

Irrigation and M&I
Contract No. 14-06-200-7773A-IR1

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

INTERIM RENEWAL CONTRACT BETWEEN THE UNITED STATES
AND
SAN LUIS WATER DISTRICT
PROVIDING FOR PROJECT WATER SERVICE
SAN LUIS UNIT AND DELTA DIVISION

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Exhibit A - Map of Contractor's Service Area

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1 UNITED STATES
2 DEPARTMENT OF THE INTERIOR
3 BUREAU OF RECLAMATION
4 Central Valley Project, California
5 INTERIM RENEWAL CONTRACT BETWEEN THE UNITED STATES
6 AND SAN LUIS WATER DISTRICT
7 PROVIDING FOR PROJECT WATER SERVICE FROM
8 SAN LUIS UNIT AND DELTA DIVISION

9 THIS CONTRACT, made this 1st day of January, 2009, in pursuance generally of the Act of
10 June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto, including, but not
11 limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and supplemented, August 4, 1939
12 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat. 483), June 3, 1960
13 (74 Stat. 156), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986
14 (100 Stat. 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all
15 collectively hereinafter referred to as Federal Reclamation law, between THE UNITED STATES OF
16 AMERICA, hereinafter referred to as the United States, and SAN LUIS WATER DISTRICT,
17 hereinafter referred to as the Contractor, a public agency of the State of California, duly organized,
18 existing, and acting pursuant to the laws thereof;

19 WITNESSETH, That:

20 EXPLANATORY RECITALS

21 [1st] WHEREAS, the United States has constructed and is operating the Central Valley
22 Project, (Project) California, for diversion, storage, carriage, distribution and beneficial use, for flood
23 control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and
24 restoration, generation and distribution of electric energy, salinity control, navigation and other

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

27 [2nd] WHEREAS, the United States constructed the Delta Division Facilities, including the
28 San Luis Unit facilities (which include the San Luis Canal, Coalinga Canal, Pleasant Valley Pumping
29 Plant, and Dos Amigos Pumping Plant), which will be used in part for the furnishing of water to the
30 Contractor pursuant to the terms of this Contract; and

31 [3rd] WHEREAS, the rights to Project Water were acquired by the United States pursuant to
32 California law for operation of the Project; and

33 [4th] WHEREAS, the United States and the Contractor entered into Contract No. 14-06-
34 200-7773A as amended, which provided the Contractor, Project Water from Project facilities from
35 January 1, 1975 to December 31, 2008, hereinafter referred to as the Existing Contract; and

36 [4.1] WHEREAS, the Existing Contract originally provided that the Contracting Officer
37 would make available for delivery to the Contractor 128,000 acre-feet of Project Water for irrigation
38 and M&I purposes each year, but was subsequently revised by mutual agreement of the Contracting
39 Officer and the Contractor to provide that the Contracting Officer would make available for delivery
40 to the Contractor 125,080 acre-feet of Project Water for irrigation and M&I purposes each year; and

41 [5th] WHEREAS, the United States and the Contractor have pursuant to Subsection
42 3404(c)(3) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into
43 binding agreements identified as Binding Agreement No. 14-06-200-7773A-BA, which sets out the
44 terms pursuant to which the Contractor agreed to renew the Existing Contract before the expiration
45 date after completion of the Programmatic Environmental Impact Statement (PEIS) and other

46 appropriate environmental documentation and negotiation of a renewal contract; and which also sets
47 out the consequences of a subsequent decision not to renew: and

48 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of the
49 Existing Contract following completion of appropriate environmental documentation, including the
50 PEIS, which was required by Section 3409 of the CVPIA, pursuant to the National Environmental
51 Policy Act (NEPA) analyzing the direct and indirect impacts and benefits of implementing the
52 CVPIA and the potential renewal of all existing contracts for Project Water; and

53 [7th] WHEREAS, rights of renewal of Existing Contract and to convert said contract to a
54 contract as provided by subsection (d), Section 9 of the Act of August 4, 1939 (53 Stat. 1187), are set
55 forth in said contract; and

56 [8th] WHEREAS, the United States has completed the PEIS, but since all the environmental
57 documentation necessary to execute a long-term renewal contract has not been completed, the
58 Contractor has requested an interim renewal contract pursuant to Section 3404(c)(1) of the CVPIA;
59 and

60 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all of
61 its obligations under the Existing Contract; and

62 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting
63 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and
64 beneficial use and expects to utilize fully for reasonable and beneficial use the quantity of Project
65 Water to be made available to it pursuant to this Contract; and

66 [11th] WHEREAS, water obtained from the Project has been relied upon by urban and
67 agricultural areas within California for more than 50 years, and is considered by the Contractor as an
68 essential portion of its water supply; and

69 [12th] WHEREAS, the economies of regions within the Project, including the Contractor's,
70 depend upon the continued availability of water, including water service from the Project; and

71 [12.1] WHEREAS, the United States Court of Appeals for the Ninth Circuit has held that
72 Section 1(a) of the San Luis Act, Public Law 86-488, 74 Stat. 156, imposes on the Secretary a duty to
73 provide drainage service to the San Luis Unit; and

74 [12.2] WHEREAS, the Contractor and the Contracting Officer recognize that adequate
75 drainage service is required to maintain agricultural production within certain areas served with
76 Project Water made available under this Contract, and all renewals thereof; and

77 [12.3] WHEREAS, the Contracting Officer intends, to the extent appropriated funds are
78 available, to develop and implement effective solutions to drainage problems in the San Luis Unit; and

79 [12.4] WHEREAS, the Contracting Officer and the Contractor acknowledge that such
80 drainage solutions may involve actions not originally contemplated and/or the construction or use of
81 facilities, other than the San Luis Drain; that the Contractor is investing in drainage solutions for
82 lands within its boundaries that should be considered by the Contracting Officer in determining
83 drainage solutions; and that the existing ratesetting policy as it relates to the allocation and collection
84 of drainage costs may require amendment to recognize those investments by the Contractor and other
85 relevant circumstances; and

86 [12.5] WHEREAS, the Department of the Interior, Bureau of Reclamation published in June
87 2006 the San Luis Drainage Feature Re-evaluation Final Environmental Impact Statement, which
88 considers alternatives to provide agricultural drainage service to the San Luis Unit; and

89 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships
90 to pursue measures to improve water supply, water quality, and reliability of the Project for all Project
91 purposes; and

92 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to
93 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment of
94 the Project as required by law; to guard reasonably against Project Water shortages; to achieve a
95 reasonable balance among competing demands for use of Project Water; and to comply with all
96 applicable environmental statutes, all consistent with the legal obligations of the United States
97 relative to the Project; and

98 [14.1] WHEREAS, the parties intend by this Contract to develop a more cooperative
99 relationship in order to achieve their mutual goals; and

100 [15th] WHEREAS, the Contractor has utilized or may utilize transfers, contract assignments,
101 rescheduling and conveyance of Project Water and non-Project water under this Contract as tools to
102 minimize the impacts of Conditions of Shortage and to maximize the beneficial use of water; and

103 [15.1] WHEREAS, the parties desire and intend that this Contract not provide a disincentive
104 to the Contractor in continuing to carry out the beneficial activities set out in the Explanatory Recital
105 immediately above; and

[15.2] WHEREAS, in order to continue water service provided under Project water service contracts that expire prior to the completion of all appropriate environmental documentation, the United States intends to execute interim renewal contracts for a period not to exceed three (3) Years in length, and for successive interim periods of not more than two (2) Years in length, until such appropriate environmental documentation, is finally completed, at which time the Secretary shall, pursuant to Federal Reclamation law, upon request of the Contractor, enter into a long-term renewal contract for a period of twenty-five (25) Years; and may thereafter renew such long-term renewal contracts for successive periods not to exceed twenty-five (25) Years each; and

[15.3] WHEREAS, the Secretary intends to assure uninterrupted water service and continuity of contract through the process set forth in Article 2 hereof; and

[16th] WHEREAS, the United States and the Contractor are willing to enter into this Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

DEFINITIONS

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

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

(b) "Charges" shall mean the payments required by Federal Reclamation law in addition to the Rates as determined annually by the Contracting Officer pursuant to this Contract;

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

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

131 (e) "Contract Total" shall mean the maximum amount of water to which the
132 Contractor is entitled under subdivision (a) of Article 3 of this Contract;

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

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

139 (g.1) "Delta Division Facilities" shall mean those existing and future Project
140 facilities in and south of the Sacramento-San Joaquin Rivers Delta, including, but not limited to, the
141 Tracy Pumping Plant, the O'Neill Forebay, the O'Neill Pumping/Generating Plant, and the San Luis
142 Reservoir, used to divert, store, and convey water to those Project Contractors entitled to receive
143 water conveyed through the Delta-Mendota Canal;

144 (h) "Eligible Lands" shall mean all lands to which Irrigation Water may be
145 delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982
146 (96 Stat. 1263), as amended, hereinafter referred to as RRA;

147 (i) "Excess Lands" shall mean all lands in excess of the limitations contained in
148 Section 204 of the RRA, other than those lands exempt from acreage limitation under Federal
149 Reclamation law;

150 (j) Omitted.

