

California Waterfix Hearing Exhibit No. DOI-18

Irrigation and M&I Contract No. 175r-1672D

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

CONTRACT BETWEEN THE UNITED STATES <u>AND</u> <u>ORANGE COVE IRRIGATION DISTRICT</u> <u>PROVIDING FOR PROJECT WATER SERVICE</u> <u>FROM FRIANT DIVISION AND</u> <u>FOR FACILITIES REPAYMENT</u>

Table of Contents

Article No. Title

Page No.

	Preamble	1
	Explanatory Recitals	2
1	Definitions	
2	Effective Date Of Contract	.13
3	Water To Be Made Available And Delivered To The Contractor	.15
4	Time For Delivery Of Water	.22
5	Point Of Diversion And Responsibility For Distribution Of Water	
6	Measurement Of Water Within The Service Area	
7	Rates, Method Of Payment For Water, And Accelerated Repayment of Facilities	.29
8	Non-Interest Bearing Operation And Maintenance Deficits	.40
9	Recovered Water Account	.40
10	Sales, Transfers, And Exchanges Of Water	.40
11	Application Of Payments And Adjustments	
12	Temporary Reductions—Return Flows	.45
13	Constraints On The Availability Of Water	
14	Unavoidable Groundwater Percolation	
15	Acreage Limitation	.49
16	Compliance With Federal Reclamation Laws	.51
17	Protection Of Water And Air Quality	
18	Water Acquired By The Contractor Other Than From The United States	.51
19	Opinions And Determinations	
20	Coordination And Cooperation	
21	Charges For Delinquent Payments	
22	Equal Employment Opportunity	
23	General Obligation—Benefits Conditioned Upon Payment	
24	Compliance With Civil Rights Laws And Regulations	.59

25	Privacy Act Co	ompliance	60
26		Pay Certain Miscellaneous Costs	
27	Water Conserv	ation	61
28	Existing Or Ac	quired Water Or Water Rights	63
29	Operation And	Maintenance By Operating Non-Federal Entity	63
30	Contingent On	Appropriation Or Allotment Of Funds	65
31	Books, Record	s, And Reports	65
32	Assignment Li	mited—Successors And Assigns Obligated	66
33	Severability		66
34	Resolution Of	Disputes	67
35	Officials Not T	o Benefit	68
36	Changes In Co	ntractor's Service Area	68
37			
38	Emergency Res	serve Fund	69
39	Medium For T	ransmitting Payment	69
40			
41		Of Contract	
42	Contract Drafti	ng Considerations	70
	Exhibit A	Contractor's Map or Description of Service Area	
	Exhibit B	Rates and Charges	
	Exhibit C-1	Repayment Schedule – Lump Sum Option	

- Exhibit C-2
- Repayment Schedule Lump Sum Option Repayment Schedule Installment Option Computation of the Friant Surcharge Restated Contract Exhibit D
- Exhibit E

1	UNITED STATES
2	DEPARTMENT OF THE INTERIOR
3	BUREAU OF RECLAMATION
4	Central Valley Project, California
5	CONTRACT BETWEEN THE UNITED STATES
6	AND
7	ORANGE COVE IRRIGATION DISTRICT
8	PROVIDING FOR PROJECT WATER SERVICE
9	FROM FRIANT DIVISION AND
10	FACILITIES REPAYMENT
11	THIS CONTRACT, made this <u>18⁴</u> day of <u>November</u> , 2010, is entered
12	into pursuant to the Act of June 17, 1902, (32 Stat. 388), and acts amendatory or supplementary
13	thereto, including but not limited to: the Act of August 26, 1937 (50 Stat. 844), as amended and
14	supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70
15	Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1262), October 27, 1986 (100
16	Stat. 3050), as amended, Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), and Title
17	X, Subtitle A, of the Act of March 30, 2009 (123 Stat. 1349), also referred to as the San Joaquin
18	River Restoration Settlement Act hereinafter referred to as SJRRSA, all collectively hereinafter
19	referred to as Federal Reclamation law, between THE UNITED STATES OF AMERICA,
20	hereinafter referred to as the United States and ORANGE COVE IRRIGATION DISTRICT,
21	hereinafter referred to as the Contractor, a public agency of the State of California, duly
22	organized, existing, and acting pursuant to the laws thereof, with its principal place of business in
23	California;
24	WITNESSETH, That

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EXPLANATORY RECITALS

26	[1 st] WHEREAS, the United States has constructed and is operating the Central Valley
27	Project, California, for diversion, storage, carriage, distribution and beneficial use, for flood
28	control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and
29	restoration, generation and distribution of electric energy, salinity control, navigation and other
30	beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and
31	the San Joaquin River and their tributaries; and
32	[2 nd] WHEREAS, the United States constructed Friant Dam (thereby creating Millerton
33	Lake) and the Friant-Kern and Madera Canals, hereinafter collectively referred to as the Friant
34	Division Facilities, which will be used in part for the furnishing of water to the Contractor
35	pursuant to the terms of this Contract; and
36	[3 rd] WHEREAS, the United States and the Contractor entered into Contract Number
37	175r-1672, as amended, which established terms for the delivery to the Contractor of Project
38	Water from the Friant Division from July 9, 1949 through February 28, 1989; and
39	[4 th] WHEREAS, the Contractor and the United States have entered into a renewal
40	contract and, pursuant to subsection 3404(c)(1) of the Central Valley Project Improvement Act
41	(CVPIA), subsequently entered into an interim renewal contract(s), identified as Contract
42	Number (s) I75r-1672R and I75r-1672-IR1, which provided for the continued water service to
43	Contractor from March 1, 1989 through February 28, 2001, and subsequently entered into a
44	long-term renewal contract identified as Contract Number I75r-1672-LTR1, which provided for

45	continued water service to Contractor through February 28, 2026, which was amended January
46	18, 2007, and is herein referred to as the "Existing Contract"; and
47	[5 th] WHEREAS, pursuant to Section 8 of the Act of June 17, 1902 (32 Stat. 388), the
48	United States has acquired water rights and other rights to the flows of the San Joaquin River,
49	including without limitation the permits issued as the result of Decision 935 by the California
50	State Water Resource Control Board and the contracts described in subdivision (n) of Article 3
51	of this Contract, pursuant to which the Contracting Officer develops, diverts, stores and delivers
52	Project Water stored or flowing through Millerton Lake in accordance with State and Federal law
53	for the benefit of Project Contractors in the Friant Division and for other specified Project
54	purposes; and
55	[6 th] WHEREAS, the water supplied to the Contractor pursuant to this Contract is
56	Project Water developed through the exercise of the rights described in the fifth (5 th) Explanatory
57	Recital of this Contract; and
58	[7 th] WHEREAS, as a result of litigation entitled "Natural Resources Defense Council,
59	et al. v Kirk Rogers, et al." No. CIV-S-88-1658LLK/GGH, certain contractors from the Friant
60	Division entered into a Stipulation of Settlement dated September 13, 2006, (the "Settlement"),
61	which settlement prescribes a Restoration Goal and a Water Management Goal and which
62	Settlement was subsequently confirmed and implemented through the SJRRSA; and
63	[8 th] WHEREAS, the SJRRSA authorizes and directs the Secretary to convert the
64	Existing Contract to a repayment contract under subsection (d) of Section 9 of the Act of August
65	4, 1939, no later than December 31, 2010, and further directs that such contract shall require the

66	accelerated repayment of the Contractor's allocated share of construction costs, either as a lump
67	sum payment by January 31, 2011 or in annual installments by January 31, 2014, which funds
68	will in turn be made available for implementation of the Settlement and SJRRSA, and which
69	costs otherwise would have been payable through annual water rates, with full repayment by
70	2030; and
71	[9 th] WHEREAS, such repayment of costs will assist the United States with
72	implementation of actions required under the Settlement and the SJRRSA and provide the
73	Contractor the benefits provided in Section 10010 of the SJRRSA; and
74	[10 th] WHEREAS, subsection (4) of Section 1 of the Act of July 2, 1956 (1956 Act)
75	directs the Secretary to provide that the other party to any contract entered into pursuant to
76	subsection (d) of Section 9 of the Act of August 4, 1939 (repayment contract) or pursuant to
77	subsection (e) of Section 9 of the Act of August 4, 1939 (water service contract) shall "have the
78	first right (to which the rights of the holders of any other type of irrigation water contract shall be
7 9	subordinate) to a stated share or quantity of the project's available water supply for beneficial
80	use on the irrigable lands within the boundaries of, or owned by, the party and a permanent right
81	to such share or quantity upon completion of payment of the amount assigned for ultimate
82	return" by the contractor subject to fulfillment of all obligations under the contract; and
83	[11 th] WHEREAS, among other things, this Contract includes provisions granting the
84	Contractor the permanent right described in the tenth (10 th) Explanatory Recital; and
85	[12 th] WHEREAS, the Contractor has demonstrated to the satisfaction of the
86	Contracting Officer that the Contractor has utilized the Project Water supplies available to it for

87	reasonable and beneficial use and/or has demonstrated projected future demand for water use
88	such that the Contractor has the capability and expects to utilize fully for reasonable and
89	beneficial use the quantity of Project Water to be made available to it pursuant to this Contract;
90	and
91	[13 th] WHEREAS, water obtained from the Central Valley Project has been relied upon
92	by urban and agricultural areas within California for more than fifty (50) years and is considered
93	by the Contractor as an essential portion of its water supply; and
94	[14 th] WHEREAS, the economies of regions within the Central Valley Project,
95	including the Contractor's, depend upon the continued availability of water, including water
96	service from the Central Valley Project; and
97	[15 th] WHEREAS, the Secretary intends through coordination, cooperation, and
98	partnerships to pursue measures to improve water supply, water quality, and reliability of the
99	Project for all Project purposes; and
100	[16 th] WHEREAS, the mutual goals of the United States and the Contractor include: to
101	provide for reliable Project Water supplies; to control costs of those supplies; to achieve
102	repayment of the Central Valley Project as required by law; to guard reasonably against Project
103	Water shortages; to achieve a reasonable balance among competing demands for use of Project
104	Water; and to comply with all applicable environmental statutes, all consistent with the legal
105	obligations of the United States relative to the Central Valley Project; and
106	[17 th] WHEREAS, any time during the Year the Contracting Officer determines that a
107	need exists to evacuate water from Millerton Lake in order to prevent or minimize spill or to

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108	meet flood control criteria (currently referred to as "uncontrolled season"), taking into
109	consideration, among other things, anticipated upstream reservoir operations and the most
110	probable forecast of snowmelt and runoff projections for the upper San Joaquin River, Friant
111	Division Project Contractors utilize a portion of their undependable Class 2 Water in their
112	service areas to, among other things, assist in the management and alleviation of groundwater
113	overdraft in the Friant Division service area, provide opportunities for restoration of the San
114	Joaquin River below Friant Dam, minimize flooding along the San Joaquin River, encourage
115	optimal water management, and maximize the reasonable and beneficial use of the water; and
116	[18 th] WHEREAS, the parties desire and intend that this Contract not provide a
117	disincentive to the Friant Division Project Contractors continuing to carry out the beneficial
118	activities set out in the Explanatory Recital immediately above; and
119	[19 th] WHEREAS, the United States has determined that the Contractor has fulfilled all
120	of its obligations under the Existing Contract.
121	NOW, THEREFORE, in consideration of the mutual and dependent covenants herein
122	contained, it is hereby mutually agreed by the parties hereto as follows:
123	DEFINITIONS
124	1. When used herein, unless otherwise distinctly expressed or manifestly
125	incompatible with the intent of the parties as expressed in this Contract, the term:
126	(a) "Additional Capital Obligation" shall mean any additional construction
127	costs or other capitalized costs incurred after the effective date of this Contract or not reflected in
128	the Existing Capital Obligation as provided in Section 10010(a)(3)(B) of the SJRRSA and any

129	amounts payable by Contractor as determined through the final adjustment described and
130	required by Section 10010(b) of the SJRRSA;
131	(b) "Calendar Year" shall mean the period January 1 through December 31,
132	both dates inclusive;
133	(c) "Charges" shall mean the payments required by Federal Reclamation law
134	in addition to the Rates and Tiered Pricing Components specified in this Contract as determined
135	annually by the Contracting Officer pursuant to this Contract and consistent with the SJRRSA;
136	(d) "Class 1 Water" shall mean that supply of water stored in or flowing
137	through Millerton Lake which, subject to the contingencies hereinafter described in Articles 3,
138	12, and 13 of this Contract, will be available for delivery from Millerton Lake and the
139	Friant-Kern and Madera Canals as a dependable water supply during each Year;
140	(e) "Class 2 Water" shall mean that supply of water which can be made
141	available subject to the contingencies hereinafter described in Articles 3, 12, and 13 of this
142	Contract for delivery from Millerton Lake and the Friant-Kern and Madera Canals in addition to
143	the supply of Class 1 Water. Because of its uncertainty as to availability and time of occurrence,
144	such water will be undependable in character and will be furnished only if, as, and when it can be
145	made available as determined by the Contracting Officer;
146	(f) "Condition of Shortage" shall mean a condition respecting the Project
147	during any Year such that the Contracting Officer is unable to deliver sufficient water to meet the
148	Contract Total;

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149	(g) "Contracting Officer" shall mean the Secretary of the Interior's duly
150	authorized representative acting pursuant to this Contract or applicable Federal Reclamation law
151	or regulation;
152	(h) "Contract Total" shall mean the maximum amount of Class 1 Water plus
153	the maximum amount of Class 2 Water specified in subdivision (a) of Article 3 of this Contract
154	and is the stated share or quantity of the Project's available water supply to which the Contractor
155	will have a permanent right in accordance with the 1956 Act and the terms of this Contract, upon
156	the Contractor's complete payment of the Repayment Obligation, notwithstanding any
157	Additional Capital Obligation that may later be established, which right shall not be disturbed so
158	long as the Contractor fulfills all of its obligations under this Contract;
159	(i) "Contractor's Service Area" shall mean the area to which the Contractor is
160	permitted to provide Project Water under this Contract as described in Exhibit "A" attached
161	hereto, which may be modified from time to time in accordance with Article 36 of this Contract
162	without amendment of this Contract;
163	(j) "CVPIA" shall mean the Central Valley Project Improvement Act, Title
164	XXXIV of the Act of October 30, 1992 (106 Stat. 4706);
165	(k) "Eligible Lands" shall mean all lands to which Irrigation Water may be
166	delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982
167	(96 Stat. 1263), as amended, hereinafter referred to as RRA;

168	(1) "Excess Lands" shall mean all lands in excess of the limitations contained
169	in Section 204 of the RRA, other than those lands exempt from acreage limitation under Federal
170	Reclamation law;
171	(m) "Existing Capital Obligation" shall mean the remaining amount of
172	construction costs of the Contractor identified in the Central Valley Project Irrigation Water
173	Rates and/or Municipal and Industrial Water Rates, respectively, dated January 25, 2007, as
174	adjusted to reflect payments not reflected in such schedule, pursuant to Section 10010(a)(3)(A)
175	of the SJRRSA. The Contracting Officer has computed the Existing Capital Obligation in a
176	manner consistent with the SJRRSA and such amount is set forth in Exhibits "C-1" and "C-2",
177	incorporated herein by reference;
178	(n) "Financing Costs", for purposes of computing the reduction of certain
179	charges as specified in subdivision (c) of Article 7 of this Contract, shall mean the difference
180	between the net present value of the Existing Capital Obligation discounted using the full
181	Treasury rate and the Existing Capital Obligation discounted using one-half the Treasury rate, as
182	set forth in Section 10010(d)(3) of the SJRRA;
183	(o) "Full Cost Rate" shall mean that water rate described in Sections 205(a)(3)
184	or 202(3) of the RRA, whichever is applicable;
185	(p) "Ineligible Lands" shall mean all lands to which Irrigation Water may not
186	be delivered in accordance with Section 204 of the RRA;
187	(q) "Irrigation Full Cost Water Rate" shall have the same meaning as "full
188	cost" as that term is used in Paragraph (3) of Section 202 of the RRA;

189	(r) "Irrigation Water" shall mean water made available from the Project that
190	is used primarily in the production of agricultural crops or livestock, including domestic use
191	incidental thereto, and watering of livestock;
192	(s) "Landholder" shall mean a party that directly or indirectly owns or leases
193	nonexempt land, as provided in 43 CFR 426.2;
194	(t) "Long Term Historic Average" shall mean the average of the final forecast
195	of Water Made Available to the Contractor pursuant to this Contract and the contracts referenced
196	in the third (3 rd) and fourth (4 th) Explanatory Recitals of this Contract;
197	(u) "Municipal and Industrial (M&I) Water" shall mean water made available
198	from the Project other than Irrigation Water made available to the Contractor. M&I Water shall
199	include water used for human use and purposes such as the watering of landscaping or pasture
200	for animals (e.g., horses) which are kept for personal enjoyment or water delivered to land
201	holdings operated in units of less than five (5) acres unless the Contractor establishes to the
202	satisfaction of the Contracting Officer that the use of water delivered to any such landholding is a
203	use described in subdivision (r) of this Article of this Contract;
204	(v) "M&I Full Cost Water Rate" shall mean the annual rate, which, as
205	determined by the Contracting Officer, shall amortize the expenditures for construction allocable
206	to Project M&I facilities in service, including, O&M deficits funded, less payments, over such
207	periods as may be required under Federal Reclamation law with interest accruing from the dates
208	such costs were first incurred plus the applicable rate for the O&M of such Project facilities.

209	Interest rates used in the calculation of the M&I Full Cost Rate shall comply with the Interest
210	Rate methodology contained in Section 202(3) (B) and (C) of the RRA;
211	(w) "Operation and Maintenance" or "O&M" shall mean normal and
212	reasonable care, control, operation, repair, replacement (other than Capital replacement), and
213	maintenance of Project facilities;
214	(x) "Operating Non-Federal Entity" shall mean the Friant Water Authority, or
215	its successor, a Non-Federal entity, which has the obligation to operate and maintain all or a
216	portion of the Friant Division Facilities pursuant to an agreement with the United States and
217	which may have funding obligations with respect thereto;
218	(y) Omitted;
219	(z) "Project" shall mean the Central Valley Project owned by the United
220	States and managed by the Department of the Interior, Bureau of Reclamation;
221	(aa) "Project Contractors" shall mean all parties who have a long-term water
222	service contract or repayment contract for Project Water from the Project with the United States
223	pursuant to Federal Reclamation law;
224	(bb) "Project Water" shall mean all water that is developed, diverted, stored, or
225	delivered by the Secretary in accordance with the statutes authorizing the Project and in
226	accordance with the terms and conditions of water rights acquired pursuant to California law;
227	(cc) "Rates" shall mean the payments for O&M costs as determined annually
228	by the Contracting Officer in accordance with the then-existing applicable water ratesetting

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229	policies for the Project, as described in subdivision (a) of Article 7 of this Contract and
230	illustrated in Exhibit "B", attached hereto;
231	(dd) "Recovered Water Account" shall mean the program, as defined in the
232	Settlement, to make water available to all of the Friant Division Project Contractors who provide
233	water to meet interim flows or restoration flows for the purpose of reducing or avoiding the
234	impact of the interim flows and restoration flows on such contractors;
235	(ee) "Repayment Obligation", as provided in subdivision (a)(2)(A) of Article 7
236	of this Contract, shall be the Existing Capital Obligation, as defined herein, discounted by
237	one-half of the Treasury rate and computed consistent with the provisions of Section
238	10010(a)(3)(A) of the SJRRSA to be paid as either a lump sum payment by January 31, 2011 or
239	in approximately equal annual installments by January 31, 2014;
240	(ff) "Secretary" shall mean the Secretary of the Interior, a duly appointed
241	successor, or an authorized representative acting pursuant to any authority of the Secretary and
242	through any agency of the Department of the Interior;
243	(gg) "Settlement" shall mean the Stipulation of Settlement dated September 13,
244	2006, the Order Approving Stipulation of Settlement, and the Judgment and further orders issued
245	by the Court pursuant to the terms and conditions of the Settlement in Natural Resources
246	Defense Council, et al. v. Rodgers, et al., No. CIV-S-88-1658 LLJ/GGH;
247	(hh) "Tiered Pricing Component" shall be the incremental amount to be paid
248	for each acre-foot of Water Delivered as described in subdivision (1)(1) of Article 7 of this
249	Contract;

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250	(ii) "Water Delivered" or "Delivered Water" shall mean Project Water
251	diverted for use by the Contractor at the point(s) of delivery approved by the Contracting
252	Officer;
253	(jj) "Water Made Available" shall mean the estimated amount of Project
254	Water that can be delivered to the Contractor for the upcoming Year as declared by the
255	Contracting Officer, pursuant to subdivision (a) of Article 4 of this Contract;
256	(kk) "Water Management Goal" shall mean the goal of the Settlement to
257	reduce or avoid adverse water supply impacts to all the Friant Division Project Contractors that
258	may result from the interim flows and restoration flows provided for in the Settlement;
259	(II) "Water Scheduled" shall mean Project Water made available to the
260	Contractor for which times and quantities for delivery have been established by the Contractor
261	and Contracting Officer, pursuant to subdivision (b) of Article 4 of this Contract; and
262	(mm) "Year" shall mean the period from and including March 1 of each
263	Calendar Year through the last day of February of the following Calendar Year.
264	EFFECTIVE DATE OF CONTRACT
265	2. (a) This Contract shall become effective on the date first hereinabove written
266	and shall continue so long as the Contractor is making the annual payments required herein and
267	paying any other amounts owing under this Contract and applicable law, unless it is terminated
268	by the Contracting Officer by reason of a material uncured breach by the Contractor; Provided,
269	That the Contracting Officer shall not seek to terminate this Contract by reason of an asserted
270	material uncured breach by the Contractor unless it has first provided at least sixty (60) days

written notice of the asserted breach to the Contractor and the Contractor has failed to cure such
breach (or to diligently commence curative actions satisfactory to the Contracting Officer for a
breach that cannot be fully cured within sixty (60) days) within the sixty (60)-day notice period;
<u>Provided further</u>, That this Contract may be terminated at any time by mutual consent of the
parties hereto.

276 (b) Upon complete payment of the Repayment Obligation by the Contractor, 277 and notwithstanding any Additional Capital Obligation that may later be established, the Tiered Pricing Component as that term is utilized in this Contract, the acreage limitations, reporting, and 278 279 Full Cost pricing provisions of Federal Reclamation law, and subdivisions (k), (l), (o) through 280 (q), (s), and (v) of Article 1, subdivisions (a)(2)(A), (l)(1), (l)(2), and (l)(3) of Article 7, Article 281 14, subdivision (a) of Article 18, and Article 25, all of this Contract, shall no longer be applicable to the Contractor. Upon complete payment of the Repayment Obligation by the 282 283 Contractor, and notwithstanding any Additional Capital Obligation that may later be established, 284 the terms of this Contract shall be as provided in the restated contract attached hereto as Exhibit 285 "E", which has been prepared solely as a matter of administrative convenience. Exhibit "E" makes no substantive revisions other than those required by this subdivision of this Article of 286 this Contract. Accordingly, upon complete payment of the Repayment Obligation by the 287 Contractor, and notwithstanding any Additional Capital Obligation that may later be established, 288 the parties shall refer to Exhibit "E" as their entire agreement under this Contract. 289

(c) This Contract supersedes in its entirety and is intended to replace in full
 the Existing Contract; <u>Provided</u>, That if this Contract is terminated or determined to be invalid or

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292	unenforceable for any reason other than a material uncured breach of this Contract by the
293	Contractor, the Existing Contract shall not be superseded and shall be in full force and effect.
294	WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR
295	3. (a) During each Year, consistent with all applicable State water rights,
296	permits, and licenses, Federal law, the Settlement including the SJRRSA, and subject to the
297	provisions set forth in Articles 12 and 13 of this Contract, the Contracting Officer shall make
298	available for delivery to the Contractor from the Project 39,200 acre-feet of Class 1 Water for
299	irrigation and M&I purposes. The quantity of Water Delivered to the Contractor in accordance
300	with this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and
301	7 of this Contract.
302	(b) Upon complete payment of the Repayment Obligation by the Contractor,
303	and notwithstanding any Additional Capital Obligation that may later be established, the
304	Contractor shall have a permanent right to the Contract Total in accordance with the 1956 Act
305	and the terms of this Contract. This right shall not be disturbed so long as the Contractor fulfills
306	all of its obligations hereunder. The quantity of water made available for delivery in any given
307	Year shall remain subject to the terms and conditions of subdivision (a) of this Article of this
308	Contract.
309	(c) The Contractor shall utilize the Project Water in accordance with all
310	applicable legal requirements.
311	(d) The Contractor shall make reasonable and beneficial use of all Project
312	Water or other water furnished pursuant to this Contract. Groundwater recharge programs,

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313 groundwater banking programs, surface water storage programs, and other similar programs 314 utilizing Project Water or other water furnished pursuant to this Contract conducted within the 315 Contractor's Service Area which are consistent with applicable State law and result in use 316 consistent with applicable Federal Reclamation law will be allowed; Provided, That any direct recharge program(s) is (are) described in the Contractor's Water Conservation Plan submitted 317 318 pursuant to Article 27 of this Contract; Provided further, That such Water Conservation Plan 319 demonstrates sufficient lawful uses exist in the Contractor's Service Area so that using a long-term average, the quantity of Delivered Water is demonstrated to be reasonable for such 320 uses and in compliance with Federal Reclamation law. Groundwater recharge programs, 321 groundwater banking programs, surface water storage programs, and other similar programs 322 utilizing Project Water or other water furnished pursuant to this Contract conducted outside the 323 Contractor's Service Area may be permitted upon written approval of the Contracting Officer, 324 which approval will be based upon environmental documentation, Project Water rights, and 325 Project operational concerns. The Contracting Officer will address such concerns in regulations, 326 327 policies, or guidelines.

(e) The Contractor, through this Contract, shall comply with requirements
applicable to the Contractor in biological opinion(s) prepared as a result of the consultation
regarding the execution of the Existing Contract undertaken pursuant to Section 7 of the
Endangered Species Act of 1973, as amended, as well as the requirements of any other biological
opinions applicable to Project Water delivery under this Contract, that are within the
Contractor's legal authority to implement. The Contractor shall comply with the limitations or

requirements imposed by environmental documentation applicable to the Contractor and within
its legal authority to implement regarding specific activities, including conversion of Irrigation
Water to M&I Water. Nothing herein shall be construed to prevent the Contractor from
challenging or seeking judicial relief in a court of competent jurisdiction with respect to any
biological opinion or other environmental documentation referred to in this Article of this
Contract.

340 **(f)** Subject to subdivisions (1) and (n) of this Article of this Contract, following the declaration of Water Made Available under Article 4 of this Contract, the 341 Contracting Officer will make a determination whether Project Water, or other water available to 342 343 the Project, can be made available to the Contractor in addition to the Contract Total in this Article of this Contract during the Year without adversely impacting the Project or other Project 344 345 Contractors and consistent with the Secretary's legal obligations. At the request of the 346 Contractor, the Contracting Officer will consult with the Contractor prior to making such a 347 determination. Subject to subdivisions (I) and (n) of this Article of this Contract, if the 348 Contracting Officer determines that Project Water, or other water available to the Project, can be 349 made available to the Contractor, the Contracting Officer will announce the availability of such water and shall so notify the Contractor as soon as practical. The Contracting Officer will 350 thereafter meet with the Contractor and other Project Contractors capable of taking such water to 351 determine the most equitable and efficient allocation of such water. If the Contractor requests 352 353 the delivery of any quantity of such water, the Contracting Officer shall make such water

available to the Contractor in accordance with applicable statutes, regulations, guidelines, andpolicies.

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

363 (h) The Contractor's right pursuant to Federal Reclamation law and applicable
364 State law to the reasonable and beneficial use of the Water Delivered pursuant to this Contract
365 shall not be disturbed so long as the Contractor shall fulfill all of its obligations under this
366 Contract. Nothing in the preceding sentence shall affect the Contracting Officer's ability to
367 impose shortages under Article 12 or subdivision (b) of Article 13 of this Contract.

368 (i) Project Water furnished to the Contractor pursuant to this Contract may be
369 delivered for purposes other than those described in subdivisions (r) and (u) of Article 1 of this
370 Contract upon written approval by the Contracting Officer in accordance with the terms and
371 conditions of such approval.

