

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

CONTRACT BETWEEN THE UNITED STATES AND

DIVERTER OF WATER FROM SACRAMENTO RIVER SOURCES,
SETTLING WATER RIGHTS DISPUTES AND
PROVIDING FOR PROJECT WATER

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5 UNITED STATES
6 DEPARTMENT OF THE INTERIOR
7 BUREAU OF RECLAMATION
8 Central Valley Project, California
9

10 CONTRACT BETWEEN THE UNITED STATES AND
11 _____
12 DIVERTER OF WATER FROM SACRAMENTO RIVER SOURCES
13 SETTLING WATER RIGHTS DISPUTES AND
14 PROVIDING FOR PROJECT WATER
15
16

17 THIS CONTRACT, hereinafter referred to as "Settlement Contract," is
18 entered into by THE UNITED STATES OF AMERICA, hereinafter referred to as the
19 United States, made this _____ day of _____, 2004, pursuant to the
20 applicable authority granted to it generally in the Act of June 17, 1902 (32 Stat. 388), and
21 acts amendatory or supplementary thereto, including, but not limited to, the Acts of
22 August 26, 1937 (50 Stat. 844), as amended and supplemented, August 4, 1939 (53 Stat.
23 1187), as amended and supplemented, including, but not limited to, Sections 9 and 14
24 thereto, July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96
25 Stat. 1262), October 27, 1986 (100 Stat. 3050), as amended, and Title XXXIV of the Act
26 of October 30, 1992 (106 Stat. 4706), all collectively hereinafter referred to as Federal
27 Reclamation law, and _____, hereinafter referred to as the
28 Contractor, a public agency of the State of California, duly organized, existing, and
29 acting pursuant to the laws thereof, with its principal place of business in California;
30 *[may change depending on contracting entity]*

31 WITNESSETH, that:

1 EXPLANATORY RECITALS

2 [1st] 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 [2nd] 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 [*Contractor Specific – “Other”*
8 *Rights*”]

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

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

16 [5th] WHEREAS, the Contractor and the United States had a dispute over the
17 respective rights of the parties to divert and use water from the regulated flow of the
18 Sacramento River which threatened to result in litigation, and as a means to settle that
19 dispute entered into Contract No. _____, as amended, hereinafter referred to
20 as the Existing Contract, which established terms for the delivery to the Contractor of
21 Central Valley Project Water, and the quantities of Base Supply the United States and the

1 Contractor agreed may be diverted by the Contractor from the Sacramento River pursuant
2 to such contract; and

3 [6th] WHEREAS, the United States and the Contractor disagree with respect to
4 the authority of the United States to change the quantities of Base Supply and/or Project
5 Water specified as available for diversion in this Settlement Contract from the quantities
6 specified in the Existing Contract, and other issues related thereto. That dispute was the
7 subject of litigation in a lawsuit entitled *Glenn-Colusa Irrigation District, et al. v. United*
8 *States, et al.* [Civ. No. S-01-1816 GEB/JFM (E.D. Cal.)]; that litigation was dismissed,
9 without prejudice, pursuant to a stipulation of dismissal filed by the parties thereto on
10 August 29, 2002. Notwithstanding that dismissal, the Contractor and the United States
11 enter into this Settlement Contract to renew the Existing Contract, pursuant to the terms
12 of the Existing Contract, Federal Reclamation law, and the laws of the State of
13 California; and

14 [7th] WHEREAS, to assure the Contractor of the enjoyment and use of the
15 regulated flow of the said Rivers and the Delta, and to provide for the economical
16 operation of the Central Valley Project by, and the reimbursement to, the United States
17 for expenditures made for said Project.

