

R.O. Draft 09/21/2012
R.O. Draft 12/13/2012
NCAO Draft 01/11/2013
NCAO Draft 02/26/2013
NCAO Draft 03/11/2013
R.O. Draft 03/19/2013
R.O. Draft 04/04/2013

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

CONTRACT BETWEEN THE UNITED STATES
AND
WOODLAND-DAVIS CLEAN WATER AGENCY,
DIVERTER OF WATER FROM SACRAMENTO RIVER SOURCES,
SETTLING WATER RIGHTS DISPUTES

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9 SETTLING WATER RIGHTS DISPUTES

10 THIS CONTRACT, hereinafter referred to as "Settlement Contract," is entered
11 into by the UNITED STATES OF AMERICA, hereinafter referred to as the United States, made
12 this _____ day of _____, 20____, pursuant to the applicable authority
13 granted to it generally in the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or
14 supplementary thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844),
15 as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented,
16 particularly Section 14 thereto, October 12, 1982 (96 Stat. 1263), October 27, 1986
17 (100 Stat. 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706),
18 all collectively hereinafter referred to as Federal Reclamation law, and WOODLAND-DAVIS
19 CLEAN WATER AGENCY, hereinafter referred to as the Contractor, a California joint powers
20 authority, duly organized, existing and acting pursuant to the laws of the State of California,
21 with its principal place of business in California;

22 WITNESSETH, That:

23 EXPLANATORY RECITALS

24 [1st] WHEREAS, the United States has constructed and is operating the Central Valley
25 Project, California, for multiple purposes pursuant to its statutory authority; and

26 [2nd] WHEREAS, the construction and operation of the integrated and coordinated
27 Central Valley Project has changed and will further change the regimen of the Sacramento,
28 American, San Joaquin, and Trinity Rivers and the Sacramento-San Joaquin Delta from
29 unregulated flow to regulated flow; and

30 [3rd] WHEREAS, the United States has rights to divert, is diverting, and will continue
31 to divert waters from said Rivers and said Delta in connection with the operation of said Central
32 Valley Project; and

33 [4th] WHEREAS, Conaway Preservation Group, LLC, hereinafter referred to as
34 Conaway, has rights to divert water from the Sacramento River for irrigation purposes under
35 Water Right Licenses 904, 905, and 5487, which are administered and enforced by the
36 California State Water Resources Control Board, hereinafter referred to as SWRCB; and

37 [5th] WHEREAS, the diversion of water by Conaway under Water Right
38 Licenses 904, 905, and 5487 is subject to the terms and conditions of “Contract Between the
39 United States and Conaway Preservation Group, LLC, Diverter of Water From Sacramento
40 River Sources, Settling Water Right Disputes and Providing for Project Water”, Contract
41 No. 14-06-200-7422A-R-1, dated March 4, 2005, hereinafter referred to as the Existing Contract,
42 which provides for up to 50,190 acre-feet of Base Supply and a supplemental supply of
43 672 acre-feet of Project Water to be diverted annually from the Sacramento River from
44 April 1, 2005, through March 31, 2045; and

45 [6th] WHEREAS, Conaway, Tri-City Water and Farm, LLC, and the Contractor
46 entered into that certain Water Agreement, dated December 21, 2010, which provides, in part,
47 for Conaway to assign and convey to the Contractor its interests in 10,000 acre-feet of
48 Sacramento River Water diverted under Water Right Licenses 904 and 5487, which is a portion
49 of the Base Supply made available under the terms and conditions of the Existing Contract; and

50 [7th] WHEREAS, on March 17, 2011, Conaway petitioned the SWRCB to approve the
51 proposed split of Water Right Licenses 904 and 5487 between Conaway and the Contractor, and
52 to add additional purposes of use, places of use and point of diversion to effectuate the
53 assignment and conveyance of the 10,000 acre-feet of Sacramento River water to the Contractor;
54 and

55 [8th] WHEREAS, pursuant to SWRCB letter, dated November 21, 2012, as modified
56 by SWRCB letter dated December 21, 2012, Conaway's petition for change was granted, and
57 Amended Licenses for Diversion and Use of Water, 904A and 5487A, were issued to the
58 Contractor and Amended Licenses for Diversion and Use of Water, 904B and 5487B, were
59 issued to Conaway, each subject to specific terms and conditions for its exercise; and

60 [9th] WHEREAS, the Existing Contract between Conaway and the United States will
61 be amended, and a new Sacramento River Settlement Contract between the Contractor and the
62 United States will be executed, to recognize the water right changes and the terms and conditions
63 in the Amended Licenses for Diversion and Use of Water, 904B and 5487B, and 904A and
64 5487A, respectively; and

65 [10th] WHEREAS, the parties acknowledge that the Secretary of the Interior's discretion
66 at the time of renewal of certain Sacramento River Water Right Settlement contracts including
67 Conaway's Existing Contract dated March 4, 2005 and the 10,000 acre-feet of Base Supply

68 water to be assigned to the Contractor from Conaway as set forth in this Contract is the subject of
69 pending litigation in *Natural Resources Defense Council, et al. v. Salazar, et al.*, Case
70 No. 09-17661 (9th Cir.), and;

