

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

CONTRACT BETWEEN THE UNITED STATES
AND
STATE OF CALIFORNIA
FOR WATER SUPPLY
TO
GRAY LODGE WILDLIFE AREA

Table of Contents

<u>Article No.</u>		<u>Page No.</u>
	Preamble	1
	Explanatory Recitals	2-3
1	Definitions	3-7
2	Term of Contract	7
3	Water to be Made Available and Delivered to the Contractor	7-10
4	Time for Delivery of Water	10-11
5	Point of Diversion, Measurement and Responsibility for Distribution of Water	12
6	Pooling of Water Supplies	13-14
7	Transfers, Reallocations or Exchanges of Water	14
8	Temporary Reductions–Return Flows	14-15
9	Water Shortage and Apportionment	15-16
10	Rules and Regulations	16
11	Water and Air Pollution Control	16
12	Quality of Water	16-17
13	Use of Non–Project Facilities for Water Delivery	17-18
14	Opinions and Determinations	18
15	Equal Opportunity	19-20
16	Compliance with Civil Rights Laws and Regulations	20
17	Water Conservation	21-23
18	Existing or Acquired Water or Water Rights	23

19	Contingent on Appropriation or Allotment of Funds	23-24
20	Books, Records, and Reports	24
<u>Article No.</u>		<u>Page No.</u>
21	Assignment Limited–Successors and Assigns Obligated	24-25
22	Liability	25
23	Officials Not to Benefit	25
24	Certification of Nonsegregated Facilities	25-26
25	Federal Laws	26
26	Notices	26-27
	Signature Page	28
	Exhibit A	
	Exhibit B	

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4 UNITED STATES
5 DEPARTMENT OF THE INTERIOR
6 BUREAU OF RECLAMATION
7 Central Valley Project, California

8 CONTRACT BETWEEN THE UNITED STATES
9 AND
10 STATE OF CALIFORNIA
11 FOR WATER SUPPLY
12 TO
13 GRAY LODGE WILDLIFE AREA

14 THIS CONTRACT, made this 19 day of January, 2001, in pursuance
15 generally of the Act of June 17, 1902 (32 Stat. 388) as amended and supplemented; the Act of August
16 27, 1954 (68 Stat. 879), as amended by the Act of November 8, 1978 (92 Stat. 3110, the Act of
17 October 27, 1986 (100 Stat. 3050), and in particular Section 3406(d) of the Central Valley Project
18 Improvement Act (CVPIA), Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706) all
19 collectively hereinafter referred to as Federal Reclamation law, between THE UNITED STATES OF
20 AMERICA, represented by the Secretary of the Interior’s duly authorized representative acting
21 pursuant to this Contract, hereinafter referred to as the Contracting Officer, and the State of California,
22 represented by the California Department of Fish and Game, hereinafter referred to as the Contractor,
23 a public agency of the State of California, duly organized, existing, and acting pursuant to the laws
24 thereof, with its principal place of business in Sacramento, California;

25 WITNESSETH, That:

EXPLANATORY RECITALS

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WHEREAS, the United States has constructed and is operating the Central Valley Project, California (Project), for diversion, storage, carriage, and distribution of the waters of the Sacramento River, the American River, the Trinity River, and the San Joaquin River and their tributaries for the following beneficial uses, including, but not limited to, flood control, irrigation, municipal, domestic, industrial water service, the protection, restoration and enhancement of fish, and wildlife, and associated habitats in the Central Valley, the generation and distribution of electric energy, salinity control, and navigation; and

WHEREAS, the wetlands of the Central Valley have declined to approximately 300,000 acres and these remaining wetlands provide critical wildlife habitat and other environmental benefits, and important recreational and educational opportunities; and

WHEREAS, the Bureau of Reclamation’s 1989 Refuge Water Supply Report concluded that “... it is clear that each refuge requires a dependable supply of good quality water to facilitate proper wetland habitat management for the migratory birds of the Pacific Flyway and resident wildlife and flora.”; and

WHEREAS, Section 3406(d) of the CVPIA requires the Secretary to provide firm water supplies of suitable quality, through long-term contractual agreements with appropriate parties, to maintain and improve certain wetland habitat areas in the Central Valley in furtherance of the objectives of the Central Valley Habitat Joint Venture and the Central Valley Project to protect, restore and enhance fish and wildlife and associated habitats; and

WHEREAS, the directives of Section 3406(d) of the CVPIA have been carried out

4 7 through a cooperative and collaborative effort between the Bureau of Reclamation and Fish and
4 8 Wildlife Service, acting for the Secretary of the Interior, the California Department of Fish and Game,
4 9 the Grassland Water District, and the Central Valley Habitat Joint Venture partners; and this
5 0 cooperative and collaborative effort is expected to continue; and

5 1 WHEREAS, the Contracting Officer intends to use Project facilities, in part, to provide
5 2 firm water supplies of suitable quality to maintain and improve the Refuges; and

5 3 WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting
5 4 Officer that the Contractor has fully utilized the Central Valley Project water supplies available to it for
5 5 reasonable and beneficial use for fish and wildlife preservation and enhancement (wetland management)
5 6 and/or the Contracting Officer has concluded through the Bureau of Reclamation's 1989 Refuge Water
5 7 Supply Report and the San Joaquin Basin Action Plan/Kesterson Mitigation Action Plan Report that
5 8 the Contractor has projected future demand for water use such that the Contractor has the capability
5 9 and expects to fully utilize for reasonable and beneficial use the quantity of water to be made available
6 0 to it pursuant to this Contract; and

