

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

CONTRACT BETWEEN THE UNITED STATES AND  
CAROL KARY, TRUSTEE OF THE FRANK LAMB TRUST,  
DIVERTER OF WATER FROM SACRAMENTO RIVER SOURCES,  
SETTLING WATER RIGHTS DISPUTES AND  
PROVIDING FOR PROJECT WATER

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3 UNITED STATES  
4 DEPARTMENT OF THE INTERIOR  
5 BUREAU OF RECLAMATION  
6 Central Valley Project, California

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8 CAROL KARY, TRUSTEE OF THE FRANK LAMB TRUST,  
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10 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 18<sup>th</sup> day of March, 2005, 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 CAROL KARY, TRUSTEE OF THE FRANK LAMB TRUST,  
22 hereinafter referred to as the Contractor, acting pursuant to Sections 12003 and 12004 of the  
23 California Water Code, with its principal place of business in California;

24 WITNESSETH, that:

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EXPLANATORY RECITALS

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

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

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

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

[5<sup>th</sup>] WHEREAS, the Contractor and the United States had a dispute over the respective rights of the parties to divert and use water from the regulated flow of the Sacramento River which threatened to result in litigation, and as a means to settle that dispute entered into Contract No. 14-06-200-2520A, as amended, hereinafter referred to as the Existing Contract, which established terms for the delivery to the Contractor of Central Valley Project Water, and the quantities of Base Supply the United States and the Contractor agreed may be diverted by the Contractor from the Sacramento River pursuant to such contract; and

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

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

56 [7<sup>th</sup>] WHEREAS, to assure the Contractor of the enjoyment and use of the regulated  
57 flow of the said Rivers and the Delta, and to provide for the economical operation of the Central  
58 Valley Project by, and the reimbursement to, the United States for expenditures made for said  
59 Project;

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

62 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

105 (g) Omitted;

106 (h) Omitted;

107 (i) Omitted;

108 (j) Omitted;

109 (k) Omitted;

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

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

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

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

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

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

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

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

131 TERM OF SETTLEMENT CONTRACT

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

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



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

151 WATER TO BE FURNISHED TO CONTRACTOR

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

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

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

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

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

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

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

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

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

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

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

197 RETURN FLOW

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

206 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

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

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

220 INTEGRATED WATER MANAGEMENT AND PARTNERSHIPS

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

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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

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

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

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

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and underground water replenishment.

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

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

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

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

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

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

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

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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

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environmental documentation referred to in this Article.

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RATE AND METHOD OF PAYMENT FOR WATER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

347 AGREEMENT ON WATER QUANTITIES

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

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

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

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

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

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

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

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

408 MEASUREMENT OF WATER

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

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

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

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

428 RULES AND REGULATIONS

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

434

GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

448

CHARGES FOR DELINQUENT PAYMENTS

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

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

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

466

QUALITY OF WATER

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

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

472 WATER AND AIR POLLUTION CONTROL

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

477 EQUAL OPPORTUNITY

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

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

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

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

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

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

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

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

524 17. Omitted.

525 18. Omitted.

526 BOOKS, RECORDS, AND REPORTS

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



536

CHANGE OF PLACE OF USE

537

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.

539

21. Omitted.

540

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 Carol Kary, 2967 Mariposa Drive, Burlingame, California 94010. 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.

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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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553

(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

555

Contract absent the written concurrence of said other party.

556

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

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approval of any proposed assignment.

558

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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562

CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

563

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

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568

CONFIRMATION OF SETTLEMENT CONTRACT

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

576           27.     Omitted.

577

PRIVACY ACT COMPLIANCE

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

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

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

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

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

603

WATER CONSERVATION

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

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

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

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

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

632 OPINIONS AND DETERMINATIONS

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

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

648

CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

649

31. (a) In addition to all other payments to be made by the Contractor pursuant to

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this Settlement Contract, the Contractor shall pay to the United States, within 60 days after

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receipt of a bill and detailed statement submitted by the Contracting Officer to the Contractor for

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such specific items of direct cost incurred by the United States for work requested by the

653

Contractor associated with this Settlement Contract plus indirect costs in accordance with

654

applicable Bureau of Reclamation policies and procedures. All such amounts referred to in this

655

Article shall not exceed the amount agreed to in writing in advance by the Contractor. This

656

Article shall not apply to costs for routine contract administration.

