

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

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

Table of Contents

<u>Article No.</u>		<u>Page No.</u>
	Preamble	1
	Explanatory Recitals	2-5
1	Definitions.....	5-10
2	Term of Contract--Right to Use of Water.....	10-13
3	Water to be Made Available and Delivered to the Contractor.....	13-19
4	Time for Delivery of Water	19-21
5	Point of Diversion and Responsibility for Distribution of Water	21-23
6	Measurement of Water Within the Contractor's Service Area	23-24
7	Rates and Method of Payment for Water.....	25-31
8	Non-Interest Bearing Operation and Maintenance Deficits.....	31
9	Sales, Transfers, or Exchanges of Water	31-32
10	Application of Payments and Adjustments.....	33
11	Temporary Reductions--Return Flows	33-34
12	Constraints on the Availability of Water	34-37
13	Unavoidable Groundwater Percolation.....	37
14	Rules and Regulations.....	37
15	Water and Air Pollution Control.....	37
16	Quality of Water	38
17	Water Acquired by the Contractor Other Than From the United States	38-41

Table of Contents - continued

<u>Article No.</u>		<u>Page No.</u>
18	Opinions and Determinations	41-42
19	Coordination and Cooperation	42-43
20	Charges for Delinquent Payments	43-44
21	Equal Opportunity	44-45
22	General Obligation--Benefits Conditioned Upon Payment	45-46
23	Compliance with Civil Rights Laws and Regulations	46-47
24	Privacy Act Compliance	47
25	Contractor to Pay Certain Miscellaneous Costs.....	47-48
26	Water Conservation	48
27	Existing or Acquired Water or Water Rights.....	48-49
28	Operation and Maintenance by Non-Federal Entity	49-50
29	Contingent on Appropriation or Allotment of Funds	50-51
30	Books, Records and Reports	51
31	Assignment Limited--Successors and Assigns Obligated	51-52
32	Severability	52
33	Resolution of Disputes.....	52-53
34	Officials Not to Benefit.....	53
35	Changes in Contractor's Service Area	53
36	Federal Laws.....	54
37	Notices	54
38	Confirmation of Contract.....	54
	Signature Page	55

Exhibit A – Map of Contractor’s Service Area

Exhibit B – Water Rate Exhibit

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

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

10 THIS CONTRACT, made this 25th day of February, 2005,

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

20 WITNESSETH, That:

EXPLANATORY RECITALS

21
22 [1st] WHEREAS, the United States has constructed and is operating the Central Valley
23 Project (Project), California, for diversion, storage, carriage, distribution and beneficial use, for
24 flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection
25 and restoration, generation and distribution of electric energy, salinity control, navigation and
26 other beneficial uses, of waters of the Sacramento River, the American River, the Trinity River,
27 and the San Joaquin River and their tributaries; and

28 [2nd] WHEREAS, the United States constructed Friant Dam (thereby creating Millerton
29 Lake) and the Friant-Kern and Madera Canals, hereinafter collectively referred to as the Friant
30 Division facilities, which will be used in part for the furnishing of water to the Contractor
31 pursuant to the terms of this Contract; and

32 [3rd] WHEREAS, pursuant to Section 8 of the Act of June 17, 1902 (32 Stat. 388), the
33 United States has acquired water rights and other rights to the flows of the San Joaquin River,
34 including without limitation the permits issued as the result of Decision 935 by the California
35 State Water Resources Control Board and the contracts described in subdivision (n) of Article 3
36 of this Contract, pursuant to which the Contracting Officer develops, diverts, stores, and delivers
37 Project Water stored or flowing through Millerton Lake in accordance with State and Federal law
38 for the benefit of Project Contractors in the Friant Division; and

39 [3.1] WHEREAS, the water supplied to the Contractor pursuant to this Contract is
40 Project Water developed through the exercise of the rights described in the third Explanatory
41 Recital of this Contract; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

99 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

160 (o) Omitted;

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

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

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

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

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

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

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

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

187 (w) Omitted;

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

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

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

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

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

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

204 TERM OF CONTRACT

205 2. (a) This Contract shall be effective March 1, 2005, through February 28,
206 2030, and supersedes the Existing Contract. In the event the Contractor wishes to renew this
207 Contract beyond February 28, 2030, the Contractor shall submit a request for renewal in writing
208 to the Contracting Officer no later than two years prior to the date this Contract expires. The
209 renewal of this Contract insofar as it pertains to the furnishing of Irrigation Water shall be
210 governed by subdivision (b) of this Article.

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

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

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

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

241 (c) Omitted.

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

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

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

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

275 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

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

282 (b) Omitted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

394 (n) The rights of the Contractor under this Contract are subject to the terms of
395 the contract for exchange waters, dated July 27, 1939, between the United States and the
396 San Joaquin and Kings River Canal and Irrigation Company, Incorporated, et al., (hereinafter
397 referred to as the Exchange Contractors), Contract No. 11r-1144, as amended. The United States
398 agrees that it will not deliver to the Exchange Contractors thereunder waters of the San Joaquin
399 River unless and until required by the terms of said contract, and the United States further agrees
400 that it will not voluntarily and knowingly determine itself unable to deliver to the Exchange
401 Contractors entitled thereto from water that is available or that may become available to it from
402 the Sacramento River and its tributaries or the Sacramento-San Joaquin Delta those quantities
403 required to satisfy the obligations of the United States under said Exchange Contract and under

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

406 TIME FOR DELIVERY OF WATER

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

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

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

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

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

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

463 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

468 (b) The Contracting Officer, either directly or through its written agreement(s)
469 with the Operating Non-Federal Entity, shall make all reasonable efforts to maintain sufficient
470 flows and levels of water in Friant-Kern Canal to deliver Project Water to the Contractor at
471 specific turnouts established pursuant to subdivision (a) of this Article.

