

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

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

Table of Contents

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
	Preamble	1
	Explanatory Recitals	2-3
1	Definitions.....	3-6
2	Term of Settlement Contract.....	7
3	Water to be Furnished to Contractor.....	7-12
4	Return Flow	12
5	Constraints on the Availability of Water	12
6	Integrated Water Management and Partnerships	13
7	Use of Water Furnished to Contractor	13-14
8	Rate and Method of Payment for Water	14-19
9	Agreement on Water Quantities.....	19-22
10	Measurement of Water.....	22-23
11	Rules and Regulations.....	23
12	General Obligation--Benefits Conditioned Upon Payment.....	23-24
13	Charges for Delinquent Payments	24
14	Quality of Water	24
15	Water and Air Pollution Control.....	25
16	Equal Opportunity.....	25-26
17	Compliance With Civil Rights Laws and Regulations.....	26
18	Mingling of Contractor's Project and Non-Project Water	27-28

Table of Contents - continued

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
19	Books, Records, and Reports	28
20	Change of Place of Use or Organization.....	28-29
21	Consolidation of Contracting Entities.....	29
22	Notices	29
23	Assignment Limited--Successors and Assigns Obligated	29-30
24	Officials Not to Benefit.....	30
25	Contingent Upon Appropriation or Allotment of Funds	30
26	Confirmation of Settlement Contract.....	30
27	Unavoidable Groundwater Percolation.....	30-31
28	Privacy Act Compliance	31
29	Water Conservation	31-34
30	Opinions and Determinations	34
31	Contractor to Pay Certain Miscellaneous Costs.....	34-35
32	Waiver of Default	35
	Signature Page	36
Exhibit A	Schedule of Monthly Diversions of Water	
Exhibit B	Map of Contractor's Ownership	
Exhibit C	Unit Duty	
Exhibit D	Water Rates and Charges	

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

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

THIS CONTRACT, hereinafter referred to as "Settlement Contract," is entered into by THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, made this 4th day of March, 2005, pursuant to the applicable authority granted to it generally in the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, including, but not limited to, Sections 9 and 14 thereto, July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat. 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively hereinafter referred to as Federal Reclamation law, and MAXWELL IRRIGATION DISTRICT, hereinafter referred to as the Contractor, a public agency of the State of California, duly organized, existing, and acting pursuant to the laws thereof, with its principal place of business in California;

WITNESSETH, that:

EXPLANATORY RECITALS

26
27 [1st] WHEREAS, the United States has constructed and is operating the Central Valley
28 Project, California, for multiple purposes pursuant to its statutory authority; and

29 [2nd] WHEREAS, the Contractor has rights to divert, is diverting, and will continue to
30 divert for reasonable beneficial use, water from the natural flow of the Sacramento River and
31 tributaries thereto, that would have been flowing therein if the Central Valley Project were not in
32 existence and from the Colusa Basin Drain;

33 [3rd] WHEREAS, the construction and operation of the integrated and coordinated
34 Central Valley Project has changed and will further change the regimen of the Sacramento,
35 American, San Joaquin, and Trinity Rivers and the Sacramento-San Joaquin Delta from
36 unregulated flow to regulated flow; and

37 [4th] WHEREAS, the United States has rights to divert, is diverting, and will continue
38 to divert waters from said Rivers and said Delta in connection with the operation of said Central
39 Valley Project; and

40 [5th] WHEREAS, the Contractor and the United States had a dispute over the
41 respective rights of the parties to divert and use water from the regulated flow of the Sacramento
42 River which threatened to result in litigation, and as a means to settle that dispute entered into
43 Contract No. 14-06-200-6078A, as revised, hereinafter referred to as the Existing Contract,
44 which established terms for the delivery to the Contractor of Central Valley Project Water, and
45 the quantities of Base Supply the United States and the Contractor agreed may be diverted by the
46 Contractor from the Sacramento River pursuant to such contract; and

47 [6th] WHEREAS, the United States and the Contractor disagree with respect to the
48 authority of the United States to change the quantities of Base Supply and/or Project Water

