

AG and M&I
T.O. Final Draft 09/27-2004
T.O. Draft 08/06-2004
R.O. Final Delta Division Form 09/14-2004
R.O. Draft 07/22-2004
CVP-Wide Form 05/23-2004
Delta Division
Contract No.
7-07-20-W0045-LTR1

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

LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
AND
THE WEST SIDE IRRIGATION DISTRICT
PROVIDING FOR PROJECT WATER SERVICE
FROM THE DELTA DIVISION

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9 FROM THE 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
16 collectively hereinafter referred to as Federal Reclamation law, between THE UNITED STATES
17 OF AMERICA, hereinafter referred to as the United States, and THE WEST SIDE IRRIGATION
18 DISTRICT, hereinafter referred to as the Contractor, a public agency of the State of California, duly
19 organized, existing, and acting pursuant to the laws thereof;

20 WITNESSETH, That:

21 EXPLANATORY RECITALS

22 [1st] WHEREAS, the United States has constructed and is operating the Central Valley
23 Project (Project), California, for diversion, storage, carriage, distribution and beneficial use, for

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

28 [2nd] WHEREAS, the United States constructed the Delta-Mendota Canal and related
29 facilities, which will be used in part for the furnishing of water to the Contractor pursuant to the
30 terms of this Contract; and

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

33 [4th] WHEREAS, the Contractor and the United States entered into Contract
34 No. 7-07-20-W0045, which established terms for the delivery to the Contractor of Project Water
35 from the Delta Division Facilities from June 29, 1977, through February 28, 1995; and

36 [5th] WHEREAS, the Contractor and the United States have pursuant to subsection
37 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into
38 interim renewal contract(s) identified as Contract No(s). 7-07-20-W0045-IR1, 7-07-20-W0045-IR2,
39 7-07-20-W0045-IR3, 7-07-20-W0045-IR4, 7-07-20-W0045-IR5, 7-07-20-W0045-IR6, 7-07-20-
40 W0045-IR7, and 7-07-20-W0045-IR8, the current of which is hereinafter referred to as the Existing
41 Contract, which provided for the continued water service to the Contractor from March 1, 1995,
42 through February 28, 2006; and

43 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of the
44 Existing Contract following completion of appropriate environmental documentation, including a
45 programmatic environmental impact statement (PEIS) pursuant to the National Environmental

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

48 [6.1] WHEREAS, pursuant to a June 5, 2001, “Agreement for Assignment of Entitlement
49 to CVP Water Between the City of Tracy and The West Side Irrigation District,” the Contractor
50 assigned to the City of Tracy 2,500 acre-feet of the Contractor’s entitlement to Project Water under
51 Contract No. 7-07-20-W0045-IR7, which assignment is reflected in the decreased quantity of Water
52 Made Available under subdivision (a) of Article 3 of this Contract; and

53 [6.2] WHEREAS, on February 27, 2004, the Contractor, the United States and the City of
54 Tracy entered into an Agreement for Assignment of Portion of Water Service Contract
55 (“Assignment Agreement”), wherein the United States approved the initial assignment of 2,500
56 acre-feet of water and the future assignment of an additional 2,500 acre-feet of Project Water
57 available to the Contractor under Contract No. 7-07-20-W0045, as then being implemented through
58 Contract No. 7-07-20-W0045-B, to the City of Tracy; and

59 [6.3] WHEREAS, the Existing Contract reflects completion of the initial assignment
60 referenced in 6.1 above, by reducing the quantity of Project Water available to the Contractor from
61 7,500 to 5,000 acre-feet; and

62 [6.4] WHEREAS, the Assignment Agreement also allows the City of Tracy
63 to exercise its right to obtain a future assignment of an additional 2,500 acre-feet of Project Water
64 available to the Contractor under the Existing Contract;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

104 DEFINITIONS

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

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

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

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

115 (d) "Contracting Officer" shall mean the Secretary of the Interior's duly
116 authorized representative acting pursuant to this Contract or applicable Federal Reclamation law or
117 regulation;

118 (e) "Contract Total" shall mean the maximum amount of water to which the
119 Contractor is entitled under subdivision (a) of Article 3 of this Contract;

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

124 (g) "CVPIA" shall mean the Central Valley Project Improvement Act, Title
125 XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

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

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

134 (i) "Excess Lands" shall mean all lands in excess of the limitations contained in
135 Section 204 of the RRA, other than those lands exempt from acreage limitation under Federal
136 Reclamation law;

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

147 (k) "Ineligible Lands" shall mean all lands to which Irrigation Water may not be
148 delivered in accordance with Section 204 of the RRA;

149 (l) "Irrigation Full Cost Water Rate" shall mean the Full Cost Rate applicable to
150 the delivery of Irrigation Water;

151 (m) "Irrigation Water" shall mean water made available from the Project that is
152 used primarily in the production of agricultural crops or livestock, including domestic use incidental
153 thereto, and watering of livestock;

154 (n) "Landholder" shall mean a party that directly or indirectly owns or leases
155 nonexempt land, as provided in 43 CFR 426.2;

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

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

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

168 (r) “Operating Non-Federal Entity” shall mean the entity, its successors or
169 assigns, which has the obligation to operate and maintain all or a portion of the Delta Division
170 Facilities pursuant to written agreement(s) with the United States. When this Contract was entered
171 into, the Operating Non-Federal Entity was the San Luis & Delta-Mendota Water Authority.

172 (s) “Project” shall mean the Central Valley Project owned by the United States
173 and managed by the Department of the Interior, Bureau of Reclamation;

174 (t) “Project Contractors” shall mean all parties who have water service contracts
175 for Project Water from the Project with the United States pursuant to Federal Reclamation law;

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

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

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

185 (x) “Secretary” shall mean the Secretary of the Interior, a duly appointed
186 successor, or an authorized representative acting pursuant to any authority of the Secretary and
187 through any agency of the Department of the Interior;

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

190 (z) “Water Delivered” or “Delivered Water” shall mean Project Water diverted
191 for use by the Contractor at the point(s) of delivery approved by the Contracting Officer;

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

195 (bb) “Water Scheduled” shall mean Project Water made available to the
196 Contractor for which times and quantities for delivery have been established by the Contractor and
197 Contracting Officer, pursuant to subdivision (b) of Article 4 of this Contract; and

198 (cc) “Year” shall mean the period from and including March 1 of each Calendar
199 Year through the last day of February of the following Calendar Year.

