

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 TEA POT DOME 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 TEA POT DOME WATER DISTRICT, hereinafter  
18 referred to as the Contractor, a public agency of the State of California, duly organized, existing, and  
19 acting pursuant to the laws thereof, with its principal place of business in California;

20 WITNESSETH, That:

21 EXPLANATORY RECITALS

22 [1<sup>st</sup>] 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 [2<sup>nd</sup>] 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 [3<sup>rd</sup>] 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 [4<sup>th</sup>] WHEREAS, the Contractor and the United States entered into Contract No. 14-06-  
43 200-7430, as amended, which established terms for the delivery to the Contractor of Project Water  
44 from the Friant Division from October 23, 1958, to February 28, 1995; and

45 [5<sup>th</sup>] 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). 14-06-200-229A-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 [6<sup>th</sup>] 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 [7<sup>th</sup>] 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 [8<sup>th</sup>] 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 [9<sup>th</sup>] WHEREAS, the United States has determined that the Contractor has fulfilled all of  
62 its obligations under the Existing Contract; and

63 [10<sup>th</sup>] 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 [11<sup>th</sup>] 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 [12<sup>th</sup>] 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 [13<sup>th</sup>] 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 [14<sup>th</sup>] 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 [15<sup>th</sup>] 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 [16<sup>th</sup>] 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 (4<sup>th</sup>) and fifth (5<sup>th</sup>) 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 (e) The parties hereto acknowledge and agree that Part A of Contract No. 14-06-  
264 200- 7430, hereinafter referred to as the Original Contract, as amended, is replaced by this Contract.  
265 The respective duties, covenants, and obligations of the parties in Original Contract, as amended,  
266 which are not replaced by this Contract shall continue in full force and effect, pending prompt  
267 completion of good faith negotiations between the parties to agree upon an amendatory contract. Part  
268 B of the Original Contract provides for the construction, operation, maintenance and repayment of a  
269 distribution system which part remains in force and effect.

270 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

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

- 277 (b) Omitted.
- 278 (c) The Contractor shall utilize the Project Water in accordance with all applicable  
279 legal requirements.
- 280 (d) The Contractor shall make reasonable and beneficial use of all Project Water or  
281 other water furnished pursuant to this Contract. Groundwater recharge programs, groundwater  
282 banking programs, surface water storage programs, and other similar programs utilizing Project  
283 Water or other water furnished pursuant to this Contract conducted within the Contractor's Service  
284 Area which are consistent with applicable State law and result in use consistent with Reclamation law  
285 will be allowed; Provided, That any direct recharge program(s) is (are) described in the Contractor's  
286 Water Conservation Plan submitted pursuant to Article 26 of this Contract; Provided, further, That  
287 such Water Conservation Plan demonstrates sufficient lawful uses exist in the Contractor's Service  
288 Area so that using a long-term average, the quantity of Delivered Water is demonstrated to be  
289 reasonable for such uses and in compliance with Reclamation law. Groundwater recharge programs,  
290 groundwater banking programs, surface water storage programs, and other similar programs utilizing  
291 Project Water or other water furnished pursuant to this Contract conducted outside the Contractor's  
292 Service Area may be permitted upon written approval of the Contracting Officer, which approval will  
293 be based upon environmental documentation, Project Water rights, and Project operational concerns.  
294 The Contracting Officer will address such concerns in regulations, policies, or guidelines.
- 295 (e) The Contractor shall comply with requirements applicable to the Contractor in  
296 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract  
297 undertaken pursuant to Section 7 of the Endangered Species Act of 1973, as amended, that are within

298 the Contractor's legal authority to implement. The Contractor shall comply with the limitations or  
299 requirements imposed by environmental documentation applicable to the Contractor and within its  
300 legal authority to implement regarding specific activities. Nothing herein shall be construed to  
301 prevent the Contractor from challenging or seeking judicial relief in a court of competent jurisdiction  
302 with respect to any biological opinion or other environmental documentation referred to in this  
303 Article.

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

318 (g) The Contractor may request permission to reschedule for use during the

319 subsequent Year some or all of the Water Made Available to the Contractor during the current Year  
320 referred to as “carryover.” The Contractor may request permission to use during the current Year a  
321 quantity of Project Water which may be made available by the United States to the Contractor during  
322 the subsequent Year referred to as “preuse.” The Contracting Officer’s written approval may permit  
323 such uses in accordance with applicable statutes, regulations, guidelines, and policies.

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

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

335 (j) The Contracting Officer shall make reasonable efforts to protect the water  
336 rights and other rights described in the third (3rd) Explanatory Recital of this Contract and to provide  
337 the water available under this Contract. The Contracting Officer shall not object to participation by  
338 the Contractor, in the capacity and to the extent permitted by law, in administrative proceedings  
339 related to the water rights and other rights described in the third (3rd) Explanatory Recital of this

340 Contract; Provided, however, That the Contracting Officer retains the right to object to the substance  
341 of the Contractor's position in such a proceeding.

342 (k) Project Water furnished to the Contractor during any month designated in a  
343 schedule or revised schedule submitted by the Contractor and approved by the Contracting Officer  
344 shall be deemed to have been accepted by the Contractor as Class 1 Water to the extent that Class 1  
345 Water is called for in such schedule for such month and shall be deemed to have been accepted as  
346 Class 2 Water to the extent Class 2 Water is called for in such schedule for such month. If in any  
347 month the Contractor diverts a quantity of water in addition to the total amount of Class 1 Water and  
348 Class 2 Water set forth in the Contractor's approved schedule or revised schedule for such month,  
349 such additional diversions shall be charged first against the Contractor's remaining Class 2 Water  
350 supply available in the current Year. To the extent the Contractor's remaining Class 2 Water supply  
351 available in the current Year is not sufficient to account for such additional diversions, such  
352 additional diversions shall be charged against the Contractor's remaining Class 1 Water supply  
353 available in the current Year. To the extent the Contractor's remaining Class 1 Water and Class 2  
354 Water supplies available in the current Year are not sufficient to account for such additional  
355 diversions, such additional diversions shall be charged first against the Contractor's available Class 2  
356 Water supply and then against the Contractor's available Class 1 Water supply, both for the following  
357 Year. Payment for all additional diversions of water shall be made in accordance with Article 7 of  
358 this Contract.

