

Irrigation and M&I
Contract No.
14-06-200-700-A-LTR1

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

LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
AND
JAMES IRRIGATION DISTRICT
PROVIDING FOR PROJECT WATER SERVICE
FROM DELTA DIVISION

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Exhibit A - Map of Contractor's Service Area

Exhibit B - Rates and Charges

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

4 LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
5 AND
6 JAMES IRRIGATION DISTRICT
7 PROVIDING FOR PROJECT WATER SERVICE
8 FROM DELTA DIVISION

9 THIS CONTRACT, made this 25th day of February, 2005, in pursuance
10 generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto,
11 including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and
12 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat.
13 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat.
14 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively
15 hereinafter referred to as Federal Reclamation law, between THE UNITED STATES OF AMERICA,
16 hereinafter referred to as the United States, and JAMES IRRIGATION DISTRICT, hereinafter
17 referred to as the Contractor, a public agency of the State of California, duly organized, existing, and
18 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 San
26 Joaquin River and their tributaries; and

27 [2nd] WHEREAS, the United States constructed the Delta-Mendota Canal and related
28 facilities, which will be used in part for the furnishing of water to the Contractor pursuant to the terms
29 of this Contract; and

30 [3rd] WHEREAS, the rights to Project Water were acquired by the United States pursuant to
31 California law for operation of the Project; and

32 [4th] WHEREAS, the Contractor and the United States entered into Contract
33 No. 14-06-200-700-A, dated December 23, 1963, which established terms for the delivery of 9,700
34 acre-feet of Schedule 2 water as a permanent adjustment and settlement of the Contractor's asserted
35 claims of rights to water in Fresno Slough, tributary to the San Joaquin River in fulfillment of such
36 rights; and

37 [5th] WHEREAS, Schedule 2 water is not the subject of this Contract and will continue to
38 be delivered and administered under the terms and conditions of Contract No. 14-06-200-700-A; and

39 [5.1] WHEREAS, Contract No. 14-06-200-700-A also established the terms for the delivery
40 of 35,300 acre-feet of supplemental water, hereinafter referred to as Project Water, to the Contractor
41 from Delta Division facilities from December 23, 1963, through December 23, 2003; and

42 [5.2] WHEREAS, the Contractor and the United States have pursuant to subsection
43 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into
44 interim renewal contract(s) identified as Contract No(s). 14-06-200-700-A-IR1 and 14-06-200-700-
45 A-IR2, the current of which is hereinafter referred to as the Existing Contract, which provided for the
46 delivery of Project Water to the Contractor from March 1, 2004, through February 28, 2006; and

47 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of the
48 Existing Contract following completion of appropriate environmental documentation, including a
49 programmatic environmental impact statement (PEIS) pursuant to the National Environmental Policy
50 Act (NEPA) analyzing the direct and indirect impacts and benefits of implementing the CVPIA and
51 the potential renewal of all existing contracts for Project Water; and

52 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
53 environmental review necessary to provide for long-term renewal of the terms and conditions for
54 Project Water service under the Existing Contract; and

55 [8th] WHEREAS, the Contractor has requested a long-term renewal contract for Project
56 Water service, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws
57 of the State of California; and

58 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all of
59 its obligations under the Existing Contract; and

60 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting
61 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and
62 beneficial use and/or has demonstrated projected future demand for water use such that the Contractor
63 has the capability and expects to utilize fully for reasonable and beneficial use the quantity of Project
64 Water to be made available to it pursuant to this Contract; and

65 [11th] WHEREAS, water obtained from the Project has been relied upon by urban and
66 agricultural areas within California for more than 50 years, and is considered by the Contractor as an
67 essential portion of its water supply; and

68 [12th] WHEREAS, the economies of regions within the Project, including the Contractor's,
69 depend upon the continued availability of water, including water service from the Project; and

70 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships
71 to pursue measures to improve water supply, water quality, and reliability of the Project for all Project
72 purposes; and

73 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to
74 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment of
75 the Project as required by law; to guard reasonably against Project Water shortages; to achieve a
76 reasonable balance among competing demands for use of Project Water; and to comply with all
77 applicable environmental statutes, all consistent with the legal obligations of the United States
78 relative to the Project; and

79 [15th] WHEREAS, the parties intend by this Contract to develop a more cooperative
80 relationship in order to achieve their mutual goals; and

81 [15.1] WHEREAS, the Contractor has utilized or may utilize transfers, contract assignments,
82 rescheduling and conveyance of Project Water and non-Project water under this Contract as tools to
83 minimize the impacts of Conditions of Shortage and to maximize the beneficial use of water; and

84 [15.2] WHEREAS, the parties desire and intend that this Contract not provide a disincentive
85 to the Contractor in continuing to carry out the beneficial activities set out in the Explanatory Recital
86 immediately above; and

87 [16th] WHEREAS, the United States and the Contractor are willing to enter into this
88 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

91 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

123 (j) "Full Cost Rate" shall mean an annual rate, as determined by the Contracting
124 Officer that shall amortize the expenditures for construction properly allocable to the Project
125 irrigation or M&I functions, as appropriate, of facilities in service including all O&M deficits funded,
126 less payments, over such periods as may be required under Federal Reclamation law, or applicable
127 contract provisions. Interest will accrue on both the construction expenditures and funded O&M
128 deficits from October 12, 1982, on costs outstanding at that date, or from the date incurred in the case
129 of costs arising subsequent to October 12, 1982, and shall be calculated in accordance with
130 subsections 202(3)(B) and (3)(C) of the RRA. The Full Cost Rate includes actual operation,
131 maintenance, and replacement costs consistent with Section 426.2 of the Rules and Regulations for
132 the RRA;

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

135 (l) "Irrigation Full Cost Water Rate" shall mean the Full Cost Rate applicable to
136 the delivery of Irrigation Water;

137 (m) "Irrigation Water" shall mean Project Water that is used primarily in the
138 production of agricultural crops or livestock, including domestic use incidental thereto, and watering
139 of livestock;

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

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

148 (p) "M&I Full Cost Water Rate" shall mean the Full Cost Rate applicable
149 to the delivery of M&I Water;

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

153 (r) "Operating Non-Federal Entity" shall mean the entity(ies), its (their) successors
154 or assigns, which has (have) the obligation to operate and maintain all or a portion of the Delta
155 Division Facilities pursuant to a written agreement(s) with the United States. When this Contract was
156 entered into, the Operating Non-Federal Entity(ies) was (were) the San Luis & Delta-Mendota Water
157 Authority;

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

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

162 (u) "Project Water" shall mean all water that is developed, diverted, stored, or
163 delivered by the Secretary in accordance with the statutes authorizing the Project and in accordance
164 with the terms and conditions of water rights acquired pursuant to California law; however, Schedule
165 2 Water shall not be considered Project Water for purposes of this Contract;

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

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

172 (w.1) "Schedule 2 Water" shall mean that water as so defined under Contract
173 No. 14-06-200-700-A with the United States, which will continue to be delivered and administered
174 under said contract;

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

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

Federal and State law, this Contract, insofar as it pertains to the furnishing of Irrigation Water to the Contractor, shall be renewed for a period of 25 years.