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TERM OF CONTRACT

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

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

(2) The conditions which must be met for this Contract to be renewed are:
(i) the Contractor has prepared a water conservation plan that has been determined by the Contracting Officer in accordance with Article 26 of this Contract to meet the conservation and efficiency criteria for evaluating such plans established under Federal law; (ii) the Contractor is implementing an effective water conservation and efficiency program based on the Contractor's water conservation plan as required by Article 26 of this Contract; (iii) the Contractor is operating and maintaining all water measuring devices and implementing all water measurement methods as approved by the Contracting Officer pursuant to Article 6 of this Contract; (iv) the Contractor has reasonably and beneficially used the Project Water supplies made available to it and, based on projected demands, is reasonably anticipated and expects to fully utilize for reasonable and

223 beneficial use the quantity of Project Water to be made available to it pursuant to such renewal; (v)
224 the Contractor is complying with all terms and conditions of this Contract; and (vi) the Contractor
225 has the physical and legal ability to deliver Project Water.

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

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

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

246 whether a conversion of the relevant portion of this Contract to a contract under subsection 9(d) of
247 the Reclamation Project Act of 1939 can be accomplished pursuant to the Act of July 2, 1956 (70
248 Stat 483). The Contracting Officer shall also make a determination ten years after the date of
249 execution of this Contract and every five years thereafter during the term of this Contract of whether
250 a conversion of the relevant portion of this Contract to a contract under subsection 9(c)(1) of the
251 Reclamation Project Act of 1939 can be accomplished. Notwithstanding any provision of this
252 Contract, the Contractor reserves and shall have all rights and benefits under the Act of July 2, 1956
253 (70 Stat. 483). The Contracting Officer anticipates that during the term of this Contract, all
254 authorized Project construction expected to occur will have occurred, and on that basis the
255 Contracting Officer agrees upon such completion to allocate all costs that are properly assignable to
256 the Contractor, and agrees further that, at any time after such allocation is made, and subject to
257 satisfaction of the condition set out in this subdivision, this Contract shall, at the request of the
258 Contractor, be converted to a contract under subsection 9(d) or 9(c)(1), whichever is applicable, of
259 the Reclamation Project Act of 1939, subject to applicable Federal law and under stated terms and
260 conditions mutually agreeable to the Contractor and the Contracting Officer. A condition for such
261 conversion to occur shall be a determination by the Contracting Officer that, account being taken of
262 the amount credited to return by the Contractor as provided for under Federal Reclamation law, the
263 remaining amount of construction costs assignable for ultimate return by the Contractor can
264 probably be repaid to the United States within the term of a contract under subsection 9(d) or
265 9(c)(1), whichever is applicable. If the remaining amount of costs that are properly assignable to
266 the Contractor cannot be determined during the term of this Contract, the Contracting Officer shall
267 notify the Contractor, and provide the reason(s) why such a determination could not be made.
268 Further, the Contracting Officer shall make such a determination as soon thereafter as possible so as

269 to permit, upon request of the Contractor and satisfaction of the conditions set out above,
270 conversion to a contract under subsection 9(d) or 9(c)(1), whichever is applicable. In the event such
271 determination of costs has not been made at a time which allows conversion of this Contract during
272 the term of this Contract or the Contractor has not requested conversion of this Contract within such
273 term, the parties shall incorporate in any subsequent renewal contract as described in subdivision (b)
274 of this Article a provision that carries forth in substantially identical terms the provisions of this
275 subdivision.

276 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

277 3. (a) (1) During each Year, consistent with all applicable State water rights,
278 permits, and licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of
279 this Contract, the Contracting Officer shall make available for delivery to the Contractor 5,000 acre-
280 feet of Project Water for irrigation and M&I purposes. Water Delivered to the Contractor in
281 accordance with this subdivision shall be scheduled and paid for pursuant to the provisions of
282 Articles 4 and 7 of this Contract.

283 (2) In the event that the assignment of rights to the Project Water from
284 the Contractor to the City of Tracy pursuant to the Assignment Agreement is terminated pursuant to
285 Section 15 of the Assignment Agreement, then upon notice by the Contractor and the City of Tracy
286 to the Contracting Officer, the quantity of Project Water to be made available to the Contractor
287 under subdivision (a)(1) of this Article of this Contract shall be increased by 2,500 acre-feet, and
288 the quantity of Project Water to be made available to the City of Tracy under this long-term contract
289 with the Contractor shall be reduced by 2,500 acre-feet.

290 (b) Because the capacity of the Project to deliver Project Water has been
291 constrained in recent years and may be constrained in the future due to many factors including

292 hydrologic conditions and implementation of Federal and State laws, the likelihood of the
293 Contractor actually receiving the amount of Project Water set out in subdivision (a) of this Article in
294 any given Year is uncertain. The Contracting Officer's modeling referenced in the PEIS projected
295 that the Contract Total set forth in this Contract will not be available to the Contractor in many
296 years. During the most recent five years, the Recent Historic Average of Water Made Available to
297 the Contractor was 3,290 acre-feet. Nothing in subdivision (b) of this Article shall affect the rights
298 and obligations of the parties under any provision of this Contract.

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

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

310 (d) The Contractor shall make reasonable and beneficial use of all water
311 furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu),
312 groundwater banking programs, surface water storage programs, and other similar programs
313 utilizing Project Water or other water furnished pursuant to this Contract conducted within the
314 Contractor's Service Area which are consistent with applicable State law and result in use consistent

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

326 (e) The Contractor shall comply with requirements applicable to the Contractor
327 in biological opinion(s) prepared as a result of a consultation regarding the execution of this
328 Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as
329 amended, that are within the Contractor's legal authority to implement. The Existing Contract,
330 which evidences in excess of 26 years of diversions for irrigation and/or M&I purposes of the
331 quantities of water provided in subdivision (a) of Article 3 of this Contract, will be considered in
332 developing an appropriate baseline for biological assessment(s) prepared pursuant to the ESA, and
333 any other needed environmental review. Nothing herein shall be construed to prevent the
334 Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with
335 respect to any biological opinion or other environmental documentation referred to in this Article.

336 (f) Following the declaration of Water Made Available under Article 4 of this
337 Contract, the Contracting Officer will make a determination whether Project Water, or other water

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

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

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

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

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

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

376 TIME FOR DELIVERY OF WATER

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

384 Contractor. Concurrently with the declaration of the Water Made Available, the Contracting
385 Officer shall provide the Contractor with the updated Recent Historic Average.