71 [11th] WHEREAS, the parties further acknowledge that if the court issues an order or
72 opinion invalidating Conaway's Existing Contract due to consultation requirements under
73 Section 7 of the Endangered Species Act, the validity of this Settlement Contract may be
74 similarly affected, and;

75 [12th] WHEREAS, to assure the Contractor of the enjoyment and use of the regulated
76 flow of the said Rivers and the Delta, and to provide for the economical operation of the
77 Central Valley Project by, and the reimbursement to, the United States for expenditures made for
78 said Project;

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

81 DEFINITIONS

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

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

88 (b) "Contract Total" shall mean the sum of the Base Supply available for
89 diversion by the Contractor for the period April 1 through October 31;

90 (c) "Critical Year" shall mean any Year in which either of the following
91 eventualities exists:

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

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

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

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

- 113 (e) "Project" shall mean the Central Valley Project owned by the
114 United States and managed by the Department of the Interior, Bureau of Reclamation;
- 115 (f) "Project Water" shall mean all water that is developed, diverted, stored, or
116 delivered by the United States pursuant to Federal Reclamation law;
- 117 (g) "Rescheduling Fee" shall mean the payments required for each acre-foot
118 of Base Supply rescheduled pursuant to subdivision (c)(1) of Article 3 of this Settlement
119 Contract, as determined annually by the Contracting Officer in accordance with the then-current
120 applicable water rate setting policies for the Project. The type and amount of the Rescheduling
121 Fee will be identified on Exhibit "C";
- 122 (h) "Secretary" or "Contracting Officer" shall mean the Secretary of the
123 Interior, a duly appointed successor, or an authorized representative acting pursuant to any
124 authority of the Secretary and through any agency of the Department of the Interior;
- 125 (i) "Surface Water" shall mean only those waters that are considered as
126 surface water under California law;
- 127 (j) "Water Year" shall mean the period commencing with October 1 of one
128 year and extending through September 30 of the next; and
- 129 (k) "Year" shall mean a calendar year.

130 TERM OF SETTLEMENT CONTRACT

131 2. This Settlement Contract shall become effective on the date the Contractor starts
132 diverting the assigned water pursuant to Licenses 904A and 5487A or January 15, 2016,
133 whichever is earlier, and shall remain in effect until and including March 31, 2045: *Provided*,
134 That under terms and conditions mutually agreeable to the parties hereto, renewals may be made
135 for successive periods not to exceed 40 years each. The terms and conditions of each renewal

136 shall be agreed upon not later than one year prior to the expiration of the then-existing Settlement
137 Contract.

138 WATER TO BE FURNISHED TO CONTRACTOR

139 3. (a) Subject to the conditions, limitations, and provisions hereinafter
140 expressed, the Contractor is hereby entitled and authorized to divert from the Sacramento River
141 at the locations shown in Exhibit "A", for beneficial use within the area delineated on Exhibit "B",
142 (both Exhibits are attached hereto and made a part hereof), the Contract Total designated in
143 Exhibit "A", or any revision thereof, in accordance with the monthly operating schedule required
144 by subdivision (c) of Article 3 of this Settlement Contract. The quantity of any water diverted
145 under this Settlement Contract from the Sacramento River, during the period April through
146 October, for use on any lands delineated on Exhibit "B", by the owner of such lands or otherwise
147 shall constitute a part of the Contract Total as shown on Exhibit "A" and shall be subject to all
148 the provisions of this Settlement Contract relating to such Contract Total as if such diversion
149 were made by the Contractor: *Provided, however,* That the Contractor reserves the right to, and
150 may at its option, divert water for beneficial use from the Sacramento River under Water Right
151 Permit 20281 issued to the Contractor by the SWRCB under Application 30358, to the extent
152 permitted under California law for beneficial use within the authorized place of use for Permit
153 20281, and such diversions will not be considered to be diversions under this Settlement
154 Contract or a part of the quantity of Base Supply specified in Exhibit "A". The lawfulness of the
155 Contractor's points of diversion for said area from the Sacramento River will not be challenged
156 by, or on behalf of, the Bureau of Reclamation except in the case of a general adjudication as
157 provided in subdivisions (b) and (c) of Article 9 of this Settlement Contract.

158 (b) The Contractor may acquire rights to divert water from the Sacramento
159 River during the period April through October after the date of execution of this Settlement
160 Contract. All diversions made from the Sacramento River, pursuant to such rights, during the
161 period April through October, shall not be considered to be diversions made pursuant to this
162 Settlement Contract or a part of the quantity of Base Supply specified in Exhibit "A": *Provided,*
163 That the quantities diverted pursuant to the above rights shall be identified on the schedule
164 submitted pursuant to subdivision (c) of Article 3 below, and shall not be substituted for any
165 Base Supply: *Provided, further,* That any such identified quantities of water under other
166 acquired rights may be diverted by the Contractor before incurring any fee pursuant to
167 subdivision (c)(1) of Article 3 below.

168 (c) Before April 1 and before the first day of each month thereafter when a
169 revision is needed, the Contractor shall submit a written schedule to the Contracting Officer
170 indicating the Contract Total to be diverted by the Contractor for irrigation and/or municipal and
171 industrial purposes during each month under this Settlement Contract. The United States shall
172 furnish water to the Contractor in accordance with the monthly operating schedule or any
173 revisions thereof. However, the United States recognizes the need of the Contractor to change
174 from time to time its monthly diversions of water from the quantities shown in Exhibit "A"; the
175 Contractor may make such changes, provided:

176 (1) that for the quantity of Base Supply diverted in excess of the
177 monthly quantity shown in Exhibit "A", and as may be reduced in accordance with
178 subdivision (c) of Article 5, during June, July, August, September, or October of any
179 Water Year, the Contractor shall be charged a Rescheduling Fee equal to 50 percent of

180 the sum of the storage operations and maintenance rate and the storage capital rate
181 components of the Project ratesetting policy.

