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15 Attorneys for Plaintiff  
WESTLANDS WATER DISTRICT  
16 DISTRIBUTION DISTRICT NO. 2

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
18 **COUNTY OF FRESNO, CENTRAL DIVISION**

19 WESTLANDS WATER DISTRICT  
DISTRIBUTION DISTRICT NO. 2, a  
20 distribution district in a California Water  
District,

21 Plaintiff,

22 v.

23 ALL PERSONS INTERESTED IN THE  
24 MATTER OF THE CONTRACT BETWEEN  
THE UNITED STATES AND WESTLANDS  
25 WATER DISTRICT DISTRIBUTION  
DISTRICT NO. 2 PROVIDING FOR  
26 PROJECT WATER SERVICE AND  
FACILITIES REPAYMENT,

27 Defendants.

Case No. [20CECG01012](#)

**WESTLANDS WATER DISTRICT  
DISTRIBUTION DISTRICT NO. 2'S  
COMPLAINT FOR VALIDATION  
JUDGMENT**

[Code Civ. Proc. § 860, et seq.]

1 Plaintiff WESTLANDS WATER DISTRICT DISTRIBUTION DISTRICT NO. 2  
2 ("District") alleges as follows:

3 **Introduction**

4 1. The District files this action seeking a validation judgment, pursuant to Code of Civil  
5 Procedure section 860, et seq., Water Code sections 35855 and 36520, and Government Code  
6 section 53510, et seq., as to a contract between the United States and Westlands Water District  
7 Distribution District No. 2 providing for Central Valley Project ("CVP" or "Project") water service  
8 and facilities repayment, which the District Board of Directors, on January 21, 2020, approved in  
9 substantially the form presented to it and authorized its execution and delivery as set forth in  
10 Resolution No. 101-20 ("Converted Contract"). True and correct copies of Resolution No. 101-20  
11 ("Resolution") and the Converted Contract, as attached to the Resolution, are attached hereto at  
12 Exhibit A, and are incorporated herein by this reference.

13 2. This validation action is brought in this Court under Code of Civil Procedure section  
14 860 as a special in rem proceeding for judicial examination, approval, and confirmation of the  
15 proceedings leading up to and including the adoption of the Resolution and resulting approval of  
16 the Converted Contract as set forth in the Resolution. The terms of the Converted Contract require  
17 the institution of this validation action.

18 3. All such proceedings by and for the District related to the approval of the Converted  
19 Contract, as set forth herein, were, and are, in the best interests of the District and all interested  
20 parties, and were, and are, in all respects legal and valid, and the Converted Contract is in all respects  
21 valid under applicable California law.

22 **Parties**

23 4. The District is, and at all times relevant has been, a public agency within the meaning  
24 of Code of Civil Procedure section 860.

25 5. The District is, and at all times relevant has been a distribution district in a California  
26 water district duly organized and existing under and by virtue of the California Water District Law  
27 (Part 6.5 of Division 13 of the California Water Code, at section 36460, et seq.). The District is  
28

1 located within Fresno County, California, and the District's principal office is located in Fresno,  
2 California.

3 6. The Defendants named herein as "ALL PERSONS INTERESTED IN THE  
4 MATTER OF THE CONTRACT BETWEEN THE UNITED STATES AND WESTLANDS  
5 WATER DISTRICT DISTRIBUTION DISTRICT NO. 2 PROVIDING FOR PROJECT WATER  
6 SERVICE AND FACILITIES REPAYMENT" are all interested parties pursuant to Section 861 of  
7 Code of Civil Procedure and are therefore sued by such designation.

8 **Jurisdiction and Venue**

9 7. Jurisdiction resides in this Court pursuant to Code of Civil Procedure section 860,  
10 Water Code sections 35407, 35408, 35855, and 36520, and Government Code section 53510, et seq.

11 8. Venue resides in this Court pursuant to Code of Civil Procedure section 860 since  
12 the District's principal office is located in Fresno, California.

13 **Publication of the Summons**

14 9. *The Business Journal* is a newspaper published, and is of general circulation, in the  
15 County of Fresno, and publication of the Summons in this newspaper is consistent with the  
16 provisions of Code of Civil Procedure section 861. The Court should therefore order publication of  
17 the Summons in said newspaper pursuant to Code of Civil Procedure section 861. The District is  
18 informed and believes, and thereon alleges, that the proceedings held herein and the adoption of the  
19 Resolution are of general knowledge to the persons affected thereby or interested therein. The other  
20 reasonably practicable manners of providing notice are: (1) notice mailed and/or emailed to District  
21 landowners and water users; and (2) notice posted on Westlands Water District's website. Therefore,  
22 the Court should also order that the District mail and/or email the Summons to the District  
23 landowners and water users in the same manner the District customarily provides notice to  
24 landowners and water users regarding District activities, and order the District to post the Summons  
25 on the Westlands Water District's website.

26 **Factual Background**

27 10. The United States constructed and operates the CVP for diversion, storage, carriage,  
28 distribution, and beneficial use, for flood control, irrigation, municipal, domestic, industrial, fish

1 and wildlife mitigation, protection and restoration, generation and distribution of electric energy,  
2 salinity control, navigation, and other beneficial uses, of waters of the Sacramento River, the  
3 American River, the Trinity River, and the San Joaquin River and their tributaries.

4 **A. Mercy Springs Water District Contract**

5 11. On or about September 28, 1959, the Mercy Springs Water District ("MSWD")  
6 entered into a contract for water service with the United States, Contract No. 14-06-200-3365  
7 ("MSWD Contract"), which provided for the delivery to MSWD of water diverted through CVP  
8 facilities.

9 12. Upon the expiration of the original MSWD Contract, MSWD and the United States  
10 entered into successive interim renewal contracts providing for water service including Contract No.  
11 14-06-200-3365A-IR8 ending on February 28, 2006.

12 13. On or about March 2, 2004, the District and the United States entered into an  
13 agreement for partial assignment (Assignment Contract 14-06-200-3365A-IR8-C) of MSWD's  
14 water service contract. Under this assignment, MSWD assigned its right, title, and interest to 4,198  
15 acre-feet of its water service contract to the District.

16 14. The District has entered into successive interim renewal contracts with the United  
17 States for water service based upon the partial assignment of the MSWD water service contract,  
18 including most recently Contract No. 14-06-200-3365-IR17-C, between the United States and the  
19 District, ending on February 28, 2022 or until the Converted Contract is in place.

20 **B. WIIN Act**

21 15. On or about December 16, 2016, the 114th Congress of the United States of America  
22 enacted the Water Infrastructure Improvements for the Nation Act (Pub. L. 114-322, 130 Stat. 1628)  
23 ("WIIN Act"). Section 4011(a)(1) of the WIIN Act provides that: "upon request of the contractor,  
24 the Secretary of the Interior shall convert any water service contract in effect on the date of  
25 enactment of this subtitle and between the United States and a water users' association [Contractor]  
26 to allow for prepayment of the repayment contract pursuant to paragraph (2) under mutually  
27 agreeable terms and conditions."

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1           **F.       Converted Contract**

2           16.     Pursuant to, and consistent with, the WIIN Act, the District requested that the United  
3 States convert the District's existing interim renewal contract to a repayment contract. The United  
4 States and the District subsequently negotiated terms and conditions to convert the District's existing  
5 interim renewal contract to a repayment contract, and those terms and conditions are reflected in the  
6 Converted Contract. The Converted Contract also reflects the current standard terms and conditions  
7 required by the Reclamation Manual, and continues water service to the District in the same scope  
8 and nature of the ongoing CVP and its existing facilities.

9           17.     The specific Converted Contract is identified as No. 14-06-200-3365A-XXX-C,  
10 entitled "Contract Between the United States and Westlands Water District Distribution District  
11 No. 2 Providing for Project Water Service and Facilities Repayment," based upon the water assigned  
12 under the MSWD Contract and the subject of Resolution No. 101-20.

13           18.     Under the Converted Contract, ongoing receipt and delivery of water to the District  
14 will continue with no expansion of service and no new facilities constructed because the District  
15 will deliver the water received under the Converted Contract: (a) to lands within the District's  
16 boundaries for beneficial use and that have been in production, and (b) through existing facilities.

17           19.     Although the specific terms of the Converted Contract are set forth within its text as  
18 incorporated herein, the following highlight some of the changes made:

19                   (a)     superfluous recitals in the existing interim renewal contract were deleted and  
20 new recitals were added to explain the basis for the conversion;

21                   (b)     definitions were: (1) added to reflect new provisions required to convert the  
22 existing interim renewal contract to a repayment contract, and (2) modified to reflect requirements  
23 of the Reclamation Manual;

24                   (c)     the term of the existing interim renewal contract was deleted and new text  
25 added that provides a new effective date based upon the contract's execution, and for the contract to  
26 continue so long as certain conditions are met;

27           ///  
28           ///  
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1 (d) provisions, principally those related to rates, method of payment and  
2 repayment were deleted, revised, and supplemented to reflect the payment obligation and mandates  
3 of the WIIN Act; and

4 (e) other provisions were deleted, revised, and supplemented to reflect text  
5 mandated by the Reclamation Manual.

6 20. The District reviewed the terms and conditions of the Converted Contract and found  
7 the form and content thereof to be acceptable to the District and appropriate for execution. The terms  
8 and conditions of the Converted Contract are within the scope of the authority granted by the  
9 District's Board of Directors through the Resolution, and consistent with, the District's powers and  
10 authorities under California Water District Law, including Water Code sections 35851, 35875, and  
11 36520.

12 21. On January 21, 2020, at a duly noticed and regular meeting of the District's Board of  
13 Directors, the Board of Directors adopted the Resolution. Prior to and at this meeting, the District  
14 complied with the Ralph M. Brown Act, Government Code section 54950, et seq. Prior to this  
15 meeting and in accord with the provisions of the Brown Act, the District, among other actions,  
16 timely posted on January 16, 2020, at its Fresno office, 3130 North Fresno Street, Fresno, CA  
17 93703, and at its 5-Points office, 23050 W. Mt. Whitney Avenue, Five Points, CA 93624, a written  
18 agenda for the January 21, 2020, meeting. This agenda described the Board of Directors' intent to  
19 consider the adoption of the Resolution, and provided interested parties with the opportunity to  
20 review and comment upon the proposed Resolution and Converted Contract. On January 16, 2020,  
21 the District also timely distributed copies of the agenda and posted a copy of the agenda, through a  
22 prominent direct link, on the Westlands Water District's website, at <https://wwd.ca.gov>, all in  
23 conformance with the provisions of the Ralph M. Brown Act, Government Code section 54950, et  
24 seq. A true and correct copy of the agenda, as posted and distributed by the District, is attached  
25 hereto at Exhibit B, and is incorporated herein by reference.

26 22. Through the Board's adoption of the Resolution, the Board: (a) authorized the filing  
27 of notices of statutory exemption and categorical exemption from the California Environmental  
28 Quality Act for approval of and authorization to execute the Converted Contract; (b) authorized the

1 approval, execution, and delivery of the Converted Contract; and (c) authorized additional actions  
2 in furtherance thereof.

3 23. No case has been filed challenging the District's actions under the California  
4 Environmental Quality Act, and the time for filing any such action has now passed.

5 **First Cause of Action**

6 (Validation Action as to all Defendants re Converted Contract)

7 24. The District incorporates by reference, as though fully set forth herein, each and  
8 every paragraph alleged in this Complaint.

9 25. The District and the United States have agreed upon the terms of the Converted  
10 Contract, and the District's Board of Directors has duly approved and authorized the execution of  
11 the Converted Contract pursuant to Resolution No. 101-20.

12 26. Such entry into and execution of the Converted Contract is authorized and consistent  
13 with the District's rights and powers under California Water District Law in order to help assure and  
14 safeguard an adequate water supply for the District and its landowners and water users.

15 27. The District therefore seeks a decree, pursuant to Code of Civil Procedure section  
16 860, et seq., determining that: (a) the District has, and at all times relevant has had, the authority to  
17 enter into said Converted Contract, including as set forth in Water Code sections 35851, 35875, and  
18 36520; (b) all of the proceedings of the District's approval of the Converted Contract were in all  
19 respects legal and valid and that the same are approved and confirmed; and (c) said Converted  
20 Contract, and each and every provision thereof, is in all respects valid under applicable California  
21 law.

22 WHEREFORE, the District prays for judgment as follows:

23 1. That this action is properly brought under Code of Civil Procedure section 860, et  
24 seq., Water Code sections 35407, 35408, 35855, and 36520, and Government Code section 53510,  
25 et seq., and is a proper procedure to determine the validity of the Converted Contract, and all of the  
26 other proceedings described in this Complaint;

27 2. That the District is a distribution district in a California water district, duly organized  
28 and existing under, and by virtue of, the California Water District Law (Part 6.5 of Division 13 of

1 the California Water Code, at section 36460, et seq.), lying within the County of Fresno, State of  
2 California, and is a public agency of the State of California;

3           3.       That judgment be entered determining that all persons having, or claiming to have,  
4 any interest in the Converted Contract, and the proceedings leading up to and including the making  
5 and approval of said Converted Contract, and the validity of the provisions thereof, and any  
6 landowner or water user in said District and any interested person, have each and all been duly  
7 served with process and summoned to appear and answer the complaint of the District herein by the  
8 publication of the Summons pursuant to Code of Civil Procedure section 861 and Government Code  
9 section 6063, and other means found reasonably practicable by the Court, all in compliance with the  
10 law and pursuant to the order of the Court, that said publication was for the time and in the form and  
11 manner in all respects as required by law;

12           4.       That judgment be entered determining that: (a) that the District has, and at all times  
13 relevant has had, the authority to enter into said Converted Contract under California Water District  
14 Law, including Water Code sections 35851, 35875 and 36520; (b) that all of the proceedings to the  
15 District's approval of said Converted Contract were in all respects legal and valid and the same are  
16 hereby approved and confirmed; and (c) that said Converted Contract is in all respects valid under  
17 applicable California law;

18           5.       That, pursuant to Code of Civil Procedure section 870, the Court finds that the  
19 judgment as entered in this action be forever binding and conclusive as to all matters herein  
20 adjudicated and as to all matters which could have been adjudicated herein as to the validity and  
21 binding nature of the Converted Contract against the District and against all other parties to this  
22 action, related to the matters described in paragraphs 1 through 4 hereof;

23           6.       That the Court provide in its judgment an appropriate injunction permanently  
24 enjoining and restraining each and every person from instituting any action or proceeding raising  
25 any issues as to the validity and binding nature of the Converted Contract as to which the judgment  
26 is binding and conclusive pursuant to Code of Civil Procedure section 870; and

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7. For such other and further relief as the Court deems just and proper.

