

Irrigation and Other
 R. O. Final Draft 10/08-2004
 A. O. Draft 09/24-2004
 A. O. Draft 07/29-2004
 R. O. CVP-Wide 04/19-2004
 Contract No.
 14-06-200-1911A-LTR1

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

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

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Exhibit A – Map of Contractor’s Service Area

Exhibit B – Water Rate Exhibit

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6 AND
7 LEWIS CREEK WATER DISTRICT
8 PROVIDING FOR PROJECT WATER SERVICE
9 FROM FRIANT DIVISION

10 THIS CONTRACT, made this _____ day of _____, 20_____,
11 in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or
12 supplementary thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844),
13 as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented,
14 July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263),
15 October 27, 1986 (100 Stat. 3050), as amended, and Title XXXIV of the Act of October 30, 1992
16 (106 Stat. 4706), all collectively hereinafter referred to as Federal Reclamation law, between
17 THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, and
18 LEWIS CREEK WATER DISTRICT, hereinafter referred to as the Contractor, a public agency
19 of the State of California, duly 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 Friant Dam (thereby creating Millerton Lake) and the Friant-Kern and Madera Canals, hereinafter collectively referred to as the Friant Division 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, pursuant to Section 8 of the Act of June 17, 1902 (32 Stat. 388), the United States has acquired water rights and other rights to the flows of the San Joaquin River, including without limitation the permits issued as the result of Decision 935 by the California State Water Resources Control Board and the contracts described in subdivision (n) of Article 3 of this Contract, pursuant to which the Contracting Officer develops, diverts, stores and delivers Project Water stored or flowing through Millerton Lake in accordance with State and Federal law for the benefit of Project Contractors in the Friant Division; and

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

42 [4th] WHEREAS, the Contractor and the United States entered into Contract
43 No. 14-06-200-1911A, as amended, which established terms for the delivery to the Contractor of
44 Project Water from the Friant Division from February 19, 1965, to February 28, 1995; and

45 [5th] WHEREAS, the Contractor and the United States have pursuant to subsection
46 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into
47 interim renewal contract(s) identified as Contract No(s). 14-06-200-1911A-IR1, -IR2, -IR3, and -
48 -IR4, the current of which is hereinafter referred to as the Existing Contract, which provided for
49 continued water service to the Contractor from the Friant Division from March 1, 2004, through
50 February 28, 2006; and

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

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

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

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

63 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the
64 Contracting Officer that the Contractor has utilized the Project Water supplies available to it for

65 reasonable and beneficial use and/or has demonstrated projected future demand for water use
66 such that the Contractor has the capability and expects to utilize fully for reasonable and
67 beneficial use the quantity of Project Water to be made available to it pursuant to this Contract;
68 and

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

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

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

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

84 [15th] WHEREAS, the parties intend by this Contract to develop a more cooperative
85 relationship in order to achieve their mutual goals; and

86 [15.1] WHEREAS, during uncontrolled seasons, Friant Division Project Contractors
87 utilize undependable Class 2 Water in their service areas to, among other things, assist in the

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

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

95 [16th] WHEREAS, the United States and the Contractor are willing to enter into this
96 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

99 DEFINITIONS

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

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

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

107 (b2) “Class 1 Water” shall mean that supply of water stored in or flowing
108 through Millerton Lake which, subject to the contingencies hereinafter described in Articles 3,
109 11, and 12 of this Contract, will be available for delivery from Millerton Lake and the
110 Friant-Kern and Madera Canals as a dependable water supply during each Year;

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

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

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

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

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

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

132 (h) "Eligible Lands" shall mean all lands to which Irrigation Water may be
133 delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982
134 (96 Stat. 1263), as amended, hereinafter referred to as the RRA;

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

138 (j) "Full Cost Rate" shall mean an annual rate as determined by the
139 Contracting Officer that shall amortize the expenditures for construction properly allocable to the
140 Project irrigation or municipal and industrial (M&I) functions, as appropriate, of facilities in
141 service including all O&M deficits funded, less payments, over such periods as may be required
142 under Federal Reclamation law, or applicable contract provisions. Interest will accrue on both
143 the construction expenditures and funded O&M deficits from October 12, 1982, on costs
144 outstanding at that date, or from the date incurred in the case of costs arising subsequent to
145 October 12, 1982, and shall be calculated in accordance with subsections 202(3)(B) and (3)(C) of
146 the RRA. The Full Cost Rate includes actual operation, maintenance, and replacement costs
147 consistent with Section 426.2 of the Rules and Regulations for the RRA;

148 (k) "Ineligible Lands" shall mean all lands to which Irrigation Water may not
149 be delivered in accordance with Section 204 of the RRA;

150 (l) "Irrigation Full Cost Water Rate" shall mean the Full Cost Rate applicable
151 to the delivery of Irrigation Water;

152 (m) "Irrigation Water" shall mean water made available from the Project that
153 is used primarily in the production of agricultural crops or livestock, including domestic use
154 incidental thereto, and watering of livestock;

155 (n) "Landholder" shall mean a party that directly or indirectly owns or leases
156 nonexempt land, as provided in 43 CFR 426.2;

157 (n2) "Long Term Historic Average" shall mean the average of the final forecast
158 of Water Made Available to the Contractor pursuant to this Contract and the contracts referenced
159 in the fourth and fifth Explanatory Recitals of this Contract;

160 (o) Omitted;

161 (p) "Municipal and Industrial (M&I) Full Cost Water Rate" shall mean the
162 Full Cost Rate applicable to the delivery of M&I water.

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

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

170 (r2) "Other Water" shall mean water from the Project other than Irrigation
171 Water as described in subdivision (m) of this Article, which is used for a purpose that is
172 considered to be an irrigation use pursuant to State law such as the watering of landscaping or
173 pasture for animals (e.g., horse) which are kept for the personal enjoyment. For purposes of this
174 Contract, Other Water shall be paid for at Rates and Charges identical to those established for
175 M&I water pursuant to the then-current M&I Ratesetting Policy;

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

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

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

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

187 (w) Omitted;

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

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

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

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

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

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

204 TERM OF CONTRACT

205 2. (a) This Contract shall be effective March 1, 20_____, through February 28,
206 20_____, and supersedes the Existing Contract. In the event the Contractor wishes to renew
207 this Contract beyond February 28, 20_____, the Contractor shall submit a request for renewal in
208 writing to the Contracting Officer no later than two years prior to the date this Contract expires.
209 The renewal of this Contract insofar as it pertains to the furnishing of Irrigation Water shall be
210 governed by subdivision (b) of this Article.

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

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

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

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

241 (c) Omitted.

242 (d) The Contracting Officer shall make a determination ten years after the
243 date of execution of this Contract, and every five years thereafter during the term of this
244 Contract, of whether a conversion of the relevant portion of this Contract to a contract under

245 subsection 9(d) of the Reclamation Project Act of 1939 can be accomplished pursuant to the Act
246 of July 2, 1956 (70 Stat 483). The Contracting Officer shall also make a determination ten years
247 after the date of execution of this Contract and every five years thereafter during the term of this
248 Contract of whether a conversion of the relevant portion of this Contract to a contract under
249 subsection 9(c)(1) of the Reclamation Project Act of 1939 can be accomplished.

