

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

LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
AND
PACHECO WATER DISTRICT
PROVIDING FOR PROJECT WATER SERVICE
FROM SAN LUIS UNIT AND DELTA DIVISION

Table of Contents

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
	Preamble	1
	Explanatory Recitals	2-5
1	Definitions	5-10
2	Term of Contract.....	10-13
3	Water to be Made Available and Delivered to the Contractor	14-18
4	Time for Delivery of Water	18-19
5	Point of Diversion and Responsibility for Distribution of Water.....	19-21
6	Measurement of Water Within the Contractor's Service Area.....	21-23
7	Rates and Method of Payment for Water.....	23-29
8	Non-Interest Bearing Operation and Maintenance Deficits	30
9	Sales, Transfers, or Exchanges of Water	30-31
10	Application of Payments and Adjustments.....	31-32
11	Temporary Reductions--Return Flows	32-33
12	Constraints on the Availability of Water	33-36
13	Unavoidable Groundwater Percolation.....	36
14	Rules and Regulations	36
15	Water and Air Pollution Control.....	36
16	Quality of Water	37
17	Water Acquired by the Contractor Other Than From the United States	38-40
18	Opinions and Determinations	41
19	Coordination and Cooperation.....	41-42
20	Charges for Delinquent Payments	43

Contract No. 6-07-20-W0469-LTR1

Table of Contents - continued

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
21	Equal Opportunity.....	44-45
22	General Obligation--Benefits Conditioned Upon Payment	45
23	Compliance With Civil Rights Laws and Regulations	45-46
24	Privacy Act Compliance	46-47
25	Contractor to Pay Certain Miscellaneous Costs	47
26	Water Conservation	47-49
27	Existing or Acquired Water or Water Rights.....	49
28	Operation and Maintenance by San Luis & Delta-Mendota Water Authority	49-51
28.1	Operation and Maintenance by California Department of Water Resources ..	51-53
28.2	Operation and Maintenance of Certain Facilities	53-55
29	Contingent on Appropriation or Allotment of Funds	55
30	Books, Records, and Reports.....	55
31	Assignment Limited--Successors and Assigns Obligated	56
32	Severability	56-57
33	Resolution of Disputes.....	57
34	Officials Not to Benefit.....	57
35	Changes in Contractor's Service Area.....	57-58
36	Federal Laws.....	58
37	Notices	58
38	Confirmation of Contract.....	59
	Signature Page	60

Exhibit A - Map of Contractor's Service Area

Exhibit B - Rates and Charges

1 UNITED STATES
2 DEPARTMENT OF THE INTERIOR
3 BUREAU OF RECLAMATION
4 Central Valley Project, California

5 LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
6 AND
7 PACHECO WATER DISTRICT
8 PROVIDING FOR PROJECT WATER SERVICE
9 FROM SAN LUIS UNIT AND DELTA DIVISION

10 THIS CONTRACT, made this ____ day of _____, 2005, in pursuance
11 generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto,
12 including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and
13 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat.
14 483), June 3, 1960 (74 Stat. 156), 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 THE
17 UNITED STATES OF AMERICA, hereinafter referred to as the United States, and PACHECO
18 WATER DISTRICT, hereinafter referred to as the Contractor, a public agency of the State of
19 California, duly organized, existing, and acting pursuant to the laws thereof;

20 WITNESSETH, That:

21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41

EXPLANATORY RECITALS

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

[2nd] WHEREAS, the United States constructed the Delta Division Facilities, including the San Luis Unit facilities (which include the San Luis Canal and Dos Amigos Pumping Plant), which will be used in part for the furnishing of water to the Contractor pursuant to the terms of this Contract; and

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

[4th] WHEREAS, the Contractor and the United States entered into Contract No. 14-06-200-W0469, which established terms for the delivery to the Contractor of Project Water from March 1, 1986, through February 29, 2024, hereinafter referred to as the Existing Contract; and

[5th] WHEREAS, the United States and the Contractor have pursuant to Subsection 3404(c)(3) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into a binding agreement identified as Binding Agreement No. 14-06-200-W0469-BA, which sets out the terms pursuant to which the Contractor agreed to renew the Existing Contract before the expiration date after completion of the Programmatic Environmental Impact Statement (PEIS) and other

42 appropriate environmental documentation and negotiation of a renewal contract; and which also sets
43 out the consequences of a subsequent decision not to renew: and

44 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal the
45 Existing Contract following completion of appropriate environmental documentation, including a
46 PEIS pursuant to the National Environmental Policy Act (NEPA) analyzing the direct and indirect
47 impacts and benefits of implementing the CVPIA and the potential renewal of all existing contracts
48 for Project Water; and

49 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
50 environmental review necessary to provide for long-term renewal of the Existing Contract; and

51 [8th] WHEREAS, the Contractor has requested the long-term renewal of the Existing
52 Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws of the
53 State of California, for water service from the Project; and

54 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all of
55 its obligations under the Existing Contract; and

56 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting
57 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and
58 beneficial use and expects to utilize fully for reasonable and beneficial use the quantity of Project
59 Water to be made available to it pursuant to this Contract; and

60 [11th] WHEREAS, water obtained from the Project has been relied upon by urban and
61 agricultural areas within California for more than 50 years, and is considered by the Contractor as an
62 essential portion of its water supply; and

63 [12th] WHEREAS, the economies of regions within the Project, including the Contractor's,
64 depend upon the continued availability of water, including water service from the Project; and

65 [12.1] WHEREAS, the United States Court of Appeals for the Ninth Circuit has held that
66 Section 1(a) of the San Luis Act, Public Law 86-488, 74 Stat. 156, imposes on the Secretary a duty to
67 provide drainage service to the San Luis Unit; and

68 [12.2] WHEREAS, the Contractor and the Contracting Officer recognize that adequate
69 drainage service is required to maintain agricultural production within certain areas served with
70 Project Water made available under this Contract and all renewals thereof; and

71 [12.3] WHEREAS, the Contracting Officer intends, to the extent appropriated funds are
72 available, to develop and implement effective solutions to drainage problems in the San Luis Unit; and

73 [12.4] WHEREAS, the Contracting Officer and the Contractor acknowledge: that such
74 drainage solutions may involve actions not originally contemplated and/or the construction or use of
75 facilities other than the San Luis Drain; that the Contractor is investing in drainage solutions for lands
76 within its boundaries that should be considered by the Contracting Officer in determining drainage
77 solutions; and that the existing ratesetting policy as it relates to the allocation and collection of
78 drainage costs may require amendment to recognize those investments by the Contractor and other
79 relevant circumstances; and

80 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships
81 to pursue measures to improve water supply, water quality, and reliability of the Project for all
82 Project purposes; and

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

89 [14.1] WHEREAS, the parties intend by this Contract to develop a more cooperative
90 relationship in order to achieve their mutual goals; and

91 [15th] WHEREAS, the Contractor has utilized or may utilize transfers, contract assignments,
92 rescheduling and conveyance of Project Water and non-Project water under this Contract as tools to
93 minimize the impacts of Conditions of Shortage and to maximize the beneficial use of water; and

94 [15.1] WHEREAS, the parties desire and intend that this Contract not provide a disincentive
95 to the Contractor in continuing to carry out the beneficial activities set out in the Explanatory Recital
96 immediately above; and