Dated: March 18, 2020

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD  
A Professional Corporation

By: 

\_\_\_\_\_  
Daniel J. O'Hanlon  
William T. Chisum  
Attorneys for Plaintiff  
WESTLANDS WATER DISTRICT

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**INDEX OF EXHIBITS**

- Exhibit A      Resolution No. 101-20, Westlands Water District Distribution District No. 2, A Resolution of the Board of Directors: Authorizing the Filing of Notices of Statutory Exemption and Categorical Exemption from the California Environmental Quality Act for Approval of and Authorization to Execute the Contract Between the United States and Westlands Water District Distribution District No. 2 Providing for Project Water Service and Facilities Repayment, Authorizing Approval, Execution, and Delivery of the Contract Between the United States and Westlands Water District Distribution District No. 2 Providing for Project Water Service and Facilities Repayment, and Authorizing Actions in Furtherance Thereof including attached Contract No. 14-06-200-3365A-XXX-C, entitled "Contract Between the United States and Westlands Water District Distribution District No. 2 Providing for Project Water Service and Facilities Repayment"
- Exhibit B      Westlands Water District Notice of Regular Meeting and Agenda Notice re January 21, 2020 meeting.

# **EXHIBIT A**

**RESOLUTION NO. 101-20**

**WESTLANDS WATER DISTRICT DISTRIBUTION DISTRICT NO. 2**

**A RESOLUTION OF THE BOARD OF DIRECTORS:**

**AUTHORIZING THE FILING OF NOTICES OF STATUTORY EXEMPTION AND CATEGORICAL EXEMPTION FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT FOR APPROVAL OF AND AUTHORIZATION TO EXECUTE THE CONTRACT BETWEEN THE UNITED STATES AND WESTLANDS WATER DISTRICT DISTRIBUTION DISTRICT NO. 2 PROVIDING FOR PROJECT WATER SERVICE AND FACILITIES REPAYMENT,**

**AUTHORIZING APPROVAL, EXECUTION, AND DELIVERY OF THE CONTRACT BETWEEN THE UNITED STATES AND WESTLANDS WATER DISTRICT DISTRIBUTION DISTRICT NO. 2 PROVIDING FOR PROJECT WATER SERVICE AND FACILITIES REPAYMENT, AND**

**AUTHORIZING ACTIONS IN FURTHERANCE THEREOF**

WHEREAS, Mercy Springs Water District (MSWD) entered into a contract for water service with the United States on September 28, 1959, Contract No. 14-06-200-3365 (the "Original Contract"), which provided for the delivery of up to 13,300 acre-feet of water diverted through Central Valley Project facilities. Upon expiration of the Original Contract, MSWD entered into successive interim renewal contracts with the United States of America providing for water service, including Contract No. 14-06-200-3365A IR8, ending on February 28, 2006; and

WHEREAS, On March 2, 2004, Westlands Water District Distribution District No. 2 (District) and the United States through the Bureau of Reclamation entered into an agreement for partial assignment (Assignment Contract 14-06-200-3365A-IR8-C) of MSWD's water service contract. Under this Assignment Contract, MSWD assigned its right, title and interest to 4,198 acre-feet of its water service contract to the District; and

WHEREAS, the District has entered into a successive interim renewal contracts with the United States of America providing for water service including the current Contract No. 14-06-200-3365-IR16-C (Existing Interim Renewal Contract) ending on February 29, 2020; and

WHEREAS, the United States has tendered a form of an interim renewal contract to the District, Renewal Contract No. 14-06-200-3365-IR17-C, (Interim Renewal Contract) which provides for the delivery of water diverted through Central Valley Project facilities under terms that are substantially the same as the Existing Interim Renewal Contract, which if executed, would remain in effect through February 28, 2022; and

WHEREAS, on December 16, 2016, the 114th Congress of the United States of America enacted the Water Infrastructure Improvements for the Nation Act (Pub. L. 114-322, 130 Stat. 1628) (WIIN Act); and

WHEREAS, Section 4011(a)(1) of the WIIN Act provides that “upon request of the contractor, the Secretary of the Interior shall convert any water service contract in effect on the date of enactment of this subtitle and between the United States and a water users’ association [Contractor] to allow for prepayment of the repayment contract pursuant to paragraph (2) under mutually agreeable terms and conditions.”; and

WHEREAS, Section 4011(a)(1) further provides that “the manner of conversion under this paragraph shall be as follows: (A) Water service contracts that were entered into under section (e) of the Act of August 4, 1939 (53 Stat. 1196), to be converted under this section shall be converted to repayment contracts under section 9(d) of that Act (53 Stat. 1195)”;

and “(B) Water service contracts that were entered under subsection (c)(2) of section 9 of the Act of August 4, 1939 (53 Stat. 1194), to be converted under this section shall be converted to a contract under subsection (c)(1) of section 9 of that Act (53 Stat. 1195).”;

and

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

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

WHEREAS, on or about April 23, 2018, pursuant to WIIN Act, 4011(a)(1), the District requested that United States Bureau of Reclamation initiate the process to convert its water service contract to a repayment contract.

WHEREAS, pursuant to and consistent with the WIIN Act, the United States and the District negotiated terms and conditions that convert the Existing Interim Renewal Contract to a repayment contract, and those terms and conditions are reflected in the attached Converted Contract between the United States and Westlands Water District Distribution District No. 2 providing for Project Water Service and Facilities Repayment, which is incorporated herein by this reference (Converted Contract); and

WHEREAS, the Converted Contract also reflects the current standard terms and conditions required by the Reclamation Manual; and

WHEREAS, the Converted Contract continues water service to the District within established parameters, in the same scope and nature of the ongoing Central Valley Project and its existing facilities; and

WHEREAS, the United States has determined that the District has fulfilled all of its obligations under the Existing Interim Renewal Contract; and

WHEREAS, the District has demonstrated to the satisfaction of the Contracting Officer that the District has utilized the Project Water supplies available to it for reasonable and beneficial use and expects to utilize fully for reasonable and beneficial use the quantity of Project Water to be made available to it pursuant to the Converted Contract; and

WHEREAS, water obtained from the Project has been relied upon by urban and agricultural areas within California for more than 50 years, and is considered by the District as an essential portion of its water supply; and

WHEREAS, the economies of regions within the Project, including the District's, depend upon the continued availability of water, including water service from the Project; and

WHEREAS, it is imperative to the District and its landowners that the District continue water service to lands within the District for beneficial use, and the District therefore proposes to enter into the Converted Contract; and

WHEREAS, under the Converted Contract, ongoing receipt and delivery of water will continue with no expansion of service and no new facilities constructed because the District will deliver the water received under the Converted Contract: (1) to lands within the District's boundaries for beneficial use and that have been in production, and (2) through existing facilities; and

WHEREAS, the District has reviewed the terms and conditions of the Converted Contract and finds the form and content thereof to be acceptable to the District and appropriate for execution; and

WHEREAS, the District maintains in its records copies of contracts, water delivery reports, crop information and other data supporting these factual findings.

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED as follows:

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

2. The Converted Contract will not create any effects specified in Title 14 of the California Code of Regulations, Section 15300.2.
3. Executing the Converted Contract is statutorily exempt from compliance with the California Environmental Quality Act as provided in the California Public Resources Code and implemented through Title 14 of the California Code of Regulations, Sections 15260 through 15285, with particular reference to Section 15261, because it is merely a continuation of a project approved, funded and fully operated prior to November 23, 1970, and no modification or alteration in the Central Valley Project or the amount of water delivered is proposed.
4. Execution of the Converted Contract is exempt from the California Environmental Quality Act based on its record of proceedings showing that the Converted Contract continues water service to the District within established parameters, in the same scope and nature of the ongoing Central Valley Project and its existing facilities; it involves no increase in existing service; and no new construction, expansion, or any modification to the existing distribution system; nor any change in the source of water to be delivered, or the uses to which such supplies will be put.
5. Execution of the Converted Contract is categorically exempt from compliance with the California Environmental Quality Act as provided in Title 14 of the California Code of Regulations, Section 15300 through 15333, with particular reference to Section 15301, because it merely provides for continued operation of existing facilities.
6. The District shall prepare and file a Notice of Exemption with the Clerks of Fresno and Kings Counties and the Office of Planning and Research (State Clearinghouse) as provided for in Title 14 of the California Code of Regulations, Section 15062(b), in substantially the forms attached hereto as Exhibit A.
7. The Converted Contract in substantially the form presented to the Board and on file with the Secretary is hereby approved.
8. The President of the District is hereby authorized to execute and deliver the Converted Contract in substantially the form attached hereto, with such additional changes and/or modifications as are approved by the President of the District, its General Manager, and its General Counsel.
9. The District's officers, staff, and consultants are authorized and directed to take all additional actions they deem necessary or appropriate in order to carry out the intent of this resolution.

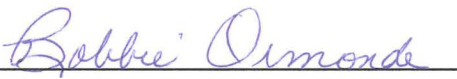
10.A certified copy of this resolution shall be prepared and transmitted by the District's Secretary to the United States Bureau of Reclamation.

Adopted at a regular meeting of the Board of Directors, at Fresno, California, this 21st day of January, 2020.

AYES: Directors Anderson, Bourdeau, Coelho, Errotabere, Enos, Ferguson, Neves, Nunn and Peracchi

NOES: None

ABSENT: None

  
Bobbie Ormonde  
Bobbie Ormonde, District Secretary

**Notice of Exemption****Appendix E**

**To:** Office of Planning and Research  
P.O. Box 3044, Room 113  
Sacramento, CA 95812-3044

County Clerk

County of: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**From:** (Public Agency): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Address)

Project Title: \_\_\_\_\_

Project Applicant: \_\_\_\_\_

Project Location - Specific:

Project Location - City: \_\_\_\_\_ Project Location - County: \_\_\_\_\_

Description of Nature, Purpose and Beneficiaries of Project:

Name of Public Agency Approving Project: \_\_\_\_\_

Name of Person or Agency Carrying Out Project: \_\_\_\_\_

Exempt Status: **(check one):**

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State type and section number: \_\_\_\_\_
- Statutory Exemptions. State code number: \_\_\_\_\_

Reasons why project is exempt:

Lead Agency

Contact Person: \_\_\_\_\_ Area Code/Telephone/Extension: \_\_\_\_\_

**If filed by applicant:**

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project?  Yes  No

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Title: \_\_\_\_\_

Signed by Lead Agency  Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.  
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: \_\_\_\_\_

# NOTICE OF EXEMPTION

Appendix E

**To:**  Office of Planning and Research/State Clearinghouse  
P.O. Box 3044, 1400 Tenth Street, Room 222  
Sacramento, CA 95812-3044

County Clerk/County Recorder  
County of Fresno  
2220 Tulare Street  
Fresno, CA 93721

County Clerk/County Recorder  
County of Kings  
County Government Center  
1400 West Lacey Boulevard  
Hanford, CA 93230

**From:**  Westlands Water District  
P.O. Box 6056  
Fresno, CA 93703

**Project Title:** Westlands Water District Distribution District No. 2 Central Valley Project Water Repayment Contract #14-06-200-3365A-XXX-C (Mercy Springs Partial Assignment Conversion to Repayment).

**Project Applicant:** Westlands Water District - Distribution District No. 2

**Project Location – Specific:** Within the boundaries of the Westlands Water District.

**Project Location – City:** Not Applicable      **Project Location – County:** Fresno and Kings.

**Description of Nature, Purpose and Beneficiaries of Project:**

The project is the execution of Contract #14-06-200-3365A-XXX-C (Mercy Springs Partial Assignment), which would convert Westlands Water District Distribution District No. 2's (District) existing water service contract to a repayment contract that provides the terms and conditions for water service with the United States Bureau of Reclamation (USBR) for the purpose of continuing delivery of Central Valley Project water within established parameters to lands within the District's existing service area boundary. The beneficiaries of the project are the District, its landowners, and water users. The USBR is a party to the bilateral agreement and as such is a recipient of the District's approval (Pub. Resources Code, §§21065, 21167.6.5). The project is entirely administrative in scope.

**Name of Public Agency Approving Project:** Westlands Water District - Distribution District No. 2

**Name of Person or Agency Carrying Out Project:** Westlands Water District - Distribution District No. 2

**Exempt Status:** *(check one)*

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State type and section number: CEQA Guidelines, §15301
- Statutory Exemptions. State code number: CEQA Guidelines, §15261

**Reasons why project is exempt:**

The project is statutorily exempt from compliance with the California Environmental Quality Act as provided in Title 14 of the California Code of Regulations, Section 15261, because it is merely a continuation of a project approved, funded and fully operated prior to November 23, 1970 and no modification or alteration in the Central Valley Project or the amount of water delivered is proposed.

The project is also exempt under 14 CCR 15301 as it provides for the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use. The Project is wholly administrative in scope as the project involves no construction, alteration, or expansion of an existing use.

**Lead Agency**

**Contact Person:** Jose Gutierrez

Area Code/Telephone/Extension: (559) 241-6215

**If filed by applicant:**

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project?  YES  NO

Signature: \_\_\_\_\_ Date: January 22, 2020 Title: Chief Operating Officer

Signed by Lead Agency    Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.

