

San Joaquin River Case History

<u>DATE</u>	<u>EVENT</u>
1860-1880	Irrigation development is started on the San Joaquin River by the cattle barons Miller and Lux who construct a series of canals radiating from the river onto San Joaquin Valley-West Side lands. The earliest versions of two river structures obstructing salmon movement appear. These are Mendota Dam near Mendota and the confluence of the San Joaquin River with Fresno Slough, and Sack Dam east of the later site of Dos Palos.
1900-1920	Agricultural development in the Friant service area exhausts local water resources, causing a severe water crisis in the area between Madera County and the Tehachapis, threatening about 200,000 acres of farmland with reversion to desert.
1912-1914	Pacific Light and Power Corporation (later Southern California Edison Company) begins initial development of the Big Creek Hydroelectric Project, which eventually include Florence, Edison, Huntington and Shaver lakes, and Mammoth Pool, as well as several power plants. These projects represent the first large-scale water storage activity on the San Joaquin River system.
1916	A new Mendota Dam is constructed to impound Mendota Pool.
1916	Kerckhoff Dam is completed on the San Joaquin River north of Auberry by the San Joaquin Power and Light Company (later PG&E). The dam blocks all migration of salmon into spawning areas in the higher Sierra Nevada. Water is diverted into a tunnel to be utilized downstream to generate electricity resulting in several river miles being dewatered downstream from Kerckhoff Dam.
1928	More than 15 years before Friant Dam is built, California Department of Fish and Game reports that there are “very few” salmon remaining in the San Joaquin River above the Merced River. The “historical” salmon fishery that once existed has been severely depleted.
1931	California Water Plan submitted to Legislature. Plan calls for construction of Central Valley Project. Key to CVP is building Shasta Dam to import Sacramento River water to replace San Joaquin River water use north of Mendota Pool, to allow construction of Friant Dam and the Madera and Friant-Kern Canals in order to preserve existing agricultural development in what is now the Friant Division service area from reversion to desert conditions. The CVP Act makes no provision for reservation of water in the San Joaquin River to preserve salmon runs above Merced River.
1933	California Legislature and voters enact California Central Valley Project Act, declaring it to be in the public interest. Principal features include Shasta Dam and Friant Dam and its canal system. Act calls for water at Friant Dam to be used primarily for irrigation and secondarily for other beneficial uses, such as fish propagation.
1933-35	California unable to fund construction of CVP due to Great Depression. California legislators ask federal government for help in completing the Water Plan.
1934	President Roosevelt approves feasibility report calling for the federal construction of the Central Valley Project as a federal Reclamation project. Feasibility report lists great public benefit of providing irrigation water to support existing agricultural development in the Friant service area.

Since 1935	Congress makes repeated appropriations of hundreds of millions of dollars for the construction of Friant Dam and canals serving Friant Division as irrigation works, and federal government obtains assignment of pending applications to appropriate water from San Joaquin River at Friant.	
1939	Exchange contracts are executed to make water for Friant Division available for appropriation.	1947 Downstream water users file <i>Rank v. Krug</i> seeking to enjoin the appropriation of water for Friant Dam.
1939	Actual construction work on Friant Dam commences. A crowd of 50,000 attends the groundbreaking ceremony.	Early 1950s Series of cases is brought before the Court of Claims and other courts by downstream water users seeking compensation for the loss of their water rights.
Late 1930s	Salmon counts at Mendota Dam fish ladder range from 3,000-7,000 fish per year. California Department of Fish and Game official writes letter stating that spawning gravels in San Joaquin River below Friant Dam can accommodate about 15,000 salmon.	1948 First deliveries are made through the Friant-Kern Canal. Full Friant Division diversions begin to occur as the Friant-Kern Canal is extended toward and into Tulare and Kern counties. Flows decrease or cease in portions of the San Joaquin River upstream from the Merced River. This event is the latest of many physical and operational changes that have reduced numbers of salmon and steelhead trout in the San Joaquin River and its major tributaries, the cumulative result of a number of different actions, taken independently by many different parties over several decades.
1928-1944	Flow records maintained by the state demonstrate that, at certain times of year, the river is dry downstream of the Sack Dam, about 86 miles below Friant Dam. The dam becomes partly operational in 1944.	1950 United States Supreme Court decides <i>United States v. Gerlach Live Stock Co.</i> , holding Friant Dam's purpose is irrigation, not navigation, and that the United States must condemn downstream water rights to acquire water for appropriation for Friant Division. Decision makes it clear that a cost of the construction of the project will be a riverbed that is generally dry at some point between Friant and Mendota Pool.
Early 1940s	Despite efforts to screen canal intakes at Mendota Pool, the fall run of salmon essentially disappears above the mouth of the Merced River, except in extremely wet years when occasional individual salmon are encountered above Mendota Pool.	1950 California Fish and Game officials request California Attorney General to resolve dispute between them and California Water Resources officials as to whether California Fish and Game Code § 5937 takes precedence over California and Federal Central Valley Project Acts and requires water to be set aside in the San Joaquin River to protect salmon runs in river.
1944	Millerton Lake fills initially. Friant Dam completed with exception of drum gates and other appurtenant works, which are delayed by material shortages during World War II. First diversions made into Madera Canal.	1951 California Attorney General issues published opinion ruling that Fish and Game Code § 5937 does not require that water that is needed for full operation of the Friant Division of the Central Valley Project must be set aside for salmon. The State and Federal Central Valley Project
1945	Fish and Game Code § 5937 (related to the need for dam operators to provide fishery flows downstream of a dam) made applicable to the United States for the first time.	
1948-55	Bureau of Reclamation executes long-term water service contracts with Friant Division under the Reclamation Act. Contracts have 40-year term and begin to expire in the late 1980s. Reclamation signs a contract with the California Department of Fish and Game and provides the water supply for the San	

