

AG and M&I
R.O. Draft 09/23-2004
R.O. Draft 09/14-2004
R.O. Draft 08/25-2004
R.O. Draft 08/17-2004
R.O. Delta Division 07/30-2004
Contract No.
14-06-200-3802A-LTR1

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

LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
AND
RECLAMATION DISTRICT NO. 1606
PROVIDING FOR PROJECT WATER SERVICE
FROM DELTA DIVISION

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3 BUREAU OF RECLAMATION
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6 AND
7 RECLAMATION DISTRICT NO. 1606
8 PROVIDING FOR PROJECT WATER SERVICE
9 FROM DELTA DIVISION

10 THIS CONTRACT, made this ____ day of _____, 2005, in pursuance
11 generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto,
12 including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and
13 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat.
14 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat.
15 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively
16 hereinafter referred to as Federal Reclamation law, between THE UNITED STATES OF AMERICA,
17 hereinafter referred to as the United States, and RECLAMATION DISTRICT NO. 1606, hereinafter
18 referred to as the Contractor, a public agency of the State of California, duly organized, existing, and
19 acting pursuant to the laws thereof;

20 WITNESSETH, That:

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EXPLANATORY RECITALS

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

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

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

[4th] WHEREAS, the Contractor and the United States entered into Contract No. 14-06-200-3802A, which established terms for the delivery of 342 acre-feet of Schedule 2 water as a permanent adjustment and settlement of the Contractors asserted claims of rights to water in Fresno Slough tributary to the San Joaquin River in fulfillment of such rights; and

[5th] WHEREAS, Schedule 2 water is not the subject of this Contract and will continue to be delivered and administered under the terms and conditions of Contract No. 14-06-200-3802A; and

[5.1] WHEREAS, Contract No. 14-06-200-3802A also established the terms for the

40 delivery of 228 acre-feet of supplemental water, hereinafter referred to as Project Water, to the
41 Contractor from Delta Division facilities from April 12, 1968, through December 23, 2003; and

42 [5.2] WHEREAS, the Contractor and the United States have pursuant to subsection
43 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into
44 interim renewal contract(s) identified as Contract No(s) 14-06-200-3802A-IR1 and 14-06-200-
45 3802A-IR2, the current of which is hereinafter referred to as the Existing Contract, which provided
46 for the delivery of Project Water to the Contractor from December 24, 2003, through February 28,
47 2005; and

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

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

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

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

61 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting
62 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and
63 beneficial use and/or has demonstrated projected future demand for water use such that the
64 Contractor has the capability and expects to utilize fully for reasonable and beneficial use the
65 quantity of Project Water to be made available to it pursuant to this Contract; and

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

69 [12th] WHEREAS, the economies of regions within the Project, including the Contractor's,
70 depend upon the continued availability of water, including water service from the Project; and

71 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships
72 to pursue measures to improve water supply, water quality, and reliability of the Project for all
73 Project purposes; and

74 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to
75 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment
76 of the Project as required by law; to guard reasonably against Project Water shortages; to achieve a
77 reasonable balance among competing demands for use of Project Water; and to comply with all

78 applicable environmental statutes, all consistent with the legal obligations of the United States
79 relative to the Project; and

80 [15th] WHEREAS, the parties intend by this Contract to develop a more cooperative

81 relationship in order to achieve their mutual goals; and

82 [15.1] WHEREAS, the Contractor has utilized or may utilize transfers, contract assignments,
83 rescheduling and conveyance of Project Water and non-Project water under this Contract as tools to
84 minimize the impacts of Conditions of Shortage and to maximize the beneficial use of water; and

85 [15.2] WHEREAS, the parties desire and intend that this Contract not provide a disincentive
86 to the Contractor in continuing to carry out the beneficial activities set out in the Explanatory Recital
87 immediately above; and

88 [16th] WHEREAS, the United States and the Contractor are willing to enter into this
89 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

92 DEFINITIONS

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

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

97 (b) "Charges" shall mean the payments required by Federal Reclamation law in
98 addition to the Rates and Tiered Pricing Component specified in this Contract as determined annually
99 by the Contracting Officer pursuant to this Contract;

100 (c) "Condition of Shortage" shall mean a condition respecting the Project during

101 any Year such that the Contracting Officer is unable to deliver sufficient water to meet the Contract
102 Total;

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

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

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

111 (g) A CVPIA@ shall mean the Central Valley Project Improvement Act, Title
112 XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

113 (g.1) "Delta Division Facilities" shall mean those existing and future Project
114 facilities in and south of the Sacramento-San Joaquin Rivers Delta, including, but not limited to, the
115 Tracy Pumping Plant, the O'Neill Forebay, the O'Neill Pumping/Generating Plant, and the San Luis
116
117 Reservoir, used to divert, store and convey water to those Project Contractors entitled to receive
118 water conveyed through the Delta-Mendota Canal.

