

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

LONG-TERM RENEWAL CONTRACT BETWEEN THE  
UNITED STATES BUREAU OF RECLAMATION  
AND  
THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS  
PROVIDING FOR PROJECT WATER SERVICE  
FROM DELTA DIVISION

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1 UNITED STATES  
2 DEPARTMENT OF THE INTERIOR  
3 BUREAU OF RECLAMATION  
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7 AND  
8 THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS  
9 PROVIDING FOR PROJECT WATER SERVICE  
10 FROM DELTA DIVISION

11 THIS CONTRACT, made this 20<sup>th</sup> day of February, 2005, in pursuance  
12 generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto,  
13 including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and  
14 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, June 21, 1963 (77 Stat.  
15 68), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat. 3050), as amended, and Title  
16 XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively hereinafter referred to as  
17 Federal Reclamation law, between THE UNITED STATES OF AMERICA, hereinafter referred to as  
18 the United States, and THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS,  
19 hereinafter referred to as the Contractor;

20 WITNESSETH, That:

21 EXPLANATORY RECITALS

22 [1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central  
23 Valley 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, hereinafter collectively referred to as the Delta Division Facilities, which will be used in  
30 part for the furnishing of water to the Contractor pursuant to the terms 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. 3-07-20-W1124, on January 1, 1993, which established terms for the delivery up to 450 acre-feet  
35 to the Contractor of Central Valley Project Water from the Delta Mendota Canal Division Facilities  
36 from January 1, 1993, through February 28, 2003; and

37 [5<sup>th</sup>] WHEREAS, the Contractor and the United States have pursuant to subsection  
38 3404(c)(3) of the Central Valley Project improvement Act (CVPIA), subsequently entered into  
39 renewal contracts identified as Contract No. 3-07-20-W1124-R, and Contract No. 3-07-20-W1124-  
40 IR1 the current of which is hereinafter referred to as the Existing Contract, which provides for the  
41 continued water service to the Contractor from March 1, 2004, through February 26, 2006; and

42 [5.1] WHEREAS, the United States and the State of California, Department of Water  
43 Resources, hereinafter referred to as the State, have entered into agreements, hereinafter referred to as  
44 the CVP-SWP Wheeling Agreement (s), for the conveyance of Project Water from the

45 Sacramento-San Joaquin Delta to the point(s) at which the Contractor is willing to take delivery of  
46 Project Water; and

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

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

55 [8<sup>th</sup>] WHEREAS, the Contractor has requested the long-term renewal of the Existing  
56 Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws of the  
57 State of California, for water service from the Project; 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 Central Valley Project Water supplies available to it for  
62 reasonable and beneficial use and/or has demonstrated projected future demand for water use such  
63 that the Contractor has the capability and expects to utilize fully for reasonable and beneficial use the  
64 quantity of Project Water to be made available to it pursuant to this Contract; and

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

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

71 [13<sup>th</sup>] WHEREAS, in the CALFED Programmatic Record of Decision, dated August 28,  
72 2000, the United States and the State of California adopted a general target of continuously improving  
73 Delta water quality for all uses. The CALFED Agencies' target for providing safe, reliable, and  
74 affordable drinking water in a cost-effective way, is to achieve either: (a) average concentrations at  
75 Clifton Court Forebay and other southern and central Delta drinking water intakes of 50 ug/L bromide  
76 and 3.0 mg/L total organic carbon, or (b) an equivalent level of public health protection using a  
77 cost-effective combination of alternative source waters, source control and treatment technologies;  
78 and

79 [14<sup>th</sup>] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships  
80 to pursue measures to improve water supply, water quality, and reliability of the Project for all Project  
81 purposes; and

82 [15<sup>th</sup>] WHEREAS, the mutual goals of the United States and the Contractor include: to  
83 provide for reliable Central Valley Project Water supplies; to control costs of those supplies; to  
84 achieve repayment of the Central Valley Project as required by law; to guard reasonably against  
85 Central Valley Project Water shortages; to achieve a reasonable balance among competing demands

86 for use of Central Valley Project Water; and to comply with all applicable environmental statutes, all  
87 consistent with the legal obligations of the United States relative to the Central Valley Project; and

88 [16<sup>th</sup>] WHEREAS, the parties intend by this Contract to develop a more cooperative  
89 relationship in order to achieve their mutual goals; and

90 [17<sup>th</sup>] WHEREAS, the United States and the Contractor are willing to enter into this  
91 long-term renewal contract pursuant to Federal Reclamation law on the terms and conditions set forth  
92 below;

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

95 DEFINITIONS

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

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

100 (b) "Charges" shall mean the payments required by Federal Reclamation law in  
101 addition to the Rates and Tiered Pricing Components specified in this Contract as determined  
102 annually by the Contracting Officer pursuant to this Contract;

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

105 Total;

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

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

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

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

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

121 (h-i) Omitted;

122 (j) "Full Cost Rate" shall mean an annual rate, as determined by the Contracting  
123 Officer that shall amortize the expenditures for construction properly allocable to the Project  
124 Irrigation or M&I functions, as appropriate, of facilities in service including all operation and  
125 maintenance deficits funded, less payments, over such periods as may be required under Federal  
126 Reclamation law, or applicable contract provisions. Interest will accrue on both the construction



