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Delta Division
Contract No.
14-06-200-3365A-LTR1

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

LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
AND
MERCY SPRINGS WATER DISTRICT
PROVIDING FOR PROJECT WATER SERVICE
FROM THE DELTA DIVISION

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Exhibit A - Map of Contractor's Service Area

Exhibit B - Rates and Charges

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

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WITNESSETH, That:

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EXPLANATORY RECITALS

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24

[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

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

29 [2nd] WHEREAS, the United States constructed the Delta-Mendota Canal and related
30 facilities, which will be used in part for the furnishing of water to the Contractor pursuant to the
31 terms of this Contract; and

32 [3rd] WHEREAS, the rights to Project Water were acquired by the United States pursuant
33 to California law for operation of the Project; and

34 [4th] WHEREAS, the Contractor and the United States entered into Contract
35 No. 14-06-200-3365A, as amended, which established terms for the delivery to the Contractor of
36 Project Water from the Delta Division Facilities from July 21, 1967, through February 28, 1995;
37 and

38 [5th] WHEREAS, the Contractor and the United States have pursuant to subsection
39 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into
40 interim renewal contract(s) identified as Contract No(s). 14-06-200-3365A-IR1, 14-06-200-3365A-
41 IR2, 14-06-200-3365A-IR3, 14-06-200-3365A-IR4-A, 14-06-200-3365A-IR5-A, 14-06-200-
42 3365A-IR6-A, 14-06-200-3365A-IR7-A, and 14-06-200-3365A-IR8-A, the current of which is
43 hereinafter referred to as the Existing Contract, which provided for the continued water service to
44 the Contractor from March 1, 1995, through February 28, 2006; and

45 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of the
46 Existing Contract following completion of appropriate environmental documentation, including a
47 programmatic environmental impact statement (PEIS) pursuant to the National Environmental

48 Policy Act (NEPA) analyzing the direct and indirect impacts and benefits of implementing the
49 CVPIA and the potential renewal of all existing contracts for Project Water; and

50 [6.1] WHEREAS, the Contractor entered into the “Agreement for Partial Assignment of
51 Water Service Contract” dated May 14, 1999, assigning 6,260 acre-feet of its Contract water supply
52 to Pajaro Valley Water Management Agency, Westlands Water District, and Santa Clara Valley
53 Water District; leaving a balance of 7,040 acre-feet of such supply subject to this Contract; and

54 [6.2] WHEREAS, the Contractor entered into a subsequent agreement entitled
55 “Agreement for Partial Assignment of Water Service Contract” dated March 1, 2003, assigning
56 4,198 acre-feet of its Contract water supply to Westlands Water District Distribution District No. 2
57 leaving a balance of 2,842 acre-feet of such supply subject to this Contract;

58 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
59 environmental review necessary to provide for long-term renewal of the Existing Contract; and

60 [8th] WHEREAS, the Contractor has requested the long-term renewal of the Existing
61 Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws of
62 the State of California, for water service from the Project; and

63 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all of
64 its obligations under the Existing Contract; and

65 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting
66 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and
67 beneficial use and/or has demonstrated projected future demand for water use such that the
68 Contractor has the capability and expects to utilize fully for reasonable and beneficial use the
69 quantity of Project Water to be made available to it pursuant to this Contract; and

70 [11th] WHEREAS, water obtained from the Project has been relied upon by urban and
71 agricultural areas within California for more than 50 years, and is considered by the Contractor as
72 an essential portion of its water supply; and

73 [12th] WHEREAS, the economies of regions within the Project, including the Contractor's,
74 depend upon the continued availability of water, including water service from the Project; and

75 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and
76 partnerships to pursue measures to improve water supply, water quality, and reliability of the
77 Project for all Project purposes; and

78 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to
79 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment
80 of the Project as required by law; to guard reasonably against Project Water shortages; to achieve a
81 reasonable balance among competing demands for use of Project Water; and to comply with all
82 applicable environmental statutes, all consistent with the legal obligations of the United States
83 relative to the Project; and

84 [15th] WHEREAS, the parties intend by this Contract to develop a more cooperative
85 relationship in order to achieve their mutual goals; and

86 [15.1] WHEREAS, the Contractor has utilized or may utilize transfers, contract
87 assignments, rescheduling and conveyance of Project Water and non-Project water under this
88 Contract as tools to minimize the impacts of Conditions of Shortage and to maximize the beneficial
89 use of water; and

90 [15.2] WHEREAS, the parties desire and intend that this Contract not provide a
91 disincentive to the Contractor in continuing to carry out the beneficial activities set out in the
92 Explanatory Recital immediately above; and

93 [16th] WHEREAS, the United States and the Contractor are willing to enter into this
94 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

97 DEFINITIONS

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

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

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

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

108 (d) “Contracting Officer” shall mean the Secretary of the Interior’s duly
109 authorized representative acting pursuant to this Contract or applicable Federal Reclamation law or
110 regulation;

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

113 (f) “Contractor's Service Area” shall mean the area to which the Contractor is
114 permitted to provide Project Water under this Contract as described in Exhibit “A” [District to

115 provide appropriate map] attached hereto, which may be modified from time to time in accordance
116 with Article 35 of this Contract without amendment of this Contract;

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

119 (g.1) “Delta Division Facilities” shall mean those existing and future Project
120 facilities in and south of the Sacramento-San Joaquin Rivers Delta, including, but not limited to, the
121 Tracy Pumping Plant, the O’Neill Pumping/Generating Plant, and the San Luis Reservoir, used to
122 divert, store and convey water to those Project Contractors entitled to receive water conveyed
123 through the Delta-Mendota Canal;

124 (h) “Eligible Lands” shall mean all lands to which Irrigation Water may be
125 delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982 (96
126 Stat. 1263), as amended, hereinafter referred to as RRA;

127 (i) “Excess Lands” shall mean all lands in excess of the limitations contained in
128 Section 204 of the RRA, other than those lands exempt from acreage limitation under Federal
129 Reclamation law;

