

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

CONTRACT BETWEEN THE UNITED STATES AND  
MIKE OTTERSON, SUCCESSOR TRUSTEE OF THE JOYCE M. WELLS REVOCABLE  
TRUST, WILL OTTERSON, AND CHRISTINE AZEVEDO,  
DIVERTER OF WATER FROM SACRAMENTO RIVER SOURCES,  
SETTLING WATER RIGHTS DISPUTES AND  
PROVIDING FOR PROJECT WATER

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4 UNITED STATES  
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7 Central Valley Project, California

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9 MIKE OTTERSON, SUCCESSOR TRUSTEE OF THE JOYCE M. WELLS REVOCABLE  
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12 SETTLING WATER RIGHTS DISPUTES AND  
13 PROVIDING FOR PROJECT WATER

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

27 WITNESSETH, that:

28

EXPLANATORY RECITALS

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[1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley

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Project, California, for multiple purposes pursuant to its statutory authority; and

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[2<sup>nd</sup>] WHEREAS, the Contractor has rights to divert, is diverting, and will continue to

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divert for reasonable beneficial use, water from the natural flow of the Sacramento River and

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tributaries thereto, that would have been flowing therein if the Central Valley Project were not in

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existence;

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[3<sup>rd</sup>] WHEREAS, the construction and operation of the integrated and coordinated

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Central Valley Project has changed and will further change the regimen of the Sacramento,

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American, San Joaquin, and Trinity Rivers and the Sacramento-San Joaquin Delta from

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unregulated flow to regulated flow; and

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[4<sup>th</sup>] WHEREAS, the United States has rights to divert, is diverting, and will continue

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to divert waters from said Rivers and said Delta in connection with the operation of said Central

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Valley Project; and

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[5<sup>th</sup>] WHEREAS, the Contractor and the United States had a dispute over the

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respective rights of the parties to divert and use water from the regulated flow of the Sacramento

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River which threatened to result in litigation, and as a means to settle that dispute entered into

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Contract No. 14-06-200-2896A, as amended, hereinafter referred to as the Existing Contract,

46

which established terms for the delivery to the Contractor of Central Valley Project Water, and

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the quantities of Base Supply the United States and the Contractor agreed may be diverted by the

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Contractor from the Sacramento River pursuant to such contract; and

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[6<sup>th</sup>] WHEREAS, the United States and the Contractor disagree with respect to the

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authority of the United States to change the quantities of Base Supply and/or Project Water

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

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

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

65 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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TERM OF SETTLEMENT CONTRACT

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2. (a) This Settlement Contract shall become effective April 1, 2005, and shall

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remain in effect until and including March 31, 2045; Provided, that under terms and conditions

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mutually agreeable to the parties hereto, renewals may be made for successive periods not to

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exceed 40 years each. The terms and conditions of each renewal shall be agreed upon not later

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than one year prior to the expiration of the then existing Settlement Contract.

147

(b) With respect to Project Water and the portions of this Settlement Contract

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pertaining thereto, upon written request by the Contractor of the Secretary made not later than

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one year prior to the expiration of this Settlement Contract, whenever, account being taken of the

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amount then credited to the costs of construction of water supply works, the remaining amount of

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construction costs of water supply work which is properly assignable for ultimate return by the

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Contractor as established by the Secretary of the Interior pursuant to (3) of Section 1 of Public

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Law 643 (70 Stat. 483), probably can be repaid to the United States within the term of a contract

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under subsection 9(d) of the 1939 Reclamation Project Act (53 Stat. 1187), the relevant portions

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of this Settlement Contract may be converted to a contract under said subsection 9(d) upon terms

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and conditions mutually agreeable to the United States and the Contractor. The Secretary shall

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make a determination ten years after the date of execution of this Settlement Contract, and every

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five years thereafter, of whether a conversion to a contract under said subsection 9(d) can be

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accomplished pursuant to Public Law 643. Notwithstanding any provision of this Settlement

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Contract, the Contractor reserves and shall have all rights and benefits under Public Law 643.

161

WATER TO BE FURNISHED TO CONTRACTOR

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3. (a) Subject to the conditions, limitations, and provisions hereinafter

163

expressed, the Contractor is hereby entitled and authorized to divert from the Sacramento River

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

248 RETURN FLOW

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

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

257 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

266 INTEGRATED WATER MANAGEMENT AND PARTNERSHIPS

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

275 USE OF WATER FURNISHED TO CONTRACTOR

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

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

282 (b) The Contractor shall comply with requirements applicable to the  
283 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution  
284 of this Settlement Contract undertaken pursuant to Section 7 of the Endangered Species Act of  
285 1973, as amended, that are within the Contractor's legal authority to implement. The Existing  
286 Contract, which evidences in excess of 40 years of diversions, for agricultural uses, of the  
287 quantities of water provided for in Article 3, and the underlying water rights of the Contractor  
288 will be considered in developing an appropriate base-line for the Biological Assessment prepared  
289 pursuant to the Endangered Species Act, and in any other needed environmental review.

