

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

LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES  
AND  
INTERNATIONAL WATER DISTRICT  
PROVIDING FOR PROJECT WATER SERVICE  
FROM FRIANT DIVISION

Table of Contents

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
	Preamble.....	1
	Explanatory Recitals .....	1-5
1	Definitions .....	5-10
2	Term of Contract .....	10-13
3	Water to be Made Available and Delivered to the Contractor .....	13-19
4	Time for Delivery of Water .....	19-21
5	Point of Diversion and Responsibility for Distribution of Water .....	22-23
6	Measurement of Water Within the Service Area.....	23-25
7	Rates and Method of Payment for Water .....	25-32
8	Non-Interest Bearing Operation and Maintenance Deficits .....	32
9	Sales, Transfers, or Exchanges of Water.....	32-34
10	Application of Payments and Adjustments .....	34
11	Temporary Reductions--Return Flows.....	35-36
12	Constraints on the Availability of Water.....	36-38
13	Unavoidable Groundwater Percolation.....	38-39
14	Rules and Regulations.....	39-40
15	Water and Air Pollution Control.....	40
16	Quality of Water .....	40
17	Water Acquired by the Contractor Other Than From the United States .....	41-43
18	Opinions and Determinations .....	43-44
19	Coordination and Cooperation .....	44-45
20	Charges for Delinquent Payments .....	45-46
21	Equal Opportunity .....	46-47
22	General Obligation--Benefits Conditioned Upon Payment .....	47-48

23 Compliance With Civil Rights Laws and Regulations .....48

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
24	Privacy Act Compliance .....	48-49
25	Contractor to Pay Certain Miscellaneous Costs .....	49
26	Water Conservation .....	49-50
27	Existing or Acquired Water or Water Rights .....	50
28	Operation and Maintenance by Non-Federal Entity .....	50-52
29	Contingent on Appropriation or Allotment of Funds .....	52
30	Books, Records, and Reports .....	52-53
31	Assignment Limited--Successors and Assigns Obligated .....	53
32	Severability .....	54
33	Resolution of Disputes .....	54-55
34	Officials Not to Benefit .....	55
35	Changes in Contractor's Service Area .....	55-56
36	Federal Laws.....	56
37	Notices.....	56
38	Confirmation of Contract	
	Signature Page	
	Exhibit A	
	Exhibit B	

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

5 LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES  
6 AND  
7 INTERNATIONAL WATER DISTRICT  
8 PROVIDING FOR PROJECT WATER SERVICE  
9 FROM FRIANT DIVISION

10 THIS CONTRACT, made this 20<sup>th</sup> day of January, 2001, in pursuance generally  
11 of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto, including, but  
12 not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and supplemented, August 4, 1939  
13 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68),  
14 October 12, 1982 (96 Stat. 1262), October 27, 1986 (100 Stat. 3050), as amended, and Title XXXIV of  
15 the Act of October 30, 1992 (106 Stat. 4706), all collectively hereinafter referred to as Federal  
16 Reclamation law, between THE UNITED STATES OF AMERICA, hereinafter referred to as the United  
17 States, and INTERNATIONAL WATER DISTRICT, hereinafter referred to as the Contractor, a public  
18 agency of the State of California, duly organized, existing, and acting pursuant to the laws thereof, with its  
19 principal place of business in California;

20 WITNESSETH, That:

21 EXPLANATORY RECITALS

22 [1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley Project,  
23 California, for diversion, storage, carriage, distribution and beneficial use, for flood control, irrigation,

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

27 [2<sup>nd</sup>] WHEREAS, the United States constructed Friant Dam (thereby creating Millerton Lake)  
28 and the Friant-Kern and Madera Canals, hereinafter collectively referred to as the Friant Division facilities,  
29 which will be used in part for the furnishing of water to the Contractor pursuant to the terms of this Contract;  
30 and

31 [3<sup>rd</sup>] WHEREAS, pursuant to Section 8 of the Act of June 17, 1902 (32 Stat. 388), the United  
32 States has acquired water rights and other rights to the flows of the San Joaquin River, including without  
33 limitation the permits issued as the result of Decision 935 by the California State Water Resource Control  
34 Board and the contracts described in subdivision (n) of Article 3 of this Contract, pursuant to which the  
35 Contracting Officer develops, diverts, stores and delivers Project Water stored or flowing through Millerton  
36 Lake in accordance with State and Federal law for the benefit of Project Contractors in the Friant Division;  
37 and

38 [3.1] WHEREAS, the water supplied to the Contractor pursuant to this Contract is Project Water  
39 developed through the exercise of the rights described in the third (3rd) Explanatory Recital of this Contract;  
40 and

41 [4<sup>th</sup>] WHEREAS, the Contractor and the United States entered into Contract  
42 No. 14-06-200-585A, as amended, which established terms for the delivery to the Contractor of Project  
43 Water from the Friant Division from August 23, 1963, to February 28, 1995; and

44 [5<sup>th</sup>] WHEREAS, the Contractor and the United States have pursuant to subsection 3404(c)(1)  
45 of the Central Valley Project Improvement Act (CVPIA), subsequently entered into interim renewal  
46 contract(s) identified as Contract No(s). 14-06-200-585A-IR1, IR2, IR3, and IR4, the current of which is  
47 hereinafter referred to as the Existing Contract, which provided for the continued water service to the  
48 Contractor from December 1, 2000, through February 28, 2001; and

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

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

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

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

61 [10<sup>th</sup>] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting Officer  
62 that the Contractor has utilized the Project Water supplies available to it for reasonable and beneficial use  
63 and/or has demonstrated projected future demand for water use such that the Contractor has the capability

64 and expects to utilize fully for reasonable and beneficial use the quantity of Project Water to be made  
65 available to it pursuant to this Contract; and

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

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

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

75 [14<sup>th</sup>] WHEREAS, the mutual goals of the United States and the Contractor include: to provide  
76 for reliable Project Water supplies; to control costs of those supplies; to achieve repayment of the Central  
77 Valley Project as required by law; to guard reasonably against Project Water shortages; to achieve a  
78 reasonable balance among competing demands for use of Project Water; and to comply with all applicable  
79 environmental statutes, all consistent with the legal obligations of the United States relative to the Central  
80 Valley Project; and

81 [15<sup>th</sup>] Omitted;

82 [15.1] WHEREAS, during Uncontrolled Seasons, Friant Division Project Contractors utilize  
83 undependable Class 2 Water in their service areas to, among other things, assist in the management and

84 alleviation of groundwater overdraft in the Friant Division service area, provide opportunities for  
85 environmental enhancement, including restoration of the San Joaquin River below Friant Dam, minimize  
86 flooding along the San Joaquin River, encourage optimal water management, and maximize the reasonable  
87 and beneficial use of the water; and

88 [15.2] WHEREAS, the parties desire and intend that this Contract not provide a disincentive to  
89 the Friant Division Project Contractors continuing to carry out the beneficial activities set out in the  
90 Explanatory Recital immediately above; and

91 [16<sup>th</sup>] WHEREAS, the United States and the Contractor are willing to enter into this Contract  
92 pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

95 DEFINITIONS

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

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

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

103 (b2) "Class 1 Water" shall mean that supply of water stored in or flowing through

104 Millerton Lake which, subject to the contingencies hereinafter described in Articles 3, 11, and 12 of  
105 this Contract, will be available for delivery from Millerton Lake and the Friant-Kern and Madera Canals as  
106 a dependable water supply during each Year;

107 (b3) "Class 2 Water" shall mean that supply of water which can be made available  
108 subject to the contingencies hereinafter described in Articles 3, 11, and 12 of this Contract for delivery from  
109 Millerton Lake and the Friant-Kern and Madera Canals in addition to the supply of Class 1 Water.  
110 Because of its uncertainty as to availability and time of occurrence, such water will be undependable in  
111 character and will be furnished only if, as, and when it can be made available as determined by the  
112 Contracting Officer;

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

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

117 (e) "Contract Total" shall mean the maximum amount of Class 1 Water, plus the  
118 maximum amount of Class 2 Water to which the Contractor is entitled under subdivision (a) of Article 3 of this  
119 Contract;

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

123 (g) "CVPIA" shall mean the Central Valley Project Improvement Act, Title XXXIV of



124 the Act of October 30, 1992 (106 Stat. 4706);

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

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

131 (j) “Full Cost Rate” shall mean that water rate described in Sections 205(a)(3) or 202(3)  
132 of the RRA, whichever is applicable;

