

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 GARFIELD 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 GARFIELD WATER DISTRICT, hereinafter referred
18 to as the Contractor, a public agency of the State of California, duly organized, existing, and acting
19 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 [4th] WHEREAS, the Contractor and the United States entered into Contract No. 14-06-
43 200-9421, as amended, which established terms for the delivery to the Contractor of Project Water
44 from the Friant Division from July 24, 1961, to February 28, 1995; and

45 [5th] WHEREAS, the Contractor and the United States have pursuant to subsection

46 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into
47 interim renewal contract(s) identified as Contract No(s). 14-06-200-9421-IR1, IR2, IR3, and IR4, the
48 current of which is hereinafter referred to as the Existing Contract, which provided for the continued
49 water service to the Contractor from December 1, 2000, through February 28, 2001; and

50 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of interim
51 and existing long-term Project Water service contracts following completion of appropriate
52 environmental documentation, including a programmatic environmental impact statement (PEIS)
53 pursuant to the National Environmental Policy Act analyzing the direct and indirect impacts and
54 benefits of implementing the CVPIA and the potential renewal of all existing contracts for Project
55 Water; and

56 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
57 environmental review necessary to provide for long-term renewal of the Existing Contract; and

58 [8th] WHEREAS, the Contractor has requested the long-term renewal of the Existing
59 Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws of the
60 State of California, for water service from the Central Valley Project; and

61 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all of
62 its obligations under the Existing Contract; and

63 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting
64 Officer that the Contractor has utilized the Central Valley Project Water supplies available to it for
65 reasonable and beneficial use and/or has demonstrated projected future demand for water use such
66 that the Contractor has the capability and expects to utilize fully for reasonable and beneficial use the

67 quantity of Project Water to be made available to it pursuant to this Contract; and

68 [11th] WHEREAS, water obtained from the Central Valley Project has been relied upon by
69 urban and agricultural areas within California for more than fifty (50) years, and is considered by the
70 Contractor as an essential portion of its water supply; and

71 [12th] WHEREAS, the economies of regions within the Central Valley Project, including the
72 Contractor's, depend upon the continued availability of water, including water service from the
73 Central Valley Project; and

74 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships
75 to pursue measures to improve water supply, water quality, and reliability of the Project for all Project
76 purposes; and

77 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to
78 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment of
79 the Central Valley Project as required by law; to guard reasonably against Project Water shortages; to
80 achieve a reasonable balance among competing demands for use of Project Water; and to comply
81 with all applicable environmental statutes, all consistent with the legal obligations of the United
82 States relative to the Central Valley Project; and

83 [15th] WHEREAS, Omitted; and

84 [15.1] WHEREAS, during Uncontrolled Seasons, Friant Division Project Contractors utilize
85 undependable Class 2 Water in their service areas to, among other things, assist in the management
86 and alleviation of groundwater overdraft in the Friant Division service area, provide opportunities for
87 environmental enhancement, including restoration of the San Joaquin River below Friant Dam,

88 minimize flooding along the San Joaquin River, encourage optimal water management, and maximize
89 the reasonable and beneficial use of the water; and

90 [15.2] WHEREAS, the parties desire and intend that this Contract not provide a disincentive
91 to the Friant Division Project Contractors continuing to carry out the beneficial activities set out in
92 the Explanatory Recital immediately above; and

93 [16th] WHEREAS, the United States and the Contractor are willing to enter into this
94 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

97 DEFINITIONS

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

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

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

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

109 (b3) "Class 2 Water" shall mean that supply of water which can be made available
110 subject to the contingencies hereinafter described in Articles 3, 11, and 12 of this Contract for
111 delivery from Millerton Lake and the Friant-Kern and Madera Canals in addition to the supply of
112 Class 1 Water. Because of its uncertainty as to availability and time of occurrence, such water will be
113 undependable in character and will be furnished only if, as, and when it can be made available as
114 determined by the Contracting Officer;

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

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

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

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

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

129 (h) "Eligible Lands" shall mean all lands to which Irrigation Water may be

130 delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982 (96
131 Stat. 1263), as amended, hereinafter referred to as RRA;

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

135 (j) "Full Cost Rate" shall mean that water rate described in Sections 205(a)(3) or
136 202(3) of the RRA, whichever is applicable;

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

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

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

150 (n) "Landholder" shall mean a party that directly or indirectly owns or leases

151 nonexempt land, as provided in 43 CFR 426.2;

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

155 (o) Omitted;

156 (p) "M&I Full Cost Water Rate" shall mean the annual rate, which, as determined
157 by the Contracting Officer, shall amortize the expenditures for construction allocable to Project M&I
158 facilities in service, including, O&M deficits funded, less payments, over such periods as may be
159 required under Federal Reclamation law with interest accruing from the dates such costs were first
160 incurred plus the applicable rate for the O&M of such Project facilities. Interest rates used in the
161 calculation of the M&I Full Cost Rate shall comply with the Interest Rate methodology contained in
162 Section 202 (3) (B) and (C) of the RRA;

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

166 (r) "Operating Non-Federal Entity" shall mean the Friant Water Users Authority, a
167 Non-Federal entity which has the obligation to operate and maintain all or a portion of the Friant
168 Division facilities pursuant to an agreement with the United States, and which may have funding
169 obligations with respect thereto;

170 (r2) "Other Water" shall mean water from the Project other than Irrigation Water as
171 described in subdivision (l) of this Article, which is used for a purpose that is considered to be an

172 irrigation use pursuant to State law such as the watering of landscaping or pasture for animals (e.g.,
173 horse) which are kept for the personal enjoyment.

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

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

178 (u) "Project Water" shall mean all water that is developed, diverted, stored, or
179 delivered by the Secretary in accordance with the statutes authorizing the Project and in accordance
180 with the terms and conditions of water rights acquired pursuant to California law;

181 (v) "Rates" shall mean the payments determined annually by the Contracting
182 Officer in accordance with the then current applicable water ratesetting policies for the Project, as
183 described in subdivision (a) of Article 7 of this Contract;

184 (w) Omitted;

185 (x) "Secretary" shall mean the Secretary of the Interior, a duly appointed
186 successor, or an authorized representative acting pursuant to any authority of the Secretary and
187 through any agency of the Department of the Interior;

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

190 (y2) "Uncontrolled Season" is any time during the Year the Contracting Officer
191 determines that a need exists to evacuate water from Millerton Lake in order to prevent or minimize
192 spill or to meet flood control criteria, taking into consideration, among other things, anticipated

193 upstream reservoir operations and the most probable forecast of snowmelt and runoff projections for
194 the upper San Joaquin River;

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

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

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

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

205 TERM OF CONTRACT

206 2. (a) This Contract shall be effective March 1, 2001, through February 28, 2026. In
207 the event the Contractor wishes to renew the Contract beyond February 28, 2026, the Contractor shall
208 submit a request for renewal in writing to the Contracting Officer no later than two (2) years prior to
209 the date this Contract expires. The renewal of this Contract insofar as it pertains to the furnishing of
210 Irrigation Water to the Contractor shall be governed by subdivision (b) of this Article.