119 (h) AEligible Lands@ shall mean all lands to which Irrigation Water may be
120 delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982 (96
121 Stat. 1263), as amended, hereinafter referred to as RRA;

122 (i) AExcess Lands® shall mean all lands in excess of the limitations contained in
123 Section 204 of the RRA, other than those lands exempt from acreage limitation under Federal
124 Reclamation law;

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

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

Deleted:

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

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

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

143 nonexempt land, as provided in 43 CFR 426.2;

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

150 (p) AM&I Full Cost Water Rate® shall mean the Full Cost Rate applicable
151 to the delivery of M&I Water;

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

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

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

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

164 (u) AProject Water@ shall mean all water that is developed, diverted, stored, or
165 delivered by the Secretary in accordance with the statutes authorizing the Project and in accordance
166 with the terms and conditions of water rights acquired pursuant to California law; however, Schedule
167 2 Water shall not be considered Project Water for purposes of this Contract;

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

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

174 (w.1) "Schedule 2 Water" shall mean that water as so defined under Contract
175 No. 14-06-200-3802A with the United States, which will continue to be delivered and administered
176 under said contract;

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

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

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

184 (aa) AWater Made Available@ shall mean the estimated amount of Project Water

185 that can be delivered to the Contractor for the upcoming Year as declared by the Contracting Officer,
186 pursuant to subdivision (a) of Article 4 of this Contract;

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

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

192 TERM OF CONTRACT

193 2. (a) This Contract shall be effective March 1, 2005, through February 28, 2030.
194 This Contract when effective supersedes that portion of Contract No. 14-06-200-3802A-IR2, dated
195 from March 1, 2004, through February 28, 2005, pertaining to the furnishing of Project Water. In the
196 event the Contractor wishes to renew this Contract beyond February 28, 2030, the Contractor shall
197 submit a request for renewal in writing to the Contracting Officer no later than two years prior to the
198 date this Contract expires. The renewal of this Contract insofar as it pertains to the furnishing of
199 Irrigation Water to the Contractor shall be governed by subdivision (b) of this Article, and the
200 renewal of this Contract insofar as it pertains to the furnishing of M&I Water to the Contractor shall
201 be governed by subdivision (c) of this Article.

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

206 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: (i) the
208 Contractor has prepared a water conservation plan that has been determined by the Contracting
209 Officer in accordance with Article 26 of this Contract to meet the conservation and efficiency criteria
210 for evaluating such plans established under Federal law; (ii) the Contractor is implementing an
211 effective water conservation and efficiency program based on the Contractor's water conservation
212 plan as required by Article 26 of this Contract; (iii) the Contractor is operating and maintaining all
213 water measuring devices and implementing all water measurement methods as approved by the
214 Contracting Officer pursuant to Article 6 of this Contract; (iv) the Contractor has reasonably and
215 beneficially used the Project Water supplies made available to it and, based on projected demands, is
216 reasonably anticipated and expects to fully utilize for reasonable and beneficial use the quantity of
217 Project Water to be made available to it pursuant to such renewal; (v) the Contractor is complying
218 with all terms and conditions of this Contract; and (vi) the Contractor has the physical and legal
219 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 consistent
222 with the parties' respective legal rights and obligations, and in consideration of all relevant facts and
223 circumstances, as those circumstances exist at the time of renewal, including, without limitation, the
224 Contractor's need for continued delivery of Project Water; environmental conditions affected by
225 implementation of the Contract to be renewed, and specifically changes in those conditions that
226 occurred during the life of the Contract to be renewed; the Secretary's progress toward achieving the

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

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

237 (d) The Contracting Officer shall make a determination ten years after the date of
238 execution of this Contract, and every five years thereafter during the term of this Contract, of whether
239 a conversion of the relevant portion of this Contract to a contract under subsection 9(d) of the
240 Reclamation Project Act of 1939 can be accomplished pursuant to the Act of July 2, 1956 (70 Stat
241 483). The Contracting Officer shall also make a determination ten years after the date of execution
242 of this Contract and every five years thereafter during the term of this Contract of whether a
243 conversion of the relevant portion of this Contract to a contract under subsection 9(c)(1) of the
244 Reclamation Project Act of 1939 can be accomplished. Notwithstanding any provision of this
245 Contract, the Contractor reserves and shall have all rights and benefits under the Act of July 2, 1956
246 (70 Stat. 483). The Contracting Officer anticipates that during the term of this Contract, all
247 authorized Project construction expected to occur will have occurred, and on that basis the

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

268 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

269 3. (a) During each Year, consistent with all applicable State water rights, permits,
270 and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of this
271 | Contract, the Contracting Officer shall make available for delivery to the Contractor 228 acre-feet of
272 | Project Water for irrigation and M&I purposes. Water Delivered to the Contractor in accordance
273 with this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of
274 this Contract. Schedule 2 water shall continue to be delivered to the Contractor at no cost pursuant to
275 Contract No. 14-06-200-3802A, dated April 12, 1968, and shall not be subject to the provisions of

276 this Contract, and said Contract No. 14-06-200-3802A shall be in full force and effect insofar as it
277 pertains to the furnishing of Schedule 2 water.

278 (b) Because the capacity of the Project to deliver Project Water has been
279 constrained in recent years and may be constrained in the future due to many factors including
280 hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractor
281 actually receiving the amount of Project Water set out in subdivision (a) of this Article in any given
282 Year is uncertain. The Contracting Officer's modeling referenced in the PEIS projected that the
283 Contract Total set forth in this Contract will not be available to the Contractor in many years. During
284 the most recent five years, the Recent Historic Average of Water Made Available to the Contractor
285 was 150 acre-feet. Nothing in subdivision (b) of this Article shall affect the rights and obligations of
286 the parties under any provision of this Contract.

