

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

CONTRACT BETWEEN THE UNITED STATES AND  
M. & T. INCORPORATED,  
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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7 DEPARTMENT OF THE INTERIOR  
8 BUREAU OF RECLAMATION  
9 Central Valley Project, California

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15 PROVIDING FOR PROJECT WATER  
16

17  
18 THIS CONTRACT, hereinafter referred to as "Settlement Contract," is

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

31 WITNESSETH, that:

1 EXPLANATORY RECITALS

2 [1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central  
3 Valley Project, California, for multiple purposes pursuant to its statutory authority; and

4 [2<sup>nd</sup>] WHEREAS, the Contractor has rights to divert, is diverting, and will  
5 continue to divert for reasonable beneficial use, water from the natural flow of the  
6 Sacramento River and tributaries thereto, that would have been flowing therein if the  
7 Central Valley Project were not in existence; and

8 [3<sup>rd</sup>] WHEREAS, the construction and operation of the integrated and  
9 coordinated Central Valley Project has changed and will further change the regimen of  
10 the Sacramento, American, San Joaquin, and Trinity Rivers and the Sacramento-San  
11 Joaquin Delta from unregulated flow to regulated flow; and

12 [4<sup>th</sup>] WHEREAS, the United States has rights to divert, is diverting, and will  
13 continue to divert waters from said Rivers and said Delta in connection with the operation  
14 of said Central Valley Project, and

15 [5<sup>th</sup>] WHEREAS, the Contractor and the United States had a dispute over the  
16 respective rights of the parties to divert and use water from the regulated flow of the  
17 Sacramento River which threatened to result in litigation, and as a means to settle that  
18 dispute entered into Contract No. 14-06-200-940A, as revised, hereinafter referred to as  
19 the Existing Contract, which established terms for the delivery to the Contractor of  
20 Central Valley Project Water, and the quantities of Base Supply the United States and the  
21 Contractor agreed may be diverted by the Contractor from the Sacramento River pursuant  
22 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, Provided,  
16 however, that the Contractor reserves the right to, and may at its option, divert water from  
17 Butte Creek to the extent permitted under Permits Nos. 4743, 4744, 5847, 5848; Licenses  
18 Nos. 2614, 2615, 2616, 2617; and the Decree rendered on May 25, 1920, by the Superior  
19 Court of Sutter County in the matter of Central California Investment Company v. John  
20 Crouch Land Company, et al., Action No. 1355, for beneficial use within the area  
21 delineated on Exhibit B. The lawfulness of the Contractor's points of diversion for said  
22 area from Butte Creek will not be challenged by, or on behalf of, the Bureau of  
23 Reclamation except in the case of a general adjudication as provided in subdivisions (b)

1 and (c) of Article 9. The quantity of any water diverted under this Settlement Contract  
2 from the Sacramento River, during the period April through October, for use on any lands  
3 delineated on Exhibit B, by the owner of such lands or otherwise shall constitute a part of  
4 the Contract Total as shown on Exhibit A and shall be subject to all the provisions of this  
5 Settlement Contract relating to such Contract Total as if such diversion were made by the  
6 Contractor.

7 (b) The Contractor may have acquired rights to divert water from the  
8 Sacramento River during the period April through October, that were obtained after the  
9 date of execution of the Existing Contract, or the Contractor may acquire such rights in  
10 the future. All diversions made from the Sacramento River, pursuant to such rights,  
11 during the period April through October, shall not be considered a part of the quantity of  
12 Base Supply and Project Water specified in Exhibit A; Provided, that the quantities  
13 diverted pursuant to the above rights shall be identified on the schedule submitted  
14 pursuant to Article 3(c) below, and shall not be substituted for any Base Supply or Project  
15 Water; Provided, further, that any such identified quantities of other acquired rights may  
16 be diverted by the Contractor before incurring any fee pursuant to Article 3(c)(1), below.

