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14  
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
16 COUNTY OF TULARE

17 FRIANT WATER AUTHORITY, a California  
18 joint powers authority, and ARVIN-EDISON  
WATER STORAGE DISTRICT, a California  
19 water storage district,

20 Plaintiffs,

21 v.

22 EASTERN TULE GROUNDWATER  
SUSTAINABILITY AGENCY, a California  
23 joint powers authority, and Does 1 through 25,  
inclusive,  
24

25 Defendants.

Case No.

**COMPLAINT FOR (1) BREACH OF  
CONTRACT; (2) BREACH OF IMPLIED  
COVENANT OF GOOD FAITH AND  
FAIR DEALING; (3) DECLARATORY  
RELIEF; AND (4) INTENTIONAL  
INTERFERENCE WITH  
CONTRACTUAL RELATIONS**

1 Plaintiff FRIANT WATER AUTHORITY (“FWA”), a California joint powers authority,  
2 and Plaintiff ARVIN-EDISON WATER STORAGE DISTRICT, (“Arvin-Edison”), a California  
3 water storage district (collectively “**Plaintiffs**”), hereby allege against Defendant EASTERN  
4 TULE GROUNDWATER SUSTAINABILITY AGENCY, a California joint powers authority  
5 (“**ETGSA**” or “**Defendant**”) and Does 1 through 25, inclusive, (collectively, “**Defendants**”) as  
6 follows:

7 **SUMMARY OF THE ACTION**

8 The water delivered by the Friant-Kern Canal, which is operated and maintained by FWA,  
9 is vital to the economy and the public health and welfare of the San Joaquin Valley. Land  
10 subsidence caused by “overdraft” groundwater pumping has severely reduced the delivery  
11 capacity of the canal causing extensive impacts to, among others, water agencies such as Arvin-  
12 Edison that rely on water deliveries from the canal. Defendant ETGSA is responsible under State  
13 law for sustainably managing the groundwater basin under its jurisdiction and to minimize land  
14 subsidence and subsidence-related impacts to critical infrastructure such as the Friant-Kern Canal.

15 ETGSA entered into a settlement agreement in 2021 with Plaintiffs under which it agreed  
16 to pay FWA for subsidence damage to the Friant-Kern Canal caused by the over-pumping of  
17 groundwater by landowners within ETGSA’s boundaries. ETGSA also agreed to take steps to  
18 avoid or minimize further subsidence damage to the canal. Defendants have intentionally violated  
19 the settlement agreement. Defendants have, among other things, failed to:

- 20 • Establish and maintain required penalties for unsustainable “overdraft” groundwater  
21 pumping;
- 22 • Timely remit penalty proceeds to FWA for purposes of repairing extensive damage to the  
23 canal caused by overdraft pumping-induced subsidence;
- 24 • Adopt and implement effective management actions that limit further subsidence impacts  
25 to the canal;
- 26 • Include a FWA representative in a standing committee authorized to recommend  
27 management actions to limit further subsidence; and
- 28 • Timely enforce the required metering and reporting of groundwater pumping from deep

1 wells in certain land subsidence management zones.

2 Defendants' failures have caused additional subsidence, damaged the Friant-Kern Canal,  
3 deprived Plaintiffs of funding to repair and restore the canal, and interfered with Arvin-Edison's  
4 contractual rights to water delivered through the canal, leaving Plaintiffs no choice but to file this  
5 action.

6 **THE PARTIES**

7 1. FWA is a California joint powers authority, duly organized and existing under and  
8 by virtue of the laws of the State of California, with its principal place of business located in  
9 Lindsay, California. FWA is responsible for the operation, maintenance, repair and replacement of  
10 the Friant-Kern Canal (sometimes "**Canal**"), a key facility of the Friant Division of the federal  
11 Central Valley Project ("**CVP**") (owned by the United States and managed by the United States  
12 Department of the Interior, Bureau of Reclamation ("**Reclamation**"). The Canal transports water  
13 from Friant Dam, near Fresno, to the Kern River, near Bakersfield, including to Arvin-Edison.

14 2. Arvin-Edison is a water storage district, duly organized and existing under and by  
15 virtue of the laws of the State of California, with its principal place of business located in Arvin,  
16 California, and is comprised of approximately 132,000 acres of mostly prime farmland. It was  
17 organized in 1942 for the express purpose of contracting with the United States for water service  
18 from the CVP. Arvin-Edison has contracted with the United States for the delivery of more than  
19 350,000 acre-feet of CVP water per year.

20 3. ETGSA is a California joint powers authority, duly organized and existing under  
21 and by virtue of the laws of the State of California, with its principal place of business located in  
22 Porterville, California. It is a groundwater sustainability agency ("**GSA**") formed pursuant to the  
23 California Sustainable Groundwater Management Act of 2014, Water Code §10720 and following  
24 ("**SGMA**"), which was enacted by the State of California to address the urgent need to more  
25 sustainably manage groundwater basins and minimize land subsidence and subsidence-related  
26 impacts to critical infrastructure. ETGSA's members include Porterville Irrigation District,  
27 Saucelito Irrigation District, Tea Pot Dome Water District, Terra Bella Irrigation District,  
28 Vandalia Water District, the City of Porterville, and the County of Tulare. The jurisdictional

1 boundaries of ETGSA, depicted on the map attached as Exhibit A, encompass a portion of the  
2 Friant-Kern Canal, which is considered “critical infrastructure” under SGMA.

3 4. Defendants DOES 1-25 are sued herein because they are in some manner legally  
4 responsible for the events and circumstances giving rise to the damages suffered by Plaintiffs,  
5 whether such acts and occurrences were committed intentionally, recklessly, negligently or  
6 otherwise, or are responsible for the performance obligations of Defendant under the  
7 Agreement (defined in paragraph 17 below), or are agents, employees, representatives or other  
8 persons acting on behalf of or in concert with Defendant with respect to obligations owed to  
9 Plaintiffs under the Agreement or at law. At this time, Plaintiffs are ignorant of the true names  
10 of Defendants DOES 1-25, inclusive, and therefore name them by their fictitious names  
11 pursuant to Code of Civil Procedure section 474. When their true names and identities are  
12 ascertained, Plaintiffs will seek leave to amend this Complaint to substitute their true names and  
13 identities in the place of such fictitious names.

#### 14 FACTUAL BACKGROUND

15 5. The 152-mile long Friant-Kern Canal is one of the most important pieces of  
16 infrastructure in the Central Valley. The Canal provides irrigation water to more than one  
17 million acres of farmland through deliveries to over 30 water agencies, including Arvin-Edison  
18 (collectively “**Friant Contractors**”). It also provides drinking water to more than 250,000 San  
19 Joaquin Valley residents, including disadvantaged communities lacking reliable access to other  
20 water sources. The regional economic benefits of water delivered through the Canal are  
21 estimated to be *several billion dollars per year*.

22 6. In recent decades, portions of the Friant-Kern Canal between mile post 88 and mile  
23 post 121.5 (an area referred to as the “**Middle Reach**”), largely located within ETGSA's  
24 boundaries, have experienced upwards of nine (9) feet of cumulative subsidence caused by  
25 unsustainable (i.e., overdraft) groundwater pumping. Because the Canal relies on gravity flow,  
26 this subsidence has reduced the conveyance capacity of the Canal, from a design capacity of  
27 4,000 cubic–feet per second (cfs) to, at present, approximately 1,500 cfs. This land subsidence  
28 has not only physically damaged the Canal but has significantly reduced deliveries to the Friant

1 Contractors (and their agricultural and residential customers) adjacent to and south of the  
2 Middle Reach. It has also limited the ability of Friant Contractors to engage in beneficial  
3 exchanges and transfers of water with other water agencies.

4 7. Because Arvin-Edison is located at the southern end of the Friant-Kern-Canal, it  
5 bears the most substantial brunt of the subsidence impacts in the Middle Reach. Indeed,  
6 subsidence of the Canal has already prevented the delivery of hundreds of thousands of acre-  
7 feet of water to Arvin-Edison, and, if allowed to continue, it is projected to reduce long-term  
8 deliveries by nearly 100,000 acre-feet per year.

9 8. To address the reduced conveyance capacity of the Friant-Kern Canal in the Middle  
10 Reach due to land subsidence, beginning in early 2017, FWA and Reclamation began formal  
11 joint planning efforts for a construction project to restore conveyance capacity referred to as the  
12 Friant-Kern Canal Middle Reach Capacity Correction Project (“**Project**”) for which FWA is  
13 responsible for providing an anticipated 75% of the funding.

14 9. Because the extensive damage to the Canal from land subsidence could not be  
15 repaired in place – as that would require the closure of the Canal – the Project alternative  
16 recommended by engineering and environmental studies, and selected by FWA and  
17 Reclamation, was the construction of a parallel canal segment extending for approximately 10  
18 miles adjacent to the existing Canal (“**Replacement Canal Segment**”). The Replacement  
19 Canal Segment (along with the portion of the existing Canal to be replaced) is located entirely  
20 within the boundaries of ETGSA. A summary of the Project prepared by Reclamation is  
21 attached to the Complaint as Exhibit B.

22 10. ETGSA is within a groundwater basin known as the “Tule Subbasin.” The Tule  
23 Subbasin has been designated “high-priority” by the State of California, meaning that ETGSA  
24 was legally required to adopt an adequate groundwater sustainability plan (“**GSP**”) by January  
25 31, 2020.

26 11. In September 2019, ETGSA released a draft GSP for public review and comment.  
27 Among other things, the September 2019 draft GSP proposed to allow continued overdraft  
28 groundwater pumping that would result in additional subsidence ranging from to 1.3 feet to 3

1 feet along portions of the Middle Reach of the Canal, including material subsidence forecast in  
2 the vicinity of the proposed Replacement Canal Segment.

3 12. On December 16, 2019, FWA submitted written comments to ETGSA on the draft  
4 GSP. FWA noted the impacts to the Canal that the additional projected subsidence could have  
5 in terms of reducing water deliveries to Friant Contractors in the vicinity and south of the  
6 Middle Reach, which in turn would diminish the ability of impacted Friant Contractors to  
7 contribute to the sustainable management of ground water in their own regions due to reduced  
8 deliveries of surface water through the Canal. FWA also expressed concern that the draft  
9 ETGSA GSP contained no specific management actions or mitigation to address the proposed  
10 subsidence impacts to the Canal. FWA requested that ETGSA direct its staff to work with  
11 FWA “to promptly develop and bring back for adoption management actions that would  
12 establish mechanisms to mitigate future subsidence impacts in the form of compensation to  
13 FWA and Friant [Contractors] to pay for the costs of repairs to the [Friant-Kern Canal]  
14 resulting from the transitional pumping/use permitted under the [proposed] GSP.”

15 13. ETGSA finalized and adopted a GSP on January 17, 2020. The adopted GSP  
16 continued to include subsidence thresholds permitting additional subsidence ranging from 1.3  
17 to 3 feet along portions of the Middle Reach of the Friant-Kern Canal during the applicable  
18 twenty-year planning period.

19 14. To address the future subsidence along the Canal forecast in the ETGSA GSP,  
20 Reclamation and FWA incorporated, at significant cost, additional embankment height to the  
21 plans for the Replacement Canal Segment of the Middle Reach Capacity Correction Project  
22 ranging from one (1) foot to five (5) feet.

23 15. On August 6, 2020, ETGSA adopted its initial rules and regulations (“**Rules and**  
24 **Regulations**”), which provide the framework for the implementation of certain management  
25 actions under its GSP. The stated purpose of the Rules and Regulations is “to provide for the  
26 sustainable management of groundwater within the ETGSA.”

27 16. Throughout 2020, and in furtherance of FWA’s December 2019 comment letter  
28 request, representatives of FWA and ETGSA engaged in negotiations to develop mechanisms

1 to address future subsidence impacts to the Friant-Kern Canal in the form of an agreement,  
2 which, among other things, would provide compensation to FWA to pay for its share of the  
3 Project.

4 17. In January 2021, FWA and Arvin-Edison entered into an agreement with ETGSA  
5 entitled “Settlement Agreement Regarding Transitional Overdraft Pumping and Anticipated  
6 Subsidence/Repairs to the Friant Kern Canal” (“**Agreement**”). The Agreement is attached as  
7 Exhibit C and is incorporated as if fully set forth by this reference.

8 18. Key purposes of the Agreement at issue in this Complaint are summarized in the  
9 following subparagraphs:

10 a. **Avoid or Minimize Subsidence Impacts to the Friant-Kern Canal as**  
11 **Required under SGMA:** The Agreement requires that ETGSA implement a GSP that  
12 complies with SGMA, in particular, the requirement to avoid or minimize significant and  
13 unreasonable subsidence impacts to critical infrastructure such as the Friant-Kern Canal.  
14 (Agreement, Recitals B through G.). To that end, the Agreement provides that ETGSA must  
15 adopt a “**Land Subsidence Management and Monitoring Plan**” (Agreement, Recital I)  
16 focused on identifying and minimizing land subsidence along the Canal and taking  
17 commercially reasonable steps to adopt and implement management actions for that purpose:  
18 “*ETGSA shall take such commercially reasonable efforts to adopt and implement such*  
19 *management action(s) as identified with the ETGSA GSP to limit additional subsidence in the*  
20 *Middle Reach [of the Friant-Kern Canal].”* (Agreement, §4.A; emphasis added.) ETGSA’s  
21 obligation to comply with SGMA in general, and limiting additional subsidence impacts to the  
22 Friant-Kern Canal in particular, is ongoing and the Agreement expressly acknowledges that  
23 further amendments to the GSP (and the implementing Rules and Regulations and management  
24 actions) might be necessary to achieve those ends. (Agreement, Recital D; Section 4.A.)

25 b. **Implement a Groundwater Accounting Action and Transitional**  
26 **Pumping Penalty Program that Generates \$200,000,000 in Penalty Revenues:** One of the  
27 key management actions that ETGSA is required to establish and implement under the  
28 Agreement is a “**Groundwater Accounting Action,**” which, among other things, tracks

1 groundwater use and provides a mechanism to allocate groundwater consistent with SGMA.  
2 (Agreement, Recital H.) The Groundwater Accounting Action is identified as a management  
3 action in Section 7.2.1 of Section 7 (Projects and Management Actions) of the ETGSA GSP.  
4 The Agreement acknowledges that the Groundwater Accounting Action would be  
5 implemented through the board approved Rules and Regulations, which in turn would  
6 “provide a penalty structure for all groundwater consumed above sustainable yield.”  
7 (Agreement, Recital L.) The Agreement describes how the Rules and Regulations  
8 characterize this overdraft pumping. Specifically, the overdraft water allowed to be pumped  
9 consistent with the ETGSA ramp down schedule for such unsustainable pumping is referred to  
10 as the “**Tier 1 Penalty Allocation**” and it has an associated penalty rate charged for each acre-  
11 foot of such overdraft water pumped (“**Tier 1 Penalty**”). All overdraft water pumped in  
12 excess of the Tier 1 Penalty Allocation is referred to as “**Tier 2**” and it has a higher penalty  
13 rate (“**Tier 2 Penalty**”) to further disincentivize overdraft pumping. (Agreement, Recital L.)  
14 The Agreement acknowledges the iterative nature of the Tier 1 Penalty Allocation as the  
15 amount of overdraft water to be allocated is subject to review and adjustment by the “ETGSA  
16 Technical Group” (Agreement, Recital K), and the Agreement also notes that the Tier 1 and  
17 Tier 2 Penalty rates “will be established annually by the ETGSA Board of Directors”  
18 (Agreement, Recital L). In addition to resulting in an intended “reduction in groundwater  
19 overuse over time” (ETGSA GSP, §7.2.2.8), the imposition of these penalties is also intended  
20 to generate revenues to fund a portion of the Project. This purpose is effectuated, in part,  
21 through Section 1 of the Agreement, which provides that “*ETGSA shall approve and maintain*  
22 *a volumetric penalty amount per acre foot consumed on transitional pumping as defined in the*  
23 *ETGSA GSP in an amount that will achieve, at minimum, the collection of \$220,000,000”.*  
24 (Agreement, §1; emphasis added.) (This program is hereafter referred to as the “**Penalty**  
25 **Program**”). The Agreement further provides that from the \$220,000,000 to be generated  
26 under the Penalty Program, “*ETGSA shall pay up to a maximum of ... \$200,000,000 of penalty*  
27 *monies to FWA on a rolling basis.*” (Agreement, §3.A; emphasis added.) (This \$200,000,000  
28 in penalties is hereafter referred to as the “**Penalty Collection Goal**”). Moreover, in

1 recognition of the fact that ETGSA had not collected any Tier 1 Penalties in 2020 since  
2 ETGSA had not yet begun to implement its Rules and Regulations, and because the parties  
3 therefore did not have any historic data available at the time of the Agreement to determine  
4 how to set the Tier 1 Penalty rate in order to achieve the Penalty Collection Goal, the parties  
5 agreed that “*ETGSA shall set a penalty amount to collect Tier 1 penalty money not received in*  
6 *year 2020 based on actual transitional water pumped over the next five years (2021-2026),*  
7 *thus increasing the amount of penalties expected to be received by ETGSA [and remitted to*  
8 *FWA] in the earlier years of the transitional pumping penalty program.” (Agreement, §1.B;*  
9 *emphasis added.) The Penalty Collection Goal of \$200,000,000 reflects a negotiated*  
10 *compromise between the parties with respect to potential damages arising from ETGSA*  
11 *allowing additional subsidence impacts of up to 3 feet along the Middle Reach of the Friant-*  
12 *Kern Canal under its GSP.*

13           c.       **Timely Collect and Remit Penalties from Overdraft Pumping to FWA**  
14 **to Fund the Middle Reach Capacity Correction Project:** The Agreement obligates ETGSA  
15 to timely collect and remit the Tier 1 and Tier 2 Penalties to FWA, and FWA is obligated to  
16 apply the funds towards the construction costs of the Project. (Agreement, Recitals P through  
17 S.). Section 1.D of the Agreement requires ETGSA “to take all commercially reasonable  
18 efforts” to invoice landowners for the Tier 1 and Tier 2 Penalties “as soon as reasonably  
19 practicable.” The importance of early receipt of funding for the Project is further  
20 acknowledged in Section 2.A of the Agreement, which describes: “*the mutual benefits that*  
21 *would result from FWA’s early receipt of funds that could be applied towards the Project.”*  
22 (Agreement, §2.A; emphasis added.)

23           d.       **Obligation to Take Subsequent Actions to Fully Effectuate the Terms**  
24 **and Intent of the Agreement:** Recognizing that further actions and ongoing cooperation  
25 would be necessary, the parties agreed in Section 14 “*to cooperate fully ... to effectuate the*  
26 *stated purposes of [the] Agreement ... and in the completion of any additional action that may*  
27 *be necessary or appropriate to give full force and effect to the terms and intent of this*  
28 *Agreement.” (Agreement, §14; emphasis added.)*

1           19. In April and July of 2021, FWA and Reclamation entered into a cost share  
2 agreement and repayment agreement, respectively, to address the funding for the construction  
3 of the Project. Under these agreements, FWA is responsible for at least 50% of the costs of the  
4 Project during construction and must also repay Reclamation over a 30-year period for a  
5 significant portion of Reclamation’s initial share of the Project construction costs (bringing  
6 FWA’s total obligation to approximately 75% of the Project costs). The current approved  
7 budget for Phase 1 of the Project (which includes the Replacement Canal Segment) is \$326  
8 million, and the overall Project budget (including Phase 2) is estimated to exceed \$650 million.  
9 In entering into the cost share and repayment agreements with Reclamation, FWA relied on the  
10 representations made by ETGSA in the Agreement, including, among others, ETGSA’s  
11 representations that it would (a) act in good faith and take commercially reasonable efforts to  
12 implement management actions such the Penalty Program in a manner that would limit  
13 additional subsidence to the Middle Reach of the Canal; (b) take all commercially reasonable  
14 efforts to invoice landowners for Tier 1 and 2 Penalties as soon as reasonably practicable; and  
15 (c) cooperate fully in the completion of any action that may be necessary or appropriate to give  
16 full force and effect to the terms and intent of the Agreement – including the intent to fund the  
17 Project.

18           20. The Groundwater Accounting provisions of the ETGSA Rules and Regulations  
19 establish a category of water referred to as “Total Precipitation” which ETGSA elected to  
20 calculate based on the long-term average of total annual precipitation within the ETGSA  
21 boundaries. In recognition of what should be the short-term reduction in the need for  
22 groundwater pumping associated with annual rainfall, the Rules and Regulations provide  
23 landowners engaged in the irrigation of lands actively used for agricultural purposes an annual  
24 allocation or credit for rainfall (“**Precipitation Credit**”). In 2021, and without any discussion  
25 with or advance notice to Plaintiffs or the general public, ETGSA administratively issued to  
26 landowners under its jurisdiction a Precipitation Credit for the 2020 water year (which was  
27 already completed) and a second Precipitation Credit for the then current 2021 water year. The  
28 amount of the 2020 water year Precipitation Credit was .89 acre-feet per acre under irrigation,

1 which resulted in a total credit spread among all applicable landowners of approximately  
2 117,000 acre-feet of water. ETGSA concurrently subtracted the same amount of water from the  
3 1,034,553 acre-feet of total transitional overdraft water budgeted in its GSP – i.e., the water  
4 from which Tier 1 and Tier 2 Penalties would be paid to FWA. Thus, the improper allocation  
5 of the Precipitation Credit for the prior 2020 water year (hereafter, “**2020 Precipitation Credit**  
6 **Giveaway**”) deprived FWA of bargained-for potential penalty revenues while also undermining  
7 the negotiated disincentives to limit subsidence caused by overdraft pumping by  
8 recharacterizing this overdraft water as available precipitation even though the vast majority of  
9 the 2020 rainfall had already evaporated or been transpired by crops during the prior water  
10 year.

11 21. In January 2022, FWA and Reclamation held a formal groundbreaking ceremony to  
12 mark the commencement of construction of Phase 1 of the Project. (As of the date of this  
13 Complaint, the Replacement Canal Segment portion of the Project is nearly complete and is  
14 anticipated to be operational by early 2024.)

15 22. The year 2022 was the first full year of ETGSA’s implementation of its Rules and  
16 Regulations and Penalty Program. Despite ongoing drought conditions in the San Joaquin  
17 Valley – conditions which reduced the availability of surface water and would have increased  
18 groundwater pumping in the area accordingly – ETGSA landowners purportedly consumed (or  
19 pre-purchased) just 42,563 acre-feet out of the 357,130 acre-feet of Tier 1 Allocation made  
20 available through 2022 for the approximately 85,000 acres of land under cultivation/irrigation  
21 in ETGSA, resulting in penalty payments to FWA far below the parties’ initial projections (i.e.,  
22 \$6,110,259 (water consumed) and \$1,943,605 (water pre-purchased)). At the same time,  
23 however, monitoring sites along portions of the Friant-Kern Canal within the boundaries of  
24 ETGSA recorded significant ongoing subsidence – nearly one foot of additional subsidence at  
25 some locations between 2020 and 2022 alone – suggesting that overdraft pumping was  
26 continuing, or even accelerating.

27 23. Alarmed by both subsidence rates along the Canal within ETGSA and the  
28 purportedly limited use of the Tier 1 Allocation overdraft water, FWA retained a team of

1 independent hydrologic engineers to review ETGSA’s Rules and Regulations and the  
2 implementation of the Penalty Program and make recommendations regarding potential  
3 revisions consistent with the Agreement.

4 24. Beginning in January 2023, Plaintiffs presented ETGSA with a number of technical  
5 recommendations regarding proposed revisions to the ETGSA Rules and Regulations, many of  
6 which focused on the calculation of the Precipitation Credit as well as the ability to carry over  
7 that credit for future use and/or transfer it to other lands and landowners, all in an effort to have  
8 ETGSA effectuate the agreed terms and purposes of the Agreement.

9 25. In addition, on multiple occasions between January 2023 and February 2024, FWA  
10 and Arvin-Edison have requested that ETGSA take specific steps to (a) adopt or implement  
11 management actions identified within the GSP to limit additional subsidence in the Middle  
12 Reach; (b) comply with the terms of the Agreement and ETGSA’s own Land Subsidence  
13 Management Plan; and (c) otherwise cooperate in the completion of actions necessary or  
14 appropriate to give full force and effect to the terms and intent of the Agreement. For example,  
15 under the Agreement, ETGSA is required to establish a standing “Land Subsidence Monitoring  
16 and Management Committee” and appoint a FWA representative to that committee.  
17 (Agreement, §4.) Despite multiple requests from FWA, ETGSA has to date established only a  
18 standing “Land Subsidence Monitoring Committee,” which has disclaimed any authority over  
19 “management” of subsidence. Instead, management actions and recommendations are  
20 purportedly made by a “Land Subsidence Management Ad Hoc Committee” – from which a  
21 FWA representative has been excluded, a clear violation of the Agreement. By way of further  
22 example, while ETGSA’s Land Subsidence Management Plan requires owners of properties  
23 that have experienced over 1.5 feet of land subsidence since 2020 to meter and report pumping  
24 data from any well pumping water below 600 feet, ETGSA has failed to require timely  
25 compliance despite its own recent acknowledgement that upwards of 42% of the land  
26 subsidence in ETGSA may be caused by groundwater extraction from such deep wells.

27 26. ETGSA has rejected or ignored reasonable recommendations and requests for  
28 compliance presented by FWA and Arvin-Edison, even though each of the recommendations

1 and requests was within ETGSA’s authority to complete. ETGSA representatives often  
2 responded that implementing the recommendations and requests would require “changes” to the  
3 Rules and Regulations and therefore could not be accommodated. Notwithstanding this excuse,  
4 ETGSA has itself amended the Rules and Regulations at least eight times since entering into the  
5 Agreement with FWA and Arvin-Edison.

6 27. At the regular monthly meeting of the ETGSA Board of Directors on February 1,  
7 2024, the board had the opportunity on a listed agenda item to direct staff to draft proposed  
8 amendments to the Rules and Regulations to address specific recommendations made by FWA  
9 and Arvin-Edison that were included in the agenda package. Instead, the Board gave no  
10 direction to staff to prepare any amendments to the Rules and Regulations.

11 28. In the four years since ETGSA’s adoption of its GSP, areas along the Middle Reach  
12 of the Canal have subsided in excess of 1.8 feet – more than 60% of the maximum allowable 3-  
13 foot threshold established for the entire 20-year planning period of the GSP. And as of  
14 September 2023, land subsidence in nine ETGSA subsidence management zones has exceeded  
15 1.5 feet. ETGSA is predicting that an additional five zones may exceed this threshold of 1.5  
16 feet and two management zones may reach 2-feet of subsidence as early as September 2024.

17 29. Between January 2021 through the last quarter of 2023, ETGSA has reported that  
18 out of 422,495 acre-feet of Tier 1 Penalty Allocation, only 73,946 acre-feet of this overdraft  
19 water has allegedly been pumped (or pre-purchased) for use on the approximately 85,000 acres  
20 of land under cultivation/irrigation in ETGSA (which use is about 18% of the allocation – a  
21 paltry amount for a critically overdrafted basin). And as of the date of this Complaint, ETGSA  
22 has only remitted a total of approximately \$16 million in penalty revenues to FWA, which is  
23 only 8% of the \$200 million Penalty Collection Goal. On the other hand, ETGSA has reported  
24 that in excess of 50% of the groundwater consumed in ETGSA between 2021 and 2023 has  
25 allegedly come from precipitation or native safe yield allocations. A graph and chart  
26 summarizing ETGSA’s reported data on the consumption of Tier 1 Allocation overdraft water,  
27 and precipitation and native safe yield allocations is attached as Exhibit D. This graph and  
28 chart was presented by FWA to the ETGSA Board at its February 1, 2024, meeting, but the

1 board nonetheless elected to make no changes to the Rules and Regulations as described in  
2 paragraph 27 above.

3 30. ETGSA has not performed under the terms of the Agreement, and has failed at both  
4 arresting subsidence and reasonably assessing, collecting and making required payments to  
5 FWA under the Penalty Program. Upon information and belief, ETGSA contends that ETGSA  
6 is not required to make any changes to its GSP and Rules and Regulations to effectuate the  
7 purposes of the Agreement, including minimizing additional subsidence impacts to the Friant-  
8 Kern Canal and generating appropriate levels of funds under the Penalty Program, at times and  
9 in sufficient amounts necessary to help fund the Project and mitigate the impacts of the  
10 additional subsidence occurring along the Middle Reach of the Canal as alleged herein.

11 31. Overdraft groundwater pumping has continued within the boundaries of ETGSA,  
12 and ETGSA has failed to take all commercially reasonable efforts to account for the overdraft  
13 groundwater pumping, assess and collect the penalties for same, and pay those funds to FWA.  
14 Instead, in the first several years of the Penalty Program, ETGSA allowed the Tier 1 Penalty  
15 Allocation to be offset against credits to landowners, including but not limited to the 2020  
16 Precipitation Credit Giveaway, thereby substantially reducing (at least on paper) the use of the  
17 Tier 1 Penalty Allocation overdraft water, which in turn has reduced the amount of Tier 1  
18 Penalties assessed, collected and remitted to FWA through 2023.

19 32. Plaintiffs have been damaged and suffered millions of dollars in lost Penalty  
20 Program revenues because of ETGSA's actions related to the 2020 Precipitation Credit  
21 Giveaway and failure to make meaningful changes to its Rules and Regulations with respect to,  
22 among other things, the calculation of the Precipitation Credit, the extent to which it may be  
23 carried over if not used in the year allocated, and the extent to which it may be transferred to  
24 other lands and landowners. Plaintiffs have and will continue to lose millions of dollars in  
25 funding for the Project, all while suffering continued undesirable subsidence in the Middle  
26 Reach of the Friant-Kern Canal, including along the nearly completed Replacement Canal  
27 Segment.

1 **ETGSA’S NONCOMPLIANCE WITH SGMA**

2 33. Pursuant to SGMA, the Sustainable Groundwater Management Office of the  
3 California Department of Water Resources (“DWR”) reviewed ETGSA’s January 2020 GSP  
4 for compliance with the act and its implementing regulations. On January 28, 2022, DWR  
5 issued a written determination that the GSP was incomplete and inadequate. As part of its  
6 notice, DWR issued a statement of findings regarding the ETGSA GSP (and the GSPs of the  
7 other GSAs in the Tule Subbasin), which included, in relevant part, the following inadequacies  
8 with respect to land subsidence:

9 “B. The GSPs do not define undesirable results or set minimum thresholds and  
10 measurable objectives for land subsidence in a manner consistent with the GSP  
11 Regulations.

12 1. In areas adjacent to the Friant-Kern Canal, the GSPs do not identify,  
13 through analysis, the total amount of subsidence that can be tolerated by  
14 the Friant-Kern Canal during implementation of the GSPs in order to  
15 maintain the ability to reasonably operate to meet contracted for water  
16 supply deliveries. **The GSPs do not explain how implementation of  
17 projects and management actions is consistent both with achieving the  
18 long-term avoidance or minimization of subsidence and with not  
19 exceeding the tolerable amount of cumulative subsidence adjacent to the  
20 Canal.**

21 ...

22 **4. The GSPs’ current minimum thresholds and measurable objectives for  
23 land subsidence are not consistent with the intent of SGMA that  
24 subsidence be avoided or minimized once sustainability is achieved in the  
25 Subbasin.”** (Emphasis added.)

26 34. DWR directed ETGSA to address the identified deficiencies in the GSP and  
27 resubmit the GSP to DWR for evaluation by no later than July 27, 2022.

28 35. ETGSA adopted a revised GSP on or about July 2022.

35. On March 2, 2023, DWR issued a written determination that the actions taken by  
ETGSA to correct the deficiencies previously noted in its GSP were not sufficient and thus  
deemed the GSP “inadequate” under SGMA finding that the GSP “does not substantially  
comply with the GSP Regulations nor satisfy the objectives of the Sustainable Groundwater  
Management Act (SGMA).”

1 37. As of the date of this Complaint, ETGSA still does not have a SGMA-compliant  
2 GSP.

3 **JURISDICTION AND VENUE**

4 38. Jurisdiction is proper in this Court because the amount in controversy exceeds the  
5 jurisdictional minimum of this Court.

6 39. Venue is proper in this Court as the Agreement provides for venue with the Tulare  
7 County Superior Court, and the acts or omission alleged herein occurred in the County of  
8 Tulare.

9 **FIRST CAUSE OF ACTION**

10 **(Breach Of Contract)**

11 **(By All Plaintiffs Against All Defendants)**

12 40. Plaintiffs hereby repeat and reallege the allegations contained in the above  
13 Paragraphs 1 through 39.

14 41. The Agreement between Plaintiffs and ETGSA constitutes a binding and  
15 enforceable agreement between Plaintiffs and ETGSA.

16 42. Under and in furtherance of the Agreement, Plaintiffs agreed to undertake certain  
17 obligations to ETGSA in exchange for valuable consideration.

18 43. Plaintiffs have duly performed all of the acts, covenants and/or conditions required  
19 under the Agreement except those that were waived, prevented and/or excused.

20 44. By its acts and omissions, including, but not limited to those referenced in the  
21 above paragraphs of this Complaint, Plaintiffs are informed and believe that ETGSA has  
22 breached the Agreement with Plaintiffs in numerous ways, including, but not limited to, the  
23 following:

24 a. Failing to adopt and implement a legally adequate GSP that avoids or  
25 minimizes undesirable subsidence impacts to critical infrastructure, including the Friant-Kern  
26 Canal;

27 b. Failing to take commercially reasonable efforts to adopt and implement  
28 management actions identified with the ETGSA GSP to limit additional subsidence in the Middle

- 1 Reach of the Friant-Kern Canal;
- 2 c. Failing to approve and maintain the Penalty Program under its Rules and
- 3 Regulations in a manner that reflects the actual consumption of unsustainable groundwater
- 4 pumping and has Penalty amounts set at rates consistent with the Agreement and that will achieve,
- 5 at minimum, the Penalty Collection Goal of \$200,000,000;
- 6 d. Failing to make all commercially reasonable efforts to invoice ETGSA
- 7 landowners for Tier 1 and Tier 2 Penalties as soon as reasonably practicable;
- 8 e. Failing to properly and timely collect and remit the Tier 1 and Tier 2
- 9 Penalties to FWA;
- 10 f. Failing to cooperate fully in the preparation and execution of other
- 11 documents and the completion of additional actions that may be necessary or appropriate to
- 12 effectuate or give full force and effect to the purposes, terms, or intent of the Agreement;
- 13 g. Failing to obtain necessary acts or address omissions from third parties,
- 14 particularly landowners and other persons pumping ground water within ETGSA, consistent with
- 15 ETGSA's obligations;
- 16 h. Failing to timely perform the things and conditions to be performed by the
- 17 ETGSA on its part, including actions related to the ETGSA GSP and the implementing Rules and
- 18 Regulations such as its Groundwater Accounting Action, Penalty Program, and Land Subsidence
- 19 and Management Plan; and,
- 20 i. Failing to create a standing Land Subsidence Management Committee and
- 21 appoint an FWA representative to such committee.