127 expenditures and funded Operations and Maintenance deficits from October 12, 1982, on costs  
128 outstanding at that date, or from the date incurred in the case of costs arising subsequent to  
129 October 12, 1982, and shall be calculated in accordance with subsections 202(3)(B) and (3)(C) of the  
130 Reclamation Reform Act. The full-cost rate includes actual operation, maintenance, and replacement  
131 costs consistent with Section 426.2 of the Rules and Regulations for the RRA;

132 (k-l) Omitted;

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

136 (n) Omitted;

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

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

145 (q) "Operation and Maintenance" or "O&M" shall mean normal and reasonable  
146 care, control, operation, repair, replacement (other than Capital replacement), and maintenance of  
147 Project facilities;

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

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

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

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

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

163 (w) "Recent Historic Average" shall mean the most recent five-year average of the  
164 final forecast of water made available to the Contractor pursuant to this Contract or its preceding  
165 contract(s);

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

169 (y) "Tiered Pricing Component" shall be the incremental amount to be paid for  
170 each acre-foot of water delivered as described in subdivision (j) of Article 7 of this Contract;

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

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

176 (bb) "Water Scheduled" shall mean Project Water Made Available to the Contractor  
177 for which times and quantities for delivery have been established by the Contractor and Contracting  
178 Officer, pursuant to subdivision (b) of Article 4 of this Contract; and

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

181 TERM OF CONTRACT

182 2. (a) This Contract shall be effective March 1, 2005, through February 28, 2045. In  
183 the event the Contractor wishes to renew the Contract beyond February 28, 2045, the Contractor shall  
184 submit a request for renewal in writing to the Contracting Officer no later than two years prior to the  
185 date this Contract expires.

186 (b) Omitted.

187 (c) This Contract shall be renewed for successive periods of up to 40 years each,  
188 which periods shall be consistent with the then-existing Reclamation-wide policy, under terms and  
189 conditions mutually agreeable to the parties and consistent with Federal and State law. The

190 Contractor shall be afforded the opportunity to comment to the Contracting Officer on the proposed  
191 adoption and application of any revised Reclamation-wide policy applicable to the delivery of Project  
192 M&I Water that would limit the term of any subsequent renewal contract with the Contractor for the  
193 furnishing of M&I Water to less than 40 years.

194 (d) The Contracting Officer shall make a determination ten years after the date of  
195 execution of this Contract, and every five years thereafter during the term of this Contract, of whether  
196 a conversion to a contract under subsection (c)(1) of Section 9 of the Reclamation Project Act of 1939  
197 can be accomplished. The Contracting Officer anticipates that during the term of this Contract, all  
198 authorized project construction expected to occur will have occurred, and on that basis the  
199 Contracting Officer agrees upon such completion to allocate all costs that are properly assignable to  
200 the Contractor, and agrees further that, at any time after such allocation is made, and subject to  
201 satisfaction of the conditions set out in this subdivision of this Article, this Contract shall, at the  
202 request of the Contractor, be converted to a contract under said subsection (c)(1) of Section 9, subject  
203 to applicable Federal law and under stated terms and conditions mutually agreeable to the Contractor  
204 and the Contracting Officer. A condition for such conversion to occur shall be a determination by the  
205 Contracting Officer that, account being taken of the amount credited to return by the Contractor as  
206 provided for under Federal Reclamation law, the remaining amount of construction costs assignable  
207 for ultimate return by the Contractor can probably be repaid to the United States within the term of a  
208 contract under said subsection (c)(1) of Section 9. If the remaining amount of costs that are properly  
209 assignable to the Contractor cannot be determined during the term of this Contract, the Contracting  
210 Officer shall notify the Contractor, and provide the reason(s) why such a determination could not be

211 made. Further, the Contracting Officer shall make such a determination as soon thereafter as possible  
212 so as to permit, upon request of the Contractor and satisfaction of the conditions set out above,  
213 conversion to a contract under said subsection (c)(1) of Section 9.

214 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

215 3. (a) (1) During each Year, consistent with all applicable State water rights,  
216 permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of this  
217 Contract, the Contracting Officer shall make available for delivery to the Contractor up to 850 acre-  
218 feet of water for M&I purposes. The quantity of Water Delivered to the Contractor in accordance  
219 with this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of  
220 this Contract.

221 (b) Because the capacity of the Project to deliver Project Water has been  
222 constrained in recent years and may be constrained in the future due to many factors including  
223 hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractor  
224 actually receiving the amount of Project Water set out in subdivision (a) of this Article in any given  
225 Year is uncertain. The Contracting Officer's most recent modeling referenced in the PEIS projected  
226 that the Contract Total set forth in this Contract will not be available to the Contractor in many years.  
227 During the most recent five years, the Recent Historic Average of Water Made Available to the  
228 Contractor was 768 acre-feet. Nothing in subdivision (b) of this Article shall affect the rights and  
229 obligations of the parties under any provision of this Contract.