17 (c) Before April 1 and before the first day of each month thereafter  
18 when a revision is needed, the Contractor shall submit a written schedule to the  
19 Contracting Officer indicating the Contract Total to be diverted by the Contractor during  
20 each month under this Settlement Contract. The United States shall furnish water to the  
21 Contractor in accordance with the monthly operating schedule or any revisions thereof.  
22 However, the United States recognizes the need of the Contractor to change from time to

1 time its monthly diversions of water from the quantities shown in Exhibit A; the  
2 Contractor may make such changes, provided:

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

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

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

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

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

22 (e) No sale, transfer, exchange, or other disposal of any of the  
23 Contract Total designated in Exhibit A or the right to the use thereof for use on land other

1 than that shown on Exhibit B shall be made by the Contractor without first obtaining the  
2 written consent of the Contracting Officer. Such consent will not be unreasonably  
3 withheld and a decision will be rendered in a timely manner. For short-term actions that  
4 will occur within one year or less, the decision will be rendered within 30 days after  
5 receipt of a complete written proposal. For long-term actions that will occur in a period  
6 longer than one year, the decision will be rendered within 90 days after receipt of a  
7 complete written proposal. For a proposal to be deemed complete by the Contracting  
8 Officer, it must comply with all provisions required by State and Federal law, including  
9 information sufficient to enable the Contracting Officer to comply with the National  
10 Environmental Policy Act, the Endangered Species Act, and applicable rules or  
11 regulations then in effect; Provided that, such consent does not authorize the use of  
12 Federal facilities to facilitate or effectuate the sale, transfer, exchange or other disposal of  
13 Base Supply. Such use of Federal facilities will be the subject of a separate agreement to  
14 be entered into between the Contractor and Reclamation.

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

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

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

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

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

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

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

14 RETURN FLOW

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

1                                    CONSTRAINTS ON THE AVAILABILITY OF WATER

2            5.        (a)        In a Critical Year, the Contractor’s Base Supply and Project Water  
3 agreed to be diverted during the period April through October of the Year in which the  
4 principal portion of the Critical Year occurs and, each monthly quantity of said period  
5 shall be reduced by twenty-five percent.

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

11                                    INTEGRATED WATER MANAGEMENT AND PARTNERSHIPS

12            6.        The Contractor and United States desire to work together to maximize the  
13 reasonable beneficial use of water for their mutual benefit. As a consequence, the United  
14 States and the Contractor will work in partnership and with others within the Sacramento  
15 Valley, including other Contractors, to facilitate the better integration within the  
16 Sacramento Valley of all water supplies including, but not limited to, the better  
17 management and integration of surface water and groundwater, the development and  
18 better utilization of surface water storage, the effective utilization of waste, seepage and  
19 return flow water, and other operational and management options that may be identified  
20 in the future.

21                                    USE OF WATER FURNISHED TO CONTRACTOR

22            7.        (a)        Project Water furnished to the Contractor pursuant to this  
23 Settlement Contract shall not be delivered or furnished by the Contractor for any

1 purposes other than agricultural purposes without the written consent of the Contracting  
2 Officer. For purposes of this Settlement Contract, “agricultural purposes” includes, but is  
3 not restricted to, the watering of livestock, incidental domestic use including related  
4 landscape irrigation, or underground water replenishment.

5 (b) The Contractor shall comply with requirements applicable to the  
6 Contractor in biological opinion(s) prepared as a result of a consultation regarding the  
7 execution of this Settlement Contract undertaken pursuant to Section 7 of the Endangered  
8 Species Act of 1973, as amended, that are within the Contractor’s legal authority to  
9 implement. The Contractor shall comply with the limitations or requirements imposed by  
10 environmental documentation applicable to the Contractor and within its legal authority  
11 to implement. The Existing Contract, which evidences in excess of 40 years of  
12 diversions, for agricultural uses, of the quantities of water provided for in Article 3, and  
13 the underlying water rights of the Contractor will be considered in developing an  
14 appropriate base-line for the Biological Assessment prepared pursuant to the Endangered  
15 Species Act, and in any other needed environmental review. Nothing herein shall be  
16 construed to prevent the Contractor from challenging or seeking judicial relief in a court  
17 of competent jurisdiction with respect to any biological opinion or other environmental  
18 documentation referred to in this Article.