151 (k) "Ineligible Lands" shall mean all lands to which Irrigation Water may not be
152 delivered in accordance with Section 204 of the RRA;

153 (l) Omitted.

154 (m) "Irrigation Water" shall mean water made available from the Project that is
155 used primarily in the production of agricultural crops or livestock, including domestic use incidental
156 thereto, and watering of livestock;

157 (n) "Landholder" shall mean a party that directly or indirectly owns or leases
158 nonexempt land, as provided in 43 CFR 426.2;

159 (o) "Municipal and Industrial (M&I) Water" shall mean Project Water, other than
160 Irrigation Water, made available to the Contractor. M&I Water shall include water used for human
161 use and purposes such as the watering of landscaping or pasture for animals (e.g., horses) which are
162 kept for personal enjoyment or water delivered to landholdings operated in units of less than
163 five acres unless the Contractor establishes to the satisfaction of the Contracting Officer that the use
164 of water delivered to any such landholding is a use described in subdivision (m) of this Article;

165 (p) Omitted.

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

169 (r) "Operating Non-Federal Entity" shall mean the entity(ies), its (their) successors
170 or assigns, which has (have) the obligation to operate and maintain all or a portion of the Delta
171 Division Facilities pursuant to written agreement(s) with the United States. When this Contract was
172 entered into, the Operating Non-Federal Entities were the San Luis & Delta-Mendota Water Authority
173 and, with respect to San Luis Unit facilities and the California Department of Water Resources;

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

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

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

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

184 (w) Omitted.

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

188 (y) Omitted

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

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

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

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

199 TERM OF CONTRACT--RIGHT TO USE OF WATER

200 2. (a) This Contract shall be effective from January 1, 2009 and shall remain in
201 effect through February 28, 2011, and thereafter will be renewed as described in this Article. Except
202 as provided in subdivision (b) of this Article, until completion of all appropriate environmental
203 review, and provided that the Contractor has complied with all the terms and conditions of the interim
204 renewal contract in effect for the period immediately preceding the requested successive interim
205 renewal contract, this Contract will be renewed, upon request of the Contractor, for successive

interim periods each of which shall be no more than two (2) Years in length. Also, except as provided in subdivision (b) of this Article, in order to promote orderly and cost effective contract administration, the terms and conditions in subsequent interim renewal contracts shall be identical to the terms and conditions in the interim renewal contract immediately preceding the subsequent interim renewal contract: Provided, however, That each party preserves the right to propose modification(s) in any interim renewal contract other than those described in subdivision (b) of this Article, in which case the parties shall negotiate in good faith appropriate modification(s) to be included in any successive interim renewal contracts. Said modification(s) of each successive interim renewal contract shall be agreed upon within a reasonable time prior to the expiration of the then existing interim renewal contract. Nothing in this Article shall in any way alter the obligation that, upon final completion of any necessary environmental documentation, the Secretary shall, pursuant to Federal Reclamation law, upon request of the Contractor, enter into a long-term renewal contract for a period of twenty-five (25) Years and may thereafter renew such long-term renewal contracts for successive periods not to exceed twenty-five (25) Years each.

(b) The parties have engaged and if necessary will continue to engage in good faith negotiations intended to permit the execution of a twenty-five (25) Year long-term renewal contract contemplated by Section 3404 (c) of the CVPIA, hereinafter referred to as a "long-term renewal contract". The parties recognize the possibility that this schedule may not be met without further negotiations. Accordingly: In the event (i) the Contractor and Contracting Officer have reached agreement on the terms of the Contractor's long-term renewal contract or (ii) the Contractor and Contracting Officer have not completed the negotiations on the Contractor's long-term renewal

contract, believe that further negotiations on that contract would be beneficial, and mutually commit to continue to negotiate to seek to reach agreement, but (iii) all environmental documentation required to allow execution of the Contractor's long-term renewal contract by both parties has not been completed in time to allow execution of the Contractor's long-term renewal contract by February 28, 2011, then (iv), the parties will expeditiously complete the environmental documentation required of each of them in order to execute the Contractor's long-term renewal contract at the earliest practicable date. In addition, the Contractor's then-current interim renewal contract will be renewed without change upon the request of either party through the agreed-upon effective date of the Contractor's long-term renewal contract or, in the absence of agreement on the terms of the Contractor's long-term renewal contract, through the succeeding February 28.

(c) The omission of language in this Contract providing for conversion of this interim renewal contract or any subsequent renewals thereof to a repayment contract, pursuant to the Act of July 2, 1956 (70 Stat. 483), shall not prejudice the Contractor's right to assert a right to have such language included in subsequent renewals of this Contract or to exercise such conversion, all as provided by law, or to negotiate the language regarding such conversion to be included in subsequent renewal contracts.

WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

3. (a) During each Year, consistent with all applicable State water rights permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of this Contract, the Contracting Officer shall make available for delivery to the Contractor 125,080 acre-feet of Project Water for irrigation and M&I purposes. Provided, however, during the two (2) month period of

248 January and February of Year, 2009, the Contracting Officer shall make available for delivery to the
249 Contractor that portion of the 2008 allocation of Project Water unused by the Contractor under the
250 Existing Contract. Water Delivered to the Contractor in accordance with this subdivision shall be
251 scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

252 (b) Because the capacity of the Project to deliver Project Water has been
253 constrained in recent years and may be constrained in the future due to many factors including
254 hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractor
255 actually receiving the amount of Project Water set out in subdivision (a) of this Article in any given
256 Year is uncertain. The Contracting Officer's modeling referenced in the PEIS projected that the
257 Contract Total set forth in this Contract will not be available to the Contractor in many years.
258 Nothing in this subdivision (b) of this Article shall affect the rights and obligations of the parties
259 under any provision of this Contract.

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

262 (c.1) In the event any Project Contractor (other than a Cross Valley Contractor) that
263 receives Project Water through the Delta Division Facilities obtains a contractual agreement that the
264 Contracting Officer shall make Project Water available at a point or points of delivery in or north of
265 the Delta, at the request of the Contractor and upon completion of any required environmental
266 documentation, this Contract shall be amended to provide for deliveries in or north of the Delta on
267 mutually agreeable terms. Such amendments to this Contract shall be limited solely to those changes
268 made necessary by the addition of such alternate points of delivery in or north of the Delta; Provided,

269 That the Contracting Officer's use of the Harvey O. Banks Pumping Plant to deliver Project Water
270 does not trigger this right of amendment.

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

287 (e) The Contractor shall comply with requirements applicable to the Contractor in
288 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract
289 undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as amended, that are

290 within the Contractor's legal authority to implement. The Existing Contract, which evidences in
291 excess of 33 years of diversions for irrigation and/or M&I purposes of the quantities of Project Water
292 provided in subdivision (a) of Article 3 of this Contract, will be considered in developing an
293 appropriate baseline for the biological assessment(s) prepared pursuant to the ESA, and any other
294 needed environmental review. Nothing herein shall be construed to prevent the Contractor from
295 challenging or seeking judicial relief in a court of competent jurisdiction with respect to any
296 biological opinion or other environmental documentation referred to in this Article.