290 Nothing herein shall be construed to prevent the Contractor from challenging or seeking judicial  
291 relief in a court of competent jurisdiction with respect to any biological opinion or other  
292 environmental documentation referred to in this Article.

293 RATE AND METHOD OF PAYMENT FOR WATER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

410 AGREEMENT ON WATER QUANTITIES

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

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

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

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

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

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

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

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

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

#### 473 MEASUREMENT OF WATER

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

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

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

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

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

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

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

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

#### 506 RULES AND REGULATIONS

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

#### 512 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

#### 526 CHARGES FOR DELINQUENT PAYMENTS

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

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

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

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

544 QUALITY OF WATER

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

550 WATER AND AIR POLLUTION CONTROL

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

555 EQUAL OPPORTUNITY

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

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

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

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

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

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

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

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

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

602 17. Omitted.

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

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

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

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

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

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

636 BOOKS, RECORDS, AND REPORTS

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

646 CHANGE OF PLACE OF USE OR ORGANIZATION

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

649 CONSOLIDATION OF CONTRACTING ENTITIES

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

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

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

656 NOTICES

657 22. Any notice, demand, or request authorized or required by this Settlement Contract  
658 shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid,  
659 or delivered to the Area Manager, Northern California Area Office, Bureau of Reclamation,  
660 16349 Shasta Dam Boulevard, Shasta Lake, California 96019, and on behalf of the United  
661 States, when mailed, postage prepaid, or delivered to Mr. Mike Otterson, Successor Trustee of  
662 the Joyce M. Wells Revocable Trust, 3999 Leesville Road, Stonyford, California 95979. The  
663 designation of the addressee or the address may be changed by notice given in the same manner  
664 as provided in this Article for other notices.

665 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

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

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

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

675 OFFICIALS NOT TO BENEFIT

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

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

683

CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

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

689

CONFIRMATION OF SETTLEMENT CONTRACT

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

697

UNAVOIDABLE GROUNDWATER PERCOLATION

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

702

PRIVACY ACT COMPLIANCE

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

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

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

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

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

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

728 WATER CONSERVATION

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

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

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

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

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

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

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

764 The Contracting Officer shall provide the Contractor with a decision, in writing, to the Offer on

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

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

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

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

780 OPINIONS AND DETERMINATIONS

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

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

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

796 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

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

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WAIVER OF DEFAULT

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

CONTRACT ASSIGNMENT OR TERMINATION UPON TRANSFER OF LAND

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

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

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

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



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

851 THE UNITED STATES OF AMERICA

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

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

855 (SEAL)

856 JOYCE M. WELLS REVOCABLE TRUST

857 By: *Mike Otterson Trustee*  
858 Mike Otterson, Successor Trustee

859 (SEAL)

860 By: *Will Otterson*  
861 Will Otterson

862 By: *Christine Azevedo*  
863 Christine Azevedo

864 (H:\public\Sac River Final LTRC's -- 01\2005-01-31 Otterson, Mike et al. Final Draft Contract  
865 with exhibits.doc)

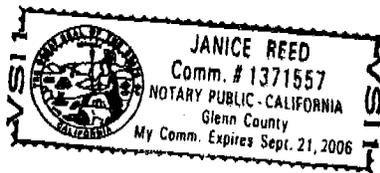
**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
County of Glenn } ss.

On 3/3/2005 before me, Janice Reed, Notary Public  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Mike Otterson, Will Otterson & Christine Azevedo  
Name(s) of Signer(s)

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



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

WITNESS my hand and official seal.  
Janice Reed  
Signature of Notary Public

**OPTIONAL**

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

**Description of Attached Document**

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

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

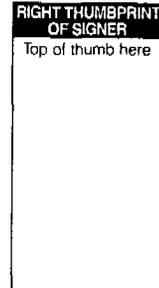
Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer**

