

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

CONTRACT BETWEEN THE UNITED STATES
AND
BYRON-BETHANY IRRIGATION DISTRICT
PROVIDING FOR PROJECT WATER SERVICE
FROM DELTA DIVISION AND FACILITIES REPAYMENT

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1 THIS CONTRACT, made this ____ day of _____, 20XX, in
2 pursuance generally of the Act of June 17, 1902, (32 Stat. 388), and acts amendatory thereof or
3 supplementary thereto, including but not limited to, the Acts of August 26, 1937 (50 Stat. 844),
4 as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented,
5 July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263),
6 October 27, 1986 (100 Stat. 3050), as amended, Title XXXIV of the Act of October 30, 1992
7 (106 Stat. 4706), as amended, and the Water Infrastructure Improvements for the Nation Act
8 (Public Law (Pub. L.) 114-322, 130 Stat. 1628), Section 4011 (a-d) and (f) (“WIIN Act”), all
9 collectively hereinafter referred to as Federal Reclamation law, between the UNITED STATES
10 OF AMERICA, hereinafter referred to as the United States, represented by the officer executing
11 this Contract, hereinafter referred to as the Contracting Officer, and BYRON-BETHANY
12 IRRIGATION DISTRICT, hereinafter referred to as the Contractor, a public agency of the State
13 of California, duly organized, existing, and acting pursuant to the laws thereof;

14 WITNESSETH, That:

EXPLANATORY RECITALS

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[1st] WHEREAS, the United States has constructed and is operating the California Central Valley Project (Project), for diversion, storage, carriage, distribution, and beneficial use, for flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and restoration, generation and distribution of electric energy, salinity control, navigation, and other beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and the San Joaquin River and their tributaries; and

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

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

[4th] WHEREAS, the United States and the Contractor entered into Contract No. 14-06-200-785, as amended, which in Part A thereof, established terms for the delivery to the Contractor of Project Water from the Delta Division facilities from May 22, 1953, though February 28, 1994; and

[5th] WHEREAS, the United States and the Contractor have pursuant to Subsection 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into interim renewal contract(s) identified as Contract No. 14-06-200-785-IR1 and subsequent Interim Renewal Contracts 14-06-200-785-IR2 through 14-06-

36 200-785-IR10, which provided for water service to the Contractor from March 1, 1994
37 through February 28, 2006; and

38 [6th] WHEREAS, the United States and the Contractor entered into a long-term
39 contract identified as Contract No. 14-06-200-785-LTR1, hereinafter referred to as the Existing
40 Contract, which provided for the continued water service to the Contractor following expiration
41 of Contract No. 14-06-200-785-IR10, and which was in effect the date the WIIN Act was
42 enacted; and

43 [7th] WHEREAS, Plain View Water District and Byron-Bethany
44 Irrigation District determined that consolidation of the two districts would improve
45 the administrative efficiency of the districts and enhance the districts' stability; and

46 [8th] WHEREAS, San Joaquin Local Agency Formation Commission
47 approved consolidation of Plain View Water District and Byron-Bethany Irrigation
48 District on August 12, 2004, by dissolving Plain View Water District and
49 reorganizing the territory to Byron-Bethany Irrigation District; and

50 [9th] WHEREAS, the consolidation referred to in the preceding two
51 explanatory recitals did not, in any manner, change the area to which the Project
52 Water may be delivered pursuant to the Existing Contract; and

53 [10th] WHEREAS, on December 16, 2016, the 114th Congress of the United
54 States of America enacted the WIIN Act; and

55 [11th] WHEREAS, Section 4011(a)(1) provides that "upon request of the
56 contractor, the Secretary of the Interior shall convert any water service contract in effect on the
57 date of enactment of this subtitle and between the United States and a water users' association

58 [Contractor] to allow for prepayment of the repayment contract pursuant to paragraph (2) under
59 mutually agreeable terms and conditions.”; and

60 [12th] WHEREAS, Section 4011(a)(1) further provides that “the manner of
61 conversion under this paragraph shall be as follows: (A) Water service contracts that were
62 entered into under section (e) of the Act of August 4, 1939 (53 Stat. 1196), to be converted under
63 this section shall be converted to repayment contracts under section 9(d) of that Act (53 Stat.
64 1195)”; and “(B) Water service contracts that were entered under subsection (c)(2) of section 9
65 of the Act of August 4, 1939 (53 Stat. 1194), to be converted under this section shall be
66 converted to a contract under subsection (c)(1) of section 9 of that Act (53 Stat. 1195).”; and

67 [13th] WHEREAS, Section 4011(a)(4)(C) further provides all contracts entered
68 into pursuant to Section 4011(a)(1), (2), and (3) shall “not modify other water service,
69 repayment, exchange and transfer contractual rights between the water users’ association
70 [Contractor], and the Bureau of Reclamation, or any rights, obligations, or relationships of the
71 water users’ association [Contractor] and their landowners as provided under State law.”; and

72 [14th] WHEREAS, Section 4011(d)(3) and (4) of the WIIN Act provides that
73 “implementation of the provisions of this subtitle shall not alter...(3) the priority of a water
74 service or repayment contractor to receive water; or (4) except as expressly provided in this
75 section, any obligations under the Federal Reclamation law, including the continuation of
76 Restoration Fund charges pursuant to section 3407(d) (Pub. L. 102-575), of the water service and
77 repayment contractors making prepayments pursuant to this section.”; and

78 [15th] WHEREAS, upon the request of the Contractor, the WIIN Act directs the
79 Secretary to convert irrigation water service contracts and municipal and industrial (M&I) water

80 service contracts into repayment contracts, amend existing repayment contracts, and allow
81 contractors to prepay their construction cost obligations pursuant to applicable Federal
82 Reclamation law; and

83 [16th] WHEREAS, the United States has determined that the Contractor
84 has fulfilled all of its obligations under the Existing Contract; and

85 [17th] WHEREAS, the Contractor has demonstrated to the satisfaction of the
86 Contracting Officer that the Contractor has utilized the Project Water supplies available
87 to it for reasonable and beneficial use and/or has demonstrated future demand for water
88 use such that the Contractor has the capability and expects to utilize fully for reasonable
89 and beneficial use the quantity of Project Water to be made available to it pursuant to
90 this Contract; and

91 [18th] WHEREAS, water obtained from the Project has been relied upon by
92 urban and agricultural areas within California for more than 50 years, and is considered
93 by the Contractor as an essential portion of its water supply; and

94 [19th] WHEREAS, the economies of regions within the Project, including the
95 Contractor's, depend upon the continued availability of water, including water service
96 from the Project; and

97 [20th] WHEREAS, the Secretary intends through coordination, cooperation, and
98 partnerships to pursue measures to improve water supply, water quality, and reliability of the
99 Project for all Project purposes; and

100 [21st] WHEREAS, the mutual goals of the United States and the Contractor
101 include: to provide for reliable Project Water supplies; to control costs of those supplies;

102 to achieve repayment of the Project as required by law; to guard reasonably against Project
103 Water shortages; to achieve a reasonable balance among competing demands for use of
104 Project Water; and to comply with all applicable environmental statutes, all consistent with
105 the legal obligations of the United States relative to the Project; and

106 [22nd] WHEREAS, the parties intend by this Contract to maintain a cooperative
107 relationship in order to achieve their mutual goals; and

108 [23rd] WHEREAS, the Contractor has utilized or may utilize transfers, contract
109 assignments, rescheduling, and conveyance of Project Water and non-Project water under this
110 Contract as tools to minimize the impacts of a Condition of Shortage and to maximize the
111 beneficial use of water; and

112 [24th] WHEREAS, the parties desire and intend that this Contract not provide a
113 disincentive to the Contractor in continuing to carry out the beneficial activities set out in
114 the Explanatory Recital immediately above; and

115 [25th] WHEREAS, the Contracting Officer and the Contractor agree that this
116 Contract complies with Section 4011 of the WIIN Act; and

117 [26th] WHEREAS, the Contracting Officer and the Contractor agree to amend
118 and convert the Existing Contract pursuant to section 4011 of the WIIN Act and other Federal
119 Reclamation law on the terms and conditions set forth below;

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

DEFINITIONS

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1. When used herein unless otherwise distinctly expressed, or manifestly incompatible with the intent of the parties as expressed in this Contract, the term:
- (a) “Additional Capital Obligation” shall mean construction costs or other capitalized costs incurred after the Effective Date or not reflected in the Existing Capital Obligation as defined herein and in accordance with Section 4011, subsection (a)(2)(B) and (a)(3)(B) of the Water Infrastructure Improvements for the Nation Act (Pub. L. 114-322, 130 Stat. 1628) (“WIIN Act”);
 - (b) “Calendar Year” shall mean the period January 1 through December 31, both dates inclusive;
 - (c) “Charges” shall mean the payments required by Federal Reclamation law in addition to the Rates and Tiered Pricing Component specified in this Contract as determined annually by the Contracting Officer pursuant to this Contract;
 - (d) “Condition of Shortage” shall mean a condition respecting the Project during any Year such that the Contracting Officer is unable to deliver sufficient water to meet the Contract Total;
 - (e) “Contracting Officer” shall mean the Secretary of the Interior's duly authorized representative acting pursuant to this Contract or applicable Federal Reclamation law or regulation;
 - (f) “Contract Total” shall mean the maximum amount of water to which the Contractor is entitled under subdivision (a) of Article 3 of this Contract;

143 (g) “Contractor's Service Area” shall mean the area to which the Contractor is
144 permitted to provide Project Water under this Contract as described in Exhibit “A”
145 attached hereto, which may be modified from time to time in accordance with Article 34
146 of this Contract without amendment of this Contract;

147 (h) “CVPIA” shall mean the Central Valley Project Improvement Act, Title
148 XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

149 (i) “Delta Division Facilities” shall mean those existing and future Project
150 facilities in and south of the Sacramento-San Joaquin Rivers Delta, including, but not
151 limited to, the C.W. “Bill” Jones Pumping Plant, the O'Neill Forebay, the O'Neill
152 Pumping/Generating Plant, and the San Luis Reservoir, used to divert, store, and convey
153 water to those Project Contractors entitled to receive water conveyed through the Delta-
154 Mendota Canal;

155 (j) “Eligible Lands” shall mean all lands to which Irrigation Water may be
156 delivered in accordance with Section 204 of the Reclamation Reform Act of 1982 (96 Stat.
157 1263), as amended;

