

R.O. Draft 05/15-2002

Contract No.
Standard Irrigation District Form
SRSC Draft 05/31/02
R.O. Draft 07/11-2002

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

WATER RIGHTS SETTLEMENT CONTRACT BETWEEN THE UNITED STATES
AND

DIVERTER OF WATER FROM SACRAMENTO RIVER SOURCES
SETTLING WATER RIGHTS DISPUTES AND
PROVIDING FOR PROJECT WATER SERVICE AND AGREEMENT ON
DIVERSION OF WATER

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

WATER RIGHTS SETTLEMENT CONTRACT BETWEEN THE UNITED STATES
AND
[REDACTED]
DIVERTER OF WATER FROM SACRAMENTO RIVER SOURCES
SETTLING WATER RIGHTS DISPUTES AND
PROVIDING FOR PROJECT WATER SERVICE AND AGREEMENT ON
DIVERSION OF WATER

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 _____, 2002, in pursuance pursuant to the applicable authority granted to it generally of 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, ~~between THE UNITED STATES OF AMERICA, hereinafter referred to as the United States,~~ and _____, hereinafter referred to as the Contractor, a public agency of the State of California, duly organized, existing, and

1 acting pursuant to the laws thereof, with its principal place of business in California;
2 (*may change depending on contracting entity*)

3 WITNESSETH, ~~That~~ that:

4 EXPLANATORY RECITALS

5 [1st] WHEREAS, the United States has constructed and is operating the Central
6 Valley Project, California, for multiple purposes pursuant to its statutory authority, ~~for~~
7 ~~diversion, storage, carriage, distribution and beneficial use, for flood control, irrigation,~~
8 ~~municipal, domestic, industrial, fish and wildlife mitigation, protection and restoration,~~
9 ~~generation and distribution of electric energy, salinity control, navigation and other~~
10 ~~beneficial uses, of waters of the Sacramento River, the American River, the Trinity River,~~
11 ~~and the San Joaquin River and their tributaries;~~ and

12 [2nd] WHEREAS, the Contractor ~~asserts that~~ it has rights to divert, is diverting,
13 and will continue to divert for reasonable beneficial use, water from the natural flow of
14 the Sacramento River and tributaries thereto, that would have been flowing therein if the
15 Central Valley Project were not in existence; and [Contractor Specific – “Other” Rights]

16 [3rd] WHEREAS, the construction and operation of the integrated and
17 coordinated Central Valley Project has changed and will further change the regimen of
18 the Sacramento, American, San Joaquin, and Trinity Rivers and the Sacramento-San
19 Joaquin Delta from unregulated flow to regulated flow; and

20 [4th] WHEREAS, the United States ~~asserts that~~ it has rights to divert, is diverting,
21 and will continue to divert waters from said Rivers and said Delta in connection with the
22 operation of said Central Valley Project, and

1 [5th] WHEREAS, the Contractor and the United States had a dispute over the
2 nature, extent and relative priority of their respective water rights of the parties to divert
3 and use water from the regulated flow of the Sacramento River which threatened to result
4 in the initiation of an adjudication of the relevant stream systems litigation, and as a
5 means to settle that dispute entered into Contract No. _____, as amended,
6 hereinafter referred to as the Existing Contract, which established terms for the delivery
7 to the Contractor of Central Valley Project Water, and the quantities of Base Supply the
8 United States and the Contractor agreed may has a right to be diverted by the Contractor
9 from the Sacramento River pursuant to such contract. from _____ through
10 March 31, 2004; and

11 6th WHEREAS, although the United States and the Contractor and the United
12 States have a current dispute over the meaning and intent of Articles 9 and 5 of the
13 Existing Contract, including litigation, but nonetheless without prejudicing the respective
14 parties' positions with respect to that litigation has requested desire to enter into the long-
15 term renewal of the Existing Contract, disagree with respect to the authority of the United
16 States to change the quantities of Base Supply and/or Project water specified in this
17 Contract from the quantities specified in the Existing Contract. That dispute is being
18 litigated in a lawsuit entitled GCID v. United States of America, Civ. No. S-01-1816
19 GEB/JFM (E.D. CA). Both the Contractor and the United States are willing to agree to
20 the dismissal of that lawsuit without waiving or otherwise prejudicing their respective
21 right to assert whatever arguments and defenses either of them believe is appropriate if
22 that issue is subsequently litigated and enter into this Settlement Contract, pursuant to the
23 terms of the Existing Contract, Federal Reclamation law, and the laws of the State of

1 California, ~~and the United States has determined that the Contractor has~~ Parties have
2 fulfilled all of its ~~their respective~~ obligations under the Existing Contract; and