130 (j) “Full Cost Rate” shall mean an annual rate, as determined by the Contracting
131 Officer that shall amortize the expenditures for construction properly allocable to the Project
132 irrigation or M&I functions, as appropriate, of facilities in service including all O&M deficits
133 funded, less payments, over such periods as may be required under Federal Reclamation law, or
134 applicable contract provisions. Interest will accrue on both the construction expenditures and
135 funded O&M deficits from October 12, 1982, on costs outstanding at that date, or from the date
136 incurred in the case of costs arising subsequent to October 12, 1982, and shall be calculated in
137 accordance with subsections 202(3)(B) and (3)(C) of the RRA. The Full Cost Rate includes actual

138 operation, maintenance, and replacement costs consistent with Section 426.2 of the Rules and
139 Regulations for the RRA;

140 (k) “Ineligible Lands” shall mean all lands to which Irrigation Water may not be
141 delivered in accordance with Section 204 of the RRA;

142 (l) “Irrigation Full Cost Water Rate” shall mean the Full Cost Rate applicable to
143 the delivery of Irrigation Water;

144 (m) “Irrigation Water” shall mean water made available from the Project that is
145 used primarily in the production of agricultural crops or livestock, including domestic use incidental
146 thereto, and watering of livestock;

147 (n) “Landholder” shall mean a party that directly or indirectly owns or leases
148 nonexempt land, as provided in 43 CFR 426.2;

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

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

158 (q) “Operation and Maintenance” or “O&M” shall mean normal and reasonable
159 care, control, operation, repair, replacement (other than capital replacement), and maintenance of
160 Project facilities;

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

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

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

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

173 (v) "Rates" shall mean the payments determined annually by the Contracting
174 Officer in accordance with the then current applicable water ratesetting policies for the Project, as
175 described in subdivision (a) of Article 7 of this Contract;

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

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

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

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

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

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

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

194 TERM OF CONTRACT

195 2. (a) This Contract shall be effective March 1, 2005, through February 28, 2030,
196 and supercedes the Existing Contract. In the event the Contractor wishes to renew this Contract
197 beyond February 28, 2030, the Contractor shall submit a request for renewal in writing to the
198 Contracting Officer no later than two years prior to the date this Contract expires. The renewal of
199 this Contract insofar as it pertains to the furnishing of Irrigation Water to the Contractor shall be
200 governed by subdivision (b) of this Article, and the renewal of this Contract insofar as it pertains to
201 the furnishing of M&I Water to the Contractor shall be governed by subdivision (c) of this Article.

202 (b) (1) Under terms and conditions of a renewal contract that are mutually
203 agreeable to the parties hereto, and upon a determination by the Contracting Officer that at the time
204 of contract renewal the conditions set forth in subdivision (b) (2) of this Article are met, and subject
205 to Federal and State law, this Contract, insofar as it pertains to the furnishing of Irrigation Water to
206 the Contractor, shall be renewed for a period of 25 years.

207 (2) The conditions which must be met for this Contract to be renewed are:
208 (i) the Contractor has prepared a water conservation plan that has been determined by the
209 Contracting Officer in accordance with Article 26 of this Contract to meet the conservation and
210 efficiency criteria for evaluating such plans established under Federal law; (ii) the Contractor is
211 implementing an effective water conservation and efficiency program based on the Contractor's
212 water conservation plan as required by Article 26 of this Contract; (iii) the Contractor is operating
213 and maintaining all water measuring devices and implementing all water measurement methods as
214 approved by the Contracting Officer pursuant to Article 6 of this Contract; (iv) the Contractor has
215 reasonably and beneficially used the Project Water supplies made available to it and, based on
216 projected demands, is reasonably anticipated and expects to fully utilize for reasonable and
217 beneficial use the quantity of Project Water to be made available to it pursuant to such renewal; (v)
218 the Contractor is complying with all terms and conditions of this Contract; and (vi) the Contractor
219 has the physical and legal ability to deliver Project Water.

220 (3) The terms and conditions of the renewal contract described in
221 subdivision (b)(1) of this Article and any subsequent renewal contracts shall be developed
222 consistent with the parties' respective legal rights and obligations, and in consideration of all
223 relevant facts and circumstances, as those circumstances exist at the time of renewal, including,
224 without limitation, the Contractor's need for continued delivery of Project Water; environmental
225 conditions affected by implementation of the Contract to be renewed, and specifically changes in
226 those conditions that occurred during the life of the Contract to be renewed; the Secretary's progress
227 toward achieving the purposes of the CVPIA as set out in Section 3402 and in implementing the
228 specific provisions of the CVPIA; and current and anticipated economic circumstances of the region
229 served by the Contractor.

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

238 (d) The Contracting Officer shall make a determination ten years after the date of
239 execution of this Contract, and every five years thereafter during the term of this Contract, of
240 whether a conversion of the relevant portion of this Contract to a contract under subsection 9(d) of
241 the Reclamation Project Act of 1939 can be accomplished pursuant to the Act of July 2, 1956 (70
242 Stat 483). The Contracting Officer shall also make a determination ten years after the date of
243 execution of this Contract and every five years thereafter during the term of this Contract of whether
244 a conversion of the relevant portion of this Contract to a contract under subsection 9(c)(1) of the
245 Reclamation Project Act of 1939 can be accomplished. Notwithstanding any provision of this
246 Contract, the Contractor reserves and shall have all rights and benefits under the Act of July 2, 1956
247 (70 Stat. 483). The Contracting Officer anticipates that during the term of this Contract, all
248 authorized Project construction expected to occur will have occurred, and on that basis the
249 Contracting Officer agrees upon such completion to allocate all costs that are properly assignable to
250 the Contractor, and agrees further that, at any time after such allocation is made, and subject to
251 satisfaction of the conditions set out in this subdivision, this Contract shall, at the request of the
252 Contractor, be converted to a contract under subsection 9(d) or 9(c)(1), whichever is applicable of

253 the Reclamation Project Act of 1939, subject to applicable Federal law and under stated terms and
254 conditions mutually agreeable to the Contractor and the Contracting Officer. A condition for such
255 conversion to occur shall be a determination by the Contracting Officer that, account being taken of
256 the amount credited to return by the Contractor as provided for under Federal Reclamation law, the
257 remaining amount of construction costs assignable for ultimate return by the Contractor can
258 probably be repaid to the United States within the term of a contract under subsection 9(d) or
259 9(c)(1), whichever is applicable. If the remaining amount of costs that are properly assignable to
260 the Contractor cannot be determined during the term of this Contract, the Contracting Officer shall
261 notify the Contractor, and provide the reason(s) why such a determination could not be made.
262 Further, the Contracting Officer shall make such a determination as soon thereafter as possible so as
263 to permit, upon request of the Contractor and satisfaction of the conditions set out above,
264 conversion to a contract under subsection 9(d) or 9(c)(1), whichever is applicable. In the event such
265 determination of costs has not been made at a time which allows conversion of this Contract during
266 the term of this Contract or the Contractor has not requested conversion of this Contract within such
267 term, the parties shall incorporate in any subsequent renewal contract as described in subdivision (b)
268 of this Article a provision that carries forth in substantially identical terms the provisions of this
269 subdivision.

