

M&I Only
Contract No.

14-06-200-5183A-LTR1

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

LONG TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
AND
EAST BAY MUNICIPAL UTILITY DISTRICT
PROVIDING FOR PROJECT WATER SERVICE
FROM THE AMERICAN RIVER DIVISION

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Exhibit A - Map of Contractor's Service Area

Exhibit B - Rates and Charges

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

5 LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
6 AND
7 EAST BAY MUNICIPAL UTILITY DISTRICT
8 PROVIDING FOR PROJECT WATER SERVICE
9 FROM THE AMERICAN RIVER DIVISION

10 THIS CONTRACT, made this 10th day of April, 2006,

11 in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or
12 supplementary thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844),
13 as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented,
14 July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263),
15 October 27, 1986 (100 Stat. 3050), as amended, and Title XXXIV of the Act of October 30, 1992
16 (106 Stat. 4706), all collectively hereinafter referred to as Federal Reclamation law, between
17 THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, and EAST
18 BAY MUNICIPAL UTILITY DISTRICT, hereinafter referred to as the Contractor, a public
19 agency of the State of California, duly organized, existing, and acting pursuant to the laws
20 thereof;

21 WITNESSETH, That:

22 EXPLANATORY RECITALS

23 [1st] WHEREAS, the United States has constructed and is operating the Central Valley
24 Project, (Project) California, for diversion, storage, carriage, distribution and beneficial use, for

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25 flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection
26 and restoration, generation and distribution of electric energy, salinity control, navigation and
27 other beneficial uses, of waters of the Sacramento River, the American River, the Trinity River,
28 and the San Joaquin River and their tributaries; and

29 [2nd] WHEREAS, the United States constructed Folsom Dam and Reservoir and
30 appurtenant facilities, hereinafter collectively referred to as the American River Division
31 facilities, which will be used in part for the furnishing of this supplemental supply of water to the
32 Contractor pursuant to the terms of this Contract; and

33 [3rd] WHEREAS, the rights to Project Water were acquired by the United States
34 pursuant to California law for operation of the Project; and

35 [4th] WHEREAS, the Contractor and the United States entered into Contract
36 No. 14-06-200-5183A, dated December 22, 1970, hereinafter referred to as the Original Contract,
37 which established terms for the delivery to the Contractor of a supplemental supply of Project
38 Water from the American River Division, of up to 150,000 acre-feet per year of Project Water
39 from a point on the Folsom South Canal at Station 666+50; and

40 [4.1] WHEREAS, Contract No. 14-06-200-5183A was superseded by Amendatory
41 Contract No. 14-06-200-5183A-1, dated July 20, 2001, hereinafter referred to as the Existing
42 Contract; and

43 [5th] Omitted; and

44 [6th] WHEREAS, Section 3404(c) of the Central Valley Project Improvement Act
45 (CVPIA) provides for long-term renewal of the Existing Contract following completion of

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46 appropriate environmental documentation, including a programmatic environmental impact
47 statement (PEIS) pursuant to the National Environmental Policy Act (NEPA) analyzing the direct
48 and indirect impacts and benefits of implementing the CVPIA and the potential renewal of all
49 existing contracts for Project Water; and

50 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
51 environmental review necessary to provide for long-term renewal of the Existing Contract; and

52 [8th] WHEREAS, the Contractor has requested the long-term renewal of the Existing
53 Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws
54 of the State of California, for water service from the Project; and

55 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all
56 of its obligations under the Existing Contract; and

57 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the
58 Contracting Officer projected future demand for water use such that the Contractor has the
59 capability and expects to utilize fully for reasonable and beneficial use the quantity of Project
60 Water to be made available to it pursuant to this Contract; and

61 [11th] WHEREAS, water obtained from the Project has been relied upon by urban and
62 agricultural areas within California for more than 50 years, and is considered by the Contractor as
63 an essential portion of its water supply; and

64 [12th] WHEREAS, the economies of regions within the Project, including the
65 Contractor's, depend upon the continued availability of water, including water service from the
66 Project; and

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67 [12.1] WHEREAS, in the California Bay-Delta Authority (CALFED) Programmatic
68 Record of Decision, dated August 28, 2000, the United States and the State of California adopted
69 a general target of continuously improving Delta water quality for all uses. The CALFED
70 Agencies' target for providing safe, reliable, and affordable drinking water in a cost-effective
71 way, is to achieve either: (a) average concentrations at Clifton Court Forebay and other southern
72 and central Delta drinking water intakes of 50 ug/L bromide and 3.0 mg/L total organic carbon,
73 or (b) an equivalent level of public health protection using a cost-effective combination of
74 alternative source waters, source control and treatment technologies; and

75 [13th] WHEREAS, the Secretary of the Interior (Secretary) intends through coordination,
76 cooperation, and partnerships to pursue measures to improve water supply, water quality, and
77 reliability of the Project for all Project purposes; and

78 [13.1] WHEREAS, the Contractor and the water users in its Service Area have improved
79 and will continue to improve water use efficiency through water conservation, water reclamation,
80 and other Best Management Practices. Implementation of these measures has reduced and will
81 continue to reduce the ability of the Contractor and the water users in its Service Area to
82 withstand a Condition of Shortage; and

83 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to
84 provide for reliable Project Water supplies; to control costs of those supplies; to achieve
85 repayment of the Project as required by law; to guard reasonably against Project Water shortages;
86 to achieve a reasonable balance among competing demands for use of Project Water; and to

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87 comply with all applicable environmental statutes, all consistent with the legal obligations of the
88 United States relative to the Project; and

89 [15th] WHEREAS, the parties intend by this Contract to develop a more cooperative
90 relationship in order to achieve their mutual goals; and

91 [16th] Omitted; and

92 [17th] Omitted; and

93 [18th] WHEREAS, in recognition of dry year considerations, the Contractor is willing to
94 forego deliveries in certain years when the Project system faces operational limits and the
95 Contractor has sufficient carryover storage under its exclusive control; and

96 [19th] WHEREAS, it is the mutual interest of the parties to encourage the development
97 by the Contractor of additional water storage capacity, including conjunctive use and ground-
98 water storage programs; and

99 [20th] WHEREAS, in this instance, "historic use" of Project Water is not an appropriate
100 basis for calculating the supply of Project Water to be made available to the Contractor during
101 years in which Project Water shortages are being imposed on Project Contractors north of the
102 Sacramento/San Joaquin River Delta ("Delta"), and therefore this Contract must incorporate a
103 different methodology for calculating the amount of Project Water to be made available to the
104 Contractor during water short years; and

105 [21st] WHEREAS, it is understood that this Contract and any renewal thereof, will be
106 the basis of substantial capital investments by the Contractor in new diversion and conveyance
107 facilities, which are intended to reduce the frequency and severity of customer deficiencies

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108 within the Contractor's water service area, and may provide available excess capacity for the use
109 and benefit of the United States, the environment, and other Project Contractors; and

110 [22nd] WHEREAS, the Contractor, in accordance with the terms and conditions of the
111 original contract, has paid substantial sums to the United States, and has not taken any substantial
112 deliveries under its original contract. Said payment has reduced potential deficit obligations to
113 the Contractor and has likely resulted in lower water rates paid by other Project Contractors; and

114 [23rd] WHEREAS, the United States and the Contractor agreed in the Existing Contract
115 that the terms and conditions for long-term renewal thereof shall be as set forth in the Existing
116 Contract, and the United States and the Contractor are willing to enter into this long-term
117 renewal contract on the terms and conditions set forth below.

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

120 DEFINITIONS

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

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

125 (b) "Charges" shall mean the payments required by Federal Reclamation law
126 in addition to the Rates and Tiered Pricing Component specified in this Contract as determined
127 annually by the Contracting Officer pursuant to this Contract;

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

131 (d) "Contracting Officer" shall mean the Secretary's duly authorized
132 representative acting pursuant to this Contract or applicable Federal Reclamation law or
133 regulation;

134 (e) "Contract Total" shall mean either the maximum amount of
135 133,000 acre-feet of water to which the Contractor is entitled under subdivision (a)(1) of Article
136 3 of this Contract; or, the maximum amount of 150,000 acre-feet of water to which the
137 Contractor is entitled in any given year under subdivision (a)(2) or (a)(3), whichever subdivision
138 is the then-operative provision, of Article 3 of this Contract;

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

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

145 (h-i) Omitted;

146 (j) "Full Cost Rate" shall mean an annual rate as determined by the
147 Contracting Officer that shall amortize the expenditures for construction properly allocable to the
148 Project irrigation or municipal and industrial (M&I) functions, as appropriate, of facilities in
149 service including all operation and maintenance (O&M) deficits funded, less payments, over such

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150 periods as may be required under Federal Reclamation law or applicable contract provisions.

