

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

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

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1 UNITED STATES
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3 BUREAU OF RECLAMATION
4 Central Valley Project, California

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

10 THIS CONTRACT, made this 20th 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 MADERA IRRIGATION DISTRICT, hereinafter referred to as the Contractor, a public
18 agency of the State of California, duly organized, existing, and acting pursuant to the laws thereof, with its
19 principal place of business in California;

20 WITNESSETH, That:

21 EXPLANATORY RECITALS

22 [1st] 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 [2nd] 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 [3rd] 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 [3.2] WHEREAS, a contract dated May 24, 1939, was made and entered into between the
42 United States and the Contractor entitled "Contract for Purchase of Property and Water Rights," which
43 contract is hereinafter referred to as the 1939 Contract; and

Contract No. I75r-2891-LTR1

44 [3.3] WHEREAS, Contractor's rights under the aforesaid 1939 Contract have been judicially
45 determined that the Contractor has a vested right in perpetuity to receive a specified quantity of water
46 together, with the right of successive renewals of all contracts for delivery thereof; and

47 [3.4] WHEREAS, Contractor's rights under the 1939 Contract have been satisfied under the
48 previous contracts for delivery of water from Friant Dam and will be satisfied for the term hereof under this
49 Contract, so long as the United States performs the terms and provisions by them to be performed herein;
50 and

51 [4th] WHEREAS, the Contractor and the United States entered into Contract No. I75r-2891, as
52 amended, which established terms for the delivery to the Contractor of Project Water from the Friant
53 Division from May 15, 1951, to February 28, 1992; and

54 [5th] WHEREAS, the Contractor and the United States have pursuant to subsection 3404(c)(1)
55 of the Central Valley Project Improvement Act (CVPIA), subsequently entered into interim renewal
56 contract(s) identified as Contract No(s). I75r-2891-IR1, IR2, IR3, and IR4, the current of which is
57 hereinafter referred to as the Existing Contract, which provided for the continued water service to the
58 Contractor from December 1, 2000, through February 28, 2001; and

59 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of interim and
60 existing long-term Project Water service contracts following completion of appropriate environmental
61 documentation, including a programmatic environmental impact statement (PEIS) pursuant to the National
62 Environmental Policy Act analyzing the direct and indirect impacts and
63 benefits of implementing the CVPIA and the potential renewal of all existing contracts for Project Water;
64 and

65 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
66 environmental review necessary to provide for long-term renewal of the Existing Contract; and

67 [8th] WHEREAS, pursuant to its rights under the 1939 Contract, the Contractor has requested
68 the long-term renewal of the Existing Contract, pursuant to the terms of the Existing Contract, Federal
69 Reclamation law, and the laws of the State of California, for water service from the Friant Division of the
70 Central Valley Project; and

71 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all of its
72 obligations under the Existing Contract; and

73 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting Officer
74 that the Contractor has utilized the Project Water supplies available to it for reasonable and beneficial use
75 and/or has demonstrated projected future demand for water use such that the Contractor has the capability
76 and expects to utilize fully for reasonable and beneficial use the quantity of Project Water to be made
77 available to it pursuant to this Contract; and

78 [11th] WHEREAS, water obtained from the Central Valley Project has been relied upon by urban
79 and agricultural areas within California for more than fifty (50) years, and is considered by the Contractor as
80 an essential portion of its water supply; and

81 [12th] WHEREAS, the economies of regions within the Central Valley Project, including the
82 Contractor's, depend upon the continued availability of water, including water service from the Central
83 Valley Project; and

84 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships to
85 pursue measures to improve water supply, water quality, and reliability of the Project for all Project

86 purposes; and

87 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to provide
88 for reliable Project Water supplies; to control costs of those supplies; to achieve repayment of the Central
89 Valley Project as required by law; to guard reasonably against Project Water shortages; to achieve a
90 reasonable balance among competing demands for use of Project Water; and to comply with all applicable
91 environmental statutes, all consistent with the legal obligations of the United States relative to the Central
92 Valley Project; and

93 [15th] Omitted;

94 [15.1] WHEREAS, during Uncontrolled Seasons, Friant Division Project Contractors utilize
95 undependable Class 2 Water in their service areas to, among other things, assist in the management and
96 alleviation of groundwater overdraft in the Friant Division service area, provide opportunities for
97 environmental enhancement, including restoration of the San Joaquin River below Friant Dam, minimize
98 flooding along the San Joaquin River, encourage optimal water management, and maximize the reasonable
99 and beneficial use of the water; and

100 [15.2] WHEREAS, the parties desire and intend that this Contract not provide a disincentive to
101 the Friant Division Project Contractors continuing to carry out the beneficial activities set out in the
102 Explanatory Recital immediately above; and

103 [16th] WHEREAS, the Contractor is entitled to long term renewal under its rights under the 1939
104 Contract, and the United States and the Contractor are willing to enter into this Contract pursuant to Federal
105 Reclamation Law on the terms and conditions set forth below; and

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

108 DEFINITIONS

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

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

113 (b) "Charges" shall mean the payments required by Federal Reclamation law in addition
114 to the Rates and Tiered Pricing Components specified in this Contract as determined annually by the
115 Contracting Officer pursuant to this Contract;

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

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

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

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

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

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

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

139 (h) "Eligible Lands" shall mean all lands to which Irrigation Water may be delivered in
140 accordance with Section 204 of the Reclamation Reform Act of October 12, 1982
141 (96 Stat. 1263), as amended, hereinafter referred to as RRA;

142 (i) "Excess Lands" shall mean all lands in excess of the limitations contained in Section
143 204 of the RRA, other than those lands exempt from acreage limitation under Federal Reclamation law;

144 (j) "Full Cost Rate" shall mean that water rate described in Sections 205(a)(3) or
145 202(3) of the RRA, whichever is applicable;

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

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

150 (m) "Irrigation Water" shall mean water made available from the Project that is used
151 primarily in the production of agricultural crops or livestock, including domestic use incidental thereto, and
152 watering of livestock. Irrigation Water shall not include water used for purposes such as the watering of
153 landscaping or pasture for animals (e.g., horses) which are kept for personal enjoyment or water delivered
154 to landholdings operated in units of less than five (5) acres unless the Contractor establishes to the
155 satisfaction of the Contracting Officer that the use of water delivered to any such landholding is a use
156 described in this subdivision of this Article;

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

159 (n2) "Long Term Historic Average" shall mean the average of the final forecast of Water
160 Made Available to the Contractor pursuant to this Contract and the contracts referenced in the fourth (4th)
161 and fifth (5th) Explanatory Recitals of this Contract;

162 (o) Omitted.

