

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

CONTRACT BETWEEN THE UNITED STATES AND  
EXCHANGE BANK, TRUSTEE OF THE CALIFORNIA STATE CONTROLLER  
ENVIRONMENTAL TRUST DATED MARCH 16, 1988, DIVERTER OF WATER FROM  
SACRAMENTO RIVER SOURCES, SETTLING WATER RIGHTS DISPUTES AND  
PROVIDING FOR PROJECT WATER

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8 EXCHANGE BANK, TRUSTEE OF THE CALIFORNIA STATE CONTROLLER  
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10 SACRAMENTO RIVER SOURCES, SETTling WATER RIGHTS DISPUTES AND  
11 PROVIDING FOR PROJECT WATER

12 THIS CONTRACT, hereinafter referred to as "Settlement Contract," is entered into  
13 by THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, made  
14 this 22 day of February, 2006, pursuant to the applicable authority granted  
15 to it generally in the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary  
16 thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and  
17 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, including but not  
18 limited to Sections 9 and 14 thereto, July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68),  
19 October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat. 3050), as amended, and Title  
20 XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively hereinafter referred to  
21 as Federal Reclamation law, and EXCHANGE BANK, TRUSTEE OF THE CALIFORNIA  
22 STATE CONTROLLER ENVIRONMENTAL TRUST DATED MARCH 16, 1988, hereinafter  
23 referred to as the Contractor, acting pursuant to Sections 12003 and 12004 of the California  
24 Water Code, with its principal place of business in California;

25 WITNESSETH, that:

EXPLANATORY RECITALS

26

27 [1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley  
28 Project, California, for multiple purposes pursuant to its statutory authority; and

29 [2<sup>nd</sup>] WHEREAS, the Contractor has rights to divert, is diverting, and will continue to  
30 divert for reasonable beneficial use, water from the natural flow of the Sacramento River and  
31 tributaries thereto, that would have been flowing therein if the Central Valley Project were not in  
32 existence; and

33 [3<sup>rd</sup>] WHEREAS, the construction and operation of the integrated and coordinated  
34 Central Valley Project has changed and will further change the regimen of the Sacramento,  
35 American, San Joaquin, and Trinity Rivers and the Sacramento-San Joaquin Delta from  
36 unregulated flow to regulated flow; and

37 [4<sup>th</sup>] WHEREAS, the United States has rights to divert, is diverting, and will continue  
38 to divert waters from said Rivers and said Delta in connection with the operation of said Central  
39 Valley Project; and

40 [5<sup>th</sup>] WHEREAS, the Contractor and the United States had a dispute over the  
41 respective rights of the parties to divert and use water from the regulated flow of the Sacramento  
42 River which threatened to result in litigation, and as a means to settle that dispute entered into  
43 Contract No. 14-06-200-3774A, hereinafter referred to as the Existing Contract, which  
44 established terms for the delivery to the Contractor of Central Valley Project Water, and the  
45 quantities of Base Supply the United States and the Contractor agreed may be diverted by the  
46 Contractor from the Sacramento River pursuant to such contract; and

47 [6<sup>th</sup>] WHEREAS, the United States and the Contractor disagree with respect to the  
8 authority of the United States to change the quantities of Base Supply and/or Project Water

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

57 [7<sup>th</sup>] WHEREAS, to assure the Contractor of the enjoyment and use of the regulated  
58 flow of the said Rivers and the Delta, and to provide for the economical operation of the Central  
59 Valley Project by, and the reimbursement to, the United States for expenditures made for said  
60 Project.

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

63 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

106 (g) Omitted;

107 (h) Omitted;

108 (i) Omitted;

109 (j) Omitted;

110 (k) Omitted;

111 (l) "Project" shall mean the Central Valley Project owned by the United

112 States and managed by the Department of the Interior, Bureau of Reclamation;

113 (m) "Project Water" shall mean all Surface Water diverted or scheduled to be

114 diverted each month during the period April through October of each Year by the Contractor

115 from the Sacramento River which is in excess of the Base Supply. The United States recognizes

116 the right of the Contractor to make arrangements for acquisition of water from projects of others

117 than the United States for delivery through the Sacramento River and tributaries subject to

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

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

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

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

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

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

132 TERM OF SETTLEMENT CONTRACT

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

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



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

152 WATER TO BE FURNISHED TO CONTRACTOR

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

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

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

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

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

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

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

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

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

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

198 RETURN FLOW

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

207 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

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

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

221 INTEGRATED WATER MANAGEMENT AND PARTNERSHIPS

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

230

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

233

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

234

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

235

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

236

and underground water replenishment.