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

232 (d) The Contractor shall make reasonable and beneficial use of all Project Water or  
233 other water furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect, or  
234 in lieu), groundwater banking programs, surface water storage programs, and other similar programs  
235 utilizing Project Water or other water furnished pursuant to this Contract conducted within the  
236 Contractor's Service Area which are consistent with applicable State law and result in use consistent  
237 with Federal Reclamation law will be allowed; Provided, That any direct recharge program(s) is (are)  
238 described in the Contractor's Water Conservation Plan submitted pursuant to Article 26 of this  
239 Contract; Provided, further, That such Water Conservation Plan demonstrates sufficient lawful uses  
240 exist in the Contractor's Service Area so that using a long-term average, the quantity of Delivered  
241 Water is demonstrated to be reasonable for such uses and in compliance with Federal Reclamation  
242 law. Groundwater recharge programs, groundwater banking programs, surface water storage  
243 programs, and other similar programs utilizing Project Water or other water furnished pursuant to this  
244 Contract conducted outside the Contractor's Service Area may be permitted upon written approval of  
245 the Contracting Officer, which approval will be based upon environmental documentation, Project  
246 Water rights, and Project operational concerns. The Contracting Officer will address such concerns  
247 in regulations, policies, or guidelines.

248 (e) The Contractor shall comply with requirements applicable to the Contractor in  
249 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract  
250 undertaken pursuant to Section 7 of the Endangered Species Act of 1973, as amended, that are within  
251 the Contractor's legal authority to implement. The Existing Contract, which evidences in excess of  
252 11 years of diversions for M&I purposes of the quantities of water provided in subdivision (a) of

253 Article 3 of this Contract, will be considered in developing an appropriate baseline for the Biological  
254 Assessment prepared pursuant to the Endangered Species Act, and any other needed environmental  
255 review. Nothing herein shall be construed to prevent the Contractor from challenging or seeking  
256 judicial relief in a court of competent jurisdiction with respect to any biological opinion or other  
257 environmental documentation referred to in this Article.

258 (f) Following the declaration of Water Made Available under Article 4 of this  
259 Contract, the Contracting Officer will make a determination whether Project Water, or other water  
260 available to the Project, can be made available to the Contractor in addition to the Contract Total  
261 under Article 3 of this Contract during the Year without adversely impacting other Project  
262 Contractors. At the request of the Contractor, the Contracting Officer will consult with the  
263 Contractor prior to making such a determination. If the Contracting Officer determines that Project  
264 Water, or other water available to the Project, can be made available to the Contractor, the  
265 Contracting Officer will announce the availability of such water and shall so notify the Contractor as  
266 soon as practical. The Contracting Officer will thereafter meet with the Contractor and other Project  
267 Contractors capable of taking such water to determine the most equitable and efficient allocation of  
268 such water. If the Contractor requests the delivery of any quantity of such water, the Contracting  
269 Officer shall make such water available to the Contractor in accordance with applicable statutes,  
270 regulations, guidelines, and policies.

271 (g) The Contractor may request permission to reschedule for use during the  
272 subsequent Year some or all of the Water Made Available to the Contractor during the current Year  
273 referred to as "carryover." The Contractor may request permission to use during the current Year, a

274 quantity of Project Water which may be made available by the United States to the Contractor during  
275 the subsequent Year referred to as "peruse." The Contracting Officer's written approval may permit  
276 such uses in accordance with applicable statutes, regulations, guidelines, and policies.

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

284 (i) Project Water furnished to the Contractor pursuant to this Contract may be  
285 delivered for purposes other than those described in subdivision (o) of Article 1 of this Contract upon  
286 written approval by the Contracting Officer in accordance with the terms and conditions of such  
287 approval.

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



295 TIME FOR DELIVERY OF WATER

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

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

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

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

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

319 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

320 5. (a) The Project Water to be furnished to the Contractor pursuant to this Contract  
321 shall be made available to the Contractor at the mileposts identified in Exhibit "C" and any additional  
322 point or points of delivery either on Project facilities or another location or locations mutually agreed  
323 to in writing by the Contracting Officer and the Contractor.

324 (a)(1) All Project Water made available to the Contractor shall be conveyed to the  
325 Contractor through the California Aqueduct pursuant to the CVP-SWP Wheeling Agreement or  
326 Project facilities, in accordance with the approved delivery scheduled described in Article 4, and as  
327 identified on Exhibit "C."

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

332 (c) The Contractor shall not deliver Project Water to land outside the Contractor's  
333 Service Area unless approved in advance by the Contracting Officer.

334 (d) All Water Delivered to the Contractor pursuant to this Contract shall be  
335 measured and recorded with equipment furnished, installed, operated, and maintained by the State at  
336 the point or points of delivery established pursuant to subdivision (a) of this Article. Upon the

337 request of either party to this Contract, the Contracting Officer shall investigate, or cause to be  
338 investigated by the responsible Operating Non-Federal Entity, the accuracy of such measurements and  
339 shall take any necessary steps to adjust any errors appearing therein. For any period of time when  
340 accurate measurements have not been made, the Contracting Officer shall consult with the Contractor  
341 and the responsible Operating Non-Federal Entity, or the State prior to making a final determination  
342 of the quantity delivered for that period of time.