3 7th WHEREAS, to assure the Contractor of the enjoyment and use of the
4 regulated flow of the said Rivers and the Delta, and to provide for the economical
5 operation of the Central Valley Project by, and the reimbursement to, the United States
6 for expenditures made for said Project;

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

9 DEFINITIONS

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

12 (a) "Base Supply" shall mean the quantity of water established in Articles 3
13 and 5 ~~which the United States agrees may be diverted by that the Contractor has a right to~~
14 ~~divert~~ from the Sacramento River each month during the period April through October of
15 each Year without payment to the United States for such quantities diverted;

16 (b) "Charges" shall mean the payments for Project Water as determined
17 annually by the Contracting Officer which the Contractor is required by Federal
18 Reclamation law ~~agreed to pursuant to this Settlement Contract~~ to pay to the United
19 States in addition to the "Rates" specified in this Contract. The nature and extent type
20 and amount of each Charges as well as categories of Charges is shall be specified in the
21 attached Exhibit "D" ~~as determined annually by the Contracting Officer pursuant to this~~
22 Contract;

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

4 (d) "Critical Year" shall mean any Year in which either of the following
5 eventualities exists:

6 (1) The forecasted full natural inflow to Shasta Lake for the current Water
7 Year, as such forecast is made by the United States on or before February 15 and
8 reviewed as frequently thereafter as conditions and information warrant, is equal to or
9 less than ~~three~~ 3.2 million ~~two hundred thousand (3,200,000)~~ acre-feet; or

10 (2) The total accumulated actual deficiencies below ~~four~~ 4 million
11 ~~(4,000,000)~~ acre-feet in the immediately prior Water Year or series of successive prior
12 Water Years each of which had inflows of less than ~~four~~ 4 million ~~(4,000,000)~~ acre-feet,
13 together with the forecasted deficiency for the current Water Year, exceed ~~eight hundred~~
14 ~~thousand (800,000)~~ acre-feet. For the purpose of determining a Critical Year the
15 computed inflow to Shasta Lake ~~as it would have existed~~ under present upstream
16 development above Shasta Lake ~~as of September 1, 1963~~ shall be used as the full natural
17 inflow to Shasta Lake. In the event that major construction occurs above Shasta Lake
18 after April 1, 2004, September 1, 1963, which materially alters the present regimen of the
19 stream systems contributing to Shasta Lake, the computed inflow to Shasta Lake used to
20 define a Critical Year will, be adjusted to eliminate the effect of such material alterations.
21 After consultation with the State of California, the National Weather Service, and other
22 recognized forecasting agencies, the Contracting Officer will select the forecast to be
23 used and will make the details of it available to the Contractor. The same forecasts used

1 by the United States for the operation of the Project shall be used to make the forecasts
2 hereunder;

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

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

8 (g) "Excess Lands" shall mean all lands in excess of the limitations contained
9 in Section 204 of the RRA, other than those lands exempt from acreage limitation under
10 Federal Reclamation law;

11 (h) "Full Cost Rate" shall mean that water rate described in Sections
12 205(a)(3) or 202(3) of the RRA, whichever is applicable;

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

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

17 (k) "Project" shall mean the Central Valley Project owned by the United
18 States and managed by the Department of the Interior, Bureau of Reclamation;

19 (l) "Project Water" shall mean all water diverted or scheduled to be diverted
20 each month during the period April through October of each Year by the Contractor from
21 the Sacramento River which is in excess of the Base Supply. The United States
22 recognizes the right of the Contractor to make arrangements for acquisition of water from
23 projects of others than the United States for delivery through the Sacramento River and

1 tributaries subject to written agreement between Contractor and the United States as to
2 identification of such water which water when so identified shall not be deemed Project
3 Water under this ~~contract~~ Settlement Contract;

4 (m) "Rates" shall mean the payments for Project Water determined annually
5 by the Contracting Officer in accordance with the then current applicable water
6 ratesetting policies for the Project, as described in subdivision (a) of Article 8 of this
7 Settlement Contract;

8 (n) "Secretary" or "Contracting Officer" shall mean the Secretary of the
9 Interior, a duly appointed successor, or an authorized representative acting pursuant to
10 any authority of the Secretary and through any agency of the Department of the Interior;

11 (o) "Water Year" shall mean the period commencing with October 1 of one
12 year and extending through September 30 of the next; and

13 (p) "Year" shall mean a calendar year.