372 (j) The Contracting Officer shall make reasonable efforts to protect the water
373 rights and other rights described in the fifth (5th) Explanatory Recital of this Contract and to
374 provide the water available under this Contract. The Contracting Officer shall not object to

375	participation by the Contractor, in the capacity and to the extent permitted by law, in
376	administrative proceedings related to the water rights and other rights described in the fifth (5th)
377	Explanatory Recital of this Contract; Provided however, That the Contracting Officer retains the
378	right to object to the substance of the Contractor's position in such a proceeding. Provided
379	further, that in such proceedings the Contracting Officer shall recognize the Contractor has a
380	legal right under the terms of this Contract to use Project Water.
381	(k) Project Water furnished to the Contractor during any month designated in
382	a schedule or revised schedule submitted by the Contractor and approved by the Contracting
383	Officer shall be deemed to have been accepted by the Contractor as Class 1 Water to the extent
384	that Class 1 Water is called for in such schedule for such month and shall be deemed to have
385	been accepted as Class 2 Water to the extent Class 2 Water is called for in such schedule for such
386	month. If in any month the Contractor diverts a quantity of water in addition to the total amount
387	of Class 1 Water and Class 2 Water set forth in the Contractor's approved schedule or revised
388	schedule for such month, such additional diversions shall be charged first against the
389	Contractor's remaining Class 2 Water supply available in the current Year. To the extent the
390	Contractor's remaining Class 2 Water supply available in the current Year is not sufficient to
391	account for such additional diversions, such additional diversions shall be charged against the
392	Contractor's remaining Class 1 Water supply available in the current Year. To the extent the
393	Contractor's remaining Class 1 Water and Class 2 Water supplies available in the current Year
394	are not sufficient to account for such additional diversions, such additional diversions shall be
395	charged first against the Contractor's available Class 2 Water supply and then against the

396	Contractor's available Class 1 Water supply, both for the following Year. Payment for all
397	additional diversions of water shall be made in accordance with Article 7 of this Contract.
398	(I) If the Contracting Officer determines there is a Project Water supply
399	available at Friant Dam as the result of an unusually large water supply not otherwise storable for
400	Project purposes or infrequent and otherwise unmanaged flood flows of short duration, such
401	water will be made available to the Contractor and others under Section 215 of the Act of
402	October 12, 1982, pursuant to the priorities specified below if the Contractor enters into a
403	temporary contract with the United States not to exceed one (1) year for the delivery of such
404	water or as otherwise provided for in Federal Reclamation law and associated regulations. Such
405	water may be identified by the Contractor either (i) as additional water to supplement the supply
406	of Class 1 Water and/or Class 2 Water made available to it pursuant to this Contract or, (ii) upon
407	written notification to the Contracting Officer, as water to be credited against the Contractor's
408	Class 2 Water supply available pursuant to this Contract. The Contracting Officer shall make
409	water determined to be available pursuant to this subsection according to the following priorities:
410	first, to contractors for Class 1 Water and/or Class 2 Water within the Friant Division; second, to
411	contractors in the Cross Valley Division of the Project. The Contracting Officer will consider
412	requests from other parties for Section 215 Water for use within the area identified as the Friant
413	Division service area in the environmental assessment developed in connection with the
414	execution of the Existing Contract.
415	(m) Nothing in this Contract, nor any action or inaction of the Contractor or

416

Contracting Officer in connection with the implementation of this Contract, is intended to

417 override, modify, supersede or otherwise interfere with any term or condition of the water rights
418 and other rights referred in the fifth (5th) Explanatory Recital of this Contract.

419 (n) The rights of the Contractor under this Contract are subject to the terms of the contract for exchange waters, dated July 27, 1939, between the United States and the San 420 Joaquin and Kings River Canal and Irrigation Company, Incorporated, et al., (hereinafter referred 421 to as the Exchange Contractors), Contract No. 11r-1144, as amended. The United States agrees 422 that it will not deliver to the Exchange Contractors thereunder waters of the San Joaquin River 423 424 unless and until required by the terms of said contract, and the United States further agrees that it will not voluntarily and knowingly determine itself unable to deliver to the Exchange 425 Contractors entitled thereto from water that is available or that may become available to it from 426 the Sacramento River and its tributaries or the Sacramento-San Joaquin Delta those quantities 427 required to satisfy the obligations of the United States under said Exchange Contract and under 428 Schedule 2 of the Contract for Purchase of Miller and Lux Water Rights (Contract Ilr-1145, 429 430 dated July 27, 1939).

(o) Pursuant to and consistent with section 10004 of SJRRSA and Paragraph
16 of the Settlement, the Contracting Officer is required to develop and implement a plan for
recirculation, recapture, reuse, exchange or transfer of water released for restoration flows or
interim flows, as those terms are defined in the Settlement, to reduce or avoid impacts to water
deliveries caused by said restoration flows or interim flows and water developed through such
activities may be made available (i) to the Contractor without the need of an additional contract,

437	and/or (ii) to others on behalf of the Contractor under terms mutually acceptable to the
438	Contractor and the Contracting Officer that are consistent with the Water Management Goal.
439	TIME FOR DELIVERY OF WATER
440	4. (a) On or about February 20 of each Calendar Year, the Contracting Officer
441	shall announce the Contracting Officer's initial declaration of the Water Made Available. The
442	declaration will be updated monthly and more frequently if necessary, based on then-current
443	operational and hydrologic conditions and a new declaration with changes, if any, to the Water
444	Made Available will be made. The Contracting Officer shall provide forecasts of Project
445	operations and the basis of the estimate, with relevant supporting information, upon the written
446	request of the Contractor. Concurrently with the declaration of the Water Made Available, the
447	Contracting Officer shall provide the Contractor with the updated Long Term Historic Average.
448	The declaration of Project operations will be expressed in terms of both Water Made Available
449	and the Long Term Historic Average.
450	(b) On or before each March 1 and at such other times as necessary, the
451	Contractor shall submit to the Contracting Officer a written schedule, satisfactory to the
452	Contracting Officer, showing the monthly quantities of Project Water to be delivered by the
453	United States to the Contractor pursuant to this Contract for the Year commencing on such
454	March 1. The Contracting Officer shall use all reasonable means to deliver Project Water
455	according to the approved schedule for the Year commencing on such March 1.
456	(c) The Contractor shall not schedule Project Water in excess of the quantity
457	of Project Water the Contractor intends to put to reasonable and beneficial use within the

458	Contractor's Service Area, or to sell, transfer or exchange pursuant to Article 10 of this Contract
459	or bank pursuant to subdivision (d) of Article 3 of this Contract during any Year.
460	(d) Subject to the conditions set forth in subdivision (a) of Article 3 of this
461	Contract, the United States shall deliver Project Water to the Contractor in accordance with the
462	initial schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any
463	written revision(s), satisfactory to the Contracting Officer, thereto submitted within a reasonable
464	time prior to the date(s) on which the requested change(s) is/are to be implemented; Provided,
465	That the total amount of water requested in that schedule or revision does not exceed the
466	quantities announced by the Contracting Officer pursuant to the provisions of subdivision (a) of
467	Article 3 of this Contract, and the Contracting Officer determines that there will be sufficient
468	capacity available in the appropriate Friant Division Facilities to deliver the water in accordance
469	with that schedule; Provided further, That the Contractor shall not schedule the delivery of any
470	water during any period as to which the Contractor is notified by the Contracting Officer or
471	Operating Non-Federal Entity that Project facilities required to make deliveries to the Contractor
472	will not be in operation because of scheduled O&M.
473	(e) The Contractor may, during the period from and including November 1 of
474	each Year through and including the last day of February of that Year, request delivery of any
475	amount of the Class 1 Water estimated by the Contracting Officer to be made available to it

during the following Year. The Contractor may, during the period from and including January 1
of each Year (or such earlier date as may be determined by the Contracting Officer) through and
including the last day of February of that Year, request delivery of any amount of Class 2 Water

479 estimated by the Contracting Officer to be made available to it during the following Year. Such 480 water shall hereinafter be referred to as pre-use water. Such request must be submitted in writing 481 by the Contractor for a specified quantity of pre-use and shall be subject to the approval of the Contracting Officer. Payment for pre-use water so requested shall be at the appropriate Rate(s) 482 483 for the following Year in accordance with Article 7 of this Contract and shall be made in advance of delivery of any pre-use water. The Contracting Officer shall deliver such pre-use 484 485 water in accordance with a schedule or any revision thereof submitted by the Contractor and 486 approved by the Contracting Officer, to the extent such water is available and to the extent such 487 deliveries will not interfere with the delivery of Project Water entitlements to other Friant Division contractors or the physical maintenance of the Project facilities. The quantities of 488 pre-use Water Delivered pursuant to this subdivision shall be deducted from the quantities of 489 490 water that the Contracting Officer would otherwise be obligated to make available to the Contractor during the following Year; Provided, That the quantity of pre-use water to be 491 492 deducted from the quantities of either Class 1 Water or Class 2 Water to be made available to the Contractor in the following Year shall be specified by the Contractor at the time the pre-use 493 water is requested or as revised in its first schedule for the following Year submitted in 494 495 accordance with subdivision (b) of this Article of this Contract, based on the availability of the 496 following Year water supplies as determined by the Contracting Officer. POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER 497

498 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this
499 Contract shall be delivered to the Contractor at a point or points of delivery either on Project

- facilities or another location or locations mutually agreed to in writing by the Contracting Officerand the Contractor.
- 502 (b) The Contracting Officer, the Operating Non-Federal Entity, or other 503 appropriate entity shall make all reasonable efforts to maintain sufficient flows and levels of 504 water in the Friant-Kern Canal to deliver Project Water to the Contractor at specific turnouts 505 established pursuant to subdivision (a) of this Article of this Contract.
- (c) The Contractor shall not deliver Project Water to land outside the
 Contractor's Service Area unless approved in advance by the Contracting Officer. Until
 complete payment of the Repayment Obligation by the Contractor, and notwithstanding any
 Additional Capital Obligation that may later be established, the Contractor shall deliver Project
 Water in accordance with applicable acreage limitations, reporting, and Full Cost pricing
 provisions of Federal Reclamation law and any applicable land classification provisions of the
 associated regulations.
- 513 (d) All Water Delivered to the Contractor pursuant to this Contract shall be measured and recorded with equipment furnished, installed, operated, and maintained by the 514 515 United States, the Operating Non-Federal Entity or other appropriate entity as designated by the Contracting Officer (hereafter "other appropriate entity") at the point or points of delivery 516 established pursuant to subdivision (a) of this Article of this Contract. Upon the request of either 517 party to this Contract, the Contracting Officer shall investigate, or cause to be investigated by the 518 519 responsible Operating Non-Federal Entity, the accuracy of such measurements and shall take any 520 necessary steps to adjust any errors appearing therein. For any period of time when accurate

521	measurements have not been made, the Contracting Officer shall consult with the Contractor and
522	the responsible Operating Non-Federal Entity prior to making a final determination of the
523	quantity delivered for that period of time.

524 (e) Neither the Contracting Officer nor any Operating Non-Federal Entity shall be responsible for the control, carriage, handling, use, disposal, or distribution of Project 525 Water Delivered to the Contractor pursuant to this Contract beyond the delivery points specified 526 527 in subdivision (a) of this Article of this Contract. The Contractor shall indemnify the United States, its officers, employees, agents, and assigns on account of damage or claim of damage of 528 529 any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with the control, carriage, handling, use, 530 disposal, or distribution of such Project Water beyond such delivery points, except for any 531 damage or claim arising out of: (i) acts or omissions of the Contracting Officer or any of its 532 533 officers, employees, agents, or assigns, including any responsible Operating Non-Federal Entity, 534 with the intent of creating the situation resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer or any of its officers, employees, agents, or assigns, including any 535 responsible Operating Non-Federal Entity; (iii) negligence of the Contracting Officer or any of 536 537 its officers, employees, agents, or assigns including any responsible Operating Non-Federal 538 Entity; or (iv) damage or claims resulting from a malfunction of facilities owned and/or operated by the United States or responsible Operating Non-Federal Entity; Provided, That the Contractor 539 is not the Operating Non-Federal Entity that owned or operated the malfunctioning facility(ies) 540 from which the damage claim arose. 541

5436.(a) The Contractor has established a measurement program satisfactory to the544Contracting Officer; all surface water delivered for irrigation purposes within the Contractor's545Service Area is measured at each agricultural turnout; and water delivered for municipal and546industrial purposes is measured at each municipal and industrial service connection. The water547measuring devices or water measuring methods of comparable effectiveness must be acceptable548to the Contracting Officer. The Contractor shall be responsible for installing, operating, and549maintaining and repairing all such measuring devices and implementing all such water550obtained from such water measuring devices or water measuring methods to ensure its proper551obtained from such water measuring devices or water delivered by the Contractor; and, if553applicable, to record water delivered for municipal and industrial purposes by customer class as554defined in the Contractor's water conservation plan provided for in Article 27 of this Contract.
Service Area is measured at each agricultural turnout; and water delivered for municipal and industrial purposes is measured at each municipal and industrial service connection. The water measuring devices or water measuring methods of comparable effectiveness must be acceptable to the Contracting Officer. The Contractor shall be responsible for installing, operating, and maintaining and repairing all such measuring devices and implementing all such water measuring methods at no cost to the United States. The Contractor shall use the information obtained from such water measuring devices or water measuring methods to ensure its proper management of the water, to bill water users for water delivered by the Contractor; and, if applicable, to record water delivered for municipal and industrial purposes by customer class as
546 industrial purposes is measured at each municipal and industrial service connection. The water 547 measuring devices or water measuring methods of comparable effectiveness must be acceptable 548 to the Contracting Officer. The Contractor shall be responsible for installing, operating, and 549 maintaining and repairing all such measuring devices and implementing all such water 550 measuring methods at no cost to the United States. The Contractor shall use the information 551 obtained from such water measuring devices or water measuring methods to ensure its proper 552 management of the water, to bill water users for water delivered by the Contractor; and, if 553 applicable, to record water delivered for municipal and industrial purposes by customer class as
547 measuring devices or water measuring methods of comparable effectiveness must be acceptable 548 to the Contracting Officer. The Contractor shall be responsible for installing, operating, and 549 maintaining and repairing all such measuring devices and implementing all such water 550 measuring methods at no cost to the United States. The Contractor shall use the information 551 obtained from such water measuring devices or water measuring methods to ensure its proper 552 management of the water, to bill water users for water delivered by the Contractor; and, if 553 applicable, to record water delivered for municipal and industrial purposes by customer class as
to the Contracting Officer. The Contractor shall be responsible for installing, operating, and maintaining and repairing all such measuring devices and implementing all such water measuring methods at no cost to the United States. The Contractor shall use the information obtained from such water measuring devices or water measuring methods to ensure its proper management of the water, to bill water users for water delivered by the Contractor; and, if applicable, to record water delivered for municipal and industrial purposes by customer class as
549 maintaining and repairing all such measuring devices and implementing all such water 550 measuring methods at no cost to the United States. The Contractor shall use the information 551 obtained from such water measuring devices or water measuring methods to ensure its proper 552 management of the water, to bill water users for water delivered by the Contractor; and, if 553 applicable, to record water delivered for municipal and industrial purposes by customer class as
550 measuring methods at no cost to the United States. The Contractor shall use the information 551 obtained from such water measuring devices or water measuring methods to ensure its proper 552 management of the water, to bill water users for water delivered by the Contractor; and, if 553 applicable, to record water delivered for municipal and industrial purposes by customer class as
obtained from such water measuring devices or water measuring methods to ensure its proper management of the water, to bill water users for water delivered by the Contractor; and, if applicable, to record water delivered for municipal and industrial purposes by customer class as
552 management of the water, to bill water users for water delivered by the Contractor; and, if 553 applicable, to record water delivered for municipal and industrial purposes by customer class as
553 applicable, to record water delivered for municipal and industrial purposes by customer class as
554 defined in the Contractor's water conservation plan provided for in Article 27 of this Contract.
Nothing herein contained, however, shall preclude the Contractor from establishing and
556 collecting any charges, assessments, or other revenues authorized by California law.
(b) To the extent the information has not otherwise been provided, upon
558 execution of this Contract, the Contractor shall provide to the Contracting Officer a written
report describing the measurement devices or water measuring methods being used or to be used
to implement subdivision (a) of this Article of this Contract and identifying the agricultural
ect a superior and the manufative and industrial complex compations on alternative measurement
561 turnouts and the municipal and industrial service connections or alternative measurement

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563	measuring methods are being used, and, if applicable, identifying the locations at which such
564	devices and/or methods are not yet being used including a time schedule for implementation at
565	such locations. The Contracting Officer shall advise the Contractor in writing within sixty (60)
566	days as to the adequacy of, and necessary modifications, if any, of the measuring devices or
567	water measuring methods identified in the Contractor's report and if the Contracting Officer does
568	not respond in such time, they shall be deemed adequate. If the Contracting Officer notifies the
569	Contractor that the measuring devices or methods are inadequate, the parties shall within sixty
570	(60) days following the Contracting Officer's response, negotiate in good faith the earliest
571	practicable date by which the Contractor shall modify said measuring devices and/or measuring
572	methods as required by the Contracting Officer to ensure compliance with subdivision (a) of this
573	Article of this Contract.
573 574	Article of this Contract. (c) All new surface water delivery systems installed within the Contractor's
574	(c) All new surface water delivery systems installed within the Contractor's
574 575	(c) All new surface water delivery systems installed within the Contractor's Service Area after the effective date of this Contract shall also comply with the measurement
574 575 576	(c) All new surface water delivery systems installed within the Contractor's Service Area after the effective date of this Contract shall also comply with the measurement provisions described in subdivision (a) of this Article of this Contract.
574 575 576 577	 (c) All new surface water delivery systems installed within the Contractor's Service Area after the effective date of this Contract shall also comply with the measurement provisions described in subdivision (a) of this Article of this Contract. (d) The Contractor shall inform the Contracting Officer and the State of
574 575 576 577 578	 (c) All new surface water delivery systems installed within the Contractor's Service Area after the effective date of this Contract shall also comply with the measurement provisions described in subdivision (a) of this Article of this Contract. (d) The Contractor shall inform the Contracting Officer and the State of California in writing by April 30 of each Year of the monthly volume of surface water delivered
574 575 576 577 578 579	 (c) All new surface water delivery systems installed within the Contractor's Service Area after the effective date of this Contract shall also comply with the measurement provisions described in subdivision (a) of this Article of this Contract. (d) The Contractor shall inform the Contracting Officer and the State of California in writing by April 30 of each Year of the monthly volume of surface water delivered within the Contractor's Service Area during the previous Year.

AND ACCELERATED REPAYMENT OF FACILITIES 584 The Contractor's cost obligations for all Delivered Water shall be 585 7. (a) 586 determined in accordance with: (i) the Secretary's ratesetting policy for Irrigation Water adopted 587 in 1988 and the Secretary's then-existing ratesetting policy for M&I Water, consistent with the 588 SJRRSA, and such ratesetting policies shall be amended, modified, or superseded only through a public notice and comment procedure; (ii) applicable Federal Reclamation law and associated 589 rules and regulations, or policies; and (iii) other applicable provisions of this Contract. 590 The Contractor shall pay the United States as provided for in this 591 (1) 592 Article of this Contract for the Delivered Water at Rates and Charges determined in accordance with policies for Irrigation Water and M&I Water. The Contractor's Rates shall be established to 593 recover its estimated reimbursable costs included in the O&M component of the Rate and 594 amounts established to recover other charges and deficits, other than the construction costs. The 595 596 Rates for O&M costs and Charges shall be adjusted, as appropriate, in accordance with the provisions of the SJRRSA. 597 In accordance with the SJRRSA, the Contractor's allocable share (2) 598 of Project construction costs will be repaid pursuant to the provisions of this Contract. 599 The amount due and payable to the United States, pursuant 600 (A) 601 to the SJRRSA, shall be the Repayment Obligation. The Repayment Obligation has been computed by the Contracting Officer in a manner consistent with the SJRRSA and is set forth, 602 both as a lump sum payment and as four (4) approximately equal annual installments, which 603 amounts together with the manner in which such amounts were calculated are set forth in 604

RATES, METHOD OF PAYMENT FOR WATER,

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605	Exhibits "C-1" and "C-2". The Repayment Obligation is due in lump sum by January 31, 2011
606	or in approximate equal annual installments no later than January 31, 2014, as provided by the
607	SJRRSA. The Contractor must provide appropriate notice to the Contracting Officer in writing
608	not later than thirty (30) days prior to January 31, 2011 if electing to repay the amount due using
609	the lump sum alternative. If such notice is not provided by such date, the Contractor shall be
610	deemed to have elected the installment payment alternative, in which case, the first such payment
611	shall be made no later than May 1, 2011, the second payment shall be made no later than the first
612	anniversary of the first payment date, the third payment shall be made no later than the second
613	anniversary of the first payment date, and the final payment shall be made no later than January
614	31, 2014. If the installment payment option is elected by the Contractor, the Contractor may
615	pre-pay the remaining portion of the Repayment Obligation by giving the Contracting Officer
616	sixty (60) days written notice, in which case, the Contracting Officer shall re-compute the
617	remaining amount due to reflect the pre-payment using the same methodology as was used to
618	compute the initial annual installment payment amount, which is illustrated in Exhibit "C-2".
619	Notwithstanding any Additional Capital Obligation that may later be established, receipt of the
620	Contractor's payment of the Repayment Obligation by the United States shall fully and
621	permanently satisfy the Existing Capital Obligation.
622	(B) Project construction costs or other capitalized costs
623	attributable to capital additions to the Project incurred after the effective date of this Contract or
624	that are not reflected in the schedules referenced in Exhibits "C-1" and "C-2" and properly

625 assignable to the Contractor, shall be repaid as prescribed by the SJRRSA without interest except

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626	as required by law. Consistent with Federal Reclamation law, interest shall continue to accrue
627	on the M&I portion of unpaid Project construction costs or other capitalized cost assigned to the
628	Contractor until such costs are paid. Increases or decreases in Project construction costs or other
629	capitalized costs assigned to the Contractor caused solely by annual adjustment of Project
630	construction costs or other capitalized costs assigned to each Central Valley Project contractor by
631	the Secretary shall not be considered in determining the amounts to be paid pursuant to this
632	subdivision (a)(2)(B), but will be considered under subdivision (b) of this Article. A separate
633	repayment agreement shall be established by the Contractor and the Contracting Officer to
634	accomplish repayment of all additional Project construction costs or other capitalized costs
635	assigned to the Contractor within the timeframe prescribed by the SJRRSA subject to the
636	following:
637	(1) If the collective annual Project construction costs or
	•
637	(1) If the collective annual Project construction costs or
637 638	(1) If the collective annual Project construction costs or other capitalized costs that are incurred after the effective date of this Contract and properly
637 638 639	(1) If the collective annual Project construction costs or other capitalized costs that are incurred after the effective date of this Contract and properly assignable to the contractors are less than \$5,000,000, then the portion of such costs properly
637 638 639 640	(1) If the collective annual Project construction costs or other capitalized costs that are incurred after the effective date of this Contract and properly assignable to the contractors are less than \$5,000,000, then the portion of such costs properly assignable to the Contractor shall be repaid in not more than five (5) years after notification of
637 638 639 640 641	(1) If the collective annual Project construction costs or other capitalized costs that are incurred after the effective date of this Contract and properly assignable to the contractors are less than \$5,000,000, then the portion of such costs properly assignable to the Contractor shall be repaid in not more than five (5) years after notification of the allocation. This amount is the result of a collective annual allocation of Project construction
637 638 639 640 641 642	(1) If the collective annual Project construction costs or other capitalized costs that are incurred after the effective date of this Contract and properly assignable to the contractors are less than \$5,000,000, then the portion of such costs properly assignable to the Contractor shall be repaid in not more than five (5) years after notification of the allocation. This amount is the result of a collective annual allocation of Project construction costs to the contractors exercising contract conversions; <u>Provided</u> , That the reference to the
637 638 639 640 641 642 643	(1) If the collective annual Project construction costs or other capitalized costs that are incurred after the effective date of this Contract and properly assignable to the contractors are less than \$5,000,000, then the portion of such costs properly assignable to the Contractor shall be repaid in not more than five (5) years after notification of the allocation. This amount is the result of a collective annual allocation of Project construction costs to the contractors exercising contract conversions; <u>Provided</u> , That the reference to the amount of \$5,000,000 shall not be a precedent in any other context.
637 638 639 640 641 642 643 644	(1) If the collective annual Project construction costs or other capitalized costs that are incurred after the effective date of this Contract and properly assignable to the contractors are less than \$5,000,000, then the portion of such costs properly assignable to the Contractor shall be repaid in not more than five (5) years after notification of the allocation. This amount is the result of a collective annual allocation of Project construction costs to the contractors exercising contract conversions; Provided, That the reference to the amount of \$5,000,000 shall not be a precedent in any other context. (2) If the collective annual Project construction costs or

647	assignable to the Contractor shall be repaid as provided by applicable Federal Reclamation law.
648	This amount is the result of a collective annual allocation of Project construction costs to the
649	contractors exercising contract conversions; Provided, That the reference to the amount of
650	\$5,000,000 shall not be a precedent in any other context.

651 Consistent with Section 10010(b) of the SJRRSA, following a final cost (b) 652 allocation by the Secretary upon completion of the construction of the Central Valley Project, the amounts paid by the Contractor shall be subject to adjustment to reflect the effect of any 653 reallocation of Project construction costs or other capitalized costs assigned to the Contractor 654 that may have occurred between the determination of Contractor's Existing Capital Obligation 655 and the final cost allocation. In the event that the final cost allocation, as determined by the 656 Secretary, indicates that the costs properly assignable to the Contractor, as determined by the 657 658 Contracting Officer, are greater than the Existing Capital Obligation and other amounts of Project construction costs or other capitalized costs paid by the Contractor, then the Contractor 659 shall be obligated to pay the remaining allocated costs. The term of such additional repayment 660 contract shall be no less than one (1) year and no more than ten (10) years, however, mutually 661 agreeable provisions regarding the rate of repayment of such amount may be developed by the 662 parties. In the event that the final cost allocation, as determined by the Secretary, indicates that 663 the costs properly assignable to the Contractor, as determined by the Contracting Officer, are less 664 than the Existing Capital Obligation and other amounts of Project construction costs or other 665 capitalized costs paid by the Contractor, then the Contracting Officer shall credit such 666 overpayment as an offset against any outstanding or future obligation of the Contractor, 667

668	consistent with the SJRRSA. This Contract shall be implemented in a manner consistent wi	ith
669	Section 10010(f) of the SJRRSA.	

670 (c) Prior to July 1 of each Calendar Year, the Contracting Officer shall provide the Contractor an estimate of the Charges for Project Water that will be applied to the 671 672 period October 1, of the current Calendar Year, through September 30, of the following Calendar 673 Year, and the basis for such estimate. The Contractor shall be allowed not less than two (2) 674 months to review and comment on such estimates. On or before September 15 of each Calendar 675 Year, the Contracting Officer shall notify the Contractor in writing of the Charges to be in effect during the period October 1 of the current Calendar Year, through September 30 of the following 676 Calendar Year, and such notification shall revise Exhibit "B". Charges shall be subject to 677 reduction consistent with the SJRRSA based upon the average annual delivery amount agreed to 678 by the Contracting Officer and the Contractor. 679

680 Upon complete payment of the Repayment Obligation by the (1) 681 Contractor, and notwithstanding any Additional Capital Obligation that may later be established, for the years 2020 through 2039 inclusive. Charges shall reflect the reduction on a per acre-foot 682 basis consistent with Section 10010(d)(1) of the SJRRSA. Exhibit "D" sets forth the reduction in 683 Charges to offset the Financing Costs as prescribed in Section 10010(d)(1) of the SJRRSA; 684 685 Provided, That if the Secretary determines such Charges are otherwise needed, an equivalent reduction will be made to O&M costs consistent with such provisions of the SJRRSA. 686 Consistent with Section 10010(d)(1) of the SJRRSA and as shown in Exhibit "D", the Friant 687 Surcharge reduction has been calculated based upon the anticipated average annual water 688

689	deliveries, for the purpose of this reduction only, mutually agreed upon by the Secretary and the
690	Contractor for the period from January 1, 2020 through December 31, 2039. The Friant
691	Surcharge reduction shall remain fixed and shall only be applied to Water Delivered pursuant to
692	this Contract to which the Friant Surcharge applies (including but not limited to water
693	transferred, banked, or exchanged), commencing on January 1, 2020 until such volume of Water
694	Delivered equals 666,400 acre-feet or December 31, 2039, whichever occurs first.
695	(2) Further, to fully offset the Financing Costs, Contractor shall be
696	entitled to a reduction in other outstanding or future obligations of the Contractor in accordance
697	with Section 10010(d)(2) of the SJRRSA. The amount of such further reduction in outstanding
698	or future obligations of the Contractor after October 1, 2019 has been computed by the
699	Contracting Officer, and as computed, such amount is set forth in Exhibit "D".
700	(d) Prior to October 1 of each Calendar Year, the Contracting Officer shall
701	make available to the Contractor an estimate of the Rates and Tiered Pricing Component for
702	Project Water for the following Year and the computations and cost allocations upon which those
703	Rates are based. The Contractor shall be allowed not less than two (2) months to review and
704	comment on such computations and cost allocations. By December 31 of each Calendar Year,
705	the Contracting Officer shall provide the Contractor with the final Rates and Tiered Pricing
706	Component to be in effect for the upcoming Year, and such notification shall revise Exhibit "B".
707	The O&M component of the Rate may be reduced as provided in the SJRRSA.
708	(e) At the time the Contractor submits the initial schedule for the delivery of
709	Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the

710	Contractor shall make an advance payment to the United States equal to the total amount payable
711	pursuant to the applicable Rate(s) set under subdivision (a) of this Article of this Contract, for the
712	Project Water scheduled to be delivered pursuant to this Contract during the first two (2)
713	calendar months of the Year. Before the end of the first month and before the end of each
714	calendar month thereafter, the Contractor shall make an advance payment to the United States, at
715	the Rate(s) set under subdivision (a) of this Article of this Contract, for the Water Scheduled to
716	be delivered pursuant to this Contract during the second month immediately following.
717	Adjustments between advance payments for Water Scheduled and payments at Rates due for
718	Water Delivered shall be made before the end of the following month; Provided, That any
719	revised schedule submitted by the Contractor pursuant to Article 4 of this Contract which
720	increases the amount of Water Delivered pursuant to this Contract during any month shall be
721	accompanied with appropriate advance payment, at the Rates then in effect, to assure that Project
722	Water is not delivered to the Contractor in advance of such payment. In any month in which the
723	quantity of Water Delivered to the Contractor pursuant to this Contract equals the quantity of
724	Water Scheduled and paid for by the Contractor, no additional Project Water shall be delivered
725	to the Contractor unless and until an advance payment at the Rates then in effect for such
726	additional Project Water is made. Final adjustment between the advance payments for the Water
727	Scheduled and payments for the quantities of Water Delivered during each Year pursuant to this
728	Contract shall be made as soon as practicable but no later than April 30th of the following Year,
729	or sixty (60) days after the delivery of Project Water carried over under subdivision (g) of Article
730	3 of this Contract if such water is not delivered by the last day of February.