	<p>Acts take precedence over Fish and Game Code § 5937 at Friant Dam.</p>
<p>1954</p>	<p>Court in <i>Rank v. Krug</i> enjoins Water Rights Board from acting on United States' applications for appropriative water rights permits for Friant Dam. Ultimately, the <i>Rank v. Krug</i> litigation determines the amount of water that the Bureau will release from Friant Dam to satisfy prior water riparian claims (the "Gravelly Ford" releases). Following that decision, the Bureau has released water from Friant Dam to satisfy the Gravelly Ford releases; in the past decade, these releases have exceeded 100,000 acre-feet per year. These releases keep in good condition a wide variety of fish for 37 miles below the dam.</p>
<p>1958-1959</p>	<p>Injunction lifted. State Water Rights Board conducts year-long evidentiary hearing on United States' applications to appropriate water for Friant Division at Friant Dam. Department of Fish and Game files protest claiming that unless water is reserved in the San Joaquin River to restore former historical salmon runs below Friant Dam, appropriation will be illegal under Fish and Game Code § 5937. Fish and Game vigorously participates in hearing, introducing over 100 exhibits and weeks of expert testimony advocating water must be reserved in river for the salmon.</p>
<p>1959</p>	<p>State Water Rights Board issues Water Rights Decision D-935. The decision dismisses the protest of California Department of Fish and Game as "not in the public interest at this time." It permits the United States to appropriate the water that Fish and Game sought to have reserved for restoration of the salmon runs. The State determines that the water sought by Fish and Game for salmon restoration is instead available for appropriation. It grants permanent appropriative water rights to the full amount of water put to reasonable beneficial use for irrigation and domestic use in the Friant Service Area on condition that United States provide certain quantities of water for City of Fresno and Fresno Irrigation District and others. Decision D-935 determines that it is in the public interest to permit the full use of Friant Dam, canals, and the Delta-</p>
	<p>Mendota works contemplated by the Central Valley Project Acts. Decision recognizes there will be a certain minimum flow of water in river at Gravelly Ford, a point more than 37 miles below the dam.</p>
	<p>Since 1959</p> <p>Bureau of Reclamation operates Friant Dam in accordance with permits granted by State of California. In reliance upon water rights granted by State, people of Friant Division invest in land, many planting permanent crops, and put water appropriated at Friant to reasonable beneficial use, without waste, up to the quantities specified in the permits.</p>
	<p>1960s-70's</p> <p>Acting at request of California Legislature, California Department of Fish & Game assesses impact of Friant Dam on salmon fishery. Official report DFG lodges with Legislature concludes that the cost of attempting to restore the salmon fishery in the San Joaquin River above the mouth of the Merced River would be so great, and the chances of total or near total failure so high, that the Legislature should not attempt to do so, but should focus on improving salmon habitat in tributaries to San Joaquin River.</p>
	<p>1969</p> <p>Congress passes National Environmental Policy Act.</p>
	<p>1970</p> <p>Bureau of Reclamation requests issuance of license on one of the water rights permits for Friant Dam. No action has ever been taken by State Water Resources Control Board on this application.</p>
	<p>1973</p> <p>Congress passes Endangered Species Act.</p>
	<p>1988</p> <p>Bureau of Reclamation and Friant Contractors begin signing long-term water service contract renewals. The Orange Cove Irrigation District is the first to sign a 40-year renewal contract.</p>
	<p>Dec. 1988</p> <p>Natural Resources Defense Council, Sierra Club, a commercial fishermen's group, and other environmental and fishing plaintiffs challenge the long-term contract renewals in a lawsuit.</p>