359 (l) If the Contracting Officer determines there is a Project Water supply available  
360 at Friant Dam as the result of an unusually large water supply not otherwise storable for Project

361 purposes or infrequent and otherwise unmanaged flood flows of short duration, such water will be  
362 made available to the Contractor and others under Section 215 of the RRA pursuant to the priorities  
363 specified below if the Contractor enters into a temporary contract with the United States not to exceed  
364 one (1) year for the delivery of such water or, as otherwise provided for in Federal Reclamation law  
365 and associated regulations. Such water may be identified by the Contractor either (i) as additional  
366 water to supplement the supply of Class 1 Water and/or Class 2 Water made available to it pursuant  
367 to this Contract or, (ii) upon written notification to the Contracting Officer, as water to be credited  
368 against the Contractor's Class 2 Water supply available pursuant to this Contract. The Contractor  
369 shall deliver such water to Eligible Lands, or to Excess Lands in accordance with this Article. The  
370 Contracting Officer shall make water determined to be available pursuant to this subsection according  
371 to the following priorities: first, to long-term contractors for Class 1 Water and/or Class 2 Water  
372 within the Friant Division; second, to long-term contractors in the Cross Valley Division of the  
373 Project. The Contracting Officer will consider and seek to accommodate requests from other parties  
374 for Section 215 Water for use within the area identified as the Friant Division service area in the  
375 environmental assessment developed in connection with the execution of this Contract.

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

380 (n) The rights of the Contractor under this Contract are subject to the terms of the  
381 contract for exchange waters, dated July 27, 1939, between the United States and the San Joaquin and

382 Kings River Canal and Irrigation Company, Incorporated, et al., (hereinafter referred to as the  
383 Exchange Contractors), Contract No. I1r-1144, as amended. The United States agrees that it will not  
384 deliver to the Exchange Contractors thereunder waters of the San Joaquin River unless and until  
385 required by the terms of said contract, and the United States further agrees that it will not voluntarily  
386 and knowingly determine itself unable to deliver to the Exchange Contractors entitled thereto from  
387 water that is available or that may become available to it from the Sacramento River and its  
388 tributaries or the Sacramento-San Joaquin Delta those quantities required to satisfy the obligations of  
389 the United States under said Exchange Contract and under Schedule 2 of the Contract for Purchase of  
390 Miller and Lux Water Rights (Contract I1r-1145, dated July 27, 1939).

391 TIME FOR DELIVERY OF WATER

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

402 (b) On or before each March 1 and at such other times as necessary, the Contractor

403 shall submit to the Contracting Officer a written schedule, satisfactory to the Contracting Officer,  
404 showing the monthly quantities of Project Water to be delivered by the United States to the  
405 Contractor pursuant to this Contract for the Year commencing on such March 1. The Contracting  
406 Officer shall use all reasonable means to deliver Project Water according to the approved schedule for  
407 the Year commencing on such March 1.

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

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

423 (e) The Contractor may, during the period from and including November 1 of each

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

445 Contracting Officer.

446 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

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

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

459 (d) All Water Delivered to the Contractor pursuant to this Contract shall be  
460 measured and recorded with equipment furnished, installed, operated, and maintained by the United  
461 States, the Operating Non-Federal Entity or other appropriate entity as designated by the Contracting  
462 Officer (hereafter "other appropriate entity") at the point or points of delivery established pursuant to  
463 subdivision (a) of this Article. Upon the request of either party to this Contract, the Contracting  
464 Officer shall investigate, or cause to be investigated by the responsible Operating Non-Federal Entity,  
465 the accuracy of such measurements and shall take any necessary steps to adjust any errors appearing

466 therein. For any period of time when accurate measurements have not been made, the Contracting  
467 Officer shall consult with the Contractor and the responsible Operating Non-Federal Entity prior to  
468 making a final determination of the quantity delivered for that period of time.

469 (e) Neither the Contracting Officer nor any Operating Non-Federal Entity shall be  
470 responsible for the control, carriage, handling, use, disposal, or distribution of Project Water  
471 Delivered to the Contractor pursuant to this Contract beyond the delivery points specified in  
472 subdivision (a) of this Article. The Contractor shall indemnify the United States, its officers,  
473 employees, agents, and assigns on account of damage or claim of damage of any nature whatsoever  
474 for which there is legal responsibility, including property damage, personal injury, or death arising out  
475 of or connected with the control, carriage, handling, use, disposal, or distribution of such Project  
476 Water beyond such delivery points, except for any damage or claim arising out of: (i) acts or  
477 omissions of the Contracting Officer or any of its officers, employees, agents, or assigns, including  
478 any responsible Operating Non-Federal Entity, with the intent of creating the situation resulting in any  
479 damage or claim; (ii) willful misconduct of the Contracting Officer or any of its officers, employees,  
480 agents, or assigns, including any responsible Operating Non-Federal Entity; (iii) negligence of the  
481 Contracting Officer or any of its officers, employees, agents, or assigns including any responsible  
482 Operating Non-Federal Entity; or (iv) damage or claims resulting from a malfunction of facilities  
483 owned and/or operated by the United States or responsible Operating Non-Federal Entity; Provided,  
484 That the Contractor is not the Operating Non-Federal Entity that owned or operated the  
485 malfunctioning facility(ies) from which the damage claim arose.

