

AGREEMENT FOR PARTIAL
ASSIGNMENT OF IVANHOE IRRIGATION DISTRICT'S
WATER SERVICE CONTRACT TO
KAWEAH DELTA WATER CONSERVATION DISTRICT

THIS AGREEMENT is made this ____ day of _____, 2008, by and among Ivanhoe Irrigation District (hereinafter referred to as “Ivanhoe”), Kaweah Delta Water Conservation District (hereinafter referred to as “Kaweah Delta”), and the United States of America through the United States Bureau of Reclamation (hereinafter referred to as “Reclamation”). Ivanhoe, Kaweah Delta, and Reclamation may sometimes be collectively referred to herein as the “Parties” and individually as a “Party”.

EXPLANATORY RECITALS

A. On September 23, 1949, Ivanhoe and the United States entered into Contract No. I75r-1809 providing for the annual delivery to Ivanhoe of up to seven thousand and seven hundred (7,700) acre feet of Class 1 water and up to seven thousand and nine hundred (7,900) acre feet of Class 2 water from the Friant Division of the Central Valley Project (CVP) through February 28, 1990. Ivanhoe and the United States entered into Contract No. I75r-1809R on March 1, 1990, which was replaced with interim renewal Contract No. I75-1809-IR1 dated July 10, 1998. On February 6, 2001, Ivanhoe and the United States entered into long term renewal Contract No. I75r-1809-LTR1 providing for continued water service through February 28, 2026, which was subsequently amended on January 19, 2007. Hereinafter, Ivanhoe’s water service contract, as amended, will be referred to as the “Existing Contract.”

23 B. Ivanhoe has requested that Reclamation approve a partial assignment of the
24 Existing Contract to Kaweah Delta as part of a long-term resource exchange program between
25 Ivanhoe and Kaweah Delta to improve the dry year reliability of the surface water supplies
26 available to Ivanhoe and to provide greater reliability of CVP water for Kaweah Delta than it
27 previously received under short term and temporary water service contracts.

28 C. Article 31 of the Existing Contract provides for assignment of the Existing
29 Contract, or any interest therein, with the written approval of the Contracting Officer acting on
30 behalf of the United States.

31 D. On April 13, 2004, Ivanhoe and Kaweah Delta entered into an agreement titled
32 “Agreement between Ivanhoe Irrigation District and Kaweah Delta Water Conservation District
33 Optimizing Use of Water Resources” (hereinafter referred to as the “Resource Exchange
34 Agreement”). In accordance with the Resource Exchange Agreement, Ivanhoe intends hereby to
35 assign a portion of the Existing Contract to Kaweah Delta in exchange for Kaweah Delta’s
36 assignment to Ivanhoe of certain water rights on the Kaweah River and certain rights to storage
37 in Terminus Reservoir, all as described in the Resource Exchange Agreement. Kaweah Delta
38 and Ivanhoe now wish to secure Reclamation’s approval of the assignment of a portion of the
39 Existing Contract.

40 E. Upon the effective date of this Agreement, Ivanhoe’s partial assignment to
41 Kaweah Delta will be final and Kaweah Delta will accept and be fully responsible for, all rights
42 and obligations of a Contractor, as that term is used under the Existing Contract, with respect to
43 Ivanhoe’s one thousand and two hundred (1,200) acre feet of Class 1 Water and up to seven

44 thousand and four hundred (7,400) acre feet of Class 2 Water (hereinafter referred to as the
45 “Assigned Project Water”).

46 F. Ivanhoe and Kaweah Delta each will have complied with all applicable federal,
47 state and local laws, rules, and ordinances that apply to the Resources Exchange Agreement and
48 this Agreement prior to the execution hereof.

