

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

LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES  
LOWER TULE RIVER IRRIGATION DISTRICT  
PROVIDING FOR PROJECT WATER SERVICE  
FROM FRIANT DIVISION

Table of Contents

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
	Preamble .....	1
	Explanatory Recitals .....	1-5
1	Definitions .....	5-10
2	Term of Contract .....	10-13
3	Water to be Made Available and Delivered to the Contractor .....	13-19
4	Time for Delivery of Water .....	19-22
5	Point of Diversion and Responsibility for Distribution of Water .....	22-24
6	Measurement of Water Within the Service Area .....	24-25
7	Rates and Method of Payment for Water .....	25-32
8	Non-Interest Bearing Operation and Maintenance Deficits .....	32
9	Sales, Transfers, or Exchanges of Water .....	32-34
10	Application of Payments and Adjustments .....	34
11	Temporary Reductions--Return Flows .....	34-36
12	Constraints on the Availability of Water .....	36-38
13	Unavoidable Groundwater Percolation .....	38
14	Rules and Regulations .....	38-39
15	Water and Air Pollution Control .....	39
16	Quality of Water .....	40
17	Water Acquired by the Contractor Other Than From the United States .....	40-43
18	Opinions and Determinations .....	43
19	Coordination and Cooperation .....	43-45
20	Charges for Delinquent Payments .....	45-46
21	Equal Opportunity .....	46-47
22	General Obligation--Benefits Conditioned Upon Payment .....	47
23	Compliance With Civil Rights Laws and Regulations .....	47-48

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
24	Privacy Act Compliance .....	48-49
25	Contractor to Pay Certain Miscellaneous Costs .....	49
26	Water Conservation .....	49-50
27	Existing or Acquired Water or Water Rights .....	50-51
28	Operation and Maintenance by Non-Federal Entity .....	51-53
29	Contingent on Appropriation or Allotment of Funds .....	53
30	Books, Records, and Reports .....	53
31	Assignment Limited--Successors and Assigns Obligated .....	54
32	Severability .....	54-55
33	Resolution of Disputes .....	55
34	Officials Not to Benefit .....	55
35	Changes in Contractor's Service Area .....	55-56
36	Federal Laws.....	56
37	Notices.....	56
38	Confirmation of Contract	
	Signature Page	
	Exhibit A	
	Exhibit B	

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 LOWER TULE RIVER IRRIGATION DISTRICT  
8 PROVIDING FOR PROJECT WATER SERVICE  
9 FROM FRIANT DIVISION

10 THIS CONTRACT, made this 20<sup>th</sup> day of January, 2001, in pursuance generally  
11 of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto, including, but  
12 not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and supplemented, August 4, 1939  
13 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68),  
14 October 12, 1982 (96 Stat. 1262), October 27, 1986 (100 Stat. 3050), as amended, and Title XXXIV of  
15 the Act of October 30, 1992 (106 Stat. 4706), all collectively hereinafter referred to as Federal  
16 Reclamation law, between THE UNITED STATES OF AMERICA, hereinafter referred to as the United  
17 States, and LOWER TULE RIVER IRRIGATION DISTRICT, hereinafter referred to as the Contractor, a  
18 public agency of the State of California, duly organized, existing, and acting pursuant to the laws thereof,  
19 with its principal place of business in California;

20 WITNESSETH, That:

21 EXPLANATORY RECITALS

22 [1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley Project,  
23 California, for diversion, storage, carriage, distribution and beneficial use, for flood control, irrigation,

24 municipal, domestic, industrial, fish and wildlife mitigation, protection and restoration, generation and  
25 distribution of electric energy, salinity control, navigation and other beneficial uses, of waters of the  
26 Sacramento River, the American River, the Trinity River, and the San Joaquin River and their tributaries; and

27 [2<sup>nd</sup>] WHEREAS, the United States constructed Friant Dam (thereby creating Millerton Lake)  
28 and the Friant-Kern and Madera Canals, hereinafter collectively referred to as the Friant Division facilities,  
29 which will be used in part for the furnishing of water to the Contractor pursuant to the terms of this Contract;  
30 and

31 [3<sup>rd</sup>] WHEREAS, pursuant to Section 8 of the Act of June 17, 1902 (32 Stat. 388), the United  
32 States has acquired water rights and other rights to the flows of the San Joaquin River, including without  
33 limitation the permits issued as the result of Decision 935 by the California State Water Resource Control  
34 Board and the contracts described in subdivision (n) of Article 3 of this Contract, pursuant to which the  
35 Contracting Officer develops, diverts, stores and delivers Project Water stored or flowing through Millerton  
36 Lake in accordance with State and Federal law for the benefit of Project Contractors in the Friant Division;  
37 and

38 [3.1] WHEREAS, the water supplied to the Contractor pursuant to this Contract is Project Water  
39 developed through the exercise of the rights described in the third (3rd) Explanatory Recital of this Contract;  
40 and

41 [4<sup>th</sup>] WHEREAS, the Contractor and the United States entered into Contract No. I75r-2771, as  
42 amended, which established terms for the delivery to the Contractor of Project Water from the Friant  
43 Division from May 5, 1951, to February 28, 1991; and

44 [5<sup>th</sup>] WHEREAS, the Contractor and the United States entered into Renewal Contract  
45 No. I75r-2771R, which provided for continued water service to the Contractor from the Friant Division  
46 from March 1, 1991, through February 28, 2029, but, in light of the Ninth Circuit Court of Appeals Opinion  
47 in the lawsuit entitled Natural Resources Defense Council, et al. v. Roger Patterson, et al., that contract was  
48 replaced by Interim Renewal Contract No. I75r-2771-IR1, dated July 10, 1998, which provides for  
49 continued water service to the Contractor from the Friant Division from September 14, 1998, through  
50 February 28, 2001; and

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

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

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

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

63 [10<sup>th</sup>] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting Officer  
64 that the Contractor has utilized the Project Water supplies available to it for reasonable and beneficial use  
65 and/or has demonstrated projected future demand for water use such that the Contractor has the capability  
66 and expects to utilize fully for reasonable and beneficial use the quantity of Project Water to be made  
67 available to it pursuant to this Contract; and

68 [11<sup>th</sup>] WHEREAS, water obtained from the Central Valley Project has been relied upon by urban  
69 and agricultural areas within California for more than fifty (50) years, and is considered by the Contractor as  
70 an essential portion of its water supply; and

71 [12<sup>th</sup>] WHEREAS, the economies of regions within the Central Valley Project, including the  
72 Contractor's, depend upon the continued availability of water, including water service from the Central  
73 Valley Project; and

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

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

83 [15<sup>th</sup>] Omitted;

84 [15.1] WHEREAS, during Uncontrolled Seasons, Friant Division Project Contractors utilize  
85 undependable Class 2 Water in their service areas to, among other things, assist in the management and  
86 alleviation of groundwater overdraft in the Friant Division service area, provide opportunities for  
87 environmental enhancement, including restoration of the San Joaquin River below Friant Dam, minimize  
88 flooding along the San Joaquin River, encourage optimal water management, and maximize the reasonable  
89 and beneficial use of the water; and

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

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

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

97 DEFINITIONS

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

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

102 (b) "Charges" shall mean the payments required by Federal Reclamation law in addition

103 to the Rates and Tiered Pricing Components specified in this Contract as determined annually by the  
104 Contracting Officer pursuant to this Contract;

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

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

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

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

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

122 (f) "Contractor's Service Area" shall mean the area to which the Contractor is

