

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

CONTRACT BETWEEN THE UNITED STATES AND  
JOHN A. DRIVER AND CLARE M. DRIVER, TRUSTEES OF THE JOHN A. AND CLARE  
M. DRIVER FAMILY REVOCABLE TRUST,  
DIVERTER OF WATER FROM SACRAMENTO RIVER SOURCES,  
SETTLING WATER RIGHTS DISPUTES AND  
PROVIDING FOR PROJECT WATER

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9 M. DRIVER FAMILY REVOCABLE TRUST,  
10 DIVERTER OF WATER FROM SACRAMENTO RIVER SOURCES,  
11 SETTLING WATER RIGHTS DISPUTES AND  
12 PROVIDING FOR PROJECT WATER

13 THIS CONTRACT, hereinafter referred to as "Settlement Contract," is entered  
14 into by THE UNITED STATES OF AMERICA, hereinafter referred to as the United States,  
15 made this 18<sup>th</sup> day of March, 2005, pursuant to the applicable authority  
16 granted to it generally in the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or  
17 supplementary thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844),  
18 as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented,  
19 including but not limited to Sections 9 and 14 thereto, July 2, 1956 (70 Stat. 483), June 21, 1963  
20 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat. 3050), as amended,  
21 and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively hereinafter  
22 referred to as Federal Reclamation law, and JOHN A. DRIVER AND CLARE M. DRIVER,  
23 TRUSTEES OF THE JOHN A. AND CLARE M. DRIVER FAMILY REVOCABLE TRUST,  
24 hereinafter referred to as the Contractor, acting pursuant to Sections 12003 and 12004 of the  
25 California Water Code, with its principal place of business in California;

26 WITNESSETH, that:

27

EXPLANATORY RECITALS

28 [1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley  
29 Project, California, for multiple purposes pursuant to its statutory authority; and

30 [2<sup>nd</sup>] WHEREAS, the Contractor has rights to divert, is diverting, and will continue to  
31 divert for reasonable beneficial use, water from the natural flow of the Sacramento River and  
32 tributaries thereto, that would have been flowing therein if the Central Valley Project were not in  
33 existence; and

34 [3<sup>rd</sup>] WHEREAS, the construction and operation of the integrated and coordinated  
35 Central Valley Project has changed and will further change the regimen of the Sacramento,  
36 American, San Joaquin, and Trinity Rivers and the Sacramento-San Joaquin Delta from  
37 unregulated flow to regulated flow; and

38 [4<sup>th</sup>] WHEREAS, the United States has rights to divert, is diverting, and will continue  
39 to divert waters from said Rivers and said Delta in connection with the operation of said Central  
40 Valley Project; and

41 [5<sup>th</sup>] WHEREAS, the Contractor and the United States had a dispute over the  
42 respective rights of the parties to divert and use water from the regulated flow of the Sacramento  
43 River which threatened to result in litigation, and as a means to settle that dispute entered into  
44 Contract No. 14-06-200-2398A, as amended, hereinafter referred to as the Existing Contract,  
45 which established terms for the delivery to the Contractor of Central Valley Project Water, and  
46 the quantities of Base Supply the United States and the Contractor agreed may be diverted by the  
47 Contractor from the Sacramento River pursuant to such contract; and

48 [6<sup>th</sup>] WHEREAS, the United States and the Contractor disagree with respect to the  
49 authority of the United States to change the quantities of Base Supply and/or Project Water

50 specified as available for diversion in this Settlement Contract from the quantities specified in  
51 the Existing Contract, and other issues related thereto. That dispute was the subject of litigation  
52 in a lawsuit entitled *Glenn-Colusa Irrigation District, et al. v. United States, et al.*  
53 [Civ. No. S-01-1816 GEB/JFM (E.D. Cal.)], but that litigation was dismissed, without prejudice,  
54 pursuant to a stipulation of dismissal filed by the parties thereto on August 29, 2002.

55 Notwithstanding that dismissal, the Contractor and the United States enter into this Settlement  
56 Contract to renew the Existing Contract, pursuant to the terms of the Existing Contract, Federal  
57 Reclamation law, and the laws of the State of California; and

58 [7<sup>th</sup>] WHEREAS, to assure the Contractor of the enjoyment and use of the regulated  
59 flow of the said Rivers and the Delta, and to provide for the economical operation of the Central  
60 Valley Project by, and the reimbursement to, the United States for expenditures made for said  
61 Project.

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

64 DEFINITIONS

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

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

71 (b) "Basin-Wide Water Management Plan" shall mean the mutually agreeable  
72 Sacramento River Basinwide Water Management Plan, dated October 11, 2004, developed by

73 Glenn- Colusa Irrigation District, Maxwell Irrigation District, Natomas Central Mutual Water  
74 Company, Pelger Mutual Water Company, Princeton-Codora Glenn Irrigation District, Provident  
75 Irrigation District, Reclamation District 108, Sutter Mutual Water Company, Anderson-  
76 Cottonwood Irrigation District, Meridian Farms Water Company, Reclamation District 1004, and  
77 the U.S. Bureau of Reclamation;

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

82 (d) "Contract Total" shall mean the sum of the Base Supply and Project Water  
83 available for diversion by the Contractor for the period April 1 through October 31;

84 (e) "Critical Year" shall mean any Year in which either of the following  
85 eventualities exists:

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

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

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

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

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

107 (g) Omitted;

108 (h) Omitted;

109 (i) Omitted;

110 (j) Omitted

111 (k) Omitted;

112 (l) "Project" shall mean the Central Valley Project owned by the United  
113 States and managed by the Department of the Interior, Bureau of Reclamation;

114 (m) "Project Water" shall mean all Surface Water diverted or scheduled to be  
115 diverted each month during the period April through October of each Year by the Contractor  
116 from the Sacramento River which is in excess of the Base Supply. The United States recognizes  
117 the right of the Contractor to make arrangements for acquisition of water from projects of others  
118 than the United States for delivery through the Sacramento River and tributaries subject to

119 written agreement between Contractor and the United States as to identification of such water,  
120 which water, when so identified, shall not be deemed Project Water under this Settlement  
121 Contract;

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

125 (o) "Secretary" or "Contracting Officer" shall mean the Secretary of the  
126 Interior, a duly appointed successor, or an authorized representative acting pursuant to any  
127 authority of the Secretary and through any agency of the Department of the Interior;

128 (p) "Surface Water" shall mean only those waters that are considered as  
129 surface water under California law;

130 (q) "Water Year" shall mean the period commencing with October 1 of one  
131 year and extending through September 30 of the next; and

132 (r) "Year" shall mean a calendar year.

