

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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1 BARCELLOS AND WOLFSEN, INC.,)
 2 et al.,)
 3)
 4 Plaintiffs,)
 5)
 6 v.)
 7 WESTLANDS WATER DISTRICT,)
 8 et al.,)
 9 Defendants.)

No. CV 79-106-EDP

STIPULATION TO MODIFY
PROPOSED JUDGMENT

10 WESTLANDS WATER DISTRICT,)
 11 Counterclaimant and)
 12 Cross-Claimant,)
 13 v.)
 14 BARCELLOS AND WOLFSEN, INC.,)
 15 et al.,)
 16 Counterclaim and)
 17 Cross-Claim)
 18 Defendants.)

19 BARCELLOS AND WOLFSEN, INC.,)
 20 et al.,)
 21 Counterclaimants and)
 22 Cross-Claimants,)
 23 v.)
 24 UNITED STATES OF AMERICA,)
 25 et al.,)
 26 Counterclaim and)
 27 Cross-Claim)
 28 Defendants.)

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FRANK ORFF, as representative)
of 1B Class,)
))
Counterclaimant and)
Cross-Claimant,)
))
v.)
))
UNITED STATES OF AMERICA,)
et al.,)
))
Counterclaim and)
Cross-Claim)
Defendants.)
_____)

_____)
WESTLANDS WATER DISTRICT,)
et al.,)
))
Plaintiffs-in-)
Consolidation,)
))
v.)
))
UNITED STATES OF AMERICA,)
et al.,)
))
Defendant-in-)
Consolidation.)
_____)

BARCELLOS & WOLFSEN, INC.,)
et al.,)
))
Plaintiffs,)
))
v.)
))
WESTLANDS WATER DISTRICT,)
et al.,)
))
Defendants.)
_____)

CONSOLIDATED
No. CV F-81-245-EDP

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1 this Judgment may be filed only after 60 days prior written
2 notice to all other parties that such a motion will be filed if
3 another party or other parties fail or refuse to perform in the
4 manner described in said notice. The parties entitled to file
5 such a motion and to receive such prior written notice thereof in
6 these present actions shall be limited to the Area representa-
7 tives provided for in Paragraph 22 below (who shall represent the
8 interests of the class members within the areas they represent),
9 the United States, the District, and any landowners or water
10 users who have heretofore appeared in these present actions on
11 their own behalf. The parties shall not seek judicial enforce-
12 ment of this Judgment in any other manner than described above.
13 During the term of this Judgment, each party shall perform all
14 acts it is obligated hereunder to perform. This Judgment shall
15 not alter or impair, or deprive any party of, any existing legal
16 rights or confer on any party any right except as expressly
17 provided herein.

18
19 4. 1963 Contract.

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21
22 4.1. Beginning the first day of the month after this
23 Judgment is entered, the District and the United States shall
24 perform the 1963 Contract; provided, that the District waives the
25 right to make payment for water requested and delivered under
26 Articles 4(c) or 8 of said contract at the rate provided in
27 Article 6 thereof so long as the rate charged for said water does
28 not exceed the applicable Central Valley Project water rate as of
the date of delivery; provided further, that to facilitate and

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1 implement the existing water conservation policies of the United
2 States, (a) Article 1(f) of said contract shall be revised to
3 state: "'year' shall mean the period commencing March 1 of each
4 year through the last day of February of the following year"; (b)
5 Article 6(b) of said contract shall be revised by substituting
6 "March 1" for "January 1" and "September 1" for "July 1"; and (c)
7 notwithstanding the provisions of Article 3(d) of said contract,
8 the quantity of water the United States shall be obligated to
9 furnish, and the District to pay for, pursuant to Article 3 of
10 said contract during the period commencing March 1, 2007, and
11 ending December 31, 2007, shall be 811,000 acre-feet. The 1963
12 Contract is a valid, enforceable and implementable contract enti-
13 tling the District through the end of 2007 to water and other
14 service by the United States as specified therein.

