

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

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

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6 AND
7 SHAFTER-WASCO IRRIGATION DISTRICT
8 PROVIDING FOR PROJECT WATER SERVICE
9 FROM FRIANT DIVISION

10 THIS CONTRACT, made this 20th 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 SHAFTER-WASCO IRRIGATION DISTRICT, hereinafter referred to as the Contractor, a
18 public agency of the State of California, duly organized, existing, and acting pursuant to the laws thereof,
19 with its principal place of business in California;

20 WITNESSETH, That:

21 EXPLANATORY RECITALS

22 [1st] 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 [2nd] 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 [3rd] 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 [4th] WHEREAS, the Contractor and the United States entered into Contract
42 No. 14-06-200-4032, as amended, which established terms for the delivery to the Contractor of Project
43 Water from the Friant Division from February 11, 1955, through February 28, 1995; and

44 [5th] 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). 14-06-200-4032-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 [6th] 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 [7th] 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 [8th] 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 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all of its
60 obligations under the Existing Contract; and

61 [10th] 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 [11th] 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 [12th] 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 [13th] 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 [14th] 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 [15th] 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 [16th] 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
114 Year 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
119 this Contract;

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

123 Contract;

124 (g) “CVPIA” shall mean the Central Valley Project Improvement Act, Title XXXIV of
125 the Act of October 30, 1992 (106 Stat. 4706);

126 (h) “Eligible Lands” shall mean all lands to which Irrigation Water may be delivered in
127 accordance with Section 204 of the Reclamation Reform Act of October 12, 1982
128 (96 Stat. 1263), as amended, hereinafter referred to as RRA;

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

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

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

135 (l) “Irrigation Full Cost Water Rate” shall 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 (4th)
144 and fifth (5th) 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
152 the 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
154 Federal Reclamation law with interest accruing from the dates such costs were first incurred plus the
155 applicable rate for the O&M of such Project facilities. Interest rates used in the calculation of the M&I Full
156 Cost Rate shall comply with the Interest Rate methodology contained in Section 202 (3) (B) and (C) of the
157 RRA;

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

161 (r) "Operating Non-Federal Entity" shall mean the Friant Water Users Authority, a
162 Non-Federal entity which has the obligation to operate and maintain all or a portion of the Friant Division

163 facilities pursuant to an agreement with the United States, and which may have funding obligations with
164 respect thereto;

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

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

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

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

175 (w) Omitted;

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

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

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

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

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

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

191 TERM OF CONTRACT

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

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

203 be renewed for a period of twenty-five (25) years.

204 (2) The conditions which must be met for this Contract to be renewed are: (i)
205 the Contractor has prepared a water conservation plan that has been determined by the Contracting Officer
206 in accordance with Article 26 of this Contract to meet the conservation and efficiency criteria for evaluating
207 such plans established under Federal law; (ii) the Contractor is implementing an effective water conservation
208 and efficiency program based on the Contractor's water conservation plan as required by Article 26 of this
209 Contract; (iii) the Contractor is operating and maintaining all water measuring devices and implementing all
210 water measurement methods as approved by the Contracting Officer pursuant to Article 6 of this Contract;
211 (iv) the Contractor has reasonably and beneficially used the Project Water supplies made available to it and,
212 based on projected demands, is reasonably anticipated and expects fully to utilize for reasonable and
213 beneficial use the quantity of Project Water to be made available to it pursuant to such renewal; (v) the
214 Contractor is complying with all terms and conditions of this Contract and all legal obligations of the
215 Contractor, if any, set forth in an enforceable court order, final judgment and/or settlement relating to
216 restoration of the San Joaquin River; and (vi) the Contractor has the physical and legal ability to deliver
217 Project Water.

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

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

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

237 (d) The Contracting Officer anticipates that by December 31, 2024, all authorized
238 Project construction expected to occur will have occurred, and on that basis the Contracting Officer agrees
239 by that date to allocate all costs that are properly assignable to the Contractor, and agrees further that, at
240 any time after such allocation is made, and subject to satisfaction of the conditions set out in this subdivision
241 of this Article, this Contract shall, at the request of the Contractor, be converted to a contract under

242 subsection (c)(1) and (d) of Section 9, of the Reclamation Project Act of 1939, subject to applicable
243 Federal law and under stated terms and conditions mutually agreeable to the Contractor and the Contracting
244 Officer. A condition for such conversion to occur shall be a determination by the Contracting Officer that,
245 account being taken of the amount credited to return by the Contractor as provided for under Reclamation
246 law, the remaining amount of construction costs assignable for ultimate return by the Contractor can
247 probably be repaid to the United States within the term of a contract under said subsection 9(c)(1) and (d).
248 If the remaining amount of costs that are properly assignable to the Contractor cannot be determined by
249 December 31, 2024, the Contracting Officer shall notify the Contractor, and provide the reason(s) why such
250 a determination could not be made. Further, the Contracting Officer shall make such a determination as
251 soon thereafter as possible so as to permit, upon request of the Contractor and satisfaction of the conditions
252 set out above, conversion to a contract under said subsection 9(c)(1) and (d). In the event such
253 determination of costs has not been made at a time which allows conversion of this Contract during the term
254 of this Contract or the Contractor has not requested conversion of this Contract within such term, the parties
255 shall incorporate in any subsequent renewal contract as described in Articles 2(b) and (c) a provision that
256 carries forth in substantially identical terms the provisions of this Article 2(d). In the event the Contracting
257 Officer is able to make a determination of the remaining amount of costs that are properly assignable to the
258 Contractor before December 31, 2024, the Contracting Officer shall do so at the earliest time he/she has
259 such ability.

260 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

261 3. (a) During each Year, consistent with all applicable State water rights, permits, and

262 licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this Contract, the
263 Contracting Officer shall make available for delivery to the Contractor 50,000 acre-feet of Class 1 Water
264 and 39,600 acre-feet of Class 2 Water, both for irrigation and M&I purposes. The quantity of Water
265 Delivered to the Contractor in accordance with this subdivision shall be scheduled and paid for pursuant to
266 the provisions of Articles 4 and 7 of this Contract.

267 (b) Omitted.