486 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

487           6.       (a)       The Contractor established a measurement program satisfactory to the  
488 Contracting Officer, all surface water delivered for irrigation purposes within the Contractor's Service  
489 Area is measured at each agricultural turnout. The water measuring devices or water measuring  
490 methods of comparable effectiveness must be acceptable to the Contracting Officer. The Contractor  
491 shall be responsible for installing, operating, and maintaining and repairing all such measuring  
492 devices and implementing all such water measuring methods at no cost to the United States. The  
493 Contractor shall use the information obtained from such water measuring devices or water measuring  
494 methods to ensure its proper management of the water, to bill water users for water delivered by the  
495 Contractor. Nothing herein contained, however, shall preclude the Contractor from establishing and  
496 collecting any charges, assessments, or other revenues authorized by California law. The Contractor  
497 shall include a summary of all its annual surface water deliveries in the annual report described in  
498 subdivision (c) of Article 26.

499           (b)       To the extent the information has not otherwise been provided, upon execution  
500 of this Contract, the Contractor shall provide to the Contracting Officer a written report describing the  
501 measurement devices or water measuring methods being used or to be used to implement subdivision  
502 (a) of this Article and identifying the agricultural turnouts or alternative measurement programs  
503 approved by the Contracting Officer, at which such measurement devices or water measuring  
504 methods are being used, and, if applicable, identifying the locations at which such devices and/or  
505 methods are not yet being used including a time schedule for implementation at such locations. The  
506 Contracting Officer shall advise the Contractor in writing within sixty (60) days as to the adequacy of,  
507 and necessary modifications, if any, of the measuring devices or water measuring methods identified

508 in the Contractor's report and if the Contracting Officer does not respond in such time, they shall be  
509 deemed adequate. If the Contracting Officer notifies the Contractor that the measuring devices or  
510 methods are inadequate, the parties shall within sixty (60) days following the Contracting Officer's  
511 response, negotiate in good faith the earliest practicable date by which the Contractor shall modify  
512 said measuring devices and/or measuring methods as required by the Contracting Officer to ensure  
513 compliance with subdivision (a) of this Article.

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

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

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

523 RATES AND METHOD OF PAYMENT FOR WATER

524 7. (a) The Contractor shall pay the United States as provided in this Article for all  
525 Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance  
526 with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's  
527 then-existing ratesetting policy for M&I Water. Such ratesetting policies shall be amended, modified,  
528 or superseded only through a public notice and comment procedure; (ii) applicable Reclamation law

529 and associated rules and regulations, or policies; and (iii) other applicable provisions of this Contract.  
530 Payments shall be made by cash transaction, wire, or any other mechanism as may be agreed to in  
531 writing by the Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing  
532 Components applicable to the Contractor upon execution of this Contract are set forth in Exhibit "B",  
533 as may be revised annually.

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

536 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall  
537 provide the Contractor an estimate of the Charges for Project Water that will be applied to the period  
538 October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and  
539 the basis for such estimate. The Contractor shall be allowed not less than two (2) months to review  
540 and comment on such estimates. On or before September 15 of each Calendar Year, the Contracting  
541 Officer shall notify the Contractor in writing of the Charges to be in effect during the period October  
542 1 of the current Calendar Year, through September 30, of the following Calendar Year, and such  
543 notification shall revise Exhibit "B."

544 (2) Prior to October 1 of each Calendar Year, the Contracting Officer shall  
545 make available to the Contractor an estimate of the Rates and Tiered Pricing Components for Project  
546 Water for the following Year and the computations and cost allocations upon which those Rates are  
547 based. The Contractor shall be allowed not less than two (2) months to review and comment on such  
548 computations and cost allocations. By December 31 of each Calendar Year, the Contracting Officer  
549 shall provide the Contractor with the final Rates and Tiered Pricing Components to be in effect for

550 the upcoming Year, and such notification shall revise Exhibit “B”.

551 (c) At the time the Contractor submits the initial schedule for the delivery of  
552 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor  
553 shall make an advance payment to the United States equal to the total amount payable pursuant to the  
554 applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be  
555 delivered pursuant to this Contract during the first two (2) calendar months of the Year. Before the  
556 end of the first month and before the end of each calendar month thereafter, the Contractor shall make  
557 an advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for  
558 the Water Scheduled to be delivered pursuant to this Contract during the second month immediately  
559 following. Adjustments between advance payments for Water Scheduled and payments at Rates due  
560 for Water Delivered shall be made before the end of the following month; Provided, That any revised  
561 schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the  
562 amount of Water Delivered pursuant to this Contract during any month shall be accompanied with  
563 appropriate advance payment, at the Rates then in effect, to assure that Project Water is not delivered  
564 to the Contractor in advance of such payment. In any month in which the quantity of Water Delivered  
565 to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid for by the  
566 Contractor, no additional Project Water shall be delivered to the Contractor unless and until an  
567 advance payment at the Rates then in effect for such additional Project Water is made. Final  
568 adjustment between the advance payments for the Water Scheduled and payments for the quantities  
569 of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable  
570 but no later than April 30th of the following Year, or sixty (60) days after the delivery of Project

571 Water carried over under subdivision (f) of Article 3 of this Contract if such water is not delivered by  
572 the last day of February.