49 G. Reclamation is willing to approve the partial assignment by Ivanhoe of its rights
50 to the Assigned Project Water to Kaweah Delta, however, this consent by Reclamation shall not
51 constitute a release by Reclamation of Ivanhoe from any of its duties and obligations under the
52 Existing Contract as to the full quantity specified in Article 3 thereof. Reclamation will,
53 however, consider Kaweah Delta separately with Ivanhoe as a Contractor, as that term is used
54 under the Existing Contract, and as to those quantities assigned hereby will hold Kaweah Delta
55 primarily responsible for compliance with the terms and conditions of the Existing Contract in
56 connection with the Assigned Project Water. Reclamation’s execution of this Agreement shall
57 constitute Reclamation’s final approval of the assignment.

58 H. The Parties to this Agreement each have complied with all environmental and
59 other laws applicable to their respective approval and implementation of this Agreement,
60 including but not limited to, the National Environmental Policy Act (NEPA), the California
61 Environmental Quality Act (CEQA), Reclamation Law, and the Federal Endangered Species Act
62 (ESA).

63 IT IS THEREFORE AGREED AMONG THE PARTIES:

64 1. Terms and Conditions. Upon the effective date of this Agreement, the assignment
65 to Kaweah Delta of Ivanhoe’s rights to the Assigned Project Water will be complete. Kaweah

66 Delta will, commencing on the effective date of this Agreement, assume all the rights, duties,
67 and interests of a Contractor, as that term is used under the Existing Contract, separately with
68 Ivanhoe. Kaweah Delta accepts all obligations, terms and conditions with respect to the Existing
69 Contract applicable to the Contractor, as that term is used under the Existing Contract, as they
70 apply to the Assigned Project Water and as they exist or may be modified from time to time in
71 accordance with law, and as supplemented herein. Kaweah Delta understands and agrees that its
72 rights as Contractor, as that term is used under the Existing Contract, may also be modified upon
73 renewal of the Existing Contract, including a requirement that it enter into a separate water
74 service, or repayment contract, with Reclamation at the time of, or prior to, such renewal as to
75 the quantity of Assigned Project Water or such other quantity as Kaweah Delta and Reclamation
76 may agree. Without limiting the generality of the foregoing, Kaweah Delta acknowledges and
77 accepts the obligation to repay its proportionate share of the CVP capital obligation that is owed
78 or that may become owing under the Existing Contract, as established in accordance with
79 Reclamation's applicable CVP rate setting policies, including changes thereto, together with any
80 one time charges associated with effectuating this Agreement.

81 2. Payment of Existing Operation and Maintenance Deficit.

82 a. Prior to the effective date of this Agreement, Ivanhoe shall have paid in
83 full to the United States any operation and maintenance deficit that may be owed by Ivanhoe to
84 the United States as a result of the previous delivery of the Assigned Project Water to Ivanhoe
85 pursuant to the Existing Contract.

86 b. Reclamation acknowledges and agrees that, upon the satisfaction of
87 subdivision a. above, no operation and maintenance deficit is owed by Ivanhoe to the United

88 States as a result of the delivery of the CVP Water as of September 30, 2006. However, if
89 Reclamation determines there is any additional amount owed or at any time needs to make an
90 adjustment to its past water contractor accountings, resulting in an amount that is outstanding or
91 overpaid as a result of delivery of CVP Water to Ivanhoe, including Restoration Fund charges,
92 such amount or adjustment shall be owed by Ivanhoe if outstanding, or credited or refunded to
93 Ivanhoe if overpaid.

94 3. Change in Service Areas and Points of Diversion. Consistent with the Existing
95 Contract, on or after the effective date of this Agreement, the Assigned Project Water will be
96 delivered to Kaweah Delta's service area as shown on Exhibit A attached to this Agreement.
97 Kaweah Delta will divert the Assigned Project Water from existing points of diversion located
98 on the Friant-Kern Canal, or other points approved in writing by Reclamation.

99 4. CVP Contractor Status. Commencing on the effective date of this Agreement,
100 Kaweah Delta shall have under this Agreement all right and interest in the Existing Contract, and
101 bear all obligations and be afforded all benefits of a Contractor as that term is used in the
102 Existing Contract.

