

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

CONTRACT BETWEEN THE UNITED STATES AND
ROBERTS DITCH IRRIGATION COMPANY, INC.,
DIVERTER OF WATER FROM SACRAMENTO RIVER SOURCES,
SETTLING WATER RIGHTS DISPUTES AND
PROVIDING FOR PROJECT WATER

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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 14th day of April, 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 ROBERTS DITCH IRRIGATION
22 COMPANY, INC., hereinafter referred to as the Contractor, a corporation, acting pursuant to
23 Sections 12003 and 12004 of the California Water Code, with its principal place of business in
24 California;

25 WITNESSETH, that:

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EXPLANATORY RECITALS

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

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

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

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

[5th] WHEREAS, the Contractor and the United States had a dispute over the respective rights of the parties to divert and use water from the regulated flow of the Sacramento River which threatened to result in litigation, and as a means to settle that dispute entered into Contract No. 14-06-200-935A, as revised, hereinafter referred to as the Existing Contract, which established terms for the delivery to the Contractor of Central Valley Project Water, and the quantities of Base Supply the United States and the Contractor agreed may be diverted by the Contractor from the Sacramento River pursuant to such contract; and

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

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

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

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

63 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

139 TERM OF SETTLEMENT CONTRACT

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

145 (b) With respect to Project Water and the portions of this Settlement Contract
146 pertaining thereto, upon written request by the Contractor of the Secretary made not later than
147 one year prior to the expiration of this Settlement Contract, whenever, account being taken of the
148 amount then credited to the costs of construction of water supply works, the remaining amount of
149 construction costs of water supply work which is properly assignable for ultimate return by the
150 Contractor as established by the Secretary of the Interior pursuant to (3) of Section 1 of Public
151 Law 643 (70 Stat. 483), probably can be repaid to the United States within the term of a contract
152 under subsection 9(d) of the 1939 Reclamation Project Act (53 Stat. 1187), the relevant portions
153 of this Settlement Contract may be converted to a contract under said subsection 9(d) upon terms
154 and conditions mutually agreeable to the United States and the Contractor. The Secretary shall
155 make a determination ten years after the date of execution of this Settlement Contract, and every
156 five years thereafter, of whether a conversion to a contract under said subsection 9(d) can be
157 accomplished pursuant to Public Law 643. Notwithstanding any provision of this Settlement
158 Contract, the Contractor reserves and shall have all rights and benefits under Public Law 643.

159 WATER TO BE FURNISHED TO CONTRACTOR

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

246 RETURN FLOW

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

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

255 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

264 INTEGRATED WATER MANAGEMENT AND PARTNERSHIPS

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

273 USE OF WATER FURNISHED TO CONTRACTOR

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

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

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

291 RATE AND METHOD OF PAYMENT FOR WATER

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

294 (1) 75 percent of the amount shown as Project Water shall be paid for
295 by the Contractor in each Year; and in addition

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

408 AGREEMENT ON WATER QUANTITIES

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

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

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

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

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

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

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

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

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

471 MEASUREMENT OF WATER

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

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

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

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

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

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

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

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

504 RULES AND REGULATIONS

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

510 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

524 CHARGES FOR DELINQUENT PAYMENTS

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

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

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

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

542 QUALITY OF WATER

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

548 WATER AND AIR POLLUTION CONTROL

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

553 EQUAL OPPORTUNITY

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

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

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

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

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

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

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

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

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

600

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

601 17. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
602 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the
603 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights
604 laws, as well as with their respective implementing regulations and guidelines imposed by the
605 U.S. Department of the Interior and/or Bureau of Reclamation.

606 (b) These statutes require that no person in the United States shall, on the
607 grounds of race, color, national origin, handicap, or age, be excluded from participation in, be
608 denied the benefits of, or be otherwise subjected to discrimination under any program or activity
609 receiving financial assistance from the Bureau of Reclamation. By executing this Settlement
610 Contract, the Contractor agrees to immediately take any measures necessary to implement this
611 obligation, including permitting officials of the United States to inspect premises, programs, and
612 documents.

613 (c) The Contractor makes this agreement in consideration of and for the
614 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other
615 Federal financial assistance extended after the date hereof to the Contractor by the Bureau of
616 Reclamation, including installment payments after such date on account of arrangements for
617 Federal financial assistance which were approved before such date. The Contractor recognizes
618 and agrees that such Federal assistance will be extended in reliance on the representations and
619 agreements made in this Article, and that the United States reserves the right to seek judicial
620 enforcement thereof.

