

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

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

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Exhibit A - Map of Contractor's Service Area

Exhibit B - Rates and Charges

1 UNITED STATES
2 DEPARTMENT OF THE INTERIOR
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4 LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
5 AND
6 PANOCHE WATER DISTRICT
7 PROVIDING FOR PROJECT WATER SERVICE
8 FROM SAN LUIS UNIT AND DELTA DIVISION

9 THIS CONTRACT, made this ____ day of _____, 2005, in pursuance
10 generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto,
11 including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and
12 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat.
13 483), June 3, 1960 (74 Stat. 156), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263),
14 October 27, 1986 (100 Stat. 3050), as amended, and Title XXXIV of the Act of October 30, 1992
15 (106 Stat. 4706), all collectively hereinafter referred to as Federal Reclamation law, between THE
16 UNITED STATES OF AMERICA, hereinafter referred to as the United States, and PANOCHE
17 WATER DISTRICT, hereinafter referred to as the Contractor, a public agency of the State of
18 California, duly organized, existing, and acting pursuant to the laws thereof;

19 WITNESSETH, That:

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EXPLANATORY RECITALS

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

[2nd] WHEREAS, the United States constructed the Delta 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. 14-06-200-7864A, which established terms for the delivery to the Contractor of Project Water from August 30, 1974, through December 31, 2008, 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. 14-06-200-7864A-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 would be considered by the Contracting Officer in determine 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 the San Luis Unit facilities, 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 94,000 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 61,852 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 evidence in
319 excess of 30 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.

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TIME FOR DELIVERY OF WATER

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

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

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

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

(2) Prior to October 1 of each Calendar Year, the Contracting Officer shall
make available to the Contractor an estimate of the Rates and Tiered Pricing Component for Project
Water for the following Year and the computations and cost allocations upon which those Rates are
based. The Contractor shall be allowed not less than two months to review and comment on such
computations and cost allocations. By December 31 of each Calendar Year, the Contracting Officer

490

491 shall provide the Contractor with the final Rates and Tiered Pricing Component to be in effect for the
492 upcoming Year, and such notification shall revise Exhibit "B."

493 (c) At the time the Contractor submits the initial schedule for the delivery of
494 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor
495 shall make an advance payment to the United States equal to the total amount payable pursuant to the
496 applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be
497 delivered pursuant to this Contract during the first two calendar months of the Year. Before the end
498 of the first month and before the end of each calendar month thereafter, the Contractor shall make an
499 advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for the
500 Water Scheduled to be delivered pursuant to this Contract during the second month immediately
501 following. Adjustments between advance payments for Water Scheduled and payments at Rates due
502 for Water Delivered shall be made before the end of the following month; Provided, That any revised
503 schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the
504 amount of Water Delivered pursuant to this Contract during any month shall be accompanied with
505 appropriate advance payment, at the Rates then in effect, to assure that Project Water is not delivered
506 to the Contractor in advance of such payment. In any month in which the quantity of Water
507 Delivered to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid
508 for by the Contractor, no additional Project Water shall be delivered to the Contractor unless and
509 until an advance payment at the Rates then in effect for such additional Project Water is made. Final
510 adjustment between the advance payments for the Water Scheduled and payments for the quantities
511 of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable
512 but no later than April 30th of the following Year, or sixty days after the delivery of Project Water

513 rescheduled under subdivision (g) of Article 3 of this Contract if such water is not delivered by the
514 last day of February.

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

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

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

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

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

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

555 (j) (1) Beginning at such time as deliveries of Project Water in a Year exceed

556 80 percent of the Contract Total, then before the end of the month following the month of delivery
557 the Contractor shall make an additional payment to the United States equal to the applicable Tiered
558 Pricing Component. The Tiered Pricing Component for the amount of Water Delivered in excess of
559 80 percent of the Contract Total, but less than or equal to 90 percent of the Contract Total, shall equal
560 one-half of the difference between the Rate established under subdivision (a) of this Article and the
561 Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable. The Tiered
562 Pricing Component for the amount of Water Delivered which exceeds 90 percent of the Contract
563 Total shall equal the difference between (i) the Rate established under subdivision (a) of this Article
564 and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable.
565 For all Water Delivered pursuant to subdivision (a) of Article 3 of this Contract which is in excess of
566 80 percent of the Contract Total, this increment shall be deemed to be divided between Irrigation
567 Water and M&I Water in the same proportion as actual deliveries of each bear to the cumulative total
568 Water Delivered.

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

576 (3) For purposes of determining the applicability of the Tiered Pricing
577 Component pursuant to this Article, Water Delivered shall include Project Water that the Contractor

578 transfers to others but shall not include Project Water transferred to the Contractor, nor shall it
579 include the additional water provided to the Contractor under the provisions of subdivision (f) of
580 Article 3 of this Contract.

