

1 HAMILTON CANDEE (SBN 111376)
JARED W. HUFFMAN (SBN 148669)
2 KATHERINE S. POOLE (SBN 195010)
3 MICHAEL E. WALL (SBN 170238)
NATURAL RESOURCES DEFENSE COUNCIL
4 111 Sutter Street, 20th Floor
San Francisco, CA 94104
5 Tel: (415) 875-6100
6 Fax: (415) 875-6161

7 PHILIP F. ATKINS-PATTENSON, (SBN 94901)
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
8 Four Embarcadero Center, 17th Floor
San Francisco, California 94111-4109
9 Tel. (415) 434-9100
Fax (415) 434-3947

10 Attorneys for Plaintiffs NRDC, *et al.*

11 [Names Of Additional Counsel Appear On Signature Page]

12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA
14 (SACRAMENTO DIVISION)

15 NATURAL RESOURCES DEFENSE
16 COUNCIL, *et al.*,

17 Plaintiff,

18 v.

19 KIRK RODGERS, as Regional Director of the
UNITED STATES BUREAU OF
20 RECLAMATION, *et al.*,

21 Defendants.

22 ORANGE COVE IRRIGATION DISTRICT,
23 *et al.*,

24 Defendants-Intervenors

Case No. CIV S-88-1658 LKK/GGH

**NOTICE OF LODGMENT OF
STIPULATION OF SETTLEMENT**

1 NOTICE IS HEREBY GIVEN that on September 13, 2006, Plaintiffs Natural
2 Resources Defense Council, *et al.* ("Plaintiffs"), Defendants Kirk Rodgers, *et al.* (the "Federal
3 Defendants") and Defendant Intervenors Orange Cove Irrigation District, *et al.* (the "Friant
4 Defendants") (collectively, the "Settling Parties") are lodging with the Court their Stipulation of
5 Settlement, including Exhibits A to F thereto (see Attachment 1), which provides for a global
6 resolution of all issues in this litigation. The Settling Parties soon will be filing their joint motion
7 for approval of the settlement and entry of Judgment.

8
9 Dated: September 13, 2006

10 NATURAL RESOURCES DEFENSE COUNCIL
11 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
12 ALTSHULER, BERZON, NUSSBAUM, RUBIN & DEMAIN

13 By



14 PHILIP F. ATKINS-PATTENSON

15 Attorneys for Plaintiffs
16 Natural Resources Defense Council, *et al.*

17
18 Dated: September 13, 2006

19 UNITED STATES DEPARTMENT OF JUSTICE,
20 ENVIRONMENT AND NATURAL RESOURCES DIVISION,
21 NATURAL RESOURCE SECTION WILDLIFE AND
22 MARINE RESOURCE SECTION

23 By

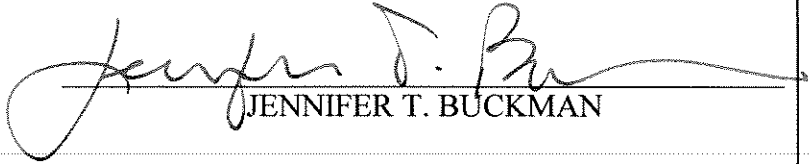


24 STEPHEN M. MACFARLANE

25 Attorneys for Defendants
26 Kirk Rodgers, *et al.*

1 Dated: September 13, 2006

2 BEST BEST & KRIEGER LLP

3
4 By 
5 JENNIFER T. BUCKMAN

6 Attorneys for Defendants Intervenors
7 Orange Cove Irrigation District, *et al.*

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 HAMILTON CANDEE, CAL. BAR NO. 111376
JARED W. HUFFMAN, CAL. BAR NO. 148669
2 KATHERINE S. POOLE, CAL. BAR NO. 195010
MICHAEL E. WALL, CAL. BAR NO. 170238
3 NATURAL RESOURCES DEFENSE COUNCIL
111 Sutter Street, 20th Floor
4 San Francisco, California 94104
Telephone: (415) 875-6100
5 Attorneys for Plaintiffs NRDC, *et al.*

6 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
7 Including Professional Corporations
PHILIP F. ATKINS-PATTENSON, CAL. BAR NO. 94901
8 Four Embarcadero Center, 17th Floor
San Francisco, California 94111-4106
9 Telephone: (415) 434-9100
10 Facsimile: (415) 434-3947
Attorneys for Plaintiffs NRDC, *et al.*

11 [Names of Additional Counsel Appear
12 On Signature Page]

13

14

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

15

16

17 NATURAL RESOURCES DEFENSE
COUNCIL, *et al.*,

18 Plaintiffs,

19

v.

20 KIRK RODGERS, as Regional Director
21 of the UNITED STATES BUREAU
OF RECLAMATION, *et al.*,

22 Defendants.

23

24 ORANGE COVE IRRIGATION
DISTRICT, *et al.*

25 Defendants
Intervenors.

26

27

28

Plaintiffs Natural Resources Defense Council, *et al.*, defendants Kirk Rodgers,
et al. and the defendants-intervenors Orange Cove Irrigation District, *et al.*, in that
certain litigation styled *Natural Resources Defense Council, et al. v. Rodgers, et al.*

1 No. CIV-S-88-1658-LKK/GGH, by and through their respective attorneys of record,
2 hereby stipulate and agree as follows:

3 Definitions

4 As used herein, the following terms shall have the following meanings:

5 (a) "CVPIA" shall mean the Central Valley Project Improvement Act, Public
6 Law No. 102-575, tit. XXXIV, 106 Stat. 4600, 4702 (1992).

7 (b) "Effective Date" shall mean the date the Court issues its Order
8 approving this Settlement.

9 (c) "ESA" shall mean the Endangered Species Act, 16 U.S.C. §§ 1531, *et*
10 *seq.*

11 (d) "Federal Defendants" shall mean Kirk Rodgers, as Director of the Mid-
12 Pacific Region of the United States Bureau of Reclamation, Dirk Kempthorne, as the
13 Secretary of the Interior, Carlos Gutierrez, as the Secretary of the United States
14 Department of Commerce, Rodney McInnis, as Regional Administrator of the
15 National Marine Fisheries Service, Steve Thompson, as California and Nevada
16 Operations Manager of the United States Fish and Wildlife Service.

17 (e) "Friant Division long-term contractors" shall mean the Arvin-Edison
18 Water Storage District, Chowchilla Water District, City of Fresno, City of Orange
19 Cove, City of Lindsay, County of Madera, Delano-Earlimart Irrigation District,
20 Exeter Irrigation District, Fresno County Waterworks District No. 18, Fresno
21 Irrigation District, Garfield Water District, Gravelly Ford Water District,
22 International Water District, Ivanhoe Irrigation District, Lewis Creek Water District,
23 Lindmore Irrigation District, Lindsay-Strathmore Irrigation District, Lower Tule
24 River Irrigation District, Madera Irrigation District, Orange Cove Irrigation District,
25 Porterville Irrigation District, Saucelito Irrigation District, Shafter-Wasco Irrigation
26 District, Southern San Joaquin Municipal Utility District, Stone Corral Irrigation
27 District, Tea Pot Dome Water District, Terra Bella Irrigation District, and Tulare
28 Irrigation District.

1 (f) "Friant Division long-term contracts" shall mean all long-term water
2 service contracts between Friant Division long-term contractors and the United
3 States Department of the Interior, Bureau of Reclamation existing as of June 30,
4 2006 that provide water service from the Friant Division of the Central Valley
5 Project.

6 (g) "Friant Parties" shall mean the Arvin-Edison Water Storage District,
7 Chowchilla Water District, Delano-Earlimart Irrigation District, Exeter Irrigation
8 District, Friant Water Users Authority, Ivanhoe Irrigation District, Lindmore
9 Irrigation District, Lindsay-Strathmore Irrigation District, Madera Irrigation District,
10 Orange Cove Irrigation District, Porterville Irrigation District, Saucelito Irrigation
11 District, Shafter-Wasco Irrigation District, Southern San Joaquin Municipal Utility
12 District, Stone Corral Irrigation District, Teapot Dome Water District, Terra-Bella
13 Irrigation District, and Tulare Irrigation District.

14 (h) "NEPA" shall mean the National Environmental Policy Act, 42 U.S.C.
15 §§ 4321, *et seq.*

16 (i) "Party" or "Parties" shall mean all Plaintiffs, Federal Defendants and
17 Friant Parties.

18 (j) "Plaintiffs" shall mean Natural Resources Defense Council, The Bay
19 Institute of San Francisco, Trout Unlimited of California, California Sportfishing
20 Protection Alliance, California Trout, Friends of the River, Nor-Cal Fishing Guides
21 and Sportsmen's Association, Pacific Coast Federation of Fishermen's Associations,
22 San Joaquin Raptor Rescue Center, Sierra Club, Stanislaus Audubon Society, Inc.,
23 United Anglers of California, California Striped Bass Association, and National
24 Audubon Society.

25 (k) "Restoration Fund" shall mean the San Joaquin River Restoration
26 Fund to be established by the legislation authorizing implementation of this
27 Settlement.

28

1 (l) "Secretary" shall mean the Secretary of the Interior or his or her
2 designee, unless otherwise specified.

3 (m) "Settlement" shall mean this Stipulation of Settlement, including
4 Exhibits A through F attached hereto and incorporated herein by reference.

5 **THIS SETTLEMENT**

6 1. The Court has issued Orders with respect to issues of liability
7 regarding Plaintiffs' First Claim for Relief in the Seventh Amended Complaint (for
8 violations of California Fish and Game Code § 5937 and § 8 of the Reclamation Act
9 of 1902) and issues of liability regarding Plaintiffs' Fourth, Fifth and Sixth Claims
10 for Relief (for violations of the ESA), but has not decided the issue of remedy for
11 any such violations. The Plaintiffs voluntarily dismissed their Third, Eighth and
12 portions of their Seventh (Para. 175-185) Claims for Relief with prejudice. The
13 Court has not yet ruled on the Plaintiffs' Second and remaining portions (Para.
14 186) of their Seventh Claim for Relief (for violation of NEPA and federal
15 reclamation law). The Parties have reached agreement on a global resolution of all
16 Claims for Relief in the Seventh Amended Complaint, on the terms and conditions
17 stated in this Settlement.

18 2. The Parties agree that a goal of this Settlement is to restore and
19 maintain fish populations in "good condition" in the main stem of the San Joaquin
20 River below Friant Dam to the confluence of the Merced River, including
21 naturally-reproducing and self-sustaining populations of salmon and other fish (the
22 "Restoration Goal"). The Parties also agree that a goal of this Settlement is to
23 reduce or avoid adverse water supply impacts to all of the Friant Division long-term
24 contractors that may result from the Interim Flows and Restoration Flows provided
25 for in this Settlement (the "Water Management Goal").

26 3. The Parties acknowledge that the historic operation of Friant Dam has
27 resulted in significant portions of the main stem of the San Joaquin River between
28 Friant Dam and Millerton Lake and the confluence of the Merced River being dry

1 during significant portions of the year in most years, with corresponding impacts on
2 fisheries downstream from Friant Dam. Despite the diligence of the Parties,
3 achieving all of the Restoration Goal by December 31, 2025 may not be possible.
4 Similarly, programs to achieve the Water Management Goal by December 31, 2025
5 may not achieve all of the desired results. Nonetheless, the Parties agree that
6 engaging in the restoration and water management efforts called for by this
7 Settlement are expected to provide significant public benefits beyond the
8 Restoration and Water Management Goals, including, for example, potential water
9 quality benefits downstream of the Merced River and potential increased
10 recreational opportunities, which warrant the commitment of public and private
11 resources to this Settlement.

12 4. The Parties acknowledge that, in addition to certain specified
13 obligations, this Settlement establishes a framework for accomplishing the goals of
14 this Settlement, specifically the Restoration Goal and the Water Management Goal,
15 and that the accomplishment of those goals requires the performance of activities,
16 such as environmental review, design, and construction, the details of which will be
17 developed subsequently under the terms of this Settlement. The Parties further
18 acknowledge that the implementation of this Settlement will occur over many years
19 and agree to cooperate in good faith to achieve the goals of this Settlement. The
20 Secretary shall diligently pursue implementation of the Restoration Goal and the
21 Water Management Goal as set forth in this Settlement.

22 5. The Parties acknowledge that to achieve the Restoration Goal will
23 require a combination of channel and structural improvements along the San
24 Joaquin River below Friant Dam, and releases of additional water from Friant Dam
25 to the confluence of the Merced River for restoration purposes, and funding.
26 Similarly, to achieve the Water Management Goal will require the planning,
27 implementation, and funding of measures called for in this Settlement to reduce or
28 avoid the impacts to all of the Friant Division long-term contractors caused by the

1 Restoration Flows (including, for example, recirculation programs and expanded
2 groundwater banking).

3 **Participation Of The State of California**

4 6. The Parties agree that implementation of this Settlement will require
5 the participation of the State of California. The Parties agree that implementation
6 of this Settlement shall be coordinated to the greatest extent possible with State of
7 California restoration efforts for the San Joaquin River, to the extent consistent
8 with the terms of this Settlement. Concurrently with the execution of this
9 Settlement, the State of California (by and through the California Resources
10 Agency, the Department of Water Resources (the "DWR"), the Department of Fish
11 and Game (the "DFG") and the California Environmental Protection Agency) and the
12 Parties are executing a Memorandum Of Understanding regarding the State of
13 California's role in the implementation of this Settlement.

14 7. The Parties believe that this Settlement provides numerous important
15 benefits to the State of California, including third parties located in the San Joaquin
16 River Basin or who use the waters of the San Joaquin River or the Sacramento-San
17 Joaquin Delta. The Parties neither intend nor believe that the implementation of
18 this Settlement will have a material adverse effect on any third parties or other
19 streams or rivers tributary to the San Joaquin River.

20 **Implementation Of This Settlement—Legislation**

21 8. The Parties acknowledge that certain actions to be undertaken to
22 implement this Settlement will require additional authorizations or appropriations
23 by Congress, or both. The Plaintiffs and the Friant Parties agree jointly to request
24 that legislation in the form of Exhibit A be enacted into law. The Parties intend and
25 anticipate that such legislation will provide the federal legislative authorizations
26 necessary for the Secretary to carry out the federal obligations under this
27 Settlement. In the event that legislation substantially in the form of Exhibit A is
28 not enacted into law by December 31, 2006, this Settlement is voidable at the

1 election of any Party. Before any Party may exercise its right to void this Settlement
2 in accordance with the preceding sentence, it shall provide written notice of its
3 intent to do so to the other Parties and, following receipt of such notice, the Parties
4 shall meet and confer in good faith for a period of no less than 30 days. During
5 that time, the Parties shall explore the extent to which this Settlement might be
6 modified (in accordance with Paragraph 48) to further the goals of this Settlement
7 in light of Congressional action or inaction on Exhibit A.

8 **Implementation Of This Settlement—The Restoration Goal**

9 **Channel And Structural Improvements**

10 9. The Parties agree that the channel and structural improvements listed
11 in Paragraph 11 are necessary to fully achieve the Restoration Goal. The Secretary
12 shall promptly commence activities pursuant to applicable law and provisions of
13 this Settlement to implement the improvements listed in Paragraph 11, provided
14 that funds are appropriated by Congress or available from non-federal sources for
15 that purpose. The Secretary shall diligently pursue completion of the improve-
16 ments listed in Paragraph 11 in consultation with the Restoration Administrator,
17 whose duties are defined in Paragraph 17, and with other federal, State, and local
18 agencies.

19 10. In undertaking the implementation of these improvements, the
20 Secretary may enter into such appropriate agreements, memoranda of
21 understanding, contracts, cost-sharing agreements, or other relationships with
22 applicable owners of facilities or property, State or local agencies, or other persons
23 or entities as may promote the timely and cost-effective completion of the
24 improvements. The improvements set forth in Paragraph 11 are, to the extent
25 practical, to be implemented in a way that is compatible with Paragraph 15.

26 11. The following are the necessary improvements, which shall be
27 developed and implemented in accordance with all applicable federal and state laws
28 and regulations:

1 (a) Phase 1 Improvements. The Parties anticipate that the highest
2 priority improvements as described in Paragraphs 11(a)(1) through (10) can be
3 developed and implemented in accordance with the milestone dates in the timeline
4 set forth in Exhibit C. The Secretary, however, agrees that such highest priority
5 improvements shall be completed no later than December 31, 2013, subject to
6 Paragraphs 21(c), 24, and 36 of this Settlement. If one or more force majeure
7 events under Paragraph 24 prevent the Secretary from completing any of the
8 improvements called for in Paragraphs 11(a)(1) through (10) by the date stated
9 herein, the Secretary shall, in addition to complying with the provisions of
10 Paragraph 24, follow the requirements otherwise provided for in Paragraphs 13(i)
11 and 15(d) pending completion of such improvements.

12 (1) Creation of a bypass channel around Mendota Pool to
13 ensure conveyance of at least 4,500 cfs from Reach 2B downstream to Reach 3.
14 This improvement requires construction of a structure capable of directing flow
15 down the bypass and allowing the Secretary to make deliveries of San Joaquin
16 River water into Mendota Pool when necessary;

17 (2) Modifications in channel capacity (incorporating new
18 floodplain and related riparian habitat) to ensure conveyance of at least 4,500 cfs in
19 Reach 2B between the Chowchilla Bifurcation Structure and the new Mendota Pool
20 bypass channel;

21 (3) Modifications in San Joaquin River channel capacity to
22 the extent necessary to ensure conveyance of at least 475 cfs through Reach 4B;

23 (4) Modifications at the Reach 4B headgate on the
24 San Joaquin River channel to ensure fish passage and enable flow routing of
25 between 500 cfs and 4,500 cfs into Reach 4B, consistent with any determination
26 made in Paragraph 11(b)(1);

27 (5) Modifications to the Sand Slough Control Structure to
28 ensure fish passage;

1 (6) Screening the Arroyo Canal water diversion immediately
2 upstream of Sack Dam to prevent entrainment of anadromous fish;

3 (7) Modifications at Sack Dam adequate to ensure fish
4 passage;

5 (8) Modifications to structures in the Eastside and Mariposa
6 Bypass channels, to the extent needed to provide anadromous fish passage on an
7 interim basis until completion of the Phase 2 improvements;

8 (9) Modifications in the Eastside and Mariposa Bypass
9 channels to establish a suitable low-flow channel, if the Secretary in consultation
10 with the Restoration Administrator determines that such modifications are
11 necessary to support anadromous fish migration through these channels; and

12 (10) Modifications to enable the deployment of seasonal
13 barriers to prevent adult anadromous fish from entering false migration pathways
14 in the area of Salt and Mud Sloughs.

