

## EXHIBIT 18-A

### SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is made by and between California American Water Company ("CAW"), the U.S. Department of Commerce, National Oceanic and Atmospheric Administration ("NOAA"), and the California Department of Fish and Game ("CDFG"). Throughout this Agreement, CAW, NOAA, and CDFG are collectively referred to as the "Parties."

#### Recitals

A. CAW is the owner and operator of the public drinking water system for the Monterey Peninsula, which serves approximately 40,000 customers. CAW is regulated by the California Public Utilities Commission ("CPUC") and is mandated by California law to serve potable water to its customers and to comply with federal and state safe drinking water laws and regulations, as well as the federal Endangered Species Act, 16 U.S.C. § 1531, et seq. (the "ESA"). A major source of CAW's water supply is diversions from the Carmel Valley Aquifer. CAW is currently working to develop an alternative long-term water supply to replace a significant portion of that water supply.

B. CAW's operations on the Carmel River are regulated by a number of agencies pursuant to certain orders and agreements. State Water Resources Control Board Order 95-10 mandates that CAW find an alternative supply for 10,730 acre-feet ("AF") of water and, pending the implementation of an alternative water supply, limit its diversions from the Carmel Valley to 11,284.8 AF. Order 95-10 was amended in 2002 to incorporate certain provisions of the Conservation Agreement (described below) relating to additional limitations on CAW's diversions at San Clemente Dam and upstream wells during low flow periods. CAW's operation of Los Padres and San Clemente Dams is controlled by an annual agreement among CAW, the Monterey Peninsula Water Management District and CDFG. CAW's operation of San Clemente Dam is further constrained by a mandate issued by the California Division of Safety of Dams ("DSOD") to institute interim safety measures that include lowering the water levels in the reservoir behind San Clemente Dam during the dry season (approximately seven months each year).

C. On September 18, 2001, NOAA's National Marine Fisheries Service ("NMFS") and CAW entered into a Conservation Agreement ("Conservation Agreement"), which required CAW to implement certain measures to reduce the impact of its operations in the Carmel River on steelhead and their habitat.

D. Naturally spawned populations of South-Central California Coast ("SCCC") steelhead (and their progeny) are listed as a threatened species under the ESA. NMFS, CDFG, and CAW have a mutual interest in avoiding the unauthorized taking of threatened SCCC steelhead and promoting their conservation and recovery.

E. The goals and objectives of the Conservation Agreement are as follows:

1. NMFS' goal and objective is to protect and conserve SCCC steelhead in the Carmel River, including maximizing the Carmel River Basin's substantial contribution toward recovering SCCC steelhead and to enforce the ESA.

2. CAW's goal and objective is to supply water in accordance with its CPUC Certificate in a manner that complies with the ESA and other regulatory obligations under state and federal law.

F. The Conservation Agreement contained three tiers of activities. Tier I included short- and mid-term actions designed to conserve steelhead in the Carmel River. Tier II described the process to be followed to address DSOD's issues with San Clemente Dam and other mid-term measures designed to conserve steelhead in the Carmel River. Tier III described the process to be followed to address the long-term implementation of actions designed to meet the goals identified by NMFS and CAW in the Conservation Agreement.

G. Since September 2001, CAW has implemented all of the measures set forth in Phase I of Tier I of the Conservation Agreement. These measures include ceasing surface water diversions at San Clemente Dam during low flow periods, ceasing diversions from the Upper Carmel Valley Wells during low flow periods, and installing a booster station to move water from the lower Carmel Valley to the Upper Carmel Valley. In addition, as part of an overall effort to protect and enhance SCCC steelhead, CAW and its customers have paid for additional steelhead mitigation measures for many years. These measures, implemented by the Monterey Peninsula Water Management District, include annual fish rescues, the construction, maintenance, renovation, and operation of a rearing facility to hold rescued steelhead, monitoring of and improvements to the instream and riparian habitat, improvements to the Carmel River Lagoon, and monitoring fish numbers during migration, and have cost CAW's ratepayers over \$28M to date.

H. Phase II of Tier I of the Conservation Agreement required CAW to maintain a continuous surface flow in the Carmel River as far downstream as possible in AQ3 (a defined area of the Carmel Valley Aquifer) by offsetting CAW water diversions in upstream sections of AQ3 with expanded diversion capability in AQ4, in the lowermost reaches of AQ3, and the Seaside Basin aquifer storage and recovery ("ASR") expansion. Phase II required CAW to increase well capacity downstream of and including the San Carlos Well by 3.0 to 5.0 cfs. CAW retrofitted the Rancho Cañada Well and increased its capacity initially by 140%. The reconditioned well was put into service on March 31, 2003. At about the same time, the California Department of Health Services opined that extractions from the nearby San Carlos Well constitute groundwater under the influence of surface water. The San Carlos well was therefore taken out of service, as there is no means of providing surface water treatment at that location. This resulted in no net gain in pumping capacity in the lower aquifer.

