

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

5 CONTRACT BETWEEN THE UNITED STATES  
6 AND  
7 STATE OF CALIFORNIA  
8 FOR WATER SUPPLY  
9 TO  
10 LOS BANOS, VOLTA, NORTH GRASSLANDS AND MENDOTA WILDLIFE AREAS

11 THIS CONTRACT, made this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, in  
12 pursuance generally of the Act of June 17, 1902 (32 Stat. 388) as amended and supplemented;  
13 the Act of August 27, 1954 (68 Stat. 879), as amended by the Act of November 8, 1978 (92 Stat.  
14 3110, the Act of October 27, 1986 (100 Stat. 3050), and in particular Section 3406(d) of the  
15 Central Valley Project Improvement Act (CVPIA), Title XXXIV of the Act of October 30, 1992  
16 (106 Stat. 4706) all collectively hereinafter referred to as Federal Reclamation law, between THE  
17 UNITED STATES OF AMERICA, represented by the Secretary of the Interior's duly authorized  
18 representative acting pursuant to this Contract, hereinafter referred to as the Contracting Officer<sup>1</sup>,  
19 and the State of California, represented by the California Department of Fish and Game,  
20 hereinafter referred to as the Contractor, a public agency of the State of California, duly  
21 organized, existing, and acting pursuant to the laws thereof, with its principal place of business in  
22 Sacramento, California;

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<sup>1</sup> Confirm consistency with the LTRC prior to execution of this Contract.

23 WITNESSETH, That:

24 EXPLANATORY RECITALS

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

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

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

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

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

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

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

59 WHEREAS, the Contracting Officer<sup>1</sup> and the Contractor are willing to  
60 execute this Contract pursuant to subsection 3406(d) of the CVPIA on the terms and conditions  
61 set forth below;

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

64 DEFINITIONS

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<sup>1</sup> Confirm consistency with LTRC prior to execution of this Contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

143 TERM OF CONTRACT

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

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

150 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

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

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

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

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

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

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

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

212 TIME FOR DELIVERY OF WATER

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

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

225

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

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

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

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

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

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

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

259 POOLING OF WATER SUPPLIES

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

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

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

282 TRANSFERS, REALLOCATIONS OR EXCHANGES OF WATER

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

288 TEMPORARY REDUCTIONS--RETURN FLOWS

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

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

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

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

311 WATER SHORTAGE AND APPORTIONMENT

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

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

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

329 RULES AND REGULATIONS

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

333 WATER AND AIR POLLUTION CONTROL

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

338 QUALITY OF WATER

339  
340 12. (a) Consistent with other legal obligations, the water delivered by the  
341 Contracting Officer to the Contractor pursuant to this Contract shall be of suitable quality to  
342 maintain and improve wetland habitat areas and of comparable quality to water provided to other  
343 Project purposes within the same geographical areas; Provided, that the Contracting Officer is  
344 under no obligation to construct or furnish water treatment facilities to maintain or to improve

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

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

361 USE OF NON-PROJECT FACILITIES FOR WATER DELIVERY

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

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

369 OPINIONS AND DETERMINATIONS

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

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

385 EQUAL OPPORTUNITY

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

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

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

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

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

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

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

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

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

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

431 COMPLIANCE WITH CIVIL RIGHTS LAWS  
432 AND REGULATIONS

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

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

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

452 WATER CONSERVATION

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

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

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

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

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

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

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

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

504 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

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

510 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

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

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

521 BOOKS, RECORDS, AND REPORTS

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

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

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

535 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

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

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

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

544 LIABILITY

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

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

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

559 OFFICIALS NOT TO BENEFIT

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

562  
563 CERTIFICATION OF NONSEGREGATED FACILITIES

564 24. The Contractor hereby certifies that it does not maintain or provide for its  
565 employees any segregated facilities at any of its establishments, and that it does not permit its  
566 employees to perform their services at any location, under its control, where segregated facilities  
567 are maintained. It certifies further that it will not maintain or provide for its employees any  
568 segregated facilities at any of its establishments, and that it will not permit its employees to  
569 perform their services at any location, under its control, where segregated facilities are  
570 maintained. The Contractor agrees that a breach of this certification is a violation of the Equal  
571 Opportunity clause in this contract. As used in this certification, the term "segregated facilities"  
572 means any waiting rooms, work areas, restrooms, and washrooms, restaurants and other eating  
573 areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking  
574 fountains, recreation or entertainment areas, transportation, and housing facilities provided for  
575 employees which are segregated by explicit directive or are in fact segregated on the basis of  
576 race, creed, color, or national origin, because of habit, local custom, or otherwise. The

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577 Contractor further agrees that (except where it has obtained identical certifications from proposed  
578 subcontractors for specific time periods) it will obtain identical certifications from proposed  
579 subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from  
580 the provisions of the Equal Opportunity clause; that it will retain such certifications in its files;  
581 and that it will forward the following notice to such proposed subcontractors (except where the  
582 proposed subcontractors have submitted identical certifications for specific periods):

583 FEDERAL LAWS

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

592 NOTICES

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

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

601 THE UNITED STATES OF AMERICA

602 By: \_\_\_\_\_  
603 Regional Director, Mid-Pacific Region

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604

Bureau of Reclamation

605 (SEAL)

CALIFORNIA DEPARTMENT OF FISH & GAME

606

By: \_\_\_\_\_

607

Director

608 Attest

609 By: \_\_\_\_\_

610 Secretary