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

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

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

599 (n) Omitted

600 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

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

604 SALES, TRANSFERS, OR EXCHANGES OF WATER

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

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

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

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

639 APPLICATION OF PAYMENTS AND ADJUSTMENTS

640 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,
641 capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of
642 the Contractor arising out of this Contract then due and payable. Overpayments of more than \$1,000

643 shall be refunded at the Contractor's request. In lieu of a refund, any amount of such overpayment at
644 the option of the Contractor, may be credited against amounts to become due to the United States by
645 the Contractor. With respect to overpayment, such refund or adjustment shall constitute the sole
646 remedy of the Contractor or anyone having or claiming to have the right to the use of any of the
647 Project Water supply provided for herein. All credits and refunds of overpayments shall be made
648 within 30 days of the Contracting Officer obtaining direction as to how to credit or refund such
649 overpayment in response to the notice to the Contractor that it has finalized the accounts for the Year
650 in which the overpayment was made.

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

656 TEMPORARY REDUCTIONS--RETURN FLOWS

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

662 (b) The Contracting Officer or Operating Non-Federal Entity(ies) may temporarily
663 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for the

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

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

679 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

685 (b) If there is a Condition of Shortage because of errors in physical operations of

686 the Project, drought, other physical causes beyond the control of the Contracting Officer or actions
687 taken by the Contracting Officer to meet legal obligations then, except as provided in subdivision (a)
688 of Article 18 of this Contract, no liability shall accrue against the United States or any of its officers,
689 agents, or employees for any damage, direct or indirect, arising therefrom.

690 (c) In any Year in which there may occur a Condition of Shortage for any of the
691 reasons specified in subdivision (b) of this Article, and subject to subdivision (d) of this Article, the
692 Contracting Officer will first allocate the available Project Water consistent with the Central Valley
693 Project M&I Water Shortage Policy in its form on the effective date of this Contract for determining
694 the amount of Project Water available for delivery to the Project Contractors. Subject to the
695 foregoing allocation, in any year in which there may occur a Condition of Shortage, the Contracting
696 Officer shall then apportion Project Water among the Contractor and others entitled to Project Water

697 from Delta Division Facilities under long-term water service or repayment contracts (or renewals
698 thereof or binding commitments therefore) in force on February 28, 2005, as follows:

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

705 (2) A determination shall be made of the total quantity of Project Water
706 that is available for meeting the scheduled total, the quantity so determined being hereinafter referred

707 to as the available supply;

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

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

721 (d) By entering into this Contract, the Contractor does not waive any legal rights
722 or remedies it may have to file or participate in any administrative or judicial proceeding contesting
723 (i) the sufficiency of the Central Valley Project M&I Water Shortage Policy; (ii) the substance of
724 such a policy; (iii) the applicability of such a policy; or (iv) the manner in which such policy is
725 implemented in order to allocate Project Water between municipal and industrial and irrigation
726 purposes; Provided, That the Contractor has commenced any such judicial challenge or any
727 administrative procedures necessary to institute any judicial challenge within 6 months of the policy
728 becoming final. By agreeing to the foregoing, the Contracting Officer does not waive any legal

729 defenses or remedies that it may have to assert in such a proceeding. Nothing contained herein shall
730 be interpreted to validate or invalidate the Central Valley Project M&I Water Shortage Policy.

731 UNAVOIDABLE GROUNDWATER PERCOLATION

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

736 RULES AND REGULATIONS

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

741 WATER AND AIR POLLUTION CONTROL

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

745 QUALITY OF WATER

746 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to
747 this Contract shall be operated and maintained to enable the United States to deliver Project Water to
748 the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act
749 of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat.
750 3050) or other existing Federal laws. The United States is under no obligation to construct or furnish
751 water treatment facilities to maintain or to improve the quality of Water Delivered to the Contractor
752 pursuant to this Contract. The United States does not warrant the quality of Water Delivered to the
753 Contractor pursuant to this Contract.
754 Contractor pursuant to this Contract.

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

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

766 WATER ACQUIRED BY THE CONTRACTOR
767 OTHER THAN FROM THE UNITED STATES

768 17. (a) Water or water rights now owned or hereafter acquired by the Contractor other
769 than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may
770 be simultaneously transported through the same distribution facilities of the Contractor subject to the
771 following: (i) if the facilities utilized for commingling Irrigation Water and non-Project water were
772 constructed without funds made available pursuant to Federal Reclamation law, the provisions of
773 Federal Reclamation law will be applicable only to the Landholders of lands which receive Irrigation
774 Water; (ii) the eligibility of land to receive Irrigation Water must be established through the
775 certification requirements as specified in the Acreage Limitation Rules and Regulations (43 CFR Part
776 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be