297 (f) Following the declaration of Water Made Available under Article 4 of this
298 Contract, the Contracting Officer will make a determination whether Project Water, or other water
299 available to the Project, can be made available to the Contractor in addition to the Contract Total
300 under this Article during the Year without adversely impacting other Project Contractors. At the
301 request of the Contractor, the Contracting Officer will consult with the Contractor prior to making
302 such a determination. If the Contracting Officer determines that Project Water, or other water
303 available to the Project, can be made available to the Contractor, the Contracting Officer will
304 announce the availability of such water and shall so notify the Contractor as soon as practical. The
305 Contracting Officer will thereafter meet with the Contractor and other Project Contractors capable of
306 taking such water to determine the most equitable and efficient allocation of such water. If the
307 Contractor requests the delivery of any quantity of such water, the Contracting Officer shall make
308 such water available to the Contractor in accordance with applicable statutes, regulations, guidelines,
309 and policies. Subject to existing interim renewal and long-term contractual commitments, water
310 rights and operational constraints, interim renewal and long-term Project Contractors shall have a first

311 right to acquire such water, including Project Water made available pursuant to Section 215 of the
312 RRA.

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

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

326 (i) Project Water furnished to the Contractor pursuant to this Contract may be
327 delivered for purposes other than those described in subdivisions (m) and (o) of Article 1 of this
328 Contract upon written approval by the Contracting Officer in accordance with the terms and
329 conditions of such approval.

330 (j) The Contracting Officer shall make reasonable efforts to protect the water
331 rights necessary for the Project and to provide the water available under this Contract and any renewal

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

TIME FOR DELIVERY OF WATER

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

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

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

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

359 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

360 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this
361 Contract shall be delivered to the Contractor at Project facilities and any additional point or points of
362 delivery either on Project facilities or another location or locations mutually agreed to in writing by
363 the Contracting Officer and the Contractor.

364 (b) The Contracting Officer, either directly or indirectly through its written
365 agreements(s) with the Operating Non-Federal Entity(ies), shall make all reasonable efforts to
366 maintain sufficient flows and levels of water in the Project facilities to deliver Project Water to the
367 Contractor at the point or points of delivery established pursuant to subdivision (a) of this Article.

368 (c) The Contractor shall deliver Irrigation Water in accordance with any applicable
369 land classification provisions of Federal Reclamation law and the associated regulations. The
370 Contractor shall not deliver Project Water to land outside the Contractor's Service Area unless
371 approved in advance by the Contracting Officer.

372 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
373 measured and recorded with equipment furnished, installed, operated, and maintained by the
374 Contracting Officer either directly or indirectly through its written agreements(s) with the Operating
375 Non-Federal Entity(ies), unless undertaken by the Contractor with the consent of the Contracting
376 Officer at the point or points of delivery established pursuant to subdivision (a) of this Article. Upon
377 the request of either party to this Contract, the Contracting Officer shall investigate, or cause to be
378 investigated by the appropriate Operating Non-Federal Entity(ies) the accuracy of such measurements
379 and shall take any necessary steps to adjust any errors appearing therein. For any period of time when
380 accurate measurements have not been made, the Contracting Officer shall consult with the Contractor
381 and the appropriate Operating Non-Federal Entity(ies), if any, prior to making a final determination of
382 the quantity delivered for that period of time.

383 (e) Absent a separate contrary written agreement with the Contractor, neither the
384 Contracting Officer nor any Operating Non-Federal Entity(ies) shall be responsible for the control,
385 carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to this
386 Contract beyond the point or points of delivery established pursuant to subdivision (a) of this Article.
387 The Contractor shall indemnify the United States, its officers, employees, agents, and assigns on
388 account of damage or claim of damage of any nature whatsoever for which there is legal
389 responsibility, including property damage, personal injury, or death arising out of or connected with
390 the control, carriage, handling, use, disposal, or distribution of such Water Delivered beyond such
391 point or points of delivery except for any damage or claim arising out of: (i) acts or omissions of the
392 Contracting Officer or any of its officers, employees, agents, and assigns, including the Operating

393 Non-Federal Entity(ies) with the intent of creating the situation resulting in any damage or claim;
394 (ii) willful misconduct of the Contracting Officer or any of its officers, employees, agents, and
395 assigns, including the Operating Non-Federal Entity(ies); (iii) negligence of the Contracting Officer
396 or any of its officers, employees, agents, and assigns including the Operating Non-Federal Entity(ies);
397 (iv) a malfunction of facilities owned and/or operated by the United States or the Operating Non-
398 Federal Entity(ies); or (v) failure of the United States, its officers, employees, agents, and assigns,
399 including the Operating Non-Federal Entity(ies), to provide drainage service.

400 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

401 6. (a) The Contractor has established a measuring program satisfactory to the
402 Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation
403 purposes within the Contractor's Service Area is measured at each agricultural turnout and such water
404 delivered for M&I purposes is measured at each M&I service connection. The water measuring
405 devices or water measuring methods of comparable effectiveness must be acceptable to the
406 Contracting Officer. The Contractor shall be responsible for installing, operating, maintaining, and
407 repairing all such measuring devices and implementing all such water measuring methods at no cost
408 to the United States. The Contractor shall use the information obtained from such water measuring
409 devices or water measuring methods to ensure its proper management of the water; to bill water users
410 for water delivered by the Contractor; and, if applicable, to record water delivered for M&I purposes
411 by customer class as defined in the Contractor's water conservation plan provided for in Article 26 of
412 this Contract. Nothing herein contained, however, shall preclude the Contractor from establishing
413 and collecting any charges, assessments, or other revenues authorized by California law. The

414 Contractor shall include a summary of all its annual surface water deliveries in the annual report
415 described in subdivision (c) of Article 26 of this Contract.

416 (b) To the extent the information has not otherwise been provided, upon execution
417 of this Contract, the Contractor shall provide to the Contracting Officer a written report describing the
418 measurement devices or water measuring methods being used or to be used to implement subdivision
419 (a) of this Article and identifying the agricultural turnouts and the M&I service connections or
420 alternative measurement programs approved by the Contracting Officer, at which such measurement
421 devices or water measuring methods are being used, and, if applicable, identifying the locations at
422 which such devices and/or methods are not yet being used including a time schedule for
423 implementation at such locations. The Contracting Officer shall advise the Contractor in writing
424 within 60 days as to the adequacy and necessary modifications, if any, of the measuring devices or
425 water measuring methods identified in the Contractor's report and if the Contracting Officer does not
426 respond in such time, they shall be deemed adequate. If the Contracting Officer notifies the
427 Contractor that the measuring devices or methods are inadequate, the parties shall within 60 days
428 following the Contracting Officer's response, negotiate in good faith the earliest practicable date by
429 which the Contractor shall modify said measuring devices and/or measuring methods as required by
430 the Contracting Officer to ensure compliance with subdivision (a) of this Article.

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

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

437 (e) The Contractor shall inform the Contracting Officer and the Operating
438 Non-Federal Entity(ies) on or before the 20th calendar day of each month of the quantity of Irrigation
439 Water and M&I Water taken during the preceding month.

440 RATES AND METHOD OF PAYMENT FOR WATER

441 7. (a) The Contractor shall pay the United States as provided in this Article for all
442 Delivered Water at Rates and Charges established in accordance with: (i) the Secretary's ratesetting
443 policy for Irrigation Water adopted in 1988 and the Secretary's then-existing ratesetting policy for
444 M&I Water. Such ratesetting policies shall be amended, modified, or superseded only through a
445 public notice and comment procedure; (ii) applicable Federal Reclamation law and associated rules
446 and regulations, or policies; and (iii) other applicable provisions of this Contract. Payments shall be
447 made by cash transaction, electronic funds transfer, or any other mechanism as may be agreed to in
448 writing by the Contractor and the Contracting Officer. The Rates and Charges applicable to the
449 Contractor upon execution of this Contract are set forth in Exhibit "B," as may be revised annually.

