
DRAFT SUPPLEMENTAL ENVIRONMENTAL ASSESSMENT

*3-MONTH EXTENSION OF THE 2010 WARREN ACT CONTRACT AND LICENSE
FOR DELTA LANDS RECLAMATION DISTRICT NO. 770
Supplementing EA-09-177*

Appendix A
Executed 2010 Warren Act Contract

April 2011



IN REPLY REFER TO:

SCC-440
WTR-4.00

United States Department of the Interior

BUREAU OF RECLAMATION
South-Central California Area Office
1243 N Street
Fresno, California 93721-1813



JUL -2 2010

Mr. Walter F. Bricker
Trustee
Delta Lands Reclamation District No. 770
P. O. Box 877
Corcoran, CA 93212

Subject: Transmittal of Executed Temporary Conveyance Contract for Conveyance of
Non-Project Water Pursuant to Warren Act of 1911 – Friant Division - Central
Valley Project

Dear Mr. Bricker:

Enclosed is the executed temporary contract (Contract) for Delta Lands Reclamation District No. 770 (District). The subject (Contract) provides for the introduction of potentially damaging flood flows (Non-Project Water) from the Kings River, St. John's River (a channel of the Kaweah River), and Tule River into the Friant-Kern Canal to help alleviate damage to farmland, property and crops, and risk to public safety within the District's boundaries. The District will either have the Friant Division Contractors divert the Non-Project Water on the District's behalf or the Non-Project Water will be discharged into the Kern River on the District's behalf. As discussed, Article 3 of the Contract indicates the term is from July 1, 2010 through May 31, 2011.

In Exhibit "B" of the Contract, the 2010 rates are shown. However, the rates provided are not inclusive of the rate for operation and maintenance of the Friant Division facilities by the Operating Non-Federal Entity (ONFE). Therefore, pursuant to Article 5, it will be necessary that you contact the Friant Water Authority for the appropriate ONFE conveyance rate.

Pursuant to Article 3 (b) of your Contract, please complete a water delivery schedule for your District and submit copies of the associated Reclamation Payment Recaps (Recaps) to Moses Prieto of this office at mprieto@usbr.gov.

Pursuant to Article 6(b), please send the full payment and associated Recaps for the amount of water scheduled to:

Bureau of Reclamation – Mid Pacific
P.O. Box 301502
Los Angeles, California 90030-1502

If you have any questions, please contact me at 559-487-5041 or at TTY 800-735-2929 for the hearing impaired. My electronic mailing address is vcurley@usbr.gov.

Sincerely,

Valerie J. Curley

Valerie J. Curley
Supervisory Repayment Specialist

Enclosure

cc: Mr. Ronald D. Jacobsma
General Manager
Friant Water Authority
854 North Harvard Avenue
Lindsay, California 93247-1715
(w/copy of enclosure)

bc: MP-440 (KHall) w/2 blue bound originals
MP-3400 (YWesson) w/copy of enclosure
CVO-100 (SSmith) w/copy of enclosure
SCC-440 (VCurley), SCC-446 (GBushard), SCC-444 (MPrieto)
(all w/copy of enclosure)

WBR:VCurley:TDishion:7/2/2010 12:14 PM:559-487-5195

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

TEMPORARY CONTRACT BETWEEN THE UNITED STATES
AND DELTA LANDS RECLAMATION DISTRICT NO. 770
PROVIDING FOR CONVEYANCE OF NON-PROJECT WATER

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

TEMPORARY CONTRACT BETWEEN THE UNITED STATES
AND
DELTA LANDS RECLAMATION DISTRICT NO. 770
PROVIDING FOR CONVEYANCE OF NON-PROJECT WATER