49 specified as available for diversion in this Settlement Contract from the quantities specified in
50 the Existing Contract, and other issues related thereto. That dispute was the subject of litigation
51 in a lawsuit entitled *Glenn-Colusa Irrigation District, et al. v. United States, et al.* [Civ. No. S-
52 01-1816 GEB/JFM (E.D. Cal.)], but that litigation was dismissed, without prejudice, pursuant to
53 a stipulation of dismissal filed by the parties thereto on August 29, 2002. Notwithstanding that
54 dismissal, the Contractor and the United States enter into this Settlement Contract to renew the
55 Existing Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and
56 the laws of the State of California; and

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

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

63 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

106 (g) "Eligible Lands" shall mean all lands to which Project Water may be
107 delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982
108 (96 Stat. 1263), as amended, hereinafter referred to as RRA;

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

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

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

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

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

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

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

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

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

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

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

139

TERM OF SETTLEMENT CONTRACT

140

2. (a) This Settlement Contract shall become effective April 1, 2005, and shall remain in effect until and including March 31, 2045; Provided, that under terms and conditions mutually agreeable to the parties hereto, renewals may be made for successive periods not to exceed 40 years each. The terms and conditions of each renewal shall be agreed upon not later than one year prior to the expiration of the then existing Settlement Contract.

145

(b) With respect to Project Water and the portions of this Settlement Contract pertaining thereto, upon written request by the Contractor of the Secretary made not later than one year prior to the expiration of this Settlement Contract, whenever, account being taken of the amount then credited to the costs of construction of water supply works, the remaining amount of construction costs of water supply work which is properly assignable for ultimate return by the Contractor as established by the Secretary of the Interior pursuant to (3) of Section 1 of Public Law 643 (70 Stat. 483), probably can be repaid to the United States within the term of a contract under subsection 9(d) of the 1939 Reclamation Project Act (53 Stat. 1187), the relevant portions of this Settlement Contract may be converted to a contract under said subsection 9(d) upon terms and conditions mutually agreeable to the United States and the Contractor. The Secretary shall make a determination ten years after the date of execution of this Settlement Contract, and every five years thereafter, of whether a conversion to a contract under said subsection 9(d) can be accomplished pursuant to Public Law 643. Notwithstanding any provision of this Settlement Contract, the Contractor reserves and shall have all rights and benefits under Public Law 643.

159

WATER TO BE FURNISHED TO CONTRACTOR

160

3. (a) Subject to the conditions, limitations, and provisions hereinafter expressed, the Contractor is hereby entitled and authorized to divert from the Sacramento River

162 at the locations shown in Exhibit A, for beneficial use within the area delineated on Exhibit B,
163 (both Exhibits are attached hereto and made a part hereof), the Contract Total designated in
164 Exhibit A, or any revision thereof, in accordance with the monthly operating schedule required
165 by Article 3(c) of this Settlement Contract. The quantity of any water diverted under this
166 Settlement Contract from the Sacramento River, during the period April through October, for use
167 on any lands delineated on Exhibit B, by the owner of such lands or otherwise shall constitute a
168 part of the Contract Total as shown on Exhibit A and shall be subject to all the provisions of this
169 Settlement Contract relating to such Contract Total as if such diversion were made by the
170 Contractor; Provided, however, that the Contractor reserves the right to, and may at its option,
171 divert water from streams and drainage channels to the extent permitted under Licenses 4523,
172 4586, 4643, 4644, 4694, 4734, and 5692 for beneficial use within the area delineated on Exhibit
173 B, subject to the terms and conditions of an agreement dated October 3, 1958, entitled
174 "Agreement Between Maxwell Irrigation District and Charles W. Welch." The lawfulness of the
175 Contractor's diversions for said area from such streams and drainage channels will not be
176 challenged by, or on behalf of, the United States except in the case of a general adjudication as
177 provided in subdivision (b) of Article 9. The United States also confirms its prior recognition
178 contained in its letter dated April 3, 1964, to Glenn-Colusa Irrigation District of that certain
179 contract dated June 2, 1953, as supplemented by July 16, 1954, among the Contractor and Glenn-
180 Colusa Irrigation District, Compton-Delevan Irrigation District, Provident Irrigation District,
181 Princeton-Codora-Glenn Irrigation District, Jacinto Irrigation District, and Reclamation District
182 No. 2047, commonly referred to as the Five-Party Agreement.