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

184 (i) During the period April through October exceed the
185 aggregate of the Contract Total for that period shown in Exhibit "A" or any
186 revision thereof;

187 (ii) During the period July through September exceed the
188 aggregate of the Contract Total for that period shown in Exhibit "A" or any
189 revision thereof.

190 (d) In the event conditions warrant, the Contracting Officer reserves the
191 right to require the Contractor to submit, at least 72 hours prior to the beginning of each
192 weekly period, its estimate of daily diversion requirements for each such period from the
193 Sacramento River: *Provided, however,* That changes during any such period may be made upon
194 the giving of 72 hours' notice thereof to the Contracting Officer.

195 (e) No sale, transfer, exchange, or other disposal of any of the Contract Total
196 designated in Exhibit "A" or the right to the use thereof for use on land other than that shown on
197 Exhibit "B" shall be made by the Contractor without first obtaining the written consent of the
198 Contracting Officer. Such consent will not be unreasonably withheld and a decision will be
199 rendered in a timely manner. For short-term actions that will occur within one year or less, the
200 decision will be rendered within 30 days after receipt of a complete written proposal. For
201 long term actions that will occur in a period longer than one year, the decision will be rendered
202 within 90 days after receipt of a complete written proposal. For a proposal to be deemed

203 complete by the Contracting Officer, it must comply with all provisions required by State and
204 Federal law, including information sufficient to enable the Contracting Officer to comply with
205 the National Environmental Policy Act, the Endangered Species Act, and applicable rules or
206 regulations then in effect: *Provided*, That such consent does not authorize the use of Federal
207 facilities to facilitate or effectuate the sale, transfer, exchange, or other disposal of Base Supply.
208 Such use of Federal facilities will be the subject of a separate agreement to be entered into
209 between the Contractor and Reclamation.

210 (f) Nothing herein contained shall prevent the Contractor from diverting
211 water during the months of November through March for beneficial use on the lands within the
212 area shown on Exhibit "B" or elsewhere to the extent authorized under the laws of the State of
213 California.

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

216 (1) The quality of water to be diverted by the Contractor;
217 (2) The control, carriage, handling, use, disposal, or distribution of
218 water diverted by the Contractor outside the facilities constructed and then being operated
219 and maintained by or on behalf of the United States; and

220 (3) Claims of damage of any nature whatsoever, including but not
221 limited to, property loss or damage, personal injury, or death arising out of or connected
222 with the control, carriage, handling, use, disposal, or distribution of said water outside of
223 the hereinabove referred to facilities.

224 RETURN FLOW

225 4. Nothing herein shall be construed as an abandonment or a relinquishment by the
226 United States of any right it may have to the use of waste, seepage, and return flow water derived
227 from water diverted by the Contractor hereunder and which escapes or is discharged beyond the
228 boundaries of the lands shown on Exhibit "B": *Provided*, That this shall not be construed as
229 claiming for the United States any right to such water which is recovered by the Contractor
230 pursuant to California law from within the boundaries of the lands shown on Exhibit "B", and
231 which is being used pursuant to this Settlement Contract for surface irrigation, municipal and
232 industrial use, or underground storage for the benefit of the lands shown on Exhibit "B" by the
233 Contractor.

234 CONSTRAINTS ON THE AVAILABILITY OF WATER

235 5. (a) In its operation of the Project, the Contracting Officer will use all
236 reasonable means to guard against a condition of shortage in the quantity of water to be made
237 available to the Contractor pursuant to this Settlement Contract. In the event the Contracting
238 Officer determines that a condition of shortage appears probable, the Contracting Officer will
239 notify the Contractor of said determination as soon as practicable.

240 (b) If there is a condition of shortage because of errors in physical operations
241 of the Project, drought, other physical causes beyond the control of the Contracting Officer or
242 actions taken by the Contracting Officer to meet current and future legal obligations, then no
243 liability shall accrue against the United States or any of its officers, agents, or employees for any
244 damage, direct or indirect, arising therefrom.

245 (c) In a Critical Year, the Contractor's Base Supply agreed to be diverted
246 during the period April through October of the Year in which the principal portion of the
247 Critical Year occurs and, each monthly quantity of said period shall be reduced by 25 percent.

248 INTEGRATED WATER MANAGEMENT AND PARTNERSHIPS

249 6. The Contractor and United States desire to work together to maximize the
250 reasonable beneficial use of water for their mutual benefit. As a consequence, the United States
251 and the Contractor will work in partnership and with others within the Sacramento Valley,

252 including other contractors, to facilitate the better integration within the Sacramento Valley of all
253 water supplies including, but not limited to, the better management and integration of surface
254 water and groundwater, the development and better utilization of surface water storage, the
255 effective utilization of waste, seepage and return flow water, and other operational and
256 management options that may be identified in the future.

