

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

CONTRACT BETWEEN THE UNITED STATES AND
TISDALE IRRIGATION AND DRAINAGE COMPANY,
DIVERTER OF WATER FROM SACRAMENTO RIVER SOURCES,
SETTLING WATER RIGHTS DISPUTES AND
PROVIDING FOR PROJECT WATER

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

12 THIS CONTRACT, hereinafter referred to as "Settlement Contract," is entered into
13 by THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, made
14 this 4th day of April, 2005, pursuant to the applicable authority granted
15 to it generally in the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary
16 thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and
17 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, including, but not
18 limited to, Sections 9 and 14 thereto, July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68),
19 October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat. 3050), as amended, and Title
20 XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively hereinafter referred to
21 as Federal Reclamation law, and TISDALE IRRIGATION AND DRAINAGE COMPANY,
22 hereinafter referred to as the Contractor, a corporation, acting pursuant to Sections 12003 and
23 12004 of the California Water Code, with its principal place of business in California;

24 WITNESSETH, that:

25

EXPLANATORY RECITALS

26

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

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

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

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

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[5th] WHEREAS, the Contractor and the United States had a dispute over the respective rights of the parties to divert and use water from the regulated flow of the Sacramento River which threatened to result in litigation, and as a means to settle that dispute entered into Contract No. 14-06-200-2781A, as revised, hereinafter referred to as the Existing Contract, which established terms for the delivery to the Contractor of Central Valley Project Water, and the quantities of Base Supply the United States and the Contractor agreed may be diverted by the Contractor from the Sacramento River pursuant to such contract; and

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47

[6th] WHEREAS, the United States and the Contractor disagree with respect to the authority of the United States to change the quantities of Base Supply and/or Project Water

48 specified as available for diversion in this Settlement Contract from the quantities specified in
49 the Existing Contract, and other issues related thereto. That dispute was the subject of litigation
50 in a lawsuit entitled *Glenn-Colusa Irrigation District, et al. v. United States, et al.*

51 [Civ. No. S-01-1816 GEB/JFM (E.D. Cal.)], but that litigation was dismissed, without prejudice,
52 pursuant to a stipulation of dismissal filed by the parties thereto on August 29, 2002.

53 Notwithstanding that dismissal, the Contractor and the United States enter into this Settlement
54 Contract to renew the Existing Contract, pursuant to the terms of the Existing Contract, Federal
55 Reclamation law, and the laws of the State of California; and

56 [7th] WHEREAS, to assure the Contractor of the enjoyment and use of the regulated
57 flow of the said Rivers and the Delta, and to provide for the economical operation of the Central
58 Valley Project by, and the reimbursement to, the United States for expenditures made for said
59 Project.

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

62 DEFINITIONS

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

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

69 (b) "Basin-Wide Water Management Plan" shall mean the mutually agreeable
70 Sacramento River Basinwide Water Management Plan, dated October 11, 2004, developed by

71 Glenn-Colusa Irrigation District, Maxwell Irrigation District, Natomas Central Mutual Water
72 Company, Pelger Mutual Water Company, Princeton-Codora-Glenn Irrigation District, Provident
73 Irrigation District, Reclamation District 108, Sutter Mutual Water Company, Anderson-
74 Cottonwood Irrigation District, Meridian Farms Water Company, Reclamation District 1004, and
75 the U.S. Bureau of Reclamation;

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

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

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

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

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

92 For the purpose of determining a Critical Year, the computation of inflow to
93 Shasta Lake shall be performed in a manner that considers the extent of upstream development

94 above Shasta Lake during the year in question, and shall be used as the full natural flow to
95 Shasta Lake. In the event that major construction has occurred or occurs above Shasta Lake after
96 September 1, 1963, and which has materially altered or alters the regimen of the stream systems
97 contributing to Shasta Lake, the computed inflow to Shasta Lake used to define a Critical Year
98 will be adjusted to eliminate the effect of such material alterations. After consultation with the
99 State of California, the National Weather Service, and other recognized forecasting agencies, the
100 Contracting Officer will select the forecast to be used and will make the details of it available to
101 the Contractor. The same forecasts used by the United States for the operation of the Project
102 shall be used to make the forecasts hereunder;

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

105 (g) "Eligible Lands" shall mean all lands to which Project Water may be
106 delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982
107 (96 Stat. 1263), as amended, hereinafter referred to as RRA;

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

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

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

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

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

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

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

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

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

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

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

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TERM OF SETTLEMENT CONTRACT

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2. (a) This Settlement Contract shall become effective April 1, 2005, and shall

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remain in effect until and including March 31, 2045; Provided, that under terms and conditions

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mutually agreeable to the parties hereto, renewals may be made for successive periods not to

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exceed 40 years each. The terms and conditions of each renewal shall be agreed upon not later

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than one year prior to the expiration of the then existing Settlement Contract.