MINGLING OF CONTRACTOR'S PROJECT AND NON-PROJECT WATER

621 18. (a) Project Water must of necessity be transported by the Contractor to its
622 water users by means of the same works and channels used for the transport of its non-Project
623 Water including Base Supply. Notwithstanding such mingling of water, the provisions of Article
624 11 hereof shall be applicable only to Project Water, and such mingling of water shall not in any
625 manner subject to the provisions of Article 11 hereof the Contractor's non-Project Water
626 including Base Supply.

628 (b) If required in accordance with subdivision (c) of this Article, the
629 Contractor shall install and maintain such measuring equipment and distribution facilities and
630 maintain such records as may be necessary to determine the amounts of water delivered to
631 Excess Lands served by the Contractor. The Contractor shall not within any month deliver to

632 Ineligible Lands water in excess of the non-Project Water, including Base Supply, for that
633 month. The Contracting Officer or authorized representative shall have the right at all
634 reasonable times to inspect such records and measuring equipment.

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

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

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

654

BOOKS, RECORDS, AND REPORTS

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

664

CHANGE OF PLACE OF USE OR ORGANIZATION

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

667 (b) While this Settlement Contract is in effect, no change shall be made in the
668 area of the Contractor as shown on its Exhibit B, by inclusion, exclusion, annexation, or
669 detachment of lands, by dissolution, consolidation, or merger or otherwise, except upon the
670 Contracting Officer's written consent thereto. Such consent will not be unreasonably withheld
671 and a decision will be provided in a timely manner.

672 (c) In the event lands are annexed to or detached from the area of the
673 Contractor, as provided herein, the quantity of Project Water to be diverted may be increased or
674 decreased, as may be appropriate, pursuant to a supplemental agreement to be executed in
675 respect thereto.

676

CONSOLIDATION OF CONTRACTING ENTITIES

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

681 No such consolidation shall be valid unless and until approved by the Contracting
682 Officer.

683 NOTICES

684 22. Any notice, demand, or request authorized or required by this Settlement Contract
685 shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid,
686 or delivered to the Area Manager, Northern California Area Office, Bureau of Reclamation,
687 16349 Shasta Dam Boulevard, Shasta Lake, California 96019, and on behalf of the United
688 States, when mailed, postage prepaid, or delivered to the Board of Directors of the Roberts Ditch
689 Irrigation Company, Inc., P.O. Box 277, Colusa, California 95932. The designation of the
690 addressee or the address may be changed by notice given in the same manner as provided in this
691 Article for other notices.

692 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

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

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

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

702 OFFICIALS NOT TO BENEFIT

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

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

710 CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

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

716 CONFIRMATION OF SETTLEMENT CONTRACT

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

724 UNAVOIDABLE GROUNDWATER PERCOLATION

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

729 PRIVACY ACT COMPLIANCE

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

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

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

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

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

755 WATER CONSERVATION

756 29. (a) Prior to the diversion of Project Water, the Contractor shall be
757 implementing an effective water conservation and efficiency program based on the Basin-Wide
758 Water Management Plan and/or Contractor's water conservation plan that has been determined
759 by the Contracting Officer to meet the conservation and efficiency criteria for evaluating water
760 conservation plans established under Federal law. The water conservation and efficiency
761 program shall contain definite water conservation objectives, appropriate economically feasible
762 water conservation measures, and time schedules for meeting those objectives. Continued
763 diversion of Project Water pursuant to this Settlement Contract shall be contingent upon the
764 Contractor's continued implementation of such water conservation program. In the event the
765 Contractor's water conservation plan or any revised water conservation plan completed pursuant
766 to subdivision (c) of Article 29 of this Settlement Contract have not yet been determined by the
767 Contracting Officer to meet such criteria, due to circumstances which the Contracting Officer
768 determines are beyond the control of the Contractor, Project Water deliveries shall be made
769 under this Settlement Contract so long as the Contractor diligently works with the Contracting
770 Officer to obtain such determination at the earliest practicable date, and thereafter the Contractor

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

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

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

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

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

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

794 (2) If Reclamation accepts the Offer, the Contractor's payment
795 obligation under Article 8(a)(1) shall be reduced to the maximum quantity of Project Water to be
796 diverted by the Contractor as specified in the Offer. The Contractor shall not divert Project
797 Water in excess of the quantities set forth in the Offer; Provided, however, if the Contractor's
798 diversions of Project Water exceed the quantities set forth in the Offer, the Contractor shall pay
799 to Reclamation the applicable Rates and Charges plus an amount equal to the applicable Rates
800 and Charges, unadjusted for ability to pay, for each acre-foot of Project Water diverted in excess
801 of the quantities set forth in the Offer.

