

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

CONTRACT BETWEEN THE UNITED STATES AND
JACK W. BABER, JUDITH S. BABER,
JACK W. BABER, JR. AND PIXIE E. BABER,
DIVERTER OF WATER FROM SACRAMENTO RIVER SOURCES,
SETTLING WATER RIGHTS DISPUTES AND
PROVIDING FOR PROJECT WATER

Table of Contents

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
	Preamble	1
	Explanatory Recitals	2-3
1	Definitions	3-6
2	Term of Contract	7
3	Water to be Furnished to Contractor	7-10
4	Return Flow	10-11
5	Constraints on the Availability of Water	11-12
6	Integrated Water Management and Partnerships	12-13
7	Use of Water Furnished to Contractor	13
8	Rate and Method of Payment for Water	14-18
9	Agreement on Water Quantities	19-21
10	Measurement of Water	21-23
11	Rules and Regulations	23
12	General Obligation – Benefits Conditioned Upon Payment	23-24
13	Charges For Delinquent Payments	24
14	Quality of Water	24-25
15	Water and Air Pollution Control	25
16	Equal Opportunity	25-26
17	Compliance With Civil Rights Laws And Regulations	26-27

Table of Contents – continued

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
18	Mingling of Contractor’s Project and Non-Project Water	27-28
19	Books, Records, and Reports	28
20	Change Of Place Of Use Or Organization	28-29
21	Consolidation Of Contracting Entities	29
22	Notices	29
23	Assignment Limited – Successors and Assigns Obligated	29-30
24	Officials Not to Benefit	30
25	Contingent Upon Appropriation or Allotment of Funds	30
26	Confirmation of Contract	30
27	Unavoidable Groundwater Percolation	30
28	Privacy Act Compliance	31
29	Water Conservation	31-33
30	Opinions And Determinations	33
31	Contractor to Pay Certain Miscellaneous Costs	34
32	Waiver of Default	34
	Signatures	35
Exhibit A	Schedule of Monthly Diversions of Water	
Exhibit B	Map of Contractor’s Ownership	
Exhibit C	Unit Duties	
Exhibit D	Rates and Charges	

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9 Central Valley Project, California

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13 JACK W. BABER, JR. AND PIXIE E. BABER,
14 DIVERTER OF WATER FROM SACRAMENTO RIVER SOURCES,
15 SETTLING WATER RIGHTS DISPUTES AND
16 PROVIDING FOR PROJECT WATER
17
18

19 THIS CONTRACT, hereinafter referred to as "Settlement Contract," is
20 entered into by THE UNITED STATES OF AMERICA, hereinafter referred to as the
21 United States, made this _____ day of _____, 2004, pursuant to the
22 applicable authority granted to it generally in the Act of June 17, 1902 (32 Stat. 388), and
23 acts amendatory or supplementary thereto, including, but not limited to, the Acts of
24 August 26, 1937 (50 Stat. 844), as amended and supplemented, August 4, 1939 (53 Stat.
25 1187), as amended and supplemented, including, but not limited to, Sections 9 and 14
26 thereto, July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96
27 Stat. 1262), October 27, 1986 (100 Stat. 3050), as amended, and Title XXXIV of the Act
28 of October 30, 1992 (106 Stat. 4706), all collectively hereinafter referred to as Federal
29 Reclamation law, and JACK W. BABER, JUDITH S. BABER, JACK W. BABER, JR.
30 AND PIXIE E. BABER, hereinafter referred to as the Contractor, a tenancy in common,
31 acting pursuant to Sections 12003 and 12004 of the California Water Code, with its
32 principal place of business in California;

1 WITNESSETH, that:

2 EXPLANATORY RECITALS

3 [1st] WHEREAS, the United States has constructed and is operating the Central
4 Valley Project, California, for multiple purposes pursuant to its statutory authority; and

5 [2nd] WHEREAS, the Contractor has rights to divert, is diverting, and will
6 continue to divert for reasonable beneficial use, water from the natural flow of the
7 Sacramento River and tributaries thereto, that would have been flowing therein if the
8 Central Valley Project were not in existence; and

9 [3rd] WHEREAS, the construction and operation of the integrated and
10 coordinated Central Valley Project has changed and will further change the regimen of
11 the Sacramento, American, San Joaquin, and Trinity Rivers and the Sacramento-San
12 Joaquin Delta from unregulated flow to regulated flow; and

13 [4th] WHEREAS, the United States has rights to divert, is diverting, and will
14 continue to divert waters from said Rivers and said Delta in connection with the operation
15 of said Central Valley Project, and

16 [5th] WHEREAS, the Contractor and the United States had a dispute over the
17 respective rights of the parties to divert and use water from the regulated flow of the
18 Sacramento River which threatened to result in litigation, and as a means to settle that
19 dispute entered into Contract No. 14-06-200-1604A, as amended, hereinafter referred to
20 as the Existing Contract, which established terms for the delivery to the Contractor of
21 Central Valley Project Water, and the quantities of Base Supply the United States and the
22 Contractor agreed may be diverted by the Contractor from the Sacramento River pursuant
23 to such contract; and

1 Sacramento River each month during the period April through October of each Year
2 without payment to the United States for such quantities diverted;

3 (b) "Basin-Wide Water Management Plan" shall mean the mutually
4 agreeable Sacramento River Basinwide Water Management Plan, dated _____,
5 developed by Glenn-Colusa Irrigation District, Maxwell Irrigation District, Natomas
6 Central Mutual Water Company, Pelger Mutual Water Company, Princeton-Codora-
7 Glenn Irrigation District, Provident Irrigation District, Reclamation District 108, Sutter
8 Mutual Water Company, Anderson-Cottonwood Irrigation District, M&T, Inc., Meridian
9 Farms Water Company, Reclamation District 1004 and the U.S. Bureau of Reclamation.

