

AG and M&I
T.O. Draft 09/29-2004
T.O. Draft 09/23-2004
T.O. Draft 08/02-2004
R.O. Final Delta Division Form 09/14-2004
R.O. Delta Division Form 07/23-2004
R.O. Draft 07/22-2004
CVP-Wide Form 05/23-2004
Delta Division
Contract No
14-06-200-922-LTR1

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

LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
AND
DEL PUERTO WATER DISTRICT
PROVIDING FOR PROJECT WATER SERVICE
FROM THE DELTA DIVISION

Table of Contents

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
	Preamble	1
	Explanatory Recitals	2-6
1	Definitions.....	6-10
2	Term of Contract.....	10-13
3	Water to be Made Available and Delivered to the Contractor.....	13-17
4	Time for Delivery of Water	17-18
5	Point of Diversion and Responsibility for Distribution of Water	19-20
6	Measurement of Water Within the Contractor’s Service Area.....	20-22
7	Rates and Method of Payment for Water.....	22-29
8	Non-Interest Bearing Operation and Maintenance Deficits.....	29
9	Sales, Transfers, or Exchanges of Water	29-30
10	Application of Payments and Adjustments.....	31
11	Temporary Reductions--Return Flows	31-32
12	Constraints on the Availability of Water	32-34
13	Unavoidable Groundwater Percolation.....	35
14	Rules and Regulations.....	35
15	Water and Air Pollution Control.....	35
16	Quality of Water	35-36
17	Water Acquired by the Contractor Other Than From the United States.....	36-38

Table of Contents - continued

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
18	Opinions and Determinations	39
19	Coordination and Cooperation	39-41
20	Charges for Delinquent Payments	41
21	Equal Opportunity	41-42
22	General Obligation--Benefits Conditioned Upon Payment	43
23	Compliance With Civil Rights Laws and Regulations	43
24	Privacy Act Compliance	43-44
25	Contractor to Pay Certain Miscellaneous Costs.....	44
26	Water Conservation	45-46
27	Existing or Acquired Water or Water Rights.....	46
28	Operation and Maintenance by Operating Non-Federal Entity	46-48
29	Contingent on Appropriation or Allotment of Funds	48
30	Books, Records, and Reports	48-49
31	Assignment Limited--Successors and Assigns Obligated	49
32	Severability	49-50
33	Resolution of Disputes.....	50
34	Officials Not to Benefit.....	50
35	Changes in Contractor's Service Area.....	51
36	Federal Laws.....	51
37	Notices	51-52
38	Confirmation of Contract.....	52
	Signature Page	53

Exhibit A - Map of Contractor's Service Area

Exhibit B - Rates and Charges

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6 AND
7 DEL PUERTO WATER DISTRICT
8 PROVIDING FOR PROJECT WATER SERVICE
9 FROM THE DELTA DIVISION

10 THIS CONTRACT, made this _____ day of _____, 2005, in pursuance
11 generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto,
12 including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and
13 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat.
14 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat.
15 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all
16 collectively hereinafter referred to as Federal Reclamation law, between THE UNITED STATES
17 OF AMERICA, hereinafter referred to as the United States, and DEL PUERTO WATER
18 DISTRICT, hereinafter referred to as the Contractor, a public agency of the State of California, duly
19 organized, existing, and acting pursuant to the laws thereof;

20 WITNESSETH, That:

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EXPLANATORY RECITALS

[1st] WHEREAS, the United States has constructed and is operating the Central Valley Project (Project), California, for diversion, storage, carriage, distribution and beneficial use, for flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and restoration, generation and distribution of electric energy, salinity control, navigation and other beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and the San Joaquin River and their tributaries; and

[2nd] WHEREAS, the United States constructed the Delta-Mendota Canal and related facilities, which will be used in part for the furnishing of water to the Contractor pursuant to the terms of this Contract; and

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

[4th] WHEREAS, the Contractor and the United States entered into Contract No. 14-06-200-922, as amended, which established terms for the delivery to the Contractor of Project Water from the Delta Division Facilities from June 10, 1953, through February 28, 1994; and

[4.1] WHEREAS, the United States and the following water districts entered into long-term water service contracts, which provided those districts Project Water from the Delta Division through the date of contract expiration listed below:

<u>District</u>	<u>Contract No.</u>	<u>Execution Date</u>	<u>Expiration Date</u>
Davis Water District	14-06-200-1458	10/03/53	02/28/94
Hospital Water District	14-06-200-923	06/10/53	02/28/94
Kern Canon Water District	14-06-200-924	06/10/53	02/28/94
Salada Water District	14-06-200-925	06/10/53	02/28/94
Sunflower Water District	14-06-200-1804	11/12/53	02/28/94
Mustang Water District	14-06-200-8103	12/07/59	02/28/95

47	<u>District</u>	<u>Contract No.</u>	<u>Execution Date</u>	<u>Expiration Date</u>
48	Orestimba Water District	14-06-200-8091	11/27/59	02/28/95
49	Quinto Water District	14-06-200-8899	01/24/61	02/28/95
50	Romero Water District	14-06-200-7758	05/11/59	02/28/95
51	Foothill Water District	14-06-200-4323	05/31/55	02/29/96

52 [4.2] WHEREAS, the long-term water service contracts between the United States and
53 Davis, Del Puerto, Hospital, Kern Canon, Salada, and Sunflower Water Districts provided for water
54 service through February 28, 1994, and for which one-year interim renewal contracts were entered
55 into providing for continued water service through February 28, 1995; and

56 [4.3] WHEREAS, all ten water districts including Davis, Foothill, Hospital, Kern Canon,
57 Mustang, Orestimba, Quinto, Romero, Salada, and Sunflower Water Districts were assigned to the
58 Contractor by separate “Assignments of Water Service Contract”, dated February 13, 1995; and

59 [4.4] WHEREAS, the Contractor and the United States entered into the interim renewal
60 contract identified as Contract No. 14-06-200-922-IR2, which consolidated all of the Water
61 Districts that were assigned to the Contractor, except Foothill Water District, and provided for the
62 continued water service from March 1, 1995, through February 28, 1997; and

63 [4.5] WHEREAS, the long-term water service contract between Foothill Water District
64 (Foothill) and the United States identified as Contract No. 14-06-200-4323, that was assigned to the
65 Contractor, provided for water service through February 28, 1996, and for which a one-year interim
66 renewal contract identified as Contract No. 14-06-200-4323-IR1, provided water service from
67 March 1, 1996, through February 28, 1997; and

68 [4.6] WHEREAS, the Contractor requested subsequent renewal and consolidation of
69 Contract No(s). 14-06-200-922-IR2 and 14-06-200-4323-IR1 pursuant to, Federal Reclamation law,
70 and the laws of the State of California, for water service from the Central Valley Project; and

71 [5th] WHEREAS, the Contractor and the United States have pursuant to subsection
72 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into
73 interim renewal contract(s) identified as Contract No(s). 14-06-200-922-IR3, 14-06-200-922-IR4,
74 14-06-200-922-IR5, 14-06-200-922-IR6, 14-06-200-922-IR7, 14-06-200-922-IR8, 14-06-200-922-
75 IR9, and 14-06-200-922-IR10, the current of which is hereinafter referred to as the Existing
76 Contract, which provided for the continued water service to the Contractor from March 1, 1997,
77 through February 28, 2006; and

78 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of the
79 Existing Contract following completion of appropriate environmental documentation, including a
80 programmatic environmental impact statement (PEIS) pursuant to the National Environmental
81 Policy Act (NEPA) analyzing the direct and indirect impacts and benefits of implementing the
82 CVPIA and the potential renewal of all existing contracts for Project Water; and

83 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
84 environmental review necessary to provide for long-term renewal of the Existing Contract; and

85 [8th] WHEREAS, the Contractor has requested the long-term renewal of the Existing
86 Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws of
87 the State of California, for water service from the Project; and

88 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all of
89 its obligations under the Existing Contract; and

90 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting
91 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and
92 beneficial use and/or has demonstrated projected future demand for water use such that the

