

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

MEMORANDUM OF AGREEMENT WITH THE FOREST SERVICE
FOR DIVERSION OF WATER

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Exhibit A - Map of Contractor's Service Area

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1 UNITED STATES
2 DEPARTMENT OF THE INTERIOR
3 BUREAU OF RECLAMATION
4 Central Valley Project, California

5 MEMORANDUM OF AGREEMENT WITH THE FOREST SERVICE
6 FOR DIVERSION OF WATER

7 THIS Memorandum of Agreement (MOA), made this ____ day of
8 _____, 20____, in pursuance generally of the Act of June 17, 1902 (32 Stat.
9 388), and acts amendatory or supplementary thereto, including, but not limited to, the Acts of
10 August 26, 1937 (50 Stat. 844), as amended and supplemented, August 4, 1939 (53 Stat. 1187),
11 as amended and supplemented, July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68),
12 October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat. 3050), as amended, and Title
13 XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively hereinafter referred to
14 as Federal Reclamation law, between THE UNITED STATES OF AMERICA, hereinafter
15 referred to as the United States, and the FOREST SERVICE, United States Department of
16 Agriculture, hereinafter referred to as the Contractor, represented by the Regional Forester,
17 California Region;

18 WITNESSETH, THAT:

19 EXPLANATORY RECITALS

20 [1st] WHEREAS, the United States has constructed and is operating the Central Valley
21 Project (Project), California, for diversion, storage, carriage, distribution and beneficial use, for

22 flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection
23 and restoration, generation and distribution of electric energy, salinity control, navigation and
24 other beneficial uses, of waters of the Sacramento River, the American River, the Trinity River,
25 and the San Joaquin River and their tributaries; and

26 [2nd] WHEREAS, the United States constructed the Shasta Dam pumping facilities and
27 the Toyon Pipeline, hereinafter collectively referred to as the Shasta Division facilities, which
28 will be used in part for the furnishing of water to the Contractor pursuant to the terms of this
29 MOA; and

30 [3rd] WHEREAS, the rights to Project Water were acquired by the United States
31 pursuant to California law for operation of the Project; and

32 [3.1] WHEREAS, the Contractor has a continuing need of a water supply from the
33 Shasta Division facilities for municipal, industrial, and domestic use to its Centimudi Marina
34 Project which is located on Shasta Lake in Section 14, Township 33 North, Range 5 West,
35 Mt. Diablo Meridian; and

36 [4th] WHEREAS, the Contractor and the United States entered into Contract
37 No. 14-06-200-3464A, which established terms for the delivery to the Contractor of Project
38 Water from the Shasta Division facilities from November 8, 1967, until terminated by mutual
39 agreement of Reclamation and the Contractor, hereinafter referred to as the “Existing Contract”;
40 and

41 [5th] WHEREAS, the United States and the Contractor have, pursuant to subsection
42 3404(c)(3) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into a
43 binding agreement, identified as Binding Agreement No. 14-06-200-3464A-BA, which sets out
44 the terms pursuant to which the Contractor agreed to renew the Existing Contract before its

45 expiration date after completion of a programmatic environmental impact statement and other
46 appropriate environmental documentation and negotiation of a renewal contract, and which also
47 sets out the consequences of a subsequent decision not to renew; and

48 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of the
49 Existing Contract following completion of appropriate environmental documentation, including a
50 programmatic environmental impact statement (PEIS) pursuant to the National Environmental
51 Policy Act (NEPA), analyzing the direct and indirect impacts and benefits of implementing the
52 CVPIA and the potential renewal of all existing contracts for Project Water; and

53 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
54 environmental review necessary to provide for long-term renewal of the Existing Contract; and

55 [8th] WHEREAS, the Contractor has requested the long-term renewal of the Existing
56 Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws
57 of the State of California, for water service from the Project; and

58 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all
59 of its obligations under the Existing Contract; and

60 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the
61 Contracting Officer that the Contractor has utilized the Project Water supplies available to it for
62 reasonable and beneficial use and, based upon a needs analysis cooperatively prepared by the
63 Contracting Officer and the Contractor, has demonstrated projected future demand for water use
64 that exceeds the Contract Total to be made available to it pursuant to this MOA; and

65 [11th] WHEREAS, water obtained from the Project has been relied upon by urban and
66 agricultural areas within California for more than 50 years, and is considered by the Contractor
67 as an essential portion of its water supply; and

68 [12th] WHEREAS, the United States and the Contractor are willing to enter into this
69 MOA pursuant to Federal Reclamation law on the terms and conditions set forth below.