158 (k) “Excess Lands” shall mean all lands in excess of the limitations
159 contained in Section 204 of the Reclamation Reform Act of 1982, other than those lands
160 exempt from acreage limitation under Federal Reclamation law;

161 (l) “Existing Capital Obligation” shall mean the remaining amount of
162 construction costs or other capitalized costs allocable to the Contractor as described in section
163 4011, subsections (a)(2)(A) and (a)(3)(A) of the WIIN Act, and as identified in the Central
164 Valley Project Irrigation Water Rates and/or Municipal and Industrial Water Rates, respectively,

165 dated **Month/Day/Year [specify ratebook year for all contractors.] [contractor specific to**
166 **address the intertie]**, as adjusted to reflect payments not reflected in such schedule. The
167 Contracting Officer has computed the Existing Capital Obligation and such amount is set forth in
168 Exhibit “C”, which is incorporated herein by reference;

169 (m) “Full Cost Rate” shall mean an annual rate, as determined by the
170 Contracting Officer that shall amortize the expenditures for construction properly
171 allocable to the Project irrigation or M&I functions, as appropriate, of facilities in
172 service including all O&M deficits funded, less payments, over such periods as may be
173 required under Federal Reclamation law, or applicable contract provisions. Interest will
174 accrue on both the construction expenditures and funded O&M deficits from October 12,
175 1982, on costs outstanding at that date, or from the date incurred in the case of costs
176 arising subsequent to October 12 1982, and shall be calculated in accordance with
177 subsections 202(3)(B) and (3)(C) of the Reclamation Reform Act of 1982. The Full Cost
178 Rate includes actual operation, maintenance, and replacement costs consistent with
179 Section 426.2 of the Rules and Regulations for the Reclamation Reform Act of 1982;

180 (n) “Ineligible Lands” shall mean all lands to which Irrigation Water may
181 not be delivered in accordance with Section 204 of the Reclamation Reform Act of 1982;

182 (o) “Irrigation Full Cost Water Rate” shall mean the Full Cost Rate
183 applicable to the delivery of Irrigation Water;

184 (p) “Irrigation Water” shall mean the use of Project Water to irrigate
185 lands primarily for the production of commercial agricultural crops or livestock, and
186 domestic and other uses that are incidental thereto;

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

189 (r) "Municipal and Industrial (M&I) Water" shall mean the use of Project
190 Water for municipal, industrial, and miscellaneous other purposes not falling under the
191 definition of "Irrigation Water" or within another category of water use under an
192 applicable Federal authority;

193 (s) "M&I Full Cost Water Rate" shall mean the Full Cost Rate
194 applicable to the delivery of M&I Water;

195 (t) "Operation and Maintenance" or "O&M" shall mean normal and
196 reasonable care, control, operation, repair, replacement (other than capital replacement),
197 and maintenance of Project facilities;

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

203 (v) "Project" shall mean the Central Valley Project owned by the United
204 States and managed by the Department of the Interior, Bureau of Reclamation;

205 (w) "Project Contractors" shall mean all parties who have contracts for
206 water service for Project Water from the Project with the United States pursuant to Federal
207 Reclamation law;

208 (x) "Project Water" shall mean all water that is developed, diverted,
209 stored, or delivered by the Secretary in accordance with the statutes authorizing the

210 Project and in accordance with the terms and conditions of water rights acquired
211 pursuant to California law;

212 (y) “Rates” shall mean the payments determined annually by the
213 Contracting Officer in accordance with the then-current applicable water ratesetting
214 policies for the Project, as described in subdivision (a) of Article 7 of this Contract;

215 (z) “Recent Historic Average” shall mean the most recent five (5)-year
216 average of the final forecast of Water Made Available to the Contractor pursuant to this
217 Contract or its preceding contract(s);

218 (aa) “Repayment Obligation” for Water Delivered as Irrigation Water shall
219 mean the Existing Capital Obligation discounted by $\frac{1}{2}$ of the Treasury rate, which shall be the
220 amount due and payable to the United States, pursuant to section 4011(a)(2)(A) of the WIIN Act;
221 and for Water Delivered as M&I Water shall mean the amount due and payable to the United
222 States, pursuant to section 4011(a)(3)(A) of the WIIN Act;

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

226 (cc) “Tiered Pricing Component” shall be the incremental amount to be
227 paid for each acre-foot of Water Delivered as described in Article 7 of this Contract and
228 as provided for in Exhibit “B”;

229 (dd) “Water Delivered” or “Delivered Water” shall mean Project Water
230 diverted for use by the Contractor at the point(s) of delivery approved by the Contracting
231 Officer;

232 (ee) “Water Made Available” shall mean the estimated amount of
233 Project Water that can be delivered to the Contractor for the upcoming Year as declared
234 by the Contracting Officer, pursuant to subdivision (a) of Article 4 of this Contract;

235 (ff) “Water Scheduled” shall mean Project Water made available to the
236 Contractor for which times and quantities for delivery have been established by the
237 Contractor and Contracting Officer, pursuant to subdivision (b) of Article 4 of this Contract;
238 and

239 (gg) “Year” shall mean the period from and including March 1 of each
240 Calendar Year through the last day of February of the following Calendar Year.

241 TERM OF CONTRACT – RIGHT TO USE OF WATER

242 2. (a) This Contract shall be effective [Effective Date], hereinafter known as the
243 “Effective Date”, and shall continue so long as the Contractor pays applicable Rates and Charges
244 under this Contract, consistent with Section 9(d) or 9(c)(1) of the Act of August 4, 1939 (53 Stat.
245 1195) as applicable, and applicable law;

246 (1) Provided, That the Contracting Officer shall not seek to terminate
247 this Contract for failure to fully or timely pay applicable Rates and Charges by the Contractor,
248 unless the Contracting Officer has first provided at least sixty (60) calendar days written notice
249 to the Contractor of such failure to pay and the Contractor has failed to cure such failure to pay,
250 or to diligently commence and maintain full curative payments satisfactory to the Contracting
251 Officer within the sixty (60) calendar days’ notice period;

252 (2) Provided, further, That the Contracting Officer shall not seek to
253 suspend making water available or declaring Water Made Available pursuant to this Contract for

254 non-compliance by the Contractor with the terms of this Contract or Federal law, unless the
255 Contracting Officer has first provided at least thirty (30) calendar days written notice to the
256 Contractor and the Contractor has failed to cure such non-compliance, or to diligently commence
257 curative actions satisfactory to the Contracting Officer for a non-compliance that cannot be fully
258 cured within the thirty (30) calendar days' notice period. If the Contracting Officer has
259 suspended making water available pursuant to this paragraph, upon cure of such non-compliance
260 satisfactory to the to the Contracting Officer, the Contracting Officer shall resume making water
261 available and declaring Water Made Available pursuant to this Contract;

262 (3) Provided, further, That this Contract may be terminated at any
263 time by mutual consent of the parties hereto.

264 (b) Upon complete payment of the Repayment Obligation by the Contractor,
265 and notwithstanding any Additional Capital Obligation that may later be established, the acreage
266 limitations, reporting, and Full Cost pricing provisions of the Reclamation Reform Act of 1982,
267 and subdivisions (j) Eligible Lands, (k) Excess Lands, and (n) Ineligible Lands, of Article 1 of
268 this Contract shall no longer be applicable.

269 (c) Notwithstanding any provision of this Contract, the Contractor reserves
270 and shall have all rights and benefits under the Act of July 2, 1956 (70 Stat. 483), to the extent
271 allowed by law.

272 (d) Notwithstanding any provision of this Contract, the Contractor reserves
273 and shall have all rights and benefits under the Act of June 21, 1963 (77 Stat. 68), to the extent
274 allowed by law.

275 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

276 3. (a) During each Year, consistent with all applicable State water rights
277 permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and
278 12 of this Contract, the Contracting Officer shall make available for delivery to the
279 Contractor 20,600 acre-feet of Project Water for irrigation and M&I purposes. Water
280 Delivered to the Contractor in accordance with this subdivision shall be scheduled and
281 paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

282 (b) Because the capacity of the Project to deliver Project Water has been
283 constrained in recent years and may be constrained in the future due to many factors
284 including hydrologic conditions and implementation of Federal and State laws, the
285 likelihood of the Contractor actually receiving the amount of Project Water set out in
286 subdivision (a) of this Article in any given Year is uncertain. The Contracting Officer's
287 modeling referenced in the programmatic environmental impact statement prepared
288 pursuant to Section 3404(c) of the CVPIA projected that the Contract Total set forth in
289 this Contract will not be available to the Contractor in many years. During the most recent five
290 years prior to execution of the Existing Contract, the Recent Historic Average Water Made
291 Available to the Contractor was 13,555 acre-feet. Nothing in this subdivision (b) of this Article
292 shall affect the rights and obligations of the parties under any provision of this Contract.

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

295 (1) In the event any Project Contractor (other than a Cross Valley
296 Contractor) that receives Project Water through the Delta Division Facilities obtains a

297 contractual agreement that the Contracting Officer shall make Project Water available at
298 a point or points of delivery in or north of the Delta, at the request of the Contractor and
299 upon completion of any required environmental documentation, this Contract shall be
300 amended to provide for deliveries in or north of the Delta on mutually agreeable terms.
301 Such amendments to this Contract shall be limited solely to those changes made necessary by
302 the addition of such alternate points of delivery in or north of the Delta; Provided, That
303 the Contracting Officer's use of the Harvey O. Banks Pumping Plant to deliver Project
304 Water does not trigger this right of amendment.

305 (d) The Contractor shall make reasonable and beneficial use of all water
306 furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect, or
307 in lieu), groundwater banking programs, surface water storage programs, and other
308 similar programs utilizing Project Water or other water furnished pursuant to this
309 Contract conducted within the Contractor's Service Area which are consistent with
310 applicable State law and result in use consistent with Federal Reclamation law will be
311 allowed; Provided, That any direct recharge program(s) is (are) described in the
312 Contractor's water conservation plan submitted pursuant to Article 25 of this Contract;
313 Provided, further, That such water conservation plan demonstrates sufficient lawful uses
314 exist in the Contractor's Service Area so that using a long-term average, the quantity of
315 Delivered Water is demonstrated to be reasonable for such uses and in compliance with
316 Federal Reclamation law. Groundwater recharge programs, groundwater banking
317 programs, surface water storage programs, and other similar programs utilizing Project
318 Water or other water furnished pursuant to this Contract conducted outside the

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

323 (e) The Contractor shall comply with requirements applicable to the
324 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution
325 of any water service contract between the Contracting Officer and the Contractor in effect
326 immediately prior to the Effective Date undertaken pursuant to Section 7 of the Endangered
327 Species Act of 1973 (ESA), as amended, that are within the Contractor's legal authority to
328 implement. The Existing Contract, which evidences in excess of 50 years of diversions for
329 irrigation and/or M&I purposes of the quantities of Project Water provided in subdivision (a) of
330 Article 3 of this Contract, will be considered in developing an appropriate baseline for any
331 required biological assessment(s) prepared pursuant to the ESA, and any other needed
332 environmental review. Nothing herein shall be construed to prevent the Contractor from
333 challenging or seeking judicial relief in a court of competent jurisdiction with respect to any
334 biological opinion or other environmental documentation referred to in this Article.