123 permitted to provide Project Water under this Contract as described in Exhibit “A” attached hereto,

124 which may be modified from time to time in accordance with Article 35 of this Contract without amendment  
125 of this Contract;

126 (g) “CVPIA” shall mean the Central Valley Project Improvement Act, Title XXXIV of  
127 the Act of October 30, 1992 (106 Stat. 4706);

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

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

133 (j) “Full Cost Rate” shall mean that water rate described in Sections 205(a)(3) or  
134 202(3) of the RRA, whichever is applicable;

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

137 (l) “Irrigation Full Cost Water Rate” shall have the same meaning as “full cost” as that  
138 term is used in paragraph (3) of Section 202 of the RRA;

139 (m) “Irrigation Water” shall mean water made available from the Project that is used  
140 primarily in the production of agricultural crops or livestock, including domestic use incidental thereto, and  
141 watering of livestock. Irrigation Water shall not include water used for purposes such as the watering of

142 landscaping or pasture for animals (e.g., horses) which are kept for personal enjoyment or water delivered  
143 to landholdings operated in units of less than five (5) acres unless the Contractor establishes to the  
144 satisfaction of the Contracting Officer that the use of water delivered to any such landholding is a use  
145 described in this subdivision of this Article;

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

148 (n2) "Long Term Historic Average" shall mean the average of the final forecast of Water  
149 Made Available to the Contractor pursuant to this Contract and the contracts referenced in the fourth (4<sup>th</sup>)  
150 and fifth (5<sup>th</sup>) Explanatory Recitals of this Contract;

151 (o) Omitted;

152 (p) "Municipal and Industrial (M&I) Full Cost Water Rate" shall mean the annual rate,  
153 which, as determined by the Contracting Officer, shall amortize the expenditures for construction allocable to  
154 Project M&I facilities in service, including, O&M deficits funded, less payments, over such periods as may  
155 be required under Federal Reclamation law with interest accruing from the dates such costs were first  
156 incurred plus the applicable rate for the O&M of such Project facilities. Interest rates used in the calculation  
157 of the M&I Full Cost Rate shall comply with the Interest Rate methodology contained in Section 202 (3)  
158 (B) and (C) of the RRA;

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

162 (r) "Operating Non-Federal Entity" shall mean the Friant Water Users Authority, a  
163 Non-Federal entity which has the obligation to operate and maintain all or a portion of the Friant  
164 Division facilities pursuant to an agreement with the United States, and which may have funding obligations  
165 with respect thereto;

166 (r2) "Other Water" shall mean water from the Project other than Irrigation Water as  
167 described in subdivision (l) of this Article, which is used for a purpose that is considered to be an irrigation  
168 use pursuant to State law such as the watering of landscaping or pasture for animals (e.g., horse) which are  
169 kept for the personal enjoyment. For purposes of this Contract, Other Water shall be paid for the Rates  
170 and Charges identical to those established for municipal and industrial water pursuant to the then current  
171 Municipal and Industrial (M&I) Ratesetting Policy.

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

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

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

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

182 (w) Omitted;

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

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

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

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

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

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

198 TERM OF CONTRACT

199 2. (a) This Contract shall be effective March 1, 2001, through February 28, 2026. In the  
200 event the Contractor wishes to renew the Contract beyond February 28, 2026, the Contractor shall submit  
201 a request for renewal in writing to the Contracting Officer no later than two (2) years prior to the date this

202 Contract expires. The renewal of this Contract insofar as it pertains to the furnishing of Irrigation Water to  
203 the Contractor shall be governed by subdivision (b) of this Article.

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

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

222 Project Water.

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

232 (c) This Contract, insofar as it pertains to the furnishing of Other Water to the  
233 Contractor, shall be renewed for a period of twenty-five (25) years and thereafter shall be renewed for  
234 successive periods of up to forty (40) years each, which periods shall be consistent with the then-existing  
235 Reclamation-wide policy, under terms and conditions mutually agreeable to the parties and consistent with  
236 Federal and State law. The present Reclamation-wide policy, dated March 20, 2000, provides that the  
237 term of such contracts shall be no more than twenty-five (25) years each, subject to a variance to allow a  
238 longer term in appropriate circumstances. The Contractor shall be afforded the opportunity to comment to  
239 the Contracting Officer on the proposed adoption and application of any revised Reclamation-wide policy  
240 applicable to the delivery of Project Other Water that would affect the term of any subsequent renewal  
241 contract with the Contractor for the furnishing of Other Water.

242 (d) The Contracting Officer anticipates that by December 31, 2024, all authorized  
243 Project construction expected to occur will have occurred, and on that basis the Contracting Officer agrees  
244 by that date to allocate all costs that are properly assignable to the Contractor, and agrees further that, at  
245 any time after such allocation is made, and subject to satisfaction of the conditions set out in this subdivision  
246 of this Article, this Contract shall, at the request of the Contractor, be converted to a contract under  
247 subsection (c)(1) and (d) of Section 9, of the Reclamation Project Act of 1939, subject to applicable  
248 Federal law and under stated terms and conditions mutually agreeable to the Contractor and the Contracting  
249 Officer. A condition for such conversion to occur shall be a determination by the Contracting Officer that,  
250 account being taken of the amount credited to return by the Contractor as provided for under Reclamation  
251 law, the remaining amount of construction costs assignable for ultimate return by the Contractor can  
252 probably be repaid to the United States within the term of a contract under said subsection 9(c)(1) and (d).  
253 If the remaining amount of costs that are properly assignable to the Contractor cannot be determined by  
254 December 31, 2024, the Contracting Officer shall notify the Contractor, and provide the reason(s) why such  
255 a determination could not be made. Further, the Contracting Officer shall make such a determination as  
256 soon thereafter as possible so as to permit, upon request of the Contractor and satisfaction of the conditions  
257 set out above, conversion to a contract under said subsection 9(c)(1) and (d). In the event such  
258 determination of costs has not been made at a time which allows conversion of this Contract during the term  
259 of this Contract or the Contractor has not requested conversion of this Contract within such term, the parties  
260 shall incorporate in any subsequent renewal contract as described in Articles 2(b) and (c) a provision that  
261 carries forth in substantially identical terms the provisions of this Article 2(d). In the event the Contracting

262 Officer is able to make a determination of the remaining amount of costs that are properly assignable to the  
263 Contractor before December 31, 2024, the Contracting Officer shall do so at the earliest time he/she has  
264 such ability.

265 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

266 3. (a) During each Year, consistent with all applicable State water rights, permits, and  
267 licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this Contract, the  
268 Contracting Officer shall make available for delivery to the Contractor 61,200 acre-feet of Class 1 Water  
269 and 238,000 acre-feet of Class 2 Water, for irrigation purposes. The quantity of Water Delivered to the  
270 Contractor in accordance with this subdivision shall be scheduled and paid for pursuant to the provisions of  
271 Articles 4 and 7 of this Contract.

272 (b) Omitted.

