

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

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

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Exhibit A - Map of Contractor's Service Area

Exhibit B - Rates and Charges

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

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

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

20 WITNESSETH, That:
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EXPLANATORY RECITALS

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

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

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

[4th] WHEREAS, the terms and conditions pursuant to which Project Water is to be delivered to the Contractor through December 31, 2007, are addressed in the Contract Between the United States and Westlands Water District Providing for Water Service, dated June 5, 1963, and the Stipulated Judgment in the lawsuit entitled Barcellos and Wolfsen, Inc., v. Westlands Water District, Civ. No. F-79-106-EDP (E.D. Cal.), as consolidated with Westlands Water District v. United States of America, Civ. No. F-81-245-EDP (E.D. Cal.), entered on December 30, 1986, hereinafter referred to as the Existing Contract; and

42 [5th] WHEREAS, the United States and the Contractor have pursuant to Subsection
43 3404(c)(3) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into
44 binding agreements identified as Binding Agreement No. 14-06-200-495A-BA, and Binding
45 Agreement No. CV 79-106-EDP-BA, which set out the terms pursuant to which the Contractor
46 agreed to renew the Existing Contract before the expiration date after completion of the
47 Programmatic Environmental Impact Statement (PEIS) and other appropriate environmental
48 documentation and negotiation of a renewal contract; and which also set out the consequences of
49 subsequent decisions not to renew; and

50 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of the
51 Existing Contract following completion of appropriate environmental documentation, including a
52 PEIS, pursuant to the National Environmental Policy Act (NEPA) analyzing the direct and indirect
53 impacts and benefits of implementing the CVPIA and the potential renewal of all existing contracts
54 for Project Water; and

55 [6.1] WHEREAS, the Contractor has been assigned the rights and interests to Project Water
56 under certain other contracts providing for Project Water service and the quantity of Project Water so
57 assigned are incorporated into this Contract; and

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

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

63 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all of

64 its obligations under the Existing Contract; and

65 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting
66 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and
67 beneficial use and expects to utilize fully for reasonable and beneficial use the quantity of Project
68 Water to be made available to it pursuant to this Contract; and

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

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

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

77 [12.2] WHEREAS, the Contractor and the Contracting Officer recognize that adequate
78 drainage service is required to maintain agricultural production within certain areas served with
79 Project Water made available under this Contract and all renewals thereof; and

80 [12.3] WHEREAS, the Contracting Officer intends, to the extent appropriated funds are
81 available, to develop and implement effective solutions to drainage problems in the San Luis Unit; and

82 [12.4] WHEREAS, the Contracting Officer and the Contractor acknowledge that such
83 drainage solutions may involve actions not originally contemplated and/or the construction or use of
84 facilities, other than the San Luis Drain; that the Contractor is investing in drainage solutions for
85 lands within its boundaries that should be considered by the Contracting Officer in determining

86 drainage solutions; and that the existing ratesetting policy as it relates to the allocation and collection
87 of drainage costs may require amendment to recognize those investments by the Contractor and other
88 relevant circumstances; and

89 [12.5] WHEREAS, the Department of the Interior, Bureau of Reclamation published in May 2005
90 the San Luis Drainage Feature Re-evaluation Draft Environmental Impact Statement, which considers
91 alternatives to provide agricultural drainage service to the San Luis Unit; and

92 [12.6] WHEREAS, the San Luis Drainage Feature Re-evaluation Draft Environmental Impact
93 Statement identified the retirement of up to 298,000 acres of land from irrigated agricultural productions
94 among the alternatives considered as means of addressing drainage in the San Luis Unit; and

95 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships
96 to pursue measures to improve water supply, water quality, and reliability of the Project for all
97 Project purposes; and

98 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to
99 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment
100 of the Project as required by law; to guard reasonably against Project Water shortages; to achieve a
101 reasonable balance among competing demands for use of Project Water; and to comply with all
102 applicable environmental statutes, all consistent with the legal obligations of the United States
103 relative to the Project; and

104 [14.1] WHEREAS, the parties intend by this Contract to develop a more cooperative
105 relationship in order to achieve their mutual goals; and

106 [15th] WHEREAS, the Contractor has utilized or may utilize transfers, contract assignments,
107 rescheduling and conveyance of Project Water and non-Project water under this Contract as tools to
108 minimize the impacts of Conditions of Shortage and to maximize the beneficial use of water; and

109 [15.1] WHEREAS, the parties desire and intend that this Contract not provide a disincentive
110 to the Contractor in continuing to carry out the beneficial activities set out in the Explanatory Recital
111 immediately above; and

112 [16th] WHEREAS, the United States and the Contractor are willing to enter into this
113 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

116 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

179 (r) "Operating Non-Federal Entity" shall mean the entity(ies), its (their)
180 successors or assigns, which has (have) the obligation to operate and maintain all or a portion of the
181 Delta Division Facilities pursuant to written agreement(s) with the United States. When this Contract
182 was entered into, the Operating Non-Federal Entities were the San Luis & Delta-Mendota Water
183 Authority and, with respect to San Luis Unit facilities, the California Department of Water
184 Resources, and the Contractor;

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

187 (t) "Project Contractors" shall mean all parties who have water service contracts

188 for Project Water from the Project with the United States pursuant to Federal Reclamation law;

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

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

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

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

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

203 (z) “Water Delivered” or “Delivered Water” shall mean Project Water diverted for
204 use by the Contractor at the point(s) of delivery approved by the Contracting Officer;

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

208 (bb) “Water Scheduled” shall mean Project Water made available to the Contractor
209 for which times and quantities for delivery have been established by the Contractor and Contracting

210 Officer, pursuant to subdivision (b) of Article 4 of this Contract; and

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

213 TERM OF CONTRACT

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

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

226 (2) The conditions which must be met for this Contract to be renewed are
227 (i) the Contractor has prepared a water conservation plan that has been determined by the Contracting
228 Officer in accordance with Article 26 of this Contract to meet the conservation and efficiency criteria
229 for evaluating such plans established under Federal law; (ii) the Contractor is implementing an
230 effective water conservation and efficiency program based on the Contractor's water conservation
231 plan as required by Article 26 of this Contract; (iii) the Contractor is operating and maintaining all

232 water measuring devices and implementing all water measurement methods as approved by the
233 Contracting Officer pursuant to Article 6 of this Contract; (iv) the Contractor has reasonably and
234 beneficially used the Project Water supplies made available to it and, based on projected demands, is
235 reasonably anticipated and expects fully to utilize for reasonable and beneficial use the quantity of
236 Project Water to be made available to it pursuant to such renewal; (v) the Contractor is complying
237 with all terms and conditions of this Contract; and (vi) the Contractor has the physical and legal
238 ability to deliver Project Water.

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

248 (c) This Contract, insofar as it pertains to the furnishing of M&I Water to the
249 Contractor, shall be renewed successive periods of up to 40 years each, which periods shall be
250 consistent with the then-existing Reclamation-wide policy, under terms and conditions mutually
251 agreeable to the parties and consistent with Federal and State law. The Contractor shall be afforded
252 the opportunity to comment to the Contracting Officer on the proposed adoption and application of
253 any revised policy applicable to the delivery of M&I Water that would limit the term of any

254 subsequent renewal contract with the Contractor for the furnishing of M&I Water to less than 40
255 years.

256 (d) The Contracting Officer shall make a determination ten years after the date of
257 execution of this Contract, and every five years thereafter during the term of this Contract, of whether
258 a conversion of the relevant portion of this Contract to a contract under subsection 9(d) of the
259 Reclamation Project Act of 1939 can be accomplished pursuant to the Act of July 2, 1956 (70 Stat
260 483). The Contracting Officer shall also make a determination ten years after the date of execution
261 of this Contract and every five years thereafter during the term of this Contract of whether a
262 conversion of the relevant portion of this Contract to a contract under subsection 9(c)(1) of the
263 Reclamation Project Act of 1939 can be accomplished. Notwithstanding any provision of this
264 Contract, the Contractor reserves and shall have all rights and benefits under the Act of July 2, 1956
265 (70 Stat. 483). The Contracting Officer anticipates that during the term of this Contract, all
266 authorized Project construction expected to occur will have occurred, and on that basis the
267 Contracting Officer agrees upon such completion to allocate all costs that are properly assignable to
268 the Contractor, and agrees further that, at any time after such allocation is made, and subject to
269 satisfaction of the condition set out in this subdivision, this Contract shall, at the request of the
270 Contractor, be converted to a contract under subsection 9(d) or 9(c)(1), whichever is applicable, of
271 the Reclamation Project Act of 1939, subject to applicable Federal law and under stated terms and
272 conditions mutually agreeable to the Contractor and the Contracting Officer. A condition for such
273 conversion to occur shall be a determination by the Contracting Officer that, account being taken of
274 the amount credited to return by the Contractor as provided for under Federal Reclamation law, the
275 remaining amount of construction costs assignable for ultimate return by the Contractor can probably

276 be repaid to the United States within the term of a contract under subsection 9(d) or 9(c)(1),
277 whichever is applicable. If the remaining amount of costs that are properly assignable to the
278 Contractor cannot be determined during the term of this Contract, the Contracting Officer shall notify
279 the Contractor, and provide the reason(s) why such a determination could not be made. Further, the
280 Contracting Officer shall make such a determination as soon thereafter as possible so as to permit,
281 upon request of the Contractor and satisfaction of the condition set out above, conversion to a
282 contract under subsection 9(d) or 9(c)(1), whichever is applicable. In the event such determination of
283 costs has not been made at a time which allows conversion of this Contract during the term of this
284 Contract or the Contractor has not requested conversion of this Contract within such term, the parties
285 shall incorporate in any subsequent renewal contract as described in subdivision (b) of this Article a
286 provision that carries forth in substantially identical terms the provisions of this subdivision.