270 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

271 3. (a) During each Year, consistent with all applicable State water rights, permits,
272 and licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this
273 Contract, the Contracting Officer shall make available for delivery to the Contractor 2,842 acre-feet
274 of Project Water for irrigation and M&I purposes. Water Delivered to the Contractor in accordance

275 with this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7
276 of this Contract.

277 (b) Because the capacity of the Project to deliver Project Water has been
278 constrained in recent years and may be constrained in the future due to many factors including
279 hydrologic conditions and implementation of Federal and State laws, the likelihood of the
280 Contractor actually receiving the amount of Project Water set out in subdivision (a) of this Article in
281 any given Year is uncertain. The Contracting Officer's modeling referenced in the PEIS projected
282 that the Contract Total set forth in this Contract will not be available to the Contractor in many
283 years. During the most recent five years, the Recent Historic Average of Water Made Available to
284 the Contractor was 1,870 acre-feet. Nothing in subdivision (b) of this Article shall affect the rights
285 and obligations of the parties under any provision of this Contract.

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

288 (c.1) In the event any Project Contractor (other than a Cross Valley Contractor)
289 that receives Project Water through the Delta Division Facilities obtains a contractual agreement
290 that the Contracting Officer shall make Project Water available at a point or points of delivery in or
291 north of the Delta, at the request of the Contractor and upon completion of any required
292 environmental documentation, this Contract shall be amended to provide for deliveries in or north
293 of the Delta on mutually agreeable terms. Such amendments to the Contract shall be limited solely
294 to those changes made necessary by the addition of such alternate points of delivery in or north of
295 the Delta; Provided, That the Contracting Officer's use of the Harvey O. Banks Pumping Plant to
296 deliver Project Water does not trigger this right of amendment.

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

313 (e) The Contractor shall comply with requirements applicable to the Contractor
314 in biological opinion(s) prepared as a result of a consultation regarding the execution of this
315 Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as
316 amended, that are within the Contractor's legal authority to implement. The Existing Contract,
317 which evidences in excess of 38 years of diversions for irrigation and/or M&I purposes of the
318 quantities of water provided in subdivision (a) of Article 3 of this Contract, will be considered in
319 developing an appropriate baseline for biological assessment(s) prepared pursuant to the ESA, and

320 any other needed environmental review. Nothing herein shall be construed to prevent the
321 Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with
322 respect to any biological opinion or other environmental documentation referred to in this Article.

323 (f) Following the declaration of Water Made Available under Article 4 of this
324 Contract, the Contracting Officer will make a determination whether Project Water, or other water
325 available to the Project, can be made available to the Contractor in addition to the Contract Total
326 under this Article during the Year without adversely impacting other Project Contractors. At the
327 request of the Contractor, the Contracting Officer will consult with the Contractor prior to making
328 such a determination. If the Contracting Officer determines that Project Water, or other water
329 available to the Project, can be made available to the Contractor, the Contracting Officer will
330 announce the availability of such water and shall so notify the Contractor as soon as practical. The
331 Contracting Officer will thereafter meet with the Contractor and other Project Contractors capable
332 of taking such water to determine the most equitable and efficient allocation of such water. If the
333 Contractor requests the delivery of any quantity of such water, the Contracting Officer shall make
334 such water available to the Contractor in accordance with applicable statutes, regulations,
335 guidelines, and policies. Subject to existing long-term contractual commitments, water rights and
336 operational constraints, long-term Project Contractors shall have a first right to acquire such water,
337 including Project Water made available pursuant to Section 215 of the RRA.

338 (g) The Contractor may request permission to reschedule for use during the
339 subsequent Year some or all of the Water Made Available to the Contractor during the current Year,
340 referred to as “rescheduled water.” The Contractor may request permission to use during the
341 current Year a quantity of Project Water which may be made available by the United States to the
342 Contractor during the subsequent Year referred to as “preuse.” The Contracting Officer’s written

343 approval may permit such uses in accordance with applicable statutes, regulations, guidelines, and
344 policies.

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

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

356 (j) The Contracting Officer shall make reasonable efforts to protect the water
357 rights necessary for the Project and to provide the water available under this Contract. The
358 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the
359 extent permitted by law, in administrative proceedings related to the Project Water rights; Provided,
360 That the Contracting Officer retains the right to object to the substance of the Contractor's position
361 in such a proceeding; Provided further, That in such proceedings the Contracting Officer shall
362 recognize the Contractor has a legal right under the terms of this Contract to use Project Water.

363 TIME FOR DELIVERY OF WATER

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

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

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

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

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

387 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

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

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

400 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
401 measured and recorded with equipment furnished, installed, operated, and maintained by the
402 Contracting Officer either directly or indirectly through its written agreement(s) with the Operating
403 Non-Federal Entity(ies), unless undertaken by the Contractor with the consent of the Contracting
404 Officer, at the point or points of delivery established pursuant to subdivision (a) of this Article.
405 Upon the request of either party to this Contract, the Contracting Officer shall investigate, or cause
406 to be investigated by the appropriate Operating Non-Federal Entity(ies), the accuracy of such
407 measurements and shall take any necessary steps to adjust any errors appearing therein. For any
408 period of time when accurate measurements have not been made, the Contracting Officer shall

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

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

427 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

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

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

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

455 the parties shall within 60 days following the Contracting Officer's response, negotiate in good faith
456 the earliest practicable date by which the Contractor shall modify said measuring devices and/or
457 measuring methods as required by the Contracting Officer to ensure compliance with subdivision
458 (a) of this Article.

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

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

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

468 RATES AND METHOD OF PAYMENT FOR WATER

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

477 Officer. The Rates, Charges, and Tiered Pricing Component applicable to the Contractor upon
478 execution of this Contract are set forth in Exhibit “B,” as may be revised annually.