450 (b) The Contracting Officer shall notify the Contractor of the Rates and Charges as
451 follows:

452 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
453 provide the Contractor an estimate of the ^{Actual} Charges for Project Water that will be applied to the period
454 October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and

Prior

455 the basis for such estimate. The Contractor shall be allowed not less than two months to review and
456 comment on such estimates. On or before September 15 of each Calendar Year, the Contracting
457 Officer shall notify the Contractor in writing of the Charges to be in effect during the period
458 October 1 of the current Calendar Year, through September 30, of the following Calendar Year, and
459 such notification shall revise Exhibit "B."

460 (2) Prior to October 1 of each Calendar Year, the Contracting Officer shall
461 make available to the Contractor an estimate of the Rates for Project Water for the following Year
462 and the computations and cost allocations upon which those Rates are based. The Contractor shall be
463 allowed not less than two months to review and comment on such computations and cost allocations.

464 By December 31 of each Calendar Year, the Contracting Officer shall provide the Contractor with
465 the final Rates to be in effect for the upcoming Year, and such notification shall revise Exhibit "B."

466 (c) At the time the Contractor submits the initial schedule for the delivery of
467 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor
468 shall make an advance payment to the United States equal to the total amount payable pursuant to the
469 applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be
470 delivered pursuant to this Contract during the first two calendar months of the Year. Before the end
471 of the first month and before the end of each calendar month thereafter, the Contractor shall make an
472 advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for the
473 Water Scheduled to be delivered pursuant to this Contract during the second month immediately
474 following. Adjustments between advance payments for Water Scheduled and payments at Rates due
475 for Water Delivered shall be made before the end of the following month; Provided, That any revised

476 schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the
477 amount of Water Delivered pursuant to this Contract during any month shall be accompanied with
478 appropriate advance payment, at the Rates then in effect, to assure that Project Water is not delivered
479 to the Contractor in advance of such payment. In any month in which the quantity of Water Delivered
480 to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid for by the
481 Contractor, no additional Project Water shall be delivered to the Contractor unless and until an
482 advance payment at the Rates then in effect for such additional Project Water is made. Final
483 adjustment between the advance payments for the Water Scheduled and payments for the quantities
484 of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable
485 but no later than April 30th of the following Year, or 60 days after the delivery of Project Water
486 rescheduled under subdivision (g) of Article 3 of this Contract if such water is not delivered by the
487 last day of February.

488 (d) The Contractor shall also make a payment in addition to the Rate(s) in
489 subdivision (c) of this Article to the United States for Water Delivered, at the Charges then in effect,
490 before the end of the month following the month of delivery. The payments shall be consistent with
491 the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery report for
492 the subject month prepared by the Operating Non-Federal Entity(ies) or, if there is no Operating
493 Non-Federal Entity, by the Contracting Officer. The water delivery report shall be deemed a bill for
494 the payment of Charges for Water Delivered. Adjustment for overpayment or underpayment of
495 Charges shall be made through the adjustment of payments due to the United States for Charges for

496 the next month. Any amount to be paid for past due payment of Charge shall be computed pursuant
497 to Article 20 of this Contract.

498 (e) The Contractor shall pay for any Water Delivered under subdivision (a), (f), or
499 (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to applicable
500 statutes, associated regulations, any applicable provisions of guidelines or ratesetting policies;
501 Provided, That the Rate for Water Delivered under subdivision (d) of Article 3 of this Contract shall
502 be no more than the otherwise applicable Rate for Irrigation Water or M&I Water under subdivision
503 (a) of this Article.

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

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

510 (h) The Contracting Officer shall keep its accounts pertaining to the administration
511 of the financial terms and conditions of its long-term contracts, in accordance with applicable Federal
512 standards, so as to reflect the application of Project costs and revenues. The Contracting Officer
513 shall, each Year upon request of the Contractor, provide to the Contractor a detailed accounting of all
514 Project and Contractor expense allocations, the disposition of all Project and Contractor revenues,
515 and a summary of all water delivery information. The Contracting Officer and the Contractor shall

516 enter into good faith negotiations to resolve any discrepancies or disputes relating to accountings,
517 reports, or information.

518 (i) The parties acknowledge and agree that the efficient administration of this
519 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,
520 policies, and procedures used for establishing Rates and Charges and/or for making and allocating
521 payments, other than those set forth in this Article may be in the mutual best interest of the parties, it
522 is expressly agreed that the parties may enter into agreements to modify the mechanisms, policies,
523 and procedures for any of those purposes while this Contract is in effect without amending this
524 Contract.

525 (j) Omitted.

526 (1-3) Omitted.

527 (k) For the term of this Contract, Rates applied under the respective ratesetting
528 policies will be established to recover only reimbursable O&M (including any deficits) and capital
529 costs of the Project, as those terms are used in the then-current Project ratesetting policies, and
530 interest, where appropriate, except in instances where a minimum Rate is applicable in accordance
531 with the relevant Project ratesetting policy. Changes of significance in practices which implement the
532 Contracting Officer's ratesetting policies will not be implemented until the Contracting Officer has
533 provided the Contractor an opportunity to discuss the nature, need, and impact of the proposed
534 change.

535 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA,
536 the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates, in

537 accordance with the applicable Project ratesetting policy, adjusted upward or downward to reflect the
538 changed costs, if any, incurred by the Contracting Officer in the delivery of the transferred Project
539 Water to the transferee's point of delivery. If the Contractor is receiving lower Rates and Charges
540 because of inability to pay and is transferring Project Water to another entity whose Rates and
541 Charges are not adjusted due to inability to pay, the Rates and Charges for transferred Project Water
542 shall not be adjusted to reflect the Contractor's inability to pay.

543 (m) Pursuant to the Act of October 27, 1986 (100 Stat.3050), the Contracting
544 Officer is authorized to adjust determinations of ability to pay every five years.

545 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

546 8. The Contractor and the Contracting Officer concur that, as of the effective date of this
547 Contract the Contractor has no non-interest bearing O&M deficits and shall have no further liability
548 therefore.

549 SALES, TRANSFERS, OR EXCHANGES OF WATER

550 9. (a) The right to receive Project Water provided for in this Contract may be sold,
551 transferred, or exchanged to others for reasonable and beneficial uses within the State of California if
552 such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable
553 guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this
554 Contract may take place without the prior written approval of the Contracting Officer, except as
555 provided for in subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be
556 approved absent all appropriate environmental documentation, including, but not limited to,
557 documents prepared pursuant to the NEPA and ESA. Such environmental documentation should

include, as appropriate, an analysis of groundwater impacts and economic and social effects, including environmental justice, of the proposed water transfers on both the transferor and transferee.

(b) In order to facilitate efficient water management by means of water transfers of the type historically carried out among Project Contractors located within the same geographical area and to allow the Contractor to participate in an accelerated water transfer program during the term of this Contract, the Contracting Officer shall prepare, as appropriate, all necessary environmental documentation, including, but not limited to, documents prepared pursuant to the NEPA and ESA, analyzing annual transfers within such geographical areas and the Contracting Officer shall determine whether such transfers comply with applicable law. Following the completion of the environmental documentation, such transfers addressed in such documentation shall be conducted with advance notice to the Contracting Officer, but shall not require prior written approval by the Contracting Officer. Such environmental documentation and the Contracting Officer's compliance determination shall be reviewed every five years and updated, as necessary, prior to the expiration of the then-existing five-year period. All subsequent environmental documentation shall include an alternative to evaluate not less than the quantity of Project Water historically transferred within the same geographical area.

(c) For a water transfer to qualify under subdivision (b) of this Article, such water transfer must: (i) be for irrigation purposes for lands irrigated within the previous three years, for M&I use, groundwater recharge, groundwater banking, or similar groundwater activities, surface water storage, or fish and wildlife resources; not lead to land conversion; and be delivered to established cropland, wildlife refuges, groundwater basins, or M&I use; (ii) occur within a single

579 Year; (iii) occur between a willing seller and a willing buyer; (iv) convey water through existing
580 facilities with no new construction or modifications to facilities and be between existing Project
581 Contractors and/or the Contractor and the United States, Department of the Interior; and (v) comply
582 with all applicable Federal, State, and local or tribal laws and requirements imposed for protection of
583 the environment and Indian Trust Assets, as defined under Federal law.