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

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

282 which approval will be based upon environmental documentation, Project Water rights, and Project
283 operational concerns. The Contracting Officer will address such concerns in regulations, policies, or
284 guidelines.

285 (e) The Contractor shall comply with requirements applicable to the Contractor in
286 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract
287 undertaken pursuant to Section 7 of the Endangered Species Act of 1973, as amended, that are within the
288 Contractor's legal authority to implement. The Contractor shall comply with the limitations or requirements
289 imposed by environmental documentation applicable to the Contractor and within its legal authority to
290 implement regarding specific activities, including conversion of Irrigation Water to M&I Water. Nothing
291 herein shall be construed to prevent the Contractor from challenging or seeking judicial relief in a court of
292 competent jurisdiction with respect to any biological opinion or other environmental documentation referred
293 to in this Article.

294 (f) Subject to subdivisions (l) and (n) of Article 3 of this Contract, following the
295 declaration of Water Made Available under Article 4 of this Contract, the Contracting Officer will make a
296 determination whether Project Water, or other water available to the Project, can be made available to the
297 Contractor in addition to the Contract Total under Article 3 of this Contract during the Year without
298 adversely impacting other Project Contractors. At the request of the Contractor, the Contracting Officer
299 will consult with the Contractor prior to making such a determination. Subject to subdivisions (l) and (n) of
300 Article 3 of this Contract, if the Contracting Officer determines that Project Water, or other water available
301 to the Project, can be made available to the Contractor, the Contracting Officer will announce the availability

302 of such water and shall so notify the Contractor as soon as practical. The Contracting Officer will thereafter
303 meet with the Contractor and other Project Contractors capable of taking such water to determine the most
304 equitable and efficient allocation of such water. If the Contractor requests the delivery of any quantity of
305 such water, the Contracting Officer shall make such water available to the Contractor in accordance with
306 applicable statutes, regulations, guidelines, and policies.

307 (g) The Contractor may request permission to reschedule for use during the subsequent
308 Year some or all of the Water Made Available to the Contractor during the current Year referred to as
309 “carryover.” The Contractor may request permission to use during the current Year a quantity of Project
310 Water which may be made available by the United States to the Contractor during the subsequent Year
311 referred to as “preuse.” The Contracting Officer’s written approval may permit such uses in accordance
312 with applicable statutes, regulations, guidelines, and policies.

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

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

322 upon written approval by the Contracting Officer in accordance with the terms and conditions of such
323 approval.

324 (j) The Contracting Officer shall make reasonable efforts to protect the water rights and
325 other rights described in the third (3rd) Explanatory Recital of this Contract and to provide the water
326 available under this Contract. The Contracting Officer shall not object to participation by the Contractor, in
327 the capacity and to the extent permitted by law, in administrative proceedings related to the water rights and
328 other rights described in the third (3rd) Explanatory Recital of this

329 Contract; Provided, however, That the Contracting Officer retains the right to object to the substance of the
330 Contractor's position in such a proceeding.

331 (k) Project Water furnished to the Contractor during any month designated in a
332 schedule or revised schedule submitted by the Contractor and approved by the Contracting Officer shall be
333 deemed to have been accepted by the Contractor as Class 1 Water to the extent that Class 1 Water is
334 called for in such schedule for such month and shall be deemed to have been accepted as Class 2 Water to
335 the extent Class 2 Water is called for in such schedule for such month. If in any month the Contractor
336 diverts a quantity of water in addition to the total amount of Class 1 Water and Class 2 Water set forth in
337 the Contractor's approved schedule or revised schedule for such month, such additional diversions shall be
338 charged first against the Contractor's remaining Class 2 Water supply available in the current Year. To the
339 extent the Contractor's remaining Class 2 Water supply available in the current Year is not sufficient to
340 account for such additional diversions, such additional diversions shall be charged against the Contractor's

341 remaining Class 1 Water supply available in the current Year. To the extent the Contractor's remaining
342 Class 1 Water and Class 2 Water supplies available in the current Year are not sufficient to account for such
343 additional diversions, such additional diversions shall be charged first against the Contractor's available
344 Class 2 Water supply and then against the Contractor's available Class 1 Water supply, both for the
345 following Year. Payment for all additional diversions of water shall be made in accordance with Article 7 of
346 this Contract.

347 (l) If the Contracting Officer determines there is a Project Water supply available at
348 Friant Dam as the result of an unusually large water supply not otherwise storable for Project purposes or
349 infrequent and otherwise unmanaged flood flows of short duration, such water will be made available to the
350 Contractor and others under Section 215 of the RRA pursuant to the priorities specified below if the
351 Contractor enters into a temporary contract with the United States not to exceed one (1) year for the
352 delivery of such water or, as otherwise provided for in Federal Reclamation law and associated regulations.
353 Such water may be identified by the Contractor either (i) as additional water to supplement the supply of
354 Class 1 Water and/or Class 2 Water made available to it pursuant to this Contract or, (ii) upon written
355 notification to the Contracting Officer, as water to be credited against the Contractor's Class 2 Water supply
356 available pursuant to this Contract. The Contractor shall deliver such water to Eligible Lands, or to Excess
357 Lands in accordance with this Article. The Contracting Officer shall make water determined to be available
358 pursuant to this subsection according to the following priorities: first, to long-term contractors for Class 1
359 Water and/or Class 2 Water within the Friant Division; second, to long-term contractors in the Cross Valley
360 Division of the Project. The Contracting Officer will consider and seek to accommodate requests from

361 other parties for Section 215 Water for use within the area identified as the Friant Division service area in
362 the environmental assessment developed in connection with the execution of this Contract.

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

367 (n) The rights of the Contractor under this Contract are subject to the terms of the
368 contract for exchange waters, dated July 27, 1939, between the United States and the San Joaquin and
369 Kings River Canal and Irrigation Company, Incorporated, et al., (hereinafter referred to as the Exchange
370 Contractors), Contract No. I1r-1144, as amended. The United States agrees that it will not deliver to the
371 Exchange Contractors thereunder waters of the San Joaquin River unless and until required by the terms of
372 said contract, and the United States further agrees that it will not voluntarily and knowingly determine itself
373 unable to deliver to the Exchange Contractors entitled thereto from water that is available or that may
374 become available to it from the Sacramento River and its tributaries or the Sacramento-San Joaquin Delta
375 those quantities required to satisfy the obligations of the United States under said Exchange Contract and
376 under Schedule 2 of the Contract for Purchase of Miller and Lux Water Rights (Contract I1r-1145, dated
377 July 27, 1939).