93 Contractor has the capability and expects to utilize fully for reasonable and beneficial use the
94 quantity of Project Water to be made available to it pursuant to this Contract; and

95 [11th] WHEREAS, water obtained from the Project has been relied upon by urban and
96 agricultural areas within California for more than 50 years, and is considered by the Contractor as
97 an essential portion of its water supply; and

98 [12th] WHEREAS, the economies of regions within the Project, including the Contractor’s,
99 depend upon the continued availability of water, including water service from the Project; and

100 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and
101 partnerships to pursue measures to improve water supply, water quality, and reliability of the
102 Project for all Project purposes; and

103 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to
104 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment
105 of the Project as required by law; to guard reasonably against Project Water shortages; to achieve a
106 reasonable balance among competing demands for use of Project Water; and to comply with all
107 applicable environmental statutes, all consistent with the legal obligations of the United States
108 relative to the Project; and

109 [15th] WHEREAS, the parties intend by this Contract to develop a more cooperative
110 relationship in order to achieve their mutual goals; and

111 [15.1] WHEREAS, the Contractor has utilized or may utilize transfers, contract
112 assignments, rescheduling and conveyance of Project Water and non-Project water under this
113 Contract as tools to minimize the impacts of Conditions of Shortage and to maximize the beneficial
114 use of water; and

115 [15.2] WHEREAS, the parties desire and intend that this Contract not provide a
116 disincentive to the Contractor in continuing to carry out the beneficial activities set out in the
117 Explanatory Recital immediately above; and

118 [16th] WHEREAS, the United States and the Contractor are willing to enter into this
119 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

122 DEFINITIONS

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

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

127 (b) “Charges” shall mean the payments required by Federal Reclamation law in
128 addition to the Rates and Tiered Pricing Component specified in this Contract as determined
129 annually by the Contracting Officer pursuant to this Contract;

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

133 (d) “Contracting Officer” shall mean the Secretary of the Interior’s duly
134 authorized representative acting pursuant to this Contract or applicable Federal Reclamation law or
135 regulation;

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

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

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

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

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

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

155 (j) "Full Cost Rate" shall mean an annual rate, as determined by the Contracting
156 Officer that shall amortize the expenditures for construction properly allocable to the Project
157 irrigation or M&I functions, as appropriate, of facilities in service including all O&M deficits
158 funded, less payments, over such periods as may be required under Federal Reclamation law, or
159 applicable contract provisions. Interest will accrue on both the construction expenditures and
160 funded O&M deficits from October 12, 1982, on costs outstanding at that date, or from the date

161 incurred in the case of costs arising subsequent to October 12, 1982, and shall be calculated in
162 accordance with subsections 202(3)(B) and (3)(C) of the RRA. The Full Cost Rate includes actual
163 operation, maintenance, and replacement costs consistent with Section 426.2 of the Rules and
164 Regulations for the RRA;

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

167 (l) “Irrigation Full Cost Water Rate” shall mean the Full Cost Rate applicable to
168 the delivery of Irrigation Water;

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

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

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

181 (p) “M&I Full Cost Water Rate” shall mean the Full Cost Rate applicable to the
182 delivery of M&I Water;

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

186 (r) “Operating Non-Federal Entity” shall mean the entity, its successors or
187 assigns, which has (have) the obligation to operate and maintain all or a portion of the Delta
188 Division Facilities pursuant to written agreement(s) with the United States. When this Contract was
189 entered into, the Operating Non-Federal Entity was the San Luis & Delta-Mendota Water Authority.

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

192 (t) “Project Contractors” shall mean all parties who have water service contracts
193 for Project Water from the Project with the United States pursuant to Federal Reclamation law;

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

197 (v) “Rates” shall mean the payments determined annually by the Contracting
198 Officer in accordance with the then current applicable water ratesetting policies for the Project, as
199 described in subdivision (a) of Article 7 of this Contract;

200 (w) “Recent Historic Average” shall mean the most recent five-year average of
201 the final forecast of Water Made Available to the Contractor pursuant to this Contract or its
202 preceding contract(s);

203 (x) “Secretary” shall mean the Secretary of the Interior, a duly appointed
204 successor, or an authorized representative acting pursuant to any authority of the Secretary and
205 through any agency of the Department of the Interior;

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

208 (z) “Water Delivered” or “Delivered Water” shall mean Project Water diverted
209 for use by the Contractor at the point(s) of delivery approved by the Contracting Officer;

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

213 (bb) “Water Scheduled” shall mean Project Water made available to the
214 Contractor for which times and quantities for delivery have been established by the Contractor and
215 Contracting Officer, pursuant to subdivision (b) of Article 4 of this Contract; and

216 (cc) “Year” shall mean the period from and including March 1 of each Calendar
217 Year through the last day of February of the following Calendar Year.

218 TERM OF CONTRACT

219 2. (a) This Contract shall be effective March 1, 2005, through February 28, 2030,
220 and supercedes the Existing Contract. In the event the Contractor wishes to renew this Contract
221 beyond February 28, 2030, the Contractor shall submit a request for renewal in writing to the
222 Contracting Officer no later than two years prior to the date this Contract expires. The renewal of
223 this Contract insofar as it pertains to the furnishing of Irrigation Water to the Contractor shall be
224 governed by subdivision (b) of this Article, and the renewal of this Contract insofar as it pertains to
225 the furnishing of M&I Water to the Contractor shall be governed by subdivision (c) of this Article.

226 (b) (1) Under terms and conditions of a renewal contract that are mutually
227 agreeable to the parties hereto, and upon a determination by the Contracting Officer that at the time
228 of contract renewal the conditions set forth in subdivision (b)(2) of this Article are met, and subject

229 to Federal and State law, this Contract, insofar as it pertains to the furnishing of Irrigation Water to
230 the Contractor, shall be renewed for a period of 25 years.

231 (2) The conditions which must be met for this Contract to be renewed are:

232 (i) the Contractor has prepared a water conservation plan that has been determined by the
233 Contracting Officer in accordance with Article 26 of this Contract to meet the conservation and
234 efficiency criteria for evaluating such plans established under Federal law; (ii) the Contractor is
235 implementing an effective water conservation and efficiency program based on the Contractor's
236 water conservation plan as required by Article 26 of this Contract; (iii) the Contractor is operating
237 and maintaining all water measuring devices and implementing all water measurement methods as
238 approved by the Contracting Officer pursuant to Article 6 of this Contract; (iv) the Contractor has
239 reasonably and beneficially used the Project Water supplies made available to it and, based on
240 projected demands, is reasonably anticipated and expects to fully utilize for reasonable and
241 beneficial use the quantity of Project Water to be made available to it pursuant to such renewal; (v)
242 the Contractor is complying with all terms and conditions of this Contract; and (vi) the Contractor
243 has the physical and legal ability to deliver Project Water.

244 (3) The terms and conditions of the renewal contract described in
245 subdivision (b)(1) of this Article and any subsequent renewal contracts shall be developed
246 consistent with the parties' respective legal rights and obligations, and in consideration of all
247 relevant facts and circumstances, as those circumstances exist at the time of renewal, including,
248 without limitation, the Contractor's need for continued delivery of Project Water; environmental
249 conditions affected by implementation of the Contract to be renewed, and specifically changes in
250 those conditions that occurred during the life of the Contract to be renewed; the Secretary's progress
251 toward achieving the purposes of the CVPIA as set out in Section 3402 and in implementing the

252 specific provisions of the CVPIA; and current and anticipated economic circumstances of the region
253 served by the Contractor.

254 (c) This Contract, insofar as it pertains to the furnishing of M&I Water to the
255 Contractor, shall be renewed for successive periods of up to 40 years each, which periods shall be
256 consistent with the then-existing Reclamation-wide policy, under terms and conditions mutually
257 agreeable to the parties and consistent with Federal and State law. The Contractor shall be afforded
258 the opportunity to comment to the Contracting Officer on the proposed adoption and application of
259 any revised policy applicable to the delivery of M&I Water that would limit the term of any
260 subsequent renewal contract with the Contractor for the furnishing of M&I Water to less than 40
261 years.

