

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

CONTRACT FOR EXCHANGE OF WATER AMONG THE UNITED STATES,
SAN LUIS WATER DISTRICT AND MEYERS FARMS FAMILY TRUST

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THIS CONTRACT, made this ____ day of _____ 2007, pursuant generally to the Act of June 17, 1902 (32 Stat. 388), the Act of 1937, as Acts amendatory or supplementary hereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and supplemented, August 4, 1939 (53 Stat. 1187), and amended and supplemented, October 12, 1982 (96 Stat. 1263), and the Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively hereinafter referred to as Federal Reclamation laws, among THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, represented by the Secretary of the Interior or his duly authorized representative executing this Contract, hereinafter referred to as the Contracting Officer, MARVIN MEYERS AS TRUSTEE OF THE MEYERS FARMS FAMILY TRUST, hereinafter referred to as Meyers, and SAN LUIS WATER DISTRICT, hereinafter referred to as the Contractor, with its principal place of business in Los Banos, California.

WITNESSETH, That:

EXPLANATORY RECITALS

WHEREAS, the United States constructed, operates and maintains the Central Valley Project for the purpose among others, of furnishing water for irrigation, municipal, industrial, domestic, fish and wildlife and other beneficial uses; and

WHEREAS, the United States constructed the Delta Division Facilities, including the San Luis Unit facilities (which include the San Luis Canal and Dos Amigos Pumping Plant),

80 which will be used in part for the furnishing of Project Water to the Contractor pursuant to the
81 terms of the Contractor's Water Service Contract; and

82 WHEREAS, the United States makes Project Water available to some of its
83 contractors from the Mendota Pool, the terminal point of the Delta-Mendota Canal; and

84 WHEREAS, the Contractor has, with the Contracting Officer's approval, diverted
85 a portion of the Project Water available to it under the Contractor's Water Service Contract to
86 Meyers for banking outside of the Contractor's boundaries in the Meyers Banking Facility; and

87 WHEREAS, the Contractor wishes to continue banking a portion of the Project
88 Water available to it under the Contractor's Water Service Contract in the Meyers Banking
89 Facility, and the Contracting Officer is willing allow such banking in accordance with the terms
90 and conditions of the April 7, 2006 letter to the Contractor which is attached hereto as Exhibit
91 A; and

92 WHEREAS, Meyers has a supply of Banked Water and desires to make said
93 water or a portion thereof available from time to time in the Mendota Pool for use by the United
94 States in exchange for the United States making an equivalent amount of Project Water
95 available to the Contractor via Project facilities for allocation to Meyers so that such water will
96 be used for irrigation by Meyers within the Contractor's boundaries; and

97 WHEREAS, the Contracting Officer is willing to allow Meyers to operate the
98 Meyers Banking Facility and introduce Banked Water into the Mendota Pool as described above
99 as long as such operation is in accordance with this Contract and the supporting environmental
100 documentation.

101 NOW, THEREFORE, in consideration of the covenants herein contained, it is
102 mutually agreed by the parties hereto as follows:

DEFINITIONS

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1. When used herein, unless otherwise distinctly expressed or manifestly incompatible with the intent hereof, the term:
- (a) “Banked Water” shall mean water delivered for banking in the Meyers Banking Facility that Meyers may make available to the Contracting Officer in the Pool pursuant to the terms and conditions of this Contract. Provided that, Banked Water does not include water allocated to Marvin and Patricia Meyers under Contract No. 9-07-20-W1608.
 - (b) “Charges” shall mean the payments required by Federal Reclamation law in addition to the Rates specified in this Contract as determined annually by the Contracting Officer pursuant to this Contract; and
 - (c) “Contracting Officer” shall mean the Secretary of the Interior’s duly authorized representative acting pursuant to this Contract or applicable Federal Reclamation law or regulation; and
 - (d) “Contractor’s Water Service Contract” shall mean Contract No. 14-06-200-7773A, between the Contractor and the United States, including amendments, modifications, and renewals thereof; and
 - (e) “Delta Division Facilities” shall mean those existing and future Project facilities in and south of the Sacramento-San Joaquin Rivers Delta, including, but not limited to, the Tracy Pumping Plant, the O’Neill Forebay, the O’Neill Pumping/Generating Plant, the San Luis Unit facilities, and the Delta-Mendota Canal, used to divert, store, and convey Project Water.
 - (f) “Exchange Water” shall mean the Project Water that will be made available to the Contractor for diversion from the San Luis Unit facilities, unless otherwise agreed in writing by the Contracting Officer, in exchange for the Banked Water made available to the Contracting Officer in the Pool;

128 (g) "Meyers Banking Facility" shall mean ponds and associated facilities
129 operated by Meyers or Meyers' successors, located in the vicinity of the Pool in western Fresno
130 County.