378 TIME FOR DELIVERY OF WATER

379 4. (a) On or about February 20 of each Calendar Year, the Contracting Officer shall
380 announce the Contracting Officer's expected declaration of the Water Made Available. The declaration will

381 be updated monthly, and more frequently if necessary, based on then-current operational and hydrologic
382 conditions and a new declaration with changes, if any, to the Water Made Available will be made. The
383 Contracting Officer shall provide forecasts of Project operations and the basis of the estimate, with relevant
384 supporting information, upon the written request of the Contractor. Concurrently with the declaration of the
385 Water Made Available, the Contracting Officer shall provide the Contractor with the updated Long Term
386 Historic Average. The declaration of Project operations will be expressed in terms of both Water Made
387 Available and the Long Term Historic Average.

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

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

397 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this Contract, the
398 United States shall deliver Project Water to the Contractor in accordance with the initial schedule submitted
399 by the Contractor pursuant to subdivision (b) of this Article, or any written revision(s), satisfactory to the

400 Contracting Officer, thereto submitted within a reasonable time prior to the date(s) on which the requested
401 change(s) is/are to be implemented; Provided, That the total amount of water requested in that schedule or
402 revision does not exceed the quantities announced by the Contracting Officer pursuant to the provisions of
403 subdivision (a) of Article 3, and the Contracting Officer determines that there will be sufficient capacity
404 available in the appropriate Friant Division facilities to deliver the water in accordance with that schedule:
405 Provided, further, That the Contractor shall not schedule the delivery of any water during any period as to
406 which the Contractor is notified by the Contracting Officer or Operating Non-Federal Entity that Project
407 facilities required to make deliveries to the Contractor will not be in operation because of scheduled O&M.

408 (e) The Contractor may, during the period from and including November 1 of each
409 Year through and including the last day of February of that Year, request delivery of any amount of the
410 Class 1 Water estimated by the Contracting Officer to be made available to it during the following Year.
411 The Contractor may, during the period from and including January 1 of each Year (or such earlier date as
412 may be determined by the Contracting Officer) through and including the last day of February of that Year,
413 request delivery of any amount of Class 2 Water estimated by the Contracting Officer to be made available
414 to it during the following Year. Such water shall hereinafter be referred to as preuse water. Such request
415 must be submitted in writing by the Contractor for a specified quantity of preuse and shall be subject to the
416 approval of the Contracting Officer. Payment for preuse water so requested shall be at the appropriate
417 rate(s) for the following Year in accordance with Article 7 of this Contract and shall be made in advance of
418 delivery of any preuse water. The Contracting Officer shall deliver such preuse water in accordance with a
419 schedule or any revision thereof submitted by the Contractor and approved by the Contracting Officer, to

420 the extent such water is available and to the extent such deliveries will not interfere with the delivery of
421 Project Water entitlements to other Friant Division contractors or the physical maintenance of the Project
422 facilities. The quantities of preuse water delivered pursuant to this subdivision shall be deducted from the
423 quantities of water that the Contracting Officer would otherwise be obligated to make available to the
424 Contractor during the following Year; Provided, That the quantity of preuse water to be deducted from the
425 quantities of either Class 1 Water or Class 2 Water to be made available to the Contractor in the following
426 Year shall be specified by the Contractor at the time the preuse water is requested or as revised in its first
427 schedule for the following Year submitted in accordance with subdivision (b) of this Article, based on the
428 availability of the following Year water supplies as determined by the Contracting Officer.

429 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

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

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

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

451 (e) Neither the Contracting Officer nor any Operating Non-Federal Entity shall be
452 responsible for the control, carriage, handling, use, disposal, or distribution of Project Water Delivered to
453 the Contractor pursuant to this Contract beyond the delivery points specified in subdivision (a) of this
454 Article. The Contractor shall indemnify the United States, its officers, employees, agents, and assigns on
455 account of damage or claim of damage of any nature whatsoever for which there is legal responsibility,
456 including property damage, personal injury, or death arising out of or connected with the control, carriage,
457 handling, use, disposal, or distribution of such Project Water beyond such delivery points, except for any
458 damage or claim arising out of: (i) acts or omissions of the Contracting Officer or any of its officers,
459 employees, agents, or assigns, including any responsible Operating Non-Federal Entity, with the intent of
460 creating the situation resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer or

461 any of its officers, employees, agents, or assigns, including any responsible Operating Non-Federal Entity;
462 (iii) negligence of the Contracting Officer or any of its officers, employees, agents, or assigns including any
463 responsible Operating Non-Federal Entity; or (iv) damage or claims resulting from a malfunction of facilities
464 owned and/or operated by the United States or responsible Operating Non-Federal Entity; Provided, That
465 the Contractor is not the Operating Non-Federal Entity that owned or operated the malfunctioning
466 facility(ies) from which the damage claim arose.

467 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

468 6. (a) The Contractor established a measurement program satisfactory to the Contracting
469 Officer, all surface water delivered for irrigation purposes within the Contractor's Service Area is measured
470 at each agricultural turnout and such water delivered for municipal and industrial purposes is measured at
471 each municipal and industrial service connection. The water measuring devices or water measuring methods
472 of comparable effectiveness must be acceptable to the Contracting Officer. The Contractor shall be
473 responsible for installing, operating, and maintaining and repairing all such measuring devices and
474 implementing all such water measuring methods at no cost to the United States. The Contractor shall use the
475 information obtained from such water measuring devices or water measuring methods to ensure its proper
476 management of the water, to bill water users for water delivered by the Contractor; and, if applicable, to
477 record water delivered for municipal and industrial purposes by customer class as defined in the
478 Contractor's water conservation plan provided for in Article 26 of this Contract. Nothing herein contained,
479 however, shall preclude the Contractor from establishing and collecting any charges, assessments, or other

480 revenues authorized by California law. The Contractor shall include a summary of all its annual surface
481 water deliveries in the annual report described in subdivision (c) of Article 26 of this Contract.