163 (p) "Municipal and Industrial (M&I) Full Cost Water Rate" shall mean the annual rate,
164 which, as determined by the Contracting Officer, shall amortize the expenditures for construction allocable to
165 Project M&I facilities in service, including, O&M deficits funded, less payments, over such periods as may
166 be required under Federal Reclamation law with interest accruing from the dates such costs were first

167 incurred plus the applicable rate for the O&M of such Project facilities. Interest rates used in the calculation
168 of the M&I Full Cost Rate shall comply with the Interest Rate methodology contained in Section 202 (3)
169 (B) and (C) of the RRA;

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

173 (r) "Operating Non-Federal Entity" shall mean the Madera-Chowchilla Water and
174 Power Authority, a Non-Federal entity which has the obligation to operate and maintain all or a portion of
175 the Friant Division facilities pursuant to an agreement with the United States, and which may have funding
176 obligations with respect thereto;

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

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

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

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

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

193 (w) Omitted;

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

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

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

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

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

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

209 TERM OF CONTRACT

210 2. (a) This Contract shall be effective March 1, 2001, through February 28, 2026. In the

211 event the Contractor wishes to renew the Contract beyond February 28, 2026, the Contractor shall submit
212 a request for renewal in writing to the Contracting Officer no later than two years prior to the date this
213 Contract expires. If the Contracting Officer determines that the Contractor has performed the terms and
214 conditions of the Existing Contract, the Contracting Officer shall renew this Contract and subsequent
215 contracts insofar as it pertains to the furnishing of Irrigation Water to the Contractor on terms and
216 conditions mutually agreeable for the longest period prescribed by law.

217 (b) Omitted.

218 (c) Omitted.

219 (d) The Contracting Officer anticipates that by December 31, 2024, all authorized
220 Project construction expected to occur will have occurred, and on that basis the Contracting Officer agrees
221 by that date to allocate all costs that are properly assignable to the Contractor, and agrees further that, at
222 any time after such allocation is made, and subject to satisfaction of the conditions set out in this subdivision
223 of this Article, this Contract shall, at the request of the Contractor, be converted to a contract under
224 subsection (c)(1) and (d) of Section 9, of the Reclamation Project Act of 1939, subject to applicable
225 Federal law and under stated terms and conditions mutually agreeable to the Contractor and the Contracting
226 Officer. A condition for such conversion to occur shall be a determination by the Contracting Officer that,
227 account being taken of the amount credited to return by the Contractor as provided for under Reclamation
228 law, the remaining amount of construction costs assignable for ultimate return by the Contractor can
229 probably be repaid to the United States within the term of a contract under said subsection 9(c)(1) and (d).
230 If the remaining amount of costs that are properly assignable to the Contractor cannot be determined by
231 December 31, 2024, the Contracting Officer shall notify the Contractor, and provide the reason(s) why such

232 a determination could not be made. Further, the Contracting Officer shall make such a determination as
233 soon thereafter as possible so as to permit, upon request of the Contractor and satisfaction of the conditions
234 set out above, conversion to a contract under said subsection 9(c)(1) and (d). In the event such
235 determination of costs has not been made at a time which allows conversion of this Contract during the term
236 of this Contract or the Contractor has not requested conversion of this Contract within such term, the parties
237 shall incorporate in any subsequent renewal contract as described in Article 2(a) a provision that carries
238 forth in substantially identical terms the provisions of this Article 2(d). In the event the Contracting Officer is
239 able to make a determination of the remaining amount of costs that are properly assignable to the Contractor
240 before December 31, 2024, the Contracting Officer shall do so at the earliest time he/she has such ability.

241 (e) The parties hereto acknowledge and agree that Part A of Contract
242 No. I75r-2891, hereinafter referred to as the Original Contract, as amended, is replaced by this Contract.
243 The respective duties, covenants, and obligations of the parties in Original Contract, as amended, which are
244 not replaced by this Contract shall continue in full force and effect, pending prompt completion of good faith
245 negotiations between the parties to agree upon an amendatory contract. Part B of the Original Contract
246 provides for the construction, operation, maintenance and repayment of a distribution system which part
247 remains in force and effect.

248 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

249 3. (a) During each Year, consistent with all applicable State water rights, permits, and
250 licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this Contract, the
251 Contracting Officer shall make available for delivery to the Contractor 85,000 acre-feet of Class 1 Water
252 and 186,000 acre-feet of Class 2 Water, both for irrigation purposes. The quantity

253 of Water Delivered to the Contractor in accordance with this subdivision shall be scheduled and paid for
254 pursuant to the provisions of Articles 4 and 7 of this Contract.

255 (b) Omitted.

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

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

273 (e) The Contractor shall comply with requirements applicable to the Contractor in

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

281 (f) Subject to subdivisions (l) and (n) of Article 3 of this Contract, following the
282 declaration of Water Made Available under Article 4 of this Contract, the Contracting Officer will make a
283 determination whether Project Water, or other water available to the Project, can be made available to the
284 Contractor in addition to the Contract Total under Article 3 of this Contract during the Year without
285 adversely impacting other Project Contractors. At the request of the Contractor, the Contracting Officer
286 will consult with the Contractor prior to making such a determination. Subject to subdivisions (l) and (n) of
287 Article 3 of this Contract, if the Contracting Officer determines that Project Water, or other water available
288 to the Project, can be made available to the Contractor, the Contracting Officer will announce the availability
289 of such water and shall so notify the Contractor as soon as practical. The Contracting Officer will thereafter
290 meet with the Contractor and other Project Contractors capable of taking such water to determine the most
291 equitable and efficient allocation of such water. If the Contractor requests the delivery of any quantity of
292 such water, the Contracting Officer shall make such water available to the Contractor in accordance with
293 applicable statutes, regulations, guidelines, and policies.

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

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

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

311 (j) The Contracting Officer shall make reasonable efforts to protect the water rights and
312 other rights described in the third (3rd) Explanatory Recital of this Contract and to provide the water
313 available under this Contract. The Contracting Officer shall not object to participation by the Contractor, in
314 the capacity and to the extent permitted by law, in administrative proceedings related to the water rights and

315 other rights described in the third (3rd) Explanatory Recital of this Contract; Provided, however, That the
316 Contracting Officer retains the right to object to the substance of the Contractor's position in such a
317 proceeding.

318 (k) Project Water furnished to the Contractor during any month designated in a
319 schedule or revised schedule submitted by the Contractor and approved by the Contracting Officer shall be
320 deemed to have been accepted by the Contractor as Class 1 Water to the extent that Class 1 Water is
321 called for in such schedule for such month and shall be deemed to have been accepted as Class 2 Water to
322 the extent Class 2 Water is called for in such schedule for such month. If in any month the Contractor
323 diverts a quantity of water in addition to the total amount of Class 1 Water and Class 2 Water set forth in
324 the Contractor's approved schedule or revised schedule for such month, such additional diversions shall be
325 charged first against the Contractor's remaining Class 2 Water supply available in the current Year. To the
326 extent the Contractor's remaining Class 2 Water supply available in the current Year is not sufficient to
327 account for such additional diversions, such additional diversions shall be charged against the Contractor's
328 remaining Class 1 Water supply available in the current Year. To the extent the Contractor's remaining
329 Class 1 Water and Class 2 Water supplies available in the current Year are not sufficient to account for such
330 additional diversions, such additional diversions shall be charged first against the Contractor's available
331 Class 2 Water supply and then against the Contractor's available Class 1 Water supply, both for the
332 following Year. Payment for all additional diversions of water shall be made in accordance with Article 7 of
333 this Contract.