I. The next step in Phase II of Tier I of the Conservation Agreement was to be the installation of a new well in the lower Carmel Valley aquifer. Studies showed that any new well in the lower Carmel Valley would likely require surface water treatment and construction of a surface water treatment plant, which was estimated to cost approximately \$5.5 million. In light

of CAW's need to focus its financial and personnel resources on a long-term water supply project, rather than those interim measures in the Carmel River, the Parties agree that proceeding with the measures set forth in Phase II of Tier I would not be financially prudent.

J. NOAA asserts that additional mid-term measures are required to further reduce the impact of CAW's operations in the Carmel River on steelhead and their habitat pending CAW's development of a long-term water supply. CAW agrees that there are further interim measures that will benefit the steelhead.

K. CAW commits that by the expiration of this Agreement, CAW will either modify its operations to avoid any take of SCCC steelhead, or have obtained all necessary permits to authorize any remaining take of SCCC steelhead caused by CAW's operations.

L. As trustee for California's fish and wildlife resources, CDFG has an interest in, and is committed to, facilitating this Agreement as set forth below.

#### A G R E E M E N T :

NOW, THEREFORE, the Parties hereby agree as follows:

I. Continuation of Tier I Phase I Activities and Certain Tier I Phase II Activities:

Throughout the term of this Agreement, CAW shall continue to implement all of the measures described in Phase I of Tier I of the Conservation Agreement.

II. New Tier I Phase II Activities:

A. CAW agrees to pay a total of Eleven Million Two Hundred Thousand Dollars (\$11,200,000.00) over a period of seven (7) years under the terms and conditions stated herein. CAW agrees to pay an initial sum of Three Million Five Hundred Thousand Dollars (\$3,500,000.00) within 60 days from the Effective Date of this Settlement Agreement ("Agreement"), followed thereafter by payment of the remaining Seven Million Seven Hundred Thousand Dollars (\$7,700,000.00), in seven (7) consecutive annual payments of One Million One Hundred Thousand Dollars (\$1,100,000.00) per year, as specified in Table 1 of this Agreement, which is attached hereto and part of this Agreement. Each annual payment shall be due and payable on or before July 1.

B. All payments CAW makes under this Agreement shall be used to fund projects to improve habitat conditions for, and production of, SCCC steelhead, and/or otherwise aid in the recovery of SCCC steelhead in the Carmel River Watershed (collectively, "projects"). The funds shall be expended only for mitigation of those impacts from well-pumping and water withdrawals by CAW that were originally intended to be addressed by Phase II of Tier I of the Conservation Agreement. No funds shall be expended to assist CAW in reducing any mitigation obligations CAW might have with respect to SCCC steelhead as a result of the impact of its remaining operations in the Carmel River Watershed on steelhead and their habitat.

C. All payments CAW makes under this Agreement shall be made to CDFG, according to procedures specified by CDFG for transfer of the funds. CDFG shall have custody

and control of the payments until they are expended pursuant to this Agreement. CDFG shall maintain records of its management of CAW's payments and shall provide annual accounting reports to NMFS and CAW on or before September 30 of each year, regarding the management and expenditure of the funds, until such time as all funds have been expended. CDFG shall ensure that all payments are expended for the benefit of SCCC steelhead in accordance with the purposes described in Section II.B. of this Agreement, but will use up to 13% of each payment as adjusted for inflation, on an ongoing basis throughout the term of the Agreement for reimbursement of any costs it incurs to administer, manage, and monitor the funds and the projects described in Section II.B. When expending the payments for projects pursuant to Section II.B., CDFG shall seek to maximize the value of the funds by seeking cash or in-kind matching contributions from fund recipients or non-State, third party project partners whenever possible.

D. CDFG shall consult with NMFS and CAW, as it deems necessary, or as may be required by statute or regulation, to resolve any questions it may have concerning projects to be funded with the money paid by CAW pursuant to Section II.A., including any technical questions it may have.

E. The Parties recognize that any activity on or near the Carmel River can have potentially adverse effects on CAW's ability to serve potable water safe for public consumption. CDFG will not fund any projects that will adversely affect CAW's mandate under California law to serve potable water to its customers and to comply with federal and state safe drinking water laws and regulations.