211 (b) (1) Under terms and conditions of a renewal contract that are mutually
212 agreeable to the parties hereto, and upon a determination by the Contracting Officer that at the time of
213 contract renewal the conditions set forth in subdivision (b)(2) of this Article are met, and subject to

214 Federal and State law, this Contract, insofar as it pertains to the furnishing of Irrigation Water to the
215 Contractor, shall be renewed for a period of twenty-five (25) years.

216 (2) The conditions which must be met for this Contract to be renewed are:

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

229 (3) The terms and conditions of the renewal contract described in
230 subdivision (b)(1) of this Article and any subsequent renewal contracts shall be developed consistent
231 with the parties' respective legal rights and obligations, and in consideration of all relevant facts and
232 circumstances, as those circumstances exist at the time of renewal, including, without limitation, the
233 Contractor's need for continued delivery of Project Water; environmental conditions affected by
234 implementation of the Contract to be renewed, and specifically changes in those conditions that

235 occurred during the life of the Contract to be renewed; the Secretary's progress toward achieving the
236 purposes of the CVPIA as set out in Section 3402 and in implementing the specific provisions of the
237 CVPIA; and current and anticipated economic circumstances of the region served by the Contractor.

238 (c) Omitted.

239 (d) The Contracting Officer anticipates that by December 31, 2024, all authorized
240 project construction expected to occur will have occurred, and on that basis the Contracting Officer
241 agrees by that date to allocate all costs that are properly assignable to the Contractor, and agrees
242 further that, at any time after such allocation is made, and subject to satisfaction of the condition set
243 out in this subdivision, this Contract shall, at the request of the Contractor, be converted to a contract
244 under subsection (d) , Section 9 of the Reclamation Project Act of 1939, subject to applicable Federal
245 law and under stated terms and conditions mutually agreeable to the Contractor and the Contracting
246 Officer. A condition for such conversion to occur shall be a determination by the Contracting Officer
247 that, account being taken of the amount credited to return by the Contractor as provided for under
248 Reclamation law, the remaining amount of construction costs assignable for ultimate return by the
249 Contractor can probably be repaid to the United States within the term of a contract under said
250 subsection (d). If the remaining amount of costs that are properly assignable to the Contractor cannot
251 be determined by December 31, 2024, the Contracting Officer shall notify the Contractor, and provide
252 the reason(s) why such a determination could not be made. Further, the Contracting Officer shall
253 make such a determination as soon thereafter as possible so as to permit, upon request of the
254 Contractor and satisfaction of the condition set out above, conversion to a contract under said
255 subsection (d). In the event such determination of costs has not been made at a time which allows

256 conversion of this Contract during the term of this Contract or the Contractor has not requested
257 conversion of this Contract within such term, the parties shall incorporate in any subsequent renewal
258 contract as described in subdivision (b) of this Article a provision that carries forth in substantially
259 identical terms the provisions of this subdivision. In the event the Contracting Officer is able to make
260 a determination of the remaining amount of costs that are properly assignable to the Contractor before
261 December 31, 2024, the Contracting Officer shall do so at the earliest time the Contracting Officer
262 has such ability.

263 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

264 3. (a) During each Year, consistent with all applicable State water rights, permits,
265 and licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this Contract,
266 the Contracting Officer shall make available for delivery to the Contractor 3,500 acre-feet of Class 1
267 Water for irrigation purposes. The quantity of Water Delivered to the Contractor in accordance with
268 this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this
269 Contract.

270 (b) Omitted.

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

273 (d) The Contractor shall make reasonable and beneficial use of all Project Water or
274 other water furnished pursuant to this Contract. Groundwater recharge programs, groundwater
275 banking programs, surface water storage programs, and other similar programs utilizing Project
276 Water or other water furnished pursuant to this Contract conducted within the Contractor's Service

277 Area which are consistent with applicable State law and result in use consistent with Reclamation law
278 will be allowed; Provided, That any direct recharge program(s) is (are) described in the Contractor's
279 Water Conservation Plan submitted pursuant to Article 26 of this Contract; Provided, further, That
280 such Water Conservation Plan demonstrates sufficient lawful uses exist in the Contractor's Service
281 Area so that using a long-term average, the quantity of Delivered Water is demonstrated to be
282 reasonable for such uses and in compliance with Reclamation law. Groundwater recharge programs,
283 groundwater banking programs, surface water storage programs, and other similar programs utilizing
284 Project Water or other water furnished pursuant to this Contract conducted outside the Contractor's
285 Service Area may be permitted upon written approval of the Contracting Officer, which approval will
286 be based upon environmental documentation, Project Water rights, and Project operational concerns.
287 The Contracting Officer will address such concerns in regulations, policies, or guidelines.

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

297 (f) Subject to subdivisions (l) and (n) of Article 3 of this Contract, following the

298 declaration of Water Made Available under Article 4 of this Contact, the Contracting Officer will
299 make a determination whether Project Water, or other water available to the Project, can be made
300 available to the Contractor in addition to the Contract Total under Article 3 of this Contract during
301 the Year without adversely impacting other Project Contractors. At the request of the Contractor, the
302 Contracting Officer will consult with the Contractor prior to making such a determination. Subject to
303 subdivisions (l) and (n) of Article 3 of this Contract, if the Contracting Officer determines that Project
304 Water, or other water available to the Project, can be made available to the Contractor, the
305 Contracting Officer will announce the availability of such water and shall so notify the Contractor as
306 soon as practical. The Contracting Officer will thereafter meet with the Contractor and other Project
307 Contractors capable of taking such water to determine the most equitable and efficient allocation of
308 such water. If the Contractor requests the delivery of any quantity of such water, the Contracting
309 Officer shall make such water available to the Contractor in accordance with applicable statutes,
310 regulations, guidelines, and policies.

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

317 (h) The Contractor’s right pursuant to Federal Reclamation law and applicable
318 State law to the reasonable and beneficial use of Water Delivered pursuant to this Contract during the

319 term thereof and any subsequent renewal contracts, as described in Article 2 of this Contract, during
320 the terms thereof shall not be disturbed so long as the Contractor shall fulfill all of its obligations
321 under this Contract and any renewals thereof. Nothing in the preceding sentence shall affect the
322 Contracting Officer's ability to impose shortages under Article 11 or subdivision (b) of Article 12 of
323 this Contract or applicable provisions of any subsequent renewal contracts.

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

328 (j) The Contracting Officer shall make reasonable efforts to protect the water
329 rights and other rights described in the third (3rd) Explanatory Recital of this Contract and to provide
330 the water available under this Contract. The Contracting Officer shall not object to participation by
331 the Contractor, in the capacity and to the extent permitted by law, in administrative proceedings
332 related to the water rights and other rights described in the third (3rd) Explanatory Recital of this
333 Contract; Provided, however, That the Contracting Officer retains the right to object to the substance
334 of the Contractor's position in such a proceeding.

