

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

CONTRACT BETWEEN THE UNITED STATES AND  
RECLAMATION DISTRICT NO. 108,  
DIVERTER OF WATER FROM SACRAMENTO RIVER SOURCES,  
SETTLING WATER RIGHTS DISPUTES AND  
PROVIDING FOR PROJECT WATER

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THIS CONTRACT, hereinafter referred to as "Settlement Contract," is entered into by THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, made this \_\_\_\_\_ day of \_\_\_\_\_, 2004, pursuant to the applicable authority granted to it generally in the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, including, but not limited to, Sections 9 and 14 thereto, July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1262), October 27, 1986 (100 Stat. 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively hereinafter referred to as Federal Reclamation law, and RECLAMATION DISTRICT NO. 108, hereinafter referred to as the Contractor, a public agency of the State of California, duly organized, existing, and acting pursuant to the laws thereof, with its principal place of business in California;  
~~[may change depending on contracting entity]~~

WITNESSETH, that:

EXPLANATORY RECITALS

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

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

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

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

[5<sup>th</sup>] WHEREAS, the Contractor and the United States had a dispute over the respective rights of the parties to divert and use water from the regulated flow of the Sacramento River which threatened to result in litigation, and as a means to settle that dispute entered into Contract No. 14-06-200-876A, ~~as amended~~, hereinafter referred to as the Existing Contract, which established terms for the delivery to the Contractor of Central Valley Project Water, and the quantities of Base Supply the United States and the Contractor agreed may be diverted by the Contractor from the Sacramento River pursuant 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: **Provided,**  
21 **however, that the Contractor reserves the right to, and may at its option, divert water from**  
22 **the Colusa Basin Drain to the extent permitted under Permit No. 8251 for beneficial use**  
23 **within the area delineated on Exhibit B. The lawfulness of the Contractor's diversion for**

1 said area from such Drain will not be challenged by, or on behalf of, the Bureau of  
2 Reclamation except in the case of a general adjudication as provided in subdivision (b) of  
3 Article 9.

4 ~~[NOTE: contractor-specific language dealing with individual water rights may be~~  
5 ~~needed.]~~

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

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

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

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

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

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

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

20                   (e)     No sale, transfer, exchange, or other disposal of any of the  
21 Contract Total designated in Exhibit A or the right to the use thereof for use on land other  
22 than that shown on Exhibit B shall be made by the Contractor without first obtaining the  
23 written consent of the Contracting Officer. Such consent will not be unreasonably

1 withheld and a decision will be rendered in a timely manner. For short-term actions that  
2 will occur within one year or less, the decision will be rendered within 30 days after  
3 receipt of a complete written proposal. For long-term actions that will occur in a period  
4 longer than one year, the decision will be rendered within 90 days after receipt of a  
5 complete written proposal. For a proposal to be deemed complete by the Contracting  
6 Officer, it must comply with all provisions required by State and Federal law, including  
7 information sufficient to enable the Contracting Officer to comply with the National  
8 Environmental Policy Act, the Endangered Species Act, and applicable rules or  
9 regulations then in effect; Provided that, such consent does not authorize the use of  
10 Federal facilities to facilitate or effectuate the sale, transfer, exchange or other disposal of  
11 Base Supply. Such use of Federal facilities will be the subject of a separate agreement to  
12 be entered into between the Contractor and Reclamation.

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

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

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

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



1 principal portion of the Critical Year occurs and, each monthly quantity of said period  
2 shall be reduced by twenty-five percent.

