

CENTRAL VALLEY

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
WATER AND POWER RESOURCES SERVICE  
Central Valley Project, California

Contract No.  
1-07-20-W0227

CONTRACT FOR SETTLEMENT OF CERTAIN FORMER  
WATER RIGHTS FROM THE SAN JOAQUIN RIVER

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1 UNITED STATES  
2 DEPARTMENT OF THE INTERIOR  
3 WATER AND POWER RESOURCES SERVICE  
4 Central Valley Project, California

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5 CONTRACT FOR SETTLEMENT OF CERTAIN FORMER  
6 WATER RIGHTS FROM THE SAN JOAQUIN RIVER

7 THIS CONTRACT, made this 28 day of April, 1961,  
8 in pursuance generally of the Act of June 17, 1902 (32 Stat. 388) and acts  
9 amendatory thereof or supplementary thereto, all collectively hereinafter  
10 referred to as the Federal Reclamation laws, and particularly pursuant to  
11 the Act of Congress, approved August 26, 1937 (50 Stat. 844, 850), entitled:  
12 "An Act authorizing the construction, repair and preservation of certain  
13 public works on rivers and harbors and for other purposes," as amended,  
14 between THE UNITED STATES OF AMERICA, hereinafter referred to as the United  
15 States, and CAROLYN G. PECK, (Trustee for the Testamentary Trust of  
16 Norman Sumner Peck), SUMNER PECK RANCH, INC., a California corporation and  
17 CAROLYN G. PECK, a widow, hereinafter referred to as the Contracting Owners:

18 WITNESSETH THAT:

19 EXPLANATORY RECITALS

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

23 WHEREAS, Friant Dam and diversion works, hereinafter collectively  
referred to as Friant Dam, one of the features of the Central Valley Project  
has been constructed on the San Joaquin River upstream from Friant, Fresno  
County, California, for the purpose of storing and diverting a portion of the  
water of the San Joaquin River, hereafter referred to as the River, for the

1 beneficial use within or without the watershed of the River consistent with  
2 the optimum operation of the Central Valley Project; and

3 WHEREAS, the United States has purchased or otherwise acquired  
4 certain rights to the water of the San Joaquin River, and the United States  
5 has changed in whole or in part the point or points of diversion and/or the  
6 place or places of use of said water to other points or places within or  
7 without the watershed of the San Joaquin River by means of Friant Dam and  
8 other works; and

9 WHEREAS, the Contracting Owners own lands hereinafter particularly  
10 described in Exhibit A, attached hereto, of which the United States has  
11 acquired certain water rights appurtenant thereto; and

12 WHEREAS, the United States desires to compensate the Contracting  
13 Owners of the land to which the certain water rights were appurtenant at  
14 the time of acquisition by the United States as aforesaid;

15 NOW, THEREFORE, in consideration of the premises and of the mutual  
16 agreements contained herein, it is agreed:

17 DEFINITIONS

18 1. When used herein, unless otherwise distinctly expressed, or mani-  
19 festly incompatible with the intent hereof, the term:

20 (a) "Secretary" or "Contracting Officer" shall mean the Secretary  
21 of the Interior or his duly authorized representative.

22 (b) "Project" shall mean the Central Valley Project, California,  
23 of the Water and Power Resources Service.

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1 (c) "year" shall mean the period from January 1 through  
2 December 31.

3 (d) "River" shall mean the San Joaquin River.

4 (e) "Friant Dam" shall mean the Friant Dam and diversion works  
5 constructed across the San Joaquin River upstream from Friant, Fresno  
6 County, California.

7 (f) "project operations" shall mean any act or thing done or  
8 undertaken by the United States through any of its departments,  
9 agents or agencies having or appearing to have actual or ostensible  
10 authority to act for the United States in connection with the Central  
11 Valley Project, California.

12 (g) "live stream" shall mean any stream of water but not less  
13 than 5 cubic feet of water per second flowing by force of gravity in  
14 an open channel.