584 APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

596 (b) All advances for miscellaneous costs incurred for work requested by the
597 Contractor pursuant to Article 25 of this Contract shall be adjusted to reflect the actual costs when the
598 work has been completed. If the advances exceed the actual costs incurred, the difference will be

599 refunded to the Contractor. If the actual costs exceed the Contractor's advances, the Contractor will
600 be billed for the additional costs pursuant to Article 25 of this Contract.

601 TEMPORARY REDUCTIONS--RETURN FLOWS

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

607 (b) The Contracting Officer or Operating Non-Federal Entity(ies) may temporarily
608 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for the
609 purposes of investigation, inspection, maintenance, repair, or replacement of any of the Project
610 facilities or any part thereof necessary for the delivery of Project Water to the Contractor, but so far as
611 feasible the Contracting Officer or Operating Non-Federal Entity(ies) will give the Contractor due
612 notice in advance of such temporary discontinuance or reduction, except in case of emergency, in
613 which case no notice need be given; Provided, That the United States shall use its best efforts to avoid
614 any discontinuance or reduction in such service. Upon resumption of service after such reduction or
615 discontinuance, and if requested by the Contractor, the United States will, if possible, deliver the
616 quantity of Project Water which would have been delivered hereunder in the absence of such
617 discontinuance or reduction.

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

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

624 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

635 (c) In any Year in which there may occur a Condition of Shortage for any of the
636 reasons specified in subdivision (b) of this Article, and subject to subdivision (d) of this Article, the
637 Contracting Officer will first allocate the available Project Water consistent with the Central Valley
638 Project M&I Water Shortage in its form applicable under Article 12(c) of water service contracts in
639 effect on the date of this contract which provide water service from Delta Division Facilities for
640 determining the amount of Project Water Available for delivery to the Project Contractors. Subject to

the foregoing allocation, in any year in which there may occur a Condition of Shortage, the Contracting Officer shall then apportion Project Water among the Contractor and others entitled to Project Water from Delta Division Facilities under long-term water service or repayment contracts (or renewals thereof or binding commitments therefore) in force on February 28, 2005, as follows:

(1) The Contracting Officer shall make an initial and subsequent determination as necessary of the total quantity of Project Water estimated to be scheduled or actually scheduled under subdivision (b) of Article 4 of this Contract and under all other interim renewal, long-term water service or repayment contracts then in force for the delivery of Project Water by the United States from Delta Division Facilities during the relevant Year, the quantity so determined being hereinafter referred to as the scheduled total;

(2) A determination shall be made of the total quantity of Project Water that is available for meeting the scheduled total, the quantity so determined being hereinafter referred to as the available supply;

(3) The total quantity of Project Water estimated to be scheduled or actually scheduled by the Contractor during the relevant Year, under subdivision (b) of Article 4 hereof, shall be divided by the scheduled total, the quotient thus obtained being hereinafter referred to as the Contractor's proportionate share; and

(4) The available supply shall be multiplied by the Contractor's proportionate share and the result shall be the quantity of Project Water made available by the United States to the Contractor for the relevant Year in accordance with the schedule developed by the Contracting Officer under subdivision (c) (1) of this Article 12, but in no event shall such amount

662 exceed the Contract Total. In the event the Contracting Officer subsequently determines that the
663 Contracting Officer can increase or needs to decrease the available supply for delivery from Delta
664 Division Facilities to interim renewal, long-term water service, and repayment contractors during the
665 relevant Year, such additions or reductions to the available supply shall be apportioned consistent
666 with subparagraphs (1) through (4), inclusive.

667 (d) By entering into this Contract, the Contractor does not waive any legal rights or
668 remedies it may have to file or participate in any administrative or judicial proceeding contesting
669 (i) the sufficiency of the Central Valley Project M&I Water Shortage Policy; (ii) the substance of such
670 a policy; (iii) the applicability of such a policy; or (iv) the manner in which such policy is
671 implemented in order to allocate Project Water between municipal and industrial and irrigation
672 purposes; Provided, That the Contractor has commenced any such judicial challenge or any
673 administrative procedures necessary to institute any judicial challenge within six months of the policy
674 becoming final. By agreeing to the foregoing, the Contracting Officer does not waive any legal
675 defenses or remedies that it may have to assert in such a proceeding. Nothing contained herein shall
676 be interpreted to validate or invalidate the Central Valley Project M&I Water Shortage Policy.

677 (e) Omitted.

678 UNAVOIDABLE GROUNDWATER PERCOLATION

679 13. To the extent applicable, the Contractor shall not be deemed to have delivered
680 Irrigation Water to Excess Lands or Ineligible Lands within the meaning of this Contract if such lands
681 are irrigated with groundwater that reaches the underground strata as an unavoidable result of the
682 delivery of Irrigation Water by the Contractor to Eligible Lands.

683 RULES AND REGULATIONS

684 14. The parties agree that the delivery of Irrigation Water or use of Federal facilities
685 pursuant to this Contract is subject to Federal Reclamation law, including but not limited to, the
686 Reclamation Reform Act of 1982 (43 U.S.C.390aa et seq.), as amended and supplemented, and the
687 rules and regulations promulgated by the Secretary of the Interior under Federal Reclamation law.

688 WATER AND AIR POLLUTION CONTROL

689 15. The Contractor, in carrying out this Contract, shall comply with all applicable water
690 and air pollution laws and regulations of the United States and the State of California, and shall
691 obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

692 QUALITY OF WATER

693 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to
694 this Contract shall be operated and maintained to enable the United States to deliver Project Water to
695 the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act
696 of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986
697 (100 Stat. 3050) or other existing Federal laws. The United States is under no obligation to construct
698 or furnish water treatment facilities to maintain or to improve the quality of Water Delivered to the
699 Contractor pursuant to this Contract. The United States does not warrant the quality of Water
700 Delivered to the Contractor pursuant to this Contract.

701 (b) The O&M of Project facilities shall be performed in such manner as is
702 practicable to maintain the quality of raw water made available through such facilities at the highest
703 level reasonably attainable as determined by the Contracting Officer. The Contractor shall be
704 responsible for compliance with all State and Federal water quality standards applicable to surface
705 and subsurface agricultural drainage discharges generated through the use of Federal or Contractor
706 facilities or Project Water provided by the Contractor within the Contractor's Service Area.

707 (c) The Contracting Officer shall notify the Contractor in writing when drainage
708 service becomes available. Thereafter, the Contracting Officer shall provide drainage service to the
709 Contractor at rates established pursuant to the then-existing ratesetting policy for Irrigation Water;
710 Provided, That such ratesetting policy shall be amended, modified, or superseded only through the
711 process described in subdivision (a) of Article 7 of this Contract.

712 WATER ACQUIRED BY THE CONTRACTOR
713 OTHER THAN FROM THE UNITED STATES

714 17. (a) Water or water rights now owned or hereafter acquired by the Contractor other
715 than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may
716 be simultaneously transported through the same distribution facilities of the Contractor subject to the
717 following: (i) if the facilities utilized for commingling Irrigation Water and non-Project water were
718 constructed without funds made available pursuant to Federal Reclamation law, the provisions of
719 Federal Reclamation law will be applicable only to the Landholders of lands which receive Irrigation
720 Water; (ii) the eligibility of land to receive Irrigation Water must be established through the
721 certification requirements as specified in the Acreage Limitation Rules and Regulations (43 CFR
722 Part 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be
723 established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity
724 necessary to irrigate such Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation
725 Water and non-Project water are/were constructed with funds made available pursuant to Federal
726 Reclamation law, the non-Project water will be subject to the acreage limitation provisions of Federal
727 Reclamation law, unless the Contractor pays to the United States the incremental fee described in
728 43 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate annually

the cost to the Federal Government, including interest, of storing or delivering non-Project water, which for purposes of this Contract shall be determined as follows: The quotient shall be the unpaid distribution system costs divided by the total irrigable acreage within the Contractor's Service Area. The incremental fee per acre is the mathematical result of such quotient times the interest rate determined using Section 202 (3) of the Act of October 12, 1982 (96 Stat. 1263). Such incremental fee will be charged to each acre of excess or full cost land within the Contractor's Service Area that receives non-Project water through Federally financed or constructed facilities. The incremental fee calculation methodology will continue during the term of this Contract absent the promulgation of a contrary Reclamation-wide rule, regulation, or policy adopted after the Contractor has been afforded the opportunity to review and comment on the proposed rule, regulation, or policy. If such rule, regulation, or policy is adopted it shall supersede this provision.

