

JUNE 21, 2007 DRAFT

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

INTERIM RENEWAL CONTRACT BETWEEN THE UNITED STATES
AND
WESTLANDS WATER DISTRICT
PROVIDING FOR PROJECT WATER SERVICE
SAN LUIS UNIT AND DELTA DIVISION

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7 PROVIDING FOR PROJECT WATER SERVICE FROM
8 SAN LUIS UNIT AND DELTA DIVISION

9 THIS CONTRACT, made this ___ of ____, 200_, in pursuance generally of the Act of June
10 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto, including, but not limited to,
11 the Acts of August 26, 1937 (50 Stat. 844), as amended and supplemented, August 4, 1939 (53 Stat.
12 1187), as amended and supplemented, July 2, 1956 (70 Stat. 483), June 3, 1960 (74 Stat. 156), June
13 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat. 3050), as
14 amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively
15 hereinafter referred to as Federal Reclamation law, between THE UNITED STATES OF AMERICA,
16 hereinafter referred to as the United States, and WESTLANDS WATER DISTRICT, hereinafter
17 referred to as the Contractor, a public agency of the State of California, duly organized, existing, and
18 acting pursuant to the laws thereof;

19 WITNESSETH, That:

20 EXPLANATORY RECITALS

21 [1st] WHEREAS, the United States has constructed and is operating the Central Valley
22 Project, (Project) California, for diversion, storage, carriage, distribution and beneficial use, for flood
23 control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and

24 restoration, generation and distribution of electric energy, salinity control, navigation and other
25 beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and the
26 San Joaquin River and their tributaries; and

27 [2nd] WHEREAS, the United States constructed the Delta Division Facilities, including the
28 San Luis Unit facilities (which include the San Luis Canal, Coalinga Canal, Pleasant Valley Pumping
29 Plant, and Dos Amigos Pumping Plant), which will be used in part for the furnishing of water to the
30 Contractor pursuant to the terms of this Contract; and

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

33 [4th] WHEREAS, the terms and conditions pursuant to which Project Water is to be
34 delivered to the Contractor through December 31, 2007, are addressed in the Contract Between the
35 United States and Westlands Water District Providing for Water Service, dated June 5, 1963, and the
36 Stipulated Judgment in the lawsuit entitled Barcellos and Wolfsen, Inc., v. Westlands Water District,
37 Civ. No. F-79-106-EDP (E.D. Cal.), as consolidated with Westlands Water District v. United States
38 of America, Civ. No. F-81-245-EDP (E.D. Cal.), entered on December 30, 1986, hereinafter referred
39 to as the Existing Contract; and

40 [5th] WHEREAS, the United States and the Contractor have pursuant to Subsection
41 3404(c)(3) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into
42 binding agreements identified as Binding Agreement No. 14-06-200-495A-BA, and Binding
43 Agreement No. CV 79-106-EDP-BA, which set out the terms pursuant to which the Contractor
44 agreed to renew the Existing Contract before the expiration date after completion of the
45 Programmatic Environmental Impact Statement (PEIS) and other appropriate environmental

46 documentation and negotiation of a renewal contract; and which also sets out the consequences of
47 subsequent decisions not to renew: and

48 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of the
49 Existing Contract following completion of appropriate environmental documentation, including the
50 PEIS, which was required by Section 3409 of the CVPIA, pursuant to the National Environmental
51 Policy Act (NEPA) analyzing the direct and indirect impacts and benefits of implementing the
52 CVPIA and the potential renewal of all existing contracts for Project Water; and

53 [7th] WHEREAS, rights of renewal of Existing Contract and to convert said contract to a
54 contract as provided by subsection (d), Section 9 of the Act of August 4, 1939 (53 Stat. 1187), are set
55 forth in said contract; and

56 [8th] WHEREAS, the United States has completed the PEIS, but since all the environmental
57 documentation necessary to execute a long-term renewal contract has not been completed, the
58 Contractor has requested an interim renewal contract pursuant to Section 3404(c)(1) of the CVPIA;
59 and

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

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

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

68 essential portion of its water supply; and

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

71 [12.1] WHEREAS, the United States Court of Appeals for the Ninth Circuit has held that
72 Section 1(a) of the San Luis Act, Public Law 86-488, 74 Stat. 156, imposes on the Secretary a duty to
73 provide drainage service to the San Luis Unit; and

74 [12.2] WHEREAS, the Contractor and the Contracting Officer recognize that adequate
75 drainage service is required to maintain agricultural production within certain areas served with
76 Project Water made available under this Contract, and all renewals thereof; and

77 [12.3] WHEREAS, the Contracting Officer intends, to the extent appropriated funds are
78 available, to develop and implement effective solutions to drainage problems in the San Luis Unit; and

79 [12.4] WHEREAS, the Contracting Officer and the Contractor acknowledge that such
80 drainage solutions may involve actions not originally contemplated and/or the construction or use of
81 facilities, other than the San Luis Drain; that the Contractor is investing in drainage solutions for
82 lands within its boundaries that should be considered by the Contracting Officer in determining
83 drainage solutions; and that the existing ratesetting policy as it relates to the allocation and collection
84 of drainage costs may require amendment to recognize those investments by the Contractor and other
85 relevant circumstances; and

86 [12.5] WHEREAS, the Department of the Interior, Bureau of Reclamation published in June 2006
87 the San Luis Drainage Feature Re-evaluation Final Environmental Impact Statement, which considers
88 alternatives to provide agricultural drainage service to the San Luis Unit; and

89 [12.6] WHEREAS, on March 9, 2007, the Record of Decision was signed for the San Luis

90 Drainage Feature Re-evaluation Final Environmental Impact Statement identifying the retirement of
91 up to 194,000 acres of land from irrigated agricultural productions as the selected alternative; and

92 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships
93 to pursue measures to improve water supply, water quality, and reliability of the Project for all
94 Project purposes; and

95 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to
96 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment
97 of the Project as required by law; to guard reasonably against Project Water shortages; to achieve a
98 reasonable balance among competing demands for use of Project Water; and to comply with all
99 applicable environmental statutes, all consistent with the legal obligations of the United States
100 relative to the Project; and

101 [14.1] WHEREAS, the parties intend by this Contract to develop a more cooperative
102 relationship in order to achieve their mutual goals; and

103 [15th] WHEREAS, the Contractor has utilized or may utilize transfers, contract assignments,
104 rescheduling and conveyance of Project Water and non-Project water under this Contract as tools to
105 minimize the impacts of Conditions of Shortage and to maximize the beneficial use of water; and

106 [15.1] WHEREAS, the parties desire and intend that this Contract not provide a disincentive
107 to the Contractor in continuing to carry out the beneficial activities set out in the Explanatory Recital
108 immediately above; and