144

(b) With respect to Project Water and the portions of this Settlement Contract

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pertaining thereto, upon written request by the Contractor of the Secretary made not later than

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one year prior to the expiration of this Settlement Contract, whenever, account being taken of the

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amount then credited to the costs of construction of water supply works, the remaining amount of

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construction costs of water supply work which is properly assignable for ultimate return by the

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Contractor as established by the Secretary of the Interior pursuant to (3) of Section 1 of Public

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Law 643 (70 Stat. 483), probably can be repaid to the United States within the term of a contract

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under subsection 9(d) of the 1939 Reclamation Project Act (53 Stat. 1187), the relevant portions

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of this Settlement Contract may be converted to a contract under said subsection 9(d) upon terms

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and conditions mutually agreeable to the United States and the Contractor. The Secretary shall

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make a determination ten years after the date of execution of this Settlement Contract, and every

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five years thereafter, of whether a conversion to a contract under said subsection 9(d) can be

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accomplished pursuant to Public Law 643. Notwithstanding any provision of this Settlement

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Contract, the Contractor reserves and shall have all rights and benefits under Public Law 643.

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WATER TO BE FURNISHED TO CONTRACTOR

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3. (a) Subject to the conditions, limitations, and provisions hereinafter

160

expressed, the Contractor is hereby entitled and authorized to divert from the Sacramento River

161 at the locations shown in Exhibit A, for beneficial use within the area delineated on Exhibit B,
162 (both Exhibits are attached hereto and made a part hereof), the Contract Total designated in
163 Exhibit A, or any revision thereof, in accordance with the monthly operating schedule required
164 by Article 3(c) of this Settlement Contract. The quantity of any water diverted under this
165 Settlement Contract from the Sacramento River, during the period April through October, for use
166 on any lands delineated on Exhibit B, by the owner of such lands or otherwise shall constitute a
167 part of the Contract Total as shown on Exhibit A and shall be subject to all the provisions of this
168 Settlement Contract relating to such Contract Total as if such diversion were made by the
169 Contractor.

170 (b) The Contractor may have acquired rights to divert water from the
171 Sacramento River during the period April through October, that were obtained after the date of
172 execution of the Existing Contract, or the Contractor may acquire such rights in the future. All
173 diversions made from the Sacramento River, pursuant to such rights, during the period April
174 through October, shall not be considered a part of the quantity of Base Supply and Project Water
175 specified in Exhibit A; Provided, that the quantities diverted pursuant to the above rights shall be
176 identified on the schedule submitted pursuant to Article 3(c) below, and shall not be substituted
177 for any Base Supply or Project Water; Provided, further, that any such identified quantities of
178 other acquired rights may be diverted by the Contractor before incurring any fee pursuant to
179 Article 3(c)(1), below.

180 (c) Before April 1 and before the first day of each month thereafter when a
181 revision is needed, the Contractor shall submit a written schedule to the Contracting Officer
182 indicating the Contract Total to be diverted by the Contractor during each month under this
183 Settlement Contract. The United States shall furnish water to the Contractor in accordance with

184 the monthly operating schedule or any revisions thereof. However, the United States recognizes
185 the need of the Contractor to change from time to time its monthly diversions of water from the
186 quantities shown in Exhibit A; the Contractor may make such changes, provided:

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

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

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

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

200 (d) In the event conditions warrant, the Contracting Officer reserves the right
201 to require the Contractor to submit, at least 72 hours prior to the beginning of each weekly
202 period, its estimate of daily diversion requirements for each such period from the Sacramento
203 River; Provided, however, that changes during any such period may be made upon the giving of
204 72 hours' notice thereof to the Contracting Officer.

205 (e) No sale, transfer, exchange, or other disposal of any of the Contract Total
206 designated in Exhibit A or the right to the use thereof for use on land other than that shown on

207 Exhibit B shall be made by the Contractor without first obtaining the written consent of the
208 Contracting Officer. Such consent will not be unreasonably withheld and a decision will be
209 rendered in a timely manner. For short-term actions that will occur within one year or less, the
210 decision will be rendered within 30 days after receipt of a complete written proposal. For
211 long-term actions that will occur in a period longer than one year, the decision will be rendered
212 within 90 days after receipt of a complete written proposal. For a proposal to be deemed
213 complete by the Contracting Officer, it must comply with all provisions required by State and
214 Federal law, including information sufficient to enable the Contracting Officer to comply with
215 the National Environmental Policy Act, the Endangered Species Act, and applicable rules or
216 regulations then in effect; Provided, that such consent does not authorize the use of Federal
217 facilities to facilitate or effectuate the sale, transfer, exchange, or other disposal of Base Supply.
218 Such use of Federal facilities will be the subject of a separate agreement to be entered into
219 between the Contractor and Reclamation.

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

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

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

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

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

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

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

240 (i) In addition to the provisions of subdivision (h) of Article 3 of this
241 Contract, if there is a shortage of Project Water because of actions taken by the Contracting
242 Officer to meet legal obligations then, except as provided in subdivision (a) of Article 30 of this
243 Contract, no liability shall accrue against the United States or any of its officers, agents, or
244 employees for any damage, direct or indirect, arising therefrom.

245 RETURN FLOW

246 4. Nothing herein shall be construed as an abandonment or a relinquishment by the
247 United States of any right it may have to the use of waste, seepage, and return flow water derived
248 from water diverted by the Contractor hereunder and which escapes or is discharged beyond the
249 boundaries of the lands shown on Exhibit B; Provided, that this shall not be construed as
250 claiming for the United States any right to such water which is recovered by the Contractor
251 pursuant to California law from within the boundaries of the lands shown on Exhibit B, and

252 which is being used pursuant to this Settlement Contract for surface irrigation or underground
253 storage for the benefit of the lands shown on Exhibit B by the Contractor.

