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Attorneys for Plaintiffs NRDC, *et al.*

[Names Of Additional Counsel Appear On Signature Page]

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 FILING OF MEMORANDUM OF UNDERSTANDING BETWEEN SETTLING PARTIES AND STATE OF CALIFORNIA

NOTICE IS HEREBY GIVEN that on September 13, 2006, Plaintiffs Natural Resources Defense Council, *et al.* ("Plaintiffs"), Defendants Kirk Rodgers, *et al.* (the "Federal Defendants") and Defendant Intervenors Orange Cove Irrigation District, *et al.* (the "Friant Defendants") (collectively, the "Settling Parties") are filing with the Court their Memorandum of Understanding with the State of California regarding the implementation of the Stipulation of Settlement lodged earlier today.

Dated: September 13, 2006

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

By _____
PHILIP F. ATKINS-PATTENSON

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

Dated: September 13, 2006

UNITED STATES DEPARTMENT OF JUSTICE,
ENVIRONMENT AND NATURAL RESOURCES DIVISION,
NATURAL RESOURCE SECTION WILDLIFE AND
MARINE RESOURCE SECTION

By _____
STEPHEN M. MACFARLANE

Attorneys for Defendants
Kirk Rodgers, *et al.*

Dated: September 13, 2006

BEST BEST & KRIEGER LLP

By _____
JENNIFER T. BUCKMAN

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

Memorandum of Understanding

by and among
the United States Department of the Interior,
the United States Department of Commerce,
the Natural Resources Defense Council,
the Friant Water Users Authority,
the California Resources Agency,
the California Department of Fish and Game,
the California Department of Water Resources,
and the California Environmental Protection Agency
Regarding Implementation of the Settlement in
Natural Resources
Defense Council, et al. v. Kirk Rodgers, et al.

A. Preface.

This Memorandum of Understanding (the "MOU") is entered into by and between the United States Department of the Interior and the United States Department of Commerce, on behalf of the Federal Defendants in Natural Resources Defense Council, et al. v. Kirk Rodgers, et al., Civ. No. S-88-1658 LKK/GGH (E.D. Cal.) (hereinafter "NRDC v. Rodgers"), the Natural Resources Defense Council ("NRDC") on behalf of the Plaintiffs in NRDC v. Rodgers, the Friant Water Users Authority ("FWUA") on behalf of the Friant Defendant-Interveners in NRDC v. Rodgers (collectively, the "Settling Parties"), and the California Resources Agency, the California Department of Water Resources ("DWR"), California Department of Fish and Game ("DFG"), and the California Environmental Protection Agency ("CalEPA") (collectively, the "State Agencies"). The parties signatory to this MOU are collectively referred to as the "Parties."

The Settling Parties are parties to NRDC v. Rodgers. NRDC v. Rodgers concerns, among other things, the restoration and maintenance of flows and fisheries in the main stem of the San Joaquin River between Friant Dam and the confluence of the Merced River. Concurrently herewith, the Settling Parties are executing a Stipulation of Settlement in the above titled action (the "Settlement"). A goal of the Settlement is to restore and maintain fish populations in "good condition" in the main stem of the San Joaquin River below Friant Dam to the confluence of the Merced River, including naturally-reproducing and self-sustaining populations of salmon and other fish (the "Restoration Goal"). The Settlement also includes a goal to reduce and avoid adverse water supply impacts to all of the Friant Division long-term contractors caused by the Restoration Flows and Interim Flows provided for in the Settlement (the "Water Management Goal"). The Settling Parties believe that the State of California ("State"), through DFG, DWR, the Resources Agency, and the CalEPA should play a major, collaborative role in the planning, design, funding, and implementation of the actions on the San Joaquin River called for by the Settlement.

The State has expressed strong support for this Settlement and has pledged cooperation and the financial resources of the State to help it succeed. The State has a significant interest in restoration of the San Joaquin River, including the exercise of regulatory oversight, jurisdiction over the public trust, land use, ecosystem, species and habitat restoration, water quality, and water management and flood control operations, as well as an interest in maintaining the agricultural economy of California. The State believes that restoration of the San Joaquin River will provide broad benefits to the environment, to the federal, State and local governments, and to millions of Californians. The Settling Parties welcome these expressions by the State, and believe that the participation of the State is essential to the success of the restoration plan for the San Joaquin River.