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

275 (d) The Contractor shall make reasonable and beneficial use of all Project Water or  
276 other water furnished pursuant to this Contract. Groundwater recharge programs, groundwater banking  
277 programs, surface water storage programs, and other similar programs utilizing Project Water or other water  
278 furnished pursuant to this Contract conducted within the Contractor's Service Area which are consistent  
279 with applicable State law and result in use consistent with Reclamation law will be allowed; Provided, That  
280 any direct recharge program(s) is (are) described in the Contractor's Water Conservation Plan submitted  
281 pursuant to Article 26 of this Contract; Provided, further, That such Water Conservation Plan demonstrates

282 sufficient lawful uses exist in the Contractor's Service Area so that using a long-term average, the quantity of  
283 Delivered Water is demonstrated to be reasonable for such uses and in compliance with Reclamation law.  
284 Groundwater recharge programs, groundwater banking programs, surface water storage programs, and  
285 other similar programs utilizing Project Water or other water furnished pursuant to this Contract conducted  
286 outside the Contractor's Service Area may be permitted upon written approval of the Contracting Officer,  
287 which approval will be based upon environmental documentation, Project Water rights, and Project  
288 operational concerns. The Contracting Officer will address such concerns in regulations, policies, or  
289 guidelines.

290 (e) The Contractor shall comply with requirements applicable to the Contractor in  
291 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract  
292 undertaken pursuant to Section 7 of the Endangered Species Act of 1973, as amended, that are within the  
293 Contractor's legal authority to implement. The Contractor shall comply with the limitations or requirements  
294 imposed by environmental documentation applicable to the Contractor and within its legal authority to  
295 implement regarding specific activities. Nothing herein shall be construed to prevent the Contractor from  
296 challenging or seeking judicial relief in a court of competent jurisdiction with respect to any biological opinion  
297 or other environmental documentation referred to in this Article.

298 (f) Subject to subdivisions (l) and (n) of Article 3 of this Contract, following the  
299 declaration of Water Made Available under Article 4 of this Contract, the Contracting Officer will make a  
300 determination whether Project Water, or other water available to the Project, can be made available to the  
301 Contractor in addition to the Contract Total under Article 3 of this Contract during the Year without

302 adversely impacting other Project Contractors. At the request of the Contractor, the Contracting Officer  
303 will consult with the Contractor prior to making such a determination. Subject to subdivisions (l) and (n) of  
304 Article 3 of this Contract, if the Contracting Officer determines that Project Water, or other water available  
305 to the Project, can be made available to the Contractor, the Contracting Officer will announce the availability  
306 of such water and shall so notify the Contractor as soon as practical. The Contracting Officer will thereafter  
307 meet with the Contractor and other Project Contractors capable of taking such water to determine the most  
308 equitable and efficient allocation of such water. If the Contractor requests the delivery of any quantity of  
309 such water, the Contracting Officer shall make such water available to the Contractor in accordance with  
310 applicable statutes, regulations, guidelines, and policies.

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

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

322 shortages under Article 11 or subdivision (b) of Article 12 of this Contract or applicable provisions of any  
323 subsequent renewal contracts.

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

328 (j) The Contracting Officer shall make reasonable efforts to protect the water rights and  
329 other rights described in the third (3rd) Explanatory Recital of this Contract and to provide the water  
330 available under this Contract. The Contracting Officer shall not object to participation by the Contractor, in  
331 the capacity and to the extent permitted by law, in administrative proceedings related to the water rights and  
332 other rights described in the third (3rd) Explanatory Recital of this Contract; Provided, however, That the  
333 Contracting Officer retains the right to object to the substance of the Contractor's position in such a  
334 proceeding.

335 (k) Project Water furnished to the Contractor during any month designated in a  
336 schedule or revised schedule submitted by the Contractor and approved by the Contracting Officer shall be  
337 deemed to have been accepted by the Contractor as Class 1 Water to the extent that Class 1 Water is  
338 called for in such schedule for such month and shall be deemed to have been accepted as Class 2 Water to  
339 the extent Class 2 Water is called for in such schedule for such month. If in any month the Contractor  
340 diverts a quantity of water in addition to the total amount of Class 1 Water and Class 2 Water set forth in  
341 the Contractor's approved schedule or revised schedule for such month, such additional diversions shall be

342 charged first against the Contractor's remaining Class 2 Water supply available in the current Year. To the  
343 extent the Contractor's remaining Class 2 Water supply available in the current Year is not sufficient to  
344 account for such additional diversions, such additional diversions shall be charged against the Contractor's  
345 remaining Class 1 Water supply available in the current Year. To the extent the Contractor's remaining  
346 Class 1 Water and Class 2 Water supplies available in the current Year are not sufficient to account for such  
347 additional diversions, such additional diversions shall be charged first against the Contractor's available  
348 Class 2 Water supply and then against the Contractor's available Class 1 Water supply, both for the  
349 following

350 Year. Payment for all additional diversions of water shall be made in accordance with Article 7 of this  
351 Contract.

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

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

368 (m) Nothing in this Contract, nor any action or inaction of the Contractor or Contracting  
369 Officer in connection with the implementation of this Contract, is intended to override, modify, supersede or  
370 otherwise interfere with any term or condition of the water rights and other rights referred in the third (3rd)  
371 Explanatory Recital of this Contract.

372 (n) The rights of the Contractor under this Contract are subject to the terms of the  
373 contract for exchange waters, dated July 27, 1939, between the United States and the San Joaquin and  
374 Kings River Canal and Irrigation Company, Incorporated, et al., (hereinafter referred to as the Exchange  
375 Contractors), Contract No. I1r-1144, as amended. The United States agrees that it will not deliver to the  
376 Exchange Contractors thereunder waters of the San Joaquin River unless and until required by the terms of  
377 said contract, and the United States further agrees that it will not voluntarily and knowingly determine itself  
378 unable to deliver to the Exchange Contractors entitled thereto from water that is available or that may  
379 become available to it from the Sacramento River and its tributaries or the Sacramento-San Joaquin Delta  
380 those quantities required to satisfy the obligations of the United States under said Exchange Contract and

381 under Schedule 2 of the Contract for Purchase of Miller and Lux Water Rights (Contract I1r-1145, dated  
382 July 27, 1939).

383 TIME FOR DELIVERY OF WATER

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

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

399 (c) The Contractor shall not schedule Project Water in excess of the quantity of Project  
400 Water the Contractor intends to put to reasonable and beneficial use within the Contractor's Service Area,

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

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

413 (e) The Contractor may, during the period from and including November 1 of each  
414 Year through and including the last day of February of that Year, request delivery of any amount of the  
415 Class 1 Water estimated by the Contracting Officer to be made available to it during the following Year.  
416 The Contractor may, during the period from and including January 1 of each Year (or such earlier date as  
417 may be determined by the Contracting Officer) through and including the last day of February of that Year,  
418 request delivery of any amount of Class 2 Water estimated by the Contracting Officer to be made available  
419 to it during the following Year. Such water shall hereinafter be referred to as preuse water. Such request  
420 must be submitted in writing by the Contractor for a specified quantity of preuse and shall be subject to the

421 approval of the Contracting Officer. Payment for preuse water so requested shall be at the appropriate  
422 rate(s) for the following Year in accordance with Article 7 of this Contract and shall be made in advance of  
423 delivery of any preuse water. The Contracting Officer shall deliver such preuse water in accordance with a  
424 schedule or any revision thereof submitted by the Contractor and approved by the Contracting Officer, to  
425 the extent such water is available and to the extent such deliveries will not interfere with the delivery of  
426 Project Water entitlements to other Friant Division contractors or the physical maintenance of the Project  
427 facilities. The quantities of preuse water delivered pursuant to this subdivision shall be deducted from the  
428 quantities of water that the Contracting Officer would otherwise be obligated to make available to the  
429 Contractor during the following Year; Provided, That the quantity of preuse water to be deducted from the  
430 quantities of either Class 1 Water or Class 2 Water to be made available to the Contractor in the following  
431 Year shall be specified by the Contractor at the time the preuse water is requested or as revised in its first  
432 schedule for the following Year submitted in accordance with subdivision (b) of this Article, based on the  
433 availability of the following Year water supplies as determined by the Contracting Officer.

