

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 M&I purposes is
546 measured at each M&I service connection. The water measuring devices or water measuring
547 methods of comparable effectiveness must be acceptable to the Contracting Officer. The
548 Contractor shall be responsible for installing, operating, and maintaining and repairing all such
549 measuring devices and implementing all such water measuring methods at no cost to the United
550 States. The Contractor shall use the information obtained from such water measuring devices or
551 water measuring methods to ensure its proper management of the water, to bill water users for
552 water delivered by the Contractor; and, if applicable, to record water delivered for M&I purposes
553 by customer class as defined in the Contractor's water conservation plan provided for in Article
554 27 of this Contract. Nothing herein contained, however, shall preclude the Contractor from
555 establishing and collecting any charges, assessments, or other revenues authorized by California
556 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 M&I service connections or alternative measurement programs approved by the
562 Contracting Officer, at which such measurement devices or water measuring methods are being

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

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

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

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

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

582
583
584 7. (a) The Contractor's cost obligations for all Delivered Water shall be
585 determined in accordance with: (i) the Secretary's ratesetting policy for Irrigation Water adopted
586 in 1988 and the Secretary's then-existing ratesetting policy for M&I Water, consistent with the
587 SJRRSA, and such ratesetting policies shall be amended, modified, or superseded only through a
588 public notice and comment procedure; (ii) applicable Federal Reclamation law and associated
589 rules and regulations, or policies; and (iii) other applicable provisions of this Contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

688 deliveries, for the purpose of this reduction only, mutually agreed upon by the Secretary and the
689 Contractor for the period from January 1, 2020 through December 31, 2039. The Friant
690 Surcharge reduction shall remain fixed and shall only be applied to Water Delivered pursuant to
691 this Contract to which the Friant Surcharge applies (including but not limited to water
692 transferred, banked, or exchanged), commencing on January 1, 2020 until such volume of Water
693 Delivered equals 2,058,200 acre-feet or December 31, 2039, whichever occurs first.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

811 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

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

815 RECOVERED WATER ACCOUNT

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

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

825 SALES, TRANSFERS, AND EXCHANGES OF WATER

826 10. (a) The right to receive Project Water provided for in this Contract may be
827 sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of
828 California if such sale, transfer, or exchange is authorized by applicable Federal and State laws,
829 and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project
830 Water under this Contract may take place without the prior written approval of the Contracting
831 Officer, except as provided for in subdivisions (b) and (c) of this Article of this Contract . No

832 such Project Water sales, transfers, or exchanges shall be approved, where approval is required,
833 absent compliance with appropriate environmental documentation including but not limited to
834 the National Environmental Policy Act and the Endangered Species Act. Such environmental
835 documentation must include, as appropriate, an analysis of groundwater impacts and economic
836 and social effects, including environmental justice, of the proposed Project Water sales, transfers
837 and exchanges on both the transferor/exchanger and transferee/exchange recipient.

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

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

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

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

870 (f) Consistent with Section 10010(e)(l) of the SJRRSA, any agreement
871 providing for sale, transfer, or exchange of Project Water that is not used for interim flows or
872 restoration flows pursuant to Paragraphs 13 and 15 of the Settlement, shall be deemed to satisfy

873 the requirements of CVPIA section 3405(a)(1)(A) and (I); Provided, That such sales, transfers, or
874 exchanges comply with sub-division (f)(1) and (f)(2) below.

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

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

889 (3) In addition, the Contracting Officer shall, at least annually, make
890 available publicly a compilation of the number of Project Water sales, transfers, and exchange
891 agreements implemented in accordance with sub-divisions (f)(1) and (f)(2) of this Article of this
892 Contract.

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

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

905 APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

914 provided for herein. All credits and refunds of overpayments shall be made within thirty (30)
915 days of the Contracting Officer obtaining direction as to how to credit or refund such
916 overpayment in response to the notice to the Contractor that it has finalized the accounts for the
917 Year in which the overpayment was made.

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

924 TEMPORARY REDUCTIONS—RETURN FLOWS

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

930 (b) The Contracting Officer or Operating Non-Federal Entity may temporarily
931 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for
932 the purposes of investigation, inspection, maintenance, repair, or replacement of any of the
933 Project facilities or any part thereof necessary for the delivery of Project Water to the Contractor,
934 but so far as feasible the Contracting Officer or Operating Non-Federal Entity will give the

935 Contractor due notice in advance of such temporary discontinuance or reduction, except in case
936 of emergency, in which case no notice need be given; Provided, That the United States shall use
937 its best efforts to avoid any discontinuance or reduction in such service. Upon resumption of
938 service after such reduction or discontinuance, and if requested by the Contractor, the United
939 States will, if possible, deliver the quantity of Project Water which would have been delivered
940 hereunder in the absence of such discontinuance or reduction.

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

950 CONSTRAINTS ON THE AVAILABILITY OF WATER

951 13. (a) In its operation of the Project, the Contracting Officer will use all
952 reasonable means to guard against a Condition of Shortage in the quantity of water to be made
953 available to the Contractor pursuant to this Contract. In the event the Contracting Officer
954 determines that a Condition of Shortage appears probable, the Contracting Officer will notify the
955 Contractor of said determination as soon as practicable.

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

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

974 (d) The Contracting Officer shall not deliver any Class 2 Water pursuant to
975 this or any other contract heretofore or hereafter entered into any Year unless and until the
976 Contracting Officer determines that the cumulative total quantity of Class 1 Water specified in

977 subdivision (c) of this Article of this Contract will be available for delivery in said Year. If the
978 Contracting Officer determines there is or will be a shortage in any Year in the quantity of
979 Class 1 Water available for delivery, the Contracting Officer shall apportion the available Class 1
980 Water among all Contractors entitled to receive such water that will be made available at Friant
981 Dam in accordance with the following:

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

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

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

993 (e) If the Contracting Officer determines there is less than the quantity of
994 Class 2 Water which the Contractor otherwise would be entitled to receive pursuant to Article 3
995 of this Contract, the quantity of Class 2 Water which shall be furnished to the Contractor by the
996 Contracting Officer will be determined in the manner set forth in paragraphs (1), (2), and (3), of

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

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

1006 UNAVOIDABLE GROUNDWATER PERCOLATION

1007 14. To the extent applicable, the Contractor shall not be deemed to have delivered
1008 Irrigation Water to Excess Lands and Ineligible Lands within the meaning of this Contract if
1009 such lands are irrigated with groundwater that reaches the underground strata as an unavoidable
1010 result of the delivery of Irrigation Water by the Contractor to Eligible Lands.

1011 ACREAGE LIMITATION

1012 15. (a) Notwithstanding the application of the acreage limitation provisions to
1013 activities referred to in subdivision (b) of this Article, subdivision (a) of Article 16, and Article
1014 18 of this Contract, upon complete payment of the Repayment Obligation by the Contractor, and
1015 notwithstanding any Additional Capital Obligation that may later be established, the provisions
1016 of section 213(a) and (b) of the RRA shall apply to lands in the Contractor's Service Area, with
1017 the effect that acreage limitations, reporting, and Full Cost pricing provisions of the RRA shall

1018 no longer apply to lands in the Contractor's Service Area with respect to Water Delivered
1019 pursuant to this Contract. Upon receiving the complete payment of the Repayment Obligation
1020 from the Contractor, Reclamation will conduct a final water district review for the purpose of
1021 determining compliance with the acreage limitations, reporting, and Full Cost pricing provisions
1022 of the RRA from the date of the last water district review until the date when payment to
1023 Reclamation of the Repayment Obligation is completed.

1024 (b) Project Water to which the Contractor is entitled through a separate
1025 contract, other than this Contract, that is subject to Federal Reclamation law, may be delivered to
1026 lands within the Contractor's Service Area. Upon complete payment of the Repayment
1027 Obligation by the Contractor, and notwithstanding any Additional Capital Obligation that may
1028 later be established, Project Water Delivered under this Contract may be mixed with Project
1029 Water Delivered pursuant to a contract with the United States, other than this Contract, to which
1030 acreage limitations, reporting, and the Full Cost pricing provisions of Federal Reclamation law
1031 apply without causing the application of the acreage limitations, reporting, and Full Cost pricing
1032 provisions of Federal Reclamation law to the Water Delivered pursuant to this Contract;
1033 Provided, The terms and conditions in such other contract shall continue to apply, and if such
1034 terms and conditions so require, the lands to receive Project Water under such other contract
1035 shall be properly designated by the Contractor and such Project Water is to be delivered in
1036 accordance with the RRA including any applicable acreage limitations, reporting, and Full Cost
1037 pricing provisions.

1038

COMPLIANCE WITH FEDERAL RECLAMATION LAWS

1039 16. (a) The parties agree that the delivery of irrigation water or use of Federal
1040 facilities pursuant to this Contract is subject to Federal Reclamation law, including but not
1041 limited to the Reclamation Reform Act of 1982 (43 U.S.C. 390 *aa et seq.*), as amended and
1042 supplemented, and the rules and regulations promulgated by the Secretary of the Interior under
1043 Federal Reclamation law.

1044 (b) The terms of this Contract are subject to the Settlement and the SJRRSA.

1045 Nothing in this Contract shall be interpreted to limit or interfere with the full implementation of
1046 the Settlement and the SJRRSA.

1047

PROTECTION OF WATER AND AIR QUALITY

1048 17. (a) Project facilities used to make available and deliver water to the
1049 Contractor shall be operated and maintained in the most practical manner to maintain the quality
1050 of the water at the highest level possible as determined by the Contracting Officer: *Provided,*
1051 *That* the United States does not warrant the quality of the water delivered to the Contractor and is
1052 under no obligation to furnish or construct water treatment facilities to maintain or improve the
1053 quality of water delivered to the Contractor.

1054 (b) The Contractor shall comply with all applicable water and air pollution
1055 laws and regulations of the United States and the State of California; and shall obtain all required
1056 permits or licenses from the appropriate Federal, State, or local authorities necessary for the
1057 delivery of water by the Contractor; and shall be responsible for compliance with all Federal,
1058 State, and local water quality standards applicable to surface and subsurface drainage and/or
1059 discharges generated through the use of Federal or Contractor facilities or project water provided
1060 by the Contractor within the Contractor's Project Water Service Area.

1061 (c) This article shall not affect or alter any legal obligations of the Secretary
1062 to provide drainage or other discharge services.

1063

WATER ACQUIRED BY THE CONTRACTOR
OTHER THAN FROM THE UNITED STATES

1064

1065 18. (a) Until complete payment of the Repayment Obligation by the Contractor,
1066 and notwithstanding any Additional Capital Obligation that may later be established, water or
1067 water rights now owned or hereafter acquired by the Contractor other than from the United

1068 States and Irrigation Water furnished pursuant to the terms of this Contract may be
1069 simultaneously transported through the same distribution facilities of the Contractor subject to
1070 the following: (i) if the facilities utilized for commingling Irrigation Water and non-project
1071 water were constructed without funds made available pursuant to Federal Reclamation law, the
1072 acreage limitations, reporting, and Full Cost pricing provisions of Federal Reclamation law will
1073 be applicable only to the Landholders of lands which receive Irrigation Water; (ii) the eligibility
1074 of land to receive Irrigation Water must be established through the certification requirements as
1075 specified in the Acreage Limitation Rules and Regulations (43 CFR Part 426); and (iii) the water
1076 requirements of Eligible Lands within the Contractor's Service Area can be established and the
1077 quantity of Irrigation Water to be utilized is less than or equal to the quantity necessary to
1078 irrigate such Eligible Lands. The Contractor and the Contracting Officer acknowledge that the
1079 Contractor's distribution system that was constructed with funds made available pursuant to
1080 Federal Reclamation law was, prior to effective date of this Contract, repaid in full and but title
1081 to the facilities has not been transferred to the Contractor. As such, when such facilities are
1082 utilized for commingling Irrigation Water and non-project water, the acreage limitations,
1083 reporting, and Full Cost pricing provisions of Federal Reclamation law will be applicable only to
1084 the Landholders of lands which receive Irrigation Water.

1085 (b) Upon complete payment of the Repayment Obligation by the Contractor,
1086 and notwithstanding any Additional Capital Obligation that may later be established, water or
1087 water rights now owned or hereafter acquired by the Contractor other than from the United
1088 States pursuant to this Contract and Irrigation Water furnished pursuant to the terms of this

1089 Contract may be simultaneously transported through the same distribution facilities of the
1090 Contractor without the payment of fees to the United States and without application of Federal
1091 Reclamation law to Water Delivered pursuant to this Contract or to lands which receive Water
1092 Delivered to Contractor pursuant to this Contract.

1093 (c) Water or water rights now owned or hereafter acquired by the Contractor,
1094 other than from the United States or adverse to the Project or its contractors (i.e., non-project
1095 water), may be stored, conveyed and/or diverted through Project facilities, other than Friant
1096 Division Facilities, subject to the completion of appropriate environmental documentation, with
1097 the approval of the Contracting Officer and the execution of any contract determined by the
1098 Contracting Officer to be necessary, consistent with the following provisions:

1099 (1) The Contractor may introduce non-project water into Project
1100 facilities and deliver said water to lands within the Contractor's Service Area, including
1101 Ineligible Lands, subject to payment to the United States and/or to any applicable Operating
1102 Non-Federal Entity of an appropriate rate as determined by the Contracting Officer. In addition,
1103 if electrical power is required to pump non-project water, the Contractor shall be responsible for
1104 obtaining the necessary power and paying the necessary charges therefor.

1105 (2) Delivery of such non-project water in and through Project facilities
1106 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project
1107 purposes as determined by the Contracting Officer; (ii) reduce the quantity or quality of water
1108 available to other Project Contractors; (iii) interfere with the delivery of contractual water
1109 entitlements to any other Project Contractors; (iv) interfere with the physical maintenance of the

1110 Project facilities; or (v) result in the United States incurring any liability or unreimbursed costs
1111 or expenses thereby.

1112 (3) Neither the United States nor the Operating Non-Federal Entity
1113 shall be responsible for control, care or distribution of the non-project water before it is
1114 introduced into or after it is delivered from the Project facilities. The Contractor hereby releases
1115 and agrees to defend and indemnify the United States and the Operating Non-Federal Entity, and
1116 their respective officers, agents, and employees, from any claim for damage to persons or
1117 property, direct or indirect, resulting from Contractor's diversion or extraction of non-project
1118 water from any source.

1119 (4) Diversion of such non-project water into Project facilities shall be
1120 consistent with all applicable laws, and if involving groundwater, consistent with any
1121 groundwater management plan for the area from which it was extracted.

1122 (5) After Project purposes are met, as determined by the Contracting
1123 Officer, the United States and the Contractor shall share priority to utilize the remaining capacity
1124 of the facilities declared to be available by the Contracting Officer for conveyance and
1125 transportation of non-project water prior to any such remaining capacity being made available to
1126 non-project contractors.

1127 (d) Non-project water may be stored, conveyed and/or diverted through Friant
1128 Division Facilities, subject to the completion of appropriate environmental documentation and
1129 approval of the Contracting Officer without execution of a separate contract, consistent with

1130 subdivisions (c)(1) through (c)(5) of this Article and any other condition determined to be
1131 appropriate by the Contracting Officer.

1132 OPINIONS AND DETERMINATIONS

1133 19. (a) Where the terms of this Contract provide for actions to be based upon the
1134 opinion or determination of either party to this Contract, said terms shall not be construed as
1135 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
1136 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly
1137 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,
1138 or unreasonable opinion or determination. Each opinion or determination by either party shall be
1139 provided in a timely manner. Nothing in this Article of this Contract is intended to or shall affect
1140 or alter the standard of judicial review applicable under Federal law to any opinion or
1141 determination implementing a specific provision of Federal law embodied in statute or
1142 regulation.

1143 (b) The Contracting Officer shall have the right to make determinations
1144 necessary to administer this Contract that are consistent with the provisions of this Contract, the
1145 laws of the United States and the State of California, and the rules and regulations promulgated
1146 by the Secretary. Such determinations shall be made in consultation with the Contractor to the
1147 extent reasonably practicable.

1148 COORDINATION AND COOPERATION

1149 20. (a) In order to further their mutual goals and objectives, the Contracting
1150 Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and

1151 with other affected Project Contractors, in order to improve the operation and management of the
1152 Project. The communication, coordination, and cooperation regarding operations and
1153 management shall include, but not limited to, any action which will or may materially affect the
1154 quantity or quality of Project Water supply, the allocation of Project Water supply, and Project
1155 financial matters including, but not limited to, budget issues. The communication, coordination,
1156 and cooperation provided for hereunder shall extend to all provisions of this Contract. Each
1157 party shall retain exclusive decision making authority for all actions, opinions, and
1158 determinations to be made by the respective party.

1159 (b) It is the intent of the Secretary to improve water supply reliability. To
1160 carry out this intent:

1161 (1) The Contracting Officer will, at the request of the Contractor,
1162 assist in the development of integrated resource management plans for the Contractor. Further,
1163 the Contracting Officer will, as appropriate, seek authorizations for implementation of
1164 partnerships to improve water supply, water quality, and reliability.

1165 (2) The Secretary will, as appropriate, pursue program and project
1166 implementation and authorization in coordination with Project Contractors to improve the water
1167 supply, water quality, and reliability of the Project for all Project purposes.

1168 (3) The Secretary will coordinate with Project Contractors and the
1169 State of California to seek improved water resource management.

1170 (4) The Secretary will coordinate actions of agencies within the
1171 Department of the Interior that may impact the availability of water for Project purposes.

1172 (5) The Contracting Officer shall periodically, but not less than
1173 annually, hold division level meetings to discuss Project operations, division level water
1174 management activities, and other issues as appropriate.

1175 (c) Without limiting the contractual obligations of the Contracting Officer
1176 hereunder, nothing in this Contract shall be construed to limit or constrain the Contracting
1177 Officer's ability to communicate, coordinate, and cooperate with the Contractor or other
1178 interested stakeholders or to make decisions in a timely fashion as needed to protect health,
1179 safety, physical integrity of structures or facilities, or the Contracting Officer's ability to comply
1180 with applicable laws.

1181 CHARGES FOR DELINQUENT PAYMENTS

1182 21. (a) The Contractor shall be subject to interest, administrative and penalty
1183 charges on delinquent installments or payments. When a payment is not received by the due
1184 date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond
1185 the due date. When a payment becomes sixty (60) days delinquent, the Contractor shall pay an
1186 administrative charge to cover additional costs of billing and processing the delinquent payment.
1187 When a payment is delinquent ninety (90) days or more, the Contractor shall pay an additional
1188 penalty charge of six (6) percent per year for each day the payment is delinquent beyond the due
1189 date. Further, the Contractor shall pay any fees incurred for debt collection services associated
1190 with a delinquent payment.

1191 (b) The interest charge rate shall be the greater of the rate prescribed quarterly
1192 in the Federal Register by the Department of the Treasury for application to overdue payments,
1193 or the interest rate of one-half of one (0.5) percent per month prescribed by Section 6 of the
1194 Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be
1195 determined as of the due date and remain fixed for the duration of the delinquent period.

1196 (c) When a partial payment on a delinquent account is received, the amount
1197 received shall be applied, first to the penalty, second to the administrative charges, third to the
1198 accrued interest, and finally to the overdue payment.

EQUAL EMPLOYMENT OPPORTUNITY

1199

1200 22. During the performance of this Contract, the Contractor agrees as follows:

1201 (a) The Contractor will not discriminate against any employee or applicant for
1202 employment because of race, color, religion, sex, disability, or national origin. The Contractor
1203 will take affirmative action to ensure that applicants are employed, and that employees are
1204 treated during employment, without regard to their race, color, religion, sex, disability, or
1205 national origin. Such action shall include, but not be limited to the following: employment,
1206 upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination;
1207 rates of pay or other forms of compensation; and selection for training, including apprenticeship.
1208 The Contractor agrees to post in conspicuous places, available to employees and applicants for
1209 employment, notices to be provided by the Contracting Officer setting forth the provisions of this
1210 nondiscrimination clause.

1211 (b) The Contractor will, in all solicitations or advertisements for employees
1212 placed by or on behalf of the Contractor, state that all qualified applicants will receive
1213 consideration for employment without regard to race, color, religion, sex, disability, or national
1214 origin.

1215 (c) The Contractor will send to each labor union or representative of workers
1216 with which it has a collective bargaining agreement or other contract or understanding, a notice,
1217 to be provided by the Contracting Officer, advising the labor union or workers' representative of
1218 the Contractor's commitments under Section 202 of Executive Order 11246 of September 24,
1219 1965, and shall post copies of the notice in conspicuous places available to employees and
1220 applicants for employment.

1221 (d) The Contractor will comply with all provisions of Executive Order No.
1222 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary
1223 of Labor.

1224 (e) The Contractor will furnish all information and reports required by
1225 Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the
1226 Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and
1227 accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to
1228 ascertain compliance with such rules, regulations, and orders.

1229 (f) In the event of the Contractor's noncompliance with the nondiscrimination
1230 clauses of this contract or with any of such rules, regulations, or orders, this contract may be
1231 canceled, terminated or suspended in whole or in part and the Contractor may be declared
1232 ineligible for further Government contracts in accordance with procedures authorized in
1233 Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and

1234 remedies invoked as provided in Executive Order 11246 of September 24, 1965 or by rule,
1235 regulation, or order of the Secretary of Labor, or as otherwise provided by law.

1236 (g) The Contractor will include the provisions of paragraphs (1) through (7) in
1237 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
1238 Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24,
1239 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor
1240 will take such action with respect to any subcontract or purchase order as may be directed by the
1241 Secretary of Labor as a means of enforcing such provisions, including sanctions for
1242 noncompliance: *Provided, however*, that in the event the Contractor becomes involved in, or is
1243 threatened with, litigation with a subcontractor or vendor as a result of such direction, the
1244 Contractor may request the United States to enter into such litigation to protect the interests of
1245 the United States.

1246 GENERAL OBLIGATION—BENEFITS CONDITIONED UPON PAYMENT

1247 23. (a) The obligation of the Contractor to pay the United States as provided in
1248 this Contract is a general obligation of the Contractor notwithstanding the manner in which the
1249 obligation may be distributed among the Contractor's water users and notwithstanding the
1250 default of individual water users in their obligations to the Contractor.