237

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

238

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

239

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

240

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

241

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

242

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

243

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

244

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

245

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

247

environmental documentation referred to in this Article.

248

RATE AND METHOD OF PAYMENT FOR WATER

249

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

250

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

251

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

252

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

339 (j) Each payment to be made pursuant to subdivisions (a) and (c) of this  
340 Article shall be made at the office of the Bureau of Reclamation, MP Region: Mid-Pacific,  
341 P.O. Box 894242, Los Angeles, CA 90189-4242, or at such other place as the United States may  
342 designate in a written notice to the said Contractor. Payments shall be made by cash transaction,  
43 wire, or any other mechanism as may be agreed to in writing by the Contractor and the

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

348 AGREEMENT ON WATER QUANTITIES

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

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

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

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

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

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

390 the obligations imposed in State Water Resources Control Board Revised Water Rights Decision  
391 1641 dated March 15, 2000, and its associated 1995 Water Quality Control Plan which, taken  
392 together, will be considered the baseline for the application of the provisions of this sub-article.

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

409 MEASUREMENT OF WATER

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

13 (b) The right of ingress to and egress from all points of diversion is hereby  
414 granted to all authorized employees of the United States. The Contractor also hereby grants to  
415 the United States the right to install, operate, maintain, and replace measuring equipment on  
416 diversion or carriage facilities at each point of diversion as the Contracting Officer deems  
417 necessary.

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

426 (d) The Contractor shall pay the United States for the costs to repair, relocate,  
427 or replace measurement equipment when the Contractor modifies, alters, removes, or replaces  
428 diversion or carriage facilities.

429 RULES AND REGULATIONS

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

435

GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

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CHARGES FOR DELINQUENT PAYMENTS

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

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

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

467

QUALITY OF WATER

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14. The operation and maintenance of Project facilities shall be performed in such manner as is practicable to maintain the quality of raw water made available through such

470 facilities at the highest level reasonably attainable as determined by the Contracting Officer. The  
471 United States does not warrant the quality of water and is under no obligation to construct or  
472 furnish water treatment facilities to maintain or better the quality of water.

473 WATER AND AIR POLLUTION CONTROL

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

478 EQUAL OPPORTUNITY

479 16. During the performance of this Settlement Contract, the Contractor agrees as  
480 follows:

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

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

495 (c) The Contractor will send to each labor union or representative of workers  
496 with which it has a collective bargaining agreement or other contract or understanding, a notice,  
497 to be provided by the Contracting Officer, advising the said labor union or workers'  
498 representative of the Contractor's commitments under Section 202 of Executive Order 11246 of  
499 September 24, 1965, and shall post copies of the notice in conspicuous places available to  
500 employees and applicants for employment.

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

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

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

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

525 17. Omitted.

526 18. Omitted.

527 BOOKS, RECORDS, AND REPORTS

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



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CHANGE OF PLACE OF USE

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20. Unless the written consent of the United States is first obtained no change shall be

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made in the place of water use shown on Exhibit B.

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21. Omitted.

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NOTICES

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22. Any notice, demand, or request authorized or required by this Settlement Contract shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Area Manager, Northern California Area Office, Bureau of Reclamation, 16349 Shasta Dam Boulevard, Shasta Lake, California 96019, and on behalf of the United States, when mailed, postage prepaid, or delivered to Exchange Bank, Trustee of the California State Controller Environmental Trust Dated March 16, 1988, c/o The Nature Conservancy, 500 Main Street, Chico, California 95928. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this Article for other notices.

550

ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

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

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(b) The assignment of any right or interest in this Settlement Contract by

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either party shall not interfere with the rights or obligations of the other party to this Settlement

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Contract absent the written concurrence of said other party.

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(c) The Contracting Officer shall not unreasonably condition or withhold his

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approval of any proposed assignment.