133 TERM OF SETTLEMENT CONTRACT

134 2. (a) This Settlement Contract shall become effective April 1, 2005, and shall  
135 remain in effect until and including March 31, 2045; Provided, that under terms and conditions  
136 mutually agreeable to the parties hereto, renewals may be made for successive periods not to  
137 exceed 40 years each. The terms and conditions of each renewal shall be agreed upon not later  
138 than one year prior to the expiration of the then existing Settlement Contract.

139 (b) With respect to Project Water and the portions of this Settlement Contract  
140 pertaining thereto, upon written request by the Contractor of the Secretary made not later than  
141 one year prior to the expiration of this Settlement Contract, whenever, account being taken of the



142 amount then credited to the costs of construction of water supply works, the remaining amount of  
143 construction costs of water supply work which is properly assignable for ultimate return by the  
144 Contractor as established by the Secretary of the Interior pursuant to (3) of Section 1 of Public  
145 Law 643 (70 Stat. 483), probably can be repaid to the United States within the term of a contract  
146 under subsection 9(d) of the 1939 Reclamation Project Act (53 Stat. 1187), the relevant portions  
147 of this Settlement Contract may be converted to a contract under said subsection 9(d) upon terms  
148 and conditions mutually agreeable to the United States and the Contractor. The Secretary shall  
149 make a determination ten years after the date of execution of this Settlement Contract, and every  
150 five years thereafter, of whether a conversion to a contract under said subsection 9(d) can be  
151 accomplished pursuant to Public Law 643. Notwithstanding any provision of this Settlement  
152 Contract, the Contractor reserves and shall have all rights and benefits under Public Law 643.

153 WATER TO BE FURNISHED TO CONTRACTOR

154 3. (a) Subject to the conditions, limitations, and provisions hereinafter  
155 expressed, the Contractor is hereby entitled and authorized to divert from the Sacramento River  
156 at the locations shown in Exhibit A, for beneficial use within the area delineated on Exhibit B,  
157 (both Exhibits are attached hereto and made a part hereof), the Contract Total designated in  
158 Exhibit A, or any revision thereof.

159 (b) No sale, transfer, exchange, or other disposal of any of the Contract Total  
160 designated in Exhibit A or the right to the use thereof for use on land other than that shown on  
161 Exhibit B shall be made by the Contractor without first obtaining the written consent of the  
162 Contracting Officer. Such consent will not be unreasonably withheld and a decision will be  
163 rendered in a timely manner. For short-term actions that will occur within one year or less, the  
164 decision will be rendered within 30 days after receipt of a complete written proposal. For

165 long-term actions that will occur in a period longer than one year, the decision will be rendered  
166 within 90 days after receipt of a complete written proposal. For a proposal to be deemed  
167 complete by the Contracting Officer, it must comply with all provisions required by State and  
168 Federal law, including information sufficient to enable the Contracting Officer to comply with  
169 the National Environmental Policy Act, the Endangered Species Act, and applicable rules or  
170 regulations then in effect; Provided, that such consent does not authorize the use of Federal  
171 facilities to facilitate or effectuate the sale, transfer, exchange or other disposal of Base Supply.  
172 Such use of Federal facilities will be the subject of a separate agreement to be entered into  
173 between the Contractor and Reclamation.

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

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

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

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

184 (2) The control, carriage, handling, use, disposal, or distribution of  
185 water diverted by the Contractor outside the facilities constructed and then being operated and  
186 maintained by or on behalf of the United States;

187 (3) Claims of damage of any nature whatsoever, including but not  
188 limited to, property loss or damage, personal injury, or death arising out of or connected with the  
189 control, carriage, handling, use, disposal, or distribution of said water outside of the hereinabove  
190 referred to facilities; and

191 (4) Any damage whether direct or indirect arising out of or in any  
192 manner caused by a shortage of water whether such shortage be on account of errors in  
193 operation, drought, or unavoidable causes.

194 (f) In addition to the provisions of subdivision (e) of Article 3 of this  
195 Contract, if there is a shortage of Project Water because of actions taken by the Contracting  
196 Officer to meet legal obligations then, except as provided in subdivision (a) of Article 30 of this  
197 Contract, no liability shall accrue against the United States or any of its officers, agents, or  
198 employees for any damage, direct or indirect, arising therefrom.

199 RETURN FLOW

200 4. Nothing herein shall be construed as an abandonment or a relinquishment by the United  
201 States of any right it may have to the use of waste, seepage, and return flow water derived from  
202 water diverted by the Contractor hereunder and which escapes or is discharged beyond the  
203 boundaries of the lands shown on Exhibit B; Provided, that this shall not be construed as  
204 claiming for the United States any right to such water which is recovered by the Contractor  
205 pursuant to California law from within the boundaries of the lands shown on Exhibit B, and  
206 which is being used pursuant to this Settlement Contract for surface irrigation or underground  
207 storage for the benefit of the lands shown on Exhibit B by the Contractor.

208 CONSTRAINTS ON THE AVAILABILITY OF WATER

209 5. In a Critical Year, the Contractor shall have the option to:

210 (a) Irrigate not in excess of 75 percent of its irrigable acreage shown on  
211 Exhibit A; or

212 (b) Divert from the Sacramento River not in excess of 75 percent of the  
213 Contract Total shown on Exhibit A, subject to the installation of measurement equipment  
214 satisfactory to the Contracting Officer. The Contractor shall install, operate, and maintain this  
215 equipment at the Contractor's expense. The Contractor shall submit, by April 1 of that Critical  
216 Year, a written schedule to the Contracting Officer indicating the Contract Total to be diverted  
217 by the Contractor during each month of that Critical Year under this Settlement Contract.

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

222 INTEGRATED WATER MANAGEMENT AND PARTNERSHIPS

223 6. The Contractor and United States desire to work together to maximize the  
224 reasonable beneficial use of water for their mutual benefit. As a consequence, the United States  
225 and the Contractor will work in partnership and with others within the Sacramento Valley,  
226 including other contractors, to facilitate the better integration within the Sacramento Valley of all  
227 water supplies including, but not limited to, the better management and integration of surface  
228 water and groundwater, the development and better utilization of surface water storage, the  
229 effective utilization of waste, seepage and return flow water, and other operational and  
230 management options that may be identified in the future.

231

USE OF WATER FURNISHED TO CONTRACTOR

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7. (a) Project Water furnished to the Contractor pursuant to this Settlement

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Contract shall not be delivered or furnished by the Contractor for any purposes other than

234

agricultural purposes without the written consent of the Contracting Officer. For purposes of this

235

Settlement Contract, "agricultural purposes" includes, but is not restricted to, the irrigation of

236

crops, the watering of livestock, incidental domestic use including related landscape irrigation,

237

and underground water replenishment.