70 NOW, THEREFORE, in consideration of the mutual covenants herein contained,
71 it is agree as follows:

72 DEFINITIONS

73 1. When used herein unless otherwise distinctly expressed, or manifestly
74 incompatible with the intent of the parties as expressed in this MOA, the term:

75 (a) “Calendar Year” shall mean the period January 1 through December 31,
76 both dates inclusive;

77 (b) “Charges” shall mean the payments required by Federal Reclamation law
78 in addition to the Rates and Tiered Pricing Component specified in this MOA as determined
79 annually by the Contracting Officer pursuant to this MOA;

80 (c) “Condition of Shortage” shall mean a condition respecting the Project
81 during any Year such that the Contracting Officer is unable to deliver sufficient water to meet the
82 Contract Total;

83 (d) “Contracting Officer” shall mean the Secretary of the Interior’s duly
84 authorized representative acting pursuant to this MOA or applicable Federal Reclamation law or
85 regulation;

86 (e) “Contract Total” shall mean the maximum amount of water to which the
87 Contractor is entitled under subdivision (a) of Article 3 of this MOA;

88 (f) “Contractor's Service Area” shall mean the area to which the Contractor is
89 permitted to provide Project Water under this MOA as described in Exhibit “A” attached hereto,
90 which may be modified from time to time in accordance with Article 35 of this MOA without
91 amendment of this MOA;

92 (g) “CVPIA” shall mean the Central Valley Project Improvement Act, Title
93 XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

94 (h) Omitted;

95 (i) Omitted;

96 (j) “Full Cost Rate” shall mean an annual rate, as determined by the
97 Contracting Officer that shall amortize the expenditures for construction properly allocable to the
98 Project irrigation or M&I functions, as appropriate, of facilities in service including all O&M
99 deficits funded, less payments, over such periods as may be required under Federal Reclamation
100 law, or applicable contract provisions. Interest will accrue on both the construction expenditures
101 and funded O&M deficits from October 12, 1982, on costs outstanding at that date, or from the
102 date incurred in the case of costs arising subsequent to October 12, 1982, and shall be calculated
103 in accordance with subsections 202(3)(B) and (3)(C) of the Reclamation Reform Act of
104 October 12, 1982 (96 Stat. 1263), as amended, hereinafter referred to as RRA. The Full Cost
105 Rate includes actual operation, maintenance, and replacement costs consistent with Section 426.2
106 of the Rules and Regulations for the RRA;

107 (k) Omitted;

108 (l) Omitted;

109 (m) Omitted;

110 (n) Omitted;

111 (o) “Municipal and Industrial (M&I) Water” shall mean Project Water made
112 available to the Contractor for purposes other than the commercial production of agricultural
113 crops or livestock;

114 (p) “M&I Full Cost Water Rate” shall mean the Full Cost Rate applicable to
115 the delivery of M&I Water;

116 (q) "Operation and Maintenance" or "O&M" shall mean normal and
117 reasonable care, control, operation, repair, replacement (other than capital replacement), and
118 maintenance of Project facilities;

119 (r) Omitted;

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

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

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

128 (v) "Rates" shall mean the payments determined annually by the Contracting
129 Officer in accordance with the then-current applicable water ratesetting policies for the Project,
130 as described in subdivision (a) of Article 7 of this MOA;

131 (w) "Recent Historic Average" shall mean the most recent five-year average of
132 the final forecast of Water Made Available to the Contractor pursuant to this MOA or its
133 preceding contract(s);

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

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

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

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

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

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

150 TERM OF CONTRACT

151 2. (a) This MOA shall be effective March 1, 20___, through February 28,
152 20___, and supercedes the Existing Contract. In the event the Contractor wishes to renew this
153 MOA beyond February 28, 20___, the Contractor shall submit a request for renewal in writing to
154 the Contracting Officer no later than two years prior to the date this MOA expires.

155 (b) Omitted.

156 (c) This MOA shall be renewed for successive periods of up to 40 years each,
157 which periods shall be consistent with then-existing Reclamation-wide policy, under terms and
158 conditions mutually agreeable to the parties and consistent with Federal and State law. The
159 Contractor shall be afforded the opportunity to comment to the Contracting Officer on the
160 proposed adoption and application of any revised policy applicable to the delivery of M&I Water
161 that would limit the term of any subsequent renewal contract with the Contractor for the
162 furnishing of M&I Water to less than 40 years.

163 (d) The Contracting Officer shall make a determination ten years after the
164 date of execution of this Contract, and every five years thereafter during the term of this

165 Contract, of whether a conversion to a contract under said subsection (c)(1) of Section 9 of the
166 Reclamation Project Act of 1939 can be accomplished. The Contracting Officer anticipates that
167 during the term of this Contract, all authorized Project construction expected to occur will have
168 occurred, and on that basis the Contracting Officer agrees upon such completion to allocate all
169 costs that are properly assignable to the Contractor, and agrees further that, at any time after such
170 allocation is made, and subject to satisfaction of the condition set out in this subdivision, this
171 Contract shall, at the request of the Contractor, be converted to a contract under said subsection
172 9(c)(1), subject to applicable Federal law and under stated terms and conditions mutually
173 agreeable to the Contractor and the Contracting Officer. A condition for such conversion to
174 occur shall be a determination by the Contracting Officer that, account being taken of the amount
175 credited to return by the Contractor as provided for under Federal Reclamation law, the
176 remaining amount of construction costs assignable for ultimate return by the Contractor can
177 probably be repaid to the United States within the term of a contract under said subsection
178 9(c)(1). If the remaining amount of costs that are properly assignable to the Contractor cannot be
179 determined during the term of this Contract, the Contracting Officer shall notify the Contractor,
180 and provide the reason(s) why such a determination could not be made. Further, the Contracting
181 Officer shall make such a determination as soon thereafter as possible so as to permit, upon
182 request of the Contractor and satisfaction of the condition set out above, conversion to a contract
183 under said subsection 9(c)(1). In the event such determination of costs has not been made at a
184 time which allows conversion of this Contract during the term of this Contract or the Contractor
185 has not requested conversion of this Contract within such term, the parties shall incorporate in
186 any subsequent renewal contract as described in subdivision (b) of this Article a provision that
187 carries forth in substantially identical terms the provisions of this subdivision.