15
16 4.2. The District acknowledges that it entered into
17 the 1963 Contract for the benefit of Areas 1A and 1B and the
18 lands therein. The District will enforce the prior rights of
19 said areas to the benefits of said contract and acknowledges that
20 water users in Areas 2A and 2B may purchase water under the 1963
21 Contract not purchased by water users in Areas 1A and 1B as
22 provided in this Judgment. To the extent that water under the
23 1963 Contract is purchased by a water user in Area 2A or Area 2B,
24 the District shall collect from such water user and pay the
25 United States for such water the water service rate set forth in
26 Article 6(a) of the 1963 Contract, Paragraph 4.4 below or 4.5.4
27 below, whichever is applicable, plus a \$0.50 per acre foot
28 drainage service charge, until such water user becomes entitled
to water service pursuant to the long-term contract described in

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1 Paragraph 12.1(a) below, whereupon the contracting improvement
2 district of the District shall collect from such water user and
3 pay the United States for such water the applicable rates set
4 forth in such long-term contract.

5 4.3. The District shall not enter into any contract
6 which would modify the rights and obligations under the 1963
7 Contract prior to 2008, except with the concurrence of Area I as
8 provided in Paragraph 22.5 below; provided, that such concurrence
9 may be obtained only by lack of objection by Area I representa-
10 tives and not by an advisory election under said paragraph.

11 4.4. The agricultural water service component of the
12 rates to be paid to the United States for water delivered under
13 Article 3 of the 1963 Contract to lands which become subject to
14 the Discretionary Provisions of the 1982 Act shall be the higher
15 of (a) \$7.50 per acre foot or (b) the appropriate rate as of the
16 date of delivery established pursuant to the 1982 Act.

17 4.5. Water deliveries under the 1963 Contract for M&I
18 Uses shall be in accordance with Paragraph 4.5.1 through 4.5.4
19 below.

20 4.5.1. Such water shall be quantified and iden-
21 tified in the schedule or any revision thereof submitted by the
22 District in accordance with Article 4(a) of the 1963 Contract;

23 4.5.2. Such water shall be measured at canalside
24 delivery points established pursuant to Article 9 of the 1963
25 Contract which are used exclusively to deliver water for M&I
26 Uses, as determined by the United States, with equipment in-
27 stalled, operated and maintained by the United States. The
28 District shall measure all water furnished by the District for

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1 M&I Uses at other delivery points with equipment installed,
2 operated and maintained by the District. Said equipment and its
3 installation, service and use shall be approved by the United
4 States. The United States shall have full access at all
5 reasonable times to inspect said measuring equipment to determine
6 the accuracy and conditions thereof and any errors in measure-
7 ments disclosed by said inspections shall be adjusted. If said
8 facilities are found to be defective or inadequate they shall be
9 adjusted, repaired or replaced by the District. In the event the
10 District neglects or fails to make such repairs or replacements
11 within a reasonable time as may be necessary to satisfy the
12 operating requirements of the United States, the United States
13 may cause repairs or replacements to be made and the costs
14 thereof charged to the District, which charge shall be paid to
15 the United States before April 1 of the year following that in
16 which the cost was incurred and a statement thereof furnished by
17 the United States;

18 4.5.3. The Federal Parties shall submit a report
19 to the District as to the quantity of water the United States
20 measures and the District shall submit a report to the Federal
21 Parties as to the quantity of water the District measures. Said
22 reports shall be submitted on or before the 10th day of each
23 month following the month in which the water is measured;

24 4.5.4. Such water shall be paid for in accordance
25 with Article 6(b) of the 1963 Contract at the applicable Central
26 Valley Project water rate as of the date of delivery.
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1 5. Provisional Water Service.

