

AG and M&I
R.O. Draft 09/23-2004
R.O. Draft 09/14-2004
R.O. Draft 08/25-2004
R.O. Draft 08/17-2004
R.O. Delta Division 07/30-2004
Contract No.
14-06-200-7859A-LTR1

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

LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
AND
COEHLO FAMILY TRUST
PROVIDING FOR PROJECT WATER SERVICE
FROM DELTA DIVISION

Table of Contents

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
	Preamble	1
	Explanatory Recitals	2-5
1	Definitions	5-10
2	Term of Contract.....	10-14
3	Water to be Made Available and Delivered to the Contractor	14-18
4	Time for Delivery of Water	19-20
5	Point of Diversion and Responsibility for Distribution of Water.....	20-22
6	Measurement of Water Within the Contractor's Service Area.....	22-23
7	Rates and Method of Payment for Water.....	24-30
8	Non-Interest Bearing Operation and Maintenance Deficits	30
9	Sales, Transfers, or Exchanges of Water	30-32
10	Application of Payments and Adjustments.....	32-33
11	Temporary Reductions--Return Flows	33-34
12	Constraints on the Availability of Water	34-36
13	Unavoidable Groundwater Percolation.....	37
14	Rules and Regulations	37
15	Water and Air Pollution Control.....	37
16	Quality of Water	37-38
17	Water Acquired by the Contractor Other Than From the United States	38-40
18	Opinions and Determinations	40-41
19	Coordination and Cooperation.....	41-43
20	Charges for Delinquent Payments	43

Table of Contents - continued

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
21	Equal Opportunity.....	43-45
22	General Obligation--Benefits Conditioned Upon Payment.....	45
23	Compliance With Civil Rights Laws and Regulations.....	45-46
24	Privacy Act Compliance.....	46
25	Contractor to Pay Certain Miscellaneous Costs.....	47
26	Water Conservation.....	47-48
27	Existing or Acquired Water or Water Rights.....	49
28	Operation and Maintenance by San Luis & Delta-Mendota Water Authority.....	49-51
29	Contingent on Appropriation or Allotment of Funds.....	51
30	Books, Records, and Reports.....	51
31	Assignment Limited--Successors and Assigns Obligated.....	52
32	Severability.....	52-53
33	Resolution of Disputes.....	53
34	Officials Not to Benefit.....	53
35	Changes in Contractor's Service Area.....	53-54
36	Federal Laws.....	54
37	Notices.....	54
38	Confirmation of Contract.....	55
	Signature Page.....	55

Exhibit A - Map of Contractor's Service Area

Exhibit B - Rates and Charges

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9 PROVIDING FOR PROJECT WATER SERVICE
10 FROM DELTA DIVISION

11 THIS CONTRACT, made this ____ day of _____, 2005, in pursuance
12 generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto,
13 including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and
14 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat.
15 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat.
16 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively
17 hereinafter referred to as Federal Reclamation law, between THE UNITED STATES OF AMERICA,
18 hereinafter referred to as the United States, and COEHLO FAMILY TRUST, hereinafter referred to
19 as the Contractor, acting pursuant to the laws of the State of California;

20 WITNESSETH, That:

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EXPLANATORY RECITALS

[1st] WHEREAS, the United States has constructed and is operating the Central Valley Project (Project), California, for diversion, storage, carriage, distribution and beneficial use, for flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and restoration, generation and distribution of electric energy, salinity control, navigation and other beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and the San Joaquin River and their tributaries; and

[2nd] WHEREAS, the United States constructed the Delta-Mendota Canal and related facilities, which will be used in part for the furnishing of water to the Contractor pursuant to the terms of this Contract; and

[3rd] WHEREAS, the rights to Project Water were acquired by the United States pursuant to California law for operation of the Project; and

[4th] WHEREAS, the Mason Loundy Trust and the United States entered into Contract No.14-06-200-7859A, which established terms for the delivery of 5,200 acre-feet of supplemental water, hereinafter referred to as Project Water, from August 20, 1974, through December 31, 2003, and 2,653 acre-feet of Schedule 2 water as a permanent adjustment and settlement of the Mason Loundy Trust’s asserted claims of rights to water in Fresno Slough tributary to the San Joaquin River in fulfillment of such rights to the Mason Loundy Trust from Delta Division Facilities; and

[5th] WHEREAS, the Mason Loundy Trust entered into “Partial Assignment of Contract and Consent Thereof” dated December 16, 1986, assigning 1,321 acre-feet of Schedule 2 water and 3,120 acre-feet of Project Water of Contract No. 14-06-200-7859A to the State of California Department of Fish & Game, Wildlife Conservation Board, leaving a balance of 1,332 acre-feet of Schedule 2 water and 2,080 acre-feet of Project Water available to the Mason Loundy Trust under

44 Contract No. 14-06-200-7859A; and

45 [5.1] WHEREAS, the Mason Loundy Trust entered into the “Assignment of Contract,
46 Consent Thereto and Assumption Thereof” dated August 22, 1995, assigning the 1,321 acre-feet of
47 Schedule 2 water and 2,080 acre-feet of Project Water remaining available under Contract
48 No. 14-06-200-7859A to the Contractor; and

49 [5.2] WHEREAS, Schedule 2 water is not the subject of this Contract and will continue to
50 be delivered and administered under the terms and conditions of Contract No. 14-06-200-7859A; and

51 [5.3] WHEREAS, Contract No. 14-06-200-7859A also established the terms for the
52 delivery of 2,080 acre-feet of supplemental water to the Contractor from Delta Division facilities
53 from August 20, 1974, through December 31, 2003; and

54 [5.4] WHEREAS, the Contractor and the United States have pursuant to subsection
55 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into interim
56 renewal contract(s) identified as Contract No(s) 14-06-200-7859A-IR1 and 14-06-200-7859A-IR2, the
57 current of which is hereinafter referred to as the Existing Contract, which provided for the delivery of
58 Project Water to the Contractor from January 1, 2004, through February 28, 2005; and

59 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of the
60 Existing Contract following completion of appropriate environmental documentation, including a
61 programmatic environmental impact statement (PEIS) pursuant to the National Environmental Policy
62 Act (NEPA) analyzing the direct and indirect impacts and benefits of implementing the CVPIA and
63 the potential renewal of all existing contracts for Project Water; and

64 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
65 environmental review necessary to provide for long-term renewal of the terms and conditions for

66 Project Water service under the Existing Contract; and

67 [8th] WHEREAS, the Contractor has requested the long-term renewal for Project Water
68 service, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws of the
69 State of California, for water service from the Project; and

70 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all of
71 its obligations under the Existing Contract; and

72 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting
73 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and
74 beneficial use and/or has demonstrated projected future demand for water use such that the
75 Contractor has the capability and expects to utilize fully for reasonable and beneficial use the
76 quantity of Project Water to be made available to it pursuant to this Contract; and

77 [11th] WHEREAS, water obtained from the Project has been relied upon by urban and
78 agricultural areas within California for more than 50 years, and is considered by the Contractor as an
79 essential portion of its water supply; and

80 [12th] WHEREAS, the economies of regions within the Project, including the Contractor's,
81 depend upon the continued availability of water, including water service from the Project; and

82 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships
83 to pursue measures to improve water supply, water quality, and reliability of the Project for all
84 Project purposes; and

85 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to
86 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment
87 of the Project as required by law; to guard reasonably against Project Water shortages; to achieve a

88 reasonable balance among competing demands for use of Project Water; and to comply with all
89 applicable environmental statutes, all consistent with the legal obligations of the United States
90 relative to the Project; and

91 [15th] WHEREAS, the parties intend by this Contract to develop a more cooperative
92 relationship in order to achieve their mutual goals; and

93 [15.1] WHEREAS, the Contractor has utilized or may utilize transfers, contract assignments,
94 rescheduling and conveyance of Project Water and non-Project water under this Contract as tools to
95 minimize the impacts of Conditions of Shortage and to maximize the beneficial use of water; and

96 [15.2] WHEREAS, the parties desire and intend that this Contract not provide a disincentive
97 to the Contractor in continuing to carry out the beneficial activities set out in the Explanatory Recital
98 immediately above; and

99 [16th] WHEREAS, the United States and the Contractor are willing to enter into this
100 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

103 DEFINITIONS

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

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

108 (b) "Charges" shall mean the payments required by Federal Reclamation law in
109 addition to the Rates and Tiered Pricing Component specified in this Contract as determined annually

110 by the Contracting Officer pursuant to this Contract;

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

114 (d) AContracting Officer@ shall mean the Secretary of the Interior-s duly authorized
115 representative acting pursuant to this Contract or applicable Federal Reclamation law or regulation;

116 (e) AContract Total@ shall mean the maximum amount of water to which the
117 Contractor is entitled under subdivision (a) of Article 3 of this Contract;

118 (f) AContractor's Service Area" shall mean the area to which the Contractor is
119 permitted to provide Project Water under this Contract as described in Exhibit AA@ attached hereto,
120 which may be modified from time to time in accordance with Article 35 of this Contract without
121 amendment of this Contract;

122 (g) ACVPPIA@ shall mean the Central Valley Project Improvement Act, Title
123 XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

124 (g.1) "Delta Division Facilities" shall mean those existing and future Project
125 facilities in and south of the Sacramento-San Joaquin Rivers Delta, including, but not limited to, the
126 Tracy Pumping Plant, the O'Neill Forebay, the O'Neill Pumping/Generating Plant, and the San Luis
127 Reservoir, used to divert, store and convey water to those Project Contractors entitled to receive
128 water conveyed through the Delta-Mendota Canal.