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

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

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

20 (1) The forecasted full natural inflow to Shasta Lake for the
21 current Water Year, as such forecast is made by the United States on or before February
22 15 and reviewed as frequently thereafter as conditions and information warrant, is equal
23 to or less than 3.2 million acre-feet; or

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

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

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

19 (g) “Eligible Lands” shall mean all lands to which Project Water may
20 be delivered in accordance with Section 204 of the Reclamation Reform Act of October
21 12, 1982 (96 Stat. 1263), as amended, hereinafter referred to as RRA;

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

4 (i) "Full Cost Rate" shall mean that water rate described in Sections
5 205(a)(3) or 202(3) of the RRA, whichever is applicable;

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

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

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

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

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

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

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

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

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

9 TERM OF SETTLEMENT CONTRACT

10 2. (a) This Settlement Contract shall become effective April 1, 2004, and
11 shall remain in effect until and including March 31, 2044: Provided, that under terms and
12 conditions mutually agreeable to the parties hereto, renewals may be made for successive
13 periods not to exceed 40 years each. The terms and conditions of each renewal shall be
14 agreed upon not later than one year prior to the expiration of the then existing Settlement
15 Contract.

16 (b) With respect to Project Water and the portions of this Settlement
17 Contract pertaining thereto, upon written request by the Contractor of the Secretary made
18 not later than one year prior to the expiration of this Settlement Contract, whenever,
19 account being taken of the amount then credited to the costs of construction of water
20 supply works, the remaining amount of construction costs of water supply work which is
21 properly assignable for ultimate return by the Contractor as established by the Secretary
22 of the Interior pursuant to (3) of Section 1 of Public Law 643 (70 Stat. 483), probably can
23 be repaid to the United States within the term of a contract under subsection 9(d) of the

1 1939 Reclamation Project Act (53 Stat. 1187), the relevant portions of this Settlement
2 Contract may be converted to a contract under said subsection 9(d) upon terms and
3 conditions mutually agreeable to the United States and the Contractor. The Secretary
4 shall make a determination 10 years after the date of execution of this Settlement
5 Contract, and every five years thereafter, of whether a conversion to a contract under said
6 subsection 9(d) can be accomplished pursuant to Public Law 643. Notwithstanding any
7 provision of this Settlement Contract, the Contractor reserves and shall have all rights and
8 benefits under Public Law 643.

9 WATER TO BE FURNISHED TO CONTRACTOR

10 3. (a) Subject to the conditions, limitations, and provisions hereinafter
11 expressed, the Contractor is hereby entitled and authorized to divert from the Sacramento
12 River at the locations shown in Exhibit A, for beneficial use within the area delineated on
13 Exhibit B, (both Exhibits are attached hereto and made a part hereof), the Contract Total
14 designated in Exhibit A, or any revision thereof, in accordance with the monthly
15 operating schedule required by Article 3(c) of this Settlement Contract. The quantity of
16 any water diverted under this Settlement Contract from the Sacramento River, during the
17 period April through October, for use on any lands delineated on Exhibit B, by the owner
18 of such lands or otherwise shall constitute a part of the Contract Total as shown on
19 Exhibit A and shall be subject to all the provisions of this Settlement Contract relating to
20 such Contract Total as if such diversion were made by the Contractor.

21 (b) The Contractor may have acquired rights to divert water from the
22 Sacramento River during the period April through October, that were obtained after the
23 date of execution of the Existing Contract, or the Contractor may acquire such rights in

1 the future. All diversions made from the Sacramento River, pursuant to such rights,
2 during the period April through October, shall not be considered a part of the quantity of
3 Base Supply and Project Water specified in Exhibit A; Provided, that the quantities
4 diverted pursuant to the above rights shall be identified on the schedule submitted
5 pursuant to Article 3(c) below, and shall not be substituted for any Base Supply or Project
6 Water; Provided, further, that any such identified quantities of other acquired rights may
7 be diverted by the Contractor before incurring any fee pursuant to Article 3(c)(1), below.

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

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

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

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

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

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

12 (e) No sale, transfer, exchange, or other disposal of any of the
13 Contract Total designated in Exhibit A or the right to the use thereof for use on land other
14 than that shown on Exhibit B shall be made by the Contractor without first obtaining the
15 written consent of the Contracting Officer. Such consent will not be unreasonably
16 withheld and a decision will be rendered in a timely manner. For short-term actions that
17 will occur within one year or less, the decision will be rendered within 30 days after
18 receipt of a complete written proposal. For long-term actions that will occur in a period
19 longer than one year, the decision will be rendered within 90 days after receipt of a
20 complete written proposal. For a proposal to be deemed complete by the Contracting
21 Officer, it must comply with all provisions required by State and Federal law, including
22 information sufficient to enable the Contracting Officer to comply with the National
23 Environmental Policy Act, the Endangered Species Act, and applicable rules or

1 regulations then in effect; Provided that, such consent does not authorize the use of
2 Federal facilities to facilitate or effectuate the sale, transfer, exchange or other disposal of
3 Base Supply. Such use of Federal facilities will be the subject of a separate agreement to
4 be entered into between the Contractor and Reclamation.

