

AG and M&I
T.O. Draft 10/19-2004
T.O. Draft 10/14-2004
T.O. Draft 09/22-2004
T.O. Draft 08/02-2004
R.O. Final Delta Division Form 07/23-2004
R.O. Draft 07/22-2004
CVP-Wide Form 05/23-2004
Delta Division
Contract No.
14-06-200-3365A-C-LTR1

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

LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
AND
WESTLANDS WATER DISTRICT
DISTRIBUTION DISTRICT NO. 2
PROVIDING FOR PROJECT WATER SERVICE
FROM THE DELTA DIVISION

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6 AND
7 WESTLANDS WATER DISTRICT
8 DISTRIBUTION DISTRICT NO. 2
9 PROVIDING FOR PROJECT WATER SERVICE
10 FROM THE DELTA DIVISION

11 THIS CONTRACT, made this _____ day of _____, 2005, in pursuance
12 generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto,
13 including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and
14 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat.
15 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat.
16 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all
17 collectively hereinafter referred to as Federal Reclamation law, between THE UNITED STATES
18 OF AMERICA, hereinafter referred to as the United States, and WESTLANDS WATER
19 DISTRICT DISTRIBUTION DISTRICT NO. 2, hereinafter referred to as the Contractor, a public
20 agency of the State of California, duly organized, existing, and acting pursuant to the laws thereof;

21 WITNESSETH, That:

EXPLANATORY RECITALS

22
23 [1st] WHEREAS, the United States has constructed and is operating the Central Valley
24 Project (Project), California, for diversion, storage, carriage, distribution and beneficial use, for
25 flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and
26 restoration, generation and distribution of electric energy, salinity control, navigation and other
27 beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and the
28 San Joaquin River and their tributaries; and

29 [2nd] WHEREAS, the United States constructed the Delta-Mendota Canal and related
30 facilities, which will be used in part for the furnishing of water to the Contractor pursuant to the
31 terms of this Contract; and

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

34 [4th] WHEREAS, Mercy Springs Water District (MSWD) and the United States entered
35 into Contract No. 14-06-200-3365A, which established terms for the delivery to MSWD of Project
36 Water from the Delta Division Facilities from June 21, 1967 through February 28, 1995; and

37 [5th] WHEREAS, MSWD and the United States have pursuant to subsection 3404(c)(1)
38 of the Central Valley Project Improvement Act (CVPIA), subsequently entered into interim renewal
39 contract(s) identified as Contract No(s). 14-06-200-3365A-IR1, 14-06-200-3365A-IR2, 14-06-200-
40 3365A-IR3-A, 14-06-200-3365A-IR4-A, 14-06-200-3365A-IR5-A, 14-06-200-3365A-IR6-A, and
41 14-06-200-3365A-IR7-A, which provided for the continued water service to the Contractor from
42 March 1, 1995 through February 28, 2004; and

43 [5.1] WHEREAS, during the term of Contract No. 14-06-200-3365A-IR7-A and
44 following approval of the United States, MSWD assigned to the Contractor on March 1, 2003, the

45 right, title and interest in and to that portion of Contract No. 14-06-200-3365A-IR7-A consisting of
46 4,198 acre-feet of Project Water together with any rights to renew that partial interest in Contract
47 No. 14-02-200-3365A-IR7-A; and

48 [5.2] WHEREAS, the Contractor and the United States have subsequent to the assignment
49 entered into a sequential interim renewal contract identified as Contract No. 14-06-200-3365A-IR8-
50 C, hereinafter referred to as the Existing Contract, consistent with the partial assignment, to provide
51 for continued delivery of Project Water to the Contractor from March 1, 2004 through February 28,
52 2006; and

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

58 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
59 environmental review necessary to provide for long-term renewal of the Existing Contract; and

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

63 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all of
64 its obligations under the Existing Contract; and

65 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting
66 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and

67 beneficial use and expects to utilize fully for reasonable and beneficial use the quantity of Project
68 Water to be made available to it pursuant to this Contract; and

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

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

74 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and
75 partnerships to pursue measures to improve water supply, water quality, and reliability of the
76 Project for all Project purposes; and

77 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to
78 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment
79 of the Project as required by law; to guard reasonably against Project Water shortages; to achieve a
80 reasonable balance among competing demands for use of Project Water; and to comply with all
81 applicable environmental statutes, all consistent with the legal obligations of the United States
82 relative to the Project; and

83 [15th] WHEREAS, the parties intend by this Contract to develop a more cooperative
84 relationship in order to achieve their mutual goals; and

85 [15.1] WHEREAS, the Contractor has utilized or may utilize transfers, contract
86 assignments, rescheduling and conveyance of Project Water and non-Project water under this
87 Contract as tools to minimize the impacts of Conditions of Shortage and to maximize the beneficial
88 use of water; and

89 [15.2] WHEREAS, the parties desire and intend that this Contract not provide a disincentive
90 to the Contractor in continuing to carry out the beneficial activities set out in the Explanatory
91 Recital immediately above; and

92 [16th] WHEREAS, the United States and the Contractor are willing to enter into this
93 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

96 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

160 (r) “Operating Non-Federal Entity” shall mean the entity(ies), its (their)
161 successors or assigns, which has (have) the obligation to operate and maintain all or a portion of the
162 Delta Division Facilities pursuant to written agreement(s) with the United States. When this
163 Contract was entered into, the Operating Non-Federal Entities were the San Luis & Delta-Mendota
164 Water Authority, and with respect to the San Luis Unit facilities, the California Department of
165 Water Resources;

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

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

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

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

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

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

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

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

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

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

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

194 TERM OF CONTRACT

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

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

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

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

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

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

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

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

239 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

240 3. (a) During each Year, consistent with all applicable State water rights, permits,
241 and licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this
242 Contract, the Contracting Officer shall make available for delivery to the Contractor 4,198 acre-feet
243 of Project Water for irrigation and M&I purposes. Water Delivered to the Contractor in accordance
244 with this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7
245 of this Contract.

246 (b) Because the capacity of the Project to deliver Project Water has been
247 constrained in recent years and may be constrained in the future due to many factors including
248 hydrologic conditions and implementation of Federal and State laws, the likelihood of the
249 Contractor actually receiving the amount of Project Water set out in subdivision (a) of this Article in
250 any given Year is uncertain. The Contracting Officer's modeling referenced in the PEIS projected
251 that the Contract Total set forth in this Contract will not be available to the Contractor in many
252 years. During the most recent five years, the Recent Historic Average of Water Made Available to
253 the Contractor was 2,762 acre-feet. Nothing in subdivision (b) of this Article shall affect the rights
254 and obligations of the parties under any provision of this Contract.