334 (l) If the Contracting Officer determines there is a Project Water supply available at
335 Friant Dam as the result of an unusually large water supply not otherwise storable for Project purposes or

336 infrequent and otherwise unmanaged flood flows of short duration, such water will be made available to the
337 Contractor and others under Section 215 of the RRA pursuant to the priorities specified below if the
338 Contractor enters into a temporary contract with the United States not to exceed one (1) year for the
339 delivery of such water or, as otherwise provided for in Federal Reclamation law and associated regulations.
340 Such water may be identified by the Contractor either (i) as additional water to supplement the supply of
341 Class 1 Water and/or Class 2 Water made available to it pursuant to this Contract or, (ii) upon written
342 notification to the Contracting Officer, as water to be credited against the Contractor's Class 2 Water supply
343 available pursuant to this Contract. The Contractor shall deliver such water to Eligible Lands, or to Excess
344 Lands in accordance with this Article. The Contracting Officer shall make water determined to be available
345 pursuant to this subsection according to the following priorities: first, to long-term contractors for Class 1
346 Water and/or Class 2 Water within the Friant Division; second, to long-term contractors in the Cross Valley
347 Division of the Project. The Contracting Officer will consider and seek to accommodate requests from
348 other parties for Section 215 Water for use within the area identified as the Friant Division service area in
349 the environmental assessment developed in connection with the execution of this Contract.

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

354 (n) The rights of the Contractor under this Contract are subject to the terms of the
355 contract for exchange waters, dated July 27, 1939, between the United States and the San Joaquin and

356 Kings River Canal and Irrigation Company, Incorporated, et al., (hereinafter referred to as the Exchange
357 Contractors), Contract No. I1r-1144, as amended. The United States agrees that it will not deliver to the
358 Exchange Contractors thereunder waters of the San Joaquin River unless and until required by the terms of
359 said contract, and the United States further agrees that it will not voluntarily and knowingly determine itself
360 unable to deliver to the Exchange Contractors entitled thereto from water that is available or that may
361 become available to it from the Sacramento River and its tributaries or the Sacramento-San Joaquin Delta
362 those quantities required to satisfy the obligations of the United States under said Exchange Contract and
363 under Schedule 2 of the Contract for Purchase of Miller and Lux Water Rights (Contract I1r-1145, dated
364 July 27, 1939).

365 TIME FOR DELIVERY OF WATER

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

375 (b) On or before each March 1 and at such other times as necessary, the Contractor

376 shall submit to the Contracting Officer a written schedule, satisfactory to the Contracting Officer, showing
377 the monthly quantities of Project Water to be delivered by the United States to the Contractor pursuant to
378 this Contract for the Year commencing on such March 1. The Contracting Officer shall use all reasonable
379 means to deliver Project Water according to the approved schedule for the Year commencing on such
380 March 1.

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

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

395 (e) The Contractor may, during the period from and including November 1 of each

396 Year through and including the last day of February of that Year, request delivery of any amount of the
397 Class 1 Water estimated by the Contracting Officer to be made available to it during the following Year.
398 The Contractor may, during the period from and including January 1 of each Year (or such earlier date as
399 may be determined by the Contracting Officer) through and including the last day of February of that Year,
400 request delivery of any amount of Class 2 Water estimated by the Contracting Officer to be made available
401 to it during the following Year. Such water shall hereinafter be referred to as preuse water. Such request
402 must be submitted in writing by the Contractor for a specified quantity of preuse and shall be subject to the
403 approval of the Contracting Officer. Payment for preuse water so requested shall be at the appropriate
404 rate(s) for the following Year in accordance with Article 7 of this Contract and shall be made in advance of
405 delivery of any preuse water. The Contracting Officer shall deliver such preuse water in accordance with a
406 schedule or any revision thereof submitted by the Contractor and approved by the Contracting Officer, to
407 the extent such water is available and to the extent such deliveries will not interfere with the delivery of
408 Project Water entitlements to other Friant Division contractors or the physical maintenance of the Project
409 facilities. The quantities of preuse water delivered pursuant to this subdivision shall be deducted from the
410 quantities of water that the Contracting Officer would otherwise be obligated to make available to the
411 Contractor during the following Year; Provided, That the quantity of preuse water to be deducted from the
412 quantities of either Class 1 Water or Class 2 Water to be made available to the Contractor in the following
413 Year shall be specified by the Contractor at the time the preuse water is requested or as revised in its first
414 schedule for the following Year submitted in accordance with subdivision (b) of this Article, based on the
415 availability of the following Year water supplies as determined by the Contracting Officer.

416 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

420 (b) The Contracting Officer, the Operating Non-Federal Entity, or other appropriate
421 entity shall make all reasonable efforts to maintain sufficient flows and levels of water in the Madera Canal to
422 deliver Project Water to the Contractor at specific turnouts established pursuant to subdivision (a) of this
423 Article.

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

428 (d) All Water Delivered to the Contractor pursuant to this Contract shall be measured
429 and recorded with equipment furnished, installed, operated, and maintained by the United States, the
430 Operating Non-Federal Entity or other appropriate entity as designated by the Contracting Officer
431 (hereafter "other appropriate entity") at the point or points of delivery established pursuant to subdivision (a)
432 of this Article. Upon the request of either party to this Contract, the Contracting Officer shall investigate, or
433 cause to be investigated by the responsible Operating Non-Federal Entity, the accuracy of such
434 measurements and shall take any necessary steps to adjust any errors appearing therein. For any period of
435 time when accurate measurements have not been made, the Contracting Officer shall consult with the

436 Contractor and the responsible Operating Non-Federal Entity prior to making a final determination of the
437 quantity delivered for that period of time.

438 (e) Neither the Contracting Officer nor any Operating Non-Federal Entity shall be
439 responsible for the control, carriage, handling, use, disposal, or distribution of Project Water Delivered to
440 the Contractor pursuant to this Contract beyond the delivery points specified in subdivision (a) of this
441 Article. The Contractor shall indemnify the United States, its officers, employees, agents, and assigns on
442 account of damage or claim of damage of any nature whatsoever for which there is legal responsibility,
443 including property damage, personal injury, or death arising out of or connected with the control, carriage,
444 handling, use, disposal, or distribution of such Project Water beyond such delivery points, except for any
445 damage or claim arising out of: (i) acts or omissions of the Contracting Officer or any of its officers,
446 employees, agents, or assigns, including any responsible Operating Non-Federal Entity, with the intent of
447 creating the situation resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer or
448 any of its officers, employees, agents, or assigns, including any responsible Operating Non-Federal Entity;
449 (iii) negligence of the Contracting Officer or any of its officers, employees, agents, or assigns including any
450 responsible Operating Non-Federal Entity; or (iv) damage or claims resulting from a malfunction of facilities
451 owned and/or operated by the United States or responsible Operating Non-Federal Entity; Provided, That
452 the Contractor is not the Operating Non-Federal Entity that owned or operated the malfunctioning
453 facility(ies) from which the damage claim arose.