183 (b) The Contractor may have acquired rights to divert water from the
184 Sacramento River during the period April through October, that were obtained after the date of

185 execution of the Existing Contract, or the Contractor may acquire such rights in the future. All
186 diversions made from the Sacramento River, pursuant to such rights, during the period April
187 through October, shall not be considered a part of the quantity of Base Supply and Project Water
188 specified in Exhibit A; Provided, that the quantities diverted pursuant to the above rights shall be
189 identified on the schedule submitted pursuant to Article 3(c) below, and shall not be substituted
190 for any Base Supply or Project Water; Provided, further, that any such identified quantities of
191 other acquired rights may be diverted by the Contractor before incurring any fee pursuant to
192 Article 3(c)(1), below.

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

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

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

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

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

213 (d) In the event conditions warrant, the Contracting Officer reserves the right
214 to require the Contractor to submit, at least 72 hours prior to the beginning of each weekly
215 period, its estimate of daily diversion requirements for each such period from the Sacramento
216 River; Provided, however, that changes during any such period may be made upon the giving of
217 72 hours' notice thereof to the Contracting Officer.

218 (e) No sale, transfer, exchange, or other disposal of any of the Contract Total
219 designated in Exhibit A or the right to the use thereof for use on land other than that shown on
220 Exhibit B shall be made by the Contractor without first obtaining the written consent of the
221 Contracting Officer. Such consent will not be unreasonably withheld and a decision will be
222 rendered in a timely manner. For short-term actions that will occur within one year or less, the
223 decision will be rendered within 30 days after receipt of a complete written proposal. For long-
224 term actions that will occur in a period longer than one year, the decision will be rendered within
225 90 days after receipt of a complete written proposal. For a proposal to be deemed complete by
226 the Contracting Officer, it must comply with all provisions required by State and Federal law,
227 including information sufficient to enable the Contracting Officer to comply with the National
228 Environmental Policy Act, the Endangered Species Act, and applicable rules or regulations then
229 in effect; Provided, that such consent does not authorize the use of Federal facilities to facilitate

230 or effectuate the sale, transfer, exchange, or other disposal of Base Supply. Such use of Federal
231 facilities will be the subject of a separate agreement to be entered into between the Contractor
232 and Reclamation.

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

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

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

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

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

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

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

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

258 RETURN FLOW

259 4. Nothing herein shall be construed as an abandonment or a relinquishment by the
260 United States of any right it may have to the use of waste, seepage, and return flow water derived
261 from water diverted by the Contractor hereunder and which escapes or is discharged beyond the
262 boundaries of the lands shown on Exhibit B; Provided, that this shall not be construed as
263 claiming for the United States any right to such water which is recovered by the Contractor
264 pursuant to California law from within the boundaries of the lands shown on Exhibit B, and
265 which is being used pursuant to this Settlement Contract for surface irrigation or underground
266 storage for the benefit of the lands shown on Exhibit B by the Contractor.

267 CONSTRAINTS ON THE AVAILABILITY OF WATER

268 5. (a) In a Critical Year, the Contractor's Base Supply and Project Water agreed
269 to be diverted during the period April through October of the Year in which the principal portion
270 of the Critical Year occurs and, each monthly quantity of said period shall be reduced by
271 25 percent.

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

276 INTEGRATED WATER MANAGEMENT AND PARTNERSHIPS

277 6. The Contractor and United States desire to work together to maximize the
278 reasonable beneficial use of water for their mutual benefit. As a consequence, the United States
279 and the Contractor will work in partnership and with others within the Sacramento Valley,
280 including other contractors, to facilitate the better integration within the Sacramento Valley of all
281 water supplies including, but not limited to, the better management and integration of surface
282 water and groundwater, the development and better utilization of surface water storage, the
283 effective utilization of waste, seepage and return flow water, and other operational and
284 management options that may be identified in the future.

285 USE OF WATER FURNISHED TO CONTRACTOR

286 7. (a) Project Water furnished to the Contractor pursuant to this Settlement
287 Contract shall not be delivered or furnished by the Contractor for any purposes other than
288 agricultural purposes without the written consent of the Contracting Officer. For purposes of this
289 Settlement Contract, "agricultural purposes" includes, but is not restricted to, the irrigation of
290 crops, the watering of livestock, incidental domestic use including related landscape irrigation,
291 and underground water replenishment.

