

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

CONTRACT BETWEEN THE UNITED STATES AND CHARLES W. TUTTLE, JR., AND  
SUE T. NOACK, TRUSTEES OF THE CHARLES W. TUTTLE FARM TRUSTS FOR THE  
BENEFIT OF CHARLES W. TUTTLE, JR., AND SUE T. NOACK, 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.....	6-7
3	Water to be Furnished to Contractor.....	7-9
4	Return Flow .....	9
5	Constraints on the Availability of Water .....	9-10
6	Integrated Water Management and Partnerships .....	10
7	Use of Water Furnished to Contractor .....	11
8	Rate and Method of Payment for Water .....	11-16
9	Agreement on Water Quantities.....	16-18
10	Measurement of Water.....	18-19
11	Rules and Regulations.....	19
12	General Obligation--Benefits Conditioned Upon Payment.....	20
13	Charges for Delinquent Payments .....	20
14	Quality of Water .....	20-21
15	Water and Air Pollution Control.....	21
16	Equal Opportunity.....	21-22
17	Omitted .....	22
18	Omitted .....	22

Table of Contents - continued

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

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9 BENEFIT OF CHARLES W. TUTTLE, JR., AND SUE T. NOACK, DIVERTER OF WATER  
10 FROM SACRAMENTO RIVER SOURCES, 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 9<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, 1963  
19 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat. 3050), as amended,  
20 and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively hereinafter  
21 referred to as Federal Reclamation law, and CHARLES W. TUTTLE, JR., AND SUE T.  
22 NOACK, TRUSTEES OF THE CHARLES W. TUTTLE FARM TRUSTS FOR THE BENEFIT  
23 OF CHARLES W. TUTTLE, JR., AND SUE T. NOACK, hereinafter referred to as the  
24 Contractor, acting pursuant to Sections 12003 and 12004 of the California Water Code, with its  
25 principal place of business in California;

26 WITNESSETH, that:

27

EXPLANATORY RECITALS

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

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

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

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

41           [5<sup>th</sup>]     WHEREAS, the Contractor and the United States had a dispute over the  
42 respective rights of the parties to divert and use water from the regulated flow of the Sacramento  
43 River which threatened to result in litigation, and as a means to settle that dispute entered into  
44 Contract No. 14-06-200-7296A, hereinafter referred to as the Existing Contract, which  
45 established terms for the delivery to the Contractor of Central Valley Project Water, and the  
46 quantities of Base Supply the United States and the Contractor agreed may be diverted by the  
47 Contractor from the Sacramento River pursuant to such contract; and

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

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

55 Notwithstanding that dismissal, the Contractor and the United States enter into this Settlement  
56 Contract to renew the Existing Contract, pursuant to the terms of the Existing Contract, Federal  
57 Reclamation law, and the laws of the State of California; and

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

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

64 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

107 (g) Omitted;

108 (h) Omitted;

109 (i) Omitted;

110 (j) Omitted;

111 (k) Omitted;

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

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

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

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

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

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

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

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

133 TERM OF SETTLEMENT CONTRACT

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

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



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

153 WATER TO BE FURNISHED TO CONTRACTOR

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

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

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

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

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

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

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

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

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

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

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

199 RETURN FLOW

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

208 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

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

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

222 INTEGRATED WATER MANAGEMENT AND PARTNERSHIPS

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

231 USE OF WATER FURNISHED TO CONTRACTOR

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

238 (b) The Contractor shall comply with requirements applicable to the  
239 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution  
240 of this Settlement Contract undertaken pursuant to Section 7 of the Endangered Species Act of  
241 1973, as amended, that are within the Contractor's legal authority to implement. The Existing  
242 Contract, which evidences in excess of 40 years of diversions, for agricultural uses, of the  
243 quantities of water provided for in Article 3, and the underlying water rights of the Contractor  
244 will be considered in developing an appropriate base-line for the Biological Assessment prepared  
245 pursuant to the Endangered Species Act, and in any other needed environmental review.  
246 Nothing herein shall be construed to prevent the Contractor from challenging or seeking judicial  
247 relief in a court of competent jurisdiction with respect to any biological opinion or other  
248 environmental documentation referred to in this Article.

249 RATE AND METHOD OF PAYMENT FOR WATER

250 8. (a) The Contractor shall make payments to the United States as provided in  
251 this Article for each acre of land irrigated April 1, through October 31 each Year.

252 Such payments shall be at Rates and Charges established in accordance with: (i)  
253 the Secretary's then current ratesetting policies for the Project; and (ii) applicable Reclamation

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

349 AGREEMENT ON WATER QUANTITIES

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

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

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

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

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

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

391 the obligations imposed in State Water Resources Control Board Revised Water Rights Decision  
392 1641 dated March 15, 2000, and its associated 1995 Water Quality Control Plan which, taken  
393 together, will be considered the baseline for the application of the provisions of this sub-article.

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

410 MEASUREMENT OF WATER

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

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

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

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

430 RULES AND REGULATIONS

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

436                    GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

450                    CHARGES FOR DELINQUENT PAYMENTS

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

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

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

468                    QUALITY OF WATER

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

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

474 WATER AND AIR POLLUTION CONTROL

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

479 EQUAL OPPORTUNITY

480 16. During the performance of this Settlement Contract, the Contractor agrees as  
481 follows:

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

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

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

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

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

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

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

526 17. Omitted.

527 18. Omitted.