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

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

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

314 (e) The Contractor shall comply with requirements applicable to the Contractor in
315 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract
316 undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as amended, that are
317 within the Contractor's legal authority to implement. The Contract No(s) 14-06-200-3802A, 14-06-
318 200-3802A-IR1 and 14-06-200-3802A-IR2, which evidence in excess of 42 years of diversions for

319 irrigation and/or M&I purposes of the quantities of water provided in subdivision (a) of Article 3 of
320 this Contract, will be considered in developing an appropriate baseline for biological assessment(s)
321 prepared pursuant to the ESA, and any other needed environmental review. Nothing herein shall be
322 construed to prevent the Contractor from challenging or seeking judicial relief in a court of competent
323 jurisdiction with respect to any biological opinion or other environmental documentation referred to in
324 this Article.

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

340 (g) The Contractor may request permission to reschedule for use during the
341 subsequent Year some or all of the Water Made Available to the Contractor during the current Year,
342 referred to as “rescheduled water.” The Contractor may request permission to use during the current
343 Year a quantity of Project Water which may be made available by the United States to the Contractor
344 during the subsequent Year referred to as “preuse.” The Contracting Officer’s written approval may
345 permit such uses in accordance with applicable statutes, regulations, guidelines, and policies.

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

353 (i) Project Water furnished to the Contractor pursuant to this Contract may be
354 delivered for purposes other than those described in subdivisions (m) and (o) of Article 1 of this

355 Contract upon written approval by the Contracting Officer in accordance with the terms and
356 conditions of such approval.

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

364 TIME FOR DELIVERY OF WATER

365 4. (a) On or about February 20 of each Calendar Year, the Contracting Officer shall

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

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

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

383 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this
384 Contract, the United States shall deliver Project Water to the Contractor in accordance with the initial
385 schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any written

386 revision(s) thereto, satisfactory to the Contracting Officer, submitted within a reasonable time prior
387 to the date(s) on which the requested change(s) is/are to be implemented.

388 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

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

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

401 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
402 measured and recorded with equipment furnished, installed, operated, and maintained by the
403 Contracting Officer either directly or indirectly through its written agreement(s) with the Operating
404 Non-Federal Entity(ies), unless undertaken by the Contractor with the consent of the Contracting
405 Officer, at the point or points of delivery established pursuant to subdivision (a) of this Article. Upon

406 the request of either party to this Contract, the Contracting Officer shall investigate, or cause to be
407 investigated by the appropriate Operating Non-Federal Entity(ies), the accuracy of such
408 measurements and shall take any necessary steps to adjust any errors appearing therein. For any
409 period of time when accurate measurements have not been made, the Contracting Officer shall
410 consult with the Contractor and the appropriate Operating Non-Federal Entity(ies), if any, prior to
411 making a final determination of the quantity delivered for that period of time.

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

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

428 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

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

444 (b) To the extent the information has not otherwise been provided, upon execution
445 of this Contract, the Contractor shall provide to the Contracting Officer a written report describing
446 the measurement devices or water measuring methods being used or to be used to implement

447 subdivision (a) of this Article and identifying the agricultural turnouts and the M&I service
448 connections or alternative measurement programs approved by the Contracting Officer, at which such
449 measurement devices or water measuring methods are being used, and, if applicable, identifying the
450 locations at which such devices and/or methods are not yet being used including a time schedule for
451 implementation at such locations. The Contracting Officer shall advise the Contractor in writing
452 within 60 days as to the adequacy, and necessary modifications, if any, of the measuring devices or
453 water measuring methods identified in the Contractor's report and if the Contracting Officer does not
454 respond in such time, they shall be deemed adequate. If the Contracting Officer notifies the
455 Contractor that the measuring devices or methods are inadequate, the parties shall within 60 days
456 following the Contracting Officer's response, negotiate in good faith the earliest practicable date by
457 which the Contractor shall modify said measuring devices and/or measuring methods as required by
458 the Contracting Officer to ensure compliance with subdivision (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 California
463 in writing by April 30 of each Year of the monthly volume of surface water delivered within the
464 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 Federal
474 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, or
476 any other mechanism as may be agreed to in writing by the Contractor and the Contracting Officer.
477 The Rates, Charges, and Tiered Pricing Component applicable to the Contractor upon execution of
478 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 Tiered
480 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 period
483 October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and
484 the basis for such estimate. The Contractor shall be allowed not less than two months to review and
485 comment on such estimates. On or before September 15 of each Calendar Year, the Contracting
486 Officer shall notify the Contractor in writing of the Charges to be in effect during the period
487 October 1 of the current Calendar Year, through September 30, of the following Calendar Year, and
488 such notification shall revise Exhibit “B.”