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

#### 8 INTEGRATED WATER MANAGEMENT AND PARTNERSHIPS

9 6. The Contractor and United States desire to work together to maximize the  
10 reasonable beneficial use of water for their mutual benefit. As a consequence, the United  
11 States and the Contractor will work in partnership and with others within the Sacramento  
12 Valley, including other Contractors, to facilitate the better integration within the  
13 Sacramento Valley of all water supplies including, but not limited to, the better  
14 management and integration of surface water and groundwater, the development and  
15 better utilization of surface water storage, the effective utilization of waste, seepage and  
16 return flow water, and other operational and management options that may be identified  
17 in the future. ~~*Language cross-referencing other related agreement will be added as*~~  
18 ~~*appropriate to the individual Settlement Contracts.*~~

#### 19 USE OF WATER FURNISHED TO CONTRACTOR

20 7. (a) Project Water furnished to the Contractor pursuant to this  
21 Settlement Contract shall not be delivered or furnished by the Contractor for any  
22 purposes other than agricultural purposes without the written consent of the Contracting  
23 Officer. For purposes of this Settlement Contract, “agricultural purposes” includes, but is

1 not restricted to, the watering of livestock, incidental domestic use including related  
2 landscape irrigation, or underground water replenishment.

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

17 RATE AND METHOD OF PAYMENT FOR WATER

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

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

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



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

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

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

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

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

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

18                                   (2)     With respect to Charges, the Contractor shall also make a  
19 payment to the United States, in addition to the Rate(s) in subdivision (c)(1) of this  
20 Article, at the Charges then in effect, before the end of the month following the month of  
21 delivery or transfer. The payments shall be consistent with the quantities of Project  
22 Water delivered or transferred. Adjustment for overpayment or underpayment of  
23 Charges shall be made through the adjustment of payments due to the United States for

1 Charges for the next month. Any amount to be paid for past due payment of Charges  
2 shall be computed pursuant to Article 13 of this Settlement Contract.

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

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

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

19 (f) The parties acknowledge and agree that the efficient administration  
20 of this Settlement Contract is their mutual goal. Recognizing that experience has  
21 demonstrated that mechanisms, policies, and procedures used for establishing Rates and  
22 Charges and/or for making and allocating payments, other than those set forth in this  
23 Article may be in the mutual best interest of the parties, it is expressly agreed that the

1 parties may enter into agreements to modify the mechanisms, policies, and procedures for  
2 any of those purposes while this Settlement Contract is in effect without amendment of  
3 this Settlement Contract.

4 (g) For the term of this Settlement Contract, Rates under the respective  
5 ratesetting policies for the Project will be established to recover only reimbursable  
6 operation and maintenance (including any deficits) and capital costs of the Project, as  
7 those terms are used in the then current Project ratesetting policies, and interest, where  
8 appropriate, except in instances where a minimum Rate is applicable in accordance with  
9 the relevant Project ratesetting policy. Proposed changes of significance in practices  
10 which implement the ratesetting policies for the Project will not be implemented until the  
11 Contracting Officer has provided the Contractor an opportunity to discuss the nature,  
12 need, and impact of the proposed change.

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

1 transferred, exchanged, or otherwise disposed of Project Water shall be the Contractor's  
2 Rates and Charges unadjusted for ability to pay.

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

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

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

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

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

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

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

4 AGREEMENT ON WATER QUANTITIES

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

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

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

15 (b) Nothing herein contained is intended to or does limit rights of the  
16 Contractor against others than the United States or of the United States against any  
17 person other than the Contractor: Provided, however, that in the event the Contractor, the  
18 United States, or any other person shall become a party to a general adjudication of rights  
19 to the use of water of the Sacramento River system, this Settlement Contract shall not  
20 jeopardize the rights or position of either party hereto or of any other person and the  
21 rights of all such persons in respect to the use of such water shall be determined in such  
22 proceedings the same as if this Settlement Contract had not been entered into, and if final  
23 judgment in any such general adjudication shall determine that the rights of the parties

1 hereto are different from the rights as assumed herein, the parties shall negotiate an  
2 amendment to give effect to such judgment. In the event the parties are unable to agree  
3 on an appropriate amendment they shall, within 60 days of determining that there is an  
4 impasse, employ the services of a neutral mediator, experienced in resolving water rights  
5 disputes, to assist in resolving the impasse. The cost of the mediation will be shared  
6 equally. A failure to reach agreement on an amendment within 60 days of the end of  
7 mediation will cause the immediate termination of this Settlement Contract.

