

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

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

Table of Contents

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
	Preamble	1
	Explanatory Recitals	1-5
1	Definitions	5-10
2	Term of Contract	10-13
3	Water to be Made Available and Delivered to the Contractor	13-19
4	Time for Delivery of Water	19-22
5	Point of Diversion and Responsibility for Distribution of Water	22-23
6	Measurement of Water Within the Service Area	24-25
7	Rates and Method of Payment for Water	26-32
8	Non-Interest Bearing Operation and Maintenance Deficits	32
9	Sales, Transfers, or Exchanges of Water	32-34
10	Application of Payments and Adjustments	34-35
11	Temporary Reductions--Return Flows	35-36
12	Constraints on the Availability of Water	36-38
13	Unavoidable Groundwater Percolation	38
14	Rules and Regulations	39
15	Water and Air Pollution Control	40
16	Quality of Water	40
17	Water Acquired by the Contractor Other Than From the United States	41-43
18	Opinions and Determinations	43-44
19	Coordination and Cooperation	44-45
20	Charges for Delinquent Payments	45-46
21	Equal Opportunity	46-47
22	General Obligation--Benefits Conditioned Upon Payment	47-48

23	Compliance With Civil Rights Laws and Regulations	48
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<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
24	Privacy Act Compliance	48-49
25	Contractor to Pay Certain Miscellaneous Costs	49
26	Water Conservation	49-51
27	Existing or Acquired Water or Water Rights	51
28	Operation and Maintenance by Non-Federal Entity	51-53
29	Contingent on Appropriation or Allotment of Funds	53
30	Books, Records, and Reports	53-54
31	Assignment Limited--Successors and Assigns Obligated	54
32	Severability	54-55
33	Resolution of Disputes	55
34	Officials Not to Benefit	56
35	Changes in Contractor's Service Area	56
36	Federal Laws	56-57
37	Notices.....	57
38	Confirmation of Contract	57
	Signature Page	
	Exhibit A	
	Exhibit B	

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6 AND
7 TERRA BELLA 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 TERRA BELLA IRRIGATION DISTRICT, hereinafter referred to as the Contractor, a public
18 agency of the State of California, duly organized, existing, and acting pursuant to the laws thereof, with its
19 principal place of business in California;

20 WITNESSETH, That:

21 EXPLANATORY RECITALS

22 [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 No. I75r-2446, as
42 amended, which established terms for the delivery to the Contractor of Project Water from the Friant
43 Division from September 12, 1950, to February 28, 1991; and

Contract No. I75r-2446-LTR1

44 [5th] WHEREAS, the Contractor and the United States entered into Renewal Contract
45 No. I75r-2446R, which provided for continued water service to the Contractor from the Friant Division
46 from March 1, 1991, through February 28, 2029, but, in light of the Ninth Circuit Court of Appeals Opinion
47 in the lawsuit entitled Natural Resources Defense Council, et al. v. Roger Patterson, et al., that contract was
48 replaced by Interim Renewal Contract No.I75r-2446-IR1, dated July 10, 1998, which provides for
49 continued water service to the Contractor from the Friant Division from September 14, 1998, through
50 February 28, 2001; and

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

56 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
57 environmental review necessary to provide for long-term renewal of the Existing Contract; and

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

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

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

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

71 [12th] WHEREAS, the economies of regions within the Central Valley Project, including the
72 Contractor's, depend upon the continued availability of water, including water service from the Central
73 Valley Project; and

74 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships to
75 pursue measures to improve water supply, water quality, and reliability of the Project for all Project
76 purposes; and

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

83 [15th] Omitted;

84 [15.1] WHEREAS, during Uncontrolled Seasons, Friant Division Project Contractors utilize
85 undependable Class 2 Water in their service areas to, among other things, assist in the management and
86 alleviation of groundwater overdraft in the Friant Division service area, provide opportunities for
87 environmental enhancement, including restoration of the San Joaquin River below Friant Dam, minimize
88 flooding along the San Joaquin River, encourage optimal water management, and maximize the reasonable
89 and beneficial use of the water; and

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

93 [16th] WHEREAS, the United States and the Contractor are willing to enter into this Contract
94 pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

97 DEFINITIONS

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

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

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

105 (b2) "Class 1 Water" shall mean that supply of water stored in or flowing through
106 Millerton Lake which, subject to the contingencies hereinafter described in Articles 3, 11, and 12 of this
107 Contract, will be available for delivery from Millerton Lake and the Friant-Kern and Madera Canals as a
108 dependable water supply during each Year;