254 CONSTRAINTS ON THE AVAILABILITY OF WATER

255 5. (a) In a Critical Year, the Contractor's Base Supply and Project Water agreed
256 to be diverted during the period April through October of the Year in which the principal portion
257 of the Critical Year occurs and, each monthly quantity of said period shall be reduced by
258 25 percent.

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

263 INTEGRATED WATER MANAGEMENT AND PARTNERSHIPS

264 6. The Contractor and United States desire to work together to maximize the
265 reasonable beneficial use of water for their mutual benefit. As a consequence, the United States
266 and the Contractor will work in partnership and with others within the Sacramento Valley,
267 including other contractors, to facilitate the better integration within the Sacramento Valley of all
268 water supplies including, but not limited to, the better management and integration of surface
269 water and groundwater, the development and better utilization of surface water storage, the
270 effective utilization of waste, seepage and return flow water, and other operational and
271 management options that may be identified in the future.

272

USE OF WATER FURNISHED TO CONTRACTOR

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7. (a) Project Water furnished to the Contractor pursuant to this Settlement

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Contract shall not be delivered or furnished by the Contractor for any purposes other than

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agricultural purposes without the written consent of the Contracting Officer. For purposes of this

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Settlement Contract, "agricultural purposes" includes, but is not restricted to, the irrigation of

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crops, the watering of livestock, incidental domestic use including related landscape irrigation,

278

and underground water replenishment.

279

(b) The Contractor shall comply with requirements applicable to the

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Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution

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of this Settlement Contract undertaken pursuant to Section 7 of the Endangered Species Act of

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1973, as amended, that are within the Contractor's legal authority to implement. The Existing

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Contract, which evidences in excess of 40 years of diversions, for agricultural uses, of the

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quantities of water provided for in Article 3, and the underlying water rights of the Contractor

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will be considered in developing an appropriate base-line for the Biological Assessment prepared

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pursuant to the Endangered Species Act, and in any other needed environmental review.

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Nothing herein shall be construed to prevent the Contractor from challenging or seeking judicial

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relief in a court of competent jurisdiction with respect to any biological opinion or other

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environmental documentation referred to in this Article.

290

RATE AND METHOD OF PAYMENT FOR WATER

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8. (a) The Contractor shall make payments to the United States as provided in

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this Article for all Project Water shown in Exhibit A as follows:

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(1) 75 percent of the amount shown as Project Water shall be paid for

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by the Contractor in each Year; and in addition

295 (2) the Contractor shall pay for Project Water actually diverted in
296 excess of 75 percent of the amount shown as Project Water.

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

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

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

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

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

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

333 (2) With respect to Charges, the Contractor shall also make a payment
334 to the United States, in addition to the Rate(s) in subdivision (c)(1) of this Article, at the Charges
335 then in effect, before the end of the month following the month of delivery or transfer. The
336 payments shall be consistent with the quantities of Project Water delivered or transferred.
337 Adjustment for overpayment or underpayment of Charges shall be made through the adjustment
338 of payments due to the United States for Charges for the next month. Any amount to be paid for

339 past due payment of Charges shall be computed pursuant to Article 13 of this Settlement
340 Contract.

341 (d) Payments to be made by the Contractor to the United States under this
342 Settlement Contract may be paid from any revenues available to the Contractor. All revenues
343 received by the United States from the Contractor relating to the delivery of Project Water or the
344 delivery of non-Project Water through Project facilities shall be allocated and applied in
345 accordance with Federal Reclamation law and the associated rules or regulations, and the then
346 current Project ratesetting policies for irrigation water.

347 (e) The Contracting Officer shall keep its accounts pertaining to the
348 administration of the financial terms and conditions of its long-term water service and Settlement
349 Contracts, in accordance with applicable Federal standards, so as to reflect the application of
350 Project costs and revenues. The Contracting Officer shall, each Year upon request of the
351 Contractor, provide to the Contractor a detailed accounting of all Project and Contractor expense
352 allocations, the disposition of all Project and Contractor revenues, and a summary of all water
353 delivery information. The Contracting Officer and the Contractor shall enter into good faith
354 negotiations to resolve any discrepancies or disputes relating to accountings, reports, or
355 information.

356 (f) The parties acknowledge and agree that the efficient administration of this
357 Settlement Contract is their mutual goal. Recognizing that experience has demonstrated that
358 mechanisms, policies, and procedures used for establishing Rates and Charges and/or for making
359 and allocating payments, other than those set forth in this Article may be in the mutual best
360 interest of the parties, it is expressly agreed that the parties may enter into agreements to modify

361 the mechanisms, policies, and procedures for any of those purposes while this Settlement
362 Contract is in effect without amendment of this Settlement Contract.