15 (b) Phase 2 Improvements. The Parties anticipate that the
16 improvements in this Paragraph 11(b) can be developed and implemented in
17 accordance with the milestone dates in the timeline set forth in Exhibit C. The
18 Secretary, however, agrees, subject to the conditions stated in Paragraphs 11(b)(1)
19 through (4), that such improvements shall be completed no later than December
20 31, 2016, subject to Paragraphs 21(c), 24, and 36 of this Settlement. While these
21 improvements are also high priorities, it is the intent of the Parties that they shall
22 be planned and implemented in a manner that does not delay completion of the
23 Phase 1 improvements. If one or more force majeure events under Paragraph 24,
24 or interference with the completion of the improvements in Paragraph 11(a), prevent
25 the Secretary from completing such improvements by December 31, 2016, the
26 Secretary shall follow the procedures set forth in Paragraph 24.

27 (1) Modifications in San Joaquin River channel capacity
28 (incorporating new floodplain and related riparian habitat) to ensure conveyance of

1 at least 4,500 cfs through Reach 4B, unless the Secretary, in consultation with the
2 Restoration Administrator and with the concurrence of the National Marine
3 Fisheries Service (the "NMFS") and the Fish and Wildlife Service (the "FWS"),
4 determines that such modifications would not substantially enhance achievement of
5 the Restoration Goal;

6 (2) Modifications to the Chowchilla Bifurcation Structure to
7 provide fish passage and prevent entrainment if the Secretary, in consultation with
8 the Restoration Administrator and with the concurrence of the NMFS and the FWS,
9 determines that such modifications are necessary to achieve the Restoration Goal;

10 (3) Filling and/or isolating the highest priority gravel pits in
11 Reach 1 (such "highest priority gravel pits" shall be determined by the Secretary, in
12 consultation with the Restoration Administrator, based on the relative potential for
13 reducing juvenile salmon mortality); and

14 (4) Modifications to the Sand Slough Control Structure to
15 enable effective routing and conveyance of Restoration Flows of up to 4,500 cfs into
16 Reach 4B, consistent with any determination made in Paragraph 11(b)(1).

17 12. The Parties acknowledge that there are likely additional channel or
18 structural improvements (including, for example, additional fish screening,
19 restoration of side channel habitat and augmentation of spawning gravel) that may
20 further enhance the success of achieving the Restoration Goal. The Restoration
21 Administrator shall identify and recommend to the Secretary such additional
22 improvements and potential measures.

23 **The Restoration Flows**

24 13. In addition to the channel and structural improvements identified in
25 Paragraph 11, releases of water from Friant Dam to the confluence of the Merced
26 River shall be made to achieve the Restoration Goal as follows:

27 (a) All such additional releases from Friant Dam shall be in
28 accordance with the hydrographs attached hereto collectively as Exhibit B (the

1 “Base Flows”), plus releases of up to an additional ten percent (10%) of the
2 applicable hydrograph flows (the “Buffer Flows”) may be made by the Secretary,
3 based upon the recommendation of the Restoration Administrator to the Secretary,
4 as provided in Paragraph 18 and Exhibit B. The Base Flows, the Buffer Flows and
5 any additional water acquired by the Secretary from willing sellers to meet the
6 Restoration Goal are collectively referred to as the “Restoration Flows.” Additional
7 water acquired by the Secretary may be carried over or stored provided that doing
8 so shall not increase the water delivery reductions to any Friant Division long-term
9 contractor beyond that caused by releases made in accordance with the
10 hydrographs (Exhibit B) and the Buffer Flows.

11 (b) The Restoration Flows identified in Exhibit B include releases
12 from Friant Dam for downstream riparian interests between Friant Dam and
13 Gravelly Ford and assume the current level of downstream diversions and seepage
14 losses downstream of Gravelly Ford.

15 (c) In the event that the level of diversions (surface or
16 underground) or seepage losses increase beyond those assumed in Exhibit B, the
17 Secretary shall, subject to Paragraphs 13(c)(1) and 13(c)(2) relating to unexpected
18 seepage losses, release water from Friant Dam in accordance with the guidelines
19 provided in Paragraph 13(j) such that the volume and timing of the Restoration
20 Flows are not otherwise impaired. With respect to seepage losses downstream of
21 Gravelly Ford that exceed the assumptions in Exhibit B (“Unexpected Seepage
22 Losses”), the Parties agree that any further releases or transfers within the
23 hydrograph required by this Paragraph 13(c) and implementation of the measures
24 set forth in Paragraphs 13(c)(1) and 13(c)(2) shall not increase the water delivery
25 reductions to any Friant Division long-term contractor beyond that caused by
26 releases made in accordance with the hydrographs (Exhibit B) and Buffer Flows.
27 The measures set forth in Paragraphs 13(c)(1) and 13(c)(2) shall be the extent of the
28 obligations of the Secretary to compensate for Unexpected Seepage Losses. The

1 Secretary shall follow the procedures set forth in Paragraphs 13(c)(1) and 13(c)(2) to
2 address Unexpected Seepage Losses:

3 (1) In preparation for the commencement of the Restoration
4 Flows, the Secretary initially shall acquire only from willing sellers not less than
5 40,000 acre feet of water or options on such quantity of water prior to the
6 commencement of full Restoration Flows as provided in Paragraph 13(i), which
7 amount the Secretary shall utilize for additional releases pursuant to this
8 Paragraph 13(c)(1), unless the Restoration Administrator recommends that a lesser
9 amount is required.

10 (2) The Secretary shall take the following steps, in the
11 following order, to address Unexpected Seepage Losses:

12 (A) First, use any available, unstorable water not
13 contracted for by Friant Division long-term contractors;

14 (B) Next, use water acquired from willing sellers,
15 including any such water that has been stored or carried over, until it has been
16 exhausted. This Paragraph 13(c)(2)(B) shall be implemented as follows:

17 (i) The Secretary shall first use water acquired
18 pursuant to Paragraph 13(c)(1) until such water is exhausted. Thereafter, as of
19 January 1st of each year, the Secretary shall have available at least 28,000 acre feet
20 of water acquired only from willing sellers, or options on such quantity of water
21 from willing sellers, which amount the Secretary shall utilize for additional releases
22 pursuant to this Paragraph 13(c)(2)(B)(i). However, the Restoration Administrator
23 may recommend that an additional amount, not to exceed 10,000 acre feet is
24 needed; and the Secretary shall acquire up to that amount recommended by the
25 Restoration Administrator only from willing sellers, or options on such quantity of
26 water from willing sellers;

27 (ii) Any water acquired from willing sellers
28 pursuant to this Paragraph 13(c)(2)(ii) that is not used in a given year shall be

1 stored, to the extent such storage is reasonably available, to assist in meeting the
2 Restoration Goal;

3 (iii) In the event the Secretary has acquired
4 water from willing sellers under this Settlement that the Restoration Administrator
5 recommends is no longer necessary to address Unexpected Seepage Losses, such
6 water shall be available to augment the Restoration Flows;

7 (iv) The Secretary shall provide notice to the
8 Plaintiffs and Friant Parties not later than December 1 of each year regarding the
9 status of acquisitions of water from willing sellers pursuant to the provisions of this
10 Paragraph 13(c);

11 (C) Next, if the Restoration Administrator
12 recommends it and the Secretary determines it to be practical, acquire additional
13 water only from willing sellers, in an amount not to exceed 22,000 acre feet;

14 (D) Next, in consultation with the Restoration
15 Administrator and NMFS and consistent with Exhibit B, transfer water from within
16 the applicable hydrograph for that year;

17 (E) Next, in consultation with the Restoration
18 Administrator, use any available Buffer Flows for that year.

19 (d) Notwithstanding Paragraphs 13(a), (b), and (c), the Parties
20 acknowledge that flood control is a primary authorized purpose of Friant Dam, that
21 flood flows may accomplish some or all of the Restoration Flow purposes to the
22 extent consistent with the hydrographs in Exhibit B and the guidelines developed
23 pursuant to Paragraph 13(j), and further acknowledge that there may be times
24 when the flows called for in the hydrographs in Exhibit B may be exceeded as a
25 result of operation of Friant Dam for flood control purposes. Nothing in this
26 Settlement shall be construed to limit, affect, or interfere with the Secretary's ability
27 to carry out such flood control operations.

28 (e) Notwithstanding Paragraphs 13(a), (b), and (c), the Secretary

1 may temporarily increase, reduce, or discontinue the release of water called for in
2 the hydrographs shown in Exhibit B for the purpose of investigating, inspecting,
3 maintaining, repairing, or replacing any of the facilities, or parts of facilities, of the
4 Friant Division of the Central Valley Project (the "CVP"), necessary for the release of
5 such Restoration Flows; however, except in cases of emergency, prior to taking any
6 such action, the Secretary shall consult with the Restoration Administrator
7 regarding the timing and implementation of any such action to avoid adverse effects
8 on fish to the extent possible. The Secretary shall use reasonable efforts to avoid
9 any such increase, reduction, or discontinuance of release. Upon resumption of
10 service after any such reduction or discontinuance, the Secretary, in consultation
11 with the Restoration Administrator, shall release, to the extent reasonably
12 practicable, the quantity of water which would have been released in the absence of
13 such discontinuance or reduction when doing so will not increase the water delivery
14 reductions to any Friant Division long-term contractors beyond what would have
15 been caused by releases made in accordance with the hydrographs (Exhibit B) and
16 Buffer Flows.

17 (f) The Parties agree to work together in identifying any increased
18 downstream surface or underground diversions and the causes of any seepage
19 losses above those assumed in Exhibit B and in identifying steps that may be taken
20 to prevent or redress such increased downstream surface or underground
21 diversions or seepage losses. Such steps may include, but are not limited to,
22 consideration and review of appropriate enforcement proceedings.

23 (g) The Restoration Flows will be measured at not less than the
24 following six locations between Friant Dam and the confluence of the Merced River,
25 and the measurements will be monitored to ensure compliance with the hydrograph
26 releases (Exhibit B) and any other applicable flow releases (*e.g.*, Buffer Flows): (i) at
27 or immediately below Friant Dam (designated as "Friant Release" on the applicable
28 hydrograph); (ii) Gravelly Ford (designated as "Reach 2" on the applicable

1 hydrograph); (iii) immediately below the Chowchilla Bifurcation Structure
2 (designated as "Reach 3" on the applicable hydrograph); (iv) below Sack Dam
3 (designated as "Reach 4" on the applicable hydrograph); (v) top of Reach 4B
4 (designated as "Reach 5" on the applicable hydrograph); and (vi) at the confluence
5 of the Merced River (designated as "Confluence" on the applicable hydrograph).

6 (h) Subject to existing downstream diversion rights, the Parties
7 intend that the Secretary, in cooperation with the Plaintiffs and Friant Parties,
8 shall, to the extent permitted by applicable law and to meet the Restoration Goal
9 and Water Management Goal, retain, acquire, or perfect all rights to manage and
10 control all Restoration Flows and all Interim Flows (as provided in Paragraph 15)
11 from Friant Dam to the Sacramento-San Joaquin Delta; provided, however, that
12 neither the Restoration Flows nor the Interim Flows shall be credited against the
13 Secretary's obligations under CVPIA § 3406(b)(2). In addition, to the extent
14 permitted by applicable law and with the cooperation of the other Parties hereto, the
15 Secretary agrees to undertake all reasonable measures to protect such rights to
16 manage and control Restoration Flows and Interim Flows, including requesting
17 necessary permit modifications and initiation of any appropriate enforcement
18 proceedings to prevent unlawful diversions of or interference with Restoration Flows
19 and Interim Flows.

20 (i) The Secretary shall commence the Restoration Flows at the
21 earliest possible date, consistent with the Restoration Goal, and the Restoration
22 Administrator shall recommend to the Secretary the date for commencement of the
23 Restoration Flows. In recommending the date for commencement of the
24 Restoration Flows, the Restoration Administrator shall consider the state of
25 completion of the measures and improvements identified in Paragraph 11(a);
26 provided, however, that the full Restoration Flows shall commence on a date certain
27 no later than January 1, 2014. If, for any reason, full Restoration Flows are not
28 released in any year beginning January 1, 2014, the Secretary shall release as

1 much of the Restoration Flows as possible, in consultation with the Restoration
2 Administrator, in light of then existing channel capacity and without delaying
3 completion of the Phase 1 improvements. In addition, the Secretary, in
4 consultation with the Restoration Administrator, shall use the amount of the
5 Restoration Flows not released in any such year by taking one or more of the
6 following steps that best achieve the Restoration Goal, as determined by the
7 Secretary, in such year or future years:

8 (1) First, if practical, enter into mutually acceptable
9 agreements with Friant Division long-term contractors to (A) bank, store, or
10 exchange such water for future use to supplement future Restoration Flows, or (B)
11 transfer or sell such water and deposit the proceeds of such transfer or sale into
12 the Restoration Fund created by this Settlement; or

13 (2) Enter into mutually acceptable agreements with third
14 parties to (A) bank, store, or exchange such water for future use to supplement
15 future Restoration Flows, or (B) transfer or sell such water and deposit the proceeds
16 of such transfer or sale into the Restoration Fund created by this Settlement; or

17 (3) Release the water from Friant Dam during times of the
18 year other than those specified in the applicable hydrograph as recommended by
19 the Restoration Administrator, subject to flood control, safety of dams and
20 operations and maintenance requirements.

21 The Secretary shall not undertake any action pursuant to
22 Paragraphs 13(i)(1) through 13(i)(3) that increases the water delivery reductions to
23 any Friant Division long-term contractor beyond what would have been caused by
24 releases in accordance with the hydrographs (Exhibit B).

25 (j) Prior to the commencement of the Restoration Flows as
26 provided in this Paragraph 13, the Secretary, in consultation with the Plaintiffs and
27 Friant Parties, shall develop guidelines, which shall include, but not be limited to:
28 (i) procedures for determining water-year types and the timing of the Restoration

1 Flows consistent with the hydrograph releases (Exhibit B); (ii) procedures for the
2 measurement, monitoring and reporting of the daily releases of the Restoration
3 Flows and the rate of flow at the locations listed in Paragraph 13(g) to assess
4 compliance with the hydrographs (Exhibit B) and any other applicable releases (*e.g.*,
5 Buffer Flows); (iii) procedures for determining and accounting for reductions in
6 water deliveries to Friant Division long-term contractors caused by the Interim
7 Flows and Restoration Flows; (iv) developing a methodology to determine whether
8 seepage losses and/or downstream surface or underground diversions increase
9 beyond current levels assumed in Exhibit B; (v) procedures for making real-time
10 changes to the actual releases from Friant Dam necessitated by unforeseen or
11 extraordinary circumstances; and (vi) procedures for determining the extent to
12 which flood releases meet the Restoration Flow hydrograph releases made in
13 accordance with Exhibit B. Such guidelines shall also establish the procedures to
14 be followed to make amendments or changes to the guidelines.

15 **Reintroduction Of Salmonids**

16 14. The Parties acknowledge that spring run and fall run Chinook salmon
17 have been largely extirpated from the San Joaquin River upstream of the
18 confluence with the Merced River. Accordingly, the Restoration Goal of this
19 Settlement shall include the reintroduction of spring run and fall run Chinook
20 salmon to the San Joaquin River between Friant Dam and the confluence with the
21 Merced River by December 31, 2012, consistent with all applicable law. The Parties
22 agree that the following steps shall be taken in furtherance of the goal of
23 reintroducing salmonids to the San Joaquin River:

24 (a) The Secretary, through the FWS, and in consultation with the
25 Secretary of Commerce, the DFG, and the Restoration Administrator, shall ensure
26 that spring and fall run Chinook salmon are reintroduced at the earliest practical
27 date after commencement of sufficient flows and the issuance of all necessary
28 permits. In the event that competition, inadequate spatial or temporal segregation

1 or other factors determined to be beyond the control of the Parties make achieving
2 the Restoration Goal for both spring run and fall run Chinook salmon infeasible,
3 then priority shall be given to restoring self-sustaining populations of wild spring
4 run Chinook salmon. The FWS shall submit a completed permit application to the
5 NMFS for the reintroduction of spring run Chinook salmon as soon as practical but
6 no later than September 30, 2010. The NMFS shall issue a decision on the permit
7 application for the reintroduction of spring run Chinook salmon as expeditiously as
8 possible but no later than April 30, 2012. The Parties anticipate that NMFS will
9 provide exemption for incidental take as appropriate as part of a biological opinion
10 or opinions addressing implementation of the Settlement. The Parties anticipate
11 that NMFS will also address incidental take issues as appropriate through the other
12 authorities available under the ESA, including Section 4(d) rules and the public
13 processes required for Section 10 permits.

14 (b) As provided in Exhibit D, the Restoration Administrator shall
15 provide the Secretary with recommendations designed to reintroduce spring run
16 and fall run Chinook salmon consistent with this Settlement. The Secretary shall
17 include these recommendations in planning and decision-making to achieve the
18 Restoration Goal. In the event the Secretary declines to follow the
19 recommendations of the Restoration Administrator as provided in this Paragraph
20 14(b), the Secretary shall provide the Restoration Administrator with an explanation
21 in writing.

