

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

CONTRACT BETWEEN THE UNITED STATES
AND
VIRGINIA L. LEMPESIS AS TRUSTEE OF THE
VIRGINIA L. LEMPESIS SEPARATE PROPERTY TRUST
PROVIDING FOR THE ADJUSTMENT AND SETTLEMENT
OF CERTAIN CLAIMED WATER RIGHTS

Table of Contents

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
	Preamble	1
	Explanatory Recitals	1-2
1	Definitions	3
2	Effective Date	3
3	Water to be Furnished to the Contractor	3-6
4	Time for Delivery of Water	6
5	Points of Delivery--Measurement and Responsibility for Distribution of Water--United States to be Held Harmless--Temporary Reductions	6-7
6	Protection of Water and Air Quality	8
7	Water Rights Settlement	9
8	Access to Fresno Slough	9-10
9	Assignment Limited--Successors and Assigns Obligated	10
10	Officials Not to Benefit	10
11	Contract Drafting Considerations	10
12	Constraints on the Availability of Water	10
13	Notices	11
	Signature Page	12
	Exhibit A Contractor's Project Water Service Area and Initial Point of Delivery	

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12 THIS CONTRACT, made this _____ day of _____, 2012, in
13 pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or
14 supplementary thereto, including, but not limited to, the Act of August 4, 1939 (53 Stat. 1187,
15 1197), as amended and supplemented, all collectively hereinafter referred to as the Federal
16 reclamation laws, between THE UNITED STATES OF AMERICA, hereinafter referred to as the
17 United States, acting through the Bureau of Reclamation, hereinafter referred to as the
18 Contracting Officer, and VIRGINIA L. LEMPESIS AS TRUSTEE OF THE VIRGINIA L.
19 LEMPESIS SEPARATE PROPERTY TRUST, hereinafter referred to as the Contractor, acting
20 pursuant to the laws of the State of California.

21 WITNESSETH That:

22 EXPLANATORY RECITALS

23 [1st] WHEREAS, the United States is constructing and operating the Central Valley
24 Project, California, for the purpose, among others of furnishing water for irrigation, municipal
25 and industrial, domestic, and other beneficial uses; and

26 [2nd] WHEREAS, the United States has constructed the Delta-Mendota Canal which
27 will be operated and used, in part, for the furnishing of water to the Contractor from Mendota
28 Pool pursuant to the terms of this Contract; and

29 [3rd] WHEREAS, the United States has the right to divert water from the San Joaquin
30 River; and

31 [4th] WHEREAS, the Contractor claims and alleges that the construction and operation
32 of the Central Valley Project has interfered with the Contractor's claimed rights in and to the use
33 of the waters of the San Joaquin River by impairing the quantity thereof; and

34 [5th] WHEREAS, the Contractor owns lands adjacent to the Fresno Slough in the
35 vicinity of the Mendota Pool area and this land is part of the area recognized under the original
36 Contract for Purchase of Miller & Lux Rights dated July 17, 1939, Contract No. I1r-1145 (1939
37 Purchase Contract); and

38 [6th] WHEREAS, the 1939 Purchase Contract was entered into as part of the plan for
39 the construction and operation of the Friant Division of the Central Valley Project; and

40 [7th] WHEREAS, the execution of this Contract is in furtherance of commitments of
41 the United States for the settlement and adjustment of certain claimed water rights to the San
42 Joaquin River under the 1939 Purchase Contract, downstream of the Friant Dam along the
43 Fresno Slough; and

44 [8th] WHEREAS, the United States is willing to deliver to the Contractor and the
45 Contractor is willing to accept up to 600 acre-feet per Year from the Mendota Pool for the
46 irrigation of approximately 215 acres of land located within the area shown in Exhibit A
47 (Contractor's Project Water Service Area), as an adjustment and settlement of the Contractor's
48 asserted claims and allegations;

49 NOW THEREFORE, in consideration of mutual and dependent covenants herein
50 contained, it is agreed as follows:

51 DEFINITIONS

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

54 (a) "Contracting Officer" shall mean the Secretary of the Interior's duly
55 authorized representative acting pursuant to this Contract or applicable Federal Reclamation law
56 or regulations;

57 (b) "Project" shall mean the Central Valley Project owned by the United
58 States and operated by the Department of the Interior, Bureau of Reclamations;

59 (c) "Schedule 2 Water" shall mean all water delivered without charge under
60 the authority of Section 14 of the Reclamation Project Act of 1939 (53 Stat. 1187, 1197) as a
61 permanent adjustment and settlement of the Contractor's asserted claims of rights to San Joaquin
62 River water in the Fresno Slough in fulfillment of such rights pursuant to the 1939 Purchase
63 Contract;

64 (d) "Secretary" shall mean the Secretary of the Interior, a duly appointed
65 successor, or an authorized representative; and

66 (e) "Year" shall mean the calendar year.

