

4.7 Surface Water Diverter Compliance

List the surface water diverters that will receive funding from the proposed grant. If there are none, so indicate. Provide agency/organization name, a contact phone number and e-mail address. For the listed surface water diverters, state whether they have submitted to the SWRCB surface water diversion reports in compliance with requirements outlined in Part 5.1 (commencing with §5100) of the Division 2 of the CWC. If a surface water diverter has not, explain and provide the anticipated date for meeting the requirements. The following must be submitted by the applicant to fulfill this requirement:

- Submittal of list of surface water diverters
- Agency/organization name(s)
- Contact phone number(s) and e-mail address(es)
- SWRCB verification documentation

Tulare Irrigation District and the County of Tulare are surface water diverters that will receive funding from this proposed grant. Tulare Irrigation District is a longtime Friant Division CVP contractor. The Bureau of Reclamation (USBR) holds the surface water diversion compliance with the State Water Resources Control Board (SWRCB) for its contractors. The documentation provided for SWRCB verification is a copy of the contract between the USBR and SWRCB for surface water diversion from Millerton Lake the Bureau executed on behalf of its contractors (see **Attachment 1 – Appendix E**). The County of Tulare has a Cross Valley Canal contract that it uses to bring water supplies into the region on behalf of other agencies. Documentation for compliance with the SWRCB is included in **Attachment 1 – Appendix F**. Contact information for both Tulare ID and the County of Tulare are provided below.

Tulare Irrigation District

Aaron Fukuda, District Engineer

Phone Number: (559) 686-3425

E-mail: akf@tulareid.org

County of Tulare

Denise England, Water Resources Program Manager

Phone Number: (559) 636-5027

E-mail: dnakins@co.tulare.ca.us

**ATTACHMENT 1 – AUTHORIZATION AND ELIGIBILITY
REQUIREMENTS**

APPENDIX E

SWRCB Diverter Verification – Tulare ID



STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

Amended License for Diversion and Use of Water

APPLICATION 25882
Page 1 of 4

PERMIT 18302

LICENSE 13286

THIS IS TO CERTIFY, That

Friant Power Authority
P.O. Box 279
Delano, CA 93216

The Deputy Director for Water Rights finds that the State Water Resources Control Board (State Water Board) and/or the Licensee have met the following requirements for Change Petition approval: (a) the change will not operate to the injury of any lawful user of water; (b) good cause has been shown for the change; (c) the petition does not constitute the initiation of a new right; and (d) demonstrated that the requirements of the California Environmental Quality Act (CEQA) have been met or that the project is exempt from CEQA.

Additionally, the State Water Board has complied with its independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audobon Society v. Superior Court* (1983) 33 Cal.3d 419 [189 Cal.Rptr. 346].)

The amended license is being issued in accordance with the redelegations of authority (Resolution No. 2007-0057.) Therefore, an amended license on **Application 25882**, filed on **December 6, 1978**, has been approved by the State Water Board SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this amended license.

Licensee has the right to the use of the waters of **San Joaquin River** in **Fresno County and Madera County**

tributary to **Suisun Bay**

for the purpose of **Power use**

Amended License 13286 supersedes the license originally issued on **July 21, 1997**, which was perfected in accordance with the laws of California, the Regulations of the State Water Board, or its predecessor, and the terms of **Permit 18302**. The priority of this right dates from **December 6, 1978**. Proof of maximum beneficial use of water under this license was made as of **October 17, 1996** (the date of inspection).

The amount of water to which this right is entitled and hereby confirmed is limited to the amount actually beneficially used for the stated purposes and shall not exceed **four thousand three hundred forty-five (4,345) cubic feet per second to be diverted from January 1 to December 31 of each year.**

(000005a)

The equivalent of the authorized continuous flow allowance for any 14-day period may be diverted in a shorter time, provided there be no interference with other rights and instream beneficial uses and provided further that all terms or conditions protecting instream beneficial uses are observed.

(0000027)

THE POINT OF DIVERSION OF SUCH WATER IS LOCATED:

Friant Dam – By California Coordinate System of 1983, Zone 4, North 2,247,856 feet and East 6,355,935 feet, being within NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 5, T11S, R21E, MDB&M.

A DESCRIPTION OF THE LANDS OR THE PLACE WHERE SUCH WATER IS PUT TO BENEFICIAL USE IS AS FOLLOWS:

At Friant-Kern Power Plant within SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 5, Madera Power Plant within NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 5, River Outlet Power Plant within SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 5, and New River Outlet Power Plant within SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 5, all within T11S, R21E, MDB&M, as shown on map filed with State Water Board.

This license shall not be construed as conferring upon the licensee right of access to the point of diversion.

(0000022)

Water diverted under this license is for nonconsumptive use and is to be released to: (A) Friant-Kern Canal within SE $\frac{1}{4}$ of SW $\frac{1}{4}$ Section 5, T11S, R21E, MDB&M, (B) Madera Canal within NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 5, T11S, R21E, MDB&M, (C) San Joaquin River within SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 5, T11S, R21E, MDB&M, and (D) San Joaquin River within SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 5, T11S, R21E, MDB&M.

(0000111)

Releases of water through Friant Dam under this license shall be subordinate to existing water rights and shall not interfere with the prior rights of downstream users.

This license is subject to prior rights. Licensee is put on notice that, during some years, water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the San Joaquin River Basin are such that, in any year of water scarcity, the season of diversion authorized herein may be reduced or completely eliminated by order of the State Water Board, made after notice to interested parties and opportunity for hearing.

(0000090)

The right hereby confirmed to the diversion and use of water is restricted to the point or points of diversion herein specified and to the lands or place of use herein described.

Reports shall be filed promptly by the licensee on the appropriate forms which will be provided for the purpose from time to time by the State Water Board.

Licensee shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by the State Water Board, reasonable access to project works to determine compliance with the terms of this license.

Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this license, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the State Water Board may be exercised by imposing specific requirements over and above those contained in this license with a view to eliminating waste of water and to meeting the reasonable water requirements of licensee without unreasonable draft on the source. Licensee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this license and to determine accurately water use as against reasonable water requirement for the authorized project. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the State Water Board also may be exercised by imposing further limitations on the diversion and use of water by the licensee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution article X, section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.

The quantity of water diverted under this license is subject to modification by the State Water Board if, after notice to the licensee and an opportunity for hearing, the State Water Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the State Water Board finds that: (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

This license does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2089) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the licensee shall obtain authorization for an incidental take prior to construction or operation of the project. Licensee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this license.

If construction or rehabilitation work is required for the diversion works covered by this license within the bed, channel, or bank of the affected water body, the licensee shall enter into a streambed or lake alteration agreement with the State Department of Fish and Game. Licensee shall submit a copy of the agreement, or waiver thereof, to the Division of Water Rights prior to commencement of work. Compliance with the terms and conditions of the agreement is the responsibility of the licensee.

This license is granted and the licensee accepts all rights herein confirmed subject to the following provisions of the Water Code:

Section 1625. Each license shall be in such form and contain such terms as may be prescribed by the State Water Board.