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731	(f) The Contractor shall also make a payment in addition to the Rate(s) in
732	subdivision (e) of this Article of this Contract to the United States for Water Delivered, at the
733	Charges and the appropriate Tiered Pricing Component then in effect, before the end of the
734	month following the month of delivery; Provided, That the Contractor may be granted an
735	exception from the Tiered Pricing Component pursuant to subdivision (1)(2) of this Article of this
736	Contract. The payments shall be consistent with the quantities of Irrigation Water and M&I
737	Water Delivered as shown in the water delivery report for the subject month prepared by the
738	Contracting Officer. Such water delivery report shall be the basis for payment of Charges and
739	Tiered Pricing Components by the Contractor, and shall be provided to the Contractor by the
740	Contracting Officer (as applicable) within five (5) days after the end of the month of delivery.
741	The water delivery report shall be deemed a bill basis for payment of Charges and the applicable
742	Tiered Pricing Component for Water Delivered. Adjustment for overpayment or underpayment
743	of Charges shall be made through the adjustment of payments due to the United States for
744	Charges for the next month. Any amount to be paid for past due payment of Charges shall be
745	computed pursuant to Article 21 of this Contract.
746	(g) The Contractor shall pay for any Water Delivered under subdivision (d),
747	(f), or (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to
748	applicable statutes, associated regulations, any applicable provisions of guidelines or ratesetting
749	policies; Provided, That the Rate for Water Delivered under subdivision (d) of Article 3 of this
750	Contract shall be no more than the otherwise applicable Rate for Irrigation Water or M&I Water
751	under subdivision (a) of this Article of this Contract.

Payments to be made by the Contractor to the United States under this 752 (h) Contract may be paid from any revenues available to the Contractor. 753 754 All revenues received by the United States from the Contractor relating to (i) 755 the delivery of Project Water or the delivery of non-project water through Project facilities shall be allocated and applied in accordance with Federal Reclamation law and the associated rules or 756 regulations, the then-existing Project Ratesetting policies for M&I Water or Irrigation Water, and 757 consistent with the SJRRSA. 758 The Contracting Officer shall keep its accounts, pertaining to the 759 (i) 760 administration of the financial terms and conditions of its long-term contracts, in accordance with applicable Federal standards so as to reflect the application of Project costs and revenues. 761 762 The Contracting Officer shall, each Year upon request of the Contractor, provide to the Contractor a detailed accounting of all Project and Contractor expense allocations, the 763 disposition of all Project and Contractor revenues, and a summary of all water delivery 764 information. The Contracting Officer and the Contractor shall enter into good faith negotiations 765 to resolve any discrepancies or disputes relating to accountings, reports, or information. 766 767 (k) The parties acknowledge and agree that the efficient administration of this Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms, 768 policies, and procedures used for establishing Rates, Charges, Tiered Pricing Components, 769 and/or for making and allocating payments, other than those set forth in this Article of this 770 Contract, may be in the mutual best interest of the parties, it is expressly agreed that the parties 771

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may enter into agreements to modify the mechanisms, policies, and procedures for any of those purposes while this Contract is in effect without amending this Contract.

Beginning at such time as the total of the deliveries of Class 1 774 **()** (1) Water and Class 2 Water in a Year exceed eighty (80) percent of the Contract Total, then before 775 the end of the month following the month of delivery the Contractor shall make an additional 776 payment to the United States equal to the applicable Tiered Pricing Component. The Tiered 777 Pricing Component for the total of the deliveries of Class 1 Water and Class 2 Water in excess of 778 eighty (80) percent of the Contract Total, but less than or equal to ninety (90) percent of the 779 Contract Total, shall equal the one-half of the difference between the Rate established under 780 subdivision (a) of this Article of this Contract and the Irrigation Full Cost Water Rate, or M&I 781 Full Cost Water Rate, whichever is applicable. The Tiered Pricing Component for the total of 782 the deliveries of Class 1 Water and Class 2 Water which exceeds ninety (90) percent of the 783 Contract Total shall equal the difference between (i) the Rate established under subdivision (a) of 784 this Article of this Contract and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost Water 785 786 Rate, whichever is applicable.

(2) Subject to the Contracting Officer's written approval, the
Contractor may request and receive an exemption from such Tiered Pricing Components for
Project Water Delivered to produce a crop which the Contracting Officer determines will provide
significant and quantifiable habitat values for waterfowl in fields where the water is used and the
crops are produced; <u>Provided</u>, That the exemption from the Tiered Pricing Components for
Irrigation Water shall apply only if such habitat values can be assured consistent with the

- purposes of CVPIA through binding agreements executed with or approved by the Contracting
 Officer prior to use of such water.
- 795 (3) For purposes of determining the applicability of the Tiered Pricing
 796 Components pursuant to this Article of this Contract, Water Delivered shall include Project
 797 Water that the Contractor transfers to others but shall not include Project Water transferred and
 798 delivered to the Contractor.
- Rates under the respective ratesetting policies will be established to 799 (m) recover only reimbursable O&M (including any deficits) costs of the Project, as those terms are 800 used in the then-existing Project ratesetting policies, and consistent with the SJRRSA, and 801 interest, where appropriate, except in instances where a minimum Rate is applicable in 802 accordance with the relevant Project ratesetting policy. Changes of significance in practices 803 which implement the Contracting Officer's ratesetting policies will not be implemented until the 804 Contracting Officer has provided the Contractor an opportunity to discuss the nature, need, and 805 806 impact of the proposed change.
- 807 (n) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the
 808 CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates
 809 adjusted upward or downward to reflect the changed costs of delivery (if any) incurred by the
 810 Contracting Officer in the delivery of the transferred Project Water to the transferee's point of
 811 delivery in accordance with the then-existing Central Valley Project Ratesetting Policy.

812	NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS
813	8. The Contractor and the Contracting Officer concur that, as of the effective date of
814	this Contract, the Contractor has no non-interest bearing operation and maintenance deficits and
815	therefore shall have no further liability.
816	RECOVERED WATER ACCOUNT
817	9. (a) Notwithstanding any other provisions of this Contract, water delivered to
818	the Contractor under its Recovered Water Account as provided at Paragraph 16(b) of the
819	Settlement and affirmed by Section 10004(a)(5) of the SJRRSA shall be at the total cost of
820	\$10.00 per acre foot. Recovered Water Account water provided to the Contractor shall be
821	administered at a priority for delivery lower than Class 2 Water and higher than Section 215
822	Water.
823	(b) The manner in which the Recovered Water Account will be administered
824	will be developed in accordance with subdivision (k) of Article 7 of this Contract, the SJRRSA,
825	and Paragraph 16 of the Settlement.
826	SALES, TRANSFERS, AND EXCHANGES OF WATER
827	10. (a) The right to receive Project Water provided for in this Contract may be
828	sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of
829	California if such sale, transfer, or exchange is authorized by applicable Federal and State laws,
830	and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project
831	Water under this Contract may take place without the prior written approval of the Contracting
832	Officer, except as provided for in subdivisions (b) and (c) of this Article of this Contract . No

833	such Project Water sales, transfers, or exchanges shall be approved, where approval is required,
834	absent compliance with appropriate environmental documentation including but not limited to
835	the National Environmental Policy Act and the Endangered Species Act. Such environmental
836	documentation must include, as appropriate, an analysis of groundwater impacts and economic
837	and social effects, including environmental justice, of the proposed Project Water sales, transfers
838	and exchanges on both the transferor/exchanger and transferee/exchange recipient.
839	(b) In order to facilitate efficient water management by means of Project
840	Water sales, transfers, or exchanges of the type historically carried out among Project
841	Contractors located within the same geographical area and to allow the Contractor to participate
842	in an accelerated water transfer program, the Contracting Officer has prepared, as appropriate,
843	necessary environmental documentation including, but not limited to, the National
844	Environmental Policy Act and the Endangered Species Act analyzing annual Project Water sales,
845	transfers, or exchanges among Contractors within the same geographical area and the
846	Contracting Officer has determined that such Project Water sales, transfers, and exchanges
847	comply with applicable law.
848	(c) Project Water sales, transfers, and exchanges analyzed in the
849	environmental documentation referenced in subdivision (b) of this Article of this Contract, shall
850	be conducted with advance notice to the Contracting Officer and the Contracting Officer's
851	written acknowledgement of the transaction, but shall not require prior written approval by the
852	Contracting Officer.

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853	(d) For Project Water sales, transfers, or exchanges to qualify under
854	subdivision (b) of this Article of this Contract such Project Water sale, transfer, or exchange
855	must: (i) be for irrigation purposes for lands irrigated within the previous three (3) years, for
856	M&1 use, groundwater recharge, groundwater banking, similar groundwater activities, surface
857	water storage, or fish and wildlife resources; not lead to land conversion; and be delivered to
858	established cropland, wildlife refuges, groundwater basins or municipal and industrial use;
859	(ii) occur within a single Year; (iii) occur between a willing seller and a willing buyer or willing
860	exchangers; (iv) convey water through existing facilities with no new construction or
861	modifications to facilities and be between existing Project Contractors and/or the Contractor and
862	the United States, Department of the Interior; and (v) comply with all applicable Federal, State,
863	and local or tribal laws and requirements imposed for protection of the environment and Indian
864	Trust Assets, as defined under Federal law.
865	(e) The environmental documentation and the Contracting Officer's
866	compliance determination for transactions described in subdivision (b) of this Article of this
867	Contract shall be reviewed every five (5) years and updated, as necessary, prior to the expiration
868	of the then-existing five (5) year period. All subsequent environmental documentation shall
869	include an alternative to evaluate not less than the quantity of Project Water historically sold,
870	transferred, or exchanged within the same geographical area.
871	(f) Consistent with Section 10010(e)(l) of the SJRRSA, any agreement
872	providing for sale, transfer, or exchange of Project Water that is not used for interim flows or
873	restoration flows pursuant to Paragraphs 13 and 15 of the Settlement, shall be deemed to satisfy

874	the requirements of CVPIA section 3405(a)(1)(A) and (I); Provided, That such sales, transfers, or
875	exchanges comply with sub-division $(f)(1)$ and $(f)(2)$ below.
876	(1) Project Water sales, transfers, and exchanges conducted under the
877	provisions of subdivision (f) of this Article of this Contract shall not require the Contracting
878	Officer's concurrence as to compliance with CVPIA 3405(a)(1)(A) and (I); Provided, That the
879	Contractor shall, for Project Water sales, transfers, or exchanges, with a term greater than one (1)
880	year, provide ninety (90) days written advance notification to the Contracting Officer and
881	similarly thirty (30) days written advance notification of any Project Water sale, transfer, or
882	exchange with a term of less than one (1) year. The Contracting Officer shall promptly make
883	such notice publicly available.
884	(2) The Contractor's thirty (30) days or ninety (90) days advance
885	written notification pursuant to subdivision (f)(1) of this Article of this Contract shall explain
886	how the proposed Project Water sales, transfers, or exchanges are intended to reduce, avoid, or
887	mitigate impacts to Project Water deliveries caused by interim or restoration flows or is
888	otherwise intended to facilitate the Water Management Goal as described in the SJRRSA. The
889	Contracting Officer shall promptly make such notice publicly available.
890	(3) In addition, the Contracting Officer shall, at least annually, make
891	available publicly a compilation of the number of Project Water sales, transfers, and exchange
892	agreements implemented in accordance with sub-divisions $(f)(1)$ and $(f)(2)$ of this Article of this
893	Contract.

894 (4) Project Water sold, transferred, or exchanged under an agreement
895 that meets the terms of subdivisions (f)(1) and (f)(2) of this Article of this Contract shall not be
896 counted as a replacement or an offset for purposes of determining reductions to Project Water
897 deliveries to any Friant Division Project Contractor except as provided in Paragraph 16(b) of the
898 Settlement.

(g) Upon complete payment of the Repayment Obligation by the Contractor,
and notwithstanding any Additional Capital Obligation that may later be established, in the case
of a sale or transfer of Irrigation Water to another contractor which is otherwise subject to the
acreage limitations, reporting, and Full Cost pricing provisions of the RRA, such sold or
transferred Irrigation Water shall not be subject to such RRA provisions, however, in the case of
a sale or transfer of Irrigation Water to the Contractor from another contractor which is subject to
RRA provisions, such RRA provisions shall apply to delivery of such water.

906

APPLICATION OF PAYMENTS AND ADJUSTMENTS

907 11. The amount of any overpayment by the Contractor of the Contractor's (a) O&M, Capital, and deficit (if any) obligations for the Year shall be applied first to any current 908 909 liabilities of the Contractor arising out of this Contract then due and payable. Overpayments of 910 more than One Thousand Dollars (\$1,000) shall be refunded at the Contractor's request. In lieu 911 of a refund, any amount of such overpayment, at the option of the Contractor, may be credited against amounts to become due to the United States by the Contractor. With respect to 912 overpayment, such refund or adjustment shall constitute the sole remedy of the Contractor or 913 914 anyone having or claiming to have the right to the use of any of the Project Water supply

915	provided for herein. All credits and refunds of overpayments shall be made within thirty (30)
916	days of the Contracting Officer obtaining direction as to how to credit or refund such
917	overpayment in response to the notice to the Contractor that it has finalized the accounts for the
918	Year in which the overpayment was made.
919	(b) All advances for miscellaneous costs incurred for work requested by the
920	Contractor pursuant to Article 26 of this Contract shall be adjusted to reflect the actual costs
921	when the work has been completed. If the advances exceed the actual costs incurred, the
922	difference will be refunded to the Contractor. If the actual costs exceed the Contractor's
923	advances, the Contractor will be billed for the additional costs pursuant to Article 26 of this
924	Contract.
925	TEMPORARY REDUCTIONS—RETURN FLOWS
926	12. (a) The Contracting Officer shall make all reasonable efforts to optimize
927	delivery of the Contract Total subject to: (i) the authorized purposes and priorities of the Project;
928	(ii) the requirements of Federal law and the Settlement; and (iii) the obligations of the United
929	States under existing contracts, or renewals thereof, providing for water deliveries from the
930	Project.
931	(b) The Contracting Officer or Operating Non-Federal Entity may temporarily
932	discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for
933	the purposes of investigation, inspection, maintenance, repair, or replacement of any of the
934	Project facilities or any part thereof necessary for the delivery of Project Water to the Contractor,
935	but so far as feasible the Contracting Officer or Operating Non-Federal Entity will give the

936	Contractor due notice in advance of such temporary discontinuance or reduction, except in case
937	of emergency, in which case no notice need be given; Provided, That the United States shall use
938	its best efforts to avoid any discontinuance or reduction in such service. Upon resumption of
939	service after such reduction or discontinuance, and if requested by the Contractor, the United
940	States will, if possible, deliver the quantity of Project Water which would have been delivered
941	hereunder in the absence of such discontinuance or reduction.
942	(c) The United States reserves the right to all seepage and return flow water
943	derived from Water Delivered to the Contractor hereunder which escapes or is discharged
944	beyond the Contractor's Service Area; Provided, That this shall not be construed as claiming for
945	the United States any right as seepage or return flow to water being used pursuant to this
946	Contract for surface irrigation or underground storage either being put to reasonable and
947	beneficial use pursuant to this Contract within the Contractor's Service Area by the Contractor or
948	those claiming by, through, or under the Contractor. For purposes of this subdivision,
949	groundwater recharge, groundwater banking and all similar groundwater activities will be
950	deemed to be underground storage.
951	CONSTRAINTS ON THE AVAILABILITY OF WATER
952	13. (a) In its operation of the Project, the Contracting Officer will use all
953	reasonable means to guard against a Condition of Shortage in the quantity of water to be made
954	available to the Contractor pursuant to this Contract. In the event the Contracting Officer

- 955 determines that a Condition of Shortage appears probable, the Contracting Officer will notify the
- 956 Contractor of said determination as soon as practicable.

957	(b) If there is a Condition of Shortage because of errors in physical operations
958	of the Project, drought, other physical causes beyond the control of the Contracting Officer or
959	actions taken by the Contracting Officer to meet legal obligations, including but not limited to
960	obligations pursuant to the Settlement then, except as provided in subdivision (a) of Article 19 of
961	this Contract, no liability shall accrue against the United States or any of its officers, agents, or
962	employees for any damage, direct or indirect, arising therefrom.
963	(c) The United States shall not execute contracts which together with this
964	Contract, shall in the aggregate provide for furnishing Class 1 Water in excess of 800,000
965	acre-feet per Year or Class 2 Water in excess of 1,401,475 acre-feet per Year; Provided, That,
966	subject to subdivision (1) of Article 3 of this Contract, the limitation placed on Class 2 Water
967	contracts shall not prohibit the United States from entering into temporary contracts of one year
968	or less in duration for delivery of Project Water to other entities if such water is not necessary to
969	meet the schedules as may be submitted by all Friant Division Project Contractors entitled to
970	receive Class 1 Water and/or Class 2 Water under their contracts. Nothing in this subdivision
971	shall limit the Contracting Officer's ability to take actions that result in the availability of new
972	water supplies to be used for Project purposes and allocating such new supplies; Provided, That
973	the Contracting Officer shall not take such actions until after consultation with the Friant
974	Division Project Contractors.
975	(d) The Contracting Officer shall not deliver any Class 2 Water pursuant to
976	this or any other contract heretofore or hereafter entered into any Year unless and until the

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Contracting Officer determines that the cumulative total quantity of Class 1 Water specified in

978	subdivision (c) of this Article of this Contract will be available for delivery in said Year. If the
979	Contracting Officer determines there is or will be a shortage in any Year in the quantity of
980	Class 1 Water available for delivery, the Contracting Officer shall apportion the available Class 1
981	Water among all Contractors entitled to receive such water that will be made available at Friant
982	Dam in accordance with the following:
983	(1) A determination shall be made of the total quantity of Class 1
984	Water at Friant Dam which is available for meeting Class 1 Water contractual commitments, the
985	amount so determined being herein referred to as the available supply.
986	(2) The total available Class 1 supply shall be divided by the Class 1
9 87	Water contractual commitments, the quotient thus obtained being herein referred to as the
988	Class 1 apportionment coefficient.
989	(3) The total quantity of Class 1 Water under Article 3 of this Contract
990	shall be multiplied by the Class 1 apportionment coefficient and the result shall be the quantity of
991	Class 1 Water required to be delivered by the Contracting Officer to the Contractor for the
992	respective Year, but in no event shall such amount exceed the total quantity of Class 1 Water
993	specified in subdivision (a) of Article 3 of this Contract.
994	(e) If the Contracting Officer determines there is less than the quantity of
995	Class 2 Water which the Contractor otherwise would be entitled to receive pursuant to Article 3
996	of this Contract, the quantity of Class 2 Water which shall be furnished to the Contractor by the
997	Contracting Officer will be determined in the manner set forth in paragraphs (1), (2), and (3), of

998	subdivision (d) of this Article of this Contract substituting the term "Class 2" for the term "Class
999	1."

1000 (f) In the event that in any Year there is made available to the Contractor, by 1001 reason of any shortage or apportionment as provided in subdivisions (a), (d), or (e) of this Article 1002 of this Contract, or any discontinuance or reduction of service as set forth in subdivision (b) of 1003 Article 12 of this Contract, less than the quantity of water which the Contractor otherwise would 1004 be entitled to receive hereunder, there shall be made an adjustment on account of the amounts 1005 already paid to the Contracting Officer by the Contractor for Class 1 Water and Class 2 Water 1006 for said Year in accordance with Article 11 of this Contract.

1007

UNAVOIDABLE GROUNDWATER PERCOLATION

1008 14. To the extent applicable, the Contractor shall not be deemed to have delivered 1009 Irrigation Water to Excess Lands and Ineligible Lands within the meaning of this Contract if 1010 such lands are irrigated with groundwater that reaches the underground strata as an unavoidable 1011 result of the delivery of Irrigation Water by the Contractor to Eligible Lands.

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ACREAGE LIMITATION

1013 15. (a) Notwithstanding the application of the acreage limitation provisions to 1014 activities referred to in subdivision (b) of this Article, subdivision (a) of Article 16, and Article 1015 18 of this Contract, upon complete payment of the Repayment Obligation by the Contractor, and 1016 notwithstanding any Additional Capital Obligation that may later be established, the provisions 1017 of section 213(a) and (b) of the RRA shall apply to lands in the Contractor's Service Area, with 1018 the effect that acreage limitations, reporting, and Full Cost pricing provisions of the RRA shall

no longer apply to lands in the Contractor's Service Area with respect to Water Delivered
pursuant to this Contract. Upon receiving the complete payment of the Repayment Obligation
from the Contractor, Reclamation will conduct a final water district review for the purpose of
determining compliance with the acreage limitations, reporting, and Full Cost pricing provisions
of the RRA from the date of the last water district review until the date when payment to
Reclamation of the Repayment Obligation is completed.

1025 (b) Project Water to which the Contractor is entitled through a separate 1026 contract, other than this Contract, that is subject to Federal Reclamation law, may be delivered to lands within the Contractor's Service Area. Upon complete payment of the Repayment 1027 1028 Obligation by the Contractor, and notwithstanding any Additional Capital Obligation that may later be established, Project Water Delivered under this Contract may be mixed with Project 1029 1030 Water Delivered pursuant to a contract with the United States, other than this Contract, to which acreage limitations, reporting, and the Full Cost pricing provisions of Federal Reclamation law 1031 apply without causing the application of the acreage limitations, reporting, and Full Cost pricing 1032 1033 provisions of Federal Reclamation law to the Water Delivered pursuant to this Contract; Provided, The terms and conditions in such other contract shall continue to apply, and if such 1034 1035 terms and conditions so require, the lands to receive Project Water under such other contract 1036 shall be properly designated by the Contractor and such Project Water is to be delivered in 1037 accordance with the RRA including any applicable acreage limitations, reporting, and Full Cost 1038 pricing provisions.

1039	COMPLIANCE WITH FEDERAL RECLAMATION LAWS
1040 1041 1042 1043 1044	16. (a) The parties agree that the delivery of irrigation water or use of Federal facilities pursuant to this Contract is subject to Federal Reclamation law, including but not limited to the Reclamation Reform Act of 1982 (43 U.S.C. 390 aa <i>et seq.</i>), as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal Reclamation law.
1045	(b) The terms of this Contract are subject to the Settlement and the SJRRSA.
1046	Nothing in this Contract shall be interpreted to limit or interfere with the full implementation of
1047	the Settlement and the SJRRSA.
1048	PROTECTION OF WATER AND AIR QUALITY
1049 1050 1051 1052 1053 1054	17. (a) Project facilities used to make available and deliver water to the Contractor shall be operated and maintained in the most practical manner to maintain the quality of the water at the highest level possible as determined by the Contracting Officer: <u>Provided</u> , <i>That</i> the United States does not warrant the quality of the water delivered to the Contractor and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to the Contractor.
1055 1056 1057 1058 1059 1060 1061	(b) The Contractor shall comply with all applicable water and air pollution laws and regulations of the United States and the State of California; and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities necessary for the delivery of water by the Contractor; and shall be responsible for compliance with all Federal, State, and local water quality standards applicable to surface and subsurface drainage and/or discharges generated through the use of Federal or Contractor facilities or project water provided by the Contractor within the Contractor's Project Water Service Area.
1062 1063	(c) This article shall not affect or alter any legal obligations of the Secretary to provide drainage or other discharge services.
1064 1065	WATER ACQUIRED BY THE CONTRACTOR OTHER THAN FROM THE UNITED STATES
1066	18. (a) Until complete payment of the Repayment Obligation by the Contractor,
1067	and notwithstanding any Additional Capital Obligation that may later be established, water or
1068	water rights now owned or hereafter acquired by the Contractor other than from the United

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1069 States and Irrigation Water furnished pursuant to the terms of this Contract may be 1070 simultaneously transported through the same distribution facilities of the Contractor subject to 1071 the following: (i) if the facilities utilized for commingling Irrigation Water and non-project 1072 water were constructed without funds made available pursuant to Federal Reclamation law, the acreage limitations, reporting, and Full Cost pricing provisions of Federal Reclamation law will 1073 1074 be applicable only to the Landholders of lands which receive Irrigation Water; (ii) the eligibility of land to receive Irrigation Water must be established through the certification requirements as 1075 specified in the Acreage Limitation Rules and Regulations (43 CFR Part 426); and (iii) the water 1076 requirements of Eligible Lands within the Contractor's Service Area can be established and the 1077 quantity of Irrigation Water to be utilized is less than or equal to the quantity necessary to 1078 1079 irrigate such Eligible Lands. The Contractor and the Contracting Officer concur that the Contractor's distribution system was constructed without funds made available pursuant to 1080 Federal Reclamation law. The use of this distribution system is not subject to the provisions of 1081 1082 . this subdivision of this Article.

1083(b)Upon complete payment of the Repayment Obligation by the Contractor,1084and notwithstanding any Additional Capital Obligation that may later be established, water or1085water rights now owned or hereafter acquired by the Contractor other than from the United1086States pursuant to this Contract and Irrigation Water furnished pursuant to the terms of this1087Contract may be simultaneously transported through the same distribution facilities of the1088Contractor without the payment of fees to the United States and without application of Federal

1089 Reclamation law to Water Delivered pursuant to this Contract or to lands which receive Water
1090 Delivered to Contractor pursuant to this Contract.

1091 (c) Water or water rights now owned or hereafter acquired by the Contractor, 1092 other than from the United States or adverse to the Project or its contractors (i.e., non-project 1093 water), may be stored, conveyed and/or diverted through Project facilities, other than Friant 1094 Division Facilities, subject to the completion of appropriate environmental documentation, with 1095 the approval of the Contracting Officer and the execution of any contract determined by the 1096 Contracting Officer to be necessary, consistent with the following provisions:

1097 (1) The Contractor may introduce non-project water into Project
1098 facilities and deliver said water to lands within the Contractor's Service Area, including
1099 Ineligible Lands, subject to payment to the United States and/or to any applicable Operating
1100 Non-Federal Entity of an appropriate rate as determined by the Contracting Officer. In addition,
1101 if electrical power is required to pump non-project water, the Contractor shall be responsible for
1102 obtaining the necessary power and paying the necessary charges therefor.

(2) Delivery of such non-project water in and through Project facilities
shall only be allowed to the extent such deliveries do not: (i) interfere with other Project
purposes as determined by the Contracting Officer; (ii) reduce the quantity or quality of water
available to other Project Contractors; (iii) interfere with the delivery of contractual water
entitlements to any other Project Contractors; (iv) interfere with the physical maintenance of the
Project facilities; or (v) result in the United States incurring any liability or unreimbursed costs
or expenses thereby.

1110	(3) Neither the United States nor the Operating Non-Federal Entity
1111	shall be responsible for control, care or distribution of the non-project water before it is
1112	introduced into or after it is delivered from the Project facilities. The Contractor hereby releases
1113	and agrees to defend and indemnify the United States and the Operating Non-Federal Entity, and
1114	their respective officers, agents, and employees, from any claim for damage to persons or
1115	property, direct or indirect, resulting from Contractor's diversion or extraction of non-project
1116	water from any source.
1117	(4) Diversion of such non-project water into Project facilities shall be
1118	consistent with all applicable laws, and if involving groundwater, consistent with any
1119	groundwater management plan for the area from which it was extracted.
1120	(5) After Project purposes are met, as determined by the Contracting
1121	Officer, the United States and the Contractor shall share priority to utilize the remaining capacity
1122	of the facilities declared to be available by the Contracting Officer for conveyance and
1123	transportation of non-project water prior to any such remaining capacity being made available to
1124	non-project contractors.
1125	(d) Non-project water may be stored, conveyed and/or diverted through Friant
1126	Division Facilities, subject to the completion of appropriate environmental documentation and
1127	approval of the Contracting Officer without execution of a separate contract, consistent with
1128	subdivisions (c)(1) through (c)(5) of this Article and any other condition determined to be
1129	appropriate by the Contracting Officer.

1130

OPINIONS AND DETERMINATIONS

19. Where the terms of this Contract provide for actions to be based upon the 1131 (a) opinion or determination of either party to this Contract, said terms shall not be construed as 1132 1133 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. Both parties, notwithstanding any other provisions of this Contract, expressly 1134 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, 1135 or unreasonable opinion or determination. Each opinion or determination by either party shall be 1136 provided in a timely manner. Nothing in this Article of this Contract is intended to or shall affect 1137 or alter the standard of judicial review applicable under Federal law to any opinion or 1138 determination implementing a specific provision of Federal law embodied in statute or 1139 1140 regulation.