777 established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity
778 necessary to irrigate such Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation
779 Water and non-Project water are/were constructed with funds made available pursuant to Federal
780 Reclamation law, the non-Project water will be subject to the acreage limitation provisions of Federal
781 Reclamation law, unless the Contractor pays to the United States the incremental fee described in 43
782 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate annually the
783 cost to the Federal Government, including interest, of storing or delivering non-Project water, which
784 for purposes of this Contract shall be determined as follows: The quotient shall be the unpaid
785 distribution system costs divided by the total irrigable acreage within the Contractor's Service Area.
786 The incremental fee per acre is the mathematical result of such quotient times the interest rate
787 determined using Section 202 (3) of the Act of October 12, 1982 (96 Stat. 1263). Such incremental
788 fee will be charged to each acre of excess or full cost land within the Contractor's Service Area that
789 receives non-Project water through Federally financed or constructed facilities. The incremental fee
790 calculation methodology will continue during the term of this Contract absent the promulgation of a
791 contrary Reclamation-wide rule, regulation or policy adopted after the Contractor has been afforded
792 the opportunity to review and comment on the proposed rule, regulation or policy. If such rule,
793 regulation or policy is adopted it shall supercede this provision.

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

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

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

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

818 (4) Diversion of such non-Project water into Project facilities shall be
819 consistent with all applicable laws, and if involving groundwater, consistent with any applicable

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820 groundwater management plan for the area from which it was extracted.

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

829 OPINIONS AND DETERMINATIONS

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

839 (b) The Contracting Officer shall have the right to make determinations necessary
840 to administer this Contract that are consistent with the provisions of this Contract, the laws of the
841 United States and of the State of California, and the rules and regulations promulgated by the

842 Secretary of the Interior. Such determinations shall be made in consultation with the Contractor to
843 the extent reasonably practicable.

844 COORDINATION AND COOPERATION

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

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

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

862 (1) The Contracting Officer will, at the request of the Contractor, assist in
863 the development of integrated resource management plans for the Contractor. Further, the

864 Contracting Officer will, as appropriate, seek authorizations for implementation of partnerships to
865 improve water supply, water quality, and reliability.

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

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

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

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

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

881 CHARGES FOR DELINQUENT PAYMENTS

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

885 When a payment becomes 60 days delinquent, the Contractor shall pay an administrative charge to
886 cover additional costs of billing and processing the delinquent payment. When a payment is
887 delinquent 90 days or more, the Contractor shall pay an additional penalty charge of six percent per
888 year for each day the payment is delinquent beyond the due date. Further, the Contractor shall pay
889 any fees incurred for debt collection services associated with a delinquent payment.

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

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

898 EQUAL OPPORTUNITY

899
900 21. During the performance of this Contract, the Contractor agrees as follows:

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

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

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

919 (d) The Contractor will comply with all provisions of Executive Order

920 No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of
921 the Secretary of Labor.

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

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

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

943 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

954 (c) With respect to subdivision (b) of this Article, the Contractor shall have no

955 obligation to require advance payment for water rates which it levies.

956 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

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

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

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

975 PRIVACY ACT COMPLIANCE

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

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

985 (c) The Contracting Officer or a designated representative shall provide the
986 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau of

987 Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior,
988 Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information
989 contained in the Landholder's certification and reporting records.

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

994 (e) The Contractor shall forward promptly to the System Manager each proposed
995 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR
996 2.71; notify the requester accordingly of such referral; and provide the System Manager with
997 information and records necessary to prepare an appropriate response to the requester. These
998 requirements do not apply to individuals seeking access to their own certification and reporting forms
999 filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy
1000 Act as a basis for the request.

1001 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1002 25. In addition to all other payments to be made by the Contractor pursuant to this
1003 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and
1004 detailed statement submitted by the Contracting Officer to the Contractor for such specific items of
1005 direct cost incurred by the United States for work requested by the Contractor associated with this
1006 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and
1007 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in
1008 writing in advance by the Contractor. This Article shall not apply to costs for routine contract
1009 administration.

1010 WATER CONSERVATION

1011 26. (a) Prior to the delivery of water provided from or conveyed through Federally
1012 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be
1013 implementing an effective water conservation and efficiency program based on the Contractor's water

1014 conservation plan that has been determined by the Contracting Officer to meet the conservation and
1015 efficiency criteria for evaluating water conservation plans established under Federal law. The water
1016 conservation and efficiency program shall contain definite water conservation objectives, appropriate
1017 economically feasible water conservation measures, and time schedules for meeting those objectives.
1018 Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's
1019 continued implementation of such water conservation program. In the event the Contractor's water
1020 conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of
1021 this Article 26 have not yet been determined by the Contracting Officer to meet such criteria, due to
1022 circumstances which the Contracting Officer determines are beyond the control of the Contractor,
1023 water deliveries shall be made under this Contract so long as the Contractor diligently works with the
1024 Contracting Officer to obtain such determination at the earliest practicable date, and thereafter the
1025 Contractor immediately begins implementing its water conservation and efficiency program in
1026 accordance with the time schedules therein.