Section 1626. All licenses shall be under the terms and conditions of this division (of the Water Code).

Section 1627. A license shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code) but no longer.

Section 1628. Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article (of the Water Code) and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.

Section 1629. Every licensee, if he accepts a license, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any licensee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Section 1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

Section 1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property cannot agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.

STATE WATER RESOURCES CONTROL BOARD

Original Signed by: PGC for

Barbara Evoy, Deputy Director
Division of Water Rights

Dated: July 11, 2011



STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

License for Diversion and Use of Water

Page 1 of 4

APPLICATION 25882

PERMIT 18302

LICENSE 13286

THIS IS TO CERTIFY, That

Friant Power Authority

24790 Avenue 95

Terra Bella, CA 93270

has made proof as of **October 17, 1996** (the date of inspection) to the satisfaction of the State Water Resources Control Board of a right to the use of the waters of **San Joaquin River in Fresno County and Madera County**

tributary to **Suisun Bay**

for the purpose of **Power use**

under Permit **18302** of the Board and that the right to the use of this water has been perfected in accordance with the laws of California, the Regulations of the Board and the permit terms; that the priority of this right dates from **December 6, 1978** and that the amount of water to which this right is entitled and hereby confirmed is limited to the amount actually beneficially used for the stated purposes and shall not exceed **four thousand three hundred forty-five (4,345) cubic feet per second to be diverted from January 1 to December 31 of each year.**

(000005a)

The equivalent of such continuous flow allowance for any 14-day period may be diverted in a shorter time provided there be no interference with other rights and instream beneficial uses and provided further that all terms or conditions protecting instream beneficial uses are observed.

(0000027)

THE POINT OF DIVERSION OF SUCH WATER IS LOCATED:

Friant Dam - North 39° 30' West, 2,200 feet from S¼ corner of Section 5, T11S, R21E, MDB&M, being within NW¼ of SW¼ of said Section 5.

A DESCRIPTION OF THE LANDS OR THE PLACE WHERE SUCH WATER IS PUT TO BENEFICIAL USE IS AS FOLLOWS:

At Friant-Kern Power Plant within SE¼ of SW¼ of Section 5, Madera Power Plant within NW¼ of SW¼ of Section 5, and River Outlet Power Plant within SW¼ of SW¼ of Section 5, all within T11S, R21E, MDB&M, as shown on map filed with State Water Resources Control Board.

This license shall not be constructed as conferring upon the licensee right of access to the point of diversion.

(0000022)

Water diverted under this license is for nonconsumptive use and is to be released to:

(A) Friant-Kern Canal within SE¼ of SW¼ of Section 5, T11S, R21E, MDB&M, (B) Madera Canal within NW¼ of SW¼ of Section 5, T11S, R21E, MDB&M, and (C) San Joaquin River within SW¼ of SW¼ of Section 5, T11S, R21E, MDB&M.

(0000111)

Releases of water through Friant Dam under this license shall be subordinate to existing water rights and shall not interfere with the prior rights of downstream users.

This license is subject to prior rights. Licensee is put on notice that during some years water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the San Joaquin River Basin are such that in any year of water scarcity the season of diversion authorized herein may be reduced or completely eliminated on order of this Board made after notice to interested parties and opportunity for hearing.

(0000090)

Licensee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this license.

The quantity of water diverted under this license is subject to modification by the Board if, after notice to the licensee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

Pursuant to California Water Code Sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this license, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

This continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this license with a view to eliminating waste of water and to meeting the reasonable water requirements of licensee without unreasonable draft on the source. Licensee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this license and to determine accurately water use as against reasonable water requirement for the authorized project. No action will be taken pursuant to this reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the licensee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Sec. 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.

Reports shall be filed promptly by licensee on appropriate forms which will be provided for the purpose from time to time by the Board.

The right hereby confirmed to the diversion and use of water is restricted to the point or points of diversion herein specified and to the lands or place of use herein described.

This license is granted and licensee accepts all rights herein confirmed subject to the following provisions of the Water Code:

Section 1625. Each license shall be in such form and contain such terms as may be prescribed by the Board.

Section 1626. All licenses shall be under the terms and conditions of this division (of the Water Code).

Section 1627. A license shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code) but no longer.

Section 1628. Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.

Section 1629. Every licensee, if he accepts a license does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any licensee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Section 1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

Section 1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property cannot agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.

Dated: **JULY 21 1997**

STATE WATER RESOURCES CONTROL BOARD

Roger Johnson
for Chief, Division of Water Rights

**ATTACHMENT 1 – AUTHORIZATION AND ELIGIBILITY
REQUIREMENTS**

APPENDIX F

SWRCB Diverter Verification – County of Tulare

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

CONTRACT BETWEEN THE UNITED STATES,
THE STATE OF CALIFORNIA,
AND
COUNTY OF TULARE
PROVIDING FOR WATER SERVICE FROM THE CENTRAL VALLEY PROJECT

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Contract No.
14-06-200-8293A

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

5 CONTRACT BETWEEN THE UNITED STATES,
6 THE STATE OF CALIFORNIA,
7 AND
8 COUNTY OF TULARE

9 PROVIDING FOR WATER SERVICE FROM THE CENTRAL VALLEY PROJECT

10 THIS CONTRACT, made this 10th day of November, 1975,
11 pursuant to the Act of June 17, 1902 (32 Stat. 388), and acts amenda-
12 tory thereof or supplementary thereto, all collectively hereinafter
13 referred to as the Federal reclamation laws, and pursuant to the
14 California Central Valley Project Act [Part 3, Division 6 (commencing
15 at Section 11100) of the California Water Code] and the California Water
16 Resources Development Bond Act [Chapter 8, Part 6, Division 6
17 (commencing at Section 12930) of the California Water Code], and all
18 acts of the California Legislature amendatory thereto or supplementary
19 thereof, between THE UNITED STATES OF AMERICA, hereinafter referred to
20 as the United States, the STATE OF CALIFORNIA acting by and through its
21 Department of Water Resources, hereinafter referred to as the State,
22 and the COUNTY OF TULARE, hereinafter referred to
as the Contractor, a public agency of the State of California, organized,
existing, and acting pursuant to the laws thereof, with its principal
place of business in Visalia, California,

WITNESSETH, That:

Preamble

1 or by direct diversion to the intake canal of the distribution system
2 constructed by Arvin-Edison Water Storage District under Public Law 130,
3 as amended, and;

4 WHEREAS conveyance of Project water through the State Water
5 Project facilities for delivery to the Contractor will be under a
6 separate agreement between the United States and the State; and

7 WHEREAS, the furnishing of water under this contract will be
8 limited to the availability of Project water and capacity in the State
9 and Federal facilities; and

10 WHEREAS, the Contractor has requested and desires to contract
11 for the furnishing by the United States of a water supply from the
12 Project and for the conveyance of such water by the State in accordance
13 with the terms of this contract for which the Contractor will make pay-
14 ments to the United States and the State upon the basis, at the rates,
15 and pursuant to the conditions hereinafter set forth; and

16 WHEREAS, the Contractor proposes to enter into subcontracts
17 for the furnishing of water made available to the Contractor under this
18 contract; and

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1 June 3, 1960 (74 Stat. 156), including the San Luis Canal, Dos
2 Amigos Pumping Plant, and related facilities;

3 (e) "delivery structure" shall mean a metered turnout for
4 the Cross Valley Canal from Reach 12E of the California Aqueduct
5 for delivery and measurement of State water and Project water;

6 (f) "OMP&R costs" shall mean the State's costs of
7 operation, maintenance, power, and replacement of all State
8 facilities used in conveying Project water to the Contractor,
9 excluding any costs of generating or acquiring power for use at
10 the Delta Pumping Plant. It is understood the Federal facilities
11 will be used for conveyance of Project water for the Contractor
12 and that the operation costs for such facilities shall be shared
13 in accordance with the operating agreement No. 14-06-200-9755 for
14 the San Luis Unit or as it may be amended.

