

1 UNITED STATES
2 DEPARTMENT OF THE INTERIOR
3 BUREAU OF RECLAMATION
4 Central Valley Project, California

5 LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
6 AND
7 CHOWCHILLA WATER DISTRICT
8 PROVIDING FOR PROJECT WATER SERVICE
9 FROM FRIANT DIVISION

10 THIS CONTRACT, made this ____ day of _____, 2001, in pursuance
11 generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto,
12 including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and
13 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat.
14 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1262), October 27, 1986 (100 Stat.
15 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively
16 hereinafter referred to as Federal Reclamation law, between THE UNITED STATES OF AMERICA,
17 hereinafter referred to as the United States, and CHOWCHILLA WATER DISTRICT, hereinafter
18 referred to as the Contractor, a public agency of the State of California, duly organized, existing, and
19 acting pursuant to the laws thereof, with its principal place of business in California;

20 WITNESSETH, That:

21 EXPLANATORY RECITALS

22 [1st] WHEREAS, the United States has constructed and is operating the Central Valley
23 Project, California, for diversion, storage, carriage, distribution and beneficial use, for flood control,
24 irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and restoration,

25 generation and distribution of electric energy, salinity control, navigation and other beneficial uses, of
26 waters of the Sacramento River, the American River, the Trinity River, and the San Joaquin River
27 and their tributaries; and

28 [2nd] WHEREAS, the United States constructed Friant Dam (thereby creating Millerton
29 Lake) and the Friant-Kern and Madera Canals, hereinafter collectively referred to as the Friant
30 Division, hereinafter collectively referred to as the Friant Division facilities, which will be used in
31 part for the furnishing of water to the Contractor pursuant to the terms of this Contract; and

32 [3rd] WHEREAS, pursuant to Section 8 of the Act of June 17, 1902(32 Stat. 388), the
33 United States has acquired water rights and other rights to the flows of the San Joaquin River,
34 including without limitation the permits issued as the result of Decision 935 by the California State
35 Water Resource Control Board and the contracts described in subdivision (n) of Article 3 of this
36 Contract, pursuant to which the Contracting Officer develops, diverts, stores and delivers Project
37 Water stored or flowing through Millerton Lake in accordance with State and Federal law for the
38 benefit of Project Contractors in the Friant Division; and

39 [3.1] WHEREAS, the water supplied to the Contractor pursuant to this Contract is Project
40 Water developed through the exercise of the rights described in the third (3rd) Explanatory Recital of
41 this Contract; and

42 [3.2] WHEREAS, a contract dated May 24, 1939, was made and entered into between the
43 United States and the Madera Irrigation District entitled "Contract for Purchase of Property and Water
44 Rights," which contract is hereinafter referred to as the 1939 Contract, and a portion of said contract
45 was assigned to the Contractor; and

46 [3.3] WHEREAS, Contractor's rights under the aforesaid 1939 Contract have been
47 judicially determined that the Contractor has a vested right in perpetuity to receive a specified
48 quantity of water together, with the right of successive renewals of all contracts for delivery thereof;
49 and

50 [3.4] WHEREAS, Contractor's rights under the 1939 Contract have been satisfied under the
51 previous contracts for delivery of water from Friant Dam and will be satisfied for the term hereof
52 under this Contract, so long as the United States performs the terms and provisions by them to be
53 performed herein; and

54 [4th] WHEREAS, the Contractor and the United States entered into Contract No. I75r-2358,
55 as amended, which established terms for the delivery to the Contractor of Project Water from the
56 Friant Division from July 5, 1950, to February 28, 1991; and

57 [5th] WHEREAS, the Contractor and the United States entered into Renewal Contract No.
58 I75r-2358R, which provided for continued water service to the Contractor from the Friant Division
59 from March 1, 1991, through February 28, 2029, but, in light of the Ninth Circuit Court of Appeals
60 Opinion in the lawsuit entitled Natural Resources Defense Council, et al. v. Roger Patterson, et al.,
61 that contract was replaced by Interim Renewal Contract No. I75r-2358-IR1, dated July 10, 1998,
62 which provides for continued water service to the Contractor from the Friant Division from
63 September 14, 1998, through February 28, 2001; and

64 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of interim
65 and existing long-term Project Water service contracts following completion of appropriate
66 environmental documentation, including a programmatic environmental impact statement (PEIS)

67 pursuant to the National Environmental Policy Act analyzing the direct and indirect impacts and
68 benefits of implementing the CVPIA and the potential renewal of all existing contracts for Project
69 Water; and

70 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
71 environmental review necessary to provide for long-term renewal of the Existing Contract; and

72 [8th] WHEREAS, pursuant to its rights under the 1939 Contract, the Contractor has
73 requested the long-term renewal of the Existing Contract, pursuant to the terms of the Existing
74 Contract, Federal Reclamation law, and the laws of the State of California, for water service from the
75 Friant Division of the Central Valley Project; and

76 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all of
77 its obligations under the Existing Contract; and

78 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting
79 Officer that the Contractor has utilized the Central Valley Project Water supplies available to it for
80 reasonable and beneficial use and/or has demonstrated projected future demand for water use such
81 that the Contractor has the capability and expects to utilize fully for reasonable and beneficial use the
82 quantity of Project Water to be made available to it pursuant to this Contract; and

83 [11th] WHEREAS, water obtained from the Central Valley Project has been relied upon by
84 urban and agricultural areas within California for more than fifty (50) years, and is considered by the
85 Contractor as an essential portion of its water supply; and

86 [12th] WHEREAS, the economies of regions within the Central Valley Project, including the
87 Contractor's, depend upon the continued availability of water, including water service from the

88 Central Valley Project; and

89 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships
90 to pursue measures to improve water supply, water quality, and reliability of the Project for all Project
91 purposes; and

92 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to
93 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment of
94 the Central Valley Project as required by law; to guard reasonably against Project Water shortages; to
95 achieve a reasonable balance among competing demands for use of Project Water; and to comply
96 with all applicable environmental statutes, all consistent with the legal obligations of the United
97 States relative to the Central Valley Project; and

98 [15th] WHEREAS, Omitted; and

99 [15.1] WHEREAS, during Uncontrolled Seasons, Friant Division Project Contractors utilize
100 undependable Class 2 Water in their service areas to, among other things, assist in the management
101 and alleviation of groundwater overdraft in the Friant Division service area, provide opportunities for
102 environmental enhancement, including restoration of the San Joaquin River below Friant Dam,
103 minimize flooding along the San Joaquin River, encourage optimal water management, and maximize
104 the reasonable and beneficial use of the water; and

105 [15.2] WHEREAS, the parties desire and intend that this Contract not provide a disincentive
106 to the Friant Division Project Contractors continuing to carry out the beneficial activities set out in
107 the Explanatory Recital immediately above; and

108 [16th] WHEREAS, the Contractor is entitled to long term renewal under its rights under the

109 1939 Contract, and the United States and the Contractor are willing to enter into this Contract
110 pursuant to Federal Reclamation Law on the terms and conditions set forth below; and

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

113 DEFINITIONS

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

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

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

121 (b2) "Class 1 Water" shall mean that supply of water stored in or flowing through
122 Millerton Lake which, subject to the contingencies hereinafter described in Articles 3, 11, and 12 of
123 this Contract, will be available for delivery from Millerton Lake and the Friant-Kern and Madera
124 Canals as a dependable water supply during each Year;

125 (b3) "Class 2 Water" shall mean that supply of water which can be made available
126 subject to the contingencies hereinafter described in Articles 3, 11, and 12 of this Contract for
127 delivery from Millerton Lake and the Friant-Kern and Madera Canals in addition to the supply of
128 Class 1 Water. Because of its uncertainty as to availability and time of occurrence, such water will be
129 undependable in character and will be furnished only if, as, and when it can be made available as

130 determined by the Contracting Officer;

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

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

136 (e) "Contract Total" shall mean the maximum amount of Class 1 Water, plus the
137 maximum amount of Class 2 Water to which the Contractor is entitled under subdivision (a) of
138 Article 3 of this Contract;

139 (f) "Contractor's Service Area" shall mean the area to which the Contractor is
140 permitted to provide Project Water under this Contract as described in Exhibit "A" attached hereto,
141 which may be modified from time to time in accordance with Article 35 of this Contract without
142 amendment of this Contract;

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

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

148 (i) "Excess Lands" shall mean all lands in excess of the limitations contained in
149 Section 204 of the RRA, other than those lands exempt from acreage limitation under Federal
150 Reclamation law;

151 (j) "Full Cost Rate" shall mean that water rate described in Sections 205(a)(3) or
152 202(3) of the RRA, whichever is applicable;