489 (2) Prior to October 1 of each Calendar Year, the Contracting Officer shall
490 make available to the Contractor an estimate of the Rates and Tiered Pricing Component for Project
491 Water for the following Year and the computations and cost allocations upon which those Rates are
492 based. The Contractor shall be allowed not less than two months to review and comment on such
493 computations and cost allocations. By December 31 of each Calendar Year, the Contracting Officer
494 shall provide the Contractor with the final Rates and Tiered Pricing Component to be in effect for the
495 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 the
499 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 an
502 advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for the
503 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 due
505 for Water Delivered shall be made before the end of the following month; Provided, That any revised
506 schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the
507 amount of Water Delivered pursuant to this Contract during any month shall be accompanied with
508 appropriate advance payment, at the Rates then in effect, to assure that Project Water is not delivered
509 to the Contractor in advance of such payment. In any month in which the quantity of Water

510 Delivered to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid
511 for by the Contractor, no additional Project Water shall be delivered to the Contractor unless and
512 until an advance payment at the Rates then in effect for such additional Project Water is made. Final
513 adjustment between the advance payments for the Water Scheduled and payments for the quantities
514 of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable
515 but no later than April 30th of the following Year, or 60 days after the delivery of Project Water
516 rescheduled under subdivision (g) of Article 3 of this Contract if such water is not delivered by the
517 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 deemed
526 a bill for the payment of Charges and the applicable Tiered Pricing Component for Water Delivered.
527 Adjustment for overpayment or underpayment of Charges shall be made through the adjustment of
528 payments due to the United States for Charges for the next month. Any amount to be paid for past
529 due payment of Charges and the Tiered Pricing Component shall be computed pursuant to Article 20
530 of this Contract.

531 (e) The Contractor shall pay for any Water Delivered under subdivision (a), (f), or
532 (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 administration
544 of the financial terms and conditions of its long-term contracts, in accordance with applicable Federal
545 standards, so as to reflect the application of Project costs and revenues. The Contracting Officer
546 shall, each Year upon request of the Contractor, provide to the Contractor a detailed accounting of all
547 Project and Contractor expense allocations, the disposition of all Project and Contractor revenues,
548 and a summary of all water delivery information. The Contracting Officer and the Contractor shall
549 enter into good faith negotiations to resolve any discrepancies or disputes relating to accountings,
550 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, and/or
554 for making and allocating payments, other than those set forth in this Article may be in the mutual
555 best interest of the parties, it is expressly agreed that the parties may enter into agreements to modify
556 the mechanisms, policies, and procedures for any of those purposes while this Contract is in effect
557 without amending this Contract.

558 (j) (1) Beginning at such time as deliveries of Project Water in a Year exceed
559 80 percent of the Contract Total, then before the end of the month following the month of delivery
560 the Contractor shall make an additional payment to the United States equal to the applicable Tiered
561 Pricing Component. The Tiered Pricing Component for the amount of Water Delivered in excess of
562 80 percent of the Contract Total, but less than or equal to 90 percent of the Contract Total, shall equal
563 one-half of the difference between the Rate established under subdivision (a) of this Article and the
564 Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable. The Tiered
565 Pricing Component for the amount of Water Delivered which exceeds 90 percent of the Contract
566 Total shall equal the difference between (i) the Rate established under subdivision (a) of this Article
567 and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable.
568 For all Water Delivered pursuant to subdivision (a) of Article 3 of this Contract which is in excess of
569 80 percent of the Contract Total, this increment shall be deemed to be divided between Irrigation
570 Water and M&I Water in the same proportion as actual deliveries of each bear to the cumulative total

571 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 produced;
576 Provided, That the exemption from the Tiered Pricing Component for Irrigation Water shall apply
577 only if such habitat values can be assured consistent with the purposes of the CVPIA through binding
578 agreements executed with or approved by the Contracting Officer prior to use of such water.

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

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

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

604 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

605 8. The Contractor and the Contracting Officer concur that, as of the effective date of this
606 Contract, the Contractor has no non-interest bearing O&M deficits and shall have no further liability
607 therefor.

608 SALES, TRANSFERS, OR EXCHANGES OF WATER

609 9. (a) The right to receive Project Water provided for in this Contract may be sold,
610 transferred, or exchanged to others for reasonable and beneficial uses within the State of California if

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

619 (b) In order to facilitate efficient water management by means of water transfers of
620 the type historically carried out among Project Contractors located within the same geographical area
621 and to allow the Contractor to participate in an accelerated water transfer program during the term of
622 this Contract, the Contracting Officer shall prepare, as appropriate, all necessary environmental
623 documentation, including but not limited to documents prepared pursuant to NEPA and ESA,
624 analyzing annual transfers within such geographical areas and the Contracting Officer shall
625 determine whether such transfers comply with applicable law. Following the completion of the
626 environmental documentation, such transfers addressed in such documentation shall be conducted
627 with advance notice to the Contracting Officer, but shall not require prior written approval by the
628 Contracting Officer. Such environmental documentation and the Contracting Officer's compliance
629 determination shall be reviewed every five years and updated, as necessary, prior to the expiration of
630 the then existing five-year period. All subsequent environmental documentation shall include an
631 alternative to evaluate not less than the quantity of Project Water historically transferred within the

632 same geographical area.