15 (g) "minimum OMP&R costs" shall mean those OMP&R costs
16 incurred irrespective of the amount of water delivered for the
17 Contractor;

18 (h) "variable OM&R costs" shall mean those costs of State
19 facilities which constitute operation, maintenance, and replace-
20 ment costs which are dependent upon and vary with the amount of
21 water delivered for the Contractor;

22 (i) "year" shall mean calendar year;

1 (j) "fiscal year" shall mean the period commencing July 1
2 through the following June 30;

3 (k) "initial delivery date" shall mean January 1, 1976, or
4 as it may be extended pursuant to Article 2(a);

5 (l) "agricultural water" shall mean water used primarily in
6 the commercial production of agricultural crops or livestock,
7 including domestic use incidental thereto, on tracts of land
8 operated in units of more than 2 acres;

9 (m) "municipal, industrial, and domestic water" (herein-
10 after abbreviated M&I water) shall mean water used for purposes
11 other than agricultural;

12 (n) "entitlement water" shall mean the amount of State Water
13 Project water to be made available to a State Water Project con-
14 tractor during the respective year, as shown in Table A of its
15 contract with the State, or as it may be amended;

16 (o) "State Water Project Contractor" shall mean any entity
17 contracting with the State for a portion of the minimum project
18 yield of the State Water Project; and

19 (p) "Subcontractor" shall mean an individual, group of
20 individuals, or organization in the County who contracts with the
21 Contractor to use water made available to the Contractor under
22 this contract.

23 TERM OF CONTRACT

24 2. (a) This contract shall be effective from the date first
25 hereinabove written through December 31, 1995: Provided, That this

1 contract may be renewed upon terms and conditions satisfactory to the
2 parties hereto: Provided, That in the event the Cross Valley Canal has
3 not been constructed by the Agency to deliver Project water at the time
4 of the initial delivery date, this contract shall terminate unless said
5 Canal is then being constructed for delivery of Project water, in which
6 case the initial delivery date may be extended by the Contracting Officer
7 and the State from year to year to permit completion of said Canal.

8 (b) The right to beneficial use of water made available
9 hereunder or any renewal hereof shall not be disturbed so long as all
10 obligations under this contract or any such renewal are fulfilled by
11 the Contractor.

12 WATER SERVICE TO BE MADE AVAILABLE

13 3. (a) Commencing January 1 of the year in which the initial
14 delivery date occurs and each year thereafter during the term of this
15 contract the Contractor shall pay for and the United States and the
16 State shall make available to the Contractor at the delivery point
17 provided under Article 8 Project water at the times and in the quanti-
18 ties specified in a schedule submitted by the Contractor in conformance
19 with subdivision (a) of Article 4 but not to exceed 3,000 acre-feet,
20 subject to the limitations provided for in this Article 3.

21 (b) In the event the United States shall, during the term
22 of this contract, receive a request from a third party or parties for a
23 contract to purchase each year all or any part of the maximum quantity
24 of 3,000 acre-feet of Project water provided in subdivision (a) of
25 this article, the Contracting Officer by written notice shall inform

1 the Contractor of such request and the Contractor within 30 days from
2 the date of such notice shall reply in writing to the Contracting
3 Officer agreeing to pay to the United States each year during the
4 remaining term of this contract for the maximum quantity of water to
5 be made available by the Contracting Officer or release to the United
6 States so much of said quantity as the Contractor does not desire to
7 retain and pay for each year: Provided, That in the event such third
8 party, or parties, does not enter into a contract for such water the
9 Contractor, upon written notice to the Contracting Officer, may retain,
10 schedule, and pay for Project water as provided in subdivision (a).

11 (c) In the event the State receives a request for water
12 service from a State Water Project Contractor prior or subsequent to
13 approval of the Contractor's schedule under Article 4 hereof, the State
14 shall reduce the amounts scheduled for delivery to the Contractor as
15 necessary in order to provide water service from the State Water Project
16 to the other party.

17 (d) In the event prior to the approval of the Contractor's
18 schedule for each of the periods covered under Article 4 hereof, the
19 State receives a request for water service from another party that is
20 not a State Water Project Contractor and is willing to enter into a
21 contract for water service which is, in the opinion of the State, more
22 advantageous to the State Water Project than this contract, then the
23 State may reduce the amounts requested for delivery to the Contractor as
24 necessary in order to provide water service to such other party unless
25 within 30 days after receipt of notice from the State, the Contractor

1 agrees to amend this contract to include terms and provisions similar
2 to those offered for such service by such other party: Provided,
3 That if the request for water service from another party that is not
4 a State Water Project Contractor is for the period May through December,
5 the amounts, if any, in the Contractor's tentatively approved schedule
6 for such period will not be affected by the request from such other
7 party.

8 (e) If in any year after the State and the Contracting
9 Officer have approved a schedule or any revision thereof submitted in
10 accordance with subdivision (a) of Article 4, the United States and
11 the State are unable to make water available in the quantities and at
12 the times requested in the schedule and the Contractor does not elect
13 to receive and does not receive such water at other times during such
14 year, the Contractor shall be entitled to an adjustment as provided in
15 Article 7(a).

16 (f) The State shall not schedule water deliveries to the
17 Contractor at a flow rate greater than the flow rate in the Cross
18 Valley Canal for which the Contractor has contracted with the Agency
19 unless the Agency agrees in writing to the use of a greater flow rate,
20 and shall not be obligated to deliver water at a flow rate other
21 than uniform flow for each scheduled amount.

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WATER USE SCHEDULES

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2 4. (a) By October 1 of each year commencing with the year prior
3 to the initial delivery date and each year thereafter, the Contractor
4 after approval by the Agency or the Agency on behalf of the Contractor
5 shall submit to the State and the Contracting Officer a written
6 schedule indicating by months the quantity of water to be made avail-
7 able at the delivery structure for the following 6 years. On or
8 before December 8 of each year the State, after consultation with the
9 Contracting Officer and the Agency, shall determine and furnish to
10 the United States, the Agency, and the Contractor an approved water
11 delivery schedule for the first 4 months of the next calendar year
12 and a tentatively approved schedule for the remaining 8-month period.
13 On or before March 15 of each year the Contractor, after approval by
14 the Agency or the Agency on behalf of the Contractor, shall submit
15 to the State and the Contracting Officer for approval a written schedule
16 indicating by months the quantities of water to be made available at
17 the delivery structure for the subsequent 8-month period beginning on
18 May 1 or shall confirm in writing the schedule it previously submitted
19 for that 8-month period. On or before May 1 of each year the State,
20 after consultation with the Contracting Officer and the Agency, shall
21 determine and furnish to the United States, the Agency, and the
22 Contractor an approved water delivery schedule for that 8-month period.