238

(b) The Contractor shall comply with requirements applicable to the

239

Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution

240

of this Settlement Contract undertaken pursuant to Section 7 of the Endangered Species Act of

241

1973, as amended, that are within the Contractor's legal authority to implement. The Existing

242

Contract, which evidences in excess of 40 years of diversions, for agricultural uses, of the

243

quantities of water provided for in Article 3, and the underlying water rights of the Contractor

244

will be considered in developing an appropriate base-line for the Biological Assessment prepared

245

pursuant to the Endangered Species Act, and in any other needed environmental review.

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Nothing herein shall be construed to prevent the Contractor from challenging or seeking judicial

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relief in a court of competent jurisdiction with respect to any biological opinion or other

248

environmental documentation referred to in this Article.

249

RATE AND METHOD OF PAYMENT FOR WATER

250

8. (a) The Contractor shall make payments to the United States as provided in

251

this Article for each acre of land irrigated from April 1 through October 31 each Year.

252

Such payments shall be at Rates and Charges established in accordance with: (i)

253

the Secretary's then current ratesetting policies for the Project; and (ii) applicable Reclamation

254 law and associated rules and regulations, or policies; Provided, that if the Contractor desires to  
255 use Project Water for other than agricultural purposes the Rates and Charges set forth above will  
256 be adjusted by the Contracting Officer to the applicable Rates and Charges for such purposes.  
257 The Rates and Charges applicable to the Contractor upon execution of this Settlement Contract  
258 are set forth in Exhibit D, as may be revised annually. The Secretary's ratesetting policies for  
259 the Project shall be amended, modified, or superseded only through a public notice and comment  
260 procedure.

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

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

270 (2) Prior to October 1 of each Year, the Contracting Officer shall make  
271 available to the Contractor an estimate of the Rates for Project Water for the following Year and  
272 the computations and cost allocations upon which those Rates are based. The Contractor shall be  
273 allowed not less than two months to review and comment on such computations and cost  
274 allocations. By December 31 of each Year, the Contracting Officer shall provide the Contractor  
275 with the final Rates to be in effect for the upcoming Year, and such notification shall revise  
276 Exhibit D.

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

279 (1) With respect to Rates and Charges, on or before May 1 of each  
280 Year, the Contractor shall pay the United States one-half the total amount payable pursuant to  
281 subdivision (a) of this Article and the remainder shall be paid on or before July 1 or such later  
282 date or dates as may be specified by the United States in a written notice to the Contractor.

283 (2) The amount to be paid on or before May 1 of each Year shall be  
284 based on a written estimate, provided to the Contracting Officer by the Contractor on or before  
285 April 1 of each Year, of the total area to be irrigated between April 1 and October 31 of that  
286 Year.

287 (3) The amount to be paid on or before July 1 shall be equal to the  
288 difference between the amount paid on May 1 and the total amount due for the Year, based on  
289 the total area actually irrigated between April 1 and July 1.

290 (4) If additional areas are placed under irrigation on or after July 1, but  
291 before October 31, additional payment shall be made in advance of such additional irrigation at  
292 the Rates and Charges shown in Exhibit D for each additional acre placed under irrigation.

293 (d) Payments to be made by the Contractor to the United States under this  
294 Settlement Contract may be paid from any revenues available to the Contractor. All revenues  
295 received by the United States from the Contractor relating to the delivery of Project Water or the  
296 delivery of non-Project Water through Project facilities shall be allocated and applied in  
297 accordance with Federal Reclamation law and the associated rules or regulations, and the then  
298 current Project ratesetting policies for irrigation water.

299 (e) The Contracting Officer shall keep its accounts pertaining to the  
300 administration of the financial terms and conditions of its long-term water service and Settlement  
301 Contracts, in accordance with applicable Federal standards, so as to reflect the application of  
302 Project costs and revenues. The Contracting Officer shall, each Year upon request of the  
303 Contractor, provide to the Contractor a detailed accounting of all Project and Contractor expense  
304 allocations, the disposition of all Project and Contractor revenues, and a summary of all water  
305 delivery information. The Contracting Officer and the Contractor shall enter into good faith  
306 negotiations to resolve any discrepancies or disputes relating to accountings, reports, or  
307 information.

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

315 (g) For the term of this Settlement Contract, Rates under the respective  
316 ratesetting policies for the Project will be established to recover only reimbursable operation and  
317 maintenance (including any deficits) and capital costs of the Project, as those terms are used in  
318 the then-current Project ratesetting policies, and interest, where appropriate, except in instances  
319 where a minimum Rate is applicable in accordance with the relevant Project ratesetting policy.  
320 Proposed changes of significance in practices which implement the ratesetting policies for the  
321 Project will not be implemented until the Contracting Officer has provided the Contractor an



322 opportunity to discuss the nature, need, and impact of the proposed change. The Contractor  
323 retains all rights to challenge the validity of Rates and Charges imposed pursuant to this  
324 Settlement Contract, including but not limited to operation and maintenance expenses and  
325 operation and maintenance deficits, in an appropriate administrative or judicial proceeding.

326 (h) Except as provided in subsection 3405(a)(1)(B) of the CVPIA, the Rates  
327 for Project Water transferred, exchanged, or otherwise disposed of, by the Contractor shall be the  
328 Contractor's Rates adjusted upward or downward to reflect the changed costs of delivery (if any)  
329 of the transferred, exchanged, or otherwise disposed of Project Water to the transferee's point of  
330 delivery in accordance with the then-current ratesetting policies for the Project. Except as  
331 provided in subsection 3407(d)(2)(A) of the CVPIA, the Charges for Project Water transferred,  
332 exchanged, or otherwise disposed of, by the Contractor shall be the Contractor's Charges  
333 specified in Exhibit D. If the Contractor is receiving lower Rates and Charges because of  
334 inability to pay and is transferring, exchanging, or otherwise disposing of Project Water to  
335 another entity whose Rates and Charges are not adjusted due to inability to pay, the Rates and  
336 Charges for transferred, exchanged, or otherwise disposed of Project Water shall be the  
337 Contractor's Rates and Charges unadjusted for ability to pay.

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

340 (j) Each payment to be made pursuant to subdivisions (a) and (b) of this  
341 Article shall be made at the office of the Bureau of Reclamation, Mid-Pacific Region, File  
342 No. 11546, P.O. Box 6000, San Francisco, California, 94160-1546, or at such other place as the  
343 United States may designate in a written notice to the said Contractor. Payments shall be made  
344 by cash transaction, wire, or any other mechanism as may be agreed to in writing by the

345 Contractor and the Contracting Officer. In event there should be a default in the payment of the  
346 amount due, the delinquent payment provisions of Article 13 shall apply. The Contractor shall  
347 not be relieved of the whole or any part of its said obligation by, on account of, or  
348 notwithstanding, as the case may be its failure, refusal, or neglect to divert the quantity of Project  
349 Water shown on Exhibit A.