22 45. ETGSA's failures to perform its obligations as required by the terms of the

23 Agreement constitute a material breach of contract.

24 46. As a direct and proximate result of ETGSA's actions, Plaintiffs have been damaged

25 in an amount in excess of the jurisdictional minimum of this Court, the precise amount to be

26 proven at trial.

27 47. Any and all applicable and enforceable conditions precedent under the Agreement

28 and applicable law to bringing the claims set forth herein and commencing this action have

1 occurred, been performed or have been waived, excused, or satisfied.

2 **SECOND CAUSE OF ACTION**

3 **(Breach Of Implied Covenant Of Good Faith And Fair Dealing)**

4 **(By All Plaintiffs Against All Defendants)**

5 48. Plaintiffs hereby repeat and reallege the allegations contained in the above  
6 Paragraphs 1 through 47.

7 49. The Agreement contains an implied covenant and duty of good faith and fair  
8 dealing pursuant to California law which provides that no party to the Agreement will act in  
9 any manner or in any way to hinder the performance of the other, and that neither party will  
10 engage in any conduct which will injure, or tend to injure, the right of the other party to receive  
11 the benefits of the Agreement.

12 50. ETGSA breached these implied covenants by engaging in conduct which frustrates  
13 Plaintiffs' rights to the benefits of the Agreement – including, but not limited to, failing, and  
14 continuing to fail, to cooperate with Plaintiffs by adopting and implementing the ETGSA GSP  
15 in the manner required under SGMA and the Agreement such that Plaintiffs would have in the  
16 past, or will in the future, receive the bargained-for benefits of the Agreement.

17 51. ETGSA has not acted – and has repeatedly refused to act – fairly and in good faith.

18 52. As a direct and proximate result of ETGSA's breaches of the implied covenant of  
19 good faith and fair dealing, Plaintiffs have been harmed and they have suffered and continue to  
20 suffer damages in an amount in excess of the jurisdictional minimum of this Court, the exact  
21 amount to be determined and proven at trial.

22 **THIRD CAUSE OF ACTION;**

23 **(Declaratory Relief, Code of Civil Procedure §1060)**

24 **(By All Plaintiffs Against All Defendants)**

25 53. Plaintiffs hereby repeat and reallege the allegations contained in the above  
26 Paragraphs 1 through 52.

27 54. An actual controversy has arisen and now exists between Plaintiffs and ETGSA  
28 (and defendants DOES 1-25), and each of them, regarding their respective rights and

1 obligations under the Agreement regarding whether ETGSA has or will adopt and implement  
2 the ETGSA GSP, including its Rules and Regulations, Land Subsidence Management Plan and  
3 other management actions in a manner, as promised in the Agreement, that will avoid or  
4 minimize additional subsidence impacts to the Middle Reach of the Friant-Kern Canal,  
5 including the nearly completed Replacement Canal Segment, and reasonably achieve the  
6 Penalty Collection Goal under the Penalty Program, and in turn remit those funds to FWA to  
7 help pay the costs of constructing the Friant-Kern Canal Middle Reach Capacity Correction  
8 Project.

9 55. Plaintiffs desire a judicial determination of its rights and duties and of the rights  
10 and obligations of ETGSA (and Defendants DOES 1-25) and a declaration as to ETGSA's  
11 obligations to adopt and implement the ETGSA GSP, including its Rules and Regulations, Land  
12 Subsidence Management Plan and other management actions in a manner that will realize, and  
13 not impair, the agreed-upon assessment and collection of Penalties from landowners under the  
14 Penalty Program, pay expected funds to FWA to fund a portion of the Friant-Kern Canal  
15 Middle Reach Capacity Correction Project, and minimize or avoid subsidence along the Middle  
16 Reach of the Friant-Kern Canal.

17 56. A judicial declaration is necessary and appropriate at this time and under all the  
18 circumstances so that Plaintiffs and ETGSA (and Defendants DOES 1-25) may determine their  
19 rights and duties under the Agreement and ETGSA's past and future adoption and  
20 implementation of the ETGSA GSP, including its Rules and Regulations, Land Subsidence  
21 Management Plan and other management actions.

22 **FOURTH CAUSE OF ACTION;**

23 **(Intentional Interference With Contractual Relations)**

24 **(By Arvin-Edison Against All Defendants)**

25 57. Plaintiffs hereby repeat and reallege the allegations contained in Paragraphs 1  
26 through 56.

27 58. At all times relevant, Arvin-Edison was party to a valid, fully vested long-term  
28 renewal contract with the United States providing for 40,000 acre-feet of Class 1 water and

1 311,675 acre-feet of Class 2 water from the Friant Division of the Central Valley Project  
2 (“**AEWSD Contract**”). A copy of the AEWSD Contract is attached as Exhibit E and is  
3 incorporated as if fully set forth by this reference.

4 59. At all times relevant, ETGSA, its member agencies, its staff, and its officials knew  
5 of the AEWSD Contract.

6 60. Through its actions and its failures to act, ETGSA made performance of the  
7 AEWSD Contract more expensive and difficult by facilitating additional subsidence of and  
8 damage to the Friant-Kern Canal and by interfering with the design, implementation, and  
9 funding of the Project, among other things.

10 61. ETGSA knew that disruption of performance of the AEWSD Contract was certain  
11 or substantially certain to occur as a result of its actions and its failures to act.

12 62. ETGSA knew that disruption of performance of the AEWSD Contract was certain  
13 or substantially certain to occur as a result of its actions and its failures to act.

14 63. Arvin-Edison has been harmed by interference with the AEWSD Contract and  
15 ETGSA’s conduct is a substantial factor in causing Arvin-Edison’s harm.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff prays for relief as follows:

18 **On the First Cause of Action**

- 19 1. For damages in an amount in excess of the jurisdictional minimum of this Court,  
20 according to proof at trial;
- 21 2. For prejudgment interest thereon at the legal rate;
- 22 3. For costs of suit herein;
- 23 4. For attorneys’ fees, expert costs, and all other reasonable expenses in accordance  
24 with the Agreement and California Code of Civil Procedure section 1717; and,
- 25 5. For such other and further relief deemed necessary and proper by the Court.

26 **On the Second Cause of Action**

- 27 1. For damages in an amount in excess of the jurisdictional minimum of this Court  
28 according to proof at trial;



1 Dated: February 15, 2024

BURKE, WILLIAMS & SORENSEN, LLP

2

3

By: 

4

David Darroch  
Attorneys for Plaintiff, FRIANT WATER  
AUTHORITY

5

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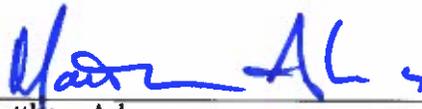
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Dated: February 15, 2024

KAPLAN KIRSCH & ROCKWELL LLP

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9

By: 

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Matthew Adams  
Attorneys for Plaintiff, ARVIN-EDISON  
WATER STORAGE DISTRICT

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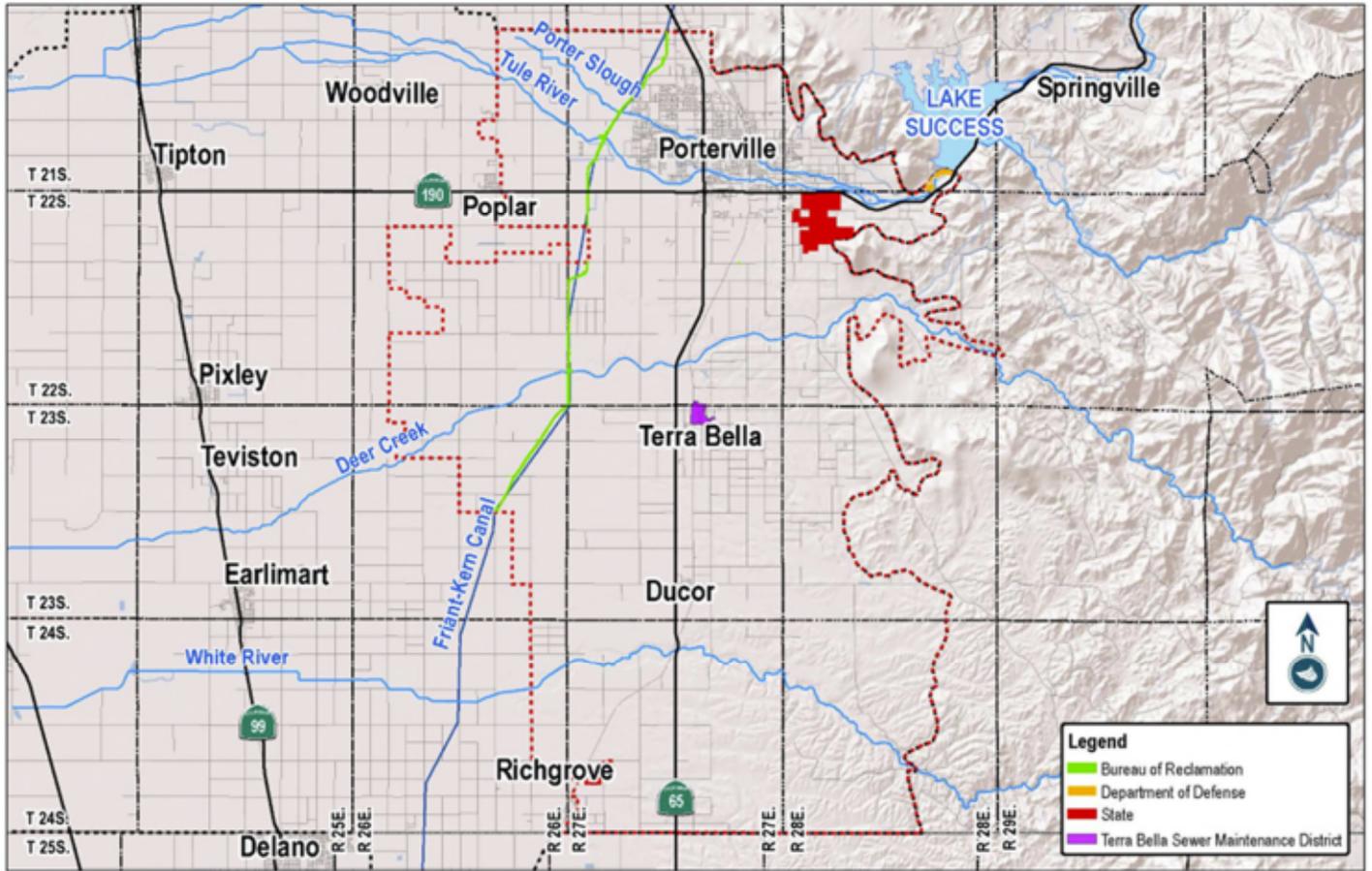
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# **EXHIBIT A**

**Exhibit A**

**Depiction of ETGSA Boundary and Location of the Friant-Kern Canal**



Source: ETGSA GSP, Figure 3-4

## **EXHIBIT B**



# Friant-Kern Canal

## Overview

As part of the Central Valley Project, the 152-mile Friant-Kern Canal delivers water to 1 million acres of some of the most productive farmland in the country and provides drinking water to thousands of San Joaquin Valley residents. The canal begins at Friant Dam and conveys water from Millerton Lake, a reservoir on the San Joaquin River, south to its terminus at the Kern River in Bakersfield. Friant-Kern Canal was designed as a gravity-fed facility and does not rely on pumps to move water.



*The Friant-Kern Canal near Fresno*

## Subsidence and Canal Operations

Completed in 1951, Friant-Kern Canal was constructed to have a capacity of 5,000 cubic feet per second (cfs) that gradually decreases to 2,000 cfs at its terminus (one cubic foot of water is about 7.5 gallons). The canal is built in both concrete-lined and unlined earth sections. Subsidence in the area, caused by pumping groundwater faster than it can be recharged, has caused parts of the canal to sink. This negatively affects the canal's ability to convey water, reducing the canal's capacity. When the land elevation lowers, the canal must be operated at a reduced flow to ensure that water does not overflow banks, thereby restricting the ability to make full water deliveries.

The diminished capacity in the canal has resulted in as much as 300,000 acre-feet of reduced water deliveries in certain water years with effects most prominent in the middle reach of the canal (milepost 88 to milepost 121).

## Middle Reach Capacity Correction

To address the canal's capacity loss, Reclamation and the Friant Water Authority are implementing the Friant-Kern Canal Middle Reach Capacity Correction. The project will restore capacity in the 33-mile section of the middle reach where it is most restricted. When the multi-phased project is complete, the canal's conveyance capacity will be restored from the current 1,600 cfs to the original 4,000 cfs. Construction of the \$500 million project kicked off in January 2022 with Phase 1, which includes constructing 10 miles of new concrete-lined canal to replace one of the worst pinch points of the subsiding canal sections. The project is funded by Reclamation, Friant Water Authority, and California Department of Water Resources. A \$22.2 million investment from the Bipartisan Infrastructure Law was announced in March 2023.



More information on the project can be found here: [www.usbr.gov/mp/fkc-fr.html](http://www.usbr.gov/mp/fkc-fr.html)

## **EXHIBIT C**

**SETTLEMENT AGREEMENT REGARDING TRANSITIONAL OVERDRAFT  
PUMPING AND ANTICIPATED SUBSIDENCE DAMAGES/REPAIRS TO THE FRIANT  
KERN CANAL**

This Settlement Agreement (“**Agreement**”) is effective as of January 12, 2021 (“**Effective Date**”), and is made between the Friant Water Authority, a California joint powers authority (“**FWA**”), and Arvin-Edison Water Storage District (“**District**”) (FWA and District are referred to collectively as “**Friant**”), and the Eastern Tule Groundwater Sustainability Agency, a California joint powers authority (“**ETGSA**”). Friant and ETGSA are collectively referred to as the “**Parties**.”

**RECITALS**

A. FWA is a joint powers authority consisting of public agencies holding long-term repayment contracts (“**Friant Contractors**”) with the Bureau of Reclamation (“**Reclamation**”) for water service from the Friant Division of the Central Valley Project and for facilities repayment. FWA is responsible for the operation, maintenance, repair and replacement (“**OM&R**”) of the Friant-Kern Canal (“**FKC**”) which conveys water from Millerton Lake along the 152-mile length of the FKC pursuant to a long-term agreement with Reclamation.

B. ETGSA is a California groundwater sustainability agency formed to implement the Sustainable Groundwater Management Act of 2014, Water Code § 10720 et seq. (“**SGMA**”) in a portion of the Tule Subbasin as defined in the Department of Water Resources Bulletin 118. The Tule Subbasin has been designated as a high- or medium-priority basin by the Department of Water Resources (“**Department**”).

C. In enacting SGMA, as set forth in Water Code section 10720.1(a) and (c), the California Legislature intended to, among other purposes, “provide for the sustainable management of groundwater basins” and “to avoid or minimize subsidence.” All groundwater sustainability plans (“**GSPs**”) adopted in a subbasin must be implemented in a manner that achieves the subbasin’s sustainability goal and avoids significant and unreasonable undesirable results. Groundwater sustainability agencies (“**GSAs**”) must describe in their GSPs the process and criteria relied upon to define undesirable results applicable to the basin. Undesirable results occur when significant and unreasonable effects for any of the sustainability indicators are caused by groundwater conditions occurring throughout the basin. (Cal. Code Regs. Tit. 23, §354.26.)

D. SGMA requires that GSAs located in basins designated high- or medium-priority adopt a groundwater sustainability plan by January 31, 2020. (*Water Code* §10735.2.) For basins that intend to develop and implement multiple groundwater sustainability plans, an Intra-basin Coordination Agreement amongst the GSAs is required prior to the Department accepting any GSPs. (*Water Code* §10727.6.) ETGSA adopted its groundwater sustainability plan (“**ETGSA GSP**”) on January 17, 2020, which included approval of the Tule Subbasin Coordination Agreement as required pursuant to *Water Code* §10727.6. The ETGSA GSP, including the Coordination Agreement, is under review by the Department pursuant to Cal. Code Regs. Tit. 23, §355.2. The Department may issue notices of deficiency, causing further amendments to the ETGSA GSP. In addition, at least every five years the Department must review the GSP, potentially necessitating further amendments.

(*Water Code* §10733.8.) A GSA has the authority to amend its GSP pursuant to *Water Code* §10728.4.

E. Under SGMA, a groundwater sustainability plan must establish minimum thresholds that quantify groundwater conditions for each applicable sustainability indicator at each monitoring site or representative monitoring site. (Cal. Code Regs. Tit. 23, §354.28(a).) The numeric value used to define minimum thresholds shall represent a point in the basin that, if exceeded, may cause undesirable results. (Cal. Code Regs. Tit. 23, §354.28(a).) Measurable objectives must be established for each sustainability indicator, based on quantitative values using the same metrics and monitoring sites as are used to define minimum thresholds. (Cal. Code Regs. Tit. 23, §354.30(b).) Measurable objectives must provide a reasonable margin of operational flexibility under adverse conditions which must take into consideration components such as historical water budgets, seasonal and long-term trends, and periods of drought, and be commensurate with levels of uncertainty. (Cal. Code Regs. Tit. 23, §354.30(c).)

F. Pursuant to the Tule Subbasin Coordination Agreement, land subsidence shall be considered significant and unreasonable if there is a loss of a functionality of a structure or a facility to the point that, due to subsidence, the structure or facility, such as the Friant-Kern Canal, cannot reasonably operate to meet contracted for water supplies deliveries without either significant repair or replacement. (Tule Subbasin Coordination Agreement, Section 4.3.4.1.) The criteria for an undesirable result for land subsidence is defined as the unreasonable subsidence below minimum thresholds at greater than 50% of GSA Management Area RMS resulting in significant impacts to critical infrastructure. (Coordination Agreement, Section 4.3.4.2.) The ETGSA GSP requires a more stringent standard than that provided in the Coordination Agreement providing that due to the presence of the Friant-Kern Canal as critical infrastructure within the ETGSA, undesirable results for land subsidence within the ETGSA is defined as the unreasonable subsidence below the minimum threshold at one (1) representative monitoring site. (ETGSA GSP, Section 5.8.1.2.)

G. The ETGSA GSP quantifies minimum thresholds and measurable objectives for land subsidence at each monitoring site by ground surface elevation. (ETGSA GSP, Tables 5-9 and 5-10.)

H. GSPs are required to include a description of projects and management actions a GSA has determined will achieve the sustainability goal for the basin. (Cal. Code Regs. Tit. 23, §354.44.) The ETGSA GSP provides for a “**Groundwater Accounting Action**,” which will be used to track groundwater use, develop an allocation of groundwater to be used for implementation of SGMA during the plan implementation period, and to develop water budgets for individual landowners and management areas. The Groundwater Accounting Action includes a proposed ramp down schedule of allowable consumed groundwater use of the 20-year plan implementation period, which may be adjusted, and anticipates the board of directors to establish rules and regulations to set allocations accordingly. (ETGSA GSP, Section 7.2.1.)

I. The ETGSA GSP also includes in its projects and management actions a “**Land Subsidence Management and Monitoring Plan**” (ETGSA GSP, Section 7.2.3). As stated in the ETGSA GSP, the ETGSA will, “in cooperation with other interested parties, (1) identify the particular causes of land subsidence within the Area along the Friant-Kern Canal, (2) identify

potential mechanisms for minimizing subsidence in the Area, (3) identify data gaps and additional monitoring sites for the purpose of improving assessment of conditions along the FKC, (4) refinement of land subsidence management criteria for the relevant area, and (5) preparation of a land subsidence monitoring and management plan focused upon the FKC.” The ETGSA has undertaken steps towards the implementation of a Land Subsidence Management and Monitoring Plan.

J. FWA contends that additional subsidence in the vicinity of the FKC is not acceptable unless there is appropriate financial mitigation for such impact to FWA and the Friant Contractors affected by such additional subsidence. ETGSA has maintained a commitment to ensure reduced land subsidence, given legacy impacts, while maintaining its obligations under SGMA to reach sustainability by 2040.

K. The ETGSA Board of Directors has approved Rules and Regulations and a First Amended Rules and Regulations on August 6, 2020 and October 1, 2020, respectively. The Rules and Regulations as approved on those dates establish an “**ETGSA Technical Group**” which is authorized to allocate sustainable yield and transitional pumping amounts pursuant to the ramp down schedule in the GSP. The ETGSA Technical Group established the water year 2021 allocation for transitional Tier 1 waters in the amount of 92,087 acre-feet per year. Based on current data, 1,034,553 acre-feet total of transitional waters are available until 2035.

L. ETGSA’s First Amended Rules and Regulations provide a penalty structure for all groundwater consumed above sustainable yield. Rates have been established for water pumped pursuant to the ramp down schedule, characterized as “**Tier 1 Penalty Allocation**” in the First Amended Rules and Regulations. Penalties are established for pumping in excess of those rates, identified as “**Tier 2**”. In addition to monetary penalties, additional civil remedies exist for pumping in excess of the ramp down schedule.

M. On October 1, 2020, ETGSA adopted Resolution 2020-03 establishing the initial penalty rate for the Tier 1 Penalty Allocation at \$245.00 (two hundred and forty-five dollars and zero cents) per acre foot consumed and the Tier 2 penalty rate at \$500.00 (five hundred dollars and zero cents) per acre-foot consumed. The First Amended Rules and Regulations provide that the penalty rate for the Tier 1 Penalty Allocation and Tier 2 will be established annually by the ETGSA Board of Directors.

N. The FKC’s conveyance system relies on a gravity design. As of 2020, capacity has been reduced to 1,650 cubic-feet per second (cfs) between mile post 88 and mile post 121.5 of the FKC (the “**Middle Reach**”). Design capacity through the Middle Reach was 4,000 cfs. Due to various design deficiencies the design capacity has never been achieved through the Middle Reach. Historic capacity demand through the Middle Reach has been estimated to be approximately 2,500 cfs. The reduced capacity precludes the potential for delivery of significant amounts of water to Friant Contractors in and south of the Middle Reach and limits the ability for exchanges and transfers of water.

O. FWA has provided ETGSA with an engineering memorandum stating that the damages in terms of the value of the lost water that FWA would not be able to deliver to Friant

Contractors if the FKC were to subside an additional three feet in the Middle Reach would be in excess of \$263,000,000.00 (two hundred and sixty-three million dollars and zero cents). ETGSA has not evaluated the memorandum, or its allegations, and as a result does not agree to any findings therein.

P. FWA and Reclamation are developing plans to restore historic capacity to the FKC. Presently, FWA and Reclamation are nearing completion of plans to restore capacity in the Middle Reach of the FKC through a project referred to as the Friant-Kern Canal Middle Reach Capacity Correction Project (“Project”). The most current engineering estimates place the cost of the Project at approximately \$500 million. Project costs estimates are expected to change given the need for additional estimates and further design work on the Project including turnouts and appurtenant facilities in and around the Middle Reach.

Q. FWA is proposing to divide the costs of Project funding into two categories: **Zone 2** –the increased capacity of the FKC attributed to the construction of the Project that is financed by non-reimbursable public funding, GSA funding and FWA OM&R funding (including any reimbursable public funding repaid via FWA OM&R funding); and **Zone 3** - the increase in capacity of the Middle Reach of the FKC above Zone 2 that will result from the construction of the part of the Project with funds derived from additional Friant Contractor voluntary funding.

R. The purpose of the payments to FWA by ETGSA under this Agreement is to fund Project Zone 2 construction. ETGSA may participate in any Zone 3 funding through other agreements with Friant Contractors. The Parties acknowledge and agree that to fully improve capacity conditions on the FKC, further projects north of Middle Reach are necessary, and that the Parties desire to pursue such projects.

S. This Agreement reflects the desire of the Parties to resolve their differences regarding past and future subsidence on the FKC and, among other things, provide (1) FWA with needed financing to complete the Project; and (2) protection to ETGSA and landowners within ETGSA’s jurisdictional boundaries (“Landowners”) that FWA and Friant Contractors affected by subsidence in the Middle Reach will not pursue litigation provided the terms of this Agreement are satisfied and Landowners are in good standing, as defined in Section 5 below, with the ETGSA.

## AGREEMENT

In consideration of the foregoing Recitals, which are incorporated herein, and the covenants contained in this Agreement, and for other further good and valuable consideration, including but not limited to the terms herein and the avoidance of further costs, inconvenience, and uncertainties related to the Parties’ respective positions, the Parties agree as follows:

### 1. **Penalty Program.**

A. ETGSA shall approve and maintain a volumetric penalty amount per acre foot consumed on transitional pumping as defined in the ETGSA GSP in an amount that will achieve, at minimum, the collection of \$220,000,000.00 (two hundred and twenty

million dollars and zero cents), if the anticipated transitional pumping of 1,034,553 acre-feet actually occurs.

- B. ETGSA shall set a penalty amount to collect Tier 1 penalty money not received in year 2020 based on actual transitional water pumped over the next five years (2021-2026), thus increasing the amount of penalties expected to be received by ETGSA in the earlier years of the transitional pumping penalty program.
- C. FWA acknowledges that the initial penalties set by ETGSA for Tier 1 (\$245 per acre-foot) and Tier 2 (\$500 per acre-foot) are consistent with this Agreement and reflect ETGSA's agreement to collect penalties not collected in year 2020 based on actual transitional water pumped over the next five years (2021-2026), thus increasing the amount of penalties expected to be received.
- D. ETGSA agrees to take all commercially reasonable efforts to begin invoicing Landowners as soon as reasonably practicable, but no later than March 2021, for all Tier 1 and Tier 2 penalties.

**2. ETGSA Lump Sum Payment under Land-Based Assessment and Reduced Penalty Program Payment.**

- A. Lump Sum Payment. In consideration of the mutual benefits that would result from FWA's early receipt of funds that could be applied towards the Project, ETGSA will use its best efforts to take all necessary steps and actions as required by law (including compliance with Proposition 218) to submit for a vote of the Landowners a land-based assessment that could be used as a source of revenue to secure bonds, notes or other obligations ("ETGSA Bonds") that would allow for a lump sum payment of \$125,000,000.00 (one hundred twenty five million dollars and zero cents) to FWA for Zone 2 of the Project ("Lump Sum Payment").
  - 1. ETGSA will use commercially reasonable efforts to obtain landowner approval of the land-based assessment under Section 2(A) above by no later than July 1, 2022. If the land-based assessment is approved by Landowners, ETGSA will use commercially reasonable efforts to issue ETGSA Bonds and to pay the Lump Sum Payment by no later than December 31, 2022. If ETGSA does not make the Lump Sum Payment by December 31, 2022, FWA in its sole and absolute discretion can decide whether to accept the Lump Sum Payment (or a different amount) at a later date if requested by ETGSA in writing to continue to pursue such payment option.
- B. Penalty Money. ETGSA shall make quarterly installments towards the Lump Sum Payment to FWA beginning as soon as reasonably practicable, but no later than the first quarter of 2021. ETGSA shall pay ninety-one percent (91%) of Tier 1 and Tier 2 penalty monies received in each calendar quarter within forty-five (45) days following the end of the subject quarter. ETGSA is entitled to keep the remaining nine percent (9%).

1. Penalty money paid in quarterly installments to FWA under this Section 2(B) shall be credited to and reduce the Lump Sum Payment amount.
  2. Payments by ETGSA to FWA under this Section 2(B) will cease, and no further penalty monies shall be paid to FWA, upon payment of the Lump Sum Payment.
3. **ETGSA Payments under the Transitional Pumping Penalty Program.** If the land-based assessment election described in Section 2 above does not pass, ETGSA agrees to the following:
  - A. If the Proposition 218 land-based assessment election does not pass as described in Section 2, ETGSA shall pay up to a maximum of two hundred million dollars (\$200,000,000.00) of penalty monies to FWA on a rolling basis. ETGSA shall pay ninety-one percent (91%) of penalty monies received in each calendar quarter within 45 (forty-five) days following the end of the subject quarter. ETGSA will be entitled to keep the remaining nine percent (9%) of penalty monies received.
  - B. The Parties acknowledge there is no assurance that any penalty monies will be received due to, among other things, the nature of the transitional pumping program which is designed to disincentivize groundwater pumping.
4. **Land Subsidence Management and Monitoring Plan.**
  - A. ETGSA shall take such commercially reasonable efforts to adopt and implement such management action(s) as identified within the ETGSA GSP to limit additional subsidence in the Middle Reach. FWA agrees to have its staff and agents meet and confer with representatives of ETGSA in order to coordinate on the monitoring of subsidence along the FKC and to provide input and recommendations as to additional management actions that may help reduce or avoid subsidence entirely. ETGSA's current draft Land Subsidence Management Plan contemplates the creation of a long-term Land Subsidence Monitoring and Management Committee. ETGSA agrees to appoint a FWA representative to the Land Subsidence Monitoring and Management Committee.
5. **Release of Liability.**
  - A. Release of Landowners and ETGSA.

Upon FWA's receipt of the earliest to occur of: (1) the Lump Sum Payment pursuant to Section 2 above, or (2) the two hundred million dollars and zero cents (\$200,000,000.00) of penalties pursuant to Section 3 above, or (3) all penalties collected and required to be transferred to FWA under Section 3 above through 2040 ("**Release Date**"), Friant, on its own behalf and on behalf of each of its respective successors, predecessors, affiliates, assigns, members, officers, employees, and agents (collectively "**Friant Releasers**"), agrees to release and forever discharge each of the Landowners (solely with respect to each such Landowner's real property

interests within the ETGSA) and ETGSA, and their respective successors, predecessors, affiliates, assigns, members, officers, employees, agents, partners, stockholders (collectively “**ETGSA Releasees**”) from any and all claims, demands, causes of action, suits, liens, obligations, charges, losses, damages, judgments, attorneys’ fees, costs, promises, liabilities, and demands of every nature, kind, and description whatsoever, in law or in equity, whether known or unknown, fixed or contingent, suspected or unsuspected, matured or not matured, liquidated or unliquidated, which the Friant Releasors may have ever had, now have, or will have against the ETGSA Releasees, in any manner arising from or related to the effects of land subsidence on the FKC (collectively “**Claims**”) up to and after the Release Date, but excluding any action as provided in Section 5(C) below.

**B. Covenant Not to Sue by Friant Releasors.**

For so long as ETGSA and each of the ETGSA Releasees remain in compliance with this Agreement, each of the Friant Releasors covenants that, excepting any action or Claims made under the conditions prescribed by Section 5(C) below, no Friant Releasor will directly or indirectly institute any legal, equitable, administrative, or other action, complaint, or proceeding against any of the ETGSA Releasees, or in any other manner assert any Claims against any of the ETGSA Releasees arising from or related to the effects of land subsidence on the FKC, including, without limitation, any past, present, or future damages.

**C. Unreleased Claims.**

1. Injunctive relief against Landowners. Notwithstanding Section 5(A) and (B) above, in the event of significant and unreasonable land subsidence pursuant to the ETGSA GSP and SGMA is incurred and there is reasonable evidence that such significant and unreasonable land subsidence is caused by groundwater pumping in excess of sustainable yield amounts within the ETGSA boundaries (as defined in the ETGSA GSP and the Rules and Regulations), Friant may pursue injunctive relief against Landowners from either judicial or administrative authorities to enjoin such groundwater pumping.

2. Good Standing. Only Landowners which are in “good standing” with the ETGSA shall be entitled to the benefits and protections of Section 5(A) and (B) above. “**Good standing**” shall mean the Landowner is in compliance with the ETGSA’s applicable Rules and Regulations and ETGSA GSP. Pumping in exceedance of the applicable Tier 1 Penalty Allocation will be evidence of not being in “good standing” with the ETGSA. The ETGSA’s written confirmation that a Landowner is in “good standing” with the ETGSA shall constitute conclusive evidence that the Landowner is entitled to the benefits and protections of Section 5(A) and (B).

3. Breach of this Agreement. The Parties may seek to enforce the terms of this Agreement in a court of competent jurisdiction as stated in Section 10 and the prevailing party in any such action may recover attorney’s fees as stated in Section

12.

**6. Indemnification.**

- A. ETGSA agrees to indemnify and hold harmless and defend the Friant Releasors, and each of them, from and against all claims, demands, causes of action, liability, cost and expenses, including damages resulting from the death or injury to any person or property, and including attorney's fees, losses or liabilities in law or in equity, of every kind and nature whatsoever for, but not limited to injury to or death of any person or property, arising out of or related to ETGSA's adoption or implementation of this Agreement, the ETGSA GSP, the Rules and Regulations, or any land-based assessment, charge or fee, imposed by the ETGSA.
- B. FWA agrees to indemnify and hold harmless and defend the ETGSA Releasees from and against all claims, demands, causes of action, liability, cost and expenses, including damages resulting from the death or injury to any person or property, and including attorney's fees, losses or liabilities in law or in equity, of every kind and nature whatsoever for, but not limited to, injury to or death of any person or property, arising out of or related to the Project, or subsidence on the FKC, which may be brought by or on behalf of the Department of Interior, Bureau of Reclamation, or any Friant Contractor or Friant Contractor landowner, except to the extent such loss or injury is caused by conduct amounting to an intentional tort.
7. **No Admission of Liability.** This Agreement reflects a compromise of disputed claims and neither the payment or performance of any consideration hereunder nor anything contained in this Agreement will be interpreted or construed to be an admission on the part of, or to the prejudice of, either Party.
8. **Warranty of Authority.** Each Party represents and warrants that it has the full right, power, legal capacity and authority to enter into and perform its obligations under this Agreement and that no approvals or consents of any persons are necessary in connection with it.
9. **Assignment of Claims.** Each Party warrants, represents, and covenants that it has not assigned, transferred or conveyed, or purported to assign, transfer or convey, and will not assign, transfer or convey to anyone any claim, demand, debt, sum of money, liability, account, obligation, action or cause of action herein. Each Party agrees to indemnify, defend and hold harmless any other Party from any claims which may be asserted against such Party, based on, or arising out of or in connection with any such assignment, transfer or conveyance, or purported assignment, transfer or conveyance.
10. **Choice of Law.** This Agreement is governed by and will be construed in accordance with the laws of the State of California. The Parties agree that any breach of the Agreement will be deemed to occur in the County of Tulare, California. The Parties further agree that jurisdiction of any dispute arising out of this Agreement will be in the courts of the State of California, County of Tulare.

