

BOOK 5697 PAGE 439

CENTRAL VALLEY  
770.

RECORDED IN OFFICIAL RECORDS OF  
FRESNO COUNTY, CALIFORNIA  
AT 50 MIN. PAST 12 M  
JUN 20 1969  
J. L. BROWN, County Recorder FEE \$151.00

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Contract No.  
14-06-200-4448A

RECORDING  
REQUESTED BY

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

CONTRACT BETWEEN THE UNITED STATES OF AMERICA AND  
M. L. DUDLEY AND COMPANY, JOHN G. INDART, AND DORIS J. INDART,  
PROVIDING FOR ADJUSTMENT AND SETTLEMENT OF CERTAIN CLAIMED  
WATER RIGHTS

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1 UNITED STATES  
2 DEPARTMENT OF THE INTERIOR  
3 BUREAU OF RECLAMATION  
4 Central Valley Project, California

5 CONTRACT BETWEEN THE UNITED STATES OF AMERICA AND  
6 M. L. DUDLEY AND COMPANY, JOHN G. INDART, AND DORIS J. INDART,  
7 PROVIDING FOR ADJUSTMENT AND SETTLEMENT OF CERTAIN CLAIMED  
8 WATER RIGHTS

9 THIS CONTRACT, made this 11<sup>th</sup> day of June, 19 69,  
10 in pursuance generally of the Act of June 17, 1902 (32 Stat. 388),  
11 and acts amendatory or supplementary thereto, all collectively here-  
12 inafter referred to as the Federal reclamation laws, between THE  
13 UNITED STATES OF AMERICA, hereinafter referred to as the United States,  
14 and M. L. DUDLEY AND COMPANY (a Corporation), JOHN G. INDART,  
15 and DORIS J. INDART (husband and wife), hereinafter referred  
16 to as the Contractors, acting pursuant to the laws of the State  
17 of California,

18 WITNESSETH, That:

19 EXPLANATORY RECITALS

20 WHEREAS, the United States is constructing and operating the  
21 Central Valley Project, California, for the purpose, among others of  
22 furnishing water for irrigation, municipal, industrial, domestic, and  
23 other beneficial uses; and

24 WHEREAS, the United States has constructed the Delta-Mendota  
Canal which will be operated and used, in part, for the furnishing of  
water to the Contractors from Mendota Pool pursuant to the terms of  
this contract; and

1           WHEREAS, the Contractors own lands lying adjacent to  
2 Fresno Slough as shown on Exhibit A, attached hereto and made a  
3 part hereof, and claim that the construction and operation of the  
4 Central Valley Project have interfered with their claimed rights in  
5 and to the use of the waters of the San Joaquin River by impairing  
6 the quantity thereof, and are willing to accept an annual delivery  
7 of two thousand two hundred and eighty (2,280) acre-feet of Project  
8 water from Mendota Pool as an adjustment and settlement of these  
9 asserted claims; and

10           WHEREAS, the Contractors own an additional forty-nine (49)  
11 acres of land in Sections 4 and 5, Township 14 South, Range 15 East,  
12 for which they claim a water right to the San Joaquin River but which,  
13 because these lands are inundated under normal operations of Mendota  
14 Dam, are not considered as irrigable lands and are not included in  
15 aforementioned settlement of two thousand two hundred and eighty  
16 (2,280) acre-feet; and

17           WHEREAS, the Contractors request and the United States agrees  
18 that in the event levees are constructed along Fresno Slough and these  
19 lands are reclaimed, that the two thousand two hundred and eighty  
20 (2,280) acre-feet be proportionally increased by eighty-one (81)  
21 acre-feet as an adjustment and settlement of these further asserted  
22 claims; and

23           WHEREAS, the United States is willing to furnish water  
24 service to the Contractors from Mendota Pool;

1 NOW, THEREFORE, in consideration of the mutual and dependent  
2 covenants herein contained, it is agreed as follows:

3 DEFINITIONS

4 1. When used herein, unless otherwise distinctly expressed  
5 or manifestly incompatible with the intent hereof, the term:

6 (a) "Secretary" or "Contracting Officer" shall mean the  
7 Secretary of the United States Department of the Interior or  
8 his duly authorized representative;

