

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

LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
AND
COUNTY OF COLUSA
PROVIDING FOR PROJECT WATER SERVICE
FROM THE SACRAMENTO RIVER DIVISION

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2
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8 AND
9 COUNTY OF COLUSA
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11 FROM THE SACRAMENTO RIVER DIVISION
12

13 THIS CONTRACT, made this ____ day of _____, 2004, in
14 pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or
15 supplementary thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844),
16 as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented,
17 July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263),
18 October 27, 1986 (100 Stat. 3050), as amended, and Title XXXIV of the Act of October 30, 1992
19 (106 Stat. 4706), all collectively hereinafter referred to as Federal Reclamation law, between
20 THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, and
21 COUNTY OF COLUSA, a political subdivision of the State of California, duly organized,
22 existing, and acting pursuant to the laws thereof, with its principal place of business in
23 California;

24 WITNESSETH, That:

25 EXPLANATORY RECITALS

26 [1st] WHEREAS, the United States has constructed and is operating the Central Valley
27 Project, California, for diversion, storage, carriage, distribution and beneficial use, for flood
28 control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and

29 restoration, generation and distribution of electric energy, salinity control, navigation and other
30 beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and
31 the San Joaquin River and their tributaries; and

32 [2nd] WHEREAS, the United States constructed the Red Bluff Diversion Dam, and the
33 Tehama-Colusa Canal and related delivery facilities including pumping plants, hereinafter
34 collectively referred to as the Canal Facilities, which will be used in part for the furnishing of
35 water to the Contractor pursuant to the terms of this Contract; and

36 [3rd] WHEREAS, the rights to Project Water were acquired by the United States
37 pursuant to California law for operation of the Project; and

38 [4th] WHEREAS, the Contractor and the United States entered into Contract
39 No. 14-06-200-8310A, which established terms for the delivery to the Contractor of Central
40 Valley Project Water from the Canal Facilities from November 18, 1975 through February 28,
41 1995, and under which the initial date of water delivery to the Contractor was January 1, 1981;
42 and

43 [5th] WHEREAS, the Contractor and the United States have pursuant to subsection
44 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into
45 interim renewal contract(s) identified as Contract No(s). 14-06-200-8310A-IR1, 14-06-200-
46 8310A-IR2, 14-06-200-8310A-IR3, 14-06-200-8310A-IR4, 14-06-200-8310A-IR5, 14-06-200-
47 8310A-IR6, 14-06-200-8310A-IR7, the current of which is hereinafter referred to as the Existing
48 Contract, which provided for the continued water service to the Contractor from March 1, 2003
49 through February 29, 2004; and

50 [5.1] WHEREAS, in accordance with Article 5 (a) of Contract No. 14-06-200-8310A,
51 and with the prior approval of the Contracting Officer, the Contractor entered into subcontracts
52 for the resale and distribution of all of the Central Valley Project Water under Contract No.

53 14-06-200-8310A with the Member Units, with an initial delivery date of January 1, 1981, and
54 for the quantities set forth below:

- 55
56 Colusa County Water District for 5,965 acre-feet;
57 Cortina Water District for 1,700 acre-feet;
58 4-M Water District for 5,700 acre-feet;
59 Glenn Valley Water District for 1,730 acre-feet;
60 Holthouse Water District for 2,450 acre-feet;
61 La Grande Water District for 2,200 acre-feet;
62 Myers-Marsh Mutual Water Company for 255 acre-feet;
63 Westside Water District for 40,000 acre-feet; and

64 [5.2] WHEREAS, the Contractor and Westside Water District entered into a partial
65 assignment on March 27, 2002, identified as Contract No. 14-06-200-8310X, to permanently
66 assign to Westside Water District 40,000 acre-feet of the Central Valley Project Water made
67 available to the Contractor pursuant to Contract No. 14-06-200-8310A; and

68 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of
69 interim and existing long-term Central Valley Project Water service contracts following
70 completion of appropriate environmental documentation, including a programmatic
71 environmental impact statement (PEIS) pursuant to the National Environmental Policy Act
72 analyzing the direct and indirect impacts and benefits of implementing the CVPIA and the
73 potential renewal of all existing contracts for Project Water; and

74 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
75 environmental review necessary to provide for long-term renewal of the Existing Contract; and

76 [8th] WHEREAS, the Contractor has requested the long-term renewal of the Existing
77 Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws
78 of the State of California, for water service from the Central Valley Project; and

79 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all
80 of its obligations under the Existing Contract; and

81 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the
82 Contracting Officer that the Contractor has utilized the Central Valley Project Water supplies
83 available to it for reasonable and beneficial use and, based upon a needs analysis cooperatively
84 prepared by the Contracting Officer and the Contractor, has demonstrated projected future
85 demand for water use that exceeds the Contract Total to be made available to it pursuant to this
86 Contract; and

87 [11th] WHEREAS, water obtained from the Central Valley Project has been relied upon
88 by urban and agricultural areas within California for more than 50 years, and is considered by the
89 Contractor as an essential portion of its water supply; and

90 [12th] WHEREAS, the economies of regions within the Central Valley Project,
91 including the Contractor's, depend upon the continued availability of water, including water
92 service from the Central Valley Project; and

93 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and
94 partnerships to pursue measures to improve water supply, water quality, and reliability of the
95 Project for all Project purposes; and

96 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to
97 provide for reliable Central Valley Project Water supplies; to control costs of those supplies; to
98 achieve repayment of the Central Valley Project as required by law; to guard reasonably against
99 Central Valley Project Water shortages; to achieve a reasonable balance among competing

100 demands for use of Central Valley Project Water; and to comply with all applicable
101 environmental statutes, all consistent with the legal obligations of the United States relative to
102 the Central Valley Project; and

103 [15th] WHEREAS, the parties intend by this Contract to develop a more cooperative
104 relationship in order to achieve their mutual goals; and

105 [16th] WHEREAS, the United States and the Contractor are willing to enter into this
106 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

107 NOW, THEREFORE, in consideration of the mutual and dependent covenants herein
108 contained, it is hereby mutually agreed by the parties hereto as follows:

109 DEFINITIONS

110 1. When used herein unless otherwise distinctly expressed, or manifestly
111 incompatible with the intent of the parties as expressed in this Contract, the term:

112 (a) "Calendar Year" shall mean the period January 1 through December 31,
113 both dates inclusive;

114 (b) "Charges" shall mean the payments required by Federal Reclamation law
115 in addition to the Rates and Tiered Pricing Components specified in this Contract as determined
116 annually by the Contracting Officer pursuant to this Contract;

117 (c) "Condition of Shortage" shall mean a condition respecting the Project
118 during any Year such that the Contracting Officer is unable to deliver sufficient water to meet the
119 Contract Total;

120 (d) "Contracting Officer" shall mean the Secretary of the Interior's duly
121 authorized representative acting pursuant to this Contract or applicable Reclamation law or
122 regulation;

123 (e) “Contract Total” shall mean the maximum amount of water to which the
124 Contractor is entitled under subdivision (a) of Article 3 of this Contract;

125 (f) “Contractor's Service Area” shall mean the area to which the Contractor
126 is permitted to provide Project Water under this Contract as described in Exhibit “A” attached
127 hereto, which may be modified from time to time in accordance with Article 35 of this Contract
128 without amendment of this Contract;

129 (g) “CVPIA” shall mean the Central Valley Project Improvement Act, Title
130 XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

131 (h) “Eligible Lands” shall mean all lands to which Irrigation Water may be
132 delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982
133 (96 Stat. 1263), as amended, hereinafter referred to as RRA;

134 (i) “Excess Lands” shall mean all lands in excess of the limitations contained
135 in Section 204 of the RRA, other than those lands exempt from acreage limitation under Federal
136 Reclamation law;

137 (j) “Full Cost Rate” shall mean an annual rate, determined by the Contracting
138 Officer that amortizes the expenditures for construction properly allocable to the Project
139 Irrigation or M&I functions, as appropriate, of facilities in service including operation and
140 maintenance deficits funded, less payments, over such periods as may be required under Federal
141 Reclamation law, or applicable contract provisions. Interest will accrue on both the construction
142 expenditures and funded O&M deficits from October 12, 1982, on costs outstanding at that date,
143 or from the date incurred in the case of costs arising subsequent to October 12, 1982, and shall be
144 calculated in accordance with subsections 202(3)(B) and (3)(C) of the RRA. The Full Cost Rate
145 includes actual operation, maintenance, and replacement costs consistent with Section 426.2 of
146 the Rules and Regulations for the RRA;

147 (k) "Ineligible Lands" shall mean all lands to which Irrigation Water may not
148 be delivered in accordance with Section 204 of the RRA;

149 (l) "Irrigation Full Cost Water Rate" shall mean the Full Cost Rate applicable
150 to the delivery of Irrigation Water;

151 (m) "Irrigation Water" shall mean water made available from the Project that
152 is used primarily in the production of agricultural crops or livestock, including domestic use
153 incidental thereto, and watering of livestock;

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

156 (o) A Member Unit shall mean an entity within the Contractor's Service Area
157 organized for the purpose of obtaining Project Water from the Canal Facilities and executing a
158 subcontract with the Contractor for such a supply;

159 (p) "Municipal and Industrial (M&I) Water" shall mean Project Water, other
160 than Irrigation Water, made available to the Contractor. M&I Water shall include water used for
161 human use and purposes such as the watering of landscaping or pasture for animals (e.g., horses)
162 which are kept for personal enjoyment or water delivered to land holdings operated in units of
163 less than 5 acres, unless the Contractor establishes to the satisfaction of the Contracting Officer
164 that the use of water delivered to any such landholding is a use described in subdivision (m) of
165 this Article;

