

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

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

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Exhibit A - Map of Contractor's Service Area

Exhibit B - Rates and Charges

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

5 LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES  
6 AND  
7 BYRON-BETHANY IRRIGATION DISTRICT  
8 PROVIDING FOR PROJECT WATER SERVICE  
9 FROM THE DELTA DIVISION

10 THIS CONTRACT, made this 25<sup>th</sup> day of July, 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 BYRON-BETHANY  
18 IRRIGATION DISTRICT, hereinafter referred to as the Contractor, a public agency of the State of  
19 California, duly organized, existing, and acting pursuant to the laws thereof;

20 WITNESSETH, That:

EXPLANATORY RECITALS

21  
22 [1<sup>st</sup>] 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 [2<sup>nd</sup>] 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 [3<sup>rd</sup>] WHEREAS, the rights to Project Water were acquired by the United States pursuant  
32 to California law for operation of the Project; and

33 [4<sup>th</sup>] WHEREAS, the Contractor and the United States entered into Contract  
34 No. 14-06-200-785, as amended, which in Part A thereof, established terms for the delivery to the  
35 Contractor of Project Water from the Delta Division Facilities from through May 22, 1953, through  
36 February 28, 1994; and

37 [5<sup>th</sup>] WHEREAS, the Contractor and the United States have pursuant to subsection  
38 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into  
39 interim renewal contract(s) identified as Contract No(s). 14-06-200-785-IR1, 14-06-200-785-IR2,  
40 14-06-200-785-IR3, 14-06-200-785-IR4, 14-06-200-785-IR5, 14-06-200-785-IR6, 14-06-200-785-  
41 IR7, 14-06-200-785-IR8, 14-06-200-785-IR9, and 14-06-200-785-IR10, the current of which is  
42 hereinafter referred to as the Existing Contract, which provided for the continued water service to  
43 the Contractor from March 1, 1994, through February 28, 2006; and

44 [5.1] WHEREAS, Plain View Water District and Byron-Bethany Irrigation District have  
45 determined that consolidation of the two districts will improve the administrative efficiency of the  
46 districts and will enhance the districts' stability; and

47 [5.2] WHEREAS, San Joaquin Local Agency Formation Commission approved  
48 consolidation of Plain View Water District and Byron-Bethany Irrigation District on August 12,  
49 2004, by dissolving Plain View Water District and reorganizing the territory to Byron-Bethany  
50 Irrigation District; and

51 [5.3] WHEREAS, the consolidation referred to in the preceding two explanatory recitals  
52 did not, in any manner, change the area to which Project Water may be delivered pursuant to the  
53 Existing Contract; and

54 [6<sup>th</sup>] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of the  
55 Existing Contract following completion of appropriate environmental documentation, including a  
56 programmatic environmental impact statement (PEIS) pursuant to the National Environmental  
57 Policy Act (NEPA) analyzing the direct and indirect impacts and benefits of implementing the  
58 CVPIA and the potential renewal of all existing contracts for Project Water; and

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

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

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

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

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

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

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

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

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

87 [15.1] WHEREAS, the Contractor has utilized or may utilize transfers, contract  
88 assignments, rescheduling and conveyance of Project Water and non-Project water under this

89 Contract as tools to minimize the impacts of Conditions of Shortage and to maximize the beneficial  
90 use of water; and

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

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

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

98 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

131 (j) "Full Cost Rate" shall mean an annual rate, as determined by the Contracting  
132 Officer that shall amortize the expenditures for construction properly allocable to the Project  
133 irrigation or M&I functions, as appropriate, of facilities in service including all O&M deficits  
134 funded, less payments, over such periods as may be required under Federal Reclamation law, or



135 applicable contract provisions. Interest will accrue on both the construction expenditures and  
136 funded O&M deficits from October 12, 1982, on costs outstanding at that date, or from the date  
137 incurred in the case of costs arising subsequent to October 12, 1982, and shall be calculated in  
138 accordance with subsections 202(3)(B) and (3)(C) of the RRA. The Full Cost Rate includes actual  
139 operation, maintenance, and replacement costs consistent with Section 426.2 of the Rules and  
140 Regulations for the RRA;

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

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

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

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

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

157 (p) "M&I Full Cost Water Rate" shall mean the Full Cost Rate applicable to the  
158 delivery of M&I Water;

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

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

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

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

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

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

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

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

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

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

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

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

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

195 TERM OF CONTRACT

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

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

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

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

221                   (3)    The terms and conditions of the renewal contract described in  
222 subdivision (b)(1) of this Article and any subsequent renewal contracts shall be developed  
223 consistent with the parties' respective legal rights and obligations, and in consideration of all  
224 relevant facts and circumstances, as those circumstances exist at the time of renewal, including,  
225 without limitation, the Contractor's need for continued delivery of Project Water; environmental

226 conditions affected by implementation of the Contract to be renewed, and specifically changes in  
227 those conditions that occurred during the life of the Contract to be renewed; the Secretary's progress  
228 toward achieving the purposes of the CVPIA as set out in Section 3402 and in implementing the  
229 specific provisions of the CVPIA; and current and anticipated economic circumstances of the region  
230 served by the Contractor.

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

239 (d) The Contracting Officer shall make a determination ten years after the date of  
240 execution of this Contract, and every five years thereafter during the term of this Contract, of  
241 whether a conversion of the relevant portion of this Contract to a contract under subsection 9(d) of  
242 the Reclamation Project Act of 1939 can be accomplished pursuant to the Act of July 2, 1956 (70  
243 Stat 483). The Contracting Officer shall also make a determination ten years after the date of  
244 execution of this Contract and every five years thereafter during the term of this Contract of whether  
245 a conversion of the relevant portion of this Contract to a contract under subsection 9(c)(1) of the  
246 Reclamation Project Act of 1939 can be accomplished. Notwithstanding any provision of this  
247 Contract, the Contractor reserves and shall have all rights and benefits under the Act of July 2, 1956  
248 (70 Stat. 483). The Contracting Officer anticipates that during the term of this Contract, all

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

271 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

272 3. (a) During each Year, consistent with all applicable State water rights, permits,  
273 and licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this  
274 Contract, the Contracting Officer shall make available for delivery to the Contractor 20,600 acre-  
275 feet of Project Water for irrigation and M&I purposes. Water Delivered to the Contractor in  
276 accordance with this subdivision shall be scheduled and paid for pursuant to the provisions of  
277 Articles 4 and 7 of this Contract.