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

135 (l) “Irrigation Full Cost Water Rate” shall have the same meaning as “full cost” as that  
136 term is used in paragraph (3) of Section 202 of the RRA;

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

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

142 (n2) “Long Term Historic Average” shall mean the average of the final forecast of Water  
143 Made Available to the Contractor pursuant to this Contract and the contracts referenced in the fourth (4<sup>th</sup>)  
144 and fifth (5<sup>th</sup>) Explanatory Recitals of this Contract;

145                   (o)     “Municipal and Industrial (M&I) Water” shall mean water made available from the  
146 Project other than Irrigation Water made available to the Contractor. M&I Water shall include water used  
147 for human use and purposes such as the watering of landscaping or pasture for animals (e.g., horses) which  
148 are kept for personal enjoyment or water delivered to land holdings operated in units of less than five (5)  
149 acres unless the Contractor establishes to the satisfaction of the Contracting Officer that the use of water  
150 delivered to any such landholding is a use described in subdivision (m) of this Article;

151                   (p)     “M&I Full Cost Water Rate” shall mean the annual rate, which, as determined by the  
152 Contracting Officer, shall amortize the expenditures for construction allocable to Project M&I facilities in  
153 service, including, O&M deficits funded, less payments, over such periods as may be required under Federal  
154 Reclamation law with interest accruing from the dates such costs were first incurred plus the applicable rate  
155 for the O&M of such Project facilities. Interest rates used in the calculation of the M&I Full Cost Rate shall  
156 comply with the Interest Rate methodology contained in Section 202 (3) (B) and (C) of the RRA;

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

159                   (r)     “Operating Non-Federal Entity” shall mean the Friant Water Users Authority,  
160 a Non-Federal entity which has the obligation to operate and maintain all or a portion of the Friant Division  
161 facilities pursuant to an agreement with the United States, and which may have funding obligations with  
162 respect thereto;

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

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

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

170 (v) "Rates" shall mean the payments determined annually by the Contracting Officer in  
171 accordance with the then current applicable water rate setting policies for the Project, as described in  
172 subdivision (a) of Article 7 of this Contract;

173 (w) Omitted;

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

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

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

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

184 (bb) "Water Scheduled" shall mean Project Water made available to the Contractor for  
185 which times and quantities for delivery have been established by the Contractor and Contracting Officer,

186 pursuant to subdivision (b) of Article 4 of this Contract; and

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

189 TERM OF CONTRACT

190 2. (a) This Contract shall be effective March 1, 2001, through February 28, 2026. In the  
191 event the Contractor wishes to renew the Contract beyond February 28, 2026, the Contractor shall submit a  
192 request for renewal in writing to the Contracting Officer no later than two (2) years prior to the date this  
193 Contract expires. The renewal of this Contract insofar as it pertains to the furnishing of Irrigation Water to the  
194 Contractor shall be governed by subdivision (b) of this Article, and the renewal of this Contract insofar as it  
195 pertains to the furnishing of M&I Water to the Contractor shall be governed by subdivision (c) of this Article.

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

201 (2) The conditions which must be met for this Contract to be renewed are: (i) the  
202 Contractor has prepared a water conservation plan that has been determined by the Contracting Officer in  
203 accordance with Article 26 of this Contract to meet the conservation and efficiency criteria for evaluating such  
204 plans established under Federal law; (ii) the Contractor is implementing an effective water conservation and  
205 efficiency program based on the Contractor's water conservation plan as required by Article 26 of this

206 Contract; (iii) the Contractor is operating and maintaining all  
207 water measuring devices and implementing all water measurement methods as approved by the Contracting  
208 Officer pursuant to Article 6 of this Contract; (iv) the Contractor has reasonably and beneficially used the  
209 Project Water supplies made available to it and, based on projected demands, is reasonably anticipated and  
210 expects fully to utilize for reasonable and beneficial use the quantity of Project Water to be made available to  
211 it pursuant to such renewal; (v) the Contractor is complying with all terms and conditions of this Contract and  
212 all legal obligations of the Contractor, if any, set forth in an enforceable court order, final judgment and/or  
213 settlement relating to restoration of the San Joaquin River; and (vi) the Contractor has the physical and legal  
214 ability to deliver Project Water.

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

224 (c) This Contract, insofar as it pertains to the furnishing of M&I Water to the Contractor,  
225 shall be renewed for a period of twenty-five (25) years and thereafter shall be renewed for successive periods

226 of up to forty (40) years each, which periods shall be consistent with the  
227 then-existing Reclamation-wide policy, under terms and conditions mutually agreeable to the parties and  
228 consistent with Federal and State law. The present Reclamation-wide policy, dated March 20, 2000,  
229 provides that the term of such contracts shall be no more than twenty-five (25) years each, subject to a  
230 variance to allow a longer term in appropriate circumstances. The Contractor shall be afforded the  
231 opportunity to comment to the Contracting Officer on the proposed adoption and application of any revised  
232 Reclamation-wide policy applicable to the delivery of Project M&I Water that would affect the term of any  
233 subsequent renewal contract with the Contractor for the furnishing of M&I Water.

234 (d) The Contracting Officer anticipates that by December 31, 2024, all authorized  
235 Project construction expected to occur will have occurred, and on that basis the Contracting Officer agrees  
236 by that date to allocate all costs that are properly assignable to the Contractor, and agrees further that, at any  
237 time after such allocation is made, and subject to satisfaction of the conditions set out in this subdivision of this  
238 Article, this Contract shall, at the request of the Contractor, be converted to a contract under subsection  
239 (c)(1) and (d) of Section 9, of the Reclamation Project Act of 1939, subject to applicable Federal law and  
240 under stated terms and conditions mutually agreeable to the Contractor and the Contracting Officer. A  
241 condition for such conversion to occur shall be a determination by the Contracting Officer that, account being  
242 taken of the amount credited to return by the Contractor as provided for under Reclamation law, the  
243 remaining amount of construction costs assignable for ultimate return by the Contractor can probably be  
244 repaid to the United States within the term of a contract under said subsection 9(c)(1) and (d). If the  
245 remaining amount of costs that are properly assignable to the Contractor cannot be determined by December

246 31, 2024, the Contracting Officer shall notify the Contractor, and provide the reason(s) why such a  
247 determination could not be made. Further, the Contracting Officer shall make such a determination as soon  
248 thereafter as possible so as to permit, upon request of the Contractor and satisfaction of the conditions set out  
249 above, conversion to a contract under said subsection 9(c)(1) and (d). In the event such determination of  
250 costs has not been made at a time which allows conversion of this Contract during the term of this Contract or  
251 the Contractor has not requested conversion of this Contract within such term, the parties shall incorporate in  
252 any subsequent renewal contract as described in Articles 2(b) and (c) a provision that carries forth in  
253 substantially identical terms the provisions of this Article 2(d). In the event the Contracting Officer is able to  
254 make a determination of the remaining amount of costs that are properly assignable to the Contractor before  
255 December 31, 2024, the Contracting Officer shall do so at the earliest time he/she has such ability.

256 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE Contractor

- 257 3. (a) During each Year, consistent with all applicable State water rights, permits, and  
258 licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this Contract, the  
259 Contracting Officer shall make available for delivery to the Contractor 1,200 acre-feet of Class 1 Water for  
260 irrigation and M&I purposes. The quantity of Water Delivered to the Contractor in accordance with this  
261 subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.
- 262 (b) Omitted.
- 263 (c) The Contractor shall utilize the Project Water in accordance with all applicable legal  
264 requirements.

265 (d) The Contractor shall make reasonable and beneficial use of all Project Water or other  
266 water furnished pursuant to this Contract. Groundwater recharge programs, groundwater banking programs,  
267 surface water storage programs, and other similar programs utilizing Project Water or other water furnished  
268 pursuant to this Contract conducted within the Contractor's Service Area which are consistent with applicable  
269 State law and result in use consistent with Reclamation law will be allowed; Provided, That any direct  
270 recharge program(s) is (are) described in the Contractor's Water Conservation Plan submitted pursuant to  
271 Article 26 of this Contract; Provided, further, That such Water Conservation Plan demonstrates sufficient  
272 lawful uses exist in the Contractor's Service Area so that using a long-term average, the quantity of Delivered  
273 Water is demonstrated to be reasonable for such uses and in compliance with Reclamation law. Groundwater  
274 recharge programs, groundwater banking programs, surface water storage programs, and other similar  
275 programs utilizing Project Water or other water furnished pursuant to this Contract conducted outside the  
276 Contractor's Service Area may be permitted upon written approval of the Contracting Officer, which  
277 approval will be based upon environmental documentation, Project Water rights, and Project operational  
278 concerns. The Contracting Officer will address such concerns in regulations, policies, or guidelines.