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3

4 5.1. The provisions of Paragraphs 5.2 through 5.3

5 below are included in this Judgment in light of the facts recited

6 in this Paragraph 5.1, as agreed to by the parties. Each year

7 from 1964 through 1981, the Federal Parties have permitted the

8 District to take various quantities of water from the Mendota

9 Pool pursuant to annual contracts to supplement the water pro-

10 vided to the District under the 1963 Contract. Since 1965 when

11 the Former Westplains District was merged into the Original

12 Westlands District, the Federal Parties have recognized that a

13 firm water supply from the San Luis Unit of 200,000 acre feet per

14 year in addition to the water from the San Luis Unit provided for

15 in the 1963 Contract and a firm water supply of 50,000 acre feet

16 per year from the Mendota Pool, are necessary within the boun-

17 daries of the District as it was expanded by the merger. Such

18 additional water supplies have consistently been allocated and

19 provided to the District by the Federal Parties each year from

20 1972 through 1981, inclusive, pursuant to a series of annual

21 contracts. Thereafter, such additional water supplies have been

22 provided pursuant to the Stipulated Agreement, as amended,

23 Exhibits C, D, E, F and G attached hereto. The District has

24 claimed that, pursuant to the provisions of the memorandum from

25 Kenneth Holum, Assistant Secretary of the Interior, Water and

26 Power Development, to Stuart Udall, Secretary of the Interior,

27 dated October 4, 1964, approved by Secretary Udall on October 7,

28 1964, and related activities, it is entitled as of right to both

of these additional supplies of water, a claim which the United

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1 States disputes herein. The parties have agreed to settle this
2 claim by recognizing the claim for the purposes of this settle-
3 ment only to the limited extent set forth in Paragraphs 5.2
4 through 5.3 below and subject to the provisions of Paragraph
5 14.1.1 below.

6
7 5.2. In addition to the quantity of water specified in
8 Article 3 of the 1963 Contract, the District shall be entitled to
9 provisional water service from the United States of 200,000 acre
10 feet per year from the San Luis Unit and 50,000 acre feet per
11 year from the Mendota Pool under the conditions specified in
12 Paragraphs 5.2.1 through 5.2.4.7 below.

13 5.2.1. The District shall pay the United States
14 for water delivered to lands which are not subject to the discre-
15 tionary provisions of the 1982 Act the Central Valley Project
16 water rates applicable to the District as of the date of
17 delivery.

18 5.2.2. The District shall pay the United States
19 for water delivered to lands which are subject to the Discretion-
20 ary Provisions of the 1982 Act the higher of (a) the rates
21 payable under Paragraph 5.2.1 above or (b) the appropriate rate
22 established pursuant to the 1982 Act.

23 5.2.3. The District shall pay the United States
24 for water delivered for M&I Uses at the applicable Central Valley
25 Project water rates as of the date of delivery.

26 5.2.4. Provisional water service under this Para-
27 graph 5 shall commence the first day of the month after this
28 Judgment is entered and end February 28 next following the
conclusion of the action entitled Contra Costa Water District v.

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1
2 Donald Hodel, as Secretary of the Interior, U.S. Dist. Ct., N.D.
3 Calif., Civil No. C-75-2508-SW, unless said action is concluded
4 by a final dismissal with prejudice, in which event said
5 provisional water service shall end two years after such
6 dismissal. All other terms and conditions of such provisional
7 water service shall be the same as under the "Contract between
8 the United States and Westlands Water District for Temporary
9 Water Service from San Luis Unit and Mendota Pool," R.O. Draft
10 4/10-1981, (hereinafter "Draft Contract") attached to the Stipu-
11 lated Agreement identified in Paragraph 1.29(b) above (Exhibit C
12 hereto), except as modified in Paragraphs 5 and 7 of the
13 Stipulated Agreement and further modified in Paragraphs 5.2.4.1
14 through 5.2.4.7 below.

15 5.2.4.1. No change in the rates to be paid
16 for water delivered for agricultural use or M&I Uses shall be
17 effective for any year unless written notice of the estimated
18 rate is given to the District on or before the preceding Septem-
19 ber 1 and written notice of the actual rate is given to the
20 District on or before the preceding December 1.

21 5.2.4.2. The following is substituted for
22 Article 6(c) of the Draft Contract:

23 "By February 1 of each year, the District shall
24 make any additional payment it is obligated to
25 make for the year."