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

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

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

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

122 (f) "Contractor's Service Area" shall mean the area to which the Contractor is

123 permitted to provide Project Water under this Contract as described in Exhibit “A” attached hereto, which
124 may be modified from time to time in accordance with Article 35 of this Contract without amendment of this
125 Contract;

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

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

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

134 (j) “Full Cost Rate” shall mean that water rate described in Sections 205(a)(3) or
135 202(3) of the RRA, whichever is applicable;

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

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

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

143 (n) “Landholder” shall mean a party that directly or indirectly owns or leases nonexempt

144 land, as provided in 43 CFR 426.2;

145 (n2) “Long Term Historic Average” shall mean the average of the final forecast of Water
146 Made Available to the Contractor pursuant to this Contract and the contracts referenced in the fourth (4th)
147 and fifth (5th) Explanatory Recitals of this Contract;

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

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

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

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

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

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

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

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

178 (w) Omitted;

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

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

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

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

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

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

194 TERM OF CONTRACT

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

202 (b) (1) Under terms and conditions of a renewal contract that are mutually
203 agreeable to the parties hereto, and upon a determination by the Contracting Officer that at the time of

204 contract renewal the conditions set forth in subdivision (b)(2) of this Article are met, and subject to Federal
205 and State law, this Contract, insofar as it pertains to the furnishing of Irrigation Water to the Contractor, shall
206 be renewed for a period of twenty-five (25) years.

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

221 (3) The terms and conditions of the renewal contract described in subdivision
222 (b)(1) of this Article and any subsequent renewal contracts shall be developed consistent with the parties'
223 respective legal rights and obligations, and in consideration of all relevant facts and circumstances, as those

224 circumstances exist at the time of renewal, including, without limitation, the Contractor's need for continued
225 delivery of Project Water; environmental conditions affected by implementation of the Contract to be
226 renewed, and specifically changes in those conditions that occurred during the life of the Contract to be
227 renewed; the Secretary's progress toward achieving the purposes of the CVPIA as set out in Section 3402
228 and in implementing the specific provisions of the CVPIA; and current and anticipated economic
229 circumstances of the region served by the Contractor.

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

240 (d) The Contracting Officer anticipates that by December 31, 2024, all authorized
241 Project construction expected to occur will have occurred, and on that basis the Contracting Officer agrees
242 by that date to allocate all costs that are properly assignable to the Contractor, and agrees further that, at

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

WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

3. (a) During each Year, consistent with all applicable State water rights, permits, and licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this Contract, the Contracting Officer shall make available for delivery to the Contractor 29,000 acre-feet of Class 1 Water for irrigation and M&I purposes. The quantity of Water Delivered to the Contractor in accordance with this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

(b) Omitted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

362 Division of the Project. The Contracting Officer will consider and seek to accommodate requests from
363 other parties for Section 215 Water for use within the area identified as the Friant Division service area in
364 the environmental assessment developed in connection with the execution of this Contract.

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

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

380 TIME FOR DELIVERY OF WATER

381 4. (a) On or about February 20 of each Calendar Year, the Contracting Officer shall

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

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

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

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

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

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

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

431 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

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

439 (c) The Contractor shall deliver Irrigation Water in accordance with any applicable land
440 classification provisions of Federal Reclamation law and the associated regulations. The Contractor shall not

441 deliver Project Water to land outside the Contractor's Service Area unless approved in advance by the
442 Contracting Officer.

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

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

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

469 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

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

481 however, shall preclude the Contractor from establishing and collecting any charges, assessments, or other
482 revenues authorized by California law. The Contractor shall include a summary of all its annual surface
483 water deliveries in the annual report described in subdivision (c) of Article 26 of this Contract.

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

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

501 subdivision (a) of this Article.