97 [16th] WHEREAS, the United States and the Contractor are willing to enter into this
98 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

101 DEFINITIONS

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

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

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

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

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

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

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

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

123 (g.1) "Delta Division Facilities" shall mean those existing and future Project
124 facilities in and south of the Sacramento-San Joaquin Rivers Delta, including, but not limited to, the

125 Tracy Pumping Plant, the O’Neill Forebay, the O’Neill Pumping/Generating Plant, and the San Luis
126 Reservoir, used to divert, store and convey water to those Project Contractors entitled to receive
127 water conveyed through the Delta-Mendota Canal;

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

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

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

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

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

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

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

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

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

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

164 (r) "Operating Non-Federal Entity" shall mean the entity(ies), its (their)
165 successors or assigns, which has (have) the obligation to operate and maintain all or a portion of the

166 Delta Division Facilities pursuant to written agreement(s) with the United States. When this Contract
167 was entered into, the Operating Non-Federal Entity(ies) was (were) the San Luis & Delta-Mendota
168 Water Authority and, with respect to San Luis Unit facilities, and the California Department of Water
169 Resources;

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

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

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

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

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

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

186 (y) “Tiered Pricing Component” shall be the incremental amount to be paid for

187 each acre-foot of Water Delivered as described in subdivision (j) of Article 7 of this Contract;

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

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

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

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

198 TERM OF CONTRACT

199 2. (a) This Contract shall be effective March 1, 2005, through February 28, 2030,
200 and supersedes the Existing Contract. In the event the Contractor wishes to renew this Contract
201 beyond February 28, 2030, the Contractor shall submit a request for renewal in writing to the
202 Contracting Officer no later than two years prior to the date this Contract expires. The renewal of
203 this Contract insofar as it pertains to the furnishing of Irrigation Water to the Contractor shall be
204 governed by subdivision (b) of this Article, and the renewal of this Contract insofar as it pertains to
205 the furnishing of M&I Water to the Contractor shall be governed by subdivision (c) of this Article.

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

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

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

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

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

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

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

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

271 provision that carries forth in substantially identical terms the provisions of this subdivision.

272 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

273 3. (a) During each Year, consistent with all applicable State water rights, permits,
274 and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of this
275 Contract, the Contracting Officer shall make available for delivery to the Contractor 10,080 acre-feet
276 of Project Water for irrigation and M&I purposes. Water Delivered to the Contractor in accordance
277 with this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of
278 this Contract.

279 (b) Because the capacity of the Project to deliver Project Water has been
280 constrained in recent years and may be constrained in the future due to many factors including
281 hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractor
282 actually receiving the amount of Project Water set out in subdivision (a) of this Article in any given
283 Year is uncertain. The Contracting Officer's modeling referenced in the PEIS projected that the
284 Contract Total set forth in this Contract will not be available to the Contractor in many years. During
285 the most recent five years, the Recent Historic Average of Water Made Available to the Contractor
286 was 6,633 acre-feet. Nothing in subdivision (b) of this Article shall affect the rights and obligations
287 of the parties under any provision of this Contract.

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

290 (c.1) In the event any Project Contractor (other than a Cross Valley Contractor) that
291 receives Project Water through the Delta Division Facilities obtains a contractual agreement that the

292 Contracting Officer shall make Project Water available at a point or points of delivery in or north of
293 the Delta, at the request of the Contractor and upon completion of any required environmental
294 documentation, this Contract shall be amended to provide for deliveries in or north of the Delta on
295 mutually agreeable terms. Such amendments to the Contract shall be limited solely to those changes
296 made necessary by the addition of such alternate points of delivery in or north of the Delta;
297 Provided, That the Contracting Officer's use of the Harvey O. Banks Pumping Plant to deliver
298 Project Water does not trigger this right of amendment.

299 (d) The Contractor shall make reasonable and beneficial use of all water furnished
300 pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu), groundwater
301 banking programs, surface water storage programs, and other similar programs utilizing Project
302 Water or other water furnished pursuant to this Contract conducted within the Contractor's Service
303 Area which are consistent with applicable State law and result in use consistent with Federal
304 Reclamation law will be allowed; Provided, That any direct recharge program(s) is (are) described in
305 the Contractor's water conservation plan submitted pursuant to Article 26 of this Contract; Provided,
306 further, That such water conservation plan demonstrates sufficient lawful uses exist in the
307 Contractor's Service Area so that using a long-term average, the quantity of Delivered Water is
308 demonstrated to be reasonable for such uses and in compliance with Federal Reclamation law.
309 Groundwater recharge programs, groundwater banking programs, surface water storage programs,
310 and other similar programs utilizing Project Water or other water furnished pursuant to this Contract
311 conducted outside the Contractor's Service Area may be permitted upon written approval of the
312 Contracting Officer, which approval will be based upon environmental documentation, Project Water

313 rights, and Project operational concerns. The Contracting Officer will address such concerns in
314 regulations, policies, or guidelines.

315 (e) The Contractor shall comply with requirements applicable to the Contractor in
316 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract
317 undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as amended, that are
318 within the Contractor's legal authority to implement. The Existing Contract, which evidences in
319 excess of 19 years of diversions for irrigation and/or M&I purposes of the quantities of water
320 provided in subdivision (a) of Article 3 of this Contract, will be considered in developing an
321 appropriate baseline for the biological assessment(s) prepared pursuant to the ESA, and any other
322 needed environmental review. Nothing herein shall be construed to prevent the Contractor from
323 challenging or seeking judicial relief in a court of competent jurisdiction with respect to any
324 biological opinion or other environmental documentation referred to in this Article.

325 (f) Following the declaration of Water Made Available under Article 4 of this
326 Contract, the Contracting Officer will make a determination whether Project Water, or other water
327 available to the Project, can be made available to the Contractor in addition to the Contract Total
328 under this Article during the Year without adversely impacting other Project Contractors. At the
329 request of the Contractor, the Contracting Officer will consult with the Contractor prior to making
330 such a determination. If the Contracting Officer determines that Project Water, or other water
331 available to the Project, can be made available to the Contractor, the Contracting Officer will
332 announce the availability of such water and shall so notify the Contractor as soon as practical. The

333 Contracting Officer will thereafter meet with the Contractor and other Project Contractors capable of
334 taking such water to determine the most equitable and efficient allocation of such water. If the
335 Contractor requests the delivery of any quantity of such water, the Contracting Officer shall make
336 such water available to the Contractor in accordance with applicable statutes, regulations, guidelines,
337 and policies. Subject to existing long-term contractual commitments, water rights and operational
338 constraints, long-term Project Contractors shall have a first right to acquire such water, including
339 Project Water made available pursuant to Section 215 of the RRA.

340 (g) The Contractor may request permission to reschedule for use during the
341 subsequent Year some or all of the Water Made Available to the Contractor during the current Year,
342 referred to as “rescheduled water”. The Contractor may request permission to use during the current
343 Year a quantity of Project Water which may be made available by the United States to the Contractor
344 during the subsequent Year referred to as “preuse”. The Contracting Officer’s written approval may
345 permit such uses in accordance with applicable statutes, regulations, guidelines, and policies.