287 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

288 3. (a) During each Year, consistent with all applicable State water rights permits, and
289 licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of this Contract, the
290 Contracting Officer shall make available for delivery to the Contractor 1,150,000 ^{1/} acre-feet of
291 Project Water for irrigation and M&I purposes. Water Delivered to the Contractor in accordance
292 with this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of
293 this Contract.

294 3. (a.1) Notwithstanding any other provisions of this Contract, in the event the Secretary
295 implements a program to retire land from irrigated agricultural production within the Contractor’s

^{1/} This amount may increase before this Contract is executed due to contract assignments. The expected maximum increase in the Contract total is 38,490 acre-feet..

296 Service Area as a means of addressing drainage in the San Luis Unit, the Contracting Officer shall
297 conduct a water needs assessment to determine whether the Contract Total will be reduced. An
298 initial water needs assessment shall be conducted upon the retirement of 25% of the land projected to
299 be retired under such land retirement program. Subsequent assessments shall be conducted upon the
300 retirement of 50% and 75% of the land projected to be retired and a final assessment will be
301 conducted at the conclusion of the land retirement program. Any water needs assessment performed
302 pursuant to this paragraph (1) shall update the water needs assessment used to compute the quantity
303 of Project Water to be made available under this Contract, which was submitted to the Contractor on
304 November 2, 2000, and shall be conducted pursuant to the methodology attached to this Contract as
305 Exhibit "C." The Contractor may request the Contracting Officer update the methodology employed
306 based upon Contractor specific information made available to the Contracting Officer by the
307 Contractor. Upon completion of any water needs assessment performed pursuant to this paragraph,
308 the Contracting Officer may make a determination to reduce the quantity of water to be made
309 available under this Contract, and the Contract Total shall be reduced according to that
310 determination; Provided, so long as the then-existing Contract Total can be put to reasonable and
311 beneficial use as determined by the water needs assessment on Eligible Lands within the Contractor's
312 Service Area that are not retired, the retirement of land shall not affect the quantity of Project Water
313 to be made available pursuant to this Contract.

314 (b) Because the capacity of the Project to deliver Project Water has been constrained in
315 recent years and may be constrained in the future due to many factors including hydrologic
316 conditions and implementation of Federal and State laws, the likelihood of the Contractor actually
317 receiving the amount of Project Water set out in subdivision (a) of this Article in any given Year is

318 uncertain. The Contracting Officer’s modeling referenced in the PEIS projected that the Contract
319 Total set forth in this Contract will not be available to the Contractor in many years. During the most
320 recent five years, the Recent Historic Average of Water Made Available to the Contractor was
321 756,700 acre-feet. Nothing in this subdivision (b) of this Article shall affect the rights and
322 obligations of the parties under any provision of this Contract.

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

325 (c.1) In the event any Project Contractor (other than a Cross Valley Contractor) that
326 receives Project Water through the Delta Division Facilities obtains a contractual agreement that the
327 Contracting Officer shall make Project Water available at a point or points of delivery in or north of
328 the Delta, at the request of the Contractor and upon completion of any required environmental
329 documentation, this Contract shall be amended to provide for deliveries in or north of the Delta on
330 mutually agreeable terms. Such amendments to the Contract shall be limited solely to those changes
331 made necessary by the addition of such alternate points of delivery in or north of the Delta; Provided,

332 That the Contracting Officer’s use of the Harvey O. Banks Pumping Plant to deliver Project Water
333 does not trigger this right of amendment.

334 (d) The Contractor shall make reasonable and beneficial use of all water furnished
335 pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu), groundwater
336 banking programs, surface water storage programs, and other similar programs utilizing Project
337 Water or other water furnished pursuant to this Contract conducted within the Contractor’s Service
338 Area which are consistent with applicable State law and result in use consistent with Federal
339 Reclamation law will be allowed; Provided, That any direct recharge program(s) is (are) described in
340 the Contractor’s water conservation plan submitted pursuant to Article 26 of this Contract; Provided,
341 further, That such water conservation plan demonstrates sufficient lawful uses exist in the
342 Contractor’s Service Area so that using a long-term average, the quantity of Delivered Water is
343 demonstrated to be reasonable for such uses and in compliance with Federal Reclamation law.
344 Groundwater recharge programs, groundwater banking programs, surface water storage programs,
345 and other similar programs utilizing Project Water or other water furnished pursuant to this Contract
346 conducted outside the Contractor’s Service Area may be permitted upon written approval of the
347 Contracting Officer, which approval will be based upon environmental documentation, Project Water
348 rights, and Project operational concerns. The Contracting Officer will address such concerns in
349 regulations, policies, or guidelines.

350 (e) The Contractor shall comply with requirements applicable to the Contractor in
351 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract
352 undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as amended, that are
353 within the Contractor’s legal authority to implement. The Existing Contract, which evidences in

354 excess of 38 years of diversions for irrigation and/or M&I purposes of the quantities of Project Water
355 provided in subdivision (a) of Article 3 of this Contract, will be considered in developing an
356 appropriate baseline for the biological assessment(s) prepared pursuant to the ESA, and any other
357 needed environmental review. Nothing herein shall be construed to prevent the Contractor from
358 challenging or seeking judicial relief in a court of competent jurisdiction with respect to any
359 biological opinion or other environmental documentation referred to in this Article.

360 (f) Following the declaration of Water Made Available under Article 4 of this
361 Contract, the Contracting Officer will make a determination whether Project Water, or other water
362 available to the Project, can be made available to the Contractor in addition to the Contract Total
363 under this Article during the Year without adversely impacting other Project Contractors. At the
364 request of the Contractor, the Contracting Officer will consult with the Contractor prior to making
365 such a determination. If the Contracting Officer determines that Project Water, or other water
366 available to the Project, can be made available to the Contractor, the Contracting Officer will
367 announce the availability of such water and shall so notify the Contractor as soon as practical. The
368 Contracting Officer will thereafter meet with the Contractor and other Project Contractors capable of
369 taking such water to determine the most equitable and efficient allocation of such water. If the
370 Contractor requests the delivery of any quantity of such water, the Contracting Officer shall make
371 such water available to the Contractor in accordance with applicable statutes, regulations, guidelines,
372 and policies. Subject to existing long-term contractual commitments, water rights and operational

373 constraints, long-term Project Contractors shall have a first right to acquire such water, including
374 Project Water made available pursuant to Section 215 of the RRA.

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

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

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

392 (j) The Contracting Officer shall make reasonable efforts to protect the water
393 rights necessary for the Project and to provide the water available under this Contract. The
394 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the

395 extent permitted by law, in administrative proceedings related to the Project Water rights; Provided,
396 that the Contracting Officer retains the right to object to the substance of the Contractor's position in
397 such a proceeding; Provided, further, That in such proceedings the Contracting Officer shall
398 recognize the Contractor has a legal right under the terms of this Contract to use Project Water.

399 TIME FOR DELIVERY OF WATER

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

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

415 (c) The Contractor shall not schedule Project Water in excess of the quantity of
416 Project Water the Contractor intends to put to reasonable and beneficial use within the Contractor's

417 Service Area or to sell, transfer, or exchange pursuant to Article 9 of this Contract during any Year.

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

423 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

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

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

436 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
437 measured and recorded with equipment furnished, installed, operated, and maintained by the
438 Contracting Officer either directly or indirectly through its written agreements(s) with the Operating

439 Non-Federal Entity(ies), unless undertaken by the Contractor with the consent of the Contracting
440 Officer at the point or points of delivery established pursuant to subdivision (a) of this Article. Upon
441 the request of either party to this Contract, the Contracting Officer shall investigate, or cause to be
442 investigated by the appropriate Operating Non-Federal Entity(ies) the accuracy of such
443 measurements and shall take any necessary steps to adjust any errors appearing therein. For any
444 period of time when accurate measurements have not been made, the Contracting Officer shall
445 consult with the Contractor and the appropriate Operating Non-Federal Entity(ies), if any, prior to
446 making a final determination of the quantity delivered for that period of time.

447 (e) Absent a separate contrary written agreement with the Contractor, neither the
448 Contracting Officer nor any Operating Non-Federal Entity(ies) shall be responsible for the control,
449 carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to this
450 Contract beyond the point or points of delivery established pursuant to subdivision (a) of this Article.
451 The Contractor shall indemnify the United States, its officers, employees, agents, and assigns on
452 account of damage or claim of damage of any nature whatsoever for which there is legal
453 responsibility, including property damage, personal injury, or death arising out of or connected with
454 the control, carriage, handling, use, disposal, or distribution of such Water Delivered beyond such
455 point or points of delivery except for any damage or claim arising out of: (i) acts or omissions of the
456 Contracting Officer or any of its officers, employees, agents, and assigns, including the Operating
457 Non-Federal Entity(ies) with the intent of creating the situation resulting in any damage or claim; (ii)
458 willful misconduct of the Contracting Officer or any of its officers, employees, agents, and assigns,
459 including the Operating Non-Federal Entity(ies); (iii) negligence of the Contracting Officer or any of
460 its officers, employees, agents, and assigns including the Operating Non-Federal Entity(ies); (iv) a

461 malfunction of facilities owned and/or operated by the United States or the Operating Non-Federal
462 Entity(ies); or (v) failure of the United States, its officers, employees, agents, and assigns, including
463 the Operating Non-Federal Entity(ies), to provide drainage service.