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

257 (1) In the event any Project Contractor (other than a Cross Valley
258 Contractor) that receives Project Water through the Delta Division Facilities obtains a contractual
259 agreement that the Contracting Officer shall make Project Water available at a point or points of
260 delivery in or north of the Delta, at the request of the Contractor and upon completion of any
261 required environmental documentation, this Contract shall be amended to provide for deliveries in

262 or north of the Delta on mutually agreeable terms. Such amendments to the Contract shall be
263 limited solely to those changes made necessary by the addition of such alternate points of delivery
264 in or north of the Delta; Provided, That the Contracting Officer's use of the Harvey O. Banks
265 Pumping Plant to deliver Project Water does not trigger this right of amendment.

266 (d) The Contractor shall make reasonable and beneficial use of all water
267 furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu),
268 groundwater banking programs, surface water storage programs, and other similar programs
269 utilizing Project Water or other water furnished pursuant to this Contract conducted within the
270 Contractor's Service Area which are consistent with applicable State law and result in use consistent
271 with Federal Reclamation law will be allowed; Provided, That any direct recharge program(s) is
272 (are) described in the Contractor's water conservation plan submitted pursuant to Article 26 of this
273 Contract; Provided, further, That such water conservation plan demonstrates sufficient lawful uses
274 exist in the Contractor's Service Area so that using a long-term average, the quantity of Delivered
275 Water is demonstrated to be reasonable for such uses and in compliance with Federal Reclamation
276 law. Groundwater recharge programs, groundwater banking programs, surface water storage
277 programs, and other similar programs utilizing Project Water or other water furnished pursuant to
278 this Contract conducted outside the Contractor's Service Area may be permitted upon written
279 approval of the Contracting Officer, which approval will be based upon environmental
280 documentation, Project Water rights, and Project operational concerns. The Contracting Officer
281 will address such concerns in regulations, policies, or guidelines.

282 (e) The Contractor shall comply with requirements applicable to the Contractor
283 in biological opinion(s) prepared as a result of a consultation regarding the execution of this
284 Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as

285 amended, that are within the Contractor's legal authority to implement. The Existing Contract,
286 which evidences in excess of 37 years of diversions for irrigation and/or M&I purposes of the
287 quantities of water provided in subdivision (a) of Article 3 of this Contract, will be considered in
288 developing an appropriate baseline for biological assessment(s) prepared pursuant to the ESA, and
289 any other needed environmental review. Nothing herein shall be construed to prevent the
290 Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with
291 respect to any biological opinion or other environmental documentation referred to in this Article.

292 (f) Following the declaration of Water Made Available under Article 4 of this
293 Contract, the Contracting Officer will make a determination whether Project Water, or other water
294 available to the Project, can be made available to the Contractor in addition to the Contract Total
295 under this Article during the Year without adversely impacting other Project Contractors. At the
296 request of the Contractor, the Contracting Officer will consult with the Contractor prior to making
297 such a determination. If the Contracting Officer determines that Project Water, or other water
298 available to the Project, can be made available to the Contractor, the Contracting Officer will
299 announce the availability of such water and shall so notify the Contractor as soon as practical. The
300 Contracting Officer will thereafter meet with the Contractor and other Project Contractors capable
301 of taking such water to determine the most equitable and efficient allocation of such water. If the
302 Contractor requests the delivery of any quantity of such water, the Contracting Officer shall make
303 such water available to the Contractor in accordance with applicable statutes, regulations,
304 guidelines, and policies. Subject to existing long-term contractual commitments, water rights and
305 operational constraints, long-term Project Contractors shall have a first right to acquire such water,
306 including Project Water made available pursuant to Section 215 of the RRA.

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

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

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

325 (j) The Contracting Officer shall make reasonable efforts to protect the water
326 rights necessary for the Project and to provide the water available under this Contract. The
327 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the
328 extent permitted by law, in administrative proceedings related to the Project Water rights; Provided,
329 That the Contracting Officer retains the right to object to the substance of the Contractor’s position

330 in such a proceeding; Provided further, That in such proceedings the Contracting Officer shall
331 recognize the Contractor has a legal right under the terms of this Contract to use Project Water.

332 TIME FOR DELIVERY OF WATER

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

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

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

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

353 initial schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any
354 written revision(s), thereto, satisfactory to the Contracting Officer, submitted within a reasonable
355 time prior to the date(s) on which the requested change(s) is/are to be implemented.

356 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

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

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

369 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
370 measured and recorded with equipment furnished, installed, operated, and maintained by the
371 Contracting Officer either directly or indirectly through its written agreement(s) with the Operating
372 Non-Federal Entity(ies), unless undertaken by the Contractor with the consent of the Contracting
373 Officer, at the point or points of delivery established pursuant to subdivision (a) of this Article.
374 Upon the request of either party to this Contract, the Contracting Officer shall investigate, or cause
375 to be investigated by the appropriate Operating Non-Federal Entity(ies), the accuracy of such

376 measurements and shall take any necessary steps to adjust any errors appearing therein. For any
377 period of time when accurate measurements have not been made, the Contracting Officer shall
378 consult with the Contractor and the appropriate Operating Non-Federal Entity(ies), if any, prior to
379 making a final determination of the quantity delivered for that period of time.

380 (e) Absent a separate contrary written agreement with the Contractor, neither the
381 Contracting Officer nor any Operating Non-Federal Entity(ies) shall be responsible for the control,
382 carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to
383 this Contract beyond the point or points of delivery established pursuant to subdivision (a) of this
384 Article. The Contractor shall indemnify the United States, its officers, employees, agents, and
385 assigns on account of damage or claim of damage of any nature whatsoever for which there is legal
386 responsibility, including property damage, personal injury, or death arising out of or connected with
387 the control, carriage, handling, use, disposal, or distribution of such Water Delivered beyond such
388 point or points of delivery, except for any damage or claim arising out of: (i) acts or omissions of
389 the Contracting Officer or any of its officers, employees, agents, and assigns, including the
390 Operating Non-Federal Entity(ies), with the intent of creating the situation resulting in any damage
391 or claim; (ii) willful misconduct of the Contracting Officer or any of its officers, employees, agents,
392 and assigns, including the Operating Non-Federal Entity(ies); (iii) negligence of the Contracting
393 Officer or any of its officers, employees, agents, and assigns including the Operating Non-Federal
394 Entity(ies); or (iv) a malfunction of facilities owned and/or operated by the United States or the
395 Operating Non-Federal Entity(ies).