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

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

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

357 (j) The Contracting Officer shall make reasonable efforts to protect the water
358 rights necessary for the Project and to provide the water available under this Contract. The
359 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the
360 extent permitted by law, in administrative proceedings related to the Project Water rights; Provided,
361 that the Contracting Officer retains the right to object to the substance of the Contractor's position in
362 such a proceeding; Provided, further, That in such proceedings the Contracting Officer shall
363 recognize the Contractor has a legal right under the terms of this Contract to use Project Water.

364 TIME FOR DELIVERY OF WATER

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

374 (b) On or before each March 1 and at such other times as necessary, the Contractor

375 shall submit to the Contracting Officer a written schedule, satisfactory to the Contracting Officer,
376 showing the monthly quantities of Project Water to be delivered by the United States to the
377 Contractor pursuant to this Contract for the Year commencing on such March 1. The Contracting
378 Officer shall use all reasonable means to deliver Project Water according to the approved schedule
379 for the Year commencing on such March 1.

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

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

388 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

393 (b) The Contracting Officer, either directly or indirectly through its written
394 agreements(s) with the Operating Non-Federal Entity(ies), shall make all reasonable efforts to
395 maintain sufficient flows and levels of water in the Project facilities to deliver Project Water to the

396 Contractor at the point or points of delivery established pursuant to subdivision (a) of this Article.

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

401 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
402 measured and recorded with equipment furnished, installed, operated, and maintained by the
403 Contracting Officer either directly or indirectly through its written agreements(s) with the Operating
404 Non-Federal Entity(ies), unless undertaken by the Contractor with the consent of the Contracting
405 Officer at the point or points of delivery established pursuant to subdivision (a) of this Article. Upon
406 the request of either party to this Contract, the Contracting Officer shall investigate, or cause to be
407 investigated by the appropriate Operating Non-Federal Entity (ies) the accuracy of such
408 measurements and shall take any necessary steps to adjust any errors appearing therein. For any
409 period of time when accurate measurements have not been made, the Contracting Officer shall
410 consult with the Contractor and the appropriate Operating Non-Federal Entity(ies), if any, prior to
411 making a final determination of the quantity delivered for that period of time.

412 (e) Absent a separate contrary written agreement with the Contractor, neither the
413 Contracting Officer nor any Operating Non-Federal Entity(ies) shall be responsible for the control,
414 carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to this
415 Contract beyond the point or points of delivery established pursuant to subdivision (a) of this Article.
416 The Contractor shall indemnify the United States, its officers, employees, agents, and assigns on

417 account of damage or claim of damage of any nature whatsoever for which there is legal
418 responsibility, including property damage, personal injury, or death arising out of or connected with
419 the control, carriage, handling, use, disposal, or distribution of such Water Delivered beyond such
420 point or points of delivery except for any damage or claim arising out of: (i) acts or omissions of the
421 Contracting Officer or any of its officers, employees, agents, and assigns, including the Operating
422 Non-Federal Entity(ies) with the intent of creating the situation resulting in any damage or claim; (ii)
423 willful misconduct of the Contracting Officer or any of its officers, employees, agents, and assigns,
424 including the Operating Non-Federal Entity(ies); (iii) negligence of the Contracting Officer or any of
425 its officers, employees, agents, and assigns including the Operating Non-Federal Entity(ies); (iv) a
426 malfunction of facilities owned and/or operated by the United States or the Operating Non-Federal
427 Entity(ies); or (v) failure of the United States, its officers, employees, agents and assigns, including
428 the Operating Non-Federal Entity(ies), to provide drainage service.

429 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

430 6. (a) The Contractor has established a measuring program satisfactory to the
431 Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation
432 purposes within the Contractor's Service Area is measured at each agricultural turnout and such
433 water delivered for M&I purposes is measured at each M&I service connection. The water
434 measuring devices or water measuring methods of comparable effectiveness must be acceptable to
435 the Contracting Officer. The Contractor shall be responsible for installing, operating, and
436 maintaining and repairing all such measuring devices and implementing all such water measuring
437 methods at no cost to the United States. The Contractor shall use the information obtained from such

438 water measuring devices or water measuring methods to ensure its proper management of the water;
439 to bill water users for water delivered by the Contractor; and, if applicable, to record water delivered
440 for M&I purposes by customer class as defined in the Contractor's water conservation plan provided
441 for in Article 26 of this Contract. Nothing herein contained, however, shall preclude the Contractor
442 from establishing and collecting any charges, assessments, or other revenues authorized by California
443 law. The Contractor shall include a summary of all its annual surface water deliveries in the annual
444 report described in subdivision (c) of Article 26.

445 (b) To the extent the information has not otherwise been provided, upon execution
446 of this Contract, the Contractor shall provide to the Contracting Officer a written report describing
447 the measurement devices or water measuring methods being used or to be used to implement
448 subdivision (a) of this Article and identifying the agricultural turnouts and the M&I service
449 connections or alternative measurement programs approved by the Contracting Officer, at which such
450 measurement devices or water measuring methods are being used, and, if applicable, identifying the
451 locations at which such devices and/or methods are not yet being used including a time schedule for
452 implementation at such locations. The Contracting Officer shall advise the Contractor in writing
453 within 60 days as to the adequacy and necessary modifications, if any, of the measuring devices or
454 water measuring methods identified in the Contractor's report and if the Contracting Officer does not
455 respond in such time, they shall be deemed adequate. If the Contracting Officer notifies the
456 Contractor that the measuring devices or methods are inadequate, the parties shall within 60 days
457 following the Contracting Officer's response, negotiate in good faith the earliest practicable date by
458 which the Contractor shall modify said measuring devices and/or measuring methods as required by

459 the Contracting Officer to ensure compliance with subdivision (a) of this Article.

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

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

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

469 RATES AND METHOD OF PAYMENT FOR WATER

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

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

482 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
483 provide the Contractor an estimate of the Charges for Project Water that will be applied to the period
484 October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and
485 the basis for such estimate. The Contractor shall be allowed not less than two months to review and
486 comment on such estimates. On or before September 15 of each Calendar Year, the Contracting
487 Officer shall notify the Contractor in writing of the Charges to be in effect during the period October
488 1 of the current Calendar Year, through September 30, of the following Calendar Year, and such
489 notification shall revise Exhibit "B."

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

497 (c) At the time the Contractor submits the initial schedule for the delivery of
498 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor
499 shall make an advance payment to the United States equal to the total amount payable pursuant to the

500 applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be
501 delivered pursuant to this Contract during the first two calendar months of the Year. Before the end
502 of the first month and before the end of each calendar month thereafter, the Contractor shall make an
503 advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for the
504 Water Scheduled to be delivered pursuant to this Contract during the second month immediately
505 following. Adjustments between advance payments for Water Scheduled and payments at Rates due
506 for Water Delivered shall be made before the end of the following month; Provided, That any revised
507 schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the
508 amount of Water Delivered pursuant to this Contract during any month shall be accompanied with
509 appropriate advance payment, at the Rates then in effect, to assure that Project Water is not delivered
510 to the Contractor in advance of such payment. In any month in which the quantity of Water
511 Delivered to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid
512 for by the Contractor, no additional Project Water shall be delivered to the Contractor unless and
513 until an advance payment at the Rates then in effect for such additional Project Water is made. Final
514 adjustment between the advance payments for the Water Scheduled and payments for the quantities
515 of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable
516 but no later than April 30th of the following Year, or sixty days after the delivery of Project Water
517 rescheduled under subdivision (g) of Article 3 of this Contract if such water is not delivered by the
518 last day of February.

