



# Summary Of The Stipulation Of Settlement

Of  
NATURAL RESOURCES DEFENSE COUNCIL, et al.,  
v.  
KIRK RODGERS, et al.  
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA  
CIV NO. S-88-1658 – LKK/GGH

This document provides a summary of the elements of the Stipulation of Settlement (“Settlement”) of the above-referenced litigation.

1. **GOALS:** The Settlement includes two parallel goals. The first, the Restoration Goal, is to restore and maintain a self-sustaining salmon population below Friant Dam to the confluence of the Merced River. The second, the Water Management Goal, is to reduce or avoid adverse water supply impacts to all of the Friant Division long-term water contractors. These parallel goals are set forth in paragraph 2 of the Settlement.
2. **RESTORATION GOAL:** Implementation of the Restoration Goal includes three essential elements. First, certain improvements providing for channel capacity, related flood protection, fish passage and fish screening are required. Second, flow releases at Friant Dam are required to create conditions conducive to restoration. Finally, fish are required to be reintroduced into the upper San Joaquin River.
  - a. **Channel Improvements:** Paragraph 11 of the Settlement identifies certain Phase 1 and Phase 2 improvements to prepare the River to receive the Restoration Flows and reintroduced fish.
    - i. Phase 1 Improvements by December 31, 2013:
      1. Mendota Pool bypass.
      2. Increase channel capacity between the Eastside bypass diversion and Mendota Pool to 4500 cfs.

# Summary of the Stipulation of Settlement Page 2

3. Increase channel capacity below the Sand Slough control structure to 475 cfs.
  4. Modify the Sand Slough control structure to provide for fish passage and appropriate routing of water.
  5. Screen the Arroyo Canal diversion.
  6. Modify Sack Dam to provide for fish passage.
  7. Modify the Eastside and Mariposa bypass channels to provide appropriate low-flow conditions and fish passage.
  8. Provide appropriate seasonal fish barriers to screen fish at Salt and Mud Sloughs.
- ii. Phase 2 Improvements by December 31, 2016:
1. Increase channel capacity below the Sand Slough control structure to 4500 cfs unless determined not to substantially enhance achievement of the Restoration Goal.
  2. Modify the Eastside Bypass diversion structure to provide appropriate fish screening and passage.
  3. Isolate critical gravel pits below Friant Dam.
- b. **Restoration Flows:** Paragraph 13 of the Settlement sets forth the provisions of the Settlement for implementation of the Restoration Flows.
- i. Hydrographs: Paragraph 13 incorporates Exhibit B, which specifies the extent of the Restoration Flows in a series of hydrographs (seasonal flow releases from Friant Dam) for specified water year types (critically dry to wet). The hydrographs are the foundation for the Restoration Flows.
  - ii. Buffer Flows: Paragraph 13 provides that the Restoration Flows specified in the hydrographs may be augmented by Buffer Flows of up to 10 %.
  - iii. Augmentation Flows: Paragraph 13 provides that the Restoration Flows can be further augmented by acquisition of water from willing sellers.
  - iv. Interim Flows: Paragraph 15 provides that Interim Flows for experimental purposes may be initiated beginning in late 2009 provided that such Interim Flows do not exceed then existing channel capacity or interfere with channel work required by Paragraph 11.

- v. **Initiation of Restoration Flows:** Full Restoration Flows are to begin on January 1, 2014. If construction is not completed, there are certain default provisions designed to preserve water for later use to achieve the Restoration Goal.
  - vi. **Flexibility:** Exhibit B specifies certain procedures to flexibly manage the Restoration Flows in ways that account for temperature and biological factors and to avoid adverse affects on other downstream fishery programs.
  - c. **Reintroduction of Fish:** Paragraph 14 of the Settlement provides that the Fish & Wildlife Service shall submit an application for a permit to reintroduce salmon to the National Marine Fisheries Service (“NMFS”) and NMFS shall issue a decision on such application by April 30, 2012. Paragraph 14 provides that the Restoration Goal includes reintroduction of fall and spring run salmon pursuant to such permit by December 31, 2012. It is anticipated that NMFS will provide incidental take exemptions through use of one or more provisions of the Endangered Species Act.
  - d. **Reopener:** Paragraph 20 of the Settlement sets forth a procedure by which any party may seek to modify the Restoration Flows after December 31, 2026. It requires a filing with the Court and a referral to the State Water Resources Control Board. Additionally, it requires a number of specific factual findings to be made by the SWRCB.
3. **WATER MANAGEMENT GOAL:** Implementation of the Water Management Goal includes two critical elements. First, it requires the development and implementation of a plan to recirculate, recapture, reuse, exchange, or transfer water released for Restoration Flows. Second, it creates a Recovered Water Account that provides an opportunity for Friant Division long-term contractors to recover water they have lost to Restoration Flows at a reduced water rate in certain wet hydrologic conditions.
- a. **Plan for Recirculation:** Paragraph 16 of the Settlement provides that the plan for recirculation must not have adverse impacts on the Restoration Goal, downstream water quality, or downstream fisheries programs. It must be consistent with all applicable laws, regulations and standards. It cannot affect the Secretary’s ability to meet existing contractual obligations and must be consistent with agreements between the United

# Summary of the Stipulation of Settlement Page 4

States and the State of California regarding operations of the CVP and the State Water Project.

