

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

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

Table of Contents

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

Table of Contents - continued

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

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11 SETTLING WATER RIGHTS DISPUTES AND  
12 PROVIDING FOR PROJECT WATER

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

26 WITNESSETH, that:

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EXPLANATORY RECITALS

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

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

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

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

41 [5<sup>th</sup>] WHEREAS, the Contractor and the United States had a dispute over the respective  
42 rights of the parties to divert and use water from the regulated flow of the Sacramento River  
43 which threatened to result in litigation, and as a means to settle that dispute entered into Contract  
44 No. 14-06-200-4105X, as amended, hereinafter referred to as the Existing Contract, which  
45 established terms for the delivery to the Contractor of Central Valley Project Water, and the  
46 quantities of Base Supply the United States and the Contractor agreed may be diverted by the  
47 Contractor from the Sacramento River pursuant to such contract; and

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

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

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

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

64 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

139 (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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

247 RETURN FLOW

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

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

256 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

265 INTEGRATED WATER MANAGEMENT AND PARTNERSHIPS

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

274 USE OF WATER FURNISHED TO CONTRACTOR

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

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

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

292 RATE AND METHOD OF PAYMENT FOR WATER

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

295 (1) 75 percent of the amount shown as Project Water shall be paid for  
296 by the Contractor in each Year; and in addition

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

409 AGREEMENT ON WATER QUANTITIES

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

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

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

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

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

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

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

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

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

472 MEASUREMENT OF WATER

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

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

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

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

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

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

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



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

505 RULES AND REGULATIONS

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

511 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

525 CHARGES FOR DELINQUENT PAYMENTS

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

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

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

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

543 QUALITY OF WATER

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

549 WATER AND AIR POLLUTION CONTROL

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

554 EQUAL OPPORTUNITY

555 16. During the performance of this Settlement Contract, the Contractor agrees as  
556 follows:

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

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

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

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

577 (d) The Contractor will comply with all provisions of Executive Order No.  
578 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of  
579 the Secretary of Labor.

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

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

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

601 17. Omitted.

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

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

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

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

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

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

#### 635 BOOKS, RECORDS, AND REPORTS

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

#### 645 CHANGE OF PLACE OF USE OR ORGANIZATION

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

#### 648 CONSOLIDATION OF CONTRACTING ENTITIES

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

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

653 No such consolidation shall be valid unless and until approved by the Contracting  
654 Officer.

655 NOTICES

656 22. Any notice, demand, or request authorized or required by this Settlement Contract  
657 shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid,  
658 or delivered to the Area Manager, Northern California Area Office, Bureau of Reclamation,  
659 16349 Shasta Dam Boulevard, Shasta Lake, California 96019, and on behalf of the United  
660 States, when mailed, postage prepaid, or delivered to Janice C. and Frank J. O'Brien, 1528 Frost  
661 Drive, San Jose, California 95131. The designation of the addressee or the address may be  
662 changed by notice given in the same manner as provided in this Article for other notices.

663 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

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

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

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

674 OFFICIALS NOT TO BENEFIT

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

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

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CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

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

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

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UNAVOIDABLE GROUNDWATER PERCOLATION

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

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PRIVACY ACT COMPLIANCE

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

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

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

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

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

727 WATER CONSERVATION

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



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

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

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

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

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

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

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

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

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

779 OPINIONS AND DETERMINATIONS

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

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

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

795 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

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

810

WAIVER OF DEFAULT

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

815           CONTRACT ASSIGNMENT OR TERMINATION UPON TRANSFER OF LAND

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

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

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

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

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

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

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

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

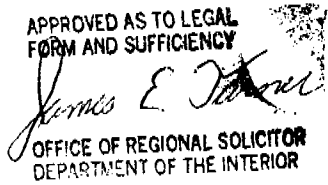
841 (d) Upon mutual agreement between the United States and the Contractor, this  
842 Settlement Contract or a portion thereof may be terminated and the new landowner will have the  
843 privilege of entering into a Settlement Contract for water service for a proportionate share of the  
844 Contract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

845 TERMINATION

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

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

850



THE UNITED STATES OF AMERICA

851  
852  
853

By: *Frank J. O'Brien*  
Regional Director, Mid-Pacific Region  
Bureau of Reclamation

854 (SEAL)

855

FRANK AND JANICE O'BRIEN TRUST

856  
857

*Frank J. O'Brien*  
Frank J. O'Brien, Trustee

858  
859

*Janice C. O'Brien*  
Janice C. O'Brien, Trustee

860 (H:\public\Sac River Final LTRC's\2005-01-31 O'Brien, Frank and Janice Final Draft Contract  
861 with exhibits.doc)

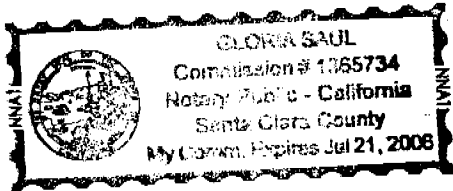
**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California  
 County of Santa Clara } ss.