343 (e) Absent a separate contrary written agreement with the Contractor, neither the  
344 Contracting Officer nor the Operating Non-Federal Entity shall be responsible for the control,  
345 carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to this  
346 Contract beyond the delivery points specified in subdivision (a) of this Article. The Contractor shall  
347 indemnify the United States, its officers, employees, agents, and assigns on account of damage or  
348 claim of damage of any nature whatsoever for which there is legal responsibility, including property  
349 damage, personal injury, or death arising out of or connected with the control, carriage, handling, use,  
350 disposal, or distribution of such Water Delivered beyond such delivery points, except for any damage  
351 or claim arising out of: (i) acts or omissions of the Contracting Officer or any of its officers,  
352 employees, agents, or assigns, including any responsible Operating Non-Federal Entity, with the  
353 intent of creating the situation resulting in any damage or claim; (ii) willful misconduct of the  
354 Contracting Officer or any of its officers, employees, agents, or assigns, including any responsible  
355 Operating Non-Federal Entity; (iii) negligence of the Contracting Officer or any of its officers,  
356 employees, agents, or assigns.

357           MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

358           6.       (a)       The Contractor has established a measuring program satisfactory to the  
359 Contracting Officer. The Contractor shall ensure that all surface water delivered for M&I purposes is  
360 measured at each M&I service connection. The water measuring devices or water measuring methods  
361 of comparable effectiveness must be acceptable to the Contracting Officer. The Contractor shall be  
362 responsible for installing, operating, and maintaining and repairing all such measuring devices and  
363 implementing all such water measuring methods at no cost to the United States. The Contractor shall  
364 use the information obtained from such water measuring devices or water measuring methods to  
365 ensure its proper management of the water. Nothing herein contained, however, shall preclude the  
366 Contractor from establishing and collecting any charges, assessments, or other revenues authorized by  
367 California law. The Contractor shall include a summary of all its annual surface water deliveries in  
368 the annual report described in subdivision (c) of Article 26.

369                       (b)       To the extent the information has not otherwise been provided, upon execution  
370 of this Contract, the Contractor shall provide to the Contracting Officer a written report describing the  
371 measurement devices or water measuring methods being used or to be used to implement subdivision  
372 (a) of this Article and identifying the M&I service connections or alternative measurement programs  
373 approved by the Contracting Officer, at which such measurement devices or water measuring  
374 methods are being used, and, if applicable, identifying the locations at which such devices and/or  
375 methods are not yet being used including a time schedule for implementation at such locations. The  
376 Contracting Officer shall advise the Contractor in writing within 60 days as to the adequacy and  
377 necessary modifications, if any, of the measuring devices or water measuring methods identified in

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

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

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

390 (e) The Contractor shall inform the Contracting Officer on or before the 20th  
391 calendar day of each month of the quantity of M&I Water taken during the preceding month.

392 RATES AND METHOD OF PAYMENT FOR WATER

393 7. (a) The Contractor shall pay the United States as provided in this Article for all  
394 Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance  
395 with: (i) the Secretary's then-existing ratesetting policy for M&I Water. Such ratesetting policies  
396 shall be amended, modified, or superseded only through a public notice and comment procedure; (ii)  
397 applicable Federal Reclamation law and associated rules and regulations, or policies; and (iii) other  
398 applicable provisions of this Contract. Payments shall be made by cash transaction, wire transfer, or

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

402 (b) The Contracting Officer shall notify the Contractor of the Rates, Charges, and  
403 Tiered Pricing Components as follows:

404 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall  
405 provide the Contractor an estimate of the Charges for Project Water that will be applied to the period  
406 October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and  
407 the basis for such estimate. The Contractor shall be allowed not less than two months to review and  
408 comment on such estimates. On or before September 15 of each Calendar Year, the Contracting  
409 Officer shall notify the Contractor in writing of the Charges to be in effect during the period  
410 October 1 of the current Calendar Year, through September 30, of the following Calendar Year, and  
411 such notification shall revise Exhibit "B."

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

419 (c) At the time the Contractor submits the initial schedule for the delivery of

420 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor  
421 shall make an advance payment to the United States equal to the total amount payable pursuant to the  
422 applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be  
423 delivered pursuant to this Contract during the first two calendar months of the Year. Before the end  
424 of the first month and before the end of each calendar month thereafter, the Contractor shall make an  
425 advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for the  
426 Water Scheduled to be delivered pursuant to this Contract during the second month immediately  
427 following. Adjustments between advance payments for Water Scheduled and payments at Rates due  
428 for Water Delivered shall be made before the end of the following month; Provided, That any revised  
429 schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the  
430 amount of Water Delivered pursuant to this Contract during any month shall be accompanied with  
431 appropriate advance payment, at the Rates then in effect, to assure that Project Water is not delivered  
432 to the Contractor in advance of such payment. In any month in which the quantity of Water Delivered  
433 to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid for by the  
434 Contractor, no additional Project Water shall be delivered to the Contractor unless and until an  
435 advance payment at the Rates then in effect for such additional Project Water is made. Final  
436 adjustment between the advance payments for the Water Scheduled and payments for the quantities  
437 of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable  
438 but no later than April 30th of the following Year, or 60 days after the delivery of Project Water  
439 carried over under subdivision (g) of Article 3 of this Contract if such water is not delivered by the  
440 last day of February.