250 Notwithstanding any provision of this Contract, the Contractor reserves and shall have all rights
251 and benefits under the Act of July 2, 1956 (70 Stat. 483). The Contracting Officer anticipates
252 that during the term of this Contract, all authorized Project construction expected to occur will
253 have occurred, and on that basis the Contracting Officer agrees by that date to allocate all costs
254 that are properly assignable to the Contractor, and agrees further that, at any time after such
255 allocation is made, and subject to satisfaction of the condition set out in this subdivision, this
256 Contract shall, at the request of the Contractor, be converted to a contract under subsection 9(d)
257 or 9(c)(1), whichever is applicable, of the Reclamation Project Act of 1939, subject to applicable
258 Federal law and under stated terms and conditions mutually agreeable to the Contractor and the
259 Contracting Officer. A condition for such conversion to occur shall be a determination by the
260 Contracting Officer that, account being taken of the amount credited to return by the Contractor
261 as provided for under Federal Reclamation law, the remaining amount of construction costs
262 assignable for ultimate return by the Contractor can probably be repaid to the United States
263 within the term of a contract under subsection 9(d) or 9(c)(1), whichever is applicable. If the
264 remaining amount of costs that are properly assignable to the Contractor cannot be determined
265 during the term of this Contract, the Contracting Officer shall notify the Contractor, and provide
266 the reason(s) why such a determination could not be made. Further, the Contracting Officer shall
267 make such a determination as soon thereafter as possible so as to permit, upon request of the

268 Contractor and satisfaction of the condition set out above, conversion to a contract under
269 subsection 9(d) or 9(c)(1), whichever is applicable. In the event such determination of costs has
270 not been made at a time which allows conversion of this Contract during the term of this
271 Contract or the Contractor has not requested conversion of this Contract within such term, the
272 parties shall incorporate in any subsequent renewal contract as described in subdivision (b) of
273 this Article a provision that carries forth in substantially identical terms the provisions of this
274 subdivision.

275 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

276 3. (a) During each Year, consistent with all applicable State water rights,
277 permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of
278 this Contract, the Contracting Officer shall make available for delivery to the Contractor 1,450
279 acre-feet of Class 1 Water for irrigation purposes. Water Delivered to the Contractor in
280 accordance with this subdivision shall be scheduled and paid for pursuant to the provisions of
281 Articles 4 and 7 of this Contract.

282 (b) Omitted.

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

285 (d) The Contractor shall make reasonable and beneficial use of all water
286 furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu),
287 groundwater banking programs, surface water storage programs, and other similar programs
288 utilizing Project Water or other water furnished pursuant to this Contract conducted within the
289 Contractor's Service Area which are consistent with applicable State law and result in use
290 consistent with Federal Reclamation law will be allowed; Provided, That any direct recharge

291 program(s) is (are) described in the Contractor's water conservation plan submitted pursuant to
292 Article 26 of this Contract; Provided, further, That such water conservation plan demonstrates
293 sufficient lawful uses exist in the Contractor's Service Area so that using a long-term average,
294 the quantity of Delivered Water is demonstrated to be reasonable for such uses and in
295 compliance with Federal Reclamation law. Groundwater recharge programs, groundwater
296 banking programs, surface water storage programs, and other similar programs utilizing Project
297 Water or other water furnished pursuant to this Contract conducted outside the Contractor's
298 Service Area may be permitted upon written approval of the Contracting Officer, which approval
299 will be based upon environmental documentation, Project Water rights, and Project operational
300 concerns. The Contracting Officer will address such concerns in regulations, policies, or
301 guidelines.

302 (e) The Contractor shall comply with requirements applicable to the
303 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution
304 of this Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA),
305 as amended, that are within the Contractor's legal authority to implement. The Existing
306 Contract, which evidences in excess of 34 years of diversions for irrigation purposes of the
307 quantities of water provided in subdivision (a) of Article 3 of this Contract, will be considered in
308 developing an appropriate baseline for the biological assessment(s) prepared pursuant to the
309 ESA, and any other needed environmental review. Nothing herein shall be construed to prevent
310 the Contractor from challenging or seeking judicial relief in a court of competent jurisdiction
311 with respect to any biological opinion or other environmental documentation referred to in this
312 Article.

313 (f) Subject to subdivisions (l) and (n) of Article 3 of this Contract, following
314 the declaration of Water Made Available under Article 4 of this Contract, the Contracting Officer
315 will make a determination whether Project Water, or other water available to the Project, can be
316 made available to the Contractor in addition to the Contract Total under Article 3 of this Contract
317 during the Year without adversely impacting other Project Contractors. At the request of the
318 Contractor, the Contracting Officer will consult with the Contractor prior to making such a
319 determination. Subject to subdivisions (l) and (n) of Article 3 of this Contract, if the Contracting
320 Officer determines that Project Water, or other water available to the Project, can be made
321 available to the Contractor, the Contracting Officer will announce the availability of such water
322 and shall so notify the Contractor as soon as practicable. The Contracting Officer will thereafter
323 meet with the Contractor and other Project Contractors capable of taking such water to determine
324 the most equitable and efficient allocation of such water. If the Contractor requests the delivery
325 of any quantity of such water, the Contracting Officer shall make such water available to the
326 Contractor in accordance with applicable statutes, regulations, guidelines, and policies.

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

334 (h) The Contractor’s right pursuant to Federal Reclamation law and applicable
335 State law to the reasonable and beneficial use of Water Delivered pursuant to this Contract

336 during the term thereof and any subsequent renewal contracts, as described in Article 2 of this
337 Contract, during the terms thereof shall not be disturbed so long as the Contractor shall fulfill all
338 of its obligations under this Contract and any renewals thereof. Nothing in the preceding
339 sentence shall affect the Contracting Officer's ability to impose shortages under Article 11 or
340 subdivision (b) of Article 12 of this Contract or applicable provisions of any subsequent renewal
341 contracts.

342 (i) Project Water furnished to the Contractor pursuant to this Contract may be
343 delivered for purposes other than those described in subdivisions (m) and (r2) of Article 1 of this
344 Contract upon written approval by the Contracting Officer in accordance with the terms and
345 conditions of such approval.

346 (j) The Contracting Officer shall make reasonable efforts to protect the water
347 rights necessary for the Project and other rights described in the third Explanatory Recital of this
348 Contract and to provide the water available under this Contract. The Contracting Officer shall
349 not object to participation by the Contractor, in the capacity and to the extent permitted by law,
350 in administrative proceedings related to the water rights and other rights described in the third
351 Explanatory Recital of this Contract; Provided, That the Contracting Officer retains the right to
352 object to the substance of the Contractor's position in such a proceeding; Provided further, That
353 in such proceedings the Contracting Officer shall recognize the Contractor has a legal right under
354 the terms of this Contract to use Project Water.

355 (k) Project Water furnished to the Contractor during any month designated in
356 a schedule or revised schedule submitted by the Contractor and approved by the Contracting
357 Officer shall be deemed to have been accepted by the Contractor as Class 1 Water to the extent
358 that Class 1 Water is called for in such schedule for such month and shall be deemed to have

359 been accepted as Class 2 Water to the extent Class 2 Water is called for in such schedule for such
360 month. If in any month the Contractor diverts a quantity of water in addition to the total amount
361 of Class 1 Water and Class 2 Water set forth in the Contractor's approved schedule or revised
362 schedule for such month, such additional diversions shall be charged first against the
363 Contractor's remaining Class 2 Water supply available in the current Year. To the extent the
364 Contractor's remaining Class 2 Water supply available in the current Year is not sufficient to
365 account for such additional diversions, such additional diversions shall be charged against the
366 Contractor's remaining Class 1 Water supply available in the current Year. To the extent the
367 Contractor's remaining Class 1 Water and Class 2 Water supplies available in the current Year are
368 not sufficient to account for such additional diversions, such additional diversions shall be
369 charged first against the Contractor's available Class 2 Water supply and then against the
370 Contractor's available Class 1 Water supply, both for the following Year. Payment for all
371 additional diversions of water shall be made in accordance with Article 7 of this Contract.