131 (h) "Operating Non-Federal Entity" shall mean the entity (ies), its (their)
132 successors or assigns, which has (have) the obligation to operate and maintain all or a portion of
133 the Delta Division Facilities pursuant to written agreement(s) with the United States. When this
134 Contract was entered into, the Operating Non-Federal Entities were the San Luis & Delta-
135 Mendota Water Authority and, with respect to San Luis Unit facilities, the California
136 Department of Water Resources.

137 (i) "Pool" shall mean the body of water known as the Mendota Pool regulated
138 by the Mendota Dam and portions of the San Joaquin River and Fresno Slough, located near the
139 City of Mendota, California.

140 (j) "Project" shall mean the Central Valley Project owned by the United
141 States and managed by the Department of the Interior, Bureau of Reclamation.

142 (k) "Project Water" shall mean all water that is developed, diverted, stored, or
143 delivered by the United States in accordance with the statutes authorizing the Project and in
144 accordance with the terms and conditions of applicable water rights permits and licenses
145 acquired pursuant to California law.

146 (l) "Rate" shall mean the payments determined annually by the Contracting
147 Officer in accordance with the then current applicable ratesetting policies for the Project as
148 identified in Exhibit B.

149 (m) "Year" shall mean the period from and including March 1 of each calendar
150 Year through the last day of February of the following calendar Year.

151 TERM OF CONTRACT

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153 2. This Contract shall become effective on the date first herein above written and

154 shall remain in effect until February 28, 2032. Provided, that upon written notice to the
155 Contractor, this Contract may be terminated by the Contracting Officer at an earlier date, if the
156 Contracting Officer determines that the Contractor or Meyers has not been complying with one
157 or more of the terms or conditions of this Contract and the Contractor or Meyers (as applicable)
158 fails to cure such noncompliance within 30 days after written notice from the Contracting Officer
159 specifying the nature of such noncompliance.

160 EXCHANGE OF WATER

161 3. (a) While this Contract is in effect, the Contractor may deliver Project Water
162 to Meyers for banking in Meyers Banking Facility. Such deliveries shall be pursuant to the letter
163 attached hereto as Exhibit A, and shall comply with any applicable Reclamation guidelines and
164 the terms and conditions of this Contract.

165 (b) The Banked Water in the Meyers Banking Facility that Meyers may make
166 available to the United States in the Pool must be (i) Project Water originally allocated to the
167 Contractor under the Contractor's Water Service Contract; (ii) water made available to the
168 Contractor pursuant to section 215 of the Act of October 12, 1982; or (iii) non-Project Water
169 approved by the Contracting Officer. The amount of water delivered to the Meyers Banking
170 Facility for banking shall be reduced by 5% for losses in the Meyers Banking Facility, and water
171 introduced into the Pool pursuant to paragraph (c) of this Article 3 shall be subject to an
172 additional 5% reduction for losses in **the** Pool. By way of example only, if Meyers delivers
173 2,000 acre feet of water to the Meyers Banking Facility for banking, 5% of that amount (or 100
174 acre feet) would be deemed lost in the Meyers Banking Facility, leaving 1,900 acre feet. When
175 that water is introduced into the Pool in accordance with paragraph (c) of this Article 3, an
176 additional 5% loss of 95 acre feet (5% of 1,900 acre feet) will be deemed to occur, leaving a total
177 of 1,805 acre feet of Banked Water available for exchange pursuant to paragraph (c) of this
178

179 Article 3.

180 (c) In any Year, up to 10,526 acre-feet of Banked Water from the Meyers
181 Banking Facility, may be introduced into the Pool and in exchange the United States shall make
182 up to 10,000 acre-feet of Exchange Water available via the Project facilities to the Contractor in
183 accordance with the provisions of subdivision (c) of this Article. On or before each March 1 and
184 at such other times as the Contracting Officer deems necessary, the Contractor and Meyers shall
185 submit to the Contracting Officer a written schedule, satisfactory to the Contracting Officer,
186 showing the monthly quantities of Banked Water to be introduced into the Pool during the
187 current Year and the monthly quantities of Exchange Water to be made available to the
188 Contractor in exchange for Banked Water made available to the Contracting Officer in the Pool.
189 The Contracting Officer shall use all reasonable means to deliver Exchange Water according to
190 the approved schedule. Provided that, unless otherwise agreed by the Contracting Officer, the
191 monthly quantities of Exchange Water made available to the Contractor shall not exceed the
192 monthly quantities of Banked Water introduced into the Pool during that same month.