335 (f) Following the declaration of Water Made Available under Article 4 of
336 this Contract, the Contracting Officer will make a determination whether Project Water, or
337 other water available to the Project, can be made available to the Contractor in addition to
338 the Contract Total under this Article during the Year without adversely impacting other
339 Project Contractors. At the request of the Contractor, the Contracting Officer will
340 consult with the Contractor prior to making such a determination. If the Contracting

341 Officer determines that Project Water, or other water available to the Project, can be
342 made available to the Contractor, the Contracting Officer will announce the availability of
343 such water and shall so notify the Contractor as soon as practical. The Contracting
344 Officer will thereafter meet with the Contractor and other Project Contractors capable of
345 taking such water to determine the most equitable and efficient allocation of such water.
346 If the Contractor requests the delivery of any quantity of such water, the Contracting
347 Officer shall make such water available to the Contractor in accordance with applicable
348 statutes, regulations, guidelines, and policies. Subject to existing long-term contractual
349 commitments, water rights, and operational constraints, long-term Project Contractors shall
350 have a first right to acquire such water, including Project Water made available pursuant
351 to Section 215 of the Reclamation Reform Act of 1982.

352 (g) The Contractor may request permission to reschedule for use during
353 the subsequent Year some or all of the Water Made Available to the Contractor during
354 the current Year, referred to as “rescheduled water.” The Contractor may request
355 permission to use during the current Year a quantity of Project Water which may be
356 made available by the United States to the Contractor during the subsequent Year referred
357 to as “preuse.” The Contracting Officer's written approval may permit such uses in
358 accordance with applicable statutes, regulations, guidelines, and policies.

359 (h) The Contractor’s right pursuant to Federal Reclamation law and
360 applicable State law to the reasonable and beneficial use of the Water Delivered pursuant to
361 this Contract shall not be disturbed, and this Contract shall continue so long as the
362 Contractor pays applicable Rates and Charges under this Contract consistent with Section

363 9(d) or 9(c)(1) of the Act of August 4, 1939 (53 Stat. 1195) as applicable, and applicable
364 law. Nothing in the preceding sentence shall affect the Contracting Officer's ability to impose
365 shortages under Article 11 or subdivision (b) of Article 12 of this Contract.

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

370 (j) The Contracting Officer shall make reasonable efforts to protect the
371 water rights necessary for the Project and to provide the water available under this Contract.
372 The Contracting Officer shall not object to participation by the Contractor, in the capacity
373 and to the extent permitted by law, in administrative proceedings related to the Project
374 Water rights; *Provided, That* the Contracting Officer retains the right to object to the
375 substance of the Contractor's position in such a proceeding; *Provided, further, That* in
376 such proceedings the Contracting Officer shall recognize the Contractor has a legal right
377 under the terms of this Contract to use Project Water.

378 TIME FOR DELIVERY OF WATER

379 4. (a) On or about February 20 each Calendar Year, the Contracting Officer
380 shall announce the Contracting Officer's expected declaration of the Water Made
381 Available. Such declaration will be expressed in terms of Water Made Available and
382 the Recent Historic Average and will be updated monthly, and more frequently if
383 necessary, based on the then-current operational and hydrologic conditions and a new
384 declaration with changes, if any, to the Water Made Available will be made. The

385 Contracting Officer shall provide forecasts of Project operations and the basis of the
386 estimate, with relevant supporting information, upon the written request of the
387 Contractor. Concurrently with the declaration of the Water Made Available, the
388 Contracting Officer shall provide the Contractor with the updated Recent Historic
389 Average.

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

397 (c) The Contractor shall not schedule Project Water in excess of the
398 quantity of Project Water the Contractor intends to put to reasonable and beneficial use
399 within the Contractor's Service Area or to sell, transfer, or exchange pursuant to Article
400 9 of this Contract during any Year.

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

407 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

408 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this
409 Contract shall be delivered to the Contractor at a point or points on the Delta-Mendota
410 Canal and any additional point or points of delivery either on Project facilities or another
411 location or locations mutually agreed to in writing by the Contracting Officer and the
412 Contractor.

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

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

422 (d) All Water Delivered to the Contractor pursuant to this Contract shall
423 be measured and recorded with equipment furnished, installed, operated, and maintained
424 by the Contracting Officer either directly or indirectly through its written agreements(s)
425 with the Operating Non-Federal Entity(ies), unless undertaken by the Contractor with
426 the consent of the Contracting Officer at the point or points of delivery established
427 pursuant to subdivision (a) of this Article. Upon the request of either party to this
428 Contract, the Contracting Officer shall investigate, or cause to be investigated by the

429 appropriate Operating Non-Federal Entity(ies), the accuracy of such measurements and
430 shall take any necessary steps to adjust any errors appearing therein. For any period of
431 time when accurate measurements have not been made, the Contracting Officer shall
432 consult with the Contractor and the appropriate Operating Non-Federal Entity(ies), if any,
433 prior to making a final determination of the quantity delivered for that period of time.

434 (e) Absent a separate contrary written agreement with the Contractor,
435 neither the Contracting Officer nor any Operating Non-Federal Entity(ies) shall be
436 responsible for the control, carriage, handling, use, disposal, or distribution of Water
437 Delivered to the Contractor pursuant to this Contract beyond the point or points of
438 delivery established pursuant to subdivision (a) of this Article. The Contractor shall
439 indemnify the United States, its officers, employees, agents, and assigns on account of
440 damage or claim of damage of any nature whatsoever for which there is legal
441 responsibility, including property damage, personal injury, or death arising out of or
442 connected with the control, carriage, handling, use, disposal, or distribution of such Water
443 Delivered beyond such point or points of delivery except for any damage or claim arising
444 out of: (i) acts or omissions of the Contracting Officer or any of its officers, employees,
445 agents, and assigns, including the Operating Non-Federal Entity(ies) with the intent of
446 creating the situation resulting in any damage or claim; (ii) willful misconduct of the
447 Contracting Officer or any of its officers, employees, agents, and assigns, including the
448 Operating Non-Federal Entity(ies); (iii) negligence of the Contracting Officer or any of its
449 officers, employees, agents, and assigns, including the Operating Non-Federal Entity(ies); or

450 (iv) a malfunction of facilities owned and/or operated by the United States or the Operating
451 Non-Federal Entity(ies).

452 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

453 6. (a) The Contractor has established a measuring program satisfactory to
454 the Contracting Officer. The Contractor shall ensure that all surface water delivered for
455 irrigation purposes within the Contractor's Service Area is measured at each agricultural
456 turnout and such water delivered for M&I purposes is measured at each M&I service
457 connection. The water measuring devices or water measuring methods of comparable
458 effectiveness must be acceptable to the Contracting Officer. The Contractor shall be
459 responsible for installing, operating, maintaining, and repairing all such measuring devices
460 and implementing all such water measuring methods at no cost to the United States. The
461 Contractor shall use the information obtained from such water measuring devices or
462 water measuring methods to ensure its proper management of the water; to bill water users for
463 water delivered by the Contractor; and, if applicable, to record water delivered for M&I
464 purposes by customer class as defined in the Contractor's water conservation plan
465 provided for in Article 25 of this Contract. Nothing herein contained, however, shall
466 preclude the Contractor from establishing and collecting any charges, assessments, or
467 other revenues authorized by California law. The Contractor shall include a summary of
468 all its annual surface water deliveries in the annual report described in subdivision (c) of
469 Article 25 of this Contract.

470 (b) To the extent the information has not otherwise been provided, upon
471 execution of this Contract, the Contractor shall provide to the Contracting Officer a written

472 report describing the measurement devices or water measuring methods being used or to
473 be used to implement subdivision (a) of this Article and identifying the agricultural
474 turnouts and the M&I service connections or alternative measurement programs
475 approved by the Contracting Officer, at which such measurement devices or water
476 measuring methods are being used, and, if applicable, identifying the locations at which
477 such devices and/or methods are not yet being used including a time schedule for
478 implementation at such locations. The Contracting Officer shall advise the Contractor
479 in writing within 60 days as to the adequacy and necessary modifications, if any, of the
480 measuring devices or water measuring methods identified in the Contractor's report and
481 if the Contracting Officer does not respond in such time, they shall be deemed adequate.
482 If the Contracting Officer notifies the Contractor that the measuring devices or methods
483 are inadequate, the parties shall within 60 days following the Contracting Officer's
484 response, negotiate in good faith the earliest practicable date by which the Contractor shall
485 modify said measuring devices and/or measuring methods as required by the Contracting
486 Officer to ensure compliance with subdivision (a) of this Article.

487 (c) All new surface water delivery systems installed within the Contractor's
488 Service Area after the Effective Date shall also comply with the measurement
489 provisions described in subdivision (a) of this Article.

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

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

496 RATES, METHOD OF PAYMENT FOR WATER AND ACCELERATED
497 REPAYMENT OF FACILITIES

498 7. (a) Notwithstanding the Contractor's full prepayment of the
499 Repayment Obligation pursuant to section 4011, subsection (a)(2)(A) and subsection
500 (a)(3)(A) of the WIIN Act, as set forth in Exhibit "C", and any payments required
501 pursuant to section 4011, subsection (b) of the WIIN Act, to reflect the adjustment for
502 the final cost allocation as described in this Article, subsection (b), the Contractor's
503 Project construction and other obligations shall be determined in accordance with: (i)
504 the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's
505 then-existing ratesetting policy for M&I Water, consistent with the WIIN Act; and such
506 ratesetting policies shall be amended, modified, or superseded only through a public
507 notice and comment procedure; (ii) applicable Federal Reclamation law and associated
508 rules and regulations, or policies, and (iii) other applicable provisions of this Contract.
509 Payments shall be made by cash transaction, electronic funds transfers, or any other
510 mechanism as may be agreed to in writing by the Contractor and the Contracting Officer.
511 The Rates, Charges, and Tiered Pricing Component applicable to the Contractor upon
512 execution of this Contract are set forth in Exhibit "B", as may be revised annually.