278 (b) Because the capacity of the Project to deliver Project Water has been  
279 constrained in recent years and may be constrained in the future due to many factors including  
280 hydrologic conditions and implementation of Federal and State laws, the likelihood of the  
281 Contractor actually receiving the amount of Project Water set out in subdivision (a) of this Article in  
282 any given Year is uncertain. The Contracting Officer's modeling referenced in the PEIS projected  
283 that the Contract Total set forth in this Contract will not be available to the Contractor in many  
284 years. During the most recent five years, the Recent Historic Average of Water Made Available to  
285 the Contractor was 13,555 acre-feet. Nothing in subdivision (b) of this Article shall affect the rights  
286 and obligations of the parties under any provision of this Contract.

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

289 (c.1) In the event any Project Contractor (other than a Cross Valley Contractor)  
290 that receives Project Water through the Delta Division Facilities obtains a contractual agreement  
291 that the Contracting Officer shall make Project Water available at a point or points of delivery in or  
292 north of the Delta, at the request of the Contractor and upon completion of any required  
293 environmental documentation, this Contract shall be amended to provide for deliveries in or north

294 of the Delta on mutually agreeable terms. Such amendments to the Contract shall be limited solely  
295 to those changes made necessary by the addition of such alternate points of delivery in or north of  
296 the Delta; Provided, That the Contracting Officer's use of the Harvey O. Banks Pumping Plant to  
297 deliver Project Water does not trigger this right of amendment.

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

314 (e) The Contractor shall comply with requirements applicable to the Contractor  
315 in biological opinion(s) prepared as a result of a consultation regarding the execution of this  
316 Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as



317 amended, that are within the Contractor's legal authority to implement. The Existing Contract,  
318 which evidences in excess of 50 years of diversions for irrigation and/or M&I purposes of the  
319 quantities of water provided in subdivision (a) of Article 3 of this Contract, will be considered in  
320 developing an appropriate baseline for biological assessment(s) prepared pursuant to the ESA, and  
321 any other needed environmental review. Nothing herein shall be construed to prevent the  
322 Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with  
323 respect to any biological opinion or other environmental documentation referred to in this Article.

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

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

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

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

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

362 in such a proceeding; Provided further, That in such proceedings the Contracting Officer shall  
363 recognize the Contractor has a legal right under the terms of this Contract to use Project Water.

364 TIME FOR DELIVERY OF WATER

365 4. (a) On or about February 20 of each Calendar Year, the Contracting Officer shall  
366 announce the Contracting Officer's expected declaration of the Water Made Available. Such  
367 declaration will be expressed in terms of both Water Made Available and the Recent Historic  
368 Average and will be updated monthly, and more frequently if necessary, based on then-current  
369 operational and hydrologic conditions and a new declaration with changes, if any, to the Water  
370 Made Available will be made. The Contracting Officer shall provide forecasts of Project operations  
371 and the basis of the estimate, with relevant supporting information, upon the written request of the  
372 Contractor. Concurrently with the declaration of the Water Made Available, the Contracting  
373 Officer shall provide the Contractor with the updated Recent Historic Average.

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

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

383 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this  
384 Contract, the United States shall deliver Project Water to the Contractor in accordance with the

385 initial schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any  
386 written revision(s) thereto, satisfactory to the Contracting Officer, submitted within a reasonable  
387 time prior to the date(s) on which the requested change(s) is/are to be implemented.

388 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

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

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

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

408 measurements and shall take any necessary steps to adjust any errors appearing therein. For any  
409 period of time when accurate measurements have not been made, the Contracting Officer shall  
410 consult with the Contractor and the appropriate Operating Non-Federal Entity, if any, prior to  
411 making a final determination of the quantity delivered for that period of time.

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

428 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

429 6. (a) The Contractor has established a measuring program satisfactory to the  
430 Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation

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

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

454 Contracting Officer does not respond in such time, they shall be deemed adequate. If the  
455 Contracting Officer notifies the Contractor that the measuring devices or methods are inadequate,  
456 the parties shall within 60 days following the Contracting Officer's response, negotiate in good faith  
457 the earliest practicable date by which the Contractor shall modify said measuring devices and/or  
458 measuring methods as required by the Contracting Officer to ensure compliance with subdivision  
459 (a) of this Article.

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

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

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

469 RATES AND METHOD OF PAYMENT FOR WATER

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

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

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

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

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

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



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

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

523 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be consistent  
524 with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery  
525 report for the subject month prepared by the Operating Non-Federal Entity or, if there is no  
526 Operating Non-Federal Entity, by the Contracting Officer. The water delivery report shall be  
527 deemed a bill for the payment of Charges and the applicable Tiered Pricing Component for Water  
528 Delivered. Adjustment for overpayment or underpayment of Charges shall be made through the  
529 adjustment of payments due to the United States for Charges for the next month. Any amount to be  
530 paid for past due payment of Charges and the Tiered Pricing Component shall be computed  
531 pursuant to Article 20 of this Contract.

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

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

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

544 (h) The Contracting Officer shall keep its accounts pertaining to the  
545 administration of the financial terms and conditions of its long-term contracts, in accordance with

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

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

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

569 Water Rate, whichever is applicable. For all Water Delivered pursuant to subdivision (a) of Article  
570 3 of this Contract which is in excess of 80 percent of the Contract Total, this increment shall be  
571 deemed to be divided between Irrigation Water and M&I Water in the same proportion as actual  
572 deliveries of each bear to the cumulative total Water Delivered.

