

1 UNITED STATES
2 DEPARTMENT OF THE INTERIOR
3 BUREAU OF RECLAMATION
4 Central Valley Project, California
5

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

12 THIS CONTRACT, made this ___ day of _____, 20___, in
13 pursuance generally of the Act of June 17, 1902 (32 Stat. 388) as amended and supplemented;
14 the Act of August 27, 1954 (68 Stat. 879), as amended by the Act of November 8, 1978 (92 Stat.
15 3110, the Act of October 27, 1986 (100 Stat. 3050), and in particular Section 3406(d) of the
16 Central Valley Project Improvement Act (CVPIA), Title XXXIV of the Act of October 30, 1992
17 (106 Stat. 4706) all collectively hereinafter referred to as Federal Reclamation law, between THE
18 UNITED STATES OF AMERICA, represented by the Secretary of the Interior's duly authorized
19 representative acting pursuant to this Contract, hereinafter referred to as the Contracting Officer¹,
20 and the State of California, represented by the California Department of Fish and Game,
21 hereinafter referred to as the Contractor, a public agency of the State of California, duly
22 organized, existing, and acting pursuant to the laws thereof, with its principal place of business in
23 Sacramento, California;

¹ Confirm consistency with the LTRC prior to execution of this Contract.

24 WITNESSETH, That:

25 EXPLANATORY RECITALS

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

33 WHEREAS, the wetlands of the Central Valley have declined to approximately
34 300,000 acres and these remaining wetlands provide critical wildlife habitat and other
35 environmental benefits, and important recreational and educational opportunities; and

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

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

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45 WHEREAS, the directives of Section 3406(d) of the CVPIA have been carried
46 out through a cooperative and collaborative effort between the Bureau of Reclamation and Fish
47 and Wildlife Service, acting for the Secretary of the Interior, the California Department of Fish
48 and Game, the Grassland Water District, and the Central Valley Habitat Joint Venture partners;
49 and this cooperative and collaborative effort is expected to continue; and

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

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

60 WHEREAS, the Contracting Officer¹ and the Contractor are willing to
61 execute this Contract pursuant to subsection 3406(d) of the CVPIA on the terms and conditions
62 set forth below;

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

65 DEFINITIONS

¹ Confirm consistency with LTRC prior to execution of this Contract.

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66 1. When used herein unless otherwise distinctly expressed, or manifestly
67 incompatible with the intent of the parties or expressed in this contract, the term:

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

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

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

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

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

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

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87 For the purpose of determining a Critically Dry Year, the computed inflow
88 to Shasta Lake under present upstream development above Shasta Lake shall be used as the full
89 natural inflow to Shasta Lake. In the event that major construction completed above Shasta Lake
90 materially alters the present regimen of the stream systems contributing to Shasta Lake, the
91 computed inflow to Shasta Lake used to define a Critically Dry Year will be adjusted to eliminate
92 the effect of such material alterations.

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

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

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

102 (g) "Hydrologic Circumstances" shall mean the conditions described in
103 subdivision (d) of this Article;

104 (h) "Incremental Level 4 Water Supplies" shall mean the difference between
105 the Level 2 Water Supplies and the Level 4 Water Supplies depicted in Exhibit "B";

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

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108 (j) "Level 4 Water Supplies" shall mean the quantities of water referred to in
109 section 3406 (d)(2) of the CVPIA and depicted in Exhibit "B" of this Contract;

110 (k) "Non-Project Facilities" shall mean any non-Project water conveyance or
111 storage facilities;

112 (l) "Non-Project Water" shall mean water or water rights, other than "Project
113 Water", acquired, appropriated by, transferred to or assigned to the Contractor or, transferred to
114 the United States for delivery to one or more of the Contractor's Refuges, as identified in Exhibit
115 "B";

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

122 (n) "Project" shall mean the Central Valley Project owned by the United
123 States and managed by the Department of the Interior, Bureau of Reclamation;

124 (o) "Project Water" shall mean all water that is developed, diverted, stored, or
125 delivered by the Secretary in accordance with the statutes authorizing the Central Valley Project
126 and in accordance with the terms and conditions of applicable water rights acquired pursuant to
127 California law;