67 EFFECTIVE DATE

68 2. This Contract shall be effective on the date first herein written and shall remain in
69 effect in perpetuity unless terminated as the result of a material uncured breach by one of the
70 parties.

71 WATER TO BE FURNISHED TO THE CONTRACTOR

72 3. Each Year, commencing with the effective date of this Contract, the United States
73 shall furnish to the Contractor for the approximately 215 acres of land as shown on Exhibit A,
74 600 acre-feet of Schedule 2 Water at times and in quantities called for as provided in subdivision
75 (a) of Article 4 hereof under the following basic table, Schedule A:

76	<u>Month</u>	<u>Quantities in Acre-feet</u>
77	January	0
78	February	100
79	March	25
80	April	25
81	May	50
82	June	150
83	July	150
84	August	100
85	September	0
86	October	0
87	November	0
88	<u>December</u>	<u>0</u>
89	Total	600

90
91 Provided, that in any Year when:

92 (a) The forecasted full natural inflow to Shasta Lake for the current water year
93 (October 1 of the preceding Year through September 30 of the current Year), as such forecast is
94 made by the United States on or before February 15 of the current year and reviewed and
95 updated as frequently thereafter as conditions and information warrant, is equal to or less than
96 3,200,000 acre-feet; or

97 (b) The total accumulated actual deficiencies below 4,000,000 acre-feet in the
98 immediately prior water year or series of successive prior water years each of which had inflows
99 to Shasta Lake of less than 4,000,000 acre-feet together with the forecasted deficiency for the
100 current water year exceed 800,000 acre-feet; then the United States shall furnish to the

101 Contractor 462 acre-feet of Schedule 2 Water at times and in quantities called for as provided in
102 subdivision (a) of Article 4 hereof under the following basic table, Schedule B:

103	<u>Month</u>	<u>Quantities in Acre-feet</u>
104	January	0
105	February	75
106	March	25
107	April	25
108	May	62
109	June	100
110	July	100
111	August	75
112	September	0
113	October	0
114	November	0
115	<u>December</u>	<u>0</u>
116	Total	462

117 For the purpose of determining subdivisions (a) and (b) of Article 3 hereof, the computed inflow
118 to Shasta Lake under present upstream development above Shasta Lake at the effective date of
119 this Contract shall be used as the full natural inflow to Shasta Lake. In the event that any major
120 construction activity completed above Shasta Lake after the effective date of this Contract
121 materially alters the present regimen of the stream systems contributing to Shasta Lake, the
122 computed inflow to Shasta Lake will be adjusted to eliminate the effect of such material
123 alterations. The United States will select the forecast to be used and submit the details of the
124 forecast to the Contractor. The same forecasts used by the United States for the operations of the
125 Project shall be used to make the forecasts hereunder. The United States shall furnish Schedule
126 2 Water to the Contractor in accordance with Schedule B.

127 TIME FOR DELIVERY OF WATER

128 4. Before January 1 of each Year the Contractor shall submit a schedule in writing to
129 the Contracting Officer, subject to the provisions of Article 3 hereof and satisfactory to the
130 Contracting Officer, indicating the desired times and quantities for the delivery of all water

131 pursuant to this Contract during such Year. In such schedule or revision thereof, the Contractor
132 may reallocate the quantities of Schedule 2 Water for the months of February through July
133 appearing in the applicable table in Article 3 hereof so long as the total for such months does not
134 thereby exceed the total for such months in that table. Within the provisions hereof the United
135 States shall attempt to deliver such water in accordance with said schedule, or any revision
136 thereof satisfactory to the Contracting Officer submitted by the Contractor within a reasonable
137 time before the desired change of times or quantities, or both.

138 POINTS OF DELIVERY--MEASUREMENT AND RESPONSIBILITY
139 FOR DISTRIBUTION OF WATER--UNITED STATES TO BE
140 HELD HARMLESS--TEMPORARY REDUCTIONS

141 5. (a) The water to be furnished to the Contractor pursuant to this Contract shall
142 be delivered from Mendota Pool at diversion points mutually agreed upon by the Contracting
143 Officer and the Contractor through facilities constructed, operated, and maintained by the
144 Contractor. The initial diversion point shall be at the location identified on the attached Exhibit
145 A.