129 (h) AEligible 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) AExcess 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) AFull Cost Rate® shall mean an annual rate, as determined by the Contracting
136 Officer that shall amortize the expenditures for construction properly allocable to the Project
137 irrigation or M&I functions, as appropriate, of facilities in service including all O&M deficits funded,
138 less payments, over such periods as may be required under Federal Reclamation law, or applicable
139 contract provisions. Interest will accrue on both the construction expenditures and funded O&M
140 deficits from October 12, 1982, on costs outstanding at that date, or from the date incurred in the case
141 of costs arising subsequent to October 12, 1982, and shall be calculated in accordance with
142 subsections 202(3)(B) and (3)(C) of the RRA. The Full Cost Rate includes actual operation,
143 maintenance, and replacement costs consistent with Section 426.2 of the Rules and Regulations for
144 the RRA;

145 (k) AIneligible Lands® shall mean all lands to which Irrigation Water may not be
146 delivered in accordance with Section 204 of the RRA;

Deleted:

147 (l) AIrrigation Full Cost Water Rate® shall mean the Full Cost Rate applicable to
148 the delivery of Irrigation Water;

149 (m) AIrrigation Water® shall mean Project Water that is used primarily in the
150 production of agricultural crops or livestock, including domestic use incidental thereto, and watering
151 of livestock;

152 (n) ALandholder® shall mean a party that directly or indirectly owns or leases

153 | nonexempt land, as provided in 43 CFR 426.2;

154 | (o) AMunicipal and Industrial (M&I) Water® shall mean Project Water, other than
155 | Irrigation Water, made available to the Contractor. M&I Water shall include water used for human
156 | use and purposes such as the watering of landscaping or pasture for animals (e.g., horses) which are
157 | kept for personal enjoyment or water delivered to landholdings operated in units of less than five
158 | acres unless the Contractor establishes to the satisfaction of the Contracting Officer that the use of
159 | water delivered to any such landholding is a use described in subdivision (m) of this Article;

160 | (p) AM&I Full Cost Water Rate® shall mean the Full Cost Rate applicable,
161 | to the delivery of M&I Water;

Deleted:

162 | (q) AOperation and Maintenance® or AO&M" shall mean normal and reasonable,
163 | care, control, operation, repair, replacement (other than capital replacement), and maintenance of
164 | Project facilities;

Deleted:

165 | (r) AOperating Non-Federal Entity" shall mean the entity(ies), its (their)
166 | successors or assigns, which has (have) the obligation to operate and maintain all or a portion of the
167 | Delta Division Facilities pursuant to a written agreement(s) with the United States. When this
168 | Contract was entered into, the Operating Non-Federal Entity(ies) was (were) the San Luis & Delta-
169 | Mendota Water Authority;

170 | (s) AProject® shall mean the Central Valley Project owned by the United States and
171 | managed by the Department of the Interior, Bureau of Reclamation;

172 | (t) AProject Contractors® shall mean all parties who have water service contracts
173 | for Project Water from the Project with the United States pursuant to Federal Reclamation law;

174

175 (u) AProject Water@ shall mean all water that is developed, diverted, stored, or
176 delivered by the Secretary in accordance with the statutes authorizing the Project and in accordance
177 with the terms and conditions of water rights acquired pursuant to California law; however, Schedule
178 2 Water shall not be considered Project Water for purposes of this Contract;

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

182 (w) ARecent Historic Average@ shall mean the most recent five year average of the
183 final forecast of Water Made Available to the Contractor pursuant to this Contract or its preceding
184 contract(s);

185 (w.1) "Schedule 2 Water" shall mean that water as so defined under Contract
186 No. 14-06-200-7859A with the United States, which will continue to be delivered and administered
187 under said contract;

188 (x) ASecretary@ shall mean the Secretary of the Interior, a duly appointed
189 successor, or an authorized representative acting pursuant to any authority of the Secretary and
190 through any agency of the Department of the Interior;

191 (y) ATiered Pricing Component@ shall be the incremental amount to be paid for
192 each acre-foot of Water Delivered as described in subdivision (j) of Article 7 of this Contract;

193 (z) AWater Delivered@ or ADelivered Water@ shall mean Project Water diverted for
194 use by the Contractor at the point(s) of delivery approved by the Contracting Officer;

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

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

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

203 TERM OF CONTRACT

204 2. (a) This Contract shall be effective March 1, 2005, through February 28, 2030.
205 This Contract when effective supersedes that portion of Contract No. 14-06-200-7859A-IR2, dated
206 from March 1, 2004, through February 28, 2005, pertaining to the furnishing of Project Water. In the
207 event the Contractor wishes to renew this Contract beyond February 28, 2030, the Contractor shall
208 submit a request for renewal in writing to the Contracting Officer no later than two years prior to the
209 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, and the
211 renewal of this Contract insofar as it pertains to the furnishing of M&I Water to the Contractor shall
212 be governed by subdivision (c) of this Article.

213 (b) (1) Under terms and conditions of a renewal contract that are mutually
214 agreeable to the parties hereto, and upon a determination by the Contracting Officer that at the time
215 of contract renewal the conditions set forth in subdivision (b)(2) of this Article are met, and subject to
216 Federal and State law, this Contract, insofar as it pertains to the furnishing of Irrigation Water to the

217 Contractor, shall be renewed for a period of 25 years.

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

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

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

238 purposes of the CVPIA as set out in Section 3402 and in implementing the specific provisions of the
239 CVPIA; and current and anticipated economic circumstances of the region served by the Contractor.

240 (c) This Contract, insofar as it pertains to the furnishing of M&I Water to the
241 Contractor, shall be renewed for successive periods of up to 40 years each, which periods shall be
242 consistent with the then-existing Reclamation-wide policy, under terms and conditions mutually
243 agreeable to the parties and consistent with Federal and State law. The Contractor shall be afforded
244 the opportunity to comment to the Contracting Officer on the proposed adoption and application of
245 any revised policy applicable to the delivery of M&I Water that would limit the term of any
246 subsequent renewal contract with the Contractor for the furnishing of M&I Water to less than 40
247 years.

248 (d) The Contracting Officer shall make a determination ten years after the date of
249 execution of this Contract, and every five years thereafter during the term of this Contract, of whether
250 a conversion of the relevant portion of this Contract to a contract under subsection 9(d) of the
251 Reclamation Project Act of 1939 can be accomplished pursuant to the Act of July 2, 1956 (70 Stat
252 483). The Contracting Officer shall also make a determination ten years after the date of execution
253 of this Contract and every five years thereafter during the term of this Contract of whether a
254 conversion of the relevant portion of this Contract to a contract under subsection 9(c)(1) of the
255 Reclamation Project Act of 1939 can be accomplished. Notwithstanding any provision of this
256 Contract, the Contractor reserves and shall have all rights and benefits under the Act of July 2, 1956
257 (70 Stat. 483). The Contracting Officer anticipates that during the term of this Contract, all
258 authorized Project construction expected to occur will have occurred, and on that basis the
259 Contracting Officer agrees upon such completion to allocate all costs that are properly assignable to

260 the Contractor, and agrees further that, at any time after such allocation is made, and subject to
261 satisfaction of the condition set out in this subdivision, this Contract shall, at the request of the
262 Contractor, be converted to a contract under subsection 9(d) or 9(c)(1), whichever is applicable of the
263 Reclamation Project Act of 1939, subject to applicable Federal law and under stated terms and
264 conditions mutually agreeable to the Contractor and the Contracting Officer. A condition for such
265 conversion to occur shall be a determination by the Contracting Officer that, account being taken of
266 the amount credited to return by the Contractor as provided for under Federal Reclamation law, the
267 remaining amount of construction costs assignable for ultimate return by the Contractor can probably
268 be repaid to the United States within the term of a contract under subsection 9(d) or 9(c)(1),
269 whichever is applicable. If the remaining amount of costs that are properly assignable to the
270 Contractor cannot be determined during the term of this Contract, the Contracting Officer shall notify
271 the Contractor, and provide the reason(s) why such a determination could not be made. Further, the
272 Contracting Officer shall make such a determination as soon thereafter as possible so as to permit,
273 upon request of the Contractor and satisfaction of the conditions set out above, conversion to a
274 contract under subsection 9(d) or 9(c)(1), whichever is applicable. In the event such determination of
275 costs has not been made at a time which allows conversion of this Contract during the term of this
276 Contract or the Contractor has not requested conversion of this Contract within such term, the parties
277 shall incorporate in any subsequent renewal contract as described in subdivision (b) of this Article a
278 provision that carries forth in substantially identical terms the provisions of this subdivision.