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

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

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

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

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

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

1 INTEGRATED WATER MANAGEMENT AND PARTNERSHIPS

2 6. The Contractor and United States desire to work together to maximize the
3 reasonable beneficial use of water for their mutual benefit. As a consequence, the United
4 States and the Contractor will work in partnership and with others within the Sacramento
5 Valley, including other Contractors, to facilitate the better integration within the
6 Sacramento Valley of all water supplies including, but not limited to, the better
7 management and integration of surface water and groundwater, the development and
8 better utilization of surface water storage, the effective utilization of waste, seepage and
9 return flow water, and other operational and management options that may be identified
10 in the future.

11 USE OF WATER FURNISHED TO CONTRACTOR

12 7. (a) Project Water furnished to the Contractor pursuant to this
13 Settlement Contract shall not be delivered or furnished by the Contractor for any
14 purposes other than agricultural purposes without the written consent of the Contracting
15 Officer. For purposes of this Settlement Contract, “agricultural purposes” includes, but is
16 not restricted to, the watering of livestock, incidental domestic use including related
17 landscape irrigation, or underground water replenishment.

18 (b) The Contractor shall comply with requirements applicable to the
19 Contractor in biological opinion(s) prepared as a result of a consultation regarding the
20 execution of this Settlement Contract undertaken pursuant to Section 7 of the Endangered
21 Species Act of 1973, as amended, that are within the Contractor’s legal authority to
22 implement. The Contractor shall comply with the limitations or requirements imposed by
23 environmental documentation applicable to the Contractor and within its legal authority

1 to implement. The Existing Contract, which evidences in excess of 40 years of
2 diversions, for agricultural uses, of the quantities of water provided for in Article 3, and
3 the underlying water rights of the Contractor will be considered in developing an
4 appropriate base-line for the Biological Assessment prepared pursuant to the Endangered
5 Species Act, and in any other needed environmental review. Nothing herein shall be
6 construed to prevent the Contractor from challenging or seeking judicial relief in a court
7 of competent jurisdiction with respect to any biological opinion or other environmental
8 documentation referred to in this Article.

9 RATE AND METHOD OF PAYMENT FOR WATER

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

12 (1) seventy-five percent of the amount shown as Project Water
13 shall be paid for by the Contractor in each Year; and in addition

14 (2) the Contractor shall pay for Project Water actually diverted
15 in excess of seventy-five percent of the amount shown as Project Water.

16 Such payments shall be at Rates and Charges established in accordance with:

17 (i) the Secretary's then-current ratesetting policies for the Project; and (ii) applicable

18 Reclamation law and associated rules and regulations, or policies: Provided, that if the

19 Contractor desires to use Project Water for other than agricultural use the Rates and

20 Charges set forth above will be adjusted by the Contracting Officer to the applicable

21 Rates and Charges for such use. The Rates and Charges applicable to the Contractor

22 upon execution of this Settlement Contract are set forth in Exhibit D, as may be revised

23 annually. The Secretary's ratesetting policies for the Project shall be amended, modified,

1 or superseded only through a public notice and comment procedure. The Contracting
2 Officer shall adjust the amount of Project Water for which payment is required to the
3 extent of any reduction in diversions of Project Water made in accordance with the water
4 conservation provisions of Article 29 (e).

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

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

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

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

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

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

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

19 (1) All revenues received by the United States from the
20 Contractor relating to the delivery of Project Water or the delivery of non-Project water
21 through Project facilities shall be allocated and applied in accordance with Federal
22 Reclamation law and the associated rules or regulations, and the then current Project
23 ratesetting policies for Irrigation Water.

1 (e) The Contracting Officer shall keep its accounts pertaining to the
2 administration of the financial terms and conditions of its long-term water service and
3 Settlement Contracts, in accordance with applicable Federal standards, so as to reflect the
4 application of Project costs and revenues. The Contracting Officer shall, each Year upon
5 request of the Contractor, provide to the Contractor a detailed accounting of all Project
6 and Contractor expense allocations, the disposition of all Project and Contractor
7 revenues, and a summary of all water delivery information. The Contracting Officer and
8 the Contractor shall enter into good faith negotiations to resolve any discrepancies or
9 disputes relating to accountings, reports, or information.

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

18 (g) For the term of this Settlement Contract, Rates under the respective
19 ratesetting policies for the Project will be established to recover only reimbursable
20 operation and maintenance (including any deficits) and capital costs of the Project, as
21 those terms are used in the then current Project ratesetting policies, and interest, where
22 appropriate, except in instances where a minimum Rate is applicable in accordance with
23 the relevant Project ratesetting policy. Proposed changes of significance in practices

1 which implement the ratesetting policies for the Project will not be implemented until the
2 Contracting Officer has provided the Contractor an opportunity to discuss the nature,
3 need, and impact of the proposed change. The Contractor retains all rights to challenge
4 the validity of Rates and Charges imposed pursuant to this Settlement Contract, including
5 but not limited to operation and maintenance expenses and operation and maintenance
6 deficits, in an appropriate administrative or judicial proceeding.