441           (d)     The Contractor shall also make a payment in addition to the Rate(s) in  
442 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the  
443 appropriate Tiered Pricing Component then in effect, before the end of the month of delivery. The  
444 payments shall be consistent with the quantities of M&I Water Delivered as shown in the water  
445 delivery report for the subject month prepared by the Operating Non-Federal Entity or, if there is no  
446 Operating Non-Federal Entity, by the Contracting Officer. The water delivery report shall be deemed  
447 a bill for the payment of Charges and the applicable Tiered Pricing Component for Water Delivered.  
448 Adjustment for overpayment or underpayment of Charges shall be made through the adjustment of  
449 payments due to the United States for Charges for the next month. Any amount to be paid for past  
450 due payment of Charges and the Tiered Pricing Component shall be computed pursuant to Article 20  
451 of this Contract.

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

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

459           (g)     All revenues received by the United States from the Contractor relating to the  
460 delivery of Project Water or the delivery of non-Project water through Project facilities shall be  
461 allocated and applied in accordance with Federal Reclamation law and the associated rules or



462 regulations, and the then current Project ratesetting policies for M&I Water.

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

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

478           (j)     (1)    Beginning at such time as deliveries of Project Water in a Year exceed  
479 80 percent of the Contract Total, then before the end of the month following the month of delivery the  
480 Contractor shall make an additional payment to the United States equal to the applicable Tiered  
481 Pricing Component. The Tiered Pricing Component for the amount of Water Delivered in excess of  
482 80 percent of the Contract Total, but less than or equal to 90 percent of the Contract Total, shall equal

483 the one-half of the difference between the Rate established under subdivision (a) of this Article and  
484 the M&I Full Cost Water Rate. The Tiered Pricing Component for the amount of Water Delivered  
485 which exceeds 90 percent of the Contract Total shall equal the difference between (i) the Rate  
486 established under subdivision (a) of this Article and (ii) the M&I Full Cost Water Rate.

487 (2) Omitted.

488 (3) For purposes of determining the applicability of the Tiered Pricing  
489 Components pursuant to this Article, Water Delivered shall include Project Water that the Contractor  
490 transfers to others but shall not include Project Water transferred to the Contractor.

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

498 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA,  
499 the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates adjusted  
500 upward or downward to reflect the changed costs of delivery (if any) of the transferred Project Water  
501 to the transferee's point of delivery in accordance with the then applicable CVP Ratesetting Policy.

502 (m) Omitted.

503                   (n)     The Contractor asserts that it is not legally obligated to pay any Project deficits  
504 claimed by the United States to have accrued as of the date of this Contract or deficit-related interest  
505 charges thereon. By entering into this Contract, the Contractor does not waive any legal rights or  
506 remedies that it may have with respect to such disputed issues. Notwithstanding the execution of this  
507 Contract and payments made hereunder, the Contractor may challenge in the appropriate  
508 administrative or judicial forums: (1) the existence, computation, or imposition of any deficit charges  
509 accruing during the term of the Existing Contract; (2) interest accruing on any such deficits; (3) the  
510 inclusion of any such deficit charges or interest in the Rates; (4) the application by the United States  
511 of payments made by the Contractor under its Existing Contract; and (5) the application of such  
512 payments in the Rates. The Contracting Officer agrees that the Contractor shall be entitled to the  
513 benefit of any administrative or judicial ruling in favor of any Project M&I contractor on any of these  
514 issues, and credits for payments heretofore made, provided that the basis for such ruling is applicable  
515 to the Contractor.

516                   (o)     The Contractor shall pay the cost of conveyance of Project Water furnished  
517 pursuant to this Contract directly to the State pursuant to the then current CVP-SWP Wheeling  
518 Agreement.

519                   8.     Omitted.

520                   9.     Omitted.

521                                   APPLICATION OF PAYMENTS AND ADJUSTMENTS

522                   10.    (a)     The amount of any overpayment by the Contractor of the Contractor's O&M,  
523 Capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of

524 the Contractor arising out of this Contract then due and payable. Overpayments of more than \$1,000  
525 shall be refunded at the Contractor's request. In lieu of a refund, any amount of such overpayment at  
526 the option of the Contractor, may be credited against amounts to become due to the United States by  
527 the Contractor. With respect to overpayment, such refund or adjustment shall constitute the sole  
528 remedy of the Contractor or anyone having or claiming to have the right to the use of any of the  
529 Project Water supply provided for herein. All credits and refunds of overpayments shall be made  
530 within 30 days of the Contracting Officer obtaining direction as to how to credit or refund such  
531 overpayment in response to the notice to the Contractor that it has finalized the accounts for the Year  
532 in which the overpayment was made.

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

538 TEMPORARY REDUCTIONS--RETURN FLOWS

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

544 (b) The Contracting Officer may temporarily discontinue or reduce the quantity of  
545 Water Delivered to the Contractor as herein provided for the purposes of investigation, inspection,  
546 maintenance, repair, or replacement of any of the Project facilities or any part thereof necessary for  
547 the delivery of Project Water to the Contractor, but so far as feasible the Contracting Officer will give  
548 the Contractor due notice in advance of such temporary discontinuance or reduction, except in case of  
549 emergency, in which case no notice need be given; Provided, That the United States shall use its best  
550 efforts to avoid any discontinuance or reduction in such service. Upon resumption of service after  
551 such reduction or discontinuance, and if requested by the Contractor, the United States will, if  
552 possible, deliver the quantity of Project Water which would have been delivered hereunder in the  
553 absence of such discontinuance or reduction.