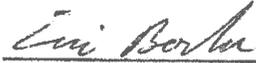
11. **Binding Upon Successors.** This Agreement is binding upon and will inure to the benefit of the Parties and their predecessors, successors, heirs, assigns, past, present or future executors, administrators, trustees, beneficiaries, affiliated and related entities, officers, directors, agents, employees and representatives.
12. **Attorney's Fees.** In the event of any dispute in any manner arising from or related to this Agreement or any transaction or event arising therefrom, the prevailing party in any action or proceeding shall be entitled to recover all reasonable attorney's fees incurred in connection with the dispute and any resultant litigation. The prevailing party shall also be entitled to recover all other reasonable costs and expenses incurred in connection with the dispute and any resultant litigation, including, without limitation, all fees of expert consultants and expert witnesses.
13. **Time of Essence.** Time is of the essence in the performance of this Agreement.
14. **Cooperation; Execution of Documents; Subsequent Actions.** Each Party agrees to cooperate fully and in the execution of any and all other documents necessary to effectuate the stated purposes of this Agreement, including but not limited to those documents specifically described in this Agreement, and in the completion of any additional action that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.
15. **Construction of Agreement.** This Agreement is the product of negotiation and preparation by and among each Party and its respective attorneys. Therefore, the Parties expressly waive the provisions of Civil Code section 1654 and acknowledge and agree that the Agreement will not be deemed prepared or drafted by any one Party, and will be construed accordingly.
16. **Integration.** This Agreement and the documents executed in connection with it constitute the complete agreement of the Parties with respect to the subject matters referred to in this Agreement. This Agreement supersedes all prior or contemporaneous negotiations, promises, covenants, agreements and representations of every nature whatsoever with respect to the subject matters referred to in this Agreement, all of which have become merged and finally integrated into this Agreement.
17. **Modification.** Any modification of this Agreement must be in writing and signed by all Parties. No oral modifications will be effective to vary or alter the terms of this Agreement.
18. **Entire Agreement.** All representations and promises pertaining to this Agreement are set forth herein and the Parties acknowledge and represent to each other that they are not entering into this Agreement on the basis of any other promises or representations, express or implied, oral or written. Each Party has fully and personally investigated the subject matter of the Agreement, and has consulted with and been represented by independent counsel in negotiation and execution thereof. No Party is relying upon any statement of fact or opinion by or of the other Party except as expressly set forth in this Agreement.

19. **Authorized Signature.** Each signatory to this Agreement warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the Party for whom the signatory purports to sign.
20. **Severability.** If any provision or any part of any provision of this Agreement is for any reason, held invalid, unenforceable or contrary to public policy or law, the remainder of this Agreement will not be affected thereby, and will continue to be valid and enforceable.
21. **Enforceable Obligations.** When executed, this Agreement will be valid, binding and legally enforceable in accordance with its terms.
22. **Warranty of Non-Inducement.** The Parties declare and represent that no promises, inducements, or agreements not expressly contained herein have been made and that this Agreement contains the entire agreement between them with respect to the subject matter of this Agreement.
23. **Counterparts.** This Agreement may be executed in counterparts, including true and accurate copies of the original, all of which, when taken together, will be deemed one original agreement. Any executed copy will not be binding upon any Party until all Parties have duly executed a copy of this Agreement.
24. **Force Majeure.** No Party will be liable in damages to any other Party for delay in performance of, or failure to perform, its obligations under this Agreement if such delay or failure is caused by a force majeure event. A "Force Majeure Event" means an event not the fault of, and beyond the reasonable control of, the Party claiming excuse which makes it impossible or extremely impracticable for such Party to perform obligations imposed on it by this Agreement by virtue of its effect on physical facilities and their operation or employees essential to such performance. Force Majeure Events include (a) an "act of God" such as an earthquake, flood, earth movement, drought, or similar catastrophic event, (b) an act of the public enemy, terrorism, sabotage, civil disturbance or similar event, (c) a strike, work stoppage, picketing or similar concerted labor action, (d) delays in construction caused by unanticipated negligence or breach of contract by a third party or inability to obtain essential materials after diligent and timely efforts, or (e) an order or regulation issued by a federal or state regulatory agency after the Effective Date of this Agreement or a judgment or order entered by a federal or state court after the Effective Date of this Agreement.
25. **Landowners.** The Parties recognize and acknowledge that each of the Landowners is an intended third-party beneficiary under this Agreement, and will have standing to enforce any provision of this Agreement.

[Signatures on the following page.]

**ETGSA:**

**EASTERN TULE GROUNDWATER SUSTAINABILITY AGENCY**



Eric Borba, Chairman

1-15-21

Dated



Rogelio Caudillo, Secretary

1/15/2021

Dated

**APPROVED AS TO FORM:**



Aubrey A. Mauritsen, General Counsel

**FWA:**

**FRIANT WATER AUTHORITY**



Cliff Loeffler, Chairman

Jan 11, 2021

Dated



Jim Erickson, Secretary

Jan 11, 2021

Dated

**APPROVED AS TO FORM:**



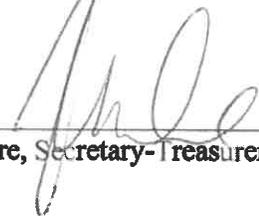
Donald M. Davis, General Counsel

**DISTRICT:**

**ARVIN-EDISON WATER STORAGE DISTRICT**

  
\_\_\_\_\_  
Edwin Camp, President

1/13/2021  
\_\_\_\_\_  
Dated

  
\_\_\_\_\_  
John Moore, Secretary-Treasurer

1/13/21  
\_\_\_\_\_  
Dated

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Scott K. Kuney, General Counsel

**DISTRICT:**

**ARVIN-EDISON WATER STORAGE DISTRICT**



Edwin Camp, President

1/13/2021

Dated

\_\_\_\_\_  
John Moore, Secretary-Treasurer

\_\_\_\_\_  
Dated

**APPROVED AS TO FORM:**

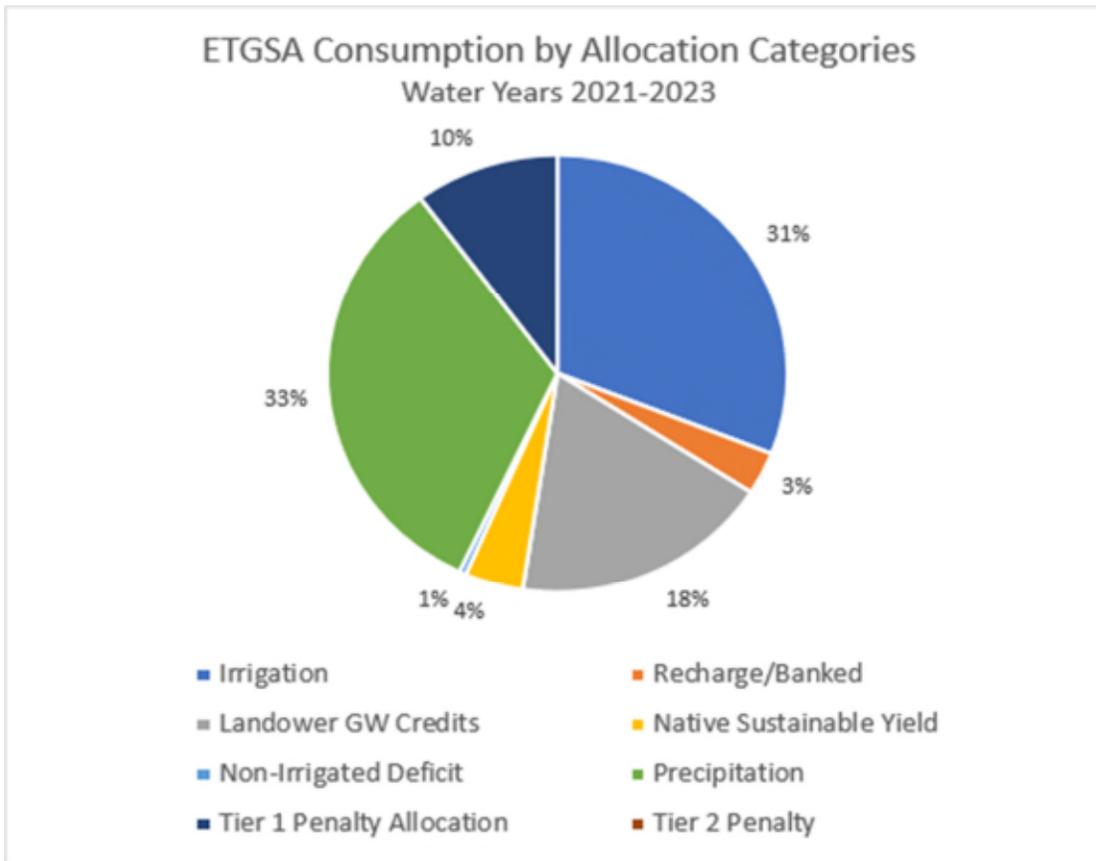
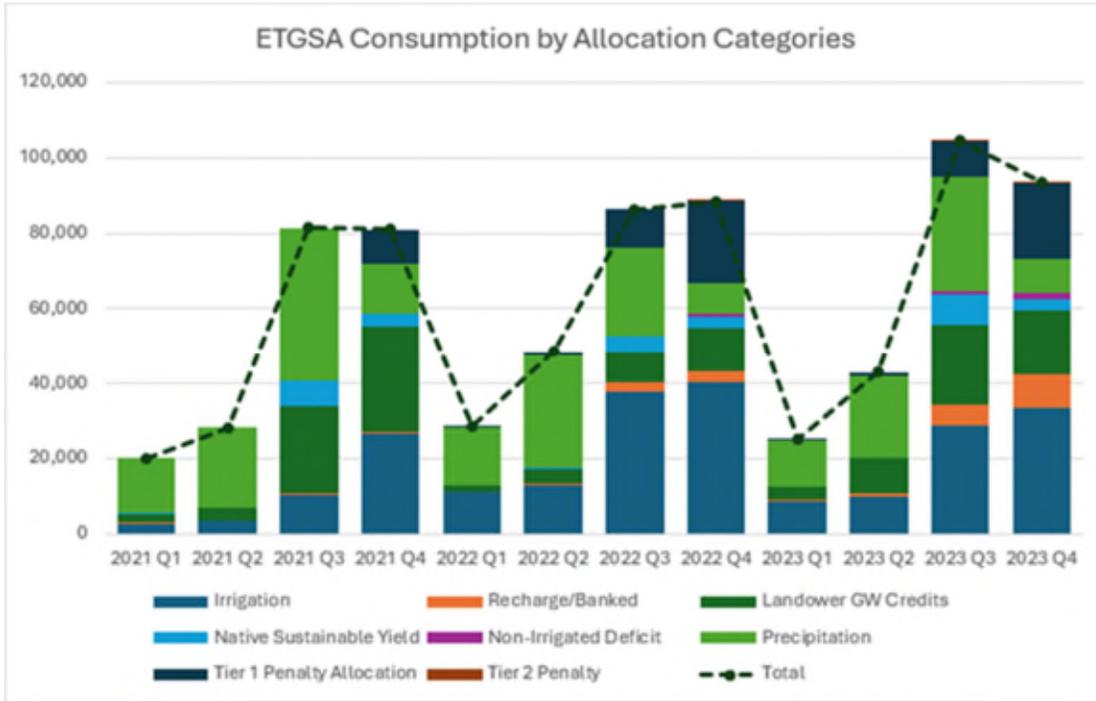


Scott K. Kuney, General Counsel

## **EXHIBIT D**

## Exhibit D

### Summary of ETGSA Water Consumption by Allocation Categories



## **EXHIBIT E**

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

CONTRACT BETWEEN THE UNITED STATES  
AND  
ARVIN-EDISON WATER STORAGE DISTRICT  
PROVIDING FOR PROJECT WATER SERVICE  
FROM FRIANT DIVISION AND  
FOR FACILITIES REPAYMENT

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Exhibit A	Contractor’s Map or Description of Service Area
Exhibit B	Rates and Charges
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1 UNITED STATES  
2 DEPARTMENT OF THE INTERIOR  
3 BUREAU OF RECLAMATION  
4 Central Valley Project, California

5 CONTRACT BETWEEN THE UNITED STATES  
6 AND  
7 ARVIN-EDISON WATER STORAGE DISTRICT  
8 PROVIDING FOR PROJECT WATER SERVICE  
9 FROM FRIANT DIVISION AND  
10 FACILITIES REPAYMENT

11 THIS CONTRACT, made this 1st day of NOVEMBER, 2010, is entered  
12 into pursuant to the Act of June 17, 1902, (32 Stat. 388), and acts amendatory or supplementary  
13 thereto, including but not limited to: the Act of August 26, 1937 (50 Stat. 844), as amended and  
14 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956  
15 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1262), October 27, 1986  
16 (100 Stat. 3050), as amended, Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), and  
17 Title X, Subtitle A, of the Act of March 30, 2009 (123 Stat. 1349), also referred to as the San  
18 Joaquin River Restoration Settlement Act hereinafter referred to as SJRRSA, all collectively  
19 hereinafter referred to as Federal Reclamation law, between THE UNITED STATES OF  
20 AMERICA, hereinafter referred to as the United States and ARVIN-EDISON WATER  
21 STORAGE DISTRICT, hereinafter referred to as the Contractor, a public agency of the State of  
22 California, duly organized, existing, and acting pursuant to the laws thereof, with its principal  
23 place of business in California;

24 WITNESSETH, That

EXPLANATORY RECITALS

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

[2<sup>nd</sup>] WHEREAS, the United States constructed Friant Dam (thereby creating Millerton Lake) and the Friant-Kern and Madera Canals, hereinafter collectively referred to as the Friant Division Facilities, which will be used in part for the furnishing of water to the Contractor pursuant to the terms of this Contract; and

[3<sup>rd</sup>] WHEREAS, the United States and the Contractor entered into Contract Number 14-06-200-229A, as amended, which established terms for the delivery to the Contractor of Project Water from the Friant Division from August 30, 1962 through February 28, 1995; and

[4<sup>th</sup>] WHEREAS, the Contractor and the United States 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 Number (s) 14-06-200-229A-IR1, IR2, IR3, and IR4, which provided for the continued water service to Contractor from March 1, 1995 through February 28, 2001, and subsequently entered into a long-term renewal contract identified as Contract Number 14-06-200-229A-LTR1, which provided for continued water service to

45 Contractor through February 28, 2026, which was amended January 18, 2007, and is herein  
46 referred to as the “Existing Contract”; and

47 [5<sup>th</sup>] WHEREAS, pursuant to Section 8 of the Act of June 17, 1902 (32 Stat. 388), the  
48 United States has acquired water rights and other rights to the flows of the San Joaquin River,  
49 including without limitation the permits issued as the result of Decision 935 by the California  
50 State Water Resource Control Board and the contracts described in subdivision (n) of Article 3  
51 of this Contract, pursuant to which the Contracting Officer develops, diverts, stores and delivers  
52 Project Water stored or flowing through Millerton Lake in accordance with State and Federal law  
53 for the benefit of Project Contractors in the Friant Division and for other specified Project  
54 purposes; and

55 [6<sup>th</sup>] WHEREAS, the water supplied to the Contractor pursuant to this Contract is  
56 Project Water developed through the exercise of the rights described in the fifth (5<sup>th</sup>) Explanatory  
57 Recital of this Contract; and

58 [7<sup>th</sup>] WHEREAS, as a result of litigation entitled “Natural Resources Defense Council,  
59 et al. v Kirk Rogers, et al.” No. CIV-S-88-1658LLK/GGH, certain contractors from the Friant  
60 Division entered into a Stipulation of Settlement dated September 13, 2006, (the “Settlement”),  
61 which settlement prescribes a Restoration Goal and a Water Management Goal and which  
62 Settlement was subsequently confirmed and implemented through the SJRRSA; and

63 [8<sup>th</sup>] WHEREAS, the SJRRSA authorizes and directs the Secretary to convert the  
64 Existing Contract to a repayment contract under subsection (d) of Section 9 of the Act of August  
65 4, 1939, no later than December 31, 2010, and further directs that such contract shall require the

66 accelerated repayment of the Contractor's allocated share of construction costs, either as a lump  
67 sum payment by January 31, 2011 or in annual installments by January 31, 2014, which funds  
68 will in turn be made available for implementation of the Settlement and SJRRSA, and which  
69 costs otherwise would have been payable through annual water rates, with full repayment by  
70 2030; and

71 [9<sup>th</sup>] WHEREAS, such repayment of costs will assist the United States with  
72 implementation of actions required under the Settlement and the SJRRSA and provide the  
73 Contractor the benefits provided in Section 10010 of the SJRRSA; and

74 [10<sup>th</sup>] WHEREAS, subsection (4) of Section 1 of the Act of July 2, 1956 (1956 Act)  
75 directs the Secretary to provide that the other party to any contract entered into pursuant to  
76 subsection (d) of Section 9 of the Act of August 4, 1939 (repayment contract) or pursuant to  
77 subsection (e) of Section 9 of the Act of August 4, 1939 (water service contract) shall "have the  
78 first right (to which the rights of the holders of any other type of irrigation water contract shall be  
79 subordinate) to a stated share or quantity of the project's available water supply for beneficial  
80 use on the irrigable lands within the boundaries of, or owned by, the party and a permanent right  
81 to such share or quantity upon completion of payment of the amount assigned for ultimate  
82 return" by the contractor subject to fulfillment of all obligations under the contract; and

83 [11<sup>th</sup>] WHEREAS, among other things, this Contract includes provisions granting the  
84 Contractor the permanent right described in the tenth (10<sup>th</sup>) Explanatory Recital; and

85 [12<sup>th</sup>] WHEREAS, the Contractor has demonstrated to the satisfaction of the  
86 Contracting Officer that the Contractor has utilized the Project Water supplies available to it for

87 reasonable and beneficial use and/or has demonstrated projected future demand for water use  
88 such that the Contractor has the capability and expects to utilize fully for reasonable and  
89 beneficial use the quantity of Project Water to be made available to it pursuant to this Contract;  
90 and

91 [13<sup>th</sup>] WHEREAS, water obtained from the Central Valley Project has been relied upon  
92 by urban and agricultural areas within California for more than fifty (50) years and is considered  
93 by the Contractor as an essential portion of its water supply; and

94 [14<sup>th</sup>] WHEREAS, the economies of regions within the Central Valley Project,  
95 including the Contractor's, depend upon the continued availability of water, including water  
96 service from the Central Valley Project; and

97 [15<sup>th</sup>] WHEREAS, the Secretary intends through coordination, cooperation, and  
98 partnerships to pursue measures to improve water supply, water quality, and reliability of the  
99 Project for all Project purposes; and

100 [16<sup>th</sup>] WHEREAS, the mutual goals of the United States and the Contractor include: to  
101 provide for reliable Project Water supplies; to control costs of those supplies; to achieve  
102 repayment of the Central Valley Project as required by law; to guard reasonably against Project  
103 Water shortages; to achieve a reasonable balance among competing demands for use of Project  
104 Water; and to comply with all applicable environmental statutes, all consistent with the legal  
105 obligations of the United States relative to the Central Valley Project; and

106 [17<sup>th</sup>] WHEREAS, any time during the Year the Contracting Officer determines that a  
107 need exists to evacuate water from Millerton Lake in order to prevent or minimize spill or to

108 meet flood control criteria (currently referred to as “uncontrolled season”), taking into  
109 consideration, among other things, anticipated upstream reservoir operations and the most  
110 probable forecast of snowmelt and runoff projections for the upper San Joaquin River, Friant  
111 Division Project Contractors utilize a portion of their undependable Class 2 Water in their  
112 service areas to, among other things, assist in the management and alleviation of groundwater  
113 overdraft in the Friant Division service area, provide opportunities for restoration of the San  
114 Joaquin River below Friant Dam, minimize flooding along the San Joaquin River, encourage  
115 optimal water management, and maximize the reasonable and beneficial use of the water; and

116 [18<sup>th</sup>] WHEREAS, the parties desire and intend that this Contract not provide a  
117 disincentive to the Friant Division Project Contractors continuing to carry out the beneficial  
118 activities set out in the Explanatory Recital immediately above; and

119 [19<sup>th</sup>] WHEREAS, the United States has determined that the Contractor has fulfilled all  
120 of its obligations under the Existing Contract.

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

123 DEFINITIONS

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

126 (a) “Additional Capital Obligation” shall mean any additional construction  
127 costs or other capitalized costs incurred after the effective date of this Contract or not reflected in  
128 the Existing Capital Obligation as provided in Section 10010(a)(3)(B) of the SJRRSA and any

129 amounts payable by Contractor as determined through the final adjustment described and  
130 required by Section 10010(b) of the SJRRSA;

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

133 (c) "Charges" shall mean the payments required by Federal Reclamation law  
134 in addition to the Rates and Tiered Pricing Components specified in this Contract as determined  
135 annually by the Contracting Officer pursuant to this Contract and consistent with the SJRRSA;

136 (d) "Class 1 Water" shall mean that supply of water stored in or flowing  
137 through Millerton Lake which, subject to the contingencies hereinafter described in Articles 3,  
138 12, and 13 of this Contract, will be available for delivery from Millerton Lake and the  
139 Friant-Kern and Madera Canals as a dependable water supply during each Year;

140 (e) "Class 2 Water" shall mean that supply of water which can be made  
141 available subject to the contingencies hereinafter described in Articles 3, 12, and 13 of this  
142 Contract for delivery from Millerton Lake and the Friant-Kern and Madera Canals in addition to  
143 the supply of Class 1 Water. Because of its uncertainty as to availability and time of occurrence,  
144 such water will be undependable in character and will be furnished only if, as, and when it can be  
145 made available as determined by the Contracting Officer;

146 (f) "Condition of Shortage" shall mean a condition respecting the Project  
147 during any Year such that the Contracting Officer is unable to deliver sufficient water to meet the  
148 Contract Total;

149                   (g)     “Contracting Officer” shall mean the Secretary of the Interior’s duly  
150 authorized representative acting pursuant to this Contract or applicable Federal Reclamation law  
151 or regulation;

152                   (h)     “Contract Total” shall mean the maximum amount of Class 1 Water plus  
153 the maximum amount of Class 2 Water specified in subdivision (a) of Article 3 of this Contract  
154 and is the stated share or quantity of the Project’s available water supply to which the Contractor  
155 will have a permanent right in accordance with the 1956 Act and the terms of this Contract, upon  
156 the Contractor’s complete payment of the Repayment Obligation, notwithstanding any  
157 Additional Capital Obligation that may later be established, which right shall not be disturbed so  
158 long as the Contractor fulfills all of its obligations under this Contract;

159                   (i)     “Contractor’s Service Area” shall mean the area to which the Contractor is  
160 permitted to provide Project Water under this Contract as described in Exhibit “A” attached  
161 hereto, which may be modified from time to time in accordance with Article 36 of this Contract  
162 without amendment of this Contract;

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

165                   (k)     “Eligible Lands” shall mean all lands to which Irrigation Water may be  
166 delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982  
167 (96 Stat. 1263), as amended, hereinafter referred to as RRA;

168 (l) "Excess Lands" shall mean all lands in excess of the limitations contained  
169 in Section 204 of the RRA, other than those lands exempt from acreage limitation under Federal  
170 Reclamation law;

171 (m) "Existing Capital Obligation" shall mean the remaining amount of  
172 construction costs of the Contractor identified in the Central Valley Project Irrigation Water  
173 Rates and/or Municipal and Industrial Water Rates, respectively, dated January 25, 2007, as  
174 adjusted to reflect payments not reflected in such schedule, pursuant to Section 10010(a)(3)(A)  
175 of the SJRRSA. The Contracting Officer has computed the Existing Capital Obligation in a  
176 manner consistent with the SJRRSA and such amount is set forth in Exhibits "C-1" and "C-2",  
177 incorporated herein by reference;

178 (n) "Financing Costs", for purposes of computing the reduction of certain  
179 charges as specified in subdivision (c) of Article 7 of this Contract, shall mean the difference  
180 between the net present value of the Existing Capital Obligation discounted using the full  
181 Treasury rate and the Existing Capital Obligation discounted using one-half the Treasury rate, as  
182 set forth in Section 10010(d)(3) of the SJRRA;

183 (o) "Full Cost Rate" shall mean that water rate described in Sections 205(a)(3)  
184 or 202(3) of the RRA, whichever is applicable;

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

187 (q) "Irrigation Full Cost Water Rate" shall have the same meaning as "full  
188 cost" as that term is used in Paragraph (3) of Section 202 of the RRA;

189                   (r)     “Irrigation Water” shall mean water made available from the Project that  
190 is used primarily in the production of agricultural crops or livestock, including domestic use  
191 incidental thereto, and watering of livestock;

192                   (s)     “Landholder” shall mean a party that directly or indirectly owns or leases  
193 nonexempt land, as provided in 43 CFR 426.2;

194                   (t)     “Long Term Historic Average” shall mean the average of the final forecast  
195 of Water Made Available to the Contractor pursuant to this Contract and the contracts referenced  
196 in the third (3<sup>rd</sup>) and fourth (4<sup>th</sup>) Explanatory Recitals of this Contract;

197                   (u)     “Municipal and Industrial (M&I) Water” shall mean water made available  
198 from the Project other than Irrigation Water made available to the Contractor. M&I Water shall  
199 include water used for human use and purposes such as the watering of landscaping or pasture  
200 for animals (e.g., horses) which are kept for personal enjoyment or water delivered to land  
201 holdings operated in units of less than five (5) acres unless the Contractor establishes to the  
202 satisfaction of the Contracting Officer that the use of water delivered to any such landholding is a  
203 use described in subdivision (r) of this Article of this Contract;

204                   (v)     “M&I Full Cost Water Rate” shall mean the annual rate, which, as  
205 determined by the Contracting Officer, shall amortize the expenditures for construction allocable  
206 to Project M&I facilities in service, including, O&M deficits funded, less payments, over such  
207 periods as may be required under Federal Reclamation law with interest accruing from the dates  
208 such costs were first incurred plus the applicable rate for the O&M of such Project facilities.

209 Interest rates used in the calculation of the M&I Full Cost Rate shall comply with the Interest  
210 Rate methodology contained in Section 202(3) (B) and (C) of the RRA;

211 (w) "Operation and Maintenance" or "O&M" shall mean normal and  
212 reasonable care, control, operation, repair, replacement (other than Capital replacement), and  
213 maintenance of Project facilities;

214 (x) "Operating Non-Federal Entity" shall mean the Friant Water Authority, or  
215 its successor, a Non-Federal entity, which has the obligation to operate and maintain all or a  
216 portion of the Friant Division Facilities pursuant to an agreement with the United States and  
217 which may have funding obligations with respect thereto;

218 (y) Omitted;

219 (z) "Project" shall mean the Central Valley Project owned by the United  
220 States and managed by the Department of the Interior, Bureau of Reclamation;

221 (aa) "Project Contractors" shall mean all parties who have a long-term water  
222 service contract or repayment contract for Project Water from the Project with the United States  
223 pursuant to Federal Reclamation law;

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

227 (cc) "Rates" shall mean the payments for O&M costs as determined annually  
228 by the Contracting Officer in accordance with the then-existing applicable water ratesetting

229 policies for the Project, as described in subdivision (a) of Article 7 of this Contract and  
230 illustrated in Exhibit “B”, attached hereto;

231 (dd) “Recovered Water Account” shall mean the program, as defined in the  
232 Settlement, to make water available to all of the Friant Division Project Contractors who provide  
233 water to meet interim flows or restoration flows for the purpose of reducing or avoiding the  
234 impact of the interim flows and restoration flows on such contractors;

235 (ee) “Repayment Obligation”, as provided in subdivision (a)(2)(A) of Article 7  
236 of this Contract, shall be the Existing Capital Obligation, as defined herein, discounted by  
237 one-half of the Treasury rate and computed consistent with the provisions of Section  
238 10010(a)(3)(A) of the SJRRSA to be paid as either a lump sum payment by January 31, 2011 or  
239 in approximately equal annual installments by January 31, 2014;

240 (ff) “Secretary” shall mean the Secretary of the Interior, a duly appointed  
241 successor, or an authorized representative acting pursuant to any authority of the Secretary and  
242 through any agency of the Department of the Interior;

243 (gg) “Settlement” shall mean the Stipulation of Settlement dated September 13,  
244 2006, the Order Approving Stipulation of Settlement, and the Judgment and further orders issued  
245 by the Court pursuant to the terms and conditions of the Settlement in Natural Resources  
246 Defense Council, et al. v. Rodgers, et al., No. CIV-S-88-1658 LLJ/GGH;

247 (hh) “Tiered Pricing Component” shall be the incremental amount to be paid  
248 for each acre-foot of Water Delivered as described in subdivision (l)(1) of Article 7 of this  
249 Contract;

250 (ii) "Water Delivered" or "Delivered Water" shall mean Project Water  
251 diverted for use by the Contractor at the point(s) of delivery approved by the Contracting  
252 Officer;

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

256 (kk) "Water Management Goal" shall mean the goal of the Settlement to  
257 reduce or avoid adverse water supply impacts to all the Friant Division Project Contractors that  
258 may result from the interim flows and restoration flows provided for in the Settlement;

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

262 (mm) "Year" shall mean the period from and including March 1 of each  
263 Calendar Year through the last day of February of the following Calendar Year.

264 EFFECTIVE DATE OF CONTRACT

265 2. (a) This Contract shall become effective on the date first hereinabove written  
266 and shall continue so long as the Contractor is making the annual payments required herein and  
267 paying any other amounts owing under this Contract and applicable law, unless it is terminated  
268 by the Contracting Officer by reason of a material uncured breach by the Contractor; Provided,  
269 That the Contracting Officer shall not seek to terminate this Contract by reason of an asserted  
270 material uncured breach by the Contractor unless it has first provided at least sixty (60) days

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

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

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

292 unenforceable for any reason other than a material uncured breach of this Contract by the  
293 Contractor, the Existing Contract shall not be superseded and shall be in full force and effect.

294 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

295 3. (a) During each Year, consistent with all applicable State water rights,  
296 permits, and licenses, Federal law, the Settlement including the SJRRSA, and subject to the  
297 provisions set forth in Articles 12 and 13 of this Contract, the Contracting Officer shall make  
298 available for delivery to the Contractor from the Project 40,000 acre-feet of Class 1 Water and  
299 311,675 acre-feet of Class 2 Water for irrigation and M&I purposes. The quantity of Water  
300 Delivered to the Contractor in accordance with this subdivision shall be scheduled and paid for  
301 pursuant to the provisions of Articles 4 and 7 of this Contract.

302 (b) Upon complete payment of the Repayment Obligation by the Contractor,  
303 and notwithstanding any Additional Capital Obligation that may later be established, the  
304 Contractor shall have a permanent right to the Contract Total in accordance with the 1956 Act  
305 and the terms of this Contract. This right shall not be disturbed so long as the Contractor fulfills  
306 all of its obligations hereunder. The quantity of water made available for delivery in any given  
307 Year shall remain subject to the terms and conditions of subdivision (a) of this Article of this  
308 Contract.

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

311 (d) The Contractor shall make reasonable and beneficial use of all Project  
312 Water or other water furnished pursuant to this Contract. Groundwater recharge programs,

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

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

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

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

354 available to the Contractor in accordance with applicable statutes, regulations, guidelines, and  
355 policies.

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

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

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

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

375 participation by the Contractor, in the capacity and to the extent permitted by law, in  
376 administrative proceedings related to the water rights and other rights described in the fifth (5th)  
377 Explanatory Recital of this Contract; Provided however, That the Contracting Officer retains the  
378 right to object to the substance of the Contractor's position in such a proceeding. Provided  
379 further, that in such proceedings the Contracting Officer shall recognize the Contractor has a  
380 legal right under the terms of this Contract to use Project Water.

381 (k) Project Water furnished to the Contractor during any month designated in  
382 a schedule or revised schedule submitted by the Contractor and approved by the Contracting  
383 Officer shall be deemed to have been accepted by the Contractor as Class 1 Water to the extent  
384 that Class 1 Water is called for in such schedule for such month and shall be deemed to have  
385 been accepted as Class 2 Water to the extent Class 2 Water is called for in such schedule for such  
386 month. If in any month the Contractor diverts a quantity of water in addition to the total amount  
387 of Class 1 Water and Class 2 Water set forth in the Contractor's approved schedule or revised  
388 schedule for such month, such additional diversions shall be charged first against the  
389 Contractor's remaining Class 2 Water supply available in the current Year. To the extent the  
390 Contractor's remaining Class 2 Water supply available in the current Year is not sufficient to  
391 account for such additional diversions, such additional diversions shall be charged against the  
392 Contractor's remaining Class 1 Water supply available in the current Year. To the extent the  
393 Contractor's remaining Class 1 Water and Class 2 Water supplies available in the current Year  
394 are not sufficient to account for such additional diversions, such additional diversions shall be  
395 charged first against the Contractor's available Class 2 Water supply and then against the

396 Contractor's available Class 1 Water supply, both for the following Year. Payment for all  
397 additional diversions of water shall be made in accordance with Article 7 of this Contract.

398 (l) If the Contracting Officer determines there is a Project Water supply  
399 available at Friant Dam as the result of an unusually large water supply not otherwise storable for  
400 Project purposes or infrequent and otherwise unmanaged flood flows of short duration, such  
401 water will be made available to the Contractor and others under Section 215 of the Act of  
402 October 12, 1982, pursuant to the priorities specified below if the Contractor enters into a  
403 temporary contract with the United States not to exceed one (1) year for the delivery of such  
404 water or as otherwise provided for in Federal Reclamation law and associated regulations. Such  
405 water may be identified by the Contractor either (i) as additional water to supplement the supply  
406 of Class 1 Water and/or Class 2 Water made available to it pursuant to this Contract or, (ii) upon  
407 written notification to the Contracting Officer, as water to be credited against the Contractor's  
408 Class 2 Water supply available pursuant to this Contract. The Contracting Officer shall make  
409 water determined to be available pursuant to this subsection according to the following priorities:  
410 first, to contractors for Class 1 Water and/or Class 2 Water within the Friant Division; second, to  
411 contractors in the Cross Valley Division of the Project. The Contracting Officer will consider  
412 requests from other parties for Section 215 Water for use within the area identified as the Friant  
413 Division service area in the environmental assessment developed in connection with the  
414 execution of the Existing Contract.

415 (m) Nothing in this Contract, nor any action or inaction of the Contractor or  
416 Contracting Officer in connection with the implementation of this Contract, is intended to

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

419 (n) The rights of the Contractor under this Contract are subject to the terms of  
420 the contract for exchange waters, dated July 27, 1939, between the United States and the San  
421 Joaquin and Kings River Canal and Irrigation Company, Incorporated, et al., (hereinafter referred  
422 to as the Exchange Contractors), Contract No. I1r-1144, as amended. The United States agrees  
423 that it will not deliver to the Exchange Contractors thereunder waters of the San Joaquin River  
424 unless and until required by the terms of said contract, and the United States further agrees that it  
425 will not voluntarily and knowingly determine itself unable to deliver to the Exchange  
426 Contractors entitled thereto from water that is available or that may become available to it from  
427 the Sacramento River and its tributaries or the Sacramento-San Joaquin Delta those quantities  
428 required to satisfy the obligations of the United States under said Exchange Contract and under  
429 Schedule 2 of the Contract for Purchase of Miller and Lux Water Rights (Contract I1r-1145,  
430 dated July 27, 1939).