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

1146

COORDINATION AND COOPERATION

1147 20. (a) In order to further their mutual goals and objectives, the Contracting
1148 Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and
1149 with other affected Project Contractors, in order to improve the operation and management of the
1150 Project. The communication, coordination, and cooperation regarding operations and

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1151	management shall include, but not limited to, any action which will or may materially affect the
1152	quantity or quality of Project Water supply, the allocation of Project Water supply, and Project
1153	financial matters including, but not limited to, budget issues. The communication, coordination,
1154	and cooperation provided for hereunder shall extend to all provisions of this Contract. Each
1155	party shall retain exclusive decision making authority for all actions, opinions, and
1156	determinations to be made by the respective party.
1157	(b) It is the intent of the Secretary to improve water supply reliability. To
1158	carry out this intent:
1159	(1) The Contracting Officer will, at the request of the Contractor,
1160	assist in the development of integrated resource management plans for the Contractor. Further,
1161	the Contracting Officer will, as appropriate, seek authorizations for implementation of
1162	partnerships to improve water supply, water quality, and reliability.
1163	(2) The Secretary will, as appropriate, pursue program and project
1164	implementation and authorization in coordination with Project Contractors to improve the water
1165	supply, water quality, and reliability of the Project for all Project purposes.
1166	(3) The Secretary will coordinate with Project Contractors and the
1167	State of California to seek improved water resource management.
1168	(4) The Secretary will coordinate actions of agencies within the
1169	Department of the Interior that may impact the availability of water for Project purposes.

1170	(5) The Contracting Officer shall periodically, but not less than
1171	annually, hold division level meetings to discuss Project operations, division level water
1172	management activities, and other issues as appropriate.
1173	(c) Without limiting the contractual obligations of the Contracting Officer
1174	hereunder, nothing in this Contract shall be construed to limit or constrain the Contracting
1175	Officer's ability to communicate, coordinate, and cooperate with the Contractor or other
1176	interested stakeholders or to make decisions in a timely fashion as needed to protect health,
1177	safety, physical integrity of structures or facilities, or the Contracting Officer's ability to comply
1178	with applicable laws.
1179	CHARGES FOR DELINQUENT PAYMENTS
1180 1181 1182 1183 1184 1185	21. (a) The Contractor shall be subject to interest, administrative and penalty charges on delinquent installments or payments. When a payment is not received by the due date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent ninety (90) days or more, the Contractor shall pay an additional
1186 1187	penalty charge of six (6) percent per year for each day the payment is delinquent beyond the due date. Further, the Contractor shall pay any fees incurred for debt collection services associated

1188 with a delinquent payment.

(b) The interest charge rate shall be the greater of the rate prescribed quarterly
in the Federal Register by the Department of the Treasury for application to overdue payments,
or the interest rate of one-half of one (0.5) percent per month prescribed by Section 6 of the
Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be
determined as of the due date and remain fixed for the duration of the delinquent period.

1194 (c) When a partial payment on a delinquent account is received, the amount 1195 received shall be applied, first to the penalty, second to the administrative charges, third to the 1196 accrued interest, and finally to the overdue payment.

EQUAL EMPLOYMENT OPPORTUNITY

1197 1198

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

The Contractor will not discriminate against any employee or applicant for 1199 (a) employment because of race, color, religion, sex, disability, or national origin. The Contractor 1200 will take affirmative action to ensure that applicants are employed, and that employees are 1201 treated during employment, without regard to their race, color, religion, sex, disability, or 1202 national origin. Such action shall include, but not be limited to the following: employment, 1203 upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; 1204 rates of pay or other forms of compensation; and selection for training, including apprenticeship. 1205 The Contractor agrees to post in conspicuous places, available to employees and applicants for 1206 employment, notices to be provided by the Contracting Officer setting forth the provisions of this 1207 1208 nondiscrimination clause.

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

1213 (c) The Contractor will send to each labor union or representative of workers 1214 with which it has a collective bargaining agreement or other contract or understanding, a notice, 1215 to be provided by the Contracting Officer, advising the labor union or workers' representative of 1216 the Contractor's commitments under Section 202 of Executive Order I1246 of September 24, 1217 1965, and shall post copies of the notice in conspicuous places available to employees and 1218 applicants for employment.

1219 (d) The Contractor will comply with all provisions of Executive Order No.
1220 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary
1221 of Labor.

1222 (e) The Contractor will furnish all information and reports required by 1223 Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the 1224 Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and 1225 accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to 1226 ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the nondiscrimination
clauses of this contract or with any of such rules, regulations, or orders, this contract may be
canceled, terminated or suspended in whole or in part and the Contractor may be declared
ineligible for further Government contracts in accordance with procedures authorized in
Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and

remedies invoked as provided in Executive Order 11246 of September 24, 1965 or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

The Contractor will include the provisions of paragraphs (1) through (7) in 1234 (g) every subcontract or purchase order unless exempted by the rules, regulations, or orders of the 1235 Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1236 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor 1237 will take such action with respect to any subcontract or purchase order as may be directed by the 1238 Secretary of Labor as a means of enforcing such provisions, including sanctions for 1239 noncompliance: Provided, however, that in the event the Contractor becomes involved in, or is 1240 threatened with, litigation with a subcontractor or vendor as a result of such direction, the 1241 Contractor may request the United States to enter into such litigation to protect the interests of 1242 1243 the United States.

1244

GENERAL OBLIGATION—BENEFITS CONDITIONED UPON PAYMENT

1245 23. (a) The obligation of the Contractor to pay the United States as provided in
1246 this Contract is a general obligation of the Contractor notwithstanding the manner in which the
1247 obligation may be distributed among the Contractor's water users and notwithstanding the
1248 default of individual water users in their obligations to the Contractor.

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

- 1255
- (c) With respect to subdivision (b) of this Article of this Contract, the
- 1256 Contractor shall have no obligation to require advance payment for water rates which it levies.
- 1257

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

125824. (a)The Contractor shall comply with Title VI of the Civil Rights Act of 19641259(42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the1260Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights1261laws, as well as with their respective implementing regulations and guidelines imposed by the1262U.S. Department of the Interior and/or Bureau of Reclamation.

1263 (b) These statutes require that no person in the United States shall, on the 1264 grounds of race, color, national origin, handicap, or age, be excluded from participation in, be

denied the benefits of, or be otherwise subjected to discrimination under any program or activity
 receiving financial assistance from the Bureau of Reclamation. By executing this Contract, the
 Contractor agrees to immediately take any measures necessary to implement this obligation,
 including permitting officials of the United States to inspect premises, programs, and documents.

The Contractor makes this agreement in consideration of and for the 1269 (c) purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other 1270 Federal financial assistance extended after the date hereof to the Contractor by the Bureau of 1271 Reclamation, including installment payments after such date on account of arrangements for 1272 Federal financial assistance which were approved before such date. The Contractor recognizes 1273 and agrees that such Federal assistance will be extended in reliance on the representations and 1274 agreements made in this Article, and that the United States reserves the right to seek judicial 1275 1276 enforcement thereof.

1277

PRIVACY ACT COMPLIANCE

1278 25. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a)
1279 (the Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et seq.) in maintaining Landholder acreage certification and reporting records, required to be
1281 submitted to the Contractor for compliance with Sections 206 and 228 of the Reclamation
1282 Reform Act of 1982 (96 Stat. 1266), and pursuant to 43 CFR 426.18.

(b) With respect to the application and administration of the criminal penalty
provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees
responsible for maintaining the certification and reporting records referenced in (a) above are
considered to be employees of the Department of the Interior. See 5 U.S.C. 552a(m).

1287 (c) The Contracting Officer or a designated representative shall provide the
1288 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau
1289 of Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation—
1290 Interior, Reclamation-31) which govern the maintenance, safeguarding, and disclosure of
1291 information contained in the Landholder's certification and reporting records.

(d) The Contracting Officer shall designate a full-time employee of the
Bureau of Reclamation to be the System Manager who shall be responsible for making decisions
on denials pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The
Contractor is authorized to grant requests by individuals for access to their own records.

1296 (e) The Contractor shall forward promptly to the System Manager each 1297 proposed denial of access under 43 CFR 2.64; and each request for amendment of records filed 1298 under 43 CFR 2.71; notify the requester accordingly of such referral; and provide the System 1299 Manager with information and records necessary to prepare an appropriate response to the

requester. These requirements do not apply to individuals seeking access to their own
 certification and reporting forms filed with the Contractor pursuant to 43 CFR 426.18, unless the
 requester elects to cite the Privacy Act as a basis for the request.

1303

CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1304 26. In addition to all other payments to be made by the Contractor pursuant to this Contract, the Contractor shall pay to the United States, within sixty (60) days after receipt of a 1305 bill and detailed statement submitted by the Contracting Officer to the Contractor for such 1306 specific items of direct cost incurred by the United States for work requested by the Contractor 1307 associated with this Contract plus indirect costs in accordance with applicable Bureau of 1308 Reclamation policies and procedures. All such amounts referred to in this Article of this 1309 Contract shall not exceed the amount agreed to in writing in advance by the Contractor. This I310 Article of this Contract shall not apply to costs for routine contract administration. 1311

1312

WATER CONSERVATION

Prior to the delivery of water provided from or conveyed through 27. 1313 (a) 1314 Federally constructed or Federally financed facilities pursuant to this Contract, the Contractor 1315 shall be implementing an effective water conservation and efficiency program based on the Contractor's water conservation plan that has been determined by the Contracting Officer to 1316 meet the conservation and efficiency criteria for evaluating water conservation plans established 1317 under Federal law. The water conservation and efficiency program shall contain definite water 1318 conservation objectives, appropriate economically feasible water conservation measures, and 1319 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this 1320 Contract shall be contingent upon the Contractor's continued implementation of such water 1321

1322	conservation program. In the event the Contractor's water conservation plan or any revised
1323	water conservation plan completed pursuant to subdivision (d) of this Article of this Contract
1324	have not yet been determined by the Contracting Officer to meet such criteria, due to
1325	circumstances which the Contracting Officer determines are beyond the control of the
1326	Contractor, water deliveries shall be made under this Contract so long as the Contractor
1327	diligently works with the Contracting Officer to obtain such determination at the earliest
1328	practicable date, and thereafter the Contractor immediately begins implementing its water
1329	conservation and efficiency program in accordance with the time schedules therein.
1330	(b) Should the amount of M&I Water Delivered pursuant to subdivision (a) of
1331	Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the
1332	Contractor shall implement the Best Management Practices identified by the time frames issued
1333	by the California Urban Water Conservation Council for such M&I Water unless any such
1334	practice is determined by the Contracting Officer to be inappropriate for the Contractor.
1335	(c) The Contractor shall submit to the Contracting Officer a report on the
1336	status of its implementation of the water conservation plan on the reporting dates specified in the
1337	then-existing conservation and efficiency criteria established under Federal law.
1338	(d) At five (5) -year intervals, the Contractor shall revise its water
1339	conservation plan to reflect the then-existing conservation and efficiency criteria for evaluating
1340	water conservation plans established under Federal law and submit such revised water
1341	management plan to the Contracting Officer for review and evaluation. The Contracting Officer
1342	will then determine if the water conservation plan meets Reclamation's then-existing

- 1343 conservation and efficiency criteria for evaluating water conservation plans established under1344 Federal law.
- 1345 (e) If the Contractor is engaged in direct groundwater recharge, such activity1346 shall be described in the Contractor's water conservation plan.
- 1347

EXISTING OR ACQUIRED WATER OR WATER RIGHTS

134828. Except as specifically provided in Article 18 of this Contract, the provisions of1349this Contract shall not be applicable to or affect non-project Water or water rights now owned or1350hereafter acquired by the Contractor or any user of such water within the Contractor's Service1351Area. Any such water shall not be considered Project Water under this Contract. In addition,1352this Contract shall not be construed as limiting or curtailing any rights which the Contractor or1353any water user within the Contractor's Service Area acquires or has available under any other1354contract pursuant to Federal Reclamation law.

1355 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

1356 29. (a) The O&M of a portion of the Project facilities which serve the Contractor,
1357 and responsibility for funding a portion of the costs of such O& M, have been transferred to the
1358 Operating Non-Federal Entity by separate agreement between the United States and the
1359 Operating Non-Federal Entity. That separate agreement shall not interfere with or affect the
1360 rights or obligations of the Contractor or the United States hereunder.

(b) The Contracting Officer has previously notified the Contractor in writing
that the O&M of a portion of the Project facilities which serve the Contractor has been
transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly

to the Operating Non-Federal Entity, or to any successor approved by the Contracting Officer 1364 under the terms and conditions of the separate agreement between the United States and the 1365 Operating Non-Federal Entity described in subdivision (a) of this Article of this Contract, all 1366 rates, charges or assessments of any kind, including any assessment for reserve funds, which the 1367 Operating Non-Federal Entity or such successor determines, sets or establishes for (i) the O&M 1368 of the portion of the Project facilities operated and maintained by the Operating Non-Federal 1369 Entity or such successor, or (ii) the Friant Division's share of the operation, maintenance and 1370 replacement costs for physical works and appurtenances associated with the Tracy Pumping 1371 Plant, the Delta-Mendota Canal, the O'Neill Pumping/Generating Plant, the federal share of the 1372 O'Neill Forebay, the Mendota Pool, and the federal share of San Luis Unit joint use conveyance 1373 and conveyance pumping facilities. Such direct payments to the Operating Non-Federal Entity 1374 or such successor shall not relieve the Contractor of its obligation to pay directly to the United 1375 States the Contractor's share of the Project Rates, Charges, and Tiered Pricing Components 1376 except to the extent the Operating Non-Federal Entity collects payments on behalf of the United 1377 States in accordance with the separate agreement identified in subdivision (a) of this Article of 1378 1379 this Contract.

(c) For so long as the O&M of any portion of the Project facilities serving the
Contractor is performed by the Operating Non-Federal Entity, or any successor thereto, the
Contracting Officer shall adjust those components of the Rates for Water Delivered under this
Contract representing the cost associated with the activity being performed by the Operating
Non-Federal Entity or its successor.

1385	(d) In the event the O&M of the Project facilities operated and maintained by
1386	the Operating Non-Federal Entity is re-assumed by the United States during the term of this
1387	Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the
1388	Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid by the
1389	Contractor for Project Water under this Contract representing the O&M costs of the portion of
1390	such Project facilities which have been re-assumed. The Contractor shall, thereafter, in the
1391	absence of written notification from the Contracting Officer to the contrary, pay the Rates,
1392	Charges, and Tiered Pricing Component(s) specified in the revised Exhibit "B" directly to the
1393	United States in compliance with Article 7 of this Contract.
1394	CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS
1395 1396 1397 1398 1399	30. The expenditure or advance of any money or the performance of any obligation of the United States under this Contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations under this Contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.
1400	BOOKS, RECORDS, AND REPORTS
1401 1402 1403 1404 1405 1406 1407 1408 1409	31. (a) The Contractor shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Contract, including: the Contractor's financial transactions, water supply data, and Project land and right-of-way agreements; the water users' land-use (crop census), land ownership, land-leasing and water use data; and other matters that the Contracting Officer may require. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this Contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this Contract.
1410	(b) Notwithstanding the provisions of subdivision (a) of this Article of this
1411	Contract, no books, records, or other information shall be requested from the Contractor by the

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1412	Contracting Officer unless such books, records, or information are reasonably related to the
1413	administration or performance of this Contract. Any such request shall allow the Contractor a
1414	reasonable period of time within which to provide the requested books, records, or information.
1415	(c) At such time as the Contractor provides information to the Contracting
1416	Officer pursuant to subdivision (a) of this Article of this Contract, a copy of such information
1417	shall be provided to the Operating Non-Federal Entity.
1418	ASSIGNMENT LIMITED—SUCCESSORS AND ASSIGNS OBLIGATED
1419 1420 1421	32. (a) The provisions of this Contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest therein shall be valid until approved in writing by the Contracting Officer.
1422	(b) The assignment of any right or interest in this Contract by either party
1423	shall not interfere with the rights or obligations of the other party to this Contract absent the
1424	written concurrence of said other party.
1425	(c) The Contracting Officer shall not unreasonably condition or withhold
1426	approval of any proposed assignment.
1427	SEVERABILITY
1428	33. In the event that a person or entity who is neither (i) a party to a Project contract,
1429	nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor
1430	(iii) an association or other form of organization whose primary function is to represent parties to
1431	Project contracts, brings an action in a court of competent jurisdiction challenging the legality or
1432	enforceability of a provision included in this Contract and said person, entity, association, or
1433	organization obtains a final court decision holding that such provision is legally invalid or

1434	unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),
1435	the parties to this Contract shall use their best efforts to (i) within thirty (30) days of the date of
1436	such final court decision identify by mutual agreement the provisions in this Contract which
1437	must be revised and (ii) within three (3) months thereafter promptly agree on the appropriate
1438	revision(s). The time periods specified above may be extended by mutual agreement of the
1439	parties. Pending the completion of the actions designated above, to the extent it can do so
1440	without violating any applicable provisions of law, the United States shall continue to make the
1441	quantities of Project Water specified in this Contract available to the Contractor pursuant to the
1442	provisions of this Contract which were not found to be legally invalid or unenforceable in the
1443	final court decision.
1444	RESOLUTION OF DISPUTES
1445	34. Should any dispute arise concerning any provisions of this Contract, or the
1446	parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to
1447	resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting
1448	Officer referring any matter to Department of Justice, the party shall provide to the other party
	Officer referring any matter to Department of Justice, the party shall provide to the other party
1449	thirty (30) days written notice of the intent to take such action; <u>Provided</u> , That such notice shall
1449 1450	
	thirty (30) days written notice of the intent to take such action; Provided, That such notice shall
1450	thirty (30) days written notice of the intent to take such action; <u>Provided</u> , That such notice shall not be required where a delay in commencing an action would prejudice the interests of the party
1450 1451	thirty (30) days written notice of the intent to take such action; <u>Provided</u> , That such notice shall not be required where a delay in commencing an action would prejudice the interests of the party that intends to file suit. During the thirty (30) day notice period, the Contractor and the

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OFFICIALS NOT TO BENEFIT

1456 35. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1457 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1458 manner as other water users or landowners.

1459

CHANGES IN CONTRACTOR'S SERVICE AREA

1460 36. (a) While this Contract is in effect, no change may be made in the
1461 Contractor's Service Area or boundaries, by inclusion or exclusion of lands, dissolution,
1462 consolidation, merger, or otherwise, except upon the Contracting Officer's written consent.

Within thirty (30) days of receipt of a request for such a change, the 1463 (b) Contracting Officer will notify the Contractor of any additional information required by the 1464 Contracting Officer for processing said request, and both parties will meet to establish a mutually 1465 agreeable schedule for timely completion of the process. Such process will analyze whether the 1466 proposed change is likely to: (i) result in the use of Project Water contrary to the terms of this 1467 Contract: (ii) impair the ability of the Contractor to pay for Project Water furnished under this 1468 Contract or to pay for any Federally-constructed facilities for which the Contractor is 1469 responsible; and (iii) have an impact on any Project Water rights applications, permits, or 1470 licenses. In addition, the Contracting Officer shall comply with the National Environmental 1471 1472 Policy Act and the Endangered Species Act. The Contractor will be responsible for all costs incurred by the Contracting Officer in this process, and such costs will be paid in accordance 1473 with Article 26 of this Contract. 1474 FEDERAL LAWS 1475

1476 37. By entering into this Contract, the Contractor does not waive its rights to contest
1477 the validity or application in connection with the performance of the terms and conditions of this

1478	Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with
1479	the terms and conditions of this Contract unless and until relief from application of such Federal
1480	law or regulation to the implementing provision of the Contract is granted by a court of
1481	competent jurisdiction.
1482	EMERGENCY RESERVE FUND
1483	38. The Contractor and Contracting Officer acknowledge that the requirements to
1484	establish and maintain a minimum reserve fund account to finance extraordinary O&M costs of
1485	Friant Division Facilities is and will continue to be administered under Contract No.
1486	8-07-20-X0356 titled Agreement To Transfer The Operation, Maintenance And Replacement
1487	And Certain Financial And Administrative Activities Related To The Friant-Kern Canal And
1488	Associated Works, dated March 1, 1998 as amended, supplemented, assigned, or renewed.
1489	MEDIUM FOR TRANSMITTING PAYMENT
1490 1491 1492 1493	39. (a) All payments from the Contractor to the United States under this contract shall be by the medium requested by the United States on or before the date payment is due. The required method of payment may include checks, wire transfers, or other types of payment specified by the United States.
1494 1495 1496 1497	(b) Upon execution of the contract, the Contractor shall furnish the Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising out of the Contractor's relationship with the United States.
1498	NOTICES
1499 1500 1501 1502 1503	40. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Area Manager, South-Central California Area Office, 1243 "N" Street, Fresno, California 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board of Directors of Orange Cove Irrigation District, P.O. Box 308, Orange Cove,

.

1504 California 93646. The designation of the addressee or the address may be changed by notice 1505 given in the same manner as provided in this Article of this Contract for other notices.

1506

CONFIRMATION OF CONTRACT

1507 41. The Contractor, after the execution of this Contract, shall promptly provide to the
1508 Contracting Officer a decree of a court of competent jurisdiction of the State of California,
1509 confirming the execution of this Contract. The Contractor shall furnish the United States a
1510 certified copy of the final decree, the validation proceedings, and all pertinent supporting records
1511 of the court approving and confirming this Contract, and decreeing and adjudging it to be lawful,
1512 valid, and binding on the Contractor.

1513

CONTRACT DRAFTING CONSIDERATIONS

151442.Articles 1 through 15, subdivision (c) of Article 16, Articles 18 through 20,1515subdivision (c) of Article 23, Articles 26 through 29, subdivisions (b) and (c) of Article 31,1516subdivisions (b) and (c) of Article 32, Articles 33 through 34, subdivision (b) of Article 36, and1517Articles 37 through 38 of this Contract have been drafted, negotiated, and reviewed by the1518parties hereto, each of whom is sophisticated in the matters to which this Contract pertains, and1519no one party shall be considered to have drafted the stated Articles.

1520

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day

and year first above written.

APPROVED AS TO LEGAL FORM AND SUFFICIENCY OFFICE OF REGIONAL SOLICITOR DEPARTMENT OF THE INTERIOR

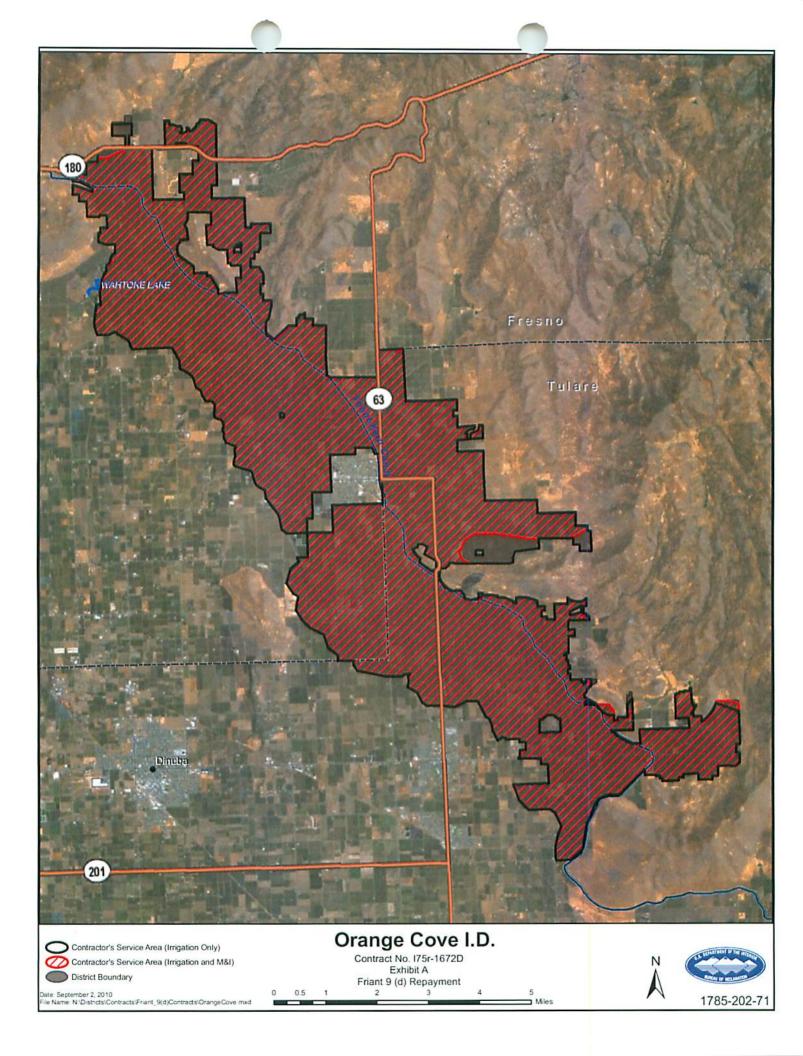
THE UNITED STATES OF AMERICA

SCIING &C 10 R. anaye By: Regional Director, Mid-Pacific Region Bureau of Reclamation

ORANGE COVE IRRIGATION DISTRICT

By: Hawey Q. Gail President, Board of Directors

Attest: Manisci By



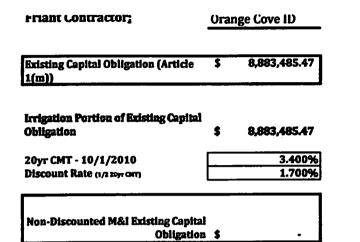
Rates and Charges

This is a placeholder page. The Rates and Charges will be transmitted to the Contractor at a later date.

Exhibit C-1 Repayment Obligation - Lump Sum Option

riant Contractor:			Ora	nge Cove ID
an Joaquin River Restoratio	n Ac	t	-	1000
xisting Capital Obligation (Article	1(m))		\$	8,883,485.47
astang suphan obligation (Autors			*	0,000,400.41
rigation portion of Existing Capital	I Obli	gation	\$	8,883,485.47
20yr CMT as of	:	10/01/10		3.400
Discount Rate (1/2 20yr CMT)			1.700
scounted Irrigation Capital			\$	7,477,615.67
Non-Discounted M&I Portion o	f		-	
Existing Capital Obligation	n		s	
Repayment Obligation - Lump Sur	n Op	CARE AND AREA TO AND A DATA STORES		
	1.00	7(a)(2)(A)		7,477,615.67
	1.000	and the second se		pital Cost
Year		Beginning Balance		Straight Line Repayment
2011	S	8,883,485	S	444,174
2012	s	8,439,311	s	444,174
2013	s	7,995,137		444,174
2014	s	7,550,963	S	444,174
2015	s	7,106,788	s	444,174
2016	\$	6,662,614	\$	444,174
2017	s	6,218,440	S	444,174
2018	s	5,774,266		444,174
2019	s	5,330,091	s	444,174
2020	s	4,885,917		444,174
2021	s	4,441,743		444,174
2022	s	3,997,568		444,174
2023	s	3,553,394		444,174
2024	s	3,109,220	s	444,174
2025	S	2,665,046		444,174
2026	s	2,220,871	s	444,174
2027	s	1,776,697	s	444,174
2028	s	1,332,523	s	444,174
2029	s	888,349	S	444,174
2030	S	444,174	\$	444,174

Exhibit C-2 Repayment Obligation - Installment Payment Option



ſ	<u>nstallment Schedul</u> Payment Due Date	igation Portion of Repayment Obligation	Non-discounted M&I Portion of Existing Capital Obligation	Repayment Obligation
1st Installment	5/1/2011	\$ 1,915,331.42	\$ 	\$ 1,915,331.42
2nd Installment	5/1/2012	\$ 1,915,042.08	\$ -	\$ 1,915,042.08
3rd Installment	5/1/2013	\$ 1,917,008.48	\$ •	\$ 1,917,008.48
 4th installment	1/31/2014	\$ 1,920,506.00	\$ •	\$ 1,920,506.00
•••	ment Obligation - Option (per Article 7(a){2}(A):	7,667,887.97	\$ -	\$ 7,667,887.97

		Irrigation I Allocated C										
		Beginning		Straight Line		· · · ·	- 1	Discounted (Capita	al Amount		
Year		Balance		Repayment	S1,	915,331.42	\$1,	915,042.08	\$1,	917,008.48		\$1,920,506.00
2011	S	8,883,485	S	444,174	S	444,174						
2012	S	8,439,311	\$	444,174	S	93,277	\$	350,898				
2013	S	7,995,137	\$	444,174	5	93,277	\$	103,715	\$	247,183		
2014	S	7,550,963	5	444,174	5	93,277	\$	103,715	\$	116,152	\$	131,031
2015	5	7,106,788	\$	444,174	S	93,277	\$	103,715	\$	116,152	\$	131,031
2016	S	6,662,614	\$	444,174	5	93,277	\$	103,715	5	116,152	\$	131,031
2017	Ś	6,218,440	\$	444,174	5	93,277	5	103,715	\$	116,152	\$	131,031
2018	Ś	5,774,266	\$	444,174	5	93,277	\$	103,715	\$	116,152	\$	131,031
2019	Ś	5,330,091	\$	444,174	S	93,277	5	103,715	\$	116,152	\$	131,03
2020	S	4,885,917	S	444,174	s	93,277	\$	103,715	\$	116,152	\$	131,031
2021	Ś	4,441,743	Ś	444,174	5	93,277	\$	103,715	\$	116,152	\$	131,031
2022	Ś	3,997,568	\$	444,174	S	93,277	\$	103,715	\$	116,152	\$	131,03
2023	Ś	3,553,394	\$	444,174	5	93,277	\$	103,715	\$	116,152	\$	131,03
2024	Ś	3,109,220	Ś	444,174	5	93,277	\$	103,715	\$	116,152	\$	131,03
2025	Ś	2,665,046	Ś	444,174	S	93,277	\$	103,715	\$	116,152	\$	131,03
2026	Š	2,220,871	Ś	444,174	S	93,277	5	103,715	\$	116,152	\$	131,03
2027	Ś	1,776,697	Ś	444,174	S	93,277	\$	103,715	\$	116,152	\$	131,03
2028	Ś	1,332,523	Ŝ	444,174	S	93,277	\$	103,715	\$	116,152	\$	131,03
2029	Š	888,349	S	444,174	Ś	93,277	\$	103,715	\$	116,152	S	131,03
2030	Š	444,174	Š.	444,174	S	93,277	S	103,715	S	116,152	\$	131,03
			Ś	8,883,485	S	2,216,430	S		S	2,221,760	S	2,227,534