9 (b) "Project" shall mean the Central Valley Project,  
10 California, of the Bureau of Reclamation;

11 (c) "Schedule 2 water" shall mean all water delivered  
12 without charge under the authority of Section 14 of the  
13 Reclamation Project Act of 1939 (53 Stat. 1187, 1197) as a  
14 permanent adjustment and settlement of the Contractors'  
15 asserted claims of rights to water in Fresno Slough tribu-  
16 tary to the San Joaquin River in fulfillment of such rights  
17 pursuant to Contract No. 11r-1145, Contract for Purchase of  
18 Miller & Lux Water Rights, dated July 27, 1939; and

19 (d) "year" shall mean the calendar year.

20 EFFECTIVE DATE

21 2. This contract shall be effective on the date of  
22 execution by the Contracting Officer.

23 WATER TO BE FURNISHED TO THE CONTRACTORS

24 3. Each year, commencing with the year in which this  
25 contract is executed, the United States shall furnish to the

1 Contractors for their lands entitled to receive such water as  
 2 shown on Exhibit A, two thousand two hundred and eighty (2,280)  
 3 acre-feet of Schedule 2 water at times and in quantities called for  
 4 as provided in subdivision (a) of Article 4 hereof under the  
 5 following basic table:

6	<u>Month</u>	<u>Quantities in Acre-feet</u>
7	January	0
8	February	195
9	March	313
10	April	277
111	May	339
12	June	423
13	July	489
14	August	218
15	September	26
16	October	0
17	November	0
18	December	0
19	Total	2,280:

20 Provided, That in any year when:

21 (a) The forecasted full natural inflow to Shasta  
 22 Lake for the current water year (October 1 of the preceding  
 23 year through September 30 of the current year), as such

1 forecast is made by the United States on or before February 15 ,  
 2 and reviewed as frequently thereafter as conditions and information  
 3 warrant, is equal to or less than three million two hundred thousand  
 4 (3,200,000) acre-feet; or

5 (b) The total accumulated actual deficiencies below four  
 6 million (4,000,000) acre-feet in the immediately prior water  
 7 year or series of successive prior water years each of which  
 8 had inflows of less than four million (4,000,000) acre-feet  
 9 together with the forecasted deficiency for the current water  
 10 year exceed eight hundred thousand (800,000) acre-feet, the  
 11 United States shall furnish to the Contractors one thousand  
 12 seven hundred and seventy-two (1,772) acre-feet of Schedule 2  
 13 water at times and in quantities called for as provided in  
 14 subdivision (a) of Article 4 hereof under the following basic  
 15 table:

16	<u>Month</u>	<u>Quantities in Acre-feet</u>
17	January	0
18	February	152
19	March	243
20	April	215
21	May	264
22	June	329
23	July	380
24	August	169

	<u>Month</u>	<u>Quantities in Acre-feet</u>
1		
2	September	20
3	October	0
4	November	0
5	December	0
6	Total	1,772

7 For the purpose of determining subsections (a) and (b) hereof,  
8 the computed inflow to Shasta Lake under present upstream development  
9 above Shasta Lake shall be used as the full natural inflow to Shasta  
10 Lake. In the event that major construction completed above Shasta  
11 Lake after September 1, 1963, materially alters the present regimen  
12 of the stream systems contributing to Shasta Lake, the computed  
13 inflow to Shasta Lake will be adjusted to eliminate the effect of  
14 such material alterations. The United States will select the fore-  
15 cast to be used and submit the details of the forecast to the  
16 Contractors. The same forecasts used by the United States for the  
17 operation of the Project shall be used to make the forecasts hereunder.  
18 Schedule 2 water made available by the United States for furnishing  
19 to the Contractors in accordance with the aforesaid schedule and not  
20 accepted by the Contractors shall be deemed to have been accepted  
21 by the Contractors at the time and in the quantities specified in  
22 said schedule.