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

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

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

495 employees, agents, or assigns, including the Operating Non-Federal Entity, with the intent of
496 creating the situation resulting in any damage or claim, (ii) willful misconduct of the Contracting
497 Officer or any of its officers, employees, agents, or assigns, including the Operating Non-Federal
498 Entity, (iii) negligence of the Contracting Officer or any of its officers, employees, agents, or
499 assigns including the Operating Non-Federal Entity, or (iv) damage or claims resulting from a
500 malfunction of facilities owned and/or operated by the United States or the Operating
501 Non-Federal Entity.

502 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

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

516 (b) To the extent the information has not otherwise been provided, upon
517 execution of this Contract, the Contractor shall provide to the Contracting Officer a written

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

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

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

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

541 RATES AND METHOD OF PAYMENT FOR WATER

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

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

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

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

570 (c) At the time the Contractor submits the initial schedule for the delivery of
571 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the
572 Contractor shall make an advance payment to the United States equal to the total amount payable
573 pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water
574 scheduled to be delivered pursuant to this Contract during the first two calendar months of the
575 Year. Before the end of the first month and before the end of each calendar month thereafter, the
576 Contractor shall make an advance payment to the United States, at the Rate(s) set under
577 subdivision (a) of this Article, for the Water Scheduled to be delivered pursuant to this Contract
578 during the second month immediately following. Adjustments between advance payments for
579 Water Scheduled and payments at Rates due for Water Delivered shall be made before the end of
580 the following month; Provided, That any revised schedule submitted by the Contractor pursuant
581 to Article 4 of this Contract which increases the amount of Water Delivered pursuant to this
582 Contract during any month shall be accompanied with appropriate advance payment, at the Rates
583 then in effect, to assure that Project Water is not delivered to the Contractor in advance of such
584 payment. In any month in which the quantity of Water Delivered to the Contractor pursuant to
585 this Contract equals the quantity of Water Scheduled and paid for by the Contractor, no

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

593 (d) The Contractor shall also make a payment in addition to the Rate(s) in
594 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
595 appropriate Tiered Pricing Component then in effect, before the end of the month following the
596 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered
597 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be
598 consistent with the quantities of Irrigation Water and Other Water Delivered as shown in the
599 water delivery report for the subject month prepared by the Operating Non-Federal Entity or, if
600 there is no Operating Non-Federal Entity, by the Contracting Officer. Such water delivery report
601 shall be the basis for payment of Charges and Tiered Pricing Component by the Contractor, and
602 shall be provided to the Contractor by the Operating Non-Federal Entity or the Contracting
603 Officer (as applicable) within five days after the end of the month of delivery. The water
604 delivery report shall be deemed a bill for the payment of Charges and the applicable Tiered
605 Pricing Component for Water Delivered. Adjustment for overpayment or underpayment of
606 Charges shall be made through the adjustment of payments due to the United States for Charges
607 for the next month. Any amount to be paid for past due payment of Charges and the Tiered
608 Pricing Component shall be computed pursuant to Article 20 of this Contract.

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

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

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

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

629 (i) The parties acknowledge and agree that the efficient administration of this
630 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,
631 policies, and procedures used for establishing Rates, Charges, and Tiered Pricing Components,

632 and/or for making and allocating payments, other than those set forth in this Article may be in
633 the mutual best interest of the parties, it is expressly agreed that the parties may enter into
634 agreements to modify the mechanisms, policies, and procedures for any of those purposes while
635 this Contract is in effect without amending this Contract.

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

648 (2) Subject to the Contracting Officer's written approval, the
649 Contractor may request and receive an exemption from such Tiered Pricing Components for
650 Project Water delivered to produce a crop which the Contracting Officer determines will provide
651 significant and quantifiable habitat values for waterfowl in fields where the water is used and the
652 crops are produced; Provided, That the exemption from the Tiered Pricing Component for
653 Irrigation Water shall apply only if such habitat values can be assured consistent with the

654 purposes of the CVPIA through binding agreements executed with or approved by the
655 Contracting Officer prior to use of such water.

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

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

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

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

678 (n) Omitted.

679 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

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

683 SALES, TRANSFERS, OR EXCHANGES OF WATER

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

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

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

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

719

APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

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

736

TEMPORARY REDUCTIONS--RETURN FLOWS

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

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

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

759 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

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

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

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

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

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

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

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

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

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

814 UNAVOIDABLE GROUNDWATER PERCOLATION

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

819 RULES AND REGULATIONS

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

825
826 (b) The terms of this Contract are subject to any enforceable order, judgment
827 and/or settlement in NRDC v. Patterson, No. CIVS 88-1658-LKK-EM and shall be timely
828 modified as necessary to effectuate or facilitate any final order, judgment, or settlement in said
829 litigation.