Exhibit D

Friant Surcharge Reduction Calculation

Orange Cove ID

Friant Contractor<u>:</u> San Joaquin River Restoration Act

	and the second se
Average Annual Delivery - Forecasted for 2020-2039*	33,320
Total Projected deliveries (over 20 yr period)**	
Article 7(c)	666,400
20 yr CMT as of 10/1/2010	3.400%
1/2 20 yr CMT as of 10/1/2010	1.700%
Irrigation Portion of Existing Capital Obligation	\$8,883,485
NPV at Half CMT (Repayment Obligation)	\$7,477,616
NPV at Full CMT	\$6,370,288
Financing Cost Offset: @ (Article 7(c)(1))	\$1,107,327
NPV of FS Reduction	\$1,061,077
Difference between Financing Cost Offset and NPV of FS Reduction	\$46,250
2020 Other Obligation Credit (FV of difference) (Art. 7(c)(2)))"	\$62,488

		13			CVPIA Friant				2.51	11111
_		19971	Irrigation portion of All	ocated Capital Cost	Surcharges		ion in Friant Su	ircharge	-	The second second
	Year		Beginning Balance	Straight Line Repaymer	Surcharge per Acre-	Friant Surcharge Reduction per Article 7(c)(1)	Friant Surcharge due per A/F after Reduction	Projected Total Annual Credit		2020 Other ligation Credit lculation (Art. 7(c)(2))
	2011	5	8,883,485	\$ 444,17	4 \$7.00		\$7.00	0	s	46,249.92
	2012	\$	8,439,311	\$ 444,17	4 \$7.00		\$7.00	0	\$	47,822.41
	2013	\$	7,995,137	\$ 444,17	4 \$7.00		\$7.00	0	S	49,448.38
	2014	\$	7,550,963	\$ 444,17	4 \$7.00		\$7.00	0	s	51,129.62
	2015	\$	7,106,788	\$ 444,17	4 \$7.00	1	\$7.00	0	s	52,868.03
	2016	S	6,662,614	\$ 444,17	4 \$7.00		\$7.00	0	s	54,665.54
	2017	\$	6,218,440	\$ 444,17	4 \$7.00		\$7.00	0	s	56,524.17
	2018	\$	5,774,266	\$ 444,17	4 \$7.00		\$7.00	0	s	58,445.99
	2019	\$	5,330,091	\$ 444,17	4 \$7.00		\$7.00	0	\$	60,433.16
	2020	\$	4,885,917	\$ 444,17	4 \$7.00	(\$3.00)	\$ 4.00	(\$99,960)	S	62,487.88
	2021	\$	4,441,743	\$ 444,17	4 \$7.00	(\$3.00)	\$ 4.00	(99,960)	2	
	2022	S	3,997,568	\$ 444,17	4 \$7.00	(\$3.00)	\$ 4.00	(99,960)		
	2023	\$	3,553,394	\$ 444,17	4 \$7.00	(\$3.00)	\$ 4.00	(99,960)		
	2024	\$	3,109,220	\$ 444,17	4 \$7.00	(\$3.00)	\$ 4.00	(99,960)		
	2025	s	2,665,046	\$ 444,17	4 \$7.00	(\$3.00)	\$ 4.00	(99,960)		
	2026	\$	2,220,871	\$ 444,17	4 \$7.00	(\$3.00)	\$ 4.00	(99,960)	12	
	2027	\$	1,776,697	\$ 444,17	4 \$7.00	(\$3.00)	\$ 4.00	(99,960)		
	2028	S	1,332,523	\$ 444,17	4 \$7.00	(\$3.00)	\$ 4.00	(99,960)		
	2029	\$	888,349	\$ 444,17	4 \$7.00	(\$3.00)	\$ 4.00	(99,960)		
	2030	\$	444,174	\$ 444,17	4 \$7.00	(\$3.00)	\$ 4.00	(99,960)		
	2031				\$7.00	(\$3.00)	\$ 4.00	(99,960)		
	2032				\$7.00	(\$3.00)	\$ 4.00	(99,960)		
	2033				\$7.00	(\$3.00)	\$ 4.00	(99,960)		
	2034				\$7.00	(\$3.00)	\$ 4.00	(99,960)	1	
	2035				\$7.00	(\$3.00)	\$ 4.00	(99,960)		
	2036				\$7.00	(\$3.00)	\$ 4.00	(99,960)		
	2037				\$7.00	(\$3.00)	\$ 4.00	(99,960)		
	2038				\$7.00	(\$3.00)	\$ 4.00	(99,960)	22	
	2039				\$7.00	(\$3.00)	\$ 4.00	(99,960)		
1				\$ 8,883,48	5	The second second second		(\$1,999,200)		A Later of La

Footnotes

* Average annual delivery forcast indicated above is a mutually agreed upon estimate of deliveries during the period 2020-2039 for purposes of calculating the Friant Surcharge reduction and related credits only.

** This figure represents the total cumulative deliveries the reduced surchage is applicable to, but not beyond 2039. If cummulative actual deliveries exceed this amount prior to 2039, the full Friant Surcharge is applicable to deliveries in excess of this amount.

*** The difference represents the amount of financing costs that are not offset through the reduced Friant Surcharge computed on this schedule. Pursuant to Section 7(c)(2), this amount shall offset the Contractor's other outstanding or future obligations. After 2020, the contractors other obligations shall be reduced in the following order to fully offset this amount: 1) Payments or prepayments due for O&M expenses and, to the extent applicable, 2) Additional Capital Obligation.

@ Amount of reduction in Friant Surcharge is computed using FPV of Financing Costs adjusted to Yr 2020. Annual Friant Surcharge reduction to fully offset Financing costs is comuted and presented on per a/f basis. Friant surchage may be reduced up to \$3 per a/f.

1,546,968

(104, 317)

(3.13)

(3.00)

 Friant Surcharge (FS) Reduction Calculations

 FV of Total Financing Cost for Offset
 \$

 Annual Credit Target
 \$

 FS Reduction w/o limit
 \$

 FS Reduction limit
 \$

EXHIBIT E

Restated Contract¹

Irrigation and M&I Contract No. 175r-1672D

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

<u>CONTRACT BETWEEN THE UNITED STATES</u> <u>AND</u> <u>ORANGE COVE IRRIGATION DISTRICT</u> <u>PROVIDING FOR PROJECT WATER SERVICE FROM</u> <u>FRIANT DIVISION AND</u> <u>FOR FACILITIES REPAYMENT</u>

Table of Contents

Article No. Title

PreambleI 1 2 3 4 5 Measurement Of Water Within The Service Area......25 6 Rates, Method Of Payment For Water, And Accelerated Repayment of Facilities .27 7 8 9 10 Application Of Payments And Adjustments......40 11 Temporary Reductions—Return Flows41 12 13 Unavoidable Groundwater Percolation.....45 14 Acreage Limitation45 15 Compliance With Federal Reclamation Laws47 16 Protection Of Water And Air Quality47 17 18 19

Page No.

¹ Pursuant to subdivision (b) of Article 2 of the Contract to which this exhibit is attached, this Exhibit "E" makes no substantive revisions to the Contract to which it is attached and is prepared solely as a matter of administrative convenience. In this Exhibit "E", references to "Contract" or "this Contract" refers to this Restated Contract.

20	Coordination And Cooperation	50
21	Charges For Delinquent Payments	
22	Equal Employment Opportunity	53
23	General Obligation—Benefits Conditioned Upon Payment	
24	Compliance With Civil Rights Laws And Regulations	54
25	Privacy Act Compliance	55
26	Contractor To Pay Certain Miscellaneous Costs	55
27	Water Conservation	56
28	Existing Or Acquired Water Or Water Rights	
29	Operation And Maintenance By Operating Non-Federal Entity	58
30	Contingent On Appropriation Or Allotment Of Funds	60
31	Books, Records, And Reports	60
32	Assignment Limited—Successors And Assigns Obligated	60
33	Severability	61
34	Resolution Of Disputes	62
35	Officials Not To Benefit	
36	Changes In Contractor's Service Area	62
37	Federal Laws	63
38	Emergency Reserve Fund	63
39	Medium For Transmitting Payment	64
40	Notices	64
41	Confirmation Of Contract	64
42	Contract Drafting Considerations	64

1	UNITED STATES
2	DEPARTMENT OF THE INTERIOR
3	BUREAU OF RECLAMATION
4	Central Valley Project, California
5	CONTRACT BETWEEN THE UNITED STATES
6	AND
7	ORANGE COVE IRRIGATION DISTRICT
8	PROVIDING FOR PROJECT WATER SERVICE
9	FROM FRIANT DIVISION AND
10	FACILITIES REPAYMENT
11	THIS CONTRACT, made this $\frac{184}{2}$ day of <u>November</u> , 2010, is entered
12	into pursuant to the Act of June 17, 1902, (32 Stat. 388), and acts amendatory or supplementary
13	thereto, including but not limited to: the Act of August 26, 1937 (50 Stat. 844), as amended and
14	supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70
15	Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1262), October 27, 1986 (100
16	Stat. 3050), as amended, Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), and Title
17	X, Subtitle A, of the Act of March 30, 2009 (123 Stat. 1349), also referred to as the San Joaquin
18	River Restoration Settlement Act hereinafter referred to as SJRRSA, all collectively hereinafter
19	referred to as Federal Reclamation law, between THE UNITED STATES OF AMERICA,
20	hereinafter referred to as the United States and ORANGE COVE IRRIGATION DISTRICT,
21	hereinafter referred to as the Contractor, a public agency of the State of California, duly
22	organized, existing, and acting pursuant to the laws thereof, with its principal place of business in
23	California;
24	WITNESSETH, That

2	5
4	J

EXPLANATORY RECITALS

26	[1 st] WHEREAS, the United States has constructed and is operating the Central Valley
27	Project, California, for diversion, storage, carriage, distribution and beneficial use, for flood
28	control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and
29	restoration, generation and distribution of electric energy, salinity control, navigation and other
30	beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and
31	the San Joaquin River and their tributaries; and
32	[2 nd] WHEREAS, the United States constructed Friant Dam (thereby creating Millerton
33	Lake) and the Friant-Kern and Madera Canals, hereinafter collectively referred to as the Friant
34	Division Facilities, which will be used in part for the furnishing of water to the Contractor
35	pursuant to the terms of this Contract; and
36	[3 rd] WHEREAS, the United States and the Contractor entered into Contract Number
37	175r-1672, as amended, which established terms for the delivery to the Contractor of Project
38	Water from the Friant Division from July 9, 1949 through February 28, 1989; and
39	[4 th] WHEREAS, the Contractor and the United States have entered into a renewal
40	contract and, pursuant to subsection 3404(c)(1) of the Central Valley Project Improvement Act
41	(CVPIA), subsequently entered into an interim renewal contract(s), identified as Contract
42	Number (s) 175r-1672R and 175r-1672-IR1, which provided for the continued water service to
43	Contractor from March 1, 1989 through February 28, 2001, and subsequently entered into a
44	long-term renewal contract identified as Contract Number 175r-1672-LTR1, which provided for

45	continued water service to Contractor through February 28, 2026, which was amended January
46	18, 2007, and is herein referred to as the "Existing Contract"; and
47	[5 th] WHEREAS, pursuant to Section 8 of the Act of June 17, 1902 (32 Stat. 388), the
48	United States has acquired water rights and other rights to the flows of the San Joaquin River,
49	including without limitation the permits issued as the result of Decision 935 by the California
50	State Water Resource Control Board and the contracts described in subdivision (n) of Article 3
51	of this Contract, pursuant to which the Contracting Officer develops, diverts, stores and delivers
52	Project Water stored or flowing through Millerton Lake in accordance with State and Federal law
53	for the benefit of Project Contractors in the Friant Division and for other specified Project
54	purposes; and
55	[6 th] WHEREAS, the water supplied to the Contractor pursuant to this Contract is
56	Project Water developed through the exercise of the rights described in the fifth (5 th) Explanatory
57	Recital of this Contract; and
58	[7 th] WHEREAS, as a result of litigation entitled "Natural Resources Defense Council,
59	et al. v Kirk Rogers, et al." No. CIV-S-88-1658LLK/GGH, certain contractors from the Friant
60	Division entered into a Stipulation of Settlement dated September 13, 2006, (the "Settlement"),
61	which settlement prescribes a Restoration Goal and a Water Management Goal and which
62	Settlement was subsequently confirmed and implemented through the SJRRSA; and
63	[8 th] WHEREAS, the SJRRSA authorizes and directs the Secretary to convert the
64	Existing Contract to a repayment contract under subsection (d) of Section 9 of the Act of August
65	4, 1939, no later than December 31, 2010, and further directs that such contract shall require the

66	accelerated repayment of the Contractor's allocated share of construction costs, either as a lump
67	sum payment by January 31, 2011 or in annual installments by January 31, 2014, which funds
68	will in turn be made available for implementation of the Settlement and SJRRSA, and which
69	costs otherwise would have been payable through annual water rates, with full repayment by
70	2030; and
71	[9 th] WHEREAS, such repayment of costs will assist the United States with
72	implementation of actions required under the Settlement and the SJRRSA and provide the
73	Contractor the benefits provided in Section 10010 of the SJRRSA; and
74	[10 th] WHEREAS, subsection (4) of Section 1 of the Act of July 2, 1956 (1956 Act)
75	directs the Secretary to provide that the other party to any contract entered into pursuant to
76	subsection (d) of Section 9 of the Act of August 4, 1939 (repayment contract) or pursuant to
77	subsection (e) of Section 9 of the Act of August 4, 1939 (water service contract) shall "have the
78	first right (to which the rights of the holders of any other type of irrigation water contract shall be
79	subordinate) to a stated share or quantity of the project's available water supply for beneficial
80	use on the irrigable lands within the boundaries of, or owned by, the party and a permanent right
81	to such share or quantity upon completion of payment of the amount assigned for ultimate
82	return" by the contractor subject to fulfillment of all obligations under the contract; and
83	[11 th] WHEREAS, among other things, this Contract includes provisions granting the
84	Contractor the permanent right described in the tenth (10 th) Explanatory Recital; and
85	[12 th] WHEREAS, the Contractor has demonstrated to the satisfaction of the
86	Contracting Officer that the Contractor has utilized the Project Water supplies available to it for

87	reasonable and beneficial use and/or has demonstrated projected future demand for water use
88	such that the Contractor has the capability and expects to utilize fully for reasonable and
89	beneficial use the quantity of Project Water to be made available to it pursuant to this Contract;
90	and
91	[13 th] WHEREAS, water obtained from the Central Valley Project has been relied upon
92	by urban and agricultural areas within California for more than fifty (50) years and is considered
93	by the Contractor as an essential portion of its water supply; and
94	[14 th] WHEREAS, the economies of regions within the Central Valley Project,
95	including the Contractor's, depend upon the continued availability of water, including water
96	service from the Central Valley Project; and
97	[15 th] WHEREAS, the Secretary intends through coordination, cooperation, and
98	partnerships to pursue measures to improve water supply, water quality, and reliability of the
99	Project for all Project purposes; and
100	[16 th] WHEREAS, the mutual goals of the United States and the Contractor include: to
101	provide for reliable Project Water supplies; to control costs of those supplies; to achieve
102	repayment of the Central Valley Project as required by law; to guard reasonably against Project
103	Water shortages; to achieve a reasonable balance among competing demands for use of Project
104	Water; and to comply with all applicable environmental statutes, all consistent with the legal
105	obligations of the United States relative to the Central Valley Project; and
106	[17 th] WHEREAS, any time during the Year the Contracting Officer determines that a
107	need exists to evacuate water from Millerton Lake in order to prevent or minimize spill or to

108	meet flood control criteria (currently referred to as "uncontrolled season"), taking into
109	consideration, among other things, anticipated upstream reservoir operations and the most
110	probable forecast of snowmelt and runoff projections for the upper San Joaquin River, Friant
111	Division Project Contractors utilize a portion of their undependable Class 2 Water in their
112	service areas to, among other things, assist in the management and alleviation of groundwater
113	overdraft in the Friant Division service area, provide opportunities for restoration of the San
114	Joaquin River below Friant Dam, minimize flooding along the San Joaquin River, encourage
115	optimal water management, and maximize the reasonable and beneficial use of the water; and
116	[18 th] WHEREAS, the parties desire and intend that this Contract not provide a
117	disincentive to the Friant Division Project Contractors continuing to carry out the beneficial
118	activities set out in the Explanatory Recital immediately above; and
119	[19 th] WHEREAS, the United States has determined that the Contractor has fulfilled all
120	of its obligations under the Existing Contract.
121	NOW, THEREFORE, in consideration of the mutual and dependent covenants herein
122	contained, it is hereby mutually agreed by the parties hereto as follows:
123	DEFINITIONS
124	1. When used herein, unless otherwise distinctly expressed or manifestly
125	incompatible with the intent of the parties as expressed in this Contract, the term:
126	(a) "Additional Capital Obligation" shall mean any additional construction
127	costs or other capitalized costs incurred after the effective date of this Contract or not reflected in
128	the Existing Capital Obligation as provided in Section 10010(a)(3)(B) of the SJRRSA and any

.

129	amounts payable by Contractor as determined through the final adjustment described and
130	required by Section 10010(b) of the SJRRSA;
131	(b) "Calendar Year" shall mean the period January 1 through December 31,
132	both dates inclusive;
133	(c) "Charges" shall mean the payments required by Federal Reclamation law
134	in addition to the Rates specified in this Contract as determined annually by the Contracting
135	Officer pursuant to this Contract and consistent with the SJRRSA;
136	(d) "Class 1 Water" shall mean that supply of water stored in or flowing
137	through Millerton Lake which, subject to the contingencies hereinafter described in Articles 3,
138	12, and 13 of this Contract, will be available for delivery from Millerton Lake and the
139	Friant-Kern and Madera Canals as a dependable water supply during each Year;
140	(e) "Class 2 Water" shall mean that supply of water which can be made
141	available subject to the contingencies hereinafter described in Articles 3, 12, and 13 of this
142	Contract for delivery from Millerton Lake and the Friant-Kern and Madera Canals in addition to
143	the supply of Class 1 Water. Because of its uncertainty as to availability and time of occurrence,
144	such water will be undependable in character and will be furnished only if, as, and when it can be
145	made available as determined by the Contracting Officer;
146	(f) "Condition of Shortage" shall mean a condition respecting the Project
147	during any Year such that the Contracting Officer is unable to deliver sufficient water to meet the
148	Contract Total;

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149	(g)	"Contracting Officer" shall mean the Secretary of the Interior's duly
150	authorized represent	tative acting pursuant to this Contract or applicable Federal Reclamation law
151	or regulation;	
152	(h)	"Contract Total" shall mean the maximum amount of Class 1 Water plus
153	the maximum amou	nt of Class 2 Water specified in subdivision (a) of Article 3 of this Contract
154	and is the stated sha	re or quantity of the Project's available water supply to which the Contractor
155	has a permanent rig	ht in accordance with the 1956 Act and the terms of this Contract, due to the
156	Contractor's comple	ete payment of the Repayment Obligation, notwithstanding any Additional
157	Capital Obligation t	hat may later be established, which right shall not be disturbed so long as the
158	Contractor fulfills a	Il of its obligations under this Contract;
159	(i)	"Contractor's Service Area" shall mean the area to which the Contractor is
160	permitted to provide	e Project Water under this Contract as described in Exhibit "A" attached
161	hereto, which may b	be modified from time to time in accordance with Article 36 of this Contract
162	without amendment	of this Contract;
163	(j)	"CVPIA" shall mean the Central Valley Project Improvement Act, Title
164	XXXIV of the Act	of October 30, 1992 (106 Stat. 4706);
165	(k)	Omitted;
166	(1)	Omitted;
167	(m)	"Existing Capital Obligation" shall mean the remaining amount of
168	construction costs o	f the Contractor identified in the Central Valley Project Irrigation Water
169	Rates and/or Munic	ipal and Industrial Water Rates, respectively, dated January 25, 2007, as

170	adjusted to reflect pay	ments not reflected in such schedule, pursuant to Section 10010(a)(3)(A)
171	of the SJRRSA. The	Contracting Officer has computed the Existing Capital Obligation in a
172	manner consistent wit	h the SJRRSA and such amount is set forth in Exhibits "C-1" and "C-2",
173	incorporated herein by	y reference;
174	(n)	"Financing Costs", for purposes of computing the reduction of certain
175	charges as specified in	n subdivision (c) of Article 7 of this Contract, shall mean the difference
176	between the net present value of the Existing Capital Obligation discounted using the full	
177	Treasury rate and the	Existing Capital Obligation discounted using one-half the Treasury rate, as
178	set forth in Section 10	010(d)(3) of the SJRRA;
179	(0)	Omitted;
180	(p)	Omitted;
181	(q)	Omitted;
182	(r)	"Irrigation Water" shall mean water made available from the Project that
183	is used primarily in th	e production of agricultural crops or livestock, including domestic use
184	incidental thereto, and	I watering of livestock;
185	(s)	Omitted;
186	(t)	"Long Term Historic Average" shall mean the average of the final forecast
187	of Water Made Availa	able to the Contractor pursuant to this Contract and the contracts referenced
188	in the third (3 rd) and f	ourth (4 th) Explanatory Recitals of this Contract;
189	(u)	"Municipal and Industrial (M&I) Water" shall mean Water Made
190	Available from the Pr	oject other than Irrigation Water made available to the Contractor. M&I

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191	Water shall include v	water used for human use and purposes such as the watering of landscaping
192	or pasture for animal	s (e.g., horses) which are kept for personal enjoyment or water delivered to
193	land holdings operate	ed in units of less than five (5) acres unless the Contractor establishes to the
194	satisfaction of the Co	ontracting Officer that the use of water delivered to any such landholding is a
195	use described in subc	livision (r) of this Article of this Contract;
196	(v)	Omitted;
197	(w)	"Operation and Maintenance" or "O&M" shall mean normal and
198	reasonable care, cont	trol, operation, repair, replacement (other than Capital replacement), and
199	maintenance of Project facilities;	
200	(x)	"Operating Non-Federal Entity" shall mean the Friant Water Authority, or
201	its successor, a Non-	Federal entity, which has the obligation to operate and maintain all or a
202	portion of the Friant	Division Facilities pursuant to an agreement with the United States and
203	which may have fund	ding obligations with respect thereto;
204	(y)	Omitted;
205	(z)	"Project" shall mean the Central Valley Project owned by the United
206	States and managed	by the Department of the Interior, Bureau of Reclamation;
207	(aa)	"Project Contractors" shall mean all parties who have a long-term water
208	service contract or re	epayment contract for Project Water from the Project with the United States
209	pursuant to Federal H	Reclamation law;

210	(bb) "Project Water" shall mean all water that is developed, diverted, stored, or
211	delivered by the Secretary in accordance with the statutes authorizing the Project and in
212	accordance with the terms and conditions of water rights acquired pursuant to California law;
213	(cc) "Rates" shall mean the payments for O&M costs as determined annually
214	by the Contracting Officer in accordance with the then-existing applicable water ratesetting
215	policies for the Project, as described in subdivision (a) of Article 7 of this Contract and
216	illustrated in Exhibit "B", attached hereto;
217	(dd) "Recovered Water Account" shall mean the program, as defined in the
218	Settlement, to make water available to all of the Friant Division Project Contractors who provide
219	water to meet interim flows or restoration flows for the purpose of reducing or avoiding the
220	impact of the interim flows and restoration flows on such contractors;
221	(ee) "Repayment Obligation", as provided in subdivision (a)(2)(A) of Article 7
222	of this Contract, shall be the Existing Capital Obligation, as defined herein, discounted by
223	one-half of the Treasury rate and computed consistent with the provisions of Section
224	10010(a)(3)(A) of the SJRRSA to be paid as either a lump sum payment by January 31, 2011 or
225	in approximately equal annual installments by January 31, 2014;
226	(ff) "Secretary" shall mean the Secretary of the Interior, a duly appointed
227	successor, or an authorized representative acting pursuant to any authority of the Secretary and
228	through any agency of the Department of the Interior;
229	(gg) "Settlement" shall mean the Stipulation of Settlement dated September 13,
230	2006, the Order Approving Stipulation of Settlement, and the Judgment and further orders issued

231	by the Court pursuan	t to the terms and conditions of the Settlement in Natural Resources
232	Defense Council, et a	al. v. Rodgers, et al., No. CIV-S-88-1658 LLJ/GGH;
233	(hh)	Omitted;
234	(ii)	"Water Delivered" or "Delivered Water" shall mean Project Water
235	diverted for use by th	e Contractor at the point(s) of delivery approved by the Contracting
236	Officer;	
237	(ij)	"Water Made Available" shall mean the estimated amount of Project
238	Water that can be de	livered to the Contractor for the upcoming Year as declared by the
239	Contracting Officer,	pursuant to subdivision (a) of Article 4 of this Contract;
240	(kk)	"Water Management Goal" shall mean the goal of the Settlement to
241	reduce or avoid adve	rse water supply impacts to all the Friant Division Project Contractors that
242	may result from the i	nterim flows and restoration flows provided for in the Settlement;
243	(11)	"Water Scheduled" shall mean Project Water made available to the
244	Contractor for which	times and quantities for delivery have been established by the Contractor
245	and Contracting Offi	cer, pursuant to subdivision (b) of Article 4 of this Contract; and
246	(mm)	"Year" shall mean the period from and including March 1 of each
247	Calendar Year throug	gh the last day of February of the following Calendar Year.
248		EFFECTIVE DATE OF CONTRACT
249	2. (a)	This Contract shall become effective on the date first hereinabove written
250	and shall continue so	long as the Contractor is making the annual payments required herein and
251	paying any other am	ounts owing under this Contract and applicable law, unless it is terminated

252	by the Contracting Officer by reason of a material uncured breach by the Contractor; Provided,
253	That the Contracting Officer shall not seek to terminate this Contract by reason of an asserted
254	material uncured breach by the Contractor unless it has first provided at least sixty (60) days
255	written notice of the asserted breach to the Contractor and the Contractor has failed to cure such
256	breach (or to diligently commence curative actions satisfactory to the Contracting Officer for a
257	breach that cannot be fully cured within sixty (60) days) within the sixty (60)-day notice period;
258	Provided further, That this Contract may be terminated at any time by mutual consent of the
259	parties hereto.
260	(b) The Contractor has paid the Repayment Obligation, and notwithstanding
261	any Additional Capital Obligation that may later be established, the tiered pricing component and
262	the acreage limitations, reporting, and Full Cost pricing provisions of Federal Reclamation law,
263	shall no longer be applicable to the Contractor.
264	(c) This Contract supersedes in its entirety and is intended to replace in full
265	the Existing Contract; Provided, That if this Contract is terminated or determined to be invalid or
266	unenforceable for any reason other than a material uncured breach of this Contract by the
267	Contractor, the Existing Contract shall not be superseded and shall be in full force and effect.
268	WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR
269	3. (a) During each Year, consistent with all applicable State water rights,
270	permits, and licenses, Federal law, the Settlement including the SJRRSA, and subject to the
271	provisions set forth in Articles 12 and 13 of this Contract, the Contracting Officer shall make
272	available for delivery to the Contractor from the Project 39,200 acre-feet of Class 1 Water, both

273	for irrigation and M&I purposes. The quantity of Water Delivered to the Contractor in
274	accordance with this subdivision shall be scheduled and paid for pursuant to the provisions of
275	Articles 4 and 7 of this Contract.
276	(b) The Contractor has paid the Repayment Obligation, and notwithstanding
277	any Additional Capital Obligation that may later be established, the Contractor has a permanent
278	right to the Contract Total in accordance with the 1956 Act and the terms of this Contract. This
279	right shall not be disturbed so long as the Contractor fulfills all of its obligations hereunder. The
280	quantity of water made available for delivery in any given Year shall remain subject to the terms
281	and conditions of subdivision (a) of this Article of this Contract.
282	(c) The Contractor shall utilize the Project Water in accordance with all
283	applicable legal requirements.
284	(d) The Contractor shall make reasonable and beneficial use of all Project
285	Water or other water furnished pursuant to this Contract. Groundwater recharge programs,
286	groundwater banking programs, surface water storage programs, and other similar programs
287	utilizing Project Water or other water furnished pursuant to this Contract conducted within the
288	Contractor's Service Area which are consistent with applicable State law and result in use
289	consistent with applicable Federal Reclamation law will be allowed; Provided, That any direct
290	recharge program(s) is (are) described in the Contractor's Water Conservation Plan submitted
291	pursuant to Article 27 of this Contract; Provided further, That such Water Conservation Plan
292	demonstrates sufficient lawful uses exist in the Contractor's Service Area so that using a

293	long-term average, the quantity of Delivered Water is demonstrated to be reasonable for such
294	uses and in compliance with Federal Reclamation law. Groundwater recharge programs,
295	groundwater banking programs, surface water storage programs, and other similar programs
296	utilizing Project Water or other water furnished pursuant to this Contract conducted outside the
297	Contractor's Service Area may be permitted upon written approval of the Contracting Officer,
298	which approval will be based upon environmental documentation, Project Water rights, and
299	Project operational concerns. The Contracting Officer will address such concerns in regulations,
300	policies, or guidelines.
301	(e) The Contractor, through this Contract, shall comply with requirements
302	applicable to the Contractor in biological opinion(s) prepared as a result of the consultation
303	regarding the execution of the Existing Contract undertaken pursuant to Section 7 of the
304	Endangered Species Act of 1973, as amended, as well as the requirements of any other biological
305	opinions applicable to Project Water delivery under this Contract, that are within the
306	Contractor's legal authority to implement. The Contractor shall comply with the limitations or
307	requirements imposed by environmental documentation applicable to the Contractor and within
308	its legal authority to implement regarding specific activities, including conversion of Irrigation
309	Water to M&I Water. Nothing herein shall be construed to prevent the Contractor from
310	challenging or seeking judicial relief in a court of competent jurisdiction with respect to any
311	biological opinion or other environmental documentation referred to in this Article of this
312	Contract.