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

1 DEFINITIONS

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

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

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

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

1 (d) “Contract Total” shall mean the sum of the Base Supply and
2 Project Water available for diversion by the Contractor for the period April 1 through
3 October 31;

4 (e) “Critical Year” shall mean any Year in which either of the
5 following eventualities exists:

6 (1) The forecasted full natural inflow to Shasta Lake for the
7 current Water Year, as such forecast is made by the United States on or before February
8 15 and reviewed as frequently thereafter as conditions and information warrant, is equal
9 to or less than 3.2 million acre-feet; or

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

14 For the purpose of determining a Critical Year, the computation of inflow
15 to Shasta Lake shall be performed in a manner that considers the extent of upstream
16 development above Shasta Lake during the year in question, and shall be used as the full
17 natural flow to Shasta Lake. In the event that major construction has occurred or occurs
18 above Shasta Lake after September 1, 1963 and which has materially altered or alters the
19 regimen of the stream systems contributing to Shasta Lake, the computed inflow to
20 Shasta Lake used to define a Critical Year will be adjusted to eliminate the effect of such
21 material alterations. After consultation with the State of California, the National Weather

1 Service, and other recognized forecasting agencies, the Contracting Officer will select the
2 forecast to be used and will make the details of it available to the Contractor. The same
3 forecasts used by the United States for the operation of the Project shall be used to make
4 the forecasts hereunder;

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

7 (g) “Eligible Lands” shall mean all lands to which Project Water may
8 be delivered in accordance with Section 204 of the Reclamation Reform Act of October
9 12, 1982 (96 Stat. 1263), as amended, hereinafter referred to as RRA;

10 (h) “Excess Lands” shall mean all lands in excess of the limitations
11 contained in Section 204 of the RRA, other than those lands exempt from acreage
12 limitation under Federal Reclamation law;

13 (i) “Full Cost Rate” shall mean that water rate described in Sections
14 205(a)(3) or 202(3) of the RRA, whichever is applicable;

15 (j) “Ineligible Lands” shall mean all lands to which Project Water
16 may not be delivered in accordance with Section 204 of the RRA;

17 (k) “Landholder” shall mean a party that directly or indirectly owns or
18 leases nonexempt land, as provided in 43 CFR 426.2;

19 (l) “Project” shall mean the Central Valley Project owned by the
20 United States and managed by the Department of the Interior, Bureau of Reclamation;

1 (m) “Project Water” shall mean all Surface Water diverted or
2 scheduled to be diverted each month during the period April through October of each
3 Year by the Contractor from the Sacramento River which is in excess of the Base Supply.
4 The United States recognizes the right of the Contractor to make arrangements for
5 acquisition of water from projects of others than the United States for delivery through
6 the Sacramento River and tributaries subject to written agreement between Contractor
7 and the United States as to identification of such water which water when so identified
8 shall not be deemed Project Water under this Settlement Contract;

9 (n) “Rates” shall mean the payments for Project Water determined
10 annually by the Contracting Officer in accordance with the then current applicable water
11 ratesetting policies for the Project, as described in subdivision (a) of Article 8 of this
12 Settlement Contract;

13 (o) “Secretary” or “Contracting Officer” shall mean the Secretary of
14 the Interior, a duly appointed successor, or an authorized representative acting pursuant to
15 any authority of the Secretary and through any agency of the Department of the Interior;

16 (p) “Surface Water” shall mean only those waters that are considered
17 as surface water under California law;

18 (q) “Water Year” shall mean the period commencing with October 1
19 of one year and extending through September 30 of the next; and

20 (r) “Year” shall mean a calendar year.

1 provision of this Settlement Contract, the Contractor reserves and shall have all rights and
2 benefits under Public Law 643.