7 (h) Except as provided in subsection 3405(a)(1)(B) of the CVPIA, the
8 Rates for Project Water transferred, exchanged, or otherwise disposed of, by the
9 Contractor shall be the Contractor's Rates adjusted upward or downward to reflect the
10 changed costs of delivery (if any) of the transferred, exchanged, or otherwise disposed of
11 Project Water to the transferee's point of delivery in accordance with the then-current
12 ratesetting policies for the Project. Except as provided in subsection 3407(d)(2)(A) of the
13 CVPIA, the Charges for Project Water transferred, exchanged, or otherwise disposed of,
14 by the Contractor shall be the Contractor's Charges specified in Exhibit D. If the
15 Contractor is receiving lower Rates and Charges because of inability to pay and is
16 transferring, exchanging, or otherwise disposing of Project Water to another entity whose
17 Rates and Charges are not adjusted due to inability to pay, the Rates and Charges for
18 transferred, exchanged, or otherwise disposed of Project Water shall be the Contractor's
19 Rates and Charges unadjusted for ability to pay.

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

1 (j) Each payment to be made pursuant to subdivisions (a) and (b) of
2 this Article shall be made at the office of the Bureau of Reclamation, Mid-Pacific Region,
3 File No. 11546, P.O. Box 6000, San Francisco, California, 94160-1546, or at such other
4 place as the United States may designate in a written notice to the said Contractor.

5 Payments shall be made by cash transaction, wire, or any other mechanism as may be
6 agreed to in writing by the Contractor and the Contracting Officer. In the event there
7 should be a default in the payment of the amount due, the delinquent payment provisions
8 of Article 13 shall apply. The Contractor shall not be relieved of the whole or any part of
9 its said obligation by, on account of, or notwithstanding, as the case may be:

10 (1) Its failure, refusal, or neglect to divert seventy-five percent
11 of the quantity of Project Water shown on Exhibit A;

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

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

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

20 AGREEMENT ON WATER QUANTITIES

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

1 (1) It shall constitute full agreement as between the United
2 States and the Contractor as to the quantities of water and the allocation thereof between
3 Base Supply and Project Water which may be diverted by the Contractor from the
4 Sacramento River for beneficial use on the land shown on Exhibit B which said
5 diversion, use, and allocation shall not be disturbed so long as the Contractor shall fulfill
6 all of its obligations hereunder;

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

9 (b) Nothing herein contained is intended to or does limit rights of the
10 Contractor against others than the United States or of the United States against any
11 person other than the Contractor: Provided, however, that in the event the Contractor, the
12 United States, or any other person shall become a party to a general adjudication of rights
13 to the use of water of the Sacramento River system, this Settlement Contract shall not
14 jeopardize the rights or position of either party hereto or of any other person and the
15 rights of all such persons in respect to the use of such water shall be determined in such
16 proceedings the same as if this Settlement Contract had not been entered into, and if final
17 judgment in any such general adjudication shall determine that the rights of the parties
18 hereto are different from the rights as assumed herein, the parties shall negotiate an
19 amendment to give effect to such judgment. In the event the parties are unable to agree
20 on an appropriate amendment they shall, within 60 days of determining that there is an
21 impasse, employ the services of a neutral mediator, experienced in resolving water rights
22 disputes, to assist in resolving the impasse. The cost of the mediation will be shared

1 equally. A failure to reach agreement on an amendment within 60 days of the end of
2 mediation will cause the immediate termination of this Settlement Contract.

3 (c) In the event that the California State Water Resources Control
4 Board or a court of competent jurisdiction issues a final decision or order modifying the
5 terms and conditions of the water rights of either party to this Settlement Contract in
6 order to impose Bay-Delta water quality obligations, the Contractor and the United States
7 shall promptly meet to determine whether or not to modify any of the terms of this
8 Settlement Contract to comply with the final decision or order, including, but not limited
9 to, the applicability of the rescheduling charge in Article 3(c)(1) of this Settlement
10 Contract. If within 60 days of the date of the issuance of the final decision or order the
11 parties are not able to reach agreement regarding either the need to modify this
12 Settlement Contract or the manner in which this Settlement Contract is to be modified,
13 the parties shall promptly retain a neutral mediator, experienced in resolving water right
14 disputes, to assist the parties in resolving their dispute. The cost of the mediator shall be
15 shared equally. In the event that either of the parties to this Settlement Contract
16 determines that the parties will not be able to develop mutually-agreeable modification(s)
17 to this Settlement Contract even with the assistance of a mediator, either of the parties to
18 this Settlement Contract may attempt to resolve the impasse by seeking appropriate
19 judicial relief including, but not limited to, filing a general adjudication of the rights to
20 the use of water in the Sacramento River system. The foregoing provisions of this sub-
21 article shall only apply to the incremental obligations contained within a final decision or
22 order of the State Water Resources Control Board that reflects a modification to the
23 obligations imposed in State Water Resources Control Board Revised Water Rights

1 Decision 1641 dated March 15, 2000, and its associated 1995 Water Quality Control Plan
2 which, taken together, will be considered the baseline for the application of the
3 provisions of this sub-article.

4 (d) In the event this Settlement Contract terminates, the rights
5 of the parties to thereafter divert and use water shall exist as if this Settlement Contract
6 had not been entered into; and the fact that as a compromise settlement of a controversy
7 as to the respective rights of the parties to divert and use water and the yield of such
8 rights during the term hereof, this Settlement Contract places a limit on the Contract
9 Total to be diverted annually by the Contractor during the Settlement Contract term and
10 segregates it into Base Supply and Project Water shall not jeopardize the rights or
11 position of either party with respect to its water rights or the yield thereof at all times
12 after the Settlement Contract terminates. It is further agreed that the Contractor at all
13 times will first use water to the use of which it is entitled by virtue of its own water
14 rights, and neither the provisions of this Settlement Contract, action taken thereunder, nor
15 payments made thereunder to the United States by the Contractor shall be construed as an
16 admission that any part of the water used by the Contractor during the term of this
17 Settlement Contract was in fact water to which it would not have been entitled under
18 water rights owned by it nor shall receipt of payments thereunder by the United States
19 from the Contractor be construed as an admission that any part of the water used by the
20 Contractor during the term of this Settlement Contract was in fact water to which it
21 would have been entitled under water rights owned by it.