528 BOOKS, RECORDS, AND REPORTS

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



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CHANGE OF PLACE OF USE

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20. Unless the written consent of the United States is first obtained no change shall be

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made in the place of water use shown on Exhibit B.

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21. Omitted.

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NOTICES

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22. Any notice, demand, or request authorized or required by this Settlement Contract shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Area Manager, Northern California Area Office, Bureau of Reclamation, 16349 Shasta Dam Boulevard, Shasta Lake, California 96019, and on behalf of the United States, when mailed, postage prepaid, or delivered to Charles W. Tuttle, Jr., 139 Country Club Drive, Colusa, California 95932. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this Article for other notices.

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ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

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

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

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

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OFFICIALS NOT TO BENEFIT

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

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CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

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

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CONFIRMATION OF SETTLEMENT CONTRACT

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

579           27.    Omitted.

580

PRIVACY ACT COMPLIANCE

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

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

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

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

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

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WATER CONSERVATION

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

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

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

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

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

635 OPINIONS AND DETERMINATIONS

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

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

651                    CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

660                    (b)    All advances for miscellaneous costs incurred for work requested by the  
661 Contractor pursuant to Article 31 of this Settlement Contract shall be adjusted to reflect the  
662 actual costs when the work has been completed. If the advances exceed the actual costs incurred,  
663 the difference will be refunded to the Contractor. If the actual costs exceed the Contractor's  
664 advances, the Contractor will be billed for the additional costs pursuant to Article 31 of this  
665 Settlement Contract.

666    WAIVER OF DEFAULT

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

671 CONTRACT ASSIGNMENT OR TERMINATION UPON TRANSFER OF LAND

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

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

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

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

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

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

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

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

697 TERMINATION

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

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

702 THE UNITED STATES OF AMERICA

703 APPROVED AS TO LEGAL  
704 FORM AND SUFFICIENCY  
705 *James E. Tuttle*  
OFFICE OF REGIONAL SOLICITOR  
DEPARTMENT OF THE INTERIOR

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

706 (SEAL)

707 CHARLES W. TUTTLE FARM TRUSTS FOR  
708 THE BENEFIT OF CHARLES W. TUTTLE, JR.,  
709 AND SUE T. NOACK

710 By: *Charles W. Tuttle, Jr., Trustee*  
711 Charles W. Tuttle, Jr., Trustee

712 By: *Sue T. Noack, Trustee*  
713 Sue T. Noack, Trustee

714 (H:\PUBLIC\Sac River Final LTRC's-01\2005-01-31TuttleCharlesW.andNoackSueT.FinalDraftCo.DOC)



State of California) )  
 ) ss.  
County of Yolo )

On this 3rd day of March, 2005, before me, the undersigned Notary Public, State of California, duly commissioned and sworn, personally appeared CHARLES W. TUTTLE, JR., TRUSTEE AND SUE T. NOACK, TRUSTEE

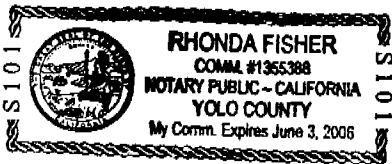
\_\_\_\_\_ personally known to me

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

Witness my hand and official seal.