573 (d) The Contractor shall also make a payment in addition to the Rate(s) in  
574 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the  
575 appropriate Tiered Pricing Component then in effect, before the end of the month following the  
576 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered  
577 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be consistent  
578 with the quantities of Irrigation Water and Other Water Delivered as shown in the water delivery  
579 report for the subject month prepared by the Operating Non-Federal Entity or, if there is no Operating  
580 Non-Federal Entity, by the Contracting Officer. Such water delivery report shall be the basis for  
581 payment of Charges and Tiered Pricing Components by the Contractor, and shall be provided to the  
582 Contractor by the Operating Non-Federal Entity or the Contracting Officer (as applicable) within five  
583 (5) days after the end of the month of delivery. The water delivery report shall be deemed a bill for  
584 the payment of Charges and the applicable Tiered Pricing Component for Water Delivered.  
585 Adjustment for overpayment or underpayment of Charges shall be made through the adjustment of  
586 payments due to the United States for Charges for the next month. Any amount to be paid for past  
587 due payment of Charges and the Tiered Pricing Component shall be computed pursuant to Article 20  
588 of this Contract.

589 (e) The Contractor shall pay for any Water Delivered under subdivision (d), (f), or  
590 (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to applicable  
591 statutes, associated regulations, any applicable provisions of guidelines or ratesetting policies;

592 Provided, That the Rate for Water Delivered under subdivision (d) of Article 3 of this Contract shall  
593 be no more than the otherwise applicable Rate for Irrigation Water or Other Water under subdivision  
594 (a) of this Article.

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

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

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

609 (i) The parties acknowledge and agree that the efficient administration of this  
610 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,  
611 policies, and procedures used for establishing Rates, Charges, and Tiered Pricing Components, and/or  
612 for making and allocating payments, other than those set forth in this Article may be in the mutual

613 best interest of the parties, it is expressly agreed that the parties may enter into agreements to modify  
614 the mechanisms, policies, and procedures for any of those purposes while this Contract is in effect  
615 without amending this Contract.

616 (j) (1) Beginning at such time as the total of the deliveries of Class 1 Water  
617 and Class 2 Water in a Year exceed eighty (80%) percent of the Contract Total, then before the end of  
618 the month following the month of delivery the Contractor shall make an additional payment to the  
619 United States equal to the applicable Tiered Pricing Component. The Tiered Pricing Component for  
620 the total of the deliveries of Class 1 Water and Class 2 Water in excess of eighty (80) percent of the  
621 Contract Total, but less than or equal to ninety (90) percent of the Contract Total, shall equal the one-  
622 half of the difference between the Rate established under subdivision (a) of Article 7 of this Contract  
623 and the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable. The  
624 Tiered Pricing Component for the total of the deliveries of Class 1 Water and Class 2 Water which  
625 exceeds ninety (90) percent of the Contract Total shall equal the difference between (i) the Rate  
626 established under subdivision (a) of Article 7 of this Contract and (ii) the Irrigation Full Cost Water  
627 Rate or M&I Full Cost Water Rate, whichever is applicable. For purposes of this subdivision, Class 2  
628 Water taken by the Contractor during an Uncontrolled Season shall not be included in the total of the  
629 deliveries of Class 1 Water and Class 2 Water.

630 (2) Subject to the Contracting Officer's written approval, the Contractor  
631 may request and receive an exemption from such Tiered Pricing Components for Project Water  
632 delivered to produce a crop which the Contracting Officer determines will provide significant and  
633 quantifiable habitat values for waterfowl in fields where the water is used and the crops are produced;

634 Provided, That the exemption from the Tiered Pricing Components for Irrigation Water shall apply  
635 only if such habitat values can be assured consistent with the purposes of CVPIA through binding  
636 agreements executed with or approved by the Contracting Officer prior to use of such water.

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

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

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

655 unadjusted for ability to pay.

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

658 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

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

662 SALES, TRANSFERS, OR EXCHANGES OF WATER

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

674 (b) In order to facilitate efficient water management by means of water transfers of  
675 the type historically carried out among Project Contractors located within the same geographical area

676 and to allow the Contractor to participate in an accelerated water transfer program during the term of  
677 this Contract, the Contracting Officer shall prepare, as appropriate, necessary environmental  
678 documentation including, but not limited to, the National Environmental Policy Act and the  
679 Endangered Species Act analyzing annual transfers within such geographical areas and the  
680 Contracting Officer shall determine whether such transfers comply with applicable law. Following  
681 the completion of the environmental documentation, such transfers addressed in such documentation  
682 shall be conducted with advance notice to the Contracting Officer, but shall not require prior written  
683 approval by the Contracting Officer. Such environmental documentation and the Contracting  
684 Officer's compliance determination shall be reviewed every five (5) years and updated, as necessary,  
685 prior to the expiration of the then existing five (5) -year period. All subsequent environmental  
686 documentation shall include an alternative to evaluate not less than the quantity of Project Water  
687 historically transferred within the same geographical area.

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

697 protection of the environment and Indian Trust Assets, as defined under Federal law.

698 APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

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

715 TEMPORARY REDUCTIONS--RETURN FLOWS

716 11. (a) Subject to: (i) the authorized purposes and priorities of the Project and the  
717 requirements of Federal law and (ii) the obligations of the United States under existing contracts, or

718 renewals thereof, providing for water deliveries from the Project, the Contracting Officer shall make  
719 all reasonable efforts to optimize Project Water deliveries to the Contractor as provided in this  
720 Contract.