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

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

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

400 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

405 (b) The Contracting Officer, either directly or indirectly through its written
406 agreement(s) with the Operating Non-Federal Entity(ies), shall make all reasonable efforts to

407 maintain sufficient flows and levels of water in Project facilities to deliver Project Water to the
408 Contractor at the point or points of delivery established pursuant to subdivision (a) of this Article.

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

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

424 (e) Absent a separate contrary written agreement with the Contractor, neither the
425 Contracting Officer nor any Operating Non-Federal Entity(ies) shall be responsible for the control,
426 carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to
427 this Contract beyond the point or points of delivery established pursuant to subdivision (a) of this
428 Article. The Contractor shall indemnify the United States, its officers, employees, agents, and
429 assigns on account of damage or claim of damage of any nature whatsoever for which there is legal

430 responsibility, including property damage, personal injury, or death arising out of or connected with
431 the control, carriage, handling, use, disposal, or distribution of such Water Delivered beyond such
432 point or points of delivery, except for any damage or claim arising out of: (i) acts or omissions of
433 the Contracting Officer or any of its officers, employees, agents, and assigns, including the
434 Operating Non-Federal Entity(ies), with the intent of creating the situation resulting in any damage
435 or claim; (ii) willful misconduct of the Contracting Officer or any of its officers, employees, agents,
436 and assigns, including the Operating Non-Federal Entity(ies); (iii) negligence of the Contracting
437 Officer or any of its officers, employees, agents, and assigns including the Operating Non-Federal
438 Entity(ies); or (iv) a malfunction of facilities owned and/or operated by the United States or the
439 Operating Non-Federal Entity(ies).

440 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

441 6. (a) The Contractor has established a measuring program satisfactory to the
442 Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation
443 purposes within the Contractor's Service Area is measured at each agricultural turnout and such
444 water delivered for M&I purposes is measured at each M&I service connection. The water
445 measuring devices or water measuring methods of comparable effectiveness must be acceptable to
446 the Contracting Officer. The Contractor shall be responsible for installing, operating, and
447 maintaining and repairing all such measuring devices and implementing all such water measuring
448 methods at no cost to the United States. The Contractor shall use the information obtained from
449 such water measuring devices or water measuring methods to ensure its proper management of the
450 water, to bill water users for water delivered by the Contractor; and, if applicable, to record water
451 delivered for M&I purposes by customer class as defined in the Contractor's water conservation
452 plan provided for in Article 26 of this Contract. Nothing herein contained, however, shall preclude

453 the Contractor from establishing and collecting any charges, assessments, or other revenues
454 authorized by California law. The Contractor shall include a summary of all its annual surface
455 water deliveries in the annual report described in subdivision (c) of Article 26.

456 (b) To the extent the information has not otherwise been provided, upon
457 execution of this Contract, the Contractor shall provide to the Contracting Officer a written report
458 describing the measurement devices or water measuring methods being used or to be used to
459 implement subdivision (a) of this Article and identifying the agricultural turnouts and the M&I
460 service connections or alternative measurement programs approved by the Contracting Officer, at
461 which such measurement devices or water measuring methods are being used, and, if applicable,
462 identifying the locations at which such devices and/or methods are not yet being used including a
463 time schedule for implementation at such locations. The Contracting Officer shall advise the
464 Contractor in writing within 60 days as to the adequacy, and necessary modifications, if any, of the
465 measuring devices or water measuring methods identified in the Contractor's report and if the
466 Contracting Officer does not respond in such time, they shall be deemed adequate. If the
467 Contracting Officer notifies the Contractor that the measuring devices or methods are inadequate,
468 the parties shall within 60 days following the Contracting Officer's response, negotiate in good faith
469 the earliest practicable date by which the Contractor shall modify said measuring devices and/or
470 measuring methods as required by the Contracting Officer to ensure compliance with subdivision
471 (a) of this Article.

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

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

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

481 RATES AND METHOD OF PAYMENT FOR WATER

482 7. (a) The Contractor shall pay the United States as provided in this Article for all
483 Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance
484 with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's
485 then-existing ratesetting policy for M&I Water, which ratesetting policies shall be amended,
486 modified, or superceded only through a public notice and comment procedure; (ii) applicable
487 Federal Reclamation law and associated rules and regulations, or policies; and (iii) other applicable
488 provisions of this Contract. Payments shall be made by cash transaction, electronic funds transfer,
489 or any other mechanism as may be agreed to in writing by the Contractor and the Contracting
490 Officer. The Rates, Charges, and Tiered Pricing Component applicable to the Contractor upon
491 execution of this Contract are set forth in Exhibit "B," as may be revised annually.

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

494 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
495 provide the Contractor an estimate of the Charges for Project Water that will be applied to the
496 period October 1, of the current Calendar Year, through September 30, of the following Calendar
497 Year, and the basis for such estimate. The Contractor shall be allowed not less than two months to

498 review and comment on such estimates. On or before September 15 of each Calendar Year, the
499 Contracting Officer shall notify the Contractor in writing of the Charges to be in effect during the
500 period October 1 of the current Calendar Year, through September 30, of the following Calendar
501 Year, and such notification shall revise Exhibit “B.”

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

509 (c) At the time the Contractor submits the initial schedule for the delivery of
510 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor
511 shall make an advance payment to the United States equal to the total amount payable pursuant to
512 the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be
513 delivered pursuant to this Contract during the first two calendar months of the Year. Before the end
514 of the first month and before the end of each calendar month thereafter, the Contractor shall make
515 an advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for
516 the Water Scheduled to be delivered pursuant to this Contract during the second month immediately
517 following. Adjustments between advance payments for Water Scheduled and payments at Rates
518 due for Water Delivered shall be made before the end of the following month; Provided, That any
519 revised schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases
520 the amount of Water Delivered pursuant to this Contract during any month shall be accompanied

521 with appropriate advance payment, at the Rates then in effect, to assure that Project Water is not
522 delivered to the Contractor in advance of such payment. In any month in which the quantity of
523 Water Delivered to the Contractor pursuant to this Contract equals the quantity of Water Scheduled
524 and paid for by the Contractor, no additional Project Water shall be delivered to the Contractor
525 unless and until an advance payment at the Rates then in effect for such additional Project Water is
526 made. Final adjustment between the advance payments for the Water Scheduled and payments for
527 the quantities of Water Delivered during each Year pursuant to this Contract shall be made as soon
528 as practicable but no later than April 30th of the following Year, or 60 days after the delivery of
529 Project Water rescheduled under subdivision (g) of Article 3 of this Contract if such water is not
530 delivered by the last day of February.