6 1 WHEREAS, the Contracting Officer and the Contractor are willing to execute
6 2 this Contract pursuant to subsection 3406(d) of the CVPIA on the terms and conditions set forth
6 3 below;

6 4 NOW, THEREFORE, in consideration of the mutual and dependent covenants herein
6 5 contained, it is hereby mutually agreed by the parties hereto as follows:

6 6 DEFINITIONS

6 7 1. When used herein unless otherwise distinctly expressed, or manifestly incompatible

6 8 with the intent of the parties or expressed in this contract, the term:

6 9 (a) "Calendar Year" shall mean the period January 1 through December 31, both
7 0 dates inclusive;

7 1 (b) "Contractor's Boundary" shall mean the Refuge(s) to which the Contractor is
7 2 permitted to provide Delivered Water under this contract as identified in Exhibit "A". Exhibit "A" may
7 3 be revised without amending this Contract upon mutual agreement of the Contractor and the
7 4 Contracting Officer;

7 5 (c) "Contracting Officer" shall mean the Secretary of the Interior's duly authorized
7 6 representative acting pursuant to this Contract;

7 7 (d) "Critically Dry Year" shall mean any Year in which either of the following
7 8 eventualities exists:

7 9 (1) The forecasted full natural inflow to Shasta Lake for the current water
8 0 year (October 1 of the preceding Calendar Year through September 30 of the current Calendar Year),
8 1 as such forecast is made by the Contracting Officer, on or before February 20, and reviewed as
8 2 frequently thereafter as conditions and information warrant, is equal to or less than 3,200,000 acre feet:
8 3 or

8 4 (2) The total accumulated actual deficiencies below 4,000,000 acre-feet in
8 5 the immediately prior water year or series of successive prior water years, each of which had inflows of
8 6 less than 4,000,000 acre-feet, together with the forecasted deficiency for the current water year exceed
8 7 800,000 acre-feet;

8 8 For the purpose of determining a Critically Dry Year, the computed inflow to

8 9 Shasta Lake under present upstream development above Shasta Lake shall be used as the full natural
9 0 inflow to Shasta Lake. In the event that major construction completed above Shasta Lake materially
9 1 alters the present regimen of the stream systems contributing to Shasta Lake, the computed inflow to
9 2 Shasta Lake used to define a Critically Dry Year will be adjusted to eliminate the effect of such material
9 3 alterations.

9 4 After consultation with the State, the National Weather Service, and other
9 5 recognized forecasting agencies, the Contracting Officer shall select the forecast to be used and will
9 6 make the details of it available to the Contractor. The same forecast used by the Contracting Officer for
9 7 operation of the Project shall be used to make forecasts hereunder.

9 8 (e) "CVPIA" shall mean the Central Valley Project Improvement
9 9 Act, Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

1 0 0 (f) "Delivered Water" shall mean the Level 2 Water Supplies and the Incremental
1 0 1 Level 4 Water Supplies diverted by the Contractor pursuant to this Contract at the Point(s) of Delivery
1 0 2 in accordance with Article 4(c) of this Contract;

1 0 3 (g) "Hydrologic Circumstances" shall mean the conditions described in subdivision
1 0 4 (d) of this Article;

1 0 5 (h) "Incremental Level 4 Water Supplies" shall mean the difference between the
1 0 6 Level 2 Water Supplies and the Level 4 Water Supplies depicted in Exhibit "B";

1 0 7 (i) "Level 2 Water Supplies" shall mean the quantities of water referred to in
1 0 8 section 3406 (d)(1) of the CVPIA and depicted in Exhibit "B" of this Contract;

1 0 9 (j) "Level 4 Water Supplies" shall mean the quantities of water referred to in

1 1 0 section 3406 (d)(2) of the CVPIA and depicted in Exhibit “B” of this Contract;

1 1 1 (k) “Non-Project Facilities” shall mean any non-Project water conveyance or storage
1 1 2 facilities;

1 1 3 (l) “Non-Project Water” shall mean water or water rights, other than “Project
1 1 4 Water”, acquired, appropriated by, transferred to or assigned to the Contractor or, transferred to the
1 1 5 United States for delivery to one or more of the Contractor’s Refuges, as identified in Exhibit “B”;

1 1 6 (m) “Point(s) of Delivery” shall mean the location(s) established and revised
1 1 7 pursuant to Article 5(a) of this Contract , at which Level 2 Water Supplies of Project Water and
1 1 8 Incremental Level 4 Water Supplies are deemed to be delivered to the Contractor and at which the
1 1 9 Contractor shall assume the responsibility for the further control, carriage, handling, use, disposal or
1 2 0 distribution of such water supplies so long as such water supplies are being used in accordance with the
1 2 1 terms and conditions of this Contract;

1 2 2 (n) “Project” shall mean the Central Valley Project owned by the United States
1 2 3 and managed by the Department of the Interior, Bureau of Reclamation;

1 2 4 (o) “Project Water” shall mean all water that is developed, diverted, stored, or
1 2 5 delivered by the Secretary in accordance with the statutes authorizing the Central Valley Project and in
1 2 6 accordance with the terms and conditions of applicable water rights acquired pursuant to California
1 2 7 law;

1 2 8 (p) “Refuge(s)” shall mean the lands in the units of the National Wildlife Refuge
1 2 9 System in the Central Valley of California; Gray Lodge, Los Banos, Volta, North Grasslands and
1 3 0 Mendota state wildlife management areas; and the Grassland Resource Conservation District all