434 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

438 (b) The Contracting Officer, the Operating Non-Federal Entity, or other appropriate  
439 entity shall make all reasonable efforts to maintain sufficient flows and levels of water in the Friant-Kern  
440 Canal to deliver Project Water to the Contractor at specific turnouts established pursuant to subdivision (a)

441 of this Article.

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

446 (d) All Water Delivered to the Contractor pursuant to this Contract shall be measured  
447 and recorded with equipment furnished, installed, operated, and maintained by the United States, the  
448 Operating Non-Federal Entity or other appropriate entity as designated by the Contracting Officer  
449 (hereafter "other appropriate entity") at the point or points of delivery established pursuant to subdivision (a)  
450 of this Article. Upon the request of either party to this Contract, the Contracting Officer shall investigate, or  
451 cause to be investigated by the responsible Operating Non-Federal Entity, the accuracy of such  
452 measurements and shall take any necessary steps to adjust any errors appearing therein. For any period of  
453 time when accurate measurements have not been made, the Contracting Officer shall consult with the  
454 Contractor and the responsible Operating Non-Federal Entity prior to making a final determination of the  
455 quantity delivered for that period of time.

456 (e) Neither the Contracting Officer nor any Operating Non-Federal Entity shall be  
457 responsible for the control, carriage, handling, use, disposal, or distribution of Project Water Delivered to  
458 the Contractor pursuant to this Contract beyond the delivery points specified in subdivision (a) of this  
459 Article. The Contractor shall indemnify the United States, its officers, employees, agents, and assigns on  
460 account of damage or claim of damage of any nature whatsoever for which there is legal responsibility,

461 including property damage, personal injury, or death arising out of or connected with the control, carriage,  
462 handling, use, disposal, or distribution of such Project Water beyond such delivery points, except for any  
463 damage or claim arising out of: (i) acts or omissions of the Contracting Officer or any of its officers,  
464 employees, agents, or assigns, including any responsible Operating Non-Federal Entity, with the intent of  
465 creating the situation resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer or  
466 any of its officers, employees, agents, or assigns, including any responsible Operating Non-Federal Entity;  
467 (iii) negligence of the Contracting Officer or any of its officers, employees, agents, or assigns including any  
468 responsible Operating Non-Federal Entity; or (iv) damage or claims resulting from a malfunction of facilities  
469 owned and/or operated by the United States or responsible Operating Non-Federal Entity; Provided, That  
470 the Contractor is not the Operating Non-Federal Entity that owned or operated the malfunctioning  
471 facility(ies) from which the damage claim arose.

472 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

473 6. (a) The Contractor established a measurement program satisfactory to the Contracting  
474 Officer, all surface water delivered for irrigation purposes within the Contractor's Service Area is measured  
475 at each agricultural turnout. The water measuring devices or water measuring methods of comparable  
476 effectiveness must be acceptable to the Contracting Officer. The Contractor shall be responsible for  
477 installing, operating, and maintaining and repairing all such measuring devices and implementing all such  
478 water measuring methods at no cost to the United States. The Contractor shall use the information obtained  
479 from such water measuring devices or water measuring methods to ensure its proper management of the  
480 water, to bill water users for water delivered by the Contractor. Nothing herein contained, however, shall

481 preclude the Contractor from establishing and collecting any charges, assessments, or other revenues  
482 authorized by California law. The Contractor shall include a summary of all its annual surface water  
483 deliveries in the annual report described in subdivision (c) of Article 26 of this Contract.

484 (b) To the extent the information has not otherwise been provided, upon execution of  
485 this Contract, the Contractor shall provide to the Contracting Officer a written report describing the  
486 measurement devices or water measuring methods being used or to be used to implement subdivision (a) of  
487 this Article and identifying the agricultural turnouts or alternative measurement programs approved by the  
488 Contracting Officer, at which such measurement devices or water measuring methods are being used, and, if  
489 applicable, identifying the locations at which such devices and/or methods are not yet being used including a  
490 time schedule for implementation at such locations. The Contracting Officer shall advise the Contractor in  
491 writing within sixty (60) days as to the adequacy of, and necessary modifications, if any, of the measuring  
492 devices or water measuring methods identified in the Contractor's report and if the Contracting Officer does  
493 not respond in such time, they shall be deemed adequate. If the Contracting Officer notifies the Contractor  
494 that the measuring devices or methods are inadequate, the parties shall within sixty (60) days following the  
495 Contracting Officer's response, negotiate in good faith the earliest practicable date by which the Contractor  
496 shall modify said measuring devices and/or measuring methods as required by the Contracting Officer to  
497 ensure compliance with subdivision (a) of this Article.

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

501 (d) The Contractor shall inform the Contracting Officer and the State of California in

502 writing by April 30 of each Year of the monthly volume of surface water delivered within the Contractor's  
503 Service Area during the previous Year.

504 (e) The Contractor shall inform the Contracting Officer and the Operating  
505 Non-Federal Entity on or before the twentieth (20<sup>th</sup>) calendar day of each month of the quantity of Irrigation  
506 and Other Water taken during the preceding month.

507 RATES AND METHOD OF PAYMENT FOR WATER

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

517 (b) The Contracting Officer shall notify the Contractor of the Rates, Charges, and  
518 Tiered Pricing Components as follows:

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

522 estimate. The Contractor shall be allowed not less than two (2) months to review and comment on such  
523 estimates. On or before September 15 of each Calendar Year, the Contracting Officer shall notify the  
524 Contractor in writing of the Charges to be in effect during the period  
525 October 1 of the current Calendar Year, through September 30, of the following Calendar Year, and such  
526 notification shall revise Exhibit "B."

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

534 (c) At the time the Contractor submits the initial schedule for the delivery of Project  
535 Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor shall make an  
536 advance payment to the United States equal to the total amount payable pursuant to the applicable Rate(s)  
537 set under subdivision (a) of this Article, for the Project Water scheduled to be delivered pursuant to this  
538 Contract during the first two (2) calendar months of the Year. Before the end of the first month and before  
539 the end of each calendar month thereafter, the Contractor shall make an advance payment to the United  
540 States, at the Rate(s) set under subdivision (a) of this Article, for the Water Scheduled to be delivered  
541 pursuant to this Contract during the second month immediately following. Adjustments between advance

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

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

562 Such water delivery report shall be the basis for payment of Charges and Tiered Pricing Components by the  
563 Contractor, and shall be provided to the Contractor by the Operating Non-Federal Entity or the Contracting  
564 Officer (as applicable) within five (5) days after the end of the month of delivery. The water delivery report  
565 shall be deemed a bill for the payment of Charges and the applicable Tiered Pricing Component for Water  
566 Delivered. Adjustment for overpayment or underpayment of Charges shall be made through the adjustment  
567 of payments due to the United States for Charges for the next month. Any amount to be paid for past due  
568 payment of Charges and the Tiered Pricing Component shall be computed pursuant to Article 20 of this  
569 Contract.