292 (b) The Contractor shall comply with requirements applicable to the
293 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution
294 of this Settlement Contract undertaken pursuant to Section 7 of the Endangered Species Act of
295 1973, as amended, that are within the Contractor's legal authority to implement. The Existing
296 Contract, which evidences in excess of 40 years of diversions, for agricultural uses, of the
297 quantities of water provided for in Article 3, and the underlying water rights of the Contractor
298 will be considered in developing an appropriate base-line for the Biological Assessment prepared

299 pursuant to the Endangered Species Act, and in any other needed environmental review.
300 Nothing herein shall be construed to prevent the Contractor from challenging or seeking judicial
301 relief in a court of competent jurisdiction with respect to any biological opinion or other
302 environmental documentation referred to in this Article.

303 RATE AND METHOD OF PAYMENT FOR WATER

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

306 (1) 75 percent of the amount shown as Project Water shall be paid for
307 by the Contractor in each Year; and in addition

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

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

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

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

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

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

339 (1) With respect to Rates, prior to May 1 of each Year, the Contractor
340 shall pay the United States one-half the total amount payable pursuant to subdivision (a) of this
341 Article and the remainder shall be paid prior to July 1 or such later date or dates as may be
342 specified by the United States in a written notice to the Contractor; Provided, however, that if at
343 any time during the Year the amount of Project Water diverted by the Contractor shall equal the

344 amount for which payment has been made, the Contractor shall pay for the remaining amount of
345 such water as shown in Exhibit A in advance of any further diversion of Project Water.

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

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

360 (e) The Contracting Officer shall keep its accounts pertaining to the
361 administration of the financial terms and conditions of its long-term water service and Settlement
362 Contracts, in accordance with applicable Federal standards, so as to reflect the application of
363 Project costs and revenues. The Contracting Officer shall, each Year upon request of the
364 Contractor, provide to the Contractor a detailed accounting of all Project and Contractor expense
365 allocations, the disposition of all Project and Contractor revenues, and a summary of all water
366 delivery information. The Contracting Officer and the Contractor shall enter into good faith

367 negotiations to resolve any discrepancies or disputes relating to accountings, reports, or
368 information.

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

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

387 (h) Except as provided in subsection 3405(a)(1)(B) of the CVPIA, the Rates
388 for Project Water transferred, exchanged, or otherwise disposed of, by the Contractor shall be the
389 Contractor's Rates adjusted upward or downward to reflect the changed costs of delivery (if any)

390 of the transferred, exchanged, or otherwise disposed of Project Water to the transferee's point of
 391 delivery in accordance with the then-current ratesetting policies for the Project. Except as
 392 provided in subsection 3407(d)(2)(A) of the CVPIA, the Charges for Project Water transferred,
 393 exchanged, or otherwise disposed of, by the Contractor shall be the Contractor's Charges
 394 specified in Exhibit D. If the Contractor is receiving lower Rates and Charges because of
 395 inability to pay and is transferring, exchanging, or otherwise disposing of Project Water to
 396 another entity whose Rates and Charges are not adjusted due to inability to pay, the Rates and
 397 Charges for transferred, exchanged, or otherwise disposed of Project Water shall be the
 398 Contractor's Rates and Charges unadjusted for ability to pay.

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

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

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

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

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

417 (4) Any injunctive process enjoining or restraining the Contractor
418 from making or collecting any such assessment, toll, or other charge referred to in subsection
419 8(c)(2) of this Settlement Contract.

420 AGREEMENT ON WATER QUANTITIES

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

422 (1) It shall constitute full agreement as between the United States and
423 the Contractor as to the quantities of water and the allocation thereof between Base Supply and
424 Project Water which may be diverted by the Contractor from the Sacramento River for beneficial
425 use on the land shown on Exhibit B from April 1 through October 31, which said diversion, use,
426 and allocation shall not be disturbed so long as the Contractor shall fulfill all of its obligations
427 hereunder;

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

430 (b) Nothing herein contained is intended to or does limit rights of the
431 Contractor against others than the United States or of the United States against any person other
432 than the Contractor; Provided, however, that in the event the Contractor, the United States, or
433 any other person shall become a party to a general adjudication of rights to the use of water of
434 the Sacramento River system, this Settlement Contract shall not jeopardize the rights or position

435 of either party hereto or of any other person and the rights of all such persons in respect to the
436 use of such water shall be determined in such proceedings the same as if this Settlement Contract
437 had not been entered into, and if final judgment in any such general adjudication shall determine
438 that the rights of the parties hereto are different from the rights as assumed herein, the parties
439 shall negotiate an amendment to give effect to such judgment. In the event the parties are unable
440 to agree on an appropriate amendment they shall, within 60 days of determining that there is an
441 impasse, employ the services of a neutral mediator, experienced in resolving water rights
442 disputes, to assist in resolving the impasse. The cost of the mediation will be shared equally. A
443 failure to reach agreement on an amendment within 60 days of the end of mediation will cause
444 the immediate termination of this Settlement Contract.