188 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

189 3. (a) During each Year, consistent with all applicable State water rights,
190 permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of
191 this MOA, the Contracting Officer shall make available for delivery to the Contractor 10 acre-
192 feet of Project Water for M&I purposes. Water Delivered to the Contractor in accordance with
193 this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of
194 this MOA.

195 (b) Because the capacity of the Project to deliver Project Water has been
196 constrained in recent years and may be constrained in the future due to many factors including
197 hydrologic conditions and implementation of Federal and State laws, the likelihood of the
198 Contractor actually receiving the amount of Project Water set out in subdivision (a) of this
199 Article in any given Year is uncertain. The Contracting Officer's modeling referenced in the
200 PEIS projected that the Contract Total set forth in this MOA will not be available to the
201 Contractor in many years. During the most recent five years, the Recent Historic Average of
202 water made available to the Contractor was 9 acre-feet. Nothing in subdivision (b) of this Article
203 shall affect the rights and obligations of the parties under any provision of this MOA.

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

206 (d) The Contractor shall make reasonable and beneficial use of all water
207 furnished pursuant to this MOA. Ground-water recharge programs (direct, indirect, or in lieu),
208 ground-water banking programs, surface water storage programs, and other similar programs
209 utilizing Project Water or other water furnished pursuant to this MOA conducted within the
210 Contractor's Service Area which are consistent with applicable State law and result in use

211 consistent with Federal Reclamation law will be allowed; Provided, That any direct recharge
212 program(s) is (are) described in the Contractor's water conservation plan submitted pursuant to
213 Article 26 of this MOA; Provided, further, That such water conservation plan demonstrates
214 sufficient lawful uses exist in the Contractor's Service Area so that using a long-term average,
215 the quantity of Delivered Water is demonstrated to be reasonable for such uses and in
216 compliance with Federal Reclamation law. Ground-water recharge programs, ground-water
217 banking programs, surface water storage programs, and other similar programs utilizing Project
218 Water or other water furnished pursuant to this MOA conducted outside the Contractor's Service
219 Area may be permitted upon written approval of the Contracting Officer, which approval will be
220 based upon environmental documentation, Project Water rights, and Project operational
221 concerns. The Contracting Officer will address such concerns in regulations, policies, or
222 guidelines.

223 (e) The Contractor shall comply with requirements applicable to the
224 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution
225 of this MOA undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as
226 amended, that are within the Contractor's legal authority to implement. The Existing Contract,
227 which evidences in excess of 36 years of diversions for irrigation and/or M&I purposes of the
228 quantities of water provided in subdivision (a) of Article 3 of this MOA, will be considered in
229 developing an appropriate baseline for biological assessment (s) prepared pursuant to the ESA,
230 and any other needed environmental review. Nothing herein shall be construed to prevent the
231 Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with
232 respect to any biological opinion or other environmental documentation referred to in this
233 Article.

234 (f) As soon as possible following each declaration of Water Made Available
235 under Article 4 of this MOA, the Contracting Officer will make a determination whether Project
236 Water, or other water available to the Project, can be made available to the Contractor in addition
237 to the Contract Total under Article 3 of this MOA during the Year without adversely impacting
238 other Project Contractors. At the request of the Contractor, the Contracting Officer will consult
239 with the Contractor prior to making such a determination. If the Contracting Officer determines
240 that Project Water, or other water available to the Project, can be made available to the
241 Contractor, the Contracting Officer will announce the availability of such water and shall so
242 notify the Contractor as soon as practical. The Contracting Officer will thereafter meet with the
243 Contractor and other Project Contractors capable of taking such water to determine the most
244 equitable and efficient allocation of such water. If the Contractor requests the delivery of any
245 quantity of such water, the Contracting Officer shall make such water available to the Contractor
246 in accordance with applicable statutes, regulations, guidelines, and policies.