166 (q) "M&I Full Cost Water Rate" shall mean the Full Cost Rate applicable to
167 the delivery of M&I Water;

168 (r) "Operation and Maintenance" or "O&M" shall mean normal and
169 reasonable care, control, operation, repair, replacement (other than Capital replacement), and
170 maintenance of Project facilities;

- 171 (s) “Operating Non-Federal Entity” shall mean the Tehama-Colusa Canal
172 Authority, a Non-Federal entity which has the obligation to operate and maintain all or a portion
173 of the Canal Facilities pursuant to an agreement with the United States, and which may have
174 funding obligations with respect thereto;
- 175 (t) “Project” shall mean the Central Valley Project owned by the United
176 States and managed by the Department of the Interior, Bureau of Reclamation;
- 177 (u) “Project Contractors” shall mean all parties who have water service
178 contracts for Project Water from the Project with the United States pursuant to Federal
179 Reclamation law;
- 180 (v) “Project Water” shall mean all water that is developed, diverted, stored, or
181 delivered by the Secretary in accordance with the statutes authorizing the Project and in
182 accordance with the terms and conditions of water rights acquired pursuant to California law;
- 183 (w) “Rates” shall mean the payments determined annually by the Contracting
184 Officer in accordance with the then current applicable water ratesetting policies for the Project,
185 as described in subdivision (a) of Article 7 of this Contract;
- 186 (x) “Recent Historic Average” shall mean the most recent 5-year average of
187 the final forecast of Water Made Available to the Contractor pursuant to this Contract or its
188 preceding contract(s);
- 189 (y) “Secretary” shall mean the Secretary of the Interior, a duly appointed
190 successor, or an authorized representative acting pursuant to any authority of the Secretary and
191 through any agency of the Department of the Interior;
- 192 (z) “Tiered Pricing Component” shall be the incremental amount to be paid
193 for each acre-foot of Water Delivered as described in subdivision (j) of Article 7 of this Contract;

194 (aa) "Water Delivered" or "Delivered Water" shall mean Project Water
195 diverted for use by the Contractor at the point(s) of delivery approved by the Contracting
196 Officer;

197 (bb) "Water Made Available" shall mean the estimated amount of Project
198 Water that can be delivered to the Contractor for the upcoming Year as declared by the
199 Contracting Officer, pursuant to subdivision (a) of Article 4 of this Contract;

200 (cc) "Water Scheduled" shall mean Project Water made available to the
201 Contractor for which times and quantities for delivery have been established by the Contractor
202 and Contracting Officer, pursuant to subdivision (b) of Article 4 of this Contract; and

203 (dd) "Year" shall mean the period from and including March 1 of each
204 Calendar Year through the last day of February of the following Calendar Year.

205 TERM OF CONTRACT

206 2. (a) This Contract shall be effective March 1, 2004, through February 28,
207 2029. In the event the Contractor wishes to renew the Contract beyond February 28, 2029, the
208 Contractor shall submit a request for renewal in writing to the Contracting Officer no later than 2
209 years prior to the date this Contract expires. The renewal of this Contract insofar as it pertains to
210 the furnishing of Irrigation Water to the Contractor shall be governed by subdivision (b) of this
211 Article, and the renewal of this Contract insofar as it pertains to the furnishing of M&I Water to
212 the Contractor shall be governed by subdivision (c) of this Article.

213 (b) (1) On terms and conditions of a renewal contract that are mutually
214 agreeable to the parties hereto, and upon a determination by the Contracting Officer that at the
215 time of contract renewal the conditions set forth in subdivision (b)(2) of this Article are met, and
216 subject to Federal and State law, this Contract, insofar as it pertains to the furnishing of Irrigation
217 Water to the Contractor, shall be renewed for a period of 25 years.

218 (2) The conditions which must be met for this Contract to be renewed
219 are: (i) the Contractor and/or each Member Unit has prepared a water conservation plan that has
220 been determined by the Contracting Officer in accordance with Article 26 of this Contract to
221 meet the conservation and efficiency criteria for evaluating such plans established under Federal
222 law; (ii) the Contractor and/or each Member Unit is implementing an effective water
223 conservation and efficiency program based on the Contractor's and/or each Member Unit's water
224 conservation plan as required by Article 26 of this Contract; (iii) the Contractor and/or each
225 Member Unit is maintaining all water measuring devices and implementing all water
226 measurement methods as approved by the Contracting Officer pursuant to Article 6 of this
227 Contract; (iv) the Contractor and/or each Member Unit has reasonably and beneficially used the
228 Project Water supplies made available to it and, based on projected demands, is reasonably
229 anticipated and expects fully to utilize for reasonable and beneficial use the quantity of Project
230 Water to be made available to it pursuant to such renewal; (v) the Contractor and/or each
231 Member Unit is complying with all terms and conditions of this Contract; and (vi) the Contractor
232 and/or each Member Unit has the physical and legal ability to deliver Project Water.

233 (3) The terms and conditions of the renewal contract described in
234 subdivision (b)(1) of this Article and any subsequent renewal contracts shall be developed
235 consistent with the parties' respective legal rights and obligations, and in consideration of all
236 relevant facts and circumstances, as those circumstances exist at the time of renewal, including,
237 without limitation, the Contractor's need for continued delivery of Project Water; environmental
238 conditions affected by implementation of the Contract to be renewed, and specifically changes in
239 those conditions that occurred during the life of the Contract to be renewed; the Secretary's
240 progress toward achieving the purposes of the CVPIA as set out in Section 3402 and in

241 implementing the specific provisions of the CVPIA; and current and anticipated economic
242 circumstances of the region served by the Contractor.

243 (c) This Contract, insofar as it pertains to the furnishing of M&I Water to the
244 Contractor, shall be renewed for a period of 25 years and thereafter shall be renewed for
245 successive periods of up to 40 years each, which periods shall be consistent with the then-
246 existing Reclamation-wide policy, under terms and conditions mutually agreeable to the parties
247 and consistent with federal and state law. The Contractor shall be afforded the opportunity to
248 comment to the Contracting Officer on the proposed adoption and application of any revised
249 Reclamation-wide policy applicable to the delivery of Project M&I Water that would limit the
250 term of any subsequent renewal contract with the Contractor for the furnishing of M&I Water to
251 less than 25 years.

252 (d) The Contracting Officer shall make a determination 10 years after the date
253 of execution of this Contract, and every 5 years thereafter during the term of this Contract, of
254 whether a conversion to a contract under said subsection 9(d) can be accomplished pursuant to
255 the Act of July 2, 1956 (Public Law 643). Notwithstanding any provision of this Contract, the
256 Contractor reserves and shall have all rights and benefits under Public Law 643. The
257 Contracting Officer anticipates that during the term of this contract, all authorized Project
258 construction expected to occur will have occurred, and on that basis the Contracting Officer
259 agrees upon such completion to allocate all costs that are properly assignable to the Contractor,
260 and agrees further that, at any time after such allocation is made, and subject to satisfaction of
261 the condition set out in this subdivision, this Contract shall, at the request of the Contractor, be
262 converted to a contract under subsection (d), Section 9 of the Reclamation Project Act of 1939,
263 subject to applicable Federal law and under stated terms and conditions mutually agreeable to the
264 Contractor and the Contracting Officer. A condition for such conversion to occur shall be a

265 determination by the Contracting Officer that, account being taken of the amount credited to
266 return by the Contractor as provided for under Reclamation law, the remaining amount of
267 construction costs assignable for ultimate return by the Contractor can probably be repaid to the
268 United States within the term of a contract under said subsection (d). If the remaining amount of
269 costs that are properly assignable to the Contractor cannot be determined during the term of this
270 Contract, the Contracting Officer shall notify the Contractor, and provide the reason(s) why such
271 a determination could not be made. Further, the Contracting Officer shall make such a
272 determination as soon thereafter as possible so as to permit, upon request of the Contractor and
273 satisfaction of the condition set out above, conversion to a contract under said subsection (d). In
274 the event such determination of costs has not been made at a time which allows conversion of
275 this Contract during the term of this Contract or the Contractor has not requested conversion of
276 this Contract within such term, the parties shall incorporate in any subsequent renewal contract
277 as described in subdivision (b) of this Article a provision that carries forth in substantially
278 identical terms the provisions of this subdivision.

279 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

280 3. (a) During each Year, consistent with all applicable State water rights,
281 permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of
282 this Contract, the Contracting Officer shall make available for delivery to the Contractor 20,000
283 acre-feet of water for irrigation and M&I purposes. The quantity of Water Delivered to the
284 Contractor in accordance with this subdivision shall be scheduled and paid for pursuant to the
285 provisions of Articles 4 and 7 of this Contract.

286 (b) Because the capacity of the Central Valley Project to deliver Project Water
287 has been constrained in recent years and may be constrained in the future due to many factors
288 including hydrologic conditions and implementation of Federal and State laws, the likelihood of

289 the Contractor actually receiving the amount of Water set out in subdivision (a) of this Article in
290 any given Year is uncertain. The Contracting Officer's most recent modeling referenced in the
291 PEIS projected that the Contract Total set forth in this Contract will not be available to the
292 Contractor in many years. During the most recent 5 years, the Recent Historic Average of water
293 made

294 available to the Contractor was 18,400 acre-feet. Nothing in subdivision (b) of this Article shall
295 affect the rights and obligations of the parties under any provision of this Contract.

296 (c) The Contractor shall utilize the Project Water in accordance with all
297 applicable legal requirements.