14 TERM OF SETTLEMENT CONTRACT

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

21 (b) Provided further, That that, With respect to Project Water and the portions of
22 this Settlement Contract pertaining thereto, uUpon written request by the Contractor of
23 the Secretary made not later than one (1) year prior to the expiration of this ~~contract~~

1 Settlement Contract, whenever, account being taken of the amount then credited to the
2 costs of construction of water supply works, the remaining amount of construction costs
3 of water supply work which is properly assignable for ultimate return by the Contractor
4 as established by the Secretary of the Interior pursuant to (3) of Section 1 of Public Law
5 643 (70 Stat. 483), probably can be repaid to the United States within the term of a
6 contract under subsection 9(d) ~~of Section 9~~ of the 1939 Reclamation Project Act (53
7 Stat. 1187), the relevant portions of ~~then~~ this contract Settlement Contract may be
8 converted to a contract under said subsection 9(d) upon terms and conditions mutually
9 agreeable to the United States and the Contractor. The Secretary shall make a
10 determination 10 years after the date of execution of this Contract, and every five years
11 thereafter, of whether a conversion to a contract under said subsection 9(d) can be
12 accomplished pursuant to Public Law 643. Notwithstanding any provision of this
13 ~~contract~~ Settlement Contract, the Contractor reserves and shall have all rights and
14 benefits under Public Law 643.

15 WATER TO BE FURNISHED TO CONTRACTOR

16 3. (a) Subject to the conditions, limitations, and provisions hereinafter expressed,
17 the Contractor is hereby entitled and authorized to divert from the Sacramento River at
18 the locations ~~shown in~~ identified on Exhibit A ~~and shown on Exhibit B~~, for beneficial use
19 within the area delineated on Exhibit B, (both Exhibits are attached hereto and made a
20 part hereof), the Contract Total designated in Exhibit A, or any revision thereof, in
21 accordance with the monthly operating schedule required by Article 3(~~bc~~) of this ~~contract~~
22 Settlement Contract. The quantity of any ~~surface~~ water diverted under this Settlement
23 Contract from the Sacramento River, during the period April through October, for use on

1 any lands delineated on Exhibit B, by the owner of such lands or otherwise shall
2 constitute a part of the Contract Total as shown on Exhibit A and shall be subject to all
3 the provisions of this ~~contract~~ Settlement Contract relating to such Contract Total as if
4 such diversion were made by the Contractor.

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

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

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

1 (1) that for the quantity of Base Supply diverted in excess of the monthly
2 quantity shown on Exhibit A, the Contractor shall be charged a fee based upon the
3 appropriate components of the Project ratesetting policy.

4 (2) Such changes shall be subject to the prior written approval of the
5 Contracting Officer.

6 (3) Provided, That that in no event shall the total quantity scheduled for
7 diversion by the Contractor from the Sacramento River:

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

10 (ii) During the period July through September exceed the aggregate of the
11 Contract Total for those months shown in Exhibit A or any revision thereof; .and

12 ~~Provided, further, That that with the prior written approval of the Contracting Officer,~~
13 ~~water to be diverted may be diverted in. The Contractor shall be charged a fee based~~
14 ~~upon the appropriate components of the water ratesetting policy for the Project for the~~
15 ~~Base Supply scheduled for diversion in April, May, or June that is diverted in September~~
16 ~~or October, or vice versa~~

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

1 ~~(d)~~ No sale, transfer, exchange, or other disposal of any of the Contract
2 Total designated in Exhibit A water Project Water (including transfers through
3 forbearance of diversions) or the right to the use thereof for use on land other than that
4 shown on Exhibit B shall be made by the Contractor without:

- 5 (1) First obtaining the written consent of the Contracting Officer; and
6 (2) Compliance with all applicable State and Federal laws, including but
7 not limited to the National Environmental Policy Act and the Endangered Species Act,
8 and applicable guidelines or regulations then in effect.

9 ~~(e) The sale, transfer, exchange, or other disposal of any Base Supply or the~~
10 ~~right to the use thereof for use on land other than that shown on Exhibit B shall be made~~
11 ~~by the Contractor in compliance with all applicable State laws.~~

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

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

- 18 (1) The quality of water to be diverted by the Contractor;
19 (2) The control, carriage, handling, use, disposal, or distribution of water
20 diverted by the Contractor outside the facilities constructed and then being operated and
21 maintained by or on behalf of the United States;

22 (3) Claims of damage of any nature whatsoever, including but not limited
23 to, property loss or damage, personal injury, or death arising out of or connected with the

1 control, carriage, handling, use, disposal, or distribution of said water outside of the
2 hereinabove referred to facilities; and