721 (b) The Contracting Officer or Operating Non-Federal Entity may temporarily  
722 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for the  
723 purposes of investigation, inspection, maintenance, repair, or replacement of any of the Project  
724 facilities or any part thereof necessary for the delivery of Project Water to the Contractor, but so far as  
725 feasible the Contracting Officer or Operating Non-Federal Entity will give the Contractor due notice  
726 in advance of such temporary discontinuance or reduction, except in case of emergency, in which case  
727 no notice need be given; Provided, That the United States shall use its best efforts to avoid any  
728 discontinuance or reduction in such service. Upon resumption of service after such reduction or  
729 discontinuance, and if requested by the Contractor, the United States will, if possible, deliver the  
730 quantity of Project Water which would have been delivered hereunder in the absence of such  
731 discontinuance or reduction.

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

739 and all similar groundwater activities will be deemed to be underground storage.

740 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

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

760 take actions that result in the availability of new water supplies to be used for Project purposes and  
761 allocating such new supplies; Provided, That the Contracting Officer shall not take such actions until  
762 after consultation with the Friant Division Project Contractors.

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

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

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

777 (3) The total quantity of Class 1 Water under Article 3 of this Contract  
778 shall be multiplied by the Class 1 apportionment coefficient and the result shall be the quantity of  
779 Class 1 Water required to be delivered by the Contracting Officer to the Contractor for the respective  
780 Year, but in no event shall such amount exceed the total quantity of Class 1 Water specified in

781 subdivision (a) of Article 3 of this Contract.

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

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

794 UNAVOIDABLE GROUNDWATER PERCOLATION

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

799 RULES AND REGULATIONS

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

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

807 WATER AND AIR POLLUTION CONTROL

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

811 QUALITY OF WATER

812 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to  
813 this Contract shall be operated and maintained to enable the United States to deliver Project Water to  
814 the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act  
815 of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat.  
816 3050) or other existing Federal laws. The United States is under no obligation to construct or furnish  
817 water treatment facilities to maintain or to improve the quality of Water Delivered to the Contractor  
818 pursuant to this Contract. The United States does not warrant the quality of Water Delivered to the  
819 Contractor pursuant to this Contract.

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

WATER ACQUIRED BY THE CONTRACTOR  
OTHER THAN FROM THE UNITED STATES

826  
827

828           17.   (a)    Water or water rights now owned or hereafter acquired by the Contractor other  
829 than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may  
830 be simultaneously transported through the same distribution facilities of the Contractor subject to the  
831 following: (i) if the facilities utilized for commingling Irrigation Water and non-project water were  
832 constructed without funds made available pursuant to Federal Reclamation law, the provisions of  
833 Federal Reclamation law will be applicable only to the Landholders of lands which receive Irrigation  
834 Water; (ii) the eligibility of land to receive Irrigation Water must be established through the  
835 certification requirements as specified in the Acreage Limitation Rules and Regulations (43 CFR Part  
836 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be  
837 established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity  
838 necessary to irrigate such Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation  
839 Water and non-project water are/were constructed with funds made available pursuant to Federal  
840 Reclamation law, the non-project water will be subject to the acreage limitation provisions of Federal  
841 Reclamation law, unless the Contractor pays to the United States the incremental fee described in 43  
842 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate annually the  
843 cost to the Federal Government, including interest of storing or delivering non-Project Water, which  
844 for purposes of this Contract shall be determined as follows: The quotient shall be the unpaid  
845 distribution system costs divided by the total irrigable acreage within the Contractor's Service Area.  
846 The incremental fee per acre is the mathematical result of such quotient times the interest rate  
847 determined using Section 202 (3) of the Act of October 12, 1982 (96 Stat. 1263). Such incremental

848 fee will be charged to each acre of excess or full cost land within the Contractor's Service Area that  
849 receives non-project water through Federally financed or constructed facilities. The incremental fee  
850 calculation methodology will continue during the term of this Contract absent the promulgation of a  
851 contrary Reclamation-wide rule, regulation or policy adopted after the Contractor has been afforded  
852 the opportunity to review and comment on the proposed rule, regulation or policy. If such rule,  
853 regulation or policy is adopted it shall supersede this provision.

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

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

867 (2) Delivery of such non-project Water in and through Project facilities  
868 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project purposes as

869 determined by the Contracting Officer; (ii) reduce the quantity or quality of water available to other  
870 Project water service contractors; (iii) interfere with the delivery of contractual water entitlements to  
871 any other Project water service contractors; or (iv) interfere with the physical maintenance of the  
872 Project facilities.

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

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

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

887 OPINIONS AND DETERMINATIONS

888 18. (a) Where the terms of this Contract provide for actions to be based upon the  
889 opinion or determination of either party to this Contract, said terms shall not be construed as

890 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or  
891 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly reserve  
892 the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or  
893 unreasonable opinion or determination. Each opinion or determination by either party shall be  
894 provided in a timely manner. Nothing in subdivision (a) of Article 18 of this Contract is intended to  
895 or shall affect or alter the standard of judicial review applicable under federal law to any opinion or  
896 determination implementing a specific provision of federal law embodied in statute or regulation.

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

902 COORDINATION AND COOPERATION

903 19. (a) In order to further their mutual goals and objectives, the Contracting Officer  
904 and the Contractor shall communicate, coordinate, and cooperate with each other, and with other  
905 affected Project Contractors, in order to improve the operation and management of the Project. The  
906 communication, coordination, and cooperation regarding operations and management shall include,  
907 but not be limited to, any action which will or may materially affect the quantity or quality of Project  
908 Water supply, the allocation of Project Water supply, and Project financial matters including, but not  
909 limited to, budget issues. The communication, coordination, and cooperation provided for hereunder  
910 shall extend to all provisions of this Contract. Each party shall retain exclusive decision making

911 authority for all actions, opinion, and determinations to be made by the respective party.