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

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

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

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

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

595           (j)     (1)     Beginning at such time as the total of the deliveries of Class 1 Water and  
596 Class 2 Water in a Year exceed eighty (80%) percent of the Contract Total, then before the end of the  
597 month following the month of delivery the Contractor shall make an additional payment to the United States  
598 equal to the applicable Tiered Pricing Component. The Tiered Pricing Component for the total of the  
599 deliveries of Class 1 Water and Class 2 Water in excess of eighty (80%) percent of the Contract Total, but  
600 less than or equal to ninety (90%) percent of the Contract Total, shall equal the one-half of the difference

601 between the Rate established under subdivision (a) of Article 7 of this Contract and the Irrigation Full Cost  
602 Water Rate or M&I Full Cost Water Rate, whichever is applicable. The Tiered Pricing Component for the  
603 total of the deliveries of Class 1 Water and Class 2 Water which exceeds ninety (90%) percent of the  
604 Contract Total shall equal the difference between (i) the Rate established under subdivision (a) of Article 7  
605 of this Contract and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is  
606 applicable.

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

614 (3) For purposes of determining the applicability of the Tiered Pricing  
615 Components pursuant to this Article, Water Delivered shall include Project Water that the Contractor  
616 transfers to others but shall not include Project Water transferred and delivered to the Contractor.

617 (k) For the term of this Contract, Rates under the respective ratesetting policies will be  
618 established to recover only reimbursable "operation and maintenance" (including any deficits) and capital  
619 costs of the Project, as those terms are used in the then-current Project ratesetting policies, and interest,  
620 where appropriate, except in instances where a minimum Rate is applicable in accordance with the relevant

621 Project ratesetting policy. Changes of significance in practices which implement the Contracting Officer's  
622 ratesetting policies will not be implemented until the Contracting Officer has provided the Contractor an  
623 opportunity to discuss the nature, need, and impact of the proposed change.

624 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA, the  
625 Rates for Project Water transferred by the Contractor shall be the Contractor's Rates adjusted upward or  
626 downward to reflect the changed costs of delivery (if any) of the transferred Project Water to the  
627 transferee's point of delivery in accordance with the then applicable CVP Ratesetting Policy. If the  
628 Contractor is receiving lower Rates and Charges because of inability to pay and is transferring Project  
629 Water to another entity whose Rates and Charges are not adjusted due to inability to pay, the Rates and  
630 Charges for transferred Project Water shall be the Contractor's Rates and Charges unadjusted for ability to  
631 pay.

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

634 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

635 8. The Contractor and the Contracting Officer concur that, as of the effective date of this  
636 Contract, the Contractor has no non-interest bearing operation and maintenance deficits and shall have no  
637 further liability therefor.

638 SALES, TRANSFERS, OR EXCHANGES OF WATER

639 9. (a) The right to receive Project Water provided for in this Contract may be sold,  
640 transferred, or exchanged to others for reasonable and beneficial uses within the State of California if such

641 sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable guidelines or  
642 regulations then in effect. No sale, transfer, or exchange of Project Water under this Contract may take  
643 place without the prior written approval of the Contracting Officer, except as provided for in subdivision (b)  
644 of this Article, and no such sales, transfers, or exchanges shall be approved absent compliance with  
645 appropriate environmental documentation including but not limited to the National Environmental Policy Act  
646 and the Endangered Species Act. Such environmental documentation should include, as appropriate, an  
647 analysis of groundwater impacts and economic and social effects, including environmental justice, of the  
648 proposed water transfers on both the transferor and transferee.

649 (b) In order to facilitate efficient water management by means of water transfers of the  
650 type historically carried out among Project Contractors located within the same geographical area and to  
651 allow the Contractor to participate in an accelerated water transfer program during the term of this Contract,  
652 the Contracting Officer shall prepare, as appropriate, necessary environmental documentation including, but  
653 not limited to, the National Environmental Policy Act and the Endangered Species Act analyzing annual  
654 transfers within such geographical areas and the Contracting Officer shall determine whether such transfers  
655 comply with applicable law. Following the completion of the environmental documentation, such transfers  
656 addressed in such documentation shall be conducted with advance notice to the Contracting Officer, but  
657 shall not require prior written approval by the Contracting Officer. Such environmental documentation and  
658 the Contracting Officer's compliance determination shall be reviewed every five (5) years and updated, as  
659 necessary, prior to the expiration of the then existing five (5) -year period. All subsequent environmental  
660 documentation shall include an alternative to evaluate not less than the quantity of Project Water historically  
661 transferred within the same geographical area.

662 (c) For a water transfer to qualify under subdivision (b) of this Article, such water  
663 transfer must: (i) be for irrigation purposes for lands irrigated within the previous three (3) years, for M&I  
664 use, groundwater recharge, groundwater banking, similar groundwater activities, surface water storage, or  
665 fish and wildlife resources; not lead to land conversion; and be delivered to established cropland, wildlife  
666 refuges, groundwater basins or municipal and industrial use; (ii) occur within a single Year; (iii) occur  
667 between a willing seller and a willing buyer; (iv) convey water through existing facilities with no new  
668 construction or modifications to facilities and be between existing Project Contractors and/or the Contractor  
669 and the United States, Department of the Interior; and  
670 (v) comply with all applicable Federal, State, and local or tribal laws and requirements imposed for  
671 protection of the environment and Indian Trust Assets, as defined under Federal law.

672 APPLICATION OF PAYMENTS AND ADJUSTMENTS

673 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,  
674 Capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of the  
675 Contractor arising out of this Contract then due and payable. Overpayments of more than One Thousand  
676 Dollars (\$1,000) shall be refunded at the Contractor's request. In lieu of a refund, any amount of such  
677 overpayment at the option of the Contractor, may be credited against amounts to become due to the United  
678 States by the Contractor. With respect to overpayment, such refund or adjustment shall constitute the sole  
679 remedy of the Contractor or anyone having or claiming to have the right to the use of any of the Project  
680 Water supply provided for herein. All credits and refunds of overpayments shall be made within thirty (30)  
681 days of the Contracting Officer obtaining direction as to how to credit or refund such overpayment in  
682 response to the notice to the Contractor that it has finalized the accounts for the Year in which the

683 overpayment was made.

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

689 TEMPORARY REDUCTIONS--RETURN FLOWS

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

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

703 hereunder in the absence of such discontinuance or reduction.

704 (c) The United States reserves the right to all seepage and return flow water derived  
705 from Water Delivered to the Contractor hereunder which escapes or is discharged beyond the Contractor's  
706 Service Area; Provided, That this shall not be construed as claiming for the United States any right as  
707 seepage or return flow to water being used pursuant to this Contract for surface irrigation or underground  
708 storage either being put to reasonable and beneficial use pursuant to this Contract within the Contractor's  
709 Service Area by the Contractor or those claiming by, through, or  
  
710 under the Contractor. For purposes of this subdivision, groundwater recharge, groundwater banking and all  
711 similar groundwater activities will be deemed to be underground storage.

712 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

718 (b) If there is a Condition of Shortage because of errors in physical operations of the  
719 Project, drought, other physical causes beyond the control of the Contracting Officer or actions taken by the  
720 Contracting Officer to meet legal obligations then, except as provided in subdivision (a) of Article 18 of this  
721 Contract, no liability shall accrue against the United States or any of its officers, agents, or employees for

722 any damage, direct or indirect, arising therefrom.