109 [15.2] WHEREAS, in order to continue water service provided under Project water service
110 contracts that expire prior to the completion of all appropriate environmental documentation, the
111 United States intends to execute interim renewal contracts for a period not to exceed three (3) Years

112 in length, and for successive interim periods of not more than two (2) Years in length, until such
113 appropriate environmental documentation, is finally completed, at which time the Secretary shall,
114 pursuant to Federal Reclamation law, upon request of the Contractor, enter into a long-term renewal
115 contract for a period of twenty-five (25) Years; and may thereafter renew such long-term renewal
116 contracts for successive periods not to exceed twenty-five (25) Years each; and

117 [15.3] WHEREAS, the Secretary intends to assure uninterrupted water service and continuity
118 of contract through the process set fourth in Article 2 hereof; and

119 [16th] WHEREAS, the United States and the Contractor are willing to enter into this
120 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

123 DEFINITIONS

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

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

128 (b) "Charges" shall mean the payments required by Federal Reclamation law in
129 addition to the Rates as determined annually by the Contracting Officer pursuant to this Contract;

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

133 (d) "Contracting Officer" shall mean the Secretary of the Interior's duly

134 authorized representative acting pursuant to this Contract or applicable Federal Reclamation law or
135 regulation;

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

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

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

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

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

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

155 (j) "Omitted"

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

158 (l) "Omitted"

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

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

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

170 (p) "Omitted"

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

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

178 Authority and, with respect to San Luis Unit facilities, the California Department of Water
179 Resources, and the Contractor;

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

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

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

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

190 (w) Omitted

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

194 (y) Omitted

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

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

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

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

205 TERM OF CONTRACT - RIGHT TO USE OF WATER

206 2. (a) This Contract shall be effective from January 1, 2008 and shall remain in
207 effect through February 28, 2010, and thereafter will be renewed as described in this Article. Except
208 as provided in subdivision (b) of this Article, until completion of all appropriate environmental
209 review, and provided that the Contractor has complied with all the terms and conditions of the
210 interim renewal contract in effect for the period immediately preceding the requested successive
211 interim renewal contract, this Contract will be renewed, upon request of the Contractor, for
212 successive interim periods each of which shall be no more than two (2) Years in length. Also, except
213 as provided in subdivision (b) of this Article, in order to promote orderly and cost effective contract
214 administration, the terms and conditions in subsequent interim renewal contracts shall be identical to
215 the terms and conditions in the interim renewal contract immediately preceding the subsequent
216 interim renewal contract: Provided, however, That each party preserves the right to propose
217 modification(s) in any interim renewal contract other than those described in subdivision (b) of this
218 Article, in which case the parties shall negotiate in good faith appropriate modification(s) to be
219 included in any successive interim renewal contracts. Said modification(s) of each successive
220 interim renewal contract shall be agreed upon within a reasonable time prior to the expiration of the
221 then existing interim renewal contract. Nothing in this Article shall in any way alter the obligation

222 that, upon final completion of any necessary environmental documentation, the Secretary shall,
223 pursuant to Federal Reclamation law, upon request of the Contractor, enter into a long-term renewal
224 contract for a period of twenty-five (25) Years and may thereafter renew such long-term renewal
225 contracts for successive periods not to exceed twenty-five (25) Years each.

226 (b) The parties have engaged and if necessary will continue to engage in good
227 faith negotiations intended to permit the execution of a twenty-five (25) Year long-term renewal
228 contract contemplated by Section 3404 (c) of the CVPIA, hereinafter referred to as a “long-term
229 renewal contract”. The parties recognize the possibility that this schedule may not be met without
230 further negotiations. Accordingly: In the event (i) the Contractor and Contracting Officer have
231 reached agreement on the terms of the Contractor’s long-term renewal contract or (ii) the Contractor
232 and Contracting Officer have not completed the negotiations on the Contractor’s long-term renewal
233 contract, believe that further negotiations on that contract would be beneficial, and mutually commit
234 to continue to negotiate to seek to reach agreement, but (iii) all environmental documentation
235 required to allow execution of the Contractor’s long-term renewal contract by both parties has not
236 been completed in time to allow execution of the Contractor’s long-term renewal contract by
237 February 28, 2010, then (iv), the parties will expeditiously complete the environmental
238 documentation required of each of them in order to execute the Contractor’s long-term renewal
239 contract at the earliest practicable date. In addition, the Contractor’s then current interim renewal
240 contract will be renewed without change upon the request of either party through the agreed-upon
241 effective date of the Contractor’s long-term renewal contract or, in the absence of agreement on the
242 terms of the Contractor’s long-term renewal contract, through the succeeding February 28.

243 (c) The omission of language in this Contract providing for conversion of this
244 interim renewal contract or any subsequent renewals thereof to a repayment contract, pursuant to the
245 Act of July 2, 1956 (70 Stat. 483), shall not prejudice the Contractor's right to assert a right to have
246 such language included in subsequent renewals of this Contract or to exercise such conversion, all as
247 provided by law, or to negotiate the language regarding such conversion to be included in subsequent
248 renewal contracts.

249 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

250 3. (a) During each Year, consistent with all applicable State water rights permits, and
251 licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of this Contract, the
252 Contracting Officer shall make available for delivery to the Contractor 1,150,000 acre-feet of Project
253 Water for irrigation and M&I purposes. Provided, however, during the two (2) month period of
254 January and February of Year, 2008, the Contracting Officer shall make available for delivery to the
255 Contractor that portion of the 2007 allocation of Project Water unused by the Contractor under the
256 Existing Contract. Water Delivered to the Contractor in accordance with this subdivision shall be
257 scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

258 (a.1) Notwithstanding any other provisions of this Contract, in the event the Secretary
259 implements a program to retire land from irrigated agricultural production within the Contractor's
260 Service Area as a means of addressing drainage in the San Luis Unit, the Contracting Officer shall
261 conduct a water needs assessment to determine whether the Contract Total will be reduced. An
262 initial water needs assessment shall be conducted upon the retirement of 25% of the land projected to
263 be retired under such land retirement program. Subsequent assessments shall be conducted upon the
264 retirement of 50% and 75% of the land projected to be retired and a final assessment will be

265 conducted at the conclusion of the land retirement program. Any water needs assessment performed
266 pursuant to this paragraph (1) shall update the water needs assessment used to compute the quantity
267 of Project Water to be made available under this Contract, which was submitted to the Contractor on
268 November 2, 2000, and shall be conducted pursuant to the methodology attached to this Contract as
269 Exhibit "C." The Contractor may request the Contracting Officer update the methodology employed
270 based upon Contractor specific information made available to the Contracting Officer by the
271 Contractor. Upon completion of any water needs assessment performed pursuant to this paragraph,
272 the Contracting Officer may make a determination to reduce the quantity of water to be made
273 available under this Contract, and the Contract Total shall be reduced according to that
274 determination; Provided, so long as the then-existing Contract Total can be put to reasonable and
275 beneficial use as determined by the water needs assessment on Eligible Lands within the Contractor's
276 Service Area that are not retired, the retirement of land shall not affect the quantity of Project Water
277 to be made available pursuant to this Contract.