257 USE OF WATER FURNISHED TO CONTRACTOR

258 7. (a) Base Supply diverted pursuant to this Settlement Contract shall not be
259 used by the Contractor for other than agricultural purposes or municipal and industrial purposes
260 without the written consent of the Contracting Officer. For purposes of this Settlement Contract,
261 “agricultural purposes” includes, but is not restricted to, the irrigation of crops, the watering of
262 livestock, incidental domestic use including related landscape irrigation, and underground water
263 replenishment; and “municipal and industrial purposes” includes, but is not limited to, the
264 watering of landscaping or pasture for animals (e.g., horses) which are kept for personal
265 enjoyment or water delivered to landholdings operated in units of less than 5 acres, fish and
266 wildlife enhancement, and fisheries and aquaculture research.

267 (b) The Contractor shall comply with requirements applicable to the
268 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution
269 of this Settlement Contract undertaken pursuant to Section 7 of the Endangered Species Act of
270 1973, as amended, that are within the Contractor’s legal authority to implement. The Existing
271 Contract, which evidences in excess of 40 years of diversions for agricultural uses, of the
272 quantities of water provided for in Article 3 of this Settlement Contract, and the underlying water
273 rights of the Contractor will be considered in developing an appropriate base-line for the
274 Biological Assessment prepared pursuant to the Endangered Species Act, and in any other

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

278 RATE AND METHOD OF PAYMENT FOR WATER

279 8. (a) The Contract Total in this Settlement Contract only provides for
280 Base Supply and does not include Project Water. In order to recover Reclamation's costs for
281 administration of this Settlement Contract, the Contractor shall pay the United States an annual
282 fee of \$400 beginning on the effective date specified in Article 2. This amount shall be increased
283 by \$50 every five years thereafter. Payment of this fee shall be due and payable on May 1 of
284 each Year. This annual fee shall cover activities including, but not limited to, operation and
285 maintenance of water measurement devices, preparation of monthly water delivery statements,
286 and maintenance of official records. Payment for activities performed by Reclamation at the
287 request of the Contractor shall be covered under Article 27 of this Settlement Contract.

288 (b) Payments to be made by the Contractor to the United States under this
289 Settlement Contract may be paid from any revenues available to the Contractor. All revenues
290 received by the United States from the Contractor relating to the delivery of non-Project water
291 through Project facilities shall be allocated and applied in accordance with Federal Reclamation
292 law and the associated rules or regulations, and the then-current Project ratesetting policies.

293 (c) The Contracting Officer shall keep its accounts pertaining to the
294 administration of the financial terms and conditions of its long-term water service and
295 Settlement Contracts, in accordance with applicable Federal standards, so as to reflect the
296 application of Project costs and revenues. The Contracting Officer shall, each Year upon request
297 of the Contractor, provide to the Contractor a detailed accounting of all Project and Contractor

298 expense allocations, the disposition of all Project and Contractor revenues, and a summary of all
299 water delivery information. The Contracting Officer and the Contractor shall enter into good
300 faith negotiations to resolve any discrepancies or disputes relating to accountings, reports, or
301 information.

302 (d) The parties acknowledge and agree that the efficient administration of this
303 Settlement Contract is their mutual goal. Recognizing that experience has demonstrated that
304 mechanisms, policies, and procedures used for establishing and allocating costs and/or for
305 making and allocating payments, other than those set forth in this Article may be in the mutual
306 best interest of the parties, it is expressly agreed that the parties may enter into agreements to
307 modify the mechanisms, policies, and procedures for any of those purposes while this
308 Settlement Contract is in effect without amendment of this Settlement Contract.

309 (e) Each payment to be made pursuant to subdivision (a) of this Article
310 shall be made at the office of the Bureau of Reclamation, MP Region: Mid-Pacific,
311 P.O. Box 301502, Los Angeles, CA, 90030-1502, or at such other place as the United States may
312 designate in a written notice to the said Contractor.

313 (f) All payments from the Contractor to the United States under this
314 Settlement Contract shall be by the medium requested by the United States on or before the date
315 payment is due. The required method of payment may include checks, wire transfers, or other
316 types of payment specified by the United States.

317 (g) Upon execution of this Settlement Contract, the Contractor shall furnish
318 the Contracting Officer with the Contractor's taxpayer's identification number (TIN). The
319 purpose for requiring the Contractor's TIN is for collecting and reporting any delinquent
320 amounts arising out of the Contractor's relationship with the United States.

321 (h) In the event there should be a default in the payment of the amount due,
322 the delinquent payment provisions of Article 13 shall apply. The Contractor shall not be relieved
323 of the whole or any part of its said obligation by, on account of, or notwithstanding, as the case
324 may be:

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

327 (2) Any judicial determination that any assessment, toll, or other
328 charge referred to in this Settlement Contract is irregular, void, or ineffectual; or

329 (3) Any injunctive process enjoining or restraining the Contractor
330 from making or collecting any such assessment, toll, or other charge referred to in this
331 Settlement Contract.

332 (i) The amount of any overpayment by the Contractor shall be credited upon
333 amounts to become due to the United States from the Contractor under the provisions hereof in
334 the ensuing Year. To the extent of such deficiency, such adjustment of overpayment shall
335 constitute the sole remedy of the Contractor.

