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**Interim Implementation Agreement for
2011 – 2012 Carmel River Mitigation Program**

THIS AGREEMENT is effective May 24, 2011, by and between California-American Water Company (California American Water) and the Monterey Peninsula Water Management District (MPWMD or Water Management District).

1. Recitals.

1.1. The Water Management District was created by the California Legislature in 1977 (Statutes of 1977, Chapter 527, as amended). The California Public Utilities Commission (CPUC or Commission) acknowledged creation of the Water Management District in Decisions 89195 and 92793. Finding 16 of Decision 89195 provides, "The use of Monterey Peninsula water resources... and management of such resources can best be accomplished by the responsible local government agencies, coordinated when necessary with California American Water and the Public Utilities Commission." Finding 18 of Decision 89195 also states, "As a result of Assembly Bill 1329 (Chapter 527) and a vote of the electorate in the area served by California American Water's Monterey District, there is now in existence the Monterey Peninsula Water Management District, having very broad powers, including taxing powers."

1.2. The MPWMD implements the comprehensive Mitigation Program ("Mitigation Program"). The Mitigation Program lessens environmental impacts that result from community water use and California American Water operations on the Carmel River and Seaside Groundwater Basins. These impacts have been determined to significantly affect the Carmel River populations of steelhead and red-legged frog, which are listed as threatened species under the federal Endangered Species Act.

1.3. State Water Resources Control Board (SWRCB) Order 95-10 (Order 95-10) recognized the MPWMD Mitigation Program. Ordering Paragraph 11 of Order 95-10 provides that California American Water is to implement all measures in mitigation of the MPWMD Water Allocation Program if those are "not implemented by MPWMD." Ordering Paragraph 9 of State Water Resources Control Board Order WR 2009-0060 (colloquially known as the "Cease and Desist Order") requires California American Water to comply with all requirements of Order 95-10, except as provided therein. Order WR 2009-0060 does not modify California American Water's obligations under Condition 11 of Order 95-10.

1.4. The MPWMD previously funded the Mitigation Program in part through a "User Fee" that California American Water collected and remitted to the MPWMD. MPWMD also uses general fund revenues to defray costs of the Mitigation Program that is not funded by the User Fee.

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1.5. CPUC Decision 09-07-021, addressing issues related to the pass-through of the MPWMD water user fee to customers, states a concern that recovery of Water Management District costs from California American Water customers by a surcharge on California American Water customer bills must be shown to be appropriate. CPUC Decision 09-07-021 does not authorize California American Water to continue collection of the MPWMD surcharge as of June 2009. This Decision requires California American Water to file an application addressing the manner in which Carmel River Mitigation program costs are funded, and authorized California American Water to establish a memorandum account for interim payments to the MPWMD.

1.6. On January 5, 2010, California American Water timely filed the application required by D.09-07-021, and subsequently reached a settlement with all parties to that proceeding and submitted that settlement to the CPUC for approval. In D.11-03-035 the CPUC rejected that settlement agreement, terminated the MPWMD User Fee memorandum account, and ordered California American Water to file an amended application in 60 days.

1.7. To ensure the Mitigation Program required by Order 95-10 continues pending a decision by the CPUC on California American Water's amended application regarding the User Fee, California American Water and the MPWMD have entered into this Agreement to address California American Water's compliance with Condition No. 11 of Order 95-10 and Condition No. 9 of Order WR 2009-0060 until the CPUC issues a decision on California-American's application regarding the User Fee.

2. Mitigation Activities. The MPWMD shall undertake the following activities:

2.1. The MPWMD shall implement the Fisheries Mitigation Program contained in the MPWMD Five Year Mitigation Program for Option V – 16,100 AF Cal-Am Production adopted by the MPWMD Board November 1990 as subsequently modified by the MPWMD Board and as further specified in Exhibit A.

2.2. The MPWMD shall implement the Riparian Vegetation and Associated Wildlife Mitigation Program developed as part of the MPWMD Five Year Mitigation Program for Option V – 16,100 AF Cal-Am Production adopted by the MPWMD Board November 1990 as subsequently modified by the MPWMD Board and as further specified in Exhibit A.

2.3. The MPWMD shall implement the Lagoon Vegetation and Wildlife Mitigation Program developed as part of the MPWMD Five Year Mitigation Program for Option V – 16,100 AF Cal-Am Production adopted by the MPWMD Board November 1990 as subsequently modified by the MPWMD Board and as further specified in Exhibit A.

