

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

CONTRACT BETWEEN THE UNITED STATES AND  
PACIFIC REALTY ASSOCIATES, L.P. dba M&T CHICO RANCH,  
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.....	7-12
4	Return Flow .....	12
5	Constraints on the Availability of Water .....	12
6	Integrated Water Management and Partnerships .....	13
7	Use of Water Furnished to Contractor .....	13-14
8	Rate and Method of Payment for Water .....	14-19
9	Agreement on Water Quantities.....	19-22
10	Measurement of Water.....	22-23
11	Rules and Regulations.....	23
12	General Obligation – Benefits Conditioned Upon Payment.....	23-24
13	Charges for Delinquent Payments .....	24
14	Quality of Water .....	24
15	Water and Air Pollution Control.....	25
16	Equal Opportunity.....	25-26
17	Omitted .....	26
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.....	27-28
20	Change of Place of Use or Organization.....	28
21	Consolidation of Contracting Entities.....	28
22	Notices .....	28
23	Assignment Limited – Successors and Assigns Obligated .....	28-29
24	Officials Not to Benefit.....	29
25	Contingent Upon Appropriation or Allotment of Funds .....	29
26	Confirmation of Settlement Contract.....	29
27	Unavoidable Groundwater Percolation.....	29
28	Privacy Act Compliance .....	30
29	Water Conservation .....	30-32
30	Opinions and Determinations .....	33
31	Contractor to Pay Certain Miscellaneous Costs.....	33-34
32	Waiver of Default .....	34
33	Contract Assignment or Termination Upon Transfer of Land.....	34-35
34	Termination.....	36
	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	

1  
2  
3 UNITED STATES  
4 DEPARTMENT OF THE INTERIOR  
5 BUREAU OF RECLAMATION  
6 Central Valley Project, California

7 CONTRACT BETWEEN THE UNITED STATES AND  
8 PACIFIC REALTY ASSOCIATES, L.P. dba M&T CHICO RANCH,  
9 DIVERTER OF WATER FROM SACRAMENTO RIVER SOURCES,  
10 SETTLING WATER RIGHTS DISPUTES AND  
11 PROVIDING FOR PROJECT WATER

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

24 WITNESSETH, that:

EXPLANATORY RECITALS

25

26 [1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley  
27 Project, California, for multiple purposes pursuant to its statutory authority; and

28 [2<sup>nd</sup>] WHEREAS, the Contractor has rights to divert, is diverting, and will continue to  
29 divert for reasonable beneficial use, water from the natural flow of the Sacramento River and  
30 tributaries thereto, that would have been flowing therein if the Central Valley Project were not in  
31 existence and water from Butte Creek; and

32 [3<sup>rd</sup>] WHEREAS, the construction and operation of the integrated and coordinated  
33 Central Valley Project has changed and will further change the regimen of the Sacramento,  
34 American, San Joaquin, and Trinity Rivers and the Sacramento-San Joaquin Delta from  
35 unregulated flow to regulated flow; and

36 [4<sup>th</sup>] WHEREAS, the United States has rights to divert, is diverting, and will continue  
37 to divert waters from said Rivers and said Delta in connection with the operation of said Central  
38 Valley Project; and

39 [5<sup>th</sup>] WHEREAS, the Contractor and the United States had a dispute over the  
40 respective rights of the parties to divert and use water from the regulated flow of the Sacramento  
41 River which threatened to result in litigation, and as a means to settle that dispute entered into  
42 Contract No. 14-06-200-940A, as revised, hereinafter referred to as the Existing Contract, which  
43 established terms for the delivery to the Contractor of Central Valley Project Water, and the  
44 quantities of Base Supply the United States and the Contractor agreed may be diverted by the  
45 Contractor from the Sacramento River pursuant to such contract; and

46 [6<sup>th</sup>] WHEREAS, the United States and the Contractor disagree with respect to the  
47 authority of the United States to change the quantities of Base Supply and/or Project Water

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

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

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

#### 62 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

115           (k)    “Landholder” shall mean a party that directly or indirectly owns or leases  
116 nonexempt land, as provided in 43 CFR 426.2;

117           (l)    “Project” shall mean the Central Valley Project owned by the United  
118 States and managed by the Department of the Interior, Bureau of Reclamation;

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

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

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

133           (p)    “Surface Water” shall mean only those waters that are considered as  
134 surface water under California law;

135           (q)    “Water Year” shall mean the period commencing with October 1 of one  
136 year and extending through September 30 of the next; and

137           (r)    “Year” shall mean a calendar year.



138

TERM OF SETTLEMENT CONTRACT

139

140

141

142

143

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.

144

145

146

147

148

149

150

151

152

153

154

155

156

157

(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.