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

643 APPLICATION OF PAYMENTS AND ADJUSTMENTS

644 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,
645 capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of
646 the Contractor arising out of this Contract then due and payable. Overpayments of more than \$1,000
647 shall be refunded at the Contractor's request. In lieu of a refund, any amount of such overpayment at
648 the option of the Contractor, may be credited against amounts to become due to the United States by
649 the Contractor. With respect to overpayment, such refund or adjustment shall constitute the sole
650 remedy of the Contractor or anyone having or claiming to have the right to the use of any of the
651 Project Water supply provided for herein. All credits and refunds of overpayments shall be made
652 within 30 days of the Contracting Officer obtaining direction as to how to credit or refund such

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

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

660 TEMPORARY REDUCTIONS--RETURN FLOWS

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

666 (b) The Contracting Officer or Operating Non-Federal Entity(ies) may temporarily
667 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for the
668 purposes of investigation, inspection, maintenance, repair, or replacement of any of the Project
669 facilities or any part thereof necessary for the delivery of Project Water to the Contractor, but so far
670 as feasible the Contracting Officer or Operating Non-Federal Entity(ies) will give the Contractor due
671 notice in advance of such temporary discontinuance or reduction, except in case of emergency, in
672 which case no notice need be given; Provided, That the United States shall use its best efforts to
673 avoid any discontinuance or reduction in such service. Upon resumption of service after such

674 reduction or discontinuance, and if requested by the Contractor, the United States will, if possible,
675 deliver the quantity of Project Water which would have been delivered hereunder in the absence of
676 such discontinuance or reduction.

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

683 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

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

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

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

712 (3) The total quantity of Project Water estimated to be scheduled or
713 actually scheduled by the Contractor during the relevant Year, under subdivision (b) of Article 4
714 hereof, shall be divided by the scheduled total, the quotient thus obtained being hereinafter referred to

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

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

735 UNAVOIDABLE GROUNDWATER PERCOLATION

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

740 RULES AND REGULATIONS

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

745 WATER AND AIR POLLUTION CONTROL

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

749 QUALITY OF WATER

750 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to
751 this Contract shall be operated and maintained to enable the United States to deliver Project Water to
752 the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act
753 of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat.
754 3050) or other existing Federal laws. The United States is under no obligation to construct or furnish
755 water treatment facilities to maintain or to improve the quality of Water Delivered to the Contractor
756 pursuant to this Contract. The United States does not warrant the quality of Water Delivered to the
757 Contractor pursuant to this Contract. None of the foregoing affects or modifies the obligations of the
758 United States under Contract No. 14-06-200-3802A dated April 12, 1968, with respect to Schedule 2

759 water, including but not limited to, Article 10 of said contract.

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

766 WATER ACQUIRED BY THE CONTRACTOR OTHER THAN
767 FROM THE UNITED STATES

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

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

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

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

797 (3) Neither the United States nor the Operating Non-Federal Entity(ies)
798 shall be responsible for control, care or distribution of the non-Project water before it is introduced
799 into or after it is delivered from the Project facilities. The Contractor hereby releases and agrees to
800 defend and indemnify the United States and the Operating Non-Federal Entity(ies), and their
801 respective officers, agents, and employees, from any claim for damage to persons or property, direct

802 or indirect, resulting from the act(s) of the Contractor, its officers, employees, agents, or assigns, in
803 (i) extracting or diverting non-Project water from any source, or (ii) diverting such non-Project water
804 into Project facilities.

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

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

816 OPINIONS AND DETERMINATIONS

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

823 provided in a timely manner. Nothing in this subdivision (a) of this Article is intended to or shall
824 affect or alter the standard of judicial review applicable under Federal law to any opinion or
825 determination implementing a specific provision of Federal law embodied in statute or regulation.

826 (b) The Contracting Officer shall have the right to make determinations necessary
827 to administer this Contract that are consistent with the provisions of this Contract, the laws of the
828 United States and of the State of California, and the rules and regulations promulgated by the

829 Secretary of the Interior. Such determinations shall be made in consultation with the Contractor to
830 the extent reasonably practicable.

831 COORDINATION AND COOPERATION

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

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

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

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

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

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

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

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

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

863 (d) Without limiting the contractual obligations of the Contracting Officer under

864 the other Articles of this Contract, nothing in this Article shall be construed to limit or constrain the
865 Contracting Officer's ability to communicate, coordinate, and cooperate with the Contractor or other
866 interested stakeholders or to make decisions in a timely fashion as needed to protect health, safety or
867 the physical integrity of structures or facilities.

868 CHARGES FOR DELINQUENT PAYMENTS

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

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

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

886 EQUAL OPPORTUNITY

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

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

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

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

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

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

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

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

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

930 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

943 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

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

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

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

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PRIVACY ACT COMPLIANCE

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24. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a) (the Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et seq.) in maintaining Landholder acreage certification and reporting records, required to be submitted to the Contractor for compliance with Sections 206 and 228 of the Reclamation Reform Act of 1982 (96 Stat. 1266), and pursuant to 43 CFR 426.18.
(b) With respect to the application and administration of the criminal penalty provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible for maintaining the certification and reporting records referenced in (a) above are considered to be employees of the Department of the Interior. See 5 U.S.C. 552a(m).