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

6 RETURN FLOW

7 4. ~~The United States reserves the right to the use of all~~ Nothing herein shall be
8 construed as an abandonment or a relinquishment by the United States of any right it may
9 have ~~the right to the use of any such **water** Project Water~~ waste, seepage, and return flow
10 water derived from **water** Project Water diverted by the Contractor hereunder and which
11 escapes or is discharged beyond the boundaries of the lands shown on Exhibit B; ~~Nothing~~
12 ~~herein shall be construed as an abandonment or a relinquishment by the United States the~~
13 ~~right to the use of any such **water** Project Water; Provided, That that this shall not be
14 construed as claiming for the United States any right to such **water** Project Water which
15 is recovered by the Contractor pursuant to California law from within the boundaries of
16 the lands shown on Exhibit B, and which is being used pursuant to this ~~contract~~
17 Settlement Contract for surface irrigation or underground storage on the lands shown on
18 Exhibit B by the Contractor, ~~nor is it intended to apply to waste, seepage, and return flow~~
19 ~~water derived from Base Supply or other non-Project Water diverted or otherwise~~
20 ~~obtained by Contractor.~~ (*Colusa Basin Drain language may be required*)~~

21 CONSTRAINTS ON THE AVAILABILITY OF WATER

22 5. (a) ~~In any Water Year that (1) the forecasted full natural inflow to Shasta Lake~~
23 ~~for the current Water Year, as such forecast is made by the United States on or before~~

1 February 15 and reviewed as frequently thereafter as conditions and information warrant,
2 is equal to or less than three ~~3.8 million~~ eight hundred thousand (3,800,000) acre feet; or
3 (2) If the total accumulated actual deficiencies in the full natural inflow to Shasta Lake in
4 the immediately prior Water Year or series of successive prior Water Years, each of
5 which had inflows of less than four ~~4 million~~ (4,000,000) acre feet, together with the
6 forecasted deficiency for the current Water Year, are between 200,000 acre feet and
7 800,000 acre feet, then the following reductions in the Contractor's monthly Contract
8 Total shall be imposed:

9	<u>Deficiency (acre feet)</u>	<u>Reduction</u>
10	200,000 — 400,000	10 percent
11	400,001 — 600,000	15 percent
12	600,001 — 800,000	20 percent

13
14 (b) In consideration for the reductions in the Contractor's monthly Contract
15 Total imposed pursuant to the provisions of Article 5(a) above, the United States shall
16 pay Contractor as follows:

17	<u>Reduction</u>	<u>Per Acre Foot Compensation</u>
18	<u>10 percent</u>	<u>\$ X</u>
19	<u>15 percent</u>	<u>\$ Y for quantities from 10-15%</u>
20	<u>20 percent</u>	<u>\$ Z for quantities from 15-20%</u>

21
22 _____ The dollar per-acre compensation shall be tied to or indexed to the increase of
23 rates for Project Water or CPI [or other].

24 (a e) In a Critical Year, the Contractor's Base Supply and Project Water
25 agreed to be diverted during the period April through October of the Year in which the
26 principal portion of the Critical Year occurs and, each monthly quantity of said period
27 shall be reduced by twenty-five percent (~~25 percent~~ %).

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

6 INTEGRATED WATER MANAGEMENT AND PARTNERSHIPS

7 6. The Contractor and United States desire to work together to maximize the
8 reasonable beneficial use of water to for their mutual benefit. As a consequence, the
9 United States and the Contractor will work in partnership and with Contractor and others
10 within the Sacramento Valley, including other Contractors with Settlement Contracts, to
11 facilitate the better integration within the Sacramento Valley of all water supplies
12 including, but not limited to, the better management and integration of surface water and
13 groundwater, the development and better utilization of surface water storage, the
14 effective utilization of waste, seepage and return flow water, and other operational and
15 management options that may be identified in the future. This will include, but not be
16 limited to, the continuation of the Sacramento River Settlement Contractors' pooling
17 agreements, the agreements with respect to use and re-use of water within the Colusa
18 Basin Drain, and the Basin Wide Water Management Plan process.

19 USE OF WATER FURNISHED TO CONTRACTOR

20 6 7. (a) Project Water furnished to the Contractor pursuant to this contract
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. ~~including~~ For purposes of this 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 ~~without written consent of the~~
3 ~~Contracting Officer.~~

4 (b) Assuming a base line that includes in excess of 40 years of diversions for
5 agricultural uses of the quantities of water provided for in Article 3, †The Contractor shall
6 comply with requirements applicable to the Contractor in biological opinion(s) prepared
7 as a result of a consultation regarding the execution of this Settlement Contract
8 undertaken pursuant to Section 7 of the Endangered Species Act of 1973, as amended,
9 that are within the Contractor's legal authority to implement. The Contractor shall
10 comply with the limitations or requirements imposed by environmental documentation
11 applicable to the Contractor and within its legal authority to implement ~~regarding specific~~
12 ~~activities, including conversion of Irrigation Water to M&I Water.~~ Nothing herein shall
13 be construed to prevent the Contractor from challenging or seeking judicial relief in a
14 court of competent jurisdiction with respect to any biological opinion or other
15 environmental documentation referred to in this Article.