193 (d) Within 20 days of its receipt of the schedule, the Contracting Officer shall
194 review and approve the schedule if:

- 195 (1) Sufficient amount of Exchange Water can be made available to
196 facilitate the exchange; and
- 197 (2) The Contracting Officer has sufficient demands for deliveries of
198 Project Water from the Pool during each of the months in which
199 Banked Water is to be introduced into the Pool; and
- 200 (3) The exchange will have no adverse impact on Project Water
201 supplies or Project operations; and
- 202 (4) The United States would be making releases to the Pool from the
203 Delta-Mendota Canal to satisfy obligations for its contractors

204 without this exchange. The schedule may be revised at the
205 discretion of the Contracting Officer if any of the conditions set
206 forth in paragraphs (d)(1) through (d)(4) of this Article change;
207 and

208 (e) Banked Water shall not be introduced into the Pool unless and until the
209 Contracting Officer has approved the schedule pursuant to subdivision (c) of the Article. The
210 Contracting Officer shall use all reasonable means to deliver Exchange Water to the Contractor
211 in accordance with the approved schedule for each Year; and

212 (f) The United States shall have all rights to the use of the Banked Water
213 introduced into the Pool by Meyers. The Contractor shall have all rights to the use of the Exchange
214 Water made available to it in accordance with this Contract.

215 (g) Unless otherwise agreed by the Contracting Officer, if during any month,
216 the Contractor does not take delivery of all the Exchange Water made available to it during that
217 month, the Exchange Water that is not taken shall be deemed unused Project Water donated by
218 the Contractor to the United States for Project purposes.

219 PAYMENT

220 4. (a) Upon execution of this Contract, the Contractor shall pay the United
221 States \$500 which shall constitute an administrative charge hereunder.

222 (b) The Contractor will pay all costs associated with the delivery of the
223 Project Water delivered to the Meyers Banking Facility, including the Contractor's Delta
224 Mendota Canal (DMC) cost-of-service Rate and applicable Charges for the Year in which the
225 Project Water was banked. All payments will be credited to the CVP as provided for in the
226 then-current CVP ratesetting policy.

227 (c) At the time the Contractor and Meyers submit the initial schedule
228 for the delivery of Exchange Water pursuant to subdivision (c) of Article 3, the Contractor shall

229 make an advance payment to the Contracting Officer equal to the total amount payable pursuant
230 to the applicable Rate(s) for the Exchange Water scheduled to be delivered pursuant to this
231 Contract during the first two calendar months of the Year reflected in such schedule. Before the
232 end of the first month and before the end of each calendar month thereafter, the Contractor shall
233 make an advance payment to the Contracting Officer, at the applicable Rate(s), for the Exchange
234 Water to be delivered pursuant to this Contract during the second month immediately following.
235 Adjustments between advance payments for Exchange Water and payments for Exchange Water
236 actually delivered shall be made before the end of the following month; Provided, That any
237 revised schedule submitted by the Contractor pursuant to subdivision (c) of Article 3 which
238 increases the amount of Exchange Water to be delivered pursuant to this Contract during any
239 month shall be accompanied with appropriate advance payment, at the Rate(s) then in effect, to
240 assure that Exchange Water is not delivered to the Contractor in advance of such payment. The
241 established Rate(s) for the additional services necessary to deliver the Exchange Water to the
242 Contractor via Project facilities shall be based upon the components identified on Exhibit B. No
243 Exchange Water shall be conveyed to the Contractor under this Contract in advance of payment
244 of such Rate.

245 (d) Any Exchange Water delivered to the Contractor in exchange for Banked
246 Water delivered into the Pool, which is delivered to full-cost landholdings, will be assessed the
247 incremental difference between the cost-of-service Rate paid at the time of deliver to the Meyers
248 Banking Facility and the full-cost Rate at the time the Banked Water is exchanged. The full-cost
249 Rate will be the rate in effect the Year the Exchange Water is delivered.

250 (e) No refund shall be made by the United States to the Contractor of the
251 payments for the conveyance of Banked Water described in subdivision (g) of Article 3.

252 (f) All payments from the Contractor to the United States under this Contract
253 shall be by the medium requested by the United States on or before the date payment is due. The
254 requirement method of payment may include checks, wire transfers, or other types of payment

255 specified by the United States.

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257 (g) Upon execution of the Contract, the Contractor shall furnish the
258 Contracting Officer with the Contractor taxpayer's identification number (TIN). The purpose for
259 requiring the Contractor TIN is for collecting and reporting any delinquent amounts arising out
260 of the Contractors relationship with the United States.

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ADJUSTMENTS

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264 5. (a) The amount of any overpayment by the Contractor by reason of the
265 quantity of Exchange Water made available to the Contractor pursuant to this Contract, as
266 conclusively determined by the Contracting Officer, having been less than the quantity which the
267 Contractor otherwise under the provision of the Contract would have been required to pay for,
268 shall be applied first to any accrued indebtedness arising out of this Contract then due and owing
269 to the United States by the Contractor. Any amount of such overpayment then remaining shall
270 be refunded to the Contractor.