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

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

508 RATES AND METHOD OF PAYMENT FOR WATER

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

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

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

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

535 (c) At the time the Contractor submits the initial schedule for the delivery of Project
536 Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor shall make an
537 advance payment to the United States equal to the total amount payable pursuant to the applicable Rate(s)
538 set under subdivision (a) of this Article, for the Project Water scheduled to be delivered pursuant to this
539 Contract during the first two (2) calendar months of the Year. Before the end of the first month and before
540 the end of each calendar month thereafter, the Contractor shall make an advance payment to the United
541 States, at the Rate(s) set under subdivision (a) of this Article, for the Water Scheduled to be delivered
542 pursuant to this Contract during the second month immediately following. Adjustments between advance
543 payments for Water Scheduled and payments at Rates due for Water Delivered shall be made before the
544 end of the following month; Provided, That any revised schedule submitted by the Contractor pursuant to
545 Article 4 of this Contract which increases the amount of Water Delivered pursuant to this Contract during
546 any month shall be accompanied with appropriate advance payment, at the Rates then in effect, to assure
547 that Project Water is not delivered to the Contractor in advance of such payment. In any month in which the

548 quantity of Water Delivered to the Contractor pursuant to this Contract equals the quantity of Water
549 Scheduled and paid for by the Contractor, no additional Project Water shall be delivered to the Contractor
550 unless and until an advance payment at the Rates then in effect for such additional Project Water is made.
551 Final adjustment between the advance payments for the Water Scheduled and payments for the quantities of
552 Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable but no
553 later than April 30th of the following Year, or sixty (60) days after the delivery of Project Water carried
554 over under subdivision (f) of Article 3 of this Contract if such water is not delivered by the last day of
555 February.

556 (d) The Contractor shall also make a payment in addition to the Rate(s) in subdivision
557 (c) of this Article to the United States for Water Delivered, at the Charges and the appropriate Tiered
558 Pricing Component then in effect, before the end of the month following the month of delivery; Provided,
559 That the Contractor may be granted an exception from the Tiered Pricing Component pursuant to
560 subdivision (j)(2) of this Article. The payments shall be consistent with the quantities of Irrigation Water and
561 M&I Water Delivered as shown in the water delivery report for the subject month prepared by the
562 Operating Non-Federal Entity or, if there is no Operating Non-Federal Entity, by the Contracting Officer.
563 Such water delivery report shall be the basis for payment of Charges and Tiered Pricing Components by the
564 Contractor, and shall be provided to the Contractor by the Operating Non-Federal Entity or the Contracting
565 Officer (as applicable) within five (5) days after the end of the month of delivery. The water delivery report
566 shall be deemed a bill for the payment of Charges and the applicable Tiered Pricing Component for Water
567 Delivered. Adjustment for overpayment or underpayment of Charges shall be made through the adjustment

568 of payments due to the United States for Charges for the next month. Any amount to be paid for past due
569 payment of Charges and the Tiered Pricing Component shall be computed pursuant to Article 20 of this
570 Contract.

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

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

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

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

588 resolve any discrepancies or disputes relating to accountings, reports, or information.

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

595 (j) (1) Beginning at such time as the total of the deliveries of Class 1 Water and
596 Class 2 Water in a Year exceed eighty (80%) percent of the Contract Total, then before the end of the
597 month following the month of delivery the Contractor shall make an additional payment to the United States
598 equal to the applicable Tiered Pricing Component. The Tiered Pricing Component for the total of the
599 deliveries of Class 1 Water and Class 2 Water in excess of eighty (80%) percent of the Contract Total, but
600 less than or equal to ninety (90%) percent of the Contract Total, shall equal the one-half of the difference
601 between the Rate established under subdivision (a) of Article 7 of this Contract and the Irrigation Full Cost
602 Water Rate or M&I Full Cost Water Rate, whichever is applicable. The Tiered Pricing Component for the
603 total of the deliveries of Class 1 Water and Class 2 Water which exceeds ninety (90%) percent of the
604 Contract Total shall equal the difference between (i) the Rate established under subdivision (a) of Article 7
605 of this Contract and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is
606 applicable.

607 (2) Subject to the Contracting Officer's written approval, the Contractor may

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

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

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

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

628 Contractor is receiving lower Rates and Charges because of inability to pay and is transferring Project
629 Water to another entity whose Rates and Charges are not adjusted due to inability to pay, the Rates and
630 Charges for transferred Project Water shall be the Contractor's Rates and Charges unadjusted for ability to
631 pay.

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

634 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

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

638 SALES, TRANSFERS, OR EXCHANGES OF WATER

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

648 proposed water transfers on both the transferor and transferee.