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313	(f) Subject to subdivisions (l) and (n) of this Article of this Contract,
314	following the declaration of Water Made Available under Article 4 of this Contract, the
315	Contracting Officer will make a determination whether Project Water, or other water available to
316	the Project, can be made available to the Contractor in addition to the Contract Total in this
317	Article of this Contract during the Year without adversely impacting the Project or other Project
318	Contractors and consistent with the Secretary's legal obligations. At the request of the
319	Contractor, the Contracting Officer will consult with the Contractor prior to making such a
320	determination. Subject to subdivisions (1) and (n) of this Article of this Contract, if the
321	Contracting Officer determines that Project Water, or other water available to the Project, can be
322	made available to the Contractor, the Contracting Officer will announce the availability of such
323	water and shall so notify the Contractor as soon as practical. The Contracting Officer will
324	thereafter meet with the Contractor and other Project Contractors capable of taking such water to
325	determine the most equitable and efficient allocation of such water. If the Contractor requests
326	the delivery of any quantity of such water, the Contracting Officer shall make such water
327	available to the Contractor in accordance with applicable statutes, regulations, guidelines, and
328	policies.

(g) The Contractor may request permission to reschedule for use during the
subsequent Year some or all of the Water Made Available to the Contractor during the current
Year referred to as "carryover." The Contractor may request permission to use during the
current Year a quantity of Project Water which may be made available by the United States to
the Contractor during the subsequent Year referred to as "pre-use." The Contracting Officer's

written approval may permit such uses in accordance with applicable statutes, regulations,guidelines, and policies.

336 (h) The Contractor's right pursuant to Federal Reclamation law and applicable
337 State law to the reasonable and beneficial use of the Water Delivered pursuant to this Contract
338 shall not be disturbed so long as the Contractor shall fulfill all of its obligations under this
339 Contract. Nothing in the preceding sentence shall affect the Contracting Officer's ability to
340 impose shortages under Article 12 or subdivision (b) of Article 13 of this Contract.

341 (i) Project Water furnished to the Contractor pursuant to this Contract may be
342 delivered for purposes other than those described in subdivisions (r) and (u) of Article 1 of this
343 Contract upon written approval by the Contracting Officer in accordance with the terms and
344 conditions of such approval.

The Contracting Officer shall make reasonable efforts to protect the water 345 (i) rights and other rights described in the fifth (5th) Explanatory Recital of this Contract and to 346 provide the water available under this Contract. The Contracting Officer shall not object to 347 participation by the Contractor, in the capacity and to the extent permitted by law, in 348 administrative proceedings related to the water rights and other rights described in the fifth (5th) 349 Explanatory Recital of this Contract; Provided however, That the Contracting Officer retains the 350 right to object to the substance of the Contractor's position in such a proceeding. Provided 351 further, that in such proceedings the Contracting Officer shall recognize the Contractor has a 352 legal right under the terms of this Contract to use Project Water. 353

355a schedule or revised schedule submitted by the Contractor and approved by the Contracting356Officer shall be deemed to have been accepted by the Contractor as Class 1 Water to the extent357that Class 1 Water is called for in such schedule for.such month and shall be deemed to have358been accepted as Class 2 Water to the extent Class 2 Water is called for in such schedule for such359month. If in any month the Contractor diverts a quantity of water in addition to the total amount360of Class 1 Water and Class 2 Water set forth in the Contractor's approved schedule or revised361schedule for such month, such additional diversions shall be charged first against the362Contractor's remaining Class 2 Water supply available in the current Year. To the extent the363account for such additional diversions, such additional diversions shall be charged against the364account for such additional diversions, such additional diversions shall be charged against the365Contractor's remaining Class 1 Water and Class 2 Water supplies available in the current Year366contractor's remaining Class 1 Water and Class 2 Water supplies available in the current Year367are not sufficient to account for such additional diversions, such additional diversions shall be charged first against the368charged first against the Contractor's available Class 2 Water supply and then against the369Contractor's available Class 1 Water supply, both for the following Year. Payment for all370additional diversions of water shall be made in accordance with Article 7 of this Contract.371(I) If the Contracting Offl	354	(k) Project Water furnished to the Contractor during any month designated in
357that Class 1 Water is called for in such schedule for.such month and shall be deemed to have358been accepted as Class 2 Water to the extent Class 2 Water is called for in such schedule for such359month. If in any month the Contractor diverts a quantity of water in addition to the total amount360of Class 1 Water and Class 2 Water set forth in the Contractor's approved schedule or revised361schedule for such month, such additional diversions shall be charged first against the362Contractor's remaining Class 2 Water supply available in the current Year. To the extent the363Contractor's remaining Class 2 Water supply available in the current Year is not sufficient to364account for such additional diversions, such additional diversions shall be charged against the365Contractor's remaining Class 1 Water supply available in the current Year. To the extent the366Contractor's remaining Class 1 Water supply available in the current Year. To the extent the367are not sufficient to account for such additional diversions, such additional diversions shall be368charged first against the Contractor's available Class 2 Water supply and then against the369Contractor's available Class 1 Water supply, both for the following Year. Payment for all370additional diversions of water shall be made in accordance with Article 7 of this Contract.371(1)If the Contracting Officer determines there is a Project Water supply372available at Friant Dam as the result of an unusually large water supply not otherwise storable for	355	a schedule or revised schedule submitted by the Contractor and approved by the Contracting
358been accepted as Class 2 Water to the extent Class 2 Water is called for in such schedule for such359month. If in any month the Contractor diverts a quantity of water in addition to the total amount360of Class 1 Water and Class 2 Water set forth in the Contractor's approved schedule or revised361schedule for such month, such additional diversions shall be charged first against the362Contractor's remaining Class 2 Water supply available in the current Year. To the extent the363Contractor's remaining Class 2 Water supply available in the current Year is not sufficient to364account for such additional diversions, such additional diversions shall be charged against the365Contractor's remaining Class 1 Water supply available in the current Year. To the extent the366Contractor's remaining Class 1 Water and Class 2 Water supplies available in the current Year367are not sufficient to account for such additional diversions, such additional diversions shall be368charged first against the Contractor's available Class 2 Water supply and then against the369Contractor's available Class 1 Water supply, both for the following Year. Payment for all370additional diversions of water shall be made in accordance with Article 7 of this Contract.371(1)If the Contracting Officer determines there is a Project Water supply372available at Friant Dam as the result of an unusually large water supply not otherwise storable for	356	Officer shall be deemed to have been accepted by the Contractor as Class 1 Water to the extent
359month. If in any month the Contractor diverts a quantity of water in addition to the total amount360of Class 1 Water and Class 2 Water set forth in the Contractor's approved schedule or revised361schedule for such month, such additional diversions shall be charged first against the362Contractor's remaining Class 2 Water supply available in the current Year. To the extent the363Contractor's remaining Class 2 Water supply available in the current Year is not sufficient to364account for such additional diversions, such additional diversions shall be charged against the365Contractor's remaining Class 1 Water supply available in the current Year. To the extent the366Contractor's remaining Class 1 Water supply available in the current Year. To the extent the367are not sufficient to account for such additional diversions, such additional diversions shall be charged first against the368charged first against the Contractor's available Class 2 Water supply and then against the369Contractor's available Class 1 Water supply, both for the following Year. Payment for all370additional diversions of water shall be made in accordance with Article 7 of this Contract.371(I)If the Contracting Officer determines there is a Project Water supply372available at Friant Dam as the result of an unusually large water supply not otherwise storable for	357	that Class I Water is called for in such schedule for such month and shall be deemed to have
360of Class 1 Water and Class 2 Water set forth in the Contractor's approved schedule or revised361schedule for such month, such additional diversions shall be charged first against the362Contractor's remaining Class 2 Water supply available in the current Year. To the extent the363Contractor's remaining Class 2 Water supply available in the current Year is not sufficient to364account for such additional diversions, such additional diversions shall be charged against the365Contractor's remaining Class 1 Water supply available in the current Year. To the extent the366Contractor's remaining Class 1 Water and Class 2 Water supplies available in the current Year367are not sufficient to account for such additional diversions, such additional diversions shall be368charged first against the Contractor's available Class 2 Water supply and then against the369Contractor's available Class 1 Water supply, both for the following Year. Payment for all370additional diversions of water shall be made in accordance with Article 7 of this Contract.371(1)If the Contracting Officer determines there is a Project Water supply372available at Friant Dam as the result of an unusually large water supply not otherwise storable for	358	been accepted as Class 2 Water to the extent Class 2 Water is called for in such schedule for such
361schedule for such month, such additional diversions shall be charged first against the362Contractor's remaining Class 2 Water supply available in the current Year. To the extent the363Contractor's remaining Class 2 Water supply available in the current Year is not sufficient to364account for such additional diversions, such additional diversions shall be charged against the365Contractor's remaining Class 1 Water supply available in the current Year. To the extent the366Contractor's remaining Class 1 Water and Class 2 Water supplies available in the current Year367are not sufficient to account for such additional diversions, such additional diversions shall be368charged first against the Contractor's available Class 2 Water supply and then against the369Contractor's available Class 1 Water supply, both for the following Year. Payment for all370additional diversions of water shall be made in accordance with Article 7 of this Contract.371(1)372If the Contracting Officer determines there is a Project Water supply	359	month. If in any month the Contractor diverts a quantity of water in addition to the total amount
362Contractor's remaining Class 2 Water supply available in the current Year. To the extent the363Contractor's remaining Class 2 Water supply available in the current Year is not sufficient to364account for such additional diversions, such additional diversions shall be charged against the365Contractor's remaining Class 1 Water supply available in the current Year. To the extent the366Contractor's remaining Class 1 Water and Class 2 Water supplies available in the current Year367are not sufficient to account for such additional diversions, such additional diversions shall be368charged first against the Contractor's available Class 2 Water supply and then against the369Contractor's available Class 1 Water supply, both for the following Year. Payment for all370additional diversions of water shall be made in accordance with Article 7 of this Contract.371(I)372available at Friant Dam as the result of an unusually large water supply not otherwise storable for	360	of Class 1 Water and Class 2 Water set forth in the Contractor's approved schedule or revised
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364account for such additional diversions, such additional diversions shall be charged against the365Contractor's remaining Class 1 Water supply available in the current Year. To the extent the366Contractor's remaining Class 1 Water and Class 2 Water supplies available in the current Year367are not sufficient to account for such additional diversions, such additional diversions shall be368charged first against the Contractor's available Class 2 Water supply and then against the369Contractor's available Class 1 Water supply, both for the following Year. Payment for all370additional diversions of water shall be made in accordance with Article 7 of this Contract.371(1)If the Contracting Officer determines there is a Project Water supply372available at Friant Dam as the result of an unusually large water supply not otherwise storable for	362	Contractor's remaining Class 2 Water supply available in the current Year. To the extent the
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 371 (l) If the Contracting Officer determines there is a Project Water supply 372 available at Friant Dam as the result of an unusually large water supply not otherwise storable for 	369	Contractor's available Class 1 Water supply, both for the following Year. Payment for all
372 available at Friant Dam as the result of an unusually large water supply not otherwise storable for	370	additional diversions of water shall be made in accordance with Article 7 of this Contract.
	371	(1) If the Contracting Officer determines there is a Project Water supply
373 Project purposes or infrequent and otherwise unmanaged flood flows of short duration, such	372	available at Friant Dam as the result of an unusually large water supply not otherwise storable for
	373	Project purposes or infrequent and otherwise unmanaged flood flows of short duration, such
374 water will be made available to the Contractor and others under Section 215 of the Act of	374	water will be made available to the Contractor and others under Section 215 of the Act of

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375	October 12, 1982, pursuant to the priorities specified below if the Contractor enters into a
376	temporary contract with the United States not to exceed one (1) year for the delivery of such
377	water or as otherwise provided for in Federal Reclamation law and associated regulations. Such
378	water may be identified by the Contractor either (i) as additional water to supplement the supply
379	of Class 1 Water and/or Class 2 Water made available to it pursuant to this Contract or, (ii) upon
380	written notification to the Contracting Officer, as water to be credited against the Contractor's
381	Class 2 Water supply available pursuant to this Contract. The Contracting Officer shall make
382	water determined to be available pursuant to this subsection according to the following priorities:
383	first, to contractors for Class 1 Water and/or Class 2 Water within the Friant Division; second, to
384	contractors in the Cross Valley Division of the Project. The Contracting Officer will consider
385	requests from other parties for Section 215 Water for use within the area identified as the Friant
386	Division service area in the environmental assessment developed in connection with the
387	execution of the Existing Contract.
388	(m) Nothing in this Contract, nor any action or inaction of the Contractor or
389	Contracting Officer in connection with the implementation of this Contract, is intended to
390	override, modify, supersede or otherwise interfere with any term or condition of the water rights
391	and other rights referred in the fifth (5th) Explanatory Recital of this Contract.
392	(n) The rights of the Contractor under this Contract are subject to the terms of
393	the contract for exchange waters, dated July 27, 1939, between the United States and the San
394	Joaquin and Kings River Canal and Irrigation Company, Incorporated, et al., (hereinafter referred
395	to as the Exchange Contractors), Contract No. 11r-1144, as amended. The United States agrees

396	that it will not deliver to the Exchange Contractors thereunder waters of the San Joaquin River
397	unless and until required by the terms of said contract, and the United States further agrees that it
398	will not voluntarily and knowingly determine itself unable to deliver to the Exchange
399	Contractors entitled thereto from water that is available or that may become available to it from
400	the Sacramento River and its tributaries or the Sacramento-San Joaquin Delta those quantities
401	required to satisfy the obligations of the United States under said Exchange Contract and under
402	Schedule 2 of the Contract for Purchase of Miller and Lux Water Rights (Contract I1r-1145,
403	dated July 27, 1939).
404	(o) Pursuant to and consistent with section 10004 of SJRRSA and Paragraph
405	16 of the Settlement, the Contracting Officer is required to develop and implement a plan for
406	recirculation, recapture, reuse, exchange or transfer of water released for restoration flows or
407	interim flows, as those terms are defined in the Settlement, to reduce or avoid impacts to water
408	deliveries caused by said restoration flows or interim flows and water developed through such
409	activities may be made available (i) to the Contractor without the need of an additional contract,
410	and/or (ii) to others on behalf of the Contractor under terms mutually acceptable to the
411	Contractor and the Contracting Officer that are consistent with the Water Management Goal.
412	TIME FOR DELIVERY OF WATER
413	4. (a) On or about February 20 of each Calendar Year, the Contracting Officer
414	shall announce the Contracting Officer's initial declaration of the Water Made Available. The
415	declaration will be updated monthly and more frequently if necessary, based on then-current
416	operational and hydrologic conditions and a new declaration with changes, if any, to the Water

417 Made Available will be made. The Contracting Officer shall provide forecasts of Project 418 operations and the basis of the estimate, with relevant supporting information, upon the written request of the Contractor. Concurrently with the declaration of the Water Made Available, the 419 Contracting Officer shall provide the Contractor with the updated Long Term Historic Average. 420 The declaration of Project operations will be expressed in terms of both Water Made Available 421 and the Long Term Historic Average. 422 On or before each March 1 and at such other times as necessary, the 423 (b) Contractor shall submit to the Contracting Officer a written schedule, satisfactory to the 424 Contracting Officer, showing the monthly quantities of Project Water to be delivered by the 425 United States to the Contractor pursuant to this Contract for the Year commencing on such 426 March 1. The Contracting Officer shall use all reasonable means to deliver Project Water 427 according to the approved schedule for the Year commencing on such March 1. 428 The Contractor shall not schedule Project Water in excess of the quantity 429 (c) of Project Water the Contractor intends to put to reasonable and beneficial use within the 430 Contractor's Service Area, or to sell, transfer or exchange pursuant to Article 10 of this Contract 431 or bank pursuant to subdivision (d) of Article 3 of this Contract during any Year. 432 Subject to the conditions set forth in subdivision (a) of Article 3 of this 433 (d) Contract, the United States shall deliver Project Water to the Contractor in accordance with the 434 initial schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any 435 written revision(s), satisfactory to the Contracting Officer, thereto submitted within a reasonable 436 time prior to the date(s) on which the requested change(s) is/are to be implemented; Provided, 437

That the total amount of water requested in that schedule or revision does not exceed the
quantities announced by the Contracting Officer pursuant to the provisions of subdivision (a) of
Article 3 of this Contract, and the Contracting Officer determines that there will be sufficient
capacity available in the appropriate Friant Division Facilities to deliver the water in accordance
with that schedule; Provided further, That the Contractor shall not schedule the delivery of any
water during any period as to which the Contractor is notified by the Contracting Officer or
Operating Non-Federal Entity that Project facilities required to make deliveries to the Contractor
will not be in operation because of scheduled O&M.
(e) The Contractor may, during the period from and including November 1 of
each Year through and including the last day of February of that Year, request delivery of any
amount of the Class 1 Water estimated by the Contracting Officer to be made available to it
during the following Year. The Contractor may, during the period from and including January 1
of each Year (or such earlier date as may be determined by the Contracting Officer) through and
including the last day of February of that Year, request delivery of any amount of Class 2 Water
estimated by the Contracting Officer to be made available to it during the following Year. Such
water shall hereinafter be referred to as pre-use water. Such request must be submitted in writing
by the Contractor for a specified quantity of pre-use and shall be subject to the approval of the
Contracting Officer. Payment for pre-use water so requested shall be at the appropriate Rate(s)
for the following Year in accordance with Article 7 of this Contract and shall be made in
advance of delivery of any pre-use water. The Contracting Officer shall deliver such pre-use
water in accordance with a schedule or any revision thereof submitted by the Contractor and

459	approved by the Contracting Officer, to the extent such water is available and to the extent such
460	deliveries will not interfere with the delivery of Project Water entitlements to other Friant
461	Division contractors or the physical maintenance of the Project facilities. The quantities of
462	pre-use Water Delivered pursuant to this subdivision shall be deducted from the quantities of
463	water that the Contracting Officer would otherwise be obligated to make available to the
464	Contractor during the following Year; Provided, That the quantity of pre-use water to be
465	deducted from the quantities of either Class 1 Water or Class 2 Water to be made available to the
466	Contractor in the following Year shall be specified by the Contractor at the time the pre-use
467	water is requested or as revised in its first schedule for the following Year submitted in
468	accordance with subdivision (b) of this Article of this Contract, based on the availability of the
469	following Year water supplies as determined by the Contracting Officer.
470	POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER
471	5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this
472	Contract shall be delivered to the Contractor at a point or points of delivery either on Project
473	facilities or another location or locations mutually agreed to in writing by the Contracting Officer
474	and the Contractor.
475	(b) The Contracting Officer, the Operating Non-Federal Entity, or other
476	appropriate entity shall make all reasonable efforts to maintain sufficient flows and levels of
477	water in the Friant-Kern Canal to deliver Project Water to the Contractor at specific turnouts
478	established pursuant to subdivision (a) of this Article of this Contract.

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479	(c) The Contractor shall not deliver Project Water to land outside the
480	Contractor's Service Area unless approved in advance by the Contracting Officer. The
481	Contractor shall deliver Project Water in accordance with applicable Federal Reclamation law.
482	(d) All Water Delivered to the Contractor pursuant to this Contract shall be
483	measured and recorded with equipment furnished, installed, operated, and maintained by the
484	United States, the Operating Non-Federal Entity or other appropriate entity as designated by the
485	Contracting Officer (hereafter "other appropriate entity") at the point or points of delivery
486	established pursuant to subdivision (a) of this Article of this Contract. Upon the request of either
487	party to this Contract, the Contracting Officer shall investigate, or cause to be investigated by the
488	responsible Operating Non-Federal Entity, the accuracy of such measurements and shall take any
489	necessary steps to adjust any errors appearing therein. For any period of time when accurate
490	measurements have not been made, the Contracting Officer shall consult with the Contractor and
491	the responsible Operating Non-Federal Entity prior to making a final determination of the
492	quantity delivered for that period of time.
493	(e) Neither the Contracting Officer nor any Operating Non-Federal Entity
494	shall be responsible for the control, carriage, handling, use, disposal, or distribution of Project
495	Water Delivered to the Contractor pursuant to this Contract beyond the delivery points specified
496	in subdivision (a) of this Article of this Contract. The Contractor shall indemnify the United
497	States, its officers, employees, agents, and assigns on account of damage or claim of damage of
498	any nature whatsoever for which there is legal responsibility, including property damage,
499	personal injury, or death arising out of or connected with the control, carriage, handling, use,

500	disposal, or distribution of such Project Water beyond such delivery points, except for any
501	damage or claim arising out of: (i) acts or omissions of the Contracting Officer or any of its
502	officers, employees, agents, or assigns, including any responsible Operating Non-Federal Entity,
503	with the intent of creating the situation resulting in any damage or claim; (ii) willful misconduct
504	of the Contracting Officer or any of its officers, employees, agents, or assigns, including any
505	responsible Operating Non-Federal Entity; (iii) negligence of the Contracting Officer or any of
506	its officers, employees, agents, or assigns including any responsible Operating Non-Federal
507	Entity; or (iv) damage or claims resulting from a malfunction of facilities owned and/or operated
508	by the United States or responsible Operating Non-Federal Entity; Provided, That the Contractor
509	is not the Operating Non-Federal Entity that owned or operated the malfunctioning facility(ies)
510	from which the damage claim arose.
511	MEASUREMENT OF WATER WITHIN THE SERVICE AREA
512	6. (a) The Contractor has established a measurement program satisfactory to the
513	Contracting Officer; all surface water delivered for irrigation purposes within the Contractor's
514	Service Area is measured at each agricultural turnout; and water delivered for M&I purposes is
515	measured at each M&I service connection. The water measuring devices or water measuring
516	methods of comparable effectiveness must be acceptable to the Contracting Officer. The
517	Contractor shall be responsible for installing, operating, and maintaining and repairing all such
518	measuring devices and implementing all such water measuring methods at no cost to the United
519	States. The Contractor shall use the information obtained from such water measuring devices or
520	water measuring methods to ensure its proper management of the water, to bill water users for

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water delivered by the Contractor; and, if applicable, to record water delivered for M&I purposes 521 by customer class as defined in the Contractor's water conservation plan provided for in Article 522 27 of this Contract. Nothing herein contained, however, shall preclude the Contractor from 523 establishing and collecting any charges, assessments, or other revenues authorized by California 524 525 law. To the extent the information has not otherwise been provided, upon 526 (b) execution of this Contract, the Contractor shall provide to the Contracting Officer a written 527 report describing the measurement devices or water measuring methods being used or to be used 528 to implement subdivision (a) of this Article of this Contract and identifying the agricultural 529

turnouts and the M&I service connections or alternative measurement programs approved by the 530 Contracting Officer, at which such measurement devices or water measuring methods are being 531 used, and, if applicable, identifying the locations at which such devices and/or methods are not 532 yet being used including a time schedule for implementation at such locations. The Contracting 533 Officer shall advise the Contractor in writing within sixty (60) days as to the adequacy of, and 534 necessary modifications, if any, of the measuring devices or water measuring methods identified 535 in the Contractor's report and if the Contracting Officer does not respond in such time, they shall 536 be deemed adequate. If the Contracting Officer notifies the Contractor that the measuring 537 devices or methods are inadequate, the parties shall within sixty (60) days following the 538 Contracting Officer's response, negotiate in good faith the earliest practicable date by which the 539 Contractor shall modify said measuring devices and/or measuring methods as required by the 540

541 Contracting Officer to ensure compliance with subdivision (a) of this Article of this Contract.

542	(c) All new surface water delivery systems installed within the Contractor's
543	Service Area after the effective date of this Contract shall also comply with the measurement
544	provisions described in subdivision (a) of this Article of this Contract.
545	(d) The Contractor shall inform the Contracting Officer and the State of
546	California in writing by April 30 of each Year of the monthly volume of surface water delivered
547	within the Contractor's Service Area during the previous Year.
548	(e) The Contractor shall inform the Contracting Officer and the Operating
549	Non-Federal Entity on or before the twentieth (20 th) calendar day of each month of the quantity
550	of Irrigation and M&I Water taken during the preceding month.
551 552	RATES, METHOD OF PAYMENT FOR WATER, AND ACCELERATED REPAYMENT OF FACILITIES
553	7. (a) The Contractor's cost obligations for all Delivered Water shall be
551	determined in accordance with: (i) the Secretary's ratesetting policy for Irrigation Water adopted
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555	in 1988 and the Secretary's then-existing ratesetting policy for M&I Water, consistent with the
555	in 1988 and the Secretary's then-existing ratesetting policy for M&I Water, consistent with the
555 556	in 1988 and the Secretary's then-existing ratesetting policy for M&I Water, consistent with the SJRRSA, and such ratesetting policies shall be amended, modified, or superseded only through a
555 556 557	in 1988 and the Secretary's then-existing ratesetting policy for M&I Water, consistent with the SJRRSA, and such ratesetting policies shall be amended, modified, or superseded only through a public notice and comment procedure; (ii) applicable Federal Reclamation law and associated
555 556 557 558	in 1988 and the Secretary's then-existing ratesetting policy for M&I Water, consistent with the SJRRSA, and such ratesetting policies shall be amended, modified, or superseded only through a public notice and comment procedure; (ii) applicable Federal Reclamation law and associated rules and regulations, or policies; and (iii) other applicable provisions of this Contract.
555 556 557 558 559	 in 1988 and the Secretary's then-existing ratesetting policy for M&I Water, consistent with the SJRRSA, and such ratesetting policies shall be amended, modified, or superseded only through a public notice and comment procedure; (ii) applicable Federal Reclamation law and associated rules and regulations, or policies; and (iii) other applicable provisions of this Contract. (1) The Contractor shall pay the United States as provided for in this

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563	amounts established to recover other charges and deficits, other than the construction costs. The
564	Rates for O&M costs and Charges shall be adjusted, as appropriate, in accordance with the
565	provisions of the SJRRSA.
566	(2) Omitted.
567	(A) Omitted.
568	(B) Project construction costs or other capitalized costs
569	attributable to capital additions to the Project incurred after the effective date of this Contract or
570	that are not reflected in the schedules referenced in Exhibits "C-1" and "C-2" and properly
571	assignable to the Contractor, shall be repaid as prescribed by the SJRRSA without interest except
572	as required by law. Consistent with Federal Reclamation law, interest shall continue to accrue
573	on the M&I portion of unpaid Project construction costs or other capitalized cost assigned to the
574	Contractor until such costs are paid. Increases or decreases in Project construction costs or other
575	capitalized costs assigned to the Contractor caused solely by annual adjustment of Project
576	construction costs or other capitalized costs assigned to each Central Valley Project contractor by
577	the Secretary shall not be considered in determining the amounts to be paid pursuant to this
578	subdivision (a)(2)(B), but will be considered under subdivision (b) of this Article. A separate
579	repayment agreement shall be established by the Contractor and the Contracting Officer to
580	accomplish repayment of all additional Project construction costs or other capitalized costs
581	assigned to the Contractor within the timeframe prescribed by the SJRRSA subject to the
582	following:

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583	(1) If the collective annual Project construction costs or
584	other capitalized costs that are incurred after the effective date of this Contract and properly
585	assignable to the contractors are less than \$5,000,000, then the portion of such costs properly
586	assignable to the Contractor shall be repaid in not more than five (5) years after notification of
587	the allocation. This amount is the result of a collective annual allocation of Project construction
588	costs to the contractors exercising contract conversions; Provided, That the reference to the
589	amount of \$5,000,000 shall not be a precedent in any other context.
590	(2) If the collective annual Project construction costs or
591	other capitalized costs that are incurred after the effective date of this Contract and properly
592	assignable to the contractors are \$5,000,000 or greater, then the portion of such costs properly
593	assignable to the Contractor shall be repaid as provided by applicable Federal Reclamation law.
594	This amount is the result of a collective annual allocation of Project construction costs to the
595	contractors exercising contract conversions; Provided, That the reference to the amount of
596	\$5,000,000 shall not be a precedent in any other context.
597	(b) Consistent with Section 10010(b) of the SJRRSA, following a final cost
598	allocation by the Secretary upon completion of the construction of the Central Valley Project, the
599	amounts paid by the Contractor shall be subject to adjustment to reflect the effect of any
600	reallocation of Project construction costs or other capitalized costs assigned to the Contractor
601	that may have occurred between the determination of Contractor's Existing Capital Obligation
602	and the final cost allocation. In the event that the final cost allocation, as determined by the
603	Secretary, indicates that the costs properly assignable to the Contractor, as determined by the

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604	Contracting Officer, are greater than the Existing Capital Obligation and other amounts of
605	Project construction costs or other capitalized costs paid by the Contractor, then the Contractor
606	shall be obligated to pay the remaining allocated costs. The term of such additional repayment
607	contract shall be no less than one (1) year and no more than ten (10) years, however, mutually
608	agreeable provisions regarding the rate of repayment of such amount may be developed by the
609	parties. In the event that the final cost allocation, as determined by the Secretary, indicates that
610	the costs properly assignable to the Contractor, as determined by the Contracting Officer, are less
611	than the Existing Capital Obligation and other amounts of Project construction costs or other
612	capitalized costs paid by the Contractor, then the Contracting Officer shall credit such
613	overpayment as an offset against any outstanding or future obligation of the Contractor,
614	consistent with the SJRRSA. This Contract shall be implemented in a manner consistent with
615	Section 10010(f) of the SJRRSA.
616	(c) Prior to July 1 of each Calendar Year, the Contracting Officer shall
617	provide the Contractor an estimate of the Charges for Project Water that will be applied to the
618	period October 1, of the current Calendar Year, through September 30, of the following Calendar
619	Year, and the basis for such estimate. The Contractor shall be allowed not less than two (2)
620	months to review and comment on such estimates. On or before September 15 of each Calendar
621	Year, the Contracting Officer shall notify the Contractor in writing of the Charges to be in effect
622	during the period October 1 of the current Calendar Year, through September 30 of the following
623	Calendar Year, and such notification shall revise Exhibit "B". Charges shall be subject to

624	reduction consistent with the SJRRSA based upon the average annual delivery amount agreed to
625	by the Contracting Officer and the Contractor.