657

(b) All advances for miscellaneous costs incurred for work requested by the

658

Contractor pursuant to Article 31 of this Settlement Contract shall be adjusted to reflect the

659

actual costs when the work has been completed. If the advances exceed the actual costs incurred,

660

the difference will be refunded to the Contractor. If the actual costs exceed the Contractor's

661

advances, the Contractor will be billed for the additional costs pursuant to Article 31 of this

662

Settlement Contract.

663

WAIVER OF DEFAULT

664

32. The waiver by either party to this Settlement Contract as to any default shall not

665

be construed as a waiver of any other default or as authority of the other party to continue such

666

default or to make, do, or perform, or not to make, do, or perform, as the case may be, any act or

667

thing which would constitute a default.

668           CONTRACT ASSIGNMENT OR TERMINATION UPON TRANSFER OF LAND

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

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

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

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

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

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

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

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

694 TERMINATION

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

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

699 APPROVED AS TO LEGAL  
FOR THE MID-PACIFIC REGION  
OFFICE OF REGIONAL SOLICITOR  
DEPARTMENT OF THE INTERIOR  
*James E. [Signature]*  
OFFICE OF REGIONAL SOLICITOR  
DEPARTMENT OF THE INTERIOR  
APPROVED AS TO LEGAL

THE UNITED STATES OF AMERICA

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

703 (SEAL)

704 FRANK LAMB TRUST

705 By: *Carol Kary Trustee*  
706 Carol Kary, Trustee

State of California, County of San Mateo  
Subscribed and sworn to (or affirmed) before me on  
this 17th day of March, 2005,  
by Carol Kary  
personally known to me or proved to me on the basis of  
satisfactory evidence to be the person(s) who appeared  
before me.  
Signature: *[Signature]*  
Comm. Exp. 02-24-2008

NOTARY PUBLIC - CALIFORNIA  
SASA MASIC  
COMM. #1472524  
COUNTY OF SAN MATEO  
My Commission expires Feb. 24, 2008