1251 (b) The payment of charges becoming due hereunder is a condition precedent
1252 to receiving benefits under this Contract. The United States shall not make water available to the
1253 Contractor through Project facilities during any period in which the Contractor may be in arrears
1254 in the advance payment of water rates due the United States. The Contractor shall not furnish
1255 water made available pursuant to this Contract for lands or parties which are in arrears in the
1256 advance payment of water rates levied or established by the Contractor.

1257 (c) With respect to subdivision (b) of this Article of this Contract, the
1258 Contractor shall have no obligation to require advance payment for water rates which it levies.

1259 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1260 24. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
1261 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the
1262 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights
1263 laws, as well as with their respective implementing regulations and guidelines imposed by the
1264 U.S. Department of the Interior and/or Bureau of Reclamation.

1265 (b) These statutes require that no person in the United States shall, on the
1266 grounds of race, color, national origin, handicap, or age, be excluded from participation in, be

1267 denied the benefits of, or be otherwise subjected to discrimination under any program or activity
1268 receiving financial assistance from the Bureau of Reclamation. By executing this Contract, the
1269 Contractor agrees to immediately take any measures necessary to implement this obligation,
1270 including permitting officials of the United States to inspect premises, programs, and documents.

1271 (c) The Contractor makes this agreement in consideration of and for the
1272 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other
1273 Federal financial assistance extended after the date hereof to the Contractor by the Bureau of
1274 Reclamation, including installment payments after such date on account of arrangements for
1275 Federal financial assistance which were approved before such date. The Contractor recognizes
1276 and agrees that such Federal assistance will be extended in reliance on the representations and
1277 agreements made in this Article, and that the United States reserves the right to seek judicial
1278 enforcement thereof.

1279 PRIVACY ACT COMPLIANCE

1280 25. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a)
1281 (the Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et
1282 seq.) in maintaining Landholder acreage certification and reporting records, required to be
1283 submitted to the Contractor for compliance with Sections 206 and 228 of the Reclamation
1284 Reform Act of 1982 (96 Stat. 1266), and pursuant to 43 CFR 426.18.

1285 (b) With respect to the application and administration of the criminal penalty
1286 provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees
1287 responsible for maintaining the certification and reporting records referenced in (a) above are
1288 considered to be employees of the Department of the Interior. See 5 U.S.C. 552a(m).

1289 (c) The Contracting Officer or a designated representative shall provide the
1290 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau
1291 of Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation—
1292 Interior, Reclamation-31) which govern the maintenance, safeguarding, and disclosure of
1293 information contained in the Landholder's certification and reporting records.

1294 (d) The Contracting Officer shall designate a full-time employee of the
1295 Bureau of Reclamation to be the System Manager who shall be responsible for making decisions
1296 on denials pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The
1297 Contractor is authorized to grant requests by individuals for access to their own records.

1298 (e) The Contractor shall forward promptly to the System Manager each
1299 proposed denial of access under 43 CFR 2.64; and each request for amendment of records filed
1300 under 43 CFR 2.71; notify the requester accordingly of such referral; and provide the System
1301 Manager with information and records necessary to prepare an appropriate response to the

1302 requester. These requirements do not apply to individuals seeking access to their own
1303 certification and reporting forms filed with the Contractor pursuant to 43 CFR 426.18, unless the
1304 requester elects to cite the Privacy Act as a basis for the request.

1305 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1306 26. In addition to all other payments to be made by the Contractor pursuant to this
1307 Contract, the Contractor shall pay to the United States, within sixty (60) days after receipt of a
1308 bill and detailed statement submitted by the Contracting Officer to the Contractor for such
1309 specific items of direct cost incurred by the United States for work requested by the Contractor
1310 associated with this Contract plus indirect costs in accordance with applicable Bureau of
1311 Reclamation policies and procedures. All such amounts referred to in this Article of this
1312 Contract shall not exceed the amount agreed to in writing in advance by the Contractor. This
1313 Article of this Contract shall not apply to costs for routine contract administration.

1314 WATER CONSERVATION

1315 27. (a) Prior to the delivery of water provided from or conveyed through
1316 Federally constructed or Federally financed facilities pursuant to this Contract, the Contractor
1317 shall be implementing an effective water conservation and efficiency program based on the
1318 Contractor's water conservation plan that has been determined by the Contracting Officer to
1319 meet the conservation and efficiency criteria for evaluating water conservation plans established
1320 under Federal law. The water conservation and efficiency program shall contain definite water
1321 conservation objectives, appropriate economically feasible water conservation measures, and
1322 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this
1323 Contract shall be contingent upon the Contractor's continued implementation of such water

1324 conservation program. In the event the Contractor's water conservation plan or any revised
1325 water conservation plan completed pursuant to subdivision (d) of this Article 26 of this Contract
1326 have not yet been determined by the Contracting Officer to meet such criteria, due to
1327 circumstances which the Contracting Officer determines are beyond the control of the
1328 Contractor, water deliveries shall be made under this Contract so long as the Contractor
1329 diligently works with the Contracting Officer to obtain such determination at the earliest
1330 practicable date, and thereafter the Contractor immediately begins implementing its water
1331 conservation and efficiency program in accordance with the time schedules therein.

1332 (b) Should the amount of M&I Water Delivered pursuant to subdivision (a) of
1333 Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the
1334 Contractor shall implement the Best Management Practices identified by the time frames issued
1335 by the California Urban Water Conservation Council for such M&I Water unless any such
1336 practice is determined by the Contracting Officer to be inappropriate for the Contractor.

1337 (c) The Contractor shall submit to the Contracting Officer a report on the
1338 status of its implementation of the water conservation plan on the reporting dates specified in the
1339 then-existing conservation and efficiency criteria established under Federal law.

1340 (d) At five (5) -year intervals, the Contractor shall revise its water
1341 conservation plan to reflect the then-existing conservation and efficiency criteria for evaluating
1342 water conservation plans established under Federal law and submit such revised water
1343 management plan to the Contracting Officer for review and evaluation. The Contracting Officer
1344 will then determine if the water conservation plan meets Reclamation's then-existing

1345 conservation and efficiency criteria for evaluating water conservation plans established under
1346 Federal law.

1347 (e) If the Contractor is engaged in direct groundwater recharge, such activity
1348 shall be described in the Contractor's water conservation plan.

1349 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1350 28. Except as specifically provided in Article 18 of this Contract, the provisions of
1351 this Contract shall not be applicable to or affect non-project Water or water rights now owned or
1352 hereafter acquired by the Contractor or any user of such water within the Contractor's Service
1353 Area. Any such water shall not be considered Project Water under this Contract. In addition,
1354 this Contract shall not be construed as limiting or curtailing any rights which the Contractor or
1355 any water user within the Contractor's Service Area acquires or has available under any other
1356 contract pursuant to Federal Reclamation law.

1357 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

1358 29. (a) The O&M of a portion of the Project facilities which serve the Contractor,
1359 and responsibility for funding a portion of the costs of such O& M, have been transferred to the
1360 Operating Non-Federal Entity by separate agreement between the United States and the
1361 Operating Non-Federal Entity. That separate agreement shall not interfere with or affect the
1362 rights or obligations of the Contractor or the United States hereunder.

1363 (b) The Contracting Officer has previously notified the Contractor in writing
1364 that the O&M of a portion of the Project facilities which serve the Contractor has been
1365 transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly

1366 to the Operating Non-Federal Entity, or to any successor approved by the Contracting Officer
1367 under the terms and conditions of the separate agreement between the United States and the
1368 Operating Non-Federal Entity described in subdivision (a) of this Article of this Contract, all
1369 rates, charges or assessments of any kind, including any assessment for reserve funds, which the
1370 Operating Non-Federal Entity or such successor determines, sets or establishes for (i) the O&M
1371 of the portion of the Project facilities operated and maintained by the Operating Non-Federal
1372 Entity or such successor, or (ii) the Friant Division's share of the operation, maintenance and
1373 replacement costs for physical works and appurtenances associated with the Tracy Pumping
1374 Plant, the Delta-Mendota Canal, the O'Neill Pumping/Generating Plant, the federal share of the
1375 O'Neill Forebay, the Mendota Pool, and the federal share of San Luis Unit joint use conveyance
1376 and conveyance pumping facilities. Such direct payments to the Operating Non-Federal Entity
1377 or such successor shall not relieve the Contractor of its obligation to pay directly to the United
1378 States the Contractor's share of the Project Rates, Charges, and Tiered Pricing Components
1379 except to the extent the Operating Non-Federal Entity collects payments on behalf of the United
1380 States in accordance with the separate agreement identified in subdivision (a) of this Article of
1381 this Contract.

1382 (c) For so long as the O&M of any portion of the Project facilities serving the
1383 Contractor is performed by the Operating Non-Federal Entity, or any successor thereto, the
1384 Contracting Officer shall adjust those components of the Rates for Water Delivered under this
1385 Contract representing the cost associated with the activity being performed by the Operating
1386 Non-Federal Entity or its successor.

1387 (d) In the event the O&M of the Project facilities operated and maintained by
1388 the Operating Non-Federal Entity is re-assumed by the United States during the term of this
1389 Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the
1390 Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid by the
1391 Contractor for Project Water under this Contract representing the O&M costs of the portion of
1392 such Project facilities which have been re-assumed. The Contractor shall, thereafter, in the
1393 absence of written notification from the Contracting Officer to the contrary, pay the Rates,
1394 Charges, and Tiered Pricing Component(s) specified in the revised Exhibit "B" directly to the
1395 United States in compliance with Article 7 of this Contract.

1396 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1397 30. The expenditure or advance of any money or the performance of any obligation of
1398 the United States under this Contract shall be contingent upon appropriation or allotment of
1399 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any
1400 obligations under this Contract. No liability shall accrue to the United States in case funds are
1401 not appropriated or allotted.

1402 BOOKS, RECORDS, AND REPORTS

1403 31. (a) The Contractor shall establish and maintain accounts and other books and
1404 records pertaining to administration of the terms and conditions of this Contract, including: the
1405 Contractor's financial transactions, water supply data, and Project land and right-of-way
1406 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use
1407 data; and other matters that the Contracting Officer may require. Reports thereon shall be
1408 furnished to the Contracting Officer in such form and on such date or dates as the Contracting
1409 Officer may require. Subject to applicable Federal laws and regulations, each party to this
1410 Contract shall have the right during office hours to examine and make copies of the other party's
1411 books and records relating to matters covered by this Contract.

1412 (b) Notwithstanding the provisions of subdivision (a) of this Article of this
1413 Contract, no books, records, or other information shall be requested from the Contractor by the

1414 Contracting Officer unless such books, records, or information are reasonably related to the
1415 administration or performance of this Contract. Any such request shall allow the Contractor a
1416 reasonable period of time within which to provide the requested books, records, or information.

1417 (c) At such time as the Contractor provides information to the Contracting
1418 Officer pursuant to subdivision (a) of this Article of this Contract, a copy of such information
1419 shall be provided to the Operating Non-Federal Entity.

1420 ASSIGNMENT LIMITED—SUCCESSORS AND ASSIGNS OBLIGATED

1421 32. (a) The provisions of this Contract shall apply to and bind the successors and
1422 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1423 therein shall be valid until approved in writing by the Contracting Officer.

1424 (b) The assignment of any right or interest in this Contract by either party
1425 shall not interfere with the rights or obligations of the other party to this Contract absent the
1426 written concurrence of said other party.

1427 (c) The Contracting Officer shall not unreasonably condition or withhold
1428 approval of any proposed assignment.

1429 SEVERABILITY

1430 33. In the event that a person or entity who is neither (i) a party to a Project contract,
1431 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor
1432 (iii) an association or other form of organization whose primary function is to represent parties to
1433 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or
1434 enforceability of a provision included in this Contract and said person, entity, association, or
1435 organization obtains a final court decision holding that such provision is legally invalid or

1436 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),
1437 the parties to this Contract shall use their best efforts to (i) within thirty (30) days of the date of
1438 such final court decision identify by mutual agreement the provisions in this Contract which
1439 must be revised and (ii) within three (3) months thereafter promptly agree on the appropriate
1440 revision(s). The time periods specified above may be extended by mutual agreement of the
1441 parties. Pending the completion of the actions designated above, to the extent it can do so
1442 without violating any applicable provisions of law, the United States shall continue to make the
1443 quantities of Project Water specified in this Contract available to the Contractor pursuant to the
1444 provisions of this Contract which were not found to be legally invalid or unenforceable in the
1445 final court decision.

1446 RESOLUTION OF DISPUTES

1447 34. Should any dispute arise concerning any provisions of this Contract, or the
1448 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to
1449 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting
1450 Officer referring any matter to Department of Justice, the party shall provide to the other party
1451 thirty (30) days written notice of the intent to take such action; Provided, That such notice shall
1452 not be required where a delay in commencing an action would prejudice the interests of the party
1453 that intends to file suit. During the thirty (30) day notice period, the Contractor and the
1454 Contracting Officer shall meet and confer in an attempt to resolve the dispute. Except as
1455 specifically provided, nothing herein is intended to waive or abridge any right or remedy that the
1456 Contractor or the United States may have.

1457 OFFICIALS NOT TO BENEFIT

1458 35. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1459 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1460 manner as other water users or landowners.

1461 CHANGES IN CONTRACTOR'S SERVICE AREA

1462 36. (a) While this Contract is in effect, no change may be made in the
1463 Contractor's Service Area or boundaries, by inclusion or exclusion of lands, dissolution,
1464 consolidation, merger, or otherwise, except upon the Contracting Officer's written consent.

1465 (b) Within thirty (30) days of receipt of a request for such a change, the
1466 Contracting Officer will notify the Contractor of any additional information required by the
1467 Contracting Officer for processing said request, and both parties will meet to establish a mutually
1468 agreeable schedule for timely completion of the process. Such process will analyze whether the
1469 proposed change is likely to: (i) result in the use of Project Water contrary to the terms of this
1470 Contract; (ii) impair the ability of the Contractor to pay for Project Water furnished under this
1471 Contract or to pay for any Federally-constructed facilities for which the Contractor is
1472 responsible; and (iii) have an impact on any Project Water rights applications, permits, or
1473 licenses. In addition, the Contracting Officer shall comply with the National Environmental
1474 Policy Act and the Endangered Species Act. The Contractor will be responsible for all costs
1475 incurred by the Contracting Officer in this process, and such costs will be paid in accordance
1476 with Article 26 of this Contract.

1477 FEDERAL LAWS

1478 37. By entering into this Contract, the Contractor does not waive its rights to contest
1479 the validity or application in connection with the performance of the terms and conditions of this

1480 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with
1481 the terms and conditions of this Contract unless and until relief from application of such Federal
1482 law or regulation to the implementing provision of the Contract is granted by a court of
1483 competent jurisdiction.

1484 EMERGENCY RESERVE FUND

1485 38. The Contractor and Contracting Officer acknowledge that the requirements to
1486 establish and maintain a minimum reserve fund account to finance extraordinary O&M costs of
1487 Friant Division Facilities is and will continue to be administered under Contract No.
1488 8-07-20-X0356 titled Agreement To Transfer The Operation, Maintenance And Replacement
1489 And Certain Financial And Administrative Activities Related To The Friant-Kern Canal And
1490 Associated Works, dated March 1, 1998 as amended, supplemented, assigned, or renewed.

1491 MEDIUM FOR TRANSMITTING PAYMENT

1492 39. (a) All payments from the Contractor to the United States under this contract
1493 shall be by the medium requested by the United States on or before the date payment is due. The
1494 required method of payment may include checks, wire transfers, or other types of payment
1495 specified by the United States.

1496 (b) Upon execution of the contract, the Contractor shall furnish the
1497 Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose
1498 for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising
1499 out of the Contractor's relationship with the United States.

1500 NOTICES

1501 40. Any notice, demand, or request authorized or required by this Contract shall be
1502 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or
1503 delivered to the Area Manager, South-Central California Area Office, 1243 "N" Street, Fresno,
1504 California 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered
1505 to the Board of Directors of the Delano-Earlimart Irrigation District, 14181 Avenue 24, Delano,

1506 California 93215. The designation of the addressee or the address may be changed by notice
1507 given in the same manner as provided in this Article of this Contract for other notices.

1508 CONFIRMATION OF CONTRACT

1509 41. The Contractor, after the execution of this Contract, shall promptly provide to the
1510 Contracting Officer a decree of a court of competent jurisdiction of the State of California,
1511 confirming the execution of this Contract. The Contractor shall furnish the United States a
1512 certified copy of the final decree, the validation proceedings, and all pertinent supporting records
1513 of the court approving and confirming this Contract, and decreeing and adjudging it to be lawful,
1514 valid, and binding on the Contractor.

1515 CONTRACT DRAFTING CONSIDERATIONS

1516 42. Articles 1 through 15, subdivision (c) of Article 16, Articles 18 through 20,
1517 subdivision (c) of Article 23, Articles 26 through 29, subdivisions (b) and (c) of Article 31,
1518 subdivisions (b) and (c) of Article 32, Articles 33 through 34, subdivision (b) of Article 36, and
1519 Articles 37 through 38 of this Contract have been drafted, negotiated, and reviewed by the
1520 parties hereto, each of whom is sophisticated in the matters to which this Contract pertains, and
1521 no one party shall be considered to have drafted the stated Articles.

1522 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day
1523 and year first above written.

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

ACTING FOR

THE UNITED STATES OF AMERICA

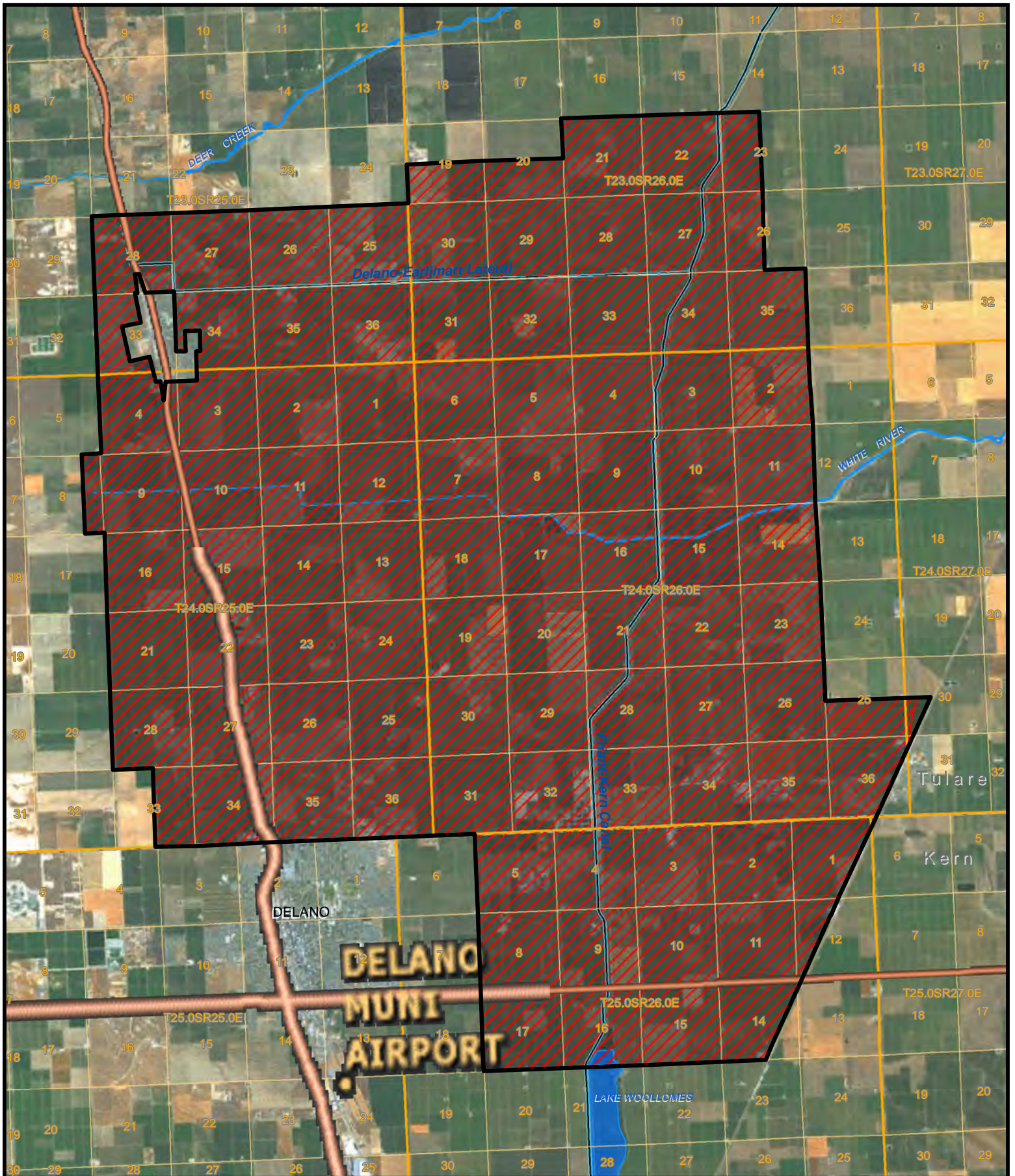
By: *Robb R. Arroyave*
Regional Director, Mid-Pacific Region
Bureau of Reclamation




DELANO-EARLIMART IRRIGATION DISTRICT

By: *Wanda D. White*
President, Board of Directors

Attest:

By: *D. R. B...*
Secretary



-  Contractor's Service Area (Irrigation Only)
-  Contractor's Service Area (Irrigation and M&I)
-  District Boundary

Delano-Earlimart I.D.