Date Received for filing at OPR: \_\_\_\_\_

Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

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

CONTRACT BETWEEN THE UNITED STATES  
AND  
WESTLANDS WATER DISTRICT DISTRIBUTION DISTRICT NO. 2  
PROVIDING FOR PROJECT WATER SERVICE  
AND FACILITIES REPAYMENT

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

CONTRACT BETWEEN THE UNITED STATES  
AND  
WESTLANDS WATER DISTRICT DISTRIBUTION DISTRICT NO. 2  
PROVIDING FOR PROJECT WATER SERVICE  
AND FACILITIES REPAYMENT

1           THIS CONTRACT, made this \_\_\_\_ day of \_\_\_\_\_ 20\_\_, in pursuance generally of  
2 the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto,  
3 including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and  
4 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70  
5 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263) , October 27, 1986 (100  
6 Stat. 3050), as amended Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706) , as  
7 amended, and the Water Infrastructure Improvements for the Nation Act (Public Law 114-322,  
8 130 Stat. 1628), Section 4011 (a-d) and (f) (“WIIN Act”), all collectively hereinafter referred to  
9 as Federal Reclamation law, between THE UNITED STATES OF AMERICA, hereinafter  
10 referred to as the United States, and WESTLANDS WATER DISTRICT DISTRIBUTION  
11 DISTRICT NO. 2, hereinafter referred to as the Contractor, a public agency of the State of  
12 California, duly organized, existing, and acting pursuant to the laws thereof;

13           WITNESSETH, That:

EXPLANATORY RECITALS

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

[2<sup>nd</sup>] WHEREAS, the United States constructed the Delta-Mendota Canal and related facilities, hereinafter collectively referred to as the Delta Division facilities, which will be used in part for the furnishing of water to the Contractor pursuant to the terms of this Contract; and

[3<sup>rd</sup>] WHEREAS, the Mercy Springs Water District (District) and the United States entered into Contract No. 14-06-200-3365A, which provided the District, Central Valley Project water from the Delta-Mendota Canal from June 21, 1967 to February 28, 1995; and

[4<sup>th</sup>] WHEREAS, the United States and the District entered into Contract No. 14-06-200-3365A-IR1 and subsequent Interim Renewal Contracts 14-06-200-3365A-IR2 through 14-06-200-3365A-IR7, which provided for the continued water service to the District from March 1, 1995, through February 29, 2004; and

[5<sup>th</sup>] WHEREAS, the Contractor and the District executed an agreement on March 1, 2003, to provide for the assignment of 4,198 acre-feet of Project Water under the District’s Contract No. 14-06-200-3365A-IR7; and

[6<sup>th</sup>] WHEREAS, the United States and the Contractor entered into Contract Number 14-06-200-3365A-IR8-C and subsequent Interim Renewal Contracts 14-06-200-3365A-IR9-C through 14-06-200-3365A-IR16-C, the last of which is hereinafter referred to as the “Existing

37 Contract”, which established terms for the delivery of Project Water to the Contractor from the  
38 Delta Division, and which was in effect the date the WIIN Act was enacted; and

39 [7<sup>th</sup>] WHEREAS, on December 16, 2016, the 114th Congress of the United States of  
40 America enacted the WIIN Act; and

41 [8<sup>th</sup>] WHEREAS, Section 4011(a)(1) provides that “upon request of the contractor, the  
42 Secretary of the Interior shall convert any water service contract in effect on the date of  
43 enactment of this subtitle and between the United States and a water users’ association  
44 [Contractor] to allow for prepayment of the repayment contract pursuant to paragraph (2) under  
45 mutually agreeable terms and conditions.”; and

46 [9<sup>th</sup>] WHEREAS, Section 4011(a)(1) further provides that “the manner of conversion  
47 under this paragraph shall be as follows: (A) Water service contracts that were entered into  
48 under section (e) of the Act of August 4, 1939 (53 Stat. 1196), to be converted under this section  
49 shall be converted to repayment contracts under section 9(d) of that Act (53 Stat. 1195)”; and  
50 “(B) Water service contracts that were entered under subsection (c)(2) of section 9 of the Act of  
51 August 4, 1939 (53 Stat. 1194), to be converted under this section shall be converted to a  
52 contract under subsection (c)(1) of section 9 of that Act (53 Stat. 1195).”; and

53 [10<sup>th</sup>] WHEREAS, Section 4011(a)(4)(C) further provides all contracts entered into  
54 pursuant to Section 4011(a)(1), (2), and (3) shall “not modify other water service, repayment,  
55 exchange, and transfer contractual rights between the water users’ association [Contractor], and  
56 the Bureau of Reclamation, or any rights, obligations, or relationships of the water users’  
57 association [Contractor] and their landowners as provided under State law.”; and

58 [11<sup>th</sup>] WHEREAS, Section 4011(d)(3) and (4) of the WIIN Act provides that  
59 “implementation of the provisions of this subtitle shall not alter...(3) the priority of a water

60 service or repayment contractor to receive water; or (4) except as expressly provided in this  
61 section, any obligations under the Federal Reclamation law, including the continuation of  
62 Restoration Fund charges pursuant to section 3407(d) (Pub. L. 102-575), of the water service and  
63 repayment contractors making prepayments pursuant to this section.”; and

64 [12<sup>th</sup>] WHEREAS, upon the request of the Contractor, the WIIN Act directs the  
65 Secretary to convert irrigation water service contracts and Municipal and Industrial (M&I) water  
66 service contracts into repayment contracts, amend existing repayment contracts, and allow  
67 contractors to prepay their construction cost obligations pursuant to applicable Federal  
68 Reclamation law; and

69 [13<sup>th</sup>] WHEREAS, the United States has determined that the Contractor has to date  
70 fulfilled all of its obligations under the Existing Contract; and

71 [14<sup>th</sup>] WHEREAS, the Contracting Officer has determined that the Contractor has the  
72 capability to fully utilize for reasonable and beneficial use, or shown projected future reasonable  
73 and beneficial use for, the quantity of Project Water to be made available to it pursuant to this  
74 Contract; and

75 [15<sup>th</sup>] WHEREAS, the Contracting Officer and the Contractor agree that this Contract  
76 complies with Section 4011 of the WIIN Act; and

77 [16<sup>th</sup>] WHEREAS, the Contracting Officer and the Contractor agree to amend and  
78 convert the Existing Contract pursuant to section 4011 of the WIIN Act and other Federal  
79 Reclamation law on the terms and conditions set forth below;

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

DEFINITIONS

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1. When used herein unless otherwise distinctly expressed, or manifestly incompatible with the intent of the parties as expressed in this Contract, the term:
- (a) "Additional Capital Obligation" shall mean construction costs or other capitalized costs incurred after the effective date of Contract or not reflected in the Existing Capital Obligation as defined herein and in accordance with Section 4011, subsection (a)(2)(B) and (a)(3)(B) of the Water Infrastructure Improvements for the Nation Act (Pub. L. 114-322, 130 Stat. 1628) ("WIIN Act");
  - (b) "Calendar Year" shall mean the period January 1 through December 31, both dates inclusive;
  - (c) "Charges" shall mean the payments required by Federal Reclamation law in addition to the Rates and Tiered Pricing Component specified in this Contract as determined annually by the Contracting Officer pursuant to this Contract;
  - (d) "Contractor's Boundaries" shall mean the area to which the Contractor is permitted to provide Project Water under this Contract;
  - (e) "CVPIA" shall mean the Central Valley Project Improvement Act, Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706);
  - (f) "Delivered Water" or "Water Delivered" shall mean Project Water made available to the Contractor and diverted at the point(s) of delivery approved by the Contracting Officer;
  - (g) "Eligible Lands" shall mean all lands to which Irrigation Water may be delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982 (96 Stat. 1263), as amended;

106 (h) "Excess Lands" shall mean all lands defined as excess in Section 204 of  
107 the Reclamation Reform Act of 1982, other than those lands exempt from acreage limitation  
108 under Federal Reclamation law;

109 (i) "Existing Capital Obligation" shall mean the remaining amount of  
110 construction costs or other capitalized costs allocable to the Contractor as described in section  
111 4011, subsections (a)(2)(A) and (a)(3)(A) of the WIIN Act, and as identified in the Central  
112 Valley Project Irrigation Water Rates and/or Municipal and Industrial Water Rates, respectively,  
113 dated Month/Day/Year [specify ratebook year for all contractors.] [contractor specific to address  
114 the intertie], as adjusted to reflect payments not reflected in such schedule. The Contracting  
115 Officer has computed the Existing Capital Obligation and such amount is set forth in Exhibit C,  
116 which is incorporated herein by reference;

117 (j) "Full Cost Rate" shall mean that water rate described in Sections 205(a)(3)  
118 or 202(3) of the Reclamation Reform Act of 1982, whichever is applicable;

119 (k) "Ineligible Lands" shall mean all lands to which Irrigation Water may not  
120 be delivered in accordance with Section 204 of the Reclamation Reform Act of 1982;

121 (l) "Irrigation Water" shall mean the use of Project Water to irrigate lands  
122 primarily for the production of commercial agricultural crops or livestock, and domestic and  
123 other uses that are incidental thereto;

124 (m) "Landholder" shall mean an individual or entity attributed with the total  
125 irrigable acreage of one or more tracts of land situated in one or more districts owned and/or  
126 operated under a lease which is served with Irrigation Water pursuant to a contract with the  
127 United States;

128 (n) "Municipal and Industrial (M&I) Water" shall mean the use of Project  
129 Water for municipal, industrial, and miscellaneous other purposes not falling under the definition  
130 of "Irrigation Water" or within another category of water use under an applicable Federal  
131 authority;

132 (o) "Operation and Maintenance" or "O&M" shall mean normal and  
133 reasonable care, control, operation, repair, replacement and maintenance of Project facilities;

134 (p) "Operating Non-Federal Entity" shall mean a Non-Federal entity which  
135 has the obligation to operate and maintain all or a portion of the Delta Division facilities pursuant  
136 to an agreement with the United States;

137 (q) "Project" shall mean the Central Valley Project owned by the United  
138 States and operated by the Department of the Interior, Bureau of Reclamation;

139 (r) "Project Contractors" shall mean all parties who have contracts for water  
140 service for Project Water from the Project with the United States pursuant to Federal  
141 Reclamation law;

142 (s) "Project Water" shall mean all water that is developed, diverted, stored, or  
143 delivered by the United States in accordance with the statutes authorizing the Project and in  
144 accordance with the terms and conditions of applicable water rights permits and licenses  
145 acquired by and/or issued to the United States pursuant to California law;

146 (t) "Rates" shall mean the payments determined annually by the Contracting  
147 Officer in accordance with the then current applicable water ratesetting policies for the Project;

148 (u) "Repayment Obligation" for Water Delivered as Irrigation Water shall  
149 mean the Existing Capital Obligation discounted by ½ of the Treasury rate, which shall be the  
150 amount due and payable to the United States, pursuant to section 4011(a)(2)(A) of the WIIN Act;  
151 and for Water Delivered as M&I Water shall mean the amount due and payable to the United  
152 States, pursuant to section 4011(a)(3)(A) of the WIIN Act;

153 (v) "Secretary" or "Contracting Officer" shall mean the Secretary of the  
154 United States Department of the Interior or his duly authorized representative;

155 (w) "Tiered Pricing Component" shall be the incremental amount to be paid  
156 for each acre-foot of Water Delivered as described in Article 7 of this Contract and as provided  
157 for in Exhibit A;

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

161 (y) "Year" shall mean the period from and including March 1 of each  
162 Calendar Year through the last day of February of the following Calendar Year.

163 TERM OF CONTRACT – RIGHT TO USE OF WATER

164 2. (a) This Contract shall be effective **March 1, 2020**, hereinafter known as the  
165 "Effective Date", and shall continue so long as the Contractor pays applicable Rates and Charges  
166 under this Contract, consistent with Section 9(d) or 9(c)(1) of the Act of August 4, 1939 (53 Stat.  
167 1195) as applicable, and applicable law;

168 (1) *Provided, That* the Contracting Officer shall not seek to terminate  
169 this Contract for failure to fully or timely pay applicable Rates and Charges by the Contractor,  
170 unless the Contracting Officer has first provided at least sixty (60) calendar days written notice  
171 to the Contractor of such failure to pay and the Contractor has failed to cure such failure to pay,  
172 or to diligently commence and maintain full curative payments satisfactory to the Contracting  
173 Officer within the sixty (60) calendar days' notice period;

174 (2) *Provided, further, That* the Contracting Officer shall not seek to  
175 suspend making water available or declaring Water Made Available pursuant to this Contract for  
176 non-compliance by the Contractor with the terms of this Contract or Federal law, unless the  
177 Contracting Officer has first provided at least thirty (30) calendar days written notice to the  
178 Contractor and the Contractor has failed to cure such non-compliance, or to diligently commence

179 curative actions satisfactory to the Contracting Officer for a non-compliance that cannot be fully  
180 cured within the thirty (30) calendar days' notice period. If the Contracting Officer has  
181 suspended making water available pursuant to this paragraph, upon cure of such non-compliance  
182 satisfactory to the to the Contracting Officer, the Contracting Officer shall resume making water  
183 available and declaring Water Made Available pursuant to this Contract;

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

186 (b) Upon complete payment of the Repayment Obligation by the Contractor,  
187 and notwithstanding any Additional Capital Obligation that may later be established, the acreage  
188 limitations, reporting, and Full Cost pricing provisions of the Reclamation Reform Act of 1982,  
189 and subdivisions (g) Eligible Lands, (h) Excess Lands, and (k) Ineligible Lands of Article 1 of  
190 this Contract shall no longer be applicable.

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

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

197 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

198 3. (a) Subject to the provisions set forth in Articles 11 and 12 of this Contract,  
199 and consistent with applicable State water rights, permits, and licenses, the Contractor is entitled  
200 to, and the Contracting Officer shall be obligated to make available to the Contractor up to 4,198  
201 acre-feet of Project Water during any Year for Irrigation and/or Municipal and Industrial  
202 purposes. The quantity of Project Water delivered to the Contractor in accordance with this

203 subdivision of this Article 3 in any Year shall be scheduled and paid for pursuant to the  
204 provisions of Articles 4 and 7 of this Contract, and shall not exceed the quantity of Project Water  
205 the Contractor intends to put to reasonable beneficial use within the Contractor's Boundaries or  
206 sold, transferred, or exchanged pursuant to Article 9 of this Contract.

207 (b) The Contractor shall utilize the Project Water made available to it  
208 pursuant to this Contract in accordance with all applicable requirements of any Biological  
209 Opinion addressing the execution of this Contract developed pursuant to Section 7 of the  
210 Endangered Species Act of 1973 as amended, and in accordance with environmental  
211 documentation as may be required for specific activities, including conversion of Irrigation  
212 Water to M&I Water.

213 (c) The Contractor shall make reasonable and beneficial use of Project Water  
214 or other water furnished pursuant to this Contract. In addition, use of Project Water in a  
215 groundwater recharge program shall be permitted under this Contract to the extent that it is  
216 carried out in accordance with California law: *Provided, however, That* such groundwater  
217 recharge program cannot be undertaken unless and until the Contractor submits a groundwater  
218 management plan pursuant to California law that demonstrates that such groundwater recharge  
219 program will result in a reasonable and beneficial use of such water.

220 (d) If the Contracting Officer determines that Project Water, or other water  
221 available to the Project, can be made available to the Contractor in addition to the quantity of  
222 Project Water made available to the Contractor pursuant to subdivision (a) of this Article, the  
223 Contracting Officer shall so notify the Contractor. If the Contractor requests the delivery of any  
224 quantity of such water, the Contracting Officer shall make such water available to the Contractor  
225 in accordance with applicable statutes, regulations, guidelines, and policies.