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

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

807 OPINIONS AND DETERMINATIONS

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

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

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

823 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

832 (b) All advances for miscellaneous costs incurred for work requested by the
833 Contractor pursuant to Article 31 of this Settlement Contract shall be adjusted to reflect the
834 actual costs when the work has been completed. If the advances exceed the actual costs incurred,
835 the difference will be refunded to the Contractor. If the actual costs exceed the Contractor's
836 advances, the Contractor will be billed for the additional costs pursuant to Article 31 of this
837 Settlement Contract.

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WAIVER OF DEFAULT

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

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

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

842

thing which would constitute a default.

843 IN WITNESS WHEREOF, the parties hereto have executed this Settlement Contract

844 as of the day and year first hereinabove written.

845 THE UNITED STATES OF AMERICA

846 APPROVED AS TO LEGAL
847 FORM AND SUFFICIENCY
848 *James E. Tamm*
OFFICE OF REGIONAL SOLICITOR
DEPARTMENT OF THE INTERIOR

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

849 (SEAL)

850 ROBERTS DITCH IRRIGATION COMPANY

851
852 By: *William B. Ash*
853 President

854 ATTEST:

855 *Gene A. Bedalov*
856 Secretary

857 (H:\public\Sac River Final LTRC's\2005-01-31 Roberts Ditch Irrigation Company, Inc., Final
858 Draft Contract with exhibits.doc)

Exhibit A

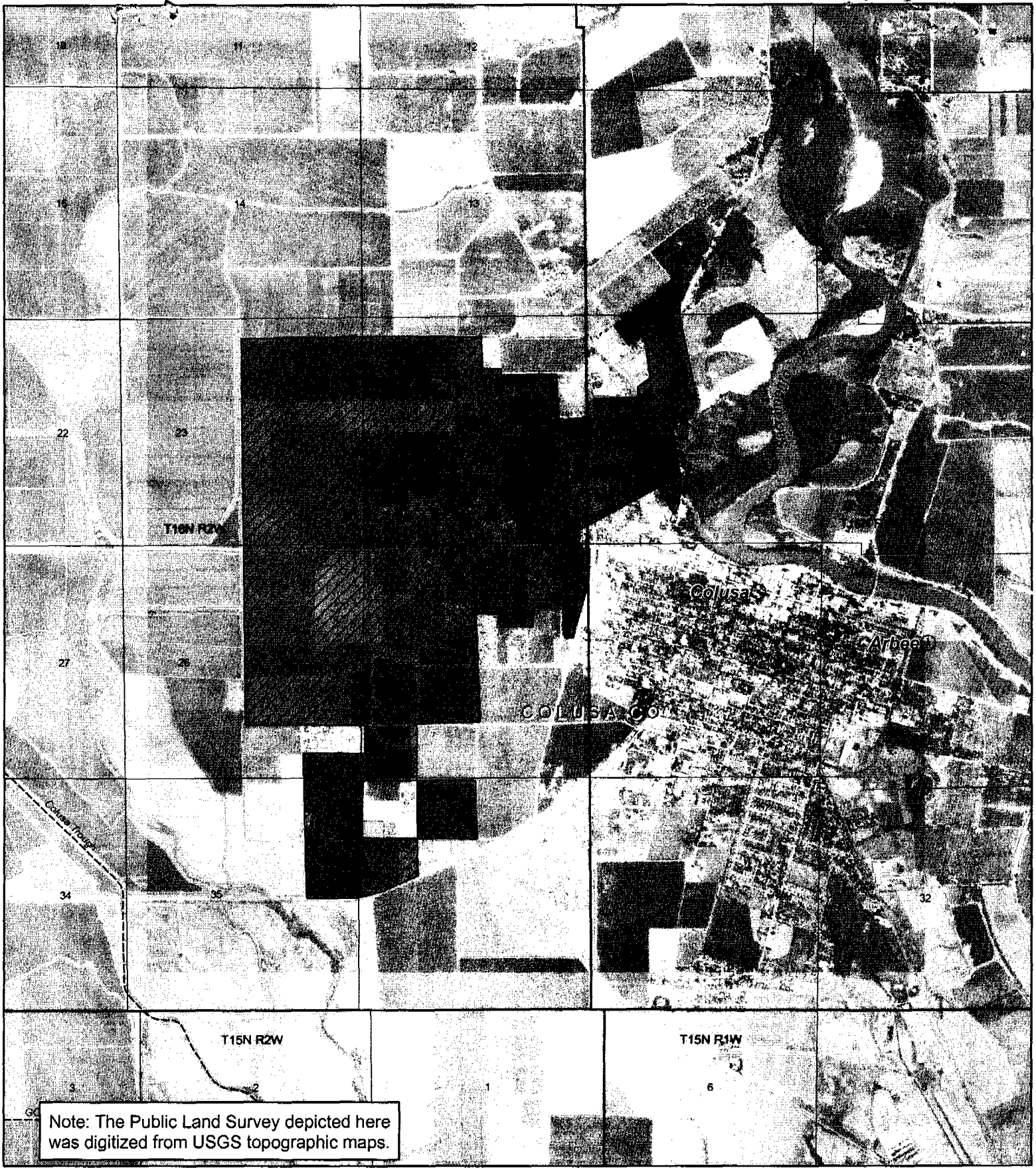
ROBERTS DITCH IRRIGATION COMPANY, INC.
Sacramento River