445 (c) In the event that the California State Water Resources Control Board or a
446 court of competent jurisdiction issues a final decision or order modifying the terms and
447 conditions of the water rights of either party to this Settlement Contract in order to impose Bay-
448 Delta water quality obligations, the Contractor and the United States shall promptly meet to
449 determine whether or not to modify any of the terms of this Settlement Contract to comply with
450 the final decision or order, including, but not limited to, the applicability of the rescheduling
451 charge in Article 3(c)(1) of this Settlement Contract. If within 60 days of the date of the issuance
452 of the final decision or order the parties are not able to reach agreement regarding either the need
453 to modify this Settlement Contract or the manner in which this Settlement Contract is to be
454 modified, the parties shall promptly retain a neutral mediator, experienced in resolving water
455 right disputes, to assist the parties in resolving their dispute. The cost of the mediator shall be
456 shared equally. In the event that either of the parties to this Settlement Contract determines that
457 the parties will not be able to develop mutually-agreeable modification(s) to this Settlement

458 Contract even with the assistance of a mediator, either of the parties to this Settlement Contract
459 may attempt to resolve the impasse by seeking appropriate judicial relief including, but not
460 limited to, filing a general adjudication of the rights to the use of water in the Sacramento River
461 system. The foregoing provisions of this sub-article shall only apply to the incremental
462 obligations contained within a final decision or order of the State Water Resources Control
463 Board that reflects a modification to the obligations imposed in State Water Resources Control
464 Board Revised Water Rights Decision 1641 dated March 15, 2000, and its associated 1995 Water
465 Quality Control Plan which, taken together, will be considered the baseline for the application of
466 the provisions of this sub-article.

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

481 any part of the water used by the Contractor during the term of this Settlement Contract was in
482 fact water to which it would have been entitled under water rights owned by it.

483 MEASUREMENT OF WATER

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

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

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

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

504 the existence of the emergency and the nature and extent of such modification, alteration,
505 removal, or replacement of diversion facilities.

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

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

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

516 RULES AND REGULATIONS

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

522 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

527 (b) The payment of Charges becoming due hereunder is a condition precedent
528 to receiving benefits under this Settlement Contract. The United States shall not make water
529 available to the Contractor through Project facilities during any period in which the Contractor

530 may be in arrears in the advance payment of water Rates due the United States. The Contractor
531 shall not furnish water made available pursuant to this Settlement Contract for lands or parties
532 which are in arrears in the advance payment of water rates levied or established by the
533 Contractor.

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

536 CHARGES FOR DELINQUENT PAYMENTS

537 13. (a) The Contractor shall be subject to interest, administrative and penalty
538 charges on delinquent installments or payments. When a payment is not received by the due
539 date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond
540 the due date. When a payment becomes 60 days delinquent, the Contractor shall pay an
541 administrative charge to cover additional costs of billing and processing the delinquent payment.
542 When a payment is delinquent 90 days or more, the Contractor shall pay an additional penalty
543 charge of six percent per year for each day the payment is delinquent beyond the due date.
544 Further, the Contractor shall pay any fees incurred for debt collection services associated with a
545 delinquent payment.

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

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

554 QUALITY OF WATER

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

560

WATER AND AIR POLLUTION CONTROL

561

562

563

564

565

566

567

568

569

570

571

572

573

574

575

576

577

578

579

580

581

582

583

584

585

586

587

588

589

590

591

592

593

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

EQUAL OPPORTUNITY

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

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

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

(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.

(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.

(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

594 Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with
595 such rules, regulations, and orders.

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

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

612 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

613 17. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
614 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the
615 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights
616 laws, as well as with their respective implementing regulations and guidelines imposed by the
617 U.S. Department of the Interior and/or Bureau of Reclamation.