279 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

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

282 Contract, the Contracting Officer shall make available for delivery to the Contractor 2,080 acre-feet
283 of Project Water for irrigation and M&I purposes. Water Delivered to the Contractor in accordance
284 with this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of
285 this Contract. Schedule 2 water shall continue to be delivered to the Contractor at no cost pursuant to
286 Contract No. 14-06-200-7859A, dated August 20, 1974, and shall not be subject to the provisions of
287 this Contract, and said Contract No. 14-06-200-7859A shall be in full force and effect insofar as it
288 pertains to the furnishing of Schedule 2 water.

289 (b) Because the capacity of the Project to deliver Project Water has been
290 constrained in recent years and may be constrained in the future due to many factors including
291 hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractor
292 actually receiving the amount of Project Water set out in subdivision (a) of this Article in any given
293 Year is uncertain. The Contracting Officer's modeling referenced in the PEIS projected that the
294 Contract Total set forth in this Contract will not be available to the Contractor in many years. During
295 the most recent five years, the Recent Historic Average of Water Made Available to the Contractor
296 was 1,369 acre-feet. Nothing in subdivision (b) of this Article shall affect the rights and obligations
297 of the parties under any provision of this Contract.

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

300 (c.1) In the event any Project Contractor (other than a Cross Valley Contractor) that
301 receives Project Water through the Delta Division Facilities obtains a contractual agreement that the
302 Contracting Officer shall make Project Water available at a point or points of delivery in or north of
303 the Delta, at the request of the Contractor and upon completion of any required environmental

304 documentation, this Contract shall be amended to provide for deliveries in or north of the Delta on
305 mutually agreeable terms. Such amendments to the Contract shall be limited solely to those changes
306 made necessary by the addition of such alternate points of delivery in or north of the Delta; Provided,
307 That the Contracting Officer's use of the Harvey O. Banks Pumping Plant to deliver Project Water
308 does not trigger this right of amendment.

309 (d) The Contractor shall make reasonable and beneficial use of all water furnished
310 pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu), groundwater
311 banking programs, surface water storage programs, and other similar programs utilizing Project Water
312 or other water furnished pursuant to this Contract conducted within the Contractor's Service Area
313 which are consistent with applicable State law and result in use consistent with Federal Reclamation
314 law will be allowed; Provided, That any direct recharge program(s) is (are) described in the
315 Contractor's water conservation plan submitted pursuant to Article 26 of this Contract; Provided,
316 further, That such water conservation plan demonstrates sufficient lawful uses exist in the Contractor's
317 Service Area so that using a long-term average, the quantity of Delivered Water is demonstrated to be
318 reasonable for such uses and in compliance with Federal Reclamation law. Groundwater recharge
319 programs, groundwater banking programs, surface water storage programs, and other similar programs
320 utilizing Project Water or other water furnished pursuant to this Contract conducted outside the
321 Contractor's Service Area may be permitted upon written approval of the Contracting Officer, which
322 approval will be based upon environmental documentation, Project Water rights, and Project
323 operational concerns. The Contracting Officer will address such concerns in regulations, policies, or
324 guidelines.

325 (e) The Contractor shall comply with requirements applicable to the Contractor in
326 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract
327 undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as amended, that are
328 within the Contractor's legal authority to implement. The Contract No(s) 14-06-200-7859A, 14-06-
329 200-7859A-IR1 and 14-06-200-7859A-IR2, which evidence in excess of 31 years of diversions for
330 irrigation and/or M&I purposes of the quantities of water provided in subdivision (a) of Article 3 of

331 this Contract, will be considered in developing an appropriate baseline for biological assessment(s)
332 prepared pursuant to the ESA, and any other needed environmental review. Nothing herein shall be
333 construed to prevent the Contractor from challenging or seeking judicial relief in a court of competent
334 jurisdiction with respect to any biological opinion or other environmental documentation referred to in
335 this Article.

336 (f) Following the declaration of Water Made Available under Article 4 of this
337 Contract, the Contracting Officer will make a determination whether Project Water, or other water
338 available to the Project, can be made available to the Contractor in addition to the Contract Total under
339 this Article during the Year without adversely impacting other Project Contractors. At the request of
340 the Contractor, the Contracting Officer will consult with the Contractor prior to making such a
341 determination. If the Contracting Officer determines that Project Water, or other water available to the
342 Project, can be made available to the Contractor, the Contracting Officer will announce the availability
343 of such water and shall so notify the Contractor as soon as practical. The Contracting Officer will
344 thereafter meet with the Contractor and other Project Contractors capable of taking such water to
345 determine the most equitable and efficient allocation of such water. If the Contractor requests the
346 delivery of any quantity of such water, the Contracting Officer shall make such water available to the
347 Contractor in accordance with applicable statutes, regulations, guidelines, and policies. Subject to
348 existing long-term contractual commitments, water rights and operational constraints, long-term
349 Project Contractors shall have a first right to acquire such water, including Project Water made
350 available pursuant to Section 215 of the RRA.

351 (g) The Contractor may request permission to reschedule for use during the
352 subsequent Year some or all of the Water Made Available to the Contractor during the current Year,

353 referred to as “rescheduled water.” The Contractor may request permission to use during the current
354 Year a quantity of Project Water which may be made available by the United States to the Contractor
355 during the subsequent Year referred to as “preuse.” The Contracting Officer’s written approval may
356 permit such uses in accordance with applicable statutes, regulations, guidelines, and policies.

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

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

368 (j) The Contracting Officer shall make reasonable efforts to protect the water
369 rights necessary for the Project and to provide the water available under this Contract. The
370 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the
371 extent permitted by law, in administrative proceedings related to the Project Water rights; Provided,
372 that the Contracting Officer retains the right to object to the substance of the Contractor's position in
373 such a proceeding; Provided further That in such proceedings the Contracting Officer shall recognize
374 the Contractor has a legal right under the terms of this Contract to use Project Water.

375 TIME FOR DELIVERY OF WATER

376 4. (a) On or about February 20 of each Calendar Year, the Contracting Officer shall
377 announce the Contracting Officer's expected declaration of the Water Made Available. Such

378 declaration will be expressed in terms of both Water Made Available and the Recent Historic
379 Average and will be updated monthly, and more frequently if necessary, based on then-current
380 operational and hydrologic conditions and a new declaration with changes, if any, to the Water Made
381 Available will be made. The Contracting Officer shall provide forecasts of Project operations and the
382 basis of the estimate, with relevant supporting information, upon the written request of the
383 Contractor. Concurrently with the declaration of the Water Made Available, the Contracting Officer
384 shall provide the Contractor with the updated Recent Historic Average.

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

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

394 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this
395 Contract, the United States shall deliver Project Water to the Contractor in accordance with the initial
396 schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any written
397 revision(s) thereto, satisfactory to the Contracting Officer, submitted within a reasonable time prior
398 to the date(s) on which the requested change(s) is/are to be implemented.

399 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

404 (b) The Contracting Officer, either directly or indirectly through its written
405 agreement(s) with the Operating Non-Federal Entity(ies), shall make all reasonable efforts to
406 maintain sufficient flows and levels of water in Project facilities to deliver Project Water to the
407 Contractor at the point or points of delivery established pursuant to subdivision (a) of this Article.