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

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

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

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

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

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

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

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

619 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

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

623 SALES, TRANSFERS, OR EXCHANGES OF WATER

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

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

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

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

659

APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

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

676

TEMPORARY REDUCTIONS--RETURN FLOWS

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



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

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

699 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

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

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

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

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

733 (4) The available supply shall be multiplied by the Contractor's  
734 proportionate share and the result shall be the quantity of Project Water made available by the  
735 United States to the Contractor for the relevant Year in accordance with the schedule developed by  
736 the Contracting Officer under subdivision (c)(1) of this Article 12, but in no event shall such  
737 amount exceed the Contract Total. In the event the Contracting Officer subsequently determines  
738 that the Contracting Officer can increase or needs to decrease the available supply for delivery from  
739 Delta Division Facilities to long-term water service and repayment Contractors during the relevant  
740 Year, such additions or reductions to the available supply shall be apportioned consistent with  
741 subparagraphs (1) through (4), inclusive.

742 (d) By entering into this Contract, the Contractor does not waive any legal rights  
743 or remedies it may have to file or participate in any administrative or judicial proceeding contesting  
744 (i) the sufficiency of the Central Valley Project M&I Water Shortage Policy; (ii) the substance of  
745 such a policy; (iii) the applicability of such a policy; or (iv) the manner in which such policy is  
746 implemented in order to allocate Project Water between municipal and industrial and irrigation  
747 purposes; Provided, That the Contractor has commenced any such judicial challenge or any  
748 administrative procedures necessary to institute any judicial challenge within six months of the

749 policy becoming final. By agreeing to the foregoing, the Contracting Officer does not waive any  
750 legal defenses or remedies that it may have to assert in such a proceeding. Nothing contained herein  
751 shall be interpreted to validate or invalidate the Central Valley Project M&I Water Shortage Policy.

752 UNAVOIDABLE GROUNDWATER PERCOLATION

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

757 RULES AND REGULATIONS

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

762 WATER AND AIR POLLUTION CONTROL

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

766 QUALITY OF WATER

767  
768 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to  
769 this Contract shall be operated and maintained to enable the United States to deliver Project Water  
770 to the Contractor in accordance with the water quality standards specified in subsection 2(b) of the  
771 Act of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100  
772 Stat. 3050) or other existing Federal laws. The United States is under no obligation to construct or  
773 furnish water treatment facilities to maintain or to improve the quality of Water Delivered to the  
774 Contractor pursuant to this Contract. The United States does not warrant the quality of Water  
775 Delivered to the Contractor pursuant to this Contract.

659

APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

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

676

TEMPORARY REDUCTIONS--RETURN FLOWS

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

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

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

699 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

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

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

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

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

733                   (4)     The available supply shall be multiplied by the Contractor's  
734 proportionate share and the result shall be the quantity of Project Water made available by the  
735 United States to the Contractor for the relevant Year in accordance with the schedule developed by  
736 the Contracting Officer under subdivision (c)(1) of this Article 12, but in no event shall such  
737 amount exceed the Contract Total. In the event the Contracting Officer subsequently determines  
738 that the Contracting Officer can increase or needs to decrease the available supply for delivery from  
739 Delta Division Facilities to long-term water service and repayment Contractors during the relevant  
740 Year, such additions or reductions to the available supply shall be apportioned consistent with  
741 subparagraphs (1) through (4), inclusive.

742                   (d)     By entering into this Contract, the Contractor does not waive any legal rights  
743 or remedies it may have to file or participate in any administrative or judicial proceeding contesting  
744 (i) the sufficiency of the Central Valley Project M&I Water Shortage Policy; (ii) the substance of  
745 such a policy; (iii) the applicability of such a policy; or (iv) the manner in which such policy is  
746 implemented in order to allocate Project Water between municipal and industrial and irrigation  
747 purposes; Provided, That the Contractor has commenced any such judicial challenge or any  
748 administrative procedures necessary to institute any judicial challenge within six months of the



749 policy becoming final. By agreeing to the foregoing, the Contracting Officer does not waive any  
750 legal defenses or remedies that it may have to assert in such a proceeding. Nothing contained herein  
751 shall be interpreted to validate or invalidate the Central Valley Project M&I Water Shortage Policy.

752 UNAVOIDABLE GROUNDWATER PERCOLATION

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

757 RULES AND REGULATIONS

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

762 WATER AND AIR POLLUTION CONTROL

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

766 QUALITY OF WATER

767  
768 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to  
769 this Contract shall be operated and maintained to enable the United States to deliver Project Water  
770 to the Contractor in accordance with the water quality standards specified in subsection 2(b) of the  
771 Act of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100  
772 Stat. 3050) or other existing Federal laws. The United States is under no obligation to construct or  
773 furnish water treatment facilities to maintain or to improve the quality of Water Delivered to the  
774 Contractor pursuant to this Contract. The United States does not warrant the quality of Water  
775 Delivered to the Contractor pursuant to this Contract.

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

782 (c) Omitted.

783 WATER ACQUIRED BY THE CONTRACTOR  
784 OTHER THAN FROM THE UNITED STATES

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

800 the Contracting Officer will calculate annually the cost to the Federal Government, including  
801 interest of storing or delivering non-Project water, which for purposes of this Contract shall be  
802 determined as follows: The quotient shall be the unpaid distribution system costs divided by the  
803 total irrigable acreage within the Contractor's Service Area. The incremental fee per acre is the  
804 mathematical result of such quotient times the interest rate determined using Section 202 (3) of the  
805 Act of October 12, 1982 (96 Stat. 1263). Such incremental fee will be charged to each acre of  
806 excess or full cost land within the Contractor's Service Area that receives non-Project water through  
807 Federally financed or constructed facilities. The incremental fee calculation methodology will  
808 continue during the term of this Contract absent the promulgation of a contrary Reclamation-wide  
809 rule, regulation, or policy adopted after the Contractor has been afforded the opportunity to review  
810 and comment on the proposed rule, regulation, or policy. If such rule, regulation, or policy is  
811 adopted it shall supersede this provision.