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

155 (l) "Irrigation Full Cost Water Rate" shall have the same meaning as "full cost" as
156 that term is used in paragraph (3) of Section 202 of the RRA;

157 (m) "Irrigation Water" shall mean water made available from the Project that is
158 used primarily in the production of agricultural crops or livestock, including domestic use incidental
159 thereto, and watering of livestock. Irrigation Water shall not include water used for purposes such as
160 the watering of landscaping or pasture for animals (e.g., horses) which are kept for personal
161 enjoyment or water delivered to landholdings operated in units of less than five (5) acres unless the
162 Contractor establishes to the satisfaction of the Contracting Officer that the use of water delivered to
163 any such landholding is a use described in this subdivision of this Article;

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

166 (n2) "Long Term Historic Average" shall mean the average of the final forecast of
167 Water Made Available to the Contractor pursuant to this Contract and the contracts referenced in the
168 fourth (4th) and fifth (5th) Explanatory Recitals of this Contract;

169 (o) Omitted;

170 (p) "M&I Full Cost Water Rate" shall mean the annual rate, which, as determined
171 by the Contracting Officer, shall amortize the expenditures for construction allocable to Project M&I

172 facilities in service, including, O&M deficits funded, less payments, over such periods as may be
173 required under Federal Reclamation law with interest accruing from the dates such costs were first
174 incurred plus the applicable rate for the O&M of such Project facilities. Interest rates used in the
175 calculation of the M&I Full Cost Rate shall comply with the Interest Rate methodology contained in
176 Section 202 (3) (B) and (C) of the RRA;

177 (q) "Operation and Maintenance" or "O&M" shall mean normal and reasonable
178 care, control, operation, repair, replacement (other than Capital replacement), and maintenance of
179 Project facilities;

180 (r) "Operating Non-Federal Entity" shall mean the Madera-Chowchilla Water and
181 Power Authority, a Non-Federal entity which has the obligation to operate and maintain all or a
182 portion of the Friant Division facilities pursuant to an agreement with the United States, and which
183 may have funding obligations with respect thereto;

184 (r2) "Other Water" shall mean water from the Project other than Irrigation Water as
185 described in subdivision (l) of this Article, which is used for a purpose that is considered to be an
186 irrigation use pursuant to State law such as the watering of landscaping or pasture for animals (e.g.,
187 horse) which are kept for the personal enjoyment.

188 (s) "Project" shall mean the Central Valley Project owned by the United States and
189 managed by the Department of the Interior, Bureau of Reclamation;

190 (t) "Project Contractors" shall mean all parties who have water service contracts
191 for Project Water from the Project with the United States pursuant to Federal Reclamation law;

192 (u) "Project Water" shall mean all water that is developed, diverted, stored, or

193 delivered by the Secretary in accordance with the statutes authorizing the Project and in accordance
194 with the terms and conditions of water rights acquired pursuant to California law;

195 (v) “Rates” shall mean the payments determined annually by the Contracting
196 Officer in accordance with the then current applicable water ratesetting policies for the Project, as
197 described in subdivision (a) of Article 7 of this Contract;

198 (w) Omitted;

199 (x) “Secretary” shall mean the Secretary of the Interior, a duly appointed
200 successor, or an authorized representative acting pursuant to any authority of the Secretary and
201 through any agency of the Department of the Interior;

202 (y) “Tiered Pricing Component” shall be the incremental amount to be paid for
203 each acre-foot of Water Delivered as described in subdivision (j) of Article 7 of this Contract;

204 (y2) “Uncontrolled Season” is any time during the Year the Contracting Officer
205 determines that a need exists to evacuate water from Millerton Lake in order to prevent or minimize
206 spill or to meet flood control criteria, taking into consideration, among other things, anticipated
207 upstream reservoir operations and the most probable forecast of snowmelt and runoff projections for
208 the upper San Joaquin River;

209 (z) “Water Delivered” or “Delivered Water” shall mean Project Water diverted for
210 use by the Contractor at the point(s) of delivery approved by the Contracting Officer;

211 (aa) “Water Made Available” shall mean the estimated amount of Project Water
212 that can be delivered to the Contractor for the upcoming Year as declared by the Contracting Officer,
213 pursuant to subdivision (a) of Article 4 of this Contract;

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

217 (cc) "Year" shall mean the period from and including March 1 of each Calendar
218 Year through the last day of February of the following Calendar Year.

219 TERM OF CONTRACT

220 2. (a) This Contract shall be effective March 1, 2001, through February 28, 2026. In
221 the event the Contractor wishes to renew the Contract beyond February 28, 2026, the Contractor shall
222 submit a request for renewal in writing to the Contracting Officer no later than two years prior to the
223 date this Contract expires. If the Contracting Officer determines that the Contractor has performed
224 the terms and conditions of the Existing Contract, the Contracting Officer shall renew this Contract
225 and subsequent contracts insofar as it pertains to the furnishing of Irrigation Water to the Contractor
226 on terms and conditions mutually agreeable for the longest period prescribed by law.

227 (b) Omitted.

228 (c) Omitted.

229 (d) The Contracting Officer anticipates that by December 31, 2024, all authorized
230 project construction expected to occur will have occurred, and on that basis the Contracting Officer
231 agrees by that date to allocate all costs that are properly assignable to the Contractor, and agrees
232 further that, at any time after such allocation is made, and subject to satisfaction of the condition set
233 out in this subdivision, this Contract shall, at the request of the Contractor, be converted to a contract
234 under subsection (d) , Section 9 of the Reclamation Project Act of 1939, subject to applicable Federal

235 law and under stated terms and conditions mutually agreeable to the Contractor and the Contracting
236 Officer. A condition for such conversion to occur shall be a determination by the Contracting Officer
237 that, account being taken of the amount credited to return by the Contractor as provided for under
238 Reclamation law, the remaining amount of construction costs assignable for ultimate return by the
239 Contractor can probably be repaid to the United States within the term of a contract under said
240 subsection (d). If the remaining amount of costs that are properly assignable to the Contractor cannot
241 be determined by December 31, 2024, the Contracting Officer shall notify the Contractor, and provide
242 the reason(s) why such a determination could not be made. Further, the Contracting Officer shall
243 make such a determination as soon thereafter as possible so as to permit, upon request of the
244 Contractor and satisfaction of the condition set out above, conversion to a contract under said
245 subsection (d). In the event such determination of costs has not been made at a time which allows
246 conversion of this Contract during the term of this Contract or the Contractor has not requested
247 conversion of this Contract within such term, the parties shall incorporate in any subsequent renewal
248 contract as described in subdivision (b) of this Article a provision that carries forth in substantially
249 identical terms the provisions of this subdivision. In the event the Contracting Officer is able to make
250 a determination of the remaining amount of costs that are properly assignable to the Contractor before
251 December 31, 2024, the Contracting Officer shall do so at the earliest time the Contracting Officer
252 has such ability.

253 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

254 3. (a) During each Year, consistent with all applicable State water rights, permits,
255 and licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this Contract,

256 the Contracting Officer shall make available for delivery to the Contractor 55,000 acre-feet of Class 1
257 Water and 160,000 acre-feet of Class 2 Water, for irrigation purposes. The quantity of Water
258 Delivered to the Contractor in accordance with this subdivision shall be scheduled and paid for
259 pursuant to the provisions of Articles 4 and 7 of this Contract.

260 (b) Omitted.

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

263 (d) The Contractor shall make reasonable and beneficial use of all Project Water or
264 other water furnished pursuant to this Contract. Groundwater recharge programs, groundwater
265 banking programs, surface water storage programs, and other similar programs utilizing Project
266 Water or other water furnished pursuant to this Contract conducted within the Contractor's Service
267 Area which are consistent with applicable State law and result in use consistent with Reclamation law
268 will be allowed; Provided, That any direct recharge program(s) is (are) described in the Contractor's
269 Water Conservation Plan submitted pursuant to Article 26 of this Contract; Provided, further, That
270 such Water Conservation Plan demonstrates sufficient lawful uses exist in the Contractor's Service
271 Area so that using a long-term average, the quantity of Delivered Water is demonstrated to be
272 reasonable for such uses and in compliance with Reclamation law. Groundwater recharge programs,
273 groundwater banking programs, surface water storage programs, and other similar programs utilizing
274 Project Water or other water furnished pursuant to this Contract conducted outside the Contractor's
275 Service Area may be permitted upon written approval of the Contracting Officer, which approval will
276 be based upon environmental documentation, Project Water rights, and Project operational concerns.