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

560 CONSTRAINTS ON THE AVAILABILITY OF WATER

561 12. (a) In its operation of the Project, the Contracting Officer will use all reasonable  
562 means to guard against a Condition of Shortage in the quantity of water to be made available to the  
563 Contractor pursuant to this long-term renewal Contract. In the event the Contracting Officer

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

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

571 (c) Omitted.

572 (d) Project Water furnished under this Contract will be allocated in accordance  
573 with the then-existing Central Valley Project M&I Water Shortage Policy. Such policy shall be  
574 amended, modified, or superseded only through a public notice and comment procedure.

575 (e) By entering into this Contract, the Contractor does not waive any legal rights or  
576 remedies it may have to file or participate in any administrative or judicial proceeding contesting (i)  
577 the sufficiency of the Central Valley Project M&I Water Shortage Policy; (ii) the substance of such a  
578 policy; or (iii) the applicability of such a policy; or (iv) the manner in which such policy is  
579 implemented in order to allocate Project Water between M&I and irrigation purposes; Provided, That  
580 the Contractor has commenced any such judicial challenge or any administrative procedures  
581 necessary to institute any judicial challenge within six months of the policy becoming final. By  
582 agreeing to the foregoing, the Contracting Officer does not waive any legal defenses or remedies that  
583 it may then have to assert in such a proceeding. By agreeing to the foregoing, the Contracting Officer  
584 does not waive any legal defenses or remedies that it may have to assert in such a proceeding.

585 Nothing contained herein shall be interpreted to validate or invalidate the Central Valley Project M&I  
586 Water Shortage Policy.

587 13. Omitted.

588 RULES AND REGULATIONS

589 14. The parties agree that the delivery of M&I Water or use of Federal facilities pursuant  
590 to this Contract is subject to the applicable provisions of Federal Reclamation law, and any applicable  
591 rules and regulations promulgated by the Secretary of the Interior under such law.

592 WATER AND AIR POLLUTION CONTROL

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

596 QUALITY OF WATER

597 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to  
598 this Contract shall be operated and maintained to enable the United States to deliver Project Water to  
599 the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act  
600 of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat.  
601 3050) or other existing Federal laws. The United States is under no obligation to construct or furnish  
602 water treatment facilities to maintain or to improve the quality of Water Delivered to the Contractor  
603 pursuant to this Contract. The United States does not warrant the quality of Water Delivered to the  
604 Contractor pursuant to this Contract. The Contractor shall be responsible for compliance with all  
605 State and Federal water quality standards applicable to the Contractor for surface and subsurface

606 agricultural drainage discharges generated through the use of Federal or Contractor facilities or  
607 Project Water provided by the Contractor within its service area.

608 (b) The O&M of Project facilities shall be performed in such manner as is  
609 practicable to maintain the quality of raw Water Made Available through such facilities at the highest  
610 level reasonably attainable as determined by the Contracting Officer.

611 WATER ACQUIRED BY THE CONTRACTOR OTHER  
612 THAN FROM THE UNITED STATES

613 17. (a) Omitted.

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

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

625 (2) Delivery of such non-Project water in and through Project facilities  
626 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project purposes as



627 determined by the Contracting Officer; (ii) reduce the quantity or quality of water available to other  
628 Project Contractors; (iii) interfere with the delivery of contractual water entitlements to any other  
629 Project Contractors; or (iv) interfere with the physical maintenance of the Project facilities.

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

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

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

647 Contracting Officer for conveyance and transportation of non-Project water prior to any such  
648 remaining capacity being made available to non-Project contractors.

649 OPINIONS AND DETERMINATIONS

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

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

664 COORDINATION AND COOPERATION

665 19. (a) In order to further their mutual goals and objectives, the Contracting Officer  
666 and the Contractor shall communicate, coordinate, and cooperate with each other, and with other  
667 affected Project Contractors, in order to improve the operation and management of the Project. The

668 communication, coordination, and cooperation regarding operations and management shall include,  
669 but not be limited to, any action which will or may materially affect the quantity or quality of Project  
670 Water supply, the allocation of Project Water supply, and Project financial matters including, but not  
671 limited to, budget issues. The communication, coordination, and cooperation provided for hereunder  
672 shall extend to all provisions of this Contract. Each party shall retain exclusive decision making  
673 authority for all actions, opinion, and determinations to be made by the respective party.

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

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

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

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

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

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

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

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

701 CHARGES FOR DELINQUENT PAYMENTS

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

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

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

718 EQUAL OPPORTUNITY

719 21. During the performance of this renewal contract, the contractor agrees all Federal  
720 statutes and regulations regarding employment and employment discrimination applicable to Federal  
721 agencies shall be fully enforced.

722 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

735 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

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

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

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

754 24. Omitted.

755 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

764 26. Omitted.

765 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

766 27. The provisions of this Contract shall not be applicable to or affect non-Project water or  
767 water rights now owned or hereafter acquired by the Contractor or any user of such water within the  
768 Contractor's Service Area. Any such water shall not be considered Project Water under this Contract.  
769 In addition, this Contract shall not be construed as limiting or curtailing any rights which the

770 Contractor or any water user within the Contractor's Service Area acquires or has available under any  
771 other contract pursuant to Federal Reclamation law.