22 **Interim Research Program And Releases**

23 15. Prior to the commencement of full Restoration Flows pursuant to this
24 Settlement, the Parties agree that the Secretary shall begin a program of interim
25 flows, which will include releases of additional water from Friant Dam commencing
26 no later than October 1, 2009, and continuing until full Restoration Flows begin.
27 Flows released according to the provisions of this Paragraph 15 shall be referred to
28 as "Interim Flows." The Restoration Administrator, in consultation with the

1 Technical Advisory Committee, the Secretary, and other appropriate federal, State
2 and local agencies, shall develop and recommend to the Secretary implementation
3 of a program of Interim Flows in order to collect relevant data concerning flows,
4 temperatures, fish needs, seepage losses, recirculation, recapture and reuse. Such
5 program shall include releasing the flows identified in Exhibit B for the appropriate
6 year type to the extent that such flows would not impede or delay completion of the
7 measures specified in Paragraph 11(a), or exceed existing downstream channel
8 capacities. To the extent that any gauging locations identified in Paragraph 13(g)
9 are not available to measure flows due to in-channel construction related to
10 Paragraph 11 improvements and until such gauging locations are installed, Interim
11 Flows will be measured by establishing any necessary temporary gauging locations
12 or by manual flow measurements for the purposes of collection of relevant data.
13 The Parties anticipate that a program of Interim Flows would include:

14 (a) In 2009, release flows from October 1 through November 20 of a
15 timing and magnitude as defined in the appropriate year type hydrograph specified
16 in Exhibit B, and without exceeding the then existing channel capacities;

17 (b) In 2010, release flows from February 1 through December 1 of a
18 timing and magnitude as defined by Exhibit B for the appropriate year type, and
19 without exceeding the then existing channel capacities;

20 (c) In 2011 and 2012, assuming in-channel construction begins
21 May 1, release flows from February 1 through May 1 of a timing and magnitude as
22 defined by Exhibit B for the appropriate year type, and without exceeding the then
23 existing channel capacities. From May 1 through September 1, release flows to wet
24 the channel down to the Chowchilla Bifurcation Structure to collect information
25 regarding infiltration losses; and

26 (d) In subsequent years, if the highest priority channel
27 improvements identified in Paragraph 11(a) are not completed, release flows for the
28 entire year of a timing and magnitude as defined by Exhibit B for the appropriate

1 year type, without exceeding the then existing channel capacities or interfering with
2 any remaining in-channel construction work on the highest priority Paragraph 11
3 improvements.

4 (e) For purposes of implementing the Interim Flows specified in
5 15(a) through 15(d), the Secretary, in consultation with the Restoration
6 Administrator, shall determine the then existing channel capacity and impact of
7 Interim Flows on channel construction work.

8 **Implementation Of This Settlement—The Water Management Goal**

9 16. In order to achieve the Water Management Goal, immediately upon the
10 Effective Date of this Settlement, the Secretary, in consultation with the Plaintiffs
11 and Friant Parties, shall commence activities pursuant to applicable law and
12 provisions of this Settlement to develop and implement the following:

13 (a) A plan for recirculation, recapture, reuse, exchange or transfer
14 of the Interim Flows and Restoration Flows for the purpose of reducing or avoiding
15 impacts to water deliveries to all of the Friant Division long-term contractors caused
16 by the Interim Flows and Restoration Flows. The plan shall include provisions for
17 funding necessary measures to implement the plan. The plan shall:

18 (1) ensure that any recirculation, recapture, reuse, exchange
19 or transfer of the Interim Flows and Restoration Flows shall have no adverse impact
20 on the Restoration Goal, downstream water quality or fisheries;

21 (2) be developed and implemented in accordance with all
22 applicable laws, regulations and standards. The Parties agree that this Paragraph
23 16 shall not be relied upon in connection with any request or proceeding relating to
24 any increase in Delta pumping rates or capacity beyond current criteria existing as
25 of the Effective Date of this Settlement;

26 (3) be developed and implemented in a manner that does not
27 adversely impact the Secretary's ability to meet contractual obligations existing as
28 of the Effective Date of this Settlement; and

1 (4) the plan shall not be inconsistent with agreements
2 between the United States Bureau of Reclamation and the California Department of
3 Water Resources existing on the Effective Date of this Settlement, with regard to
4 operation of the CVP and State Water Project.

5 (b) A Recovered Water Account (the "Account") and program to
6 make water available to all of the Friant Division long-term contractors who provide
7 water to meet Interim Flows or Restoration Flows for the purpose of reducing or
8 avoiding the impact of the Interim Flows and Restoration Flows on such
9 contractors. In implementing this Account, the Secretary shall:

10 (1) Monitor and record reductions in water deliveries to
11 Friant Division long-term contractors occurring as a direct result of the Interim
12 Flows and Restoration Flows that have not been replaced by recirculation,
13 recapture, reuse, exchange or transfer of Interim Flows and Restoration Flows or
14 replaced or offset by other water programs or projects undertaken or funded by the
15 Secretary or other Federal Agency or agency of the State of California specifically to
16 mitigate the water delivery impacts caused by the Interim Flows and Restoration
17 Flows ("Reduction in Water Deliveries"). For purposes of this Account, water
18 voluntarily sold to the Secretary either to mitigate Unexpected Seepage Losses or to
19 augment Base Flows by any Friant Division long-term contractor shall not be
20 considered a Reduction in Water Delivery caused by this Settlement. The Account
21 shall establish a baseline condition as of the Effective Date of this Settlement with
22 respect to water deliveries for the purpose of determining such reductions. The
23 balance of any Friant Division long-term contractor in the Account shall be
24 annually adjusted in accordance with the provisions of this Paragraph 16(b)(1) and
25 of Paragraph 16(b)(2). Each Friant Division long-term contractor's account shall
26 accrue one acre foot of water for each acre foot of Reduction in Water Deliveries. In
27 those years when, pursuant to Paragraphs 13(a) and 18, the Secretary, in
28 consultation with the Restoration Administrator, determines to increase releases to

1 include some or all of the Buffer Flows, Friant Division long-term contractors shall
2 accrue into their account one and one quarter acre foot of water for each acre foot
3 of Reduction in Water Deliveries;

4 (2) Make water available as herein provided to all of the
5 Friant Division long-term contractors who experience a Reduction in Water
6 Deliveries as a direct result of the release of Interim Flows and Restoration Flows as
7 reflected in their Account maintained pursuant to Paragraph 16(b)(1). Water shall
8 be made available only in wet hydrologic conditions when water is not needed for
9 the Interim Flows and Restoration Flows as provided for in this Settlement, to meet
10 Friant Division long-term contract obligations, or to meet other contractual
11 obligations of the Secretary existing on the Effective Date of this Settlement, as
12 determined by the Secretary;

13 (3) Make water available to the Friant Division long-term
14 contractors pursuant to Paragraph 16(b)(2) at the total cost of \$10.00 per acre foot,
15 which amounts shall be deposited into the Restoration Fund to be established by
16 the legislation authorizing implementation of this Settlement;

17 (4) Ensure that recovery of the costs of any new CVP
18 facilities for storage or conveyance of CVP water is not determined according to the
19 provisions of this Paragraph 16; and

20 (5) Implement the Account and program developed pursuant
21 to this Paragraph in accordance with all applicable laws, regulations and standards.

22 **Implementation Of This Settlement**

23 **The Restoration Administrator And Technical Advisory Committee**

24 17. The Parties agree that a Restoration Administrator shall be selected to
25 assist the Parties in the implementation of this Settlement. The Restoration
26 Administrator shall have only those powers and duties as are specified in this
27 Settlement, including Exhibits hereto. The Plaintiffs and the Friant Parties agree to
28 the establishment of a Technical Advisory Committee to assist and advise the

1 Restoration Administrator regarding the implementation of this Settlement. In
2 carrying out all of the duties specified in this Settlement and Exhibit D, the
3 Restoration Administrator shall consult with the Technical Advisory Committee in a
4 manner consistent with the nature and time of the specific task.

5 18. The selection and duties of the Restoration Administrator and the
6 Technical Advisory Committee are set forth in this Settlement and Exhibit D.

7 Consistent with Exhibit B, the Restoration Administrator shall make
8 recommendations to the Secretary concerning the manner in which the
9 hydrographs shall be implemented and when the Buffer Flows are needed to help in
10 meeting the Restoration Goal. In making such recommendations, the Restoration
11 Administrator shall consult with the Technical Advisory Committee, provided that
12 members of the Technical Advisory Committee are timely available for such
13 consultation. The Secretary shall consider and implement these recommendations
14 to the extent consistent with applicable law, operational criteria (including flood
15 control, safety of dams, and operations and maintenance), and the terms of this
16 Settlement. Except as specifically provided in Exhibit B, the Restoration
17 Administrator shall not recommend changes in specific release schedules within an
18 applicable hydrograph that change the total amount of water otherwise required to
19 be released pursuant to the applicable hydrograph (Exhibit B) or which increase the
20 water delivery reductions to any Friant Division long-term contractors.

21 19. (a) In implementing this Settlement, the Secretary shall develop, as
22 appropriate, procedures for coordinating technical assistance, regulatory
23 compliance, and sharing of information with other Federal agencies and State
24 agencies with resource management or regulatory responsibilities related to the
25 Restoration Goal, as well as with the Restoration Administrator and Technical
26 Advisory Committee. The Secretary, or the Secretary of Commerce as appropriate,
27 shall designate staff from the Bureau of Reclamation, the FWS, and the NMFS to act
28 as liaisons to the Technical Advisory Committee. The Secretary, or the Secretary of

1 Commerce as appropriate, shall also designate staff from the aforementioned
2 agencies and other agencies as appropriate, and may create agency teams,
3 committees or working groups to provide assistance in the implementation of the
4 Restoration and Water Management Goals, including assistance to the Restoration
5 Administrator and the Technical Advisory Committee. The Secretary may also enter
6 into memoranda of understanding or agreements, as appropriate, to facilitate
7 implementation of this Settlement.

8 (b) The Secretary, with cooperation of the other Parties, shall
9 provide appropriate opportunities for input from third parties who have an interest
10 in measures to be undertaken pursuant to this Settlement, and for coordination
11 with third parties who own or control facilities or property affected by
12 implementation of such measures. Further, the Secretary, with cooperation of the
13 other Parties, shall provide appropriate opportunities for public participation
14 regarding implementation of this Settlement.

15 **Changes To The Restoration Flows**

16 20. Prior to December 31, 2025, the Restoration Flows shall not be
17 changed from those provided under this Settlement unless augmented by water
18 acquired by the Secretary from willing sellers through voluntary acquisitions, or a
19 different level of Restoration Flows is agreed to in writing signed on behalf of all the
20 Parties hereto. After December 31, 2025, the Restoration Flows provided under
21 this Settlement shall not be changed except by a written agreement signed on
22 behalf of all the Parties, acquisition of water from willing sellers, or a final
23 recommendation by the SWRCB and a final Order of this Court.

24 (a) After December 31, 2025, and prior to July 1, 2026, any Party
25 may file a motion in this action in the United States District Court for the Eastern
26 District of California (Sacramento Division), to request an increase, decrease or
27 material change in the quantity and/or timing of the Restoration Flows. If after
28 July 1, 2026 any Party seeks such relief, it shall file a new action seeking relief in

1 the United States District Court for the Eastern District of California (Sacramento
2 Division). Whether by motion or a new action, the Party seeking such relief shall
3 request the Court to order a reference to the SWRCB to make any necessary
4 findings or determinations including, but not limited to all findings and
5 determinations specified in Paragraph 20(d), relevant to the request for a change in
6 the Restoration Flows.

7 (b) The proceeding before the SWRCB shall be governed by the
8 applicable provisions of California law governing quasijudicial proceedings. The
9 Parties expect that the costs of the proceeding before the SWRCB shall be absorbed
10 by the water rights fees paid by Friant Division long-term water contractors to the
11 SWRCB.

12 (c) Review of any recommendation by the SWRCB concerning a
13 change in the Restoration Flows shall be governed by the applicable rules and
14 procedures of this Court.

15 (d) The evaluation of a requested change in the Restoration Flows
16 shall be made in light of all of the following factors:

17 (1) The extent of implementation of this Settlement, and the
18 extent of success of the Restoration Flows and the other non-flow restoration
19 measures taken pursuant to this Settlement in achieving the Restoration Goal. For
20 purposes of such evaluation, in addition to any other applicable legal requirements,
21 the following criteria shall be considered: (A) the extent of progress in the
22 achievement of the Restoration Goal, and whether additional flows will assist in
23 achieving the Restoration Goal or maintaining fish in "good condition"; (B) beginning
24 7 years after the reintroduction of spring run chinook salmon to the San Joaquin
25 River, whether the annual escapement of wild spring run adult salmon has dropped
26 below 500 in any year; and (C) the likely effect of any requested change in the
27 Restoration Flows on the achievement of the Restoration Goal:
28

1 (2) The extent of success in meeting the Water Management
2 Goal:

3 (3) The reasonableness of the requested action in light of the
4 provisions of Article 10, Section 2, of the California Constitution:

5 (4) The effectiveness of the restoration measures provided
6 for in this Settlement in achieving the Restoration Goal, the progress of the channel
7 and structural improvements identified in Paragraph 11 (or other improvements
8 that may be performed), the progress of the implementation of a plan for
9 recirculation, recapture, reuse, exchange or transfer of the Restoration Flows for the
10 purpose of reducing or avoiding impacts to the Friant Division long-term
11 contractors caused by the Restoration Flows, the effect of any unforeseen obstacles
12 to achievement of the Restoration Goal, and the likely effectiveness of any proposed
13 change in the Restoration Flows in achieving the Restoration Goal:

14 (5) The effects, including benefits and impacts, of the
15 Restoration Flows on downstream environmental conditions and the likely effect on
16 such downstream environmental conditions of any change to the Restoration Flows:
17 and

18 (6) The likely economic effects, including benefits and
19 impacts, of the Restoration Flows and any requested change in the Restoration
20 Flows, including direct impacts on lands currently served with San Joaquin River
21 water, indirect third party impacts, changes in costs of water supplies, potential
22 cropping shifts, benefits to downstream farmers and communities, and improved
23 water quality benefits for all persons and entities using or receiving benefits from
24 the San Joaquin River system.

25 **The Funding Plan**

26 21. The implementation of this Settlement shall be funded as follows:

27 (a) Federal Funding Contributions. Pursuant to CVPIA § 3406(c), all
28 entities who receive water from the Friant Division of the CVP are currently

1 assessed a surcharge of \$7.00 per acre-foot for all CVP water delivered in lieu of
2 providing water to implement the CVPIA, in addition to all other applicable charges.
3 Additionally, pursuant to CVPIA § 3407(d)(2)(a), all entities who receive water from
4 the Friant Division and Hidden and Buchanan Units of the CVP are currently
5 assessed a per acre foot restoration charge for all CVP water delivered to them for
6 deposit in the CVPIA Restoration Fund for the purpose of implementing the CVPIA.

7 (1) At the beginning of the fiscal year following enactment of
8 legislation substantially in the form of Exhibit A, the Secretary shall dedicate all
9 such surcharge payments made by such entities pursuant to CVPIA § 3406(c)(1),
10 either directly or as a revenue stream to support a bond issue, federally guaranteed
11 loan or other appropriate financing instrument, to be issued or entered into by an
12 appropriate public agency or subdivision of the State of California, and shall also
13 allocate annually up to two million dollars (\$2,000,000) (October 2006 price levels)
14 of the restoration charges paid by such entities pursuant to CVPIA §3407(d)(2)(a) for
15 the purpose of implementing this Settlement.

16 (2) From the fiscal year following enactment of legislation
17 substantially in the form of Exhibit A, and continuing for nine (9) fiscal years
18 thereafter, the Secretary shall dedicate the capital component of payments made by
19 the Friant Division long-term contractors pursuant to long-term water service
20 contracts, if not otherwise needed to cover CVP operation and maintenance costs,
21 either directly or as a revenue stream to support a bond issue, federally guaranteed
22 loan or other appropriate financing instrument, to be issued or entered into by an
23 appropriate public agency or subdivision of the State of California for the purpose of
24 implementing this Settlement. It is the intent of the Parties that the capital
25 repayment obligations of such contractors under such contracts shall be credited by
26 the amount paid into the Fund authorized by the legislation (Exhibit A).

27 (3) To the extent the Secretary determines to utilize some of
28 the funds identified in Paragraphs 21(a)(1) and 21(a)(2) as a revenue stream to

1 support a bond issue, federally guaranteed loan or other appropriate financing
2 instrument, to be issued or entered into by an appropriate public agency or
3 subdivision of the State of California for the purpose of implementing this
4 Settlement, the Secretary may enter into specific agreements with such appropriate
5 public agency or subdivision of the State of California that sets forth the terms and
6 conditions of such bond issue, federally guaranteed loan or other appropriate
7 financing instrument. The Secretary may also utilize a portion of the funds
8 collected pursuant to Paragraphs 21(a)(1) and 21(a)(2) to create a sinking or
9 contingency fund that may be necessary to facilitate a bond issue, federally
10 guaranteed loan or other appropriate financing instrument.

11 (4) The Secretary shall expend the funds identified in
12 Paragraphs 21(a)(1) and 21(a)(2) for the purpose of implementing this Settlement,
13 together with any other federal funds appropriated for such purpose, and together
14 with any non-federal funds received pursuant to cost-sharing agreements with the
15 State of California and any other cost-sharing agreements entered into by the
16 Secretary for this purpose. If authorized by Congress, the Secretary may carry over
17 any funds received during a federal fiscal year, and not needed in that federal fiscal
18 year for activities provided under this Settlement, to a subsequent federal fiscal
19 year to implement activities provided under this Settlement.

20 (5) The Parties shall cooperate in connection with the
21 preparation and issuance of a revenue bond, federally guaranteed loan, or other
22 appropriate financing instrument.