519 (d) The Contractor shall also make a payment in addition to the Rate(s) in
520 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the

521 appropriate Tiered Pricing Component then in effect, before the end of the month following the
522 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered
523 Pricing Component pursuant to subdivision (j) (2) of this Article. The payments shall be consistent
524 with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery
525 report for the subject month prepared by the Operating Non-Federal Entity(ies) or, if there is no
526 Operating Non-Federal Entity, by the Contracting Officer. The water delivery report shall be deemed
527 a bill for the payment of Charges and the applicable Tiered Pricing Component for Water Delivered.
528 Adjustment for overpayment or underpayment of Charges shall be made through the adjustment of
529 payments due to the United States for Charges for the next month. Any amount to be paid for past
530 due payment of Charges and the Tiered Pricing Component shall be computed pursuant to Article 20
531 of this Contract.

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

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

540 (g) All revenues received by the United States from the Contractor relating to the
541 delivery of Project Water or the delivery of non-Project water through Project facilities shall be

542 allocated and applied in accordance with Federal Reclamation law and the associated rules or
543 regulations, and the then current Project ratesetting policies for M&I Water or Irrigation Water.

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

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

559 (j) (1) Beginning at such time as deliveries of Project Water in a Year exceed
560 80 percent of the Contract Total, then before the end of the month following the month of delivery
561 the Contractor shall make an additional payment to the United States equal to the applicable Tiered

562 Pricing Component. The Tiered Pricing Component for the amount of Water Delivered in excess of
563 80 percent of the Contract Total, but less than or equal to 90 percent of the Contract Total, shall equal
564 one-half of the difference between the Rate established under subdivision (a) of this Article and the
565 Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable. The Tiered
566 Pricing Component for the amount of Water Delivered which exceeds 90 percent of the Contract
567 Total shall equal the difference between (i) the Rate established under subdivision (a) of this Article
568 and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable.
569 For all Water Delivered pursuant to subdivision (a) of Article 3 of this Contract which is in excess of
570 80 percent of the Contract Total, this increment shall be deemed to be divided between Irrigation
571 Water and M&I Water in the same proportion as actual deliveries of each bear to the cumulative total
572 Water Delivered.

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

580 (3) For purposes of determining the applicability of the Tiered Pricing
581 Component pursuant to this Article, Water Delivered shall include Project Water that the Contractor
582 transfers to others but shall not include Project Water transferred to the Contractor, nor shall it

583 include the additional water provided to the Contractor under the provisions of subdivision (f) of
584 Article 3 of this Contract.

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

593 (l) Except as provided in subsections 3405(a) (1) (B) and 3405(f) of the CVPIA,
594 the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates, in
595 accordance with the applicable Project ratesetting policy, adjusted upward or downward to reflect the
596 changed costs if any, incurred by the Contracting Officer in the delivery of the transferred Project
597 Water to the transferee's point of delivery. If the Contractor is receiving lower Rates and Charges
598 because of inability to pay and is transferring Project Water to another entity whose Rates and
599 Charges are not adjusted due to inability to pay, the Rates and Charges for transferred Project Water
600 shall not be adjusted to reflect the Contractor's inability to pay.

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

603 (n) Omitted

604 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

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

608 SALES, TRANSFERS, OR EXCHANGES OF WATER

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

619 (b) In order to facilitate efficient water management by means of water transfers of
620 the type historically carried out among Project Contractors located within the same geographical area
621 and to allow the Contractor to participate in an accelerated water transfer program during the term of
622 this Contract, the Contracting Officer shall prepare, as appropriate, all necessary environmental
623 documentation, including but not limited to, documents prepared pursuant to NEPA and ESA,

624 analyzing annual transfers within such geographical areas and the Contracting Officer shall
625 determine whether such transfers comply with applicable law. Following the completion of the
626 environmental documentation, such transfers addressed in such documentation shall be conducted
627 with advance notice to the Contracting Officer, but shall not require prior written approval by the
628 Contracting Officer. Such environmental documentation and the Contracting Officer's compliance
629 determination shall be reviewed every five years and updated, as necessary, prior to the expiration of
630 the then existing five-year period. All subsequent environmental documentation shall include an
631 alternative to evaluate not less than the quantity of Project Water historically transferred within the
632 same geographical area.

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

643 APPLICATION OF PAYMENTS AND ADJUSTMENTS

644 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,

645 capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of
646 the Contractor arising out of this Contract then due and payable. Overpayments of more than \$1,000
647 shall be refunded at the Contractor's request. In lieu of a refund, any amount of such overpayment at
648 the option of the Contractor, may be credited against amounts to become due to the United States by
649 the Contractor. With respect to overpayment, such refund or adjustment shall constitute the sole
650 remedy of the Contractor or anyone having or claiming to have the right to the use of any of the
651 Project Water supply provided for herein. All credits and refunds of overpayments shall be made
652 within 30 days of the Contracting Officer obtaining direction as to how to credit or refund such
653 overpayment in response to the notice to the Contractor that it has finalized the accounts for the Year
654 in which the overpayment was made.

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

660 TEMPORARY REDUCTIONS--RETURN FLOWS

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

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

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

683 CONSTRAINTS ON THE AVAILABILITY OF WATER

684 12. (a) In its operation of the Project, the Contracting Officer will use all reasonable
685 means to guard against a Condition of Shortage in the quantity of water to be made available to the

686 Contractor pursuant to this Contract. In the event the Contracting Officer determines that a
687 Condition of Shortage appears probable, the Contracting Officer will notify the Contractor of said
688 determination as soon as practicable.

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

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

703 (1) The Contracting Officer shall make an initial and subsequent
704 determination as necessary of the total quantity of Project Water estimated to be scheduled or actually
705 scheduled under subdivision (b) of Article 4 of this Contract and under all other long-term water
706 service or repayment contracts then in force for the delivery of Project Water by the United States

707 from Delta Division Facilities during the relevant Year, the quantity so determined being hereinafter
708 referred to as the scheduled total;

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

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

716 (4) The available supply shall be multiplied by the Contractor's
717 proportionate share and the result shall be the quantity of Project Water made available by the United
718 States to the Contractor for the relevant Year in accordance with the schedule developed by the
719 Contracting Officer under subdivision (c)(1) of this Article 12, but in no event shall such amount
720 exceed the Contract Total. In the event the Contracting Officer subsequently determines that the
721 Contracting Officer can increase or needs to decrease the available supply for delivery from Delta
722 Division Facilities to long-term water service and repayment Contractors during the relevant Year,
723 such additions or reductions to the available supply shall be apportioned consistent with
724 subparagraphs (1) through (4), inclusive.

725 (d) By entering into this Contract, the Contractor does not waive any legal rights
726 or remedies it may have to file or participate in any administrative or judicial proceeding contesting

727 (i) the sufficiency of the Central Valley Project M&I Water Shortage Policy; (ii) the substance of
728 such a policy; (iii) the applicability of such a policy; or (iv) the manner in which such policy is
729 implemented in order to allocate Project Water between municipal and industrial and irrigation
730 purposes; Provided, that the Contractor has commenced any such judicial challenge or any
731 administrative procedures necessary to institute any judicial challenge within 6 months of the policy
732 becoming final. By agreeing to the foregoing, the Contracting Officer does not waive any legal
733 defenses or remedies that it may have to assert in such a proceeding. Nothing contained herein shall
734 be interpreted to validate or invalidate the Central Valley Project M&I Water Shortage Policy.