464 MEASUREMENT OF WATER WITHIN THE CONTRACTOR’S SERVICE AREA

465 6. (a) The Contractor has established a measuring program satisfactory to the
466 Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation
467 purposes within the Contractor’s Service Area is measured at each agricultural turnout and such
468 water delivered for M&I purposes is measured at each M&I service connection. The water
469 measuring devices or water measuring methods of comparable effectiveness must be acceptable to
470 the Contracting Officer. The Contractor shall be responsible for installing, operating, maintaining,
471 and repairing all such measuring devices and implementing all such water measuring methods at no
472 cost to the United States. The Contractor shall use the information obtained from such water
473 measuring devices or water measuring methods to ensure its proper management of the water; to bill
474 water users for water delivered by the Contractor; and, if applicable, to record water delivered for
475 M&I purposes by customer class as defined in the Contractor’s water conservation plan provided for
476 in Article 26 of this Contract. Nothing herein contained, however, shall preclude the Contractor from
477 establishing and collecting any charges, assessments, or other revenues authorized by California law.
478 The Contractor shall include a summary of all its annual surface water deliveries in the annual report
479 described in subdivision (c) of Article 26 of this Contract.

480 (b) To the extent the information has not otherwise been provided, upon execution
481 of this Contract, the Contractor shall provide to the Contracting Officer a written report describing
482 the measurement devices or water measuring methods being used or to be used to implement

483 subdivision (a) of this Article and identifying the agricultural turnouts and the M&I service
484 connections or alternative measurement programs approved by the Contracting Officer, at which such
485 measurement devices or water measuring methods are being used, and, if applicable, identifying the
486 locations at which such devices and/or methods are not yet being used including a time schedule for
487 implementation at such locations. The Contracting Officer shall advise the Contractor in writing
488 within 60 days as to the adequacy and necessary modifications, if any, of the measuring devices or
489 water measuring methods identified in the Contractor's report and if the Contracting Officer does not
490 respond in such time, they shall be deemed adequate. If the Contracting Officer notifies the
491 Contractor that the measuring devices or methods are inadequate, the parties shall within 60 days
492 following the Contracting Officer's response, negotiate in good faith the earliest practicable date by
493 which the Contractor shall modify said measuring devices and/or measuring methods as required by
494 the Contracting Officer to ensure compliance with subdivision (a) of this Article.

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

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

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

504 RATES AND METHOD OF PAYMENT FOR WATER

505 7. (a) The Contractor shall pay the United States as provided in this Article for all
506 Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance
507 with: (i) the Secretary’s ratesetting policy for Irrigation Water adopted in 1988 and the Secretary’s
508 then-existing ratesetting policy for M&I Water. Such ratesetting policies shall be amended,
509 modified, or superseded only through a public notice and comment procedure; (ii) applicable Federal
510 Reclamation law and associated rules and regulations, or policies; and (iii) other applicable
511 provisions of this Contract. Payments shall be made by cash transaction, electronic funds transfer, or
512 any other mechanism as may be agreed to in writing by the Contractor and the Contracting Officer.
513 The Rates, Charges, and Tiered Pricing Component applicable to the Contractor upon execution of
514 this Contract are set forth in Exhibit “B,” as may be revised annually.

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

517 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
518 provide the Contractor an estimate of the Charges for Project Water that will be applied to the period
519 October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and

520 the basis for such estimate. The Contractor shall be allowed not less than two months to review and
521 comment on such estimates. On or before September 15 of each Calendar Year, the Contracting
522 Officer shall notify the Contractor in writing of the Charges to be in effect during the period
523 October 1 of the current Calendar Year, through September 30, of the following Calendar Year, and
524 such notification shall revise Exhibit "B."

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

532 (c) At the time the Contractor submits the initial schedule for the delivery of
533 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor
534 shall make an advance payment to the United States equal to the total amount payable pursuant to the
535 applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be
536 delivered pursuant to this Contract during the first two calendar months of the Year. Before the end
537 of the first month and before the end of each calendar month thereafter, the Contractor shall make an
538 advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for the
539 Water Scheduled to be delivered pursuant to this Contract during the second month immediately
540 following. Adjustments between advance payments for Water Scheduled and payments at Rates due
541 for Water Delivered shall be made before the end of the following month; Provided, That any revised

542 schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the
543 amount of Water Delivered pursuant to this Contract during any month shall be accompanied with
544 appropriate advance payment, at the Rates then in effect, to assure that Project Water is not delivered
545 to the Contractor in advance of such payment. In any month in which the quantity of Water
546 Delivered to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid
547 for by the Contractor, no additional Project Water shall be delivered to the Contractor unless and
548 until an advance payment at the Rates then in effect for such additional Project Water is made. Final
549 adjustment between the advance payments for the Water Scheduled and payments for the quantities
550 of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable
551 but no later than April 30th of the following Year, or 60 days after the delivery of Project Water
552 rescheduled under subdivision (g) of Article 3 of this Contract if such water is not delivered by the
553 last day of February.

554 (d) The Contractor shall also make a payment in addition to the Rate(s) in
555 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
556 appropriate Tiered Pricing Component then in effect, before the end of the month following the
557 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered
558 Pricing Component pursuant to subdivision (j) (2) of this Article. The payments shall be consistent
559 with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery
560 report for the subject month prepared by the Operating Non-Federal Entity(ies) or, if there is no
561 Operating Non-Federal Entity, by the Contracting Officer. The water delivery report shall be deemed
562 a bill for the payment of Charges and the applicable Tiered Pricing Component for Water Delivered.
563 Adjustment for overpayment or underpayment of Charges shall be made through the adjustment of

564 payments due to the United States for Charges for the next month. Any amount to be paid for past
565 due payment of Charges and the Tiered Pricing Component shall be computed pursuant to Article 20
566 of this Contract.

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

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

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

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

586 reports, or information.

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

594 (j) (1) Beginning at such time as deliveries of Project Water in a Year exceed
595 80 percent of the Contract Total, then before the end of the month following the month of delivery
596 the Contractor shall make an additional payment to the United States equal to the applicable Tiered
597 Pricing Component. The Tiered Pricing Component for the amount of Water Delivered in excess of
598 80 percent of the Contract Total, but less than or equal to 90 percent of the Contract Total, shall equal
599 one-half of the difference between the Rate established under subdivision (a) of this Article and the
600 Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable. The Tiered
601 Pricing Component for the amount of Water Delivered which exceeds 90 percent of the Contract
602 Total shall equal the difference between (i) the Rate established under subdivision (a) of this Article
603 and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable.
604 For all Water Delivered pursuant to subdivision (a) of Article 3 of this Contract which is in excess of
605 80 percent of the Contract Total, this increment shall be deemed to be divided between Irrigation
606 Water and M&I Water in the same proportion as actual deliveries of each bear to the cumulative total
607 Water Delivered. Solely for the purpose of calculating the Tiered Pricing Component, the Full Cost

608 Rate shall not include the interest component of the Contractor's water distribution system
609 constructed by the United States and covered by Repayment Contract No. 14-06-200-2020A entered
610 into pursuant to 43 USC 485h(d).

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

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

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

631 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA,
632 the Rates for Project Water transferred by the Contractor shall be the Contractor’s Rates, in
633 accordance with the applicable Project ratesetting policy, adjusted upward or downward to reflect the
634 changed costs, if any, incurred by the Contracting Officer in the delivery of the transferred Project
635 Water to the transferee’s point of delivery. If the Contractor is receiving lower Rates and Charges
636 because of inability to pay and is transferring Project Water to another entity whose Rates and
637 Charges are not adjusted due to inability to pay, the Rates and Charges for transferred Project Water
638 shall not be adjusted to reflect the Contractor’s inability to pay.

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

641 (n) Omitted.

642

643 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

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

647 SALES, TRANSFERS, OR EXCHANGES OF WATER

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

658 (b) In order to facilitate efficient water management by means of water transfers of
659 the type historically carried out among Project Contractors located within the same geographical area
660 and to allow the Contractor to participate in an accelerated water transfer program during the term of
661 this Contract, the Contracting Officer shall prepare, as appropriate, all necessary environmental
662 documentation, including, but not limited to, documents prepared pursuant to the NEPA and ESA,
663 analyzing annual transfers within such geographical areas and the Contracting Officer shall
664 determine whether such transfers comply with applicable law. Following the completion of the

665 environmental documentation, such transfers addressed in such documentation shall be conducted
666 with advance notice to the Contracting Officer, but shall not require prior written approval by the
667 Contracting Officer. Such environmental documentation and the Contracting Officer’s compliance
668 determination shall be reviewed every five years and updated, as necessary, prior to the expiration of
669 the then existing five-year period. All subsequent environmental documentation shall include an
670 alternative to evaluate not less than the quantity of Project Water historically transferred within the
671 same geographical area.

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

682 APPLICATION OF PAYMENTS AND ADJUSTMENTS

683 10. (a) The amount of any overpayment by the Contractor of the Contractor’s O&M,
684 capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of
685 the Contractor arising out of this Contract then due and payable. Overpayments of more than \$1,000
686 shall be refunded at the Contractor’s request. In lieu of a refund, any amount of such overpayment, at

687 the option of the Contractor, may be credited against amounts to become due to the United States by
688 the Contractor. With respect to overpayment, such refund or adjustment shall constitute the sole
689 remedy of the Contractor or anyone having or claiming to have the right to the use of any of the
690 Project Water supply provided for herein. All credits and refunds of overpayments shall be made
691 within 30 days of the Contracting Officer obtaining direction as to how to credit or refund such
692 overpayment in response to the notice to the Contractor that it has finalized the accounts for the Year
693 in which the overpayment was made.

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

699 TEMPORARY REDUCTIONS--RETURN FLOWS

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

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

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

722 CONSTRAINTS ON THE AVAILABILITY OF WATER

723 12. (a) In its operation of the Project, the Contracting Officer will use all reasonable
724 means to guard against a Condition of Shortage in the quantity of water to be made available to the
725 Contractor pursuant to this Contract. In the event the Contracting Officer determines that a
726 Condition of Shortage appears probable, the Contracting Officer will notify the Contractor of said

727 determination as soon as practicable.