THIS CONTRACT, made this 1st day of July, 2010,

pursuant to the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, including the Act of February 21, 1911 (36 Stat. 925), and Section 305 of the Reclamation States Emergency Drought Relief Act of 1991, enacted March 5, 1992 (106 Stat. 59), all collectively hereinafter referred to as the Federal Reclamation laws, between the UNITED STATES OF AMERICA, hereinafter referred to as the United States, represented by the officer executing this Contract, hereinafter referred to as the Contracting Officer, and DELTA LANDS RECLAMATION DISTRICT NO. 770, hereinafter referred to as the Contractor;

WITNESSETH, That:

EXPLANATORY RECITALS

[1st] WHEREAS, the United States has constructed and is operating the Central Valley Project, California, for diversion, storage, carriage, distribution and beneficial use, for flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and restoration, generation and distribution of electric energy, salinity control, navigation and

other beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and the San Joaquin River and their tributaries; and

[2nd] WHEREAS, pursuant to the Act of February 21, 1911 (36 Stat. 925), commonly referred to as the Warren Act, the Secretary of the Interior may enter into contracts for the impoundment, storage, and carriage of Non-Project Water to the extent the Project facilities have Excess Capacity, and any such contracts shall be upon terms and conditions as the Secretary determines to be just and equitable; and

[3rd] WHEREAS, the Contractor is responsible for protecting lands within its boundaries from floods, and during periods when, flood waters from the Kings, St. John's (a channel of the Kaweah River), and/or Tule Rivers can reach the Contractor's boundaries, causing damage to farm land or other property and/or jeopardizing public safety; and

[4th] WHEREAS, beginning in 1978, through a series of letter agreements and contracts, made pursuant to the Warren Act, the Contractor has used Excess Capacity in Project Facilities to convey potentially damaging flood flows of Non-Project Water from the Kings River, St. John's River (a channel of the Kaweah River), and Tule River, to help alleviate damage to farm land, property and crops, and risk to public safety within the Contractor's boundaries; and

[5th] WHEREAS, the Contractor's most recent Warren Act contract, Contract No. 08-WC-20-3678, dated July 11, 2008, expired February 28, 2009, and the Contractor desires to enter into a long-term Warren Act contract to use Excess Capacity in the Friant Division Project Facilities to divert Non-Project Water from said Rivers during periods of excessive rainfall; and

[6th] WHEREAS, until the long-term Warren Act contract can be executed, it is the intention of the parties hereto to enter into a temporary contract pursuant to the Warren Act for use of Excess Capacity in the Project Facilities for the conveyance of Non-Project Water from said Rivers; and

[7th] WHEREAS, to the extent Excess Capacity is available, the United States is willing to convey said Non-Project Water through the Project Facilities in accordance with the terms and conditions hereinafter stated.

NOW, THEREFORE, in consideration of the covenants herein contained, the parties agree as follows:

DEFINITIONS

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

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

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

(c) Omitted

(d) Omitted

(e) "Excess Capacity" shall mean capacity in the Project Facilities in excess of that needed to meet the Project's authorized purposes, as determined solely by the Contracting Officer, which may be made available to convey Non-Project Water;

(f) Omitted

(g) Omitted

(h) Omitted

(i) Omitted

(j) Omitted

(k) “Non-Project Water” shall mean water acquired by or available to the Contractor from the source(s) identified in Exhibit C that has not been appropriated by the United States;

(l) “Operating Non-Federal Entity” shall mean the non-federal entity that has the obligation pursuant to a separate agreement with the United States to operate and maintain all or a portion of the Project Facilities, and which may have funding obligations with respect thereto;

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

(n) “Project Facilities” shall mean the Friant-Kern Canal and associated facilities, constructed as features of the Friant Division, Central Valley Project;

(o) “Rates” shall mean the amount to be paid to the United States by the Contractor, as set forth in Exhibit B, for the use of Excess Capacity in the Project Facilities made available pursuant to this Contract;

(p) Omitted;

(q) “Secretary” shall mean the Secretary of the Interior, a duly appointed successor, or an authorized representative acting pursuant to any authority of the Secretary and through any agency of the Department of the Interior; and

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

(s) "Friant Division Contractors" shall mean those contractors situated within the Friant Division permitted place of use and possessing a long-term water service contract, repayment contract, or assignment contract with Reclamation.