396 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

397 6. (a) The Contractor has established a measuring program satisfactory to the
398 Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation

399 purposes within the Contractor's Service Area is measured at each agricultural turnout and such
400 water delivered for M&I purposes is measured at each M&I service connection. The water
401 measuring devices or water measuring methods of comparable effectiveness must be acceptable to
402 the Contracting Officer. The Contractor shall be responsible for installing, operating, and
403 maintaining and repairing all such measuring devices and implementing all such water measuring
404 methods at no cost to the United States. The Contractor shall use the information obtained from
405 such water measuring devices or water measuring methods to ensure its proper management of the
406 water, to bill water users for water delivered by the Contractor; and, if applicable, to record water
407 delivered for M&I purposes by customer class as defined in the Contractor's water conservation
408 plan provided for in Article 26 of this Contract. Nothing herein contained, however, shall preclude
409 the Contractor from establishing and collecting any charges, assessments, or other revenues
410 authorized by California law. The Contractor shall include a summary of all its annual surface
411 water deliveries in the annual report described in subdivision (c) of Article 26.

412 (b) To the extent the information has not otherwise been provided, upon
413 execution of this Contract, the Contractor shall provide to the Contracting Officer a written report
414 describing the measurement devices or water measuring methods being used or to be used to
415 implement subdivision (a) of this Article and identifying the agricultural turnouts and the M&I
416 service connections or alternative measurement programs approved by the Contracting Officer, at
417 which such measurement devices or water measuring methods are being used, and, if applicable,
418 identifying the locations at which such devices and/or methods are not yet being used including a
419 time schedule for implementation at such locations. The Contracting Officer shall advise the
420 Contractor in writing within 60 days as to the adequacy, and necessary modifications, if any, of the
421 measuring devices or water measuring methods identified in the Contractor's report and if the

422 Contracting Officer does not respond in such time, they shall be deemed adequate. If the
423 Contracting Officer notifies the Contractor that the measuring devices or methods are inadequate,
424 the parties shall within 60 days following the Contracting Officer's response, negotiate in good faith
425 the earliest practicable date by which the Contractor shall modify said measuring devices and/or
426 measuring methods as required by the Contracting Officer to ensure compliance with subdivision
427 (a) of this Article.

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

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

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

437 RATES AND METHOD OF PAYMENT FOR WATER

438 7. (a) The Contractor shall pay the United States as provided in this Article for all
439 Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance
440 with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's
441 then-existing ratesetting policy for M&I Water, which ratesetting policies shall be amended,
442 modified, or superceded only through a public notice and comment procedure; (ii) applicable
443 Federal Reclamation law and associated rules and regulations, or policies; and (iii) other applicable
444 provisions of this Contract. Payments shall be made by cash transaction, electronic funds transfer,

445 or any other mechanism as may be agreed to in writing by the Contractor and the Contracting
446 Officer. The Rates, Charges, and Tiered Pricing Component applicable to the Contractor upon
447 execution of this Contract are set forth in Exhibit "B," as may be revised annually.

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

450 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
451 provide the Contractor an estimate of the Charges for Project Water that will be applied to the
452 period October 1, of the current Calendar Year, through September 30, of the following Calendar
453 Year, and the basis for such estimate. The Contractor shall be allowed not less than two months to
454 review and comment on such estimates. On or before September 15 of each Calendar Year, the
455 Contracting Officer shall notify the Contractor in writing of the Charges to be in effect during the
456 period October 1 of the current Calendar Year, through September 30, of the following Calendar
457 Year, and such notification shall revise Exhibit "B".

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

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

468 the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be
469 delivered pursuant to this Contract during the first two calendar months of the Year. Before the end
470 of the first month and before the end of each calendar month thereafter, the Contractor shall make
471 an advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for
472 the Water Scheduled to be delivered pursuant to this Contract during the second month immediately
473 following. Adjustments between advance payments for Water Scheduled and payments at Rates
474 due for Water Delivered shall be made before the end of the following month; Provided, That any
475 revised schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases
476 the amount of Water Delivered pursuant to this Contract during any month shall be accompanied
477 with appropriate advance payment, at the Rates then in effect, to assure that Project Water is not
478 delivered to the Contractor in advance of such payment. In any month in which the quantity of
479 Water Delivered to the Contractor pursuant to this Contract equals the quantity of Water Scheduled
480 and paid for by the Contractor, no additional Project Water shall be delivered to the Contractor
481 unless and until an advance payment at the Rates then in effect for such additional Project Water is
482 made. Final adjustment between the advance payments for the Water Scheduled and payments for
483 the quantities of Water Delivered during each Year pursuant to this Contract shall be made as soon
484 as practicable but no later than April 30th of the following Year, or sixty days after the delivery of
485 Project Water rescheduled under subdivision (g) of Article 3 of this Contract if such water is not
486 delivered by the last day of February.

487 (d) The Contractor shall also make a payment in addition to the Rate(s) in
488 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
489 appropriate Tiered Pricing Component then in effect, before the end of the month following the
490 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered

491 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be consistent
492 with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery
493 report for the subject month prepared by the Operating Non-Federal Entity(ies) or, if there is no
494 Operating Non-Federal Entity, by the Contracting Officer. The water delivery report shall be
495 deemed a bill for the payment of Charges and the applicable Tiered Pricing Component for Water
496 Delivered. Adjustment for overpayment or underpayment of Charges shall be made through the
497 adjustment of payments due to the United States for Charges for the next month. Any amount to be
498 paid for past due payment of Charges and the Tiered Pricing Component shall be computed
499 pursuant to Article 20 of this Contract.

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

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

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

512 (h) The Contracting Officer shall keep its accounts pertaining to the
513 administration of the financial terms and conditions of its long-term contracts, in accordance with

514 applicable Federal standards, so as to reflect the application of Project costs and revenues. The
515 Contracting Officer shall, each Year upon request of the Contractor, provide to the Contractor a
516 detailed accounting of all Project and Contractor expense allocations, the disposition of all Project
517 and Contractor revenues, and a summary of all water delivery information. The Contracting Officer
518 and the Contractor shall enter into good faith negotiations to resolve any discrepancies or disputes
519 relating to accountings, reports, or information.