277 The Contracting Officer will address such concerns in regulations, policies, or guidelines.

278 (e) The Contractor shall comply with requirements applicable to the Contractor in
279 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract
280 undertaken pursuant to Section 7 of the Endangered Species Act of 1973, as amended, that are within
281 the Contractor's legal authority to implement. The Contractor shall comply with the limitations or
282 requirements imposed by environmental documentation applicable to the Contractor and within its
283 legal authority to implement regarding specific activities. Nothing herein shall be construed to
284 prevent the Contractor from challenging or seeking judicial relief in a court of competent jurisdiction
285 with respect to any biological opinion or other environmental documentation referred to in this
286 Article.

287 (f) Subject to subdivisions (l) and (n) of Article 3 of this Contract, following the
288 declaration of Water Made Available under Article 4 of this Contract, the Contracting Officer will
289 make a determination whether Project Water, or other water available to the Project, can be made
290 available to the Contractor in addition to the Contract Total under Article 3 of this Contract during
291 the Year without adversely impacting other Project Contractors. At the request of the Contractor, the
292 Contracting Officer will consult with the Contractor prior to making such a determination. Subject to
293 subdivisions (l) and (n) of Article 3 of this Contract, if the Contracting Officer determines that Project
294 Water, or other water available to the Project, can be made available to the Contractor, the
295 Contracting Officer will announce the availability of such water and shall so notify the Contractor as
296 soon as practical. The Contracting Officer will thereafter meet with the Contractor and other Project
297 Contractors capable of taking such water to determine the most equitable and efficient allocation of

298 such water. If the Contractor requests the delivery of any quantity of such water, the Contracting
299 Officer shall make such water available to the Contractor in accordance with applicable statutes,
300 regulations, guidelines, and policies.

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

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

314 (i) Project Water furnished to the Contractor pursuant to this Contract may be
315 delivered for purposes other than those described in subdivisions (m) and (r2) of Article 1 of this
316 Contract upon written approval by the Contracting Officer in accordance with the terms and
317 conditions of such approval.

318 (j) The Contracting Officer shall make reasonable efforts to protect the water

319 rights and other rights described in the third (3rd) Explanatory Recital of this Contract and to provide
320 the water available under this Contract. The Contracting Officer shall not object to participation by
321 the Contractor, in the capacity and to the extent permitted by law, in administrative proceedings
322 related to the water rights and other rights described in the third (3rd) Explanatory Recital of this
323 Contract; Provided, however, That the Contracting Officer retains the right to object to the substance
324 of the Contractor's position in such a proceeding.

325 (k) Project Water furnished to the Contractor during any month designated in a
326 schedule or revised schedule submitted by the Contractor and approved by the Contracting Officer
327 shall be deemed to have been accepted by the Contractor as Class 1 Water to the extent that Class 1
328 Water is called for in such schedule for such month and shall be deemed to have been accepted as
329 Class 2 Water to the extent Class 2 Water is called for in such schedule for such month. If in any
330 month the Contractor diverts a quantity of water in addition to the total amount of Class 1 Water and
331 Class 2 Water set forth in the Contractor's approved schedule or revised schedule for such month,
332 such additional diversions shall be charged first against the Contractor's remaining Class 2 Water
333 supply available in the current Year. To the extent the Contractor's remaining Class 2 Water supply
334 available in the current Year is not sufficient to account for such additional diversions, such
335 additional diversions shall be charged against the Contractor's remaining Class 1 Water supply
336 available in the current Year. To the extent the Contractor's remaining Class 1 Water and Class 2
337 Water supplies available in the current Year are not sufficient to account for such additional
338 diversions, such additional diversions shall be charged first against the Contractor's available Class 2
339 Water supply and then against the Contractor's available Class 1 Water supply, both for the following

340 Year. Payment for all additional diversions of water shall be made in accordance with Article 7 of
341 this Contract.

342 (l) If the Contracting Officer determines there is a Project Water supply available
343 at Friant Dam as the result of an unusually large water supply not otherwise storable for Project
344 purposes or infrequent and otherwise unmanaged flood flows of short duration, such water will be
345 made available to the Contractor and others under Section 215 of the RRA pursuant to the priorities
346 specified below if the Contractor enters into a temporary contract with the United States not to exceed
347 one (1) year for the delivery of such water or, as otherwise provided for in Federal Reclamation law
348 and associated regulations. Such water may be identified by the Contractor either (i) as additional
349 water to supplement the supply of Class 1 Water and/or Class 2 Water made available to it pursuant
350 to this Contract or, (ii) upon written notification to the Contracting Officer, as water to be credited
351 against the Contractor's Class 2 Water supply available pursuant to this Contract. The Contractor
352 shall deliver such water to Eligible Lands, or to Excess Lands in accordance with this Article. The
353 Contracting Officer shall make water determined to be available pursuant to this subsection according
354 to the following priorities: first, to long-term contractors for Class 1 Water and/or Class 2 Water
355 within the Friant Division; second, to long-term contractors in the Cross Valley Division of the
356 Project. The Contracting Officer will consider and seek to accommodate requests from other parties
357 for Section 215 Water for use within the area identified as the Friant Division service area in the
358 environmental assessment developed in connection with the execution of this Contract.

359 (m) Nothing in this Contract, nor any action or inaction of the Contractor or
360 Contracting Officer in connection with the implementation of this Contract, is intended to override,

361 modify, supersede or otherwise interfere with any term or condition of the water rights and other
362 rights referred in the third (3rd) Explanatory Recital of this Contract.

363 (n) The rights of the Contractor under this Contract are subject to the terms of the
364 contract for exchange waters, dated July 27, 1939, between the United States and the San Joaquin and
365 Kings River Canal and Irrigation Company, Incorporated, et al., (hereinafter referred to as the
366 Exchange Contractors), Contract No. I1r-1144, as amended. The United States agrees that it will not
367 deliver to the Exchange Contractors thereunder waters of the San Joaquin River unless and until
368 required by the terms of said contract, and the United States further agrees that it will not voluntarily
369 and knowingly determine itself unable to deliver to the Exchange Contractors entitled thereto from
370 water that is available or that may become available to it from the Sacramento River and its
371 tributaries or the Sacramento-San Joaquin Delta those quantities required to satisfy the obligations of
372 the United States under said Exchange Contract and under Schedule 2 of the Contract for Purchase of
373 Miller and Lux Water Rights (Contract I1r-1145, dated July 27, 1939).

374 TIME FOR DELIVERY OF WATER

375 (4) (a) On or about February 20 of each Calendar Year, the Contracting Officer shall
376 announce the Contracting Officer's expected declaration of the Water Made Available. The
377 declaration will be updated monthly, and more frequently if necessary, based on then-current
378 operational and hydrologic conditions and a new declaration with changes, if any, to the Water Made
379 Available will be made. The Contracting Officer shall provide forecasts of Project operations and the
380 basis of the estimate, with relevant supporting information, upon the written request of the
381 Contractor. Concurrently with the declaration of the Water Made Available, the Contracting Officer

382 shall provide the Contractor with the updated Long Term Historic Average. The declaration of
383 Project operations will be expressed in terms of both Water Made Available and the Long Term
384 Historic Average.

385 (b) On or before each March 1 and at such other times as necessary, the Contractor
386 shall submit to the Contracting Officer a written schedule, satisfactory to the Contracting Officer,
387 showing the monthly quantities of Project Water to be delivered by the United States to the
388 Contractor pursuant to this Contract for the Year commencing on such March 1. The Contracting
389 Officer shall use all reasonable means to deliver Project Water according to the approved schedule for
390 the Year commencing on such March 1.

391 (c) The Contractor shall not schedule Project Water in excess of the quantity of
392 Project Water the Contractor intends to put to reasonable and beneficial use within the Contractor's
393 Service Area or to sell, transfer or exchange pursuant to Article 9 of this Contract during any Year.

394 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this
395 Contract, the United States shall deliver Project Water to the Contractor in accordance with the initial
396 schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any written
397 revision(s), satisfactory to the Contracting Officer, thereto submitted within a reasonable time prior to
398 the date(s) on which the requested change(s) is/are to be implemented; Provided, That the total
399 amount of water requested in that schedule or revision does not exceed the quantities announced by
400 the Contracting Officer pursuant to the provisions of subdivision (a) of Article 3, and the Contracting
401 Officer determines that there will be sufficient capacity available in the appropriate Friant Division
402 facilities to deliver the water in accordance with that schedule: Provided, further, That the Contractor

403 shall not schedule the delivery of any water during any period as to which the Contractor is notified
404 by the Contracting Officer or Operating Non-Federal Entity that Project facilities required to make
405 deliveries to the Contractor will not be in operation because of scheduled O&M.