19 RATE AND METHOD OF PAYMENT FOR WATER

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

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

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

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

4     (i) the Secretary's then-current ratesetting policies for the Project; and (ii) applicable  
5 Reclamation law and associated rules and regulations, or policies: Provided, that if the  
6 Contractor desires to use Project Water for other than agricultural use the Rates and  
7 Charges set forth above will be adjusted by the Contracting Officer to the applicable  
8 Rates and Charges for such use. The Rates and Charges applicable to the Contractor  
9 upon execution of this Settlement Contract are set forth in Exhibit D, as may be revised  
10 annually. The Secretary's ratesetting policies for the Project shall be amended, modified,  
11 or superseded only through a public notice and comment procedure. The Contracting  
12 Officer shall adjust the amount of Project Water for which payment is required to the  
13 extent of any reduction in diversions of Project Water made in accordance with the water  
14 conservation provisions of Article 29 (e).

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

17                               (1)     Prior to July 1 of each Year, the Contracting Officer shall  
18 provide the Contractor an estimate of the Charges for Project Water that will be applied  
19 to the period October 1, of the current Year, through September 30, of the following  
20 Year, and the basis for such estimate. The Contractor shall be allowed not less than two  
21 months to review and comment on such estimates. On or before September 15 of each  
22 Year, the Contracting Officer shall notify the Contractor in writing of the Charges to be

1 in effect during the period October 1 of the current Year, through September 30, of the  
2 following Year, and such notification shall revise Exhibit D.

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

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

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

20 (2) With respect to Charges, the Contractor shall also make a  
21 payment to the United States, in addition to the Rate(s) in subdivision (c)(1) of this  
22 Article, at the Charges then in effect, before the end of the month following the month of  
23 delivery or transfer. The payments shall be consistent with the quantities of Project

1 Water delivered or transferred. Adjustment for overpayment or underpayment of  
2 Charges shall be made through the adjustment of payments due to the United States for  
3 Charges for the next month. Any amount to be paid for past due payment of Charges  
4 shall be computed pursuant to Article 13 of this Settlement Contract.

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

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

12 (e) The Contracting Officer shall keep its accounts pertaining to the  
13 administration of the financial terms and conditions of its long-term water service and  
14 Settlement Contracts, in accordance with applicable Federal standards, so as to reflect the  
15 application of Project costs and revenues. The Contracting Officer shall, each Year upon  
16 request of the Contractor, provide to the Contractor a detailed accounting of all Project  
17 and Contractor expense allocations, the disposition of all Project and Contractor  
18 revenues, and a summary of all water delivery information. The Contracting Officer and  
19 the Contractor shall enter into good faith negotiations to resolve any discrepancies or  
20 disputes relating to accountings, reports, or information.

21 (f) The parties acknowledge and agree that the efficient administration  
22 of this Settlement Contract is their mutual goal. Recognizing that experience has  
23 demonstrated that mechanisms, policies, and procedures used for establishing Rates and

1 Charges and/or for making and allocating payments, other than those set forth in this  
2 Article may be in the mutual best interest of the parties, it is expressly agreed that the  
3 parties may enter into agreements to modify the mechanisms, policies, and procedures for  
4 any of those purposes while this Settlement Contract is in effect without amendment of  
5 this Settlement Contract.

6 (g) For the term of this Settlement Contract, Rates under the respective  
7 ratesetting policies for the Project will be established to recover only reimbursable  
8 operation and maintenance (including any deficits) and capital costs of the Project, as  
9 those terms are used in the then current Project ratesetting policies, and interest, where  
10 appropriate, except in instances where a minimum Rate is applicable in accordance with  
11 the relevant Project ratesetting policy. Proposed changes of significance in practices  
12 which implement the ratesetting policies for the Project will not be implemented until the  
13 Contracting Officer has provided the Contractor an opportunity to discuss the nature,  
14 need, and impact of the proposed change. The Contractor retains all rights to challenge  
15 the validity of Rates and Charges imposed pursuant to this Settlement Contract, including  
16 but not limited to operation and maintenance expenses and operation and maintenance  
17 deficits, in an appropriate administrative or judicial proceeding.