For the years 2020 through 2039 inclusive, Charges shall reflect 626 (1) the reduction on a per acre-foot basis consistent with Section 10010(d)(1) of the SJRRSA. 627 Exhibit "D" sets forth the reduction in Charges to offset the Financing Costs as prescribed in 628 Section 10010(d)(1) of the SJRRSA; Provided, That if the Secretary determines such Charges are 629 otherwise needed, an equivalent reduction will be made to O&M costs consistent with such 630 provisions of the SJRRSA. Consistent with Section 10010(d)(1) of the SJRRSA and as shown in 631 Exhibit "D", the Friant Surcharge reduction has been calculated based upon the anticipated 632 average annual water deliveries, for the purpose of this reduction only, mutually agreed upon by 633 the Secretary and the Contractor for the period from January 1, 2020 through December 31, 634 2039. The Friant Surcharge reduction shall remain fixed and shall only be applied to Water 635 Delivered pursuant to this Contract to which the Friant Surcharge applies (including but not 636 limited to water transferred, banked, or exchanged), commencing on January 1, 2020 until such 637 volume of Water Delivered equals 666,400 acre-feet or December 31, 2039, whichever occurs 638 first. 639

640 (2) Further, to fully offset the Financing Costs, Contractor shall be
641 entitled to a reduction in other outstanding or future obligations of the Contractor in accordance
642 with Section 10010(d)(2) of the SJRRSA. The amount of such further reduction in outstanding
643 or future obligations of the Contractor after October 1, 2019 has been computed by the
644 Contracting Officer, and as computed, such amount is set forth in Exhibit "D".

645	(d) Prior to October 1 of each Calendar Year, the Contracting Officer shall
646	make available to the Contractor an estimate of the Rates for Project Water for the following
647	Year and the computations and cost allocations upon which those Rates are based. The
648	Contractor shall be allowed not less than two (2) months to review and comment on such
649	computations and cost allocations. By December 31 of each Calendar Year, the Contracting
650	Officer shall provide the Contractor with the final Rates to be in effect for the upcoming Year,
651	and such notification shall revise Exhibit "B". The O&M component of the Rate may be
652	reduced as provided in the SJRRSA.
653	(e) At the time the Contractor submits the initial schedule for the delivery of
654	Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the
655	Contractor shall make an advance payment to the United States equal to the total amount payable
656	pursuant to the applicable Rate(s) set under subdivision (a) of this Article of this Contract, for the
657	Project Water scheduled to be delivered pursuant to this Contract during the first two (2)
658	calendar months of the Year. Before the end of the first month and before the end of each
659	calendar month thereafter, the Contractor shall make an advance payment to the United States, at
660	the Rate(s) set under subdivision (a) of this Article of this Contract, for the Water Scheduled to
661	be delivered pursuant to this Contract during the second month immediately following.
662	Adjustments between advance payments for Water Scheduled and payments at Rates due for
663	Water Delivered shall be made before the end of the following month; Provided, That any
664	revised schedule submitted by the Contractor pursuant to Article 4 of this Contract which
665	increases the amount of Water Delivered pursuant to this Contract during any month shall be

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666	accompanied with appropriate advance payment, at the Rates then in effect, to assure that Project
667	Water is not delivered to the Contractor in advance of such payment. In any month in which the
668	quantity of Water Delivered to the Contractor pursuant to this Contract equals the quantity of
669	Water Scheduled and paid for by the Contractor, no additional Project Water shall be delivered
670	to the Contractor unless and until an advance payment at the Rates then in effect for such
671	additional Project Water is made. Final adjustment between the advance payments for the Water
672	Scheduled and payments for the quantities of Water Delivered during each Year pursuant to this
673	Contract shall be made as soon as practicable but no later than April 30th of the following Year,
674	or sixty (60) days after the delivery of Project Water carried over under subdivision (g) of Article
675	3 of this Contract if such water is not delivered by the last day of February.
676	(f) The Contractor shall also make a payment in addition to the Rate(s) in
676 677	(f) The Contractor shall also make a payment in addition to the Rate(s) in subdivision (e) of this Article of this Contract to the United States for Water Delivered, at the
677	subdivision (e) of this Article of this Contract to the United States for Water Delivered, at the
677 678	subdivision (e) of this Article of this Contract to the United States for Water Delivered, at the Charges then in effect, before the end of the month following the month of delivery. The
677 678 679	subdivision (e) of this Article of this Contract to the United States for Water Delivered, at the Charges then in effect, before the end of the month following the month of delivery. The payments shall be consistent with the quantities of Irrigation Water and M&I Water Delivered as
677 678 679 680	subdivision (e) of this Article of this Contract to the United States for Water Delivered, at the Charges then in effect, before the end of the month following the month of delivery. The payments shall be consistent with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery report for the subject month prepared by the Contracting Officer.
677 678 679 680 681	subdivision (e) of this Article of this Contract to the United States for Water Delivered, at the Charges then in effect, before the end of the month following the month of delivery. The payments shall be consistent with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery report for the subject month prepared by the Contracting Officer. Such water delivery report shall be the basis for payment of Charges by the Contractor, and shall
677 678 679 680 681 682	subdivision (e) of this Article of this Contract to the United States for Water Delivered, at the Charges then in effect, before the end of the month following the month of delivery. The payments shall be consistent with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery report for the subject month prepared by the Contracting Officer. Such water delivery report shall be the basis for payment of Charges by the Contractor, and shall be provided to the Contractor by the Contracting Officer (as applicable) within five (5) days after

686	for the next month. Any amount to be paid for past due payment of Charges shall be computed
687	pursuant to Article 21 of this Contract.
688	(g) The Contractor shall pay for any Water Delivered under subdivision (d),
689	(f), or (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to
690	applicable statutes, associated regulations, any applicable provisions of guidelines or ratesetting
691	policies; Provided, That the Rate for Water Delivered under subdivision (d) of Article 3 of this
692	Contract shall be no more than the otherwise applicable Rate for Irrigation Water or M&I Water
693	under subdivision (a) of this Article of this Contract.
694	(h) Payments to be made by the Contractor to the United States under this
695	Contract may be paid from any revenues available to the Contractor.
696	(i) All revenues received by the United States from the Contractor relating to
69 7	the delivery of Project Water or the delivery of non-project water through Project facilities shall
698	be allocated and applied in accordance with Federal Reclamation law and the associated rules or
699	regulations, the then-existing Project Ratesetting policies for M&I Water or Irrigation Water, and
700	consistent with the SJRRSA.
701	(j) The Contracting Officer shall keep its accounts, pertaining to the
702	administration of the financial terms and conditions of its long-term contracts, in accordance
703	with applicable Federal standards so as to reflect the application of Project costs and revenues.
704	The Contracting Officer shall, each Year upon request of the Contractor, provide to the
705	Contractor a detailed accounting of all Project and Contractor expense allocations, the
706	disposition of all Project and Contractor revenues, and a summary of all water delivery

707	information.	The Co	ntractin	g Officer and the Contractor shall enter into good faith negotiations
708	to resolve an	y discre	pancies	or disputes relating to accountings, reports, or information.
709		(k)	The pa	rties acknowledge and agree that the efficient administration of this
710	Contract is the	neir mut	ual goal.	Recognizing that experience has demonstrated that mechanisms,
711	policies, and	procedu	ires used	for establishing Rates, Charges, and/or for making and allocating
712	payments, ot	her than	those se	et forth in this Article of this Contract, may be in the mutual best
713	interest of the	e parties	, it is ex	pressly agreed that the parties may enter into agreements to modify
714	the mechanis	i <mark>ms, pol</mark> i	cies, an	d procedures for any of those purposes while this Contract is in
715	effect withou	it amend	ling this	Contract.
716		(l)	(1)	Omitted.
717			(2)	Omitted.
718			(3)	Omitted.
719		(m)	Rates	under the respective ratesetting policies will be established to
720	recover only	reimbur	sable O	&M (including any deficits) costs of the Project, as those terms are
721	used in the th	nen-exis	ting Proj	ject ratesetting policies, and consistent with the SJRRSA, and
722	interest, whe	re appro	priate, e	except in instances where a minimum Rate is applicable in
723	accordance v	with the	relevant	Project ratesetting policy. Changes of significance in practices
724	which imple	ment the	e Contra	cting Officer's ratesetting policies will not be implemented until the
725	Contracting	Officer 1	has prov	ided the Contractor an opportunity to discuss the nature, need, and
726	impact of the	e propos	ed chang	ge.

727	(n) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the
728	CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates
729	adjusted upward or downward to reflect the changed costs of delivery (if any) incurred by the
730	Contracting Officer in the delivery of the transferred Project Water to the transferee's point of
731	delivery in accordance with the then-existing Central Valley Project Ratesetting Policy.
732	NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS
733	8. The Contractor and the Contracting Officer concur that, as of the effective date of
734	this Contract, the Contractor has no non-interest bearing operation and maintenance deficits and
735	therefore shall have no further liability.
736	RECOVERED WATER ACCOUNT
737	9. (a) Notwithstanding any other provisions of this Contract, water delivered to
738	the Contractor under its Recovered Water Account as provided at Paragraph 16(b) of the
739	Settlement and affirmed by Section 10004(a)(5) of the SJRRSA shall be at the total cost of
740	\$10.00 per acre foot. Recovered Water Account water provided to the Contractor shall be
741	administered at a priority for delivery lower than Class 2 Water and higher than Section 215
742	Water.
743	(b) The manner in which the Recovered Water Account will be administered
744	will be developed in accordance with subdivision (k) of Article 7 of this Contract, the SJRRSA,
745	and Paragraph 16 of the Settlement.

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SALES, TRANSFERS, AND EXCHANGES OF WATER

747 10. The right to receive Project Water provided for in this Contract may be (a) sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of 748 California if such sale, transfer, or exchange is authorized by applicable Federal and State laws, 749 750 and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this Contract may take place without the prior written approval of the Contracting 751 Officer, except as provided for in subdivisions (b) and (c) of this Article of this Contract. No 752 such Project Water sales, transfers, or exchanges shall be approved, where approval is required, 753 absent compliance with appropriate environmental documentation including but not limited to 754 the National Environmental Policy Act and the Endangered Species Act. Such environmental 755 documentation must include, as appropriate, an analysis of groundwater impacts and economic 756 and social effects, including environmental justice, of the proposed Project Water sales, transfers 757 and exchanges on both the transferor/exchanger and transferee/exchange recipient. 758 In order to facilitate efficient water management by means of Project 759 **(b)** Water sales, transfers, or exchanges of the type historically carried out among Project 760 Contractors located within the same geographical area and to allow the Contractor to participate 761 in an accelerated water transfer program, the Contracting Officer has prepared, as appropriate, 762 necessary environmental documentation including, but not limited to, the National 763 Environmental Policy Act and the Endangered Species Act analyzing annual Project Water sales,

transfers, or exchanges among Contractors within the same geographical area and the 765

Contracting Officer has determined that such Project Water sales, transfers, and exchanges
comply with applicable law.

(c) Project Water sales, transfers, and exchanges analyzed in the
environmental documentation referenced in subdivision (b) of this Article of this Contract, shall
be conducted with advance notice to the Contracting Officer and the Contracting Officer's
written acknowledgement of the transaction, but shall not require prior written approval by the
Contracting Officer.

For Project Water sales, transfers, or exchanges to qualify under 773 (d) subdivision (b) of this Article of this Contract such Project Water sale, transfer, or exchange 774 must: (i) be for irrigation purposes for lands irrigated within the previous three (3) years. for 775 M&I use, groundwater recharge, groundwater banking, similar groundwater activities, surface 776 water storage, or fish and wildlife resources; not lead to land conversion; and be delivered to 777 established cropland, wildlife refuges, groundwater basins or M&I use; (ii) occur within a single 778 Year; (iii) occur between a willing seller and a willing buyer or willing exchangers; (iv) convey 779 water through existing facilities with no new construction or modifications to facilities and be 780 between existing Project Contractors and/or the Contractor and the United States, Department of 781 the Interior; and (v) comply with all applicable Federal, State, and local or tribal laws and 782 requirements imposed for protection of the environment and Indian Trust Assets, as defined 783 784 under Federal law.

(e) The environmental documentation and the Contracting Officer's
compliance determination for transactions described in subdivision (b) of this Article of this

787	Contract shall be reviewed every five (5) years and updated, as necessary, prior to the expiration
788	of the then-existing five (5) year period. All subsequent environmental documentation shall
789	include an alternative to evaluate not less than the quantity of Project Water historically sold,
790	transferred, or exchanged within the same geographical area.
791	(f) Consistent with Section 10010(e)(l) of the SJRRSA, any agreement
792	providing for sale, transfer, or exchange of Project Water that is not used for interim flows or
793	restoration flows pursuant to Paragraphs 13 and 15 of the Settlement, shall be deemed to satisfy
794	the requirements of CVPIA section 3405(a)(1)(A) and (1); Provided, That such sales, transfers, or
795	exchanges comply with sub-division (f)(1) and (f)(2) below.
796	(1) Project Water sales, transfers, and exchanges conducted under the
797	provisions of subdivision (f) of this Article of this Contract shall not require the Contracting
798	Officer's concurrence as to compliance with CVPIA 3405(a)(1)(A) and (I); Provided. That the
799	Contractor shall, for Project Water sales, transfers, or exchanges, with a term greater than one (1)
800	year, provide ninety (90) days written advance notification to the Contracting Officer and
801	similarly thirty (30) days written advance notification of any Project Water sale, transfer, or
802	exchange with a term of less than one (1) year. The Contracting Officer shall promptly make
803	such notice publicly available.
804	(2) The Contractor's thirty (30) days or ninety (90) days advance
805	written notification pursuant to subdivision (f)(1) of this Article of this Contract shall explain
806	how the proposed Project Water sales, transfers, or exchanges are intended to reduce, avoid, or
807	mitigate impacts to Project Water deliveries caused by interim or restoration flows or is

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808	otherwise intended to facilitate the Water Management Goal as described in the SJRRSA. The
809	Contracting Officer shall promptly make such notice publicly available.
810	(3) In addition, the Contracting Officer shall, at least annually, make
811	available publicly a compilation of the number of Project Water sales, transfers, and exchange
812	agreements implemented in accordance with sub-divisions (f)(1) and (f)(2) of this Article of this
813	Contract.
814	(4) Project Water sold, transferred, or exchanged under an agreement
815	that meets the terms of subdivisions (f)(1) and (f)(2) of this Article of this Contract shall not be
816	counted as a replacement or an offset for purposes of determining reductions to Project Water
817	deliveries to any Friant Division Project Contractor except as provided in Paragraph 16(b) of the
818	Settlement.
819	(g) Notwithstanding any Additional Capital Obligation that may later be
820	established, in the case of a sale or transfer of Irrigation Water to another contractor which is
821	otherwise subject to the acreage limitations, reporting, and Full Cost pricing provisions of the
822	Reclamation Reform Act of 1982, as amended, hereinafter referred to as the RRA, such sold or
823	transferred Irrigation Water shall not be subject to such RRA provisions, however, in the case of
824	a sale or transfer of Irrigation Water to the Contractor from another contractor which is subject to
825	RRA provisions, such RRA provisions shall apply to delivery of such water.
826	APPLICATION OF PAYMENTS AND ADJUSTMENTS
827	11. (a) The amount of any overpayment by the Contractor of the Contractor's
828	O&M, Capital, and deficit (if any) obligations for the Year shall be applied first to any current

829	liabilities of the Contractor arising out of this Contract then due and payable. Overpayments of		
830	more than One Thousand Dollars (\$1,000) shall be refunded at the Contractor's request. In lieu		
831	of a refund, any amount of such overpayment, at the option of the Contractor, may be credited		
832	against amounts to become due to the United States by the Contractor. With respect to		
833	overpayment, such refund or adjustment shall constitute the sole remedy of the Contractor or		
834	anyone having or claiming to have the right to the use of any of the Project Water supply		
835	provided for herein. All credits and refunds of overpayments shall be made within thirty (30)		
836	days of the Contracting Officer obtaining direction as to how to credit or refund such		
837	overpayment in response to the notice to the Contractor that it has finalized the accounts for the		
838	Year in which the overpayment was made.		
839	(b) All advances for miscellaneous costs incurred for work requested by the		
840	Contractor pursuant to Article 26 of this Contract shall be adjusted to reflect the actual costs		
841	when the work has been completed. If the advances exceed the actual costs incurred, the		
842	difference will be refunded to the Contractor. If the actual costs exceed the Contractor's		
843	advances, the Contractor will be billed for the additional costs pursuant to Article 26 of this		
844	Contract.		
845	TEMPORARY REDUCTIONS—RETURN FLOWS		
846	12. (a) The Contracting Officer shall make all reasonable efforts to optimize		
847	delivery of the Contract Total subject to: (i) the authorized purposes and priorities of the Project;		
848	(ii) the requirements of Federal law and the Settlement; and (iii) the obligations of the United		

849 States under existing contracts, or renewals thereof, providing for water deliveries from the850 Project.

The Contracting Officer or Operating Non-Federal Entity may temporarily 851 **(b)** discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for 852 the purposes of investigation, inspection, maintenance, repair, or replacement of any of the 853 Project facilities or any part thereof necessary for the delivery of Project Water to the Contractor, 854 but so far as feasible the Contracting Officer or Operating Non-Federal Entity will give the 855 Contractor due notice in advance of such temporary discontinuance or reduction, except in case 856 of emergency, in which case no notice need be given; Provided, That the United States shall use 857 its best efforts to avoid any discontinuance or reduction in such service. Upon resumption of 858 service after such reduction or discontinuance, and if requested by the Contractor, the United 859 States will, if possible, deliver the quantity of Project Water which would have been delivered 860 hereunder in the absence of such discontinuance or reduction. 861

(c) The United States reserves the right to all seepage and return flow water
derived from Water Delivered to the Contractor hereunder which escapes or is discharged
beyond the Contractor's Service Area; <u>Provided</u>, That this shall not be construed as claiming for
the United States any right as seepage or return flow to water being used pursuant to this
Contract for surface irrigation or underground storage either being put to reasonable and
beneficial use pursuant to this Contract within the Contractor's Service Area by the Contractor or
those claiming by, through, or under the Contractor. For purposes of this subdivision,

869	groundwater recharge, groundwater banking and all similar groundwater activities will be
870	deemed to be underground storage.
871	CONSTRAINTS ON THE AVAILABILITY OF WATER
872	13. (a) In its operation of the Project, the Contracting Officer will use all
873	reasonable means to guard against a Condition of Shortage in the quantity of water to be made
874	available to the Contractor pursuant to this Contract. In the event the Contracting Officer
875	determines that a Condition of Shortage appears probable, the Contracting Officer will notify the
876	Contractor of said determination as soon as practicable.
877	(b) If there is a Condition of Shortage because of errors in physical operations
878	of the Project, drought, other physical causes beyond the control of the Contracting Officer or
879	actions taken by the Contracting Officer to meet legal obligations, including but not limited to
880	obligations pursuant to the Settlement then, except as provided in subdivision (a) of Article 19 of
881	this Contract, no liability shall accrue against the United States or any of its officers, agents, or
882	employees for any damage, direct or indirect, arising therefrom.
883	(c) The United States shall not execute contracts which together with this
884	Contract, shall in the aggregate provide for furnishing Class I Water in excess of 800,000
885	acre-feet per Year or Class 2 Water in excess of 1,401,475 acre-feet per Year; Provided, That,
886	subject to subdivision (I) of Article 3 of this Contract, the limitation placed on Class 2 Water
887	contracts shall not prohibit the United States from entering into temporary contracts of one year
888	or less in duration for delivery of Project Water to other entities if such water is not necessary to
889	meet the schedules as may be submitted by all Friant Division Project Contractors entitled to

890	receive Class 1 Water and/or Class 2 Water under their contracts. Nothing in this subdivision
891	shall limit the Contracting Officer's ability to take actions that result in the availability of new
892	water supplies to be used for Project purposes and allocating such new supplies; Provided, That
893	the Contracting Officer shall not take such actions until after consultation with the Friant
894	Division Project Contractors.
895	(d) The Contracting Officer shall not deliver any Class 2 Water pursuant to
896	this or any other contract heretofore or hereafter entered into any Year unless and until the
897	Contracting Officer determines that the cumulative total quantity of Class 1 Water specified in
898	subdivision (c) of this Article of this Contract will be available for delivery in said Year. If the
899	Contracting Officer determines there is or will be a shortage in any Year in the quantity of
900	Class 1 Water available for delivery, the Contracting Officer shall apportion the available Class 1
901	Water among all Contractors entitled to receive such water that will be made available at Friant
902	Dam in accordance with the following:
903	(1) A determination shall be made of the total quantity of Class 1
904	Water at Friant Dam which is available for meeting Class 1 Water contractual commitments, the
905	amount so determined being herein referred to as the available supply.
906	(2) The total available Class 1 supply shall be divided by the Class 1
907	Water contractual commitments, the quotient thus obtained being herein referred to as the
908	Class 1 apportionment coefficient.
909	(3) The total quantity of Class 1 Water under Article 3 of this Contract
910	shall be multiplied by the Class 1 apportionment coefficient and the result shall be the quantity of

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911	Class 1 Water required to be delivered by the Contracting Officer to the Contractor for the
912	respective Year, but in no event shall such amount exceed the total quantity of Class 1 Water
913	specified in subdivision (a) of Article 3 of this Contract.
914	(e) If the Contracting Officer determines there is less than the quantity of
915	Class 2 Water which the Contractor otherwise would be entitled to receive pursuant to Article 3
916	of this Contract, the quantity of Class 2 Water which shall be furnished to the Contractor by the
917	Contracting Officer will be determined in the manner set forth in paragraphs (1), (2), and (3), of
918	subdivision (d) of this Article of this Contract substituting the term "Class 2" for the term "Class
919	1."
920	(f) In the event that in any Year there is made available to the Contractor, by
921	reason of any shortage or apportionment as provided in subdivisions (a), (d), or (e) of this Article
922	of this Contract, or any discontinuance or reduction of service as set forth in subdivision (b) of
923	Article 12 of this Contract, less than the quantity of water which the Contractor otherwise would
924	be entitled to receive hereunder, there shall be made an adjustment on account of the amounts
925	already paid to the Contracting Officer by the Contractor for Class 1 Water and Class 2 Water
926	for said Year in accordance with Article 11 of this Contract.
927	UNAVOIDABLE GROUNDWATER PERCOLATION
928	14. Omitted.
929	ACREAGE LIMITATION
930	15. (a) .The Contractor has paid the Repayment Obligation, and notwithstanding
931	any Additional Capital Obligation that may later be established, the provisions of section 213(a)

and (b) of the RRA shall apply to lands in the Contractor's Service Area, with the effect that
acreage limitations, reporting, and Full Cost pricing provisions of the RRA shall no longer apply
to lands in the Contractor's Service Area with respect to Water Delivered pursuant to this
Contract. Reclamation will conduct a final water district review for the purpose of determining
compliance with the acreage limitations, reporting, and Full Cost pricing provisions of the RRA
from the date of the last water district review until the date when payment to Reclamation of the
Repayment Obligation was completed.

Project Water to which the Contractor is entitled through a separate 939 **(b)** contract, other than this Contract, that is subject to Federal Reclamation law, may be delivered to 940 lands within the Contractor's Service Area. Notwithstanding any Additional Capital Obligation 941 that may later be established, Project Water Delivered under this Contract may be mixed with 942 Project Water Delivered pursuant to a contract with the United States, other than this Contract, to 943 which acreage limitations, reporting, and the Full Cost pricing provisions of Federal Reclamation 944 law apply without causing the application of the acreage limitations, reporting, and the Full Cost 945 pricing provisions of Federal Reclamation law to the Water Delivered pursuant to this Contract; 946 Provided, The terms and conditions in such other contract shall continue to apply, and if such 947 terms and conditions so require, the lands to receive Project Water under such other contract 948 shall be properly designated by the Contractor and such Project Water is to be delivered in 949 accordance with the RRA including any applicable acreage limitations, reporting, and Full Cost 950 951 pricing provisions.

952	COMPLIANCE WITH FEDERAL RECLAMATION LAWS			
953 954 955 956	16. (a) The parties agree that the delivery of water or the use of Federal facilities pursuant to this Contract is subject to Federal Reclamation law, as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal Reclamation law.			
957	(b) The terms of this Contract are subject to the Settlement and the SJRRSA.			
958	Nothing in this Contract shall be interpreted to limit or interfere with the full implementation of			
959	the Settlement and the SJRRSA.			
960	PROTECTION OF WATER AND AIR QUALITY			
961 962 963 964 965 966	17. (a) Project facilities used to make available and deliver water to the Contractor shall be operated and maintained in the most practical manner to maintain the quality of the water at the highest level possible as determined by the Contracting Officer: <u>Provided</u> , <i>That</i> the United States does not warrant the quality of the water delivered to the Contractor and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to the Contractor.			
967 968 969 970 971 972 973	(b) The Contractor shall comply with all applicable water and air pollution laws and regulations of the United States and the State of California; and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities necessary for the delivery of water by the Contractor; and shall be responsible for compliance with all Federal, State, and local water quality standards applicable to surface and subsurface drainage and/or discharges generated through the use of Federal or Contractor facilities or project water provided by the Contractor within the Contractor's Project Water Service Area.			
974 975	(c) This article shall not affect or alter any legal obligations of the Secretary to provide drainage or other discharge services.			
976 977	WATER ACQUIRED BY THE CONTRACTOR OTHER THAN FROM THE UNITED STATES			
978	18. (a) Omitted.			
979	(b) Notwithstanding any Additional Capital Obligation that may later be			
980	established, water or water rights now owned or hereafter acquired by the Contractor other than			

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981	from the United States pursuant to this Contract and Irrigation Water furnished pursuant to the
982	terms of this Contract may be simultaneously transported through the same distribution facilities
983	of the Contractor without the payment of fees to the United States and without application of
984	Federal Reclamation law to Water Delivered pursuant to this Contract or to lands which receive
985	Water Delivered to Contractor pursuant to this Contract.
986	(c) Water or water rights now owned or hereafter acquired by the Contractor,
987	other than from the United States or adverse to the Project or its contractors (i.e., non-project
988	water), may be stored, conveyed and/or diverted through Project facilities, other than Friant
989	Division Facilities, subject to the completion of appropriate environmental documentation, with
990	the approval of the Contracting Officer and the execution of any contract determined by the
991	Contracting Officer to be necessary, consistent with the following provisions:
992	(1) The Contractor may introduce non-project water into Project
993	facilities and deliver said water to lands within the Contractor's Service Area subject to payment
994	to the United States and/or to any applicable Operating Non-Federal Entity of an appropriate rate
995	as determined by the Contracting Officer. In addition, if electrical power is required to pump
996	non-project water, the Contractor shall be responsible for obtaining the necessary power and
997	paying the necessary charges therefor.
998	(2) Delivery of such non-project water in and through Project facilities
999	shall only be allowed to the extent such deliveries do not: (i) interfere with other Project
1000	purposes as determined by the Contracting Officer; (ii) reduce the quantity or quality of water
1001	available to other Project Contractors; (iii) interfere with the delivery of contractual water

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entitlements to any other Project Contractors; (iv) interfere with the physical maintenance of the
Project facilities; or (v) result in the United States incurring any liability or unreimbursed costs
or expenses thereby.

1005 (3) Neither the United States nor the Operating Non-Federal Entity
1006 shall be responsible for control, care or distribution of the non-project water before it is
1007 introduced into or after it is delivered from the Project facilities. The Contractor hereby releases
1008 and agrees to defend and indemnify the United States and the Operating Non-Federal Entity, and
1009 their respective officers, agents, and employees, from any claim for damage to persons or
1010 property, direct or indirect, resulting from Contractor's diversion or extraction of non-project
1011 water from any source.

1012(4)Diversion of such non-project water into Project facilities shall be1013consistent with all applicable laws, and if involving groundwater, consistent with any1014groundwater management plan for the area from which it was extracted.