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OFFICIALS NOT TO BENEFIT

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

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CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

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25. The expenditure or advance of any money or the performance of any obligation of the United States under this Settlement Contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the

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567

568 Contractor from any obligations under this Settlement Contract. No liability shall accrue to the  
569 United States in case funds are not appropriated or allotted.

570 CONFIRMATION OF SETTLEMENT CONTRACT

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

578 27. Omitted.

579 PRIVACY ACT COMPLIANCE

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

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

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

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

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

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606

WATER CONSERVATION

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

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

627                   (c)   At five-year intervals, the Contractor shall revise its water conservation  
628 plan to reflect the then current conservation and efficiency criteria for evaluating water

629 conservation plans established under Federal law and submit such revised water management  
630 plan to the Contracting Officer for review and evaluation. The Contracting Officer will then  
631 determine if the water conservation plan meets Reclamation's then current conservation and  
632 efficiency criteria for evaluating water conservation plans established under Federal law.

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

635 OPINIONS AND DETERMINATIONS

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

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

51 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

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

666 WAIVER OF DEFAULT

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

671 CONTRACT ASSIGNMENT OR TERMINATION UPON TRANSFER OF LAND

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

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

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

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

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

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

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

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

697 TERMINATION

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

IN WITNESS WHEREOF, the parties hereto have executed this Settlement

Contract as of the day and year first hereinabove written.

APPROVED AS TO LEGAL  
FORM AND SUFFICIENCY

*James E. [Signature]*  
OFFICE OF REGIONAL SOLICITOR  
DEPARTMENT OF THE INTERIOR

THE UNITED STATES OF AMERICA

By:

*[Signature]*

Regional Director, Mid-Pacific Region  
Bureau of Reclamation

(SEAL)

EXCHANGE BANK, TRUSTEE OF  
THE CALIFORNIA STATE CONTROLLER  
ENVIRONMENTAL TRUST DATED  
MARCH 16, 1988

By:

*[Signature]*

Name Steven T. Jenkins

Title V.P.

EXCHANGE BANK

*[Signature]*  
JUDY BURSON  
TRUST OFFICER

(H:\PUBLIC\Sac River Final LTRC's-01\2005-01-31 Exchange Bank (Nature Conservancy)  
Final Draft Cont.DOC)

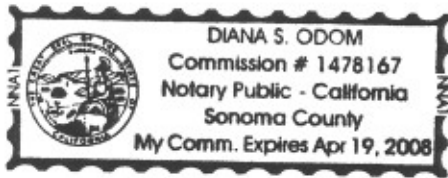


**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
County of Sonoma } ss.

On 2/1/06 before me, Diana S. Odom, Notary Public  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")  
personally appeared Steven T. Jenkins  
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.  
Diana S. Odom  
Signature of Notary Public

**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.*

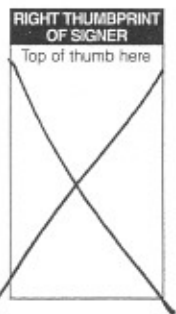
**Description of Attached Document**

Title or Type of Document: Water Settlement Contract  
Document Date: 11/4/05 Number of Pages: 30  
Signer(s) Other Than Named Above: Judy Burson

**Capacity(ies) Claimed by Signer**

Signer's Name: Steven T. Jenkins  
 Individual  
 Corporate Officer — Title(s): Vice President  
 Partner —  Limited  General  
 Attorney-in-Fact  
 Trustee  
 Guardian or Conservator  
 Other: \_\_\_\_\_

Signer Is Representing: Exchange Bank



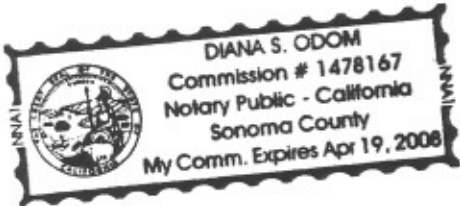
**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
County of Sonoma } ss.

On 2/1/06 before me, Diana S. Odom, Notary Public  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")  
personally appeared Judy Burson  
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.

Diana S. Odom  
Signature of Notary Public

**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.*

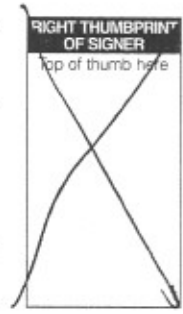
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Title or Type of Document: water Settlement Contract  
Document Date: 11/4/05 Number of Pages: 30  
Signer(s) Other Than Named Above: Steven T. Jenkins

**Capacity(ies) Claimed by Signer**

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

Signer Is Representing: Exchange Bank



# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Sonoma

} ss.