271 (b) In the event the amount of Exchange Water delivered to the Contractor
272 exceeds the quantity of Banked Water introduced into the Pool by Meyers, the Contracting
273 Officer shall so notify the Contractor within 30 days and the Contractor shall pay to the United
274 States for said excess Exchange Water. If the amount of Exchange Water delivered to the
275 Contractor during any month exceeds the quantity of Banked Water introduced into the Pool
276 during that same month, within 30 days of the receipt of written notification from the
277 Contracting Officer of such imbalance, Meyers shall introduce a sufficient amount of additional
278 Banked Water into the Pool to balance the amount of Banked Water introduced into the Pool and
279 the total amount of Exchange Water made available to the Contractor. In the event Meyers does
280 not introduce a sufficient amount of additional Banked Water into the Pool within 30 days,
281 deliveries of Exchange Water to the Contractor shall be terminated immediately, without the
282 notice of noncompliance provided for in Article 2 of this Contract.

283 .MEASUREMENT OF BANKED WATER AND EXCHANGE WATER

284 6. (a) The appropriate Operating Non-Federal Entity will measure the amount of
285 the Banked Water pumped into the Pool for exchange and shall provide those measurements to
286 the Contracting Officer, Meyers, and the Contractor within 30 days. Upon request of any party to
287 this Contract, the Contracting Officer shall investigate or cause to be investigated by the
288 appropriate Operating Non-Federal Entity the accuracy of such measurements and shall take any
289 necessary steps to adjust any errors appearing therein. For any period of time when accurate
290 measurements have not been made, the Contracting Officer shall consult with the Meyers and the
291 appropriate Operating Non-Federal Entity, prior to making a final determination of the quantity
292 of Banked Water pumped into the Pool.

293 (b) Exchange Water scheduled pursuant to Article 3 of this Contract in
294 exchange for Banked Water shall be delivered to the Contractor, at locations identified in the
295 Contractor's Water Service Contract for delivery of Project Water and any additional point or
296 points of delivery either on Project facilities or another location or locations mutually agreed to
297 in writing by the Contracting Officer and the Contractor. Exchange Water delivered to the
298 Contractor pursuant to this Contract shall be measured and recorded with equipment furnished,
299 installed, operated, and maintained by the Contracting Officer either directly or indirectly
300 through its written agreements with the Operating Non-Federal Entity(ies), in accordance with
301 the measurement provisions in the Contractor's Water Service Contract, unless undertaken by
302 the Contractor with the consent of the Contracting Officer at the point or points of delivery
303 established pursuant to this subdivision. The Operating Non-Federal Entity shall provide those
304 measurements to the Contracting Officer, the Contractor and Meyers within 30 days. Upon the
305 request of **any** party to this Contract, the Contracting Officer shall investigate, or cause to be
306 investigated by the appropriate Operating Non-Federal Entity (ies) accuracy of such
307 measurements and shall take any necessary steps to adjust any errors appearing therein. For any
308 period of time when accurate measurements have not been made, the Contracting Officer shall

309 consult with the Contractor and the appropriate Operating Non-Federal Entity(ies), if any, prior
310 to making a final determination of the quantity delivered for that period of time.

311 UNITED STATES NOT LIABLE

312 7. (a) Neither the Contracting Officer, the Contractor, nor any Operating Non-
313 Federal Entity(ies) shall be responsible for the control, carriage, handling, use, disposal, or
314 distribution of the Banked Water before it is pumped into the Pool.

315 (b) At no time, shall the Contractor be responsible for the control, care of
316 distribution of the Banked Water.

317 (c) Meyers shall indemnify the United States, the Contractor, its officers,
318 employees, agents, and assigns on account of damage or claim of damage of any nature
319 whatsoever for which there is legal responsibility, including property damage, personal injury, or
320 death arising out of or connected with the control, carriage, handling, use, disposal, or
321 distribution of such Banked Water beyond the Pool except for any damage or claim arising out
322 of: (i) acts or omissions of the Contracting Officer, the Contractor, or any of its officers,
323 employees, agents, and assigns, including the Operating Non-Federal Entity(ies) with the intent
324 of creating the situation resulting in any damage or claim; (ii) willful misconduct of the
325 Contracting Officer, the Contractor, or any of its officers, employees, agents, and assigns,
326 including the Operating Non-Federal Entity(ies); (iii) negligence of the Contracting Officer, the
327 Contractor, or any of its officers, employees, agents, and assigns including the Operating Non-
328 Federal Entity(ies); and (iv) a malfunction of facilities owned and/or operated by the United
329 States, the Contractor, or the Operating Non-Federal Entity(ies).

QUALITY OF WATER

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8. (a) The Banked Water introduced into the Pool must comply with the water quality standards specified in Exhibit C and the groundwater levels in monitoring wells near the Fresno Slough are to be monitored as set forth in Exhibit C. Analysis and achievement of those standards must occur prior to the introduction of the Banked Water into the Pool. All costs associated with the analysis of the quality of the Banked Water shall be paid by Meyers.