431 (o) Pursuant to and consistent with section 10004 of SJRRSA and Paragraph  
432 16 of the Settlement, the Contracting Officer is required to develop and implement a plan for  
433 recirculation, recapture, reuse, exchange or transfer of water released for restoration flows or  
434 interim flows, as those terms are defined in the Settlement, to reduce or avoid impacts to water  
435 deliveries caused by said restoration flows or interim flows and water developed through such  
436 activities may be made available (i) to the Contractor without the need of an additional contract,

437 and/or (ii) to others on behalf of the Contractor under terms mutually acceptable to the  
438 Contractor and the Contracting Officer that are consistent with the Water Management Goal.

439 TIME FOR DELIVERY OF WATER

440 4. (a) On or about February 20 of each Calendar Year, the Contracting Officer  
441 shall announce the Contracting Officer's initial declaration of the Water Made Available. The  
442 declaration will be updated monthly and more frequently if necessary, based on then-current  
443 operational and hydrologic conditions and a new declaration with changes, if any, to the Water  
444 Made Available will be made. The Contracting Officer shall provide forecasts of Project  
445 operations and the basis of the estimate, with relevant supporting information, upon the written  
446 request of the Contractor. Concurrently with the declaration of the Water Made Available, the  
447 Contracting Officer shall provide the Contractor with the updated Long Term Historic Average.  
448 The declaration of Project operations will be expressed in terms of both Water Made Available  
449 and the Long Term Historic Average.

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

456 (c) The Contractor shall not schedule Project Water in excess of the quantity  
457 of Project Water the Contractor intends to put to reasonable and beneficial use within the

458 Contractor's Service Area, or to sell, transfer or exchange pursuant to Article 10 of this Contract  
459 or bank pursuant to subdivision (d) of Article 3 of this Contract during any Year.

460 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this  
461 Contract, the United States shall deliver Project Water to the Contractor in accordance with the  
462 initial schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any  
463 written revision(s), satisfactory to the Contracting Officer, thereto submitted within a reasonable  
464 time prior to the date(s) on which the requested change(s) is/are to be implemented; Provided,  
465 That the total amount of water requested in that schedule or revision does not exceed the  
466 quantities announced by the Contracting Officer pursuant to the provisions of subdivision (a) of  
467 Article 3 of this Contract, and the Contracting Officer determines that there will be sufficient  
468 capacity available in the appropriate Friant Division Facilities to deliver the water in accordance  
469 with that schedule; Provided further, That the Contractor shall not schedule the delivery of any  
470 water during any period as to which the Contractor is notified by the Contracting Officer or  
471 Operating Non-Federal Entity that Project facilities required to make deliveries to the Contractor  
472 will not be in operation because of scheduled O&M.

473 (e) The Contractor may, during the period from and including November 1 of  
474 each Year through and including the last day of February of that Year, request delivery of any  
475 amount of the Class 1 Water estimated by the Contracting Officer to be made available to it  
476 during the following Year. The Contractor may, during the period from and including January 1  
477 of each Year (or such earlier date as may be determined by the Contracting Officer) through and  
478 including the last day of February of that Year, request delivery of any amount of Class 2 Water

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

497 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

500 facilities or another location or locations mutually agreed to in writing by the Contracting Officer  
501 and the Contractor.

502 (b) The Contracting Officer, the Operating Non-Federal Entity, or other  
503 appropriate entity shall make all reasonable efforts to maintain sufficient flows and levels of  
504 water in the Friant-Kern Canal to deliver Project Water to the Contractor at specific turnouts  
505 established pursuant to subdivision (a) of this Article of this Contract.

506 (c) The Contractor shall not deliver Project Water to land outside the  
507 Contractor's Service Area unless approved in advance by the Contracting Officer. Until  
508 complete payment of the Repayment Obligation by the Contractor, and notwithstanding any  
509 Additional Capital Obligation that may later be established, the Contractor shall deliver Project  
510 Water in accordance with applicable acreage limitations, reporting, and Full Cost pricing  
511 provisions of Federal Reclamation law and any applicable land classification provisions of the  
512 associated regulations.

513 (d) All Water Delivered to the Contractor pursuant to this Contract shall be  
514 measured and recorded with equipment furnished, installed, operated, and maintained by the  
515 United States, the Operating Non-Federal Entity or other appropriate entity as designated by the  
516 Contracting Officer (hereafter "other appropriate entity") at the point or points of delivery  
517 established pursuant to subdivision (a) of this Article of this Contract. Upon the request of either  
518 party to this Contract, the Contracting Officer shall investigate, or cause to be investigated by the  
519 responsible Operating Non-Federal Entity, the accuracy of such measurements and shall take any  
520 necessary steps to adjust any errors appearing therein. For any period of time when accurate

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

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

542 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

543 6. (a) The Contractor has established a measurement program satisfactory to the  
544 Contracting Officer; all surface water delivered for irrigation purposes within the Contractor's  
545 Service Area is measured at each agricultural turnout; and water delivered for municipal and  
546 industrial purposes is measured at each municipal and industrial service connection. The water  
547 measuring devices or water measuring methods of comparable effectiveness must be acceptable  
548 to the Contracting Officer. The Contractor shall be responsible for installing, operating, and  
549 maintaining and repairing all such measuring devices and implementing all such water  
550 measuring methods at no cost to the United States. The Contractor shall use the information  
551 obtained from such water measuring devices or water measuring methods to ensure its proper  
552 management of the water, to bill water users for water delivered by the Contractor; and, if  
553 applicable, to record water delivered for municipal and industrial purposes by customer class as  
554 defined in the Contractor's water conservation plan provided for in Article 27 of this Contract.  
555 Nothing herein contained, however, shall preclude the Contractor from establishing and  
556 collecting any charges, assessments, or other revenues authorized by California law.

557 (b) To the extent the information has not otherwise been provided, upon  
558 execution of this Contract, the Contractor shall provide to the Contracting Officer a written  
559 report describing the measurement devices or water measuring methods being used or to be used  
560 to implement subdivision (a) of this Article of this Contract and identifying the agricultural  
561 turnouts and the municipal and industrial service connections or alternative measurement  
562 programs approved by the Contracting Officer, at which such measurement devices or water

563 measuring methods are being used, and, if applicable, identifying the locations at which such  
564 devices and/or methods are not yet being used including a time schedule for implementation at  
565 such locations. The Contracting Officer shall advise the Contractor in writing within sixty (60)  
566 days as to the adequacy of, and necessary modifications, if any, of the measuring devices or  
567 water measuring methods identified in the Contractor's report and if the Contracting Officer does  
568 not respond in such time, they shall be deemed adequate. If the Contracting Officer notifies the  
569 Contractor that the measuring devices or methods are inadequate, the parties shall within sixty  
570 (60) days following the Contracting Officer's response, negotiate in good faith the earliest  
571 practicable date by which the Contractor shall modify said measuring devices and/or measuring  
572 methods as required by the Contracting Officer to ensure compliance with subdivision (a) of this  
573 Article of this Contract.

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

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

580 (e) The Contractor shall inform the Contracting Officer and the Operating  
581 Non-Federal Entity on or before the twentieth (20<sup>th</sup>) calendar day of each month of the quantity  
582 of Irrigation and M&I Water taken during the preceding month.

583 RATES, METHOD OF PAYMENT FOR WATER,  
584 AND ACCELERATED REPAYMENT OF FACILITIES

585 7. (a) The Contractor's cost obligations for all Delivered Water shall be  
586 determined in accordance with: (i) the Secretary's ratesetting policy for Irrigation Water adopted  
587 in 1988 and the Secretary's then-existing ratesetting policy for M&I Water, consistent with the  
588 SJRRSA, and such ratesetting policies shall be amended, modified, or superseded only through a  
589 public notice and comment procedure; (ii) applicable Federal Reclamation law and associated  
590 rules and regulations, or policies; and (iii) other applicable provisions of this Contract.

591 (1) The Contractor shall pay the United States as provided for in this  
592 Article of this Contract for the Delivered Water at Rates and Charges determined in accordance  
593 with policies for Irrigation Water and M&I Water. The Contractor's Rates shall be established to  
594 recover its estimated reimbursable costs included in the O&M component of the Rate and  
595 amounts established to recover other charges and deficits, other than the construction costs. The  
596 Rates for O&M costs and Charges shall be adjusted, as appropriate, in accordance with the  
597 provisions of the SJRRSA.

598 (2) In accordance with the SJRRSA, the Contractor's allocable share  
599 of Project construction costs will be repaid pursuant to the provisions of this Contract.

600 (A) The amount due and payable to the United States, pursuant  
601 to the SJRRSA, shall be the Repayment Obligation. The Repayment Obligation has been  
602 computed by the Contracting Officer in a manner consistent with the SJRRSA and is set forth,  
603 both as a lump sum payment and as four (4) approximately equal annual installments, which  
604 amounts together with the manner in which such amounts were calculated are set forth in

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

622 (B) Project construction costs or other capitalized costs  
623 attributable to capital additions to the Project incurred after the effective date of this Contract or  
624 that are not reflected in the schedules referenced in Exhibits "C-1" and "C-2" and properly  
625 assignable to the Contractor, shall be repaid as prescribed by the SJRRSA without interest except

626 as required by law. Consistent with Federal Reclamation law, interest shall continue to accrue  
627 on the M&I portion of unpaid Project construction costs or other capitalized cost assigned to the  
628 Contractor until such costs are paid. Increases or decreases in Project construction costs or other  
629 capitalized costs assigned to the Contractor caused solely by annual adjustment of Project  
630 construction costs or other capitalized costs assigned to each Central Valley Project contractor by  
631 the Secretary shall not be considered in determining the amounts to be paid pursuant to this  
632 subdivision (a)(2)(B), but will be considered under subdivision (b) of this Article. A separate  
633 repayment agreement shall be established by the Contractor and the Contracting Officer to  
634 accomplish repayment of all additional Project construction costs or other capitalized costs  
635 assigned to the Contractor within the timeframe prescribed by the SJRRSA subject to the  
636 following:

637 (1) If the collective annual Project construction costs or  
638 other capitalized costs that are incurred after the effective date of this Contract and properly  
639 assignable to the contractors are less than \$5,000,000, then the portion of such costs properly  
640 assignable to the Contractor shall be repaid in not more than five (5) years after notification of  
641 the allocation. This amount is the result of a collective annual allocation of Project construction  
642 costs to the contractors exercising contract conversions; Provided, That the reference to the  
643 amount of \$5,000,000 shall not be a precedent in any other context.

644 (2) If the collective annual Project construction costs or  
645 other capitalized costs that are incurred after the effective date of this Contract and properly  
646 assignable to the contractors are \$5,000,000 or greater, then the portion of such costs properly

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

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

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

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

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

689 deliveries, for the purpose of this reduction only, mutually agreed upon by the Secretary and the  
690 Contractor for the period from January 1, 2020 through December 31, 2039. The Friant  
691 Surcharge reduction shall remain fixed and shall only be applied to Water Delivered pursuant to  
692 this Contract to which the Friant Surcharge applies (including but not limited to water  
693 transferred, banked, or exchanged), commencing on January 1, 2020 until such volume of Water  
694 Delivered equals 1,552,690 acre-feet or December 31, 2039, whichever occurs first.

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

700 (d) Prior to October 1 of each Calendar Year, the Contracting Officer shall  
701 make available to the Contractor an estimate of the Rates and Tiered Pricing Component for  
702 Project Water for the following Year and the computations and cost allocations upon which those  
703 Rates are based. The Contractor shall be allowed not less than two (2) months to review and  
704 comment on such computations and cost allocations. By December 31 of each Calendar Year,  
705 the Contracting Officer shall provide the Contractor with the final Rates and Tiered Pricing  
706 Component to be in effect for the upcoming Year, and such notification shall revise Exhibit "B".  
707 The O&M component of the Rate may be reduced as provided in the SJRRSA.

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

710 Contractor shall make an advance payment to the United States equal to the total amount payable  
711 pursuant to the applicable Rate(s) set under subdivision (a) of this Article of this Contract, for the  
712 Project Water scheduled to be delivered pursuant to this Contract during the first two (2)  
713 calendar months of the Year. Before the end of the first month and before the end of each  
714 calendar month thereafter, the Contractor shall make an advance payment to the United States, at  
715 the Rate(s) set under subdivision (a) of this Article of this Contract, for the Water Scheduled to  
716 be delivered pursuant to this Contract during the second month immediately following.

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

731                   (f)     The Contractor shall also make a payment in addition to the Rate(s) in  
732                   subdivision (e) of this Article of this Contract to the United States for Water Delivered, at the  
733                   Charges and the appropriate Tiered Pricing Component then in effect, before the end of the  
734                   month following the month of delivery; Provided, That the Contractor may be granted an  
735                   exception from the Tiered Pricing Component pursuant to subdivision (l)(2) of this Article of this  
736                   Contract. The payments shall be consistent with the quantities of Irrigation Water and M&I  
737                   Water Delivered as shown in the water delivery report for the subject month prepared by the  
738                   Contracting Officer. Such water delivery report shall be the basis for payment of Charges and  
739                   Tiered Pricing Components by the Contractor, and shall be provided to the Contractor by the  
740                   Contracting Officer (as applicable) within five (5) days after the end of the month of delivery.  
741                   The water delivery report shall be deemed a bill basis for payment of Charges and the applicable  
742                   Tiered Pricing Component for Water Delivered. Adjustment for overpayment or underpayment  
743                   of Charges shall be made through the adjustment of payments due to the United States for  
744                   Charges for the next month. Any amount to be paid for past due payment of Charges shall be  
745                   computed pursuant to Article 21 of this Contract.

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

752                   (h)     Payments to be made by the Contractor to the United States under this  
753     Contract may be paid from any revenues available to the Contractor.

754                   (i)     All revenues received by the United States from the Contractor relating to  
755     the delivery of Project Water or the delivery of non-project water through Project facilities shall  
756     be allocated and applied in accordance with Federal Reclamation law and the associated rules or  
757     regulations, the then-existing Project Ratesetting policies for M&I Water or Irrigation Water, and  
758     consistent with the SJRRSA.

759                   (j)     The Contracting Officer shall keep its accounts, pertaining to the  
760     administration of the financial terms and conditions of its long-term contracts, in accordance  
761     with applicable Federal standards so as to reflect the application of Project costs and revenues.  
762     The Contracting Officer shall, each Year upon request of the Contractor, provide to the  
763     Contractor a detailed accounting of all Project and Contractor expense allocations, the  
764     disposition of all Project and Contractor revenues, and a summary of all water delivery  
765     information. The Contracting Officer and the Contractor shall enter into good faith negotiations  
766     to resolve any discrepancies or disputes relating to accountings, reports, or information.

767                   (k)     The parties acknowledge and agree that the efficient administration of this  
768     Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,  
769     policies, and procedures used for establishing Rates, Charges, Tiered Pricing Components,  
770     and/or for making and allocating payments, other than those set forth in this Article of this  
771     Contract, may be in the mutual best interest of the parties, it is expressly agreed that the parties

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

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

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

793 purposes of CVPIA through binding agreements executed with or approved by the Contracting  
794 Officer prior to use of such water.

795 (3) For purposes of determining the applicability of the Tiered Pricing  
796 Components pursuant to this Article of this Contract, Water Delivered shall include Project  
797 Water that the Contractor transfers to others but shall not include Project Water transferred and  
798 delivered to the Contractor.

799 (m) Rates under the respective ratesetting policies will be established to  
800 recover only reimbursable O&M (including any deficits) costs of the Project, as those terms are  
801 used in the then-existing Project ratesetting policies, and consistent with the SJRRSA, and  
802 interest, where appropriate, except in instances where a minimum Rate is applicable in  
803 accordance with the relevant Project ratesetting policy. Changes of significance in practices  
804 which implement the Contracting Officer's ratesetting policies will not be implemented until the  
805 Contracting Officer has provided the Contractor an opportunity to discuss the nature, need, and  
806 impact of the proposed change.

807 (n) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the  
808 CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates  
809 adjusted upward or downward to reflect the changed costs of delivery (if any) incurred by the  
810 Contracting Officer in the delivery of the transferred Project Water to the transferee's point of  
811 delivery in accordance with the then-existing Central Valley Project Ratesetting Policy.

812           NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

813           8.       The Contractor and the Contracting Officer concur that, as of the effective date of  
814 this Contract, the Contractor has no non-interest bearing operation and maintenance deficits and  
815 therefore shall have no further liability.

816                           RECOVERED WATER ACCOUNT

817           9.       (a)     Notwithstanding any other provisions of this Contract, water delivered to  
818 the Contractor under its Recovered Water Account as provided at Paragraph 16(b) of the  
819 Settlement and affirmed by Section 10004(a)(5) of the SJRRSA shall be at the total cost of  
820 \$10.00 per acre foot. Recovered Water Account water provided to the Contractor shall be  
821 administered at a priority for delivery lower than Class 2 Water and higher than Section 215  
822 Water.

823                       (b)     The manner in which the Recovered Water Account will be administered  
824 will be developed in accordance with subdivision (k) of Article 7 of this Contract, the SJRRSA,  
825 and Paragraph 16 of the Settlement.

826                           SALES, TRANSFERS, AND EXCHANGES OF WATER

827           10.     (a)     The right to receive Project Water provided for in this Contract may be  
828 sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of  
829 California if such sale, transfer, or exchange is authorized by applicable Federal and State laws,  
830 and applicable guidelines or regulations then in effect. Furthermore, The Contractor may  
831 continue to exchange Project Water for water from the Cross Valley Division contractors in the  
832 manner historically carried out with the approval of the Contracting Officer under Contract No.

833 14-06-200-229A. No sale, transfer, or exchange of Project Water under this Contract may take  
834 place without the prior written approval of the Contracting Officer, except as provided for in  
835 subdivisions (b) and (c) of this Article of this Contract. No such Project Water sales, transfers,  
836 or exchanges shall be approved, where approval is required, absent compliance with appropriate  
837 environmental documentation including but not limited to the National Environmental Policy  
838 Act and the Endangered Species Act. Such environmental documentation must include, as  
839 appropriate, an analysis of groundwater impacts and economic and social effects, including  
840 environmental justice, of the proposed Project Water sales, transfers and exchanges on both the  
841 transferor/exchanger and transferee/exchange recipient.

842 (b) In order to facilitate efficient water management by means of Project  
843 Water sales, transfers, or exchanges of the type historically carried out among Project  
844 Contractors located within the same geographical area and to allow the Contractor to participate  
845 in an accelerated water transfer program, the Contracting Officer has prepared, as appropriate,  
846 necessary environmental documentation including, but not limited to, the National  
847 Environmental Policy Act and the Endangered Species Act analyzing annual Project Water sales,  
848 transfers, or exchanges among Contractors within the same geographical area and the  
849 Contracting Officer has determined that such Project Water sales, transfers, and exchanges  
850 comply with applicable law.

851 (c) Project Water sales, transfers, and exchanges analyzed in the  
852 environmental documentation referenced in subdivision (b) of this Article of this Contract, shall  
853 be conducted with advance notice to the Contracting Officer and the Contracting Officer's

854 written acknowledgement of the transaction, but shall not require prior written approval by the  
855 Contracting Officer.

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

868 (e) The environmental documentation and the Contracting Officer's  
869 compliance determination for transactions described in subdivision (b) of this Article of this  
870 Contract shall be reviewed every five (5) years and updated, as necessary, prior to the expiration  
871 of the then-existing five (5) year period. All subsequent environmental documentation shall  
872 include an alternative to evaluate not less than the quantity of Project Water historically sold,  
873 transferred, or exchanged within the same geographical area.

874 (f) Consistent with Section 10010(e)(l) of the SJRRSA, any agreement  
875 providing for sale, transfer, or exchange of Project Water that is not used for interim flows or  
876 restoration flows pursuant to Paragraphs 13 and 15 of the Settlement, shall be deemed to satisfy  
877 the requirements of CVPIA section 3405(a)(1)(A) and (I); Provided, That such sales, transfers, or  
878 exchanges comply with sub-division (f)(1) and (f)(2) below.

879 (1) Project Water sales, transfers, and exchanges conducted under the  
880 provisions of subdivision (f) of this Article of this Contract shall not require the Contracting  
881 Officer's concurrence as to compliance with CVPIA 3405(a)(1)(A) and (I); Provided, That the  
882 Contractor shall, for Project Water sales, transfers, or exchanges, with a term greater than one (1)  
883 year, provide ninety (90) days written advance notification to the Contracting Officer and  
884 similarly thirty (30) days written advance notification of any Project Water sale, transfer, or  
885 exchange with a term of less than one (1) year. The Contracting Officer shall promptly make  
886 such notice publicly available.

887 (2) The Contractor's thirty (30) days or ninety (90) days advance  
888 written notification pursuant to subdivision (f)(1) of this Article of this Contract shall explain  
889 how the proposed Project Water sales, transfers, or exchanges are intended to reduce, avoid, or  
890 mitigate impacts to Project Water deliveries caused by interim or restoration flows or is  
891 otherwise intended to facilitate the Water Management Goal as described in the SJRRSA. The  
892 Contracting Officer shall promptly make such notice publicly available.

893 (3) In addition, the Contracting Officer shall, at least annually, make  
894 available publicly a compilation of the number of Project Water sales, transfers, and exchange

895 agreements implemented in accordance with sub-divisions (f)(1) and (f)(2) of this Article of this  
896 Contract.

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

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

909 APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

916 overpayment, such refund or adjustment shall constitute the sole remedy of the Contractor or  
917 anyone having or claiming to have the right to the use of any of the Project Water supply  
918 provided for herein. All credits and refunds of overpayments shall be made within thirty (30)  
919 days of the Contracting Officer obtaining direction as to how to credit or refund such  
920 overpayment in response to the notice to the Contractor that it has finalized the accounts for the  
921 Year in which the overpayment was made.

922 (b) All advances for miscellaneous costs incurred for work requested by the  
923 Contractor pursuant to Article 26 of this Contract shall be adjusted to reflect the actual costs  
924 when the work has been completed. If the advances exceed the actual costs incurred, the  
925 difference will be refunded to the Contractor. If the actual costs exceed the Contractor's  
926 advances, the Contractor will be billed for the additional costs pursuant to Article 26 of this  
927 Contract.

928 TEMPORARY REDUCTIONS—RETURN FLOWS

929 12. (a) The Contracting Officer shall make all reasonable efforts to optimize  
930 delivery of the Contract Total subject to: (i) the authorized purposes and priorities of the Project;  
931 (ii) the requirements of Federal law and the Settlement; and (iii) the obligations of the United  
932 States under existing contracts, or renewals thereof, providing for water deliveries from the  
933 Project.

934 (b) The Contracting Officer or Operating Non-Federal Entity may temporarily  
935 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for  
936 the purposes of investigation, inspection, maintenance, repair, or replacement of any of the

937 Project facilities or any part thereof necessary for the delivery of Project Water to the Contractor,  
938 but so far as feasible the Contracting Officer or Operating Non-Federal Entity will give the  
939 Contractor due notice in advance of such temporary discontinuance or reduction, except in case  
940 of emergency, in which case no notice need be given; Provided, That the United States shall use  
941 its best efforts to avoid any discontinuance or reduction in such service. Upon resumption of  
942 service after such reduction or discontinuance, and if requested by the Contractor, the United  
943 States will, if possible, deliver the quantity of Project Water which would have been delivered  
944 hereunder in the absence of such discontinuance or reduction.

945 (c) The United States reserves the right to all seepage and return flow water  
946 derived from Water Delivered to the Contractor hereunder which escapes or is discharged  
947 beyond the Contractor's Service Area; Provided, That this shall not be construed as claiming for  
948 the United States any right as seepage or return flow to water being used pursuant to this  
949 Contract for surface irrigation or underground storage either being put to reasonable and  
950 beneficial use pursuant to this Contract within the Contractor's Service Area by the Contractor or  
951 those claiming by, through, or under the Contractor. For purposes of this subdivision,  
952 groundwater recharge, groundwater banking and all similar groundwater activities will be  
953 deemed to be underground storage.

954 CONSTRAINTS ON THE AVAILABILITY OF WATER

955 13. (a) In its operation of the Project, the Contracting Officer will use all  
956 reasonable means to guard against a Condition of Shortage in the quantity of water to be made  
957 available to the Contractor pursuant to this Contract. In the event the Contracting Officer

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

960 (b) If there is a Condition of Shortage because of errors in physical operations  
961 of the Project, drought, other physical causes beyond the control of the Contracting Officer or  
962 actions taken by the Contracting Officer to meet legal obligations, including but not limited to  
963 obligations pursuant to the Settlement then, except as provided in subdivision (a) of Article 19 of  
964 this Contract, no liability shall accrue against the United States or any of its officers, agents, or  
965 employees for any damage, direct or indirect, arising therefrom.

966 (c) The United States shall not execute contracts which together with this  
967 Contract, shall in the aggregate provide for furnishing Class 1 Water in excess of 800,000  
968 acre-feet per Year or Class 2 Water in excess of 1,401,475 acre-feet per Year; Provided, That,  
969 subject to subdivision (l) of Article 3 of this Contract, the limitation placed on Class 2 Water  
970 contracts shall not prohibit the United States from entering into temporary contracts of one year  
971 or less in duration for delivery of Project Water to other entities if such water is not necessary to  
972 meet the schedules as may be submitted by all Friant Division Project Contractors entitled to  
973 receive Class 1 Water and/or Class 2 Water under their contracts. Nothing in this subdivision  
974 shall limit the Contracting Officer's ability to take actions that result in the availability of new  
975 water supplies to be used for Project purposes and allocating such new supplies; Provided, That  
976 the Contracting Officer shall not take such actions until after consultation with the Friant  
977 Division Project Contractors.

978 (d) The Contracting Officer shall not deliver any Class 2 Water pursuant to  
979 this or any other contract heretofore or hereafter entered into any Year unless and until the  
980 Contracting Officer determines that the cumulative total quantity of Class 1 Water specified in  
981 subdivision (c) of this Article of this Contract will be available for delivery in said Year. If the  
982 Contracting Officer determines there is or will be a shortage in any Year in the quantity of  
983 Class 1 Water available for delivery, the Contracting Officer shall apportion the available Class 1  
984 Water among all Contractors entitled to receive such water that will be made available at Friant  
985 Dam in accordance with the following:

986 (1) A determination shall be made of the total quantity of Class 1  
987 Water at Friant Dam which is available for meeting Class 1 Water contractual commitments, the  
988 amount so determined being herein referred to as the available supply.

989 (2) The total available Class 1 supply shall be divided by the Class 1  
990 Water contractual commitments, the quotient thus obtained being herein referred to as the  
991 Class 1 apportionment coefficient.

992 (3) The total quantity of Class 1 Water under Article 3 of this Contract  
993 shall be multiplied by the Class 1 apportionment coefficient and the result shall be the quantity of  
994 Class 1 Water required to be delivered by the Contracting Officer to the Contractor for the  
995 respective Year, but in no event shall such amount exceed the total quantity of Class 1 Water  
996 specified in subdivision (a) of Article 3 of this Contract.

997 (e) If the Contracting Officer determines there is less than the quantity of  
998 Class 2 Water which the Contractor otherwise would be entitled to receive pursuant to Article 3

999 of this Contract, the quantity of Class 2 Water which shall be furnished to the Contractor by the  
1000 Contracting Officer will be determined in the manner set forth in paragraphs (1), (2), and (3), of  
1001 subdivision (d) of this Article of this Contract substituting the term "Class 2" for the term "Class  
1002 1."

1003 (f) In the event that in any Year there is made available to the Contractor, by  
1004 reason of any shortage or apportionment as provided in subdivisions (a), (d), or (e) of this Article  
1005 of this Contract, or any discontinuance or reduction of service as set forth in subdivision (b) of  
1006 Article 12 of this Contract, less than the quantity of water which the Contractor otherwise would  
1007 be entitled to receive hereunder, there shall be made an adjustment on account of the amounts  
1008 already paid to the Contracting Officer by the Contractor for Class 1 Water and Class 2 Water  
1009 for said Year in accordance with Article 11 of this Contract.

1010 UNAVOIDABLE GROUNDWATER PERCOLATION

1011 14. To the extent applicable, the Contractor shall not be deemed to have delivered  
1012 Irrigation Water to Excess Lands and Ineligible Lands within the meaning of this Contract if  
1013 such lands are irrigated with groundwater that reaches the underground strata as an unavoidable  
1014 result of the delivery of Irrigation Water by the Contractor to Eligible Lands.

1015 ACREAGE LIMITATION

1016 15. (a) Notwithstanding the application of the acreage limitation provisions to  
1017 activities referred to in subdivision (b) of this Article, subdivision (a) of Article 16, and Article  
1018 18 of this Contract, upon complete payment of the Repayment Obligation by the Contractor, and  
1019 notwithstanding any Additional Capital Obligation that may later be established, the provisions

1020 of section 213(a) and (b) of the RRA shall apply to lands in the Contractor's Service Area, with  
1021 the effect that acreage limitations, reporting, and Full Cost pricing provisions of the RRA shall  
1022 no longer apply to lands in the Contractor's Service Area with respect to Water Delivered  
1023 pursuant to this Contract. Upon receiving the complete payment of the Repayment Obligation  
1024 from the Contractor, Reclamation will conduct a final water district review for the purpose of  
1025 determining compliance with the acreage limitations, reporting, and Full Cost pricing provisions  
1026 of the RRA from the date of the last water district review until the date when payment to  
1027 Reclamation of the Repayment Obligation is completed.

1028 (b) Project Water to which the Contractor is entitled through a separate  
1029 contract, other than this Contract, that is subject to Federal Reclamation law, may be delivered to  
1030 lands within the Contractor's Service Area. Upon complete payment of the Repayment  
1031 Obligation by the Contractor, and notwithstanding any Additional Capital Obligation that may  
1032 later be established, Project Water Delivered under this Contract may be mixed with Project  
1033 Water Delivered pursuant to a contract with the United States, other than this Contract, to which  
1034 acreage limitations, reporting, and the Full Cost pricing provisions of Federal Reclamation law  
1035 apply without causing the application of the acreage limitations, reporting, and Full Cost pricing  
1036 provisions of Federal Reclamation law to the Water Delivered pursuant to this Contract;  
1037 Provided, The terms and conditions in such other contract shall continue to apply, and if such  
1038 terms and conditions so require, the lands to receive Project Water under such other contract  
1039 shall be properly designated by the Contractor and such Project Water is to be delivered in

1040 accordance with the RRA including any applicable acreage limitations, reporting, and Full Cost  
1041 pricing provisions.

1042 COMPLIANCE WITH FEDERAL RECLAMATION LAWS

1043 16. (a) The parties agree that the delivery of irrigation water or use of Federal  
1044 facilities pursuant to this Contract is subject to Federal Reclamation law, including but not  
1045 limited to the Reclamation Reform Act of 1982 (43 U.S.C. 390 aa *et seq.*), as amended and  
1046 supplemented, and the rules and regulations promulgated by the Secretary of the Interior under  
1047 Federal Reclamation law.

1048 (b) The terms of this Contract are subject to the Settlement and the SJRRSA.

1049 Nothing in this Contract shall be interpreted to limit or interfere with the full implementation of  
1050 the Settlement and the SJRRSA.

1051 PROTECTION OF WATER AND AIR QUALITY

1052 17. (a) Project facilities used to make available and deliver water to the  
1053 Contractor shall be operated and maintained in the most practical manner to maintain the quality  
1054 of the water at the highest level possible as determined by the Contracting Officer: *Provided,*  
1055 *That* the United States does not warrant the quality of the water delivered to the Contractor and is  
1056 under no obligation to furnish or construct water treatment facilities to maintain or improve the  
1057 quality of water delivered to the Contractor.

1058 (b) The Contractor shall comply with all applicable water and air pollution  
1059 laws and regulations of the United States and the State of California; and shall obtain all required  
1060 permits or licenses from the appropriate Federal, State, or local authorities necessary for the  
1061 delivery of water by the Contractor; and shall be responsible for compliance with all Federal,  
1062 State, and local water quality standards applicable to surface and subsurface drainage and/or  
1063 discharges generated through the use of Federal or Contractor facilities or project water provided  
1064 by the Contractor within the Contractor's Project Water Service Area.

1065 (c) This article shall not affect or alter any legal obligations of the Secretary  
1066 to provide drainage or other discharge services.

WATER ACQUIRED BY THE CONTRACTOR  
OTHER THAN FROM THE UNITED STATES

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18. (a) Until complete payment of the Repayment Obligation by the Contractor, and notwithstanding any Additional Capital Obligation that may later be established, water or water rights now owned or hereafter acquired by the Contractor other than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may be simultaneously transported through the same distribution facilities of the Contractor subject to the following: (i) if the facilities utilized for commingling Irrigation Water and non-project water were constructed without funds made available pursuant to Federal Reclamation law, the acreage limitations, reporting, and Full Cost pricing provisions of Federal Reclamation law will be applicable only to the Landholders of lands which receive Irrigation Water; (ii) the eligibility of land to receive Irrigation Water must be established through the certification requirements as specified in the Acreage Limitation Rules and Regulations (43 CFR Part 426); and (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity necessary to irrigate such Eligible Lands. The Contractor and the Contracting Officer acknowledge that the Contractor's distribution system that was constructed with funds made available pursuant to Federal Reclamation law was, prior to effective date of this Contract, repaid in full and title to the facilities transferred to the Contractor. As such, when such facilities are utilized for commingling Irrigation Water and non-project water, the acreage limitations, reporting, and Full Cost pricing provisions of Federal Reclamation law will be applicable only to the Landholders of lands which receive Irrigation Water.

1089                   (b)     Upon complete payment of the Repayment Obligation by the Contractor,  
1090     and notwithstanding any Additional Capital Obligation that may later be established, water or  
1091     water rights now owned or hereafter acquired by the Contractor other than from the United  
1092     States pursuant to this Contract and Irrigation Water furnished pursuant to the terms of this  
1093     Contract may be simultaneously transported through the same distribution facilities of the  
1094     Contractor without the payment of fees to the United States and without application of Federal  
1095     Reclamation law to Water Delivered pursuant to this Contract or to lands which receive Water  
1096     Delivered to Contractor pursuant to this Contract.