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>660</u>	<u>0</u>	<u>660</u>
May	<u>670</u>	<u>0</u>	<u>670</u>
June	<u>950</u>	<u>0</u>	<u>950</u>
July	<u>600</u>	<u>0</u>	<u>600</u>
August	<u>250</u>	<u>300</u>	<u>550</u>
September	<u>610</u>	<u>0</u>	<u>610</u>
October	<u>400</u>	<u>0</u>	<u>400</u>
Total	<u>4,140</u>	<u>300</u>	<u>4,440</u>

Point of Diversion: 90.7R

Dated: 01-31-2005



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

Roberts Ditch Irrigation Company

Contract No. 14-06-200-935A-R-1

Exhibit B

 Contractor's Service Area

 District Boundary

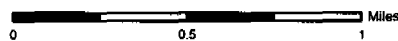


Exhibit C

ROBERTS DITCH IRRIGATION COMPANY, INC.
Sacramento RiverUNIT DUTY

(In Acre-Feet Per Acre)

	<u>Rice</u>	<u>Alfalfa and Irrigated Pasture</u>	<u>General Crops</u>
June	1.70	0.80	0.60
July	1.80	1.00	0.70
August	1.70	0.80	0.70
September	0.50	0.60	0.40

Dated: 01-31-2005

Exhibit D

ROBERTS DITCH IRRIGATION COMPANY, INC.
 Sacramento River
2005 Water Rates and Charges Per Acre-Foot

<u>COST OF SERVICE RATES:</u>	<u>Irrigation</u>
Capital Rates	
Storage	\$ 4.78
O&M Rates:	
Water Marketing	\$ 6.61
Storage	\$ 5.93
Deficit Rates:	
Interest Bearing	\$ 3.96
CFO/PFR Adjustment Rate 1/	<u>\$ 1.28</u>
TOTAL	<u>\$22.56</u>
<u>RESCHEDULING FEE:</u>	<u>\$5.70</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>\$28.89</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>\$31.48</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 five-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).

*Roberts Ditch Irrigation Co.
436 Market St.
Colusa, CA 95932*

Resolution to Agenda Item No. 6:

Discussion and approval of Long Term Contract.

On March 24, 2005 at 10:50 AM, at the annual meeting of Roberts Ditch, approval of Long-Term Renewal Contract No. 14-06-200-935Aa-R-1, was voted in favor for acceptance by the following Roberts Ditch Board members:

Gail A. Beduhn
William Ash
John Zwald
Francis Hickel
Raymond Gonzales

Authorization for Gail A. Beduhn as Secretary-Treasurer and William Ash as President to execute same Contract was approved by:

John Zwald
Francis Hickel
Raymond Gonzales

Respectfully submitted,

Gail A. Beduhn, Secretary