454 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

455 6. (a) The Contractor established a measurement program satisfactory to the Contracting
456 Officer, all surface water delivered for irrigation purposes within the Contractor's Service Area is measured

457 at each agricultural turnout. The water measuring devices or water measuring methods of comparable
458 effectiveness must be acceptable to the Contracting Officer. The Contractor shall be responsible for
459 installing, operating, and maintaining and repairing all such measuring devices and implementing all such
460 water measuring methods at no cost to the United States. The Contractor shall use the information obtained
461 from such water measuring devices or water measuring methods to ensure its proper management of the
462 water, to bill water users for water delivered by the Contractor. Nothing herein contained, however, shall
463 preclude the Contractor from establishing and collecting any charges, assessments, or other revenues
464 authorized by California law. The Contractor shall include a summary of all its annual surface water
465 deliveries in the annual report described in subdivision (c) of Article 26 of this Contract.

466 (b) To the extent the information has not otherwise been provided, upon execution of
467 this Contract, the Contractor shall provide to the Contracting Officer a written report describing the
468 measurement devices or water measuring methods being used or to be used to implement subdivision (a) of
469 this Article and identifying the agricultural turnouts and the municipal and industrial service connections or
470 alternative measurement programs approved by the Contracting Officer, at which such measurement devices
471 or water measuring methods are being used, and, if applicable, identifying the locations at which such
472 devices and/or methods are not yet being used including a time schedule for implementation at such
473 locations. The Contracting Officer shall advise the Contractor in writing within sixty (60) days as to the
474 adequacy of, and necessary modifications, if any, of the measuring devices or water measuring methods
475 identified in the Contractor's report and if the Contracting Officer does not respond in such time, they shall
476 be deemed adequate. If the Contracting Officer notifies the Contractor that the measuring devices or

477 methods are inadequate, the parties shall within sixty (60) days following the Contracting Officer's response,
478 negotiate in good faith the earliest practicable date by which the Contractor shall modify said measuring
479 devices and/or measuring methods as required by the Contracting Officer to ensure compliance with
480 subdivision (a) of this Article.

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

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

487 (e) The Contractor shall inform the Contracting Officer and the Operating
488 Non-Federal Entity on or before the twentieth (20th) calendar day of each month of the quantity of Irrigation
489 and M&I water taken during the preceding month.

490 RATES AND METHOD OF PAYMENT FOR WATER

491 7. (a) The Contractor shall pay the United States as provided in this Article for all
492 Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance with: (i)
493 the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's then-existing
494 ratesetting policy for M&I water. Such ratesetting policies shall be amended, modified, or superseded only
495 through a public notice and comment procedure; (ii) applicable Reclamation law and associated rules and
496 regulations, or policies; and (iii) other applicable provisions of this Contract. Payments shall be made by

497 cash transaction, wire, or any other mechanism as may be agreed to in writing by the Contractor and the
498 Contracting Officer. The Rates, Charges, and Tiered Pricing Components applicable to the Contractor
499 upon execution of this Contract are set forth in Exhibit "B", as may be revised annually.

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

502 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall provide
503 the Contractor an estimate of the Charges for Project Water that will be applied to the period October 1, of
504 the current Calendar Year, through September 30, of the following Calendar Year, and the basis for such
505 estimate. The Contractor shall be allowed not less than two (2) months to review and comment on such
506 estimates. On or before September 15 of each Calendar Year, the Contracting Officer shall notify the
507 Contractor in writing of the Charges to be in effect during the period
508 October 1 of the current Calendar Year, through September 30, of the following Calendar Year, and such
509 notification shall revise Exhibit "B."

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

518 (c) At the time the Contractor submits the initial schedule for the delivery of Project
519 Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor shall make an
520 advance payment to the United States equal to the total amount payable pursuant to the applicable Rate(s)
521 set under subdivision (a) of this Article, for the Project Water scheduled to be delivered pursuant to this
522 Contract during the first two (2) calendar months of the Year. Before the end of the first month and before
523 the end of each calendar month thereafter, the Contractor shall make an advance payment to the United
524 States, at the Rate(s) set under subdivision (a) of this Article, for the Water Scheduled to be delivered
525 pursuant to this Contract during the second month immediately following. Adjustments between advance
526 payments for Water Scheduled and payments at Rates due for Water Delivered shall be made before the
527 end of the following month; Provided, That any revised schedule submitted by the Contractor pursuant to
528 Article 4 of this Contract which increases the amount of Water Delivered pursuant to this Contract during
529 any month shall be accompanied with appropriate advance payment, at the Rates then in effect, to assure
530 that Project Water is not delivered to the Contractor in advance of such payment. In any month in which the
531 quantity of Water Delivered to the Contractor pursuant to this Contract equals the quantity of Water
532 Scheduled and paid for by the Contractor, no additional Project Water shall be delivered to the Contractor
533 unless and until an advance payment at the Rates then in effect for such additional Project Water is made.
534 Final adjustment between the advance payments for the Water Scheduled and payments for the quantities of
535 Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable but no
536 later than April 30th of the following Year, or sixty (60) days after the delivery of Project

537 Water carried over under subdivision (f) of Article 3 of this Contract if such water is not delivered by the last
538 day of February.

539 (d) The Contractor shall also make a payment in addition to the Rate(s) in subdivision
540 (c) of this Article to the United States for Water Delivered, at the Charges and the appropriate Tiered
541 Pricing Component then in effect, before the end of the month following the month of delivery; Provided,
542 That the Contractor may be granted an exception from the Tiered Pricing Component pursuant to
543 subdivision (j)(2) of this Article. The payments shall be consistent with the quantities of Irrigation Water and
544 Other Water Delivered as shown in the water delivery report for the subject month prepared by the
545 Operating Non-Federal Entity or, if there is no Operating Non-Federal Entity, by the Contracting Officer.
546 Such water delivery report shall be the basis for payment of Charges and Tiered Pricing Components by the
547 Contractor, and shall be provided to the Contractor by the Operating Non-Federal Entity or the Contracting
548 Officer (as applicable) within
549 five (5) days after the end of the month of delivery. The water delivery report shall be deemed a bill for the
550 payment of Charges and the applicable Tiered Pricing Component for Water Delivered. Adjustment for
551 overpayment or underpayment of Charges shall be made through the adjustment of payments due to the
552 United States for Charges for the next month. Any amount to be paid for past due payment of Charges and
553 the Tiered Pricing Component shall be computed pursuant to Article 20 of this Contract.

