

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

CONTRACT BETWEEN THE UNITED STATES AND
LOMO COLD STORAGE AND JUSTIN J. MICHELI, TRUSTEE
OF THE JUSTIN J. MICHELI AND ANGELINE MICHELI
1988 REVOCABLE TRUST DATED FEBRUARY 4, 1988,
DIVERTER OF WATER FROM SACRAMENTO RIVER SOURCES,
SETTLING WATER RIGHTS DISPUTES AND
PROVIDING FOR PROJECT WATER

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9 OF THE JUSTIN J. MICHELI AND ANGELINE MICHELI
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11 DIVERTER OF WATER FROM SACRAMENTO RIVER SOURCES,
12 SETTLING WATER RIGHTS DISPUTES AND
13 PROVIDING FOR PROJECT WATER

14 THIS CONTRACT, hereinafter referred to as "Settlement Contract," is entered into
15 by THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, made
16 this 15th day of March, 2005, pursuant to the applicable authority
17 granted to it generally in the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or
18 supplementary thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844),
19 as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented,
20 including, but not limited to, Sections 9 and 14 thereto, July 2, 1956 (70 Stat. 483), June 21,
21 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat. 3050), as
22 amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively
23 hereinafter referred to as Federal Reclamation law, and LOMO COLD STORAGE AND
24 JUSTIN J. MICHELI, TRUSTEE OF THE JUSTIN J. MICHELI AND ANGELINE MICHELI
25 1988 REVOCABLE TRUST DATED FEBRUARY 4, 1988, hereinafter referred to as the
26 Contractor, acting pursuant to Sections 12003 and 12004 of the California Water Code, with its
27 principal place of business in California;

28 WITNESSETH, that:

29 EXPLANATORY RECITALS

30 [1st] WHEREAS, the United States has constructed and is operating the Central Valley
31 Project, California, for multiple purposes pursuant to its statutory authority; and

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

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

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

43 [5th] WHEREAS, the Contractor and the United States had a dispute over the
44 respective rights of the parties to divert and use water from the regulated flow of the Sacramento
45 River which threatened to result in litigation, and as a means to settle that dispute entered into
46 Contract No. 14-06-200-931A, as amended, hereinafter referred to as the Existing Contract,
47 which established terms for the delivery to the Contractor of Central Valley Project Water, and
48 the quantities of Base Supply the United States and the Contractor agreed may be diverted by the
49 Contractor from the Sacramento River pursuant to such contract; and

50 [6th] WHEREAS, the United States and the Contractor disagree with respect to the
51 authority of the United States to change the quantities of Base Supply and/or Project Water
52 specified as available for diversion in this Settlement Contract from the quantities specified in
53 the Existing Contract, and other issues related thereto. That dispute was the subject of litigation
54 in a lawsuit entitled *Glenn-Colusa Irrigation District, et al. v. United States, et al.* [Civ. No. S-
55 01-1816 GEB/JFM (E.D. Cal.)], but that litigation was dismissed, without prejudice, pursuant to
56 a stipulation of dismissal filed by the parties thereto on August 29, 2002. Notwithstanding that
57 dismissal, the Contractor and the United States enter into this Settlement Contract to renew the
58 Existing Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and
59 the laws of the State of California; and

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

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

66 DEFINITIONS

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

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

73 (b) "Basin-Wide Water Management Plan" shall mean the mutually agreeable
74 Sacramento River Basinwide Water Management Plan, dated October 11, 2004, developed by
75 Glenn-Colusa Irrigation District, Maxwell Irrigation District, Natomas Central Mutual Water
76 Company, Pelger Mutual Water Company, Princeton-Codora-Glenn Irrigation District, Provident
77 Irrigation District, Reclamation District 108, Sutter Mutual Water Company, Anderson-
78 Cottonwood Irrigation District, Meridian Farms Water Company, Reclamation District 1004, and
79 the U.S. Bureau of Reclamation;

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

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

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

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

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

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

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

109 (g) "Eligible Lands" shall mean all lands to which Project Water may be
110 delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982
111 (96 Stat. 1263), as amended, hereinafter referred to as RRA;

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

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

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

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

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

123 (m) "Project Water" shall mean all Surface Water diverted or scheduled to be
124 diverted each month during the period April through October of each Year by the Contractor
125 from the Sacramento River which is in excess of the Base Supply. The United States recognizes
126 the right of the Contractor to make arrangements for acquisition of water from projects of others
127 than the United States for delivery through the Sacramento River and tributaries subject to
128 written agreement between Contractor and the United States as to identification of such water
129 which water when so identified shall not be deemed Project Water under this Settlement
130 Contract;