Contract No. I75R-3327D

Exhibit A

Friant 9 (d) Repayment



EXHIBIT B

Rates and Charges

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

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Exhibit C-1
 Repayment Obligation - Lump Sum Option

Friant Contractor;
 San Joaquin River Restoration Act

Delano-Earlimart ID

Existing Capital Obligation (Article 1(m)) \$ 27,463,109.01

Irrigation portion of Existing Capital Obligation \$ 27,445,206.23

20yr CMT as of : 10/01/10 3.400%

Discount Rate (1/2 20yr CMT) 1.700%

Discounted Irrigation Capital \$ 23,101,822.46

Non-Discounted M&I Portion of Existing Capital Obligation \$ 17,902.78

Repayment Obligation - Lump Sum Option (per Article 7(a)(2)(A)) \$ 23,119,725.24

Year	Irrigation Portion of Allocated Capital Cost	
	Beginning Balance	Straight Line Repayment
	2011	\$ 27,445,206
2012	\$ 26,072,946	\$ 1,372,260
2013	\$ 24,700,686	\$ 1,372,260
2014	\$ 23,328,425	\$ 1,372,260
2015	\$ 21,956,165	\$ 1,372,260
2016	\$ 20,583,905	\$ 1,372,260
2017	\$ 19,211,644	\$ 1,372,260
2018	\$ 17,839,384	\$ 1,372,260
2019	\$ 16,467,124	\$ 1,372,260
2020	\$ 15,094,863	\$ 1,372,260
2021	\$ 13,722,603	\$ 1,372,260
2022	\$ 12,350,343	\$ 1,372,260
2023	\$ 10,978,082	\$ 1,372,260
2024	\$ 9,605,822	\$ 1,372,260
2025	\$ 8,233,562	\$ 1,372,260
2026	\$ 6,861,302	\$ 1,372,260
2027	\$ 5,489,041	\$ 1,372,260
2028	\$ 4,116,781	\$ 1,372,260
2029	\$ 2,744,521	\$ 1,372,260
2030	\$ 1,372,260	\$ 1,372,260
		\$ 27,445,206

Exhibit C-2
Repayment Obligation - Installment Payment Option

Priority Contractor: Delano-Earlimart ID

Existing Capital Obligation (Article 1(m)) \$ 27,463,109.01

Irrigation Portion of Existing Capital Obligation \$ 27,445,206.23

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

Non-Discounted M&I Existing Capital Obligation \$ 17,902.78

Installment Schedule

	Payment Due Date	Irrigation Portion of Repayment Obligation	Non-discounted M&I Portion of Existing Capital Obligation	Repayment Obligation
1st Installment	5/1/2011	\$ 5,917,346.97	\$ 17,902.78	\$ 5,935,249.75
2nd Installment	5/1/2012	\$ 5,916,453.05	-	\$ 5,916,453.05
3rd Installment	5/1/2013	\$ 5,922,528.18	-	\$ 5,922,528.18
4th Installment	1/31/2014	\$ 5,933,333.64	-	\$ 5,933,333.64

Total Repayment Obligation - Installment Option (per Article 7(a)(2)(A)) \$ 23,689,661.84 \$ 17,902.78 \$ 23,707,564.62

Year	Irrigation Portion of Allocated Capital Cost		Discounted Capital Amount			
	Beginning Balance	Straight Line Repayment	\$5,917,346.97	\$5,916,453.05	\$5,922,528.18	\$5,933,333.64
2011	\$ 27,445,206	\$ 1,372,260	\$ 1,372,260			
2012	\$ 26,072,946	\$ 1,372,260	\$ 288,175	\$ 1,084,086		
2013	\$ 24,700,686	\$ 1,372,260	\$ 288,175	\$ 320,423	\$ 763,663	
2014	\$ 23,328,425	\$ 1,372,260	\$ 288,175	\$ 320,423	\$ 358,846	\$ 404,817
2015	\$ 21,956,165	\$ 1,372,260	\$ 288,175	\$ 320,423	\$ 358,846	\$ 404,817
2016	\$ 20,583,905	\$ 1,372,260	\$ 288,175	\$ 320,423	\$ 358,846	\$ 404,817
2017	\$ 19,211,644	\$ 1,372,260	\$ 288,175	\$ 320,423	\$ 358,846	\$ 404,817
2018	\$ 17,839,384	\$ 1,372,260	\$ 288,175	\$ 320,423	\$ 358,846	\$ 404,817
2019	\$ 16,467,124	\$ 1,372,260	\$ 288,175	\$ 320,423	\$ 358,846	\$ 404,817
2020	\$ 15,094,863	\$ 1,372,260	\$ 288,175	\$ 320,423	\$ 358,846	\$ 404,817
2021	\$ 13,722,603	\$ 1,372,260	\$ 288,175	\$ 320,423	\$ 358,846	\$ 404,817
2022	\$ 12,350,343	\$ 1,372,260	\$ 288,175	\$ 320,423	\$ 358,846	\$ 404,817
2023	\$ 10,978,082	\$ 1,372,260	\$ 288,175	\$ 320,423	\$ 358,846	\$ 404,817
2024	\$ 9,605,822	\$ 1,372,260	\$ 288,175	\$ 320,423	\$ 358,846	\$ 404,817
2025	\$ 8,233,562	\$ 1,372,260	\$ 288,175	\$ 320,423	\$ 358,846	\$ 404,817
2026	\$ 6,861,302	\$ 1,372,260	\$ 288,175	\$ 320,423	\$ 358,846	\$ 404,817
2027	\$ 5,489,041	\$ 1,372,260	\$ 288,175	\$ 320,423	\$ 358,846	\$ 404,817
2028	\$ 4,116,781	\$ 1,372,260	\$ 288,175	\$ 320,423	\$ 358,846	\$ 404,817
2029	\$ 2,744,521	\$ 1,372,260	\$ 288,175	\$ 320,423	\$ 358,846	\$ 404,817
2030	\$ 1,372,260	\$ 1,372,260	\$ 288,175	\$ 320,423	\$ 358,846	\$ 404,817
	\$ 27,445,206	\$ 1,372,260	\$ 6,847,579	\$ 6,851,696	\$ 6,864,046	\$ 6,881,885

Exhibit D
Friant Surcharge Reduction Calculation

Friant Contractor:
San Joaquin River Restoration Act

Delano-Earlimart ID

Average Annual Delivery - Forecasted for 2020-2039*	102,910
Total Projected deliveries (over 20 yr period)**	
Article 7(c)	2,058,200
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	\$27,445,206
NPV at Half CMT (Repayment Obligation)	\$23,101,822
NPV at Full CMT	\$19,680,775
Financing Cost Offset: ^o (Article 7(c)(1))	\$3,421,048
NPV of FS Reduction	\$3,277,175
Difference between Financing Cost Offset and NPV of FS Reduction	\$143,872
2020 Other Obligation Credit (FV of difference) (Art. 7(c)(2)) ^o	\$194,385

Year	Irrigation portion of Allocated Capital Cost		CVPIA Friant	Reduction in Friant Surcharge			
	Beginning Balance	Straight Line Repayment	Surcharge per Acre- Foot Before Reduction	Friant Surcharge Reduction per Article 7(c)(1)	Friant Surcharge due per A/F after Reduction	Projected Total Annual Credit	2020 Other Obligation Credit Calculation (Art. 7(c)(2))
2011	\$ 27,445,206	\$ 1,372,260	\$7.00		\$7.00	0	\$ 143,872.47
2012	\$ 26,072,946	\$ 1,372,260	\$7.00		\$7.00	0	\$ 148,764.13
2013	\$ 24,700,686	\$ 1,372,260	\$7.00		\$7.00	0	\$ 153,822.11
2014	\$ 23,328,425	\$ 1,372,260	\$7.00		\$7.00	0	\$ 159,052.06
2015	\$ 21,956,165	\$ 1,372,260	\$7.00		\$7.00	0	\$ 164,459.83
2016	\$ 20,583,905	\$ 1,372,260	\$7.00		\$7.00	0	\$ 170,051.47
2017	\$ 19,211,644	\$ 1,372,260	\$7.00		\$7.00	0	\$ 175,833.22
2018	\$ 17,839,384	\$ 1,372,260	\$7.00		\$7.00	0	\$ 181,811.55
2019	\$ 16,467,124	\$ 1,372,260	\$7.00		\$7.00	0	\$ 187,993.14
2020	\$ 15,094,863	\$ 1,372,260	\$7.00	(\$3.00)	\$ 4.00	(\$308,730)	\$ 194,384.90
2021	\$ 13,722,603	\$ 1,372,260	\$7.00	(\$3.00)	\$ 4.00	(308,730)	
2022	\$ 12,350,343	\$ 1,372,260	\$7.00	(\$3.00)	\$ 4.00	(308,730)	
2023	\$ 10,978,082	\$ 1,372,260	\$7.00	(\$3.00)	\$ 4.00	(308,730)	
2024	\$ 9,605,822	\$ 1,372,260	\$7.00	(\$3.00)	\$ 4.00	(308,730)	
2025	\$ 8,233,562	\$ 1,372,260	\$7.00	(\$3.00)	\$ 4.00	(308,730)	
2026	\$ 6,861,302	\$ 1,372,260	\$7.00	(\$3.00)	\$ 4.00	(308,730)	
2027	\$ 5,489,041	\$ 1,372,260	\$7.00	(\$3.00)	\$ 4.00	(308,730)	
2028	\$ 4,116,781	\$ 1,372,260	\$7.00	(\$3.00)	\$ 4.00	(308,730)	
2029	\$ 2,744,521	\$ 1,372,260	\$7.00	(\$3.00)	\$ 4.00	(308,730)	
2030	\$ 1,372,260	\$ 1,372,260	\$7.00	(\$3.00)	\$ 4.00	(308,730)	
2031			\$7.00	(\$3.00)	\$ 4.00	(308,730)	
2032			\$7.00	(\$3.00)	\$ 4.00	(308,730)	
2033			\$7.00	(\$3.00)	\$ 4.00	(308,730)	
2034			\$7.00	(\$3.00)	\$ 4.00	(308,730)	
2035			\$7.00	(\$3.00)	\$ 4.00	(308,730)	
2036			\$7.00	(\$3.00)	\$ 4.00	(308,730)	
2037			\$7.00	(\$3.00)	\$ 4.00	(308,730)	
2038			\$7.00	(\$3.00)	\$ 4.00	(308,730)	
2039			\$7.00	(\$3.00)	\$ 4.00	(308,730)	
	\$ 27,445,206					(\$6,174,600)	

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	\$	4,779,303
Annual Credit Target	\$	(322,284)
FS Reduction w/o limit	\$	(3.13)
FS Reduction limit	\$	(3.00)

EXHIBIT E

Restated Contract¹

Irrigation and M&I
Contract No. I75r-3327D

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

CONTRACT BETWEEN THE UNITED STATES
AND
DELANO-EARLIMART IRRIGATION DISTRICT
PROVIDING FOR PROJECT WATER SERVICE FROM
FRIANT DIVISION AND
FOR FACILITIES REPAYMENT

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

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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 DELANO-EARLIMART IRRIGATION DISTRICT
8 PROVIDING FOR PROJECT WATER SERVICE
9 FROM FRIANT DIVISION AND
10 FACILITIES REPAYMENT

11 THIS CONTRACT, made this 17th 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 (70
15 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1262), October 27, 1986 (100
16 Stat. 3050), as amended, Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), and Title
17 X, Subtitle A, of the Act of March 30, 2009 (123 Stat. 1349), also referred to as the San Joaquin
18 River Restoration Settlement Act hereinafter referred to as SJRRSA, all collectively hereinafter
19 referred to as Federal Reclamation law, between THE UNITED STATES OF AMERICA,
20 hereinafter referred to as the United States and DELANO-EARLIMART IRRIGATION
21 DISTRICT, hereinafter referred to as the Contractor, a public agency of the State of California,
22 duly organized, existing, and acting pursuant to the laws thereof, with its principal place of
23 business in California;

24 WITNESSETH, That

EXPLANATORY RECITALS

25

[1st] WHEREAS, the United States has constructed and is operating the Central Valley
26 Project, California, for diversion, storage, carriage, distribution and beneficial use, for flood
27 control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and
28 restoration, generation and distribution of electric energy, salinity control, navigation and other
29 beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and
30 the San Joaquin River and their tributaries; and
31

32

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

36

[3rd] WHEREAS, the United States and the Contractor entered into Contract Number
37 I75r-3327, as amended, which established terms for the delivery to the Contractor of Project
38 Water from the Friant Division from August 11, 1951 through February 29, 1992; and

39

[4th] WHEREAS, the Contractor and the United States have entered into a renewal
40 contract and, pursuant to subsection 3404(c)(1) of the Central Valley Project Improvement Act
41 (CVPIA), subsequently entered into an interim renewal contract(s), identified as Contract
42 Number (s) I75r-3327R and I75r-3327-IR1, which provided for the continued water service to
43 Contractor from March 1, 1992 through February 28, 2001, and subsequently entered into a
44 long-term renewal contract identified as Contract Number I75r-3327-LTR1, which provided for

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

47 [5th] 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 [6th] 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 (5th) Explanatory
57 Recital of this Contract; and

58 [7th] 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 [8th] 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 [9th] 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 [10th] 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 [11th] WHEREAS, among other things, this Contract includes provisions granting the
84 Contractor the permanent right described in the tenth (10th) Explanatory Recital; and

85 [12th] 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 [13th] 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 [14th] 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 [15th] 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 [16th] 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 [17th] 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 [18th] 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 [19th] 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 SJRRA;

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 (3rd) and fourth (4th) 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 108,800 acre-feet of Class 1 Water and

273 74,500 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. I1r-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 (20th) 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 2,058,200 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 (1) (1) Omitted.

717 (2) (2) Omitted.

718 (3) (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. No sale, transfer, or exchange of Project

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

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

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

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

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

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

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

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

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

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

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

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

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

826 APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

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

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

845 TEMPORARY REDUCTIONS—RETURN FLOWS

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

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

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

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

871 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

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

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

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

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

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

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

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

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

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

927 UNAVOIDABLE GROUNDWATER PERCOLATION

928 14. Omitted.

929 ACREAGE LIMITATION

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

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

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

952 COMPLIANCE WITH FEDERAL RECLAMATION LAW

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

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

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PROTECTION OF WATER AND AIR QUALITY

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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.

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(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.

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

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WATER ACQUIRED BY THE CONTRACTOR
OTHER THAN FROM THE UNITED STATES

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18. (a) Omitted.

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(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.

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(c) Water or water rights now owned or hereafter acquired by the Contractor,

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other than from the United States or adverse to the Project or its contractors (i.e., non-project

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

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

998 (2) Delivery of such non-project water in and through Project facilities
999 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project
1000 purposes as determined by the Contracting Officer; (ii) reduce the quantity or quality of water
1001 available to other Project Contractors; (iii) interfere with the delivery of contractual water
1002 entitlements to any other Project Contractors; (iv) interfere with the physical maintenance of the
1003 Project facilities; or (v) result in the United States incurring any liability or unreimbursed costs
1004 or expenses thereby.

1005 (3) Neither the United States nor the Operating Non-Federal Entity
1006 shall be responsible for control, care or distribution of the non-project water before it is
1007 introduced into or after it is delivered from the Project facilities. The Contractor hereby releases
1008 and agrees to defend and indemnify the United States and the Operating Non-Federal Entity, and

1009 their respective officers, agents, and employees, from any claim for damage to persons or
1010 property, direct or indirect, resulting from Contractor's diversion or extraction of non-project
1011 water from any source.

1012 (4) Diversion of such non-project water into Project facilities shall be
1013 consistent with all applicable laws, and if involving groundwater, consistent with any
1014 groundwater management plan for the area from which it was extracted.

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

1020 (d) Non-project water may be stored, conveyed and/or diverted through Friant
1021 Division Facilities, subject to the prior completion of appropriate environmental documentation
1022 and approval of the Contracting Officer without execution of a separate contract, consistent with
1023 subdivisions (c)(1) through (c)(5) of this Article and any other condition determined to be
1024 appropriate by the Contracting Officer.

1025 OPINIONS AND DETERMINATIONS

1026 19. (a) Where the terms of this Contract provide for actions to be based upon the
1027 opinion or determination of either party to this Contract, said terms shall not be construed as
1028 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
1029 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly

1030 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,
1031 or unreasonable opinion or determination. Each opinion or determination by either party shall be
1032 provided in a timely manner. Nothing in this Article of this Contract is intended to or shall affect
1033 or alter the standard of judicial review applicable under Federal law to any opinion or
1034 determination implementing a specific provision of Federal law embodied in statute or
1035 regulation.

1036 (b) The Contracting Officer shall have the right to make determinations
1037 necessary to administer this Contract that are consistent with the provisions of this Contract, the
1038 laws of the United States and the State of California, and the rules and regulations promulgated
1039 by the Secretary. Such determinations shall be made in consultation with the Contractor to the
1040 extent reasonably practicable.

1041 COORDINATION AND COOPERATION

1042 20. (a) In order to further their mutual goals and objectives, the Contracting
1043 Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and
1044 with other affected Project Contractors, in order to improve the operation and management of the
1045 Project. The communication, coordination, and cooperation regarding operations and
1046 management shall include, but not limited to, any action which will or may materially affect the
1047 quantity or quality of Project Water supply, the allocation of Project Water supply, and Project
1048 financial matters including, but not limited to, budget issues. The communication, coordination,
1049 and cooperation provided for hereunder shall extend to all provisions of this Contract. Each

1050 party shall retain exclusive decision making authority for all actions, opinions, and
1051 determinations to be made by the respective party.

1052 (b) It is the intent of the Secretary to improve water supply reliability. To
1053 carry out this intent:

1054 (1) The Contracting Officer will, at the request of the Contractor,
1055 assist in the development of integrated resource management plans for the Contractor. Further,
1056 the Contracting Officer will, as appropriate, seek authorizations for implementation of
1057 partnerships to improve water supply, water quality, and reliability.

1058 (2) The Secretary will, as appropriate, pursue program and project
1059 implementation and authorization in coordination with Project Contractors to improve the water
1060 supply, water quality, and reliability of the Project for all Project purposes.

1061 (3) The Secretary will coordinate with Project Contractors and the
1062 State of California to seek improved water resource management.

1063 (4) The Secretary will coordinate actions of agencies within the
1064 Department of the Interior that may impact the availability of water for Project purposes.

1065 (5) The Contracting Officer shall periodically, but not less than
1066 annually, hold division level meetings to discuss Project operations, division level water
1067 management activities, and other issues as appropriate.

1068 (c) Without limiting the contractual obligations of the Contracting Officer
1069 hereunder, nothing in this Contract shall be construed to limit or constrain the Contracting
1070 Officer's ability to communicate, coordinate, and cooperate with the Contractor or other

1071 interested stakeholders or to make decisions in a timely fashion as needed to protect health,
1072 safety, physical integrity of structures or facilities, or the Contracting Officer's ability to comply
1073 with applicable laws.

1074 CHARGES FOR DELINQUENT PAYMENTS

1075 21. (a) The Contractor shall be subject to interest, administrative and penalty
1076 charges on delinquent installments or payments. When a payment is not received by the due
1077 date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond
1078 the due date. When a payment becomes sixty (60) days delinquent, the Contractor shall pay an
1079 administrative charge to cover additional costs of billing and processing the delinquent payment.
1080 When a payment is delinquent ninety (90) days or more, the Contractor shall pay an additional
1081 penalty charge of six (6) percent per year for each day the payment is delinquent beyond the due
1082 date. Further, the Contractor shall pay any fees incurred for debt collection services associated
1083 with a delinquent payment.

1084 (b) The interest charge rate shall be the greater of the rate prescribed quarterly
1085 in the Federal Register by the Department of the Treasury for application to overdue payments,
1086 or the interest rate of one-half of one (0.5) percent per month prescribed by Section 6 of the
1087 Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be
1088 determined as of the due date and remain fixed for the duration of the delinquent period.

1089 (c) When a partial payment on a delinquent account is received, the amount
1090 received shall be applied, first to the penalty, second to the administrative charges, third to the
1091 accrued interest, and finally to the overdue payment.

1092 EQUAL EMPLOYMENT OPPORTUNITY

1093 22. During the performance of this Contract, the Contractor agrees as follows:

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

1104 (b) The Contractor will, in all solicitations or advertisements for employees
1105 placed by or on behalf of the Contractor, state that all qualified applicants will receive
1106 consideration for employment without regard to race, color, religion, sex, disability, or national
1107 origin.

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

1114 (d) The Contractor will comply with all provisions of Executive Order No.
1115 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary
1116 of Labor.

1117 (e) The Contractor will furnish all information and reports required by
1118 Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the
1119 Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and
1120 accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to
1121 ascertain compliance with such rules, regulations, and orders.

1122 (f) In the event of the Contractor's noncompliance with the nondiscrimination
1123 clauses of this contract or with any of such rules, regulations, or orders, this contract may be
1124 canceled, terminated or suspended in whole or in part and the Contractor may be declared
1125 ineligible for further Government contracts in accordance with procedures authorized in
1126 Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and
1127 remedies invoked as provided in Executive Order 11246 of September 24, 1965 or by rule,
1128 regulation, or order of the Secretary of Labor, or as otherwise provided by law.

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

1139 GENERAL OBLIGATION—BENEFITS CONDITIONED UPON PAYMENT

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

1144 (b) The payment of charges becoming due hereunder is a condition precedent
1145 to receiving benefits under this Contract. The United States shall not make water available to the
1146 Contractor through Project facilities during any period in which the Contractor may be in arrears
1147 in the advance payment of water rates due the United States. The Contractor shall not furnish
1148 water made available pursuant to this Contract for lands or parties which are in arrears in the
1149 advance payment of water rates levied or established by the Contractor.

1150 (c) With respect to subdivision (b) of this Article of this Contract, the
1151 Contractor shall have no obligation to require advance payment for water rates which it levies.

1152 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1153 24. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
1154 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the
1155 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights
1156 laws, as well as with their respective implementing regulations and guidelines imposed by the
1157 U.S. Department of the Interior and/or Bureau of Reclamation.

1158 (b) These statutes require that no person in the United States shall, on the
1159 grounds of race, color, national origin, handicap, or age, be excluded from participation in, be
1160 denied the benefits of, or be otherwise subjected to discrimination under any program or activity
1161 receiving financial assistance from the Bureau of Reclamation. By executing this Contract, the
1162 Contractor agrees to immediately take any measures necessary to implement this obligation,
1163 including permitting officials of the United States to inspect premises, programs, and documents.

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

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PRIVACY ACT COMPLIANCE

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25. Omitted.

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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

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

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

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

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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.

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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

1193 conservation program. In the event the Contractor's water conservation plan or any revised
1194 water conservation plan completed pursuant to subdivision (d) of this Article of this Contract
1195 have not yet been determined by the Contracting Officer to meet such criteria, due to
1196 circumstances which the Contracting Officer determines are beyond the control of the
1197 Contractor, water deliveries shall be made under this Contract so long as the Contractor
1198 diligently works with the Contracting Officer to obtain such determination at the earliest
1199 practicable date, and thereafter the Contractor immediately begins implementing its water
1200 conservation and efficiency program in accordance with the time schedules therein.

