

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Black Butte Project, California

MEMORANDUM OF AGREEMENT WITH THE FOREST SERVICE
FOR DIVERSION OF WATER FROM SALT CREEK

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Exhibit A - Map of Contractor's Service Area

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1 UNITED STATES
2 DEPARTMENT OF THE INTERIOR
3 BUREAU OF RECLAMATION
4 Black Butte Project, California

5 MEMORANDUM OF AGREEMENT WITH THE FOREST SERVICE
6 FOR DIVERSION OF WATER FROM SALT CREEK

7 THIS Memorandum of Agreement (MOA) , made this ____ day of
8 _____, 20___, in pursuance generally of the Act of June 17, 1902 (32 Stat.
9 388), and acts amendatory or supplementary thereto, including, but not limited to, the Acts of
10 August 26, 1937 (50 Stat. 844), as amended and supplemented, August 4, 1939 (53 Stat. 1187),
11 as amended and supplemented, July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68),
12 October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat. 3050), as amended, and Title
13 XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively hereinafter referred to
14 as Federal Reclamation law, between THE UNITED STATES OF AMERICA, hereinafter
15 referred to as the United States, and the FOREST SERVICE, United States Department of
16 Agriculture, hereinafter referred to as the Contractor, represented by the Regional Forester,
17 California Region;

18 WITNESSETH, THAT:

19 EXPLANATORY RECITALS

20 [1st] WHEREAS, the United States has constructed and is operating the Central Valley
21 Project (Project), California, for diversion, storage, carriage, distribution and beneficial use, for

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

26 [2nd] WHEREAS, the United States constructed the Black Butte Dam and Reservoir
27 which were integrated into the Project and which will be used in part for the furnishing of water
28 to the Contractor pursuant to the terms of this MOA; and

29 [2.1] WHEREAS, the United States constructed the Orland Project which is being
30 operated by the Orland Unit Water Users' Association pursuant to Contract No. 14-06-200-3502
31 dated August 26, 1954, as amended by the contract dated August 24, 1960; and

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

34 [3.1] WHEREAS, the water rights of all lands and the use thereof within the watershed
35 of Stony Creek and its tributaries were adjudicated by the U.S. District Court for the Northern
36 District of California, Second Division in the United States of America, v. H.C. Angle, et al.,
37 Equity No. 30, hereinafter referred to as the Angle Decree and said rights are administered by
38 said courts; and

39 [3.2] WHEREAS, the Contractor has a continuing need of a water supply for
40 municipal, industrial, and domestic use to serve the California Department of Forestry and Fire
41 Protection's Salt Creek Conservation Camp which is located on National Forest land in Section
42 34, Township 23 North, Range 7 Mt. Diablo Meridian; and

43 [3.3] WHEREAS, the Service proposes to continue to divert water from Salt Creek to
44 provide said water supply; and

45 [4th] WHEREAS, the Contractor and the United States entered into Contract
46 No. 14-06-200-3621A, which established terms for the delivery to the Contractor of Project
47 Water from the Black Butte Dam and Reservoir from January 15, 1968, until terminated by
48 mutual agreement of Reclamation and the Contractor, hereinafter referred to as the “Existing
49 Contract”; and

50 [5th] WHEREAS, the United States and the Contractor have, pursuant to subsection
51 3404(c)(3) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into a
52 binding agreement, identified as Binding Agreement No. 14-06-200-3621A-BA, which sets out
53 the terms pursuant to which the Contractor agreed to renew the Existing Contract before its
54 expiration date after completion of a programmatic environmental impact statement and other
55 appropriate environmental documentation and negotiation of a renewal contract, and which also
56 sets out the consequences of a subsequent decision not to renew; and

57 [5.1] WHEREAS, to satisfy existing downstream rights, Reclamation proposes to
58 continue to furnish a replacement supply in Stony Creek for such water diverted by the
59 Contractor pursuant to Contract No. 14-06-200-1020A, dated June 26, 1964, between
60 Reclamation and the Orland Unit Water Users’ Association; and

61 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of the
62 Existing Contract following completion of appropriate environmental documentation, including a
63 programmatic environmental impact statement PEIS pursuant to the National Environmental
64 Policy Act (NEPA), analyzing the direct and indirect impacts and benefits of implementing the
65 CVPIA and the potential renewal of all existing contracts for Project Water; and

66 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
67 environmental review necessary to provide for long-term renewal of the Existing Contract; and

68 [8th] WHEREAS, the Contractor has requested the long-term renewal of the Existing
69 Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws
70 of the State of California, for water service from the Project; and

71 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all
72 of its obligations under the Existing Contract; and

73 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the
74 Contracting Officer that the Contractor has utilized the Project Water supplies available to it for
75 reasonable and beneficial use and, based upon a needs analysis cooperatively prepared by the
76 Contracting Officer and the Contractor, has demonstrated projected future demand for water use
77 that exceeds the Contract Total to be made available to it pursuant to this MOA; and

78 [11th] WHEREAS, water obtained from the Project has been relied upon by urban and
79 agricultural areas within California for more than 50 years, and is considered by the Contractor
80 as an essential portion of its water supply; and

81 [12th] WHEREAS, the United States and the Contractor are willing to enter into this
82 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below.