1 MEASUREMENT OF WATER

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

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

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

19 (d) The Contractor shall not modify, alter, remove, or replace
20 diversion facilities or do any other act which would alter the effectiveness or accuracy of
21 the measuring equipment installed by the United States or its representatives unless and
22 until the Contracting Officer has been notified with due diligence and has been given an
23 opportunity to modify such measuring equipment in such manner as may be necessary or

1 appropriate. In the event of an emergency the Contractor shall notify the United States
2 within a reasonable time thereafter as to the existence of the emergency and the nature
3 and extent of such modification, alteration, removal, or replacement of diversion
4 facilities.

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

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

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

16 RULES AND REGULATIONS

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

22 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

23
24 12. (a) The obligation of the Contractor to pay the United States as
25 provided in this Settlement Contract is a general obligation of the Contractor

1 notwithstanding the manner in which the obligation may be distributed among the
2 Contractor's water users and notwithstanding the default of individual water users in their
3 obligations to the Contractor.

4
5 (b) The payment of Charges becoming due hereunder is a condition
6 precedent to receiving benefits under this Settlement Contract. The United States shall
7 not make water available to the Contractor through Project facilities during any period in
8 which the Contractor may be in arrears in the advance payment of water Rates due the
9 United States. The Contractor shall not furnish water made available pursuant to this
10 Settlement Contract for lands or parties which are in arrears in the advance payment of
11 water rates levied or established by the Contractor.

12
13 (c) With respect to subdivision (b) of this Article, the Contractor shall
14 have no obligation to require advance payment for water Rates which it levies.

15 CHARGES FOR DELINQUENT PAYMENTS

16
17
18 13. (a) The Contractor shall be subject to interest, administrative and
19 penalty charges on delinquent installments or payments. When a payment is not received
20 by the due date, the Contractor shall pay an interest charge for each day the payment is
21 delinquent beyond the due date. When a payment becomes 60 days delinquent, the
22 Contractor shall pay an administrative charge to cover additional costs of billing and
23 processing the delinquent payment. When a payment is delinquent 90 days or more, the
24 Contractor shall pay an additional penalty charge of six percent per year for each day the
25 payment is delinquent beyond the due date. Further, the Contractor shall pay any fees
26 incurred for debt collection services associated with a delinquent payment.

27
28 (b) The interest charge rate shall be the greater of the rate prescribed
29 quarterly in the Federal Register by the Department of the Treasury for application to
30 overdue payments, or the interest rate of one-half of one percent per month prescribed by
31 Section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest
32 charge rate shall be determined as of the due date and remain fixed for the duration of the
33 delinquent period.

34
35 (c) When a partial payment on a delinquent account is received, the
36 amount received shall be applied, first to the penalty, second to the administrative
37 charges, third to the accrued interest, and finally to the overdue payment.

38 QUALITY OF WATER

39
40 14. The operation and maintenance of Project facilities shall be performed in
41 such manner as is practicable to maintain the quality of raw water made available through
42 such facilities at the highest level reasonably attainable as determined by the Contracting

1 Officer. The United States does not warrant the quality of water and is under no
2 obligation to construct or furnish water treatment facilities to maintain or better the
3 quality of water.

4 WATER AND AIR POLLUTION CONTROL

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

9 EQUAL OPPORTUNITY

10 16. During the performance of this Settlement Contract, the Contractor agrees
11 as follows:

12
13 (a) The Contractor will not discriminate against any employee or
14 applicant for employment because of race, color, religion, sex, or national origin. The
15 Contractor will take affirmative action to ensure that applicants are employed, and that
16 employees are treated during employment, without regard to their race, color, religion,
17 sex, or national origin. Such action shall include, but not be limited to, the following:
18 Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising;
19 layoff or termination, rates of payment or other forms of compensation; and selection for
20 training, including apprenticeship. The Contractor agrees to post in conspicuous places,
21 available to employees and applicants for employment, notices to be provided by the
22 Contracting Officer setting forth the provisions of this nondiscrimination clause.

23
24 (b) The Contractor will, in all solicitations or advertisements for
25 employees placed by or on behalf of the Contractor, state that all qualified applicants will
26 receive consideration for employment without discrimination because of race, color,
27 religion, sex, or national origin.

28
29 (c) The Contractor will send to each labor union or representative of
30 workers with which it has a collective bargaining agreement or other contract or
31 understanding, a notice, to be provided by the Contracting Officer, advising the said labor
32 union or workers' representative of the Contractor's commitments under Section 202 of
33 Executive Order No. 11246 of September 24, 1965, as amended, and shall post copies of
34 the notice in conspicuous places available to employees and applicants for employment.

35

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

4
5 (e) The Contractor will furnish all information and reports required by
6 said amended Executive Order and by the rules, regulations, and orders of the Secretary
7 of Labor, or pursuant thereto, and will permit access to its books, records, and accounts
8 by the Contracting Officer and the Secretary of Labor for purposes of investigation to
9 ascertain compliance with such rules, regulations, and orders.