279 (e) The Contractor shall comply with requirements applicable to the Contractor in  
280 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract undertaken  
281 pursuant to Section 7 of the Endangered Species Act of 1973, as amended, that are within the Contractor's  
282 legal authority to implement. The Contractor shall comply with the limitations or requirements imposed by  
283 environmental documentation applicable to the Contractor and within its legal authority to implement regarding  
284 specific activities, including conversion of Irrigation Water to M&I Water. Nothing herein shall be construed



285 to prevent the Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with  
286 respect to any biological opinion or other environmental documentation referred to in this Article.

287 (f) Subject to subdivisions (l) and (n) of Article 3 of this Contract, following the  
288 declaration of Water Made Available under Article 4 of this Contract, the Contracting Officer will make a  
289 determination whether Project Water, or other water available to the Project, can be made available to the  
290 Contractor in addition to the Contract Total under Article 3 of this Contract during the Year without adversely  
291 impacting other Project Contractors. At the request of the Contractor, the Contracting Officer will consult  
292 with the Contractor prior to making such a determination. Subject to subdivisions (l) and (n) of Article 3 of  
293 this Contract, if the Contracting Officer determines that Project Water, or other water available to the Project,  
294 can be made available to the Contractor, the Contracting Officer will announce the availability of such water  
295 and shall so notify the Contractor as soon as practical. The Contracting Officer will thereafter meet with the  
296 Contractor and other Project Contractors capable of taking such water to determine the most equitable and  
297 efficient allocation of such water. If the Contractor requests the delivery of any quantity of such water, the  
298 Contracting Officer shall make such water available to the Contractor in accordance with applicable statutes,  
299 regulations, guidelines, and policies.

300 (g) The Contractor may request permission to reschedule for use during the subsequent  
301 Year some or all of the Water Made Available to the Contractor during the current Year referred to as  
302 “carryover.” The Contractor may request permission to use during the current Year a quantity of Project  
303 Water which may be made available by the United States to the Contractor during the subsequent Year  
304 referred to as “preuse.” The Contracting Officer’s written approval may permit such uses in accordance with

305 applicable statutes, regulations, guidelines, and policies.

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

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

316 (j) The Contracting Officer shall make reasonable efforts to protect the water rights and  
317 other rights described in the third (3rd) Explanatory Recital of this Contract and to provide the water available  
318 under this Contract. The Contracting Officer shall not object to participation by the Contractor, in the  
319 capacity and to the extent permitted by law, in administrative proceedings related to the water rights and other  
320 rights described in the third (3rd) Explanatory Recital of this Contract; Provided, however, That the  
321 Contracting Officer retains the right to object to the substance of the Contractor's position in such a  
322 proceeding.

323 (k) Project Water furnished to the Contractor during any month designated in a schedule

324 or revised schedule submitted by the Contractor and approved by the Contracting Officer shall be deemed to  
325 have been accepted by the Contractor as Class 1 Water to the extent that Class 1 Water is called for in such  
326 schedule for such month and shall be deemed to have been accepted as Class 2 Water to the extent Class 2  
327 Water is called for in such schedule for such month. If in any month the Contractor diverts a quantity of water  
328 in addition to the total amount of Class 1 Water and Class 2 Water set forth in the Contractor's approved  
329 schedule or revised schedule for such month, such additional diversions shall be charged first against the  
330 Contractor's remaining Class 2 Water supply available in the current Year. To the extent the Contractor's  
331 remaining Class 2 Water supply available in the current Year is not sufficient to account for such additional  
332 diversions, such additional diversions shall be charged against the Contractor's remaining Class 1 Water  
333 supply available in the current Year. To the extent the Contractor's remaining Class 1 Water and Class 2  
334 Water supplies available in the current Year are not sufficient to account for such additional diversions, such  
335 additional diversions shall be charged first against the Contractor's available Class 2 Water supply and then  
336 against the Contractor's available Class 1 Water supply, both for the following Year. Payment for all  
337 additional diversions of water shall be made in accordance with Article 7 of this Contract.

338 (l) If the Contracting Officer determines there is a Project Water supply available at  
339 Friant Dam as the result of an unusually large water supply not otherwise storable for Project purposes or  
340 infrequent and otherwise unmanaged flood flows of short duration, such water will be made available to the  
341 Contractor and others under Section 215 of the RRA pursuant to the priorities specified below if the  
342 Contractor enters into a temporary contract with the United States not to exceed one (1) year for the delivery  
343 of such water or, as otherwise provided for in Federal Reclamation law and associated regulations. Such

344 water may be identified by the Contractor either (i) as additional water to supplement the supply of Class 1  
345 Water and/or Class 2 Water made available to it pursuant to this Contract or, (ii) upon written notification to  
346 the Contracting Officer, as water to be credited against the Contractor's Class 2 Water supply available  
347 pursuant to this Contract. The Contractor shall deliver such water to Eligible Lands, or to Excess Lands in  
348 accordance with this Article. The Contracting Officer shall make water determined to be available pursuant  
349 to this subsection according to the following priorities: first, to long-term Contractors for Class 1 Water and/or  
350 Class 2 Water within the Friant Division; second, to long-term Contractors in the Cross Valley Division of the  
351 Project. The Contracting Officer will consider and seek to accommodate requests from other parties for  
352 Section 215 Water for use within the area identified as the Friant Division service area in the environmental  
353 assessment developed in connection with the execution of this Contract.

354 (m) Nothing in this Contract, nor any action or inaction of the Contractor or Contracting  
355 Officer in connection with the implementation of this Contract, is intended to override, modify, supersede or  
356 otherwise interfere with any term or condition of the water rights and other rights referred in the third (3rd)  
357 Explanatory Recital of this Contract.

358 (n) The rights of the Contractor under this Contract are subject to the terms of the  
359 contract for exchange waters, dated July 27, 1939, between the United States and the San Joaquin and Kings  
360 River Canal and Irrigation Company, Incorporated, et al., (hereinafter referred to as the Exchange  
361 Contractors), Contract No. I1r-1144, as amended. The United States agrees that it will not deliver to the  
362 Exchange Contractors thereunder waters of the San Joaquin River unless and until required by the terms of  
363 said contract, and the United States further agrees that it will not voluntarily and knowingly determine itself

364 unable to deliver to the Exchange Contractors entitled thereto from water that is available or that may become  
365 available to it from the Sacramento River and its tributaries or the Sacramento-San Joaquin Delta those  
366 quantities required to satisfy the obligations of the United States under said Exchange Contract and under  
367 Schedule 2 of the Contract for Purchase of Miller and Lux Water Rights (Contract I1r-1145, dated July 27,  
368 1939).

369 TIME FOR DELIVERY OF WATER

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

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

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

387 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this Contract, the  
388 United States shall deliver Project Water to the Contractor in accordance with the initial schedule submitted  
389 by the Contractor pursuant to subdivision (b) of this Article, or any written revision(s), satisfactory to the  
390 Contracting Officer, thereto submitted within a reasonable time prior to the date(s) on which the requested  
391 change(s) is/are to be implemented; Provided, That the total amount of water requested in that schedule or  
392 revision does not exceed the quantities announced by the Contracting Officer pursuant to the provisions of  
393 subdivision (a) of Article 3, and the Contracting Officer determines that there will be sufficient capacity  
394 available in the appropriate Friant Division facilities to deliver the water in accordance with that schedule:  
395 Provided, further, That the Contractor shall not schedule the delivery of any water during any period as to  
396 which the Contractor is notified by the Contracting Officer or Operating Non-Federal Entity that Project  
397 facilities required to make deliveries to the Contractor will not be in operation because of scheduled O&M.