16 RATE AND METHOD OF PAYMENT FOR WATER

17 7.8. (a) The Contractor shall make payments to the United States as provided in
18 this Article for all Project Water shown in Exhibit A as follows:

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

21 (2) the Contractor shall pay for Project Water actually diverted in excess
22 of seventy-five percent of the amount shown as Project Water. ~~of this contract~~
23 Settlement Contract and which is actually diverted by Contractor

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.

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

12 [(1) Prior to July 1 of each Year, the Contracting Officer shall provide the
13 Contractor an estimate of the Charges for Project Water that will be applied to the period
14 October 1, of the current Year, through September 30, of the following Year, and the
15 basis for such estimate. The Contractor shall be allowed not less than two (2) months to
16 review and comment on such estimates. On or before September 15 of each Year, the
17 Contracting Officer shall notify the Contractor in writing of the Charges to be in effect
18 during the period October 1 of the current Year, through September 30, of the following
19 Year, and such notification shall revise Exhibit "D."

20 (2) Prior to October 1 of each Year, the Contracting Officer shall make
21 available to the Contractor an estimate of the Rates for Project Water for the following
22 Year and the computations and cost allocations upon which those Rates are based. The
23 Contractor shall be allowed not less than two (2) months to review and comment on such

1 computations and cost allocations. By December 31 of each Year, the Contracting
2 Officer shall provide the Contractor with the final Rates to be in effect for the upcoming
3 Year, and such notification shall revise Exhibit "D".

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

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

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

22 (d) Payments to be made by the Contractor to the United States under this
23 ~~contract~~ Settlement Contract may be paid from any revenues available to the Contractor.

1 (d1) ~~(Contractor Specific)~~ All revenues received by the United States from
2 the Contractor relating to the delivery of Project Water or the delivery of non-Project
3 water through Project facilities shall be allocated and applied in accordance with Federal
4 Reclamation law and the associated rules or regulations, and the then current Project
5 ratesetting policies for Irrigation Water.

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

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

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

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

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

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

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

12 (1) Its failure, refusal, or neglect to divert seventy-five percent of the
13 quantity of Project Water ~~as hereinabove provided~~ shown on Exhibit A;

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

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

19 (4) Any injunctive process enjoining or restraining the Contractor from
20 making or collecting any such assessment, toll, or other charge referred to in subsection
21 8(c)(2) of this Settlement Contract.

1 AGREEMENT ON WATER QUANTITIES

2 § 9. (a) During the term of this ~~contract~~ Settlement Contract and any renewals
3 thereof:

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

10 (2) ~~The Contractor~~ Neither party shall ~~not~~ claim any right against the
11 ~~United States~~ other in conflict with the provisions of Article 9(a)(1) hereof, ~~nor shall the~~
12 ~~United States claim any right against the Contractor in conflict with the provisions~~
13 ~~hereof.~~

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

1 herein, the ~~United States shall submit it to the Contractor~~ 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 to assist in resolving the impasse. The
5 cost of the mediation will be shared equally. A failure to reach agreement on an
6 amendment within 60 days of the end of mediation will cause the immediate termination
7 of this Settlement Contract. ~~and the contract shall be deemed to have been amended~~
8 ~~accordingly unless within sixty (60) days after submission of such amendment to the~~
9 ~~Contractor, the Contractor elects to terminate the contract or within the same period of~~
10 ~~time the parties agree upon mutually satisfactory amendments to give effect to such~~
11 ~~judgment: Provided, further, That if, during the term of this Contract, the Contractor's or~~
12 ~~the United States' water rights are adjusted or affected, or the responsibility to meet flow,~~
13 ~~water quality and/or environmental requirements under those water rights is modified~~
14 ~~(e.g., changes to the Delta Water Quality Control Plan and associated water right~~
15 ~~actions), by or through any final administrative or judicial proceeding, the Contractor and~~
16 ~~the United States shall negotiate appropriate adjustments to this contract.~~ In the event the
17 parties are unable to agree on an appropriate amendment they shall, within 60 days of
18 determining that there is an impasse, employ the services of a neutral mediator to assist in
19 resolving the impasse. The cost of the mediation will be shared equally. A failure to
20 reach agreement on an amendment within 60 days of the end of mediation will cause the
21 immediate termination of this Settlement Contract.