10
11 (f) In the event of the Contractor's noncompliance with the
12 nondiscrimination clauses of this Settlement Contract or with any of the said rules,
13 regulations, or orders, this Settlement Contract may be canceled, terminated, or
14 suspended, in whole or in part, and the Contractor may be declared ineligible for further
15 Government contracts in accordance with procedures authorized in said amended
16 Executive Order, and such other sanctions may be imposed and remedies invoked as
17 provided in said Executive Order, or by rule, regulation, or order of the Secretary of
18 Labor, or as otherwise provided by law.

19
20 (g) The Contractor will include the provisions of paragraphs (a)
21 through (g) in every subcontract or purchase order unless exempted by the rules,
22 regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said
23 amended Executive Order, so that such provisions will be binding upon each
24 subcontractor or vendor. The Contractor will take such action with respect to any
25 subcontract or purchase order as may be directed by the Secretary of Labor as a means of
26 enforcing such provisions, including sanctions for noncompliance: Provided, however,
27 that in the event the Contractor becomes involved in, or is threatened with, litigation with
28 a subcontractor or vendor as a result of such direction, the Contractor may request the
29 United States to enter into such litigation to protect the interests of the United States.

30
31 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

32
33 17. Omitted

34
35 MINGLING OF CONTRACTOR'S PROJECT AND NON-PROJECT WATER

36 18. (a) Project Water must of necessity be transported by the Contractor to
37 its water users by means of the same works and channels used for the transport of its non-
38 Project Water including Base Supply. Notwithstanding such mingling of water, the
39 provisions of Article 11 hereof shall be applicable only to Project Water, and such

1 mingling of water shall not in any manner subject to the provisions of Article 11 hereof
2 the Contractor's non-Project water including Base Supply.

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

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

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

18 (2) the Unit Duties as set forth in Exhibit C attached hereto and
19 made a part hereof, or by such other Unit Duties mutually agreed upon by the Contractor
20 and the Contracting Officer. In order to make the computation of the water requirement
21 for Eligible Lands, on April 1 of each Year and concurrently with its order for water for
22 the irrigation season, the Contractor shall designate the acreage of and type of crops to be
23 grown on its Eligible Lands that irrigation season. During any month the water

1 requirement as above determined for crops growing on Eligible Lands during such month
2 is equal to or in excess of the Project Water for that month as provided herein the
3 Contractor shall not be required to measure the water delivered to Excess Lands. Any
4 month the said water requirement is less than the amount of Project Water as provided
5 herein, the Contractor will be required to measure water delivered to excess land in
6 accordance with subdivision (b) hereof.

7 BOOKS, RECORDS, AND REPORTS

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

18
19 CHANGE OF PLACE OF USE OR ORGANIZATION

20 20. Omitted

21 CONSOLIDATION OF CONTRACTING ENTITIES

22
23 21. Consolidation of Contractors may be approved by the Contracting Officer
24 provided: (i) the Contracting Officer approves the form and organization of the resulting
25 entity and the utilization by it of the Contract Total; and (ii) the obligations of the
26 Contractors are assumed by such entity.

27 No such consolidation shall be valid unless and until approved by the Contracting
28 Officer.

1 NOTICES

2 22. Any notice, demand, or request authorized or required by this Settlement
3 Contract shall be deemed to have been given, on behalf of the Contractor, when mailed,
4 postage prepaid, or delivered to the Area Manager, Northern California Area Office,
5 Bureau of Reclamation, 16349 Shasta Dam Blvd., Shasta Lake, California, 96019, and on
6 behalf of the United States, when mailed, postage prepaid, or delivered to Jack Baber, et
7 al., 1113 Carson Street, Colusa, California 95932. The designation of the addressee or
8 the address may be changed by notice given in the same manner as provided in this
9 Article for other notices.

10 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

11 23. Omitted

12 OFFICIALS NOT TO BENEFIT

13 24. (a) No Member of or Delegate to Congress, Resident Commissioner,
14 or official of the Contractor shall benefit from this Settlement Contract other than as a
15 water user or landowner in the same manner as other water users or landowners.
16

17 (b) No officer or member of the governing board of the Contractor
18 shall receive any benefit that may arise by reason of this Settlement Contract other than
19 as a landowner within the Contractor’s service area and in the same manner as other
20 landowners within the said service area.
21

22 CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

23 25. The expenditure or advance of any money or the performance of any
24 obligation of the United States under this Settlement Contract shall be contingent upon
25 appropriation or allotment of funds. Absence of appropriation or allotment of funds shall
26 not relieve the Contractor from any obligations under this Settlement Contract. No
27 liability shall accrue to the United States in case funds are not appropriated or allotted.
28

29 CONFIRMATION OF SETTLEMENT CONTRACT

30 26. The Contractor, after the execution of this Settlement Contract, shall
31 promptly seek to secure a decree of a court of competent jurisdiction of the State of
32 California, if appropriate, confirming the execution of this Settlement Contract. The
33 Contractor shall furnish the United States a certified copy of the final decree, the
34 validation proceedings, and all pertinent supporting records of the court approving and
35 confirming this Settlement Contract, and decreeing and adjudging it to be lawful, valid,
36 and binding on the Contractor. This Settlement Contract shall not be binding on the
37 United States until such final decree has been secured.
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1 UNAVOIDABLE GROUNDWATER PERCOLATION

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

6 PRIVACY ACT COMPLIANCE

7
8 28. (a) The Contractor shall comply with the Privacy Act of 1974 (5
9 U.S.C. 552a) (the Act) and the Department of the Interior rules and regulations under the
10 Act (43 CFR 2.45 et seq.) in maintaining Landholder acreage certification and reporting
11 records, required to be submitted to the Contractor for compliance with Sections 206 and
12 228 of the Reclamation Reform Act of 1982 (96 Stat. 1266), and pursuant to 43 CFR
13 426.18.