1027 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
1028 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall implement
1029 the Best Management Practices identified by the time frames issued by the California Urban Water
1030 Conservation Council for such M&I Water unless any such practice is determined by the Contracting
1031 Officer to be inappropriate for the Contractor.

1032 (c) The Contractor shall submit to the Contracting Officer a report on the status of
1033 its implementation of the water conservation plan on the reporting dates specified in the then existing
1034 conservation and efficiency criteria established under Federal law.

1035 (d) At five-year intervals, the Contractor shall revise its water conservation plan to
1036 reflect the then current conservation and efficiency criteria for evaluating water conservation plans
1037 established under Federal law and submit such revised water management plan to the Contracting
1038 Officer for review and evaluation. The Contracting Officer will then determine if the water
1039 conservation plan meets Reclamation's then current conservation and efficiency criteria for
1040 evaluating water conservation plans established under Federal law.

1041 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall
1042 be described in the Contractor's water conservation plan.

1043 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1044 27. Except as specifically provided in Article 17 of this Contract, the provisions of this
1045 Contract shall not be applicable to or affect non-project water or water rights now owned or hereafter
1046 acquired by the Contractor or any user of such water within the Contractor's Service Area. Any such
1047 water shall not be considered Project Water under this Contract. In addition, this Contract shall not
1048 be construed as limiting or curtailing any rights which the Contractor or any water user within the
1049 Contractor's Service Area acquires or has available under any other contract pursuant to Federal
1050 Reclamation law.

1051 OPERATION AND MAINTENANCE BY SAN LUIS AND DELTA-MENDOTA WATER
1052 AUTHORITY

1053 28. (a) The O&M of a portion of the Project facilities which serve the Contractor, and
1054 responsibility for funding a portion of the costs of such O&M, have been transferred to the San Luis
1055 & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate agreement (8-07-
1056 20-X0354) between the United States and Operating Non-Federal Entity San Luis & Delta-Mendota

1057 Water Authority. That separate agreement shall not interfere with or affect the rights or obligations
1058 of the Contractor or the United States hereunder.

1059 (b) The Contracting Officer has previously notified the Contractor in writing that
1060 the O&M of a portion of the Project facilities which serve the Contractor has been transferred to
1061 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, and therefore, the
1062 Contractor shall pay directly to Operating Non-Federal Entity San Luis & Delta-Mendota Water
1063 Authority, or to any successor approved by the Contracting Officer under the terms and conditions of
1064 the separate agreement between the United States and Operating Non-Federal Entity San Luis &
1065 Delta-Mendota Water Authority, described in subdivision (a) of this Article, all rates, charges, or
1066 assessments of any kind, including any assessment for reserve funds, which Operating Non-Federal
1067 Entity San Luis & Delta-Mendota Water Authority, or such successor determines, sets, or establishes
1068 for the O&M of the portion of the Project facilities operated and maintained by Operating Non-
1069 Federal Entity San Luis & Delta-Mendota Water Authority, or such successor. Such direct payments
1070 to Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or such successor shall
1071 not relieve the Contractor of its obligation to pay directly to the United States the Contractor's share
1072 of the Project Rates, Charges, and Tiered Pricing Component(s) except to the extent the Operating
1073 Non-Federal Entity collects payments on behalf of the United States in accordance with subdivision
1074 (a) of this Article.

1075 (c) For so long as the O&M of any portion of the Project facilities serving the
1076 Contractor is performed by Operating Non-Federal Entity San Luis & Delta-Mendota Water
1077 Authority, or any successor thereto, the Contracting Officer shall adjust those components of the
1078 Rates for Water Delivered under this Contract representing the cost associated with the activity being

1079 performed by Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or its
1080 successor.

1081 (d) In the event the O&M of the Project facilities operated and maintained by
1082 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority is re-assumed by the
1083 United States during the term of this Contract, the Contracting Officer shall so notify the Contractor,
1084 in writing, and present to the Contractor a revised Exhibit "B" which shall include the portion of the
1085 Rates to be paid by the Contractor for Project Water under this Contract representing the O&M costs
1086 of the portion of such Project facilities which have been re-assumed. The Contractor shall, thereafter,
1087 in the absence of written notification from the Contracting Officer to the contrary, pay the Rates,
1088 Charges, and the Tiered Pricing Component specified in the revised Exhibit "B" directly to the
1089 United States in compliance with Article 7 of this Contract.

1090 OPERATION AND MAINTENANCE BY CALIFORNIA DEPARTMENT OF WATER
1091 RESOURCES

1092 28.1 (a) The O&M of a portion of the Project facilities which serve the Contractor, and
1093 responsibility for funding a portion of the costs of such O&M, have been transferred to the California
1094 Department of Water Resources, an Operating Non-Federal Entity by a separate agreement (14-06-
1095 200-9755) between the United States and Operating Non-Federal Entity California Department of
1096 Water Resources. This separate agreement shall not interfere with or affect the rights or obligations
1097 of the Contractor or the United States hereunder.