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

374 (h) Except as provided in subsection 3405(a)(1)(B) of the CVPIA, the Rates
375 for Project Water transferred, exchanged, or otherwise disposed of, by the Contractor shall be the
376 Contractor's Rates adjusted upward or downward to reflect the changed costs of delivery (if any)
377 of the transferred, exchanged, or otherwise disposed of Project Water to the transferee's point of
378 delivery in accordance with the then-current ratesetting policies for the Project. Except as
379 provided in subsection 3407(d)(2)(A) of the CVPIA, the Charges for Project Water transferred,
380 exchanged, or otherwise disposed of, by the Contractor shall be the Contractor's Charges
381 specified in Exhibit D. If the Contractor is receiving lower Rates and Charges because of
382 inability to pay and is transferring, exchanging, or otherwise disposing of Project Water to
383 another entity whose Rates and Charges are not adjusted due to inability to pay, the Rates and

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

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

388 (j) Each payment to be made pursuant to subdivisions (a) and (c) of this
389 Article shall be made at the office of the Bureau of Reclamation, MP Region: Mid-Pacific,
390 P.O. Box 894242, Los Angeles, CA 90189-4242, or at such other place as the United States may
391 designate in a written notice to the said Contractor. Payments shall be made by cash transaction,
392 wire, or any other mechanism as may be agreed to in writing by the Contractor and the
393 Contracting Officer. In the event there should be a default in the payment of the amount due, the
394 delinquent payment provisions of Article 13 shall apply. The Contractor shall not be relieved of
395 the whole or any part of its said obligation by, on account of, or notwithstanding, as the case may
396 be:

397 (1) Its failure, refusal, or neglect to divert 75 percent of the quantity of
398 Project Water shown on Exhibit A;

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

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

404 (4) Any injunctive process enjoining or restraining the Contractor
405 from making or collecting any such assessment, toll, or other charge referred to in subsection
406 8(c)(2) of this Settlement Contract.

AGREEMENT ON WATER QUANTITIES

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9. (a) During the term of this Settlement Contract and any renewals thereof:
- (1) It shall constitute full agreement as between the United States and the Contractor as to the quantities of water and the allocation thereof between Base Supply and Project Water which may be diverted by the Contractor from the Sacramento River for beneficial use on the land shown on Exhibit B from April 1 through October 31, which said diversion, use, and allocation shall not be disturbed so long as the Contractor shall fulfill all of its obligations hereunder;
- (2) Neither party shall claim any right against the other in conflict with the provisions of Article 9(a)(1) hereof.
- (b) Nothing herein contained is intended to or does limit rights of the Contractor against others than the United States or of the United States against any person other than the Contractor; Provided, however, that in the event the Contractor, the United States, or any other person shall become a party to a general adjudication of rights to the use of water of the Sacramento River system, this Settlement Contract shall not jeopardize the rights or position of either party hereto or of any other person and the rights of all such persons in respect to the use of such water shall be determined in such proceedings the same as if this Settlement Contract had not been entered into, and if final judgment in any such general adjudication shall determine that the rights of the parties hereto are different from the rights as assumed herein, the parties shall negotiate an amendment to give effect to such judgment. In the event the parties are unable to agree on an appropriate amendment they shall, within 60 days of determining that there is an impasse, employ the services of a neutral mediator, experienced in resolving water rights disputes, to assist in resolving the impasse. The cost of the mediation will be shared equally. A

430 failure to reach agreement on an amendment within 60 days of the end of mediation will cause
431 the immediate termination of this Settlement Contract.

432 (c) In the event that the California State Water Resources Control Board or a
433 court of competent jurisdiction issues a final decision or order modifying the terms and
434 conditions of the water rights of either party to this Settlement Contract in order to impose Bay-
435 Delta water quality obligations, the Contractor and the United States shall promptly meet to
436 determine whether or not to modify any of the terms of this Settlement Contract to comply with
437 the final decision or order, including, but not limited to, the applicability of the rescheduling
438 charge in Article 3(c)(1) of this Settlement Contract. If within 60 days of the date of the issuance
439 of the final decision or order the parties are not able to reach agreement regarding either the need
440 to modify this Settlement Contract or the manner in which this Settlement Contract is to be
441 modified, the parties shall promptly retain a neutral mediator, experienced in resolving water
442 right disputes, to assist the parties in resolving their dispute. The cost of the mediator shall be
443 shared equally. In the event that either of the parties to this Settlement Contract determines that
444 the parties will not be able to develop mutually-agreeable modification(s) to this Settlement
445 Contract even with the assistance of a mediator, either of the parties to this Settlement Contract
446 may attempt to resolve the impasse by seeking appropriate judicial relief including, but not
447 limited to, filing a general adjudication of the rights to the use of water in the Sacramento River
448 system. The foregoing provisions of this sub-article shall only apply to the incremental
449 obligations contained within a final decision or order of the State Water Resources Control
450 Board that reflects a modification to the obligations imposed in State Water Resources Control
451 Board Revised Water Rights Decision 1641 dated March 15, 2000, and its associated 1995 Water

452 Quality Control Plan which, taken together, will be considered the baseline for the application of
453 the provisions of this sub-article.