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

662 (c) For a water transfer to qualify under subdivision (b) of this Article, such water
663 transfer must: (i) be for irrigation purposes for lands irrigated within the previous three (3) years, for M&I
664 use, groundwater recharge, groundwater banking, similar groundwater activities, surface water storage, or
665 fish and wildlife resources; not lead to land conversion; and be delivered to established cropland, wildlife
666 refuges, groundwater basins or municipal and industrial use; (ii) occur within a single Year; (iii) occur
667 between a willing seller and a willing buyer; (iv) convey water through existing facilities with no new

668 construction or modifications to facilities and be between existing Project Contractors and/or the Contractor
669 and the United States, Department of the Interior; and (v) comply with all applicable Federal, State, and
670 local or tribal laws and requirements imposed for protection of the environment and Indian Trust Assets, as
671 defined under Federal law.

672 APPLICATION OF PAYMENTS AND ADJUSTMENTS

673 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,
674 Capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of the
675 Contractor arising out of this Contract then due and payable. Overpayments of more than One Thousand
676 Dollars (\$1,000) shall be refunded at the Contractor's request. In lieu of a refund, any amount of such
677 overpayment at the option of the Contractor, may be credited against amounts to become due to the United
678 States by the Contractor. With respect to overpayment, such refund or adjustment shall constitute the sole
679 remedy of the Contractor or anyone having or claiming to have the right to the use of any of the Project
680 Water supply provided for herein. All credits and refunds of overpayments shall be made within thirty (30)
681 days of the Contracting Officer obtaining direction as to how to credit or refund such overpayment in
682 response to the notice to the Contractor that it has finalized the accounts for the Year in which the
683 overpayment was made.

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

687 refunded to the Contractor. If the actual costs exceed the Contractor's advances, the Contractor will be
688 billed for the additional costs pursuant to Article 25 of this Contract.

689 TEMPORARY REDUCTIONS--RETURN FLOWS

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

694 (b) The Contracting Officer or Operating Non-Federal Entity may temporarily
695 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for the purposes
696 of investigation, inspection, maintenance, repair, or replacement of any of the Project facilities or any part
697 thereof necessary for the delivery of Project Water to the Contractor, but so far as feasible the Contracting
698 Officer or Operating Non-Federal Entity will give the Contractor due notice in advance of such temporary
699 discontinuance or reduction, except in case of emergency, in which case no notice need be given; Provided,
700 That the United States shall use its best efforts to avoid any discontinuance or reduction in such service.
701 Upon resumption of service after such reduction or discontinuance, and if requested by the Contractor, the
702 United States will, if possible, deliver the quantity of Project Water which would have been delivered
703 hereunder in the absence of such discontinuance or reduction.

704 (c) The United States reserves the right to all seepage and return flow water derived
705 from Water Delivered to the Contractor hereunder which escapes or is discharged beyond the Contractor's
706 Service Area; Provided, That this shall not be construed as claiming for the United States any right as

707 seepage or return flow to water being used pursuant to this Contract for surface irrigation or underground
708 storage either being put to reasonable and beneficial use pursuant to this Contract within the Contractor's
709 Service Area by the Contractor or those claiming by, through, or under the Contractor. For purposes of this
710 subdivision, groundwater recharge, groundwater banking and all similar groundwater activities will be
711 deemed to be underground storage.

712 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

723 (c) The United States shall not execute contracts which together with this Contract, shall
724 in the aggregate provide for furnishing during the life of this Contract or any renewals hereof Class 1 Water
725 in excess of 800,000 acre-feet per Year or Class 2 Water in excess of 1,401,475 acre-feet per Year;
726 Provided, That, subject to subdivision (l) of Article 3 of this Contract, the limitation placed on Class 2 Water

727 contracts shall not prohibit the United States from entering into temporary contracts of one year or less in
728 duration for delivery of Project Water to other entities if such water is not necessary to meet the schedules
729 as may be submitted by all Friant Division long-term water service contractors entitled to receive Class 1
730 Water and/or Class 2 Water under their water service contracts. Nothing in this subdivision shall limit the
731 Contracting Officer's ability to take actions that result in the availability of new water supplies to be used for
732 Project purposes and allocating such new supplies; Provided, That the Contracting Officer shall not take
733 such actions until after consultation with the Friant Division Project Contractors.