350 AGREEMENT ON WATER QUANTITIES

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

352 (1) It shall constitute full agreement as between the United States and  
353 the Contractor as to the quantities of water and the allocation thereof between Base Supply and  
354 Project Water which may be diverted by the Contractor from the Sacramento River for beneficial  
355 use on the land shown on Exhibit B from April 1 through October 31, which said diversion, use,  
356 and allocation shall not be disturbed so long as the Contractor shall fulfill all of its obligations  
357 hereunder;

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

360 (b) Nothing herein contained is intended to or does limit rights of the  
361 Contractor against others than the United States or of the United States against any person other  
362 than the Contractor; Provided, however, that in the event the Contractor, the United States, or  
363 any other person shall become a party to a general adjudication of rights to the use of water of  
364 the Sacramento River system, this Settlement Contract shall not jeopardize the rights or position  
365 of either party hereto or of any other person and the rights of all such persons in respect to the  
366 use of such water shall be determined in such proceedings the same as if this Settlement Contract  
367 had not been entered into, and if final judgment in any such general adjudication shall determine

368 that the rights of the parties hereto are different from the rights as assumed herein, the parties  
369 shall negotiate an amendment to give effect to such judgment. In the event the parties are unable  
370 to agree on an appropriate amendment they shall, within 60 days of determining that there is an  
371 impasse, employ the services of a neutral mediator, experienced in resolving water rights  
372 disputes, to assist in resolving the impasse. The cost of the mediation will be shared equally. A  
373 failure to reach agreement on an amendment within 60 days of the end of mediation will cause  
374 the immediate termination of this Settlement Contract.

375 (c) In the event that the California State Water Resources Control Board or a  
376 court of competent jurisdiction issues a final decision or order modifying the terms and  
377 conditions of the water rights of either party to this Settlement Contract in order to impose Bay-  
378 Delta water quality obligations, the Contractor and the United States shall promptly meet to  
379 determine whether or not to modify any of the terms of this Settlement Contract to comply with  
380 the final decision or order. If within 60 days of the date of the issuance of the final decision or  
381 order the parties are not able to reach agreement regarding either the need to modify this  
382 Settlement Contract or the manner in which this Settlement Contract is to be modified, the  
383 parties shall promptly retain a neutral mediator, experienced in resolving water right disputes, to  
384 assist the parties in resolving their dispute. The cost of the mediator shall be shared equally. In  
385 the event that either of the parties to this Settlement Contract determines that the parties will not  
386 be able to develop mutually-agreeable modification(s) to this Settlement Contract even with the  
387 assistance of a mediator, either of the parties to this Settlement Contract may attempt to resolve  
388 the impasse by seeking appropriate judicial relief including, but not limited to, filing a general  
389 adjudication of the rights to the use of water in the Sacramento River system. The foregoing  
390 provisions of this sub-article shall only apply to the incremental obligations contained within a

391 final decision or order of the State Water Resources Control Board that reflects a modification to  
392 the obligations imposed in State Water Resources Control Board Revised Water Rights Decision  
393 1641 dated March 15, 2000, and its associated 1995 Water Quality Control Plan which, taken  
394 together, will be considered the baseline for the application of the provisions of this sub-article.

395 (d) In the event this Settlement Contract terminates, the rights of the parties to  
396 thereafter divert and use water shall exist as if this Settlement Contract had not been entered into;  
397 and the fact that as a compromise settlement of a controversy as to the respective rights of the  
398 parties to divert and use water and the yield of such rights during the term hereof, this Settlement  
399 Contract places a limit on the Contract Total to be diverted annually by the Contractor during the  
400 Settlement Contract term and segregates it into Base Supply and Project Water shall not  
401 jeopardize the rights or position of either party with respect to its water rights or the yield thereof  
402 at all times after the Settlement Contract terminates. It is further agreed that the Contractor at all  
403 times will first use water to the use of which it is entitled by virtue of its own water rights, and  
404 neither the provisions of this Settlement Contract, action taken thereunder, nor payments made  
405 thereunder to the United States by the Contractor shall be construed as an admission that any part  
406 of the water used by the Contractor during the term of this Settlement Contract was in fact water  
407 to which it would not have been entitled under water rights owned by it nor shall receipt of  
408 payments thereunder by the United States from the Contractor be construed as an admission that  
409 any part of the water used by the Contractor during the term of this Settlement Contract was in  
410 fact water to which it would have been entitled under water rights owned by it.

411

MEASUREMENT OF WATER

412

10. (a) All water diverted by the Contractor from the Sacramento River will be

413

diverted at the existing point or points of diversion shown on Exhibit A or at such other points as

414

may be mutually agreed upon in writing by the Contracting Officer and the Contractor.

415

(b) The right of ingress to and egress from all points of diversion is hereby

416

granted to all authorized employees of the United States. The Contractor also hereby grants to

417

the United States the right to install, operate, maintain, and replace measuring equipment on

418

diversion or carriage facilities at each point of diversion as the Contracting Officer deems

419

necessary.

420

(c) The Contractor shall not modify, alter, remove, or replace diversion

421

facilities or do any other act which would alter the effectiveness or accuracy of the measuring

422

equipment installed by the United States or its representatives unless and until the Contracting

423

Officer has been notified with due diligence and has been given an opportunity to modify such

424

measuring equipment in such manner as may be necessary or appropriate. In the event of an

425

emergency the Contractor shall notify the United States within a reasonable time thereafter as to

426

the existence of the emergency and the nature and extent of such modification, alteration,

427

removal, or replacement of diversion facilities.

428

(d) The Contractor shall pay the United States for the costs to repair, relocate,

429

or replace measurement equipment when the Contractor modifies, alters, removes, or replaces

430

diversion or carriage facilities.

431

RULES AND REGULATIONS

432

11. The parties agree that the delivery of Project Water for irrigation use or use of

433

Federal facilities pursuant to this Settlement Contract is subject to Federal Reclamation law,

434 including but not limited to, the Reclamation Reform Act of 1982 (43 U.S.C.390aa et seq.), as  
435 amended and supplemented, and the rules and regulations promulgated by the Secretary of the  
436 Interior under Federal Reclamation law.

437 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

451 CHARGES FOR DELINQUENT PAYMENTS

452 13. (a) The Contractor shall be subject to interest, administrative and penalty  
453 charges on delinquent installments or payments. When a payment is not received by the due  
454 date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond  
455 the due date. When a payment becomes 60 days delinquent, the Contractor shall pay an  
456 administrative charge to cover additional costs of billing and processing the delinquent payment.  
457 When a payment is delinquent 90 days or more, the Contractor shall pay an additional penalty  
458 charge of six percent per year for each day the payment is delinquent beyond the due date.  
459 Further, the Contractor shall pay any fees incurred for debt collection services associated with a  
460 delinquent payment.