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

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

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

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

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

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TERM OF SETTLEMENT CONTRACT

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WATER TO BE FURNISHED TO CONTRACTOR

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

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

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

174 (b) The Contractor may have acquired rights to divert water from the
175 Sacramento River during the period April through October, that were obtained after the date of
176 execution of the Existing Contract, or the Contractor may acquire such rights in the future. All
177 diversions made from the Sacramento River, pursuant to such rights, during the period April
178 through October, shall not be considered a part of the quantity of Base Supply and Project Water
179 specified in Exhibit A; Provided, that the quantities diverted pursuant to the above rights shall be
180 identified on the schedule submitted pursuant to Article 3(c) below, and shall not be substituted
181 for any Base Supply or Project Water; Provided, further, that any such identified quantities of
182 other acquired rights may be diverted by the Contractor before incurring any fee pursuant to
183 Article 3(c)(1), below.

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

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

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

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

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

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

204 (d) In the event conditions warrant, the Contracting Officer reserves the right
205 to require the Contractor to submit, at least 72 hours prior to the beginning of each weekly
206 period, its estimate of daily diversion requirements for each such period from the Sacramento
207 River; Provided, however, that changes during any such period may be made upon the giving of
208 72 hours' notice thereof to the Contracting Officer.

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

211 Exhibit B shall be made by the Contractor without first obtaining the written consent of the
212 Contracting Officer. Such consent will not be unreasonably withheld and a decision will be
213 rendered in a timely manner. For short-term actions that will occur within one year or less, the
214 decision will be rendered within 30 days after receipt of a complete written proposal. For long-
215 term actions that will occur in a period longer than one year, the decision will be rendered within
216 90 days after receipt of a complete written proposal. For a proposal to be deemed complete by
217 the Contracting Officer, it must comply with all provisions required by State and Federal law,
218 including information sufficient to enable the Contracting Officer to comply with the National
219 Environmental Policy Act, the Endangered Species Act, and applicable rules or regulations then
220 in effect; Provided, that such consent does not authorize the use of Federal facilities to facilitate
221 or effectuate the sale, transfer, exchange, or other disposal of Base Supply. Such use of Federal
222 facilities will be the subject of a separate agreement to be entered into between the Contractor
223 and Reclamation.

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

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

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

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

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

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

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

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

249 RETURN FLOW

250 4. Nothing herein shall be construed as an abandonment or a relinquishment by the
251 United States of any right it may have to the use of waste, seepage, and return flow water derived
252 from water diverted by the Contractor hereunder and which escapes or is discharged beyond the
253 boundaries of the lands shown on Exhibit B; Provided, that this shall not be construed as
254 claiming for the United States any right to such water which is recovered by the Contractor
255 pursuant to California law from within the boundaries of the lands shown on Exhibit B, and

256 which is being used pursuant to this Settlement Contract for surface irrigation or underground
257 storage for the benefit of the lands shown on Exhibit B by the Contractor.

258 CONSTRAINTS ON THE AVAILABILITY OF WATER

259 5. (a) In a Critical Year, the Contractor's Base Supply and Project Water agreed
260 to be diverted during the period April through October of the Year in which the principal portion
261 of the Critical Year occurs and, each monthly quantity of said period shall be reduced by
262 25 percent.

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

267 INTEGRATED WATER MANAGEMENT AND PARTNERSHIPS

268 6. The Contractor and United States desire to work together to maximize the
269 reasonable beneficial use of water for their mutual benefit. As a consequence, the United States
270 and the Contractor will work in partnership and with others within the Sacramento Valley,
271 including other contractors, to facilitate the better integration within the Sacramento Valley of all
272 water supplies including, but not limited to, the better management and integration of surface
273 water and groundwater, the development and better utilization of surface water storage, the
274 effective utilization of waste, seepage and return flow water, and other operational and
275 management options that may be identified in the future.

276 USE OF WATER FURNISHED TO CONTRACTOR

277 7. (a) Project Water furnished to the Contractor pursuant to this Settlement
278 Contract shall not be delivered or furnished by the Contractor for any purposes other than

279 agricultural purposes without the written consent of the Contracting Officer. For purposes of this
280 Settlement Contract, "agricultural purposes" includes, but is not restricted to, the irrigation of
281 crops, the watering of livestock, incidental domestic use including related landscape irrigation,
282 and underground water replenishment.