(2) The conditions which must be met for this Contract to be renewed are:

(i) the Contractor has prepared a water conservation plan that has been determined by the Contracting Officer in accordance with Article 26 of this Contract to meet the conservation and efficiency criteria for evaluating such plans established under Federal law; (ii) the Contractor is implementing an effective water conservation and efficiency program based on the Contractor's water conservation plan as required by Article 26 of this Contract; (iii) the Contractor is operating and maintaining all water measuring devices and implementing all water measurement methods as approved by the Contracting Officer pursuant to Article 6 of this Contract; (iv) the Contractor has reasonably and beneficially used the Project Water supplies made available to it and, based on projected demands, is reasonably anticipated and expects to fully utilize for reasonable and beneficial use the quantity of Project Water to be made available to it pursuant to such renewal; (v) the Contractor is complying with all terms and conditions of this Contract; and (vi) the Contractor has the physical and legal ability to deliver Project Water.

198 (3) The terms and conditions of the renewal contract described in
199 subdivision (b)(1) of this Article and any subsequent renewal contracts shall be developed consistent
200 with the parties' respective legal rights and obligations, and in consideration of all relevant facts and
201 circumstances, as those circumstances exist at the time of renewal, including, without limitation, the
202 Contractor's need for continued delivery of Project Water; environmental conditions affected by
203 implementation of the Contract to be renewed, and specifically changes in those conditions that

204 occurred during the life of the Contract to be renewed; the Secretary's progress toward achieving the
205 purposes of the CVPIA as set out in Section 3402 and in implementing the specific provisions of the
206 CVPIA; and current and anticipated economic circumstances of the region served by the Contractor.

207 (c) This Contract, insofar as it pertains to the furnishing of M&I Water to the
208 Contractor, shall be renewed for successive periods of up to 40 years each, which periods shall be
209 consistent with the then-existing Reclamation-wide policy, under terms and conditions mutually
210 agreeable to the parties and consistent with Federal and State law. The Contractor shall be afforded
211 the opportunity to comment to the Contracting Officer on the proposed adoption and application of
212 any revised policy applicable to the delivery of M&I Water that would limit the term of any
213 subsequent renewal contract with the Contractor for the furnishing of M&I Water to less than 40
214 years.

215 (d) The Contracting Officer shall make a determination ten years after the date of
216 execution of this Contract, and every five years thereafter during the term of this Contract, of whether
217 a conversion of the relevant portion of this Contract to a contract under subsection 9(d) of the
218 Reclamation Project Act of 1939 can be accomplished pursuant to the Act of July 2, 1956 (70 Stat
219 483). The Contracting Officer shall also make a determination ten years after the date of execution of
220 this Contract and every five years thereafter during the term of this Contract of whether a conversion
221 of the relevant portion of this Contract to a contract under subsection 9(c)(1) of the Reclamation
222 Project Act of 1939 can be accomplished. Notwithstanding any provision of this Contract, the
223 Contractor reserves and shall have all rights and benefits under the Act of July 2, 1956 (70 Stat. 483).
224 The Contracting Officer anticipates that during the term of this Contract, all authorized Project

225 construction expected to occur will have occurred, and on that basis the Contracting Officer agrees
226 upon such completion to allocate all costs that are properly assignable to the Contractor, and agrees
227 further that, at any time after such allocation is made, and subject to satisfaction of the condition set
228 out in this subdivision, this Contract shall, at the request of the Contractor, be converted to a contract
229 under subsection 9(d) or 9(c)(1), whichever is applicable, of the Reclamation Project Act of 1939,
230 subject to applicable Federal law and under stated terms and conditions mutually agreeable to the
231 Contractor and the Contracting Officer. A condition for such conversion to occur shall be a
232 determination by the Contracting Officer that, account being taken of the amount credited to return by
233 the Contractor as provided for under Federal Reclamation law, the remaining amount of construction
234 costs assignable for ultimate return by the Contractor can probably be repaid to the United States
235 within the term of a contract under subsection 9(d) or 9(c)(1), whichever is applicable. If the
236 remaining amount of costs that are properly assignable to the Contractor cannot be determined during
237 the term of this Contract, the Contracting Officer shall notify the Contractor, and provide the
238 reason(s) why such a determination could not be made. Further, the Contracting Officer shall make
239 such a determination as soon thereafter as possible so as to permit, upon request of the Contractor and
240 satisfaction of the conditions set out above, conversion to a contract under subsection 9(d) or 9(c)(1),
241 whichever is applicable. In the event such determination of costs has not been made at a time which
242 allows conversion of this Contract during the term of this Contract or the Contractor has not
243 requested conversion of this Contract within such term, the parties shall incorporate in any
244 subsequent renewal contract as described in subdivision (b) of this Article a provision that carries
245 forth in substantially identical terms the provisions of this subdivision.

246 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

247 3. (a) During each Year, consistent with all applicable State water rights, permits,
248 and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of this
249 Contract, the Contracting Officer shall make available for delivery to the Contractor 35,300 acre-feet
250 of Project Water for irrigation and M&I purposes. Water Delivered to the Contractor in accordance
251 with this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of
252 this Contract. Schedule 2 water shall continue to be delivered to the Contractor at no cost pursuant
253 to Contract No. 14-06-200-700-A, dated December 23, 1963, and shall not be subject to the
254 provisions of this Contract, and said Contract No. 14-06-200-700-A shall be in full force and effect
255 insofar as it pertains to the furnishing of Schedule 2 water.

256 (b) Because the capacity of the Project to deliver Project Water has been
257 constrained in recent years and may be constrained in the future due to many factors including
258 hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractor
259 actually receiving the amount of Project Water set out in subdivision (a) of this Article in any given
260 Year is uncertain. The Contracting Officer's modeling referenced in the PEIS projected that the
261 Contract Total set forth in this Contract will not be available to the Contractor in many years. During
262 the most recent five years, the Recent Historic Average of Water Made Available to the Contractor
263 was 23,227 acre-feet. Nothing in subdivision (b) of this Article shall affect the rights and obligations
264 of the parties under any provision of this Contract.

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

267 (c.1) In the event any Project Contractor (other than a Cross Valley Contractor) that
268 receives Project Water through the Delta Division Facilities obtains a contractual agreement that the
269 Contracting Officer shall make Project Water available at a point or points of delivery in or north of
270 the Delta, at the request of the Contractor and upon completion of any required environmental
271 documentation, this Contract shall be amended to provide for deliveries in or north of the Delta on
272 mutually agreeable terms. Such amendments to the Contract shall be limited solely to those changes
273 made necessary by the addition of such alternate points of delivery in or north of the Delta; Provided,
274 That the Contracting Officer's use of the Harvey O. Banks Pumping Plant to deliver Project Water
275 does not trigger this right of amendment.

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

288 Contractor's Service Area may be permitted upon written approval of the Contracting Officer, which
289 approval will be based upon environmental documentation, Project Water rights, and Project
290 operational concerns. The Contracting Officer will address such concerns in regulations, policies, or
291 guidelines.

292 (e) The Contractor shall comply with requirements applicable to the Contractor in
293 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract
294 undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as amended, that are
295 within the Contractor's legal authority to implement. The Contract No(s). 14-06-200-700-A, 14-06-
296 200-700-A-IR1, and 14-06-200-700-A-IR2, which evidence in excess of 41 years of diversions for
297 irrigation and/or M&I purposes of the quantities of water provided in subdivision (a) of Article 3 of
298 this Contract, will be considered in developing an appropriate baseline for biological assessment(s)
299 prepared pursuant to the ESA, and any other needed environmental review. Nothing herein shall be
300 construed to prevent the Contractor from challenging or seeking judicial relief in a court of competent
301 jurisdiction with respect to any biological opinion or other environmental documentation referred to in
302 this Article.