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

527 (j) (1) Beginning at such time as deliveries of Project Water in a Year
528 exceed 80 percent of the Contract Total, then before the end of the month following the month of
529 delivery the Contractor shall make an additional payment to the United States equal to the
530 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water
531 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the
532 Contract Total, shall equal one-half of the difference between the Rate established under
533 subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate,
534 whichever is applicable. The Tiered Pricing Component for the amount of Water Delivered which
535 exceeds 90 percent of the Contract Total shall equal the difference between (i) the Rate established

536 under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost
537 Water Rate, whichever is applicable.

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

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

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

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

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

569 (n) Omitted.

570 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

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

574 SALES, TRANSFERS, OR EXCHANGES OF WATER

575 9. (a) The right to receive Project Water provided for in this Contract may be sold,
576 transferred, or exchanged to others for reasonable and beneficial uses within the State of California
577 if such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable
578 guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this
579 Contract may take place without the prior written approval of the Contracting Officer, except as
580 provided for in subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be
581 approved absent all appropriate environmental documentation, including but not limited to,

582 documents prepared pursuant to the NEPA and ESA. Such environmental documentation should
583 include, as appropriate, an analysis of groundwater impacts and economic and social effects,
584 including environmental justice, of the proposed water transfers on both the transferor and
585 transferee.

586 (b) In order to facilitate efficient water management by means of water transfers
587 of the type historically carried out among Project Contractors located within the same geographical
588 area and to allow the Contractor to participate in an accelerated water transfer program during the
589 term of this Contract, the Contracting Officer shall prepare, as appropriate, all necessary
590 environmental documentation, including but not limited to documents prepared pursuant to NEPA
591 and ESA, analyzing annual transfers within such geographical areas and the Contracting Officer
592 shall determine whether such transfers comply with applicable law. Following the completion of
593 the environmental documentation, such transfers addressed in such documentation shall be
594 conducted with advance notice to the Contracting Officer, but shall not require prior written
595 approval by the Contracting Officer. Such environmental documentation and the Contracting
596 Officer's compliance determination shall be reviewed every five years and updated, as necessary,
597 prior to the expiration of the then existing five year period. All subsequent environmental
598 documentation shall include an alternative to evaluate not less than the quantity of Project Water
599 historically transferred within the same geographical area.

600 (c) For a water transfer to qualify under subdivision (b) of this Article, such
601 water transfer must: (i) be for irrigation purposes for lands irrigated within the previous three years,
602 for M&I use, groundwater recharge, groundwater banking, or similar groundwater activities, surface
603 water storage, or fish and wildlife resources; not lead to land conversion; and be delivered to
604 established cropland, wildlife refuges, groundwater basins or M&I use; (ii) occur within a single

605 Year; (iii) occur between a willing seller and a willing buyer; (iv) convey water through existing
606 facilities with no new construction or modifications to facilities and be between existing Project
607 Contractors and/or the Contractor and the United States, Department of the Interior; and (v) comply
608 with all applicable Federal, State, and local or tribal laws and requirements imposed for protection
609 of the environment and Indian Trust Assets, as defined under Federal law.

610 APPLICATION OF PAYMENTS AND ADJUSTMENTS

611 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,
612 capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of
613 the Contractor arising out of this Contract then due and payable. Overpayments of more than
614 \$1,000 shall be refunded at the Contractor's request. In lieu of a refund, any amount of such
615 overpayment at the option of the Contractor may be credited against amounts to become due to the
616 United States by the Contractor. With respect to overpayment, such refund or adjustment shall
617 constitute the sole remedy of the Contractor or anyone having or claiming to have the right to the
618 use of any of the Project Water supply provided for herein. All credits and refunds of overpayments
619 shall be made within 30 days of the Contracting Officer obtaining direction as to how to credit or
620 refund such overpayment in response to the notice to the Contractor that it has finalized the
621 accounts for the Year in which the overpayment was made.

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

627 TEMPORARY REDUCTIONS--RETURN FLOWS

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

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

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

650 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

661 (c) In any Year in which there may occur a Condition of Shortage for any of the
662 reasons specified in subdivision (b) of this Article, and subject to subdivision (d) of this Article, the
663 Contracting Officer will first allocate the available Project Water consistent with the [insert title of
664 final policy] in its form on the effective date of this Contract for determining the amount of Project
665 Water available for delivery to the Project Contractors. Subject to the foregoing allocation, in any
666 year in which there may occur a Condition of Shortage, the Contracting Officer shall then apportion
667 Project Water among the Contractor and others entitled to Project Water from Delta Division
668 Facilities under long-term water service or repayment contracts (or renewals thereof or binding
669 commitments therefore) in force on February 28, 2005, as follows:

670 (1) The Contracting Officer shall make an initial and subsequent
671 determination as necessary of the total quantity of Project Water estimated to be scheduled or
672 actually scheduled under subdivision (b) of Article 4 of this Contract and under all other long-term

673 water service or repayment contracts then in force for the delivery of Project Water by the United
674 States from Delta Division Facilities during the relevant Year, the quantity so determined being
675 hereinafter referred to as the scheduled total;

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

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

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

692 (d) By entering into this Contract, the Contractor does not waive any legal rights
693 or remedies it may have to file or participate in any administrative or judicial proceeding contesting
694 (i) the sufficiency of the Central Valley Project M&I Water Shortage Policy; (ii) the substance of
695 such a policy; (iii) the applicability of such a policy; or (iv) the manner in which such policy is

696 implemented in order to allocate Project Water between M&I and irrigation purposes; Provided,
697 That the Contractor has commenced any such judicial challenge or any administrative procedures
698 necessary to institute any judicial challenge within 6 months of the policy becoming final. By
699 agreeing to the foregoing, the Contracting Officer does not waive any legal defenses or remedies
700 that it may have to assert in such a proceeding. Nothing contained herein shall be interpreted to
701 validate or invalidate the Central Valley Project M&I Water Shortage Policy.