406 (e) The Contractor may, during the period from and including November 1 of each
407 Year through and including the last day of February of that Year, request delivery of any amount of
408 the Class 1 Water estimated by the Contracting Officer to be made available to it during the following
409 Year. The Contractor may, during the period from and including January 1 of each Year (or such
410 earlier date as may be determined by the Contracting Officer) through and including the last day of
411 February of that Year, request delivery of any amount of Class 2 Water estimated by the Contracting
412 Officer to be made available to it during the following Year. Such water shall hereinafter be referred
413 to as preuse water. Such request must be submitted in writing by the Contractor for a specified
414 quantity of preuse and shall be subject to the approval of the Contracting Officer. Payment for preuse
415 water so requested shall be at the appropriate rate(s) for the following Year in accordance with
416 Article 7 of this Contract and shall be made in advance of delivery of any preuse water. The
417 Contracting Officer shall deliver such preuse water in accordance with a schedule or any revision
418 thereof submitted by the Contractor and approved by the Contracting Officer, to the extent such water
419 is available and to the extent such deliveries will not interfere with the delivery of Project Water
420 entitlements to other Friant Division contractors or the physical maintenance of the Project facilities.
421 The quantities of preuse water delivered pursuant to this subdivision shall be deducted from the
422 quantities of water that the Contracting Officer would otherwise be obligated to make available to the
423 Contractor during the following Year; Provided, That the quantity of preuse water to be deducted

424 from the quantities of either Class 1 Water or Class 2 Water to be made available to the Contractor in
425 the following Year shall be specified by the Contractor at the time the preuse water is requested or as
426 revised in its first schedule for the following Year submitted in accordance with subdivision (b) of
427 this Article, based on the availability of the following Year water supplies as determined by the
428 Contracting Officer.

429 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

430 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this
431 Contract shall be delivered to the Contractor at a point or points of delivery either on Project facilities
432 or another location or locations mutually agreed to in writing by the Contracting Officer and the
433 Contractor.

434 (b) The Contracting Officer, the Operating Non-Federal Entity, or other
435 appropriate entity shall make all reasonable efforts to maintain sufficient flows and levels of water in
436 the Madera Canal to deliver Project Water to the Contractor at specific turnouts established pursuant
437 to subdivision (a) of this Article.

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

442 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
443 measured and recorded with equipment furnished, installed, operated, and maintained by the United
444 States, the Operating Non-Federal Entity or other appropriate entity as designated by the Contracting

445 Officer (hereafter “other appropriate entity”) at the point or points of delivery established pursuant to
446 subdivision (a) of this Article. Upon the request of either party to this Contract, the Contracting
447 Officer shall investigate, or cause to be investigated by the responsible Operating Non-Federal Entity,
448 the accuracy of such measurements and shall take any necessary steps to adjust any errors appearing
449 therein. For any period of time when accurate measurements have not been made, the Contracting
450 Officer shall consult with the Contractor and the responsible Operating Non-Federal Entity prior to
451 making a final determination of the quantity delivered for that period of time.

452 (e) Neither the Contracting Officer nor any Operating Non-Federal Entity shall be
453 responsible for the control, carriage, handling, use, disposal, or distribution of Project Water
454 Delivered to the Contractor pursuant to this Contract beyond the delivery points specified in
455 subdivision (a) of this Article. The Contractor shall indemnify the United States, its officers,
456 employees, agents, and assigns on account of damage or claim of damage of any nature whatsoever
457 for which there is legal responsibility, including property damage, personal injury, or death arising out
458 of or connected with the control, carriage, handling, use, disposal, or distribution of such Project
459 Water beyond such delivery points, except for any damage or claim arising out of: (i) acts or
460 omissions of the Contracting Officer or any of its officers, employees, agents, or assigns, including
461 any responsible Operating Non-Federal Entity, with the intent of creating the situation resulting in any
462 damage or claim; (ii) willful misconduct of the Contracting Officer or any of its officers, employees,
463 agents, or assigns, including any responsible Operating Non-Federal Entity; (iii) negligence of the
464 Contracting Officer or any of its officers, employees, agents, or assigns including any responsible
465 Operating Non-Federal Entity; or (iv) damage or claims resulting from a malfunction of facilities

466 owned and/or operated by the United States or responsible Operating Non-Federal Entity; Provided,
467 That the Contractor is not the Operating Non-Federal Entity that owned or operated the
468 malfunctioning facility(ies) from which the damage claim arose.

469 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

470 6. (a) The Contractor established a measurement program satisfactory to the
471 Contracting Officer, all surface water delivered for irrigation purposes within the Contractor's Service
472 Area is measured at each agricultural turnout. The water measuring devices or water measuring
473 methods of comparable effectiveness must be acceptable to the Contracting Officer. The Contractor
474 shall be responsible for installing, operating, and maintaining and repairing all such measuring
475 devices and implementing all such water measuring methods at no cost to the United States. The
476 Contractor shall use the information obtained from such water measuring devices or water measuring
477 methods to ensure its proper management of the water, to bill water users for water delivered by the
478 Contractor. Nothing herein contained, however, shall preclude the Contractor from establishing and
479 collecting any charges, assessments, or other revenues authorized by California law. The Contractor
480 shall include a summary of all its annual surface water deliveries in the annual report described in
481 subdivision (c) of Article 26.

482 (b) To the extent the information has not otherwise been provided, upon execution
483 of this Contract, the Contractor shall provide to the Contracting Officer a written report describing the
484 measurement devices or water measuring methods being used or to be used to implement subdivision
485 (a) of this Article and identifying the agricultural turnouts or alternative measurement programs
486 approved by the Contracting Officer, at which such measurement devices or water measuring

487 methods are being used, and, if applicable, identifying the locations at which such devices and/or
488 methods are not yet being used including a time schedule for implementation at such locations. The
489 Contracting Officer shall advise the Contractor in writing within sixty (60) days as to the adequacy of,
490 and necessary modifications, if any, of the measuring devices or water measuring methods identified
491 in the Contractor's report and if the Contracting Officer does not respond in such time, they shall be
492 deemed adequate. If the Contracting Officer notifies the Contractor that the measuring devices or
493 methods are inadequate, the parties shall within sixty (60) days following the Contracting Officer's
494 response, negotiate in good faith the earliest practicable date by which the Contractor shall modify
495 said measuring devices and/or measuring methods as required by the Contracting Officer to ensure
496 compliance with subdivision (a) of this Article.

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

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

503 (e) The Contractor shall inform the Contracting Officer and the Operating Non-
504 Federal Entity on or before the twentieth (20th) calendar day of each month of the quantity of
505 Irrigation and Other Water taken during the preceding month.

506 RATES AND METHOD OF PAYMENT FOR WATER

507 7. (a) The Contractor shall pay the United States as provided in this Article for all

508 Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance
509 with: (i) the Secretary’s ratesetting policy for Irrigation Water adopted in 1988 and the Secretary’s
510 then-existing ratesetting policy for M&I Water. Such ratesetting policies shall be amended, modified,
511 or superseded only through a public notice and comment procedure; (ii) applicable Reclamation law
512 and associated rules and regulations, or policies; and (iii) other applicable provisions of this Contract.
513 Payments shall be made by cash transaction, wire, or any other mechanism as may be agreed to in
514 writing by the Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing
515 Components applicable to the Contractor upon execution of this Contract are set forth in Exhibit “B”,
516 as may be revised annually.

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

519 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
520 provide the Contractor an estimate of the Charges for Project Water that will be applied to the period
521 October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and
522 the basis for such estimate. The Contractor shall be allowed not less than two (2) months to review
523 and comment on such estimates. On or before September 15 of each Calendar Year, the Contracting
524 Officer shall notify the Contractor in writing of the Charges to be in effect during the period October
525 1 of the current Calendar Year, through September 30, of the following Calendar Year, and such
526 notification shall revise Exhibit “B.”

527 (2) Prior to October 1 of each Calendar Year, the Contracting Officer shall
528 make available to the Contractor an estimate of the Rates and Tiered Pricing Components for Project

529 Water for the following Year and the computations and cost allocations upon which those Rates are
 530 based. The Contractor shall be allowed not less than two (2) months to review and comment on such
 531 computations and cost allocations. By December 31 of each Calendar Year, the Contracting Officer
 532 shall provide the Contractor with the final Rates and Tiered Pricing Components to be in effect for
 533 the upcoming Year, and such notification shall revise Exhibit “B”.