398 (e) The Contractor may, during the period from and including November 1 of each Year  
399 through and including the last day of February of that Year, request delivery of any amount of the Class 1  
400 Water estimated by the Contracting Officer to be made available to it during the following Year. The  
401 Contractor may, during the period from and including January 1 of each Year (or such earlier date as may be  
402 determined by the Contracting Officer) through and including the last day of February of that Year, request  
403 delivery of any amount of Class 2 Water estimated by the Contracting Officer to be made available to it

404 during the following Year. Such water shall hereinafter be referred to as preuse water. Such request must be  
405 submitted in writing by the Contractor for a specified quantity of preuse and shall be subject to the approval of  
406 the Contracting Officer. Payment for preuse water so requested shall be at the appropriate rate(s) for the  
407 following Year in accordance with Article 7 of this Contract and shall be made in advance of delivery of any  
408 preuse water. The Contracting Officer shall deliver such preuse water in accordance with a schedule or any  
409 revision thereof submitted by the Contractor and approved by the Contracting Officer, to the extent such  
410 water is available and to the extent such deliveries will not interfere with the delivery of Project Water  
411 entitlements to other Friant Division Contractors or the physical maintenance of the Project facilities. The  
412 quantities of preuse water delivered pursuant to this subdivision shall be deducted from the quantities of water  
413 that the Contracting Officer would otherwise be obligated to make available to the Contractor during the  
414 following Year; Provided, That the quantity of preuse water to be deducted from the quantities of either  
415 Class 1 Water or Class 2 Water to be made available to the Contractor in the following Year shall be  
416 specified by the Contractor at the time the preuse water is requested or as revised in its first schedule for the  
417 following Year submitted in accordance with subdivision (b) of this Article, based on the availability of the  
418 following Year water supplies as determined by the Contracting Officer.

419 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

423                   (b)     The Contracting Officer, the Operating Non-Federal Entity, or other appropriate  
424     entity shall make all reasonable efforts to maintain sufficient flows and levels of water in the Friant-Kern Canal  
425     to deliver Project Water to the Contractor at specific turnouts established pursuant to subdivision (a) of this  
426     Article.

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

431                   (d)     All Water Delivered to the Contractor pursuant to this Contract shall be measured  
432     and recorded with equipment furnished, installed, operated, and maintained by the United States, the  
433     Operating Non-Federal Entity or other appropriate entity as designated by the Contracting Officer (hereafter  
434     “other appropriate entity”) at the point or points of delivery established pursuant to subdivision (a) of this  
435     Article. Upon the request of either party to this Contract, the Contracting Officer shall investigate, or cause to  
436     be investigated by the responsible Operating Non-Federal Entity, the accuracy of such measurements and  
437     shall take any necessary steps to adjust any errors appearing therein. For any period of time when accurate  
438     measurements have not been made, the Contracting Officer shall consult with the Contractor and the  
439     responsible Operating Non-Federal Entity prior to making a final determination of the quantity delivered for  
440     that period of time.

441                   (e)     Neither the Contracting Officer nor any Operating Non-Federal Entity shall be  
442     responsible for the control, carriage, handling, use, disposal, or distribution of Project Water Delivered to the



443 Contractor pursuant to this Contract beyond the delivery points specified in subdivision (a) of this Article.  
444 The Contractor shall indemnify the United States, its officers, employees, agents, and assigns on account of  
445 damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property  
446 damage, personal injury, or death arising out of or connected with the control, carriage, handling, use,  
447 disposal, or distribution of such Project Water beyond such delivery points, except for any damage or claim  
448 arising out of: (i) acts or omissions of the Contracting Officer or any of its officers, employees, agents, or  
449 assigns, including any responsible Operating Non-Federal Entity, with the intent of creating the situation  
450 resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer or any of its officers,  
451 employees, agents, or assigns, including any responsible Operating Non-Federal Entity; (iii) negligence of the  
452 Contracting Officer or any of its officers, employees, agents, or assigns including any responsible Operating  
453 Non-Federal Entity; or (iv) damage or claims resulting from a malfunction of facilities owned and/or operated  
454 by the United States or responsible Operating Non-Federal Entity; Provided, That the Contractor is not the  
455 Operating Non-Federal Entity that owned or operated the malfunctioning facility(ies) from which the damage  
456 claim arose.

457 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

458 6. (a) The Contractor established a measurement program satisfactory to the Contracting  
459 Officer, all surface water delivered for irrigation purposes within the Contractor's Service Area is measured at  
460 each agricultural turnout and such water delivered for municipal and industrial purposes is measured at each  
461 municipal and industrial service connection. The water measuring devices or water measuring methods of  
462 comparable effectiveness must be acceptable to the Contracting Officer. The Contractor shall be responsible  
463 for installing, operating, and maintaining and repairing all such measuring devices and implementing all such

464 water measuring methods at no cost to the United States. The Contractor shall use the information obtained  
465 from such water measuring devices or water measuring methods to ensure its proper management of the  
466 water, to bill water users for water delivered by the Contractor; and, if applicable, to record water delivered  
467 for municipal and industrial purposes by customer class as defined in the Contractor's water conservation plan  
468 provided for in Article 26 of this Contract. Nothing herein contained, however, shall preclude the Contractor  
469 from establishing and collecting any charges, assessments, or other revenues authorized by California law.  
470 The Contractor shall include a summary of all its annual surface water deliveries in the annual report described  
471 in subdivision (c) of Article 26 of this Contract.

472 (b) To the extent the information has not otherwise been provided, upon execution of this  
473 Contract, the Contractor shall provide to the Contracting Officer a written report describing the measurement  
474 devices or water measuring methods being used or to be used to implement subdivision (a) of this Article and  
475 identifying the agricultural turnouts and the municipal and industrial service connections or alternative  
476 measurement programs approved by the Contracting Officer, at which such measurement devices or water  
477 measuring methods are being used, and, if applicable, identifying the locations at which such devices and/or  
478 methods are not yet being used including a time schedule for implementation at such locations. The  
479 Contracting Officer shall advise the Contractor in writing within sixty (60) days as to the adequacy of, and  
480 necessary modifications, if any, of the measuring devices or water measuring methods identified in the  
481 Contractor's report and if the Contracting Officer does not respond in such time, they shall be deemed  
482 adequate. If the Contracting Officer notifies the Contractor that the measuring devices or methods are  
483 inadequate, the parties shall within sixty (60) days following the Contracting Officer's response, negotiate in

484 good faith the earliest practicable date by which the Contractor shall modify said measuring devices and/or  
485 measuring methods as required by the Contracting Officer to ensure compliance with subdivision (a) of this  
486 Article.

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

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

493 (e) The Contractor shall inform the Contracting Officer and the Operating  
494 Non-Federal Entity on or before the twentieth (20<sup>th</sup>) calendar day of each month of the quantity of Irrigation  
495 and M&I Water taken during the preceding month.

496 RATES AND METHOD OF PAYMENT FOR WATER

497 7. (a) The Contractor shall pay the United States as provided in this Article for all  
498 Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance with: (i) the  
499 Secretary's rate setting policy for Irrigation Water adopted in 1988 and the Secretary's then-existing rate  
500 setting policy for M&I Water. Such rate setting policies shall be amended, modified, or superseded only  
501 through a public notice and comment procedure; (ii) applicable Reclamation law and associated rules and  
502 regulations, or policies; and (iii) other applicable provisions of this Contract. Payments shall be made by cash  
503 transaction, wire, or any other mechanism as may be agreed to in writing by the Contractor and the

504 Contracting Officer. The Rates, Charges, and Tiered Pricing Components applicable to the Contractor upon  
505 execution of this Contract are set forth in Exhibit “B”, as may be revised annually.

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

508 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall provide  
509 the Contractor an estimate of the Charges for Project Water that will be applied to the period October 1, of  
510 the current Calendar Year, through September 30, of the following Calendar Year, and the basis for such  
511 estimate. The Contractor shall be allowed not less than two (2) months to review and comment on such  
512 estimates. On or before September 15 of each Calendar Year, the Contracting Officer shall notify the  
513 Contractor in writing of the Charges to be in effect during the period  
514 October 1 of the current Calendar Year, through September 30, of the following Calendar Year, and such  
515 notification shall revise Exhibit “B.”

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

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

524 Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor shall make an  
525 advance payment to the United States equal to the total amount payable pursuant to the applicable Rate(s) set  
526 under subdivision (a) of this Article, for the Project Water scheduled to be delivered pursuant to this Contract  
527 during the first two (2) calendar months of the Year. Before the end of the first month and before the end of  
528 each calendar month thereafter, the Contractor shall make an advance payment to the United States, at the  
529 Rate(s) set under subdivision (a) of this Article, for the Water Scheduled to be delivered pursuant to this  
530 Contract during the second month immediately following. Adjustments between advance payments for Water  
531 Scheduled and payments at Rates due for Water Delivered shall be made before the end of the following  
532 month; Provided, That any revised schedule submitted by the Contractor pursuant to Article 4 of this Contract  
533 which increases the amount of Water Delivered pursuant to this Contract during any month shall be  
534 accompanied with appropriate advance payment, at the Rates then in effect, to assure that Project Water is  
535 not delivered to the Contractor in advance of such payment. In any month in which the quantity of Water  
536 Delivered to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid for by  
537 the Contractor, no additional Project Water shall be delivered to the Contractor unless and until an advance  
538 payment at the Rates then in effect for such additional Project Water is made. Final adjustment between the  
539 advance payments for the Water Scheduled and payments for the quantities of Water Delivered during each  
540 Year pursuant to this Contract shall be made as soon as practicable but no later than April 30th of the  
541 following Year, or sixty (60) days after the delivery of Project Water carried over under subdivision (f) of  
542 Article 3 of this Contract if such water is not delivered by the last day of February.

