

DEPARTMENT OF WATER RESOURCES

1416 NINTH STREET, P.O. BOX 942836
SACRAMENTO, CA 94236-0001
(916) 653-5791



October 12, 2016

Hearing Chair Tam Doduc
Hearing Officer Felicia Marcus
State Water Resources Control Board
P.O Box 100
Sacramento Ca 95812-0100

Re: California Waterfix Settlement Agreement (Friant Division Contractors)

Dear Hearing Chair Doduc and Hearing Officer Marcus:

The California Department of Water Resources (DWR) respectfully submits the enclosed Settlement Agreement regarding the California Waterfix (Friant Division Contractors) to be lodged in the referenced matter between the Department of Water Resources and the Friant Water Authority, including its participating members.

If you have any questions please feel free to contact me at (916) 651-0874.

Sincerely,

A handwritten signature in blue ink, appearing to read "Spencer Kenner".

Spencer Kenner
Chief Counsel

Enclosure

**SETTLEMENT AGREEMENT REGARDING THE CALIFORNIA WATERFIX
(FRIANT DIVISION CONTRACTORS)**

This Settlement Agreement Regarding the California WaterFix (Friant Division Contractors) ("**Agreement**"), by and among the South Valley Water Association and its participating members, the Friant North Authority and its participating members, and the Friant Water Authority and its participating members (collectively, "**Friant Parties**") and the United States of America, Department of the Interior, Bureau of Reclamation ("**Reclamation**") and the California Department of Water Resources ("**DWR**"), is effective as of October 1, 2016 ("**Effective Date**"). The entities signing this Agreement are referred to individually as a "**Party**," and collectively as the "**Parties**."

RECITALS

A. The South Valley Water Association enters into this Agreement on its own behalf and on behalf of its participating members: Delano-Earlimart Irrigation District, Exeter Irrigation District, Ivanhoe Irrigation District, Lower Tule River Irrigation District, Pixley Irrigation District, Stone Corral Irrigation District, Shafter Wasco Irrigation District, Tea Pot Dome Water District, and Southern San Joaquin Municipal Utility District.

B. The Friant North Authority enters into this Agreement on its own behalf and on behalf of its participating members: Fresno Irrigation District, Madera Irrigation District, Chowchilla Water District, and Gravelly Ford Water District.

C. The Friant Water Authority enters into this Agreement on its own behalf and on behalf of its participating members: Arvin-Edison Water Storage District, City of Fresno, Hills Valley Irrigation District, Kaweah Delta Water Conservation District, Kern-Tulare Water District, Lindmore Irrigation District, Lindsay-Strathmore Irrigation District, Orange Cove Irrigation District, Porterville Irrigation District, Saucelito Irrigation District, Terra Bella Irrigation District, and Tulare Irrigation District.

D. DWR and Reclamation submitted to the State Water Resources Control Board ("**State Water Board**") a joint change petition ("**Petition**") to add three new points of diversion on the Sacramento River to implement the California WaterFix Project ("**CWF**").

E. The Friant Parties, either individually or in a representative capacity on behalf of their members, filed protests or notices of intent to appear and participate in hearings on the Petition, or both, with the State Water Board, on the basis that implementation of the CWF would cause adverse water supply impacts to the Friant Parties and their landowners ("**Protests**").

F. DWR and Reclamation contend, on the other hand, that the CWF could benefit the water supply of the Friant Parties and their landowners and that there is no legal injury to the Friant Parties.

G. Without admitting to any liability arising from the Friant Parties' alleged harms in connection with the proposed implementation of the CWF, Reclamation and DWR desire to settle the Parties' disagreements in lieu of litigation or other adversary proceeding.

H. This Agreement is intended to protect the interests of the Friant Parties and the landowners they serve in the event that the State Water Board approves and Reclamation and DWR implement the CWF. By entering into this Agreement, the Friant Parties do not endorse or otherwise support approval and implementation of the CWF.

I. Reclamation and DWR will benefit from the Friant Parties' withdrawal of their Protests prior to a decision regarding the Petition, incidental take permits and other permits and approvals that will govern construction and operation of the CWF; therefore, this Agreement is intended to bind Reclamation and DWR, and their successors and assigns, to comply with the terms of this Agreement.

J. This Agreement is entered in the context of the CWF as defined by the Project Description testimony of DWR and Reclamation's case in chief (Alternative 4A of the Recirculated Draft EIS/R, between operational scenarios H3 and H4, with the potential for adaptive management scenarios between Boundary 1 and Boundary 2) ("**Project Description**").