(b) Water or water rights now owned or hereafter acquired by the Contractor, other than from the United States may be stored, conveyed and/or diverted through Project facilities, subject to the completion of appropriate environmental documentation, with the approval of the Contracting Officer and the execution of any contract determined by the Contracting Officer to be necessary, consistent with the following provisions:

(1) The Contractor may introduce non-Project water into Project facilities and deliver said water to lands within the Contractor's Service Area, including Ineligible Lands, subject to payment to the United States and/or to any applicable Operating Non-Federal Entity of an appropriate rate as determined by the applicable Project ratesetting policy, the RRA, and the Project

use power policy, if such Project use power policy is applicable, each as amended, modified, or superseded from time to time.

(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; or (iv) interfere with the physical maintenance of the Project facilities.

(3) Neither the United States nor the Operating Non-Federal Entity(ies) shall be responsible for control, care or distribution of the non-Project water before it is introduced into or after it is delivered from the Project facilities. The Contractor hereby releases and agrees to defend and indemnify the United States and the Operating Non-Federal Entity(ies), and their respective officers, agents, and employees, from any claim for damage to persons or property, direct or indirect, resulting from the act(s) of the Contractor, its officers, employees, agents, or assigns, in (i) extracting or diverting non-Project water from any source, or (ii) diverting such non-Project water into Project facilities.

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

(5) After Project purposes are met, as determined by the Contracting Officer, the United States and Project Contractors entitled to Project Water from Delta Division Facilities shall share priority to utilize the remaining capacity of the facilities declared to be available

770 by the Contracting Officer for conveyance and transportation of non-Project water prior to any such
771 remaining capacity being made available to non-Project contractors. Other Project Contractors shall
772 have a second priority to any remaining capacity of facilities declared to be available by the
773 Contracting Officer for conveyance and transportation of non-Project water prior to any such
774 remaining capacity being made available to non-Project contractors.

775 OPINIONS AND DETERMINATIONS

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

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

790 COORDINATION AND COOPERATION

791 19. (a) In order to further their mutual goals and objectives, the Contracting Officer
792 and the Contractor shall communicate, coordinate, and cooperate with each other; and with other
793 affected Project Contractors, in order to improve the operation and management of the Project. The
794 communication, coordination, and cooperation regarding operations and management shall include,
795 but not be limited to, any action which will or may materially affect the quantity or quality of Project
796 Water supply, the allocation of Project Water supply, and Project financial matters including, but not
797 limited to, budget issues. The communication, coordination, and cooperation provided for hereunder
798 shall extend to all provisions of this Contract. Each party shall retain exclusive decision making
799 authority for all actions, opinions, and determinations to be made by the respective party.

800 (b) Within 120 days following the effective date of this Contract, the Contractor,
801 other affected Project Contractors, and the Contracting Officer shall arrange to meet with interested
802 Project Contractors to develop a mutually agreeable, written Project-wide process, which may be
803 amended as necessary separate and apart from this Contract. The goal of this process shall be to
804 provide, to the extent practicable, the means of mutual communication and interaction regarding
805 significant decisions concerning Project operation and management on a real-time basis.

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

808 (1) The Contracting Officer will, at the request of the Contractor, assist in
809 the development of integrated resource management plans for the Contractor. Further, the

810 Contracting Officer will, as appropriate, seek authorizations for implementation of partnerships to
811 improve water supply, water quality, and reliability.

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

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

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

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

822 (d) Without limiting the contractual obligations of the Contracting Officer under
823 the other Articles of this Contract, nothing in this Article shall be construed to limit or constrain the
824 Contracting Officer's ability to communicate, coordinate, and cooperate with the Contractor or other
825 interested stakeholders or to make decisions in a timely fashion as needed to protect health, safety, or
826 the physical integrity of structures or facilities.

827 CHARGES FOR DELINQUENT PAYMENTS

828 20. (a) The Contractor shall be subject to interest, administrative and penalty charges
829 on delinquent installments or payments. When a payment is not received by the due date, the
830 Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date.
831 When a payment becomes 60 days delinquent, the Contractor shall pay an administrative charge to
832 cover additional costs of billing and processing the delinquent payment. When a payment is
833 delinquent 90 days or more, the Contractor shall pay an additional penalty charge of six percent per

834 year for each day the payment is delinquent beyond the due date. Further, the Contractor shall pay
835 any fees incurred for debt collection services associated with a delinquent payment.

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

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

844 EQUAL OPPORTUNITY

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

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

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

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

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

(e) The Contractor will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer 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 the said 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 said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

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

GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

901 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

902 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
903 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age
904 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as
905 well as with their respective implementing regulations and guidelines imposed by the U.S.
906 Department of the Interior and/or Bureau of Reclamation.

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

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

920 PRIVACY ACT COMPLIANCE

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

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

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

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

939 (e) The Contractor shall forward promptly to the System Manager each proposed
940 denial of access under 43 CFR 2.64; and each request for amendment of records filed under
941 43 CFR 2.71; notify the requester accordingly of such referral; and provide the System Manager with
942 information and records necessary to prepare an appropriate response to the requester. These
943 requirements do not apply to individuals seeking access to their own certification and reporting forms
944 filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy
945 Act as a basis for the request.

946 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

947 25. In addition to all other payments to be made by the Contractor pursuant to this
948 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and
949 detailed statement submitted by the Contracting Officer to the Contractor for such specific items of
950 direct cost incurred by the United States for work requested by the Contractor associated with this
951 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and
952 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in
953 writing in advance by the Contractor. This Article shall not apply to costs for routine contract
954 administration.

955 WATER CONSERVATION

956 26. (a) Prior to the delivery of water provided from or conveyed through Federally
957 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be
958 implementing an effective water conservation and efficiency program based on the Contractor's water
959 conservation plan that has been determined by the Contracting Officer to meet the conservation and
960 efficiency criteria for evaluating water conservation plans established under Federal law. The water

conservation and efficiency program shall contain definite water conservation objectives, appropriate economically feasible water conservation measures, and time schedules for meeting those objectives. Continued Project Water delivery pursuant to this 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 water conservation plan completed pursuant to subdivision (d) of this Article 26 have not yet been determined by the Contracting Officer to meet such criteria, due to 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 diligently works with the Contracting Officer to obtain such determination at the earliest practicable date, and thereafter the Contractor immediately begins implementing its water conservation and efficiency program in accordance with the time schedules therein.

(b) Should the amount of M&I Water delivered pursuant to subdivision (a) of Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall implement the Best Management Practices identified by the time frames issued by the California Urban Water Conservation Council for such M&I Water unless any such practice is determined by the Contracting Officer to be inappropriate for the Contractor.

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

(d) At five-year intervals, the Contractor shall revise its water conservation plan to reflect the then-current conservation and efficiency criteria for evaluating water conservation plans

established under Federal law and submit such revised water management plan to the Contracting Officer for review and evaluation. The Contracting Officer will then determine if the water conservation plan meets Reclamation's then-current conservation and efficiency criteria for evaluating water conservation plans established under Federal law.

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

EXISTING OR ACQUIRED WATER OR WATER RIGHTS

27. Except as specifically provided in Article 17 of this Contract, the provisions of this Contract shall not be applicable to or affect non-Project Water or water rights now owned or hereafter acquired by the Contractor or any user of such water within the Contractor's Service Area. Any such water shall not be considered Project Water under this Contract. In addition, 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 other contract pursuant to Federal Reclamation law.

OPERATION AND MAINTENANCE BY SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

28. (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 San Luis & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate agreement (8-07-20-X0354) between the United States and Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority. That separate agreement shall not interfere with or affect the rights or obligations of the Contractor or the United States hereunder.