Exhibit A  
 CAROL KARY, TRUSTEE of the FRANK LAMB TRUST  
 Sacramento River

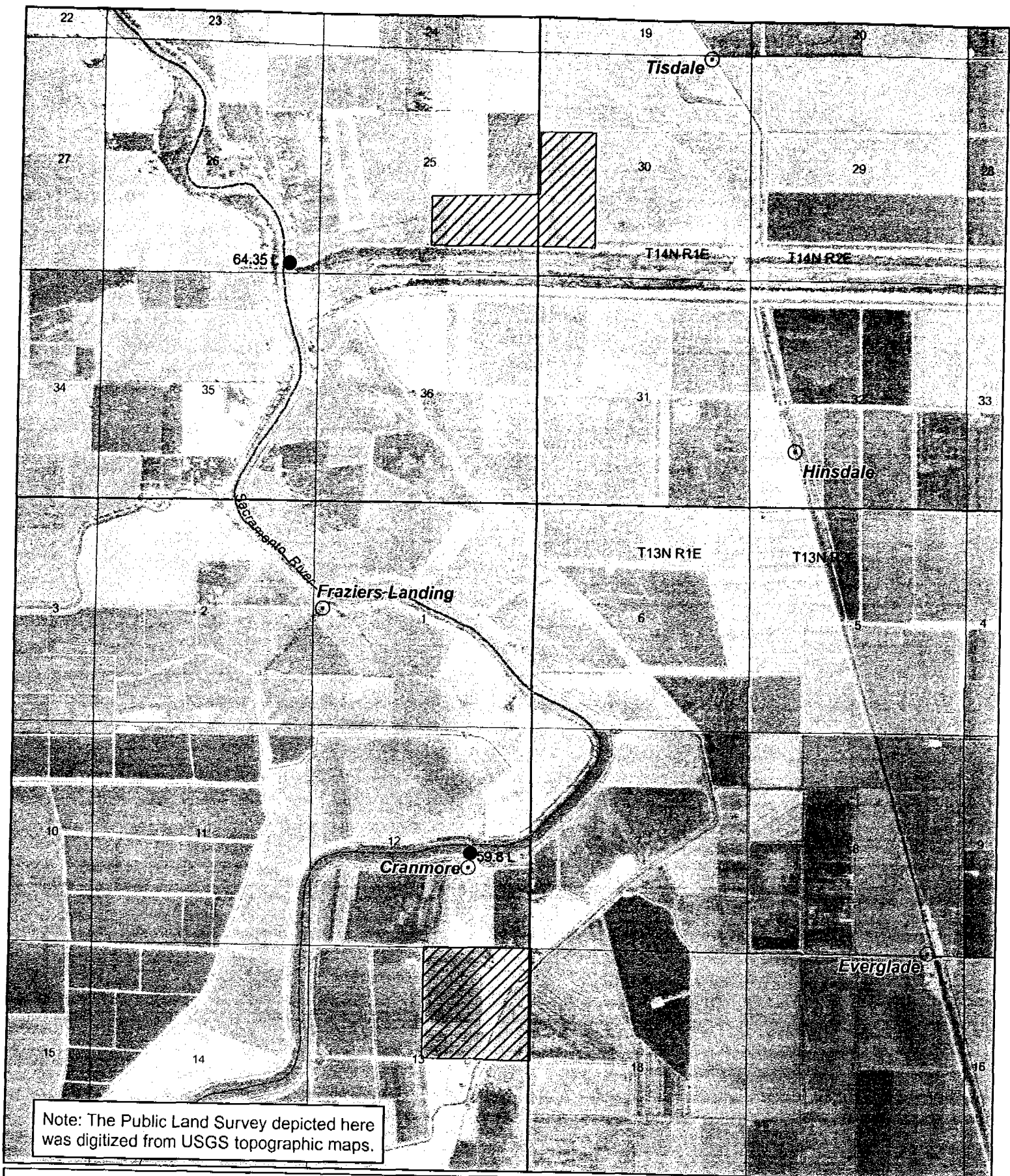
SCHEDULE OF MONTHLY DIVERSIONS OF WATER

<u>AREA 1</u>	<u>Base Supply</u> (acre-feet)	<u>Project Water</u> (acre-feet)	<u>Contract Total</u> (acre-feet)
April	<u>0</u>	<u>0</u>	<u>0</u>
May	<u>140</u>	<u>0</u>	<u>140</u>
June	<u>80</u>	<u>30</u>	<u>110</u>
July	<u>20</u>	<u>120</u>	<u>140</u>
August	<u>0</u>	<u>130</u>	<u>130</u>
September	<u>50</u>	<u>40</u>	<u>90</u>
October	<u>0</u>	<u>0</u>	<u>0</u>
Total	<u>290</u>	<u>320</u>	<u>610</u>

Irrigable Acres: 140  
Points of Diversion: 64.35L  
Dated: 01-31-2005

<u>AREA 2</u>	<u>Base Supply</u> (acre-feet)	<u>Project Water</u> (acre-feet)	<u>Contract Total</u> (acre-feet)
April	<u>0</u>	<u>0</u>	<u>0</u>
May	<u>50</u>	<u>0</u>	<u>50</u>
June	<u>60</u>	<u>50</u>	<u>110</u>
July	<u>0</u>	<u>130</u>	<u>130</u>
August	<u>0</u>	<u>80</u>	<u>80</u>
September	<u>0</u>	<u>20</u>	<u>20</u>
October	<u>0</u>	<u>0</u>	<u>0</u>
Total	<u>110</u>	<u>280</u>	<u>390</u>