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

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

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



## Exhibit A

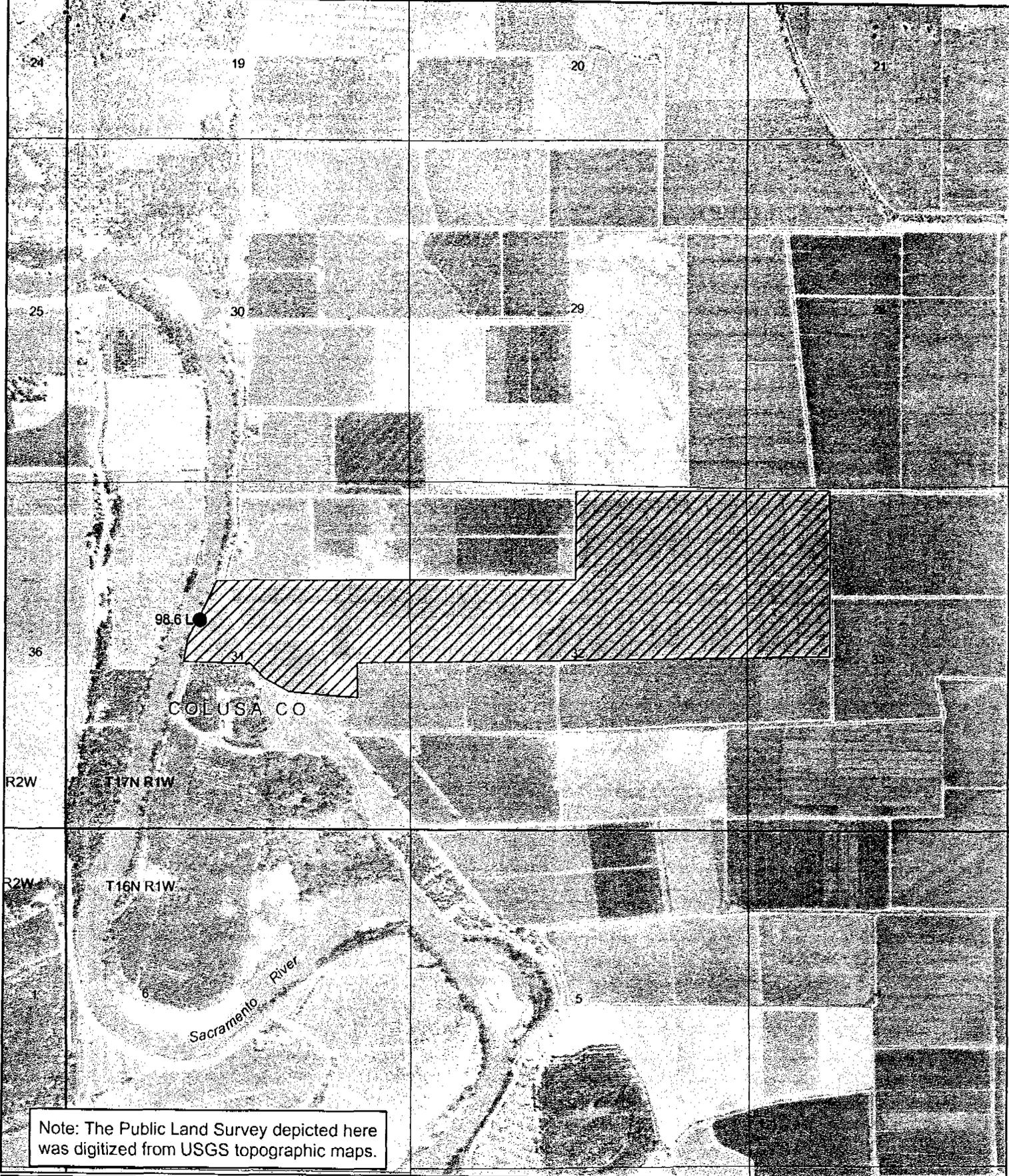
MIKE OTTERSON, SUCCESSOR TRUSTEE  
of the JOYCE M. WELLS REVOCABLE TRUST,  
WILL OTTERSON, and CHRISTINE AZEVEDO  
Sacramento River

SCHEDULE OF MONTHLY DIVERSIONS OF WATER

	<u>Base Supply</u> (acre-feet)	<u>Project Water</u> (acre-feet)	<u>Contract Total</u> (acre-feet)
April	<u>120</u>	<u>0</u>	<u>120</u>
May	<u>580</u>	<u>0</u>	<u>580</u>
June	<u>360</u>	<u>0</u>	<u>360</u>
July	<u>160</u>	<u>0</u>	<u>160</u>
August	<u>165</u>	<u>300</u>	<u>465</u>
September	<u>120</u>	<u>0</u>	<u>120</u>
October	<u>10</u>	<u>0</u>	<u>10</u>
Total	<u>1,515</u>	<u>300</u>	<u>1,815</u>