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

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

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

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

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

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

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

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

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

774 UNAVOIDABLE GROUNDWATER PERCOLATION

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

779 RULES AND REGULATIONS

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

784 WATER AND AIR POLLUTION CONTROL

785 15. The Contractor, in carrying out this Contract, shall comply with all applicable water
786 and air pollution laws and regulations of the United States and the State of California, and shall
787 obtain all required permits or licenses from the appropriate Federal, State, or local authorities.
788

789 QUALITY OF WATER

790 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to
791 this Contract shall be operated and maintained to enable the United States to deliver Project Water to
792 the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act
793 of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat.
794 3050) or other existing Federal laws. The United States is under no obligation to construct or furnish
795 water treatment facilities to maintain or to improve the quality of Water Delivered to the Contractor
796 pursuant to this Contract. The United States does not warrant the quality of Water Delivered to the
797 Contractor pursuant to this Contract.

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

804 (c) The Contracting Officer shall notify the Contractor in writing when drainage
805 service becomes available. Thereafter, the Contracting Officer shall provide drainage service to the
806 Contractor at rates established pursuant to the then-existing ratesetting policy for Irrigation Water;
807 Provided, That such ratesetting policy shall be amended, modified, or superseded only through the
808 process described in subdivision (a) of Article 7 of this Contract.

809 WATER ACQUIRED BY THE CONTRACTOR
810 OTHER THAN FROM THE UNITED STATES

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

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

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

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

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

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

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

864 (5) After Project purposes are met, as determined by the Contracting
865 Officer, the United States and Project Contractors entitled to Project Water from Delta Division
866 Facilities shall share priority to utilize the remaining capacity of the facilities declared to be available
867 by the Contracting Officer for conveyance and transportation of non-Project water prior to any such
868 remaining capacity being made available to non-Project contractors. Other Project Contractors shall
869 have a second priority to any remaining capacity of facilities declared to be available by the
870 Contracting Officer for conveyance and transportation of non-Project water prior to any such
871 remaining capacity being made available to non-Project contractors.

872 OPINIONS AND DETERMINATIONS

873 18. (a) Where the terms of this Contract provide for actions to be based upon the
874 opinion or determination of either party to this Contract, said terms shall not be construed as

875 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
876 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly
877 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or
878 unreasonable opinion or determination. Each opinion or determination by either party shall be
879 provided in a timely manner. Nothing in this subdivision (a) of this Article is intended to or shall
880 affect or alter the standard of judicial review applicable under Federal law to any opinion or
881 determination implementing a specific provision of Federal law embodied in statute or regulation.

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

887 COORDINATION AND COOPERATION

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

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

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

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

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

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

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

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

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

924 CHARGES FOR DELINQUENT PAYMENTS

925 20. (a) The Contractor shall be subject to interest, administrative and penalty charges
926 on delinquent installments or payments. When a payment is not received by the due date, the
927 Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date.
928 When a payment becomes 60 days delinquent, the Contractor shall pay an administrative charge to
929 cover additional costs of billing and processing the delinquent payment. When a payment is
930 delinquent 90 days or more, the Contractor shall pay an additional penalty charge of six percent per
931 year for each day the payment is delinquent beyond the due date. Further, the Contractor shall pay
932 any fees incurred for debt collection services associated with a delinquent payment.

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

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

941 EQUAL OPPORTUNITY

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

943 (a) The Contractor will not discriminate against any employee or applicant for
944 employment because of race, color, religion, sex, or national origin. The Contractor will take
945 affirmative action to ensure that applicants are employed, and that employees are treated during
946 employment, without regard to their race, color, religion, sex, or national origin. Such action shall
947 include, but not be limited to, the following: Employment, upgrading, demotion, or transfer;
948 recruitment or recruitment advertising; layoff or termination, rates of payment or other forms of
949 compensation; and selection for training, including apprenticeship. The Contractor agrees to post in

950 conspicuous places, available to employees and applicants for employment, notices to be provided by
951 the Contracting Officer setting forth the provisions of this nondiscrimination clause.

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

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

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

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

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

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

985 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

998 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

999 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42
1000 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age
1001 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as
1002 well as with their respective implementing regulations and guidelines imposed by the U.S.
1003 Department of the Interior and/or Bureau of Reclamation.

1004 (b) These statutes require that no person in the United States shall, on the grounds
1005 of race, color, national origin, handicap, or age, be excluded from participation in, be denied the
1006 benefits of, or be otherwise subjected to discrimination under any program or activity receiving
1007 financial assistance from the Bureau of Reclamation. By executing this Contract, the Contractor
1008 agrees to immediately take any measures necessary to implement this obligation, including
1009 permitting officials of the United States to inspect premises, programs, and documents.

1010 (c) The Contractor makes this agreement in consideration of and for the purpose
1011 of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial
1012 assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including
1013 installment payments after such date on account of arrangements for Federal financial assistance
1014 which were approved before such date. The Contractor recognizes and agrees that such Federal
1015 assistance will be extended in reliance on the representations and agreements made in this Article,
1016 and that the United States reserves the right to seek judicial enforcement thereof.

1017 PRIVACY ACT COMPLIANCE

1018 24. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a) (the
1019 Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et seq.) in
1020 maintaining Landholder acreage certification and reporting records, required to be submitted to the

1021 Contractor for compliance with Sections 206 and 228 of the Reclamation Reform Act of 1982 (96
1022 Stat. 1266), and pursuant to 43 CFR 426.18.

1023 (b) With respect to the application and administration of the criminal penalty
1024 provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible
1025 for maintaining the certification and reporting records referenced in (a) above are considered to be
1026 employees of the Department of the Interior. See 5 U.S.C. 552a(m).

1027 (c) The Contracting Officer or a designated representative shall provide the
1028 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau of
1029 Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior,
1030 Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information
1031 contained in the Landholder's certification and reporting records.

1032 (d) The Contracting Officer shall designate a full-time employee of the Bureau of
1033 Reclamation to be the System Manager who shall be responsible for making decisions on denials
1034 pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is
1035 authorized to grant requests by individuals for access to their own records.

1036 (e) The Contractor shall forward promptly to the System Manager each proposed
1037 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR
1038 2.71; notify the requester accordingly of such referral; and provide the System Manager with
1039 information and records necessary to prepare an appropriate response to the requester. These
1040 requirements do not apply to individuals seeking access to their own certification and reporting forms
1041 filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy
1042 Act as a basis for the request.

1043 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1044 25. In addition to all other payments to be made by the Contractor pursuant to this
1045 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and
1046 detailed statement submitted by the Contracting Officer to the Contractor for such specific items of
1047 direct cost incurred by the United States for work requested by the Contractor associated with this
1048 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and
1049 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in
1050 writing in advance by the Contractor. This Article shall not apply to costs for routine contract
1051 administration.

1052 WATER CONSERVATION

1053 26. (a) Prior to the delivery of water provided from or conveyed through Federally
1054 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be
1055 implementing an effective water conservation and efficiency program based on the Contractor's water
1056 conservation plan that has been determined by the Contracting Officer to meet the conservation and
1057 efficiency criteria for evaluating water conservation plans established under Federal law. The water
1058 conservation and efficiency program shall contain definite water conservation objectives, appropriate
1059 economically feasible water conservation measures, and time schedules for meeting those objectives.
1060 Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's
1061 continued implementation of such water conservation program. In the event the Contractor's water
1062 conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of
1063 this Article 26 have not yet been determined by the Contracting Officer to meet such criteria, due to
1064 circumstances which the Contracting Officer determines are beyond the control of the Contractor,

1065 water deliveries shall be made under this Contract so long as the Contractor diligently works with the
1066 Contracting Officer to obtain such determination at the earliest practicable date, and thereafter the
1067 Contractor immediately begins implementing its water conservation and efficiency program in
1068 accordance with the time schedules therein.

1069 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
1070 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall implement
1071 the Best Management Practices identified by the time frames issued by the California Urban Water
1072 Conservation Council for such M&I Water unless any such practice is determined by the Contracting
1073 Officer to be inappropriate for the Contractor.

1074 (c) The Contractor shall submit to the Contracting Officer a report on the status of
1075 its implementation of the water conservation plan on the reporting dates specified in the then-existing
1076 conservation and efficiency criteria established under Federal law.

1077 (d) At five-year intervals, the Contractor shall revise its water conservation plan to
1078 reflect the then-current conservation and efficiency criteria for evaluating water conservation plans
1079 established under Federal law and submit such revised water management plan to the Contracting
1080 Officer for review and evaluation. The Contracting Officer will then determine if the water
1081 conservation plan meets Reclamation's then-current conservation and efficiency criteria for
1082 evaluating water conservation plans established under Federal law.

1083 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall
1084 be described in the Contractor's water conservation plan.

1085 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1086 27. Except as specifically provided in Article 17 of this Contract, the provisions of this

1087 Contract shall not be applicable to or affect non-Project water or water rights now owned or hereafter
1088 acquired by the Contractor or any user of such water within the Contractor's Service Area. Any such
1089 water shall not be considered Project Water under this Contract. In addition, this Contract shall not
1090 be construed as limiting or curtailing any rights which the Contractor or any water user within the
1091 Contractor's Service Area acquires or has available under any other contract pursuant to Federal
1092 Reclamation law.

1093 OPERATION AND MAINTENANCE BY
1094 SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

1095 28. (a) The O&M of a portion of the Project facilities which serve the Contractor, and
1096 responsibility for funding a portion of the costs of such O&M, have been transferred to the San Luis
1097 & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate agreement (8-07-
1098 20-X0354) between the United States and Operating Non-Federal Entity San Luis & Delta-Mendota
1099 Water Authority. That separate agreement shall not interfere with or affect the rights or obligations
1100 of the Contractor or the United States hereunder.