2.4. The MPWMD shall implement other activities designed to improve the habitat values of the Carmel River watershed to the extent that such programs mitigate adverse effects of California-American's river operations on habitat for the SCCC Steelhead and the California Red-Legged Frog as further specified in Exhibit A. Such activities may include, but are not limited to, the Carmel River Management Program as subsequently modified by the MPWMD Board and as further specified in Exhibit A.

3. Reporting.

3.1. The MPWMD shall publish a report on mitigation activities substantially similar to the Mitigation Program Annual Reports previously published by the MPWMD. California-American shall provide data necessary for the MPWMD to prepare that report in accordance with historical practice.

3.2. Any report prepared pursuant to this section shall be made available to the public and reviewed by the MPWMD Board at a public meeting.

4. Invoices and Use of Funds.

4.1. The Water Management District shall invoice California American Water once each calendar month for 1/12th of the budget shown in Exhibit B. Such invoice shall include copies of all invoices received by the Water Management District from its non-employee vendors that are included as a charge listed in the Water Management District's budget.

4.2. Unless otherwise provided by this agreement, California American Water shall pay the full amount of the Water Management District's invoice within 45 days of receipt.

4.3. The Water Management District shall use funds received pursuant to this Section 4 exclusively as reimbursement for reasonable and necessary costs incurred to implement the Mitigation Program as specified herein. The Water Management District shall pay all employees, contractors and other vendors in accordance with the contracts between such parties (including any collective bargaining agreements), California law, or both, as applicable.

5. Records and Subsequent Review by California Public Utilities Commission

5.1. The Water Management District and California American Water each acknowledge that: (a) CPUC Decision 11-03-035 terminated California American Water's authorization to record interim payments in a User Fee memorandum account; (b) that California American Water has a

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contingent obligation to pursuant to Condition No. 11 of Order 95-10 and Condition No. 9 of Order WR 2009-0060 to ensure the Mitigation Program continues to be implemented if the MPWMD ceases implementing that program; (c) California American Water has been authorized to establish a memorandum account for costs related to compliance with Order WR 2009-0060; (c) that the CPUC will undertake a reasonableness review of expenses recorded in that memorandum account; and (d) that the CPUC may disallow costs it deems unreasonable or imprudent.

- 5.2. The Parties nonetheless deem this agreement is important to the Monterey Peninsula's water supply and that any effort California American Water undertakes to comply cost-effectively with Order WR 2009-0060 inures to the benefit of the Monterey Peninsula's residents.
- 5.3. MPWMD shall maintain complete and accurate records in accordance with generally accepted accounting practices for government agencies sufficient to show that funds received pursuant to this Agreement have been used exclusively to pay reasonable and necessary costs incurred to implement the Mitigation Program. MPWMD shall fully assist and cooperate with California-American in responding to data requests issued by the CPUC regarding the purposes of this Agreement.
- 5.4. The Water Management District and California American Water shall fully assist and cooperate with each other in seeking authority from the CPUC for California American Water to recover in rates from California American Water's ratepayers all payments made to the Water Management District under this Agreement.
- 5.5. As to any event where the CPUC disallows California American Water's request for reimbursement of recorded interim costs funded pursuant to this Agreement, then and in those events California American Water and the Water Management District shall immediately meet and confer in an attempt to identify the reason(s) for disallowance, and shall agree as to how consequences of disallowance may be equitably shared between them. Should an agreed sharing of this risk not be reached within ninety (90) days after the date either party first requests resolution, the parties shall then select a mediator by requesting a list of seven (7) qualified arbitrators from the State Mediation and Conciliation Service. The parties shall flip a coin to determine who strikes first and shall alternate striking mediators until one name remains. The selected mediator shall provide a written recommendation as to how the parties shall equitably share the consequences of the disallowed interim costs, taking into account the amount of disallowance, the nature of the activity that was disallowed, and the long term benefits of that activity.

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6. Performance.