TERM OF CONTRACT

2. This Contract shall become effective July 1, 2010 and shall remain in effect through May 31, 2011: *Provided*, That upon written notice to the Contractor, this Contract may be terminated by the Contracting Officer at an earlier date, if the Contracting Officer determines that the Contractor has not been complying with one or more terms or conditions of this Contract.

INTRODUCTION, CONVEYANCE, AND DISCHARGE OF NON-PROJECT WATER

3. (a) During the term of this Contract, the Contractor may introduce up to an aggregate total of 250,000 acre-feet of Non-Project Water from the source(s) identified in Exhibit C into Project Facilities at milepost 29.10 for Kings River water, at milepost 69.45 for St. Johns River water (a channel of the Kaweah River), and at milepost 95.67 for Tule River water. The United States or the designated Operating Non-Federal Entity shall convey the Non-Project Water through Excess Capacity in the Project Facilities from said point(s) of introduction for diversion on behalf of the Contractor to Friant Division Contractors or discharged through existing gates at the terminus of the Project Facilities into the Kern River on behalf of the Contractor: *Provided*, That the quantity of Non-Project Water to be diverted by the Friant

Division Contractors or discharged on behalf of the Contractor from Project Facilities shall not exceed the quantity of Non-Project Water previously introduced into the Project Facilities by the Contractor at said point(s) of introduction, less 5 percent for conveyance losses.

(b) Prior to the introduction of Non-Project Water into the Project Facilities, the Contractor shall submit a schedule to the Contracting Officer and the designated Operating Non-Federal Entity showing the quantities of Non-Project Water to be introduced into the Project Facilities, and the desired time or times for conveyance of said Non-Project Water for diversion by Friant Division Contractors and/or discharge into the Kern River: Provided, That the Contractor is not required to initially schedule conveyance of the maximum quantity of Non-Project Water for which the Contractor desires conveyance during the term of this Contract. The initial schedule and any revision(s) thereof shall be in a form acceptable to the Contracting Officer and shall be submitted at such times and in such manner as determined by the Contracting Officer. The Contractor shall not introduce Non-Project Water into the Project Facilities unless and until the schedule and any revision(s) thereof have been approved by the Contracting Officer and the Operating Non-Federal Entity and all the provisions of Exhibit C are met. Introduction of waters is subject to the Operating Non-Federal Entity verifying adequate means for diversion of the introduced water to the Friant Division Contractors and/or for discharge to the Kern River. Discharge of flows to the Kern River will be subject to approval by the Kern Rivermaster acknowledging available channel capacity and acceptance of the Non-Project Water.

c) All Non-Project Water must be diverted from or discharged from the Project Facilities up to 30 days from the date of introduction and/or upon expiration or termination of this Contract whichever is sooner.

(d) Unless otherwise agreed to in writing by the Contracting Officer, the Non-Project Water shall be introduced into and conveyed on behalf of the Contractor through existing Project Facilities. Temporary inflow or pumping facilities required to effectuate the introduction of Non-Project Water into the Project Facilities and/or the diversion or discharge of the Non-Project Water on behalf of the Contractor from the Project Facilities, shall be the Contractor's responsibility, at its own cost and expense to obtain all necessary rights-of-way for such facilities, including the appropriate right-of-use agreement(s) or other authorizations issued by the United States for any such facilities located on right-of-way for existing Project Facilities. The Contractor, at its own cost and expense, shall be responsible for providing, installing, operating, maintaining, repairing, and replacing said inflow and pumping facilities. The Contractor hereby grants to the Contracting Officer and the Operating Non-Federal Entity access to all temporary inflow and pumping facilities installed by the Contractor.

(e) The introduction, conveyance, diversion, and/or discharge of Non-Project Water pursuant to this Contract will not be supported with Project-use energy. If electrical power is required to pump the Non-Project Water into, through or from the Project Facilities, the Contractor shall be responsible for the acquisition and payment of all electrical power and associated transmission service charges.