Irrigable Acres: 140  
Points of Diversion: 59.8L  
Dated: 01-31-2005





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

# Kary, Carol

Contract No. 14-06-200-2520A-R-1

Exhibit B

-  Contractor's Service Area
-  Point of Diversion

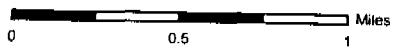


Exhibit C

Omitted

## Exhibit D

CAROL KARY, TRUSTEE of the FRANK LAMB TRUST  
 Sacramento River  
2005 Water Rates and Charges per Irrigated Acre

	<u>AREA 1</u> <u>Irrigation</u>	<u>AREA 2</u> <u>Irrigation</u>
<u>COST OF SERVICE RATES:</u>	<u>\$40.57</u>	<u>\$35.50</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>\$55.73</u>	<u>\$48.76</u>
Section 205(a)(3) Rate is applicable to a Limited Recipient that did not receive irrigation water on or before October 1, 1981.	<u>\$61.83</u>	<u>\$54.10</u>
CHARGES UNDER P.L. 102-575 TO THE RESTORATION FUND 1/ Restoration Payments (3407(d)(2)(A))	<u>\$18.13</u>	<u>\$15.86</u>

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).

RODEGERDTS, MEANS, NORTHUP & ESTEY  
ATTORNEYS AT LAW  
618 COURT STREET  
WOODLAND, CALIFORNIA 95695  
TELEPHONE: (916) 662-7367

**FILED**

JUL 26 1976

**CERTIFIED COPY**

LAURENCE P. HENIGAN, Clerk  
By GENOPE SHARP  
Deputy

Recorded in Book A-82 page 249

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF YOLO

In the Matter of the Estate	)	No. 13558
-of-	)	
FRANK LAMB,	)	<u>JUDGMENT SETTLING FIRST AND FINAL</u>
	)	<u>ACCOUNT AND REPORT OF EXECUTRIX,</u>
	)	<u>ALLOWANCE OF FEE AND COMMISSION,</u>
Deceased.	)	<u>FOR PRORATION OF TAXES AND FOR</u>
	)	<u>FINAL DISTRIBUTION</u>

CAROL KARY, as Executrix of the Will of FRANK LAMB, deceased, having filed her first and final account, report, and petition for its settlement and for final distribution and the report and petition coming on this day regularly for hearing, the Court finds:

1. Due notice of the settlement of the account and of the hearing on the petition for final distribution of the estate has been regularly given for the period and in the manner prescribed by law.

2. All acts and transactions of the Executrix of the Will of said decedent during the period of the account are truly shown and should be approved, and all allegations of the

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3 petition for its settlement and for final distribution are true.  
4 The account is full, true, and correct and should be settled,  
5 allowed, and approved as filed.

6 3. The decedent died testate on February 24, 1974,  
7 in the County of Yolo, State of California, and was at the time  
8 of his death a resident thereof.

9 4. On March 14, 1974, petitioner was appointed  
10 Executrix of the Will of the decedent and qualified as such on  
11 that date; at all times since then she has been and now is  
12 the Executrix of the decedent's Will.

13 5. Notice to creditors has been published for the  
14 period and in the manner prescribed by law. Within thirty (30)  
15 days after completion of publication of notice to creditors, an  
16 affidavit was filed with the Clerk of this Court showing due  
17 publication of notice to creditors in the manner and form re-  
18 quired by law. More than four (4) months have elapsed since  
19 the first publication of notice to creditors. The time for  
20 filing or presenting claims has expired, and the estate is now  
21 in a condition to be closed.

22 6. No claims have been filed or presented against  
23 the estate.

24 7. All debts of decedent and of the estate and all  
25 expenses of administration have been paid.

26 8. A written report of the inheritance tax referee  
27 appointed in the proceeding is on file, and an order fixing the  
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3 SIXTH of said Will, then in such event she  
4 shall receive her distributive share in accordance  
5 with said Will. FAY LAMB has irrevocably  
6 transferred and conveyed her one-half (1/2)  
7 of the community real property to CAROL KARY  
8 and JAMES LEATHERS as Trustees to be held in  
9 trust subject to the provisions of Paragraph  
10 SIXTH of said last Will and Testament.