482 (b) To the extent the information has not otherwise been provided, upon execution of
483 this Contract, the Contractor shall provide to the Contracting Officer a written report describing the
484 measurement devices or water measuring methods being used or to be used to implement subdivision (a) of
485 this Article and identifying the agricultural turnouts and the municipal and industrial service connections or
486 alternative measurement programs approved by the Contracting Officer, at which such measurement devices
487 or water measuring methods are being used, and, if applicable, identifying the locations at which such
488 devices and/or methods are not yet being used including a time schedule for implementation at such
489 locations. The Contracting Officer shall advise the Contractor in writing within sixty (60) days as to the
490 adequacy of, and necessary modifications, if any, of the measuring devices or water measuring methods
491 identified in the Contractor's report and if the Contracting Officer does not respond in such time, they shall
492 be deemed adequate. If the Contracting Officer notifies the Contractor that the measuring devices or
493 methods are inadequate, the parties shall within sixty (60) days following the Contracting Officer's response,
494 negotiate in good faith the earliest practicable date by which the Contractor shall modify said measuring
495 devices and/or measuring methods as required by the Contracting Officer to ensure compliance with
496 subdivision (a) of this Article.

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

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

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

506 RATES AND METHOD OF PAYMENT FOR WATER

507 7. (a) The Contractor shall pay the United States as provided in this Article for all
508 Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance with: (i)
509 the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's then-existing
510 ratesetting policy for M&I Water. Such ratesetting policies shall be amended, modified, or superseded only
511 through a public notice and comment procedure; (ii) applicable Reclamation law and associated rules and
512 regulations, or policies; and (iii) other applicable provisions of this Contract. Payments shall be made by
513 cash transaction, wire, or any other mechanism as may be agreed to in writing by the Contractor and the
514 Contracting Officer. The Rates, Charges, and Tiered Pricing Components applicable to the Contractor
515 upon execution of this Contract are set forth in Exhibit "B", as may be revised annually.

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

518 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall provide

519 the Contractor an estimate of the Charges for Project Water that will be applied to the period October 1, of
520 the current Calendar Year, through September 30, of the following Calendar Year, and the basis for such
521 estimate. The Contractor shall be allowed not less than two (2) months to review and comment on such
522 estimates. On or before September 15 of each Calendar Year, the Contracting Officer shall notify the
523 Contractor in writing of the Charges to be in effect during the period
524 October 1 of the current Calendar Year, through September 30, of the following Calendar Year, and such
525 notification shall revise Exhibit "B."

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

533 (c) At the time the Contractor submits the initial schedule for the delivery of Project
534 Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor shall make an
535 advance payment to the United States equal to the total amount payable pursuant to the applicable Rate(s)
536 set under subdivision (a) of this Article, for the Project Water scheduled to be delivered pursuant to this
537 Contract during the first two (2) calendar months of the Year. Before the end of the first month and before
538 the end of each calendar month thereafter, the Contractor shall make an advance payment to the United

539 States, at the Rate(s) set under subdivision (a) of this Article, for the Water Scheduled to be delivered
540 pursuant to this Contract during the second month immediately following. Adjustments between advance
541 payments for Water Scheduled and payments at Rates due for Water Delivered shall be made before the
542 end of the following month; Provided, That any revised schedule submitted by the Contractor pursuant to
543 Article 4 of this Contract which increases the amount of Water Delivered pursuant to this Contract during
544 any month shall be accompanied with appropriate advance payment, at the Rates then in effect, to assure
545 that Project Water is not delivered to the Contractor in advance of such payment. In any month in which the
546 quantity of Water Delivered to the Contractor pursuant to this Contract equals the quantity of Water
547 Scheduled and paid for by the Contractor, no additional Project Water shall be delivered to the Contractor
548 unless and until an advance payment at the Rates then in effect for such additional Project Water is made.
549 Final adjustment between the advance payments for the Water Scheduled and payments for the quantities of
550 Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable but no
551 later than April 30th of the following Year, or sixty (60) days after the delivery of Project Water carried
552 over under subdivision (f) of Article 3 of this Contract if such water is not delivered by the last day of
553 February.

554 (d) The Contractor shall also make a payment in addition to the Rate(s) in subdivision
555 (c) of this Article to the United States for Water Delivered, at the Charges and the appropriate Tiered
556 Pricing Component then in effect, before the end of the month following the month of delivery; Provided,
557 That the Contractor may be granted an exception from the Tiered Pricing Component pursuant to
558 subdivision (j)(2) of this Article. The payments shall be consistent with the quantities of Irrigation Water and

559 M&I Water Delivered as shown in the water delivery report for the subject month prepared by the
560 Operating Non-Federal Entity or, if there is no Operating Non-Federal Entity, by the Contracting Officer.
561 Such water delivery report shall be the basis for payment of Charges and Tiered Pricing Components by the
562 Contractor, and shall be provided to the Contractor by the Operating Non-Federal Entity or the Contracting
563 Officer (as applicable) within five (5) days after the end of the month of delivery. The water delivery report
564 shall be deemed a bill for the payment of Charges and the applicable Tiered Pricing Component for Water
565 Delivered. Adjustment for overpayment or underpayment of Charges shall be made through the adjustment
566 of payments due to the United States for Charges for the next month. Any amount to be paid for past due
567 payment of Charges and the Tiered Pricing Component shall be computed pursuant to Article 20 of this
568 Contract.

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

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

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

579 then current Project ratesetting policies for M&I Water or Irrigation Water.

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

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

593 (j) (1) Beginning at such time as the total of the deliveries of Class 1 Water and
594 Class 2 Water in a Year exceed eighty (80%) percent of the Contract Total, then before the end of the
595 month following the month of delivery the Contractor shall make an additional payment to the United States
596 equal to the applicable Tiered Pricing Component. The Tiered Pricing Component for the total of the
597 deliveries of Class 1 Water and Class 2 Water in excess of eighty (80%) percent of the Contract Total, but
598 less than or equal to ninety (90%) percent of the Contract Total, shall equal the one-half of the difference

599 between the Rate established under subdivision (a) of Article 7 of this Contract and the Irrigation Full Cost
600 Water Rate or M&I Full Cost Water Rate, whichever is applicable. The Tiered Pricing Component for the
601 total of the deliveries of Class 1 Water and Class 2 Water which exceeds ninety (90%) percent of the
602 Contract Total shall equal the difference between (i) the Rate established under subdivision (a) of Article 7
603 of this Contract and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is
604 applicable.