Rhonda Fisher  
Notary Public, State of California

My commission expires 03/03/06

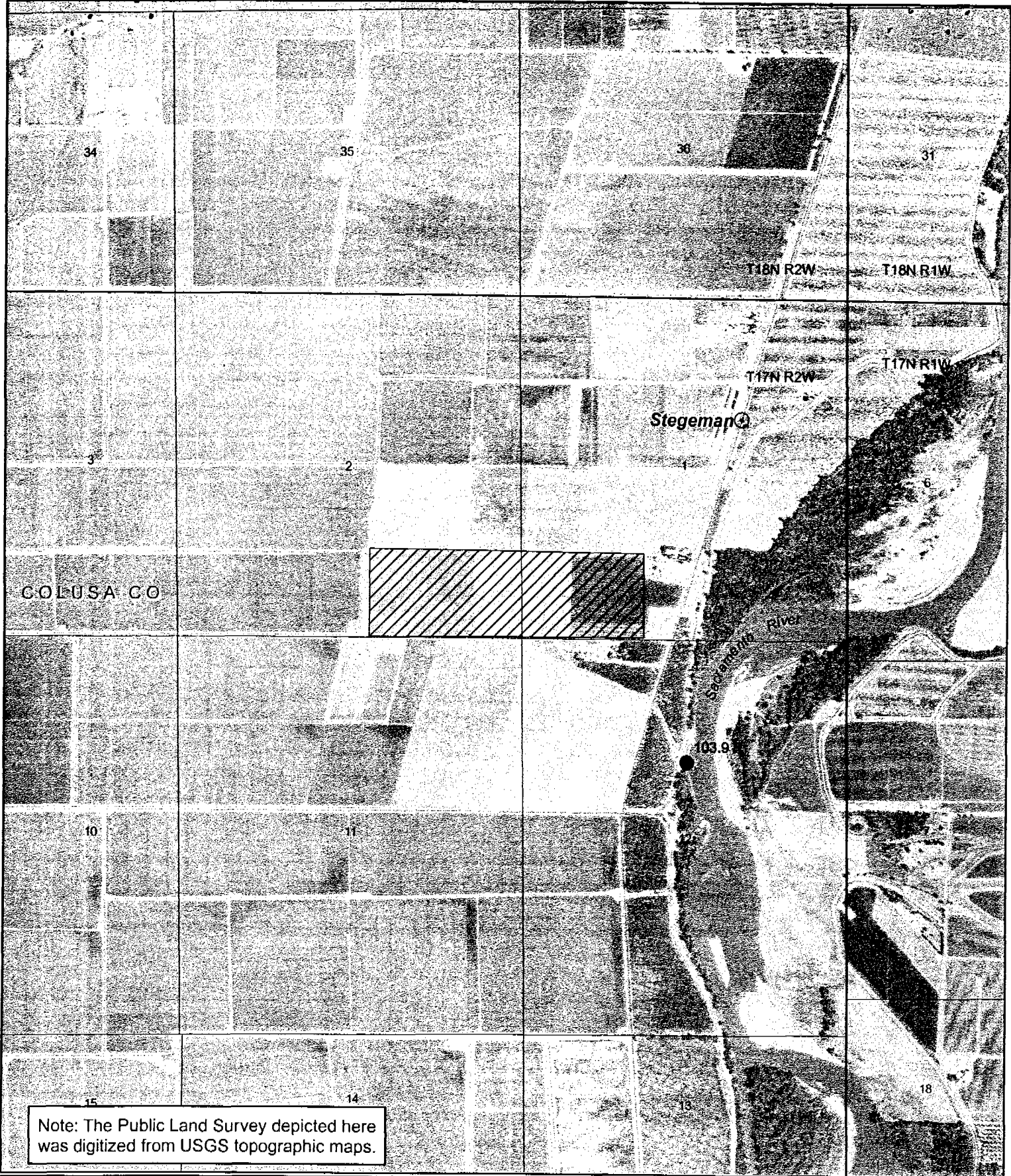


## Exhibit A

CHARLES W. TUTTLE FARM TRUSTS  
Sacramento RiverSCHEDULE OF MONTHLY DIVERSIONS OF WATER

	<u>Base Supply</u> (acre-feet)	<u>Project Water</u> (acre-feet)	<u>Contract Total</u> (acre-feet)
April	<u>20</u>	<u>0</u>	<u>20</u>
May	<u>30</u>	<u>0</u>	<u>30</u>
June	<u>40</u>	<u>35</u>	<u>75</u>
July	<u>0</u>	<u>95</u>	<u>95</u>
August	<u>0</u>	<u>90</u>	<u>90</u>
September	<u>0</u>	<u>50</u>	<u>50</u>
October	<u>30</u>	<u>0</u>	<u>30</u>
Total	<u>120</u>	<u>270</u>	<u>390</u>

Irrigable Acres: 140Points of Diversion: 103.9RDated: 01-31-2005



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

# Tuttle, Charles W. and Noack, Sue T.

Contract No. 14-06-200-7296A-R-1

Exhibit B



Contractor's Service Area



Point of Diversion

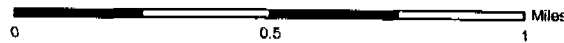


Exhibit C

Omitted

Exhibit D

CHARLES W. TUTTLE FARM TRUSTS  
Sacramento River  
2005 Water Rates and Charges per Irrigated Acre

COST OF SERVICE RATE: \$34.56

FULL-COST RATES:

Section 202(3) Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981. Provided as Needed

Section 205(a)(3) Rate is applicable to a Limited Recipient that did not receive irrigation water on or before October 1, 1981. Provided as Needed

CHARGES UNDER P.L. 102-575 TO THE RESTORATION FUND 1/

Restoration Payments (3407(d)(2)(A)) \$15.29

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

The foregoing instrument, consisting of nineteen (19) typewritten pages, including this page, was on the day it bears date signed and subscribed by CHARLES W. TUTTLE, the person therein named, in the presence of us, all present at the same time, and was at the time of his signing and subscribing the same, acknowledged and declared by him to us in the presence of each of us together to be his Last Will, and thereupon we at his request, in his presence and in the presence of one another, subscribed our names as witnesses thereto.

Albert G. Linn residing at Colusa

Ernest J. Linn residing at Colusa

\_\_\_\_\_ residing at \_\_\_\_\_

1 ERNEST T. HUBBARD, #25045  
HUBBARD & LINDQUIST  
2 Attorneys at Law  
101 Third Street  
3 P. O. Box 570  
Colusa, California 95932  
4 Telephone: (530) 458-8255

5  
6 Attorneys for Petitioner  
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10 SUPERIOR COURT OF CALIFORNIA, COUNTY OF COLUSA  
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12 In the Matter of the Estate of  
13 CHARLES W. TUTTLE, SR., also  
known as C. W. TUTTLE,  
14 CHARLES W. TUTTLE, and  
CHARLES WHITCOMB TUTTLE,  
15  
16 Deceased.

No. PR5921  
PETITION TO MODIFY TRUST  
WITH REGARD TO SUCCESSOR  
TRUSTEES  
(PROBATE CODE SECTION 15403)

17 Petitioners allege:

18 1. Petitioners are at present the duly appointed and  
19 acting trustees of the trusts created under the will of Charles W.  
20 Tuttle, Sr. under the terms of the Judgement Settling First and  
21 Final Account and Report of Executrix, Allowing Attorneys' Fees for  
22 Ordinary and Extraordinary Service and of Final Distribution Under  
23 Will, said Judgement having been dated and filed herein on April 4,  
24 1977. Decedent's will created two trusts ("Farm Trusts"): one  
25 trust is for the benefit of Charles W. Tuttle, Jr., Elizabeth L.  
26 Tuttle, his wife, and their issue; and the other trust is for the  
27 benefit of Sue Tuttle Noack and her issue. Petitioners are the  
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1 decedent's only two children and are also at present the respective  
2 income beneficiaries of the two trusts under decedent's will.  
3 Elizabeth L. Tuttle is income beneficiary of the trust for benefit  
4 of Charles W. Tuttle, Jr. and his issue upon death of Charles W.  
5 Tuttle, Jr. subject to termination if she remarries. The above  
6 referred to Judgement is referred to below as "Judgement of  
7 Distribution" for convenience. The income beneficiaries' respec-  
8 tive issue are the remainderman of their trusts.