298 (d) The Contractor shall make reasonable and beneficial use of all Project
299 Water or other water furnished pursuant to this Contract. Ground-water recharge programs
300 (direct, indirect, or in lieu), ground-water banking programs, surface water storage programs, and
301 other similar programs utilizing Project Water or other water furnished pursuant to this Contract
302 conducted within the Contractor's Service Area which are consistent with applicable State law
303 and result in use consistent with Reclamation law will be allowed; Provided, That any direct
304 recharge program(s) is (are) described in ~~the Contractor's~~ each Member Unit's Water
305 Conservation Plan submitted pursuant to Article 26 of this Contract; Provided, further, That such
306 Water Conservation Plan demonstrates sufficient lawful uses exist in the Contractor's Service
307 Area so that using a long-term average, the quantity of Delivered Water is demonstrated to be
308 reasonable for such uses and in compliance with Reclamation Law. Ground-water recharge
309 programs, ground-water banking programs, surface water storage programs, and other similar
310 programs utilizing Project Water or other water furnished pursuant to this Contract conducted
311 outside the Contractor's Service Area may be permitted upon written approval of the Contracting
312 Officer, which approval will be based upon environmental documentation, Project Water rights,

313 and Project operational concerns. The Contracting Officer will address such concerns in
314 regulations, policies, or guidelines.

315 (e) The Contractor shall comply with requirements applicable to the
316 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution
317 of this Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973, as
318 amended, that are within the Contractor's legal authority to implement. The Existing Contract,
319 which evidences in excess of 22 years of diversions for irrigation and/or municipal and industrial
320 purposes of the quantities of water provided in subdivision (a) of Article 3 of this Contract, will
321 be considered in developing an appropriate baseline for the Biological Assessment prepared
322 pursuant to the Endangered Species Act, and any other needed environmental review. Nothing
323 herein shall be construed to prevent the Contractor from challenging or seeking judicial relief in
324 a court of competent jurisdiction with respect to any biological opinion or other environmental
325 documentation referred to in this Article.

326 (f) As soon as possible following each declaration of Water Made Available
327 under Article 4 of this Contract, the Contracting Officer will make a determination whether
328 Project Water, or other water available to the Project, can be made available to the Contractor in
329 addition to the Contract Total under Article 3 of this Contract during the Year without adversely
330 impacting other Project Contractors. At the request of the Contractor, the Contracting Officer
331 will consult with the Contractor prior to making such a determination. If the Contracting Officer
332 determines that Project Water, or other water available to the Project, can be made available to
333 the Contractor, the Contracting Officer will announce the availability of such water and shall so
334 notify the Contractor as soon as practical. The Contracting Officer will thereafter meet with the
335 Contractor and other Project Contractors capable of taking such water to determine the most
336 equitable and efficient allocation of such water. If the Contractor requests the delivery of any

337 quantity of such water, the Contracting Officer shall make such water available to the Contractor
338 in accordance with applicable statutes, regulations, guidelines, and policies.

339 (g) The Contractor may request permission to reschedule for use during the
340 subsequent Year some or all of the Water Made Available to the Contractor during the current
341 Year referred to as “carryover.” The Contractor may request permission to use during the
342 current Year a quantity of Project Water which may be made available by the United States to
343 the Contractor during the subsequent Year referred to as “preuse.” The Contracting Officer’s
344 written approval may permit such uses in accordance with applicable statutes, regulations,
345 guidelines, and policies.

346 (h) The Contractor’s right pursuant to Federal Reclamation law and applicable
347 State law to the reasonable and beneficial use of Water Delivered pursuant to this Contract
348 during the term thereof and any subsequent renewal contracts, as described in Article 2 of this
349 Contract, during the terms thereof shall not be disturbed so long as the Contractor shall fulfill all
350 of its obligations under this Contract and any renewals thereof. Nothing in the preceding
351 sentence shall affect the Contracting Officer’s ability to impose shortages under Article 11 or
352 subdivision (b) of Article 12 of this Contract or applicable provisions of any subsequent renewal
353 contracts.

354 (i) Project Water furnished to the Contractor pursuant to this Contract may be
355 delivered for other than irrigation or M&I purposes upon written approval by the Contracting
356 Officer in accordance with the terms and conditions of such approval.

357 (j) The Contracting Officer shall make reasonable efforts to protect the water
358 rights necessary for the Project and to provide the water available under this Contract. The
359 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the
360 extent permitted by law, in administrative proceedings related to the Project Water rights;

361 Provided, however, That the Contracting Officer retains the right to object to the substance of the
362 Contractor's position in such a proceeding; Provided further, that in such proceedings the
363 Contracting Officer shall recognize the Contractor has a legal right under the terms of this
364 Contract to use Project Water.

365 TIME FOR DELIVERY OF WATER

366 4. (a) On or about February 20 of each Calendar Year, the Contracting Officer
367 shall announce the Contracting Officer's expected declaration of the Water Made Available.
368 Such declaration will be expressed in terms of both Water Made Available and the Recent
369 Historic Average and will be updated monthly, and more frequently if necessary, based on then-
370 current operational and hydrologic conditions and a new declaration with changes, if any, to the
371 Water Made Available will be made. The Contracting Officer shall provide forecasts of Project
372 operations and the basis of the estimate, with relevant supporting information, upon the written
373 request of the Contractor. Concurrently with the declaration of the Water Made Available, the
374 Contracting Officer shall provide the Contractor with the updated Recent Historic Average.

375 (b) On or before each March 1 and at such other times as necessary, the
376 Contractor shall, or, if so provided by subcontract with a Member Unit, a Member Unit shall
377 submit to the Contracting Officer a written schedule, satisfactory to the Contracting Officer,
378 showing the monthly quantities of Project Water to be delivered by the United States to the
379 Contractor pursuant to this Contract for the Year commencing on such March 1. The
380 Contracting Officer shall use all reasonable means to deliver Project Water according to the
381 approved schedule for the Year commencing on such March 1.

382 (c) The Contractor, or, if so provided by subcontract with a Member Unit, a
383 Member Unit shall not schedule Project Water in excess of the quantity of Project Water the

384 Contractor intends to put to reasonable and beneficial use within the Contractor's Service Area or
385 to sell, transfer, or exchange pursuant to Article 9 of this Contract during any Year.

386 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this
387 Contract, the United States shall deliver Project Water to the Contractor in accordance with the
388 initial schedule submitted by the Contractor or Member Unit pursuant to subdivision (b) of this
389 Article, or any written revision(s), satisfactory to the Contracting Officer, thereto submitted
390 within a reasonable time prior to the date(s) on which the requested change(s) is/are to be
391 implemented.

392 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

393 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this
394 Contract shall be delivered to the Contractor at approved turnouts on the Canal Facilities and any
395 additional point or points of delivery either on Project facilities or another location or locations
396 mutually agreed to in writing by the Contracting Officer and the Contractor.

397 (b) The Contracting Officer, the Operating Non-Federal Entity, or other
398 appropriate entity shall make all reasonable efforts to maintain sufficient flows and levels of
399 water in the Canal Facilities to deliver Project Water to the Contractor at specific turnouts
400 established pursuant to subdivision (a) of this Article. The parties acknowledge that it may be
401 necessary from time to time to shut down the canal for maintenance or emergencies. Except in
402 the case of emergency, the Contracting Officer shall consult with the Contractor to schedule the
403 shut down at such times and for such duration as will allow for the work to be accomplished
404 completely and efficiently, and with a minimum of disruption of water service to the Contractor.
405 In this regard, shut downs will, to the extent reasonably possible, be limited to the months of
406 December and January.

407 (c) The Contractor shall deliver Irrigation Water in accordance with any
408 applicable land classification provisions of Federal Reclamation law and the associated
409 regulations. The Contractor shall not deliver Project Water to land outside the Contractor's
410 Service Area unless approved in advance by the Contracting Officer.

411 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
412 measured and recorded with equipment furnished, installed, operated, and maintained by the
413 United States, the Operating Non-Federal Entity or other appropriate entity as designated by the
414 Contracting Officer (hereafter "other appropriate entity") at the point or points of delivery
415 established pursuant to subdivision (a) of this Article. Upon the request of either party to this
416 Contract, the Contracting Officer shall investigate, or cause to be investigated by the responsible
417 Operating Non-Federal Entity, the accuracy of such measurements and shall take any necessary
418 steps to adjust any errors appearing therein. For any period of time when accurate measurements
419 have not been made, the Contracting Officer shall consult with the Contractor and the
420 responsible Operating Non-Federal Entity prior to making a final determination of the quantity
421 delivered for that period of time.

422 (e) Neither the Contracting Officer nor any Operating Non-Federal Entity
423 shall be responsible for the control, carriage, handling, use, disposal, or distribution of Project
424 Water Delivered to the Contractor pursuant to this Contract beyond the delivery points specified
425 in subdivision (a) of this Article. The Contractor shall indemnify the United States, its officers,
426 employees, agents, and assigns on account of damage or claim of damage of any nature
427 whatsoever for which there is legal responsibility, including property damage, personal injury, or
428 death arising out of or connected with the control, carriage, handling, use, disposal, or
429 distribution of such Project Water beyond such delivery points, except for any damage or claim
430 arising out of (i) acts or omissions of the Contracting Officer or any of its officers, employees,

431 agents, or assigns, including any responsible Operating Non-Federal Entity, with the intent of
432 creating the situation resulting in any damage or claim, (ii) willful misconduct of the Contracting
433 Officer or any of its officers, employees, agents, or assigns, including any responsible Operating
434 Non-Federal Entity, (iii) negligence of the Contracting Officer or any of its officers, employees,
435 agents, or assigns including any responsible Operating Non-Federal Entity, or (iv) damage or
436 claims resulting from a malfunction of facilities owned and/or operated by the United States or
437 responsible Operating Non-Federal Entity; Provided, That the Contractor is not the Operating
438 Non-Federal Entity that owned or operated the malfunctioning facility(ies) from which the
439 damage claim arose.