15 (h) "control point" shall mean a point in any channel of the  
16 River where a live stream, as herein defined, is at any time flowing  
17 or would most likely flow where such channel intersects the most  
18 southerly boundary line of the said land extended easterly as indicated  
19 on Exhibit A.

20 (i) "water" or "waters" shall mean the actual water of the River  
21 regardless of source.

22 EFFECTIVE DATE

23 2. This contract shall become effective on the date of execution by  
24 the Contracting Officer.

1 LAND AFFECTED

2 3. The land of the Contracting Owners hereinabove referred to and  
3 directly affected by this contract is particularly described in Exhibit A,  
4 attached hereto, and by this reference made a part hereof.

5 CONTROL OF THE RIVER

6 4. The Contracting Owners acknowledge:

7 (a) The right of the United States to control, operate, utilize  
8 and maintain Friant Dam and any other dam or dams or works whatever so as  
9 to interfere with, direct and/or control the flow of the River, its trib-  
10 utaries, branch channels and sloughs, as the Contracting Officer may at  
11 any time and from time to time determine to be necessary.

12 (b) The right of the United States to use and/or divert within  
13 or without the watershed of the River and change the place or places of  
14 use and/or change the point or points of diversion and/or the purpose or  
15 purposes of use of any of the water of the River and at any time and from  
16 time to time as it may determine to be necessary, except only as stated in  
17 Article 5 hereof.

18 PROVISION FOR LIVE STREAM

19 5. The Contracting Officer will permit water to pass by or through  
20 Friant Dam into the River, which water, together with the accretions to  
21 the River from all sources whatsoever, will maintain a live stream in the  
22 River at the control point defined in Article 1 herein.

1 RIVER TO BE KEPT OPEN

2 6. The Contracting Owners expressly agree for the benefit of the  
3 United States and others owning rights to the use of water from the River  
4 that they will place no substantial obstruction of any kind whatsoever in  
5 any channel of the River to the detriment of the United States or of others  
6 diverting from the River nor authorize the same to be done by others.

7 HOW OWNER MAY DIVERT WATER

8 7. The United States does not and will not so far as it and its  
9 successors and assigns are concerned, object to any reasonable beneficial  
10 use of the water of the River for irrigation and/or domestic purposes  
11 exclusively upon the land described in Exhibit A: Provided, That water  
12 to supply such beneficial use or uses shall be taken only from water in  
13 the River at a point or at points upon, adjacent to or opposite said  
14 described land or at a point or at points upon said described land from  
15 underground sources.

16 UNITED STATES MAY MAINTAIN RIVER CHANNEL

17 8. While the United States shall be under no obligation to do so,  
18 its officers, agents and employees, so far as the Contracting Owners of  
19 land described in Exhibit A are concerned, may enter upon the River at  
20 any place and at any time and from time to time and construct, reconstruct,  
21 maintain and/or operate such works or excavation as it may deem necessary  
22 or convenient in connection with the maintenance or control of any channel  
23 or channels of the River. The officers, agents and employees of the United  
24 States shall enjoy the right of reasonable passage from time to time over

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1 the said described land with equipment required for such construction,  
2 reconstruction, maintenance and/or operation as may be necessary. The  
3 Contracting Officer also may take and utilize for any of the aforesaid  
4 purposes from the channel or channels of the River at or near the point  
5 or points of such works or excavation such earth, sand, rock and/or  
6 gravel as may be deemed by it as necessary for the purpose.