9           2. The trusts created under the will of Charles W.  
10 Tuttle are testamentary and are not revocable.

11           3. The decedent's estate is administered in, and the  
12 principal place of business of the trusts referred to herein is,  
13 Colusa County, California.

14           4. The names and addresses and adult status of all the  
15 present beneficiaries of the trusts and all the persons entitled to  
16 notices of the hearing of this petition are set forth in Exhibit A  
17 which is attached to this petition and incorporated herein by this  
18 reference.

19           5. The trusts own substantial interests in real and  
20 personal property. The trusts' interest in real property are  
21 subject to no debts or liens. The trusts are not indebted except  
22 with regard to current operating expenses which have been, and are  
23 at present, paid as invoices are received.

24           6. Subparagraph J of provision 11 of said Judgement of  
25 Distribution (beginning on line 19 of Page 8 thereof) states in  
26 part as follows:



1 J. The property described below is distributed to  
2 OMA R. TUTTLE as trustee to be held upon the terms,  
3 trusts and conditions set forth in decedent's Will and  
4 which are particularly set forth in paragraphs 9, 11, 12,  
5 13 and 14 of decedent's will admitted to probate herein,  
6 which provisions are set forth in detail in Exhibit "C"  
7 attached hereto. Upon the death of OMA R. TUTTLE, or  
8 should she at any time be unable or unwilling so to  
9 serve, for any reason, CHARLES W. TUTTLE, JR. and SUE  
10 TUTTLE NOACK shall be the co-trustees of these trusts.  
11 Thereafter and upon the death of CHARLES W. TUTTLE, JR.  
12 or SUE TUTTLE NOACK, or upon either of them becoming  
13 unable or unwilling to serve as such co-trustee, BANK OF  
14 AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION shall  
15 become the co-trustee in place of the co-trustee who is  
16 no longer acting. At such time as neither CHARLES W.  
17 TUTTLE, JR. and SUE TUTTLE NOACK is serving as co-  
18 trustee, said BANK OF AMERICA NATIONAL TRUST AND SAVINGS  
19 ASSOCIATION shall serve as sole trustee. The property  
20 hereby ordered distributed to the trustee is as follows:  
21 ...

22 7. The trust business of BANK OF AMERICA NATIONAL TRUST  
23 AND SAVINGS ASSOCIATION was transferred to WELLS FARGO BANK after  
24 the date of the Judgment of Distribution, and WELLS FARGO BANK has  
25 succeeded to appointments as trustee which were previously made  
26 naming BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION.

27 8. OMA R. TUTTLE died on January 13, 1987. These  
28 Petitioners have been the duly appointed and acting co-trustees of  
these trusts since that date.

9. At the date the decedent executed his will and for  
several years thereafter, his children and grandchildren were  
relatively young and had limited business and property management  
experience; decedent's will therefore appointed a corporate  
fiduciary (Bank of America N.T. & S.A.) as successor co-trustee in  
the event one of decedent's two children could no longer act as co-  
trustee and also as sole trustee at such time as neither child  
could. Since that date the decedent's children, and also several

1 of his grandchildren (notably, Karen Noack, Charles T. Noack,  
2 Cynthia T. Sanderson, and Caroline T. Huff, also known as Caroline  
3 T. Dean) have acquired substantial business and property management  
4 experience, and it is therefore no longer necessary or advisable to  
5 appoint a corporate fiduciary as successor co-trustee or successor  
6 sole trustee because competent family members are available to act  
7 in those capacities.

8           10. Petitioners' representative has discussed these  
9 matters with the trust department of Wells Fargo Bank, N. A. Wells  
10 Fargo Bank, N. A. has agreed that under the present circumstances  
11 it will not object to modification of the trusts to provide that it  
12 will not act as successor co-trustee or sole successor trustee at  
13 such time as the need for a successor arises. Wells Fargo Bank's  
14 written Consent and Waiver of Objection to this modification will  
15 be filed herein before the date of hearing this petition.

16           11. Petitioners have also discussed these matters with  
17 Elizabeth L. Tuttle and all the six remaindermen beneficiaries of  
18 the trusts, and they agree it is in the best interests of all  
19 beneficiaries that competent family members become successor  
20 trustees to your petitioners instead of a corporate fiduciary as  
21 now set forth in the Judgement of Distribution. They have further  
22 agreed that in the event of the death or inability of either  
23 Charles W. Tuttle, Jr. or Sue Tuttle Noack to serve as a co-  
24 trustee, or should either of them be unwilling so to serve, the  
25 other of them should act as sole trustee of the trusts hereunder;  
26 and further, in the event of the deaths of both petitioners, or  
27 should neither of them for any reason be able and willing to act as  
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1 trustee, then and in those events: Cynthia T. Sanderson should act  
2 as sole successor trustee of the trust for the benefit of Charles  
3 W. Tuttle, Jr. and his issue, and in such event should Cynthia T.  
4 Sanderson be at any time unable or unwilling so to act, that  
5 Caroline T. Huff (also known as Caroline T. Dean) should act as  
6 sole successor trustee of that trust; and further in such event,  
7 that Karen Noack should act as sole successor trustee of the trust  
8 for the benefit of Sue T. Noack and her issue, and should Karen  
9 Noack be at any time unable or unwilling so to act, that Charles  
10 T. Noack should act as sole successor of that trust. The written  
11 consents of Elizabeth L. Tuttle and all the remaindermen benefi-  
12 ciaries of these trusts will be filed herein prior to the date of  
13 hearing this petition. All the present beneficiaries are over the  
14 age of twenty-five years.