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

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

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

634 18. (a) Project Water must of necessity be transported by the Contractor to its
635 water users by means of the same works and channels used for the transport of its non-Project
636 Water including Base Supply. Notwithstanding such mingling of water, the provisions of Article
637 11 hereof shall be applicable only to Project Water, and such mingling of water shall not in any
638 manner subject to the provisions of Article 11 hereof the Contractor's non-Project Water
639 including Base Supply.

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

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

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

655 (2) the Unit Duties as set forth in Exhibit C attached hereto and made
 656 a part hereof, or by such other Unit Duties mutually agreed upon by the Contractor and the
 657 Contracting Officer. In order to make the computation of the water requirement for Eligible
 658 Lands, on April 1 of each Year and concurrently with its order for water for the irrigation season,
 659 the Contractor shall designate the acreage of and type of crops to be grown on its Eligible Lands
 660 that irrigation season. During any month the water requirement as above determined for crops
 661 growing on Eligible Lands during such month is equal to or in excess of the Project Water for
 662 that month as provided herein the Contractor shall not be required to measure the water delivered
 663 to Excess Lands. Any month the said water requirement is less than the amount of Project Water
 664 as provided herein, the Contractor will be required to measure water delivered to excess land in
 665 accordance with subdivision (b) hereof.

666 BOOKS, RECORDS, AND REPORTS

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

676 CHANGE OF PLACE OF USE OR ORGANIZATION

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

679 (b) While this Settlement Contract is in effect, no change shall be made in the
 680 area of the Contractor as shown on its Exhibit B, by inclusion, exclusion, annexation, or
 681 detachment of lands, by dissolution, consolidation, or merger or otherwise, except upon the

682 Contracting Officer's written consent thereto. Such consent will not be unreasonably withheld
683 and a decision will be provided in a timely manner.

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

688 CONSOLIDATION OF CONTRACTING ENTITIES

689 21. Consolidation of Contractors may be approved by the Contracting Officer
690 provided: (i) the Contracting Officer approves the form and organization of the resulting entity
691 and the utilization by it of the Contract Total; and (ii) the obligations of the Contractors are
692 assumed by such entity.

693 No such consolidation shall be valid unless and until approved by the Contracting
694 Officer.

695 NOTICES

696 22. Any notice, demand, or request authorized or required by this Settlement Contract
697 shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid,
698 or delivered to the Area Manager, Northern California Area Office, Bureau of Reclamation,
699 16349 Shasta Dam Boulevard, Shasta Lake, California 96019, and on behalf of the United
700 States, when mailed, postage prepaid, or delivered to the Board of Directors of the Maxwell
701 Irrigation District, P.O. Box 217 (3999 Two Mile Road), Maxwell, California 95955. The
702 designation of the addressee or the address may be changed by notice given in the same manner
703 as provided in this Article for other notices.

704 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

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

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

712 (c) The Contracting Officer shall not unreasonably condition or withhold his
713 approval of any proposed assignment.

714 OFFICIALS NOT TO BENEFIT

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

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

722 CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

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

728 CONFIRMATION OF SETTLEMENT CONTRACT

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

736 UNAVOIDABLE GROUNDWATER PERCOLATION

737 27. To the extent applicable, the Contractor shall not be deemed to have delivered
738 Project Water to Excess Lands or Ineligible Lands if such lands are irrigated with groundwater

739 that reaches the underground strata as an unavoidable result of the delivery of Project Water by
 740 the Contractor to Eligible Lands.

741 PRIVACY ACT COMPLIANCE

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

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

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

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

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

767 WATER CONSERVATION

768 29. (a) Prior to the diversion of Project Water, the Contractor shall be
 769 implementing an effective water conservation and efficiency program based on the Basin-Wide
 770 Water Management Plan and/or Contractor's water conservation plan that has been determined
 771 by the Contracting Officer to meet the conservation and efficiency criteria for evaluating water

772 conservation plans established under Federal law. The water conservation and efficiency
773 program shall contain definite water conservation objectives, appropriate economically feasible
774 water conservation measures, and time schedules for meeting those objectives. Continued
775 diversion of Project Water pursuant to this Settlement Contract shall be contingent upon the
776 Contractor's continued implementation of such water conservation program. In the event the
777 Contractor's water conservation plan or any revised water conservation plan completed pursuant
778 to subdivision (c) of Article 29 of this Settlement Contract have not yet been determined by the
779 Contracting Officer to meet such criteria, due to circumstances which the Contracting Officer
780 determines are beyond the control of the Contractor, Project Water deliveries shall be made
781 under this Settlement Contract so long as the Contractor diligently works with the Contracting
782 Officer to obtain such determination at the earliest practicable date, and thereafter the Contractor
783 immediately begins implementing its water conservation and efficiency program in accordance
784 with the time schedules therein.