1101 (b) The Contracting Officer has previously notified the Contractor in writing that
1102 the O&M of a portion of the Project facilities which serve the Contractor has been transferred to
1103 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, and therefore, the
1104 Contractor shall pay directly to Operating Non-Federal Entity San Luis & Delta-Mendota Water
1105 Authority, or to any successor approved by the Contracting Officer under the terms and conditions of
1106 the separate agreement between the United States and Operating Non-Federal Entity San Luis &
1107 Delta-Mendota Water Authority, described in subdivision (a) of this Article, all rates, charges, or
1108 assessments of any kind, including any assessment for reserve funds, which Operating Non-Federal

1109 Entity San Luis & Delta-Mendota Water Authority, or such successor determines, sets, or establishes
1110 for the O&M of the portion of the Project facilities operated and maintained by Operating Non-
1111 Federal Entity San Luis & Delta-Mendota Water Authority, or such successor. Such direct payments
1112 to Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or such successor shall
1113 not relieve the Contractor of its obligation to pay directly to the United States the Contractor’s share
1114 of the Project Rates, Charges, and Tiered Pricing Components except to the extent the Operating
1115 Non-Federal Entity collects payments on behalf of the United States in accordance with subdivision
1116 (a) of this Article.

1117 (c) For so long as the O&M of any portion of the Project facilities serving the
1118 Contractor is performed by Operating Non-Federal Entity San Luis & Delta-Mendota Water
1119 Authority, or any successor thereto, the Contracting Officer shall adjust those components of the
1120 Rates for Water Delivered under this Contract representing the cost associated with the activity being
1121 performed by Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or its
1122 successor.

1123 (d) In the event the O&M of the Project facilities operated and maintained by
1124 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority is re-assumed by the
1125 United States during the term of this Contract, the Contracting Officer shall so notify the Contractor,
1126 in writing, and present to the Contractor a revised Exhibit “B” which shall include the portion of the
1127 Rates to be paid by the Contractor for Project Water under this Contract representing the O&M costs
1128 of the portion of such Project facilities which have been re-assumed. The Contractor shall, thereafter,
1129 in the absence of written notification from the Contracting Officer to the contrary, pay the Rates,
1130 Charges, and the Tiered Pricing Component specified in the revised Exhibit “B” directly to the

1131 United States in compliance with Article 7 of this Contract.

1132 OPERATION AND MAINTENANCE BY
1133 CALIFORNIA DEPARTMENT OF WATER RESOURCES

1134 28.1 (a) The O&M of a portion of the Project facilities which serve the Contractor, and
1135 responsibility for funding a portion of the costs of such O&M, have been transferred to the California
1136 Department of Water Resources, an Operating Non-Federal Entity by a separate agreement (14-06-
1137 200-9755) between the United States and Operating Non-Federal Entity California Department of
1138 Water Resources. This separate agreement shall not interfere with or affect the rights or obligations
1139 of the Contractor or the United States hereunder.

1140 (b) The Contracting Officer has previously notified the Contractor in writing that
1141 the O&M of a portion of the Project facilities which serve the Contractor has been transferred to
1142 Operating Non-Federal Entity California Department of Water Resources, and the Contractor shall
1143 pay directly to Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or to any
1144 successor approved by the Contracting Officer under the terms and conditions of the separate
1145 agreement between the United States and Operating Non-Federal Entity San Luis & Delta-Mendota
1146 Water Authority, described in subdivision (a) of Article 28 of this Contract, all rates, charges, or
1147 assessments of any kind, including any assessment for reserve funds, which Operating Non-Federal
1148 Entity California Department of Water Resources, or such successor determines, sets, or establishes
1149 for the O&M of the portion of the Project facilities operated and maintained by Operating Non-
1150 Federal Entity California Department of Water Resources, or such successor. Such direct payments
1151 to Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or such successor shall
1152 not relieve the Contractor of its obligation to pay directly to the United States the Contractor's share

1153 of the Project Rates, Charges, and Tiered Pricing Components except to the extent the Operating
1154 Non-Federal Entity collects payments on behalf of the United States in accordance with the separate
1155 agreement identified in subdivision (a) of Article 28 of this Contract.

1156 (c) For so long as the O&M of any portion of the Project facilities serving the
1157 Contractor is performed by Operating Non-Federal Entity California Department of Water Resources,
1158 or any successor thereto, the Contracting Officer shall adjust those components of the Rates for
1159 Water Delivered under this Contract representing the cost associated with the activity being
1160 performed by Operating Non-Federal Entity California Department of Water Resources, or its
1161 successor.

1162 (d) In the event the O&M of the Project facilities operated and maintained by
1163 Operating Non-Federal Entity California Department of Water Resources is re-assumed by the
1164 United States during the term of this Contract, the Contracting Officer shall so notify the Contractor,
1165 in writing, and present to the Contractor a revised Exhibit “B” which shall include the portion of the
1166 Rates, Charges, and the Tiered Pricing Component to be paid by the Contractor for Project Water
1167 under this Contract representing the O&M costs of the portion of such Project facilities which have
1168 been re-assumed. The Contractor shall, thereafter, in the absence of written notification from the
1169 Contracting Officer to the contrary, pay the Rates, Charges, and Tiered Pricing Component(s)
1170 specified in the revised Exhibit “B” directly to the United States in compliance with Article 7 of this
1171 Contract.

1172 OPERATION AND MAINTENANCE BY THE CONTRACTOR

1173 28.2 (a) During the term of this Contract, the Contractor shall act as the Operating
1174 Non-Federal Entity for a portion of the Project facilities which serves the Department of Fish and

1175 Game, the City of Huron, and the City of Coalinga, including but not limited to the Coalinga Canal
1176 System, which consists in part of the Coalinga Canal and turnouts and Pleasant Valley Pumping
1177 Plant. The Contractor, without expense to the United States, shall care for, operate, and maintain
1178 such portion of the Project facilities for the furnishing of water to the Department of Fish and Game,
1179 the City of Huron, and the City of Coalinga in full compliance with Federal Reclamation law and in
1180 such manner that they will remain in good and efficient condition; Provided, That the United States
1181 shall finance the costs of all major replacements of such facilities that the Contracting Officer
1182 determines are needed; Provided further, That if the Department of Fish and Game, the City of
1183 Huron, or the City of Coalinga fails to pay to the Contractor in advance such entity's share of the
1184 O&M costs, consistent with any agreements between the Contractor and the Department of Fish and
1185 Game, the City of Huron, or the City of Coalinga, respectively, the Contractor shall be relieved of its
1186 obligation to the O&M of such facilities for the benefit of the non-paying entity.

1187 (b) The Contracting Officer previously notified the Department of Fish and Game,
1188 the City of Huron, and the City of Coalinga in writing that the O&M of a portion of the Project
1189 facilities which serves the Department of Fish and Game, the City of Huron, and the City of Coalinga
1190 has been transferred to the Contractor. Therefore, the Department of Fish and Game and the City of
1191 Huron have entered, and the City of Coalinga is expected to enter, separate agreements with the
1192 Contractor providing the terms and conditions pursuant to which the Contractor will operate and
1193 maintain a portion of the Project facilities which serves the Department of Fish and Game, the City of
1194 Huron, and the City of Coalinga, including the amount(s) the Department of Fish and Game, the City
1195 of Huron, and the City of Coalinga are to pay the Contractor for that service. Consistent with any
1196 such agreements, the Department of Fish and Game, the City of Huron, and the City of Coalinga shall

1197 pay directly to the Contractor all rates, charges, or assessments of any kind, including any assessment
1198 for reserve funds, which the Contractor sets, or establishes for a portion of the Project facilities which
1199 serves the Department of Fish and Game, the City of Huron, and the City of Coalinga and is operated
1200 and maintained by the Contractor. Such direct payments to the Contractor shall not relieve the
1201 Contractor of its obligation to pay directly to the United States the Department of Fish and Game, the
1202 City of Huron, and the City of Coalinga its share of the Project Rates, Charges, and Tiered Pricing
1203 Components referred to in this Contract.

1204 (c) For so long as the O&M for a portion of the Project facilities which serves the
1205 Department of Fish and Game, the City of Huron, and the City of Coalinga is performed by the
1206 Contractor, the Contracting Officer shall adjust those components of the Rates for Water Delivered
1207 under the Contracts representing the cost associated with the activity being performed by the
1208 Contractor.

1209 (d) The United States may re-assume O&M for a portion of the Project facilities
1210 which serves the Department of Fish and Game, the City of Huron, and the City of Coalinga. In that
1211 event, the Contracting Officer shall so notify the Department of Fish and Game, the City of Huron,
1212 and the City of Coalinga, in writing, and present to the Contractor a revised Exhibit “B” which shall
1213 include the portion of the Rates, Charges, and Tiered Pricing Component(s) to be paid by the
1214 Department of Fish and Game, the City of Huron, and the City of Coalinga for Project Water under
1215 this Contract representing the O&M costs for a portion of the Project facilities which serves the
1216 Department of Fish and Game, the City of Huron, and the City of Coalinga. The Department of Fish
1217 and Game, the City of Huron, and the City of Coalinga shall, thereafter, in the absence of written
1218 notification from the Contracting Officer to the contrary, pay the Rates, Charges, and Tiered Pricing

1219 Component(s) specified in the revised Exhibit “B” directly to the United States in compliance with
1220 Article 7 of their contracts. The Contractor shall, thereafter, be relieved of all of its obligations under
1221 this Article 28.2.