151 Interest will accrue on both the construction expenditures and funded O&M deficits from

152 October 12, 1982, on costs outstanding at that date, or from the date incurred in the case of costs

153 arising subsequent to October 12, 1982, and shall be calculated in accordance with subsections

154 202(3)(B) and (3)(C) of the Reclamation Reform Act of October 12, 1982 (RRA) . The Full

155 Cost Rate includes actual operation, maintenance, and replacement costs consistent with Section

156 426.2 of the Rules and Regulations for the RRA (96 Stat. 1263), as amended.

157 (k-l) Omitted;

158 (m) "Irrigation Water" shall mean water made available from the Project that is

159 used primarily in the production of agricultural crops or livestock, including domestic use

160 incidental thereto, and watering of livestock;

161 (n) Omitted;

162 (o) "Municipal and Industrial Water" or "(M&I) Water" shall mean Project

163 Water, other than Irrigation Water, made available to the Contractor. M&I Water shall include

164 water used for human use and purposes such as the watering of landscaping or pasture for

165 animals (e.g., horses) which are kept for personal enjoyment or water delivered to land holdings

166 operated in units of less than five acres unless the Contractor establishes to the satisfaction of the

167 Contracting Officer that the use of water delivered to any such landholding is a use described in

168 subdivision (m) of this Article;

169 (p) "M&I Full Cost Water Rate" shall mean the Full Cost Rate applicable to

170 the delivery of M&I Water;

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

174 (r) Omitted;

175 (s) "Project" shall mean the Project owned by the United States and managed
176 by the Department of the Interior, Bureau of Reclamation;

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

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

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

186 (w) "Recent Historic Average" shall mean the most recent five-year average of
187 the final forecast of Water Made Available to the Contractor pursuant to this Contract or its
188 preceding contract(s);

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

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

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

196 (z.1) "Total System Storage" shall mean the quantity of untreated water stored
197 in Pardee, Camanche, San Pablo, Upper San Leandro, Briones, Lafayette, and Chabot Reservoirs,
198 and any quantity of water that has been moved from said reservoirs to other untreated water
199 storage facilities operated for the benefit of Contractor in the same Year;

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

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

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

208 TERM OF CONTRACT

209 2. (a) This Contract shall be effective March 1, 2006, through February 28,
210 2046, and supersedes the Existing Contract. In the event the Contractor wishes to renew the
211 Contract beyond February 28, 2046, the Contractor shall submit a request for renewal in writing
212 to the Contracting Officer no later than two years prior to the date this Contract expires.

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213 (b) Omitted.

214 (c) This Contract shall be renewed for successive periods of up to 40 years
215 each, which periods shall be consistent with then-existing Reclamation-wide policy, under terms
216 and conditions mutually agreeable to the parties and consistent with Federal and State law. The
217 Contractor shall be afforded the opportunity to comment to the Contracting Officer on the
218 proposed adoption and application of any revised policy applicable to the delivery of Project
219 M&I Water that would limit the term of any subsequent renewal contract with the Contractor for
220 the furnishing of M&I Water to less than 40 years.

221 (d) The Contracting Officer shall make a determination ten years after the date
222 of execution of this Contract, and every five years thereafter during the term of this Contract, of
223 whether a conversion to a contract under subsection 9(c)(1) of the Reclamation Project Act of
224 1939 can be accomplished. The Contracting Officer anticipates that during the term of this
225 Contract, all authorized Project construction expected to occur will have occurred, and on that
226 basis the Contracting Officer agrees upon such completion to allocate all costs that are properly
227 assignable to the Contractor, and agrees further that, at any time after such allocation is made,
228 and subject to satisfaction of the conditions set out in this subdivision, this Contract shall, at the
229 request of the Contractor, be converted to a contract under subsection 9(c)(1) of the Reclamation
230 Project Act of 1939, subject to applicable Federal law and under stated terms and conditions
231 mutually agreeable to the Contractor and the Contracting Officer. A condition for such
232 conversion to occur shall be a determination by the Contracting Officer that, account being taken
233 of the amount credited to return by the Contractor as provided for under Federal Reclamation
234 law, the remaining amount of construction costs assignable for ultimate return by the Contractor

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235 can probably be repaid to the United States within the term of a contract under subsection
236 9(c)(1). If the remaining amount of costs that are properly assignable to the Contractor cannot be
237 determined during the term of this Contract, the Contracting Officer shall notify the Contractor,
238 and provide the reason(s) why such a determination could not be made. Further, the Contracting
239 Officer shall make such a determination as soon thereafter as possible so as to permit, upon
240 request of the Contractor and satisfaction of the conditions set out above, conversion to a contract
241 under subsection 9(c)(1). In the event such determination of costs has not been made at a time
242 which allows conversion of this Contract during the term of this Contract or the Contractor has
243 not requested conversion of this Contract within such term, the parties shall incorporate in any
244 subsequent renewal contract as described in subdivision (c) of this Article a provision that carries
245 forth in substantially identical terms the provisions of this subdivision.

246 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

247 3. (a) During each Year, consistent with all applicable State water rights,
248 permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of
249 this Contract, the Contracting Officer shall make available for delivery to the Contractor, Project
250 Water pursuant to either subdivision (1), (2), or (3) below:

251 (1) At Freeport on the Sacramento River, the Contractor shall be
252 entitled to take delivery of up to a total of 133,000 acre-feet of Project Water for M&I purposes
253 in any Year in which the Contractor's March 1 forecast of its October 1 Total System Storage, as
254 revised monthly through May 1 is less than 500,000 acre-feet based on a 50 percent exceedance,
255 or any different reasonable exceedance used by the Contractor to declare rationing within the
256 Contractor's Water Service Area, or as otherwise agreed to by the parties (referred to as the TSS

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257 forecast). Said entitlement shall not exceed a total of 165,000 acre-feet of Water delivered in any
258 three consecutive Year period that the Contractor's Total System Storage forecast remains below
259 500,000 acre-feet.

260 (2) At Site 5 on the lower American River as described in
261 subdivision (a)(2) of Article 5 of this Contract, the Contractor shall be entitled to take delivery of
262 up to a total of 150,000 acre-feet of Project Water for M&I purposes in any Year, provided that
263 conditions in Article 5(a)(2) are satisfied.

264 (3) At Station 666+50 on the Folsom South Canal, the Contractor shall
265 be entitled to take delivery of up to a total of 150,000 acre-feet of Project Water for M&I
266 purposes in any Year, only under the terms and conditions of Article 5(a)(3). The quantity of
267 Water Delivered to the Contractor in accordance with this subdivision shall be scheduled and
268 paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

269 (b) Because the capacity of the Project to deliver Project Water has been
270 constrained in recent years and may be constrained in the future due to many factors including
271 hydrologic conditions and implementation of Federal and State laws, the likelihood of the
272 Contractor actually receiving the amount of Project Water set out in subdivision (a) of this
273 Article in any given Year is uncertain. The Contracting Officer's modeling referenced in the
274 PEIS, projected that the Contract Total set forth in this Contract will not be available to the
275 Contractor in many years. During the five years immediately preceding execution of the Existing
276 Contract, the average amount of water made available under the Original Contract was

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277 75,000 acre-feet based on contract minimum quantities. Nothing in subdivision (b) of this
278 Article shall affect the rights and obligations of the parties under any provision of this Contract.

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

281 (d) The Contractor shall make reasonable and beneficial use of all water
282 furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu),
283 ground-water banking programs, surface water storage programs, and other similar programs
284 utilizing Project Water or other water furnished pursuant to this Contract conducted within the
285 Contractor's Service Area which are consistent with applicable State law and result in use
286 consistent with Federal Reclamation law will be allowed; Provided, That any direct recharge
287 program(s) is (are) described in the Contractor's water conservation plan submitted pursuant to
288 Article 26 of this Contract; Provided, further, That such water conservation plan demonstrates
289 sufficient lawful uses exist in the Contractor's Service Area so that using a long-term average,
290 the quantity of Delivered Water is demonstrated to be reasonable for such uses and in compliance
291 with Federal Reclamation law. Ground-water recharge programs, ground-water banking
292 programs, surface water storage programs, and other similar programs utilizing Project Water or
293 other water furnished pursuant to this Contract conducted outside the Contractor's Service Area
294 may be permitted upon written approval of the Contracting Officer, which approval will be based
295 upon environmental documentation, Project Water rights, and Project operational concerns. The
296 Contracting Officer will address such concerns in regulations, policies, or guidelines.