(f) The introduction of Non-Project Water into the Project Facilities by the Contractor shall be conditioned upon compliance by the Contractor with the environmental measures described in the environmental documentation prepared in connection with the execution of this Contract and with the terms of the applicable operations procedures approved by the Contracting Officer.

162 MEASUREMENT OF NON-PROJECT WATER

163 4. (a) All Non-Project Water shall be measured and recorded at the point(s) of
164 introduction and point(s) of delivery established pursuant to Article 3 herein with measurement
165 devices acceptable to the Contracting Officer and the methods used to make such measurements
166 shall be in accordance with sound engineering practices.

167 (b) Unless otherwise agreed to in writing by the Contracting Officer, the
168 Contractor, at its own cost and expense, shall be responsible for providing, installing, operating,
169 maintaining, repairing, and replacing all measurement devices required under this Contract in
170 accordance with Short-Term License Contract Number 10-LC-20-0258 dated May 31, 2010, or
171 other requisite authorization(s) issued by the United States. The Contractor shall be responsible
172 for all costs associated with the issuance of such Short-Term License and authorization(s).

173 (c) The Contractor shall maintain accurate records of the quantity of
174 Non-Project Water, expressed in acre-feet, introduced into the Project Facilities at said
175 authorized point(s) of introduction and shall provide such records to the Contracting Officer and
176 the Operating Non-Federal Entity at such times and in such manner as determined by the
177 Contracting Officer.

178 (c.1) The Contractor shall provide, to the Contracting Officer and the Operating
179 Non-Federal Entity by July 31, 2011, a Floodwater Report and Delivery Plan accounting for the
180 Non-Project Water pumped into and/or discharged from the Project Facilities. The report shall be
181 in a form acceptable to the Contracting Officer.

182 (c.2) The Operating Non-Federal Entity shall be responsible for measuring the
183 quantity of Non-Project Water either diverted from the Project Facilities by Friant Division
184 Contractors or discharged into the Kern River through the existing gate at the terminus of the

Project Facilities and shall maintain accurate records of such diversions and/or discharges of Non-Project Water and shall provide such records to the Contracting Officer and the Contractor monthly and otherwise upon request.

(d) Upon the request of either party to this Contract, the Contracting Officer shall investigate, or cause to be investigated by the Operating Non-Federal Entity, the accuracy of all measurements of Non-Project Water required by this Contract. If the investigation discloses errors in the recorded measurements, such errors shall be promptly corrected. If the investigation discloses that measurement devices are defective or inoperative, the Contracting Officer shall take any necessary actions to ensure that the responsible party makes the appropriate adjustments, repairs, or replacements to the measurement devices. In the event the Contractor, as the responsible party, neglects or fails to make such adjustments, repairs, or replacements to the measurement devices within a reasonable time and to the reasonable satisfaction of the Contracting Officer, the Contracting Officer may cause such adjustments, repairs, or replacements to be made and the costs thereof shall be charged to the Contractor and the Contractor shall pay said charges to the United States immediately upon receipt of a detailed billing therefore. For any period of time during which accurate measurements of the Non-Project Water have not been made, the Contracting Officer shall consult with the Contractor and the Operating Non-Federal Entity prior to making a determination of the quantity of Non-Project Water delivered for that period of time and such determination by the Contracting Officer shall be final and binding on the Contractor.

OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

5. (a) The operation and maintenance of the Project Facilities to be used to convey, divert and/or discharge the Non-Project Water on behalf of the Contractor, and

responsibility for funding a portion of the costs of such operation and maintenance, have been transferred from the United States to the Friant Water Authority, the designated Operating Non-Federal Entity, pursuant to a separate agreement, identified as Contract No. 8-07-20-X0356, dated March 1, 1998, as amended and assigned. That separate agreement shall not interfere with or affect the rights or obligations of the Contractor or the United States hereunder.