18 (h) Except as provided in subsection 3405(a)(1)(B) of the CVPIA, the  
19 Rates for Project Water transferred, exchanged, or otherwise disposed of, by the  
20 Contractor shall be the Contractor's Rates adjusted upward or downward to reflect the  
21 changed costs of delivery (if any) of the transferred, exchanged, or otherwise disposed of  
22 Project Water to the transferee's point of delivery in accordance with the then-current  
23 ratesetting policies for the Project. Except as provided in subsection 3407(d)(2)(A) of the

1 CVPIA, the Charges for Project Water transferred, exchanged, or otherwise disposed of,  
2 by the Contractor shall be the Contractor's Charges specified in Exhibit D. If the  
3 Contractor is receiving lower Rates and Charges because of inability to pay and is  
4 transferring, exchanging, or otherwise disposing of Project Water to another entity whose  
5 Rates and Charges are not adjusted due to inability to pay, the Rates and Charges for  
6 transferred, exchanged, or otherwise disposed of Project Water shall be the Contractor's  
7 Rates and Charges unadjusted for ability to pay.

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

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

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

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

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

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

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

7                   AGREEMENT ON WATER QUANTITIES

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

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

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

18                   (b) Nothing herein contained is intended to or does limit rights of the  
19 Contractor against others than the United States or of the United States against any  
20 person other than the Contractor: Provided, however, that in the event the Contractor, the  
21 United States, or any other person shall become a party to a general adjudication of rights  
22 to the use of water of the Sacramento River system, this Settlement Contract shall not  
23 jeopardize the rights or position of either party hereto or of any other person and the

1 rights of all such persons in respect to the use of such water shall be determined in such  
2 proceedings the same as if this Settlement Contract had not been entered into, and if final  
3 judgment in any such general adjudication shall determine that the rights of the parties  
4 hereto are different from the rights as assumed herein, the parties shall negotiate an  
5 amendment to give effect to such judgment. In the event the parties are unable to agree  
6 on an appropriate amendment they shall, within 60 days of determining that there is an  
7 impasse, employ the services of a neutral mediator, experienced in resolving water rights  
8 disputes, to assist in resolving the impasse. The cost of the mediation will be shared  
9 equally. A failure to reach agreement on an amendment within 60 days of the end of  
10 mediation will cause the immediate termination of this Settlement Contract.

11 (c) In the event that the California State Water Resources Control  
12 Board or a court of competent jurisdiction issues a final decision or order modifying the  
13 terms and conditions of the water rights of either party to this Settlement Contract in  
14 order to impose Bay-Delta water quality obligations, the Contractor and the United States  
15 shall promptly meet to determine whether or not to modify any of the terms of this  
16 Settlement Contract to comply with the final decision or order, including, but not limited  
17 to, the applicability of the rescheduling charge in Article 3(c)(1) of this Settlement  
18 Contract. If within 60 days of the date of the issuance of the final decision or order the  
19 parties are not able to reach agreement regarding either the need to modify this  
20 Settlement Contract or the manner in which this Settlement Contract is to be modified,  
21 the parties shall promptly retain a neutral mediator, experienced in resolving water right  
22 disputes, to assist the parties in resolving their dispute. The cost of the mediator shall be  
23 shared equally. In the event that either of the parties to this Settlement Contract

1 determines that the parties will not be able to develop mutually-agreeable modification(s)  
2 to this Settlement Contract even with the assistance of a mediator, either of the parties to  
3 this Settlement Contract may attempt to resolve the impasse by seeking appropriate  
4 judicial relief including, but not limited to, filing a general adjudication of the rights to  
5 the use of water in the Sacramento River system. The foregoing provisions of this sub-  
6 article shall only apply to the incremental obligations contained within a final decision or  
7 order of the State Water Resources Control Board that reflects a modification to the  
8 obligations imposed in State Water Resources Control Board Revised Water Rights  
9 Decision 1641 dated March 15, 2000, and its associated 1995 Water Quality Control Plan  
10 which, taken together, will be considered the baseline for the application of the  
11 provisions of this sub-article.