23 (b) Limitation on Financial Contribution of Certain Contracting
24 Entities. Payments made by long-term contractors who receive water from the
25 Friant Division and Hidden and Buchanan Units of the CVP as provided in
26 Paragraph 21(a) and payments made pursuant to Paragraph 16(b)(3) of this
27 Settlement shall be the limit of such entities' direct financial contribution to this
28 Settlement; *provided, however*, that the Friant Division long-term contractors shall

1 continue to pay no less than their current per acre foot surcharge assessed
2 pursuant to CVPIA § 3406(c)(1) for the duration of the restoration programs
3 provided under this Settlement, and *further provided* that the Friant Division and
4 Hidden and Buchanan Units long-term contractors shall continue to pay no less
5 than their current per acre foot restoration charges pursuant to CVPIA
6 § 3407(d)(2)(a). Notwithstanding the preceding sentence, the Parties understand
7 and agree that the implementation of this Settlement may lead to reduced water
8 deliveries to Friant Division long-term contractors resulting in increased water rates
9 for water delivered to such entities pursuant to their existing water service
10 contracts, and this Settlement shall have no effect on the determination of such
11 water rates. The Parties further agree that this limitation on financial responsibility
12 for the Friant Division and Hidden and Buchanan Units long-term contractors does
13 not extend to recovery of costs for any new water supply benefit beyond those
14 provided pursuant to the water management measures provided in Paragraph 16.

15 (c) Additional Federal Appropriations. The dedication of funds as
16 provided in Paragraph 21(a) shall not preclude the Secretary from attempting to
17 seek to secure the appropriations of additional funds by Congress for the
18 implementation of this Settlement. The Secretary anticipates seeking such
19 appropriations through the appropriate administrative process; *provided however*,
20 that the amount requested in any year shall not be subject to Paragraphs 25
21 through 27 of this Settlement or otherwise subject to judicial enforcement.

22 (d) State Contributions. The Secretary shall negotiate one or more
23 agreements with the State of California, on terms and conditions mutually agreeable
24 to the Secretary and the State, by which the State shall participate in the
25 implementation of this Settlement through funding and other means.

26 **Contract Amendments**

- 27 22. The Parties agree as follows:
28 (a) Subject to Paragraph 32, the Parties agree that as part of the

1 resolution of Plaintiffs' contract-related claims for relief, all existing long-term water
2 service contracts in the Friant Division and Hidden and Buchanan Units are valid
3 and shall continue to be in effect under the terms and conditions of such contracts,
4 as amended by this Settlement. The Parties further agree that, by entering into this
5 Settlement, Plaintiffs do not waive any right to challenge any contract not identified
6 in this Paragraph 22(a). In the event the Judgment entered pursuant to this
7 Settlement is vacated, the following amendments in Paragraph 22(b) shall be void
8 *ab initio*, and Article 14(b) of the existing contracts shall be automatically
9 reinstated.

10 (b) To implement this Settlement, all existing long-term water
11 service contracts in the Friant Division and the Hidden and Buchanan Units shall
12 be amended for the limited purpose of adding the language provided in Paragraphs
13 22(b)(1) through 22(b)(4). The Secretary shall ensure that all such contract
14 amendments for the Friant Division and the Hidden and Buchanan Units have been
15 executed no later than 90 days after the Effective Date of this Settlement,

16 (1) Article 3(a) shall be amended to provide after the words
17 "consistent with all applicable State water rights, permits, and licenses, Federal
18 law" the phrase ", and the Stipulation of Settlement dated September 13, 2006, the
19 Order Approving Stipulation of Settlement, and the Judgment and further orders
20 issued by the Court pursuant to terms and conditions of the Settlement in *Natural*
21 *Resources Defense Council, et al. v. Rodgers, et al.*, No. CIV-S-88-1658 LKK/GGH."

22 (2) Article 11(a) shall be amended to add after the words
23 "Federal law" the phrase ", and the Stipulation of Settlement dated September 13,
24 2006, the Order Approving Stipulation of Settlement, the Judgment and further
25 orders issued by the Court pursuant to terms and conditions of the Settlement in
26 *Natural Resources Defense Council, et al. v. Rodgers, et al.*, No. CIV-S-88-1658
27 LKK/GGH."

28 (3) Article 12(b) shall be amended to provide after the words

1 “legal obligation” the phrase “, including but not limited to obligations pursuant to
2 the Stipulation of Settlement dated September 13, 2006, the Order Approving
3 Stipulation of Settlement, the Judgment and further orders issued by the Court
4 pursuant to terms and conditions of the Settlement in *Natural Resources Defense*
5 *Council, et al. v. Rodgers, et al.*, No. CIV-S-88-1658 LKK/GGH.”

6 (4) Article 14(b) shall be amended to provide: "The terms of
7 this Contract are subject to the Stipulation of Settlement dated September 13,
8 2006, the Order Approving Stipulation Of Settlement, the Judgment and further
9 orders issued by the Court pursuant to terms and conditions of the Settlement in
10 *Natural Resources Defense Council, et al. v. Rodgers, et al.*, No. CIV-S-88-1658-
11 LKK/GGH. Nothing in this Contract shall be interpreted to limit or interfere with
12 the full implementation of this Settlement, Order, the Judgment and further orders
13 issued by the Court pursuant to terms and conditions of the Settlement.”

14 **Conditions Precedent and Force Majeure**

15 23. Conditions Precedent. The Secretary’s obligations to implement the
16 improvements specified under Paragraph 11 are subject to the condition precedent
17 that the legislation substantially in the form of Exhibit A shall, as provided in
18 Paragraph 8, be enacted into law. To the extent this condition precedent is not
19 satisfied, the Secretary shall be relieved of the affected obligations, and no breach of
20 this Agreement shall result, and no liability shall accrue to the United States. Prior
21 to the enactment of the legislation (Exhibit A), the Secretary may exercise any
22 existing authority to initiate the planning and design of the improvements specified
23 under Paragraph 11, subject to the availability of appropriations. Except as
24 expressly provided in this Paragraph 23, there are no conditions precedent, either
25 express or implied.

26 24. Force Majeure. The Parties agree:

27 (a) A “force majeure event” means an event beyond the reasonable
28 control of the Secretary that prevents the Secretary from fulfilling any obligation

1 required by this Settlement despite the exercise of due diligence. Such events may
2 include natural disasters as well as all unavoidable legal impediments or
3 prohibitions. In the case of a force majeure event, the Secretary shall be relieved of
4 those specific obligations directly precluded by the force majeure event, as well as
5 those other obligations whose performance is precluded by the inability to perform,
6 or delay in performing, the directly precluded obligations, and only for the duration
7 of such force majeure event, as provided herein. The term "due diligence" includes,
8 to the extent reasonably possible, taking steps to prevent or minimize the force
9 majeure event's interference with the Secretary's performance of any affected
10 obligations under this Settlement.

11 (b) In the event of a force majeure event:

12 (1) The Secretary shall notify the other Parties orally, within
13 five days of the onset of the claimed force majeure event, of the occurrence, nature
14 and expected duration of such event to the extent then known by the Secretary.

15 That oral notification shall be followed by written notification to be sent within ten
16 days of the force majeure event providing the aforementioned information as well as
17 a description, to the extent then known by the Secretary, of the steps taken or
18 proposed to be taken to prevent or minimize the force majeure event's interference
19 with the Secretary's performance of any affected obligations under this Settlement;

20 (2) The Secretary shall provide periodic written notification
21 to the other Parties of the Secretary's efforts to address and resolve a force majeure
22 event; and

23 (3) If any Party disputes the Secretary's claim of a force
24 majeure event, or the adequacy of the Secretary's efforts to address and resolve
25 such event, such Party shall proceed in the manner specified in Paragraphs 25, 26,
26 and 27.

27 **Resolution Of Disputes Under This Stipulation Of Settlement**

28 25. This Court shall retain jurisdiction over this Settlement for the

1 purpose of judicial resolution through the procedures provided under Paragraph 27
2 of disputes that may arise among the Parties to this Settlement concerning the
3 interpretation or implementation of this Settlement. This Court's continuing
4 jurisdiction shall continue until the later of (i) July 1, 2026, or (ii) a motion is
5 brought pursuant to Paragraph 20, and the matter is finally resolved as provided in
6 that Paragraph.

7 26. Prior to seeking relief from this Court to resolve a dispute under this
8 Settlement, the Parties shall first meet and confer in good faith to informally resolve
9 such dispute, with the proviso that issues concerning the exercise of condemnation
10 authority are not subject to the provisions of Paragraphs 26 and 27 or otherwise
11 subject to judicial enforcement under this Settlement. In the event that such
12 informal efforts fail, the Parties agree to follow the procedure for a formal resolution
13 of all such disputes as stated below:

14 (a) The complaining Party shall serve on the other Parties a written
15 Statement of Position setting forth that Party's position, and including such data,
16 analysis, or opinion as that Party reasonably believes is necessary to prevail as to
17 the matter in dispute;

18 (b) Within twenty (20) days of receipt of the Statement of Position,
19 any other Party may serve its written Statement of Position with respect to such
20 dispute;

21 (c) The Parties shall thereafter meet and confer in an effort to
22 resolve the dispute. If the dispute remains unresolved, the Parties by mutual
23 consent may, but are not required to, select a third party neutral to assist the
24 Parties in resolving the dispute. In such event, the Parties to the dispute shall
25 share the reasonable costs of the third party neutral on a *pro-rata* basis. Any
26 proceedings before the third party neutral shall be commenced as expeditiously as
27 possible and shall not involve taking discovery. The third party neutral shall not be
28 required to issue any decision or opinion, and any Party to the particular dispute

1 may in good faith elect to terminate such proceedings and proceed to invoke the
2 jurisdiction of this Court as provided in Paragraph 27 of this Settlement; and

3 (d) Except for the purpose of demonstrating compliance or
4 noncompliance with the informal and formal dispute resolution provisions of this
5 Paragraph 26, the informal and formal dispute resolution proceedings provided for
6 in this Paragraph 26 shall be and remain confidential.

7 27. In the event the Parties are unable to resolve a dispute arising under
8 this Settlement by means of the informal or formal procedures provided in
9 Paragraph 26, any Party may thereafter invoke, as provided in this Paragraph 27,
10 the jurisdiction of this Court to resolve such dispute, in accordance with the
11 procedures set forth below, with the proviso that issues concerning the exercise of
12 condemnation authority are not subject to the provisions of Paragraphs 26 and 27
13 or otherwise subject to judicial enforcement under this Settlement.

14 (a) The complaining party shall notice a motion, in accordance
15 with the Local Rules of this Court, requesting judicial resolution of the dispute.
16 The parties may, by stipulation approved by the Court, alter the time table for
17 briefing the motion; otherwise, briefing shall proceed as set forth in the Local Rules.

18 (b) A Party may conduct discovery as to the matter in dispute only
19 after approval by the Court upon a showing of good cause that the discovery is
20 necessary.

21 (c) In resolving the dispute, the Court shall review the Parties'
22 respective positions and supporting data, analyses, and opinions, together with
23 such other information as the Parties may seek to submit. The standard of review
24 to be applied by the Court is whether the position of the Party charged with
25 non-performance was arbitrary or capricious or not in good faith.

26 (d) In exercising the retained jurisdiction to resolve disputes
27 brought before the Court by the Parties as provided under this Paragraph 27, the
28 Court shall award only such relief as is provided in 5 U.S.C. § 706, and only after

1 briefing of the matter in dispute pursuant to the provisions of this Paragraph 27.
2 In no case shall a Party be deemed in contempt or otherwise subject to sanctions
3 for nonperformance until after issuance of an order of Court following briefing of
4 the matter in dispute pursuant to the provisions of this Paragraph 27 and after a
5 reasonable time is provided for compliance with such order.

6 (e) The Party prevailing in a matter disputed pursuant to this
7 Paragraph 27 may seek to recover its reasonable attorneys' fees and costs incurred
8 in bringing a successful claim of nonperformance, provided that such fees and costs
9 may be recovered only to the extent otherwise provided by law.

10 **Additional Provisions**

11 28. In implementing this Settlement, the Secretary shall comply with all
12 applicable federal and state laws, rules and regulations, including the NEPA and
13 the ESA, as necessary. The Secretary shall initiate and expeditiously complete
14 applicable environmental documentation and consultations as may be necessary to
15 effectuate the purposes of this Settlement.

16 29. All agreements with third parties to implement material terms of this
17 Settlement shall be consistent with this Settlement. The Parties shall make all such
18 agreements available to the other Parties within a reasonable time of execution and
19 upon request, subject to exemptions under the Freedom of Information Act and the
20 California Public Records Act, as applicable. The Parties will develop procedures for
21 providing notice to one another of such agreements.

22 30. In the event of any action by third parties to challenge the terms and
23 conditions of this Settlement, Plaintiffs and the Friant Parties agree to cooperate
24 with the Federal Defendants in a vigorous defense of such action as necessary.

25 31. As of the Effective Date of this Settlement, the Secretary has not
26 developed a plan pursuant to CVPIA § 3406(c)(1) that is inconsistent with the terms
27 and conditions of this Settlement.

28 32. This Settlement is executed solely for the purpose of compromising

1 and settling this litigation, and nothing herein shall be construed as a precedent in
2 any other context. This Settlement shall bind the Parties only as may be necessary
3 to implement the terms of this Settlement. Nothing in this Settlement shall be
4 construed or offered in evidence in any proceeding as an admission or concession of
5 wrongdoing, liability, or any issue of fact or law concerning the claims settled under
6 this Settlement.

7 33. Nothing in this Settlement shall be construed to deprive any federal
8 official of the authority to revise, amend, or promulgate regulations. Nothing in this
9 Settlement shall be deemed to limit the authority of the executive branch to make
10 recommendations to Congress on any particular piece of legislation.

11 34. No Member of or Delegate to Congress, Resident Commissioner, or
12 official of the Friant Water Users Authority shall benefit from this Settlement other
13 than as a water user or landowner in the same manner as other water users or
14 landowners.

15 35. Nothing in this Settlement shall be construed to commit a federal
16 official to expend federal funds not appropriated by Congress.

17 36. To the extent that the expenditure or advance of any money or the
18 performance of any obligation of the United States under this Settlement is to be
19 funded by appropriation of funds by Congress, the expenditure, advance, or
20 performance shall be contingent upon the appropriation of funds by Congress that
21 are available for this purpose and the apportionment of such funds by the Office of
22 Management and Budget. No breach of this Settlement shall result and no liability
23 shall accrue to the United States in the event such funds are not appropriated or
24 apportioned.

25 37. The Parties reserve the right to amend this Settlement upon mutually
26 agreeable terms to comply with any subsequent court order issued by a court of
27 competent jurisdiction concerning the operation of the Friant Division of the CVP.

28 38. Except as provided in this Settlement, this Settlement shall be

1 governed by, and construed and enforced in accordance with, and pursuant to, the
2 laws of the United States of America, including federal reclamation law and federal
3 law applicable to contracts made or performed by the United States or to which it is
4 a party.

5 39. The Parties shall each (a) execute all such additional documents as
6 may reasonably be necessary or desirable to carry out the provisions of this
7 Settlement, and (b) in good faith undertake all reasonable efforts to effectuate the
8 provisions of this Settlement.

9 40. This Settlement is binding upon and shall inure to the benefit of each
10 of the Plaintiffs, the Federal Defendants, the Friant Water Users Authority and all
11 Friant Division and Hidden and Buchanan Unit long-term contractors, and their
12 respective agents, employees, representatives, officers, directors, parents,
13 subsidiaries, divisions, affiliates, heirs, executors, estates, administrators,
14 predecessors, successors and assigns. Except as provided in this Paragraph 40,
15 this Settlement is not intended to, and shall not be interpreted in a manner so as to
16 confer rights on persons or entities who are not Parties hereto, or to create intended
17 or expected third party status on any such non-party.

18 41. The Parties each agree that this Settlement is contractual in nature,
19 not a mere recital. This Settlement constitutes the final, complete and exclusive
20 agreement and understanding among the Parties with respect to this Settlement,
21 and supersedes all prior agreements and understandings, whether oral or written,
22 concerning the subject matter hereof. Other than the Exhibits to this Settlement,
23 which are attached hereto and incorporated by reference, no other document, nor
24 any representation, inducement, agreement, understanding or promise, constitutes
25 any part of this Settlement or the settlement it represents, nor shall it be used in
26 construing this Settlement.

27 42. The Parties agree that none of them shall assert that any legal
28 argument, assertion, defense or other legal claim raised by another Party is barred

1 by the passage of time resulting from the implementation of this Settlement, and by
2 execution of this Settlement, the Parties agree to toll any applicable statutes of
3 limitation.

4 43. No releases of Restoration Flows or Interim Flows, nor any failure to
5 deliver (or diminution in delivery of) water pursuant to existing contracts or
6 renewals thereof because of any release of Restoration Flows or Interim Flows, nor
7 any failure to deliver (or diminution in delivery of) water pursuant to Paragraph 16,
8 shall give rise to any claim for a taking of property pursuant to the United States
9 Constitution, Constitution of the State of California, or the Tucker Act, 28 U.S.C. §
10 1491.

11 44. The Parties each acknowledge that (a) it has been represented by
12 counsel throughout all of the negotiations that preceded execution of this
13 Settlement, and (b) it has executed this Settlement in consideration of the advice of
14 such legal counsel.

15 45. (a) This Settlement is a global resolution of all of Plaintiffs' claims
16 against the Federal Defendants and the Friant Parties, except for Plaintiffs' claims
17 for attorneys' fees, expenses, and costs, which are left for future negotiation,
18 resolution, or Court order. Nothing in this Settlement shall be construed or offered
19 in evidence in any proceeding as an admission or concession of wrongdoing or
20 liability, or of any issue of fact or law concerning the claims settled under this
21 Settlement. The Federal Defendants do not hereby waive any defenses they may
22 have concerning Plaintiffs' claims against the Federal Defendants, including
23 Plaintiffs' claims for attorneys' fees, expenses, and costs. The Plaintiffs may offer
24 the Settlement into evidence to support their claim for attorneys' fees, expenses,
25 and costs, and the Federal Defendants may dispute any assertion made by the
26 Plaintiffs. This Settlement is executed solely for the purpose of compromising and
27 settling this litigation, and nothing herein shall be construed as precedent in any
28 other context.