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

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

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

747 (3) The total quantity of Class 1 Water under Article 3 of this Contract shall be

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

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

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

763 UNAVOIDABLE GROUNDWATER PERCOLATION

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

768 RULES AND REGULATIONS

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

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

776 (c) The parties acknowledge that, as of the effective date of this Contract, active
777 settlement discussions are underway in NRDC v. Patterson between Friant Division water service
778 contractors, representatives of the Contracting Officer, and the plaintiffs in NRDC v. Patterson. The mutual
779 goals of the parties to those discussions are (i) to expeditiously evaluate and implement, on a mutually
780 acceptable basis, instream and related measures that will restore ecological functions and hydrologic and
781 geomorphologic processes of the San Joaquin River below Friant Dam to a level that restores and maintains
782 fish populations in good condition, including but not limited to naturally-reproducing, self-sustaining
783 populations of chinook salmon and (ii) to accomplish these restoration goals while not adversely impacting
784 the overall sufficiency, reliability and cost of water supplies to Friant Division water users. The Contractor
785 has been actively participating, and intends to continue to participate in such settlement discussions. Except
786 as provided in this Contract, this Contract does not add to the obligations of the parties, if any, relating to
787 the San Joaquin River. This Contract does not limit or detract from the obligations of the parties, if any,
788 relating to the San Joaquin River.

789 WATER AND AIR POLLUTION CONTROL

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

793 QUALITY OF WATER

794 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to this
795 Contract shall be operated and maintained to enable the United States to deliver Project Water to the
796 Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act of August
797 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat. 3050) or
798 other existing Federal laws. The United States is under no obligation to construct or furnish water treatment
799 facilities to maintain or to improve the quality of Water Delivered to the Contractor pursuant to this
800 Contract. The United States does not warrant the quality of Water Delivered to the Contractor pursuant to
801 this Contract.

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

WATER ACQUIRED BY THE CONTRACTOR
OTHER THAN FROM THE UNITED STATES

808
809

810 17. (a) Water or water rights now owned or hereafter acquired by the Contractor other
811 than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may be
812 simultaneously transported through the same distribution facilities of the Contractor subject to the following:
813 (i) if the facilities utilized for commingling Irrigation Water and non-project water were constructed without
814 funds made available pursuant to Federal Reclamation law, the provisions of Federal Reclamation law will
815 be applicable only to the Landholders of lands which receive Irrigation Water; (ii) the eligibility of land to
816 receive Irrigation Water must be established through the certification requirements as specified in the
817 Acreage Limitation Rules and Regulations (43 CFR
818 Part 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be
819 established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity necessary to
820 irrigate such Eligible Lands. The Contractor and the Contracting Officer acknowledge that the Contractor's
821 distribution system that was constructed with Federal financing was, prior to effective date of this Contract,
822 repaid in full and title to the facilities transferred to the Contractor. As such, when such facilities are utilized
823 for commingling Irrigation Water and non-project water, the provisions of Federal Reclamation law will be
824 applicable only to the landholders of lands which receive Irrigation Water.

825 (b) Water or water rights now owned or hereafter acquired by the Contractor, other
826 than from the United States or adverse to the Project or its contractors (i.e., non-project water), may be
827 stored, conveyed and/or diverted through Project facilities, subject to the completion of appropriate

828 environmental documentation, with the approval of the Contracting Officer and the execution of any contract
829 determined by the Contracting Officer to be necessary, consistent with the following provisions:

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

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

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

848 (4) Diversion of such non-project water into Project facilities shall be consistent

849 with all applicable laws, and if involving groundwater, consistent with any groundwater management plan for
850 the area from which it was extracted.

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

855 OPINIONS AND DETERMINATIONS

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

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

869 COORDINATION AND COOPERATION

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

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

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

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

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

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

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

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

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

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

907 CHARGES FOR DELINQUENT PAYMENTS

908 20. (a) The Contractor shall be subject to interest, administrative and penalty charges on
909 delinquent installments or payments. When a payment is not received by the due date, the Contractor shall
910 pay an interest charge for each day the payment is delinquent beyond the due date. When a payment

911 becomes sixty (60) days delinquent, the Contractor shall pay an administrative charge to cover additional
912 costs of billing and processing the delinquent payment. When a payment is delinquent ninety (90) days or
913 more, the Contractor shall pay an additional penalty charge of six (6%) percent per year for each day the
914 payment is delinquent beyond the due date. Further, the Contractor shall pay any fees incurred for debt
915 collection services associated with a delinquent payment.

916 (b) The interest charge rate shall be the greater of the rate prescribed quarterly in the
917 Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate
918 of one-half of one (0.5%) percent per month prescribed by Section 6 of the Reclamation Project Act of
919 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain
920 fixed for the duration of the delinquent period.