262 (d) The Contracting Officer shall make a determination ten years after the date of
263 execution of this Contract, and every five years thereafter during the term of this Contract, of
264 whether a conversion of the relevant portion of this Contract to a contract under subsection 9(d) of
265 the Reclamation Project Act of 1939 can be accomplished pursuant to the Act of July 2, 1956 (70
266 Stat 483). The Contracting Officer shall also make a determination ten years after the date of
267 execution of this Contract and every five years thereafter during the term of this Contract of whether
268 a conversion of the relevant portion of this Contract to a contract under subsection 9(c)(1) of the
269 Reclamation Project Act of 1939 can be accomplished. Notwithstanding any provision of this
270 Contract, the Contractor reserves and shall have all rights and benefits under the Act of July 2, 1956
271 (70 Stat. 483). The Contracting Officer anticipates that during the term of this Contract, all
272 authorized Project construction expected to occur will have occurred, and on that basis the
273 Contracting Officer agrees upon such completion to allocate all costs that are properly assignable to
274 the Contractor, and agrees further that, at any time after such allocation is made, and subject to

275 satisfaction of the condition set out in this subdivision, this Contract shall, at the request of the
 276 Contractor, be converted to a contract under subsection 9(d) or 9(c)(1), whichever is applicable, of
 277 the Reclamation Project Act of 1939, subject to applicable Federal law and under stated terms and
 278 conditions mutually agreeable to the Contractor and the Contracting Officer. A condition for such
 279 conversion to occur shall be a determination by the Contracting Officer that, account being taken of
 280 the amount credited to return by the Contractor as provided for under Federal Reclamation law, the
 281 remaining amount of construction costs assignable for ultimate return by the Contractor can
 282 probably be repaid to the United States within the term of a contract under subsection 9(d) or
 283 9(c)(1), whichever is applicable. If the remaining amount of costs that are properly assignable to
 284 the Contractor cannot be determined during the term of this Contract, the Contracting Officer shall
 285 notify the Contractor, and provide the reason(s) why such a determination could not be made.
 286 Further, the Contracting Officer shall make such a determination as soon thereafter as possible so as
 287 to permit, upon request of the Contractor and satisfaction of the conditions set out above,
 288 conversion to a contract under subsection 9(d) or 9(c)(1), whichever is applicable. In the event such
 289 determination of costs has not been made at a time which allows conversion of this Contract during
 290 the term of this Contract or the Contractor has not requested conversion of this Contract within such
 291 term, the parties shall incorporate in any subsequent renewal contract as described in subdivision (b)
 292 of this Article a provision that carries forth in substantially identical terms the provisions of this
 293 subdivision.

294 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

295 3. (a) During each Year, consistent with all applicable State water rights, permits,
 296 and licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this
 297 Contract, the Contracting Officer shall make available for delivery to the Contractor

298 140,210 acre-feet of Project Water for irrigation and M&I purposes. Water Delivered to the
299 Contractor in accordance with this subdivision shall be scheduled and paid for pursuant to the
300 provisions of Articles 4 and 7 of this Contract.

301 (b) Because the capacity of the Project to deliver Project Water has been
302 constrained in recent years and may be constrained in the future due to many factors including
303 hydrologic conditions and implementation of Federal and State laws, the likelihood of the
304 Contractor actually receiving the amount of Project Water set out in subdivision (a) of this Article in
305 any given Year is uncertain. The Contracting Officer’s modeling referenced in the PEIS projected
306 that the Contract Total set forth in this Contract will not be available to the Contractor in many
307 years. During the most recent five years, the Recent Historic Average of Water Made Available to
308 the Contractor was 92,258 acre-feet. Nothing in subdivision (b) of this Article shall affect the rights
309 and obligations of the parties under any provision of this Contract.

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

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

321 (d) The Contractor shall make reasonable and beneficial use of all water
322 furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu),
323 groundwater banking programs, surface water storage programs, and other similar programs
324 utilizing Project Water or other water furnished pursuant to this Contract conducted within the
325 Contractor’s Service Area which are consistent with applicable State law and result in use consistent
326 with Federal Reclamation law will be allowed; Provided, That any direct recharge program(s) is
327 (are) described in the Contractor’s water conservation plan submitted pursuant to Article 26 of this
328 Contract; Provided, further, That such water conservation plan demonstrates sufficient lawful uses
329 exist in the Contractor’s Service Area so that using a long-term average, the quantity of Delivered
330 Water is demonstrated to be reasonable for such uses and in compliance with Federal Reclamation
331 law. Groundwater recharge programs, groundwater banking programs, surface water storage
332 programs, and other similar programs utilizing Project Water or other water furnished pursuant to
333 this Contract conducted outside the Contractor’s Service Area may be permitted upon written
334 approval of the Contracting Officer, which approval will be based upon environmental
335 documentation, Project Water rights, and Project operational concerns. The Contracting Officer
336 will address such concerns in regulations, policies, or guidelines.

337 (e) The Contractor shall comply with requirements applicable to the Contractor
338 in biological opinion(s) prepared as a result of a consultation regarding the execution of this
339 Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as
340 amended, that are within the Contractor’s legal authority to implement. The Existing Contract,
341 which evidences in excess of 51 years of diversions for irrigation and/or M&I purposes of the
342 quantities of water provided in subdivision (a) of Article 3 of this Contract, will be considered in
343 developing an appropriate baseline for biological assessment(s) prepared pursuant to the ESA, and

344 any other needed environmental review. Nothing herein shall be construed to prevent the
345 Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with
346 respect to any biological opinion or other environmental documentation referred to in this Article.

347 (f) Following the declaration of Water Made Available under Article 4 of this
348 Contract, the Contracting Officer will make a determination whether Project Water, or other water
349 available to the Project, can be made available to the Contractor in addition to the Contract Total
350 under this Article during the Year without adversely impacting other Project Contractors. At the
351 request of the Contractor, the Contracting Officer will consult with the Contractor prior to making
352 such a determination. If the Contracting Officer determines that Project Water, or other water
353 available to the Project, can be made available to the Contractor, the Contracting Officer will
354 announce the availability of such water and shall so notify the Contractor as soon as practical. The
355 Contracting Officer will thereafter meet with the Contractor and other Project Contractors capable
356 of taking such water to determine the most equitable and efficient allocation of such water. If the
357 Contractor requests the delivery of any quantity of such water, the Contracting Officer shall make
358 such water available to the Contractor in accordance with applicable statutes, regulations,
359 guidelines, and policies. Subject to existing long-term contractual commitments, water rights and
360 operational constraints, long-term Project Contractors shall have a first right to acquire such water,
361 including Project Water made available pursuant to Section 215 of the RRA.

362 (g) The Contractor may request permission to reschedule for use during the
363 subsequent Year some or all of the Water Made Available to the Contractor during the current Year,
364 referred to as “rescheduled water.” The Contractor may request permission to use during the
365 current Year a quantity of Project Water which may be made available by the United States to the
366 Contractor during the subsequent Year referred to as “preuse.” The Contracting Officer’s written

367 approval may permit such uses in accordance with applicable statutes, regulations, guidelines, and
368 policies.

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

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

380 (j) The Contracting Officer shall make reasonable efforts to protect the water
381 rights necessary for the Project and to provide the water available under this Contract. The
382 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the
383 extent permitted by law, in administrative proceedings related to the Project Water rights; Provided,
384 That the Contracting Officer retains the right to object to the substance of the Contractor’s position
385 in such a proceeding; Provided further, That in such proceedings the Contracting Officer shall
386 recognize the Contractor has a legal right under the terms of this Contract to use Project Water.

387 TIME FOR DELIVERY OF WATER

388 4. (a) On or about February 20 of each Calendar Year, the Contracting Officer shall
389 announce the Contracting Officer’s expected declaration of the Water Made Available. Such

390 declaration will be expressed in terms of both Water Made Available and the Recent Historic
391 Average and will be updated monthly, and more frequently if necessary, based on then-current
392 operational and hydrologic conditions and a new declaration with changes, if any, to the Water
393 Made Available will be made. The Contracting Officer shall provide forecasts of Project operations
394 and the basis of the estimate, with relevant supporting information, upon the written request of the
395 Contractor. Concurrently with the declaration of the Water Made Available, the Contracting
396 Officer shall provide the Contractor with the updated Recent Historic Average.