735 UNAVOIDABLE GROUNDWATER PERCOLATION

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

740 RULES AND REGULATIONS

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

745 WATER AND AIR POLLUTION CONTROL

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

749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768

QUALITY OF WATER

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

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

(c) The Contracting Officer shall notify the Contractor in writing when drainage service becomes available. Thereafter, the Contracting Officer shall provide drainage service to the Contractor at rates established pursuant to the then-existing ratesetting policy for irrigation water; Provided, that such ratesetting policy shall be amended, modified, or superceded only through the process described in subdivision (a) of Article 7 of this Contract.

769
770

WATER ACQUIRED BY THE CONTRACTOR
OTHER THAN FROM THE UNITED STATES

771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790

17. (a) Water or water rights now owned or hereafter acquired by the Contractor other than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may be simultaneously transported through the same distribution facilities of the Contractor subject to the following: (i) if the facilities utilized for commingling Irrigation Water and non-Project water were constructed without funds made available pursuant to Federal Reclamation law, the provisions of Federal Reclamation law will be applicable only to the Landholders of lands which receive Irrigation Water; (ii) the eligibility of land to receive Irrigation Water must be established through the certification requirements as specified in the Acreage Limitation Rules and Regulations (43 CFR Part 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity necessary to irrigate such Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation Water and non-Project water are/were constructed with funds made available pursuant to Federal Reclamation law, the non-Project water will be subject to the acreage limitation provisions of Federal Reclamation law, unless the Contractor pays to the United States the incremental fee described in 43 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate annually the cost to the Federal Government, including interest, of storing or delivering non-Project water, which for purposes of this Contract shall be determined as follows: The quotient shall be the unpaid distribution system costs divided by the total irrigable acreage within the Contractor's Service Area. The incremental fee per acre is the mathematical result of such quotient times the interest rate determined using Section 202 (3) of the Act of October 12, 1982 (96 Stat. 1263). Such incremental

791 fee will be charged to each acre of excess or full cost land within the Contractor's Service Area that
792 receives non-Project water through Federally financed or constructed facilities. The incremental fee
793 calculation methodology will continue during the term of this Contract absent the promulgation of a
794 contrary Reclamation-wide rule, regulation or policy adopted after the Contractor has been afforded
795 the opportunity to review and comment on the proposed rule, regulation or policy. If such rule,
796 regulation or policy is adopted it shall supercede this provision.

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

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

808 (2) Delivery of such non-Project water in and through Project facilities
809 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project purposes as
810 determined by the Contracting Officer; (ii) reduce the quantity or quality of water available to other
811 Project Contractors; (iii) interfere with the delivery of contractual water entitlements to any other

812 Project Contractors; or (iv) interfere with the physical maintenance of the Project facilities.

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

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

824 (5) After Project purposes are met, as determined by the Contracting
825 Officer, the United States and Project Contractors entitled to Project Water from Delta Division
826 Facilities shall share priority to utilize the remaining capacity of the facilities declared to be
827 available by the Contracting Officer for conveyance and transportation of non-Project water prior to
828 any such remaining capacity being made available to non-Project contractors. Other Project
829 Contractors shall have a second priority to any remaining capacity of facilities declared to be
830 available by the Contracting Officer for conveyance and transportation of non-Project water prior to
831 any such remaining capacity being made available to non-Project contractors.

Formatted: Indent: First line: 0"

832

OPINIONS AND DETERMINATIONS

833

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

834

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

835

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

836

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

837

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

838

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

839

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

840

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

841

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

842

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

843

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

844

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

845

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

846

the extent reasonably practicable.

847

COORDINATION AND COOPERATION

848

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

849

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

850

affected Project Contractors, in order to improve the operation and management of the Project. The

851

communication, coordination, and cooperation regarding operations and management shall include,

852

but not be limited to, any action which will or may materially affect the quantity or quality of Project

853 Water supply, the allocation of Project Water supply, and Project financial matters including, but not
854 limited to, budget issues. The communication, coordination, and cooperation provided for hereunder
855 shall extend to all provisions of this Contract. Each party shall retain exclusive decision making
856 authority for all actions, opinions, and determinations to be made by the respective party.

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

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

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

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

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

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

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

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

884 CHARGES FOR DELINQUENT PAYMENTS

885 20. (a) The Contractor shall be subject to interest, administrative and penalty charges
886 on delinquent installments or payments. When a payment is not received by the due date, the
887 Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date.
888 When a payment becomes 60 days delinquent, the Contractor shall pay an administrative charge to
889 cover additional costs of billing and processing the delinquent payment. When a payment is
890 delinquent 90 days or more, the Contractor shall pay an additional penalty charge of six percent per
891 year for each day the payment is delinquent beyond the due date. Further, the Contractor shall pay
892 any fees incurred for debt collection services associated with a delinquent payment.

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

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

EQUAL OPPORTUNITY

901
902
903

904
905
906
907
908
909
910
911
912

913
914
915

916
917
918
919
920
921

922
923
924

925
926
927
928
929

930
931
932
933
934

935

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

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

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

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

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

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

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

936 by law.

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

946
947

GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

960 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

961
962 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42
963 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age
964 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as
965 well as with their respective implementing regulations and guidelines imposed by the U.S.
966 Department of the Interior and/or Bureau of Reclamation.

967 (b) These statutes require that no person in the United States shall, on the grounds
968 of race, color, national origin, handicap, or age, be excluded from participation in, be denied the

969 benefits of, or be otherwise subjected to discrimination under any program or activity receiving
970 financial assistance from the Bureau of Reclamation. By executing this Contract, the Contractor
971 agrees to immediately take any measures necessary to implement this obligation, including
972 permitting officials of the United States to inspect premises, programs, and documents.

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

980 PRIVACY ACT COMPLIANCE

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

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

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

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

999 (e) (e) The Contractor shall forward promptly to the System Manager each
1000 proposed denial of access under 43 CFR 2.64; and each request for amendment of records filed under
1001 43 CFR 2.71; notify the requester accordingly of such referral; and provide the System Manager with
1002 information and records necessary to prepare an appropriate response to the requester. These
1003 requirements do not apply to individuals seeking access to their own certification and reporting forms

1004 filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy
1005 Act as a basis for the request.

1006 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1007 25. In addition to all other payments to be made by the Contractor pursuant to this
1008 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and
1009 detailed statement submitted by the Contracting Officer to the Contractor for such specific items of
1010 direct cost incurred by the United States for work requested by the Contractor associated with this
1011 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and
1012 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in
1013 writing in advance by the Contractor. This Article shall not apply to costs for routine contract
1014 administration.