543 (d) The Contractor shall also make a payment in addition to the Rate(s) in subdivision (c)

544 of this Article to the United States for Water Delivered, at the Charges and the appropriate Tiered Pricing  
545 Component then in effect, before the end of the month following the month of delivery; Provided, That the  
546 Contractor may be granted an exception from the Tiered Pricing Component pursuant to subdivision (j)(2) of  
547 this Article. The payments shall be consistent with the quantities of Irrigation Water and M&I Water  
548 Delivered as shown in the water delivery report for the subject month prepared by the Operating Non-  
549 Federal Entity or, if there is no Operating Non-Federal Entity, by the Contracting Officer. Such water  
550 delivery report shall be the basis for payment of Charges and Tiered Pricing Components by the Contractor,  
551 and shall be provided to the Contractor by the Operating Non-Federal Entity or the Contracting Officer (as  
552 applicable) within five (5) days after the end of the month of delivery. The water delivery report shall be  
553 deemed a bill for the payment of Charges and the applicable Tiered Pricing Component for Water Delivered.  
554 Adjustment for overpayment or underpayment of Charges shall be made through the adjustment of payments  
555 due to the United States for Charges for the next month. Any amount to be paid for past due payment of  
556 Charges and the Tiered Pricing Component shall be computed pursuant to Article 20 of this Contract.

557 (e) The Contractor shall pay for any Water Delivered under subdivision (d), (f), or (g) of  
558 Article 3 of this Contract as determined by the Contracting Officer pursuant to applicable statutes, associated  
559 regulations, any applicable provisions of guidelines or rate setting policies; Provided, That the Rate for Water  
560 Delivered under subdivision (d) of Article 3 of this Contract shall be no more than the otherwise applicable  
561 Rate for Irrigation Water or M&I Water under subdivision (a) of this Article.

562 (f) Payments to be made by the Contractor to the United States under this Contract may

563 be paid from any revenues available to the Contractor.

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

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

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

581 (j) (1) Beginning at such time as the total of the deliveries of Class 1 Water and

582 Class 2 Water in a Year exceed eighty (80%) percent of the Contract Total, then before the end of the month  
583 following the month of delivery the Contractor shall make an additional payment to the United States equal to  
584 the applicable Tiered Pricing Component. The Tiered Pricing Component for the total of the deliveries of  
585 Class 1 Water and Class 2 Water in excess of eighty (80%) percent of the Contract Total, but less than or  
586 equal to ninety (90%) percent of the Contract Total, shall equal the one-half of the difference between the  
587 Rate established under subdivision (a) of Article 7 of this Contract and the Irrigation Full Cost Water Rate or  
588 M&I Full Cost Water Rate, whichever is applicable. The Tiered Pricing Component for the total of the  
589 deliveries of Class 1 Water and Class 2 Water which exceeds ninety (90%) percent of the Contract Total  
590 shall equal the difference between (i) the Rate established under subdivision (a) of Article 7 of this Contract  
591 and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable.

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

599 (3) For purposes of determining the applicability of the Tiered Pricing  
600 Components pursuant to this Article, Water Delivered shall include Project Water that the Contractor  
601 transfers to others but shall not include Project Water transferred and delivered to the Contractor.



602 (k) For the term of this Contract, Rates under the respective rate setting policies will be  
603 established to recover only reimbursable “operation and maintenance” (including any deficits) and capital  
604 costs of the Project, as those terms are used in the then-current Project rate setting policies, and interest,  
605 where appropriate, except in instances where a minimum Rate is applicable in accordance with the relevant  
606 Project rate setting policy. Changes of significance in practices which implement the Contracting Officer’s  
607 rate setting policies will not be implemented until the Contracting Officer has provided the Contractor an  
608 opportunity to discuss the nature, need, and impact of the proposed change.

609 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA, the  
610 Rates for Project Water transferred by the Contractor shall be the Contractor’s Rates adjusted upward or  
611 downward to reflect the changed costs of delivery (if any) of the transferred Project Water to the transferee’s  
612 point of delivery in accordance with the then applicable CVP Rate setting Policy. If the Contractor is  
613 receiving lower Rates and Charges because of inability to pay and is transferring Project Water to another  
614 entity whose Rates and Charges are not adjusted due to inability to pay, the Rates and Charges for  
615 transferred Project Water shall be the Contractor’s Rates and Charges unadjusted for ability to pay.

616 (m) Pursuant to the Act of October 27, 1986 (100 Stat. 3050), the Contracting Officer is  
617 authorized to adjust determinations of ability to pay every five (5) years.

618 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

619 8. The Contractor and the Contracting Officer concur that, as of the effective date of this  
620 Contract, the Contractor has no non-interest bearing operation and maintenance deficits and shall have no  
621 further liability therefor.

SALES, TRANSFERS, OR EXCHANGES OF WATER

622  
623  
624  
625  
626  
627  
628  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
640  
641

9. (a) The right to receive Project Water provided for in this Contract may be sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of California if such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this Contract may take place without the prior written approval of the Contracting Officer, except as provided for in subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be approved absent compliance with appropriate environmental documentation including but not limited to the National Environmental Policy Act and the Endangered Species Act. Such environmental documentation should include, as appropriate, an analysis of groundwater impacts and economic and social effects, including environmental justice, of the proposed water transfers on both the transferor and transferee.

(b) In order to facilitate efficient water management by means of water transfers of the type historically carried out among Project Contractors located within the same geographical area and to allow the Contractor to participate in an accelerated water transfer program during the term of this Contract, the Contracting Officer shall prepare, as appropriate, necessary environmental documentation including, but not limited to, the National Environmental Policy Act and the Endangered Species Act analyzing annual transfers within such geographical areas and the Contracting Officer shall determine whether such transfers comply with applicable law. Following the completion of the environmental documentation, such transfers addressed in such documentation shall be conducted with advance notice to the Contracting Officer, but shall not require prior written approval by the Contracting Officer. Such environmental documentation and the

642 Contracting Officer's compliance determination shall be reviewed every five (5) years and updated, as  
643 necessary, prior to the expiration of the then existing five (5) -year period. All subsequent environmental  
644 documentation shall include an alternative to evaluate not less than the quantity of Project Water historically  
645 transferred within the same geographical area.

646 (c) For a water transfer to qualify under subdivision (b) of this Article, such water transfer  
647 must: (i) be for irrigation purposes for lands irrigated within the previous three (3) years, for M&I use,  
648 groundwater recharge, groundwater banking, similar groundwater activities, surface water storage, or fish and  
649 wildlife resources; not lead to land conversion; and be delivered to established cropland, wildlife refuges,  
650 groundwater basins or municipal and industrial use; (ii) occur within a single Year; (iii) occur between a willing  
651 seller and a willing buyer; (iv) convey water through existing facilities with no new construction or  
652 modifications to facilities and be between existing Project Contractors and/or the Contractor and the United  
653 States, Department of the Interior; and (v) comply with all applicable Federal, State, and local or tribal laws  
654 and requirements imposed for protection of the environment and Indian Trust Assets, as defined under  
655 Federal law.

656 APPLICATION OF PAYMENTS AND ADJUSTMENTS

657 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,  
658 Capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of the  
659 Contractor arising out of this Contract then due and payable. Overpayments of more than One Thousand  
660 Dollars (\$1,000) shall be refunded at the Contractor's request. In lieu of a refund, any amount of such  
661 overpayment at the option of the Contractor, may be credited against amounts to become due to the United

662 States by the Contractor. With respect to overpayment, such refund or adjustment shall constitute the sole  
663 remedy of the Contractor or anyone having or claiming to have the right to the use of any of the Project Water  
664 supply provided for herein. All credits and refunds of overpayments shall be made within thirty (30) days of  
665 the Contracting Officer obtaining direction as to how to credit or refund such overpayment in response to the  
666 notice to the Contractor that it has finalized the accounts for the Year in which the overpayment was made.