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

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

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

496 (c) At the time the Contractor submits the initial schedule for the delivery of
497 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor
498 shall make an advance payment to the United States equal to the total amount payable pursuant to
499 the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be

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

518 (d) The Contractor shall also make a payment in addition to the Rate(s) in
519 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
520 appropriate Tiered Pricing Component then in effect, before the end of the month following the
521 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered
522 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be consistent

523 with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery
524 report for the subject month prepared by the Operating Non-Federal Entity(ies) or, if there is no
525 Operating Non-Federal Entity, by the Contracting Officer. The water delivery report shall be
526 deemed a bill for the payment of Charges and the applicable Tiered Pricing Component for Water
527 Delivered. Adjustment for overpayment or underpayment of Charges shall be made through the
528 adjustment of payments due to the United States for Charges for the next month. Any amount to be
529 paid for past due payment of Charges and the Tiered Pricing Component shall be computed
530 pursuant to Article 20 of this Contract.

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

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

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

543 (h) The Contracting Officer shall keep its accounts pertaining to the
544 administration of the financial terms and conditions of its long-term contracts, in accordance with
545 applicable Federal standards, so as to reflect the application of Project costs and revenues. The

546 Contracting Officer shall, each Year upon request of the Contractor, provide to the Contractor a
547 detailed accounting of all Project and Contractor expense allocations, the disposition of all Project
548 and Contractor revenues, and a summary of all water delivery information. The Contracting Officer
549 and the Contractor shall enter into good faith negotiations to resolve any discrepancies or disputes
550 relating to accountings, reports, or information.

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

558 (j) (1) Beginning at such time as deliveries of Project Water in a Year
559 exceed 80 percent of the Contract Total, then before the end of the month following the month of
560 delivery the Contractor shall make an additional payment to the United States equal to the
561 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water
562 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the
563 Contract Total, shall equal one-half of the difference between the Rate established under
564 subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate,
565 whichever is applicable. The Tiered Pricing Component for the amount of Water Delivered which
566 exceeds 90 percent of the Contract Total shall equal the difference between (i) the Rate established
567 under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost
568 Water Rate, whichever is applicable. For all Water Delivered pursuant to subdivision (a) of

569 Article 3 of this Contract which is in excess of 80 percent of the Contract Total, this increment shall
570 be deemed to be divided between Irrigation Water and M&I Water in the same proportion as actual
571 deliveries of each bear to the cumulative total Water Delivered

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

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

585 (k) For the term of this Contract, Rates applied under the respective ratesetting
586 policies will be established to recover only reimbursable O&M (including any deficits) and capital
587 costs of the Project, as those terms are used in the then-current Project ratesetting policies, and
588 interest, where appropriate, except in instances where a minimum Rate is applicable in accordance
589 with the relevant Project ratesetting policy. Changes of significance in practices which implement
590 the Contracting Officer's ratesetting policies will not be implemented until the Contracting Officer

591 has provided the Contractor an opportunity to discuss the nature, need, and impact of the proposed
592 change.

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

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

603 (n) With respect to the Rates for M&I Water, the Contractor asserts that it is not
604 legally obligated to pay any Project deficits claimed by the United States to have accrued as of the
605 date of this Contract or deficit-related interest charges thereon. By entering into this Contract, the
606 Contractor does not waive any legal rights or remedies that it may have with respect to such
607 disputed issues. Notwithstanding the execution of this Contract and payments made hereunder, the
608 Contractor may challenge in the appropriate administrative or judicial forums; (1) the existence,
609 computation, or imposition of any deficit charges accruing during the term of the Existing Contract
610 and any preceding interim renewal contracts, if applicable; (2) interest accruing on any such
611 deficits; (3) the inclusion of any such deficit charges or interest in the Rates; (4) the application by
612 the United States of payments made by the Contractor under its Existing Contract and any
613 preceding interim renewal contracts if applicable; and (5) the application of such payments in the

614 Rates. The Contracting Officer agrees that the Contractor shall be entitled to the benefit of any
615 administrative or judicial ruling in favor of any Project M&I contractor on any of these issues, and
616 credits for payments heretofore made, provided that the basis for such ruling is applicable to the
617 Contractor.

618 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

619 8. The Contractor and the Contracting Officer concur that, as of the effective date of
620 this Contract, the Contractor has no non-interest bearing O&M deficits and shall have no further
621 liability therefore.

622 SALES, TRANSFERS, OR EXCHANGES OF WATER

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

634 (b) In order to facilitate efficient water management by means of water transfers
635 of the type historically carried out among Project Contractors located within the same geographical
636 area and to allow the Contractor to participate in an accelerated water transfer program during the

637 term of this Contract, the Contracting Officer shall prepare, as appropriate, all necessary
638 environmental documentation, including but not limited to documents prepared pursuant to NEPA
639 and ESA, analyzing annual transfers within such geographical areas and the Contracting Officer
640 shall determine whether such transfers comply with applicable law. Following the completion of
641 the environmental documentation, such transfers addressed in such documentation shall be
642 conducted with advance notice to the Contracting Officer, but shall not require prior written
643 approval by the Contracting Officer. Such environmental documentation and the Contracting
644 Officer's compliance determination shall be reviewed every five years and updated, as necessary,
645 prior to the expiration of the then existing five-year period. All subsequent environmental
646 documentation shall include an alternative to evaluate not less than the quantity of Project Water
647 historically transferred within the same geographical area.

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

658 APPLICATION OF PAYMENTS AND ADJUSTMENTS

659 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,
660 capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of
661 the Contractor arising out of this Contract then due and payable. Overpayments of more than
662 \$1,000 shall be refunded at the Contractor's request. In lieu of a refund, any amount of such
663 overpayment at the option of the Contractor may be credited against amounts to become due to the
664 United States by the Contractor. With respect to overpayment, such refund or adjustment shall
665 constitute the sole remedy of the Contractor or anyone having or claiming to have the right to the
666 use of any of the Project Water supply provided for herein. All credits and refunds of overpayments
667 shall be made within 30 days of the Contracting Officer obtaining direction as to how to credit or
668 refund such overpayment in response to the notice to the Contractor that it has finalized the
669 accounts for the Year in which the overpayment was made.