303 (f) Following the declaration of Water Made Available under Article 4 of this
304 Contract, the Contracting Officer will make a determination whether Project Water, or other water
305 available to the Project, can be made available to the Contractor in addition to the Contract Total under
306 this Article during the Year without adversely impacting other Project Contractors. At the request of
307 the Contractor, the Contracting Officer will consult with the Contractor prior to making such a
308 determination. If the Contracting Officer determines that Project Water, or other water available to the

309 Project, can be made available to the Contractor, the Contracting Officer will announce the availability
310 of such water and shall so notify the Contractor as soon as practical. The Contracting Officer will
311 thereafter meet with the Contractor and other Project Contractors capable of taking such water to
312 determine the most equitable and efficient allocation of such water. If the Contractor requests the
313 delivery of any quantity of such water, the Contracting Officer shall make such water available to the
314 Contractor in accordance with applicable statutes, regulations, guidelines, and policies. Subject to
315 existing long-term contractual commitments, water rights and operational constraints, long-term
316 Project Contractors shall have a first right to acquire such water, including Project Water made
317 available pursuant to Section 215 of the RRA.

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

324 (h) The Contractor's right pursuant to Federal Reclamation law and applicable
325 State law to the reasonable and beneficial use of Water Delivered pursuant to this Contract during the
326 term thereof and any subsequent renewal contracts, as described in Article 2 of this Contract, during
327 the terms thereof shall not be disturbed so long as the Contractor shall fulfill all of its obligations
328 under this Contract and any renewals thereof. Nothing in the preceding sentence shall affect the

329 Contracting Officer's ability to impose shortages under Article 11 or subdivision (b) of Article 12 of
330 this Contract or applicable provisions of any subsequent renewal contracts.

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

335 (j) The Contracting Officer shall make reasonable efforts to protect the water
336 rights necessary for the Project and to provide the water available under this Contract. The
337 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the
338 extent permitted by law, in administrative proceedings related to the Project Water rights; Provided,
339 That the Contracting Officer retains the right to object to the substance of the Contractor's position in
340 such a proceeding; Provided, further, That in such proceedings the Contracting Officer shall
341 recognize the Contractor has a legal right under the terms of this Contract to use Project Water.

342 TIME FOR DELIVERY OF WATER

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

350 Contractor. Concurrently with the declaration of the Water Made Available, the Contracting Officer
351 shall provide the Contractor with the updated Recent Historic Average.

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

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

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

366 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

367 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this
368 Contract shall be delivered to the Contractor from the Mendota Pool and any additional point or
369 points of delivery either on Project facilities or another location or locations mutually agreed to in
370 writing by the Contracting Officer and the Contractor.

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

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

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

390 (e) Absent a separate contrary written agreement with the Contractor, neither the
391 Contracting Officer nor any Operating Non-Federal Entity(ies) shall be responsible for the control,

392 carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to this
393 Contract beyond the point or points of delivery established pursuant to subdivision (a) of this Article.
394 The Contractor shall indemnify the United States, its officers, employees, agents, and assigns on
395 account of damage or claim of damage of any nature whatsoever for which there is legal
396 responsibility, including property damage, personal injury, or death arising out of or connected with
397 the control, carriage, handling, use, disposal, or distribution of such Water Delivered beyond such
398 point or points of delivery except for any damage or claim arising out of: (i) acts or omissions of the
399 Contracting Officer or any of its officers, employees, agents, and assigns, including the Operating
400 Non-Federal Entity(ies), with the intent of creating the situation resulting in any damage or claim; (ii)
401 willful misconduct of the Contracting Officer or any of its officers, employees, agents, and assigns,
402 including the Operating Non-Federal Entity(ies); (iii) negligence of the Contracting Officer or any of
403 its officers, employees, agents, and assigns including the Operating Non-Federal Entity(ies); or (iv) a
404 malfunction of facilities owned and/or operated by the United States or the Operating Non-Federal
405 Entity(ies).

406 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

407 6. (a) The Contractor has established a measuring program satisfactory to the
408 Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation
409 purposes within the Contractor's Service Area is measured at each agricultural turnout and such water
410 delivered for M&I purposes is measured at each M&I service connection. The water measuring
411 devices or water measuring methods of comparable effectiveness must be acceptable to the
412 Contracting Officer. The Contractor shall be responsible for installing, operating, and maintaining

413 and repairing all such measuring devices and implementing all such water measuring methods at no
414 cost to the United States. The Contractor shall use the information obtained from such water
415 measuring devices or water measuring methods to ensure its proper management of the water, to bill
416 water users for water delivered by the Contractor; and, if applicable, to record water delivered for
417 M&I purposes by customer class as defined in the Contractor's water conservation plan provided for
418 in Article 26 of this Contract. Nothing herein contained, however, shall preclude the Contractor from
419 establishing and collecting any charges, assessments, or other revenues authorized by California law.
420 The Contractor shall include a summary of all its annual surface water deliveries in the annual report
421 described in subdivision (c) of Article 26.

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

434 following the Contracting Officer's response, negotiate in good faith the earliest practicable date by
435 which the Contractor shall modify said measuring devices and/or measuring methods as required by
436 the Contracting Officer to ensure compliance with subdivision (a) of this Article.

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

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

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

446 RATES AND METHOD OF PAYMENT FOR WATER

447 7. (a) The Contractor shall pay the United States as provided in this Article for all
448 Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance
449 with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's
450 then-existing ratesetting policy for M&I Water, which ratesetting policies shall be amended,
451 modified, or superseded only through a public notice and comment procedure; (ii) applicable Federal
452 Reclamation law and associated rules and regulations, or policies; and (iii) other applicable
453 provisions of this Contract. Payments shall be made by cash transaction, electronic funds transfer, or
454 any other mechanism as may be agreed to in writing by the Contractor and the Contracting Officer.

455 The Rates, Charges, and Tiered Pricing Component applicable to the Contractor upon execution of
456 this Contract are set forth in Exhibit "B," as may be revised annually.

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

459 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
460 provide the Contractor an estimate of the Charges for Project Water that will be applied to the period
461 October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and
462 the basis for such estimate. The Contractor shall be allowed not less than two months to review and
463 comment on such estimates. On or before September 15 of each Calendar Year, the Contracting
464 Officer shall notify the Contractor in writing of the Charges to be in effect during the period
465 October 1 of the current Calendar Year, through September 30, of the following Calendar Year, and
466 such notification shall revise Exhibit "B."

467 (2) Prior to October 1 of each Calendar Year, the Contracting Officer shall
468 make available to the Contractor an estimate of the Rates and Tiered Pricing Component for Project
469 Water for the following Year and the computations and cost allocations upon which those Rates are
470 based. The Contractor shall be allowed not less than two months to review and comment on such
471 computations and cost allocations. By December 31 of each Calendar Year, the Contracting Officer
472 shall provide the Contractor with the final Rates and Tiered Pricing Component to be in effect for the
473 upcoming Year, and such notification shall revise Exhibit "B."