534 (c) At the time the Contractor submits the initial schedule for the delivery of
 535 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor
 536 shall make an advance payment to the United States equal to the total amount payable pursuant to the
 537 applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be
 538 delivered pursuant to this Contract during the first two (2) calendar months of the Year. Before the
 539 end of the first month and before the end of each calendar month thereafter, the Contractor shall make
 540 an advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for
 541 the Water Scheduled to be delivered pursuant to this Contract during the second month immediately
 542 following. Adjustments between advance payments for Water Scheduled and payments at Rates due
 543 for Water Delivered shall be made before the end of the following month; Provided, That any revised
 544 schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the
 545 amount of Water Delivered pursuant to this Contract during any month shall be accompanied with
 546 appropriate advance payment, at the Rates then in effect, to assure that Project Water is not delivered
 547 to the Contractor in advance of such payment. In any month in which the quantity of Water Delivered
 548 to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid for by the
 549 Contractor, no additional Project Water shall be delivered to the Contractor unless and until an

550 advance payment at the Rates then in effect for such additional Project Water is made. Final
551 adjustment between the advance payments for the Water Scheduled and payments for the quantities
552 of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable
553 but no later than April 30th of the following Year, or sixty (60) days after the delivery of Project
554 Water carried over under subdivision (f) of Article 3 of this Contract if such water is not delivered by
555 the last day of February.

556 (d) The Contractor shall also make a payment in addition to the Rate(s) in
557 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
558 appropriate Tiered Pricing Component then in effect, before the end of the month following the
559 month of delivery of delivery; Provided, That the Contractor may be granted an exception from the
560 Tiered Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be
561 consistent with the quantities of Irrigation Water and Other Water Delivered as shown in the water
562 delivery report for the subject month prepared by the Operating Non-Federal Entity or, if there is no
563 Operating Non-Federal Entity, by the Contracting Officer. Such water delivery report shall be the
564 basis for payment of Charges and Tiered Pricing Components by the Contractor, and shall be
565 provided to the Contractor by the Operating Non-Federal Entity or the Contracting Officer (as
566 applicable) within five (5) days after the end of the month of delivery. The water delivery report shall
567 be deemed a bill for the payment of Charges and the applicable Tiered Pricing Component for Water
568 Delivered. Adjustment for overpayment or underpayment of Charges shall be made through the
569 adjustment of payments due to the United States for Charges for the next month. Any amount to be
570 paid for past due payment of Charges and the Tiered Pricing Component shall be computed pursuant

571 to Article 20 of this Contract.

572 (e) The Contractor shall pay for any Water Delivered under subdivision (d), (f), or
573 (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to applicable
574 statutes, associated regulations, any applicable provisions of guidelines or ratesetting policies;
575 Provided, That the Rate for Water Delivered under subdivision (d) of Article 3 of this Contract shall
576 be no more than the otherwise applicable Rate for Irrigation Water or Other Water under subdivision
577 (a) of this Article.

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

580 (g) All revenues received by the United States from the Contractor relating to the
581 delivery of Project Water or the delivery of non-project water through Project facilities shall be
582 allocated and applied in accordance with Federal Reclamation law and the associated rules or
583 regulations, and the then current Project ratesetting policies for M&I Water or Irrigation Water.

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

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

599 (j) (1) Beginning at such time as the total of the deliveries of Class 1 Water
600 and Class 2 Water in a Year exceed eighty (80%) percent of the Contract Total, then before the end of
601 the month following the month of delivery the Contractor shall make an additional payment to the
602 United States equal to the applicable Tiered Pricing Component. The Tiered Pricing Component for
603 the total of the deliveries of Class 1 Water and Class 2 Water in excess of eighty (80) percent of the
604 Contract Total, but less than or equal to ninety (90) percent of the Contract Total, shall equal the one-
605 half of the difference between the Rate established under subdivision (a) of Article 7 of this Contract
606 and the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable. The
607 Tiered Pricing Component for the total of the deliveries of Class 1 Water and Class 2 Water which
608 exceeds ninety (90) percent of the Contract Total shall equal the difference between (i) the Rate
609 established under subdivision (a) of Article 7 of this Contract and (ii) the Irrigation Full Cost Water
610 Rate or M&I Full Cost Water Rate, whichever is applicable. For purposes of this subdivision, Class 2
611 Water taken by the Contractor during an Uncontrolled Season shall not be included in the total of the
612 deliveries of Class 1 Water and Class 2 Water.

613 (2) Subject to the Contracting Officer’s written approval, the Contractor
614 may request and receive an exemption from such Tiered Pricing Components for Project Water
615 delivered to produce a crop which the Contracting Officer determines will provide significant and
616 quantifiable habitat values for waterfowl in fields where the water is used and the crops are produced;
617 Provided, That the exemption from the Tiered Pricing Components for Irrigation Water shall apply
618 only if such habitat values can be assured consistent with the purposes of CVPIA through binding
619 agreements executed with or approved by the Contracting Officer prior to use of such water.

620 (3) For purposes of determining the applicability of the Tiered Pricing
621 Components pursuant to this Article, Water Delivered shall include Project Water that the Contractor
622 transfers to others but shall not include Project Water transferred and delivered to the Contractor.

623 (k) For the term of this Contract, Rates under the respective ratesetting policies
624 will be established to recover only reimbursable Operation and Maintenance (including any deficits)
625 and capital costs of the Project, as those terms are used in the then-current Project ratesetting policies,
626 and interest, where appropriate, except in instances where a minimum Rate is applicable in
627 accordance with the relevant Project ratesetting policy. Changes of significance in practices which
628 implement the Contracting Officer’s ratesetting policies will not be implemented until the
629 Contracting Officer has provided the Contractor an opportunity to discuss the nature, need, and
630 impact of the proposed change.

631 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA,
632 the Rates for Project Water transferred by the Contractor shall be the Contractor’s Rates adjusted
633 upward or downward to reflect the changed costs of delivery (if any) of the transferred Project Water

634 to the transferee's point of delivery in accordance with the then applicable CVP Ratesetting Policy. If
635 the Contractor is receiving lower Rates and Charges because of inability to pay and is transferring
636 Project Water to another entity whose Rates and Charges are not adjusted due to inability to pay, the
637 Rates and Charges for transferred Project Water shall be the Contractor's Rates and Charges
638 unadjusted for ability to pay.

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

641 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

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

645 SALES, TRANSFERS, OR EXCHANGES OF WATER

646 9. (a) The right to receive Project Water provided for in this Contract may be sold,
647 transferred, or exchanged to others for reasonable and beneficial uses within the State of California if
648 such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable
649 guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this
650 Contract may take place without the prior written approval of the Contracting Officer, except as
651 provided for in subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be
652 approved absent compliance with appropriate environmental documentation including but not limited
653 to the National Environmental Policy Act and the Endangered Species Act. Such environmental
654 documentation should include, as appropriate, an analysis of groundwater impacts and economic and

655 social effects, including environmental justice, of the proposed water transfers on both the transferor
656 and transferee.

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

671 (c) For a water transfer to qualify under subdivision (b) of this Article, such water
672 transfer must: (i) be for irrigation purposes for lands irrigated within the previous three (3) years, for
673 M&I use, groundwater recharge, groundwater banking, similar groundwater activities, surface water
674 storage, or fish and wildlife resources; not lead to land conversion; and be delivered to established
675 cropland, wildlife refuges, groundwater basins or municipal and industrial use; (ii) occur within a

676 single Year; (iii) occur between a willing seller and a willing buyer; (iv) convey water through
677 existing facilities with no new construction or modifications to facilities and be between existing
678 Project Contractors and/or the Contractor and the United States, Department of the Interior; and (v)
679 comply with all applicable Federal, State, and local or tribal laws and requirements imposed for
680 protection of the environment and Indian Trust Assets, as defined under Federal law.

681 APPLICATION OF PAYMENTS AND ADJUSTMENTS

682 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,
683 Capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of
684 the Contractor arising out of this Contract then due and payable. Overpayments of more than One
685 Thousand Dollars (\$1,000) shall be refunded at the Contractor's request. In lieu of a refund, any
686 amount of such overpayment at the option of the Contractor, may be credited against amounts to
687 become due to the United States by the Contractor. With respect to overpayment, such refund or
688 adjustment shall constitute the sole remedy of the Contractor or anyone having or claiming to have
689 the right to the use of any of the Project Water supply provided for herein. All credits and refunds of
690 overpayments shall be made within thirty (30) days of the Contracting Officer obtaining direction as
691 to how to credit or refund such overpayment in response to the notice to the Contractor that it has
692 finalized the accounts for the Year in which the overpayment was made.

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

697 be billed for the additional costs pursuant to Article 25 of this 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 contracts, or
701 renewals thereof, providing for water deliveries from the Project, the Contracting Officer shall make
702 all reasonable efforts to optimize Project Water deliveries to the Contractor as provided in this
703 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 the
706 purposes of investigation, inspection, maintenance, repair, or replacement of any of the Project
707 facilities or any part thereof necessary for the delivery of Project Water to the Contractor, but so far as
708 feasible the Contracting Officer or Operating Non-Federal Entity will give the Contractor due notice
709 in advance of such temporary discontinuance or reduction, except in case of emergency, in which case
710 no notice need be given; Provided, That the United States shall use its best efforts to avoid any
711 discontinuance or reduction in such service. Upon resumption of service after such reduction or
712 discontinuance, and if requested by the Contractor, the United States will, if possible, deliver the
713 quantity of Project Water which would have been delivered hereunder in the absence of such
714 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 beyond the
717 Contractor's Service Area; Provided, That this shall not be construed as claiming for the United

718 States any right as seepage or return flow to water being used pursuant to this Contract for surface
719 irrigation or underground storage either being put to reasonable and beneficial use pursuant to this
720 Contract within the Contractor's Service Area by the Contractor or those claiming by, through, or
721 under the Contractor. For purposes of this subdivision, groundwater recharge, groundwater banking
722 and all similar groundwater activities will be deemed to be underground storage.