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

675 TEMPORARY REDUCTIONS--RETURN FLOWS

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

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

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

698 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

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

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

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

727 (3) The total quantity of Project Water estimated to be scheduled or
728 actually scheduled by the Contractor during the relevant Year, under subdivision (b) of Article 4
729 hereof, shall be divided by the scheduled total, the quotient thus obtained being hereinafter referred
730 to as the Contractor's proportionate share; and

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

740 (d) By entering into this Contract, the Contractor does not waive any legal rights
741 or remedies it may have to file or participate in any administrative or judicial proceeding contesting
742 (i) the sufficiency of the Central Valley Project M&I Water Shortage Policy; (ii) the substance of
743 such a policy; (iii) the applicability of such a policy; or (iv) the manner in which such policy is
744 implemented in order to allocate Project Water between municipal and industrial and irrigation
745 purposes; Provided, that the Contractor has commenced any such judicial challenge or any
746 administrative procedures necessary to institute any judicial challenge within six months of the
747 policy becoming final. By agreeing to the foregoing, the Contracting Officer does not waive any
748 legal defenses or remedies that it may have to assert in such a proceeding. Nothing contained herein
749 shall be interpreted to validate or invalidate the Central Valley M&I Water Shortage Policy.

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UNAVOIDABLE GROUNDWATER PERCOLATION

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

RULES AND REGULATIONS

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

WATER AND AIR POLLUTION CONTROL

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

QUALITY OF WATER

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

(b) The O&M of Project facilities shall be performed in such manner as is practicable to maintain the quality of raw water made available through such facilities at the highest level reasonably attainable as determined by the Contracting Officer. The Contractor shall be

776 responsible for compliance with all State and Federal water quality standards applicable to surface
777 and subsurface agricultural drainage discharges generated through the use of Federal or Contractor
778 facilities or Project Water provided by the Contractor within the Contractor's Service Area.

779 (c) Omitted.

780 WATER ACQUIRED BY THE CONTRACTOR
781 OTHER THAN FROM THE UNITED STATES

782 17. (a) Water or water rights now owned or hereafter acquired by the Contractor
783 other than from the United States and Irrigation Water furnished pursuant to the terms of this
784 Contract may be simultaneously transported through the same distribution facilities of the
785 Contractor subject to the following: (i) if the facilities utilized for commingling Irrigation Water
786 and non-Project water were constructed without funds made available pursuant to Federal
787 Reclamation law, the provisions of Federal Reclamation law will be applicable only to the
788 Landholders of lands which receive Irrigation Water; (ii) the eligibility of land to receive Irrigation
789 Water must be established through the certification requirements as specified in the Acreage
790 Limitation Rules and Regulations (43 CFR Part 426); (iii) the water requirements of Eligible Lands
791 within the Contractor's Service Area can be established and the quantity of Irrigation Water to be
792 utilized is less than or equal to the quantity necessary to irrigate such Eligible Lands; and (iv) if the
793 facilities utilized for commingling Irrigation Water and non-Project water are/were constructed with
794 funds made available pursuant to Federal Reclamation law, the non-Project water will be subject to
795 the acreage limitation provisions of Federal Reclamation law, unless the Contractor pays to the
796 United States the incremental fee described in 43 CFR 426.15. In determining the incremental fee,
797 the Contracting Officer will calculate annually the cost to the Federal Government, including
798 interest of storing or delivering non-Project water, which for purposes of this Contract shall be
799 determined as follows: The quotient shall be the unpaid distribution system costs divided by the

800 total irrigable acreage within the Contractor's Service Area. The incremental fee per acre is the
801 mathematical result of such quotient times the interest rate determined using Section 202 (3) of the
802 Act of October 12, 1982 (96 Stat. 1263). Such incremental fee will be charged to each acre of
803 excess or full cost land within the Contractor's Service Area that receives non-Project water through
804 Federally financed or constructed facilities. The incremental fee calculation methodology will
805 continue during the term of this Contract absent the promulgation of a contrary Reclamation-wide
806 rule, regulation, or policy adopted after the Contractor has been afforded the opportunity to review
807 and comment on the proposed rule, regulation, or policy. If such rule, regulation, or policy is
808 adopted it shall supercede this provision.

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

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

820 (2) Delivery of such non-Project water in and through Project facilities
821 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project purposes
822 as determined by the Contracting Officer; (ii) reduce the quantity or quality of water available to

823 other Project Contractors; (iii) interfere with the delivery of contractual water entitlements to any
824 other Project Contractors; or (iv) interfere with the physical maintenance of the Project facilities.

825 (3) Neither the United States nor the Operating Non-Federal Entity(ies)
826 shall be responsible for control, care, or distribution of the non-Project water before it is introduced
827 into or after it is delivered from the Project facilities. The Contractor hereby releases and agrees to
828 defend and indemnify the United States and the Operating Non-Federal Entity(ies), and their
829 respective officers, agents, and employees, from any claim for damage to persons or property, direct
830 or indirect, resulting from the act(s) of the Contractor, its officers, employees, agents, or assigns, in
831 (i) extracting or diverting non-Project water from any source, or (ii) diverting such non-Project
832 water into Project facilities.

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

836 (5) After Project purposes are met, as determined by the Contracting
837 Officer, the United States and Project Contractors entitled to Project Water from Delta Division
838 Facilities shall share priority to utilize the remaining capacity of the facilities declared to be
839 available by the Contracting Officer for conveyance and transportation of non-Project water prior to
840 any such remaining capacity being made available to non-Project contractors. Other Project
841 Contractors shall have a second priority to any remaining capacity of facilities declared to be
842 available by the Contracting Officer for conveyance and transportation of non-Project water prior to
843 any such remaining capacity being made available to non-Project contractors.

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OPINIONS AND DETERMINATIONS

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

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

COORDINATION AND COOPERATION

19. (a) In order to further their mutual goals and objectives, the Contracting Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and with other affected Project Contractors, in order to improve the operation and management of the Project. The communication, coordination, and cooperation regarding operations and management shall include, but not be limited to, any action which will or may materially affect the quantity or quality of Project Water supply, the allocation of Project Water supply, and Project financial matters including, but not limited to, budget issues. The communication, coordination, and cooperation

867 provided for hereunder shall extend to all provisions of this Contract. Each party shall retain
868 exclusive decision making authority for all actions, opinions, and determinations to be made by the
869 respective party.