(b) If it is determined by the Contracting Officer that the quality of the Banked Water to be introduced into the Pool for exchange does not comply with the standards established in Exhibit C or otherwise significantly degrades the quality of the water in the Pool, the Contracting Officer shall notify the Meyers that the Banked Water is unacceptable, and Meyers shall immediately terminate any and all efforts to pump into the Pool until such quality standards can be achieved.

(c) The United States does not warrant the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water.

OPERATION AND MAINTENANCE BY NON-FEDERAL ENTITY(IES)

9. (a) The Operation and Maintenance (O&M) of a portion of the Project facilities which serve Meyers and the Contractor, and responsibility for funding a portion of the costs of such O&M, have been transferred to the San Luis & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate agreement (8-07-20-X0354) between the United States and Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority and transferred to California Department of Water Resources, an Operating Non-Federal Entity by separate the agreement (14-06-200-9755) between the United States and Operating Non-Federal Entity California Department of Water Resources. These separate agreements shall not interfere with or affect the rights or obligations of Meyers and the Contractor or the United States

355 hereunder.

356 (b) The Contracting Officer has previously notified the Contractor in writing
357 that the O&M of a portion of the Project facilities which serve Meyers and the Contractor has
358 been transferred to the Operating Non-Federal Entity(ies), and therefore, the Contractor shall pay
359 directly to Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or to any
360 successor approved by the Contracting Officer under the terms and conditions of the separate
361 agreements between the United States and Operating Non-Federal Entity(ies), described in
362 subdivision (a) of this Article, all rates, charges, or assessments of any kind, including any
363 assessment for reserve funds, which Operating Non-Federal Entity San Luis & Delta-Mendota
364 Water Authority, or such successor determines, sets, or establishes for the O&M of the portion of
365 the Project facilities operated and maintained by the Operating Non-Federal Entity(ies), or such
366 successor. Such direct payments to Operating Non-Federal Entity San Luis & Delta-Mendota
367 Water Authority, or such successor shall not relieve the Contractor of its obligation to pay
368 directly to the United States the Contractor's share of the Rates, except to the extent the
369 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, collects payments on
370 behalf of the United States in accordance with subdivision (a) of this Article.

371 (c) For so long as the O&M of any portion of the Project facilities serving the
372 Contractor is performed by Operating Non-Federal Entity (ies), or any successor thereto, the
373 Contracting Officer shall adjust those components of the Rates for Exchange Water delivered
374 under this Contract representing the cost associated with the activity being performed by
375 Operating Non-Federal Entity (ies), or its successor.

376 (d) In the event the O&M of the Project facilities operated and maintained by
377 Operating Non-Federal Entity(ies) is re-assumed by the United States during the term of this
378 Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the
379 Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid by the

380 Contractor for Exchange Water under this Contract representing the O&M costs of the portion of
381 such Project facilities which have been re-assumed. The Contractor shall, thereafter, in the
382 absence of written notification from the Contracting Officer to the contrary, pay the Rates,
383 specified in the revised Exhibit "B" directly to the United States in compliance with Article 4 of
384 this Contract.

385 OPINIONS AND DETERMINATIONS

386 10. (a) Where the terms of this Contract provide for actions to be based upon the
387 opinion or determination of the parties to this Contract, said terms shall not be construed as
388 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
389 determinations. All parties, notwithstanding any other provisions of this Contract, expressly
390 reserve the right to seek relief from and appropriate adjustment for any such arbitrary,
391 capricious, or unreasonable opinion or determination. Each opinion or determination by the
392 parties shall be provided in a timely manner. Nothing in this subdivision (a) of this Article is
393 intended to or shall affect or alter the standard of judicial review applicable under Federal law to
394 any opinion or determination implementing a specific provision of Federal law embodied in
395 statute or regulation.

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

401 RESOLUTION OF DISPUTES

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403 11. Should any dispute arise concerning any provisions of this Contract, or the
404 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to

405 resolve the dispute. Prior to the Contractor or Meyers commencing any legal action, or the
406 Contracting Officer referring any matter to the Department of Justice, the party shall provide to
407 the other party 30 days' written notice of the intent to take such action; Provided, That such
408 notice shall not be required where a delay in commencing an action would prejudice the interests
409 of the party that intends to file suit. During the 30 day notice period, the Contractor, Meyers,
410 and the Contracting Officer shall meet and confer in an attempt to resolve the dispute. Except as
411 specifically provided, nothing herein is intended to waive or abridge any right or remedy that the
412 Contractor, Meyers or the United States may have.