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

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

615 (k) For the term of this Contract, Rates under the respective ratesetting policies will be
616 established to recover only reimbursable "operation and maintenance" (including any deficits) and capital
617 costs of the Project, as those terms are used in the then-current Project ratesetting policies, and interest,
618 where appropriate, except in instances where a minimum Rate is applicable in accordance with the relevant

619 Project ratesetting policy. Changes of significance in practices which implement the Contracting Officer's
620 ratesetting policies will not be implemented until the Contracting Officer has provided the Contractor an
621 opportunity to discuss the nature, need, and impact of the proposed change.

622 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA, the
623 Rates for Project Water transferred by the Contractor shall be the Contractor's Rates adjusted upward or
624 downward to reflect the changed costs of delivery (if any) of the transferred Project Water to the
625 transferee's point of delivery in accordance with the then applicable CVP Ratesetting Policy. If the
626 Contractor is receiving lower Rates and Charges because of inability to pay and is transferring Project
627 Water to another entity whose Rates and Charges are not adjusted due to inability to pay, the Rates and
628 Charges for transferred Project Water shall be the Contractor's Rates and Charges unadjusted for ability to
629 pay.

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

632 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

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

636 SALES, TRANSFERS, OR EXCHANGES OF WATER

637 9. (a) The right to receive Project Water provided for in this Contract may be sold,
638 transferred, or exchanged to others for reasonable and beneficial uses within the State of California if such

639 sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable guidelines or
640 regulations then in effect. No sale, transfer, or exchange of Project Water under this Contract may take
641 place without the prior written approval of the Contracting Officer, except as provided for in subdivision (b)
642 of this Article, and no such sales, transfers, or exchanges shall be approved absent compliance with
643 appropriate environmental documentation including but not limited to the National Environmental Policy Act
644 and the Endangered Species Act. Such environmental documentation should include, as appropriate, an
645 analysis of groundwater impacts and economic and social effects, including environmental justice, of the
646 proposed water transfers on both the transferor and transferee.

647 (b) In order to facilitate efficient water management by means of water transfers of the
648 type historically carried out among Project Contractors located within the same geographical area and to
649 allow the Contractor to participate in an accelerated water transfer program during the term of this Contract,
650 the Contracting Officer shall prepare, as appropriate, necessary environmental documentation including, but
651 not limited to, the National Environmental Policy Act and the Endangered Species Act analyzing annual
652 transfers within such geographical areas and the Contracting Officer shall determine whether such transfers
653 comply with applicable law. Following the completion of the environmental documentation, such transfers
654 addressed in such documentation shall be conducted with advance notice to the Contracting Officer, but
655 shall not require prior written approval by the Contracting Officer. Such environmental documentation and
656 the Contracting Officer's compliance determination shall be reviewed every five (5) years and updated, as
657 necessary, prior to the expiration of the then existing five (5) -year period. All subsequent environmental
658 documentation shall include an alternative to evaluate not less than the quantity of Project Water historically

659 transferred within the same geographical area.

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

670 APPLICATION OF PAYMENTS AND ADJUSTMENTS

671 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,
672 Capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of the
673 Contractor arising out of this Contract then due and payable. Overpayments of more than One Thousand
674 Dollars (\$1,000) shall be refunded at the Contractor's request. In lieu of a refund, any amount of such
675 overpayment at the option of the Contractor, may be credited against amounts to become due to the United
676 States by the Contractor. With respect to overpayment, such refund or adjustment shall constitute the sole
677 remedy of the Contractor or anyone having or claiming to have the right to the use of any of the Project
678 Water supply provided for herein. All credits and refunds of overpayments shall be made within thirty (30)

679 days of the Contracting Officer obtaining direction as to how to credit or refund such overpayment in
680 response to the notice to the Contractor that it has finalized the accounts for the Year in which the
681 overpayment was made.

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

687 TEMPORARY REDUCTIONS--RETURN FLOWS

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

692 (b) The Contracting Officer or Operating Non-Federal Entity may temporarily
693 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for the purposes
694 of investigation, inspection, maintenance, repair, or replacement of any of the Project facilities or any part
695 thereof necessary for the delivery of Project Water to the Contractor, but so far as feasible the Contracting
696 Officer or Operating Non-Federal Entity will give the Contractor due notice in advance of such temporary
697 discontinuance or reduction, except in case of emergency, in which case no notice need be given; Provided,

698 That the United States shall use its best efforts to avoid any discontinuance or reduction in such service.
699 Upon resumption of service after such reduction or discontinuance, and if requested by the Contractor, the
700 United States will, if possible, deliver the quantity of Project Water which would have been delivered
701 hereunder in the absence of such discontinuance or reduction.

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

710 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

716 (b) If there is a Condition of Shortage because of errors in physical operations of the
717 Project, drought, other physical causes beyond the control of the Contracting Officer or actions taken by the

718 Contracting Officer to meet legal obligations then, except as provided in subdivision (a) of Article 18 of this
719 Contract, no liability shall accrue against the United States or any of its officers, agents, or employees for
720 any damage, direct or indirect, arising therefrom.

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

732 (d) The Contracting Officer shall not deliver any Class 2 Water pursuant to this or any
733 other contract for water service heretofore or hereafter entered into any Year unless and until the
734 Contracting Officer determines that the cumulative total quantity of Class 1 Water specified in subdivision (c)
735 of this Article will be available for delivery in said Year. If the Contracting Officer determines there is or will
736 be a shortage in any Year in the quantity of Class 1 Water available for delivery, the Contracting Officer
737 shall apportion the available Class 1 Water among all contractors entitled to receive such water that will be
738 made available at Friant Dam in accordance with the following:

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

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

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

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

755 (f) In the event that in any Year there is made available to the Contractor, by reason of
756 any shortage or apportionment as provided in subdivisions (a), (d) or (e) of this Article, or any
757 discontinuance or reduction of service as set forth in subdivision (a) of Article 11 of this Contract, less than
758 the quantity of water which the Contractor otherwise would be entitled to receive hereunder, there shall be

759 made an adjustment on account of the amounts already paid to the Contracting Officer by the Contractor for
760 Class 1 Water and Class 2 Water for said Year in accordance with Article 10 of this Contract.