1201 (b) Should the amount of M&I Water Delivered pursuant to subdivision (a) of
1202 Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the
1203 Contractor shall implement the Best Management Practices identified by the time frames issued
1204 by the California Urban Water Conservation Council for such M&I Water unless any such
1205 practice is determined by the Contracting Officer to be inappropriate for the Contractor.

1206 (c) The Contractor shall submit to the Contracting Officer a report on the
1207 status of its implementation of the water conservation plan on the reporting dates specified in the
1208 then-existing conservation and efficiency criteria established under Federal law.

1209 (d) At five (5) -year intervals, the Contractor shall revise its water
1210 conservation plan to reflect the then-existing conservation and efficiency criteria for evaluating
1211 water conservation plans established under Federal law and submit such revised water
1212 management plan to the Contracting Officer for review and evaluation. The Contracting Officer
1213 will then determine if the water conservation plan meets Reclamation's then-existing

1214 conservation and efficiency criteria for evaluating water conservation plans established under
1215 Federal law.

1216 (e) If the Contractor is engaged in direct groundwater recharge, such activity
1217 shall be described in the Contractor's water conservation plan.

1218 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1219 28. Except as specifically provided in Article 18 of this Contract, the provisions of
1220 this Contract shall not be applicable to or affect non-project water or water rights now owned or
1221 hereafter acquired by the Contractor or any user of such water within the Contractor's Service
1222 Area. Any such water shall not be considered Project Water under this Contract. In addition,
1223 this Contract shall not be construed as limiting or curtailing any rights which the Contractor or
1224 any water user within the Contractor's Service Area acquires or has available under any other
1225 contract pursuant to Federal Reclamation law.

1226 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

1227 29. (a) The O&M of a portion of the Project facilities which serve the Contractor,
1228 and responsibility for funding a portion of the costs of such O&M, have been transferred to the
1229 Operating Non-Federal Entity by separate agreement between the United States and the
1230 Operating Non-Federal Entity. That separate agreement shall not interfere with or affect the
1231 rights or obligations of the Contractor or the United States hereunder.

1232 (b) The Contracting Officer has previously notified the Contractor in writing
1233 that the O&M of a portion of the Project facilities which serve the Contractor has been
1234 transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly

1235 to the Operating Non-Federal Entity, or to any successor approved by the Contracting Officer
1236 under the terms and conditions of the separate agreement between the United States and the
1237 Operating Non-Federal Entity described in subdivision (a) of this Article of this Contract, all
1238 rates, charges or assessments of any kind, including any assessment for reserve funds, which the
1239 Operating Non-Federal Entity or such successor determines, sets or establishes for (i) the O&M
1240 of the portion of the Project facilities operated and maintained by the Operating Non-Federal
1241 Entity or such successor, or (ii) the Friant Division's share of the operation, maintenance and
1242 replacement costs for physical works and appurtenances associated with the Tracy Pumping
1243 Plant, the Delta-Mendota Canal, the O'Neill Pumping/Generating Plant, the federal share of the
1244 O'Neill Forebay, the Mendota Pool, and the federal share of San Luis Unit joint use conveyance
1245 and conveyance pumping facilities. Such direct payments to the Operating Non-Federal Entity
1246 or such successor shall not relieve the Contractor of its obligation to pay directly to the United
1247 States the Contractor's share of the Project Rates and Charges, except to the extent the Operating
1248 Non-Federal Entity collects payments on behalf of the United States in accordance with the
1249 separate agreement identified in subdivision (a) of this Article of this Contract.

1250 (c) For so long as the O&M of any portion of the Project facilities serving the
1251 Contractor is performed by the Operating Non-Federal Entity, or any successor thereto, the
1252 Contracting Officer shall adjust those components of the Rates for Water Delivered under this
1253 Contract representing the cost associated with the activity being performed by the Operating
1254 Non-Federal Entity or its successor.

1255 (d) In the event the O&M of the Project facilities operated and maintained by
1256 the Operating Non-Federal Entity is re-assumed by the United States during the term of this
1257 Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the
1258 Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid by the
1259 Contractor for Project Water under this Contract representing the O &M costs of the portion of
1260 such Project facilities which have been re-assumed. The Contractor shall, thereafter, in the
1261 absence of written notification from the Contracting Officer to the contrary, pay the Rates and
1262 Charges specified in the revised Exhibit "B" directly to the United States in compliance with
1263 Article 7 of this Contract.

1264 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1265 30. The expenditure or advance of any money or the performance of any obligation of
1266 the United States under this Contract shall be contingent upon appropriation or allotment of
1267 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any
1268 obligations under this Contract. No liability shall accrue to the United States in case funds are
1269 not appropriated or allotted.

1270 BOOKS, RECORDS, AND REPORTS

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

1280 (b) Notwithstanding the provisions of subdivision (a) of this Article of this
1281 Contract, no books, records, or other information shall be requested from the Contractor by the

1282 Contracting Officer unless such books, records, or information are reasonably related to the
1283 administration or performance of this Contract. Any such request shall allow the Contractor a
1284 reasonable period of time within which to provide the requested books, records, or information.

1285 (c) At such time as the Contractor provides information to the Contracting
1286 Officer pursuant to subdivision (a) of this Article of this Contract, a copy of such information
1287 shall be provided to the Operating Non-Federal Entity.

1288 ASSIGNMENT LIMITED—SUCCESSORS AND ASSIGNS OBLIGATED

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

1292 (b) The assignment of any right or interest in this Contract by either party
1293 shall not interfere with the rights or obligations of the other party to this Contract absent the
1294 written concurrence of said other party.

1295 (c) The Contracting Officer shall not unreasonably condition or withhold
1296 approval of any proposed assignment.

1297 SEVERABILITY

1298 33. In the event that a person or entity who is neither (i) a party to a Project contract,
1299 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor
1300 (iii) an association or other form of organization whose primary function is to represent parties to
1301 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or
1302 enforceability of a provision included in this Contract and said person, entity, association, or
1303 organization obtains a final court decision holding that such provision is legally invalid or

1304 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),
1305 the parties to this Contract shall use their best efforts to (i) within thirty (30) days of the date of
1306 such final court decision identify by mutual agreement the provisions in this Contract which
1307 must be revised and (ii) within three (3) months thereafter promptly agree on the appropriate
1308 revision(s). The time periods specified above may be extended by mutual agreement of the
1309 parties. Pending the completion of the actions designated above, to the extent it can do so
1310 without violating any applicable provisions of law, the United States shall continue to make the
1311 quantities of Project Water specified in this Contract available to the Contractor pursuant to the
1312 provisions of this Contract which were not found to be legally invalid or unenforceable in the
1313 final court decision.

1314 RESOLUTION OF DISPUTES

1315 34. Should any dispute arise concerning any provisions of this Contract, or the
1316 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to
1317 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting
1318 Officer referring any matter to Department of Justice, the party shall provide to the other party
1319 thirty (30) days written notice of the intent to take such action; Provided, That such notice shall
1320 not be required where a delay in commencing an action would prejudice the interests of the party
1321 that intends to file suit. During the thirty (30) day notice period, the Contractor and the
1322 Contracting Officer shall meet and confer in an attempt to resolve the dispute. Except as
1323 specifically provided, nothing herein is intended to waive or abridge any right or remedy that the
1324 Contractor or the United States may have.

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OFFICIALS NOT TO BENEFIT

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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.

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CHANGES IN CONTRACTOR'S SERVICE AREA

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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.

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

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FEDERAL LAWS

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

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1348 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with
1349 the terms and conditions of this Contract unless and until relief from application of such Federal
1350 law or regulation to the implementing provision of the Contract is granted by a court of
1351 competent jurisdiction.

1352 EMERGENCY RESERVE FUND

1353 38. The Contractor and Contracting Officer acknowledge that the requirements to
1354 establish and maintain a minimum reserve fund account to finance extraordinary O&M costs of
1355 Friant Division Facilities is and will continue to be administered under Contract No.
1356 8-07-20-X0356 titled Agreement To Transfer The Operation, Maintenance And Replacement
1357 And Certain Financial And Administrative Activities Related To The Friant-Kern Canal And
1358 Associated Works, dated March 1, 1998 as amended, supplemented, assigned, or renewed.

1359 MEDIUM FOR TRANSMITTING PAYMENT

1360 39. (a) All payments from the Contractor to the United States under this contract
1361 shall be by the medium requested by the United States on or before the date payment is due. The
1362 required method of payment may include checks, wire transfers, or other types of payment
1363 specified by the United States.

1364 (b) Upon execution of the contract, the Contractor shall furnish the
1365 Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose
1366 for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising
1367 out of the Contractor's relationship with the United States.

1368 NOTICES

1369 40. Any notice, demand, or request authorized or required by this Contract shall be
1370 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or
1371 delivered to the Area Manager, South-Central California Area Office, 1243 "N" Street, Fresno,
1372 California 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered
1373 to the Board of Directors of the Delano-Earlimart Irrigation District, 14181 Avenue 24, Delano,

1374 California 93215. The designation of the addressee or the address may be changed by notice
1375 given in the same manner as provided in this Article of this Contract for other notices.

1376 CONFIRMATION OF CONTRACT

1377 41. The Contractor, after the execution of this Contract, shall promptly provide to the
1378 Contracting Officer a decree of a court of competent jurisdiction of the State of California,
1379 confirming the execution of this Contract. The Contractor shall furnish the United States a
1380 certified copy of the final decree, the validation proceedings, and all pertinent supporting records
1381 of the court approving and confirming this Contract, and decreeing and adjudging it to be lawful,
1382 valid, and binding on the Contractor.

1383 CONTRACT DRAFTING CONSIDERATIONS

1384 42. Articles 1 through 15, subdivision (c) of Article 16, Articles 18 through 20,
1385 subdivision (c) of Article 23, Articles 26 through 29, subdivisions (b) and (c) of Article 31,
1386 subdivisions (b) and (c) of Article 32, Articles 33 through 34, subdivision (b) of Article 36, and
1387 Articles 37 through 38 of this Contract have been drafted, negotiated, and reviewed by the
1388 parties hereto, each of whom is sophisticated in the matters to which this Contract pertains, and
1389 no one party shall be considered to have drafted the stated Articles.

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

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RESOLUTION NO. 10-06
of the
DELANO-EARLIMART IRRIGATION DISTRICT

APPROVING AND AUTHORIZING THE EXECUTION OF
CONTRACT NO. 175r-3327D BETWEEN THE UNITED STATES AND
DELANO-EARLIMART IRRIGATION DISTRICT PROVIDING FOR PROJECT
WATER SERVICE, 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 Delano-Earlimart Irrigation District (“District”); and

WHEREAS, the United States and the District have, continuously, since August 11, 1951, been parties to a contract, as amended and as renewed periodically, providing for water service from the Friant Division Facilities to the District (the “Existing Contract”); and

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

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

WHEREAS, the SJRRSA authorizes and directs the Secretary to convert the Existing Contract to a repayment contract under subsection (d) of Section 9 of the Act of August

4, 1939, no later than December 31, 2010, under mutually agreeable terms and conditions; and

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

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

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

WHEREAS, the District intends to finance its capital cost repayment obligations under the Repayment Contract through issuance of notes, bonds or other form of indebtedness; and

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

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

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

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

1. Determines that the foregoing recitals and findings are true and correct, and incorporates them herein by this reference.
2. Approves and authorizes execution of the Repayment Contract by the President and Secretary as attached in Exhibit A, which execution shall be subject to and occur upon: (i) the successful completion of proceedings necessary to validate the Repayment Contract; (ii) the final determination of the Treasury Rate on October 1, 2010 and the resulting final determination of the Repayment Obligation set forth in Exhibit Nos. C1, C2 and D of the Repayment Contract; and (iii) the District obtaining financing of its repayment obligations under terms satisfactory to the Board of Directors.
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.
4. Authorizes and directs the District's Secretary to the Board to provide certified copies of the foregoing resolution to the Bureau of Reclamation.
5. Authorizes the President and Secretary of the Board to approve corrections to the Repayment Contract as may be necessary provided any such modifications are necessary to correct non-substantive errors and omissions in the Repayment Contract and do not result in any substantive changes in the contract attached as Exhibit A.
6. Authorizes and directs the District'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 financing of the Repayment Obligation.

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.

ADOPTED: June 3, 2010 upon motion of Director Hronis, seconded by Director Caratan and passed by the following vote:

AYES: 5
NOES: 0
ABSTAIN: 0
ABSENT: 0

CERTIFICATE OF SECRETARY

I do hereby certify that I am the Secretary of the Delano-Earlimart Irrigation District, an irrigation district organized and existing under the laws of the State of California, and that the foregoing Resolution was duly adopted by the Board of Directors of said District at a meeting thereof duly held at the office of the said District at 14181 Avenue 24, Delano, California on the 3rd day of June, 2010, at which meeting a quorum of said Board of Directors was at all times present and acting, and that said Resolution has not been rescinded or amended in whole or any part thereof, and remains in force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and the Seal of the Delano-Earlimart Irrigation District this 3rd day of June, 2010.

A handwritten signature in black ink, appearing to read "Dale R. Brogan", written over a horizontal line.

Dale R. Brogan, Secretary
Delano-Earlimart Irrigation District

Appendix L Comments Received Prior to Completion of the 2020 GSP

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Appendix L Comments Received Prior to Completion of the 2020 GSP

L-1: Summary of Comments Received On Plan

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Comment Response Summary

DEID GSA Public Review Draft Groundwater Sustainability Plan dated November 15, 2019

Comment letters on the DEID GSA Draft GSP were received from the following entities/individuals:

Comment Letter	Entity/Individual	Abbreviation
A	Arvin Edison Water Storage District / Shafter-Wasco Irrigation District	AEWSD / SWID
B	Audubon California / The Nature Conservancy	AC / TNC
C	Bureau of Reclamation	BR
D	California Department of Fish and Wildlife	CDFW
E	Friant Water Authority	FWA
F	Lindsay-Strathmore Irrigation District	LSID
G	The County of Tulare	TC
H	Westchester Group Investment Management, Inc.	WGIM
I	Western Management Area Landowners	WMA

Review comments have been grouped by similar topic and summarized, with a response from the GSA.

Topics

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. Subsidence/ Infrastructure Impacts 2. Environmental
<i>-Groundwater Dependent Ecosystems</i> 3. Beneficial Users Identification
<i>-Disadvantage Communities</i>
<i>-Public Water Systems</i>
<i>-Domestic Wells</i> 4. Water Quality
<i>-Disadvantage Communities</i> 5. Public Participation | <ol style="list-style-type: none"> 6. Land Use (Future Growth)
<i>-Tulare County</i>
<i>-Disadvantage Communities</i> 7. Water Budget/Technical Issues 8. Generalized Comments
<i>-GSA Policies</i>
<i>-Basin Setting</i>
<i>-Sustainable Management Criteria</i>
<i>-Projects & Management Actions</i> |
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Subsidence/ Infrastructure Impacts		Comments received from: AEWS-D-SWID, BR, FWA, LSID, WMA
Response to these comments are provided in Master Response 1		
Comment #	GSP Reference	Review Comment Summary*
A.1	3.5.2.4	Minimum thresholds are not protective of beneficial users' ability to receive FKC water deliveries downstream of the Tule Subbasin due to subsidence in the Tule Subbasin.
A.2	5.2	Tule Subbasin GSPs should include P&MAs that allow zero additional subsidence beyond legacy.
A.3	TSCA - 4.3.4	UR be defined at each RMS for Subsidence on the FKC. Incorporate RMS at 1-mile intervals along FKC. GSP does not identify P&MA's that will be taken to avoid subsidence UR along the FKC.
A.4	5.2.1	Mitigation to damages to the FKC should be proposed from the use of Transitional Pumping.
A.5	TSCA - 4.2	The Sustainability Goal in the TSCA and the Tule Subbasin GSPs is not fully consistent with the General Principles laid forth in the GSP Regulations.
A.6	TSCA - 4.3	The definition of Undesirable Results in the TSCA and the Tule Subbasin GSPs is not compliant with the GSP Regulations.
A.7	2.3.5	The Basin Setting information lacks sufficient discussion of the serious issue of subsidence.
A.8	4.2.3.5	The Monitoring Network for subsidence in the vicinity of the FKC is inadequate.
A.9	3.5.1.4	The proposed Sustainable Management Criteria for subsidence are insufficient in their consideration of impacts on adjacent basins.
A.10	5.2	The proposed Projects and Management Actions do not adequately address and mitigate impacts from subsidence.
A.11	3.5.1.4	The "Undesirable Results for Land Subsidence" were not adequately defined regarding subsidence related impacts on the FKC.
A.12	3.4; TSCA - 4.3.4	Allowing less than 50% of the Representative Monitoring Sites (RMSs) to exceed the Minimum Thresholds (MT) criterion might not be protective of adequate conveyance capacity of the FKC.
A.13	3.5.2.5.3	The FKC current and projected conveyance capacity based on SMC should be defined.
A.14	3.5.1.4	The relationship between the FKC Conveyance Capacity and Measurable Objectives (MOs).
A.16	DEID GSA	Insufficient RMSs along the FKC in the DEID GSA MA.
A.17	4	RMSs at river crossing might not be approximate
A.18	4.2.3.5	There are not RMSs dedicated to address the concern of FKC structural damages.
A.19	DEID GSA	The FKCSMA does not include the portions of FKC in the ET and DEID GSA MA. Although historical subsidence along the FKC in the DEID GSA MA has been small, future subsidence will increase if groundwater extraction increases in the vicinity of the FKC.
A.21	General	Subsidence and associated ground deformation are mostly irreversible
A.22	5.2	Curtailment of groundwater extraction near the FKC should be included in Projects & Management Actions.

* Review comments have been grouped by similar topic and summarized. For full text of comment, see respective comment letter as noted.

Subsidence/ Infrastructure Impacts

Comments received from: AEWS-D-SWID, BR, FWA, LSID, WMA

Response to these comments are provided in **Master Response 1**

Comment #	GSP Reference	Review Comment Summary*
C.1	General	Concurrence with FWA letter to Tule Subbasin GSA's
E.1	5.2.1	Mitigation for additional subsidence along the FKC caused from "Transitional Pumping".
E.2	ETGSA	Undesirable Result would occur if Minimum Threshold occurred at 1 RMS.
E.3	ETGSA	Incorporate additional RMS along the FKC, spaced no more than 1 mile apart.
E.4	ETGSA	Develop a "Friant-Kern Canal Subsidence Management Area".
F.1	General	Concurrence with FWA letter to Tule Subbasin GSA's
F.2	3	Unacceptable to allow 3 additional feet of subsidence and for 50% of RMS to reach their MT before an UR occurs.
I.1	5.2.2.2.10	Timing and amount of FKC mitigation fee is a concern.
I.3	5.2.2.2.10	WMA landowners preservation of rights to contest legal responsibility to pay FKC subsidence impact fees.

Environmental/ Groundwater Dependent Ecosystems

Comments received from: AC-TNC, CDFW

Response to these comments are provided in **Master Response 2**

Comment #	GSP Reference	Review Comment Summary*
B.8	1.4.1.4.2.1	Identification of potential GDEs should include: Characterization of biological resources for each GDE unit with baseline conditions, a description of data gaps, and plans to reconcile data gaps in the monitoring networks.
B.12	3.5.1	Take into consideration GDEs and ISWs when setting SMCs and addressing impacts to beneficial users.
B.13	2	GDEs can be further analyzed using the TNC GDE Pulse web application.
B.17	5	Environmental resources protection needs should be considered in establishing project priorities.
B.18	5.2.1.4	Consider using recharge projects as multi-benefit projects to benefit environmental users.
D.1	2.2.7; Figure 2-6	GDE identification s based on limited information to thoroughly identify GDEs and risk exclusion of potential GDEs.
D.2	1.5.1	Environmental beneficial uses and users are not identified.

* Review comments have been grouped by similar topic and summarized. For full text of comment, see respective comment letter as noted.

Environmental/ Groundwater Dependent Ecosystems		Comments received from: AC-TNC, CDFW
<i>Response to these comments are provided in Master Response 2</i>		
Comment #	GSP Reference	Review Comment Summary*
B.12	3.5.1	Take into consideration GDEs and ISWs when setting SMCs and addressing impacts to beneficial users.
B.13	2	GDEs can be further analyzed using the TNC GDE Pulse web application.
B.17	5	Environmental resources protection needs should be considered in establishing project priorities.
B.18	5.2.1.4	Consider using recharge projects as multi-benefit projects to benefit environmental users.

Beneficial Users Identification		Comments received from: AC- TNC, TC
<i>Response to these comments are provided in Master Response 3</i>		
Comment #	GSP Reference	Review Comment Summary*
B.1	1.5.1	The draft GSP identifies classes of beneficial users but does not include a section specifically describing the beneficial users within the GSA area or how they were engaged throughout the development of the GSP.
B.3	4	The GSP should include detailed information about domestic wells. Maps of the monitoring networks should be provided overlying DACs, domestic wells, community water systems, GDEs and other beneficial users. Also, the GSP should present historical and current groundwater conditions near previously listed beneficial user and more thoroughly identify habitat near GDEs.
B.7	4	Management and monitoring area should be protective of all beneficial users, including DACs and anticipated impacts to these management areas should be discussed.
B.10	3	Impact analysis of SMCs established for groundwater levels relative to DACs.
B.11	3.4; 3.5	Provide justification for continued groundwater level decline and how it will result in sustainable conditions for groundwater users.
B.14	5	The likely benefits and impacts to DAC members by the proposed projects and management actions are not clearly identified in the GSP.
B.15	5	Develop an assistance program for potentially impacted beneficial users.
B.16	5	Identify groundwater accounting program for each type of user to create individual tailored allocations or identify policies that will ensure domestic water users have access to safe, clean affordable and accessible drinking water.
G.19	3.5.2.5.3	Unclear if some domestic well impacts are expected and if so, how they will be mitigated.

* Review comments have been grouped by similar topic and summarized. For full text of comment, see respective comment letter as noted.

Beneficial Users Identification		Comments received from: AC- TNC, TC
<i>Response to these comments are provided in Master Response 3</i>		
Comment #	GSP Reference	Review Comment Summary*
G.21	5.2.1.1	The importation of water supplies will stabilize water levels for rural domestic users in the DEID management area.
G.23	5.2.2.2.4	All domestic wells that go dry due to excessive extraction are mitigated.
G.24	5.2.3.1.1	Management Actions for PUDs and CSDs to be coordinated with the County and recommended to update LAFCo MSR's for all PUD. and CSDs.
G.25	6.5.2	A different assessment rate should be considered for de minimis users.