702 UNAVOIDABLE GROUNDWATER PERCOLATION

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

707 RULES AND REGULATIONS

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

712 WATER AND AIR POLLUTION CONTROL

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

716 QUALITY OF WATER

717 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to
718 this Contract shall be operated and maintained to enable the United States to deliver Project Water
719 to the Contractor in accordance with the water quality standards specified in subsection 2(b) of the
720 Act of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100
721 Stat. 3050) or other existing Federal laws. The United States is under no obligation to construct or

722 furnish water treatment facilities to maintain or to improve the quality of Water Delivered to the
723 Contractor pursuant to this Contract. The United States does not warrant the quality of Water
724 Delivered to the Contractor pursuant to this Contract.

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

731 (c) Omitted.

732 WATER ACQUIRED BY THE CONTRACTOR
733 OTHER THAN FROM THE UNITED STATES

734 17. (a) Water or water rights now owned or hereafter acquired by the Contractor
735 other than from the United States and Irrigation Water furnished pursuant to the terms of this
736 Contract may be simultaneously transported through the same distribution facilities of the
737 Contractor subject to the following: (i) if the facilities utilized for commingling Irrigation Water and
738 non-Project water were constructed without funds made available pursuant to Federal Reclamation
739 law, the provisions of Federal Reclamation law will be applicable only to the Landholders of lands
740 which receive Irrigation Water; (ii) the eligibility of land to receive Irrigation Water must be
741 established through the certification requirements as specified in the Acreage Limitation Rules and
742 Regulations (43 CFR Part 426); (iii) the water requirements of Eligible Lands within the
743 Contractor's Service Area can be established and the quantity of Irrigation Water to be utilized is
744 less than or equal to the quantity necessary to irrigate such Eligible Lands; and (iv) if the facilities
745 utilized for commingling Irrigation Water and non-Project water are/were constructed with funds

746 made available pursuant to Federal Reclamation law, the non-Project water will be subject to the
747 acreage limitation provisions of Federal Reclamation law, unless the Contractor pays to the United
748 States the incremental fee described in 43 CFR 426.15. In determining the incremental fee, the
749 Contracting Officer will calculate annually the cost to the Federal Government, including interest of
750 storing or delivering non-Project water, which for purposes of this Contract shall be determined as
751 follows: The quotient shall be the unpaid distribution system costs divided by the total irrigable
752 acreage within the Contractor's Service Area. The incremental fee per acre is the mathematical
753 result of such quotient times the interest rate determined using Section 202 (3) of the Act of
754 October 12, 1982 (96 Stat. 1263). Such incremental fee will be charged to each acre of excess or
755 full cost land within the Contractor's Service Area that receives non-Project water through
756 Federally financed or constructed facilities. The incremental fee calculation methodology will
757 continue during the term of this Contract absent the promulgation of a contrary Reclamation-wide
758 rule, regulation or policy adopted after the Contractor has been afforded the opportunity to review
759 and comment on the proposed rule, regulation or policy. If such rule, regulation or policy is
760 adopted it shall supercede this provision.

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

766 (1) The Contractor may introduce non-Project water into Project facilities
767 and deliver said water to lands within the Contractor's Service Area, including Ineligible Lands,
768 subject to payment to the United States and/or to any applicable Operating Non-Federal Entity of an

769 appropriate rate as determined by the applicable Project ratesetting policy, the RRA, and the Project
770 use power policy, if such Project use power policy is applicable, each as amended, modified or
771 superceded from time to time.

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

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

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

788 (5) After Project purposes are met, as determined by the Contracting
789 Officer, the United States and Project Contractors entitled to Project Water from Delta Division
790 Facilities shall share priority to utilize the remaining capacity of the facilities declared to be
791 available by the Contracting Officer for conveyance and transportation of non-Project water prior to

792 any such remaining capacity being made available to non-Project contractors. Other Project
793 Contractors shall have a second priority to any remaining capacity of facilities declared to be
794 available by the Contracting Officer for conveyance and transportation of non-Project water prior to
795 any such remaining capacity being made available to non-Project contractors.

796 OPINIONS AND DETERMINATIONS

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

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

811 COORDINATION AND COOPERATION

812 19. (a) In order to further their mutual goals and objectives, the Contracting Officer
813 and the Contractor shall communicate, coordinate, and cooperate with each other, and with other
814 affected Project Contractors, in order to improve the operation and management of the Project. The

815 communication, coordination, and cooperation regarding operations and management shall include,
816 but not be limited to, any action which will or may materially affect the quantity or quality of
817 Project Water supply, the allocation of Project Water supply, and Project financial matters
818 including, but not limited to, budget issues. The communication, coordination, and cooperation
819 provided for hereunder shall extend to all provisions of this Contract. Each party shall retain
820 exclusive decision making authority for all actions, opinions, and determinations to be made by the
821 respective party.

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

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

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

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

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

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

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

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

850 CHARGES FOR DELINQUENT PAYMENTS

851 20. (a) The Contractor shall be subject to interest, administrative and penalty charges
852 on delinquent installments or payments. When a payment is not received by the due date, the
853 Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date.
854 When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative
855 charge to cover additional costs of billing and processing the delinquent payment. When a payment
856 is delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six
857 (6%) percent per year for each day the payment is delinquent beyond the due date. Further, the
858 Contractor shall pay any fees incurred for debt collection services associated with a delinquent
859 payment.

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

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

868

EQUAL OPPORTUNITY

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

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

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

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

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

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

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

903 (g) The Contractor will include the provisions of paragraphs (a) through (g) in
904 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
905 Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such

906 provisions will be binding upon each subcontractor or vendor. The Contractor will take such action
907 with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a
908 means of enforcing such provisions, including sanctions for noncompliance: Provided, however,
909 That in the event the Contractor becomes involved in, or is threatened with, litigation with a
910 subcontractor or vendor as a result of such direction, the Contractor may request the United States
911 to enter into such litigation to protect the interests of the United States.

912 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

925 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

926 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
927 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the
928 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws,
929 as well as with their respective implementing regulations and guidelines imposed by the U.S.
930 Department of the Interior and/or Bureau of Reclamation.

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

937 (c) The Contractor makes this agreement in consideration of and for the purpose
938 of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal
939 financial assistance extended after the date hereof to the Contractor by the Bureau of Reclamation,
940 including installment payments after such date on account of arrangements for Federal financial
941 assistance which were approved before such date. The Contractor recognizes and agrees that such

942 Federal assistance will be extended in reliance on the representations and agreements made in this
943 Article, and that the United States reserves the right to seek judicial enforcement thereof.