14
15 (b) With respect to the application and administration of the criminal
16 penalty provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's
17 employees responsible for maintaining the certification and reporting records referenced
18 in (a) above are considered to be employees of the Department of the Interior. See
19 U.S.C. 552a(m).

20
21 (c) The Contracting Officer or a designated representative shall
22 provide the Contractor with current copies of the Interior Department Privacy Act
23 regulations and the Bureau of Reclamation Federal Register Privacy Act System of
24 Records Notice (Acreage Limitation--Interior, Reclamation-31) which govern the
25 maintenance, safeguarding, and disclosure of information contained in the Landholder's
26 certification and reporting records.

27
28 (d) The Contracting Officer shall designate a full-time employee of the
29 Bureau of Reclamation to be the System Manager who shall be responsible for making
30 decisions on denials pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to
31 43 CFR 2.72. The Contractor is authorized to grant requests by individuals for access to
32 their own records.

33
34 (e) The Contractor shall forward promptly to the System Manager
35 each proposed denial of access under 43 CFR 2.64; and each request for amendment of
36 records filed under 43 CFR 2.71; notify the requester accordingly of such referral; and
37 provide the System Manager with information and records necessary to prepare an
38 appropriate response to the requester. These requirements do not apply to individuals
39 seeking access to their own certification and reporting forms filed with the Contractor
40 pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy Act as a basis
41 for the request.

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WATER CONSERVATION

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

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

1 (c) At five year intervals, the Contractor shall revise its water
2 conservation plan to reflect the then current conservation and efficiency criteria for
3 evaluating water conservation plans established under Federal law and submit such
4 revised water management plan to the Contracting Officer for review and evaluation.
5 The Contracting Officer will then determine if the water conservation plan meets
6 Reclamation's then current conservation and efficiency criteria for evaluating water
7 conservation plans established under Federal law.

8 (d) If the Contractor is engaged in direct ground-water recharge, such
9 activity shall be described in the Contractor's water conservation plan.

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

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

21 (2) If Reclamation accepts the Offer, the Contractor's payment
22 obligation under Article 8(a)(1) shall be reduced to the maximum quantity of Project
23 Water to be diverted by the Contractor as specified in the Offer. The Contractor shall not

1 divert Project Water in excess of the quantities set forth in the Offer: Provided, however,
2 if the Contractor's diversions of Project Water exceed the quantities set forth in the Offer,
3 the Contractor shall pay to Reclamation the applicable Rates and Charges plus an amount
4 equal to the applicable Rates and Charges, unadjusted for ability to pay, for each acre-
5 foot of Project Water diverted in excess of the quantities set forth in the Offer.

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

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

11 OPINIONS AND DETERMINATIONS

12 30. (a) Where the terms of this Settlement Contract provide for actions to
13 be based upon the opinion or determination of either party to this Settlement Contract,
14 said terms shall not be construed as permitting such action to be predicated upon
15 arbitrary, capricious, or unreasonable opinions or determinations. Both parties,
16 notwithstanding any other provisions of this Settlement Contract, expressly reserve the
17 right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or
18 unreasonable opinion or determination. Each opinion or determination by either party
19 shall be provided in a timely manner. Nothing in subdivision (a) of Article 30 of this
20 Settlement Contract is intended to or shall affect or alter the standard of judicial review
21 applicable under Federal law to any opinion or determination implementing a specific
22 provision of Federal law embodied in statute or regulation.
23

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

7 ~~(c) — In the event that the United States, as a result of litigation or~~
8 ~~agreement, or failure to require an agreement, give substantially more favorable treatment~~
9 ~~to any other diverter from the Sacramento River under similar circumstances than that~~
10 ~~accorded under this contract to the Contractor, the United States agrees to renegotiate this~~
11 ~~contract to provide comparable treatment to the Contractor hereunder.~~

12 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

13 31. (a) In addition to all other payments to be made by the Contractor
14 pursuant to this Settlement Contract, the Contractor shall pay to the United States, within
15 60 days after receipt of a bill and detailed statement submitted by the Contracting Officer
16 to the Contractor for such specific items of direct cost incurred by the United States for
17 work requested by the Contractor associated with this Settlement Contract plus indirect
18 costs in accordance with applicable Bureau of Reclamation policies and procedures. All
19 such amounts referred to in this Article shall not exceed the amount agreed to in writing
20 in advance by the Contractor. This Article shall not apply to costs for routine contract
21 administration.

22 (b) All advances for miscellaneous costs incurred for work requested
23 by the Contractor pursuant to Article 31 of this Settlement Contract shall be adjusted to

1 reflect the actual costs when the work has been completed. If the advances exceed the
2 actual costs incurred, the difference will be refunded to the Contractor. If the actual costs
3 exceed the Contractor's advances, the Contractor will be billed for the additional costs
4 pursuant to Article 31 of this Settlement Contract.

5 WAIVER OF DEFAULT

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

10 CONTRACT ASSIGNMENT OR TERMINATION UPON TRANSFER OF LAND

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

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

17 (2) A voluntary inter vivos transfer may be made to a person
18 ineligible to hold title to the land as a non-excess landowner provided that no Project
19 water may thereafter be used on excess lands and the assignee shall not be privileged to
20 obtain such use of Project water on excess.