(b) The Contractor shall pay directly to the Friant Water Authority, or to any successor approved by the Contracting Officer, under the terms and conditions of the separate agreement described in subdivision (a) of this Article, all rates, charges, or assessments of any kind, including any assessment for reserve funds, that the Friant Water Authority or such successor determines, sets, or establishes for the operation and maintenance of the portion of the Project Facilities operated and maintained by the Friant Water Authority or such successor.

(c) For so long as the operation and maintenance of any portion of the Project Facilities used to convey, divert, and/or discharge the Non-Project Water on behalf of the Contractor is performed by the Friant Water Authority, or any successor thereto, the Contracting Officer shall adjust those components of the Rates for the Non-Project Water conveyed, diverted, and/or discharged under this Contract by deleting the costs associated with the activity being performed by the Friant Water Authority or its successor.

(d) In the event the United States reassumes operation and maintenance of any portion of the Project Facilities from the Operating Non-Federal Entity, the Contracting Officer shall so notify the Contractor, in writing, and shall revise the Rates on Exhibit B to include the costs associated with the operation and maintenance activities reassumed by the United States. The Contractor shall, thereafter, in the absence of written notification from the Contracting

Officer to the contrary, pay the Rates, specified in the revised Exhibit B directly to the United States in compliance with Article 6 of this Contract.

PAYMENTS AND ADJUSTMENTS

6. (a) Upon execution of this Contract by the Contractor, the Contractor shall pay to the United States the sum of \$500, which shall constitute an administrative charge hereunder.

(b) At the time the Contractor submits a schedule, or any revision(s) thereof pursuant to subdivision (c) of Article 3 herein, the Contractor shall make an advance payment to the United States equal to the total amount payable pursuant to the applicable Rates shown on Exhibit B for each acre-foot of Non-Project Water to be introduced into the Project Facilities. Non-Project Water shall not be introduced into Project Facilities by the Contractor prior to such payment being received by the United States.

(c) Omitted

(d) The amount of any overpayment by the Contractor by reason of the quantity of Non-Project Water introduced into the Project Facilities and conveyed pursuant to this Contract, as conclusively determined by the Contracting Officer, having been less than the quantity which the Contractor otherwise under the provisions of this Contract would have been required to pay for, shall be applied first to any accrued indebtedness arising out of this Contract then due and owing to the United States by the Contractor. Any amount of such overpayment then remaining shall be refunded to the Contractor: Provided, however, That no refund shall be made by the United States to the Contractor for any quantity of Non-Project Water deemed to be unused water donated to the United States for Project purposes pursuant to subdivision (d) of

Article 3 herein nor for the administrative charge required pursuant to subdivision (a) of this Article.

(e) All payments made by the Contractor pursuant to subdivision (b) of this Article shall be covered into the Reclamation Fund pursuant to Section 3 of the Act of February 21, 1911 (36 Stat. 925).

(f) The payment of the Rates set forth in this Article for the use of Excess Capacity are exclusive of O&M costs to be paid directly to the Operating Non-Federal Entity by the Contractor, and any additional charges that the Contractor may assess its water users. In accordance with the Act of February 21, 1911 (36 Stat. 925), the Contractor may not impose on its water users any charge for the use of Excess Capacity that exceeds the amount paid to the United States and to the Operating Non-Federal Entity; Provided, That the Contractor may also charge its water users such additional amounts as are necessary to cover the Contractor's reasonable administrative costs in contracting with the United States for the use of Excess Capacity in the Project Facilities.

MEDIUM FOR TRANSMITTING PAYMENTS

7. (a) All payments from the Contractor to the United States under this Contract shall be by the medium requested by the United States on or before the date payment is due. The required method of payment may include checks, wire transfers, or other types of payment specified by the United States.

272 (b) Upon execution of the Contract, the Contractor shall furnish the
273 Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose
274 for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising
275 out of the Contractor's relationship with the United States.