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297 (e) The Contractor shall comply with requirements applicable to the
298 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution
299 of this Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA),
300 as amended, that are within the Contractor's legal authority to implement. Nothing herein shall
301 be construed to prevent the Contractor from challenging or seeking judicial relief in a court of
302 competent jurisdiction with respect to any biological opinion or other environmental
303 documentation referred to in this Article.

304 (f) Following the declaration of Water Made Available under Article 4 of this
305 Contract, the Contracting Officer will make a determination whether Project Water, or other
306 water available to the Project, can be made available to the Contractor in addition to the Contract
307 Total under Article 3 of this Contract during the Year without adversely impacting other Project
308 Contractors. At the request of the Contractor, the Contracting Officer will consult with the
309 Contractor prior to making such a determination. If the Contracting Officer determines that
310 Project Water, or other water available to the Project, can be made available to the Contractor,
311 the Contracting Officer will announce the availability of such water and shall so notify the
312 Contractor as soon as practical. The Contracting Officer will thereafter meet with the Contractor
313 and other Project Contractors capable of taking such water to determine the most equitable and
314 efficient allocation of such water. If the Contractor requests the delivery of any quantity of such
315 water, the Contracting Officer shall make such water available to the Contractor in accordance
316 with applicable statutes, regulations, guidelines, and policies.

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317 (g) The Contractor may request permission to reschedule for use during the
318 subsequent Year some or all of the Water Made Available to the Contractor during the current
319 Year referred to as "carryover" The Contractor may request permission to use during the current
320 Year a quantity of Project Water which may be made available by the United States to the
321 Contractor during the subsequent Year referred to as "preuse." The Contracting Officer's written
322 approval may permit such uses in accordance with applicable statutes, regulations, guidelines,
323 and policies.

324 (h) The Contractor's right pursuant to Federal Reclamation law and applicable
325 State law to the reasonable and beneficial use of Water Delivered pursuant to this Contract
326 during the term thereof and any subsequent renewal Contracts, as described in Article 2 of this
327 Contract, during the terms thereof shall not be disturbed so long as the Contractor shall fulfill all
328 of its obligations under this Contract and any renewals thereof. Nothing in the preceding
329 sentence shall affect the Contracting Officer's ability to impose shortages under Article 11 or
330 subdivision (b) of Article 12 of this Contract or applicable provisions of any subsequent renewal
331 Contracts.

332 (i) Project Water furnished to the Contractor pursuant to this Contract may be
333 delivered for purposes other than those described in subdivision (o) of Article 1 of this Contract
334 upon written approval by the Contracting Officer in accordance with the terms and conditions of
335 such approval.

336 (j) The Contracting Officer shall make reasonable efforts to protect the water
337 rights necessary for the Project and to provide the water available under this Contract. The

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338 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the
339 extent permitted by law, in administrative proceedings related to the Project Water rights;
340 Provided, That the Contracting Officer retains the right to object to the substance of the
341 Contractor's position in such a proceeding; Provided further, That in such proceedings the
342 Contracting Officer shall recognize the Contractor has a legal right under the terms of this
343 Contract to use Project Water.

344 TIME FOR DELIVERY OF WATER

345 4. (a) On or about February 20 of each Calendar Year, the Contracting Officer
346 shall announce the Contracting Officer's expected declaration of the Water Made Available.
347 Such declaration will be expressed in terms of both Water Made Available and the Recent
348 Historic Average and will be updated monthly, and more frequently if necessary, based on then-
349 current operational and hydrologic conditions and a new declaration with changes, if any, to the
350 Water Made Available will be made. The Contracting Officer shall provide forecasts of Project
351 operations and the basis of the estimate, with relevant supporting information, upon the written
352 request of the Contractor. Concurrently with the declaration of the Water Made Available, the
353 Contracting Officer shall provide the Contractor with the updated Recent Historic Average.

354 (b) On or before each March 1 and at such other times as necessary, the
355 Contractor shall submit to the Contracting Officer a written schedule, satisfactory to the
356 Contracting Officer, showing the monthly quantities of Project Water to be delivered by the
357 United States to the Contractor pursuant to this Contract for the Year commencing on such
358 March 1. The Contracting Officer shall use all reasonable means to deliver Project Water
359 according to the approved schedule for the Year commencing on such March 1.

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

364 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this
365 Contract, the United States shall deliver Project Water to the Contractor in accordance with the
366 initial schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any
367 written revision(s), satisfactory to the Contracting Officer, thereto submitted within a reasonable
368 time prior to the date(s) on which the requested change(s) is/are to be implemented.

369 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

370 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this
371 Contract shall be delivered to the Contractor at one of the following points of delivery; Provided,
372 That any necessary consultation under Section 7 of the ESA, and compliance with NEPA, as
373 applicable, has been completed prior to any diversions:

374 (1) A point of delivery on the Sacramento River at Freeport (Freeport).
375 It is the intent of the parties to pursue this point of delivery in cooperation with City and County
376 of Sacramento and the Sacramento County Water Agency. The parties acknowledge that the
377 point of delivery identified above, is included as an authorized point of delivery under the water
378 rights for the Project if it is sited consistent with the State Water Resources Control Board
379 (SWRCB) Order of July 29, 1999, pertaining to Permits 11315 and 11316 or other existing
380 appropriate SWRCB permits. If it is not, Project Water will not be delivered to this point of
381 delivery unless and until such point is added to the water rights permits of the Project. Subject to

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382 reimbursement of costs pursuant to Article 25 of this Contract the Contracting Officer will
383 petition the California SWRCB to include the necessary points of delivery to the water rights for
384 the Project, and the Contractor shall cooperate with and assist the Contracting Officer in
385 prosecuting such petition in a timely manner. The Contracting Officer shall bear neither
386 responsibility nor liability for existing and/or future constructed non-Federal diversion or
387 delivery facilities or the use thereof.

388 (2) A point of delivery identified as "Site 5" in the Environmental
389 Impact Statement supporting the Existing Contract published in December 2000, subject to the
390 following conditions: (i) prior to approval to divert from Site 5, the Contractor must complete
391 and implement a water storage strategy, satisfactory to the Contracting Officer, which will allow
392 the Contractor to meet Project purposes within the necessary flow pattern limitations
393 accompanied by the appropriate environmental documentation; (ii) prior to the approval to divert
394 from Site 5 the Contractor must comply with all relevant State and Federal laws and regulations
395 including but not limited to the California Wild and Scenic Rivers Act; (iii) the Contractor will
396 not divert at a rate higher than 155 cfs, or when the American River flow rates are below those
397 specified in the decision of Judge Richard Hodge in Alameda Superior Court on January 2, 1990;
398 (iv) the Contractor will not divert unless the point of delivery is an authorized point of diversion
399 for the associated Project Water rights.

400 (3) Deliveries of water diverted from Nimbus Dam are hereby
401 prohibited; Provided, however, if the permitting and necessary agreements for a diversion at
402 either Freeport or Site 5 are not completed by July 31, 2002, or another date agreed to by the

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403 parties, deliveries shall be made, without further amendment of the Contract, at Station 666+50
404 on the Folsom South Canal provided that the Contractor makes good faith efforts and devotes
405 adequate resources to obtain the necessary permits and agreements.

406 Such deliveries shall be made in accordance with the decision of Judge Richard
407 Hodge, dated January 2, 1990, in Alameda County Superior Court Action No. 425955. Once a
408 diversion project for delivery of water under this Contract is constructed at Freeport or Site 5 and
409 is fully operational, diversion of water at Nimbus Dam shall no longer be an alternative source
410 for delivery of Project or non-Project water to Contractor under this Contract.

411 (b) Omitted.

412 (c) The Contractor shall not deliver Project Water outside the Contractor's
413 Service Area unless approved in advance by the Contracting Officer.