THE PARTIES AGREE AS FOLLOWS:

I. TERMS OF SETTLEMENT

1. Core Rights and Priorities Not Altered. Reclamation and DWR agree that the Petition will be expressly subject to, and approval of the Petition may not be construed to alter: (a) any existing vested rights, including pre-1914 appropriative and riparian rights and permitted and licensed rights as reflected in existing records, permits, and water rights decisions, including Decision 935 and Decision 990; (b) all permit conditions other than the prior Point of Diversion conditions that are the subject of the Petition; (c) all existing priorities relative to existing facilities, including those established by existing permits, vested pre-1914 appropriative rights and riparian rights, or other lawful means; (d) all existing contractual obligations, including specifically but without limitation, obligations of the United States contained in Article 3(n) of the Friant Division contracts; and (e) state and Federal law, including state and Federal court decisions, including without limitation the *Westlands Water District v. United States* decisions.

2. No Effect on "Central Valley Project Integration." Reclamation agrees that the Petition's approval will not constitute, and may not be used as a basis for arguing or establishing, that CVP operations have been integrated or will be further integrated as a result of approval of the Petition, or for changing any of the existing contractual obligations relative to existing facilities of the CVP divisions and units. Further, Reclamation will not request that the State Water Board make any finding that CVP operations have been integrated or further integrated, whether in connection with the Petition or any future State Water Board approval or assessment required of DWR or Reclamation by the State Water Board in connection with any CWF permit approval by the State Water Board prior to implementation of the CWF.

3. No Waiver of Arguments Regarding the Coordinated Operations Agreement. The Parties agree that all arguments regarding the application of the Coordinated Operations Agreement ("COA"), and the Parties' ability to participate in any review of the COA under Article 14 of that agreement are not waived as a result of this Agreement, the withdrawal of the Protests by the Friant Parties, or the approval by the State Water Board of the Petition.

4. No Effect on Cost Allocation Negotiations. Reclamation agrees that any approval of the Petition, and this Agreement, will not constitute, and may not be used as a basis for arguing or establishing, that the Friant Parties have agreed to pay for any costs relating to implementation of the CWF.

5. Operations Plan to Deliver Substitute Water Required by Exchange Contract. Reclamation agrees that any operations plan developed for the CWF will be consistent with the Core Rights and Priorities described in Section I.1 of this Agreement. In implementing the CWF and any operations plan developed under it, DWR and Reclamation shall not modify, nor amend the rights and obligations of the Parties to any existing water service, repayment, settlement, purchase, or exchange contract with the United States, including but not limited to, the obligations and commitments of the United States under Article 3(n) of the Friant Division contracts, to satisfy the requirements of the San Joaquin River Exchange Contractors as established pursuant to Contract No. Ilr-1144, as amended, from supplies available to it from the Sacramento River and its tributaries or the Sacramento/San Joaquin River Delta.

6. Notice to the State Water Board; Withdrawal of Friant Parties' Protests. Following execution of this Agreement, DWR and Reclamation will notify the State Water Board of this Agreement and will lodge a copy of this Agreement with such notice. Upon the filing of such notice, the Friant Parties will, as soon as practicable, withdraw their Protests and any materials submitted in connection with their Protests, and will not otherwise participate in the hearings in furtherance of their Protests. In the event that the State Water Board issues or proposes to issue permits or orders, or makes other authorizations that both (i) substantially deviate from the Project Description, and (ii) cause injury to the Friant Parties, the Friant Parties, after consulting with DWR and

Reclamation, will not be bound by this Section I.6, and will be free to oppose the Petition. The Parties agree that a substantial deviation would involve significant changes to the Project Description or mitigation measures not contemplated or addressed in the CWF Project Description.

7. Third Party Settlements. If a Party enters into another final settlement or agreement to resolve a protest before the State Water Board in this proceeding that substantially contradicts this Agreement, the affected Party must immediately notify all other Parties, who will then meet to determine whether an actual conflict exists, and, if so, its scope. If necessary, the Parties will work cooperatively to mutually determine the means necessary to resolve any conflict, including, but not limited to, seeking a final determination from each Party's respective high level decision-makers. DWR and Reclamation agree to disclose to the Friant Parties when other final settlements are negotiated, and their terms.