1098 (b) The Contracting Officer has previously notified the Contractor in writing that
1099 the O&M of a portion of the Project facilities which serve the Contractor has been transferred to
1100 Operating Non-Federal Entity California Department of Water Resources, and the Contractor shall

1101 pay directly to Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or to any
1102 successor approved by the Contracting Officer under the terms and conditions of the separate
1103 agreement between the United States and Operating Non-Federal Entity San Luis & Delta-Mendota
1104 Water Authority, described in subdivision (a) of Article 28 of this Contract, all rates, charges, or
1105 assessments of any kind, including any assessment for reserve funds, which Operating Non-Federal
1106 Entity California Department of Water Resources, or such successor determines, sets, or establishes
1107 for the O&M of the portion of the Project facilities operated and maintained by Operating Non-
1108 Federal Entity California Department of Water Resources, or such successor. Such direct payments
1109 to Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or such successor shall
1110 not relieve the Contractor of its obligation to pay directly to the United States the Contractor's share
1111 of the Project Rates, Charges, and Tiered Pricing Components except to the extent the Operating
1112 Non-Federal Entity collects payments on behalf of the United States in accordance with the separate
1113 agreement identified in subdivision (a) of Article 28 of this Contract.

1114 (c) For so long as the O&M of any portion of the Project facilities serving the
1115 Contractor is performed by Operating Non-Federal Entity California Department of Water Resources,
1116 or any successor thereto, the Contracting Officer shall adjust those components of the Rates for
1117 Water Delivered under this Contract representing the cost associated with the activity being
1118 performed by Operating Non-Federal Entity California Department of Water Resources, or its
1119 successor.

1120 (d) In the event the O&M of the Project facilities operated and maintained by
1121 Operating Non-Federal Entity California Department of Water Resources is re-assumed by the
1122 United States during the term of this Contract, the Contracting Officer shall so notify the Contractor,

1123 in writing, and present to the Contractor a revised Exhibit “B” which shall include the portion of the
1124 Rates, Charges, and Tiered Pricing Component(s) to be paid by the Contractor for Project Water
1125 under this Contract representing the O&M costs of the portion of such Project facilities which have
1126 been re-assumed. The Contractor shall, thereafter, in the absence of written notification from the
1127 Contracting Officer to the contrary, pay the Rates, Charges, and the Tiered Pricing Component
1128 specified in the revised Exhibit “B” directly to the United States in compliance with Article 7 of this
1129 Contract.

1130
1131 PUMPING PLANTS, POWER FOR PUMPING PLANTS, AND TRANSFER
1132 OF OPERATION AND MAINTENANCE TO THE CONTRACTOR

1133 28.2. (a) The United States shall furnish and install pumping plants and furnish the
1134 amount of Project power the Contracting Officer determines is necessary to deliver Project Water to
1135 the Contractor from the Delta-Mendota and San Luis Canals at the point(s) of delivery identified
1136 pursuant to subdivision (a) of Article 5 at heads and elevations sufficient to irrigate by gravity the
1137 areas within the Contractor’s Service Area below 700 feet mean sea level elevation.

1138 (b) With advance approval of the Contracting Officer, the Contractor may, at its
1139 own expense, furnish and install pumping facilities, and related electrical equipment, to enable it to
1140 divert and deliver Project Water from the Delta-Mendota and San Luis Canals before the United
1141 States furnishes and installs all the pumping plants referred to in subdivision (a) of this Article. The
1142 United States shall furnish the amount of Project power needed to operate such pumping facilities;
1143 Provided, That the Contractor maintains an agreement with an entity to convey such power to such
1144 facilities, and the Contractor agrees to pay any and all charges assessed by that entity for such
1145 service.

1146 (c) The furnishing of power by the United States shall be in conformance with
1147 operating criteria, rules, and regulations, including the project use power policy, established by the
1148 Contracting Officer; Provided, That any such operating criteria, rules, and regulations, including the
1149 project use power policy, established by the Contracting Officer shall not excuse the United States
1150 from its obligation under subdivision (a) of this Article. Such operating criteria, rules, and
1151 regulations shall be developed in cooperation with the Contractor and shall be based on acceptable
1152 irrigation management practices and the power generation capacity available to the United States for
1153 the furnishing of Project water to the Contractor.

1154 (d) The Contractor hereby agrees to operate and maintain, at its own expense, all
1155 of the pumping facilities described in subdivisions (a) and (b) of this Article in such a manner that
1156 they remain in good and efficient condition; Provided, That the United States shall finance the costs
1157 of all major replacements that the Contracting Officer determines are needed.