128 (p) "Refuge(s)" shall mean the lands in the units of the National Wildlife
129 Refuge System in the Central Valley of California; Gray Lodge, Los Banos, Volta, North

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130 Grasslands and Mendota state wildlife management areas; and the Grassland Resource
131 Conservation District all identified in the Refuge Water Supply Report and the land(s) identified
132 in the San Joaquin Basin Action Plan/Kesterson Mitigation Action Plan Report prepared by the
133 Bureau of Reclamation as set forth in Section 3406(d) of the CVPIA and/or as revised in
134 accordance with subdivision (b) of this Article;

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

139 (r) "Secretary" shall mean the Secretary of the Interior, a duly appointed
140 successor, or an authorized representative acting pursuant to any authority of the Secretary
141 through any agency of the Department of the Interior;

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

144 TERM OF CONTRACT

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

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

151 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

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152 3. (a) During each Year, consistent with State water rights, permits and licenses,
153 federal law, and subject to the provisions set forth in Articles 8 and 9 of this Contract, the
154 Contracting Officer shall, at the Point(s) of Delivery, make available and/or convey to the
155 Contractor the maximum quantities of Project Water and Non-Project Water, respectively,
156 required to provide each of the Refuges with the Level 2 Water Supplies set forth in Exhibit "B"
157 and the Incremental Level 4 Water Supplies set forth in Exhibit "B". The quantities of Level 2
158 Water Supplies and Incremental Level 4 Water Supplies made available and/or conveyed to the
159 Contractor shall be scheduled in accordance with the provisions of Article 4 of this Contract;
160 Provided, that in light of the fact that, Section 3406(d)(2) of the CVPIA provides that the
161 Incremental Level 4 Water Supplies shall be acquired in cooperation with the State of California
162 and in consultation with the Central Valley Habitat Joint Venture and other interests in
163 cumulating increments of not less than ten percent per annum, from the date the CVPIA was
164 enacted, through voluntary measures which include, but are not limited to, water conservation,
165 conjunctive use, purchase, lease, donations, or similar activities, or a combination of such
166 activities which do not require involuntary reallocation of Project yield, water being provided as
167 all or part of the Incremental Level 4 Water Supplies for each of the Refuges can be made
168 available only to the extent that the Contracting Officer is able to acquire the Incremental Level 4
169 Water Supplies from willing sources; Accordingly, the Contracting Officer shall use his/her best
170 efforts to acquire the Incremental Level 4 Water Supplies and shall coordinate acquisitions of
171 Level 4 Water Supplies with acquisitions of Environmental Water Account (EWA) water
172 pursuant to the Operating Principles Agreement, dated August 28, 2000 attached to the Record of
173 Decision for the CALFED Bay-Delta Program, dated August 28, 2000 and/or other acquisitions

174 of water for environmental purposes to ensure that acquisitions of Incremental Level 4 Water
175 Supplies have a priority at least equal to acquisitions of EWA and/or other environmental water
176 each Year. The Contracting Officer also agrees that the Interagency Refuge Management Team
177 shall be included among the interests consulted in acquiring Incremental Level 4 Water Supplies.

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

185 (c) The Contractor shall comply with requirements applicable to the
186 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution
187 of this Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973, as
188 amended, that are within the Contractor's legal authority to implement. The Contractor shall
189 comply with the limitations or requirements imposed by environmental documentation applicable
190 to the Contractor and within its legal authority to implement. Nothing herein shall be construed
191 to prevent the Contractor from challenging or seeking judicial relief in a court of competent
192 jurisdiction with respect to any Biological Opinion or other environmental documentation
193 referred to in this Article.