103 5. Water Rates and Charges. The Assigned Project Water shall be subject to the
104 applicable Rates, Charges, and crediting determined annually in accordance with Federal law,
105 associated regulations and the then current CVP rate setting policies. To enable Reclamation to
106 compute appropriate Rates, Charges, and crediting, Kaweah Delta shall submit to Reclamation
107 water delivery schedules as required by the Existing Contract, as may be amended, supplemented
108 or renewed. Upon execution of this Agreement, all historic, present and future costs accrued

109 under the Existing Contract that relates to the Assigned Project Water, will be recognized and
110 established under separate financial accountings for Kaweah Delta.

111 6. Reservation of Interest. Notwithstanding any other provision of this Agreement,
112 Ivanhoe remains fully obligated to Reclamation under the Existing Contract. Without limiting
113 the generality of the foregoing, Ivanhoe hereby retains a right of reverter under the Existing
114 Contract to the full contractual quantities set forth in Article 3 of the Existing Contract and the
115 Parties agree that in the event that this Agreement is terminated then Ivanhoe's rights to all
116 contract quantities specified in Article 3 of the Existing Contract shall be fully restored to
117 Ivanhoe and Kaweah Delta's right to the Assigned Project Water under this Agreement shall
118 terminate.

119 7. Applicability of the Reclamation Reform Act of 1982. The Assigned Project
120 Water, when used for irrigation purposes shall only be delivered to lands held either by
121 landholders who have elected to be subject to the provisions of the Reclamation Reform Act of
122 1982, 43 U.S.C. Sections 390aa *et seq.*, 96 Stat, 1263, by executing an irrevocable election or by
123 landholders who own or lease lands located within a district subject to said Act.

124 8. Existing Contract Renewal Rights. All parties to this Agreement acknowledge
125 and understand that this Agreement does not afford either Ivanhoe or Kaweah Delta any
126 contractual rights to any renewal of the Existing Contract beyond that provided pursuant to the
127 Existing Contract.

128 9. United States Approval. The United States hereby approves this Agreement,
129 accepts the assignment contemplated hereby, and pending the judgment in confirmation, accepts

130 Kaweah Delta as a Contractor, as that term is used in the Existing Contract, and finds that no
131 further action by the United States is necessary to put this Agreement into effect.

132 10. Agreement Drafting Consideration. Articles 1 through 9, 11, and 12.b. of this
133 Agreement have been drafted, negotiated, and reviewed by the Parties hereto, each of whom is
134 sophisticated in the matters to which this Agreement pertains, and no one Party shall be
135 considered to have drafted the stated articles.

136
137 11. Effective Date. The effective date of this Agreement shall be the date on which
138 the latest judgment in confirmation, reasonably acceptable to the Parties, is entered by the
139 Court(s) of competent jurisdiction.

140 12. Court Confirmation.

141
142 a. Kaweah Delta and Ivanhoe, after the execution of this Agreement by
143 Reclamation, shall promptly seek, jointly or separately, a judgment of a court of competent
144 jurisdiction of the State of California confirming the execution of this Agreement and that is
145 binding and lawful. Kaweah Delta and Ivanhoe shall furnish the United States with a certified
146 copy of the final decree, the validation proceedings, together with all pertinent supporting
147 records of the court validating this Agreement and decreeing and adjudging it to be lawful, valid,
148 and binding on Ivanhoe and Kaweah Delta. This Agreement shall not be binding on any of the
149 parties until the aforementioned final decree has been secured.

150
151 b. Such confirmation proceeding(s) shall be initiated pursuant to California
152 Code of Civil Procedure sections 860 through 870.5, no later than 30 days after this fully
153 executed Agreement is provided to the Parties and will be processed diligently and continuously
154 through completion. Unless otherwise directed by law, during the pendency of the
155 aforementioned confirmation proceeding(s), none of the Parties may withdraw from, modify, or
156 amend the provisions hereof without the express written consent of all Parties.