158

WATER TO BE FURNISHED TO CONTRACTOR

159

160

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

161 at the locations shown in Exhibit A, for beneficial use within the area delineated on Exhibit B,  
162 (both Exhibits are attached hereto and made a part hereof), the Contract Total designated in  
163 Exhibit A, or any revision thereof, in accordance with the monthly operating schedule required  
164 by Article 3(c) of this Settlement Contract. The quantity of any water diverted under this  
165 Settlement Contract from the Sacramento River, during the period April through October, for use  
166 on any lands delineated on Exhibit B, by the owner of such lands or otherwise shall constitute a  
167 part of the Contract Total as shown on Exhibit A and shall be subject to all the provisions of this  
168 Settlement Contract relating to such Contract Total as if such diversion were made by the  
169 Contractor; Provided, however, that the Contractor reserves the right to, and may at its option,  
170 divert water from Butte Creek to the extent permitted under Permits Nos. 4743, 4744, 5847,  
171 5848; Licenses Nos. 2614, 2615, 2616, 2617; and the Decree rendered on May 25, 1920, by the  
172 Superior Court of Sutter County in the matter of Central California Investment Company v. John  
173 Crouch Land Company, et al., Action No. 1355, for beneficial use within the area delineated on  
174 Exhibit B; Provided, further that the Contractor is permitted during April, May, June, and  
175 October of each Year to divert water from the Sacramento River in excess of the amounts  
176 specified in Exhibit A in accordance with the Agreement Between the United States and M&T  
177 Chico Ranch, Incorporated, and Parrott Investment Company, Incorporated, For Exchange of  
178 Water from Butte Creek for Water from the Sacramento River, dated July 15, 2003. The  
179 lawfulness of the Contractor's points of diversion for said area from Butte Creek will not be  
180 challenged by, or on behalf of, the Bureau of Reclamation except in the case of a general  
181 adjudication as provided in subdivisions (b) and (c) of Article 9.

182 (b) The Contractor may have acquired rights to divert water from the  
183 Sacramento River during the period April through October, that were obtained after the date of

184 execution of the Existing Contract, or the Contractor may acquire such rights in the future. All  
185 diversions made from the Sacramento River, pursuant to such rights, during the period April  
186 through October, shall not be considered a part of the quantity of Base Supply and Project Water  
187 specified in Exhibit A; Provided, that the quantities diverted pursuant to the above rights shall be  
188 identified on the schedule submitted pursuant to Article 3(c) below, and shall not be substituted  
189 for any Base Supply or Project Water; Provided, further, that any such identified quantities of  
190 other acquired rights may be diverted by the Contractor before incurring any fee pursuant to  
191 Article 3(c)(1), below.

192 (c) Before April 1 and before the first day of each month thereafter when a  
193 revision is needed, the Contractor shall submit a written schedule to the Contracting Officer  
194 indicating the Contract Total to be diverted by the Contractor during each month under this  
195 Settlement Contract. The United States shall furnish water to the Contractor in accordance with  
196 the monthly operating schedule or any revisions thereof. However, the United States recognizes  
197 the need of the Contractor to change from time to time its monthly diversions of water from the  
198 quantities shown in Exhibit A; the Contractor may make such changes, provided:

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

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

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

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

212 (d) In the event conditions warrant, the Contracting Officer reserves the right  
213 to require the Contractor to submit, at least 72 hours prior to the beginning of each weekly  
214 period, its estimate of daily diversion requirements for each such period from the Sacramento  
215 River; Provided, however, that changes during any such period may be made upon the giving of  
216 72 hours' notice thereof to the Contracting Officer.

217 (e) No sale, transfer, exchange, or other disposal of any of the Contract Total  
218 designated in Exhibit A or the right to the use thereof for use on land other than that shown on  
219 Exhibit B shall be made by the Contractor without first obtaining the written consent of the  
220 Contracting Officer. Such consent will not be unreasonably withheld and a decision will be  
221 rendered in a timely manner. For short-term actions that will occur within one year or less, the  
222 decision will be rendered within 30 days after receipt of a complete written proposal. For long-  
223 term actions that will occur in a period longer than one year, the decision will be rendered within  
224 90 days after receipt of a complete written proposal. For a proposal to be deemed complete by  
225 the Contracting Officer, it must comply with all provisions required by State and Federal law,  
226 including information sufficient to enable the Contracting Officer to comply with the National  
227 Environmental Policy Act, the Endangered Species Act, and applicable rules or regulations then  
228 in effect; Provided, that such consent does not authorize the use of Federal facilities to facilitate

229 or effectuate the sale, transfer, exchange, or other disposal of Base Supply. Such use of Federal  
230 facilities will be the subject of a separate agreement to be entered into between the Contractor  
231 and Reclamation.