1015 WATER CONSERVATION

1016 26. (a) Prior to the delivery of water provided from or conveyed through Federally
1017 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be
1018 implementing an effective water conservation and efficiency program based on the Contractor's water
1019 conservation plan that has been determined by the Contracting Officer to meet the conservation and
1020 efficiency criteria for evaluating water conservation plans established under Federal law. The water
1021 conservation and efficiency program shall contain definite water conservation objectives, appropriate
1022 economically feasible water conservation measures, and time schedules for meeting those objectives.
1023 Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's
1024 continued implementation of such water conservation program. In the event the Contractor's water
1025 conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of

1026 this Article 26 have not yet been determined by the Contracting Officer to meet such criteria, due to
1027 circumstances which the Contracting Officer determines are beyond the control of the Contractor,
1028 water deliveries shall be made under this Contract so long as the Contractor diligently works with the
1029 Contracting Officer to obtain such determination at the earliest practicable date, and thereafter the
1030 Contractor immediately begins implementing its water conservation and efficiency program in
1031 accordance with the time schedules therein.

1032 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
1033 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall implement
1034 the Best Management Practices identified by the time frames issued by the California Urban Water
1035 Conservation Council for such M&I Water unless any such practice is determined by the Contracting
1036 Officer to be inappropriate for the Contractor.

1037 (c) The Contractor shall submit to the Contracting Officer a report on the status of
1038 its implementation of the water conservation plan on the reporting dates specified in the then existing
1039 conservation and efficiency criteria established under Federal law.

1040 (d) At five year intervals, the Contractor shall revise its water conservation plan to
1041 reflect the then current conservation and efficiency criteria for evaluating water conservation plans
1042 established under Federal law and submit such revised water management plan to the Contracting
1043 Officer for review and evaluation. The Contracting Officer will then determine if the water

1044 conservation plan meets Reclamation's then current conservation and efficiency criteria for
1045 evaluating water conservation plans established under Federal law.

1046 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall
1047 be described in the Contractor's water conservation plan.

1048 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1049 27. Except as specifically provided in Article 17 of this Contract, the provisions of this
1050 Contract shall not be applicable to or affect non-project water or water rights now owned or hereafter
1051 acquired by the Contractor or any user of such water within the Contractor's Service Area. Any such
1052 water shall not be considered Project Water under this Contract. In addition, this Contract shall not
1053 be construed as limiting or curtailing any rights which the Contractor or any water user within the
1054 Contractor's Service Area acquires or has available under any other contract pursuant to Federal
1055 Reclamation law.

1056 OPERATION AND MAINTENANCE BY SAN LUIS & DELTA-MENDOTA WATER
1057 AUTHORITY

1058 28. (a) The O&M of a portion of the Project facilities which serve the Contractor, and
1059 responsibility for funding a portion of the costs of such O&M, have been transferred to the San Luis
1060 & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate agreement (8-07-
1061 20-X0354) between the United States and Operating Non-Federal Entity San Luis & Delta-Mendota
1062 Water Authority. That separate agreement shall not interfere with or affect the rights or obligations
1063 of the Contractor or the United States hereunder.

1064 (b) The Contracting Officer has previously notified the Contractor in writing that
1065 the O&M of a portion of the Project facilities which serve the Contractor has been transferred to
1066 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, and therefore, the

1067 Contractor shall pay directly to Operating Non-Federal Entity San Luis & Delta-Mendota Water
1068 Authority, or to any successor approved by the Contracting Officer under the terms and conditions of
1069 the separate agreement between the United States and Operating Non-Federal Entity San Luis &
1070 Delta-Mendota Water Authority, described in subdivision (a) of this Article, all rates, charges, or
1071 assessments of any kind, including any assessment for reserve funds, which Operating Non-Federal
1072 Entity San Luis & Delta-Mendota Water Authority, or such successor determines, sets, or establishes
1073 for the O&M of the portion of the Project facilities operated and maintained by Operating Non-
1074 Federal Entity San Luis & Delta-Mendota Water Authority, or such successor. Such direct payments
1075 to Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or such successor shall
1076 not relieve the Contractor of its obligation to pay directly to the United States the Contractor's share
1077 of the Project Rates, Charges, and Tiered Pricing Components except to the extent the Operating
1078 Non-Federal Entity collects payments on behalf of the United States in accordance with subdivision
1079 (a) of this Article.

1080 (c) For so long as the O&M of any portion of the Project facilities serving the
1081 Contractor is performed by Operating Non-Federal Entity San Luis & Delta-Mendota Water
1082 Authority, or any successor thereto, the Contracting Officer shall adjust those components of the
1083 Rates for Water Delivered under this Contract representing the cost associated with the activity being
1084 performed by Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or its
1085 successor.

1086 (d) In the event the O&M of the Project facilities operated and maintained by

1087 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority is re-assumed by the
1088 United States during the term of this Contract, the Contracting Officer shall so notify the Contractor,
1089 in writing, and present to the Contractor a revised Exhibit "B" which shall include the portion of the
1090 Rates to be paid by the Contractor for Project Water under this Contract representing the O&M costs
1091 of the portion of such Project facilities which have been re-assumed. The Contractor shall, thereafter,
1092 in the absence of written notification from the Contracting Officer to the contrary, pay the Rates,
1093 Charges, and the Tiered Pricing Component specified in the revised Exhibit "B" directly to the
1094 United States in compliance with Article 7 of this Contract.

1095 OPERATION AND MAINTENANCE BY CALIFORNIA DEPARTMENT OF WATER
1096 RESOURCES

1097 28.1 (a) The O&M of a portion of the Project facilities which serve the Contractor, and
1098 responsibility for funding a portion of the costs of such O&M, have been transferred to the California
1099 Department of Water Resources, an Operating Non-Federal Entity by a separate agreement (14-06-
1100 200-9755) between the United States and Operating Non-Federal Entity California Department of
1101 Water Resources. This separate agreement shall not interfere with or affect the rights or obligations
1102 of the Contractor or the United States hereunder.

1103 (b) The Contracting Officer has previously notified the Contractor in writing that
1104 the O&M of a portion of the Project facilities which serve the Contractor has been transferred to
1105 Operating Non-Federal Entity California Department of Water Resources, and the Contractor shall
1106 pay directly to Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or to any
1107 successor approved by the Contracting Officer under the terms and conditions of the separate
1108 agreement between the United States and Operating Non-Federal Entity San Luis & Delta-Mendota

1109 Water Authority, described in subdivision (a) of Article 28 of this Contract, all rates, charges, or
1110 assessments of any kind, including any assessment for reserve funds, which Operating Non-Federal
1111 Entity California Department of Water Resources, or such successor determines, sets, or establishes
1112 for the O&M of the portion of the Project facilities operated and maintained by Operating Non-
1113 Federal Entity California Department of Water Resources, or such successor. Such direct payments
1114 to Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or such successor shall
1115 not relieve the Contractor of its obligation to pay directly to the United States the Contractor's share
1116 of the Project Rates, Charges, and Tiered Pricing Component(s) except to the extent the Operating
1117 Non-Federal Entity collects payments on behalf of the United States in accordance with the separate
1118 agreement identified in subdivision (a) of Article 28 of this Contract.

1119 (c) For so long as the O&M of any portion of the Project facilities serving the
1120 Contractor is performed by Operating Non-Federal Entity California Department of Water Resources,
1121 or any successor thereto, the Contracting Officer shall adjust those components of the Rates for
1122 Water Delivered under this Contract representing the cost associated with the activity being
1123 performed by Operating Non-Federal Entity California Department of Water Resources, or its
1124 successor.