723 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

729 (b) If there is a Condition of Shortage because of errors in physical operations of
730 the Project, drought, other physical causes beyond the control of the Contracting Officer or actions
731 taken by the Contracting Officer to meet legal obligations then, except as provided in subdivision (a)
732 of Article 18 of this Contract, no liability shall accrue against the United States or any of its officers,
733 agents, or employees for any damage, direct or indirect, arising therefrom.

734 (c) The United States shall not execute contracts which together with this
735 Contract, shall in the aggregate provide for furnishing during the life of this Contract or any renewals
736 hereof Class 1 Water in excess of 800,000 acre-feet per Year or Class 2 Water in excess of
737 1,401,475 acre-feet per Year; Provided, That, subject to subdivision (l) of Article 3 of this Contract,
738 the limitation placed on Class 2 Water contracts shall not prohibit the United States from entering

739 into temporary contracts of one year or less in duration for delivery of Project Water to other entities
740 if such water is not necessary to meet the schedules as may be submitted by all Friant Division long-
741 term water service contractors entitled to receive Class 1 Water and/or Class 2 Water under their
742 water service contracts. Nothing in this subdivision shall limit the Contracting Officer's ability to
743 take actions that result in the availability of new water supplies to be used for Project purposes and
744 allocating such new supplies; Provided, That the Contracting Officer shall not take such actions until
745 after consultation with the Friant Division Project Contractors.

746 (d) The Contracting Officer shall not deliver any Class 2 Water pursuant to this or
747 any other contract for water service heretofore or hereafter entered into any Year unless and until the
748 Contracting Officer determines that the cumulative total quantity of Class 1 Water specified in
749 subdivision (c) of this Article will be available for delivery in said Year. If the Contracting Officer
750 determines there is or will be a shortage in any Year in the quantity of Class 1 Water available for
751 delivery, the Contracting Officer shall apportion the available Class 1 Water among all contractors
752 entitled to receive such water that will be made available at Friant Dam in accordance with the
753 following:

754 (1) A determination shall be made of the total quantity of Class 1 Water at
755 Friant Dam which is available for meeting Class 1 Water contractual commitments, the amount so
756 determined being herein referred to as the available supply.

757 (2) The total available Class 1 supply shall be divided by the Class 1 Water
758 contractual commitments, the quotient thus obtained being herein referred to as the Class 1
759 apportionment coefficient.

760 (3) The total quantity of Class 1 Water under Article 3 of this Contract
761 shall be multiplied by the Class 1 apportionment coefficient and the result shall be the quantity of
762 Class 1 Water required to be delivered by the Contracting Officer to the Contractor for the respective
763 Year, but in no event shall such amount exceed the total quantity of Class 1 Water specified in
764 subdivision (a) of Article 3 of this Contract.

765 (e) If the Contracting Officer determines there is less than the quantity of Class 2
766 Water which the Contractor otherwise would be entitled to receive pursuant to Article 3 of this
767 Contract, the quantity of Class 2 Water which shall be furnished to the Contractor by the Contracting
768 Officer will be determined in the manner set forth in paragraphs (1), (2), and (3), of subdivision (d) of
769 this Article substituting the term "Class 2" for the term "Class 1."

770 (f) In the event that in any Year there is made available to the Contractor, by
771 reason of any shortage or apportionment as provided in subdivisions (a), (d) or (e) of this Article, or
772 any discontinuance or reduction of service as set forth in subdivision (a) of Article 11 of this
773 Contract, less than the quantity of water which the Contractor otherwise would be entitled to receive
774 hereunder, there shall be made an adjustment on account of the amounts already paid to the
775 Contracting Officer by the Contractor for Class 1 Water and Class 2 Water for said Year in
776 accordance with Article 10 of this Contract.

777 UNAVOIDABLE GROUNDWATER PERCOLATION

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

781 delivery of Irrigation Water by the Contractor to Eligible Lands.

782 RULES AND REGULATIONS

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

787 (b) If the April 4, 1989, order denying plaintiffs' motion for preliminary injunction
788 is applicable to this Contract, the terms of this Contract are subject to the final Order in NRDC v.
789 Houston, No. CIVS 88-1658-LKK-EM.

790 WATER AND AIR POLLUTION CONTROL

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

794 QUALITY OF WATER

795 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to
796 this Contract shall be operated and maintained to enable the United States to deliver Project Water to
797 the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act
798 of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat.
799 3050) or other existing Federal laws. The United States is under no obligation to construct or furnish
800 water treatment facilities to maintain or to improve the quality of Water Delivered to the Contractor
801 pursuant to this Contract. The United States does not warrant the quality of Water Delivered to the
802 Contractor pursuant to this Contract.

803 (b) The Operation and Maintenance of Project facilities shall be performed in such

804 manner as is practicable to maintain the quality of raw water made available through such facilities at
805 the highest level reasonably attainable as determined by the Contracting Officer. The Contractor shall
806 be responsible for compliance with all State and Federal water quality standards applicable to surface
807 and subsurface agricultural drainage discharges generated through the use of Federal or Contractor
808 facilities or Project Water provided by the Contractor within the Contractor's Service Area.

809 WATER ACQUIRED BY THE CONTRACTOR
810 OTHER THAN FROM THE UNITED STATES

811 17. (a) Water or water rights now owned or hereafter acquired by the Contractor other
812 than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may
813 be simultaneously transported through the same distribution facilities of the Contractor subject to the
814 following: (i) if the facilities utilized for commingling Irrigation Water and non-project water were
815 constructed without funds made available pursuant to Federal Reclamation law, the provisions of
816 Federal Reclamation law will be applicable only to the Landholders of lands which receive Irrigation
817 Water; (ii) the eligibility of land to receive Irrigation Water must be established through the
818 certification requirements as specified in the Acreage Limitation Rules and Regulations (43 CFR Part
819 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be
820 established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity
821 necessary to irrigate such Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation
822 Water and non-project water are/were constructed with funds made available pursuant to Federal
823 Reclamation law, the non-project water will be subject to the acreage limitation provisions of Federal
824 Reclamation law, unless the Contractor pays to the United States the incremental fee described in 43
825 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate annually the

826 cost to the Federal Government, including interest of storing or delivering non-Project Water, which
827 for purposes of this Contract shall be determined as follows: The quotient shall be the unpaid
828 distribution system costs divided by the total irrigable acreage within the Contractor's Service Area.
829 The incremental fee per acre is the mathematical result of such quotient times the interest rate
830 determined using Section 202 (3) of the Act of October 12, 1982 (96 Stat. 1263). Such incremental
831 fee will be charged to each acre of excess or full cost land within the Contractor's Service Area that
832 receives non-project water through Federally financed or constructed facilities. The incremental fee
833 calculation methodology will continue during the term of this Contract absent the promulgation of a
834 contrary Reclamation-wide rule, regulation or policy adopted after the Contractor has been afforded
835 the opportunity to review and comment on the proposed rule, regulation or policy. If such rule,
836 regulation or policy is adopted it shall supersede this provision.

837 (b) Water or water rights now owned or hereafter acquired by the Contractor, other
838 than from the United States or adverse to the Project or its contractors (i.e. non-project water), may be
839 stored, conveyed and/or diverted through Project facilities, subject to the completion of appropriate
840 environmental documentation, with the approval of the Contracting Officer and the execution of any
841 contract determined by the Contracting Officer to be necessary, consistent with the following
842 provisions:

843 (1) The Contractor may introduce non-project water into Project facilities
844 and deliver said water to lands within the Contractor's Service Area, including Ineligible Lands,
845 subject to payment to the United States and/or to any applicable Operating Non-Federal Entity of an
846 appropriate rate as determined by the CVP Ratesetting Policy and the RRA, each as amended,

847 modified or superceded from time to time. In addition, if electrical power is required to pump non-
848 project water through the facilities, the Contractor shall be responsible for obtaining the necessary
849 power and paying the necessary charges therefor.