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

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

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

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

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

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

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

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

#### 257 RETURN FLOW

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

#### 266 CONSTRAINTS ON THE AVAILABILITY OF WATER

267 5. (a) In a Critical Year, the Contractor's Base Supply and Project Water agreed  
268 to be diverted during the period April through October of the Year in which the principal portion  
269 of the Critical Year occurs and, each monthly quantity of said period shall be reduced by  
270 25 percent.

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

275 INTEGRATED WATER MANAGEMENT AND PARTNERSHIPS

276 6. The Contractor and United States desire to work together to maximize the  
277 reasonable beneficial use of water for their mutual benefit. As a consequence, the United States  
278 and the Contractor will work in partnership and with others within the Sacramento Valley,  
279 including other contractors, to facilitate the better integration within the Sacramento Valley of all  
280 water supplies including, but not limited to, the better management and integration of surface  
281 water and groundwater, the development and better utilization of surface water storage, the  
282 effective utilization of waste, seepage and return flow water, and other operational and  
283 management options that may be identified in the future.

284 USE OF WATER FURNISHED TO CONTRACTOR

285 7. (a) Project Water furnished to the Contractor pursuant to this Settlement  
286 Contract shall not be delivered or furnished by the Contractor for any purposes other than  
287 agricultural purposes without the written consent of the Contracting Officer. For purposes of this  
288 Settlement Contract, "agricultural purposes" includes, but is not restricted to, the irrigation of  
289 crops, the watering of livestock, incidental domestic use including related landscape irrigation,  
290 and underground water replenishment.

291 (b) The Contractor shall comply with requirements applicable to the  
292 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution  
293 of this Settlement Contract undertaken pursuant to Section 7 of the Endangered Species Act of  
294 1973, as amended, that are within the Contractor's legal authority to implement. The Existing  
295 Contract, which evidences in excess of 40 years of diversions, for agricultural uses, of the  
296 quantities of water provided for in Article 3, and the underlying water rights of the Contractor  
297 will be considered in developing an appropriate base-line for the Biological Assessment prepared

298 pursuant to the Endangered Species Act, and in any other needed environmental review.  
299 Nothing herein shall be construed to prevent the Contractor from challenging or seeking judicial  
300 relief in a court of competent jurisdiction with respect to any biological opinion or other  
301 environmental documentation referred to in this Article.

302 RATE AND METHOD OF PAYMENT FOR WATER

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

305 (1) 75 percent of the amount shown as Project Water shall be paid for  
306 by the Contractor in each Year; and in addition

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

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



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

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

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

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

338 (1) With respect to Rates, prior to May 1 of each Year, the Contractor  
339 shall pay the United States one-half the total amount payable pursuant to subdivision (a) of this  
340 Article and the remainder shall be paid prior to July 1 or such later date or dates as may be  
341 specified by the United States in a written notice to the Contractor; Provided, however, that if at  
342 any time during the Year the amount of Project Water diverted by the Contractor shall equal the

343 amount for which payment has been made, the Contractor shall pay for the remaining amount of  
344 such water as shown in Exhibit A in advance of any further diversion of Project Water.

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

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

359 (e) The Contracting Officer shall keep its accounts pertaining to the  
360 administration of the financial terms and conditions of its long-term water service and Settlement  
361 Contracts, in accordance with applicable Federal standards, so as to reflect the application of  
362 Project costs and revenues. The Contracting Officer shall, each Year upon request of the  
363 Contractor, provide to the Contractor a detailed accounting of all Project and Contractor expense  
364 allocations, the disposition of all Project and Contractor revenues, and a summary of all water  
365 delivery information. The Contracting Officer and the Contractor shall enter into good faith

366 negotiations to resolve any discrepancies or disputes relating to accountings, reports, or  
367 information.

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

375           (g)     For the term of this Settlement Contract, Rates under the respective  
376 ratesetting policies for the Project will be established to recover only reimbursable operation and  
377 maintenance (including any deficits) and capital costs of the Project, as those terms are used in  
378 the then current Project ratesetting policies, and interest, where appropriate, except in instances  
379 where a minimum Rate is applicable in accordance with the relevant Project ratesetting policy.  
380 Proposed changes of significance in practices which implement the ratesetting policies for the  
381 Project will not be implemented until the Contracting Officer has provided the Contractor an  
382 opportunity to discuss the nature, need, and impact of the proposed change. The Contractor  
383 retains all rights to challenge the validity of Rates and Charges imposed pursuant to this  
384 Settlement Contract, including but not limited to operation and maintenance expenses and  
385 operation and maintenance deficits, in an appropriate administrative or judicial proceeding.