83 NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is
84 agreed as flows:

85 DEFINITIONS

86 1. When used herein unless otherwise distinctly expressed, or manifestly
87 incompatible with the intent of the parties as expressed in this MOA, the term:

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

90 (b) "Charges" shall mean the payments required by Federal Reclamation law
91 in addition to the Rates and Tiered Pricing Component specified in this MOA as determined
92 annually by the Contracting Officer pursuant to this MOA;

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

96 (d) "Contracting Officer" shall mean the Secretary of the Interior's duly
97 authorized representative acting pursuant to this MOA or applicable Federal Reclamation law or
98 regulation;

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

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

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

107 (h) Omitted;

108 (i) Omitted;

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

115 date incurred in the case of costs arising subsequent to October 12, 1982, and shall be calculated
116 in accordance with subsections 202(3)(B) and (3)(C) of the Reclamation Reform Act of
117 October 12, 1982 (96 Stat. 1263), as amended, hereinafter referred to as RRA. The Full Cost
118 Rate includes actual operation, maintenance, and replacement costs consistent with Section 426.2
119 of the Rules and Regulations for the RRA;

120 (k) Omitted;

121 (l) Omitted;

122 (m) Omitted;

123 (n) Omitted;

124 (o) "Municipal and Industrial (M&I) Water" shall mean Project Water made
125 available to the Contractor for purposes other than the commercial production of agricultural
126 crops or livestock;

127 (p) "M&I Full Cost Water Rate" shall mean the Full Cost Rate applicable to
128 the delivery of M&I Water;

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

132 (r) Omitted;

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

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

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

141 (v) "Rates" shall mean the payments determined annually by the Contracting
142 Officer in accordance with the then-current applicable water ratesetting policies for the Project,
143 as described in subdivision (a) of Article 7 of this MOA;

144 (w) "Recent Historic Average" shall mean the most recent five-year average of
145 the final forecast of Water Made Available to the Contractor pursuant to this MOA or its
146 preceding contract(s);

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

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

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

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

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

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

163 TERM OF CONTRACT

164 2. (a) This MOA shall be effective March 1, 20___, through February 28,
165 20___, and supercedes the Existing Contract. In the event the Contractor wishes to renew this

166 MOA beyond February 28, 20____, the Contractor shall submit a request for renewal in writing to
167 the Contracting Officer no later than two years prior to the date this MOA expires.

168 (b) Omitted.

169 (c) This MOA shall be renewed for successive periods of up to 40 years each,
170 which periods shall be consistent with then-existing Reclamation-wide policy, under terms and
171 conditions mutually agreeable to the parties and consistent with Federal and State law. The
172 Contractor shall be afforded the opportunity to comment to the Contracting Officer on the
173 proposed adoption and application of any revised policy applicable to the delivery of M&I Water
174 that would limit the term of any subsequent renewal contract with the Contractor for the
175 furnishing of M&I Water to less than 40 years.

176 (d) The Contracting Officer shall make a determination ten years after the
177 date of execution of this MOA, and every five years thereafter during the term of this MOA, of
178 whether a conversion of the relevant portion of this MOA to a contract under said subsection
179 9(d) of the Reclamation Project Act of 1939 can be accomplished pursuant to the Act of July 2,
180 1956 (70 Stat. 483). The Contracting Officer shall also make a determination ten years after the
181 date of execution of this MOA and every five years thereafter during the term of this MOA of
182 whether a conversion of the relevant portion of this MOA to a contract under subsection 9(c)(1)
183 of the Reclamation Project Act of 1939 can be accomplished. Notwithstanding any provision of
184 this MOA, the Contractor reserves and shall have all rights and benefits under the Act of July 2,
185 1956 (70 Stat. 483). The Contracting Officer anticipates that during the term of this MOA, all
186 authorized Project construction expected to occur will have occurred, and on that basis the
187 Contracting Officer agrees upon such completion to allocate all costs that are properly assignable
188 to the Contractor, and agrees further that, at any time after such allocation is made, and subject to

189 satisfaction of the condition set out in this subdivision, this MOA shall, at the request of the
190 Contractor, be converted to a contract under subsection 9(d) or 9(c)(1), whichever is applicable,
191 of the Reclamation Project Act of 1939, subject to applicable Federal law and under stated terms
192 and conditions mutually agreeable to the Contractor and the Contracting Officer. A condition for
193 such conversion to occur shall be a determination by the Contracting Officer that, account being
194 taken of the amount credited to return by the Contractor as provided for under Federal
195 Reclamation law, the remaining amount of construction costs assignable for ultimate return by
196 the Contractor can probably be repaid to the United States within the term of a contract under
197 said subsection 9(d) or 9(c)(1), whichever is applicable. If the remaining amount of costs that
198 are properly assignable to the Contractor cannot be determined during the term of this MOA, the
199 Contracting Officer shall notify the Contractor, and provide the reason(s) why such a
200 determination could not be made. Further, the Contracting Officer shall make such a
201 determination as soon thereafter as possible so as to permit, upon request of the Contractor and
202 satisfaction of the condition set out above, conversion to a contract under subsection 9(d) or
203 9(c)(1), whichever is applicable. In the event such determination of costs has not been made at a
204 time which allows conversion of this MOA during the term of this MOA or the Contractor has
205 not requested conversion of this MOA within such term, the parties shall incorporate in any
206 subsequent renewal contract as described in subdivision (b) of this Article a provision that carries
207 forth in substantially identical terms the provisions of this subdivision.