B. The Effect Of This MOU.

Nothing in this MOU is intended to, nor shall it have the effect of, constraining, limiting or relieving any public entity in carrying out its statutory responsibilities or obligations. Nothing in this MOU constitutes an admission by any of the Parties hereto as to the proper interpretation of any provision of law, nor is anything in this MOU intended to, nor shall it have the effect of, waiving or limiting any of the Parties' rights and remedies under any applicable law. By entering into this MOU, the State Agencies are not stating that the Settlement represents the only feasible manner in which flows or salmon populations could be restored on the main stem of the San Joaquin River. This MOU does not limit the restoration activities that DWR, DFG and other State agencies may undertake on the main stem of the San Joaquin River. Nothing in this MOU is intended to, nor shall it have the effect of, amending, modifying or otherwise altering any provision of the Settlement.

C. Specific Provisions.

1. **General Principles.**

   a. The State Agencies intend to assist the Settling Parties in implementation of the Settlement consistent with the State Agencies' authorities, resources and broader regional resource strategies.
   b. The Settling Parties intend to assist the State Agencies in their efforts to support the implementation of the Settlement, consistent with the terms and conditions of the Settlement.
   c. The State Agencies and the Settling Parties intend to work together collaboratively in the planning, design, funding and implementation of appropriate aspects of the Settlement.

2. **Settlement Implementation by State and Federal Agencies.**

   The Secretaries of the Interior and Commerce, and the California Secretary for Resources, and the Secretary of CalEPA shall, within 90 days of the effective date of this MOU, establish a process for the State and Federal agencies to implement the Settlement. The Secretary of the Interior and the California Secretary for Resources, in cooperation

with the other Settling Parties, shall establish or convene new or existing working groups, technical committees, or advisory councils, as appropriate, to assure public participation and input into the implementation of the Settlement.

3. Participation In Technical Committees.

a. The Technical Advisory Committee, as defined in the Settlement, shall include one representative from DWR and one representative from DFG, each of whom shall participate as an ex officio non-voting member who will receive notices of meetings and materials to be considered at such meetings.
b. Any additional technical committees and/or working groups that may be established to assist in implementation of the Settlement shall, as appropriate, include representatives from DWR, DFG, and other State Agencies and federal agencies.

4. Assistance Of The State Agencies.

a. DWR intends to assist in various aspects of the planning, design, and construction of physical improvements identified in the Settlement, including projects related to flood protection, levee relocation, construction standards and maintenance, and modifications to, and maintenance of, channel facilities including assistance with obtaining all necessary permits, the design and construction of facilities to provide for fish passage and to minimize fish entrainment, the establishment of appropriate riparian habitat, and identification and implementation of the best available science and monitoring so the system can be adaptively managed to better achieve the goals and document results. DWR also intends to assist in various aspects of the implementation of the Water Management Goal identified in the Settlement. DWR intends to identify specific projects and the nature and level of the assistance for such projects in future agreements.

b. DFG intends to assist in various aspects of the planning and design of activities, including providing technical assistance to the Settling Parties on actions related to the release of flows identified in the Settlement, the design and construction of facilities to provide for fish passage and to prevent fish entrainment as identified in the Settlement, the manner of reintroducing to, and monitoring and evaluating fish in, the main stem of the San Joaquin River, and the establishment and maintenance of appropriate riparian habitat. DFG intends to identify specific activities and the nature and level of the assistance for such projects in future agreements.