372 (l) If the Contracting Officer determines there is a Project Water supply
373 available at Friant Dam as the result of an unusually large water supply not otherwise storable for
374 Project purposes or infrequent and otherwise unmanaged flood flows of short duration, such
375 water will be made available to the Contractor and others under Section 215 of the RRA pursuant
376 to the priorities specified below if the Contractor enters into a temporary contract with the
377 United States not to exceed one year for the delivery of such water or, as otherwise provided for
378 in Federal Reclamation law and associated regulations. Such water may be identified by the
379 Contractor either (i) as additional water to supplement the supply of Class 1 Water and/or Class 2
380 Water made available to it pursuant to this Contract or, (ii) upon written notification to the
381 Contracting Officer, as water to be credited against the Contractor's Class 2 Water supply

382 available pursuant to this Contract. The Contractor shall deliver such water to Eligible Lands, or
383 to Excess Lands in accordance with this Article. The Contracting Officer shall make water
384 determined to be available pursuant to this subsection according to the following priorities: first,
385 to long-term contractors for Class 1 Water and/or Class 2 Water within the Friant Division;
386 second, to long-term contractors in the Cross Valley Division of the Project. The Contracting
387 Officer will consider and seek to accommodate requests from other parties for Section 215 Water
388 for use within the area identified as the Friant Division service area in the environmental
389 assessment developed in connection with the execution of this Contract.

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

394 (n) The rights of the Contractor under this Contract are subject to the terms of
395 the contract for exchange waters, dated July 27, 1939, between the United States and the
396 San Joaquin and Kings River Canal and Irrigation Company, Incorporated, et al., (hereinafter
397 referred to as the Exchange Contractors), Contract No. I1r-1144, as amended. The United States
398 agrees that it will not deliver to the Exchange Contractors thereunder waters of the San Joaquin
399 River unless and until required by the terms of said contract, and the United States further agrees
400 that it will not voluntarily and knowingly determine itself unable to deliver the Exchange
401 Contractors entitled thereto from water that is available or that may become available to it from
402 the Sacramento River and its tributaries or the Sacramento-San Joaquin Delta those quantities
403 required to satisfy the obligations of the United States under said Exchange Contract and under

404 Schedule 2 of the Contract for Purchase of Miller and Lux Water Rights (Contract No. I1r-1145,
405 dated July 27, 1939).

406 TIME FOR DELIVERY OF WATER

407 4. (a) On or about February 20 of each Calendar Year, the Contracting Officer
408 shall announce the Contracting Officer's expected declaration of the Water Made Available.
409 Such declaration will be expressed in terms of both Water Made Available and the Long-Term
410 Historic Average and will be updated monthly, and more frequently if necessary, based on then-
411 current operational and hydrologic conditions and a new declaration with changes, if any, to the
412 Water Made Available will be made. The Contracting Officer shall provide forecasts of Project
413 operations and the basis of the estimate, with relevant supporting information, upon the written
414 request of the Contractor. Concurrently with the declaration of the Water Made Available, the
415 Contracting Officer shall provide the Contractor with the updated Long Term Historic Average.
416 The declaration of Project operations will be expressed in terms of both Water Made Available
417 and the Long Term Historic Average.

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

424 (c) The Contractor shall not schedule Project Water in excess of the quantity
425 of Project Water the Contractor intends to put to reasonable and beneficial use within the

426 Contractor's Service Area or to sell, transfer, or exchange pursuant to Article 9 of this Contract
427 during any Year.

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

441 (e) The Contractor may, during the period from and including November 1 of
442 each Year through and including the last day of February of that Year, request delivery of any
443 amount of the Class 1 Water estimated by the Contracting Officer to be made available to it
444 during the following Year. The Contractor may, during the period from and including January 1
445 of each Year (or such earlier date as may be determined by the Contracting Officer) through and
446 including the last day of February of that Year, request delivery of any amount of Class 2 Water
447 estimated by the Contracting Officer to be made available to it during the following Year. Such
448 water shall hereinafter be referred to as preuse water. Such request must be submitted in writing

449 by the Contractor for a specified quantity of preuse and shall be subject to the approval of the
450 Contracting Officer. Payment for preuse water so requested shall be at the appropriate rate(s) for
451 the following Year in accordance with Article 7 of this Contract and shall be made in advance of
452 delivery of any preuse water. The Contracting Officer shall deliver such preuse water in
453 accordance with a schedule or any revision thereof submitted by the Contractor and approved by
454 the Contracting Officer, to the extent such water is available and to the extent such deliveries
455 will not interfere with the delivery of Project Water entitlements to other Friant Division
456 contractors or the physical maintenance of the Project facilities. The quantities of preuse water
457 delivered pursuant to this subdivision shall be deducted from the quantities of water that the
458 Contracting Officer would otherwise be obligated to make available to the Contractor during the
459 following Year; Provided, That the quantity of preuse water to be deducted from the quantities of
460 either Class 1 Water or Class 2 Water to be made available to the Contractor in the following
461 Year shall be specified by the Contractor at the time the preuse water is requested or as revised in
462 its first schedule for the following Year submitted in accordance with subdivision (b) of this
463 Article, based on the availability of the following Year water supplies as determined by the
464 Contracting Officer.

465 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

470 (b) The Contracting Officer, either directly or through its written agreement(s)
471 with the Operating Non-Federal Entity, shall make all reasonable efforts to maintain sufficient

472 flows and levels of water in Friant-Kern Canal to deliver Project Water to the Contractor at
473 specific turnouts established pursuant to subdivision (a) of this Article.

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

478 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
479 measured and recorded with equipment furnished, installed, operated, and maintained by the
480 United States, or the Operating Non-Federal Entity at the point or points of delivery established
481 pursuant to subdivision (a) of this Article. Upon the request of either party to this Contract, the
482 Contracting Officer shall investigate, or cause to be investigated by the appropriate Operating
483 Non-Federal Entity, the accuracy of such measurements and shall take any necessary steps to
484 adjust any errors appearing therein. For any period of time when accurate measurements have
485 not been made, the Contracting Officer shall consult with the Contractor and the appropriate
486 Operating Non-Federal Entity prior to making a final determination of the quantity delivered for
487 that period of time.

488 (e) Neither the Contracting Officer nor any Operating Non-Federal Entity
489 shall be responsible for the control, carriage, handling, use, disposal, or distribution of Water
490 Delivered to the Contractor pursuant to this Contract beyond the delivery points specified in
491 subdivision (a) of this Article. The Contractor shall indemnify the United States, its officers,
492 employees, agents, and assigns on account of damage or claim of damage of any nature
493 whatsoever for which there is legal responsibility, including property damage, personal injury, or
494 death arising out of or connected with the control, carriage, handling, use, disposal, or

495 distribution of such Water Delivered beyond such delivery points, except for any damage or
496 claim arising out of (i) acts or omissions of the Contracting Officer or any of its officers,
497 employees, agents, or assigns, including the Operating Non-Federal Entity, with the intent of
498 creating the situation resulting in any damage or claim, (ii) willful misconduct of the Contracting
499 Officer or any of its officers, employees, agents, or assigns, including the Operating Non-Federal
500 Entity, (iii) negligence of the Contracting Officer or any of its officers, employees, agents, or
501 assigns including the Operating Non-Federal Entity, or (iv) damage or claims resulting from a
502 malfunction of facilities owned and/or operated by the United States or the Operating
503 Non-Federal Entity.