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

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

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

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CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

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

997 WATER CONSERVATION

998 26. (a) Prior to the delivery of water provided from or conveyed through Federally
999 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be
1000 implementing an effective water conservation and efficiency program based on the Contractor's water
1001 conservation plan that has been determined by the Contracting Officer to meet the conservation and
1002 efficiency criteria for evaluating water conservation plans established under Federal law. The water
1003 conservation and efficiency program shall contain definite water conservation objectives, appropriate
1004 economically feasible water conservation measures, and time schedules for meeting those objectives.
1005 Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's
1006 continued implementation of such water conservation program. In the event the Contractor's water
1007 conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of
1008 Article 26 of this Contract have not yet been determined by the Contracting Officer to meet such
1009 criteria, due to circumstances which the Contracting Officer determines are beyond the control of the
1010 Contractor, water deliveries shall be made under this Contract so long as the Contractor diligently
1011 works with the Contracting Officer to obtain such determination at the earliest practicable date, and
1012 thereafter the Contractor immediately begins implementing its water conservation and efficiency

1013 program in accordance with the time schedules therein.

1014 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
1015 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall implement
1016 the Best Management Practices identified by the time frames issued by the California Urban Water
1017 Conservation Council for such M&I Water unless any such practice is determined by the Contracting
1018 Officer to be inappropriate for the Contractor.

1019 (c) The Contractor shall submit to the Contracting Officer a report on the status of
1020 its implementation of the water conservation plan on the reporting dates specified in the then existing
1021 conservation and efficiency criteria established under Federal law.

1022 (d) At five-year intervals, the Contractor shall revise its water conservation plan to
1023 reflect the then current conservation and efficiency criteria for evaluating water conservation plans
1024 established under Federal law and submit such revised water management plan to the Contracting
1025 Officer for review and evaluation. The Contracting Officer will then determine if the water
1026 conservation plan meets Reclamation's then current conservation and efficiency criteria for
1027 evaluating water conservation plans established under Federal law.

1028 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall
1029 be described in the Contractor's water conservation plan.

1030 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1031 27. Except as specifically provided in Article 17 of this Contract, the provisions of this
1032 Contract shall not be applicable to or affect non-Project water or water rights now owned or hereafter

1033 acquired by the Contractor or any user of such water within the Contractor's Service Area. Any such
1034 water shall not be considered Project Water under this Contract. In addition, this Contract shall not
1035 be construed as limiting or curtailing any rights which the Contractor or any water user within the
1036 Contractor's Service Area acquires or has available under any other contract pursuant to Federal
1037 Reclamation law.

1038 OPERATION AND MAINTENANCE BY
1039 SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

1040 28. (a) The O&M of a portion of the Project facilities which serve the Contractor, and
1041 responsibility for funding a portion of the costs of such O&M, have been transferred to the San Luis
1042 & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate agreement (8-07-
1043 20-X0354) between the United States and the Operating Non-Federal Entity San Luis & Delta-
1044 Mendota Water Authority. That separate agreement shall not interfere with or affect the rights or
1045 obligations of the Contractor or the United States hereunder.

1046 (b) The Contracting Officer has previously notified the Contractor in writing that
1047 the Operation and Maintenance of a portion of the Project facilities which serve the Contractor has
1048 been transferred to the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority,
1049 and therefore, the Contractor shall pay directly to the Operating Non-Federal Entity San Luis &
1050 Delta-Mendota Water Authority, or to any successor approved by the Contracting Officer under the
1051 terms and conditions of the separate agreement between the United States and the Operating Non-
1052 Federal Entity San Luis & Delta-Mendota Water Authority described in subdivision (a) of this
1053 Article, all rates, charges, or assessments of any kind, including any assessment for reserve funds,
1054 which the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or such

1055 successor determines, sets, or establishes for the O&M of the portion of the Project facilities operated
1056 and maintained by the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or
1057 such successor. Such direct payments to the Operating Non-Federal Entity San Luis & Delta-
1058 Mendota Water Authority or such successor shall not relieve the Contractor of its obligation to pay
1059 directly to the United States the Contractor's share of the Project Rates, Charges, and Tiered Pricing
1060 Component except to the extent the Operating Non-Federal Entity San Luis & Delta-Mendota Water
1061 Authority collects payments on behalf of the United States in accordance with the separate agreement
1062 identified in subdivision (a) of this Article.

1063 (c) For so long as the O&M of any portion of the Project facilities serving the
1064 Contractor is performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water
1065 Authority, or any successor thereto, the Contracting Officer shall adjust those components of the
1066 Rates for Water Delivered under this Contract representing the cost associated with the activity being
1067 performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or its
1068 successor.

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

1076 Charges, and Tiered Pricing Component specified in the revised Exhibit "B" directly to the United
1077 States in compliance with Article 7 of this Contract.

1078 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1079 29. The expenditure or advance of any money or the performance of any obligation of the
1080 United States under this Contract shall be contingent upon appropriation or allotment of funds.
1081 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
1082 under this Contract. No liability shall accrue to the United States in case funds are not appropriated
1083 or allotted.