1222 PUMPING PLANTS, POWER FOR PUMPING PLANTS, AND TRANSFER
1223 OF OPERATION AND MAINTENANCE TO THE CONTRACTOR

1224 28.3. (a) The United States shall furnish and install pumping plants and furnish the
1225 amount of Project power the Contracting Officer determines is necessary to deliver Project Water to
1226 the Contractor from the Delta-Mendota, San Luis, and Coalinga Canals, including the Pleasant
1227 Valley Pumping Plant, at the point(s) of delivery identified pursuant to subdivision (a) of Article 5 of
1228 this Contract at heads and elevations sufficient to irrigate by gravity the areas within the Contractor’s
1229 Service Area below 700 feet mean sea level elevation.

1230 (b) With advance approval of the Contracting Officer, the Contractor may, at its
1231 own expense, furnish and install pumping facilities, and related electrical equipment, to enable it to
1232 divert and deliver Project Water from the Delta-Mendota, San Luis, and Coalinga Canals and the
1233 Pleasant Valley Pumping Plant before the United States furnishes and installs all the pumping plants
1234 referred to in subdivision (a) of this Article. The United States shall furnish the amount of Project
1235 power needed to operate such pumping facilities; Provided, That the Contractor maintains an
1236 agreement with an entity to convey such power to such facilities, and the Contractor agrees to pay
1237 any and all charges assessed by that entity for such service.

1238 (c) The furnishing of power by the United States shall be in conformance with
1239 operating criteria, rules, and regulations, including the project use power policy, established by the
1240 Contracting Officer; Provided, That any such operating criteria, rules, and regulations, including the

1241 project use power policy, established by the Contracting Officer shall not excuse the United States
1242 from its obligation under subdivision (a) of this Article. Such operating criteria, rules, and
1243 regulations shall be developed in cooperation with the Contractor and shall be based on acceptable
1244 irrigation management practices and the power generation capacity available to the United States for
1245 the furnishing of Project water to the Contractor.

1246 (d) The Contractor hereby agrees to operate and maintain, at its own expense, all
1247 of the pumping facilities described in subdivisions (a) and (b) of this Article in such a manner that
1248 they remain in good and efficient condition; Provided, That the United States shall finance the costs
1249 of all major replacements that the Contracting Officer determines are needed.

1250 (e) The Contracting Officer or his representative shall at all times have access to
1251 and may inspect and investigate the pumping facilities for the purpose of ascertaining if they are
1252 being kept in safe and proper operating condition.

1253 (f) No change in any of the pumping facilities, which in the opinion of the
1254 Contracting Officer is substantial, shall be made by the Contractor without first obtaining the written
1255 consent of the Contracting Officer. The Contractor shall promptly make any and all repairs and
1256 replacements to the pumping facilities which in the opinion of the Contracting Officer are necessary.

1257 In the event the Contractor neglects or fails to make such repairs and replacements or in the event of
1258 operation by the United States of the pumping facilities pursuant to subdivision (g) of this Article,
1259 the United States may cause the repairs and replacements to be made and the cost thereof, as
1260 determined by the Contracting Officer, shall be paid by the Contractor to the United States upon
1261 notice of the payment due but not later than April 1 of the year following that during which such

1262 work was completed.

1263 (g) In the event the Contracting Officer determines that the Contractor has not
1264 properly cared for, operated, and maintained said pumping facilities or has failed to comply with any
1265 of the provisions of this Article, then at the election of the Contracting Officer the United States may
1266 take over from the Contractor the care and O&M of the pumping facilities by giving written notice to
1267 the Contractor of such election and the effective date thereof. Thereafter, during the period of
1268 operation by the United States, the Contractor shall pay to the United States in advance of the use of
1269 such pumping facilities the Contractor's share of the cost of O&M thereof and replacements
1270 therefore, as fixed in notices from the Contracting Officer. In the event such advances are inadequate
1271 to properly care for, operate, and maintain the pumping facilities to the end of any year, the
1272 Contracting Officer may give written notice of a supplemental O&M charge and the Contractor shall
1273 pay such amount on or before the date specified in said notice. Any amount of such advances
1274 remaining unexpended or unobligated, at the option of the Contractor, either shall be refunded or
1275 credited upon amounts to become due to the United States from the Contractor under the provisions
1276 of this Contract in subsequent years. The pumping facilities so taken back by the United States may
1277 be returned to the Contractor upon the furnishing to the Contractor of a written 90-day notice of
1278 intention to retransfer.

1279 (h) The Contractor shall hold the United States, its officers, and employees
1280 harmless from every and all claim for damages to persons or property arising out of or connected
1281 with the Contractor's O&M of the pumping facilities referred to in this Article; Provided, That
1282 nothing contained herein shall be construed as an assumption of liability by the Contractor to parties
1283 other than the United States with respect to such matters.

1284 (i) During the time the pumping facilities are operated and maintained by the
1285 Contractor, in addition to all other payments to be made by the Contractor under this Contract, the
1286 Contractor shall pay to the United States pursuant to Article 25 hereof, costs incurred by the United
1287 States for work associated with the pumping facilities under this Contract normally charged by the
1288 United States to water users and properly and equitably chargeable to the Contractor.

1289 (j) The Contracting Officer may make review of any part or all of the pumping
1290 facilities being operated by the Contractor pursuant to this Article to assist the Contractor in
1291 assessing the condition of facilities and the adequacy of the maintenance program(s). The
1292 Contracting Officer shall prepare reports based on the examinations, inspections or audits, and
1293 furnish copies of such reports and any recommendations to the Contractor. The Contractor shall
1294 reimburse the actual cost

1295 incurred by the United States in making O&M examinations, inspections, and audits, and preparing
1296 associated reports and recommendations.

1297 (k) If deemed necessary by the Contracting Officer or requested by the Contractor,
1298 special inspections of the pumping facilities being operated by the Contractor and of the Contractor's
1299 books and records may be made to ascertain the extent of any O&M deficiencies, to determine the
1300 remedial measures required for their correction, and to assist the Contractor in solving specific
1301 problems. Any special inspection or audit shall, except in a case of emergency, be made after written
1302 notice to the Contractor and the actual cost thereof shall be paid by the Contractor to the United
1303 States.

1304 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1305 29. The expenditure or advance of any money or the performance of any obligation of the
1306 United States under this Contract shall be contingent upon appropriation or allotment of funds.
1307 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
1308 under this Contract. No liability shall accrue to the United States in case funds are not appropriated
1309 or allotted.

1310 BOOKS, RECORDS, AND REPORTS

1311 30. (a) The Contractor shall establish and maintain accounts and other books and
1312 records pertaining to administration of the terms and conditions of this Contract, including: the
1313 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;
1314 the water users' land-use (crop census), land ownership, land-leasing and water use data; and other
1315 matters that the Contracting Officer may require. Reports thereon shall be furnished to the
1316 Contracting Officer in such form and on such date or dates as the Contracting Officer may require.
1317 Subject to applicable Federal laws and regulations, each party to this Contract shall have the right
1318 during office hours to examine and make copies of the other party's books and records relating to
1319 matters covered by this Contract.

1320 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,
1321 records, or other information shall be requested from the Contractor by the Contracting Officer unless
1322 such books, records, or information are reasonably related to the administration or performance of

1323 this Contract. Any such request shall allow the Contractor a reasonable period of time within which
1324 to provide the requested books, records, or information.

1325 (c) At such time as the Contractor provides information to the Contracting Officer
1326 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the
1327 Operating Non-Federal Entity.

1328 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1329 31. (a) The provisions of this Contract shall apply to and bind the successors and
1330 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1331 therein shall be valid until approved in writing by the Contracting Officer.

1332 (b) The assignment of any right or interest in this Contract by either party shall not
1333 interfere with the rights or obligations of the other party to this Contract absent the written
1334 concurrence of said other party.

1335 (c) The Contracting Officer shall not unreasonably condition or withhold approval
1336 of any proposed assignment.

1337 SEVERABILITY

1338 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor
1339 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an
1340 association or other form of organization whose primary function is to represent parties to Project
1341 contracts, brings an action in a court of competent jurisdiction challenging the legality or
1342 enforceability of a provision included in this Contract and said person, entity, association, or
1343 organization obtains a final court decision holding that such provision is legally invalid or
1344 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the
1345 parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court

1346 decision identify by mutual agreement the provisions in this Contract which must be revised and (ii)
1347 within three months thereafter promptly agree on the appropriate revision(s). The time periods
1348 specified above may be extended by mutual agreement of the parties. Pending the completion of the
1349 actions designated above, to the extent it can do so without violating any applicable provisions of
1350 law, the United States shall continue to make the quantities of Project Water specified in this
1351 Contract available to the Contractor pursuant to the provisions of this Contract which were not found
1352 to be legally invalid or unenforceable in the final court decision.

1353 RESOLUTION OF DISPUTES

1354 33. Should any dispute arise concerning any provisions of this Contract, or the parties’
1355 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the
1356 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring
1357 any matter to the Department of Justice, the party shall provide to the other party 30 days’ written
1358 notice of the intent to take such action; Provided, That such notice shall not be required where a
1359 delay in commencing an action would prejudice the interests of the party that intends to file suit.
1360 During the 30-day notice period, the Contractor and the Contracting Officer shall meet and confer in
1361 an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to
1362 waive or abridge any right or remedy that the Contractor or the United States may have.

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OFFICIALS NOT TO BENEFIT

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

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CHANGES IN CONTRACTOR’S SERVICE AREA

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

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(b) Within 30 days of receipt of a request for such a change, the Contracting

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Officer will notify the Contractor of any additional information required by the Contracting Officer

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for processing said request, and both parties will meet to establish a mutually agreeable schedule for

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timely completion of the process. Such process will analyze whether the proposed change is likely

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to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of

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the Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-

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constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project

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Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply with

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the NEPA and the ESA. The Contractor will be responsible for all costs incurred by the Contracting

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Officer in this process, and such costs will be paid in accordance with Article 25 of this Contract.