- 6.1. The MPWMD and California American Water shall meet on an as-needed basis throughout this agreement with the purpose of, among other things, ensuring that no activities performed by the MPWMD under this Agreement are duplicative of activities performed by California American Water or otherwise paid by California American Water's customers unless by their nature an activity requires a cooperative effort. Such meetings include but are not limited to, California-American's General Manager's reports at MPWMD Board meetings, quarterly water budget meetings, and MPWMD annual budget workshop(s).
- 6.2. In its performance of activities under this Agreement, the Water Management District shall act as independent contractor and the Water Management District and California American Water are not an agent or employee of the other. California American Water, for its part, agrees to provide access to information in its possession and cooperation of its staff in order to assist MPWMD and its contractor(s) to carry out its responsibilities herein. Any information California American Water provides to MPWMD for the purposes of this agreement marked as "confidential" shall be treated in the same manner as "Confidential Information" is treated under the California American Water-MPWMD Non-Disclosure Agreement dated June 22, 2009. The Water Management District shall have exclusive and complete control over its employees and subcontractors, and shall determine the method of performing the services hereunder.

7. Term, Termination and Survival

- 7.1. Unless terminated earlier under the subsequent paragraph, this Agreement shall remain in effect until the effective date of final action by the CPUC in Proceeding A.10-01-012 relating to the MPWMD User Fee or December 31, 2012, whichever occurs first.
- 7.2. California American Water may terminate this agreement at its convenience by providing the MPWMD written notice, in the manner specified in Section 10, 30 calendar days prior to the proposed termination date.
- 7.3. The MPWMD may terminate this agreement at its convenience by providing the MPWMD written notice, in the manner specified in Section 10, 90 calendar days prior to the proposed termination date such that California American Water can arrange for alternate performance.
- 7.4. Any obligation for one party to indemnify another shall survive the termination of this Agreement.

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7.5. The obligations under Section 5 shall remain in effect until the expiration of the time California American Water is required to preserve records regarding any aspect of this transaction pursuant to Resolution A-4691 of the California Public Utilities Commission dated July 12, 1977.

8. Disputes and Indemnification

8.1. In the event a dispute arises out of the performance of this Agreement, either party shall, as soon as a conflict is identified, submit a written statement of the conflict to the other party. Within five (5) working days of receipt of such a statement of conflict, the second party will respond and a meeting will be arranged not more than five (5) working days thereafter to arrive at a negotiated settlement or procedure for settlement. If, within twenty (20) working days from the initial filing of a statement of conflict an agreement cannot be reached, the parties agree to submit the matter to non-binding mediation. If meditation is unsuccessful, it is agreed that the dispute may be resolved in a court of law competent to hear this matter. This Agreement shall be construed in accord with California law. The prevailing party shall be awarded costs of suit and attorneys' fees.

8.2. Notwithstanding any other provision of this Agreement, each party shall indemnify, defend, protect, hold harmless, and release the other, any parent or affiliate, and their respective officers, agents, and employees, from and against any and all claims losses, proceedings, damages, causes of action, liability, costs, or expense (including attorney's fees and witness costs) arising from or in connection with, or caused by any negligent act or omission or willful misconduct of such indemnifying party. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages or compensation payable to or for the indemnifying party under workers' compensation acts, disability benefit acts, or other employee benefit acts.

8.3. This Agreement shall be construed in accord with California law without reference to conflicts of laws principles.

8.4. The prevailing party shall be awarded costs of suit and attorneys' fees.

9. Amendment and Integration

9.1. This Agreement sets forth the entire understanding of the parties with respect to the subject matter herein. Except as stated herein, there are no other agreements expressed or implied, oral or written, except as set forth herein.

9.2. If, during the course of the work herein contemplated, the need to change the purpose of this Agreement should arise, for whatever reason, whichever party first identifies such need to change shall notify the other party in writing. The authorized representatives of the parties shall meet

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within seven (7) working days of the date of such notice, to discuss the need for change so identified and to determine if this Agreement should be amended.

9.3. Any changes agreed to shall be documented by duly approved and executed amendments to this Agreement or other means acceptable to both parties.

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10. Notices.

