Memorandum of Understanding

by and among
the United States Department of the Interior Bureau of Reclamation,
the San Joaquin River Exchange Contractors Water Authority,
the Central California Irrigation District,
the Firebaugh Canal Water District,
the San Luis Canal Company,
the Columbia Canal Company
the Merced Irrigation District,
the Turlock Irrigation District,
the Modesto Irrigation District,
the Oakdale Irrigation District,
the South San Joaquin Irrigation District,
the San Joaquin Tributaries Association,
the San Joaquin River Resource Management Coalition,
the Westlands Water District, and
the San Luis & Delta-Mendota Water Authority
Regarding Implementation of the Stipulation of Settlement in
Natural Resources Defense Council, et al. v. Kirk Rodgers, et al.

A. Preface.

This Memorandum of Understanding (the "MOU") is entered into by and between the United States Department of the Interior Bureau of Reclamation ("Reclamation"), as a party to the Stipulation of Settlement in Natural Resources Defense Council, et al. v. Kirk Rodgers, et al., Civ. No. S-88-1658 LKK/GGH (E.D. Cal.) (hereinafter "*NRDC v. Rodgers*"); and the San Joaquin River Exchange Contractors Water Authority, the Central California Irrigation District, the Firebaugh Canal Water District, the San Luis Canal Company, the Columbia Canal Company, the Merced Irrigation District, the Turlock Irrigation District, the Modesto Irrigation District, the Oakdale Irrigation District, the South San Joaquin Irrigation District, the San Joaquin Tributaries Association, the San Joaquin River Resource Management Coalition, the Westlands Water District, and the San Luis & Delta-Mendota Water Authority (collectively, the "Third Parties"). The foregoing entities that are signatories to this MOU are collectively referred to as the "Parties."

Reclamation is a party to *NRDC v. Rodgers,* which concerns, among other things, the restoration and maintenance of flows and fisheries in the main stem of the San Joaquin River between Friant Dam and the confluence of the Merced River. A Stipulation of Settlement in *NRDC v. Rodgers* (the "Settlement") was approved by the federal district court on October 23, 2006.

For purposes of this MOU, the Third Parties are or represent some of the entities or individuals located in the San Joaquin River Basin who are landowners adjacent to the San Joaquin River, or who use the waters of the San Joaquin River, tributaries of the San Joaquin River or the Sacramento-San Joaquin Delta, including persons or entities diverting or receiving water pursuant to applicable state and/or federal law. The Third Parties are not parties to the Settlement, however they did actively participate in crafting the enabling legislation and have an interest in the implementation of the restoration actions on the San Joaquin River, and the effects it may have on public and private property, water and hydroelectric operations on the San Joaquin River and its tributaries, the operations and funding of the Central Valley Project (CVP), land use, ongoing ecosystem, species and habitat restoration activities, water quality, and flood control operations, as well as an interest in maintaining the agricultural economy of the region. As provided in Paragraph 7 of the Settlement, Reclamation neither intends nor believes that the implementation of the Settlement or the implementing legislation will have a material adverse effect on the Third Parties, other interests not a party to the litigation, or on other streams or rivers tributary to the San Joaquin River. Reclamation believes that the Third Parties have special expertise with respect to implementation of certain elements of the Settlement and the implementing legislation and that the participation of the Third Parties will contribute to the success of the restoration plan for the San Joaquin River. The Third Parties will play a collaborative role in the planning, design, implementation and potential adaptation of the actions on the San Joaquin River called for by the Settlement and in the implementing legislation. As referred to in this MOU, the "implementing legislation" shall mean S. 27 and H.R. 24, introduced January 4, 2007, a copy of which is attached hereto as Exhibit A and incorporated herein by reference.

B. <u>The Effect Of This MOU</u>.

1. Nothing in this MOU precludes, or shall be interpreted to preclude, other interested parties from participation in processes designed to implement the Settlement. Additionally, the parties to this MOU acknowledge that as the implementation process moves forward, there may be other parties identified with substantially similar circumstances that may become signatories to this MOU or may execute other MOUs with Reclamation.

2. The implementing agencies are currently in the process of developing the internal organizational structures and procedures that will be used to implement the Settlement. The Parties to this MOU recognize that those organizational structures and procedures will undoubtedly continue to evolve as the Settlement is implemented. Nothing in this MOU precludes, or shall be interpreted to preclude, the implementing agencies from altering such organizational structures and procedures to better carry out the terms of the Settlement and the implementing legislation, provided, however, that such changes shall not interfere with the ability of the Third Parties to provide timely and comprehensive comments to the Secretary of the Interior (Secretary) through whatever organizational structure is developed.

3. Nothing in this MOU is intended to, nor shall it have the effect of, constraining, limiting or relieving any public entity in carrying out its statutory or contractual responsibilities or obligations. Entering into this MOU and agreeing to collaborate and work together to implement the Settlement shall not constitute an admission by the Third Parties as to the proper interpretation of any provision of law, nor is anything in this MOU intended to, nor shall it have the effect of, waiving or limiting any of the Third Parties' rights and remedies under any applicable law. The Third Parties specifically retain all rights of action or claims of relief with respect to the implementation of the Settlement that they may have under any applicable law. Nothing in this MOU is intended to, nor shall it have the effect of, amending, modifying or otherwise altering any provision of the Settlement or the Memorandum of Understanding between the Settling Parties and the State of California.

C. <u>Specific Principles.</u>

1. It is anticipated that the Secretary of the Interior, through Reclamation and the U.S. Fish and Wildlife Service, will implement the Settlement through a Program Management Team, and that implementation will be managed by a Program Manager. It is anticipated that the Program Manager will manage and coordinate the work of technical workgroups and will coordinate with the Restoration Administrator as provided in the Settlement.