226 (e) If the Contractor requests permission to reschedule for use during the  
227 subsequent Year some or all of the Project Water made available to the Contractor during the  
228 current Year or to use, during the current Year, that quantity of Project Water the United States  
229 has agreed to make available to the Contractor during the subsequent Year, the Contracting  
230 Officer may permit such uses in accordance with applicable statutes, regulations, guidelines, and  
231 policies.

232 (f) The Contractor's rights pursuant to Federal Reclamation law and  
233 applicable State law to the beneficial use of water furnished pursuant to this Contract shall not be  
234 disturbed so long as the Contractor shall fulfill all of its obligations under this Contract. Nothing  
235 in the preceding sentence shall affect the Contracting Officer's ability to impose shortages under  
236 subdivision (b) of Article 12 of this Contract.

237 (g) Notwithstanding subdivisions (l) and (n) of Article 1 of this Contract,  
238 Project Water furnished to the Contractor pursuant to this Contract may be delivered for  
239 purposes other than those described in subdivisions (l) and (n) of Article 1 of this Contract upon  
240 written approval by the Contracting Officer in accordance with the terms and conditions of such  
241 approval.

242 (h) The Contractor's right pursuant to Federal Reclamation law and applicable  
243 State law to the reasonable and beneficial use of the Water Delivered pursuant to this Contract  
244 shall not be disturbed, and this Contract shall continue so long as the Contractor pays applicable  
245 Rates and Charges under this Contract consistent with Section 9(d) or 9(c)(1) of the Act of  
246 August 4, 1939 (53 Stat. 1195) as applicable, and applicable law. Nothing in the preceding  
247 sentence shall affect the Contracting Officer's ability to impose shortages under Article 11 or  
248 subdivision (b) of Article 12 of this Contract.

TIME FOR DELIVERY OF WATER

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250           4.       (a)       On or about February 20, of each Calendar Year, the Contracting Officer  
251 shall declare the amount of Project Water estimated to be made available to the Contractor  
252 pursuant to this Contract for the upcoming Year. The declaration will be updated monthly, as  
253 necessary, based on current hydrologic conditions. The Contracting Officer shall make available  
254 the forecast of Project operations, with relevant supporting information, upon the written request  
255 of the Contractor or its representatives. Upon written request of the Contractor, the Contracting  
256 Officer shall provide the basis of the estimate which shall include, but not be limited to, a  
257 monthly pumping forecast for the O'Neill Pumping Plant, the projected carryover of Project  
258 reservoirs, projected CVPIA impacts, projected Endangered Species Act and all other regulatory  
259 impacts.

260                   (b)       On or before each March 1, the Contractor shall submit to the Contracting  
261 Officer and at such other times as necessary, a written schedule, satisfactory to the Contracting  
262 Officer, showing the times and quantities of Project Water to be delivered by the United States to  
263 the Contractor pursuant to this Contract, and consistent with subdivision (a) of Article 3 of this  
264 Contract.

265                   (c)       Subject to the conditions set forth in subdivision (a) of Article 3 of this  
266 Contract, the United States shall deliver Project Water to the Contractor in accordance with the  
267 initial schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any  
268 revision(s) thereto submitted within a reasonable time prior to the date(s) on which the requested  
269 change(s) is(are) to be implemented.

POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

270  
271           5.       (a)       The Project Water to be furnished to the Contractor pursuant to this  
272 Contract shall be made available to the Contractor at either of the mileposts identified in Exhibit

273 B and any additional point or points of delivery either on Delta Division facilities or another  
274 location or locations mutually agreed to in writing by the Contracting Officer and the Contractor

275 (b) The Contracting Officer shall make all reasonable efforts to maintain  
276 sufficient flows and levels of water in the Delta-Mendota Canal to furnish Project Water to the  
277 Contractor at the full design capacity of the turnout(s) established as a delivery point(s) pursuant  
278 to subdivision (a) of this Article.

279 (c) Irrigation Water furnished to the Contractor pursuant to this Contract shall  
280 be delivered by the Contractor in accordance with any applicable land classification provisions  
281 of Federal Reclamation law and the associated regulations. Project Water shall not be delivered  
282 to land outside the Contractor's Boundaries unless approved in advance by the Contracting  
283 Officer.

284 (d) All Project Water delivered to the Contractor pursuant to this Contract  
285 shall be measured and recorded with equipment furnished, installed, operated, and maintained by  
286 the United States or the responsible Operating Non-Federal Entity at the point or points of  
287 delivery established pursuant to subdivision (a) of this Article. Upon the request of either party  
288 to this Contract, the Contracting Officer shall investigate the accuracy of such measurements and  
289 shall take any necessary steps to adjust any errors appearing therein. The Contractor shall advise  
290 the Contracting Officer on or before the 10th calendar day of each month of the quantity of M&I  
291 Water taken during the preceding month.

292 (e) Neither the United States nor any Operating Non-Federal Entity shall be  
293 responsible for the control, carriage, handling, use, disposal, or distribution of Project Water  
294 made available to the Contractor pursuant to this Contract beyond the delivery points specified in  
295 subdivision (a) of this Article. The Contractor shall indemnify the United States its officers,

296 employees, agents, and assigns on account of damage or claim of damage of any nature  
297 whatsoever for which there is legal responsibility, including property damage, personal injury, or  
298 death arising out of or connected with the control, carriage, handling, use, disposal, or  
299 distribution of such Project Water beyond such delivery points, except for any damage or claim  
300 arising out of (i) acts performed by the United States or any of its officers, employees, agents, or  
301 assigns, including any responsible Operating Non-Federal Entity, with the intent of creating the  
302 situation resulting in any damage or claim; (ii) willful misconduct of the United States or any of  
303 its officers, employees, agents, or assigns, including any responsible Operating Non-Federal  
304 Entity, or (iii) negligence of the United States or any of its officers, employees, agents, or  
305 assigns, including any responsible Operating Non-Federal Entity.

306 MEASUREMENT OF WATER WITHIN THE DISTRICT

307 6. (a) Within five (5)-years of the effective date of this Contract, the Contractor  
308 shall ensure that, unless the Contractor establishes an alternative measurement program  
309 satisfactory to the Contracting Officer, all surface water delivered for irrigation purposes within  
310 the Contractor's Boundaries is measured at each agricultural turnout and such water delivered for  
311 Municipal and Industrial purposes is measured at each Municipal and Industrial service  
312 connection. All water measuring devices or water measuring methods of comparable  
313 effectiveness must be acceptable to the Contracting Officer. The Contractor shall be responsible  
314 for installing, operating, and maintaining and repairing all such measuring devices and  
315 implementing all such water measuring methods at no cost to the United States. The Contractor  
316 shall use the information obtained from such water measuring devices or water measuring  
317 methods to ensure proper management of the water; to bill water users for water delivered by the  
318 Contractor; and, if applicable, to record water delivered for Municipal and Industrial purposes by  
319 customer class as defined in its water conservation plan. Nothing herein contained in this

320 Article, however, shall preclude the Contractor from establishing and collecting any charges,  
321 assessments or other revenues authorized by California law. The Contractor shall include a  
322 summary of its annual surface water deliveries in the annual report described in subdivision (d)  
323 of Article 24 of this Contract.

324 (b) Omitted.

325 (c) All new surface water delivery systems installed within the Contractor's  
326 Boundaries after the effective date of this Contract shall also comply with the measurement  
327 provisions described in subdivision (a) of this Article.

328 (d) The Contractor shall inform the Contracting Officer and the State of  
329 California in writing by April 30 of each Year of the monthly volume of surface water delivered  
330 within the Contractor's Boundaries during the previous Year.

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

333 7. (a) Notwithstanding the Contractor's full prepayment of the Repayment  
334 Obligation pursuant to section 4011, subsection (a)(2)(A) and subsection (a)(3)(A) of the WIIN  
335 Act, as set forth in Exhibit C, and any payments required pursuant to section 4011, subsection (b)  
336 of the WIIN Act, to reflect the adjustment for the final cost allocation as described in this Article,  
337 subsection (b), the Contractor's Project construction and other obligations shall be determined in  
338 accordance with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and  
339 the Secretary's then-existing ratesetting policy for M&I Water, consistent with the WIIN Act;  
340 and such ratesetting policies shall be amended, modified, or superseded only through a public  
341 notice and comment procedure; (ii) applicable Federal Reclamation law and associated rules and  
342 regulations, or policies, and (iii) other applicable provisions of this Contract. Payments shall be  
343 made by cash transaction, electronic funds transfers, or any other mechanism as may be agreed

344 to in writing by the Contractor and the Contracting Officer. The Rates, Charges, and Tiered  
345 Pricing Component applicable to the Contractor upon execution of this Contract are set forth in  
346 Exhibit “A,” as may be revised annually.

347 (1) The Contractor shall pay the United States as provided for in this  
348 Article of this Contract for all Delivered Water at Rates, Charges, and Tiered Pricing Component  
349 in accordance with policies for Irrigation Water and M&I Water. The Contractor’s Rates shall  
350 be established to recover its estimated reimbursable costs included in the operation and  
351 maintenance component of the Rate and amounts established to recover deficits and other  
352 charges, if any, including construction costs as identified in the following subdivisions.

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

355 (A) The amount due and payable to the United States, pursuant  
356 to the WIIN Act, shall be the Repayment Obligation. The Repayment Obligation has been  
357 computed by the Contracting Officer in a manner consistent with the WIIN Act and is set forth  
358 as a lump sum payment (M&I and Irrigation) and as four (4) approximately equal annual  
359 installments (Irrigation Only) to be repaid no later than three (3) years after the effective date of  
360 this Contract as set forth in Exhibit C. [There could be one or two exhibits in most cases due to  
361 more than one service area (For Irrigation contractors and M&I contractors)] The Repayment  
362 Obligation is due in lump sum by [Month, Day, Year] as provided by the WIIN Act. The  
363 Contractor must provide appropriate notice to the Contracting Officer in writing no later than  
364 thirty (30) days prior to [Month, Day, Year] [Division Level: consider the effective date of the  
365 contract being converted] if electing to repay the amount due using the lump sum alternative. If  
366 such notice is not provided by such date, the Contractor shall be deemed to have elected the

367 installment payment alternative, in which case, the first such payment shall be made no later than  
368 [Month, Day, Year] [Division Level: consider the effective date of the contract being  
369 converted]. The second payment shall be made no later than the first anniversary of the first  
370 payment date. The third payment shall be made no later than the second anniversary of the first  
371 payment date. The final payment shall be made no later than [Month, Day, Year] [no later than  
372 the third anniversary of the effective date of the contract]. If the installment payment option is  
373 elected by the Contractor, the Contractor may pre-pay the remaining portion of the Repayment  
374 Obligation by giving the Contracting Officer sixty (60) days written notice, in which case, the  
375 Contracting Officer shall re-compute the remaining amount due to reflect the pre-payment using  
376 the same methodology as was used to compute the initial annual installment payment amount,  
377 which is illustrated in Exhibit C. Notwithstanding any Additional Capital Obligation that may  
378 later be established, receipt of the Contractor's payment of the Repayment Obligation to the  
379 United States shall fully and permanently satisfy the Existing Capital Obligation.

380 (B) Additional Capital Obligations that are not reflected in, the  
381 schedules referenced in Exhibit C and properly assignable to the Contractor, shall be repaid as  
382 prescribed by the WIIN Act without interest except as required by law. Consistent with Federal  
383 Reclamation law, interest shall continue to accrue on the M&I portion of the Additional Capital  
384 Obligation assigned to the Contractor until such costs are paid. Increases or decreases in the  
385 Additional Capital Obligation assigned to the Contractor caused solely by annual adjustment of  
386 the Additional Capital Obligation assigned to each Project contractor by the Secretary shall not  
387 be considered in determining the amounts to be paid pursuant to this subdivision (a)(2)(B),  
388 however, will be considered under subdivision (b) of this Article. A separate agreement shall be  
389 established by the Contractor and the Contracting Officer to accomplish repayment of the

390 Additional Capital Obligation assigned to the Contractor within the timeframe prescribed by the  
391 WIIN Act, subject to the following:

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

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

404 (b) In the event that the final cost allocation referenced in Section 4011(b) of  
405 the WIIN Act determines that the costs properly assignable to the Contractor are greater than  
406 what has been paid by the Contractor, the Contractor shall be obligated to pay the remaining  
407 allocated costs. The term of such additional repayment contract shall be not less than one (1)  
408 year and not more than ten (10) years, however, mutually agreeable provisions regarding the rate  
409 of repayment of such amount may be developed by the Contractor and Contracting Officer. In  
410 the event that the final cost allocation indicates that the costs properly assignable to the  
411 Contractor are less than what the Contractor has paid, the Contracting Officer shall credit such

412 overpayment as an offset against any outstanding or future obligations of the Contractor, with the  
413 exception of Restoration Fund charges pursuant to section 3407(d) of Pub. L. 102-575.

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

416 (1) Prior to July 1, of each Calendar Year, the Contracting Officer  
417 shall provide the Contractor the preliminary calculation of the Charges that will be applied for  
418 the period October 1, of the current Calendar Year, through September 30, of the following  
419 Calendar Year, and identify the statutes, regulations and guidelines used as the basis for such  
420 calculations. On or before September 15, of each Calendar Year, the Contracting Officer shall  
421 notify the Contractor in writing of the Charges to be in effect during the period October 1, of the  
422 current Calendar Year, through September 30, of the following Calendar Year, and such  
423 notification shall revise Exhibit "A."

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

431 (d) At the time the Contractor submits the initial schedule for the delivery of  
432 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the  
433 Contractor shall pay the United States the total amount payable pursuant to the applicable Rate(s)  
434 for all Project Water scheduled to be delivered pursuant to this Contract during the first two (2)

435 calendar months of the Year. Before the end of the first month or part thereof of the Year, and  
436 before the end of each calendar month thereafter, the Contractor shall pay pursuant to the  
437 applicable Rate(s) for all Project Water scheduled to be delivered pursuant to this Contract  
438 during the second month immediately following. Adjustments between the payments for the  
439 scheduled amount of Project Water and the appropriate payments for quantities of Delivered  
440 Water furnished pursuant to this Contract each month shall be made before the end of the  
441 following month: *Provided, That* any revised schedule submitted by the Contractor pursuant to  
442 Article 4 of this Contract, which increases the amount of Project Water to be delivered pursuant  
443 to this Contract during any month shall be accompanied with appropriate payment for Rates to  
444 assure that Project Water is not furnished to the Contractor in advance of such payment. In any  
445 month in which the quantity of Delivered Water furnished to the Contractor pursuant to this  
446 Contract equals the quantity of Project Water scheduled and paid for by the Contractor, no  
447 additional Project Water shall be made available to the Contractor unless and until payment of  
448 Rates for such additional Project Water is made. Final adjustment between the payments of  
449 Rates for the Project Water scheduled and the quantities of Delivered Water furnished during  
450 each Year pursuant to this Contract shall be made as soon as possible but no later than April 30th  
451 of the following Year.