1 3 1 identified in the Refuge Water Supply Report and the land(s) identified in the San Joaquin Basin Action
1 3 2 Plan/Kesterson Mitigation Action Plan Report prepared by the Bureau of Reclamation as set forth in
1 3 3 Section 3406(d) of the CVPIA and/or as revised in accordance with subdivision (b) of this Article;

1 3 4 (q) "Refuge Water Supply Report" shall mean the report issued by the Mid-Pacific
1 3 5 Region of the Bureau of Reclamation of the United States Department of the Interior entitled "Report
1 3 6 on Refuge Water Supply Investigations, Central Valley Hydrologic Basin, California" (March 1989);

1 3 7 (r) "Secretary" shall mean the Secretary of the Interior, a duly appointed
1 3 8 successor, or an authorized representative acting pursuant to any authority of the Secretary through any
1 3 9 agency of the Department of the Interior;

1 4 0 (s) "Year" shall mean the period from and including March 1 of
1 4 1 each Calendar Year through the last day of February of the following Calendar Year;

1 4 2 TERM OF CONTRACT

1 4 3 2. (a) This contract shall be effective on March 1, 2001 and shall remain in effect
1 4 4 through February 28, 2026.

1 4 5 (b) Upon request by the Contractor, this Contract shall be renewed for successive periods
1 4 6 of twenty-five (25) years each, subject to the terms and conditions mutually agreeable to the parties.
1 4 7 The Contractor shall request renewal of the Contract at least two (2) years prior to the date on which
1 4 8 this Contract expires.

1 4 9 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

1 5 0 3. (a) During each Year, consistent with State water rights, permits and licenses,
1 5 1 federal law, and subject to the provisions set forth in Articles 8 and 9 of this Contract, the Contracting

1 5 2 Officer shall, at the Point(s) of Delivery, make available and/or convey to the Contractor the maximum
1 5 3 quantities of Project Water and Non-Project Water, respectively, required to provide each of the
1 5 4 Refuges with the Level 2 Water Supplies set forth in Exhibit “B” and the Incremental Level 4 Water
1 5 5 Supplies set forth in Exhibit “B”. The quantities of Level 2 Water Supplies and Incremental Level 4
1 5 6 Water Supplies made available and/or conveyed to the Contractor shall be scheduled in accordance
1 5 7 with the provisions of Article 4 of this Contract; Provided, that in light of the fact that, Section
1 5 8 3406(d)(2) of the CVPIA provides that the Incremental Level 4 Water Supplies shall be acquired in
1 5 9 cooperation with the State of California and in consultation with the Central Valley Habitat Joint
1 6 0 Venture and other interests in cumulating increments of not less than ten percent per annum, from the
1 6 1 date the CVPIA was enacted, through voluntary measures which include, but are not limited to, water
1 6 2 conservation, conjunctive use, purchase, lease, donations, or similar activities, or a combination of such
1 6 3 activities which do not require involuntary reallocation of Project yield, water being provided as all or
1 6 4 part of the Incremental Level 4 Water Supplies for each of the Refuges can be made available only to
1 6 5 the extent that the Contracting Officer is able to acquire the Incremental Level 4 Water Supplies from
1 6 6 willing sources; Accordingly, the Contracting Officer shall use his/her best efforts to acquire the
1 6 7 Incremental Level 4 Water Supplies and shall coordinate acquisitions of Level 4 Water Supplies with
1 6 8 acquisitions of Environmental Water Account (EWA) water pursuant to the Operating Principles
1 6 9 Agreement, dated August 28, 2000 attached to the Record of Decision for the CALFED Bay-Delta
1 7 0 Program, dated August 28, 2000 and/or other acquisitions of water for environmental purposes to
1 7 1 ensure that acquisitions of Incremental Level 4 Water Supplies have a priority at least equal to
1 7 2 acquisitions of EWA and/or other environmental water each Year. The Contracting Officer also agrees

1 7 3 that the Interagency Refuge Management Team, created pursuant to Article 6 of this Contract, shall be
1 7 4 included among the interests consulted in acquiring Incremental Level 4 Water Supplies.

1 7 5 (b) The Contractor shall continue use of the Non-Project Water component of the Level 2
1 7 6 Water Supplies set forth in Exhibit “B” as long as such Non-Project Water remains available to the
1 7 7 Contractor and is of suitable quality. In the event that such water supply is unavailable to the
1 7 8 Contractor, or is not of suitable quality, subject to the provisions set forth in Articles 8 and 9 of this
1 7 9 Contract, the Contracting Officer shall deliver to the Contractor sufficient substitute Project Water to
1 8 0 ensure that the quantities of Level 2 Water Supplies are available to the Contractor in accordance with
1 8 1 subdivision (a) of this Article.

1 8 2 (c) The Contractor shall comply with requirements applicable to the Contractor in
1 8 3 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract
1 8 4 undertaken pursuant to Section 7 of the Endangered Species Act of 1973, as amended, that are within
1 8 5 the Contractor’s legal authority to implement. The Contractor shall comply with the limitations or
1 8 6 requirements imposed by environmental documentation applicable to the Contractor and within its legal
1 8 7 authority to implement. Nothing herein shall be construed to prevent the Contractor from challenging or
1 8 8 seeking judicial relief in a court of competent jurisdiction with respect to any Biological Opinion or other
1 8 9 environmental documentation referred to in this Article.

1 9 0 (d) The Contractor shall make reasonable and beneficial use of all Delivered
1 9 1 Water furnished pursuant to this Contract consistent with the wetland habitat water management plan(s)
1 9 2 described in Article 17 of this Contract.