1097                   (c)     Water or water rights now owned or hereafter acquired by the Contractor,  
1098     other than from the United States or adverse to the Project or its contractors (i.e., non-project  
1099     water), may be stored, conveyed and/or diverted through Project facilities, other than Friant  
1100     Division Facilities, subject to the completion of appropriate environmental documentation, with  
1101     the approval of the Contracting Officer and the execution of any contract determined by the  
1102     Contracting Officer to be necessary, consistent with the following provisions:

1103                   (1)     The Contractor may introduce non-project water into Project  
1104     facilities and deliver said water to lands within the Contractor's Service Area, including  
1105     Ineligible Lands, subject to payment to the United States and/or to any applicable Operating  
1106     Non-Federal Entity of an appropriate rate as determined by the Contracting Officer. In addition,  
1107     if electrical power is required to pump non-project water, the Contractor shall be responsible for  
1108     obtaining the necessary power and paying the necessary charges therefor.

1109                           (2)     Delivery of such non-project water in and through Project facilities  
1110 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project  
1111 purposes as determined by the Contracting Officer; (ii) reduce the quantity or quality of water  
1112 available to other Project Contractors; (iii) interfere with the delivery of contractual water  
1113 entitlements to any other Project Contractors; (iv) interfere with the physical maintenance of the  
1114 Project facilities; or (v) result in the United States incurring any liability or unreimbursed costs  
1115 or expenses thereby.

1116                           (3)     Neither the United States nor the Operating Non-Federal Entity  
1117 shall be responsible for control, care or distribution of the non-project water before it is  
1118 introduced into or after it is delivered from the Project facilities. The Contractor hereby releases  
1119 and agrees to defend and indemnify the United States and the Operating Non-Federal Entity, and  
1120 their respective officers, agents, and employees, from any claim for damage to persons or  
1121 property, direct or indirect, resulting from Contractor's diversion or extraction of non-project  
1122 water from any source.

1123                           (4)     Diversion of such non-project water into Project facilities shall be  
1124 consistent with all applicable laws, and if involving groundwater, consistent with any  
1125 groundwater management plan for the area from which it was extracted.

1126                           (5)     After Project purposes are met, as determined by the Contracting  
1127 Officer, the United States and the Contractor shall share priority to utilize the remaining capacity  
1128 of the facilities declared to be available by the Contracting Officer for conveyance and

1129 transportation of non-project water prior to any such remaining capacity being made available to  
1130 non-project contractors.

1131 (d) Non-project water may be stored, conveyed and/or diverted through Friant  
1132 Division Facilities, subject to the completion of appropriate environmental documentation and  
1133 approval of the Contracting Officer without execution of a separate contract, consistent with  
1134 subdivisions (c)(1) through (c)(5) of this Article and any other condition determined to be  
1135 appropriate by the Contracting Officer.

1136 OPINIONS AND DETERMINATIONS

1137 19. (a) Where the terms of this Contract provide for actions to be based upon the  
1138 opinion or determination of either party to this Contract, said terms shall not be construed as  
1139 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or  
1140 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly  
1141 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,  
1142 or unreasonable opinion or determination. Each opinion or determination by either party shall be  
1143 provided in a timely manner. Nothing in this Article of this Contract is intended to or shall affect  
1144 or alter the standard of judicial review applicable under Federal law to any opinion or  
1145 determination implementing a specific provision of Federal law embodied in statute or  
1146 regulation.

1147 (b) The Contracting Officer shall have the right to make determinations  
1148 necessary to administer this Contract that are consistent with the provisions of this Contract, the  
1149 laws of the United States and the State of California, and the rules and regulations promulgated

1150 by the Secretary. Such determinations shall be made in consultation with the Contractor to the  
1151 extent reasonably practicable.

1152 COORDINATION AND COOPERATION

1153 20. (a) In order to further their mutual goals and objectives, the Contracting  
1154 Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and  
1155 with other affected Project Contractors, in order to improve the operation and management of the  
1156 Project. The communication, coordination, and cooperation regarding operations and  
1157 management shall include, but not limited to, any action which will or may materially affect the  
1158 quantity or quality of Project Water supply, the allocation of Project Water supply, and Project  
1159 financial matters including, but not limited to, budget issues. The communication, coordination,  
1160 and cooperation provided for hereunder shall extend to all provisions of this Contract. Each  
1161 party shall retain exclusive decision making authority for all actions, opinions, and  
1162 determinations to be made by the respective party.

1163 (b) It is the intent of the Secretary to improve water supply reliability. To  
1164 carry out this intent:

1165 (1) The Contracting Officer will, at the request of the Contractor,  
1166 assist in the development of integrated resource management plans for the Contractor. Further,  
1167 the Contracting Officer will, as appropriate, seek authorizations for implementation of  
1168 partnerships to improve water supply, water quality, and reliability.

1169 (2) The Secretary will, as appropriate, pursue program and project  
1170 implementation and authorization in coordination with Project Contractors to improve the water  
1171 supply, water quality, and reliability of the Project for all Project purposes.

1172 (3) The Secretary will coordinate with Project Contractors and the  
1173 State of California to seek improved water resource management.

1174 (4) The Secretary will coordinate actions of agencies within the  
1175 Department of the Interior that may impact the availability of water for Project purposes.

1176 (5) The Contracting Officer shall periodically, but not less than  
1177 annually, hold division level meetings to discuss Project operations, division level water  
1178 management activities, and other issues as appropriate.

1179 (c) Without limiting the contractual obligations of the Contracting Officer  
1180 hereunder, nothing in this Contract shall be construed to limit or constrain the Contracting  
1181 Officer's ability to communicate, coordinate, and cooperate with the Contractor or other  
1182 interested stakeholders or to make decisions in a timely fashion as needed to protect health,  
1183 safety, physical integrity of structures or facilities, or the Contracting Officer's ability to comply  
1184 with applicable laws.

1185 CHARGES FOR DELINQUENT PAYMENTS

1186 21. (a) The Contractor shall be subject to interest, administrative and penalty  
1187 charges on delinquent installments or payments. When a payment is not received by the due  
1188 date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond  
1189 the due date. When a payment becomes sixty (60) days delinquent, the Contractor shall pay an  
1190 administrative charge to cover additional costs of billing and processing the delinquent payment.  
1191 When a payment is delinquent ninety (90) days or more, the Contractor shall pay an additional  
1192 penalty charge of six (6) percent per year for each day the payment is delinquent beyond the due  
1193 date. Further, the Contractor shall pay any fees incurred for debt collection services associated  
1194 with a delinquent payment.

1195 (b) The interest charge rate shall be the greater of the rate prescribed quarterly  
1196 in the Federal Register by the Department of the Treasury for application to overdue payments,  
1197 or the interest rate of one-half of one (0.5) percent per month prescribed by Section 6 of the  
1198 Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be  
1199 determined as of the due date and remain fixed for the duration of the delinquent period.

1200 (c) When a partial payment on a delinquent account is received, the amount  
1201 received shall be applied, first to the penalty, second to the administrative charges, third to the  
1202 accrued interest, and finally to the overdue payment.

1203 EQUAL EMPLOYMENT OPPORTUNITY

1204 22. During the performance of this Contract, the Contractor agrees as follows:

1205 (a) The Contractor will not discriminate against any employee or applicant for  
1206 employment because of race, color, religion, sex, disability, or national origin. The Contractor  
1207 will take affirmative action to ensure that applicants are employed, and that employees are  
1208 treated during employment, without regard to their race, color, religion, sex, disability, or  
1209 national origin. Such action shall include, but not be limited to the following: employment,  
1210 upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination;  
1211 rates of pay or other forms of compensation; and selection for training, including apprenticeship.  
1212 The Contractor agrees to post in conspicuous places, available to employees and applicants for  
1213 employment, notices to be provided by the Contracting Officer setting forth the provisions of this  
1214 nondiscrimination clause.

1215 (b) The Contractor will, in all solicitations or advertisements for employees  
1216 placed by or on behalf of the Contractor, state that all qualified applicants will receive  
1217 consideration for employment without regard to race, color, religion, sex, disability, or national  
1218 origin.

1219 (c) The Contractor will send to each labor union or representative of workers  
1220 with which it has a collective bargaining agreement or other contract or understanding, a notice,  
1221 to be provided by the Contracting Officer, advising the labor union or workers' representative of  
1222 the Contractor's commitments under Section 202 of Executive Order 11246 of September 24,  
1223 1965, and shall post copies of the notice in conspicuous places available to employees and  
1224 applicants for employment.

1225 (d) The Contractor will comply with all provisions of Executive Order No.  
1226 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary  
1227 of Labor.

1228 (e) The Contractor will furnish all information and reports required by  
1229 Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the  
1230 Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and

1231 accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to  
1232 ascertain compliance with such rules, regulations, and orders.

1233 (f) In the event of the Contractor's noncompliance with the nondiscrimination  
1234 clauses of this contract or with any of such rules, regulations, or orders, this contract may be  
1235 canceled, terminated or suspended in whole or in part and the Contractor may be declared  
1236 ineligible for further Government contracts in accordance with procedures authorized in  
1237 Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and  
1238 remedies invoked as provided in Executive Order 11246 of September 24, 1965 or by rule,  
1239 regulation, or order of the Secretary of Labor, or as otherwise provided by law.

1240 (g) The Contractor will include the provisions of paragraphs (1) through (7) in  
1241 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the  
1242 Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24,  
1243 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor  
1244 will take such action with respect to any subcontract or purchase order as may be directed by the  
1245 Secretary of Labor as a means of enforcing such provisions, including sanctions for  
1246 noncompliance: *Provided, however*, that in the event the Contractor becomes involved in, or is  
1247 threatened with, litigation with a subcontractor or vendor as a result of such direction, the  
1248 Contractor may request the United States to enter into such litigation to protect the interests of  
1249 the United States.

1250 GENERAL OBLIGATION—BENEFITS CONDITIONED UPON PAYMENT

1251 23. (a) The obligation of the Contractor to pay the United States as provided in  
1252 this Contract is a general obligation of the Contractor notwithstanding the manner in which the  
1253 obligation may be distributed among the Contractor's water users and notwithstanding the  
1254 default of individual water users in their obligations to the Contractor.

1255 (b) The payment of charges becoming due hereunder is a condition precedent  
1256 to receiving benefits under this Contract. The United States shall not make water available to the  
1257 Contractor through Project facilities during any period in which the Contractor may be in arrears  
1258 in the advance payment of water rates due the United States. The Contractor shall not furnish  
1259 water made available pursuant to this Contract for lands or parties which are in arrears in the  
1260 advance payment of water rates levied or established by the Contractor.

1261 (c) With respect to subdivision (b) of this Article of this Contract, the  
1262 Contractor shall have no obligation to require advance payment for water rates which it levies.

1263

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1264           24.   (a)   The Contractor shall comply with Title VI of the Civil Rights Act of 1964  
1265 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the  
1266 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights  
1267 laws, as well as with their respective implementing regulations and guidelines imposed by the  
1268 U.S. Department of the Interior and/or Bureau of Reclamation.

1269                   (b)   These statutes require that no person in the United States shall, on the  
1270 grounds of race, color, national origin, handicap, or age, be excluded from participation in, be  
1271 denied the benefits of, or be otherwise subjected to discrimination under any program or activity  
1272 receiving financial assistance from the Bureau of Reclamation. By executing this Contract, the  
1273 Contractor agrees to immediately take any measures necessary to implement this obligation,  
1274 including permitting officials of the United States to inspect premises, programs, and documents.

1275                   (c)   The Contractor makes this agreement in consideration of and for the  
1276 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other  
1277 Federal financial assistance extended after the date hereof to the Contractor by the Bureau of  
1278 Reclamation, including installment payments after such date on account of arrangements for  
1279 Federal financial assistance which were approved before such date. The Contractor recognizes  
1280 and agrees that such Federal assistance will be extended in reliance on the representations and  
1281 agreements made in this Article, and that the United States reserves the right to seek judicial  
1282 enforcement thereof.

1283

PRIVACY ACT COMPLIANCE

1284           25.   (a)   The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a)  
1285 (the Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et  
1286 seq.) in maintaining Landholder acreage certification and reporting records, required to be  
1287 submitted to the Contractor for compliance with Sections 206 and 228 of the Reclamation  
1288 Reform Act of 1982 (96 Stat. 1266), and pursuant to 43 CFR 426.18.

1289                   (b)   With respect to the application and administration of the criminal penalty  
1290 provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees  
1291 responsible for maintaining the certification and reporting records referenced in (a) above are  
1292 considered to be employees of the Department of the Interior. See 5 U.S.C. 552a(m).

1293                   (c)   The Contracting Officer or a designated representative shall provide the  
1294 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau  
1295 of Reclamation Federal Register Privacy Act System of Records Notice (Acreage  
1296 Limitation—Interior, Reclamation-31) which govern the maintenance, safeguarding, and  
1297 disclosure of information contained in the Landholder's certification and reporting records.

1298 (d) The Contracting Officer shall designate a full-time employee of the  
1299 Bureau of Reclamation to be the System Manager who shall be responsible for making decisions  
1300 on denials pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The  
1301 Contractor is authorized to grant requests by individuals for access to their own records.

1302 (e) The Contractor shall forward promptly to the System Manager each  
1303 proposed denial of access under 43 CFR 2.64; and each request for amendment of records filed  
1304 under 43 CFR 2.71; notify the requester accordingly of such referral; and provide the System  
1305 Manager with information and records necessary to prepare an appropriate response to the  
1306 requester. These requirements do not apply to individuals seeking access to their own  
1307 certification and reporting forms filed with the Contractor pursuant to 43 CFR 426.18, unless the  
1308 requester elects to cite the Privacy Act as a basis for the request.

1309 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1310 26. In addition to all other payments to be made by the Contractor pursuant to this  
1311 Contract, the Contractor shall pay to the United States, within sixty (60) days after receipt of a  
1312 bill and detailed statement submitted by the Contracting Officer to the Contractor for such  
1313 specific items of direct cost incurred by the United States for work requested by the Contractor  
1314 associated with this Contract plus indirect costs in accordance with applicable Bureau of  
1315 Reclamation policies and procedures. All such amounts referred to in this Article of this  
1316 Contract shall not exceed the amount agreed to in writing in advance by the Contractor. This  
1317 Article of this Contract shall not apply to costs for routine contract administration.

1318 WATER CONSERVATION

1319 27. (a) Prior to the delivery of water provided from or conveyed through  
1320 Federally constructed or Federally financed facilities pursuant to this Contract, the Contractor  
1321 shall be implementing an effective water conservation and efficiency program based on the  
1322 Contractor's water conservation plan that has been determined by the Contracting Officer to  
1323 meet the conservation and efficiency criteria for evaluating water conservation plans established

1324 under Federal law. The water conservation and efficiency program shall contain definite water  
1325 conservation objectives, appropriate economically feasible water conservation measures, and  
1326 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this  
1327 Contract shall be contingent upon the Contractor's continued implementation of such water  
1328 conservation program. In the event the Contractor's water conservation plan or any revised  
1329 water conservation plan completed pursuant to subdivision (d) of this Article of this Contract  
1330 have not yet been determined by the Contracting Officer to meet such criteria, due to  
1331 circumstances which the Contracting Officer determines are beyond the control of the  
1332 Contractor, water deliveries shall be made under this Contract so long as the Contractor  
1333 diligently works with the Contracting Officer to obtain such determination at the earliest  
1334 practicable date, and thereafter the Contractor immediately begins implementing its water  
1335 conservation and efficiency program in accordance with the time schedules therein.

1336 (b) Should the amount of M&I Water Delivered pursuant to subdivision (a) of  
1337 Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the  
1338 Contractor shall implement the Best Management Practices identified by the time frames issued  
1339 by the California Urban Water Conservation Council for such M&I Water unless any such  
1340 practice is determined by the Contracting Officer to be inappropriate for the Contractor.

1341 (c) The Contractor shall submit to the Contracting Officer a report on the  
1342 status of its implementation of the water conservation plan on the reporting dates specified in the  
1343 then-existing conservation and efficiency criteria established under Federal law.

1344 (d) At five (5) -year intervals, the Contractor shall revise its water  
1345 conservation plan to reflect the then-existing conservation and efficiency criteria for evaluating  
1346 water conservation plans established under Federal law and submit such revised water  
1347 management plan to the Contracting Officer for review and evaluation. The Contracting Officer  
1348 will then determine if the water conservation plan meets Reclamation's then-existing  
1349 conservation and efficiency criteria for evaluating water conservation plans established under  
1350 Federal law.

1351 (e) If the Contractor is engaged in direct groundwater recharge, such activity  
1352 shall be described in the Contractor's water conservation plan.

1353 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1354 28. Except as specifically provided in Article 18 of this Contract, the provisions of  
1355 this Contract shall not be applicable to or affect non-project Water or water rights now owned or  
1356 hereafter acquired by the Contractor or any user of such water within the Contractor's Service  
1357 Area. Any such water shall not be considered Project Water under this Contract. In addition,  
1358 this Contract shall not be construed as limiting or curtailing any rights which the Contractor or  
1359 any water user within the Contractor's Service Area acquires or has available under any other  
1360 contract pursuant to Federal Reclamation law.

1361 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

1362 29. (a) The O&M of a portion of the Project facilities which serve the Contractor,  
1363 and responsibility for funding a portion of the costs of such O&M, have been transferred to the  
1364 Operating Non-Federal Entity by separate agreement between the United States and the

1365 Operating Non-Federal Entity. That separate agreement shall not interfere with or affect the  
1366 rights or obligations of the Contractor or the United States hereunder.

1367 (b) The Contracting Officer has previously notified the Contractor in writing  
1368 that the O&M of a portion of the Project facilities which serve the Contractor has been  
1369 transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly  
1370 to the Operating Non-Federal Entity, or to any successor approved by the Contracting Officer  
1371 under the terms and conditions of the separate agreement between the United States and the  
1372 Operating Non-Federal Entity described in subdivision (a) of this Article of this Contract, all  
1373 rates, charges or assessments of any kind, including any assessment for reserve funds, which the  
1374 Operating Non-Federal Entity or such successor determines, sets or establishes for (i) the O&M  
1375 of the portion of the Project facilities operated and maintained by the Operating Non-Federal  
1376 Entity or such successor, or (ii) the Friant Division's share of the operation, maintenance and  
1377 replacement costs for physical works and appurtenances associated with the Tracy Pumping  
1378 Plant, the Delta-Mendota Canal, the O'Neill Pumping/Generating Plant, the federal share of the  
1379 O'Neill Forebay, the Mendota Pool, and the federal share of San Luis Unit joint use conveyance  
1380 and conveyance pumping facilities. Such direct payments to the Operating Non-Federal Entity  
1381 or such successor shall not relieve the Contractor of its obligation to pay directly to the United  
1382 States the Contractor's share of the Project Rates, Charges, and Tiered Pricing Components  
1383 except to the extent the Operating Non-Federal Entity collects payments on behalf of the United  
1384 States in accordance with the separate agreement identified in subdivision (a) of this Article of  
1385 this Contract.

1386 (c) For so long as the O&M of any portion of the Project facilities serving the  
1387 Contractor is performed by the Operating Non-Federal Entity, or any successor thereto, the  
1388 Contracting Officer shall adjust those components of the Rates for Water Delivered under this  
1389 Contract representing the cost associated with the activity being performed by the Operating  
1390 Non-Federal Entity or its successor.

1391 (d) In the event the O&M of the Project facilities operated and maintained by  
1392 the Operating Non-Federal Entity is re-assumed by the United States during the term of this  
1393 Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the  
1394 Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid by the  
1395 Contractor for Project Water under this Contract representing the O&M costs of the portion of  
1396 such Project facilities which have been re-assumed. The Contractor shall, thereafter, in the  
1397 absence of written notification from the Contracting Officer to the contrary, pay the Rates,  
1398 Charges, and Tiered Pricing Component(s) specified in the revised Exhibit "B" directly to the  
1399 United States in compliance with Article 7 of this Contract.

1400 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1401 30. The expenditure or advance of any money or the performance of any obligation of  
1402 the United States under this Contract shall be contingent upon appropriation or allotment of  
1403 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any  
1404 obligations under this Contract. No liability shall accrue to the United States in case funds are  
1405 not appropriated or allotted.

1406 BOOKS, RECORDS, AND REPORTS

1407 31. (a) The Contractor shall establish and maintain accounts and other books and  
1408 records pertaining to administration of the terms and conditions of this Contract, including: the  
1409 Contractor's financial transactions, water supply data, and Project land and right-of-way  
1410 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use  
1411 data; and other matters that the Contracting Officer may require. Reports thereon shall be

1412 furnished to the Contracting Officer in such form and on such date or dates as the Contracting  
1413 Officer may require. Subject to applicable Federal laws and regulations, each party to this  
1414 Contract shall have the right during office hours to examine and make copies of the other party's  
1415 books and records relating to matters covered by this Contract.

1416 (b) Notwithstanding the provisions of subdivision (a) of this Article of this  
1417 Contract, no books, records, or other information shall be requested from the Contractor by the  
1418 Contracting Officer unless such books, records, or information are reasonably related to the  
1419 administration or performance of this Contract. Any such request shall allow the Contractor a  
1420 reasonable period of time within which to provide the requested books, records, or information.

1421 (c) At such time as the Contractor provides information to the Contracting  
1422 Officer pursuant to subdivision (a) of this Article of this Contract, a copy of such information  
1423 shall be provided to the Operating Non-Federal Entity.

1424 ASSIGNMENT LIMITED—SUCCESSORS AND ASSIGNS OBLIGATED

1425 32. (a) The provisions of this Contract shall apply to and bind the successors and  
1426 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest  
1427 therein shall be valid until approved in writing by the Contracting Officer.

1428 (b) The assignment of any right or interest in this Contract by either party  
1429 shall not interfere with the rights or obligations of the other party to this Contract absent the  
1430 written concurrence of said other party.

1431 (c) The Contracting Officer shall not unreasonably condition or withhold  
1432 approval of any proposed assignment.

1433 SEVERABILITY

1434 33. In the event that a person or entity who is neither (i) a party to a Project contract,  
1435 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor

1436 (iii) an association or other form of organization whose primary function is to represent parties to  
1437 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or  
1438 enforceability of a provision included in this Contract and said person, entity, association, or  
1439 organization obtains a final court decision holding that such provision is legally invalid or  
1440 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),  
1441 the parties to this Contract shall use their best efforts to (i) within thirty (30) days of the date of  
1442 such final court decision identify by mutual agreement the provisions in this Contract which  
1443 must be revised and (ii) within three (3) months thereafter promptly agree on the appropriate  
1444 revision(s). The time periods specified above may be extended by mutual agreement of the  
1445 parties. Pending the completion of the actions designated above, to the extent it can do so  
1446 without violating any applicable provisions of law, the United States shall continue to make the  
1447 quantities of Project Water specified in this Contract available to the Contractor pursuant to the  
1448 provisions of this Contract which were not found to be legally invalid or unenforceable in the  
1449 final court decision.

1450 RESOLUTION OF DISPUTES

1451 34. Should any dispute arise concerning any provisions of this Contract, or the  
1452 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to  
1453 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting  
1454 Officer referring any matter to Department of Justice, the party shall provide to the other party  
1455 thirty (30) days written notice of the intent to take such action; Provided, That such notice shall  
1456 not be required where a delay in commencing an action would prejudice the interests of the party

1457 that intends to file suit. During the thirty (30) day notice period, the Contractor and the  
1458 Contracting Officer shall meet and confer in an attempt to resolve the dispute. Except as  
1459 specifically provided, nothing herein is intended to waive or abridge any right or remedy that the  
1460 Contractor or the United States may have.

1461 OFFICIALS NOT TO BENEFIT

1462 35. No Member of or Delegate to Congress, Resident Commissioner, or official of the  
1463 Contractor shall benefit from this Contract other than as a water user or landowner in the same  
1464 manner as other water users or landowners.

1465 CHANGES IN CONTRACTOR'S SERVICE AREA

1466 36. (a) While this Contract is in effect, no change may be made in the  
1467 Contractor's Service Area or boundaries, by inclusion or exclusion of lands, dissolution,  
1468 consolidation, merger, or otherwise, except upon the Contracting Officer's written consent.

1469 (b) Within thirty (30) days of receipt of a request for such a change, the  
1470 Contracting Officer will notify the Contractor of any additional information required by the  
1471 Contracting Officer for processing said request, and both parties will meet to establish a mutually  
1472 agreeable schedule for timely completion of the process. Such process will analyze whether the  
1473 proposed change is likely to: (i) result in the use of Project Water contrary to the terms of this  
1474 Contract; (ii) impair the ability of the Contractor to pay for Project Water furnished under this  
1475 Contract or to pay for any Federally-constructed facilities for which the Contractor is  
1476 responsible; and (iii) have an impact on any Project Water rights applications, permits, or  
1477 licenses. In addition, the Contracting Officer shall comply with the National Environmental  
1478 Policy Act and the Endangered Species Act. The Contractor will be responsible for all costs

1479 incurred by the Contracting Officer in this process, and such costs will be paid in accordance  
1480 with Article 26 of this Contract.

1481 FEDERAL LAWS

1482 37. By entering into this Contract, the Contractor does not waive its rights to contest  
1483 the validity or application in connection with the performance of the terms and conditions of this  
1484 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with  
1485 the terms and conditions of this Contract unless and until relief from application of such Federal  
1486 law or regulation to the implementing provision of the Contract is granted by a court of  
1487 competent jurisdiction.

1488 EMERGENCY RESERVE FUND

1489 38. The Contractor and Contracting Officer acknowledge that the requirements to  
1490 establish and maintain a minimum reserve fund account to finance extraordinary O&M costs of  
1491 Friant Division Facilities is and will continue to be administered under Contract No.  
1492 8-07-20-X0356 titled Agreement To Transfer The Operation, Maintenance And Replacement  
1493 And Certain Financial And Administrative Activities Related To The Friant-Kern Canal And  
1494 Associated Works, dated March 1, 1998 as amended, supplemented, assigned, or renewed.

1495 MEDIUM FOR TRANSMITTING PAYMENT

1496 39. (a) All payments from the Contractor to the United States under this contract  
1497 shall be by the medium requested by the United States on or before the date payment is due. The  
1498 required method of payment may include checks, wire transfers, or other types of payment  
1499 specified by the United States.

1500 (b) Upon execution of the contract, the Contractor shall furnish the  
1501 Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose  
1502 for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising  
1503 out of the Contractor's relationship with the United States.

1504

NOTICES

1505  
1506  
1507  
1508  
1509  
1510  
1511

40. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Area Manager, South-Central California Area Office, 1243 "N" Street, Fresno, California 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board of Directors of the Arvin-Edison Water Storage District, P.O. Box 174, Arvin, California 93203. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this Article of this Contract for other notices.

1512

CONFIRMATION OF CONTRACT

1513  
1514  
1515  
1516  
1517  
1518

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

1519

CONTRACT DRAFTING CONSIDERATIONS

1520  
1521  
1522  
1523  
1524  
1525

42. Articles 1 through 15, subdivision (c) of Article 16, Articles 18 through 20, subdivision (c) of Article 23, Articles 26 through 29, subdivisions (b) and (c) of Article 31, subdivisions (b) and (c) of Article 32, Articles 33 through 34, subdivision (b) of Article 36, and Articles 37 through 38 of this Contract have been drafted, negotiated, and reviewed by the parties hereto, each of whom is sophisticated in the matters to which this Contract pertains, and no one party shall be considered to have drafted the stated Articles.

1526 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day  
1527 and year first above written.

THE UNITED STATES OF AMERICA

APPROVED AS TO LEGAL  
FORM AND SUFFICIENCY  
*James E. Thomas*  
OFFICE OF REGIONAL SOLICITOR  
DEPARTMENT OF THE INTERIOR

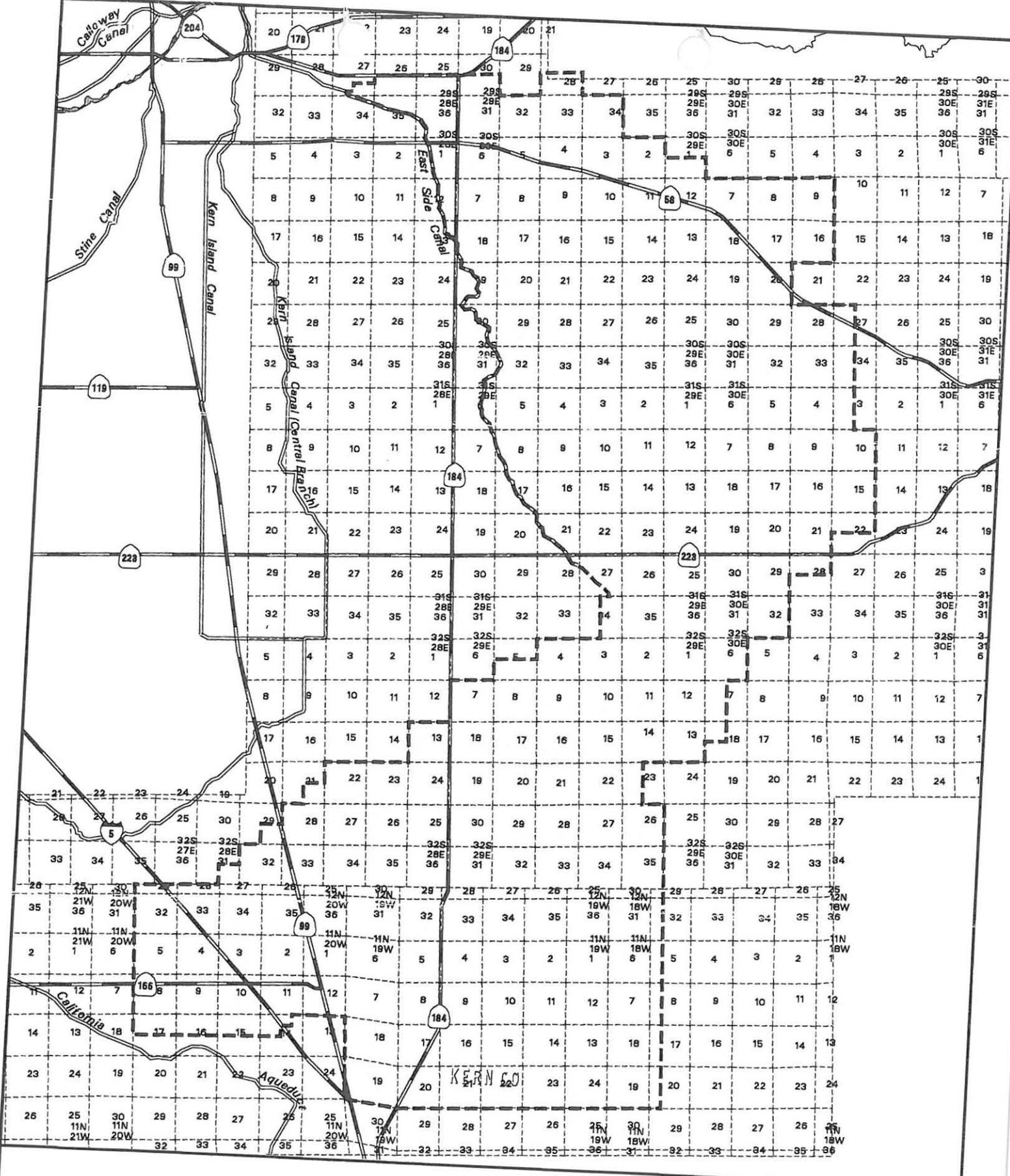
By: *Donald R. Deason*  
Regional Director, Mid-Pacific Region  
Bureau of Reclamation

ARVIN-EDISON WATER STORAGE DISTRICT

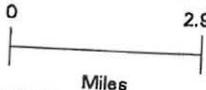
By: *[Signature]*  
President, Board of Directors

Attest:

By: *[Signature]*  
Secretary



Date: 30-NOV-2000  
 \DISTRICTS\CONTRACTS\ARVIN\_EDISON\MAP\ARVIN\_EDISON



# ARVIN-EDISON W.S.D.

## EXHIBIT A

-  Service Area Boundary
-  Water District Boundary



214-208-12653

**EXHIBIT B**

**Rates and Charges**

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

**Exhibit C-1**

Repayment Obligation - Lump Sum Option

**Friant Contractor:**

**Arvin-Edison**

**San Joaquin River Restoration Act**

<b>Existing Capital Obligation (Article 1(m))</b>	<b>\$ 23,553,426.98</b>
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<b>Irrigation portion of Existing Capital Obligation</b>	<b>\$ 23,767,502.98</b>
--	-------------------------

<b>20yr CMT as of :</b>	<b>10/01/10</b>	<b>3.400%</b>
-------------------------	-----------------	---------------

<b>Discount Rate (1/2 20yr CMT)</b>	<b>1.700%</b>
-------------------------------------	---------------

<b>Discounted Irrigation Capital</b>	<b>\$ 20,006,139.86</b>
--------------------------------------	-------------------------

**Non-Discounted M&I Portion of Existing Capital Obligation**

**\$ (214,076.00)**

<b>Repayment Obligation - Lump Sum Option (per Article 7(a)(2)(A))</b>			
		<b>\$</b>	<b>19,792,063.86</b>
		<b>Irrigation Portion of Allocated Capital Cost</b>	
		<b>Beginning Balance</b>	<b>Straight Line Repayment</b>
<b>Year</b>			
2011	\$	23,767,503	\$ 1,188,375
2012	\$	22,579,128	\$ 1,188,375
2013	\$	21,390,753	\$ 1,188,375
2014	\$	20,202,378	\$ 1,188,375
2015	\$	19,014,002	\$ 1,188,375
2016	\$	17,825,627	\$ 1,188,375
2017	\$	16,637,252	\$ 1,188,375
2018	\$	15,448,877	\$ 1,188,375
2019	\$	14,260,502	\$ 1,188,375
2020	\$	13,072,127	\$ 1,188,375
2021	\$	11,883,751	\$ 1,188,375
2022	\$	10,695,376	\$ 1,188,375
2023	\$	9,507,001	\$ 1,188,375
2024	\$	8,318,626	\$ 1,188,375
2025	\$	7,130,251	\$ 1,188,375
2026	\$	5,941,876	\$ 1,188,375
2027	\$	4,753,501	\$ 1,188,375
2028	\$	3,565,125	\$ 1,188,375
2029	\$	2,376,750	\$ 1,188,375
2030	\$	1,188,375	\$ 1,188,375
			<b>\$ 23,767,503</b>