504 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

505 6. (a) The Contractor has established a measuring program satisfactory to the
506 Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation
507 purposes within the Contractor's Service Area is measured at each agricultural turnout. The
508 water measuring devices or water measuring methods of comparable effectiveness must be
509 acceptable to the Contracting Officer. The Contractor shall be responsible for installing,
510 operating, and maintaining and repairing all such measuring devices and implementing all such
511 water measuring methods at no cost to the United States. The Contractor shall use the
512 information obtained from such water measuring devices or water measuring methods to ensure
513 its proper management of the water and to bill water users for water delivered by the Contractor.
514 Nothing herein contained, however, shall preclude the Contractor from establishing and
515 collecting any charges, assessments, or other revenues authorized by California law. The
516 Contractor shall include a summary of all its annual surface water deliveries in the annual report
517 described in subdivision (c) of Article 26.

518 (b) To the extent the information has not otherwise been provided, upon
519 execution of this Contract, the Contractor shall provide to the Contracting Officer a written
520 report describing the measurement devices or water measuring methods being used or to be used
521 to implement subdivision (a) of this Article and identifying the agricultural turnouts or
522 alternative measurement programs approved by the Contracting Officer, at which such
523 measurement devices or water measuring methods are being used, and, if applicable, identifying
524 the locations at which such devices and/or methods are not yet being used including a time
525 schedule for implementation at such locations. The Contracting Officer shall advise the
526 Contractor in writing within 60 days as to the adequacy and necessary modifications, if any, of
527 the measuring devices or water measuring methods identified in the Contractor's report and if the
528 Contracting Officer does not respond in such time, they shall be deemed adequate. If the
529 Contracting Officer notifies the Contractor that the measuring devices or methods are
530 inadequate, the parties shall within 60 days following the Contracting Officer's response,
531 negotiate in good faith the earliest practicable date by which the Contractor shall modify said
532 measuring devices and/or measuring methods as required by the Contracting Officer to ensure
533 compliance with subdivision (a) of this Article.

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

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

540 (e) The Contractor shall inform the Contracting Officer and the Operating
541 Non-Federal Entity on or before the 20th calendar day of each month of the quantity of Irrigation
542 Water and Other Water taken during the preceding month.

543 RATES AND METHOD OF PAYMENT FOR WATER

544 7. (a) The Contractor shall pay the United States as provided in this Article for
545 all Delivered Water at Rates, Charges, and the Tiered Pricing Component established in
546 accordance with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and
547 the Secretary's then-existing ratesetting policy for M&I water. Such ratesetting policies shall be
548 amended, modified, or superseded only through a public notice and comment procedure;
549 (ii) applicable Federal Reclamation law and associated rules and regulations, or policies; and
550 (iii) other applicable provisions of this Contract. Payments shall be made by cash transaction,
551 electronic funds transfer, or any other mechanism as may be agreed to in writing by the
552 Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing Component
553 applicable to the Contractor upon execution of this Contract are set forth in Exhibit "B," as may
554 be revised annually.

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

557 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
558 provide the Contractor an estimate of the Charges for Project Water that will be applied to the
559 period October 1, of the current Calendar Year, through September 30, of the following Calendar
560 Year, and the basis for such estimate. The Contractor shall be allowed not less than two months
561 to review and comment on such estimates. On or before September 15 of each Calendar Year,
562 the Contracting Officer shall notify the Contractor in writing of the Charges to be in effect during

563 the period October 1 of the current Calendar Year, through September 30, of the following
564 Calendar Year, and such notification shall revise Exhibit "B."

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

572 (c) At the time the Contractor submits the initial schedule for the delivery of
573 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the
574 Contractor shall make an advance payment to the United States equal to the total amount payable
575 pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water
576 scheduled to be delivered pursuant to this Contract during the first two calendar months of the
577 Year. Before the end of the first month and before the end of each calendar month thereafter, the
578 Contractor shall make an advance payment to the United States, at the Rate(s) set under
579 subdivision (a) of this Article, for the Water Scheduled to be delivered pursuant to this Contract
580 during the second month immediately following. Adjustments between advance payments for
581 Water Scheduled and payments at Rates due for Water Delivered shall be made before the end of
582 the following month; Provided, That any revised schedule submitted by the Contractor pursuant
583 to Article 4 of this Contract which increases the amount of Water Delivered pursuant to this
584 Contract during any month shall be accompanied with appropriate advance payment, at the Rates
585 then in effect, to assure that Project Water is not delivered to the Contractor in advance of such

586 payment. In any month in which the quantity of Water Delivered to the Contractor pursuant to
587 this Contract equals the quantity of Water Scheduled and paid for by the Contractor, no
588 additional Project Water shall be delivered to the Contractor unless and until an advance
589 payment at the Rates then in effect for such additional Project Water is made. Final adjustment
590 between the advance payments for the Water Scheduled and payments for the quantities of Water
591 Delivered during each Year pursuant to this Contract shall be made as soon as practicable, but no
592 later than April 30th of the following Year, or 60 days after the delivery of Project Water carried
593 over under subdivision (g) of Article 3 of this Contract if such water is not delivered by the last
594 day of February.

595 (d) The Contractor shall also make a payment in addition to the Rate(s) in
596 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
597 appropriate Tiered Pricing Component then in effect, before the end of the month following the
598 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered
599 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be
600 consistent with the quantities of Irrigation Water and Other Water Delivered as shown in the
601 water delivery report for the subject month prepared by the Operating Non-Federal Entity or, if
602 there is no Operating Non-Federal Entity, by the Contracting Officer. Such water delivery report
603 shall be the basis for payment of Charges and Tiered Pricing Component by the Contractor, and
604 shall be provided to the Contractor by the Operating Non-Federal Entity or the Contracting
605 Officer (as applicable) within five days after the end of the month of delivery. The water
606 delivery report shall be deemed a bill for the payment of Charges and the applicable Tiered
607 Pricing Component for Water Delivered. Adjustment for overpayment or underpayment of
608 Charges shall be made through the adjustment of payments due to the United States for Charges

609 for the next month. Any amount to be paid for past due payment of Charges and the Tiered
610 Pricing Component shall be computed pursuant to Article 20 of this Contract.

611 (e) The Contractor shall pay for any Water Delivered under subdivision (a),
612 (f), or (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to
613 applicable statutes, associated regulations, any applicable provisions of guidelines or ratesetting
614 policies; Provided, That the Rate for Water Delivered under subdivision (f) of Article 3 of this
615 Contract shall be no more than the otherwise applicable Rate for Irrigation Water or Other Water
616 under subdivision (a) of this Article.

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

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

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

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

638 (j) (1) Beginning at such time as total deliveries of Class 1 Water and
639 Class 2 Water in a Year exceed 80 percent of the Contract Total, then before the end of the
640 month following the month of delivery the Contractor shall make an additional payment to the
641 United States equal to the applicable Tiered Pricing Component. The Tiered Pricing Component
642 for the total amount of the deliveries of Class 1 Water and Class 2 Water Delivered in excess of
643 80 percent of the Contract Total, but less than or equal to 90 percent of the Contract Total, shall
644 equal one-half of the difference between the Rate established under subdivision (a) of this Article
645 and the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable.
646 The Tiered Pricing Component for the total amount of the deliveries of Class 1 Water and
647 Class 2 Water which exceeds 90 percent of the Contract Total shall equal the difference between
648 (i) the Rate established under subdivision (a) of this Article and (ii) the Irrigation Full Cost
649 Water Rate or M&I Full Cost Water Rate, whichever is applicable.