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

197 (e) In order to maximize water available to Refuges and better manage such
198 water, the Contractor may request the Contracting Officer's permission to reschedule a portion
199 of the Level 2 Water Supplies and/or a portion of the Incremental Level 4 Water Supplies made
200 available to the Contractor for use within the Contractor's Boundary during the current Year for
201 use within the subsequent Year. The Contracting Officer may permit such rescheduling in
202 accordance with applicable law, and the then-current applicable rescheduling guidelines and
203 policies. Upon execution of this Contract, the Contracting Officer shall have adopted
204 amendments to any applicable rescheduling guidelines and policies to provide for the
205 rescheduling of refuge water in accordance with this Article. After execution of this Contract
206 and annually thereafter, the Contracting Officer shall provide the Contractor with a copy of the
207 then-current rescheduling guidelines and policies.

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

213 TIME FOR DELIVERY OF WATER

214 4. (a) On or about February 20 of each Calendar Year, the Contracting Officer
215 shall provide the Contractor, in writing, with a preliminary forecast of whether the upcoming

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216 Year will be a Critically Dry Year; and, if a Critically Dry Year is forecast, the extent to which
217 Level 2 Water Supplies to be made available to the Contractor during the upcoming Year are to
218 be shorted pursuant to Article 9 of this Contract; and the amount of Incremental Level 4 Water
219 Supplies estimated to be made available to the Contractor pursuant to this Contract for the
220 upcoming Year. The forecast will be updated monthly, as necessary, based on then-current
221 hydrologic conditions. Upon the request of the Contractor, the Contracting Officer shall make
222 available to the Contractor the data on which the Contracting Officer relied to determine whether
223 the Year in question will or will not be a Critically Dry Year and to determine the amounts of
224 Level 2 Water Supplies and Incremental Level 4 Water Supplies to be made available to the
225 Contractor pursuant to this Contract during a Critically Dry Year.

226
227 (b) Based on the forecast(s) referred to in subdivision (a) of this Article, on or before
228 March 1 of each Calendar Year, the Contractor shall submit to the Contracting Officer a written
229 schedule, satisfactory to the Contracting Officer, showing both the monthly and annual quantities
230 of Level 2 Water Supplies and Incremental Level 4 Water Supplies to be delivered by the
231 Contracting Officer to each of the Refuges pursuant to this Contract. Each schedule shall be
232 updated on a monthly basis to reflect actual use and remaining estimated needs.

233 (c) In accordance with subdivision (a) of Article 3 of this Contract, the Contracting
234 Officer shall make available and/or convey Level 2 Water Supplies and Incremental Level 4
235 Water Supplies for diversion by the Contractor at the Points of Delivery in accordance with the
236 schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any written
237 revision(s) thereto, mutually agreed to by the Contracting Officer and the Contractor which are

238 submitted to the Contracting Officer within a reasonable time prior to the date(s) on which the
239 requested change(s) is/are to be implemented.

240 POINT OF DIVERSION, MEASUREMENT AND RESPONSIBILITY FOR DISTRIBUTION
241 OF WATER

242 5. (a) The original Point(s) of Delivery shall be established by written mutual
243 agreement of the Contractor and the Contracting Officer. Such Point(s) of Delivery may be
244 revised without amending this Contract upon written mutual agreement of the Contracting
245 Officer and the Contractor.

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

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

260 POOLING OF WATER SUPPLIES

261 6. (a) Whenever the maximum quantities of Level 2 Water Supplies and/or the
262 Incremental Level 4 Water Supplies depicted in Exhibit "B" are reduced pursuant to Article 9 of
263 this Contract, the remaining Level 2 Water Supplies and/or the Incremental Level 4 Water
264 Supplies may be pooled for use on other Refuge(s); Provided, that no individual Refuge shall
265 receive more Level 2 Water Supplies than would have been made available to it absent a
266 reduction pursuant to Article 9 of this Contract; or be reduced by more than twenty-five (25)
267 percent; Provided further, that the Contracting Officer makes a written determination that pooling
268 of water for use on other Refuge(s) would not have an adverse impact, that cannot be reasonably
269 mitigated, on Project operations, other Project Contractors, or other Project purposes; Provided
270 further, that the Contracting Officer determines that such reallocation is permitted under the
271 terms and conditions of the applicable underlying water right permit and/or license; and
272 Provided still further, that water made available under this contract may not be scheduled for
273 delivery outside the Contractor's Boundary without prior written approval of the Contracting
274 Officer.

