

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

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

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Exhibit A - Map of Contractor's Service Area

Exhibit B - Rates and Charges

1 UNITED STATES  
2 DEPARTMENT OF THE INTERIOR  
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5 LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES  
6 AND  
7 RECLAMATION DISTRICT NO. 1606  
8 PROVIDING FOR PROJECT WATER SERVICE  
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10 THIS CONTRACT, made this 25<sup>th</sup> day of February, 2005, in pursuance  
11 generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto,  
12 including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and  
13 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat.  
14 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat.  
15 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively  
16 hereinafter referred to as Federal Reclamation law, between THE UNITED STATES OF AMERICA,  
17 hereinafter referred to as the United States, and RECLAMATION DISTRICT NO. 1606, hereinafter  
18 referred to as the Contractor, a public agency of the State of California, duly organized, existing, and  
19 acting pursuant to the laws thereof;

20 WITNESSETH, That:

21 EXPLANATORY RECITALS

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 flood  
24 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 San  
27 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 terms  
30 of this Contract; and

31 [3<sup>rd</sup>] WHEREAS, the rights to Project Water were acquired by the United States pursuant to  
32 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. 14-06-200-3802A, dated April 12, 1968, which established terms for the delivery of 342 acre-feet  
35 of Schedule 2 water as a permanent adjustment and settlement of the Contractor's asserted claims of  
36 rights to water in Fresno Slough, tributary to the San Joaquin River, in fulfillment of such rights; and

37 [5<sup>th</sup>] WHEREAS, Schedule 2 water is not the subject of this Contract and will continue to  
38 be delivered and administered under the terms and conditions of Contract No. 14-06-200-3802A; and

39 [5.1] WHEREAS, Contract No. 14-06-200-3802A also established the terms for the  
40 delivery of 228 acre-feet of supplemental water, hereinafter referred to as Project Water, to the  
41 Contractor from Delta Division facilities from April 12, 1968, through December 23, 2003; and

42 [5.2] WHEREAS, the Contractor and the United States have pursuant to subsection  
43 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into  
44 interim renewal contract(s) identified as Contract No(s). 14-06-200-3802-A-IR1 and 14-06-200-3802-  
45 A-IR2, the current of which is hereinafter referred to as the Existing Contract, which provided for the  
46 delivery of Project Water to the Contractor from March 1, 2004, through February 28, 2006; and

47 [6<sup>th</sup>] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of the  
48 Existing Contract following completion of appropriate environmental documentation, including a  
49 programmatic environmental impact statement (PEIS) pursuant to the National Environmental Policy  
50 Act (NEPA) analyzing the direct and indirect impacts and benefits of implementing the CVPIA and  
51 the potential renewal of all existing contracts for Project Water; and

52 [7<sup>th</sup>] WHEREAS, the United States has completed the PEIS and all other appropriate  
53 environmental review necessary to provide for long-term renewal of the terms and conditions for  
54 Project Water service under the Existing Contract; and

55 [8<sup>th</sup>] WHEREAS, the Contractor has requested a long-term renewal contract for Project  
56 Water service pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws  
57 of the State of California; and

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

60           [10<sup>th</sup>]  WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting  
61 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and  
62 beneficial use and/or has demonstrated projected future demand for water use such that the Contractor  
63 has the capability and expects to utilize fully for reasonable and beneficial use the quantity of Project  
64 Water to be made available to it pursuant to this Contract; and

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

68           [12<sup>th</sup>]  WHEREAS, the economies of regions within the Project, including the Contractor's,  
69 depend upon the continued availability of water, including water service from the Project; and

70           [13<sup>th</sup>]  WHEREAS, the Secretary intends through coordination, cooperation, and partnerships  
71 to pursue measures to improve water supply, water quality, and reliability of the Project for all Project  
72 purposes; and

73           [14<sup>th</sup>]  WHEREAS, the mutual goals of the United States and the Contractor include: to  
74 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment of  
75 the Project as required by law; to guard reasonably against Project Water shortages; to achieve a  
76 reasonable balance among competing demands for use of Project Water; and to comply with all

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

79 [15<sup>th</sup>] WHEREAS, the parties intend by this Contract to develop a more cooperative  
80 relationship in order to achieve their mutual goals; and

81 [15.1] WHEREAS, the Contractor has utilized or may utilize transfers, contract assignments,  
82 rescheduling and conveyance of Project Water and non-Project water under this Contract as tools to  
83 minimize the impacts of Conditions of Shortage and to maximize the beneficial use of water; and

84 [15.2] WHEREAS, the parties desire and intend that this Contract not provide a disincentive  
85 to the Contractor in continuing to carry out the beneficial activities set out in the Explanatory Recital  
86 immediately above; and

87 [16<sup>th</sup>] WHEREAS, the United States and the Contractor are willing to enter into this  
88 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

91 DEFINITIONS

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

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

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

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

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

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

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

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

112 (g.1) "Delta Division Facilities" shall mean those existing and future Project  
113 facilities in and south of the Sacramento-San Joaquin Rivers Delta, including, but not limited to, the  
114 Tracy Pumping Plant, the O'Neill Forebay, the O'Neill Pumping/Generating Plant, and the San Luis



115 Reservoir, used to divert, store and convey water to those Project Contractors entitled to receive water  
116 conveyed through the Delta-Mendota Canal.

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

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

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

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

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

137 (m) "Irrigation Water" shall mean Project Water that is used primarily in the  
138 production of agricultural crops or livestock, including domestic use incidental thereto, and watering  
139 of livestock;

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

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

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

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

153 (r) "Operating Non-Federal Entity" shall mean the entity(ies), its (their) successors  
154 or assigns, which has (have) the obligation to operate and maintain all or a portion of the Delta

155 Division Facilities pursuant to a written agreement(s) with the United States. When this Contract was  
156 entered into, the Operating Non-Federal Entity(ies) was (were) the San Luis & Delta-Mendota Water  
157 Authority;

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

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

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

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

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

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

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

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

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

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

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

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

190 TERM OF CONTRACT

191 2. (a) This Contract shall be effective March 1, 2005, through February 28, 2030, and  
192 supersedes Contract No. 14-06-200-3802-A-IR2. In the event the Contractor wishes to renew this  
193 Contract beyond February 28, 2030, the Contractor shall submit a request for renewal in writing to  
194 the Contracting Officer no later than two years prior to the date this Contract expires. The renewal of

195 this Contract insofar as it pertains to the furnishing of Irrigation Water to the Contractor shall be  
196 governed by subdivision (b) of this Article, and the renewal of this Contract insofar as it pertains to  
197 the furnishing of M&I Water to the Contractor shall be governed by subdivision (c) of this Article.