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FEDERAL LAWS

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

1388

NOTICES

1389 37. Any notice, demand, or request authorized or required by this Contract shall be
1390 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered
1391 to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, California 93721,
1392 and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board of
1393 Directors of the Westlands Water District, P. O. Box 6056, Fresno, California 93703-6056. The
1394 designation of the addressee or the address may be changed by notice given in the same manner as
1395 provided in this Article for other notices.

1396

CONFIRMATION OF CONTRACT

1397 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a
1398 decree of a court of competent jurisdiction of the State of California, confirming the execution of this
1399 Contract. The Contractor shall furnish the United States a certified copy of the final decree, the
1400 validation proceedings, and all pertinent supporting records of the court approving and confirming
1401 this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

1402 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and
1403 year first above written.

1404
1405 THE UNITED STATES OF AMERICA

1406 By: _____
1407 Regional Director, Mid-Pacific Region
1408 Bureau of Reclamation

1409 (SEAL)

1410 WESTLANDS WATER DISTRICT

1411 By: _____
1412 President of the Board of Directors

1413 Attest:

1414 By: _____
1415 Secretary of the Board of Directors

1416 (H:\pub 440\LTRC\Final Draft LTRC's – Fresno, Tracy\11-01-04 Westlands Water District Final
1417 Draft LTRC with exhibits.doc)

EXHIBIT A

[Map or Description of Service Area]

EXHIBIT B
WESTLANDS WATER DISTRICT
2005 Water Rates and Charges

	<u>2005 Rates Per Acre-Foot</u>		
	<u>Irrigation Water</u>	<u>Irrigation Water</u>	<u>M&I Water</u>
COST-OF-SERVICE (COS) RATES:	SLC	DMC	
Capital Rates:	\$15.78	\$ 6.52	\$18.72
O&M Rates:			
Water Marketing	\$ 6.61	\$ 6.61	\$ 3.89
Storage	\$ 5.93	\$ 5.93	\$ 6.67
Conveyance	*		*
Direct Pumping (Project Use Energy)	\$ 2.60		\$ 2.39
Tracy Pumping	*		*
San Luis Drain	\$ 0.71		
Deficit Rates:			
Non-Interest Bearing			
Interest Bearing			
<u>TOTAL COS RATES:</u>	\$31.63	\$19.06	\$31.67
<u>M&I FULL-COST RATE:</u>			\$42.58
Tiered Pricing Component >80% <=90% of Contract			
Total [Full Cost Rate - COS Rate /2]:			
Tiered Pricing Component >90% of Contract			
Total [Full Cost Rate - COS Rate]:			
<u>FULL-COST RATES:</u>			
SECTION 202(3) Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981.	\$55.20	\$43.32	
<u>205 FULL-COST RATES:</u>			
SECTION 205(a)(3) Rate is applicable to a Qualified Recipient or to a Limited Recipient that did not receive irrigation water on or before October 1, 1981.	\$70.01	\$56.47	
SURCHARGES UNDER P.L. 102-575 TO RESTORATION FUND**	\$ 7.93	\$ 7.93	\$15.87

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

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

EXHIBIT C

Central Valley Project (CVP) Water Needs Assessments Purpose and Methodology

Purpose:

Water needs assessments have been performed for each CVP water contractor eligible to participate in the CVP long-term contract renewal process. These water needs assessments serve three purposes:

Confirm past beneficial use of CVP water;

Provide water demand and supply information under current and future conditions for the environmental documents; and

Provide an estimate of contractor-specific needs for CVP water by the year 2025 to serve as a starting point for discussions regarding contract quantities in the negotiation process.

These three purposes require that the water needs assessments be done for a number of different timeframes.

Small Contractors exempt from Detailed Water Needs Assessments:

In order to minimize the informational burdens on CVP water contractors with small amounts of CVP supply under contract, an exemption from the requirement for detailed water needs assessments has been provided to these contractors. The exemption applies to contractors who provide agricultural water to a service area of 2000 irrigable acres, or less, and/or provide urban water now, or in the future, in the amount of 2000 acre-feet annually, or less. A contractor may be exempt from the water needs assessment requirement for its urban water service, but not for its agricultural water service, or vice-a-versa. These contractors are assumed to demonstrate future need if they have beneficially used their CVP supplies in the past.

Past Beneficial Use:

Originally, Reclamation requested water demand and supply information for the 1979 through 1997 timeframe. Reclamation believes that evaluations of beneficial use, current and future CVP needs based on information for a 19-year period of record, including both wet and dry periods, is a scientifically defensible way of conducting water needs assessments. However, the concerns of the CVP water contractors with respect to the magnitude of the information request persuaded Reclamation to perform the assessments using a representative snapshot year approach, instead. Although less scientifically rigorous, the snapshot year approach appears adequate for cursory evaluations of water needs.

Nineteen Eighty Nine, is the snapshot year chosen to confirm past beneficial use of CVP water for the American, Delta, Contra Costa, Sacramento, and San Felipe regions (refer to the definitions on the next page). This year was chosen because most CVP water contractors received full delivery of their requested water supplies and the total annual precipitation for most CVP regions was in the

normal range. Since 1989 was a drought year in the Friant region, 1996 was the snapshot year selected to calculate past beneficial use for this region. Water Need Assessments for the Stanislaus Region have been deferred pending the resolution of operational issues in the Stanislaus River basin. Some contractors have elected to deviate from the selected snapshot year because of the unavailability of information for that year. Following is a description of the regions:

American: American River Division

Delta: Delta Division combined with West San Joaquin Division, but not the Contra Costa Unit

Contra Costa: Contra Costa Unit

Stanislaus: East Side Division

Friant: Friant Division combined with Hidden Unit, Buchanan Unit, and Cross Valley Canal

Sacramento: Sacramento River Division combined with Trinity River and Shasta Divisions

San Felipe: San Felipe Division

The environmental documentation associated with the CVP long-term contract renewals specifies 1995 as the base year. Therefore, water supply and demand information is indicated on the water needs assessments for the 1995 level of development, if available. In many cases, the information provided to demonstrate past beneficial use is also reasonably representative of 1995 level water supplies and demands.

Definition of Need for CVP Water Supplies:

An important function of these assessments is the estimation of year 2025 CVP water needs. The assessments compare all demands and all supplies (including CVP supplies) estimated for the 2025 level of development for a normal hydrologic year. Demands include agricultural, urban and, on occasion, environmental water demands. For these assessments, current CVP contract supplies are set as the maximum annual contractual amount for each water contractor, except in the Friant Division. The Friant Division's Class II contract amounts are based on wet hydrologic year and were reduced to 40% of the contract amount to reflect normal year hydrology. The results are displayed in Column 39 as Unmet Demand. If the number in this column is positive or only slightly negative¹ then the CVP water contractor is deemed to have full future need of the maximum annual CVP supply currently under contract for all year types. Dry year and critically dry year analyses were only performed for urban contractors who did not demonstrate full future need of their CVP contract supply in a normal hydrologic year.

The methodology used to estimate agricultural and urban water demands as well as to estimate the availability of non-CVP supplies is described in the following sections.

Agricultural Water Demand:

Agricultural water demand is defined as the sum of the district's irrigation water demand and the intra-district conveyance losses, where irrigation water demand is the product of the irrigated

1. If the negative amount is within 10% for contracts in excess of 15,000 acre-feet, or within 25% for contracts equal to, or less than, 15,000 acre-feet; the test of full future need of CVP supplies under contract is deemed to be met.

acreage in a district and the average farm delivery requirement. The farm delivery requirement is defined as the unit amount of water necessary to supply crop water needs in excess of effective precipitation and varies based on crop type, climate, irrigation water quality, soil salinity and irrigation method. The district's irrigation water demand is not necessarily the sum of all the on-farm irrigation water demands because such measures as recycling of intra-district return flows are effective in reducing the overall district irrigation water demand. The assumption for this analysis is that the continued implementation of water use efficiency measures between now and the year 2025 will further reduce the unit amount of water needed to grow crops in the future. Often, it is also assumed that district conveyance losses will decrease in the future. Specifically, district irrigation efficiencies are assumed to increase from an average of 75 percent currently to 85 percent by the year 2025, where district irrigation efficiency is defined as follows:

$$\text{District Irrigation Efficiency} = \frac{\text{Supply B Non Recoverable Losses to the District}}{\text{Supply}}$$

or

$$= \frac{\text{District's Crop Water Requirement of Applied Water (ETAW) + Recoverable losses within the District}^2}{\text{District's Irrigation Water Demand}}$$

Certain districts, such as those with large elevation differences within their boundaries, have target district irrigation efficiencies of 80 percent.

Estimating Crop Water Requirements

Generally, the CVP water contractors' Water Management Plans provide historical information on crop water requirements. This information was used in the snapshot year analyses to confirm past beneficial use of CVP supplies and to reflect the base condition in the environmental documents.

Reclamation estimated crop water requirements for the year 2025 level of development based on the CVP water contractors' estimates of future crops and acreage planted multiplied by estimates of the farm delivery requirements for each crop. Reclamation staff initially estimated crop water requirements for all regions using evapotranspiration (ET) and effective precipitation (EP) data from several sources: 1) California Department of Water Resources (DWR) Bulletin 160-98, 2) DWR Bulletin 113-3, and 3) Reclamation knowledge and experience. The ET and EP information was tabulated on a Detailed Analysis Unit (DAU) basis and then proportioned to each district based on the district's area in a DAU. The data was then used in combination with other traditional methodologies for determining crop water requirements to estimate each district's total irrigation water demand in the year 2025.

In February 2000, representatives of the Friant and Delta Region CVP water contractors expressed the following concerns with using this methodology:

The crop water requirements estimated are too low;

2. Recoverable loss is defined as water recovered or recoverable by the district or irrigators for reuse.

The effective precipitation component to meeting crop water requirements is too high for some areas.