On October 24, 2005 before me,

Date

FRANCES N. LUCAL, Notary Public

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

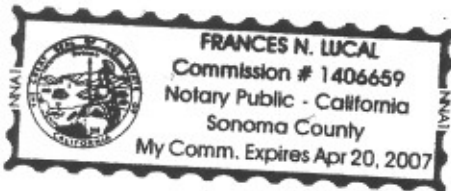
personally appeared

STEVEN T. JENKINS

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.

Place Notary Seal Above

Signature of Notary Public

## 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: \_\_\_\_\_

Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_

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

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

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

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

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

Signer's Name: \_\_\_\_\_

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

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

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

EXCHANGE BANK  
 DIRECTORS' RESOLUTION RE SIGNATURE AUTHORITY  
 FOR TRUST ASSETS

IT RESOLVED by the Board of Directors of Exchange Bank that the following officers of this Bank hereinafter designated be and they are hereby authorized and empowered to make and/or acknowledge and/or deliver the instruments and documents and to perform the acts hereinafter designated for and on behalf of this Bank with respect to all business and activities of this Bank where it is acting in a trust, fiduciary or representative capacity:

1. Any two of the following officers, to wit: the Chairman of the Board of Directors, the President, any Executive Vice-President and the Controller-Treasurer, or any one of the foregoing acting in conjunction with any other officer of this Bank:

(a) All conveyances of real property, leases of any real property, contracts, encumbrances, agreements, instruments or documents affecting any real property or interest therein now or hereafter held by or standing in the name of this Bank as Trustee or in any other representative or fiduciary capacity, including, without limitations, as Executor, Co-Executor, Administrator, Co-Administrator, Guardian, Co-Guardian, Assignee, Receiver, Agent, Custodian, Depository, Trustee, or Co-Trustee.

2. Any one of the following officers, to wit: the Chairman of the Board of Directors, the President, any Executive Vice-President, and Vice-President, any Senior Trust Officer, any Trust Officer:

(a) With respect to any and all personal property now or hereafter held by this Bank as Trustee, Fiduciary or other representative capacity, to sign and deliver all transfers, endorsements, or assignments of corporate stocks, registered bonds, Trustee's certificates, Trust receipts, or evidences of indebtedness of any nature held by this Bank, proxies and powers of attorney to vote shares of corporate stock, and to sign checks and drafts drawn upon or charged against Trust funds held by this Bank.

BE IT FURTHER RESOLVED, that in the execution for this Bank on its behalf as Trustee or in any representative or fiduciary capacity, of any instrument, document, writing, notice or paper hereinbefore mentioned, it shall not be necessary to affix the corporate seal of this Bank thereto and any of said instruments, documents, writings, notices or papers when executed without said seal affixed thereto shall be of the same force and effect and as binding on this Bank as if said corporate seal had been affixed thereto in each instance; and,

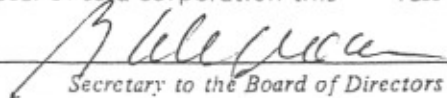
BE IT FURTHER RESOLVED, that any and all resolutions previously adopted by this Bank authorizing officers or others to sign documents for and on behalf of this Bank which are inconsistent or in conflict with the foregoing Resolutions, be and they are hereby rescinded.

Dated: November 12, 1974.


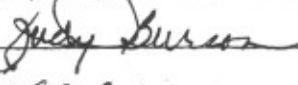
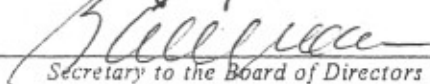
CERTIFICATE OF SECRETARY

BRUCE DECRONA, do hereby certify that I am the Secretary of the Board of Directors of Exchange Bank, Santa Rosa, California, a California banking corporation; that the foregoing constitutes a full, true and correct copy of the Resolution duly adopted by the Board of Directors of said Bank on the 12th day of November, 1974, at which meeting a quorum was present and voted; that said Resolution is not in conflict with the By-Laws of said Bank, has not been otherwise modified, cancelled or revoked, and is in full force and effect at the date hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said corporation this 4th day of November ~~1974~~ 2005.