**Exhibit C-2**  
**Repayment Obligation - Installment Payment Option**

**Contractor:** Arvin-Edison

**Existing Capital Obligation (Article 1(m))**      \$    23,553,426.98

**Irrigation Portion of Existing Capital Obligation**      \$    23,767,502.98

**20yr CMT - 10/1/2010**      3.400%  
**Discount Rate (1/2 20yr CMT)**      1.700%

**Non-Discounted M&I Existing Capital Obligation**      \$    (214,076.00)

**Installment Schedule**

	<b>Payment Due Date</b>	<b>Irrigation Portion of Repayment Obligation</b>	<b>Non-discounted M&amp;I Portion of Existing Capital Obligation</b>	<b>Repayment Obligation</b>
<b>1st Installment</b>	5/1/2011	\$ 5,124,412.64	\$ (214,076.00)	\$ 4,910,336.64
<b>2nd Installment</b>	5/1/2012	\$ 5,123,638.51	\$ -	\$ 5,123,638.51
<b>3rd Installment</b>	5/1/2013	\$ 5,128,899.56	\$ -	\$ 5,128,899.56
<b>4th Installment</b>	1/31/2014	\$ 5,138,257.07	\$ -	\$ 5,138,257.07
<b>Total Repayment Obligation - Installment Option (per Article 7(a)(2)(A):</b>		\$ 20,515,207.78	\$ (214,076.00)	\$ 20,301,131.78

Year	Irrigation Portion of Allocated Capital Cost		Discounted Capital Amount			
	Beginning Balance	Straight Line Repayment	\$5,124,412.64	\$5,123,638.51	\$5,128,899.56	\$5,138,257.07
2011	\$ 23,767,503	\$ 1,188,375	\$ 1,188,375			
2012	\$ 22,579,128	\$ 1,188,375	\$ 249,559	\$ 938,816		
2013	\$ 21,390,753	\$ 1,188,375	\$ 249,559	\$ 277,486	\$ 661,331	
2014	\$ 20,202,378	\$ 1,188,375	\$ 249,559	\$ 277,486	\$ 310,760	\$ 350,571
2015	\$ 19,014,002	\$ 1,188,375	\$ 249,559	\$ 277,486	\$ 310,760	\$ 350,571
2016	\$ 17,825,627	\$ 1,188,375	\$ 249,559	\$ 277,486	\$ 310,760	\$ 350,571
2017	\$ 16,637,252	\$ 1,188,375	\$ 249,559	\$ 277,486	\$ 310,760	\$ 350,571
2018	\$ 15,448,877	\$ 1,188,375	\$ 249,559	\$ 277,486	\$ 310,760	\$ 350,571
2019	\$ 14,260,502	\$ 1,188,375	\$ 249,559	\$ 277,486	\$ 310,760	\$ 350,571
2020	\$ 13,072,127	\$ 1,188,375	\$ 249,559	\$ 277,486	\$ 310,760	\$ 350,571
2021	\$ 11,883,751	\$ 1,188,375	\$ 249,559	\$ 277,486	\$ 310,760	\$ 350,571
2022	\$ 10,695,376	\$ 1,188,375	\$ 249,559	\$ 277,486	\$ 310,760	\$ 350,571
2023	\$ 9,507,001	\$ 1,188,375	\$ 249,559	\$ 277,486	\$ 310,760	\$ 350,571
2024	\$ 8,318,626	\$ 1,188,375	\$ 249,559	\$ 277,486	\$ 310,760	\$ 350,571
2025	\$ 7,130,251	\$ 1,188,375	\$ 249,559	\$ 277,486	\$ 310,760	\$ 350,571
2026	\$ 5,941,876	\$ 1,188,375	\$ 249,559	\$ 277,486	\$ 310,760	\$ 350,571
2027	\$ 4,753,501	\$ 1,188,375	\$ 249,559	\$ 277,486	\$ 310,760	\$ 350,571
2028	\$ 3,565,125	\$ 1,188,375	\$ 249,559	\$ 277,486	\$ 310,760	\$ 350,571
2029	\$ 2,376,750	\$ 1,188,375	\$ 249,559	\$ 277,486	\$ 310,760	\$ 350,571
2030	\$ 1,188,375	\$ 1,188,375	\$ 249,559	\$ 277,486	\$ 310,760	\$ 350,571
	\$ 23,767,503	\$ 23,767,503	\$ 5,929,992	\$ 5,933,557	\$ 5,944,252	\$ 5,959,701

**Exhibit D**  
Friant Surcharge Reduction Calculation

**Friant Contractor:**  
**San Joaquin River Restoration Act**

Arvin-Edison

Average Annual Delivery - Forecasted for 2020-2039*	77,635
<b>Total Projected deliveries (over 20 yr period)**</b>	
Article 7(c)	1,552,700
20 yr CMT as of 10/1/2010	3.400%
1/2 20 yr CMT as of 10/1/2010	1.700%
Irrigation Portion of Existing Capital Obligation	\$23,767,503
NPV at Half CMT (Repayment Obligation)	\$20,006,140
NPV at Full CMT	\$17,043,518
<b>Financing Cost Offset: ® (Article 7(c)(1))</b>	<b>\$2,962,622</b>
NPV of FS Reduction	\$2,472,291
<b>Difference between Financing Cost Offset and NPV of FS Reduction</b>	<b>\$490,330</b>
<b>2020 Other Obligation Credit (FV of difference) (Art. 7(c)(2))***</b>	<b>\$662,481</b>

Year	Irrigation portion of Allocated Capital Cost		CVPIA Friant	Reduction in Friant Surcharge			2020 Other Obligation Credit Calculation (Art. 7(c)(2))
	Beginning Balance	Straight Line Repayment	Surcharge per Acre-Foot Before Reduction	Friant Surcharge Reduction per Article c(1)	Friant Surcharge due per A/F after Reduction	Projected Total Annual Credit	
2011	\$ 23,767,503	\$ 1,188,375	\$7.00		\$7.00	0	\$ 490,330.31
2012	\$ 22,579,128	\$ 1,188,375	\$7.00		\$7.00	0	\$ 507,001.54
2013	\$ 21,390,753	\$ 1,188,375	\$7.00		\$7.00	0	\$ 524,239.60
2014	\$ 20,202,378	\$ 1,188,375	\$7.00		\$7.00	0	\$ 542,063.74
2015	\$ 19,014,002	\$ 1,188,375	\$7.00		\$7.00	0	\$ 560,493.91
2016	\$ 17,825,627	\$ 1,188,375	\$7.00		\$7.00	0	\$ 579,550.70
2017	\$ 16,637,252	\$ 1,188,375	\$7.00		\$7.00	0	\$ 599,255.43
2018	\$ 15,448,877	\$ 1,188,375	\$7.00		\$7.00	0	\$ 619,630.11
2019	\$ 14,260,502	\$ 1,188,375	\$7.00		\$7.00	0	\$ 640,697.53
2020	\$ 13,072,127	\$ 1,188,375	\$7.00	(\$3.00)	\$ 4.00	(\$232,905)	\$ 662,481.25
2021	\$ 11,883,751	\$ 1,188,375	\$7.00	(\$3.00)	\$ 4.00	(232,905)	
2022	\$ 10,695,376	\$ 1,188,375	\$7.00	(\$3.00)	\$ 4.00	(232,905)	
2023	\$ 9,507,001	\$ 1,188,375	\$7.00	(\$3.00)	\$ 4.00	(232,905)	
2024	\$ 8,318,626	\$ 1,188,375	\$7.00	(\$3.00)	\$ 4.00	(232,905)	
2025	\$ 7,130,251	\$ 1,188,375	\$7.00	(\$3.00)	\$ 4.00	(232,905)	
2026	\$ 5,941,876	\$ 1,188,375	\$7.00	(\$3.00)	\$ 4.00	(232,905)	
2027	\$ 4,753,501	\$ 1,188,375	\$7.00	(\$3.00)	\$ 4.00	(232,905)	
2028	\$ 3,565,125	\$ 1,188,375	\$7.00	(\$3.00)	\$ 4.00	(232,905)	
2029	\$ 2,376,750	\$ 1,188,375	\$7.00	(\$3.00)	\$ 4.00	(232,905)	
2030	\$ 1,188,375	\$ 1,188,375	\$7.00	(\$3.00)	\$ 4.00	(232,905)	
2031			\$7.00	(\$3.00)	\$ 4.00	(232,905)	
2032			\$7.00	(\$3.00)	\$ 4.00	(232,905)	
2033			\$7.00	(\$3.00)	\$ 4.00	(232,905)	
2034			\$7.00	(\$3.00)	\$ 4.00	(232,905)	
2035			\$7.00	(\$3.00)	\$ 4.00	(232,905)	
2036			\$7.00	(\$3.00)	\$ 4.00	(232,905)	
2037			\$7.00	(\$3.00)	\$ 4.00	(232,905)	
2038			\$7.00	(\$3.00)	\$ 4.00	(232,905)	
2039			\$7.00	(\$3.00)	\$ 4.00	(232,905)	
	\$ 23,767,503					(\$4,658,100)	

**Exhibit D**  
Friant Surcharge Reduction Calculation

**Footnotes**

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

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

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

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

Friant Surcharge (FS) Reduction Calculations

FV of Total Financing Cost for Offset	\$	4,138,868
Annual Credit Target	\$	(279,097)
FS Reduction w/o limit	\$	(3.59)
FS Reduction limit	\$	(3.00)

**EXHIBIT E**

**Restated Contract<sup>1</sup>**

Irrigation and M&I  
Contract No. 14-06-200-229AD

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

CONTRACT BETWEEN THE UNITED STATES  
AND  
ARVIN-EDISON WATER STORAGE DISTRICT  
PROVIDING FOR PROJECT WATER SERVICE FROM  
FRIANT DIVISION AND  
FOR FACILITIES REPAYMENT

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

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

5 CONTRACT BETWEEN THE UNITED STATES  
6 AND  
7 ARVIN-EDISON WATER STORAGE DISTRICT  
8 PROVIDING FOR PROJECT WATER SERVICE  
9 FROM FRIANT DIVISION AND  
10 FACILITIES REPAYMENT

11 THIS CONTRACT, made this 1st day of NOVEMBER, 2010, is entered  
12 into pursuant to the Act of June 17, 1902, (32 Stat. 388), and acts amendatory or supplementary  
13 thereto, including but not limited to: the Act of August 26, 1937 (50 Stat. 844), as amended and  
14 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956  
15 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1262), October 27, 1986  
16 (100 Stat. 3050), as amended, Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), and  
17 Title X, Subtitle A, of the Act of March 30, 2009 (123 Stat. 1349), also referred to as the San  
18 Joaquin River Restoration Settlement Act hereinafter referred to as SJRRSA, all collectively  
19 hereinafter referred to as Federal Reclamation law, between THE UNITED STATES OF  
20 AMERICA, hereinafter referred to as the United States and ARVIN-EDISON WATER  
21 STORAGE DISTRICT, hereinafter referred to as the Contractor, a public agency of the State of  
22 California, duly organized, existing, and acting pursuant to the laws thereof, with its principal  
23 place of business in California;

24 WITNESSETH, That

EXPLANATORY RECITALS

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

[2<sup>nd</sup>] WHEREAS, the United States constructed Friant Dam (thereby creating Millerton Lake) and the Friant-Kern and Madera Canals, hereinafter collectively referred to as the Friant Division Facilities, which will be used in part for the furnishing of water to the Contractor pursuant to the terms of this Contract; and

[3<sup>rd</sup>] WHEREAS, the United States and the Contractor entered into Contract Number 14-06-200-229A, as amended, which established terms for the delivery to the Contractor of Project Water from the Friant Division from August 30, 1962 through February 28, 1995; and

[4<sup>th</sup>] WHEREAS, the Contractor and the United States 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 Number (s) 14-06-200-229A-IR1, IR2, IR3, and IR4, which provided for the continued water service to Contractor from March 1, 1995 through February 28, 2001, and subsequently entered into a long-term renewal contract identified as Contract Number 14-06-200-229A-LTR1, which provided for continued water service to

45 Contractor through February 28, 2026, which was amended January 18, 2007, and is herein  
46 referred to as the “Existing Contract”; and

47 [5<sup>th</sup>] WHEREAS, pursuant to Section 8 of the Act of June 17, 1902 (32 Stat. 388), the  
48 United States has acquired water rights and other rights to the flows of the San Joaquin River,  
49 including without limitation the permits issued as the result of Decision 935 by the California  
50 State Water Resource Control Board and the contracts described in subdivision (n) of Article 3  
51 of this Contract, pursuant to which the Contracting Officer develops, diverts, stores and delivers  
52 Project Water stored or flowing through Millerton Lake in accordance with State and Federal law  
53 for the benefit of Project Contractors in the Friant Division and for other specified Project  
54 purposes; and

55 [6<sup>th</sup>] WHEREAS, the water supplied to the Contractor pursuant to this Contract is  
56 Project Water developed through the exercise of the rights described in the fifth (5<sup>th</sup>) Explanatory  
57 Recital of this Contract; and

58 [7<sup>th</sup>] WHEREAS, as a result of litigation entitled “Natural Resources Defense Council,  
59 et al. v Kirk Rogers, et al.” No. CIV-S-88-1658LLK/GGH, certain contractors from the Friant  
60 Division entered into a Stipulation of Settlement dated September 13, 2006, (the “Settlement”),  
61 which settlement prescribes a Restoration Goal and a Water Management Goal and which  
62 Settlement was subsequently confirmed and implemented through the SJRRSA; and

63 [8<sup>th</sup>] WHEREAS, the SJRRSA authorizes and directs the Secretary to convert the  
64 Existing Contract to a repayment contract under subsection (d) of Section 9 of the Act of August  
65 4, 1939, no later than December 31, 2010, and further directs that such contract shall require the

66 accelerated repayment of the Contractor's allocated share of construction costs, either as a lump  
67 sum payment by January 31, 2011 or in annual installments by January 31, 2014, which funds  
68 will in turn be made available for implementation of the Settlement and SJRRSA, and which  
69 costs otherwise would have been payable through annual water rates, with full repayment by  
70 2030; and

71 [9<sup>th</sup>] WHEREAS, such repayment of costs will assist the United States with  
72 implementation of actions required under the Settlement and the SJRRSA and provide the  
73 Contractor the benefits provided in Section 10010 of the SJRRSA; and

74 [10<sup>th</sup>] WHEREAS, subsection (4) of Section 1 of the Act of July 2, 1956 (1956 Act)  
75 directs the Secretary to provide that the other party to any contract entered into pursuant to  
76 subsection (d) of Section 9 of the Act of August 4, 1939 (repayment contract) or pursuant to  
77 subsection (e) of Section 9 of the Act of August 4, 1939 (water service contract) shall "have the  
78 first right (to which the rights of the holders of any other type of irrigation water contract shall be  
79 subordinate) to a stated share or quantity of the project's available water supply for beneficial  
80 use on the irrigable lands within the boundaries of, or owned by, the party and a permanent right  
81 to such share or quantity upon completion of payment of the amount assigned for ultimate  
82 return" by the contractor subject to fulfillment of all obligations under the contract; and

83 [11<sup>th</sup>] WHEREAS, among other things, this Contract includes provisions granting the  
84 Contractor the permanent right described in the tenth (10<sup>th</sup>) Explanatory Recital; and

85 [12<sup>th</sup>] WHEREAS, the Contractor has demonstrated to the satisfaction of the  
86 Contracting Officer that the Contractor has utilized the Project Water supplies available to it for

87 reasonable and beneficial use and/or has demonstrated projected future demand for water use  
88 such that the Contractor has the capability and expects to utilize fully for reasonable and  
89 beneficial use the quantity of Project Water to be made available to it pursuant to this Contract;  
90 and

91 [13<sup>th</sup>] WHEREAS, water obtained from the Central Valley Project has been relied upon  
92 by urban and agricultural areas within California for more than fifty (50) years and is considered  
93 by the Contractor as an essential portion of its water supply; and

94 [14<sup>th</sup>] WHEREAS, the economies of regions within the Central Valley Project,  
95 including the Contractor's, depend upon the continued availability of water, including water  
96 service from the Central Valley Project; and

97 [15<sup>th</sup>] WHEREAS, the Secretary intends through coordination, cooperation, and  
98 partnerships to pursue measures to improve water supply, water quality, and reliability of the  
99 Project for all Project purposes; and

100 [16<sup>th</sup>] WHEREAS, the mutual goals of the United States and the Contractor include: to  
101 provide for reliable Project Water supplies; to control costs of those supplies; to achieve  
102 repayment of the Central Valley Project as required by law; to guard reasonably against Project  
103 Water shortages; to achieve a reasonable balance among competing demands for use of Project  
104 Water; and to comply with all applicable environmental statutes, all consistent with the legal  
105 obligations of the United States relative to the Central Valley Project; and

106 [17<sup>th</sup>] WHEREAS, any time during the Year the Contracting Officer determines that a  
107 need exists to evacuate water from Millerton Lake in order to prevent or minimize spill or to

108 meet flood control criteria (currently referred to as “uncontrolled season”), taking into  
109 consideration, among other things, anticipated upstream reservoir operations and the most  
110 probable forecast of snowmelt and runoff projections for the upper San Joaquin River, Friant  
111 Division Project Contractors utilize a portion of their undependable Class 2 Water in their  
112 service areas to, among other things, assist in the management and alleviation of groundwater  
113 overdraft in the Friant Division service area, provide opportunities for restoration of the San  
114 Joaquin River below Friant Dam, minimize flooding along the San Joaquin River, encourage  
115 optimal water management, and maximize the reasonable and beneficial use of the water; and

116 [18<sup>th</sup>] WHEREAS, the parties desire and intend that this Contract not provide a  
117 disincentive to the Friant Division Project Contractors continuing to carry out the beneficial  
118 activities set out in the Explanatory Recital immediately above; and

119 [19<sup>th</sup>] WHEREAS, the United States has determined that the Contractor has fulfilled all  
120 of its obligations under the Existing Contract.

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

123 DEFINITIONS

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

126 (a) “Additional Capital Obligation” shall mean any additional construction  
127 costs or other capitalized costs incurred after the effective date of this Contract or not reflected in  
128 the Existing Capital Obligation as provided in Section 10010(a)(3)(B) of the SJRRSA and any

129 amounts payable by Contractor as determined through the final adjustment described and  
130 required by Section 10010(b) of the SJRRSA;

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

133 (c) "Charges" shall mean the payments required by Federal Reclamation law  
134 in addition to the Rates specified in this Contract as determined annually by the Contracting  
135 Officer pursuant to this Contract and consistent with the SJRRSA;

136 (d) "Class 1 Water" shall mean that supply of water stored in or flowing  
137 through Millerton Lake which, subject to the contingencies hereinafter described in Articles 3,  
138 12, and 13 of this Contract, will be available for delivery from Millerton Lake and the  
139 Friant-Kern and Madera Canals as a dependable water supply during each Year;

140 (e) "Class 2 Water" shall mean that supply of water which can be made  
141 available subject to the contingencies hereinafter described in Articles 3, 12, and 13 of this  
142 Contract for delivery from Millerton Lake and the Friant-Kern and Madera Canals in addition to  
143 the supply of Class 1 Water. Because of its uncertainty as to availability and time of occurrence,  
144 such water will be undependable in character and will be furnished only if, as, and when it can be  
145 made available as determined by the Contracting Officer;

146 (f) "Condition of Shortage" shall mean a condition respecting the Project  
147 during any Year such that the Contracting Officer is unable to deliver sufficient water to meet the  
148 Contract Total;

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

152 (h) "Contract Total" shall mean the maximum amount of Class 1 Water plus  
153 the maximum amount of Class 2 Water specified in subdivision (a) of Article 3 of this Contract  
154 and is the stated share or quantity of the Project's available water supply to which the Contractor  
155 has a permanent right in accordance with the 1956 Act and the terms of this Contract, due to the  
156 Contractor's complete payment of the Repayment Obligation, notwithstanding any Additional  
157 Capital Obligation that may later be established, which right shall not be disturbed so long as the  
158 Contractor fulfills all of its obligations under this Contract;

159 (i) "Contractor's Service Area" shall mean the area to which the Contractor is  
160 permitted to provide Project Water under this Contract as described in Exhibit "A" attached  
161 hereto, which may be modified from time to time in accordance with Article 36 of this Contract  
162 without amendment of this Contract;

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

165 (k) Omitted;

166 (l) Omitted;

167 (m) "Existing Capital Obligation" shall mean the remaining amount of  
168 construction costs of the Contractor identified in the Central Valley Project Irrigation Water  
169 Rates and/or Municipal and Industrial Water Rates, respectively, dated January 25, 2007, as

170 adjusted to reflect payments not reflected in such schedule, pursuant to Section 10010(a)(3)(A)  
171 of the SJRRSA. The Contracting Officer has computed the Existing Capital Obligation in a  
172 manner consistent with the SJRRSA and such amount is set forth in Exhibits "C-1" and "C-2",  
173 incorporated herein by reference;

174 (n) "Financing Costs", for purposes of computing the reduction of certain  
175 charges as specified in subdivision (c) of Article 7 of this Contract, shall mean the difference  
176 between the net present value of the Existing Capital Obligation discounted using the full  
177 Treasury rate and the Existing Capital Obligation discounted using one-half the Treasury rate, as  
178 set forth in Section 10010(d)(3) of the SJRRRA;

179 (o) Omitted;

180 (p) Omitted;

181 (q) Omitted;

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

185 (s) Omitted;

186 (t) "Long Term Historic Average" shall mean the average of the final forecast  
187 of Water Made Available to the Contractor pursuant to this Contract and the contracts referenced  
188 in the third (3<sup>rd</sup>) and fourth (4<sup>th</sup>) Explanatory Recitals of this Contract;

189 (u) "Municipal and Industrial (M&I) Water" shall mean Water Made  
190 Available from the Project other than Irrigation Water made available to the Contractor. M&I

191 Water shall include water used for human use and purposes such as the watering of landscaping  
192 or pasture for animals (e.g., horses) which are kept for personal enjoyment or water delivered to  
193 land holdings operated in units of less than five (5) acres unless the Contractor establishes to the  
194 satisfaction of the Contracting Officer that the use of water delivered to any such landholding is a  
195 use described in subdivision (r) of this Article of this Contract;

196 (v) Omitted;

197 (w) "Operation and Maintenance" or "O&M" shall mean normal and  
198 reasonable care, control, operation, repair, replacement (other than Capital replacement), and  
199 maintenance of Project facilities;

200 (x) "Operating Non-Federal Entity" shall mean the Friant Water Authority, or  
201 its successor, a Non-Federal entity, which has the obligation to operate and maintain all or a  
202 portion of the Friant Division Facilities pursuant to an agreement with the United States and  
203 which may have funding obligations with respect thereto;

204 (y) Omitted;

205 (z) "Project" shall mean the Central Valley Project owned by the United  
206 States and managed by the Department of the Interior, Bureau of Reclamation;

207 (aa) "Project Contractors" shall mean all parties who have a long-term water  
208 service contract or repayment contract for Project Water from the Project with the United States  
209 pursuant to Federal Reclamation law;

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

213 (cc) "Rates" shall mean the payments for O&M costs as determined annually  
214 by the Contracting Officer in accordance with the then-existing applicable water ratesetting  
215 policies for the Project, as described in subdivision (a) of Article 7 of this Contract and  
216 illustrated in Exhibit "B", attached hereto;

217 (dd) "Recovered Water Account" shall mean the program, as defined in the  
218 Settlement, to make water available to all of the Friant Division Project Contractors who provide  
219 water to meet interim flows or restoration flows for the purpose of reducing or avoiding the  
220 impact of the interim flows and restoration flows on such contractors;

221 (ee) "Repayment Obligation", as provided in subdivision (a)(2)(A) of Article 7  
222 of this Contract, shall be the Existing Capital Obligation, as defined herein, discounted by  
223 one-half of the Treasury rate and computed consistent with the provisions of Section  
224 10010(a)(3)(A) of the SJRRSA to be paid as either a lump sum payment by January 31, 2011 or  
225 in approximately equal annual installments by January 31, 2014;

226 (ff) "Secretary" shall mean the Secretary of the Interior, a duly appointed  
227 successor, or an authorized representative acting pursuant to any authority of the Secretary and  
228 through any agency of the Department of the Interior;

229 (gg) "Settlement" shall mean the Stipulation of Settlement dated September 13,  
230 2006, the Order Approving Stipulation of Settlement, and the Judgment and further orders issued

231 by the Court pursuant to the terms and conditions of the Settlement in Natural Resources  
232 Defense Council, et al. v. Rodgers, et al., No. CIV-S-88-1658 LLJ/GGH;

233 (hh) Omitted;

234 (ii) "Water Delivered" or "Delivered Water" shall mean Project Water  
235 diverted for use by the Contractor at the point(s) of delivery approved by the Contracting  
236 Officer;

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

240 (kk) "Water Management Goal" shall mean the goal of the Settlement to  
241 reduce or avoid adverse water supply impacts to all the Friant Division Project Contractors that  
242 may result from the interim flows and restoration flows provided for in the Settlement;

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

246 (mm) "Year" shall mean the period from and including March 1 of each  
247 Calendar Year through the last day of February of the following Calendar Year.

248 EFFECTIVE DATE OF CONTRACT

249 2. (a) This Contract shall become effective on the date first hereinabove written  
250 and shall continue so long as the Contractor is making the annual payments required herein and  
251 paying any other amounts owing under this Contract and applicable law, unless it is terminated

252 by the Contracting Officer by reason of a material uncured breach by the Contractor; Provided,  
253 That the Contracting Officer shall not seek to terminate this Contract by reason of an asserted  
254 material uncured breach by the Contractor unless it has first provided at least sixty (60) days  
255 written notice of the asserted breach to the Contractor and the Contractor has failed to cure such  
256 breach (or to diligently commence curative actions satisfactory to the Contracting Officer for a  
257 breach that cannot be fully cured within sixty (60) days) within the sixty (60)-day notice period;  
258 Provided further, That this Contract may be terminated at any time by mutual consent of the  
259 parties hereto.

260 (b) The Contractor has paid the Repayment Obligation, and notwithstanding  
261 any Additional Capital Obligation that may later be established, the tiered pricing component and  
262 the acreage limitations, reporting, and Full Cost pricing provisions of Federal Reclamation law,  
263 shall no longer be applicable to the Contractor.

264 (c) This Contract supersedes in its entirety and is intended to replace in full  
265 the Existing Contract; Provided, That if this Contract is terminated or determined to be invalid or  
266 unenforceable for any reason other than a material uncured breach of this Contract by the  
267 Contractor, the Existing Contract shall not be superseded and shall be in full force and effect.

268 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

269 3. (a) During each Year, consistent with all applicable State water rights,  
270 permits, and licenses, Federal law, the Settlement including the SJRRSA, and subject to the  
271 provisions set forth in Articles 12 and 13 of this Contract, the Contracting Officer shall make  
272 available for delivery to the Contractor from the Project 40,000 acre-feet of Class 1 Water and

273 311,675 acre-feet of Class 2 Water for irrigation and M&I purposes. The quantity of Water  
274 Delivered to the Contractor in accordance with this subdivision shall be scheduled and paid for  
275 pursuant to the provisions of Articles 4 and 7 of this Contract.

276 (b) The Contractor has paid the Repayment Obligation, and notwithstanding  
277 any Additional Capital Obligation that may later be established, the Contractor has a permanent  
278 right to the Contract Total in accordance with the 1956 Act and the terms of this Contract. This  
279 right shall not be disturbed so long as the Contractor fulfills all of its obligations hereunder. The  
280 quantity of water made available for delivery in any given Year shall remain subject to the terms  
281 and conditions of subdivision (a) of this Article of this Contract.

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

284 (d) The Contractor shall make reasonable and beneficial use of all Project  
285 Water or other water furnished pursuant to this Contract. Groundwater recharge programs,  
286 groundwater banking programs, surface water storage programs, and other similar programs  
287 utilizing Project Water or other water furnished pursuant to this Contract conducted within the  
288 Contractor's Service Area which are consistent with applicable State law and result in use  
289 consistent with applicable Federal Reclamation law will be allowed; Provided, That any direct  
290 recharge program(s) is (are) described in the Contractor's Water Conservation Plan submitted  
291 pursuant to Article 27 of this Contract; Provided further, That such Water Conservation Plan  
292 demonstrates sufficient lawful uses exist in the Contractor's Service Area so that using a  
293 long-term average, the quantity of Delivered Water is demonstrated to be reasonable for such

294 uses and in compliance with Federal Reclamation law. Groundwater recharge programs,  
295 groundwater banking programs, surface water storage programs, and other similar programs  
296 utilizing Project Water or other water furnished pursuant to this Contract conducted outside the  
297 Contractor's Service Area may be permitted upon written approval of the Contracting Officer,  
298 which approval will be based upon environmental documentation, Project Water rights, and  
299 Project operational concerns. The Contracting Officer will address such concerns in regulations,  
300 policies, or guidelines.

301 (e) The Contractor, through this Contract, shall comply with requirements  
302 applicable to the Contractor in biological opinion(s) prepared as a result of the consultation  
303 regarding the execution of the Existing Contract undertaken pursuant to Section 7 of the  
304 Endangered Species Act of 1973, as amended, as well as the requirements of any other biological  
305 opinions applicable to Project Water delivery under this Contract, that are within the  
306 Contractor's legal authority to implement. The Contractor shall comply with the limitations or  
307 requirements imposed by environmental documentation applicable to the Contractor and within  
308 its legal authority to implement regarding specific activities, including conversion of Irrigation  
309 Water to M&I Water. Nothing herein shall be construed to prevent the Contractor from  
310 challenging or seeking judicial relief in a court of competent jurisdiction with respect to any  
311 biological opinion or other environmental documentation referred to in this Article of this  
312 Contract.

313 (f) Subject to subdivisions (l) and (n) of this Article of this Contract,  
314 following the declaration of Water Made Available under Article 4 of this Contract, the

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

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

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

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

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

354 (k) Project Water furnished to the Contractor during any month designated in  
355 a schedule or revised schedule submitted by the Contractor and approved by the Contracting  
356 Officer shall be deemed to have been accepted by the Contractor as Class 1 Water to the extent

357 that Class 1 Water is called for in such schedule for such month and shall be deemed to have  
358 been accepted as Class 2 Water to the extent Class 2 Water is called for in such schedule for such  
359 month. If in any month the Contractor diverts a quantity of water in addition to the total amount  
360 of Class 1 Water and Class 2 Water set forth in the Contractor's approved schedule or revised  
361 schedule for such month, such additional diversions shall be charged first against the  
362 Contractor's remaining Class 2 Water supply available in the current Year. To the extent the  
363 Contractor's remaining Class 2 Water supply available in the current Year is not sufficient to  
364 account for such additional diversions, such additional diversions shall be charged against the  
365 Contractor's remaining Class 1 Water supply available in the current Year. To the extent the  
366 Contractor's remaining Class 1 Water and Class 2 Water supplies available in the current Year  
367 are not sufficient to account for such additional diversions, such additional diversions shall be  
368 charged first against the Contractor's available Class 2 Water supply and then against the  
369 Contractor's available Class 1 Water supply, both for the following Year. Payment for all  
370 additional diversions of water shall be made in accordance with Article 7 of this Contract.

371 (l) If the Contracting Officer determines there is a Project Water supply  
372 available at Friant Dam as the result of an unusually large water supply not otherwise storable for  
373 Project purposes or infrequent and otherwise unmanaged flood flows of short duration, such  
374 water will be made available to the Contractor and others under Section 215 of the Act of  
375 October 12, 1982, pursuant to the priorities specified below if the Contractor enters into a  
376 temporary contract with the United States not to exceed one (1) year for the delivery of such  
377 water or as otherwise provided for in Federal Reclamation law and associated regulations. Such

378 water may be identified by the Contractor either (i) as additional water to supplement the supply  
379 of Class 1 Water and/or Class 2 Water made available to it pursuant to this Contract or, (ii) upon  
380 written notification to the Contracting Officer, as water to be credited against the Contractor's  
381 Class 2 Water supply available pursuant to this Contract. The Contracting Officer shall make  
382 water determined to be available pursuant to this subsection according to the following priorities:  
383 first, to contractors for Class 1 Water and/or Class 2 Water within the Friant Division; second, to  
384 contractors in the Cross Valley Division of the Project. The Contracting Officer will consider  
385 requests from other parties for Section 215 Water for use within the area identified as the Friant  
386 Division service area in the environmental assessment developed in connection with the  
387 execution of the Existing Contract.

388 (m) Nothing in this Contract, nor any action or inaction of the Contractor or  
389 Contracting Officer in connection with the implementation of this Contract, is intended to  
390 override, modify, supersede or otherwise interfere with any term or condition of the water rights  
391 and other rights referred in the fifth (5th) Explanatory Recital of this Contract.

392 (n) The rights of the Contractor under this Contract are subject to the terms of  
393 the contract for exchange waters, dated July 27, 1939, between the United States and the San  
394 Joaquin and Kings River Canal and Irrigation Company, Incorporated, et al., (hereinafter referred  
395 to as the Exchange Contractors), Contract No. 11r-1144, as amended. The United States agrees  
396 that it will not deliver to the Exchange Contractors thereunder waters of the San Joaquin River  
397 unless and until required by the terms of said contract, and the United States further agrees that it  
398 will not voluntarily and knowingly determine itself unable to deliver to the Exchange

399 Contractors entitled thereto from water that is available or that may become available to it from  
400 the Sacramento River and its tributaries or the Sacramento-San Joaquin Delta those quantities  
401 required to satisfy the obligations of the United States under said Exchange Contract and under  
402 Schedule 2 of the Contract for Purchase of Miller and Lux Water Rights (Contract I1r-1145,  
403 dated July 27, 1939).

404 (o) Pursuant to and consistent with section 10004 of SJRRSA and Paragraph  
405 16 of the Settlement, the Contracting Officer is required to develop and implement a plan for  
406 recirculation, recapture, reuse, exchange or transfer of water released for restoration flows or  
407 interim flows, as those terms are defined in the Settlement, to reduce or avoid impacts to water  
408 deliveries caused by said restoration flows or interim flows and water developed through such  
409 activities may be made available (i) to the Contractor without the need of an additional contract,  
410 and/or (ii) to others on behalf of the Contractor under terms mutually acceptable to the  
411 Contractor and the Contracting Officer that are consistent with the Water Management Goal.

412 TIME FOR DELIVERY OF WATER

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

420 Contracting Officer shall provide the Contractor with the updated Long Term Historic Average.  
421 The declaration of Project operations will be expressed in terms of both Water Made Available  
422 and the Long Term Historic Average.

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

429 (c) The Contractor shall not schedule Project Water in excess of the quantity  
430 of Project Water the Contractor intends to put to reasonable and beneficial use within the  
431 Contractor's Service Area, or to sell, transfer or exchange pursuant to Article 10 of this Contract  
432 or bank pursuant to subdivision (d) of Article 3 of this Contract during any Year.