2. The Third Parties intend to assist Reclamation and the other implementing agencies in the implementation of the Settlement consistent with the Third Parties' authorities and resources and consistent with the terms and conditions of the Settlement.

3. The Third Parties and Reclamation intend to work together in the planning, design, and implementation of appropriate aspects of the Settlement. Reclamation, along with the other implementing agencies and the Settling Parties, will be primarily responsible for implementing the Settlement. The Third Parties will assist with the implementation of the Settlement by providing data and technical analysis, modeling and other information necessary for successful implementation.

4. To implement the Settlement, the Program Management Team currently intends to establish at least four Technical Workgroups composed of implementing agency staff: a Water Management Workgroup, a Fish Management Workgroup, an Engineering and Design Workgroup, and a Planning, Environmental Compliance, and Permitting Workgroup. Other technical workgroups may be established as needed. It is envisioned that one or more stakeholder groups will be established. The Third Parties shall be included, where appropriate, on stakeholder groups associated with the Technical Workgroups to facilitate participation and input into the implementation of the Settlement.

5. The Third Parties agree to cooperate with Reclamation in the implementation of the Settlement, and Reclamation agrees to receive input from the Third Parties on matters relating to the reintroduction of salmonids, and the design and construction of channel and structural modifications and improvements, fish passage and fish screens,

and water operations. The Third Parties shall establish a Coordinating Committee to coordinate the efforts outlined in this MOU with Reclamation and to assist in the implementation of the Settlement. The Coordinating Committee may make recommendations as to implementation of the Settlement to minimize or offset impacts to Third Parties consistent with the process in Paragraph 19(b) of the Settlement. The recommendations may include, but are not limited to: timing of the Base Flow releases allocated during the period from March 1 through May 1 for the purpose of coordinating spring pulse flows on the lower San Joaquin River and its tributaries; planning, design and construction of channel and structural improvements called for in Paragraph 11 of the Settlement and the implementing legislation; the program for reintroducing Central Valley spring-run Chinook salmon called for in the implementing legislation; the acquisition and disposal of real property; levee design, construction, and maintenance; the conduct of a study to determine whether to expand channel and conveyance capacity to 4,500 cfs in reach 4B of the San Joaquin River or to use an alternate route for pulse flows and any action to expand reach 4B; and activities associated with carrying out the Water Management Goal, including, but not limited to, recirculation, recapture, reuse exchange or transfer of Restoration Flows. Consistent with the Settlement, the Program Manager will use reasonable efforts under the circumstances to provide to the Coordinating Committee any recommendation by the Restoration Administrator to the Secretary or the Secretary's designee regarding a matter that is a subject of this MOU. Any comments from the Coordinating Committee to the Secretary or the Secretary's designee shall be provided in a timely manner.

6. It is the intent of Reclamation to work closely with affected landowner groups and/or affected individual landowners, in the areas represented by the Third Parties in order to effectuate the Settlement and the implementing legislation. Reclamation agrees that the involvement of private landowners is crucial to ensuring the success of the Settlement. The Third Parties shall establish a Landowner Committee to coordinate the implementation of the Settlement with the private landowners they represent and to provide for the dissemination of information to those landowners.

7. It is the intent of Reclamation to work closely with affected landowners groups and/or affected landowners in other areas of the River or the Delta in order to effectuate the Settlement and the implementing legislation. Reclamation may enter into agreements with landowners in those areas or areas represented by the Third Parties, as necessary, regarding the construction, implementation, operation, and/or maintenance of the facilities including the Phase 1 and Phase 2 Improvements identified in the Settlement.

D. <u>Additional Provisions</u>.

1. This MOU shall take effect on the date signed and shall terminate on December 31, 2026, unless extended by written agreement of all of the Parties.

2. Any provision of this MOU may be modified or amended, including modification to add parties, only by written agreement executed by all of the Parties.

3. Any Party to this MOU wishing to withdraw from this MOU must provide a written notice to each other Party hereto specifying the reason the notifying Party wishes to withdraw. The Parties shall promptly meet and confer in a good faith effort to address and resolve, if possible, the issue(s) causing the notifying Party to wish to withdraw from this MOU. If following such meeting the notifying Party still wishes to withdraw, such Party may withdraw 30 days after the date of the written notice.

4. The expenditure or advance of any money or the performance of any obligation of the United States under this MOU shall be contingent upon appropriation or allotment of funds. No liability shall accrue to the United States for failure to perform any obligation under this MOU in the event that funds are not appropriated or allotted.

5. This MOU may be signed in two or more counterparts each of which, when executed and delivered, shall be an original and all of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document.

6. Each signatory to this MOU certifies that he or she is authorized to execute this MOU on behalf of the Party he or she represents, and that such Party shall be fully bound by the terms hereof upon such signature without further act, approval, or authorization of such Party.

DATED: FEB 2 6 2007, 2007

Signatures:

United States Department of the Interior Bureau of Reclamation

San Joaquin River Exchange Contractors Water Authority

Central California Irrigation District

Firebaugh Canal Water District

Chase Hurley

San Luis Canal Company

Columbia Canal Company

Merced Irrigation District

Turlock Irrigation District

Modesto Irrigation District

Oakdale Irrigation District

South San Joaquin Irrigation District

San Joaquin Tributaries Association

San Joaquin River Resource Management Coalition

Westlands Water District

San Luis & Delta-Mendota Water Authority