531 (d) The Contractor shall also make a payment in addition to the Rate(s) in
532 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
533 appropriate Tiered Pricing Component then in effect, before the end of the month following the
534 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered
535 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be consistent
536 with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery
537 report for the subject month prepared by the Operating Non-Federal Entity(ies) or, if there is no
538 Operating Non-Federal Entity, by the Contracting Officer. The water delivery report shall be
539 deemed a bill for the payment of Charges and the applicable Tiered Pricing Component for Water
540 Delivered. Adjustment for overpayment or underpayment of Charges shall be made through the
541 adjustment of payments due to the United States for Charges for the next month. Any amount to be
542 paid for past due payment of Charges and the Tiered Pricing Component shall be computed
543 pursuant to Article 20 of this Contract.

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

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

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

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

564 (i) The parties acknowledge and agree that the efficient administration of this
565 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,
566 policies, and procedures used for establishing Rates, Charges, and Tiered Pricing Component,

567 and/or for making and allocating payments, other than those set forth in this Article may be in the
568 mutual best interest of the parties, it is expressly agreed that the parties may enter into agreements to
569 modify the mechanisms, policies, and procedures for any of those purposes while this Contract is in
570 effect without amending this Contract.

571 (j) (1) Beginning at such time as deliveries of Project Water in a Year
572 exceed 80 percent of the Contract Total, then before the end of the month following the month of
573 delivery the Contractor shall make an additional payment to the United States equal to the
574 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water
575 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the
576 Contract Total, shall equal one-half of the difference between the Rate established under
577 subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate,
578 whichever is applicable. The Tiered Pricing Component for the amount of Water Delivered which
579 exceeds 90 percent of the Contract Total shall equal the difference between (i) the Rate established
580 under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost
581 Water Rate, whichever is applicable. For all Water Delivered pursuant to subdivision (a) of Article
582 3 of this Contract which is in excess of 80 percent of the Contract Total, this increment shall be
583 deemed to be divided between Irrigation Water and M&I Water in the same proportion as actual
584 deliveries of each bear to the cumulative total Water Delivered.

585 (2) Subject to the Contracting Officer's written approval, the Contractor
586 may request and receive an exemption from such Tiered Pricing Component for Project Water
587 delivered to produce a crop which the Contracting Officer determines will provide significant and
588 quantifiable habitat values for waterfowl in fields where the water is used and the crops are
589 produced; Provided, That the exemption from the Tiered Pricing Component for Irrigation Water

590 shall apply only if such habitat values can be assured consistent with the purposes of the CVPIA
591 through binding agreements executed with or approved by the Contracting Officer prior to use of
592 such water.

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

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

606 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA,
607 the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates, in
608 accordance with the applicable Project ratesetting policy, adjusted upward or downward to reflect
609 the changed costs, if any, incurred by the Contracting Officer in the delivery of the transferred
610 Project Water to the transferee's point of delivery. If the Contractor is receiving lower Rates and
611 Charges because of inability to pay and is transferring Project Water to another entity whose Rates

612 and Charges are not adjusted due to inability to pay, the Rates and Charges for transferred Project
613 Water shall not be adjusted to reflect the Contractor's inability to pay.

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

616 (n) With respect to the Rates for M&I Water, the Contractor asserts that it is not
617 legally obligated to pay any Project deficits claimed by the United States to have accrued as of the
618 date of this Contract or deficit-related interest charges thereon. By entering into this Contract, the
619 Contractor does not waive any legal rights or remedies that it may have with respect to such
620 disputed issues. Notwithstanding the execution of this Contract and payments made hereunder, the
621 Contractor may challenge in the appropriate administrative or judicial forums; (1) the existence,
622 computation, or imposition of any deficit charges accruing during the term of the Existing Contract
623 and any preceding interim renewal contracts, if applicable; (2) interest accruing on any such
624 deficits; (3) the inclusion of any such deficit charges or interest in the Rates; (4) the application by
625 the United States of payments made by the Contractor under its Existing Contract and any
626 preceding interim renewal contracts if applicable; and (5) the application of such payments in the
627 Rates. The Contracting Officer agrees that the Contractor shall be entitled to the benefit of any
628 administrative or judicial ruling in favor of any Project M&I contractor on any of these issues, and
629 credits for payments heretofore made, provided that the basis for such ruling is applicable to the
630 Contractor.

631 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

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

635 SALES, TRANSFERS, OR EXCHANGES OF WATER

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

647 (b) In order to facilitate efficient water management by means of water transfers
648 of the type historically carried out among Project Contractors located within the same geographical
649 area and to allow the Contractor to participate in an accelerated water transfer program during the
650 term of this Contract, the Contracting Officer shall prepare, as appropriate, all necessary
651 environmental documentation, including but not limited to documents prepared pursuant to NEPA
652 and ESA, analyzing annual transfers within such geographical areas and the Contracting Officer
653 shall determine whether such transfers comply with applicable law. Following the completion of
654 the environmental documentation, such transfers addressed in such documentation shall be
655 conducted with advance notice to the Contracting Officer, but shall not require prior written
656 approval by the Contracting Officer. Such environmental documentation and the Contracting
657 Officer's compliance determination shall be reviewed every five years and updated, as necessary,

658 prior to the expiration of the then existing five-year period. All subsequent environmental
659 documentation shall include an alternative to evaluate not less than the quantity of Project Water
660 historically transferred within the same geographical area.

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

671 APPLICATION OF PAYMENTS AND ADJUSTMENTS

672 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,
673 capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of
674 the Contractor arising out of this Contract then due and payable. Overpayments of more than
675 \$1,000 shall be refunded at the Contractor's request. In lieu of a refund, any amount of such
676 overpayment at the option of the Contractor may be credited against amounts to become due to the
677 United States by the Contractor. With respect to overpayment, such refund or adjustment shall
678 constitute the sole remedy of the Contractor or anyone having or claiming to have the right to the
679 use of any of the Project Water supply provided for herein. All credits and refunds of overpayments
680 shall be made within 30 days of the Contracting Officer obtaining direction as to how to credit or

681 refund such overpayment in response to the notice to the Contractor that it has finalized the
682 accounts for the Year in which the overpayment was made.