944 PRIVACY ACT COMPLIANCE

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

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

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

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

963 (e) The Contractor shall forward promptly to the System Manager each proposed
964 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR
965 2.71; notify the requester accordingly of such referral; and provide the System Manager with
966 information and records necessary to prepare an appropriate response to the requester. These
967 requirements do not apply to individuals seeking access to their own certification and reporting
968 forms filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the
969 Privacy Act as a basis for the request.

970 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

971 25. In addition to all other payments to be made by the Contractor pursuant to this
972 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and
973 detailed statement submitted by the Contracting Officer to the Contractor for such specific items of
974 direct cost incurred by the United States for work requested by the Contractor associated with this
975 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and

976 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in
977 writing in advance by the Contractor. This Article shall not apply to costs for routine contract
978 administration.

979 WATER CONSERVATION

980 26. (a) Prior to the delivery of water provided from or conveyed through Federally
981 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be
982 implementing an effective water conservation and efficiency program based on the Contractor's
983 water conservation plan that has been determined by the Contracting Officer to meet the
984 conservation and efficiency criteria for evaluating water conservation plans established under
985 Federal law. The water conservation and efficiency program shall contain definite water
986 conservation objectives, appropriate economically feasible water conservation measures, and time
987 schedules for meeting those objectives. Continued Project Water delivery pursuant to this Contract
988 shall be contingent upon the Contractor's continued implementation of such water conservation
989 program. In the event the Contractor's water conservation plan or any revised water conservation
990 plan completed pursuant to subdivision (d) of Article 26 of this Contract have not yet been
991 determined by the Contracting Officer to meet such criteria, due to circumstances which the
992 Contracting Officer determines are beyond the control of the Contractor, water deliveries shall be
993 made under this Contract so long as the Contractor diligently works with the Contracting Officer to
994 obtain such determination at the earliest practicable date, and thereafter the Contractor immediately
995 begins implementing its water conservation and efficiency program in accordance with the time
996 schedules therein.

997 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
998 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall implement

999 the Best Management Practices identified by the time frames issued by the California Urban Water
1000 Conservation Council for such M&I Water unless any such practice is determined by the
1001 Contracting Officer to be inappropriate for the Contractor.

1002 (c) The Contractor shall submit to the Contracting Officer a report on the status
1003 of its implementation of the water conservation plan on the reporting dates specified in the then
1004 existing conservation and efficiency criteria established under Federal law.

1005 (d) At 5 year intervals, the Contractor shall revise its water conservation plan to
1006 reflect the then current conservation and efficiency criteria for evaluating water conservation plans
1007 established under Federal law and submit such revised water management plan to the Contracting
1008 Officer for review and evaluation. The Contracting Officer will then determine if the water
1009 conservation plan meets Reclamation's then current conservation and efficiency criteria for
1010 evaluating water conservation plans established under Federal law.

1011 (e) If the Contractor is engaged in direct groundwater recharge, such activity
1012 shall be described in the Contractor's water conservation plan.

1013 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1014 27. Except as specifically provided in Article 17 of this Contract, the provisions of this
1015 Contract shall not be applicable to or affect non-Project water or water rights now owned or
1016 hereafter acquired by the Contractor or any user of such water within the Contractor's Service Area.
1017 Any such water shall not be considered Project Water under this Contract. In addition, this Contract
1018 shall not be construed as limiting or curtailing any rights which the Contractor or any water user
1019 within the Contractor's Service Area acquires or has available under any other contract pursuant to
1020 Federal Reclamation law.

1044 payments on behalf of the United States in accordance with the separate agreement identified in
1045 subdivision (a) of this Article.

1046 (c) For so long as the O&M of any portion of the Project facilities serving the
1047 Contractor is performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water
1048 Authority, or any successor thereto, the Contracting Officer shall adjust those components of the
1049 Rates for Water Delivered under this Contract representing the cost associated with the activity
1050 being performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority
1051 or its successor.

1052 (d) In the event the O&M of the Project facilities operated and maintained by the
1053 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority is re-assumed by the
1054 United States during the term of this Contract, the Contracting Officer shall so notify the
1055 Contractor, in writing, and present to the Contractor a revised Exhibit "B" which shall include the
1056 portion of the Rates to be paid by the Contractor for Project Water under this Contract representing
1057 the O&M costs of the portion of such Project facilities which have been re-assumed. The
1058 Contractor shall, thereafter, in the absence of written notification from the Contracting Officer to the
1059 contrary, pay the Rates, Charges, and Tiered Pricing Component specified in the revised Exhibit
1060 "B" directly to the United States in compliance with Article 7 of this Contract.

1061 OPERATION AND MAINTENANCE BY CALIFORNIA DEPARTMENT OF WATER
1062 RESOURCES

1063 28.1 (a) The O&M of a portion of the Project facilities which serve the Contractor,
1064 and responsibility for funding a portion of the costs of such O&M, have been transferred to the
1065 California Department of Water Resources, an Operating Non-Federal Entity by a separate
1066 agreement (14-06-200-9755) between the United States and Operating Non-Federal Entity

1067 California Department of Water Resources. This separate agreement shall not interfere with or
1068 affect the rights or obligations of the Contractor or the United States hereunder.

1069 (b) The Contracting Officer has previously notified the Contractor in writing that
1070 the O&M of a portion of the Project facilities which serve the Contractor has been transferred to
1071 Operating Non-Federal Entity California Department of Water Resources, and the Contractor shall
1072 pay directly to Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or to any
1073 successor approved by the Contracting Officer under the terms and conditions of the separate
1074 agreement between the United States and Operating Non-Federal Entity San Luis & Delta-Mendota
1075 Water Authority, described in subdivision (a) of Article 28 of this Contract, all rates, charges, or
1076 assessments of any kind, including any assessment for reserve funds, which Operating Non-Federal
1077 Entity California Department of Water Resources, or such successor determines, sets, or establishes
1078 for the O&M of the portion of the Project facilities operated and maintained by Operating Non-
1079 Federal Entity California Department of Water Resources, or such successor. Such direct
1080 payments to Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or such
1081 successor shall not relieve the Contractor of its obligation to pay directly to the United States the
1082 Contractor's share of the Project Rates, Charges, and Tiered Pricing Components except to the
1083 extent the Operating Non-Federal Entity collects payments on behalf of the United States in
1084 accordance with the separate agreement identified in subdivision (a) of Article 28 of this Contract.