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

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

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

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

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

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

845 available by the Contracting Officer for conveyance and transportation of non-Project water prior to  
846 any such remaining capacity being made available to non-Project contractors.

847 OPINIONS AND DETERMINATIONS

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

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

862 COORDINATION AND COOPERATION

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

868 Project Water supply, the allocation of Project Water supply, and Project financial matters  
869 including, but not limited to, budget issues. The communication, coordination, and cooperation  
870 provided for hereunder shall extend to all provisions of this Contract. Each party shall retain  
871 exclusive decision making authority for all actions, opinions, and determinations to be made by the  
872 respective party.

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

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

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

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

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

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

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

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

901 CHARGES FOR DELINQUENT PAYMENTS

902 20. (a) The Contractor shall be subject to interest, administrative and penalty charges  
903 on delinquent installments or payments. When a payment is not received by the due date, the  
904 Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date.  
905 When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative  
906 charge to cover additional costs of billing and processing the delinquent payment. When a payment  
907 is delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six  
908 (6%) percent per year for each day the payment is delinquent beyond the due date. Further, the  
909 Contractor shall pay any fees incurred for debt collection services associated with a delinquent  
910 payment.

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

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

919 EQUAL OPPORTUNITY

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

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

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

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

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

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

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

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



961 subcontractor or vendor as a result of such direction, the Contractor may request the United States  
962 to enter into such litigation to protect the interests of the United States.

963 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

976 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

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

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

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

995

PRIVACY ACT COMPLIANCE

996 24. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a)  
 997 (the Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et  
 998 seq.) in maintaining Landholder acreage certification and reporting records, required to be  
 999 submitted to the Contractor for compliance with Sections 206 and 228 of the Reclamation Reform  
 1000 Act of 1982 (96 Stat. 1266), and pursuant to 43 CFR 426.18.

1001 (b) With respect to the application and administration of the criminal penalty  
 1002 provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible  
 1003 for maintaining the certification and reporting records referenced in (a) above are considered to be  
 1004 employees of the Department of the Interior. See 5 U.S.C. 552a(m).

1005 (c) The Contracting Officer or a designated representative shall provide the  
 1006 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau of  
 1007 Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior,  
 1008 Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information  
 1009 contained in the Landholder's certification and reporting records.

1010 (d) The Contracting Officer shall designate a full-time employee of the Bureau of  
 1011 Reclamation to be the System Manager who shall be responsible for making decisions on denials  
 1012 pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is  
 1013 authorized to grant requests by individuals for access to their own records.

1014 (e) The Contractor shall forward promptly to the System Manager each proposed  
 1015 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR  
 1016 2.71; notify the requester accordingly of such referral; and provide the System Manager with  
 1017 information and records necessary to prepare an appropriate response to the requester. These  
 1018 requirements do not apply to individuals seeking access to their own certification and reporting  
 1019 forms filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the  
 1020 Privacy Act as a basis for the request.

1021 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1022 25. In addition to all other payments to be made by the Contractor pursuant to this  
 1023 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and  
 1024 detailed statement submitted by the Contracting Officer to the Contractor for such specific items of  
 1025 direct cost incurred by the United States for work requested by the Contractor associated with this  
 1026 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and  
 1027 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in

1028 writing in advance by the Contractor. This Article shall not apply to costs for routine contract  
1029 administration.

1030 WATER CONSERVATION

1031 26. (a) Prior to the delivery of water provided from or conveyed through Federally  
1032 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be  
1033 implementing an effective water conservation and efficiency program based on the Contractor's  
1034 water conservation plan that has been determined by the Contracting Officer to meet the  
1035 conservation and efficiency criteria for evaluating water conservation plans established under  
1036 Federal law. The water conservation and efficiency program shall contain definite water  
1037 conservation objectives, appropriate economically feasible water conservation measures, and time  
1038 schedules for meeting those objectives. Continued Project Water delivery pursuant to this Contract  
1039 shall be contingent upon the Contractor's continued implementation of such water conservation  
1040 program. In the event the Contractor's water conservation plan or any revised water conservation  
1041 plan completed pursuant to subdivision (d) of Article 26 of this Contract have not yet been  
1042 determined by the Contracting Officer to meet such criteria, due to circumstances which the  
1043 Contracting Officer determines are beyond the control of the Contractor, water deliveries shall be  
1044 made under this Contract so long as the Contractor diligently works with the Contracting Officer to  
1045 obtain such determination at the earliest practicable date, and thereafter the Contractor immediately  
1046 begins implementing its water conservation and efficiency program in accordance with the time  
1047 schedules therein.

1048 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of  
1049 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall implement  
1050 the Best Management Practices identified by the time frames issued by the California Urban Water

1051 Conservation Council for such M&I Water unless any such practice is determined by the  
1052 Contracting Officer to be inappropriate for the Contractor.

1053 (c) The Contractor shall submit to the Contracting Officer a report on the status  
1054 of its implementation of the water conservation plan on the reporting dates specified in the then  
1055 existing conservation and efficiency criteria established under Federal law.

1056 (d) At five-year intervals, the Contractor shall revise its water conservation plan  
1057 to reflect the then current conservation and efficiency criteria for evaluating water conservation  
1058 plans established under Federal law and submit such revised water management plan to the  
1059 Contracting Officer for review and evaluation. The Contracting Officer will then determine if the  
1060 water conservation plan meets Reclamation's then current conservation and efficiency criteria for  
1061 evaluating water conservation plans established under Federal law.