335 (k) Project Water furnished to the Contractor during any month designated in a
336 schedule or revised schedule submitted by the Contractor and approved by the Contracting Officer
337 shall be deemed to have been accepted by the Contractor as Class 1 Water to the extent that Class 1
338 Water is called for in such schedule for such month and shall be deemed to have been accepted as
339 Class 2 Water to the extent Class 2 Water is called for in such schedule for such month. If in any

340 month the Contractor diverts a quantity of water in addition to the total amount of Class 1 Water and
341 Class 2 Water set forth in the Contractor's approved schedule or revised schedule for such month,
342 such additional diversions shall be charged first against the Contractor's remaining Class 2 Water
343 supply available in the current Year. To the extent the Contractor's remaining Class 2 Water supply
344 available in the current Year is not sufficient to account for such additional diversions, such
345 additional diversions shall be charged against the Contractor's remaining Class 1 Water supply
346 available in the current Year. To the extent the Contractor's remaining Class 1 Water and Class 2
347 Water supplies available in the current Year are not sufficient to account for such additional
348 diversions, such additional diversions shall be charged first against the Contractor's available Class 2
349 Water supply and then against the Contractor's available Class 1 Water supply, both for the following
350 Year. Payment for all additional diversions of water shall be made in accordance with Article 7 of
351 this Contract.

352 (l) If the Contracting Officer determines there is a Project Water supply available
353 at Friant Dam as the result of an unusually large water supply not otherwise storable for Project
354 purposes or infrequent and otherwise unmanaged flood flows of short duration, such water will be
355 made available to the Contractor and others under Section 215 of the RRA pursuant to the priorities
356 specified below if the Contractor enters into a temporary contract with the United States not to exceed
357 one (1) year for the delivery of such water or, as otherwise provided for in Federal Reclamation law
358 and associated regulations. Such water may be identified by the Contractor either (i) as additional
359 water to supplement the supply of Class 1 Water and/or Class 2 Water made available to it pursuant
360 to this Contract or, (ii) upon written notification to the Contracting Officer, as water to be credited

361 against the Contractor's Class 2 Water supply available pursuant to this Contract. The Contractor
362 shall deliver such water to Eligible Lands, or to Excess Lands in accordance with this Article. The
363 Contracting Officer shall make water determined to be available pursuant to this subsection according
364 to the following priorities: first, to long-term contractors for Class 1 Water and/or Class 2 Water
365 within the Friant Division; second, to long-term contractors in the Cross Valley Division of the
366 Project. The Contracting Officer will consider and seek to accommodate requests from other parties
367 for Section 215 Water for use within the area identified as the Friant Division service area in the
368 environmental assessment developed in connection with the execution of this Contract.

369 (m) Nothing in this Contract, nor any action or inaction of the Contractor or
370 Contracting Officer in connection with the implementation of this Contract, is intended to override,
371 modify, supersede or otherwise interfere with any term or condition of the water rights and other
372 rights referred in the third (3rd) Explanatory Recital of this Contract.

373 (n) The rights of the Contractor under this Contract are subject to the terms of the
374 contract for exchange waters, dated July 27, 1939, between the United States and the San Joaquin and
375 Kings River Canal and Irrigation Company, Incorporated, et al., (hereinafter referred to as the
376 Exchange Contractors), Contract No. IIr-1144, as amended. The United States agrees that it will not
377 deliver to the Exchange Contractors thereunder waters of the San Joaquin River unless and until
378 required by the terms of said contract, and the United States further agrees that it will not voluntarily
379 and knowingly determine itself unable to deliver to the Exchange Contractors entitled thereto from
380 water that is available or that may become available to it from the Sacramento River and its
381 tributaries or the Sacramento-San Joaquin Delta those quantities required to satisfy the obligations of

382 the United States under said Exchange Contract and under Schedule 2 of the Contract for Purchase of
383 Miller and Lux Water Rights (Contract I1r-1145, dated July 27, 1939).

384 TIME FOR DELIVERY OF WATER

385 (4) (a) On or about February 20 of each Calendar Year, the Contracting Officer shall
386 announce the Contracting Officer's expected declaration of the Water Made Available. The
387 declaration will be updated monthly, and more frequently if necessary, based on then-current
388 operational and hydrologic conditions and a new declaration with changes, if any, to the Water Made
389 Available will be made. The Contracting Officer shall provide forecasts of Project operations and the
390 basis of the estimate, with relevant supporting information, upon the written request of the
391 Contractor. Concurrently with the declaration of the Water Made Available, the Contracting Officer
392 shall provide the Contractor with the updated Long Term Historic Average. The declaration of
393 Project operations will be expressed in terms of both Water Made Available and the Long Term
394 Historic Average.

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

401 (c) The Contractor shall not schedule Project Water in excess of the quantity of
402 Project Water the Contractor intends to put to reasonable and beneficial use within the Contractor's

403 Service Area or to sell, transfer or exchange pursuant to Article 9 of this Contract during any Year.

404 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this
405 Contract, the United States shall deliver Project Water to the Contractor in accordance with the initial
406 schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any written
407 revision(s), satisfactory to the Contracting Officer, thereto submitted within a reasonable time prior to
408 the date(s) on which the requested change(s) is/are to be implemented; Provided, That the total
409 amount of water requested in that schedule or revision does not exceed the quantities announced by
410 the Contracting Officer pursuant to the provisions of subdivision (a) of Article 3, and the Contracting
411 Officer determines that there will be sufficient capacity available in the appropriate Friant Division
412 facilities to deliver the water in accordance with that schedule: Provided, further, That the Contractor
413 shall not schedule the delivery of any water during any period as to which the Contractor is notified
414 by the Contracting Officer or Operating Non-Federal Entity that Project facilities required to make
415 deliveries to the Contractor will not be in operation because of scheduled O&M.

416 (e) The Contractor may, during the period from and including November 1 of each
417 Year through and including the last day of February of that Year, request delivery of any amount of
418 the Class 1 Water estimated by the Contracting Officer to be made available to it during the following
419 Year. The Contractor may, during the period from and including January 1 of each Year (or such
420 earlier date as may be determined by the Contracting Officer) through and including the last day of
421 February of that Year, request delivery of any amount of Class 2 Water estimated by the Contracting
422 Officer to be made available to it during the following Year. Such water shall hereinafter be referred
423 to as preuse water. Such request must be submitted in writing by the Contractor for a specified

424 quantity of preuse and shall be subject to the approval of the Contracting Officer. Payment for preuse
425 water so requested shall be at the appropriate rate(s) for the following Year in accordance with
426 Article 7 of this Contract and shall be made in advance of delivery of any preuse water. The
427 Contracting Officer shall deliver such preuse water in accordance with a schedule or any revision
428 thereof submitted by the Contractor and approved by the Contracting Officer, to the extent such water
429 is available and to the extent such deliveries will not interfere with the delivery of Project Water
430 entitlements to other Friant Division contractors or the physical maintenance of the Project facilities.
431 The quantities of preuse water delivered pursuant to this subdivision shall be deducted from the
432 quantities of water that the Contracting Officer would otherwise be obligated to make available to the
433 Contractor during the following Year; Provided, That the quantity of preuse water to be deducted
434 from the quantities of either Class 1 Water or Class 2 Water to be made available to the Contractor in
435 the following Year shall be specified by the Contractor at the time the preuse water is requested or as
436 revised in its first schedule for the following Year submitted in accordance with subdivision (b) of
437 this Article, based on the availability of the following Year water supplies as determined by the
438 Contracting Officer.