1085 (c) For so long as the O&M of any portion of the Project facilities serving the
1086 Contractor is performed by Operating Non-Federal Entity California Department of Water
1087 Resources, or any successor thereto, the Contracting Officer shall adjust those components of the
1088 Rates for Water Delivered under this Contract representing the cost associated with the activity

1089 being performed by Operating Non-Federal Entity California Department of Water Resources, or its
1090 successor.

1091 (d) In the event the O&M of the Project facilities operated and maintained by
1092 Operating Non-Federal Entity California Department of Water Resources, is re-assumed by the
1093 United States during the term of this Contract, the Contracting Officer shall so notify the
1094 Contractor, in writing, and present to the Contractor a revised Exhibit "B" which shall include the
1095 portion of the Rates, Charges, and Tiered Pricing Component(s) to be paid by the Contractor for
1096 Project Water under this Contract representing the O&M costs of the portion of such Project
1097 facilities which have been re-assumed. The Contractor shall, thereafter, in the absence of written
1098 notification from the Contracting Officer to the contrary, pay the Rates, Charges, and Tiered Pricing
1099 Component(s) specified in the revised Exhibit "B" directly to the United States in compliance with
1100 Article 7 of this Contract.

1101 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1102 29. The expenditure or advance of any money or the performance of any obligation of
1103 the United States under this Contract shall be contingent upon appropriation or allotment of funds.
1104 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
1105 under this Contract. No liability shall accrue to the United States in case funds are not appropriated
1106 or allotted.

1107 BOOKS, RECORDS, AND REPORTS

1108 30. (a) The Contractor shall establish and maintain accounts and other books and
1109 records pertaining to administration of the terms and conditions of this Contract, including: the
1110 Contractor's financial transactions, water supply data, and Project land and right-of-way
1111 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use
1112 data; and other matters that the Contracting Officer may require. Reports thereon shall be furnished
1113 to the Contracting Officer in such form and on such date or dates as the Contracting Officer may
1114 require. Subject to applicable Federal laws and regulations, each party to this Contract shall have
1115 the right during office hours to examine and make copies of the other party's books and records
1116 relating to matters covered by this Contract.

1117 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,
1118 records, or other information shall be requested from the Contractor by the Contracting Officer
1119 unless such books, records, or information are reasonably related to the administration or
1120 performance of this Contract. Any such request shall allow the Contractor a reasonable period of
1121 time within which to provide the requested books, records, or information.

1122 (c) At such time as the Contractor provides information to the Contracting
1123 Officer pursuant to subdivision (a) of this Article, a copy of such information shall be provided to
1124 the Operating Non-Federal Entity.

1125 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1126 31. (a) The provisions of this Contract shall apply to and bind the successors and
1127 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1128 therein shall be valid until approved in writing by the Contracting Officer.

1129 (b) The assignment of any right or interest in this Contract by either party shall
1130 not interfere with the rights or obligations of the other party to this Contract absent the written
1131 concurrence of said other party.

1132 (c) The Contracting Officer shall not unreasonably condition or withhold
1133 approval of any proposed assignment.

1134 SEVERABILITY

1135 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor
1136 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an
1137 association or other form of organization whose primary function is to represent parties to Project
1138 contracts, brings an action in a court of competent jurisdiction challenging the legality or
1139 enforceability of a provision included in this Contract and said person, entity, association, or
1140 organization obtains a final court decision holding that such provision is legally invalid or

1141 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the
1142 parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court
1143 decision identify by mutual agreement the provisions in this Contract which must be revised and (ii)
1144 within 3 months thereafter promptly agree on the appropriate revision(s). The time periods
1145 specified above may be extended by mutual agreement of the parties. Pending the completion of
1146 the actions designated above, to the extent it can do so without violating any applicable provisions
1147 of law, the United States shall continue to make the quantities of Project Water specified in this
1148 Contract available to the Contractor pursuant to the provisions of this Contract which were not
1149 found to be legally invalid or unenforceable in the final court decision.

1150 RESOLUTION OF DISPUTES

1151 33. Should any dispute arise concerning any provisions of this Contract, or the parties'
1152 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the
1153 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring
1154 any matter to the Department of Justice, the party shall provide to the other party 30 days' written
1155 notice of the intent to take such action; Provided, That such notice shall not be required where a
1156 delay in commencing an action would prejudice the interests of the party that intends to file suit.
1157 During the 30 day notice period, the Contractor and the Contracting Officer shall meet and confer in
1158 an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to
1159 waive or abridge any right or remedy that the Contractor or the United States may have.

1160 OFFICIALS NOT TO BENEFIT

1161 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1162 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1163 manner as other water users or landowners.

1164 CHANGES IN CONTRACTOR'S SERVICE AREA

1165 35. (a) While this Contract is in effect, no change may be made in the Contractor's
1166 Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,
1167 except upon the Contracting Officer's written consent.

1168 (b) Within 30 days of receipt of a request for such a change, the Contracting
1169 Officer will notify the Contractor of any additional information required by the Contracting Officer
1170 for processing said request, and both parties will meet to establish a mutually agreeable schedule for
1171 timely completion of the process. Such process will analyze whether the proposed change is likely
1172 to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability
1173 of the Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-
1174 constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project
1175 Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply
1176 with the NEPA and the ESA. The Contractor will be responsible for all costs incurred by the
1177 Contracting Officer in this process, and such costs will be paid in accordance with Article 25 of this
1178 Contract.

1179 FEDERAL LAWS

1180 36. By entering into this Contract, the Contractor does not waive its rights to contest the
1181 validity or application in connection with the performance of the terms and conditions of this
1182 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the
1183 terms and conditions of this Contract unless and until relief from application of such Federal law or
1184 regulation to the implementing provision of the Contract is granted by a court of competent
1185 jurisdiction.

1186 NOTICES

1187 37. Any notice, demand, or request authorized or required by this Contract shall be
1188 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered

1189 to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, CA 93721, and
1190 on behalf of the United States, when mailed, postage prepaid, or delivered to the Board of Directors
1191 of the Westlands Water District Distribution District No. 2, P.O. Box 6056, Fresno CA 93703-6056.
1192 The designation of the addressee or the address may be changed by notice given in the same manner
1193 as provided in this Article for other notices.