452 (e) The Contractor shall also make a payment in addition to the Rate(s) in  
453 subdivision (d) of this Article to the United States for Water Delivered, at the Charges and  
454 appropriate Tiered Pricing Component then in effect, before the end of the month following the  
455 month of delivery; *Provided, That* the Contractor may be granted an exception from the Tiered  
456 Pricing Component pursuant to subdivision (k)(2) of this Article. The payments shall be  
457 consistent with the quantities of Irrigation Water and M&I Water Delivered as shown in the

458 water delivery report for the subject month prepared by the Operating Non-Federal Entity or, if  
459 there is no Operating Non-Federal Entity, by the Contracting Officer. The water delivery report  
460 shall be deemed a bill for the payment of Charges and applicable Tiered Pricing Component for  
461 Water Delivered. Adjustment for overpayment or underpayment of Charges and the Tiered  
462 Pricing Component shall be made through the adjustment of payments due to the United States  
463 for Charges for the next month. Any amount to be paid for past due payment of Charges shall be  
464 computed pursuant to Article 18 of this Contract.

465 (f) The Contractor shall pay for any Project Water provided under subdivision  
466 (d) or (e) of Article 3 of this Contract as determined by the Contracting Officer pursuant to  
467 applicable statutes, regulations, guidelines, and policies.

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

470 (h) Revenues received by the United States pursuant to this Contract shall be  
471 allocated and applied in accordance with Federal Reclamation law, including but not limited to,  
472 subsection 3 of Section 1 of the Act of July 2, 1956 (70 Stat. 483), and subsection (f) of Section  
473 3405, subsection (c)(1) of Section 3406 and subsection (d)(2)(A) of Section 3407 of the CVPIA,  
474 and the associated regulations, including but not limited to, the Project Irrigation Water  
475 ratesetting policy and the Project M&I Water ratesetting policy promulgated pursuant to the  
476 Administrative Procedures Act.

477 (i) At the Contractor's request, the Contracting Officer shall provide to the  
478 Contractor an accounting of all of the expenses allocated and the disposition of all revenues  
479 received pursuant to this Contract in sufficient detail to allow the Contractor to determine that  
480 the allocation of expenses and disposition of all revenues received was accomplished in

481 conformance with Federal Reclamation law and the associated regulations. The Contracting  
482 Officer and the Contractor shall enter into good faith negotiations to resolve any discrepancies or  
483 disputes arising out of said accounting of the Contractor's review thereof.

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

491 (k) 1. Beginning at such time as deliveries of Project Water in a Year  
492 exceed 80 percent of the Contract Total, then before the end of the month following the month of  
493 delivery the Contractor shall make an additional payment to the United States equal to the  
494 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water  
495 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the  
496 Contract Total, shall equal one-half of the difference between the Rate established under  
497 subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water  
498 Rate, whichever is applicable. The Tiered Pricing Component for the amount of Water  
499 Delivered which exceeds 90 percent of the Contract Total shall equal the difference between (i)  
500 the Rate established under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water  
501 Rate or M&I Full Cost Water Rate, whichever is applicable. For all Water Delivered pursuant to  
502 subdivision (a) of Article 3 of this Contract which is in excess of 80 percent of the Contract

503 Total, this increment shall be deemed to be divided between Irrigation Water and M&I Water in  
504 the same proportion as actual deliveries of each bear to the cumulative total Water Delivered.

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

513                   3.       For purposes of determining the applicability of the Tiered Pricing  
514 Component pursuant to this Article, Water Delivered shall include Project Water that the  
515 Contractor transfers to others but shall not include Project Water transferred to the Contractor,  
516 nor shall it include the additional water provided to the Contractor under the provisions of  
517 subdivision (d) of Article 3 of this Contract.

518                   NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

519                   8.       The Contractor and the Contracting Officer concur that at the time of execution of  
520 this Contract, the Contractor has no non-interest bearing operation and maintenance deficits and  
521 shall have no further liability therefor.

522                   TRANSFERS OR EXCHANGES OF WATER

523                   9.       The right to Project Water provided for in this Contract may be sold, transferred,  
524 or exchanged to others for beneficial uses within the State of California if such sale, transfer, or  
525 exchange is authorized by applicable Federal laws, State laws, and applicable guidelines or  
526 regulations then in effect. The right to sell, transfer, or exchange Project Water shall include,

527 and the Contracting Officer shall apply this Article in a manner that does not impede or restrict,  
528 lawful short-term sales, transfers, or exchanges of the type the District and Contractor  
529 historically carried out with approval of the Contracting Officer under Contract No. 14-06-200-  
530 3365A, as amended, assigned, and renewed. No sale, transfer, or exchange of the right to Project  
531 Water under this Contract may take place without the prior written approval of the Contracting  
532 Officer.

533 APPLICATION OF PAYMENTS AND ADJUSTMENTS

534 10. (a) The amount of any overpayment by the Contractor shall be applied first to  
535 any accrued indebtedness arising out of this Contract then due and payable by the Contractor.  
536 Any amount of such overpayment then remaining shall, at the option of the Contractor, be  
537 refunded to the Contractor or credited upon amounts to become due to the United States from the  
538 Contractor under the provisions of this Contract in the following months. With respect to  
539 overpayment, such adjustment shall constitute the sole remedy of the Contractor or anyone  
540 having or claiming to have the right to the use of any of the water supply provide for in this  
541 Contract.

542 (b) All advances for miscellaneous costs incurred for work requested by the  
543 Contractor pursuant to Article 23 of this Contract shall be adjusted to reflect the actual costs  
544 when the work has been completed. If the advances exceed the actual costs incurred, the  
545 difference will be refunded to the Contractor. If the actual costs exceed the Contractor's  
546 advances, the Contractor will be billed for the additional costs pursuant to Article 23 of this  
547 Contract.

548 TEMPORARY REDUCTIONS – RETURN FLOWS

549 11. (a) Subject to: (i) the authorized purposes and priorities of the Project; and  
550 (ii) the obligations of the United States under existing contracts, or renewals thereof, providing

551 for water deliveries from the Project, the Contracting Officer shall make all reasonable efforts to  
552 optimize Project Water deliveries to the Contractor as provided in this Contract.

553 (b) The United States may temporarily discontinue or reduce the quantity of  
554 Project Water to be delivered to the Contractor as herein provided for the purposes of  
555 investigation, inspection, maintenance, repair, or replacement of any of the Project facilities or  
556 any part thereof necessary for the delivery of Project Water to the Contractor, but so far as  
557 feasible the Contracting Officer will give the Contractor due notice in advance of such temporary  
558 discontinuance or reduction, except in case of emergency, in which case no notice need be given:  
559 *Provided, That* the United States shall use its best efforts to avoid any discontinuance or  
560 reduction in such service. Upon resumption of service after such reduction or discontinuance,  
561 and if requested by the Contractor, the United States will, if possible, deliver the quantity of  
562 Project Water which would have been delivered hereunder in the absence of such discontinuance  
563 or reduction: *Provided, further, That* with respect to any quantity of Project Water not delivered  
564 after a discontinuance or reduction the Contractor shall be relieved of its scheduling and payment  
565 obligations for such quantity of Project Water.

566 (c) The United States reserves the right to all seepage and return flow water  
567 derived from water delivered to the Contractor under this Contract which escapes or is  
568 discharged beyond the Contractor's Boundaries: *Provided, That* this shall not be construed as  
569 claiming for the United States any right to seepage or return flow being put to reasonable and  
570 beneficial use pursuant to this Contract within the Contractor's Boundaries by the Contractor or  
571 those claiming by, through, or under the Contractor.

572 CONSTRAINTS ON THE AVAILABILITY OF WATER

573 12. (a) In its operation of the Project, the Contracting Officer will use all  
574 reasonable means to guard against a Condition of Shortage in the quantity of Project Water to be  
575 made available to the Contractor pursuant to this Contract. In the event the Contracting Officer

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

578 (b) If there is a Condition of Shortage because of inaccurate runoff forecasting  
579 or other similar operational errors affecting the Project; drought and other physical or natural  
580 causes beyond the control of the Contracting Officer; or actions taken by the Contracting Officer  
581 to meet current and future legal obligations, then, except as provided in subdivision (a) of Article  
582 17 of this Contract, no liability shall accrue against the United States or any of its officers,  
583 agents, or employees for any damage, direct or indirect, arising therefrom.

584 (c) In any Year in which there may occur a shortage for any of the reasons  
585 specified in subdivision (b) of this Article, the Contracting Officer shall apportion the available  
586 Project Water supply among the Contractor and others entitled, under existing contracts and  
587 future contracts (to the extent such future contracts are permitted under subsections (a) and (b) of  
588 Section 3404 of the CVPIA) and renewals thereof, to receive Project Water consistent with the  
589 contractual obligations of the United States.

590 (d) Subject to subdivision (c) of this Article, in any Year in which there may  
591 occur a shortage for any of the reasons specified in subdivision (b) of this Article, the  
592 Contracting Officer shall apportion the available Project Water among the Contractor and others  
593 entitled to receive Project Water from the Delta-Mendota Canal as follows:

594 (1) A determination shall be made of the total quantity of water  
595 scheduled to be delivered during the respective Year under all contracts then in force for the  
596 delivery of water from the Delta-Mendota Canal, the quantity so determined being herein  
597 referred to as the contractual commitments from the Delta-Mendota Canal.

598 (2) The total quantity of water scheduled to be delivered to the  
599 Contractor from the Delta-Mendota Canal during the respective Year under subdivision (a) of  
600 Article 3 of this Contract shall be divided by the contractual commitments, the quotient thus  
601 obtained being herein referred to as the Contractor's contractual entitlement from the Delta-  
602 Mendota Canal.

603 (3) The supply determined by the Contracting Officer to be available  
604 from the Delta-Mendota Canal shall be multiplied by the Contractor's contractual entitlement and  
605 the result shall be the quantity of water required to be delivered by the United States to the  
606 Contractor for the respective Year from the Delta-Mendota Canal.

607 UNAVOIDABLE GROUNDWATER PERCOLATION

608 13. (a) The Contractor shall not be deemed to have furnished Irrigation Water to  
609 Excess Lands or Ineligible Lands within the meaning of this Contract if such lands are irrigated  
610 with groundwater that reaches the underground strata as an unavoidable result of the furnishing  
611 of Irrigation Water by the Contractor to Eligible Lands.

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

614 COMPLIANCE WITH FEDERAL RECLAMATION LAWS

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

620 PROTECTION OF WATER AND AIR QUALITY

621 15. (a) Omitted

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

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

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

636 WATER ACQUIRED BY THE CONTRACTOR OTHER THAN FROM THE UNITED  
637 STATES

638 16. (a) Water or water rights now owned or hereafter acquired by the Contractor  
639 other than from the United States and Irrigation Water furnished pursuant to the terms of this  
640 Contract may be simultaneously transported through the same distribution facilities of the  
641 Contractor subject to the following: (i) if the facilities utilized for commingling Irrigation Water  
642 and non-Project water were constructed without funds made available pursuant to Federal  
643 Reclamation law, the provisions of Federal Reclamation law will be applicable only to the  
644 Landholders of lands which receive Irrigation Water; (ii) the eligibility of land to receive  
645 Irrigation Water must be established through the certification requirements as specified in the  
646 Acreage Limitation Rules and Regulations (43 CFR Part 426); (iii) the water requirements of  
647 Eligible Lands within the Contractor's Boundaries can be established and the quantity of  
648 Irrigation Water to be utilized is less than or equal to the quantity necessary to irrigate such  
649 Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation Water and non-  
650 Project water are constructed with funds made available pursuant to Federal Reclamation law,  
651 the non-Project water will be subject to Federal Reclamation law, until such funds have been  
652 repaid.

653 (b) Upon complete payment of the Repayment Obligation by the Contractor,  
654 this Article 16 shall no longer be applicable.

655 OPINIONS AND DETERMINATIONS

656 17. (a) Where the terms of this Contract provide for actions to be based upon the  
657 opinion or determination of either party to this Contract, said terms shall not be construed as  
658 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or

659 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly  
660 reserve the right to relief from and appropriate adjustment for any such arbitrary, capricious, or  
661 unreasonable opinion or determination. Each opinion or determination by either party shall be  
662 provided in a timely manner.

663 (b) The Contracting Officer shall have the right to make determinations  
664 necessary to administer this Contract that are consistent with the expressed and implied  
665 provisions of this Contract, the laws of the United States and the State of California, and the  
666 rules and regulations promulgated by the Secretary. Such determinations shall be made in  
667 consultation with the Contractor to the extent reasonably practicable.

668 CHARGES FOR DELINQUENT PAYMENTS

669 18. (a) The Contractor shall be subject to interest, administrative, and penalty  
670 charges on delinquent payments. If a payment is not received by the due date, the Contractor  
671 shall pay an interest charge on the delinquent payment for each day the payment is delinquent  
672 beyond the due date. If a payment becomes 60 days delinquent, the Contractor shall pay, in  
673 addition to the interest charge, an administrative charge to cover additional costs of billing and  
674 processing the delinquent payment. If a payment is delinquent 90 days or more, the Contractor  
675 shall pay, in addition to the interest and administrative charges, a penalty charge for each day the  
676 payment is delinquent beyond the due date, based on the remaining balance of the payment due  
677 at the rate of 6 percent per year. The Contractor shall also pay any fees incurred for debt  
678 collection services associated with a delinquent payment.

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

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

686 EQUAL EMPLOYMENT OPPORTUNITY

687 19. During the performance of this Contract, the Contractor agrees as follows:

688 (a) The Contractor will not discriminate against any employee or applicant for  
689 employment because of race, color, religion, sex, sexual orientation, gender identity, or national  
690 origin. The Contractor will take affirmative action to ensure that applicants are employed, and

691 that employees are treated during employment, without regard to their race, color, religion, sex,  
692 sexual orientation, gender identity, or national origin. Such action shall include, but not be  
693 limited to, the following: employment, upgrading, demotion, or transfer; recruitment or  
694 recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and  
695 selection for training, including apprenticeship. The Contractor agrees to post in conspicuous  
696 places, available to employees and applicants for employment, notices to be provided by the  
697 Contracting Officer setting forth the provisions of this nondiscrimination clause.