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

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

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

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

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

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

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

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

898 CHARGES FOR DELINQUENT PAYMENTS

899 20. (a) The Contractor shall be subject to interest, administrative and penalty charges
900 on delinquent installments or payments. When a payment is not received by the due date, the
901 Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date.
902 When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative
903 charge to cover additional costs of billing and processing the delinquent payment. When a payment
904 is delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six
905 (6%) percent per year for each day the payment is delinquent beyond the due date. Further, the
906 Contractor shall pay any fees incurred for debt collection services associated with a delinquent
907 payment.

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

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

916 EQUAL OPPORTUNITY

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

918 (a) The Contractor will not discriminate against any employee or applicant for
919 employment because of race, color, religion, sex, or national origin. The Contractor will take
920 affirmative action to ensure that applicants are employed, and that employees are treated during
921 employment, without regard to their race, color, religion, sex, or national origin. Such action shall

922 include, but not be limited to, the following: Employment, upgrading, demotion, or transfer;
923 recruitment or recruitment advertising; layoff or termination, rates of payment or other forms of
924 compensation; and selection for training, including apprenticeship. The Contractor agrees to post in
925 conspicuous places, available to employees and applicants for employment, notices to be provided
926 by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

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

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

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

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

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

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

960 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

973 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

974 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
975 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the
976 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws,
977 as well as with their respective implementing regulations and guidelines imposed by the U.S.
978 Department of the Interior and/or Bureau of Reclamation.

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

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

992 PRIVACY ACT COMPLIANCE

993 24. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a)
994 (the Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et
995 seq.) in maintaining Landholder acreage certification and reporting records, required to be

996 submitted to the Contractor for compliance with Sections 206 and 228 of the Reclamation Reform
997 Act of 1982 (96 Stat. 1266), and pursuant to 43 CFR 426.18.

998 (b) With respect to the application and administration of the criminal penalty
999 provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible
1000 for maintaining the certification and reporting records referenced in (a) above are considered to be
1001 employees of the Department of the Interior. See 5 U.S.C. 552a(m).

1002 (c) The Contracting Officer or a designated representative shall provide the
1003 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau of
1004 Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior,
1005 Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information
1006 contained in the Landholder's certification and reporting records.

1007 (d) The Contracting Officer shall designate a full-time employee of the Bureau of
1008 Reclamation to be the System Manager who shall be responsible for making decisions on denials
1009 pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is
1010 authorized to grant requests by individuals for access to their own records.

1011 (e) The Contractor shall forward promptly to the System Manager each proposed
1012 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR
1013 2.71; notify the requester accordingly of such referral; and provide the System Manager with
1014 information and records necessary to prepare an appropriate response to the requester. These
1015 requirements do not apply to individuals seeking access to their own certification and reporting
1016 forms filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the
1017 Privacy Act as a basis for the request.

1018 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1019 25. In addition to all other payments to be made by the Contractor pursuant to this
1020 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and
1021 detailed statement submitted by the Contracting Officer to the Contractor for such specific items of
1022 direct cost incurred by the United States for work requested by the Contractor associated with this
1023 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and
1024 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in
1025 writing in advance by the Contractor. This Article shall not apply to costs for routine contract
1026 administration.

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WATER CONSERVATION

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

(b) Should the amount of M&I Water delivered pursuant to subdivision (a) of Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall implement the Best Management Practices identified by the time frames issued by the California Urban Water Conservation Council for such M&I Water unless any such practice is determined by the Contracting Officer to be inappropriate for the Contractor.

1050 (c) The Contractor shall submit to the Contracting Officer a report on the status
1051 of its implementation of the water conservation plan on the reporting dates specified in the then
1052 existing conservation and efficiency criteria established under Federal law.

1053 (d) At five-year intervals, the Contractor shall revise its water conservation plan
1054 to reflect the then current conservation and efficiency criteria for evaluating water conservation
1055 plans established under Federal law and submit such revised water management plan to the
1056 Contracting Officer for review and evaluation. The Contracting Officer will then determine if the
1057 water conservation plan meets Reclamation's then current conservation and efficiency criteria for
1058 evaluating water conservation plans established under Federal law.

1059 (e) If the Contractor is engaged in direct groundwater recharge, such activity
1060 shall be described in the Contractor's water conservation plan.

1061 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1062 27. Except as specifically provided in Article 17 of this Contract, the provisions of this
1063 Contract shall not be applicable to or affect non-Project water or water rights now owned or
1064 hereafter acquired by the Contractor or any user of such water within the Contractor's Service Area.
1065 Any such water shall not be considered Project Water under this Contract. In addition, this Contract
1066 shall not be construed as limiting or curtailing any rights which the Contractor or any water user
1067 within the Contractor's Service Area acquires or has available under any other contract pursuant to
1068 Federal Reclamation law.

1069 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

1070 28. (a) The O&M of a portion of the Project facilities which serve the Contractor,
1071 and responsibility for funding a portion of the costs of such O&M, have been transferred to the San
1072 Luis & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate agreement

1073 (8-07-20-X0354) between the United States and the Operating Non-Federal Entity San Luis
1074 & Delta-Mendota Water Authority. That separate agreement shall not interfere with or affect the
1075 rights or obligations of the Contractor or the United States hereunder.

1076 (b) The Contracting Officer has previously notified the Contractor in writing that
1077 the O&M of a portion of the Project facilities which serve the Contractor has been transferred to the
1078 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, and therefore, the
1079 Contractor shall pay directly to the Operating Non-Federal Entity San Luis & Delta-Mendota Water
1080 Authority, or to any successor approved by the Contracting Officer under the terms and conditions
1081 of the separate agreement between the United States and the Operating Non-Federal Entity San Luis
1082 & Delta-Mendota Water Authority described in subdivision (a) of this Article, all rates, charges, or
1083 assessments of any kind, including any assessment for reserve funds, which the Operating Non-
1084 Federal Entity San Luis & Delta-Mendota Water Authority or such successor determines, sets, or
1085 establishes for the O&M of the portion of the Project facilities operated and maintained by the
1086 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or such successor. Such
1087 direct payments to the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or
1088 such successor shall not relieve the Contractor of its obligation to pay directly to the United States
1089 the Contractor's share of the Project Rates, Charges, and Tiered Pricing Component except to the
1090 extent the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority collects
1091 payments on behalf of the United States in accordance with the separate agreement identified in
1092 subdivision (a) of this Article.