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

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

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

411 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

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

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

424 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
425 measured and recorded with equipment furnished, installed, operated, and maintained by the
426 Contracting Officer either directly or indirectly through its written agreement(s) with the Operating
427 Non-Federal Entity(ies), unless undertaken by the Contractor with the consent of the Contracting
428 Officer, at the point or points of delivery established pursuant to subdivision (a) of this Article.
429 Upon the request of either party to this Contract, the Contracting Officer shall investigate, or cause
430 to be investigated by the appropriate Operating Non-Federal Entity(ies), the accuracy of such
431 measurements and shall take any necessary steps to adjust any errors appearing therein. For any
432 period of time when accurate measurements have not been made, the Contracting Officer shall

433 consult with the Contractor and the appropriate Operating Non-Federal Entity(ies), if any, prior to
434 making a final determination of the quantity delivered for that period of time.

435 (e) Absent a separate contrary written agreement with the Contractor, neither the
436 Contracting Officer nor any Operating Non-Federal Entity(ies) shall be responsible for the control,
437 carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to
438 this Contract beyond the point or points of delivery established pursuant to subdivision (a) of this
439 Article. The Contractor shall indemnify the United States, its officers, employees, agents, and
440 assigns on account of damage or claim of damage of any nature whatsoever for which there is legal
441 responsibility, including property damage, personal injury, or death arising out of or connected with
442 the control, carriage, handling, use, disposal, or distribution of such Water Delivered beyond such
443 point or points of delivery, except for any damage or claim arising out of: (i) acts or omissions of
444 the Contracting Officer or any of its officers, employees, agents, and assigns, including the
445 Operating Non-Federal Entity(ies), with the intent of creating the situation resulting in any damage
446 or claim; (ii) willful misconduct of the Contracting Officer or any of its officers, employees, agents,
447 and assigns, including the Operating Non-Federal Entity(ies); (iii) negligence of the Contracting
448 Officer or any of its officers, employees, agents, and assigns including the Operating Non-Federal
449 Entity(ies); or (iv) a malfunction of facilities owned and/or operated by the United States or the
450 Operating Non-Federal Entity(ies).

451 MEASUREMENT OF WATER WITHIN THE CONTRACTOR’S SERVICE AREA

452 6. (a) The Contractor has established a measuring program satisfactory to the
453 Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation
454 purposes within the Contractor’s Service Area is measured at each agricultural turnout and such
455 water delivered for M&I purposes is measured at each M&I service connection. The water

456 measuring devices or water measuring methods of comparable effectiveness must be acceptable to
457 the Contracting Officer. The Contractor shall be responsible for installing, operating, and
458 maintaining and repairing all such measuring devices and implementing all such water measuring
459 methods at no cost to the United States. The Contractor shall use the information obtained from
460 such water measuring devices or water measuring methods to ensure its proper management of the
461 water, to bill water users for water delivered by the Contractor; and, if applicable, to record water
462 delivered for M&I purposes by customer class as defined in the Contractor's water conservation
463 plan provided for in Article 26 of this Contract. Nothing herein contained, however, shall preclude
464 the Contractor from establishing and collecting any charges, assessments, or other revenues
465 authorized by California law. The Contractor shall include a summary of all its annual surface
466 water deliveries in the annual report described in subdivision (c) of Article 26.

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

479 the parties shall within 60 days following the Contracting Officer’s response, negotiate in good faith
480 the earliest practicable date by which the Contractor shall modify said measuring devices and/or
481 measuring methods as required by the Contracting Officer to ensure compliance with subdivision
482 (a) of this Article.

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

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

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

492 RATES AND METHOD OF PAYMENT FOR WATER

493 7. (a) The Contractor shall pay the United States as provided in this Article for all
494 Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance
495 with: (i) the Secretary’s ratesetting policy for Irrigation Water adopted in 1988 and the Secretary’s
496 then-existing ratesetting policy for M&I Water, which ratesetting policies shall be amended,
497 modified, or superceded only through a public notice and comment procedure; (ii) applicable
498 Federal Reclamation law and associated rules and regulations, or policies; and (iii) other applicable
499 provisions of this Contract. Payments shall be made by cash transaction, electronic funds transfer,
500 or any other mechanism as may be agreed to in writing by the Contractor and the Contracting

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

503 (b) The Contracting Officer shall notify the Contractor of the Rates, Charges, and
504 Tiered Pricing Component as follows:

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

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

520 (c) At the time the Contractor submits the initial schedule for the delivery of
521 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor
522 shall make an advance payment to the United States equal to the total amount payable pursuant to
523 the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be

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

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

547 with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery
548 report for the subject month prepared by the Operating Non-Federal Entity(ies) or, if there is no
549 Operating Non-Federal Entity, by the Contracting Officer. The water delivery report shall be
550 deemed a bill for the payment of Charges and the applicable Tiered Pricing Component for Water
551 Delivered. Adjustment for overpayment or underpayment of Charges shall be made through the
552 adjustment of payments due to the United States for Charges for the next month. Any amount to be
553 paid for past due payment of Charges and the Tiered Pricing Component shall be computed
554 pursuant to Article 20 of this Contract.

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

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

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

567 (h) The Contracting Officer shall keep its accounts pertaining to the
568 administration of the financial terms and conditions of its long-term contracts, in accordance with
569 applicable Federal standards, so as to reflect the application of Project costs and revenues. The

570 Contracting Officer shall, each Year upon request of the Contractor, provide to the Contractor a
571 detailed accounting of all Project and Contractor expense allocations, the disposition of all Project
572 and Contractor revenues, and a summary of all water delivery information. The Contracting Officer
573 and the Contractor shall enter into good faith negotiations to resolve any discrepancies or disputes
574 relating to accountings, reports, or information.

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

582 (j) (1) Beginning at such time as deliveries of Project Water in a Year
583 exceed 80 percent of the Contract Total, then before the end of the month following the month of
584 delivery the Contractor shall make an additional payment to the United States equal to the
585 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water
586 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the
587 Contract Total, shall equal one-half of the difference between the Rate established under
588 subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate,
589 whichever is applicable. The Tiered Pricing Component for the amount of Water Delivered which
590 exceeds 90 percent of the Contract Total shall equal the difference between (i) the Rate established
591 under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost
592 Water Rate, whichever is applicable. For all Water Delivered pursuant to subdivision (a) of

593 Article 3 of this Contract which is in excess of 80 percent of the Contract Total, this increment shall
594 be deemed to be divided between Irrigation Water and M&I Water in the same proportion as actual
595 deliveries of each bear to the cumulative total Water Delivered.

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

604 (3) For purposes of determining the applicability of the Tiered Pricing
605 Component pursuant to this Article, Water Delivered shall include Project Water that the Contractor
606 transfers to others but shall not include Project Water transferred to the Contractor, nor shall it
607 include the additional water provided to the Contractor under the provisions of subdivision (f) of
608 Article 3 of this Contract.

609 (k) For the term of this Contract, Rates applied under the respective ratesetting
610 policies will be established to recover only reimbursable O&M (including any deficits) and capital
611 costs of the Project, as those terms are used in the then-current Project ratesetting policies, and
612 interest, where appropriate, except in instances where a minimum Rate is applicable in accordance
613 with the relevant Project ratesetting policy. Changes of significance in practices which implement
614 the Contracting Officer’s ratesetting policies will not be implemented until the Contracting Officer

615 has provided the Contractor an opportunity to discuss the nature, need, and impact of the proposed
616 change.

617 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA,
618 the Rates for Project Water transferred by the Contractor shall be the Contractor’s Rates, in
619 accordance with the applicable Project ratesetting policy, adjusted upward or downward to reflect
620 the changed costs, if any, incurred by the Contracting Officer in the delivery of the transferred
621 Project Water to the transferee’s point of delivery. If the Contractor is receiving lower Rates and
622 Charges because of inability to pay and is transferring Project Water to another entity whose Rates
623 and Charges are not adjusted due to inability to pay, the Rates and Charges for transferred Project
624 Water shall not be adjusted to reflect the Contractor’s inability to pay.