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

286 (c) The Contractor shall utilize the Project Water in accordance with all applicable

287 legal requirements.

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

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

309 conducted outside the Contractor's Service Area may be permitted upon written approval of the
310 Contracting Officer, which approval will be based upon environmental documentation, Project Water
311 rights, and Project operational concerns. The Contracting Officer will address such concerns in
312 regulations, policies, or guidelines.

313 (e) The Contractor shall comply with requirements applicable to the Contractor in
314 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract
315 undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as amended, that are
316 within the Contractor's legal authority to implement. The Existing Contract, which evidences in
317 excess of 40 years of diversions for irrigation and/or M&I purposes of the quantities of Project Water
318 provided in subdivision (a) of Article 3 of this Contract, will be considered in developing an
319 appropriate baseline for the biological assessment(s) prepared pursuant to the ESA, and any other
320 needed environmental review. Nothing herein shall be construed to prevent the Contractor from
321 challenging or seeking judicial relief in a court of competent jurisdiction with respect to any
322 biological opinion or other environmental documentation referred to in this Article.

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

331 Contracting Officer will thereafter meet with the Contractor and other Project Contractors capable of
332 taking such water to determine the most equitable and efficient allocation of such water. If the
333 Contractor requests the delivery of any quantity of such water, the Contracting Officer shall make
334 such water available to the Contractor in accordance with applicable statutes, regulations, guidelines,
335 and policies. Subject to existing interim renewal and long-term contractual commitments, water
336 rights and operational constraints, interim renewal and long-term Project Contractors shall have a
337 first right to acquire such water, including Project Water made available pursuant to Section 215 of
338 the RRA.

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

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

352 (i) Project Water furnished to the Contractor pursuant to this Contract may be

353 delivered for purposes other than those described in subdivisions (m) and (o) of Article 1 of this
354 Contract upon written approval by the Contracting Officer in accordance with the terms and
355 conditions of such approval.

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

364 TIME FOR DELIVERY OF WATER

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

372 (b) On or before each March 1 and at such other times as necessary, the Contractor
373 shall submit to the Contracting Officer a written schedule, satisfactory to the Contracting Officer,
374 showing the monthly quantities of Project Water to be delivered by the United States to the

375 Contractor pursuant to this Contract for the Year commencing on such March 1. The Contracting
376 Officer shall use all reasonable means to deliver Project Water according to the approved schedule
377 for the Year commencing on such March 1.

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

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

386 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

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

395 (c) The Contractor shall deliver Irrigation Water in accordance with any
396 applicable land classification provisions of Federal Reclamation law and the associated regulations.

397 The Contractor shall not deliver Project Water to land outside the Contractor's Service Area unless
398 approved in advance by the Contracting Officer.

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

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

419 Contracting Officer or any of its officers, employees, agents, and assigns, including the Operating
420 Non-Federal Entity(ies) with the intent of creating the situation resulting in any damage or claim; (ii)
421 willful misconduct of the Contracting Officer or any of its officers, employees, agents, and assigns,
422 including the Operating Non-Federal Entity(ies); (iii) negligence of the Contracting Officer or any of
423 its officers, employees, agents, and assigns including the Operating Non-Federal Entity(ies); (iv) a
424 malfunction of facilities owned and/or operated by the United States or the Operating Non-Federal
425 Entity(ies); or (v) failure of the United States, its officers, employees, agents, and assigns, including
426 the Operating Non-Federal Entity(ies), to provide drainage service.

427 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

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

441 The Contractor shall include a summary of all its annual surface water deliveries in the annual report
442 described in subdivision (c) of Article 26 of this Contract.

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

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

461 (d) The Contractor shall inform the Contracting Officer and the State of California
462 in writing by April 30 of each Year of the monthly volume of surface water delivered within the

463 Contractor's Service Area during the previous Year.

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

467

468 RATES AND METHOD OF PAYMENT FOR WATER

469 7. (a) The Contractor shall pay the United States as provided in this Article for all
470 Delivered Water at Rates and Charges established in accordance with: (i) the Secretary's ratesetting
471 policy for Irrigation Water adopted in 1988 and the Secretary's then-existing ratesetting policy for
472 M&I Water. Such ratesetting policies shall be amended, modified, or superseded only through a
473 public notice and comment procedure; (ii) applicable Federal Reclamation law and associated rules
474 and regulations, or policies; and (iii) other applicable provisions of this Contract. Payments shall be
475 made by cash transaction, electronic funds transfer, or any other mechanism as may be agreed to in
476 writing by the Contractor and the Contracting Officer. The Rates and Charges applicable to the
477 Contractor upon execution of this Contract are set forth in Exhibit "B," as may be revised annually.

478

479 (b) The Contracting Officer shall notify the Contractor of the Rates and Charges
480 as follows:

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

485 comment on such estimates. On or before September 15 of each Calendar Year, the Contracting
486 Officer shall notify the Contractor in writing of the Charges to be in effect during the period
487 October 1 of the current Calendar Year, through September 30, of the following Calendar Year, and
488 such notification shall revise Exhibit "B."

489 (2) Prior to October 1 of each Calendar Year, the Contracting Officer shall
490 make available to the Contractor an estimate of the Rates for Project Water for the following Year
491 and the computations and cost allocations upon which those Rates are based. The Contractor shall be
492 allowed not less than two months to review and comment on such computations and cost allocations.

493 By December 31 of each Calendar Year, the Contracting Officer shall provide the Contractor with
494 the final Rates to be in effect for the upcoming Year, and such notification shall revise Exhibit "B."

495 (c) At the time the Contractor submits the initial schedule for the delivery of
496 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor
497 shall make an advance payment to the United States equal to the total amount payable pursuant to the
498 applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be
499 delivered pursuant to this Contract during the first two calendar months of the Year. Before the end
500 of the first month and before the end of each calendar month thereafter, the Contractor shall make an
501 advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for the
502 Water Scheduled to be delivered pursuant to this Contract during the second month immediately
503 following. Adjustments between advance payments for Water Scheduled and payments at Rates due
504 for Water Delivered shall be made before the end of the following month; Provided, That any revised
505 schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the
506 amount of Water Delivered pursuant to this Contract during any month shall be accompanied with

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

517 (d) The Contractor shall also make a payment in addition to the Rate(s) in
518 subdivision (c) of this Article to the United States for Water Delivered, at the Charges then in effect,
519 before the end of the month following the month of delivery. The payments shall be consistent with
520 the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery report for
521 the subject month prepared by the Operating Non-Federal Entity(ies) or, if there is no Operating
522 Non-Federal Entity, by the Contracting Officer. The water delivery report shall be deemed a bill for
523 the payment of Charges for Water Delivered. Adjustment for overpayment or underpayment of
524 Charges shall be made through the adjustment of payments due to the United States for Charges for
525 the next month. Any amount to be paid for past due payment of Charges shall be computed pursuant
526 to Article 20 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 (d) 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 and Charges and/or for making and allocating
550 payments, other than those set forth in this Article may be in the mutual best interest of the parties, it

551 is expressly agreed that the parties may enter into agreements to modify the mechanisms, policies,
552 and procedures for any of those purposes while this Contract is in effect without amending this
553 Contract.