1015 (5) After Project purposes are met, as determined by the Contracting 1016 Officer, the United States and the Contractor shall share priority to utilize the remaining capacity 1017 of the facilities declared to be available by the Contracting Officer for conveyance and 1018 transportation of non-project water prior to any such remaining capacity being made available to 1019 non-project contractors.

1020(d) Non-project water may be stored, conveyed and/or diverted through Friant1021Division Facilities, subject to the prior completion of appropriate environmental documentation1022and approval of the Contracting Officer without execution of a separate contract, consistent with

1023	subdivisions (c)(1) through (c)(5) of this Article and any other condition determined to be
1024	appropriate by the Contracting Officer.
1025	OPINIONS AND DETERMINATIONS
1026	19. (a) Where the terms of this Contract provide for actions to be based upon the
1027	opinion or determination of either party to this Contract, said terms shall not be construed as
1028	permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
1029	determinations. Both parties, notwithstanding any other provisions of this Contract, expressly
1030	reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,
1031	or unreasonable opinion or determination. Each opinion or determination by either party shall be
1032	provided in a timely manner. Nothing in this Article of this Contract is intended to or shall affect
1033	or alter the standard of judicial review applicable under Federal law to any opinion or
1034	determination implementing a specific provision of Federal law embodied in statute or
1035	regulation.
1036	(b) The Contracting Officer shall have the right to make determinations
1037	necessary to administer this Contract that are consistent with the provisions of this Contract, the
1038	laws of the United States and the State of California, and the rules and regulations promulgated
1039	by the Secretary. Such determinations shall be made in consultation with the Contractor to the
1040	extent reasonably practicable.
1041	COORDINATION AND COOPERATION
1042	20. (a) In order to further their mutual goals and objectives, the Contracting
1043	Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and

1044	with other affected Project Contractors, in order to improve the operation and management of the
1045	Project. The communication, coordination, and cooperation regarding operations and
1046	management shall include, but not limited to, any action which will or may materially affect the
1047	quantity or quality of Project Water supply, the allocation of Project Water supply, and Project
1048	financial matters including, but not limited to, budget issues. The communication, coordination,
1049	and cooperation provided for hereunder shall extend to all provisions of this Contract. Each
1050	party shall retain exclusive decision making authority for all actions, opinions, and
1051	determinations to be made by the respective party.
1052	(b) It is the intent of the Secretary to improve water supply reliability. To
1053	carry out this intent:
1054	(1) The Contracting Officer will, at the request of the Contractor,
1055	assist in the development of integrated resource management plans for the Contractor. Further,
1056	the Contracting Officer will, as appropriate, seek authorizations for implementation of
1057	partnerships to improve water supply, water quality, and reliability.
1058	(2) The Secretary will, as appropriate, pursue program and project
1059	implementation and authorization in coordination with Project Contractors to improve the water
1060	supply, water quality, and reliability of the Project for all Project purposes.
1061	(3) The Secretary will coordinate with Project Contractors and the
1062	State of California to seek improved water resource management.
1063	(4) The Secretary will coordinate actions of agencies within the
1064	Department of the Interior that may impact the availability of water for Project purposes.

1065	(5) The Contracting Officer shall periodically, but not less than
1066	annually, hold division level meetings to discuss Project operations, division level water
1067	management activities, and other issues as appropriate.
1068	(c) Without limiting the contractual obligations of the Contracting Officer
1069	hereunder, nothing in this Contract shall be construed to limit or constrain the Contracting
1070	Officer's ability to communicate, coordinate, and cooperate with the Contractor or other
1071	interested stakeholders or to make decisions in a timely fashion as needed to protect health,
1072	safety, physical integrity of structures or facilities, or the Contracting Officer's ability to comply
1073	with applicable laws.
1074	CHARGES FOR DELINQUENT PAYMENTS
1075 1076 1077 1078 1079 1080 1081 1082 1083	21. (a) The Contractor shall be subject to interest, administrative and penalty charges on delinquent installments or payments. When a payment is not received by the due date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six (6) percent per year for each day the payment is delinquent beyond the due date. Further, the Contractor shall pay any fees incurred for debt collection services associated with a delinquent payment.
1084 1085 1086 1087 1088	 (b) The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of one-half of one (0.5) percent per month prescribed by Section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period. (c) When a partial payment on a delinquent account is received, the amount
	(C) which a partial payment on a definiquent account is received, the amount

EQUAL EMPLOYMENT OPPORTUNITY

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

The Contractor will not discriminate against any employee or applicant for 1094 (a) employment because of race, color, religion, sex, disability, or national origin. The Contractor 1095 will take affirmative action to ensure that applicants are employed, and that employees are 1096 treated during employment, without regard to their race, color, religion, sex, disability, or 1097 national origin. Such action shall include, but not be limited to the following: employment, 1098 upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; 1099 rates of pay or other forms of compensation; and selection for training, including apprenticeship. 1100 The Contractor agrees to post in conspicuous places, available to employees and applicants for 1101 employment, notices to be provided by the Contracting Officer setting forth the provisions of this 1102 nondiscrimination clause. 1103

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

1108 (c) The Contractor will send to each labor union or representative of workers 1109 with which it has a collective bargaining agreement or other contract or understanding, a notice, 1110 to be provided by the Contracting Officer, advising the labor union or workers' representative of 1111 the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1112 1965, and shall post copies of the notice in conspicuous places available to employees and 1113 applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No.
1115 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary
of Labor.

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

(f) In the event of the Contractor's noncompliance with the nondiscrimination
 clauses of this contract or with any of such rules, regulations, or orders, this contract may be
 canceled, terminated or suspended in whole or in part and the Contractor may be declared
 ineligible for further Government contracts in accordance with procedures authorized in

Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965 or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

The Contractor will include the provisions of paragraphs (1) through (7) in 1129 (g) every subcontract or purchase order unless exempted by the rules, regulations, or orders of the 1130 Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1131 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor 1132 will take such action with respect to any subcontract or purchase order as may be directed by the 1133 Secretary of Labor as a means of enforcing such provisions, including sanctions for 1134 noncompliance: Provided, however, that in the event the Contractor becomes involved in, or is 1135 threatened with, litigation with a subcontractor or vendor as a result of such direction, the 1136 Contractor may request the United States to enter into such litigation to protect the interests of 1137 the United States. 1138

1139 GENERAL OBLIGATION—BENEFITS CONDITIONED UPON PAYMENT

1140 23. (a) The obligation of the Contractor to pay the United States as provided in
1141 this Contract is a general obligation of the Contractor notwithstanding the manner in which the
1142 obligation may be distributed among the Contractor's water users and notwithstanding the
1143 default of individual water users in their obligations to the Contractor.

- (b) The payment of charges becoming due hereunder is a condition precedent to receiving benefits under this Contract. The United States shall not make water available to the Contractor through Project facilities during any period in which the Contractor may be in arrears in the advance payment of water rates due the United States. The Contractor shall not furnish water made available pursuant to this Contract for lands or parties which are in arrears in the advance payment of water rates levied or established by the Contractor.
- 1150

- (c) With respect to subdivision (b) of this Article of this Contract, the
- 1151 Contractor shall have no obligation to require advance payment for water rates which it levies.
- 1152

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

115324. (a)The Contractor shall comply with Title VI of the Civil Rights Act of 19641154(42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the1155Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights1156laws, as well as with their respective implementing regulations and guidelines imposed by the1157U.S. Department of the Interior and/or Bureau of Reclamation.

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

1164 The Contractor makes this agreement in consideration of and for the (c) purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other 1165 Federal financial assistance extended after the date hereof to the Contractor by the Bureau of 1166 Reclamation, including installment payments after such date on account of arrangements for 1167 Federal financial assistance which were approved before such date. The Contractor recognizes 1168 and agrees that such Federal assistance will be extended in reliance on the representations and 1169 agreements made in this Article, and that the United States reserves the right to seek judicial 1170 1171 enforcement thereof.

PRIVACY ACT COMPLIANCE

1173 25. Omitted.

1172

1174 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1175 26. In addition to all other payments to be made by the Contractor pursuant to this 1176 Contract, the Contractor shall pay to the United States, within sixty (60) days after receipt of a

bill and detailed statement submitted by the Contracting Officer to the Contractor for such

1178 specific items of direct cost incurred by the United States for work requested by the Contractor

- associated with this Contract plus indirect costs in accordance with applicable Bureau of
- 1180 Reclamation policies and procedures. All such amounts referred to in this Article of this
- 1181 Contract shall not exceed the amount agreed to in writing in advance by the Contractor. This
- 1182 Article of this Contract shall not apply to costs for routine contract administration.

1183

WATER CONSERVATION

27. Prior to the delivery of water provided from or conveyed through 1184 (a) Federally constructed or Federally financed facilities pursuant to this Contract, the Contractor 1185 shall be implementing an effective water conservation and efficiency program based on the 1186 Contractor's water conservation plan that has been determined by the Contracting Officer to 1187 meet the conservation and efficiency criteria for evaluating water conservation plans established 1188 under Federal law. The water conservation and efficiency program shall contain definite water 1189 conservation objectives, appropriate economically feasible water conservation measures, and 1190 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this 1191 1192 Contract shall be contingent upon the Contractor's continued implementation of such water conservation program. In the event the Contractor's water conservation plan or any revised 1193 water conservation plan completed pursuant to subdivision (d) of this Article of this Contract 1194 have not yet been determined by the Contracting Officer to meet such criteria, due to 1195 1196 circumstances which the Contracting Officer determines are beyond the control of the Contractor, water deliveries shall be made under this Contract so long as the Contractor 1197 diligently works with the Contracting Officer to obtain such determination at the earliest 1198 practicable date, and thereafter the Contractor immediately begins implementing its water 1199 conservation and efficiency program in accordance with the time schedules therein. 1200 Should the amount of M&I Water Delivered pursuant to subdivision (a) of 1201 **(b)** 1202 Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the Contractor shall implement the Best Management Practices identified by the time frames issued 1203

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1204	by the California Urban Water Conservation Council for such M&I Water unless any such
1205	practice is determined by the Contracting Officer to be inappropriate for the Contractor.
1206	(c) The Contractor shall submit to the Contracting Officer a report on the
1207	status of its implementation of the water conservation plan on the reporting dates specified in the
1208	then-existing conservation and efficiency criteria established under Federal law.
1209	(d) At five (5) -year intervals, the Contractor shall revise its water
1210	conservation plan to reflect the then-existing conservation and efficiency criteria for evaluating
1211	water conservation plans established under Federal law and submit such revised water
1212	management plan to the Contracting Officer for review and evaluation. The Contracting Officer
1213	will then determine if the water conservation plan meets Reclamation's then-existing
1214	conservation and efficiency criteria for evaluating water conservation plans established under
1215	Federal law.
1216	(e) If the Contractor is engaged in direct groundwater recharge, such activity
1217	shall be described in the Contractor's water conservation plan.
1218	EXISTING OR ACQUIRED WATER OR WATER RIGHTS
1219	28. Except as specifically provided in Article 18 of this Contract, the provisions of
1220	this Contract shall not be applicable to or affect non-project water or water rights now owned or
.1221	hereafter acquired by the Contractor or any user of such water within the Contractor's Service
1222	Area. Any such water shall not be considered Project Water under this Contract. In addition,
1223	this Contract shall not be construed as limiting or curtailing any rights which the Contractor or

- any water user within the Contractor's Service Area acquires or has available under any othercontract pursuant to Federal Reclamation law.
- 1226 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

29. (a) The O&M of a portion of the Project facilities which serve the Contractor,
and responsibility for funding a portion of the costs of such O&M, have been transferred to the
Operating Non-Federal Entity by separate agreement between the United States and the
Operating Non-Federal Entity. That separate agreement shall not interfere with or affect the
rights or obligations of the Contractor or the United States hereunder.

The Contracting Officer has previously notified the Contractor in writing 1232 **(b)** 1233 that the O&M of a portion of the Project facilities which serve the Contractor has been transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly 1234 to the Operating Non-Federal Entity, or to any successor approved by the Contracting Officer 1235 under the terms and conditions of the separate agreement between the United States and the 1236 Operating Non-Federal Entity described in subdivision (a) of this Article of this Contract, all 1237 rates, charges or assessments of any kind, including any assessment for reserve funds, which the 1238 Operating Non-Federal Entity or such successor determines, sets or establishes for (i) the O&M 1239 of the portion of the Project facilities operated and maintained by the Operating Non-Federal 1240 Entity or such successor, or (ii) the Friant Division's share of the operation, maintenance and 1241 replacement costs for physical works and appurtenances associated with the Tracy Pumping 1242 Plant, the Delta-Mendota Canal, the O'Neill Pumping/Generating Plant, the federal share of the 1243 O'Neill Forebay, the Mendota Pool, and the federal share of San Luis Unit joint use conveyance 1244

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1245	and conveyance pumping facilities. Such direct payments to the Operating Non-Federal Entity
1246	or such successor shall not relieve the Contractor of its obligation to pay directly to the United
1247	States the Contractor's share of the Project Rates and Charges, except to the extent the Operating
1248	Non-Federal Entity collects payments on behalf of the United States in accordance with the
1249	separate agreement identified in subdivision (a) of this Article of this Contract.
1250	(c) For so long as the O&M of any portion of the Project facilities serving the
1251	Contractor is performed by the Operating Non-Federal Entity, or any successor thereto, the
1252	Contracting Officer shall adjust those components of the Rates for Water Delivered under this
1253	Contract representing the cost associated with the activity being performed by the Operating
1254	Non-Federal Entity or its successor.
1255	(d) In the event the O&M of the Project facilities operated and maintained by
1256	the Operating Non-Federal Entity is re-assumed by the United States during the term of this
1257	Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the
1258	Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid by the
1259	Contractor for Project Water under this Contract representing the O&M costs of the portion of
1260	such Project facilities which have been re-assumed. The Contractor shall, thereafter, in the
1261	absence of written notification from the Contracting Officer to the contrary, pay the Rates and
1262	Charges specified in the revised Exhibit "B" directly to the United States in compliance with
1263	Article 7 of this Contract.

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CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

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

1270

BOOKS, RECORDS, AND REPORTS

(a) The Contractor shall establish and maintain accounts and other books and 1271 31. records pertaining to administration of the terms and conditions of this Contract, including: the 1272 Contractor's financial transactions, water supply data, and Project land and right-of-way 1273 agreements: the water users' land-use (crop census), land ownership, land-leasing and water use 1274 data; and other matters that the Contracting Officer may require. Reports thereon shall be 1275 furnished to the Contracting Officer in such form and on such date or dates as the Contracting 1276 Officer may require. Subject to applicable Federal laws and regulations, each party to this 1277 Contract shall have the right during office hours to examine and make copies of the other party's 1278 books and records relating to matters covered by this Contract. 1279

1280

(b) Notwithstanding the provisions of subdivision (a) of this Article of this

1281 Contract, no books, records, or other information shall be requested from the Contractor by the

1282 Contracting Officer unless such books, records, or information are reasonably related to the

administration or performance of this Contract. Any such request shall allow the Contractor a

- reasonable period of time within which to provide the requested books, records, or information.
- 1285 (c) At such time as the Contractor provides information to the Contracting
- 1286 Officer pursuant to subdivision (a) of this Article of this Contract, a copy of such information
- 1287 shall be provided to the Operating Non-Federal Entity.
- 1288 <u>ASSIGNMENT LII</u>

ASSIGNMENT LIMITED—SUCCESSORS AND ASSIGNS OBLIGATED

1289 32. (a) The provisions of this Contract shall apply to and bind the successors and 1290 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest 1291 therein shall be valid until approved in writing by the Contracting Officer.

1292	(b) The assignment of any right or interest in this Contract by either party
1293	shall not interfere with the rights or obligations of the other party to this Contract absent the
1294	written concurrence of said other party.
1295	(c) The Contracting Officer shall not unreasonably condition or withhold
1296	approval of any proposed assignment.
1297	<u>SEVERABILITY</u>
1298	33. In the event that a person or entity who is neither (i) a party to a Project contract,
1299	nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor
1300	(iii) an association or other form of organization whose primary function is to represent parties to
1301	Project contracts, brings an action in a court of competent jurisdiction challenging the legality or
1302	enforceability of a provision included in this Contract and said person, entity, association, or
1303	organization obtains a final court decision holding that such provision is legally invalid or
1304	unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),
1305	the parties to this Contract shall use their best efforts to (i) within thirty (30) days of the date of
1306	such final court decision identify by mutual agreement the provisions in this Contract which
1307	must be revised and (ii) within three (3) months thereafter promptly agree on the appropriate
1308	revision(s). The time periods specified above may be extended by mutual agreement of the
1309	parties. Pending the completion of the actions designated above, to the extent it can do so
1310	without violating any applicable provisions of law, the United States shall continue to make the
1311	quantities of Project Water specified in this Contract available to the Contractor pursuant to the

- provisions of this Contract which were not found to be legally invalid or unenforceable in thefinal court decision.
- 1314

RESOLUTION OF DISPUTES

Should any dispute arise concerning any provisions of this Contract, or the 34. 1315 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to 1316 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting 1317 Officer referring any matter to Department of Justice, the party shall provide to the other party 1318 thirty (30) days written notice of the intent to take such action; Provided, That such notice shall 1319 not be required where a delay in commencing an action would prejudice the interests of the party 1320 that intends to file suit. During the thirty (30) day notice period, the Contractor and the 1321 Contracting Officer shall meet and confer in an attempt to resolve the dispute. Except as 1322 specifically provided, nothing herein is intended to waive or abridge any right or remedy that the 1323 1324 Contractor or the United States may have. 1325 **OFFICIALS NOT TO BENEFIT** No Member of or Delegate to Congress, Resident Commissioner, or official of the 1326 35. Contractor shall benefit from this Contract other than as a water user or landowner in the same 1327 manner as other water users or landowners. 1328 CHANGES IN CONTRACTOR'S SERVICE AREA 1329 While this Contract is in effect, no change may be made in the 1330 36. (a) Contractor's Service Area or boundaries, by inclusion or exclusion of lands, dissolution, 1331 consolidation, merger, or otherwise, except upon the Contracting Officer's written consent. 1332 Within thirty (30) days of receipt of a request for such a change, the (b) 1333 Contracting Officer will notify the Contractor of any additional information required by the 1334

1335	Contracting Officer for processing said request, and both parties will meet to establish a mutually
1336	agreeable schedule for timely completion of the process. Such process will analyze whether the
1337	proposed change is likely to: (i) result in the use of Project Water contrary to the terms of this
1338	Contract; (ii) impair the ability of the Contractor to pay for Project Water furnished under this
1339	Contract or to pay for any Federally-constructed facilities for which the Contractor is
1340	responsible; and (iii) have an impact on any Project Water rights applications, permits, or
1341	licenses. In addition, the Contracting Officer shall comply with the National Environmental
1342	Policy Act and the Endangered Species Act. The Contractor will be responsible for all costs
1343	incurred by the Contracting Officer in this process, and such costs will be paid in accordance
1344	with Article 26 of this Contract.
1345	FEDERAL LAWS
1346	37. By entering into this Contract, the Contractor does not waive its rights to contest
1347	the validity or application in connection with the performance of the terms and conditions of this
1348	Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with
1349	the terms and conditions of this Contract unless and until relief from application of such Federal
1350	law or regulation to the implementing provision of the Contract is granted by a court of
1351	competent jurisdiction.
1352	EMERGENCY RESERVE FUND
1353	38. The Contractor and Contracting Officer acknowledge that the requirements to
1354	establish and maintain a minimum reserve fund account to finance extraordinary O&M costs of
1355	Friant Division Facilities is and will continue to be administered under Contract No.

1356	8-07-20-X0356 titled Agreement To Transfer The Operation, Maintenance And Replacement		
1357	And Certain Financial And Administrative Activities Related To The Friant-Kern Canal And		
1358	Associated Works, dated March 1, 1998 as amended, supplemented, assigned, or renewed.		
1359	MEDIUM FOR TRANSMITTING PAYMENT		
1360	39. (a) All payments from the Contractor to the United States under this contract		
1361	shall be by the medium requested by the United States on or before the date payment is due. The		
1362	required method of payment may include checks, wire transfers, or other types of payment		
1363	specified by the United States.		
1364	(b) Upon execution of the contract, the Contractor shall furnish the		
1365	Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose		
1366	for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising		
1367	out of the Contractor's relationship with the United States.		
1368	NOTICES		
1369	40. Any notice, demand, or request authorized or required by this Contract shall be		
1370	deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or		
1371	delivered to the Area Manager, South-Central California Area Office, 1243 "N" Street, Fresno,		
1372	California 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered		
1373	to the Board of Directors of Orange Cove Irrigation District, P.O. Box 308, Orange Cove,		
1374	California 93646. The designation of the addressee or the address may be changed by notice		
1375	given in the same manner as provided in this Article of this Contract for other notices.		
1376	CONFIRMATION OF CONTRACT		
1377	41. The Contractor, after the execution of this Contract, shall promptly provide to the		
1378	Contracting Officer a decree of a court of competent jurisdiction of the State of California,		
1379	confirming the execution of this Contract. The Contractor shall furnish the United States a		
1380	certified copy of the final decree, the validation proceedings, and all pertinent supporting records		
1381	of the court approving and confirming this Contract, and decreeing and adjudging it to be lawful,		
1382	valid, and binding on the Contractor.		
1383	CONTRACT DRAFTING CONSIDERATIONS		
	42. Articles 1 through 15, subdivision (c) of Article 16, Articles 18 through 20,		
1384	42. Articles 1 through 15, subdivision (c) of Article 16, Articles 18 through 20, subdivision (c) of Article 23, Articles 26 through 29, subdivisions (b) and (c) of Article 31,		
1385	Subdivision (c) of Africie 25, Africies 20 milliough 27, Subdivisions (b) and (c) of Africie 31,		

- subdivisions (b) and (c) of Article 32, Articles 33 through 34, subdivision (b) of Article 36, and Articles 37 through 38 of this Contract have been drafted, negotiated, and reviewed by the parties hereto, each of whom is sophisticated in the matters to which this Contract pertains, and no one party shall be considered to have drafted the stated Articles.

1390 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day
1391 and year first above written.

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BEFORE THE BOARD OF DIRECTORS OF THE ORANGE COVE IRRIGATION DISTRICT

IN THE MATTER OF:

RESOLUTION NO: 2010-07

APPROVING AND AUTHORIZING THE EXECUTION OF A CONTRACT BETWEEN THE UNITED STATES AND ORANGE COVE IRRIGATION DISTRICT PROVIDING FOR PROJECT WATER SERVICE AND FACILITIES REPAYMENT; AND AUTHORIZING COMMENCEMENT OF VALIDATION ACTION

WHEREAS, the United States of America ("United States") has constructed and is operating the Central Valley Project ("Project") in California, for diversion, storage, carriage, distribution and beneficial use, for flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and restoration, generation and distribution of electric energy, salinity control, navigation and other beneficial uses, of the waters of the Sacramento River, the American River, the Trinity River, and the San Joaquin River and their tributaries ("Project Water"); and

WHEREAS, the United States constructed Friant Dam (thereby creating Millerton Lake) and the Friant-Kern and Madera Canals, hereinafter collectively referred to as the Friant Division Facilities, which will be used in part for the furnishing of Project Water to the Orange Cove Irrigation District ("DISTRICT"); and

WHEREAS, the United States and the DISTRICT have, continuously, since July 9, 1949, been parties to a contract, as amended and as renewed periodically, providing for water service from the Friant Division Facilities to the DISTRICT (the "Existing Contract"); and

WHEREAS, Federal law, and the Existing Contract in accordance with Article 2(d) thereof, provide for conversion to a repayment contract under subsection (d) of Section 9 of the Act of August 4, 1939 which conversion, upon District's payment of its share of the remaining amount of Project construction costs, would grant the DISTRICT a permanent right to a stated share or quantity of Project Water without need for renewal; relieve its landowners of the acreage limitation and full cost pricing provisions of Reclamation Law; and, relieve the DISTRICT of tiered pricing provisions in the Existing Contract; and

WHEREAS, as a result of litigation entitled "Natural Resources Defense Council, et al. v Kirk Rogers, et al." No. CIV-S-88-1658LLK/GGH, certain Friant Division contractors entered into a Stipulation of Settlement dated September 13, 2006 (the "Settlement"), which Settlement was subsequently confirmed and implemented through Title X, Subtitle A, of the Act of March 30, 2009 (123 Stat. 1349), known as the San Joaquin River Restoration Settlement Act and hereinafter referred to as "SJRRSA"; and WHEREAS, the SJRRSA authorizes and directs the Secretary to convert the Existing Contract to a repayment contract under subsection (d) of Section 9 of the Act of August 4, 1939, no later than December 31, 2010, under mutually agreeable terms and conditions; and

WHEREAS, the DISTRICT and United States have concluded negotiations on all substantive terms and conditions of a repayment contract entitled "Contract between the United States and DISTRICT for Project Water Service and Facilities Repayment," a true and correct copy of which is attached hereto as Exhibit A and incorporated herein by this reference ("Repayment Contract"); and

WHEREAS, consistent with the provisions of the SJRRSA and other laws, the Repayment Contract includes provisions improving water management, including provisions expediting water transfers by the DISTRICT;

WHEREAS, upon completing accelerated repayment of its allocated share of capital obligations as required therein, the Repayment Contract provides that: (i) the DISTRICT is vested with the permanent right to a stated share or quantity of water from the Project for beneficial use by the DISTRICT; (ii) its landholders will be relieved of the acreage limitation and full cost pricing provisions of Reclamation Law; and (iii) the DISTRICT will be relieved of tiered pricing provisions; and

WHEREAS, the DISTRICT intends to finance its capital cost repayment obligations under the Repayment Contract through issuance of notes, bonds or other form of indebtedness or from cash reserves or a combination of financing and cash reserves; and

WHEREAS, the Repayment Contract requires that the DISTRICT provide the United States with a final decree of a court of competent jurisdiction in the State of California confirming the validity of the Repayment Contract; and

WHEREAS, the Board of Directors of OCID did adopt, on May 12th, 2010, Resolution No. 2010-05; and,

WHEREAS, the United States Bureau of Reclamation has since modified the Contract that was approved in Resolution No. 2010-05; and,

WHEREAS the BOD wishes to review the revisions submitted by the United States, and to reconsider its action taken in Resolution No. 2010-05.

Now therefore be it resolved that Resolution No. 2010-05 is rescinded.

WHEREAS, the Board of Directors has reviewed the Repayment Contract and finds that conversion from the Existing Contract to the Repayment Contract is in the best interests of the DISTRICT and its landowners, and that the Repayment Contract should be executed in substantially the form attached as Exhibit A hereto, which execution shall occur upon the completion of proceedings necessary to validate the Repayment Contract and upon obtaining the financing sufficient for retiring its repayment obligations under terms satisfactory to the Board of Directors; and

WHEREAS, federal law requires that the Repayment Obligation (as defined in the Repayment Contract) be determined according to the Treasury Rate (as defined in the Repayment Contract) on October 1, 2010, and that Exhibit Nos. C-1, C-2 and D of the Repayment Contract, which exhibits set forth the Repayment Obligation of the District, are based upon the current Treasury Rate and that adjustments to the Treasury Rate could occur before October 1, 2010, and such adjustment will require corresponding adjustment of the Repayment Obligation currently described in Exhibit Nos. C1, C2 and D prior to execution of the Repayment Contract; and

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the District:

- 1. Determines that the foregoing recitals and findings are true and correct, and incorporates them herein by this reference; and
- 2. Approves and authorizes execution of the Repayment Contract by the President and Secretary as attached in Exhibit A, which execution shall be subject to and occur upon: (i) the successful completion of proceedings necessary to validate the Repayment Contract; (ii) the final determination of the Treasury Rate on October 1, 2010 and the resulting final determination of the Repayment Obligation set forth in Exhibit Nos. C1, C2 and D of the Repayment Contract; and (iii) the DISTRICT obtaining financing, to the extent necessary, of its repayment obligations under terms satisfactory to the Board of Directors; and
- 3. Authorizes and directs the DISTRICT's legal counsel to initiate and prosecute a validation proceeding pursuant to Code of Civil Procedure section 860, et seq., as necessary to confirm the validity of the Repayment Contract, and to do all things necessary and appropriate to prosecute said action; and
- 4. Authorizes and directs the DISTRICT's Secretary to the Board to provide certified copies of the foregoing resolution to the Bureau of Reclamation; and
- 5. Authorizes the President and Secretary of the Board to approve corrections to the Repayment Contract as may be necessary provided any such modifications are necessary to correct non substantive errors and omissions in the Repayment Contract and do not result in any substantive changes in the contract attached as Exhibit A.
- 6. Authorizes and directs the DISTRICT officers, staff and consultants to take all additional actions they deem necessary or appropriate to facilitate the conversion to the Repayment Contract and obtain appropriate financing of the Repayment Obligation; and

BE IT FURTHER RESOLVED that until the Repayment Contract in substantially the form as Exhibit A is executed by the DISTRICT and the United States, the Existing Contract shall continue in full force and effect in accordance with its terms.

All of the foregoing, being on the motion of Director Collin III, and seconded by Director Katayama, was authorized by the following vote:

AYES:	Directors; Collin III, Brown, Miller, Katayama, Bailey
NOES:	None
ABSTAINING:	None
ABSENT:	None

I HEREBY CERTIFY that the foregoing resolution is the resolution of said District as duly passed and adopted by said Board of Directors on the 9th day of June, 2010.

WITNESS my hand and seal of the Board of Directors this 9th day of June, 2010.

Secretary of the Board of Directory