21 (3) In the event the title of the Contractor to such land, or any
22 portion thereof, is transferred by operation of law, such as by conveyance in satisfaction
23 of a mortgage, by inheritance, or by devise, the rights and obligations of the Contractor

1 shall pass with the title and the land shall be subject to provisions of Reclamation law
2 pertaining to such transfers. Any transfer of the rights and obligations of this contract by
3 the person acquiring title by operation of law shall be in accordance with provisions of
4 subsection (1) or (2) above.

5 (b) The Contractor shall notify the Contracting Officer in writing of
6 any proposed transfer of this contract. In addition, in the case of a partial assignment the
7 Contract shall:

8 (1) Designate the proportionate quantities of base supply and
9 Project water which it desires to assign;

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

12 (c) No transfer of this contract shall be effective unless and until
13 approved by the Contracting Officer, and, if approved, shall be effective from the date of
14 such approval.

15 (d) Upon mutual agreement between the United States and the
16 Contractor the contract or a portion thereof may be terminated and the new landowner
17 will have the privilege of entering into a contract for water service for a proportionate
18 share of the total supply provided he is duly qualified to receive water for such land.

19 TERMINATION

20 34. This contract will terminate upon mutual agreement of the parties prior to
21 the end of the term or any renewal thereof.

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

3
4 THE UNITED STATES OF AMERICA

5
6
7
8 By: _____
9 Regional Director, Mid-Pacific Region
10 Bureau of Reclamation

11
12 **CONTRACTORS:**

13
14
15
16
17 _____
18 Jack W. Baber

19
20
21 _____
22 Judith S. Baber

23
24
25 _____
26 Jack W. Baber, Jr.

27
28
29 _____
30 Pixie E. Baber

31
32

Exhibit A

Jack W. Baber, Judith S. Baber, Jack W. Baber, Jr. And Pixie E. Baber

Contract No. 14-06-200-1604A

Sacramento River

SCHEDULE OF MONTHLY DIVERSIONS OF WATER

	<u>Base Supply</u> (acre-feet)	<u>Project Water</u> (acre-feet)	<u>Total Supply</u> (acre-feet)
April	<u>0</u>	<u>0</u>	<u>0</u>
May	<u>1,160</u>	<u>0</u>	<u>1,160</u>
June	<u>1,310</u>	<u>393</u>	<u>1,703</u>
July	<u>430</u>	<u>758</u>	<u>1,188</u>
August	<u>150</u>	<u>1,370</u>	<u>1,520</u>
September	<u>540</u>	<u>109</u>	<u>649</u>
October	<u>40</u>	<u>0</u>	<u>40</u>
Total	<u>3,630</u>	<u>2,630</u>	<u>6,260</u>

Point of Diversion: 95.6L

Dated:

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Exhibit B
(Map to be inserted to identify area covered by contract)

Jack W. Baber, Judith S. Baber, Jack W. Baber, Jr. And Pixie E. Baber
Contract No. 14-06-200-1604A
Sacramento River

1 Exhibit C

2
3 Jack W. Baber, Judith S. Baber, Jack W. Baber, Jr. And Pixie E. Baber

4 Contract No. 14-06-200-1604A

5 Sacramento River

6
7 UNIT DUTY

8
9 (In Acre-Feet Per Acre)

10
11
12

	<u>Rice</u>	<u>Alfalfa and Irrigated Pasture</u>	<u>General Crops</u>
13 June	1.80	0.80	0.60
14 July	1.90	1.00	0.70
15 August	1.80	0.80	0.70
16 September	0.50	0.60	0.40

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39 Dated:
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1 Exhibit D

2 Jack W. Baber, Judith S. Baber, Jack W. Baber, Jr. And Pixie E. Baber

3 Contract No. 14-06-200-1604A

4 Sacramento River

5
6 WATER RATES AND CHARGES

7 *Note: Rates and Charges shown are 2003 rates. This exhibit will be updated prior to*
8 *execution of the contract to reflect the Rates and Charges for 2004.*

9 COST OF SERVICE RATES: Per Acre-Foot

10		
11	Capital Rates	
12		\$4.45
13		
14	O&M Rates:	
15	Water Marketing	\$6.28
16	Storage	\$5.57
17		
18	Deficit Rates:	
19	Interest Bearing	\$1.91
20		
21	CFO/PFR Adjustment Rate 1/	\$1.09
22		
23	TOTAL	\$19.30
24		

25 FULL-COST RATES:

26
27 Section 202(3) Rate is applicable to a
28 Qualified Recipient or to a Limited
29 Recipient receiving irrigation water
30 on or before October 1, 1981. \$24.38

31
32 Section 205(a)(3) Rate is
33 applicable to a Limited Recipient that
34 did not receive irrigation water on or
35 before October 1, 1981. \$27.04

36
37 CHARGES UNDER P.L. 102-575 TO THE
38 RESTORATION FUND 2/

39 Restoration Payments (3407(d)(2)(A)) \$7.69

40
41 1/ Chief Financial Officer (CFO) adjustment and Provision for Replacement (PFR) expense is
42 being distributed over a 5-year period beginning in FY 2003 for those contractors that requested
43 those costs be deferred.

44
45 2/ Restoration fund charges are payments in addition to the water rates and were determined
46 pursuant to Title XXXIV of Public Law 102-575. Restoration fund charges are on a fiscal year
47 basis (10/1 - 9/30).