15           12. The modification of the trusts requested herein does  
16 not adversely affect the carrying out of any material purpose of  
17 these trusts.

18           WHEREFORE, petitioners pray for an order:

19           1. That Paragraph 11. J. of the Judgment of distribution  
20 dated and filed herein on April 4, 1977 be modified with regard to  
21 appointment of successor trustees as follows:

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1 In the event of the death or inability of either Charles  
2 W. Tuttle, Jr. or Sue Tuttle Noack to serve as a co-  
3 trustee, or should either of them be unwilling so to  
4 serve, the other of them shall act as sole trustee of the  
5 trusts hereunder; and further, in the event of the deaths  
6 of both petitioners, or should neither of them for any  
7 reason be able and willing to act as trustee, then and in  
8 those events: Cynthia T. Sanderson shall act as sole  
9 successor trustee of the trust for the benefit of Charles  
10 W. Tuttle, Jr. and his issue, and in such event should  
11 Cynthia T. Sanderson be at any time unable or unwilling  
12 so to act, that Caroline T. Huff (also known as Caroline  
13 T. Dean) shall act as sole successor trustee of that  
14 trust; and further in such event, that Karen Noack shall  
15 act as sole successor trustee of the trust for the  
16 benefit of Sue T. Noack and her issue, and should Karen  
17 Noack be at any time unable or unwilling so to act, that  
18 Charles T. Noack shall act as sole successor of that  
19 trust.

2. For such other orders as the court may deem proper.

DATE: January 24, 1998

CHARLES W. TUTTLE, JR. Petitioner

SUE TUTTLE NOACK, Petitioner

HUBBARD & LINDQUIST

BY:

ERNEST T HUBBARD,  
Attorney for Petitioner

1 VERIFICATION

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3 We, CHARLES W. TUTTLE, JR. and SUE TUTTLE NOACK, the  
4 petitioners in this matter, declare that we have read the petition  
5 and know its contents, which are true of our own knowledge except  
6 as to those matters stated on our information and belief, and as to  
7 those matters we believe the petition to be true.

8 We declare under penalty of perjury under the laws of the  
9 State of California that the foregoing is true and correct.

10 Executed on \_\_\_\_\_, 1998, at Colusa, California.

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14 CHARLES W. TUTTLE, JR., Petitioner

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16 SUE TUTTLE NOACK, Petitioner  
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EXHIBIT A

NAMES, ADDRESSES, AND STATUS OF BENEFICIARIES AND  
PERSONS ENTITLED TO NOTICE OF HEARING THIS PETITION

1. The present beneficiaries of the trust for benefit of Sue Tuttle Noack and her issue are:

a. Sue Tuttle Noack, 2740 Laurel Drive, Sacramento, California 95825, adult, income beneficiary for her life.

b. Kenneth B . Noack, Jr., adult, 2558 Bowher Court, Carmichael, California 95608, remainderman.

c. Karen Noack, adult, 2750 Laurel Drive, Sacramento, California 95864, remainderman.

d. Charles T. Noack, adult, 1342 32nd Avenue, San Francisco, California 94122, remainderman.

2. The present beneficiaries of the trust for benefit of Charles W. Tuttle, Jr. and his issue are:

a. Charles W. Tuttle, Jr., 1217 Carson Street, Colusa, California 95932, adult, income beneficiary for his life.

b. Elizabeth L. Tuttle, adult, income beneficiary upon death of Charles W. Tuttle, Jr. for her life, subject to termination if she remarries. 1217 Carson Street, Colusa, California 95932.

c. Catherine Ottmar, adult, 2524 Myra Place, N. E., Albuquerque, N.M. 87112, remainderman.

d. Caroline T. Huff, also known as Caroline T. Dean, adult, 1737 El Paseo Drive, Woodland, California 95695, remainderman.

e. Cynthia T. Sanderson, adult, 5140 N. E. Meadow Drive, Park City, Utah 84060, remainderman.

D:\TUTTLE\PETITION.2

TRUSTS

# Last Will and Testament of

CHARLES W. TUTTLE

I, CHARLES W. TUTTLE, also known as CHARLES W. TUTTLE, SR., reside in the County of Colusa, State of California, and am adult and mature in years and of sound and disposing mind and memory and am not acting under duress, menace, fraud or the undue influence of any person or persons whomsoever, but I realize the uncertainty of life and the desirability of giving adequate and full consideration to the matter of providing by my Last Will and Testament for the fair, just and equitable distribution of my estate to those persons whom I deem to be entitled thereto as the natural or proper objects of my consideration and bounty in the disposition of all of the property and assets of which I may die seized or possessed or in which I have any right or power of testamentary disposition at the time of my death. Accordingly, after due and deliberate thought, study and meditation in this regard, I do herewith and hereby make, publish and declare this document to be my Last Will and Testament, and I hereby expressly revoke each and every other will, codicil and testamentary writing of every kind and character whatsoever heretofore made by me, to the end and with the intent and purpose that the provisions herein set forth shall contain and comprehend a completely integrated testamentary plan for the disposition of my entire estate.