554 (e) The Contractor shall pay for any Water Delivered under subdivisions (d), (f), or (g)
555 of Article 3 of this Contract as determined by the Contracting Officer pursuant to applicable statutes,
556 associated regulations, any applicable provisions of guidelines or ratesetting policies; Provided, That the

557 Rate for Water Delivered under subdivision (d) of Article 3 of this Contract shall be no more than the
558 otherwise applicable Rate for Irrigation Water or Other Water under subdivision (a) of this Article.

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

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

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

572 (i) The parties acknowledge and agree that the efficient administration of this Contract
573 is their mutual goal. Recognizing that experience has demonstrated that mechanisms, policies, and
574 procedures used for establishing Rates, Charges, and Tiered Pricing Components, and/or for making and
575 allocating payments, other than those set forth in this Article may be in the mutual best interest of the parties,
576 it is expressly agreed that the parties may enter into agreements to modify the mechanisms, policies, and

577 procedures for any of those purposes while this Contract is in effect without amending this Contract.

578 (j) (1) Beginning at such time as the total of the deliveries of Class 1 Water and
579 Class 2 Water in a Year exceed eighty (80%) percent of the Contract Total, then before the end of the
580 month following the month of delivery the Contractor shall make an additional payment to the United States
581 equal to the applicable Tiered Pricing Component. The Tiered Pricing Component for the total of the
582 deliveries of Class 1 Water and Class 2 Water in excess of eighty (80%) percent of the Contract Total, but
583 less than or equal to ninety (90%) percent of the Contract Total, shall equal the one-half of the difference
584 between the Rate established under subdivision (a) of Article 7 of this Contract and the Irrigation Full Cost
585 Water Rate or M&I Full Cost Water Rate, whichever is applicable. The Tiered Pricing Component for the
586 total of the deliveries of Class 1 Water and Class 2 Water which exceeds ninety (90%) percent of the
587 Contract Total shall equal the difference between (i) the Rate established under subdivision (a) of Article 7
588 of this Contract and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is
589 applicable.

590 (2) Subject to the Contracting Officer's written approval, the Contractor may
591 request and receive an exemption from such Tiered Pricing Components for Project Water delivered to
592 produce a crop which the Contracting Officer determines will provide significant and quantifiable habitat
593 values for waterfowl in fields where the water is used and the crops are produced; Provided, That the
594 exemption from the Tiered Pricing Components for Irrigation Water shall apply

595 only if such habitat values can be assured consistent with the purposes of CVPIA through binding
596 agreements executed with or approved by the Contracting Officer prior to use of such water.

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

600 (k) For the term of this Contract, Rates under the respective ratesetting policies will be
601 established to recover only reimbursable “operation and maintenance” (including any deficits) and capital
602 costs of the Project, as those terms are used in the then-current Project ratesetting policies, and interest,
603 where appropriate, except in instances where a minimum Rate is applicable in accordance with the relevant
604 Project ratesetting policy. Changes of significance in practices which implement the Contracting Officer’s
605 ratesetting policies will not be implemented until the Contracting Officer has provided the Contractor an
606 opportunity to discuss the nature, need, and impact of the proposed change.

607 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA, the
608 Rates for Project Water transferred by the Contractor shall be the Contractor’s Rates adjusted upward or
609 downward to reflect the changed costs of delivery (if any) of the transferred Project Water to the
610 transferee’s point of delivery in accordance with the then applicable CVP Ratesetting Policy. If the
611 Contractor is receiving lower Rates and Charges because of inability to pay and is transferring Project
612 Water to another entity whose Rates and Charges are not adjusted due to inability to pay, the Rates and
613 Charges for transferred Project Water shall be the Contractor’s Rates and Charges unadjusted for ability to
614 pay.

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

617 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

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

621 SALES, TRANSFERS, OR EXCHANGES OF WATER

622 9. (a) The right to receive Project Water provided for in this Contract may be sold,
623 transferred, or exchanged to others for reasonable and beneficial uses within the State of California if such
624 sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable guidelines or
625 regulations then in effect. No sale, transfer, or exchange of Project Water under this Contract may take
626 place without the prior written approval of the Contracting Officer, except as provided for in subdivision (b)
627 of this Article, and no such sales, transfers, or exchanges shall be approved absent compliance with
628 appropriate environmental documentation including but not limited to the National Environmental Policy Act
629 and the Endangered Species Act. Such environmental documentation should include, as appropriate, an
630 analysis of groundwater impacts and economic and social effects, including environmental justice, of the
631 proposed water transfers on both the transferor and transferee.

632 (b) In order to facilitate efficient water management by means of water transfers of the
633 type historically carried out among Project Contractors located within the same geographical area and to
634 allow the Contractor to participate in an accelerated water transfer program during the term of this Contract,

635 the Contracting Officer shall prepare, as appropriate, necessary environmental documentation including, but
636 not limited to, the National Environmental Policy Act and the Endangered Species Act analyzing annual
637 transfers within such geographical areas and the Contracting Officer shall determine whether such transfers
638 comply with applicable law. Following the completion of the environmental documentation, such transfers
639 addressed in such documentation shall be conducted with advance notice to the Contracting Officer, but
640 shall not require prior written approval by the Contracting Officer. Such environmental documentation and
641 the Contracting Officer's compliance determination shall be reviewed every five (5) years and updated, as
642 necessary, prior to the expiration of the then existing five (5) -year period. All subsequent environmental
643 documentation shall include an alternative to evaluate not less than the quantity of Project Water historically
644 transferred within the same geographical area.

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

655 APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

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

672 TEMPORARY REDUCTIONS--RETURN FLOWS

673 11. (a) Subject to: (i) the authorized purposes and priorities of the Project and the
674 requirements of Federal law and (ii) the obligations of the United States under existing contracts, or renewals

675 thereof, providing for water deliveries from the Project, the Contracting Officer shall make all reasonable
676 efforts to optimize Project Water deliveries to the Contractor as provided in this Contract.

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

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

695 deemed to be underground storage.

696 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

707 (c) The United States shall not execute contracts which together with this Contract, shall
708 in the aggregate provide for furnishing during the life of this Contract or any renewals hereof Class 1 Water
709 in excess of 800,000 acre-feet per Year or Class 2 Water in excess of 1,401,475 acre-feet per Year;
710 Provided, That, subject to subdivision (l) of Article 3 of this Contract, the limitation placed on Class 2 Water
711 contracts shall not prohibit the United States from entering into temporary contracts of one year or less in
712 duration for delivery of Project Water to other entities if such water is not necessary to meet the schedules
713 as may be submitted by all Friant Division long-term water service contractors entitled to receive Class 1
714 Water and/or Class 2 Water under their water service contracts. Nothing in this subdivision shall limit the

715 Contracting Officer's ability to take actions that result in the availability of new water supplies to be used for
716 Project purposes and allocating such new supplies; Provided, That the Contracting Officer shall not take
717 such actions until after consultation with the Friant Division Project Contractors.