Oct. 1992	<p>Congress passes Central Valley Project Improvement Act. Up to 800,000 acre-feet of water is to be made available for fish and wildlife. Regarding the San Joaquin River, the CVPIA expressly provides that “The Secretary [of Interior] shall . . . develop a comprehensive plan, which is reasonable, prudent and feasible, to address fish, wildlife, and habitat concerns on the San Joaquin River, including but not limited to the streamflow, channel, riparian habitat, and water quality improvements that would be needed to reestablish where necessary and to sustain naturally reproducing anadromous fisheries from Friant Dam to its confluence with the San Francisco Bay. . . .” However, the CVPIA further provides that until Congress has authorized the Secretary to implement a “reasonable, prudent, and feasible” plan, “the Secretary shall not, as a measure to implement this title, make releases for the restoration of flows between Gravelly Ford and the Mendota Pool and shall not thereafter make such releases as a measure to implement this title without a specific Act of Congress authorizing such releases.” The San Joaquin River “between Friant Dam and the Mendota Pool” is expressly exempted from the CVPIA’s requirement to double anadromous fish production. Instead, Friant contractors are required to pay an escalating surcharge on each acre-foot of water provided to them; this surcharge is added to the CVPIA’s Restoration Fund. The measure is signed into law by the first President Bush as part of a much larger Reclamation water projects bill.</p>	
June 1995	<p>Court enters order holding that Defendants were not required to comply with the National Environmental Policy Act before renewing the long-term contracts, but finding that the government erred by not adequately consulting with the wildlife protection agencies under the Endangered Species Act.</p>	
Jan. 1997	<p>Trial Court declares the Friant long-term renewal contracts invalid, finding that the Bureau had not adequately consulted with the wildlife agencies as required by the ESA. The Court dismisses the state law fishery protection claim (Section</p>	<p>5937) as premature and enters Judgment in favor of Plaintiffs.</p>
		Sept. 1998
		<p>Ninth Circuit issues a decision upholding the lower court’s judgment on the ESA claim, but reinstating the Section 5937 claim. The Ninth Circuit directs the lower court to undertake further proceedings to determine “. . . whether § 5937 is applicable to the Friant dam under state law” and “whether the actual application of § 5937 is inconsistent with the CVPIA.” The Court of Appeal notes, “It has yet to be determined how much water release would be required under § 5937 and whether that would be consistent with the CVPIA.”</p>
		1999-2003
		<p>The Friant Water Users Authority and its member districts engage in settlement discussions, efforts and studies with the NRDC and other plaintiffs.</p>
		Jan. 2001
		<p>United States signs long-term, 25-year renewal contracts with many Friant contractors. The contracts expressly incorporate the terms of any judgment or settlement of the case.</p>
		April 2003
		<p>Settlement negotiations between the plaintiffs and Friant defendants collapse when the parties are unable to agree on a cap for the amount of water released to the river.</p>
		Aug. 2003
		<p>Plaintiffs file Seventh Amended Complaint alleging ESA, NEPA, Reclamation Law and CVPIA violations, seeking to invalidate long-term water service contract renewals, and § 5937 claim alleging continuing duty to release enough water from Friant Dam to restore former salmon runs above the Merced River.</p>
		Aug. 2004
		<p>Distinguishing prior authority to the contrary, the Court holds that § 5937 imposes a continuing duty to release sufficient water from Friant Dam into the San Joaquin River from Friant Dam to restore historic salmon runs and fishery conditions. The Court does not decide what remedy, if any, is appropriate. Rather, the Court withholds this issue for a separate “remedy” trial.</p>
		Early 2005
		<p>The Court schedules the remedy trial to begin on February 14, 2006. The Court</p>

	orders the parties to begin exchanging discovery by June 15, 2006.		
June 15, 2005	The parties begin discovery by exchanging their "initial disclosures" of documents and witnesses.		Joaquin River in a reasonable and practical manner." The Governor indicates his administration "stands ready to assist the parties in this important effort and to assure the integration of the settlement into broader resource strategies."
July 28, 2005	The court enters an Order finding that the January 2001 renewal of long-term, 25-year CVP contracts represented a violation of the ESA. The decision does not conclude what remedy, if any, is to be imposed.	June 30, 2006	Negotiators for the FWUA, NRDC and the Federal Government tell the United States District Court that the parties have come to agreement on all salient points in the complex case.
August 2005	Preparing for the remedies trial on the state fishery protection law (Section 5937) claim, the parties exchange expert reports and learn more about the scientific bases of each side's position on river restoration.	June 30, 2006	Negotiators announce that they have reached agreement on the terms of the settlement and that the accord is ready to be recommended to all of the case's parties. Negotiators for the state and the settling parties reach agreement on the text of a memorandum of understanding regarding the federal and state roles in implementing the settlement, one that will be recommended to respective clients.
August 2005	Senator Dianne Feinstein and House Water and Power Subcommittee Chairman George Radanovich ask the parties to look for some means of compromising and reaching a settlement. A series of informal discussions begins.	July-Aug. 2006	As individual entities that are parties to the litigation take action to approve the Settlement, confidential briefings are made to San Joaquin River stakeholder groups that were not parties.
Jan. 2006	With "substantial progress" being made, the Court vacates all dates on the case's calendar, including the February 14 trial date.	Sept. 13, 2006	Settlement agreement is filed in U.S. District Court in Sacramento by the NRDC and its fellow plaintiffs, the Friant defendants and the United States.
January, 2006	Governor Schwarzenegger writes to Interior Secretary Gale Norton to "express my strong support for this potential settlement to restore the San		