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

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

214 with all terms and conditions of this Contract; and (vi) the Contractor has the physical and legal  
215 ability to deliver Project Water.

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

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

233 (d) The Contracting Officer shall make a determination ten years after the date of  
234 execution of this Contract, and every five years thereafter during the term of this Contract, of whether  
235 a conversion of the relevant portion of this Contract to a contract under subsection 9(d) of the  
236 Reclamation Project Act of 1939 can be accomplished pursuant to the Act of July 2, 1956 (70 Stat  
237 483). The Contracting Officer shall also make a determination ten years after the date of execution of  
238 this Contract and every five years thereafter during the term of this Contract of whether a conversion  
239 of the relevant portion of this Contract to a contract under subsection 9(c)(1) of the Reclamation  
240 Project Act of 1939 can be accomplished. Notwithstanding any provision of this Contract, the  
241 Contractor reserves and shall have all rights and benefits under the Act of July 2, 1956 (70 Stat. 483).  
242 The Contracting Officer anticipates that during the term of this Contract, all authorized Project  
243 construction expected to occur will have occurred, and on that basis the Contracting Officer agrees  
244 upon such completion to allocate all costs that are properly assignable to the Contractor, and agrees  
245 further that, at any time after such allocation is made, and subject to satisfaction of the condition set  
246 out in this subdivision, this Contract shall, at the request of the Contractor, be converted to a contract  
247 under subsection 9(d) or 9(c)(1), whichever is applicable, of the Reclamation Project Act of 1939,  
248 subject to applicable Federal law and under stated terms and conditions mutually agreeable to the  
249 Contractor and the Contracting Officer. A condition for such conversion to occur shall be a  
250 determination by the Contracting Officer that, account being taken of the amount credited to return by  
251 the Contractor as provided for under Federal Reclamation law, the remaining amount of construction  
252 costs assignable for ultimate return by the Contractor can probably be repaid to the United States

253 within the term of a contract under subsection 9(d) or 9(c)(1), whichever is applicable. If the  
254 remaining amount of costs that are properly assignable to the Contractor cannot be determined during  
255 the term of this Contract, the Contracting Officer shall notify the Contractor, and provide the  
256 reason(s) why such a determination could not be made. Further, the Contracting Officer shall make  
257 such a determination as soon thereafter as possible so as to permit, upon request of the Contractor and  
258 satisfaction of the condition set out above, conversion to a contract under subsection 9(d) or 9(c)(1),  
259 whichever is applicable. In the event such determination of costs has not been made at a time which  
260 allows conversion of this Contract during the term of this Contract or the Contractor has not  
261 requested conversion of this Contract within such term, the parties shall incorporate in any  
262 subsequent renewal contract as described in subdivision (b) of this Article a provision that carries  
263 forth in substantially identical terms the provisions of this subdivision.

264 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

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



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

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

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

285 (c.1) In the event any Project Contractor (other than a Cross Valley Contractor) that  
286 receives Project Water through the Delta Division Facilities obtains a contractual agreement that the  
287 Contracting Officer shall make Project Water available at a point or points of delivery in or north of  
288 the Delta, at the request of the Contractor and upon completion of any required environmental  
289 documentation, this Contract shall be amended to provide for deliveries in or north of the Delta on  
290 mutually agreeable terms. Such amendments to the Contract shall be limited solely to those changes  
291 made necessary by the addition of such alternate points of delivery in or north of the Delta; Provided,

292 That the Contracting Officer's use of the Harvey O. Banks Pumping Plant to deliver Project Water  
293 does not trigger this right of amendment.

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

310 (e) The Contractor shall comply with requirements applicable to the Contractor in  
311 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract

312 undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as amended, that are  
313 within the Contractor's legal authority to implement. The Contract No(s). 14-06-200-3802A, 14-06-  
314 200-3802-A-IR1, and 14-06-200-3802-A-IR2, which evidence in excess of 36 years of diversions for  
315 irrigation and/or M&I purposes of the quantities of water provided in subdivision (a) of Article 3 of  
316 this Contract, will be considered in developing an appropriate baseline for biological assessment(s)  
317 prepared pursuant to the ESA, and any other needed environmental review. Nothing herein shall be  
318 construed to prevent the Contractor from challenging or seeking judicial relief in a court of competent  
319 jurisdiction with respect to any biological opinion or other environmental documentation referred to in  
320 this Article.

321 (f) Following the declaration of Water Made Available under Article 4 of this  
322 Contract, the Contracting Officer will make a determination whether Project Water, or other water  
323 available to the Project, can be made available to the Contractor in addition to the Contract Total under  
324 this Article during the Year without adversely impacting other Project Contractors. At the request of  
325 the Contractor, the Contracting Officer will consult with the Contractor prior to making such a  
326 determination. If the Contracting Officer determines that Project Water, or other water available to the  
327 Project, can be made available to the Contractor, the Contracting Officer will announce the availability  
328 of such water and shall so notify the Contractor as soon as practical. The Contracting Officer will  
329 thereafter meet with the Contractor and other Project Contractors capable of taking such water to  
330 determine the most equitable and efficient allocation of such water. If the Contractor requests the  
331 delivery of any quantity of such water, the Contracting Officer shall make such water available to the

332 Contractor in accordance with applicable statutes, regulations, guidelines, and policies. Subject to  
333 existing long-term contractual commitments, water rights and operational constraints, long-term  
334 Project Contractors shall have a first right to acquire such water, including Project Water made  
335 available pursuant to Section 215 of the RRA.