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

627 (n) With respect to the Rates for M&I Water, the Contractor asserts that it is not
628 legally obligated to pay any Project deficits claimed by the United States to have accrued as of the
629 date of this Contract or deficit-related interest charges thereon. By entering into this Contract, the
630 Contractor does not waive any legal rights or remedies that it may have with respect to such
631 disputed issues. Notwithstanding the execution of this Contract and payments made hereunder, the
632 Contractor may challenge in the appropriate administrative or judicial forums; (1) the existence,
633 computation, or imposition of any deficit charges accruing during the term of the Existing Contract
634 and any preceding interim renewal contracts, if applicable; (2) interest accruing on any such
635 deficits; (3) the inclusion of any such deficit charges or interest in the Rates; (4) the application by
636 the United States of payments made by the Contractor under its Existing Contract and any
637 preceding interim renewal contracts if applicable; and (5) the application of such payments in the

638 Rates. The Contracting Officer agrees that the Contractor shall be entitled to the benefit of any
639 administrative or judicial ruling in favor of any Project M&I contractor on any of these issues, and
640 credits for payments heretofore made, provided that the basis for such ruling is applicable to the
641 Contractor.

642 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

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

646 SALES, TRANSFERS, OR EXCHANGES OF WATER

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

658 (b) In order to facilitate efficient water management by means of water transfers
659 of the type historically carried out among Project Contractors located within the same geographical
660 area and to allow the Contractor to participate in an accelerated water transfer program during the

661 term of this Contract, the Contracting Officer shall prepare, as appropriate, all necessary
662 environmental documentation, including but not limited to documents prepared pursuant to NEPA
663 and ESA, analyzing annual transfers within such geographical areas and the Contracting Officer
664 shall determine whether such transfers comply with applicable law. Following the completion of
665 the environmental documentation, such transfers addressed in such documentation shall be
666 conducted with advance notice to the Contracting Officer, but shall not require prior written
667 approval by the Contracting Officer. Such environmental documentation and the Contracting
668 Officer's compliance determination shall be reviewed every five years and updated, as necessary,
669 prior to the expiration of the then existing five-year period. All subsequent environmental
670 documentation shall include an alternative to evaluate not less than the quantity of Project Water
671 historically transferred within the same geographical area.

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

682 APPLICATION OF PAYMENTS AND ADJUSTMENTS

683 10. (a) The amount of any overpayment by the Contractor of the Contractor’s O&M,
684 capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of
685 the Contractor arising out of this Contract then due and payable. Overpayments of more than
686 \$1,000 shall be refunded at the Contractor’s request. In lieu of a refund, any amount of such
687 overpayment at the option of the Contractor may be credited against amounts to become due to the
688 United States by the Contractor. With respect to overpayment, such refund or adjustment shall
689 constitute the sole remedy of the Contractor or anyone having or claiming to have the right to the
690 use of any of the Project Water supply provided for herein. All credits and refunds of overpayments
691 shall be made within 30 days of the Contracting Officer obtaining direction as to how to credit or
692 refund such overpayment in response to the notice to the Contractor that it has finalized the
693 accounts for the Year in which the overpayment was made.

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

699 TEMPORARY REDUCTIONS--RETURN FLOWS

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

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

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

722 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

733 (c) In any Year in which there may occur a Condition of Shortage for any of the
734 reasons specified in subdivision (b) of this Article, and subject to subdivision (d) of this Article, the
735 Contracting Officer will first allocate the available Project Water consistent with the Central Valley
736 Project M&I Water Shortage Policy in its form on the effective date of this Contract for
737 determining the amount of Project Water available for delivery to the Project Contractors. Subject
738 to the foregoing allocation, in any year in which there may occur a Condition of Shortage, the
739 Contracting Officer shall then apportion Project Water among the Contractor and others entitled to
740 Project Water from Delta Division Facilities under long-term water service or repayment contracts
741 (or renewals thereof or binding commitments therefore) in force on February 28, 2005, as follows:

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

748 (2) A determination shall be made of the total quantity of Project Water
749 that is available for meeting the scheduled total, the quantity so determined being hereinafter
750 referred to as the available supply;

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

755 (4) The available supply shall be multiplied by the Contractor's
756 proportionate share and the result shall be the quantity of Project Water made available by the
757 United States to the Contractor for the relevant Year in accordance with the schedule developed by
758 the Contracting Officer under subdivision (c)(1) of this Article, but in no event shall such amount
759 exceed the Contract Total. In the event the Contracting Officer subsequently determines that the
760 Contracting Officer can increase or needs to decrease the available supply for delivery from Delta
761 Division Facilities to long-term water service and repayment Contractors during the relevant Year,
762 such additions or reductions to the available supply shall be apportioned consistent with
763 subparagraphs (1) through (4), inclusive.

764 (d) By entering into this Contract, the Contractor does not waive any legal rights
765 or remedies it may have to file or participate in any administrative or judicial proceeding contesting
766 (i) the sufficiency of the Central Valley Project M&I Water Shortage Policy; (ii) the substance of
767 such a policy; (iii) the applicability of such a policy; or (iv) the manner in which such policy is
768 implemented in order to allocate Project Water between municipal and industrial and irrigation
769 purposes; Provided, That the Contractor has commenced any such judicial challenge or any
770 administrative procedures necessary to institute any judicial challenge within six months of the
771 policy becoming final. By agreeing to the foregoing, the Contracting Officer does not waive any
772 legal defenses or remedies that it may have to assert in such a proceeding. Nothing contained herein
773 shall be interpreted to validate or invalidate the Central Valley Project M&I Water Shortage Policy.

774 UNAVOIDABLE GROUNDWATER PERCOLATION

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

779 RULES AND REGULATIONS

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

784 WATER AND AIR POLLUTION CONTROL

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

788 QUALITY OF WATER

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

797 (b) The O&M of Project facilities shall be performed in such manner as is
798 practicable to maintain the quality of raw water made available through such facilities at the highest
799 level reasonably attainable as determined by the Contracting Officer. The Contractor shall be

800 responsible for compliance with all State and Federal water quality standards applicable to surface
801 and subsurface agricultural drainage discharges generated through the use of Federal or Contractor
802 facilities or Project Water provided by the Contractor within the Contractor's Service Area.

803 (c) Omitted.

804 WATER ACQUIRED BY THE CONTRACTOR
805 OTHER THAN FROM THE UNITED STATES

806 17. (a) Water or water rights now owned or hereafter acquired by the Contractor
807 other than from the United States and Irrigation Water furnished pursuant to the terms of this
808 Contract may be simultaneously transported through the same distribution facilities of the
809 Contractor subject to the following: (i) if the facilities utilized for commingling Irrigation Water
810 and non-Project water were constructed without funds made available pursuant to Federal
811 Reclamation law, the provisions of Federal Reclamation law will be applicable only to the
812 Landholders of lands which receive Irrigation Water; (ii) the eligibility of land to receive Irrigation
813 Water must be established through the certification requirements as specified in the Acreage
814 Limitation Rules and Regulations (43 CFR Part 426); (iii) the water requirements of Eligible Lands
815 within the Contractor's Service Area can be established and the quantity of Irrigation Water to be
816 utilized is less than or equal to the quantity necessary to irrigate such Eligible Lands; and (iv) if the
817 facilities utilized for commingling Irrigation Water and non-Project water are/were constructed with
818 funds made available pursuant to Federal Reclamation law, the non-Project water will be subject to
819 the acreage limitation provisions of Federal Reclamation law, unless the Contractor pays to the
820 United States the incremental fee described in 43 CFR 426.15. In determining the incremental fee,
821 the Contracting Officer will calculate annually the cost to the Federal Government, including
822 interest of storing or delivering non-Project water, which for purposes of this Contract shall be
823 determined as follows: The quotient shall be the unpaid distribution system costs divided by the

824 total irrigable acreage within the Contractor’s Service Area. The incremental fee per acre is the
825 mathematical result of such quotient times the interest rate determined using Section 202 (3) of the
826 Act of October 12, 1982 (96 Stat. 1263). Such incremental fee will be charged to each acre of
827 excess or full cost land within the Contractor’s Service Area that receives non-Project water through
828 Federally financed or constructed facilities. The incremental fee calculation methodology will
829 continue during the term of this Contract absent the promulgation of a contrary Reclamation-wide
830 rule, regulation, or policy adopted after the Contractor has been afforded the opportunity to review
831 and comment on the proposed rule, regulation, or policy. If such rule, regulation, or policy is
832 adopted it shall supercede this provision.