440 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

441 6. (a) By _____ [DATE] _____, the Contractor shall
442 ensure that, unless the Contractor has established an alternative measurement program
443 satisfactory to the Contracting Officer, all surface water delivered for irrigation purposes within
444 the Contractor's Service Area is measured at each agricultural turnout and such water delivered
445 for municipal and industrial purposes is measured at each municipal and industrial service
446 connection. The water measuring devices or water measuring methods of comparable
447 effectiveness must be acceptable to the Contracting Officer. The Contractor shall be responsible
448 for installing, operating, and maintaining and repairing all such measuring devices and
449 implementing all such water measuring methods at no cost to the United States. The Contractor
450 shall use the information obtained from such water measuring devices or water measuring
451 methods to ensure its proper management of the water, to bill water users for water delivered by
452 the Contractor; and, if applicable, to record water delivered for municipal and industrial purposes
453 by customer class as defined in the Contractor's Member Unit's water conservation plan
454 provided for in Article 26 of this Contract. Nothing herein contained, however, shall preclude

455 the Contractor from establishing and collecting any charges, assessments, or other revenues
456 authorized by California law. The Contractor shall include a summary of all its annual surface
457 water deliveries in the annual report described in subdivision (c) of Article 26.

458 (b) To the extent the information has not otherwise been provided, upon
459 execution of this Contract, the Contractor shall provide to the Contracting Officer a written
460 report describing the measurement devices or water measuring methods being used or to be used
461 to implement subdivision (a) of this Article and identifying the agricultural turnouts and the
462 municipal and industrial service connections or alternative measurement programs approved by
463 the Contracting Officer, at which such measurement devices or water measuring methods are
464 being used, and, if applicable, identifying the locations at which such devices and/or methods are
465 not yet being used including a time schedule for implementation at such locations. The
466 Contracting Officer shall advise the Contractor in writing within 60 days as to the adequacy of,
467 and necessary modifications, if any, of the measuring devices or water measuring methods
468 identified in the Contractor's report and if the Contracting Officer does not respond in such time,
469 they shall be deemed adequate. If the Contracting Officer notifies the Contractor that the
470 measuring devices or methods are inadequate, the parties shall within 60 days following the
471 Contracting Officer's response, negotiate in good faith the earliest practicable date by which the
472 Contractor shall modify said measuring devices and/or measuring methods as required by the
473 Contracting Officer to ensure compliance with subdivision (a) of this Article.

474 (c) All new surface water delivery systems installed within the Contractor's
475 Service Area after the effective date of this Contract shall also comply with the measurement
476 provisions described in subdivision (a) of this Article.

477 (d) The Contractor shall inform the Contracting Officer and the State of
478 California in writing by April 30 of each Year of the monthly volume of surface water delivered
479 within the Contractor's Service Area during the previous Year.

480 (e) The Contractor shall inform the Contracting Officer and the Operating
481 Non-Federal Entity on or before the 20th calendar day of each month of the quantity of Irrigation
482 and M&I Water taken during the preceding month.

483 RATES AND METHOD OF PAYMENT FOR WATER

484 7. (a) The Contractor shall pay the United States as provided in this Article for
485 all Delivered Water at Rates, Charges, and the Tiered Pricing Component established in
486 accordance with (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and
487 the Secretary's then-existing ratesetting policy for M&I Water. Such ratesetting policies shall be
488 amended, modified, or superseded only through a public notice and comment procedure; (ii)
489 applicable Reclamation law and associated rules and regulations, or policies; and (iii) other
490 applicable provisions of this Contract. Payments shall be made by cash transaction, wire, or any
491 other mechanism as may be agreed to in writing by the Contractor and the Contracting Officer.
492 The Rates, Charges, and Tiered Pricing Components applicable to the Contractor upon execution
493 of this Contract are set forth in Exhibits "B-1 through B-7" for subcontracts with the Member
494 Units identified in said exhibits, as may be revised annually. For subcontracts with Member
495 Units other than those identified in the said exhibits, Rates, Charges, and Tiered Pricing
496 Components will be developed as necessary and will automatically become exhibits hereto as
497 though fully set forth herein.

498 (b) The Contracting Officer shall notify the Contractor of the Rates, Charges,
499 and Tiered Pricing Components as follows:

500 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
501 provide the Contractor an estimate of the Charges for Project Water that will be applied to the
502 period October 1, of the current Calendar Year, through September 30, of the following Calendar
503 Year, and the basis for such estimate. The Contractor shall be allowed not less than 2 months to
504 review and comment on such estimates. On or before September 15 of each Calendar Year, the
505 Contracting Officer shall notify the Contractor in writing of the Charges to be in effect during the
506 period October 1 of the current Calendar Year, through September 30, of the following Calendar
507 Year, and such notification shall revise Exhibits “B-1” through “B-7” and any additional
508 exhibits.

509 (2) Prior to October 1 of each Calendar Year, the Contracting Officer
510 shall make available to the Contractor an estimate of the Rates and Tiered Pricing Components
511 for Project Water for the following Year and the computations and cost allocations upon which
512 those Rates are based. The Contractor shall be allowed not less than 2 months to review and
513 comment on such computations and cost allocations. By December 31 of each Calendar Year,
514 the Contracting Officer shall provide the Contractor with the final Rates and Tiered Pricing
515 Components to be in effect for the upcoming Year, and such notification shall revise Exhibits
516 “B-1” through “B-7” and any additional exhibits

517 (c) At the time the Contractor submits the initial schedule for the delivery of
518 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the
519 Contractor shall make an advance payment to the United States equal to the total amount payable
520 pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water

521 scheduled to be delivered pursuant to this Contract during the first 2 calendar months of the
522 Year. Before the end of the first month and before the end of each calendar month thereafter, the
523 Contractor shall make an advance payment to the United States, at the Rate(s) set under
524 subdivision (a) of this Article, for the Water Scheduled to be delivered pursuant to this Contract
525 during the second month immediately following. Adjustments between advance payments for
526 Water Scheduled and payments at Rates due for Water Delivered shall be made before the end of
527 the following month; Provided, That any revised schedule submitted by the Contractor pursuant
528 to Article 4 of this Contract which increases the amount of Water Delivered pursuant to this
529 Contract during any month shall be accompanied with appropriate advance payment, at the Rates
530 then in effect, to assure that Project Water is not delivered to the Contractor in advance of such
531 payment. In any month in which the quantity of Water Delivered to the Contractor pursuant to
532 this Contract equals the quantity of Water Scheduled and paid for by the Contractor, no
533 additional Project Water shall be delivered to the Contractor unless and until an advance
534 payment at the Rates then in effect for such additional Project Water is made. Final adjustment
535 between the advance payments for the Water Scheduled and payments for the quantities of Water
536 Delivered during each Year pursuant to this Contract shall be made as soon as practicable but no
537 later than April 30th of the following Year, or 60 days after the delivery of Project Water carried
538 over under subdivision (f) of Article 3 of this Contract if such water is not delivered by the last
539 day of February.

540 (d) The Contractor shall also make a payment in addition to the Rate(s) in
541 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the

542 appropriate Tiered Pricing Component then in effect, before the end of the month following the
543 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered
544 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be
545 consistent with the quantities of Irrigation Water and M&I Water Delivered as shown in the
546 water delivery report for the subject month prepared by the Operating Non-Federal Entity or, if
547 there is no Operating Non-Federal Entity, by the Contracting Officer. The water delivery report
548 shall be deemed a bill for the payment of Charges and the applicable Tiered Pricing Component
549 for Water Delivered. Adjustment for overpayment or underpayment of Charges shall be made
550 through the adjustment of payments due to the United States for Charges for the next month.
551 Any amount to be paid for past due payment of Charges and the Tiered Pricing Component shall
552 be computed pursuant to Article 20 of this Contract.

553 (e) The Contractor shall pay for any Water Delivered under subdivision (d),
554 (f), or (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to
555 applicable statutes, associated regulations, any applicable provisions of guidelines or ratesetting
556 policies; Provided, That the Rate for Water Delivered under subdivision (d) or (f) of Article 3 of
557 this Contract shall be no more than the otherwise applicable Rate for Irrigation Water or M&I
558 Water under subdivision (a) of this Article.

559 (f) Payments to be made by the Contractor to the United States under this
560 Contract may be paid from any revenues available to the Contractor.

561 (g) All revenues received by the United States from the Contractor relating to
562 the delivery of Project Water or the delivery of non-project water through Project facilities shall

563 be allocated and applied in accordance with Federal Reclamation law and the associated rules or
564 regulations, and the then current Project ratesetting policies for M&I Water or Irrigation Water.

565 (h) The Contracting Officer shall keep its accounts pertaining to the
566 administration of the financial terms and conditions of its long-term contracts, in accordance
567 with applicable Federal standards, so as to reflect the application of Project costs and revenues.
568 The Contracting Officer shall, each Year upon request of the Contractor, provide to the
569 Contractor a detailed accounting of all Project and Contractor expense allocations, the
570 disposition of all Project and Contractor revenues, and a summary of all water delivery
571 information. The Contracting Officer and the Contractor shall enter into good faith negotiations
572 to resolve any discrepancies or disputes relating to accountings, reports, or information.

573 (i) The parties acknowledge and agree that the efficient administration of this
574 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,
575 policies, and procedures used for establishing Rates, Charges, and Tiered Pricing Components,
576 and/or for making and allocating payments, other than those set forth in this Article may be in
577 the mutual best interest of the parties, it is expressly agreed that the parties may enter into
578 agreements to modify the mechanisms, policies, and procedures for any of those purposes while
579 this Contract is in effect without amending this Contract.