276
277 (c) At the date of executing this Contract, the Contractor has complied with
278 the provisions of subdivision (b) of this Article.

279 EXCESS CAPACITY

280 8. (a) The availability of Excess Capacity shall be determined solely by the
281 Contracting Officer. Nothing contained in this Contract shall limit or preclude the United States
282 from utilizing available capacity in the Project Facilities for the storage and conveyance of
283 Project Water pursuant to Federal law, Reclamation law or policy, and existing contract(s); or (2)
284 for using Excess Capacity in the Project Facilities for the storage and conveyance of any other
285 supplies of Non-Project Water.

286 (b) The Contracting Officer and the Operating Non-Federal Entity shall not be
287 obligated to convey, divert, or discharge Non-Project Water during periods of maintenance or for
288 other operating requirements.

289 (c) If at any time the Contracting Officer determines that there will not be
290 Excess Capacity in the Project Facilities sufficient to allow the Non-Project Water to be
291 introduced into, conveyed, diverted, and/or discharged from Project Facilities in accordance with
292 an approved schedule submitted by the Contractor, the Contracting Officer shall so notify the
293 Contractor in writing. Within 24 hours of said notice, the Contractor shall revise its schedule
294 accordingly.

295 (d) No provision of this Contract shall be construed in any way as a basis for
296 the Contractor to establish a priority to or a permanent right to the use of Excess Capacity in the

Project Facilities nor to set a precedent to obligate the United States to enter into contracts with any other entities or individuals for the conveyance or storage of Non-Project Water.

ACREAGE LIMITATION PROVISIONS

9. (a) Omitted

RECEIPT AND DISTRIBUTION OF NON-PROJECT WATER--
SALE, TRANSFER, OR EXCHANGE OF NON-PROJECT WATER

10. (a) The parties hereto acknowledge that this Contract does not grant any permission or entitlement to the Contractor to extract and/or divert Non-Project Water from the source(s) described on Exhibit C or to change the nature or place of use of its rights to said Non-Project Water in any way. It is the responsibility of the Contractor to comply with all applicable Federal, State, and local laws, including, but not limited to, State water law in relation to the Non-Project Water. It is expressly understood by the parties that the United States is only providing conveyance capacity for the Non-Project Water and does not claim any interest in the acquisition or use of the Non-Project Water beyond the terms specifically set forth in this Contract.

(b) The Contracting Officer makes no representations as to the accuracy of the description or of the validity of the Contractor's rights to the Non-Project Water listed in Exhibit C.

(c) The Contractor further releases the United States, its officers, agents and employees, including the Operating Non-Federal Entity, from every claim for damage to persons or property, direct or indirect, resulting from the Contracting Officer's determination of the quantity of Excess Capacity available in the Project Facilities for conveyance of the Contractor's

Non-Project Water, the determination that the Non-Project Water introduced into Project Facilities must be terminated, and the elimination from Exhibit C of any source(s) of Non-Project Water.

WATER CONSERVATION

11. (a) Prior to the delivery of water provided from or conveyed through federally constructed or federally financed facilities pursuant to this Contract, the Contractor shall develop a water conservation plan, consistent with the plans required by Section 210(b) of the RRA and Part 427.1 of the Water Conservation Rules and Regulations effective January 1, 1998.

(b) Omitted.

(c) Due to the nature and source of this Non-Project Water as addressed in the third WHEREAS and as identified in subdivision (k) of Article 1 of this Contract, a water conservation plan is not applicable in this circumstance.

UNITED STATES NOT LIABLE

12. (a) The United States, its officers, agents and employees, including the Operating Non-Federal Entity, shall not be responsible for the control, care, or distribution of the Non-Project Water before it is introduced into or after it is conveyed through the Project Facilities. It is specifically understood by the parties hereto that the United States is only providing conveyance capacity for the Non-Project Water and does not claim any interest in the acquisition or use of the Non-Project Water beyond the terms specifically set forth in this Contract.