1062 (e) If the Contractor is engaged in direct groundwater recharge, such activity  
1063 shall be described in the Contractor's water conservation plan.

1064 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1065 27. Except as specifically provided in Article 17 of this Contract, the provisions of this  
1066 Contract shall not be applicable to or affect non-project water or water rights now owned or  
1067 hereafter acquired by the Contractor or any user of such water within the Contractor's Service Area.  
1068 Any such water shall not be considered Project Water under this Contract. In addition, this Contract  
1069 shall not be construed as limiting or curtailing any rights which the Contractor or any water user  
1070 within the Contractor's Service Area acquires or has available under any other contract pursuant to  
1071 Federal Reclamation law.

1072            OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

1073            28.    (a)    The O&M of a portion of the Project facilities which serve the Contractor,  
1074            and responsibility for funding a portion of the costs of such O&M, have been transferred to the San  
1075            Luis & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate agreement  
1076            (8-07-20-X0354) between the United States and the Operating Non-Federal Entity San Luis  
1077            & Delta-Mendota Water Authority. That separate agreement shall not interfere with or affect the  
1078            rights or obligations of the Contractor or the United States hereunder.

1079                    (b)    The Contracting Officer has previously notified the Contractor in writing that  
1080            the Operation and Maintenance of a portion of the Project facilities which serve the Contractor has  
1081            been transferred to the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority,  
1082            and therefore, the Contractor shall pay directly to the Operating Non-Federal Entity San Luis &  
1083            Delta-Mendota Water Authority, or to any successor approved by the Contracting Officer under the  
1084            terms and conditions of the separate agreement between the United States and the Operating Non-  
1085            Federal Entity San Luis & Delta-Mendota Water Authority described in subdivision (a) of this  
1086            Article, all rates, charges, or assessments of any kind, including any assessment for reserve funds,  
1087            which the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or such  
1088            successor determines, sets, or establishes for the O&M of the portion of the Project facilities  
1089            operated and maintained by the Operating Non-Federal Entity San Luis & Delta-Mendota Water  
1090            Authority or such successor. Such direct payments to the Operating Non-Federal Entity San Luis &  
1091            Delta-Mendota Water Authority or such successor shall not relieve the Contractor of its obligation  
1092            to pay directly to the United States the Contractor's share of the Project Rates, Charges, and Tiered  
1093            Pricing Component except to the extent the Operating Non-Federal Entity San Luis &

1094 Delta-Mendota Water Authority collects payments on behalf of the United States in accordance  
1095 with the separate agreement identified in subdivision (a) of this Article.

1096 (c) For so long as the O&M of any portion of the Project facilities serving the  
1097 Contractor is performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water  
1098 Authority, or any successor thereto, the Contracting Officer shall adjust those components of the  
1099 Rates for Water Delivered under this Contract representing the cost associated with the activity  
1100 being performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority  
1101 or its successor.

1102 (d) In the event the O&M of the Project facilities operated and maintained by the  
1103 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority is re-assumed by the  
1104 United States during the term of this Contract, the Contracting Officer shall so notify the  
1105 Contractor, in writing, and present to the Contractor a revised Exhibit "B" which shall include the  
1106 portion of the Rates to be paid by the Contractor for Project Water under this Contract representing  
1107 the O&M costs of the portion of such Project facilities which have been re-assumed. The  
1108 Contractor shall, thereafter, in the absence of written notification from the Contracting Officer to the  
1109 contrary, pay the Rates, Charges, and Tiered Pricing Component specified in the revised Exhibit  
1110 "B" directly to the United States in compliance with Article 7 of this Contract.

1111 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1112 29. The expenditure or advance of any money or the performance of any obligation of  
1113 the United States under this Contract shall be contingent upon appropriation or allotment of funds.  
1114 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations  
1115 under this Contract. No liability shall accrue to the United States in case funds are not appropriated  
1116 or allotted.

1117 BOOKS, RECORDS, AND REPORTS

1118 30. (a) The Contractor shall establish and maintain accounts and other books and  
1119 records pertaining to administration of the terms and conditions of this Contract, including: the

1120 Contractor's financial transactions, water supply data, and Project land and right-of-way  
1121 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use  
1122 data; and other matters that the Contracting Officer may require. Reports thereon shall be furnished  
1123 to the Contracting Officer in such form and on such date or dates as the Contracting Officer may  
1124 require. Subject to applicable Federal laws and regulations, each party to this Contract shall have  
1125 the right during office hours to examine and make copies of the other party's books and records  
1126 relating to matters covered by this Contract.

1127 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,  
1128 records, or other information shall be requested from the Contractor by the Contracting Officer  
1129 unless such books, records, or information are reasonably related to the administration or  
1130 performance of this Contract. Any such request shall allow the Contractor a reasonable period of  
1131 time within which to provide the requested books, records, or information.

1132 (c) At such time as the Contractor provides information to the Contracting  
1133 Officer pursuant to subdivision (a) of this Article, a copy of such information shall be provided to  
1134 the Operating Non-Federal Entity.

1135 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1136 31. (a) The provisions of this Contract shall apply to and bind the successors and  
1137 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest  
1138 therein shall be valid until approved in writing by the Contracting Officer.

1139 (b) The assignment of any right or interest in this Contract by either party shall  
1140 not interfere with the rights or obligations of the other party to this Contract absent the written  
1141 concurrence of said other party.

1142 (c) The Contracting Officer shall not unreasonably condition or withhold  
1143 approval of any proposed assignment.