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

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

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

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

735 this Contract.

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

741 (f) In the event that in any Year there is made available to the Contractor, by reason of
742 any shortage or apportionment as provided in subdivisions (a), (d) or (e) of this Article, or any
743 discontinuance or reduction of service as set forth in subdivision (a) of Article 11 of this Contract, less than
744 the quantity of water which the Contractor otherwise would be entitled to receive hereunder, there shall be
745 made an adjustment on account of the amounts already paid to the Contracting Officer by the Contractor for
746 Class 1 Water and Class 2 Water for said Year in accordance with Article 10 of this Contract.

747 UNAVOIDABLE GROUNDWATER PERCOLATION

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

752 RULES AND REGULATIONS

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

757 (b) The Contractor shall comply with all terms and conditions of this Contract and all
758 legal obligations of the Contractor, if any, set forth in an enforceable court order, final judgment and/or
759 settlement relating to restoration of the San Joaquin River. Accordingly, the terms of this Contract are
760 subject to any enforceable order, judgment and/or settlement in NRDC v. Patterson,
761 No. CIVS 88-1658-LKK-EM and shall be timely modified as necessary to effectuate or facilitate any final
762 order, judgment or settlement in said litigation.

763 (c) The parties acknowledge that, as of the effective date of this Contract, active
764 settlement discussions are underway in NRDC v. Patterson between Friant Division water service
765 contractors, representatives of the Contracting Officer, and the plaintiffs in NRDC v. Patterson. The mutual
766 goals of the parties to those discussions are (i) to expeditiously evaluate and implement, on a mutually
767 acceptable basis, instream and related measures that will restore ecological functions and hydrologic and
768 geomorphologic processes of the San Joaquin River below Friant Dam to a level that restores and maintains
769 fish populations in good condition, including but not limited to naturally-reproducing, self-sustaining
770 populations of chinook salmon and (ii) to accomplish these restoration goals while not adversely impacting
771 the overall sufficiency, reliability and cost of water supplies to Friant Division water users. The Contractor
772 has been actively participating, and intends to continue to participate in such settlement discussions. Except
773 as provided in this Contract, this Contract does not add to the obligations of the parties, if any, relating to
774 the San Joaquin River. This Contract does not limit or detract from the obligations of the parties, if any,
775 relating to the San Joaquin River.

776 WATER AND AIR POLLUTION CONTROL

799 simultaneously transported through the same distribution facilities of the Contractor subject to the following:

800 (i) if the facilities utilized for commingling Irrigation Water and non-project water were constructed without

801 funds made available pursuant to Federal Reclamation law, the provisions of Federal Reclamation law will

802 be applicable only to the Landholders of lands which receive Irrigation Water; (ii) the eligibility of land to

803 receive Irrigation Water must be established through the certification requirements as specified in the

804 Acreage Limitation Rules and Regulations (43 CFR

805 Part 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be

806 established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity necessary to

807 irrigate such Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation Water and non-project

808 water are/were constructed with funds made available pursuant to Federal Reclamation law, the non-project

809 water will be subject to the acreage limitation provisions of Federal Reclamation law, unless the Contractor

810 pays to the United States the incremental fee described in 43 CFR 426.15. In determining the incremental

811 fee, the Contracting Officer will calculate annually the cost to the Federal Government, including interest of

812 storing or delivering non-project water, which for purposes of this Contract shall be determined as follows:

813 The quotient shall be the unpaid distribution system costs divided by the total irrigable acreage within the

814 Contractor's Service Area. The incremental fee per acre is the mathematical result of such quotient times

815 the interest rate determined using Section 202 (3) of the Act of October 12, 1982 (96 Stat. 1263). Such

816 incremental fee will be charged to each acre of excess or full cost land within the Contractor's Service Area

817 that receives non-project water through Federally financed or constructed facilities. The incremental fee

818 calculation methodology will continue during the term of this Contract absent the promulgation of a contrary

819 Reclamation-wide rule, regulation or policy adopted after the Contractor has been afforded

820 the opportunity to review and comment on the proposed rule, regulation or policy. If such rule, regulation or
821 policy is adopted it shall supersede this provision.

822 (b) Water or water rights now owned or hereafter acquired by the Contractor, other
823 than from the United States or adverse to the Project or its contractors (i.e., non-project water), may be
824 stored, conveyed and/or diverted through Project facilities, subject to the completion of appropriate
825 environmental documentation, with the approval of the Contracting Officer and the execution of any contract
826 determined by the Contracting Officer to be necessary, consistent with the following provisions:

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

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

839 (3) Neither the United States nor the Operating Non-Federal Entity shall be

840 responsible for control, care or distribution of the non-project water before it is introduced into or after it is
841 delivered from the Project facilities. The Contractor hereby releases and agrees to defend and indemnify the
842 United States and the Operating Non-Federal Entity, and their respective officers, agents, and employees,
843 from any claim for damage to persons or property, direct or indirect, resulting from Contractor's diversion
844 or extraction of non-project water from any source.

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

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

852 OPINIONS AND DETERMINATIONS

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

860 under federal law to any opinion or determination implementing a specific provision of federal law embodied
861 in statute or regulation.

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

866 COORDINATION AND COOPERATION

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

876 (b) Within one-hundred twenty (120) days following the effective date of this Contract,
877 the Contractor, other affected Project Contractors, and the Contracting Officer shall arrange to meet with
878 interested Project Contractors to develop a mutually agreeable, written Project-wide process, which may be
879 amended as necessary separate and apart from this Contract. The goal of this process shall be to provide,

880 to the extent practicable, the means of mutual communication and
881 interaction regarding significant decisions concerning Project operation and management on a
882 real-time basis.

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

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

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

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

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

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

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

904 CHARGES FOR DELINQUENT PAYMENTS

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

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

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

921 EQUAL OPPORTUNITY

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

923 (a) The Contractor will not discriminate against any employee or applicant for
924 employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative
925 action to ensure that applicants are employed, and that employees are treated during employment, without
926 regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to,

927 the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff
928 or termination, rates of payment or other forms of compensation; and selection for training, including
929 apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants
930 for employment, notices to be provided by the Contracting Officer setting forth the provisions of this
931 nondiscrimination clause.

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

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

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

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

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

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

960 direction, the Contractor may request the United States to enter into such litigation to protect the interests of
961 the United States.

962 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

975 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

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

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

987 (c) The Contractor makes this agreement in consideration of and for the purpose of
988 obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial
989 assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including

990 installment payments after such date on account of arrangements for Federal financial assistance which were
991 approved before such date. The Contractor recognizes and agrees that such Federal assistance will be
992 extended in reliance on the representations and agreements made in this Article, and that the United States
993 reserves the right to seek judicial enforcement thereof.