513 (1) The Contractor shall pay the United States as provided for in this
514 Article of this Contract for all Delivered Water at Rates, Charges, and Tiered Pricing

515 Component in accordance with policies for Irrigation Water and M&I Water. The Contractor's
516 Rates shall be established to recover its estimated reimbursable costs included in the operation
517 and maintenance component of the Rate and amounts established to recover deficits and other
518 charges, if any, including construction costs as identified in the following subdivisions.

519 (2) In accordance with the WIIN Act, the Contractor's allocable share
520 of Project construction costs will be repaid pursuant to the provisions of this Contract.

521 (A) The amount due and payable to the United States, pursuant
522 to the WIIN Act, shall be the Repayment Obligation. The Repayment Obligation has been
523 computed by the Contracting Officer in a manner consistent with the WIIN Act and is set forth
524 as a lump sum payment (M&I and Irrigation) and as four (4) approximately equal annual
525 installments (Irrigation Only) to be repaid no later than three (3) years after the Effective Date as
526 set forth in Exhibit "C". **There could be one or two exhibits in most cases due to more than**

527 **one service area [For Irrigation contractors and M&I contractors]** The Repayment
528 Obligation is due in lump sum by **[Month Day, Year]** as provided by the WIIN Act. The
529 Contractor must provide appropriate notice to the Contracting Officer in writing no later than
530 thirty (30) days prior to **[Month Day, Year] [Division Level: consider the effective date of**
531 **the contract being converted]** if electing to repay the amount due using the lump sum
532 alternative. If such notice is not provided by such date, the Contractor shall be deemed to have
533 elected the installment payment alternative, in which case, the first such payment shall be made
534 no later than **[Month Day, Year] [Division Level: consider the effective date of the contract**
535 **being converted]**. The second payment shall be made no later than the first anniversary of the
536 first payment date. The third payment shall be made no later than the second anniversary of the

537 first payment date. The final payment shall be made no later than **[Month Day, Year] [no later**
538 **than the third anniversary of the effective date of the contract]**. If the installment payment
539 option is elected by the Contractor, the Contractor may pre-pay the remaining portion of the
540 Repayment Obligation by giving the Contracting Officer sixty (60) days written notice, in which
541 case, the Contracting Officer shall re-compute the remaining amount due to reflect the pre-
542 payment using the same methodology as was used to compute the initial annual installment
543 payment amount, which is illustrated in Exhibit “C”. Notwithstanding any Additional Capital
544 Obligation that may later be established, receipt of the Contractor’s payment of the Repayment
545 Obligation to the United States shall fully and permanently satisfy the Existing Capital
546 Obligation.

547 (B) Additional Capital Obligations that are not reflected in, the
548 schedules referenced in Exhibit “C” and properly assignable to the Contractor, shall be repaid as
549 prescribed by the WIIN Act without interest except as required by law. Consistent with Federal
550 Reclamation law, interest shall continue to accrue on the M&I portion of the Additional Capital
551 Obligation assigned to the Contractor until such costs are paid. Increases or decreases in the
552 Additional Capital Obligation assigned to the Contractor caused solely by annual adjustment of
553 the Additional Capital Obligation assigned to each Project contractor by the Secretary shall not
554 be considered in determining the amounts to be paid pursuant to this subdivision (a)(2)(B),
555 however, will be considered under subdivision (b) of this Article. A separate agreement shall be
556 established by the Contractor and the Contracting Officer to accomplish repayment of the
557 Additional Capital Obligation assigned to the Contractor within the timeframe prescribed by the
558 WIIN Act, subject to the following:

559 (1) If the collective Additional Capital Obligation
560 properly assignable to the contractors exercising conversion under section 4011 of the WIIN Act
561 is less than five million dollars (\$5,000,000), then the portion of such costs properly assignable
562 to the Contractor shall be repaid not more than five (5)-years after the Contracting Officer
563 notifies the Contractor of the Additional Capital Obligation; *Provided, That* the reference to the
564 amount of five million dollars (\$5,000,000) shall not be a precedent in any other context.

565 (2) If the collective Additional Capital Obligation
566 properly assignable to the contractors exercising conversion under section 4011 of the WIIN Act
567 is equal to or greater than five million dollars (\$5,000,000), then the portion of such costs
568 properly assignable to the Contractor shall be repaid as provided by applicable Federal
569 Reclamation law and Project ratesetting policy; *Provided, That* the reference to the amount of
570 five million dollars (\$5,000,000) shall not be a precedent in any other context.

571 (b) In the event that the final cost allocation referenced in Section 4011(b) of
572 the WIIN Act determines that the costs properly assignable to the Contractor are greater than
573 what has been paid by the Contractor, the Contractor shall be obligated to pay the remaining
574 allocated costs. The term of such additional repayment contract shall be not less than one (1)
575 year and not more than ten (10) years, however, mutually agreeable provisions regarding the rate
576 of repayment of such amount may be developed by the Contractor and Contracting Officer. In
577 the event that the final cost allocation indicates that the costs properly assignable to the
578 Contractor are less than what the Contractor has paid, the Contracting Officer shall credit such
579 overpayment as an offset against any outstanding or future obligations of the Contractor, with the
580 exception of Restoration Fund charges pursuant to section 3407(d) of Pub. L. 102-575.

581 (c) The Contracting Officer shall notify the Contractor of the Rates, Charges,
582 and Tiered Pricing Component as follows:

583 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
584 provide the Contractor an estimate of the Charges for Project Water that will be applied
585 to the period October 1, of the current Calendar Year, through September 30, of the
586 following Calendar Year, and the basis for such estimate. The Contractor shall be
587 allowed not less than two months to review and comment on such estimates. On or
588 before September 15 of each Calendar Year, the Contracting Officer shall notify the
589 Contractor in writing of the Charges to be in effect during the period October 1 of the current
590 Calendar Year, through September 30, of the following Calendar Year, and such
591 notification shall revise Exhibit "B."

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

599 (d) At the time the Contractor submits the initial schedule for the delivery of
600 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the
601 Contractor shall make an advance payment to the United States equal to the total amount
602 payable pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the

603 Project Water scheduled to be delivered pursuant to this Contract during the first two
604 calendar months of the Year. Before the end of the first month and before the end of
605 each calendar month thereafter, the Contractor shall make an advance payment to the
606 United States, at the Rate(s) set under subdivision (a) of this Article, for the Water
607 Scheduled to be delivered pursuant to this Contract during the second month
608 immediately following. Adjustments between advance payments for Water Scheduled
609 and payments at Rates due for Water Delivered shall be made before the end of the
610 following month; *Provided, That* any revised schedule submitted by the Contractor
611 pursuant to Article 4 of this Contract which increases the amount of Water Delivered
612 pursuant to this Contract during any month shall be accompanied with appropriate
613 advance payment, at the Rates then in effect, to assure that Project Water is not
614 delivered to the Contractor in advance of such payment. In any month in which the
615 quantity of Water Delivered to the Contractor pursuant to this Contract equals the
616 quantity of Water Scheduled and paid for by the Contractor, no additional Project Water
617 shall be delivered to the Contractor unless and until an advance payment at the Rates
618 then in effect for such additional Project Water is made. Final adjustment between the
619 advance payments for the Water Scheduled and payments for the quantities of Water
620 Delivered during each Year pursuant to this Contract shall be made as soon as
621 practicable but no later than April 30th of the following Year, or 60 days after the
622 delivery of Project Water rescheduled under subdivision (g) of Article 3 of this Contract
623 if such water is not delivered by the last day of February.

624 (e) The Contractor shall also make a payment in addition to the Rate(s) in

625 subdivision (d) of this Article to the United States for Water Delivered, at the Charges and the
626 appropriate Tiered Pricing Component then in effect, before the end of the month following the
627 month of delivery; *Provided, That* the Contractor may be granted an exception from the
628 Tiered Pricing Component pursuant to subdivision (k)(2) of this Article. The payments
629 shall be consistent with the quantities of Irrigation Water and M&I Water Delivered as shown in
630 the water delivery report for the subject month prepared by the Operating Non-Federal Entity or,
631 if there is no Operating Non-Federal Entity, by the Contracting Officer. The water delivery
632 report shall be deemed a bill for the payment of Charges and the applicable Tiered Pricing
633 Component for Water Delivered. Adjustment for overpayment or underpayment of Charges
634 shall be made through the adjustment of payments due to the United States for Charges for the
635 next month. Any amount to be paid for past due payment of Charges and the Tiered Pricing
636 Component shall be computed pursuant to Article 19 of this Contract.

637 (f) The Contractor shall pay for any Water Delivered under subdivision
638 (a), (f), or (g) of Article 3 of this Contract as determined by the Contracting Officer
639 pursuant to applicable statutes, associated regulations, any applicable provisions of
640 guidelines or ratesetting policies; *Provided, That* the Rate for Water Delivered under
641 subdivision (f) of Article 3 of this Contract shall be no more than the otherwise
642 applicable Rate for Irrigation Water or M&I Water under subdivision (a) of this Article.

643 (g) Payments to be made by the Contractor to the United States under this
644 Contract may be paid from any revenues available to the Contractor.

645 (h) All revenues received by the United States from the Contractor
646 relating to the delivery of Project Water or the delivery of non-Project water through

647 Project facilities shall be allocated and applied in accordance with Federal Reclamation
648 law and the associated rules or regulations, and the then-current Project ratesetting policies
649 for M&I Water or Irrigation Water.

650 (i) The Contracting Officer shall keep its accounts pertaining to the
651 administration of the financial terms and conditions of its long-term contracts, in accordance
652 with applicable Federal standards, so as to reflect the application of Project costs and
653 revenues. The Contracting Officer shall, each Year upon request of the Contractor,
654 provide to the Contractor a detailed accounting of all Project and Contractor expense
655 allocations, the disposition of all Project and Contractor revenues, and a summary of all
656 water delivery information. The Contracting Officer and the Contractor shall enter into
657 good faith negotiations to resolve any discrepancies or disputes relating to accountings,
658 reports, or information.