554 (j) Omitted

555 (1-3) Omitted

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

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

572 (m) Pursuant to the Act of October 27, 1986 (100 Stat.3050), the Contracting

573 Officer is authorized to adjust determinations of ability to pay every five years.

574

575 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

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

579 SALES, TRANSFERS, OR EXCHANGES OF WATER

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

590 (b) In order to facilitate efficient water management by means of water transfers of
591 the type historically carried out among Project Contractors located within the same geographical area
592 and to allow the Contractor to participate in an accelerated water transfer program during the term of
593 this Contract, the Contracting Officer shall prepare, as appropriate, all necessary environmental
594 documentation, including, but not limited to, documents prepared pursuant to the NEPA and ESA,

595 analyzing annual transfers within such geographical areas and the Contracting Officer shall
596 determine whether such transfers comply with applicable law. Following the completion of the
597 environmental documentation, such transfers addressed in such documentation shall be conducted
598 with advance notice to the Contracting Officer, but shall not require prior written approval by the
599 Contracting Officer. Such environmental documentation and the Contracting Officer's compliance
600 determination shall be reviewed every five years and updated, as necessary, prior to the expiration of
601 the then existing five-year period. All subsequent environmental documentation shall include an
602 alternative to evaluate not less than the quantity of Project Water historically transferred within the
603 same geographical area.

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

614 APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

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

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

631 TEMPORARY REDUCTIONS--RETURN FLOWS

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

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

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

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

654 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

660 (b) If there is a Condition of Shortage because of errors in physical operations of

661 the Project, drought, other physical causes beyond the control of the Contracting Officer or actions
662 taken by the Contracting Officer to meet legal obligations then, except as provided in subdivision (a)
663 of Article 18 of this Contract, no liability shall accrue against the United States or any of its officers,
664 agents, or employees for any damage, direct or indirect, arising therefrom.

665 (c) In any Year in which there may occur a Condition of Shortage for any of the
666 reasons specified in subdivision (b) of this Article, and subject to subdivision (d) of this Article, the
667 Contracting Officer will first allocate the available Project Water consistent with the Central Valley
668 Project M&I Water Shortage in its form applicable under Article 12(c) of water service contracts in
669 effect on the date of this Contract which provide water service from Delta Division Facilities for
670 determining the amount of Project Water Available for delivery to the Project Contractors. Subject
671 to the foregoing allocation, in any year in which there may occur a Condition of Shortage, the
672 Contracting Officer shall then apportion Project Water among the Contractor and others entitled to
673 Project Water from Delta Division Facilities under long-term water service or repayment contracts
674 (or renewals thereof or binding commitments therefore) in force on February 28, 2005, as follows:

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

681 (2) A determination shall be made of the total quantity of Project Water
682 that is available for meeting the scheduled total, the quantity so determined being hereinafter referred

683 to as the available supply;

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

688 (4) The available supply shall be multiplied by the Contractor's
689 proportionate share and the result shall be the quantity of Project Water made available by the United
690 States to the Contractor for the relevant Year in accordance with the schedule developed by the
691 Contracting Officer under subdivision (c) (1) of this Article 12, but in no event shall such amount
692 exceed the Contract Total. In the event the Contracting Officer subsequently determines that the
693 Contracting Officer can increase or needs to decrease the available supply for delivery from Delta
694 Division Facilities to interim renewal, long-term water service, and repayment contractors during the
695 relevant Year, such additions or reductions to the available supply shall be apportioned consistent
696 with subparagraphs (1) through (4), inclusive.

697 (d) By entering into this Contract, the Contractor does not waive any legal rights
698 or remedies it may have to file or participate in any administrative or judicial proceeding contesting
699 (i) the sufficiency of the Central Valley Project M&I Water Shortage Policy; (ii) the substance of
700 such a policy; (iii) the applicability of such a policy; or (iv) the manner in which such policy is
701 implemented in order to allocate Project Water between municipal and industrial and irrigation
702 purposes; Provided, That the Contractor has commenced any such judicial challenge or any
703 administrative procedures necessary to institute any judicial challenge within six months of the policy
704 becoming final. By agreeing to the foregoing, the Contracting Officer does not waive any legal

705 defenses or remedies that it may have to assert in such a proceeding. Nothing contained herein shall
706 be interpreted to validate or invalidate the Central Valley Project M&I Water Shortage Policy.

707 (e) Omitted

708 UNAVOIDABLE GROUNDWATER PERCOLATION

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

713 RULES AND REGULATIONS

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

718 WATER AND AIR POLLUTION CONTROL

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

722 QUALITY OF WATER

723 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to
724 this Contract shall be operated and maintained to enable the United States to deliver Project Water to
725 the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act
726 of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat.
727 3050) or other existing Federal laws. The United States is under no obligation to construct or furnish
728 water treatment facilities to maintain or to improve the quality of Water Delivered to the Contractor
729 pursuant to this Contract. The United States does not warrant the quality of Water Delivered to the

730 Contractor pursuant to this Contract.

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

737 (c) The Contracting Officer shall notify the Contractor in writing when drainage
738 service becomes available. Thereafter, the Contracting Officer shall provide drainage service to the
739 Contractor at rates established pursuant to the then-existing ratesetting policy for Irrigation Water;
740 Provided, That such ratesetting policy shall be amended, modified, or superseded only through the
741 process described in subdivision (a) of Article 7 of this Contract.