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

254 (h) The Contractor’s right pursuant to Federal Reclamation law and applicable
255 State law to the reasonable and beneficial use of Water Delivered pursuant to this MOA during
256 the term thereof and any subsequent renewal contracts, as described in Article 2 of this MOA,

257 during the terms thereof shall not be disturbed so long as the Contractor shall fulfill all of its
258 obligations under this MOA and any renewals thereof. Nothing in the preceding sentence shall
259 affect the Contracting Officer's ability to impose shortages under Article 11 or subdivision (b) of
260 Article 12 of this MOA or applicable provisions of any subsequent renewal contracts.

261 (i) Project Water furnished to the Contractor pursuant to this MOA may be
262 delivered for other than M&I purposes upon written approval by the Contracting Officer in
263 accordance with the terms and conditions of such approval.

264 (j) The Contracting Officer shall make reasonable efforts to protect the water
265 rights necessary for the Project and to provide the water available under this MOA. The
266 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the
267 extent permitted by law, in administrative proceedings related to the Project Water rights;
268 Provided, That the Contracting Officer retains the right to object to the substance of the
269 Contractor's position in such a proceeding; Provided further, That in such proceedings the
270 Contracting Officer shall recognize the Contractor has a legal right under the terms of this MOA
271 to use Project Water.

272 TIME FOR DELIVERY OF WATER

273 4. (a) On or about February 20 of each Calendar Year, the Contracting Officer
274 shall announce the Contracting Officer's expected declaration of the Water Made Available.
275 Such declaration will be expressed in terms of both Water Made Available and the Recent
276 Historic Average and will be updated monthly, and more frequently if necessary, based on then-
277 current operational and hydrologic conditions and a new declaration with changes, if any, to the
278 Water Made Available will be made. The Contracting Officer shall provide forecasts of Project
279 operations and the basis of the estimate, with relevant supporting information, upon the written

280 request of the Contractor. Concurrently with the declaration of the Water Made Available, the
281 Contracting Officer shall provide the Contractor with the updated Recent Historic Average.

282 (b) On or before each March 1 and at such other times as necessary, the
283 Contractor shall submit to the Contracting Officer a written schedule, satisfactory to the
284 Contracting Officer, showing the monthly quantities of Project Water to be delivered by the
285 United States to the Contractor pursuant to this MOA for the Year commencing on such March
286 1. The Contracting Officer shall use all reasonable means to deliver Project Water according to
287 the approved schedule for the Year commencing on such March 1.

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

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

297 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

298 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this
299 MOA shall be delivered to the Contractor at Station 24___ of the Toyon Pipeline and any
300 additional point or points of delivery either on Project facilities or another location or locations
301 mutually agreed to in writing by the Contracting Officer and the Contractor.

302 (b) The Contracting Officer shall make all reasonable efforts to maintain
303 sufficient flows and levels of water in Shasta Reservoir to deliver Project Water to the Contractor
304 at specific turnouts established pursuant to subdivision (a) of this Article.

305 (c) Omitted.

306 (d) All Water Delivered to the Contractor pursuant to this MOA shall be
307 measured and recorded with equipment furnished, installed, operated, and maintained by the
308 Contractor at the point or points of delivery established pursuant to subdivision (a) of this
309 Article. Upon the request of either party to this MOA, the Contracting Officer shall investigate
310 the accuracy of such measurements and shall take any necessary steps to adjust any errors
311 appearing therein. For any period of time when accurate measurements have not been made, the
312 Contracting Officer shall consult with the Contractor prior to making a final determination of the
313 quantity delivered for that period of time.

314 (e) The Contracting Officer shall not be responsible for the control, carriage,
315 handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to this
316 MOA beyond the delivery points specified in subdivision (a) of this Article.

317 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

318 6. Omitted.

319 RATES AND METHOD OF PAYMENT FOR WATER

320 7. (a) The Contractor shall pay the United States as provided in this Article for
321 all Delivered Water at Rates, Charges, and the Tiered Pricing Component established in
322 accordance with (i) the Secretary's then-existing ratesetting policy for M&I Water. Such
323 ratesetting policy shall be amended, modified, or superceded only through a public notice and
324 comment procedure; (ii) applicable Federal Reclamation law and associated rules and

325 regulations, or policies; and (iii) other applicable provisions of this MOA. Payments shall be
326 made by cash transaction, electronic funds transfer, or any other mechanism as may be agreed to
327 in writing by the Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing
328 Component applicable to the Contractor upon execution of this MOA are set forth in Exhibit
329 “B,” as may be revised annually.

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

332 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
333 provide the Contractor an estimate of the Charges for Project Water that will be applied to the
334 period October 1, of the current Calendar Year, through September 30, of the following Calendar
335 Year, and the basis for such estimate. The Contractor shall be allowed not less than two months
336 to review and comment on such estimates. On or before September 15 of each Calendar Year,
337 the Contracting Officer shall notify the Contractor in writing of the Charges to be in effect during
338 the period October 1 of the current Calendar Year, through September 30, of the following
339 Calendar Year, and such notification shall revise Exhibit “B.”