433 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this  
434 Contract, the United States shall deliver Project Water to the Contractor in accordance with the  
435 initial schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any  
436 written revision(s), satisfactory to the Contracting Officer, thereto submitted within a reasonable  
437 time prior to the date(s) on which the requested change(s) is/are to be implemented; Provided,  
438 That the total amount of water requested in that schedule or revision does not exceed the  
439 quantities announced by the Contracting Officer pursuant to the provisions of subdivision (a) of  
440 Article 3 of this Contract, and the Contracting Officer determines that there will be sufficient

441 capacity available in the appropriate Friant Division Facilities to deliver the water in accordance  
442 with that schedule; Provided further, That the Contractor shall not schedule the delivery of any  
443 water during any period as to which the Contractor is notified by the Contracting Officer or  
444 Operating Non-Federal Entity that Project facilities required to make deliveries to the Contractor  
445 will not be in operation because of scheduled O&M.

446 (e) The Contractor may, during the period from and including November 1 of  
447 each Year through and including the last day of February of that Year, request delivery of any  
448 amount of the Class 1 Water estimated by the Contracting Officer to be made available to it  
449 during the following Year. The Contractor may, during the period from and including January 1  
450 of each Year (or such earlier date as may be determined by the Contracting Officer) through and  
451 including the last day of February of that Year, request delivery of any amount of Class 2 Water  
452 estimated by the Contracting Officer to be made available to it during the following Year. Such  
453 water shall hereinafter be referred to as pre-use water. Such request must be submitted in writing  
454 by the Contractor for a specified quantity of pre-use and shall be subject to the approval of the  
455 Contracting Officer. Payment for pre-use water so requested shall be at the appropriate Rate(s)  
456 for the following Year in accordance with Article 7 of this Contract and shall be made in  
457 advance of delivery of any pre-use water. The Contracting Officer shall deliver such pre-use  
458 water in accordance with a schedule or any revision thereof submitted by the Contractor and  
459 approved by the Contracting Officer, to the extent such water is available and to the extent such  
460 deliveries will not interfere with the delivery of Project Water entitlements to other Friant  
461 Division contractors or the physical maintenance of the Project facilities. The quantities of

462 pre-use Water Delivered pursuant to this subdivision shall be deducted from the quantities of  
463 water that the Contracting Officer would otherwise be obligated to make available to the  
464 Contractor during the following Year; Provided, That the quantity of pre-use water to be  
465 deducted from the quantities of either Class 1 Water or Class 2 Water to be made available to the  
466 Contractor in the following Year shall be specified by the Contractor at the time the pre-use  
467 water is requested or as revised in its first schedule for the following Year submitted in  
468 accordance with subdivision (b) of this Article of this Contract, based on the availability of the  
469 following Year water supplies as determined by the Contracting Officer.

470 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

475 (b) The Contracting Officer, the Operating Non-Federal Entity, or other  
476 appropriate entity shall make all reasonable efforts to maintain sufficient flows and levels of  
477 water in the Friant-Kern Canal to deliver Project Water to the Contractor at specific turnouts  
478 established pursuant to subdivision (a) of this Article of this Contract.

479 (c) The Contractor shall not deliver Project Water to land outside the  
480 Contractor's Service Area unless approved in advance by the Contracting Officer. The  
481 Contractor shall deliver Project Water in accordance with applicable Federal Reclamation law.

482 (d) All Water Delivered to the Contractor pursuant to this Contract shall be

483 measured and recorded with equipment furnished, installed, operated, and maintained by the  
484 United States, the Operating Non-Federal Entity or other appropriate entity as designated by the  
485 Contracting Officer (hereafter "other appropriate entity") at the point or points of delivery  
486 established pursuant to subdivision (a) of this Article of this Contract. Upon the request of either  
487 party to this Contract, the Contracting Officer shall investigate, or cause to be investigated by the  
488 responsible Operating Non-Federal Entity, the accuracy of such measurements and shall take any  
489 necessary steps to adjust any errors appearing therein. For any period of time when accurate  
490 measurements have not been made, the Contracting Officer shall consult with the Contractor and  
491 the responsible Operating Non-Federal Entity prior to making a final determination of the  
492 quantity delivered for that period of time.

493 (e) Neither the Contracting Officer nor any Operating Non-Federal Entity  
494 shall be responsible for the control, carriage, handling, use, disposal, or distribution of Project  
495 Water Delivered to the Contractor pursuant to this Contract beyond the delivery points specified  
496 in subdivision (a) of this Article of this Contract. The Contractor shall indemnify the United  
497 States, its officers, employees, agents, and assigns on account of damage or claim of damage of  
498 any nature whatsoever for which there is legal responsibility, including property damage,  
499 personal injury, or death arising out of or connected with the control, carriage, handling, use,  
500 disposal, or distribution of such Project Water beyond such delivery points, except for any  
501 damage or claim arising out of: (i) acts or omissions of the Contracting Officer or any of its  
502 officers, employees, agents, or assigns, including any responsible Operating Non-Federal Entity,  
503 with the intent of creating the situation resulting in any damage or claim; (ii) willful misconduct

504 of the Contracting Officer or any of its officers, employees, agents, or assigns, including any  
505 responsible Operating Non-Federal Entity; (iii) negligence of the Contracting Officer or any of  
506 its officers, employees, agents, or assigns including any responsible Operating Non-Federal  
507 Entity; or (iv) damage or claims resulting from a malfunction of facilities owned and/or operated  
508 by the United States or responsible Operating Non-Federal Entity; Provided, That the Contractor  
509 is not the Operating Non-Federal Entity that owned or operated the malfunctioning facility(ies)  
510 from which the damage claim arose.

511 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

512 6. (a) The Contractor has established a measurement program satisfactory to the  
513 Contracting Officer; all surface water delivered for irrigation purposes within the Contractor's  
514 Service Area is measured at each agricultural turnout; and water delivered for M&I purposes is  
515 measured at each M&I service connection. The water measuring devices or water measuring  
516 methods of comparable effectiveness must be acceptable to the Contracting Officer. The  
517 Contractor shall be responsible for installing, operating, and maintaining and repairing all such  
518 measuring devices and implementing all such water measuring methods at no cost to the United  
519 States. The Contractor shall use the information obtained from such water measuring devices or  
520 water measuring methods to ensure its proper management of the water, to bill water users for  
521 water delivered by the Contractor; and, if applicable, to record water delivered for M&I purposes  
522 by customer class as defined in the Contractor's water conservation plan provided for in Article  
523 27 of this Contract. Nothing herein contained, however, shall preclude the Contractor from

524 establishing and collecting any charges, assessments, or other revenues authorized by California  
525 law.

526 (b) To the extent the information has not otherwise been provided, upon  
527 execution of this Contract, the Contractor shall provide to the Contracting Officer a written  
528 report describing the measurement devices or water measuring methods being used or to be used  
529 to implement subdivision (a) of this Article of this Contract and identifying the agricultural  
530 turnouts and the M&I service connections or alternative measurement programs approved by the  
531 Contracting Officer, at which such measurement devices or water measuring methods are being  
532 used, and, if applicable, identifying the locations at which such devices and/or methods are not  
533 yet being used including a time schedule for implementation at such locations. The Contracting  
534 Officer shall advise the Contractor in writing within sixty (60) days as to the adequacy of, and  
535 necessary modifications, if any, of the measuring devices or water measuring methods identified  
536 in the Contractor's report and if the Contracting Officer does not respond in such time, they shall  
537 be deemed adequate. If the Contracting Officer notifies the Contractor that the measuring  
538 devices or methods are inadequate, the parties shall within sixty (60) days following the  
539 Contracting Officer's response, negotiate in good faith the earliest practicable date by which the  
540 Contractor shall modify said measuring devices and/or measuring methods as required by the  
541 Contracting Officer to ensure compliance with subdivision (a) of this Article of this Contract.

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

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

548 (e) The Contractor shall inform the Contracting Officer and the Operating  
549 Non-Federal Entity on or before the twentieth (20<sup>th</sup>) calendar day of each month of the quantity  
550 of Irrigation and M&I Water taken during the preceding month.

551 RATES, METHOD OF PAYMENT FOR WATER,  
552 AND ACCELERATED REPAYMENT OF FACILITIES

553 7. (a) The Contractor's cost obligations for all Delivered Water shall be  
554 determined in accordance with: (i) the Secretary's ratesetting policy for Irrigation Water adopted  
555 in 1988 and the Secretary's then-existing ratesetting policy for M&I Water, consistent with the  
556 SJRRSA, and such ratesetting policies shall be amended, modified, or superseded only through a  
557 public notice and comment procedure; (ii) applicable Federal Reclamation law and associated  
558 rules and regulations, or policies; and (iii) other applicable provisions of this Contract.

559 (1) The Contractor shall pay the United States as provided for in this  
560 Article of this Contract for the Delivered Water at Rates and Charges determined in accordance  
561 with policies for Irrigation Water and M&I Water. The Contractor's Rates shall be established to  
562 recover its estimated reimbursable costs included in the O&M component of the Rate and  
563 amounts established to recover other charges and deficits, other than the construction costs. The  
564 Rates for O&M costs and Charges shall be adjusted, as appropriate, in accordance with the  
565 provisions of the SJRRSA.

566 (2) Omitted.

567 (A) Omitted.

568 (B) Project construction costs or other capitalized costs

569 attributable to capital additions to the Project incurred after the effective date of this Contract or

570 that are not reflected in the schedules referenced in Exhibits "C-1" and "C-2" and properly

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

572 as required by law. Consistent with Federal Reclamation law, interest shall continue to accrue

573 on the M&I portion of unpaid Project construction costs or other capitalized cost assigned to the

574 Contractor until such costs are paid. Increases or decreases in Project construction costs or other

575 capitalized costs assigned to the Contractor caused solely by annual adjustment of Project

576 construction costs or other capitalized costs assigned to each Central Valley Project contractor by

577 the Secretary shall not be considered in determining the amounts to be paid pursuant to this

578 subdivision (a)(2)(B), but will be considered under subdivision (b) of this Article. A separate

579 repayment agreement shall be established by the Contractor and the Contracting Officer to

580 accomplish repayment of all additional Project construction costs or other capitalized costs

581 assigned to the Contractor within the timeframe prescribed by the SJRRSA subject to the

582 following:

583 (1) If the collective annual Project construction costs or

584 other capitalized costs that are incurred after the effective date of this Contract and properly

585 assignable to the contractors are less than \$5,000,000, then the portion of such costs properly

586 assignable to the Contractor shall be repaid in not more than five (5) years after notification of

587 the allocation. This amount is the result of a collective annual allocation of Project construction

588 costs to the contractors exercising contract conversions; Provided, That the reference to the  
589 amount of \$5,000,000 shall not be a precedent in any other context.

590 (2) If the collective annual Project construction costs or  
591 other capitalized costs that are incurred after the effective date of this Contract and properly  
592 assignable to the contractors are \$5,000,000 or greater, then the portion of such costs properly  
593 assignable to the Contractor shall be repaid as provided by applicable Federal Reclamation law.  
594 This amount is the result of a collective annual allocation of Project construction costs to the  
595 contractors exercising contract conversions; Provided, That the reference to the amount of  
596 \$5,000,000 shall not be a precedent in any other context.

597 (b) Consistent with Section 10010(b) of the SJRRSA, following a final cost  
598 allocation by the Secretary upon completion of the construction of the Central Valley Project, the  
599 amounts paid by the Contractor shall be subject to adjustment to reflect the effect of any  
600 reallocation of Project construction costs or other capitalized costs assigned to the Contractor  
601 that may have occurred between the determination of Contractor's Existing Capital Obligation  
602 and the final cost allocation. In the event that the final cost allocation, as determined by the  
603 Secretary, indicates that the costs properly assignable to the Contractor, as determined by the  
604 Contracting Officer, are greater than the Existing Capital Obligation and other amounts of  
605 Project construction costs or other capitalized costs paid by the Contractor, then the Contractor  
606 shall be obligated to pay the remaining allocated costs. The term of such additional repayment  
607 contract shall be no less than one (1) year and no more than ten (10) years, however, mutually  
608 agreeable provisions regarding the rate of repayment of such amount may be developed by the

609 parties. In the event that the final cost allocation, as determined by the Secretary, indicates that  
610 the costs properly assignable to the Contractor, as determined by the Contracting Officer, are less  
611 than the Existing Capital Obligation and other amounts of Project construction costs or other  
612 capitalized costs paid by the Contractor, then the Contracting Officer shall credit such  
613 overpayment as an offset against any outstanding or future obligation of the Contractor,  
614 consistent with the SJRRSA. This Contract shall be implemented in a manner consistent with  
615 Section 10010(f) of the SJRRSA.

616 (c) Prior to July 1 of each Calendar Year, the Contracting Officer shall  
617 provide the Contractor an estimate of the Charges for Project Water that will be applied to the  
618 period October 1, of the current Calendar Year, through September 30, of the following Calendar  
619 Year, and the basis for such estimate. The Contractor shall be allowed not less than two (2)  
620 months to review and comment on such estimates. On or before September 15 of each Calendar  
621 Year, the Contracting Officer shall notify the Contractor in writing of the Charges to be in effect  
622 during the period October 1 of the current Calendar Year, through September 30 of the following  
623 Calendar Year, and such notification shall revise Exhibit "B". Charges shall be subject to  
624 reduction consistent with the SJRRSA based upon the average annual delivery amount agreed to  
625 by the Contracting Officer and the Contractor.

626 (1) For the years 2020 through 2039 inclusive, Charges shall reflect  
627 the reduction on a per acre-foot basis consistent with Section 10010(d)(1) of the SJRRSA.  
628 Exhibit "D" sets forth the reduction in Charges to offset the Financing Costs as prescribed in  
629 Section 10010(d)(1) of the SJRRSA; Provided, That if the Secretary determines such Charges are

630 otherwise needed, an equivalent reduction will be made to O&M costs consistent with such  
631 provisions of the SJRRSA. Consistent with Section 10010(d)(1) of the SJRRSA and as shown in  
632 Exhibit "D", the Friant Surcharge reduction has been calculated based upon the anticipated  
633 average annual water deliveries, for the purpose of this reduction only, mutually agreed upon by  
634 the Secretary and the Contractor for the period from January 1, 2020 through December 31,  
635 2039. The Friant Surcharge reduction shall remain fixed and shall only be applied to Water  
636 Delivered pursuant to this Contract to which the Friant Surcharge applies (including but not  
637 limited to water transferred, banked, or exchanged), commencing on January 1, 2020 until such  
638 volume of Water Delivered equals 1,552,690 acre-feet or December 31, 2039, whichever occurs  
639 first.

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

645 (d) Prior to October 1 of each Calendar Year, the Contracting Officer shall  
646 make available to the Contractor an estimate of the Rates for Project Water for the following  
647 Year and the computations and cost allocations upon which those Rates are based. The  
648 Contractor shall be allowed not less than two (2) months to review and comment on such  
649 computations and cost allocations. By December 31 of each Calendar Year, the Contracting  
650 Officer shall provide the Contractor with the final Rates to be in effect for the upcoming Year,

651 and such notification shall revise Exhibit "B". The O&M component of the Rate may be  
652 reduced as provided in the SJRRSA.

653 (e) At the time the Contractor submits the initial schedule for the delivery of  
654 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the  
655 Contractor shall make an advance payment to the United States equal to the total amount payable  
656 pursuant to the applicable Rate(s) set under subdivision (a) of this Article of this Contract, for the  
657 Project Water scheduled to be delivered pursuant to this Contract during the first two (2)  
658 calendar months of the Year. Before the end of the first month and before the end of each  
659 calendar month thereafter, the Contractor shall make an advance payment to the United States, at  
660 the Rate(s) set under subdivision (a) of this Article of this Contract, for the Water Scheduled to  
661 be delivered pursuant to this Contract during the second month immediately following.  
662 Adjustments between advance payments for Water Scheduled and payments at Rates due for  
663 Water Delivered shall be made before the end of the following month; Provided, That any  
664 revised schedule submitted by the Contractor pursuant to Article 4 of this Contract which  
665 increases the amount of Water Delivered pursuant to this Contract during any month shall be  
666 accompanied with appropriate advance payment, at the Rates then in effect, to assure that Project  
667 Water is not delivered to the Contractor in advance of such payment. In any month in which the  
668 quantity of Water Delivered to the Contractor pursuant to this Contract equals the quantity of  
669 Water Scheduled and paid for by the Contractor, no additional Project Water shall be delivered  
670 to the Contractor unless and until an advance payment at the Rates then in effect for such  
671 additional Project Water is made. Final adjustment between the advance payments for the Water

672 Scheduled and payments for the quantities of Water Delivered during each Year pursuant to this  
673 Contract shall be made as soon as practicable but no later than April 30th of the following Year,  
674 or sixty (60) days after the delivery of Project Water carried over under subdivision (g) of Article  
675 3 of this Contract if such water is not delivered by the last day of February.

676 (f) The Contractor shall also make a payment in addition to the Rate(s) in  
677 subdivision (e) of this Article of this Contract to the United States for Water Delivered, at the  
678 Charges then in effect, before the end of the month following the month of delivery. The  
679 payments shall be consistent with the quantities of Irrigation Water and M&I Water Delivered as  
680 shown in the water delivery report for the subject month prepared by the Contracting Officer.  
681 Such water delivery report shall be the basis for payment of Charges by the Contractor, and shall  
682 be provided to the Contractor by the Contracting Officer (as applicable) within five (5) days after  
683 the end of the month of delivery. The water delivery report shall be deemed a bill basis for  
684 payment of Charges for Water Delivered. Adjustment for overpayment or underpayment of  
685 Charges shall be made through the adjustment of payments due to the United States for Charges  
686 for the next month. Any amount to be paid for past due payment of Charges shall be computed  
687 pursuant to Article 21 of this Contract.

688 (g) The Contractor shall pay for any Water Delivered under subdivision (d),  
689 (f), or (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to  
690 applicable statutes, associated regulations, any applicable provisions of guidelines or ratesetting  
691 policies; Provided, That the Rate for Water Delivered under subdivision (d) of Article 3 of this

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

694 (h) Payments to be made by the Contractor to the United States under this  
695 Contract may be paid from any revenues available to the Contractor.

696 (i) All revenues received by the United States from the Contractor relating to  
697 the delivery of Project Water or the delivery of non-project water through Project facilities shall  
698 be allocated and applied in accordance with Federal Reclamation law and the associated rules or  
699 regulations, the then-existing Project Ratesetting policies for M&I Water or Irrigation Water, and  
700 consistent with the SJRRSA.

701 (j) The Contracting Officer shall keep its accounts, pertaining to the  
702 administration of the financial terms and conditions of its long-term contracts, in accordance  
703 with applicable Federal standards so as to reflect the application of Project costs and revenues.  
704 The Contracting Officer shall, each Year upon request of the Contractor, provide to the  
705 Contractor a detailed accounting of all Project and Contractor expense allocations, the  
706 disposition of all Project and Contractor revenues, and a summary of all water delivery  
707 information. The Contracting Officer and the Contractor shall enter into good faith negotiations  
708 to resolve any discrepancies or disputes relating to accountings, reports, or information.

709 (k) The parties acknowledge and agree that the efficient administration of this  
710 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,  
711 policies, and procedures used for establishing Rates, Charges, and/or for making and allocating  
712 payments, other than those set forth in this Article of this Contract, may be in the mutual best

713 interest of the parties, it is expressly agreed that the parties may enter into agreements to modify  
714 the mechanisms, policies, and procedures for any of those purposes while this Contract is in  
715 effect without amending this Contract.

716 (l) (1) Omitted.

717 (2) Omitted.

718 (3) Omitted.

719 (m) Rates under the respective ratesetting policies will be established to  
720 recover only reimbursable O&M (including any deficits) costs of the Project, as those terms are  
721 used in the then-existing Project ratesetting policies, and consistent with the SJRRSA, and  
722 interest, where appropriate, except in instances where a minimum Rate is applicable in  
723 accordance with the relevant Project ratesetting policy. Changes of significance in practices  
724 which implement the Contracting Officer's ratesetting policies will not be implemented until the  
725 Contracting Officer has provided the Contractor an opportunity to discuss the nature, need, and  
726 impact of the proposed change.

727 (n) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the  
728 CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates  
729 adjusted upward or downward to reflect the changed costs of delivery (if any) incurred by the  
730 Contracting Officer in the delivery of the transferred Project Water to the transferee's point of  
731 delivery in accordance with the then-existing Central Valley Project Ratesetting Policy.

732                   NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

733                   8.       The Contractor and the Contracting Officer concur that, as of the effective date of  
734 this Contract, the Contractor has no non-interest bearing operation and maintenance deficits and  
735 therefore shall have no further liability.

736                                   RECOVERED WATER ACCOUNT

737                   9.       (a)     Notwithstanding any other provisions of this Contract, water delivered to  
738 the Contractor under its Recovered Water Account as provided at Paragraph 16(b) of the  
739 Settlement and affirmed by Section 10004(a)(5) of the SJRRSA shall be at the total cost of  
740 \$10.00 per acre foot. Recovered Water Account water provided to the Contractor shall be  
741 administered at a priority for delivery lower than Class 2 Water and higher than Section 215  
742 Water.

743                                   (b)     The manner in which the Recovered Water Account will be administered  
744 will be developed in accordance with subdivision (k) of Article 7 of this Contract, the SJRRSA,  
745 and Paragraph 16 of the Settlement.

746                                   SALES, TRANSFERS, AND EXCHANGES OF WATER

747                   10.     (a)     The right to receive Project Water provided for in this Contract may be  
748 sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of  
749 California if such sale, transfer, or exchange is authorized by applicable Federal and State laws,  
750 and applicable guidelines or regulations then in effect. Furthermore, The Contractor may  
751 continue to exchange Project Water for water from the Cross Valley Division contractors in the  
752 manner historically carried out with the approval of the Contracting Officer under Contract No.

753 14-06-200-229A. No sale, transfer, or exchange of Project Water under this Contract may take  
754 place without the prior written approval of the Contracting Officer, except as provided for in  
755 subdivisions (b) and (c) of this Article of this Contract. No such Project Water sales, transfers,  
756 or exchanges shall be approved, where approval is required, absent compliance with appropriate  
757 environmental documentation including but not limited to the National Environmental Policy  
758 Act and the Endangered Species Act. Such environmental documentation must include, as  
759 appropriate, an analysis of groundwater impacts and economic and social effects, including  
760 environmental justice, of the proposed Project Water sales, transfers and exchanges on both the  
761 transferor/exchanger and transferee/exchange recipient.

762 (b) In order to facilitate efficient water management by means of Project  
763 Water sales, transfers, or exchanges of the type historically carried out among Project  
764 Contractors located within the same geographical area and to allow the Contractor to participate  
765 in an accelerated water transfer program, the Contracting Officer has prepared, as appropriate,  
766 necessary environmental documentation including, but not limited to, the National  
767 Environmental Policy Act and the Endangered Species Act analyzing annual Project Water sales,  
768 transfers, or exchanges among Contractors within the same geographical area and the  
769 Contracting Officer has determined that such Project Water sales, transfers, and exchanges  
770 comply with applicable law.

771 (c) Project Water sales, transfers, and exchanges analyzed in the  
772 environmental documentation referenced in subdivision (b) of this Article of this Contract, shall  
773 be conducted with advance notice to the Contracting Officer and the Contracting Officer's

774 written acknowledgement of the transaction, but shall not require prior written approval by the  
775 Contracting Officer.

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

788 (e) The environmental documentation and the Contracting Officer's  
789 compliance determination for transactions described in subdivision (b) of this Article of this  
790 Contract shall be reviewed every five (5) years and updated, as necessary, prior to the expiration  
791 of the then-existing five (5) year period. All subsequent environmental documentation shall  
792 include an alternative to evaluate not less than the quantity of Project Water historically sold,  
793 transferred, or exchanged within the same geographical area.

794 (f) Consistent with Section 10010(e)(I) of the SJRRSA, any agreement  
795 providing for sale, transfer, or exchange of Project Water that is not used for interim flows or  
796 restoration flows pursuant to Paragraphs 13 and 15 of the Settlement, shall be deemed to satisfy  
797 the requirements of CVPIA section 3405(a)(1)(A) and (I); Provided, That such sales, transfers, or  
798 exchanges comply with sub-division (f)(1) and (f)(2) below.

799 (1) Project Water sales, transfers, and exchanges conducted under the  
800 provisions of subdivision (f) of this Article of this Contract shall not require the Contracting  
801 Officer's concurrence as to compliance with CVPIA 3405(a)(1)(A) and (I); Provided, That the  
802 Contractor shall, for Project Water sales, transfers, or exchanges, with a term greater than one (1)  
803 year, provide ninety (90) days written advance notification to the Contracting Officer and  
804 similarly thirty (30) days written advance notification of any Project Water sale, transfer, or  
805 exchange with a term of less than one (1) year. The Contracting Officer shall promptly make  
806 such notice publicly available.

807 (2) The Contractor's thirty (30) days or ninety (90) days advance  
808 written notification pursuant to subdivision (f)(1) of this Article of this Contract shall explain  
809 how the proposed Project Water sales, transfers, or exchanges are intended to reduce, avoid, or  
810 mitigate impacts to Project Water deliveries caused by interim or restoration flows or is  
811 otherwise intended to facilitate the Water Management Goal as described in the SJRRSA. The  
812 Contracting Officer shall promptly make such notice publicly available.

813 (3) In addition, the Contracting Officer shall, at least annually, make  
814 available publicly a compilation of the number of Project Water sales, transfers, and exchange

815 agreements implemented in accordance with sub-divisions (f)(1) and (f)(2) of this Article of this  
816 Contract.

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

822 (g) Notwithstanding any Additional Capital Obligation that may later be  
823 established, in the case of a sale or transfer of Irrigation Water to another contractor which is  
824 otherwise subject to the acreage limitations, reporting, and Full Cost pricing provisions of the  
825 Reclamation Reform Act of 1982, as amended, hereinafter referred to as the RRA, such sold or  
826 transferred Irrigation Water shall not be subject to such RRA provisions, however, in the case of  
827 a sale or transfer of Irrigation Water to the Contractor from another contractor which is subject to  
828 RRA provisions, such RRA provisions shall apply to delivery of such water.

829 APPLICATION OF PAYMENTS AND ADJUSTMENTS

830 11. (a) The amount of any overpayment by the Contractor of the Contractor's  
831 O&M, Capital, and deficit (if any) obligations for the Year shall be applied first to any current  
832 liabilities of the Contractor arising out of this Contract then due and payable. Overpayments of  
833 more than One Thousand Dollars (\$1,000) shall be refunded at the Contractor's request. In lieu  
834 of a refund, any amount of such overpayment, at the option of the Contractor, may be credited  
835 against amounts to become due to the United States by the Contractor. With respect to

836 overpayment, such refund or adjustment shall constitute the sole remedy of the Contractor or  
837 anyone having or claiming to have the right to the use of any of the Project Water supply  
838 provided for herein. All credits and refunds of overpayments shall be made within thirty (30)  
839 days of the Contracting Officer obtaining direction as to how to credit or refund such  
840 overpayment in response to the notice to the Contractor that it has finalized the accounts for the  
841 Year in which the overpayment was made.

842 (b) All advances for miscellaneous costs incurred for work requested by the  
843 Contractor pursuant to Article 26 of this Contract shall be adjusted to reflect the actual costs  
844 when the work has been completed. If the advances exceed the actual costs incurred, the  
845 difference will be refunded to the Contractor. If the actual costs exceed the Contractor's  
846 advances, the Contractor will be billed for the additional costs pursuant to Article 26 of this  
847 Contract.

848 TEMPORARY REDUCTIONS—RETURN FLOWS

849 12. (a) The Contracting Officer shall make all reasonable efforts to optimize  
850 delivery of the Contract Total subject to: (i) the authorized purposes and priorities of the Project;  
851 (ii) the requirements of Federal law and the Settlement; and (iii) the obligations of the United  
852 States under existing contracts, or renewals thereof, providing for water deliveries from the  
853 Project.

854 (b) The Contracting Officer or Operating Non-Federal Entity may temporarily  
855 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for  
856 the purposes of investigation, inspection, maintenance, repair, or replacement of any of the

857 Project facilities or any part thereof necessary for the delivery of Project Water to the Contractor,  
858 but so far as feasible the Contracting Officer or Operating Non-Federal Entity will give the  
859 Contractor due notice in advance of such temporary discontinuance or reduction, except in case  
860 of emergency, in which case no notice need be given; Provided, That the United States shall use  
861 its best efforts to avoid any discontinuance or reduction in such service. Upon resumption of  
862 service after such reduction or discontinuance, and if requested by the Contractor, the United  
863 States will, if possible, deliver the quantity of Project Water which would have been delivered  
864 hereunder in the absence of such discontinuance or reduction.

865 (c) The United States reserves the right to all seepage and return flow water  
866 derived from Water Delivered to the Contractor hereunder which escapes or is discharged  
867 beyond the Contractor's Service Area; Provided, That this shall not be construed as claiming for  
868 the United States any right as seepage or return flow to water being used pursuant to this  
869 Contract for surface irrigation or underground storage either being put to reasonable and  
870 beneficial use pursuant to this Contract within the Contractor's Service Area by the Contractor or  
871 those claiming by, through, or under the Contractor. For purposes of this subdivision,  
872 groundwater recharge, groundwater banking and all similar groundwater activities will be  
873 deemed to be underground storage.

874 CONSTRAINTS ON THE AVAILABILITY OF WATER

875 13. (a) In its operation of the Project, the Contracting Officer will use all  
876 reasonable means to guard against a Condition of Shortage in the quantity of water to be made  
877 available to the Contractor pursuant to this Contract. In the event the Contracting Officer

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

880 (b) If there is a Condition of Shortage because of errors in physical operations  
881 of the Project, drought, other physical causes beyond the control of the Contracting Officer or  
882 actions taken by the Contracting Officer to meet legal obligations, including but not limited to  
883 obligations pursuant to the Settlement then, except as provided in subdivision (a) of Article 19 of  
884 this Contract, no liability shall accrue against the United States or any of its officers, agents, or  
885 employees for any damage, direct or indirect, arising therefrom.

886 (c) The United States shall not execute contracts which together with this  
887 Contract, shall in the aggregate provide for furnishing Class 1 Water in excess of 800,000  
888 acre-feet per Year or Class 2 Water in excess of 1,401,475 acre-feet per Year; Provided, That,  
889 subject to subdivision (l) of Article 3 of this Contract, the limitation placed on Class 2 Water  
890 contracts shall not prohibit the United States from entering into temporary contracts of one year  
891 or less in duration for delivery of Project Water to other entities if such water is not necessary to  
892 meet the schedules as may be submitted by all Friant Division Project Contractors entitled to  
893 receive Class 1 Water and/or Class 2 Water under their contracts. Nothing in this subdivision  
894 shall limit the Contracting Officer's ability to take actions that result in the availability of new  
895 water supplies to be used for Project purposes and allocating such new supplies; Provided, That  
896 the Contracting Officer shall not take such actions until after consultation with the Friant  
897 Division Project Contractors.

898 (d) The Contracting Officer shall not deliver any Class 2 Water pursuant to  
899 this or any other contract heretofore or hereafter entered into any Year unless and until the  
900 Contracting Officer determines that the cumulative total quantity of Class 1 Water specified in  
901 subdivision (c) of this Article of this Contract will be available for delivery in said Year. If the  
902 Contracting Officer determines there is or will be a shortage in any Year in the quantity of  
903 Class 1 Water available for delivery, the Contracting Officer shall apportion the available Class 1  
904 Water among all Contractors entitled to receive such water that will be made available at Friant  
905 Dam in accordance with the following:

906 (1) A determination shall be made of the total quantity of Class 1  
907 Water at Friant Dam which is available for meeting Class 1 Water contractual commitments, the  
908 amount so determined being herein referred to as the available supply.

909 (2) The total available Class 1 supply shall be divided by the Class 1  
910 Water contractual commitments, the quotient thus obtained being herein referred to as the  
911 Class 1 apportionment coefficient.

912 (3) The total quantity of Class 1 Water under Article 3 of this Contract  
913 shall be multiplied by the Class 1 apportionment coefficient and the result shall be the quantity of  
914 Class 1 Water required to be delivered by the Contracting Officer to the Contractor for the  
915 respective Year, but in no event shall such amount exceed the total quantity of Class 1 Water  
916 specified in subdivision (a) of Article 3 of this Contract.

917 (e) If the Contracting Officer determines there is less than the quantity of  
918 Class 2 Water which the Contractor otherwise would be entitled to receive pursuant to Article 3

919 of this Contract, the quantity of Class 2 Water which shall be furnished to the Contractor by the  
920 Contracting Officer will be determined in the manner set forth in paragraphs (1), (2), and (3), of  
921 subdivision (d) of this Article of this Contract substituting the term "Class 2" for the term "Class  
922 1."

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

930 UNAVOIDABLE GROUNDWATER PERCOLATION

931 14. Omitted.

932 ACREAGE LIMITATION

933 15. (a) The Contractor has paid the Repayment Obligation, and notwithstanding  
934 any Additional Capital Obligation that may later be established, the provisions of section 213(a)  
935 and (b) of the RRA shall apply to lands in the Contractor's Service Area, with the effect that  
936 acreage limitations, reporting, and Full Cost pricing provisions of the RRA shall no longer apply  
937 to lands in the Contractor's Service Area with respect to Water Delivered pursuant to this  
938 Contract. Reclamation will conduct a final water district review for the purpose of determining  
939 compliance with the acreage limitations, reporting, and Full Cost pricing provisions of the RRA

940 from the date of the last water district review until the date when payment to Reclamation of the  
941 Repayment Obligation was completed.

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

955 COMPLIANCE WITH FEDERAL RECLAMATION LAWS

956 16. (a) The parties agree that the delivery of water or the use of Federal facilities  
957 pursuant to this Contract is subject to Federal Reclamation law, as amended and supplemented,  
958 and the rules and regulations promulgated by the Secretary of the Interior under Federal  
959 Reclamation law.

960 (b) The terms of this Contract are subject to the Settlement and the SJRRSA.  
961 Nothing in this Contract shall be interpreted to limit or interfere with the full implementation of  
962 the Settlement and the SJRRSA.

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PROTECTION OF WATER AND AIR QUALITY

17. (a) Project facilities used to make available and deliver water to the Contractor shall be operated and maintained in the most practical manner to maintain the quality of the water at the highest level possible as determined by the Contracting Officer: *Provided, That* the United States does not warrant the quality of the water delivered to the Contractor and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to the Contractor.

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

(c) This article shall not affect or alter any legal obligations of the Secretary to provide drainage or other discharge services.

WATER ACQUIRED BY THE CONTRACTOR  
OTHER THAN FROM THE UNITED STATES

18. (a) Omitted.

(b) Notwithstanding any Additional Capital Obligation that may later be established, water or water rights now owned or hereafter acquired by the Contractor other than from the United States pursuant to this Contract and Irrigation Water furnished pursuant to the terms of this Contract may be simultaneously transported through the same distribution facilities of the Contractor without the payment of fees to the United States and without application of Federal Reclamation law to Water Delivered pursuant to this Contract or to lands which receive Water Delivered to Contractor pursuant to this Contract.