Water Quality		Comments received from: TC
<i>Response to these comments are provided in Master Response 4</i>		
Comment #	GSP Reference	Review Comment Summary*
G.22	5.2.1.4.1	Recharge projects have the potential to transport water quality constituents into drinking water sources.

Public Participation		Comments received from: AC-TNC
<i>Response to these comments are provided in Master Response 5</i>		
Comment #	GSP Reference	Review Comment Summary*
B.9	3	DACs members were not adequately considered in the discussion of URs, MOs, and MTs for groundwater levels and Water Quality.

* Review comments have been grouped by similar topic and summarized. For full text of comment, see respective comment letter as noted.

Land Use (Future Growth)

Comments received from: TC

*Response to these comments are provided in **Master Response 6***

Comment #	GSP Reference	Review Comment Summary*
E.32	3.3	Clearly and transparently describe the basis for water quality sustainable management criteria.
G.1	Pg. 1-6	Tulare County maintains land use and zoning authority in LAFCo designated PUD and CSD through administration of the County general plan, zoning ordinance, and ordinance code.
G.2	1.4.1.3	Describe and reference Lang Use Designation rather than existing land uses in the Communities, Hamlets, and Legacy Communities.
G.3	Table 1-2	Count of domestic wells seems low. Please note if unknown category includes domestic wells.
G.5	Pg. 1-21	Community growth for municipal water budgets stops in 2040. The GSP should incorporate growth through 20170.
G.7	1.4.4.4	Th County maintains and does not abdicate its authority regarding the application of land use and zoning regulations as feasible and of the county general plan, zoning ordinance, and ordinance code.
G.8	1.4.4.5	Clarify that the plans active in DEID GSA jurisdiction should not be assumed to reflect a 2070 population.
G.9	Pg. 1-28	The County's planned growth seemed to be protected from implementation of the GSP.
G.10	Pg. 1-29	The County will interact with the GSA through review and input on permitting of wells.
G.18	2.5	Ensure management area boundaries around communities will match county future land use plans.
G.20	5.2	The County will have a role in projects as they relate to supporting Community Plans.

Water Budgets

Comments received from: AEWSD-SWID, AC-TNC, TC, WGIM

*Response to these comments are provided in **Master Response 7***

Comment #	GSP Reference	Review Comment Summary*
A.20	2.4.2.4	Overdraft in the subbasin was defined based on averaged hydrology from the years 1990/91 through 2009/10. The average condition between 1990/91 and 2009/10 might not be representative of the long-term average condition.
B.4	2.4.5	The water budget does not clearly identify how climate change will affect specific elements of it.
B.5	2.4.8	It is not clear how sustainable yield allocations protect drinking water users.
B.6	2.4.4	The GSP should provide separate evapotranspiration by land use types.

* Review comments have been grouped by similar topic and summarized. For full text of comment, see respective comment letter as noted.

Water Budgets		Comments received from: AEWSW-SWID, AC-TNC, TC, WGIM
<i>Response to these comments are provided in Master Response 7</i>		
Comment #	GSP Reference	Review Comment Summary*
G.11	1.4.4.7	Municipal growth rates in water budget seem to be consistent with Community Plans. If budget is low, it should be adjusted accordingly.
G.12	Pg. 2-1	General statement about DEID GSA water budget pertaining to current and projected municipal water use.
G.13	Pg. 2-13	Clarify the cause of subsurface inflow and outflow in the GSA is due to neighboring GSAs over extraction.
G.14	2.4.1.1.5	Current municipal water use should be used in lieu of average water use.
G.15	2.4.1.2.5.3	Percolation of applied municipal irrigation should be shown as a range, not an average, with the most recent value reflecting current population conditions.
G.16	2.4.1.2.9	Municipal consumptive use should be shown as a range rather than an average, with the most recent value reflecting current population conditions.
G.17	2.4.4.1	Municipal pumping should be shown as a range rather than an average, with the most recent value reflecting current population conditions.
G.26	CA, Att. 2, 2.3.1.1.5	Urban water use is going to continue to grow with population.
H.1	2.4.8	Clarify Sustainable Yield calculation for the water budget and landowner allocations.

Generalized Comments		Comments received from: AEWSW-SWID-GSI, WGIM AC-CWC-TNC, CWC, HFS, TC, WPUD, WMA
<i>Response to these comments are provided in Master Response 8</i>		
Comment #	GSP Reference	Review Comment Summary*
A.15	3	Model uncertainties and margin of error should be incorporated into subsidence related SMC.
B.2	5	It is important that stakeholder engagement be maintained through the development of future projects and management actions and other SGMA compliance and implementation steps.
G.4	1.4.1.4.2.2	The County appreciates the GSA calling attention to the needs to protect water sources for DACs.
G.6	Pg. 1-25	Good recognition of cooperative nature necessary between the GSA and County.
H.2	General	GSA to use best available data when applying pumping restrictions. Sustainable Yield allocations and pumping allowances should be consistent across the entire subbasin.

* Review comments have been grouped by similar topic and summarized. For full text of comment, see respective comment letter as noted.

Generalized Comments

Comments received from: AEWS-D-SWID-GSI, WGIM AC-CWC-TNC, CWC, HFS, TC, WPUD, WMA

*Response to these comments are provided in **Master Response 8***

Comment #	GSP Reference	Review Comment Summary*
H.3	General	Sustainable Yield allocations, initial pumping allowances and ramp down schedules should be consistent across the entire subbasin.
H.4	General	GSA's should implement a coordinated subbasin wide DMS and measurement methodology.
H.5	General	GSA's to develop quality assurance process for ET consumptive use calculations.
I.2	5.2.2.2.2/10	Access and discretion by WMA landowners of "project funds"
I.4	General	How will precipitation accruals to groundwater be calculated?
I.5	General	Measuring use of groundwater use is not in GSP.

* Review comments have been grouped by similar topic and summarized. For full text of comment, see respective comment letter as noted.

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Appendix L Comments Received Prior to Completion of the 2020 GSP

L-2: Staff Report Responding to Comments Received

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STAFF REPORT-GLOBAL RESPONSES TO COMMENTS ON THE DEID GSP RECEIVED BY DEID GSA

Staff reviewed and has drafted the responses below to written comments received since the release of the draft Groundwater Sustainability Plan (GSP) covering that portion of the Tule Subbasin falling within the jurisdictional boundaries of the Delano-Earlimart Irrigation District Groundwater Sustainability Agency (DEID GSA). The responses are organized by common topics and issues raised by the various commenters, in the order shown in the summary matrix attached to this report. In addition to the comments below, a written response to the comments received from Tulare County was sent to the county on January 23, 2020, consistent with Section 10728.4 of the Water Code, a copy of which is attached to this report.

Any edits to the GSP deemed necessary as a result of the comments or following guidance received from the Board at public meetings held since the GSP was first released, are indicated in the redline version of the GSP attached to this report.

I. SUBSIDENCE / INFRASTRUCTURE IMPACTS

a. COMMENTERS

Bureau of Reclamation; Friant Water Authority; Arvin Edison Water Storage District; Shafter-Wasco Irrigation District; and Lindsay-Strathmore Irrigation District, Western Management Area landowners.

b. COMMENTS SUMMARY

Commenters expressed concerns that land subsidence on the Friant-Kern Canal (FKC) was not sufficiently addressed in the GSP and that the criteria for undesirable results as relate to land subsidence defined in the Coordination Agreement, at or around the time the comments were received, as “the unreasonable subsidence below minimum thresholds at greater than 50% of GSA Management Area RMS resulting in significant impacts to critical infrastructure.” The commenters also suggested that the Minimum Thresholds set in the GSP are not sufficiently protective of beneficial users of the FKC, do not sufficiently consider impacts on adjacent basins, and that projects and management actions must be included in the GSP that would allow no further subsidence beyond legacy as result of transitional pumping, and adequately mitigate impacts from subsidence. Commenters also stated that the Monitoring Network for subsidence in the vicinity of the FKC is not sufficient. Comments were received regarding implementation and amount of any FKC subsidence fee assessed and preservation to contest any fees assessed.

c. RESPONSE TO COMMENTS

The issue of land subsidence, particularly land subsidence impacting the conveyance capacity of the FKC is a very important issue to the DEID GSA. The undesirable results associated with land subsidence are discussed fully and

throughout the GSP. Land subsidence is a slow-occurring process that takes time to halt. Addressing this issue requires working cooperatively with our neighboring GSAs because much of the FKC and pumping impacting the FKC fall outside the jurisdiction of the DEID GSA. To that end, the DEID GSA has been actively engaged in negotiations over the past several months with the other GSAs covering the Tule Subbasin, in order to more effectively address the issue of land subsidence as it relates to the FKC. The negotiations resulted in the acknowledgment by all GSAs of the need for an additional standard of a localized nature, and the successful inclusion of an additional criteria for undesirable result related to land subsidence affecting the FKC. (*See* Section 4.3.4.2 of the Tule Subbasin Coordination Agreement, as revised.) In addition to the new localized criteria for land subsidence undesirable results, the Coordination Agreement was revised to include an acknowledgment that improved monitoring alone is not sufficient to address this issue and that it must necessarily be accompanied by projects and management actions by the GSAs to either prevent or mitigate post-2020 subsidence affecting the FKC “upon or before the occurrence of any localized” land subsidence undesirable result. (*See* Section VI of the Tule Subbasin Coordination Agreement, as revised.) Further, the GSP’s project and management action associated with transitional pumping, as described in Section 5.1.1.2 of the GSP, specifies that a mitigation fee would be imposed on pumpers engaged in transitional pumping that would be used to mitigate the impact of that transitional pumping on the FKC in a manner that is proportionate with the pumpers’ share of responsibility. The DEID GSA has been and will continue to work with DEID GSA landowners potentially affected by implementation of FKC mitigation fees and related issues. The surrounding GSAs have also committed to consider implementing other or similar mitigation actions, as reflected in the revised Section VI of the Coordination Agreement. The DEID GSA believes that these commitments, if carried into action by our neighboring GSAs would, in combination with the DEID GSA’s proposed actions and in cooperation with the Friant Water Authority, adequately address land subsidence that impacts the conveyance capacity of the FKC.

d. STAFF RECOMMENDATION

Staff recommends the Board approve the changes made to the GSP, Section 5.1.1.2 and to Sections 4.3.4.2 and Section VI of the Coordination Agreement, described above and attached herein, as responsive to comments received on the issue of land subsidence and impacts on the FKC.

II. ENVIRONMENTAL / GROUNDWATER DEPENDENT ECOSYSTEMS

a. COMMENTERS

The Nature Conservancy; Audubon California; and the California Department of Fish and Wildlife.

b. COMMENTS SUMMARY

The comments centered around consideration of Groundwater Dependent Ecosystems (GDEs) in determining project priorities and the need to expand monitoring in order to better identify and address GDEs as beneficial uses.

c. RESPONSE TO COMMENTS

The Sustainable Groundwater Management Act (SGMA) regulations define GDEs to mean “ecological communities or species that depend on groundwater emerging from aquifers or on groundwater occurring near the ground surface.” (Cal. Code Regs., tit. 23, § 351(m).) This definition goes hand-in-hand with a finding that interconnected surface water exists within the subbasin area. The GSP identified and addressed the GDEs using that definition as its guide. The hydrologists who studied the Tule Subbasin and assisted in drafting the GSP found no interconnected surface water systems and no areas of surface water that meet SGMA’s definition of GDEs due to the depth to groundwater being below the root zone reach of native vegetation. (*See* Sections 2.3.6 and 2.3.7 of the GSP.) Although seasonal ecological systems may emerge on a seasonal basis in portions of upstream surface water streams, hydrogeological studies have shown that the Tule Subbasin is detached from any surface water ecological assets that fall within SGMA’s definition of GDEs.

The DEID GSA will continue to work with its consultants on updating the information as the monitoring network is expanded and new data is collected regarding GDEs. If GDEs or interconnected surface water are identified in the future, the GSP will be updated to address them in accordance with SGMA.

d. STAFF RECOMMENDATION

Staff believes GDEs are adequately addressed in the GSP based on currently available information and best available science. Staff will present the Board with updates related to that issue as more data is collected during the GSP implementation period that reveals relevant information that require further action, consistent with SGMA.

III. BENEFICIAL USERS IDENTIFICATION

a. COMMENTERS

The Nature Conservancy; Audubon California; and the County of Tulare.

b. COMMENTS SUMMARY

Commenters suggested that domestic wells, particularly in Disadvantaged Communities (DACs), must be identified in more detail and that the GSP includes an analysis regarding impacts to domestic wells as a result of lowering groundwater levels and a related mitigation plan. Commenters also suggested creating an accounting program for each type of user and to create individually

tailored allocations and replenishment assessment for domestic water users in those communities.

c. RESPONSE TO COMMENTS

The projects and management actions contemplated in the GSP are intended to prevent water levels from dropping to a level that would impact wells, regardless of whether the wells are for domestic or irrigation/agricultural use. However, this may be negatively influenced by continued pumping in surrounding GSA areas beyond the Subbasin-wide minimum thresholds. Within the context of the proposed transitional pumping project (*See* Section 5.2.2 of the GSP), an analysis of potential impacts to the DEID Management Area (DEID MA) has been evaluated through a study done by Thomas Harder and Associates using the groundwater model developed for the Subbasin. The study is not the definitive analysis of the impacts of Western Management Area (WMA) pumping to the DEID MA, but it is indicative of anticipated impacts. Further study and analysis will be modeled to determine the impacts with actual groundwater elevations used to confirm those impacts. DEID GSA intends to address potential negative well impacts through a mitigation program with other Tule Subbasin GSAs in accordance with the Coordination Agreement. Any assessments imposed by the DEID GSA must be applied equitably and consistent with state law.

With respect to identifying domestic wells in more detail, as noted in section 1.4.1.4.1 of the GSP, the well density count within the DEID GSA was based on the Department of Water Resources (DWR) Well Completion Report Map Application tool. This tool only reports wells with well completion reports on file. Section 1.4.1.4.1 was modified to clarify this point and recognize that additional wells may be present that were not included in the DWR reporting tool. The DEID GSA looks forward to working cooperatively with Tulare County on projects and management actions impacting the County's plans and with other stakeholders to address their concerns as more data becomes available.

d. STAFF RECOMMENDATION

Staff recommends the Board approves the changes made to the GSP, Section 1.4.1.4.1 described above and attached herein, as responsive to comments received on the issue of identification of domestic wells. Staff believes the GSP adequately addresses DACs based on currently available information. Staff will present the Board with updates related to that issue as more data is collected during the GSP implementation period that reveals relevant information that require further action, consistent with SGMA.

IV. WATER QUALITY

a. COMMENTERS

The County of Tulare.

b. COMMENTS SUMMARY

The County expressed concerns that the recharge projects proposed in the GSP may negatively impact water quality and drinking sources.

c. RESPONSE TO COMMENTS

DEID GSA intends to implement all projects and management actions consistent with the sustainable management criteria set forth in Section 3 of the GSP, including groundwater quality (*See* Section 3.5.1.3 of the GSP)

d. STAFF RECOMMENDATION

Staff believes water quality issues are adequately addressed in the GSP based on currently available information. Staff will present the Board with updates related to that issue as more data is collected during the GSP implementation period that reveals relevant information that require further action, consistent with SGMA

V. PUBLIC PARTICIPATION

a. COMMENTERS

The Nature Conservancy and Audubon California.

b. COMMENTS SUMMARY

Commenters expressed a concern that DACs were not adequately considered in the discussion of Unreasonable Results, Measurable Objectives and Minimum Thresholds for water levels and water quality.

c. RESPONSE TO COMMENTS

The DEID GSA complied with applicable statutory noticing requirements in the release and evaluation of its GSP. Section 1.5 of the GSP provides an overview of the public engagement opportunities provided by the DEID GSA, inviting stakeholders, including DACs, to participate in the GSP development process. A list of all public meetings held is attached to the GSP as Appendix D. Comments were invited and encouraged during the meetings and the DEID GSA endeavored to address those comments as the GSP was being drafted.

d. STAFF RECOMMENDATION

Staff believes the DEID GSA complied with all SGMA requirements related to inviting and encouraging public participation during the GSP development period.

VI. LAND USE (FUTURE GROWTH)

a. COMMENTERS

The County of Tulare.

b. COMMENTS SUMMARY

The County sought confirmation of its land use and zoning authority, making sure the County is involved in the implementation of projects impacting its plans and that projected population growth estimates are not to be assumed to reflect 2070 population.

c. RESPONSE TO COMMENTS

The DEID GSA recognizes the County's land use, zoning and well permitting authority in certain portions of the DEID GSA jurisdictional area. (*See* Sections 1.4.4.1 and 1.4.4.6 of the GSP.) Further clarification was added to Section 1.4.1.3 referencing the County General Plan land use designations. As recognized by the County's comment, the water budget in the GSP reflects higher muni demand and may incorporate all of the projected growth for the communities within the DEID GSA. Clarification was added to Section 1.4.4.5 of the GSP regarding not assuming 2070 population.

d. STAFF RECOMMENDATION

Staff recommends the Board approves the changes made to the GSP, Sections 1.4.1.3 and 1.4.4.5 described above and attached herein, as responsive to comments received on the issue of population growth estimates. Staff will present the Board with updates related to that issue as more data becomes available.

VII. WATER BUDGET

a. COMMENTERS

Arvin Edison Water Storage District; Shafter-Wasco Irrigation District; The Nature Conservancy; Audubon California; the County of Tulare; and Westchester Group Investment Management, Inc.

b. COMMENTS SUMMARY

Commenters stated that the 1990/91 through 2009/10 may not be a representative period of overdraft or long-term average conditions in the subbasin. Commenters raised a question as to how climate change would affect the water budget, how sustainable yield calculations protect drinking water users and whether the water budget should be adjusted to reflect projected growth in municipal water use. Other comments were related to inflow and outflow due to over extraction in neighboring GSAs, showing certain calculations, such as municipal pumping, percolation of applied native groundwater for municipal irrigation, municipal consumptive use and municipal groundwater pumping as a range as opposed to an average.

c. RESPONSE TO COMMENTS

Many of the details requested in these comments are provided in various analyses included in appendices to the GSP, in particular the Tule Subbasin Coordination Agreement and the studies attached to the GSP and the Coordination Agreement. Given the complex and technical nature of those attachments, the GSP itself was drafted in a manner to provide sufficient specificity while leaving the finer details to the appendices. Thus, recognizing that much of the information sought by the commenters can be found in the appendices, no further changes were made to the GSP with the exception of clarifications added to Sections 2.4.1.1.5; 2.4.1.2.5.3; 2.4.1.2.9; and 2.4.4.1 related to use of ranges instead of the above-noted averages.

With respect to inflows and outflows impacted by neighboring GSAs, DEID GSA met with the other GSAs within the Tule Subbasin on numerous occasions to address this issue. It is the expectation of the DEID GSA that surrounding GSAs will implement projects and management actions, including potential mitigation of negative impacts to the DEID GSA, to address this issue consistent with the Coordination Agreement and SGMA requirements.

d. STAFF RECOMMENDATION

Staff recommends the Board approves the changes made to the GSP, Sections 2.4.1.1.5; 2.4.1.2.5.3; 2.4.1.2.9; and 2.4.4.1 as described above and attached herein. Staff will present the Board with updates related to the water budget as more data becomes available that require further action, consistent with SGMA requirements.

VIII. OTHER GENERAL COMMENTS RECEIVED

a. COMMENTERS

Arvin Edison Water Storage District; Shafter-Wasco Irrigation District; Audubon California; The Nature Conservation; the County of Tulare; and Westchester Group Investment Management, Inc., Western Management Area landowners.

b. COMMENTS SUMMARY

Commenters generally expressed concerns with the model uncertainties, the need to maintain stakeholder involvement throughout the GSP implementation period, use of mitigation funds collected, questions concerning implementation of the GSP, and how allocations would be implemented consistently across the subbasin.

c. RESPONSE TO COMMENTS

A certain level of uncertainty is inherent in any modeling effort. Such uncertainties are only narrowed as more monitoring is implemented and data is collected. The DEID GSA is committed to this effort, as stated in the GSP and the Coordination Agreement. The DEID GSA will comply with all public noticing

and stakeholder engagement required under SGMA and work cooperatively with stakeholders in implementing the proposed projects and management actions. It is DEID GSA's expectation that commitments made in the Coordination Agreements will be carried to fruition by all GSAs in order to meet the subbasin's sustainability goal. Specific implementation actions that will be taken by the DEID GSA will be identified through additional stakeholder input on rules and regulations that will be developed.

d. STAFF RECOMMENDATION

Staff believes the GSP and Coordination Agreement adequately addresses these comments and that no further edits are necessary at this time. Staff will present the Board with updates related to these issues as more data becomes available that require further action, consistent with SGMA requirements.