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

412 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
413 measured and recorded with equipment furnished, installed, operated, and maintained by the
414 Contracting Officer either directly or indirectly through its written agreement(s) with the Operating
415 Non-Federal Entity(ies), unless undertaken by the Contractor with the consent of the Contracting
416 Officer, at the point or points of delivery established pursuant to subdivision (a) of this Article. Upon
417 the request of either party to this Contract, the Contracting Officer shall investigate, or cause to be
418 investigated by the appropriate Operating Non-Federal Entity(ies), the accuracy of such
419 measurements and shall take any necessary steps to adjust any errors appearing therein. For any
420 period of time when accurate measurements have not been made, the Contracting Officer shall
421 consult with the Contractor and the appropriate Operating Non-Federal Entity(ies), if any, prior to

422 making a final determination of the quantity delivered for that period of time.

(e) Absent a separate contrary written agreement with the Contractor, neither the Contracting Officer nor any Operating Non-Federal Entity(ies) shall be responsible for the control, carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to this Contract beyond the point or points of delivery established pursuant to subdivision (a) of this Article. The Contractor shall indemnify the United States, its officers, employees, agents, and assigns on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such Water Delivered beyond such point or points of delivery except for any damage or claim arising out of: (i) acts or omissions of the Contracting Officer or any of its officers, employees, agents, and assigns, including the Operating Non-Federal Entity(ies), with the intent of creating the situation resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer or any of its officers, employees, agents, and assigns, including the Operating Non-Federal Entity(ies); (iii) negligence of the Contracting Officer or any of its officers, employees, agents, and assigns including the Operating Non-Federal Entity(ies); or (iv) a

423
424 malfunction of facilities owned and/or operated by the United States or the Operating Non-Federal
425 Entity(ies).

426 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

427 6. (a) The Contractor has established a measuring program satisfactory to the
428 Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation
429 purposes within the Contractor's Service Area is measured at each agricultural turnout and such

430 water delivered for M&I purposes is measured at each M&I service connection. The water
431 measuring devices or water measuring methods of comparable effectiveness must be acceptable to
432 the Contracting Officer. The Contractor shall be responsible for installing, operating, and
433 maintaining and repairing all such measuring devices and implementing all such water measuring
434 methods at no cost to the United States. The Contractor shall use the information obtained from such
435 water measuring devices or water measuring methods to ensure its proper management of the water,
436 to bill water users for water delivered by the Contractor; and, if applicable, to record water delivered
437 for M&I purposes by customer class as defined in the Contractor's water conservation plan provided
438 for in Article 26 of this Contract. Nothing herein contained, however, shall preclude the Contractor
439 from establishing and collecting any charges, assessments, or other revenues authorized by California
440 law. The Contractor shall include a summary of all its annual surface water deliveries in the annual
441 report described in subdivision (c) of Article 26.

442 (b) To the extent the information has not otherwise been provided, upon execution
443 of this Contract, the Contractor shall provide to the Contracting Officer a written report describing
444 the measurement devices or water measuring methods being used or to be used to implement
445 subdivision (a) of this Article and identifying the agricultural turnouts and the M&I service
446 connections or alternative measurement programs approved by the Contracting Officer, at which such
447 measurement devices or water measuring methods are being used, and, if applicable, identifying the
448 locations at which such devices and/or methods are not yet being used including a time schedule for
449 implementation at such locations. The Contracting Officer shall advise the Contractor in writing
450 within 60 days as to the adequacy, and necessary modifications, if any, of the measuring devices or
451 water measuring methods identified in the Contractor's report and if the Contracting Officer does not

452 respond in such time, they shall be deemed adequate. If the Contracting Officer notifies the
453 Contractor that the measuring devices or methods are inadequate, the parties shall within 60 days
454 following the Contracting Officer's response, negotiate in good faith the earliest practicable date by
455 which the Contractor shall modify said measuring devices and/or measuring methods as required by
456 the Contracting Officer to ensure compliance with subdivision (a) of this Article.

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

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

463 (e) The Contractor shall inform the Contracting Officer and the Operating
464 Non-Federal Entity on or before the 20th calendar day of each month of the quantity of Irrigation
465 Water and M&I Water taken during the preceding month.

466 RATES AND METHOD OF PAYMENT FOR WATER

467 7. (a) The Contractor shall pay the United States as provided in this Article for all
468 Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance
469 with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's
470 then-existing ratesetting policy for M&I Water, which ratesetting policies shall be amended,
471 modified, or superceded only through a public notice and comment procedure; (ii) applicable Federal
472 Reclamation law and associated rules and regulations, or policies; and (iii) other applicable
473 provisions of this Contract. Payments shall be made by cash transaction, electronic funds transfer, or

474 any other mechanism as may be agreed to in writing by the Contractor and the Contracting Officer.
475 The Rates, Charges, and Tiered Pricing Component applicable to the Contractor upon execution of
476 this Contract are set forth in Exhibit "B," as may be revised annually.

477 (b) The Contracting Officer shall notify the Contractor of the Rates, Charges, and
478 Tiered Pricing Component as follows:

479 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
480 provide the Contractor an estimate of the Charges for Project Water that will be applied to the period
481 October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and
482 the basis for such estimate. The Contractor shall be allowed not less than two months to review and
483 comment on such estimates. On or before September 15 of each Calendar Year, the Contracting
484 Officer shall notify the Contractor in writing of the Charges to be in effect during the period
485 October 1 of the current Calendar Year, through September 30, of the following Calendar Year, and
486 such notification shall revise Exhibit "B."

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

494 (c) At the time the Contractor submits the initial schedule for the delivery of
495 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor

496 shall make an advance payment to the United States equal to the total amount payable pursuant to the
497 applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be
498 delivered pursuant to this Contract during the first two calendar months of the Year. Before the end
499 of the first month and before the end of each calendar month thereafter, the Contractor shall make an
500 advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for the
501 Water Scheduled to be delivered pursuant to this Contract during the second month immediately
502 following. Adjustments between advance payments for Water Scheduled and payments at Rates due
503 for Water Delivered shall be made before the end of the following month; Provided, That any revised
504 schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the
505 amount of Water Delivered pursuant to this Contract during any month shall be accompanied with
506 appropriate advance payment, at the Rates then in effect, to assure that Project Water is not delivered
507 to the Contractor in advance of such payment. In any month in which the quantity of Water
508 Delivered to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid
509 for by the Contractor, no additional Project Water shall be delivered to the Contractor unless and
510 until an advance payment at the Rates then in effect for such additional Project Water is made. Final
511 adjustment between the advance payments for the Water Scheduled and payments for the quantities
512 of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable
513 but no later than April 30th of the following Year, or 60 days after the delivery of Project Water
514 rescheduled under subdivision (g) of Article 3 of this Contract if such water is not delivered by the
515 last day of February.

516 (d) The Contractor shall also make a payment in addition to the Rate(s) in
517 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the

518 appropriate Tiered Pricing Component then in effect, before the end of the month following the
519 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered
520 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be consistent
521 with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery
522 report for the subject month prepared by the Operating Non-Federal Entity(ies) or, if there is no
523 Operating Non-Federal Entity, by the Contracting Officer. The water delivery report shall be deemed
524 a bill for the payment of Charges and the applicable Tiered Pricing Component for Water Delivered.
525 Adjustment for overpayment or underpayment of Charges shall be made through the adjustment of
526 payments due to the United States for Charges for the next month. Any amount to be paid for past
527 due payment of Charges and the Tiered Pricing Component shall be computed pursuant to Article 20
528 of this Contract.

529 (e) The Contractor shall pay for any Water Delivered under subdivision (a), (f), or
530 (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to applicable
531 statutes, associated regulations, any applicable provisions of guidelines or ratesetting policies;
532 Provided, That the Rate for Water Delivered under subdivision (d) of Article 3 of this Contract shall
533 be no more than the otherwise applicable Rate for Irrigation Water or M&I Water under subdivision
534 (a) of this Article.

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

537 (g) All revenues received by the United States from the Contractor relating to the
538 delivery of Project Water or the delivery of non-Project water through Project facilities shall be
539 allocated and applied in accordance with Federal Reclamation law and the associated rules or

540 regulations, and the then current Project ratesetting policies for M&I Water or Irrigation Water.