474 (c) At the time the Contractor submits the initial schedule for the delivery of
475 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor

476 shall make an advance payment to the United States equal to the total amount payable pursuant to the
477 applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be
478 delivered pursuant to this Contract during the first two calendar months of the Year. Before the end
479 of the first month and before the end of each calendar month thereafter, the Contractor shall make an
480 advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for the
481 Water Scheduled to be delivered pursuant to this Contract during the second month immediately
482 following. Adjustments between advance payments for Water Scheduled and payments at Rates due
483 for Water Delivered shall be made before the end of the following month; Provided, That any revised
484 schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the
485 amount of Water Delivered pursuant to this Contract during any month shall be accompanied with
486 appropriate advance payment, at the Rates then in effect, to assure that Project Water is not delivered
487 to the Contractor in advance of such payment. In any month in which the quantity of Water Delivered
488 to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid for by the
489 Contractor, no additional Project Water shall be delivered to the Contractor unless and until an
490 advance payment at the Rates then in effect for such additional Project Water is made. Final
491 adjustment between the advance payments for the Water Scheduled and payments for the quantities
492 of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable
493 but no later than April 30th of the following Year, or 60 days after the delivery of Project Water
494 rescheduled under subdivision (g) of Article 3 of this Contract if such water is not delivered by the
495 last day of February.

496 (d) The Contractor shall also make a payment in addition to the Rate(s) in
497 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
498 appropriate Tiered Pricing Component then in effect, before the end of the month following the
499 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered
500 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be consistent
501 with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery
502 report for the subject month prepared by the Operating Non-Federal Entity(ies) or, if there is no
503 Operating Non-Federal Entity, by the Contracting Officer. The water delivery report shall be deemed
504 a bill for the payment of Charges and the applicable Tiered Pricing Component for Water Delivered.
505 Adjustment for overpayment or underpayment of Charges shall be made through the adjustment of
506 payments due to the United States for Charges for the next month. Any amount to be paid for past
507 due payment of Charges and the Tiered Pricing Component shall be computed pursuant to Article 20
508 of this Contract.

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

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

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

521 (h) The Contracting Officer shall keep its accounts pertaining to the administration
522 of the financial terms and conditions of its long-term contracts, in accordance with applicable Federal
523 standards, so as to reflect the application of Project costs and revenues. The Contracting Officer
524 shall, each Year upon request of the Contractor, provide to the Contractor a detailed accounting of all
525 Project and Contractor expense allocations, the disposition of all Project and Contractor revenues,
526 and a summary of all water delivery information. The Contracting Officer and the Contractor shall
527 enter into good faith negotiations to resolve any discrepancies or disputes relating to accountings,
528 reports, or information.

529 (i) The parties acknowledge and agree that the efficient administration of this
530 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,
531 policies, and procedures used for establishing Rates, Charges, and Tiered Pricing Component, and/or
532 for making and allocating payments, other than those set forth in this Article may be in the mutual
533 best interest of the parties, it is expressly agreed that the parties may enter into agreements to modify
534 the mechanisms, policies, and procedures for any of those purposes while this Contract is in effect
535 without amending this Contract.

536 (j) (1) Beginning at such time as deliveries of Project Water in a Year exceed
537 80 percent of the Contract Total, then before the end of the month following the month of delivery the

538 Contractor shall make an additional payment to the United States equal to the applicable Tiered
539 Pricing Component. The Tiered Pricing Component for the amount of Water Delivered in excess of
540 80 percent of the Contract Total, but less than or equal to 90 percent of the Contract Total, shall equal
541 one-half of the difference between the Rate established under subdivision (a) of this Article and the
542 Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable. The Tiered
543 Pricing Component for the amount of Water Delivered which exceeds 90 percent of the Contract
544 Total shall equal the difference between (i) the Rate established under subdivision (a) of this Article
545 and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable.
546 For all Water Delivered pursuant to subdivision (a) of Article 3 of this Contract which is in excess of
547 80 percent of the Contract Total, this increment shall be deemed to be divided between Irrigation
548 Water and M&I Water in the same proportion as actual deliveries of each bear to the cumulative total
549 Water Delivered.

550 (2) Subject to the Contracting Officer's written approval, the Contractor
551 may request and receive an exemption from such Tiered Pricing Component for Project Water
552 delivered to produce a crop which the Contracting Officer determines will provide significant and
553 quantifiable habitat values for waterfowl in fields where the water is used and the crops are produced;
554 Provided, That the exemption from the Tiered Pricing Component for Irrigation Water shall apply
555 only if such habitat values can be assured consistent with the purposes of the CVPIA through binding
556 agreements executed with or approved by the Contracting Officer prior to use of such water.

557 (3) For purposes of determining the applicability of the Tiered Pricing
558 Component pursuant to this Article, Water Delivered shall include Project Water that the Contractor

559 transfers to others but shall not include Project Water transferred to the Contractor, nor shall it
560 include the additional water provided to the Contractor under the provisions of subdivision (f) of
561 Article 3 of this Contract.

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

570 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA,
571 the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates, in
572 accordance with the applicable Project ratesetting policy, adjusted upward or downward to reflect the
573 changed costs, if any, incurred by the Contracting Officer in the delivery of the transferred Project
574 Water to the transferee's point of delivery in accordance with the then applicable Project ratesetting
575 policy. If the Contractor is receiving lower Rates and Charges because of inability to pay and is
576 transferring Project Water to another entity whose Rates and Charges are not adjusted due to inability
577 to pay, the Rates and Charges for transferred Project Water shall not be adjusted to reflect the
578 Contractor's inability to pay.

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

581 (n) Omitted.

582 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

583 8. The Contractor and the Contracting Officer concur that, as of the effective date of this
584 Contract, the Contractor has no non-interest bearing O&M deficits and shall have no further liability
585 therefor.

586 SALES, TRANSFERS, OR EXCHANGES OF WATER

587 9. (a) The right to receive Project Water provided for in this Contract may be sold,
588 transferred, or exchanged to others for reasonable and beneficial uses within the State of California if
589 such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable
590 guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this
591 Contract may take place without the prior written approval of the Contracting Officer, except as
592 provided for in subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be
593 approved absent all appropriate environmental documentation, including but not limited to,
594 documents prepared pursuant to the NEPA and ESA. Such environmental documentation should
595 include, as appropriate, an analysis of groundwater impacts and economic and social effects,
596 including environmental justice, of the proposed water transfers on both the transferor and transferee.

597 (b) In order to facilitate efficient water management by means of water transfers of
598 the type historically carried out among Project Contractors located within the same geographical area
599 and to allow the Contractor to participate in an accelerated water transfer program during the term of

600 this Contract, the Contracting Officer shall prepare, as appropriate, all necessary environmental
601 documentation, including but not limited to documents prepared pursuant to NEPA and ESA,
602 analyzing annual transfers within such geographical areas and the Contracting Officer shall determine
603 whether such transfers comply with applicable law. Following the completion of the environmental
604 documentation, such transfers addressed in such documentation shall be conducted with advance
605 notice to the Contracting Officer, but shall not require prior written approval by the Contracting
606 Officer. Such environmental documentation and the Contracting Officer's compliance determination
607 shall be reviewed every five years and updated, as necessary, prior to the expiration of the then
608 existing five-year period. All subsequent environmental documentation shall include an alternative to
609 evaluate not less than the quantity of Project Water historically transferred within the same
610 geographical area.