830 (c) Omitted.

831 WATER AND AIR POLLUTION CONTROL

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

836

QUALITY OF WATER

837

16. (a) Project facilities used to deliver Project Water to the Contractor pursuant

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to this Contract shall be operated and maintained to enable the United States to deliver Project

839

Water to the Contractor in accordance with the water quality standards specified in subsection

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2(b) of the Act of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October

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27, 1986 (100 Stat. 3050) or other existing Federal laws. The United States is under no

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obligation to construct or furnish water treatment facilities to maintain or to improve the quality

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of Water Delivered to the Contractor pursuant to this Contract. The United States does not

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warrant the quality of Water Delivered to the Contractor pursuant to this Contract.

845

(b) The O&M of Project facilities shall be performed in such manner as is

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practicable to maintain the quality of raw water made available through such facilities at the

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highest level reasonably attainable as determined by the Contracting Officer. The Contractor

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shall be responsible for compliance with all State and Federal water quality standards applicable

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to surface and subsurface agricultural drainage discharges generated through the use of Federal

850

or Contractor facilities or Project Water provided by the Contractor within the Contractor's

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Service Area.

852

WATER ACQUIRED BY THE CONTRACTOR

853

OTHER THAN FROM THE UNITED STATES

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17. (a) Water or water rights now owned or hereafter acquired by the Contractor

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other than from the United States and Irrigation Water furnished pursuant to the terms of this

856

Contract may be simultaneously transported through the same distribution facilities of the

857

Contractor subject to the following: (i) if the facilities utilized for commingling Irrigation Water

858

and non-Project water were constructed without funds made available pursuant to Federal

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

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

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

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

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

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

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

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

915 OPINIONS AND DETERMINATIONS

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

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

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

931 COORDINATION AND COOPERATION

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

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

949 (c) It is the intent of the Secretary to improve water supply reliability. To
950 carry out this intent:

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

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

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

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

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

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

970 CHARGES FOR DELINQUENT PAYMENTS

971 20. (a) The Contractor shall be subject to interest, administrative and penalty
972 charges on delinquent installments or payments. When a payment is not received by the due
973 date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond
974 the due date. When a payment becomes sixty (60) days delinquent, the Contractor shall pay an
975 administrative charge to cover additional costs of billing and processing the delinquent payment.

976 When a payment is delinquent ninety (90) days or more, the Contractor shall pay an additional
977 penalty charge of six (6%) percent per year for each day the payment is delinquent beyond the
978 due date. Further, the Contractor shall pay any fees incurred for debt collection services
979 associated with a delinquent payment.

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

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

988 EQUAL OPPORTUNITY

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

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

1000 (b) The Contractor will, in all solicitations or advertisements for employees
1001 placed by or on behalf of the Contractor, state that all qualified applicants will receive
1002 consideration for employment without discrimination because of race, color, religion, sex, or
1003 national origin.

1004 (c) The Contractor will send to each labor union or representative of workers
1005 with which it has a collective bargaining agreement or other contract or understanding, a notice,
1006 to be provided by the Contracting Officer, advising the said labor union or workers'
1007 representative of the Contractor's commitments under Section 202 of Executive Order 11246 of
1008 September 24, 1965, and shall post copies of the notice in conspicuous places available to
1009 employees and applicants for employment.

1010 (d) The Contractor will comply with all provisions of Executive Order
1011 No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders
1012 of the Secretary of Labor.

1013 (e) The Contractor will furnish all information and reports required by said
1014 amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or
1015 pursuant thereto, and will permit access to its books, records, and accounts by the Contracting
1016 Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with
1017 such rules, regulations, and orders.

1018 (f) In the event of the Contractor's noncompliance with the nondiscrimination
1019 clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be
1020 canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared
1021 ineligible for further Government contracts in accordance with procedures authorized in said
1022 amended Executive Order, and such other sanctions may be imposed and remedies invoked as
1023 provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as
1024 otherwise provided by law.

1025 (g) The Contractor will include the provisions of paragraphs (a) through (g) in
1026 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
1027 Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such
1028 provisions will be binding upon each subcontractor or vendor. The Contractor will take such
1029 action with respect to any subcontract or purchase order as may be directed by the Secretary of
1030 Labor as a means of enforcing such provisions, including sanctions for noncompliance:
1031 Provided, however, That in the event the Contractor becomes involved in, or is threatened with,
1032 litigation with a subcontractor or vendor as a result of such direction, the Contractor may request
1033 the United States to enter into such litigation to protect the interests of the United States.

1034 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

1035 22. (a) The obligation of the Contractor to pay the United States as provided in
1036 this Contract is a general obligation of the Contractor notwithstanding the manner in which the
1037 obligation may be distributed among the Contractor's water users and notwithstanding the default
1038 of individual water users in their obligations to the Contractor.

1039 (b) The payment of charges becoming due hereunder is a condition precedent
1040 to receiving benefits under this Contract. The United States shall not make water available to the
1041 Contractor through Project facilities during any period in which the Contractor may be in arrears
1042 in the advance payment of water rates due the United States. The Contractor shall not furnish
1043 water made available pursuant to this Contract for lands or parties which are in arrears in the
1044 advance payment of water rates levied or established by the Contractor.