386           (h)     Except as provided in subsection 3405(a)(1)(B) of the CVPIA, the Rates  
387 for Project Water transferred, exchanged, or otherwise disposed of, by the Contractor shall be the  
388 Contractor's Rates adjusted upward or downward to reflect the changed costs of delivery (if any)

389 of the transferred, exchanged, or otherwise disposed of Project Water to the transferee's point of  
390 delivery in accordance with the then-current ratesetting policies for the Project. Except as  
391 provided in subsection 3407(d)(2)(A) of the CVPIA, the Charges for Project Water transferred,  
392 exchanged, or otherwise disposed of, by the Contractor shall be the Contractor's Charges  
393 specified in Exhibit D. If the Contractor is receiving lower Rates and Charges because of  
394 inability to pay and is transferring, exchanging, or otherwise disposing of Project Water to  
395 another entity whose Rates and Charges are not adjusted due to inability to pay, the Rates and  
396 Charges for transferred, exchanged, or otherwise disposed of Project Water shall be the  
397 Contractor's Rates and Charges unadjusted for ability to pay.

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

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

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

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

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

416 (4) Any injunctive process enjoining or restraining the Contractor  
417 from making or collecting any such assessment, toll, or other charge referred to in subsection  
418 8(c)(2) of this Settlement Contract.

419 AGREEMENT ON WATER QUANTITIES

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

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

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

429 (b) Nothing herein contained is intended to or does limit rights of the  
430 Contractor against others than the United States or of the United States against any person other  
431 than the Contractor; Provided, however, that in the event the Contractor, the United States, or  
432 any other person shall become a party to a general adjudication of rights to the use of water of  
433 the Sacramento River system, this Settlement Contract shall not jeopardize the rights or position

434 of either party hereto or of any other person and the rights of all such persons in respect to the  
435 use of such water shall be determined in such proceedings the same as if this Settlement Contract  
436 had not been entered into, and if final judgment in any such general adjudication shall determine  
437 that the rights of the parties hereto are different from the rights as assumed herein, the parties  
438 shall negotiate an amendment to give effect to such judgment. In the event the parties are unable  
439 to agree on an appropriate amendment they shall, within 60 days of determining that there is an  
440 impasse, employ the services of a neutral mediator, experienced in resolving water rights  
441 disputes, to assist in resolving the impasse. The cost of the mediation will be shared equally. A  
442 failure to reach agreement on an amendment within 60 days of the end of mediation will cause  
443 the immediate termination of this Settlement Contract.

444 (c) In the event that the California State Water Resources Control Board or a  
445 court of competent jurisdiction issues a final decision or order modifying the terms and  
446 conditions of the water rights of either party to this Settlement Contract in order to impose Bay-  
447 Delta water quality obligations, the Contractor and the United States shall promptly meet to  
448 determine whether or not to modify any of the terms of this Settlement Contract to comply with  
449 the final decision or order, including, but not limited to, the applicability of the rescheduling  
450 charge in Article 3(c)(1) of this Settlement Contract. If within 60 days of the date of the issuance  
451 of the final decision or order the parties are not able to reach agreement regarding either the need  
452 to modify this Settlement Contract or the manner in which this Settlement Contract is to be  
453 modified, the parties shall promptly retain a neutral mediator, experienced in resolving water  
454 right disputes, to assist the parties in resolving their dispute. The cost of the mediator shall be  
455 shared equally. In the event that either of the parties to this Settlement Contract determines that  
456 the parties will not be able to develop mutually-agreeable modification(s) to this Settlement

457 Contract even with the assistance of a mediator, either of the parties to this Settlement Contract  
458 may attempt to resolve the impasse by seeking appropriate judicial relief including, but not  
459 limited to, filing a general adjudication of the rights to the use of water in the Sacramento River  
460 system. The foregoing provisions of this sub-article shall only apply to the incremental  
461 obligations contained within a final decision or order of the State Water Resources Control  
462 Board that reflects a modification to the obligations imposed in State Water Resources Control  
463 Board Revised Water Rights Decision 1641 dated March 15, 2000, and its associated 1995 Water  
464 Quality Control Plan which, taken together, will be considered the baseline for the application of  
465 the provisions of this sub-article.