611 (c) For a water transfer to qualify under subdivision (b) of this Article, such water
612 transfer must: (i) be for irrigation purposes for lands irrigated within the previous three years, for
613 M&I use, groundwater recharge, groundwater banking, or similar groundwater activities, surface
614 water storage, or fish and wildlife resources; not lead to land conversion; and be delivered to
615 established cropland, wildlife refuges, groundwater basins or M&I use; (ii) occur within a single
616 Year; (iii) occur between a willing seller and a willing buyer; (iv) convey water through existing
617 facilities with no new construction or modifications to facilities and be between existing Project
618 Contractors and/or the Contractor and the United States, Department of the Interior; and (v) comply
619 with all applicable Federal, State, and local or tribal laws and requirements imposed for protection of
620 the environment and Indian Trust Assets, as defined under Federal law.

621 APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

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

638 TEMPORARY REDUCTIONS--RETURN FLOWS

639 11. (a) Subject to: (i) the authorized purposes and priorities of the Project and the
640 requirements of Federal law and (ii) the obligations of the United States under existing contracts, or
641 renewals thereof, providing for water deliveries from the Project, the Contracting Officer shall make

642 all reasonable efforts to optimize Project Water deliveries to the Contractor as provided in this
643 Contract.

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

655 (c) The United States reserves the right to all seepage and return flow water
656 derived from Water Delivered to the Contractor hereunder which escapes or is discharged beyond the
657 Contractor's Service Area; Provided, That this shall not be construed as claiming for the United States
658 any right to seepage or return flow being put to reasonable and beneficial use pursuant to this
659 Contract within the Contractor's Service Area by the Contractor or those claiming by, through, or
660 under the Contractor.

661 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

672 (c) In any Year in which there may occur a Condition of Shortage for any of the
673 reasons specified in subdivision (b) of this Article, and subject to subdivision (d) of this Article, the
674 Contracting Officer will first allocate the available Project Water consistent with the draft CVP M&I
675 Water Shortage Policy on the effective date of this Contract as finally adopted after environmental
676 review for determining the amount of Project Water available for delivery to the Project Contractors.
677 Subject to the foregoing allocation, in any year in which there may occur a Condition of Shortage, the
678 Contracting Officer shall then apportion Project Water among the Contractor and others entitled to
679 Project Water from Delta Division Facilities under long-term water service or repayment contracts (or
680 renewals thereof or binding commitments therefor) in force on February 28, 2005, as follows:

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

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

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

694 (4) The available supply shall be multiplied by the Contractor's
695 proportionate share and the result shall be the quantity of Project Water made available by the United
696 States to the Contractor for the relevant Year in accordance with the schedule developed by the
697 Contracting Officer under subdivision (c)(1) of this Article, but in no event shall such amount exceed
698 the Contract Total. In the event the Contracting Officer subsequently determines that the Contracting
699 Officer can increase or needs to decrease the available supply for delivery from Delta Division
700 Facilities to long-term water service and repayment Contractors during the relevant Year, such

701 additions or reductions to the available supply shall be apportioned consistent with subparagraphs (1)
702 through (4), inclusive.

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

713 UNAVOIDABLE GROUNDWATER PERCOLATION

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

718 RULES AND REGULATIONS

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

723

WATER AND AIR POLLUTION CONTROL

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

727

QUALITY OF WATER

728 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to
729 this Contract shall be operated and maintained to enable the United States to deliver Project Water to
730 the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act
731 of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat.
732 3050) or other existing Federal laws. The United States is under no obligation to construct or furnish
733 water treatment facilities to maintain or to improve the quality of Water Delivered to the Contractor
734 pursuant to this Contract. The United States does not warrant the quality of Water Delivered to the
735 Contractor pursuant to this Contract. None of the foregoing affects or modifies the obligations of the
736 United States under Contract No. 14-06-200-700-A, dated December 23, 1963, with respect to
737 Schedule 2 water, including but not limited to, Article 10 of said contract.

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

744
745

WATER ACQUIRED BY THE CONTRACTOR OTHER
THAN FROM THE UNITED STATES

746 17. (a) Water or water rights now owned or hereafter acquired by the Contractor other
747 than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may
748 be simultaneously transported through the same distribution facilities of the Contractor subject to the
749 following: (i) if the facilities utilized for commingling Irrigation Water and non-Project water were
750 constructed without funds made available pursuant to Federal Reclamation law, the provisions of
751 Federal Reclamation law will be applicable only to the Landholders of lands which receive Irrigation
752 Water; (ii) the eligibility of land to receive Irrigation Water must be established through the
753 certification requirements as specified in the Acreage Limitation Rules and Regulations (43 CFR Part
754 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be
755 established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity
756 necessary to irrigate such Eligible Lands. The Contractor and the Contracting Officer concur that, as
757 of the effective date of this Contract, the Contractor has a distribution system that was constructed
758 without the use of Federally financed funds.

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

764 (1) The Contractor may introduce non-Project water into Project facilities
765 and deliver said water to lands within the Contractor's Service Area, including Ineligible Lands,
766 subject to payment to the United States and/or to any applicable Operating Non-Federal Entity of an
767 appropriate rate as determined by the applicable Project ratesetting policy, the RRA, and the Project
768 use power policy, if such Project use power policy is applicable, each as amended, modified, or
769 superseded from time to time.

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

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

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

786 (5) After Project purposes are met, as determined by the Contracting
787 Officer, the United States and Project Contractors entitled to Project Water from Delta Division
788 Facilities shall share priority to utilize the remaining capacity of the facilities declared to be available
789 by the Contracting Officer for conveyance and transportation of non-Project water prior to any such
790 remaining capacity being made available to non-Project contractors. Other Project Contractors shall
791 have a second priority to any remaining capacity of facilities declared to be available by the
792 Contracting Officer for conveyance and transportation of non-Project water prior to any such
793 remaining capacity being made available to non-Project contractors.

794 OPINIONS AND DETERMINATIONS

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

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

809 COORDINATION AND COOPERATION

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

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

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

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

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

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

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

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

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

846

CHARGES FOR DELINQUENT PAYMENTS

847 20. (a) The Contractor shall be subject to interest, administrative and penalty charges
848 on delinquent installments or payments. When a payment is not received by the due date, the
849 Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date.
850 When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative
851 charge to cover additional costs of billing and processing the delinquent payment. When a payment is
852 delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six (6%)
853 percent per year for each day the payment is delinquent beyond the due date. Further, the Contractor
854 shall pay any fees incurred for debt collection services associated with a delinquent payment.

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

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

863

EQUAL OPPORTUNITY

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

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

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

877 (c) The Contractor will send to each labor union or representative of workers with
878 which it has a collective bargaining agreement or other contract or understanding, a notice, to be
879 provided by the Contracting Officer, advising the said labor union or workers' representative of the

880 Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and
881 shall post copies of the notice in conspicuous places available to employees and applicants for
882 employment.