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

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

556 (j) (1) Beginning at such time as deliveries of Project Water in a Year exceed
557 80 percent of the Contract Total, then before the end of the month following the month of delivery
558 the Contractor shall make an additional payment to the United States equal to the applicable Tiered
559 Pricing Component. The Tiered Pricing Component for the amount of Water Delivered in excess of
560 80 percent of the Contract Total, but less than or equal to 90 percent of the Contract Total, shall equal

561 one-half of the difference between the Rate established under subdivision (a) of this Article and the
562 Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable. The Tiered
563 Pricing Component for the amount of Water Delivered which exceeds 90 percent of the Contract
564 Total shall equal the difference between (i) the Rate established under subdivision (a) of this Article
565 and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable.
566 For all Water Delivered pursuant to subdivision (a) of Article 3 of this Contract which is in excess of
567 80 percent of the Contract Total, this increment shall be deemed to be divided between Irrigation
568 Water and M&I Water in the same proportion as actual deliveries of each bear to the cumulative total
569 Water Delivered.

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

577 (3) For purposes of determining the applicability of the Tiered Pricing
578 Component pursuant to this Article, Water Delivered shall include Project Water that the Contractor
579 transfers to others but shall not include Project Water transferred to the Contractor, nor shall it
580 include the additional water provided to the Contractor under the provisions of subdivision (f) of
581 Article 3 of this Contract.

582 (k) For the term of this Contract, Rates applied under the respective ratesetting

583 policies will be established to recover only reimbursable O&M (including any deficits) and capital
584 costs of the Project, as those terms are used in the then-current Project ratesetting policies, and
585 interest, where appropriate, except in instances where a minimum Rate is applicable in accordance
586 with the relevant Project ratesetting policy. Changes of significance in practices which implement
587 the Contracting Officer's ratesetting policies will not be implemented until the Contracting Officer
588 has provided the Contractor an opportunity to discuss the nature, need, and impact of the proposed
589 change.

590 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA,
591 the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates, in
592 accordance with the applicable Project ratesetting policy, adjusted upward or downward to reflect the
593 changed costs, if any, incurred by the Contracting Officer in the delivery of the transferred Project
594 Water to the transferee's point of delivery in accordance with the then applicable Project ratesetting
595 policy. If the Contractor is receiving lower Rates and Charges because of inability to pay and is
596 transferring Project Water to another entity whose Rates and Charges are not adjusted due to inability
597 to pay, the Rates and Charges for transferred Project Water shall not be adjusted to reflect the
598 Contractor's inability to pay.

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

601 (n) Omitted

602 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

603 8. The Contractor and the Contracting Officer concur that, as of the effective date of this

604 Contract, the Contractor has no non-interest bearing O&M deficits and shall have no further liability
605 therefor.

606 SALES, TRANSFERS, OR EXCHANGES OF WATER

607 9. (a) The right to receive Project Water provided for in this Contract may be sold,
608 transferred, or exchanged to others for reasonable and beneficial uses within the State of California if
609 such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable
610 guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this
611 Contract may take place without the prior written approval of the Contracting Officer, except as
612 provided for in subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be
613 approved absent all appropriate environmental documentation, including but not limited to,
614 documents prepared pursuant to the NEPA and ESA. Such environmental documentation should
615 include, as appropriate, an analysis of groundwater impacts and economic and social effects,
616 including environmental justice, of the proposed water transfers on both the transferor and transferee.

617 (b) In order to facilitate efficient water management by means of water transfers of
618 the type historically carried out among Project Contractors located within the same geographical area
619 and to allow the Contractor to participate in an accelerated water transfer program during the term of
620 this Contract, the Contracting Officer shall prepare, as appropriate, all necessary environmental
621 documentation, including but not limited to documents prepared pursuant to NEPA and ESA,
622 analyzing annual transfers within such geographical areas and the Contracting Officer shall
623 determine whether such transfers comply with applicable law. Following the completion of the
624 environmental documentation, such transfers addressed in such documentation shall be conducted
625 with advance notice to the Contracting Officer, but shall not require prior written approval by the

626 Contracting Officer. Such environmental documentation and the Contracting Officer's compliance
627 determination shall be reviewed every five years and updated, as necessary, prior to the expiration of
628 the then existing five-year period. All subsequent environmental documentation shall include an
629 alternative to evaluate not less than the quantity of Project Water historically transferred within the
630 same geographical area.

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

641 APPLICATION OF PAYMENTS AND ADJUSTMENTS

642 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,
643 capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of
644 the Contractor arising out of this Contract then due and payable. Overpayments of more than \$1,000
645 shall be refunded at the Contractor's request. In lieu of a refund, any amount of such overpayment at
646 the option of the Contractor, may be credited against amounts to become due to the United States by

647 the Contractor. With respect to overpayment, such refund or adjustment shall constitute the sole
648 remedy of the Contractor or anyone having or claiming to have the right to the use of any of the
649 Project Water supply provided for herein. All credits and refunds of overpayments shall be made
650 within 30 days of the Contracting Officer obtaining direction as to how to credit or refund such

651 overpayment in response to the notice to the Contractor that it has finalized the accounts for the Year
652 in which the overpayment was made.

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

658 TEMPORARY REDUCTIONS--RETURN FLOWS

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

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

668 as feasible the Contracting Officer or Operating Non-Federal Entity(ies) will give the Contractor due
669 notice in advance of such temporary discontinuance or reduction, except in case of emergency, in
670 which case no notice need be given; Provided, That the United States shall use its best efforts to
671 avoid any discontinuance or reduction in such service. Upon resumption of service after such
672 reduction or discontinuance, and if requested by the Contractor, the United States will, if possible,
673 deliver the quantity of Project Water which would have been delivered hereunder in the absence of
674 such discontinuance or reduction.

675 (c) The United States reserves the right to all seepage and return flow water
676 derived from Water Delivered to the Contractor hereunder which escapes or is discharged beyond the
677 Contractor's Service Area; Provided, That this shall not be construed as claiming for the United
678 States any right to seepage or return flow being put to reasonable and beneficial use pursuant to this
679 Contract within the Contractor's Service Area by the Contractor or those claiming by, through, or
680 under the Contractor.

681 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

687 (b) If there is a Condition of Shortage because of errors in physical operations of
688 the Project, drought, other physical causes beyond the control of the Contracting Officer or actions
689 taken by the Contracting Officer to meet legal obligations then, except as provided in subdivision (a)

690 of Article 18 of this Contract, no liability shall accrue against the United States or any of its officers,
691 agents, or employees for any damage, direct or indirect, arising therefrom.

692 (c) In any Year in which there may occur a Condition of Shortage for any of the
693 reasons specified in subdivision (b) of this Article, and subject to subdivision (d) of this Article, the
694 Contracting Officer will first allocate the available Project Water consistent with the Central Valley
695 Project M&I Water Shortage Policy in its form on the effective date of this Contract for determining
696 the amount of Project Water available for delivery to the Project Contractors. Subject to the
697 foregoing allocation, in any year in which there may occur a Condition of Shortage, the Contracting
698 Officer shall then apportion Project Water among the Contractor and others entitled to Project Water
699 from Delta Division Facilities under long-term water service or repayment contracts (or renewals
700 thereof or binding commitments therefor) in force on February 28, 2005, as follows:

701 (1) The Contracting Officer shall make an initial and subsequent
702 determination as necessary of the total quantity of Project Water estimated to be scheduled or
703 actually scheduled under subdivision (b) of Article 4 of this Contract and under all other long-term
704 water service or repayment contracts then in force for the delivery of Project Water by the United
705 States from Delta Division Facilities during the relevant Year, the quantity so determined being
706 hereinafter referred to as the scheduled total;

707 (2) A determination shall be made of the total quantity of Project Water
708 that is available for meeting the scheduled total, the quantity so determined being hereinafter referred
709 to as the available supply;

710 (3) The total quantity of Project Water estimated to be scheduled or

711 actually scheduled by the Contractor during the relevant Year, under subdivision (b) of Article 4

712 hereof, shall be divided by the scheduled total, the quotient thus obtained being hereinafter referred to
713 as the Contractor's proportionate share; and

714 (4) The available supply shall be multiplied by the Contractor's
715 proportionate share and the result shall be the quantity of Project Water made available by the United
716 States to the Contractor for the relevant Year in accordance with the schedule developed by the
717 Contracting Officer under subdivision (c)(1) of this Article, but in no event shall such amount exceed
718 the Contract Total. In the event the Contracting Officer subsequently determines that the Contracting
719 Officer can increase or needs to decrease the available supply for delivery from Delta Division
720 Facilities to long-term water service and repayment Contractors during the relevant Year, such
721 additions or reductions to the available supply shall be apportioned consistent with subparagraphs (1)
722 through (4), inclusive.