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

702 (c) The Contractor will not discharge or in any other manner discriminate  
703 against any employee or applicant for employment because such employee or applicant has  
704 inquired about, discussed, or disclosed the compensation of the employee or applicant or another  
705 employee or applicant. This provision shall not apply to instances in which an employee who  
706 has access to the compensation information of other employees or applicants as part of such  
707 employee's essential job functions discloses the compensation of such other employees or  
708 applicants to individuals who do not otherwise have access to such information, unless such  
709 disclosure is in response to a formal complaint or charge, in furtherance of an investigation,  
710 proceeding, hearing, or action, including an investigation conducted by the employer, or is  
711 consistent with the Contractor's legal duty to furnish information.

712 (d) The Contractor will send to each labor union or representative of workers  
713 with which it has a collective bargaining agreement or other contract or understanding, a notice,  
714 to be provided by the Contracting Officer, advising the labor union or workers' representative of  
715 the Contractor's commitments under section 202 of Executive Order No. 11246 of September  
716 24, 1965, and shall post copies of the notice in conspicuous places available to employees and  
717 applicants for employment.

718 (e) The Contractor will comply with all provisions of Executive Order No.  
719 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary  
720 of Labor.

721 (f) The Contractor will furnish all information and reports required by  
722 Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of  
723 the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and  
724 accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to  
725 ascertain compliance with such rules, regulations, and orders.

726 (g) In the event of the Contractor's noncompliance with the nondiscrimination  
727 clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be  
728 canceled, terminated or suspended in whole or in part and the Contractor may be declared  
729 ineligible for further Government contracts in accordance with procedures authorized in  
730 Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed

731 and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by  
732 rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

733 (h) The Contractor will include the provisions of paragraphs (a) through (g) in  
734 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the  
735 Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September  
736 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The  
737 Contractor will take such action with respect to any subcontract or purchase order as may be  
738 directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions  
739 for noncompliance: *Provided, however, That* in the event the Contractor becomes involved in, or  
740 is threatened with, litigation with a subcontractor or vendor as a result of such direction, the  
741 Contractor may request the United States to enter into such litigation to protect the interests of  
742 the United States.

743 GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT

744 20. (a) The obligation of the Contractor to pay the United States as provided in  
745 this Contract is a general obligation of the Contractor notwithstanding the manner in which the  
746 obligation may be distributed among the Contractor's water users and notwithstanding the default  
747 of individual water users in their obligation to the Contractor.

748 (b) The payment of charges becoming due pursuant to this Contract is a  
749 condition precedent to receiving benefits under this Contract. The United States shall not make  
750 water available to the Contractor through Project facilities during any period in which the  
751 Contractor is in arrears in the advance payment of water rates due the United States. The  
752 Contractor shall not deliver water under the terms and conditions of this Contract for lands or  
753 parties that are in arrears in the advance payment of water rates as levied or established by the  
754 Contractor.

755 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

756 21. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964  
757 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as  
758 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title  
759 III; 42 U.S.C. 6101, et seq.), Title III of the Americans with Disabilities Act of 1990 (Pub. L.  
760 101-336; 42 U.S.C. § 12181, et seq.), and any other applicable civil rights laws, and with the  
761 applicable implementing regulations and any guidelines imposed by the U.S. Department of the  
762 Interior and/or Bureau of Reclamation.

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

770 (c) The Contractor makes this Contract in consideration of and for the  
771 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other  
772 Federal financial assistance extended after the date hereof to the Contractor by the Bureau of  
773 Reclamation, including installment payments after such date on account of arrangements for  
774 Federal financial assistance which were approved before such date. The Contractor recognizes  
775 and agrees that such Federal assistance will be extended in reliance on the representations and  
776 agreements made in this Article and that the United States reserves the right to seek judicial  
777 enforcement thereof.

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

780 PRIVACY ACT COMPLIANCE

781 22. (a) The Contractor shall comply with the Privacy Act of 1974 (Privacy Act)  
782 (5 U.S.C. § 552a) and the Department of the Interior rules and regulations under the Privacy Act  
783 (43 C.F.R. § 2.45, et seq.) in maintaining Landholder certification and reporting records required  
784 to be submitted to the Contractor for compliance with Sections 206, 224(c), and 228 of the  
785 Reclamation Reform Act of 1982 (43 U.S.C. §§ 390ff, 390ww, and 390zz), and pursuant to 43  
786 C.F.R. § 426.18.

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

792 (c) The Contracting Officer or a designated representative shall provide the  
793 Contractor with current copies of the Department of the Interior Privacy Act regulations and the  
794 Bureau of Reclamation Federal Register Privacy Act System of Records Notice (Interior/WBR-  
795 31, Acreage Limitation) which govern the maintenance, safeguarding, and disclosure of  
796 information contained in the Landholders' certification and reporting records.

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

801 (e) The Contractor shall forward promptly to the System Manager each  
802 proposed denial of access under 43 C.F.R. § 2.64 and each request for amendment of records  
803 filed under 43 C.F.R. § 2.71; notify the requester accordingly of such referral; and provide the  
804 System Manager with information and records necessary to prepare an appropriate response to  
805 the requester. These requirements do not apply to individuals seeking access to their own  
806 certification and reporting forms filed with the Contractor pursuant to 43 C.F.R. § 426.18 unless  
807 the requester elects to cite the Privacy Act as an authority for the request.

808 (f) Upon complete payment of the Repayment Obligation by the Contractor,  
809 this Article 22 will no longer be applicable.

810 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

811 23. In addition to all other payments to be made by the Contractor pursuant to this  
812 Contract, the Contractor shall pay to the United States, within sixty (60) days after receipt of a  
813 bill and detailed statement submitted by the Contracting Officer to the Contractor for such  
814 specific items of direct cost incurred by the United States for work requested by the Contractor  
815 associated with this Contract plus a percentage of such direct costs for administrative and general  
816 overhead in accordance with applicable Bureau of Reclamation policy and procedures. All such  
817 amounts referred to in this Article shall not exceed the amount agreed to in writing in advance by  
818 the Contractor. This Article shall not apply to costs for routine contract administration.

819 WATER CONSERVATION

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

824 Additionally, an effective water conservation and efficiency program shall be based on the  
825 Contractor's water conservation plan that has been determined by the Contracting Officer to meet  
826 the conservation and efficiency criteria for evaluating water conservation plans established under  
827 Federal law. The water conservation and efficiency program shall contain definite water  
828 conservation objectives, appropriate economically feasible water conservation measures, and  
829 time schedules for meeting those objectives.

830 (b) Should the amount of M&I Water delivered pursuant to subdivision (a)  
831 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall  
832 implement the Best Management Practices identified by and the time frames issued by the Mid-

833 Pacific Region's then-existing conservation and efficiency criteria for such M&I Water unless  
834 any such practice is determined by the Contracting Officer to be inappropriate for the Contractor.

835 (c) As part of the water conservation program, the Contractor shall develop  
836 and be implementing a tiered block water pricing program that promotes conservation and the  
837 efficient management of Project Water within eighteen (18) months of the effective date of this  
838 Contract. Such pricing program for Project Water shall take into account all relevant  
839 circumstances, including without limitation, water shortages imposed under this Contract and the  
840 availability and cost of the Contractor's and individual water user's non-Project alternative  
841 sources of supply, including groundwater and other non-Project water supplies, so that the  
842 Contractor's pricing structure provides incentives for conservation and the efficient management  
843 of overall water supply available to water users served by the Contractor. *Provided, That* no  
844 such tiered block water pricing program need be implemented by the Contractor if the  
845 Contracting Officer determines, based on information provided by the Contractor, that (i) such a  
846 pricing structure will not result in significant conservation of water available for use within the  
847 Contractor's Boundaries, including groundwater or (ii) other pricing program, conservation, or  
848 management measures are more appropriate and/or will result in comparable or better  
849 conservation of the water supplies available within the Contractor's Boundaries. *Provided,*  
850 *further, That* if the Contractor fails to, or elects not to, comply with this subdivision of this  
851 Article 24, then any subsequent Contract shall contain a tiered pricing contractual provision  
852 pursuant to subsection (d) of Section 3405 of the CVPIA.

853 (d) The Contractor shall submit to the Contracting Officer by December 31, of  
854 each Calendar Year, an annual report on the status of its implementation of the water  
855 conservation program.

856 (e) At five (5)-year intervals, the Contractor shall revise its water  
857 conservation plan to reflect the then-existing conservation and efficiency criteria for evaluating  
858 water conservation plans established under Federal law and submit such revised water  
859 management plan to the Contracting Officer for review and evaluation. The Contracting Officer  
860 will then determine if the water conservation plan meets the Bureau of Reclamation's then-  
861 existing conservation and efficiency criteria for evaluating water conservation plans established  
862 under Federal law.

863 (f) Upon complete payment of the Repayment Obligation by the Contractor,  
864 and notwithstanding any Additional Capital Obligation that may later be established, subsection  
865 (c) of this Article 24 of this Contract shall no longer be applicable.

866 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

867 25. Except as specifically provided in Article 16 of this Contract, the provisions of  
868 this Contract shall not be applicable to or affect water or water rights now owned or hereafter  
869 acquired by the Contractor or any user of such water within the Contractor's Boundaries from  
870 other than the United States by the Contractor. Any such water shall not be considered Project  
871 Water under this Contract. In addition, this Contract shall not be construed as limiting or  
872 curtailing any rights which the Contractor or any water user within the Contractor's Boundaries  
873 acquires or has available under any other contract pursuant to the Federal Reclamation law.

874 OPERATION AND MAINTENANCE BY THE OPERATING NON-FEDERAL ENTITY

875 26. (a) The responsibility for performing and, in some cases, funding the O&M of  
876 all or any portion of the Delta Division facilities may be transferred to an Operating Non-Federal  
877 Entity by one or more separate agreements between the United States and the Operating Non-  
878 Federal Entity. Any such agreement(s) shall require the Operating Non-Federal Entity to

879 perform the O&M in compliance with the provisions of this Contract and shall not interfere with  
880 the rights and obligations of the Contractor and the United States under this Contract.

881 (b) The Contracting Officer has previously notified the Contractor in writing  
882 that the Operation and Maintenance of a portion of the Project facilities which serve the  
883 Contractor has been transferred to the Operating Non-Federal Entity, and therefore, the  
884 Contractor shall pay directly to the Operating Non-Federal Entity, or to any successor approved  
885 by the Contracting Officer under the terms and conditions of the separate agreement between the  
886 United States and the Operating Non-Federal Entity described in subdivision (a) of this Article,  
887 all rates, charges, or assessments of any kind, including any assessment for reserve funds, which  
888 the Operating Non-Federal Entity or such successor determines, sets, or establishes for the  
889 Operation and Maintenance of the portion of the Project facilities operated and maintained by the  
890 Operating Non-Federal Entity or such successor. Such direct payments to Operating Non-  
891 Federal Entity or such successor shall not relieve the Contractor of its obligation to pay directly  
892 to the United States the Contractor's share of the Project Rates, Charges, and Tiered Pricing  
893 Component except to the extent the Operating Non-Federal Entity collects payments on behalf of  
894 the United States in accordance with the separate agreement identified in subdivision (a) of this  
895 Article.

896 (c) In the event the Operation and Maintenance of the Project facilities  
897 operated and maintained by the Operating Non-Federal Entity is re-assumed by the United States  
898 during the term of this Contract, the Contracting Officer shall so notify the Contractor, in  
899 writing, and present to the Contractor a revised Exhibit "A" which shall include the portion of  
900 the Rates to be paid by the Contractor for Project Water under this Contract representing the  
901 Operation and Maintenance costs of the portion of such Project facilities which have been

902 reassumed. The Contractor shall, thereafter, in the absence of written notification from the  
903 Contracting Officer to the contrary, pay the Rates, Charges, and Tiered Pricing Component  
904 specified in the revised Exhibit "A" directly to the United States in compliance with Article 7 of  
905 this Contract.

906 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

907 27. The expenditure or advance of any money or the performance of any obligation of  
908 the United States under this Contract shall be contingent upon appropriation or allotment of  
909 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any  
910 obligations under this Contract. No liability shall accrue to the United States in case funds are  
911 not appropriated or allotted.

912 BOOKS, RECORDS, AND REPORTS

913 28. The Contractor shall establish and maintain accounts and other books and records  
914 pertaining to administration of the terms and conditions of this Contract, including the  
915 Contractor's financial transactions; water supply data; project operations, maintenance, and  
916 replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop  
917 census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting  
918 Officer may require. Reports shall be furnished to the Contracting Officer in such form and on  
919 such date or dates as the Contracting Officer may require. Subject to applicable Federal laws  
920 and regulations, each party to this Contract shall have the right during office hours to examine  
921 and make copies of the other party's books and records relating to matters covered by this  
922 Contract.

923 ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

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

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

930 SEVERABILITY

931 30. In the event that a person or entity who is neither (i) a party to a Project Contract,  
932 nor (ii) a person or entity that receives Project Water from a party to a Project Contract, nor (iii)

933 an association or other form of organization whose primary function is to represent parties to  
934 Project Contracts, brings an action in a court of competent jurisdiction challenging the legality or  
935 enforceability of a provision included in this Contract and said person, entity, association, or  
936 organization obtains a final court decision holding that such provision is legally invalid or  
937 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),  
938 the parties to this Contract shall use their best efforts to (i) within thirty (30) days of the date of  
939 such final court decision identify by mutual agreement the provisions in this Contract which  
940 must be revised, and (ii) within three (3) months thereafter promptly agree on the appropriate  
941 revision(s). The time periods specified above may be extended by mutual agreement of the  
942 parties. Pending the completion of the actions designated above, to the extent it can do so  
943 without violating any applicable provisions of law, the United States shall continue to make the  
944 quantities of Project Water specified in this Contract available to the Contractor pursuant to the  
945 provisions of this Contract which were not found to be legally invalid or unenforceable in the  
946 final court decision.

947 OFFICIALS NOT TO BENEFIT

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

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

952 32. While this Contract is in effect, no change may be made in the Contractor's  
953 Service Area or organization, by inclusion or exclusion of lands or by any other changes which  
954 may affect the respective rights, obligations, privileges, and duties of either the United States or  
955 the Contractor under this Contract, including, but not limited to, dissolution, consolidation, or  
956 merger, except upon the Contracting Officer's written consent.