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

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

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

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

907 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

912 (b) The payment of charges becoming due hereunder is a condition precedent to
913 receiving benefits under this Contract. The United States shall not make water available to the
914 Contractor through Project facilities during any period in which the Contractor may be in arrears in

915 the advance payment of water rates due the United States. The Contractor shall not furnish water
916 made available pursuant to this Contract for lands or parties which are in arrears in the advance
917 payment of water rates levied or established by the Contractor.

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

920 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

921 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
922 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age
923 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as
924 well as with their respective implementing regulations and guidelines imposed by the U.S.
925 Department of the Interior and/or Bureau of Reclamation.

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

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

939 PRIVACY ACT COMPLIANCE

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

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

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

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

959 (e) The Contractor shall forward promptly to the System Manager each proposed
960 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR
961 2.71; notify the requester accordingly of such referral; and provide the System Manager with
962 information and records necessary to prepare an appropriate response to the requester. These
963 requirements do not apply to individuals seeking access to their own certification and reporting forms
964 filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy
965 Act as a basis for the request.

966 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

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WATER CONSERVATION

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26. (a) Prior to the delivery of water provided from or conveyed through Federally

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constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be

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implementing an effective water conservation and efficiency program based on the Contractor's water

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conservation plan that has been determined by the Contracting Officer to meet the conservation and

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efficiency criteria for evaluating water conservation plans established under Federal law. The water

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conservation and efficiency program shall contain definite water conservation objectives, appropriate

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economically feasible water conservation measures, and time schedules for meeting those objectives.

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Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's

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continued implementation of such water conservation program. In the event the Contractor's water

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conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of

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Article 26 of this Contract have not yet been determined by the Contracting Officer to meet such

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criteria, due to circumstances which the Contracting Officer determines are beyond the control of the

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Contractor, water deliveries shall be made under this Contract so long as the Contractor diligently

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works with the Contracting Officer to obtain such determination at the earliest practicable date, and

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thereafter the Contractor immediately begins implementing its water conservation and efficiency

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program in accordance with the time schedules therein.

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(b) Should the amount of M&I Water delivered pursuant to subdivision (a) of

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Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall implement the

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Best Management Practices identified by the time frames issued by the California Urban Water

995 Conservation Council for such M&I Water unless any such practice is determined by the Contracting
996 Officer to be inappropriate for the Contractor.

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

1000 (d) At five-year intervals, the Contractor shall revise its water conservation plan to
1001 reflect the then-current conservation and efficiency criteria for evaluating water conservation plans
1002 established under Federal law and submit such revised water management plan to the Contracting
1003 Officer for review and evaluation. The Contracting Officer will then determine if the water
1004 conservation plan meets Reclamation's then-current conservation and efficiency criteria for
1005 evaluating water conservation plans established under Federal law.

1006 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall
1007 be described in the Contractor's water conservation plan.

1008 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1009 27. Except as specifically provided in Article 17 of this Contract, the provisions of this
1010 Contract shall not be applicable to or affect non-Project water or water rights now owned or hereafter
1011 acquired by the Contractor or any user of such water within the Contractor's Service Area. Any such
1012 water shall not be considered Project Water under this Contract. In addition, this Contract shall not
1013 be construed as limiting or curtailing any rights which the Contractor or any water user within the
1014 Contractor's Service Area acquires or has available under any other contract pursuant to Federal
1015 Reclamation law.

1037 the United States the Contractor's share of the Project Rates, Charges, and Tiered Pricing Component
1038 except to the extent the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority
1039 collects payments on behalf of the United States in accordance with the separate agreement identified
1040 in subdivision (a) of this Article.

1041 (c) For so long as the O&M of any portion of the Project facilities serving the
1042 Contractor is performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water
1043 Authority, or any successor thereto, the Contracting Officer shall adjust those components of the
1044 Rates for Water Delivered under this Contract representing the cost associated with the activity being
1045 performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or its
1046 successor.

1047 (d) In the event the O&M of the Project facilities operated and maintained by the
1048 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority is re-assumed by the
1049 United States during the term of this Contract, the Contracting Officer shall so notify the Contractor,
1050 in writing, and present to the Contractor a revised Exhibit "B" which shall include the portion of the
1051 Rates to be paid by the Contractor for Project Water under this Contract representing the O&M costs
1052 of the portion of such Project facilities which have been re-assumed. The Contractor shall, thereafter,
1053 in the absence of written notification from the Contracting Officer to the contrary, pay the Rates,
1054 Charges, and Tiered Pricing Component specified in the revised Exhibit "B" directly to the United
1055 States in compliance with Article 7 of this Contract.

1056 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1057 29. The expenditure or advance of any money or the performance of any obligation of the
1058 United States under this Contract shall be contingent upon appropriation or allotment of funds.

1059 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
1060 under this Contract. No liability shall accrue to the United States in case funds are not appropriated
1061 or allotted.

1062 BOOKS, RECORDS, AND REPORTS

1063 30. (a) The Contractor shall establish and maintain accounts and other books and
1064 records pertaining to administration of the terms and conditions of this Contract, including: the
1065 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;
1066 the water users' land-use (crop census), land ownership, land-leasing and water use data; and other
1067 matters that the Contracting Officer may require. Reports thereon shall be furnished to the
1068 Contracting Officer in such form and on such date or dates as the Contracting Officer may require.
1069 Subject to applicable Federal laws and regulations, each party to this Contract shall have the right
1070 during office hours to examine and make copies of the other party's books and records relating to
1071 matters covered by this Contract.

1072 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,
1073 records, or other information shall be requested from the Contractor by the Contracting Officer unless
1074 such books, records, or information are reasonably related to the administration or performance of
1075 this Contract. Any such request shall allow the Contractor a reasonable period of time within which
1076 to provide the requested books, records, or information.

1077 (c) At such time as the Contractor provides information to the Contracting Officer
1078 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the
1079 Operating Non-Federal Entity.

1080 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1081 31. (a) The provisions of this Contract shall apply to and bind the successors and
1082 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1083 therein shall be valid until approved in writing by the Contracting Officer.

1084 (b) The assignment of any right or interest in this Contract by either party shall not
1085 interfere with the rights or obligations of the other party to this Contract absent the written
1086 concurrence of said other party.

1087 (c) The Contracting Officer shall not unreasonably condition or withhold approval
1088 of any proposed assignment.

1089 SEVERABILITY

1090 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor
1091 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an
1092 association or other form of organization whose primary function is to represent parties to Project
1093 contracts, brings an action in a court of competent jurisdiction challenging the legality or
1094 enforceability of a provision included in this Contract and said person, entity, association, or
1095 organization obtains a final court decision holding that such provision is legally invalid or
1096 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the
1097 parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court
1098 decision identify by mutual agreement the provisions in this Contract which must be revised and (ii)
1099 within three months thereafter promptly agree on the appropriate revision(s). The time periods
1100 specified above may be extended by mutual agreement of the parties. Pending the completion of the
1101 actions designated above, to the extent it can do so without violating any applicable provisions of
1102 law, the United States shall continue to make the quantities of Project Water specified in this Contract
1103 available to the Contractor pursuant to the provisions of this Contract which were not found to be
1104 legally invalid or unenforceable in the final court decision.