336 AGREEMENT ON WATER QUANTITIES

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

338 (1) It shall constitute full agreement as between the United States and
339 the Contractor as to the quantities of Base Supply which may be diverted by the Contractor from
340 the Sacramento River for beneficial use on the lands shown on Exhibit "B" from April 1 through
341 October 31, which said diversion, use, and allocation shall not be disturbed so long as the
342 Contractor shall fulfill all of its obligations hereunder;

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

345 (b) Nothing herein contained is intended to or does limit rights of the
346 Contractor against others than the United States or of the United States against any person other
347 than the Contractor: *Provided, however,* That in the event the Contractor, the United States, or

348 any other person shall become a party to a general adjudication of rights to the use of water of
349 the Sacramento River system, this Settlement Contract shall not jeopardize the rights or position
350 of either party hereto or of any other person and the rights of all such persons in respect to the
351 use of such water shall be determined in such proceedings the same as if this Settlement Contract
352 had not been entered into, and if final judgment in any such general adjudication shall determine
353 that the rights of the parties hereto are different from the rights as assumed herein, the parties
354 shall negotiate an amendment to give effect to such judgment. In the event the parties are unable
355 to agree on an appropriate amendment they shall, within 60 days of determining that there is an
356 impasse, employ the services of a neutral mediator, experienced in resolving water rights
357 disputes, to assist in resolving the impasse. The cost of the mediation will be shared equally. A
358 failure to reach agreement on an amendment within 60 days of the end of mediation will cause
359 the immediate termination of this Settlement Contract.

360 (c) In the event that the SWRCB or a court of competent jurisdiction issues a
361 final decision or order modifying the terms and conditions of the water rights of either party to
362 this Settlement Contract in order to impose Bay-Delta water quality obligations, the Contractor
363 and the United States shall promptly meet to determine whether or not to modify any of the
364 terms of this Settlement Contract to comply with the final decision or order, including, but not
365 limited to, the applicability of the Rescheduling Fee in subdivision (c)(1) of Article 3 of this
366 Settlement Contract. If within 60 days of the date of the issuance of the final decision or order
367 the parties are not able to reach agreement regarding either the need to modify this Settlement
368 Contract or the manner in which this Settlement Contract is to be modified, the parties shall
369 promptly retain a neutral mediator, experienced in resolving water right disputes, to assist the
370 parties in resolving their dispute. The cost of the mediator shall be shared equally. In the event

371 that either of the parties to this Settlement Contract determines that the parties will not be able to
372 develop mutually-agreeable modification(s) to this Settlement Contract even with the assistance
373 of a mediator, either of the parties to this Settlement Contract may attempt to resolve the impasse
374 by seeking appropriate judicial relief including, but not limited to, filing a general adjudication of
375 the rights to the use of water in the Sacramento River system. The foregoing provisions of this
376 subarticle shall only apply to the incremental obligations contained within a final decision or
377 order of the SWRCB that reflects a modification to the obligations imposed in SWRCB Revised
378 Water Rights Decision 1641, dated March 15, 2000, and its associated 2006 Water Quality
379 Control Plan which, taken together, will be considered the baseline for the application of the
380 provisions of this subarticle.

381 (d) In the event this Settlement Contract terminates, the rights of the parties to
382 thereafter divert and use water shall exist as if this Settlement Contract had not been entered into;
383 and the fact that as a compromise settlement of a controversy as to the respective rights of the
384 parties to divert and use water and the yield of such rights during the term hereof, this Settlement
385 Contract places a limit on the Contract Total to be diverted annually by the Contractor during the
386 Settlement Contract term shall not jeopardize the rights or position of either party with respect to
387 its water rights or the yield thereof at all times after the Settlement Contract terminates. It is
388 further agreed that the Contractor at all times will first use water to the use of which it is entitled
389 by virtue of its own water rights, and neither the provisions of this Settlement Contract, action
390 taken thereunder, nor payments made thereunder to the United States by the Contractor shall be
391 construed as an admission that any part of the water used by the Contractor during the term of
392 this Settlement Contract was in fact water to which it would not have been entitled under water
393 rights owned by it nor shall receipt of payments thereunder by the United States from the

394 Contractor be construed as an admission that any part of the water used by the Contractor during
395 the term of this Settlement Contract was in fact water to which it would have been entitled under
396 water rights owned by it.

397 MEASUREMENT OF WATER

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

401 (b) All water diverted from the Sacramento River pursuant to this
402 Settlement Contract will be measured or caused to be measured by the United States at each
403 point of diversion with existing equipment or equipment to be installed, operated, and
404 maintained by the Contractor, and/or others, under contract with and at the option of the
405 United States, at the Contractor's expense. The equipment and methods used to make such
406 measurement shall be in accordance with sound engineering practices. Upon request of the
407 Contractor, the accuracy of such measurements will be investigated by the Contracting Officer
408 and any errors appearing therein will be corrected.

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

413 (d) The Contractor shall not modify, alter, remove, or replace diversion
414 facilities or do any other act which would alter the effectiveness or accuracy of the measuring
415 equipment installed by the United States or its representatives unless and until the Contracting
416 Officer has been notified with due diligence and has been given an opportunity to modify such

417 measuring equipment in such manner as may be necessary or appropriate. In the event of an
418 emergency the Contractor shall notify the United States within a reasonable time thereafter as to
419 the existence of the emergency and the nature and extent of such modification, alteration,
420 removal, or replacement of diversion facilities.