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

1 admission that any part of the water used by the Contractor during the term of this  
2 Settlement Contract was in fact water to which it would not have been entitled under  
3 water rights owned by it nor shall receipt of payments thereunder by the United States  
4 from the Contractor be construed as an admission that any part of the water used by the  
5 Contractor during the term of this Settlement Contract was in fact water to which it  
6 would have been entitled under water rights owned by it.

7 MEASUREMENT OF WATER

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

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

20 (c) The right of ingress to and egress from all points of diversion is  
21 hereby granted to all authorized employees of the United States. The Contractor also  
22 hereby grants to the United States the right to install, operate, maintain and replace such

1 equipment on diversion or carriage facilities at each point of diversion as the Contracting  
2 Officer deems necessary.

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

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

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

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

1 RULES AND REGULATIONS

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

7 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

8  
9 12. (a) The obligation of the Contractor to pay the United States as  
10 provided in this Settlement Contract is a general obligation of the Contractor  
11 notwithstanding the manner in which the obligation may be distributed among the  
12 Contractor's water users and notwithstanding the default of individual water users in their  
13 obligations to the Contractor.

14  
15 (b) The payment of Charges becoming due hereunder is a condition  
16 precedent to receiving benefits under this Settlement Contract. The United States shall  
17 not make water available to the Contractor through Project facilities during any period in  
18 which the Contractor may be in arrears in the advance payment of water Rates due the  
19 United States. The Contractor shall not furnish water made available pursuant to this  
20 Settlement Contract for lands or parties which are in arrears in the advance payment of  
21 water rates levied or established by the Contractor.

22  
23 (c) With respect to subdivision (b) of this Article, the Contractor shall  
24 have no obligation to require advance payment for water Rates which it levies.

25  
26 CHARGES FOR DELINQUENT PAYMENTS

27  
28 13. (a) The Contractor shall be subject to interest, administrative and  
29 penalty charges on delinquent installments or payments. When a payment is not received  
30 by the due date, the Contractor shall pay an interest charge for each day the payment is  
31 delinquent beyond the due date. When a payment becomes 60 days delinquent, the  
32 Contractor shall pay an administrative charge to cover additional costs of billing and  
33 processing the delinquent payment. When a payment is delinquent 90 days or more, the  
34 Contractor shall pay an additional penalty charge of six percent per year for each day the  
35 payment is delinquent beyond the due date. Further, the Contractor shall pay any fees  
36 incurred for debt collection services associated with a delinquent payment.

37  
38 (b) The interest charge rate shall be the greater of the rate prescribed  
39 quarterly in the Federal Register by the Department of the Treasury for application to  
40 overdue payments, or the interest rate of one-half of one percent per month prescribed by

1 Section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest  
2 charge rate shall be determined as of the due date and remain fixed for the duration of the  
3 delinquent period.

4  
5 (c) When a partial payment on a delinquent account is received, the  
6 amount received shall be applied, first to the penalty, second to the administrative  
7 charges, third to the accrued interest, and finally to the overdue payment.

8  
9 QUALITY OF WATER

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

16 WATER AND AIR POLLUTION CONTROL

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

21 EQUAL OPPORTUNITY

22 16. During the performance of this Settlement Contract, the Contractor agrees  
23 as follows:

24  
25 (a) The Contractor will not discriminate against any employee or  
26 applicant for employment because of race, color, religion, sex, or national origin. The  
27 Contractor will take affirmative action to ensure that applicants are employed, and that  
28 employees are treated during employment, without regard to their race, color, religion,  
29 sex, or national origin. Such action shall include, but not be limited to, the following:  
30 Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising;  
31 layoff or termination, rates of payment or other forms of compensation; and selection for  
32 training, including apprenticeship. The Contractor agrees to post in conspicuous places,

1 available to employees and applicants for employment, notices to be provided by the  
2 Contracting Officer setting forth the provisions of this nondiscrimination clause.