23 TIME FOR DELIVERY OF WATER

24 4. (a) Before January 1 of each year the Contractors shall  
25 submit a schedule in writing to the Contracting Officer, subject to

1 the provisions of Article 3 hereof and satisfactory to the Contracting  
2 Officer, indicating the desired times and quantities for the  
3 delivery of all water pursuant to this contract during such year.  
4 In such schedule or revision thereof the Contractors may reallocate  
5 the quantities of Schedule 2 water for the months of February  
6 through June appearing in the applicable table in Article 3  
7 hereof so long as the total for such months does not thereby  
8 exceed the total for such months in that table. Within the provisions  
9 hereof the United States shall attempt to deliver such water in  
10 accordance with said schedule, or any revision thereof satisfactory  
11 to the Contracting Officer submitted by the Contractors within a  
12 reasonable time before the desired change of times or quantities,  
13 or both: Provided, That the United States shall not be obligated to  
14 deliver water to the Contractors during the months of December and  
15 January.

16 POINTS OF DELIVERY--MEASUREMENT AND RESPONSIBILITY  
FOR DISTRIBUTION OF WATER

17 5. (a) The water to be furnished to the Contractors pursuant  
18 to this contract shall be delivered from Mendota Pool at diversion  
19 points mutually agreed upon by the Contracting Officer and the  
20 Contractors.

21 (b) All water furnished pursuant to this contract shall be  
22 measured by the United States at the points of delivery established



1 pursuant to subdivision (a) of this article with equipment installed,  
2 operated, and maintained by the United States. Upon request of the  
3 Contractors the accuracy of such measurements shall be investigated  
4 by the Contracting Officer and any errors appearing therein adjusted.

5 (c) The United States shall not be responsible for the  
6 control, carriage, handling, use, disposal, or distribution of water  
7 which may be furnished at the delivery points established pursuant  
8 to subdivision (a) of this article, nor for claim of damage of any  
9 nature whatsoever, including but not limited to property damage,  
10 personal injury or death, arising out of or connected with the  
11 control, carriage, handling, use, disposal, or distribution of such  
12 water beyond such delivery points.

13 (d) The United States may temporarily discontinue or reduce  
14 the quantity of water to be furnished to the Contractors as herein  
15 provided for the purpose of such investigation, inspection, mainte-  
16 nance, repair, or replacement as may be reasonably necessary of any  
17 of the Project facilities used for the furnishing of water to the  
18 Contractors or any part thereof, but so far as feasible the United  
19 States shall give the Contractors due notice in advance of such  
20 temporary discontinuance or reduction, except in case of emergency,  
21 in which case no notice need be given. When service is resumed, to  
22 the extent it may be possible to do so and within the ability of the  
23 Contractors to accept it, the United States shall deliver the quantity  
24 of water which would have been furnished to the Contractors in the  
25 absence of such contingency.

QUALITY OF WATER

1  
2           6. (a) The water to be furnished under this contract shall  
3 be of the best quality that the United States, following its estab-  
4 lished operating procedures, can deliver by means of either the  
5 Delta-Mendota Canal or the San Joaquin River or both and shall be  
6 at all times suitable irrigation water for use upon the Contractors'  
7 lands. The fact that the requirements of such water quality are  
8 herein stated only in terms of parts per million of total dissolved  
9 solids should not be construed as meaning that this particular  
10 measurement of water quality is the sole indication of requisite  
11 water quality. The best data presently available on the character  
12 of the possible sources of water supplying Delta-Mendota Canal  
13 indicate that as concentration changes there will be no significant  
14 change in the character of the water with respect to the proportions  
15 of the various constituents. However, if such water meets the  
16 following specific requirements it shall be deemed conclusively to  
17 be suitable irrigation water hereunder:

18           (1) Daily: The quality of water shall not exceed  
19 a mean daily value of eight hundred (800) parts per million  
20 of total dissolved solids. The mean daily values are to be  
21 computed by weighting the instantaneous values on the basis  
22 of time of occurrence during each day;

23           (2) Monthly: The quality of water shall not exceed  
24 a mean monthly value of six hundred (600) parts per million  
25 of total dissolved solids. The mean monthly value is to be

1        computed by weighting each mean daily value of total dissolved  
2        solids on the basis of the quantity of water delivered each  
3        day of the month;

4                (3)    Annual: The quality of water shall not exceed  
5        a mean annual value during the year of four hundred and  
6        fifty (450) parts per million of total dissolved solids. The  
7        mean annual value is to be computed by weighting each mean  
8        daily value of total dissolved solids on the basis of quantity  
9        of water delivered each day of the year; and

10               (4)    Five-year: The average quality of water for any  
11        five (5) consecutive years shall not exceed a mean value of  
12        four hundred (400) parts per million of total dissolved solids.  
13        The 5-year average shall be computed by weighting each mean  
14        daily value of total dissolved solids on the basis of quantity  
15        of water delivered each day of the five (5) consecutive years  
16        ending with the last year of the period.