340 (2) Prior to October 1 of each Calendar Year, the Contracting Officer
341 shall make available to the Contractor an estimate of the Rates and Tiered Pricing Component
342 for Project Water for the following Year and the computations and cost allocations upon which
343 those Rates are based. The Contractor shall be allowed not less than two months to review and
344 comment on such computations and cost allocations. By December 31 of each Calendar Year,
345 the Contracting Officer shall provide the Contractor with the final Rates and Tiered Pricing
346 Component to be in effect for the upcoming Year, and such notification shall revise Exhibit “B.”

347 (c) At the time the Contractor submits the initial schedule for the delivery of
348 Project Water for each Year pursuant to subdivision (b) of Article 4 of this MOA, the Contractor
349 shall make an advance payment to the United States equal to the total amount payable pursuant
350 to the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled
351 to be delivered pursuant to this MOA during the first two calendar months of the Year. Before
352 the end of the first month and before the end of each calendar month thereafter, the Contractor
353 shall make an advance payment to the United States, at the Rate(s) set under subdivision (a) of
354 this Article, for the Water Scheduled to be delivered pursuant to this MOA during the second
355 month immediately following. Adjustments between advance payments for Water Scheduled
356 and payments at Rates due for Water Delivered shall be made before the end of the following
357 month; Provided, That any revised schedule submitted by the Contractor pursuant to Article 4 of
358 this MOA which increases the amount of Water Delivered pursuant to this MOA during any
359 month shall be accompanied with appropriate advance payment, at the Rates then in effect, to
360 assure that Project Water is not delivered to the Contractor in advance of such payment. In any
361 month in which the quantity of Water Delivered to the Contractor pursuant to this MOA equals
362 the quantity of Water Scheduled and paid for by the Contractor, no additional Project Water shall
363 be delivered to the Contractor unless and until an advance payment at the Rates then in effect for
364 such additional Project Water is made. Final adjustment between the advance payments for the
365 Water Scheduled and payments for the quantities of Water Delivered during each Year pursuant
366 to this MOA shall be made as soon as practicable, but no later than April 30th of the following
367 Year, or 60 days after the delivery of Project Water carried over under subdivision (g) of Article
368 3 of this MOA if such water is not delivered by the last day of February.

369 (d) The Contractor shall also make a payment in addition to the Rate(s) in
370 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
371 appropriate Tiered Pricing Component then in effect, before the end of the month following the
372 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered
373 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be
374 consistent with the quantities of M&I Water Delivered as shown in the water delivery report for
375 the subject month prepared by the Contracting Officer. The water delivery report shall be
376 deemed a bill for the payment of Charges and the applicable Tiered Pricing Component for
377 Water Delivered. Adjustment for overpayment or underpayment of Charges shall be made
378 through the adjustment of payments due to the United States for Charges for the next month.
379 Any amount to be paid for past due payment of Charges and the Tiered Pricing Component shall
380 be computed pursuant to Article 20 of this MOA.

381 (e) The Contractor shall pay for any Water Delivered under subdivision (a),
382 (f), or (g) of Article 3 of this MOA as determined by the Contracting Officer pursuant to
383 applicable statutes, associated regulations, any applicable provisions of guidelines or ratesetting
384 policies; Provided, That the Rate for Water Delivered under subdivision (f) of Article 3 of this
385 MOA shall be no more than the otherwise applicable Rate for M&I Water under subdivision (a)
386 of this Article.

387 (f) Payments to be made by the Contractor to the United States under this
388 MOA may be paid from any revenues available to the Contractor.

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

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

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

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

408 (j) (1) Beginning at such time as deliveries of Project Water in a Year
409 exceed 80 percent of the Contract Total, then before the end of the month following the month of
410 delivery the Contractor shall make an additional payment to the United States equal to the
411 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water
412 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the
413 Contract Total, shall equal one-half of the difference between the Rate established under

414 subdivision (a) of this Article and the M&I Full Cost Water Rate. The Tiered Pricing
415 Component for the amount of Water Delivered which exceeds 90 percent of the Contract Total
416 shall equal the difference between (i) the Rate established under subdivision (a) of this Article
417 and (ii) the M&I Full Cost Water Rate.

418 (2) Omitted.

419 (3) For purposes of determining the applicability of the Tiered Pricing
420 Component pursuant to this Article, Water Delivered shall include Project Water that the
421 Contractor transfers to others but shall not include Project Water transferred to the Contractor,
422 nor shall it include the additional water provided to the Contractor under the provisions of
423 subdivision (f) of Article 3 of this MOA.

424 (k) For the term of this MOA, Rates under the respective ratesetting policies
425 will be established to recover only reimbursable O&M (including any deficits) and capital costs
426 of the Project, as those terms are used in the then-current Project ratesetting policies, and interest,
427 where appropriate, except in instances where a minimum Rate is applicable in accordance with
428 the relevant Project ratesetting policy. Changes of significance in practices which implement the
429 Contracting Officer's ratesetting policies will not be implemented until the Contracting Officer
430 has provided the Contractor an opportunity to discuss the nature, need, and impact of the
431 proposed change.

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

439 for transferred Project Water shall be the Contractor's Rates and Charges and will not be
440 adjusted to reflect the Contractor's inability to pay.