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

672 TEMPORARY REDUCTIONS--RETURN FLOWS

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

677 (b) The Contracting Officer or Operating Non-Federal Entity may temporarily  
678 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for the purposes  
679 of investigation, inspection, maintenance, repair, or replacement of any of the Project facilities or any part  
680 thereof necessary for the delivery of Project Water to the Contractor, but so far as feasible the Contracting

681 Officer or Operating Non-Federal Entity will give the Contractor due notice in advance of such temporary  
682 discontinuance or reduction, except in case of emergency, in which case no notice need be given; Provided,  
683 That the United States shall use its best efforts to avoid any discontinuance or reduction in such service. Upon  
684 resumption of service after such reduction or discontinuance, and if requested by the Contractor, the United  
685 States will, if possible, deliver the quantity of Project Water which would have been delivered hereunder in  
686 the absence of such discontinuance or reduction.

687 (c) The United States reserves the right to all seepage and return flow water derived from  
688 Water Delivered to the Contractor hereunder which escapes or is discharged beyond the Contractor's  
689 Service Area; Provided, That this shall not be construed as claiming for the United States any right as  
690 seepage or return flow to water being used pursuant to this Contract for surface irrigation or underground  
691 storage either being put to reasonable and beneficial use pursuant to this Contract within the Contractor's  
692 Service Area by the Contractor or those claiming by, through, or under the Contractor. For purposes of this  
693 subdivision, groundwater recharge, groundwater banking and all similar groundwater activities will be deemed  
694 to be underground storage.

695 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

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

705 (c) The United States shall not execute contracts which together with this Contract, shall  
706 in the aggregate provide for furnishing during the life of this Contract or any renewals hereof Class 1 Water in  
707 excess of 800,000 acre-feet per Year or Class 2 Water in excess of 1,401,475 acre-feet per Year;  
708 Provided, That, subject to subdivision (l) of Article 3 of this Contract, the limitation placed on Class 2 Water  
709 contracts shall not prohibit the United States from entering into temporary contracts of one year or less in  
710 duration for delivery of Project Water to other entities if such water is not necessary to meet the schedules as  
711 may be submitted by all Friant Division  
712 long-term water service Contractors entitled to receive Class 1 Water and/or Class 2 Water under their water  
713 service contracts. Nothing in this subdivision shall limit the Contracting Officer's ability to take actions that  
714 result in the availability of new water supplies to be used for Project purposes and allocating such new  
715 supplies; Provided, That the Contracting Officer shall not take such actions until after consultation with the  
716 Friant Division Project Contractors.

717 (d) The Contracting Officer shall not deliver any Class 2 Water pursuant to this or any  
718 other contract for water service heretofore or hereafter entered into any Year unless and until the Contracting  
719 Officer determines that the cumulative total quantity of Class 1 Water specified in subdivision (c) of this  
720 Article will be available for delivery in said Year. If the Contracting Officer determines there is or will be a

721 shortage in any Year in the quantity of Class 1 Water available for delivery, the Contracting Officer shall  
722 apportion the available Class 1 Water among all Contractors entitled to receive such water that will be made  
723 available at Friant Dam in accordance with the following:

724 (1) A determination shall be made of the total quantity of Class 1 Water at Friant  
725 Dam which is available for meeting Class 1 Water contractual commitments, the amount so determined being  
726 herein referred to as the available supply.

727 (2) The total available Class 1 supply shall be divided by the Class 1 Water  
728 contractual commitments, the quotient thus obtained being herein referred to as the Class 1 apportionment  
729 coefficient.

730 (3) The total quantity of Class 1 Water under Article 3 of this Contract shall be  
731 multiplied by the Class 1 apportionment coefficient and the result shall be the quantity of Class 1 Water  
732 required to be delivered by the Contracting Officer to the Contractor for the respective Year, but in no event  
733 shall such amount exceed the total quantity of Class 1 Water specified in subdivision (a) of Article 3 of this  
734 Contract.

735 (e) If the Contracting Officer determines there is less than the quantity of Class 2 Water  
736 which the Contractor otherwise would be entitled to receive pursuant to Article 3 of this Contract, the quantity  
737 of Class 2 Water which shall be furnished to the Contractor by the Contracting Officer will be determined in  
738 the manner set forth in paragraphs (1), (2), and (3), of subdivision (d) of this Article substituting the term  
739 "Class 2" for the term "Class 1."

740 (f) In the event that in any Year there is made available to the Contractor, by reason of  
741 any shortage or apportionment as provided in subdivisions (a), (d) or (e) of this Article, or any discontinuance  
742 or reduction of service as set forth in subdivision (a) of Article 11 of this Contract, less than the quantity of  
743 water which the Contractor otherwise would be entitled to receive hereunder, there shall be made an  
744 adjustment on account of the amounts already paid to the Contracting Officer by the Contractor for Class 1  
745 Water and Class 2 Water for said Year in accordance with Article 10 of this Contract.

746 UNAVOIDABLE GROUNDWATER PERCOLATION

747 13. To the extent applicable, the Contractor shall not be deemed to have delivered Irrigation  
748 Water to Excess Lands or Ineligible Lands within the meaning of this Contract if such lands



749 are irrigated with groundwater that reaches the underground strata as an unavoidable result of the delivery of  
750 Irrigation Water by the Contractor to Eligible Lands.

751 RULES AND REGULATIONS

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

756 (b) The terms of this Contract are subject to any enforceable order, judgment and/or  
757 settlement in NRDC v. Patterson, No. CIVS 88-1658-LKK-EM and shall be timely modified as necessary  
758 to effectuate or facilitate any final order, judgment or settlement in said litigation.

759 (c) The parties acknowledge that, as of the effective date of this Contract, active  
760 settlement discussions are underway in NRDC v. Patterson between Friant Division water service  
761 contractors, representatives of the Contracting Officer, and the plaintiffs in NRDC v. Patterson. The mutual  
762 goals of the parties to those discussions are (i) to expeditiously evaluate and implement, on a mutually  
763 acceptable basis, instream and related measures that will restore ecological functions and hydrologic and  
764 geomorphologic processes of the San Joaquin River below Friant Dam to a level that restores and maintains  
765 fish populations in good condition, including but not limited to naturally-reproducing, self-sustaining  
766 populations of chinook salmon and (ii) to accomplish these restoration goals while not adversely impacting the  
767 overall sufficiency, reliability and cost of water supplies to Friant Division water users. The Contractor has  
768 been actively participating, and intends to continue to participate in such settlement discussions. Except as  
769 provided in this Contract, this Contract does

770 not add to the obligations of the parties, if any, relating to the San Joaquin River. This Contract does not limit  
771 or detract from the obligations of the parties, if any, relating to the San Joaquin River.

772 WATER AND AIR POLLUTION CONTROL

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

776 QUALITY OF WATER

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

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

791 WATER ACQUIRED BY THE Contractor  
792 OTHER THAN FROM THE UNITED STATES

793 17. (a) Water or water rights now owned or hereafter acquired by the Contractor other than  
794 from the United States and Irrigation Water furnished pursuant to the terms of this Contract may be  
795 simultaneously transported through the same distribution facilities of the Contractor subject to the following: (i)  
796 if the facilities utilized for commingling Irrigation Water and non-project water were constructed without funds  
797 made available pursuant to Federal Reclamation law, the provisions of Federal Reclamation law will be  
798 applicable only to the Landholders of lands which receive Irrigation Water; (ii) the eligibility of land to receive  
799 Irrigation Water must be established through the certification requirements as specified in the Acreage  
800 Limitation Rules and Regulations (43 CFR  
801 Part 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be  
802 established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity necessary to  
803 irrigate such Eligible Lands. The Contractor and the Contracting Officer concur that, as of the effective date  
804 of this Contract, the Contractor has a distribution system that was constructed without the use of federally  
805 financed funds. The use of this distribution system is not subject to the provisions of this subdivision of this  
806 Article.