1 Concurrently with the furnishing of the approved delivery schedule the
2 State shall furnish the Contractor with a written statement of the
3 charges for conveyance of Project water to the Contractor for the next
4 succeeding year. All such statements shall be accompanied by the data
5 and computations used by the State in determining the amount of the
6 above charges as the State deems appropriate. Subject to the provisions
7 of Articles 9, 10, and 11 hereof, the United States and the State will
8 provide and convey respectively such quantities of water indicated by
9 said schedule, or increases or decreases to such schedule submitted by
10 the Contractor after approval by the Agency within a reasonable time
11 before the desired change of times or quantities as the Contracting
12 Officer and the State deem reasonable.

13 (b) If, after meeting other contractual demands additional
14 supplies of water and delivery capacity are available, which would allow
15 delivery to the Contractor of an amount greater than provided in Article
16 3(a) as determined by the Contracting Officer and the State, the Contractor,
17 after approval by the Agency, may submit a revision of its schedule. Pay-
18 ment for any such additional water scheduled shall be made in accordance
19 with Article 6. The acceptance by the Contractor of such additional water
20 shall neither entitle nor obligate the Contractor to receive such quantities
21 in subsequent years.

22 (c) All dates and times referred to in this article may be
23 revised in writing by mutual consent of the parties to this contract.

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TRANSFERS OR EXCHANGES OF WATER

5. Water made available to the Contractor pursuant to this contract or as a result of an exchange agreement with the Arvin-Edison Water Storage District shall be used only on lands within a sub-contractor's boundaries: Provided, That upon advance written approval by the Contracting Officer of such arrangements the Contractor may enter into agreements for the sale, transfer, or exchange of Project water with other contractors from the Project: Provided further, That Project water conveyed to the Contractor through State facilities pursuant to this contract shall not be used, sold, or otherwise disposed of by the Contractor for use outside the Contractor's boundaries and within the boundaries of a State Water Project contractor without the prior written consent of the State and the Agency.

METHOD AND RATE OF PAYMENT FOR WATER--CONTRACTOR TO PAY OTHER COSTS

6. (a) Payment of the costs of conveyance of water through the State facilities shall be made by the Contractor directly to the State as follows:

- (1) The Contractor shall pay to the State on or before February 1 of each year the charges for scheduled water deliveries for the period January 1 through June 30, and on or before August 1 the charges for the period July 1 through December 31.

1 (2) The State shall determine the charge for
2 conveyance and delivery of water through the State Water
3 Project facilities based on the following criteria.

4 a. A unit rate shall be determined annually
5 which, if assessed on all State water delivered to date
6 plus all entitlement water to be delivered to State Water
7 Project contractors and all Project water to be delivered
8 under this and similar contracts during the remainder of the
9 repayment period of the State Water Project, would total
10 a sum at the end of the period equivalent to all reimburs-
11 able capital and minimum OMP&R transportation costs to be
12 incurred during the period, together with interest at the
13 State Water Project interest rate, for the reaches of the
14 California Aqueduct required in conveying Project water
15 through State Water Project facilities.

16 b. The charge shall be the sum of the following:

17 (1) The rate determined in a. above
18 multiplied by the number of acre-feet scheduled
19 for delivery to the Contractor at the beginning
20 of the year, or as increased during the year,
21 whichever is greater;

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1 (2) That portion of the total annual
2 variable O&M costs of State facilities as the total
3 quantity of the Contractor's Project water delivered
4 to the Contractor pursuant to Article 4(a) hereof in
5 such year bears to the total quantity of water
6 delivered from or through the State facilities;

7 (3) The incremental costs, if any, caused by
8 the conveyance and delivery of Project water to the
9 Contractor which, unless included in the charges to
10 the Contractor, would result in increased charges to
11 other State contractors;

12 (4) An adjustment for any difference between
13 the quantities of water in an approved schedule at the
14 time such payment was made and the reduced quantities in
15 any later approved amendment of such schedule.

16 (b) Payment to the United States for water service shall be
17 made to the United States as follows:

18 (1) At least 15 days prior to the delivery of water
19 as indicated by the current approved schedule, the Contractor
20 shall pay to the United States the amount payable for quantities
21 scheduled for the first 2 months. Before the end of the first
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1 month of delivery and before the end of each month thereafter
2 the Contractor shall pay for the water to be delivered during
3 the second month immediately following.

4 (2) Adjustment for any difference between the payment
5 for the scheduled quantities of water and payment for water
6 actually delivered in any month shall be made in the payment in
7 the month immediately following.

8 (3) By December 1 of each year the Contractor shall
9 make any additional payment necessary to meet the total quantity
10 of water the Contractor is obligated to pay for that year pursuant
11 to Article 3(a).

12 (c) If the Contractor is unable, fails, or refuses to accept
13 delivery of the quantities of water made available at the delivery
14 structure in accordance with the current approved schedule, such inability,
15 failure, or refusal shall not relieve the Contractor of its obligations
16 to pay the State and the United States, and the Contractor agrees to make
17 payment in the same manner as if such water had been delivered and
18 accepted by the Contractor. Any water made available at the delivery
19 structure and not accepted by the Contractor shall be deemed to be the
20 property of the United States and shall be disposed of in accordance
21 with a separate agreement between the United States and the State.

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1 (d) The rate to be paid the United States for agricultural
2 water shall consist of the following components:

3 (1) A Project operation, maintenance, and replace-
4 ment (hereinafter abbreviated OM&R) component of \$4 per acre-foot
5 for the period ending the 5th fiscal year following the fiscal
6 year in which water is made available pursuant to subdivision (a)
7 of Article 3. Prior to June 15 of the last fiscal year of said
8 period and June 15 of each succeeding 5th fiscal year thereafter,
9 this component shall be redetermined by the Contracting Officer
10 for the succeeding 5 fiscal years by dividing the estimated
11 average annual OM&R cost for the Federal facilities involved
12 in the delivery of water pursuant to this and similar contracts
13 for the delivery of water to the Cross Valley Canal during the
14 immediately succeeding 5 fiscal year period by the total estimated
15 quantity of water that is made available to said contractors
16 during said period. Each determination shall include an adjust-
17 ment to reflect the difference in the actual and estimated water
18 use and OM&R costs for the preceding 5 fiscal years.

19 (2) A capital cost component of \$1.10 per acre-foot:
20 Provided, That this component shall be increased in the amount
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1 that the Contractor's cost under subdivision (a) of this article
2 for water conveyed by the State facilities is less than \$4.90 per
3 acre-foot.