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

924 EQUAL OPPORTUNITY

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

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

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

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

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

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

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

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

965 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

978 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

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

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

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

997 PRIVACY ACT COMPLIANCE

998 24. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a) (the
999 Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et seq.) in
1000 maintaining Landholder acreage certification and reporting records, required to be submitted to the
1001 Contractor for compliance with Sections 206 and 228 of the Reclamation Reform Act of 1982 (96 Stat.
1002 1266), and pursuant to 43 CFR 426.18.

1003 (b) With respect to the application and administration of the criminal penalty provisions
1004 of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible for maintaining
1005 the certification and reporting records referenced in (a) above are considered to be employees of the
1006 Department of the Interior. See 5 U.S.C. 552a(m).

1007 (c) The Contracting Officer or a designated representative shall provide the Contractor
1008 with current copies of the Interior Department Privacy Act regulations and the Bureau of Reclamation
1009 Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior, Reclamation-31)
1010 which govern the maintenance, safeguarding, and disclosure of information contained in the Landholder's
1011 certification and reporting records.

1012 (d) The Contracting Officer shall designate a full-time employee of the Bureau of
1013 Reclamation to be the System Manager who shall be responsible for making decisions on denials pursuant to
1014 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is authorized to
1015 grant requests by individuals for access to their own records.

1016 (e) The Contractor shall forward promptly to the System Manager each proposed
1017 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR 2.71;
1018 notify the requester accordingly of such referral; and provide the System Manager with information and
1019 records necessary to prepare an appropriate response to the requester. These requirements do not apply to
1020 individuals seeking access to their own certification and reporting forms filed with the Contractor pursuant to
1021 43 CFR 426.18, unless the requester elects to cite the Privacy Act as a basis for the request.

1022 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1023 25. In addition to all other payments to be made by the Contractor pursuant to this Contract, the
1024 Contractor shall pay to the United States, within sixty (60) days after receipt of a bill and detailed statement
1025 submitted by the Contracting Officer to the Contractor for such specific items of direct cost incurred by the
1026 United States for work requested by the Contractor associated with this Contract plus indirect costs in
1027 accordance with applicable Bureau of Reclamation policies and procedures. All such amounts referred to in
1028 this Article shall not exceed the amount agreed to in writing in advance by the Contractor. This Article shall
1029 not apply to costs for routine contract administration.

1030 WATER CONSERVATION

1031 26. (a) Prior to the delivery of water provided from or conveyed through Federally
1032 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be implementing an

1033 effective water conservation and efficiency program based on the Contractor's water conservation plan that
1034 has been determined by the Contracting Officer to meet the conservation and efficiency criteria for
1035 evaluating water conservation plans established under Federal law. The water conservation and efficiency
1036 program shall contain definite water conservation objectives, appropriate economically feasible water
1037 conservation measures, and time schedules for meeting those objectives. Continued Project Water delivery
1038 pursuant to this Contract shall be contingent upon the Contractor's continued implementation of such water
1039 conservation program. In the event the Contractor's water conservation plan or any revised water
1040 conservation plan completed pursuant to subdivision (d) of Article 26 of this Contract have not yet been
1041 determined by the Contracting Officer to meet such criteria, due to circumstances which the Contracting
1042 Officer determines are beyond the control of the Contractor, water deliveries shall be made under this
1043 Contract so long as the Contractor diligently works with the Contracting Officer to obtain such
1044 determination at the earliest practicable date, and thereafter the Contractor immediately begins implementing
1045 its water conservation and efficiency program in accordance with the time schedules therein.

1046 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of Article 3
1047 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the Contractor shall implement
1048 the Best Management Practices identified by the time frames issued by the California Urban Water
1049 Conservation Council for such M&I Water unless any such practice is determined by the Contracting
1050 Officer to be inappropriate for the Contractor.

1051 (c) The Contractor shall submit to the Contracting Officer a report on the status of its
1052 implementation of the water conservation plan on the reporting dates specified in the then existing
1053 conservation and efficiency criteria established under Federal law.

1054 (d) At five (5) -year intervals, the Contractor shall revise its water conservation plan to
1055 reflect the then current conservation and efficiency criteria for evaluating water conservation plans
1056 established under Federal law and submit such revised water management plan to the Contracting Officer
1057 for review and evaluation. The Contracting Officer will then determine if the water conservation plan meets
1058 Reclamation's then current conservation and efficiency criteria for evaluating water conservation plans
1059 established under Federal law.

1060 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall be
1061 described in the Contractor's water conservation plan.