3 WATER TO BE FURNISHED TO CONTRACTOR

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

15 ***[NOTE: contractor-specific language dealing with individual water rights may be***
16 ***needed.]***

17 (b) The Contractor may have acquired rights to divert water from the
18 Sacramento River during the period April through October, that were obtained after the
19 date of execution of the Existing Contract, or the Contractor may acquire such rights in
20 the future. All diversions made from the Sacramento River, pursuant to such rights,
21 during the period April through October, shall not be considered a part of the quantity of

1 Base Supply and Project Water specified in Exhibit A; Provided, that the quantities
2 diverted pursuant to the above rights shall be identified on the schedule submitted
3 pursuant to Article 3(c) below, and shall not be substituted for any Base Supply or Project
4 Water; Provided, further, that any such identified quantities of other acquired rights may
5 be diverted by the Contractor before incurring any fee pursuant to Article 3(c)(1), below.

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

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

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

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

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

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

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

1 information sufficient to enable the Contracting Officer to comply with the National
2 Environmental Policy Act, the Endangered Species Act, and applicable rules or
3 regulations then in effect; Provided that, such consent does not authorize the use of
4 Federal facilities to facilitate or effectuate the sale, transfer, exchange or other disposal of
5 Base Supply. Such use of Federal facilities will be the subject of a separate agreement to
6 be entered into between the Contractor and Reclamation.

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

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

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

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

18 (2) The control, carriage, handling, use, disposal, or

19 distribution of water diverted by the Contractor outside the facilities constructed and then
20 being operated and maintained by or on behalf of the United States;

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

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:

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

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

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

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

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

19 (1) Prior to July 1 of each Year, the Contracting Officer shall
20 provide the Contractor an estimate of the Charges for Project Water that will be applied
21 to the period October 1, of the current Year, through September 30, of the following

1 Year, and the basis for such estimate. The Contractor shall be allowed not less than two
2 months to review and comment on such estimates. On or before September 15 of each
3 Year, the Contracting Officer shall notify the Contractor in writing of the Charges to be
4 in effect during the period October 1 of the current Year, through September 30, of the
5 following Year, and such notification shall revise Exhibit D.

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

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

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

1 made, the Contractor shall pay for the remaining amount of such water as shown in
2 Exhibit A in advance of any further diversion of Project Water.

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

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

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

18 (e) The Contracting Officer shall keep its accounts pertaining to the
19 administration of the financial terms and conditions of its long-term water service and
20 Settlement Contracts, in accordance with applicable Federal standards, so as to reflect the
21 application of Project costs and revenues. The Contracting Officer shall, each Year upon

1 request of the Contractor, provide to the Contractor a detailed accounting of all Project
2 and Contractor expense allocations, the disposition of all Project and Contractor
3 revenues, and a summary of all water delivery information. The Contracting Officer and
4 the Contractor shall enter into good faith negotiations to resolve any discrepancies or
5 disputes relating to accountings, reports, or information.

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

14 (g) For the term of this Settlement Contract, Rates under the respective
15 ratesetting policies for the Project will be established to recover only reimbursable
16 operation and maintenance (including any deficits) and capital costs of the Project, as
17 those terms are used in the then current Project ratesetting policies, and interest, where
18 appropriate, except in instances where a minimum Rate is applicable in accordance with
19 the relevant Project ratesetting policy. Proposed changes of significance in practices
20 which implement the ratesetting policies for the Project will not be implemented until the

1 Contracting Officer has provided the Contractor an opportunity to discuss the nature,
2 need, and impact of the proposed change.

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

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

19 (j) Each payment to be made pursuant to subdivisions (a) and (b) of
20 this Article shall be made at the office of the Bureau of Reclamation, Mid-Pacific Region,
21 File No. 11546, P.O. Box 6000, San Francisco, California, 94160-1546, or at such other

1 place as the United States may designate in a written notice to the said Contractor.
2 Payments shall be made by cash transaction, wire, or any other mechanism as may be
3 agreed to in writing by the Contractor and the Contracting Officer. In **the** event there
4 should be a default in the payment of the amount due, the delinquent payment provisions
5 of Article 13 shall apply. The Contractor shall not be relieved of the whole or any part of
6 its said obligation by, on account of, or notwithstanding, as the case may be:

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

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

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

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

17 AGREEMENT ON WATER QUANTITIES

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

20 (1) It shall constitute full agreement as between the United
21 States and the Contractor as to the quantities of water and the allocation thereof between

1 Base Supply and Project Water which may be diverted by the Contractor from the
2 Sacramento River for beneficial use on the land shown on Exhibit B which said
3 diversion, use, and allocation shall not be disturbed so long as the Contractor shall fulfill
4 all of its obligations hereunder;

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

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

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

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

1 order of the State Water Resources Control Board that reflects a modification to the
2 obligations imposed in State Water Resources Control Board Revised Water Rights
3 Decision 1641 dated March 15, 2000, and its associated 1995 Water Quality Control Plan
4 which, taken together, will be considered the baseline for the application of the
5 provisions of this sub-article.

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

1 Contractor during the term of this Settlement Contract was in fact water to which it
2 would have been entitled under water rights owned by it.

3 MEASUREMENT OF WATER

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

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

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

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

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

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

18 (g) All new surface water delivery systems installed within the lands
19 delineated on Exhibit B after the effective date of this **Settlement** Contract shall also
20 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.

1
2 (b) The interest charge rate shall be the greater of the rate prescribed
3 quarterly in the Federal Register by the Department of the Treasury for application to
4 overdue payments, or the interest rate of one-half of one percent per month prescribed by
5 Section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest
6 charge rate shall be determined as of the due date and remain fixed for the duration of the
7 delinquent period.

8
9 (c) When a partial payment on a delinquent account is received, the
10 amount received shall be applied, first to the penalty, second to the administrative
11 charges, third to the accrued interest, and finally to the overdue payment.

12
13 QUALITY OF WATER

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

20 WATER AND AIR POLLUTION CONTROL

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

25 EQUAL OPPORTUNITY

26 16. During the performance of this Settlement Contract, the Contractor agrees
27 as follows:
28

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

11
12 (b) The Contractor will, in all solicitations or advertisements for
13 employees placed by or on behalf of the Contractor, state that all qualified applicants will
14 receive consideration for employment without discrimination because of race, color,
15 religion, sex, or national origin.

16
17 (c) The Contractor will send to each labor union or representative of
18 workers with which it has a collective bargaining agreement or other contract or
19 understanding, a notice, to be provided by the Contracting Officer, advising the said labor
20 union or workers' representative of the Contractor's commitments under Section 202 of
21 Executive Order No. 11246 of September 24, 1965, as amended, and shall post copies of
22 the notice in conspicuous places available to employees and applicants for employment.

23
24 (d) The Contractor will comply with all provisions of Executive Order
25 No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant
26 orders of the Secretary of Labor.

27
28 (e) The Contractor will furnish all information and reports required by
29 said amended Executive Order and by the rules, regulations, and orders of the Secretary
30 of Labor, or pursuant thereto, and will permit access to its books, records, and accounts
31 by the Contracting Officer and the Secretary of Labor for purposes of investigation to
32 ascertain compliance with such rules, regulations, and orders.

33
34 (f) In the event of the Contractor's noncompliance with the
35 nondiscrimination clauses of this Settlement Contract or with any of the said rules,
36 regulations, or orders, this Settlement Contract may be canceled, terminated, or
37 suspended, in whole or in part, and the Contractor may be declared ineligible for further
38 Government contracts in accordance with procedures authorized in said amended
39 Executive Order, and such other sanctions may be imposed and remedies invoked as
40 provided in said Executive Order, or by rule, regulation, or order of the Secretary of
41 Labor, or as otherwise provided by law.