1158 (e) The Contracting Officer or his representative shall at all times have access to
1159 and may inspect and investigate the pumping facilities for the purpose of ascertaining if they are
1160 being kept in safe and proper operating condition.

1161 (f) No change in any of the pumping facilities, which in the opinion of the
1162 Contracting Officer is substantial, shall be made by the Contractor without first obtaining the written
1163 consent of the Contracting Officer. The Contractor promptly shall make any and all repairs and
1164 replacements to the pumping facilities which in the opinion of the Contracting Officer are necessary.
1165 In the event the Contractor neglects or fails to make such repairs and replacements or in the event of
1166 operation by the United States of the pumping facilities pursuant to subdivision (i) of this Article, the
1167 United States may cause the repairs and replacements to be made and the cost thereof, as determined

1168 by the Contracting Officer, shall be paid by the Contractor to the United States upon notice of the
1169 payment due but not later than April 1 of the year following that during which such work was
1170 completed.

1171 (g) In the event the Contracting Officer determines that the Contractor has not
1172 properly cared for, operated, and maintained said pumping facilities or has failed to comply with any
1173 of the provisions of this Article, then at the election of the Contracting Officer the United States may
1174 take over from the Contractor the care and O&M of the pumping facilities by giving written notice to
1175 the Contractor of such election and the effective date thereof. Thereafter during the period of
1176 operation by the United States the Contractor shall pay to the United States in advance of the use of
1177 such pumping facilities the Contractor's share of the cost of O&M thereof and replacements
1178 therefore, as fixed in notices from the Contracting Officer. In the event such advances are inadequate
1179 to properly care for, operate, and maintain the pumping facilities to the end of any year, the
1180 Contracting Officer may give written notice of a supplemental O&M charge and the Contractor shall
1181 pay such amount on or before the date specified in said notice. Any amount of such advances
1182 remaining unexpended or unobligated, at the option of the Contractor, either shall be refunded or
1183 credited upon amounts to become due to the United States from the Contractor under the provisions
1184 of this Contract in subsequent years. The pumping facilities so taken back by the United States may
1185 be returned to the Contractor upon the furnishing to the Contractor of a written 90-day notice of
1186 intention to retransfer.

1187 (h) The Contractor shall hold the United States, its officers and employees
1188 harmless from every and all claim for damages to persons or property arising out of or connected
1189 with the Contractor's O&M of the pumping facilities referred to in this Article; Provided, That

1190 nothing contained herein shall be construed as an assumption of liability by the Contractor to parties
1191 other than the United States with respect to such matters.

1192 (i) During the time the pumping facilities are operated and maintained by the
1193 Contractor, in addition to all other payments to be made by the Contractor under this Contract, the
1194 Contractor shall pay to the United States pursuant to Article 25 hereof, costs incurred by the United
1195 States for work associated with the pumping facilities under this Contract normally charged by the
1196 United States to water users and properly and equitably chargeable to the Contractor.

1197 (j) The Contracting Officer may make review of any part or all of the pumping
1198 facilities being operated by the Contractor pursuant to this Article to assist the Contractor in
1199 assessing the condition of facilities and the adequacy of the maintenance program(s). The
1200 Contracting Officer shall prepare reports based on the examinations, inspections or audits, and
1201 furnish copies of such reports and any recommendations to the Contractor. The Contractor shall
1202 reimburse the actual cost incurred by the United States in making O&M examinations, inspections,
1203 and audits, and preparing associated reports and recommendations.

1204 (k) If deemed necessary by the Contracting Officer or requested by the Contractor,
1205 special inspections of the pumping facilities being operated by the Contractor and of the Contractor's
1206 books and records may be made to ascertain the extent of any O&M deficiencies, to determine the
1207 remedial measures required for their correction, and to assist the Contractor in solving specific
1208 problems. Any special inspection or audit shall, except in a case of emergency, be made after written
1209 notice to the Contractor and the actual cost thereof shall be paid by the Contractor to the United
1210 States.

1211 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1212 29. The expenditure or advance of any money or the performance of any obligation of the
1213 United States under this Contract shall be contingent upon appropriation or allotment of funds.
1214 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
1215 under this Contract. No liability shall accrue to the United States in case funds are not appropriated
1216 or allotted.

1217 BOOKS, RECORDS, AND REPORTS

1218 30. (a) The Contractor shall establish and maintain accounts and other books and
1219 records pertaining to administration of the terms and conditions of this Contract, including: the
1220 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;
1221 the water users' land-use (crop census), land ownership, land-leasing and water use data; and other
1222 matters that the Contracting Officer may require. Reports thereon shall be furnished to the
1223 Contracting Officer in such form and on such date or dates as the Contracting Officer may require.
1224 Subject to applicable Federal laws and regulations, each party to this Contract shall have the right
1225 during office hours to examine and make copies of the other party's books and records relating to
1226 matters covered by this Contract.