283 (b) The Contractor shall comply with requirements applicable to the
284 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution
285 of this Settlement Contract undertaken pursuant to Section 7 of the Endangered Species Act of
286 1973, as amended, that are within the Contractor's legal authority to implement. The Existing
287 Contract, which evidences in excess of 40 years of diversions, for agricultural uses, of the
288 quantities of water provided for in Article 3, and the underlying water rights of the Contractor
289 will be considered in developing an appropriate base-line for the Biological Assessment prepared
290 pursuant to the Endangered Species Act, and in any other needed environmental review.
291 Nothing herein shall be construed to prevent the Contractor from challenging or seeking judicial
292 relief in a court of competent jurisdiction with respect to any biological opinion or other
293 environmental documentation referred to in this Article.

294 RATE AND METHOD OF PAYMENT FOR WATER

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

297 (1) 75 percent of the amount shown as Project Water shall be paid for
298 by the Contractor in each Year; and in addition

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

301 Such payments shall be at Rates and Charges established in accordance with: (i) the
302 Secretary's then-current ratesetting policies for the Project; and (ii) applicable Reclamation law
303 and associated rules and regulations, or policies; Provided, that if the Contractor desires to use
304 Project Water for other than agricultural purposes the Rates and Charges set forth above will be
305 adjusted by the Contracting Officer to the applicable Rates and Charges for such purposes. The
306 Rates and Charges applicable to the Contractor upon execution of this Settlement Contract are
307 set forth in Exhibit D, as may be revised annually. The Secretary's ratesetting policies for the
308 Project shall be amended, modified, or superseded only through a public notice and comment
309 procedure. The Contracting Officer shall adjust the amount of Project Water for which payment
310 is required to the extent of any reduction in diversions of Project Water made in accordance with
311 the water conservation provisions of Article 29(e).

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

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

321 (2) Prior to October 1 of each Year, the Contracting Officer shall make
322 available to the Contractor an estimate of the Rates for Project Water for the following Year and
323 the computations and cost allocations upon which those Rates are based. The Contractor shall be

324 allowed not less than two months to review and comment on such computations and cost
325 allocations. By December 31 of each Year, the Contracting Officer shall provide the Contractor
326 with the final Rates to be in effect for the upcoming Year, and such notification shall revise
327 Exhibit D.

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

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

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

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

347 received by the United States from the Contractor relating to the delivery of Project Water or the
348 delivery of non-Project Water through Project facilities shall be allocated and applied in
349 accordance with Federal Reclamation law and the associated rules or regulations, and the then
350 current Project ratesetting policies for irrigation water.

351 (e) The Contracting Officer shall keep its accounts pertaining to the
352 administration of the financial terms and conditions of its long-term water service and Settlement
353 Contracts, in accordance with applicable Federal standards, so as to reflect the application of
354 Project costs and revenues. The Contracting Officer shall, each Year upon request of the
355 Contractor, provide to the Contractor a detailed accounting of all Project and Contractor expense
356 allocations, the disposition of all Project and Contractor revenues, and a summary of all water
357 delivery information. The Contracting Officer and the Contractor shall enter into good faith
358 negotiations to resolve any discrepancies or disputes relating to accountings, reports, or
359 information.

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

367 (g) For the term of this Settlement Contract, Rates under the respective
368 ratesetting policies for the Project will be established to recover only reimbursable operation and
369 maintenance (including any deficits) and capital costs of the Project, as those terms are used in

370 the then current Project ratesetting policies, and interest, where appropriate, except in instances
371 where a minimum Rate is applicable in accordance with the relevant Project ratesetting policy.
372 Proposed changes of significance in practices which implement the ratesetting policies for the
373 Project will not be implemented until the Contracting Officer has provided the Contractor an
374 opportunity to discuss the nature, need, and impact of the proposed change. The Contractor
375 retains all rights to challenge the validity of Rates and Charges imposed pursuant to this
376 Settlement Contract, including but not limited to operation and maintenance expenses and
377 operation and maintenance deficits, in an appropriate administrative or judicial proceeding.

378 (h) Except as provided in subsection 3405(a)(1)(B) of the CVPIA, the Rates
379 for Project Water transferred, exchanged, or otherwise disposed of, by the Contractor shall be the
380 Contractor's Rates adjusted upward or downward to reflect the changed costs of delivery (if any)
381 of the transferred, exchanged, or otherwise disposed of Project Water to the transferee's point of
382 delivery in accordance with the then-current ratesetting policies for the Project. Except as
383 provided in subsection 3407(d)(2)(A) of the CVPIA, the Charges for Project Water transferred,
384 exchanged, or otherwise disposed of, by the Contractor shall be the Contractor's Charges
385 specified in Exhibit D. If the Contractor is receiving lower Rates and Charges because of
386 inability to pay and is transferring, exchanging, or otherwise disposing of Project Water to
387 another entity whose Rates and Charges are not adjusted due to inability to pay, the Rates and
388 Charges for transferred, exchanged, or otherwise disposed of Project Water shall be the
389 Contractor's Rates and Charges unadjusted for ability to pay.