42

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

11
12 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS
13 *(For Districts Only)*
14

15 17. (a) The Contractor shall comply with Title VI of the Civil Rights Act
16 of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112,
17 as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other
18 applicable civil rights laws, as well as with their respective implementing regulations and
19 guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.
20

21 (b) These statutes require that no person in the United States shall, on
22 the grounds of race, color, national origin, handicap, or age, be excluded from
23 participation in, be denied the benefits of, or be otherwise subjected to discrimination
24 under any program or activity receiving financial assistance from the Bureau of
25 Reclamation. By executing this Settlement Contract, the Contractor agrees to
26 immediately take any measures necessary to implement this obligation, including
27 permitting officials of the United States to inspect premises, programs, and documents.
28

29 (c) The Contractor makes this agreement in consideration of and for
30 the purpose of obtaining any and all Federal grants, loans, contracts, property discounts,
31 or other Federal financial assistance extended after the date hereof to the Contractor by
32 the Bureau of Reclamation, including installment payments after such date on account of
33 arrangements for Federal financial assistance which were approved before such date.
34 The Contractor recognizes and agrees that such Federal assistance will be extended in
35 reliance on the representations and agreements made in this Article, and that the United
36 States reserves the right to seek judicial enforcement thereof.
37

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

39 18. (a) Project Water must of necessity be transported by the Contractor to
40 its water users by means of the same works and channels used for the transport of its non-

1 Project Water including Base Supply. Notwithstanding such mingling of water, the
2 provisions of Article 11 hereof shall be applicable only to Project Water, and such
3 mingling of water shall not in any manner subject to the provisions of Article 11 hereof
4 the Contractor's non-Project water including Base Supply.

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

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

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

20 (2) the Unit Duties as set forth in Exhibit C attached hereto and
21 made a part hereof, or by such other Unit Duties mutually agreed upon by the Contractor

1 and the Contracting Officer. In order to make the computation of the water requirement
2 for Eligible Lands, on April 1 of each Year and concurrently with its order for water for
3 the irrigation season, the Contractor shall designate the acreage of and type of crops to be
4 grown on its Eligible Lands that irrigation season. During any month the water
5 requirement as above determined for crops growing on Eligible Lands during such month
6 is equal to or in excess of the Project Water for that month as provided herein the
7 Contractor shall not be required to measure the water delivered to Excess Lands. Any
8 month the said water requirement is less than the amount of Project Water as provided
9 herein, the Contractor will be required to measure water delivered to excess land in
10 accordance with subdivision (b) hereof.

11 BOOKS, RECORDS, AND REPORTS

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

22
23 CHANGE OF PLACE OF USE OR ORGANIZATION

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

26 (b) While this Settlement Contract is in effect, no change shall be
27 made in the area of the Contractor as shown on its Exhibit B, by inclusion, exclusion,

1 annexation or detachment of lands, by dissolution, consolidation, or merger or otherwise,
2 except upon the Contracting Officer's written consent thereto. Such consent will not be
3 unreasonably withheld and a decision will be provided in a timely manner. [*There may*
4 *need to be Contractor specific language added.*]

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

9 CONSOLIDATION OF CONTRACTING ENTITIES

10
11 21. Consolidation of Contractors may be approved by the Contracting Officer
12 provided: (i) the Contracting Officer approves the form and organization of the resulting
13 entity and the utilization by it of the Contract Total; and (ii) the obligations of the
14 Contractors are assumed by such entity.

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

17 NOTICES

18 22. Any notice, demand, or request authorized or required by this Settlement
19 Contract shall be deemed to have been given, on behalf of the Contractor, when mailed,
20 postage prepaid, or delivered to the Area Manager, Northern California Area Office,
21 Bureau of Reclamation, 16349 Shasta Dam Blvd., Shasta Lake, California, 96019, and on
22 behalf of the United States, when mailed, postage prepaid, or delivered to the Board of
23 Directors /City Council of the _____. The designation of the
24 addressee or the address may be changed by notice given in the same manner as provided
25 in this Article for other notices.
26

1 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

2
3 23. (a) The provisions of this Settlement Contract shall apply to and bind
4 the successors and assigns of the parties hereto, but no assignment or transfer of this
5 Settlement Contract or any right or interest therein shall be valid until approved in writing
6 by the Contracting Officer.