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

443 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

444 8. Omitted.

445 SALES, TRANSFERS, OR EXCHANGES OF WATER

446 9. Omitted.

447 APPLICATION OF PAYMENTS AND ADJUSTMENTS

448 10. (a) The amount of any overpayment by the Contractor of the Contractor's
449 O&M, capital, and deficit (if any) obligations for the Year shall be applied first to any current
450 liabilities of the Contractor arising out of this MOA then due and payable. Overpayments of
451 more than \$1,000 shall be refunded at the Contractor's request. In lieu of a refund, any amount
452 of such overpayment, at the option of the Contractor, may be credited against amounts to become
453 due to the United States by the Contractor. With respect to overpayment, such refund or
454 adjustment shall constitute the sole remedy of the Contractor or anyone having or claiming to
455 have the right to the use of any of the Project Water supply provided for herein. All credits and
456 refunds of overpayments shall be made within 30 days of the Contracting Officer obtaining
457 direction as to how to credit or refund such overpayment in response to the notice to the
458 Contractor that it has finalized the accounts for the Year in which the overpayment was made.

459 (b) All advances for miscellaneous costs incurred for work requested by the
460 Contractor pursuant to Article 25 of this MOA shall be adjusted to reflect the actual costs when
461 the work has been completed. If the advances exceed the actual costs incurred, the difference
462 will be refunded to the Contractor. If the actual costs exceed the Contractor's advances, the
463 Contractor will be billed for the additional costs pursuant to Article 25.

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TEMPORARY REDUCTIONS--RETURN FLOWS

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

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

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

CONSTRAINTS ON THE AVAILABILITY OF WATER

12. (a) In its operation of the Project, the Contracting Officer will use all reasonable means to guard against a Condition of Shortage in the quantity of water to be made

490 available to the Contractor pursuant to this MOA. In the event the Contracting Officer
491 determines that a Condition of Shortage appears probable, the Contracting Officer will notify the
492 Contractor of said determination as soon as practicable.

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

498 (c) Omitted.

499 (d) Project Water furnished under this MOA will be allocated in accordance
500 with the then-existing Project M&I Water Shortage Policy. Such policy shall be amended,
501 modified, or superceded only through a public notice and comment procedure.

502 UNAVOIDABLE GROUNDWATER PERCOLATION

503 13. Omitted.

504 RULES AND REGULATIONS

505 14. The parties agree that the delivery of Project Water or use of Federal facilities
506 pursuant to this MOA is subject to Federal Reclamation law, as amended and supplemented, and
507 the rules and regulations promulgated by the Secretary of the Interior under Federal Reclamation
508 law.

509 WATER AND AIR POLLUTION CONTROL

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

513 QUALITY OF WATER

514 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant
515 to this MOA shall be operated and maintained to enable the United States to deliver Project

516 Water to the Contractor in accordance with the water quality standards specified in subsection
517 2(b) of the Act of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October
518 27, 1986 (100 Stat. 3050) or other existing Federal laws. The United States is under no
519 obligation to construct or furnish water treatment facilities to maintain or to improve the quality
520 of Water Delivered to the Contractor pursuant to this MOA. The United States does not warrant
521 the quality of Water Delivered to the Contractor pursuant to this MOA.

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

529 WATER ACQUIRED BY THE CONTRACTOR
530 OTHER THAN FROM THE UNITED STATES

531 17. Omitted.

532 OPINIONS AND DETERMINATIONS

533 18. (a) Where the terms of this MOA provide for actions to be based upon the
534 opinion or determination of either party to this MOA, said terms shall not be construed as
535 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
536 determinations. Both parties, notwithstanding any other provisions of this MOA, expressly
537 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,
538 or unreasonable opinion or determination. Each opinion or determination by either party shall be
539 provided in a timely manner. Nothing in subdivision (a) of Article 18 of this MOA is intended to

540 or shall affect or alter the standard of judicial review applicable under Federal law to any opinion
541 or determination implementing a specific provision of Federal law embodied in statute or
542 regulation.

543 (b) The Contracting Officer shall have the right to make determinations
544 necessary to administer this MOA that are consistent with the provisions of this MOA, the laws
545 of the United States and of the State of California, and the rules and regulations promulgated by
546 the Secretary of the Interior. Such determinations shall be made in consultation with the
547 Contractor to the extent reasonably practicable.

548 COORDINATION AND COOPERATION

549 19. (a) In order to further their mutual goals and objectives, the Contracting
550 Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and
551 with other affected Project Contractors, in order to improve the operation and management of the
552 Project. The communication, coordination, and cooperation regarding operations and
553 management shall include, but not be limited to, any action which will or may materially affect
554 the quantity or quality of Project Water supply, the allocation of Project Water supply, and
555 Project financial matters including, but not limited to, budget issues. The communication,
556 coordination, and cooperation provided for hereunder shall extend to all provisions of this MOA.
557 Each party shall retain exclusive decision making authority for all actions, opinions, and
558 determinations to be made by the respective party.