580 (j) (1) Beginning at such time as deliveries of Project Water in a Year
581 exceed 80 percent of the ~~Contract Total~~ quantity of Project Water under subcontract with each
582 Member Unit, then before the end of the month following the month of delivery the Contractor
583 shall make an additional payment to the United States equal to the applicable Tiered Pricing

584 Component. The Tiered Pricing Component for the amount of Water Delivered in excess of 80
585 percent of the ~~Contract Total~~ quantity of Project Water under subcontract with each Member
586 Unit, but less than or equal to 90 percent of the ~~Contract Total~~ quantity of Project Water under
587 subcontract with each Member Unit, shall equal one-half of the difference between the Rate
588 established under subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I
589 Full Cost Water Rate, whichever is applicable. The Tiered Pricing Component for the amount of
590 Water Delivered which exceeds 90 percent of the ~~Contract Total~~ quantity of Project Water under
591 subcontract with each Member Unit shall equal the difference between (i) the Rate established
592 under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost
593 Water Rate, whichever is applicable. For all Water Delivered pursuant to subdivision (a) of
594 Article 3 of this Contract which is in excess of 80 percent of the ~~Contract Total~~ quantity of
595 Project Water under subcontract with each Member Unit, this increment shall be deemed to be
596 divided between Irrigation Water and M&I Water in the same proportion as actual deliveries of
597 each bear to the cumulative total Water Delivered.

598 (2) Subject to the Contracting Officer's written approval, the
599 Contractor may request and receive an exemption from such Tiered Pricing Components for
600 Project Water delivered to produce a crop which the Contracting Officer determines will provide
601 significant and quantifiable habitat values for waterfowl in fields where the water is used and the
602 crops are produced; Provided, That the exemption from the Tiered Pricing Components for
603 Irrigation Water shall apply only if such habitat values can be assured consistent with the

604 purposes of CVPIA through binding agreements executed with or approved by the Contracting
605 Officer prior to use of such water.

606 (3) For purposes of determining the applicability of the Tiered Pricing
607 Components pursuant to this Article, Water Delivered shall include Project Water that ~~the~~
608 ~~Contractor~~ ~~each Member Unit~~ transfers to others but shall not include Project Water transferred
609 and delivered to ~~the Contractor~~ ~~each Member Unit~~ nor shall it include the additional water
610 provided to the Contractor ~~and/or each Member Unit~~ under the provisions of subdivision (f) of
611 Article 3 of this Contract.

612 (k) For the term of this Contract, Rates under the respective ratesetting
613 policies will be established to recover only reimbursable “operation and maintenance” (including
614 any deficits) and capital costs of the Project, as those terms are used in the then-current Project
615 ratesetting policies, and interest, where appropriate, except in instances where a minimum Rate is
616 applicable in accordance with the relevant Project ratesetting policy. Changes of significance in
617 practices which implement the Contracting Officer’s ratesetting policies will not be implemented
618 until the Contracting Officer has provided the Contractor an opportunity to discuss the nature,
619 need, and impact of the proposed change.

620 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the
621 CVPIA, the Rates for Project Water transferred by ~~the Contractor~~ ~~each Member Unit~~ shall be ~~the~~
622 ~~Contractor’s~~ ~~each Member Unit’s~~ Rates adjusted upward or downward to reflect the changed
623 costs, (if any), incurred by the Contracting Officer in the delivery of the transferred Project
624 Water to the transferee’s point of delivery in accordance with the then applicable CVP

625 Ratesetting Policy. If ~~the Contractor~~ each Member Unit is receiving lower Rates and Charges
626 because of inability to pay and is transferring Project Water to another entity whose Rates and
627 Charges are not adjusted due to inability to pay, the Rates and Charges for transferred Project
628 Water shall be ~~the Contractor's~~ each Member Unit's Rates and Charges unadjusted for inability
629 to pay.

630 (m) Pursuant to the Act of October 27, 1986 (100 Stat. 3050), the Contracting
631 Officer is authorized to adjust determinations of ability to pay every 5 years.

632 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

633 8. The Contractor and the Contracting Officer concur that, as of the effective date of
634 this Contract, the Contractor has no non-interest bearing operation and maintenance deficits and
635 shall have no further liability therefor.

636 SALES, TRANSFERS, OR EXCHANGES OF WATER

637 9. (a) The right to receive Project Water provided for in this Contract may be
638 sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of
639 California if such sale, transfer, or exchange is authorized by applicable Federal and State laws,
640 and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project
641 Water under this Contract may take place without the prior written approval of the Contracting
642 Officer, except as provided for in subdivision (b) of this Article, and no such sales, transfers, or
643 exchanges shall be approved absent compliance with appropriate environmental documentation
644 including but not limited to the National Environmental Policy Act and the Endangered Species
645 Act. Such environmental documentation should include, as appropriate, an analysis of ground-

646 water impacts and economic and social effects, including environmental justice, of the proposed
647 water transfers on both the transferor and transferee.

648 (b) In order to facilitate efficient water management by means of water
649 transfers of the type historically carried out among Project Contractors located within the same
650 geographical area and to allow the Contractor to participate in an accelerated water transfer
651 program during the term of this Contract, the Contracting Officer shall prepare, as appropriate,
652 necessary environmental documentation including, but not limited to, the National
653 Environmental Policy Act and the Endangered Species Act analyzing annual transfers within
654 such geographical areas and the Contracting Officer shall determine whether such transfers
655 comply with applicable law. Following the completion of the environmental documentation,
656 such transfers addressed in such documentation shall be conducted with advance notice to the
657 Contracting Officer, but shall not require prior written approval by the Contracting Officer. Such
658 environmental documentation and the Contracting Officer's compliance determination shall be
659 reviewed every 5 years and updated, as necessary, prior to the expiration of the then-existing 5-
660 year period. All subsequent environmental documentation shall include an alternative to
661 evaluate not less than the quantity of Project Water historically transferred within the same
662 geographical area.

663 (c) For a water transfer to qualify under subdivision (b) of this Article, such
664 water transfer must: (i) be for irrigation purposes for lands irrigated within the previous 3 years,
665 for M&I use, groundwater recharge, groundwater banking, similar groundwater activities,
666 surface water storage, or fish and wildlife resources; not lead to land conversion; and be

667 delivered to established cropland, wildlife refuges, ground-water basins or municipal and
668 industrial use; (ii) occur within a single Year; (iii) occur between a willing seller and a willing
669 buyer; (iv) convey water through existing facilities with no new construction or modifications to
670 facilities and be between existing Project Contractors and/or the Contractor and the United
671 States, Department of the Interior; and (v) comply with all applicable Federal, State, and local or
672 tribal laws and requirements imposed for protection of the environment and Indian Trust Assets,
673 as defined under Federal law.

674 (d) For the purpose of determining whether section 3405(a)(1)(M) of the
675 CVPIA applies to the Contractor or a Member Unit as a transferor or transferee of Project Water,
676 the Contracting Officer acknowledges that the Contractor or a Member Unit is within a county,
677 watershed, or other area of origin, as those terms are utilized under California law, of water that
678 constitutes the natural flow of the Sacramento River and its tributaries above the confluence of
679 the American and Sacramento Rivers.

680 APPLICATION OF PAYMENTS AND ADJUSTMENTS

681 10. (a) The amount of any overpayment by the Contractor of the Contractor's
682 O&M, Capital, and deficit (if any) obligations for the Year shall be applied first to any current
683 liabilities of the Contractor arising out of this Contract then due and payable. Overpayments of
684 more than \$1,000 shall be refunded at the Contractor's request. In lieu of a refund, any amount
685 of such overpayment at the option of the Contractor, may be credited against amounts to become
686 due to the United States by the Contractor. With respect to overpayment, such refund or
687 adjustment shall constitute the sole remedy of the Contractor or anyone having or claiming to

688 have the right to the use of any of the Project Water supply provided for herein. All credits and
689 refunds of overpayments shall be made within 30 days of the Contracting Officer obtaining
690 direction as to how to credit or refund such overpayment in response to the notice to the
691 Contractor that it has finalized the accounts for the Year in which the overpayment was made.

692 (b) All advances for miscellaneous costs incurred for work requested by the
693 Contractor pursuant to Article 25 of this Contract shall be adjusted to reflect the actual costs
694 when the work has been completed. If the advances exceed the actual costs incurred, the
695 difference will be refunded to the Contractor. If the actual costs exceed the Contractor's
696 advances, the Contractor will be billed for the additional costs pursuant to Article 25 of this
697 Contract.

698 TEMPORARY REDUCTIONS--RETURN FLOWS

699 11. (a) Subject to: (i) the authorized purposes and priorities of the Project and the
700 requirements of Federal law; and (ii) the obligations of the United States under existing
701 contracts, or renewals thereof, providing for water deliveries from the Project, the Contracting
702 Officer shall make all reasonable efforts to optimize Project Water deliveries to the Contractor as
703 provided in this Contract.

704 (b) The Contracting Officer or Operating Non-Federal Entity may temporarily
705 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for
706 the purposes of investigation, inspection, maintenance, repair, or replacement of any of the
707 Project facilities or any part thereof necessary for the delivery of Project Water to the Contractor,
708 but so far as feasible the Contracting Officer or Operating Non-Federal Entity will give the

709 Contractor due notice in advance of such temporary discontinuance or reduction, except in case
710 of emergency, in which case no notice need be given; Provided, That the United States shall use
711 its best efforts to avoid any discontinuance or reduction in such service. Upon resumption of
712 service after such reduction or discontinuance, and if requested by the Contractor, the United
713 States will, if possible, deliver the quantity of Project Water which would have been delivered
714 hereunder in the absence of such discontinuance or reduction.