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

392 (j) Each payment to be made pursuant to subdivisions (a) and (c) of this
393 Article shall be made at the office of the Bureau of Reclamation, MP Region: Mid-Pacific,
394 P.O. Box 894242, Los Angeles, CA 90189-4242, or at such other place as the United States may
395 designate in a written notice to the said Contractor. Payments shall be made by cash transaction,
396 wire, or any other mechanism as may be agreed to in writing by the Contractor and the
397 Contracting Officer. In the event there should be a default in the payment of the amount due, the
398 delinquent payment provisions of Article 13 shall apply. The Contractor shall not be relieved of
399 the whole or any part of its said obligation by, on account of, or notwithstanding, as the case may
400 be:

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

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

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

408 (4) Any injunctive process enjoining or restraining the Contractor
409 from making or collecting any such assessment, toll, or other charge referred to in subsection
410 8(c)(2) of this Settlement Contract.

411 AGREEMENT ON WATER QUANTITIES

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

413 (1) It shall constitute full agreement as between the United States and
414 the Contractor as to the quantities of water and the allocation thereof between Base Supply and

415 Project Water which may be diverted by the Contractor from the Sacramento River for beneficial
416 use on the land shown on Exhibit B from April 1 through October 31, which said diversion, use,
417 and allocation shall not be disturbed so long as the Contractor shall fulfill all of its obligations
418 hereunder;

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

421 (b) Nothing herein contained is intended to or does limit rights of the
422 Contractor against others than the United States or of the United States against any person other
423 than the Contractor; Provided, however, that in the event the Contractor, the United States, or
424 any other person shall become a party to a general adjudication of rights to the use of water of
425 the Sacramento River system, this Settlement Contract shall not jeopardize the rights or position
426 of either party hereto or of any other person and the rights of all such persons in respect to the
427 use of such water shall be determined in such proceedings the same as if this Settlement Contract
428 had not been entered into, and if final judgment in any such general adjudication shall determine
429 that the rights of the parties hereto are different from the rights as assumed herein, the parties
430 shall negotiate an amendment to give effect to such judgment. In the event the parties are unable
431 to agree on an appropriate amendment they shall, within 60 days of determining that there is an
432 impasse, employ the services of a neutral mediator, experienced in resolving water rights
433 disputes, to assist in resolving the impasse. The cost of the mediation will be shared equally. A
434 failure to reach agreement on an amendment within 60 days of the end of mediation will cause
435 the immediate termination of this Settlement Contract.

436 (c) In the event that the California State Water Resources Control Board or a
437 court of competent jurisdiction issues a final decision or order modifying the terms and

438 conditions of the water rights of either party to this Settlement Contract in order to impose Bay-
439 Delta water quality obligations, the Contractor and the United States shall promptly meet to
440 determine whether or not to modify any of the terms of this Settlement Contract to comply with
441 the final decision or order, including, but not limited to, the applicability of the rescheduling
442 charge in Article 3(c)(1) of this Settlement Contract. If within 60 days of the date of the issuance
443 of the final decision or order the parties are not able to reach agreement regarding either the need
444 to modify this Settlement Contract or the manner in which this Settlement Contract is to be
445 modified, the parties shall promptly retain a neutral mediator, experienced in resolving water
446 right disputes, to assist the parties in resolving their dispute. The cost of the mediator shall be
447 shared equally. In the event that either of the parties to this Settlement Contract determines that
448 the parties will not be able to develop mutually-agreeable modification(s) to this Settlement
449 Contract even with the assistance of a mediator, either of the parties to this Settlement Contract
450 may attempt to resolve the impasse by seeking appropriate judicial relief including, but not
451 limited to, filing a general adjudication of the rights to the use of water in the Sacramento River
452 system. The foregoing provisions of this sub-article shall only apply to the incremental
453 obligations contained within a final decision or order of the State Water Resources Control
454 Board that reflects a modification to the obligations imposed in State Water Resources Control
455 Board Revised Water Rights Decision 1641 dated March 15, 2000, and its associated 1995 Water
456 Quality Control Plan which, taken together, will be considered the baseline for the application of
457 the provisions of this sub-article.