1004 (b) The Contracting Officer has previously notified the Contractor in writing that
1005 the O&M of a portion of the Project facilities which serve the Contractor has been transferred to
1006 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, and therefore, the
1007 Contractor shall pay directly to Operating Non-Federal Entity San Luis & Delta-Mendota Water
1008 Authority, or to any successor approved by the Contracting Officer under the terms and conditions of
1009 the separate agreement between the United States and Operating Non-Federal Entity San Luis &
1010 Delta-Mendota Water Authority, described in subdivision (a) of this Article, all rates, charges, or
1011 assessments of any kind, including any assessment for reserve funds, which Operating Non-Federal
1012 Entity San Luis & Delta-Mendota Water Authority, or such successor determines, sets, or establishes
1013 for the O&M of the portion of the Project facilities operated and maintained by Operating
1014 Non-Federal Entity San Luis & Delta-Mendota Water Authority, or such successor. Such direct
1015 payments to Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or such
1016 successor shall not relieve the Contractor of its obligation to pay directly to the United States the
1017 Contractor's share of the Project Rates and Charges except to the extent the Operating Non-Federal
1018 Entity collects payments on behalf of the United States in accordance with subdivision (a) of this
1019 Article.

1020 (c) For so long as the O&M of any portion of the Project facilities serving the
1021 Contractor is performed by Operating Non-Federal Entity San Luis & Delta-Mendota Water
1022 Authority, or any successor thereto, the Contracting Officer shall adjust those components of the
1023 Rates for Water Delivered under this Contract representing the cost associated with the activity being

performed by Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or its successor.

(d) In the event the O&M of the Project facilities operated and maintained by Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority is re-assumed by the United States during the term of this Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid by the Contractor for Project Water under this Contract representing the O&M costs of the portion of such Project facilities which have been re-assumed. The Contractor shall, thereafter, in the absence of written notification from the Contracting Officer to the contrary, pay the Rates and Charges specified in the revised Exhibit "B" directly to the United States in compliance with Article 7 of this Contract.

OPERATION AND MAINTENANCE BY
CALIFORNIA DEPARTMENT OF WATER RESOURCES

28.1 (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 California Department of Water Resources, an Operating Non-Federal Entity by a separate agreement (14-06-200-9755) between the United States and Operating Non-Federal Entity California Department of Water Resources. This separate agreement shall not interfere with or affect the 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 Operating Non-Federal Entity California Department of Water Resources, and the Contractor shall

1046 pay directly to Operating Non-Federal Entity San Luis and Delta-Mendota Water Authority, or to any
1047 successor approved by the Contracting Officer under the terms and conditions of the separate
1048 agreement between the United States and Operating Non-Federal Entity San Luis and Delta-Mendota
1049 Water Authority, described in subdivision (a) of Article 28 of this Contract, all rates, charges, or
1050 assessments of any kind, including any assessment for reserve funds, which Operating Non-Federal
1051 Entity California Department of Water Resources, or such successor determines, sets, or establishes
1052 for the O&M conveyance and conveyance pumping portion of the Project facilities operated and
1053 maintained by Operating Non-Federal Entity California Department of Water Resources, or such
1054 successor. Such direct payments to Operating Non-Federal Entity San Luis and Delta-Mendota Water
1055 Authority, or such successor shall not relieve the Contractor of its obligation to pay directly to the
1056 United States the Contractor's share of the Project Rates and Charges except to the extent the
1057 Operating Non-Federal Entity San Luis and Delta-Mendota Water Authority collects payments on
1058 behalf of the United States in accordance with the separate agreement identified in subdivision (a) of
1059 Article 28 of this Contract.

1060 (c) For so long as the O&M of any portion of the Project facilities serving the
1061 Contractor is performed by Operating Non-Federal Entity California Department of Water Resources,
1062 or any successor thereto, the Contracting Officer shall adjust those components of the Rates for Water
1063 Delivered under this Contract representing the cost associated with the activity being performed by
1064 Operating Non-Federal Entity California Department of Water Resources, or its successor.

1065 (d) In the event the O&M of the Project facilities operated and maintained by
1066 Operating Non-Federal Entity California Department of Water Resources is re-assumed by the

1067 United States during the term of this Contract, the Contracting Officer shall so notify the Contractor,
1068 in writing, and present to the Contractor a revised Exhibit "B" which shall include the portion of the
1069 Rates and Charges, to be paid by the Contractor for Project Water under this Contract representing the
1070 O&M costs of the portion of such Project facilities which have been re-assumed. The Contractor
1071 shall, thereafter, in the absence of written notification from the Contracting Officer to the contrary,
1072 pay the Rates and Charges specified in the revised Exhibit "B" directly to the United States in
1073 compliance with Article 7 of this Contract.

1074 PUMPING PLANTS, POWER FOR PUMPING PLANTS, AND TRANSFER
1075 OF OPERATION AND MAINTENANCE TO THE CONTRACTOR

1076 28.2. (a) The United States shall furnish and install pumping plants and furnish the
1077 amount of Project power the Contracting Officer determines is necessary to deliver Project Water to
1078 the Contractor from the Delta-Mendota and San Luis Canals at the point(s) of delivery identified
1079 pursuant to subdivision (a) of Article 5 at heads and elevations sufficient to irrigate by gravity the
1080 areas within the Contractor's Service Area below 700 feet mean sea level elevation.

1081 (b) With advance approval of the Contracting Officer, the Contractor may, at its
1082 own expense, furnish and install pumping facilities, and related electrical equipment, to enable it to
1083 divert and deliver Project Water from the Delta-Mendota and San Luis Canals before the
1084 United States furnishes and installs all the pumping plants referred to in subdivision (a) of this
1085 Article. The United States shall furnish the amount of Project power needed to operate such pumping
1086 facilities; Provided, That the Contractor maintains an agreement with an entity to convey such power
1087 to such facilities, and the Contractor agrees to pay any and all charges assessed by that entity for such
1088 service.

1089 (c) The furnishing of power by the United States shall be in conformance with
1090 operating criteria, rules, and regulations, including the project use power policy, established by the
1091 Contracting Officer; Provided, That any such operating criteria, rules, and regulations, including the
1092 project use power policy, established by the Contracting Officer shall not excuse the United States
1093 from its obligation under subdivision (a) of this Article. Such operating criteria, rules, and
1094 regulations shall be developed in cooperation with the Contractor and shall be based on acceptable
1095 irrigation management practices and the power generation capacity available to the United States for
1096 the furnishing of Project water to the Contractor.

1097 (d) The Contractor hereby agrees to operate and maintain, at its own expense, all
1098 of the pumping facilities described in subdivisions (a) and (b) of this Article in such a manner that
1099 they remain in good and efficient condition; Provided, That the United States shall finance the costs
1100 of all major replacements that the Contracting Officer determines are needed.

1101 (e) The Contracting Officer or his representative shall at all times have access to
1102 and may inspect and investigate the pumping facilities for the purpose of ascertaining if they are
1103 being kept in safe and proper operating condition.

1104 (f) No change in any of the pumping facilities, which in the opinion of the
1105 Contracting Officer is substantial, shall be made by the Contractor without first obtaining the written
1106 consent of the Contracting Officer. The Contractor promptly shall make any and all repairs and
1107 replacements to the pumping facilities which in the opinion of the Contracting Officer are necessary.
1108 In the event the Contractor neglects or fails to make such repairs and replacements or in the event of
1109 operation by the United States of the pumping facilities pursuant to subdivision (g) of this Article, the

1110 United States may cause the repairs and replacements to be made and the cost thereof, as determined
1111 by the Contracting Officer, shall be paid by the Contractor to the United States upon notice of the
1112 payment due but not later than April 1 of the year following that during which such work was
1113 completed.

1114 (g) In the event the Contracting Officer determines that the Contractor has not
1115 properly cared for, operated, and maintained said pumping facilities or has failed to comply with any
1116 of the provisions of this Article, then at the election of the Contracting Officer the United States may
1117 take over from the Contractor the care and O&M of the pumping facilities by giving written notice to
1118 the Contractor of such election and the effective date thereof. Thereafter during the period of
1119 operation by the United States the Contractor shall pay to the United States in advance of the use of
1120 such pumping facilities the Contractor's share of the cost of O&M thereof and replacements
1121 therefore, as fixed in notices from the Contracting Officer. In the event such advances are inadequate
1122 to properly care for, operate, and maintain the pumping facilities to the end of any year, the
1123 Contracting Officer may give written notice of a supplemental O&M charge and the Contractor shall
1124 pay such amount on or before the date specified in said notice. Any amount of such advances
1125 remaining unexpended or unobligated, at the option of the Contractor, either shall be refunded or
1126 credited upon amounts to become due to the United States from the Contractor under the provisions
1127 of this Contract in subsequent years. The pumping facilities so taken back by the United States may
1128 be returned to the Contractor upon the furnishing to the Contractor of a written 90-day notice of
1129 intention to retransfer.