439 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

444 (b) The Contracting Officer, the Operating Non-Federal Entity, or other

445 appropriate entity shall make all reasonable efforts to maintain sufficient flows and levels of water in
446 the Friant-Kern Canal to deliver Project Water to the Contractor at specific turnouts established
447 pursuant to subdivision (a) of this Article.

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

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

462 (e) Neither the Contracting Officer nor any Operating Non-Federal Entity shall be
463 responsible for the control, carriage, handling, use, disposal, or distribution of Project Water
464 Delivered to the Contractor pursuant to this Contract beyond the delivery points specified in
465 subdivision (a) of this Article. The Contractor shall indemnify the United States, its officers,

466 employees, agents, and assigns on account of damage or claim of damage of any nature whatsoever
467 for which there is legal responsibility, including property damage, personal injury, or death arising out
468 of or connected with the control, carriage, handling, use, disposal, or distribution of such Project
469 Water beyond such delivery points, except for any damage or claim arising out of: (i) acts or
470 omissions of the Contracting Officer or any of its officers, employees, agents, or assigns, including
471 any responsible Operating Non-Federal Entity, with the intent of creating the situation resulting in any
472 damage or claim; (ii) willful misconduct of the Contracting Officer or any of its officers, employees,
473 agents, or assigns, including any responsible Operating Non-Federal Entity; (iii) negligence of the
474 Contracting Officer or any of its officers, employees, agents, or assigns including any responsible
475 Operating Non-Federal Entity; or (iv) damage or claims resulting from a malfunction of facilities
476 owned and/or operated by the United States or responsible Operating Non-Federal Entity; Provided,
477 That the Contractor is not the Operating Non-Federal Entity that owned or operated the
478 malfunctioning facility(ies) from which the damage claim arose.

479 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

480 6. (a) The Contractor established a measurement program satisfactory to the
481 Contracting Officer, all surface water delivered for irrigation purposes within the Contractor's Service
482 Area is measured at each agricultural turnout. The water measuring devices or water measuring
483 methods of comparable effectiveness must be acceptable to the Contracting Officer. The Contractor
484 shall be responsible for installing, operating, and maintaining and repairing all such measuring
485 devices and implementing all such water measuring methods at no cost to the United States. The
486 Contractor shall use the information obtained from such water measuring devices or water measuring

487 methods to ensure its proper management of the water, to bill water users for water delivered by the
488 Contractor. Nothing herein contained, however, shall preclude the Contractor from establishing and
489 collecting any charges, assessments, or other revenues authorized by California law. The Contractor
490 shall include a summary of all its annual surface water deliveries in the annual report described in
491 subdivision (c) of Article 26.

492 (b) To the extent the information has not otherwise been provided, upon execution
493 of this Contract, the Contractor shall provide to the Contracting Officer a written report describing the
494 measurement devices or water measuring methods being used or to be used to implement subdivision
495 (a) of this Article and identifying the agricultural turnouts or alternative measurement programs
496 approved by the Contracting Officer, at which such measurement devices or water measuring
497 methods are being used, and, if applicable, identifying the locations at which such devices and/or
498 methods are not yet being used including a time schedule for implementation at such locations. The
499 Contracting Officer shall advise the Contractor in writing within sixty (60) days as to the adequacy of,
500 and necessary modifications, if any, of the measuring devices or water measuring methods identified
501 in the Contractor's report and if the Contracting Officer does not respond in such time, they shall be
502 deemed adequate. If the Contracting Officer notifies the Contractor that the measuring devices or
503 methods are inadequate, the parties shall within sixty (60) days following the Contracting Officer's
504 response, negotiate in good faith the earliest practicable date by which the Contractor shall modify
505 said measuring devices and/or measuring methods as required by the Contracting Officer to ensure
506 compliance with subdivision (a) of this Article.

507 (c) All new surface water delivery systems installed within the Contractor's

508 Service Area after the effective date of this Contract shall also comply with the measurement
509 provisions described in subdivision (a) of this Article.

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

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

516 RATES AND METHOD OF PAYMENT FOR WATER

517 7. (a) The Contractor shall pay the United States as provided in this Article for all
518 Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance
519 with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's
520 then-existing ratesetting policy for M&I Water. Such ratesetting policies shall be amended, modified,
521 or superseded only through a public notice and comment procedure; (ii) applicable Reclamation law
522 and associated rules and regulations, or policies; and (iii) other applicable provisions of this Contract.
523 Payments shall be made by cash transaction, wire, or any other mechanism as may be agreed to in
524 writing by the Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing
525 Components applicable to the Contractor upon execution of this Contract are set forth in Exhibit "B",
526 as may be revised annually.

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

529 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
530 provide the Contractor an estimate of the Charges for Project Water that will be applied to the period
531 October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and
532 the basis for such estimate. The Contractor shall be allowed not less than two (2) months to review
533 and comment on such estimates. On or before September 15 of each Calendar Year, the Contracting
534 Officer shall notify the Contractor in writing of the Charges to be in effect during the period October
535 1 of the current Calendar Year, through September 30, of the following Calendar Year, and such
536 notification shall revise Exhibit "B."

537 (2) Prior to October 1 of each Calendar Year, the Contracting Officer shall
538 make available to the Contractor an estimate of the Rates and Tiered Pricing Components for Project
539 Water for the following Year and the computations and cost allocations upon which those Rates are
540 based. The Contractor shall be allowed not less than two (2) months to review and comment on such
541 computations and cost allocations. By December 31 of each Calendar Year, the Contracting Officer
542 shall provide the Contractor with the final Rates and Tiered Pricing Components to be in effect for
543 the upcoming Year, and such notification shall revise Exhibit "B".

544 (c) At the time the Contractor submits the initial schedule for the delivery of
545 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor
546 shall make an advance payment to the United States equal to the total amount payable pursuant to the
547 applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be
548 delivered pursuant to this Contract during the first two (2) calendar months of the Year. Before the
549 end of the first month and before the end of each calendar month thereafter, the Contractor shall make

550 an advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for
551 the Water Scheduled to be delivered pursuant to this Contract during the second month immediately
552 following. Adjustments between advance payments for Water Scheduled and payments at Rates due
553 for Water Delivered shall be made before the end of the following month; Provided, That any revised
554 schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the
555 amount of Water Delivered pursuant to this Contract during any month shall be accompanied with
556 appropriate advance payment, at the Rates then in effect, to assure that Project Water is not delivered
557 to the Contractor in advance of such payment. In any month in which the quantity of Water Delivered
558 to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid for by the
559 Contractor, no additional Project Water shall be delivered to the Contractor unless and until an
560 advance payment at the Rates then in effect for such additional Project Water is made. Final
561 adjustment between the advance payments for the Water Scheduled and payments for the quantities
562 of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable
563 but no later than April 30th of the following Year, or sixty (60) days after the delivery of Project
564 Water carried over under subdivision (f) of Article 3 of this Contract if such water is not delivered by
565 the last day of February.