22 (c) In the event this ~~contract~~Settlement Contract terminates, the rights of the
23 parties to thereafter divert and use water shall exist as if this ~~contract~~Settlement Contract

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

18 **Contractors' proposed language changes were received on July 9, 2002, but we have**
19 **not had the opportunity to review. We will discuss the proposed language at the**
20 **next negotiations session.**

MEASUREMENT OF WATER

22 9 10. (a) All water diverted by the Contractor from the Sacramento River will be
23 diverted at the existing point or points of diversion shown on Exhibit A or at such other

1 points as may be mutually agreed upon in writing by the Contracting Officer and the
2 Contractor.

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

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

16 (d) The Contractor shall not modify, alter, remove, or replace diversion
17 facilities or do any other act which would alter the effectiveness or accuracy of the
18 measuring equipment installed by the United States or its representatives unless and until
19 the Contracting Officer has been notified with due diligence and has been given an
20 opportunity to modify such measuring equipment in such manner as may be necessary or
21 appropriate. In the event of an emergency the Contractor shall notify the United States
22 within a reasonable time thereafter as to the existence of the emergency and the nature

1 and extent of such modification, alteration, removal, or replacement of diversion
2 facilities.

3 (e) ~~Unless the Contractor has itself already incurred the relevant expenses, t~~
4 **T**he Contractor shall pay the United States for the costs to repair, relocate, or replace
5 measurement equipment when the Contractor modifies, alters, removes, or replaces
6 diversion or carriage facilities.

7 (f) (*Contractor Specific*) By _____ [DATE] _____, the
8 Contractor shall ensure that, unless the Contractor establishes an alternative measurement
9 program satisfactory to the Contracting Officer, all surface water delivered for irrigation
10 purposes on the lands delineated on Exhibit B is measured at each agricultural turnout.
11 The water measuring devices or water measuring methods of comparable effectiveness
12 must be acceptable to the Contracting Officer. The Contractor shall be responsible for
13 installing, operating, and maintaining and repairing all such measuring devices and
14 implementing all such water measuring methods at no cost to the United States. The
15 Contractor shall inform the Contracting Officer in writing by April 30 of each Year of the
16 monthly volume of surface water delivered to the lands delineated on Exhibit B during
17 the previous Year. This information will be used by Reclamation to satisfy the water
18 measurement requirements of the Contractor's water conservation plan, as set forth in
19 Article 28 of this Contract.

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

RULES AND REGULATIONS

1
2 ~~10~~ 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 ~~11~~ 12. (a) The obligation of the Contractor to pay the United States as provided
10 in this Settlement Contract is a general obligation of the Contractor notwithstanding the
11 manner in which the obligation may be distributed among the Contractor's water users
12 and notwithstanding the default of individual water users in their obligations to the
13 Contractor.

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

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

25
26 CHARGES FOR DELINQUENT PAYMENTS

27
28 ~~12~~ 13. (a) The Contractor shall be subject to interest, administrative and penalty
29 charges on delinquent installments or payments. When a payment is not received by the
30 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 ~~sixty (60)~~ days delinquent,
32 the Contractor shall pay an administrative charge to cover additional costs of billing and
33 processing the delinquent payment. When a payment is delinquent ~~ninety (90)~~ days or
34 more, the Contractor shall pay an additional penalty charge of six ~~(6%)~~ percent per year
35 for each day the payment is delinquent beyond the due date. Further, the Contractor shall
36 pay any fees incurred for debt collection services associated with a delinquent payment.

37
38 (b) The interest charge rate shall be the greater of the rate prescribed quarterly
39 in the Federal Register by the Department of the Treasury for application to overdue
40 payments, or the interest rate of one-half of one ~~(0.5%)~~ percent per month prescribed by

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

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

8
9 QUALITY OF WATER

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

16 WATER AND AIR POLLUTION CONTROL

17 ~~14~~ 15. The Contractor, in carrying out this Settlement Contract, shall comply
18 with all applicable water and air pollution laws and regulations of the United States and
19 the State of California, and shall obtain all required permits or licenses from the
20 appropriate Federal, State, or local authorities.