IX. ADDITIONAL ITEMS PRESENTED BY STAFF FOR THE BOARD'S CONSIDERATION

a. FURTHER CHANGES TO THE GSP

In addition to the above, the following edits were incorporated into the GSP hereby presented to the Board for adoption, as well as other minor edits, corrections and clarifications, as shown in the redline attached hereto:

- **Section 1**, highlighting past and current groundwater management actions implemented by the Delano-Earlimart Irrigation District (DEID), including importation of water which far exceed pumping level within the DEID service area.
- **Section 2**, clarifying that DEID is a net depositor of water within the DEID GSA area through past and current investments, projects and management actions, including purchase and delivery of imported water.
- **Section 3**, modified the definition of sustainable goal, consistent with language in Section 4.2 of the negotiated Coordination Agreement, as explained in Part IX.b below. Further, additional language was added to provide a comparison of groundwater levels with and without transition pumping proposed in areas outside the DEID service area, which operates sustainably, to help identify impacts subject to mitigation by those utilizing transitional pumping.
- **Sections 4, 6 and 7**, no changes since the most recent draft released on November 15, 2019.
- **Section 5**, clarifications and additional description to the mitigation projects and management actions associated with transitional pumping proposed in the Western Management Area (Section 5.1.1.2), consistent with the provisions of the Coordination Agreement.

b. FURTHER CHANGES TO THE COORDINATION AGREEMENT

As mentioned above, Staff has been engaged in active negotiations with the other GSAs with jurisdiction over portion of the Tule Subbasin. As a result, certain provisions of the draft Coordination Agreement were revised, in addition to the changes described above. Of note, are the following:

- **Section 1.3**, naming Mr. David De Groot, Principal Engineer with 4-Creeks as the Chairperson of the Tule Subbasin TAC, responsible, among other things, for submitting the GSPs and Coordination Agreement and future updates thereto, to DWR.
- **Section 3.3**, outlining methodologies for measuring or estimating groundwater extraction in the Tule Subbasin to be deployed by the GSAs.
- **Section 4.2**, defining the sustainability goal of the Tule Subbasin in a manner that better aligns with SGMA language, i.e., as “the absence of undesirable results, accomplished by 2040 and achieved through a collaborative, Subbasin-wide program of sustainable groundwater management by the various Tule Subbasin GSAs” with the ultimate goal being “avoidance of undesirable results caused by groundwater conditions throughout the Subbasin.”
- **Section 4.2.1**, clarifying that the sustainable yield for the Tule Subbasin as a whole is 130,000 afy, which, for purposes of developing individual GSA water budgets and GSPs, shall be divided amongst the GSAs by multiplying that GSAs proportionate areal coverage of the Tule Subbasin times the total Subbasin sustainable yield. This method was selected because it represents the currently readily-available and implementable manner of accounting for the water budget and will be revisited in future GSP updates as more reliable data becomes available. This section also clarifies that the division of the water budget and sustainable yield amongst the GSAs is not an allocation or final determination of any water rights.
- **Section 4.3.1.1**, defining an undesirable result for groundwater levels as “significant and unreasonable if there is basin-wide loss of well pumping capacity, which cannot be remedied.”
- **Section 4.3.4.1**, more expressly stating the connection between land subsidence and the FKC’s conveyance capacity and specifying that GSAs will implement projects and management actions “to decelerate and eventually arrest land subsidence” by 2040, “including measures necessary to reduce or eliminate land subsidence significantly and unreasonably affecting the functionality or a structure or facility, such as the FKC.”

- **Section 4.3.4.2**, adding, as stated in the response to comments above, a localized criteria for an undesirable result whereby “an undesirable result will also occur if land subsidence in particularized areas within a given GSA causes significant and unreasonable adverse effects on the functionality of a structure or facility, such as the FKC, regardless of whether the more than 50% of the GSA Management Area RMS locations indicate exceedance of the subsidence standard.”
- **Section VI**, reiterating the GSAs commitments to work individually and together towards achieving the sustainability goal of the Tule Subbasin. Also repeated here is an acknowledgment by all GSAs that monitoring in and by itself is not sufficient to address land subsidence issues affecting the FKC and that it “necessarily must be accompanied by projects and management actions to address the impacts of post-2020 subsidence levels, including consideration of actions such as the collection of mitigation fees to have the responsible party or entity bear their proportionate share of responsibility in relation to impacts reasonable attributable to such party or entity.” Additional provisions were also added to confirm a commitment to working with “Friant Water Authority on the development of a Friant-Kern Canal mitigation program, potentially to include targeted pumping reductions and mitigation fees, to be imposed by GSAs within specific areas, based on an analysis of each GSA’s likely proportional impact on post 2020 subsidence.” Finally, provisions were added whereby the GSAs “agree to work diligently to develop an initial localized mitigation program based on the best available information related to the projects cause of post 2020 subsidence, with the intent to have said mitigation program effective upon or before the occurrence of any localized or basin wide subsidence undesirable result.”
- **Section 7.1.8**, clarifying that the “resolution of any dispute or claim related to a water right” by any GSA is outside the scope of the Coordination Agreement.
- **Section 7.8**, expressly stating that nothing in the Coordination Agreement “is intended to modify the water rights of any Party or Person” nor an admission by any GSA regarding any water right or priority of any water right that is claimed by any GSA or person or the sufficiency to any such claim or defenses thereto, and that the GSA do not waive their election to assert a legal claim or argument as to “water, water right or any subject matter of this Coordination agreement or defenses thereto.”
- **Section 7.9**, clarified that the Coordination Agreement supersedes the MOU to Develop and Implement a Coordination Agreement and any oral understanding relating to the subject matter thereof.
- Other minor edits and clarifications in various sections of the Coordination Agreement shown in the redline attached hereto.

c. STAFF RECOMMENDATION

Staff believes these changes and additions to the DEID GSP and the Coordination Agreement represent a positive step towards meeting SGMA requirements and recommends the Board approves the changes outlined herein.

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Appendix L Comments Received Prior to Completion of the 2020 GSP

L-3: Response to Comments Received By Tulare County

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Delano-Earlimart Irrigation District Groundwater Sustainability Agency

14181 Avenue 24 ♦ Delano, Ca 93215

January 23, 2020

Tulare County Board of Supervisors
2800 W. Burrel
Visalia, CA 93291
Attention: Denise England

Via email and U.S. mail

Dear Ms. England:

The Delano-Earlimart Irrigation District Groundwater Sustainability Agency (DEID GSA) received comments from the County of Tulare (County) on its Groundwater Sustainability Plan on December 16, 2019. The DEID GSA appreciates those comments and is providing the attached responses to those comments.

Final revisions to the GSP are currently being made to include comments received from the County and will be posted to the GSA page of the DEID website later this week. You may access the final draft GSP by going to deid.org/gsa/.

Sincerely,


for Eric Quinley, General Manager
Delano-Earlimart Irrigation District GSA

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Delano-Earlimart Draft GSP - summary of County notes – responses to County notes

Draft Copy	County Notes	DEID Response to County Notes
<p>Pg 1-6 Management Area 3. MOU between DEID GSA and Richgrove Community Service District designates DEID GSA as the principle agency with jurisdiction over RCSD Management Area for the purposes of SGMA and the implementation of this Plan (see Appendix 1-C: MOU Between DEID GSA and Richgrove Community Service District).</p>	<p>The County has land use authority in this service area. The MOU between DEID and the PUD should not impact the County’s authorities over growth and well permitting. However, it is plausible that a groundwater availability restriction could be placed upon any development as a condition of service by the PUD. That would be a consideration on a case-by-case basis, based upon whether CEQA compliance is necessary (e.g. requiring any type of water supply sufficiency determination).</p> <p>Therefore, the County maintains land use authority in LAFCo designated PUD and CSD boundaries. Future development applications would rely on the PUD or CSD to provide a will serve letter.</p> <p>The County maintains and does not abdicate its authority regarding the application of land use and zoning regulations as feasible and appropriate through the administration of the County general plan, zoning ordinance, and ordinance code.</p>	<p>DEID recognizes the County’s land use, zoning and well permitting authority in this Management Area as well as in other portions of the DEID GSA jurisdictional area. Please refer to Sections 1.4.4.1 and 1.4.4.6 (commencing on pp. 1-21 and 1-30) of the GSP.</p>
<p>Pg 1-6. Management Area 4 MOU between DEID GSA and Earlimart Public Utility District designates DEID GSA as the principle agency with jurisdiction over EPUD Management Area for the purposes of SGMA and the</p>	<p>See Pg 1-6 Management Area 3 comment above.</p>	<p>As stated above, DEID recognizes the County’s land use, zoning and well permitting authority in this Management Area as well as in other portions of the DEID GSA jurisdictional area. Please refer to</p>

<p>implementation of this Plan (see Appendix 1-D: MOU Between DEID GSA and Earlimart Public Utility District).</p>		<p>Sections 1.4.4.1 and 1.4.4.6 (commencing on pp. 1-21 and 1-30) of the GSP.</p>
<p>Pg 1-8. Paragraph 1. The county governments each retains general land use planning authority and jurisdiction over its respective area.</p>	<p>See Pg 1-6 Management Area 3 comment above.</p>	<p>As stated above, DEID recognizes the County's land use, zoning and well permitting authority in this Management Area as well as in other portions of the DEID GSA jurisdictional area. Please refer to Sections 1.4.4.1 and 1.4.4.6 (commencing on pp. 1-21 and 1-30) of the GSP.</p>
<p>Pg 1-9. 1.4.1.3 Description of Plan Area</p>	<p>The existing land use designations described in this section are not general plan "Land Use Designations" they describe existing land uses on the ground. Incorporate at a minimum General Plan Figure 4-1 and reference the land use diagrams in the Communities, Hamlets, and Legacy Communities as applicable.</p> <p>The following adopted plans are located in the Delano-Earlimart GSA:</p> <p>Earlimart Community Plan Richgrove Community Plan Allensworth Hamlet Plan Teviston Hamlet Plan Jovista Legacy Plan Delano Area Community Plan (not completed as of yet)</p>	<p>Section 1.4.1.3 of the GSP has been amended to make that clarification. Please note that Tulare County land use designations are discussed in more detail in Section 1.4.4.1 (p. 1-21).</p> <p>Further, the only communities within the DEID GSA are Earlimart and Richgrove.</p>
<p>Pg 1-13 Table 1-2: Wells within DEID GSA by Well Type</p>	<p>This seems like a low count for all the likely rural domestic wells. Please note if the unknown category includes domestic wells. Please clarify.</p>	<p>As noted in section 1.4.1.4.1, the well density count within the DEID GSA was based on the DWR Well Completion Report Map Application tool. This tool only reports</p>

		wells with well completion reports on file. A clarifying note will be added to this section recognizing that additional wells may be present that were not included in the DWR reporting tool.
<p>Pg 1-14. 1.4.1.4.2.2 Groundwater Dependent Communities</p> <p>As previously described in Section 1.4.1.4 Identification of Water Use Sector & Water Source Type (see Figure 1-5), the Earlimart and Richgrove communities, which are part of the DEID GSA, rely exclusively on groundwater extractions to meet their municipal and industrial needs. Both of these communities are considered either Disadvantaged or Severely Disadvantaged Communities.</p>	<p>The County appreciates the GSA calling attention to the needs to protect these water sources for these disadvantaged communities.</p>	<p>Thank you.</p>
<p>Pg 1-21. Urban land use is more specifically managed in the Tulare County GP through the official adoption of Urban Development Boundaries (UDBs) and Urban Area Boundaries (UABs). UDBs establish a 20-year growth boundary that is consistent with the General Plan's time horizon and delineate an area around incorporated cities or unincorporated communities wherein urban development is allowed and services are likely to be extended. UABs are areas where land uses are presumed to have an impact upon the adjacent incorporated city. To coordinate land use</p>	<p>The Budget for the Tule Basin – and for the DE subset – stop any expansion of municipal pumping at 2040. Growth will continue to 2070 – the GSPs full sustainability period. But, the Budget at the end of this GSP has the “current” Muni Pumping at 2800 af/yr, and the future Muni pumping only at 3700 af/yr. While this is steady through the Sustainability period (unlike some of the other GSP's), it does accommodate some growth (e.g. 900 af of pumping – or about 3,000 to 4,000 people). This is consistent with the 1.3% growth from the (2030) Community Plans.</p>	<p>Thank you.</p>

<p>planning with cities, the County adopts City UABs and City UDBs wherein the city regulates land use within the City UDB and the city and the County coordinate on land use within the City UAB.</p> <p>Generally, the Planning Area of a city's General Plan is coterminous with the County Adopted City UAB. Within DEID GSA, there are two Community Plans that include UDBs and/or UABs that are addressed by this GSP. The most recent version of these plans, as well as the UDBs and/or UABs that they define, include:</p> <ul style="list-style-type: none"> • Richgrove Community Plan Update (2017) • UDB for Richgrove • Earlimart Community Plan Update (2017) • UDB for Earlimart 		
<p>Pg 1-25. Paragraph 3. Tulare County's role in water management is broad and active, particularly through the implementation of its General Plan and its Zoning Ordinance (<i>Ordinance No. 352</i>), which translates GP policies into specific use regulations and development standards. The County also administers other ordinances that influence the use and management of water within the County, and it may adopt more in the future if deemed necessary. However, limited only to the implementation of its GP, Tulare County recognizes that its role in water management is</p>	<p>Good recognition of the cooperative nature necessary.</p>	<p>Thank you.</p>

<p>neither comprehensive, nor is it to be construed as such; rather, water management within the County is carried out by way of dynamic interactions between the many participants who each bear a variety of responsibilities:</p>		
<p>Page 1-27. 1.4.4.4 Effects of Land Use Plans within the Tule Subbasin The DEID GSA shall request the County of Tulare and the County of Kern that it be notified when land use plan changes are proposed within the DEID GSA. Any proposed land use plan changes will be reviewed for potential significant impacts to implementation of the DEID GSP. The DEID GSA will request that no land use changes be approved prior to said review and certification that that there will be no unmitigated impacts that would disrupt the sustainability goals of the GSA.</p>	<p>Agreed. The County maintains and does not abdicate its authority regarding the application of land use and zoning regulations as feasible and of the county general plan, zoning ordinance, and ordinance code.</p> <p>While the concept may argued to be consistent with the intent of the General Plan, the determination of “unmitigated” is not in the GSA’s jurisdictional authority as it relates to land use choices but may be so as a responsible agency under CEQA.</p>	<p>Section 1.4.4.4 has been revised and no longer contains this language. Additional language has been added to further address the County’s comment.</p>
<p>Page 1-27. 1.4.4.5 Water Supply Assumptions of Land Use Plans Water supply assumptions within the recently adopted General and Community Plans active within DEID GSA’s jurisdiction generally provide global estimations of future water supplies and demands. Additionally, these plans provide Goals and Policies that recognize the need and, when implemented, provide for sustainable water management.</p>	<p>Please clarify that the plans active in DEIDGSA’s jurisdiction should not be assumed to reflect a 2070 population. To be clear there may be unanticipated additional growth beyond what these land use plans assumed. The note on the 2017 Community Plans may not reflect a longer-term demand that may have been included in those Plans. However, as noted elsewhere, the DEID water budget (at the end of GSP’s attachments) does reflect a higher Muni demand that “current” that may incorporate all the projected growth as anticipated in</p>	<p>As recognized by the County’s comment, the water budget in the GSP reflects higher muni demand and may incorporate all of the projected growth for the communities within the DEID GSA. We will add clarification regarding not assuming 2070 population.</p> <p>Also, please note that the only communities within the DEID GSA are Earlimart and Richgrove.</p>

	<p>all the listed communities as well.</p> <p>The following adopted plans are located in the Delano-Earlimart GSA:</p> <p>Earlimart Community Plan (UDB) Richgrove Community Plan (UDB) Allensworth Hamlet Plan (HDB) Teviston Hamlet Plan (HDB) Jovista Legacy Plan (LDB) Delano Area Community Plan (UDB)</p> <p>The plans listed above utilize projections to 2030 and or 2040.</p>	
<p>Page 1-28. Paragraph 4. The projects and management actions proposed in this GSP provide a framework by which the opportunity to use lands according to existing land use designations as permitted by land use designations and zoning ordinances remains unaltered, subject to the sustainable use of groundwater within the DEID GSA’s jurisdiction. However, the assumptions made by DEID GSA in this GSP anticipate a shift in water demand due to the implementation of certain projects and management actions that ultimately reduces the total volume of groundwater supply available for extraction on an annual basis and, therefore, current actual land uses reliant upon these groundwater supplies may change during the Plan’s implementation horizon.</p>	<p>This includes the key word “unaltered” and seems to protect the County’s planned growth from being restrained due to the GSP.</p> <p>It anticipated that there may be change to “actual land” uses reliant on groundwater under SGMA but the County anticipates that GSA will assist in any required mitigation to reduce the extent and impact of reduced groundwater pumping to existing uses.</p>	<p>As reflected in Section 5 of the GSP, the GSA will endeavor to reduce reliance on groundwater pumping by implementing projects and management actions aimed at improving the availability of supplemental and imported water sources as a substitute to pumping. However, changes in land uses may be necessary, particularly in light of the time it would take to implement those projects and in light of the reduced water delivery capacity of the FKC due to land subsidence resulting from excessive pumping in certain areas of the Tule Subbasin outside the DEID GSA jurisdiction.</p>
<p>Page 1-29. Paragraph 2. Each</p>	<p>The County will interact with the</p>	<p>Thank you.</p>

<p>county has its own policies and procedures to obtain a water well permit. The DEID GSA shall request notification of any proposed water wells within the DEID GSA and shall further request the opportunity to review said requests so that the potential for undesirable effects that a new well might have on implementation of the GSP and provide comments and/or approval prior to issuance of any well permit.</p>	<p>GSA through review and input on well permitting. The County has modified its forms to integrate the role of GSAs in the process. GSA policies should be consistent with adopted County Environmental Health well permitting process. Specifically, see Water Code Section 10726.4(b).</p>	
<p>Page 1-29. 1.4.4.7 Effect of Land Use Plans Outside of the Tule Subbasin Given that GSPs implemented within adjacent Subbasins must (1) ensure no adverse impact to the GSPs implemented within the Tule Subbasin and must also (2) address any impact that the various land use plans active within their GSPs' respective Plan Areas may have on their successful implementation of their respective GSPs, DEID GSA does not anticipate any significant adverse impacts resulting from the implementation of land use plans adjacent to the Tule Subbasin.</p>	<p>This is important. But it is in the context of the water budget for DEIDGSA that shows some modest increase in future Muni groundwater pumping. Increases greater than those values could be claimed to be an impact (current conditions pumping 2800 af, future condition pumping 3700 af all the way to 2070A). The County has checked the Community Plans in this area and this growth rate appears consistent with these estimated budgets. If the budget is too low, it should be adjusted accordingly.</p> <p>Another avenue that could be considered is updating LAFCo MSR's as a first step regarding CSD and PUD pumping and water supply capabilities within the next 5 years (at the next update of the GSP).</p>	<p>Future Muni water budgets are believed to be reasonable estimations. Future estimates of water needs will be periodically reviewed with both EPUD and RCSD, at least every 5 years when GSP updates are done.</p>
<p>Page 2-1. Introduction The Basin Setting for the DEID GSA is derived from the Tule Subbasin Setting, which was developed for the Tule Subbasin by Thomas Harder</p>	<p>This document includes a budget for the entire Tule Subbasin, and separate sub-budgets for each GSA, included DEID GSA. The DEID GSA budget has current Muni pumping at 2800 af/yr, and future</p>	<p>Correct.</p>

<p>and Company, The Tule Subbasin Setting can be found as Attachment 2 to the Draft Tule Subbasin Coordination Agreement 1 (see Appendix A).</p>	<p>pumping at 3,700 af/yr.</p>	
<p>Page 2-13. Paragraph 1. However, when factoring subsurface inflows from outside of the subbasin and from other Tule Subbasin GSAs (1986/87-2016/17 average of 24,000 acre-feet) and subsurface outflows to others outside of the subbasin and other Tule Subbasin GSAs north and west of the DEID GSA (1986/87-2016/17 average of 52,000 acre-feet) the DEID GSP area is not in balance (Table 2 of Appendix C, Tule Subbasin Setting). The primary source of this imbalance is an over-extraction of groundwater resources within GSAs that are located north and west of the DEID GSA.</p>	<p>Please clarify, this may be of concern, and given that the imbalance may not be reported in these surrounding GSA's please verify that the numbers are consistently being reported in the surrounding GSA's or at least report here the constituencies.</p>	<p>DEID GSA met with the other GSAs within the Tule Subbasin on numerous occasions to address this issue. It is the expectation of the DEID GSA that surrounding GSAs will implement projects and management actions to address this issue consistent with the Coordination Agreement and SGMA requirements.</p>
<p>Pag 2-14. 2.4.1.1.5 Municipal Deliveries from Wells For the period of 1986/87-2016/17, municipal pumping within DEID GSA on an average annual basis was estimated to be approximately 2,100 acre-feet/yr (see Table 1a of Appendix C, Tule Subbasin Setting).</p>	<p>Please clarify that the stated value of 2,100 is the "average" value for this period. Using an average value for Muni pumping should be noted that it increases with growth – unlike ag use, which varies greatly with crop trends and annual hydrology/rainfall. This should just show the range and indicate that current use is 2800 af/yr (see ch 2 of Tule Subbasin Setting Rpt, Appendix C, Table 1-a for DEID GSA)</p>	<p>Clarification made.</p>
<p>Page 2-16. 2.4.1.2.5.3 Deep Percolation of Applied Native Groundwater for Municipal Irrigation (Municipal Pumping) Deep percolation of applied groundwater for municipal</p>	<p>The value is an "average" and should be shown as a range, with the most recent value reflecting current population conditions.</p>	<p>Clarification made.</p>

<p>irrigation is described in Chapter 2.3.1.2.5. For the period of 1986/87- 2016/17, deep percolation of applied groundwater for municipal irrigation within DEID GSA on an average annual basis was estimated to be approximately 1,400 acre-feet/yr (see Table 1b of Appendix C, Tule Subbasin Setting).</p>		
<p>Page 2-17. 2.4.1.2.9 Municipal Consumptive Use Municipal consumptive use is described in Chapter 2.3.1.2.6. For the period of 1986/87- 2016/17, the estimated municipal consumptive use from landscape irrigation within the DEID GSA on an average annual basis was estimated to be approximately 700 acre-feet/yr (see Table 1b of Appendix C, Tule Subbasin Setting).</p>	<p>The value is an “average” and should be shown as a range, with the most recent value reflecting current population conditions.</p>	<p>Clarification made.</p>
<p>Page 2-20. 2.4.4.1 Municipal Groundwater Pumping For the period of 1986/87- 2016/17, municipal groundwater pumping within DEID GSA on an average annual basis was estimated to be approximately 2,100 acre-feet/yr (see Table 1b of Appendix C, Tule Subbasin Setting).</p>	<p>The value is an “average” and should be shown as a range, with the most recent value reflecting current population conditions.</p>	<p>Clarification made.</p>
<p>Page 2-26. 2.5 Management Areas</p> <ul style="list-style-type: none"> • The Earlimart Public Utilities District- The Earlimart PUD serves the water and wastewater needs of the unincorporated community of Earlimart. With a service area of 773 acres, the EPUD has been 	<p>Will the GSA recognize any future expansion of these management areas as they may annex additional lands for growth? Or, are the boundaries as established fixed for the long-term future? If they are not consistent, they may need to become consistent (e.g. the GSA will need to match the County’s land use Plans in the updated GSP</p>	<p>Any future annexation will need to be addressed at the time it is proposed; the proposed annexation’s impact on water demand within the DEID GSA area will be an important factor in the GSA’s position. The DEID GSA is not anticipating an expansion</p>

<p>historically dependent on groundwater. Because of its location and being a purveyor of domestic water as well as managing wastewater, the EPUD is its own management area.</p> <ul style="list-style-type: none"> • The Richgrove Community Services District- The Richgrove CSD serves the water and wastewater needs of the unincorporated community of Richgrove. With a service area of 234 acres, the RCSD has been historically dependent on groundwater. Because of its location and being a purveyor of domestic water as well as managing wastewater, the RCSD is its own management area. 	<p>within the next 5 years.</p>	<p>through annexation in either the EPUD MA or the RCSD MA over the next 5 years.</p>
<p>Page 3-20. 3.5.2.5.3 Effects on Beneficial Uses Well failures (<i>e.g. collapsed casing due to excessive groundwater level decline or land subsidence</i>): Minimum Thresholds established for groundwater levels to minimize loss of existing wells.</p>	<p>Unclear if some domestic well impacts are expected, and, if so, how such impacts to these deminimus users would be mitigated.</p> <p>Also, it is not clear what objective or subjective criteria were used in relation to the term ‘minimize’.</p>	<p>The projects and management actions contemplated in the GSP are intended to prevent water levels from dropping to a level that would impact wells, regardless of whether the wells are for domestic or irrigation/agricultural use. However, this may be negatively influenced by continued pumping in surrounding GSAs’ beyond the Subbasin-wide minimum thresholds.</p> <p>Within the context of the proposed transitional pumping project (see Section 5.2.2), an analysis of potential impacts to the DEID MA has been evaluated through a study done by Thomas Harder</p>

		and Associates using the groundwater model developed for the subbasin. The study is not the definitive analysis of the impacts of WMA pumping to the DEID MA, but it is indicative of an anticipated impact. Further study and analysis will be modeled to determine the impacts with actual groundwater elevations used to confirm those impacts. DEID intends to address potential negative well impacts through a mitigation program with other Tule Subbasin GSA in accordance with the Coordination Agreement. The intent is to mitigate the impacts of resulting lower groundwater levels on landowners within the DEID GSA area caused by other GSAs.
Page 5-1. 5.2 Projects and Management Actions Municipal Water Supply and Quality Projects	The County will have a role with these projects as it relates to supporting the Community Plans in this GSA boundary.	DEID GSA looks forward to working cooperatively with the County on these projects.
Page 5-3. 5.2.1.1 Action 1 – Continued Importation and Optimization of Imported Water Supplies	This action will help stabilize levels for rural domestic users within this management area. The County is supportive. While rural domestic use is not explicitly named, the maintenance of gw levels will benefit this use group.	Thank you.
Page 5-8. 5.2.1.2 Action 2 – Increase Importation of Imported Waters Action 2 of the DEID Management Area consist of increasing imported water quantities above historic operations to meet consumptive	Similar to Action 1, this action will help stabilize levels for rural domestic users within this management area. The County is supportive. While rural domestic use is not explicitly named, the maintenance of gw levels will benefit this user group.	Thank you.