1. TERMINOLOGY: As used in this Will, the masculine, feminine, or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context

9. GIFTS INTO TRUST: I hereby give, devise and bequeath all of my interests in insurance upon the life of another person (if any) and in farming real property (described further below) in trust to my wife, OMA, upon the trusts, terms, and conditions set forth hereinafter. Upon OMA's death, or in the event that she is at any time unable or unwilling to serve as trustee, for any reason, I nominate and appoint my son and daughter, CHARLES, JR. and SUE, as Co-Trustees of these trusts. These trusts may hereinafter be referred to as the "Farm Trusts" or the "Farm Trust for CHARLES W. TUTTLE, JR." and the "Farm Trust for SUE TUTTLE NOACK," respectively, as a matter of convenience. Upon the death of CHARLES, JR. or SUE, or upon either of them becoming unable or unwilling to serve as Co-Trustee, I nominate and appoint BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, a national banking association (hereinafter referred to as "BANK") as successor Co-Trustee, to serve with any remaining child as Co-Trustees. At such time as neither CHARLES, JR. nor SUE is serving as Co-Trustee, the BANK shall serve as sole Trustee.

*Note: In 1998 Bank of America, later Wells Fargo, removed themselves as co trustees of the trusts. Charles Tuttle, Jr. and Sue Noack remain as the only trustees.*

A. The interests in farming real property which are devised to my Trustees above consist of two parcels of real property which I commonly refer to as the "Princeton Ranch" and the "Helphenstine Ranch" respectively.

1. The Princeton Ranch is located in Colusa County approximately ten miles northerly from the City of Colusa, and consists of the old Gordon Ranch east of the main canal of Reclamation District No. 2047 and additional adjoining land purchased from the Charles Welch Estate by me and my wife in 1964, containing a total of 1,400 acres, more or less. OMA and I own an undivided four-fifths interest in the Princeton Ranch as community property;



of real property located north of the Princeton Ranch in Township 17 North, Range 2 West, M.D.B. & M., being a portion of the Larkin's Children's Rancho, containing 140 acres, more or less. By way of further identification this real property was owned by the Helphenstine family until 1972. This parcel is my separate property, and the entire ranch is devised to my Trustees in this paragraph 9.

B. My Trustee shall divide all property given to the Farm Trusts into two equal shares, one of which shall be referred to hereinafter as "my son's share" and the other as "my daughter's share," and each share shall be accounted for separately. My son's share shall be held in trust for the benefit of CHARLES, JR., and his family; and my daughter's share shall be held in trust for SUE and her family, as set forth below. Each Farm Trust may hold an undivided interest in property with the other Farm Trust.

C. My Trustee shall pay the entire net income, from my son's share of the Farm Trust to CHARLES, JR. during his life; during the lifetime of my son, CHARLES, JR., my trustees shall pay over, deliver, assign, transfer or convey to him, discharged of trust, and out of the principal of said trust, so much thereof as he shall request in writing but not exceeding in any calendar year the larger of (1) the sum of Five Thousand Dollars (\$5,000.00) or (2) five percent (5%) of the value of the assets of the trust principal. This right shall be noncumulative, so that if in any calendar year CHARLES, JR. does not so request any such payment or distribution, his right to withdraw any such amount or property not withdrawn shall lapse at the end of that calendar year. Upon CHARLES, JR.'s death my Trustee shall pay the entire net income of my son's share to his wife, ELIZABETH L. TUTTLE, until she dies or remarries, or until the date of final distribution of my son's share (as defined below), whichever occurs first. Upon the death or

(and to their issue by right of representation, should any of his children predecease final distribution of this trust) until the date of final distribution as defined below.

(1) The date of final distribution of my son's share is the date of the last of the following events to occur:

(a) Death of CHARLES W. TUTTLE, JR.

(b) Death of SUE TUTTLE NOACK

(c) The earliest date upon which my youngest living grandchild is at least twenty-five (25) years of age.

(2) Upon the date of final distribution of my son's share as defined above, my Trustee shall distribute the corpus and undistributed income, if any, of my son's share to his children, share and share alike, or should any of them fail to survive to said date of final distribution, to such predeceased child's issue by right of representation. If any of my son's children die before the date of final distribution leaving no issue surviving to said date of final distribution, that predeceased child shall not be considered in the final distribution.

D. My Trustee shall pay the entire net income from my daughter's share of the Farm Trust to SUE during her life; during the lifetime of my daughter, SUE, my trustees shall pay over, deliver, assign, transfer or convey to her discharged of trust, and out of the principal of said trust, so much thereof as she shall request in writing but not exceeding in any calendar year the larger of (1) the sum of Five Thousand Dollars (\$5,000.00) or (2) five percent (5%) of the value of the assets of the trust principal. This right shall be noncumulative so that if in any calendar year SUE does not so request any such payment or distribution, her right to withdraw any such amount or property not withdrawn shall lapse at the end of that calendar year.

Upon her death my Trustee shall pay the entire net income of my daughter's share to her children, share and share alike, (and to their issue by right of representation, should any of her children predecease final distribution of this trust) until the date of distribution as defined below.