566 (d) The Contractor shall also make a payment in addition to the Rate(s) in
567 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
568 appropriate Tiered Pricing Component then in effect, before the end of the month following the
569 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered
570 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be consistent

571 with the quantities of Irrigation Water and Other Water Delivered as shown in the water delivery
572 report for the subject month prepared by the Operating Non-Federal Entity or, if there is no Operating
573 Non-Federal Entity, by the Contracting Officer. Such water delivery report shall be the basis for
574 payment of Charges and Tiered Pricing Components by the Contractor, and shall be provided to the
575 Contractor by the Operating Non-Federal Entity or the Contracting Officer (as applicable) within five
576 (5) days after the end of the month of delivery. The water delivery report shall be deemed a bill for
577 the payment of Charges and the applicable Tiered Pricing Component for Water Delivered.
578 Adjustment for overpayment or underpayment of Charges shall be made through the adjustment of
579 payments due to the United States for Charges for the next month. Any amount to be paid for past
580 due payment of Charges and the Tiered Pricing Component shall be computed pursuant to Article 20
581 of this Contract.

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

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

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

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

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

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

609 (j) (1) Beginning at such time as the total of the deliveries of Class 1 Water
610 and Class 2 Water in a Year exceed eighty (80%) percent of the Contract Total, then before the end of
611 the month following the month of delivery the Contractor shall make an additional payment to the
612 United States equal to the applicable Tiered Pricing Component. The Tiered Pricing Component for

613 the total of the deliveries of Class 1 Water and Class 2 Water in excess of eighty (80) percent of the
614 Contract Total, but less than or equal to ninety (90) percent of the Contract Total, shall equal the one-
615 half of the difference between the Rate established under subdivision (a) of Article 7 of this Contract
616 and the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable. The
617 Tiered Pricing Component for the total of the deliveries of Class 1 Water and Class 2 Water which
618 exceeds ninety (90) percent of the Contract Total shall equal the difference between (i) the Rate
619 established under subdivision (a) of Article 7 of this Contract and (ii) the Irrigation Full Cost Water
620 Rate or M&I Full Cost Water Rate, whichever is applicable. For purposes of this subdivision, Class 2
621 Water taken by the Contractor during an Uncontrolled Season shall not be included in the total of the
622 deliveries of Class 1 Water and Class 2 Water.

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

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

633 (k) For the term of this Contract, Rates under the respective ratesetting policies

634 will be established to recover only reimbursable Operation and Maintenance (including any deficits)
635 and capital costs of the Project, as those terms are used in the then-current Project ratesetting policies,
636 and interest, where appropriate, except in instances where a minimum Rate is applicable in
637 accordance with the relevant Project ratesetting policy. Changes of significance in practices which
638 implement the Contracting Officer's ratesetting policies will not be implemented until the
639 Contracting Officer has provided the Contractor an opportunity to discuss the nature, need, and
640 impact of the proposed change.

641 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA,
642 the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates adjusted
643 upward or downward to reflect the changed costs of delivery (if any) of the transferred Project Water
644 to the transferee's point of delivery in accordance with the then applicable CVP Ratesetting Policy. If
645 the Contractor is receiving lower Rates and Charges because of inability to pay and is transferring
646 Project Water to another entity whose Rates and Charges are not adjusted due to inability to pay, the
647 Rates and Charges for transferred Project Water shall be the Contractor's Rates and Charges
648 unadjusted for ability to pay.

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

651 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

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

655 SALES, TRANSFERS, OR EXCHANGES OF WATER

656 9. (a) The right to receive Project Water provided for in this Contract may be sold,
657 transferred, or exchanged to others for reasonable and beneficial uses within the State of California if
658 such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable
659 guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this
660 Contract may take place without the prior written approval of the Contracting Officer, except as
661 provided for in subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be
662 approved absent compliance with appropriate environmental documentation including but not limited
663 to the National Environmental Policy Act and the Endangered Species Act. Such environmental
664 documentation should include, as appropriate, an analysis of groundwater impacts and economic and
665 social effects, including environmental justice, of the proposed water transfers on both the transferor
666 and transferee.

667 (b) In order to facilitate efficient water management by means of water transfers of
668 the type historically carried out among Project Contractors located within the same geographical area
669 and to allow the Contractor to participate in an accelerated water transfer program during the term of
670 this Contract, the Contracting Officer shall prepare, as appropriate, necessary environmental
671 documentation including, but not limited to, the National Environmental Policy Act and the
672 Endangered Species Act analyzing annual transfers within such geographical areas and the
673 Contracting Officer shall determine whether such transfers comply with applicable law. Following
674 the completion of the environmental documentation, such transfers addressed in such documentation
675 shall be conducted with advance notice to the Contracting Officer, but shall not require prior written

676 approval by the Contracting Officer. Such environmental documentation and the Contracting
677 Officer's compliance determination shall be reviewed every five (5) years and updated, as necessary,
678 prior to the expiration of the then existing five (5) -year period. All subsequent environmental
679 documentation shall include an alternative to evaluate not less than the quantity of Project Water
680 historically transferred within the same geographical area.

681 (c) For a water transfer to qualify under subdivision (b) of this Article, such water
682 transfer must: (i) be for irrigation purposes for lands irrigated within the previous three (3) years, for
683 M&I use, groundwater recharge, groundwater banking, similar groundwater activities, surface water
684 storage, or fish and wildlife resources; not lead to land conversion; and be delivered to established
685 cropland, wildlife refuges, groundwater basins or municipal and industrial use; (ii) occur within a
686 single Year; (iii) occur between a willing seller and a willing buyer; (iv) convey water through
687 existing facilities with no new construction or modifications to facilities and be between existing
688 Project Contractors and/or the Contractor and the United States, Department of the Interior; and (v)
689 comply with all applicable Federal, State, and local or tribal laws and requirements imposed for
690 protection of the environment and Indian Trust Assets, as defined under Federal law.

691 APPLICATION OF PAYMENTS AND ADJUSTMENTS

692 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,
693 Capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of
694 the Contractor arising out of this Contract then due and payable. Overpayments of more than One
695 Thousand Dollars (\$1,000) shall be refunded at the Contractor's request. In lieu of a refund, any
696 amount of such overpayment at the option of the Contractor, may be credited against amounts to

697 become due to the United States by the Contractor. With respect to overpayment, such refund or
698 adjustment shall constitute the sole remedy of the Contractor or anyone having or claiming to have
699 the right to the use of any of the Project Water supply provided for herein. All credits and refunds of
700 overpayments shall be made within thirty (30) days of the Contracting Officer obtaining direction as
701 to how to credit or refund such overpayment in response to the notice to the Contractor that it has
702 finalized the accounts for the Year in which the overpayment was made.

703 (b) All advances for miscellaneous costs incurred for work requested by the
704 Contractor pursuant to Article 25 of this Contract shall be adjusted to reflect the actual costs when the
705 work has been completed. If the advances exceed the actual costs incurred, the difference will be
706 refunded to the Contractor. If the actual costs exceed the Contractor's advances, the Contractor will
707 be billed for the additional costs pursuant to Article 25 of this Contract.