11 Attached to the petition herein, marked  
12 EXHIBIT "C", is the election signed by FAY LAMB.  
13 That because FAY LAMB, the surviving spouse of  
14 said decedent, has complied with the provisions  
15 of said last Will and Testament, all of the  
16 real property of the estate including FAY LAMB'S  
17 one-half (1/2) community interest should be  
18 distributed to CAROL KARY and JAMES LEATHERS,  
19 to be held in trust, to be administered in  
20 accordance with the provisions of Paragraph  
21 SIXTH of the last Will and Testament of FRANK  
22 LAMB, deceased.

23 Paragraph TENTH of decedent's Will further  
24 directs that the real property bequeathed in  
25 Paragraph SIXTH shall bear its prorata share  
26 of all expenses of administration and debts.

27 B. To FAY LAMB, surviving spouse, decedent's one-

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3 half (1/2) share of all personal property  
4 including all rice acreage history and allotments.  
5 If decedent's share of the personal property  
6 is greater than one-half (1/2) of the real  
7 property, then the bequest to FAY LAMB shall  
8 be reduced by sufficient cash or other property  
9 so that the total value of all assets in the  
10 trust established in Paragraph SIXTH of decedent's  
11 Will equals the total value of all community  
12 assets held by decedent and his surviving  
13 spouse, FAY LAMB. If decedent's share of the  
14 personal property is less than one-half (1/2)  
15 of the real property, then the bequest to  
16 FAY LAMB shall be increased by sufficient cash  
17 or other property so that the total value of  
18 all assets in the trust equals the total value  
19 of all community assets held by FAY LAMB.  
20 That the trust created by Paragraph SIXTH of  
21 the decedent's Will has received real property  
22 in the sum of \$29,956.62 in excess of the personal  
23 property distributed to FAY LAMB. That the  
24 trust has executed its promissory note in the  
25 sum of \$14,978.31, to FAY LAMB in said sum to  
26 equalize the difference.

27 The property in the possession of the executrix



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3 to be distributed to CAROL KARY and JAMES  
4 LEATHERS, in trust, is the real property more  
5 particularly described on page 3 through 8 of  
6 EXHIBIT "A", attached hereto, subject to the  
7 lien of the United States Government until  
8 evidence that all Federal Estate taxes in this  
9 estate have been paid in full, together with  
10 certain assets received since the last date  
11 shown in the account, to-wit:

County of Sutter-tax refund	\$ 369.19
Farmers' Rice Co-op	
progress payment	3,681.66
Sutter Mutual Water Company	
Levee set back refund	<u>58.35</u>
	\$4,109.20

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16 C. All of the rest, residue and remainder, as shown  
17 on page 1 and 2 of EXHIBIT "A" attached hereto,  
18 to FAY LAMB.

19 19. That in addition to the assets as shown on  
20 EXHIBIT "B", page 1, of the petition on file herein, 2239 shares  
21 of Farmers Rice Cooperative were inventoried as a portion of  
22 the partnership. The shares on hand at date of death less  
23 423 shares redeemed during probate should be distributed to  
24 FAY LAMB; the shares received during probate should be distributed  
25 to 54 shares to FAY LAMB and 276 shares to CAROL KARY and  
26 JAMES LEATHERS, trustees.

27 That in addition to the assets shown on EXHIBIT "B",  
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3 page 1 of the petition on file herein, there are Sutter Basin  
4 retains which should be distributed as follows:

5 A. To FAY LAMB:

6 Crop Year

7 1969 \$3,015.56  
8 1970 3,754.07  
9 1971 2,549.30  
10 1972 1,696.37  
11 1973 1,540.76  
12 1974 531.10

13 B. To CAROL KARY and JAMES LEATHERS, Trustees:

14 1974 \$2,696.89  
15 1975 6,982.96  
16 9,679.85

17 20. On December 5, 1974, an order was entered in  
18 the above entitled Court transferring decedent's interest in  
19 farming equipment and motor vehicles to CLIFTON LAMB pursuant  
20 to a partnership agreement, upon payment of the sum of  
21 \$59,474.00, which payment was made.