4 (e) The rate to be paid the United States for M&I water to
5 be made available pursuant to this contract shall be \$20 per acre-foot:
6 Provided, That this rate may be adjusted on July 1 of the 5th fiscal
7 year next following the year in which the initial delivery date occurs
8 and on July 1 of each 5th fiscal year thereafter upon 6 months written
9 notice to the Contractor.

10 ADJUSTMENTS

11 7. (a) The amount of any overpayment to the United States or
12 the State by the Contractor by reason of the water actually made
13 available for the Contractor at the delivery structure during any
14 year, as conclusively determined by the Contracting Officer and the
15 State, after consultation with the Agency, having been less than the
16 quantity of water scheduled pursuant to Article 4(a) which the Contractor
17 otherwise under the provisions of this contract would have been
18 required to receive and pay for shall be applied first to any accrued
19 indebtedness arising out of this contract then due and owing to
20 the United States or the State by the Contractor and any amount
21 of such overpayment then remaining shall, at the option of the
22 Contractor, be refunded to the Contractor or credited upon amounts
23 to become due to the United States or the State respectively from

1 the Contractor under the provisions thereof in the ensuing year.
2 Such adjustment shall constitute the sole remedy of the Contractor
3 or anyone having or claiming to have the right to the use of any
4 of the water supply provided for herein.

5 (b) In the event that the Contractor contests the accuracy
6 of any statement submitted to it by the State pursuant to this contract
7 it shall give the State notice thereof at least 10 days prior to the
8 day upon which payment of the stated amounts is due. To the extent
9 that the State finds that the Contractor's contentions regarding the
10 statement are correct, it shall revise the statement accordingly, and
11 the Contractor shall make payment of the revised amounts on or before
12 the due date. To the extent that the State does not find the Con-
13 tractor's contentions to be correct, or where time is not available
14 for review of such contentions prior to the due date, the Contractor
15 shall make payment of the stated amounts on or before the due date,
16 but may make the contested part of such payment under protest and seek
17 to recover the amount thereof from the State.

18 (c) If in any year, by reason of errors in computation or
19 other causes, there is an overpayment or underpayment to the State by
20 the Contractor of its charges provided for herein, the amount of such
21 overpayment or underpayment shall be credited or debited, as the case
22 may be, to the Contractor's account for the next succeeding year and
23 the State shall notify the Contractor thereof in writing.

1 POINTS OF DELIVERY--MEASUREMENT AND RESPONSIBILITY
2 FOR DISTRIBUTION OF WATER

3 8. (a) Water to be made available to the Contractor pursuant
4 to this contract shall be delivered at the delivery structure. The
5 delivery of Project water through or from the Cross Valley Canal shall
6 be pursuant to an agreement between the Contractor and the Agency. If
7 necessary, the delivery of Project water to Arvin-Edison Water Storage
8 District shall be in accordance with an agreement between the
9 Contractor and the Arvin-Edison Water Storage District whose terms
10 shall be concurred in by the Contracting Officer.

11 (b) As requested by the Agency the State shall design and
12 construct the delivery structure including capacity for the Contractor.

13 (c) All water furnished at the delivery structure pursuant
14 to this contract shall be measured by the State with equipment owned,
15 operated, and maintained by the State. Upon the request of the Contractor
16 or the Agency on behalf of the Contractor, the accuracy of such measure-
17 ments will be investigated by the State and the measurements will be
18 adjusted for any errors determined by the State.
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1 (d) Neither the United States nor the State shall be
2 responsible for the control, carriage, handling, use, disposal, or
3 distribution of water beyond the delivery structure and the Contractor
4 shall hold the United States and the State harmless on account of damage
5 or claim of damage of any nature whatsoever, including but not limited
6 to property damage, personal injury or death, arising out of or
7 connected with the control, carriage, handling, use, disposal, or
8 distribution of said water beyond the delivery structure.

9 TEMPORARY REDUCTIONS--RETURN FLOWS

10 9. (a) The quantity of water made available to the Contractor
11 may be temporarily discontinued or reduced for the purpose of such
12 investigation, inspection, maintenance, repair, or replacement as may
13 be necessary of any of the Federal facilities and State facilities
14 used to convey said water. In addition the State may temporarily
15 discontinue or reduce deliveries to the Contractor for the purpose of
16 meeting its delivery commitments to State Water Project contractors.
17 So far as feasible, the Contracting Officer or the State will give the
18 Contractor due notice in advance of such temporary discontinuance or
19 reduction except in the case of an emergency, in which case no notice
20 need be given. In the event of any discontinuance or reduction by the
21 State of conveyance and delivery of Project water, the Contractor, with
22 the concurrence of the United States, may elect to take delivery of the
23 amount of Project water which otherwise would have been conveyed

1 and delivered to the Contractor by the State during such period
2 at other times during the year or succeeding years to the extent
3 that Project water is then available and such election is consistent
4 with the State's overall delivery capability, considering the then
5 current delivery schedules to the State Water Project contractors.

6 (b) The United States reserves the right to all waste,
7 seepage, and return flow water derived from water furnished to the
8 Contractor or exchanged with Arvin-Edison Water Storage District which
9 escapes or is discharged beyond the Contractor's boundaries after such
10 water has been conveyed through the delivery structure. Nothing herein
11 shall be construed as claiming for the United States any rights, as
12 waste, seepage, or return flow, to water being used pursuant to this
13 contract for surface irrigation or underground storage within the
14 Contractor's boundaries by the Contractor, or those claiming by or
15 through the Contractor.

16 UNITED STATES NOT LIABLE FOR WATER SHORTAGE

17 10. (a) Notwithstanding any other provisions of this contract,
18 the United States shall be obligated to deliver water hereunder only at
19 times and in quantities for which facilities and water are available,
20 as conclusively determined by the Contracting Officer.

21 (b) There may occur, at times during any year, a shortage
22 in the quantity of Project water to be made available for delivery to
23 the Contractor pursuant to this contract. In no event shall any

1 liability accrue against the United States, the State, or any of their
2 officers, agents, or employees for any damage, direct or indirect,
3 arising from such a shortage on account of errors in operation, drought,
4 or any other cause.

5 (c) In any year in which a shortage may occur the Contracting
6 Officer reserves the right to apportion the available Project water
7 supply among the Contractor and others entitled under the then existing
8 contracts to receive Project water in such a manner as he deems
9 equitable and physically possible.

10 STATE NOT LIABLE FOR INABILITY TO DELIVER WATER

11 11. The State shall make all reasonable efforts consistent with
12 sound fiscal policies, reasonable construction schedules and proper
13 operating procedures to complete and maintain the necessary facilities
14 and to deliver Project water to the Contractor in accordance with the
15 provisions of this contract in such manner and at such times as such
16 water is scheduled by the Contractor: Provided, That such water has
17 been furnished to the State by the United States: And provided further,
18 That in no event shall any liability accrue against the State or any of
19 its officers, agents or employees for damage, direct or indirect for
20 failure to deliver such water to the Contractor on account of errors
21 in operation, drought, or any other cause.