1144 SEVERABILITY

1145 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor  
1146 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an

1147 association or other form of organization whose primary function is to represent parties to Project  
1148 contracts, brings an action in a court of competent jurisdiction challenging the legality or  
1149 enforceability of a provision included in this Contract and said person, entity, association, or  
1150 organization obtains a final court decision holding that such provision is legally invalid or  
1151 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the  
1152 parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court  
1153 decision identify by mutual agreement the provisions in this Contract which must be revised and (ii)  
1154 within three months thereafter promptly agree on the appropriate revision(s). The time periods  
1155 specified above may be extended by mutual agreement of the parties. Pending the completion of  
1156 the actions designated above, to the extent it can do so without violating any applicable provisions  
1157 of law, the United States shall continue to make the quantities of Project Water specified in this  
1158 Contract available to the Contractor pursuant to the provisions of this Contract which were not  
1159 found to be legally invalid or unenforceable in the final court decision.

#### 1160 RESOLUTION OF DISPUTES

1161 33. Should any dispute arise concerning any provisions of this Contract, or the parties'  
1162 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the  
1163 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring  
1164 any matter to the Department of Justice, the party shall provide to the other party 30 days' written  
1165 notice of the intent to take such action; Provided, That such notice shall not be required where a  
1166 delay in commencing an action would prejudice the interests of the party that intends to file suit.  
1167 During the 30-day notice period, the Contractor and the Contracting Officer shall meet and confer in  
1168 an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to  
1169 waive or abridge any right or remedy that the Contractor or the United States may have.



1170

OFFICIALS NOT TO BENEFIT

1171 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the  
1172 Contractor shall benefit from this Contract other than as a water user or landowner in the same  
1173 manner as other water users or landowners.

1174

CHANGES IN CONTRACTOR'S SERVICE AREA

1175 35. (a) While this Contract is in effect, no change may be made in the Contractor's  
1176 Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,  
1177 except upon the Contracting Officer's written consent.

1178 (b) Within 30 days of receipt of a request for such a change, the Contracting  
1179 Officer will notify the Contractor of any additional information required by the Contracting Officer  
1180 for processing said request, and both parties will meet to establish a mutually agreeable schedule for  
1181 timely completion of the process. Such process will analyze whether the proposed change is likely  
1182 to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability  
1183 of the Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-  
1184 constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project  
1185 Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply  
1186 with the NEPA and the ESA. The Contractor will be responsible for all costs incurred by the  
1187 Contracting Officer in this process, and such costs will be paid in accordance with Article 25 of this  
1188 Contract.

1189

FEDERAL LAWS

1190 36. By entering into this Contract, the Contractor does not waive its rights to contest the  
1191 validity or application in connection with the performance of the terms and conditions of this  
1192 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the  
1193 terms and conditions of this Contract unless and until relief from application of such Federal law or

1194 regulation to the implementing provision of the Contract is granted by a court of competent  
1195 jurisdiction.

1196 NOTICES

1197 37. Any notice, demand, or request authorized or required by this Contract shall be  
1198 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered  
1199 to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, California  
1200 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board  
1201 of Directors of the Byron-Bethany Irrigation District, P. O. Box 160, Byron, California 94514. The  
1202 designation of the addressee or the address may be changed by notice given in the same manner as  
1203 provided in this Article for other notices.

1204 CONFIRMATION OF CONTRACT

1205 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a  
1206 decree of a court of competent jurisdiction of the State of California, confirming the execution of  
1207 this Contract. The Contractor shall furnish the United States a certified copy of the final decree, the  
1208 validation proceedings, and all pertinent supporting records of the court approving and confirming  
1209 this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

1210 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and  
1211 year first above written.

1212 THE UNITED STATES OF AMERICA

1213 APPROVED AS TO LEGAL  
1214 FORM AND SUFFICIENCY  
1215 *James E. Smith*  
OFFICE OF REGIONAL SOLICITOR  
DEPARTMENT OF THE INTERIOR

By: *[Signature]*  
Regional Director, Mid-Pacific Region  
Bureau of Reclamation

1216 (SEAL)