22 21. On April 21, 1975, Judgment of Preliminary  
23 Distribution was entered in this estate whereby there was  
24 distributed to CAROL KARY and JAMES LEATHERS, in trust, upon  
25 the terms and subject to the conditions set forth in Paragraph  
26 SIXTH of decedent's Will dated February 16, 1973, an undivided  
27 one-half (1/2) interest in decedent's real property more  
28 particularly described in EXHIBIT "A" attached hereto and made  
a part hereof.

22. The real property of the estate heretofore  
distributed in trust and the real property distributed herein,

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3 their services and the payment is approved.

4           6. Notice to creditors has been given as required  
5 by law.

6           7. The California inheritance taxes due and pay-  
7 able by the estate have been paid. The tax so paid is prorated  
8 and charged as set forth above.

9           8. The Federal Estate tax due and payable by the  
10 estate has been paid and is prorated and charged as set forth  
11 above.

12           9. The property of the estate ordered distributed  
13 herein is described in EXHIBIT "A" and is to be distributed  
14 in the following manner:

15           A. To FAY LAMB, the property as shown on page 1  
16 and 2 of EXHIBIT "A" attached hereto and by this  
17 reference made a part hereof.

18           B. To CAROL KARY and JAMES LEATHERS, in trust to  
19 be held by the trustees for the uses and purposes  
20 as set forth in Paragraph SIXTH of decedent's  
21 Will a copy of which paragraph SIXTH is attached  
22 hereto as EXHIBIT "B" and by this reference  
23 made a part hereof, all the property as described  
24 on pages 3 through 8 on EXHIBIT "A" attached  
25 hereto.

26           10. Any other property of the estate not now known  
27 or discovered that may belong to the estate or in which the  
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estate may have any interest shall be distributed as set forth  
above.

DATED: July 26, 1976.

JAMES C. WEFERMOTT  
JUDGE OF THE SUPERIOR COURT

✓ SIXTH: In event my spouse shall survive, I give, devise and bequeath my community interest together with my spouse's community interest in the farming real property in Reclamation District 1500 and District 1660, Sutter County, to my daughter CAROL KARY and JAMES LEATHERS in trust, nevertheless, to be held, administered and distributed in accordance with the following provisions:

✓ 1. The Trustees shall hold, manage, invest and reinvest the income therefrom and shall distribute the net income therefrom in monthly or other convenient installments to my daughter, CAROL KARY during her lifetime. That except for the power described in subparagraph 2 hereof, said CAROL KARY shall be considered the sole Trustee of this trust and shall solely exercise all those powers more particularly described in subparagraph 6 hereof.

2. If at any time in the absolute discretion of the Trustee JAMES LEATHERS, my daughter, CAROL KARY, should for any reason be in need of funds for her proper care, maintenance and support, the said Trustee may in his absolute discretion pay to or apply for the benefit of my daughter, in addition to the payments hereinabove provided for her, such amounts from the principal of the trust estate as the said Trustee may, from time to time, deem necessary or advisable for her proper care, maintenance, and support.

3. If and so long as my daughter, CAROL KARY, shall be one of two Trustees of this trust, she shall be wholly disqualified from participating in any decision of the Trustees as to whether or not and as to the extent to which the powers given by paragraph 2 above to the Trustees with respect to income or principal shall or shall not, be exercised for her benefit directly or indirectly, and all such decisions shall be made by the Trustee other than my daughter. If and so long as my daughter

*[Handwritten signature]*  
*[Handwritten initials]*  
*[Handwritten initials]*

EXHIBIT "B"

shall be the sole Trustee of this trust, the powers given by Paragraph 2, above, to the Trustees with respect to income or principal shall not be exercisable by her.

4. On the death of my daughter CAROL KARY the Trustee shall divide the trust estate into as many equal shares as there are children of hers then living and children of hers then deceased leaving issue then living. The Trustee shall allocate one (1) such equal share to each living child of hers and one (1) such equal share to each group composed of the living issue of a deceased child of hers. Each such share shall be distributed, or retained in trust, as hereafter provided.