1093 (c) For so long as the O&M of any portion of the Project facilities serving the
1094 Contractor is performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water
1095 Authority, or any successor thereto, the Contracting Officer shall adjust those components of the

1096 Rates for Water Delivered under this Contract representing the cost associated with the activity
1097 being performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority
1098 or its successor.

1099 (d) In the event the O&M of the Project facilities operated and maintained by the
1100 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority is re-assumed by the
1101 United States during the term of this Contract, the Contracting Officer shall so notify the
1102 Contractor, in writing, and present to the Contractor a revised Exhibit "B" which shall include the
1103 portion of the Rates to be paid by the Contractor for Project Water under this Contract representing
1104 the O&M costs of the portion of such Project facilities which have been re-assumed. The
1105 Contractor shall, thereafter, in the absence of written notification from the Contracting Officer to the
1106 contrary, pay the Rates, Charges, and Tiered Pricing Component specified in the revised Exhibit
1107 "B" directly to the United States in compliance with Article 7 of this Contract.

1108 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1109 29. The expenditure or advance of any money or the performance of any obligation of
1110 the United States under this Contract shall be contingent upon appropriation or allotment of funds.
1111 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
1112 under this Contract. No liability shall accrue to the United States in case funds are not appropriated
1113 or allotted.

1114 BOOKS, RECORDS, AND REPORTS

1115 30. (a) The Contractor shall establish and maintain accounts and other books and
1116 records pertaining to administration of the terms and conditions of this Contract, including: the
1117 Contractor's financial transactions, water supply data, and Project land and right-of-way
1118 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use
1119 data; and other matters that the Contracting Officer may require. Reports thereon shall be furnished
1120 to the Contracting Officer in such form and on such date or dates as the Contracting Officer may
1121 require. Subject to applicable Federal laws and regulations, each party to this Contract shall have
1122 the right during office hours to examine and make copies of the other party's books and records
1123 relating to matters covered by this Contract.

1124 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,
1125 records, or other information shall be requested from the Contractor by the Contracting Officer
1126 unless such books, records, or information are reasonably related to the administration or
1127 performance of this Contract. Any such request shall allow the Contractor a reasonable period of
1128 time within which to provide the requested books, records, or information.

1129 (c) At such time as the Contractor provides information to the Contracting
1130 Officer pursuant to subdivision (a) of this Article, a copy of such information shall be provided to
1131 the Operating Non-Federal Entity.

1132 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1133 31. (a) The provisions of this Contract shall apply to and bind the successors and
1134 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1135 therein shall be valid until approved in writing by the Contracting Officer.

1136 (b) The assignment of any right or interest in this Contract by either party shall
1137 not interfere with the rights or obligations of the other party to this Contract absent the written
1138 concurrence of said other party.

1139 (c) The Contracting Officer shall not unreasonably condition or withhold
1140 approval of any proposed assignment.

1141 SEVERABILITY

1142 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor
1143 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an
1144 association or other form of organization whose primary function is to represent parties to Project
1145 contracts, brings an action in a court of competent jurisdiction challenging the legality or
1146 enforceability of a provision included in this Contract and said person, entity, association, or
1147 organization obtains a final court decision holding that such provision is legally invalid or

1148 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the
1149 parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court
1150 decision identify by mutual agreement the provisions in this Contract which must be revised and (ii)
1151 within three months thereafter promptly agree on the appropriate revision(s). The time periods
1152 specified above may be extended by mutual agreement of the parties. Pending the completion of
1153 the actions designated above, to the extent it can do so without violating any applicable provisions
1154 of law, the United States shall continue to make the quantities of Project Water specified in this
1155 Contract available to the Contractor pursuant to the provisions of this Contract which were not
1156 found to be legally invalid or unenforceable in the final court decision.

1157 RESOLUTION OF DISPUTES

1158 33. Should any dispute arise concerning any provisions of this Contract, or the parties'
1159 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the
1160 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring
1161 any matter to the Department of Justice, the party shall provide to the other party 30 days' written
1162 notice of the intent to take such action; Provided, That such notice shall not be required where a
1163 delay in commencing an action would prejudice the interests of the party that intends to file suit.
1164 During the 30-day notice period, the Contractor and the Contracting Officer shall meet and confer in
1165 an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to
1166 waive or abridge any right or remedy that the Contractor or the United States may have.

1167 OFFICIALS NOT TO BENEFIT

1168 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1169 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1170 manner as other water users or landowners.

1171 CHANGES IN CONTRACTOR'S SERVICE AREA

1172 35. (a) While this Contract is in effect, no change may be made in the Contractor's
1173 Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,
1174 except upon the Contracting Officer's written consent.

1175 (b) Within 30 days of receipt of a request for such a change, the Contracting
1176 Officer will notify the Contractor of any additional information required by the Contracting Officer
1177 for processing said request, and both parties will meet to establish a mutually agreeable schedule for
1178 timely completion of the process. Such process will analyze whether the proposed change is likely
1179 to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability
1180 of the Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-
1181 constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project
1182 Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply
1183 with the NEPA and the ESA. The Contractor will be responsible for all costs incurred by the
1184 Contracting Officer in this process, and such costs will be paid in accordance with Article 25 of this
1185 Contract.

1186 FEDERAL LAWS

1187 36. By entering into this Contract, the Contractor does not waive its rights to contest the
1188 validity or application in connection with the performance of the terms and conditions of this
1189 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the
1190 terms and conditions of this Contract unless and until relief from application of such Federal law or
1191 regulation to the implementing provision of the Contract is granted by a court of competent
1192 jurisdiction.

1193 NOTICES

1194 37. Any notice, demand, or request authorized or required by this Contract shall be
1195 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered

1196 to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, California
1197 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board
1198 of Directors, Mercy Springs Water District, 52027 West Althea Avenue, Firebaugh,
1199 California 93622. The designation of the addressee or the address may be changed by notice given
1200 in the same manner as provided in this Article for other notices.

1201 CONFIRMATION OF CONTRACT

1202 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a
1203 decree of a court of competent jurisdiction of the State of California, confirming the execution of
1204 this Contract. The Contractor shall furnish the United States a certified copy of the final decree, the
1205 validation proceedings, and all pertinent supporting records of the court approving and confirming
1206 this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

1207 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and
1208 year first above written.