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1 predicated upon arbitrary, capricious, or unreasonable opinions or
2 determination, whether or not stated to be conclusive. If the Con-
3 tractor questions any determination made by the Contracting Officer
4 or the State, findings of facts shall be made by the Secretary or
5 the State, as appropriate to the issue, after consultation with the
6 Contractor and shall be binding upon the parties.

7 INTEREST FOR DELINQUENT PAYMENTS

8 15. The Contractor shall pay interest to the United States and
9 the State, respectively, on installments or charges which become
10 delinquent computed at the rate of 1% per month of the amount of such
11 delinquent installments or charges each day from such delinquency until
12 paid: Provided, That no interest shall be charged the Contractor unless
13 such delinquency continues for more than 30 days in which event the
14 interest shall accrue from the initial date of delinquency.

15 GENERAL OBLIGATION OF CONTRACTOR TO LEVY TAXES AND ASSESSMENTS--
16 BENEFITS CONDITIONED UPON PAYMENTS

17 16. (a) The obligation of the Contractor to pay the United
18 States and the State as provided in this contract is a general obliga-
19 tion of the Contractor notwithstanding the manner in which the obligation
20 may be distributed among the water users of the Contractor or a sub-
21 contractor and notwithstanding the default of individual water users in
22 their obligations to the Contractor.

1 (b) If in any year the Contractor fails or is unable to
2 raise sufficient funds by other means, the governing body of the
3 Contractor shall levy upon all property within the Contractor's or a
4 subcontractor's service area not exempt from taxation, a special tax or
5 assessment sufficient to provide for all payments due the United States
6 and the State under this contract.

7 (c) Taxes or assessments levied by the governing body of the
8 Contractor pursuant to subdivision (b) of this article shall be
9 enforced and collected by all officers of the Contractor charged with
10 the duty of enforcing and collecting taxes or assessments levied by the
11 Contractor.

12 (d) All money collected by way of special taxes or assess-
13 ments under this article for payments due the State shall be kept in
14 a separate fund by the treasurer or other officer of the Contractor
15 charged with the safekeeping and disbursement of funds of the Contractor,
16 and, upon the written demand of the State, the Treasurer or other
17 officer shall pay over to the State all such money in his possession
18 or control then due the State under this contract, which money shall
19 be applied by the State to the satisfaction of the amount due under
20 this contract.

21 (e) In the event of failure, neglect, or refusal of any
22 officer of the Contractor to levy any tax or assessment necessary to

1 provide payment by the Contractor under this contract, to enforce or
2 to collect the tax or assessment, or to pay over to the United States
3 or State any money then due collected on the tax or assessment, either
4 or both the State and the United States may take such action in a court
5 of competent jurisdiction as they deem necessary to compel the perform-
6 ance in their proper sequence of all such duties. Action taken
7 pursuant hereto shall not deprive the State or the United States or
8 limit any remedy provided by this contract or by law for the recovery
9 of money due or which may become due under this contract.

10 (f) The payment of charges becoming due hereunder is a
11 condition precedent to receiving Project water under this contract.
12 No Project water will be made available to the Contractor or a sub-
13 contractor during any period in which the Contractor or a subcontractor
14 may be in arrears in the advance payment of any charges due the United
15 States. The Contractor or a subcontractor shall not furnish water
16 made available pursuant to this contract for lands or parties which are
17 in arrears in the advance payment of charges as levied or established
18 by the Contractor.

19 QUALITY OF WATER

20 17. The operation and maintenance of Project facilities and
21 State facilities shall be performed in such manner as is practicable
22 to maintain the quality of raw water made available through such
23 facilities at the highest level reasonably attainable as determined

1 by the Contracting Officer and the State, respectively. Neither the
2 United States nor the State warrants the quality of water nor is either
3 under any obligation to construct or furnish water treatment facilities
4 to maintain or better the quality of water.

5 ENVIRONMENT PROTECTION AND POLLUTION CONTROL

6 18. The Contractor shall, within its legal authority, comply
7 fully with all applicable Federal laws, orders, and regulations, and
8 the laws of the State of California, all as administered by appropriate
9 authorities, concerning protection of the environment and pollution
10 of air, streams, reservoirs, groundwater, or water courses with respect
11 to thermal pollution or the discharge of refuse, garbage, sewage
12 effluent, industrial waste, oil, mine tailings, mineral salts, or other
13 pollutants.

14 EQUAL OPPORTUNITY

15 19. During the performance of this contract, the Contractor
16 agrees as follows:

17 (a) The Contractor will not discriminate against any
18 employee or applicant for employment because of race, color,
19 religion, sex, or national origin. The Contractor will take
20 affirmative action to ensure that applicants are employed, and
21 that employees are treated during employment, without regard
22 to their race, color, religion, sex, or national origin. Such

1 action shall include, but not be limited to, the following:
2 Employment, upgrading, demotion, or transfer; recruitment or
3 recruitment advertising; layoff or termination; rates of pay
4 or other forms of compensation; and selection for training
5 including apprenticeship. The Contractor agrees to post in
6 conspicuous places, available to employees and applicants for
7 employment, notices to be provided by the Contracting Officer
8 setting forth the provisions of this Equal Opportunity clause.

9 (b) The Contractor will, in all solicitations or adver-
10 tisements for employees placed by or on behalf of the Contractor,
11 state that all qualified applicants will receive consideration
12 for employment without regard to race, color, religion, sex,
13 or national origin.

14 (c) The Contractor will send to each labor union or
15 representative of workers with which it has a collective bargain-
16 ing agreement or other contract or understanding, a notice, to
17 be provided by the Contracting Officer, advising the labor
18 union or workers' representative of the Contractor's commitments
19 under this Equal Opportunity clause, and shall post copies of the
20 notice in conspicuous places available to employees and applicants
21 for employment.

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

5 (e) The Contractor will furnish all information and reports
6 required by said amended Executive Order and by the rules,
7 regulations, and orders of the Secretary of Labor, or pursuant
8 thereto, and will permit access to its books, records, and
9 accounts by the Contracting Officer and the Secretary of Labor
10 for purposes of investigation to ascertain compliance with such
11 rules, regulations, and orders.

12 (f) In the event of the Contractor's noncompliance with
13 the Equal Opportunity clause of this contract or with any of
14 the said rules, regulations, or orders, this contract may be
15 canceled, terminated, or suspended, in whole or in part, and
16 the Contractor may be declared ineligible for further Government
17 contracts in accordance with procedures authorized in said
18 amended Executive Order, and such other sanctions may be imposed
19 and remedies invoked as provided in said Executive Order, or by
20 rules, regulation, or order of the Secretary of Labor, or as
21 otherwise provided by law.
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1 (g) The Contractor will include the provisions of paragraphs
2 (a) through (g) in every subcontract or purchase order unless
3 exempted by rules, regulations, or orders of the Secretary of
4 Labor issued pursuant to Section 204 of said amended Executive
5 Order, so that such provisions will be binding upon each sub-
6 contractor or vendor. The Contractor will take such action with
7 respect to any subcontract or purchase order as the Contracting
8 Officer may direct as a means of enforcing such provisions,
9 including sanctions for noncompliance: Provided, however, That
10 in the event the Contractor becomes involved in, or is threatened
11 with, litigation with a subcontractor or vendor as a result of
12 such direction by the Contracting Officer, the Contractor may
13 request the United States to enter into such litigation to protect
14 the interests of the United States.