1 9 3 (e) In order to maximize water available to Refuges and better manage such water,

1 9 4 the Contractor may request the Contracting Officer's permission to reschedule a portion of the Level 2
1 9 5 Water Supplies and/or a portion of the Incremental Level 4 Water Supplies made available to the
1 9 6 Contractor for use within the Contractor's Boundary during the current Year for use within the
1 9 7 subsequent Year. The Contracting Officer may permit such rescheduling in accordance with applicable
1 9 8 law, and the then-current applicable rescheduling guidelines and policies. Upon execution of this
1 9 9 Contract, the Contracting Officer shall have adopted amendments to any applicable rescheduling
2 0 0 guidelines and policies to provide for the rescheduling of refuge water in accordance with this Article.
2 0 1 After execution of this Contract and annually thereafter, the Contracting Officer shall provide the
2 0 2 Contractor with a copy of the then-current rescheduling guidelines and policies.

2 0 3 (f) The Contracting Officer shall not interfere with the Contractor's right pursuant
2 0 4 to Federal Reclamation law and applicable California law to the beneficial use of water furnished
2 0 5 pursuant to this Contract so long as the Contractor fulfills all of its obligations under this Contract. A
2 0 6 reduction in water supplies pursuant to Article 9 of this Contract shall not be deemed to constitute such
2 0 7 interference.

2 0 8 TIME FOR DELIVERY OF WATER

2 0 9 4. (a) On or about February 20 of each Calendar Year, the Contracting Officer shall
2 1 0 provide the Contractor, in writing, with a preliminary forecast of whether the upcoming Year will be a
2 1 1 Critically Dry Year; and, if a Critically Dry Year is forecast, the extent to which Level 2 Water Supplies
2 1 2 to be made available to the Contractor during the upcoming Year are to be shorted pursuant to Article
2 1 3 9 of this Contract; and the amount of Incremental Level 4 Water Supplies estimated to be made
2 1 4 available to the Contractor pursuant to this Contract for the upcoming Year. The forecast will be

2 1 5 updated monthly, as necessary, based on then-current hydrologic conditions. Upon the request of the
2 1 6 Contractor, the Contracting Officer shall make available to the Contractor the data on which the
2 1 7 Contracting Officer relied to determine whether the Year in question will or will not be a Critically Dry
2 1 8 Year and to determine the amounts of Level 2 Water Supplies and Incremental Level 4 Water Supplies
2 1 9 to be made available to the Contractor pursuant to this Contract during a Critically Dry Year.

2 2 0 (b) Based on the forecast(s) referred to in subdivision (a) of this Article, on or before
2 2 1 March 1 of each Calendar Year, the Contractor shall submit to the Contracting Officer a written
2 2 2 schedule, satisfactory to the Contracting Officer, showing both the monthly and annual quantities of
2 2 3 Level 2 Water Supplies and Incremental Level 4 Water Supplies to be delivered by the Contracting
2 2 4 Officer to each of the Refuges pursuant to this Contract. Each schedule shall be updated on a monthly
2 2 5 basis to reflect actual use and remaining estimated needs.

2 2 6 (c) In accordance with subdivision (a) of Article 3 of this Contract, the Contracting Officer
2 2 7 shall make available and/or convey Level 2 Water Supplies and Incremental Level 4 Water Supplies
2 2 8 for diversion by the Contractor at the Points of Delivery in accordance with the schedule submitted by
2 2 9 the Contractor pursuant to subdivision (b) of this Article, or any written revision(s) thereto, mutually
2 3 0 agreed to by the Contracting Officer and the Contractor which are submitted to the Contracting Officer
2 3 1 within a reasonable time prior to the date(s) on which the requested change(s) is/are to be implemented.

2 3 2 POINT OF DIVERSION, MEASUREMENT AND RESPONSIBILITY FOR DISTRIBUTION
2 3 3 OF WATER

2 3 4 5. (a) The original Point(s) of Delivery shall be established by written mutual

2 3 5 agreement of the Contractor and the Contracting Officer. Such Point(s) of Delivery may be revised
2 3 6 without amending this Contract upon written mutual agreement of the Contracting Officer and the
2 3 7 Contractor.

2 3 8 (b) All water delivered to the Contractor pursuant to this Contract is to be
2 3 9 measured at the Point(s) of Delivery to reflect the quantities of Level 2 Water Supplies and Incremental
2 4 0 Level 4 Water Supplies delivered to the Contractor's Boundary. Upon the request of the Contractor or
2 4 1 on the Contracting Officer's own initiative, the Contracting Officer shall investigate the accuracy of such
2 4 2 measurements and the parties will jointly take any necessary steps to adjust any errors appearing
2 4 3 therein. For any period of time when accurate measurement has not been made, the Contracting
2 4 4 Officer shall consult with the Contractor prior to making a determination of the quantity of Delivered
2 4 5 Water for that period of time. The Contractor shall advise the Contracting Officer on or before the 10th
2 4 6 calendar day of each month of the quantities of Level 2 Water Supplies and Incremental Level 4 Water
2 4 7 Supplies taken during the preceding month at the Point(s) of Delivery.

2 4 8 (c) The Contracting Officer shall not be responsible for the control, carriage,
2 4 9 handling, use, disposal, or distribution of water delivered to the Contractor pursuant to this Contract
2 5 0 beyond the Point(s) of Delivery specified in subdivision (a) of this Article.