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

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

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

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

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

360 TIME FOR DELIVERY OF WATER

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

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

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

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

384 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

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

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

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

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

424 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

425 6. (a) The Contractor has established a measuring program satisfactory to the  
426 Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation  
427 purposes within the Contractor's Service Area is measured at each agricultural turnout and such water



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

440 (b) To the extent the information has not otherwise been provided, upon execution  
441 of this Contract, the Contractor shall provide to the Contracting Officer a written report describing the  
442 measurement devices or water measuring methods being used or to be used to implement subdivision  
443 (a) of this Article and identifying the agricultural turnouts and the M&I service connections or  
444 alternative measurement programs approved by the Contracting Officer, at which such measurement  
445 devices or water measuring methods are being used, and, if applicable, identifying the locations at  
446 which such devices and/or methods are not yet being used including a time schedule for  
447 implementation at such locations. The Contracting Officer shall advise the Contractor in writing

448 within 60 days as to the adequacy, and necessary modifications, if any, of the measuring devices or  
449 water measuring methods identified in the Contractor's report and if the Contracting Officer does not  
450 respond in such time, they shall be deemed adequate. If the Contracting Officer notifies the  
451 Contractor that the measuring devices or methods are inadequate, the parties shall within 60 days  
452 following the Contracting Officer's response, negotiate in good faith the earliest practicable date by  
453 which the Contractor shall modify said measuring devices and/or measuring methods as required by  
454 the Contracting Officer to ensure compliance with subdivision (a) of this Article.

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

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

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

464 RATES AND METHOD OF PAYMENT FOR WATER

465 7. (a) The Contractor shall pay the United States as provided in this Article for all  
466 Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance  
467 with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's

468 then-existing ratesetting policy for M&I Water, which ratesetting policies shall be amended,  
469 modified, or superseded only through a public notice and comment procedure; (ii) applicable Federal  
470 Reclamation law and associated rules and regulations, or policies; and (iii) other applicable  
471 provisions of this Contract. Payments shall be made by cash transaction, electronic funds transfer, or  
472 any other mechanism as may be agreed to in writing by the Contractor and the Contracting Officer.  
473 The Rates, Charges, and Tiered Pricing Component applicable to the Contractor upon execution of  
474 this Contract are set forth in Exhibit "B," as may be revised annually.

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

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

485 (2) Prior to October 1 of each Calendar Year, the Contracting Officer shall  
486 make available to the Contractor an estimate of the Rates and Tiered Pricing Component for Project  
487 Water for the following Year and the computations and cost allocations upon which those Rates are

488 based. The Contractor shall be allowed not less than two months to review and comment on such  
489 computations and cost allocations. By December 31 of each Calendar Year, the Contracting Officer  
490 shall provide the Contractor with the final Rates and Tiered Pricing Component to be in effect for the  
491 upcoming Year, and such notification shall revise Exhibit "B."

492 (c) At the time the Contractor submits the initial schedule for the delivery of  
493 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor  
494 shall make an advance payment to the United States equal to the total amount payable pursuant to the  
495 applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be  
496 delivered pursuant to this Contract during the first two calendar months of the Year. Before the end  
497 of the first month and before the end of each calendar month thereafter, the Contractor shall make an  
498 advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for the  
499 Water Scheduled to be delivered pursuant to this Contract during the second month immediately  
500 following. Adjustments between advance payments for Water Scheduled and payments at Rates due  
501 for Water Delivered shall be made before the end of the following month; Provided, That any revised  
502 schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the  
503 amount of Water Delivered pursuant to this Contract during any month shall be accompanied with  
504 appropriate advance payment, at the Rates then in effect, to assure that Project Water is not delivered  
505 to the Contractor in advance of such payment. In any month in which the quantity of Water Delivered  
506 to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid for by the  
507 Contractor, no additional Project Water shall be delivered to the Contractor unless and until an

508 advance payment at the Rates then in effect for such additional Project Water is made. Final  
509 adjustment between the advance payments for the Water Scheduled and payments for the quantities  
510 of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable  
511 but no later than April 30th of the following Year, or 60 days after the delivery of Project Water  
512 rescheduled under subdivision (g) of Article 3 of this Contract if such water is not delivered by the  
513 last day of February.

514 (d) The Contractor shall also make a payment in addition to the Rate(s) in  
515 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the  
516 appropriate Tiered Pricing Component then in effect, before the end of the month following the  
517 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered  
518 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be consistent  
519 with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery  
520 report for the subject month prepared by the Operating Non-Federal Entity(ies) or, if there is no  
521 Operating Non-Federal Entity, by the Contracting Officer. The water delivery report shall be deemed  
522 a bill for the payment of Charges and the applicable Tiered Pricing Component for Water Delivered.  
523 Adjustment for overpayment or underpayment of Charges shall be made through the adjustment of  
524 payments due to the United States for Charges for the next month. Any amount to be paid for past  
525 due payment of Charges and the Tiered Pricing Component shall be computed pursuant to Article 20  
526 of this Contract.

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

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

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

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

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

554 (j) (1) Beginning at such time as deliveries of Project Water in a Year exceed  
555 80 percent of the Contract Total, then before the end of the month following the month of delivery the  
556 Contractor shall make an additional payment to the United States equal to the applicable Tiered  
557 Pricing Component. The Tiered Pricing Component for the amount of Water Delivered in excess of  
558 80 percent of the Contract Total, but less than or equal to 90 percent of the Contract Total, shall equal  
559 one-half of the difference between the Rate established under subdivision (a) of this Article and the  
560 Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable. The Tiered  
561 Pricing Component for the amount of Water Delivered which exceeds 90 percent of the Contract  
562 Total shall equal the difference between (i) the Rate established under subdivision (a) of this Article  
563 and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable.  
564 For all Water Delivered pursuant to subdivision (a) of Article 3 of this Contract which is in excess of  
565 80 percent of the Contract Total, this increment shall be deemed to be divided between Irrigation

566 Water and M&I Water in the same proportion as actual deliveries of each bear to the cumulative total  
567 Water Delivered.

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

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

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



586 provided the Contractor an opportunity to discuss the nature, need, and impact of the proposed  
587 change.