1125 (d) In the event the O&M of the Project facilities operated and maintained by
1126 Operating Non-Federal Entity California Department of Water Resources is re-assumed by the
1127 United States during the term of this Contract, the Contracting Officer shall so notify the Contractor,
1128 in writing, and present to the Contractor a revised Exhibit "B" which shall include the portion of the
1129 Rates, Charges, and Tiered Pricing Component(s) to be paid by the Contractor for Project Water

1130 under this Contract representing the O&M costs of the portion of such Project facilities which have
1131 been re-assumed. The Contractor shall, thereafter, in the absence of written notification from the
1132 Contracting Officer to the contrary, pay the Rates, Charges, and the Tiered Pricing Component
1133 specified in the revised Exhibit "B" directly to the United States in compliance with Article 7 of this
1134 Contract.

1135 OPERATION AND MAINTENANCE OF CERTAIN FACILITIES

1136 28.2 (a) The Contracting Officer and the Contractor acknowledge that, with the
1137 advance approval of the Contracting Officer, the Contractor has, at its own expense, furnished and
1138 installed facilities, including but not limited to two, 30 inch siphons, each with 30 cubic feet per
1139 second capacity, 30 inch discharge diameters and open flow propeller meters located at Milepost
1140 89.66 Left – Meters A and B, and related equipment, to enable it to divert and deliver Project Water
1141 from the San Luis Canal before the United States furnishes and installs any such facilities. Such
1142 facilities have been constructed pursuant to a license agreement between the parties. The Contracting
1143 Officer acknowledges that such facilities are essential for the Contractor to receive Project Water
1144 from the San Luis Canal.

1145 (b) The Contractor hereby agrees to operate and maintain, at its own expense, all
1146 of the facilities described in subdivision (a) of this Article in such a manner that they remain in good
1147 and efficient condition.

1148 (c) The Contracting Officer or his representative shall at all times have access to
1149 and may inspect and investigate the facilities for the purpose of ascertaining if they are being kept in
1150 safe and proper operating condition.

1151 (d) No change in any of the facilities, which in the opinion of the Contracting
1152 Officer is substantial, shall be made by the Contractor without first obtaining the written consent of
1153 the Contracting Officer.

1154 (e) The Contractor shall hold the United States, its officers and employees
1155 harmless from every and all claim for damages to persons or property arising out of or connected
1156 with the Contractor's O&M of the facilities referred to in this Article; Provided, That nothing
1157 contained herein shall be construed as an assumption of liability by the Contractor to parties other
1158 than the United States with respect to such matters.

1159 (g) During the time the facilities are operated and maintained by the Contractor, in
1160 addition to all other payments to be made by the Contractor under this Contract, the Contractor shall
1161 pay to the United States pursuant to Article 25 hereof, costs incurred by the United States for work
1162 associated with the facilities under this Contract normally charged by the United States to water users
1163 and properly and equitably chargeable to the Contractor.

1164 (i) If deemed necessary by the Contracting Officer or requested by the Contractor,
1165 special inspections of the facilities being operated by the Contractor and of the Contractor's books
1166 and records may be made to ascertain the extent of any O&M deficiencies, to determine the remedial
1167 measures required for their correction, and to assist the Contractor in solving specific problems. Any
1168 special inspection or audit shall, except in a case of emergency, be made after written notice to the
1169 Contractor and the actual cost thereof shall be paid by the Contractor to the United States.

1170 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1171 29. The expenditure or advance of any money or the performance of any obligation of the
1172 United States under this Contract shall be contingent upon appropriation or allotment of funds.
1173 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
1174 under this Contract. No liability shall accrue to the United States in case funds are not appropriated
1175 or allotted.

1176 BOOKS, RECORDS, AND REPORTS

1177 30. (a) The Contractor shall establish and maintain accounts and other books and
1178 records pertaining to administration of the terms and conditions of this Contract, including: the
1179 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;
1180 the water users' land-use (crop census), land ownership, land-leasing and water use data; and other
1181 matters that the Contracting Officer may require. Reports thereon shall be furnished to the
1182 Contracting Officer in such form and on such date or dates as the Contracting Officer may require.
1183 Subject to applicable Federal laws and regulations, each party to this Contract shall have the right
1184 during office hours to examine and make copies of the other party's books and records relating to
1185 matters covered by this Contract.

1186 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,
1187 records, or other information shall be requested from the Contractor by the Contracting Officer unless
1188 such books, records, or information are reasonably related to the administration or performance of
1189 this Contract. Any such request shall allow the Contractor a reasonable period of time within which
1190 to provide the requested books, records, or information.

1191 (c) At such time as the Contractor provides information to the Contracting Officer
1192 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the
1193 Operating Non-Federal Entity.

1194 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1195 31. (a) The provisions of this Contract shall apply to and bind the successors and
1196 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1197 therein shall be valid until approved in writing by the Contracting Officer.

1198 (b) The assignment of any right or interest in this Contract by either party shall not
1199 interfere with the rights or obligations of the other party to this Contract absent the written
1200 concurrence of said other party.

1201 (c) The Contracting Officer shall not unreasonably condition or withhold approval
1202 of any proposed assignment.

1203 SEVERABILITY

1204 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor
1205 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an
1206 association or other form of organization whose primary function is to represent parties to Project
1207 contracts, brings an action in a court of competent jurisdiction challenging the legality or
1208 enforceability of a provision included in this Contract and said person, entity, association, or
1209 organization obtains a final court decision holding that such provision is legally invalid or
1210 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the
1211 parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court
1212 decision identify by mutual agreement the provisions in this Contract which must be revised and (ii)
1213 within three months thereafter promptly agree on the appropriate revision(s). The time periods
1214 specified above may be extended by mutual agreement of the parties. Pending the completion of the
1215 actions designated above, to the extent it can do so without violating any applicable provisions of
1216 law, the United States shall continue to make the quantities of Project Water specified in this
1217 Contract available to the Contractor pursuant to the provisions of this Contract which were not found
1218 to be legally invalid or unenforceable in the final court decision.

1219 RESOLUTION OF DISPUTES

1220 33. Should any dispute arise concerning any provisions of this Contract, or the parties’
1221 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the
1222 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring
1223 any matter to the Department of Justice, the party shall provide to the other party 30 days’ written
1224 notice of the intent to take such action; Provided, That such notice shall not be required where a
1225 delay in commencing an action would prejudice the interests of the party that intends to file suit.
1226 During the 30 day notice period, the Contractor and the Contracting Officer shall meet and confer in
1227 an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to
1228 waive or abridge any right or remedy that the Contractor or the United States may have.

OFFICIALS NOT TO BENEFIT

1229 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1230 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1231 manner as other water users or landowners.

1232 CHANGES IN CONTRACTOR’S SERVICE AREA

1233 35. (a) While this Contract is in effect, no change may be made in the Contractor's
1234 Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,
1235 except upon the Contracting Officer's written consent.

1236 (b) Within 30 days of receipt of a request for such a change, the Contracting
1237 Officer will notify the Contractor of any additional information required by the Contracting Officer
1238 for processing said request, and both parties will meet to establish a mutually agreeable schedule for
1239 timely completion of the process. Such process will analyze whether the proposed change is likely

1240 to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of
1241 the Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-
1242 constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project
1243 Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply with
1244 the NEPA and the ESA. The Contractor will be responsible for all costs incurred by the Contracting
1245 Officer in this process, and such costs will be paid in accordance with Article 25 of this Contract.

