

## **Appendix A**

# **Stipulation of the Settlement in NRDC, et al., v. Kirk Rodgers, et al.**

**Water Year 2010 Interim Flows Project  
Draft Environmental Assessment/Initial Study**





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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
(SACRAMENTO DIVISION)

NATURAL RESOURCES DEFENSE  
COUNCIL, *et al.*,

Plaintiff,

v.

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

Defendants.

ORANGE COVE IRRIGATION DISTRICT,  
*et al.*,

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 Intervenor 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



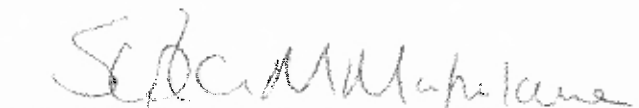
14 PHILIP F. ATKINS-PATTENSON

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



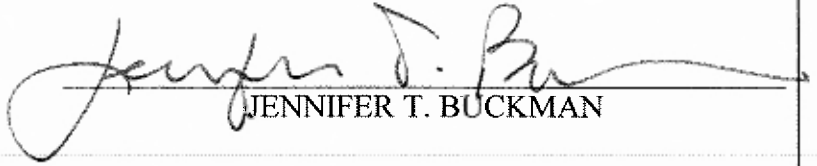
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1 Dated: September 13, 2006

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

NATURAL RESOURCES DEFENSE  
COUNCIL, *et al.*,

Plaintiffs,

v.

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

Defendants.

ORANGE COVE IRRIGATION  
DISTRICT, *et al.*

Defendants  
Intervenors.

CIV NO. S-88-1658 - LKK/GGH

**STIPULATION OF SETTLEMENT**

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.*

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

Definitions

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

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

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

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

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

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

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

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

**Channel And Structural Improvements**

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

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

11. The following are the necessary improvements, which shall be developed and implemented in accordance with all applicable federal and state laws 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;

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

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

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

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

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

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

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

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

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

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

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

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

#### **The Restoration Flows**

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

(a) All such additional releases from Friant Dam shall be in 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

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

#### **Reintroduction Of Salmonids**

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

(a) The Secretary, through the FWS, and in consultation with the Secretary of Commerce, the DFG, and the Restoration Administrator, shall ensure that spring and fall run Chinook salmon are reintroduced at the earliest practical date after commencement of sufficient flows and the issuance of all necessary 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

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

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

#### **Changes To The Restoration Flows**

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

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

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

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

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

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

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

#### **The Funding Plan**

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

(a) Federal Funding Contributions. Pursuant to CVPIA § 3406(c), all 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

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

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

#### **Conditions Precedent and Force Majeure**

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

24. Force Majeure. The Parties agree:

(a) A “force majeure event” means an event beyond the reasonable 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.

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

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

Plaintiffs:

San Joaquin River Project Manager  
Western Water Project  
Natural Resources Defense Council  
111 Sutter Street, 20<sup>th</sup> Floor  
San Francisco, CA 94104

Federal Defendants:

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 DATED: 9/13/2006

2  
3 NATURAL RESOURCES DEFENSE COUNCIL,  
4 SHEPPARD MULLIN RICHTER & HAMPTON LLP  
5 ALTSHULER, BERZON, NUSSBAUM, RUBIN & DEMAIN

6 By 

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Attorneys for Plaintiffs

NATURAL RESOURCES DEFENSE COUNCIL, *et al.*

7  
8  
9 DATED: 9/13/2006

10  
11 By 

HAMILTON CANDÉE

Attorneys for Plaintiffs

NATURAL RESOURCES DEFENSE COUNCIL, *et al.*

12  
13  
14 DATED: 9/13/2006

15  
16 UNITED STATES DEPARTMENT OF JUSTICE  
17 NATURAL RESOURCES SECTION, ENVIRONMENT &  
18 NATURAL RESOURCES DIVISION

19 By 

DAVID B. GLAZER

STEPHEN M. MACFARLANE

Attorneys for Defendants

KIRK RODGERS, *et al.*

20  
21  
22  
23 DATED: 9/13/2006

24  
25 By 

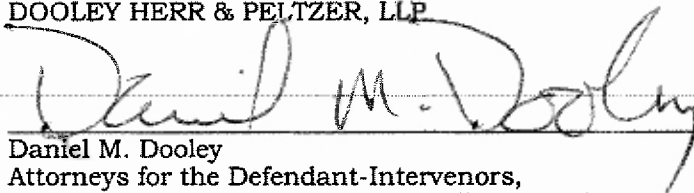
Kole M. Upton

Chair, Friant Water Users Authority

1  
2  
3 DATED: 9/13/2006

4 DOOLEY HERR & PELTZER, LLP

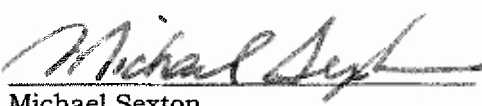
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Water District, and Tulare Irrigation District

9 DATED: 9/13/2006

10 MINASIAN, SPRUANCE, MEITH, SOARES & SEXTON, LLP

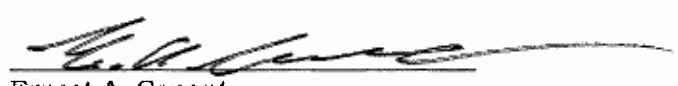
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Irrigation District, Lindsay-Strathmore Irrigation  
District, Orange Cove Irrigation District, and Terra Bella  
Irrigation District

17 DATED: 9/13/2006

18 YOUNG WOOLDRIDGE, LLP

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20  
21 By

  
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Municipal Utility District

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STIPULATION OF SETTLEMENT

1 DATED: 9/13/2006

2 BAKER MANOCK & JENSEN

3  
4 By 

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

7 DATED: 9/13/2006

8 STOEL RIVES, LLP

9  
10 By 

11 Michael A. Campos  
12 Attorneys for the Defendant-Intervenor,  
13 Madera Irrigation District  
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