761 UNAVOIDABLE GROUNDWATER PERCOLATION

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

766 RULES AND REGULATIONS

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

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

774 (c) The parties acknowledge that, as of the effective date of this Contract, active
775 settlement discussions are underway in NRDC v. Patterson between Friant Division water service
776 contractors, representatives of the Contracting Officer, and the plaintiffs in NRDC v. Patterson. The mutual
777 goals of the parties to those discussions are (i) to expeditiously evaluate and implement, on a mutually
778 acceptable basis, instream and related measures that will restore ecological functions and hydrologic and

779 geomorphologic processes of the San Joaquin River below Friant Dam to a level that restores and maintains
780 fish populations in good condition, including but not limited to naturally-reproducing, self-sustaining
781 populations of chinook salmon and (ii) to accomplish these restoration goals while not adversely impacting
782 the overall sufficiency, reliability and cost of water supplies to Friant Division water users. The Contractor
783 has been actively participating, and intends to continue to participate in such settlement discussions. Except
784 as provided in this Contract, this Contract does

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

787 WATER AND AIR POLLUTION CONTROL

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

791 QUALITY OF WATER

792 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to this
793 Contract shall be operated and maintained to enable the United States to deliver Project Water to the
794 Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act of August
795 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat. 3050) or
796 other existing Federal laws. The United States is under no obligation to construct or furnish water treatment
797 facilities to maintain or to improve the quality of Water Delivered to the Contractor pursuant to this

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

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

806 WATER ACQUIRED BY THE CONTRACTOR
807 OTHER THAN FROM THE UNITED STATES

808 17. (a) Water or water rights now owned or hereafter acquired by the Contractor other
809 than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may be
810 simultaneously transported through the same distribution facilities of the Contractor subject to the following:
811 (i) if the facilities utilized for commingling Irrigation Water and non-project water were constructed without
812 funds made available pursuant to Federal Reclamation law, the provisions of Federal Reclamation law will
813 be applicable only to the Landholders of lands which receive Irrigation Water; (ii) the eligibility of land to
814 receive Irrigation Water must be established through the certification requirements as specified in the
815 Acreage Limitation Rules and Regulations (43 CFR
816 Part 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be

817 established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity necessary to
818 irrigate such Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation Water and non-project
819 water are/were constructed with funds made available pursuant to Federal Reclamation law, the non-project
820 water will be subject to the acreage limitation provisions of Federal Reclamation law, unless the Contractor
821 pays to the United States the incremental fee described in

822 43 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate annually the cost
823 to the Federal Government, including interest of storing or delivering non-Project Water, which for purposes
824 of this Contract shall be determined as follows: The quotient shall be the unpaid distribution system costs
825 divided by the total irrigable acreage within the Contractor's Service Area. The incremental fee per acre is
826 the mathematical result of such quotient times the interest rate determined using Section 202 (3) of the Act of
827 October 12, 1982 (96 Stat. 1263). Such incremental fee will be charged to each acre of excess or full cost
828 land within the Contractor's Service Area that receives non-project water through Federally financed or
829 constructed facilities. The incremental fee calculation methodology will continue during the term of this
830 Contract absent the promulgation of a contrary Reclamation-wide rule, regulation or policy adopted after the
831 Contractor has been afforded the opportunity to review and comment on the proposed rule, regulation or
832 policy. If such rule, regulation or policy is adopted it shall supersede this provision.

833 (b) Water or water rights now owned or hereafter acquired by the Contractor, other
834 than from the United States or adverse to the Project or its contractors (i.e., non-project water), may be
835 stored, conveyed and/or diverted through Project facilities, subject to the completion of appropriate
836 environmental documentation, with the approval of the Contracting Officer and the execution of any contract
837 determined by the Contracting Officer to be necessary, consistent with the following provisions:

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

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

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

856 (4) Diversion of such non-project water into Project facilities shall be consistent
857 with all applicable laws, and if involving groundwater, consistent with any groundwater management plan for

858 the area from which it was extracted.

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

863 OPINIONS AND DETERMINATIONS

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

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

877 COORDINATION AND COOPERATION

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

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

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

896 (1) The Contracting Officer will, at the request of the Contractor, assist in the

897 development of integrated resource management plans for the Contractor. Further, the Contracting Officer
898 will, as appropriate, seek authorizations for implementation of partnerships to improve water supply, water
899 quality, and reliability.

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

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

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

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

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

915 CHARGES FOR DELINQUENT PAYMENTS

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

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

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

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

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

973 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

978 (b) The payment of charges becoming due hereunder is a condition precedent to
979 receiving benefits under this Contract. The United States shall not make water available to the Contractor

980 through Project facilities during any period in which the Contractor may be in arrears in the advance
981 payment of water rates due the United States. The Contractor shall not furnish water made available
982 pursuant to this Contract for lands or parties which are in arrears in the advance payment of water rates
983 levied or established by the Contractor.

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

986 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

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

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

998 (c) The Contractor makes this agreement in consideration of and for the purpose of
999 obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial
1000 assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including
1001 installment payments after such date on account of arrangements for Federal financial assistance which were
1002 approved before such date. The Contractor recognizes and agrees that such Federal assistance will be
1003 extended in reliance on the representations and agreements made in this Article, and that the United States
1004 reserves the right to seek judicial enforcement thereof.

1005 PRIVACY ACT COMPLIANCE

1006 24. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a) (the
1007 Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et seq.) in
1008 maintaining Landholder acreage certification and reporting records, required to be submitted to the
1009 Contractor for compliance with Sections 206 and 228 of the Reclamation Reform Act of 1982 (96 Stat.
1010 1266), and pursuant to 43 CFR 426.18.