208 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

209 3. (a) During each Year, consistent with all applicable State water rights,
210 permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of
211 this MOA, the Contracting Officer shall furnish a replacement supply of up to 45 acre-feet of

212 Project Water in Stony Creek below the confluence of Salt and Stony Creeks for the water
213 diverted by the Contractor for M&I purposes. Water Delivered to the Contractor in accordance
214 with this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and
215 7 of this MOA.

216 (b) Because the capacity of the Project to deliver Project Water has been
217 constrained in recent years and may be constrained in the future due to many factors including
218 hydrologic conditions and implementation of Federal and State laws, the likelihood of the
219 Contractor actually receiving the amount of Project Water set out in subdivision (a) of this
220 Article in any given Year is uncertain. The Contracting Officer's modeling referenced in the
221 PEIS projected that the Contract Total set forth in this MOA will not be available to the
222 Contractor in many years. During the most recent five years, the Recent Historic Average of
223 water made available to the Contractor was 41 acre-feet. Nothing in subdivision (b) of this
224 Article shall affect the rights and obligations of the parties under any provision of this MOA.

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

227 (d) The Contractor shall make reasonable and beneficial use of all water
228 furnished pursuant to this MOA. Ground-water recharge programs (direct, indirect, or in lieu),
229 ground-water banking programs, surface water storage programs, and other similar programs
230 utilizing Project Water or other water furnished pursuant to this MOA conducted within the
231 Contractor's Service Area which are consistent with applicable State law and result in use
232 consistent with Federal Reclamation law will be allowed; Provided, That any direct recharge
233 program(s) is (are) described in the Contractor's water conservation plan submitted pursuant to
234 Article 26 of this MOA; Provided, further, That such water conservation plan demonstrates

235 sufficient lawful uses exist in the Contractor's Service Area so that using a long-term average,
236 the quantity of Delivered Water is demonstrated to be reasonable for such uses and in
237 compliance with Federal Reclamation law. Ground-water recharge programs, ground-water
238 banking programs, surface water storage programs, and other similar programs utilizing Project
239 Water or other water furnished pursuant to this MOA conducted outside the Contractor's Service
240 Area may be permitted upon written approval of the Contracting Officer, which approval will be
241 based upon environmental documentation, Project Water rights, and Project operational
242 concerns. The Contracting Officer will address such concerns in regulations, policies, or
243 guidelines.

244 (e) The Contractor shall comply with requirements applicable to the
245 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution
246 of this MOA undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as
247 amended, that are within the Contractor's legal authority to implement. The Existing Contract,
248 which evidences in excess of 35 years of diversions for irrigation and/or M&I purposes of the
249 quantities of water provided in subdivision (a) of Article 3 of this MOA, will be considered in
250 developing an appropriate baseline for biological assessment(s) prepared pursuant to the ESA,
251 and any other needed environmental review. Nothing herein shall be construed to prevent the
252 Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with
253 respect to any biological opinion or other environmental documentation referred to in this
254 Article.

255 (f) As soon as possible following each declaration of Water Made Available
256 under Article 4 of this MOA, the Contracting Officer will make a determination whether Project
257 Water, or other water available to the Project, can be made available to the Contractor in addition

258 to the Contract Total under Article 3 of this MOA during the Year without adversely impacting
259 other Project Contractors. At the request of the Contractor, the Contracting Officer will consult
260 with the Contractor prior to making such a determination. If the Contracting Officer determines
261 that Project Water, or other water available to the Project, can be made available to the
262 Contractor, the Contracting Officer will announce the availability of such water and shall so
263 notify the Contractor as soon as practical. The Contracting Officer will thereafter meet with the
264 Contractor and other Project Contractors capable of taking such water to determine the most
265 equitable and efficient allocation of such water. If the Contractor requests the delivery of any
266 quantity of such water, the Contracting Officer shall make such water available to the Contractor
267 in accordance with applicable statutes, regulations, guidelines, and policies.

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

275 (h) The Contractor’s right pursuant to Federal Reclamation law and applicable
276 State law to the reasonable and beneficial use of Water Delivered pursuant to this MOA during
277 the term thereof and any subsequent renewal contracts, as described in Article 2 of this MOA,
278 during the terms thereof shall not be disturbed so long as the Contractor shall fulfill all of its
279 obligations under this MOA and any renewals thereof. Nothing in the preceding sentence shall

280 affect the Contracting Officer's ability to impose shortages under Article 11 or subdivision (b) of
281 Article 12 of this MOA or applicable provisions of any subsequent renewal contracts.

282 (i) Project Water furnished to the Contractor pursuant to this MOA may be
283 delivered for other than M&I purposes upon written approval by the Contracting Officer in
284 accordance with the terms and conditions of such approval.

285 (j) The Contracting Officer shall make reasonable efforts to protect the water
286 rights necessary for the Project and to provide the water available under this MOA. The
287 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the
288 extent permitted by law, in administrative proceedings related to the Project Water rights;
289 Provided, That the Contracting Officer retains the right to object to the substance of the
290 Contractor's position in such a proceeding; Provided further, That in such proceedings the
291 Contracting Officer shall recognize the Contractor has a legal right under the terms of this MOA
292 to use Project Water.