3  
4 (b) The Contractor will, in all solicitations or advertisements for  
5 employees placed by or on behalf of the Contractor, state that all qualified applicants will  
6 receive consideration for employment without discrimination because of race, color,  
7 religion, sex, or national origin.

8  
9 (c) The Contractor will send to each labor union or representative of  
10 workers with which it has a collective bargaining agreement or other contract or  
11 understanding, a notice, to be provided by the Contracting Officer, advising the said labor  
12 union or workers' representative of the Contractor's commitments under Section 202 of  
13 Executive Order No. 11246 of September 24, 1965, as amended, and shall post copies of  
14 the notice in conspicuous places available to employees and applicants for employment.

15  
16 (d) The Contractor will comply with all provisions of Executive Order  
17 No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant  
18 orders of the Secretary of Labor.

19  
20 (e) The Contractor will furnish all information and reports required by  
21 said amended Executive Order and by the rules, regulations, and orders of the Secretary  
22 of Labor, or pursuant thereto, and will permit access to its books, records, and accounts  
23 by the Contracting Officer and the Secretary of Labor for purposes of investigation to  
24 ascertain compliance with such rules, regulations, and orders.

25  
26 (f) In the event of the Contractor's noncompliance with the  
27 nondiscrimination clauses of this Settlement Contract or with any of the said rules,  
28 regulations, or orders, this Settlement Contract may be canceled, terminated, or  
29 suspended, in whole or in part, and the Contractor may be declared ineligible for further  
30 Government contracts in accordance with procedures authorized in said amended  
31 Executive Order, and such other sanctions may be imposed and remedies invoked as  
32 provided in said Executive Order, or by rule, regulation, or order of the Secretary of  
33 Labor, or as otherwise provided by law.

34  
35 (g) The Contractor will include the provisions of paragraphs (a)  
36 through (g) in every subcontract or purchase order unless exempted by the rules,  
37 regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said  
38 amended Executive Order, so that such provisions will be binding upon each  
39 subcontractor or vendor. The Contractor will take such action with respect to any  
40 subcontract or purchase order as may be directed by the Secretary of Labor as a means of  
41 enforcing such provisions, including sanctions for noncompliance: Provided, however,  
42 that in the event the Contractor becomes involved in, or is threatened with, litigation with  
43 a subcontractor or vendor as a result of such direction, the Contractor may request the  
44 United States to enter into such litigation to protect the interests of the United States.

45

1                    COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

2  
3            17.    Omitted

4  
5                    MINGLING OF CONTRACTOR’S PROJECT AND NON-PROJECT WATER

6            18.    (a)    Project Water must of necessity be transported by the Contractor to  
7 its water users by means of the same works and channels used for the transport of its non-  
8 Project Water including Base Supply. Notwithstanding such mingling of water, the  
9 provisions of Article 11 hereof shall be applicable only to Project Water, and such  
10 mingling of water shall not in any manner subject to the provisions of Article 11 hereof  
11 the Contractor’s non-Project water including Base Supply.

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

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



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CHANGE OF PLACE OF USE OR ORGANIZATION

20. Omitted

CONSOLIDATION OF CONTRACTING ENTITIES

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

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

NOTICES

22. Any notice, demand, or request authorized or required by this Settlement Contract shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Area Manager, Northern California Area Office, Bureau of Reclamation, 16349 Shasta Dam Blvd., Shasta Lake, California, 96019, and on behalf of the United States, when mailed, postage prepaid, or delivered to M. & T. Incorporated, 3964 Chico River Road, Chico, California 95928. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this Article for other notices.

ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

23. Omitted

OFFICIALS NOT TO BENEFIT

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

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

1                   CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

2  
3           25.     The expenditure or advance of any money or the performance of any  
4 obligation of the United States under this Settlement Contract shall be contingent upon  
5 appropriation or allotment of funds. Absence of appropriation or allotment of funds shall  
6 not relieve the Contractor from any obligations under this Settlement Contract. No  
7 liability shall accrue to the United States in case funds are not appropriated or allotted.  
8

9                   CONFIRMATION OF SETTLEMENT CONTRACT

10           26.     The Contractor, after the execution of this Settlement Contract, shall  
11 promptly seek to secure a decree of a court of competent jurisdiction of the State of  
12 California, if appropriate, confirming the execution of this Settlement Contract. The  
13 Contractor shall furnish the United States a certified copy of the final decree, the  
14 validation proceedings, and all pertinent supporting records of the court approving and  
15 confirming this Settlement Contract, and decreeing and adjudging it to be lawful, valid,  
16 and binding on the Contractor. This Settlement Contract shall not be binding on the  
17 United States until such final decree has been secured.  
18

19                   UNAVOIDABLE GROUNDWATER PERCOLATION

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

24                   PRIVACY ACT COMPLIANCE

25  
26           28.     (a)     The Contractor shall comply with the Privacy Act of 1974 (5  
27 U.S.C. 552a) (the Act) and the Department of the Interior rules and regulations under the  
28 Act (43 CFR 2.45 et seq.) in maintaining Landholder acreage certification and reporting  
29 records, required to be submitted to the Contractor for compliance with Sections 206 and  
30 228 of the Reclamation Reform Act of 1982 (96 Stat. 1266), and pursuant to 43 CFR  
31 426.18.  
32

33                   (b)     With respect to the application and administration of the criminal  
34 penalty provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's  
35 employees responsible for maintaining the certification and reporting records referenced  
36 in (a) above are considered to be employees of the Department of the Interior. See 5  
37 U.S.C. 552a(m).  
38

39                   (c)     The Contracting Officer or a designated representative shall  
40 provide the Contractor with current copies of the Interior Department Privacy Act

1 regulations and the Bureau of Reclamation Federal Register Privacy Act System of  
2 Records Notice (Acreage Limitation--Interior, Reclamation-31) which govern the  
3 maintenance, safeguarding, and disclosure of information contained in the Landholder's  
4 certification and reporting records.

5  
6 (d) The Contracting Officer shall designate a full-time employee of the  
7 Bureau of Reclamation to be the System Manager who shall be responsible for making  
8 decisions on denials pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to  
9 43 CFR 2.72. The Contractor is authorized to grant requests by individuals for access to  
10 their own records.

11  
12 (e) The Contractor shall forward promptly to the System Manager  
13 each proposed denial of access under 43 CFR 2.64; and each request for amendment of  
14 records filed under 43 CFR 2.71; notify the requester accordingly of such referral; and  
15 provide the System Manager with information and records necessary to prepare an  
16 appropriate response to the requester. These requirements do not apply to individuals  
17 seeking access to their own certification and reporting forms filed with the Contractor  
18 pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy Act as a basis  
19 for the request.

#### 20 21 WATER CONSERVATION

22 29. (a) Prior to the diversion of Project Water, the Contractor shall be  
23 implementing an effective water conservation and efficiency program based on the  
24 Basin-Wide Water Management Plan and/or Contractor's water conservation plan that  
25 has been determined by the Contracting Officer to meet the conservation and efficiency  
26 criteria for evaluating water conservation plans established under Federal law. The water  
27 conservation and efficiency program shall contain definite water conservation objectives,  
28 appropriate economically feasible water conservation measures, and time schedules for  
29 meeting those objectives. Continued diversion of Project Water pursuant to this  
30 Settlement Contract shall be contingent upon the Contractor's continued implementation  
31 of such water conservation program. In the event the Contractor's water conservation  
32 plan or any revised water conservation plan completed pursuant to subdivision (c) of  
33 Article 29 of this Settlement Contract have not yet been determined by the Contracting

1 Officer to meet such criteria, due to circumstances which the Contracting Officer  
2 determines are beyond the control of the Contractor, Project Water deliveries shall be  
3 made under this Settlement Contract so long as the Contractor diligently works with the  
4 Contracting Officer to obtain such determination at the earliest practicable date, and  
5 thereafter the Contractor immediately begins implementing its water conservation and  
6 efficiency program in accordance with the time schedules therein.