In order to address these concerns a number of evaluations were performed.

One analysis compared the agricultural water demand calculations performed by the districts' private consultant and those performed by Reclamation for the water districts in the Delta Region. This analysis indicated that Reclamation's and the consultant's estimation of these water demands on a regional basis is close (within 8%). However, the results of the agricultural water demand determinations diverge as the regional area is broken into sub-regions and especially when the comparison is made at the district level.

A comparison of calculations of ET and EP for alfalfa in the Friant Region using the methodologies of Bulletin 160-98, Reclamation and the Natural Resources Conservation Service (NRCS) indicates that Bulletin 160-98 consistently estimates EP higher than the other two methods at the district level.

One reason for this difference appears to be that the Bulletin 160-98 methodology estimates the contribution of rainfall to the soil moisture profile in the non-irrigation season in a different way than the other two methodologies. Similarly, a comparison of ET values shows that the Bulletin 160-98 values are consistently lower than the NRCS values at the district level. This difference is most likely the result of Bulletin 160-98's use of "actual" ET values. "Actual" ET is potential ET modified to reflect regional agricultural practices by farmers. The NRCS method uses potential ET values without modification.

Based on discussions with DWR, the affected CVP water contractors and their consultants; Reclamation concluded that the regional agricultural practices taken into account by Bulletin 160-98 may not be reflective of current and/or future practices by the CVP water contractors. For this reason, Reclamation determined that it was more prudent to use potential ET values than the "actual" ET values from Bulletin 160-98 in evaluating 2025 crop water requirements for water districts located in the Friant and Delta Regions.

In addition, Reclamation and representatives of the Friant and Delta Region water contractors agreed on a different methodology to estimate EP than the one used in Bulletin 160-98 because of the lack of dependable rainfall. The bulletin assumes rainfall is effective if it can be stored in the soil moisture profile, or directly meet crop water needs during any month. However, in actual practice to effectively manage farm operations, a farmer may need to pre-irrigate one or more fields earlier in the month only to have a major precipitation later in the month, thus reducing the effectiveness of the rainfall during that month.

Revised Agricultural Water Demand Methodology for the Friant and Delta Regions:

Following is a description of the revised methodology for estimating ET and EP:

EP is estimated to be 50 percent of long-term average annual rainfall with the exception of citrus EP. For citrus groves, it is estimated that one inch of the initial rainfall is stored before the soil seals over and the runoff begins; then about 10% of the additional rainfall for the season is estimated

to be effective.

ET is determined using California Irrigation Management Information System (CIMIS) potential ET data and crop coefficients supplied by the University of California Cooperative Extension.

No change was made to the ET and EP determinations for the CVP water contractors in the other regions because these regions are located in areas of higher precipitation not as sensitive to the issues raised in the comparative analyses.

Urban Water Demand:

Urban water demand is defined as the sum of residential, nonresidential and distribution system demands. The components of residential demand include indoor and outdoor demand. Originally, information on residential and a portion of nonresidential demand was requested in terms of these two components; however, most CVP water contractors were unable to provide the information in that format. Therefore, the information request was revised to a combined figure for indoor and outdoor use. Nonresidential demand includes commercial, institutional and industrial demands. Distribution system demands consist of unaccounted beneficial use and distribution system losses where:

Unaccounted beneficial use includes water for such uses as fire fighting, mainline flushing, storm drain flushing, sewer and street cleaning, construction site use, water quality testing and other testing.

Distribution system losses accounts for water lost because of leaks in storage and distribution systems, evaporation, illegal connections, and water theft.

Projected M&I water demand will be influenced over time by many factors, including future land use changes, population shifts, and improvements in residential and distribution system efficiencies over time. As is the case for agricultural water demands, the methodology assumes that the implementation of water conservation measures in the next 25 years will increase the efficiency of urban water use and reduce unit M&I water demands. Specifically, the average per capita usage is assumed to decrease from 5% to 14% depending on the location in the state.

Non-CVP Water Supplies:

Non-CVP water supplies can include groundwater including the conjunctive use of surface and groundwater, State Water Project (SWP) supplies, local surface water supplies, recycled water, inter-district return flows and water transfers. The methodology considers water transfers a beneficial use of water. Water transfers are, therefore, included in the 2025 level assessments if there is evidence of a commitment by both parties to engage in the transfer in this timeframe.

Average values for SWP and local surface supplies are used in the 2025 level assessments unless the analysis is for dry or critical year conditions. Often the source of information is the 10-year average surface water supply from the contractor's Water Management Plan. If there is an indication that

surface water supplies will decrease in the future because of increased upstream diversions or increased environmental requirements, the surface water supply is reduced to reflect these considerations in the 2025 level assessment.

Where available, groundwater safe yields are used to estimate future groundwater pumping. Safe yield is defined as the amount of groundwater a district can pump on a long-term average and not cause the long-term decline of groundwater levels leading to excessive depths for pumping or leading to degradation of groundwater quality. A safe yield value is the result of a complex interaction between many factors; a change in any one of the factors can have an impact on the value obtained from safe yield computations. The main factors involved in safe yield computations can include, but are not limited to, water supply, consumptive use, losses to the system, and water quality. Adding to the complexity of the analysis is that many, if not most, of the factors involved in a safe yield computation are time dependent, and have both short-term and long-term trends--which may be quite different. If a safe yield analysis is not available for the contractors' groundwater resources, groundwater pumping and recharge, if applicable, is estimated from historical information for the 2025 level assessments.

Originally, groundwater pumping for the Friant Region was estimated based on historical estimates of groundwater pumping for 1996 from the water contractors' Water Management Plans. During the February 2000 discussions with representatives of the Friant Region water contractors, the issue of groundwater was raised. Specifically, Reclamation was requested to evaluate the possibility of using the original safe yields estimated by Reclamation as the supply available from groundwater in the 2025 level assessments. Reclamation agreed to investigate the use of these original safe yields because the original safe yields were developed for ultimate buildout and included CVP groundwater recharge. Following is a summary of the analysis performed to estimate groundwater pumping for the Friant Region in the 2025 level assessments:

Analysis of Groundwater Pumping in the Friant Region:

Groundwater technical studies were conducted by Reclamation in the 1940's and 1950's to characterize the geohydrology, groundwater occurrence and groundwater conditions in each district, and to determine each district's safe yield. Prior to the delivery of CVP water supplies, farmers irrigated mainly with groundwater, although some local surface water sources were also used. Because recharge of groundwater could not keep pace with the use of water primarily for agricultural purposes, groundwater levels had declined in many areas, and groundwater overdraft was common throughout the region.

A review of Reclamation's original safe yields for the Friant Region shows that these safe yield estimates are generally less than the estimated amounts of groundwater pumping for 1996. Reclamation's original safe yield estimates are also generally less than the updated safe yield estimates performed by Reclamation for some of the districts in the early 1990's. However, the 1990's safe yield estimates are considered preliminary numbers and were never adopted by Reclamation nor accepted by the Friant water contractors. Historical estimates of groundwater pumping indicate that these water contractors are pumping groundwater in excess of the original safe yields.

The groundwater pumping in excess of safe yield has resulted in the continued decline in the groundwater tables underlying most of the districts. A review of hundreds of individual well hydrographs shows that this increase in pumping has not been supported by the aquifer. Most districts are still experiencing declining groundwater levels since the inception of CVP deliveries. With the exception of five districts (Delano Earlimart, Exeter, Lindmore, Lindsay-Strathmore and Orange Cove), cumulative groundwater storage has decreased in the remaining 19 Friant districts since the CVP began importing water into those districts. The five districts that show overall rises in groundwater storage change have unique geohydrologic conditions and were evaluated individually to determine appropriate levels of groundwater pumping for the 2025 level assessments.

From the analysis performed, it can be concluded that CVP deliveries since 1986, as evidenced by a continuous decline in storage from 1986 to 1992, have not been sufficient to maintain reasonably stable groundwater levels, nor have CVP deliveries supported an increase in groundwater levels in wet years under the conjunctive use operations practiced by most districts. Safe yield pumping in combination with surface water supplies should have sustained or raised groundwater levels to some stable level. However, historical groundwater pumping has been higher than the safe yield values. In addition, unforeseen factors in the original safe yield analysis such as the magnitude of groundwater use by non-district entities primarily for urban needs within the boundaries of the district, the magnitude of groundwater and surface water use by adjacent districts, changes in the type of crops, droughts and reductions in CVP water deliveries may render even the original safe yield values as too high. However, the unavailability of critical information and the lack of time to perform an analysis make the determination of new safe yields for the Friant Region infeasible at this time. Therefore, Reclamation concurs that the original safe yields are appropriate to depict groundwater pumping in the 2025 level assessments for the Friant Region.

Sources of Information

The Water Management Plans that most water districts have prepared in response to the mandates of the Central Valley Project Improvement Act and the Reclamation Reform Act provide information on agricultural, urban and environmental water demands as well as on water supplies available to meet these demands. In most cases, these plans depict information for a representative year, although some plans provide a number of years of historical information as well as projections for the future. Fortunately, the representative year for many of these plans is either 1989, or 1996. The water contractors were asked to verify that information contained in these plans may be used to calculate past beneficial use and/or to depict current conditions for the purposes of the environmental documentation. In addition, the agricultural water contractors were requested to provide projections of types of crops planted, irrigated acres and amounts and types of non-CVP water supplies for the year 2025. Similarly, the urban water contractors were asked to provide population projections, projections of nonresidential water demand and amounts and types of non-CVP water supplies for the year 2025.

Other sources of information included DWR Bulletin 160-98, DWR Bulletin 113-3, CIMIS information, crop coefficients from various sources, Reclamation's annual crop reports, the January 2000 Water Forum Agreements for the American River, Reclamation's groundwater safe yield studies

and miscellaneous planning and environmental documents.