957 RECLAMATION REFORM ACT OF 1982

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

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

965 CERTIFICATION OF NONSEGREGATED FACILITIES

966 34. The Contractor hereby certifies that it does not maintain or provide for its  
967 employees any segregated facilities at any of its establishments and that it does not permit its  
968 employees to perform their services at any location under its control where segregated facilities  
969 are maintained. It certifies further that it will not maintain or provide for its employees any  
970 segregated facilities at any of its establishments and that it will not permit its employees to  
971 perform their services at any location under its control where segregated facilities are  
972 maintained. The Contractor agrees that a breach of this certification is a violation of the Equal  
973 Employment Opportunity clause in this Contract. As used in this certification, the term  
974 "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms,  
975 restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas,  
976 parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing  
977 facilities provided for employees which are segregated by explicit directive or are in fact  
978 segregated on the basis of race, creed, color, or national origin, because of habit, local custom,  
979 disability, or otherwise. The Contractor further agrees that (except where it has obtained  
980 identical certifications from proposed subcontractors for specific time periods) it will obtain  
981 identical certifications from proposed subcontractors prior to the award of subcontracts  
982 exceeding \$10,000 which are not exempt from the provisions of the Equal Employment  
983 Opportunity clause; that it will retain such certifications in its files; and that it will forward the  
984 following notice to such proposed subcontractors (except where the proposed subcontractors  
985 have submitted identical certifications for specific time periods):

986 NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR  
987 CERTIFICATIONS OF NONSEGREGATED FACILITIES

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

993

MEDIUM FOR TRANSMITTING PAYMENT

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

998                   (b)   Upon execution of this Contract, the Contractor shall furnish the  
999 Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose  
1000 for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising  
1001 out of the Contractor's relationship with the United States.

1002

NOTICES

1003           36.   Any notice, demand, or request authorized or required by this Contract shall be  
1004 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or  
1005 delivered to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno,  
1006 California 93721, Bureau of Reclamation, and on behalf of the United States, when mailed,  
1007 postage prepaid, or delivered to the Board of Directors of the Westlands Water District  
1008 Distribution District No. 2, P.O. Box 6056, Fresno, California 93703-6056. The designation of  
1009 the addressee or the address may be changed by notice given in the same manner as provided in  
1010 this Article for other notices.

1011

CONTRACT DRAFTING CONSIDERATIONS

1012           37.   This amended Contract has been negotiated and reviewed by the parties hereto,  
1013 each of whom is sophisticated in the matters to which this amended Contract pertains. The  
1014 double-spaced Articles of this amended Contract have been drafted, negotiated, and reviewed by  
1015 the parties, and no one party shall be considered to have drafted the stated Articles. Single-  
1016 spaced Articles are standard Articles pursuant to Bureau of Reclamation policy.

1017

CONFIRMATION OF CONTRACT

1018           38.   Promptly after the execution of this amended Contract, the Contractor will  
1019 provide to the Contracting Officer a certified copy of a final decree of a court of competent  
1020 jurisdiction in the State of California, confirming the proceedings on the part of the Contractor  
1021 for the authorization of the execution of this amended Contract. This amended Contract shall not  
1022 be binding on the United States until the Contractor secures a final decree.

1023 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day  
1024 and year first above written.

1025 UNITED STATES OF AMERICA

1026 By: \_\_\_\_\_  
1027 Regional Director  
1028 Mid-Pacific Region  
1029 Bureau of Reclamation

1030 WESTLANDS WATER DISTRICT DISTRIBUTION  
1031 DISTRICT NO. 2  
1032 (SEAL)

1033 By: \_\_\_\_\_  
1034 President of the Board of Directors

1035 Attest:

1036 By: \_\_\_\_\_  
1037 Secretary of the Board of Directors

Irrigation and M&I  
Contract No. 14-06-200-3365A-XXX-C  
(Mercy Springs Partial Assignment)

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

CONTRACT BETWEEN THE UNITED STATES  
AND  
WESTLANDS WATER DISTRICT DISTRIBUTION DISTRICT NO. 2  
PROVIDING FOR PROJECT WATER SERVICE  
AND FACILITIES REPAYMENT

Exhibits

Exhibit A – Rates and Charges

*This Exhibit template is unchanged from current Contract and is updated annually. Rate Schedules may be found at: <https://www.usbr.gov/mp/cvpwaterrates/ratebooks/index.html>*

Exhibit B – Points of Diversion

*This Exhibit has been updated to reflect Westlands Water District's points of diversion..*

Exhibit C – Repayment Obligation

*This Exhibit template was developed during the WIIN Act Negotiations. Relevant data will be incorporated upon contract execution.*

**EXHIBIT A**  
**WESTLANDS WATER DISTRICT (DD #2)**  
**(PARTIAL ASSIGNMENT OF MERCY SPRINGS WATER DISTRICT)**  
**2019 Rates and Charges**  
**(Per Acre-Foot)**

	<b>Irrigation</b>	<b>M&amp;I<sup>4</sup></b>
	<b>Water</b>	<b>Water</b>
	<b>SLC</b>	<b>SLC</b>
<b>COST-OF-SERVICE (COS) RATE</b>		
Construction Costs	\$58.11	
DMC Aqueduct Intertie	\$1.25	
O&M Components		
Water Marketing	\$7.07	
Storage	\$14.52	
Credit for other PUE Remittance <sup>1</sup>	(\$9.74)	
Direct Pumping		
Deficit Cost (American Recovery and Reinvestment Act (ARRA) included)	\$0.00	
<b>TOTAL COS RATE</b>	<b>\$71.21</b>	
<b>Project Use Energy Payment<sup>3</sup></b>		
Direct Pumping	\$12.63	
Other PUE Remittance	\$9.74	
<b>IRRIGATION FULL-COST RATE</b>		
Section 202(3) Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981.	\$105.26	
Section 205(a)(3) Rate is applicable to a Limited Recipient that did not receive irrigation water on or before October 1, 1981.	\$134.90	
<b>M&amp;I FULL COST RATE</b>		
<b>CHARGES AND ASSESSMENTS (Payments in addition to Rates)</b>		
P.L. 102-575 Surcharge (Restoration Fund Payment) [Section 3407(d)(2)(A)]	\$10.63	
P.L. 106-377 Assessment (Trinity Public Utilities District) [Appendix B, Section 203]	\$0.30	

**EXPLANATORY NOTES**

**1**

Project Use Energy payment is being remitted to Western Area Power Authority for storage and direct pumping based on the deliveries of a select few contractors. The rates for the select few contractors are reduced as a credit in the O&M rates. All Contractors will ultimately pay for the storage and direct pumping service but as an offset to the amount paid by the select few.

**2** Contractor has advanced paid O&M greater than two months pursuant to terms of the agreements. The O&M component of the rate has been reduced to reflect funds advanced.

**3** Project Use Energy payment is in addition to the Contract Rate and Full-Cost Water Rates. Refer to the water rate books for more information.

**4** The Contractor has not projected any delivery of M&I Water for the 2019 contract year. A temporary M&I Rate will be applied upon any M&I water delivery.

The CVP M&I Water Shortage Policy per EIS/EIR dated August 2015 and Record of Decision dated November 2015 defines the M&I Historic Use as the average quantity of CVP water put to beneficial use during the last three years of water deliveries, unconstrained (100% allocation) by the availability of CVP water for South of the Delta. Contractor's last three years in acre feet (AF) are: 2006 = 0 AF; 2011 = 0 AF; 2017 = 0 AF; equals a M&I Historic use average quantity of 0 AF.

**Additional detail of rate components is available on the Internet at:**

<http://www.usbr.gov/mp/cvpwaterrates/ratebooks/index.html>

## Exhibit B

### **Points of Diversion on the San Luis Canal:**

MP-104.18 Lat.1R, MP-105.2L, MP-105.22 Lat.1L, MP-105.23 Lat.2R,  
MP-106.35 Lat.2L, MP-108.39 Lat.3L, MP-108.46 Lat.3R, MP-110.52 Lat. 4L,  
MP-111.93 Lat.5L, MP-113 Lat.6L, MP-113.77 Lat.4R, MP-114R, MP-114.64R,  
MP-114.90 Lat.5R, MP-114.92R, MP-116.02R, MP-116.32R, MP-116.91R,  
MP-117.51 Lat.8L, MP-117.51R, MP-118.44 Lat.7R, MP-118.46R, MP-119.56R  
A&B, MP-119.63 Lat.8R, MP-119.63R ABC, MP-120.77 Lat.9L, MP-120.86R,  
MP-120.87R A&B, MP-121.92 Lat.10L, MP-122.02R, MP-122.05R,  
MP-122.59R, MP-123.89R, MP-124.16R, MP-124.18 Lat.11L, MP-124.19R,  
MP-125.36R, MP-126.65 Lat.12L, MP-128.49R, MP-128.57 Lat.11R,  
MP-128.78R, MP-129.88 Lat.13L, MP-130.85 Lat.14L, MP-131.70 Lat.15L,  
MP-132.74 Lat.12R, MP-132.81 Lat.16L, MP-133.81 Lat.17L, MP-133.81  
Lat.13R, MP-134.94 Lat.18L, MP-135.96 Lat.14R, MP-136.05 Lat.19L,  
MP-137.00 Lat.15R, MP-137.11 Lat.20L, MP-138.14 Lat.16R, MP-138.29  
Lat.21L, MP-139.27 Lat.17R, MP-139.39 Lat.22L, MP-140.48 Lat.18R,  
MP-140.57 Lat.23L, MP-141.29R, MP-141.53 Lat.19R, MP-141.60 Lat.24L,  
MP-142.57R, MP-142.60R A&B, MP-143.16, MP-145.26 Lat.25L, MP-145.32  
Lat.20R, MP-147.02 Lat.26L, MP-147.75R, MP-147.77R, MP-149.12 Lat.27L,  
MP-149.55 Lat.21R, MP-149.59R, MP-150.48R, MP-150.88 Lat.28L, MP-151.19  
Lat.22R, MP-152.35 Lat.29L, MP-154.11 Lat.30L, MP-156.34 Lat.23R,  
MP-156.40 Lat.31L, MP-158.47 Lat.32L, MP-158.47 Lat.24R, MP-160.45  
Lat.33L, MP-160.45 Lat.25R, MP-161.60 Lat.34L, MP-161.60 Lat.26R,  
MP-162.63 Lat.35L, MP-163.59L, MP-163.69 Lat.36L, MP-163.69 Lat.27R,  
MP-164.79 Lat.28R, MP-167.04 Lat.37L, MP-167.84 Lat.29R, MP-169.30  
Lat.38L, MP-171.51 Lat.30R

## Exhibit C Template

### Repayment Obligation - Current Calculation under the WIIN Act, Section 4011 (a) (2)

Represents an Example of Cost to Repay Construction Based on Unpaid Construction (From 2018 or 2019 of the Water Rate Books\*\*)

Contractor: Contractor A  
 Facility: San Luis Canal (This does not include Delta-Mendota Pool or Canal)  
 Contract: Contract Number #:

Irrigation Construction Cost (2018 or 2019 Irrigation Ratebook, Schedule A-2Ba and A-2Bc)			
	Unpaid Cost	Discount	
Construction Cost (Excludes Intertie):	\$ 2,000,000	\$	1,860,792
Intertie Construction Cost:	\$ 50,000	\$	36,962
<b>Total</b>	<b>\$ 2,050,000</b>	<b>\$</b>	<b>1,897,754</b>
If Paid in Installments (1/2 of 20 yr CMT)			
	Due		
Payment 1	1-Jan-20	\$	492,663
Payment 2	1-Jan-21	\$	492,663
Payment 3	1-Jan-22	\$	492,663
Payment 4	1-Jan-23	\$	492,663
<b>Total Installment Payments</b>		<b>\$</b>	<b>1,970,653</b>
20 yr CMT Rates - 4/23/2018			3.050%
Discount Rate: 1/2 of 20 yr CMT (WIIN Act, Section 4011(a)(2)(A) & f)			1.525%

M&I Construction Cost (2018 or 2019 M&I Ratebook, Schedule A-2Ba)	
	Unpaid Cost
Construction Cost *:	\$ 300,000
* Excludes Interest to payment date as interest will be computed as an annual expense as usual	

Calculation Support: Irrigation lump sum or first payment due date 1-Jan-20  
 Days Until End of Fiscal Year 273

Fiscal Yr	Unpaid Allocated Construction Cost			Unpaid Intertie Construction Cost			Total
	Beginning Balance	Straight Line Repayment	Present Value	Beginning Balance	Straight Line Repayment	Present Value	Present Values
	2018	\$ 2,000,000	\$ 153,846	\$ 153,846	\$ 50,000	\$ 1,087	\$ 1,087
2019	\$ 1,846,154	\$ 153,846	\$ 153,846	\$ 48,913	\$ 1,087	\$ 1,087	\$ 154,933
2020	\$ 1,692,308	\$ 153,846	\$ 152,116	\$ 47,826	\$ 1,087	\$ 1,075	\$ 153,191
2021	\$ 1,538,462	\$ 153,846	\$ 149,831	\$ 46,739	\$ 1,087	\$ 1,059	\$ 150,890
2022	\$ 1,384,615	\$ 153,846	\$ 147,580	\$ 45,652	\$ 1,087	\$ 1,043	\$ 148,623
2023	\$ 1,230,769	\$ 153,846	\$ 145,364	\$ 44,565	\$ 1,087	\$ 1,027	\$ 146,391
2024	\$ 1,076,923	\$ 153,846	\$ 143,180	\$ 43,478	\$ 1,087	\$ 1,012	\$ 144,192
2025	\$ 923,077	\$ 153,846	\$ 141,029	\$ 42,391	\$ 1,087	\$ 996	\$ 142,026
2026	\$ 769,231	\$ 153,846	\$ 138,911	\$ 41,304	\$ 1,087	\$ 981	\$ 139,892
2027	\$ 615,385	\$ 153,846	\$ 136,824	\$ 40,217	\$ 1,087	\$ 967	\$ 137,791
2028	\$ 461,538	\$ 153,846	\$ 134,769	\$ 39,130	\$ 1,087	\$ 952	\$ 135,721
2029	\$ 307,692	\$ 153,846	\$ 132,745	\$ 38,043	\$ 1,087	\$ 938	\$ 133,683
2030	\$ 153,846	\$ 153,846	\$ 130,751	\$ 36,957	\$ 1,087	\$ 924	\$ 131,675
2031-63				\$ 35,870	\$ 35,870	\$ 23,815	\$ 23,815
<b>Total, Lump Sum Payment</b>			<b>\$ 1,860,792</b>			<b>\$ 36,962</b>	<b>\$ 1,897,754</b>

Amount of Reduction, Lump Sum \$ 139,208 \$ 13,038 \$ 152,246

\*\* Water Rate Charges and payments are a requirement under the existing and amendatory contract. If at a later date charges are updated based on Regional and Area Office reviews, any unpaid charges are still due.