708 TEMPORARY REDUCTIONS--RETURN FLOWS

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

714 (b) The Contracting Officer or Operating Non-Federal Entity may temporarily
715 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for the
716 purposes of investigation, inspection, maintenance, repair, or replacement of any of the Project
717 facilities or any part thereof necessary for the delivery of Project Water to the Contractor, but so far as

718 feasible the Contracting Officer or Operating Non-Federal Entity will give the Contractor due notice
719 in advance of such temporary discontinuance or reduction, except in case of emergency, in which case
720 no notice need be given; Provided, That the United States shall use its best efforts to avoid any
721 discontinuance or reduction in such service. Upon resumption of service after such reduction or
722 discontinuance, and if requested by the Contractor, the United States will, if possible, deliver the
723 quantity of Project Water which would have been delivered hereunder in the absence of such
724 discontinuance or reduction.

725 (c) The United States reserves the right to all seepage and return flow water
726 derived from Water Delivered to the Contractor hereunder which escapes or is discharged beyond the
727 Contractor's Service Area; Provided, That this shall not be construed as claiming for the United
728 States any right as seepage or return flow to water being used pursuant to this Contract for surface
729 irrigation or underground storage either being put to reasonable and beneficial use pursuant to this
730 Contract within the Contractor's Service Area by the Contractor or those claiming by, through, or
731 under the Contractor. For purposes of this subdivision, groundwater recharge, groundwater banking
732 and all similar groundwater activities will be deemed to be underground storage.

733 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

744 (c) The United States shall not execute contracts which together with this
745 Contract, shall in the aggregate provide for furnishing during the life of this Contract or any renewals
746 hereof Class 1 Water in excess of 800,000 acre-feet per Year or Class 2 Water in excess of
747 1,401,475 acre-feet per Year; Provided, That, subject to subdivision (l) of Article 3 of this Contract,
748 the limitation placed on Class 2 Water contracts shall not prohibit the United States from entering
749 into temporary contracts of one year or less in duration for delivery of Project Water to other entities
750 if such water is not necessary to meet the schedules as may be submitted by all Friant Division long-
751 term water service contractors entitled to receive Class 1 Water and/or Class 2 Water under their
752 water service contracts. Nothing in this subdivision shall limit the Contracting Officer's ability to
753 take actions that result in the availability of new water supplies to be used for Project purposes and
754 allocating such new supplies; Provided, That the Contracting Officer shall not take such actions until
755 after consultation with the Friant Division Project Contractors.

756 (d) The Contracting Officer shall not deliver any Class 2 Water pursuant to this or
757 any other contract for water service heretofore or hereafter entered into any Year unless and until the
758 Contracting Officer determines that the cumulative total quantity of Class 1 Water specified in
759 subdivision (c) of this Article will be available for delivery in said Year. If the Contracting Officer

760 determines there is or will be a shortage in any Year in the quantity of Class 1 Water available for
761 delivery, the Contracting Officer shall apportion the available Class 1 Water among all contractors
762 entitled to receive such water that will be made available at Friant Dam in accordance with the
763 following:

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

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

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

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

780 (f) In the event that in any Year there is made available to the Contractor, by

781 reason of any shortage or apportionment as provided in subdivisions (a), (d) or (e) of this Article, or
782 any discontinuance or reduction of service as set forth in subdivision (a) of Article 11 of this
783 Contract, less than the quantity of water which the Contractor otherwise would be entitled to receive
784 hereunder, there shall be made an adjustment on account of the amounts already paid to the
785 Contracting Officer by the Contractor for Class 1 Water and Class 2 Water for said Year in
786 accordance with Article 10 of this Contract.

787 UNAVOIDABLE GROUNDWATER PERCOLATION

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

792 RULES AND REGULATIONS

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

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

800 WATER AND AIR POLLUTION CONTROL

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

804

QUALITY OF WATER

805

16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to

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this Contract shall be operated and maintained to enable the United States to deliver Project Water to

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the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act

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of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat.

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3050) or other existing Federal laws. The United States is under no obligation to construct or furnish

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water treatment facilities to maintain or to improve the quality of Water Delivered to the Contractor

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pursuant to this Contract. The United States does not warrant the quality of Water Delivered to the

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Contractor pursuant to this Contract.

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

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manner as is practicable to maintain the quality of raw water made available through such facilities at

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the highest level reasonably attainable as determined by the Contracting Officer. The Contractor shall

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be responsible for compliance with all State and Federal water quality standards applicable to surface

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and subsurface agricultural drainage discharges generated through the use of Federal or Contractor

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facilities or Project Water provided by the Contractor within the Contractor's Service Area.

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WATER ACQUIRED BY THE CONTRACTOR

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OTHER THAN FROM THE UNITED STATES

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17. (a) Water or water rights now owned or hereafter acquired by the Contractor other

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than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may

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be simultaneously transported through the same distribution facilities of the Contractor subject to the

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following: (i) if the facilities utilized for commingling Irrigation Water and non-project water were

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constructed without funds made available pursuant to Federal Reclamation law, the provisions of

826 Federal Reclamation law will be applicable only to the Landholders of lands which receive Irrigation
827 Water; (ii) the eligibility of land to receive Irrigation Water must be established through the
828 certification requirements as specified in the Acreage Limitation Rules and Regulations (43 CFR Part
829 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be
830 established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity
831 necessary to irrigate such Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation
832 Water and non-project water are/were constructed with funds made available pursuant to Federal
833 Reclamation law, the non-project water will be subject to the acreage limitation provisions of Federal
834 Reclamation law, unless the Contractor pays to the United States the incremental fee described in 43
835 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate annually the
836 cost to the Federal Government, including interest of storing or delivering non-Project Water, which
837 for purposes of this Contract shall be determined as follows: The quotient shall be the unpaid
838 distribution system costs divided by the total irrigable acreage within the Contractor's Service Area.
839 The incremental fee per acre is the mathematical result of such quotient times the interest rate
840 determined using Section 202 (3) of the Act of October 12, 1982 (96 Stat. 1263). Such incremental
841 fee will be charged to each acre of excess or full cost land within the Contractor's Service Area that
842 receives non-project water through Federally financed or constructed facilities. The incremental fee
843 calculation methodology will continue during the term of this Contract absent the promulgation of a
844 contrary Reclamation-wide rule, regulation or policy adopted after the Contractor has been afforded
845 the opportunity to review and comment on the proposed rule, regulation or policy. If such rule,
846 regulation or policy is adopted it shall supersede this provision.

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

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

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

866 (3) Neither the United States nor the Operating Non-Federal Entity shall be
867 responsible for control, care or distribution of the non-project water before it is introduced into or

868 after it is delivered from the Project facilities. The Contractor hereby releases and agrees to defend
869 and indemnify the United States and the Operating Non-Federal Entity, and their respective officers,
870 agents, and employees, from any claim for damage to persons or property, direct or indirect, resulting
871 from Contractor's diversion or extraction of non-project water from any source.