559 (b) Within 120 days following the effective date of this MOA, the Contractor,
560 other affected Project Contractors, and the Contracting Officer shall arrange to meet with
561 interested Project Contractors to develop a mutually agreeable, written Project-wide process,
562 which may be amended as necessary separate and apart from this MOA. The goal of this process

563 shall be to provide, to the extent practicable, the means of mutual communication and interaction
564 regarding significant decisions concerning Project operation and management on a real-time
565 basis.

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

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

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

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

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

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

583 (d) Without limiting the contractual obligations of the Contracting Officer
584 under the other Articles of this MOA nothing in this Article shall be construed to limit or
585 constrain the Contracting Officer's ability to communicate, coordinate, and cooperate with the

586 Contractor or other interested stakeholders or to make decisions in a timely fashion as needed to
587 protect health, safety, or the physical integrity of structures or facilities.

588 CHARGES FOR DELINQUENT PAYMENTS

589 20. (a) The Contractor shall be subject to interest, administrative and penalty
590 charges on delinquent installments or payments. When a payment is not received by the due
591 date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond
592 the due date. When a payment becomes sixty (60) days delinquent, the Contractor shall pay an
593 administrative charge to cover additional costs of billing and processing the delinquent payment.
594 When a payment is delinquent ninety (90) days or more, the Contractor shall pay an additional
595 penalty charge of six (6%) percent per year for each day the payment is delinquent beyond the
596 due date. Further, the Contractor shall pay any fees incurred for debt collection services
597 associated with a delinquent payment.

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

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

606 EQUAL OPPORTUNITY

607 21. Omitted.

608 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

609 22. Omitted.

610 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

611 23. Omitted.

612 PRIVACY ACT COMPLIANCE

613 24. Omitted.

614 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

615 25. In addition to all other payments to be made by the Contractor pursuant to this
616 MOA, the Contractor shall pay to the United States, within 60 days after receipt of a bill and

617 detailed statement submitted by the Contracting Officer to the Contractor for such specific items
618 of direct cost incurred by the United States for work requested by the Contractor associated with
619 this MOA plus indirect costs in accordance with applicable Bureau of Reclamation policies and
620 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in
621 writing in advance by the Contractor. This Article shall not apply to costs for routine contract
622 administration.

623 WATER CONSERVATION

624 26. (a) Prior to the delivery of water provided from or conveyed through
625 Federally constructed or Federally financed facilities pursuant to this MOA, the Contractor shall
626 be implementing an effective water conservation and efficiency program based on the
627 Contractor's water conservation plan that has been determined by the Contracting Officer to meet
628 the conservation and efficiency criteria for evaluating water conservation plans established under
629 Federal law. The water conservation and efficiency program shall contain definite water
630 conservation objectives, appropriate economically feasible water conservation measures, and
631 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this
632 MOA shall be contingent upon the Contractor's continued implementation of such water
633 conservation program. In the event the Contractor's water conservation plan or any revised water
634 conservation plan completed pursuant to subdivision (d) of Article 26 of this MOA have not yet
635 been determined by the Contracting Officer to meet such criteria, due to circumstances which the
636 Contracting Officer determines are beyond the control of the Contractor, water deliveries shall be
637 made under this MOA so long as the Contractor diligently works with the Contracting Officer to
638 obtain such determination at the earliest practicable date, and thereafter the Contractor
639 immediately begins implementing its water conservation and efficiency program in accordance
640 with the time schedules therein.

641 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
642 Article 3 of this MOA equal or exceed 2,000 acre-feet per Year, the Contractor shall implement

643 the Best Management Practices identified by the time frames issued by the California Urban
644 Water Conservation Council for such M&I Water unless any such practice is determined by the
645 Contracting Officer to be inappropriate for the Contractor.

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

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

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

657 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

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

665 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

666 28. Omitted.

667 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

668 29. The expenditure or advance of any money or the performance of any obligation of
669 the United States under this MOA shall be contingent upon appropriation or allotment of funds.

670 Absence of appropriation or allotment of funds shall not relieve the Contractor from any
671 obligations under this MOA. No liability shall accrue to the United States in case funds are not
672 appropriated or allotted.

673 BOOKS, RECORDS, AND REPORTS

674 30. (a) The Contractor shall establish and maintain accounts and other books and
675 records pertaining to administration of the terms and conditions of this MOA. Reports thereon
676 shall be furnished to the Contracting Officer in such form and on such date or dates as the
677 Contracting Officer may require. Subject to applicable Federal laws and regulations, each party
678 to this MOA shall have the right during office hours to examine and make copies of the other
679 party's books and records relating to matters covered by this MOA.

680 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

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

684 (b) The assignment of any right or interest in this MOA by either party shall
685 not interfere with the rights or obligations of the other party to this MOA absent the written
686 concurrence of said other party.

687 (c) The Contracting Officer shall not unreasonably condition or withhold his
688 approval of any proposed assignment.