1 (b) The Plaintiffs intend to move for an award of their attorneys'
2 fees, expenses, and costs incurred subsequent to April 10, 2000, in the prosecution
3 of this action, including settlement, pursuant to the Endangered Species Act, 16
4 U.S.C. §1540(g), and under the Equal Access to Justice Act, 28 U.S.C. § 2412. The
5 Plaintiffs will file their motion for an award of attorneys' fees, expenses, and costs
6 within thirty (30) days of entry of the Judgment provided for in this Settlement, in
7 accordance with the separate Order approving this Stipulation, and the Parties
8 agree that, following entry of the Judgment, they will negotiate in good faith
9 concerning the amount of attorneys' fees, expenses, and costs to be paid to the
10 Plaintiffs. In the event such negotiations do not resolve Plaintiffs' motion, (1) the
11 Friant Parties agree that, in the manner and to the extent provided by above-
12 referenced statutes, the Plaintiffs are entitled to an award of their reasonable
13 attorneys' fees, expenses, and costs for the period subsequent to April 10, 2000,
14 and (2) the Federal Defendants reserve their right to oppose Plaintiffs' motion as
15 provided in Paragraph 45(a), above. Briefing and resolution of Plaintiffs' motion for
16 attorneys' fees, expenses, and costs shall follow the procedure set forth in the
17 separate Order approving this Stipulation.

18 46. For purposes of this Settlement, each of the Parties shall designate a
19 point of contact, or change thereto, for all notices and consultations required by this
20 Settlement. The initial points of contacts so designated are:

21 Plaintiffs:

22 San Joaquin River Project Manager
23 Western Water Project
24 Natural Resources Defense Council
25 111 Sutter Street, 20th Floor
26 San Francisco, CA 94104

27 Federal Defendants:

28 Area Manager
South-Central California Area Office
U.S. Bureau of Reclamation
1243 N Street
Fresno, CA 93721

1 Fisheries Program Manager
2 California/Nevada Operations Office
3 U.S. Fish and Wildlife Service
4 2800 Cottage Way, W-2605
5 Sacramento, CA 95825

6 Assistant Regional Administrator for Protected Resources
7 National Marine Fisheries Service
8 650 Capitol Mall, Suite 8-300
9 Sacramento, CA 95814

10 Regional Solicitor
11 Pacific Southwest Region
12 U.S. Department of the Interior
13 2800 Cottage Way, E-1712
14 Sacramento, CA 95825

15 Friant Parties:

16 General Manager
17 Friant Water Users Authority
18 854 North Harvard Avenue
19 Lindsay, CA 93247

20 Gregory K. Wilkinson
21 Best, Best & Krieger
22 P.O. Box 1028
23 Riverside, CA 92502-1028

24 47. This Settlement may be executed in counterparts.

25 48. This Settlement may only be modified in writing upon agreement of the
26 Parties.

27 49. The Parties agree to entry of an Order approving this Settlement, in
28 the form of Exhibit E, and a Stipulated Judgment in the form of Exhibit F.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: 9/13/2006

NATURAL RESOURCES DEFENSE COUNCIL,
SHEPPARD MULLIN RICHTER & HAMPTON LLP
ALTSHULER, BERZON, NUSSBAUM, RUBIN & DEMAIN


By



PHILIP F. ATKINS-PATTENSON
Attorneys for Plaintiffs
NATURAL RESOURCES DEFENSE COUNCIL, *et al.*

DATED: 9/13/2006

By

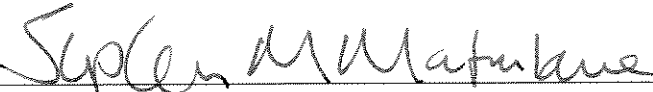


Hamilton Candee
Attorneys for Plaintiffs
NATURAL RESOURCES DEFENSE COUNCIL, *et al.*

DATED: 9/13/2006

UNITED STATES DEPARTMENT OF JUSTICE
NATURAL RESOURCES SECTION, ENVIRONMENT &
NATURAL RESOURCES DIVISION

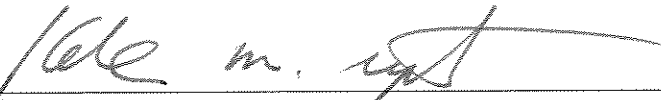
By



DAVID B. GLAZER
STEPHEN M. MACFARLANE
Attorneys for Defendants
KIRK RODGERS, *et al.*

DATED: 9/13/2006

By

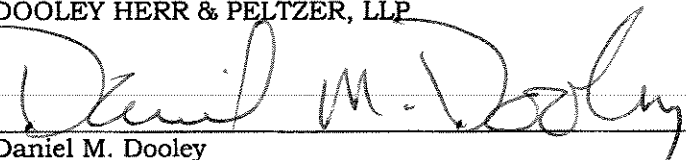


Kole M. Upton
Chair, Friant Water Users Authority

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: 9/13/2006

DOOLEY HERR & PELTZER, LLP

By 

Daniel M. Dooley
Attorneys for the Defendant-Intervenors,
Porterville Irrigation District, Saucelito Irrigation
District, Stone Corral Irrigation District, Teapot Dome
Water District, and Tulare Irrigation District

DATED: 9/13/2006

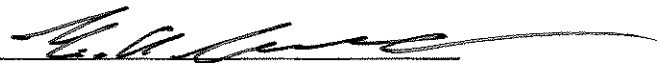
MINASIAN, SPRUANCE, MEITH, SOARES & SEXTON, LLP

By 

Michael Sexton
Attorneys for the Defendant-Intervenors,
Delano-Earlimart Irrigation District, Exeter Irrigation
District, Ivanhoe Irrigation District, Lindmore
Irrigation District, Lindsay-Strathmore Irrigation
District, Orange Cove Irrigation District, and Terra Bella
Irrigation District

DATED: 9/13/2006

YOUNG WOOLDRIDGE, LLP

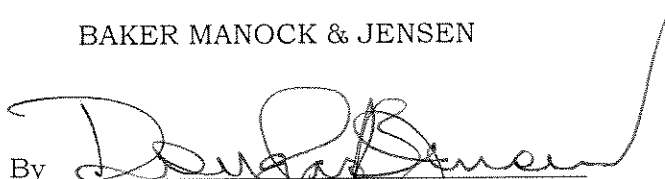
By 

Ernest A. Conant
Attorneys for the Defendant-Intervenors,
Arvin-Edison Water Storage District, Shafter-Wasco
Irrigation District, and Southern San Joaquin
Municipal Utility District

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


DATED: 9/13/2006

BAKER MANOCK & JENSEN

By 
Douglas Jensen
Attorneys for the Defendant-Intervenor,
Chowchilla Water District

DATED: 9/13/2006

STOEL RIVES, LLP

By 
Michael A. Campos
Attorneys for the Defendant-Intervenor,
Madera Irrigation District

STIPULATION OF SETTLEMENT

NRDC v. RODGERS

DRAFT LEGISLATION

EXHIBIT A

Title ___: SAN JOAQUIN RIVER RESTORATION SETTLEMENT ACT

Section 101. Short Title.

This Title may be cited as the "San Joaquin River Restoration Settlement Act."

Section 102. Purposes.

The purpose of this title is to authorize implementation of the Stipulation of Settlement dated [insert date] (the "Settlement") in the litigation entitled NATURAL RESOURCES DEFENSE COUNCIL, et al. v. KIRK RODGERS, et al., United States District Court, Eastern District of California, No. CIV. S-88-1658-LKK/GGH.

Section 103. Definitions.

As used in this Title, the terms "Friant Division long-term contractors," "Interim Flows," "Restoration Flows," "Recovered Water Account," "Restoration Goal," and "Water Management Goal" shall have the meaning as defined in the Settlement referenced in Section 102 of this Title.

Section 104. Implementation of Settlement.

- (a) The Secretary of the Interior ("Secretary") is hereby authorized and directed to implement the terms and conditions of the Settlement in cooperation with the State of California, including but not limited to the following measures as these measures are prescribed in the Settlement:
 - (i) Design and construct channel and structural improvements as described in Paragraph 11 of the Settlement; *provided, however*, that the Secretary shall not make or fund any such improvements to facilities or property of the State of California without the approval of the State of California and the State's agreement in one or more Memoranda of Understanding to participate where appropriate;
 - (ii) Modify Friant Dam operations so as to provide Restoration Flows and Interim Flows;
 - (iii) Acquire water, water rights, or options to acquire water as described in Paragraph 13 of the Settlement;
 - (iv) Implement the terms and conditions of the Settlement related to recirculation, recapture, reuse, exchange or transfer of water

released for Restoration Flows or Interim Flows, for the purpose of accomplishing the Water Management Goal of the Settlement; and

- (v) Develop and implement the Recovered Water Account as specified in the Settlement, including the pricing and payment crediting provisions described in Paragraph 16(b)(3) of the Settlement, provided that all other provisions of Reclamation Law shall remain applicable.
- (b) In order to facilitate or expedite implementation of the Settlement, the Secretary is authorized and directed to enter into appropriate agreements, including cost sharing agreements, with the State of California. The Secretary is further authorized to enter into contracts, memoranda of understanding, financial assistance agreements, cost sharing agreements and other appropriate agreements with state, tribal, and local governmental agencies, and with private parties, including, but not limited to, agreements related to construction, and operation and maintenance of facilities, all of which shall be on terms and conditions that the Secretary deems necessary to achieve the purposes of the Settlement.
- (c) The Secretary is further authorized to accept and expend non-federal funds in order to facilitate implementation of the Settlement.
- (d) The Secretary is further authorized to conduct any design or engineering studies that are necessary to implement the Settlement.

Section 105. Acquisition and Disposal of Property; Title to Facilities

- (a) Unless acquired pursuant to Section 105(b) of this Title, title to any facility or facilities, stream channel, levees, or other real property modified or improved in the course of implementing the Settlement authorized by this Title, and title to any modifications or improvements of such facility or facilities, stream channel, levees, or other real property shall remain in the owner of the property and shall not be transferred to the United States on account of such modifications or improvements.
- (b) The Secretary is authorized to acquire through purchase from willing sellers any property, interests in property, or options to acquire real property needed to implement the Settlement authorized by this Title. The Secretary is authorized, but not required, to exercise all of the authorities provided in Section 2 of the Act of August 26, 1937, Ch. 832, 50 Stat. 844, to carry out the measures authorized in Sections 104 and 105 of this Title.

- (c) Upon the Secretary's determination that retention of title to property or interests in property acquired pursuant to this Title is no longer needed to be held by the United States for the furtherance of the Settlement, the Secretary is authorized to dispose of such property or interest in property on such terms and conditions as the Secretary deems appropriate and in the best interest of the United States, including but not limited to, possible transfer of such property to the State of California. Proceeds from the disposal by sale of any such property or interests in property shall be deposited in the fund established by Section 109(c) of this Title.

Section 106. Compliance with Applicable Law.

- (a) In undertaking the measures authorized by Section 104 of this Title, the Secretary shall comply with all applicable federal and state laws, rules and regulations, including the National Environmental Policy Act and the Endangered Species Act, as necessary. The Secretaries of the Interior and Commerce are authorized and directed to initiate and expeditiously complete applicable environmental reviews and consultations as may be necessary to effectuate the purposes of the Settlement. Nothing in this Title shall modify any existing obligation of the United States under federal reclamation law to operate the Central Valley Project in conformity with State law.
- (b) In undertaking the measures authorized by Section 104 of this Title, and for which environmental review is required, the Secretary may provide funds made available under this Title to affected Federal agencies, State agencies, and Indian tribes if the Secretary determines that such funds are necessary to allow the Federal agencies, State agencies, or Indian tribes to effectively participate in the environmental review process. For purposes of this section, environmental review is defined to include any consultation and planning necessary to comply with paragraph (a) of this section. Such funds may be provided only to support activities that directly contribute to the implementation of the terms and conditions of the Settlement.
- (c) The United States' share of the costs of implementing this Title shall be non-reimbursable under Reclamation law, provided that nothing in this subsection shall limit or be construed to limit the use of the funds assessed and collected pursuant to Sections 3406(c)(1) and 3407(d)(2) of Title XXXIV of Pub. L. No. 102-575, for implementation of the Settlement, nor shall it be construed to limit or modify existing or future Central Valley Project Ratesetting Policies.

Section 107. Compliance with Central Valley Project Improvement Act.

Congress hereby finds and declares that the Settlement satisfies and discharges all of the obligations of the Secretary contained in Section 3406(c) (1) of Title XXXIV of Public Law 102-575; *provided, however*, that the Secretary shall continue to assess and collect the charges provided in Section 3406(c)(1) as provided in the Settlement and Section 109(d) of this Title.

Section 108. No Private Right of Action.

Nothing in this Title shall confer upon any person or entity not a party to the Settlement a private right of action or claim for relief to interpret or enforce the provisions of this Title or the Settlement.

Section 109. Appropriations; Settlement Fund.

- (a) The costs of implementing the provisions of Section 104(a)(i) of this Title shall be shared by the State of California pursuant to the terms of a Memorandum of Understanding executed by the State of California and the Parties to the Settlement on [date]. In addition, the Secretary shall enter into one or more agreements to fund or implement improvements on a project-by-project basis with the State of California, which agreements shall provide for recognition of either monetary or in-kind contributions toward the State of California's share of the cost of implementing the provisions of Section 104(a)(i).
- (b) In addition to the funds provided in Sections (c)(1), (c)(3), and (c)(5) below, there are also authorized to be appropriated not to exceed \$ 250 million (October 2006 price levels) to implement this Title and the Settlement, to be available until expended.. The Secretary is authorized to use monies from the Fund created under Section 3407 of Title XXXIV of Public Law 102-575 for purposes of this Title.
- (c) There is hereby established within the Treasury of the United States the "San Joaquin River Restoration Fund," into which shall be deposited, and which shall be used solely for the purpose of implementing the Settlement:
 - (1) Subject to Section 109(d) below, at the beginning of the fiscal year following enactment of this Title, all payments received pursuant to Section 3406(c)(1) of Title XXXIV of Public Law 102-575, which shall be available for expenditure without further appropriation;
 - (2) Subject to Section 109(d) below, the capital component (not otherwise needed to cover operation and maintenance costs) of

payments made by Friant Division long-term contractors pursuant to long-term water service contracts for 9 years beginning the first fiscal year following enactment of this Title. The capital repayment obligation of such contractors under such contracts shall be reduced by the amount paid pursuant to this Section 109(c)(2).

- (3) Proceeds from a bond issue, federally guaranteed loan or other appropriate financing instrument, to be issued or entered into by an appropriate public agency or subdivision of the State of California, which funds shall be available for expenditure without further appropriation.
 - (4) Proceeds from the sale of water pursuant to the Settlement, or from the sale of property or interests in property as provided in Section 105 of this Title, which funds shall be available for expenditure without further appropriation.
 - (5) Any non-federal funds, including but not limited to State cost-sharing funds, contributed to the United States for implementation of the Settlement, which the Secretary may expend without further appropriation for the purposes for which contributed.
- (d) The Secretary is authorized to enter into agreements with appropriate agencies or subdivisions of the State of California in order to facilitate a bond issue, federally guaranteed loan or other appropriate financing instrument, for the purpose of implementing this Settlement. If the Secretary and an appropriate agency or subdivision enter into such an agreement, and if such agency or subdivision issues one or more revenue bonds, procures a federally secured loan, or other appropriate financing to fund implementation of the Settlement, and if such agency deposits the proceeds received from such bonds, loans or financing into the Fund pursuant to Section 109(c)(3), monies specified in Sections 109(c)(1) and (2) shall be provided by the Friant Division long-term contractors directly to such public agency or subdivision to repay the bond, loan or financing rather than into the Fund. After the satisfaction of any such bond, loan or financing, the payments specified in Sections 109(c)(1) and (2) shall be paid directly into the Fund authorized by this Section 109.
- (e) Payments made by long-term contractors who receive water from the Friant Division and Hidden and Buchanan Units of the Central Valley Project pursuant to §§ 3406(c)(1) and 3407(d)(2)(a) of Title XXXIV of Pub. L. No. 102-575 and payments made pursuant to Paragraph 16(b)(3) of the Settlement and Section 109(c)(2) of this Title shall be the limitation of such entities' direct financial contribution to the Settlement, subject to the terms and conditions of Paragraph 21 of the Settlement.

- (f) Nothing in this Act shall be construed to require a federal official to expend federal funds not appropriated by Congress, or to seek the appropriation of additional funds by Congress, for the implementation of the Settlement.
-

STIPULATION OF SETTLEMENT NRDC v. RODGERS

EXHIBIT B

[Restoration Hydrographs]

This Exhibit B sets forth the hydrographs which constitute the “Base Flows” referenced in paragraph 13 of the Stipulation of Settlement. For purposes of implementing the hydrographs, the following provisions shall apply:

1. Buffer Flows.

Paragraph 13 of the Stipulation of Settlement provides for the Base Flows to be augmented by Buffer Flows of up to 10% of the applicable hydrograph included in this Exhibit B. Except as provided in Paragraph 4 of this Exhibit B, such Buffer Flows are intended to augment the daily flows specified in the applicable hydrograph. For purposes of this Exhibit, Base Flows and Buffer Flows shall collectively be referred to as Restoration Flows.