275 (b) An Interagency Refuge Water Management Team, to be chaired by the
276 Contracting Officer and to be established upon execution of this Contract, shall be entitled to
277 collaboratively allocate the pooled water supplies and provide a schedule for delivery of the
278 pooled supplies to meet the highest priority needs of the Refuge(s) as depicted in Exhibit "B";

279 Provided, however, nothing in this Article is intended to require the Contractor to pool the water
280 supply provided for in this Contract. The Interagency Refuge Water Management Team shall be
281 composed of designees of the Bureau of Reclamation, the United States Fish and Wildlife
282 Service, the California Department of Fish and Game, and the Grassland Water District.

283 TRANSFERS, REALLOCATIONS OR EXCHANGES OF WATER

284 7. Subject to the prior written approval of the Contracting Officer, the Project Water
285 made available under this Contract may be transferred, reallocated or exchanged in that Year to
286 other Refuge(s) if such transfer, reallocation or exchange is requested by the Contractor and is
287 authorized by applicable Federal and California State laws, and then-current applicable
288 guidelines or regulations.

289 TEMPORARY REDUCTIONS--RETURN FLOWS

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

293 (b) The quantity of water to be delivered to the Contractor as herein provided
294 may be temporarily discontinued or reduced when investigation, inspection, maintenance, repair,
295 or replacement of any of the Project facilities and/or Non-Project Facilities or any part thereof
296 necessary for the delivery of water to the Contractor is required. The Contracting Officer shall
297 give and/or arrange to have the owner/operator of Non-Project Facilities give the Contractor due
298 written notice in advance of such temporary discontinuance or reduction, except in case of an
299 emergency, when no advance notice is possible, in which case the Contracting Officer shall

300 notify and/or arrange to have the owner/operator of the Non-Project Facilities notify the
301 Contractor of said discontinuance or reduction as soon as is feasible; Provided, that the
302 Contracting Officer shall use its best efforts to avoid any discontinuance or reduction in such
303 service. Upon resumption of service after such reduction or discontinuance, and if requested by
304 the Contractor, the Contracting Officer will make all reasonable efforts, consistent with other
305 obligations and operational constraints, to deliver the quantity of water which would have been
306 delivered hereunder in the absence of such discontinuance or reduction.

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

312 WATER SHORTAGE AND APPORTIONMENT

313 9. (a) In a Critically Dry Year, the Contracting Officer may temporarily reduce,
314 for that Year, the availability of Level 2 Water Supplies up to twenty-five (25) percent of the
315 maximum quantities set forth in Exhibit "B" whenever reductions due to Hydrologic
316 Circumstances are imposed upon agricultural deliveries of Project Water; Provided, that such
317 reductions shall not exceed in percentage terms the reductions imposed on agricultural service
318 contractors. The quantity of Non-Project Water available to one or more of the Refuges as part of
319 its/their Level 2 Water Supplies may be reduced by more than twenty-five (25) percent in Years
320 when the quantity of Project Water made available to the Contractor can be reduced by no more
321 than twenty-five (25) percent. In such cases, the Contracting Officer shall make up the supply

322 difference with water supplies provided by the Contracting Officer to ensure that Level 2 Water
323 Supplies from all sources are not reduced by more than twenty-five (25) percent.

324 (b) Reductions in the Level 2 Water Supplies to be made available to the
325 individual Refuge(s) pursuant to this Contract, shall be imposed only in a Critically Dry Year.
326 For the Incremental Level 4 Water Supplies provided from Non-Project Water and Project
327 Water, reductions shall be imposed in accordance with the priority or priorities that were applied
328 to such Non-Project Water and the shortages assigned to Project Water prior to its transfer or
329 acquisition as Incremental Level 4 Water Supplies.