15 TITLE VI, CIVIL RIGHTS ACT OF 1964

16 20. (a) The Contractor agrees that it will comply with Title VI
17 of the Civil Rights Act of July 2, 1964 (78 Stat. 241) and all require-
18 ments imposed by or pursuant to the Department of the Interior Regulation
19 (43 CFR 17) issued pursuant to that title, to the end that, in accordance
20 with Title VI of that Act and the Regulation, no person in the United
21 States shall, on the grounds of race, color, sex, or national origin
22 be excluded from participation in, be denied the benefits of, or be

1 otherwise subjected to discrimination under any program or activity for
2 which the Contractor receives financial assistance from the United
3 States and hereby gives assurance that it will immediately take any
4 measures to effectuate this agreement.

5 (b) If any real property or structure thereon is provided or
6 improved with the aid of Federal financial assistance extended to the
7 Contractor by the United States, this assurance obligates the Contractor,
8 or, in the case of any transfer of such property, any transferee for the
9 period during which the real property or structure is used for a purpose
10 involving the provision of similar services or benefits. If any personal
11 property is so provided, this assurance obligates the Contractor for the
12 period during which it retains ownership or possession of the property.
13 In all other cases, this assurance obligates the Contractor for the
14 period during which the Federal financial assistance is extended to it
15 by the United States.

16 (c) This assurance is given in consideration of and for
17 the purpose of obtaining any and all Federal grants, loans, contracts,
18 property, discounts, or other Federal financial assistance extended
19 after the date hereof to the Contractor by the United States, including
20 installment payments after such date on account of arrangements for
21 Federal financial assistance which were approved before such date. The
22 Contractor recognizes and agrees that such Federal financial assistance

1 will be extended in reliance on the representations and agreements
2 made in this assurance, and that the United States shall reserve the
3 right to seek judicial enforcement of this assurance. This assurance
4 is binding on the Contractor, its successors, transferees, and assignees.

5 LANDS NOT TO RECEIVE WATER FURNISHED TO CONTRACTOR
6 BY UNITED STATES UNTIL OWNERS THEREOF EXECUTE CERTAIN CONTRACTS

7 21. (a) No water made available pursuant to this contract shall
8 be furnished to any excess lands as defined in Article 23 hereof unless
9 the owners thereof shall have executed valid recordable contracts in
10 form prescribed by the United States, agreeing to the provisions of
11 this article and Articles 22 and 23 hereof, agreeing to the appraisal
12 provided for in Article 22 hereof and that such appraisal shall be
13 made on the basis of the actual bona fide value of such lands at the
14 date of the appraisal without reference to the construction of the
15 Project, all as hereinafter provided, and agreeing to the sale of such
16 excess lands under terms and conditions satisfactory to the Secretary
17 and at prices not to exceed those fixed, as hereinafter provided. No
18 sale of any excess lands shall carry the right to receive water made
19 available pursuant to this contract, unless and until the purchase
20 price involved in such sale is approved by the Contracting Officer
21 and upon proof of fraudulent representation as to the true considera-
22 tion involved in such sales the United States may instruct the Contractor

1 or a subcontractor by written notice to refuse to furnish any water
2 subject to this contract to the land involved in such fraudulent sales
3 and the Contractor or a subcontractor thereafter shall not furnish said
4 water to such lands.

5 (b) If Project water furnished to the Contractor or a sub-
6 contractor pursuant to this contract reaches the underground strata
7 of excess land owned by a large landowner, as defined in Article 23 who
8 has not executed a recordable contract and the large landowner pumps
9 such Project water from the underground, the Contractor or a subcontractor
10 will not be deemed to have furnished such water to said lands within the
11 meaning of this contract if such water reached the underground strata
12 of the aforesaid excess land as an unavoidable result of the furnishing
13 of Project water by the Contractor or a subcontractor to nonexcess lands,
14 to to excess lands with respect to which a recordable contract has been
15 executed.

16 VALUATION AND SALE OF EXCESS LANDS

17 22. (a) The value of the excess irrigable lands within a sub-
18 contractor's service area as defined in Article 23 held in private
19 ownership of large landowners as defined in said article, for the
20 purposes of this contract shall be appraised in a manner to be
21 prescribed by the Secretary. At the option of the large landowner,
22 however, the value of such land may be appraised, subject to the
23 approval thereof by the Secretary, by three appraisers. One of said
24 appraisers shall be designated by the Secretary and one shall be

1 designated by the Contractor and the two appraisers so appointed shall
2 name the third. If the appraisers so designated by the Secretary and
3 the Contractor are unable to agree upon the appointment of the third,
4 the Presiding Justice of the Fifth District Court of Appeal of the
5 State of California shall be requested to name the third appraiser.

6 (b) The following principles shall govern the appraisal:

7 (1) No value shall be given such lands on account of
8 the existing or prospective possibility of securing water from
9 the Project; and

10 (2) The value of improvements on the land at the time
11 of said appraisal shall be included therein, but shall also be
12 set forth separately in such appraisal.

13 (c) The excess land of any large landowner shall be
14 reappraised in the manner provided in subdivision (a) hereof at the
15 instance of the United States or at the request of said landowner.
16 The cost of the first two appraisals of each tract of excess land
17 shall be paid by the United States. The cost of each appraisal
18 thereafter shall be paid by the party requesting such appraisal.

19 (d) Any improvements made or placed on the appraised land
20 after the appraisal hereinabove provided for prior to sale of the land
21 by a large landowner shall be appraised in like manner.

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1 (e) Excess irrigable lands sold by large landowners within a
2 subcontractor's service area shall not carry the right to receive water
3 made available pursuant to this contract for such land and the Contractor
4 agrees to refuse to furnish such water to land so sold until, in addition
5 to compliance with the other provisions hereof, a verified statement
6 showing the sale price upon any such sale shall have been filed with
7 the Contractor and said sale price is not in excess of the appraised
8 value fixed as provided herein.

9 (f) The Contractor agrees to take all reasonable steps
10 requested by the Contracting Officer to ascertain the occurrence and
11 conditions of all sales of irrigable lands of large landowners in a
12 subcontractor's service area made subsequent to the execution of this
13 contract and to inform the United States concerning the same.

14 (g) A true copy of this contract, of each recordable
15 contract executed pursuant to this article and Articles 21 and 23
16 hereof, and of each appraisal made pursuant thereto shall be furnished
17 to the Contractor by the United States and shall be maintained on file
18 in the office of the Contractor and like copies in such offices of the
19 Bureau of Reclamation as may be designated by the Contracting Officer
20 and shall be made available for examination during the usual office
21 hours by all persons who may be interested therein.