458 (d) In the event this Settlement Contract terminates, the rights of the parties to
459 thereafter divert and use water shall exist as if this Settlement Contract had not been entered into;
460 and the fact that as a compromise settlement of a controversy as to the respective rights of the

461 parties to divert and use water and the yield of such rights during the term hereof, this Settlement
462 Contract places a limit on the Contract Total to be diverted annually by the Contractor during the
463 Settlement Contract term and segregates it into Base Supply and Project Water shall not
464 jeopardize the rights or position of either party with respect to its water rights or the yield thereof
465 at all times after the Settlement Contract terminates. It is further agreed that the Contractor at all
466 times will first use water to the use of which it is entitled by virtue of its own water rights, and
467 neither the provisions of this Settlement Contract, action taken thereunder, nor payments made
468 thereunder to the United States by the Contractor shall be construed as an admission that any part
469 of the water used by the Contractor during the term of this Settlement Contract was in fact water
470 to which it would not have been entitled under water rights owned by it nor shall receipt of
471 payments thereunder by the United States from the Contractor be construed as an admission that
472 any part of the water used by the Contractor during the term of this Settlement Contract was in
473 fact water to which it would have been entitled under water rights owned by it.

474 MEASUREMENT OF WATER

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

478 (b) All water diverted from the Sacramento River pursuant to this Settlement
479 Contract will be measured or caused to be measured by the United States at each point of
480 diversion with existing equipment or equipment to be installed, operated, and maintained by the
481 United States, and/or others, under contract with and at the option of the United States. The
482 equipment and methods used to make such measurement shall be in accordance with sound

483 engineering practices. Upon request of the Contractor, the accuracy of such measurements will
484 be investigated by the Contracting Officer and any errors appearing therein will be corrected.

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

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

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

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

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

507 RULES AND REGULATIONS

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

513 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

527 CHARGES FOR DELINQUENT PAYMENTS

528 13. (a) The Contractor shall be subject to interest, administrative and penalty
529 charges on delinquent installments or payments. When a payment is not received by the due
530 date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond
531 the due date. When a payment becomes 60 days delinquent, the Contractor shall pay an
532 administrative charge to cover additional costs of billing and processing the delinquent payment.
533 When a payment is delinquent 90 days or more, the Contractor shall pay an additional penalty
534 charge of six percent per year for each day the payment is delinquent beyond the due date.

535 Further, the Contractor shall pay any fees incurred for debt collection services associated with a
536 delinquent payment.

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

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

545 QUALITY OF WATER

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

551 WATER AND AIR POLLUTION CONTROL

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

556 EQUAL OPPORTUNITY

557 16. During the performance of this Settlement Contract, the Contractor agrees as
558 follows:

559 (a) The Contractor will not discriminate against any employee or applicant for
560 employment because of race, color, religion, sex, or national origin. The Contractor will take
561 affirmative action to ensure that applicants are employed, and that employees are treated during
562 employment, without regard to their race, color, religion, sex, or national origin. Such action
563 shall include, but not be limited to, the following: Employment, upgrading, demotion, or
564 transfer; recruitment or recruitment advertising; layoff or termination, rates of payment or other

565 forms of compensation; and selection for training, including apprenticeship. The Contractor
566 agrees to post in conspicuous places, available to employees and applicants for employment,
567 notices to be provided by the Contracting Officer setting forth the provisions of this
568 nondiscrimination clause.

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

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

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

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

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

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

603 17. Omitted.

604 MINGLING OF CONTRACTOR'S PROJECT AND NON-PROJECT WATER

605 18. (a) Project Water must of necessity be transported by the Contractor to its
606 water users by means of the same works and channels used for the transport of its non-Project
607 Water including Base Supply. Notwithstanding such mingling of water, the provisions of Article
608 11 hereof shall be applicable only to Project Water, and such mingling of water shall not in any
609 manner subject to the provisions of Article 11 hereof the Contractor's non-Project Water
610 including Base Supply.

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

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

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

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

637 BOOKS, RECORDS, AND REPORTS

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

647 CHANGE OF PLACE OF USE OR ORGANIZATION

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

650 CONSOLIDATION OF CONTRACTING ENTITIES

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

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

655 No such consolidation shall be valid unless and until approved by the Contracting
656 Officer.

657 NOTICES

658 22. Any notice, demand, or request authorized or required by this Settlement Contract
659 shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid,
660 or delivered to the Area Manager, Northern California Area Office, Bureau of Reclamation,
661 16349 Shasta Dam Boulevard, Shasta Lake, California 96019, and on behalf of the United
662 States, when mailed, postage prepaid, or delivered to Justin J. Micheli,, Trustee, Lomo Cold
663 Storage, 6005 Highway 99, Live Oak, California 95953. The designation of the addressee or the
664 address may be changed by notice given in the same manner as provided in this Article for other
665 notices.