772 OPERATION AND MAINTENANCE BY NON-FEDERAL ENTITY

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

779 (b) The Contracting Officer has previously notified the Contractor in writing that  
780 the O&M of a portion of the Project facilities which serve the Contractor has been transferred to the  
781 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, and therefore, the  
782 Contractor shall pay directly to the Operating Non-Federal Entity San Luis & Delta-Mendota Water  
783 Authority, or to any successor approved by the Contracting Officer under the terms and conditions of  
784 the separate agreement between the United States and the Operating Non-Federal Entity San Luis &  
785 Delta Mendota Water Authority described in subdivision (a) of this Article, all Rates, Charges, or  
786 assessments of any kind, including any assessment for reserve funds, which the Operating  
787 Non-Federal Entity San Luis & Delta Mendota Water Authority or such successor determines, sets, or  
788 establishes for the O&M of the portion of the Project facilities operated and maintained by the  
789 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or such successor. Such  
790 direct payments to the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or

791 such successor shall not relieve the Contractor of its obligation to pay directly to the United States the  
792 Contractor's share of the Project Rates, Charges, and Tiered Pricing Components except to the extent  
793 the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority collects payments on  
794 behalf of the United States in accordance with the separate agreement identified in subdivision (a) of  
795 this Article.

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

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



811 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

812 29. The expenditure or advance of any money or the performance of any obligation of the  
813 United States under this Contract shall be contingent upon appropriation or allotment of funds.  
814 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations  
815 under this Contract. No liability shall accrue to the United States in case funds are not appropriated  
816 or allotted.

817 BOOKS, RECORDS, AND REPORTS

818 30. (a) The Contractor shall establish and maintain accounts and other books and  
819 records pertaining to administration of the terms and conditions of this Contract, including: the  
820 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;  
821 water use data; and other matters that the Contracting Officer may require. Reports thereon shall be  
822 furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer  
823 may require. Subject to applicable Federal laws and regulations, each party to this Contract shall  
824 have the right during office hours to examine and make copies of the other party's books and records  
825 relating to matters covered by this Contract.

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

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

834 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

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

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

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

843 SEVERABILITY

844 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor  
845 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an  
846 association or other form of organization whose primary function is to represent parties to Project  
847 contracts, brings an action in a court of competent jurisdiction challenging the legality or  
848 enforceability of a provision included in this Contract and said person, entity, association, or  
849 organization obtains a final court decision holding that such provision is legally invalid or  
850 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the  
851 parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court  
852 decision identify by mutual agreement the provisions in this Contract which must be revised and (ii)  
853 within three months thereafter promptly agree on the appropriate revision(s). The time periods  
854 specified above may be extended by mutual agreement of the parties. Pending the completion of the  
855 actions designated above, to the extent it can do so without violating any applicable provisions of  
856 law, the United States shall continue to make the quantities of Project Water specified in this Contract  
857 available to the Contractor pursuant to the provisions of this Contract which were not found to be  
858 legally invalid or unenforceable in the final court decision.

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RESOLUTION OF DISPUTES

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

OFFICIALS NOT TO BENEFIT

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

CHANGES IN CONTRACTOR'S SERVICE AREA

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

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

882 Contractor to pay for Project Water furnished under this Contract or to pay for any  
883 Federally-constructed facilities for which the Contractor is responsible; and (iii) have an impact on  
884 any Project Water rights applications, permits, or licenses. In addition, the Contracting Officer shall  
885 comply with the National Environmental Policy Act and the Endangered Species Act. The Contractor  
886 will be responsible for all costs incurred by the Contracting Officer in this process, and such costs  
887 will be paid in accordance with Article 25 of this Contract.

888 36. Omitted.

889 NOTICES

890 37. Any notice, demand, or request authorized or required by this Contract shall be  
891 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered  
892 to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, California 93721,  
893 and on behalf of the United States, when mailed, postage prepaid, or delivered to the San Joaquin  
894 Valley National Cemetery, U. S. Department of Veterans Affairs, 32053 West McCabe Road,  
895 Gustine, California 95322. The designation of the addressee or the address may be changed by  
896 notice given in the same manner as provided in this Article for other notices.

897 38. Omitted.