1227 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,
1228 records, or other information shall be requested from the Contractor by the Contracting Officer unless
1229 such books, records, or information are reasonably related to the administration or performance of
1230 this Contract. Any such request shall allow the Contractor a reasonable period of time within which
1231 to provide the requested books, records, or information.

1232 (c) At such time as the Contractor provides information to the Contracting Officer
1233 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the
1234 Operating Non-Federal Entity.

1235 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1236 31. (a) The provisions of this Contract shall apply to and bind the successors and
1237 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1238 therein shall be valid until approved in writing by the Contracting Officer.

1239 (b) The assignment of any right or interest in this Contract by either party shall not
1240 interfere with the rights or obligations of the other party to this Contract absent the written
1241 concurrence of said other party.

1242 (c) The Contracting Officer shall not unreasonably condition or withhold approval
1243 of any proposed assignment.

1244 SEVERABILITY

1245 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor
1246 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an
1247 association or other form of organization whose primary function is to represent parties to Project
1248 contracts, brings an action in a court of competent jurisdiction challenging the legality or
1249 enforceability of a provision included in this Contract and said person, entity, association, or
1250 organization obtains a final court decision holding that such provision is legally invalid or
1251 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the
1252 parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court
1253 decision identify by mutual agreement the provisions in this Contract which must be revised and (ii)
1254 within three months thereafter promptly agree on the appropriate revision(s). The time periods
1255 specified above may be extended by mutual agreement of the parties. Pending the completion of the
1256 actions designated above, to the extent it can do so without violating any applicable provisions of
1257 law, the United States shall continue to make the quantities of Project Water specified in this
1258 Contract available to the Contractor pursuant to the provisions of this Contract which were not found
1259 to be legally invalid or unenforceable in the final court decision.

1260 RESOLUTION OF DISPUTES

1261 33. Should any dispute arise concerning any provisions of this Contract, or the parties'
1262 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the
1263 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring
1264 any matter to the Department of Justice, the party shall provide to the other party 30 days' written
1265 notice of the intent to take such action; Provided, That such notice shall not be required where a
1266 delay in commencing an action would prejudice the interests of the party that intends to file suit.
1267 During the 30 day notice period, the Contractor and the Contracting Officer shall meet and confer in
1268 an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to
1269 waive or abridge any right or remedy that the Contractor or the United States may have.

1270 OFFICIALS NOT TO BENEFIT

1271 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1272 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1273 manner as other water users or landowners.

1274 CHANGES IN CONTRACTOR'S SERVICE AREA

1275 35. (a) While this Contract is in effect, no change may be made in the Contractor's
1276 Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,
1277 except upon the Contracting Officer's written consent.
1278

1279 (b) Within 30 days of receipt of a request for such a change, the Contracting
1280 Officer will notify the Contractor of any additional information required by the Contracting Officer
1281 for processing said request, and both parties will meet to establish a mutually agreeable schedule for

1282 timely completion of the process. Such process will analyze whether the proposed change is likely
1283 to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of
1284 the Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-
1285 constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project
1286 Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply with
1287 the NEPA and the ESA. The Contractor will be responsible for all costs incurred by the Contracting
1288 Officer in this process, and such costs will be paid in accordance with Article 25 of this Contract.

1289 FEDERAL LAWS

1290 36. By entering into this Contract, the Contractor does not waive its rights to contest the
1291 validity or application in connection with the performance of the terms and conditions of this
1292 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the
1293 terms and conditions of this Contract unless and until relief from application of such Federal law or
1294 regulation to the implementing provision of the Contract is granted by a court of competent
1295 jurisdiction.

1296 NOTICES

1297 37. Any notice, demand, or request authorized or required by this Contract shall be
1298 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered
1299 to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, California 93721,
1300 and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board of
1301 Directors of the Panoche Water District, 52027 West Althea Avenue, Firebaugh, California 93622.
1302 The designation of the addressee or the address may be changed by notice given in the same manner
1303 as provided in this Article for other notices.

1304 CONFIRMATION OF CONTRACT

1305 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a
1306 decree of a court of competent jurisdiction of the State of California, confirming the execution of this
1307 Contract. The Contractor shall furnish the United States a certified copy of the final decree, the
1308 validation proceedings, and all pertinent supporting records of the court approving and confirming
1309 this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

1310 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and
1311 year first above written.