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

838 (1) The Contractor may introduce non-Project water into Project facilities
839 and deliver said water to lands within the Contractor’s Service Area, including Ineligible Lands,
840 subject to payment to the United States and/or to any applicable Operating Non-Federal Entity of an
841 appropriate rate as determined by the applicable Project ratesetting policy, the RRA, and the Project
842 use power policy, if such Project use power policy is applicable, each as amended, modified, or
843 superceded from time to time.

844 (2) Delivery of such non-Project water in and through Project facilities
845 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project purposes
846 as determined by the Contracting Officer; (ii) reduce the quantity or quality of water available to

847 other Project Contractors; (iii) interfere with the delivery of contractual water entitlements to any
848 other Project Contractors; or (iv) interfere with the physical maintenance of the Project facilities.

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

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

860 (5) After Project purposes are met, as determined by the Contracting
861 Officer, the United States and Project Contractors entitled to Project Water from Delta Division
862 Facilities shall share priority to utilize the remaining capacity of the facilities declared to be
863 available by the Contracting Officer for conveyance and transportation of non-Project water prior to
864 any such remaining capacity being made available to non-Project contractors. Other Project
865 Contractors shall have a second priority to any remaining capacity of facilities declared to be
866 available by the Contracting Officer for conveyance and transportation of non-Project water prior to
867 any such remaining capacity being made available to non-Project contractors.

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OPINIONS AND DETERMINATIONS

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

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

COORDINATION AND COOPERATION

19. (a) In order to further their mutual goals and objectives, the Contracting Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and with other affected Project Contractors, in order to improve the operation and management of the Project. The communication, coordination, and cooperation regarding operations and management shall include, but not be limited to, any action which will or may materially affect the quantity or quality of Project Water supply, the allocation of Project Water supply, and Project financial matters including, but not limited to, budget issues. The communication, coordination, and cooperation

891 provided for hereunder shall extend to all provisions of this Contract. Each party shall retain
892 exclusive decision making authority for all actions, opinions, and determinations to be made by the
893 respective party.

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

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

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

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

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

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

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

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

922 CHARGES FOR DELINQUENT PAYMENTS

923 20. (a) The Contractor shall be subject to interest, administrative and penalty charges
924 on delinquent installments or payments. When a payment is not received by the due date, the
925 Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date.
926 When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative
927 charge to cover additional costs of billing and processing the delinquent payment. When a payment
928 is delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six
929 (6%) percent per year for each day the payment is delinquent beyond the due date. Further, the
930 Contractor shall pay any fees incurred for debt collection services associated with a delinquent
931 payment.

932
933 (b) The interest charge rate shall be the greater of the rate prescribed quarterly in
934 the Federal Register by the Department of the Treasury for application to overdue payments, or the
935 interest rate of one-half of one (0.5%) percent per month prescribed by Section 6 of the Reclamation
936 Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due
937 date and remain fixed for the duration of the delinquent period.

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

941 EQUAL OPPORTUNITY

942
943 21. During the performance of this Contract, the Contractor agrees as follows:

944 (a) The Contractor will not discriminate against any employee or applicant for
945 employment because of race, color, religion, sex, or national origin. The Contractor will take
946 affirmative action to ensure that applicants are employed, and that employees are treated during
947 employment, without regard to their race, color, religion, sex, or national origin. Such action shall

948 include, but not be limited to, the following: Employment, upgrading, demotion, or transfer;
949 recruitment or recruitment advertising; layoff or termination, rates of payment or other forms of
950 compensation; and selection for training, including apprenticeship. The Contractor agrees to post in
951 conspicuous places, available to employees and applicants for employment, notices to be provided
952 by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

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

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

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

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

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

977
978 (g) The Contractor will include the provisions of paragraphs (a) through (g) in
979 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
980 Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such
981 provisions will be binding upon each subcontractor or vendor. The Contractor will take such action
982 with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a
983 means of enforcing such provisions, including sanctions for noncompliance: Provided, however,
984 That in the event the Contractor becomes involved in, or is threatened with, litigation with a
985 subcontractor or vendor as a result of such direction, the Contractor may request the United States
986 to enter into such litigation to protect the interests of the United States.

987 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

1000 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1001 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
1002 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the
1003 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws,
1004 as well as with their respective implementing regulations and guidelines imposed by the U.S.
1005 Department of the Interior and/or Bureau of Reclamation.

1006 (b) These statutes require that no person in the United States shall, on the
1007 grounds of race, color, national origin, handicap, or age, be excluded from participation in, be
1008 denied the benefits of, or be otherwise subjected to discrimination under any program or activity
1009 receiving financial assistance from the Bureau of Reclamation. By executing this Contract, the
1010 Contractor agrees to immediately take any measures necessary to implement this obligation,
1011 including permitting officials of the United States to inspect premises, programs, and documents.

1012 (c) The Contractor makes this agreement in consideration of and for the purpose
1013 of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal
1014 financial assistance extended after the date hereof to the Contractor by the Bureau of Reclamation,
1015 including installment payments after such date on account of arrangements for Federal financial
1016 assistance which were approved before such date. The Contractor recognizes and agrees that such
1017 Federal assistance will be extended in reliance on the representations and agreements made in this
1018 Article, and that the United States reserves the right to seek judicial enforcement thereof.

1019 PRIVACY ACT COMPLIANCE

1020 24. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a)
1021 (the Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et
1022 seq.) in maintaining Landholder acreage certification and reporting records, required to be

1023 submitted to the Contractor for compliance with Sections 206 and 228 of the Reclamation Reform
1024 Act of 1982 (96 Stat. 1266), and pursuant to 43 CFR 426.18.

1025 (b) With respect to the application and administration of the criminal penalty
1026 provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible
1027 for maintaining the certification and reporting records referenced in (a) above are considered to be
1028 employees of the Department of the Interior. See 5 U.S.C. 552a(m).

1029 (c) The Contracting Officer or a designated representative shall provide the
1030 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau of
1031 Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior,
1032 Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information
1033 contained in the Landholder's certification and reporting records.
1034

1035 (d) The Contracting Officer shall designate a full-time employee of the Bureau of
1036 Reclamation to be the System Manager who shall be responsible for making decisions on denials
1037 pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is
1038 authorized to grant requests by individuals for access to their own records.

1039 (e) The Contractor shall forward promptly to the System Manager each proposed
1040 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR
1041 2.71; notify the requester accordingly of such referral; and provide the System Manager with
1042 information and records necessary to prepare an appropriate response to the requester. These
1043 requirements do not apply to individuals seeking access to their own certification and reporting
1044 forms filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the
1045 Privacy Act as a basis for the request.

1046 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1047 25. In addition to all other payments to be made by the Contractor pursuant to this
1048 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and
1049 detailed statement submitted by the Contracting Officer to the Contractor for such specific items of
1050 direct cost incurred by the United States for work requested by the Contractor associated with this
1051 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and
1052 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in
1053 writing in advance by the Contractor. This Article shall not apply to costs for routine contract
1054 administration.