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

666 (k) (1) Beginning at such time as deliveries of Project Water in a Year
667 exceed 80 percent of the Contract Total, then before the end of the month following the month of
668 delivery the Contractor shall make an additional payment to the United States equal to the

669 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water
670 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the
671 Contract Total, shall equal one-half of the difference between the Rate established under
672 subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water
673 Rate, whichever is applicable. The Tiered Pricing Component for the amount of Water
674 Delivered which exceeds 90 percent of the Contract Total shall equal the difference between (i)
675 the Rate established under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water
676 Rate or M&I Full Cost Water Rate, whichever is applicable. For all Water Delivered pursuant to
677 subdivision (a) of Article 3 of this Contract which is in excess of 80 percent of the Contract
678 Total, this increment shall be deemed to be divided between Irrigation Water and M&I Water in
679 the same proportion as actual deliveries of each bear to the cumulative total Water Delivered.

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

688 (3) For purposes of determining the applicability of the Tiered Pricing
689 Component pursuant to this Article, Water Delivered shall include Project Water that the
690 Contractor transfers to others but shall not include Project Water transferred to the Contractor,

691 nor shall it include the additional water provided to the Contractor under the provisions of
692 subdivision (f) of Article 3 of this Contract.

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

701 (m) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the
702 CVPIA, the Rates for Project Water transferred by the Contractor shall be the
703 Contractor's Rates, in accordance with the applicable Project ratesetting policy, adjusted
704 upward or downward to reflect the changed costs, if any, incurred by the Contracting Officer
705 in the delivery of the transferred Project Water to the transferee's point of delivery. If the
706 Contractor is receiving lower Rates and Charges because of inability to pay and is
707 transferring Project Water to another entity whose Rates and Charges are not adjusted
708 due to inability to pay, the Rates and Charges for transferred Project Water shall not be
709 adjusted to reflect the Contractor's inability to pay.

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

712 (o) With respect to the Rates for M&I Water, the Contractor asserts that it is

713 not legally obligated to pay any Project deficits claimed by the United States to have accrued as
714 of the date of this Contract or deficit-related interest charges thereon. By entering into this
715 Contract, the Contractor does not waive any legal rights or remedies that it may have with
716 respect to such disputed issues. Notwithstanding the execution of this Contract and payments
717 made hereunder, the Contractor may challenge in the appropriate administrative or judicial
718 forums; (1) the existence, computation, or imposition of any deficit charges accruing during the
719 term of the Existing Contract and any preceding interim renewal contracts, if applicable; (2)
720 interest accruing on any such deficits; (3) the inclusion of any such deficit charges or interest in
721 the Rates; (4) the application by the United States of payments made by the Contractor under its
722 Existing Contract and any preceding interim renewal contracts if applicable; and (5) the
723 application of such payments in the Rates. The Contracting Officer agrees that the Contractor
724 shall be entitled to the benefit of any administrative or judicial ruling in favor of any Project
725 M&I contractor on any of these issues, and credits for payments heretofore made, provided that
726 the basis for such ruling is applicable to the Contractor.

727 NON-INTEREST BEARING O&M DEFICITS

728 8. The Contractor and the Contracting Officer concur that, as of the Effective Date
729 the Contractor has no non-interest bearing O&M deficits and shall have no further
730 liability therefore.

731 SALES, TRANSFERS, OR EXCHANGES OF WATER

732 9. (a) The right to receive Project Water provided for in this Contract may be
733 sold, transferred, or exchanged to others for reasonable and beneficial uses within the
734 State of California if such sale, transfer, or exchange is authorized by applicable Federal

735 and State laws, and applicable guidelines or regulations then in effect. No sale, transfer,
736 or exchange of Project Water under this Contract may take place without the prior
737 written approval of the Contracting Officer, except as provided for in subdivision (b) of
738 this Article, and no such sales, transfers, or exchanges shall be approved absent all
739 appropriate environmental documentation, including, but not limited to, documents
740 prepared pursuant to the NEPA and ESA. Such environmental documentation should
741 include, as appropriate, an analysis of groundwater impacts and economic and social
742 effects, including environmental justice, of the proposed water transfers on both the
743 transferor and transferee.

744 (b) In order to facilitate efficient water management by means of water
745 transfers of the type historically carried out among Project Contractors located within the
746 same geographical area and to allow the Contractor to participate in an accelerated water
747 transfer program during the term of this Contract, the Contracting Officer shall prepare, as
748 appropriate, all necessary environmental documentation, including, but not limited to,
749 documents prepared pursuant to the NEPA and ESA, analyzing annual transfers within
750 such geographical areas and the Contracting Officer shall determine whether such
751 transfers comply with applicable law. Following the completion of the environmental
752 documentation, such transfers addressed in such documentation shall be conducted with
753 advance notice to the Contracting Officer, but shall not require prior written approval by
754 the Contracting Officer. Such environmental documentation and the Contracting
755 Officer's compliance determination shall be reviewed every five years and updated, as
756 necessary, prior to the expiration of the then existing five (5)-year period. All subsequent

757 environmental documentation shall include an alternative to evaluate not less than the quantity of
758 Project Water historically transferred within the same geographical area.

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

770 APPLICATION OF PAYMENTS AND ADJUSTMENTS

771 10. (a) The amount of any overpayment by the Contractor of the Contractor's
772 O&M, capital, and deficit (if any) obligations for the Year shall be applied first to any current
773 liabilities of the Contractor arising out of this Contract then due and payable.
774 Overpayments of more than \$1,000 shall be refunded at the Contractor's request. In lieu of a
775 refund, any amount of such overpayment, at the option of the Contractor, may be credited
776 against amounts to become due to the United States by the Contractor. With respect to
777 overpayment, such refund or adjustment shall constitute the sole remedy of the Contractor or
778 anyone having or claiming to have the right to the use of any of the Project Water supply

779 provided for by this Contract. All credits and refunds of overpayments shall be made
780 within 30 days of the Contracting Officer obtaining direction as to how to credit or
781 refund such overpayment in response to the notice to the Contractor that it has finalized the
782 accounts for the Year in which the overpayment was made.

783 (b) All advances for miscellaneous costs incurred for work requested by the
784 Contractor pursuant to Article 24 of this Contract shall be adjusted to reflect the actual
785 costs when the work has been completed. If the advances exceed the actual costs incurred, the
786 difference will be refunded to the Contractor. If the actual costs exceed the Contractor's
787 advances, the Contractor will be billed for the additional costs pursuant to Article 24 of this
788 Contract.

789 TEMPORARY REDUCTIONS – RETURN FLOWS

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

795 (b) The Contracting Officer or Operating Non-Federal Entity(ies) may
796 temporarily discontinue or reduce the quantity of Water Delivered to the Contractor as
797 herein provided for the purposes of investigation, inspection, maintenance, repair, or
798 replacement of any of the Project facilities or any part thereof necessary for the delivery of
799 Project Water to the Contractor, but so far as feasible the Contracting Officer or Operating
800 Non-Federal Entity(ies) will give the Contractor due notice in advance of such temporary

801 discontinuance or reduction, except in case of emergency, in which case no notice need be
802 given; Provided, That the United States shall use its best efforts to avoid any
803 discontinuance or reduction in such service. Upon resumption of service after such
804 discontinuance or reduction, and if requested by the Contractor, the United States will, if
805 possible, deliver the quantity of Project Water which would have been delivered
806 hereunder in the absence of such discontinuance or reduction.

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

813 CONSTRAINTS ON THE AVAILABILITY OF WATER

814 12. (a) In its operation of the Project, the Contracting Officer will use all
815 reasonable means to guard against a Condition of Shortage in the quantity of Project
816 Water to be made available to the Contractor pursuant to this Contract. In the event the
817 Contracting Officer determines that a Condition of Shortage appears probable, the
818 Contracting Officer will notify the Contractor of said determination as soon as practicable.

819 (b) If there is a Condition of Shortage because of inaccurate runoff forecasting
820 or other similar operational errors affecting the Project; drought and other physical or natural
821 causes beyond the control of the Contracting Officer; or actions taken by the Contracting
822 Officer to meet current and future legal obligations, then, except as provided in subdivision (a) of
823 Article 17 of this Contract, no liability shall accrue against the United States or any of its
824 officers, agents, or employees for any damage, direct or indirect, arising therefrom.

825 (c) In any Year in which there may occur a Condition of Shortage for any of
826 the reasons specified in subdivision (b) of this Article, and subject to subdivision (d) of this
827 Article, the Contracting Officer will first allocate the available Project Water consistent

828 with the Project M&I Water Shortage Policy as finally adopted after environmental review for
829 determining the amount of Project Water Available for delivery to the Project
830 Contractors. Subject to the foregoing allocation, in any year in which there may occur a
831 Condition of Shortage, the Contracting Officer shall then apportion Project Water among
832 the Contractor and others entitled to Project Water from Delta Division Facilities under
833 long-term water service or repayment contracts (or renewals thereof or binding
834 commitments therefore) in force on February 28, 2005, as follows:

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

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

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

849 (4) The available supply shall be multiplied by the Contractor's

850 proportionate share and the result shall be the quantity of Project Water made available
851 by the United States to the Contractor for the relevant Year in accordance with the
852 schedule developed by the Contracting Officer under subdivision (c)(1) of this Article 12,
853 but in no event shall such amount exceed the Contract Total. In the event the
854 Contracting Officer subsequently determines that the Contracting Officer can increase or
855 needs to decrease the available supply for delivery from Delta Division Facilities to
856 long-term water service and repayment contractors during the relevant Year, such
857 additions or reductions to the available supply shall be apportioned consistent with
858 subparagraphs (1) through (4), inclusive.

859 (d) By entering into this Contract, the Contractor does not waive any legal
860 rights or remedies it may have to file or participate in any administrative or judicial
861 proceeding contesting: (i) the sufficiency of the Project M&I Water Shortage Policy; (ii)
862 the substance of such a policy; (iii) the applicability of such a policy; or (iv) the manner in
863 which such policy is implemented in order to allocate Project Water between M&I and
864 irrigation purposes; *Provided, That* the Contractor has commenced any such judicial
865 challenge or any administrative procedures necessary to institute any judicial challenge
866 within six months of the policy becoming final. By agreeing to the foregoing, the
867 Contracting Officer does not waive any legal defenses or remedies that it may have to
868 assert in such a proceeding. Nothing contained herein shall be interpreted to validate or
869 invalidate the Project M&I Water Shortage Policy.

870 UNAVOIDABLE GROUNDWATER PERCOLATION

871 13. (a) To the extent applicable, the Contractor shall not be deemed to have

872 delivered Irrigation Water to Excess Lands or Ineligible Lands within the meaning of this
873 Contract if such lands are irrigated with groundwater that reaches the underground strata
874 as an unavoidable result of the delivery of Irrigation Water by the Contractor to Eligible
875 Lands.