22

1 will agree to dispose of his excess lands in accordance there-
2 with to persons who can take title thereto as nonexcess land
3 as herein provided. The price shall not exceed the approved,
4 appraised value of such excess land and said land shall be
5 disposed of within a period of 10 years after the date of
6 execution of said recordable contract. If said land is not so
7 disposed of to persons who have taken title thereto as nonexcess
8 land within said period of 10 years, the Secretary shall have
9 the power to dispose of said land at the appraised value thereof
10 fixed as provided herein or such lower price as may be approved
11 by the owner of such land, subject to the same conditions as
12 would apply to such large landowner. The Contractor agrees
13 that it will refuse to furnish water to any large landowner other
14 than for his nonexcess land until such owner meets the conditions
15 precedent herein stated; and

16 (2) Within 30 days after the date of notice from the
17 United States requesting a large landowner to designate his
18 irrigable lands within a subcontractor's service area which
19 desires to designate as nonexcess lands, file in the office of
20 the Contractor, in duplicate, one copy thereof to be furnished
21 by the Contractor to the Bureau of Reclamation, his written
22

1 land and upon failure to do so the Contractor shall make such desig-
2 nation and mail a notice thereof to the large landowner, and in the
3 event the Contractor fails to act within such period of time as the
4 Contracting Officer considers reasonable, such designation will be
5 made by the Contracting Officer, who will mail a notice thereof to
6 the Contractor and the large landowner. The large landowner shall
7 become bound by such action on the part of the Contractor or the
8 Contracting Officer and the Contractor will furnish said water only
9 to the land so designated to be nonexcess land. A large landowner
10 may with the consent of the Contracting Officer designate land
11 other than that previously designated as nonexcess land: Provided,
12 That an equal acreage of the land previously designated as nonexcess
13 shall, upon such new designation, become excess land thereafter
14 subject to the provisions of this article and Articles 21 and 22 of
15 this contract and shall be described in an amendment of such record-
16 able contract as may have been executed by the large landowner in
17 the same manner as if such land had been excess land at the time of
18 the original designation.

19 REPEAL OR AMENDMENT OF FEDERAL RECLAMATION LAWS

20 24. In the event that the Congress of the United States repeals
21 the so-called excess land provisions of the Federal reclamation laws,
22 Articles 21, 22, and 23 of this contract will no longer be of any
23 force or effect and, in the event that the Congress amends the
24 excess land provisions or other provisions of the Federal reclamation

1 laws, the United States agrees, at the option of the Contractor, to
2 negotiate amendments of appropriate articles of this contract, all
3 consistently with the provisions of such amendment.

4 WATER ACQUIRED BY CONTRACTOR OR A SUBCONTRACTOR
5 OTHER THAN FROM THE UNITED STATES

6 25. (a) Water or water rights now owned or hereafter acquired
7 by the Contractor or a subcontractor other than from the United States
8 and Project water furnished pursuant to this contract may be trans-
9 ported through distribution facilities of the Contractor or a sub-
10 contractor other than those constructed by the United States if the
11 Contracting Officer determines that such mingling is necessary to avoid
12 a duplication of facilities. Notwithstanding such mingling, the pro-
13 visions of this contract shall apply only to the quantity of water
14 furnished to the Contractor or a subcontractor pursuant to the terms
15 hereof and the quantity of water acquired by or available to the
16 Contractor or a subcontractor other than from the United States shall
17 not in any manner be subject to the provisions of this contract.

18 (b) With respect to the distribution works or portions
19 thereof in which mingling is permitted as provided in subdivision (a)
20 hereof, the Contractor or a subcontractor:

21 (1) Will be responsible for the operation and mainte-
22 nance of separate outlets from the distribution system for
23 eligible and ineligible lands. At the request of the Contracting
Officer, the Contractor or a subcontractor will be responsible

1 for the installation, operation, and maintenance of water
2 measuring equipment at delivery points for the furnishing of
3 water to ineligible lands and, further, will be responsible
4 for the installation, operation, and maintenance of similar
5 equipment for measuring the water available to the Contractor
6 or a subcontractor other than pursuant to this contract, and
7 the Contracting Officer may check and inspect said equipment
8 at any time; and

9 (2) Agrees that the quantity of all water furnished
10 to the Contractor or a subcontractor pursuant to this contract
11 during each 24-hour period will be delivered only to eligible
12 lands through the aforesaid outlets. The Contractor shall be
13 deemed to be in breach of this contract if at any time there
14 is furnished to any ineligible lands served by the distribution
15 works or portions thereof in which mingling is permitted a
16 quantity of water which is greater than that which the Con-
17 tractor or subcontractor has introduced into said system from
18 the supply available other than pursuant to this contract.

19 BOOKS, RECORDS, AND REPORTS

20 26. The Contractor or a subcontractor shall establish and maintain
21 accounts and other books and records pertaining to its financial trans-
22 actions, land use and crop census, water supply, water use, and to other
23 matters as the Contracting Officer may require. Reports thereon
24 shall be furnished to the Contracting Officer in such form and on

1 such date or dates as he may require. Subject to applicable Federal
2 laws and regulations, each party shall have the rights during office
3 hours to examine and make copies of each other's books and records
4 relating to matters covered by this contract.

5 NOTICES

6 27. Any notice, demand, or request authorized or required by
7 this contract shall be deemed to have been given when mailed, postage
8 prepaid, or delivered to the Regional Director, Mid-Pacific Region,
9 Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825, on
10 behalf of the United States and to the Board of Supervisors, Tulare
11 County, Tulare County Courthouse, Visalia, CA 93277, on behalf of
12 the Contractor. The designation of the addressee or the address may
13 be changed by notice given in the same manner as provided in this article
14 for other notices.

15 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

16 28. The provisions of this contract shall apply to and bind
17 the successors and assigns of the parties hereto, but no assignment
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1 or transfer of this contract or any part or interest therein shall be
2 valid until approved by the Contracting Officer.

3 OFFICIALS NOT TO BENEFIT

4 29. (a) No member of or delegate to Congress or resident
5 commissioner shall be admitted to any share or part of this contract
6 or to any benefit that may arise herefrom, but this restriction shall
7 not be construed to extend to this contract if made with a corpora-
8 tion for its general benefit.

9 (b) No official of the Contractor or any of its subcontractors
10 shall receive any benefit that may arise by reason of this contract
11 other than as a water user within the boundaries of the Contractor's
12 service area or any of its subcontractors' service areas in the same
13 manner as other water users within such areas.

14 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

15 30. The expenditure or advance of any money or the performance
16 of any work by the United States hereunder which may require appro-
17 priation of money by the Congress or the allotment of funds shall be
18 contingent upon such appropriation or allotment being made. The
19 failure of the Congress to appropriate funds or the absence of any
20 allotment of funds shall not relieve the Contractor from any obliga-
21 tions under this contract. No liability shall accrue to the United
22 States in case such funds are not appropriated or allotted.

CONFIRMATION OF CONTRACT

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31. The Contractor, upon the execution of this contract, shall promptly secure a final decree of the proper court of the State of California approving and confirming the contract and decreeing and adjudging it to be lawful, valid, and binding on the Contractor. The Contractor shall furnish to the United States a certified copy of such decree and of all pertinent supporting records.