742

743

744

WATER ACQUIRED BY THE CONTRACTOR
OTHER THAN FROM THE UNITED STATES

745 17. (a) Water or water rights now owned or hereafter acquired by the Contractor other
746 than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may
747 be simultaneously transported through the same distribution facilities of the Contractor subject to the
748 following: (i) if the facilities utilized for commingling Irrigation Water and non-Project water were
749 constructed without funds made available pursuant to Federal Reclamation law, the provisions of
750 Federal Reclamation law will be applicable only to the Landholders of lands which receive Irrigation
751 Water; (ii) the eligibility of land to receive Irrigation Water must be established through the
752 certification requirements as specified in the Acreage Limitation Rules and Regulations (43 CFR Part

753 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be
754 established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity
755 necessary to irrigate such Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation
756 Water and non-Project water are/were constructed with funds made available pursuant to Federal
757 Reclamation law, the non-Project water will be subject to the acreage limitation provisions of Federal
758 Reclamation law, unless the Contractor pays to the United States the incremental fee described in 43
759 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate annually the
760 cost to the Federal Government, including interest, of storing or delivering non-Project water, which
761 for purposes of this Contract shall be determined as follows: The quotient shall be the unpaid
762 distribution system costs divided by the total irrigable acreage within the Contractor's Service Area.
763 The incremental fee per acre is the mathematical result of such quotient times the interest rate
764 determined using Section 202 (3) of the Act of October 12, 1982 (96 Stat. 1263). Such incremental
765 fee will be charged to each acre of excess or full cost land within the Contractor's Service Area that
766 receives non-Project water through Federally financed or constructed facilities. The incremental fee
767 calculation methodology will continue during the term of this Contract absent the promulgation of a
768 contrary Reclamation-wide rule, regulation, or policy adopted after the Contractor has been afforded
769 the opportunity to review and comment on the proposed rule, regulation, or policy. If such rule,
770 regulation, or policy is adopted it shall supersede this provision.

771 (b) Water or water rights now owned or hereafter acquired by the Contractor,
772 other than from the United States may be stored, conveyed and/or diverted through Project facilities,
773 subject to the completion of appropriate environmental documentation, with the approval of the
774 Contracting Officer and the execution of any contract determined by the Contracting Officer to be

775 necessary, consistent with the following provisions:

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

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

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

795 (4) Diversion of such non-Project water into Project facilities shall be
796 consistent with all applicable laws, and if involving groundwater, consistent with any applicable

797 groundwater management plan for the area from which it was extracted.

798 (5) After Project purposes are met, as determined by the Contracting
799 Officer, the United States and Project Contractors entitled to Project Water from Delta Division
800 Facilities shall share priority to utilize the remaining capacity of the facilities declared to be available
801 by the Contracting Officer for conveyance and transportation of non-Project water prior to any such
802 remaining capacity being made available to non-Project contractors. Other Project Contractors shall
803 have a second priority to any remaining capacity of facilities declared to be available by the
804 Contracting Officer for conveyance and transportation of non-Project water prior to any such
805 remaining capacity being made available to non-Project contractors.

806 OPINIONS AND DETERMINATIONS

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

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

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

821 COORDINATION AND COOPERATION

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

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

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

839 (1) The Contracting Officer will, at the request of the Contractor, assist in
840 the development of integrated resource management plans for the Contractor. Further, the

841 Contracting Officer will, as appropriate, seek authorizations for implementation of partnerships to
842 improve water supply, water quality, and reliability.

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

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

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

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

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

858 CHARGES FOR DELINQUENT PAYMENTS

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

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

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

875 EQUAL OPPORTUNITY

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

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

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

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

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

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

902 regulations, and orders.

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

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

919 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

932 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

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

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

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

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PRIVACY ACT COMPLIANCE

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

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

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

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

973 (e) The Contractor shall forward promptly to the System Manager each proposed
974 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR

975 2.71; notify the requester accordingly of such referral; and provide the System Manager with
976 information and records necessary to prepare an appropriate response to the requester. These
977 requirements do not apply to individuals seeking access to their own certification and reporting forms
978 filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy
979 Act as a basis for the request.

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CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

990

WATER CONSERVATION

991 26. (a) Prior to the delivery of water provided from or conveyed through Federally
992 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be
993 implementing an effective water conservation and efficiency program based on the Contractor's water
994 conservation plan that has been determined by the Contracting Officer to meet the conservation and
995 efficiency criteria for evaluating water conservation plans established under Federal law. The water
996 conservation and efficiency program shall contain definite water conservation objectives, appropriate
997 economically feasible water conservation measures, and time schedules for meeting those objectives.
998 Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's
999 continued implementation of such water conservation program. In the event the Contractor's water

1000 conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of
1001 this Article 26 have not yet been determined by the Contracting Officer to meet such criteria, due to
1002 circumstances which the Contracting Officer determines are beyond the control of the Contractor,
1003 water deliveries shall be made under this Contract so long as the Contractor diligently works with the
1004 Contracting Officer to obtain such determination at the earliest practicable date, and thereafter the
1005 Contractor immediately begins implementing its water conservation and efficiency program in
1006 accordance with the time schedules therein.

1007 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
1008 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall implement
1009 the Best Management Practices identified by the time frames issued by the California Urban Water
1010 Conservation Council for such M&I Water unless any such practice is determined by the Contracting
1011 Officer to be inappropriate for the Contractor.

1012 (c) The Contractor shall submit to the Contracting Officer a report on the status of
1013 its implementation of the water conservation plan on the reporting dates specified in the then-existing
1014 conservation and efficiency criteria established under Federal law.

1015 (d) At five-year intervals, the Contractor shall revise its water conservation plan to
1016 reflect the then-current conservation and efficiency criteria for evaluating water conservation plans
1017 established under Federal law and submit such revised water management plan to the Contracting
1018 Officer for review and evaluation. The Contracting Officer will then determine if the water
1019 conservation plan meets Reclamation's then-current conservation and efficiency criteria for
1020 evaluating water conservation plans established under Federal law.

1021 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall

1022 be described in the Contractor's water conservation plan.

1023 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1024 27. Except as specifically provided in Article 17 of this Contract, the provisions of this
1025 Contract shall not be applicable to or affect non-Project Water or water rights now owned or
1026 hereafter acquired by the Contractor or any user of such water within the Contractor's Service Area.
1027 Any such water shall not be considered Project Water under this Contract. In addition, this Contract
1028 shall not be construed as limiting or curtailing any rights which the Contractor or any water user
1029 within the Contractor's Service Area acquires or has available under any other contract pursuant to
1030 Federal Reclamation law.

1031 OPERATION AND MAINTENANCE BY
1032 SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

1033 28. (a) The O&M of a portion of the Project facilities which serve the Contractor, and
1034 responsibility for funding a portion of the costs of such O&M, have been transferred to the San Luis
1035 & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate agreement (8-07-
1036 20-X0354) between the United States and Operating Non-Federal Entity San Luis & Delta-Mendota
1037 Water Authority. That separate agreement shall not interfere with or affect the rights or obligations
1038 of the Contractor or the United States hereunder.