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

1 judicial relief including, but not limited to, filing a general adjudication of the rights to  
2 the use of water in the Sacramento River system. The foregoing provisions of this sub-  
3 article shall only apply to the incremental obligations contained within a final decision or  
4 order of the State Water Resources Control Board that reflects a modification to the  
5 obligations imposed in State Water Resources Control Board Revised Water Rights  
6 Decision 1641 dated March 15, 2000, and its associated 1995 Water Quality Control Plan  
7 which, taken together, will be considered the baseline for the application of the  
8 provisions of this sub-article.

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



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

4 MEASUREMENT OF WATER

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

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

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

22 (d) The Contractor shall not modify, alter, remove, or replace  
23 diversion facilities or do any other act which would alter the effectiveness or accuracy of

1 the measuring equipment installed by the United States or its representatives unless and  
2 until the Contracting Officer has been notified with due diligence and has been given an  
3 opportunity to modify such measuring equipment in such manner as may be necessary or  
4 appropriate. In the event of an emergency the Contractor shall notify the United States  
5 within a reasonable time thereafter as to the existence of the emergency and the nature  
6 and extent of such modification, alteration, removal, or replacement of diversion  
7 facilities.

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

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

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

19 RULES AND REGULATIONS

20 11. The parties agree that the delivery of Project Water for irrigation use or  
21 use of Federal facilities pursuant to this Settlement Contract is subject to Federal  
22 Reclamation law, including but not limited to, the Reclamation Reform Act of 1982 (43

1 U.S.C. 390aa et seq.), as amended and supplemented, and the rules and regulations  
2 promulgated by the Secretary of the Interior under Federal Reclamation law.

3 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT  
4

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

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

18  
19 (c) With respect to subdivision (b) of this Article, the Contractor shall  
20 have no obligation to require advance payment for water Rates which it levies.

21  
22 CHARGES FOR DELINQUENT PAYMENTS  
23

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

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

40  
41 (c) When a partial payment on a delinquent account is received, the  
42 amount received shall be applied, first to the penalty, second to the administrative  
43 charges, third to the accrued interest, and finally to the overdue payment.  
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QUALITY OF WATER

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

WATER AND AIR POLLUTION CONTROL

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

EQUAL OPPORTUNITY

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

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

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

1 (c) The Contractor will send to each labor union or representative of  
2 workers with which it has a collective bargaining agreement or other contract or  
3 understanding, a notice, to be provided by the Contracting Officer, advising the said labor  
4 union or workers' representative of the Contractor's commitments under Section 202 of  
5 Executive Order No. 11246 of September 24, 1965, as amended, and shall post copies of  
6 the notice in conspicuous places available to employees and applicants for employment.  
7

8 (d) The Contractor will comply with all provisions of Executive Order  
9 No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant  
10 orders of the Secretary of Labor.  
11

12 (e) The Contractor will furnish all information and reports required by  
13 said amended Executive Order and by the rules, regulations, and orders of the Secretary  
14 of Labor, or pursuant thereto, and will permit access to its books, records, and accounts  
15 by the Contracting Officer and the Secretary of Labor for purposes of investigation to  
16 ascertain compliance with such rules, regulations, and orders.  
17

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

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

### 38 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

#### 39 *(For Districts Only)*

40  
41 17. (a) The Contractor shall comply with Title VI of the Civil Rights Act  
42 of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112,  
43 as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other  
44 applicable civil rights laws, as well as with their respective implementing regulations and  
45 guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.  
46

1 (b) These statutes require that no person in the United States shall, on  
2 the grounds of race, color, national origin, handicap, or age, be excluded from  
3 participation in, be denied the benefits of, or be otherwise subjected to discrimination  
4 under any program or activity receiving financial assistance from the Bureau of  
5 Reclamation. By executing this Settlement Contract, the Contractor agrees to  
6 immediately take any measures necessary to implement this obligation, including  
7 permitting officials of the United States to inspect premises, programs, and documents.  
8

9 (c) The Contractor makes this agreement in consideration of and for  
10 the purpose of obtaining any and all Federal grants, loans, contracts, property discounts,  
11 or other Federal financial assistance extended after the date hereof to the Contractor by  
12 the Bureau of Reclamation, including installment payments after such date on account of  
13 arrangements for Federal financial assistance which were approved before such date.  
14 The Contractor recognizes and agrees that such Federal assistance will be extended in  
15 reliance on the representations and agreements made in this Article, and that the United  
16 States reserves the right to seek judicial enforcement thereof.  
17