1045 (b1) In addition to the remedy in subdivision (b) of this Article, if the
1046 Contracting Officer determines that the Contractor is in arrears in the advance payment of water
1047 rates that are due to the United States as provided in subdivision (c) of Article 7 of this Contract,

1048 in addition to not delivering water until payments are current, this Contract may be terminated
1049 pursuant to the procedures set forth in this subparagraph. If the Contracting Officer elects to
1050 terminate the Contract pursuant to this provision, the Contracting Officer shall provide the
1051 Contractor 60 days' written notice of his or her intent to do so. Such notice shall specify the
1052 precise nature of the delinquency and the precise amount the Contractor must pay to cure the
1053 delinquency. If the Contractor cures the delinquency within 60 days of the date of the notice
1054 provided by the Contracting Officer, the Contracting Officer shall not terminate the Contract. If
1055 the Contractor fails to cure the delinquency within 60 days of the date of the notice provided by
1056 the Contracting Officer, the Contracting Officer may immediately terminate the Contract and
1057 shall provide written notice to the Contractor within five days of such termination that he or she
1058 has done so.

1059 (c) With respect to subdivision (b) of this Article, the Contractor shall have no
1060 obligation to require advance payment for water rates which it levies.

1061 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1062 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
1063 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the
1064 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights
1065 laws, as well as with their respective implementing regulations and guidelines imposed by the
1066 U.S. Department of the Interior and/or Bureau of Reclamation.

1067 (b) These statutes require that no person in the United States shall, on the
1068 grounds of race, color, national origin, handicap, or age, be excluded from participation in, be
1069 denied the benefits of, or be otherwise subjected to discrimination under any program or activity
1070 receiving financial assistance from the Bureau of Reclamation. By executing this Contract, the
1071 Contractor agrees to immediately take any measures necessary to implement this obligation,
1072 including permitting officials of the United States to inspect premises, programs, and documents.

1073 (c) The Contractor makes this agreement in consideration of and for the
1074 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other
1075 Federal financial assistance extended after the date hereof to the Contractor by the Bureau of
1076 Reclamation, including installment payments after such date on account of arrangements for

1077 Federal financial assistance which were approved before such date. The Contractor recognizes
1078 and agrees that such Federal assistance will be extended in reliance on the representations and
1079 agreements made in this Article, and that the United States reserves the right to seek judicial
1080 enforcement thereof.

1081 PRIVACY ACT COMPLIANCE

1082 24. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a)
1083 (the Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et
1084 seq.) in maintaining Landholder acreage certification and reporting records, required to be
1085 submitted to the Contractor for compliance with Sections 206 and 228 of the Reclamation
1086 Reform Act of 1982 (96 Stat. 1266), and pursuant to 43 CFR 426.18.

1087 (b) With respect to the application and administration of the criminal penalty
1088 provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees
1089 responsible for maintaining the certification and reporting records referenced in (a) above are
1090 considered to be employees of the Department of the Interior. See 5 U.S.C. 552a(m).

1091 (c) The Contracting Officer or a designated representative shall provide the
1092 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau
1093 of Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--
1094 Interior, Reclamation-31) which govern the maintenance, safeguarding, and disclosure of
1095 information contained in the Landholder's certification and reporting records.

1096 (d) The Contracting Officer shall designate a full-time employee of the
1097 Bureau of Reclamation to be the System Manager who shall be responsible for making decisions
1098 on denials pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The
1099 Contractor is authorized to grant requests by individuals for access to their own records.

1100 (e) The Contractor shall forward promptly to the System Manager each
1101 proposed denial of access under 43 CFR 2.64; and each request for amendment of records filed
1102 under 43 CFR 2.71; notify the requester accordingly of such referral; and provide the System
1103 Manager with information and records necessary to prepare an appropriate response to the
1104 requester. These requirements do not apply to individuals seeking access to their own
1105 certification and reporting forms filed with the Contractor pursuant to 43 CFR 426.18, unless the
1106 requester elects to cite the Privacy Act as a basis for the request.

1107 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1108 25. In addition to all other payments to be made by the Contractor pursuant to this
1109 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and
1110 detailed statement submitted by the Contracting Officer to the Contractor for such specific items

1111 of direct cost incurred by the United States for work requested by the Contractor associated with
1112 this Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies
1113 and procedures. All such amounts referred to in this Article shall not exceed the amount agreed
1114 to in writing in advance by the Contractor. This Article shall not apply to costs for routine
1115 contract administration.

1116 WATER CONSERVATION

1117 26. (a) During the term of this Contract, the Contractor shall comply with all
1118 applicable requirements imposed on it by Section 210 of the RRA, regulations duly promulgated
1119 and adopted thereunder, and any other applicable water conservation guidelines as they are duly
1120 promulgated, adopted and amended from time to time: Provided, That the Contractor shall have
1121 not less than 18 months to comply with any revisions in any such applicable regulations or water
1122 conservation guidelines.

1123 (b) Omitted.

1124 (c) The Contractor shall submit to the Contracting Officer a report on the
1125 status of its implementation of the water conservation plan on the reporting dates specified in the
1126 then existing conservation and efficiency criteria established under Federal law.