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

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

599 (n) Omitted.

600 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

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

604                                    SALES, TRANSFERS, OR EXCHANGES OF WATER

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

615                    (b)        In order to facilitate efficient water management by means of water transfers of  
616 the type historically carried out among Project Contractors located within the same geographical area  
617 and to allow the Contractor to participate in an accelerated water transfer program during the term of  
618 this Contract, the Contracting Officer shall prepare, as appropriate, all necessary environmental  
619 documentation, including but not limited to documents prepared pursuant to NEPA and ESA,  
620 analyzing annual transfers within such geographical areas and the Contracting Officer shall determine  
621 whether such transfers comply with applicable law. Following the completion of the environmental  
622 documentation, such transfers addressed in such documentation shall be conducted with advance  
623 notice to the Contracting Officer, but shall not require prior written approval by the Contracting

624 Officer. Such environmental documentation and the Contracting Officer's compliance determination  
625 shall be reviewed every five years and updated, as necessary, prior to the expiration of the then-  
626 existing five-year period. All subsequent environmental documentation shall include an alternative to  
627 evaluate not less than the quantity of Project Water historically transferred within the same  
628 geographical area.

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

639 APPLICATION OF PAYMENTS AND ADJUSTMENTS

640 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,  
641 capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of  
642 the Contractor arising out of this Contract then due and payable. Overpayments of more than \$1,000  
643 shall be refunded at the Contractor's request. In lieu of a refund, any amount of such overpayment at

644 the option of the Contractor, may be credited against amounts to become due to the United States by  
645 the Contractor. With respect to overpayment, such refund or adjustment shall constitute the sole  
646 remedy of the Contractor or anyone having or claiming to have the right to the use of any of the  
647 Project Water supply provided for herein. All credits and refunds of overpayments shall be made  
648 within 30 days of the Contracting Officer obtaining direction as to how to credit or refund such  
649 overpayment in response to the notice to the Contractor that it has finalized the accounts for the Year  
650 in which the overpayment was made.

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

656 TEMPORARY REDUCTIONS--RETURN FLOWS

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

662 (b) The Contracting Officer or Operating Non-Federal Entity(ies) may temporarily  
663 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for the

664 purposes of investigation, inspection, maintenance, repair, or replacement of any of the Project  
665 facilities or any part thereof necessary for the delivery of Project Water to the Contractor, but so far as  
666 feasible the Contracting Officer or Operating Non-Federal Entity(ies) will give the Contractor due  
667 notice in advance of such temporary discontinuance or reduction, except in case of emergency, in  
668 which case no notice need be given; Provided, That the United States shall use its best efforts to avoid  
669 any discontinuance or reduction in such service. Upon resumption of service after such reduction or  
670 discontinuance, and if requested by the Contractor, the United States will, if possible, deliver the  
671 quantity of Project Water which would have been delivered hereunder in the absence of such  
672 discontinuance or reduction.

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

679 CONSTRAINTS ON THE AVAILABILITY OF WATER

680 12. (a) In its operation of the Project, the Contracting Officer will use all  
681 reasonable means to guard against a Condition of Shortage in the quantity of water to be made  
682 available to the Contractor pursuant to this Contract. In the event the Contracting Officer determines

683 that a Condition of Shortage appears probable, the Contracting Officer will notify the Contractor of  
684 said determination as soon as practicable.

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

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

699 (1) The Contracting Officer shall make an initial and subsequent  
700 determination as necessary of the total quantity of Project Water estimated to be scheduled or actually  
701 scheduled under subdivision (b) of Article 4 of this Contract and under all other long-term water  
702 service or repayment contracts then in force for the delivery of Project Water by the United States

703 from Delta Division Facilities during the relevant Year, the quantity so determined being hereinafter  
704 referred to as the scheduled total;

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

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

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

721 (d) By entering into this Contract, the Contractor does not waive any legal rights or  
722 remedies it may have to file or participate in any administrative or judicial proceeding contesting (i)

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

731 UNAVOIDABLE GROUNDWATER PERCOLATION

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

736 RULES AND REGULATIONS

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

741 WATER AND AIR POLLUTION CONTROL

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



745

QUALITY OF WATER

746

16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to

747

this Contract shall be operated and maintained to enable the United States to deliver Project Water to

748

the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act

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of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat.

750

3050) or other existing Federal laws. The United States is under no obligation to construct or furnish

751

water treatment facilities to maintain or to improve the quality of Water Delivered to the Contractor

752

pursuant to this Contract. The United States does not warrant the quality of Water Delivered to the

753

Contractor pursuant to this Contract. None of the foregoing affects or modifies the obligations of the

754

United States under Contract No. 14-06-200-3802A, dated April 12, 1968, with respect to Schedule 2

755

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

756

(b) The O&M of Project facilities shall be performed in such manner as is

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practicable to maintain the quality of raw water made available through such facilities at the highest

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level reasonably attainable as determined by the Contracting Officer. The Contractor shall be

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responsible for compliance with all State and Federal water quality standards applicable to surface

760

and subsurface agricultural drainage discharges generated through the use of Federal or Contractor

761

facilities or Project Water provided by the Contractor within the Contractor's Service Area.

762

WATER ACQUIRED BY THE CONTRACTOR OTHER THAN

763

FROM THE UNITED STATES

764

17. (a) Water or water rights now owned or hereafter acquired by the Contractor other

765

than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may

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

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

782 (1) The Contractor may introduce non-Project water into Project facilities  
783 and deliver said water to lands within the Contractor's Service Area, including Ineligible Lands,  
784 subject to payment to the United States and/or to any applicable Operating Non-Federal Entity of an  
785 appropriate rate as determined by the applicable Project ratesetting policy, the RRA, and the Project

786 use power policy, if such Project use power policy is applicable, each as amended, modified, or  
787 superseded from time to time.