461 (b) The interest charge rate shall be the greater of the rate prescribed quarterly  
462 in the Federal Register by the Department of the Treasury for application to overdue payments,  
463 or the interest rate of one-half of one percent per month prescribed by Section 6 of the  
464 Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be  
465 determined as of the due date and remain fixed for the duration of the delinquent period.

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

469

QUALITY OF WATER

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

475

WATER AND AIR POLLUTION CONTROL

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

480

EQUAL OPPORTUNITY

481 16. During the performance of this Settlement Contract, the Contractor agrees as  
482 follows:

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

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

497 (c) The Contractor will send to each labor union or representative of workers  
498 with which it has a collective bargaining agreement or other contract or understanding, a notice,  
499 to be provided by the Contracting Officer, advising the said labor union or workers'

500 representative of the Contractor's commitments under Section 202 of Executive Order 11246 of  
 501 September 24, 1965, and shall post copies of the notice in conspicuous places available to  
 502 employees and applicants for employment.

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

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

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

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

527 17. Omitted.

528 18. Omitted.

529 BOOKS, RECORDS, AND REPORTS

530 19. The Contractor shall establish and maintain accounts and other books and records  
 531 pertaining to administration of the terms and conditions of this Settlement Contract, including:  
 532 the Contractor's financial transactions, water supply data, and Project land and right-of-way  
 533 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use  
 534 data; and other matters that the Contracting Officer may require. Reports thereon shall be  
 535 furnished to the Contracting Officer in such form and on such date or dates as the Contracting  
 536 Officer may require. Subject to applicable Federal laws and regulations, each party to this



537 Settlement Contract shall have the right during office hours to examine and make copies of each  
538 other's books and official records relating to matters covered by this Settlement Contract.

539 CHANGE OF PLACE OF USE

540 20. Unless the written consent of the United States is first obtained no change shall be  
541 made in the place of water use shown on Exhibit B.

542 21. Omitted.

543 NOTICES

544 22. Any notice, demand, or request authorized or required by this Settlement Contract  
545 shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid,  
546 or delivered to the Area Manager, Northern California Area Office, Bureau of Reclamation,  
547 16349 Shasta Dam Boulevard, Shasta Lake, California 96019, and on behalf of the United States,  
548 when mailed, postage prepaid, or delivered to John A. Driver and Clare M. Driver, Trustees of  
549 the John A. and Clare M. Driver Family Revocable Trust, 20528 Cranmore Road, Knights  
550 Landing, California 95645. The designation of the addressee or the address may be changed by  
551 notice given in the same manner as provided in this Article for other notices.

552 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

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

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

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

562 OFFICIALS NOT TO BENEFIT

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

566

CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

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

572

CONFIRMATION OF SETTLEMENT CONTRACT

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

580

27. Omitted.

581

PRIVACY ACT COMPLIANCE

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

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

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

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

600 (e) The Contractor shall forward promptly to the System Manager each  
 601 proposed denial of access under 43 CFR 2.64; and each request for amendment of records filed

602 under 43 CFR 2.71; notify the requester accordingly of such referral; and provide the System  
603 Manager with information and records necessary to prepare an appropriate response to the  
604 requester. These requirements do not apply to individuals seeking access to their own  
605 certification and reporting forms filed with the Contractor pursuant to 43 CFR 426.18, unless the  
606 requester elects to cite the Privacy Act as a basis for the request.

607

WATER CONSERVATION

608           29.   (a)   Prior to the diversion of Project Water, the Contractor shall be  
609 implementing an effective water conservation and efficiency program based on the Basin-Wide  
610 Water Management Plan and/or Contractor's water conservation plan that has been determined  
611 by the Contracting Officer to meet the conservation and efficiency criteria for evaluating water  
612 conservation plans established under Federal law. The water conservation and efficiency  
613 program shall contain definite water conservation objectives, appropriate economically feasible  
614 water conservation measures, and time schedules for meeting those objectives. Continued  
615 diversion of Project Water pursuant to this Settlement Contract shall be contingent upon the  
616 Contractor's continued implementation of such water conservation program. In the event the  
617 Contractor's water conservation plan or any revised water conservation plan completed pursuant  
618 to subdivision (d) of Article 29 of this Settlement Contract have not yet been determined by the  
619 Contracting Officer to meet such criteria, due to circumstances which the Contracting Officer  
620 determines are beyond the control of the Contractor, Project Water deliveries shall be made  
621 under this Settlement Contract so long as the Contractor diligently works with the Contracting  
622 Officer to obtain such determination at the earliest practicable date, and thereafter the Contractor  
623 immediately begins implementing its water conservation and efficiency program in accordance  
624 with the time schedules therein.

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

628 (c) At five-year intervals, the Contractor shall revise its water conservation  
629 plan to reflect the then current conservation and efficiency criteria for evaluating water  
630 conservation plans established under Federal law and submit such revised water management  
631 plan to the Contracting Officer for review and evaluation. The Contracting Officer will then  
632 determine if the water conservation plan meets Reclamation's then current conservation and  
633 efficiency criteria for evaluating water conservation plans established under Federal law.

634 (d) If the Contractor is engaged in direct groundwater recharge, such activity  
635 shall be described in the Contractor's water conservation plan.

#### 636 OPINIONS AND DETERMINATIONS

637 30. (a) Where the terms of this Settlement Contract provide for actions to be  
638 based upon the opinion or determination of either party to this Settlement Contract, said terms  
639 shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or  
640 unreasonable opinions or determinations. Both parties, notwithstanding any other provisions of  
641 this Settlement Contract, expressly reserve the right to seek relief from and appropriate  
642 adjustment for any such arbitrary, capricious, or unreasonable opinion or determination. Each  
643 opinion or determination by either party shall be provided in a timely manner. Nothing in  
644 subdivision (a) of Article 30 of this Settlement Contract is intended to or shall affect or alter the  
645 standard of judicial review applicable under Federal law to any opinion or determination  
646 implementing a specific provision of Federal law embodied in statute or regulation.

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

652 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

661 (b) All advances for miscellaneous costs incurred for work requested by the  
662 Contractor pursuant to Article 31 of this Settlement Contract shall be adjusted to reflect the  
663 actual costs when the work has been completed. If the advances exceed the actual costs incurred,  
664 the difference will be refunded to the Contractor. If the actual costs exceed the Contractor's  
665 advances, the Contractor will be billed for the additional costs pursuant to Article 31 of this  
666 Settlement Contract.