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

688 TEMPORARY REDUCTIONS--RETURN FLOWS

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

694 (b) The Contracting Officer or Operating Non-Federal Entity(ies) may
695 temporarily discontinue or reduce the quantity of Water Delivered to the Contractor as herein
696 provided for the purposes of investigation, inspection, maintenance, repair, or replacement of any of
697 the Project facilities or any part thereof necessary for the delivery of Project Water to the
698 Contractor, but so far as feasible the Contracting Officer or Operating Non-Federal Entity(ies) will
699 give the Contractor due notice in advance of such temporary discontinuance or reduction, except in
700 case of emergency, in which case no notice need be given; Provided, That the United States shall
701 use its best efforts to avoid any discontinuance or reduction in such service. Upon resumption of
702 service after such reduction or discontinuance, and if requested by the Contractor, the United States

703 will, if possible, deliver the quantity of Project Water which would have been delivered hereunder
704 in the absence of such discontinuance or reduction.

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

711 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

722 (c) In any Year in which there may occur a Condition of Shortage for any of the
723 reasons specified in subdivision (b) of this Article, and subject to subdivision (d) of this Article, the
724 Contracting Officer will first allocate the available Project Water consistent with the Central Valley
725 Project M&I Water Shortage Policy in its form on the effective date of this Contract for determining

726 the amount of Project Water available for delivery to the Project Contractors. Subject to the
727 foregoing allocation, in any year in which there may occur a Condition of Shortage, the Contracting
728 Officer shall then apportion Project Water among the Contractor and others entitled to Project
729 Water from Delta Division Facilities under long-term water service or repayment contracts (or
730 renewals thereof or binding commitments therefore) in force on February 28, 2005, as follows:

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

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

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

744 (4) The available supply shall be multiplied by the Contractor's
745 proportionate share and the result shall be the quantity of Project Water made available by the
746 United States to the Contractor for the relevant Year in accordance with the schedule developed by
747 the Contracting Officer under subdivision (c)(1) of this Article 12, but in no event shall such
748 amount exceed the Contract Total. In the event the Contracting Officer subsequently determines

749 that the Contracting Officer can increase or needs to decrease the available supply for delivery from
750 Delta Division Facilities to long-term water service and repayment Contractors during the relevant
751 Year, such additions or reductions to the available supply shall be apportioned consistent with
752 subparagraphs (1) through (4), inclusive.

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

763 UNAVOIDABLE GROUNDWATER PERCOLATION

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

768 RULES AND REGULATIONS

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

773

WATER AND AIR POLLUTION CONTROL

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

777

QUALITY OF WATER

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

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

792 (c) Omitted.

793

WATER ACQUIRED BY THE CONTRACTOR
OTHER THAN FROM THE UNITED STATES

794

795 17. (a) Water or water rights now owned or hereafter acquired by the Contractor
796 other than from the United States and Irrigation Water furnished pursuant to the terms of this
797 Contract may be simultaneously transported through the same distribution facilities of the

798 Contractor subject to the following: (i) if the facilities utilized for commingling Irrigation Water
799 and non-Project water were constructed without funds made available pursuant to Federal
800 Reclamation law, the provisions of Federal Reclamation law will be applicable only to the
801 Landholders of lands which receive Irrigation Water; (ii) the eligibility of land to receive Irrigation
802 Water must be established through the certification requirements as specified in the Acreage
803 Limitation Rules and Regulations (43 CFR Part 426); (iii) the water requirements of Eligible Lands
804 within the Contractor's Service Area can be established and the quantity of Irrigation Water to be
805 utilized is less than or equal to the quantity necessary to irrigate such Eligible Lands; and (iv) if the
806 facilities utilized for commingling Irrigation Water and non-Project water are/were constructed with
807 funds made available pursuant to Federal Reclamation law, the non-Project water will be subject to
808 the acreage limitation provisions of Federal Reclamation law, unless the Contractor pays to the
809 United States the incremental fee described in 43 CFR 426.15. In determining the incremental fee,
810 the Contracting Officer will calculate annually the cost to the Federal Government, including
811 interest of storing or delivering non-Project water, which for purposes of this Contract shall be
812 determined as follows: The quotient shall be the unpaid distribution system costs divided by the
813 total irrigable acreage within the Contractor's Service Area. The incremental fee per acre is the
814 mathematical result of such quotient times the interest rate determined using Section 202 (3) of the
815 Act of October 12, 1982 (96 Stat. 1263). Such incremental fee will be charged to each acre of
816 excess or full cost land within the Contractor's Service Area that receives non-Project water through
817 Federally financed or constructed facilities. The incremental fee calculation methodology will
818 continue during the term of this Contract absent the promulgation of a contrary Reclamation-wide
819 rule, regulation, or policy adopted after the Contractor has been afforded the opportunity to review

820 and comment on the proposed rule, regulation, or policy. If such rule, regulation, or policy is
821 adopted it shall supercede this provision.

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

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

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

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

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

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

849 (5) After Project purposes are met, as determined by the Contracting
850 Officer, the United States and Project Contractors entitled to Project Water from Delta Division
851 Facilities shall share priority to utilize the remaining capacity of the facilities declared to be
852 available by the Contracting Officer for conveyance and transportation of non-Project water prior to
853 any such remaining capacity being made available to non-Project contractors. Other Project
854 Contractors shall have a second priority to any remaining capacity of facilities declared to be
855 available by the Contracting Officer for conveyance and transportation of non-Project water prior to
856 any such remaining capacity being made available to non-Project contractors.

857 OPINIONS AND DETERMINATIONS

858 18. (a) Where the terms of this Contract provide for actions to be based upon the
859 opinion or determination of either party to this Contract, said terms shall not be construed as
860 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
861 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly
862 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or
863 unreasonable opinion or determination. Each opinion or determination by either party shall be
864 provided in a timely manner. Nothing in this subdivision (a) of this Article is intended to or shall

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

867

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

873 COORDINATION AND COOPERATION

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

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

888 provide, to the extent practicable, the means of mutual communication and interaction regarding
889 significant decisions concerning Project operation and management on a real-time basis.

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

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

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

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

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

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

907 (d) Without limiting the contractual obligations of the Contracting Officer under
908 the other Articles of this Contract, nothing in this Article shall be construed to limit or constrain the
909 Contracting Officer's ability to communicate, coordinate, and cooperate with the Contractor or

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

912 CHARGES FOR DELINQUENT PAYMENTS

913 20. (a) The Contractor shall be subject to interest, administrative and penalty charges
914 on delinquent installments or payments. When a payment is not received by the due date, the
915 Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date.
916 When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative
917 charge to cover additional costs of billing and processing the delinquent payment. When a payment
918 is delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six
919 (6%) percent per year for each day the payment is delinquent beyond the due date. Further, the
920 Contractor shall pay any fees incurred for debt collection services associated with a delinquent
921 payment.