2 5 1 POOLING OF WATER SUPPLIES

2 5 2 6. (a) Whenever the maximum quantities of Level 2 Water Supplies and/or the
2 5 3 Incremental Level 4 Water Supplies depicted in Exhibit "B" are reduced pursuant to Article 9 of this

2 5 4 Contract, the remaining Level 2 Water Supplies and/or the Incremental Level 4 Water Supplies may be
2 5 5 pooled for use on other Refuge(s); Provided, that no individual Refuge shall receive more Level 2
2 5 6 Water Supplies than would have been made available to it absent a reduction pursuant to Article 9 of
2 5 7 this Contract; or be reduced by more than twenty-five (25) percent; Provided further, that the
2 5 8 Contracting Officer makes a written determination that pooling of water for use on other Refuge(s)
2 5 9 would not have an adverse impact, that cannot be reasonably mitigated, on Project operations, other
2 6 0 Project Contractors, or other Project purposes; Provided further, that the Contracting Officer
2 6 1 determines that such reallocation is permitted under the terms and conditions of the applicable
2 6 2 underlying water right permit and/or license; and Provided still further, that water made available under
2 6 3 this contract may not be scheduled for delivery outside the Contractor’s Boundary without prior
2 6 4 written approval of the Contracting Officer.

2 6 5 (b) An Interagency Refuge Water Management Team, to be chaired by the Contracting
2 6 6 Officer and to be established upon execution of this Contract, shall be entitled to collaboratively
2 6 7 allocate the pooled water supplies and provide a schedule for delivery of the pooled supplies to meet
2 6 8 the highest priority needs of the Refuge(s) as depicted in Exhibit “B”; Provided, however, nothing in this
2 6 9 Article is intended to require the Contractor to pool the water supply provided for in this Contract. The
2 7 0 Interagency Refuge Water Management Team shall be composed of designees of the Bureau of
2 7 1 Reclamation, the United States Fish and Wildlife Service, the California Department of Fish and Game,
2 7 2 and the Grassland Water District.

2 7 3 TRANSFERS, REALLOCATIONS OR EXCHANGES OF WATER

2 7 4 7. Subject to the prior written approval of the Contracting Officer, the Project Water made

275 available under this Contract may be transferred, reallocated or exchanged in that Year to other
276 Refuge(s) or Project contractors if such transfer, reallocation or exchange is requested by the
277 Contractor and is authorized by applicable Federal and California State laws, and then-current
278 applicable guidelines or regulations.

279 TEMPORARY REDUCTIONS--RETURN FLOWS

280 8. (a) Consistent with the authorized purposes and priorities of the Project and the
281 requirements of Federal law, the Contracting Officer shall make all reasonable efforts to optimize water
282 deliveries to the Contractor as provided in this Contract.

283 (b) The quantity of water to be delivered to the Contractor as herein provided may
284 be temporarily discontinued or reduced when investigation, inspection, maintenance, repair, or
285 replacement of any of the Project facilities and/or Non-Project Facilities or any part thereof necessary
286 for the delivery of water to the Contractor is required. The Contracting Officer shall give and/or arrange
287 to have the owner/operator of Non-Project Facilities give the Contractor due written notice in advance
288 of such temporary discontinuance or reduction, except in case of an emergency, when no advance
289 notice is possible, in which case the Contracting Officer shall notify and/or arrange to have the
290 owner/operator of the Non-Project Facilities notify the Contractor of said discontinuance or reduction
291 as soon as is feasible; Provided, that the Contracting Officer shall use its best efforts to avoid any
292 discontinuance or reduction in such service. Upon resumption of service after such reduction or
293 discontinuance, and if requested by the Contractor, the Contracting Officer will make all reasonable
294 efforts, consistent with other obligations and operational constraints, to deliver the quantity of water
295 which would have been delivered hereunder in the absence of such discontinuance or reduction.

296 (c) The United States reserves the right to all seepage and return flow water
297 derived from Delivered Water which escapes or is discharged beyond the Contractor's Boundary;
298 Provided, that this shall not be construed as claiming for the United States any right to seepage or return
299 flow being put to beneficial use pursuant to this contract within the Contractor's Boundary by the
300 Contractor or those claiming by, through, or under the Contractor.

301 WATER SHORTAGE AND APPORTIONMENT

302 9. (a) In a Critically Dry Year, the Contracting Officer may temporarily reduce, for
303 that Year, the availability of Level 2 Water Supplies up to twenty-five (25) percent of the maximum
304 quantities set forth in Exhibit "B" whenever reductions due to Hydrologic Circumstances are imposed
305 upon agricultural deliveries of Project Water; Provided, that such reductions shall not exceed in
306 percentage terms the reductions imposed on agricultural service contractors. The quantity of Non-
307 Project Water available to one or more of the Refuges as part of its/their Level 2 Water Supplies may
308 be reduced by more than twenty-five (25) percent in Years when the quantity of Project Water made
309 available to the Contractor can be reduced by no more than twenty-five (25) percent. In such cases,
310 the Contracting Officer shall make up the supply difference with water supplies provided by the
311 Contracting Officer to ensure that Level 2 Water Supplies from all sources are not reduced by more
312 than twenty-five (25) percent.

313 (b) Reductions in the Level 2 Water Supplies to be made available to the individual
314 Refuge(s) pursuant to this Contract, shall be imposed only in a Critically Dry Year. For the Incremental
315 Level 4 Water Supplies provided from Non-Project Water and Project Water, reductions shall be
316 imposed in accordance with the priority or priorities that were applied to such Non-Project Water and

3 1 7 the shortages assigned to Project Water prior to its transfer or acquisition as Incremental Level 4 Water
3 1 8 Supplies.

3 1 9 RULES AND REGULATIONS

3 2 0 10. The parties agree that the delivery of water pursuant to this Contract is subject to
3 2 1 Federal Reclamation law, as may be amended and supplemented, as applicable, and the rules and
3 2 2 regulations promulgated by the Secretary of the Interior under Federal Reclamation law.