723 (d) By entering into this Contract, the Contractor does not waive any legal rights
724 or remedies it may have to file or participate in any administrative or judicial proceeding contesting
725 (i) the sufficiency of the Central Valley Project M&I Water Shortage Policy; (ii) the substance of
726 such a policy; (iii) the applicability of such a policy; or (iv) the manner in which such policy is
727 implemented in order to allocate Project Water between municipal and industrial and irrigation
728 purposes; Provided, that the Contractor has commenced any such judicial challenge or any
729 administrative procedures necessary to institute any judicial challenge within 6 months of the policy
730 becoming final. By agreeing to the foregoing, the Contracting Officer does not waive any legal
731 defenses or remedies that it may have to assert in such a proceeding. Nothing contained herein shall

732 be interpreted to validate or invalidate the Central Valley Project M&I Water Shortage Policy.

733 UNAVOIDABLE GROUNDWATER PERCOLATION

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

738 RULES AND REGULATIONS

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

743 WATER AND AIR POLLUTION CONTROL

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

747 QUALITY OF WATER

748 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to
749 this Contract shall be operated and maintained to enable the United States to deliver Project Water to
750 the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act
751 of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat.
752 3050) or other existing Federal laws. The United States is under no obligation to construct or furnish
753 water treatment facilities to maintain or to improve the quality of Water Delivered to the Contractor
754 pursuant to this Contract. The United States does not warrant the quality of Water Delivered to the
755 Contractor pursuant to this Contract. None of the foregoing affects or modifies the obligations of the

756 United States under Contract No. 14-06-200-7859A, dated August 20, 1974, with respect to Schedule
757 2 water, including but not limited to, Article 10 of said contract.

758 (b) The O&M of Project facilities shall be performed in such manner as is
759 practicable to maintain the quality of raw water made available through such facilities at the highest
760 level reasonably attainable as determined by the Contracting Officer. The Contractor shall be
761 responsible for compliance with all State and Federal water quality standards applicable to surface
762 and subsurface agricultural drainage discharges generated through the use of Federal or Contractor
763 facilities or Project Water provided by the Contractor within the Contractor's Service Area.

764 WATER ACQUIRED BY THE CONTRACTOR OTHER THAN
765 FROM THE UNITED STATES

766 17. (a) Water or water rights now owned or hereafter acquired by the Contractor other
767 than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may
768 be simultaneously transported through the same distribution facilities of the Contractor subject to the
769 following: (i) if the facilities utilized for commingling Irrigation Water and non-Project water were
770 constructed without funds made available pursuant to Federal Reclamation law, the provisions of
771 Federal Reclamation law will be applicable only to the Landholders of lands which receive Irrigation
772 Water; (ii) the eligibility of land to receive Irrigation Water must be established through the
773 certification requirements as specified in the Acreage Limitation Rules and Regulations (43 CFR Part
774 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be
775 established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity
776 necessary to irrigate such Eligible Lands. The Contractor and the Contracting Officer concur that, as

777 of the effective date of this Contract, the Contractor has a distribution system that was constructed
778 without the use of federally financed funds.

779 (b) Water or water rights now owned or hereafter acquired by the Contractor,
780 other than from the United States may be stored, conveyed and/or diverted through Project facilities,
781 subject to the completion of appropriate environmental documentation, with the approval of the
782 Contracting Officer and the execution of any contract determined by the Contracting Officer to be
783 necessary, consistent with the following provisions:

784 (1) The Contractor may introduce non-Project water into Project facilities
785 and deliver said water to lands within the Contractor's Service Area, including Ineligible Lands,
786 subject to payment to the United States and/or to any applicable Operating Non-Federal Entity of an
787 appropriate rate as determined by the applicable Project ratesetting policy, the RRA, and the Project
788 use power policy, if such Project use power policy is applicable, each as amended, modified or
789 superceded from time to time.

790 (2) Delivery of such non-Project water in and through Project facilities
791 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project purposes as
792 determined by the Contracting Officer; (ii) reduce the quantity or quality of water available to other
793 Project Contractors; (iii) interfere with the delivery of contractual water entitlements to any other
794 Project Contractors; or (iv) interfere with the physical maintenance of the Project facilities.

795 (3) Neither the United States nor the Operating Non-Federal Entity(ies)
796 shall be responsible for control, care or distribution of the non-Project water before it is introduced
797 into or after it is delivered from the Project facilities. The Contractor hereby releases and agrees to

798 defend and indemnify the United States and the Operating Non-Federal Entity(ies), and their
799 respective officers, agents, and employees, from any claim for damage to persons or property, direct
800 or indirect, resulting from the act(s) of the Contractor, its officers, employees, agents, or assigns, in
801 (i) extracting or diverting non-Project water from any source, or (ii) diverting such non-Project water
802 into Project facilities.

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

806 (5) After Project purposes are met, as determined by the Contracting
807 Officer, the United States and Project Contractors entitled to Project Water from Delta Division
808 Facilities shall share priority to utilize the remaining capacity of the facilities declared to be available
809 by the Contracting Officer for conveyance and transportation of non-Project water prior to any such
810 remaining capacity being made available to non-Project contractors. Other Project Contractors shall
811 have a second priority to any remaining capacity of facilities declared to be available by the
812 Contracting Officer for conveyance and transportation of non-Project water prior to any such
813 remaining capacity being made available to non-Project contractors.

814 OPINIONS AND DETERMINATIONS

815 18. (a) Where the terms of this Contract provide for actions to be based upon the
816 opinion or determination of either party to this Contract, said terms shall not be construed as
817 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
818 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly
819 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or

820 unreasonable opinion or determination. Each opinion or determination by either party shall be
821 provided in a timely manner. Nothing in this subdivision (a) of this Article is intended to or shall
822 affect or alter the standard of judicial review applicable under Federal law to any opinion or
823 determination implementing a specific provision of Federal law embodied in statute or regulation.

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

829 COORDINATION AND COOPERATION

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

839 (b) Within 120 days following the effective date of this Contract, the Contractor,
840 other affected Project Contractors, and the Contracting Officer shall arrange to meet with interested

841 Project Contractors to develop a mutually agreeable, written Project-wide process, which may be
842 amended as necessary separate and apart from this Contract. The goal of this process shall be to
843 provide, to the extent practicable, the means of mutual communication and interaction regarding
844 significant decisions concerning Project operation and management on a real-time basis.

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

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

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

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

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

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

861 (d) Without limiting the contractual obligations of the Contracting Officer under
862 the other Articles of this Contract, nothing in this Article shall be construed to limit or constrain the
863 Contracting Officer's ability to communicate, coordinate, and cooperate with the Contractor or other
864 interested stakeholders or to make decisions in a timely fashion as needed to protect health, safety or
865 the physical integrity of structures or facilities.

866 CHARGES FOR DELINQUENT PAYMENTS

867 20. (a) The Contractor shall be subject to interest, administrative and penalty charges
868 on delinquent installments or payments. When a payment is not received by the due date, the
869 Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date.
870 When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative
871 charge to cover additional costs of billing and processing the delinquent payment. When a payment
872 is delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six
873 (6%) percent per year for each day the payment is delinquent beyond the due date. Further, the
874 Contractor shall pay any fees incurred for debt collection services associated with a delinquent
875 payment.

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

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

884 EQUAL OPPORTUNITY

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

886 (a) The Contractor will not discriminate against any employee or applicant for
887 employment because of race, color, religion, sex, or national origin. The Contractor will take
888 affirmative action to ensure that applicants are employed, and that employees are treated during
889 employment, without regard to their race, color, religion, sex, or national origin. Such action shall
890 include, but not be limited to, the following: Employment, upgrading, demotion, or transfer;
891 recruitment or recruitment advertising; layoff or termination, rates of payment or other forms of

892 compensation; and selection for training, including apprenticeship. The Contractor agrees to post in
893 conspicuous places, available to employees and applicants for employment, notices to be provided by
894 the Contracting Officer setting forth the provisions of this nondiscrimination clause.

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

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

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

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

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

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

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GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

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COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

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

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

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

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PRIVACY ACT COMPLIANCE

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

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

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

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

979 (e) The Contractor shall forward promptly to the System Manager each proposed
980 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR
981 2.71; notify the requester accordingly of such referral; and provide the System Manager with
982 information and records necessary to prepare an appropriate response to the requester. These
983 requirements do not apply to individuals seeking access to their own certification and reporting forms
984 filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy
985 Act as a basis for the request.