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

735 (d) The Contracting Officer shall not deliver any Class 2 Water pursuant to this or any  
736 other contract for water service heretofore or hereafter entered into any Year unless and until the  
737 Contracting Officer determines that the cumulative total quantity of Class 1 Water specified in subdivision (c)  
738 of this Article will be available for delivery in said Year. If the Contracting Officer determines there is or will  
739 be a shortage in any Year in the quantity of Class 1 Water available for delivery, the Contracting Officer  
740 shall apportion the available Class 1 Water among all contractors entitled to receive such water that will be  
741 made available at Friant Dam in accordance with the following:

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

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

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

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

758 (f) In the event that in any Year there is made available to the Contractor, by reason of  
759 any shortage or apportionment as provided in subdivisions (a), (d) or (e) of this Article, or any  
760 discontinuance or reduction of service as set forth in subdivision (a) of Article 11 of this Contract, less than  
761 the quantity of water which the Contractor otherwise would be entitled to receive hereunder, there shall be  
762 made an adjustment on account of the amounts already paid to the Contracting Officer by the Contractor for

763 Class 1 Water and Class 2 Water for said Year in accordance with Article 10 of this Contract.

764 UNAVOIDABLE GROUNDWATER PERCOLATION

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

769 RULES AND REGULATIONS

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

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

777 (c) The parties acknowledge that, as of the effective date of this Contract, active  
778 settlement discussions are underway in NRDC v. Patterson between Friant Division water service  
779 contractors, representatives of the Contracting Officer, and the plaintiffs in NRDC v. Patterson. The mutual  
780 goals of the parties to those discussions are (i) to expeditiously evaluate and implement, on a mutually  
781 acceptable basis, instream and related measures that will restore ecological functions and hydrologic and  
782 geomorphologic processes of the San Joaquin River below Friant Dam to a level that restores and maintains  
783 fish populations in good condition, including but not limited to naturally-reproducing, self-sustaining  
784 populations of chinook salmon and (ii) to accomplish these restoration goals while not adversely impacting

785 the overall sufficiency, reliability and cost of water supplies to Friant Division water users. The Contractor  
786 has been actively participating, and intends to continue to participate in such settlement discussions. Except  
787 as provided in this Contract, this Contract does not add to the obligations of the parties, if any, relating to  
788 the San Joaquin River. This Contract does not limit or detract from the obligations of the parties, if any,  
789 relating to the San Joaquin River.

790 WATER AND AIR POLLUTION CONTROL

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

794 QUALITY OF WATER

795 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to this  
796 Contract shall be operated and maintained to enable the United States to deliver Project Water to the  
797 Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act of August  
798 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat. 3050) or  
799 other existing Federal laws. The United States is under no obligation to construct or furnish water treatment  
800 facilities to maintain or to improve the quality of Water Delivered to the Contractor pursuant to this  
801 Contract. The United States does not warrant the quality of Water Delivered to the Contractor pursuant to  
802 this Contract.

803 (b) The Operation and Maintenance of Project facilities shall be performed in such  
804 manner as is practicable to maintain the quality of raw water made available through such facilities at the  
805 highest level reasonably attainable as determined by the Contracting Officer. The Contractor shall be

806 responsible for compliance with all State and Federal water quality standards applicable to surface and  
807 subsurface agricultural drainage discharges generated through the use of Federal or Contractor facilities or  
808 Project Water provided by the Contractor within the Contractor's Service Area.

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 be  
813 simultaneously transported through the same distribution facilities of the Contractor subject to the following:  
814 (i) if the facilities utilized for commingling Irrigation Water and non-project water were constructed without  
815 funds made available pursuant to Federal Reclamation law, the provisions of Federal Reclamation law will  
816 be applicable only to the Landholders of lands which receive Irrigation Water; (ii) the eligibility of land to  
817 receive Irrigation Water must be established through the certification requirements as specified in the  
818 Acreage Limitation Rules and Regulations (43 CFR  
819 Part 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 necessary to  
821 irrigate such Eligible Lands. The Contractor and the Contracting Officer concur that, as of the effective date  
822 of this Contract, the Contractor has a distribution system that was constructed without the use of federally  
823 financed funds. The use of this distribution system is not subject to the provisions of this subdivision of this  
824 Article.

825 (b) Water or water rights now owned or hereafter acquired by the Contractor, other  
826 than from the United States or adverse to the Project or its contractors (i.e., non-project water), may be

827 stored, conveyed and/or diverted through Project facilities, subject to the completion of appropriate  
828 environmental documentation, with the approval of the Contracting Officer and the execution of any contract  
829 determined by the Contracting Officer to be necessary, consistent with the following provisions:

830 (1) The Contractor may introduce non-project water into Project facilities and  
831 deliver said water to lands within the Contractor's Service Area, including Ineligible Lands, subject to  
832 payment to the United States and/or to any applicable Operating Non-Federal Entity of an appropriate rate  
833 as determined by the CVP Ratesetting Policy and the RRA, each as amended, modified or superseded from  
834 time to time. In addition, if electrical power is required to pump

835 non-project water through the facilities, the Contractor shall be responsible for obtaining the necessary  
836 power and paying the necessary charges therefor.

837 (2) Delivery of such non-project water in and through Project facilities shall only  
838 be allowed to the extent such deliveries do not: (i) interfere with other Project purposes as determined by  
839 the Contracting Officer; (ii) reduce the quantity or quality of water available to other Project water service  
840 contractors; (iii) interfere with the delivery of contractual water entitlements to any other Project water  
841 service contractors; or (iv) interfere with the physical maintenance of the Project facilities.

842 (3) Neither the United States nor the Operating Non-Federal Entity shall be  
843 responsible for control, care or distribution of the non-project water before it is introduced into or after it is  
844 delivered from the Project facilities. The Contractor hereby releases and agrees to defend and indemnify the  
845 United States and the Operating Non-Federal Entity, and their respective officers, agents, and employees,

846 from any claim for damage to persons or property, direct or indirect, resulting from Contractor's diversion  
847 or extraction of non-project water from any source.

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

851 (5) After Project purposes are met, as determined by the Contracting Officer,  
852 the United States and the Contractor shall share priority to utilize the remaining capacity of the facilities  
853 declared to be available by the Contracting Officer for conveyance and transportation of

854 non-project water prior to any such remaining capacity being made available to non-Project contractors.

855 OPINIONS AND DETERMINATIONS

856 18. (a) Where the terms of this Contract provide for actions to be based upon the opinion  
857 or determination of either party to this Contract, said terms shall not be construed as permitting such action  
858 to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. Both parties,  
859 notwithstanding any other provisions of this Contract, expressly reserve the right to seek relief from and  
860 appropriate adjustment for any such arbitrary, capricious, or unreasonable opinion or determination. Each  
861 opinion or determination by either party shall be provided in a timely manner. Nothing in subdivision (a) of  
862 Article 18 of this Contract is intended to or shall affect or alter the standard of judicial review applicable  
863 under federal law to any opinion or determination implementing a specific provision of federal law embodied  
864 in statute or regulation.

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

869 COORDINATION AND COOPERATION

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

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

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

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

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

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

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

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

902 (d) Without limiting the contractual obligations of the Contracting Officer hereunder,  
903 nothing in this Contract shall be construed to limit or constrain the Contracting Officer's ability to  
904 communicate, coordinate, and cooperate with the Contractor or other interested stakeholders or to make  
905 decisions in a timely fashion as needed to protect health, safety, physical integrity of structures or facilities, or

906 the Contracting Officer's ability to comply with applicable laws.