1312 THE UNITED STATES OF AMERICA

1313 By: _____
1314 Regional Director, Mid-Pacific Region
1315 Bureau of Reclamation

1316 (SEAL)

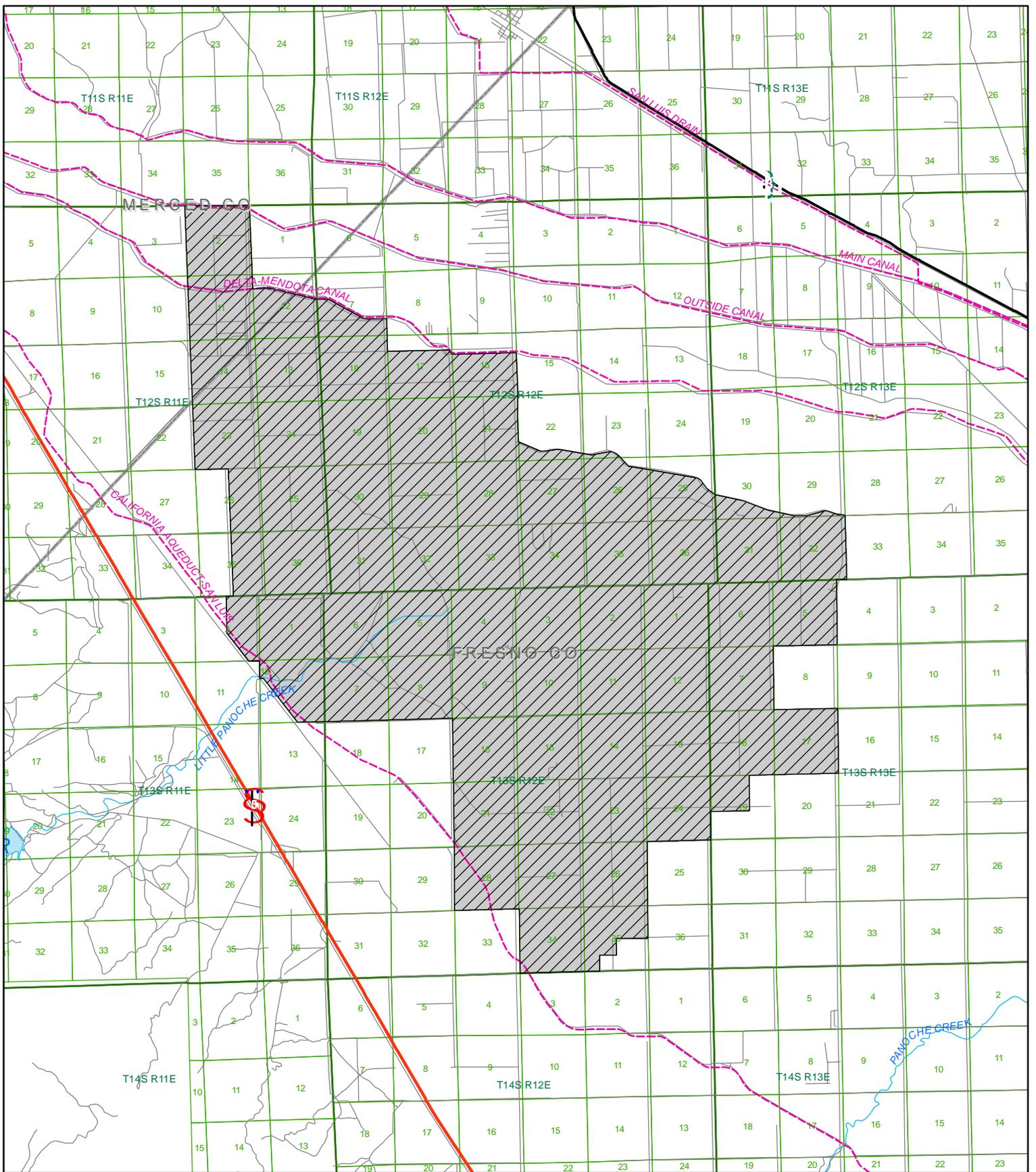
1317 PANOCHÉ WATER DISTRICT

1318 By: _____
1319 President of the Board of Directors

1320 Attest:

1321 By: _____
1322 Secretary of the Board of Directors

1323 (h:\PUB 440\lrc\Final Draft LTRC's – Fresno, Tracy\10-22-04 Panoche WD Final Draft LTRC with
1324 exhibits.doc)



Panoche Water District

EXHIBIT B
PANOCHE 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>
	SLC	DMC	
COST-OF-SERVICE (COS) RATES:			
Capital Rates:	\$13.48	\$10.50	\$22.47
O&M Rates:			
Water Marketing	\$7.59	\$7.59	\$5.01
Storage	\$5.83	\$5.83	\$6.38
Conveyance	*		*
Direct Pumping (Project Use Energy)	\$0.01		
Tracy Pumping	*		*
San Luis Drain			
Deficit Rates:			
Non-Interest Bearing			
Interest Bearing			
<u>TOTAL COST-OF-SERVICE RATES (COS):</u>	\$26.91	\$23.92	\$39.87
<u>M&I FULL-COST RATE:</u>			\$53.89
<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.	\$38.37	\$35.56	
<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.	\$46.05	\$42.63	
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	\$15.64

* 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).