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

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

880 OPINIONS AND DETERMINATIONS

881 18. (a) Where the terms of this Contract provide for actions to be based upon the
882 opinion or determination of either party to this Contract, said terms shall not be construed as
883 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
884 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly reserve
885 the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or
886 unreasonable opinion or determination. Each opinion or determination by either party shall be
887 provided in a timely manner. Nothing in subdivision (a) of Article 18 of this Contract is intended to
888 or shall affect or alter the standard of judicial review applicable under federal law to any opinion or

889 determination implementing a specific provision of federal law embodied in statute or regulation.

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

895 COORDINATION AND COOPERATION

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

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

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

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

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

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

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

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

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

928 (d) Without limiting the contractual obligations of the Contracting Officer
929 hereunder, nothing in this Contract shall be construed to limit or constrain the Contracting Officer's
930 ability to communicate, coordinate, and cooperate with the Contractor or other interested stakeholders

931 or to make decisions in a timely fashion as needed to protect health, safety, physical integrity of
932 structures or facilities, or the Contracting Officer's ability to comply with applicable laws.

933 CHARGES FOR DELINQUENT PAYMENTS

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

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

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

950 EQUAL OPPORTUNITY

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

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

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

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

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

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

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

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

994 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

999 (b) The payment of charges becoming due hereunder is a condition precedent to
1000 receiving benefits under this Contract. The United States shall not make water available to the
1001 Contractor through Project facilities during any period in which the Contractor may be in arrears in
1002 the advance payment of water rates due the United States. The Contractor shall not furnish water
1003 made available pursuant to this Contract for lands or parties which are in arrears in the advance
1004 payment of water rates levied or established by the Contractor.

1005 (c) With respect to subdivision (b) of this Article, the Contractor shall have no
1006 obligation to require advance payment for water rates which it levies.

1007 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1008 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42
1009 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age
1010 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as
1011 well as with their respective implementing regulations and guidelines imposed by the U.S.
1012 Department of the Interior and/or Bureau of Reclamation.

1013 (b) These statutes require that no person in the United States shall, on the grounds
1014 of race, color, national origin, handicap, or age, be excluded from participation in, be denied the
1015 benefits of, or be otherwise subjected to discrimination under any program or activity receiving
1016 financial assistance from the Bureau of Reclamation. By executing this Contract, the Contractor
1017 agrees to immediately take any measures necessary to implement this obligation, including permitting
1018 officials of the United States to inspect premises, programs, and documents.

1019 (c) The Contractor makes this agreement in consideration of and for the purpose of
1020 obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial
1021 assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including
1022 installment payments after such date on account of arrangements for Federal financial assistance
1023 which were approved before such date. The Contractor recognizes and agrees that such Federal
1024 assistance will be extended in reliance on the representations and agreements made in this Article,
1025 and that the United States reserves the right to seek judicial enforcement thereof.

1026 PRIVACY ACT COMPLIANCE

1027 24. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a) (the
1028 Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et seq.) in
1029 maintaining Landholder acreage certification and reporting records, required to be submitted to the
1030 Contractor for compliance with Sections 206 and 228 of the Reclamation Reform Act of 1982 (96
1031 Stat. 1266), and pursuant to 43 CFR 426.18.

1032 (b) With respect to the application and administration of the criminal penalty
1033 provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible
1034 for maintaining the certification and reporting records referenced in (a) above are considered to be
1035 employees of the Department of the Interior. See 5 U.S.C. 552a(m).

1036 (c) The Contracting Officer or a designated representative shall provide the
1037 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau of
1038 Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior,
1039 Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information
1040 contained in the Landholder's certification and reporting records.

1041 (d) The Contracting Officer shall designate a full-time employee of the Bureau of
1042 Reclamation to be the System Manager who shall be responsible for making decisions on denials
1043 pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is
1044 authorized to grant requests by individuals for access to their own records.

1045 (e) The Contractor shall forward promptly to the System Manager each proposed
1046 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR
1047 2.71; notify the requester accordingly of such referral; and provide the System Manager with
1048 information and records necessary to prepare an appropriate response to the requester. These
1049 requirements do not apply to individuals seeking access to their own certification and reporting forms
1050 filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy
1051 Act as a basis for the request.

1052 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1053 25. In addition to all other payments to be made by the Contractor pursuant to this
1054 Contract, the Contractor shall pay to the United States, within sixty (60) days after receipt of a bill
1055 and detailed statement submitted by the Contracting Officer to the Contractor for such specific items
1056 of direct cost incurred by the United States for work requested by the Contractor associated with this
1057 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and
1058 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in
1059 writing in advance by the Contractor. This Article shall not apply to costs for routine contract
1060 administration.

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WATER CONSERVATION

26. (a) During the term of this Contract, the Contractor shall comply with all applicable requirements imposed on it by Section 210 of the RRA, regulations duly promulgated and adopted thereunder, and any other applicable water conservation guidelines as they are duly promulgated, adopted and amended from time to time: Provided, That the Contractor shall have not less than eighteen (18) months to comply with any revisions in any such applicable regulations or water conservation guidelines.

(b) Omitted.

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

(d) Omitted.

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

EXISTING OR ACQUIRED WATER OR WATER RIGHTS

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

1082 Reclamation law.

1083 OPERATION AND MAINTENANCE BY NON-FEDERAL ENTITY

1084 28. (a) The Operation and Maintenance of a portion of the Project facilities which
1085 serve the Contractor, and responsibility for funding a portion of the costs of such Operation and
1086 Maintenance, have been transferred to the Operating Non-Federal Entity by separate agreement
1087 between the United States and the Operating Non-Federal Entity. That separate agreement shall not
1088 interfere with or affect the rights or obligations of the Contractor or the United States hereunder.

1089 (b) The Contracting Officer has previously notified the Contractor in writing that
1090 the Operation and Maintenance of a portion of the Project facilities which serve the Contractor has
1091 been transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly
1092 to the Operating Non-Federal Entity, or to any successor approved by the Contracting Officer under
1093 the terms and conditions of the separate agreement between the United States and the Operating Non-
1094 Federal Entity described in subdivision (a) of this Article, all rates, charges or assessments of any
1095 kind, including any assessment for reserve funds, which the Operating Non-Federal Entity or such
1096 successor determines, sets or establishes for (i) the Operation and Maintenance of the portion of the
1097 Project facilities operated and maintained by the Operating Non-Federal Entity or such successor, or
1098 (ii) the Friant Division's share of the operation, maintenance and replacement costs for physical
1099 works and appurtenances associated with the Tracy Pumping Plant, the Delta-Mendota Canal, the
1100 O'Neill Pumping/Generating Plant, the federal share of the O'Neill Forebay, the Mendota Pool, and
1101 the federal share of San Luis Unit joint use conveyance and conveyance pumping facilities. Such
1102 direct payments to the Operating Non-Federal Entity or such successor shall not relieve the

1103 Contractor of its obligation to pay directly to the United States the Contractor’s share of the Project
1104 Rates, Charges, and Tiered Pricing Components except to the extent the Operating Non-Federal
1105 Entity collects payments on behalf of the United States in accordance with the separate agreement
1106 identified in subdivision (a) of this Article.