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

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

930 EQUAL OPPORTUNITY

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

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

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

944 (c) The Contractor will send to each labor union or representative of workers
945 with which it has a collective bargaining agreement or other contract or understanding, a notice, to

946 be provided by the Contracting Officer, advising the said labor union or workers' representative of
947 the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965,
948 and shall post copies of the notice in conspicuous places available to employees and applicants for
949 employment.

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

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

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

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

974 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

987 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

988 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
989 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the
990 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws,
991 as well as with their respective implementing regulations and guidelines imposed by the U.S.
992 Department of the Interior and/or Bureau of Reclamation.

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

999 (c) The Contractor makes this agreement in consideration of and for the purpose
1000 of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal
1001 financial assistance extended after the date hereof to the Contractor by the Bureau of Reclamation,
1002 including installment payments after such date on account of arrangements for Federal financial
1003 assistance which were approved before such date. The Contractor recognizes and agrees that such
1004 Federal assistance will be extended in reliance on the representations and agreements made in this
1005 Article, and that the United States reserves the right to seek judicial enforcement thereof.

1006 PRIVACY ACT COMPLIANCE

1007 24. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a)
1008 (the Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et
1009 seq.) in maintaining Landholder acreage certification and reporting records, required to be
1010 submitted to the Contractor for compliance with Sections 206 and 228 of the Reclamation Reform
1011 Act of 1982 (96 Stat. 1266), and pursuant to 43 CFR 426.18.

1012 (b) With respect to the application and administration of the criminal penalty
1013 provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible
1014 for maintaining the certification and reporting records referenced in (a) above are considered to be
1015 employees of the Department of the Interior. See 5 U.S.C. 552a(m).
1016

1017 (c) The Contracting Officer or a designated representative shall provide the
1018 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau of
1019 Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior,
1020 Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information
1021 contained in the Landholder's certification and reporting records.

1022 (d) The Contracting Officer shall designate a full-time employee of the Bureau of
1023 Reclamation to be the System Manager who shall be responsible for making decisions on denials
1024 pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is
1025 authorized to grant requests by individuals for access to their own records.

1026 (e) The Contractor shall forward promptly to the System Manager each proposed
1027 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR
1028 2.71; notify the requester accordingly of such referral; and provide the System Manager with
1029 information and records necessary to prepare an appropriate response to the requester. These
1030 requirements do not apply to individuals seeking access to their own certification and reporting
1031 forms filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the
1032 Privacy Act as a basis for the request.

1033 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1034 25. In addition to all other payments to be made by the Contractor pursuant to this
1035 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and
1036 detailed statement submitted by the Contracting Officer to the Contractor for such specific items of
1037 direct cost incurred by the United States for work requested by the Contractor associated with this
1038 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and
1039 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in
1040 writing in advance by the Contractor. This Article shall not apply to costs for routine contract
1041 administration.

1042 WATER CONSERVATION

1043 26. (a) Prior to the delivery of water provided from or conveyed through Federally
1044 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be
1045 implementing an effective water conservation and efficiency program based on the Contractor's
1046 water conservation plan that has been determined by the Contracting Officer to meet the
1047 conservation and efficiency criteria for evaluating water conservation plans established under
1048 Federal law. The water conservation and efficiency program shall contain definite water
1049 conservation objectives, appropriate economically feasible water conservation measures, and time

1050 schedules for meeting those objectives. Continued Project Water delivery pursuant to this Contract
1051 shall be contingent upon the Contractor's continued implementation of such water conservation
1052 program. In the event the Contractor's water conservation plan or any revised water conservation
1053 plan completed pursuant to subdivision (d) of Article 26 of this Contract have not yet been
1054 determined by the Contracting Officer to meet such criteria, due to circumstances which the
1055 Contracting Officer determines are beyond the control of the Contractor, water deliveries shall be
1056 made under this Contract so long as the Contractor diligently works with the Contracting Officer to
1057 obtain such determination at the earliest practicable date, and thereafter the Contractor immediately
1058 begins implementing its water conservation and efficiency program in accordance with the time
1059 schedules therein.

1060 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
1061 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall implement
1062 the Best Management Practices identified by the time frames issued by the California Urban Water
1063 Conservation Council for such M&I Water unless any such practice is determined by the
1064 Contracting Officer to be inappropriate for the Contractor.

1065 (c) The Contractor shall submit to the Contracting Officer a report on the status
1066 of its implementation of the water conservation plan on the reporting dates specified in the then
1067 existing conservation and efficiency criteria established under Federal law.

1068 (d) At five-year intervals, the Contractor shall revise its water conservation plan
1069 to reflect the then current conservation and efficiency criteria for evaluating water conservation
1070 plans established under Federal law and submit such revised water management plan to the
1071 Contracting Officer for review and evaluation. The Contracting Officer will then determine if the

1072 water conservation plan meets Reclamation's then current conservation and efficiency criteria for
1073 evaluating water conservation plans established under Federal law.

1074 (e) If the Contractor is engaged in direct groundwater recharge, such activity
1075 shall be described in the Contractor's water conservation plan.

1076 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1077 27. Except as specifically provided in Article 17 of this Contract, the provisions of this
1078 Contract shall not be applicable to or affect non-Project water or water rights now owned or
1079 hereafter acquired by the Contractor or any user of such water within the Contractor's Service Area.
1080 Any such water shall not be considered Project Water under this Contract. In addition, this Contract
1081 shall not be construed as limiting or curtailing any rights which the Contractor or any water user
1082 within the Contractor's Service Area acquires or has available under any other contract pursuant to
1083 Federal Reclamation law.

1084 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

1085 28. (a) The O&M of a portion of the Project facilities which serve the Contractor,
1086 and responsibility for funding a portion of the costs of such O&M, have been transferred to the San
1087 Luis & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate agreement
1088 (8-07-20-X0354) between the United States and the Operating Non-Federal Entity San Luis &
1089 Delta-Mendota Water Authority. That separate agreement shall not interfere with or affect the
1090 rights or obligations of the Contractor or the United States hereunder.