(c) Water or water rights now owned or hereafter acquired by the Contractor, other than from the United States or adverse to the Project or its contractors (i.e., non-project

991 water), may be stored, conveyed and/or diverted through Project facilities, other than Friant  
992 Division Facilities, subject to the completion of appropriate environmental documentation, with  
993 the approval of the Contracting Officer and the execution of any contract determined by the  
994 Contracting Officer to be necessary, consistent with the following provisions:

995 (1) The Contractor may introduce non-project water into Project  
996 facilities and deliver said water to lands within the Contractor's Service Area subject to payment  
997 to the United States and/or to any applicable Operating Non-Federal Entity of an appropriate rate  
998 as determined by the Contracting Officer. In addition, if electrical power is required to pump  
999 non-project water, the Contractor shall be responsible for obtaining the necessary power and  
1000 paying the necessary charges therefor.

1001 (2) Delivery of such non-project water in and through Project facilities  
1002 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project  
1003 purposes as determined by the Contracting Officer; (ii) reduce the quantity or quality of water  
1004 available to other Project Contractors; (iii) interfere with the delivery of contractual water  
1005 entitlements to any other Project Contractors; (iv) interfere with the physical maintenance of the  
1006 Project facilities; or (v) result in the United States incurring any liability or unreimbursed costs  
1007 or expenses thereby.

1008 (3) Neither the United States nor the Operating Non-Federal Entity  
1009 shall be responsible for control, care or distribution of the non-project water before it is  
1010 introduced into or after it is delivered from the Project facilities. The Contractor hereby releases  
1011 and agrees to defend and indemnify the United States and the Operating Non-Federal Entity, and

1012 their respective officers, agents, and employees, from any claim for damage to persons or  
1013 property, direct or indirect, resulting from Contractor's diversion or extraction of non-project  
1014 water from any source.

1015 (4) Diversion of such non-project water into Project facilities shall be  
1016 consistent with all applicable laws, and if involving groundwater, consistent with any  
1017 groundwater management plan for the area from which it was extracted.

1018 (5) After Project purposes are met, as determined by the Contracting  
1019 Officer, the United States and the Contractor shall share priority to utilize the remaining capacity  
1020 of the facilities declared to be available by the Contracting Officer for conveyance and  
1021 transportation of non-project water prior to any such remaining capacity being made available to  
1022 non-project contractors.

1023 (d) Non-project water may be stored, conveyed and/or diverted through Friant  
1024 Division Facilities, subject to the prior completion of appropriate environmental documentation  
1025 and approval of the Contracting Officer without execution of a separate contract, consistent with  
1026 subdivisions (c)(1) through (c)(5) of this Article and any other condition determined to be  
1027 appropriate by the Contracting Officer.

1028 OPINIONS AND DETERMINATIONS

1029 19. (a) Where the terms of this Contract provide for actions to be based upon the  
1030 opinion or determination of either party to this Contract, said terms shall not be construed as  
1031 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or  
1032 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly

1033 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,  
1034 or unreasonable opinion or determination. Each opinion or determination by either party shall be  
1035 provided in a timely manner. Nothing in this Article of this Contract is intended to or shall affect  
1036 or alter the standard of judicial review applicable under Federal law to any opinion or  
1037 determination implementing a specific provision of Federal law embodied in statute or  
1038 regulation.

1039 (b) The Contracting Officer shall have the right to make determinations  
1040 necessary to administer this Contract that are consistent with the provisions of this Contract, the  
1041 laws of the United States and the State of California, and the rules and regulations promulgated  
1042 by the Secretary. Such determinations shall be made in consultation with the Contractor to the  
1043 extent reasonably practicable.

1044 COORDINATION AND COOPERATION

1045 20. (a) In order to further their mutual goals and objectives, the Contracting  
1046 Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and  
1047 with other affected Project Contractors, in order to improve the operation and management of the  
1048 Project. The communication, coordination, and cooperation regarding operations and  
1049 management shall include, but not limited to, any action which will or may materially affect the  
1050 quantity or quality of Project Water supply, the allocation of Project Water supply, and Project  
1051 financial matters including, but not limited to, budget issues. The communication, coordination,  
1052 and cooperation provided for hereunder shall extend to all provisions of this Contract. Each

1053 party shall retain exclusive decision making authority for all actions, opinions, and  
1054 determinations to be made by the respective party.

1055 (b) It is the intent of the Secretary to improve water supply reliability. To  
1056 carry out this intent:

1057 (1) The Contracting Officer will, at the request of the Contractor,  
1058 assist in the development of integrated resource management plans for the Contractor. Further,  
1059 the Contracting Officer will, as appropriate, seek authorizations for implementation of  
1060 partnerships to improve water supply, water quality, and reliability.

1061 (2) The Secretary will, as appropriate, pursue program and project  
1062 implementation and authorization in coordination with Project Contractors to improve the water  
1063 supply, water quality, and reliability of the Project for all Project purposes.

1064 (3) The Secretary will coordinate with Project Contractors and the  
1065 State of California to seek improved water resource management.

1066 (4) The Secretary will coordinate actions of agencies within the  
1067 Department of the Interior that may impact the availability of water for Project purposes.

1068 (5) The Contracting Officer shall periodically, but not less than  
1069 annually, hold division level meetings to discuss Project operations, division level water  
1070 management activities, and other issues as appropriate.

1071 (c) Without limiting the contractual obligations of the Contracting Officer  
1072 hereunder, nothing in this Contract shall be construed to limit or constrain the Contracting  
1073 Officer's ability to communicate, coordinate, and cooperate with the Contractor or other

1074 interested stakeholders or to make decisions in a timely fashion as needed to protect health,  
1075 safety, physical integrity of structures or facilities, or the Contracting Officer's ability to comply  
1076 with applicable laws.

1077 CHARGES FOR DELINQUENT PAYMENTS

1078 21. (a) The Contractor shall be subject to interest, administrative and penalty  
1079 charges on delinquent installments or payments. When a payment is not received by the due  
1080 date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond  
1081 the due date. When a payment becomes sixty (60) days delinquent, the Contractor shall pay an  
1082 administrative charge to cover additional costs of billing and processing the delinquent payment.  
1083 When a payment is delinquent ninety (90) days or more, the Contractor shall pay an additional  
1084 penalty charge of six (6) percent per year for each day the payment is delinquent beyond the due  
1085 date. Further, the Contractor shall pay any fees incurred for debt collection services associated  
1086 with a delinquent payment.

1087 (b) The interest charge rate shall be the greater of the rate prescribed quarterly  
1088 in the Federal Register by the Department of the Treasury for application to overdue payments,  
1089 or the interest rate of one-half of one (0.5) percent per month prescribed by Section 6 of the  
1090 Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be  
1091 determined as of the due date and remain fixed for the duration of the delinquent period.

1092 (c) When a partial payment on a delinquent account is received, the amount  
1093 received shall be applied, first to the penalty, second to the administrative charges, third to the  
1094 accrued interest, and finally to the overdue payment.

1095 EQUAL EMPLOYMENT OPPORTUNITY

1096 22. During the performance of this Contract, the Contractor agrees as follows:

1097 (a) The Contractor will not discriminate against any employee or applicant for  
1098 employment because of race, color, religion, sex, disability, or national origin. The Contractor  
1099 will take affirmative action to ensure that applicants are employed, and that employees are  
1100 treated during employment, without regard to their race, color, religion, sex, disability, or  
1101 national origin. Such action shall include, but not be limited to the following: employment,  
1102 upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination;  
1103 rates of pay or other forms of compensation; and selection for training, including apprenticeship.  
1104 The Contractor agrees to post in conspicuous places, available to employees and applicants for  
1105 employment, notices to be provided by the Contracting Officer setting forth the provisions of this  
1106 nondiscrimination clause.

1107 (b) The Contractor will, in all solicitations or advertisements for employees  
1108 placed by or on behalf of the Contractor, state that all qualified applicants will receive  
1109 consideration for employment without regard to race, color, religion, sex, disability, or national  
1110 origin.

1111 (c) The Contractor will send to each labor union or representative of workers  
1112 with which it has a collective bargaining agreement or other contract or understanding, a notice,  
1113 to be provided by the Contracting Officer, advising the labor union or workers' representative of  
1114 the Contractor's commitments under Section 202 of Executive Order 11246 of September 24,  
1115 1965, and shall post copies of the notice in conspicuous places available to employees and  
1116 applicants for employment.

1117 (d) The Contractor will comply with all provisions of Executive Order No.  
1118 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary  
1119 of Labor.

1120 (e) The Contractor will furnish all information and reports required by  
1121 Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the  
1122 Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and  
1123 accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to  
1124 ascertain compliance with such rules, regulations, and orders.

1125 (f) In the event of the Contractor's noncompliance with the nondiscrimination  
1126 clauses of this contract or with any of such rules, regulations, or orders, this contract may be  
1127 canceled, terminated or suspended in whole or in part and the Contractor may be declared  
1128 ineligible for further Government contracts in accordance with procedures authorized in  
1129 Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and  
1130 remedies invoked as provided in Executive Order 11246 of September 24, 1965 or by rule,  
1131 regulation, or order of the Secretary of Labor, or as otherwise provided by law.

1132 (g) The Contractor will include the provisions of paragraphs (1) through (7) in  
1133 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the  
1134 Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24,  
1135 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor  
1136 will take such action with respect to any subcontract or purchase order as may be directed by the  
1137 Secretary of Labor as a means of enforcing such provisions, including sanctions for  
1138 noncompliance: *Provided, however,* that in the event the Contractor becomes involved in, or is  
1139 threatened with, litigation with a subcontractor or vendor as a result of such direction, the  
1140 Contractor may request the United States to enter into such litigation to protect the interests of  
1141 the United States.

1142                    GENERAL OBLIGATION—BENEFITS CONDITIONED UPON PAYMENT

1143                    23.    (a)    The obligation of the Contractor to pay the United States as provided in  
1144 this Contract is a general obligation of the Contractor notwithstanding the manner in which the  
1145 obligation may be distributed among the Contractor's water users and notwithstanding the  
1146 default of individual water users in their obligations to the Contractor.

1147                    (b)    The payment of charges becoming due hereunder is a condition precedent  
1148 to receiving benefits under this Contract. The United States shall not make water available to the  
1149 Contractor through Project facilities during any period in which the Contractor may be in arrears  
1150 in the advance payment of water rates due the United States. The Contractor shall not furnish  
1151 water made available pursuant to this Contract for lands or parties which are in arrears in the  
1152 advance payment of water rates levied or established by the Contractor.

1153                    (c)    With respect to subdivision (b) of this Article of this Contract, the  
1154 Contractor shall have no obligation to require advance payment for water rates which it levies.

1155                    COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1156                    24.    (a)    The Contractor shall comply with Title VI of the Civil Rights Act of 1964  
1157 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the  
1158 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights  
1159 laws, as well as with their respective implementing regulations and guidelines imposed by the  
1160 U.S. Department of the Interior and/or Bureau of Reclamation.

1161                    (b)    These statutes require that no person in the United States shall, on the  
1162 grounds of race, color, national origin, handicap, or age, be excluded from participation in, be  
1163 denied the benefits of, or be otherwise subjected to discrimination under any program or activity  
1164 receiving financial assistance from the Bureau of Reclamation. By executing this Contract, the  
1165 Contractor agrees to immediately take any measures necessary to implement this obligation,  
1166 including permitting officials of the United States to inspect premises, programs, and documents.

1167                    (c)    The Contractor makes this agreement in consideration of and for the  
1168 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other  
1169 Federal financial assistance extended after the date hereof to the Contractor by the Bureau of  
1170 Reclamation, including installment payments after such date on account of arrangements for  
1171 Federal financial assistance which were approved before such date. The Contractor recognizes  
1172 and agrees that such Federal assistance will be extended in reliance on the representations and  
1173 agreements made in this Article, and that the United States reserves the right to seek judicial  
1174 enforcement thereof.

1175

PRIVACY ACT COMPLIANCE

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25. Omitted.

1177

CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

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Contract, the Contractor shall pay to the United States, within sixty (60) days after receipt of a

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

1181

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

1182

associated with this Contract plus indirect costs in accordance with applicable Bureau of

1183

Reclamation policies and procedures. All such amounts referred to in this Article of this

1184

Contract shall not exceed the amount agreed to in writing in advance by the Contractor. This

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Article of this Contract shall not apply to costs for routine contract administration.

1186

WATER CONSERVATION

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

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

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shall be implementing an effective water conservation and efficiency program based on the

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Contractor's water conservation plan that has been determined by the Contracting Officer to

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meet the conservation and efficiency criteria for evaluating water conservation plans established

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under Federal law. The water conservation and efficiency program shall contain definite water

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conservation objectives, appropriate economically feasible water conservation measures, and

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time schedules for meeting those objectives. Continued Project Water delivery pursuant to this

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Contract shall be contingent upon the Contractor's continued implementation of such water

1196 conservation program. In the event the Contractor's water conservation plan or any revised  
1197 water conservation plan completed pursuant to subdivision (d) of this Article of this Contract  
1198 have not yet been determined by the Contracting Officer to meet such criteria, due to  
1199 circumstances which the Contracting Officer determines are beyond the control of the  
1200 Contractor, water deliveries shall be made under this Contract so long as the Contractor  
1201 diligently works with the Contracting Officer to obtain such determination at the earliest  
1202 practicable date, and thereafter the Contractor immediately begins implementing its water  
1203 conservation and efficiency program in accordance with the time schedules therein.

1204 (b) Should the amount of M&I Water Delivered pursuant to subdivision (a) of  
1205 Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the  
1206 Contractor shall implement the Best Management Practices identified by the time frames issued  
1207 by the California Urban Water Conservation Council for such M&I Water unless any such  
1208 practice is determined by the Contracting Officer to be inappropriate for the Contractor.

1209 (c) The Contractor shall submit to the Contracting Officer a report on the  
1210 status of its implementation of the water conservation plan on the reporting dates specified in the  
1211 then-existing conservation and efficiency criteria established under Federal law.

1212 (d) At five (5) -year intervals, the Contractor shall revise its water  
1213 conservation plan to reflect the then-existing conservation and efficiency criteria for evaluating  
1214 water conservation plans established under Federal law and submit such revised water  
1215 management plan to the Contracting Officer for review and evaluation. The Contracting Officer  
1216 will then determine if the water conservation plan meets Reclamation's then-existing

1217 conservation and efficiency criteria for evaluating water conservation plans established under  
1218 Federal law.

1219 (e) If the Contractor is engaged in direct groundwater recharge, such activity  
1220 shall be described in the Contractor's water conservation plan.

1221 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1222 28. Except as specifically provided in Article 18 of this Contract, the provisions of  
1223 this Contract shall not be applicable to or affect non-project water or water rights now owned or  
1224 hereafter acquired by the Contractor or any user of such water within the Contractor's Service  
1225 Area. Any such water shall not be considered Project Water under this Contract. In addition,  
1226 this Contract shall not be construed as limiting or curtailing any rights which the Contractor or  
1227 any water user within the Contractor's Service Area acquires or has available under any other  
1228 contract pursuant to Federal Reclamation law.

1229 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

1230 29. (a) The O&M of a portion of the Project facilities which serve the Contractor,  
1231 and responsibility for funding a portion of the costs of such O&M, have been transferred to the  
1232 Operating Non-Federal Entity by separate agreement between the United States and the  
1233 Operating Non-Federal Entity. That separate agreement shall not interfere with or affect the  
1234 rights or obligations of the Contractor or the United States hereunder.

1235 (b) The Contracting Officer has previously notified the Contractor in writing  
1236 that the O&M of a portion of the Project facilities which serve the Contractor has been  
1237 transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly

1238 to the Operating Non-Federal Entity, or to any successor approved by the Contracting Officer  
1239 under the terms and conditions of the separate agreement between the United States and the  
1240 Operating Non-Federal Entity described in subdivision (a) of this Article of this Contract, all  
1241 rates, charges or assessments of any kind, including any assessment for reserve funds, which the  
1242 Operating Non-Federal Entity or such successor determines, sets or establishes for (i) the O&M  
1243 of the portion of the Project facilities operated and maintained by the Operating Non-Federal  
1244 Entity or such successor, or (ii) the Friant Division's share of the operation, maintenance and  
1245 replacement costs for physical works and appurtenances associated with the Tracy Pumping  
1246 Plant, the Delta-Mendota Canal, the O'Neill Pumping/Generating Plant, the federal share of the  
1247 O'Neill Forebay, the Mendota Pool, and the federal share of San Luis Unit joint use conveyance  
1248 and conveyance pumping facilities. Such direct payments to the Operating Non-Federal Entity  
1249 or such successor shall not relieve the Contractor of its obligation to pay directly to the United  
1250 States the Contractor's share of the Project Rates and Charges, except to the extent the Operating  
1251 Non-Federal Entity collects payments on behalf of the United States in accordance with the  
1252 separate agreement identified in subdivision (a) of this Article of this Contract.

1253 (c) For so long as the O&M of any portion of the Project facilities serving the  
1254 Contractor is performed by the Operating Non-Federal Entity, or any successor thereto, the  
1255 Contracting Officer shall adjust those components of the Rates for Water Delivered under this  
1256 Contract representing the cost associated with the activity being performed by the Operating  
1257 Non-Federal Entity or its successor.

1258 (d) In the event the O&M of the Project facilities operated and maintained by  
 1259 the Operating Non-Federal Entity is re-assumed by the United States during the term of this  
 1260 Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the  
 1261 Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid by the  
 1262 Contractor for Project Water under this Contract representing the O&M costs of the portion of  
 1263 such Project facilities which have been re-assumed. The Contractor shall, thereafter, in the  
 1264 absence of written notification from the Contracting Officer to the contrary, pay the Rates and  
 1265 Charges specified in the revised Exhibit "B" directly to the United States in compliance with  
 1266 Article 7 of this Contract.

1267 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1268 30. The expenditure or advance of any money or the performance of any obligation of  
 1269 the United States under this Contract shall be contingent upon appropriation or allotment of  
 1270 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any  
 1271 obligations under this Contract. No liability shall accrue to the United States in case funds are  
 1272 not appropriated or allotted.

1273 BOOKS, RECORDS, AND REPORTS

1274 31. (a) The Contractor shall establish and maintain accounts and other books and  
 1275 records pertaining to administration of the terms and conditions of this Contract, including: the  
 1276 Contractor's financial transactions, water supply data, and Project land and right-of-way  
 1277 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use  
 1278 data; and other matters that the Contracting Officer may require. Reports thereon shall be  
 1279 furnished to the Contracting Officer in such form and on such date or dates as the Contracting  
 1280 Officer may require. Subject to applicable Federal laws and regulations, each party to this  
 1281 Contract shall have the right during office hours to examine and make copies of the other party's  
 1282 books and records relating to matters covered by this Contract.

1283 (b) Notwithstanding the provisions of subdivision (a) of this Article of this  
 1284 Contract, no books, records, or other information shall be requested from the Contractor by the

1285 Contracting Officer unless such books, records, or information are reasonably related to the  
1286 administration or performance of this Contract. Any such request shall allow the Contractor a  
1287 reasonable period of time within which to provide the requested books, records, or information.

1288 (c) At such time as the Contractor provides information to the Contracting  
1289 Officer pursuant to subdivision (a) of this Article of this Contract, a copy of such information  
1290 shall be provided to the Operating Non-Federal Entity.

1291 ASSIGNMENT LIMITED—SUCCESSORS AND ASSIGNS OBLIGATED

1292 32. (a) The provisions of this Contract shall apply to and bind the successors and  
1293 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest  
1294 therein shall be valid until approved in writing by the Contracting Officer.

1295 (b) The assignment of any right or interest in this Contract by either party  
1296 shall not interfere with the rights or obligations of the other party to this Contract absent the  
1297 written concurrence of said other party.

1298 (c) The Contracting Officer shall not unreasonably condition or withhold  
1299 approval of any proposed assignment.

1300 SEVERABILITY

1301 33. In the event that a person or entity who is neither (i) a party to a Project contract,  
1302 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor  
1303 (iii) an association or other form of organization whose primary function is to represent parties to  
1304 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or  
1305 enforceability of a provision included in this Contract and said person, entity, association, or  
1306 organization obtains a final court decision holding that such provision is legally invalid or

1307 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),  
1308 the parties to this Contract shall use their best efforts to (i) within thirty (30) days of the date of  
1309 such final court decision identify by mutual agreement the provisions in this Contract which  
1310 must be revised and (ii) within three (3) months thereafter promptly agree on the appropriate  
1311 revision(s). The time periods specified above may be extended by mutual agreement of the  
1312 parties. Pending the completion of the actions designated above, to the extent it can do so  
1313 without violating any applicable provisions of law, the United States shall continue to make the  
1314 quantities of Project Water specified in this Contract available to the Contractor pursuant to the  
1315 provisions of this Contract which were not found to be legally invalid or unenforceable in the  
1316 final court decision.

1317 RESOLUTION OF DISPUTES

1318 34. Should any dispute arise concerning any provisions of this Contract, or the  
1319 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to  
1320 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting  
1321 Officer referring any matter to Department of Justice, the party shall provide to the other party  
1322 thirty (30) days written notice of the intent to take such action; Provided, That such notice shall  
1323 not be required where a delay in commencing an action would prejudice the interests of the party  
1324 that intends to file suit. During the thirty (30) day notice period, the Contractor and the  
1325 Contracting Officer shall meet and confer in an attempt to resolve the dispute. Except as  
1326 specifically provided, nothing herein is intended to waive or abridge any right or remedy that the  
1327 Contractor or the United States may have.

1328

OFFICIALS NOT TO BENEFIT

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1330  
1331

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

1332

CHANGES IN CONTRACTOR'S SERVICE AREA

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1334  
1335

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

1336

(b) Within thirty (30) days of receipt of a request for such a change, the

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Contracting Officer will notify the Contractor of any additional information required by the

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Contracting Officer for processing said request, and both parties will meet to establish a mutually

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agreeable schedule for timely completion of the process. Such process will analyze whether the

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proposed change is likely to: (i) result in the use of Project Water contrary to the terms of this

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Contract; (ii) impair the ability of the Contractor to pay for Project Water furnished under this

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Contract or to pay for any Federally-constructed facilities for which the Contractor is

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responsible; and (iii) have an impact on any Project Water rights applications, permits, or

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licenses. In addition, the Contracting Officer shall comply with the National Environmental

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Policy Act and the Endangered Species Act. The Contractor will be responsible for all costs

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incurred by the Contracting Officer in this process, and such costs will be paid in accordance

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with Article 26 of this Contract.

1348

FEDERAL LAWS

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37. By entering into this Contract, the Contractor does not waive its rights to contest

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the validity or application in connection with the performance of the terms and conditions of this

1351 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with  
1352 the terms and conditions of this Contract unless and until relief from application of such Federal  
1353 law or regulation to the implementing provision of the Contract is granted by a court of  
1354 competent jurisdiction.

1355 EMERGENCY RESERVE FUND

1356 38. The Contractor and Contracting Officer acknowledge that the requirements to  
1357 establish and maintain a minimum reserve fund account to finance extraordinary O&M costs of  
1358 Friant Division Facilities is and will continue to be administered under Contract No.  
1359 8-07-20-X0356 titled Agreement To Transfer The Operation, Maintenance And Replacement  
1360 And Certain Financial And Administrative Activities Related To The Friant-Kern Canal And  
1361 Associated Works, dated March 1, 1998 as amended, supplemented, assigned, or renewed.

1362 MEDIUM FOR TRANSMITTING PAYMENT

1363 39. (a) All payments from the Contractor to the United States under this contract  
1364 shall be by the medium requested by the United States on or before the date payment is due. The  
1365 required method of payment may include checks, wire transfers, or other types of payment  
1366 specified by the United States.

1367 (b) Upon execution of the contract, the Contractor shall furnish the  
1368 Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose  
1369 for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising  
1370 out of the Contractor's relationship with the United States.

1371 NOTICES

1372 40. Any notice, demand, or request authorized or required by this Contract shall be  
1373 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or  
1374 delivered to the Area Manager, South-Central California Area Office, 1243 "N" Street, Fresno,  
1375 California 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered  
1376 to the Board of Directors of the Arvin-Edison Water Storage District, P.O. Box 174, Arvin,

1377 California 93203. The designation of the addressee or the address may be changed by notice  
1378 given in the same manner as provided in this Article of this Contract for other notices.

1379 CONFIRMATION OF CONTRACT

1380 41. The Contractor, after the execution of this Contract, shall promptly provide to the  
1381 Contracting Officer a decree of a court of competent jurisdiction of the State of California,  
1382 confirming the execution of this Contract. The Contractor shall furnish the United States a  
1383 certified copy of the final decree, the validation proceedings, and all pertinent supporting records  
1384 of the court approving and confirming this Contract, and decreeing and adjudging it to be lawful,  
1385 valid, and binding on the Contractor.

1386 CONTRACT DRAFTING CONSIDERATIONS

1387 42. Articles 1 through 15, subdivision (c) of Article 16, Articles 18 through 20,  
1388 subdivision (c) of Article 23, Articles 26 through 29, subdivisions (b) and (c) of Article 31,  
1389 subdivisions (b) and (c) of Article 32, Articles 33 through 34, subdivision (b) of Article 36, and  
1390 Articles 37 through 38 of this Contract have been drafted, negotiated, and reviewed by the  
1391 parties hereto, each of whom is sophisticated in the matters to which this Contract pertains, and  
1392 no one party shall be considered to have drafted the stated Articles.

Contract No. 14-06-200-229AD

1393            IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day  
1394            and year first above written.

**BEFORE THE BOARD OF DIRECTORS OF  
ARVIN-EDISON WATER STORAGE DISTRICT**

IN THE MATTER OF:

RESOLUTION NO. 10-18

APPROVING AND AUTHORIZING THE EXECUTION OF A  
CONTRACT BETWEEN THE UNITED STATES AND ARVIN-EDISON WATER  
STORAGE DISTRICT PROVIDING FOR PROJECT WATER SERVICE AND FACILITIES  
REPAYMENT; AND AUTHORIZING COMMENCEMENT OF VALIDATION ACTION

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

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

WHEREAS, the United States and the DISTRICT have, continuously, since August 30, 1962 been parties to a contract, as amended and as renewed periodically providing for water service from the Friant Division Facilities to the DISTRICT (the "Existing Contract"); and

WHEREAS, the Existing Contract provides for conversion to a repayment contract under subsection (d) of Section 9 of the Act of August 4, 1939 upon completion of the Project, anticipated by 2030, which conversion would grant the DISTRICT a permanent right to a stated share or quantity of Project Water, relieve its landowners of the acreage limitation and full cost pricing provisions of Reclamation Law; and relieve the DISTRICT of tiered pricing provisions; and

WHEREAS, as a result of litigation entitled "Natural Resources Defense Council, et al. v Kirk Rogers, et al." No. CIV-S-88-1658LLK/GGH, certain Friant Division contractors entered into a Stipulation of Settlement dated September 13, 2006 (the "Settlement"), which Settlement was subsequently confirmed and implemented through Title X, Subtitle A, of the Act of March 30, 2009 (123 Stat. 1349), known as the San Joaquin River Restoration Settlement Act and hereinafter referred to as "SJRRSA"; and

WHEREAS, the SJRRSA authorizes and directs the Secretary to convert the Existing Contract to a repayment contract under subsection (d) of Section 9 of the Act of August 4, 1939, no later than December 31, 2010 under mutually agreeable terms and conditions; and

WHEREAS, the DISTRICT and United States have negotiated all substantive terms and conditions of a repayment contract entitled "Contract between the United States and DISTRICT for Project Water Service and Facilities Repayment," a true and correct copy of

which is attached hereto as Exhibit A and incorporated herein by this reference ("Repayment Contract"); and

WHEREAS, consistent with the provisions of the SJRRSA and other laws, the Repayment Contract provides that, upon execution thereof, the DISTRICT will be entitled to certain provisions to expedite water transfers; and

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

WHEREAS, water available to the DISTRICT under the Repayment Contract will be diverted through the same Project facilities as the water provided under the Existing Contract; and

WHEREAS, the DISTRICT will continue to distribute Project Water received pursuant to the Repayment Contract through the same DISTRICT distribution facilities used in connection with water made available under the Existing Contract; and

WHEREAS, the Repayment Contract does not increase the quantity of Project Water to be made available to the DISTRICT and no additional lands within the DISTRICT will be irrigated as a result of the conversion to the Repayment Contract; and

WHEREAS, the DISTRICT intends to finance its payment obligations under the Repayment Contract through issuance of bonds or other form of indebtedness; and

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

WHEREAS, consistent with the findings herein and information compiled by DISTRICT officers, staff and/or consultants for the Board of Directors' consideration, the DISTRICT has determined that conversion from the Existing Contract to a Repayment Contract with the United States is exempt under the California Environmental Quality Act, pursuant to sections 15261, 15301, and 15061 of Title 14 California Code of Regulations because the conversion: (i) is merely a continuation of a project previously approved, funded and operated prior to November 23, 1970 and no modification or alteration in the Project, the DISTRICT distribution system, lands irrigated within the DISTRICT, or the amount of water delivered is proposed; (ii) is consistent with the Project Water entitlement granted to the DISTRICT prior to April 5, 1973 and does not involve a greater degree of responsibility than did the Existing Contract or previous water service contracts with the United States; (iii) provides for the ongoing operation and permitting of existing public facilities involving negligible or no expansion of use beyond that contemplated under the Existing Contract; and (iv) do not have the potential to cause a physical change that will have a significant effect on the environment; and

WHEREAS, the Board of Directors has reviewed the Repayment Contract and finds that conversion from the Existing Contract to the Repayment Contract is in the best

interests of the DISTRICT and its landowners, and that the Repayment Contract should be executed in substantially the form attached as Exhibit A hereto, which execution shall not occur until the DISTRICT completes proceedings necessary to validate the Repayment Contract and obtains financing of its repayment obligations under terms satisfactory to the Board of Directors; and

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

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

1. Determines that the foregoing recitals and findings are true and correct, and incorporates them herein by this reference; and
2. Approves and authorizes execution of the Repayment Contract by the President and Secretary in substantially the form attached hereto as Exhibit A, which execution shall be subject to and occur upon: (i) the successful completion of proceedings necessary to validate the Repayment Contract; (ii) the final determination of the Treasury Rate on October 1, 2010 and the resulting final determination of the Repayment Obligation set forth in Exhibits C1, C2, and D of the Repayment Contract; and (iii) the DISTRICT obtaining financing of its repayment obligations under terms satisfactory to the Board of Directors; and
3. Authorizes and directs the DISTRICT'S legal counsel to initiate and prosecute a validation proceeding pursuant to Code of Civil Procedure section 860, et seq., as necessary to confirm the validity of the Repayment Contract, and to do all things necessary and appropriate to prosecute said action; and
4. Authorizes and directs the DISTRICT'S officers, staff, legal counsel, and/or consultants to file a Notice of Exemption pursuant to CEQA concerning the Repayment Contract, in accordance with the information compiled by DISTRICT officers, staff and/or consultants for the Board of Directors' consideration and the findings memorialized in this resolution; and
5. Authorizes and directs the DISTRICT'S officers, staff and consultants to provide certified copies of the foregoing resolution to the Bureau of Reclamation; and
6. Authorizes and directs the DISTRICT'S officers, staff and consultants to take all additional actions they deem necessary or appropriate to facilitate the conversion to the Repayment Contract and obtain appropriate funding to satisfy the Repayment Obligation; and

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

All of the foregoing, being on the motion of Director Moore, and seconded by Director Fanucchi, was authorized by the following vote:

AYES: Directors' Frick, Camp, Moore, Fanucchi, Pascoe, Johnston, and Lehr.

NOES: None

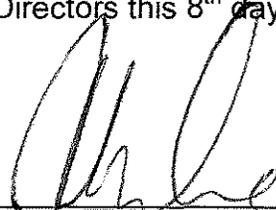
ABSTAINING: None

ABSENT: Directors' Giumarra and Valpredo.

I HEREBY CERTIFY that the foregoing resolution is the resolution of said District as duly passed and adopted by said Board of Directors on the 8<sup>th</sup> day of June 2010.

WITNESS my hand and seal of the Board of Directors this 8<sup>th</sup> day of June 2010.



  
\_\_\_\_\_  
John C. Moore  
Secretary of the Board of Directors



# United States Department of the Interior

BUREAU OF RECLAMATION  
Mid-Pacific Regional Office  
2800 Cottage Way  
Sacramento, California 95825-1898

IN REPLY  
REFER TO:

MP-440  
WTR-4.00

OCT 25 2010

FEDERAL EXPRESS DELIVERY

Mr. Howard R. Frick  
President  
Arvin-Edison Water Storage District  
20401 Bear Mountain Boulevard  
Arvin, CA 93202

Subject: Contract Between the United States and Arvin-Edison Water Storage District (District)  
Providing For Project Water Service From Friant Division And For Facilities  
Repayment – Contract No. 14-06-200-229AD – Central Valley Project, California

Dear Mr. Frick:

The Bureau of Reclamation is authorized and directed to convert, by December 31, 2010, the existing Friant Division long-term contracts to repayment contracts under mutually agreeable terms and conditions pursuant to Section 9(d) of the Reclamation Project Act of 1939, and the San Joaquin River Restoration Settlement Act (Part I, Title X, of the Omnibus Public Land Management Act of 2009, Public Law 111-11, March 2009). The converted contracts have accelerated repayment provisions to make funds available for implementing the San Joaquin River Restoration Settlement Act.

Enclosed are three bluebound originals of the subject contract providing for the conversion of the long-term contracts to repayment contracts. If the enclosed contract is acceptable to the District, please have the authorized officials of the District sign each of the bluebound originals and return all originals to this office, Attention: MP 440 (Ms. Karen Hall), as expeditiously as possible. Please note that the contract will be dated after execution by the Regional Director of the Mid-Pacific Region. In addition, an original board resolution approving this contract as to form and authorizing the designated officials to sign the contract is to be submitted along with the signed originals of the contract.

Execution of this contract by Reclamation is contingent upon the District being in compliance with all terms and conditions of its existing Central Valley Project water service contract(s). Upon completion of final processing, an original of the fully executed contract will be sent to the District for their records.

Subject: Arvin-Edison Water Storage District – Contract No. 14-06-200-229AD

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If you have any questions, please contact Mr. Richard Stevenson, Deputy Regional Resources Manager at 916-978-5264, or e-mail [rstevenson@usbr.gov](mailto:rstevenson@usbr.gov).

Sincerely,



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Donald R. Glaser  
Regional Director

Enclosures – 3