1084 BOOKS, RECORDS, AND REPORTS

1085 30. (a) The Contractor shall establish and maintain accounts and other books and
1086 records pertaining to administration of the terms and conditions of this Contract, including: the
1087 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;
1088 the water users' land-use (crop census), land ownership, land-leasing and water use data; and other
1089 matters that the Contracting Officer may require. Reports thereon shall be furnished to the
1090 Contracting Officer in such form and on such date or dates as the Contracting Officer may require.
1091 Subject to applicable Federal laws and regulations, each party to this Contract shall have the right
1092 during office hours to examine and make copies of the other party's books and records relating to
1093 matters covered by this Contract.

1094 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,
1095 records, or other information shall be requested from the Contractor by the Contracting Officer unless
1096 such books, records, or information are reasonably related to the administration or performance of
1097 this Contract. Any such request shall allow the Contractor a reasonable period of time within which
1098 to provide the requested books, records, or information.

1099 (c) At such time as the Contractor provides information to the Contracting Officer
1100 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the

1101 Operating Non-Federal Entity.

1102 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1103 31. (a) The provisions of this Contract shall apply to and bind the successors and
1104 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1105 therein shall be valid until approved in writing by the Contracting Officer.

1106 (b) The assignment of any right or interest in this Contract by either party shall not
1107 interfere with the rights or obligations of the other party to this Contract absent the written
1108 concurrence of said other party.

1109 (c) The Contracting Officer shall not unreasonably condition or withhold approval
1110 of any proposed assignment.

1111 SEVERABILITY

1112 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor
1113 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an
1114 association or other form of organization whose primary function is to represent parties to Project
1115 contracts, brings an action in a court of competent jurisdiction challenging the legality or
1116 enforceability of a provision included in this Contract and said person, entity, association, or
1117 organization obtains a final court decision holding that such provision is legally invalid or
1118 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the
1119 parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court
1120 decision identify by mutual agreement the provisions in this Contract which must be revised and (ii)
1121 within three months thereafter promptly agree on the appropriate revision(s). The time periods
1122 specified above may be extended by mutual agreement of the parties. Pending the completion of the

1123 actions designated above, to the extent it can do so without violating any applicable provisions of
1124 law, the United States shall continue to make the quantities of Project Water specified in this
1125 Contract available to the Contractor pursuant to the provisions of this Contract which were not found
1126 to be legally invalid or unenforceable in the final court decision.

1127 RESOLUTION OF DISPUTES

1128 33. Should any dispute arise concerning any provisions of this Contract, or the parties=
1129 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the
1130 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring
1131 any matter to the Department of Justice, the party shall provide to the other party 30 days' written
1132 notice of the intent to take such action; Provided, That such notice shall not be required where a
1133 delay in commencing an action would prejudice the interests of the party that intends to file suit.
1134 During the 30-day notice period, the Contractor and the Contracting Officer shall meet and confer in
1135 an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to
1136 waive or abridge any right or remedy that the Contractor or the United States may have.

1137 OFFICIALS NOT TO BENEFIT

1138 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1139 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1140 manner as other water users or landowners.

1141 CHANGES IN CONTRACTOR'S SERVICE AREA

1142 35. (a) While this Contract is in effect, no change may be made in the Contractor's
1143 Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,
1144 except upon the Contracting Officer's written consent.

1145 | _____(b) Within 30 days of receipt of a request for such a change, the Contracting

1146 Officer will notify the Contractor of any additional information required by the Contracting Officer
1147 for processing said request, and both parties will meet to establish a mutually agreeable schedule for
1148 timely completion of the process. Such process will analyze whether the proposed change is likely
1149 to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of
1150 the Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-
1151 constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project
1152 Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply with
1153 the NEPA and the ESA. The Contractor will be responsible for all costs incurred by the Contracting
1154 Officer in this process, and such costs will be paid in accordance with Article 25 of this Contract.

1155 FEDERAL LAWS

1156 36. By entering into this Contract, the Contractor does not waive its rights to contest the
1157 validity or application in connection with the performance of the terms and conditions of this
1158 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the
1159 terms and conditions of this Contract unless and until relief from application of such Federal law or
1160 regulation to the implementing provision of the Contract is granted by a court of competent
1161 jurisdiction.

1162 NOTICES

1163 37. Any notice, demand, or request authorized or required by this Contract shall be
1164 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered
1165 to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, California 93721,
1166 and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board of
1167 Directors of the Reclamation District No. 1606, P.O. Box 757, San Joaquin, California 93660. The
1168 designation of the addressee or the address may be changed by notice given in the same manner as
1169 provided in this Article for other notices.

1170

CONFIRMATION OF CONTRACT

1171 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a
1172 decree of a court of competent jurisdiction of the State of California, confirming the execution of this
1173 Contract. The Contractor shall furnish the United States a certified copy of the final decree, the
1174 validation proceedings, and all pertinent supporting records of the court approving and confirming
1175 this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and

1176 year first above written.