(b) The Contractor shall indemnify and hold the United States, its officers, agents and employees, including the Operating Non-Federal Entity, harmless from legal liability for damages of any nature whatsoever arising out of any actions or omissions of the Contractor, its officers, agents and employees, resulting from the Contractor's performance of this Contract,

including the manner or method in which the Non-Project Water identified on Exhibit C is introduced into the Project Facilities and diverted from such Project Facilities for Friant Division Contractors and/or discharged into the Kern River. The Contractor further releases the United States, its officers, agents and employees, including the Operating Non-Federal Entity, from every claim for damage to persons or property, direct or indirect, resulting from the Contracting Officer's determination of the quantity of Excess Capacity available in the Project Facilities for conveyance of the Non-Project Water on behalf of the Contractor, the determination that the Non-Project Water introduced into Project Facilities must be terminated, and the elimination from Exhibit C of any source(s) of Non-Project Water. Nothing contained in this Article shall be construed as an assumption of liability by the Contractor with respect to such matters.

OPINIONS AND DETERMINATIONS

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

(b) The Contracting Officer shall have the right to make determinations necessary to administer this Contract that are consistent with the provisions of this Contract, the

laws of the United States and the State of California, and the rules and regulations promulgated by the Secretary. Such determinations shall be made in consultation with the Contractor to the extent reasonably practicable.

PROTECTION OF WATER AND AIR QUALITY

14. (a) Project Facilities used to convey Non-Project Water on behalf of the Contractor shall be operated and maintained in the most practical manner to maintain the quality of the Non-Project Water at the highest level possible as determined by the Contracting Officer: *Provided*, That the United States does not warrant the quality of the Non-Project Water conveyed on behalf of the Contractor and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of the Non-Project Water conveyed on behalf of the Contractor.

(b) The Contractor shall comply with all applicable water and air pollution laws and regulations of the United States and the State of California; and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities necessary for the conveyance of Non-Project Water on behalf of the Contractor; and shall be responsible for compliance with all Federal, State, and local water quality standards applicable to surface and subsurface drainage and/or discharges generated through the use of Project Facilities or Contractor facilities or Non-Project Water conveyed and on behalf of the Contractor.

(c) This Article shall not affect or alter any legal obligations of the Secretary to provide drainage or other discharge services.

(d) The Non-Project Water introduced into the Project Facilities shall be of such quality, as determined solely by the Contracting Officer, as to not significantly degrade the quality of the Project water. If it is determined by the Contracting Officer that the quality of the Non-Project Water from any source(s) identified in Exhibit C will significantly degrade the quality of Project Water in or introduced into the Project Facilities, the Contractor shall, upon receipt of a written notice from the Contracting Officer, arrange for the immediate termination of the introduction of Non-Project Water from such sources(s) into the Project Facilities, and Exhibit C shall be modified to delete such sources(s) of Non-Project Water.

(e) Omitted

(f) At all times during the term of this Contract, the Contractor shall be in compliance with the requirements of the then-current Quality Assurance Project Plan (Plan) prepared by the Contracting Officer for Non-Project Water introduced into and conveyed through the Project Facilities. The Plan, as identified in Exhibit D, describes the sample collection procedures, water testing methods, and data review process, including quality control/quality assurance protocols, to verify analytical results.

(g) The Contracting Officer reserves the right to require additional analyses to ensure the Non-Project Water meets the Bureau of Reclamation's water quality acceptance criteria.

CHARGES FOR DELINQUENT PAYMENTS

15. (a) The Contractor shall be subject to interest, administrative, and penalty charges on delinquent payments. If a payment is not received by the due date, the Contractor shall pay an interest charge on the delinquent payment for each day the payment is delinquent beyond the due date. If a payment becomes 60 days delinquent, in addition to the interest charge, the Contractor shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. If a payment is delinquent 90 days or more, in addition to the interest and administrative charges, the Contractor shall pay a penalty charge for each day the payment is delinquent beyond the due date, based on the remaining balance of the payment due at the rate of 6 percent per year. The Contractor shall also pay any fees incurred for debt collection services associated with a delinquent payment.