3 2 3 WATER AND AIR POLLUTION CONTROL

3 2 4 11. The Contractor, in carrying out this contract, shall comply with all applicable water and
3 2 5 air pollution laws and regulations of the United States and the State of California, and shall obtain all
3 2 6 required permits or licenses from the appropriate Federal, State, or local authorities.

3 2 7 QUALITY OF WATER

3 2 8 12. (a) Consistent with other legal obligations, the water delivered by the Contracting
3 2 9 Officer to the Contractor pursuant to this Contract shall be of suitable quality to maintain and improve
3 3 0 wetland habitat areas and of comparable quality to water provided to other Project purposes within the
3 3 1 same geographical areas; Provided, that the Contracting Officer is under no obligation to construct or
3 3 2 furnish water treatment facilities to maintain or to improve the quality of the water furnished to the
3 3 3 Contractor pursuant to this contract. The quality of Delivered Water may be monitored by the
3 3 4 Contractor at the Point(s) of Delivery on an as needed basis. Should the Contracting Officer, in
3 3 5 consultation with the Contractor, determine that the Level 2 Water Supplies and/or the Level 4 Water
3 3 6 Supplies to be made available to the Contractor pursuant to this Contract during all or any part of a
3 3 7 Year will not be of the quality that the Contractor feels is suitable to maintain and improve wetland
3 3 8 habitat areas, the Contractor and the Contracting Officer shall meet within 48 hours or at a time

3 3 9 mutually agreeable to the parties and determine the appropriate actions necessary to identify and
3 4 0 address the source of the water quality problems.

3 4 1 (b) The operation and maintenance of Project facilities shall be performed in such
3 4 2 manner as is practicable to maintain the quality of raw water made available through such facilities at the
3 4 3 highest level reasonably attainable as determined by the Contracting Officer. The Contractor shall be
3 4 4 responsible for compliance with all State of California and Federal water quality standards and
3 4 5 directives applicable to surface return flows and subsurface agricultural drainage discharges generated
3 4 6 within its boundaries arising from water conveyed to the Refuges pursuant to this Contract. This
3 4 7 Contract does not create any obligation on the Contracting Officer to provide drainage services.

3 4 8 USE OF NON-PROJECT FACILITIES FOR WATER DELIVERY

3 4 9 13. Any use of Non-Project Facilities, including use of State Water Project facilities pursuant
3 5 0 to Joint Point of Diversion or other use of State Water Project facilities to deliver the water supplies
3 5 1 provided for in the Contract, or any agreement for the use of such Non-Project Facilities, shall in no
3 5 2 way alter the obligation of the Contracting Officer to make available and deliver water supplies in
3 5 3 accordance with all of the terms and conditions of this Contract. In addition, any costs incurred in the
3 5 4 use of Non-Project Facilities to deliver water supplies pursuant to this Contract shall be paid for in
3 5 5 accordance with Section 3406(d)(3) of the CVPIA.

3 5 6 OPINIONS AND DETERMINATIONS

3 5 7 14. (a) Where the terms of this Contract provide for actions to be based upon the
3 5 8 opinion or determination of either party to this Contract, said terms shall not be construed as permitting
3 5 9 such action to be predicated upon opinions or determinations that are arbitrary, capricious or

360 unreasonable. Both parties, notwithstanding any other provisions of this Contract, expressly reserve the
361 right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or unreasonable
362 opinion or determination. Each opinion or determination by either party shall be provided in a timely
363 manner. Nothing in this subdivision of this Article is intended to or shall affect or alter the standard of
364 judicial review applicable under federal law to any opinion or determination implementing a specific
365 provision of federal law embodied in statute or regulation.

366 (b) Both parties to this Contract shall have the right to make determinations
367 necessary to administer this Contract that are consistent with the provisions of this Contract, the laws of
368 the United States and of California, and the rules and regulations promulgated by the Secretary of the
369 Interior. Each party shall make such determinations in consultation with the other party to the extent
370 reasonably practicable.

371 EQUAL OPPORTUNITY

372 15. During the performance of this contract, the Contractor agrees as follows:

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

382 (b) The Contractor will, in all solicitations or advertisements for employees placed

383 by or on behalf of the Contractor, state that all qualified applicants will receive consideration for
384 employment without discrimination because of race, color, religion, sex, or national origin.

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

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

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

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

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

414 COMPLIANCE WITH CIVIL RIGHTS LAWS
415 AND REGULATIONS

416 16. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42

4 1 7 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age
4 1 8 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well
4 1 9 as with their respective implementing regulations and guidelines imposed by the U.S. Department of the
4 2 0 Interior and/or Bureau of Reclamation.

4 2 1 (b) These statutes require that no person in the United States shall, on the grounds
4 2 2 of race, color, national origin, handicap, or age, be excluded from participation in, be denied the
4 2 3 benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial
4 2 4 assistance from the Bureau of Reclamation. By executing this contract, the Contractor agrees to
4 2 5 immediately take any measures necessary to implement this obligation, including permitting officials of
4 2 6 the United States to inspect premises, programs, and documents.

4 2 7 (c) The Contractor makes this agreement in consideration of and for the purpose of
4 2 8 obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial
4 2 9 assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including
4 3 0 installment payments after such date on account of arrangements for Federal financial assistance which
4 3 1 were approved before such date. The Contractor recognizes and agrees that such Federal assistance
4 3 2 will be extended in reliance on the representations and agreements made in this Article, and that the
4 3 3 United States reserves the right to seek judicial enforcement thereof.