293 TIME FOR DELIVERY OF WATER

294 4. (a) On or about February 20 of each Calendar Year, the Contracting Officer
295 shall announce the Contracting Officer's expected declaration of the Water Made Available.
296 Such declaration will be expressed in terms of both Water Made Available and the Recent
297 Historic Average and will be updated monthly, and more frequently if necessary, based on then-
298 current operational and hydrologic conditions and a new declaration with changes, if any, to the
299 Water Made Available will be made. The Contracting Officer shall provide forecasts of Project
300 operations and the basis of the estimate, with relevant supporting information, upon the written
301 request of the Contractor. Concurrently with the declaration of the Water Made Available, the
302 Contracting Officer shall provide the Contractor with the updated Recent Historic Average.

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

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

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

318 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

319 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this
320 MOA shall be delivered below the confluence of Salt and Stony Creeks to replace water diverted
321 by the Contractor at approved points of diversion on Salt Creek and any additional point or
322 points of delivery mutually agreed to in writing by the Contracting Officer and the Contractor.

323 (b) Omitted.

324 (c) Omitted.

325 (d) All Water Delivered to the Contractor pursuant to this MOA shall be
326 measured and recorded with equipment furnished, installed, operated, and maintained by the
327 Contractor at the point or points of delivery established pursuant to subdivision (a) of this
328 Article. Upon the request of either party to this MOA, the Contracting Officer shall investigate
329 the accuracy of such measurements and shall take any necessary steps to adjust any errors
330 appearing therein. For any period of time when accurate measurements have not been made, the
331 Contracting Officer shall consult with the Contractor prior to making a final determination of the
332 quantity delivered for that period of time.

333 (e) The Contracting Officer shall not be responsible for the control, carriage,
334 handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to this
335 MOA beyond the delivery points specified in subdivision (a) of this Article.

336 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

337 6. (a) The Contractor has established a measuring program satisfactory to the
338 Contracting Officer. The Contractor shall ensure that all surface water delivered for M&I
339 purposes within the Contractor's Service Area is measured at each M&I service connection. The
340 water measuring devices or water measuring methods of comparable effectiveness must be
341 acceptable to the Contracting Officer. The Contractor shall be responsible for installing,
342 operating, and maintaining and repairing all such measuring devices and implementing all such
343 water measuring methods at no cost to the United States. The Contractor shall use the
344 information obtained from such water measuring devices or water measuring methods to ensure
345 its proper management of the water, to bill water users for water delivered by the Contractor;
346 and, if applicable, to record water delivered for M&I purposes by customer class as defined in
347 the Contractor's water conservation plan provided for in Article 26 of this MOA. Nothing herein

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

352 (b) To the extent the information has not otherwise been provided, upon
353 execution of this MOA, the Contractor shall provide to the Contracting Officer a written report
354 describing the measurement devices or water measuring methods being used or to be used to
355 implement subdivision (a) of this Article and identifying the M&I service connections or
356 alternative measurement programs approved by the Contracting Officer, at which such
357 measurement devices or water measuring methods are being used, and, if applicable, identifying
358 the locations at which such devices and/or methods are not yet being used including a time
359 schedule for implementation at such locations. The Contracting Officer shall advise the
360 Contractor in writing within 60 days as to the adequacy and necessary modifications, if any, of
361 the measuring devices or water measuring methods identified in the Contractor's report and if the
362 Contracting Officer does not respond in such time, they shall be deemed adequate. If the
363 Contracting Officer notifies the Contractor that the measuring devices or methods are
364 inadequate, the parties shall within 60 days following the Contracting Officer's response,
365 negotiate in good faith the earliest practicable date by which the Contractor shall modify said
366 measuring devices and/or measuring methods as required by the Contracting Officer to ensure
367 compliance with subdivision (a) of this Article.

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

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

374 (e) The Contractor shall inform the Contracting Officer on or before the 20th
375 calendar day of each month of the quantity of M&I Water taken during the preceding month.

376 RATES AND METHOD OF PAYMENT FOR WATER

377 7. (a) The Contractor shall pay the United States as provided in this Article for
378 all Delivered Water at Rates, Charges, and the Tiered Pricing Component established in
379 accordance with (i) the Secretary's then-existing ratesetting policy for M&I Water. Such
380 ratesetting policy shall be amended, modified, or superceded only through a public notice and
381 comment procedure; (ii) applicable Federal Reclamation law and associated rules and
382 regulations, or policies; and (iii) other applicable provisions of this MOA. Payments shall be
383 made by cash transaction, electronic funds transfer, or any other mechanism as may be agreed to
384 in writing by the Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing
385 Component applicable to the Contractor upon execution of this MOA are set forth in Exhibit
386 "B," as may be revised annually.

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

389 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
390 provide the Contractor an estimate of the Charges for Project Water that will be applied to the
391 period October 1, of the current Calendar Year, through September 30, of the following Calendar
392 Year, and the basis for such estimate. The Contractor shall be allowed not less than two months
393 to review and comment on such estimates. On or before September 15 of each Calendar Year,

394 the Contracting Officer shall notify the Contractor in writing of the Charges to be in effect during
395 the period October 1 of the current Calendar Year, through September 30, of the following
396 Calendar Year, and such notification shall revise Exhibit "B."