986 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

987 25. In addition to all other payments to be made by the Contractor pursuant to this
988 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and
989 detailed statement submitted by the Contracting Officer to the Contractor for such specific items of
990 direct cost incurred by the United States for work requested by the Contractor associated with this

991 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and
992 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in
993 writing in advance by the Contractor. This Article shall not apply to costs for routine contract
994 administration.

995 WATER CONSERVATION

996 26. (a) Prior to the delivery of water provided from or conveyed through Federally
997 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be
998 implementing an effective water conservation and efficiency program based on the Contractor's water
999 conservation plan that has been determined by the Contracting Officer to meet the conservation and
1000 efficiency criteria for evaluating water conservation plans established under Federal law. The water
1001 conservation and efficiency program shall contain definite water conservation objectives, appropriate
1002 economically feasible water conservation measures, and time schedules for meeting those objectives.
1003 Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's
1004 continued implementation of such water conservation program. In the event the Contractor's water
1005 conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of
1006 Article 26 of this Contract have not yet been determined by the Contracting Officer to meet such
1007 criteria, due to circumstances which the Contracting Officer determines are beyond the control of the
1008 Contractor, water deliveries shall be made under this Contract so long as the Contractor diligently
1009 works with the Contracting Officer to obtain such determination at the earliest practicable date, and
1010 thereafter the Contractor immediately begins implementing its water conservation and efficiency
1011 program in accordance with the time schedules therein.

1012 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of

1013 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall implement
1014 the Best Management Practices identified by the time frames issued by the California Urban Water
1015 Conservation Council for such M&I Water unless any such practice is determined by the Contracting
1016 Officer to be inappropriate for the Contractor.

1017 (c) The Contractor shall submit to the Contracting Officer a report on the status of
1018 its implementation of the water conservation plan on the reporting dates specified in the then existing
1019 conservation and efficiency criteria established under Federal law.

1020 (d) At five-year intervals, the Contractor shall revise its water conservation plan to
1021 reflect the then current conservation and efficiency criteria for evaluating water conservation plans
1022 established under Federal law and submit such revised water management plan to the Contracting
1023 Officer for review and evaluation. The Contracting Officer will then determine if the water
1024 conservation plan meets Reclamation's then current conservation and efficiency criteria for
1025 evaluating water conservation plans established under Federal law.

1026 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall
1027 be described in the Contractor's water conservation plan.

1028 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1029 27. Except as specifically provided in Article 17 of this Contract, the provisions of this
1030 Contract shall not be applicable to or affect non-Project water or water rights now owned or hereafter
1031 acquired by the Contractor or any user of such water within the Contractor's Service Area. Any such
1032 water shall not be considered Project Water under this Contract. In addition, this Contract shall not
1033 be construed as limiting or curtailing any rights which the Contractor or any water user within the
1034 Contractor's Service Area acquires or has available under any other contract pursuant to Federal
1035 Reclamation law.

1036 OPERATION AND MAINTENANCE BY
1037 SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

1038 28. (a) The O&M of a portion of the Project facilities which serve the Contractor, and
1039 responsibility for funding a portion of the costs of such O&M, have been transferred to the San Luis
1040 & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate agreement (8-07-
1041 20-X0354) between the United States and the Operating Non-Federal Entity San Luis & Delta-
1042 Mendota Water Authority. That separate agreement shall not interfere with or affect the rights or
1043 obligations of the Contractor or the United States hereunder.

1044 (b) The Contracting Officer has previously notified the Contractor in writing that
1045 the Operation and Maintenance of a portion of the Project facilities which serve the Contractor has
1046 been transferred to the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority,
1047 and therefore, the Contractor shall pay directly to the Operating Non-Federal Entity San Luis &
1048 Delta-Mendota Water Authority, or to any successor approved by the Contracting Officer under the
1049 terms and conditions of the separate agreement between the United States and the Operating Non-
1050 Federal Entity San Luis & Delta-Mendota Water Authority described in subdivision (a) of this
1051 Article, all rates, charges, or assessments of any kind, including any assessment for reserve funds,
1052 which the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or such
1053 successor determines, sets, or establishes for the O&M of the portion of the Project facilities operated
1054 and maintained by the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or
1055 such successor. Such direct payments to the Operating Non-Federal Entity San Luis & Delta-
1056 Mendota Water Authority or such successor shall not relieve the Contractor of its obligation to pay
1057 directly to the United States the Contractor's share of the Project Rates, Charges, and Tiered Pricing
1058 Component except to the extent the Operating Non-Federal Entity San Luis & Delta-Mendota Water
1059 Authority collects payments on behalf of the United States in accordance with the separate agreement

1060 identified in subdivision (a) of this Article.

1061 (c) For so long as the O&M of any portion of the Project facilities serving the
1062 Contractor is performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water
1063 Authority, or any successor thereto, the Contracting Officer shall adjust those components of the
1064 Rates for Water Delivered under this Contract representing the cost associated with the activity being
1065 performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or its
1066 successor.

1067 (d) In the event the O&M of the Project facilities operated and maintained by the
1068 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority is re-assumed by the
1069 United States during the term of this Contract, the Contracting Officer shall so notify the Contractor,
1070 in writing, and present to the Contractor a revised Exhibit AB[®] which shall include the portion of the
1071 Rates to be paid by the Contractor for Project Water under this Contract representing the O&M costs
1072 of the portion of such Project facilities which have been re-assumed. The Contractor shall, thereafter,
1073 in the absence of written notification from the Contracting Officer to the contrary, pay the Rates,
1074 Charges, and Tiered Pricing Component specified in the revised Exhibit "B" directly to the United
1075 States in compliance with Article 7 of this Contract.

1076 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1077 29. The expenditure or advance of any money or the performance of any obligation of the
1078 United States under this Contract shall be contingent upon appropriation or allotment of funds.
1079 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
1080 under this Contract. No liability shall accrue to the United States in case funds are not appropriated
1081 or allotted.

1082 BOOKS, RECORDS, AND REPORTS

1083 30. (a) The Contractor shall establish and maintain accounts and other books and

1084 records pertaining to administration of the terms and conditions of this Contract, including: the
1085 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;
1086 the water users' land-use (crop census), land ownership, land-leasing and water use data; and other
1087 matters that the Contracting Officer may require. Reports thereon shall be furnished to the
1088 Contracting Officer in such form and on such date or dates as the Contracting Officer may require.
1089 Subject to applicable Federal laws and regulations, each party to this Contract shall have the right
1090 during office hours to examine and make copies of the other party's books and records relating to
1091 matters covered by this Contract.

1092 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,
1093 records, or other information shall be requested from the Contractor by the Contracting Officer unless
1094 such books, records, or information are reasonably related to the administration or performance of
1095 this Contract. Any such request shall allow the Contractor a reasonable period of time within which
1096 to provide the requested books, records, or information.

1097 (c) At such time as the Contractor provides information to the Contracting Officer
1098 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the
1099 Operating Non-Federal Entity.

1100 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1101 31. (a) The provisions of this Contract shall apply to and bind the successors and
1102 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1103 therein shall be valid until approved in writing by the Contracting Officer.

1104 (b) The assignment of any right or interest in this Contract by either party shall not
1105 interfere with the rights or obligations of the other party to this Contract absent the written
1106 concurrence of said other party.

1107 (c) The Contracting Officer shall not unreasonably condition or withhold approval
1108 of any proposed assignment.

1109 SEVERABILITY

1110 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor
1111 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an
1112 association or other form of organization whose primary function is to represent parties to Project
1113 contracts, brings an action in a court of competent jurisdiction challenging the legality or
1114 enforceability of a provision included in this Contract and said person, entity, association, or
1115 organization obtains a final court decision holding that such provision is legally invalid or
1116 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the
1117 parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court
1118 decision identify by mutual agreement the provisions in this Contract which must be revised and (ii)
1119 within three months thereafter promptly agree on the appropriate revision(s). The time periods
1120 specified above may be extended by mutual agreement of the parties. Pending the completion of the
1121 actions designated above, to the extent it can do so without violating any applicable provisions of
1122 law, the United States shall continue to make the quantities of Project Water specified in this
1123 Contract available to the Contractor pursuant to the provisions of this Contract which were not found
1124 to be legally invalid or unenforceable in the final court decision.