Point of Diversion: 98.6L

Dated: 01-31-2005



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

# Otterson, Mike (Wells, Joyce)

Contract No. 14-06-200-2896A-R-1

Exhibit B

-  Contractor's Service Area
-  Point of Diversion

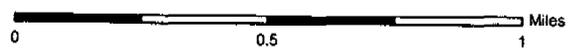


Exhibit C

MIKE OTTERSON, SUCCESSOR TRUSTEE  
of the JOYCE M. WELLS REVOCABLE TRUST,  
WILL OTTERSON, and CHRISTINE AZEVEDO  
Sacramento River

UNIT DUTY

(In Acre-Feet Per Acre)

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

Dated:

01-31-2005

## Exhibit D

MIKE OTTERSON, SUCCESSOR TRUSTEE  
of the JOYCE M. WELLS REVOCABLE TRUST,  
WILL OTTERSON, and CHRISTINE AZEVEDO  
Sacramento River  
2005 Water Rates and Charges per Acre-Foot

<u>COST OF SERVICE RATES:</u>	<u>Irrigation</u>
Capital Rates	
Storage	\$ 4.23
O&M Rates:	
Water Marketing	\$ 6.28
Storage	\$ 5.57
Deficit Rates:	
Interest Bearing	\$ 2.54
CFO/PFR Adjustment Rate 1/	<u>\$ 1.24</u>
TOTAL	<u>\$19.86</u>
<u>RESCHEDULING FEE:</u>	<u>\$5.54</u>
<u>FULL-COST RATES:</u>	
Section 202(3) Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981.	<u>\$25.82</u>
Section 205(a)(3) Rate is applicable to a Limited Recipient that did not receive irrigation water on or before October 1, 1981.	<u>\$28.20</u>
<u>CHARGES UNDER P.L. 102-575 TO THE  RESTORATION FUND 2/</u>	
Restoration Payments (3407(d)(2)(A))	<u>\$ 7.93</u>

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

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

1 (1) In the event no successor Trustee is  
2 designated by the Trustor or by the resigning or removed Trustee,  
3 then my son, MIKE OTTERSON, shall serve as successor Trustee.  
4 Should my son not be able or willing to serve as Trustee, I  
5 designate my daughter-in-law, TINA OTTERSON, to serve as successor  
6 Trustee.

7 e. Trustee's Accounting - The Trustee shall  
8 maintain accurate accounts and records, and shall render periodic  
9 statements to the Trustor during her lifetime showing receipts and  
10 disbursements of principal and income and itemizing all trust  
11 assets as of the close of the account.

12 f. Bond - No bond shall be required of any  
13 Trustee hereunder for any purpose whatsoever.

14 12. AMENDMENT AND REVOCATION- The trust hereby created  
15 may be altered, amended, revoked, or terminated, in whole or in  
16 part, by the Trustor by an instrument in writing delivered to the  
17 Trustee, except that changes relating to the Trustee's duties,  
18 liabilities, or compensation shall not be effective without the  
19 consent of the Trustee.

20 13. CONSTRUCTION - For the purpose of construing the  
21 terms of this trust agreement:

22 a. The masculine, feminine, or neuter gender, and  
23 the singular or plural number, shall each be deemed to include the  
24 others wherever the context so indicates.

25 b. The paragraph and subparagraph headings are  
26 for convenience only, are not a part of this trust, and do not in

1 any way limit or amplify the terms or provisions of the trust  
2 created hereunder.

3 c. The trust herein created is established and  
4 accepted by the Trustee under the laws of the State of California,  
5 and all questions concerning the validity, construction, and  
6 administration of the trust shall be determined under the laws of  
7 the state.

8 d. Should any of the provisions of this trust be  
9 invalid for any reason, the invalidity thereof shall not affect  
10 any of the other provisions hereunder, and all invalid provisions  
11 hereof shall be wholly disregarded.

12 IN WITNESS WHEREOF, the parties hereto have executed  
13 this trust agreement the day and year first above written.

14  
15 Joyce M. Wells, Trustor  
16 Joyce M. Wells, Trustor

17  
18 Joyce M. Wells, Trustee  
19 Joyce M. Wells, Trustee

20 STATE OF CALIFORNIA )  
21 COUNTY OF COLUSA ) ss.

22 On this 12<sup>th</sup> day of May, 1992, before me  
23 Dana Wilson FSW, personally appeared JOYCE  
24 M. WELLS, known to me (or proved to me on the basis of  
25 satisfactory evidence) to be the person whose name is subscribed  
26 to this instrument, and acknowledged that she executed the same.

25 IN WITNESS WHEREOF I have hereunto set my hand and  
26 affixed my official seal in the County of Colusa, State of  
California, the day and year in this certificate first above