667 WAIVER OF DEFAULT

668 32. The waiver by either party to this Settlement Contract as to any default shall not  
669 be construed as a waiver of any other default or as authority of the other party to continue such

670 default or to make, do, or perform, or not to make, do, or perform, as the case may be, any act or  
671 thing which would constitute a default.

672 CONTRACT ASSIGNMENT OR TERMINATION UPON TRANSFER OF LAND

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

676 (1) A voluntary inter vivos transfer may be made, upon mutual  
677 agreement of the United States and the Contractors, to a person eligible to hold title to the land as  
678 a nonexcess landowner; and

679 (2) In the event the title of the Contractors to such land, or any portion  
680 thereof, is transferred by operation of law, such as by conveyance in satisfaction of a mortgage,  
681 by inheritance, or by device, the rights and obligations of the Contractors shall pass with the title  
682 and the land shall be subject to provisions of Reclamation law pertaining to such transfers. Any  
683 transfer of the rights and obligations of this Settlement Contract by the person acquiring title by  
684 operation of law shall be in accordance with provisions of subsection (1) above.

685 (b) The Contractors shall notify the Contracting Officer in writing of any  
686 proposed transfer of this Settlement Contract. In addition, in the case of a partial assignment the  
687 Contractors shall:

688 (1) Designate the proportionate quantities of Base Supply and Project  
689 Water which they desire to assign; and

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

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

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

698 TERMINATION

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

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

703 THE UNITED STATES OF AMERICA

APPROVED AS TO LEGAL  
FORM AND SUFFICIENCY

*James E. Turner*  
OFFICE OF REGIONAL SOLICITOR  
DEPARTMENT OF THE INTERIOR

By: *[Signature]*  
Regional Director, Mid-Pacific Region  
Bureau of Reclamation

704  
705  
706

707 (SEAL)

708 JOHN A. AND CLARE M. DRIVER FAMILY  
709 REVOCABLE TRUST

710 *[Signature]*  
711 John A. Driver, Trustee

712 *Clare M. Driver*  
713 Clare M. Driver, Trustee

714 (H:\PUBLIC\Sac River Final LTRC's-01\2005-01-31DriverJohnA.andClareM.-2398A-R-1FinalDraft.DOC)



# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

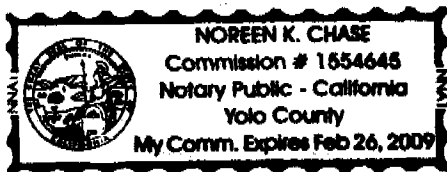
State of California  
County of Yolo } ss.

On March 9, 2005, before me, NOREEN K. CHASE, Notary Public  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared JOHN A. DRIVER and CLARE M. Driver  
Name(s) of Signer(s)

- personally known to me  
 proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) ~~is~~/are subscribed to the within instrument and acknowledged to me that ~~he/she~~/they executed the same in ~~his/her~~/their authorized capacity(ies), and that by ~~his/her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Noreen K Chase  
Signature of Notary Public

Place Notary Seal Above

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: United States Department of the Interior Bureau of Reclamation Central Valley Project, California

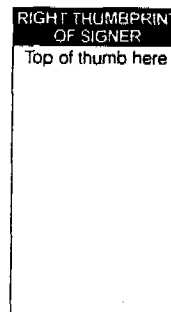
Document Date: not dated Number of Pages: 30 + exhibits

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer

- Signer's Name: \_\_\_\_\_
- Individual  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Attorney in Fact  
 Trustee  
 Guardian or Conservator  
 Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_



**CERTIFICATION OF TRUST DOCUMENT  
(CALIFORNIA PROBATE CODE SECTION 18100.5)**

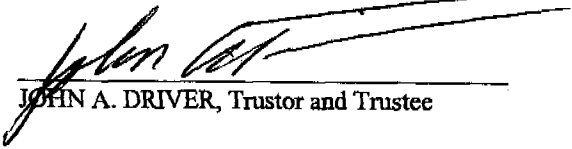
JOHN A. DRIVER and CLARE M. DRIVER, declare that:

1. We are the Trustors and Trustees under the JOHN A. AND CLARE M. DRIVER FAMILY REVOCABLE TRUST.
2. The attached pages of this trust agreement designating JOHN A. DRIVER and CLARE M. DRIVER as Trustors and as Trustees and reciting the powers of the Trustee, appointing successor Trustees, and depicting the signatures and acknowledging the signatures, are true and correct copies of the original trust document.
3. The name of the trust is the JOHN A. AND CLARE M. DRIVER FAMILY REVOCABLE TRUST. Assets in the trust should be titled in the names of the Trustees as follows: JOHN A. DRIVER and CLARE M. DRIVER, Trustees of the JOHN A. AND CLARE M. DRIVER FAMILY REVOCABLE TRUST dated August 31, 1994.
4. This Trust is revocable. The persons holding the power to revoke the Trust are JOHN A. DRIVER and CLARE M. DRIVER.
5. The taxpayer identification number of the trust is 553-38-3027.
6. Pursuant to paragraph 18. of ARTICLE X either Trustee may exercise alone or jointly the powers of the Trustee, except as to any act to which the other Co-Trustee objects. Third persons who do not receive a written objection from the other Co-Trustee are entitled to rely on the instructions of only one Co-Trustee without further proof of the other Co-Trustee's joinder.

This Certification is being signed by all currently acting Trustees of the Trust. This Certification is made pursuant to California Probate Code Section 18100.5. The trust is in full force and effect and the provisions of the trust depicted in the attached pages have not been changed or amended. The Trust has not been revoked, modified, or amended in any manner, other than as set forth above, which would cause the representations in this certification to be incorrect.

PROBATE CODE SECTION 18100.5(h) PROVIDES THAT ANY PERSON WHO REFUSES TO ACCEPT THIS CERTIFICATION IN LIEU OF THE ORIGINAL TRUST DOCUMENTS WILL BE LIABLE FOR DAMAGES, INCLUDING ATTORNEYS' FEES, INCURRED AS A RESULT OF THAT REFUSAL, IF THE COURT DETERMINES THAT THE PERSON ACTED IN BAD FAITH IN REQUESTING THE TRUST DOCUMENTS.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Certification is executed on March 9, 2005, at Woodland, California.

  
\_\_\_\_\_  
JOHN A. DRIVER, Trustor and Trustee

  
\_\_\_\_\_  
CLARE M. DRIVER, Trustor and Trustee

JOHN A. AND CLARE M. DRIVER

FAMILY REVOCABLE TRUST

THIS TRUST AGREEMENT IS MADE BY AND BETWEEN JOHN A. DRIVER, also known as J. A. DRIVER, and CLARE M. DRIVER, residents of Sutter County, California, as Trustors and JOHN A. DRIVER, also known as J. A. DRIVER, and CLARE M. DRIVER, residents of Sutter County, California, as Trustee.