466 (d) In the event this Settlement Contract terminates, the rights of the parties to  
467 thereafter divert and use water shall exist as if this Settlement Contract had not been entered into;  
468 and the fact that as a compromise settlement of a controversy as to the respective rights of the  
469 parties to divert and use water and the yield of such rights during the term hereof, this Settlement  
470 Contract places a limit on the Contract Total to be diverted annually by the Contractor during the  
471 Settlement Contract term and segregates it into Base Supply and Project Water shall not  
472 jeopardize the rights or position of either party with respect to its water rights or the yield thereof  
473 at all times after the Settlement Contract terminates. It is further agreed that the Contractor at all  
474 times will first use water to the use of which it is entitled by virtue of its own water rights, and  
475 neither the provisions of this Settlement Contract, action taken thereunder, nor payments made  
476 thereunder to the United States by the Contractor shall be construed as an admission that any part  
477 of the water used by the Contractor during the term of this Settlement Contract was in fact water  
478 to which it would not have been entitled under water rights owned by it nor shall receipt of  
479 payments thereunder by the United States from the Contractor be construed as an admission that

480 any part of the water used by the Contractor during the term of this Settlement Contract was in  
481 fact water to which it would have been entitled under water rights owned by it.

482 MEASUREMENT OF WATER

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

486 (b) All water diverted from the Sacramento River pursuant to this Settlement  
487 Contract will be measured or caused to be measured by the United States at each point of  
488 diversion with existing equipment or equipment to be installed, operated, and maintained by the  
489 United States, and/or others, under contract with and at the option of the United States. The  
490 equipment and methods used to make such measurement shall be in accordance with sound  
491 engineering practices. Upon request of the Contractor, the accuracy of such measurements will  
492 be investigated by the Contracting Officer and any errors appearing therein will be corrected.

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

497 (d) The Contractor shall not modify, alter, remove, or replace diversion  
498 facilities or do any other act which would alter the effectiveness or accuracy of the measuring  
499 equipment installed by the United States or its representatives unless and until the Contracting  
500 Officer has been notified with due diligence and has been given an opportunity to modify such  
501 measuring equipment in such manner as may be necessary or appropriate. In the event of an  
502 emergency the Contractor shall notify the United States within a reasonable time thereafter as to



503 the existence of the emergency and the nature and extent of such modification, alteration,  
504 removal, or replacement of diversion facilities.

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

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

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

515 RULES AND REGULATIONS

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

521 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

526 (b) The payment of Charges becoming due hereunder is a condition precedent  
527 to receiving benefits under this Settlement Contract. The United States shall not make water  
528 available to the Contractor through Project facilities during any period in which the Contractor

529 may be in arrears in the advance payment of water Rates due the United States. The Contractor  
530 shall not furnish water made available pursuant to this Settlement Contract for lands or parties  
531 which are in arrears in the advance payment of water rates levied or established by the  
532 Contractor.

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

535 CHARGES FOR DELINQUENT PAYMENTS

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

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

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

553 QUALITY OF WATER

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

559

WATER AND AIR POLLUTION CONTROL

560

15. The Contractor, in carrying out this Settlement Contract, shall comply with all

561

applicable water and air pollution laws and regulations of the United States and the State of

562

California, and shall obtain all required permits or licenses from the appropriate Federal, State,

563

or local authorities.

564

EQUAL OPPORTUNITY

565

16. During the performance of this Settlement Contract, the Contractor agrees as

566

follows:

567

(a) The Contractor will not discriminate against any employee or applicant for

568

employment because of race, color, religion, sex, or national origin. The Contractor will take

569

affirmative action to ensure that applicants are employed, and that employees are treated during

570

employment, without regard to their race, color, religion, sex, or national origin. Such action

571

shall include, but not be limited to, the following: Employment, upgrading, demotion, or

572

transfer; recruitment or recruitment advertising; layoff or termination, rates of payment or other

573

forms of compensation; and selection for training, including apprenticeship. The Contractor

574

agrees to post in conspicuous places, available to employees and applicants for employment,

575

notices to be provided by the Contracting Officer setting forth the provisions of this

576

nondiscrimination clause.

577

(b) The Contractor will, in all solicitations or advertisements for employees

578

placed by or on behalf of the Contractor, state that all qualified applicants will receive

579

consideration for employment without discrimination because of race, color, religion, sex, or

580

national origin.

581

(c) The Contractor will send to each labor union or representative of workers

582

with which it has a collective bargaining agreement or other contract or understanding, a notice,

583

to be provided by the Contracting Officer, advising the said labor union or workers'

584

representative of the Contractor's commitments under Section 202 of Executive Order No. 11246

585

of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places

586

available to employees and applicants for employment.

587

(d) The Contractor will comply with all provisions of Executive Order

588

No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders

589

of the Secretary of Labor.

590

(e) The Contractor will furnish all information and reports required by said

591

amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or

592

pursuant thereto, and will permit access to its books, records, and accounts by the Contracting

593 Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with  
594 such rules, regulations, and orders.

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

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

611 17. Omitted.