1039 (b) The Contracting Officer has previously notified the Contractor in writing that
1040 the O&M of a portion of the Project facilities which serve the Contractor has been transferred to
1041 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, and therefore, the
1042 Contractor shall pay directly to Operating Non-Federal Entity San Luis & Delta-Mendota Water
1043 Authority, or to any successor approved by the Contracting Officer under the terms and conditions of
1044 the separate agreement between the United States and Operating Non-Federal Entity San Luis &

1045 Delta-Mendota Water Authority, described in subdivision (a) of this Article, all rates, charges, or
1046 assessments of any kind, including any assessment for reserve funds, which Operating Non-Federal
1047 Entity San Luis & Delta-Mendota Water Authority, or such successor determines, sets, or establishes
1048 for the O&M of the portion of the Project facilities operated and maintained by Operating Non-
1049 Federal Entity San Luis & Delta-Mendota Water Authority, or such successor. Such direct payments
1050 to Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or such successor shall
1051 not relieve the Contractor of its obligation to pay directly to the United States the Contractor's share
1052 of the Project Rates and Charges except to the extent the Operating Non-Federal Entity collects
1053 payments on behalf of the United States in accordance with subdivision (a) of this Article.

1054 (c) For so long as the O&M of any portion of the Project facilities serving the
1055 Contractor is performed by Operating Non-Federal Entity San Luis & Delta-Mendota Water
1056 Authority, or any successor thereto, the Contracting Officer shall adjust those components of the
1057 Rates for Water Delivered under this Contract representing the cost associated with the activity being
1058 performed by Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or its
1059 successor.

1060 (d) In the event the O&M of the Project facilities operated and maintained by
1061 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority is re-assumed by the
1062 United States during the term of this Contract, the Contracting Officer shall so notify the Contractor,
1063 in writing, and present to the Contractor a revised Exhibit "B" which shall include the portion of the
1064 Rates to be paid by the Contractor for Project Water under this Contract representing the O&M costs
1065 of the portion of such Project facilities which have been re-assumed. The Contractor shall, thereafter,
1066 in the absence of written notification from the Contracting Officer to the contrary, pay the Rates and

1067 Charges specified in the revised Exhibit “B” directly to the United States in compliance with Article
1068 7 of this Contract.

1069 OPERATION AND MAINTENANCE BY
1070 CALIFORNIA DEPARTMENT OF WATER RESOURCES

1071 28.1 (a) The O&M of a portion of the Project facilities which serve the Contractor, and
1072 responsibility for funding a portion of the costs of such O&M, have been transferred to the California
1073 Department of Water Resources, an Operating Non-Federal Entity by a separate agreement (14-06-
1074 200-9755) between the United States and Operating Non-Federal Entity California Department of
1075 Water Resources. This separate agreement shall not interfere with or affect the rights or obligations
1076 of the Contractor or the United States hereunder.

1077 (b) The Contracting Officer has previously notified the Contractor in writing that
1078 the O&M of a portion of the Project facilities which serve the Contractor has been transferred to
1079 Operating Non-Federal Entity California Department of Water Resources, and the Contractor shall
1080 pay directly to Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or to any
1081 successor approved by the Contracting Officer under the terms and conditions of the separate
1082 agreement between the United States and Operating Non-Federal Entity San Luis & Delta-Mendota
1083 Water Authority, described in subdivision (a) of Article 28 of this Contract, all rates, charges, or
1084 assessments of any kind, including any assessment for reserve funds, which Operating Non-Federal
1085 Entity California Department of Water Resources, or such successor determines, sets, or establishes
1086 for the O&M of the portion of the Project facilities operated and maintained by Operating Non-
1087 Federal Entity California Department of Water Resources, or such successor. Such direct payments
1088 to Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or such successor shall
1089 not relieve the Contractor of its obligation to pay directly to the United States the Contractor’s share

1090 of the Project Rates and Charges except to the extent the Operating Non-Federal Entity collects
1091 payments on behalf of the United States in accordance with the separate agreement identified in
1092 subdivision (a) of Article 28 of this Contract.

1093 (c) For so long as the O&M of any portion of the Project facilities serving the
1094 Contractor is performed by Operating Non-Federal Entity California Department of Water Resources,
1095 or any successor thereto, the Contracting Officer shall adjust those components of the Rates for
1096 Water Delivered under this Contract representing the cost associated with the activity being
1097 performed by Operating Non-Federal Entity California Department of Water Resources, or its
1098 successor.

1099 (d) In the event the O&M of the Project facilities operated and maintained by
1100 Operating Non-Federal Entity California Department of Water Resources is re-assumed by the
1101 United States during the term of this Contract, the Contracting Officer shall so notify the Contractor,
1102 in writing, and present to the Contractor a revised Exhibit "B" which shall include the portion of the
1103 Rates and Charges, to be paid by the Contractor for Project Water under this Contract representing
1104 the O&M costs of the portion of such Project facilities which have been re-assumed. The Contractor
1105 shall, thereafter, in the absence of written notification from the Contracting Officer to the contrary,
1106 pay the Rates and Charges specified in the revised Exhibit "B" directly to the United States in
1107 compliance with Article 7 of this Contract.

1108 OPERATION AND MAINTENANCE BY THE CONTRACTOR

1109 28.2 (a) During the term of this Contract, the Contractor shall act as the Operating
1110 Non-Federal Entity for a portion of the Project facilities which serves the Department of Fish and
1111 Game, the City of Huron, and the City of Coalinga, including but not limited to the Coalinga Canal

1112 System, which consists in part of the Coalinga Canal and turnouts and Pleasant Valley Pumping
1113 Plant. The Contractor, without expense to the United States, shall care for, operate, and maintain
1114 such portion of the Project facilities for the furnishing of water to the Department of Fish and Game,
1115 the City of Huron, and the City of Coalinga in full compliance with Federal Reclamation law and in
1116 such manner that they will remain in good and efficient condition; Provided, That the United States
1117 shall finance the costs of all major replacements of such facilities that the Contracting Officer
1118 determines are needed; Provided further, That if the Department of Fish and Game, the City of
1119 Huron, or the City of Coalinga fails to pay to the Contractor in advance such entity's share of the
1120 O&M costs, consistent with any agreements between the Contractor and the Department of Fish and
1121 Game, the City of Huron, or the City of Coalinga, respectively, the Contractor shall be relieved of its
1122 obligation to the O&M of such facilities for the benefit of the non-paying entity.