876 (b) Upon complete payment of the Repayment Obligation by the Contractor,
877 this Article 13 shall no longer be applicable.

878 COMPLIANCE WITH FEDERAL RECLAMATION LAWS

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

884 PROTECTION OF WATER AND AIR QUALITY

885 15. (a) Omitted

886 (b) The United States will care for, operate and maintain reserved works in a
887 manner that preserves the quality of the water at the highest level possible as determined by the
888 Contracting Officer. The United States does not warrant the quality of the water delivered to the
889 Contractor and is under no obligation to furnish or construct water treatment facilities to
890 maintain or improve the quality of water delivered to the Contractor.

891 (c) The Contractor will comply with all applicable water and air pollution
892 laws and regulations of the United States and the State of California; and will obtain all required
893 permits or licenses from the appropriate Federal, State, or local authorities necessary for the
894 delivery of water by the Contractor; and shall be responsible for compliance with all Federal,
895 State, and local water quality standards applicable to surface and subsurface drainage and/or
896 discharges generated through the use of Federal or Contractor facilities or Project Water
897 provided by the Contractor within its Service Area.

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

900 (e) Omitted

923 Contractor's Service Area. The incremental fee per acre is the mathematical result of
924 such quotient times the interest rate determined using Section 202 (3) of the Act of
925 October 12, 1982 (96 Stat. 1263). Such incremental fee will be charged to each acre of
926 excess or full-cost land within the Contractor's Service Area that receives non-Project
927 water through Federally financed or constructed facilities. The incremental fee calculation
928 methodology will continue during the term of this Contract absent the promulgation of a
929 contrary Bureau of Reclamation-wide rule, regulation, or policy adopted after the
930 Contractor has been afforded the opportunity to review and comment on the proposed
931 rule, regulation, or policy. If such rule, regulation, or policy is adopted, it shall supersede
932 this provision.

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

939 (1) The Contractor may introduce non-Project water into Project
940 facilities and deliver said water to lands within the Contractor's Service Area, including
941 Ineligible Lands, subject to payment to the United States and/or to any applicable
942 Operating Non-Federal Entity of an appropriate rate as determined by the applicable
943 Project ratesetting policy, the Reclamation Reform Act of 1982, and the Project use
944 power policy, if such Project use power policy is applicable, each as amended, modified, or

945 superseded from time to time.

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

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

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

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

967 facilities declared to be available by the Contracting Officer for conveyance and
968 transportation of non-Project water prior to any such remaining capacity being made
969 available to non-Project contractors. Other Project Contractors shall have a second priority
970 to any remaining capacity of facilities declared to be available by the Contracting Officer
971 for conveyance and transportation of non-Project water prior to any such remaining
972 capacity being made available to non-Project contractors.

973 (c) Upon complete payment of the Repayment Obligation by the Contractor,
974 subdivision (a) of this Article 16 shall no longer be applicable.

975 OPINIONS AND DETERMINATIONS

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

986 (b) The Contracting Officer shall have the right to make determinations
987 necessary to administer this Contract that are consistent with the provisions of this
988 Contract, the laws of the United States and of the State of California, and the rules and

989 regulations promulgated by the Secretary. Such determinations shall be made in
990 consultation with the Contractor to the extent reasonably practicable.

991 COORDINATION AND COOPERATION

992 18. (a) In order to further their mutual goals and objectives, the Contracting
993 Officer and the Contractor shall communicate, coordinate, and cooperate with each other,
994 and with other affected Project Contractors, in order to improve the O&M of the
995 Project. The communication, coordination, and cooperation regarding O&M shall
996 include, but not be limited to, any action which will or may materially affect the quantity
997 or quality of Project Water supply, the allocation of Project Water supply, and Project
998 financial matters including, but not limited to, budget issues. The communication,
999 coordination, and cooperation provided for hereunder shall extend to all provisions of
1000 this Contract. Each party shall retain exclusive decision making authority for all actions,
1001 opinions, and determinations to be made by the respective party.

1002 (b) Within 120 days following the Effective Date, the Contractor, other
1003 affected Project Contractors, and the Contracting Officer shall arrange to meet with
1004 interested Project Contractors to develop a mutually agreeable, written Project-wide
1005 process, which may be amended as necessary separate and apart from this Contract. The
1006 goal of this process shall be to provide, to the extent practicable, the means of mutual
1007 communication and interaction regarding significant decisions concerning Project O&M
1008 on a real-time basis.

1009 (c) In light of the factors referred to in subdivision (b) of Article 3 of this
1010 Contract, it is the intent of the Secretary to improve water supply reliability. To carry out

1011 this intent:

1012 (1) The Contracting Officer will, at the request of the Contractor,
1013 assist in the development of integrated resource management plans for the Contractor.
1014 Further, the Contracting Officer will, as appropriate, seek authorizations for implementation
1015 of partnerships to improve water supply, water quality, and reliability.

1016 (2) The Secretary will, as appropriate, pursue program and project
1017 implementation and authorization in coordination with Project Contractors to improve the
1018 water supply, water quality, and reliability of the Project for all Project purposes.

1019 (3) The Secretary will coordinate with Project Contractors and the
1020 State of California to seek improved water resource management.

1021 (4) The Secretary will coordinate actions of agencies within the
1022 Department of the Interior that may impact the availability of water for Project purposes.

1023 (5) The Contracting Officer shall periodically, but not less than
1024 annually, hold division-level meetings to discuss Project operations, division-level water
1025 management activities, and other issues as appropriate.

1026 (d) Without limiting the contractual obligations of the Contracting Officer
1027 under the other Articles of this Contract, nothing in this Article shall be construed to limit
1028 or constrain the Contracting Officer's ability to communicate, coordinate, and cooperate
1029 with the Contractor or other interested stakeholders or to make decisions in a timely fashion
1030 as needed to protect health, safety, or the physical integrity of structures or facilities.

1031

CHARGES FOR DELINQUENT PAYMENTS

1032 19. (a) The Contractor shall be subject to interest, administrative, and penalty
1033 charges on delinquent payments. If a payment is not received by the due date, the
1034 Contractor shall pay an interest charge on the delinquent payment for each day the payment
1035 is delinquent beyond the due date. If a payment becomes 60 days delinquent, the
1036 Contractor shall pay, in addition to the interest charge, an administrative charge to
1037 cover additional costs of billing and processing the delinquent payment. If a payment is
1038 delinquent 90 days or more, the Contractor shall pay, in addition to the interest and
1039 administrative charges, a penalty charge for each day the payment is delinquent beyond the
1040 due date, based on the remaining balance of the payment due at the rate of 6 percent per
1041 year. The Contractor shall also pay any fees incurred for debt collection services associated
1042 with a delinquent payment.

1043 (b) The interest rate charged shall be the greater of either the rate prescribed
1044 quarterly in the Federal Register by the Department of the Treasury for application to
1045 overdue payments, or the interest rate of 0.5 percent per month. The interest rate charged
1046 will be determined as of the due date and remain fixed for the duration of the delinquent
1047 period.

1048 (c) When a partial payment on a delinquent account is received, the amount
1049 received shall be applied first to the penalty charges, second to the administrative charges,
1050 third to the accrued interest, and finally to the overdue payment.

1051

EQUAL EMPLOYMENT OPPORTUNITY

1052 20. During the performance of this Contract, the Contractor agrees as follows:

1053 (a) The Contractor will not discriminate against any employee or applicant
1054 for employment because of race, color, religion, sex, sexual orientation, gender identity, or
1055 national origin. The Contractor will take affirmative action to ensure that applicants are
1056 employed, and that employees are treated during employment, without regard to their race,
1057 color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall
1058 include, but not be limited to, the following: employment, upgrading, demotion, or
1059 transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other
1060 forms of compensation; and selection for training, including apprenticeship. The Contractor
1061 agrees to post in conspicuous places, available to employees and applicants for employment,
1062 notices to be provided by the Contracting Officer setting forth the provisions of this
1063 nondiscrimination clause.

1064 (b) The Contractor will, in all solicitations or advertisements for employees
1065 placed by or on behalf of the Contractor, state that all qualified applicants will receive
1066 consideration for employment without regard to race, color, religion, sex, sexual orientation,
1067 gender identity, or national origin.

1068 (c) The Contractor will not discharge or in any other manner discriminate
1069 against any employee or applicant for employment because such employee or applicant has
1070 inquired about, discussed, or disclosed the compensation of the employee or applicant or
1071 another employee or applicant. This provision shall not apply to instances in which an
1072 employee who has access to the compensation information of other employees or applicants as
1073 part of such employee's essential job functions discloses the compensation of such other
1074 employees or applicants to individuals who do not otherwise have access to such information,
1075 unless such disclosure is in response to a formal complaint or charge, in furtherance of an
1076 investigation, proceeding, hearing, or action, including an investigation conducted by the
1077 employer, or is consistent with the Contractor's legal duty to furnish information.

1078 (d) The Contractor will send to each labor union or representative of
1079 workers with which it has a collective bargaining agreement or other contract or understanding,
1080 a notice, to be provided by the Contracting Officer, advising the labor union or workers'
1081 representative of the Contractor's commitments under section 202 of Executive Order No.
1082 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places
1083 available to employees and applicants for employment.

1084 (e) The Contractor will comply with all provisions of Executive Order No.
1085 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary
1086 of Labor.

1087 (f) The Contractor will furnish all information and reports required by
1088 Executive Order No. 11246 of Sept. 24, 1965, and by the rules, regulations, and orders of
1089 the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and
1090 accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation
1091 to ascertain compliance with such rules, regulations, and orders.

1092 (g) In the event of the Contractor's noncompliance with the
1093 nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this
1094 Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may
1095 be declared ineligible for further Government contracts in accordance with procedures
1096 authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may
1097 be imposed and remedies invoked as provided in Executive Order No. 11246 of Sept. 24,
1098 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by
1099 law.

1100 (h) The Contractor will include the provisions of paragraphs (a) through (g)
1101 in every subcontract or purchase order unless exempted by the rules, regulations, or orders
1102 of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of Sept.
1103 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The
1104 Contractor will take such action with respect to any subcontract or purchase order as may be
1105 directed by the Secretary of Labor as a means of enforcing such provisions, including
1106 sanctions for noncompliance: *Provided, however, That* in the event the Contractor

1107 becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a
1108 result of such direction, the Contractor may request the United States to enter into such
1109 litigation to protect the interests of the United States.