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

613 18. (a) Project Water must of necessity be transported by the Contractor to its  
614 water users by means of the same works and channels used for the transport of its non-Project  
615 Water including Base Supply. Notwithstanding such mingling of water, the provisions of Article  
616 11 hereof shall be applicable only to Project Water, and such mingling of water shall not in any  
617 manner subject to the provisions of Article 11 hereof the Contractor's non-Project Water  
618 including Base Supply.

619 (b) If required in accordance with subdivision (c) of this Article, the  
620 Contractor shall install and maintain such measuring equipment and distribution facilities and  
621 maintain such records as may be necessary to determine the amounts of water delivered to  
622 Excess Lands served by the Contractor. The Contractor shall not within any month deliver to  
623 Ineligible Lands water in excess of the non-Project Water, including Base Supply, for that

624 month. The Contracting Officer or authorized representative shall have the right at all  
625 reasonable times to inspect such records and measuring equipment.

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

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

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

645 BOOKS, RECORDS, AND REPORTS

646 19. The Contractor shall establish and maintain accounts and other books and records  
647 pertaining to administration of the terms and conditions of this Settlement Contract, including:

648 the Contractor's financial transactions, water supply data, and Project land and right-of-way  
 649 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use  
 650 data; and other matters that the Contracting Officer may require. Reports thereon shall be  
 651 furnished to the Contracting Officer in such form and on such date or dates as the Contracting  
 652 Officer may require. Subject to applicable Federal laws and regulations, each party to this  
 653 Settlement Contract shall have the right during office hours to examine and make copies of each  
 654 other's books and official records relating to matters covered by this Settlement Contract.

655 CHANGE OF PLACE OF USE OR ORGANIZATION

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

658 CONSOLIDATION OF CONTRACTING ENTITIES

659 21. Consolidation of Contractors may be approved by the Contracting Officer  
 660 provided: (i) the Contracting Officer approves the form and organization of the resulting entity  
 661 and the utilization by it of the Contract Total; and (ii) the obligations of the Contractors are  
 662 assumed by such entity.

663 No such consolidation shall be valid unless and until approved by the Contracting  
 664 Officer.

665 NOTICES

666 22. Any notice, demand, or request authorized or required by this Settlement Contract  
 667 shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid,  
 668 or delivered to the Area Manager, Northern California Area Office, Bureau of Reclamation,  
 669 16349 Shasta Dam Boulevard, Shasta Lake, California 96019, and on behalf of the United States,  
 670 when mailed, postage prepaid, or delivered to Pacific Realty Associates, L.P. dba M&T Chico  
 671 Ranch, 15350 S.W. Sequoia Parkway, Suite 300, Portland, Oregon 97224 with a copy to M&T  
 672 Chico Ranch, 3964 Chico River Road, Chico, California 95928. The designation of the  
 673 addressee or the address may be changed by notice given in the same manner as provided in this  
 674 Article for other notices.

675 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

676  
 677 23. (a) The provisions of this Settlement Contract shall apply to and bind the  
 678 successors and assigns of the parties hereto, but no assignment or transfer of this Settlement  
 679 Contract or any right or interest therein shall be valid until approved in writing by the  
 680 Contracting Officer.

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

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

686 OFFICIALS NOT TO BENEFIT

687  
688 24. (a) No Member of or Delegate to Congress, Resident Commissioner, or  
689 official of the Contractor shall benefit from this Settlement Contract other than as a water user or  
690 landowner in the same manner as other water users or landowners.

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

695 CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

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

701 CONFIRMATION OF SETTLEMENT CONTRACT

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

709 UNAVOIDABLE GROUNDWATER PERCOLATION

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

714

PRIVACY ACT COMPLIANCE

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

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

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

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

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

740

WATER CONSERVATION

741           29.   (a)    Prior to the diversion of Project Water, the Contractor shall be  
742 implementing an effective water conservation and efficiency program based on the Basin-Wide  
743 Water Management Plan and/or Contractor's water conservation plan that has been determined  
744 by the Contracting Officer to meet the conservation and efficiency criteria for evaluating water  
745 conservation plans established under Federal law. The water conservation and efficiency  
746 program shall contain definite water conservation objectives, appropriate economically feasible



747 water conservation measures, and time schedules for meeting those objectives. Continued  
748 diversion of Project Water pursuant to this Settlement Contract shall be contingent upon the  
749 Contractor's continued implementation of such water conservation program. In the event the  
750 Contractor's water conservation plan or any revised water conservation plan completed pursuant  
751 to subdivision (c) of Article 29 of this Settlement Contract have not yet been determined by the  
752 Contracting Officer to meet such criteria, due to circumstances which the Contracting Officer  
753 determines are beyond the control of the Contractor, Project Water deliveries shall be made  
754 under this Settlement Contract so long as the Contractor diligently works with the Contracting  
755 Officer to obtain such determination at the earliest practicable date, and thereafter the Contractor  
756 immediately begins implementing its water conservation and efficiency program in accordance  
757 with the time schedules therein.