21 EQUAL OPPORTUNITY

22
23 ~~15~~ 16. During the performance of this Settlement Contract, the Contractor agrees
24 as follows:

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

1 available to employees and applicants for employment, notices to be provided by the
2 Contracting Officer setting forth the provisions of this nondiscrimination clause.
3

4 (b) The Contractor will, in all solicitations or advertisements for employees
5 placed by or on behalf of the Contractor, state that all qualified applicants will receive
6 consideration for employment without discrimination because of race, color, religion,
7 sex, or national origin.
8

9 (c) The Contractor will send to each labor union or representative of workers
10 with which it has a collective bargaining agreement or other contract or understanding, a
11 notice, to be provided by the Contracting Officer, advising the said labor union or
12 workers' representative of the Contractor's commitments under Section 202 of Executive
13 Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous
14 places available to employees and applicants for employment.
15

16 (d) The Contractor will comply with all provisions of Executive Order No.
17 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant
18 orders of the Secretary of Labor.
19

20 (e) The Contractor will furnish all information and reports required by said
21 amended Executive Order and by the rules, regulations, and orders of the Secretary of
22 Labor, or pursuant thereto, and will permit access to its books, records, and accounts by
23 the Contracting Officer and the Secretary of Labor for purposes of investigation to
24 ascertain compliance with such rules, regulations, and orders.
25

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

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

45 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS
46 *(For Districts Only)*

1
2 ~~16~~ 17. (a) The Contractor shall comply with Title VI of the Civil Rights Act of
3 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as
4 amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other
5 applicable civil rights laws, as well as with their respective implementing regulations and
6 guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.
7

8 (b) These statutes require that no person in the United States shall, on the
9 grounds of race, color, national origin, handicap, or age, be excluded from participation
10 in, be denied the benefits of, or be otherwise subjected to discrimination under any
11 program or activity receiving financial assistance from the Bureau of Reclamation. By
12 executing this Settlement Contract, the Contractor agrees to immediately take any
13 measures necessary to implement this obligation, including permitting officials of the
14 United States to inspect premises, programs, and documents.
15

16 (c) The Contractor makes this agreement in consideration of and for the
17 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or
18 other Federal financial assistance extended after the date hereof to the Contractor by the
19 Bureau of Reclamation, including installment payments after such date on account of
20 arrangements for Federal financial assistance which were approved before such date.
21 The Contractor recognizes and agrees that such Federal assistance will be extended in
22 reliance on the representations and agreements made in this Article, and that the United
23 States reserves the right to seek judicial enforcement thereof.
24

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

26 ~~17~~ 18. (a) Project Water must of necessity be transported by the Contractor to its
27 water users by means of the same works and channels used for the transport of its non-
28 Project Water including Base Supply. Notwithstanding such mingling of water, the
29 provisions of Article 11 hereof shall be applicable only to Project Water, and such
30 mingling of water shall not in any manner subject to the provisions of Article 11 hereof
31 the Contractor's non-Project water including Base Supply.

32 (b) If required in accordance with subdivision (c) of this Article, the
33 Contractor shall install and maintain such measuring equipment and distribution facilities
34 and maintain such records as may be necessary to determine the amounts of water
35 delivered to Excess Lands served by the Contractor. The Contractor shall not within any

1 month deliver to Ineligible Lands water in excess of the non-Project Water, including
2 Base Supply, for that month. The Contracting Officer or authorized representative shall
3 have the right at all reasonable times to inspect such records and measuring equipment.

4 (c) The Contractor will not be considered in violation of the requirement that
5 Project Water be delivered only to Eligible Lands during any month of the irrigation
6 season that the water requirement for beneficial use on Eligible Lands for that month is
7 equal to or in excess of the Project Water for that month as shown on Exhibit A or any
8 revision thereof pursuant to subdivision (b) of Article 3. The water requirement for
9 beneficial use on Eligible Lands will be determined by multiplying:

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

12 (2) the Unit Duties as set forth in Exhibit C attached hereto and made a
13 part hereof, or by such other Unit Duties mutually agreed upon by the Contractor and the
14 Contracting Officer. In order to make the computation of the water requirement for
15 Eligible Lands, on April 1 of each Year and concurrently with its order for water for the
16 irrigation season, the Contractor shall designate the acreage of and type of crops to be
17 grown on its Eligible Lands that irrigation season. During any month the water
18 requirement as above determined for crops growing on Eligible Lands during such month
19 is equal to or in excess of the Project Water for that month as provided herein the
20 Contractor shall not be required to measure the water delivered to Excess Lands. Any
21 month the said water requirement is less than the amount of Project Water as provided
22 herein, the Contractor will be required to measure water delivered to excess land in
23 accordance with subdivision (b) hereof.

1 BOOKS, RECORDS, AND REPORTS

2 ~~18~~ 19. The Contractor shall establish and maintain accounts and other books and
3 records pertaining to administration of the terms and conditions of this Settlement
4 Contract, including: the Contractor's financial transactions, water supply data, and
5 Project land and right-of-way agreements; the water users' land-use (crop census), land
6 ownership, land-leasing and water use data; and other matters that the Contracting
7 Officer may require. Reports thereon shall be furnished to the Contracting Officer in
8 such form and on such date or dates as the Contracting Officer may require. Subject to
9 applicable Federal laws and regulations, each party to this Settlement-Contract shall have
10 the right during office hours to examine and make copies of each other's books and
11 official records relating to matters covered by this Settlement Contract.