414 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
415 measured and recorded with equipment furnished, installed, operated, and maintained by the
416 Contractor, or any other appropriate entity as designated by the Contracting Officer (hereafter
417 "other appropriate entity") at the point or points of delivery established pursuant to subdivision
418 (a) of this Article. Upon the request of either party to this Contract, the Contracting Officer shall
419 investigate the accuracy of such measurements and shall take any necessary steps to adjust any
420 errors appearing therein. For any period of time when accurate measurements have not been
421 made, the Contracting Officer shall consult with the Contractor prior to making a final
422 determination of the quantity delivered for that period of time.

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423 (e) The Contracting Officer shall not be responsible for the control, carriage,
424 handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to this
425 Contract beyond the delivery points specified in subdivision (a) of this Article. The Contractor
426 shall indemnify the United States, its officers, employees, agents, and assigns on account of
427 damage or claim of damage of any nature whatsoever for which there is legal responsibility,
428 including property damage, personal injury, or death arising out of or connected with the control,
429 carriage, handling, use, disposal, or distribution of such Water Delivered beyond such delivery
430 points, except for any damage or claim arising out of: (i) acts or omissions of the Contracting
431 Officer or any of its officers, employees, agents, or assigns with the intent of creating the
432 situation resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer or
433 any of its officers, employees, agents, or assigns; (iii) negligence of the Contracting Officer or
434 any of its officers, employees, agents, or assigns; or (iv) damage or claims resulting from a
435 malfunction of facilities owned and/or operated by the United States.

436 (f) The parties agree that for the purposes of taking delivery of water under
437 this Contract, at Freeport on the Sacramento River or at Site 5 on the Lower American River, the
438 Contractor shall have the right to construct a facility which connects to and extends from or near
439 the existing terminus of the Folsom South Canal or at any other points of delivery set forth in
440 Article 5(a) to the Mokelumne Aqueducts. The Contractor shall also have the right to use the
441 Folsom South Canal as a conveyance facility for Project Water that may be delivered to the
442 Contractor at any location and pumped back to the Folsom South Canal through a pipeline to be
443 constructed and operated by the Contractor at its expense and which will connect to the Folsom

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444 South Canal at a point located northerly of Grant Line Road at Station 522+81 to accommodate
445 the Site 5 option, or at a location in the vicinity of Grant Line Road at approximately Station
446 666+50 to accommodate the Freeport East option or other location as mutually agreed to, in
447 writing, by the parties. Prior to the construction of connection facilities to the Folsom South
448 Canal, or from the Folsom South Canal to the Mokelumne Aqueducts for any project different
449 than the project described in the Record of Decision, the Contractor shall submit any necessary
450 further plans, specifications and environmental documentation for making such connections to
451 the Contracting Officer for review and written approval. The Contracting Officer shall cooperate
452 with the Contractor in the development of such further plans, specifications and environmental
453 documentation. All such design and construction costs shall be at the Contractor's expense. The
454 Contracting Officer's approval of such further plans, specifications, and environmental
455 documentation shall not be unreasonably withheld. The Contractor shall pay all reasonable costs,
456 including overhead, incurred by the Contracting Officer in (1) the development, review, and
457 approval of any further plans, specifications, and environmental documentation and (2)
458 inspection and oversight costs related to any construction. The United States shall hold the
459 Contractor harmless from any liability arising from the negligence or willful misconduct of the
460 United States, or any of its officers, employees, agents, or assigns, in the conveyance of Project
461 Water through the Folsom South Canal; Provided, That such liability has not arisen from
462 performance or lack thereof of the Contractor under terms and conditions of any approvals
463 related to the Contractor's connection facilities, this Contract or any subsequent amendment or
464 renewal thereof.

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465 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

466 6. (a) The parties acknowledge that the Contractor has equipped all surface
467 water delivery systems within its boundaries with water measuring devices at each M&I water
468 service connection of a type acceptable to the Contracting Officer. The Contractor shall be
469 responsible for installing, operating, and maintaining and repairing all such measuring devices
470 and implementing all such water measuring methods at no cost to the United States. The
471 Contractor shall use the information obtained from such water measuring devices or water
472 measuring methods to ensure its proper management of the water, to bill water users for water
473 delivered by the Contractor; and, if applicable, to record water delivered for M&I purposes by
474 customer class as defined in the Contractor's water conservation plan provided for in Article 26
475 of this Contract. Nothing herein contained, however, shall preclude the Contractor from
476 establishing and collecting any charges, assessments, or other revenues authorized by California
477 law. The Contractor shall include a summary of all its annual surface water deliveries in the
478 annual report described in subdivision (c) of Article 26 of this Contract.

479 (b) To the extent the information has not otherwise been provided, upon
480 execution of this Contract, the Contractor shall provide to the Contracting Officer a written
481 report describing the measurement devices or water measuring methods being used or to be used
482 to implement subdivision (a) of this Article and identifying the M&I service connections or
483 alternative measurement programs approved by the Contracting Officer, at which such
484 measurement devices or water measuring methods are being used, and, if applicable, identifying
485 the locations at which such devices and/or methods are not yet being used including a time

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486 schedule for implementation at such locations. The Contracting Officer shall advise the
487 Contractor in writing within 60 days as to the adequacy of, and necessary modifications, if any,
488 of the measuring devices or water measuring methods identified in the Contractor's report and if
489 the Contracting Officer does not respond in such time, they shall be deemed adequate. If the
490 Contracting Officer notifies the Contractor that the measuring devices or methods are inadequate,
491 the parties shall within 60 days following the Contracting Officer's response, negotiate in good
492 faith the earliest practicable date by which the Contractor shall modify said measuring devices
493 and/or measuring methods as required by the Contracting Officer to ensure compliance with
494 subdivision (a) of this Article.

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

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

501 (e) The Contractor shall inform the Contracting Officer on or before the 20th
502 calendar day of each month of the quantity of M&I Water taken during the preceding month.

503 RATES AND METHOD OF PAYMENT FOR WATER

504 7. (a) The Contractor shall pay the United States as provided in this Article for
505 all Delivered Water at Rates, Charges, and the Tiered Pricing Component established in
506 accordance with: (i) the Secretary's then-existing ratesetting policy for M&I Water. Such

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507 ratesetting policy shall be amended, modified, or superseded only through a public notice and
508 comment procedure; (ii) applicable Federal Reclamation law and associated rules and
509 regulations, or policies; and (iii) other applicable provisions of this Contract. Payments shall be
510 made by cash transaction, electronic funds transfer, or any other mechanism as may be agreed to
511 in writing by the Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing
512 Component applicable to the Contractor upon execution of this Contract are set forth in Exhibit
513 "B," as may be revised annually.

514 (b) The Contracting Officer shall notify the Contractor of the Rates, Charges,
515 and Tiered Pricing Component as follows:

516 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
517 provide the Contractor an estimate of the Charges for Project Water that will be applied to the
518 period October 1, of the current Calendar Year, through September 30, of the following Calendar
519 Year, and the basis for such estimate. The Contractor shall be allowed not less than two months
520 to review and comment on such estimates. On or before September 15 of each Calendar Year,
521 the Contracting Officer shall notify the Contractor in writing of the Charges to be in effect during
522 the period October 1 of the current Calendar Year, through September 30, of the following
523 Calendar Year, and such notification shall revise Exhibit "B."

524 (2) Prior to October 1 of each Calendar Year, the Contracting Officer
525 shall make available to the Contractor an estimate of the Rates and Tiered Pricing Component for
526 Project Water for the following Year and the computations and cost allocations upon which those
527 Rates are based. The Contractor shall be allowed not less than two months to review and

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528 comment on such computations and cost allocations. By December 31 of each Calendar Year,
529 the Contracting Officer shall provide the Contractor with the final Rates and Tiered Pricing
530 Component to be in effect for the upcoming Year, and such notification shall revise Exhibit "B."