4 3 4 WATER CONSERVATION

4 3 5 17. (a) The Contractor shall prepare individual refuge wetland habitat water
4 3 6 management plan(s) in order to ensure the effective use of water supplies to meet wetland resource
4 3 7 needs and to meet the objectives of the Central Valley Habitat Joint Venture and the purposes of the
4 3 8 CVPIA to maintain and improve certain Central Valley wetland habitat areas. Criteria to prepare and
4 3 9 evaluate refuge wetland habitat water management plan(s) shall be developed by the Interagency
4 4 0 Refuge Water Management Team within one (1) year of the execution of this Contract, and reviewed
4 4 1 and updated every five (5) years thereafter taking into consideration the provisions of the Interagency
4 4 2 Coordinated Program Task Force report dated June 1998. The criteria shall include economically

4 4 3 feasible water management measures which can improve the Contractors' efficient use of water in a
4 4 4 manner appropriate for wetland and wildlife management, and shall also include time schedules for
4 4 5 meeting the water use efficiency and conservation objectives. The criteria shall grant substantial
4 4 6 deference to on-going state efforts related to wetlands water management and shall take into account
4 4 7 the unique requirements associated with water use for the maintenance and enhancement of wetland
4 4 8 and wildlife habitat. The Contractor shall make all reasonable efforts, consistent with appropriate
4 4 9 limitations recognized in Article 19 of this Contract, to complete the original wetland habitat water
4 5 0 management plan(s) within one (1) year of the establishment of the criteria. The Contracting Officer will
4 5 1 review and determine if the wetland habitat water management plan(s) meet the established criteria for
4 5 2 evaluating said plan within ninety (90) days of receipt of each plan.

4 5 3 (b) Prior to the Contractor being afforded opportunities such as pooling
4 5 4 and rescheduling of water supplies pursuant to Articles 3 and 6 of this Contract, the Contractor must
4 5 5 be implementing a wetland habitat water management plan that has been determined by the Contracting
4 5 6 Officer to meet the established criteria developed pursuant to subdivision (a) of this Article for
4 5 7 preparing and evaluating said plan. Continued pooling and rescheduling benefits pursuant to Articles 3
4 5 8 and 6 of this Contract shall be contingent upon the Contractor's continued implementation of such
4 5 9 wetland habitat water management plans. In the event the Contracting Officer determines the
4 6 0 Contractor is unable to implement its wetland habitat water management plan, due to circumstances
4 6 1 beyond its control, the pooling and rescheduling benefits of Articles 3 and 6 of this Contract shall be
4 6 2 continued so long as the Contractor diligently works with the Contracting Officer to obtain such
4 6 3 determination at the earliest practicable date and thereafter the Contractor begins implementing its

4 6 4 wetland habitat water management plan immediately after the circumstances preventing implementation
4 6 5 have ceased.

4 6 6 (c) In the event that implementation of the wetland habitat water management
4 6 7 plan(s) prepared pursuant to subdivision (a) of this Article results in water savings, all conserved water
4 6 8 supplies may be transferred/reallocated, under the terms and conditions of this Contract, to other
4 6 9 wetland, wildlife and fishery needs or to other Project contractors in accordance with the
4 7 0 recommendations of the Interagency Refuge Water Management Team established pursuant to Article
4 7 1 6 of this Contract; Provided, that the Contracting Officer makes a written determination that such
4 7 2 transfer/reallocation of conserved water would not have an adverse impact, that cannot be reasonably
4 7 3 mitigated, on Project operations, other Project contractors or other Project purposes; Provided further,
4 7 4 that the transfer/reallocation is requested by the Contractor and the Contracting Officer determines that
4 7 5 the transfer/reallocation is authorized by applicable laws, and then-current applicable guidelines and/or
4 7 6 regulations.

4 7 7 (d) The Contractor shall submit to the Contracting Officer an annual update on the
4 7 8 status of its implementation of the wetland habitat water management plan(s) for the previous Water
4 7 9 Year.

4 8 0 (e) At five (5) year intervals, the Contractor shall revise its wetland habitat water
4 8 1 management plan(s), as necessary, to reflect the then-current criteria for preparing and evaluating said
4 8 2 plans and submit such revised plan(s). Upon completion of such revised plan(s), the Contractor shall
4 8 3 submit such revised plan(s) to the Contracting Officer for review and so the Contracting Officer can
4 8 4 determine whether such plan(s) meet the then-current criteria.

4 8 5 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

4 8 6 18. Except as provided in subdivision (b) of Article 3, the exercise of existing water rights by
4 8 7 the Contractor, or its acquisition of additional water or water rights from other than the United States,
4 8 8 shall not alter the obligation of the Contracting Officer to provide the maximum quantities of Level 2
4 8 9 Water Supplies and Incremental Level 4 Water Supplies under subdivision (a) of Article 3 of this
4 9 0 Contract.

4 9 1 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

4 9 2 19. (a) The expenditure or advance of any money or the performance of any obligation
4 9 3 of the United States under this contract shall be contingent upon appropriation or allotment of funds.
4 9 4 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
4 9 5 under this contract. No liability shall accrue to the United States in case funds are not appropriated or
4 9 6 allotted.

4 9 7 (b) The expenditure of any funds and the performance of any terms of this contract by the
4 9 8 Contractor may require appropriation of funds or the allotment of funds by the State Legislature and
4 9 9 shall be contingent upon such appropriation or allotment being made. The failure of the State Legislature
5 0 0 to appropriate funds or the absence of any allotment of funds shall not impose any liability on the State
5 0 1 of California.