1209 THE UNITED STATES OF AMERICA

1210 By: _____
1211 Regional Director, Mid-Pacific Region
1212 Bureau of Reclamation

1213 (SEAL)

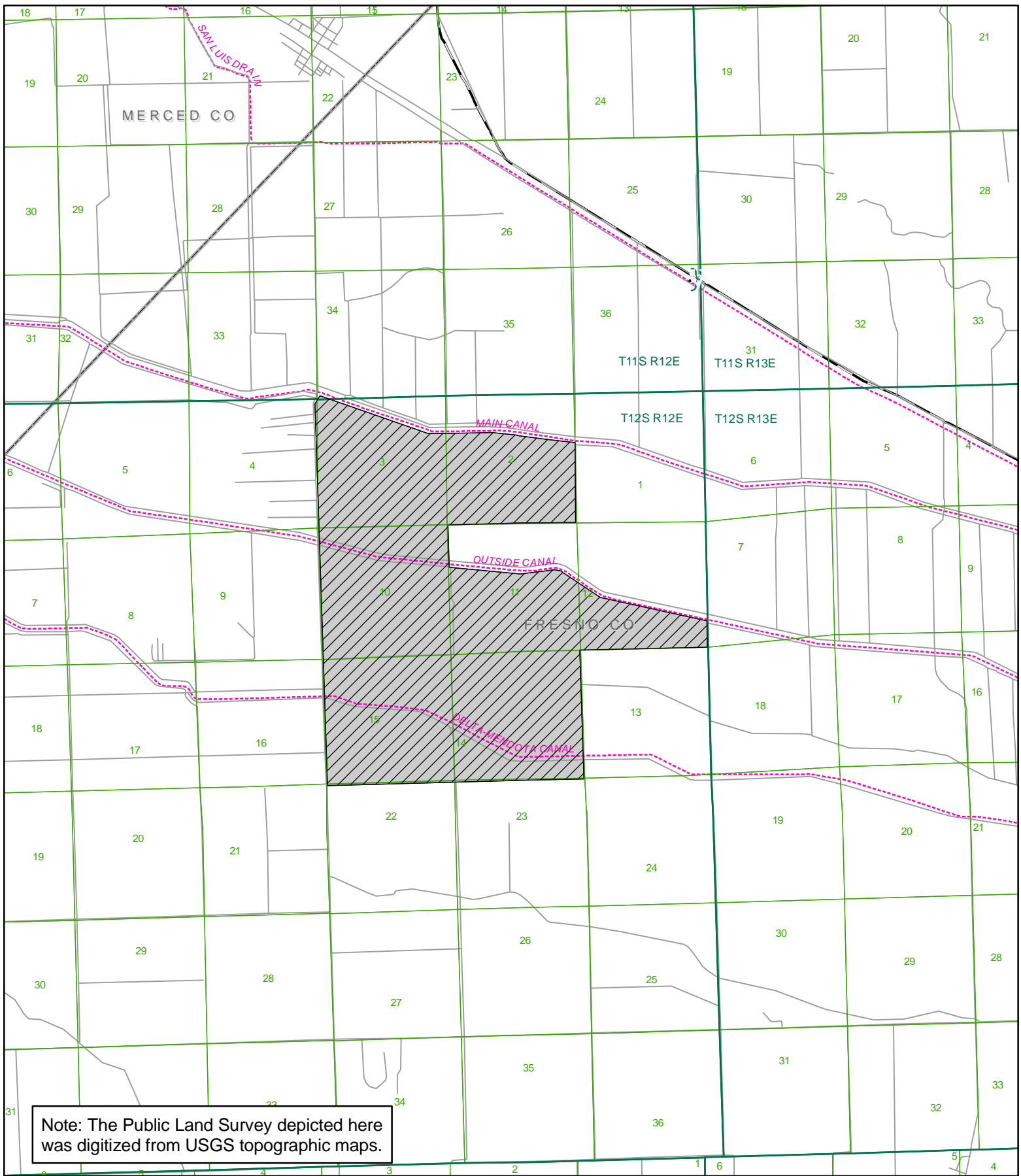
1214 MERCY SPRINGS WATER DISTRICT

1215 By: _____
1216 President of the Board of Directors



1217 Attest:

1218 By: _____
1219 Secretary of the Board of Directors

1220 (H:\pub 440\LTRC\Final Draft LTRC's – Fresno, Tracy\09-14-04 Mercy Springs WD Final Draft
1221 LTRC with exhibits.doc)



Note: The Public Land Survey depicted here was digitized from USGS topographic maps.

-  Contractor's Service Area
-  District Boundary

Mercy Springs W.D.
 Contract No. 14-06-200-3365A-A-LTR1
 EXHIBIT A

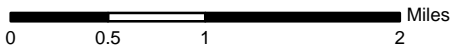


EXHIBIT B
MERCY SPRINGS WATER DISTRICT
Water Rates and Charges

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>2004 Rates per Acre-Foot</u>	
	<u>Irrigation</u> <u>Water</u>	<u>M&I</u> <u>Water 1/</u>
Capital Rates	\$22.72	
O&M Rates:		
Water Marketing	7.59	
Storage	5.83	
Conveyance		
Conveyance Pumping		
Deficit Rates:		
Non-Interest Bearing		
Interest Bearing		
CFO/PFR Adj. Rate 2/		
TOTAL COST-OF-SERVICE-RATES	<u>\$36.14</u>	<u>1/</u>
<u>FULL-COST RATES</u>		
<u>Section 202(3)</u> Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981.	<u>\$35.91</u>	
<u>Section 205(a)(3)</u> Rate is applicable to a Limited Recipient that did <u>not</u> receive irrigation water on or before October 1, 1981.	<u>\$43.12</u>	
<u>CHARGES UNDER P.L. 102-575 TO RESTORATION FUND 3/</u>		
Restoration Payments (3407(d)(2)(A))	<u>\$ 7.82</u>	<u>\$15.64</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/ Rate represents Chief Financial Officers (CFO) adjustment and Provision for Replacement (PFR) credit for option 2 cost deferment to be distributed over 5-year period beginning with 2003 water rates.

3/ 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).