2. Water Year Types.

The Base Flows are presented in Tables 1A-1F as a set of six hydrographs that vary in shape and volume according to wetness in the basin. The six year types are described as “Critical Low”, “Critical High”, “Dry”, “Normal-Dry”, “Normal-Wet”, and “Wet.” The total annual unimpaired runoff at Friant for the water year (October through September) is the index by which the water year type is determined. In order of descending wetness, the wettest 20 percent of the years are classified as Wet, the next 30 percent of the years are classified as Normal-Wet, the next 30 percent of the years are classified as Normal-Dry, the next 15 percent of the years are classified as Dry, and the remaining 5 percent of the years are classified as Critical (represented by the “Critical High” hydrograph). A subset of the Critical years, those with less than 400 TAF of unimpaired runoff, are identified for use of the “Critical Low” hydrograph. The hydrographs, Tables 1A-1F, depict an annual quantity of water based upon the flow schedules identified. Components of the hydrograph are plotted for each water-year type, with various types of flows (Fall Base and Spring Run Incubation Flow; Fall Run attraction Flow; Fall-Run Spawning and Incubation Flow; Winter Base Flows; Spring Rise and Pulse Flows; Summer Base Flows; Spring-Run Spawning Flows) in specified amounts throughout the year, some of which vary in amount and duration depending upon year type classification. To avoid a moving distribution of year-type assignment, water years 1922-2004 will be used to establish year types.

3. Continuous Line Hydrographs.

The Parties agree to transform the stair step hydrographs to more continuous hydrographs prior to December 31, 2008 to ensure completion before the initiation of Restoration Flows, provided that the Parties shall mutually-agree that transforming the hydrographs will not materially impact the Restoration or Water Management Goal.

4. Flexibility in Timing of Releases.

(a) In order to achieve the Restoration Goal and to avoid material adverse impacts on existing fisheries downstream of Friant Dam, the Parties agree to the following provisions to provide certain flexibility in administration of the hydrographs and Buffer Flows.

(b) The distribution of Base Flow releases depicted in each hydrograph is intended to allow flexibility in any given year for the Restoration Administrator, in consultation with the

Technical Advisory Committee, to recommend to the Secretary appropriate ramping rates and precise flow amounts on specific dates as provided for in this subparagraph and consistent with the flow measurement and monitoring provisions of the Settlement. Base Flow releases allocated during the period from March 1 through May 1 (the "Spring Period") in any year may be shifted up to four weeks earlier and later than what is depicted in the hydrograph for that year, and managed flexibly within that range (i.e. February 1 through May 28), so long as the total volume of Base Flows allocated for the Spring Period is not changed. The Base Flows depicted in each hydrograph from October 1 through November 30 (the "Fall Period") likewise are intended to allow flexibility in any given year for the Restoration Administrator, in consultation with the Technical Advisory Committee, to recommend to the Secretary precise flow amounts on specific dates, and may be shifted up to four weeks earlier or later so long as the total volume of Base Flows allocated during that Period of the year is not changed.

(c) The process for determining and implementing Buffer Flows is set out in Paragraphs 13 and 18 of the Settlement, as implemented by this Exhibit B. The Restoration Administrator, in consultation with the Technical Advisory Committee, may recommend to the Secretary that the daily releases provided for in the hydrographs, or as modified pursuant to Paragraph 4(b) above, be augmented by application of the Buffer Flows up to 10% of the daily flows. From October 1 through December 31, the Buffer Flows shall be defined as 10% of the total volume of Base Flows during that period, and may be managed flexibly as a block of water during the Fall Period and four weeks earlier or later, as provided in Paragraph 4(b) above. Up to 50% of the Buffer Flows available from May 1 to September 30 not to exceed 5,000 acre feet may be moved to augment flows during the Spring or the Fall Periods.

(d) The Restoration Administrator may recommend additional changes in specific release schedules within an applicable hydrograph (beyond those described in subparagraphs (b) and (c) above) to the extent consistent with achieving the Restoration Goal without changing the total amount of water otherwise required to be released pursuant to the applicable hydrograph or materially increasing the water delivery reductions to any Friant Division long-term contractors.

5. Flushing Flows.

In Normal-Wet and Wet years, the stair-step hydrographs, Exhibits 1A-1F, include a block of water averaging 4,000 cfs from April 16-30 to perform several functions, including but not limited to geomorphic functions such as flushing spawning gravels ("The Flushing Flows"). Therefore, unless the Secretary, in consultation with the Restoration Administrator, determines that Flushing Flows are not needed, hydrographs in Normal-Wet and Wet years will also include Flushing Flows during that period. Working within the constraints of the flood control system, the Restoration Flow releases from Friant Dam to provide these Flushing Flows shall include a peak release as close to 8,000 cfs as possible for several hours and then recede at an appropriate rate. The precise timing and magnitude of the Flushing Flows shall be based on monitoring of meteorological conditions, channel conveyance capacity, salmonid distribution, and other physical/ecological factors with the primary goal to mobilize spawning gravels, maintain their looseness and flush fine sediments, so long as the total volume of Restoration Flows allocated for Flushing Flows for that year is not changed. Nothing in this Paragraph 5 is intended to limit the flexibility to move or modify the Flushing Flows as provided in Paragraph 4 above, so long as the total volume of Base Flows allocated during the Spring Period is not changed.

6. Riparian Recruitment Flows.

In Wet Years, in coordination with the peak Flushing Flow releases, Restoration Flows should be gradually ramped down over a 60-90 day period to promote the establishment of riparian vegetation at appropriate elevations in the channel. The precise timing and magnitude of the riparian recruitment release shall be based on monitoring of meteorological conditions, channel conveyance capacity, salmonid distribution and other physical/ecological factors with the primary goal to establish native riparian vegetation working within the constraints of the flood control system, so long as the total volume of Restoration Flows allocated for Riparian Recruitment for that year is not exceeded.

Table 1A. Proposed restoration flow release schedule and accounting for critical low year type on the San Joaquin River

Hydrograph Component	Friant Release	Gain and Loss Assumptions				Flow at Upstream End of Reach				
		Riparian Releases	Reach 2 losses	Mud Slough Accretions	Salt and Accretions	Reach 2	Reach 3	Reach 4	Reach 5	Confluence
Fall Base and Spring Run Incubation Flow	160	160	80	300	5	0	0	0	0	300
Fall Run Attraction Flow	130	130	100	300	5	0	0	0	0	300
Fall-Run Spawning and Incubation Flow	120	120	80	400	5	0	0	0	0	400
Winter Base Flows	100	100	80	500	5	0	0	0	0	500
	130	130	90	500	5	0	0	0	0	500
Spring Rise and Pulse Flows	130	130	150	475	5	0	0	0	0	475
	150	150	80	400	5	0	0	0	0	400
	150	150	80	400	5	0	0	0	0	400
Summer Base Flows	190	190	80	400	5	0	0	0	0	400
	230	230	80	275	5	0	0	0	0	275
Spring-Run Spawning Flows	210	210	80	275	5	0	0	0	0	275
Total Annual (acre ft.)	116,662	116,662	60,568	276,012	3,614	0	0	0	0	275,468
Assumed Riparian Release	116,662									
Restoration Release (af)	0									

- Riparian releases - Riparian releases for current conditions average from 117- to 126 TAF/YR. Assumed approx 117 TAF/YR to be consistent with Steiner declaration which is derived from CALSIM and WSS estimates; adjusted monthly estimates to add to approx 117 TAF and to be more consistent with data from last 5 years; rounded to nearest 10 cfs. The Nov/Dec period 120 cfs estimate is an average of the assumed 130 cfs average in Nov and 110 cfs in Dec; the May/June period average of 190 cfs is an average of 175 cfs in May and 200 cfs in June. Friant base releases in recent years (2001 - 2005) have actually average of approximately 124,000 acre feet in order to meet 5 cfs. at every diversion point during all seasons.
- Reach 2 Losses. Determined by flow at head of Reach 2. Assumed relatively constant, steady-state conditions. Flows less than 300 cfs at the head of the reach lose 80 cfs, consistent with 1995-2000 data including the 1999 pilot project. Flows between 300 and 400 cfs lose 90 cfs. Flows above 400 and below 800 cfs lose 100 cfs. Used flow lose curve at Figure 2-4 of the Background Report for flows above 1,000 cfs. That curve was based upon non-steady-state flow conditions, and thus likely overestimate steady-state conditions. Assumed no losses in Reach 2B below the Bifurcation.
- Salt and Mud Slough Accretions - From Sum of Mud and Salt Slough flow in Table 2-15 of the Background Report. Additional accretions occur in reach 4B and 5 but small (up to 50 cfs) relative to total Mud and Salt Slough inflow.
- Reach 2 flow - Flow at head of Reach 2 is equal to Friant release minus riparian release plus Gravelly Ford base flow of 5 cfs. The Gravelly Ford base flow is usually higher in winter because of local tributary inflow, return flow and requirement to meet 5 cfs flow at every diversion point. Summer base flow is often higher than 5 cfs because of irrigation return flow and requirement to meet 5 cfs flow at every diversion point.
- Reach 3 flow - Equal to Reach 2 flow minus Reach 2 losses. Reach 3 flow ignores contributions from Delta Mendota Canal added at Mendota Pool which is subsequently diverted at the bottom of Reach 3 at Sack Dam into the Arroyo Canal and therefore assumes no net gain. Actual inflows could be greater particularly during the irrigation season.
- Reach 4 flows - Equal to the net Reach 3 flows. Additional flow in Reach 3 is on "top" of existing irrigation supply flows and no losses are assumed although Reach 3 appears to be a small losing reach at this time. May become gaining reach over time if losses in Reach 2 fill sufficient aquifer storage.
- Reach 5 flow - Assume equal to Reach 4 flow. Seasonal losses in Reach 4A and gains in Reach 4B. Although likely a net gain in Reach 4 flow, assumed no gain for simplicity.
- Confluence - Reach 5 flow plus Mud and Salt Slough. Does not include up to another 50 cfs of accretion upstream of Mud and Salt Slough that the WOST hydrograph included.
- Riparian release total slightly different in critical years due to variations in the length of the November pulse flow and rounding of riparian release averages during the November 1-December 31 time period.

Table 1B. Proposed restoration flow release schedule and accounting for critical high year type on the San Joaquin River

Hydrograph Component	Friant Release	Gain and Loss Assumptions			Flow at Upstream End of Reach				
		Riparian Releases	Reach 2 losses	Salt and Mud Slough Accretions	Reach 2	Reach 3	Reach 4	Reach 5	Confluence
Fall Base and Spring Run Incubation Flow	160	160	80	300	5	0	0	0	300
Fall Run Attraction Flow	400	130	100	300	275	175	175	175	475
Fall-Run Spawning and Incubation Flow	120	120	80	400	5	0	0	0	400
Winter Base Flows	110	100	80	500	15	0	0	0	500
Spring Rise and Pulse Flows	500	130	90	500	375	285	285	285	785
	1500	130	150	475	1375	1225	1225	1225	1700
	200	150	80	400	55	0	0	0	400
	200	150	80	400	55	0	0	0	400
Summer Base Flows	215	190	80	400	30	0	0	0	400
	255	230	80	275	30	0	0	0	275
	260	210	80	275	55	0	0	0	275
Spring-Run Spawning Flows									
Total Annual (acre ft.)	187,457	116,662	60,568	276,012	74,408	49,352	49,352	49,352	325,364
Assumed Riparian Release	116,662								
Restoration Release (af)	70,795								

- Riparian releases - Riparian releases for current conditions average from 117- to 126 TAF/YR. Assumed approx 117 TAF/YR to be consistent with Steiner declaration which is derived from CALSIM and WSS estimates; adjusted monthly estimates to add to approx 117 TAF and to be more consistent with data from last 5 years; rounded to nearest 10 cfs. The Nov/Dec period 120 cfs estimate is an average of the assumed 130 cfs average in Nov and 110 cfs in Dec; the May/June period average of 190 cfs is an average of 175 cfs in May and 200 cfs in June. Friant base releases in recent years (2001 - 2005) have actually average of approximately 124,000 acre feet in order to meet 5 cfs. at every diversion point during all seasons.
- Reach 2 losses - Determined by flow at head of Reach 2. Assume relatively constant, steady-state conditions. Flows at head of reach less than 300 lose 80 cfs consistent with 1995-200 data including 1999 pilot project. Flows between 300 and 400 cfs lose 90 cfs; flows above 400 and below 800 cfs lose 100 cfs; consistent with 1995-2000 data. Above 1000 cfs used flow lose curve on fig 2-4 of the Background Report. That curve was based upon non- steady-state flow conditions and thus likely overestimate steady-state conditions. Assume no losses in Reach 2B below the Bifurcation.
- Salt and Mud Slough Accretions - From Sum of Mud and Salt Slough flow in Table 2-15 of the Background Report. Additional accretions occur in reach 4B and 5 but small (up to 50 cfs) relative to total Mud and Salt Slough inflow.
- Reach 2 flow- Flow at head of Reach 2 is equal to Friant release minus riparian release plus Gravelly Ford base flow of 5 cfs. The Gravelly Ford base flow is usually higher in winter because of local tributary inflow, return flow and requirement to meet 5 cfs flow at every diversion point. Summer base flow is often higher than 5 cfs because of irrigation return flow and requirement to meet 5 cfs flow at every diversion point.
- Reach 3 flow - Equal to Reach 2 flow minus Reach 2 losses. Reach 3 flow ignores contributions from Delta Mendota Canal added at Mendota Pool which is subsequently diverted at the bottom of Reach 3 at Sack Dam into the Arroyo Canal and therefore assumes no net gain. Actual inflows could be greater particularly during the irrigation season.
- Reach 4 flows - Equal to the net Reach 3 flows. Additional flow in Reach 3 is on "top" of existing irrigation supply flows and no losses are assumed although Reach 3 appears to be a small losing reach at this time. May become gaining reach over time if losses in Reach 2 fill sufficient aquifer storage.
- Reach 5 flow - Assume equal to Reach 4 flow. Seasonal losses in Reach 4A and gains in Reach 4B. Although likely a net gain in Reach 4 flow, assumed no gain for simplicity.
- Confluence - Reach 5 flow plus Mud and Salt Slough. Does not include up to another 50 cfs of accretion upstream of Mud and Salt Slough that the WOST hydrograph included.
- Flows in the May 1 to June 30, July 1 to Aug 30 and Sept 1 to Sept 31st have elevated flows of 25 to 50 cfs reflecting 3TAF blocks of water to be used for riparian vegetation irrigation
- Riparian release total slightly different in critical years due to variations in the length of the November pulse flow and rounding of riparian release averages during the November 1- December 31 time period.

Table 1C. Proposed restoration flow release schedule and accounting for dry year type on the San Joaquin River

Hydrograph Component	Friant Release	Gain and Loss Assumptions			Flow at Upstream End of Reach				
		Riparian Releases	Reach 2 losses	Salt and Mud Slough Accretions	Reach 2	Reach 3	Reach 4	Reach 5	Confluence
Fall Base and Spring Run Incubation Flow	350	160	80	300	195	115	115	115	415
Fall Run Attraction Flow	700	130	100	300	575	475	475	475	775
Fall-Run Spawning and Incubation Flow	350	120	80	400	235	155	155	155	555
Winter Base Flows	350	100	80	500	255	175	175	175	675
	500	130	90	500	375	285	285	285	785
Spring Rise and Pulse Flows	1,500	130	150	475	1,375	1,225	1,225	1,225	1,700
	350	150	80	400	205	125	125	125	525
	350	150	80	400	205	125	125	125	525
Summer Base Flows	350	190	80	400	165	85	85	85	485
	350	230	80	275	125	45	45	45	320
Spring-Run Spawning Flows	350	210	80	275	145	65	65	65	340
Total Annual (acre ft.)	300,762	116,741	60,727	275,220	187,635	126,908	126,908	126,908	402,128
Assumed Riparian Release	116,741								
Restoration Release (af)	184,021								

- Riparian releases - Riparian releases for current conditions average from 117- to 126 TAF/YR. Assumed approx 117 TAF/YR to be consistent with Steiner declaration which is derived from CALSIM and WSS estimates; adjusted monthly estimates to add to approx 117 TAF and to be more consistent with data from last 5 years; rounded to nearest 10 cfs. The Nov/Dec period 120 cfs estimate is an average of the assumed 130 cfs average in Nov and 110 cfs in Dec; the May/June period average of 190 cfs is an average of 175 cfs in May and 200 cfs in June. Friant base releases in recent years (2001 - 2005) have actually average of approximately 124,000 acre feet in order to meet 5 cfs. at every diversion point during all seasons.
- Reach 2 losses - Determined by flow at head of Reach 2. Assume relatively constant, steady-state conditions. Flows at head of reach less than 300 lose 80 cfs consistent with 1995-200 data including 1999 pilot project. Flows between 300 and 400 cfs lose 90 cfs; flows above 400 and below 800 cfs lose 100 cfs; consistent with 1995-2000 data. Above 1000 cfs used flow lose curve on fig 2-4 of the Background Report. That curve was based upon non- steady-state flow conditions and thus likely overestimate steady-state conditions. Assume no losses in Reach 2B below the Bifurcation.
- Salt and Mud Slough Accretions - From Sum of Mud and Salt Slough flow in Table 2-15 of the Background Report. Additional accretions occur in reach 4B and 5 but small (up to 50 cfs) relative to total Mud and Salt Slough inflow.
- Reach 2 flow- Flow at head of Reach 2 is equal to Friant release minus riparian release plus Gravelly Ford base flow of 5 cfs. The Gravelly Ford base flow is usually higher in winter because of local tributary inflow, return flow and requirement to meet 5 cfs flow at every diversion point. Summer base flow is often higher than 5 cfs because of irrigation return flow and requirement to meet 5 cfs flow at every diversion point.
- Reach 3 flow - Equal to Reach 2 flow minus Reach 2 losses. Reach 3 flow ignores contributions from Delta Mendota Canal added at Mendota Pool which is subsequently diverted at the bottom of Reach 3 at Sack Dam into the Arroyo Canal and therefore assumes no net gain. Actual inflows could be greater particularly during the irrigation season.
- Reach 4 flows - Equal to the net Reach 3 flows. Additional flow in Reach 3 is on "top" of existing irrigation supply flows and no losses are assumed although Reach 3 appears to be a small losing reach at this time. May become gaining reach over time if losses in Reach 2 fill sufficient aquifer storage.
- Reach 5 flow - Assume equal to Reach 4 flow. Seasonal losses in Reach 4A and gains in Reach 4B. Although likely a net gain in Reach 4 flow, assumed no gain for simplicity.
- Confluence - Reach 5 flow plus Mud and Salt Slough. Does not include up to another 50 cfs of accretion upstream of Mud and Salt Slough that the WOST hydrograph included.