650 (2) Subject to the Contracting Officer's written approval, the
651 Contractor may request and receive an exemption from such Tiered Pricing Components for
652 Project Water delivered to produce a crop which the Contracting Officer determines will provide
653 significant and quantifiable habitat values for waterfowl in fields where the water is used and the

654 crops are produced; Provided, That the exemption from the Tiered Pricing Component for
655 Irrigation Water shall apply only if such habitat values can be assured consistent with the
656 purposes of the CVPIA through binding agreements executed with or approved by the
657 Contracting Officer prior to use of such water.

658 (3) For purposes of determining the applicability of the Tiered Pricing
659 Component pursuant to this Article, Water Delivered shall include Project Water that the
660 Contractor transfers to others but shall not include Project Water transferred to the Contractor.

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

669 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the
670 CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates
671 adjusted upward or downward to reflect the changed costs, if any, incurred by the Contracting
672 Officer in the delivery of the transferred Project Water to the transferee's point of delivery in
673 accordance with the then-applicable Project ratesetting policy. If the Contractor is receiving
674 lower Rates and Charges because of inability to pay and is transferring Project Water to another
675 entity whose Rates and Charges are not adjusted due to inability to pay, the Rates and Charges

676 for transferred Project Water shall be the Contractor's Rates and Charges and will not be
677 adjusted to reflect the Contractor's inability to pay.

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

680 (n) Omitted.

681 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

682 8. The Contractor and the Contracting Officer concur that, as of the effective date of
683 this Contract, the Contractor has no non-interest bearing O&M deficits and shall have no further
684 liability therefor.

685 SALES, TRANSFERS, OR EXCHANGES OF WATER

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

697 (b) In order to facilitate efficient water management by means of water
698 transfers of the type historically carried out among Project Contractors located within the same

699 geographical area and to allow the Contractor to participate in an accelerated water transfer
700 program during the term of this Contract, the Contracting Officer shall prepare, as appropriate,
701 all necessary environmental documentation including, but not limited to, documents prepared
702 pursuant to NEPA and ESA, analyzing annual transfers within such geographical areas, and the
703 Contracting Officer shall determine whether such transfers comply with applicable law.
704 Following the completion of the environmental documentation, such transfers addressed in such
705 documentation shall be conducted with advance notice to the Contracting Officer, but shall not
706 require prior written approval by the Contracting Officer. Such environmental documentation
707 and the Contracting Officer's compliance determination shall be reviewed every five years and
708 updated, as necessary, prior to the expiration of the then-existing five-year period. All
709 subsequent environmental documentation shall include an alternative to evaluate not less than the
710 quantity of Project Water historically transferred within the same geographical area.

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

721 APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

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

738 TEMPORARY REDUCTIONS-RETURN FLOWS

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

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

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

761 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

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

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

790 Class 1 Water available for delivery, the Contracting Officer shall apportion the available Class 1
791 Water among all contractors entitled to receive such water that will be made available at Friant
792 Dam in accordance with the following:

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

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

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

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

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

813 to receive hereunder, there shall be made an adjustment on account of the amounts already paid
814 to the Contracting Officer by the Contractor for Class 1 Water and Class 2 Water for said Year in
815 accordance with Article 10 of this Contract.

816 UNAVOIDABLE GROUNDWATER PERCOLATION

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

821 RULES AND REGULATIONS

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

827
828 (b) The terms of this Contract are subject to any enforceable order, judgment
829 and/or settlement in NRDC v. Patterson, No. CIVS 88-1658-LKK-EM and shall be timely
830 modified as necessary to effectuate or facilitate any final order, judgment, or settlement in said
831 litigation.

832 (c) Omitted.

833 WATER AND AIR POLLUTION CONTROL

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

838

QUALITY OF WATER

839 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant
840 to this Contract shall be operated and maintained to enable the United States to deliver Project
841 Water to the Contractor in accordance with the water quality standards specified in subsection
842 2(b) of the Act of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October
843 27, 1986 (100 Stat. 3050) or other existing Federal laws. The United States is under no
844 obligation to construct or furnish water treatment facilities to maintain or to improve the quality
845 of Water Delivered to the Contractor pursuant to this Contract. The United States does not
846 warrant the quality of Water Delivered to the Contractor pursuant to this Contract.

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

854

WATER ACQUIRED BY THE CONTRACTOR

855

OTHER THAN FROM THE UNITED STATES

856 17. (a) Water or water rights now owned or hereafter acquired by the Contractor
857 other than from the United States and Irrigation Water furnished pursuant to the terms of this
858 Contract may be simultaneously transported through the same distribution facilities of the
859 Contractor subject to the following: (i) if the facilities utilized for commingling Irrigation Water
860 and non-Project water were constructed without funds made available pursuant to Federal

861 Reclamation law, the provisions of Federal Reclamation law will be applicable only to the
862 Landholders of lands which receive Irrigation Water; (ii) the eligibility of land to receive
863 Irrigation Water must be established through the certification requirements as specified in the
864 Acreage Limitation Rules and Regulations (43 CFR Part 426); (iii) the water requirements of
865 Eligible Lands within the Contractor's Service Area can be established and the quantity of
866 Irrigation Water to be utilized is less than or equal to the quantity necessary to irrigate such
867 Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation Water and non-
868 Project water are/were constructed with funds made available pursuant to Federal Reclamation
869 law, the non-Project water will be subject to the acreage limitation provisions of Federal
870 Reclamation law, unless the Contractor pays to the United States the incremental fee described in
871 43 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate
872 annually the cost to the Federal Government, including interest, of storing or delivering non-
873 Project water, which for purposes of this Contract shall be determined as follows: The quotient
874 shall be the unpaid distribution system costs divided by the total irrigable acreage within the
875 Contractor's Service Area. The incremental fee per acre is the mathematical result of such
876 quotient times the interest rate determined using Section 202 (3) of the Act of October 12, 1982
877 (96 Stat. 1263). Such incremental fee will be charged to each acre of excess or full cost land
878 within the Contractor's Service Area that receives non-Project water through Federally financed
879 or constructed facilities. The incremental fee calculation methodology will continue during the
880 term of this Contract absent the promulgation of a contrary Reclamation-wide rule, regulation, or
881 policy adopted after the Contractor has been afforded the opportunity to review and comment on
882 the proposed rule, regulation, or policy. If such rule, regulation, or policy is adopted it shall
883 supercede this provision.

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

889 (1) The Contractor may introduce non-Project water into Project
890 facilities and deliver said water to lands within the Contractor's Service Area, including
891 Ineligible Lands, subject to payment to the United States and/or to any applicable Operating
892 Non-Federal Entity of an appropriate rate as determined by the applicable Project ratesetting
893 policy, the RRA, and the Project use power policy, if such Project use power policy is applicable,
894 each as amended, modified, or superseded from time to time.