666 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

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

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

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

676 OFFICIALS NOT TO BENEFIT

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

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

684 CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

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

690 CONFIRMATION OF SETTLEMENT CONTRACT

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

698 UNAVOIDABLE GROUNDWATER PERCOLATION

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

703 PRIVACY ACT COMPLIANCE

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

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

713 (c) The Contracting Officer or a designated representative shall provide the
714 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau
715 of Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--

716 Interior, Reclamation-31) which govern the maintenance, safeguarding, and disclosure of
717 information contained in the Landholder's certification and reporting records.

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

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

729 WATER CONSERVATION

730 29. (a) Prior to the diversion of Project Water, the Contractor shall be
731 implementing an effective water conservation and efficiency program based on the Basin-Wide
732 Water Management Plan and/or Contractor's water conservation plan that has been determined
733 by the Contracting Officer to meet the conservation and efficiency criteria for evaluating water
734 conservation plans established under Federal law. The water conservation and efficiency
735 program shall contain definite water conservation objectives, appropriate economically feasible
736 water conservation measures, and time schedules for meeting those objectives. Continued
737 diversion of Project Water pursuant to this Settlement Contract shall be contingent upon the
738 Contractor's continued implementation of such water conservation program. In the event the
739 Contractor's water conservation plan or any revised water conservation plan completed pursuant
740 to subdivision (c) of Article 29 of this Settlement Contract have not yet been determined by the
741 Contracting Officer to meet such criteria, due to circumstances which the Contracting Officer
742 determines are beyond the control of the Contractor, Project Water deliveries shall be made
743 under this Settlement Contract so long as the Contractor diligently works with the Contracting

744 Officer to obtain such determination at the earliest practicable date, and thereafter the Contractor
745 immediately begins implementing its water conservation and efficiency program in accordance
746 with the time schedules therein.

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

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

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

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

761 (1) On or before February 15 of any Water Year, the Contractor may
762 file with Reclamation an offer to reduce Project Water use, hereinafter referred to as Offer. The
763 Offer shall specify the maximum quantity of Project Water to be diverted by the Contractor for
764 each month that Project Water is available for that Water Year under this Settlement Contract.
765 The Contracting Officer shall provide the Contractor with a decision, in writing, to the Offer on

766 or before March 15 of that Water Year. The dates specified in this Article 29(e)(1) can be
767 changed if mutually agreed to, in writing, by the Contractor and Contracting Officer.

768 (2) If Reclamation accepts the Offer, the Contractor's payment
769 obligation under Article 8(a)(1) shall be reduced to the maximum quantity of Project Water to be
770 diverted by the Contractor as specified in the Offer. The Contractor shall not divert Project
771 Water in excess of the quantities set forth in the Offer; Provided, however, if the Contractor's
772 diversions of Project Water exceed the quantities set forth in the Offer, the Contractor shall pay
773 to Reclamation the applicable Rates and Charges plus an amount equal to the applicable Rates
774 and Charges, unadjusted for ability to pay, for each acre-foot of Project Water diverted in excess
775 of the quantities set forth in the Offer.

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

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

781 OPINIONS AND DETERMINATIONS

782 30. (a) Where the terms of this Settlement Contract provide for actions to be
783 based upon the opinion or determination of either party to this Settlement Contract, said terms
784 shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or
785 unreasonable opinions or determinations. Both parties, notwithstanding any other provisions of
786 this Settlement Contract, expressly reserve the right to seek relief from and appropriate
787 adjustment for any such arbitrary, capricious, or unreasonable opinion or determination. Each
788 opinion or determination by either party shall be provided in a timely manner. Nothing in

789 subdivision (a) of Article 30 of this Settlement Contract is intended to or shall affect or alter the
790 standard of judicial review applicable under Federal law to any opinion or determination
791 implementing a specific provision of Federal law embodied in statute or regulation.

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

797 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

806 (b) All advances for miscellaneous costs incurred for work requested by the
807 Contractor pursuant to Article 31 of this Settlement Contract shall be adjusted to reflect the
808 actual costs when the work has been completed. If the advances exceed the actual costs incurred,
809 the difference will be refunded to the Contractor. If the actual costs exceed the Contractor's
810 advances, the Contractor will be billed for the additional costs pursuant to Article 31 of this
811 Settlement Contract.