8. Circumstances Permitting Future Challenges by Friant Parties. This Agreement does not prevent the Friant Parties, after consulting with DWR and Reclamation, from commenting on, opposing, or challenging any action, permit, or approval that both (i) substantially deviates from the Project Description, and (ii) causes injury to the Friant Parties. The Parties agree that a substantial deviation would involve significant changes to the Project Description or mitigation measures not contemplated or addressed in the CWF Project Description.

9. Release of Environmental Claims. If the State Water Board approves the CWF Change of Point of Diversion, the Friant Parties shall not file a legal challenge to the FEIR/EIS for the CWF as it relates to the environmental impacts of that approval, or assert any related cause of action or voluntarily join any related lawsuit as a petitioner, provided that the terms of this Agreement have been fully and completely implemented. By no later than five (5) days after the Effective Date of this Agreement the Friant Parties shall submit to DWR a letter stating that the full and complete implementation of this Agreement will address the concerns expressed in the Friant Parties' comment letters regarding the effects that the State Water Board's approval of the Change in Point of Diversion would have on the Friant Parties' water supply.

10. General Release. The Friant Parties hereby release, to the fullest extent permitted by applicable law, DWR and Reclamation from any and all Protests which they now have or have ever had against DWR and Reclamation with respect to the Petition. For the avoidance of doubt, this release shall not include claims to enforce the terms of this Agreement.

II. GENERAL PROVISIONS

1. Incorporation of Recitals. The recitals set forth in "Recitals" are, by this reference, incorporated into and deemed a part of this Agreement.
2. Section Titles. Section titles are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the provisions of this Agreement.
3. Governing Law. California and Federal law governs the interpretation and enforcement of this Agreement.
4. Construction. The Parties acknowledge that each Party and its counsel have reviewed and participated in the drafting of this Agreement and that no rule of construction to the effect that any ambiguities are to be resolved against the drafting party will be employed in the interpretation of this Agreement.
5. Entire Agreement. This Agreement constitutes the entire agreement among the Parties, and it is expressly understood and agreed that the Agreement has been freely and voluntarily entered into by the Parties with the advice of counsel, who have explained the legal effect of this Agreement. The terms of this Agreement are contractual and not mere recitals. The Parties further acknowledge that no warranties, representations or inducements not contained in this Agreement have been made on any subject in connection with this Agreement, and that they have not been induced to execute this Agreement by reason of non-disclosure or suppression of any fact. This Agreement may not be altered, modified or otherwise changed in any respect except by writing, duly executed by the Parties or their authorized representatives. This Agreement is fully integrated.
6. Duty to Cooperate. The Parties agree to cooperate so as to facilitate each other Party's efforts to carry out its obligations under this Agreement.
7. Further Assurances. Each of the Parties agrees to execute and deliver to the other Parties such information, materials, or documents as may be required under this Agreement and to take such other action as may be required to effectively carry out the terms of this Agreement.
8. Notices. All written notices required or permitted to be given under this Agreement will be deemed made when received by each other Party at its respective address set forth in the attached Exhibit A. Any Party may change its notice information by giving notice to the other Parties in compliance with this Section. Notice will be deemed effective on the date personally delivered or electronically transmitted by facsimile. If the notice is mailed, notice will be deemed given three days after deposit of

the same in the custody of the United States Postal Service, postage prepaid, for first class delivery, or upon delivery if using a major courier service with tracking capabilities.

9. Remedies. The Parties retain the full range of legal and equitable remedies to enforce the terms of this Agreement, including injunctive relief and specific performance, to the extent allowed by law, to ensure the Parties comply with their commitments under this Agreement. The Parties agree to meet and confer and attempt to resolve their differences informally before commencing any action to enforce this Agreement. In the event of any legal action or proceeding to enforce this Agreement, each Party will be responsible for its own attorneys' fees and costs.

10. Non-Severability. In the event any of the terms, conditions or covenants contained in this Agreement is held to be invalid by any court of competent jurisdiction, then the entire Agreement will be deemed null and void and will not be given effect unless all of the Parties agree in writing to continue to abide by the remaining provisions of this Agreement.

11. Successors and Transferees. The obligations and benefits of this Agreement shall be binding on and inure to the benefit of the Parties' heirs, assignees, transferees, and successors in interest.