F. Any failure by CAW to make any payment required by this Agreement within the time period this Agreement specifies shall constitute a breach of this Agreement. In the event of a breach, CDFG shall notify NOAA and NOAA shall give CAW written notice of the breach by registered mail and demand that CAW make payment within ten (10) business days of receipt of such notice by CAW.

### III. Tier III Activities:

CAW has identified the Coastal Water Project ("CWP") as its proposed project for a long-term water supply to replace 10,730 AF of water that CAW diverts from the Carmel Valley Aquifer, plus approximately 1,000 AF to protect against overdraft of the Seaside Basin. CAW will continue to diligently pursue the environmental review and required permits to design, build and operate the CWP. The current schedule contemplates having the CWP in operation by 2015 at the earliest. The Parties recognize that the CWP will require extensive environmental review and permits from many federal, state and local agencies over which CAW has no control. CAW will keep NOAA informed of the CWP's schedule, progress, potential delays and the reasons therefore.

### IV. NOAA's Cooperation with CAW and Other Agencies:

NOAA and CAW recognize that the CPUC is CAW's primary regulatory agency. CAW is obligated to serve its customers in a cost-effective manner. CAW must obtain CPUC permission to fund activities such as environmental mitigation, and the rates charged to CAW's

customers must be approved by the CPUC. NOAA acknowledges that in CAW's role as a CPUC regulated water provider, that it has an obligation to serve its customers.

CAW is facing a plethora of permitting and regulatory issues related to CAW's quest to implement a replacement long-term water supply, to comply with the ESA and regulatory requirements of other federal and state agencies.

Cooperation, as used herein, means providing comments on a project or course of action by writing letters, appearing at public meetings and hearings to speak or give testimony, and meeting with other government agencies, consistent with NOAA's mission, policies, and its ESA responsibilities, and taking into account the limitations imposed by staff time and resources.

A. California Public Utilities Commission

1. NOAA will cooperate in CPUC proceedings related to approval of the Certificate of Public Convenience and Necessity for a replacement long-term water supply project by explaining the importance of the recovery of the SCCC steelhead and the habitat of the Carmel River, and the environmental benefits of a replacement long-term water supply compared to the environmental detriment of continuing the current water supply for the Monterey Peninsula.

2. NOAA will cooperate in any CPUC general rate proceedings concerning the recovery in rates of costs of a replacement long-term water supply project and funds paid for mitigation by explaining to the CPUC: (1) the benefits to steelhead of any mitigation funds paid pursuant to any agreement with NOAA; (2) the penalties applicable to violations of the ESA; and (3) compliance with the ESA is mandatory.

B. Other Agencies with Permitting/Regulatory Authority over the Coastal Water Project.

1. Monterey Bay National Marine Sanctuary ("MBNMS")

NOAA will cooperate with CAW by meeting with NOAA personnel who manage MBNMS to educate them about how a replacement long-term water supply project will benefit listed species in the Carmel River and its habitat; discuss with CAW and MBNMS any concerns of MBNMS regarding a replacement long-term water supply project's potential effects on MBNMS.

2. California Coastal Commission ("CCC")

A Coastal Development Permit from CCC is required. NOAA will cooperate with CAW by (1) explaining the critical need for the replacement of a long-term water supply for Carmel River to CCC and that the means of providing such a replacement water supply are extremely limited and (2) that CCC should consider the overall environmental picture for Monterey Peninsula, including the benefit to listed species in and along the Carmel River, and not just the marine species in MBNMS.

3. State Water Resources Control Board ("SWRCB")

The second component of the CWP is aquifer storage and recovery (ASR) in the Seaside Basin, which will require water rights permits from SWRCB. NOAA has supported the concept of ASR for years. NOAA will cooperate with CAW regarding the benefits of diversions to ASR during times of excess flow on the Carmel River. NOAA will meet and confer with CAW to discuss any of its concerns with CAW'S ASR permit applications before commenting publicly.

4. U.S. Fish and Wildlife Service ("USFWS")

NOAA will cooperate with CAW regarding USFWS issues related to permits for a replacement long-term water supply project.

5. California Department of Fish and Game

NOAA will cooperate with CAW regarding CDFG issues related to permits for a replacement long-term water supply project.

V. Prosecutorial Discretion:

It is the responsibility of NOAA to investigate and take appropriate enforcement action with respect to violations of the ESA involving species under its jurisdiction. In light of the substantial amounts of time and money that have been, and will continue to be, expended by CAW on steelhead conservation measures, and in light of the commitment by CAW, by the expiration of this Agreement, to either modify its operations to avoid any take of SCCC steelhead, or have obtained all necessary permits to authorize any remaining take of SCCC steelhead caused by CAW's operations, NOAA agrees that prosecution of CAW for ESA violations relating to its pumping operations and water withdrawals from the Carmel River is not the preferred course of action.