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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 for processing said request, and both parties will meet to establish a mutually agreeable schedule for timely completion of the process. Such process will analyze whether the proposed change is likely to:

(i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of the

1128 Contractor to pay for Project Water furnished under this Contract or to pay for any
1129 Federally-constructed facilities for which the Contractor is responsible; and (iii) have an impact on
1130 any Project Water rights applications, permits, or licenses. In addition, the Contracting Officer shall
1131 comply with the NEPA and the ESA. The Contractor will be responsible for all costs incurred by the
1132 Contracting Officer in this process, and such costs will be paid in accordance with Article 25 of this
1133 Contract.

1134 FEDERAL LAWS

1135 36. By entering into this Contract, the Contractor does not waive its rights to contest the
1136 validity or application in connection with the performance of the terms and conditions of this
1137 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the
1138 terms and conditions of this Contract unless and until relief from application of such Federal law or
1139 regulation to the implementing provision of the Contract is granted by a court of competent
1140 jurisdiction.

1141 NOTICES

1142 37. Any notice, demand, or request authorized or required by this Contract shall be
1143 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered
1144 to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, California 93721,
1145 and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board of
1146 Directors of the James Irrigation District, P.O. Box 757, San Joaquin, California 93660. The
1147 designation of the addressee or the address may be changed by notice given in the same manner as
1148 provided in this Article for other notices.

1149 CONFIRMATION OF CONTRACT

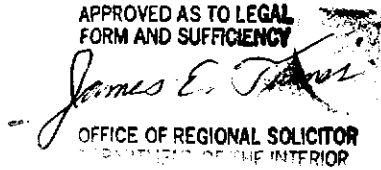
1150 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a
1151 decree of a court of competent jurisdiction of the State of California, confirming the execution of this
1152 Contract. The Contractor shall furnish the United States a certified copy of the final decree, the
1153

1154 validation proceedings, and all pertinent supporting records of the court approving and confirming
1155 this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

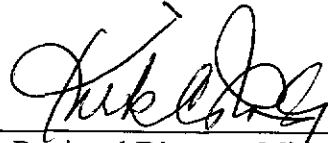
1156 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day
1157 and year first above written.

1158

THE UNITED STATES OF AMERICA



1159
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By: 
Regional Director, Mid-Pacific Region
Bureau of Reclamation

1162 (SEAL)

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JAMES IRRIGATION DISTRICT

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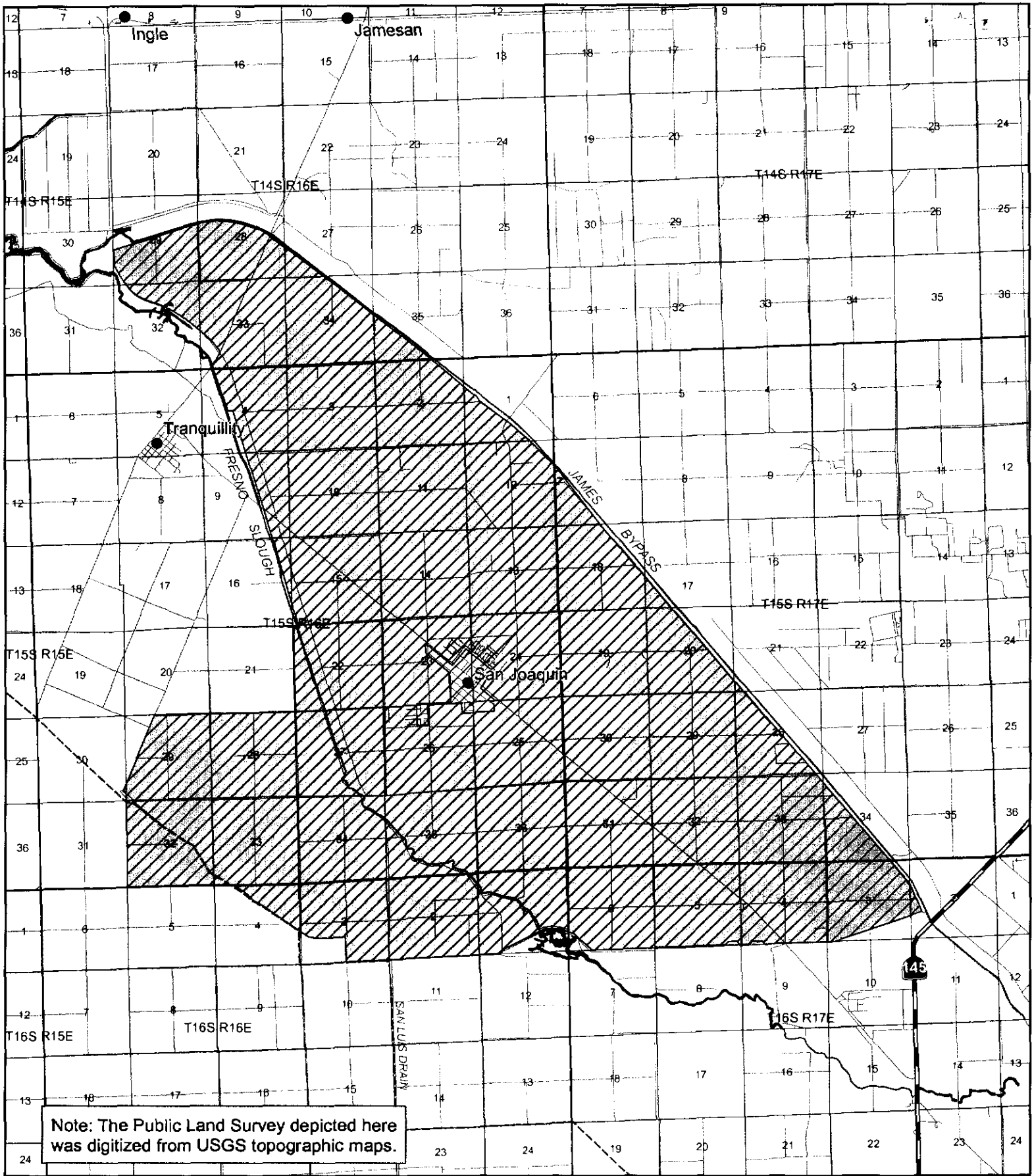
By: 
President of the Board of Directors



1166 Attest:

1167
1168

By: 
Secretary of the Board of Directors

1169 (H:\pub 440\LTRC\Final Draft LTRC's - Fresno, Tracy\09-23-04 James ID Final Draft LTRC with
1170 exhib*-its.doc)



-  Contractor's Service Area
-  District Boundary

James Irrigation District

Contract No. 14-06-200-700A-LTR1
Exhibit A



EXHIBIT B
JAMES IRRIGATION DISTRICT
Water Rates and Charges

CONTRACT NO. 14-06-200-700-A-LTR1	<u>2005 Rates Per Acre-Foot</u>	
	<u>Irrigation Water</u>	<u>M&I Water</u>
COST-OF-SERVICE (COS) RATES:	DMC	
Capital Rates:	\$11.40	
O&M Rates:		
Water Marketing	\$6.61	
Storage	\$5.93	
Conveyance	*	
Direct Pumping (Project Use Energy)		
Tracy Pumping		
San Luis Drain		
Deficit Rates:		
Non-Interest Bearing		
Interest Bearing	\$0.07	
CFO/PFR Adjustment Rate	\$1.05	
<u>TOTAL COST-OF-SERVICE RATES (COS):</u>	\$25.06	
<u>M&I FULL-COST RATE:</u>		
Tiered Pricing Component >80% <=90% of Contract		
Total [Full Cost Rate - COS Rate /2]:	\$6.32	
Tiered Pricing Component >90% of Contract		
Total [Full Cost Rate - COS Rate]:	\$12.63	
<u>FULL-COST RATES:</u>		
Section 202(3) Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981.	\$37.69	
<u>205 FULL-COST RATES:</u>		
Section 205(a)(3) Rate is applicable to a Qualified Recipient or to a Limited Recipient that did not receive irrigation water on or before October 1, 1981.	\$44.78	
SURCHARGES UNDER P.L. 102-575 TO RESTORATION FUND**	\$7.93	

* Conveyance and Conveyance Pumping Operation and maintenance costs were removed for ratesetting purposes and are to be billed directly to the water authorities.