12. Representations and Warranties of Authority. Each Party represents to all other Parties that such Party has the full power and authority to enter into this Agreement, that the execution and delivery of this Agreement will not violate other any agreement to which such Party is a party or by which such Party is bound, and that this Agreement, as executed and delivered, constitutes a valid and binding obligation of such Party, enforceable in accordance with its terms. The corporate, partnership, and association signatories to this Agreement expressly warrant that they have been authorized by their respective company, partnership, or association entities to execute this Agreement and to bind them to the terms and provisions of this Agreement. Any public agency signatory to this Agreement represents and warrants that the Agreement is executed in compliance with a resolution or other formal action of the governing entity of the public agency, duly adopted by the governing entity and recorded in the minutes of the governing entity. Any individual signing this Agreement on behalf of a public agency represents that she/he has full authority to do so.

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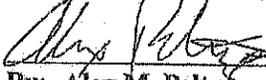
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13. Counterparts. The parties may execute this Agreement in counterparts. The counterparts, if any, constitute a single agreement.

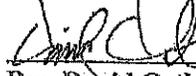
Executed by Parties on the date indicated below:

**SOUTH VALLEY WATER
ASSOCIATION AND ITS
PARTICIPATING MEMBERS**

 9/28/16
By: Alex M. Peltzer Dated

Peltzer & Richardson LC
Attorneys for South Valley Water
Association, Delano-Earlimart Irrigation
District, Exeter Irrigation District, Ivanhoe
Irrigation District, Lower Tule River
Irrigation District, Pixley Irrigation
District, Stone Corral Irrigation District,
Shafter Wasco Irrigation District, Tea Pot
Dome Water District, and Southern San
Joaquin Municipal Utility District.

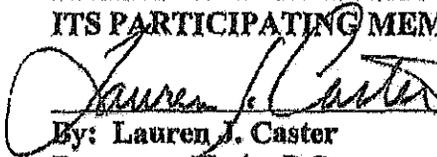
**FRIANT NORTH AUTHORITY AND
ITS PARTICIPATING MEMBERS**

 9/27/16
By: David Orth Dated

Executive Director of Friant North
Authority, and authorized representative of
Fresno Irrigation District, Madera
Irrigation District, Chowchilla Water
District, and Gravelly Ford Water District

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**FRIANT WATER AUTHORITY AND
ITS PARTICIPATING MEMBERS**

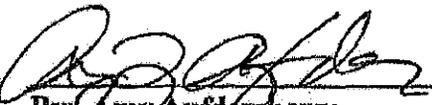
 Sept. 26, 2016
By: Lauren J. Caster Dated

Fennemore Craig, P.C.
Attorneys for Friant Water Authority,
Arvin-Edison Water Storage District, City
of Fresno, Hills Valley Irrigation District,
Kaweah Delta Water Conservation District,
Kern-Tulare Water District, Lindmore
Irrigation District, Lindsay-Strathmore
Irrigation District, Orange Cove Irrigation
District, Porterville Irrigation District,
Saucelito Irrigation District, Terra Bella
Irrigation District, and Tulare Irrigation
District

**UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION
("RECLAMATION")** #

Approved as to form:

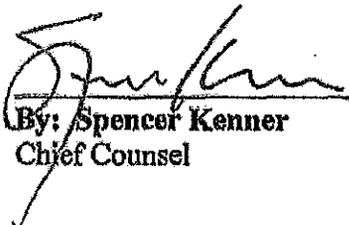
 10-3-2016
By: David Murillo Dated
Regional Director, Mid-Pacific Region,
Bureau of Reclamation

 9/30/16
By: Amy Aufdenberge Dated
Office of the Solicitor, Department of
Interior

**CALIFORNIA DEPARTMENT OF
WATER RESOURCES ("DWR")**

Approved as to legal form and sufficiency:

 9/29/16
By: Mark Cowin Dated
Director

 9/28/16
By: Spencer Kenner Dated
Chief Counsel

00012833 REVISION%

EXHIBIT A

NOTICES

**FRIANT NORTH AUTHORITY
AND ITS PARTICIPATING MEMBERS:**

David Orth
Executive Officer
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With a copy to:

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**SOUTH VALLEY WATER ASSOCIATION
AND ITS PARTICIPATING MEMBERS:**

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With a copy to:

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**UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION:**

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With a copy to:

Amy Aufdenberge
Assistant Regional Solicitor
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Department of the Interior
2800 Cottage Way, Rm. E-1712
Sacramento, CA 95825
(916) 978-5688

CALIFORNIA DEPARTMENT OF WATER RESOURCES:

Mark W. Cowin
Director
Department of Water Resources
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With a copy to:

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