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

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

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

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

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

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

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

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

940 CHARGES FOR DELINQUENT PAYMENTS

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

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

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

957 EQUAL OPPORTUNITY

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

959 (a) The Contractor will not discriminate against any employee or applicant for

960 employment because of race, color, religion, sex, or national origin. The Contractor will take  
961 affirmative action to ensure that applicants are employed, and that employees are treated during  
962 employment, without regard to their race, color, religion, sex, or national origin. Such action shall  
963 include, but not be limited to, the following: Employment, upgrading, demotion, or transfer;  
964 recruitment or recruitment advertising; layoff or termination, rates of payment or other forms of  
965 compensation; and selection for training, including apprenticeship. The Contractor agrees to post in  
966 conspicuous places, available to employees and applicants for employment, notices to be provided by  
967 the Contracting Officer setting forth the provisions of this nondiscrimination clause.

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

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

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

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

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

992 (g) The Contractor will include the provisions of paragraphs (a) through (g) in  
993 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the  
994 Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such  
995 provisions will be binding upon each subcontractor or vendor. The Contractor will take such action

996 with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a  
997 means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That  
998 in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor  
999 or vendor as a result of such direction, the Contractor may request the United States to enter into such  
1000 litigation to protect the interests of the United States.

1001 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

1002 22. (a) The obligation of the Contractor to pay the United States as provided in this  
1003 Contract is a general obligation of the Contractor notwithstanding the manner in which the obligation  
1004 may be distributed among the Contractor's water users and notwithstanding the default of individual  
1005 water users in their obligations to the Contractor.

1006 (b) The payment of charges becoming due hereunder is a condition precedent to  
1007 receiving benefits under this Contract. The United States shall not make water available to the  
1008 Contractor through Project facilities during any period in which the Contractor may be in arrears in  
1009 the advance payment of water rates due the United States. The Contractor shall not furnish water  
1010 made available pursuant to this Contract for lands or parties which are in arrears in the advance  
1011 payment of water rates levied or established by the Contractor.

1012 (c) With respect to subdivision (b) of this Article, the Contractor shall have no  
1013 obligation to require advance payment for water rates which it levies.

1014 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1015 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42  
1016 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age  
1017 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as  
1018 well as with their respective implementing regulations and guidelines imposed by the U.S.  
1019 Department of the Interior and/or Bureau of Reclamation.

1020 (b) These statutes require that no person in the United States shall, on the grounds  
1021 of race, color, national origin, handicap, or age, be excluded from participation in, be denied the  
1022 benefits of, or be otherwise subjected to discrimination under any program or activity receiving  
1023 financial assistance from the Bureau of Reclamation. By executing this Contract, the Contractor  
1024 agrees to immediately take any measures necessary to implement this obligation, including permitting  
1025 officials of the United States to inspect premises, programs, and documents.

1026 (c) The Contractor makes this agreement in consideration of and for the purpose of  
1027 obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial

1028 assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including  
1029 installment payments after such date on account of arrangements for Federal financial assistance  
1030 which were approved before such date. The Contractor recognizes and agrees that such Federal  
1031 assistance will be extended in reliance on the representations and agreements made in this Article,  
1032 and that the United States reserves the right to seek judicial enforcement thereof.

1033 PRIVACY ACT COMPLIANCE

1034 24. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a) (the  
1035 Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et seq.) in  
1036 maintaining Landholder acreage certification and reporting records, required to be submitted to the  
1037 Contractor for compliance with Sections 206 and 228 of the Reclamation Reform Act of 1982 (96  
1038 Stat. 1266), and pursuant to 43 CFR 426.18.

1039 (b) With respect to the application and administration of the criminal penalty  
1040 provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible  
1041 for maintaining the certification and reporting records referenced in (a) above are considered to be  
1042 employees of the Department of the Interior. See 5 U.S.C. 552a(m).

1043 (c) The Contracting Officer or a designated representative shall provide the  
1044 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau of  
1045 Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior,  
1046 Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information  
1047 contained in the Landholder's certification and reporting records.

1048 (d) The Contracting Officer shall designate a full-time employee of the Bureau of  
1049 Reclamation to be the System Manager who shall be responsible for making decisions on denials  
1050 pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is  
1051 authorized to grant requests by individuals for access to their own records.

1052 (e) The Contractor shall forward promptly to the System Manager each proposed  
1053 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR  
1054 2.71; notify the requester accordingly of such referral; and provide the System Manager with  
1055 information and records necessary to prepare an appropriate response to the requester. These  
1056 requirements do not apply to individuals seeking access to their own certification and reporting forms  
1057 filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy  
1058 Act as a basis for the request.

1059 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1060 25. In addition to all other payments to be made by the Contractor pursuant to this

1061 Contract, the Contractor shall pay to the United States, within sixty (60) days after receipt of a bill  
1062 and detailed statement submitted by the Contracting Officer to the Contractor for such specific items  
1063 of direct cost incurred by the United States for work requested by the Contractor associated with this  
1064 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and  
1065 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in  
1066 writing in advance by the Contractor. This Article shall not apply to costs for routine contract  
1067 administration.

1068 WATER CONSERVATION

1069 26. (a) Prior to the delivery of water provided from or conveyed through Federally  
1070 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be  
1071 implementing an effective water conservation and efficiency program based on the Contractor's water  
1072 conservation plan that has been determined by the Contracting Officer to meet the conservation and  
1073 efficiency criteria for evaluating water conservation plans established under Federal law. The water  
1074 conservation and efficiency program shall contain definite water conservation objectives, appropriate  
1075 economically feasible water conservation measures, and time schedules for meeting those objectives.  
1076 Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's  
1077 continued implementation of such water conservation program. In the event the Contractor's water  
1078 conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of  
1079 Article 26 of this Contract have not yet been determined by the Contracting Officer to meet such  
1080 criteria, due to circumstances which the Contracting Officer determines are beyond the control of the  
1081 Contractor, water deliveries shall be made under this Contract so long as the Contractor diligently

1082 works with the Contracting Officer to obtain such determination at the earliest practicable date, and  
1083 thereafter the Contractor immediately begins implementing its water conservation and efficiency  
1084 program in accordance with the time schedules therein.