12
13 CHANGE OF PLACE OF USE OR ORGANIZATION

14 ~~19~~ 20. (a) Unless the ~~written consent of the~~ United States is first obtained
15 ~~consulted~~ no change shall be made in the place of water use shown on Exhibit B.

16 (b) While this ~~contract~~ Settlement Contract is in effect, no change shall be
17 made in the area of the Contractor as shown on its Exhibit B, by inclusion or exclusion of
18 lands, by dissolution, consolidation, or merger or otherwise, ~~except upon~~ ~~unless~~ the
19 Contracting ~~Officer's written assent thereto~~ Officer is first consulted.

20 (c) In the event lands are excluded from the area of the Contractor, as
21 provided herein, the quantity of Project Water to be diverted may be decreased pursuant
22 to a supplemental agreement to be executed in respect thereto.

23 CONSOLIDATION OF CONTRACTING ENTITIES

24
25 ~~20~~ 21. Consolidation of Contractors ~~may~~ will be approved by the Contracting
26 Officer ~~upon request~~ provided: (i) ~~the Contracting Officer approves the form and~~
27 ~~organization of the resulting entity and the utilization by it of the Contract Total; and (ii)~~
28 the obligations of the Contractors are assumed by ~~such~~ the resulting entity.

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

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

8
9 **Contractors' proposed language changes were received on July 9, 2002, but**
10 **we have not had the opportunity to review. We will discuss the proposed**
11 **language at the next negotiations session.**

12
13 **WATER CONSERVATION**

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

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

3 (b) The Contractor shall submit to the Contracting Officer a report on the
4 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 (5)-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 activity
15 shall be described in the Contractor's water conservation plan.

16 OPINIONS AND DETERMINATIONS

17
18 29 30. (a) Where the terms of this Settlement Contract provide for actions to be
19 based upon the opinion or determination of either party to this Settlement Contract, said
20 terms shall not be construed as permitting such action to be predicated upon arbitrary,
21 capricious, or unreasonable opinions or determinations. Both parties, notwithstanding
22 any other provisions of this Settlement Contract, expressly reserve the right to seek relief
23 from and appropriate adjustment for any such arbitrary, capricious, or unreasonable
24 opinion or determination. Each opinion or determination by either party shall be

1 provided in a timely manner. Nothing in subdivision (a) of Article ~~29~~ 30 of this
2 Settlement Contract is intended to or shall affect or alter the standard of judicial review
3 applicable under federal law to any opinion or determination implementing a specific
4 provision of federal law embodied in statute or regulation.

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

11 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

12 ~~30~~ 31. (a) In addition to all other payments to be made by the Contractor
13 pursuant to this Settlement Contract, the Contractor shall pay to the United States, within
14 ~~sixty (60)~~ days after receipt of a bill and detailed statement submitted by the Contracting
15 Officer to the Contractor for such specific items of direct cost incurred by the United
16 States for work requested by the Contractor associated with this Settlement Contract plus
17 indirect costs in accordance with applicable Bureau of Reclamation policies and
18 procedures. All such amounts referred to in this Article shall not exceed the amount
19 agreed to in writing in advance by the Contractor. This Article shall not apply to costs
20 for routine ~~contract~~ Settlement Contract administration.

21 (b) All advances for miscellaneous costs incurred for work requested by the
22 Contractor pursuant to Article 30 of this Settlement Contract shall be adjusted to reflect
23 the actual costs when the work has been completed. If the advances exceed the actual

1 costs incurred, the difference will be refunded to the Contractor. If the actual costs
2 exceed the Contractor's advances, the Contractor will be billed for the additional costs
3 pursuant to Article ~~30~~ 31 of this Settlement Contract.

4 WAIVER OF DEFAULT

5 ~~31~~ 32. The waiver by either party to this ~~contract~~ Settlement Contract as to any
6 default shall not be construed as a waiver of any other default or as authority of the other
7 party to continue such default or to make, do, or perform, or not to make, do, or perform,
8 as the case may be, any act or thing which would constitute a default.

1 IN WITNESS WHEREOF, the parties hereto have executed this ~~contract~~
2 Settlement 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 (Contractor)

17
18
19 By: _____
20 President

21
22 ATTEST:

23
24
25
26 _____
27 Secretary

28
29
30 (I:\sac river renewal\Sac R Std Form 7-10.doc)