531 (c) At the time the Contractor submits the initial schedule for the delivery of
532 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the
533 Contractor shall make an advance payment to the United States equal to the total amount payable
534 pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water
535 scheduled to be delivered pursuant to this Contract during the first two calendar months of the
536 Year. Before the end of the first month and before the end of each calendar month thereafter, the
537 Contractor shall make an advance payment to the United States, at the Rate(s) set under
538 subdivision (a) of this Article, for the Water Scheduled to be delivered pursuant to this Contract
539 during the second month immediately following. Adjustments between advance payments for
540 Water Scheduled and payments at Rates due for Water Delivered shall be made before the end of
541 the following month; Provided, That any revised schedule submitted by the Contractor pursuant
542 to Article 4 of this Contract which increases the amount of Water Delivered pursuant to this
543 Contract during any month shall be accompanied with appropriate advance payment, at the Rates
544 then in effect, to assure that Project Water is not delivered to the Contractor in advance of such
545 payment. In any month in which the quantity of Water Delivered to the Contractor pursuant to
546 this Contract equals the quantity of Water Scheduled and paid for by the Contractor, no
547 additional Project Water shall be delivered to the Contractor unless and until an advance payment
548 at the Rates then in effect for such additional Project Water is made. Final adjustment between

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549 the advance payments for the Water Scheduled and payments for the quantities of Water
550 Delivered during each Year pursuant to this Contract shall be made as soon as practicable but no
551 later than April 30th of the following Year, or 60 days after the delivery of Project Water carried
552 over under subdivision (g) of Article 3 of this Contract if such water is not delivered by the last
553 day of February.

554 (d) The Contractor shall also make a payment in addition to the Rate(s) in
555 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
556 appropriate Tiered Pricing Component then in effect, before the end of the month following the
557 month of delivery. The payments shall be consistent with the quantities of M&I Water Delivered
558 as shown in the water delivery report for the subject month prepared by the Contracting Officer.
559 The water delivery report shall be deemed a bill for the payment of Charges and the applicable
560 Tiered Pricing Component for Water Delivered. Adjustment for overpayment or underpayment
561 of Charges shall be made through the adjustment of payments due to the United States for
562 Charges for the next month. Any amount to be paid for past due payment of Charges and the
563 Tiered Pricing Component shall be computed pursuant to Article 20 of this Contract.

564 (e) The Contractor shall pay for any Water Delivered under subdivision (a),
565 (f), or (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to
566 applicable statutes, associated regulations, any applicable provisions of guidelines or ratesetting
567 policies; Provided, That the Rate for Water Delivered under subdivision (f) of Article 3 of this

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568 Contract shall be no more than the otherwise applicable Rate for M&I Water under subdivision
569 (a) of this Article.

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

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

576 (h) The Contracting Officer shall keep its accounts pertaining to the
577 administration of the financial terms and conditions of its long-term Contracts, in accordance
578 with applicable Federal standards, so as to reflect the application of Project costs and revenues.
579 The Contracting Officer shall, each Year upon request of the Contractor, provide to the
580 Contractor a detailed accounting of all Project and Contractor expense allocations, the
581 disposition of all Project and Contractor revenues, and a summary of all water delivery
582 information. The Contracting Officer and the Contractor shall enter into good faith negotiations
583 to resolve any discrepancies or disputes relating to accountings, reports, or information.

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

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589 agreements to modify the mechanisms, policies, and procedures for any of those purposes while
590 this Contract is in effect without amending this Contract; Provided, That such modification does
591 not unreasonably shift costs to other Project Contractors.

592 (j) (1) Beginning at such time as deliveries of Project Water in a Year
593 exceed 80 percent of the Contract Total, then before the end of the month following the month of
594 delivery the Contractor shall make an additional payment to the United States equal to the
595 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water
596 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the
597 Contract Total, shall equal one-half of the difference between the Rate established under
598 subdivision (a) of this Article and the M&I Full Cost Water Rate. The Tiered Pricing
599 Component for the amount of Water Delivered which exceeds 90 percent of the Contract Total
600 shall equal the difference between (i) the Rate established under subdivision (a) of this Article
601 and (ii) the M&I Full Cost Water Rate.

602 (2) Omitted.

603 (3) For purposes of determining the applicability of the Tiered Pricing
604 Component pursuant to this Article, Water Delivered shall include Project Water that the
605 Contractor transfers to others but shall not include Project Water transferred to the Contractor,
606 nor shall it include the additional water provided to the Contractor under the provisions of
607 subdivision (f) of Article 3 of this Contract.

608 (k) For the term of this Contract, Rates under the M&I ratesetting policy will
609 be established to recover only reimbursable O&M (including any deficits) and capital costs of the

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610 Project, as those terms are used in the then-current Project M&I ratesetting policy, and interest,
611 where appropriate, except in instances where a minimum Rate is applicable in accordance with
612 the relevant Project ratesetting policy. Changes of significance in practices which implement the
613 Contracting Officer's ratesetting policies will not be implemented until the Contracting Officer
614 has provided the Contractor an opportunity to discuss the nature, need, and impact of the
615 proposed change.

616 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the
617 CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates
618 adjusted upward or downward to reflect the changed costs (if any) incurred by the Contracting
619 Officer in the delivery of the transferred Project Water to the transferee's point of delivery in
620 accordance with the then-applicable Project ratesetting policy.

621 (m) Omitted.

622 (n) With respect to the Rates for M&I Water, the Contractor asserts that it is
623 not legally obligated to pay any Project deficits claimed by the United States to have accrued as
624 of the date of this Contract or deficit-related interest charges thereon. By entering into this
625 Contract, the Contractor does not waive any legal rights or remedies which it may have with
626 respect to such disputed issues. Notwithstanding the execution of this Contract and payments
627 made hereunder, the Contractor may challenge in the appropriate administrative or judicial
628 forums: (1) the existence, computation, or imposition of any deficit charges accruing during the
629 term of the Original and the Existing Contracts; (2) interest accruing on any such deficits; (3) the
630 inclusion of any such deficit charges or interest in the Rates; (4) the application by the United

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631 States of payments made by the Contractor under its Original and the Existing Contracts; and
632 (5) the application of such payments in the Rates. The Contracting Officer agrees that the
633 Contractor shall be entitled to the benefit of any administrative or judicial ruling in favor of any
634 Project M&I Contractor on any of these issues, and credits for payments heretofore made;
635 Provided, That the basis for such ruling is applicable to the Contractor.

636 8. Omitted.

637 SALES, TRANSFERS, OR EXCHANGES OF WATER

638 9. (a) The right to receive Project Water provided for in this Contract may be
639 sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of
640 California if such sale, transfer, or exchange is authorized by applicable Federal and State laws,
641 and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project
642 Water under this Contract may take place without the prior written approval of the Contracting
643 Officer, except as provided for in subdivision (b) of this Article, and no such sales, transfers, or
644 exchanges shall be approved absent completion of all appropriate environmental documentation,
645 including but not limited to documents prepared pursuant to the NEPA and the ESA. Such
646 environmental documentation should include, as appropriate, an analysis of ground-water
647 impacts and economic and social effects, including environmental justice, of the proposed water
648 transfers on both the transferor and transferee.

649 (b) In order to facilitate efficient water management by means of water
650 transfers of the type historically carried out among Project Contractors located within the same
651 geographical area and to allow the Contractor to participate in an accelerated water transfer

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652 program during the term of this Contract, the Contracting Officer shall prepare, as appropriate,
653 all necessary environmental documentation including, but not limited to, documents prepared
654 pursuant to NEPA and ESA analyzing annual transfers within such geographical areas, and the
655 Contracting Officer shall determine whether such transfers comply with applicable law.

656 Following the completion of the environmental documentation, such transfers addressed in such
657 documentation shall be conducted with advance notice to the Contracting Officer, but shall not
658 require prior written approval by the Contracting Officer. Such environmental documentation
659 and the Contracting Officer's compliance determination shall be reviewed every five years and
660 updated, as necessary, prior to the expiration of the then existing five-year period. All

661 subsequent environmental documentation shall include an alternative to evaluate
662 not less than the quantity of Project Water historically transferred within the same geographical
663 area.

664 (c) For a water transfer to qualify under subdivision (b) of this Article, such
665 water transfer must: (i) be for irrigation purposes for lands irrigated within the previous three
666 years, for M&I use, ground-water recharge, water banking, or fish and wildlife resources; not
667 lead to land conversion; and be delivered to established cropland, wildlife refuges, ground-water
668 basins or M&I use; (ii) occur within a single Year; (iii) occur between a willing seller and a
669 willing buyer; (iv) convey water through existing facilities with no new construction or
670 modifications to facilities and be between existing Project Contractors and/or the Contractor and
671 the United States, Department of the Interior; and (v) comply with all applicable Federal, State,

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672 and local or tribal laws and requirements imposed for protection of the environment and Indian
673 Trust Assets, as defined under Federal law.