715 (c) The United States reserves the right to all seepage and return flow water
716 derived from Water Delivered to the Contractor hereunder which escapes or is discharged
717 beyond the Contractor's Service Area; Provided, That this shall not be construed as claiming for
718 the United States any right as seepage or return flow being put to reasonable and beneficial use
719 pursuant to this Contract within the Contractor's Service Area by the Contractor or those
720 claiming by, through, or under the Contractor.

721 CONSTRAINTS ON THE AVAILABILITY OF WATER

722 12. (a) In its operation of the Project, the Contracting Officer will use all
723 reasonable means to guard against a Condition of Shortage in the quantity of water to be made
724 available to the Contractor pursuant to this Contract. In the event the Contracting Officer
725 determines that a Condition of Shortage appears probable, the Contracting Officer will notify the
726 Contractor of said determination as soon as practicable.

727 (b) If there is a Condition of Shortage because of errors in physical operations
728 of the Project, drought, other physical causes beyond the control of the Contracting Officer or
729 actions taken by the Contracting Officer to meet legal obligations then, except as provided in

730 subdivision (a) of Article 18 of this Contract, no liability shall accrue against the United States or
731 any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom.

732 (c) In any Year in which there may occur a shortage for any of the reasons
733 specified in subdivision (b) above, the Contracting Officer shall apportion the available Project
734 Water supply among the Contractor and others entitled, under existing contracts and future
735 contracts (to the extent such future contracts are permitted under subsections (a) and (b) of
736 Section 3404 of the CVPIA) and renewals thereof, to receive Project Water consistent with the
737 contractual obligations of the United States.

738 (d) ~~DIVISIONAL ISSUE — M&I Water Service Contracts~~

739 UNAVOIDABLE GROUNDWATER PERCOLATION

740 13. To the extent applicable, the Contractor shall not be deemed to have delivered
741 Irrigation Water to Excess Lands or Ineligible Lands within the meaning of this Contract if such
742 lands are irrigated with groundwater that reaches the underground strata as an unavoidable result
743 of the delivery of Irrigation Water by the Contractor to Eligible Lands.

744 RULES AND REGULATIONS

745 14. The parties agree that the delivery of Irrigation Water or use of Federal facilities
746 pursuant to this Contract is subject to Federal Reclamation law, including but not limited to, the
747 Reclamation Reform Act of 1982 (43 U.S.C.390aa et seq.), as amended and supplemented, and
748 the rules and regulations promulgated by the Secretary of the Interior under Federal Reclamation
749 law.

750 WATER AND AIR POLLUTION CONTROL

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

755 QUALITY OF WATER

756 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant
757 to this Contract shall be operated and maintained to enable the United States to deliver Project
758 Water to the Contractor in accordance with the water quality standards specified in subsection
759 2(b) of the Act of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October
760 27, 1986 (100 Stat. 3050) or other existing Federal laws. The United States is under no
761 obligation to construct or furnish water treatment facilities to maintain or to improve the quality
762 of Water Delivered to the Contractor pursuant to this Contract. The United States does not
763 warrant the quality of Water Delivered to the Contractor pursuant to this Contract.

764 (b) The Operation and Maintenance of Project facilities shall be performed in
765 such manner as is practicable to maintain the quality of raw water made available through such
766 facilities at the highest level reasonably attainable as determined by the Contracting Officer. The
767 Contractor shall be responsible for compliance with all State and Federal water quality standards
768 applicable to surface and subsurface agricultural drainage discharges generated through the use
769 of Federal or Contractor facilities or Project Water provided by the Contractor within the
770 Contractor's Service Area.

771 WATER ACQUIRED BY THE CONTRACTOR
772 OTHER THAN FROM THE UNITED STATES

773 17. (a) Water or water rights now owned or hereafter acquired by the Contractor
774 other than from the United States and Irrigation Water furnished pursuant to the terms of this
775 Contract may be simultaneously transported through the same distribution facilities of the
776 Contractor subject to the following: (i) if the facilities utilized for commingling Irrigation Water
777 and non-Project water were constructed without funds made available pursuant to Federal
778 Reclamation law, the provisions of Federal Reclamation law will be applicable only to the
779 Landholders of lands which receive Irrigation Water; (ii) the eligibility of land to receive
780 Irrigation Water must be established through the certification requirements as specified in the
781 Acreage Limitation Rules and Regulations (43 CFR Part 426); (iii) the water requirements of
782 Eligible Lands within the Contractor's Service Area can be established and the quantity of
783 Irrigation Water to be utilized is less than or equal to the quantity necessary to irrigate such
784 Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation Water and non-
785 Project water are/were constructed with funds made available pursuant to Federal Reclamation
786 law, the non-Project water will be subject to the acreage limitation provisions of Federal
787 Reclamation law, unless the Contractor pays to the United States the incremental fee described in
788 43 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate
789 annually the cost to the Federal Government, including interest ~~of~~ on storing or delivering non-
790 Project water, which for purposes of this Contract shall be determined as follows: The quotient
791 shall be the unpaid distribution system costs divided by the total irrigable acreage within the
792 Contractor's Service Area. The incremental fee per acre is the mathematical result of such
793 quotient times the interest rate determined using Section 202 (3) of the Act of October 12, 1982
794 (96 Stat. 1263). Such incremental fee will be charged to each acre of excess or full cost land
795 within the Contractor's Service Area that receives non-Project water through Federally financed

796 or constructed facilities. The incremental fee calculation methodology will continue during the
797 term of this Contract absent the promulgation of a contrary Reclamation-wide rule, regulation, or
798 policy adopted after the Contractor has been afforded the opportunity to review and comment on
799 the proposed rule, regulation, or policy. If such rule, regulation, or policy is adopted it shall
800 supersede this provision.

801 (b) Water or water rights now owned or hereafter acquired by the Contractor,
802 other than from the United States, may be stored, conveyed, and/or diverted through Project
803 facilities, subject to the completion of appropriate environmental documentation, with the
804 approval of the Contracting Officer and the execution of any contract determined by the
805 Contracting Officer to be necessary, consistent with the following provisions:

806 (1) The Contractor may introduce non-Project water into Project
807 facilities and deliver said water to lands within the Contractor's Service Area, including
808 Ineligible Lands, subject to payment to the United States and/or to any applicable Operating
809 Non-Federal Entity of an appropriate rate as determined by the CVP Ratesetting Policy and the
810 RRA of 1982, each as amended, modified, or superceded from time to time. In addition, if
811 electrical power is required to pump non-Project water through the facilities, the Contractor shall
812 be responsible for obtaining the necessary power and paying the necessary charges therefor.

813 (2) Delivery of such non-Project water in and through Project facilities
814 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project
815 purposes as determined by the Contracting Officer; (ii) reduce the quantity or quality of water
816 available to other Project water service contractors; (iii) interfere with the delivery of contractual
817 water entitlements to any other Project water service contractors; or (iv) interfere with the
818 physical maintenance of the Project facilities.

819 (3) Neither the United States nor the Operating Non-Federal Entity
820 shall be responsible for control, care, or distribution of the non-Project water before it is
821 introduced into or after it is delivered from the Project facilities. The Contractor hereby releases
822 and agrees to defend and indemnify the United States and the Operating Non-Federal Entity, and
823 their respective officers, agents, and employees, from any claim for damage to persons or
824 property, direct or indirect, arising out of or relating to the Contractor's or its officer's,
825 employee's, agent's or assign's, act of (i) extracting or diverting non-Project water from any
826 source, or (ii) diverting such non-Project water into Project facilities.

827 (4) Diversion of such non-Project water into Project facilities shall be
828 consistent with all applicable laws, and if involving groundwater, consistent with any applicable
829 ground-water management plan for the area from which it was extracted.

830 (5) After Project purposes are met, as determined by the Contracting
831 Officer, the United States and the Contractor shall share priority to utilize the remaining capacity
832 of the facilities declared to be available by the Contracting Officer for conveyance and
833 transportation of non-Project water prior to any such remaining capacity being made available to
834 non-Project contractors.

835 OPINIONS AND DETERMINATIONS

836 18. (a) Where the terms of this Contract provide for actions to be based upon the
837 opinion or determination of either party to this Contract, said terms shall not be construed as
838 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
839 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly
840 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,
841 or unreasonable opinion or determination. Each opinion or determination by either party shall be
842 provided in a timely manner. Nothing in subdivision (a) of Article 18 of this Contract is

843 intended to or shall affect or alter the standard of judicial review applicable under Federal law to
844 any opinion or determination implementing a specific provision of Federal law embodied in
845 statute or regulation.

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

851 COORDINATION AND COOPERATION

852 19. (a) In order to further their mutual goals and objectives, the Contracting
853 Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and
854 with other affected Project Contractors, in order to improve the operation and management of the
855 Project. The communication, coordination, and cooperation regarding operations and
856 management shall include, but not be limited to, any action which will or may materially affect
857 the quantity or quality of Project Water supply, the allocation of Project Water supply, and
858 Project financial matters including, but not limited to, budget issues. The communication,
859 coordination, and cooperation provided for hereunder shall extend to all provisions of this
860 Contract. Each party shall retain exclusive decision making authority for all actions, opinion,
861 and determinations to be made by the respective party.

862 (b) Within 120 days following the effective date of this Contract, the
863 Contractor, other affected Project Contractors, and the Contracting Officer shall arrange to meet
864 with interested Project Contractors to develop a mutually agreeable, written Project-wide
865 process, which may be amended as necessary separate and apart from this Contract. The goal of
866 this process shall be to provide, to the extent practicable, the means of mutual communication

867 and interaction regarding significant decisions concerning Project operation and management on
868 a real-time basis.