The Trustors have transferred and delivered to the Trustee without any consideration on the part of the Trustors, the property described in the attached Schedule "A" which is a part of this Trust Agreement, receipt of which is hereby acknowledged by the Trustee. The said property, together with any other property that may later become subject to this trust, shall constitute the trust estate, and shall be held, administered and distributed by the Trustee as provided herein.

Any community property or separate property transferred to the trust shall remain community property or separate property after its transfer.

**ARTICLE I**

**ADDITIONS TO TRUSTS**

The Trustors shall have the right, at any time, either during their lifetimes or by will at their deaths, to add to this trust other property, which additional property, upon its receipt and acceptance by the Trustee, shall become a part of the trust estate.

**ARTICLE II**

**COMMUNITY PROPERTY DURING JOINT LIFETIMES OF TRUSTORS**

During the joint lifetimes of the Trustors, the Trustee shall pay to both spouses for the account of the community, or shall apply for the benefit of the Trustors, the entire net income of the community

distributive share of the beneficiary to whom or for whose benefit the payment is made.

(2) The trust shall terminate as soon as no child of such deceased child of the Trustors is living who is under age twenty-one (21). Upon termination, the remaining balance of the trust shall be distributed, free of trust, to the then living issue of such deceased child of the Trustors, by right of representation, or if there are none, to the then living issue of the Trustors, by right of representation; provided, however, that if a part of that balance would otherwise be distributed free of trust to any person for whose benefit a trust is then being administered under this instrument, that part shall instead be added to that trust and shall thereafter be administered according to its terms.

#### ARTICLE X

##### ADMINISTRATION OF TRUSTS

All taxes, assessments, fees, charges and other expenses incurred by the Trustee in the administration or protection of any trust or trusts provided for in this instrument, including the compensation allowed to the Trustee for the services of the Trustee hereunder, shall be a charge upon the trust estate and shall be paid by the Trustee in full out of the principal or in full out of the income of the trust estate, or partially from each, in accordance with the provisions of the California Revised Uniform Principal and Income Law from time to time existing.

Upon any division of the trust estate into separate shares or trusts and upon any distribution, the Trustee may apportion and allocate the assets of the trust estate in cash or in kind, or partly in cash and partly in kind, or in undivided interests, in such manner as the Trustee

in the Trustee's discretion deems advisable. The Trustee may sell such property as the Trustee deems necessary to make such division or distribution. After any division of the trust estate, the Trustee may make joint investments with funds from some or all of the several shares or trusts; provided, however, that nothing herein contained shall give the Trustee any authority to change or alter as between beneficiaries the total value of such beneficiary's trust estate.

To carry out the purposes of any trust or trusts provided for in this instrument, and subject to any additions or limitations stated elsewhere in this Trust, the Trustee is vested with the following powers in addition to those powers now or hereafter conferred on the Trustee by law.

1. To continue to hold any property and to operate at the risk of the trust estate any business that the Trustee receives or acquires under the trust as long as the Trustee deems advisable.
2. To manage, control, grant options on, sell (for cash or on deferred payments), convey, exchange, partition, divide, improve, and repair trust property.
3. To lease trust property for terms within or beyond the term of the trust and for any purpose including exploration for and removal of the gas, oil and other minerals, and to enter into community oil leases, pooling, and unitization agreements.
4. To borrow money, and to encumber or hypothecate trust property by mortgage, deed of trust, pledge or otherwise.
5. To carry, at the expense of the trust, insurance of such kinds and in such amounts as the Trustee deems advisable to protect the trust estate and the Trustee against any hazard.
6. To commence or defend such litigation with respect to the trust or any property of the trust estate as the Trustee may deem advisable, at the expense of the trust.
7. To compromise or otherwise adjust any claims or litigation against or in favor of the trust.
8. To invest and reinvest the trust estate in every kind of property, real, personal or mixed, and every kind of investment, specifically including, but not by way of limitation, corporate obligations of every kind, stocks, preferred or common, shares of investment trusts, investment companies, and mutual funds, and mortgage

participations, which men of prudence, discretion, and intelligence acquire for their own account; to buy stocks or other securities on margin, and to buy or sell options, puts, and calls.

9. With respect to securities held in the trust, to have all the rights, powers and privileges of an owner, including, but not by way of limitation, the power to vote, give proxies and pay assessments; to participate in voting trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers, liquidations, sales, and leases, and incident to such participation to deposit securities with and transfer title to any protective or other committee on such terms as the Trustee may deem advisable; and to exercise or sell stock subscriptions or conversion rights.

10. Except as otherwise specifically provided in this instrument, the determination of all matters with respect to what is principal and income of the trust estate and the apportionment and allocation of receipts and expenses between these accounts shall be governed by the provisions of the California Revised Uniform Principal and Income Law from time to time existing.

11. The Trustee is expressly authorized to continue to hold and operate or participate in the operation of any farming or ranching property or interest that the Trustee receives or acquires under this trust as long as the Trustee deems advisable, at the risk of the trust estate.

12. To pay any California estate or federal estate taxes, including any generation skipping transfer taxes, which may be payable on the assets of this trust upon the death of any of Trustors' children or their issue.

13. The Trustee shall have the power, in the Trustee's absolute discretion, to retain or invest in undivided interests and commingle assets of separate trusts hereunder and shall not be required to physically segregate or apportion undivided interests to the separate trusts hereunder.

14. Subdivide and develop land, make or vacate plats, adjust boundaries, and dedicate land to public use without consideration.

15. Pay reasonable compensation of the trustee and any attorney, accountant, investment advisor, broker or other professional for services performed for the trust.

16. Withhold from distribution any trust property that is subject to conflicting claims, tax deficiencies, or other liabilities, including property subject to federal or California estate, gift or generation-skipping tax liabilities, contingent or otherwise until such claims, deficiencies or liabilities are settled and/or paid.

17. Except as otherwise provided and unless a Trustor's Will provides otherwise, all federal and California estate taxes and any state inheritance taxes payable on the death of either Trustor that are attributable to any trust created under this instrument shall be paid from such trust and equitably prorated among the persons entitled to

benefit under this instrument as provided by California Law without giving effect to Internal Revenue Code Section 2207A.

18. The Co-Trustees may exercise alone or jointly the powers set forth above. Notwithstanding the power granted to either Co-Trustee to act alone each Co-Trustee shall have no power to perform any act to which the other Co-Trustee objects. Before acting on the instructions of a Co-Trustee, any person who receives a written objection signed by the other Co-Trustee shall not be entitled to rely on such instructions. Third persons who do not receive a written objection from the other Co-Trustee shall, however, be entitled to rely on the instructions of only one Co-Trustee without further proof of the other Co-Trustee's joinder.