674 APPLICATION OF PAYMENTS AND ADJUSTMENTS

675 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,
676 capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities
677 of the Contractor arising out of this Contract then due and payable. Overpayments of more than
678 \$1,000 shall be refunded at the Contractor's request. In lieu of a refund, any amount of such
679 overpayment, at the option of the Contractor, may be credited against amounts to become due to
680 the United States by the Contractor. With respect to overpayment, such refund or adjustment
681 shall constitute the sole remedy of the Contractor or anyone having or claiming to have the right
682 to the use of any of the Project Water supply provided for herein. All credits and refunds of
683 overpayments shall be made within 30 days of the Contracting Officer obtaining direction as to
684 how to credit or refund such overpayment in response to the notice to the Contractor that it has
685 finalized the accounts for the Year in which the overpayment was made.

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

691 (c) Nothing in this Contract shall be construed to require or prohibit the
692 Contractor from making voluntary payments for retiring or avoiding any O&M deficit. Such

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693 voluntary payments would be the same as, or similar to, participation in the existing Contracting
694 Officer's Voluntary Payment Program.

695 TEMPORARY REDUCTIONS--RETURN FLOWS

696 11. (a) Subject to: (i) the authorized purposes and priorities of the Project and the
697 requirements of Federal law; and (ii) the obligations of the United States under existing
698 contracts, or renewals thereof, providing for water deliveries from the Project, the Contracting
699 Officer shall make all reasonable efforts to optimize Project Water deliveries to the Contractor as
700 provided in this Contract.

701 (b) The Contracting Officer may temporarily discontinue or reduce the
702 quantity of Water Delivered to the Contractor as herein provided for the purposes of
703 investigation, inspection, maintenance, repair, or replacement of any of the Project facilities or
704 any part thereof necessary for the delivery of Project Water to the Contractor, but so far as
705 feasible the Contracting Officer will give the Contractor due notice in advance of such temporary
706 discontinuance or reduction, except in case of emergency, in which case no notice need be given;
707 Provided, That the United States shall use its best efforts to avoid any discontinuance or
708 reduction in such service. Upon resumption of service after such reduction or discontinuance,
709 and if requested by the Contractor, the United States will, if possible, deliver the quantity of
710 Project Water which would have been delivered hereunder in the absence of such discontinuance
711 or reduction.

712 (c) The United States reserves the right to all seepage and return flow water
713 derived from Water Delivered to the Contractor hereunder which escapes or is discharged beyond

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714 the Contractor's Service Area; Provided, That this shall not be construed as claiming for the
715 United States any right as seepage or return flow being put to reasonable and beneficial use
716 pursuant to this Contract within the Contractor's Service Area by the Contractor or those
717 claiming by, through, or under the Contractor.

718 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

729 (c) Omitted.

730 (d) In any Year in which there may occur a shortage for any of the reasons
731 specified in subdivision (b) above, the Contracting Officer shall apportion the available Project
732 Water supply among the Contractor and others entitled, under existing contracts and future
733 contracts (to the extent such future contracts are permitted under subsections (a) and (b) of
734 Section 3404 of the CVPIA) and renewals thereof, to receive Project Water consistent with the

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735 contractual obligations of the United States and consistent with the then-current M&I Water
736 Shortage Policy for the Project or any modifications or replacement thereof; Provided, That the
737 133,000 acre-feet of Project Water referenced in Article 3(a) shall be used as the base amount
738 (equivalent to the term "historic use" applied in the M&I Water Shortage Policy for the Project,
739 dated February 17, 1994) for the purpose of calculating Project Water shortages applicable to the
740 Contractor. Such Policy shall be amended, modified, or superseded only through a public notice
741 and comment procedure.

742 (e) By entering into this Contract, the Contractor does not waive any legal
743 rights or remedies it may have to file or participate in any administrative or judicial proceeding
744 contesting (i) the sufficiency of the manner in which any Project M&I Water Shortage Policy
745 adopted after the effective date of this Contract was promulgated; (ii) the substance of such a
746 policy; or (iii) the applicability of such a policy. By agreeing to the foregoing, the Contracting
747 Officer does not waive any legal defenses or remedies that it may then have to assert in such a
748 proceeding.

749 13. Omitted.

750 RULES AND REGULATIONS

751 14. The parties agree that the delivery of M&I Water or use of Federal facilities pursuant
752 to this Contract is subject to the applicable provisions of Federal Reclamation law and any applicable
753 rules and regulations promulgated by the Secretary under such law.

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WATER AND AIR POLLUTION CONTROL

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15. The Contractor, in carrying out this Contract, shall comply with all applicable water and

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air pollution laws and regulations of the United States and the State of California, and shall

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obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

758

QUALITY OF WATER

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16. (a) Project facilities used to deliver Project Water to the Contractor pursuant

760

to this Contract shall be operated and maintained to enable the United States to deliver Project

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Water to the Contractor in accordance with the water quality standards specified in subsection

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2(b) of the Act of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of

763

October 27, 1986 (100 Stat. 3050), or other existing Federal laws. The United States is under no

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obligation to construct or furnish water treatment facilities to maintain or to improve the quality

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of Water Delivered to the Contractor pursuant to this Contract. The United States does not

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warrant the quality of Water Delivered to the Contractor pursuant to this Contract.

767

(b) The O&M of Project facilities shall be performed in such manner as is

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practicable to maintain the quality of raw water made available through such facilities at the

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highest level reasonably attainable as determined by the Contracting Officer.

770

WATER ACQUIRED BY THE CONTRACTOR

771

OTHER THAN FROM THE UNITED STATES

772

17. (a) Omitted.

773

(b) Water or water rights now owned or hereafter acquired by the Contractor,

774

other than from the United States, may be stored, conveyed, and/or diverted through Project

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775 facilities, subject to the completion of appropriate environmental documentation, with the
776 approval of the Contracting Officer and the execution of any contract determined by the
777 Contracting Officer to be necessary, consistent with the following provisions:

778 (1) The Contractor may introduce non-Project water into Project
779 facilities and deliver said water within the Contractor's Service Area, subject to payment to the
780 United States of an appropriate rate as determined by the applicable Project ratesetting policy and
781 the Project use power policy, if such Project use power policy is applicable, each as amended,
782 modified or superseded from time to time.

783 (2) Delivery of such non-Project water in and through Project facilities
784 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project
785 purposes as determined by the Contracting Officer; (ii) reduce the quantity or quality of water
786 available to other Project Contractors; (iii) interfere with the delivery of contractual water
787 entitlements to any other Project Contractors; or (iv) interfere with the physical maintenance
788 of the Project facilities.

789 (3) The United States shall not be responsible for control, care, or
790 distribution of the non-Project water before it is introduced into or after it is delivered from the
791 Project facilities. The Contractor hereby releases and agrees to defend and indemnify the United
792 States, and its officers, agents, and employees, from any claim for damage to persons or property,
793 direct or indirect, resulting from the acts of the Contractor, its officers', employees', agents' or
794 assigns', act(s) in (i) extracting or diverting non-Project water from any source, or (ii) diverting
795 such non-Project water into Project facilities.

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

799 (5) After Project purposes are met, as determined by the Contracting
800 Officer, the United States and the Contractor shall share priority to utilize the remaining capacity
801 of the facilities declared to be available by the Contracting Officer for conveyance and
802 transportation of non-Project water prior to any such remaining capacity being made available to
803 non-Project Contractors.

804 (6) The provisions of this Article 17 shall not apply to water conveyed
805 through the Folsom South Canal consistent with Article 5.

806 OPINIONS AND DETERMINATIONS

807 18. (a) Where the terms of this Contract provide for actions to be based upon the
808 opinion or determination of either party to this Contract, said terms shall not be construed as
809 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
810 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly
811 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,
812 or unreasonable opinion or determination. Each opinion or determination by either party shall be
813 provided in a timely manner. Nothing in subdivision (a) of Article 18 of this Contract is intended
814 to or shall affect or alter the standard of judicial review applicable under Federal law to any
815 opinion or determination implementing a specific provision of Federal law embodied in statute or
816 regulation.