1055 WATER CONSERVATION

1056 26. (a) Prior to the delivery of water provided from or conveyed through Federally
1057 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be
1058 implementing an effective water conservation and efficiency program based on the Contractor's
1059 water conservation plan that has been determined by the Contracting Officer to meet the
1060 conservation and efficiency criteria for evaluating water conservation plans established under
1061 Federal law. The water conservation and efficiency program shall contain definite water
1062 conservation objectives, appropriate economically feasible water conservation measures, and time
1063 schedules for meeting those objectives. Continued Project Water delivery pursuant to this Contract
1064 shall be contingent upon the Contractor's continued implementation of such water conservation
1065 program. In the event the Contractor's water conservation plan or any revised water conservation
1066 plan completed pursuant to subdivision (d) of Article 26 of this Contract have not yet been
1067 determined by the Contracting Officer to meet such criteria, due to circumstances which the
1068 Contracting Officer determines are beyond the control of the Contractor, water deliveries shall be
1069 made under this Contract so long as the Contractor diligently works with the Contracting Officer to
1070 obtain such determination at the earliest practicable date, and thereafter the Contractor immediately
1071 begins implementing its water conservation and efficiency program in accordance with the time
1072 schedules therein.

1073 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
1074 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall implement
1075 the Best Management Practices identified by the time frames issued by the California Urban Water
1076 Conservation Council for such M&I Water unless any such practice is determined by the
1077 Contracting Officer to be inappropriate for the Contractor.

1078 (c) The Contractor shall submit to the Contracting Officer a report on the status
1079 of its implementation of the water conservation plan on the reporting dates specified in the then
1080 existing conservation and efficiency criteria established under Federal law.

1081 (d) At five-year intervals, the Contractor shall revise its water conservation plan
1082 to reflect the then current conservation and efficiency criteria for evaluating water conservation
1083 plans established under Federal law and submit such revised water management plan to the
1084 Contracting Officer for review and evaluation. The Contracting Officer will then determine if the
1085 water conservation plan meets Reclamation’s then current conservation and efficiency criteria for
1086 evaluating water conservation plans established under Federal law.

1087 (e) If the Contractor is engaged in direct groundwater recharge, such activity
1088 shall be described in the Contractor’s water conservation plan.

1089 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1090 27. Except as specifically provided in Article 17 of this Contract, the provisions of this
1091 Contract shall not be applicable to or affect non-Project water or water rights now owned or
1092 hereafter acquired by the Contractor or any user of such water within the Contractor's Service Area.
1093 Any such water shall not be considered Project Water under this Contract. In addition, this Contract
1094 shall not be construed as limiting or curtailing any rights which the Contractor or any water user
1095 within the Contractor's Service Area acquires or has available under any other contract pursuant to
1096 Federal Reclamation law.

1097 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

1098 28. (a) The O&M of a portion of the Project facilities which serve the Contractor,
1099 and responsibility for funding a portion of the costs of such O&M, have been transferred to the San
1100 Luis & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate agreement

1101 (8-07-20-X0354) between the United States and the Operating Non-Federal Entity San Luis
1102 & Delta-Mendota Water Authority. That separate agreement shall not interfere with or affect the
1103 rights or obligations of the Contractor or the United States hereunder.

1104 (b) The Contracting Officer has previously notified the Contractor in writing that
1105 the O&M of a portion of the Project facilities which serve the Contractor has been transferred to the
1106 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, and therefore, the
1107 Contractor shall pay directly to the Operating Non-Federal Entity San Luis & Delta-Mendota Water
1108 Authority, or to any successor approved by the Contracting Officer under the terms and conditions
1109 of the separate agreement between the United States and the Operating Non-Federal Entity San Luis
1110 & Delta-Mendota Water Authority described in subdivision (a) of this Article, all rates, charges, or
1111 assessments of any kind, including any assessment for reserve funds, which the Operating Non-
1112 Federal Entity San Luis & Delta-Mendota Water Authority or such successor determines, sets, or
1113 establishes for the O&M of the portion of the Project facilities operated and maintained by the
1114 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or such successor. Such
1115 direct payments to the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or
1116 such successor shall not relieve the Contractor of its obligation to pay directly to the United States
1117 the Contractor's share of the Project Rates, Charges, and Tiered Pricing Component except to the
1118 extent the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority collects
1119 payments on behalf of the United States in accordance with the separate agreement identified in
1120 subdivision (a) of this Article.

1121 (c) For so long as the O&M of any portion of the Project facilities serving the
1122 Contractor is performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water
1123 Authority, or any successor thereto, the Contracting Officer shall adjust those components of the

1124 Rates for Water Delivered under this Contract representing the cost associated with the activity
1125 being performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority
1126 or its successor.

1127 (d) In the event the O&M of the Project facilities operated and maintained by the
1128 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority is re-assumed by the
1129 United States during the term of this Contract, the Contracting Officer shall so notify the
1130 Contractor, in writing, and present to the Contractor a revised Exhibit “B” which shall include the
1131 portion of the Rates to be paid by the Contractor for Project Water under this Contract representing
1132 the O&M costs of the portion of such Project facilities which have been re-assumed. The
1133 Contractor shall, thereafter, in the absence of written notification from the Contracting Officer to the
1134 contrary, pay the Rates, Charges, and Tiered Pricing Component specified in the revised Exhibit
1135 “B” directly to the United States in compliance with Article 7 of this Contract.

1136 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1137 29. The expenditure or advance of any money or the performance of any obligation of
1138 the United States under this Contract shall be contingent upon appropriation or allotment of funds.
1139 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
1140 under this Contract. No liability shall accrue to the United States in case funds are not appropriated
1141 or allotted.

1142 BOOKS, RECORDS, AND REPORTS

1143 30. (a) The Contractor shall establish and maintain accounts and other books and
1144 records pertaining to administration of the terms and conditions of this Contract, including: the
1145 Contractor's financial transactions, water supply data, and Project land and right-of-way
1146 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use
1147 data; and other matters that the Contracting Officer may require. Reports thereon shall be furnished
1148 to the Contracting Officer in such form and on such date or dates as the Contracting Officer may
1149 require. Subject to applicable Federal laws and regulations, each party to this Contract shall have
1150 the right during office hours to examine and make copies of the other party's books and records
1151 relating to matters covered by this Contract.

1152 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,
1153 records, or other information shall be requested from the Contractor by the Contracting Officer
1154 unless such books, records, or information are reasonably related to the administration or
1155 performance of this Contract. Any such request shall allow the Contractor a reasonable period of
1156 time within which to provide the requested books, records, or information.

1157 (c) At such time as the Contractor provides information to the Contracting
1158 Officer pursuant to subdivision (a) of this Article, a copy of such information shall be provided to
1159 the Operating Non-Federal Entity.

1160 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1161 31. (a) The provisions of this Contract shall apply to and bind the successors and
1162 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1163 therein shall be valid until approved in writing by the Contracting Officer.

1164 (b) The assignment of any right or interest in this Contract by either party shall
1165 not interfere with the rights or obligations of the other party to this Contract absent the written
1166 concurrence of said other party.

1167 (c) The Contracting Officer shall not unreasonably condition or withhold
1168 approval of any proposed assignment.

1169 SEVERABILITY

1170 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor
1171 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an
1172 association or other form of organization whose primary function is to represent parties to Project
1173 contracts, brings an action in a court of competent jurisdiction challenging the legality or
1174 enforceability of a provision included in this Contract and said person, entity, association, or
1175 organization obtains a final court decision holding that such provision is legally invalid or

1176 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the
1177 parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court
1178 decision identify by mutual agreement the provisions in this Contract which must be revised and (ii)
1179 within three months thereafter promptly agree on the appropriate revision(s). The time periods
1180 specified above may be extended by mutual agreement of the parties. Pending the completion of
1181 the actions designated above, to the extent it can do so without violating any applicable provisions
1182 of law, the United States shall continue to make the quantities of Project Water specified in this
1183 Contract available to the Contractor pursuant to the provisions of this Contract which were not
1184 found to be legally invalid or unenforceable in the final court decision.

1185 RESOLUTION OF DISPUTES

1186 33. Should any dispute arise concerning any provisions of this Contract, or the parties’
1187 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the
1188 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring
1189 any matter to the Department of Justice, the party shall provide to the other party 30 days’ written
1190 notice of the intent to take such action; Provided, That such notice shall not be required where a
1191 delay in commencing an action would prejudice the interests of the party that intends to file suit.
1192 During the 30-day notice period, the Contractor and the Contracting Officer shall meet and confer
1193 in an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to
1194 waive or abridge any right or remedy that the Contractor or the United States may have.