850 (2) Delivery of such non-project Water in and through Project facilities
851 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project purposes as
852 determined by the Contracting Officer; (ii) reduce the quantity or quality of water available to other
853 Project water service contractors; (iii) interfere with the delivery of contractual water entitlements to
854 any other Project water service contractors; or (iv) interfere with the physical maintenance of the
855 Project facilities.

856 (3) Neither the United States nor the Operating Non-Federal Entity shall be
857 responsible for control, care or distribution of the non-project water before it is introduced into or
858 after it is delivered from the Project facilities. The Contractor hereby releases and agrees to defend
859 and indemnify the United States and the Operating Non-Federal Entity, and their respective officers,
860 agents, and employees, from any claim for damage to persons or property, direct or indirect, resulting
861 from Contractor's diversion or extraction of non-project water from any source.

862 (4) Diversion of such non-Project Water into Project facilities shall be
863 consistent with all applicable laws, and if involving groundwater, consistent with any groundwater
864 management plan for the area from which it was extracted.

865 (5) After Project purposes are met, as determined by the Contracting
866 Officer, the United States and the Contractor shall share priority to utilize the remaining capacity of
867 the facilities declared to be available by the Contracting Officer for conveyance and transportation of

868 non-project water prior to any such remaining capacity being made available to non-Project
869 contractors.

870 OPINIONS AND DETERMINATIONS

871 18. (a) Where the terms of this Contract provide for actions to be based upon the
872 opinion or determination of either party to this Contract, said terms shall not be construed as
873 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
874 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly reserve
875 the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or
876 unreasonable opinion or determination. Each opinion or determination by either party shall be
877 provided in a timely manner. Nothing in subdivision (a) of Article 18 of this Contract is intended to
878 or shall affect or alter the standard of judicial review applicable under federal law to any opinion or
879 determination implementing a specific provision of federal law embodied in statute or regulation.

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

885 COORDINATION AND COOPERATION

886 19. (a) In order to further their mutual goals and objectives, the Contracting Officer
887 and the Contractor shall communicate, coordinate, and cooperate with each other, and with other
888 affected Project Contractors, in order to improve the operation and management of the Project. The

889 communication, coordination, and cooperation regarding operations and management shall include,
890 but not be limited to, any action which will or may materially affect the quantity or quality of Project
891 Water supply, the allocation of Project Water supply, and Project financial matters including, but not
892 limited to, budget issues. The communication, coordination, and cooperation provided for hereunder
893 shall extend to all provisions of this Contract. Each party shall retain exclusive decision making
894 authority for all actions, opinion, and determinations to be made by the respective party.

895 (b) Within one-hundred twenty (120) days following the effective date of this
896 Contract, the Contractor, other affected Project Contractors, and the Contracting Officer shall arrange
897 to meet with interested Project Contractors to develop a mutually agreeable, written Project-wide
898 process, which may be amended as necessary separate and apart from this Contract. The goal of this
899 process shall be to provide, to the extent practicable, the means of mutual communication and
900 interaction regarding significant decisions concerning Project operation and management on a real-
901 time basis.

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

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

908 (2) The Secretary will, as appropriate, pursue program and project
909 implementation and authorization in coordination with Project Contractors to improve the water

910 supply, water quality, and reliability of the Project for all Project purposes.

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

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

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

918 (d) Without limiting the contractual obligations of the Contracting Officer
919 hereunder, nothing in this Contract shall be construed to limit or constrain the Contracting Officer's
920 ability to communicate, coordinate, and cooperate with the Contractor or other interested stakeholders
921 or to make decisions in a timely fashion as needed to protect health, safety, physical integrity of
922 structures or facilities, or the Contracting Officer's ability to comply with applicable laws.

923 CHARGES FOR DELINQUENT PAYMENTS

924 20. (a) The Contractor shall be subject to interest, administrative and penalty charges
925 on delinquent installments or payments. When a payment is not received by the due date, the
926 Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date.
927 When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative
928 charge to cover additional costs of billing and processing the delinquent payment. When a payment is
929 delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six (6%)
930 percent per year for each day the payment is delinquent beyond the due date. Further, the Contractor
931 shall pay any fees incurred for debt collection services associated with a delinquent payment.

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

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

940 EQUAL OPPORTUNITY

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

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

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

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

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

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

968 (f) In the event of the Contractor's noncompliance with the nondiscrimination
969 clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be
970 canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible

971 for further Government contracts in accordance with procedures authorized in said amended
972 Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said
973 Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided
974 by law.

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

984 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

997 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

998 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42
999 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age
1000 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as
1001 well as with their respective implementing regulations and guidelines imposed by the U.S.
1002 Department of the Interior and/or Bureau of Reclamation.

1003 (b) These statutes require that no person in the United States shall, on the grounds
1004 of race, color, national origin, handicap, or age, be excluded from participation in, be denied the
1005 benefits of, or be otherwise subjected to discrimination under any program or activity receiving
1006 financial assistance from the Bureau of Reclamation. By executing this Contract, the Contractor
1007 agrees to immediately take any measures necessary to implement this obligation, including permitting
1008 officials of the United States to inspect premises, programs, and documents.

1009 (c) The Contractor makes this agreement in consideration of and for the purpose of
1010 obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial
1011 assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including
1012 installment payments after such date on account of arrangements for Federal financial assistance
1013 which were approved before such date. The Contractor recognizes and agrees that such Federal
1014 assistance will be extended in reliance on the representations and agreements made in this Article,
1015 and that the United States reserves the right to seek judicial enforcement thereof.

1016 PRIVACY ACT COMPLIANCE

1017 24. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a) (the
1018 Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et seq.) in
1019 maintaining Landholder acreage certification and reporting records, required to be submitted to the
1020 Contractor for compliance with Sections 206 and 228 of the Reclamation Reform Act of 1982 (96
1021 Stat. 1266), and pursuant to 43 CFR 426.18.

1022 (b) With respect to the application and administration of the criminal penalty
1023 provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible
1024 for maintaining the certification and reporting records referenced in (a) above are considered to be
1025 employees of the Department of the Interior. See 5 U.S.C. 552a(m).

1026 (c) The Contracting Officer or a designated representative shall provide the
1027 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau of
1028 Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior,
1029 Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information
1030 contained in the Landholder's certification and reporting records.

1031 (d) The Contracting Officer shall designate a full-time employee of the Bureau of
1032 Reclamation to be the System Manager who shall be responsible for making decisions on denials
1033 pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is
1034 authorized to grant requests by individuals for access to their own records.

1035 (e) The Contractor shall forward promptly to the System Manager each proposed
1036 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR
1037 2.71; notify the requester accordingly of such referral; and provide the System Manager with

1038 information and records necessary to prepare an appropriate response to the requester. These
1039 requirements do not apply to individuals seeking access to their own certification and reporting forms
1040 filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy
1041 Act as a basis for the request.

1042 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1043 25. In addition to all other payments to be made by the Contractor pursuant to this
1044 Contract, the Contractor shall pay to the United States, within sixty (60) days after receipt of a bill
1045 and detailed statement submitted by the Contracting Officer to the Contractor for such specific items
1046 of direct cost incurred by the United States for work requested by the Contractor associated with this
1047 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and
1048 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in
1049 writing in advance by the Contractor. This Article shall not apply to costs for routine contract
1050 administration.

1051 WATER CONSERVATION

1052 26. (a) Prior to the delivery of water provided from or conveyed through Federally
1053 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be
1054 implementing an effective water conservation and efficiency program based on the Contractor's water
1055 conservation plan that has been determined by the Contracting Officer to meet the conservation and
1056 efficiency criteria for evaluating water conservation plans established under Federal law. The water
1057 conservation and efficiency program shall contain definite water conservation objectives, appropriate
1058 economically feasible water conservation measures, and time schedules for meeting those objectives.
1059 Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's
1060 continued implementation of such water conservation program. In the event the Contractor's water

1061 conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of
1062 Article 26 of this Contract have not yet been determined by the Contracting Officer to meet such
1063 criteria, due to circumstances which the Contracting Officer determines are beyond the control of the
1064 Contractor, water deliveries shall be made under this Contract so long as the Contractor diligently
1065 works with the Contracting Officer to obtain such determination at the earliest practicable date, and
1066 thereafter the Contractor immediately begins implementing its water conservation and efficiency
1067 program in accordance with the time schedules therein.

1068 (b) Omitted.

1069 (c) The Contractor shall submit to the Contracting Officer a report on the status of
1070 its implementation of the water conservation plan on the reporting dates specified in the then existing
1071 conservation and efficiency criteria established under Federal law.

1072 (d) At five (5) -year intervals, the Contractor shall revise its water conservation
1073 plan to reflect the then current conservation and efficiency criteria for evaluating water conservation
1074 plans established under Federal law and submit such revised water management plan to the
1075 Contracting Officer for review and evaluation. The Contracting Officer will then determine if the
1076 water conservation plan meets Reclamation's then current conservation and efficiency criteria for
1077 evaluating water conservation plans established under Federal law.