26 5.2.4.3. The following is substituted for
27 Article 15 of the Draft Contract:

28 "(a) The parties agree that the delivery of
irrigation water or the use of Federal facilities

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1 pursuant to this contract is subject to the
2 acreage and ownership limitations and pricing
3 provisions of reclamation law, as amended and
4 supplemented, including but not limited to the
5 1982 Act.

6 "(b) The Contracting Officer shall have the
7 right to make, after an opportunity has been
8 offered to the Contractor for consultation, rules
9 and regulations consistent with the provisions of
10 this contract, the laws of the United States and
11 the State of California, to add to or to modify
12 them as may be deemed proper and necessary to
13 carry out this contract, and to supply necessary
14 details of its administrations which are not
15 covered by express provisions of this contract.
16 The Contractor shall observe such rules and
17 regulations."

18 5.2.4.4. The following is substituted for
19 Article 19 of the Draft Contract:

20 "Where the terms of this contract provide for
21 action to be based upon the opinion or determina-
22 tion of either party to this contract, whether or
23 not stated to be conclusive, said terms shall not
24 be construed as permitting such action to be
25 predicated upon arbitrary, capricious, or unrea-
26 sonable opinions or determinations. In the event
27 that the Contractor questions any factual determi-
28 nation made by the Contracting Officer, the

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1 findings as to the facts shall be made by the
2 Secretary only after consultation with the Con-
3 tractor and shall be conclusive upon the parties."

4 5.2.4.5. The following is substituted for
5 Article 20 of the Draft Contract:

6 "The Contractor shall pay a late payment
7 charge on installments or charges which are
8 received after the due date. The late payment
9 charge percentage rate calculated by the Depart-
10 ment of the Treasury and published quarterly in
11 the Federal Register shall be used; provided, that
12 the late payment charge percentage rate shall not
13 be less than 0.5 percent per month. The late
14 payment charge percentage rate applied on an
15 overdue payment shall remain in effect until
16 payment is received. The late payment rate for a
17 30-day period shall be determined on the day
18 immediately following the due date and shall be
19 applied to the overdue payment for any portion of
20 the 30-day period of delinquency. In the case of
21 partial late payments, the amount received shall
22 first be applied to the late charge on the overdue
23 payment and then to the overdue payment."

24 5.2.4.6. Article 31 of the Draft Contract is
25 deleted.

26 5.2.4.7. To facilitate and implement the
27 existing policies of the United States, Article 1(d) of the Draft
28 Contract shall be revised to state: "'Year' shall mean the period

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1 commencing March 1 of each year through the last day of February
2 of the following year."

3 5.3. The District acknowledges that all water to which
4 the District is entitled pursuant to Paragraph 5.2 above shall be
5 for the benefit of the 2A Parties and the 2B Parties and the
6 lands in Area 2A and Area 2B.

7
8 6. Drainage Service Facilities.

9
10 6.1. The Federal Parties, in consultation and coopera-
11 tion with the District, shall develop, adopt and submit to the
12 District by December 31, 1991, a Drainage Plan for Drainage
13 Service Facilities, which shall have at least the elements set
14 forth in Paragraphs 6.1.1 and 6.1.2 below; provided, that the
15 remedies available to a party for an alleged breach of this
16 paragraph by the Federal Parties shall be strictly limited to (a)
17 the release to the District of the money then deposited in the
18 Drainage Trust Fund, plus accumulated interest, pursuant to
19 Paragraphs 7.1.8 and 7.1.8.1, below, and (b) the revival of any
20 claim against the United States of the right to drainage service
21 or Drainage Service Facilities pursuant to and in accordance with
22 the terms of Paragraph 14.1.2, below.

23 6.1.1. The Drainage Service Facilities included
24 in the Drainage Plan shall (a) in the aggregate have sufficient
25 capacity and capability to transport, treat as necessary, and
26 dispose of, the annual quantity of subsurface agricultural
27 drainage water from the District (not less than 60,000 acre feet
28 and not more than 100,000 acre feet) required to be disposed of