1091 (b) The Contracting Officer has previously notified the Contractor in writing that
1092 the O&M of a portion of the Project facilities which serve the Contractor has been transferred to the
1093 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, and therefore, the
1094 Contractor shall pay directly to the Operating Non-Federal Entity San Luis & Delta-Mendota Water

1095 Authority, or to any successor approved by the Contracting Officer under the terms and conditions
1096 of the separate agreement between the United States and the Operating Non-Federal Entity San Luis
1097 & Delta-Mendota Water Authority described in subdivision (a) of this Article, all rates, charges, or
1098 assessments of any kind, including any assessment for reserve funds, which the Operating Non-
1099 Federal Entity San Luis & Delta-Mendota Water Authority or such successor determines, sets, or
1100 establishes for the O&M of the portion of the Project facilities operated and maintained by the
1101 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or such successor. Such
1102 direct payments to the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or
1103 such successor shall not relieve the Contractor of its obligation to pay directly to the United States
1104 the Contractor's share of the Project Rates, Charges, and Tiered Pricing Component except to the
1105 extent the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority collects
1106 payments on behalf of the United States in accordance with the separate agreement identified in
1107 subdivision (a) of this Article.

1108 (c) For so long as the O&M of any portion of the Project facilities serving the
1109 Contractor is performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water
1110 Authority, or any successor thereto, the Contracting Officer shall adjust those components of the
1111 Rates for Water Delivered under this Contract representing the cost associated with the activity
1112 being performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority
1113 or its successor.

1114 (d) In the event the O&M of the Project facilities operated and maintained by the
1115 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority is re-assumed by the
1116 United States during the term of this Contract, the Contracting Officer shall so notify the
1117 Contractor, in writing, and present to the Contractor a revised Exhibit "B" which shall include the

1118 portion of the Rates to be paid by the Contractor for Project Water under this Contract representing
1119 the O&M costs of the portion of such Project facilities which have been re-assumed. The
1120 Contractor shall, thereafter, in the absence of written notification from the Contracting Officer to the
1121 contrary, pay the Rates, Charges, and Tiered Pricing Component specified in the revised Exhibit
1122 “B” directly to the United States in compliance with Article 7 of this Contract.

1123 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1124 29. The expenditure or advance of any money or the performance of any obligation of
1125 the United States under this Contract shall be contingent upon appropriation or allotment of funds.
1126 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
1127 under this Contract. No liability shall accrue to the United States in case funds are not appropriated
1128 or allotted.

1129 BOOKS, RECORDS, AND REPORTS

1130 30. (a) The Contractor shall establish and maintain accounts and other books and
1131 records pertaining to administration of the terms and conditions of this Contract, including: the
1132 Contractor's financial transactions, water supply data, and Project land and right-of-way
1133 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use
1134 data; and other matters that the Contracting Officer may require. Reports thereon shall be furnished
1135 to the Contracting Officer in such form and on such date or dates as the Contracting Officer may
1136 require. Subject to applicable Federal laws and regulations, each party to this Contract shall have
1137 the right during office hours to examine and make copies of the other party's books and records
1138 relating to matters covered by this Contract.

1139 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,
1140 records, or other information shall be requested from the Contractor by the Contracting Officer
1141 unless such books, records, or information are reasonably related to the administration or
1142 performance of this Contract. Any such request shall allow the Contractor a reasonable period of
1143 time within which to provide the requested books, records, or information.

1144 (c) At such time as the Contractor provides information to the Contracting
1145 Officer pursuant to subdivision (a) of this Article, a copy of such information shall be provided to
1146 the Operating Non-Federal Entity.

1147 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1148 31. (a) The provisions of this Contract shall apply to and bind the successors and
1149 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1150 therein shall be valid until approved in writing by the Contracting Officer.

1151 (b) The assignment of any right or interest in this Contract by either party shall
1152 not interfere with the rights or obligations of the other party to this Contract absent the written
1153 concurrence of said other party.

1154 (c) The Contracting Officer shall not unreasonably condition or withhold
1155 approval of any proposed assignment.

1156 SEVERABILITY

1157 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor
1158 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an
1159 association or other form of organization whose primary function is to represent parties to Project
1160 contracts, brings an action in a court of competent jurisdiction challenging the legality or
1161 enforceability of a provision included in this Contract and said person, entity, association, or
1162 organization obtains a final court decision holding that such provision is legally invalid or
1163 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the
1164 parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court
1165 decision identify by mutual agreement the provisions in this Contract which must be revised and (ii)
1166 within three months thereafter promptly agree on the appropriate revision(s). The time periods
1167 specified above may be extended by mutual agreement of the parties. Pending the completion of
1168 the actions designated above, to the extent it can do so without violating any applicable provisions
1169 of law, the United States shall continue to make the quantities of Project Water specified in this

1170 Contract available to the Contractor pursuant to the provisions of this Contract which were not
1171 found to be legally invalid or unenforceable in the final court decision.

1172 RESOLUTION OF DISPUTES

1173 33. Should any dispute arise concerning any provisions of this Contract, or the parties'
1174 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the
1175 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring
1176 any matter to the Department of Justice, the party shall provide to the other party 30 days' written
1177 notice of the intent to take such action; Provided, That such notice shall not be required where a
1178 delay in commencing an action would prejudice the interests of the party that intends to file suit.
1179 During the 30-day notice period, the Contractor and the Contracting Officer shall meet and confer in
1180 an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to
1181 waive or abridge any right or remedy that the Contractor or the United States may have.

1182 OFFICIALS NOT TO BENEFIT

1183 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1184 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1185 manner as other water users or landowners.

1186 CHANGES IN CONTRACTOR'S SERVICE AREA

1187 35. (a) While this Contract is in effect, no change may be made in the Contractor's
1188 Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,
1189 except upon the Contracting Officer's written consent.

1190 (b) Within 30 days of receipt of a request for such a change, the Contracting
1191 Officer will notify the Contractor of any additional information required by the Contracting Officer
1192 for processing said request, and both parties will meet to establish a mutually agreeable schedule for
1193 timely completion of the process. Such process will analyze whether the proposed change is likely
1194 to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability

1195 of the Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-
1196 constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project
1197 Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply
1198 with the NEPA and the ESA. The Contractor will be responsible for all costs incurred by the
1199 Contracting Officer in this process, and such costs will be paid in accordance with Article 25 of this
1200 Contract.

1201 FEDERAL LAWS

1202 36. By entering into this Contract, the Contractor does not waive its rights to contest the
1203 validity or application in connection with the performance of the terms and conditions of this
1204 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the
1205 terms and conditions of this Contract unless and until relief from application of such Federal law or
1206 regulation to the implementing provision of the Contract is granted by a court of competent
1207 jurisdiction.