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

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

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

1 (c) The Contractor will not be considered in violation of the  
2 requirement that Project Water be delivered only to Eligible Lands during any month of  
3 the irrigation season that the water requirement for beneficial use on Eligible Lands for  
4 that month is equal to or in excess of the Project Water for that month as shown on  
5 Exhibit A or any revision thereof pursuant to subdivision (c) of Article 3. The water  
6 requirement for beneficial use on Eligible Lands will be determined by multiplying:  
7 (1) the number of irrigable acres of the particular types of  
8 crops grown in that year on the acreage designated as eligible by  
9 (2) the Unit Duties as set forth in Exhibit C attached hereto and  
10 made a part hereof, or by such other Unit Duties mutually agreed upon by the Contractor  
11 and the Contracting Officer. In order to make the computation of the water requirement  
12 for Eligible Lands, on April 1 of each Year and concurrently with its order for water for  
13 the irrigation season, the Contractor shall designate the acreage of and type of crops to be  
14 grown on its Eligible Lands that irrigation season. During any month the water  
15 requirement as above determined for crops growing on Eligible Lands during such month  
16 is equal to or in excess of the Project Water for that month as provided herein the  
17 Contractor shall not be required to measure the water delivered to Excess Lands. Any  
18 month the said water requirement is less than the amount of Project Water as provided  
19 herein, the Contractor will be required to measure water delivered to excess land in  
20 accordance with subdivision (b) hereof.

21 BOOKS, RECORDS, AND REPORTS

22 19. The Contractor shall establish and maintain accounts and other books and  
23 records pertaining to administration of the terms and conditions of this Settlement  
24 Contract, including: the Contractor's financial transactions, water supply data, and  
25 Project land and right-of-way agreements; the water users' land-use (crop census), land

1 ownership, land-leasing and water use data; and other matters that the Contracting  
2 Officer may require. Reports thereon shall be furnished to the Contracting Officer in  
3 such form and on such date or dates as the Contracting Officer may require. Subject to  
4 applicable Federal laws and regulations, each party to this Settlement Contract shall have  
5 the right during office hours to examine and make copies of each other's books and  
6 official records relating to matters covered by this Settlement Contract.

7  
8 CHANGE OF PLACE OF USE OR ORGANIZATION

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

11 (b) While this Settlement Contract is in effect, no change shall be  
12 made in the area of the Contractor as shown on its Exhibit B, by inclusion, exclusion,  
13 annexation or detachment of lands, by dissolution, consolidation, or merger or otherwise,  
14 except upon the Contracting Officer's written consent thereto. Such consent will not be  
15 unreasonably withheld and a decision will be provided in a timely manner. ~~*There may*~~  
16 ~~*need to be Contractor specific language added.*~~

17 (c) In the event lands are annexed to or detached from the area of the  
18 Contractor, as provided herein, the quantity of Project Water to be diverted may be  
19 increased or decreased, as may be appropriate, pursuant to a supplemental agreement to  
20 be executed in respect thereto.

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 the Board of  
7 Directors of the Reclamation District No. 108, PO Box 50, 975 Wilson Bend Road,  
8 Grimes, CA 95950. The designation of the addressee or the address may be changed by  
9 notice given in the same manner as provided in this Article for other notices.

10 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

11  
12  
13 23. (a) The provisions of this Settlement Contract shall apply to and bind  
14 the successors and assigns of the parties hereto, but no assignment or transfer of this  
15 Settlement Contract or any right or interest therein shall be valid until approved in writing  
16 by the Contracting Officer.

17  
18 (b) The assignment of any right or interest in this Settlement Contract  
19 by either party shall not interfere with the rights or obligations of the other party to this  
20 Settlement Contract absent the written concurrence of said other party.

21  
22 (c) The Contracting Officer shall not unreasonably condition or  
23 withhold his approval of any proposed assignment.