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

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

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

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

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

779                   (2)     If Reclamation accepts the Offer, the Contractor's payment  
780 obligation under Article 8(a)(1) shall be reduced to the maximum quantity of Project Water to be  
781 diverted by the Contractor as specified in the Offer. The Contractor shall not divert Project  
782 Water in excess of the quantities set forth in the Offer; Provided, however, if the Contractor's  
783 diversions of Project Water exceed the quantities set forth in the Offer, the Contractor shall pay  
784 to Reclamation the applicable Rates and Charges plus an amount equal to the applicable Rates  
785 and Charges, unadjusted for ability to pay, for each acre-foot of Project Water diverted in excess  
786 of the quantities set forth in the Offer.

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

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

OPINIONS AND DETERMINATIONS

792  
793  
794           30.   (a)   Where the terms of this Settlement Contract provide for actions to be  
795 based upon the opinion or determination of either party to this Settlement Contract, said terms  
796 shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or  
797 unreasonable opinions or determinations. Both parties, notwithstanding any other provisions of  
798 this Settlement Contract, expressly reserve the right to seek relief from and appropriate  
799 adjustment for any such arbitrary, capricious, or unreasonable opinion or determination. Each  
800 opinion or determination by either party shall be provided in a timely manner. Nothing in  
801 subdivision (a) of Article 30 of this Settlement Contract is intended to or shall affect or alter the  
802 standard of judicial review applicable under Federal law to any opinion or determination  
803 implementing a specific provision of Federal law embodied in statute or regulation.

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

CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

809  
810           31.   (a)   In addition to all other payments to be made by the Contractor pursuant to  
811 this Settlement Contract, the Contractor shall pay to the United States, within 60 days after  
812 receipt of a bill and detailed statement submitted by the Contracting Officer to the Contractor for  
813 such specific items of direct cost incurred by the United States for work requested by the  
814 Contractor associated with this Settlement Contract plus indirect costs in accordance with  
815 applicable Bureau of Reclamation policies and procedures. All such amounts referred to in this

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

817 Article shall not apply to costs for routine contract administration.

818 (b) All advances for miscellaneous costs incurred for work requested by the  
819 Contractor pursuant to Article 31 of this Settlement Contract shall be adjusted to reflect the  
820 actual costs when the work has been completed. If the advances exceed the actual costs incurred,  
821 the difference will be refunded to the Contractor. If the actual costs exceed the Contractor's  
822 advances, the Contractor will be billed for the additional costs pursuant to Article 31 of this  
823 Settlement Contract.

824 WAIVER OF DEFAULT

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

829 CONTRACT ASSIGNMENT OR TERMINATION UPON TRANSFER OF LAND

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

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

836 (2) A voluntary inter vivos transfer may be made to a person ineligible  
837 to hold title to the land as a nonexcess landowner provided that no Project Water may thereafter

838 be used on Excess Lands and the assignee shall not be privileged to obtain such use of Project  
839 Water on Excess Lands.

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

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

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

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

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

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

859

TERMINATION

860

34. This Settlement Contract will terminate upon mutual agreement of the parties

861

prior to the end of the term or any renewal thereof.


IN WITNESS WHEREOF, the parties hereto have executed this Settlement

Contract as of the day and year first hereinabove written.

862

THE UNITED STATES OF AMERICA

863

By:   
Regional Director, Mid-Pacific Region  
Bureau of Reclamation

864

865

866

(SEAL)

867

868

APPROVED AS TO LEGAL  
FORM AND SUFFICIENCY



OFFICE OF REGIONAL SOLICITOR  
DEPARTMENT OF THE INTERIOR

869

870

PACIFIC REALTY ASSOCIATES, L.P. dba  
M&T CHICO RANCH  
By: PacTrust Realty, Inc., General Partner


By:   
President

871

ATTEST:

872

873

  
Secretary

874

(H:\public\Sac River Final LTRC's\2005-01-31 Pacific Realty Associates L.P (dba M&T Chico Ranch)Final draft with exhibits.doc)

875

## Exhibit A

PACIFIC REALTY ASSOCIATES, L.P. dba M&T CHICO RANCH  
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>1,200</u>	<u>0</u>	<u>1,200</u>
May	<u>1,640</u>	<u>0</u>	<u>1,640</u>
June	<u>2,730</u>	<u>272</u>	<u>3,002</u>
July	<u>4,010</u>	<u>320</u>	<u>4,330</u>
August	<u>4,260</u>	<u>304</u>	<u>4,564</u>
September	<u>2,380</u>	<u>80</u>	<u>2,460</u>
October	<u>760</u>	<u>0</u>	<u>760</u>
Total	<u>16,980</u>	<u>976</u>	<u>17,956</u>

Points of Diversion: 140.8L, 141.5L



Dated: 01-31-2005

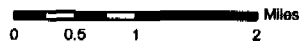


Note: The Public Land Survey depicted here was digitized from USGS topographic maps.