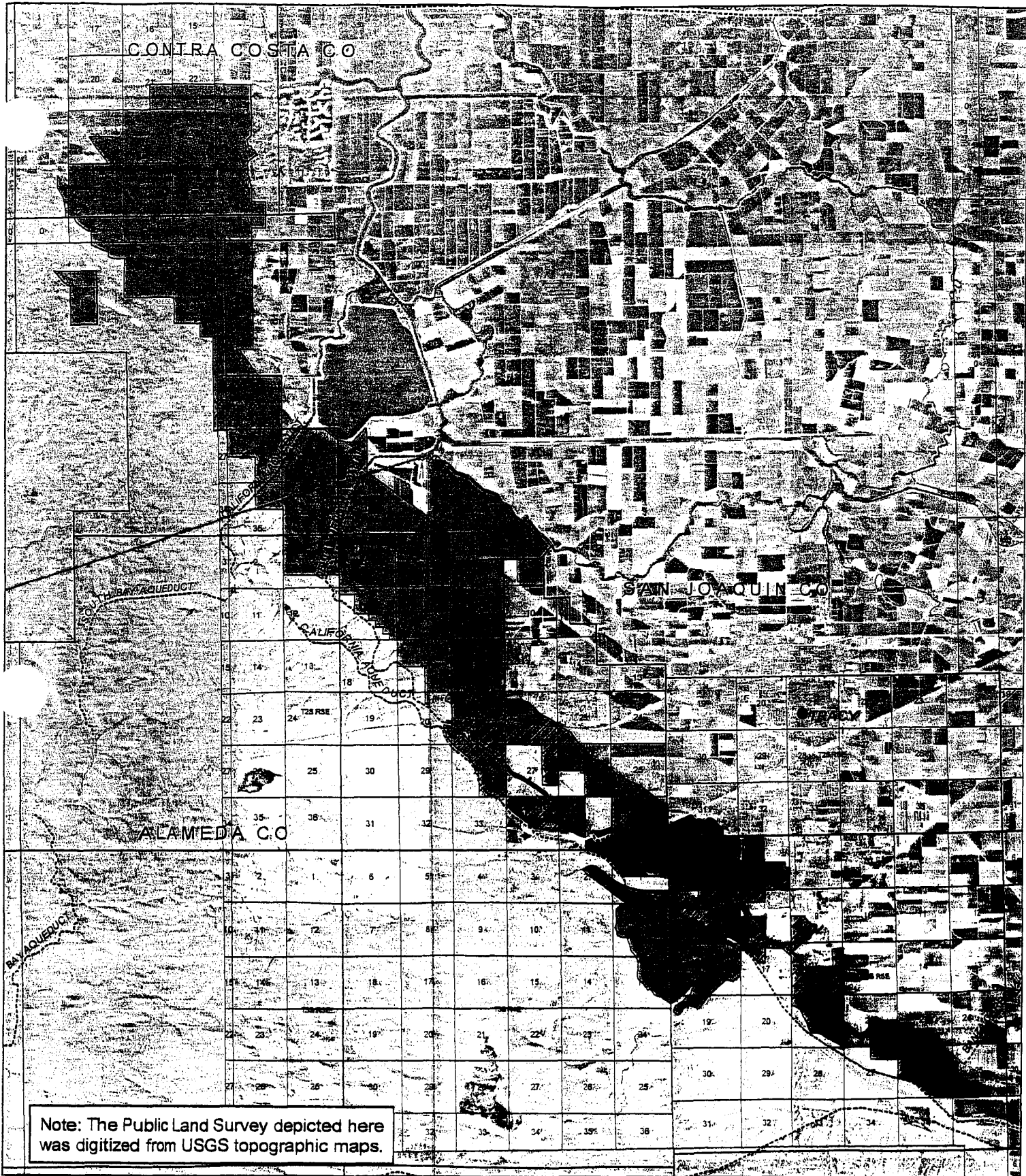
1217 BYRON-BETHANY IRRIGATION DISTRICT

1218 By: *[Signature]*  
1219 President of the Board of Directors

1220 Attest:

1221 By: *[Signature]*  
1222 Secretary of the Board of Directors



1223 (H:\pub 440\LTRC\Final Draft LTRC's - Fresno, Tracy\09-29-04 Byron Bethany WD Final Draft  
1224 LTRC with exhibits.doc)

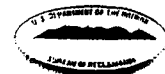
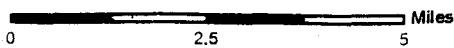


# Byron-Bethany Irrigation District

Contract No. 14-06-200-785-LTR1

EXHIBIT A

-  Contractor's Service Area
-  District Boundary



Date: March 14, 2005  
 File Name: N:\districts\contracts\byron\_bethany\byron\_bethany.mxd

214-202-804

**EXHIBIT B**  
**BYRON BETHANY IRRIGATION DISTRICT**  
**Water Rates and Charges**

|  | <u>2005 Rates Per Acre-Foot</u> |                      |
|--|---------------------------------|----------------------|
|  | <u>Irrigation Water</u>         | <u>M&amp;I Water</u> |
| <b>COST-OF-SERVICE (COS) RATES:</b>  |                                 |                      |
| Capital Rates:   | \$ 10.37                        | \$ 4.00              |
| <b>O&amp;M Rates:</b>  |                                 |                      |
| Water Marketing  | \$ 6.61                         | \$ 3.89              |
| Storage  | \$ 5.93                         | \$ 6.67              |
| Conveyance   | *                               | *                    |
| Conveyance Pumping   | *                               | *                    |
| <b>Deficit Rates:</b>  |                                 |                      |
| Non-Interest Bearing   |                                 |                      |
| Interest Bearing   |                                 | \$                   |
| CFO/PFR Adjustment Rate <sup>1</sup>   | \$ 1.55                         | \$ 1.46              |
| <b><u>TOTAL COST-OF-SERVICE RATES (COS):</u></b>   | <b>\$24.46</b>                  | <b>\$16.02</b>       |
| <b><u>FULL-COST RATES:</u></b>   |                                 |                      |
| Section 202(3) Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981.                      | \$36.04                         |                      |
| <b><u>205 FULL-COST RATES:</u></b>   |                                 |                      |
| Section 205(a)(3) Rate is applicable to a Qualified Recipient or to a Limited Recipient that did <u>not</u> receive irrigation water on or before October 1, 1981. | \$43.13                         |                      |
| Tiered Pricing Component >80% <=90% of Contract  |                                 |                      |
| Total [Full Cost Rate - COS Rate /2]:  | \$ 5.79                         |                      |
| Tiered Pricing Component >90% of Contract  |                                 |                      |
| Total [Full Cost Rate - COS Rate]:   | \$11.58                         |                      |
| <b>SURCHARGES UNDER P.L. 102-575</b>   |                                 |                      |
| <b>TO RESTORATION FUND**</b>   | \$ 7.93                         | \$15.87              |

RECENT HISTORIC USE as defined in the CVP M&I Water Shortage Policy is 800 acre-feet.

- \* Conveyance and Conveyance Pumping Operation and maintenance costs were removed for ratesetting purposes and are to be billed directly to the water authorities.
- \*\* The surcharges are payments in addition to the water rates and were determined pursuant to Title XXXIV of Public Law 102-575. Restoration fund surcharges under P.L. 102-575 are on a fiscal year basis (10/1-9/30).

<sup>1</sup> Rate represents Chief Financial Officers (CFO) Adjustment and Provision for Replacement (PFR) credit for option 2 cost deferral to be distributed over 5-year period beginning with 2003 water rates.