c. DWR and DFG each intend to assist the Settling Parties in identifying State funding sources which may be available to implement the Restoration Goal and the Water Management Goal of the Settlement, in addition to the funding source described in 4(d) below. Such assistance may include identification of specific present and future funding sources and advice regarding the processes to apply for such funding. Any such funding provided by DWR and/or DFG for implementation of projects identified in the Settlement shall be provided pursuant to separate agreements. In determining

whether to enter into any such separate agreements or to provide funds to implement a project called for in the Settlement, the State intends to consider, among other things: (i) the appropriate share of funding to be provided by Settling Parties consistent with the Settlement; (ii) the overall progress in implementing the Settlement; (iii) the support provided by the Settling Parties for the State Agencies' efforts to implement provisions of the Settlement, as appropriate; and (iv) the success of the Settlement in achieving goals of the Settlement. In addition to these four factors, DFG intends to consider progress in the development of a plan for the founding and restoration stocks for anadromous fish preparatory to the submission of a permit application as provided in paragraph 14 of the Settlement, and the then-current need and level of funding required for the operation of the Hills Ferry Fish Barrier.

d. An initiative known as "The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006" ("Bond Act") has qualified for the California ballot for the November 2006 election. The Bond Act specifies in Chapter 5, section 75050 (n), that $100,000,000 shall be available to the California Resources Secretary for the purpose of implementing a court settlement to restore flows and naturally-reproducing and self-sustaining populations of salmon to the San Joaquin River, and specifies that the funds shall be available for channel and structural improvements and related research pursuant to the court settlement. Should this Bond Act be enacted by the vote of the people of the State of California, the California Resources Secretary shall implement Chapter 5, section 75050 (n) so that such funds are expended consistent with this MOU to implement the Settlement.

D. Additional Provisions.

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

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

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

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

5. The commitments and obligations under this MOU of the State, by and through DWR

and DFG, or other State Agencies, are subject to the availability of appropriated funds. No liability shall accrue to the State for failure to perform any obligation under this MOU in the event that funds are not appropriated or available.

6. Nothing in this MOU shall modify any existing obligation of the United States under federal reclamation law to operate the Central Valley Project in conformity with State law.

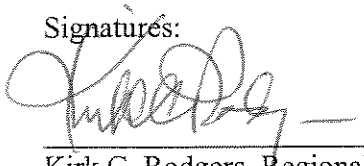
7. This MOU may be signed in two or more counterparts each of which, when executed and delivered, shall be an original and all of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document.

8. Notwithstanding any other provision of this MOU, nothing herein is intended to constitute consent by the State or any of its departments, agencies, commissions, and boards to suit in any court described in Article III of the United States Constitution. This MOU shall not waive, or be interpreted as waiving, the State's sovereign immunity under the Eleventh Amendment or any other provision of the United States Constitution in any present or future judicial or administrative forum.

9. The Department of the Interior is entering into this MOU pursuant to the Central Valley Project Improvement Act (the "CVPIA"), P.L. 102-575, Title XXXIV, and additional legislation contemplated as part of the Settlement. The Department of Commerce is entering into this MOU pursuant to the Anadromous Fish Conservation Act, 16 U.S.C. § 757a, *et seq.*

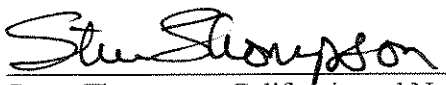
10. Each signatory to this MOU certifies that he or she is authorized to execute this MOU and to legally bind the Party he or she represents, and that such Party shall be fully bound by the terms hereof upon such signature without further act, approval, or authorization of such Party.

Signatures:



9/12/2006

Kirk C. Rodgers, Regional Director, Mid-Pacific Region
Bureau of Reclamation — Date



9/12/2006

Steve Thompson, California and Nevada Operations Manager
United States Fish and Wildlife Service — Date

for Rodney McInnis, Regional Administrator
National Marine Fisheries Service — Date

Hamilton Candee
Natural Resources Defense Council on behalf of itself and all other plaintiffs — Date

Philip F. Atkins-Pattenson
On behalf of NRDC, et al. — Date

Ronald D. Jacobsma, General Manager
Friant Water Users Authority — Date

Michael Chrisman, Secretary
California Resources Agency — Date

Lester A. Snow, Director — Date
California Department of Water Resources

L. Ryan Broddrick, Director — Date
California Department of Fish and Game

Linda S. Adams, Secretary
California Environmental Protection Agency — Date

9/13/2006

Rodney McInnis, Regional Administrator
National Marine Fisheries Service — Date

Hamilton Candee — 9/13/06

Hamilton Candee
Natural Resources Defense Council on behalf of itself and all other plaintiffs — Date

