



Case Evolution

The settlement presented to the Federal Court on September 13, 2006, is intended to resolve a court case that began as a dispute over renewal of federal water supply contracts for San Joaquin Valley farmers and evolved over 18 years to become a debate over the nature and future of the San Joaquin River.

In the late 1980s, irrigation districts within the Central Valley Project's Friant Division were moving to renew long-term water service contracts that were then expiring. Friant districts believed the United States had pledged when it executed the original 40-year contracts that there would be a continuous supply of water for Friant as long as it was put to beneficial use. In 1988, as the United States Department of the Interior was in the process of renewing the first Friant contract, that of the Orange Cove Irrigation District, objections were raised by the environmental community. The Natural Resources Defense Council (NRDC) and a coalition of other environmental and commercial fishing plaintiffs initiated litigation that challenged the contract renewals. Since then, the environmentalists amended their complaint several times, raising many complicated legal issues.

In recent years, though, the dispute has centered on a state fishery protection law, Section 5937 of the California Fish & Game Code. This state law requires dam owners and operators to release "sufficient" water to operate a fish passageway or "maintain in good condition" the fish in the river below the dam. The dispute centered on whether this state law applied to the federal project and, if so, whether releasing the amount of water needed to satisfy the state law would conflict with the laws authorizing the dam.

In August 2004, the court ruled that Section 5937 imposes a continuing duty to release sufficient water from Friant Dam into the San Joaquin River to restore former historic salmon runs and fishery conditions. The court did not determine how much water would be needed to satisfy the state law. Rather, the court set the case for a trial in February 2006 to determine the amount of the releases. In 2005, the parties began preparing for that trial and gained valuable new scientific information about possible restoration strategies.

In summer 2005, Senator Dianne Feinstein and House Water and Power Subcommittee Chairman George Radanovich began a non-partisan effort to bring the parties together to achieve a mutually agreeable settlement. This represented the second try to settle the case. The first set of settlement negotiations took place in 1999 - 2002, during which time the parties conducted many fishery and water supply related studies.

Even though this first four-year round of negotiations proved unsuccessful with the parties ending up going back to court, a foundation for future discussions was laid.

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New negotiations began during the summer of 2005. Talks were frequent and just as often difficult but progress, although slow, proved to be steady.

A key breakthrough occurred when, at the urging of Senator Feinstein and Chairman Radanovich, the parties agreed on a significant compromise: In exchange for restoration of the river below Friant Dam, Friant's water loss for the fishery's needs would be capped at certain amounts. Even though the settlement will result in use of a portion of the Friant water supply that the farmers really can't afford to lose, the compromise removed what promised to stretch into years of continued uncertainty over the Friant water supply and economic and social well-being of the eastern San Joaquin Valley. It also provided means of attempting to recover, re-use and recirculate water in an attempt to mitigate impacts upon Friant users.

By April 2006, the parties were able to inform the court that agreement had been achieved on numerous issues, including restoration goals, water flows, ways of managing and recovering water and a host of other issues. At the end of June, attorneys for the parties reported that they had agreed to a settlement in principle. The agreement, covering 20 years, and possibly longer, is now public as a result of filing the document with the court.