1085 (b) Omitted.

1086 (c) The Contractor shall submit to the Contracting Officer a report on the status of  
1087 its implementation of the water conservation plan on the reporting dates specified in the then existing  
1088 conservation and efficiency criteria established under Federal law.

1089 (d) At five (5) -year intervals, the Contractor shall revise its water conservation  
1090 plan to reflect the then current conservation and efficiency criteria for evaluating water conservation  
1091 plans established under Federal law and submit such revised water management plan to the  
1092 Contracting Officer for review and evaluation. The Contracting Officer will then determine if the  
1093 water conservation plan meets Reclamation's then current conservation and efficiency criteria for  
1094 evaluating water conservation plans established under Federal law.

1095 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall  
1096 be described in the Contractor's water conservation plan.

1097 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1098 27. Except as specifically provided in Article 17 of this Contract, the provisions of this  
1099 Contract shall not be applicable to or affect non-Project Water or water rights now owned or hereafter  
1100 acquired by the Contractor or any user of such water within the Contractor's Service Area. Any such  
1101 water shall not be considered Project Water under this Contract. In addition, this Contract shall not  
1102 be construed as limiting or curtailing any rights which the Contractor or any water user within the

1103 Contractor's Service Area acquires or has available under any other contract pursuant to Federal  
1104 Reclamation law.

1105 OPERATION AND MAINTENANCE BY NON-FEDERAL ENTITY

1106 28. (a) The Operation and Maintenance of a portion of the Project facilities which  
1107 serve the Contractor, and responsibility for funding a portion of the costs of such Operation and  
1108 Maintenance, have been transferred to the Operating Non-Federal Entity by separate agreement  
1109 between the United States and the Operating Non-Federal Entity. That separate agreement shall not  
1110 interfere with or affect the rights or obligations of the Contractor or the United States hereunder.

1111 (b) The Contracting Officer has previously notified the Contractor in writing that  
1112 the Operation and Maintenance of a portion of the Project facilities which serve the Contractor has  
1113 been transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly  
1114 to the Operating Non-Federal Entity, or to any successor approved by the Contracting Officer under  
1115 the terms and conditions of the separate agreement between the United States and the Operating Non-  
1116 Federal Entity described in subdivision (a) of this Article, all rates, charges or assessments of any  
1117 kind, including any assessment for reserve funds, which the Operating Non-Federal Entity or such  
1118 successor determines, sets or establishes for (i) the Operation and Maintenance of the portion of the  
1119 Project facilities operated and maintained by the Operating Non-Federal Entity or such successor, or  
1120 (ii) the Friant Division's share of the operation, maintenance and replacement costs for physical  
1121 works and appurtenances associated with the Tracy Pumping Plant, the Delta-Mendota Canal, the  
1122 O'Neill Pumping/Generating Plant, the federal share of the O'Neill Forebay, the Mendota Pool, and  
1123 the federal share of San Luis Unit joint use conveyance and conveyance pumping facilities. Such

1124 direct payments to the Operating Non-Federal Entity or such successor shall not relieve the  
1125 Contractor of its obligation to pay directly to the United States the Contractor's share of the Project  
1126 Rates, Charges, and Tiered Pricing Components except to the extent the Operating Non-Federal  
1127 Entity collects payments on behalf of the United States in accordance with the separate agreement  
1128 identified in subdivision (a) of this Article.

1129 (c) For so long as the Operation and Maintenance of any portion of the Project  
1130 facilities serving the Contractor is performed by the Operating Non-Federal Entity, or any successor  
1131 thereto, the Contracting Officer shall adjust those components of the Rates for Water Delivered under  
1132 this Contract representing the cost associated with the activity being performed by the Operating Non-  
1133 Federal Entity or its successor.

1134 (d) In the event the Operation and Maintenance of the Project facilities operated  
1135 and maintained by the Operating Non-Federal Entity is re-assumed by the United States during the  
1136 term of this Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to  
1137 the Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid by the  
1138 Contractor for Project Water under this Contract representing the Operation and Maintenance costs of  
1139 the portion of such Project facilities which have been re-assumed. The Contractor shall, thereafter, in  
1140 the absence of written notification from the Contracting Officer to the contrary, pay the Rates,  
1141 Charges, and Tiered Pricing Component(s) specified in the revised Exhibit "B" directly to the United  
1142 States in compliance with Article 7 of this Contract.

1143 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1144 29. The expenditure or advance of any money or the performance of any obligation of the  
1145 United States under this Contract shall be contingent upon appropriation or allotment of funds.

1146 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations  
1147 under this Contract. No liability shall accrue to the United States in case funds are not appropriated  
1148 or allotted.

1149 BOOKS, RECORDS, AND REPORTS

1150 30. (a) The Contractor shall establish and maintain accounts and other books and  
1151 records pertaining to administration of the terms and conditions of this Contract, including: the  
1152 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;  
1153 the water users' land-use (crop census), land ownership, land-leasing and water use data; and other  
1154 matters that the Contracting Officer may require. Reports thereon shall be furnished to the  
1155 Contracting Officer in such form and on such date or dates as the Contracting Officer may require.  
1156 Subject to applicable Federal laws and regulations, each party to this Contract shall have the right  
1157 during office hours to examine and make copies of the other party's books and records relating to  
1158 matters covered by this Contract.