(1) The date of final distribution of my daughter's share is the date of the last of the following events to occur:

(a) Death of CHARLES W. TUTTLE, JR.

(b) Death of SUE TUTTLE NOACK.

(c) The earliest date upon which my youngest living grandchild is at least twenty-five years of age.

(2) Upon the date of final distribution of my daughter's share as defined above, my Trustee shall distribute the corpus and undistributed income, if any, of my daughter's share to her children, share and share alike, or should any of them fail to survive to said date of final distribution, to such predeceased child's issue by right of representation. If any of my daughter's children die before the date of final distribution leaving no issue surviving to said date of final distribution, that predeceased child shall not be considered in the final distribution.

E. At any time that the BANK is acting hereunder as Co-Trustee or sole Trustee, the BANK may, in its sole and uncontrolled discretion and without consent of CHARLES, JR. or SUE, apply for the benefit of any grandchild of mine as much of the principal of that grandchild's parent's share of the trust principal as the BANK shall deem necessary for said grandchild's proper support, care, maintenance, and education, after taking into consideration, to the extent the BANK shall deem advisable, any income or other resources of that grandchild outside of this trust known to the BANK. The BANK may pay more to or apply more for some

child to the exclusion of others if the BANK shall deem this necessary or appropriate in the light of the circumstances, the size of that respective share of the trust estate, and the probable future needs of all the grandchildren. Any payment or application of benefits pursuant to this subparagraph shall be charged against the respective share of the trust estate as a whole rather than against the ultimate distributive share of a grandchild to whom or for whose benefit the payment is made.

10. RESIDUE: Subject to payment of all death taxes, claims and expenses of administration herein, I hereby give, devise, and bequeath all of the rest, residue and remainder of my estate to the trustee, or trustees, as the case may be, of the Farm Trusts created under paragraph 9 hereinabove, upon the same terms and conditions as set forth in this Will for the creation, operation, distribution and termination of the Farm Trusts, and in particular, by way of example only, under the trusts, terms, and conditons of paragraphs 9, 11, 12, 13 and 14 of this Will.

11. TERMINATION: Unless sooner terminated in accordance with the terms set forth in this Will, each trust created hereunder shall terminate twenty-one years after the death of the last survivor of OMA, CHARLES, JR., SUE, and of all of my grandchildren living at the date of my death. All principal and undistributed income of any trust so terminated shall be distributed to the then income beneficiary of that trust in the proportions in which the persons comprising the beneficiary of that trust are, at the time of termination, entitled to share in the income of that trust.

12. ADMINISTRATIVE POWERS OF TRUSTEE: To carry out the purposes of any trust created under this Will, and subject to any limitations stated elsewhere in this Will, the Trustee is vested with the following additional powers with respect to the trust estate

and any part of it, in addition to those powers now or hereinafter conferred by law:

A. To retain, in the Trustee's absolute discretion and for such period as to the Trustee shall seem advisable, any and all investments and other properties held by me at my death without liability for any loss incurred by reason of the retention of such investments or properties and to collect, redeem and receive all dividends, interest, rent, royalties and other income owing thereon; to accept property of any kind and nature from any person or organization upon the same trusts, terms, and conditions set forth herein, but the trustee need not accept such offered property under this trust if the Trustee believes that acceptance of the property would not be in the best interest of the beneficiaries of the Farm Trusts.

B. To change investments and properties and to invest and reinvest all or any part of the corpus of my estate or any of the trusts hereby established in such securities, investments, or other property as to the Trustee deems advisable and proper, irrespective of whether the same are authorized for the investment of trust funds by the laws of the State of California or otherwise; to lend money to any person, organization, trust or estate for any purpose, either with or without security, at my Trustee's sole discretion, and to charge for such loan either no interest or such rate of interest as my Trustee shall in the Trustee's own sole discretion determine; to pay out of principal of the Farm Trusts any estate and inheritance taxes payable as a result of my death or the death of OMA which may be chargeable against said trusts or the beneficiaries thereof, but only at the sole discretion of the Trustee; to pay premiums on any policies of insurance, including life insurance, owned by the Farm Trusts.

C. To sell all or any part of the property of whatsoever kind, of which I may die seized or possessed, or to, or

in which I may be or become in any way entitled or have any interest whatsoever, or which at any time may constitute a part of my estate or of any of the trusts hereby established, at such times, upon such terms, for cash or on credit, with or without security, in such manner and at such prices, at either public or private sale, as to him shall seem advisable and proper and to execute good and sufficient deeds and bills of sale thereof.

D. To mortgage, pledge, collect, convert, redeem, exchange or otherwise dispose of any securities or other property at any time held by him. To lease any property for any purpose including exploration for or production of rock, sand, minerals, oil, gas, or other hydrocarbons, for a period within or beyond any period authorized by law or the duration of any trust or estate hereby established.

E. To borrow money, whether to pay taxes, exercise subscriptions, rights and options, pay assessments or to accomplish any other purpose of any nature incidental to the administration of my estate or of any of the trusts hereby established, and to pledge any securities or other property held by him as security therefor.

F. To enforce any bonds, mortgages, other obligations or liens held hereunder. To enter upon such contracts and agreements and to make such compromises or settlements of debts, claims or controversies, including any and all death taxes chargeable against the estate as he may deem necessary or advisable. To submit to arbitration any matter of differences. To vote personally or by proxy any shares of stock which may at any time be held by him hereunder, and similarly to exercise by attorney any rights appurtenant to any other securities or other property at any time held by him hereunder.