869 (c) In light of the factors referred to in subdivision (b) of Article 3 of this
870 Contract, it is the intent of the Secretary to improve water supply reliability. To carry out this
871 intent:

872 (1) The Contracting Officer will, at the request of the Contractor,
873 assist in the development of integrated resource management plans for the Contractor. Further,
874 the Contracting Officer will, as appropriate, seek authorizations for implementation of
875 partnerships to improve water supply, water quality, and reliability.

876 (2) The Secretary will, as appropriate, pursue program and project
877 implementation and authorization in coordination with Project Contractors to improve the water
878 supply, water quality, and reliability of the Project for all Project purposes.

879 (3) The Secretary will coordinate with Project Contractors and the
880 State of California to seek improved water resource management.

881 (4) The Secretary will coordinate actions of agencies within the
882 Department of the Interior that may impact the availability of water for Project purposes.

883 (5) The Contracting Officer shall periodically, but not less than
884 annually, hold division level meetings to discuss Project operations, division level water
885 management activities, and other issues as appropriate.

886 (d) Without limiting the contractual obligations of the Contracting Officer
887 under the other Articles of this Contract, nothing in this Article shall be construed to limit or
888 constrain the Contracting Officer's ability to communicate, coordinate, and cooperate with the
889 Contractor or other interested stakeholders or to make decisions in a timely fashion as needed to
890 protect health, safety, physical integrity of structures or facilities.

891 CHARGES FOR DELINQUENT PAYMENTS

892 20. (a) The Contractor shall be subject to interest, administrative and penalty
893 charges on delinquent installments or payments. When a payment is not received by the due
894 date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond
895 the due date. When a payment becomes sixty (60) days delinquent, the Contractor shall pay an
896 administrative charge to cover additional costs of billing and processing the delinquent payment.
897 When a payment is delinquent ninety (90) days or more, the Contractor shall pay an additional
898 penalty charge of six (6%) percent per year for each day the payment is delinquent beyond the
899 due date. Further, the Contractor shall pay any fees incurred for debt collection services
900 associated with a delinquent payment.

901 (b) The interest charge rate shall be the greater of the rate prescribed quarterly
902 in the Federal Register by the Department of the Treasury for application to overdue payments,
903 or the interest rate of one-half of one (0.5%) percent per month prescribed by Section 6 of the
904 Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be
905 determined as of the due date and remain fixed for the duration of the delinquent period.

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

909 EQUAL OPPORTUNITY

910 21. During the performance of this Contract, the Contractor agrees as follows:

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

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

925 (c) The Contractor will send to each labor union or representative of workers
926 with which it has a collective bargaining agreement or other contract or understanding, a notice,
927 to be provided by the Contracting Officer, advising the said labor union or workers'
928 representative of the Contractor's commitments under Section 202 of Executive Order 11246 of
929 September 24, 1965, and shall post copies of the notice in conspicuous places available to
930 employees and applicants for employment.

931 (d) The Contractor will comply with all provisions of Executive Order
932 No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders
933 of the Secretary of Labor.

934 (e) The Contractor will furnish all information and reports required by said
935 amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or
936 pursuant thereto, and will permit access to its books, records, and accounts by the Contracting
937 Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with
938 such rules, regulations, and orders.

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

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

955 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

956 22. (a) The obligation of the Contractor to pay the United States as provided in
957 this Contract is a general obligation of the Contractor notwithstanding the manner in which the
958 obligation may be distributed among the Contractor's water users and notwithstanding the default
959 of individual water users in their obligations to the Contractor.

960 (b) The payment of charges becoming due hereunder is a condition precedent
961 to receiving benefits under this Contract. The United States shall not make water available to the
962 Contractor through Project facilities during any period in which the Contractor may be in arrears
963 in
964 the advance payment of water rates due the United States. The Contractor shall not furnish water
965 made available pursuant to this Contract for lands or parties which are in arrears in the advance
966 payment of water rates levied or established by the Contractor.

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

969 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

970 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
971 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the
972 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights
973 laws, as well as with their respective implementing regulations and guidelines imposed by the
974 U.S. Department of the Interior and/or Bureau of Reclamation.

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

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

989 PRIVACY ACT COMPLIANCE

990 24. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a)
991 (the Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et
992 seq.) in maintaining Landholder acreage certification and reporting records, required to be

993 submitted to the Contractor for compliance with Sections 206 and 228 of the Reclamation
994 Reform Act of 1982 (96 Stat. 1266), and pursuant to 43 CFR 426.18.

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

999 (c) The Contracting Officer or a designated representative shall provide the
1000 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau
1001 of Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation-
1002 Interior, Reclamation-31) which govern the maintenance, safeguarding, and disclosure of
1003 information contained in the Landholder's certification and reporting records.

1004 (d) The Contracting Officer shall designate a full-time employee of the
1005 Bureau of Reclamation to be the System Manager who shall be responsible for making decisions
1006 on denials pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The
1007 Contractor is authorized to grant requests by individuals for access to their own records.

1008 (e) The Contractor shall forward promptly to the System Manager each
1009 proposed denial of access under 43 CFR 2.64; and each request for amendment of records filed
1010 under 43 CFR 2.71; notify the requester accordingly of such referral; and provide the System
1011 Manager with information and records necessary to prepare an appropriate response to the
1012 requester. These requirements do not apply to individuals seeking access to their own
1013 certification and reporting forms filed with the Contractor pursuant to 43 CFR 426.18, unless the
1014 requester elects to cite the Privacy Act as a basis for the request.

1015 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1016 25. In addition to all other payments to be made by the Contractor pursuant to this
1017 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and
1018 detailed statement submitted by the Contracting Officer to the Contractor for such specific items
1019 of direct cost incurred by the United States for work requested by the Contractor associated with
1020 this Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies
1021 and procedures. All such amounts referred to in this Article shall not exceed the amount agreed
1022 to in writing in advance by the Contractor. This Article shall not apply to costs for routine
1023 contract administration.

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WATER CONSERVATION

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26. (a) Prior to the delivery of water provided from or conveyed through

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Federally constructed or Federally financed facilities pursuant to this Contract, ~~the Contractor~~

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~~each Member Unit~~ which has a subcontract shall be implementing an effective water

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conservation and efficiency program based on the ~~Contractor's~~ Member Unit's water

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conservation plan that has been determined by the Contracting Officer to meet the conservation

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and efficiency criteria for evaluating water conservation plans established under Federal law.

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The water conservation and efficiency program shall contain definite water conservation

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objectives, appropriate economically feasible water conservation measures, and time schedules

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for meeting those objectives. Continued Project Water delivery pursuant to this Contract shall be

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contingent upon the ~~Contractor's~~ Member Unit's continued implementation of such water

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conservation program. In the event the ~~Contractor's~~ Member Unit's water conservation plan or

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any revised water conservation plan completed pursuant to subdivision (d) of Article 26 of this

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Contract have not yet been determined by the Contracting Officer to meet such criteria, due to

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circumstances which the Contracting Officer determines are beyond the control of the ~~Contractor~~

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Member Unit, water deliveries shall be made under this Contract so long as the ~~Contractor~~

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Member Unit diligently works with the Contracting Officer to obtain such determination at the

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earliest practicable date, and thereafter the ~~Contractor~~ Member Unit immediately begins

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implementing its water conservation and efficiency program in accordance with the time

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schedules therein.

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(b) Should the amount of M&I Water delivered pursuant to subdivision (a) of

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Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the ~~Contractor~~ Member Unit

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shall implement the Best Management Practices identified by the time frames issued by the

1047 California Urban Water Conservation Council for such M&I Water unless any such practice is
1048 determined by the Contracting Officer to be inappropriate for the ~~Contractor~~ Member Unit.

1049 (c) The ~~Contractor~~ Member Unit shall submit to the Contracting Officer a
1050 report on the status of its implementation of the water conservation plan on the reporting dates
1051 specified in the then existing conservation and efficiency criteria established under Federal law.

1052 (d) At 5-year intervals, the Contractor shall revise its water conservation plan
1053 to reflect the then current conservation and efficiency criteria for evaluating water conservation
1054 plans established under Federal law and submit such revised water management plan to the
1055 Contracting Officer for review and evaluation. The Contracting Officer will then determine if
1056 the water conservation plan meets Reclamation's then current conservation and efficiency
1057 criteria for evaluating water conservation plans established under Federal law.

1058 (e) If the Contractor is engaged in direct ground-water recharge, such activity
1059 shall be described in the Contractor's water conservation plan.

1060 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1061 27. Except as specifically provided in Article 17 of this Contract, the provisions of
1062 this Contract shall not be applicable to or affect non-Project water or water rights now owned or
1063 hereafter acquired by the Contractor or any user of such water within the Contractor's Service
1064 Area. Any such water shall not be considered Project Water under this Contract. In addition,
1065 this Contract shall not be construed as limiting or curtailing any rights which the Contractor or
1066 any water user within the Contractor's Service Area acquires or has available under any other
1067 contract pursuant to Federal Reclamation law.

1068 OPERATION AND MAINTENANCE BY NON-FEDERAL ENTITY

1069 28. (a) The Operation and Maintenance of a portion of the Project facilities which
1070 serve the Contractor, and responsibility for funding a portion of the costs of such Operation and

1071 Maintenance, have been transferred to the Operating Non-Federal Entity by separate agreement
1072 between the United States and the Operating Non-Federal Entity. That separate agreement shall
1073 not interfere with or affect the rights or obligations of the Contractor or the United States
1074 hereunder.