994 PRIVACY ACT COMPLIANCE

995 24. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a) (the
996 Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et seq.) in
997 maintaining Landholder acreage certification and reporting records, required to be submitted to the
998 Contractor for compliance with Sections 206 and 228 of the Reclamation Reform Act of 1982 (96 Stat.
999 1266), and pursuant to 43 CFR 426.18.

1000 (b) With respect to the application and administration of the criminal penalty provisions
1001 of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible for maintaining
1002 the certification and reporting records referenced in (a) above are considered to be employees of the
1003 Department of the Interior. See 5 U.S.C. 552a(m).

1004 (c) The Contracting Officer or a designated representative shall provide the Contractor
1005 with current copies of the Interior Department Privacy Act regulations and the Bureau of Reclamation
1006 Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior, Reclamation-31)
1007 which govern the maintenance, safeguarding, and disclosure of information contained in the Landholder's
1008 certification and reporting records.

1009 (d) The Contracting Officer shall designate a full-time employee of the Bureau of
1010 Reclamation to be the System Manager who shall be responsible for making decisions on denials pursuant to
1011 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is authorized to
1012 grant requests by individuals for access to their own records.

1013 (e) The Contractor shall forward promptly to the System Manager each proposed
1014 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR 2.71;
1015 notify the requester accordingly of such referral; and provide the System Manager with information and
1016 records necessary to prepare an appropriate response to the requester. These requirements do not apply to
1017 individuals seeking access to their own certification and reporting forms filed with the Contractor pursuant to
1018 43 CFR 426.18, unless the requester elects to cite the Privacy Act as a basis for the request.

1019 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1020 25. In addition to all other payments to be made by the Contractor pursuant to this Contract, the

1021 Contractor shall pay to the United States, within sixty (60) days after receipt of a bill and detailed statement
1022 submitted by the Contracting Officer to the Contractor for such specific items of direct cost incurred by the
1023 United States for work requested by the Contractor associated with this Contract plus indirect costs in
1024 accordance with applicable Bureau of Reclamation policies and procedures. All such amounts referred to in
1025 this Article shall not exceed the amount agreed to in writing in advance by the Contractor. This Article shall
1026 not apply to costs for routine contract administration.

1027 WATER CONSERVATION

1028 26. (a) Prior to the delivery of water provided from or conveyed through Federally
1029 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be implementing an
1030 effective water conservation and efficiency program based on the Contractor's water conservation plan that
1031 has been determined by the Contracting Officer to meet the conservation and efficiency criteria for
1032 evaluating water conservation plans established under Federal law. The water conservation and efficiency
1033 program shall contain definite water conservation objectives, appropriate economically feasible water
1034 conservation measures, and time schedules for meeting those objectives. Continued Project Water delivery
1035 pursuant to this Contract shall be contingent upon the Contractor's continued implementation of such water
1036 conservation program. In the event the Contractor's water conservation plan or any revised water
1037 conservation plan completed pursuant to subdivision (d) of Article 26 of this Contract have not yet been
1038 determined by the Contracting Officer to meet such criteria, due to circumstances which the Contracting
1039 Officer determines are beyond the control of the Contractor, water deliveries shall be made under this
1040 Contract so long as the Contractor diligently works with the Contracting Officer to obtain such

1041 determination at the earliest practicable date, and thereafter the Contractor immediately begins implementing
1042 its water conservation and efficiency program in accordance with the time schedules therein.

1043 (b) Omitted.

1044 (c) The Contractor shall submit to the Contracting Officer a report on the status of its
1045 implementation of the water conservation plan on the reporting dates specified in the then existing
1046 conservation and efficiency criteria established under Federal law.

1047 (d) At five (5) -year intervals, the Contractor shall revise its water conservation plan to
1048 reflect the then current conservation and efficiency criteria for evaluating water conservation plans
1049 established under Federal law and submit such revised water management plan to the Contracting Officer
1050 for review and evaluation. The Contracting Officer will then determine if the water conservation plan meets
1051 Reclamation's then current conservation and efficiency criteria for evaluating water conservation plans
1052 established under Federal law.

1053 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall be
1054 described in the Contractor's water conservation plan.

1055 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1056 27. Except as specifically provided in Article 17 of this Contract, the provisions of this Contract
1057 shall not be applicable to or affect non-project water or water rights now owned or hereafter acquired by
1058 the Contractor or any user of such water within the Contractor's Service Area. Any such water shall not be
1059 considered Project Water under this Contract. In addition, this Contract shall not be construed as limiting or
1060 curtailing any rights which the Contractor or any water user within the

1061 Contractor's Service Area acquires or has available under any other contract pursuant to Federal
1062 Reclamation law.

1063 OPERATION AND MAINTENANCE BY NON-FEDERAL ENTITY

1064 28. (a) The Operation and Maintenance of a portion of the Project facilities which serve the
1065 Contractor, and responsibility for funding a portion of the costs of such Operation and Maintenance, have
1066 been transferred to the Operating Non-Federal Entity by separate agreement between the United States and
1067 the Operating Non-Federal Entity. That separate agreement shall not interfere with or affect the rights or
1068 obligations of the Contractor or the United States hereunder.

1069 (b) The Contracting Officer has previously notified the Contractor in writing that the
1070 Operation and Maintenance of a portion of the Project facilities which serve the Contractor has been
1071 transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly to the
1072 Operating Non-Federal Entity, or to any successor approved by the Contracting Officer under the terms
1073 and conditions of the separate agreement between the United States and the Operating Non-Federal Entity
1074 described in subdivision (a) of this Article, all rates, charges or assessments of any kind, including any
1075 assessment for reserve funds, which the Operating Non-Federal Entity or such successor determines, sets or
1076 establishes for (i) the Operation and Maintenance of the portion of the Project facilities operated and
1077 maintained by the Operating Non-Federal Entity or such successor, or (ii) the Friant Division's share of the
1078 operation, maintenance and replacement costs for physical works and appurtenances associated with the
1079 Tracy Pumping Plant, the Delta-Mendota Canal, the O'Neill Pumping/Generating Plant, the federal share of
1080 the O'Neill Forebay, the Mendota Pool, and the federal share of San Luis Unit joint use conveyance and

1081 conveyance pumping facilities. Such direct payments to the Operating Non-Federal Entity or such
1082 successor shall not relieve the Contractor of its obligation to pay directly to the United States the
1083 Contractor's share of the Project Rates, Charges, and Tiered Pricing Components except to the extent the
1084 Operating Non-Federal Entity collects payments on behalf of the United States in accordance with the
1085 separate agreement identified in subdivision (a) of this Article.

1086 (c) For so long as the Operation and Maintenance of any portion of the Project facilities
1087 serving the Contractor is performed by the Operating Non-Federal Entity, or any successor thereto, the
1088 Contracting Officer shall adjust those components of the Rates for Water Delivered under this Contract
1089 representing the cost associated with the activity being performed by the Operating Non-Federal Entity or
1090 its successor.