1127 (d) Omitted.

1128 (e) If the Contractor is engaged in direct groundwater recharge, such activity
1129 shall be described in the Contractor's water conservation plan.

1130 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1131 27. Except as specifically provided in Article 17 of this Contract, the provisions of
1132 this Contract shall not be applicable to or affect non-Project water or water rights now owned or
1133 hereafter acquired by the Contractor or any user of such water within the Contractor's Service

1134 Area. Any such water shall not be considered Project Water under this Contract. In addition,
1135 this Contract shall not be construed as limiting or curtailing any rights which the Contractor or
1136 any water user within the Contractor's Service Area acquires or has available under any other
1137 contract pursuant to Federal Reclamation law.

1138 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

1139 28. (a) The O&M of a portion of the Project facilities which serve the Contractor,
1140 and responsibility for funding a portion of the costs of such O&M, have been transferred to the
1141 Operating Non-Federal Entity by separate agreement between the United States and the
1142 Operating Non-Federal Entity. That separate agreement shall not interfere with or affect the
1143 rights or obligations of the Contractor or the United States hereunder.

1144 (b) The Contracting Officer has previously notified the Contractor in writing
1145 that the O&M of a portion of the Project facilities which serve the Contractor has been
1146 transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly
1147 to the Operating Non-Federal Entity, or to any successor approved by the Contracting Officer
1148 under the terms and conditions of the separate agreement between the United States and the
1149 Operating Non-Federal Entity described in subdivision (a) of this Article, all rates, charges, or
1150 assessments of any kind, including any assessment for reserve funds, which the Operating
1151 Non-Federal Entity or such successor determines, sets, or establishes for (i) the O&M of the
1152 portion of the Project facilities operated and maintained by the Operating Non-Federal Entity or
1153 such successor, or (ii) the Friant Division's share of the operation, maintenance and replacement
1154 costs for physical works and appurtenances associated with the Tracy Pumping Plant, the
1155 Delta-Mendota Canal, the O'Neill Pumping/Generating Plant, the federal share of the
1156 O'Neill Forebay, the Mendota Pool, and the federal share of San Luis Unit joint use conveyance

1157 and conveyance pumping facilities. Such direct payments to the Operating Non-Federal Entity
1158 or such successor shall not relieve the Contractor of its obligation to pay directly to the
1159 United States the Contractor's share of the Project Rates, Charges, and Tiered Pricing
1160 Component(s) except to the extent the Operating Non-Federal Entity collects payments on behalf
1161 of the United States in accordance with the separate agreement identified in subdivision (a) of
1162 this Article.

1163 (c) For so long as the O&M of any portion of the Project facilities serving the
1164 Contractor is performed by the Operating Non-Federal Entity, or any successor thereto, the
1165 Contracting Officer shall adjust those components of the Rates for Water Delivered under this
1166 Contract representing the cost associated with the activity being performed by the Operating
1167 Non-Federal Entity or its successor.

1168 (d) In the event the O&M of the Project facilities operated and maintained by
1169 the Operating Non-Federal Entity is re-assumed by the United States during the term of this
1170 Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the
1171 Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid by the
1172 Contractor for Project Water under this Contract representing the O&M costs of the portion of
1173 such Project facilities which have been re-assumed. The Contractor shall, thereafter, in the
1174 absence of written notification from the Contracting Officer to the contrary, pay the Rates,

1175 Charges, and Tiered Pricing Component(s) specified in the revised Exhibit "B" directly to the
1176 United States in compliance with Article 7 of this Contract.

1177 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1178 29. The expenditure or advance of any money or the performance of any obligation of

1179 the United States under this Contract shall be contingent upon appropriation or allotment of
1180 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any
1181 obligations under this Contract. No liability shall accrue to the United States in case funds are
1182 not appropriated or allotted.
1183

1184 BOOKS, RECORDS, AND REPORTS

1185 30. (a) The Contractor shall establish and maintain accounts and other books and
1186 records pertaining to administration of the terms and conditions of this Contract, including: the
1187 Contractor's financial transactions, water supply data, and Project land and right-of-way
1188 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use
1189 data; and other matters that the Contracting Officer may require. Reports thereon shall be
1190 furnished to the Contracting Officer in such form and on such date or dates as the Contracting
1191 Officer may require. Subject to applicable Federal laws and regulations, each party to this
1192 Contract shall have the right during office hours to examine and make copies of the other party's
1193 books and records relating to matters covered by this Contract.

1194 (b) Notwithstanding the provisions of subdivision (a) of this Article, no
1195 books, records, or other information shall be requested from the Contractor by the Contracting
1196 Officer unless such books, records, or information are reasonably related to the administration or
1197 performance of this Contract. Any such request shall allow the Contractor a reasonable period of
1198 time within which to provide the requested books, records, or information.

1199 (c) At such time as the Contractor provides information to the Contracting
1200 Officer pursuant to subdivision (a) of this Article, a copy of such information shall be provided
1201 to the Operating Non-Federal Entity.

1202 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1203 31. (a) The provisions of this Contract shall apply to and bind the successors and
1204 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1205 therein shall be valid until approved in writing by the Contracting Officer.