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

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

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

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

799 (1) On or before February 15 of any Water Year, the Contractor may
800 file with Reclamation an offer to reduce Project Water use, hereinafter referred to as Offer. The
801 Offer shall specify the maximum quantity of Project Water to be diverted by the Contractor for
802 each month that Project Water is available for that Water Year under this Settlement Contract.
803 The Contracting Officer shall provide the Contractor with a decision, in writing, to the Offer on
804 or before March 15 of that Water Year. The dates specified in this Article 29(e)(1) can be
805 changed if mutually agreed to, in writing, by the Contractor and Contracting Officer.

806 (2) If Reclamation accepts the Offer, the Contractor's payment
807 obligation under Article 8(a)(1) shall be reduced to the maximum quantity of Project Water to be
808 diverted by the Contractor as specified in the Offer. The Contractor shall not divert Project
809 Water in excess of the quantities set forth in the Offer; Provided, however, if the Contractor's
810 diversions of Project Water exceed the quantities set forth in the Offer, the Contractor shall pay
811 to Reclamation the applicable Rates and Charges plus an amount equal to the applicable Rates
812 and Charges, unadjusted for ability to pay, for each acre-foot of Project Water diverted in excess
813 of the quantities set forth in the Offer.

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

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

819 OPINIONS AND DETERMINATIONS

820 30. (a) Where the terms of this Settlement Contract provide for actions to be
821 based upon the opinion or determination of either party to this Settlement Contract, said terms
822 shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or
823 unreasonable opinions or determinations. Both parties, notwithstanding any other provisions of
824 this Settlement Contract, expressly reserve the right to seek relief from and appropriate
825 adjustment for any such arbitrary, capricious, or unreasonable opinion or determination. Each
826 opinion or determination by either party shall be provided in a timely manner. Nothing in
827 subdivision (a) of Article 30 of this Settlement Contract is intended to or shall affect or alter the
828 standard of judicial review applicable under Federal law to any opinion or determination
829 implementing a specific provision of Federal law embodied in statute or regulation.

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

835 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

836 31. (a) In addition to all other payments to be made by the Contractor pursuant to
837 this Settlement Contract, the Contractor shall pay to the United States, within 60 days after
838 receipt of a bill and detailed statement submitted by the Contracting Officer to the Contractor for

839 such specific items of direct cost incurred by the United States for work requested by the
840 Contractor associated with this Settlement Contract plus indirect costs in accordance with
841 applicable Bureau of Reclamation policies and procedures. All such amounts referred to in this
842 Article shall not exceed the amount agreed to in writing in advance by the Contractor. This
843 Article shall not apply to costs for routine contract administration.

844 (b) All advances for miscellaneous costs incurred for work requested by the
845 Contractor pursuant to Article 31 of this Settlement Contract shall be adjusted to reflect the
846 actual costs when the work has been completed. If the advances exceed the actual costs incurred,
847 the difference will be refunded to the Contractor. If the actual costs exceed the Contractor's
848 advances, the Contractor will be billed for the additional costs pursuant to Article 31 of this
849 Settlement Contract.

850 WAIVER OF DEFAULT

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

855 IN WITNESS WHEREOF, the parties hereto have executed this Settlement Contract
856 as of the day and year first hereinabove written.

857 THE UNITED STATES OF AMERICA

858
859
860

APPROVED AS TO LEGAL
FORM AND SUFFICIENCY

Almuntun B. S.
OFFICE OF REGIONAL SOLICITOR
DEPARTMENT OF THE INTERIOR

By: *[Signature]*

Regional Director, Mid-Pacific Region
Bureau of Reclamation

861 (SEAL)

862

MAXWELL IRRIGATION DISTRICT

863
864

By: *[Signature]*

President

865 ATTEST:

866
867

[Signature]
Secretary

868 (H:\public\Sac River Final LTRC's\2005-01-31 Maxwell ID Final Draft Contract with
869 exhibits.doc)