1194 CONFIRMATION OF CONTRACT

1195 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a
1196 decree of a court of competent jurisdiction of the State of California, confirming the execution of
1197 this Contract. The Contractor shall furnish the United States a certified copy of the final decree, the
1198 validation proceedings, and all pertinent supporting records of the court approving and confirming
1199 this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

1200 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and
1201 year first above written.

1202 THE UNITED STATES OF AMERICA

1203 By: _____
1204 Regional Director, Mid-Pacific Region
1205 Bureau of Reclamation

1206 (SEAL)

1207 WESTLANDS WATER DISTRICT
1208 DISTRIBUTION DISTRICT NO. 2

1209 By: _____
1210 President of the Board of Directors

1211 Attest:

1212 By: _____
1213 Secretary of the Board of Directors

1214 (H:\pub 440\LTRC\Final Draft LTRC's-Fresno, Trac10-19-04 Westlands DD Final LTRC Draft
1215 with exhibits.doc)

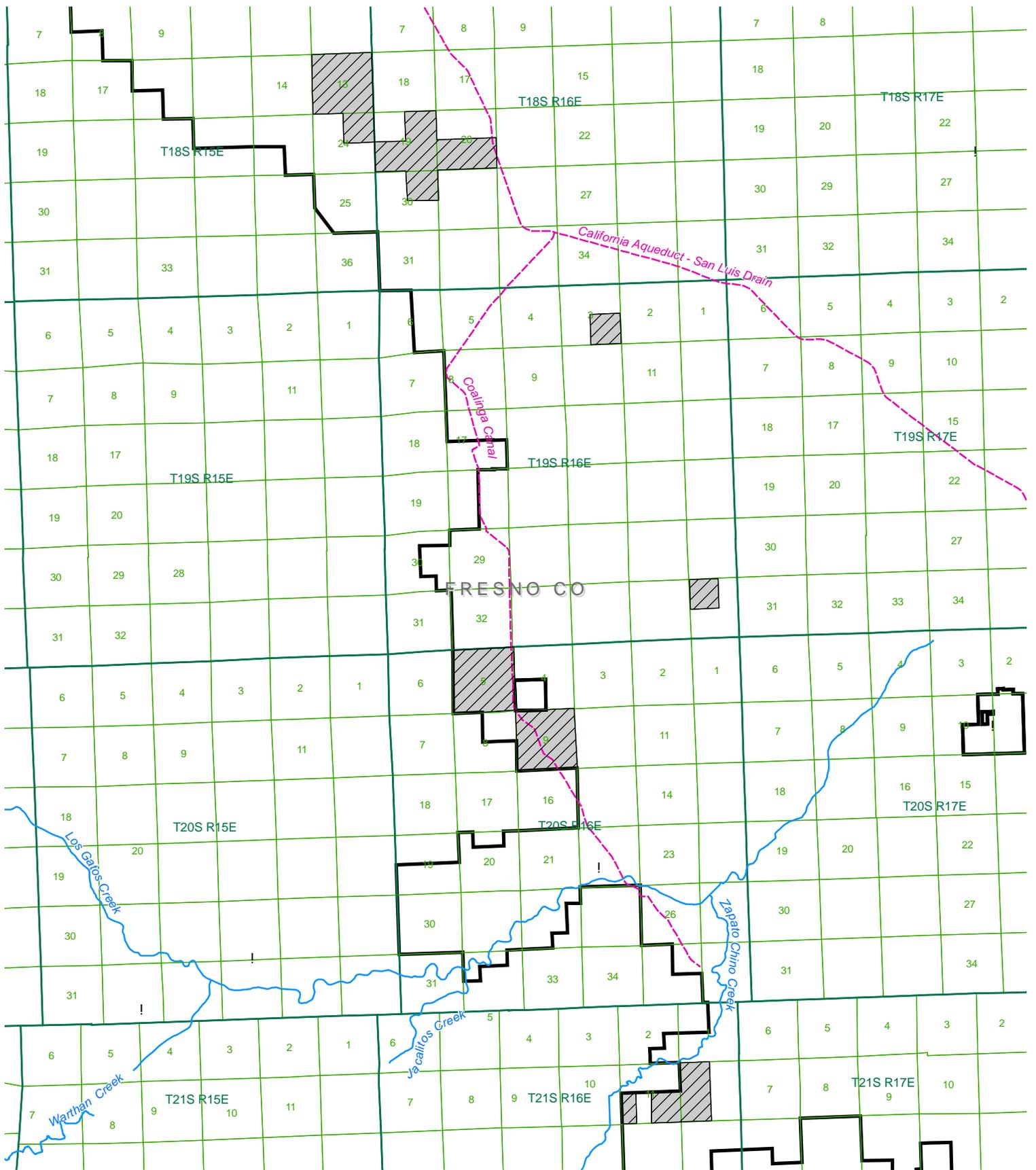


EXHIBIT B
WESTLANDS WATER DISTRICT DISTRIBUTION DISTRICT NO. 2
Water Rates and Charges

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

<u>COST-OF-SERVICE RATES:</u>	<u>2004 Rates per Acre-Foot</u>		
	<u>Irrigation Water</u>	<u>M&I Water</u>	
Capital Rates	<u>Westlands</u> \$15.40	1/	
O&M Rates:			
Water Marketing	6.28		
Storage	5.57		
San Luis Drain	.41		
Direct Pumping	1.75		
Conveyance			
Conveyance Pumping			
Deficit Rates:			
Non-Interest Bearing			
Interest Bearing			
CFO/PFR Adj. Rates 2/			
TOTAL COST-OF-SERVICE-RATES	<u>\$29.41</u>	<u>1/</u>	
<u>FULL-COST RATES:</u>			
<u>Section 202(3)</u> Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981.	<u>\$53.30</u>		
<u>Section 205(a)(3)</u> Rate is applicable to a Limited Recipient that did not receive irrigation water on or before October 1, 1981.	<u>\$67.87</u>		
<u>CHARGES UNDER P.L. 102-575 TO RESTORATION FUND 3/</u>			
Restoration Payments (3407(d)(2)(A))	<u>\$ 7.69</u>	<u>\$ 7.69</u>	<u>\$15.38</u>

1/ To be provided as needed. Contractor does not currently receive M&I water and is not projected to take any in the near future.

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

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