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

Recent Historic Use as defined in the CVP M&I Water Storage Policy is 23,227 acre-feet.

RESOLUTION NO. 2005-02

**RESOLUTION
OF THE
BOARD OF DIRECTORS
JAMES IRRIGATION DISTRICT**

**RESOLUTION CONSIDERING ENVIRONMENTAL
IMPACTS OF LONG-TERM RENEWAL
CONTRACT FOR CENTRAL VALLEY PROJECT WATER SERVICE,
APPROVING LONG-TERM RENEWAL CONTRACT,
AUTHORIZING EXECUTION THEREOF AND
AUTHORIZING RELATED ACTIONS**

WHEREAS, the JAMES IRRIGATION DISTRICT (the "District") entered into that certain contract between the United States and James Irrigation District Providing for Water Service, Contract No. 14-06-200-700A, dated December 23, 1963, (the "Original Contract"), providing for the delivery of up to 35,300 acre feet of water diverted through Central Valley Project facilities and the District's distribution system.

WHEREAS, the Original Contract expired on December 23, 2003, and the District has entered into successive contracts to renew the Original Contract for each of the years since the expiration of the Original Contract (the "Interim Renewal Contract" or collectively, the "Interim Renewal Contracts"), continuing the same water service under substantially the same terms and conditions, except for price and length of term, as was provided in the Original Contract.

WHEREAS, the current Interim Renewal Contract will expire on February 28, 2006.

WHEREAS, the United States has offered the District a Long-Term Renewal Contract for a term of twenty-five (25) years, on substantially the same substantive terms and conditions as included in the most recent Interim Renewal Contract, Contract No. 14-06-200-700A IR2, between the District and the United States, which is on file with the Secretary of the Board (the Long-Term Renewal Contract).

WHEREAS, the District has fully utilized, for reasonable and beneficial use, all water provided under the Original Contract and the Interim Renewal Contracts by receiving and delivering such water to lands within the District's boundaries for irrigation purposes, or putting such water to beneficial use through conservation and transfer in accordance with California law, and there is continuing need for such water over the next twenty-five (25) years as documented in Reclamation's water needs analysis for the Contract.

WHEREAS, it is imperative to the District and its landowners that the District renew, on a long-term basis, its water service contract with the United States of America pursuant to the Act of Congress of July 2, 1956 (70 Stat. 483) and the Act of Congress of October 30, 1992 (96

WHEREAS, the Board has reviewed the terms of the proposed Long-Term Renewal Contract.

WHEREAS, water made available under the Long-Term Renewal Contract will be diverted through the same Central Valley Project facilities as the water provided under the Original Contract and the Interim Renewal Contracts.

WHEREAS, no expansion of water service will occur under the Long-Term Renewal Contract, as the District will distribute water received through the same distribution system as used for the Original Contract and Interim Renewal Contracts and will provide water under such renewal to the same lands within the boundaries of the District.

WHEREAS, the District has copies of contracts, water delivery reports, crop information and other data supporting these findings.

WHEREAS, the Board of Directors of the District has reviewed that certain memorandum re Preliminary Environmental Assessment – Long-Term Renewal Contract from the District Manager, which is on file with the Secretary of the Board, and which concludes that the District's action in approving the Long-Term Renewal Contract is a project that is exempt from further proceedings pursuant to the California Environmental Quality Act ("CEQA") for the reasons in said memorandum set forth.

NOW, THEREFORE, BE IT RESOLVED, AS FOLLOWS:

Section 1. The facts set forth in the recitals above and in the documents referenced therein are true and correct, and the Board of Directors so finds and determines.

Section 2. The Long-Term Renewal Contract in substantially the form presented to the Board and on file with the Secretary hereof is hereby approved.

Section 3. The President and Secretary of the District are hereby authorized and directed to execute the Long-Term Renewal Contract in substantially the form presented to the Board, subject to such additions, deletions and revisions as the executing officers may approve prior to execution, said execution providing conclusive proof of such approval.

Section 4. The Board further finds that:

A. Approval of the Long-Term Renewal Contract is statutorily exempt from further compliance with CEQA as provided in Title 14 of the California Code of Regulations ("CFR"), Section 15261, because it is merely the continuation of a project approved, funded and fully operated prior to November 23, 1970, and no modification or alteration in the Central Valley Project, the District distribution system or the amount of water delivered is proposed.

B. Insofar as the Long-Term Renewal Contract calls for changes in rates, such changes are statutorily exempt from further compliance with CEQA as provided in Title 14 CFR Section 15273(a).

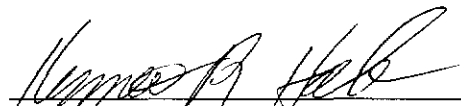
C. Approval of the Long-Term Renewal Contract is categorically exempt from further proceedings under CEQA pursuant to Title 14 CFR Section 15301, because it merely provides for continued operation of an existing facility.

D. Approval of the Long-Term Renewal Project will not create any effects on the environment that make categorical exemptions inapplicable pursuant to Title 14 CFR 15300.2.

Section 5. The Manager of the District is hereby authorized and directed to prepare and file within 5 days a Notice of Exemption with the County Clerk or Clerks of Fresno County for the District's Long-Term Renewal Contract for Central Valley Project Water Service, in accordance with Section 15062(b) of Title 14 of the California Code of Regulations.

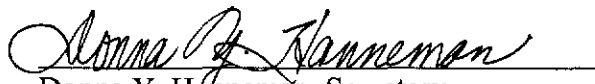
Section 6. The District's officers, staff and consultants are hereby authorized and directed to take all additional actions that they deem necessary or appropriate to carry out the intent of this Resolution and to ensure continued water service to the District and its water users.

Passed and adopted this 8th day of February, 2005.



Kenneth R. Hale, President
BOARD OF DIRECTORS
JAMES IRRIGATION DISTRICT

ATTEST:

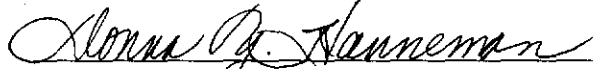


Donna Y. Hanneman, Secretary
BOARD OF DIRECTORS
JAMES IRRIGATION DISTRICT

CERTIFICATION OF SECRETARY

I HEREBY CERTIFY that the foregoing is the resolution of JAMES IRRIGATION DISTRICT as duly passed and adopted by said Board of Directors at a meeting thereof duly called and held on this 8th day of February, 2005.

{ SEAL }



Donna Y. Hanneman, Secretary
BOARD OF DIRECTORS
JAMES IRRIGATION DISTRICT