1206 (b) The assignment of any right or interest in this Contract by either party
1207 shall not interfere with the rights or obligations of the other party to this Contract absent the
1208 written concurrence of said other party.

1209 (c) The Contracting Officer shall not unreasonably condition or withhold
1210 approval of any proposed assignment.

1211 SEVERABILITY

1212 32. In the event that a person or entity who is neither (i) a party to a Project contract,
1213 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor
1214 (iii) an association or other form of organization whose primary function is to represent parties to
1215 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or
1216 enforceability of a provision included in this Contract and said person, entity, association, or
1217 organization obtains a final court decision holding that such provision is legally invalid or
1218 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),
1219 the parties to this Contract shall use their best efforts to (i) within 30 days of the date of such
1220 final court decision identify by mutual agreement the provisions in this Contract which must be
1221 revised, and (ii) within three months thereafter promptly agree on the appropriate revision(s).
1222 The time periods specified above may be extended by mutual agreement of the parties. Pending
1223 the completion of the actions designated above, to the extent it can do so without violating any
1224 applicable provisions of law, the United States shall continue to make the quantities of Project
1225 Water specified in this Contract available to the Contractor pursuant to the provisions of this
1226 Contract which were not found to be legally invalid or unenforceable in the final court decision.

1227 RESOLUTION OF DISPUTES

1228 33. Should any dispute arise concerning any provisions of this Contract, or the
1229 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to
1230 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting
1231 Officer referring any matter to Department of Justice, the party shall provide to the other party

1232 30 days' written notice of the intent to take such action; Provided, That such notice shall not be
1233 required where a delay in commencing an action would prejudice the interests of the party that
1234 intends to file suit. During the 30-day notice period, the Contractor and the Contracting Officer
1235 shall meet and confer in an attempt to resolve the dispute. Except as specifically provided,
1236 nothing herein is intended to waive or abridge any right or remedy that the Contractor or the
1237 United States may have.

1238 OFFICIALS NOT TO BENEFIT

1239 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1240 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1241 manner as other water users or landowners.

1242 CHANGES IN CONTRACTOR'S SERVICE AREA

1243 35. (a) While this Contract is in effect, no change may be made in the
1244 Contractor's Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger,
1245 or otherwise, except upon the Contracting Officer's written consent.

1246 (b) Within 30 days of receipt of a request for such a change, the Contracting
1247 Officer will notify the Contractor of any additional information required by the Contracting
1248 Officer for processing said request, and both parties will meet to establish a mutually agreeable
1249 schedule for timely completion of the process. Such process will analyze whether the proposed
1250 change is likely to: (i) result in the use of Project Water contrary to the terms of this Contract;
1251 (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or
1252 to pay for any Federally-constructed facilities for which the Contractor is responsible; and
1253 (iii) have an impact on any Project Water rights applications, permits, or licenses. In addition,
1254 the Contracting Officer shall comply with the NEPA and the ESA. The Contractor will be
1255 responsible for all costs incurred by the Contracting Officer in this process, and such costs will
1256 be paid in accordance with Article 25 of this Contract.

1257 FEDERAL LAWS

1258 36. By entering into this Contract, the Contractor does not waive its rights to contest
1259 the validity or application in connection with the performance of the terms and conditions of this
1260 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with
1261 the terms and conditions of this Contract unless and until relief from application of such Federal
1262 law or regulation to the implementing provision of the Contract is granted by a court of
1263 competent jurisdiction.

1264 NOTICES

1265 37. Any notice, demand, or request authorized or required by this Contract shall be
1266 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or
1267 delivered to the Area Manager, South-Central California Area Office, 1243 "N" Street, Fresno,
1268 California 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered
1269 to the Board of Directors of the Lewis Creek Water District, P. O. Box 911, Visalia, California
1270 93279-0911. The designation of the addressee or the address may be changed by notice given in
1271 the same manner as provided in this Article for other notices.

1272 CONFIRMATION OF CONTRACT

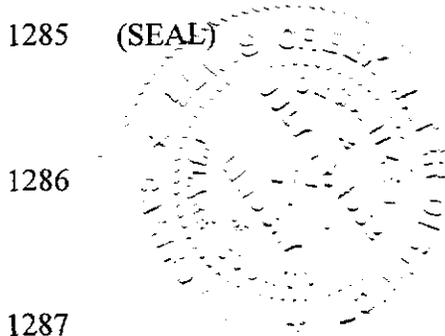
1273 38. The Contractor, after the execution of this Contract, shall promptly seek to secure
1274 a decree of a court of competent jurisdiction of the State of California, confirming the execution
1275 of this Contract. The Contractor shall furnish the United States a certified copy of the final
1276 decree, the validation proceedings, and all pertinent supporting records of the court approving
1277 and confirming this Contract, and decreeing and adjudging it to be lawful, valid, and binding on
1278 the Contractor.

1279 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of
1280 the day and year first above written.