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

901 (3) Neither the United States nor the Operating Non-Federal Entity
902 shall be responsible for control, care, or distribution of the non-Project water before it is
903 introduced into or after it is delivered from the Project facilities. The Contractor hereby releases
904 and agrees to defend and indemnify the United States and the Operating Non-Federal Entity, and
905 their respective officers, agents, and employees, from any claim for damage to persons or
906 property, direct or indirect, resulting from the acts of the Contractor, its officers', employees',

907 agents' or assigns', act(s) in (i) extracting or diverting non-Project water from any source, or (ii)
908 diverting such non-Project water into Project facilities.

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

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

917 OPINIONS AND DETERMINATIONS

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

928 (b) The Contracting Officer shall have the right to make determinations
929 necessary to administer this Contract that are consistent with the provisions of this Contract, the

930 laws of the United States and of the State of California, and the rules and regulations
931 promulgated by the Secretary of the Interior. Such determinations shall be made in consultation
932 with the Contractor to the extent reasonably practicable.

933 COORDINATION AND COOPERATION

934 19. (a) In order to further their mutual goals and objectives, the Contracting
935 Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and
936 with other affected Project Contractors, in order to improve the operation and management of the
937 Project. The communication, coordination, and cooperation regarding operations and
938 management shall include, but not be limited to, any action which will or may materially affect
939 the quantity or quality of Project Water supply, the allocation of Project Water supply, and
940 Project financial matters including, but not limited to, budget issues. The communication,
941 coordination, and cooperation provided for hereunder shall extend to all provisions of this
942 Contract. Each party shall retain exclusive decision making authority for all actions, opinions,
943 and determinations to be made by the respective party.

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

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

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

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

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

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

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

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

973

CHARGES FOR DELINQUENT PAYMENTS

974 20. (a) The Contractor shall be subject to interest, administrative and penalty
975 charges on delinquent installments or payments. When a payment is not received by the due
976 date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond
977 the due date. When a payment becomes sixty (60) days delinquent, the Contractor shall pay an
978 administrative charge to cover additional costs of billing and processing the delinquent payment.
979 When a payment is delinquent ninety (90) days or more, the Contractor shall pay an additional
980 penalty charge of six (6%) percent per year for each day the payment is delinquent beyond the
981 due date. Further, the Contractor shall pay any fees incurred for debt collection services
982 associated with a delinquent payment.

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

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

991

EQUAL OPPORTUNITY

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

993 (a) The Contractor will not discriminate against any employee or applicant for
994 employment because of race, color, religion, sex, or national origin. The Contractor will take
995 affirmative action to ensure that applicants are employed, and that employees are treated during
996 employment, without regard to their race, color, religion, sex, or national origin. Such action
997 shall include, but not be limited to, the following: Employment, upgrading, demotion, or
998 transfer; recruitment or recruitment advertising; layoff or termination, rates of payment or other
999 forms of compensation; and selection for training, including apprenticeship. The Contractor
1000 agrees to post in conspicuous places, available to employees and applicants for employment,
1001 notices to be provided by the Contracting Officer setting forth the provisions of this
1002 nondiscrimination clause.

1003 (b) The Contractor will, in all solicitations or advertisements for employees
1004 placed by or on behalf of the Contractor, state that all qualified applicants will receive
1005 consideration for employment without discrimination because of race, color, religion, sex, or
1006 national origin.

1007 (c) The Contractor will send to each labor union or representative of workers
1008 with which it has a collective bargaining agreement or other contract or understanding, a notice,
1009 to be provided by the Contracting Officer, advising the said labor union or workers'

1010 representative of the Contractor's commitments under Section 202 of Executive Order 11246 of
1011 September 24, 1965, and shall post copies of the notice in conspicuous places available to
1012 employees and applicants for employment.

1013 (d) The Contractor will comply with all provisions of Executive Order
1014 No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders
1015 of the Secretary of Labor.

1016 (e) The Contractor will furnish all information and reports required by said
1017 amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or
1018 pursuant thereto, and will permit access to its books, records, and accounts by the Contracting
1019 Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with
1020 such rules, regulations, and orders.

1021 (f) In the event of the Contractor's noncompliance with the nondiscrimination
1022 clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be
1023 canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared
1024 ineligible for further Government contracts in accordance with procedures authorized in said
1025 amended Executive Order, and such other sanctions may be imposed and remedies invoked as
1026 provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as
1027 otherwise provided by law.

1028 (g) The Contractor will include the provisions of paragraphs (a) through (g) in
1029 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
1030 Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such
1031 provisions will be binding upon each subcontractor or vendor. The Contractor will take such
1032 action with respect to any subcontract or purchase order as may be directed by the Secretary of
1033 Labor as a means of enforcing such provisions, including sanctions for noncompliance:
1034 Provided, however, That in the event the Contractor becomes involved in, or is threatened with,
1035 litigation with a subcontractor or vendor as a result of such direction, the Contractor may request
1036 the United States to enter into such litigation to protect the interests of the United States.

1037 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

1038 22. (a) The obligation of the Contractor to pay the United States as provided in
1039 this Contract is a general obligation of the Contractor notwithstanding the manner in which the
1040 obligation may be distributed among the Contractor's water users and notwithstanding the default
1041 of individual water users in their obligations to the Contractor.

1042 (b) The payment of charges becoming due hereunder is a condition precedent
1043 to receiving benefits under this Contract. The United States shall not make water available to the
1044 Contractor through Project facilities during any period in which the Contractor may be in arrears
1045 in the advance payment of water rates due the United States. The Contractor shall not furnish
1046 water made available pursuant to this Contract for lands or parties which are in arrears in the
1047 advance payment of water rates levied or established by the Contractor.

1048 (b1) In addition to the remedy in subdivision (b) of this Article, if the
1049 Contracting Officer determines that the Contractor is in arrears in the advance payment of water
1050 rates that are due to the United States as provided in subdivision (c) of Article 7 of this Contract,
1051 in addition to not delivering water until payments are current, this Contract may be terminated
1052 pursuant to the procedures set forth in this subparagraph. If the Contracting Officer elects to
1053 terminate the Contract pursuant to this provision, the Contracting Officer shall provide the
1054 Contractor 60 days' written notice of his or her intent to do so. Such notice shall specify the
1055 precise nature of the delinquency and the precise amount the Contractor must pay to cure the
1056 delinquency. If the Contractor cures the delinquency within 60 days of the date of the notice
1057 provided by the Contracting Officer, the Contracting Officer shall not terminate the Contract. If
1058 the Contractor fails to cure the delinquency within 60 days of the date of the notice provided by
1059 the Contracting Officer, the Contracting Officer may immediately terminate the Contract and
1060 shall provide written notice to the Contractor within five days of such termination that he or she
1061 has done so.

1062 (c) With respect to subdivision (b) of this Article, the Contractor shall have no
1063 obligation to require advance payment for water rates which it levies.

1064 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1065 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
1066 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the
1067 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights
1068 laws, as well as with their respective implementing regulations and guidelines imposed by the
1069 U.S. Department of the Interior and/or Bureau of Reclamation.

1070 (b) These statutes require that no person in the United States shall, on the
1071 grounds of race, color, national origin, handicap, or age, be excluded from participation in, be
1072 denied the benefits of, or be otherwise subjected to discrimination under any program or activity
1073 receiving financial assistance from the Bureau of Reclamation. By executing this Contract, the

1074 Contractor agrees to immediately take any measures necessary to implement this obligation,
1075 including permitting officials of the United States to inspect premises, programs, and documents.