413 TERMINATION OF CONTRACT

414 12. In the event the Contractor is no longer a Project water service contractor, this
415 Contract shall be terminated immediately and of no further force and effect by any party
416 providing notice to the other parties.

417 CHARGES FOR DELINQUENT PAYMENTS

418 13. (a) The Contractor shall be subject to interest, administrative and penalty
419 charges on delinquent installments or payments. When a payment is not received by the due
420 date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond
421 the due date. When a payment becomes sixty (60) days delinquent, the Contractor shall pay an
422 administrative charge to cover additional costs of billing and processing the delinquent payment.
423 When a payment is delinquent ninety (90) days or more, the Contractor shall pay an additional
424 penalty charge of six percent (6%) per year for each day the payment is delinquent beyond the
425 due date. Further, the Contractor shall pay any fees incurred for debt collection services
426 associated with a delinquent payment.

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

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

435 EQUAL OPPORTUNITY

436 14. During the performance of this Contract, the Contractor agrees as follows:

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

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

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

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

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

467 (f) In the event of the Contractor or Meyer's noncompliance with the
468 nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders,
469 this Contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor
470 and Meyers may be declared ineligible for further Government contracts in accordance with
471 procedures authorized in said amended Executive Order, and such other sanctions may be
472 imposed and remedies invoked as provided in said Executive Order, or by rule, regulation, or
473 order of the Secretary of Labor, or as otherwise provided by law.

474 (g) The Contractor or Meyers will include the provisions of paragraphs (a)
475 through (g) in every subcontract or purchase order unless exempted by the rules, regulations, or
476 orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive
477 Order, so that such provisions will be binding upon each subcontractor or vendor. The
478 Contractor or Meyers will take such action with respect to any subcontract or purchase order as
479 may be directed by the Secretary of Labor as a means of enforcing such provisions, including
480 sanctions for noncompliance: Provided, however, That in the event the Contractor **or** Meyers
481 becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of
482 such direction, the Contractor **or** Meyers may request the United States to enter into such
483 litigation to protect the interests of the United States.

484

485 BOOKS, RECORDS, AND REPORTS

486
487 15. The Contractor and Meyers shall each establish and maintain accounts and other
488 books and records pertaining to administration of the terms and conditions of this Contract,
489 including: the Contractor's financial transactions, water supply data, Project operation,
490 maintenance and replacement logs, and Project land and right-of-way use agreements; the water
491 users' land-use (crop census), landownership, land-leasing and water-use data; and other matters
492 that the Contracting Officer may require. Reports thereon shall be furnished to the Contracting
493 Officer in such form and on such date or dates as the Contracting Officer may require. Subject
494 to applicable Federal laws and regulations, each party to this Contract shall have the right during
495 office hours to examine and make copies of the other party's books and records relating to
496 matters covered by this Contract.

497
498 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

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500 16. The expenditure or advance of any money or the performance of any obligation of
501 the United States under this Contract shall be contingent upon appropriation or allotment of
502 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any
503 obligations under this Contract. No liability shall accrue to the United States in case funds are
504 not appropriated or allotted.

505
506 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

507
508 17. The provisions of this Contract shall apply to and bind the successors and assigns
509 of the parties hereto, no assignment or transfer of this Contract or any right or interest therein
510 shall be valid until approved in writing by the Contracting Officer.

511
512 OFFICIALS NOT TO BENEFIT

513
514 18. No Member of or Delegate to Congress, Resident Commissioner or, official of the
515 Contractor shall benefit from this Contract other than as a water user or landowner in the, same
516 manner as other water users or landowners.

517
518 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

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

525
526 (b) These statutes require that no person in the United States shall, on the
527 grounds of race, color, national origin, handicap, or age, be excluded from participation in, be
528 denied the benefits of, or be otherwise subjected to discrimination under any program or activity
529 receiving financial assistance from the Bureau of Reclamation. By executing this Contract, the
530 Contractor agrees to immediately take any measures necessary to implement this obligation,
531 including permitting officials of the United States to inspect premises, programs, and documents.

532 (c) The Contractor and Meyers each makes this agreement in consideration of
533 and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts

534 or other Federal financial assistance extended after the date hereof to the Contractor or Meyers
535 by the Bureau of Reclamation, including installment payments after such date on account of
536 arrangements for Federal financial assistance which were approved before such date. The
537 Contractor recognizes and agrees that such Federal assistance will be extended in reliance on the
538 representations and agreements made in this Article, and that the United States reserves the right
539 to seek judicial enforcement thereof.

540 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

541 20. (a) The obligation of the Contractor to pay the United States as provided in
542 this Contract is a general obligation of the Contractor notwithstanding the manner in which the
543 obligation may be distributed among the Contractor's water users and notwithstanding the default
544 of individual water users in their obligations to the Contractor.