# Pacific Realty Associates, L.P. (M & T Chico Ranch)

Contract No. 14-06-200-940A-R-1  
Exhibit B

-  Contractor's Service Area
-  Point of Diversion





## Exhibit C

PACIFIC REALTY ASSOCIATES, L.P. dba M&T CHICO RANCH  
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	2.00	1.00	0.70
August	1.90	0.80	0.70
September	0.50	0.60	0.40

Dated: 01-31-2005

## Exhibit D

PACIFIC REALTY ASSOCIATES, L.P. dba M&T CHICO RANCH  
 Sacramento River  
2005 Water Rates and Charges per Acre-Foot

<u>COST OF SERVICE RATES:</u>	<u>Irrigation</u>
Capital Rates	
Storage	\$ 4.74
O&M Rates:	
Water Marketing	\$ 6.61
Storage	\$ 5.93
Deficit Rates:	
Interest Bearing	\$ 3.09
CFO/PFR Adjustment Rate 1/	<u>\$ 1.21</u>
TOTAL	<u>\$21.58</u>
<u>RESCHEDULING FEE:</u>	<u>\$5.68</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>\$26.01</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>\$28.74</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).

## PACTRUST REALTY, INC.

WHEREAS, PacTrust Realty, Inc. ("Corporation") is the General Partner of Pacific Realty Associates, L.P., a limited partnership organized under the laws of the State of Delaware (the "Partnership");

WHEREAS, pursuant to Section 7 of the Third Amended and Restated Limited Partnership Agreement of the Partnership dated as of August 5, 1988 (the "Partnership Agreement"), the General Partner of the Partnership has the sole responsibility and authority for the conduct of the Partnership business;

WHEREAS, it is in the best interests of the Partnership and of this Corporation as the General Partner of the Partnership to authorize the officers of this Corporation to perform the actions and to execute the documents which enable this Corporation to perform its duties as the General Partner of the Partnership;


NOW THEREFORE BE IT RESOLVED, that President, Peter F. Bechen, and Vice President, David W. Ramus, and any other officer of this Corporation be, and each of them hereby is, authorized and directed to take any and all actions and to execute any and all documents necessary or desirable concerning the "Contract Between The United States and Pacific Realty Associates, L.P. dba M&T Chico Ranch, Diverter of Water from Sacramento River Sources, Settling Water Rights Disputes and Providing for Project Water;"

RESOLVED FURTHER, that any action previously taken or any document previously executed by any officer of this Corporation on behalf of this Corporation as the General Partner of the Partnership to enable this Corporation to fulfill its rights, obligations and duties under the Partnership Agreement, including without limitation, the rights, obligations and duties set forth in Sections 6, 7 and 11 of the Partnership Agreement be, and the same hereby are, authorized, ratified and approved.

### Certificate

I, Terry L. O'Toole, Secretary of PacTrust Realty, Inc., a Delaware corporation, hereby CERTIFY that (1) the foregoing is a true and correct copy of resolutions approved and adopted by the Board of Directors of said Corporation by unanimous written consent without a meeting on March 1, 2005 and that (2) said resolutions are in full force and effect on the date hereof and have not been amended or rescinded.

Dated: March 1, 2005

  
Terry L. O'Toole, Secretary

**General Authorization**

RESOLVED FURTHER, that each of the officers of this Corporation is authorized and directed to execute all documents and otherwise take on behalf of this Corporation all actions necessary or appropriate to carry out the intent and achieve the purposes of the foregoing resolutions.

DIRECTORS:

  
Peter F. Bechen

  
Henry R. Kravis

\_\_\_\_\_  
Robert I. MacDonnell

\_\_\_\_\_  
George R. Roberts

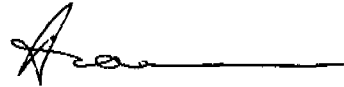
General Authorization

RESOLVED FURTHER, that each of the officers of this Corporation is authorized and directed to execute all documents and otherwise take on behalf of this Corporation all actions necessary or appropriate to carry out the intent and achieve the purposes of the foregoing resolutions.


DIRECTORS:

  
Peter F. Bechen

\_\_\_\_\_  
Henry R. Kravis



\_\_\_\_\_  
Robert I. MacDonnell

  
\_\_\_\_\_  
George R. Roberts