Accordingly, so long as CAW complies with the terms and conditions of this Agreement, then with respect to violations which may occur during the term of this Agreement NOAA will exercise enforcement discretion relative to any potential violation of the ESA committed by CAW involving its pumping operations or water withdrawals from the Carmel River in the following manner:

A. NOAA may investigate and document each apparent ESA violation.

B. NOAA will exercise enforcement discretion in prosecuting such ESA violations, if in the sole view of NOAA, CAW has fully complied with the terms and conditions of this Agreement.

C. If NOAA believes CAW has not complied with any term or condition of this Agreement, NOAA shall notify CAW and CDFG of said belief within five (5) business days after making this determination.

D. This exercise of enforcement discretion does not apply to any intentional violation(s) of the ESA by CAW.

E. Nothing in this Agreement limits or otherwise affects CDFG's authority or discretion to enforce any violations of the California Fish and Game Code by CAW, or any rights, responsibilities, or duties it has under federal, State, or local laws, rules, and regulations, or its discretion to exercise those rights, responsibilities, or duties, in regard to CAW's well-pumping and water withdrawals from the Carmel River watershed.

VI. Term of Agreement:

A. This Agreement shall expire 364 calendar days following the seventh (7th) anniversary of the Effective Date of the Agreement, or upon receipt by CDFG from CAW of the final payment due under Section II.A. of this Agreement, whichever occurs later. This Agreement may terminate prior to its expiration in the event that: (1) CAW fully complies with subsection (2) of Ordering Paragraph 2 of the State Water Resources Control Board Order 95-10, or (2) CAW obtains appropriate incidental take authorization under the ESA from NMFS authorizing incidental taking of SCCC steelhead, whichever occurs first.

B. Notwithstanding the expiration or termination of this Agreement pursuant to Section VI.A., CDFG shall continue to comply with all requirements of the Agreement until such time as all funds paid to CDFG by CAW have been expended pursuant to Section II., and CDFG has provided a final accounting report to NMFS and CAW, pursuant to Section II.C.

C. The term of this Agreement may be extended by mutual written consent of the Parties, or as specified in Section VIII.A. below.

D. If CAW has otherwise complied with the terms of this Agreement, but because of reasons beyond its reasonable control and without its fault or negligence, CAW determines by the start of year five of this Agreement that it may be unable to modify its operations to avoid any take of SCCC steelhead by the expiration of this Agreement, then NOAA and CAW shall meet and confer regarding: (i) the progress of actions funded by this Agreement to improve habitat conditions for or otherwise aid in the recovery of SCCC steelhead; (ii) the progress of CAW's Tier III activities; (iii) the prudence of CAW incurring expenses that will be borne by CAW's ratepayers to otherwise obtain incidental take authorization; and (iv) authorizing any take of SCCC steelhead caused by CAW's operations that may remain at the expiration of this Agreement. Either party may call for such meeting no earlier than two years prior to the expiration of this Agreement and no later than six months prior to the expiration of this Agreement. This meet and confer obligation is in addition to the discretion of the parties to extend this agreement pursuant to Section VI.C.

VII. Effective Date:

The Effective Date of this Agreement means the date on which all Parties have signed the Agreement.

VIII. Miscellaneous Provisions:

A. Although this Agreement does not address NOAA's ESA concerns with respect to any of CAW's operations other than well-pumping and water withdrawals from the Carmel River watershed, NOAA and CAW agree that they will negotiate in good faith using their best efforts to reach an agreement by not later than six (6) months from the Effective Date of this Agreement to address NOAA's ESA concerns regarding CAW's remaining operations. Any subsequent agreement may include an extension of the term of this Agreement.

B. Any Party may issue a press release regarding the contents of this Agreement.

C. The provisions of this Agreement shall apply to and be binding upon the Parties and their respective successors and assigns.

D. This written Agreement and the Conservation Agreement signed by NMFS and CAW on September 18, 2001, shall constitute the sole and entire agreement between the Parties and supersede any prior agreements and understandings whether oral or otherwise between NMFS and CAW. The terms and conditions of the Conservation Agreement, except any obligations to increase well capacity in the lower Carmel Valley as previously required by Phase II Tier I, are expressly incorporated herein by reference. Any modification of this Agreement shall be in writing and signed by the Parties.