Table 1D. Proposed restoration flow release schedule and accounting for normal-dry year type on the San Joaquin River

Hydrograph Component	Gain and Loss Assumptions			Flow at Upstream End of Reach					
	Friant Release	Riparian Releases	Reach 2 losses	Mud Slough Accretions	Reach 2	Reach 3	Reach 4	Reach 5	Confluence
Fall Base and Spring Run Incubation Flow					195	115	115	115	415
Fall Run Attraction Flow	350	160	80	300	575	475	475	475	775
Fall-Run Spawning and Incubation Flow	700	130	100	300	235	155	155	155	555
Winter Base Flows	350	100	80	500	255	175	175	175	675
	500	130	90	500	375	285	285	285	785
Spring Rise and Pulse Flows	1,500	130	150	475	1,375	1,225	1,225	1,225	1,700
	2,500	150	175	400	2,355	2,180	2,180	2,180	2,580
	350	150	80	400	205	125	125	125	525
Summer Base Flows	350	190	80	400	165	85	85	85	485
	350	230	80	275	125	45	45	45	320
Spring-Run Spawning Flows	350	210	80	275	145	65	65	65	340
Total Annual (acre ft.)	364,617	116,741	63,548	275,220	251,490	187,942	187,942	187,942	483,162
Assumed Riparian Release	116,741								
Restoration Release (af)	247,876								

- Riparian releases - Riparian releases for current conditions average from 117- to 126 TAF/YR. Assumed approx 117 TAF/YR to be consistent with Steiner declaration which is derived from CALSIM and WSS estimates; adjusted monthly estimates to add to approx 117 TAF and to be more consistent with data from last 5 years; rounded to nearest 10 cfs. The Nov/Dec period 120 cfs estimate is an average of the assumed 130 cfs average in Nov and 110 cfs in Dec; the May/June period average of 190 cfs is an average of 175 cfs in May and 200 cfs in June. Friant base releases in recent years (2001 - 2005) have actually average of approximately 124,000 acre feet in order to meet 5 cfs. at every diversion point during all seasons.
- Reach 2 losses - Determined by flow at head of Reach 2. Assume relatively constant, steady-state conditions. Flows at head of reach less than 300 lose 80 cfs consistent with 1995-200 data including 1999 pilot project. Flows between 300 and 400 cfs lose 90 cfs; flows above 400 and below 800 cfs lose 100 cfs; consistent with 1995-2000 data. Above 1000 cfs used flow lose curve on fig 2-4 of the Background Report. That curve was based upon non-steady-state flow conditions and thus likely overestimate steady-state conditions. Assume no losses in Reach 2B below the Bifurcation.
- Salt and Mud Slough Accretions - From Sum of Mud and Salt Slough flow in Table 2-15 of the Background Report. Additional accretions occur in reach 4B and 5 but small (up to 50 cfs) relative to total Mud and Salt Slough inflow.
- Reach 2 flow- Flow at head of Reach 2 is equal to Friant release minus riparian release plus Gravelly Ford base flow of 5 cfs. The Gravelly Ford base flow is usually higher in winter because of local tributary inflow, return flow and requirement to meet 5 cfs flow at every diversion point. Summer base flow is often higher than 5 cfs because of irrigation return flow and requirement to meet 5 cfs flow at every diversion point.
- Reach 3 flow - Equal to Reach 2 flow minus Reach 2 losses. Reach 3 flow ignores contributions from Delta Mendota Canal added at Mendota Pool which is subsequently diverted at the bottom of Reach 3 at Sack Dam into the Arroyo Canal and therefore assumes no net gain. Actual inflows could be greater particularly during the irrigation season.
- Reach 4 flows - Equal to the net Reach 3 flows. Additional flow in Reach 3 is on "top" of existing irrigation supply flows and no losses are assumed although Reach 3 appears to be a small losing reach at this time. May become gaining reach over time if losses in Reach 2 fill sufficient aquifer storage.
- Reach 5 flow - Assume equal to Reach 4 flow. Seasonal losses in Reach 4A and gains in Reach 4B. Although likely a net gain in Reach 4 flow, assumed no gain for simplicity.
- Confluence - Reach 5 flow plus Mud and Salt Slough. Does not include up to another 50 cfs of accretion upstream of Mud and Salt Slough that the WOST hydrograph included.

Table 1E. Proposed restoration flow release schedule and accounting for normal-wet year type on the San Joaquin River

Hydrograph Component	Gain and Loss Assumptions				Flow at Upstream End of Reach					
	Friant Release	Riparian Releases	Reach 2 losses	Salt and Mud Slough Accretions	Reach 1	Reach 2	Reach 3	Reach 4	Reach 5	Confluence
Fall Base and Spring Run Incubation Flow	350	160	80	300	115	195	115	115	115	415
Fall Run Attraction Flow	700	130	100	300	475	575	475	475	475	775
Fall-Run Spawning and Incubation Flow	350	120	80	400	155	235	155	155	155	555
Winter Base Flows	350	100	80	500	175	255	175	175	175	675
	500	130	90	500	285	375	285	285	285	785
Spring Rise and Pulse Flows	1,500	130	150	475	1,225	1,375	1,225	1,225	1,225	1,700
	2,500	150	175	400	2,180	2,355	2,180	2,180	2,180	2,580
	4,000	150	200	400	3,655	3,855	3,655	3,655	3,655	4,055
Summer Base Flows	350	190	80	400	85	165	85	85	85	485
	350	230	80	275	45	125	45	45	45	320
Spring-Run Spawning Flows	350	210	80	275	65	145	65	65	65	340
Total Annual (acre ft.)	473,022	116,741	67,112	275,220	292,783	359,895	292,783	292,783	292,783	568,003
Assumed Riparian Release	116,741									
Restoration Release (af)	356,281									

- Riparian releases - Riparian releases for current conditions average from 117- to 126 TAF/YR. Assumed approx 117 TAF/YR to be consistent with Steiner declaration which is derived from CALSIM and WSS estimates; adjusted monthly estimates to add to approx 117 TAF and to be more consistent with data from last 5 years; rounded to nearest 10 cfs. The Nov/Dec period 120 cfs estimate is an average of the assumed 130 cfs average in Nov and 110 cfs in Dec; the May/June period average of 190 cfs is an average of 175 cfs in May and 200 cfs in June. Friant base releases in recent years (2001 - 2005) have actually average of approximately 124,000 acre feet in order to meet 5 cfs, at every diversion point during all seasons.
- Reach 2 losses - Determined by flow at head of Reach 2. Assume relatively constant, steady-state conditions. Flows at head of reach less than 300 lose 80 cfs consistent with 1995-200 data including 1999 pilot project. Flows between 300 and 400 cfs lose 90 cfs; flows above 400 and below 800 cfs lose 100 cfs; consistent with 1995-2000 data. Above 1000 cfs used flow lose curve on fig 2-4 of the Background Report. That curve was based upon non- steady-state flow conditions and thus likely overestimate steady-state conditions. Assume no losses in Reach 2B below the Bifurcation.
- Salt and Mud Slough Accretions - From Sum of Mud and Salt Slough flow in Table 2-15 of the Background Report. Additional accretions occur in reach 4B and 5 but small (up to 50 cfs) relative to total Mud and Salt Slough inflow.
- Reach 2 flow - Flow at head of Reach 2 is equal to Friant release minus riparian release plus Gravelly Ford base flow of 5 cfs. The Gravelly Ford base flow is usually higher in winter because of local tributary inflow, return flow and requirement to meet 5 cfs flow at every diversion point. Summer base flow is often higher than 5 cfs because of irrigation return flow and requirement to meet 5 cfs flow at every diversion point.
- Reach 3 flow - Equal to Reach 2 flow minus Reach 2 losses. Reach 3 flow ignores contributions from Delta Mendota Canal added at Mendota Pool which is subsequently diverted at the bottom of Reach 3 at Sack Dam into the Arroyo Canal and therefore assumes no net gain. Actual inflows could be greater particularly during the irrigation season.
- Reach 4 flows - Equal to the net Reach 3 flows. Additional flow in Reach 3 is on "top" of existing irrigation supply flows and no losses are assumed although Reach 3 appears to be a small losing reach at this time. May become gaining reach over time if losses in Reach 2 fill sufficient aquifer storage.
- Reach 5 flow - Assume equal to Reach 4 flow. Seasonal losses in Reach 4A and gains in Reach 4B. Although likely a net gain in Reach 4 flow, assumed no gain for simplicity.
- Confluence - Reach 5 flow plus Mud and Salt Slough. Does not include up to another 50 cfs of accretion upstream of Mud and Salt Slough that the WOST hydrograph included.

Table 1F. Proposed restoration flow release schedule and accounting for wet year type on the San Joaquin River

Hydrograph Component	Friant Release	Gain and Loss Assumptions			Flow at Upstream End of Reach				
		Riparian Releases	Reach 2 losses	Salt and Mud Slough Accretions	Reach 2	Reach 3	Reach 4	Reach 5	Confluence
Fall Base and Spring Run Incubation Flow	350	160	80	300	195	115	115	115	415
Fall Run Attraction Flow	700	130	100	300	575	475	475	475	775
Fall-Run Spawning and Incubation Flow	350	120	80	400	235	155	155	155	555
Winter Base Flows	350	100	80	500	255	175	175	175	675
	500	130	90	500	375	285	285	285	785
Spring Rise and Pulse Flows	1,500	130	150	475	1,375	1,225	1,225	1,225	1,700
	2,500	150	175	400	2,355	2,180	2,180	2,180	2,580
	4,000	150	200	400	3,855	3,655	3,655	3,655	4,055
Summer Base Flows	2,000	190	165	400	1,815	1,650	1,650	1,650	2,050
	350	230	80	275	125	45	45	45	320
Spring-Run Spawning Flows	350	210	80	275	145	65	65	65	340
Total Annual (acre ft.)	672,309	116,741	77,378	275,220	559,182	481,803	481,803	481,803	757,023
Assumed Riparian Release	116,741								
Restoration Release (af)	555,568								

- Riparian releases - Riparian releases for current conditions average from 117- to 126 TAF/YR. Assumed approx 117 TAF/YR to be consistent with Steiner declaration which is derived from CALSIM and WSS estimates; adjusted monthly estimates to add to approx 117 TAF and to be more consistent with data from last 5 years; rounded to nearest 10 cfs. The Nov/Dec period 120 cfs estimate is an average of the assumed 130 cfs average in Nov and 110 cfs in Dec; the May/June period average of 190 cfs is an average of 175 cfs in May and 200 cfs in June. Friant base releases in recent years (2001 - 2005) have actually average of approximately 124,000 acre feet in order to meet 5 cfs. at every diversion point during all seasons.
- Reach 2 losses - Determined by flow at head of Reach 2. Assume relatively constant, steady-state conditions. Flows at head of reach less than 300 lose 80 cfs consistent with 1995-200 data including 1999 pilot project. Flows between 300 and 400 cfs lose 90 cfs; flows above 400 and below 800 cfs lose 100 cfs; consistent with 1995-2000 data. Above 1000 cfs used flow lose curve on fig 2-4 of the Background Report. That curve was based upon non- steady-state flow conditions and thus likely overestimate steady-state conditions. Assume no losses in Reach 2B below the Bifurcation.
- Salt and Mud Slough Accretions - From Sum of Mud and Salt Slough flow in Table 2-15 of the Background Report. Additional accretions occur in reach 4B and 5 but small (up to 50 cfs) relative to total Mud and Salt Slough inflow.
- Reach 2 flow- Flow at head of Reach 2 is equal to Friant release minus riparian release plus Gravelly Ford base flow of 5 cfs. The Gravelly Ford base flow is usually higher in winter because of local tributary inflow, return flow and requirement to meet 5 cfs flow at every diversion point. Summer base flow is often higher than 5 cfs because of irrigation return flow and requirement to meet 5 cfs flow at every diversion point.
- Reach 3 flow - Equal to Reach 2 flow minus Reach 2 losses. Reach 3 flow ignores contributions from Delta Mendota Canal added at Mendota Pool which is subsequently diverted at the bottom of Reach 3 at Sack Dam into the Arroyo Canal and therefore assumes no net gain. Actual inflows could be greater particularly during the irrigation season.
- Reach 4 flows - Equal to the net Reach 3 flows. Additional flow in Reach 3 is on "top" of existing irrigation supply flows and no losses are assumed although Reach 3 appears to be a small losing reach at this time. May become gaining reach over time if losses in Reach 2 fill sufficient aquifer storage.
- Reach 5 flow - Assume equal to Reach 4 flow. Seasonal losses in Reach 4A and gains in Reach 4B. Although likely a net gain in Reach 4 flow, assumed no gain for simplicity.
- Confluence - Reach 5 flow plus Mud and Salt Slough. Does not include up to another 50 cfs of accretion upstream of Mud and Salt Slough that the WOST hydrograph included.
- May - June flow of 2,000 c.f.s. is block of water for shaping as riparian recruitment recession flow.

STIPULATION OF SETTLEMENT

NRDC v. RODGERS

PARAGRAPH 11 MILESTONE DATES

EXHIBIT C

EXHIBIT C

The Parties have collectively developed the following timeline for the development and implementation of the improvements described in Paragraph 11 of the Stipulation of Settlement. In so doing, the Parties have considered a variety of factors including, but not limited to, the desire to commence Restoration Flows (and other restoration-related activities) at the earliest possible date, as well as the challenges associated with the development and implementation of these improvements. For these reasons, the dates set forth below represent milestones for purposes of implementing the Settlement. The enforceable deadlines are set forth in the Stipulation of Settlement.

These dates were drawn from a schedule the Federal Defendants developed to assess the estimated minimum period to complete the Paragraph 11 improvements. The Parties recognize that this schedule is ambitious and reflects the Parties' intent to complete the improvements in an expeditious manner. Many assumptions were made in developing this schedule and include, but are not limited to: technical understanding of the nature of the improvements given the current limited availability of detailed site-specific information, availability of sufficient funding and resources, timely acquisition of necessary land and entry rights, timely availability of detailed information and survey results for environmental analysis, timely issuance of necessary permits, and no reduction in the estimated annual 120-day construction period due to weather, in-stream flows events, environmental or permitting requirements.

Program Environmental Compliance

September, 2009: Complete necessary and appropriate NEPA, NHPA, ESA, CEQA review

Phase 1 Improvements

December, 2011: Complete modification of Reach 4B to route at least 475 cfs

December, 2012: Complete Reach 2B-Mendota Pool 4,500 cfs bypass channel

Complete modifications of Sand Slough Control Structure and San Joaquin River headgate for routing 500-4,500 cfs and fish passage

Complete screening of Arroyo Canal and construction of fish ladder at Sack Dam

Complete modification of structures in the East Side and Mariposa Bypasses for fish passage

Complete construction of low-flow channel in East Side and Mariposa Bypasses, if necessary

Complete steps to enable deployment of fish barriers at Salt and Mud Sloughs

December, 2013: Complete Reach 2B channel capacity increase to 4,500 cfs with floodplain and riparian habitat

Phase 2 Improvements

December, 2016: Complete modification of Reach 4B for routing 4,500 cfs

Complete filling and isolating gravel pits in Reach 1

Complete modifications to Bifurcation Structure for fish passage and to prevent entrainment, if necessary

STIPULATION OF SETTLEMENT

NRDC v. RODGERS

EXHIBIT D

[Technical Advisory Committee and Restoration Administrator]

This Exhibit D describes the duties and tasks identified for the Restoration Administrator and the Technical Advisory Committee in the Stipulation of Settlement (the "Settlement").

A. Selection And Term Of Restoration Administrator

1. Within 60 days of the effective date of this Settlement, the Plaintiffs and Friant Defendants will decide upon a mutually agreed upon selection for Restoration Administrator. The Restoration Administrator shall have technical qualifications related to the Restoration Goal and, at the time of appointment, shall have no relationship to any of the Parties. In the event the Plaintiffs and Friant Defendants do not agree upon a Restoration Administrator selection within 60 days of the effective date of this Settlement, the Plaintiffs will appoint two individuals and the Friant Defendants will appoint two individuals to a selection committee, which will then select a fifth individual member who is not currently employed by any Party and has relevant technical background. This committee will confer no later than 90 days after the effective date of this Settlement and select by majority vote an individual to serve as the Restoration Administrator and submit such selection to the Court for appointment.
2. If the individual serving as Restoration Administrator resigns, is discharged by the non-federal Parties or is unable to perform the duties of the Restoration Administrator, then the process described in Paragraph 1 will be used to select a replacement within 60 days of the date the Restoration Administrator resigns, or is discharged or is unable to perform the duties of the Restoration Administrator. The selection shall be submitted to the Court for appointment. Any Party may petition the Plaintiffs and the Friant Defendants to replace the individual serving as Restoration Administrator for non-performance of duties. If the Parties do not agree about whether the Restoration Administrator should be discharged, the non-federal Parties shall form a selection committee as described in Paragraph 1 to make findings and recommend the retention or discharge of the Restoration Administrator. A majority vote recommendation of the committee will be binding on the Parties.
3. The appointment of the Restoration Administrator pursuant to Paragraph 1 above shall be for an initial term of 6 years. The Restoration Administrator may be reappointed, or a new Restoration Administrator may be appointed, by the Plaintiffs and Friant Defendants pursuant to the procedure set forth in Paragraph 1 above, each for a term of 6 years. The Restoration Administrator shall continue to advise the Secretary of the Interior ("Secretary") as specified in this Settlement and this Exhibit D until December 31, 2026, unless extended by mutual agreement of the Parties.