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

822 COORDINATION AND COOPERATION

823 19. (a) In order to further their mutual goals and objectives, the Contracting
824 Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and
825 with other affected Project Contractors, in order to improve the O&M of the Project. The
826 communication, coordination, and cooperation regarding operations and management shall
827 include, but not be limited to, any action which will or may materially affect the quantity or
828 quality of Project Water supply, the allocation of Project Water supply, and Project financial
829 matters including, but not limited to, budget issues. The communication, coordination, and
830 cooperation provided for hereunder shall extend to all provisions of this Contract. Each party
831 shall retain exclusive decision making authority for all actions, opinion, and determinations to be
832 made by the respective party.

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

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837 this process shall be to provide, to the extent practicable, the means of mutual communication
838 and interaction regarding significant decisions concerning Project O&M on a real-time basis.

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

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

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

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

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

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

856 (d) Without limiting the contractual obligations of the Contracting Officer
857 under the other Articles of this Contract, nothing in this Article shall be construed to limit or

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858 constrain the Contracting Officer's ability to communicate, coordinate, and cooperate with the
859 Contractor or other interested stakeholders or to make decisions in a timely fashion as needed to
860 protect health, safety, physical integrity of structures or facilities.

861 CHARGES FOR DELINQUENT PAYMENTS

862 20. (a) The Contractor shall be subject to interest, administrative and penalty
863 charges on delinquent installments or payments. When a payment is not received by the due
864 date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond
865 the due date. When a payment becomes 60 days delinquent, the Contractor shall pay an
866 administrative charge to cover additional costs of billing and processing the delinquent payment.
867 When a payment is delinquent 90 days or more, the Contractor shall pay an additional penalty
868 charge of six percent per year for each day the payment is delinquent beyond the due date.
869 Further, the Contractor shall pay any fees incurred for debt collection services associated with a
870 delinquent payment.

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

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

879 EQUAL OPPORTUNITY

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

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

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

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

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

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

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

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

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925 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

938 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

939 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
940 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the
941 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights
942 laws, as well as with their respective implementing regulations and guidelines imposed by the
943 U.S. Department of the Interior and/or Bureau of Reclamation.

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

950 (c) The Contractor makes this agreement in consideration of and for the purpose
951 of obtaining any and all Federal grants, loans, Contracts, property discounts, or other Federal
952 financial assistance extended after the date hereof to the Contractor by the Bureau of Reclamation,
953 including installment payments after such date on account of arrangements for Federal financial
954 assistance which were approved before such date. The Contractor recognizes and agrees that such
955 Federal assistance will be extended in reliance on the representations and agreements made in this
956 Article, and that the United States reserves the right to seek judicial enforcement thereof.

957 24. Omitted.

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958

CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

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Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and

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detailed statement submitted by the Contracting Officer to the Contractor for such specific items

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of direct cost incurred by the United States for work requested by the Contractor associated with

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this Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies

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and procedures. All such amounts referred to in this Article shall not exceed the amount agreed

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to in writing in advance by the Contractor. This Article shall not apply to costs for routine

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Contract administration.

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WATER CONSERVATION

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26. (a) The Contractor has developed and is implementing an effective water

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conservation program based on the Contractor's water conservation plan that has been reviewed

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by the Contracting Officer and determined to meet the conservation and efficiency criteria

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established under Federal law. The water conservation and efficiency program contains certain

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definite water conservation objectives, appropriate economically feasible water conservation

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measures, and time schedules for meeting those objectives. Continued Project Water delivery

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pursuant to this Contract shall be contingent upon the Contractor's continued implementation of

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such water conservation program. In the event the Contractor's water conservation plan or any

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revised water conservation plan completed pursuant to subdivision (d) of Article 26 of this

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Contract have not yet been determined by the Contracting Officer to meet such criteria, due to

978

circumstances which the Contracting Officer determines are beyond the control of the

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979 Contractor, water deliveries shall be made under this Contract so long as the Contractor
980 diligently works with the Contracting Officer to obtain such determination at the earliest
981 practicable date, and thereafter the Contractor immediately begins implementing its water
982 conservation and efficiency program in accordance with the time schedules therein.

983 (b) The Contractor shall implement the Best Management Practices identified
984 by the time frames issued by the California Urban Water Conservation Council for such M&I
985 Water unless any such practice is determined by the Contracting Officer to be inappropriate for
986 the Contractor.

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

990 (d) At five-year intervals, the Contractor shall revise its water conservation
991 plan to reflect the then-current conservation and efficiency criteria for evaluating water
992 conservation plans established under Federal law and submit such revised water management
993 plan to the Contracting Officer for review and evaluation. The Contracting Officer will then
994 determine if the water conservation plan meets Reclamation's then-current
995 conservation and efficiency criteria for evaluating water conservation plans established under
996 Federal law.

997 (e) If the Contractor is engaged in direct ground-water recharge, such activity
998 shall be described in the Contractor's water conservation plan.

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999

EXISTING OR ACQUIRED WATER OR WATER RIGHTS

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27. Except as specifically provided in Article 17 of this Contract, the provisions of

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this Contract shall not be applicable to or affect non-Project water or water rights now owned or

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hereafter acquired by the Contractor or any user of such water within the Contractor's Service

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Area. Any such water shall not be considered Project Water under this Contract. In addition,

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this Contract shall not be construed as limiting or curtailing any rights which the Contractor or

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any water user within the Contractor's Service Area acquires or has available under any other

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Contract pursuant to Federal Reclamation law.

1007

28. Omitted.

1008

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

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29. The expenditure or advance of any money or the performance of any obligation of

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the United States under this Contract shall be contingent upon appropriation or allotment of

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funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any

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obligations under this Contract. No liability shall accrue to the United States in case funds are

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not appropriated or allotted.

1014

BOOKS, RECORDS, AND REPORTS

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30. (a) The Contractor shall establish and maintain accounts and other books and

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records pertaining to administration of the terms and conditions of this Contract, including: the

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Contractor's financial transactions, water supply data, and Project land and right-of-way

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agreements; water use data; and other matters that the Contracting Officer may require. Reports

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thereon shall be furnished to the Contracting Officer in such form and on such date or dates as

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the Contracting Officer may require. Subject to applicable Federal laws and regulations, each

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party to this Contract shall have the right during office hours to examine and make copies of the

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other party's books and records relating to matters covered by this Contract.

1023

(b) Notwithstanding the provisions of subdivision (a) of this Article, no

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books, records, or other information shall be requested from the Contractor by the Contracting

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Officer unless such books, records, or information are reasonably related to the administration or

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1026 performance of this Contract. Any such request shall allow the Contractor a reasonable period of
1027 time within which to provide the requested books, records, or information.

1028 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1029 31. (a) The provisions of this Contract shall apply to and bind the successors and
1030 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1031 therein shall be valid until approved in writing by the Contracting Officer.

1032 (b) The assignment of any right or interest in this Contract by either party shall
1033 not interfere with the rights or obligations of the other party to this Contract absent the written
1034 concurrence of said other party.

1035 (c) The Contracting Officer shall not unreasonably condition or withhold
1036 approval of any proposed assignment.

1037 SEVERABILITY

1038 32. In the event that a person or entity who is neither (i) a party to a Project contract,
1039 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor
1040 (iii) an association or other form of organization whose primary function is to represent parties to
1041 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or
1042 enforceability of a provision included in this Contract and said person, entity, association, or
1043 organization obtains a final court decision holding that such provision is legally invalid or
1044 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),
1045 the parties to this Contract shall use their best efforts to (i) within 30 days of the date of such
1046 final court decision identify by mutual agreement the provisions in this Contract which must be
1047 revised and (ii) within three months thereafter promptly agree on the appropriate revision(s). The

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1048 time periods specified above may be extended by mutual agreement of the parties. Pending the
1049 completion of the actions designated above, to the extent it can do so without violating any
1050 applicable provisions of law, the United States shall continue to make the quantities of Project
1051 Water specified in this Contract available to the Contractor pursuant to the provisions of this
1052 Contract which were not found to be legally invalid or unenforceable in the final court decision.

1053 RESOLUTION OF DISPUTES

1054 33. Should any dispute arise concerning any provisions of this Contract, or the
1055 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to
1056 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting
1057 Officer referring any matter to Department of Justice, the party shall provide to the other party 30
1058 days' written notice of the intent to take such action; Provided, That such notice shall not be
1059 required where a delay in commencing an action would prejudice the interests of the party that
1060 intends to file suit. During the 30-day notice period, the Contractor and the Contracting Officer
1061 shall meet and confer in an attempt to resolve the dispute. Except as specifically provided,
1062 nothing herein is intended to waive or abridge any right or remedy that the Contractor or the
1063 United States may have.