1208 NOTICES

1209 37. Any notice, demand, or request authorized or required by this Contract shall be
1210 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered
1211 to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, California
1212 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board
1213 of Directors of The West Side Irrigation District, 1320 Tracy Boulevard, Tracy, California 95378.
1214 The designation of the addressee or the address may be changed by notice given in the same manner
1215 as provided in this Article for other notices.

1216 CONFIRMATION OF CONTRACT

1217 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a
1218 decree of a court of competent jurisdiction of the State of California, confirming the execution of
1219 this Contract. The Contractor shall furnish the United States a certified copy of the final decree, the
1220 validation proceedings, and all pertinent supporting records of the court approving and confirming
1221 this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

1222 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and
1223 year first above written.

1224 THE UNITED STATES OF AMERICA

1225 By: _____
1226 Regional Director, Mid-Pacific Region
1227 Bureau of Reclamation

1228 (SEAL)

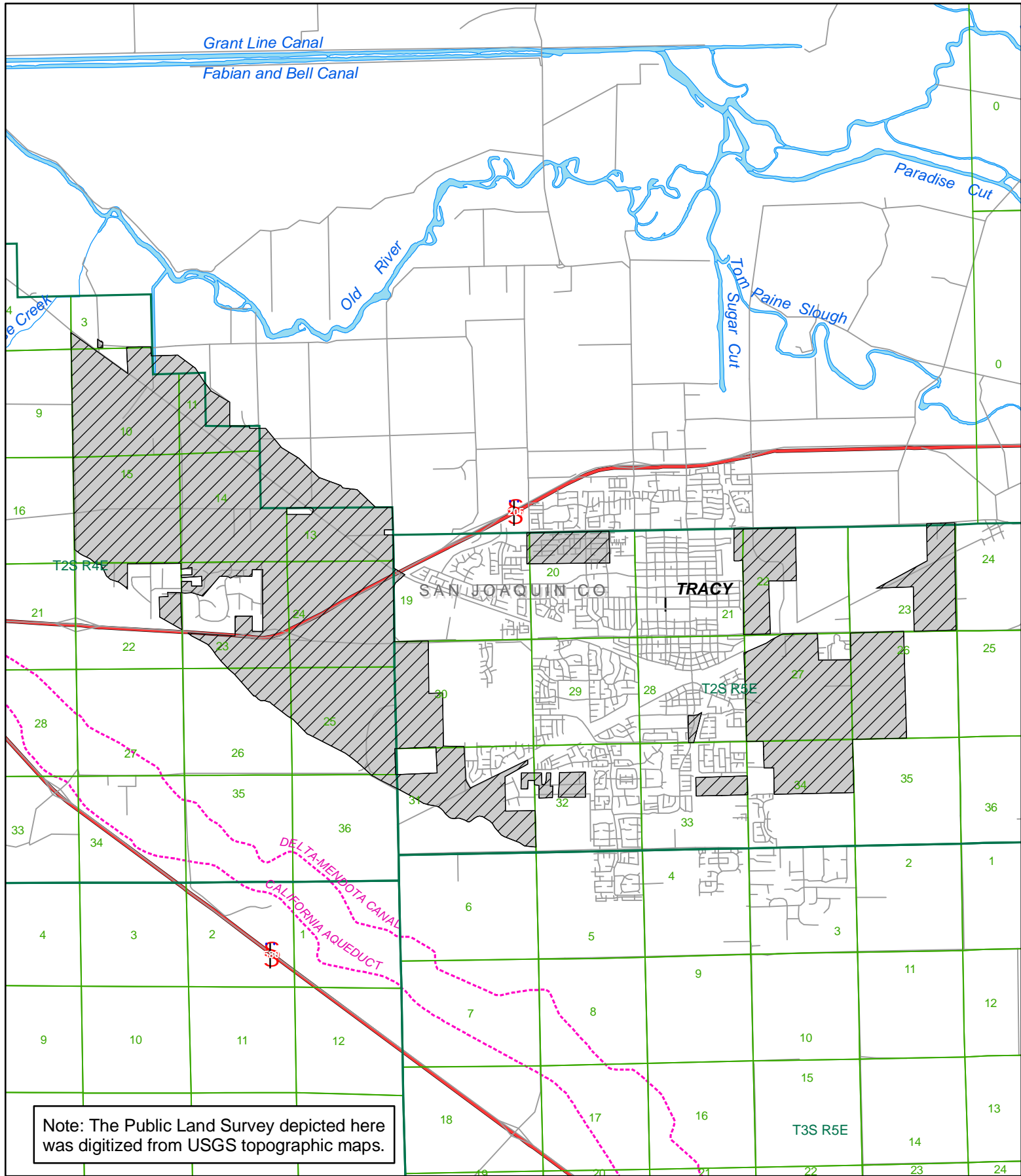
1229 THE WEST SIDE IRRIGATION DISTRICT

1230 By: _____
1231 President of the Board of Directors



1232 Attest:

1233 By: _____
1234 Secretary of the Board of Directors

1235 (H:\pub 440\LTRC\Final Draft LTRC's – Fresno, Tracy\09-27-04 The West Side ID Final Draft
1236 LTRC with exhibits.doc)



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

-  Contractor's Service Area
-  District Boundary

The West Side I.D.

Contract No. 7-07-20-W0045-LTR1
EXHIBIT A

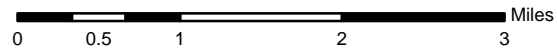


EXHIBIT B
THE WEST SIDE IRRIGATION DISTRICT
Water Rates and Charges

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

<u>COST-OF-SERVICE RATES:</u>	<u>2004 Rates per Acre-Foot</u>	
	<u>Irrigation Water</u>	<u>M&I Water 1/</u>
Capital Rates	\$ 8.52	
O&M Rates:		
Water Marketing	7.59	
Storage	5.83	
Conveyance		
Conveyance Pumping		
Deficit Rates:		
Non-Interest Bearing		
Interest Bearing		
CFO/PFR Adj. Rate 2/	<u>1.64</u>	
TOTAL COST-OF-SERVICE-RATES	<u>\$23.57</u>	<u>1/</u>
 <u>FULL-COST RATES</u>		
<u>Section 202(3)</u> Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981.	<u>\$36.60</u>	
<u>Section 205(a)(3)</u> Rate is applicable to a Limited Recipient that did <u>not</u> receive irrigation water on or before October 1, 1981.	<u>\$43.40</u>	
 <u>CHARGES UNDER P.L. 102-575 TO RESTORATION FUND 3/</u>		
Restoration Payments (3407(d)(2)(A))	<u>\$ 7.82</u>	<u>\$15.64</u>

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

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

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