G. To consent to the reorganization, consolidation,

corporation, company or association, or to the sale or lease of the property thereof or any part thereof, including any securities or other property which may at the time be held by him hereunder, and to do any act or exercise any power with reference thereto that may be legally exercised by any person owning similar property in his own right, including the exercise of options, deposit or exchange of securities, entrance into voting trusts, making of agreements or subscriptions which he may deem necessary or advisable in connection therewith, all without applying to any Court for permission so to do, and to hold and redeem or sell or otherwise dispose of any securities or other property which he may so acquire irrespective of whether the same be authorized for the investment of trust funds by the laws of the State of California or otherwise.

H. To cause to be registered in his own name without qualification or description, or in his name as Trustee hereunder, or in the name of his nominee or nominees, without qualification or description, any securities at any time held in my estate or in any of the trusts hereby established.

I. To continue any business or partnership which I may own or in which I may have any interest at my death for such period of time as, in the discretion of my Trustee, shall be in the best interests of my estate, without liability for any losses incurred in carrying on such business or partnership or for any depreciation in the value of any of the assets thereof.

J. To improve, repair or rebuild any real property or any part or portion thereof that may be held in my estate or under any trust hereby established. To pay from the gross income received from the trust property, or if said income is insufficient, then from the principal thereof, to the extent of any deficiency, all real and personal property taxes, assessments, insurance, and

other charges on the trust property, including interest on any mortgage or deed of trust that may exist as a lien or charge on the trust property.

K. Except as otherwise specifically provided in this Will, the determination of all matters with respect to what is principal and income of the trust estate and the apportionment and allocation of receipts and expenses between these accounts shall be governed by the provisions of the California Principal and Income Law from time to time existing. Any such matter not provided for either in this Will or in the Principal and Income Law shall be determined by the BANK in the BANK's discretion.

L. In making any division or divisions of my estate, or any portion thereof, or of the trust hereby established, to divide in specie any shares of stocks, bonds or other securities forming a part of my estate, or of the trusts hereby established, or to allot to any of the parts into which such division is made such shares of stocks, bonds or other securities, or any of my real property or any interest therein, at a value to be determined by him as of the date or dates of distribution to the beneficiary or beneficiaries entitled thereto, and his judgment as to the propriety of such allotment and the relative value of any stocks, bonds or other securities, or any of my real property or any interest therein, so allotted shall be final and conclusive on all parties interested in my estate or in the trusts hereby established. Each trust share shall be a separate trust and shall be held and administered as such by my Trustee; however, my Trustee shall not be required to make physical division of the assets of the trust property except when necessary for distribution of corpus, but may at his discretion, keep the corpus of each trust in one or more consolidated funds in which the separate trusts have undivided interests.



M. In the event that rights to subscribe to securities or other property shall accrue upon any of the securities or other property held by my Trustee, to exercise such rights or to sell the same in his sole discretion, and, insofar as may be permitted by law, the proceeds of such sale or in the event of the exercise thereof, the value thereof at the time of such exercise, shall be and become part of the corpus.

N. The powers herein granted to my Trustee pursuant to law shall include all powers necessary to carry the same into effect. The enumeration of specific powers herein shall not be construed in any way to limit or affect the general powers herein granted.

O. My Trustee may freely act under all or any of the powers given to her in this Will in all matters concerning my estate and the trusts herein created after forming her judgment based upon all the circumstances of any particular situation and in accordance with such judgment as to the wisest and best course to pursue, without the necessity of obtaining the consent or approval of any Court and notwithstanding that she may also be acting, either individually, or as Trustee of the trusts herein created or other trusts, or as agent of other persons or corporations interested in the same matters, or may be interested in connection with the same matters as an individual, stockholder, director or otherwise, and the bequests, in trust or otherwise, made by me have been so made in contemplation of such freedom of judgment and action.

P. My Trustee shall not be required to make any provision on account of the diminution or increase in value of any securities or investments at any time constituting a part of my estate or of any of the trusts hereby established, or for depreciation in respect of any tangible property, or for the

purpose of amortizing or making good any amounts paid in premiums on the purchase of securities or of any other property.

Q. To carry, at the expense of any trust created herein, insurance of such kinds and in such amounts as the Trustee shall deem advisable to protect the trust property and the Trustee against any hazard.

R. To commence or defend any litigation with respect to any trust created herein or any property of the trust property as the Trustee may deem advisable.

S. To determine in the Trustee's own sole discretion the frequency of distribution to income beneficiaries, but in any event income shall be distributed at least annually.

13. DEALING WITH FIDUCIARY: No person dealing with my Executor or Trustee shall be obligated to see to the application of any monies, securities, or other property paid or delivered to him or to inquire into the expediency or propriety of any transaction or the authority of my Executor or Trustee to enter into and consummate the same upon such terms as he may deem advisable.

14. ASSIGNMENT OF INTEREST: The interest of any beneficiary under the trusts hereby established shall not be pledged, assigned, hypothecated or in any way alienated by such beneficiary and shall be immune from seizure or control of creditors of such beneficiary and neither the income nor principal of any trust shall be subject to attachment, garnishment, claims through bankruptcy or otherwise, nor be subject to judgment or any court proceedings in aid of execution thereon. Should the Trustee so desire, the Trustee may as a condition precedent withhold payments of principal or interest under this trust until personal order for payment is given or personal receipt furnished by the beneficiary entitled thereto.