1159 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,  
1160 records, or other information shall be requested from the Contractor by the Contracting Officer unless  
1161 such books, records, or information are reasonably related to the administration or performance of  
1162 this Contract. Any such request shall allow the Contractor a reasonable period of time within which  
1163 to provide the requested books, records, or information.

1164 (c) At such time as the Contractor provides information to the Contracting Officer  
1165 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the  
1166 Operating Non-Federal Entity.

1167 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1168 31. (a) The provisions of this Contract shall apply to and bind the successors and  
1169 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest  
1170 therein shall be valid until approved in writing by the Contracting Officer.

1171 (b) The assignment of any right or interest in this Contract by either party shall not  
1172 interfere with the rights or obligations of the other party to this Contract absent the written

1173 concurrence of said other party.

1174 (c) The Contracting Officer shall not unreasonably condition or withhold approval  
1175 of any proposed assignment.

1176 SEVERABILITY

1177 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor  
1178 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an  
1179 association or other form of organization whose primary function is to represent parties to Project  
1180 contracts, brings an action in a court of competent jurisdiction challenging the legality or  
1181 enforceability of a provision included in this Contract and said person, entity, association, or  
1182 organization obtains a final court decision holding that such provision is legally invalid or  
1183 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the  
1184 parties to this Contract shall use their best efforts to (i) within thirty (30) days of the date of such final  
1185 court decision identify by mutual agreement the provisions in this Contract which must be revised  
1186 and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s). The time  
1187 periods specified above may be extended by mutual agreement of the parties. Pending the completion  
1188 of the actions designated above, to the extent it can do so without violating any applicable provisions  
1189 of law, the United States shall continue to make the quantities of Project Water specified in this  
1190 Contract available to the Contractor pursuant to the provisions of this Contract which were not found  
1191 to be legally invalid or unenforceable in the final court decision.

1192 RESOLUTION OF DISPUTES

1193 33. Should any dispute arise concerning any provisions of this Contract, or the parties'

1194 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the  
1195 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring  
1196 any matter to Department of Justice, the party shall provide to the other party thirty (30) days' written  
1197 notice of the intent to take such action; Provided, That such notice shall not be required where a delay  
1198 in commencing an action would prejudice the interests of the party that intends to file suit. During  
1199 the thirty (30) -day notice period, the Contractor and the Contracting Officer shall meet and confer in  
1200 an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to waive  
1201 or abridge any right or remedy that the Contractor or the United States may have.

1202 OFFICIALS NOT TO BENEFIT

1203 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the  
1204 Contractor shall benefit from this Contract other than as a water user or landowner in the same  
1205 manner as other water users or landowners.

1206 CHANGES IN CONTRACTOR'S SERVICE AREA

1207 35. (a) While this Contract is in effect, no change may be made in the Contractor's  
1208 Service Area or boundaries, by inclusion or exclusion of lands, dissolution, consolidation, merger, or  
1209 otherwise, except upon the Contracting Officer's written consent.

1210 (b) Within thirty (30) days of receipt of a request for such a change, the  
1211 Contracting Officer will notify the Contractor of any additional information required by the  
1212 Contracting Officer for processing said request, and both parties will meet to establish a mutually  
1213 agreeable schedule for timely completion of the process. Such process will analyze whether the  
1214 proposed change is likely to: (i) result in the use of Project Water contrary to the terms of this  
1215 Contract; (ii) impair the ability of the Contractor to pay for Project Water furnished under this  
1216 Contract or to pay for any Federally-constructed facilities for which the Contractor is responsible; and

1217 (iii) have an impact on any Project Water rights applications, permits, or licenses. In addition, the  
1218 Contracting Officer shall comply with the National Environmental Policy Act and the Endangered  
1219 Species Act. The Contractor will be responsible for all costs incurred by the Contracting Officer in  
1220 this process, and such costs will be paid in accordance with Article 25 of this Contract.

1221 FEDERAL LAWS

1222 36. By entering into this Contract, the Contractor does not waive its rights to contest the  
1223 validity or application in connection with the performance of the terms and conditions of this  
1224 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the  
1225 terms and conditions of this Contract unless and until relief from application of such Federal law or  
1226 regulation to the implementing provision of the Contract is granted by a court of competent  
1227 jurisdiction.

1228 NOTICES

1229 37. Any notice, demand, or request authorized or required by this Contract shall be  
1230 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered  
1231 to the Area Manager, South-Central California Area Office, 1243 "N" Street, Fresno, California  
1232 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board of  
1233 Directors of the Tea Pot Dome Water District, 105 West Tea Pot Dome Avenue, Porterville,  
1234 California 93257. The designation of the addressee or the address may be changed by notice given in  
1235 the same manner as provided in this Article for other notices.

1236 CONFIRMATION OF CONTRACT

1237 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a  
1238 decree of a court of competent jurisdiction of the State of California, confirming the execution of this  
1239 Contract. The Contractor shall furnish the United States a certified copy of the final decree, the  
1240 validation proceedings, and all pertinent supporting records of the court approving and confirming  
1241 this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

1242 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and  
1243 year first above written.

THE UNITED STATES OF AMERICA

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

TEA POT DOME WATER DISTRICT

By: \_\_\_\_\_  
President of the Board of Directors

Attest:

By: \_\_\_\_\_  
Secretary of the Board of Directors

Contract No. 14-06-200-7430-LTR1

EXHIBIT A

[Map or Description of Service Area]

Contract No. 14-06-200-7430-LTR1

EXHIBIT B  
[Initial Rates and Charges]

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