1125 RESOLUTION OF DISPUTES

1126 33. Should any dispute arise concerning any provisions of this Contract, or the parties=
1127 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the
1128 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring
1129 any matter to the Department of Justice, the party shall provide to the other party 30 days' written
1130 notice of the intent to take such action; Provided, That such notice shall not be required where a

1131 delay in commencing an action would prejudice the interests of the party that intends to file suit.
1132 During the 30-day notice period, the Contractor and the Contracting Officer shall meet and confer in
1133 an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to
1134 waive or abridge any right or remedy that the Contractor or the United States may have.

1135 OFFICIALS NOT TO BENEFIT

1136 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1137 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1138 manner as other water users or landowners.

1139 CHANGES IN CONTRACTOR'S SERVICE AREA

1140 35. (a) While this Contract is in effect, no change may be made in the Contractor's
1141 Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,
1142 except upon the Contracting Officer's written consent.

1143 (b) Within 30 days of receipt of a request for such a change, the Contracting
1144 Officer will notify the Contractor of any additional information required by the Contracting Officer
1145 for processing said request, and both parties will meet to establish a mutually agreeable schedule for
1146 timely completion of the process. Such process will analyze whether the proposed change is likely
1147 to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of
1148 the Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-
1149 constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project
1150 Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply with
1151 the NEPA and the ESA. The Contractor will be responsible for all costs incurred by the Contracting
1152 Officer in this process, and such costs will be paid in accordance with Article 25 of this Contract.

1153 FEDERAL LAWS

1154 36. By entering into this Contract, the Contractor does not waive its rights to contest the

1155 validity or application in connection with the performance of the terms and conditions of this
1156 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the
1157 terms and conditions of this Contract unless and until relief from application of such Federal law or
1158 regulation to the implementing provision of the Contract is granted by a court of competent
1159 jurisdiction.

1160 NOTICES

1161 37. Any notice, demand, or request authorized or required by this Contract shall be
1162 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered
1163 to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, California 93721,
1164 and on behalf of the United States, when mailed, postage prepaid, or delivered to Mr. Jerry Coehlo,
1165 Coehlo Family Trust, 5494 West Mount Whitney Avenue, Riverdale, California 93656. The
1166 designation of the addressee or the address may be changed by notice given in the same manner as
1167 provided in this Article for other notices.

1168 CONFIRMATION OF CONTRACT

1169 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a
1170 decree of a court of competent jurisdiction of the State of California, confirming the execution of this
1171 Contract. The Contractor shall furnish the United States a certified copy of the final decree, the
1172 validation proceedings, and all pertinent supporting records of the court approving and confirming
1173 this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

1174 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and
1175 year first above written.

1176 THE UNITED STATES OF AMERICA

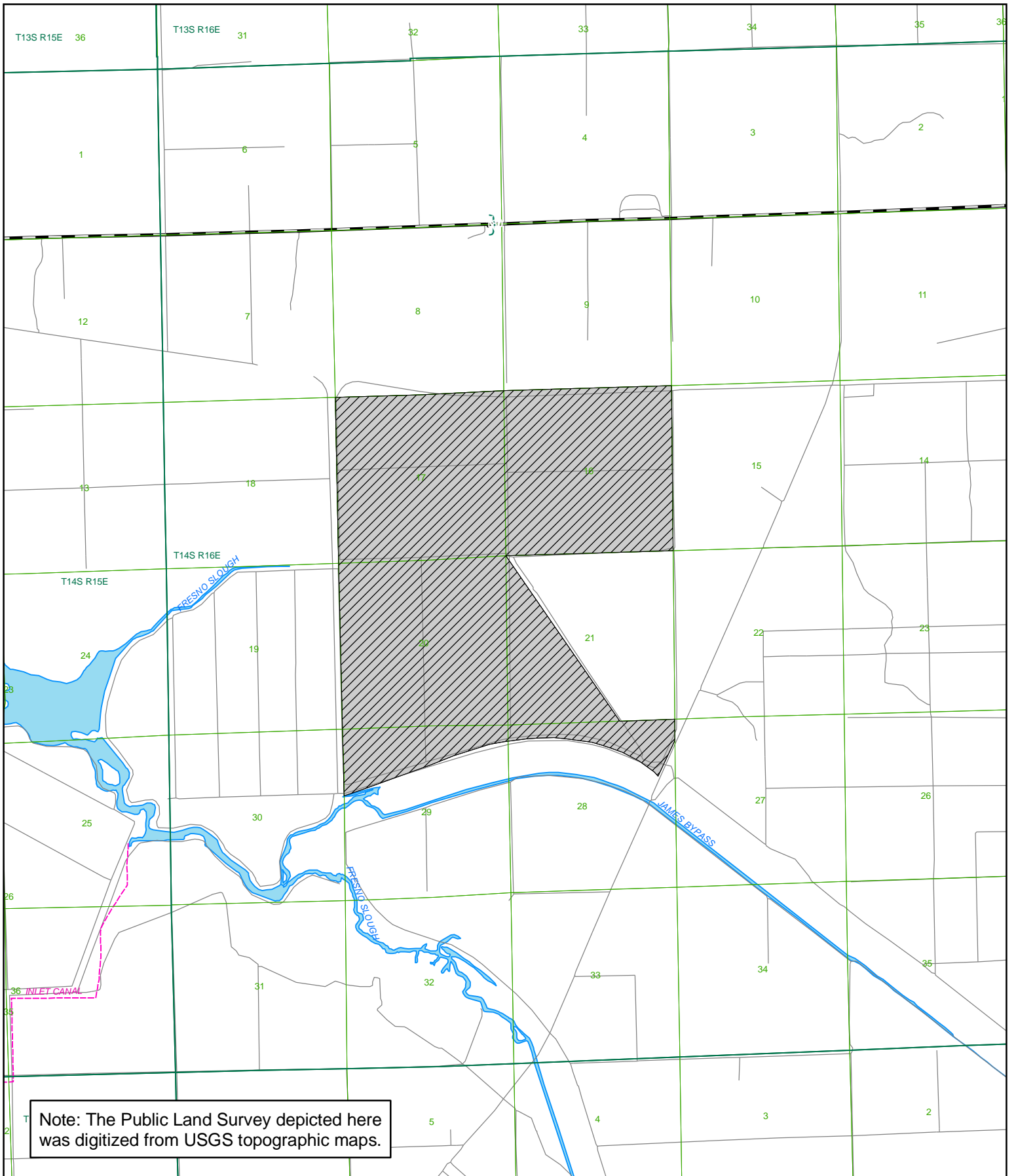
1177 By: _____
1178 Regional Director, Mid-Pacific Region
1179 Bureau of Reclamation

1180 (SEAL)

1181 COEHLO FAMILY TRUST

1182 By: _____
1183 Trustee

1184 (H:\pub 440\LTRC\Final Draft LTRC's – Fresno, Tracy\09-23-04 Coehlo Family Trust Final Draft
1185 LTRC with exhibits.doc)



Coelho Family Trust

Contract No. 14-06-200-7859A-LTR1
Exhibit A

-  Contractor's Service Area
-  District Boundary

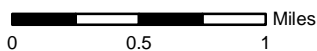


EXHIBIT B
COEHLO FAMILY TRUST
Water Rates and Charges

Note: Rates and Charges are 2004 rates. This exhibit will be updated prior to execution of the contract to reflect the current Rates and Charges.

<u>Cost-of-Service Rates</u>	<u>Irrigation Water</u>	<u>M&I Water 1/</u>
Capital Rates	\$ 11.77	
O&M Rates:		
Water Marketing	7.59	
Storage	5.83	
Conveyance	2/	
Conveyance Pumping	2/	
Deficit Rates:		
Non-Interest Bearing	N/A	
Interest Bearing	3.29	
CFO/PFR Adj. Rate 3/	1.53	
<u>TOTAL COST-OF-SERVICE RATES</u>	<u>30.01</u>	
RRA Full Cost Rates:		
Section 202(3) Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981	\$ 40.88	
Section 205(a)(3) - Rate is applicable to a Limited Recipient that did not receive irrigation water on or before October 1, 1981	\$ 47.95	
<u>Charges Under P.L. 102-575 to Restoration Fund 4/</u>	<u>\$ 7.82</u>	

1/ To be provided as needed. Contractor does not currently receive M&I water and is not projected to take any in the near future.

2/ costs are direct billed by Operating Non-Federal Entity

3/ Rate represents Chief Financial Officers (CFO) adjustment and Provisions for Replacement (PFR) credit for option 2 cost deferment to be distributed over 5-year period beginning with 2003 water rates.

4/ Restoration fund charges are payments in addition to the water rates and were determined pursuant to Title XXXIV of Public Law 102-575. Restoration fund charges are on a fiscal year basis (10/1-9/30).