  
 Secretary to the Board of Directors

certify that the following signatures are the true signatures of the following named officers, and that such named officers are duly elected or appointed and acting officers of said Exchange Bank:

Name	Title	Official Signature
<u>Steven T. Jenkins</u>	<u>Vice President</u>	
<u>Burson</u>	<u>Trust Officer</u>	
		 Secretary to the Board of Directors

Dated: November 4, 2005

Exhibit A

EXCHANGE BANK, TRUSTEE of the CALIFORNIA STATE CONTROLLER  
 ENVIRONMENTAL TRUST DATED MARCH 16, 1988

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>40</u>	<u>0</u>	<u>40</u>
May	<u>90</u>	<u>0</u>	<u>90</u>
June	<u>70</u>	<u>60</u>	<u>130</u>
July	<u>0</u>	<u>190</u>	<u>190</u>
August	<u>0</u>	<u>180</u>	<u>180</u>
September	<u>0</u>	<u>140</u>	<u>140</u>
October	<u>10</u>	<u>0</u>	<u>10</u>
Total	<u>210</u>	<u>570</u>	<u>780</u>

Irrigable Acres: 320

Points of Diversion: 168.85R

Dated: 01-31-2005



## Exchange Bank (c/o Nature Conservancy)

Contract No. 14-06-200-3774A-R-1  
Exhibit B



Contractor's Service Area



Point of Diversion

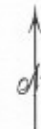


Exhibit C

Omitted

Exhibit D

EXCHANGE BANK, TRUSTEE of the CALIFORNIA STATE CONTROLLER  
ENVIRONMENTAL TRUST DATED MARCH 16, 1988  
Sacramento River  
2005 Water Rates and Charges per Irrigated Acre

COST OF SERVICE RATE: \$31.92

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.

Provided as Needed

Section 205(a)(3) Rate is applicable to a Limited Recipient that did not receive irrigation water on or before October 1, 1981.

Provided as Needed

CHARGES UNDER P.L. 102-575 TO THE RESTORATION FUND 1/

Restoration Payments (3407(d)(2)(A)) \$14.13

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).



EXCHANGE BANK  
 DIRECTORS' RESOLUTION RE SIGNATURE AUTHORITY  
 FOR TRUST ASSETS

BE IT RESOLVED by the Board of Directors of Exchange Bank that the following officers of this Bank hereinafter designated be and they are hereby authorized and empowered to make and/or acknowledge and/or deliver the instruments and documents and to perform the acts hereinafter designated for and on behalf of this Bank with respect to all business and activities of this Bank where it is acting in a trust, fiduciary or representative capacity:

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(a) All conveyances of real property, leases of any real property, contracts, encumbrances, agreements, instruments or documents affecting any real property or interest therein now or hereafter held by or standing in the name of this Bank as Trustee or in any other representative or fiduciary capacity, including, without limitations, as Executor, Co-Executor, Administrator, Co-Administrator, Guardian, Co-Guardian, Assignee, Receiver, Agent, Custodian, Depository, Trustee, or Co-Trustee.

2. Any one of the following officers, to wit: the Chairman of the Board of Directors, the President, any Executive Vice-President, and Vice-President, any Senior Trust Officer, any Trust Officer:

(a) With respect to any and all personal property now or hereafter held by this Bank as Trustee, Fiduciary or other representative capacity, to sign and deliver all transfers, endorsements, or assignments of corporate stocks, registered bonds, Trustee's certificates, Trust receipts, or evidences of indebtedness of any nature held by this Bank, proxies and powers of attorney to vote shares of corporate stock, and to sign checks and drafts drawn upon or charged against Trust funds held by this Bank.

BE IT FURTHER RESOLVED, that in the execution for this Bank on its behalf as Trustee or in any representative or fiduciary capacity, of any instrument, document, writing, notice or paper hereinbefore mentioned, it shall not be necessary to affix the corporate seal of this Bank thereto and any of said instruments, documents, writings, notices or papers when executed without said seal affixed thereto shall be of the same force and effect and as binding on this Bank as if said corporate seal had been affixed thereto in each instance; and,


BE IT FURTHER RESOLVED, that any and all resolutions previously adopted by this Bank authorizing officers or others to sign documents for and on behalf of this Bank which are inconsistent or in conflict with the foregoing Resolutions, be and they are hereby rescinded.