1246 FEDERAL LAWS

1247 36. By entering into this Contract, the Contractor does not waive its rights to contest the
1248 validity or application in connection with the performance of the terms and conditions of this
1249 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the
1250 terms and conditions of this Contract unless and until relief from application of such Federal law or
1251 regulation to the implementing provision of the Contract is granted by a court of competent
1252 jurisdiction.

1253 NOTICES

1254 37. Any notice, demand, or request authorized or required by this Contract shall be
1255 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered
1256 to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, California 93721,
1257 and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board of
1258 Directors of the Pacheco Water District, 52027 West Althea Avenue, Firebaugh, California 93622.
1259 The designation of the addressee or the address may be changed by notice given in the same manner
1260 as provided in this Article for other notices.

1261 CONFIRMATION OF CONTRACT

1262 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a
1263 decree of a court of competent jurisdiction of the State of California, confirming the execution of this
1264 Contract. The Contractor shall furnish the United States a certified copy of the final decree, the
1265 validation proceedings, and all pertinent supporting records of the court approving and confirming
1266 this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

1267 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and
1268 year first above written.

1269 THE UNITED STATES OF AMERICA

1270 By: _____
1271 Regional Director, Mid-Pacific Region
1272 Bureau of Reclamation

1273 (SEAL)

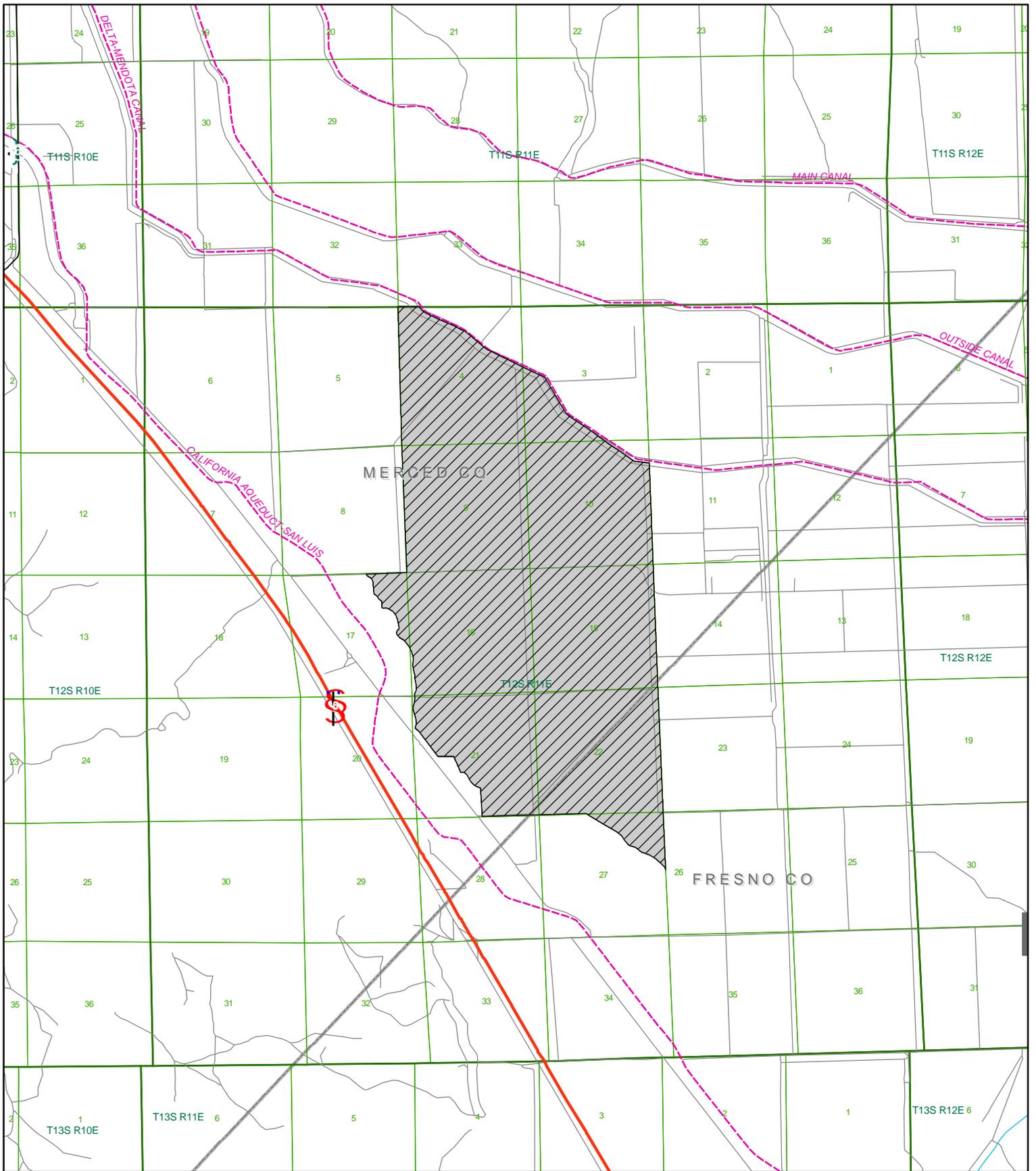
1274 PACHECO WATER DISTRICT

1275 By: _____
1276 President of the Board of Directors

1277 Attest:

1278 By: _____
1279 Secretary of the Board of Directors

1280
1281
1282
1283
1284
1285 (H:\pub 440\LTRC\Final Draft LTRC's – Fresno, Tracy\10-22-04 Pacheco WD Final; Draft
1286 LTRC.doc)



Pacheco Water District

EXHIBIT B
PACHECO WATER DISTRICT
Water Rates and Charges

	<u>2004 Rates Per Acre-Foot</u>		
	<u>Irrigation Water</u>	<u>Irrigation Water</u>	<u>M&I Water</u>
COST-OF-SERVICE (COS) RATES:	SLC	DMC	
Capital Rates:	\$6.68	\$14.78	
O&M Rates:			
Water Marketing	\$7.59	\$7.59	
Storage	\$5.83	\$5.83	
Conveyance	*		
Direct Pumping (Project Use Energy)	\$0.00		
Tracy Pumping	*		
San Luis Drain			
Deficit Rates:			
Non-Interest Bearing			
Interest Bearing			
<u>TOTAL COST-OF-SERVICE RATES (COS):</u>	\$20.10	\$28.20	
<u>M&I FULL-COST RATE:</u>			
<u>FULL-COST RATES:</u>			
Section 202(3) Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981.	\$37.70	\$37.88	
<u>205 FULL-COST RATES:</u>			
Section 205(a)(3) Rate is applicable to a Qualified Recipient or to a Limited Recipient that did not receive irrigation water on or before October 1, 1981.	\$44.76	\$45.94	
Tiered Pricing Component >80% <=90% of Contract Total [Full Cost Rate - COS Rate /2]:			
Tiered Pricing Component >90% of Contract Total [Full Cost Rate - COS Rate]:			
SURCHARGES UNDER P.L. 102-575 TO RESTORATION FUND**	\$7.82	\$7.82	

* Conveyance and Conveyance Pumping Operation and maintenance costs were removed for ratesetting purposes and are to be billed directly to the water authorities.

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