1062 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1063 27. Except as specifically provided in Article 17 of this Contract, the provisions of this Contract
1064 shall not be applicable to or affect non-project water or water rights now owned or hereafter acquired by
1065 the Contractor or any user of such water within the Contractor's Service Area. Any such water shall not be
1066 considered Project Water under this Contract. In addition, this Contract shall not be construed as limiting or
1067 curtailing any rights which the Contractor or any water user within the Contractor's Service Area acquires or
1068 has available under any other contract pursuant to Federal Reclamation law.

1069 OPERATION AND MAINTENANCE BY NON-FEDERAL ENTITY

1070 28. (a) The Operation and Maintenance of a portion of the Project facilities which serve the
1071 Contractor, and responsibility for funding a portion of the costs of such Operation and Maintenance, have
1072 been transferred to the Operating Non-Federal Entity by separate agreement between the United States and
1073 the Operating Non-Federal Entity. That separate agreement shall not interfere with or affect the rights or
1074 obligations of the Contractor or the United States hereunder.

1075 (b) The Contracting Officer has previously notified the Contractor in writing that the
1076 Operation and Maintenance of a portion of the Project facilities which serve the Contractor has been
1077 transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly to the
1078 Operating Non-Federal Entity, or to any successor approved by the Contracting Officer under the terms
1079 and conditions of the separate agreement between the United States and the Operating
1080 Non-Federal Entity described in subdivision (a) of this Article, all rates, charges or assessments of any kind,
1081 including any assessment for reserve funds, which the Operating Non-Federal Entity or such successor
1082 determines, sets or establishes for (i) the Operation and Maintenance of the portion of the Project facilities
1083 operated and maintained by the Operating Non-Federal Entity or such successor, or (ii) the Friant Division's
1084 share of the operation, maintenance and replacement costs for physical works and appurtenances associated
1085 with the Tracy Pumping Plant, the Delta-Mendota Canal, the O'Neill Pumping/Generating Plant, the federal
1086 share of the O'Neill Forebay, the Mendota Pool, and the federal share of San Luis Unit joint use
1087 conveyance and conveyance pumping facilities. Such direct payments to the Operating Non-Federal Entity
1088 or such successor shall not relieve the Contractor of its obligation to pay directly to the United States the
1089 Contractor's share of the Project Rates, Charges, and Tiered Pricing Components except to the extent the
1090 Operating Non-Federal Entity collects payments on behalf of the United States in accordance with the
1091 separate agreement identified in subdivision (a) of this Article.

1092 (c) For so long as the Operation and Maintenance of any portion of the Project facilities
1093 serving the Contractor is performed by the Operating Non-Federal Entity, or any successor thereto, the
1094 Contracting Officer shall adjust those components of the Rates for Water Delivered under this Contract

1095 representing the cost associated with the activity being performed by the Operating Non-Federal Entity or
1096 its successor.

1097 (d) In the event the Operation and Maintenance of the Project facilities operated and
1098 maintained by the Operating Non-Federal Entity is re-assumed by the United States during the term of this
1099 Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the Contractor a
1100 revised Exhibit "B" which shall include the portion of the Rates to be paid by the Contractor for Project
1101 Water under this Contract representing the Operation and Maintenance costs of the portion of such Project
1102 facilities which have been re-assumed. The Contractor shall, thereafter, in the absence of written notification
1103 from the Contracting Officer to the contrary, pay the Rates, Charges, and Tiered Pricing Component(s)
1104 specified in the revised Exhibit "B" directly to the United States in compliance with Article 7 of this Contract.

1105 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1106 29. The expenditure or advance of any money or the performance of any obligation of the
1107 United States under this Contract shall be contingent upon appropriation or allotment of funds. Absence of
1108 appropriation or allotment of funds shall not relieve the Contractor from any obligations under this Contract.
1109 No liability shall accrue to the United States in case funds are not appropriated or allotted.

1110 BOOKS, RECORDS, AND REPORTS

1111 30. (a) The Contractor shall establish and maintain accounts and other books and records
1112 pertaining to administration of the terms and conditions of this Contract, including: the Contractor's financial
1113 transactions, water supply data, and Project land and right-of-way agreements; the water users' land-use
1114 (crop census), land ownership, land-leasing and water use data; and other matters that the Contracting
1115 Officer may require. Reports thereon shall be furnished to the Contracting Officer in such form and on such
1116 date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations,
1117 each party to this Contract shall have the right during office hours to examine and make copies of the other
1118 party's books and records relating to matters covered by this Contract.