146 (b) All water furnished pursuant to this Contract shall be measured by the
147 United States at the points of delivery established pursuant to sub-division (a) of this article with
148 equipment installed, operated, and maintained by the United States. Upon request of the
149 Contractor, the accuracy of such measurements shall be investigated by the Contracting Officer,
150 and any errors appearing therein adjusted.

151 (c) The United States shall not be responsible for the control, carriage,
152 handling, use, disposal, or distribution of water beyond the delivery points, and the Contractor
153 shall hold the United States harmless on account of damage or claim of damage of any nature
154 whatsoever for which there is legal responsibility, including property damage, personal injury, or

155 death arising out of or connected with the control, carriage, handling, use, disposal, or
156 distribution of such water.

157 (d) The United States may temporarily discontinue or reduce the quantity of
158 water to be furnished to the Contractor under this Contract for the purposes of such investigation,
159 inspection, maintenance, repair, or replacement of any of the Project facilities or any part thereof
160 necessary for the furnishing of water to the Contractor, but so far as feasible the United States
161 will give the Contractor due notice in advance of such temporary discontinuance or reduction,
162 except in case of emergency, in which case no notice need to be given: Provided, however, That
163 the United States shall use its best efforts to avoid any discontinuance or reduction in service for
164 a period longer than three (3) days. Upon resumption of service after such discontinuance or
165 reduction, and if requested by the Contractor, the United States will attempt to deliver the
166 quantity of water which would have been furnished, hereunder, in the absence of such
167 discontinuance or reduction.

168 PROTECTION OF WATER AND AIR QUALITY

169 6. (a) Project facilities used to make available and deliver water to the Contractor
170 shall be operated and maintained in the most practical manner to maintain the quality of the
171 water at the highest level possible as determined by the Contracting Officer: *Provided, That* the
172 United States does not warrant the quality of the water delivered to the Contractor and is under
173 no obligation to furnish or construct water treatment facilities to maintain or improve the quality
174 of water delivered to the Contractor.

175 (b) The Contractor shall comply with all applicable water and air pollution laws
176 and regulations of the United States and the State of California; and shall obtain all required
177 permits or licenses from the appropriate Federal, State, or local authorities necessary for the
178 delivery of water by the Contractor; and shall be responsible for compliance with all Federal,
179 State, and local water quality standards applicable to surface and subsurface drainage and/or
180 discharges generated through the use of Federal or Contractor facilities or project water provided
181 by the Contractor within the Contractor's Project Water Service Area.

182 (c) This article shall not affect or alter any legal obligations of the Secretary
183 to provide drainage or other discharge services.

184 (d) Although the United States does not warrant the quality of the water
185 delivered to the Contractor, the water to be furnished under this Contract shall be of the highest
186 level possible quality that the United States, following its established operating procedures, can
187 deliver by means of either the Delta-Mendota Canal or the San Joaquin River or both and shall
188 be at all times suitable irrigation water for use upon the Contractor's lands. The fact that the
189 requirement of such water quality are herein stated only in terms of parts per million of total
190 dissolved solids should not be construed as meaning that this particular measurement of water
191 quality is the sole indication of requisite water quality. The best data presently available on the
192 character of the possible sources of water supplying the Delta-Mendota Canal indicate that as
193 concentration changes there will be no significant change in the character of the water with
194 respect to the proportions of the various constituents. However, if such water meets the
195 following specific requirements, it shall be deemed conclusively to be suitable irrigation water
196 hereunder:

197 (1) Daily: The quality of water shall not exceed a mean daily value of
198 800 parts per million of total dissolved solids. The mean daily values are to be computed by
199 weighting the instantaneous values on the basis of time of occurrence during each day;

200 (2) Monthly: The quality of water shall not exceed a mean monthly
201 value of 600 parts per million of total dissolved solids. The mean monthly value is to be
202 computed by weighting each mean daily value of total dissolved solids on the basis of the
203 quantity of water delivered each day of the month;

204 (3) Annual: The quality of water shall not exceed a mean annual value
205 during the Year of 450 parts per million of total dissolved solids. The mean annual value is to be

206 computed by weighting each mean daily value of total dissolved solids on the basis of quantity
207 of water delivered each day of the Year; and

208 (4) Five-year: The average quality of water for any five (5)
209 consecutive Years shall not exceed a mean value of 400 parts per million of total dissolved
210 solids. The five (5)-year average shall be computed by weighting each mean daily value of total
211 dissolved solids on the basis of quantity of water delivered each day of the five (5) consecutive
212 Years ending with the last Year of the period.