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

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CHANGES IN CONTRACTOR'S SERVICE AREA

554 21. While this Contract is in effect, no change may be made in the
555 Contractor's Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger,
556 or otherwise, except upon the Contracting Officer's written consent.

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558

MEDIUM FOR TRANSMITTING PAYMENTS

559 22. See article 4 (f), (g)

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CLEAN AIR AND WATER

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23. The Contractor and Meyers agree as follows:

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(1) To comply with all the requirements of Section 114 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*, as amended by Public Law 91-604), and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*, as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in Section 114 of the Air Act and Section 308 of the Water Act, respectively, and all regulations and guidelines issued thereunder before the execution of this contract.

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(2) That no portion of the work required by this contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this contract was executed unless and until the Environmental Protection Agency eliminates the name of such facility or facilities from such listing.

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(3) To use its best efforts to comply with clean air standards and clean water standards at the facility where the contract work is being performed.

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(4) To insert the substance of the provisions of this article into any nonexempt subcontract, including this paragraph (a) (4).

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579

(b) The terms used in this article have the following meanings:

(1) The term "Air Act" means the Clean Air Act, as amended

580 (42 U.S.C. 1857 *et seq.*, as amended by Public Law 91-604).

581 (2) The term “Water Act” means the Federal Water Pollution
582 Control Act, as amended (33 U.S.C. 1251 *et seq.*, as amended by Public Law 92-500).

583 (3) The term “clean air standards” means any enforceable rules,
584 regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other
585 requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act
586 or Executive Order 11738, an applicable implementation plan as described in Section 110(d) of
587 the Air Act (42 U.S.C. 1857c-5(d)), an approved implementation procedure or plan under
588 Section 111(c) or Section 111(d), respectively, of the Air Act (42 U.S.C. 1857c-6(c) or (d)), or
589 an approved implementation procedure under Section 112(d) of the Air Act (42 U.S.C. 1857c-
590 7(d)).

591 (4) The term “clean water standards” means any
592 enforceable limitation, control, condition, prohibition, standard, or other requirement which is
593 promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the
594 Environmental Protection Agency or by a state under an approved program, as authorized by
595 Section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance
596 with pretreatment regulations as required by Section 307 of the Water Act (33 U.S.C. 1317).

597 (5) The term “comply” means compliance with clean air or water
598 standards. Comply shall also mean compliance with a schedule or plan ordered or approved by
599 a court of competent jurisdiction, the Environmental Protection Agency, or an air or water
600 pollution control agency in accordance with the requirements of the Air Act or Water Act and
601 regulations issued pursuant thereto.

602 (6) The term “facility” means any building, plant, installation,
603 structure, mine, vessel or other floating craft, location, or site of operations owned, leased, or
604 supervised by a contractor or subcontractor to be utilized in the performance of a contract or
605 subcontract. Where a location or site of operations contains or includes more than one building,
606 plant, installation, or structure, the entire location or site shall be deemed to be a facility except
607 where the Director, Office of Federal Activities, Environmental Protection Agency, determines
608 that independent facilities are collocated in one geographical area.

609 PROTECTION OF WATER AND AIR QUALITY

610
611 24. (a) Project facilities used to make available and deliver water to the
612 Contractor shall be operated and maintained in the most practical manner to maintain the quality
613 of the water at the highest level possible as determined by the Contracting Officer: *Provided,*
614 *That* the United States does not warrant the quality of the water delivered to the Contractor and
615 is under no obligation to furnish or construct water treatment facilities to maintain or improve
616 the quality of water delivered to the Contractor and Meyers.

617 (b) The Contractor and Meyers shall comply with all applicable water and
618 air pollution laws and regulations of the United States and the State of California; and shall
619 obtain all required permits or licenses from the appropriate Federal, State, or local authorities
620 necessary for the delivery of water by the Contractor and Meyers; and shall be responsible for
621 compliance with all Federal, State, and local water quality standards applicable to surface and
622 subsurface drainage and/or discharges generated through the use of Federal or Contractor
623 facilities and Meyers or Exchange Water provided by the Contractor within the Contractor’s
624 Project Water Service Area.

625 (c) This article shall not affect or alter any legal obligations of the
626 Secretary to provide drainage or other discharge services.

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COMPLIANCE WITH FEDERAL RECLAMATION LAWS

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25. The parties agree that the delivery of irrigation water or use of Federal facilities pursuant to this Contract is subject to Federal reclamation law, including but not limited to the Reclamation Reform Act of 1982 (43 U.S.C. 390aa *et seq.*), as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal reclamation law.

PRIVACY ACT COMPLIANCE

26. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a) (Privacy Act) and the Department of the Interior rules and regulations under the Privacy Act (43 CFR 2.45 *et seq.*) in maintaining landholder certification and reporting records required to be submitted to the Contractor for compliance with Sections 206, 224(c), and 228 of the Reclamation Reform Act of 1982 (96 Stat. 1261), and pursuant to 43 CFR 426.18.