A. Each share allocated to a living child of hers shall be retained and administered by the Trustee in a separate trust as follows:

- (i) The Trustee shall pay to or apply for the benefit of the child the entire net income of the child's trust, quarter-annually or at more frequent intervals. If the Trustee deems the income to be insufficient, the Trustee shall also pay to or apply for the benefit of the child as much of the principal of the child's trust as the Trustee in the Trustee's discretion deems necessary for the child's proper support, care, maintenance, and education, after taking into consideration, to the extent the Trustee deems advisable, any income or other resources of the child, outside the child's trust, known to the Trustee.
- (ii) When her youngest child attains the age of twenty-five (25) years the trust shall there

L.L.  
M. K.  
(C)

tion as the Trustees in their absolute discretion may determine to be advisable prior to final distribution of the trust property.

6. In addition to the powers, authority and discretion conferred upon the Trustees by law (all of which are hereby confirmed to the Trustees without being subject to the limitations of Section 2321 of the Civil Code of California), but subject in all respects to the specific limitations on such powers, authority and discretion hereinafter set forth, the Trustees are hereby authorized and empowered as follows:

- (a) To continue to hold any property and to operate at the risk of the trust estate any business that the Trustees receive or acquire under the trust as long as the Trustees deem advisable;
- (b) To manage, control, grant options on, sell (for cash or on deferred payments), convey, exchange, partition, divide, improve, and repair trust property;
- (c) 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;
- (d) To borrow money, and to encumber or hypothecate trust property by mortgage, deed of trust, pledge or otherwise;
- (e) To carry, at the expense of the trust, insurance of such kinds and in such amounts as the Trustees deem advisable to protect the trust estate and the Trustees against any hazard;
- (f) To commence or defend such litigation with respect to the trust or any property of the trust estate as the Trustees may deem advisable, at the expense of the trust;
- (g) To compromise or otherwise adjust any claims or litigation against or in favor of the trust;
- (h) 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;
- (i) With respect to securities held in the trust, to

*Handwritten initials and signature:*  
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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 Trustees may deem advisable; and to exercise or sell stock subscription or conversion rights;

- (j) Except as otherwise specifically provided in this Will, 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 Principal and Income Law from time to time existing;
- (k) The Trustees are expressly authorized to continue to hold and operate or participate in the operation of any farming or ranching property or interest that the Trustees receive or acquire under this trust as long as the Trustees deem advisable, at the risk of the trust estate.

7. The beneficiaries of this trust 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 so to do, 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.

8. In the event of the resignation or incapacity of CAROL KARY to act as Co-Trustee or Sole Trustee hereunder, then in that event, JAMES LEATHERS shall act as Successor Co-Trustee or Sole Trustee. In the event of the resignation or incapacity of JAMES LEATHERS to act as Co-trustee or Sole Trustee, then E. L. MEANS shall act as Successor Co-Trustee or Sole Trustee, and in the event of the resignation or incapacity of E. L. MEANS to act as Co-Trustee or Sole Trustee, then in such event any beneficiary of the trust may secure the appointment of a Successor Trustee by petitioning the Superior Court of competent jurisdiction

*[Handwritten signature]*  
\_\_\_\_\_  
*[Handwritten signature]*



STATE of CALIFORNIA }  
COUNTY of YOLO } SS.

I, LAURENCE P. HENIGAN, County Clerk of the above entitled County, and ex-officio Clerk of the Superior Court thereof, do hereby certify that the foregoing is a full, true and correct copy of the original on file in my office, and that I have carefully compared the same with the original.

Witness, my hand and the seal of said Superior Court  
this 26 day of July, 1976  
LAURENCE P. HENIGAN, Clerk

By: [Signature]

Deputy



7806

RECORDED AT THE REQUEST OF  
Erdegrats, Means, Rodrup & Estey  
JUL 29 1976  
at 16 min. past 9 o'clock  
A. M. Vol. 873 page 17  
OFFICIAL RECORDS OF  
SUTTER COUNTY, CALIFORNIA  
DIANE SNOGRASS County Recorder  
By Janees Whately  
Deputy Recorder  
Fee \$ 29.00

BOOK 873 PAGE 43

Indexed

Compared