454 (d) In the event this Settlement Contract terminates, the rights of the parties to
455 thereafter divert and use water shall exist as if this Settlement Contract had not been entered into;
456 and the fact that as a compromise settlement of a controversy as to the respective rights of the
457 parties to divert and use water and the yield of such rights during the term hereof, this Settlement
458 Contract places a limit on the Contract Total to be diverted annually by the Contractor during the
459 Settlement Contract term and segregates it into Base Supply and Project Water shall not
460 jeopardize the rights or position of either party with respect to its water rights or the yield thereof
461 at all times after the Settlement Contract terminates. It is further agreed that the Contractor at all
462 times will first use water to the use of which it is entitled by virtue of its own water rights, and
463 neither the provisions of this Settlement Contract, action taken thereunder, nor payments made
464 thereunder to the United States by the Contractor shall be construed as an admission that any part
465 of the water used by the Contractor during the term of this Settlement Contract was in fact water
466 to which it would not have been entitled under water rights owned by it nor shall receipt of
467 payments thereunder by the United States from the Contractor be construed as an admission that
468 any part of the water used by the Contractor during the term of this Settlement Contract was in
469 fact water to which it would have been entitled under water rights owned by it.

470 MEASUREMENT OF WATER

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

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

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

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

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

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

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

503 RULES AND REGULATIONS

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

509 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

514 (b) The payment of Charges becoming due hereunder is a condition precedent
515 to receiving benefits under this Settlement Contract. The United States shall not make water
516 available to the Contractor through Project facilities during any period in which the Contractor
517 may be in arrears in the advance payment of water Rates due the United States. The Contractor
518 shall not furnish water made available pursuant to this Settlement Contract for lands or parties
519 which are in arrears in the advance payment of water rates levied or established by the
520 Contractor.

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

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CHARGES FOR DELINQUENT PAYMENTS

524 13. (a) The Contractor shall be subject to interest, administrative and penalty
525 charges on delinquent installments or payments. When a payment is not received by the due
526 date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond
527 the due date. When a payment becomes 60 days delinquent, the Contractor shall pay an
528 administrative charge to cover additional costs of billing and processing the delinquent payment.
529 When a payment is delinquent 90 days or more, the Contractor shall pay an additional penalty
530 charge of six percent per year for each day the payment is delinquent beyond the due date.
531 Further, the Contractor shall pay any fees incurred for debt collection services associated with a
532 delinquent payment.

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

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

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QUALITY OF WATER

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

547

WATER AND AIR POLLUTION CONTROL

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

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EQUAL OPPORTUNITY

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

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

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

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

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

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

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

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

599 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

600 17. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
 601 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the
 602 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights
 603 laws, as well as with their respective implementing regulations and guidelines imposed by the
 604 U.S. Department of the Interior and/or Bureau of Reclamation.

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

612 (c) The Contractor makes this agreement in consideration of and for the
 613 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other
 614 Federal financial assistance extended after the date hereof to the Contractor by the Bureau of
 615 Reclamation, including installment payments after such date on account of arrangements for
 616 Federal financial assistance which were approved before such date. The Contractor recognizes
 617 and agrees that such Federal assistance will be extended in reliance on the representations and
 618 agreements made in this Article, and that the United States reserves the right to seek judicial
 619 enforcement thereof.

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

621 18. (a) Project Water must of necessity be transported by the Contractor to its
 622 water users by means of the same works and channels used for the transport of its non-Project
 623 Water including Base Supply. Notwithstanding such mingling of water, the provisions of Article
 624 11 hereof shall be applicable only to Project Water, and such mingling of water shall not in any

625 manner subject to the provisions of Article 11 hereof the Contractor's non-Project Water
626 including Base Supply.

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

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

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

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

648 growing on Eligible Lands during such month is equal to or in excess of the Project Water for
649 that month as provided herein the Contractor shall not be required to measure the water delivered
650 to Excess Lands. Any month the said water requirement is less than the amount of Project Water
651 as provided herein, the Contractor will be required to measure water delivered to excess land in
652 accordance with subdivision (b) hereof.

653 BOOKS, RECORDS, AND REPORTS

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

663 CHANGE OF PLACE OF USE OR ORGANIZATION

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

666 (b) While this Settlement Contract is in effect, no change shall be made in the
667 area of the Contractor as shown on its Exhibit B, by inclusion, exclusion, annexation, or
668 detachment of lands, by dissolution, consolidation, or merger or otherwise, except upon the
669 Contracting Officer's written consent thereto. Such consent will not be unreasonably withheld
670 and a decision will be provided in a timely manner.

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

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CONSOLIDATION OF CONTRACTING ENTITIES

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21. Consolidation of Contractors may be approved by the Contracting Officer

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provided: (i) the Contracting Officer approves the form and organization of the resulting entity

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and the utilization by it of the Contract Total; and (ii) the obligations of the Contractors are

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assumed by such entity.

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

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Officer.

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NOTICES

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22. Any notice, demand, or request authorized or required by this Settlement Contract

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shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid,

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or delivered to the Area Manager, Northern California Area Office, Bureau of Reclamation,

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16349 Shasta Dam Boulevard, Shasta Lake, California 96019, and on behalf of the United

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States, when mailed, postage prepaid, or delivered to the Board of Directors, Tisdale Irrigation

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and Drainage Company, P. O. Box 309, Meridian, California 95957. The designation of the

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addressee or the address may be changed by notice given in the same manner as provided in this

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Article for other notices.