1281 THE UNITED STATES OF AMERICA

1282 APPROVED AS TO LEGAL
1283 FORM AND SUFFICIENCY
1284 *James E. [Signature]*
OFFICE OF REGIONAL SOLICITOR
DEPARTMENT OF THE INTERIOR

By: *[Signature]*
Regional Director, Mid-Pacific Region
Bureau of Reclamation

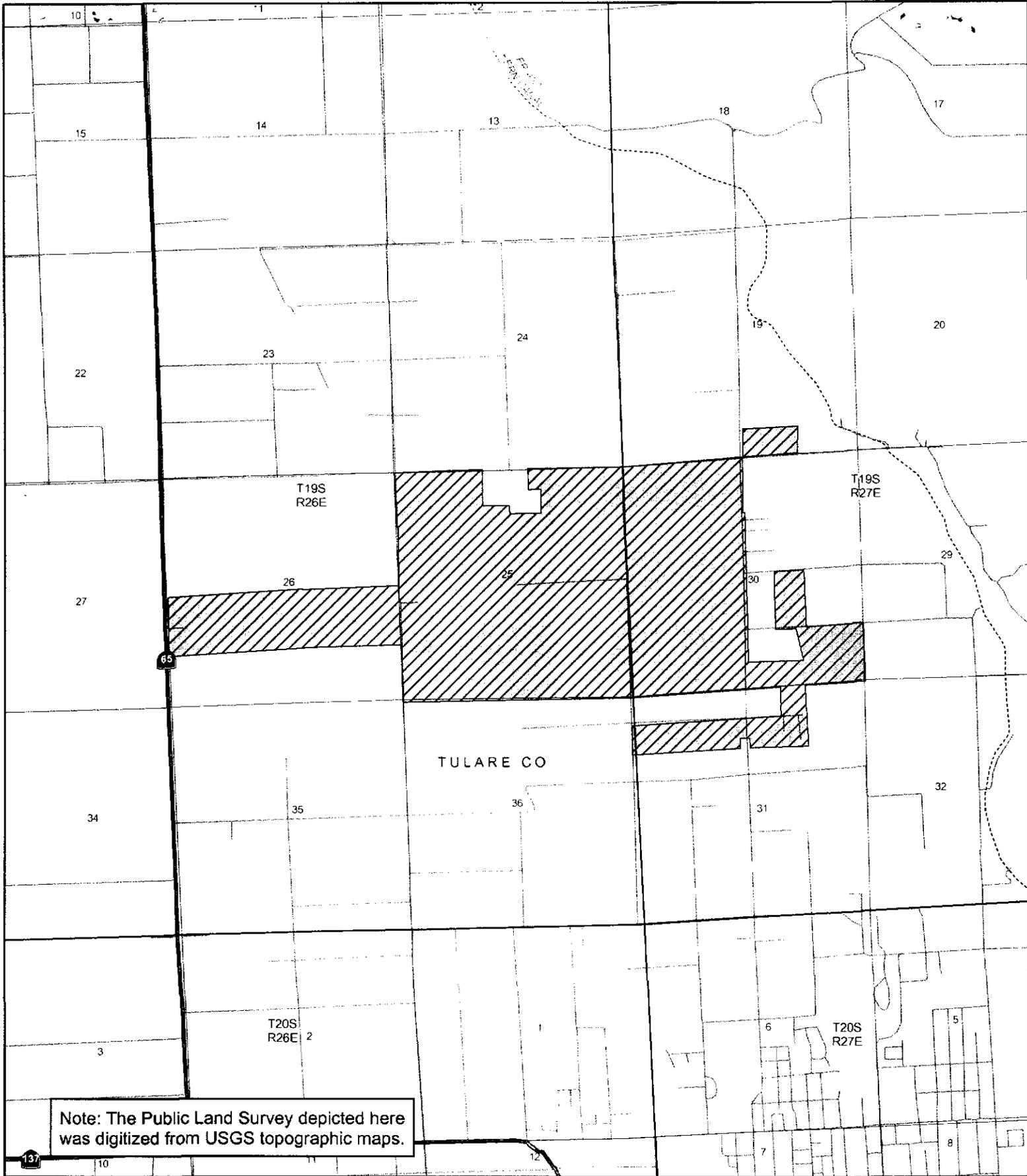


1287 LEWIS CREEK WATER DISTRICT
1288 By: *[Signature]*
President of the Board of Directors

1289 Attest:

1290 By: *[Signature]*
1291 Secretary of the Board of Directors

1292 (H:\pub 440\LTRC\Final Draft LTRC's - Fresno, Tracy\10-08-04 Lewis Creek Wd Final Draft
1293 LTRC with exhibits.doc)



-  Contractor's Service Area
-  District Boundary

Lewis Creek W.D

Contract No. 14-06-200-1911A-LTR1
EXHIBIT A



EXHIBIT B
LEWIS CREEK WATER DISTRICT
Water Rates and Charges

CONTRACT NO. 14-06-200-1911A-LTR1	<u>2005 Rates Per Acre-Foot</u>	
O&M AND COST-OF-SERVICE RATES:	Irrigation Water	
	Class 1	Other Water
Capital Rates:	\$10.61	****
O&M Rates:		
Water Marketing	\$6.61	
Storage	\$5.93	
Conveyance	*	
Deficit Rates:		
Non-Interest Bearing	\$0.00	
Interest Bearing	\$2.05	
CFO/PFR Adj Rate**	\$4.71	
TOTAL COST-OF-SERVICE RATES (COS):	\$29.91	
Tiered Pricing Component >80% <=90% of Contract		
Total [202 (3) Rate - COS Rate /2]:	\$31.73	
Tiered Pricing Component >90% of Contract		
Total [202 (3) Rate - COS Rate]:	\$63.47	
FULL-COST RATES:		
Section 202(3) Rate is applicable to a Qualified recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981.	\$93.38	
Section 205(a)(3) Rate is applicable to a Limited Recipient that did not receive irrigation water on or before October 1, 1981.	\$131.55	
SURCHARGES UNDER P.L. 102-575 TO RESTORATION FUND***		
Friant Surcharge [3406(c)(1)]	\$7.00	
Restoration Payments [3407(d)(2)(A)]	\$7.93	

* Conveyance Operation and Maintenance costs were removed for Irrigation ratesetting purposes and are to be billed directly by Friant Water Authority.