<p>use requirements, new water demands, and reduce reliance on groundwater pumping.</p>		
<p>Page 5-17. 5.2.1.4.1 Description This Action will build upon the historic direct water recharge projects described in Action 3 to enhance the water resources available to the DEID Management Area. Future direct water recharge projects will increase the amount of water in storage through utilization of unused CVP imported water supplies available to the DEID Management Area through its long-term CVP water contract with the U.S. Department of the Interior. Other non-CVP supplies will also be used when and if available.</p>	<p>This action has the potential to transport water quality constituents (e.g. nitrates or arsenic) into drinking water sources.</p>	<p>All projects and management actions will be implemented within the sustainable management criteria set forth in Section 3 of the GSP, including groundwater quality (please see Section 3.5.1.3)</p>
<p>Page 5-33. 5.2.2.2.4 Quantification of Water Budget Impact If all lands within the WMA were to use the maximum amount of water under Action 1, over-pumping would total approximately XXXX3 acre-feet between 2020-2035.</p>	<p>The extent of over-pumping will have an impact on any domestic wells in this area. The County would like some assurances that any domestic wells that go dry due to this planned management approach are mitigated by those continuing the excessive extraction. There are likely only a few wells in this area, so should be a nominal consideration.</p>	<p>Please see response above to comment regarding “Page 3-20. 3.5.2.5.3 Effects on Beneficial Uses Well failures”</p>
<p>Page 5-34. 5.2.2.2.7 Anticipated Benefits and Evaluation Action 1 will provide an orderly transition from current pumping levels to sustainable levels as required by SGMA over a 15-year time period. It is designed to avoid the economic</p>	<p>The avoidance of economic impacts is reasonable. For your consideration, impacts to domestic wells in the area due to ongoing lowering of groundwater levels may need to be mitigated at the GSA level.</p>	<p>Please see response above.</p>

<p>impact that would otherwise be felt in an “overnight” reduction in water supplies. While implementation of Action 1 will delay reaching sustainability before 2035, through responsible mitigation of impacts, the benefits of this Action can be realized while meeting the goal of sustainability by 2040.</p>		
<p>Page 5-57. 5.2.3.1.1 Introduction Projects and management actions for the RCSD MA are associated with the following general categories of actions:</p> <ul style="list-style-type: none"> • Current Groundwater Supply Optimization • Development of Additional Groundwater Supplies • Existing and Future Managed Aquifer Recharge 	<p>These actions will be coordinated with the County’s Community Plan for this management area.</p> <p>Recommend updating LAFCo MSR’s as a first step regarding CSD and PUD water supply capabilities.</p>	<p>The DEID GSA looks forward to working cooperatively with the county on projects and management actions impacting the County’s plans.</p>
<p>Page 5-69. 5.2.4.1.1 Introduction Projects and management actions for the EPUD MA are associated with the following general categories of actions:</p> <ul style="list-style-type: none"> • Current groundwater supply optimization • Development of additional groundwater supplies • Existing and future managed aquifer recharge 	<p>These actions should be coordinated with the County’s Community Plan for this management area.</p>	<p>The DEID GSA looks forward to working cooperatively with the county on projects and management actions impacting the County’s plans.</p>
<p>Page 6-6. 6.5.2 DEID GSA Land-Based Assessment Fees As noted above, general expenses of the GSP are anticipated to be funded through a per-acre land-based assessment across all acreage in</p>	<p>The County requests that the GSA look towards a different assessment rate for de minimus users.</p>	<p>Any assessments imposed by the DEID GSA must be applied equitably and consistent with state law.</p>

<p>the DEID GSA. This is expected to be achieved through either a Proposition 218 election or a Proposition 26 fee assessment.</p>		
<p>Page 22 of TULE SUBBASIN COORDINATION AGREEMENT ATTACHMENT 2 2.3.1.1.5. Municipal Deliveries from Wells Groundwater pumping for municipal supply is conducted by the city of Porterville and small municipalities for the local communities in the Tule Subbasin. From water years 1986-87 to 2016/17, municipal pumping from wells was estimated to average approximately 20,000 acre-ft.yr.</p>	<p>As noted previously, values like this are an 'average'. Generally, urban use is going to continue to grow as population grows - though the use per person may be lower.</p>	<p>Agreed. The Basin Setting includes projections for future municipal water use for each GSA and the Subbasin.</p>

Appendix L Comments Received Prior to Completion of the 2020 GSP

L-4: Comment Letters Received on Plan

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State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



November 26, 2019

Via Mail and Electronic Mail

Dale Brogan, Special Projects Manager
Delano-Earlimart Irrigation District GSA
14181 Avenue 24
Delano, California 93215

Email: dbrogan@deid.org

Subject: Comments on the Delano-Earlimart Subbasin Groundwater Sustainability Plan

Dear Mr. Brogan:

The California Department of Fish and Wildlife (Department) Central Region is providing comments on the Delano-Earlimart Subbasin Draft Groundwater Sustainability Plan (GSP) prepared by Delano-Earlimart Irrigation District Groundwater Sustainability Agency (GSA) for its portion of the Tule Subbasin (subbasin), pursuant to the Sustainable Groundwater Management Act (SGMA). As trustee agency for the State's fish and wildlife resources, the Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of such species (Fish & Game Code §§ 711.7 and 1802).

Development and implementation of Groundwater Sustainability Plans under SGMA represents a new era of California groundwater management. The Department has an interest in the sustainable management of groundwater, as many sensitive ecosystems and species depend on groundwater and interconnected surface waters, including ecosystems on Department-owned and managed lands within SGMA regulated basins. SGMA and its implementing regulations afford ecosystems and species specific statutory and regulatory consideration, including the following as pertinent to Groundwater Sustainability Plans:

- Groundwater Sustainability Plans must identify and consider impacts to groundwater dependent ecosystems (GDE's) pursuant to 23 California Code of Regulations (CCR) § 354.16(g) and Water Code § 10727.4(l);
- Groundwater Sustainability Agencies must consider all beneficial uses and users of groundwater, including environmental users of groundwater pursuant to Water Code §10723.2 (e); and Groundwater Sustainability Plans should identify and consider potential effects on all beneficial uses and users of groundwater

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pursuant to 23 CCR §§ 354.10(a), 354.26(b)(3), 354.28(b)(4), 354.34(b)(2), and 354.34(f)(3);

- Groundwater Sustainability Plans must establish sustainable management criteria that avoid undesirable results within 20 years of the applicable statutory deadline, including depletions of interconnected surface water that have significant and unreasonable adverse impacts on beneficial uses of the surface water pursuant to 23 CCR § 354.22 *et seq.* and Water Code §§ 10721(x)(6) and 10727.2(b) and describe monitoring networks that can identify adverse impacts to beneficial uses of interconnected surface waters pursuant to 23 CCR § 354.34(c)(6)(D); and
- Groundwater Sustainability Plans must account for groundwater extraction for all Water Use Sectors including managed wetlands, managed recharge, and native vegetation pursuant to 23 CCR §§ 351(a) and 354.18(b)(3).

Furthermore, the Public Trust Doctrine imposes a related but distinct obligation to consider how groundwater management affects public trust resources, including navigable surface waters and fisheries. Groundwater hydrologically connected to navigable surface waters and surface waters tributary to navigable surface waters are also subject to the Public Trust Doctrine to the extent that groundwater extractions or diversions affect or may affect public trust uses (*Environmental Law Foundation v. State Water Resources Control Board* (2018), 26 Cal. App. 5th 844). Accordingly, groundwater plans should consider potential impacts to and appropriate protections for navigable interconnected surface waters and their tributaries, and interconnected surface waters that support fisheries, including the level of groundwater contribution to those waters.

In the context of SGMA statutes and regulations and Public Trust Doctrine considerations, the Department values SGMA groundwater planning that carefully considers and protects groundwater dependent ecosystems and fish and wildlife beneficial uses and users of groundwater and interconnected surface waters.

COMMENT OVERVIEW

The Department supports ecosystem preservation in compliance with SGMA and its implementing regulations based on Department expertise and best available information and science.

The Department recommends the GSP provide additional information and analysis that considers all environmental beneficial uses and users of groundwater in its sustainability management criteria, and better characterize and consider surface water-groundwater connectivity. In addition, the Department is providing comments and recommendations below.

COMMENTS AND RECOMMENDATIONS

The Department comments are as follows:

1. **Comment #1 Groundwater-Dependent Ecosystems.** Attachment 2 Tule Subbasin Coordination Agreement Draft Tule Subbasin Setting. Chapter 2 Tule Subbasin Setting. Section 2.2 Groundwater Conditions, Subsection 2.2.7 Groundwater Dependent Ecosystems (page 19) and Figure 2-26. The GDE identification section, pursuant to 23 CCR § 354.16 (g), is based on limited information to thoroughly identify ecosystems that may depend on groundwater and risks the exclusion of potential GDEs.
 - a. *Issue:* Methods applied to the Natural Communities Commonly Associated with Groundwater (NCCAG) dataset to identify potential GDEs are not robust. Note Figure 2-26 does not present any GDEs on the map. The removal of areas with a depth to groundwater greater than 25 feet in January 2015 relies on a single-point-in-time baseline hydrology, specifically a point in time that is several years into a historic drought when groundwater levels were trending significantly lower due to reduced surface water availability. Exclusion of potential GDEs based on this singular groundwater elevation measurement is questionable because it does not consider representative climate conditions (i.e., seasons and a range of water type years) and it does not account for GDEs that can survive a finite period of time without groundwater access (Naumburg et al. 2005), but that rely on groundwater table recovery periods for long term survival.
 - b. *Recommendations:* The Department recommends clarifying if the GSP identifies any likely GDEs and recommends the GSP consider the following for improved information gathering to better ground truth potential GDEs:
 - i. Depth to Groundwater: If the GSP does indeed analyze GDEs based on a depth to groundwater analysis as suggested on Figure 2-26, the Department recommends the GSP develop a hydrologically robust baseline from which to identify GDEs that relies on multiple, climatically representative years of groundwater elevation, that accounts for the inter-seasonal and inter-annual variability of GDE water demand, and that is based on a clear understanding of shallow groundwater. A robust hydrologic baseline will help account for GDEs that can survive a finite period of time without groundwater access (Naumburg et al. 2005), but that rely on groundwater table recovery periods for long-term survival.

- ii. Include Additional References for Evaluation: The Department recognizes that NCCAG (Klausmeyer et al. 2018) provided by California Department of Water Resources (CDWR) is a good starting reference for GDE's; however, the Department recommends the GSP include additional resources (including local knowledge) for evaluating GDE locations. The Department recommends consulting other references, including but not limited to the following tools and other resources: the California Department of Fish and Wildlife (CDFW) Vegetation Classification and Mapping Program (VegCAMP) (CDFW 2019A); the CDFW California Natural Diversity Database (CNDDDB) (2019B); the California Native Plant Society (CNPS) Manual of California Vegetation (CNPS 2019A); the CNPS California Protected Areas Database (CNPS 2019B); the United States Fish and Wildlife Service (USFWS) National Wetlands Inventory (2018); the USFWS online mapping tool for listed species critical habitat (2019); the United States Forest Service CALVEG ecological grouping classification and assessment system (2019); and other publications by Klausmeyer et al. (2019), Rohde et al. (2018), The Nature Conservancy (TNC) (2014, 2019), and Witham et al. (2014).

2. Comment #2 Environmental Beneficial Users. Section.5 Notice and Communications. Subsection 1.5.1 Beneficial Uses and Users (page 1-31). The GSP does not identify environmental beneficial uses and users of groundwater.

- a. *Issue*: The GSP does not specifically identify environmental uses and users of groundwater as beneficial uses in the subbasin (page 1-31).
- b. *Recommendation*: The Department recommends identifying environmental beneficial uses and users of groundwater and including a detailed description on how these users, such as GDEs and the species therein, may rely on groundwater and may be impacted by Sustainable Management Criteria pursuant to 23 CCR §§ 354.10(a), 354.26(b)(3), 354.28(b)(4), 354.34(b)(2), and 354.34(f)(3). The [Critical Species Lookbook](#) (TNC 2019) is a resource to help identify threatened and endangered species in any basin and subbasin subject to SGMA and to help understand species relationships to groundwater. The LookBook also offers narrative on species and habitat groundwater dependence that can be a model for describing environmental beneficial uses and users of groundwater in the GSP.

OTHER COMMENTS: Implementation of Future Project Actions Related to SGMA

SGMA exempts the preparation and adoption of GSPs from the California Environmental Quality Act (CEQA) (WC §10728.6); however, SGMA specifically states that implementation of project actions taken pursuant to SGMA are not exempt from CEQA (WC §10728.6). The Department is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). The Department, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, the Department is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

The Department is also a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381), and the Department expects that it may need to exercise regulatory authority as provided by the Fish and Game Code for implementation of projects related to the GSP that are also subject to CEQA. These projects may be subject to the Department's lake and streambed alteration regulatory authority (i.e., Fish & G. Code, § 1600 et seq.). Notification pursuant to Fish and Game Code § 1602 is warranted if a project will (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); and/or (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. Likewise, to the extent that implementation of any project may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required. The Department is required to comply with CEQA in its issuance of a Lake or Streambed Alteration Agreement or an Incidental Take Permit.

Water Rights: The implementation of SGMA does not alter or determine surface or groundwater rights (WC §10720.5). It is the intent of SGMA to respect overlying and other proprietary rights to groundwater, consistent with section 1200 of the Water Code (Section 1(b)(4) of AB 1739). The capture of unallocated stream flows to artificially recharge groundwater aquifers are subject to appropriation and approval by the State Water Resources Control Board (SWRCB) pursuant to Water Code § 1200 et seq. The Department, as Trustee Agency, is consulted by SWRCB during the water rights process to provide terms and conditions designed to protect fish and wildlife prior to appropriation of the State's water resources. Certain fish and wildlife are reliant upon aquatic and riparian ecosystems, which in turn are reliant upon adequate flows of water. The Department therefore has a material interest in assuring that adequate water flows within streams for the protection, maintenance and proper stewardship of those

Dale Brogan, GSA Contact
Delano-Earlimart Irrigation District GSA
November 26, 2019
Page 6

resources. The Department provides, as available, biological expertise to review and comment on environmental documents and impacts arising from project activities.

CONCLUSION

In conclusion, the Delano-Earlimart Subbasin Draft GSP needs to address all SGMA statutes and regulations, and the Department recommends the GSP seriously consider fish and wildlife beneficial uses and interconnected surface waters. The Department recommends that the GSP consider the above comments before the GSP is submitted to the California Department of Water Resources. The Department appreciates the opportunity to provide comments on the Delano-Earlimart Subbasin Draft GSP. If you have any further questions, please contact Dr. Andrew Gordus, Staff Toxicologist, at Andy.Gordus@wildlife.ca.gov or (559) 243-4014, extension 239.

Sincerely,



JAV Julie A. Vance
Regional Manager, Central Region

Attachment (Literature Cited)

ec: See Page Seven

ec: **California Department of Fish and Wildlife**

Joshua Grover, Branch Chief
Water Branch
Joshua.Grover@wildlife.ca.gov

Robert Holmes, Environmental Program Manager
Statewide Water Planning Program
Robert.Holmes@wildlife.ca.gov

Briana Seapy, Statewide SGMA Coordinator
Groundwater Program
Briana.Seapy@wildlife.ca.gov

Annee Ferranti, Environmental Program Manager
Central Region
Annee.Ferranti@wildlife.ca.gov

Andy Gordus, Staff Toxicologist
Central Region
Andy.Gordus@wildlife.ca.gov

Annette Tenneboe, Senior Environmental Scientist Specialist
Central Region
Annette.Tenneboe@wildlife.ca.gov

John Battisoni, Senior Environmental Scientist Supervisor
Central Region
John.Battisoni@wildlife.ca.gov

California Department of Water Resources

Craig Altare, Supervising Engineering Geologist
Sustainable Groundwater Management Program
Craig.Altare@water.ca.gov

Mike McKenzie, SGMA Point of Contact
South Central Region Office
Charles.McKenzie@water.ca.gov

State Water Resources Control Board

Natalie Stork, Chief
Groundwater Management Program
Natalie.Stork@waterboards.ca.gov

Dale Brogan, GSA Contact
Delano-Earlimart Irrigation District GSA
November 26, 2019
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Tulare Basin Watershed Partnership

Carole Combs
ccombs@thegrid.net

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Rick Borges
Tulare I.D.

Jason R. Phillips
Chief Executive Officer

Douglas A. DeFlicht
Chief Operating Officer

854 N. Harvard Ave.
Lindsay, CA 93247

1121 L St., Ste. 610
Sacramento, CA 95814

(559) 562-6305

December 16, 2019

Alpaugh GSA
Delano Earlimart Irrigation District GSA
Eastern Tule GSA
Lower Tule River Irrigation District GSA
Pixley Irrigation District GSA
Tri-County Water Authority GSA

Re: Comments on Tule Subbasin Groundwater Sustainability Plans

To: The Directors and Staff of the Referenced Groundwater Sustainability Agencies

The Friant Water Authority (FWA), which operates the 152-mile long Friant-Kern Canal (FKC or Canal) on behalf of the United States Department of Interior's Bureau of Reclamation (Reclamation) and which Canal conveys contract water to 34 water agencies and municipalities that in turn serve tens of thousands of residential customers and over 1 million acres of farmland, respectfully submits this comment letter on the Groundwater Sustainability Plans (GSPs) that have been drafted by each of the Groundwater Sustainability Agencies (GSAs) addressed in this letter pursuant to the Sustainable Groundwater Management Act (SGMA).¹

As a preliminary matter, we commend the various boards, staff members and technical consultants for the efforts that have gone into the preparation of the draft GSPs and for the transparent and collaborative manner in which the GSAs have engaged with stakeholders such as FWA. We are in this together, and your leadership to date, as evidenced by the outreach to our agency, has been exemplary. With the exception of the issues noted below, FWA fully supports the adoption and implementation of the GSPs. To that end, FWA looks forward to continuing our collaboration in order to achieve the "Sustainability Goal" of the Tule Subbasin, which, as defined in the Tule Subbasin Coordination Agreement (Coordination Agreement), is "the absence of significant and unreasonable undesirable results associated with groundwater pumping."²

In our initial comment letter of May 28, 2019, we notified each GSA that FWA would be carefully reviewing the draft GSPs in terms of the description and definition of undesirable results with respect to subsidence impacts to the Canal, and noted that while SGMA established a 20-year planning period to bring the Tule Subbasin into sustainability, the continuation of unmitigated land subsidence impacts to the Canal would be unacceptable and that feasible solutions must be identified. With that

¹ Water Code § 10720 and following.

² Coordination Agreement, § 4.2.

outcome in mind, we provide our specific comments on the draft GSPs, particularly the GSP of the Eastern Tule GSA (ETGSA).

We support the stated intent in the Coordination Agreement as to the purpose of avoiding undesirable results in the context of land subsidence: “the avoidance of an undesirable result of land subsidence is to protect critical infrastructure for the beneficial uses within the Tule Subbasin, including excessive costs to fix, repair, or otherwise retrofit such infrastructure and may also result in an interim loss of benefits to the users of such infrastructure.”³ It cannot be disputed that the FKC is one of if not THE most critical infrastructure facility in the Tule Subbasin with respect to the conveyance of water for beneficial use. It also cannot be disputed, as documented in the GSPs, that groundwater pumping in the vicinity of the Canal has resulted in upwards of 9 feet of land subsidence in recent decades - several feet of which has occurred in recent years even after the adoption of SGMA.⁴ Because the Canal’s conveyance system relies on a “gravity” design, this subsidence has reduced the conveyance capacity of the Canal to 40% of its original capacity (from 4,000 to 1,650 cubic-feet per second (cfs)) in these subsided areas. The resulting constriction in the Canal is precluding the delivery of significant amounts of water to Friant Division Contractors (Friant Districts) below the subsided areas and also affects the ability to Friant Districts above the constricted area to engage in exchanges or transfers of water.