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WAIVER OF DEFAULT

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

CONTRACT ASSIGNMENT OR TERMINATION UPON TRANSFER OF LAND

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

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

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

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

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

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

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

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

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

847 TERMINATION

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

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

852

THE UNITED STATES OF AMERICA

APPROVED AS TO LEGAL
FORM AND SUFFICIENCY
James E. [Signature]
OFFICE OF REGIONAL SOLICITOR
DEPARTMENT OF THE INTERIOR

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

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856 (SEAL)

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LOMO COLD STORAGE

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By: *John Micheli (Partner)*

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JUSTIN J. MICHELI, TRUSTEE OF THE
J. MICHELI AND ANGELINE MICHELI
1988 REVOCABLE TRUST DATED
FEBRUARY 4, 1988

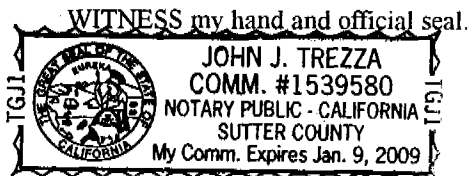
864
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Justin J. Micheli
Justin J. Micheli, Trustee

866 (H:\public\Sac River Final LTRC's\2005-01-31 Lomo Cold Storage and Michelli, Justin Final
867 Draft Contract with exhibits.doc)

STATE OF CALIFORNIA)
) ss.
COUNTY OF SUTTER)

On this 9th day of March in the year 2005, before me, JOHN J. TREZZA, a Notary Public in and for said State, personally appeared JOHN MICHELI and JUSTIN J. MICHELI, personally known to me (or proved 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.



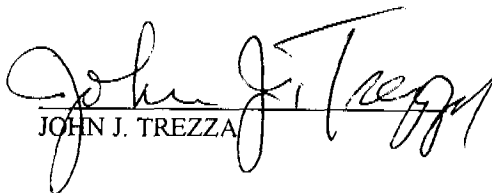

JOHN J. TREZZA

Exhibit A

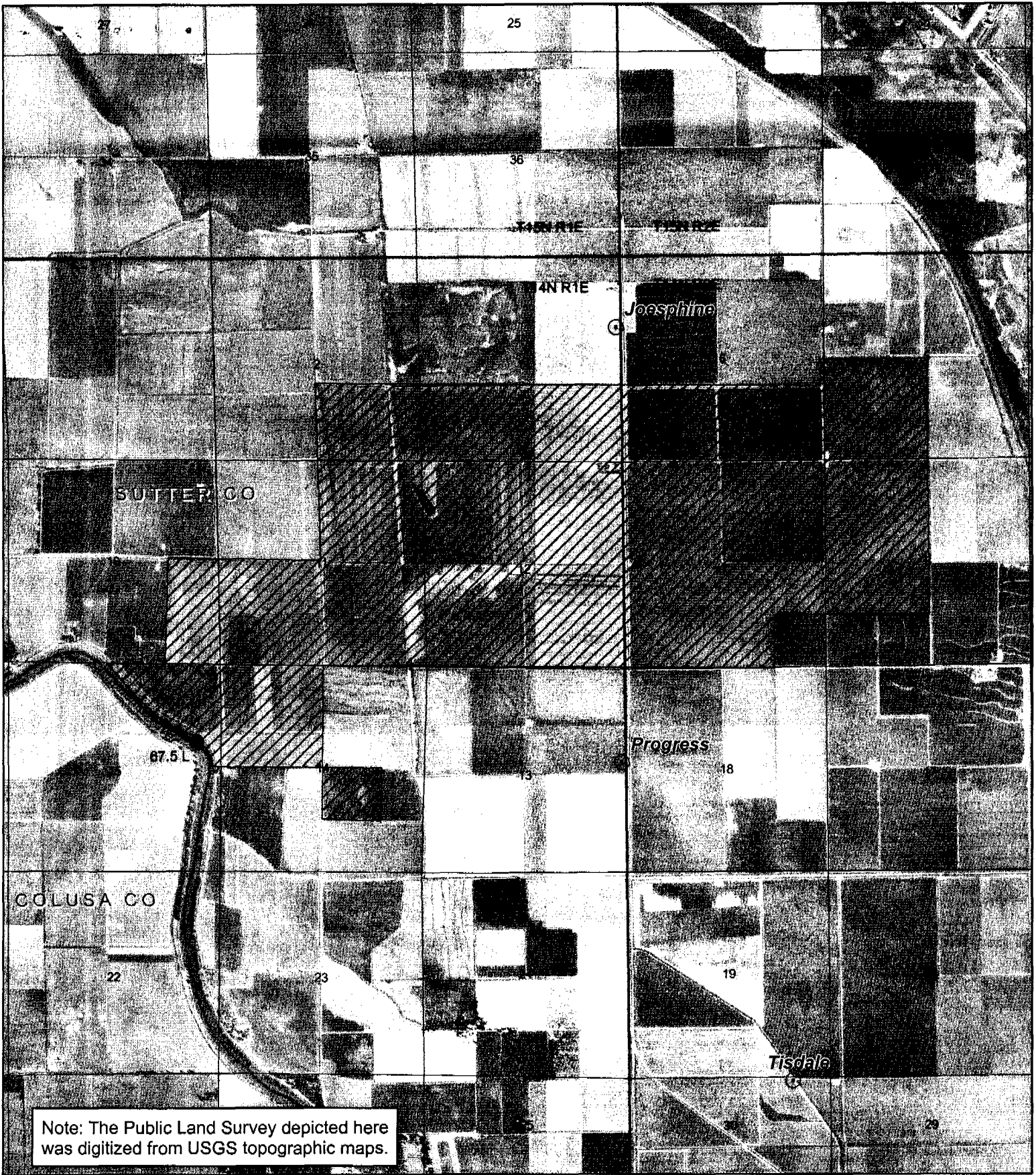
LOMO COLD STORAGE and
 JUSTIN J. MICHELI, TRUSTEE of the JUSTIN J. MICHELI
 and ANGELINE MICHELI 1988 REVOCABLE TRUST DATED FEBRUARY 4, 1988
 Sacramento River