1107 (c) For so long as the Operation and Maintenance of any portion of the Project
1108 facilities serving the Contractor is performed by the Operating Non-Federal Entity, or any successor
1109 thereto, the Contracting Officer shall adjust those components of the Rates for Water Delivered under
1110 this Contract representing the cost associated with the activity being performed by the Operating Non-
1111 Federal Entity or its successor.

1112 (d) In the event the Operation and Maintenance of the Project facilities operated
1113 and maintained by the Operating Non-Federal Entity is re-assumed by the United States during the
1114 term of this Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to
1115 the Contractor a revised Exhibit “B” which shall include the portion of the Rates to be paid by the
1116 Contractor for Project Water under this Contract representing the Operation and Maintenance costs of
1117 the portion of such Project facilities which have been re-assumed. The Contractor shall, thereafter, in
1118 the absence of written notification from the Contracting Officer to the contrary, pay the Rates,
1119 Charges, and Tiered Pricing Component(s) specified in the revised Exhibit “B” directly to the United
1120 States in compliance with Article 7 of this Contract.

1121 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1122 29. The expenditure or advance of any money or the performance of any obligation of the
1123 United States under this Contract shall be contingent upon appropriation or allotment of funds.
1124 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
1125 under this Contract. No liability shall accrue to the United States in case funds are not appropriated

1126 or allotted.

1127 BOOKS, RECORDS, AND REPORTS

1128 30. (a) The Contractor shall establish and maintain accounts and other books and
1129 records pertaining to administration of the terms and conditions of this Contract, including: the
1130 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;
1131 the water users' land-use (crop census), land ownership, land-leasing and water use data; and other
1132 matters that the Contracting Officer may require. Reports thereon shall be furnished to the
1133 Contracting Officer in such form and on such date or dates as the Contracting Officer may require.
1134 Subject to applicable Federal laws and regulations, each party to this Contract shall have the right
1135 during office hours to examine and make copies of the other party's books and records relating to
1136 matters covered by this Contract.

1137 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,
1138 records, or other information shall be requested from the Contractor by the Contracting Officer unless
1139 such books, records, or information are reasonably related to the administration or performance of
1140 this Contract. Any such request shall allow the Contractor a reasonable period of time within which
1141 to provide the requested books, records, or information.

1142 (c) At such time as the Contractor provides information to the Contracting Officer
1143 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the
1144 Operating Non-Federal Entity.

1145 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1146 31. (a) The provisions of this Contract shall apply to and bind the successors and
1147 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1148 therein shall be valid until approved in writing by the Contracting Officer.

1149 (b) The assignment of any right or interest in this Contract by either party shall not
1150 interfere with the rights or obligations of the other party to this Contract absent the written
1151 concurrence of said other party.

1152 (c) The Contracting Officer shall not unreasonably condition or withhold approval
1153 of any proposed assignment.

1154 SEVERABILITY

1155 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor
1156 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an
1157 association or other form of organization whose primary function is to represent parties to Project
1158 contracts, brings an action in a court of competent jurisdiction challenging the legality or
1159 enforceability of a provision included in this Contract and said person, entity, association, or
1160 organization obtains a final court decision holding that such provision is legally invalid or
1161 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the
1162 parties to this Contract shall use their best efforts to (i) within thirty (30) days of the date of such final
1163 court decision identify by mutual agreement the provisions in this Contract which must be revised
1164 and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s). The time
1165 periods specified above may be extended by mutual agreement of the parties. Pending the completion
1166 of the actions designated above, to the extent it can do so without violating any applicable provisions
1167 of law, the United States shall continue to make the quantities of Project Water specified in this
1168 Contract available to the Contractor pursuant to the provisions of this Contract which were not found
1169 to be legally invalid or unenforceable in the final court decision.

1170 RESOLUTION OF DISPUTES

1171 33. Should any dispute arise concerning any provisions of this Contract, or the parties'
1172 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the

1173 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring
1174 any matter to Department of Justice, the party shall provide to the other party thirty (30) days' written
1175 notice of the intent to take such action; Provided, That such notice shall not be required where a delay
1176 in commencing an action would prejudice the interests of the party that intends to file suit. During
1177 the thirty (30) -day notice period, the Contractor and the Contracting Officer shall meet and confer in
1178 an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to waive
1179 or abridge any right or remedy that the Contractor or the United States may have.

1180 OFFICIALS NOT TO BENEFIT

1181 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1182 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1183 manner as other water users or landowners.

1184 CHANGES IN CONTRACTOR'S SERVICE AREA

1185 35. (a) While this Contract is in effect, no change may be made in the Contractor's
1186 Service Area or boundaries, by inclusion or exclusion of lands, dissolution, consolidation, merger, or
1187 otherwise, except upon the Contracting Officer's written consent.

1188 (b) Within thirty (30) days of receipt of a request for such a change, the
1189 Contracting Officer will notify the Contractor of any additional information required by the
1190 Contracting Officer for processing said request, and both parties will meet to establish a mutually
1191 agreeable schedule for timely completion of the process. Such process will analyze whether the
1192 proposed change is likely to: (i) result in the use of Project Water contrary to the terms of this
1193 Contract; (ii) impair the ability of the Contractor to pay for Project Water furnished under this
1194 Contract or to pay for any Federally-constructed facilities for which the Contractor is responsible; and
1195 (iii) have an impact on any Project Water rights applications, permits, or licenses. In addition, the

1196 Contracting Officer shall comply with the National Environmental Policy Act and the Endangered
1197 Species Act. The Contractor will be responsible for all costs incurred by the Contracting Officer in
1198 this process, and such costs will be paid in accordance with Article 25 of this Contract.

1199 FEDERAL LAWS

1200 36. By entering into this Contract, the Contractor does not waive its rights to contest the
1201 validity or application in connection with the performance of the terms and conditions of this
1202 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the
1203 terms and conditions of this Contract unless and until relief from application of such Federal law or
1204 regulation to the implementing provision of the Contract is granted by a court of competent
1205 jurisdiction.

1206 NOTICES

1207 37. Any notice, demand, or request authorized or required by this Contract shall be
1208 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered
1209 to the Area Manager, South-Central California Area Office, 1243 "N" Street, Fresno, California
1210 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board of
1211 Directors of the Garfield Water District, PO Box 337, Clovis, California 93613. The designation of
1212 the addressee or the address may be changed by notice given in the same manner as provided in this
1213 Article for other notices.

1214 CONFIRMATION OF CONTRACT

1215 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a
1216 decree of a court of competent jurisdiction of the State of California, confirming the execution of this
1217 Contract. The Contractor shall furnish the United States a certified copy of the final decree, the
1218 validation proceedings, and all pertinent supporting records of the court approving and confirming
1219 this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

1220 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and
1221 year first above written.

THE UNITED STATES OF AMERICA

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

GARFIELD WATER DISTRICT

By: _____
President of the Board of Directors

Attest:

By: _____
Secretary of the Board of Directors

Contract No. 14-06-200-9421-LTR1

EXHIBIT A

[Map or Description of Service Area]

Contract No. 14-06-200-9421-LTR1

EXHIBIT B
[Initial Rates and Charges]

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