689 SEVERABILITY

690 32. In the event that a person or entity who is neither (i) a party to a Project contract,
691 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii)
692 an association or other form of organization whose primary function is to represent parties to
693 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or
694 enforceability of a provision included in this MOA and said person, entity, association, or
695 organization obtains a final court decision holding that such provision is legally invalid or
696 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),

697 the parties to this MOA shall use their best efforts to (i) within 30 days of the date of such final
698 court decision identify by mutual agreement the provisions in this MOA which must be revised,
699 and (ii) within three months thereafter promptly agree on the appropriate revision(s). The time
700 periods specified above may be extended by mutual agreement of the parties. Pending the
701 completion of the actions designated above, to the extent it can do so without violating any
702 applicable provisions of law, the United States shall continue to make the quantities of Project
703 Water specified in this MOA available to the Contractor pursuant to the provisions of this MOA
704 which were not found to be legally invalid or unenforceable in the final court decision.

705 RESOLUTION OF DISPUTES

706 33. Should any dispute arise concerning any provisions of this MOA, or the parties'
707 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the
708 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer
709 referring any matter to Department of Justice, the party shall provide to the other party 30 days'
710 written notice of the intent to take such action; Provided, That such notice shall not be required
711 where a delay in commencing an action would prejudice the interests of the party that intends to
712 file suit. During the 30-day notice period, the Contractor and the Contracting Officer shall meet
713 and confer in an attempt to resolve the dispute. Except as specifically provided, nothing herein is
714 intended to waive or abridge any right or remedy that the Contractor or the United States may
715 have.

716 OFFICIALS NOT TO BENEFIT

717 34. Omitted.

718 CHANGES IN CONTRACTOR'S SERVICE AREA

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

722 (b) Within 30 days of receipt of a request for such a change, the Contracting
723 Officer will notify the Contractor of any additional information required by the Contracting

724 Officer for processing said request, and both parties will meet to establish a mutually agreeable
725 schedule for timely completion of the process. Such process will analyze whether the proposed
726 change is likely to: (i) result in the use of Project Water contrary to the terms of this MOA; (ii)
727 impair the ability of the Contractor to pay for Project Water furnished under this MOA or to pay
728 for any Federally-constructed facilities for which the Contractor is responsible; and (iii) have an
729 impact on any Project Water rights applications, permits, or licenses. In addition, the
730 Contracting Officer shall comply with the NEPA and the ESA. The Contractor will be
731 responsible for all costs incurred by the Contracting Officer in this process, and such costs will
732 be paid in accordance with Article 25 of this MOA.

733 FEDERAL LAWS

734 36. By entering into this MOA, the Contractor does not waive its rights to contest the
735 validity or application in connection with the performance of the terms and conditions of this
736 MOA of any Federal law or regulation; Provided, That the Contractor agrees to comply with the
737 terms and conditions of this MOA unless and until relief from application of such Federal law or
738 regulation to the implementing provision of the Contract is granted by a court of competent
739 jurisdiction.

740 NOTICES

741 37. Any notice, demand, or request authorized or required by this MOA shall be
742 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or
743 delivered to the Area Manager, Bureau of Reclamation, Northern California Area Office, 16349
744 Shasta Dam Boulevard, Shasta Lake, California 96019, and on behalf of the United States, when
745 mailed, postage prepaid, or delivered to the Forest Supervisor, U. S. Forest Service, 3644 Avtech
746 Parkway, Redding, California 96002. The designation of the addressee or the address may be
747 changed by notice given in the same manner as provided in this Article for other notices.

748 CONFIRMATION OF CONTRACT

749 38. Omitted.

750 IN WITNESS WHEREOF, the parties hereto have executed this MOA as of the day and
751 year first above written.

752 THE UNITED STATES OF AMERICA

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

756 UNITED STATES DEPARTMENT
757 OF AGRICULTURE

758 By: _____
759 Regional Forester

760 (I:\LTRC\Draft LTRC\06-22-2004 Forest Service – Centimudi Final LTRC Draft Contract.doc)

EXHIBIT A

Map of Contractor's Service Area
United States Forest Service

EXHIBIT B

2004 Water Rates and Charges
United States Forest Service

	<u>M&I</u>
<u>COST OF SERVICE RATES:</u>	
Capital Rates	\$1.93
O&M Rates:	
Water Marketing	5.01
Storage	6.38
Deficit Rates:	
Interest Bearing	0.32
CFO/PRF Adj. Rate 2/	<u>2.29</u>
TOTAL (Minimum Rate =\$15.00)	<u>\$15.92</u>
 <u>M&I FULL-COST RATE:</u>	 <u>\$17.04</u>

CHARGES UNDER P.L. 102-575 TO THE
RESTORATION FUND 1/

Restoration Payments (3407(d)(2)(A))	<u>\$15.64</u>
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1/ 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).

2/ Chief Financial Officer (CFO) adjustment and Provision for Replacement (PFR) expense is being distributed over a 5-year period beginning in FY 2003 for those contractors that requested those costs be deferred.