1076 (c) The Contractor makes this agreement in consideration of and for the
1077 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other
1078 Federal financial assistance extended after the date hereof to the Contractor by the Bureau of
1079 Reclamation, including installment payments after such date on account of arrangements for
1080 Federal financial assistance which were approved before such date. The Contractor recognizes
1081 and agrees that such Federal assistance will be extended in reliance on the representations and
1082 agreements made in this Article, and that the United States reserves the right to seek judicial
1083 enforcement thereof.

1084 PRIVACY ACT COMPLIANCE

1085 24. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a)
1086 (the Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et
1087 seq.) in maintaining Landholder acreage certification and reporting records, required to be
1088 submitted to the Contractor for compliance with Sections 206 and 228 of the Reclamation
1089 Reform Act of 1982 (96 Stat. 1266), and pursuant to 43 CFR 426.18.

1090 (b) With respect to the application and administration of the criminal penalty
1091 provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees
1092 responsible for maintaining the certification and reporting records referenced in (a) above are
1093 considered to be employees of the Department of the Interior. See 5 U.S.C. 552a(m).

1094 (c) The Contracting Officer or a designated representative shall provide the
1095 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau
1096 of Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--
1097 Interior, Reclamation-31) which govern the maintenance, safeguarding, and disclosure of
1098 information contained in the Landholder's certification and reporting records.

1099 (d) The Contracting Officer shall designate a full-time employee of the
1100 Bureau of Reclamation to be the System Manager who shall be responsible for making decisions
1101 on denials pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The
1102 Contractor is authorized to grant requests by individuals for access to their own records.

1103 (e) The Contractor shall forward promptly to the System Manager each
1104 proposed denial of access under 43 CFR 2.64; and each request for amendment of records filed
1105 under 43 CFR 2.71; notify the requester accordingly of such referral; and provide the System
1106 Manager with information and records necessary to prepare an appropriate response to the
1107 requester. These requirements do not apply to individuals seeking access to their own
1108 certification and reporting forms filed with the Contractor pursuant to 43 CFR 426.18, unless the
1109 requester elects to cite the Privacy Act as a basis for the request.

1110 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1111 25. In addition to all other payments to be made by the Contractor pursuant to this
1112 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and
1113 detailed statement submitted by the Contracting Officer to the Contractor for such specific items
1114 of direct cost incurred by the United States for work requested by the Contractor associated with
1115 this Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies
1116 and procedures. All such amounts referred to in this Article shall not exceed the amount agreed
1117 to in writing in advance by the Contractor. This Article shall not apply to costs for routine
1118 contract administration.

1119 WATER CONSERVATION

1120 26. (a) During the term of this Contract, the Contractor shall comply with all
1121 applicable requirements imposed on it by Section 210 of the RRA, regulations duly promulgated
1122 and adopted thereunder, and any other applicable water conservation guidelines as they are duly
1123 promulgated, adopted and amended from time to time: Provided, That the Contractor shall have
1124 not less than 18 months to comply with any revisions in any such applicable regulations or water
1125 conservation guidelines.

1126 (b) Omitted.

1127 (c) The Contractor shall submit to the Contracting Officer a report on the
1128 status of its implementation of the water conservation plan on the reporting dates specified in the
1129 then existing conservation and efficiency criteria established under Federal law.

1130 (d) Omitted.

1131 (e) If the Contractor is engaged in direct groundwater recharge, such activity
1132 shall be described in the Contractor's water conservation plan.

1133 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1134 27. Except as specifically provided in Article 17 of this Contract, the provisions of
1135 this Contract shall not be applicable to or affect non-Project water or water rights now owned or
1136 hereafter acquired by the Contractor or any user of such water within the Contractor's Service
1137 Area. Any such water shall not be considered Project Water under this Contract. In addition,
1138 this Contract shall not be construed as limiting or curtailing any rights which the Contractor or
1139 any water user within the Contractor's Service Area acquires or has available under any other
1140 contract pursuant to Federal Reclamation law.

1141 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

1142 28. (a) The O&M of a portion of the Project facilities which serve the Contractor,
1143 and responsibility for funding a portion of the costs of such O&M, have been transferred to the
1144 Operating Non-Federal Entity by separate agreement between the United States and the
1145 Operating Non-Federal Entity. That separate agreement shall not interfere with or affect the
1146 rights or obligations of the Contractor or the United States hereunder.

1147 (b) The Contracting Officer has previously notified the Contractor in writing
1148 that the O&M of a portion of the Project facilities which serve the Contractor has been
1149 transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly
1150 to the Operating Non-Federal Entity, or to any successor approved by the Contracting Officer
1151 under the terms and conditions of the separate agreement between the United States and the
1152 Operating Non-Federal Entity described in subdivision (a) of this Article, all rates, charges, or
1153 assessments of any kind, including any assessment for reserve funds, which the Operating
1154 Non-Federal Entity or such successor determines, sets, or establishes for (i) the O&M of the
1155 portion of the Project facilities operated and maintained by the Operating Non-Federal Entity or

1156 such successor, or (ii) the Friant Division's share of the operation, maintenance and replacement
1157 costs for physical works and appurtenances associated with the Tracy Pumping Plant, the
1158 Delta-Mendota Canal, the O'Neill Pumping/Generating Plant, the federal share of the
1159 O'Neill Forebay, the Mendota Pool, and the federal share of San Luis Unit joint use conveyance
1160 and conveyance pumping facilities. Such direct payments to the Operating Non-Federal Entity
1161 or such successor shall not relieve the Contractor of its obligation to pay directly to the
1162 United States the Contractor's share of the Project Rates, Charges, and Tiered Pricing
1163 Component(s) except to the extent the Operating Non-Federal Entity collects payments on behalf
1164 of the United States in accordance with the separate agreement identified in subdivision (a) of
1165 this Article.

1166 (c) For so long as the O&M of any portion of the Project facilities serving the
1167 Contractor is performed by the Operating Non-Federal Entity, or any successor thereto, the
1168 Contracting Officer shall adjust those components of the Rates for Water Delivered under this
1169 Contract representing the cost associated with the activity being performed by the Operating
1170 Non-Federal Entity or its successor.

1171 (d) In the event the O&M of the Project facilities operated and maintained by
1172 the Operating Non-Federal Entity is re-assumed by the United States during the term of this
1173 Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the
1174 Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid by the
1175 Contractor for Project Water under this Contract representing the O&M costs of the portion of
1176 such Project facilities which have been re-assumed. The Contractor shall, thereafter, in the
1177 absence of written notification from the Contracting Officer to the contrary, pay the Rates,

1178 Charges, and Tiered Pricing Component(s) specified in the revised Exhibit “B” directly to the
1179 United States in compliance with Article 7 of this Contract.

1180 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1181 29. The expenditure or advance of any money or the performance of any obligation of
1182 the United States under this Contract shall be contingent upon appropriation or allotment of
1183 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any
1184 obligations under this Contract. No liability shall accrue to the United States in case funds are
1185 not appropriated or allotted.
1186

1187 BOOKS, RECORDS, AND REPORTS

1188 30. (a) The Contractor shall establish and maintain accounts and other books and
1189 records pertaining to administration of the terms and conditions of this Contract, including: the
1190 Contractor's financial transactions, water supply data, and Project land and right-of-way
1191 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use
1192 data; and other matters that the Contracting Officer may require. Reports thereon shall be
1193 furnished to the Contracting Officer in such form and on such date or dates as the Contracting
1194 Officer may require. Subject to applicable Federal laws and regulations, each party to this
1195 Contract shall have the right during office hours to examine and make copies of the other party's
1196 books and records relating to matters covered by this Contract.