# **EXHIBIT B**

# WESTLANDS WATER DISTRICT

## NOTICE OF REGULAR MEETING AND AGENDA

### NOTICE

Notice is hereby given that a regular meeting of the Board of Directors of Westlands Water District will be held on January 21, 2020 at 1:00 p.m. at the District's Fresno Office, 3130 N. Fresno Street, Fresno, California 93703.

**Public Comment** - Any member of the public may address the Board concerning any matter on the agenda before or, for open session items, during its consideration of that matter. Public comment is limited to three minutes per person and no more than fifteen minutes per topic. For good cause, the Board President may waive these limitations.

### AGENDA

1. **Call to Order**
2. **Board to Consider Corrections or Additions to the Agenda of Items, as Authorized by Government Code Section 54950 et seq.**
3. **Board to Consider Approval of the Minutes of the following:**
  - a. Special Board Meeting of December 11, 2019
  - b. Regular Board Meeting of December 17, 2019
  - c. Special Board Meeting and Hearing of December 18, 2019
  - d. Special Board Meeting of January 6, 2020
  - e. Special Board Meeting and Hearing of January 8, 2020
4. **General Manager's Report (Birmingham)**
  - a. Water supply, water operations and Projected Water Supply and Use and Central Valley Project/ State Water Project Operations, drainage, energy, Bay-Delta Water Quality Control Plan-Voluntary Agreement Update, ROC on LTO and other resources activities
  - b. Federal & State Legislative Affairs
  - c. Public Outreach
  - d. Other District Activities
5. **Outside Agency Activities (Board)** - Reports on activities of outside agencies (FFA, SLDMWA, ACWA and SFCWA, etc.) will be presented.
6. **Legal Affairs Committee (Coelho)** - The Committee Chair will report on items within the Committee's jurisdiction.
7. **Operations & Maintenance Committee (Coelho)** - The Committee Chair will report on items within the Committee's jurisdiction.

# WESTLANDS WATER DISTRICT

January 21, 2020 at 1:00 p.m.

**Public Comment** - Any member of the public may address the Board concerning any matter on the agenda before or, for open session items, during its consideration of that matter. Public comment is limited to three minutes per person and no more than fifteen minutes per topic. For good cause, the Board President may waive these limitations.

8. **Personnel Committee (Enos)** - The Committee Chair will report on items within the Committee's jurisdiction.
9. **Water Policy Committee (Errotabere)** – The Committee Chair will report and the Board will act upon recommendations of the Committee, if any, regarding the following items:
  - a. Consider a Recommendation that the Board of Directors Adopt Resolution No. 101-20 Certifying the Final Environmental Impact Statement/Environmental Impact Report, SCH #2013041028, for the Mendota Pool Group 20-Year Exchange Program Pursuant to the California Environmental Quality Act
  - b. Consider a Recommendation that the Board of Directors Adopt Resolution No. 102-20 Approving and Adopting the Mendota Pool Group 20-Year Exchange Program, and Related Actions
10. **Sustainable Groundwater Management Act** - Serving as the Groundwater Sustainability Agency of the Westside Subbasin, Board to receive an update and provide input on Sustainable Groundwater Management Act of 2014 (SGMA) implementation/compliance activities, including actions to implement the Groundwater Sustainability Plan.
11. **Finance & Administration Committee (Enos)** - The Committee will report and the Board will act upon recommendations of the Committee, if any, regarding the following items:
  - a. Board to Consider Selection of Underwriting Team for 2020A Revenue Bonds
  - b. Consider Recommendation that the Board of Directors Approve Budget Transfers and Augmentations
    - 1) 2019-2020 Budget Augmentation and Transfer for Power – Temporary Facilities
  - c. Consider Recommendation that the Board of Directors Approve Accounts Payable Reports
  - d. Receive Report on Investments and Financial Reports
12. **Consider a Recommendation that the Board of Directors Adopt Resolution No. 103-20 Authorizing Execution and Delivery of a Joint Exercise of Powers Agreement to Create the San Luis Unit/Westlands Water District Financing Authority and a Joint Exercise of Powers Agreement to Create the San Luis Unit/San Luis Water District Financing Authority, and Authorizing Certain Other Matters in Connection Therewith**
13. **Board to Consider Request by Brownstein, Hyatt, Farber, Schreck for Waiver of Potential Conflict of Interest and Informed Consent**

# WESTLANDS WATER DISTRICT

January 21, 2020 at 1:00 p.m.

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14. **Board to Consider (a) Appointment of a District Representative to the San Luis & Delta-Mendota Water Authority Board of Directors, and (b) Recommendation for an Appointment of a District Representative to the San Luis & Delta-Mendota Water Authority Finance and Administration Committee**
15. **Board to Consider Appointment of Director Dan Errotabere to the Westlands Water District Financing Corporation Board of Directors**
16. **Sitting as the Board of Directors of Distribution District No. 1 – The Board will act upon the recommendations, if any, regarding the following items:**
  1. Call to Order
  2. Board to Consider Corrections or Additions to the Agenda of Items, as Authorized by Government Code Section 54950 et seq.
  3. Approval of the Minutes of the Regular Board Meeting of December 17, 2019
  4. Consider Recommendation that the Board of Directors Adopt Resolution Nos. 101-20, 102-20, 103-20 and 104-20, Authorizing the Filing of Notices of Statutory Exemption and Categorical Exemption from the California Environmental Quality Act for Approval of and Authorization to Execute the Contract Between the United States and Westlands Water District Providing for Project Water Service and Facilities Repayment, Authorizing Approval and Execution of the Contract Between the United States and Westlands Water District Providing for Project Water Service and Facilities Repayment, and Authorizing Actions Furtherance Thereof
  5. Public Comment – Any member of the public may address the Board concerning any matter not on the Agenda within the Board's jurisdiction. Public comment is limited to three minutes per person and no more than fifteen minutes per topic. For good cause, the Board President may waive these limitations.
  6. Adjournment
17. **Sitting as the Board of Directors of Distribution District No. 2 – The Board will act upon the recommendations, if any, regarding the following items:**
  1. Call to Order
  2. Board to Consider Corrections or Additions to the Agenda of Items, as Authorized by Government Code Section 54950 et seq.
  3. Board to Consider Approval of the Minutes of the Regular Board Meeting of December 17, 2019

# WESTLANDS WATER DISTRICT

January 21, 2020 at 1:00 p.m.

**Public Comment** - Any member of the public may address the Board concerning any matter on the agenda before or, for open session items, during its consideration of that matter. Public comment is limited to three minutes per person and no more than fifteen minutes per topic. For good cause, the Board President may waive these limitations.

4. Consider Recommendation that the Board of Directors Adopt Resolution Nos. 101-20, Authorizing the Filing of Notices of Statutory Exemption and Categorical Exemption from the California Environmental Quality Act for Approval of and Authorization to Execute the Contract Between the United States and Westlands Water District Providing for Project Water Service and Facilities Repayment, Authorizing Approval and Execution of the Contract Between the United States and Westlands Water District Providing for Project Water Service and Facilities Repayment, and Authorizing Actions Furtherance Thereof
  5. Public Comment – Any member of the public may address the Board concerning any matter not on the Agenda within the Board's jurisdiction. Public comment is limited to three minutes per person and no more than fifteen minutes per topic. For good cause, the Board President may waive these limitations.
  6. Adjournment
- 
18. **Public Comment** - Any member of the public may address the Board concerning any matter not on the Agenda but within the Board's jurisdiction. Public comment is limited to three minutes per person and no more than fifteen minutes per topic. For good cause, the Board President may waive these limitations.
  19. **Closed Session** - The Board will meet in closed session pursuant to the Government Code sections noted to discuss the following:
    - a. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION  
Significant exposure to litigation pursuant to paragraph (2) or (3) of subdivision (d) of Government Code Section 54956.9 – 2 potential cases
    - b. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION  
Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Government Code Section 54956.9 – 3 potential cases
    - c. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION  
Existing Litigation Pursuant to paragraph (1) of Subdivision (d) of Section 54956.9
      - 1) Firebaugh Canal Water District et al. v. United States of America et al., United States District Court, Eastern District of California, Case Nos. 1:88-cv-634-LJO/SKO, 1:91-cv-048-LJO/SKO
      - 2) Westlands Water District v. United States, United States Court of Appeal for the Federal Circuit, Case No. 13-5069

## WESTLANDS WATER DISTRICT

January 21, 2020 at 1:00 p.m.

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- 3) San Luis & Delta-Mendota Water Authority and Westlands Water District v. Delta Stewardship Council et al., Sacramento County Superior Court Case No. 34-2013-80001500 (Delta Plan Litigation). Appeals in Delta Plan Litigation:

City of Stockton v. Delta Stewardship Council et al. (Sacramento County Superior Court JCCP No. 4758)(Third District Court of Appeal Case No. C082994); State Water Contractors, et al. v. Delta Stewardship Council et al. (Sacramento County Superior Court JCCP No. 4758) (Third District Court of Appeal Case No. C082944); California Water Impact Network, et al. v. Delta Stewardship Council et al. (Sacramento County Superior Court JCCP No. 4758) (Third District Court of Appeal Case No. C082994); Central Delta Water Agency, et al. v. Delta Stewardship Council et al. (Sacramento County Superior Court JCCP No. 4758) (Third District Court of Appeal Case No. C082994); North Coast Rivers Alliance, et al. v. Delta Stewardship Council et al. (Sacramento County Superior Court JCCP No. 4758) (Third District Court of Appeal Case No. C082994); San Luis & Delta-Mendota Water Agency et al. v. Delta Stewardship Council et al. (Sacramento County Superior Court JCCP No. 4758) (Third District Court of Appeal Case No. C082994); Save the California Delta Alliance v. Delta Stewardship Council et al. (Sacramento County Superior Court JCCP No. 4758) (Third District Court of Appeal Case No. C082994)

- 4) California Sportfishing Protection Alliance et al. vs. California State Water Resources Control Board, et al., Alameda County Superior Court, Case No. RG15780498 (State WQCP/TUCP) (2015 TUCP Orders)
- 5) North Coast Rivers Alliance et al. v. U.S. Department of the Interior et al., United States District Court, Eastern District of California, Case No. 1:16-cv-00307-LJO-MJS (2016-2018 Interim Renewal Contract EA)
- 6) Natural Resources Defense Council et al. v. Bernhardt et al., United States District Court, Eastern District of California, Case No. 1:05-cv-01207-LJO-EPG (2005 DMC Contract Renewals Litigation)
- 7) City of Fresno, et al. v. United States, United States Court of Federal Claims, Case No. 16-1276L (Friant Takings Suit)
- 8) North Coast Rivers Alliance v. Delta Stewardship Council, Sacramento County Superior Court, Case No. 34- 2018-80002898; Central Delta Water Agency v. Delta Stewardship Council, Sacramento County Superior Court, Case No. 34-2018-80002900; Friends of the River v. Delta Stewardship Council, Sacramento County Superior Court, Case No. 34-2018-80002901; California Water Impact

# WESTLANDS WATER DISTRICT

January 21, 2020 at 1:00 p.m.

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Network v. Delta Stewardship Council, Sacramento County Superior Court, Case No. 34-2018-80002904 (Delta Plan Amendment Litigation)

- 9) Westlands Water District v. State Water Resources Control Board, Fresno County Superior Court, Case No. 19CECG00165 (WQCP Phase 1 Litigation)
- 10) North Coast Rivers Alliance et al. v. Department of Water Resources, Sacramento Superior Court Case No. 34-2019-80003057 (COA Addendum-WaterFix No Harm Litigation)
- 11) People of the State of California v. Westlands Water District, Shasta Superior Court, Case No. 192487 (Public Resources Code Section 5093.542)
- 12) Friends of the River et al. v. Westlands Water District, Shasta Superior Court, Case No. 192490 (Public Resources Code Section 5093.542)
- 13) North Coast Rivers Alliance et al. v. Westlands Water District, Shasta Superior Court, Case No. 192958 (Public Resources Code Section 5093.542)
- 14) Westlands Water District v. All Persons Interested in the Matter of the Contract Between the United States and Westlands Water District Providing Project Water Service, San Luis Unit and Delta Division and Facilities Repayment, Fresno Superior Court, Case No. 19CECG03887 (Validation Action)
- 15) Pacific Coast Federation of Fishermen's Association et al. v. Ross et al., United States District Court, Northern District of California, Case No. 3:19-cv-07897 (2019 ROC on LTO BiOps Litigation)
- 16) Mound Farms v. California Department of General Services et al., Yolo County Superior Court, Case No. PT19-2766 (Yolo Ranch CEQA Challenge)

20. **Report from Closed Session, if any Required by Government Code Section 54957.1**
21. **Board to Consider Election of One of its Members to Serve as Vice President of the Board**
22. **Board to Consider Authorizing Amendment to the Term of the General Manager's Employment Agreement**
23. **Adjournment**

I, Original Signed by District Secretary, declare that the foregoing agenda for the January 21, 2020 regular meeting of the Westlands Water District Board of Directors was posted on January 16, 2020, at the District's Fresno Office, 3130 N. Fresno Street, Fresno, CA 93703, at the District's Five Points Field Office, 23050 W. Mt. Whitney Avenue, Five Points, CA 93624, and on the District's website, at <https://wwd.ca.gov> and was available for public inspection.

# WESTLANDS WATER DISTRICT

January 21, 2020 at 1:00 p.m.

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Written materials related to an item on this agenda to be considered in open session that are public records and that are distributed less than 72 hours prior to the meeting will be made available for public inspection, (1) when distributed if said materials were prepared by the District or a member of the Board of Directors or (2) after the meeting if said materials were prepared by others, at the District's Fresno office, 3130 N. Fresno St., Fresno, California during normal business hours.

A person with a qualifying disability under the Americans with Disabilities Act of 1990 may request the District provide a disability-related modification or accommodation in order to participate in any public meeting of the District. Such assistance includes appropriate alternative formats for the agendas and agenda packets used for any public meetings of the District. Requests for such assistance and for agendas and agenda packets shall be made in person, by telephone, facsimile, or written correspondence.