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

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

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

804 (5) After Project purposes are met, as determined by the Contracting  
805 Officer, the United States and Project Contractors entitled to Project Water from Delta Division

806 Facilities shall share priority to utilize the remaining capacity of the facilities declared to be available  
807 by the Contracting Officer for conveyance and transportation of non-Project water prior to any such  
808 remaining capacity being made available to non-Project contractors. Other Project Contractors shall  
809 have a second priority to any remaining capacity of facilities declared to be available by the  
810 Contracting Officer for conveyance and transportation of non-Project water prior to any such  
811 remaining capacity being made available to non-Project contractors.

812 OPINIONS AND DETERMINATIONS

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

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

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

827 COORDINATION AND COOPERATION

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

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

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

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

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

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

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

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

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

864

CHARGES FOR DELINQUENT PAYMENTS

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

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

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

881

EQUAL OPPORTUNITY

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

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

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

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

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

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

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

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

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

925 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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



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

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

938 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

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

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

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

957 PRIVACY ACT COMPLIANCE

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

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

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

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

976 (e) The Contractor shall forward promptly to the System Manager each proposed  
977 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR  
978 2.71; notify the requester accordingly of such referral; and provide the System Manager with  
979 information and records necessary to prepare an appropriate response to the requester. These  
980 requirements do not apply to individuals seeking access to their own certification and reporting forms  
981 filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy  
982 Act as a basis for the request.

983 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

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

992 WATER CONSERVATION

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

1009                   (b)     Should the amount of M&I Water delivered pursuant to subdivision (a) of  
1010 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall implement the  
1011 Best Management Practices identified by the time frames issued by the California Urban Water  
1012 Conservation Council for such M&I Water unless any such practice is determined by the Contracting  
1013 Officer to be inappropriate for the Contractor.

1014                   (c)     The Contractor shall submit to the Contracting Officer a report on the status of  
1015 its implementation of the water conservation plan on the reporting dates specified in the then-existing  
1016 conservation and efficiency criteria established under Federal law.

1017                   (d)     At five-year intervals, the Contractor shall revise its water conservation plan to  
1018 reflect the then-current conservation and efficiency criteria for evaluating water conservation plans  
1019 established under Federal law and submit such revised water management plan to the Contracting  
1020 Officer for review and evaluation. The Contracting Officer will then determine if the water  
1021 conservation plan meets Reclamation's then-current conservation and efficiency criteria for  
1022 evaluating water conservation plans established under Federal law.

1023                   (e)     If the Contractor is engaged in direct groundwater recharge, such activity shall  
1024 be described in the Contractor's water conservation plan.

1025                                   EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1026                   27.     Except as specifically provided in Article 17 of this Contract, the provisions of this  
1027 Contract shall not be applicable to or affect non-Project water or water rights now owned or hereafter  
1028 acquired by the Contractor or any user of such water within the Contractor's Service Area. Any such

1029 water shall not be considered Project Water under this Contract. In addition, this Contract shall not  
1030 be construed as limiting or curtailing any rights which the Contractor or any water user within the  
1031 Contractor's Service Area acquires or has available under any other contract pursuant to Federal  
1032 Reclamation law.

1033 OPERATION AND MAINTENANCE BY  
1034 SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

1035 28. (a) The O&M of a portion of the Project facilities which serve the Contractor, and  
1036 responsibility for funding a portion of the costs of such O&M, have been transferred to the San Luis  
1037 & Delta-Mendota Water Authority, an Operating Non-Federal Entity, by separate agreement (8-07-  
1038 20-X0354) between the United States and the Operating Non-Federal Entity San Luis & Delta-  
1039 Mendota Water Authority. That separate agreement shall not interfere with or affect the rights or  
1040 obligations of the Contractor or the United States hereunder.

1041 (b) The Contracting Officer has previously notified the Contractor in writing that  
1042 the Operation and Maintenance of a portion of the Project facilities which serve the Contractor has  
1043 been transferred to the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority,  
1044 and therefore, the Contractor shall pay directly to the Operating Non-Federal Entity San Luis & Delta-  
1045 Mendota Water Authority, or to any successor approved by the Contracting Officer under the terms  
1046 and conditions of the separate agreement between the United States and the Operating Non-Federal  
1047 Entity San Luis & Delta-Mendota Water Authority described in subdivision (a) of this Article, all  
1048 rates, charges, or assessments of any kind, including any assessment for reserve funds, which the  
1049 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or such successor

1050 determines, sets, or establishes for the O&M of the portion of the Project facilities operated and  
1051 maintained by the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or such  
1052 successor. Such direct payments to the Operating Non-Federal Entity San Luis & Delta-Mendota  
1053 Water Authority or such successor shall not relieve the Contractor of its obligation to pay directly to  
1054 the United States the Contractor's share of the Project Rates, Charges, and Tiered Pricing Component  
1055 except to the extent the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority  
1056 collects payments on behalf of the United States in accordance with the separate agreement identified  
1057 in subdivision (a) of this Article.

1058           (c) For so long as the O&M of any portion of the Project facilities serving the  
1059 Contractor is performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water  
1060 Authority, or any successor thereto, the Contracting Officer shall adjust those components of the  
1061 Rates for Water Delivered under this Contract representing the cost associated with the activity being  
1062 performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or its  
1063 successor.

1064           (d) In the event the O&M of the Project facilities operated and maintained by the  
1065 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority is re-assumed by the  
1066 United States during the term of this Contract, the Contracting Officer shall so notify the Contractor,  
1067 in writing, and present to the Contractor a revised Exhibit "B" which shall include the portion of the  
1068 Rates to be paid by the Contractor for Project Water under this Contract representing the O&M costs  
1069 of the portion of such Project facilities which have been re-assumed. The Contractor shall, thereafter,

1070 in the absence of written notification from the Contracting Officer to the contrary, pay the Rates,  
1071 Charges, and Tiered Pricing Component specified in the revised Exhibit "B" directly to the United  
1072 States in compliance with Article 7 of this Contract.

1073 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1074 29. The expenditure or advance of any money or the performance of any obligation of the  
1075 United States under this Contract shall be contingent upon appropriation or allotment of funds.  
1076 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations  
1077 under this Contract. No liability shall accrue to the United States in case funds are not appropriated  
1078 or allotted.