Exhibit A




MAXWELL IRRIGATION DISTRICT
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>1,990</u>	<u>0</u>	<u>1,990</u>
May	<u>3,520</u>	<u>0</u>	<u>3,520</u>
June	<u>2410</u>	<u>0</u>	<u>2410</u>
July	<u>220</u>	<u>2,000</u>	<u>2,220</u>
August	<u>30</u>	<u>2,000</u>	<u>2,030</u>
September	<u>710</u>	<u>2,000</u>	<u>2,710</u>
October	<u>3,100</u>	<u>0</u>	<u>3,100</u>
Total	<u>11,980</u>	<u>6,000</u>	<u>17,980</u>

Points of Diversion: 103.8R, 104.1R

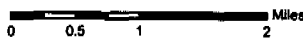
Dated: 01-31-2005



-  Contractor's Service Area
-  District Boundary
-  Point of Diversion

Maxwell Irrigation District

Contract No. 14-06-200-6078A-R-1
Exhibit B



Date: November 2, 2004
File Name: N:\districts\contracts\maxwell_irrigation_district\maxwell.mxd

725-202-33

Exhibit C

MAXWELL IRRIGATION DISTRICT
Sacramento River

UNIT DUTY

(In Acre-Feet Per Acre)

	<u>Rice</u>	<u>Alfalfa and Irrigated Pasture</u>	<u>General Crops</u>
June	1.80	0.80	0.60
July	1.90	1.00	0.70
August	1.80	0.80	0.70
September	0.50	0.60	0.40

Dated: 01-31-2005

Exhibit D

MAXWELL IRRIGATION DISTRICT
 Sacramento River
2005 Water Rates and Charges per Acre-Foot

<u>COST OF SERVICE RATES:</u>	<u>Irrigation</u>
Capital Rates	
Storage	\$ 4.96
O&M Rates:	
Water Marketing	\$ 6.61
Storage	\$ 5.93
Deficit Rates:	
Interest Bearing	\$ 5.62
CFO/PFR Adjustment Rate 1/	<u>\$ 1.74</u>
TOTAL	<u>\$24.86</u>
<u>RESCHEDULING FEE:</u>	<u>\$5.79</u>

FULL-COST RATES:

Section 202(3) Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981.

\$27.64

Section 205(a)(3) Rate is applicable to a Limited Recipient that did not receive irrigation water on or before October 1, 1981.

\$30.31

CHARGES UNDER P.L. 102-575 TO THE RESTORATION FUND 2/

Restoration Payments (3407(d)(2)(A))

\$ 7.93

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MAXWELL IRRIGATION DISTRICT

RESOLUTION 2005-01
RESOLUTION APPROVING EXECUTION OF RENEWAL
SETTLEMENT CONTRACT BETWEEN THE DISTRICT AND THE UNITED STATES,

Whereas, the respective negotiating teams for Maxwell Irrigation District ("District") and the United States Bureau of Reclamation ("Reclamation") have concluded negotiations on the renewal of the District's Settlement Contract with Reclamation in the form presented at this meeting ("Settlement Contract," Contract No. 14-06-200-6078A); and

Whereas, the District approves the form and content of the Settlement Contract, and determines that execution of the Settlement Contract would be in the best interest of the District and its water users.

NOW, THEREFORE, BE IT RESOLVED as follows:

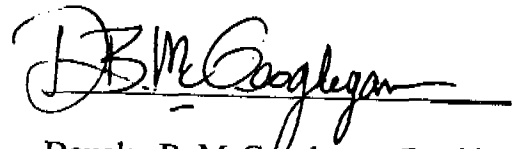
1. The Settlement Contract is hereby approved as to form and content.
2. The President is authorized and directed to execute the Settlement Contract on behalf of the District, and to take all appropriate action to perform the Settlement Contract on behalf of the District.


PASSED AND ADOPTED on February 8, 2005 by the Board of Directors by the following vote.

AYES: McGeoghegan, Mensik, Southam, Wells

NOES: None

ABSENT: Richter


Douglas B. McGeoghegan, President

ATTEST: 
Mary C. Wells, Secretary


7018R021505pmbSettlement

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATION

I hereby certify that I am the Secretary of Maxwell Irrigation District, and that the foregoing resolution is a true and complete copy of a Resolution 2005-01, duly adopted by the Board of Directors of Maxwell Irrigation District at a Regular Board meeting on February 8, 2005.

February 8, 2005


Mary C. Wells, Secretary