1119 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books, records,

1120 or other information shall be requested from the Contractor by the Contracting Officer unless such books,
1121 records, or information are reasonably related to the administration or performance of this Contract. Any
1122 such request shall allow the Contractor a reasonable period of time within which to provide the requested
1123 books, records, or information.

1124 (c) At such time as the Contractor provides information to the Contracting Officer
1125 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the Operating
1126 Non-Federal Entity.

1127 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1128 31. (a) The provisions of this Contract shall apply to and bind the successors and assigns of
1129 the parties hereto, but no assignment or transfer of this Contract or any right or interest therein shall be valid
1130 until approved in writing by the Contracting Officer.

1131 (b) The assignment of any right or interest in this Contract by either party shall not
1132 interfere with the rights or obligations of the other party to this Contract absent the written concurrence of
1133 said other party.

1134 (c) The Contracting Officer shall not unreasonably condition or withhold approval of
1135 any proposed assignment.

1136 SEVERABILITY

1137 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor (ii) a
1138 person or entity that receives Project Water from a party to a Project contract, nor (iii) an association or
1139 other form of organization whose primary function is to represent parties to Project contracts, brings an
1140 action in a court of competent jurisdiction challenging the legality or enforceability of a provision included in

1141 this Contract and said person, entity, association, or organization obtains a final court decision holding that
1142 such provision is legally invalid or unenforceable and the Contractor has not intervened in that lawsuit in
1143 support of the plaintiff(s), the parties to this Contract shall use their best efforts to (i) within thirty (30) days
1144 of the date of such final court decision identify by mutual agreement the provisions in this Contract which
1145 must be revised and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s).
1146 The time periods specified above may be extended by mutual agreement of the parties. Pending the
1147 completion of the actions designated above, to the extent it can do so without violating any applicable
1148 provisions of law, the United States shall continue to make the quantities of Project Water specified in this
1149 Contract available to the Contractor pursuant to the provisions of this Contract which were not found to be
1150 legally invalid or unenforceable in the final court decision.

1151 RESOLUTION OF DISPUTES

1152 33. Should any dispute arise concerning any provisions of this Contract, or the parties' rights
1153 and obligations thereunder, the parties shall meet and confer in an attempt to resolve the dispute. Prior to
1154 the Contractor commencing any legal action, or the Contracting Officer referring any matter to Department
1155 of Justice, the party shall provide to the other party thirty (30) days' written notice of the intent to take such
1156 action; Provided, That such notice shall not be required where a delay in commencing an action would
1157 prejudice the interests of the party that intends to file suit. During the thirty (30) -day notice period, the
1158 Contractor and the Contracting Officer shall meet and confer in an attempt to resolve the dispute. Except as
1159 specifically provided, nothing herein is intended to waive or abridge any right or remedy that the Contractor
1160 or the United States may have.

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OFFICIALS NOT TO BENEFIT

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

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CHANGES IN CONTRACTOR'S SERVICE AREA

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

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

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FEDERAL LAWS

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36. By entering into this Contract, the Contractor does not waive its rights to contest the validity or application in connection with the performance of the terms and conditions of this Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the terms and conditions of this

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1183 Contract unless and until relief from application of such Federal law or regulation to the implementing
1184 provision of the Contract is granted by a court of competent jurisdiction.

1185 NOTICES

1186 37. Any notice, demand, or request authorized or required by this Contract shall be deemed to
1187 have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Area
1188 Manager, South-Central California Area Office, 1243 “N” Street, Fresno, California 93721, and on behalf
1189 of the United States, when mailed, postage prepaid, or delivered to the Board of Directors of the Terra
1190 Bella Irrigation District, 24790 Avenue 95, Terra Bella, California 93270. The designation of the
1191 addressee or the address may be changed by notice given in the same manner as provided in this Article for
1192 other notices.

1193 CONFIRMATION OF CONTRACT

1194 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a decree
1195 of a court of competent jurisdiction of the State of California, confirming the execution of this Contract. The
1196 Contractor shall furnish the United States a certified copy of the final decree, the validation proceedings, and
1197 all pertinent supporting records of the court approving and confirming this Contract, and decreeing and
1198 adjudging it to be lawful, valid, and binding on the Contractor.

1199 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day
1200 and 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)

TERRA BELLA IRRIGATION DISTRICT

By: /s/ Edwin L. Wheaton
President of the Board of Directors

Attest:

By: /s/ Karen L. Kerwood
Secretary of the Board of Directors
TERR.WPD