**Resolution 2005-22**

**RESOLUTION OF BYRON BETHANY IRRIGATION DISTRICT AUTHORIZING EXECUTION OF LONG-TERM RENEWAL CONTRACT FOR CENTRAL VALLEY PROJECT WATER SERVICE AND DIRECTING STAFF TO FILE NOTICE OF EXEMPTION PURSUANT TO CALIFORNIA ENVIRONMENTAL QUALITY ACT**

WHEREAS, Plain View Water District (PVWD) entered into Contract No. 14-07-200-785 (Original Contract) between the United States Bureau of Reclamation (Reclamation) and Plain View Water District providing for the delivery of up to 20,600 acre-feet of water diverted through Central Valley Project (CVP) facilities and PVWD's distribution system;

WHEREAS, the Original Contract expired on February 28, 1994 and PVWD entered into successive interim contracts with Reclamation for each of the years since the expiration of the Original Contract (collectively referred to as Interim Renewal Contracts), providing for continued water service in accordance with substantially the same terms and conditions, except price and length, as the Original Contract;

WHEREAS, on August 12, 2004, PVWD and Byron Bethany Irrigation District (BBID) consolidated by dissolving PVWD and reorganizing the territory into BBID and thereby establishing a CVP service area, inclusive of all lands formerly part of PVWD, within the boundaries of BBID;

WHEREAS, the United States has offered BBID a Long-Term Renewal Contract (Long-Term Renewal Contract) for a term of twenty-five years on substantially the same terms and conditions as the most recent Interim Renewal Contracts, a copy of which is attached hereto as Exhibit A and incorporated by reference;

WHEREAS, BBID has fully utilized for reasonable beneficial use, all water provided under the Original Contract and the Interim Renewal Contracts by receiving and delivering such water to lands within the CVP service area of BBID or putting water to beneficial use through conservation and transfer in accordance with California law;

WHEREAS, BBID has a continuing need for water over the next twenty-five years as documented in the Water Needs Assessment, prepared by Reclamation in association with the renewal of BBID's Long-Term Renewal Contract and which is attached hereto as Exhibit B;

WHEREAS, it is imperative to BBID and its landowners that BBID renew on a long-term basis, its water service contract with the United States of America pursuant to the Act of Congress of July 2, 1956 (70 Stat. 483) and the Act of Congress of October 30, 1992 (96 Stat.

1262), in order to provide continued delivery of the same quantity of water to lands within BBID for a term of twenty-five years;

WHEREAS, the Board has reviewed the terms of the proposed Long-Term Renewal Contract, which provides that water will be diverted through the same Central Valley Project facilities as, the water delivered under the Original Contract and the Interim Renewal Contracts;

WHEREAS, BBID will distribute water received through the same distribution system as used for the Original Contract and Interim Renewal Contract and will provide water under such renewal to the same lands within the CVP service area of BBID;

WHEREAS, BBID has copies of contracts, water delivery reports, crop information and other data supporting these findings;

WHEREAS, the Board has reviewed staff's Memorandum regarding Preliminary Environmental Assessment, Long-Term Renewal Contract No. 14-06-200-785-LTCR1, which is on file with the Secretary of the Board, and which concludes that BBID's actions in approving the Long-Term Renewal Contract is a project that is exempt from further proceedings pursuant to the California Environmental Quality Act (CEQA) for the reasons set forth in the memorandum.

NOW THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The facts set forth in the recitals above and in the referenced documents are true and correct, and the Board of Directors so finds and determines.
2. The Long-Term Renewal Contract in substantially the form presented to the Board and on file with the Secretary is approved.
3. The President and Secretary of BBID are authorized and directed to execute the Long-Term Renewal Contract in substantially the form presented to the Board, subject to such additions, deletions and revisions as the executing officers may approve prior to execution. Execution provides conclusive proof of such approval.
4. The Board of Directors further finds that:
  - A. Approval of the Long-Term Contract is statutorily exempt from further compliance with CEQA as provided in Title 14 of the California Code of Regulations (State CEQA Guidelines) section 15261, because it is merely the continuation of a project approved, funded and fully operated prior to November 23, 1970, and no modification or

alteration is proposed in the Central Valley Project, BBID distribution system or the amount of water delivered.

B. Insofar as the Long-Term Renewal Contract calls for changes in rates, such changes are statutorily exempt from further compliance with CEQA, as provided in State CEQA Guidelines section 15273(a).

C. Approval of the Long-Term Renewal Contract is categorically exempt from further proceedings under CEQA pursuant to State CEQA Guidelines section 15301, because it merely provides for the continued operation of an existing facility.

D. Approval of the Long-Term Renewal Project will not have any significant effects on the environment that make categorical exemptions inapplicable pursuant to State CEQA Guidelines section 15300.2.

5. The General Manager of BBID is authorized and directed to prepare and file within 5 days a Notice of Exemption with the County Clerk of San Joaquin County for BBID's Long-Term Renewal Contract for Central Valley Project Water Service, in accordance with State CEQA Guidelines section 15062(b).

6. BBID's officers, staff and consultants are authorized and directed to take all additional actions deemed necessary or appropriate to carry out the intent of this Resolution and to ensure continued water service to BBID and its water users, including to file, as appropriate, a validation action pursuant to Code of Civil Procedure section 860 et seq.

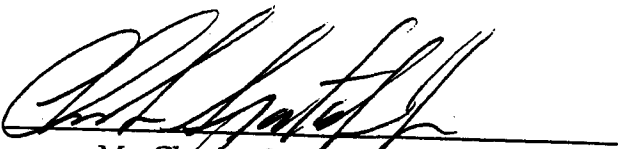
PASSED AND ADOPTED at a Regular Meeting of the Board of Directors of the BYRON BETHANY IRRIGATION DISTRICT this 21<sup>st</sup> day of June, 2005, by the following vote:

AYES: Brown, Clemons, Franco, Gilbert, Kagehiro, Spatafore, Tennant

NOES:

ABSTAINED:

ABSENT: Maggiore, Musco



Mr. Charles Spatafore, Jr., President



Secretary's Certification

I, Rick Gilmore, Secretary of the Board of Directors of the Byron Bethany Irrigation District, do hereby certify that the foregoing Resolution is a true and correct copy entered into the Minutes of the Regular Board Meeting of June 21, 2005, at which time a quorum was present, and no motion to amend or rescind the above resolution was made.



\_\_\_\_\_  
Rick Gilmore, Secretary