17               (b)    The quality of water from the San Joaquin River shall  
18        be determined at the present location of the Whitehouse gaging  
19        station, and from Delta-Mendota Canal shall be measured by a salinity  
20        recorder as presently installed in said Canal. The quality deter-  
21        mination made at said gaging station and the rating of said recorder  
22        shall be from bottle samples taken twice each month from which total  
23        dissolved solids will be determined by chemical analysis. When water  
24        is being delivered from Delta-Mendota Canal and from the San Joaquin

1 River simultaneously, the quality of all water so delivered shall be  
2 determined by computing the weighted average quality of all water so  
3 delivered. All quality determinations shall be made by the Contracting  
4 Officer.

5 WATER POLLUTION CONTROL

6 7. The Contractors agree that they will comply fully with all  
7 applicable Federal laws, orders, and regulations, and the laws of  
8 the State of California, all as administered by appropriate authorities,  
9 concerning the pollution of streams, reservoirs, groundwater, or  
10 water courses with respect to thermal pollution or the discharge of  
11 refuse, garbage, sewage effluent, industrial waste, oil, mine  
12 tailings, mineral salts, or other pollutants. The Contractors  
13 further agree that any contract they may enter into with a third  
14 party for the furnishing of Project water will contain a similar  
15 water pollution control article.

16 WATER RIGHTS SETTLEMENT

17 8. The Contractors, their successors, or assigns shall not  
18 divert, dispose of, or otherwise use water from Mendota Pool under  
19 any claim of water rights to San Joaquin River water so long as  
20 the United States delivers or is ready, able, and willing to  
21 deliver Schedule 2 water to the Contractors in accordance with  
22 the terms of this contract: Provided, That in the event levees  
23 are constructed along Fresno Slough and the additional forty-nine  
24 (49) acres of land in Sections 4 and 5, Township 14 South, Range  
25 15 East, owned by the Contractors for which they claim a water  
26 right from the San Joaquin River, but which, because these lands

1 are inundated under normal operations of Mendota Dam, are not  
2 considered as irrigable lands, become irrigable due to the construc-  
3 tion of said levees, the Schedule 2 water and the scheduling  
4 thereof as listed in Article 3 shall be proportionally  
5 increased by eighty-one (81) acre-feet. Performance by the United  
6 States of its obligations hereunder with respect to the delivery  
7 of Schedule 2 water shall release the United States from liability  
8 with respect to such claims.

9 ACCESS TO FRESNO SLOUGH

10 9. To the extent the Contractors have the power to grant such  
11 use, the United States, its employees, and its agents may use  
12 the roads within the Contractors' lands as such roads may exist  
13 for ingress and egress to and from Fresno Slough.

14 REMEDIES UNDER CONTRACT NOT EXCLUSIVE--WAIVERS

15 10. Nothing contained in this contract shall be construed as  
16 in any manner abridging, limiting, or depriving the United States  
17 of any means of enforcing any remedy, either at law or in equity,  
18 for the breach of any of the provisions hereof which it would other-  
19 wise have. Any waiver at any time by either party to this contract  
20 of their rights with respect to a default, or any matter  
21 arising in connection with this contract, shall not be deemed to be  
22 a waiver with respect to any subsequent default or matter.

23 OFFICIALS NOT TO BENEFIT

24 11. No Member of or Delegate to Congress or Resident Commissioner  
25 shall be admitted to any share or part of this contract or to any

1 benefit that may arise herefrom, but this restriction shall not be  
2 construed to extend to this contract if made with a corporation or  
3 company for its general benefit.