330 RULES AND REGULATIONS

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

334 WATER AND AIR POLLUTION CONTROL

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

339 QUALITY OF WATER

340
341 12. (a) Consistent with other legal obligations, the water delivered by the
342 Contracting Officer to the Contractor pursuant to this Contract shall be of suitable quality to
343 maintain and improve wetland habitat areas and of comparable quality to water provided to other
344 Project purposes within the same geographical areas; Provided, that the Contracting Officer is
345 under no obligation to construct or furnish water treatment facilities to maintain or to improve

346 the quality of the water furnished to the Contractor pursuant to this contract. The quality of
347 Delivered Water may be monitored by the Contractor at the Point(s) of Delivery on an as needed
348 basis. Should the Contracting Officer, in consultation with the Contractor, determine that the
349 Level 2 Water Supplies and/or the Level 4 Water Supplies to be made available to the Contractor
350 pursuant to this Contract during all or any part of a Year will not be of the quality that the
351 Contractor feels is suitable to maintain and improve wetland habitat areas, the Contractor and the
352 Contracting Officer shall meet within 48 hours or at a time mutually agreeable to the parties and
353 determine the appropriate actions necessary to identify and address the source of the water
354 quality problems.

355 (b) The operation and maintenance of Project facilities shall be performed in
356 such manner as is practicable to maintain the quality of raw water made available through such
357 facilities at the highest level reasonably attainable as determined by the Contracting Officer. The
358 Contractor shall be responsible for compliance with all State of California and Federal water
359 quality standards and directives applicable to surface return flows arising from water conveyed to
360 the Refuges pursuant to this Contract. This Contract does not create any obligation on the
361 Contracting Officer to provide drainage services.

362 USE OF NON-PROJECT FACILITIES FOR WATER DELIVERY

363 13. Any use of Non-Project Facilities, including use of State Water Project facilities
364 pursuant to Joint Point of Diversion or other use of State Water Project facilities to deliver the
365 water supplies provided for in the Contract, or any agreement for the use of such Non-Project
366 Facilities, shall in no way alter the obligation of the Contracting Officer to make available and
367 deliver water supplies in accordance with all of the terms and conditions of this Contract. In

368 addition, any costs incurred in the use of Non-Project Facilities to deliver water supplies pursuant
369 to this Contract shall be paid for in accordance with Section 3406(d)(3) of the CVPIA.

370 OPINIONS AND DETERMINATIONS

371 14. (a) Where the terms of this Contract provide for actions to be based upon the
372 opinion or determination of either party to this Contract, said terms shall not be construed as
373 permitting such action to be predicated upon opinions or determinations that are arbitrary,
374 capricious or unreasonable. Both parties, notwithstanding any other provisions of this Contract,
375 expressly reserve the right to seek relief from and appropriate adjustment for any such arbitrary,
376 capricious, or unreasonable opinion or determination. Each opinion or determination by either
377 party shall be provided in a timely manner. Nothing in this subdivision of this Article is intended
378 to or shall affect or alter the standard of judicial review applicable under federal law to any
379 opinion or determination implementing a specific provision of federal law embodied in statute or
380 regulation.

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

386 EQUAL OPPORTUNITY

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

388 (a) The Contractor will not discriminate against any employee or applicant for
389 employment because of race, color, religion, sex, or national origin. The Contractor will take
390 affirmative action to ensure that applicants are employed, and that employees are treated during

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391 employment, without regard to their race, color, religion, sex, or national origin. Such action
392 shall include, but not be limited to, the following: Employment, upgrading, demotion, or
393 transfer; recruitment or recruitment advertising; layoff or termination, rates of payment or other
394 forms of compensation; and selection for training, including apprenticeship. The Contractor
395 agrees to post in conspicuous places, available to employees and applicants for employment,
396 notices to be provided by the Contracting Officer setting forth the provisions of this
397 nondiscrimination clause.

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

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

408 (d) The Contractor will comply with all provisions of Executive Order No.
409 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of
410 the Secretary of Labor.

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

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

423 (g) The Contractor will include the provisions of paragraphs (a) through (g) in
424 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
425 Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such
426 provisions will be binding upon each subcontractor or vendor. The Contractor will take such
427 action with respect to any subcontract or purchase order as may be directed by the Secretary of

428 Labor as a means of enforcing such provisions, including sanctions for noncompliance:
429 Provided, however, That in the event the Contractor becomes involved in, or is threatened with,
430 litigation with a subcontractor or vendor as a result of such direction, the Contractor may request
431 the United States to enter into such litigation to protect the interests of the United States.