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

404 (c) At the time the Contractor submits the initial schedule for the delivery of
405 Project Water for each Year pursuant to subdivision (b) of Article 4 of this MOA, the Contractor
406 shall make an advance payment to the United States equal to the total amount payable pursuant
407 to the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled
408 to be delivered pursuant to this MOA during the first two calendar months of the Year. Before
409 the end of the first month and before the end of each calendar month thereafter, the Contractor
410 shall make an advance payment to the United States, at the Rate(s) set under subdivision (a) of
411 this Article, for the Water Scheduled to be delivered pursuant to this MOA during the second
412 month immediately following. Adjustments between advance payments for Water Scheduled
413 and payments at Rates due for Water Delivered shall be made before the end of the following
414 month; Provided, That any revised schedule submitted by the Contractor pursuant to Article 4 of
415 this MOA which increases the amount of Water Delivered pursuant to this MOA during any
416 month shall be accompanied with appropriate advance payment, at the Rates then in effect, to

417 assure that Project Water is not delivered to the Contractor in advance of such payment. In any
418 month in which the quantity of Water Delivered to the Contractor pursuant to this MOA equals
419 the quantity of Water Scheduled and paid for by the Contractor, no additional Project Water shall
420 be delivered to the Contractor unless and until an advance payment at the Rates then in effect for
421 such additional Project Water is made. Final adjustment between the advance payments for the
422 Water Scheduled and payments for the quantities of Water Delivered during each Year pursuant
423 to this MOA shall be made as soon as practicable, but no later than April 30th of the following
424 Year, or 60 days after the delivery of Project Water carried over under subdivision (g) of Article
425 3 of this MOA if such water is not delivered by the last day of February.

426 (d) The Contractor shall also make a payment in addition to the Rate(s) in
427 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
428 appropriate Tiered Pricing Component then in effect, before the end of the month following the
429 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered
430 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be
431 consistent with the quantities of M&I Water Delivered as shown in the water delivery report for
432 the subject month prepared by the Contracting Officer. The water delivery report shall be
433 deemed a bill for the payment of Charges and the applicable Tiered Pricing Component for
434 Water Delivered. Adjustment for overpayment or underpayment of Charges shall be made
435 through the adjustment of payments due to the United States for Charges for the next month.
436 Any amount to be paid for past due payment of Charges and the Tiered Pricing Component shall
437 be computed pursuant to Article 20 of this MOA.

438 (e) The Contractor shall pay for any Water Delivered under subdivision (a),
439 (f), or (g) of Article 3 of this MOA as determined by the Contracting Officer pursuant to

440 applicable statutes, associated regulations, any applicable provisions of guidelines or ratesetting
441 policies; Provided, That the Rate for Water Delivered under subdivision (f) of Article 3 of this
442 MOA shall be no more than the otherwise applicable Rate for M&I Water under subdivision (a)
443 of this Article.

444 (f) Payments to be made by the Contractor to the United States under this
445 MOA may be paid from any revenues available to the Contractor.

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

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

458 (i) The parties acknowledge and agree that the efficient administration of this
459 MOA is their mutual goal. Recognizing that experience has demonstrated that mechanisms,
460 policies, and procedures used for establishing Rates, Charges, and the Tiered Pricing
461 Component, and/or for making and allocating payments, other than those set forth in this Article
462 may be in the mutual best interest of the parties, it is expressly agreed that the parties may enter

463 into agreements to modify the mechanisms, policies, and procedures for any of those purposes
464 while this MOA is in effect without amending this MOA.

465 (j) (1) Beginning at such time as deliveries of Project Water in a Year
466 exceed 80 percent of the Contract Total, then before the end of the month following the month of
467 delivery the Contractor shall make an additional payment to the United States equal to the
468 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water
469 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the
470 Contract Total, shall equal one-half of the difference between the Rate established under
471 subdivision (a) of this Article and the M&I Full Cost Water Rate, whichever is applicable. The
472 Tiered Pricing Component for the amount of Water Delivered which exceeds 90 percent of the
473 Contract Total shall equal the difference between (i) the Rate established under subdivision (a) of
474 this Article and (ii) the M&I Full Cost Water Rate.

475 (2) Omitted.

476 (3) For purposes of determining the applicability of the Tiered Pricing
477 Component pursuant to this Article, Water Delivered shall include Project Water that the
478 Contractor transfers to others but shall not include Project Water transferred to the Contractor,
479 nor shall it include the additional water provided to the Contractor under the provisions of
480 subdivision (f) of Article 3 of this MOA.

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

489 (1) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the
490 CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates
491 adjusted upward or downward to reflect the changed costs, if any, incurred by the Contracting
492 Officer in the delivery of the transferred Project Water to the transferee's point of delivery in
493 accordance with the then applicable Project ratesetting policy. If the Contractor is receiving
494 lower Rates and Charges because of inability to pay and is transferring Project Water to another
495 entity whose Rates and Charges are not adjusted due to inability to pay, the Rates and Charges
496 for transferred Project Water shall be the Contractor's Rates and Charges and will not be
497 adjusted to reflect the Contractor's inability to pay.

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

500 (n) With respect to the Rates for M&I water, the Contractor asserts that it is
501 not legally obligated to pay any Project deficits claimed by the United States to have accrued as
502 of the date of this MOA or deficit-related interest charges thereon. By entering into this MOA,
503 the Contractor does not waive any legal rights or remedies that it may have with respect to such
504 disputed issues. Notwithstanding the execution of this MOA and payments made hereunder, the
505 Contractor may challenge in the appropriate administrative or judicial forums: (1) the existence,
506 computation, or imposition of any deficit charges accruing during the term of the Existing
507 Contract and any preceding interim renewal contracts, if applicable; (2) interest accruing on any
508 such deficits; (3) the inclusion of any such deficit charges or interest in the Rates; (4) the
509 application by the United States of payments made by the Contractor under its Existing Contract
510 and any preceding interim renewal contracts, if applicable; and (5) the application of such
511 payments in the Rates. The Contracting Officer agrees that the Contractor shall be entitled to the

512 benefit of any administrative or judicial ruling in favor of any Project M&I contractor on any of
513 these issues, and credits for payments heretofore made, Provided, That the basis for such ruling
514 is applicable to the Contractor.