24 OFFICIALS NOT TO BENEFIT

25  
26  
27 24. (a) No Member of or Delegate to Congress, Resident Commissioner,  
28 or official of the Contractor shall benefit from this Settlement Contract other than as a  
29 water user or landowner in the same manner as other water users or landowners.

30  
31 (b) No officer or member of the governing board of the Contractor  
32 shall receive any benefit that may arise by reason of this Settlement Contract other than  
33 as a landowner within the Contractor's service area and in the same manner as other  
34 landowners within the said service area.

35 CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

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

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CONFIRMATION OF SETTLEMENT CONTRACT

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

UNAVOIDABLE GROUNDWATER PERCOLATION

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

PRIVACY ACT COMPLIANCE

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

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

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

(d) The Contracting Officer shall designate a full-time employee of the Bureau of Reclamation to be the System Manager who shall be responsible for making decisions on denials pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to

1 43 CFR 2.72. The Contractor is authorized to grant requests by individuals for access to  
2 their own records.

3  
4 (e) The Contractor shall forward promptly to the System Manager  
5 each proposed denial of access under 43 CFR 2.64; and each request for amendment of  
6 records filed under 43 CFR 2.71; notify the requester accordingly of such referral; and  
7 provide the System Manager with information and records necessary to prepare an  
8 appropriate response to the requester. These requirements do not apply to individuals  
9 seeking access to their own certification and reporting forms filed with the Contractor  
10 pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy Act as a basis  
11 for the request.

12  
13 WATER CONSERVATION

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

1 thereafter the Contractor immediately begins implementing its water conservation and  
2 efficiency program in accordance with the time schedules therein.

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

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

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

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

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

1 Contractor with a decision, in writing, to the Offer on or before March 15 of that Water  
2 Year. The dates specified in this Article 29(e)(1) can be changed if mutually agreed to, in  
3 writing, by the Contractor and Contracting Officer.

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

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

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

17 OPINIONS AND DETERMINATIONS

18  
19 30. (a) Where the terms of this Settlement Contract provide for actions to  
20 be based upon the opinion or determination of either party to this Settlement Contract,  
21 said terms shall not be construed as permitting such action to be predicated upon  
22 arbitrary, capricious, or unreasonable opinions or determinations. Both parties,  
23 notwithstanding any other provisions of this Settlement Contract, expressly reserve the  
24 right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or

1 unreasonable opinion or determination. Each opinion or determination by either party  
2 shall be provided in a timely manner. Nothing in subdivision (a) of Article 30 of this  
3 Settlement Contract is intended to or shall affect or alter the standard of judicial review  
4 applicable under Federal law to any opinion or determination implementing a specific  
5 provision of Federal law embodied in statute or regulation.

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

12 ~~(c) In the event that the United States, as a result of litigation or agreement, or~~  
13 ~~failure to require an agreement, gives substantially more favorable treatment to any other~~  
14 ~~diverter from the Sacramento River under similar circumstances than that accorded under~~  
15 ~~this Settlement Contract to the Contractor, the United States agrees to renegotiate this~~  
16 ~~Settlement Contract to provide comparable treatment to the Contractor hereunder.~~

17 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

18 31. (a) In addition to all other payments to be made by the Contractor  
19 pursuant to this Settlement Contract, the Contractor shall pay to the United States, within  
20 60 days after receipt of a bill and detailed statement submitted by the Contracting Officer  
21 to the Contractor for such specific items of direct cost incurred by the United States for  
22 work requested by the Contractor associated with this Settlement Contract plus indirect  
23 costs in accordance with applicable Bureau of Reclamation policies and procedures. All

1 such amounts referred to in this Article shall not exceed the amount agreed to in writing  
2 in advance by the Contractor. This Article shall not apply to costs for routine contract  
3 administration.

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

10 WAIVER OF DEFAULT

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

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  
13 (SEAL)

14  
15  
16                   RECLAMATION DISTRICT NO. 108

17  
18  
19                   By: \_\_\_\_\_  
20                   President

21  
22  
23                   ATTEST:

24  
25  
26                   \_\_\_\_\_  
27                   Secretary

28  
29