1011 (b) With respect to the application and administration of the criminal penalty provisions
1012 of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible for maintaining

1013 the certification and reporting records referenced in (a) above are considered to be employees of the
1014 Department of the Interior. See 5 U.S.C. 552a(m).

1015 (c) The Contracting Officer or a designated representative shall provide the Contractor
1016 with current copies of the Interior Department Privacy Act regulations and the Bureau of Reclamation
1017 Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior, Reclamation-31)
1018 which govern the maintenance, safeguarding, and disclosure of information contained in the Landholder's
1019 certification and reporting records.

1020 (d) The Contracting Officer shall designate a full-time employee of the Bureau of
1021 Reclamation to be the System Manager who shall be responsible for making decisions on denials pursuant to
1022 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is authorized to
1023 grant requests by individuals for access to their own records.

1024 (e) The Contractor shall forward promptly to the System Manager each proposed
1025 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR 2.71;
1026 notify the requester accordingly of such referral; and provide the System Manager with information and
1027 records necessary to prepare an appropriate response to the requester. These requirements do not apply to
1028 individuals seeking access to their own certification and reporting forms filed with the Contractor pursuant to
1029 43 CFR 426.18, unless the requester elects to cite the Privacy Act as a basis for the request.

1030 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1031 25. In addition to all other payments to be made by the Contractor pursuant to this Contract, the
1032 Contractor shall pay to the United States, within sixty (60) days after receipt of a bill and detailed statement
1033 submitted by the Contracting Officer to the Contractor for such specific items of direct cost incurred by the
1034 United States for work requested by the Contractor associated with this Contract plus indirect costs in
1035 accordance with applicable Bureau of Reclamation policies and procedures. All such amounts referred to in
1036 this Article shall not exceed the amount agreed to in writing in advance by the Contractor. This Article shall
1037 not apply to costs for routine contract administration.

1038 WATER CONSERVATION

1039 26. (a) Prior to the delivery of water provided from or conveyed through Federally

1040 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be implementing an
1041 effective water conservation and efficiency program based on the Contractor's water conservation plan that
1042 has been determined by the Contracting Officer to meet the conservation and efficiency criteria for
1043 evaluating water conservation plans established under Federal law. The water conservation and efficiency
1044 program shall contain definite water conservation objectives, appropriate economically feasible water
1045 conservation measures, and time schedules for meeting those objectives. Continued Project Water delivery
1046 pursuant to this Contract shall be contingent upon the Contractor's continued implementation of such water
1047 conservation program. In the event the Contractor's water conservation plan or any revised water
1048 conservation plan completed pursuant to subdivision (d) of Article 26 of this Contract have not yet been
1049 determined by the Contracting Officer to meet such criteria, due to circumstances which the Contracting
1050 Officer determines are beyond the control of the Contractor, water deliveries shall be made under this
1051 Contract so long as the Contractor diligently works with the Contracting Officer to obtain such
1052 determination at the earliest practicable date, and thereafter the Contractor immediately begins implementing
1053 its water conservation and efficiency program in accordance with the time schedules therein.

1054 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of Article 3
1055 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the Contractor shall implement
1056 the Best Management Practices identified by the time frames issued by the California Urban Water
1057 Conservation Council for such M&I Water unless any such practice is determined by the Contracting
1058 Officer to be inappropriate for the Contractor.

1059 (c) The Contractor shall submit to the Contracting Officer a report on the status of its

1060 implementation of the water conservation plan on the reporting dates specified in the then existing
1061 conservation and efficiency criteria established under Federal law.

1062 (d) At five (5) -year intervals, the Contractor shall revise its water conservation plan to
1063 reflect the then current conservation and efficiency criteria for evaluating water conservation plans
1064 established under Federal law and submit such revised water management plan to the Contracting Officer
1065 for review and evaluation. The Contracting Officer will then determine if the water conservation plan meets
1066 Reclamation’s then current conservation and efficiency criteria for evaluating water conservation plans
1067 established under Federal law.

1068 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall be
1069 described in the Contractor’s water conservation plan.

1070 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1071 27. Except as specifically provided in Article 17 of this Contract, the provisions of this Contract
1072 shall not be applicable to or affect non-project water or water rights now owned or hereafter acquired by
1073 the Contractor or any user of such water within the Contractor's Service Area. Any such water shall not be
1074 considered Project Water under this Contract. In addition, this Contract shall not be construed as limiting or
1075 curtailing any rights which the Contractor or any water user within the Contractor's Service Area acquires or
1076 has available under any other contract pursuant to Federal Reclamation law.

1077 OPERATION AND MAINTENANCE BY NON-FEDERAL ENTITY

1078 28. (a) The Operation and Maintenance of a portion of the Project facilities which serve the

1079 Contractor, and responsibility for funding a portion of the costs of such Operation and Maintenance, have
1080 been transferred to the Operating Non-Federal Entity by separate agreement
1081 between the United States and the Operating Non-Federal Entity. That separate agreement shall not
1082 interfere with or affect the rights or obligations of the Contractor or the United States hereunder.

1083 (b) The Contracting Officer has previously notified the Contractor in writing that the
1084 Operation and Maintenance of a portion of the Project facilities which serve the Contractor has been
1085 transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly to the
1086 Operating Non-Federal Entity, or to any successor approved by the Contracting Officer under the terms
1087 and conditions of the separate agreement between the United States and the Operating
1088 Non-Federal Entity described in subdivision (a) of this Article, all rates, charges or assessments of any kind,
1089 including any assessment for reserve funds, which the Operating Non-Federal Entity or such successor
1090 determines, sets or establishes for (i) the Operation and Maintenance of the portion of the Project facilities
1091 operated and maintained by the Operating Non-Federal Entity or such successor, or (ii) the Friant Division's
1092 share of the operation, maintenance and replacement costs for physical works and appurtenances associated
1093 with the Tracy Pumping Plant, the Delta-Mendota Canal, the O'Neill Pumping/Generating Plant, the federal
1094 share of the O'Neill Forebay, the Mendota Pool, and the federal share of San Luis Unit joint use
1095 conveyance and conveyance pumping facilities. Such direct payments to the Operating Non-Federal Entity
1096 or such successor shall not relieve the Contractor of its obligation to pay directly to the United States the
1097 Contractor's share of the Project Rates, Charges, and Tiered Pricing Components except to the extent the
1098 Operating Non-Federal Entity collects payments on behalf of the United States in accordance with the

1099 separate agreement identified in subdivision (a) of this Article.