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

1099 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1100 29. The expenditure or advance of any money or the performance of any obligation of the
1101 United States under this Contract shall be contingent upon appropriation or allotment of funds. Absence of
1102 appropriation or allotment of funds shall not relieve the Contractor from any obligations under this Contract.

1103 No liability shall accrue to the United States in case funds are not appropriated or allotted.

1104 BOOKS, RECORDS, AND REPORTS

1105 30. (a) The Contractor shall establish and maintain accounts and other books and records
1106 pertaining to administration of the terms and conditions of this Contract, including: the Contractor's financial
1107 transactions, water supply data, and Project land and right-of-way agreements; the water users' land-use
1108 (crop census), land ownership, land-leasing and water use data; and other matters that the Contracting
1109 Officer may require. Reports thereon shall be furnished to the Contracting Officer in such form and on such
1110 date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations,
1111 each party to this Contract shall have the right during office hours to examine and make copies of the other
1112 party's books and records relating to matters covered by this Contract.

1113 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books, records,
1114 or other information shall be requested from the Contractor by the Contracting Officer unless such books,
1115 records, or information are reasonably related to the administration or performance of this Contract. Any
1116 such request shall allow the Contractor a reasonable period of time within which to provide the requested
1117 books, records, or information.

1118 (c) At such time as the Contractor provides information to the Contracting Officer
1119 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the Operating
1120 Non-Federal Entity.

1121 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1122 31. (a) The provisions of this Contract shall apply to and bind the successors and assigns of
1123 the parties hereto, but no assignment or transfer of this Contract or any right or interest therein shall be valid
1124 until approved in writing by the Contracting Officer.

1125 (b) The assignment of any right or interest in this Contract by either party shall not
1126 interfere with the rights or obligations of the other party to this Contract absent the written concurrence of
1127 said other party.

1128 (c) The Contracting Officer shall not unreasonably condition or withhold approval of
1129 any proposed assignment.

1130 SEVERABILITY

1131 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor (ii) a
1132 person or entity that receives Project Water from a party to a Project contract, nor (iii) an association or
1133 other form of organization whose primary function is to represent parties to Project contracts, brings an
1134 action in a court of competent jurisdiction challenging the legality or enforceability of a provision included in
1135 this Contract and said person, entity, association, or organization obtains a final court decision holding that
1136 such provision is legally invalid or unenforceable and the Contractor has not intervened in that lawsuit in
1137 support of the plaintiff(s), the parties to this Contract shall use their best efforts to (i) within thirty (30) days
1138 of the date of such final court decision identify by mutual agreement the provisions in this Contract which
1139 must be revised and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s).
1140 The time periods specified above may be extended by mutual agreement of the parties. Pending the
1141 completion of the actions designated above, to the extent it can do so without violating any applicable
1142 provisions of law, the United States shall continue to make the quantities of Project Water specified in this
1143 Contract available to the Contractor pursuant to the provisions of this Contract which were not found to be
1144 legally invalid or unenforceable in the final court decision.

1145 RESOLUTION OF DISPUTES

1146 33. Should any dispute arise concerning any provisions of this Contract, or the parties' rights
1147 and obligations thereunder, the parties shall meet and confer in an attempt to resolve the dispute. Prior to

1148 the Contractor commencing any legal action, or the Contracting Officer referring any matter to Department
1149 of Justice, the party shall provide to the other party thirty (30) days' written notice of the intent to take such
1150 action; Provided, That such notice shall not be required where a delay in commencing an action would
1151 prejudice the interests of the party that intends to file suit. During the thirty (30) -day notice period, the
1152 Contractor and the Contracting Officer shall meet and confer in an attempt to resolve the dispute. Except as
1153 specifically provided, nothing herein is intended to waive or abridge any right or remedy that the Contractor
1154 or the United States may have.

1155 OFFICIALS NOT TO BENEFIT

1156 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1157 Contractor shall benefit from this Contract other than as a water user or landowner in the same manner as
1158 other water users or landowners.

1159 CHANGES IN CONTRACTOR'S SERVICE AREA

1160 35. (a) While this Contract is in effect, no change may be made in the Contractor's Service
1161 Area or boundaries, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,
1162 except upon the Contracting Officer's written consent.

1163 (b) Within thirty (30) days of receipt of a request for such a change, the Contracting
1164 Officer will notify the Contractor of any additional information required by the Contracting Officer for
1165 processing said request, and both parties will meet to establish a mutually agreeable schedule for timely
1166 completion of the process. Such process will analyze whether the proposed change is likely to: (i) result in
1167 the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of the Contractor to pay
1168 for Project Water furnished under this Contract or to pay for any Federally-constructed facilities for which
1169 the Contractor is responsible; and (iii) have an impact on any Project Water rights applications, permits, or

1170 licenses. In addition, the Contracting Officer shall comply with the National Environmental Policy Act and
1171 the Endangered Species Act. The Contractor will be responsible for all costs incurred by the Contracting
1172 Officer in this process, and such costs will be paid in accordance with Article 25 of this Contract.

1173 FEDERAL LAWS

1174 36. By entering into this Contract, the Contractor does not waive its rights to contest the validity
1175 or application in connection with the performance of the terms and conditions of this Contract of any Federal
1176 law or regulation; Provided, That the Contractor agrees to comply with the terms and conditions of this
1177 Contract unless and until relief from application of such Federal law or regulation to the implementing
1178 provision of the Contract is granted by a court of competent jurisdiction.

1179 NOTICES

1180 37. Any notice, demand, or request authorized or required by this Contract shall be deemed to
1181 have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Area
1182 Manager, South-Central California Area Office, 1243 "N" Street, Fresno, California 93721, and on behalf
1183 of the United States, when mailed, postage prepaid, or delivered to the Board of Directors of the Madera
1184 Irrigation District, 12152 Road 28 1/4, Madera, California 93637. The designation of the addressee or the
1185 address may be changed by notice given in the same manner as provided in this Article for other notices.

1186 CONFIRMATION OF CONTRACT

1187 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a decree
1188 of a court of competent jurisdiction of the State of California, confirming the execution of this Contract. The
1189 Contractor shall furnish the United States a certified copy of the final decree, the validation proceedings, and
1190 all pertinent supporting records of the court approving and confirming this Contract, and decreeing and
1191 adjudging it to be lawful, valid, and binding on the Contractor.

1192 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day
1193 and 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)

MADERA IRRIGATION DISTRICT

By: /s/ Roger F. Galleano
President of the Board of Directors

Attest:

By: /s/ Cynthia A. Rascoe
Secretary of the Board of Directors

(I:Made.wpd)

Contract No. I75r-2891-LTR1

EXHIBIT A

[Map or Description of Service Area]

Contract No. I75r-2891-LTR1

EXHIBIT B
[Initial Rates and Charges]