B. Composition and Selection of the Technical Advisory Committee

4. The Friant Defendants and Plaintiffs agree to establish a Technical Advisory Committee ("TAC") to assist the Restoration Administrator as set forth in this Settlement and Exhibit D.
5. The membership of the TAC shall not be federal employees. Accordingly, the TAC will consist of two Plaintiffs' designees and two Friant Defendants' designees. The TAC will also include two designees mutually agreed upon by the Plaintiffs and Friant Defendants. In order to provide the greatest assistance to the Restoration

Administrator regarding the implementation of the Settlement, it is agreed that all TAC members should have relevant technical or scientific background or expertise in fields related to river restoration or fishery restoration.

6. Within 60 days of the effective date of this Settlement, the Plaintiffs and the Friant Defendants shall (1) provide to all Parties the names and contact information for their two initial designees for the TAC; and (2) confer on a list of potential nominees for the two mutually-agreed upon designees for the TAC. If Plaintiffs and Friant Defendants cannot mutually agree on the two additional members of the TAC, then each of the two parties will submit three names along with supporting qualifications to the Restoration Administrator to select the two most qualified candidates for the positions.

7. All members of the TAC will be appointed for 3 year terms, which shall be renewable pursuant to the procedure set forth in Paragraph 5 and 6. Vacancies shall be filled pursuant to Paragraph 5 above. The TAC will continue until 2026, unless terminated sooner or extended further by mutual agreement of the Plaintiffs and Friant Defendants. The Secretary will not fund or manage the activities of the TAC. The work of the TAC will be coordinated by the Restoration Administrator, and the Restoration Administrator shall be authorized to create a separate account in a financial institution mutually agreeable to the Plaintiffs and Friant Defendants ("Restoration Administrator Account"), and accept funding into that account from the State or other non-federal sources, to support the work of the TAC. The Restoration Administrator, with the assistance of the Plaintiffs and Friant Defendants, shall ensure that the work of the TAC is funded at appropriate levels through this separate account, including appropriate compensation for the members of the TAC.

C. Duties of the Restoration Administrator and Technical Advisory Committee

8. The Restoration Administrator's general duties are set forth in Paragraphs 9, 11, 12, 13, 14, 15, 16, 17, 18 and 19 of the Stipulation of Settlement, and within this Exhibit D. In carrying out these duties, the Restoration Administrator shall consult with the TAC, and, as provided in Paragraphs 9 and 10 below, consult with such Federal agency technical and regulatory staff as have been designated in accordance with Paragraph 19 of the Stipulation of Settlement.

9. The TAC's primary role will be to advise the Restoration Administrator. The Parties intend that the TAC and the Restoration Administrator will work closely together. In addition to the specific obligations referenced in Paragraph 10 below, the Restoration Administrator and TAC shall, as appropriate, consult with technical representatives of those State agencies with whom the Secretary of Interior and Secretary of Commerce (the Secretaries) have entered into cooperative agreements or memoranda of understanding, and those Federal agency representatives designated in accordance with Paragraph 18 of the Settlement, on matters including, but not be limited to, pre-permitting and pre-ESA consultation activities, sharing of information, and technical assistance during initial project development, planning, design, and implementation phases, and monitoring.

10. In addition to the general duties set forth in the Settlement, the Restoration Administrator shall:

- a. schedule and attend meetings of the TAC, coordinate or facilitate the completion and/or production of any reports of the TAC, receive and consider any recommendations of the TAC, and ensure that meetings of the TAC are open to Federal and State staff designated to assist in the implementation of this Settlement.
 - b. in consultation with the TAC, make recommendations to the Secretaries regarding stock selection, re-introduction strategies, and other significant decisions relating to reintroduction and management of restored Chinook salmon below Friant Dam.
 - c. on or before February 1st of each year, provide an annual written report to the Parties about progress made over the previous calendar year in implementing the Settlement, and the Plaintiffs and Friant Defendants shall furnish a copy of this report to the Court. The report shall include but not be limited to a summary of settlement implementation activities of the previous year, findings of research and data collection, any additional recommended measures to achieve the Restoration Goal, a summary of progress and impediments in meeting targets established pursuant to Paragraph 11 below, and a summary of expenditures from the Restoration Administrator Account. The TAC shall assist in the preparation of this report. The report shall be made available to the Parties, and 30 days thereafter shall be publicly released.
 - d. if in the implementation of any of the tasks set out in the Settlement or in this Exhibit D, the Restoration Administrator reasonably determines there is a need for technical assistance beyond the primary assistance provided by the TAC, the Restoration Administrator, in consultation with the TAC, shall obtain such technical assistance.
11. In order to achieve the Restoration Goal, the Restoration Administrator, in consultation with the TAC, shall as soon as possible, but not later than one year after the effective date of the Settlement, make recommendations to the Secretary regarding the following:
- a. stock selection, re-introduction strategies, and other significant decisions relating to reintroducing and managing spring run and fall run Chinook salmon below Friant Dam;
 - b. appropriate use of existing and enhanced hatchery facilities and trap and haul for the sole purpose of accelerating the reintroduction of self-sustaining Chinook salmon fisheries below Friant Dam. Beyond the use of hatcheries and trap and haul to facilitate reintroduction, the Restoration Administrator shall only recommend the use of hatcheries and trap and haul for operations essential to protect fish populations from dropping below a level of low risk of extirpation;
 - c. appropriate interim targets, goals and milestones for annual escapement of wild adult Chinook salmon, including interim targets designed to achieve continual population growth and the long-term population target

for spring and fall run Chinook salmon by 2025. Interim goals shall include objective criteria to prevent restored populations of wild salmon from dropping below a level of low risk for extirpation;

- d. appropriate long-term targets for annual escapement of wild adult Chinook salmon, which shall reflect the potential of the restored River to support robust populations of wild Chinook salmon; and
 - e. coordination of releases from Friant Dam with fishery restoration actions on the Merced, Tuolumne, and Stanislaus Rivers.
-

EXHIBIT E

**PROPOSED ORDER APPROVING
STIPULATION OF SETTLEMENT**

NRDC v. RODGERS

1 HAMILTON CANDEE (SBN 111376)
2 JARED W. HUFFMAN (SBN 148669)
3 KATHERINE S. POOLE (SBN 195010)
4 MICHAEL E. WALL (SBN 170238)
5 NATURAL RESOURCES DEFENSE COUNCIL
6 111 Sutter Street, 20th Floor
7 San Francisco, CA 94104
8 Tel: (415) 875-6100; Fax: (415) 875-6161
9 Attorneys for Plaintiffs NRDC *et al.*

7 PHILIP F. ATKINS-PATTENSON (SBN 94901)
8 SHEPPARD MULLIN RICHTER & HAMPTON, LLP
9 4 Embarcadero Center, Suite 1700
10 San Francisco, CA 94111
11 Tel: (415) 434-9100; Fax: (415) 434-3947
12 Attorneys for Plaintiffs NRDC *et al.*

11 FRED H. ALTSHULER (SBN 43878)
12 SCOTT L. SHUCHART, *pro hac vice* (NY 4345617)
13 ALTSHULER, BERZON, NUSSBAUM, RUBIN & DEMAIN
14 177 Post Street, Suite 300
15 San Francisco, CA 94108
16 Tel: (415) 421-7151; Fax: (415) 362-8064
17 Attorneys for Plaintiff NRDC

17 UNITED STATES DISTRICT COURT
18 FOR THE EASTERN DISTRICT OF CALIFORNIA

19 NATURAL RESOURCES DEFENSE COUNCIL, *et al.*,

20 Plaintiffs,

21 v.

22 KIRK RODGERS, as Regional Director of the
23 UNITED STATES BUREAU OF RECLAMATION,
24 *et al.*

25 Defendants,

26 ORANGE COVE IRRIGATION DISTRICT, *et al.*,

27 Defendants-Intervenors.
28

Case No.
CIV-S-88-1658 LKK/GGH

**[PROPOSED]
ORDER APPROVING
STIPULATION OF SETTLEMENT**

1 Plaintiffs NRDC, *et al.* (“Plaintiffs”), defendants Kirk. Rodgers, *et al.* (the “Federal
2 Defendants”), and defendants-intervenors Orange Cove Irrigation District, *et al.* (the “Friant
3 Defendants”) have jointly requested approval by this Court of a proposed settlement of this litigation
4 on the terms and conditions set forth in the Stipulation of Settlement (including Exhibits A – F thereto,
5 which are incorporated by reference as part of the Stipulation of Settlement). The Court, which has
6 presided over this complex case for the past 18 years and is intimately familiar with the issues and the
7 parties’ positions with respect thereto, has carefully reviewed the Stipulation of Settlement, and the
8 arguments of counsel for the parties.

9 Accordingly,

10 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Stipulation of
11 Settlement, attached hereto as Exhibit 1 and incorporated herein by reference, be and hereby is
12 approved.

13 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all obligations set
14 forth in the Stipulation of Settlement shall be performed in accordance with the terms of the
15 Stipulation of Settlement.

16 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall
17 retain jurisdiction, as provided in the Stipulation of Settlement, for purposes of resolving disputes that
18 may arise in connection with the interpretation of the Stipulation of Settlement or the implementation
19 of the settlement. This Court’s continuing jurisdiction shall continue until the later of (i) July 1, 2026,
20 or (ii) a motion is brought pursuant to Paragraph 20 of the Stipulation of Settlement, and the matter is
21 finally resolved as provided therein. In the event that a party exercises its right under Paragraph 8 of
22 the Stipulation of Settlement prior to that date to declare the settlement provided therein void, the
23 Judgment shall be vacated, and the Court will convene a Status Conference.

24 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiffs and
25 the Friant Defendants are directed to meet and confer concerning the selection of the Restoration
26 Administrator, as provided in the Stipulation of Settlement and Exhibit D thereto, and to submit a
27 Proposed Order Appointing Restoration Administrator to the Court for approval as provided in the
28 Stipulation of Settlement and Exhibit D thereto.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties shall attempt to negotiate an award of Plaintiffs' reasonable attorneys' fees and costs as provided in Paragraph 45 of the Stipulation of Settlement. To facilitate such negotiations, and notwithstanding the time limit of Local Rule 54-292(b), Plaintiffs may file a Notice of Motion and Motion for Attorneys' Fees and Costs within 30 days of the entry of the Judgment in this action in order to meet the timeliness requirements of 28 U.S.C. § 2412(d)(1)(B) and Local Rule 54-293; provided, however, within 60 days thereafter, if agreement has not been reached among the parties as to Plaintiffs' Motion for Fees and Costs, then Plaintiffs shall file a brief and supporting materials addressing the remaining requirements for a motion for attorneys' fees and costs as provided in Local Rules 54-293 and 54-292. The Federal Defendants and Friant Defendants may have 30 days following service of Plaintiffs' brief and supporting materials to file papers in opposition, in whole or in part, to Plaintiffs' Motion for Fees and Costs. Plaintiffs may file reply papers within 14 days of service of any opposition papers. Any amount of Plaintiffs' attorneys' fees and costs not resolved by negotiations among the parties shall be determined by the Court through a separate Order on Plaintiffs' Motion.

DATED: _____

THE HONORABLE LAWRENCE K. KARLTON
SENIOR UNITED STATES DISTRICT JUDGE

EXHIBIT F
PROPOSED JUDGMENT

NRDC v. RODGERS

1 HAMILTON CANDEE (SBN 111376)
JARED W. HUFFMAN (SBN 148669)
2 KATHERINE S. POOLE (SBN 195010)
MICHAEL E. WALL (SBN 170238)
3 NATURAL RESOURCES DEFENSE COUNCIL
111 Sutter Street, 20th Floor
4 San Francisco, CA 94104
Tel: (415) 875-6100; Fax: (415) 875-6161
5 Attorneys for Plaintiffs NRDC *et al.*

6 PHILIP F. ATKINS-PATTENSON (SBN 94901)
7 SHEPPARD MULLIN RICHTER & HAMPTON, LLP
4 Embarcadero Center, Suite 1700
8 San Francisco, CA 94111
Tel: (415) 434-9100; Fax: (415) 434-3947
9 Attorneys for Plaintiffs NRDC *et al.*

10 FRED H. ALTSHULER (SBN 43878)
11 SCOTT L. SHUCHART, *pro hac vice* (NY 4345617)
ALTSHULER, BERZON, NUSSBAUM, RUBIN & DEMAINE
12 177 Post Street, Suite 300
San Francisco, CA 94108
13 Tel: (415) 421-7151; Fax: (415) 362-8064
14 Attorneys for Plaintiff NRDC

15 **UNITED STATES DISTRICT COURT**
16 **EASTERN DISTRICT OF CALIFORNIA**
17 **SACRAMENTO DIVISION**

18 NATURAL RESOURCES DEFENSE
COUNCIL, INC., *et al.*

19 Plaintiffs

CV-S-88-1658 LKK/GGH

20 vs.

21
22 KIRK RODGERS, Regional Director,
UNITED STATES BUREAU OF
23 RECLAMATION, *et al.*,

24 Defendants.

[PROPOSED] JUDGMENT

25
26
27 ORANGE COVE IRRIGATION
DISTRICT, *et al.*,

28 Defendants-Interventors

1 In accordance with the Parties' Stipulation of Settlement and the Court's
2 Order of this date approving the Stipulation of Settlement, it is hereby ORDERED
3 that judgment is entered in this case.

4

5

6 Dated: _____

HON. LAWRENCE K. KARLTON
Senior United States District Judge

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

PROOF OF SERVICE

I, Mary Ann Vitry, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 400 Capitol Mall, Suite 1650, Sacramento, California 95814. On September 13, 2006, I served the within document(s):

NOTICE OF LODGMENT OF STIPULATION OF SETTLEMENT

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Sacramento, California addressed as set forth below.
- by causing personal delivery by _____ of the document(s) listed above to the person(s) at the address(es) set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- I caused such envelope to be delivered via overnight delivery addressed as indicated on the attached service list. Such envelope was deposited for delivery by _____ following the firm's ordinary business practices.

Via U.S. District Court, notice will be electronically mailed to:

Fred H. Altshuler	faltshuler@altshulerberzon.com , tmason@altshulerberzon.com , sshuchart@altshulerberzon.com , hmillier@altshulerberzon.com
Philip F. Atkins-Pattenson	patkinspattenson@sheppardmullin.com
J. Mark Atlas	jma@jmatlaslaw.com , matlas@mhalaw.com
Hamilton Candee	hcandee@nrdc.org , macaux@nrdc.org
Ernest Albert Conant	econant@youngwooldridge.com , waterlaw@youngwooldridge.com
Daniel M. Dooley	ddooley@dhlaw.net , mparten@dhlaw.net , apeltzer@dhlaw.net , ccarlson@dhlaw.net , jblack@dhlaw.net , vacosta@dhlaw.net
Denslow Brooks Green	dengreen@sbcglobal.net
Douglas Blaine Jensen	djb@bmjlaw.com
Jan Leslie Kahn	jkahn@kschanford.com , agarcia@kschanford.com
Jeffrey A. Meith	jmeith@minasianlaw.com , j.meith@att.net , judy@minasianlaw.com , cmecf@minasianlaw.com
Mark William Poole	mark.poole@doj.ca.gov
Jon David Rubin	jrubin@diepenbrock.com , llawrie@diepenbrock.com , jonishi@diepenbrock.com
Michael Victor Sexton	msexton@minasianlaw.com , cmecf@minasianlaw.com , anna@minasianlaw.com

LAW OFFICES OF
BEST BEST & KRIEGER LLP
400 CAPITOL MALL, SUITE 1650
SACRAMENTO, CALIFORNIA 95814

1	Lee N. Smith	lsmith@stoel.com , mmsykes@stoel.com , vlballew@stoel.com
2	James E. Thompson	james.thompson@bbklaw.com , astrid.watterson@bbklaw.com , rebecca.lerma@bbklaw.com
3	Gregory K. Wilkinson	gregory.wilkinson@bbklaw.com
4	Jennifer Buckman	jennifer.buckman@bklaw.com
5	David B. Glazer	david.glazer@usdoj.gov , efile_sf.enrd@usdoj.com
6	Clifford Thomas Lee	Cliff.Le@doj.ca.gov , Voneciel.Gaines@doj.ca.gov
7	Stephen M. Macfarlane	Stephen.Macfarlane@usdoj.gov , efile-sacramento.enrd@usdoj.com , deedee.sparks@usdoj.gov
8	James A. Maysonett	James.A.Maysonett@usdoj.gov , Leatha.Johnson@usdoj.gov
9	Leo Patrick O'Brien	leo@baykeeper.org
10	Katherine Scott Poole	kpooles@nrdc.org
11	Mark William Poole	mark.poole@doj.ca.gov
12	Richard Roos-Collins	rrcollins@n-h-i-org
13	Daniel Joseph O'Hanlon	Dohanlon@kmtg.com , DGentry@kmtg.com , Calendar8@kmtg.com
14	Gary William Sawyers	gsawyers@sawyerslaw.com
15	Danial Zackary Smith	zsmith@visaliaalaw.com
16	Timothy O'Laughlin	towater@olaughlinparis.com
17	William C. Paris	Bparis@olaughlinparis.com

Notice will be delivered via first-class U.S. mail to:

Dante John Nomellini, Jr.
 Nomellini Grilli & McDaniel
 P.O. Box 1461
 Stockton, CA 95201-1461

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on September 13, 2006



 Mary Ann Vitry

LAW OFFICES OF
 BEST BEST & KRIEGER LLP
 400 CAPITOL MALL, SUITE 1650
 SACRAMENTO, CALIFORNIA 95814