1195 OFFICIALS NOT TO BENEFIT

1196 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1197 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1198 manner as other water users or landowners.

1199 CHANGES IN CONTRACTOR’S SERVICE AREA

1200 35. (a) While this Contract is in effect, no change may be made in the Contractor's
1201 Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,
1202 except upon the Contracting Officer's written consent.

1203 (b) Within 30 days of receipt of a request for such a change, the Contracting
1204 Officer will notify the Contractor of any additional information required by the Contracting Officer
1205 for processing said request, and both parties will meet to establish a mutually agreeable schedule for
1206 timely completion of the process. Such process will analyze whether the proposed change is likely
1207 to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability
1208 of the Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-
1209 constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project
1210 Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply
1211 with the NEPA and the ESA. The Contractor will be responsible for all costs incurred by the
1212 Contracting Officer in this process, and such costs will be paid in accordance with Article 25 of this
1213 Contract.

1214 FEDERAL LAWS

1215 36. By entering into this Contract, the Contractor does not waive its rights to contest the
1216 validity or application in connection with the performance of the terms and conditions of this
1217 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the
1218 terms and conditions of this Contract unless and until relief from application of such Federal law or
1219 regulation to the implementing provision of the Contract is granted by a court of competent
1220 jurisdiction.

1221 NOTICES

1222 37. Any notice, demand, or request authorized or required by this Contract shall be
1223 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered

1224 to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, California
1225 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board
1226 of Directors of the Del Puerto Water District, P. O. Box 1596, Patterson, California 95363-1596.
1227 The designation of the addressee or the address may be changed by notice given in the same manner
1228 as provided in this Article for other notices.

1229 CONFIRMATION OF CONTRACT

1230 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a
1231 decree of a court of competent jurisdiction of the State of California, confirming the execution of
1232 this Contract. The Contractor shall furnish the United States a certified copy of the final decree, the
1233 validation proceedings, and all pertinent supporting records of the court approving and confirming
1234 this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

1235 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and
1236 year first above written.

1237 THE UNITED STATES OF AMERICA

1238 By: _____
1239 Regional Director, Mid-Pacific Region
1240 Bureau of Reclamation

1241 (SEAL)

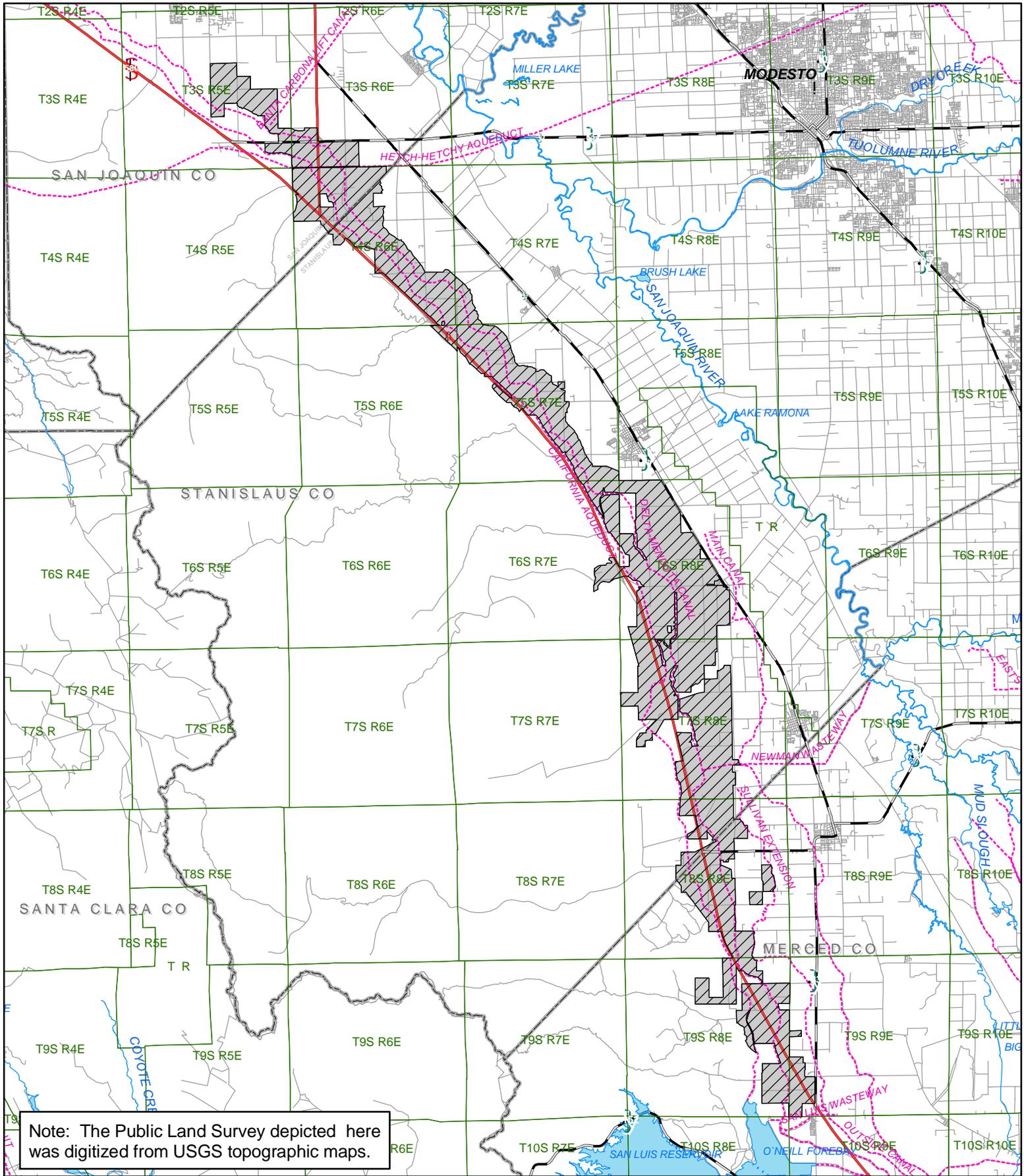
1242 DEL PUERTO WATER DISTRICT

1243 By: _____
1244 President of the Board of Directors

1245 Attest:

1246 By: _____
1247 Secretary of the Board of Directors

1248 (H:\pub 440\LTRC\Final Draft LTRC's – Fresno, Tracy\09-29-04 Del Puerto WD Final Draft
1249 LTRC with exhibits.doc)



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

 Contractor's Service Area
 District Boundary

Del Puerto W.D.

Contract No. 14-06-200-922-LTR1
EXHIBIT A



EXHIBIT B
DEL PUERTO WATER DISTRICT
Water Rates and Charges

Note: Rates and Charges are 2004 rates. This exhibit will be updated prior to execution of the contract to reflect the current Rates and Charges.

<u>COST-OF-SERVICE RATES:</u>	<u>2004 Rates per Acre-Foot</u>	
	<u>Irrigation</u> <u>Water</u>	<u>M&I</u> <u>Water</u>
Capital Rates	\$10.36	\$18.47
O&M Rates:		
Water Marketing	7.59	5.01
Storage	5.83	6.38
Conveyance		
Conveyance Pumping		
Deficit Rates:		
Non-Interest Bearing		
Interest Bearing		
CFO/PFR Adj. Rate 1/		
TOTAL COST-OF-SERVICE-RATES	<u>\$23.78</u>	<u>\$29.86</u>

FULL-COST RATES

Section 202(3) Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981. \$35.59

Section 205(a)(3) Rate is applicable to a Limited Recipient that did not receive irrigation water on or before October 1, 1981. \$42.66

CHARGES UNDER P.L. 102-575 TO RESTORATION FUND 2/

Restoration Payments (3407(d)(2)(A))	<u>\$ 7.82</u>	<u>\$15.64</u>
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1/ Rate represents Chief Financial Officers (CFO) adjustment and Provision for Replacement (PFR) credit for option 2 cost deferment to be distributed over 5-year period beginning with 2003 water rates.

2/ Restoration fund charges are payments in addition to the water rates and were determined pursuant to Title XXXIV of Public Law 102-575. Restoration fund charges are on a fiscal year basis (10/1-9/30).