4 NOTICES

5 12. (a) Any notice authorized or required to be given to the  
6 United States shall be deemed to have been given when mailed, postage  
7 prepaid, or delivered to the Regional Director, Region 2, Bureau  
8 of Reclamation, 2800 Cottage Way, Sacramento, California 95825.

9 Any notice authorized or required to be given to the Contractors  
10 shall be deemed to have been given when mailed in a postage-prepaid  
11 or franked envelope or delivered to M. L. Dudley and Company,  
12 509 E. Ashlan Avenue, Fresno, California 93704, and to John G.  
13 Indart, 130 E. Terrace Avenue, Fresno, California 93705.

14 (b) The designation of the addressees or the addresses  
15 given above may be changed by notice given in the same general manner  
16 as provided in this article for other notices.

17 (c) This article shall not preclude the effective service  
18 of any such notice or announcement by other means.

19 COVENANT AGAINST CONTINGENT FEES

20 13. The Contractors warrant that they have not employed any  
21 person to solicit or secure this contract upon an agreement or under-  
22 standing for a commission, percentage, brokerage or contingent fee,  
excepting bona fide employees or bona fide established commercial or

1 selling agencies maintained by the Contractors for the purpose of  
2 securing business. For breach or violation of this warranty the  
3 United States shall have the right to annul this contract without  
4 liability.

5 IN WITNESS WHEREOF, the parties hereto have executed this  
6 contract the day and year first above written.

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23

THE UNITED STATES OF AMERICA

By *R. J. Rafford*  
Regional Director, Region 2  
Bureau of Reclamation

CONTRACTORS:

M. L. DUDLEY AND COMPANY

By *M. L. Dudley*  
President

(SEAL)

ATTEST:

*James R. Dudley*  
Secretary

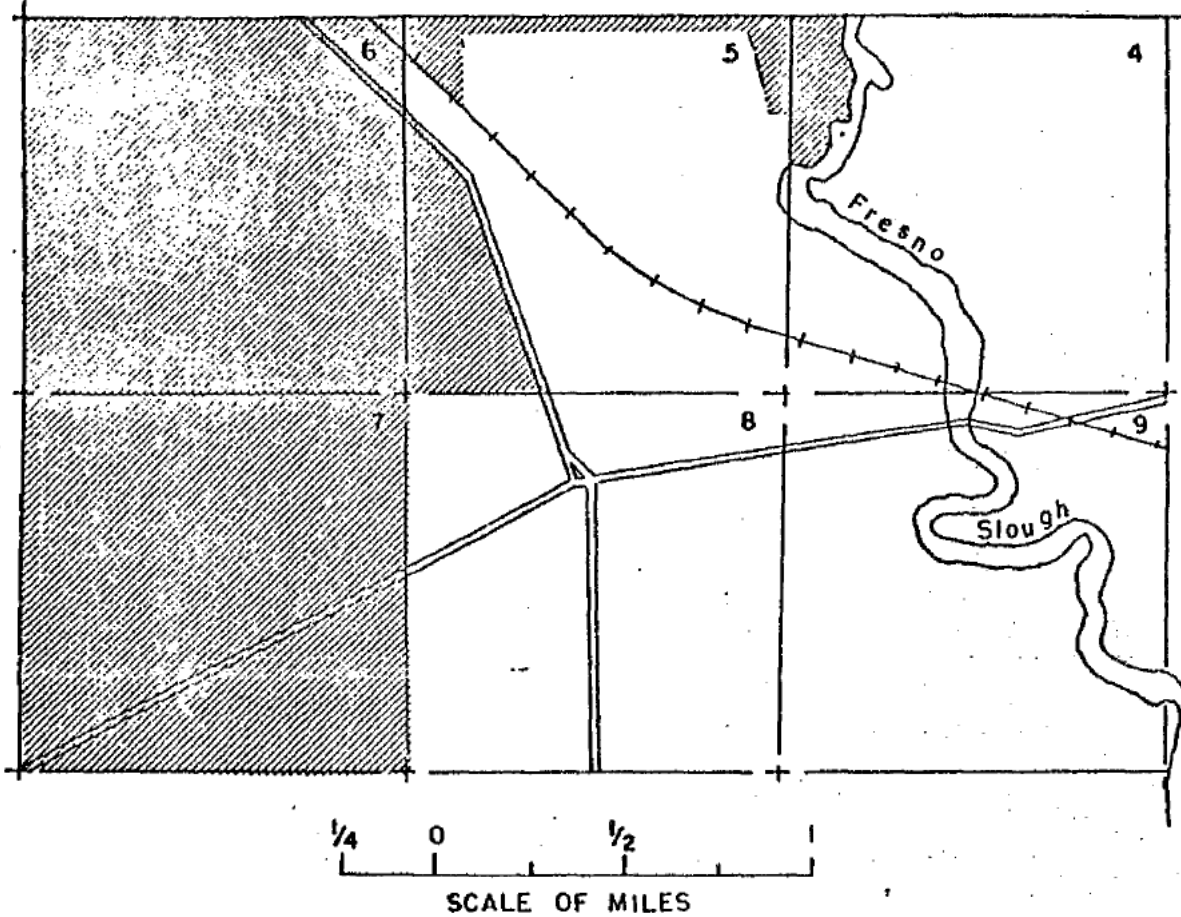
*John G. Indart*  
John G. Indart

*Doris J. Indart*  
Doris J. Indart

(Husband and Wife)

# EXHIBIT A

T. 14 S. - R. 15 E.



M. L. DUDLEY and COMPANY and  
 JOHN G. INDART and DORIS J. INDART

 Riparian Land

UNITED STATES  
 DEPARTMENT OF THE INTERIOR  
 BUREAU OF RECLAMATION  
 CENTRAL VALLEY PROJECT-CALIF.

Dr. by B. C.

11-27-68

214-228-3502

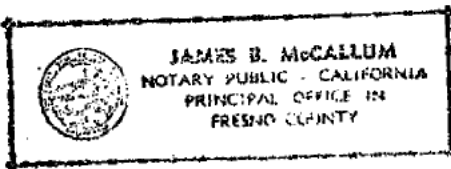


ACKNOWLEDGMENT

STATE OF California )  
COUNTY OF Fresno ) ss.

On this 19<sup>th</sup> day of May, in the year 1969,  
before me, James B McCallum personally  
appeared John G. Indart and Doris J. Indart, the persons whose names  
are subscribed to the within instrument and acknowledged that they  
executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed  
my official seal the day and year in this acknowledgment first above  
written.



James B McCallum  
Notary Public in and for the  
County of Fresno  
State of California

My commission expires March 23, 1971

## RESOLUTION

WHEREAS, the UNITED STATES has submitted to M. L. DUDLEY AND COMPANY, a Corporation, and to JOHN G. INDART AND DORIS J. INDART, for approval a document identified as R.O. Draft 3/18-1969 and entitled "CONTRACT BETWEEN THE UNITED STATES OF AMERICA AND M. L. DUDLEY AND COMPANY, JOHN G. INDART, AND DORIS J. INDART PROVIDING FOR ADJUSTMENT AND SETTLEMENT OF CERTAIN CLAIMED WATER RIGHTS"; and

WHEREAS, said contract is satisfactory to M. L. DUDLEY AND COMPANY in the form so presented.

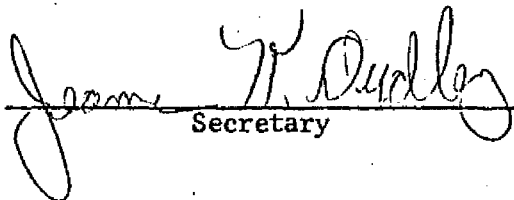
NOW, THEREFORE, BE IT RESOLVED:

1. That the contract hereinbefore referred to is hereby approved as to form.

2. That upon approval of the said contract by the Secretary of the Interior of the United States the President and the Secretary of M. L. DUDLEY AND COMPANY are hereby authorized to execute the contract on behalf of the Company.

I, the undersigned, Secretary of M. L. DUDLEY AND COMPANY, a California corporation, do hereby certify that the foregoing is a full, true and correct copy of a resolution unanimously adopted at a special meeting of the Board of Directors of said corporation, held on the 14 day of May, 1969; that the same has never been amended, modified or rescinded and is in full force and effect.

Dated this 14 day of May, 1969.

  
Secretary