1197 (b) Notwithstanding the provisions of subdivision (a) of this Article, no
1198 books, records, or other information shall be requested from the Contractor by the Contracting
1199 Officer unless such books, records, or information are reasonably related to the administration or
1200 performance of this Contract. Any such request shall allow the Contractor a reasonable period of
1201 time within which to provide the requested books, records, or information.

1202 (c) At such time as the Contractor provides information to the Contracting
1203 Officer pursuant to subdivision (a) of this Article, a copy of such information shall be provided
1204 to the Operating Non-Federal Entity.

1205 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1206 31. (a) The provisions of this Contract shall apply to and bind the successors and
1207 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1208 therein shall be valid until approved in writing by the Contracting Officer.
1209

1210 (b) The assignment of any right or interest in this Contract by either party
1211 shall not interfere with the rights or obligations of the other party to this Contract absent the
1212 written concurrence of said other party.

1213 (c) The Contracting Officer shall not unreasonably condition or withhold
1214 approval of any proposed assignment.

1215 SEVERABILITY

1216 32. In the event that a person or entity who is neither (i) a party to a Project contract,
1217 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor
1218 (iii) an association or other form of organization whose primary function is to represent parties to
1219 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or
1220 enforceability of a provision included in this Contract and said person, entity, association, or
1221 organization obtains a final court decision holding that such provision is legally invalid or
1222 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),
1223 the parties to this Contract shall use their best efforts to (i) within 30 days of the date of such
1224 final court decision identify by mutual agreement the provisions in this Contract which must be
1225 revised, and (ii) within three months thereafter promptly agree on the appropriate revision(s).
1226 The time periods specified above may be extended by mutual agreement of the parties. Pending
1227 the completion of the actions designated above, to the extent it can do so without violating any
1228 applicable provisions of law, the United States shall continue to make the quantities of Project
1229 Water specified in this Contract available to the Contractor pursuant to the provisions of this
1230 Contract which were not found to be legally invalid or unenforceable in the final court decision.

1231

RESOLUTION OF DISPUTES

1232 33. Should any dispute arise concerning any provisions of this Contract, or the
1233 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to
1234 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting
1235 Officer referring any matter to Department of Justice, the party shall provide to the other party
1236 30 days' written notice of the intent to take such action; Provided, That such notice shall not be
1237 required where a delay in commencing an action would prejudice the interests of the party that
1238 intends to file suit. During the 30-day notice period, the Contractor and the Contracting Officer
1239 shall meet and confer in an attempt to resolve the dispute. Except as specifically provided,
1240 nothing herein is intended to waive or abridge any right or remedy that the Contractor or the
1241 United States may have.

1242

OFFICIALS NOT TO BENEFIT

1243 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1244 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1245 manner as other water users or landowners.

1246

CHANGES IN CONTRACTOR'S SERVICE AREA

1247 35. (a) While this Contract is in effect, no change may be made in the
1248 Contractor's Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger,
1249 or otherwise, except upon the Contracting Officer's written consent.

1250 (b) Within 30 days of receipt of a request for such a change, the Contracting
1251 Officer will notify the Contractor of any additional information required by the Contracting
1252 Officer for processing said request, and both parties will meet to establish a mutually agreeable
1253 schedule for timely completion of the process. Such process will analyze whether the proposed
1254 change is likely to: (i) result in the use of Project Water contrary to the terms of this Contract;
1255 (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or

1256 to pay for any Federally-constructed facilities for which the Contractor is responsible; and
1257 (iii) have an impact on any Project Water rights applications, permits, or licenses. In addition,
1258 the Contracting Officer shall comply with the NEPA and the ESA. The Contractor will be
1259 responsible for all costs incurred by the Contracting Officer in this process, and such costs will
1260 be paid in accordance with Article 25 of this Contract.

1261 FEDERAL LAWS

1262 36. By entering into this Contract, the Contractor does not waive its rights to contest
1263 the validity or application in connection with the performance of the terms and conditions of this
1264 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with
1265 the terms and conditions of this Contract unless and until relief from application of such Federal
1266 law or regulation to the implementing provision of the Contract is granted by a court of
1267 competent jurisdiction.

1268 NOTICES

1269 37. Any notice, demand, or request authorized or required by this Contract shall be
1270 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or
1271 delivered to the Area Manager, South-Central California Area Office, 1243 "N" Street, Fresno,
1272 California 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered
1273 to the Board of Directors of the Lewis Creek Water District, P. O. Box 911, Visalia, California
1274 93278. The designation of the addressee or the address may be changed by notice given in the
1275 same manner as provided in this Article for other notices.

1276 CONFIRMATION OF CONTRACT

1277 38. The Contractor, after the execution of this Contract, shall promptly seek to secure
1278 a decree of a court of competent jurisdiction of the State of California, confirming the execution
1279 of this Contract. The Contractor shall furnish the United States a certified copy of the final
1280 decree, the validation proceedings, and all pertinent supporting records of the court approving
1281 and confirming this Contract, and decreeing and adjudging it to be lawful, valid, and binding on
1282 the Contractor.

1283 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of
1284 the day and year first above written.

1285 THE UNITED STATES OF AMERICA

1286 By: _____
1287 Regional Director, Mid-Pacific Region
1288 Bureau of Reclamation

1289 (SEAL)

1290 LEWIS CREEK WATER DISTRICT

1291 By: _____
1292 President of the Board of Directors

1293 Attest:

1294 By: _____
1295 Secretary of the Board of Directors

1296 (H:\pub 440\LTRC\Final Draft LTRC's – Fresno, Tracy\10-08-04 Lewis Creek Wd Final Draft
1297 LTRC with exhibits.doc)

EXHIBIT A

[Map or Description of Service Area]

EXHIBIT B
LEWIS CREEK 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>2004 Rates Per Acre-Foot</u>	
	<u>Irrigation Water</u>	<u>Other</u>
	<u>Class 1</u>	<u>Water*</u>
<u>O&M AND COST-OF-SERVICE RATES:</u>		
Capital Rates:	\$10.56	
O&M Rates:		
Water Marketing	\$ 7.59	
Storage	\$ 5.83	
Conveyance	**	
Conveyance Pumping	**	
Deficit Rates:		
Non-Interest Bearing	\$0.02	
Interest Bearing	\$6.43	
CFO/PFR Adjustment Rate***	\$3.49	
<u>TOTAL COST-OF-SERVICE-RATES:</u>	\$33.92	
<u>FULL-COST RATES:</u>		
<u>Section 202(3)</u> Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981.	\$79.71	
<u>Section 205(a)(3)</u> Rate is applicable to a Limited Recipient that did not receive irrigation water on or before October 1, 1981.	\$109.76	
<u>SURCHARGES UNDER P.L. 102-575</u>		
<u>TO RESTORATION FUND</u>		
Friant Surcharge [3406(c)(1)]	\$7.00	
Restoration Payments [3407(d)(2)(A)]	\$7.82	

* Other Water rate will be computed as equal to an M&I rate when needed.

** Conveyance and conveyance pumping operation and maintenance costs were removed for ratesetting purposes and are to be billed directly to the water authorities.

*** Rate represents the Chief Financial Officer (CFO) adjustment and Provision for Replacement (PFR) credit for option 2 cost deferment to be distributed over a 5-year period beginning with 2003 water rates.

Note: The surcharges are in addition to the water rates and were determined pursuant to Title XXXIV of Public Law 102-575 (CVPIA). The Restoration Fund surcharges are on a fiscal year basis (10/1-9/30).