As a result of the persistent overdraft conditions in the Tule Subbasin, FWA, at considerable expense, is developing plans, undertaking environmental review, and pursuing permitting to address these existing subsidence impacts by restoring capacity through a project referred to as the “Friant-Kern Canal Middle Reach Capacity Correction Project” (Project). The current engineering estimates place the cost of the Project in excess of \$500 million.

With this well-documented and undisputed background in mind, including the extensive information, analysis and modeling in the GSPs and their supporting technical appendices, FWA must express its dissatisfaction with both the proposed “minimum thresholds” for subsidence and the criteria used to define “undesirable results” with respect to future subsidence as applied to the FKC. Specifically, the draft GSPs provide for **up to three feet of additional subsidence along the Canal** caused by transitional pumping/use **BEFORE** the identified **minimum thresholds** are exceeded. This impact will be compounded by the reliance of the GSPs on the definition of undesirable results in the Coordination Agreement, which provides as follows:

§ 4.3.4.2 Criteria to Define Undesirable Results: *“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.”* (Emphasis added.)

Figure 5-1 of the GSP for the ETGSA identifies seven Representative Monitoring Sites (RMS) along the most severely subsided portion of the FKC covering a distance of approximately 12 miles measured from the Tule River at Avenue 152 to Avenue 80. Using the proposed criteria for defining an undesirable result, the “transitional” overdraft pumping will be permitted to potentially cause 3 additional feet of

³ Coordination Agreement, § 4.3.4.3.

⁴ ETGSA GSP, § 4.3.5; see also FWA’s Friant-Kern Canal Fact Sheet (attached).

subsidence over at least a 4-6 mile area (the distance of 4 of 7 RMS (i.e., more than 50% of the Representative Monitoring Sites)) BEFORE being deemed an undesirable result.⁵ This is not acceptable to FWA unless there is concurrent and corresponding mitigation in the form of compensation to FWA and the Friant Districts to pay for the damages resulting from such pumping as discussed further below.⁶ If the GSAs agree to incorporate the prompt adoption of management actions that would provide reasonable compensation to address “interim” subsidence (i.e., the continuation of subsidence until the proposed “minimum thresholds” are reached), then FWA would not object to the GSPs maintaining these objectives, not as minimum thresholds that must be exceeded before management action is taken, but rather, as a basis for **additional** management actions, including greater compensation for damages to the Canal and Friant Districts and potential additional reductions in groundwater pumping to achieve sustainability sooner and avoid further impacts to the Canal if these so-called minimum thresholds are exceeded.

In addition to establishing a uniform zero-tolerance for additional subsidence impacts to the Canal absent appropriate compensation/mitigation, the criteria for monitoring any continued undesirable results for land subsidence as pertaining to the Canal need to be site specific and should be based on any additional subsidence detected at a single RMS location. Furthermore, because the FKC is critical infrastructure, FWA recommends that the Tule Subbasin GSPs incorporate additional RMS along the FKC for the entire length of the Tule Subbasin and that such RMS locations be spaced not more than one mile apart. Some of the Friant Districts are adding such monitoring sites for their own water banking/recharge projects near the FKC, and we would encourage the GSAs to incorporate these facilities as part of their subsidence monitoring management actions with respect to the FKC.

While the GSPs do not calculate the amount of capacity loss to the Canal from the contemplated 3 additional feet of subsidence that is predicted over the first 15 years of the GSPs, FWA estimates this capacity reduction to be on order of 460 cubic feet per second (cfs), which would result in a conveyance capacity of 1,140 cfs (based on current deficient conditions) and put the Canal capacity at 2,860 cfs below the original design capacity of 4,000 cfs. FWA further estimates that the 3 additional feet of subsidence contemplated under the GSPs will result in further reduced water deliveries to Friant Districts below the impacted area on the order of at least 30,000 to 40,000 acre feet (AF) per year, in addition to the already significant inability to convey water during wet years such as 2017 and 2019 where FWA estimates that upwards of 300,000 AF could have been delivered to Friant Districts but for the capacity restrictions caused by subsidence due to overdraft groundwater pumping in the Tule Subbasin. Under such conditions, Friant Districts’ imported surface water supplies through the FKC will be even further restricted, which in turn will diminish their ability to contribute to the sustainable management of their own respective subbasins in the future.

⁵ See ETGSA GSP, § 5.8.3.1.2 (Quantified Minimum Thresholds).

⁶ See Civil Code section 3479: “**Anything which is injurious to** health, including, but not limited to ... an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs **the free passage or use**, in the customary manner, **of any ...canal ... is a nuisance.**” (Emphasis added.) It is FWA’s position that any pumping activity causing further subsidence to the Canal constitutes a nuisance unless appropriate compensation/mitigation is provided.

FWA is encouraged that the GSP for ETGSA establishes a “Friant-Kern Canal Subsidence Management Area.” However, neither that Plan nor any of the other GSPs establish specific management actions or mitigation to address the continued subsidence impacts to the Canal despite the fact that the GSPs contemplate continued overdraft conditions (aka “transitional pumping/use”) through the implementation period of 2040.⁷

For the above reasons, **all** further subsidence along the Canal as contemplated in the GSPs should be considered significant and unreasonable and deemed to substantially interfere with surface land uses unless appropriate mitigation is provided to fairly compensate FWA and the Friant Districts for such interference.⁸ Accordingly, the GSPs should be revised to mandate the prompt adoption of management actions (following adoption of the GSP) that provide for such equitable compensation as a condition of the transitional groundwater pumping permitted under each GSP in areas where such pumping can reasonably be demonstrated to cause continued subsidence impacts to the Canal.

Given the acknowledged effects of continued subsidence proximate to the FKC, these immediate management actions to mitigate such impacts are required. To this end, concurrent with the adoption of the final GSPs, as amended to address the comments provided herein, FWA respectfully request that the Board of each GSA direct staff to continue to work with FWA and Friant Districts to promptly develop and bring back for adoption management actions that would establish mechanisms to mitigate future subsidence impacts in the form of compensation to FWA and Friant Districts to pay for the costs of repairs to the FKC resulting from the transitional pumping/use permitted under the GSPs as well as the reduced water deliveries to Friant Districts until such repairs are completed. This mitigation could come in the form of fees or charges imposed on groundwater pumping and/or assessments or charges spread over the lands benefitting from groundwater pumping permitted under the GSPs that have caused, and can reasonably be demonstrated will continue to cause, undesirable results to the Friant-Kern Canal.

On behalf of FWA, I appreciate your consideration of these comments. FWA staff looks forward to continued collaboration on prompt and appropriate actions that will help us move forward with our mandate to restore critically needed capacity to the Friant-Kern Canal.

Sincerely,



Jason Phillips, CEO

Attachment: FWA Subsidence Fact Sheet

⁷ We acknowledge that the Delano-Earlimart GSP does contain management actions that assert it will achieve sustainability, but because the plan still anticipates that future subsidence will occur, more attention to address FWA’s concerns regarding compensation for continuing subsidence impacts to the FKC is still warranted.

⁸ See Water Code § 10721(x)(5).



Chris Tantau
Kaweah Delta W.C.D.
Chairman of the Board

Jim Erickson
Madera I.D.
Vice Chairman

Cliff Loeffler
Lindsay-Strathmore I.D.
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Michael Brownfield
Lindmore I.D.

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Lower Tule River I.D.

Kent H. Stephens
Kern-Tulare W.D.

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Orange Cove I.D.

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Steven G. Kisling
Saucelito I.D.

Matt Leider
Tea Pot Dome W.D.

Edwin L. Wheaton
Terra Bella I.D.

Rick Borges
Tulare I.D.

Jason R. Phillips
Chief Executive Officer

Douglas A. DeFlitch
Chief Operating Officer

854 N. Harvard Ave.
Lindsay, CA 93247

1121 L St., Ste. 610
Sacramento, CA 95814

(559) 562-6305

January 27, 2020

Via Email (equinley@deid.org)

Board of Directors
Delano-Earlimart Irrigation District GSA
14181 Avenue 24
Delano, California 93215

RE: Support of Final DEID GSA Groundwater Sustainability Plan

Dear Members of the Board of Directors and GSA Staff:

Friant Water Authority (FWA) staff has reviewed the DEID GSA Groundwater Sustainability Plan (GSP) dated January 2020 (Final Redline) (Final GSP) that is proposed for adoption at your meeting today, and for the reasons set forth below, we encourage adoption of the Final GSP.¹

As you are aware, FWA submitted a comment letter dated December 16, 2019, to each Groundwater Sustainability Agency (GSA) within the Tule Subbasin regarding the GSPs that were being developed. As the operating non-federal entity of the Friant-Kern Canal (FKC), FWA outlined in its comment letter generalized concerns with how the GSAs were intending to define and monitor “undesirable results” under SGMA with respect to future subsidence impacts to the FKC caused by transitional overdraft pumping included within any GSP. In addition, FWA requested that GSAs either include a management action in the GSP or provide assurance that such action would be promptly taken following adoption of a GSP, which action would provide a mechanism to compensate FWA and the Friant Districts that pay for the operations, maintenance and replacement of the FKC to the extent such transitional pumping resulted in additional subsidence impacts to the FKC.

In the ensuing weeks, FWA staff has met on multiple occasions with General Manager Eric Quinley and Special Projects Manager Dale Brogan to discuss FWA’s concerns and how they were being addressed in the Final GSP. We commend them both on their efforts and outreach, which has greatly assisted us in coming to this position of support for the Final GSP.

As an initial matter, and as reflected in the Final GSP, FWA is cognizant of the distinction between the existing conditions and historic groundwater management within the lands under the jurisdiction of the Delano-Earlimart Irrigation District (a

¹ Because the Final GSP was not released until after the January FWA Board of Directors meeting, FWA staff was not able to present to Plan to the Board for consideration and a request for a letter of support. We plan to do so at the February Board meeting.

net depositor of groundwater to the subbasin) and the lands within the GSA, which when viewed separate from DEID, contribute to overdraft conditions. To that end, we support the establishment of the “Western Management Area” (WMA), which consists of approximately 7,555 acres of actively farmed land adjacent to DEID, but without any readily available access to surface water (i.e., a “white area”) as set forth in Section 5.2.2 of the Final GSP.

Section 5.2.2.2.2 (Circumstantial Considerations) appropriately documents the historic subsidence impacts to the FKC resulting from overdraft pumping in the Tule Subbasin, as well as the continued impacts to the FKC anticipated to be caused by transitional pumping within the Subbasin, including the WMA, as identified in analyses prepared by Thomas Harder and Associates.

Most importantly, Section 5.2.2.2.10 (Cost & Funding) outlines the potential establishment of “an assessment on WMA lands employing transitional pumping to fund FKC subsidence mitigation caused by pumping on those lands. The transitional pumping price paid by WMA landowners will include a per acre-foot FKC mitigation fee that may be subject to retroactive and future adjustment based on an assignment of relative responsibility of FKC subsidence that is the result of continued over-pumping through the WMA transitional pumping project.” This is precisely the type of management action that FWA requested be included in any GSP that permitted overdraft pumping in the vicinity of the FKC that could cause further impacts to the FKC, particularly with respect to reduced conveyance capacity.

Finally, we also want to acknowledge the efforts of your staff in pressing for changes to the final Tule Subbasin Coordination Agreement that incorporate FWA’s request that the criteria to define undesirable results in Section 4.3.4.2 be revised to allow GSAs to adopt a more stringent criteria (e.g., subsidence at a single Representative Monitoring Site (RMS)) where land subsidence may cause unreasonable adverse effects on the functionality of the FKC. The final Coordination Agreement includes this revision.

In closing, based on the content outlined above, FWA staff supports the Board’s adoption of the Final GSP with respect to the vital matter of future land subsidence and mitigating potential impacts to the Friant-Kern Canal.

Sincerely,



Jason Phillips, CEO

cc: Tule Subbasin GSAs



P.O. Box 846 • Lindsay, CA 93247 • Phone: (559) 562-2581 • Fax: (559) 562-3882 • www.lsid.org

Eastern Tule GSA
Lower Tule River Irrigation District GSA
Pixley Irrigation District GSA
Delano-Earlimart Irrigation District GSA
Tri-County Water Authority GSA
Alpaugh GSA

RE: Public Comments to Tule Basin Groundwater Sustainability Plans (GSP)

To: Directors and Staff of the Referenced Groundwater Sustainability Agencies

Lindsay Strathmore Irrigation District supports the comment letter dated December 16, 2019, submitted on behalf of Friant Water Authority concerning your Groundwater Sustainability Plans (GSP) for the Tule Subbasin. By and through this letter, the District adopts each comment and objection in that letter as its own, along with any exhibits or attachments to that letter, and incorporates herein by this reference all such comments, objections, and documents.

The District specifically wants to emphasize the importance of addressing and resolving the ongoing subsidence issues with the Friant-Kern Canal that are caused or exacerbated by groundwater pumping in the Tule Subbasin. Allowing for three (3) additional feet of subsidence along the Friant-Kern Canal is unacceptable without adequate mitigation. Nor is it acceptable to further handicap this issue by requiring more than 50% of the seven (7) monitoring sites to show three (3) feet of subsidence before considering this matter an undesirable result. To prevent further water supply loss and economic injury to the Friant Contractors, the District urges you to meaningfully address and resolve the issue of subsidence in your GSPs, including undertaking the actions suggested by Friant Water Authority.

Sincerely,

A handwritten signature in blue ink that reads "Craig N. Wallace".

Craig N. Wallace
General Manager
Lindsay-Strathmore Irrigation District

cc. LSID Board of Directors
Friant Water Authority
District Legal Counsel



December 17, 2019 (**Revised GSI 4-page Memo**)

Rogelio Caudillo, Interim Executive Director
Eastern Tule GSA (info@easterntulegsa.com)
881 W. Morton Avenue, Suite D
Porterville, CA 93257

Eric Limas, General Manager
Lower Tule River Irrigation District GSA (ltridgsp@ltrid.org)
357 E. Olive Avenue
Tipton, CA 93272

Eric Limas, General Manager
Pixley Irrigation District GSA (pixleygsp@ltrid.org)
357 E. Olive Avenue
Tipton, CA 93272

Dale Brogan (dbrogan@deid.org)
Delano Earlimart Irrigation District GSA
14181 Avenue 24
Delano, CA 93215

Deanna Jackson, Executive Director (djackson@tcwater.org)
Tri-County Water Authority GSA
944 Whitley Avenue, Suite E
Delano, CA 93215

David Kahn, Esq. (dkahn@kschanford.com)
Alpaugh GSA
219 N. Douty Street
Hanford, CA 93230

RE: Public Comments to Tule Basin Groundwater Sustainability Plans (GSP)

To Whom It May Concern,

The letter concerns the Groundwater Sustainability Plans (GSPs) that have been drafted by each of the agencies addressed in this letter pursuant to the Sustainable

Groundwater Management Act (Water Code § 10720 *et seq.*) (“SGMA”). The GSPs are referred to herein collectively as the “Tule Subbasin GSPs”.

SGMA regulations are set forth in Title 23 of the California Code of Regulations. 23 CCR § 350.4(f) (General Principles) state a GSP “will be evaluated, and its implementation assessed, consistent with the objective that a basin be sustainably managed within 20 years of Plan implementation *without adversely affecting the ability of an adjacent basin to implement its Plan or achieve and maintain its sustainability goal over the planning and implementation horizon.*” (Emphasis added.) Furthermore, 23 CCR § 354.28 (Minimum Thresholds) states a GSP must describe “how minimum thresholds have been selected to avoid causing undesirable results in adjacent basins or affecting the ability of adjacent basins to achieve sustainability goals.” There are other sections that speak to similar requirements regarding adjacent basins (e.g., §§ 354.34, 354.38, 355.4).

As you are well aware, there are at least two (2) Kern County water districts, Arvin-Edison Water Storage District and Shafter-Wasco Irrigation District (collectively referred to as “Friant Districts”), that have contracts for 441,275 acre-feet of water service with the United States Department of Interior’s Bureau of Reclamation (Reclamation) from Millerton Lake located in Fresno/Madera County that is subsequently conveyed through the Friant-Kern Canal (FKC).

The Friant Districts encompass over 170,000 acres within the Kern Subbasin, which is adjacent to and just south of the Tule Subbasin. **The Friant Districts are concerned that the minimum thresholds in the Tule Subbasin GSPs as currently drafted are not protective of the beneficial water users downstream of the Tule Subbasin and will negatively impact the Friant Districts by limiting their ability to receive significant quantities of their contracted surface water imports due to past and ongoing subsidence within the Tule Subbasin.** Historically, the surface water imports into Kern County from the FKC have enabled the Friant Districts to achieve sustainable groundwater conditions. Unlike declines in groundwater levels, subsidence is a largely irreversible process and therefore once they occur impacts to the FKC from subsidence cannot be reversed, only mitigated through costly infrastructure repairs.

While the Tule Subbasin GSPs did not report loss of water supply from continued subsidence, the Friant Water Authority (FWA) in coordination with others, has completed a draft feasibility study and performed engineering estimates that are detailed in the attached “Friant-Kern Canal Middle Reach Capacity Correction Project Draft Recommended Plan Report” (Report), with current FKC repairs being in excess of \$500 million. The Report estimated a projected average annual loss of up to 145,000 acre-feet per year of surface supply caused by continued land subsidence and the corresponding reduction in the conveyance capacity of the FKC (Report Table 5-4). However, during wet years, similar to 2017 and 2019, FWA has estimated the water supply losses to be nearly 300,000 acre-feet in both wet years, which figure would be significantly higher with an additional 3 feet of subsidence. Under such conditions of continued subsidence, the Friant Districts’ imported surface water supplies through the FKC will be restricted such that the Friant Districts’ ability to

contribute to the sustainable management of the Kern Subbasin will be greatly compromised. The continued subsidence negatively impacts the Friant Districts and does not comport with the SGMA regulations, which therefore violates the following, including without limitation: 23 CCR §§ 350.4(f), 354.28, and 355.4(b)(7).

Friant Districts take great exception to the Tule Subbasin GSPs that assume up to a **maximum of 3 feet** of additional subsidence along the FKC (as well as up to nearly 9 additional feet of subsidence in other areas in the Tule Subbasin). While the GSPs did not calculate the amount of FKC capacity loss from such 3 feet drop in elevation, the FWA estimated the capacity reduction to be 1,140 cfs (or 460 cfs drop from current conditions and 2,860 cfs from original design of 4,000 cfs) (Report Figure 5-2). Given current conditions that already restrict FKC deliveries, any further subsidence would be significant and unreasonable and substantially interfere with surface land uses. (See Water Code § 10721(x)(5)). **Consequently, the Friant Districts recommend the Tule Subbasin GSPs include immediate management actions that provide for no additional subsidence (0 feet) beyond that “legacy” subsidence¹ which would occur if pumping were to cease immediately.** No analysis was undertaken to demonstrate how minimum thresholds for subsidence would impact the FKC and affected interests of beneficial users of groundwater or land uses and property interests. Furthermore, the analysis conducted to establish minimum thresholds in the Tule Subbasin GSPs relies on modeling for which sufficient uncertainty and sensitivity analysis have not been completed, or at the very least are not presented. Given the inherent uncertainty in the subsidence model, use of a safety factor in establishing minimum thresholds is warranted.

The Friant Districts’ note that in addition to negative impacts to the Friant Districts’ water supply, other FKC contractors that are located upstream of the Tule Subbasin will also experience negative financial impacts as a result of the FWA’s FKC Operations & Maintenance (O&M) cost recovery methodology, which methodology is essentially based on *actual deliveries*. With continued subsidence in the Tule Subbasin, the Friant Districts’ deliveries will be reduced and therefore northern FKC contractors’ prorata share of the FKC O&M will increase.

In addition to the continued 3-foot subsidence allowance, the Tule Subbasin GSPs define an Undesirable Result for subsidence to occur when subsidence minimum thresholds are exceeded at greater than 50% of Representative Monitoring Sites (RMS) on a Management Area basis. This definition would allow exceedances of minimum thresholds at multiple RMS (e.g., 3 out of 7 RMS along the FKC in the Eastern Tule GSA area) without it being deemed an Undesirable Result. Friant Districts’ recommend an Undesirable Result at just 1 RMS. In addition to changing the threshold, provided that the FKC is critical infrastructure, Friant Districts recommend that the Tule Subbasin GSPs incorporate additional RMS, located at one-mile intervals or less, along the FKC that spans the entire length of the Tule Subbasin. **However,**

¹ “Legacy” subsidence here refers to subsidence resulting from ongoing depressurization and compaction of compressible subsurface units due to historical groundwater pumping and groundwater level declines. Based on the physical characteristics of the compressible subsurface units in the Tule Subbasin, such “legacy” subsidence would be expected to continue for a period of up to approximately two years if groundwater pumping were to cease immediately (see attached letter from Dr. Chin Man Mok, GSI Environmental Inc.).

the GSPs do not clarify the projects or management actions that would be taken to avoid such Undesirable Results.

The GSPs contemplate the continued overdraft conditions (aka “transitional pumping”) through the implementation period of 2040, which has been modelled by the Tule Subbasin to cause subsidence. However, the Tule Subbasin GSPs (except one) do not propose any form of mitigation. (See CCR 23 § 354.44) In that regard, the Friant Districts’ appreciate the Delano-Earlimart Irrigation District’s (DEID) Policy Point #8 (Transitional Pumping), which states unmitigated transitional pumping within the Tule Subbasin would not be supported by DEID, and DEID’s treatment of the Western Management Area covering non-districted or “white lands”, which states transitional pumping would be subject to mitigation fees.

It shall be noted that the Tule Subbasin Coordination Agreement states the following regarding FKC subsidence:

- “...may result in an interim loss of benefit to the users of such infrastructure...”
- “...exceedance of minimum thresholds...could likely induce financial hardship on land and property interest...”

Given the acknowledged effects of continued subsidence proximate to the FKC, management actions expressly required to avoid and mitigate such impacts are promptly required. (See CCR 23, § 355.4 and Water Code § 10720.1(e).)

Additional observations about the GSP, including review of subsidence information from local experts, is detailed in the attached is EKI Environment and Water and GSI Environmental Technical memorandums.