1123 (b) The Contracting Officer previously notified the Department of Fish and Game,
1124 the City of Huron, and the City of Coalinga in writing that the O&M of a portion of the Project
1125 facilities which serves the Department of Fish and Game, the City of Huron, and the City of Coalinga
1126 has been transferred to the Contractor. Therefore, the Department of Fish and Game and the City of
1127 Huron have entered, and the City of Coalinga is expected to enter, separate agreements with the
1128 Contractor providing the terms and conditions pursuant to which the Contractor will operate and
1129 maintain a portion of the Project facilities which serves the Department of Fish and Game, the City of
1130 Huron, and the City of Coalinga, including the amount(s) the Department of Fish and Game, the City
1131 of Huron, and the City of Coalinga are to pay the Contractor for that service. Consistent with any
1132 such agreements, the Department of Fish and Game, the City of Huron, and the City of Coalinga shall
1133 pay directly to the Contractor all rates, charges, or assessments of any kind, including any assessment

1134 for reserve funds, which the Contractor sets, or establishes for a portion of the Project facilities which
1135 serves the Department of Fish and Game, the City of Huron, and the City of Coalinga and is operated
1136 and maintained by the Contractor. Such direct payments to the Contractor shall not relieve the
1137 Contractor of its obligation to pay directly to the United States the Department of Fish and Game, the
1138 City of Huron, and the City of Coalinga its share of the Project Rates and Charges referred to in this
1139 Contract.

1140 (c) For so long as the O&M for a portion of the Project facilities which serves the
1141 Department of Fish and Game, the City of Huron, and the City of Coalinga is performed by the
1142 Contractor, the Contracting Officer shall adjust those components of the Rates for Water Delivered
1143 under the Contracts representing the cost associated with the activity being performed by the
1144 Contractor.

1145 (d) The United States may re-assume O&M for a portion of the Project facilities
1146 which serves the Department of Fish and Game, the City of Huron, and the City of Coalinga. In that
1147 event, the Contracting Officer shall so notify the Department of Fish and Game, the City of Huron,
1148 and the City of Coalinga, in writing, and present to the Contractor a revised Exhibit "B" which shall
1149 include the portion of the Rates and Charges to be paid by the Department of Fish and Game, the City
1150 of Huron, and the City of Coalinga for Project Water under this Contract representing the O&M costs
1151 for a portion of the Project facilities which serves the Department of Fish and Game, the City of
1152 Huron, and the City of Coalinga. The Department of Fish and Game, the City of Huron, and the City
1153 of Coalinga shall, thereafter, in the absence of written notification from the Contracting Officer to the
1154 contrary, pay the Rates and Charges specified in the revised Exhibit "B" directly to the United States
1155 in compliance with Article 7 of their contracts. The Contractor shall, thereafter, be relieved of all of

1156 its obligations under this Article 28.2.

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PUMPING PLANTS, POWER FOR PUMPING PLANTS, AND TRANSFER
OF OPERATION AND MAINTENANCE TO THE CONTRACTOR

1160 28.3. (a) The United States shall furnish and install pumping plants and furnish the
1161 amount of Project power the Contracting Officer determines is necessary to deliver Project Water to
1162 the Contractor from the Delta-Mendota, San Luis, and Coalinga Canals, including the Pleasant
1163 Valley Pumping Plant, at the point(s) of delivery identified pursuant to subdivision (a) of Article 5 of
1164 this Contract at heads and elevations sufficient to irrigate by gravity the areas within the Contractor's
1165 Service Area below 700 feet mean sea level elevation.

1166 (b) With advance approval of the Contracting Officer, the Contractor may, at its
1167 own expense, furnish and install pumping facilities, and related electrical equipment, to enable it to
1168 divert and deliver Project Water from the Delta-Mendota, San Luis, and Coalinga Canals and the
1169 Pleasant Valley Pumping Plant before the United States furnishes and installs all the pumping plants
1170 referred to in subdivision (a) of this Article. The United States shall furnish the amount of Project
1171 power needed to operate such pumping facilities; Provided, That the Contractor maintains an
1172 agreement with an entity to convey such power to such facilities, and the Contractor agrees to pay
1173 any and all charges assessed by that entity for such service.

1174 (c) The furnishing of power by the United States shall be in conformance with
1175 operating criteria, rules, and regulations, including the project use power policy, established by the
1176 Contracting Officer; Provided, That any such operating criteria, rules, and regulations, including the
1177 project use power policy, established by the Contracting Officer shall not excuse the United States
1178 from its obligation under subdivision (a) of this Article. Such operating criteria, rules, and

1179 regulations shall be developed in cooperation with the Contractor and shall be based on acceptable
1180 irrigation management practices and the power generation capacity available to the United States for
1181 the furnishing of Project Water to the Contractor.

1182 (d) The Contractor hereby agrees to operate and maintain, at its own expense, all
1183 of the pumping facilities described in subdivisions (a) and (b) of this Article in such a manner that
1184 they remain in good and efficient condition; Provided, That the United States shall finance the costs
1185 of all major replacements that the Contracting Officer determines are needed.

1186 (e) The Contracting Officer or his representative shall at all times have access to
1187 and may inspect and investigate the pumping facilities for the purpose of ascertaining if they are
1188 being kept in safe and proper operating condition.

1189 (f) No change in any of the pumping facilities, which in the opinion of the
1190 Contracting Officer is substantial, shall be made by the Contractor without first obtaining the written
1191 consent of the Contracting Officer. The Contractor shall promptly make any and all repairs and
1192 replacements to the pumping facilities which in the opinion of the Contracting Officer are necessary.
1193 In the event the Contractor neglects or fails to make such repairs and replacements or in the event of
1194 operation by the United States of the pumping facilities pursuant to subdivision (g) of this Article,
1195 the United States may cause the repairs and replacements to be made and the cost thereof, as
1196 determined by the Contracting Officer, shall be paid by the Contractor to the United States upon
1197 notice of the payment due but not later than April 1 of the year following that during which such
1198 work was completed.

1199 (g) In the event the Contracting Officer determines that the Contractor has not
1200 properly cared for, operated, and maintained said pumping facilities or has failed to comply with any

1201 of the provisions of this Article, then at the election of the Contracting Officer the United States may
1202 take over from the Contractor the care and O&M of the pumping facilities by giving written notice to
1203 the Contractor of such election and the effective date thereof. Thereafter, during the period of
1204 operation by the United States, the Contractor shall pay to the United States in advance of the use of
1205 such pumping facilities the Contractor's share of the cost of O&M thereof and replacements
1206 therefore, as fixed in notices from the Contracting Officer. In the event such advances are inadequate
1207 to properly care for, operate, and maintain the pumping facilities to the end of any year, the
1208 Contracting Officer may give written notice of a supplemental O&M charge and the Contractor shall
1209 pay such amount on or before the date specified in said notice. Any amount of such advances
1210 remaining unexpended or unobligated, at the option of the Contractor, either shall be refunded or
1211 credited upon amounts to become due to the United States from the Contractor under the provisions
1212 of this Contract in subsequent years. The pumping facilities so taken back by the United States may
1213 be returned to the Contractor upon the furnishing to the Contractor of a written 90-day notice of
1214 intention to retransfer.

1215 (h) The Contractor shall hold the United States, its officers, and employees
1216 harmless from every and all claim for damages to persons or property arising out of or connected
1217 with the Contractor's O&M of the pumping facilities referred to in this Article; Provided, That
1218 nothing contained herein shall be construed as an assumption of liability by the Contractor to parties
1219 other than the United States with respect to such matters.

