

Appendix A

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

**Water Year 2010 Interim Flows Project
Final
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



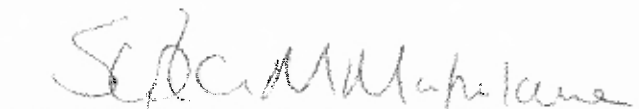
14 PHILIP F. ATKINS-PATTENSON

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



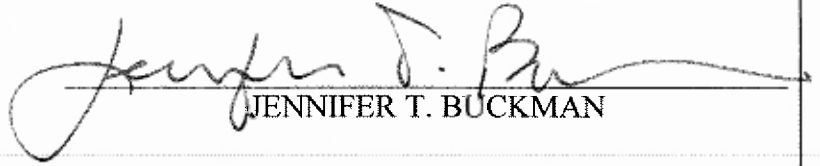
24 STEPHEN M. MACFARLANE

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1 Dated: September 13, 2006

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4 By


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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

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

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

9 **Channel And Structural Improvements**

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

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

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

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

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

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

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

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

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

(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, 20th 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

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

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

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

Friant Parties:

General Manager
Friant Water Users Authority
854 North Harvard Avenue
Lindsay, CA 93247

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

47. This Settlement may be executed in counterparts.

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

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

1 DATED: 9/13/2006

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

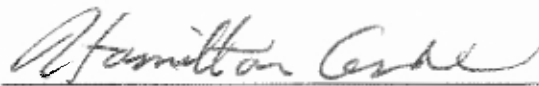
6 By 

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Attorneys for Plaintiffs

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9 DATED: 9/13/2006

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11 By 

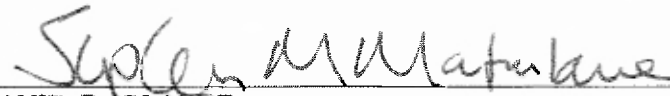
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14 DATED: 9/13/2006

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

19 By 

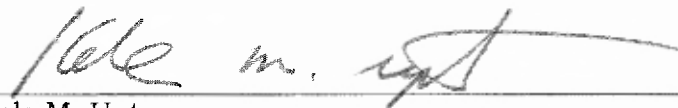
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Attorneys for Defendants

KIRK RODGERS, *et al.*

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23 DATED: 9/13/2006

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25 By 

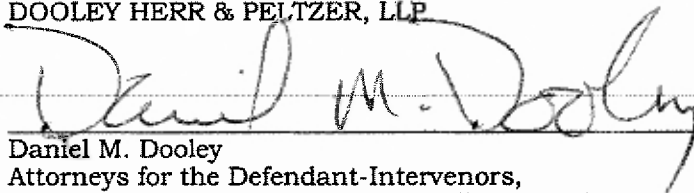
KOLE M. UPTON

Chair, Friant Water Users Authority

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3 DATED: 9/13/2006

4 DOOLEY HERR & PELTZER, LLP

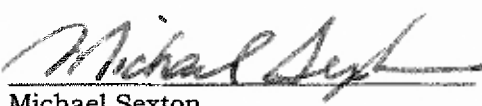
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9 DATED: 9/13/2006

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

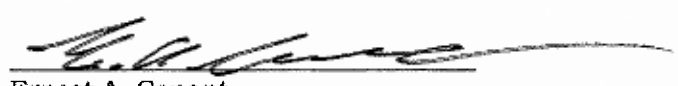
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District, Ivanhoe Irrigation District, Lindmore
Irrigation District, Lindsay-Strathmore Irrigation
District, Orange Cove Irrigation District, and Terra Bella
Irrigation District

17 DATED: 9/13/2006

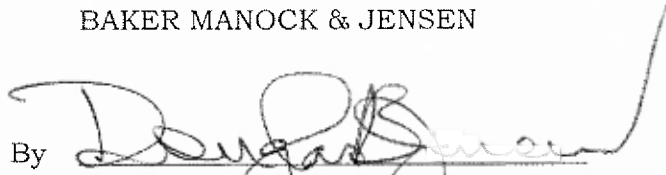
18 YOUNG WOOLDRIDGE, LLP

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21 By


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Municipal Utility District

1 DATED: 9/13/2006

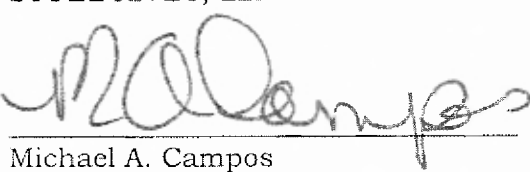
2 BAKER MANOCK & JENSEN

3
4 By 

5 Douglas Jensen
6 Attorneys for the Defendant-Intervenor,
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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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STIPULATION OF SETTLEMENT

NRDC v. RODGERS

~~DRAFT LEGISLATION~~

EXHIBIT A

Title __: SAN JOAQUIN RIVER RESTORATION SETTLEMENT ACT

Section 101. Short Title.

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

Section 102. Purposes.

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

Section 103. Definitions.

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

Section 104. Implementation of Settlement.

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

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

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

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

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

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

Section 106. Compliance with Applicable Law.

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

Section 107. Compliance with Central Valley Project Improvement Act.

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

Section 108. No Private Right of Action.

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

Section 109. Appropriations; Settlement Fund.

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

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

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

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