1064 OFFICIALS NOT TO BENEFIT

1065 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1066 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1067 manner as other water users or landowners.

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1068

CHANGES IN CONTRACTOR'S SERVICE AREA

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

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(b) Within 30 days of receipt of a request for such a change, the Contracting Officer will notify the Contractor of any additional information required by the Contracting Officer for processing said request, and both parties will meet to establish a mutually agreeable schedule for timely completion of the process. Such process will analyze whether the proposed change is likely to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply with NEPA and ESA. The Contractor will be responsible for all costs incurred by the Contracting Officer in this process, and such costs will be paid in accordance with Article 25 of this Contract.

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FEDERAL LAWS

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

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1090

NOTICES

1091 37. Any notice, demand, or request authorized or required by this Contract shall be deemed to
1092 have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to Area
1093 Manager, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom, California 95630-1799, and
1094 on behalf of the United States, when mailed, postage prepaid, to Board of Directors, East Bay
1095 Municipal Utility District, P. O. Box 24055, Oakland, California 94623-1055, or delivered to
1096 Board of Directors, East Bay Municipal Utility District, 375 Eleventh Street, Oakland, California
1097 94607. The designation of the addressee or the address may be changed by notice given in the
1098 same manner as provided in this Article for other notices.

1099

CONFIRMATION OF CONTRACT

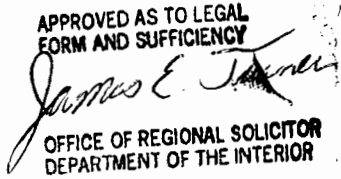
1100 38. The Contractor, after the execution of this Contract, shall furnish to the
1101 Contracting Officer evidence that pursuant to the laws of the State of California, the Contractor is
1102 a legally constituted entity, and the Contract is lawful, valid, and binding on the Contractor. This
1103 Contract shall not be binding on the United States until such evidence has been provided to the
1104 Contracting Officer's satisfaction.

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1105 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of
1106 the day and year first above written.

1107

THE UNITED STATES OF AMERICA



1108

By:

[Handwritten Signature]

1109

Regional Director, Mid-Pacific Region
Bureau of Reclamation

1110

1111 (SEAL)

1112

EAST BAY MUNICIPAL UTILITY DISTRICT

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1114

By:

William B. Patterson

President of the Board of Directors

1115 Attest:

1116

1117

By:

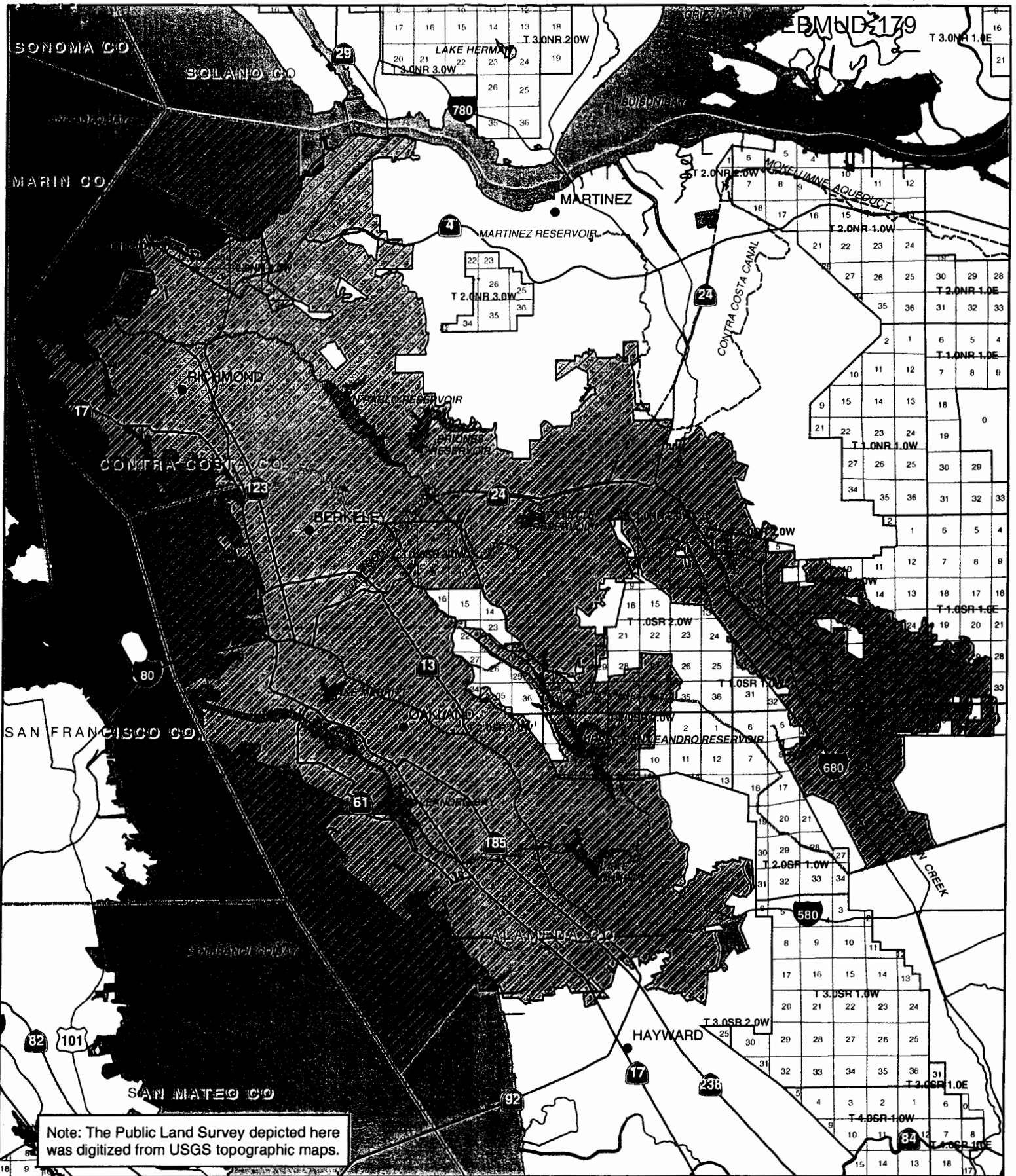
Lynelle M Lewis



Secretary of the Board of Directors

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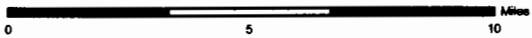


-  District Boundary
-  Contractor's Service Area

East Bay M.U.D.

Exhibit A

Contract No. 14-06-200-5183A-LTR1



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EXHIBIT B
[Initial Rates and Charges]
EAST BAY MUNICIPAL UTILITY DISTRICT

~~Note: These are 2004 water rates. 2005 water rates will be furnished when available.~~

| | <u>2004 Rates Per Acre-Foot</u> |
|--|---------------------------------|
| | <u>M&I</u> |
| O&M AND COST-OF-SERVICE RATES: | |
| Capital Rate: | \$21.99 |
| O&M Rate: | \$16.71 |
| Water Marketing | \$5.01 |
| Storage | 6.38 |
| Conveyance | 5.32 |
| CFO/PFR Adjustment Rate | \$ 1.18 |
| Deficit Rate: * | \$70.68 |
| TOTAL COST-OF-SERVICE (COS) RATE: | \$110.55 |
| TIERED PRICING COMPONENT >80% ≤90% OF CONTRACT TOTAL (M&I Full Cost Rate - COS rate / 2): | \$6.57 |
| TIERED PRICING COMPONENT > 90% OF CONTRACT TOTAL (M&I Full Cost Rate - COS rate): | \$13.13 |
| M&I FULL COST RATE: Interest rates used in the calculation of the M&I Full Cost Rate shall comply with the Interest Rate methodology contained in Section 202 (3) (B) and (C) of the Reclamation Reform Act of October 12, 1982 (96 Stat. 1263), as amended; | \$123.68 |
| SURCHARGES UNDER P.L. 102-575 TO RESTORATION FUND** | |
| Restoration Payments [3407(d)(2)(A)] | \$15.64 |

* See subdivision (n) of Article 7.

** The surcharges are payments in addition to the water rates and are determined pursuant to Title XXXIV of P.L. 102-575. Restoration Fund surcharges under P.L. 102-575 are on a fiscal year basis (10/1 -9/30).