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>1,400</u>	<u>0</u>	<u>1,400</u>
May	<u>2,900</u>	<u>0</u>	<u>2,900</u>
June	<u>1,670</u>	<u>0</u>	<u>1,670</u>
July	<u>130</u>	<u>320</u>	<u>450</u>
August	<u>60</u>	<u>300</u>	<u>360</u>
September	<u>250</u>	<u>80</u>	<u>330</u>
October	<u>0</u>	<u>0</u>	<u>0</u>
Total	<u>6,410</u>	<u>700</u>	<u>7,110</u>

Point of Diversion: 67.5L

Dated: 01-31-2005



Lomo Cold Storage and Michelli, Justin

Contract No. 14-06-200-931A-R-1

Exhibit B



Contractor's Service Area



Point of Diversion

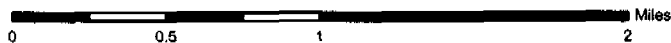


Exhibit C

LOMO COLD STORAGE and
 JUSTIN J. MICHELI, TRUSTEE of the JUSTIN J. MICHELI
 and ANGELINE MICHELI 1988 REVOCABLE TRUST DATED FEBRUARY 4, 1988
 Sacramento River

UNIT DUTY

(In Acre-Feet Per Acre)

	<u>Rice</u>	<u>Alfalfa and Irrigated Pasture</u>	<u>General Crops</u>
June	1.90	0.80	0.60
July	2.10	1.00	0.70
August	2.00	0.80	0.70
September	0.50	0.60	0.40

Dated: 01-31-2005

Exhibit D

LOMO COLD STORAGE and
 JUSTIN J. MICHELI, TRUSTEE of the JUSTIN J. MICHELI
 and ANGELINE MICHELI 1988 REVOCABLE TRUST DATED FEBRUARY 4, 1988
 Sacramento River
2005 Water Rates and Charges per Acre-Foot

<u>COST OF SERVICE RATES:</u>	<u>Irrigation</u>
Capital Rates	
Storage	\$ 4.25
O&M Rates:	
Water Marketing	\$ 6.61
Storage	\$ 5.93
Deficit Rates:	
Interest Bearing	\$ 0.00
CFO/PFR Adjustment Rate 1/	<u>\$ 1.20</u>
TOTAL	<u>\$17.99</u>
<u>RESCHEDULING FEE:</u>	<u>\$5.43</u>
<u>FULL-COST RATES:</u>	
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>\$22.90</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>\$25.34</u>
<u>CHARGES UNDER P.L. 102-575 TO THE RESTORATION FUND 2/</u>	
Restoration Payments (3407(d)(2)(A))	<u>\$ 7.93</u>

1/ Chief Financial Officer (CFO) adjustment and Provision for Replacement (PFR) expense is being distributed over a 5-year period beginning in FY 2003 for those contractors that requested those costs be deferred.

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