Dated: November 12, 1974.

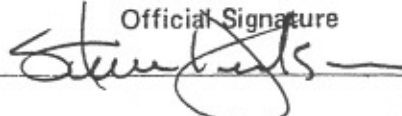
**CERTIFICATE OF SECRETARY**

BRUCE DECORONA, do hereby certify that I am the Secretary of the Board of Directors of Exchange Bank, Santa Rosa, California, a California banking corporation; that the foregoing constitutes a full, true and correct copy of the Resolution duly adopted by the Board of Directors of said Bank on the 12th day of November, 1974, at which meeting a quorum was present and voted; that said Resolution is not in conflict with the By-Laws of said Bank, has not been otherwise modified, cancelled or revoked, and is in full force and effect at the date hereof.

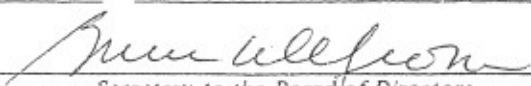
IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said corporation this 4th day of November ~~1974~~ 2005

  
 Secretary to the Board of Directors

I certify that the following signatures are the true signatures of the following named officers, and that such named officers are duly elected or appointed and acting officers of said Exchange Bank:

Name	Title	Official Signature
Steven T. Jenkins	Vice President	

Dated: 11/04/05

  
 Secretary to the Board of Directors

1                                    AGREEMENT BETWEEN THE  
2                                    SACRAMENTO RIVER WATER CONTRACTORS ASSOCIATION  
3                                    AND THE  
4                                    UNITED STATES BUREAU OF RECLAMATION

5                    THIS AGREEMENT is made and entered into this 13<sup>th</sup> day of September, 2005, by  
6                    and between the SACRAMENTO RIVER WATER CONTRACTORS ASSOCIATION (hereinafter  
7                    referred to as the Association) and the UNITED STATES BUREAU OF RECLAMATION  
8                    (hereinafter referred to as Reclamation).

9                                    RECITALS

10                    [1<sup>st</sup>]     The Association is composed of a group of Sacramento River Settlement Contractors  
11                    (Contractors), each of whom has a contract with Reclamation for diversion of water from the  
12                    Sacramento River, including Project Water supplied by the Central Valley Project. The Association  
13                    has been formed for the purpose of facilitating the exchange of Project Water among the members  
14                    of the Association, pursuant to their respective contracts with Reclamation.

15                    [2<sup>nd</sup>]     The Association maintains and operates a pool of Project Water to which  
16                    Association members are able to commit Project Water not anticipated to be used by that member  
17                    during the irrigation season (April 1 through October 31 of each calendar year).

18                    [3<sup>rd</sup>]     Reclamation recognizes the desirability of the existence of such an Association of  
19                    Contractors and recognizes the desirability of exchanges of Project Water by the Contractors  
20                    through the Association. Reclamation also recognizes the advantages of merger or consolidation of

21 the members of the Association or other Contractors to the extent deemed desirable by the members  
22 or other Contractors involved.

23 [4<sup>th</sup>] It is the desire of the Association and Reclamation to identify and confirm the  
24 procedures which will be used for the exchange or sale of Project Water under the members'  
25 respective contracts.

26 AGREEMENTS

27 1. The term of this agreement shall commence upon April 1, 2005, and shall expire on  
28 March 31, 2045, or upon the dissolution of the Association, whichever shall first occur, and shall  
29 supersede Contract No. 14-06-200-7863A-R-1 dated March 24, 2004, in its entirety.

30 2. The Association will advise Reclamation of its membership on the effective date of  
31 this agreement and of any changes by April 15 of each year thereafter.

32 3. The Association having agreed among its members to exchange Project Water  
33 committed by the Association members to the Association pool, Reclamation agrees that the water  
34 so committed may be exchanged among such Association members. The exchange of all Project  
35 Water within the total amount of Project Water available to all Association members is appropriate;  
36 Provided, that the collective uses of the members of the Association do not exceed the collective  
37 Project Water available to all Association members for that irrigation season.

38 4. To the extent that the total Project Water available in the Association pool during a  
39 particular irrigation season exceeds the anticipated uses of the membership from that pool, the  
40 Association shall be privileged to arrange for the sale of such water on behalf of its membership to  
41 other users in the Sacramento River Basin, subject to prior written approval of Reclamation.