432 COMPLIANCE WITH CIVIL RIGHTS LAWS
433 AND REGULATIONS

434 16. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
435 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the
436 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights
437 laws, as well as with their respective implementing regulations and guidelines imposed by the
438 U.S. Department of the Interior and/or Bureau of Reclamation.

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

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

453 WATER CONSERVATION

454 17. (a) The Contractor shall prepare individual refuge wetland habitat water
455 management plan(s) in order to ensure the effective use of water supplies to meet wetland
456 resource needs and to meet the objectives of the Central Valley Habitat Joint Venture and the
457 purposes of the CVPIA to maintain and improve certain Central Valley wetland habitat areas.
458 Criteria to prepare and evaluate refuge wetland habitat water management plan(s) shall be

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459 developed by the Interagency Refuge Water Management Team within one (1) year of the
460 execution of this Contract, and reviewed and updated every five (5) years thereafter taking into
461 consideration the provisions of the Interagency Coordinated Program Task Force report dated
462 June 1998. The criteria shall include economically feasible water management measures which
463 can improve the Contractors' efficient use of water in a manner appropriate for wetland and
464 wildlife management, and shall also include time schedules for meeting the water use efficiency
465 and conservation objectives. The criteria shall grant substantial deference to on-going state
466 efforts related to wetlands water management and shall take into account the unique requirements
467 associated with water use for the maintenance and enhancement of wetland and wildlife habitat.
468 The Contractor shall make all reasonable efforts, consistent with appropriate limitations
469 recognized in Article 19 of this Contract, to complete the original wetland habitat water
470 management plan(s) within one (1) year of the establishment of the criteria. The Contracting
471 Officer will review and determine if the wetland habitat water management plan(s) meet the
472 established criteria for evaluating said plan within ninety (90) days of receipt of each plan.

473 (b) Prior to the Contractor being afforded opportunities such as pooling
474 and rescheduling of water supplies pursuant to Articles 3 and 6 of this Contract, the Contractor
475 must be implementing a wetland habitat water management plan that has been determined by the
476 Contracting Officer to meet the established criteria developed pursuant to subdivision (a) of this
477 Article for preparing and evaluating said plan. Continued pooling and rescheduling benefits
478 pursuant to Articles 3 and 6 of this Contract shall be contingent upon the Contractor's continued
479 implementation of such wetland habitat water management plans. In the event the Contracting
480 Officer determines the Contractor is unable to implement its wetland habitat water management

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481 plan, due to circumstances beyond its control, the pooling and rescheduling benefits of Articles 3
482 and 6 of this Contract shall be continued so long as the Contractor diligently works with the
483 Contracting Officer to obtain such determination at the earliest practicable date and thereafter
484 the Contractor begins implementing its wetland habitat water management plan immediately
485 after the circumstances preventing implementation have ceased.

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

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

500 (e) At five (5) year intervals, the Contractor shall revise its wetland habitat
501 water management plan(s), as necessary, to reflect the then-current criteria for preparing and
502 evaluating said plans and submit such revised plan(s). Upon completion of such revised plan(s),

503 the Contractor shall submit such revised plan(s) to the Contracting Officer for review and so the
504 Contracting Officer can determine whether such plan(s) meet the then-current criteria.

505 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

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

511 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

512 19. (a) The expenditure or advance of any money or the performance of any
513 obligation of the United States under this contract shall be contingent upon appropriation or
514 allotment of funds. Absence of appropriation or allotment of funds shall not relieve the
515 Contractor from any obligations under this contract. No liability shall accrue to the United States
516 in case funds are not appropriated or allotted.

517 (b) The expenditure of any funds and the performance of any terms of this contract by
518 the Contractor may require appropriation of funds or the allotment of funds by the State
519 Legislature and shall be contingent upon such appropriation or allotment being made. The failure
520 of the State Legislature to appropriate funds or the absence of any allotment of funds shall not
521 impose any liability on the State of California.