1079 BOOKS, RECORDS, AND REPORTS

1080 30. (a) The Contractor shall establish and maintain accounts and other books and  
1081 records pertaining to administration of the terms and conditions of this Contract, including: the  
1082 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;  
1083 the water users' land-use (crop census), land ownership, land-leasing and water use data; and other  
1084 matters that the Contracting Officer may require. Reports thereon shall be furnished to the  
1085 Contracting Officer in such form and on such date or dates as the Contracting Officer may require.  
1086 Subject to applicable Federal laws and regulations, each party to this Contract shall have the right  
1087 during office hours to examine and make copies of the other party's books and records relating to  
1088 matters covered by this Contract.

1089 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,  
1090 records, or other information shall be requested from the Contractor by the Contracting Officer unless  
1091 such books, records, or information are reasonably related to the administration or performance of  
1092 this Contract. Any such request shall allow the Contractor a reasonable period of time within which  
1093 to provide the requested books, records, or information.

1094 (c) At such time as the Contractor provides information to the Contracting Officer  
1095 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the  
1096 Operating Non-Federal Entity.

1097 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1098 31. (a) The provisions of this Contract shall apply to and bind the successors and  
1099 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest  
1100 therein shall be valid until approved in writing by the Contracting Officer.

1101 (b) The assignment of any right or interest in this Contract by either party shall not  
1102 interfere with the rights or obligations of the other party to this Contract absent the written  
1103 concurrence of said other party.

1104 (c) The Contracting Officer shall not unreasonably condition or withhold approval  
1105 of any proposed assignment.

1106 SEVERABILITY

1107 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor  
1108 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an  
1109 association or other form of organization whose primary function is to represent parties to Project  
1110 contracts, brings an action in a court of competent jurisdiction challenging the legality or  
1111 enforceability of a provision included in this Contract and said person, entity, association, or  
1112 organization obtains a final court decision holding that such provision is legally invalid or  
1113 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the  
1114 parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court



1115 decision identify by mutual agreement the provisions in this Contract which must be revised and (ii)  
1116 within three months thereafter promptly agree on the appropriate revision(s). The time periods  
1117 specified above may be extended by mutual agreement of the parties. Pending the completion of the  
1118 actions designated above, to the extent it can do so without violating any applicable provisions of  
1119 law, the United States shall continue to make the quantities of Project Water specified in this Contract  
1120 available to the Contractor pursuant to the provisions of this Contract which were not found to be  
1121 legally invalid or unenforceable in the final court decision.

1122 RESOLUTION OF DISPUTES

1123 33. Should any dispute arise concerning any provisions of this Contract, or the parties'  
1124 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the  
1125 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring  
1126 any matter to the Department of Justice, the party shall provide to the other party 30 days' written  
1127 notice of the intent to take such action; Provided, That such notice shall not be required where a delay  
1128 in commencing an action would prejudice the interests of the party that intends to file suit. During  
1129 the 30-day notice period, the Contractor and the Contracting Officer shall meet and confer in an  
1130 attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to waive or  
1131 abridge any right or remedy that the Contractor or the United States may have.

1132 OFFICIALS NOT TO BENEFIT

1133 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the  
1134 Contractor shall benefit from this Contract other than as a water user or landowner in the same  
1135 manner as other water users or landowners.

1136

CHANGES IN CONTRACTOR'S SERVICE AREA

1137           35.   (a)   While this Contract is in effect, no change may be made in the Contractor's  
1138 Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,  
1139 except upon the Contracting Officer's written consent.

1140                   (b)   Within 30 days of receipt of a request for such a change, the Contracting  
1141 Officer will notify the Contractor of any additional information required by the Contracting Officer  
1142 for processing said request, and both parties will meet to establish a mutually agreeable schedule for  
1143 timely completion of the process. Such process will analyze whether the proposed change is likely to:  
1144 (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of the  
1145 Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-  
1146 constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project  
1147 Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply with  
1148 the NEPA and the ESA. The Contractor will be responsible for all costs incurred by the Contracting  
1149 Officer in this process, and such costs will be paid in accordance with Article 25 of this Contract.

1150

FEDERAL LAWS

1151           36.   By entering into this Contract, the Contractor does not waive its rights to contest the  
1152 validity or application in connection with the performance of the terms and conditions of this  
1153 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the  
1154 terms and conditions of this Contract unless and until relief from application of such Federal law or  
1155 regulation to the implementing provision of the Contract is granted by a court of competent  
1156 jurisdiction.

1157

NOTICES

1158           37. Any notice, demand, or request authorized or required by this Contract shall be  
1159 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered  
1160 to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, California 93721,  
1161 and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board of  
1162 Directors of the Reclamation District No. 1606, P.O. Box 757, San Joaquin, California 93660. The  
1163 designation of the addressee or the address may be changed by notice given in the same manner as  
1164 provided in this Article for other notices.

1165

CONFIRMATION OF CONTRACT

1166           38. The Contractor, after the execution of this Contract, shall promptly seek to secure a  
1167 decree of a court of competent jurisdiction of the State of California, confirming the execution of this  
1168 Contract. The Contractor shall furnish the United States a certified copy of the final decree, the  
1169 validation proceedings, and all pertinent supporting records of the court approving and confirming  
1170 this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

1171 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and  
1172 year first above written.

1173  
1174

THE UNITED STATES OF AMERICA

APPROVED AS TO LEGAL  
FORM AND SUFFICIENCY  
*James E. Turner*  
OFFICE OF REGIONAL SOLICITOR  
DEPARTMENT OF THE INTERIOR

1175  
1176  
1177

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

1178 (SEAL)