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ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

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23. (a) The provisions of this Settlement Contract shall apply to and bind the

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successors and assigns of the parties hereto, but no assignment or transfer of this Settlement

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Contract or any right or interest therein shall be valid until approved in writing by the

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Contracting Officer.

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(b) The assignment of any right or interest in this Settlement Contract by

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either party shall not interfere with the rights or obligations of the other party to this Settlement

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Contract absent the written concurrence of said other party.

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(c) The Contracting Officer shall not unreasonably condition or withhold his

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approval of any proposed assignment.

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OFFICIALS NOT TO BENEFIT

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24. (a) No Member of or Delegate to Congress, Resident Commissioner, or

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official of the Contractor shall benefit from this Settlement Contract other than as a water user or

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landowner in the same manner as other water users or landowners.

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

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CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

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

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CONFIRMATION OF SETTLEMENT CONTRACT

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

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UNAVOIDABLE GROUNDWATER PERCOLATION

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

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PRIVACY ACT COMPLIANCE

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

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(b) With respect to the application and administration of the criminal penalty provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees

737 responsible for maintaining the certification and reporting records referenced in (a) above are
738 considered to be employees of the Department of the Interior. See 5 U.S.C. 552a(m).

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

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

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

755 WATER CONSERVATION

756 29. (a) Prior to the diversion of Project Water, the Contractor shall be
757 implementing an effective water conservation and efficiency program based on the Basin-Wide
758 Water Management Plan and/or Contractor's water conservation plan that has been determined
759 by the Contracting Officer to meet the conservation and efficiency criteria for evaluating water
760 conservation plans established under Federal law. The water conservation and efficiency
761 program shall contain definite water conservation objectives, appropriate economically feasible
762 water conservation measures, and time schedules for meeting those objectives. Continued
763 diversion of Project Water pursuant to this Settlement Contract shall be contingent upon the
764 Contractor's continued implementation of such water conservation program. In the event the
765 Contractor's water conservation plan or any revised water conservation plan completed pursuant
766 to subdivision (c) of Article 29 of this Settlement Contract have not yet been determined by the

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

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

776 (c) At five-year intervals, the Contractor shall revise its water conservation
777 plan to reflect the then current conservation and efficiency criteria for evaluating water
778 conservation plans established under Federal law and submit such revised water management
779 plan to the Contracting Officer for review and evaluation. The Contracting Officer will then
780 determine if the water conservation plan meets Reclamation's then current conservation and
781 efficiency criteria for evaluating water conservation plans established under Federal law.

782 (d) If the Contractor is engaged in direct groundwater recharge, such activity
783 shall be described in the Contractor's water conservation plan.

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

787 (1) On or before February 15 of any Water Year, the Contractor may
788 file with Reclamation an offer to reduce Project Water use, hereinafter referred to as Offer. The
789 Offer shall specify the maximum quantity of Project Water to be diverted by the Contractor for

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

794 (2) If Reclamation accepts the Offer, the Contractor's payment
795 obligation under Article 8(a)(1) shall be reduced to the maximum quantity of Project Water to be
796 diverted by the Contractor as specified in the Offer. The Contractor shall not divert Project
797 Water in excess of the quantities set forth in the Offer; Provided, however, if the Contractor's
798 diversions of Project Water exceed the quantities set forth in the Offer, the Contractor shall pay
799 to Reclamation the applicable Rates and Charges plus an amount equal to the applicable Rates
800 and Charges, unadjusted for ability to pay, for each acre-foot of Project Water diverted in excess
801 of the quantities set forth in the Offer.

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

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

807 OPINIONS AND DETERMINATIONS

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

813 adjustment for any such arbitrary, capricious, or unreasonable opinion or determination. Each
814 opinion or determination by either party shall be provided in a timely manner. Nothing in
815 subdivision (a) of Article 30 of this Settlement Contract is intended to or shall affect or alter the
816 standard of judicial review applicable under Federal law to any opinion or determination
817 implementing a specific provision of Federal law embodied in statute or regulation.

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

823 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

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

836 advances, the Contractor will be billed for the additional costs pursuant to Article 31 of this
837 Settlement Contract.

838

WAIVER OF DEFAULT

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

843 IN WITNESS WHEREOF, the parties hereto have executed this Settlement

844 Contract as of the day and year first hereinabove written.

845 THE UNITED STATES OF AMERICA

APPROVED AS TO LEGAL
FORM AND SUFFICIENCY
James E. [Signature]
OFFICE OF REGIONAL SOLICITOR
DEPARTMENT OF THE INTERIOR

846

847

848

By: *[Signature]*
Regional Director, Mid-Pacific Region
Bureau of Reclamation

849 (SEAL)

