

The San Joaquin River Settlement

Setting the Record Straight

Myth One: Friant has no other option but to settle.

Fact: While some say that Friant's political and legal options outside the settlement are dim, it is important to note that they do have options. Indeed, Friant's representatives in the House of Representatives and the United States Senate have the ability to legislate a reasonable solution to the lawsuit and restore the San Joaquin River – independent of the Courts and the settlement. Furthermore, Friant has a last resort legal appeal, under a “pre-emption” claim, that can be taken all the way to the Supreme Court. These are options, while remote, that are currently available. The bottom line is that many events have transpired over the past year that have fundamentally affected the viability of recirculating the lost water. Therefore, Friant needs to take some time and reassess their situation and determine, once again, through an official vote, if the settlement is the only viable option at this point. In this assessment, they need to keep in mind that if this settlement is authorized by federal legislation, all of Friant's options immediately evaporate. Friant would have no recourse with the Courts, the Administration, or the Congress. They will have to permanently live with their deal, even if environmental organizations challenge every project that would implement the water management goal.



Myth Two: Friant has to accept the terms of the settlement because no other alternative has been offered.

Fact: To date, there have been seven alternatives offered to the settling parties – including legislation to completely replace the settlement with a congressionally-mandated restoration of the river and full water recovery. Alternatives that have been offered included Friant replacement water from the Westside, water conservation programs and idling of land, authorization of water recovery and replacement projects, and a legal recourse option if the water management goals were not met. All offers have been summarily opposed by the settling parties without a single vote by the Friant Board.

Myth Three: The Settlement will only reduce water deliveries by 170,000 acre-feet. (Friant Q&A Document pg. 1)

Fact: The nonpartisan Congressional Research Service estimates that the average annual reduction in water deliveries is 225,000 acre-feet. However, averages are misleading. For example, Friant operates in a Normal-Dry and Normal-Wet water year, as identified in the settlement, 60% of the time. In these years, the average water delivery reduction would be 302,000 acre-feet. This does not include an additional 10% buffer flows that are authorized in the settlement. (Steiner Report 2005)

Myth Four: The settlement will end any future litigation on the San Joaquin River issue.

Fact: There is nothing in the settlement or the authorizing legislation that prevents a third party from suing the federal government and/or Friant Water Users Authority to release more water. Third parties could continue to threaten Friant's water under other federal and state statutes outside of the settlement and its implementing legislation.

Myth Five: The water losses outlined in the settlement will be 15% of the average annual deliveries evenly divided among all Friant Division long-term water contractors. (Q&A Document pg. 1)

Fact: No decisions have yet been made as to how water losses due to the settlement will be apportioned among Friant water users. The non-partisan CRS, based on existing water law, assumed that non long-term water contracts will be the first to lose water, then Class II water contracts, and finally Class I contracts. Under this methodology, the average reduction for Class I contract deliveries is estimated at 5%; the estimated average reduction for Class II deliveries is 27%; and the estimated average reduction for \$215 deliveries is 47%.(.)



Myth Six: Water prices will not change as a result of the Settlement.

Fact: Under a proposed amendment to H.R. 24 being drafted by Friant (see Friant's Legal Counsel's memo Sept. 2007), Friant would advance forward their repayment of capital costs to solve a congressional budgetary requirement. This would inevitably result in the need for Friant to seek private market financing to cover the advanced costs. This additional cost could significantly alter the price of water – some areas could see prices over \$100 an acre-foot. Furthermore, because there will be less water to go around, water purchased on the

(continued on reverse)

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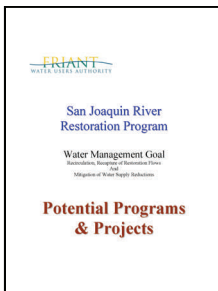
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market will certainly increase due to supply and demand.

Myth Seven: *The settlement authorizes construction of many projects to recover the restoration flows. (Friant Letter to Senator Feinstein, Sept. 2007, and memo from Friant Attorney to Senator Feinstein, Nov. 2006)*

Fact: According to CRS, “no specific water management projects are identified as part of the settlement, nor is it clear how funding under the settlement would be divided between efforts to achieve the restoration goal and efforts to achieve the water management goal.” Furthermore, the Bureau of Reclamation in a letter dated July 2007 said that [“Reclamation is unable to state with absolute certainty that H.R. 24 would provide all the necessary authority to construct all of the project proposals.”](#) (see project proposals in *Friant Water Management Goal: Potential Programs & Projects* document, Feb. 2007)



Myth Eight: *The settlement provides long-term water supply certainty. (Settling Parties' press release pg. 1)*

Fact: [The settlement only lasts 20 years.](#) “After December 31, 2025 ... 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.” (*Stipulation of Settlement*, pg. 24)

We should not forget the havoc that the Central Valley Project Improvement Act (CVPIA) inflicted on the San Joaquin Valley. Water lost by the Westside was supposed to be miti-

gated. To date, the only mitigation effort has been the voluntary and involuntary following of land both on a temporary and permanent basis. We face the same unpleasant option if the promise of recirculating the lost water turns out to be illusory.

Myth Nine: *Restoring the San Joaquin River will cost \$500 million. (Congressional Budget Office)*

Fact: The Congressional Budget Office estimate only includes what is clearly outlined in the implementing legislation, H.R. 24. The estimate does not include restoring Reach 4b which would cost \$357 million; the legislation simply calls for a feasibility study on Reach 4b. The estimate also does not include any of Friant's proposed projects to meet the water management goals which would cost \$2 billion (see *Friant Water Management Goal: Potential Programs & Projects*, Feb. 2007). Additionally, the legislation does not provide clear authorization for the projects included in the Friant proposal. The economic impacts of reduced water supplies within Friant have also been ignored in cost estimates.

Myth Ten: *There will be a thriving salmon habitat on the San Joaquin River when the restoration releases begin.*

Fact One: According to CRS, “all or many environmental factors may need to be favorable to permit this species to complete its migratory life history.” In other words, [you would need a “perfect storm” of environmental conditions for restoration to be successful year after year.](#)

The CRS continues on to say that “while the optimistic view holds that all these [environmental] factors indeed can be favorable, the pessimistic view would point out that all these factors, many beyond human control, may not be expected to be favorable

in any single year, leading to population stress and decline, if not total failure in some years.”

Fact Two: The settling parties have artificially set the bar low to achieve success. [The stipulation of settlement on page 25 states that the restoration project is successful if 500 salmon return to the river.](#)

Fact Three: Again, according to CRS, “if the premise is true that Chinook salmon historically inhabiting the San Joaquin River were uniquely adapted to withstand otherwise lethal warm water temperatures, then one of the key questions affecting restoration success may be whether any remnant of this uniquely adapted genetic strain of Chinook salmon has been preserved and is available for the proposed San Joaquin River restoration effort.”



If Chinook salmon are unable to thrive in the warm waters of the San Joaquin, environmentalists will likely seek additional releases.

Myth Eleven: *Studies show it is feasible that restoration of salmon to the San Joaquin River can be successfully achieved.*

Fact: According to CRS, no federally sponsored feasibility study has been accomplished on restoring the complete 153 mile length of the San Joaquin River. In fact, [the National Marine Fisheries Service considers it far more economical to enhance existing populations of salmon than to attempt to restore an extirpated species.](#) (*Role of Large Extirpated Areas in Recovery*, NMFS, Jan. 2007)