1130 (h) The Contractor shall hold the United States, its officers and employees
1131 harmless from every and all claim for damages to persons or property arising out of or connected with
1132 the Contractor's O&M of the pumping facilities referred to in this Article; Provided, That nothing
1133 contained herein shall be construed as an assumption of liability by the Contractor to parties other
1134 than the United States with respect to such matters.

1135 (i) During the time the pumping facilities are operated and maintained by the
1136 Contractor, in addition to all other payments to be made by the Contractor under this Contract, the
1137 Contractor shall pay to the United States pursuant to Article 25 hereof, costs incurred by the
1138 United States for work associated with the pumping facilities under this Contract normally charged by
1139 the United States to water users and properly and equitably chargeable to the Contractor.

1140 (j) The Contracting Officer may make review of any part or all of the pumping
1141 facilities being operated by the Contractor pursuant to this Article to assist the Contractor in assessing
1142 the condition of facilities and the adequacy of the maintenance program(s). The Contracting Officer
1143 shall prepare reports based on the examinations, inspections or audits, and furnish copies of such
1144 reports and any recommendations to the Contractor. The Contractor shall reimburse the actual cost
1145 incurred by the United States in making O&M examinations, inspections, and audits, and preparing
1146 associated reports and recommendations.

1147 (k) If deemed necessary by the Contracting Officer or requested by the Contractor,
1148 special inspections of the pumping facilities being operated by the Contractor and of the Contractor's
1149 books and records may be made to ascertain the extent of any O&M deficiencies, to determine the
1150 remedial measures required for their correction, and to assist the Contractor in solving specific

1151 problems. Any special inspection or audit shall, except in a case of emergency, be made after written
1152 notice to the Contractor and the actual cost thereof shall be paid by the Contractor to the
1153 United States.

1154 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1155 29. The expenditure or advance of any money or the performance of any obligation of the
1156 United States under this Contract shall be contingent upon appropriation or allotment of funds.
1157 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
1158 under this Contract. No liability shall accrue to the United States in case funds are not appropriated
1159 or allotted.

1160 BOOKS, RECORDS, AND REPORTS

1162 30. (a) The Contractor shall establish and maintain accounts and other books and
1163 records pertaining to administration of the terms and conditions of this Contract including: the
1164 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;
1165 the water users' land-use (crop census), land ownership, land-leasing and water use data; and other
1166 matters that the Contracting Officer may require. Reports thereon shall be furnished to the
1167 Contracting Officer in such form and on such date or dates as the Contracting Officer may require.
1168 Subject to applicable Federal laws and regulations, each party to this Contract shall have the right
1169 during office hours to examine and make copies of the other party's books and records relating to
1170 matters covered by this Contract.

1171 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,
1172 records, or other information shall be requested from the Contractor by the Contracting Officer unless
1173 such books, records, or information are reasonably related to the administration or performance of
1174 this Contract. Any such request shall allow the Contractor a reasonable period of time within which
1175 to provide the requested books, records, or information.

1176 (c) At such time as the Contractor provides information to the Contracting Officer
1177 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the
1178 Operating Non-Federal Entity(ies).

1179 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1180 31. (a) The provisions of this Contract shall apply to and bind the successors and
1181 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1182 therein shall be valid until approved in writing by the Contracting Officer.

1183 (b) The assignment of any right or interest in this Contract by either party shall not
1184 interfere with the rights or obligations of the other party to this Contract absent the written
1185 concurrence of said other party.

1186 (c) The Contracting Officer shall not unreasonably condition or withhold approval
1187 of any proposed assignment.

1188 SEVERABILITY

1189 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor
1190 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an
1191 association or other form of organization whose primary function is to represent parties to Project
1192 contracts, brings an action in a court of competent jurisdiction challenging the legality or
1193 enforceability of a provision included in this Contract and said person, entity, association, or
1194 organization obtains a final court decision holding that such provision is legally invalid or
1195 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the
1196 parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court
1197 decision identify by mutual agreement the provisions in this Contract which must be revised and
1198 (ii) within three months thereafter promptly agree on the appropriate revision(s). The time periods
1199 specified above may be extended by mutual agreement of the parties. Pending the completion of the
1200 actions designated above, to the extent it can do so without violating any applicable provisions of

law, the United States shall continue to make the 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 the final court decision.

RESOLUTION OF DISPUTES

33. Should any dispute arise concerning any provisions of this Contract, or the parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring any matter to the Department of Justice, the party shall provide to the other party 30 days' written notice of the intent to take such action; Provided, 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 30-day notice period, the Contractor and the Contracting Officer shall meet and confer in an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to waive or abridge any right or remedy that the Contractor or the United States may have.

OFFICIALS NOT TO BENEFIT

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

CHANGES IN CONTRACTOR'S SERVICE AREA

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

(b) Within 30 days of receipt of a request for such a change, the Contracting Officer will notify the Contractor of any additional information required by the Contracting Officer

1224 for processing said request, and both parties will meet to establish a mutually agreeable schedule for
1225 timely completion of the process. Such process will analyze whether the proposed change is likely to:
1226 (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of the
1227 Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-
1228 constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project
1229 Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply with
1230 the NEPA and the ESA. The Contractor will be responsible for all costs incurred by the Contracting
1231 Officer in this process, and such costs will be paid in accordance with Article 25 of this Contract.

1232 FEDERAL LAWS

1233 36. By entering into this Contract, the Contractor does not waive its rights to contest the
1234 validity or application in connection with the performance of the terms and conditions of this
1235 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the
1236 terms and conditions of this Contract unless and until relief from application of such Federal law or
1237 regulation to the implementing provision of the Contract is granted by a court of competent
1238 jurisdiction.

1239 NOTICES

1241 37. Any notice, demand, or request authorized or required by this Contract shall be
1242 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered
1243 to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, CA 93721, and on
1244 behalf of the United States, when mailed, postage prepaid, or delivered to the Board of Directors of
1245 the San Luis Water District, 1015 6th Street, Los Banos, California 93635. The designation of the
1246 addressee or the address may be changed by notice given in the same manner as provided in this
1247 Article for other notices.

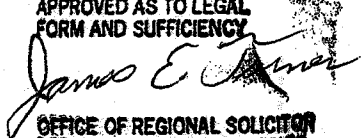
1248

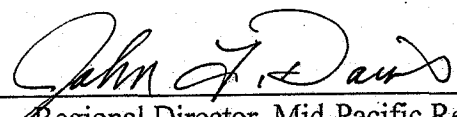
1249 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and
1250 year first above written.

1251
1252

THE UNITED STATES OF AMERICA

1253
1254
1255

APPROVED AS TO LEGAL
FORM AND SUFFICIENCY

OFFICE OF REGIONAL SOLICITOR
DEPARTMENT OF THE INTERIOR

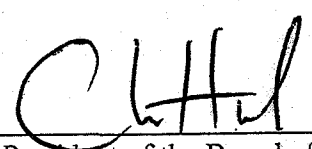
By: 
Regional Director, Mid-Pacific Region
Bureau of Reclamation

1256 (SEAL)

1257


SAN LUIS WATER DISTRICT

1258
1259

By: 
President of the Board of Directors

1260 Attest:

1261
1262

By: 
Secretary of the Board of Directors



Contractor's Service Area



District Boundary

San Luis Water District

Contract No. 14-06-200-7864A-IR1

Exhibit A

Date: June 25, 2008
File Name: N:\C\istricts\Contract\san_luis\san_luis_IR.mxd

0 2.5 5 Miles



805-202-19

EXHIBIT B
2009 Rates and Charges
(Placeholder)