850

851

TISDALE IRRIGATION AND DRAINAGE
COMPANY

852

853

By: *Larry Chesini*
President

854 ATTEST:

855

856

[Signature]
Secretary

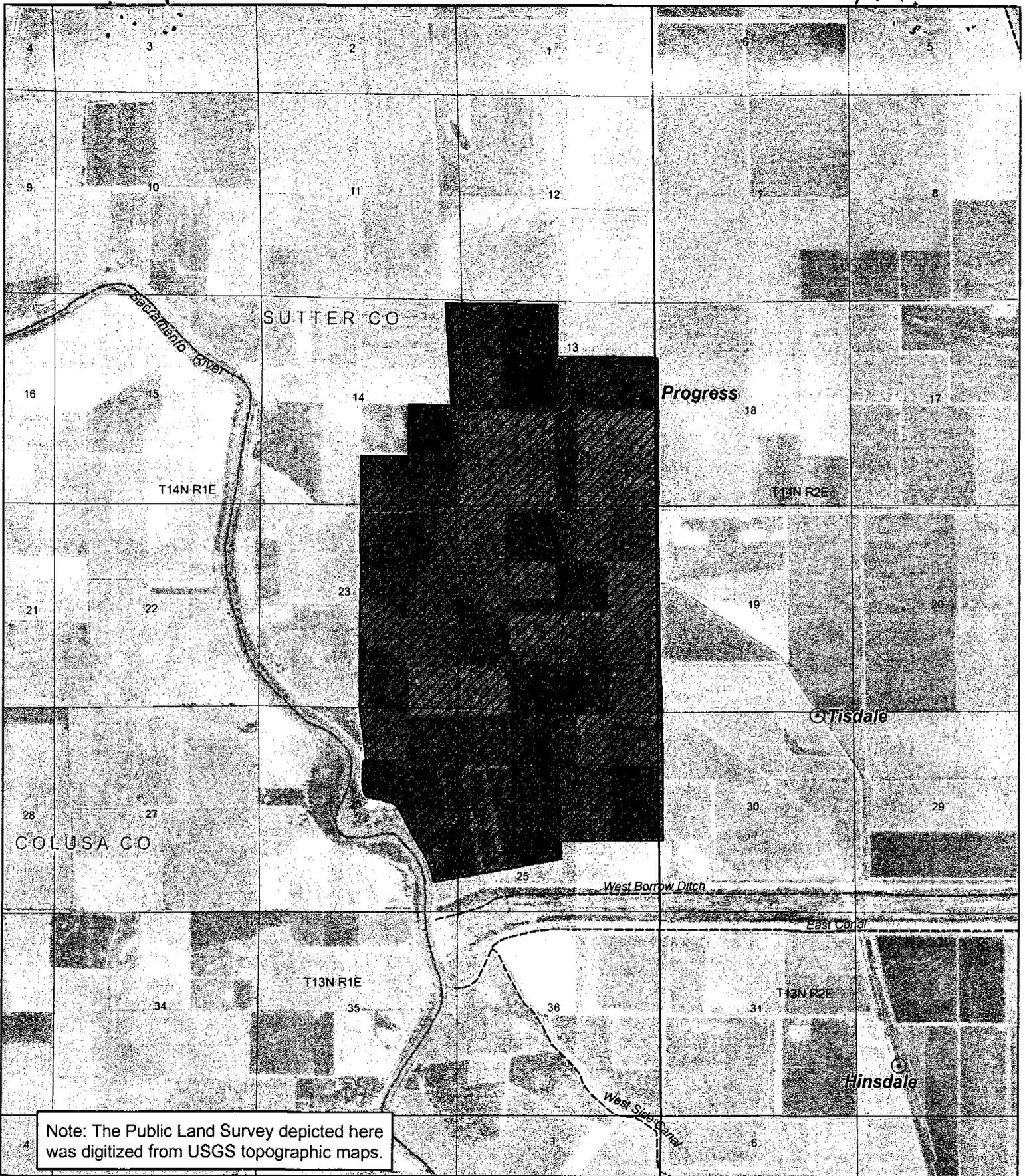
857 (H:\public\Sac River Final LTRC's\2005-01-31 Tisdale Irrigation and Drainage Company Final
858 Draft Contract with exhibits.doc)

Exhibit A

TISDALE IRRIGATION AND DRAINAGE COMPANY
Sacramento RiverSCHEDULE OF MONTHLY DIVERSIONS OF WATER

	<u>Base Supply</u> (acre-feet)	<u>Project Water</u> (acre-feet)	<u>Contract Total</u> (acre-feet)
April	<u>1,200</u>	<u>0</u>	<u>1,200</u>
May	<u>2,000</u>	<u>0</u>	<u>2,000</u>
June	<u>1,900</u>	<u>0</u>	<u>1,900</u>
July	<u>1,000</u>	<u>800</u>	<u>1,800</u>
August	<u>500</u>	<u>1,200</u>	<u>1,700</u>
September	<u>1,100</u>	<u>0</u>	<u>1,100</u>
October	<u>200</u>	<u>0</u>	<u>200</u>
Total	<u>7,900</u>	<u>2,000</u>	<u>9,900</u>

Point of Diversion: 64.4L, 67.1LDated: 01-31-2005



Note: The Public Land Survey depicted here was digitized from USGS topographic maps.

Tisdale Irrigation & Drainage Co.