213 (e) The quality of water from the San Joaquin River shall be determined at the
214 present location of the Whitehouse gauging station, and from Delta-Mendota Canal shall be
215 measured by a salinity recorder as presently installed in said Canal. The quality determination
216 made at said Whitehouse gauging station and the rating of said recorder shall be from bottle
217 samples taken twice each month from which total dissolved solids will be determined by
218 chemical analysis. When water is being delivered from Delta-Mendota Canal and from the San
219 Joaquin River simultaneously, the quality of all water so delivered shall be determined by
220 computing the weighted average quality of all water so delivered. All quality determinations
221 shall be made by the Contracting Officer.

222 WATER RIGHTS SETTLEMENT

223 7. The Contractor, its successors, or assigns shall not divert, dispose of, or otherwise
224 use water from Mendota Pool under any claim of water rights to San Joaquin River water so long
225 as the United States delivers or is ready, able, and willing to deliver Schedule 2 Water to the
226 Contractor in accordance with the terms of this Contract: Performance by the United States of its
227 obligations hereunder with respect to the delivery of Schedule 2 Water shall release the United
228 States from liability with respect to such claims.

ACCESS TO FRESNO SLOUGH

229 8. To the extent the Contractor has the power to grant such use, the United States, its
230 employees, and its agents may use the roads within the Contractor’s lands as such roads may
231 exist for ingress and egress to and from Fresno Slough.

ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

233 9. The provisions of this Contract shall apply to and bind the successors and assigns
234 of the parties hereto, but no assignment or transfer of this Contract or any right or interest therein
235 by either party shall be valid until approved in writing by the other party.

OFFICIALS NOT TO BENEFIT

237 10. (a) No member of or delegate to Congress or resident commissioner shall be
238 admitted to any share or part of this Contract or to any benefit that may arise here from, but this
239 restriction shall not be construed to extend to this Contract if made with a corporation for its
240 general benefit.

241 (b) No official of the Contractor shall receive any benefit that may arise by
242 reason of this Contract other than as a landowner within the Project and in the same manner as
243 other landowners within the Project.

CONTRACT DRAFTING CONSIDERATIONS

245 11. This Contract has been negotiated and reviewed by the parties hereto, each of
246 whom is sophisticated in the matters to which this Contract pertains. The double-spaced articles
247 of this Contract have been drafted, negotiated, and reviewed by the parties, and no one party
248 shall be considered to have drafted the stated articles.

CONSTRAINTS ON THE AVAILABILITY OF WATER

250 12. (a) In its operation of the Project, the Contracting Officer will use all
251 reasonable means to guard against a condition of shortage in the quantity of water to be made
252 available to the Contractor pursuant to this Contract. In the event the Contracting Officer
253 determines that a condition of shortage appears probable, the Contracting Officer will notify the
254 Contractor of said determination as soon as practicable.

255 (b) If there is a condition of shortage because of errors in physical operations
256 of the Project, drought, other physical causes beyond the control of the Contracting Officer or
257 actions taken by the Contracting Officer to meet current and future legal obligations, then no
258 liability shall accrue against the United States or any of its officers, agents, or employees for any
259 damage direct or indirect, arising therefrom.

260

NOTICES

261 13. Any notice, demand, or request authorized or required by this Contract shall be
262 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or
263 delivered to the Area Manager, South-Central California Area Office, 1243 "N" Street, Fresno,
264 California 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered
265 to Ms. Virginia L. Lempesis, 5065 N. Van Ness Blvd., Fresno CA 93711. The designation of the
266 addressee or the address may be changed by notice given in the same manner as provided in this
267 article for other notices.

268 IN WITNESS WHEREOF, the parties hereto have executed this Contract the day and
269 year first above written.

270 THE UNITED STATES OF AMERICA

271 By: _____
272 Regional Director, Mid-Pacific Region
273 Bureau of Reclamation

274 VIRGINIA L. LEMPESIS AS TRUSTEE OF THE
275 VIRGINIA L. LEMPESIS SEPARATE
276 PROPERTY TRUST

277 By: _____
278 Virginia L. Lempesis, Trustee

279 STATE OF CALIFORNIA)

280)SS.

281 COUNTY OF)

282

283 On _____, before me, _____, Notary Public,
284 personally appeared _____,
285 who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
286 subscribed to the within instrument and acknowledged to me that he/she/they executed the same
287 in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
288 the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

289 I certify under penalty of perjury under the laws of the State of California that the
290 foregoing paragraph is true and correct.

291

292

293

Notary Public

294 STATE OF CALIFORNIA)
295)SS.
296 COUNTY OF)

297

298 On _____, before me, _____, Notary Public,
299 personally appeared _____,
300 who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
301 subscribed to the within instrument and acknowledged to me that he/she/they executed the same
302 in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
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305 foregoing paragraph is true and correct.

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307

308

Notary Public