807 (b) Water or water rights now owned or hereafter acquired by the Contractor, other than  
808 from the United States or adverse to the Project or its Contractors (i.e., non-project water), may be stored,  
809 conveyed and/or diverted through Project facilities, subject to the completion of appropriate environmental  
810 documentation, with the approval of the Contracting Officer and the

811 execution of any contract determined by the Contracting Officer to be necessary, consistent with the following  
812 provisions:

813 (1) The Contractor may introduce non-project water into Project facilities and  
814 deliver said water to lands within the Contractor's Service Area, including Ineligible Lands, subject to  
815 payment to the United States and/or to any applicable Operating Non-Federal Entity of an appropriate rate as  
816 determined by the CVP Rate setting Policy and the RRA, each as amended, modified or superseded from  
817 time to time. In addition, if electrical power is required to pump  
818 non-project water through the facilities, the Contractor shall be responsible for obtaining the necessary power  
819 and paying the necessary charges therefor.

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

825 (3) Neither the United States nor the Operating Non-Federal Entity shall be  
826 responsible for control, care or distribution of the non-project water before it is introduced into or after it is  
827 delivered from the Project facilities. The Contractor hereby releases and agrees to defend and indemnify the  
828 United States and the Operating Non-Federal Entity, and their respective officers, agents, and employees,  
829 from any claim for damage to persons or property, direct or indirect, resulting from Contractor's diversion or  
830 extraction of non-project water from any source.

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

834 (5) After Project purposes are met, as determined by the Contracting Officer, the  
835 United States and the Contractor shall share priority to utilize the remaining capacity of the facilities declared  
836 to be available by the Contracting Officer for conveyance and transportation of non-project water prior to any  
837 such remaining capacity being made available to non-Project Contractors.

838 OPINIONS AND DETERMINATIONS

839 18. (a) Where the terms of this Contract provide for actions to be based upon the opinion or  
840 determination of either party to this Contract, said terms shall not be construed as permitting such action to be  
841 predicated upon arbitrary, capricious, or unreasonable opinions or determinations. Both parties,  
842 notwithstanding any other provisions of this Contract, expressly reserve the right to seek relief from and  
843 appropriate adjustment for any such arbitrary, capricious, or unreasonable opinion or determination. Each  
844 opinion or determination by either party shall be provided in a timely manner. Nothing in subdivision (a) of  
845 Article 18 of this Contract is intended to or shall affect or alter the standard of judicial review applicable under  
846 federal law to any opinion or determination implementing a specific provision of federal law embodied in  
847 statute or regulation.

848 (b) The Contracting Officer shall have the right to make determinations necessary to  
849 administer this Contract that are consistent with the provisions of this Contract, the laws of the United States  
850 and of the State of California, and the rules and regulations promulgated by the Secretary of the Interior.

851 Such determinations shall be made in consultation with the Contractor to the extent reasonably practicable.

852 COORDINATION AND COOPERATION

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

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

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

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

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

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

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

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

885 (d) Without limiting the contractual obligations of the Contracting Officer hereunder,  
886 nothing in this Contract shall be construed to limit or constrain the Contracting Officer's ability to  
887 communicate, coordinate, and cooperate with the Contractor or other interested stakeholders or to make  
888 decisions in a timely fashion as needed to protect health, safety, physical integrity of structures or facilities, or  
889 the Contracting Officer's ability to comply with applicable laws.

890 CHARGES FOR DELINQUENT PAYMENTS

891 20. (a) The Contractor shall be subject to interest, administrative and penalty charges on

892 delinquent installments or payments. When a payment is not received by the due date, the Contractor shall  
893 pay an interest charge for each day the payment is delinquent beyond the due date. When a payment  
894 becomes sixty (60) days delinquent, the Contractor shall pay an administrative charge to cover additional  
895 costs of billing and processing the delinquent payment. When a payment is delinquent ninety (90) days or  
896 more, the Contractor shall pay an additional penalty charge of six (6%) percent per year for each day the  
897 payment is delinquent beyond the due date. Further, the Contractor shall pay any fees incurred for debt  
898 collection services associated with a delinquent payment.

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

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

907 EQUAL OPPORTUNITY

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

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

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

921 (c) The Contractor will send to each labor union or representative of workers with which  
922 it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the  
923 Contracting Officer, advising the said labor union or workers' representative of the Contractor's commitments



924 under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in  
925 conspicuous places available to employees and applicants for employment.

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

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

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

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

947 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

952 (b) The payment of charges becoming due hereunder is a condition precedent to receiving  
953 benefits under this Contract. The United States shall not make water available to the Contractor through  
954 Project facilities during any period in which the Contractor may be in arrears in the advance payment of water  
955 rates due the United States. The Contractor shall not furnish water made available pursuant to this Contract

956 for lands or parties which are in arrears in the advance payment of water rates levied or established by the  
957 Contractor.

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

960 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

961 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C.  
962 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age Discrimination  
963 Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well as with their  
964 respective implementing regulations and guidelines imposed by the U.S. Department of the Interior and/or  
965 Bureau of Reclamation.

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

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

979 PRIVACY ACT COMPLIANCE

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

985 (b) With respect to the application and administration of the criminal penalty provisions of

986 the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible for maintaining the  
987 certification and reporting records referenced in (a) above are considered to be employees of the Department  
988 of the Interior. See 5 U.S.C. 552a(m).

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

994 (d) The Contracting Officer shall designate a full-time employee of the Bureau of  
995 Reclamation to be the System Manager who shall be responsible for making decisions on denials pursuant to  
996 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is authorized to grant  
997 requests by individuals for access to their own records.

998 (e) The Contractor shall forward promptly to the System Manager each proposed denial  
999 of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR 2.71; notify  
1000 the requester accordingly of such referral; and provide the System Manager with information and records  
1001 necessary to prepare an appropriate response to the requester. These requirements do not apply to  
1002 individuals seeking access to their own certification and reporting forms filed with the Contractor pursuant to  
1003 43 CFR 426.18, unless the requester elects to cite the Privacy Act as a basis for the request.

1004 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1005 25. In addition to all other payments to be made by the Contractor pursuant to this Contract, the  
1006 Contractor shall pay to the United States, within sixty (60) days after receipt of a bill and detailed statement  
1007 submitted by the Contracting Officer to the Contractor for such specific items of direct cost incurred by the  
1008 United States for work requested by the Contractor associated with this Contract plus indirect costs in  
1009 accordance with applicable Bureau of Reclamation policies and procedures. All such amounts referred to in  
1010 this Article shall not exceed the amount agreed to in writing in advance by the Contractor. This Article shall  
1011 not apply to costs for routine contract administration.

1012 WATER CONSERVATION

1013           26.   (a)    During the term of this Contract, the Contractor shall comply with all applicable  
1014 requirements imposed on it by Section 210 of the RRA, regulations duly promulgated and adopted  
1015 thereunder, and any other applicable water conservation guidelines as they are duly promulgated, adopted  
1016 and amended from time to time: Provided, That the Contractor shall have not less than eighteen (18) months  
1017 to comply with any revisions in any such applicable regulations or water conservation guidelines.

1018                   (b)    Omitted.

1019           (c)    The Contractor shall submit to the Contracting Officer a report on the status of its  
1020 implementation of the water conservation plan on the reporting dates specified in the then existing  
1021 conservation and efficiency criteria established under Federal law.

1022                   (d)    Omitted.

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

1025                                   EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1026           27.    Except as specifically provided in Article 17 of this Contract, the provisions of this Contract  
1027 shall not be applicable to or affect non-project water or water rights now owned or hereafter acquired by the  
1028 Contractor or any user of such water within the Contractor's Service Area. Any such water shall not be  
1029 considered Project Water under this Contract. In addition, this Contract shall not be construed as limiting or  
1030 curtailing any rights which the Contractor or any water user within the Contractor's Service Area acquires or  
1031 has available under any other contract pursuant to Federal Reclamation law.

1032                                   OPERATION AND MAINTENANCE BY NON-FEDERAL ENTITY

1033           28.   (a)    The Operation and Maintenance of a portion of the Project facilities which serve the

1034 Contractor, and responsibility for funding a portion of the costs of such Operation and Maintenance, have  
1035 been transferred to the Operating Non-Federal Entity by separate agreement between the United States and  
1036 the Operating Non-Federal Entity. That separate agreement shall not interfere with or affect the rights or  
1037 obligations of the Contractor or the United States hereunder.