- b. **Recovered Water Account:** Paragraph 16 provides for the creation of an account that tracks the water Friant Division long-term contractors provide toward Restoration Flows. Any contractors that provide such water will be able to purchase water for \$10 an acre foot during certain wet conditions when water is available that is not necessary to meet contractual obligations or Restoration Flows. This provision is designed to foster increased water banking and management programs to reduce the water supply impacts of the Settlement.
4. **STATE PARTICIPATION:** The Settlement contemplates that the State of California will be a necessary participant in implementation of many provisions. To that end, the Parties have negotiated a memorandum of understanding with certain State agencies that specifies how the Parties and the State will integrate their activities to implement the Settlement. It is contemplated that the State will provide technical and funding resources to this effort and that specific agreements will be negotiated with the State regarding specific actions required by the Settlement.
5. **FUNDING:** Paragraph 21 of the Settlement sets forth a number of very specific provisions related to funding the Settlement. It includes provisions relating to the character of the capital investment, limitations on Friant Division long-term contractor payments, identification of existing funding resources and additional appropriations authorization.
  - a. **Costs are Nonreimbursable:** The Settlement provides that the costs of the Settlement will not add to the capital obligations of the CVP.
  - b. **Commitment and Limit on Friant Contributions:** The Settlement provides that Friant Division long-term water contractors will continue to pay the CVPIA Restoration Charge and Friant Surcharge for the life of the Settlement. It further provides that the funding provisions set forth in the Settlement shall be the limit of their financial obligation to the Settlement.
  - c. **Friant Surcharge:** The CVPIA imposed a special surcharge on water delivered to Friant users. Only Friant users pay this charge. The Settlement provides that the CVPIA Friant Surcharge payments shall be dedicated to the implementation of the Settlement.

# Summary of the Stipulation of Settlement Page 5

- d. **Capital Payments:** The Settlement provides that the capital repayment portion of the Friant water rate payments shall be dedicated to the Settlement for a period of 9 fiscal years.
  - e. **Restoration Payments:** The CVPIA imposed a Restoration Fund charge on all water delivered by the CVP. Friant users also pay this charge. The Settlement provides that up to \$2 million annually of the Friant CVPIA Restoration Charge payments will be made available to the Settlement.
  - f. **Additional Appropriations Authorization:** The Settlement authorizes additional appropriations authority for implementation of the Settlement of \$250 million. It should be noted that some of the identified sources of funding discussed above are not subject to the appropriations ceiling or to annual appropriations and may not be subject to scoring for budget allocation purposes.
  - g. **Revenue Bond Authority:** The Settlement authorizes the Secretary of the Interior to enter into agreements with subdivisions of the State of California to provide certain revenue streams to support a revenue bond issue. This discretion creates the opportunity to front load some of the funding streams to assist in implementing the Settlement.
  - h. **State Funding:** As discussed above, the Settlement anticipates State funding. In addition to existing State resources (i.e. Prop 13 & Prop 50), there are specified and unspecified sources of funding included in bond measures to be considered by the voters of California this November.
6. **OTHER CLAIMS FOR RELIEF:** The Settlement resolves all claims pending in the existing litigation, including those challenging the validity of the Friant Division long-term renewal contracts, except attorneys' fees and costs.
7. **NON PARTY PARTICIPATION IN SETTLEMENT:** The Settlement acknowledges that implementation will require a series of agreements of various forms with agencies, entities and individuals who are not parties to the litigation. Paragraph 19(b) provides that the Secretary of the Interior will provide for coordination with interested third parties (including third parties who own or control lands or facilities affected by the implementation of the Settlement), and for public participation in Settlement implementation. Paragraph 10 specifically contemplates that such agreements will be negotiated. Additionally, provisions

of the MOU with the State contemplate joint efforts to provide mechanisms for non party participation in the implementation of the Settlement.

## **SUMMARY OF FUNDING PROVISIONS**

### **FRIANT SURCHARGE**

- Is expected to generate a minimum annual average of \$8 million per year.
- Will raise at least \$160 million during the first 20 years of the Restoration project and will continue thereafter as well.

### **RESTORATION FUND PAYMENTS**

- Friant currently pays \$11 million annually.
- Up to \$2 million of such payments will be available.
- Will generate up to \$40 million in the first 20 years of the Restoration project and will be available thereafter as well.

### **FRIANT CAPITAL PAYMENTS**

- Friant contractors currently pay an average of \$10 million per year towards their CVP capital repayment obligation.
- The Settlement allocates 9 years of such payments to the Restoration project.
- Will generate \$90 million for the Restoration project.

### **APPROPRIATIONS AUTHORIZATION**

- The Settlement Authorizes appropriations of \$250 million.

### **TOTAL FUNDING PROVIDED**

- \$450 million have been provided for in the Settlement.
- At least \$160 million Friant Surcharge payments, up to \$40 million of Restoration fund Payments and \$250 million in authorized appropriations.
- Additional State funding from bonds and/or appropriations is not included in the total funding noted above.