1110 GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT

1111 21. (a) The obligation of the Contractor to pay the United States as provided in
1112 this Contract is a general obligation of the Contractor notwithstanding the manner in which the
1113 obligation may be distributed among the Contractor's water users and notwithstanding the default
1114 of individual water users in their obligation to the Contractor.

1115 (b) The payment of charges becoming due pursuant to this Contract is a
1116 condition precedent to receiving benefits under this Contract. The United States shall not make
1117 water available to the Contractor through Project facilities during any period in which the
1118 Contractor is in arrears in the advance payment of water rates due the United States. The
1119 Contractor shall not deliver water under the terms and conditions of this Contract for lands or
1120 parties that are in arrears in the advance payment of water rates as levied or established by the
1121 Contractor.

1122 (c) With respect to subdivision (b) of this Article, the Contractor shall have no
1123 obligation to require advance payment for water rates which it levies.

1124 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1125 22. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
1126 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as
1127 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title
1128 III; 42 U.S.C. 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L. 101-
1129 336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the
1130 applicable implementing regulations and any guidelines imposed by the U.S.
1131 Department of the Interior and/or Bureau of Reclamation.

1132 (b) These statutes prohibit any person in the United States from being
1133 excluded from participation in, being denied the benefits of, or being otherwise subjected to
1134 discrimination under any program or activity receiving financial assistance from the Bureau
1135 of Reclamation on the grounds of race, color, national origin, disability, or age. By
1136 executing this Contract, the Contractor agrees to immediately take any measures necessary
1137 to implement this obligation, including permitting officials of the United States to inspect
1138 premises, programs, and documents.

1139 (c) The Contractor makes this Contract in consideration of and for the
1140 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other
1141 Federal financial assistance extended after the date hereof to the Contractor by the Bureau

1142 of Reclamation, including installment payments after such date on account of
1143 arrangements for Federal financial assistance which were approved before such date.
1144 The Contractor recognizes and agrees that such Federal assistance will be extended in
1145 reliance on the representations and agreements made in this Article and that the United
1146 States reserves the right to seek judicial enforcement thereof.

1147 (d) Complaints of discrimination against the Contractor shall be investigated
1148 by the Contracting Officer's Office of Civil Rights.

1149 PRIVACY ACT COMPLIANCE

1150 23. (a) The Contractor shall comply with the Privacy Act of 1974 (Privacy Act)
1151 (5 U.S.C. § 552a) and the Department of the Interior rules and regulations under the Privacy
1152 Act (43 C.F.R. § 2.45, et seq.) in maintaining Landholder certification and reporting
1153 records required to be submitted to the Contractor for compliance with Sections 206,
1154 224(c), and 228 of the Reclamation Reform Act of 1982 (43 U.S.C. §§ 390ff, 390ww, and
1155 390zz), and pursuant to 43 C.F.R. § 426.18.

1156 (b) With respect to the application and administration of the criminal penalty
1157 provisions of the Privacy Act (5 U.S.C. § 552a(i)), the Contractor and the Contractor's
1158 employees who are responsible for maintaining the certification and reporting records
1159 referenced in paragraph (a) above are considered to be employees of the Department of the
1160 Interior. See 5 U.S.C. § 552a(m).

1161 (c) The Contracting Officer or a designated representative shall provide the
1162 Contractor with current copies of the Department of the Interior Privacy Act regulations
1163 and the Bureau of Reclamation Federal Register Privacy Act System of Records Notice
1164 (Interior/WBR-31, Acreage Limitation) which govern the maintenance, safeguarding,
1165 and disclosure of information contained in the Landholders' certification and reporting
1166 records.

1167 (d) The Contracting Officer shall designate a full-time employee of the
1168 Bureau of Reclamation to be the System Manager responsible for making decisions on
1169 denials pursuant to 43 C.F.R. §§ 2.61 and 2.64 and amendment requests pursuant to 43
1170 C.F.R. § 2.72. The Contractor is authorized to grant requests by individuals for access to
1171 their own records.

1172 (e) The Contractor shall forward promptly to the System Manager each
1173 proposed denial of access under 43 C.F.R. § 2.64 and each request for amendment of
1174 records filed under 43 C.F.R. § 2.71; notify the requester accordingly of such referral;
1175 and provide the System Manager with information and records necessary to prepare an
1176 appropriate response to the requester. These requirements do not apply to individuals
1177 seeking access to their own certification and reporting forms filed with the Contractor

1178 pursuant to 43 C.F.R. § 426.18 unless the requester elects to cite the Privacy Act as an
1179 authority for the request.

1180 (f) Upon complete payment of the Repayment Obligation by the
1181 Contractor, this Article 23 will no longer be applicable.

1182 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1183 24. In addition to all other payments to be made by the Contractor pursuant to this
1184 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill
1185 and detailed statement submitted by the Contracting Officer to the Contractor for such
1186 specific items of direct cost incurred by the United States for work requested by the
1187 Contractor associated with this Contract plus indirect costs in accordance with applicable
1188 Bureau of Reclamation policies and procedures. All such amounts referred to in this
1189 Article shall not exceed the amount agreed to in writing in advance by the Contractor.
1190 This Article shall not apply to costs for routine contract administration.

1191 WATER CONSERVATION

1192 25. (a) Prior to the delivery of water provided from or conveyed through
1193 Federally constructed or Federally financed facilities pursuant to this Contract, the
1194 Contractor shall develop a water conservation plan, as required by subsection 210(b) of the
1195 Reclamation Reform Act of 1982 and 43 C.F.R. 427.1 (Water Conservation Rules and
1196 Regulations).

1197 Additionally, an effective water conservation and efficiency program shall be based on the
1198 Contractor's water conservation plan that has been determined by the Contracting Officer to
1199 meet the conservation and efficiency criteria for evaluating water conservation plans
1200 established under Federal law. The water conservation and efficiency program shall
1201 contain definite water conservation objectives, appropriate economically feasible water
1202 conservation measures, and time schedules for meeting those objectives. Continued

1203 Project Water delivery pursuant to this Contract shall be contingent upon the
1204 Contractor's continued implementation of such water conservation program. In the
1205 event the Contractor's water conservation plan or any revised water conservation plan
1206 completed pursuant to subdivision (d) of this Article 25 have not yet been determined by
1207 the Contracting Officer to meet such criteria, due to circumstances which the
1208 Contracting Officer determines are beyond the control of the Contractor, water deliveries
1209 shall be made under this Contract so long as the Contractor diligently works with the
1210 Contracting Officer to obtain such determination at the earliest practicable date, and
1211 thereafter the Contractor immediately begins implementing its water conservation and
1212 efficiency program in accordance with the time schedules therein.

1213 (b) Should the amount of M&I Water delivered pursuant to subdivision
1214 (a) of Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year,
1215 the Contractor shall implement the Best Management Practices identified by the time
1216 frames issued by the Mid-Pacific Region's then-existing conservation and efficiency
1217 criteria for such M&I Water unless any such practice is determined by the Contracting
1218 Officer to be inappropriate for the Contractor.

1219 (c) The Contractor shall submit to the Contracting Officer a report on the
1220 status of its implementation of the water conservation plan on the reporting dates specified in the
1221 then-existing conservation and efficiency criteria established under Federal law.

1222 (d) At five (5)-year intervals, the Contractor shall revise its water
1223 conservation plan to reflect the then-existing conservation and efficiency criteria for evaluating
1224 water conservation plans established under Federal law and submit such revised water

1225 management plan to the Contracting Officer for review and evaluation. The Contracting Officer
1226 will then determine if the water conservation plan meets the Bureau of Reclamation's then-
1227 existing conservation and efficiency criteria for evaluating water conservation plans established
1228 under Federal law.

1229 (e) If the Contractor is engaged in direct groundwater recharge, such activity
1230 shall be described in the Contractor's water conservation plan.

1231 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1232 26. Except as specifically provided in Article 16 of this Contract, the provisions
1233 of this Contract shall not be applicable to or affect non-Project water or water rights now owned
1234 or hereafter acquired by the Contractor or any user of such water within the Contractor's Service
1235 Area. Any such water shall not be considered Project Water under this Contract. In addition,
1236 this Contract shall not be construed as limiting or curtailing any rights which the Contractor or
1237 any water user within the Contractor's Service Area acquires or has available under any other
1238 contract pursuant to Federal Reclamation law.

1239 OPERATION AND MAINTENANCE BY THE OPERATING NON-FEDERAL ENTITY

1240 27. (a) The O&M of a portion of the Project facilities which serve the Contractor,
1241 and responsibility for funding a portion of the costs of such O&M, have been transferred to the
1242 San Luis & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate
1243 agreement (8-07-20-X0354-X) between the United States and Operating Non-Federal Entity San
1244 Luis & Delta-Mendota Water Authority. That separate agreement shall not interfere with or
1245 affect the rights or obligations of the Contractor or the United States hereunder.

1246 (b) The Contracting Officer has previously notified the Contractor in
1247 writing that the Operation and Maintenance of a portion of the Project facilities which
1248 serve the Contractor has been transferred to the Operating Non-Federal Entity San Luis &
1249 Delta-Mendota Water Authority, and therefore, the Contractor shall pay directly to the
1250 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or to any
1251 successor approved by the Contracting Officer under the terms and conditions of the
1252 separate agreement between the United States and the Operating Non-Federal Entity San
1253 Luis & Delta-Mendota Water Authority described in subdivision (a) of this Article, all rates,
1254 charges, or assessments of any kind, including any assessment for reserve funds, which the
1255 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or such successor
1256 determines, sets, or establishes for the Operation and Maintenance of the portion of the Project
1257 facilities operated and maintained by the Operating Non-Federal Entity San Luis & Delta-
1258 Mendota Water Authority or such successor. Such direct payments to Operating Non-Federal
1259 Entity San Luis & Delta-Mendota Water Authority or such successor shall not relieve the
1260 Contractor of its obligation to pay directly to the United States the Contractor's share of
1261 the Project Rates, Charges, and Tiered Pricing Component except to the extent the
1262 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority collects payments
1263 on behalf of the United States in accordance with the separate agreement identified in
1264 subdivision (a) of this Article.

1265 (c) For so long as the O&M of any portion of the Project facilities
1266 serving the Contractor is performed by Operating Non-Federal Entity San Luis &
1267 Delta-Mendota Water Authority, or any successor thereto, the Contracting Officer

1268 shall adjust those components of the Rates for Water Delivered under this Contract
1269 representing the cost associated with the activity being performed by Operating Non-
1270 Federal Entity San Luis & Delta-Mendota Water Authority or its successor.