515 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

516 8. The Contractor and the Contracting Officer concur that, as of the effective date of
517 this MOA, the Contractor has no non-interest bearing O&M deficits and shall have no further
518 liability therefor.

519 SALES, TRANSFERS, OR EXCHANGES OF WATER

520 9. (a) The right to receive Project Water provided for in this MOA may be sold,
521 transferred, or exchanged to others for reasonable and beneficial uses within the State of
522 California if such sale, transfer, or exchange is authorized by applicable Federal and State laws,
523 and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project
524 Water under this MOA may take place without the prior written approval of the Contracting
525 Officer, except as provided for in subdivision (b) of this Article, and no such sales, transfers, or
526 exchanges shall be approved absent all appropriate environmental documentation, including but
527 not limited to, documents prepared pursuant to NEPA and ESA. Such environmental
528 documentation should include, as appropriate, an analysis of ground-water impacts and
529 economic and social effects, including environmental justice, of the proposed water transfers on
530 both the transferor and transferee.

531 (b) In order to facilitate efficient water management by means of water
532 transfers of the type historically carried out among Project Contractors located within the same
533 geographical area and to allow the Contractor to participate in an accelerated water transfer
534 program during the term of this MOA, the Contracting Officer shall prepare, as appropriate, all

535 necessary environmental documentation including, but not limited to, documents prepared
536 pursuant to NEPA and ESA, analyzing annual transfers within such geographical areas, and the
537 Contracting Officer shall determine whether such transfers comply with applicable law.
538 Following the completion of the environmental documentation, such transfers addressed in such
539 documentation shall be conducted with advance notice to the Contracting Officer, but shall not
540 require prior written approval by the Contracting Officer. Such environmental documentation
541 and the Contracting Officer's compliance determination shall be reviewed every five years and
542 updated, as necessary, prior to the expiration of the then-existing five-year period. All
543 subsequent environmental documentation shall include an alternative to evaluate not less than the
544 quantity of Project Water historically transferred within the same geographical area.

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

556 (d) For the purpose of determining whether Section 3405(a)(1)(M) of the
557 CVPIA applies to the Contractor as a transferor or transferee of Project Water, the Contracting

558 Officer acknowledges that the Contractor is within a county, watershed, or other area of origin,
559 as those terms are utilized under California law, of water that constitutes the natural flow of the
560 Sacramento River and its tributaries above the confluence of the American and Sacramento
561 Rivers.

562 APPLICATION OF PAYMENTS AND ADJUSTMENTS

563 10. (a) The amount of any overpayment by the Contractor of the Contractor's
564 O&M, capital, and deficit (if any) obligations for the Year shall be applied first to any current
565 liabilities of the Contractor arising out of this MOA then due and payable. Overpayments of
566 more than \$1,000 shall be refunded at the Contractor's request. In lieu of a refund, any amount
567 of such overpayment, at the option of the Contractor, may be credited against amounts to become
568 due to the United States by the Contractor. With respect to overpayment, such refund or
569 adjustment shall constitute the sole remedy of the Contractor or anyone having or claiming to
570 have the right to the use of any of the Project Water supply provided for herein. All credits and
571 refunds of overpayments shall be made within 30 days of the Contracting Officer obtaining
572 direction as to how to credit or refund such overpayment in response to the notice to the
573 Contractor that it has finalized the accounts for the Year in which the overpayment was made.

574 (b) All advances for miscellaneous costs incurred for work requested by the
575 Contractor pursuant to Article 25 of this MOA shall be adjusted to reflect the actual costs when
576 the work has been completed. If the advances exceed the actual costs incurred, the difference
577 will be refunded to the Contractor. If the actual costs exceed the Contractor's advances, the
578 Contractor will be billed for the additional costs pursuant to Article 25.

579 TEMPORARY REDUCTIONS--RETURN FLOWS

580 11. (a) Subject to: (i) the authorized purposes and priorities of the Project and the
581 requirements of Federal law; and (ii) the obligations of the United States under existing
582 contracts, or renewals thereof, providing for water deliveries from the Project, the Contracting

583 Officer shall make all reasonable efforts to optimize Project Water deliveries to the Contractor as
584 provided in this MOA.

585 (b) The Contracting Officer may temporarily discontinue or reduce the
586 quantity of Water Delivered to the Contractor as herein provided for the purposes of
587 investigation, inspection, maintenance, repair, or replacement of any of the Project facilities or
588 any part thereof necessary for the delivery of Project Water to the Contractor, but so far as
589 feasible the Contracting Officer will give the Contractor due notice in advance of such temporary
590 discontinuance or reduction, except in case of emergency, in which case no notice need be given;
591 Provided, That the United States shall use its best efforts to avoid any discontinuance or
592 reduction in such service. Upon resumption of service after such reduction or discontinuance,
593 and if requested by the Contractor, the United States will, if possible, deliver the quantity of
594 Project Water which would have been delivered hereunder in the absence of such discontinuance
595 or reduction.