907 CHARGES FOR DELINQUENT PAYMENTS

908 20. (a) The Contractor shall be subject to interest, administrative and penalty charges on  
909 delinquent installments or payments. When a payment is not received by the due date, the Contractor shall  
910 pay an interest charge for each day the payment is delinquent beyond the due date. When a payment  
911 becomes sixty (60) days delinquent, the Contractor shall pay an administrative charge to cover additional  
912 costs of billing and processing the delinquent payment. When a payment is delinquent ninety (90) days or  
913 more, the Contractor shall pay an additional penalty charge of six (6%) percent per year for each day the  
914 payment is delinquent beyond the due date. Further, the Contractor shall pay any fees incurred for debt  
915 collection services associated with a delinquent payment.

916 (b) The interest charge rate shall be the greater of the rate prescribed quarterly in the  
917 Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate  
918 of one-half of one (0.5%) percent per month prescribed by Section 6 of the Reclamation Project Act of  
919 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain  
920 fixed for the duration of the delinquent period.

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

924 EQUAL OPPORTUNITY

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

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

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

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

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

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

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

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

965 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

978 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

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

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

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

997 PRIVACY ACT COMPLIANCE

998 24. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a) (the  
999 Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et seq.) in  
1000 maintaining Landholder acreage certification and reporting records, required to be submitted to the

1001 Contractor for compliance with Sections 206 and 228 of the Reclamation Reform Act of 1982 (96 Stat.  
1002 1266), and pursuant to 43 CFR 426.18.

1003 (b) With respect to the application and administration of the criminal penalty provisions  
1004 of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible for maintaining  
1005 the certification and reporting records referenced in (a) above are considered to be employees of the  
1006 Department of the Interior. See 5 U.S.C. 552a(m).

1007 (c) The Contracting Officer or a designated representative shall provide the Contractor  
1008 with current copies of the Interior Department Privacy Act regulations and the Bureau of Reclamation  
1009 Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior, Reclamation-31)  
1010 which govern the maintenance, safeguarding, and disclosure of information contained in the Landholder's  
1011 certification and reporting records.

1012 (d) The Contracting Officer shall designate a full-time employee of the Bureau of  
1013 Reclamation to be the System Manager who shall be responsible for making decisions on denials pursuant to  
1014 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is authorized to  
1015 grant requests by individuals for access to their own records.

1016 (e) The Contractor shall forward promptly to the System Manager each proposed  
1017 denial of access under 43 CFR 2.64; and each request for amendment of records filed under  
1018 43 CFR 2.71; notify the requester accordingly of such referral; and provide the System Manager with  
1019 information and records necessary to prepare an appropriate response to the requester. These requirements  
1020 do not apply to individuals seeking access to their own certification and reporting forms  
1021 filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy Act as a  
1022 basis for the request.

1023 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1024 25. In addition to all other payments to be made by the Contractor pursuant to this Contract, the  
1025 Contractor shall pay to the United States, within sixty (60) days after receipt of a bill and detailed statement  
1026 submitted by the Contracting Officer to the Contractor for such specific items of direct cost incurred by the  
1027 United States for work requested by the Contractor associated with this Contract plus indirect costs in  
1028 accordance with applicable Bureau of Reclamation policies and procedures. All such amounts referred to in  
1029 this Article shall not exceed the amount agreed to in writing in advance by the Contractor. This Article shall

1030 not apply to costs for routine contract administration.

1031 WATER CONSERVATION

1032 26. (a) Prior to the delivery of water provided from or conveyed through Federally  
1033 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be implementing an  
1034 effective water conservation and efficiency program based on the Contractor's water conservation plan that  
1035 has been determined by the Contracting Officer to meet the conservation and efficiency criteria for  
1036 evaluating water conservation plans established under Federal law. The water conservation and efficiency  
1037 program shall contain definite water conservation objectives, appropriate economically feasible water  
1038 conservation measures, and time schedules for meeting those objectives. Continued Project Water delivery  
1039 pursuant to this Contract shall be contingent upon the Contractor's continued implementation of such water  
1040 conservation program. In the event the Contractor's water conservation plan or any revised water  
1041 conservation plan completed pursuant to subdivision (d) of Article 26 of this Contract have not yet been  
1042 determined by the Contracting Officer to meet such criteria, due to circumstances which the Contracting  
1043 Officer determines are beyond the control of the Contractor, water deliveries shall be made under this  
1044 Contract so long as the Contractor diligently works with the Contracting Officer to obtain such  
1045 determination at the earliest practicable date, and thereafter the Contractor immediately begins implementing  
1046 its water conservation and efficiency program in accordance with the time schedules therein.

1047 (b) Omitted.

1048 (c) The Contractor shall submit to the Contracting Officer a report on the status of its  
1049 implementation of the water conservation plan on the reporting dates specified in the then existing  
1050 conservation and efficiency criteria established under Federal law.

1051 (d) At five (5) -year intervals, the Contractor shall revise its water conservation plan to  
1052 reflect the then current conservation and efficiency criteria for evaluating water conservation plans  
1053 established under Federal law and submit such revised water management plan to the Contracting Officer  
1054 for review and evaluation. The Contracting Officer will then determine if the water conservation plan meets  
1055 Reclamation's then current conservation and efficiency criteria for evaluating water conservation plans  
1056 established under Federal law.

1057 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall be  
1058 described in the Contractor's water conservation plan.

1059 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1060 27. Except as specifically provided in Article 17 of this Contract, the provisions of this Contract  
1061 shall not be applicable to or affect non-project water or water rights now owned or hereafter acquired by  
1062 the Contractor or any user of such water within the Contractor's Service Area. Any such water shall not be  
1063 considered Project Water under this Contract. In addition, this Contract shall not be construed as limiting or  
1064 curtailing any rights which the Contractor or any water user within the Contractor's Service Area acquires or  
1065 has available under any other contract pursuant to Federal Reclamation law.

1066 OPERATION AND MAINTENANCE BY NON-FEDERAL ENTITY

1067 28. (a) The Operation and Maintenance of a portion of the Project facilities which serve the  
1068 Contractor, and responsibility for funding a portion of the costs of such Operation and Maintenance, have  
1069 been transferred to the Operating Non-Federal Entity by separate agreement between the United States and  
1070 the Operating Non-Federal Entity. That separate agreement shall not interfere with or affect the rights or

1071 obligations of the Contractor or the United States hereunder.

1072           (b)     The Contracting Officer has previously notified the Contractor in writing that the  
1073 Operation and Maintenance of a portion of the Project facilities which serve the Contractor has been  
1074 transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly to the  
1075 Operating Non-Federal Entity, or to any successor approved by the Contracting Officer under the terms  
1076 and conditions of the separate agreement between the United States and the Operating Non-Federal Entity  
1077 described in subdivision (a) of this Article, all rates, charges or assessments of any kind, including any  
1078 assessment for reserve funds, which the Operating Non-Federal Entity or such successor determines, sets or  
1079 establishes for (i) the Operation and Maintenance of the portion of the Project facilities operated and  
1080 maintained by the Operating Non-Federal Entity or such successor, or (ii) the Friant Division's share of the  
1081 operation, maintenance and replacement costs for physical works and appurtenances associated with the  
1082 Tracy Pumping Plant, the Delta-Mendota Canal, the O'Neill Pumping/Generating Plant, the federal share of  
1083 the O'Neill Forebay, the Mendota Pool, and the federal share of San Luis Unit joint use conveyance and  
1084 conveyance pumping facilities. Such direct payments to the Operating Non-Federal Entity or such  
1085 successor shall not relieve the Contractor of its obligation to pay directly to the United States the  
1086 Contractor's share of the Project Rates, Charges, and Tiered Pricing Components except to the extent the  
1087 Operating Non-Federal Entity collects payments on behalf of the United States in accordance with the  
1088 separate agreement identified in subdivision (a) of this Article.