522 BOOKS, RECORDS, AND REPORTS

523 20. (a) The Contractor shall establish and maintain accounts and other books and
524 records pertaining to administration of the terms and conditions of this contract, including: the
525 Contractor's financial transactions, water supply data, and right-of-way agreements; and other
526 matters that the Contracting Officer may require. Reports thereon shall be furnished to the

527 Contracting Officer in such form and on such date or dates as the Contracting Officer may
528 require. Subject to applicable Federal laws and regulations, each party to this contract shall have
529 the right during office hours to examine and make copies of the other party's books and records
530 relating to matters covered by this contract.

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

536 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

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

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

543 (c) The Contracting Officer shall not unreasonably condition or withhold
544 his/her approval of any proposed assignment.

545 LIABILITY

546 22. (a) The Contractor shall not assert that the United States, its officers, agents
547 and employees are responsible for legal liability for damages of any nature whatsoever arising

548 out of any actions or omissions by the Contractor, its officers, agents and employees in the
549 performance of this Contract.

550 (b) The United States shall not assert that the Contractor, its officers, agents
551 and employees are responsible for legal liability for damages of any nature whatsoever arising
552 out of any actions or omissions by the United States, its officers, agents and employees in the
553 performance of this Contract.

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

560 OFFICIALS NOT TO BENEFIT

561 23. No Member of or Delegate to Congress, Resident Commissioner, or official of the
562 Contractor shall benefit from this contract.

563 CERTIFICATION OF NONSEGREGATED FACILITIES

565 24. The Contractor hereby certifies that it does not maintain or provide for its
566 employees any segregated facilities at any of its establishments, and that it does not permit its
567 employees to perform their services at any location, under its control, where segregated facilities
568 are maintained. It certifies further that it will not maintain or provide for its employees any
569 segregated facilities at any of its establishments, and that it will not permit its employees to
570 perform their services at any location, under its control, where segregated facilities are
571 maintained. The Contractor agrees that a breach of this certification is a violation of the Equal
572 Opportunity clause in this contract. As used in this certification, the term "segregated facilities"
573 means any waiting rooms, work areas, restrooms, and washrooms, restaurants and other eating

574 areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking
575 fountains, recreation or entertainment areas, transportation, and housing facilities provided for
576 employees which are segregated by explicit directive or are in fact segregated on the basis of
577 race, creed, color, or national origin, because of habit, local custom, or otherwise. The
578 Contractor further agrees that (except where it has obtained identical certifications from proposed
579 subcontractors for specific time periods) it will obtain identical certifications from proposed
580 subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from
581 the provisions of the Equal Opportunity clause; that it will retain such certifications in its files;
582 and that it will forward the following notice to such proposed subcontractors (except where the
583 proposed subcontractors have submitted identical certifications for specific periods):

584 FEDERAL LAWS

585 25. By entering into this Contract, the Contractor does not waive its rights to contest
586 the validity or application of, or compliance with, any federal law or regulation in connection
587 with the performance of the terms and conditions of this Contract , nor does the Contractor waive
588 any rights it may have to seek enforcement of obligations of the Secretary to provide water
589 supplies to the Contractor under federal law independent of this Contract; Provided, that the
590 Contractor agrees to comply with the terms and conditions of this Contract unless and until relief
591 from or compliance with application of such Federal law or regulation to the implementing
592 provision of the Contract is granted by a court of competent jurisdiction.

593 NOTICES

594 26. Any notice, demand, or request authorized or required by this contract shall be
595 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or
596 delivered to the Area Manager _____, and on
597 behalf of the United States, when mailed, postage prepaid, or delivered to
598 the _____. The designation of the addressee or the address may be
599 changed by notice given in the same manner as provided in this Article for other notices.

600 IN WITNESS WHEREOF, the parties hereto have executed this contract as of the day
601 and year first above written.

602 THE UNITED STATES OF AMERICA

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603 By: _____
604 Regional Director, Mid-Pacific Region
605 Bureau of Reclamation

606 (SEAL) CALIFORNIA DEPARTMENT OF FISH & GAME

607 By: _____
608 Director

609 Attest

610 By: _____
611 Secretary