42 5. Nothing herein shall be deemed to jeopardize or affect the ability of each member of  
43 the Association to make use of all Project Water made available to that member by Reclamation.

44 6. Mergers or consolidations among members of the Association or other Contractors  
45 may be appropriate even to the extent of the merger or consolidation of all of the Association  
46 members and others into a single contracting entity should such merger or consolidation be deemed  
47 to be desirable by the members. Any such mergers or consolidations shall be subject to the  
48 approval of Reclamation.

49 IN WITNESS WHEREOF, the parties hereto have executed this agreement the day  
50 and year first above written.

51

UNITED STATES OF AMERICA

52 APPROVED AS TO LEGAL  
53 FORM AND SUFFICIENCY  
54 *James E. ...*  
OFFICE OF REGIONAL SOLICITOR  
DEPARTMENT OF THE INTERIOR

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

(SEAL)

55  
56

SACRAMENTO RIVER WATER  
CONTRACTORS ASSOCIATION

57  
58  
59

By: *[Signature]*  
Jack W. Baber  
President

60 Attest  
61 *[Signature]*  
62 Secretary

RESOLUTION OF THE EXECUTIVE COMMITTEE OF THE  
SACRAMENTO RIVER WATER CONTRACTORS ASSOCIATION

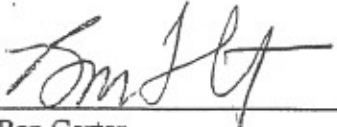
Having reviewed the following two contracts proposed to be signed between the Sacramento River Water Contractors Association (SRWCA) and the United States Bureau of Reclamation (USBR), the Executive Committee of the Association hereby approves said contracts in the form submitted by letters of transmittal from the USBR and hereby authorizes and directs the President and Secretary of the Association to execute each of the following contracts as presented by the USBR and to return them to the USBR for execution by the United States:

1. Contract No. 14-06-200-7863A-R-2, being an agreement between the Association and the USBR, for exchange of Project Water, commencing April 1, 2005 and expiring March 31, 2045.
2. Contract No. 05-WC-20-3234 for purchase of water by USBR from the Association Project Water Pool, in the amount of 20,000 acre feet, effective for the irrigation season 2005 to and including October 30, 2005.

CERTIFICATION

The foregoing Resolution was adopted by the affirmative vote of the Executive Committee of the Sacramento River Water Contractors Association on September 10, 2005, a quorum being available for that purpose.

Signed: \_\_\_\_\_

  
Ben Carter  
Secretary  
Sacramento River Water Contractors Association

**EXHIBIT B**  
**2006 Water Rates and Charges**  
**San Juan Water District**

Rate or Charge Type	Component	2006 Cost Per Acre-Foot M&I
Capital Rates		\$1.40
O&M Rates:		
	Water Marketing	\$4.36
	Storage	\$8.22
	Conveyance	\$0.00
	Direct Pumping	\$0.00
Deficit Rates:		
	Non-Interest Bearing	\$0.00
	Interest Bearing	\$0.00
CFO/PFR Adjustment Rate <sup>1</sup>		\$5.05
Contract Rate		\$19.03
Tiered Pricing Component [>80% <90% of Contract Total] (M&I Full Cost Rate - COS Rate/2)		\$0.54
Tiered Pricing Component [>90% of Contract Total] (M&I Full Cost Rate-COS Rate)		\$1.07
Restoration Fund Surcharges Under P.L. 102-575 <sup>2</sup> :		
	M&I surcharge	\$34.35
	Restoration Surcharge under 3407(d)(2)(A)	\$16.49

Note: Additional detail of rate components is available on the Internet at  
[http://www.usbr.gov/mp/cvpwaternates/rate\\_process/overview.html](http://www.usbr.gov/mp/cvpwaternates/rate_process/overview.html)

<sup>1</sup> Rate represents the Chief Financial Officer adjustment and Provision for Replacement credit for option 2 cost deferment to be distributed over a five-year period beginning with 2003 water rates.

<sup>2</sup> The surcharges are payments in addition to the water rates and are determined pursuant to Title XXXIV of P.L. 102-575 on a federal fiscal year basis (10/01-9/30).