1220 (i) During the time the pumping facilities are operated and maintained by the
1221 Contractor, in addition to all other payments to be made by the Contractor under this Contract, the
1222 Contractor shall pay to the United States pursuant to Article 25 hereof, costs incurred by the United

1223 States for work associated with the pumping facilities under this Contract normally charged by the
1224 United States to water users and properly and equitably chargeable to the Contractor.

1225 (j) The Contracting Officer may make review of any part or all of the pumping
1226 facilities being operated by the Contractor pursuant to this Article to assist the Contractor in
1227 assessing the condition of facilities and the adequacy of the maintenance program(s). The
1228 Contracting Officer shall prepare reports based on the examinations, inspections or audits, and
1229 furnish copies of such reports and any recommendations to the Contractor. The Contractor shall
1230 reimburse the actual cost
1231 incurred by the United States in making O&M examinations, inspections, and audits, and preparing
1232 associated reports and recommendations.

1233 (k) If deemed necessary by the Contracting Officer or requested by the Contractor,
1234 special inspections of the pumping facilities being operated by the Contractor and of the Contractor's
1235 books and records may be made to ascertain the extent of any O&M deficiencies, to determine the
1236 remedial measures required for their correction, and to assist the Contractor in solving specific
1237 problems. Any special inspection or audit shall, except in a case of emergency, be made after written
1238 notice to the Contractor and the actual cost thereof shall be paid by the Contractor to the United
1239 States.

1240 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1241 29. The expenditure or advance of any money or the performance of any obligation of the
1242 United States under this Contract shall be contingent upon appropriation or allotment of funds.
1243 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
1244 under this Contract. No liability shall accrue to the United States in case funds are not appropriated
1245 or allotted.

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BOOKS, RECORDS, AND REPORTS

1248 30. (a) The Contractor shall establish and maintain accounts and other books and
1249 records pertaining to administration of the terms and conditions of this Contract including: the
1250 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;
1251 the water users' land-use (crop census), land ownership, land-leasing and water use data; and other
1252 matters that the Contracting Officer may require. Reports thereon shall be furnished to the
1253 Contracting Officer in such form and on such date or dates as the Contracting Officer may require.
1254 Subject to applicable Federal laws and regulations, each party to this Contract shall have the right
1255 during office hours to examine and make copies of the other party's books and records relating to
1256 matters covered by this Contract.

1257 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,
1258 records, or other information shall be requested from the Contractor by the Contracting Officer unless
1259 such books, records, or information are reasonably related to the administration or performance of
1260 this Contract. Any such request shall allow the Contractor a reasonable period of time within which
1261 to provide the requested books, records, or information.

1262 (c) At such time as the Contractor provides information to the Contracting Officer
1263 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the
1264 Operating Non-Federal Entity (ies).

1265 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1266 31. (a) The provisions of this Contract shall apply to and bind the successors and
1267 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1268 therein shall be valid until approved in writing by the Contracting Officer.

1269 (b) The assignment of any right or interest in this Contract by either party shall not
1270 interfere with the rights or obligations of the other party to this Contract absent the written
1271 concurrence of said other party.

1272 (c) The Contracting Officer shall not unreasonably condition or withhold approval

1273 of any proposed assignment.

1274 SEVERABILITY

1275 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor
1276 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an
1277 association or other form of organization whose primary function is to represent parties to Project
1278 contracts, brings an action in a court of competent jurisdiction challenging the legality or
1279 enforceability of a provision included in this Contract and said person, entity, association, or
1280 organization obtains a final court decision holding that such provision is legally invalid or
1281 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the
1282 parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court
1283 decision identify by mutual agreement the provisions in this Contract which must be revised and (ii)
1284 within three months thereafter promptly agree on the appropriate revision(s). The time periods
1285 specified above may be extended by mutual agreement of the parties. Pending the completion of the
1286 actions designated above, to the extent it can do so without violating any applicable provisions of
1287 law, the United States shall continue to make the quantities of Project Water specified in this
1288 Contract available to the Contractor pursuant to the provisions of this Contract which were not found
1289 to be legally invalid or unenforceable in the final court decision.

1290 RESOLUTION OF DISPUTES

1291 33. Should any dispute arise concerning any provisions of this Contract, or the parties'
1292 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the
1293 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring
1294 any matter to the Department of Justice, the party shall provide to the other party 30 days' written

1295 notice of the intent to take such action; Provided, That such notice shall not be required where a
1296 delay in commencing an action would prejudice the interests of the party that intends to file suit.
1297 During the 30-day notice period, the Contractor and the Contracting Officer shall meet and confer in
1298 an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to
1299 waive or abridge any right or remedy that the Contractor or the United States may have.

1300 OFFICIALS NOT TO BENEFIT

1301 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1302 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1303 manner as other water users or landowners.

1304 CHANGES IN CONTRACTOR'S SERVICE AREA

1305 35. (a) While this Contract is in effect, no change may be made in the Contractor's
1306 Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,
1307 except upon the Contracting Officer's written consent.

1308 (b) Within 30 days of receipt of a request for such a change, the Contracting
1309 Officer will notify the Contractor of any additional information required by the Contracting Officer
1310 for processing said request, and both parties will meet to establish a mutually agreeable schedule for
1311 timely completion of the process. Such process will analyze whether the proposed change is likely
1312 to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of
1313 the Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-
1314 constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project
1315 Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply with
1316 the NEPA and the ESA. The Contractor will be responsible for all costs incurred by the Contracting
1317 Officer in this process, and such costs will be paid in accordance with Article 25 of this Contract.

1318

FEDERAL LAWS

1319 36. By entering into this Contract, the Contractor does not waive its rights to contest the
1320 validity or application in connection with the performance of the terms and conditions of this
1321 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the
1322 terms and conditions of this Contract unless and until relief from application of such Federal law or
1323 regulation to the implementing provision of the Contract is granted by a court of competent
1324 jurisdiction.

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NOTICES

1327 37. Any notice, demand, or request authorized or required by this Contract shall be
1328 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered
1329 to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, California 93721,
1330 and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board of
1331 Directors of the Westlands Water District, P. O. Box 6056, Fresno, California 93703-6056. The
1332 designation of the addressee or the address may be changed by notice given in the same manner as
1333 provided in this Article for other notices.

1334 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and
1335 year first above written.

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1337

THE UNITED STATES OF AMERICA

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

1341 (SEAL)

1342

WESTLANDS WATER DISTRICT _____

1343
1344

By: _____
President of the Board of Directors

1345 Attest:

1346
1347

By: _____
Secretary of the Board of Directors

EXHIBIT A

[Map or Description of Service Area]

DRAFT

EXHIBIT B
200 Water Rates and Charges

DRAFT