1177
1178

THE UNITED STATES OF AMERICA

1179
1180
1181

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

1182 (SEAL)

1183

RECLAMATION DISTRICT NO. 1606

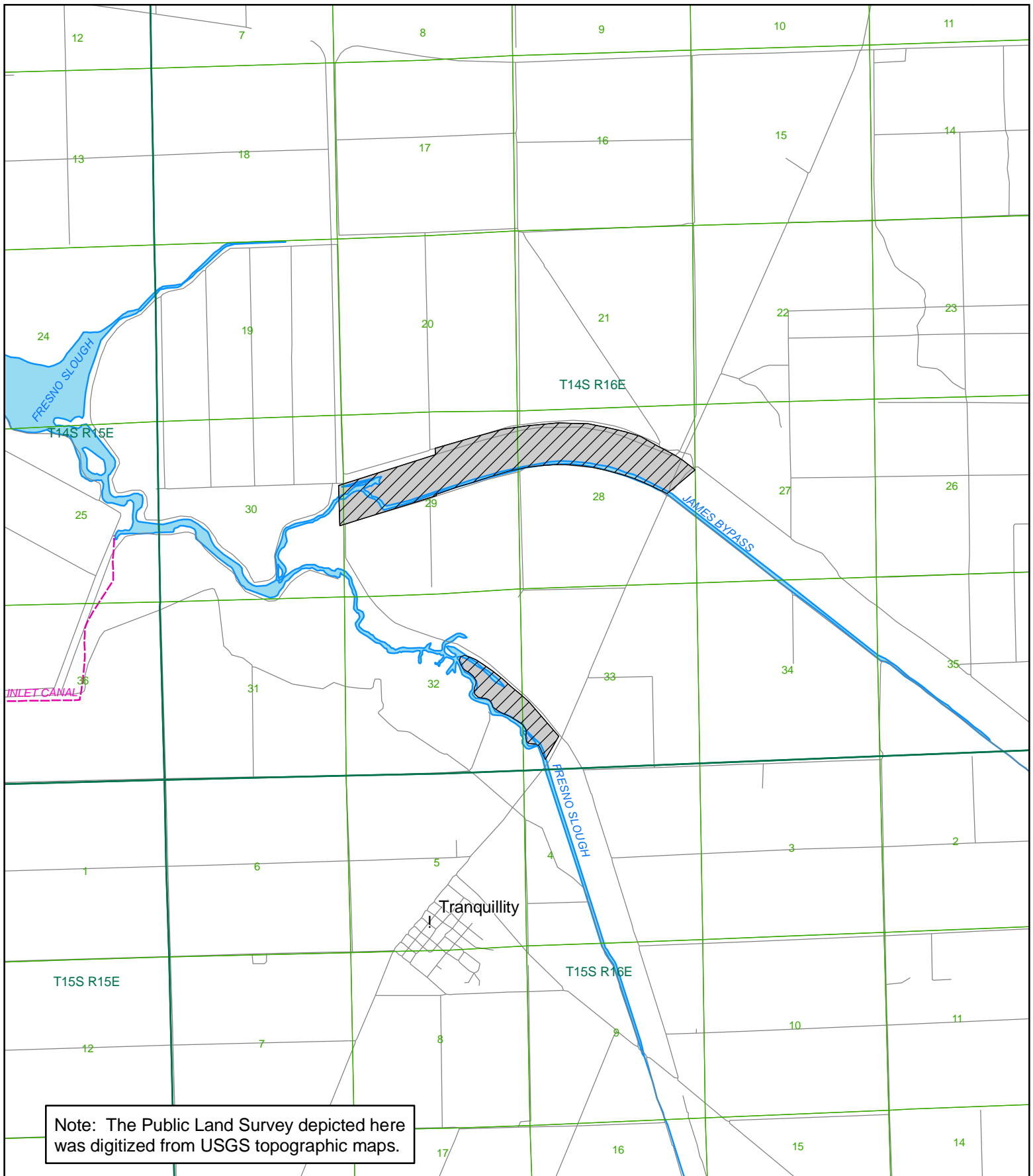
1184
1185

By: _____
President of the Board of Directors

1186 Attest:

1187 By: _____
1188 Secretary of the Board of Directors

1189 (H:\pub 440\LTRC\Final Draft LTRC's – Fresno, Tracy\09-23-04 Reclamation 1606 Final Draft
1190 LTRC with exhibits.doc)

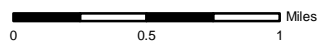


Note: The Public Land Survey depicted here was digitized from USGS topographic maps.

Reclamation District 1606



Contract No. 14-06-200-3802A-LTR1
Exhibit A



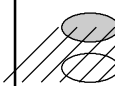

 District Boundary
 Contractor's Service Area

EXHIBIT B
RECLAMATION DISTRICT NO. 1606
Water Rates and Charges

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

<u>Cost-of-Service Rates</u>	<u>Irrigation Water</u>	<u>M&I Water 1/</u>
Capital Rates	\$ 10.28	
O&M Rates:		
Water Marketing	7.59	
Storage	5.83	
Conveyance	2/	
Conveyance Pumping	2/	
Deficit Rates:		
Non-Interest Bearing	N/A	
Interest Bearing	.11	
CFO/PFR Adj. Rate 4/	.66	
<u>TOTAL COST-OF-SERVICE RATES</u>	<u>24.69</u>	

RRA Full Cost Rates:

Section 202(3) Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981 \$ 41.72

Section 205(a)(3) - Rate is applicable to a Limited Recipient that did not receive irrigation water on or before October 1, 1981 \$ 48.48

Charges Under P.L. 102-575 to Restoration Fund 5/ \$ 7.82

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

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

3/ Will be recovered by separate agreement - See Article 8

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

5/ 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).