1075 (b) The Contracting Officer has previously notified the Contractor in writing
1076 that the Operation and Maintenance of a portion of the Project facilities which serve the
1077 Contractor has been transferred to the Operating Non-Federal Entity, and therefore, the
1078 Contractor shall pay directly to the Operating Non-Federal Entity, or to any successor approved
1079 by the Contracting Officer under the terms and conditions of the separate agreement between the
1080 United States and the Operating Non-Federal Entity described in subdivision (a) of this Article,
1081 all rates, charges, or assessments of any kind, including any assessment for reserve funds, which
1082 the Operating Non-Federal Entity or such successor determines, sets, or establishes for the
1083 Operation and Maintenance of the portion of the Project facilities operated and maintained by the
1084 Operating Non-Federal Entity or such successor. Such direct payments to the Operating Non-
1085 Federal Entity or such successor shall not relieve the Contractor of its obligation to pay directly
1086 to the United States the Contractor's share of the Project Rates, Charges, and Tiered Pricing
1087 Components except to the extent the Operating Non-Federal Entity collects payments on behalf
1088 of the United States in accordance with the separate agreement identified in subdivision (a) of
1089 this Article.

1090 (c) For so long as the Operation and Maintenance of any portion of the
1091 Project facilities serving the Contractor is performed by the Operating Non-Federal Entity, or
1092 any successor thereto, the Contracting Officer shall adjust those components of the Rates for
1093 Water Delivered under this Contract representing the cost associated with the activity being
1094 performed by the Operating Non-Federal Entity or its successor.

1095 (d) In the event the Operation and Maintenance of the Project facilities
1096 operated and maintained by the Operating Non-Federal Entity is re-assumed by the United States
1097 during the term of this Contract, the Contracting Officer shall so notify the Contractor, in
1098 writing, and present to the Contractor a revised Exhibit "B" which shall include the portion of
1099 the Rates to be paid by the Contractor for Project Water under this Contract representing the
1100 Operation and Maintenance costs of the portion of such Project facilities which have been re-
1101 assumed. The Contractor shall, thereafter, in the absence of written notification from the
1102 Contracting Officer to the contrary, pay the Rates, Charges, and Tiered Pricing Component(s)
1103 specified in the revised Exhibit "B" directly to the United States in compliance with Article 7 of
1104 this Contract.

1105 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1106 29. The expenditure or advance of any money or the performance of any obligation of
1107 the United States under this Contract shall be contingent upon appropriation or allotment of
1108 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any
1109 obligations under this Contract. No liability shall accrue to the United States in case funds are
1110 not appropriated or allotted.

1111 BOOKS, RECORDS, AND REPORTS

1112 30. (a) The Contractor shall establish and maintain accounts and other books and
1113 records pertaining to administration of the terms and conditions of this Contract, including: the
1114 Contractor's financial transactions, water supply data, and Project land and right-of-way
1115 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use
1116 data; and other matters that the Contracting Officer may require. Reports thereon shall be
1117 furnished to the Contracting Officer in such form and on such date or dates as the Contracting
1118 Officer may require. Subject to applicable Federal laws and regulations, each party to this

1119 Contract shall have the right during office hours to examine and make copies of the other party's
1120 books and records relating to matters covered by this Contract.

1121 (b) Notwithstanding the provisions of subdivision (a) of this Article, no
1122 books, records, or other information shall be requested from the Contractor by the Contracting
1123 Officer unless such books, records, or information are reasonably related to the administration or
1124 performance of this Contract. Any such request shall allow the Contractor a reasonable period of
1125 time within which to provide the requested books, records, or information.

1126 (c) At such time as the Contractor provides information to the Contracting
1127 Officer pursuant to subdivision (a) of this Article, a copy of such information shall be provided
1128 to the Operating Non-Federal Entity.

1129 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1130 31. (a) The provisions of this Contract shall apply to and bind the successors and
1131 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1132 therein shall be valid until approved in writing by the Contracting Officer.

1133 (b) The assignment of any right or interest in this Contract by either party
1134 shall not interfere with the rights or obligations of the other party to this Contract absent the
1135 written concurrence of said other party.

1136 (c) The Contracting Officer shall not unreasonably condition or withhold his
1137 approval of any proposed assignment.

1138 SEVERABILITY

1139 32. In the event that a person or entity who is neither (i) a party to a Project contract,
1140 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii)
1141 an association or other form of organization whose primary function is to represent parties to
1142 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or
1143 enforceability of a provision included in this Contract and said person, entity, association, or

1144 organization obtains a final court decision holding that such provision is legally invalid or
1145 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),
1146 the parties to this Contract shall use their best efforts to (i) within 30 days of the date of such
1147 final court decision identify by mutual agreement the provisions in this Contract which must be
1148 revised, and (ii) within 3 months thereafter promptly agree on the appropriate revision(s). The
1149 time periods specified above may be extended by mutual agreement of the parties. Pending the
1150 completion of the actions designated above, to the extent it can do so without violating any
1151 applicable provisions of law, the United States shall continue to make the quantities of Project
1152 Water specified in this Contract available to the Contractor pursuant to the provisions of this
1153 Contract which were not found to be legally invalid or unenforceable in the final court decision.

1154 RESOLUTION OF DISPUTES

1155 33. Should any dispute arise concerning any provisions of this Contract, or the
1156 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to
1157 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting
1158 Officer referring any matter to Department of Justice, the party shall provide to the other party
1159 30 days' written notice of the intent to take such action; Provided, That such notice shall not be
1160 required where a delay in commencing an action would prejudice the interests of the party that
1161 intends to file suit. During the 30-day notice period, the Contractor and the Contracting Officer
1162 shall meet and confer in an attempt to resolve the dispute. Except as specifically provided,
1163 nothing herein is intended to waive or abridge any right or remedy that the Contractor or the
1164 United States may have.

1165 OFFICIALS NOT TO BENEFIT

1166 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1167 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1168 manner as other water users or landowners.

1169

CHANGES IN CONTRACTOR'S SERVICE AREA

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35. (a) While this Contract is in effect, no change may be made in the Contractor's Service Area or boundaries, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise, except upon the Contracting Officer's written consent.

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(b) Within 30 days of receipt of a request for such a change, the Contracting

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Officer will notify the Contractor of any additional information required by the Contracting

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Officer for processing said request, and both parties will meet to establish a mutually agreeable

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schedule for timely completion of the process. Such process will analyze whether the proposed

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change is likely to: (i) result in the use of Project Water contrary to the terms of this Contract;

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(ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or

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to pay for any Federally-constructed facilities for which the Contractor is responsible; and (iii)

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have an impact on any Project Water rights applications, permits, or licenses. In addition, the

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Contracting Officer shall comply with the National Environmental Policy Act and the

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Endangered Species Act. The Contractor will be responsible for all costs incurred by the

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Contracting Officer in this process, and such costs will be paid in accordance with Article 25 of

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this Contract.

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FEDERAL LAWS

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36. By entering into this Contract, the Contractor does not waive its rights to contest

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the validity or application in connection with the performance of the terms and conditions of this

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Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with

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the terms and conditions of this Contract unless and until relief from application of such Federal

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law or regulation to the implementing provision of the Contract is granted by a court of

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competent jurisdiction.

1192 NOTICES

1193 37. Any notice, demand, or request authorized or required by this Contract shall be
1194 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or
1195 delivered to the Area Manager, Bureau of Reclamation, Northern California Area Office, 16349
1196 Shasta Dam Boulevard, Shasta Lake, California 96019, and on behalf of the United States, when
1197 mailed, postage prepaid, or delivered to the Board of Supervisors of the County of Colusa, 546
1198 Jay Street, Colusa, California 95932. The designation of the addressee or the address may be
1199 changed by notice given in the same manner as provided in this Article for other notices.

1200 CONTRACTS WITH MEMBER UNITSBRESALE OF WATER

1201 38. The Contractor may enter into subcontracts with Member Units for the resale and
1202 distribution of water furnished pursuant to this Contract within the Contractor's Service Area.
1203 Each such Member Unit subcontract shall be subject to the obligations and limitations imposed,
1204 and to the rights granted, by this contract and shall so provide. The terms and conditions of each
1205 Member Unit's subcontract shall be approved by the Contracting Officer prior to the execution of
1206 such Member Unit subcontract, which approval shall be limited to a determination that the
1207 subcontract is consistent with the provisions of this contract. Nothing herein or therein contained
1208 shall be deemed in any way to release the Contractor from its primary liability to the United
1209 States hereunder with respect to each and all of the obligations undertaken by the Contractor in
1210 this Contract.

1211 CONFIRMATION OF CONTRACT

1212 39. The Contractor, after the execution of this Contract, shall promptly seek to secure
1213 a decree of a court of competent jurisdiction of the State of California, confirming the execution
1214 of this Contract. The Contractor shall furnish the United States a certified copy of the final

1215 decree, the validation proceedings, and all pertinent supporting records of the court approving
1216 and confirming this Contract, and decreeing and adjudging it to be lawful, valid, and binding on
1217 the Contractor.

County of Colusa Draft 6/25-2003
R.O. Final CVP-Wide 6/10-2003
Sac. Valley Division Draft 5/28-2003
CVP-Wide Draft 5/23-2003
Contract No. 14-06-200-8310A-LTR1

EXHIBIT A

[Map or Description of Service Area]

County of Colusa Draft 6/25-2003
R.O. Final CVP-Wide 6/10-2003
Sac. Valley Division Draft 5/28-2003
CVP-Wide Draft 5/23-2003
Contract No. 14-06-200-8310A-LTR1

EXHIBIT B
[Initial Rates and Charges]