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

11 (c) At five year intervals, the Contractor shall revise its water  
12 conservation plan to reflect the then current conservation and efficiency criteria for  
13 evaluating water conservation plans established under Federal law and submit such  
14 revised water management plan to the Contracting Officer for review and evaluation.  
15 The Contracting Officer will then determine if the water conservation plan meets  
16 Reclamation's then current conservation and efficiency criteria for evaluating water  
17 conservation plans established under Federal law.

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

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

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

9                                   (2)     If Reclamation accepts the Offer, the Contractor's payment  
10 obligation under Article 8(a)(1) shall be reduced to the maximum quantity of Project  
11 Water to be diverted by the Contractor as specified in the Offer. The Contractor shall not  
12 divert Project Water in excess of the quantities set forth in the Offer: Provided, however,  
13 if the Contractor's diversions of Project Water exceed the quantities set forth in the Offer,  
14 the Contractor shall pay to Reclamation the applicable Rates and Charges plus an amount  
15 equal to the applicable Rates and Charges, unadjusted for ability to pay, for each acre-  
16 foot of Project Water diverted in excess of the quantities set forth in the Offer.

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

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

22  
23

OPINIONS AND DETERMINATIONS

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2  
3           30.   (a)    Where the terms of this Settlement Contract provide for actions to  
4 be based upon the opinion or determination of either party to this Settlement Contract,  
5 said terms shall not be construed as permitting such action to be predicated upon  
6 arbitrary, capricious, or unreasonable opinions or determinations. Both parties,  
7 notwithstanding any other provisions of this Settlement Contract, expressly reserve the  
8 right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or  
9 unreasonable opinion or determination. Each opinion or determination by either party  
10 shall be provided in a timely manner. Nothing in subdivision (a) of Article 30 of this  
11 Settlement Contract is intended to or shall affect or alter the standard of judicial review  
12 applicable under Federal law to any opinion or determination implementing a specific  
13 provision of Federal law embodied in statute or regulation.

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

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

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CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

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

WAIVER OF DEFAULT

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

CONTRACT ASSIGNMENT OR TERMINATION UPON TRANSFER OF LAND

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

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

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

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

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

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

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

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

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

10 TERMINATION

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

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

15  
16 THE UNITED STATES OF AMERICA

17  
18  
19  
20 By: \_\_\_\_\_  
21 Regional Director, Mid-Pacific Region  
22 Bureau of Reclamation

23  
24  
25 (SEAL)

26  
27  
28 **M. & T. INCORPORATED**

29  
30  
31 By: \_\_\_\_\_  
32 President

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ATTEST:

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Secretary

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Exhibit A

M. & T. Incorporated  
Contract No. 14-06-200-940A  
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>1,200</u>	<u>0</u>	<u>1,200</u>
May	<u>1,640</u>	<u>0</u>	<u>1,640</u>
June	<u>2,730</u>	<u>272</u>	<u>3,002</u>
July	<u>4,010</u>	<u>320</u>	<u>4,330</u>
August	<u>4,260</u>	<u>304</u>	<u>4,564</u>
September	<u>2,380</u>	<u>80</u>	<u>2,460</u>
October	<u>760</u>	<u>0</u>	<u>760</u>
Total	<u>16,980</u>	<u>976</u>	<u>17,956</u>

Points of Diversion: 141.5L

Dated:

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

M. & T. Incorporated  
Contract No. 14-06-200-940A  
Sacramento River

1 Exhibit C

2  
3 M. & T. Incorporated  
4 Contract No. 14-06-200-940A  
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	1.90	0.80	0.60
14 July	2.00	1.00	0.70
15 August	1.90	0.80	0.70
16 September	0.50	0.60	0.40

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34 Points of Diversion: 141.5L  
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39 Dated:  
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1 Exhibit D  
2 M. & T. Incorporated  
3 Contract No. 14-06-200-940A  
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		\$4.55
13		
14	O&M Rates:	
15	Water Marketing	\$6.28
16	Storage	\$5.57
17		
18	Deficit Rates:	
19	Interest Bearing	\$2.04
20		
21	CFO/PFR Adjustment Rate 1/	\$1.21
22		
23	TOTAL	\$19.65
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. \$24.91

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. \$27.64

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).