9/13/06

Philip F. Atkins-Pattenson
On behalf of NRDC, et al. — Date

9/13/2006

Ronald D. Jacobsma, General Manager
Friant Water Users Authority — Date

9/13/2006

Michael Chrisman, Secretary
California Resources Agency — Date

9/13/2006

Lester A. Snow, Director — Date
California Department of Water Resources

9/13/2006

L. Ryan Broddrick, Director — Date
California Department of Fish and Game

9/13/2006

Linda S. Adams, Secretary
California Environmental Protection Agency — Date

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National Marine Fisheries Service — Date

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Natural Resources Defense Council on behalf of itself and all other plaintiffs — Date

Philip F. Atkins-Pattenson
On behalf of NRDC, et al. — Date

Ronald D. Jacobsma, General Manager
Friant Water Users Authority — Date

Mike Chrisman — 9/13/06

Michael Chrisman, Secretary
California Resources Agency — Date

Lester A. Snow, Director
California Department of Water Resources — Date

L. Ryan Broddrick, Director
California Department of Fish and Game — Date

Linda S. Adams, Secretary
California Environmental Protection Agency — Date

Rodney McInnis, Regional Administrator
National Marine Fisheries Service — Date

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Natural Resources Defense Council on behalf of itself and all other plaintiffs — Date

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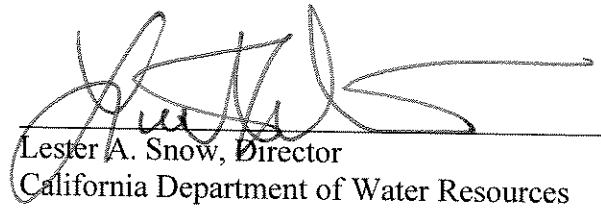
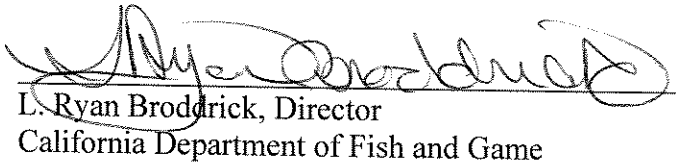
Friant Water Users Authority — Date

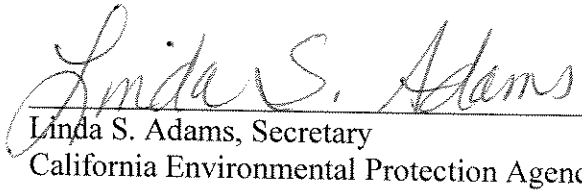
Michael Chrisman, Secretary
California Resources Agency — Date



Lester A. Snow, Director
California Department of Water Resources — 9/12/06 Date



L. Ryan Broddrick, Director
California Department of Fish and Game — 12 SEP 06 Date



Linda S. Adams, Secretary
California Environmental Protection Agency — 9/12/06 Date

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

PROOF OF SERVICE

I, Mary Ann Vitry, declare:

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

NOTICE OF FILING OF MEMORANDUM OF UNDERSTANDING BETWEEN SETTLING PARTIES AND STATE OF CALIFORNIA

☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Sacramento, California addressed as set forth below.

☐ by causing personal delivery by _____ of the document(s) listed above to the person(s) at the address(es) set forth below.

☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

☐ I caused such envelope to be delivered via overnight delivery addressed as indicated on the attached service list. Such envelope was deposited for delivery by _____ following the firm's ordinary business practices.

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

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Timothy O'Laughlin	towater@olaughlinparis.com
William C. Paris	Bparis@olaughlinparis.com

Notice will be delivered via first-class U.S. mail to:
Dante John Nomellini, Jr.
Nomellini Grilli & McDaniel
P.O. Box 1461
Stockton, CA 95201-1461

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

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

Executed on September 13, 2006

Mary Ann Vitry

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