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

424 (f) All new surface water delivery systems installed within the lands
425 delineated on Exhibit "B" after the effective date of this Settlement Contract shall also comply
426 with the measurement provisions described in this Article.

427 (g) The Contractor shall inform the Contracting Officer on or before the 10th
428 calendar day of each month of the quantity of Contract Total diverted or furnished for
429 agricultural and municipal and industrial purposes during the preceding month.

430 RULES AND REGULATIONS

431 11. The parties agree that the use of Federal facilities pursuant to this Settlement
432 Contract is subject to Federal Reclamation law, including but not limited to, the Reclamation
433 Reform Act of 1982 (96 Stat. 1263), as amended and supplemented, and the rules and regulations
434 promulgated by the Secretary of the Interior under Federal Reclamation law.

435 GENERAL OBLIGATION—BENEFITS CONDITIONED UPON PAYMENT

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

440 (b) The payment of charges becoming due hereunder is a condition precedent
441 to receiving benefits under this Settlement Contract. The United States shall not make water
442 available to the Contractor through Project facilities during any period in which the Contractor
443 may be in arrears in the advance payment of water rates due the United States. The Contractor

444 shall not furnish water made available pursuant to this Settlement Contract for lands or parties
445 which are in arrears in the advance payment of water rates levied or established by the
446 Contractor.

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

449 CHARGES FOR DELINQUENT PAYMENTS

450 13. (a) The Contractor shall be subject to interest, administrative, and penalty
451 charges on delinquent payments. If a payment is not received by the due date, the Contractor
452 shall pay an interest charge on the delinquent payment for each day the payment is delinquent
453 beyond the due date. If a payment becomes 60 days delinquent, the Contractor shall pay, in
454 addition to the interest charge, an administrative charge to cover additional costs of billing and
455 processing the delinquent payment. If a payment is delinquent 90 days or more, the Contractor
456 shall pay, in addition to the interest and administrative charges, a penalty charge for each day the
457 payment is delinquent beyond the due date, based on the remaining balance of the payment due
458 at the rate of 6 percent per year. The Contractor shall also pay any fees incurred for debt
459 collection services associated with a delinquent payment.

460 (b) The interest rate charged shall be the greater of either the rate prescribed
461 quarterly in the Federal Register by the Department of the Treasury for application to overdue
462 payments, or the interest rate of 0.5 percent per month. The interest rate charged will be
463 determined as of the due date and remain fixed for the duration of the delinquent period.

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

PROTECTION OF WATER AND AIR QUALITY

467 14. (a) Project facilities used to make available and deliver water to the
468 Contractor shall be operated and maintained in the most practical manner to maintain the quality
469 of the water at the highest level possible as determined by the Contracting Officer: *Provided,*
470 *That* the United States does not warrant the quality of the water delivered to the Contractor and is
471 under no obligation to furnish or construct water treatment facilities to maintain or improve the
472 quality of water delivered to the Contractor.

473 (b) The Contractor shall comply with all applicable water and air pollution
474 laws and regulations of the United States and the State of California; and shall obtain all required
475 permits or licenses from the appropriate Federal, State, or local authorities necessary for the
476 delivery of water by the Contractor; and shall be responsible for compliance with all Federal,
477 State, and local water quality standards applicable to surface and subsurface drainage and/or
478 discharges generated through the use of Federal or Contractor facilities or water provided by the
479 Contractor within the Contractor's service area.

480 (c) This Article shall not affect or alter any legal obligations of the Secretary
481 to provide drainage or other discharge services.

EQUAL EMPLOYMENT OPPORTUNITY

482 15. During the performance of this Settlement Contract, the Contractor agrees as
483 follows:

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

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

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

504 (d) The Contractor will comply with all provisions of EO 11246, and of the
505 rules, regulations, and relevant orders of the Secretary of Labor.

506 (e) The Contractor will furnish all information and reports required by
507 EO 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant
508 thereto, and will permit access to his books, records, and accounts by the Contracting Agency
509 and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules,
510 regulations, and orders.

511 (f) In the event of the Contractor's noncompliance with the nondiscrimination
512 clauses of this Settlement Contract or with any of such rules, regulations, or orders, this
513 Settlement Contract may be canceled, terminated or suspended in whole or in part and the
514 Contractor may be declared ineligible for further Government contracts in accordance with
515 procedures authorized in EO 11246, and such other sanctions may be imposed and remedies
516 invoked as provided in EO 11246 or by rule, regulation, or order of the Secretary of Labor, or as
517 otherwise provided by law.

518 (g) The Contractor will include the provisions of paragraphs (a) through (g) in
519 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
520 Secretary of Labor issued pursuant to Section 204 of EO 11246, so that such provisions will be

521 binding upon each subcontractor or vendor. The Contractor will take such action with respect to
522 any subcontract or purchase order as may be directed by the Secretary of Labor as a means of
523 enforcing such provisions, including sanctions for noncompliance: *Provided, however*, That in
524 the event the Contractor becomes involved in, or is threatened with, litigation with a
525 subcontractor or vendor as a result of such direction, the Contractor may request the United
526 States to enter into such litigation to protect the interests of the United States.