1100 (c) For so long as the Operation and Maintenance of any portion of the Project facilities
1101 serving the Contractor is performed by the Operating Non-Federal Entity, or any successor thereto, the
1102 Contracting Officer shall adjust those components of the Rates for Water Delivered under this Contract
1103 representing the cost associated with the activity being performed by the Operating Non-Federal Entity or
1104 its successor.

1105 (d) In the event the Operation and Maintenance of the Project facilities operated and
1106 maintained by the Operating Non-Federal Entity is re-assumed by the United States during the term of this
1107 Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the Contractor a
1108 revised Exhibit "B" which shall include the portion of the Rates to be paid by the Contractor for Project
1109 Water under this Contract representing the Operation and Maintenance costs of the portion of such Project
1110 facilities which have been re-assumed. The Contractor shall, thereafter, in the absence of written notification
1111 from the Contracting Officer to the contrary, pay the Rates, Charges, and Tiered Pricing Component(s)
1112 specified in the revised Exhibit "B" directly to the United States in compliance with Article 7 of this Contract.

1113 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1114 29. The expenditure or advance of any money or the performance of any obligation of the
1115 United States under this Contract shall be contingent upon appropriation or allotment of funds. Absence of
1116 appropriation or allotment of funds shall not relieve the Contractor from any obligations under this Contract.
1117 No liability shall accrue to the United States in case funds are not appropriated or allotted.

1118 BOOKS, RECORDS, AND REPORTS

1119 30. (a) The Contractor shall establish and maintain accounts and other books and records
1120 pertaining to administration of the terms and conditions of this Contract, including: the Contractor's financial

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

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

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

1135 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

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

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

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

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SEVERABILITY

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

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

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other form of organization whose primary function is to represent parties to Project contracts, brings an

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

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this Contract and said person, entity, association, or organization obtains a final court decision holding that

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such provision is legally invalid or unenforceable and the Contractor has not intervened in that lawsuit in

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

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of the date of such final court decision identify by mutual agreement the provisions in this Contract which

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must be revised and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s).

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The time periods specified above may be extended by mutual agreement of the parties. Pending the

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completion of the actions designated above, to the extent it can do so without violating any applicable

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provisions of law, the United States shall continue to make the quantities of Project Water specified in this

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Contract available to the Contractor pursuant to the provisions of this Contract which were not found to be

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legally invalid or unenforceable in the final court decision.

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RESOLUTION OF DISPUTES

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

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

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

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

1164 action; Provided, That such notice shall not be required where a delay in commencing an action would
1165 prejudice the interests of the party that intends to file suit. During the thirty (30) -day notice period, the
1166 Contractor and the Contracting Officer shall meet and confer in an attempt to resolve the dispute. Except as
1167 specifically provided, nothing herein is intended to waive or abridge any right or remedy that the Contractor
1168 or the United States may have.

1169 OFFICIALS NOT TO BENEFIT

1170 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1171 Contractor shall benefit from this Contract other than as a water user or landowner in the same manner as
1172 other water users or landowners.

1173 CHANGES IN CONTRACTOR'S SERVICE AREA

1174 35. (a) While this Contract is in effect, no change may be made in the Contractor's Service
1175 Area or boundaries, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,
1176 except upon the Contracting Officer's written consent.

1177 (b) Within thirty (30) days of receipt of a request for such a change, the Contracting
1178 Officer will notify the Contractor of any additional information required by the Contracting Officer for
1179 processing said request, and both parties will meet to establish a mutually agreeable schedule for timely
1180 completion of the process. Such process will analyze whether the proposed change is likely to: (i) result in
1181 the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of the Contractor to pay
1182 for Project Water furnished under this Contract or to pay for any Federally-constructed facilities for which
1183 the Contractor is responsible; and (iii) have an impact on any Project Water rights applications, permits, or

1184 licenses. In addition, the Contracting Officer shall comply with the National Environmental Policy Act and
1185 the Endangered
1186 Species Act. The Contractor will be responsible for all costs incurred by the Contracting Officer in this
1187 process, and such costs will be paid in accordance with Article 25 of this Contract.

1188 FEDERAL LAWS

1189 36. By entering into this Contract, the Contractor does not waive its rights to contest the validity
1190 or application in connection with the performance of the terms and conditions of this Contract of any Federal
1191 law or regulation; Provided, That the Contractor agrees to comply with the terms and conditions of this
1192 Contract unless and until relief from application of such Federal law or regulation to the implementing
1193 provision of the Contract is granted by a court of competent jurisdiction.

1194 NOTICES

1195 37. Any notice, demand, or request authorized or required by this Contract shall be deemed to
1196 have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Area
1197 Manager, South-Central California Area Office, 1243 “N” Street, Fresno, California 93721, and on behalf
1198 of the United States, when mailed, postage prepaid, or delivered to the Board of Directors of the Shafter-
1199 Wasco Irrigation District, PO Box 1168, Wasco, California 93280. The designation of the addressee or
1200 the address may be changed by notice given in the same manner as provided in this Article for other notices.

1201 CONFIRMATION OF CONTRACT

1202 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a decree
1203 of a court of competent jurisdiction of the State of California, confirming the execution of this Contract. The
1204 Contractor shall furnish the United States a certified copy of the final decree, the validation proceedings, and
1205 all pertinent supporting records of the court approving and confirming this Contract, and decreeing and
1206 adjudging it to be lawful, valid, and binding on the Contractor.

1207 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and
1208 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)

SHAFTER-WASCO IRRIGATION DISTRICT

By: /s/ Roger Frantz
President of the Board of Directors

Attest:

By: /s/ Jerry L. Ezell
Secretary of the Board of Directors

(I:Shaf.wpd)

EXHIBIT A

[Map or Description of Service Area]

Contract No.14-06-200-4032-LTR1

EXHIBIT B
[Initial Rates and Charges]