1089           (c)     For so long as the Operation and Maintenance of any portion of the Project facilities  
1090 serving the Contractor is performed by the Operating Non-Federal Entity, or any successor thereto, the

1091 Contracting Officer shall adjust those components of the Rates for Water Delivered under this Contract  
1092 representing the cost associated with the activity being performed by the Operating Non-Federal Entity or  
1093 its successor.

1094 (d) In the event the Operation and Maintenance of the Project facilities operated and  
1095 maintained by the Operating Non-Federal Entity is re-assumed by the United States during the term of this  
1096 Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the Contractor a  
1097 revised Exhibit "B" which shall include the portion of the Rates to be paid by the Contractor for Project  
1098 Water under this Contract representing the Operation and Maintenance costs of the portion of such Project  
1099 facilities which have been re-assumed. The Contractor shall, thereafter, in the absence of written notification  
1100 from the Contracting Officer to the contrary, pay the Rates,

1101 Charges, and Tiered Pricing Component(s) specified in the revised Exhibit "B" directly to the United States  
1102 in compliance with Article 7 of this Contract.

1103 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1104 29. The expenditure or advance of any money or the performance of any obligation of the  
1105 United States under this Contract shall be contingent upon appropriation or allotment of funds. Absence of  
1106 appropriation or allotment of funds shall not relieve the Contractor from any obligations under this Contract.  
1107 No liability shall accrue to the United States in case funds are not appropriated or allotted.

1108 BOOKS, RECORDS, AND REPORTS

1109 30. (a) The Contractor shall establish and maintain accounts and other books and records  
1110 pertaining to administration of the terms and conditions of this Contract, including: the Contractor's financial  
1111 transactions, water supply data, and Project land and right-of-way agreements; the water users' land-use  
1112 (crop census), land ownership, land-leasing and water use data; and other matters that the Contracting

1113 Officer may require. Reports thereon shall be furnished to the Contracting Officer in such form and on such  
1114 date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations,  
1115 each party to this Contract shall have the right during office hours to examine and make copies of the other  
1116 party's books and records relating to matters covered by this Contract.

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

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

1125 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

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

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

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

1134

SEVERABILITY

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32. In the event that a person or entity who is neither (i) a party to a Project contract, nor (ii) a

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person or entity that receives Project Water from a party to a Project contract, nor (iii) an association or

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other form of organization whose primary function is to represent parties to Project contracts, brings an

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action in a court of competent jurisdiction challenging the legality or enforceability of a provision included in

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this Contract and said person, entity, association, or organization obtains a final court decision holding that

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such provision is legally invalid or unenforceable and the Contractor has not intervened in that lawsuit in

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support of the plaintiff(s), the parties to this Contract shall use their best efforts to (i) within thirty (30) days

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of the date of such final court decision identify by mutual agreement the provisions in this Contract which

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must be revised and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s).

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The time periods specified above may be extended by mutual agreement of the parties. Pending the

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completion of the actions designated above, to the extent it can do so without violating any applicable

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provisions of law, the United States shall continue to make the quantities of Project Water specified in this

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Contract available to the Contractor pursuant to the provisions of this Contract which were not found to be

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legally invalid or unenforceable in the final court decision.

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RESOLUTION OF DISPUTES

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33. Should any dispute arise concerning any provisions of this Contract, or the parties' rights

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and obligations thereunder, the parties shall meet and confer in an attempt to resolve the dispute. Prior to

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the Contractor commencing any legal action, or the Contracting Officer referring any matter to Department

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of Justice, the party shall provide to the other party thirty (30) days' written notice of the intent to take such

1154 action; Provided, That such notice shall not be required where a delay in commencing an action would  
1155 prejudice the interests of the party that intends to file suit. During the thirty (30) -day notice period, the  
1156 Contractor and the Contracting Officer shall meet and confer in an attempt to resolve the dispute. Except as  
1157 specifically provided, nothing herein is intended to waive or abridge any right or remedy that the Contractor  
1158 or the United States may have.

1159 OFFICIALS NOT TO BENEFIT

1160 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the  
1161 Contractor shall benefit from this Contract other than as a water user or landowner in the same manner as  
1162 other water users or landowners.

1163 CHANGES IN CONTRACTOR'S SERVICE AREA

1164 35. (a) While this Contract is in effect, no change may be made in the Contractor's Service  
1165 Area or boundaries, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,  
1166 except upon the Contracting Officer's written consent.

1167 (b) Within thirty (30) days of receipt of a request for such a change, the Contracting  
1168 Officer will notify the Contractor of any additional information required by the Contracting Officer for  
1169 processing said request, and both parties will meet to establish a mutually agreeable schedule for timely  
1170 completion of the process. Such process will analyze whether the proposed change is likely to: (i) result in  
1171 the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of the Contractor to pay  
1172 for Project Water furnished under this Contract or to pay for any Federally-constructed facilities for which  
1173 the Contractor is responsible; and (iii) have an impact on any Project Water rights applications, permits, or  
1174 licenses. In addition, the Contracting Officer shall comply with the National Environmental Policy Act and  
1175 the Endangered Species Act. The Contractor will be responsible for all costs incurred by the Contracting

1176 Officer in this process, and such costs will be paid in accordance with Article 25 of this Contract.

1177 FEDERAL LAWS

1178 36. By entering into this Contract, the Contractor does not waive its rights to contest the validity  
1179 or application in connection with the performance of the terms and conditions of this Contract of any Federal  
1180 law or regulation; Provided, That the Contractor agrees to comply with the terms and conditions of this  
1181 Contract unless and until relief from application of such Federal law or regulation to the implementing  
1182 provision of the Contract is granted by a court of competent jurisdiction.

1183 NOTICES

1184 37. Any notice, demand, or request authorized or required by this Contract shall be deemed to  
1185 have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Area  
1186 Manager, South-Central California Area Office, 1243 "N" Street, Fresno, California 93721, and on behalf  
1187 of the United States, when mailed, postage prepaid, or delivered to the Board of Directors of the Lower  
1188 Tule River Irrigation District, PO Box 4388, Porterville, California 93258. The designation of the  
1189 addressee or the address may be changed by notice given in the same manner as provided in this Article for  
1190 other notices.

1191 CONFIRMATION OF CONTRACT

1192 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a decree  
1193 of a court of competent jurisdiction of the State of California, confirming the execution of this Contract. The  
1194 Contractor shall furnish the United States a certified copy of the final decree, the validation proceedings, and  
1195 all pertinent supporting records of the court approving and confirming this Contract, and decreeing and  
1196 adjudging it to be lawful, valid, and binding on the Contractor.

1197 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and  
1198 year first above written.

THE UNITED STATES OF AMERICA

By: /s/ William H. Luce, Jr.  
Acting Regional Director, Mid-Pacific Region  
Bureau of Reclamation

(SEAL)

LOWER TULE RIVER IRRIGATION DISTRICT

By: /s/ Robert F. Bowman  
President of the Board of Directors

Attest:

By: /s/ Daniel G. Vink  
Secretary of the Board of Directors

(I:Lowe.wpd)

Contract No. I75r-2771-LTR1

EXHIBIT A

[Map or Description of Service Area]

Contract No. I75r-2771-LTR1

**EXHIBIT B**  
[Initial Rates and Charges]