On March 11 2005 before me, Gloria Saul, Notary Public  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")  
 personally appeared Frank J O'Brien & Janice C O'Brien  
Name(s) of Signer(s)

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

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



WITNESS my hand and official seal.

Gloria Saul  
Signature of Notary Public

**OPTIONAL**

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

**Description of Attached Document** US Dept of Interior  
Bureau of Reclamation  
Central Valley Project California

Title or Type of Document: \_\_\_\_\_

Document Date: March 11, 2005 Number of Pages: 36

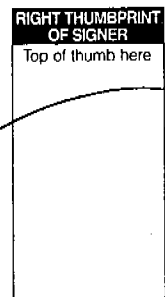
Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer**

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

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

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



*Copy of Original Frank & Janice O'Brien Trust  
Att: Paul Roskopf has in his possession original dated (12/17/97)*

THE  
FRANK AND JANICE O'BRIEN TRUST

This Declaration of Trust ("Declaration"), is executed this 17 day of December, 1997, by and between FRANK J. O'BRIEN, sometimes hereinafter referred to as "Husband Trustor," and JANICE C. O'BRIEN, sometimes hereinafter referred to as "Wife Trustor," and as Trustees. We may be referred to hereinafter collectively as "Trustors," and sometimes hereinafter collectively referred to as "Trustee," depending on the context. This Declaration of Trust is declared in the "first person" and references to "I," "Our" or "We" refer to the Trustors or an individual Trustor, depending upon the context. This declaration shall be known as "THE FRANK AND JANICE O'BRIEN TRUST." *dated 12/17/97*

**ARTICLE I. TRANSFER CREATING TRUST.** We herewith concurrently transfer to the Trustee the community property assets described in Exhibit "A" attached hereto and made a part hereof. We anticipate the transfer of additional community property assets from time to time, which we will describe in subsequently attached exhibits designated "A-1" or such other consecutively numbered exhibits as may be appropriate. Any separate property assets of Husband Trustor shall be described in Exhibit "B" and subsequently attached consecutively numbered exhibits. Any separate property assets of Wife Trustor shall be described in Exhibit "C" and subsequently attached consecutively numbered exhibits. All such assets shall constitute and shall be referred to herein as the "trust estate." The trust estate shall be held, administered and distributed by us in our capacity as Trustee, or by the successor Trustee, as hereinafter set forth. In our capacity as Trustee, we accept title to the trust estate as conveyed, with the understanding that the trust estate will be held, administered and distributed in accordance with the terms of this Declaration.

**ARTICLE II. DESCRIPTION OF FAMILY.** We have two (2) children of our marriage: DAVID FRANCIS O'BRIEN and JAMES MICHAEL O'BRIEN. We have no other children now living or previously deceased children leaving issue surviving.

**ARTICLE III. CHARACTER OF TRUST ESTATE.** It is our intention that all community property transferred to the trust estate, together with the proceeds thereof, shall retain its character as community property during our joint lifetimes, subject, however, to all the terms and conditions of this Declaration. Similarly, it is our intention that all separate property of either of us transferred to the trust estate, together with the proceeds thereof, shall also retain its separate property character during our joint lifetimes, subject also to all the terms and conditions