7
8 (b) The assignment of any right or interest in this Settlement Contract
9 by either party shall not interfere with the rights or obligations of the other party to this
10 Settlement Contract absent the written concurrence of said other party.

11
12 (c) The Contracting Officer shall not unreasonably condition or
13 withhold his approval of any proposed assignment.

14
15 OFFICIALS NOT TO BENEFIT

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

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

25
26 CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

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

33
34 CONFIRMATION OF SETTLEMENT CONTRACT

35 26. The Contractor, after the execution of this Settlement Contract, shall
36 promptly seek to secure a decree of a court of competent jurisdiction of the State of
37 California, if appropriate, confirming the execution of this Settlement Contract. The
38 Contractor shall furnish the United States a certified copy of the final decree, the
39 validation proceedings, and all pertinent supporting records of the court approving and
40 confirming this Settlement Contract, and decreeing and adjudging it to be lawful, valid,

1 and binding on the Contractor. This Settlement Contract shall not be binding on the
2 United States until such final decree has been secured.

3
4 UNAVOIDABLE GROUNDWATER PERCOLATION

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

9 PRIVACY ACT COMPLIANCE

10
11 28. (a) The Contractor shall comply with the Privacy Act of 1974 (5
12 U.S.C. 552a) (the Act) and the Department of the Interior rules and regulations under the
13 Act (43 CFR 2.45 et seq.) in maintaining Landholder acreage certification and reporting
14 records, required to be submitted to the Contractor for compliance with Sections 206 and
15 228 of the Reclamation Reform Act of 1982 (96 Stat. 1266), and pursuant to 43 CFR
16 426.18.

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

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

30
31 (d) The Contracting Officer shall designate a full-time employee of the
32 Bureau of Reclamation to be the System Manager who shall be responsible for making
33 decisions on denials pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to
34 43 CFR 2.72. The Contractor is authorized to grant requests by individuals for access to
35 their own records.
36

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

9
10 WATER CONSERVATION

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

1 be diverted by the Contractor for each month that Project Water is available for that
2 Water Year under this Settlement Contract. The Contracting Officer shall provide the
3 Contractor with a decision, in writing, to the Offer on or before March 15 of that Water
4 Year. The dates specified in this Article 29(e)(1) can be changed if mutually agreed to, in
5 writing, by the Contractor and Contracting Officer.

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

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

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

19 OPINIONS AND DETERMINATIONS
20

21 30. (a) Where the terms of this Settlement Contract provide for actions to
22 be based upon the opinion or determination of either party to this Settlement Contract,

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

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

16 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

1 costs in accordance with applicable Bureau of Reclamation policies and procedures. All
2 such amounts referred to in this Article shall not exceed the amount agreed to in writing
3 in advance by the Contractor. This Article shall not apply to costs for routine contract
4 administration.

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

11 WAIVER OF DEFAULT

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

**2003 Water Rates and Charges for Contract No. ##-##-###-#####
Contractor Name - Sacramento River**

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Per Acre-Foot

COST OF SERVICE RATES:

Capital Rates	\$4.24
O&M Rates:	
Water Marketing	\$5.66
Storage	\$4.87
Deficit Rates:	
Interest Bearing	\$3.34
TOTAL	\$18.11

FULL-COST RATES:

Section 202(3) Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981.	\$22.12
Section 205(a)(3) Rate is applicable to a Limited Recipient that did not receive irrigation water on or before October 1, 1981.	\$24.47

**CHARGES UNDER P.L. 102-575 TO THE
RESTORATION FUND 1/**

Restoration Payments (3407(d)(2)(A))	\$7.54
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R.O. Draft 05/15-2002
SRSC Draft 05/31/02
R.O. Draft 07/11-2002
SRSC Draft 08/16/02
SRSC Draft 10/01/02
SRSC Draft 10/31/02

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