527 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

528 16. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
529 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112, as amended), the
530 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights
531 laws, as well as with their respective implementing regulations and guidelines imposed by the
532 U.S. Department of the Interior and/or Bureau of Reclamation.

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

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

548 BOOKS, RECORDS, AND REPORTS

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

558 CHANGE OF PLACE OF USE OR ORGANIZATION

559 18. (a) Unless the written consent of the United States is first obtained no change
560 shall be made in the place of water use shown on Exhibit “B”.

561 (b) While this Settlement Contract is in effect, no change shall be made in the
562 Contractor’s Service Area as shown on Exhibit “B”, by inclusion, exclusion, annexation or
563 detachment of lands, by dissolution, consolidation, or merger or otherwise, except upon the
564 Contracting Officer’s written consent thereto. Such consent will not be unreasonably withheld
565 and a decision will be provided in a timely manner.

566 CONSOLIDATION OF CONTRACTING ENTITIES

567 19. Consolidation of Contractors may be approved by the Contracting Officer
568 provided: (i) the Contracting Officer approves the form and organization of the resulting entity
569 and the utilization by it of the Contract Total; and (ii) the obligations of the Contractors are
570 assumed by such entity.

571 No such consolidation shall be valid unless and until approved by the Contracting
572 Officer.

573 NOTICES

574 20. Any notice, demand, or request authorized or required by this Settlement Contract
575 shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid,
576 or delivered to the Area Manager, Northern California Area Office, Bureau of Reclamation,
577 16349 Shasta Dam Boulevard, Shasta Lake, California 96019, and on behalf of the
578 United States, when mailed, postage prepaid, or delivered to General Manager, Woodland-Davis
579 Clean Water Agency, 23 Russell Boulevard, Davis, California 95616. The designation of the
580 addressee or the address may be changed by notice given in the same manner as provided in this
581 Article for other notices.

582 ASSIGNMENT LIMITED—SUCCESSORS AND ASSIGNS OBLIGATED

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

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

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

592 OFFICIALS NOT TO BENEFIT

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

596 (b) No officer or member of the governing board of the Contractor shall
597 receive any benefit that may arise by reason of this Settlement Contract other than as a water
598 user or landowner within the Contractor's service area delineated on Exhibit "B" and in the same
599 manner as other water users and landowners within the said service area.

600 CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

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

606 CONFIRMATION OF SETTLEMENT CONTRACT

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

614 WATER CONSERVATION

615 25. Prior to the diversion of water under this Settlement Contract, the Contractor shall
616 be implementing effective water conservation and efficiency programs based on the water
617 conservation elements of the water management plans prepared pursuant to sections 10800 and

618 10620 through 10645 of the California Water Code. In the event that the state requirement for
619 preparation and implementation of the water management plans is discontinued, suspended or
620 otherwise terminated during the term of this contract, the Contractor will then be required to
621 prepare the plan(s) required by Section 210(b) of the Reclamation Reform Act of 1982 96 Stat.
622 1263), as amended, and Part 427.1 of the Water Conservation Rules and Regulations effective
623 January 1, 1998.

624 OPINIONS AND DETERMINATIONS

625 26. (a) Where the terms of this Settlement Contract provide for actions to be
626 based upon the opinion or determination of either party to this Settlement Contract, said terms
627 shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or
628 unreasonable opinions or determinations. Both parties, notwithstanding any other provisions of
629 this Settlement Contract, expressly reserve the right to seek relief from and appropriate
630 adjustment for any such arbitrary, capricious, or unreasonable opinion or determination. Each
631 opinion or determination by either party shall be provided in a timely manner. Nothing in
632 subdivision (a) of Article 26 of this Settlement Contract is intended to or shall affect or alter the
633 standard of judicial review applicable under Federal law to any opinion or determination
634 implementing a specific provision of Federal law embodied in statute or regulation.

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

640 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

649 (b) All advances for miscellaneous costs incurred for work requested by the
650 Contractor pursuant to Article 27 of this Settlement Contract shall be adjusted to reflect the
651 actual costs when the work has been completed. If the advances exceed the actual costs incurred,
652 the difference will be refunded to the Contractor. If the actual costs exceed the Contractor's
653 advances, the Contractor will be billed for the additional costs pursuant to Article 27 of this
654 Settlement Contract.

655 WAIVER OF DEFAULT

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

660 TERMINATION

661 29. This Settlement Contract will terminate upon mutual agreement of the parties
662 prior to the end of the term or any renewal thereof.

663

CONTRACT DRAFTING CONSIDERATIONS

664 30. This Contract has been negotiated and reviewed by the parties hereto, each of
665 whom is sophisticated in the matters to which this Contract pertains. The double-spaced articles
666 of this Contract have been drafted, negotiated, and reviewed by the parties, and no one party
667 shall be considered to have drafted the stated articles.