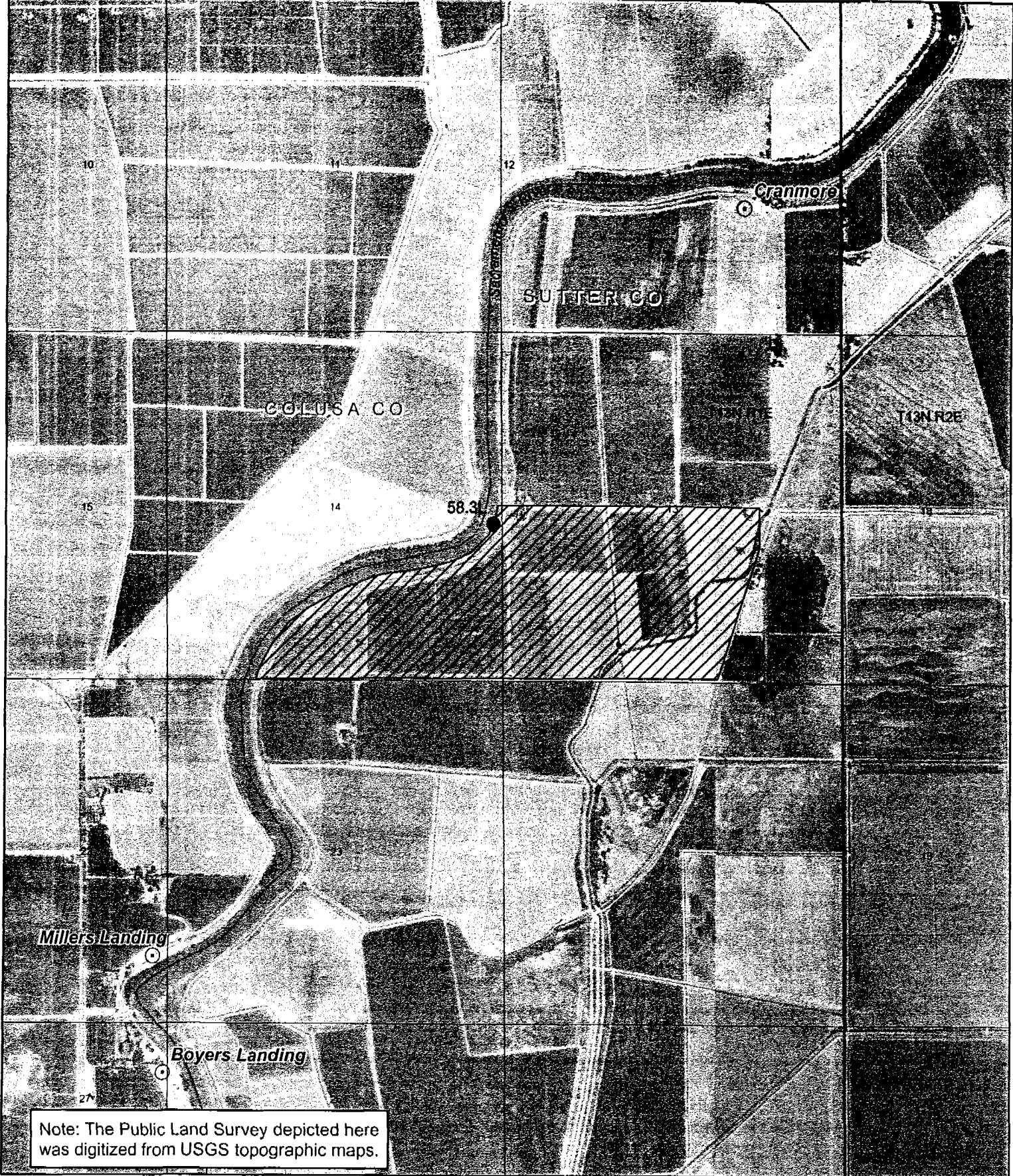


## Exhibit A



FRANK AND JANICE O'BRIEN TRUST  
Sacramento RiverSCHEDULE OF MONTHLY DIVERSIONS OF WATER

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

Irrigable Acres: 290Points of Diversion: 58.3LDated: 01-31-2005



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

-  Contractor's Service Area
-  Point of Diversion

**O'Brien, Frank and Janice**  
 Contract No. 14-06-200-4105X-R-1  
 Exhibit B

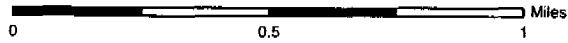


Exhibit C

FRANK AND JANICE O'BRIEN TRUST  
Sacramento River

UNIT DUTY

(In Acre-Feet Per Acre)

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

Dated: 01-31-2005

## Exhibit D

FRANK AND JANICE O'BRIEN TRUST  
 Sacramento River  
2005 Water Rates and Charges per Acre-Foot

<u>COST OF SERVICE RATES:</u>	<u>Irrigation</u>
Capital Rates	
Storage	\$ 4.58
O&M Rates:	
Water Marketing	\$ 6.61
Storage	\$ 5.93
Deficit Rates:	
Interest Bearing	\$ 0.00
CFO/PFR Adjustment Rate 1/	<u>\$ 1.29</u>
TOTAL	<u>\$18.41</u>
<u>RESCHEDULING FEE:</u>	<u>\$5.60</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>\$23.22</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>\$25.78</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).