Contract No. 14-06-200-2781A-R-1
Exhibit B

-  Contractor's Service Area
-  District Boundary



Date: November 5, 2004
File Name: N:\districts\contracts\tisdale\tisdale.mxd

725-202-45

Exhibit C

TISDALE IRRIGATION AND DRAINAGE COMPANY
Sacramento River

UNIT DUTY

(In Acre-Feet Per Acre)

	<u>Rice</u>	<u>Alfalfa and Irrigated Pasture</u>	<u>General Crops</u>
July	2.10	1.00	0.70
August	2.00	0.80	0.70
September	0.50	0.60	0.40

Dated: 01-31-2005

Exhibit D

TISDALE IRRIGATION AND DRAINAGE COMPANY
 Sacramento River
2005 Water Rates and Charges per Acre-Foot

<u>COST OF SERVICE RATES:</u>	<u>Irrigation</u>
Capital Rates	
Storage	\$ 4.58
O&M Rates:	
Water Marketing	\$ 6.61
Storage	\$ 5.93
Deficit Rates:	
Interest Bearing	\$ 3.28
CFO/PFR Adjustment Rate 1/	<u>\$ 1.27</u>
TOTAL	<u>\$21.67</u>
<u>RESCHEDULING FEE:</u>	<u>\$5.60</u>
<u>FULL-COST RATES:</u>	
Section 202(3) Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981.	<u>\$28.12</u>
Section 205(a)(3) Rate is applicable to a Limited Recipient that did not receive irrigation water on or before October 1, 1981.	<u>\$30.50</u>
<u>CHARGES UNDER P.L. 102-575 TO THE RESTORATION FUND 2/</u>	
Restoration Payments (3407(d)(2)(A))	<u>\$ 7.93</u>

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

2/ These surcharges are payments in addition to the water rates and are determined pursuant to Title XXXIV of P.L. 102-575. Restoration Fund surcharges under P.L. 102-575 are on a fiscal year basis (10/1-9/30). Contractors with ability to pay relief do not pay Restoration Fund charges for agricultural water.

**BOARD OF DIRECTORS
TISDALE IRRIGATION AND DRAINAGE COMPANY
RESOLUTION APPROVING FORM OF
SETTLEMENT RENEWAL
WATER SERVICE CONTRACT DRAFT
BETWEEN THE UNITED STATES OF AMERICAN AND
TISDALE IRRIGATION AND DRAINAGE COMPANY

(RENEWAL CONTRACT NO. 14-06-200-2781A-R1)**

AS A BASIS AND PREMISE for this Resolution, the Board of Directors of TISDALE IRRIGATION AND DRAINAGE COMPANY finds and states as follows:

1. The District entered into a "Contract Between the United States and the TISDALE IRRIGATION AND DRAINAGE COMPANY Providing For Project Water Service Diverter of Water from Sacramento River Sources, in agreement on diversion of water," Contract No. 14-06-200-2781A (sometimes referred to herein as the "Original Contract");
2. The original contract expired on March 31, 2004.
3. This Board has reviewed the terms and conditions of the form of the Settlement Renewal Contract Draft (sometimes referred to herein as the "Settlement Draft") and finds that the form and content thereof are acceptable, and it is in the best interests of the District and its landowners that the District execute the Settlement Contract;

NOW, THEREFORE, BE IT RESOLVED by this Board of Directors, as follows:

1. The TISDALE IRRIGATION AND DRAINAGE COMPANY approves the Renewal Contract entitled "Settlement Contract Between the United States and the TISDALE IRRIGATION AND DRAINAGE

COMPANY, DIVERTER OF WATER FROM SACRAMENTO RIVER SOURCES, SETTling WATER RIGHTS DISPUTES AND PROVIDING FOR PROJECT WATER," renewal Contract No. 14-06-200-2781A-R1, in substantially the form presented at this meeting.

2. The President and Secretary or any other officer of the District are authorized to execute the Settlement Renewal Contract on the District's behalf.

3. The Secretary shall forthwith prepare and transmit a certified copy of this Resolution to Reclamation.

4. The District's officers, staff and consultants are authorized and directed to do all things necessary and appropriate to carry out the foregoing and to ensure continued and uninterrupted water service to the District under its settlement renewal.

PASSED AND ADOPTED on July 29, 2003 at a meeting of the Board of Directors by the following vote:

AYES: Tom, Burkhouse, Mike Cole, Chris Capaul

NOES:

ABSENT: Larry Chesini, Eugene Honon

Larry Chesini
President

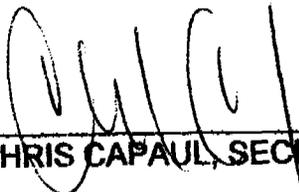
ATTEST:

[Signature]
Secretary

CERTIFICATION

I, CHRIS CAPAUL, the duly and regularly appointed Secretary of the TISDALE IRRIGATION AND DRAINAGE COMPANY, hereby certify that the foregoing is a true, correct and exact copy of a Resolution of the Board of Directors of TISDALE IRRIGATION AND DRAINAGE COMPANY, duly and regularly passed and adopted at a meeting of the said Board of Directors at Meridian, California on July 29, 2003, the original of which is on file in my office and duly and regularly entered in the official records of proceedings of the Board of Directors of TISDALE IRRIGATION AND DRAINAGE COPMANY.

DATED: July 29, 2003


CHRIS CAPAUL, SECRETETARY