1179

RECLAMATION DISTRICT NO. 1606

1180  
1181

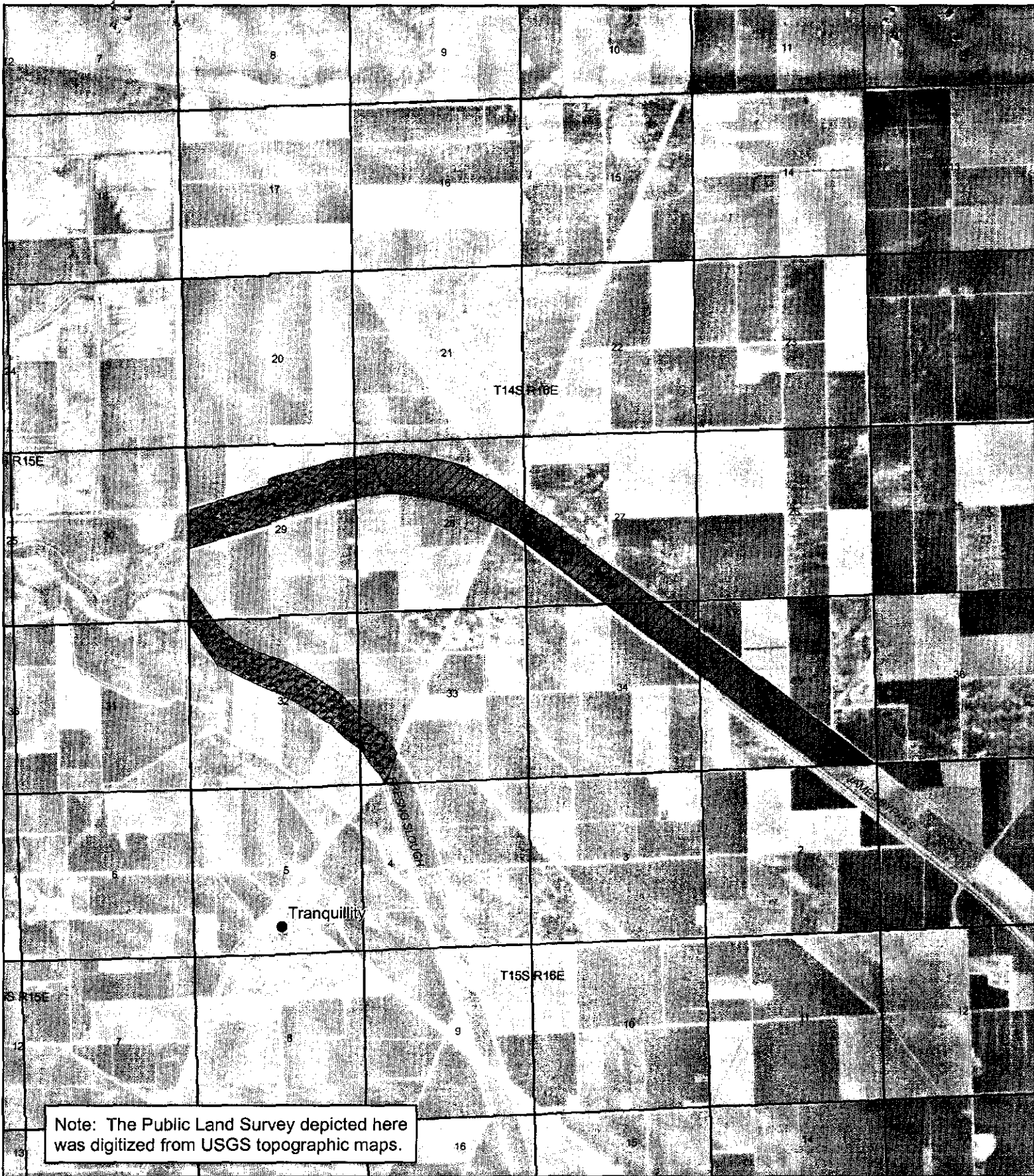
By: *Arnon J. Salcedo*  
President of the Board of Directors

1182 Attest:

1183  
1184

By: *Anna J. Naranjo*  
Secretary of the Board of Directors

1185 (H:\pub 440\LTRC\Final Draft LTRC's - Fresno, Tracy\09-23-04 Reclamation 1606 Final Draft  
1186 LTRC with exhibits.doc)






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

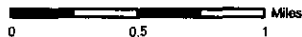
# Reclamation District 1606

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

Exhibit A

-  District Boundary
-  Contractor's Service Area
-  Lands Having Claimed Rights to Use San Joaquin River Water

Date: February 11, 2005  
 File Name: N:\districts\contracts\recdist\_1606\recdist\_1606.mxd



214-202-20

EXHIBIT B  
RECLAMATION DISTRICT NO. 1606  
Water Rates and Charges

CONTRACT NO. 14-06-200-3802A-LTR1	<u>2005 Rates Per Acre-Foot</u>
	<u>Irrigation Water</u> <u>M&amp;I Water</u>
<b>COST-OF-SERVICE (COS) RATES:</b>	<b>DMC</b>
Capital Rates:	\$10.42
O&M Rates:	
Water Marketing	\$6.61
Storage	\$5.93
Conveyance	*
Direct Pumping (Project Use Energy)	
Tracy Pumping	
San Luis Drain	
Deficit Rates:	
Non-Interest Bearing	
Interest Bearing	\$0.19
CFO/PFR Adjustment Rate	\$0.85
<b><u>TOTAL COST-OF-SERVICE RATES (COS):</u></b>	<b>\$24.00</b>
<b><u>M&amp;I FULL-COST RATE:</u></b>	
Tiered Pricing Component >80% <=90% of Contract	
Total [Full Cost Rate - COS Rate /2]:	\$8.47
Tiered Pricing Component >90% of Contract	
Total [Full Cost Rate - COS Rate]:	\$16.94
<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.	\$40.94
<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 not receive irrigation water on or before October 1, 1981.	\$47.77
<b>SURCHARGES UNDER P.L. 102-575</b>	
<b>TO RESTORATION FUND**</b>	<b>\$7.93</b>

\* 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).

Recent Historic Use as defined in the CVP M&I Water Storage Policy is 150 acre-feet.