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

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

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

BEFORE THE BOARD OF DIRECTORS
OF THE
LEWIS CREEK WATER DISTRICT
COUNTY OF TULARE, STATE OF CALIFORNIA

RESOLUTION TO APPROVE THE FORM)	RESOLUTION NO. <u>2005-2</u>
OF LONG-TERM CONTRACT NO.)	
14-06-200-1911A-LTR1, AUTHORIZING ITS)	
EXECUTION, AND AUTHORIZING A)	
VALIDATION ACTION AS REQUIRED BY)	
SECTION 38 OF THE CONTRACT)	
)	
)	

WHEREAS, the Lewis Creek Water District (the "District") and the United States entered into Contract No. 14-06-200-1911A which provided for water delivery from the Central Valley Project through the Friant-Kern and Madera Canals from February 19, 1965 through February 28, 1995; and

WHEREAS, the United States and the District, pursuant to the Central Valley Project Improvement Act, have subsequently entered into interim renewal contract(s) identified as Contract No(s). 14-06-200-1911A-IR1 and IR2, which provided for continued water service to Contractor from February 20, 1998 through February 29, 2000; and

WHEREAS, due to gross malfeasance by its management, which was outside the knowledge and control of the Contractor's water users, the Contractor did not timely perform all its payment obligations under the previous interim renewal contract, thereby placing renewal of the contract in abeyance until such time as the Contractor brings its payment obligations current; and

WHEREAS, the Contractor subsequently cured all its past-due payment obligations to the satisfaction of the United States, and the Contractor and the United States entered into interim Contract No. 14-06-200-1911A-IR3 which provided for continued water service subject to certain terms and limitations from February 6, 2004 through February 29, 2004, and Contract No. 14-06-200-1911A-IR4 from March 1, 2004 through February 28, 2005; and

WHEREAS, it is in the best interest of the District and the United States to enter into a long-term renewal contract which provides for continued water service subject to certain terms and limitations; and

WHEREAS, the United States Bureau of Reclamation has offered the District a long term renewal contract providing for continued water service for a period of twenty-five (25) years subject to certain terms and conditions; and

WHEREAS, Article 38 of said long-term renewal contract specifies that the District after execution of the long-term renewal contract shall promptly seek to secure a decree of

a court of competent jurisdiction of the State of California, confirming the execution of the long-term renewal contract; and

NOW, THEREFORE, the Board of Directors of the Lewis Creek Water District hereby resolve:

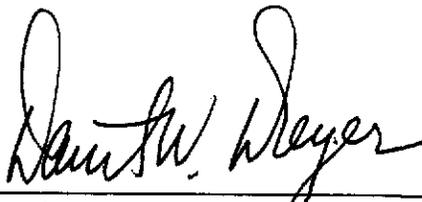
1. That the form of the proposed Long Term Contract (#14-06-200-1911A-LTR1) provided to the District by the United States Bureau of Reclamation is approved substantially in the form recently put out to public comment, subject to review and approval as to its final form following completion of the required public review and comment period; and
2. That the General Manager is authorized to execute said long-term renewal contract;
3. That the General Manager of the District is directed to notify the Fresno area office of the United States Bureau of Reclamation of the adoption of this Resolution;
4. The District's legal counsel is hereby directed to commence and prosecute any and all legal proceedings necessary to validate the execution of said long-term renewal contract, Contract No. 14-06-200-1911A-LTR1.

This Resolution shall take affect immediately upon its adoption, passed and adopted by the Board of Directors of the Lewis Creek Water District on February 22, 2005, by the following vote:

AYES: Dreyer, Murray and Sliskovich

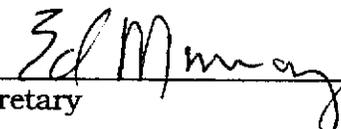
NOES: None

ABSENT: Hill and Vera



President

ATTEST:



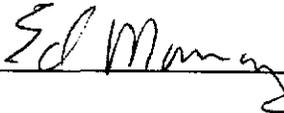
Secretary

CERTIFICATION

I, Ed Murray, the duly qualified Secretary of the LEWIS CREEK WATER DISTRICT, do hereby certify that the foregoing is a full, true and correct copy of a motion adopted at a Special (Regular/Special) Meeting of the Board of Directors duly held on the 22nd day of February, 2005, of which meeting all members of said Board of Directors had due notice.

I hereby further certify that the same resolution has not been modified or amended in any way, and that the same is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the LEWIS CREEK WATER DISTRICT this 22nd day of February, 2005.



Secretary