1038 (b) The Contracting Officer has previously notified the Contractor in writing that the  
1039 Operation and Maintenance of a portion of the Project facilities which serve the Contractor has been  
1040 transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly to the  
1041 Operating Non-Federal Entity, or to any successor approved by the Contracting Officer under the terms and  
1042 conditions of the separate agreement between the United States and the Operating  
1043 Non-Federal Entity described in subdivision (a) of this Article, all rates, charges or assessments of any kind,  
1044 including any assessment for reserve funds, which the Operating Non-Federal Entity or such successor  
1045 determines, sets or establishes for (i) the Operation and Maintenance of the portion of the Project facilities  
1046 operated and maintained by the Operating Non-Federal Entity or such successor, or (ii) the Friant Division's  
1047 share of the operation, maintenance and replacement costs for physical works and appurtenances associated  
1048 with the Tracy Pumping Plant, the Delta-Mendota Canal, the O'Neill Pumping/Generating Plant, the federal  
1049 share of the O'Neill Forebay, the Mendota Pool, and the federal share of San Luis Unit joint use conveyance  
1050 and conveyance pumping facilities. Such direct payments to the Operating Non-Federal Entity or such  
1051 successor shall not relieve the Contractor of its obligation to pay directly to the United States the Contractor's  
1052 share of the Project Rates, Charges, and Tiered Pricing Components except to the extent the Operating Non-  
1053 Federal Entity collects payments on behalf of the United States in accordance with the separate agreement

1054 identified in subdivision (a) of this Article.

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

1060 (d) In the event the Operation and Maintenance of the Project facilities operated and  
1061 maintained by the Operating Non-Federal Entity is re-assumed by the United States during the term of this  
1062 Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the Contractor a  
1063 revised Exhibit "B" which shall include the portion of the Rates to be paid by the Contractor for Project  
1064 Water under this Contract representing the Operation and Maintenance costs of the portion of such Project  
1065 facilities which have been re-assumed. The Contractor shall, thereafter, in the absence of written notification  
1066 from the Contracting Officer to the contrary, pay the Rates, Charges, and Tiered Pricing Component(s)  
1067 specified in the revised Exhibit "B" directly to the United States in compliance with Article 7 of this Contract.

1068 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1069 29. The expenditure or advance of any money or the performance of any obligation of the United  
1070 States under this Contract shall be contingent upon appropriation or allotment of funds. Absence of  
1071 appropriation or allotment of funds shall not relieve the Contractor from any obligations under this Contract.  
1072 No liability shall accrue to the United States in case funds are not appropriated or allotted.

1073 BOOKS, RECORDS, AND REPORTS

1074 30. (a) The Contractor shall establish and maintain accounts and other books and records  
1075 pertaining to administration of the terms and conditions of this Contract, including: the Contractor's financial

1076 transactions, water supply data, and Project land and right-of-way agreements; the water users' land-use  
1077 (crop census), land ownership, land-leasing and water use data; and other matters that the Contracting Officer  
1078 may require. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or  
1079 dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party  
1080 to this Contract shall have the right during office hours to examine and make copies of the other party's books  
1081 and records relating to matters covered by this Contract.

1082 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books, records, or  
1083 other information shall be requested from the Contractor by the Contracting Officer unless such books,  
1084 records, or information are reasonably related to the administration or performance of this Contract. Any  
1085 such request shall allow the Contractor a reasonable period of time within which to provide the requested  
1086 books, records, or information.

1087 (c) At such time as the Contractor provides information to the Contracting Officer  
1088 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the Operating Non-  
1089 Federal Entity.

1090 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1091 31. (a) The provisions of this Contract shall apply to and bind the successors and assigns of  
1092 the parties hereto, but no assignment or transfer of this Contract or any right or interest therein shall be valid  
1093 until approved in writing by the Contracting Officer.

1094 (b) The assignment of any right or interest in this Contract by either party shall not  
1095 interfere with the rights or obligations of the other party to this Contract absent the written concurrence of said  
1096 other party.

1097 (c) The Contracting Officer shall not unreasonably condition or withhold approval of any  
1098 proposed assignment.

1099

SEVERABILITY

1100

32. In the event that a person or entity who is neither (i) a party to a Project contract, nor (ii) a

1101

person or entity that receives Project Water from a party to a Project contract, nor (iii) an association or other

1102

form of organization whose primary function is to represent parties to Project contracts, brings an action in a

1103

court of competent jurisdiction challenging the legality or enforceability of a provision included in this Contract

1104

and said person, entity, association, or organization obtains a final court decision holding that such provision is

1105

legally invalid or unenforceable and the Contractor has not intervened in that lawsuit in support of the

1106

plaintiff(s), the parties to this Contract shall use their best efforts to (i) within thirty (30) days of the date of

1107

such final court decision identify by mutual agreement the provisions in this Contract which must be revised

1108

and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s). The time periods

1109

specified above may be extended by mutual agreement of the parties. Pending the completion of the actions

1110

designated above, to the extent it can do so without violating any applicable provisions of law, the United

1111

States shall continue to make the quantities of Project Water specified in this Contract available to the

1112

Contractor pursuant to the provisions of this Contract which were not found to be legally invalid or

1113

unenforceable in the final court decision.

1114

RESOLUTION OF DISPUTES

1115

33. Should any dispute arise concerning any provisions of this Contract, or the parties' rights and

1116

obligations thereunder, the parties shall meet and confer in an attempt to resolve the dispute. Prior to the

1117

Contractor commencing any legal action, or the Contracting Officer referring any matter to Department of

1118

Justice, the party shall provide to the other party thirty (30) days' written notice of the intent to take such



1119 action; Provided, That such notice shall not be required where a delay in commencing an action would  
1120 prejudice the interests of the party that intends to file suit. During the thirty (30) -day notice period, the  
1121 Contractor and the Contracting Officer shall meet and confer in an attempt to resolve the dispute. Except as  
1122 specifically provided, nothing herein is intended to waive or abridge any right or remedy that the Contractor or  
1123 the United States may have.

1124 OFFICIALS NOT TO BENEFIT

1125 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the  
1126 Contractor shall benefit from this Contract other than as a water user or landowner in the same manner as  
1127 other water users or landowners.

1128 CHANGES IN CONTRACTOR'S SERVICE AREA

1129 35. (a) While this Contract is in effect, no change may be made in the Contractor's Service  
1130 Area or boundaries, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,  
1131 except upon the Contracting Officer's written consent.

1132 (b) Within thirty (30) days of receipt of a request for such a change, the Contracting  
1133 Officer will notify the Contractor of any additional information required by the Contracting Officer for  
1134 processing said request, and both parties will meet to establish a mutually agreeable schedule for timely  
1135 completion of the process. Such process will analyze whether the proposed change is likely to: (i) result in the  
1136 use of Project Water contrary to the terms of this Contract; (ii) impair the ability of the Contractor to pay for  
1137 Project Water furnished under this Contract or to pay for any Federally-constructed facilities for which the  
1138 Contractor is responsible; and (iii) have an impact on any Project Water rights applications, permits, or  
1139 licenses. In addition, the Contracting Officer shall comply with the National Environmental Policy Act and the  
1140 Endangered

1141 Species Act. The Contractor will be responsible for all costs incurred by the Contracting Officer in this  
1142 process, and such costs will be paid in accordance with Article 25 of this Contract.

1143 FEDERAL LAWS

1144 36. By entering into this Contract, the Contractor does not waive its rights to contest the validity  
1145 or application in connection with the performance of the terms and conditions of this Contract of any Federal  
1146 law or regulation; Provided, That the Contractor agrees to comply with the terms and conditions of this  
1147 Contract unless and until relief from application of such Federal law or regulation to the implementing  
1148 provision of the Contract is granted by a court of competent jurisdiction.

1149 NOTICES

1150 37. Any notice, demand, or request authorized or required by this Contract shall be deemed to  
1151 have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Area  
1152 Manager, South-Central California Area Office, 1243 "N" Street, Fresno, California 93721, and on behalf of  
1153 the United States, when mailed, postage prepaid, or delivered to the Board of Directors of the International  
1154 Water District, 9010 East Tollhouse Road, Clovis, California 93613. The designation of the addressee or  
1155 the address may be changed by notice given in the same manner as provided in this Article for other notices.

1156

CONFIRMATION OF CONTRACT

1157

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

1158

1159

1160

1161

1162

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and

1163

year first above written.

THE UNITED STATES OF AMERICA

By: /s/ William H. Luce, Jr.  
Acting Regional Director, Mid-Pacific Region  
Bureau of Reclamation

(SEAL)

INTERNATIONAL WATER DISTRICT

By: /s/ Shawn S. Stevenson  
President of the Board of Directors

Attest:

By: /s/ Leola R. Harlan  
Secretary of the Board of Directors

(I:Inte.wpd)

EXHIBIT A

[Map or Description of Service Area]

Contract No. 14-06-200-585A-LTR1

**EXHIBIT B**  
[Initial Rates and Charges]