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

900 THE UNITED STATES OF AMERICA

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

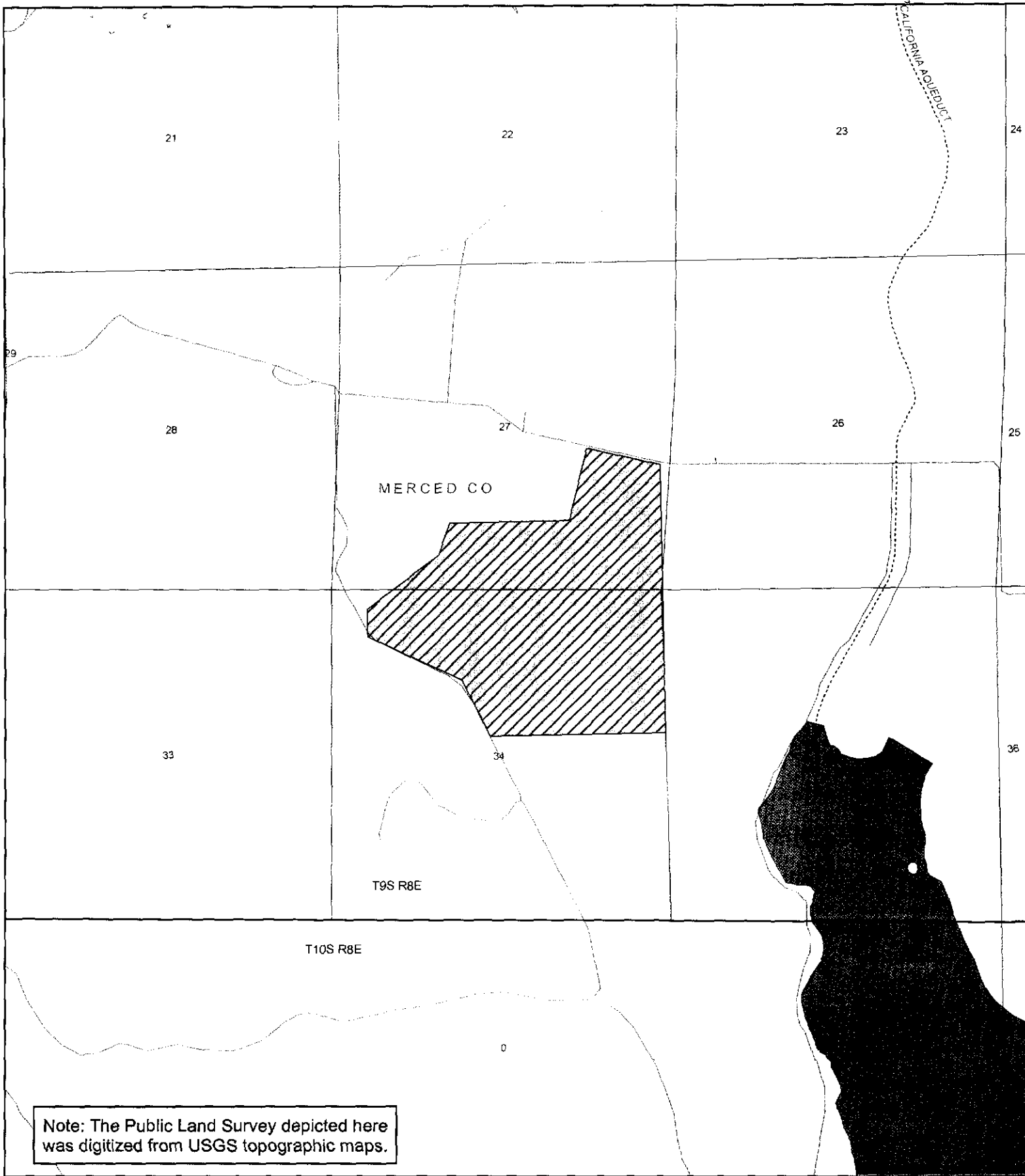
By: *[Signature]*  
Regional Director, Mid-Pacific Region  
Bureau of Reclamation

904 (SEAL)



U. S. DEPARTMENT OF VETERAN AFFAIRS

905 By: *Robert B. Holbrook*  
906 Director, Office of Construction  
907 Management, National Cemetery  
908 Administration

909 (H:\pub 440\LTRC\Final Draft LTRC's - Fresno, Tracy\10-28-04 Veterans Final Draft Contract with  
910 exhibits.doc)



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

-  District Boundary
-  Contractor's Service Area

**US Dept. of Veterans Affairs  
(San Joaquin National Cemetery)**  
Contract No. 3-07-20-W1124-LTR1  
EXHIBIT A

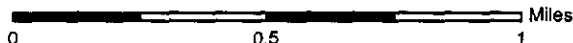


EXHIBIT B  
DEPARTMENT OF VETERAN'S AFFAIRS - SAN JOAQUIN VALLEY CEMETERY  
Water Rates and Charges

	2005 Rates Per Acre-Foot	
	Irrigation Water	M&I Water
<b>COST-OF-SERVICE (COS) RATES:</b>		
Capital Rates:		\$12.18
<b>O&amp;M Rates:</b>		
Water Marketing		\$ 3.89
Storage		\$ 6.67
Conveyance		*
Conveyance Pumping		*
<b>Deficit Rates:</b>		
Non-Interest Bearing		\$ 6.56
Interest Bearing		\$ .23
CFO/PFR Adjustment Rate <sup>1</sup>		
<b><u>TOTAL COST-OF-SERVICE RATES (COS):</u></b>		<b>\$29.53</b>
<b><u>FULL-COST RATES:</u></b>		
Section 202(3) Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981.		
<b><u>205 FULL-COST RATES:</u></b>		
Section 205(a)(3) Rate is applicable to a Qualified Recipient or to a Limited Recipient that did <u>not</u> receive irrigation water on or before October 1, 1981.		
<b>Tiered Pricing Component &gt;80% &lt;=90% of Contract</b>		
Total [Full Cost Rate - COS Rate /2]:		\$ 3.75
<b>Tiered Pricing Component &gt;90% of Contract</b>		
Total [Full Cost Rate - COS Rate]:		\$ 7.50
<b>SURCHARGES UNDER P.L. 102-575</b>		
<b>TO RESTORATION FUND**</b>	<b>\$ 7.93</b>	<b>\$15.87</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).

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

Contract No. 3-07-20-W1124-LTR1

EXHIBIT C  
[points of diversion]

Turnout Location(s):

Reach 2B, DWR Mile Post 66.12 on the California Aqueduct