E. All notices and communications required under this Agreement shall be made to the Parties through each of the following persons and addresses:

1. TO CAW:

Craig Anthony  
General Manager, Central Division  
California American Water  
511 Forest Lodge Road  
Suite 100  
Pacific Grove, CA 93950  
Phone: 831-646-3214  
Fax: 831-375-4367

2. TO NOAA:

Joyce Ambrosius  
Supervisor  
Central California Coast  
National Marine Fisheries Service  
777 Sonoma Ave., Rm. 325  
Santa Rosa, CA 95404  
Phone: 707-575-6064  
Fax: 707-578-3435



3. TO CDFG:

Jeff Single  
Regional Manager  
Central Region  
Department of Fish and Game  
1234 E. Shaw  
Fresno, CA 93710  
Phone: 559-243-4005 ext. 121  
Fax: 559-243-4022

F. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same agreement.

G. Each undersigned representative of a party to this Agreement certifies that he or she is fully authorized by that party to enter into and execute the terms of this Agreement and legally bind such party to this Agreement.

ACCEPTED ON BEHALF OF CALIFORNIA-AMERICAN WATER COMPANY BY:



B. Kent Turner  
President  
California-American Water Company

DATED: 3/2/2009

ACCEPTED ON BEHALF OF THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION BY:

\_\_\_\_\_  
Niel Moeller  
Office of General Counsel for Enforcement & Litigation, NOAA

DATED: \_\_\_\_\_

\_\_\_\_\_  
Rodney McInnis  
Regional Administrator Southwest Region  
National Marine Fisheries Service, NOAA

DATED: \_\_\_\_\_

3. TO CDFG:

Jeff Single  
Regional Manager  
Central Region  
Department of Fish and Game  
1234 E. Shaw  
Fresno, CA 93710  
Phone: 559-243-4005 ext. 121  
Fax: 559-243-4022

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B. Kent Turner  
President  
California-American Water Company

DATED: \_\_\_\_\_

ACCEPTED ON BEHALF OF THE NATIONAL OCEANIC AND ATMOSPHERIC  
ADMINISTRATION BY:

\_\_\_\_\_  
Niel Moeller  
Office of General Counsel for Enforcement & Litigation, NOAA

DATED: \_\_\_\_\_

Rodney R M McInnis  
Rodney McInnis  
Regional Administrator Southwest Region  
National Marine Fisheries Service, NOAA

DATED: 3-2-09

3. TO CDFG:

Jeff Single  
Regional Manager  
Central Region  
Department of Fish and Game  
1234 E. Shaw  
Fresno, CA 93710  
Phone: 559-243-4005 ext. 121  
Fax: 559-243-4022

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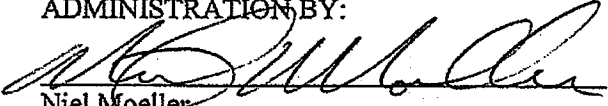
G. Each undersigned representative of a party to this Agreement certifies that he or she is fully authorized by that party to enter into and execute the terms of this Agreement and legally bind such party to this Agreement.

ACCEPTED ON BEHALF OF CALIFORNIA-AMERICAN WATER COMPANY BY:

\_\_\_\_\_  
B. Kent Turner  
President  
California-American Water Company

DATED: \_\_\_\_\_

ACCEPTED ON BEHALF OF THE NATIONAL OCEANIC AND ATMOSPHERIC  
ADMINISTRATION BY:

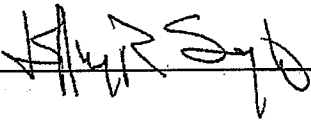
  
Niel Moeller  
Office of General Counsel for Enforcement & Litigation, NOAA

DATED: 3/3/09

\_\_\_\_\_  
Rodney McInnis  
Regional Administrator Southwest Region  
National Marine Fisheries Service, NOAA

DATED: \_\_\_\_\_

ACCEPTED ON BEHALF OF THE CALIFORNIA DEPARTMENT OF FISH AND GAME  
BY:

  
\_\_\_\_\_  
Jeff Single  
Regional Manager  
Central Region, CDFG

DATED: 2-25-09

**TABLE 1:**

**MITIGATION FUNDS UNDER NOAA, CDFG, CAL-AM SETTLEMENT AGREEMENT**

<b>Due Date</b>	<b>Payment Amount</b>
April 1, 2009	\$3.5 million
July 1, 2010	\$1.1 million
July 1, 2011	\$1.1 million
July 1, 2012	\$1.1 million
July 1, 2013	\$1.1 million
July 1, 2014	\$1.1 million
July 1, 2015	\$1.1 million
July 1, 2016	\$1.1 million

**Total: \$11.2 million**