1078 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall
1079 be described in the Contractor's water conservation plan.

1080 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1081 27. Except as specifically provided in Article 17 of this Contract, the provisions of this

1082 Contract shall not be applicable to or affect non-Project Water or water rights now owned or hereafter
1083 acquired by the Contractor or any user of such water within the Contractor's Service Area. Any such
1084 water shall not be considered Project Water under this Contract. In addition, this Contract shall not
1085 be construed as limiting or curtailing any rights which the Contractor or any water user within the
1086 Contractor's Service Area acquires or has available under any other contract pursuant to Federal
1087 Reclamation law.

1088 OPERATION AND MAINTENANCE BY NON-FEDERAL ENTITY

1089 28. (a) The Operation and Maintenance of a portion of the Project facilities which
1090 serve the Contractor, and responsibility for funding a portion of the costs of such Operation and
1091 Maintenance, have been transferred to the Operating Non-Federal Entity by separate agreement
1092 between the United States and the Operating Non-Federal Entity. That separate agreement shall not
1093 interfere with or affect the rights or obligations of the Contractor or the United States hereunder.

1094 (b) The Contracting Officer has previously notified the Contractor in writing that
1095 the Operation and Maintenance of a portion of the Project facilities which serve the Contractor has
1096 been transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly
1097 to the Operating Non-Federal Entity, or to any successor approved by the Contracting Officer under
1098 the terms and conditions of the separate agreement between the United States and the Operating Non-
1099 Federal Entity described in subdivision (a) of this Article, all rates, charges or assessments of any
1100 kind, including any assessment for reserve funds, which the Operating Non-Federal Entity or such
1101 successor determines, sets or establishes for (i) the Operation and Maintenance of the portion of the
1102 Project facilities operated and maintained by the Operating Non-Federal Entity or such successor, or

1103 (ii) the Friant Division’s share of the operation, maintenance and replacement costs for physical
1104 works and appurtenances associated with the Tracy Pumping Plant, the Delta-Mendota Canal, the
1105 O’Neill Pumping/Generating Plant, the federal share of the O’Neill Forebay, the Mendota Pool, and
1106 the federal share of San Luis Unit joint use conveyance and conveyance pumping facilities. Such
1107 direct payments to the Operating Non-Federal Entity or such successor shall not relieve the
1108 Contractor of its obligation to pay directly to the United States the Contractor’s share of the Project
1109 Rates, Charges, and Tiered Pricing Components except to the extent the Operating Non-Federal
1110 Entity collects payments on behalf of the United States in accordance with the separate agreement
1111 identified in subdivision (a) of this Article.

1112 (c) For so long as the Operation and Maintenance of any portion of the Project
1113 facilities serving the Contractor is performed by the Operating Non-Federal Entity, or any successor
1114 thereto, the Contracting Officer shall adjust those components of the Rates for Water Delivered under
1115 this Contract representing the cost associated with the activity being performed by the Operating Non-
1116 Federal Entity or its successor.

1117 (d) In the event the Operation and Maintenance of the Project facilities operated
1118 and maintained by the Operating Non-Federal Entity is re-assumed by the United States during the
1119 term of this Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to
1120 the Contractor a revised Exhibit “B” which shall include the portion of the Rates to be paid by the
1121 Contractor for Project Water under this Contract representing the Operation and Maintenance costs of
1122 the portion of such Project facilities which have been re-assumed. The Contractor shall, thereafter, in
1123 the absence of written notification from the Contracting Officer to the contrary, pay the Rates,

1124 Charges, and Tiered Pricing Component(s) specified in the revised Exhibit "B" directly to the United
1125 States in compliance with Article 7 of this Contract.

1126 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1127 29. The expenditure or advance of any money or the performance of any obligation of the
1128 United States under this Contract shall be contingent upon appropriation or allotment of funds.
1129 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
1130 under this Contract. No liability shall accrue to the United States in case funds are not appropriated
1131 or allotted.

1132 BOOKS, RECORDS, AND REPORTS

1133 30. (a) The Contractor shall establish and maintain accounts and other books and
1134 records pertaining to administration of the terms and conditions of this Contract, including: the
1135 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;
1136 the water users' land-use (crop census), land ownership, land-leasing and water use data; and other
1137 matters that the Contracting Officer may require. Reports thereon shall be furnished to the
1138 Contracting Officer in such form and on such date or dates as the Contracting Officer may require.
1139 Subject to applicable Federal laws and regulations, each party to this Contract shall have the right
1140 during office hours to examine and make copies of the other party's books and records relating to
1141 matters covered by this Contract.

1142 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,
1143 records, or other information shall be requested from the Contractor by the Contracting Officer unless
1144 such books, records, or information are reasonably related to the administration or performance of
1145 this Contract. Any such request shall allow the Contractor a reasonable period of time within which
1146 to provide the requested books, records, or information.

1147 (c) At such time as the Contractor provides information to the Contracting Officer
1148 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the
1149 Operating Non-Federal Entity.

1150 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1173 Contract available to the Contractor pursuant to the provisions of this Contract which were not found
1174 to be legally invalid or unenforceable in the final court decision.

1175 RESOLUTION OF DISPUTES

1176 33. Should any dispute arise concerning any provisions of this Contract, or the parties'
1177 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the
1178 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring
1179 any matter to Department of Justice, the party shall provide to the other party thirty (30) days' written
1180 notice of the intent to take such action; Provided, That such notice shall not be required where a delay
1181 in commencing an action would prejudice the interests of the party that intends to file suit. During
1182 the thirty (30) -day notice period, the Contractor and the Contracting Officer shall meet and confer in
1183 an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to waive
1184 or abridge any right or remedy that the Contractor or the United States may have.

1185 OFFICIALS NOT TO BENEFIT

1186 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1187 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1188 manner as other water users or landowners.

1189 CHANGES IN CONTRACTOR'S SERVICE AREA

1190 35. (a) While this Contract is in effect, no change may be made in the Contractor's
1191 Service Area or boundaries, by inclusion or exclusion of lands, dissolution, consolidation, merger, or
1192 otherwise, except upon the Contracting Officer's written consent.

1193 (b) Within thirty (30) days of receipt of a request for such a change, the
1194 Contracting Officer will notify the Contractor of any additional information required by the
1195 Contracting Officer for processing said request, and both parties will meet to establish a mutually

1196 agreeable schedule for timely completion of the process. Such process will analyze whether the
1197 proposed change is likely to: (i) result in the use of Project Water contrary to the terms of this
1198 Contract; (ii) impair the ability of the Contractor to pay for Project Water furnished under this
1199 Contract or to pay for any Federally-constructed facilities for which the Contractor is responsible; and
1200 (iii) have an impact on any Project Water rights applications, permits, or licenses. In addition, the
1201 Contracting Officer shall comply with the National Environmental Policy Act and the Endangered
1202 Species Act. The Contractor will be responsible for all costs incurred by the Contracting Officer in
1203 this process, and such costs will be paid in accordance with Article 25 of this Contract.

1204 FEDERAL LAWS

1205 36. By entering into this Contract, the Contractor does not waive its rights to contest the
1206 validity or application in connection with the performance of the terms and conditions of this
1207 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the
1208 terms and conditions of this Contract unless and until relief from application of such Federal law or
1209 regulation to the implementing provision of the Contract is granted by a court of competent
1210 jurisdiction.

1211 NOTICES

1212 37. Any notice, demand, or request authorized or required by this Contract shall be
1213 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered
1214 to the Area Manager, South-Central California Area Office, 1243 "N" Street, Fresno, California
1215 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board of
1216 Directors of the Chowchilla Water District, PO Box 905, Chowchilla, California 93610. The
1217 designation of the addressee or the address may be changed by notice given in the same manner as
1218 provided in this Article for other notices.

1219 CONFIRMATION OF CONTRACT

1220 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a
1221 decree of a court of competent jurisdiction of the State of California, confirming the execution of this
1222 Contract. The Contractor shall furnish the United States a certified copy of the final decree, the
1223 validation proceedings, and all pertinent supporting records of the court approving and confirming
1224 this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

1225 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and
1226 year first above written.

THE UNITED STATES OF AMERICA

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

CHOWCHILLA WATER DISTRICT

By: _____
President of the Board of Directors

Attest:

By: _____
Secretary of the Board of Directors

Contract No. I75r-2358-LTR1

EXHIBIT A

[Map or Description of Service Area]

Contract No. I75r-2358-LTR1

EXHIBIT B
[Initial Rates and Charges]

(P:\cvpia\3404c\exhibits\friant\chow.wpd)