(b) The interest charge rate shall be the greater of either the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments or the interest rate of 0.5 percent per month. The interest charge rate will be determined as of the due date and remain fixed for the duration of the delinquent period.

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

EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

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

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

(e) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965 or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the Contractor becomes involved in, or is

threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

CERTIFICATION OF NONSEGREGATED FACILITIES

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

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Employment Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually). Note: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

18. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, *et seq.*), Title II of the Americans with Disabilities Act of 1990 if the entity is a State or local government entity [Title III if the entity is a non-government entity], and any other applicable civil rights laws, as well as with their

506 respective implementing regulations and guidelines imposed by the U.S. Department of the
507 Interior and/or Bureau of Reclamation.

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

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

522 (d) Complaints of discrimination against the Contractor shall be investigated
523 by the Contracting Officer's Office of Civil Rights.

524 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

525 19. (a) The obligation of the Contractor to pay the United States as provided in
526 this Contract is a general obligation of the Contractor notwithstanding the manner in which the
527 obligation may be distributed among the Contractor's water users and notwithstanding the default
528 of individual water users in their obligation to the Contractor.

529 (b) The payment of charges becoming due pursuant to this Contract is a
530 condition precedent to receiving benefits under this Contract. The United States shall not make
531 Non-Project Water available to the Contractor through Project Facilities during any period in
532 which the Contractor is in arrears in the advance payment of Rates and charges due the United
533 States. The Contractor shall not deliver Non-Project Water under the terms and conditions of
534 this Contract for lands or parties that are in arrears in the advance payment of rates and charges
535 as levied or established by the Contractor.

536 BOOKS, RECORDS, AND REPORTS

537 20. The Contractor shall establish and maintain accounts and other books and records
538 pertaining to administration of the terms and conditions of this Contract, including
539 the Contractor's financial transactions; water supply data; and project land and rights-of-way
540 use agreements;; and other matters that the Contracting Officer may require. Reports shall be
541 furnished to the Contracting Officer in such form and on such date or dates as the Contracting
542 Officer may require. Subject to applicable Federal laws and regulations, each party to this

Contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this Contract.

CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

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

ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

22. The provisions of this Contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest therein by either party shall be valid until approved in writing by the other party.

OFFICIALS NOT TO BENEFIT

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

CHANGES IN CONTRACTOR'S ORGANIZATION

24. While this Contract is in effect, no change may be made in the Contractor's organization, by inclusion or exclusion of lands or by any other changes which may affect the respective rights, obligations, privileges, and duties of either the United States or the Contractor under this Contract including, but not limited to, dissolution, consolidation, or merger, except upon the Contracting Officer's written consent.

NOTICES

25. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to Bureau of Reclamation, South-Central California Area Office, 1243 "N" Street, Fresno, California 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board of Trustees of Delta Lands Reclamation District No. 770, Post Office Box 877, Corcoran, California 93212. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this Article for other notices.

INCORPORATION OF EXHIBITS

26. Exhibits A through D are attached hereto and incorporated herein.

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CONTRACT DRAFTING CONSIDERATIONS

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27. The articles or any portions thereof in this Contract that are double-spaced have been drafted, negotiated, and reviewed by the parties hereto, each of whom is sophisticated in the matters to which this Contract pertains, and no one party shall be considered to have drafted the stated articles.

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

582 UNITED STATES OF AMERICA

583 By: Laura Myers
584 Area Manager
585 South-Central California Area Office
586 Mid-Pacific Region
587 Bureau of Reclamation

(SEAL)

DELTA LANDS RECLAMATION DISTRICT NO. 770

588 By: Ed Baltes
589 President of the Board of Directors
590 Attest: Ed

591 By: Step Baltes
Acting Secretary of the Board of Directors