5 0 2 BOOKS, RECORDS, AND REPORTS

5 0 3 20. (a) The Contractor shall establish and maintain accounts and other books and
5 0 4 records pertaining to administration of the terms and conditions of this contract, including: the
5 0 5 Contractor's financial transactions, water supply data, and right-of-way agreements; and other matters
5 0 6 that the Contracting Officer may require. Reports thereon shall be furnished to the Contracting Officer
5 0 7 in such form and on such date or dates as the Contracting Officer may require. Subject to applicable
5 0 8 Federal laws and regulations, each party to this contract shall have the right during office hours to
5 0 9 examine and make copies of the other party's books and records relating to matters covered by this
5 1 0 contract.

5 1 1 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books, records, or
5 1 2 other information shall be requested from the Contractor by the Contracting Officer unless such books,
5 1 3 records, or information are reasonably related to the administration or performance of this Contract.
5 1 4 Any such request shall allow the Contractor a reasonable period of time within which to provide the
5 1 5 requested books, records, or information.

5 1 6 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

5 1 7 21. (a) The provisions of this contract shall apply to and bind the successors and
5 1 8 assigns of the parties hereto, but no assignment or transfer of this contract or any right or interest therein
5 1 9 shall be valid until approved in writing by the Contracting Officer.

5 2 0 (b) The assignment of any right or interest in this contract by either party shall not
5 2 1 interfere with the rights or obligations of the other party to this contract absent the written concurrence
5 2 2 of said other party.

5 2 3 (c) The Contracting Officer shall not unreasonably condition or withhold his/her
5 2 4 approval of any proposed assignment.

5 2 5 LIABILITY

5 2 6 22. (a) The Contractor shall not assert that the United States, its officers, agents and
5 2 7 employees are responsible for legal liability for damages of any nature whatsoever arising out of any
5 2 8 actions or omissions by the Contractor, its officers, agents and employees in the performance of this
5 2 9 Contract.

5 3 0 (b) The United States shall not assert that the Contractor, its officers, agents and
5 3 1 employees are responsible for legal liability for damages of any nature whatsoever arising out of any
5 3 2 actions or omissions by the United States, its officers, agents and employees in the performance of this

5 3 3 Contract.

5 3 4 (c) Within thirty (30) days of receipt by either party of any claim for liability arising
5 3 5 from actions within the scope of this Contract, the party receiving the claim shall notify the other party
5 3 6 of such claim and provide a copy of the claim to the other party, if it is in written form. Nothing in this
5 3 7 Article shall be construed to limit the right of either party to assert such affirmative defenses and file
5 3 8 such cross complaints as may be appropriate in relation to any claim affecting the liability of such party.

5 3 9 OFFICIALS NOT TO BENEFIT

5 4 0 23. No Member of or Delegate to Congress, Resident Commissioner, or official of the
5 4 1 Contractor shall benefit from this contract.

5 4 2 CERTIFICATION OF NONSEGREGATED FACILITIES

5 4 3 24. The Contractor hereby certifies that it does not maintain or provide for its employees
5 4 4 any segregated facilities at any of its establishments, and that it does not permit its employees to
5 4 5 perform their services at any location, under its control, where segregated facilities are maintained. It
5 4 6 certifies further that it will not maintain or provide for its employees any segregated facilities at any of its
5 4 7 establishments, and that it will not permit its employees to perform their services at any location, under
5 4 8 its control, where segregated facilities are maintained. The Contractor agrees that a breach of this
5 4 9 certification is a violation of the Equal Opportunity clause in this contract. As used in this certification,
5 5 0 the term "segregated facilities" means any waiting rooms, work areas, restrooms, and washrooms,
5 5 1 restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas,
5 5 2 parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities
5 5 3 provided for employees which are segregated by explicit directive or are in fact segregated on the basis
5 5 4 of race, creed, color, or national origin, because of habit, local custom, or otherwise. The Contractor
5 5 5 further agrees that (except where it has obtained identical certifications from proposed subcontractors
5 5 6 for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the
5 5 7 award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal
5 5 8 Opportunity clause; that it will retain such certifications in its files; and that it will forward the following
5 5 9 notice to such proposed subcontractors (except where the proposed subcontractors have submitted
5 6 0 identical certifications for specific periods):

5 6 1 FEDERAL LAWS

5 6 2 25. By entering into this Contract, the Contractor does not waive its rights to contest the

5 6 3 validity or application of, or compliance with, any federal law or regulation in connection with the
5 6 4 performance of the terms and conditions of this Contract , nor does the Contractor waive any rights it
5 6 5 may have to seek enforcement of obligations of the Secretary to provide water supplies to the
5 6 6 Contractor under federal law independent of this Contract; Provided, that the Contractor agrees to
5 6 7 comply with the terms and conditions of this Contract unless and until relief from or compliance with
5 6 8 application of such Federal law or regulation to the implementing provision of the Contract is granted by
5 6 9 a court of competent jurisdiction.

5 7 0 NOTICES

5 7 1 26. Any notice, demand, or request authorized or required by this contract shall be deemed
5 7 2 to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the
5 7 3 Area Manager, Bureau of Reclamation, North-Central Area Office, 16349 Shasta Dam Boulevard,
5 7 4 Shasta Lake CA 96019-8400, and on behalf of the United States, when mailed, postage prepaid, or
5 7 5 delivered to the California Department of Fish and Game, Legal Affairs Division, 1416 Ninth Street,
5 7 6 12th Floor, Sacramento, CA 95814. The designation of the addressee or the address may be changed
5 7 7 by notice given in the same manner as provided in this Article for other notices.