1271 (d) In the event the Operation and Maintenance of the Project facilities
1272 operated and maintained by the Operating Non-Federal Entity San Luis & Delta-Mendota
1273 Water Authority is re-assumed by the United States during the term of this Contract, the
1274 Contracting Officer shall so notify the Contractor, in writing, and present to the
1275 Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid
1276 by the Contractor for Project Water under this Contract representing the Operation and
1277 Maintenance costs of the portion of such Project facilities which have been re-assumed. The
1278 Contractor shall, thereafter, in the absence of written notification from the Contracting Officer to
1279 the contrary, pay the Rates, Charges, and Tiered Pricing Component specified in the revised
1280 Exhibit "B" directly to the United States in compliance with Article 7 of this Contract.

1281 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1282 28. The expenditure or advance of any money or the performance of any obligation of
1283 the United States under this Contract shall be contingent upon appropriation or allotment
1284 of funds. Absence of appropriation or allotment of funds shall not relieve the Contractor
1285 from any obligations under this Contract. No liability shall accrue to the United States in case
1286 funds are not appropriated or allotted.

1287 BOOKS, RECORDS, AND REPORTS

1288 29. (a) The Contractor shall establish and maintain accounts and other books and
1289 records pertaining to administration of the terms and conditions of this Contract, including
1290 the Contractor's financial transactions; water supply data; project operations, maintenance, and
1291 replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop
1292 census), land-ownership, land-leasing, and water-use data; and other matters that the
1293 Contracting Officer may require. Reports shall be furnished to the Contracting Officer
1294 in such form and on such date or dates as the Contracting Officer may require. Subject to
1295 applicable Federal laws and regulations, each party to this Contract shall have the right during

1296 office hours to examine and make copies of the other party's books and records relating to
1297 matters covered by this Contract.

1298 (b) Notwithstanding the provisions of subdivision (a) of this Article, no
1299 books, records, or other information shall be requested from the Contractor by the
1300 Contracting Officer unless such books, records, or information are reasonably related to the
1301 administration or performance of this Contract. Any such request shall allow the Contractor a
1302 reasonable period of time within which to provide the requested books, records, or
1303 information.

1304 (c) At such time as the Contractor provides information to the Contracting
1305 Officer pursuant to subdivision (a) of this Article, a copy of such information shall be provided
1306 to the Operating Non-Federal Entity(ies).

1307 ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

1308 30. (a) The provisions of this Contract shall apply to and bind the successors and
1309 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1310 therein by either party shall be valid until approved in writing by the other party.

1311 (b) The assignment of any right or interest in this Contract by either party
1312 shall not interfere with the rights or obligations of the other party to this Contract absent the
1313 written concurrence of said other party.

1314 (c) The Contracting Officer shall not unreasonably condition or withhold
1315 approval of any proposed assignment.

1316 SEVERABILITY

1317 31. In the event that a person or entity who is neither (i) a party to a Project contract,
1318 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii)
1319 an association or other form of organization whose primary function is to represent parties to

1320 Project contracts, brings an action in a court of competent jurisdiction challenging the
1321 legality or enforceability of a provision included in this Contract and said person, entity,
1322 association, or organization obtains a final court decision holding that such provision is
1323 legally invalid or unenforceable and the Contractor has not intervened in that lawsuit in
1324 support of the plaintiff(s), the parties to this Contract shall use their best efforts to (i)
1325 within 30 days of the date of such final court decision identify by mutual agreement the
1326 provisions in this Contract which must be revised and (ii) within three months thereafter
1327 promptly agree on the appropriate revision(s). The time periods specified above may be
1328 extended by mutual agreement of the parties. Pending the completion of the actions
1329 designated above, to the extent it can do so without violating any applicable provisions of
1330 law, the United States shall continue to make the quantities of Project Water specified in this
1331 Contract available to the Contractor pursuant to the provisions of this Contract which were not
1332 found to be legally invalid or unenforceable in the final court decision.

1333 RESOLUTION OF DISPUTES

1334 32. Should any dispute arise concerning any provisions of this Contract, or the
1335 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt
1336 to resolve the dispute. Prior to the Contractor commencing any legal action, or the
1337 Contracting Officer referring any matter to the Department of Justice, the party shall
1338 provide to the other party 30 days' written notice of the intent to take such action;
1339 Provided, That such notice shall not be required where a delay in commencing an action
1340 would prejudice the interests of the party that intends to file suit. During the 30-day
1341 notice period, the Contractor and the Contracting Officer shall meet and confer in an

1342 attempt to resolve the dispute. Except as specifically provided, nothing herein is intended
1343 to waive or abridge any right or remedy that the Contractor or the United States may have.

1344 OFFICIALS NOT TO BENEFIT

1345 33. No Member of or Delegate to the Congress, Resident Commissioner, or official of
1346 the Contractor shall benefit from this Contract other than as a water user or landowner in the
1347 same manner as other water users or landowners.

1348 CHANGES IN CONTRACTOR'S ORGANIZATION AND/OR SERVICE AREA

1349 34. (a) While this Contract is in effect, no change may be made in the
1350 Contractor's Service Area or organization, by inclusion or exclusion of lands or by any other
1351 changes which may affect the respective rights, obligations, privileges, and duties of either the
1352 United States or the Contractor under this Contract, including, but not limited to, dissolution,
1353 consolidation, or merger, except upon the Contracting Officer's written consent.

1354 (b) Within 30 days of receipt of a request for such a change, the Contracting
1355 Officer will notify the Contractor of any additional information required by the Contracting
1356 Officer for processing said request, and both parties will meet to establish a mutually agreeable
1357 schedule for timely completion of the process. Such process will analyze whether the proposed
1358 change, is likely to: (i) result in the use of Project Water contrary to the terms of this Contract;
1359 (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or
1360 to pay for any Federally-constructed facilities for which the Contractor is responsible; and (iii)
1361 have an impact on any Project Water rights applications, permits, or licenses. In addition,
1362 the Contracting Officer shall comply with the NEPA and the ESA. The Contractor will
1363 be responsible for all costs incurred by the Contracting Officer in this process, and such
1364 costs will be paid in accordance with Article 24 of this Contract.

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FEDERAL LAWS

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

RECLAMATION REFORM ACT OF 1982

36. (a) Upon a Contractor’s compliance with and discharge of the Repayment Obligation pursuant to this Contract, subsections (a) and (b) of Section 213 of the Reclamation Reform Act of 1982 (96 Stat. 1269) shall apply to affected lands.

(b) The obligation of a Contractor to pay the Additional Capital Obligation shall not affect the Contractor’s status as having repaid all of the construction costs assignable to the Contractor or the applicability of subsections (a) and (b) of section 213 of the Reclamation Reform Act of 1982 (96 Stat. 1269) once the Repayment Obligation is paid.

CERTIFICATION OF NONSEGREGATED FACILITIES

37. The Contractor hereby certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained. It certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments and that it will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this certification is a violation of the Equal Employment Opportunity clause in this Contract. As used in this certification, the term “segregated facilities” means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact

1393 segregated on the basis of race, creed, color, or national origin, because of habit, local custom,
1394 disability, or otherwise. The Contractor further agrees that (except where it has obtained
1395 identical certifications from proposed subcontractors for specific time periods) it will obtain
1396 identical certifications from proposed subcontractors prior to the award of subcontracts
1397 exceeding \$10,000 which are not exempt from the provisions of the Equal Employment
1398 Opportunity clause; that it will retain such certifications in its files; and that it will forward the
1399 following notice to such proposed subcontractors (except where the proposed subcontractors
1400 have submitted identical certifications for specific time periods):

1401 **NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR**
1402 **CERTIFICATIONS OF NONSEGREGATED FACILITIES**

1403 A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract
1404 exceeding \$10,000 which is not exempt from the provisions of the Equal Employment
1405 Opportunity clause. The certification may be submitted either for each subcontract or for all
1406 subcontracts during a period (i.e., quarterly, semiannually, or annually). Note: The penalty for
1407 making false statements in offers is prescribed in 18 U.S.C. § 1001.

1408 **NOTICES**

1409 38. Any notice, demand, or request authorized or required by this Contract shall be
1410 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or
1411 delivered to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno,
1412 California 93721, Bureau of Reclamation, and on behalf of the United States, when mailed,
1413 postage prepaid, or delivered to the Board of Directors of the Byron-Bethany Irrigation
1414 District, 7995 Bruns Road, Byron, California 94514. The designation of the addressee or the
1415 address may be changed by notice given in the same manner as provided in this Article for other
1416 notices.

1417 **MEDIUM FOR TRANSMITTING PAYMENT**

1418 39. (a) All payments from the Contractor to the United States under this Contract
1419 shall be by the medium requested by the United States on or before the date payment is due. The
1420 required method of payment may include checks, wire transfers, or other types of payment
1421 specified by the United States.

1422 (b) Upon execution of this Contract, the Contractor shall furnish the
1423 Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose
1424 for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising
1425 out of the Contractor's relationship with the United States.

1426 **CONTRACT DRAFTING CONSIDERATIONS**

1427 40. This amended Contract has been negotiated and reviewed by the parties hereto,
1428 each of whom is sophisticated in the matters to which this amended Contract pertains. The

1429 double-spaced Articles of this amended Contract have been drafted, negotiated, and reviewed by
1430 the parties, and no one party shall be considered to have drafted the stated Articles. Single-
1431 spaced Articles are standard Articles pursuant to Bureau of Reclamation policy.

1432 CONFIRMATION OF CONTRACT

1433 41. Promptly after the execution of this amended Contract, the Contractor will
1434 provide to the Contracting Officer a certified copy of a final decree of a court of competent
1435 jurisdiction in the State of California, confirming the proceedings on the part of the Contractor
1436 for the authorization of the execution of this amended Contract. This amended Contract shall not
1437 be binding on the United States until the Contractor secures a final decree.

1438

1439 IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the
1440 day and year first above written.

1441 UNITED STATES OF AMERICA

1442 By: _____
1443 Regional Director
1444 Interior Region 10: California-Great Basin
1445 Bureau of Reclamation

1446 BYRON-BETHANY IRRIGATION DISTRICT
1447 (SEAL)

1448 By: _____
1449 President of the Board of Directors

1450 Attest:

1451 By: _____
1452 Secretary of the Board of Directors