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

602 CONSTRAINTS ON THE AVAILABILITY OF WATER

603 12. (a) In its operation of the Project, the Contracting Officer will use all
604 reasonable means to guard against a Condition of Shortage in the quantity of water to be made
605 available to the Contractor pursuant to this MOA. In the event the Contracting Officer

606 determines that a Condition of Shortage appears probable, the Contracting Officer will notify the
607 Contractor of said determination as soon as practicable.

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

613 (c) Omitted.

614 (d) Project Water furnished under this MOA will be allocated in accordance
615 with the then-existing Project M&I Water Shortage Policy. Such policy shall be amended,
616 modified, or superceded only through a public notice and comment procedure.

617 (e) By entering into this MOA, the Contractor does not waive any legal rights
618 or remedies it may have to file or participate in any administrative or judicial proceeding
619 contesting (i) the sufficiency of the manner in which any Project M&I Water Shortage Policy
620 adopted after the effective date of this MOA was promulgated; (ii) the substance of such a
621 policy; or (iii) the applicability of such a policy. By agreeing to the foregoing, the Contracting
622 Officer does not waive any legal defenses or remedies that it may then have to assert in such a
623 proceeding.

624 UNAVOIDABLE GROUNDWATER PERCOLATION

625 13. Omitted.

626 RULES AND REGULATIONS

627 14. The parties agree that the delivery of Project Water or use of Federal facilities
628 pursuant to this MOA is subject to Federal Reclamation law, as amended and supplemented, and

629 the rules and regulations promulgated by the Secretary of the Interior under Federal Reclamation
630 law.

631 WATER AND AIR POLLUTION CONTROL

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

635 QUALITY OF WATER

636 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant
637 to this MOA shall be operated and maintained to enable the United States to deliver Project
638 Water to the Contractor in accordance with the water quality standards specified in subsection
639 2(b) of the Act of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of
640 October 27, 1986 (100 Stat. 3050) or other existing Federal laws. The United States is under no
641 obligation to construct or furnish water treatment facilities to maintain or to improve the quality
642 of Water Delivered to the Contractor pursuant to this MOA. The United States does not warrant
643 the quality of Water Delivered to the Contractor pursuant to this MOA.

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

651 WATER ACQUIRED BY THE CONTRACTOR
652 OTHER THAN FROM THE UNITED STATES

653 17. Omitted.

654

OPINIONS AND DETERMINATIONS

655

18. (a) Where the terms of this MOA provide for actions to be based upon the

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opinion or determination of either party to this MOA, said terms shall not be construed as

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permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or

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determinations. Both parties, notwithstanding any other provisions of this MOA, expressly

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reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,

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or unreasonable opinion or determination. Each opinion or determination by either party shall be

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provided in a timely manner. Nothing in subdivision (a) of Article 18 of this MOA is intended to

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or shall affect or alter the standard of judicial review applicable under Federal law to any opinion

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or determination implementing a specific provision of Federal law embodied in statute or

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regulation.

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(b) The Contracting Officer shall have the right to make determinations

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necessary to administer this MOA that are consistent with the provisions of this MOA, the laws

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of the United States and of the State of California, and the rules and regulations promulgated by

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the Secretary of the Interior. Such determinations shall be made in consultation with the

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Contractor to the extent reasonably practicable.

670

COORDINATION AND COOPERATION

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19. (a) In order to further their mutual goals and objectives, the Contracting

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Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and

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with other affected Project Contractors, in order to improve the operation and management of the

674

Project. The communication, coordination, and cooperation regarding operations and

675 management shall include, but not be limited to, any action which will or may materially affect
676 the quantity or quality of Project Water supply, the allocation of Project Water supply, and
677 Project financial matters including, but not limited to, budget issues. The communication,
678 coordination, and cooperation provided for hereunder shall extend to all provisions of this MOA.
679 Each party shall retain exclusive decision making authority for all actions, opinions, and
680 determinations to be made by the respective party.

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

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

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

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

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

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

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

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

710 CHARGES FOR DELINQUENT PAYMENTS

711 20. (a) The Contractor shall be subject to interest, administrative and penalty
712 charges on delinquent installments or payments. When a payment is not received by the due
713 date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond
714 the due date. When a payment becomes sixty (60) days delinquent, the Contractor shall pay an
715 administrative charge to cover additional costs of billing and processing the delinquent payment.
716 When a payment is delinquent ninety (90) days or more, the Contractor shall pay an additional
717 penalty charge of six (6%) percent per year for each day the payment is delinquent beyond the
718 due date. Further, the Contractor shall pay any fees incurred for debt collection services
719 associated with a delinquent payment.

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

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

728

EQUAL OPPORTUNITY

729

21. Omitted.

730

GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

731

22. Omitted.

732

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

733

23. Omitted.

734

PRIVACY ACT COMPLIANCE

735

24. Omitted.

736

CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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25. In addition to all other payments to be made by the Contractor pursuant to this

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MOA, the Contractor shall pay to the United States, within 60 days after receipt of a bill and

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detailed statement submitted by the Contracting Officer to the Contractor for such specific items

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of direct cost incurred by the United States for work requested by the Contractor associated with

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this MOA plus indirect costs in accordance with applicable Bureau of Reclamation policies and

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procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in

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writing in advance by the Contractor. This Article shall not apply to costs for routine contract

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administration.