The beneficiaries of any irrevocable trust or trusts created under the provisions of this instrument are hereby restrained from selling, transferring, assigning, hypothecating, anticipating, or otherwise disposing of their interest or estate in either the principal or income and are without the power to do so before actual receipt, nor shall such interest or estate be subject to their liabilities or obligations or to judgments or other legal process, bankruptcy proceedings or claims of creditors or others before actual receipt by the beneficiary.

#### ARTICLE XI

##### NOMINATION AND AUTHORITY OF TRUSTEE

In the event that either JOHN A. DRIVER or CLARE M. DRIVER resigns, becomes incapacitated, dies or is otherwise unable to act as Trustee, then in such event, the survivor shall act as sole Trustee. In the event both JOHN A. DRIVER and CLARE M. DRIVER shall resign, become incapacitated, die, or are otherwise unable to act, then in such event, WILLIAM ALFRED DRIVER shall act as Trustee. In the event WILLIAM ALFRED DRIVER resigns, becomes incapacitated, dies, or is otherwise unable to act, then in such event, the GREGORY ERIC DRIVER shall act as Trustee. In the event there shall ever be a vacancy as to any Trustee hereunder for any cause and for which a successor is not named herein, then in

such event, any beneficiary of the trust may secure the appointment of a successor Trustee by petitioning a Superior Court of competent jurisdiction.

## ARTICLE XII

### REVOCATION AND AMENDMENT

1. During the joint lifetimes of the Trustors, this trust may be revoked in whole or in part with respect to community property by an instrument in writing signed by either Trustors and delivered to the Trustee and the other Trustors, and with respect to separate property, by an instrument in writing, signed by the Trustor who contributed that property to the trust, delivered to the Trustee. Upon such revocation, the Trustee shall distribute all trust property then held as community property to the Trustors as their community property, to be held and administered as community property, and shall distribute all such separate property to the Trustor who contributed that property.

2. The Trustors while both are alive, may amend any of the terms of this trust or alter, divest the interest of, or change beneficiaries by written instrument signed by both Trustors delivered to the Trustee.

3. On the death of the Deceased Spouse, the Surviving Spouse shall have the power to amend, revoke, or terminate the Survivor's Trust, but the Exemption Trust and the Marital Trust may not be amended, revoked, or terminated. On the death of the Surviving Spouse, no trust may be amended, revoked, or terminated. On revocation or termination of the Survivor's Trust during the Surviving Spouse's lifetime, all of its assets shall be delivered to the Surviving Spouse.

4. The powers of the Trustors to revoke or amend this instrument are personal to them and shall not be exercisable in their



otherwise adjust any claim, dispute, or controversy arising under any policy, and shall have authority to initiate, defend, settle and compromise any legal proceeding necessary in the Trustee's opinion to collect the proceeds of any policy. The Trustee's receipt to any insurer shall be considered in full discharge of the insurer's liability under any policy, and the insurer shall not be under any duty to inquire concerning the Trustee's application of policy proceeds.

#### ARTICLE XXIII

##### BOND AND TRUSTEE'S LIABILITY

No bond shall be required of any person named in this instrument as Trustee, or of any person appointed as the Trustee in the manner specified in this instrument, for the faithful performance of his or her duties as Trustee.

No successor Trustee shall be liable for any act, omission, or default of a predecessor Trustee. Unless requested in writing within ninety (90) days of appointment by an adult beneficiary of the trust, no successor Trustee shall have any duty to investigate or review any action of a predecessor Trustee.

#### ARTICLE XXIV

##### GENDER

Except where the context in this Trust requires otherwise, the singular includes the plural, and the masculine gender includes the feminine and neuter genders.

#### ARTICLE XXV

##### NAME OF TRUSTS

These trusts may be referred to collectively as the JOHN A. AND CLARE M. DRIVER FAMILY REVOCABLE TRUST and the separate trusts created herein may be referred to as the MARITAL TRUST of the JOHN A.

AND CLARE M. DRIVER FAMILY REVOCABLE TRUST, THE SURVIVOR'S TRUST of the JOHN A. AND CLARE M. DRIVER FAMILY REVOCABLE TRUST, and the EXEMPTION TRUST of the JOHN A. AND CLARE M. DRIVER FAMILY REVOCABLE TRUST.

The Trustors and Trustee have executed this Trust Agreement this 31 day of August, 1994, at Woodland, Yolo County, California.

John A. Driver  
JOHN A. DRIVER, Trustor

Clare M. Driver  
CLARE M. DRIVER, Trustor

John A. Driver  
JOHN A. DRIVER, Trustee

Clare M. Driver  
CLARE A. DRIVER, Trustee

State of California )  
                          ) ss.  
County of Yolo        )

On August 31, 1994, before me, the undersigned, a notary public, personally appeared JOHN A. DRIVER and CLARE M. DRIVER personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

Exhibit A

JOHN A. DRIVER and CLARE M. DRIVER,  
 TRUSTEES of the JOHN A. and CLARE M. DRIVER FAMILY REVOCABLE 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>1</u>	<u>0</u>	<u>1</u>
May	<u>3</u>	<u>0</u>	<u>3</u>
June	<u>2</u>	<u>1</u>	<u>3</u>
July	<u>0</u>	<u>4</u>	<u>4</u>
August	<u>0</u>	<u>3</u>	<u>3</u>
September	<u>0</u>	<u>2</u>	<u>2</u>
October	<u>0</u>	<u>0</u>	<u>0</u>
Total	<u>6</u>	<u>10</u>	<u>16</u>



Irrigable Acres: 6

Points of Diversion: 36.45L

Dated: 01-31-2005



Note: The Public Land Survey depicted here was digitized from USGS topographic maps.

-  Contractor's Service Area
-  Point of Diversion

**Driver, John A. and Clare M.**  
**Contract No. 14-06-200-2388A-R-1**  
**Exhibit B**



Exhibit C

Omitted

## Exhibit D

JOHN A. DRIVER and CLARE M. DRIVER,  
 TRUSTEES of the JOHN A. and CLARE M. DRIVER FAMILY REVOCABLE TRUST  
 Sacramento River  
2005 Water Rates and Charges per Irrigated Acre

	<u>Irrigation</u>
<u>COST OF SERVICE RATE:</u>	<u>\$29.53</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.	<u>\$38.68</u>
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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.	<u>\$42.98</u>
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<u>CHARGES UNDER P.L. 102-575 TO THE RESTORATION FUND 1/</u> Restoration Payments (3407(d)(2)(A))	<u>\$13.22</u>
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1/ 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).