7 NO RESPONSIBILITY FOR LACK OF FLOOD CONTROL

8 9. Among the purposes of the Central Valley Project is that of  
9 regulating the flow of the River and controlling floods. While the  
10 Contracting Officer endeavors to operate Friant Dam as to carry out  
11 and accomplish such purposes so far as that feature is concerned, he  
12 makes no representation as to the amount and character of such regula-  
13 tion and control. Regardless of any reasonable project operations at  
14 Friant Dam, the United States shall be in no manner responsible for any  
15 damages which may accrue to the Contracting Owners or to any of the land  
16 or property of the Contracting Owners or to any of the land or property  
17 of the Contracting Owners described in Exhibit A or otherwise because of  
18 construction, operation or maintenance of Friant Dam or from any excess,  
19 unusual or flood water of the River

20 EFFECT OF INTERRUPTION OF PERFORMANCE

21 10. In the event performance in whole or in part of the obligations  
22 of the United States under this contract is hindered, interrupted or pre-  
23 vented by war, strikes, lockout, fire, act of God, or by civil or military  
24 authorities or by any cause beyond the control of the United States hereto

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1 whether similar to the causes herein specified or not, such obligations  
2 of the United States under this contract shall be suspended to the extent  
3 and for the time that performance thereof is prevented or affected by  
4 such hindrance, interruption or prevention. Due diligence shall be  
5 observed by the United States hereto as far as lies in its power in per-  
6 forming its obligations under this contract.

7 NO WATER OR WATER RIGHTS TO BE SOLD BY CONTRACTING OWNERS

8 11. The Contracting Owners shall not sell or attempt to sell or  
9 convey any water or water rights or interest therein from any source  
10 whatever, claimed to be parcel of or attached or appurtenant to or for  
11 use upon the land described in Exhibit A or any part thereof, for use  
12 elsewhere or upon other land, and any such attempted sale or conveyance  
13 shall be void.

14 PROTECTION OF WATER RIGHTS

15 12. For the purposes of enforcing and/or protecting the water rights  
16 of the parties hereto, the Contracting Officer, acting in behalf of either  
17 the United States or the Contracting Owners, may assert any claim or  
18 exercise any right which the Contracting Owners might assert or exercise  
19 on their own behalf either under or in the absence of this contract, and  
20 for that purpose only the Contracting Officer is hereby appointed irrev-  
21 ocably agent of the Contracting Owners.

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OFFICIALS NOT TO BENEFIT

13. No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

NOTICES

14. Any notice, demand, or request authorized or required by this contract shall be deemed to have been given, on behalf of the Contracting Owners, when mailed, postage prepaid, or delivered to the Regional Director, Mid-Pacific Region, Water and Power Resources Service, 2800 Cottage Way, Sacramento, California 95825, and on behalf of the United States, when mailed, postage prepaid, or delivered to the address of record of the landowners. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

15. The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto.

COVENANT AGAINST CONTINGENT FEES

16. The Contracting Owners warrant that they have not employed any person to solicit or secure this contract on any agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the United States the right to annul the contract

1 or to deduct from the contract the price or consideration in the amount  
2 of such commission, percentage, brokerage or contingent fees. This  
3 warranty shall not apply to commissions payable by the Contracting  
4 Owners upon contracts or sales secured or made through bona fide  
5 established commercial or selling agencies maintained by the Contract-  
6 ing Owners for the purpose of securing business.

7 IN WITNESS WHEREOF, the parties hereto have executed or caused  
8 these presents to be executed in duplicate original the day and year  
9 first above written.

10

THE UNITED STATES OF AMERICA

11

12

By M. A. O'Brien  
Acting Regional Director, Mid-Pacific Region  
Water and Power Resources Service

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15

CONTRACTING OWNERS

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17

By Carolyn G. Peck  
Carolyn G. Peck, Trustee

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P. O. Box 507  
Mendota, California 93640  
(Address)

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CONTRACTING OWNERS

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SUMNER PECK RANCH, INC.,  
A California Corporation

By Carolyn G. Peck

P. O. Box 507  
Mendota, California 93640.

(Address)

Carolyn G. Peck

Carolyn G. Peck, a widow

P. O. Box 507  
Mendota, California 93640

(Address)

EXHIBIT "A"  
 T. 11S.-R. 20E.  
 CAROLYN G. PECK, TRUSTEE

EXPLANATION  
 [Yellow outline] HOLDING BOUNDARY  
 [Pink dotted area] ASSUMED RIPARIAN LAND

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