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

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

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

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

NOTICES

27. Any notice, demand or request authorized or required by this Contract shall be deemed to have been given to the Contracting Officer, when mailed, postage prepaid, or delivered to the Area Manager, 1243 N Street, Fresno, California 93721, telephone (559) 487-5116 and to Meyers, when mailed, postage prepaid, or delivered to the Meyers Farms Family Trust, P.O. Box 457, Firebaugh, California, 93622, telephone (559) 659-3033 and to the **Contractor**, when mailed, postage prepaid, or delivered to San Luis Water District P.O. Box 2135, Los Banos, California, 93635. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this Article for other notices.

CONTRACT DRAFTING CONSIDERATIONS

28. Articles 1 through 12, and Article 29 of this Contract have been drafted,

678 negotiated, and reviewed by the parties hereto, each of whom is sophisticated in the matters to
679 which this Contract pertains, and no one party shall be considered to have drafted the stated
680 articles.

681 ENTIRE AGREEMENT

682 29. This Contract and the documents referenced herein contain all of
683
684 agreements of the parties hereto with respect to matters contained herein, and no other agreement
685 or understanding pertaining to any such matter shall be effective for any purpose. No provisions
686 hereof may be amended or modified in any manner whatsoever except by an agreement in
687 writing signed by duly authorized representative of each of the parties.

DRAFT

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

690 UNITED STATES OF AMERICA

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694 By: _____
695 Regional Director, Mid-Pacific Region
696 Bureau of Reclamation Office

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699 By: _____
700 Marvin Meyers, as Trustee of the
701 Meyers Farms Family Trust

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704 SAN LUIS WATER DISTRICT

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706 By: _____
707 Martin McIntyre, General Manager

708 Notary Statement:
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April 7, 2006 Banking Approval Letter

See pdf label Exhibit A

DRAFT

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2007 Rates for Conveyance of Exchange Water

<u>2007 Cost Component San Luis Canal</u>	<u>Irrigation Rate</u>
O'Neill Conveyance Pumping	\$0.40
Dos Amigos Conveyance Pumping	\$0.57
Direct Pumping Capital	\$3.37
Direct Pumping Project Use Energy O&M	<u>\$3.66</u>
TOTAL	\$8.00
<u>2007 Cost Component Delta Mendota Canal</u>	<u>Irrigation Rate</u>
O'Neill Conveyance Pumping	\$0
Dos Amigos Conveyance Pumping	\$0
Direct Pumping Capital	\$0
Direct Pumping Project Use Energy O&M	\$0

Exchange Contract between Marvin Meyers Farms Family Trust, San Luis Water District, and Reclamation, Contract No. 07-WC-20-3529. Initially, the San Luis Water District (Contractor) Delta-Mendota Canal (DMC) cost of service Rate for delivery of Project Water, will be paid in advance of banking the water for use at a later date. Such Rate is established pursuant to the Contractor's Water Service Contract 14-06-200-7773A. If the Exchange Water is conveyed through the San Luis Canal (SLC), the Contractor will pay for additional services necessary to deliver the Exchange Water to the Contractor.

As a general note, the Authorities perform the operation and maintenance of the conveyance and conveyance pumping facilities and are responsible for the recovery of these costs. Reclamation will calculate the Rate for the additional services based upon the components as shown above.

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Water Quality Standards and Monitoring

RECLAMATION CONTRACTUAL WATER QUALITY
STANDARDS AT MENDOTA POOL

DAILY: The quality of water shall not exceed a mean daily value of eight hundred (800) parts per million of total dissolved solids (TDS). The mean daily values are computed by weighting the instantaneous values on the basis of time of occurrence during each day.

MONTHLY: The quality of water shall not exceed a mean monthly value of six hundred (600) parts per million of TDS. The mean monthly value is computed by weighting each mean daily value of TDS on a basis of the quantity of water delivered each day of the month.

ANNUAL: The quality of water shall not exceed a mean annual value of four hundred and fifty (450) parts per million of TDS. The mean annual value is computed by weighting each mean daily value of TDS on the basis of quantity of water delivered each day of the year.

FIVE YEAR: the average quality of water for any five (5) consecutive years shall not exceed a mean value of four hundred (400) parts per million of TDS. The 5-year average shall be computed by weighting each mean daily value of TDS on the basis of water delivered each day of the five (5) consecutive years ending with the current year.

MONITORING

Groundwater levels in monitoring wells installed near the Fresno Slough will be monitored during periods of extraction to determine if a direct hydraulic connection exists between shallow groundwater and surface water in the Fresno Slough as provided under Appendix A (Meyers Farms Monitoring Program) in the Environmental Assessment (EA) titled Meyers Farm Water Banking Project, EA number 05-09.