# **RESOLUTION NO. 2005-01**

**RESOLUTION  
OF THE  
BOARD OF TRUSTEES  
RECLAMATION DISTRICT NO. 1606**

**RESOLUTION CONSIDERING ENVIRONMENTAL  
IMPACTS OF LONG-TERM RENEWAL  
CONTRACT FOR CENTRAL VALLEY PROJECT WATER SERVICE,  
APPROVING LONG-TERM RENEWAL CONTRACT,  
AUTHORIZING EXECUTION THEREOF AND  
AUTHORIZING RELATED ACTIONS**

WHEREAS, the RECLAMATION DISTRICT NO. 1606 (the "District") entered into that certain contract between the United States and Reclamation District No. 1606 Providing for Water Service, Contract No. 14-06-200-3802-A, dated April 12, 1968, (the "Original Contract"), providing for the delivery of up to 228 acre feet of water diverted through Central Valley Project facilities and the District's distribution system.

WHEREAS, the Original Contract expired on December 23, 2003, and the District has entered into successive contracts to renew the Original Contract for each of the years since the expiration of the Original Contract (the "Interim Renewal Contract" or collectively, the "Interim Renewal Contracts"), continuing the same water service under substantially the same terms and conditions, except for price and length of term, as was provided in the Original Contract.

WHEREAS, the current Interim Renewal Contract will expire on February 28, 2006.

WHEREAS, the United States has offered the District a Long-Term Renewal Contract for a term of twenty-five (25) years, on substantially the same substantive terms and conditions as included in the most recent Interim Renewal Contract, Contract No. 14-06-200-3802-A IR-2, between the District and the United States, which is on file with the Secretary of the Board (the Long-Term Renewal Contract).

WHEREAS, the District has fully utilized, for reasonable and beneficial use, all water provided under the Original Contract and the Interim Renewal Contracts by receiving and delivering such water to lands within the District's boundaries for irrigation purposes, or putting such water to beneficial use through conservation and transfer in accordance with California law, and there is continuing need for such water over the next twenty-five (25) years as documented in Reclamation's water needs analysis for the Contract.

WHEREAS, it is imperative to the District and its landowners that the District 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 for continued delivery of the same quantity of water to lands within the District's boundaries for a term of twenty-five (25) years.

WHEREAS, the Board has reviewed the terms of the proposed Long-Term Renewal Contract.

WHEREAS, water made available under the Long-Term Renewal Contract will be diverted through the same Central Valley Project facilities as the water provided under the Original Contract and the Interim Renewal Contracts.

WHEREAS, no expansion of water service will occur under the Long-Term Renewal Contract, as the District will distribute water received through the same distribution system as used for the Original Contract and Interim Renewal Contracts and will provide water under such renewal to the same lands within the boundaries of the District.

WHEREAS, the District has copies of contracts, water delivery reports, crop information and other data supporting these findings.

WHEREAS, the Board of Trustees of the District has reviewed that certain memorandum re Preliminary Environmental Assessment – Long-Term Renewal Contract from the District Manager, which is on file with the Secretary of the Board, and which concludes that the District's action 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 in said memorandum set forth.

NOW, THEREFORE, BE IT RESOLVED, AS FOLLOWS:

Section 1. The facts set forth in the recitals above and in the documents referenced therein are true and correct, and the Board of Trustees so finds and determines.

Section 2. The Long-Term Renewal Contract in substantially the form presented to the Board and on file with the Secretary hereof is hereby approved.

Section 3. The President and Secretary of the District are hereby 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, said execution providing conclusive proof of such approval.

Section 4. The Board further finds that:

A. Approval of the Long-Term Renewal Contract is statutorily exempt from further compliance with CEQA as provided in Title 14 of the California Code of Regulations ("CFR"), 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 in the Central Valley Project, the District distribution system or the amount of water delivered is proposed.



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 Title 14 CFR Section 15273(a).

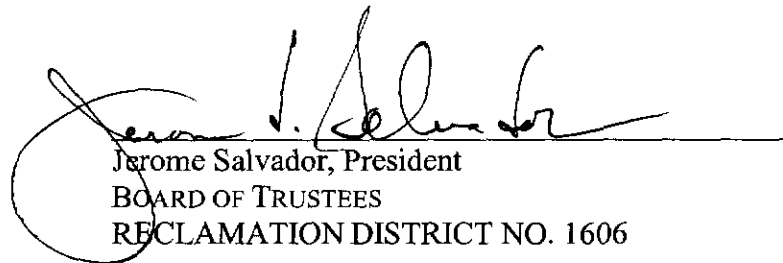
C. Approval of the Long-Term Renewal Contract is categorically exempt from further proceedings under CEQA pursuant to Title 14 CFR Section 15301, because it merely provides for continued operation of an existing facility.

D. Approval of the Long-Term Renewal Project will not create any effects on the environment that make categorical exemptions inapplicable pursuant to Title 14 CFR 15300.2.

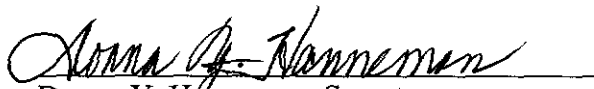
Section 5. The Manager of the District is hereby authorized and directed to prepare and file within 5 days a Notice of Exemption with the County Clerk or Clerks of Fresno County for the District's Long-Term Renewal Contract for Central Valley Project Water Service, in accordance with Section 15062(b) of Title 14 of the California Code of Regulations.

Section 6. The District's officers, staff and consultants are hereby authorized and directed to take all additional actions that they deem necessary or appropriate to carry out the intent of this Resolution and to ensure continued water service to the District and its water users.

Passed and adopted this 17<sup>th</sup> day of February, 2005.

  
Jerome Salvador, President  
BOARD OF TRUSTEES  
RECLAMATION DISTRICT NO. 1606

ATTEST:

  
Donna Y. Hanneman, Secretary  
BOARD OF TRUSTEES  
RECLAMATION DISTRICT NO. 1606

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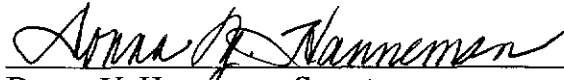
**CERTIFICATION OF SECRETARY**

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I HEREBY CERTIFY that the foregoing is the resolution of RECLAMATION DISTRICT NO. 1606 as duly passed and adopted by said Board of Trustees at a meeting thereof duly called and held on this 17<sup>th</sup> day of February, 2005.

{ SEAL }



Donna Y. Hanneman, Secretary

BOARD OF TRUSTEES

RECLAMATION DISTRICT NO. 1606