745

WATER CONSERVATION

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

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Federally constructed or Federally financed facilities pursuant to this MOA, the Contractor shall

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be implementing an effective water conservation and efficiency program based on the

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Contractor's water conservation plan that has been determined by the Contracting Officer to meet

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the conservation and efficiency criteria for evaluating water conservation plans established under

751 Federal law. The water conservation and efficiency program shall contain definite water
752 conservation objectives, appropriate economically feasible water conservation measures, and
753 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this
754 MOA shall be contingent upon the Contractor's continued implementation of such water
755 conservation program. In the event the Contractor's water conservation plan or any revised water
756 conservation plan completed pursuant to subdivision (d) of Article 26 of this MOA have not yet
757 been determined by the Contracting Officer to meet such criteria, due to circumstances which the
758 Contracting Officer determines are beyond the control of the Contractor, water deliveries shall be
759 made under this MOA so long as the Contractor diligently works with the Contracting Officer to
760 obtain such determination at the earliest practicable date, and thereafter the Contractor
761 immediately begins implementing its water conservation and efficiency program in accordance
762 with the time schedules therein.

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

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

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

777 (e) If the Contractor is engaged in direct ground-water recharge, such activity
778 shall be described in the Contractor's water conservation plan.

779 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

780 27. Except as specifically provided in Article 17 of this MOA, the provisions of this
781 MOA shall not be applicable to or affect non-Project water or water rights now owned or
782 hereafter acquired by the Contractor or any user of such water within the Contractor's Service
783 Area. Any such water shall not be considered Project Water under this MOA. In addition, this
784 MOA shall not be construed as limiting or curtailing any rights which the Contractor or any
785 water user within the Contractor's Service Area acquires or has available under any other
786 contract pursuant to Federal Reclamation law.

787 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

788 28. Omitted.

789 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

790 29. The expenditure or advance of any money or the performance of any obligation of
791 the United States under this MOA shall be contingent upon appropriation or allotment of funds.
792 Absence of appropriation or allotment of funds shall not relieve the Contractor from any
793 obligations under this MOA. No liability shall accrue to the United States in case funds are not
794 appropriated or allotted.

795 BOOKS, RECORDS, AND REPORTS

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

805 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

833 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer
834 referring any matter to Department of Justice, the party shall provide to the other party 30 days'
835 written notice of the intent to take such action; Provided, That such notice shall not be required
836 where a delay in commencing an action would prejudice the interests of the party that intends to
837 file suit. During the 30-day notice period, the Contractor and the Contracting Officer shall meet
838 and confer in an attempt to resolve the dispute. Except as specifically provided, nothing herein is
839 intended to waive or abridge any right or remedy that the Contractor or the United States may
840 have.

841 OFFICIALS NOT TO BENEFIT

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

845 CHANGES IN CONTRACTOR'S SERVICE AREA

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

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

860

FEDERAL LAWS

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36. By entering into this MOA, the Contractor does not waive its rights to contest the

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validity or application in connection with the performance of the terms and conditions of this

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MOA of any Federal law or regulation; Provided, That the Contractor agrees to comply with the

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terms and conditions of this MOA unless and until relief from application of such Federal law or

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regulation to the implementing provision of the Contract is granted by a court of competent

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jurisdiction.

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NOTICES

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37. Any notice, demand, or request authorized or required by this MOA shall be

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deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or

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delivered to the Area Manager, Bureau of Reclamation, Northern California Area Office, 16349

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Shasta Dam Boulevard, Shasta Lake, California 96019, and on behalf of the United States, when

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mailed, postage prepaid, or delivered to the Forest Supervisor, United States Forest Service, 825

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North Humboldt Street, Willows, California 95988. The designation of the addressee or the

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address may be changed by notice given in the same manner as provided in this Article for other

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notices.

876

CONFIRMATION OF CONTRACT

877

38. Omitted.

878 IN WITNESS WHEREOF, the parties hereto have executed this MOA as of the day
879
880 and year first above written.

881 THE UNITED STATES OF AMERICA

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

885 UNITED STATES DEPARTMENT OF AGRICULTURE

886 By: _____
887 Regional Forester

888 (I:\LTRC\Draft LTRC\06-22-2004 Forest Service - Salt Creek Final LTRC Draft Contract.doc)

EXHIBIT A

Map of Contractor's Service Area
United States Forest Service – Black Butte Project

EXHIBIT B

2004 Water Rates and Charges
United States Forest Service – Black Butte Project

	<u>M&I</u>
<u>COST OF SERVICE RATES:</u>	
Capital Rates	\$6.68
O&M Rates:	
Water Marketing	5.01
Storage	6.38
Deficit Rates:	
Interest Bearing	0.00
CFO/PRF Adj. Rate 2/	<u>0.00</u>
TOTAL	<u>\$18.07</u>
 <u>M&I FULL-COST RATE:</u>	 <u>\$22.05</u>

CHARGES UNDER P.L. 102-575 TO THE
RESTORATION FUND 1/

Restoration Payments (3407(d)(2)(A))	<u>\$15.64</u>
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1/ 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).

2/ Chief Financial Officer (CFO) adjustment and Provision for Replacement (PFR) expense is being distributed over a 5-year period beginning in FY 2003 for those contractors that requested those costs be deferred.