668 IN WITNESS WHEREOF, the parties hereto have executed this Settlement

669 Contract as of the day and year first hereinabove written.

670

UNITED STATES OF AMERICA

671

By: _____

672

Regional Director, Mid-Pacific Region

673

Bureau of Reclamation

674 (SEAL)

675

WOODLAND-DAVIS CLEAN WATER AGENCY

676

By: _____

677

General Manager

Exhibit A

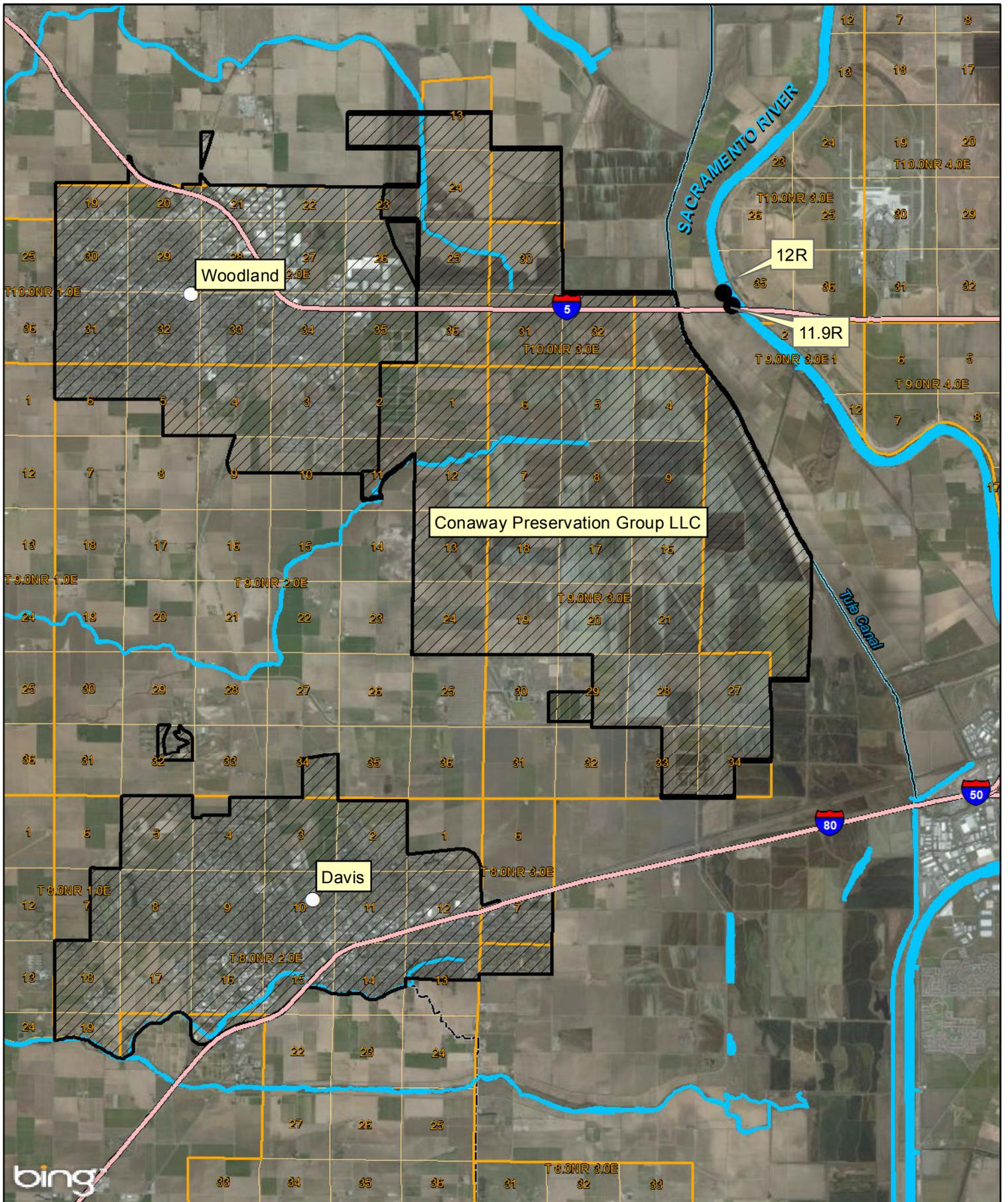
WOODLAND-DAVIS CLEAN WATER AGENCY
Sacramento River

SCHEDULE OF MONTHLY DIVERSIONS OF WATER

| | <u>Base Supply</u> (acre-feet) | <u>Contract Total</u> (acre-feet) |
|-----------|-----------------------------------|--------------------------------------|
| April | <u>0</u> | <u>0</u> |
| May | <u>0</u> | <u>0</u> |
| June | <u>2,500</u> | <u>2,500</u> |
| July | <u>3,500</u> | <u>3,500</u> |
| August | <u>500</u> | <u>500</u> |
| September | <u>3,500</u> | <u>3,500</u> |
| October | <u>0</u> | <u>0</u> |
| Total | <u>10,000</u> | <u>10,000</u> |

Points of Diversion: 12.0R, 11.9R

Dated:



- Point of Diversion
- ▨ Contractor's Service Area

Woodland-Davis Clean Water Agency

Exhibit B

Contract No. 14-06-200-7422X-R-1



725-202-156

Date: March 4, 2013
 Name: N:\Districts\Contracts\WoodlandDavisCleanWaterAgency\
 Woodland-Davis Clean Water Agency and Conway 7422X-R1 2_28_13



Exhibit C

WOODLAND-DAVIS CLEAN WATER AGENCY
Sacramento River

2013 Rescheduling Fee per Acre-Foot¹

Agricultural
Purposes

\$8.41

Municipal and Industrial
Purposes

\$6.35

Draft

¹ The Rescheduling Fee is determined annually pursuant to the Central Valley Project Ratesetting Policies.