- 10.1. All communications to either party by the other shall be deemed given when made in writing and delivered or mailed to such party at its respective address shown in Paragraph 10.2
- 10.2. Addresses for Notices

MPWMD: Monterey Peninsula Water Management District
5 Harris Court, Bldg. G
Post Office Box 85
Monterey, California 93942

California American Water:

California American Water – Monterey
511 Forest Lodge Road, Suite 100
Pacific Grove, California 93950

With a copy to:
Vice President – Legal, Operations
1033 B Avenue, Suite 200
Coronado, CA 92118

11. References. This Agreement refers to the following prior documents:

- 11.1. Sections 2.1-2.3:
 - 11.1.1. Mitigation Program for Water Allocation Program EIR (Final EIR: MPWMD, Water Allocation Program Final Environmental Impact Report, certified by MPWMD Board November 5, 1990)
 - 11.1.2. MPWMD, Five Year Mitigation Program for Option V – 16,100 AF Cal-Am Production, adopted by MPWMD Board November 1990
 - 11.1.2.1. MPWMD, Annual Mitigation Program Reports
- 11.2. Section 2.4:
 - 11.2.1. MPWMD Carmel River Riparian Corridor Irrigation Program
 - 11.2.2. Monterey County Use Permits issued by the Monterey County Planning Commission to California-American Water Company, December 1980: PC-3794 for Cypress Well, PC-3795 for

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San Carlos Well, PC-3796 for Rancho Canada Well, and PC-3797 for Pearce Well

- 11.2.3. January 14, 1981 Agreement between MPWMD and California-American Water Company for management of riparian vegetation in the area of the four Cal-Am wells (Cypress, San Carlos, Rancho Canada, and Pearce Wells)
- 11.2.4. Carmel River Management Program; MPWMD, Carmel River Management Plan, March 1984; MPWMD, Final EIR, Carmel River Management Plan and Boronda Erosion Control Project, certified October 29, 1984

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement effective as of the day and year first above written.

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

BY: Darby W. Fuerst
General Manager

CALIFORNIA AMERICAN WATER

BY: Robert MacLean
President

Exhibit A

Fisheries Program

Staffing

The MPWMD shall staff the Fisheries Program with a Senior Fisheries Biologist and two Associate Fisheries Biologists. At least 75 percent of the Senior Fisheries Biologist hours shall be dedicated to the Fisheries Program. At least 95 percent of each Associate Fisheries Biologists hours shall be dedicated to the Fisheries Program.

Sleepy Hollow Steelhead Rearing Facility Operation

The MPWMD shall operate the Sleepy Hollow Steelhead Rearing Facility. The following expenditures are included in the budget: general operations and maintenance; electricity purchases; road maintenance; standby generator fuel purchases; standby generator maintenance; and intake and cold well repair and maintenance.

Juvenile Steelhead Rescues

The MPWMD shall conduct juvenile steelhead rescues. The following expenditures are included in the budget: fish rescue supplies; water resource assistants; seasonal fish rescue workers; on-call fish rescue crew; and the purchase and maintenance of miscellaneous equipment.

Adult Steelhead Monitoring

The MPWMD shall monitor adult steelhead counts at San Clemente Dam. The budget for this task includes fish counter supplies.

Riparian Vegetation and Erosion Control Program

Staffing

The MPWMD shall staff the Riparian Vegetation and Erosion Control Program with a Riparian Projects Coordinator, a River Maintenance Specialist, and a River Maintenance Worker. At least 85 percent of the Riparian Projects Coordinator hours shall be dedicated to the Fisheries Program. The River Maintenance Specialist and River Maintenance Worker shall devote all of their time to this program.

Riparian Vegetation Management

The MPWMD shall: operate and maintain the Water Management District's riparian irrigation systems; maintain and diversify the Water Management District plantings, including seed collection and propagation, and supplemental plantings; conduct riparian corridor maintenance projects; and address vegetation hazards and remove trash.

Riparian Monitoring

The MPWMD shall implement the Riparian Monitoring activities, including: operating and maintaining vegetation and soil moisture monitoring equipment, employing a field biology assistant, and conducting groundwater drawdown monitoring.

Hydrologic Monitoring Program

Staffing

The MPWMD shall staff the Hydrologic Monitoring Program with a Hydrography Program Coordinator. At least 90 percent of the Hydrography Program Coordinator's hours shall be dedicated to the Hydrologic Monitoring Program.

Lagoon Vegetation and Wildlife Program

Staffing

The MPWMD shall staff the Lagoon Vegetation and Wildlife Program with a Hydrography Program Coordinator, Associate Fisheries Biologist, Associate Hydrologist, and Senior Water Resource Engineer. At least 90 percent of the Hydrography Program Coordinator hours shall be dedicated to the Hydrologic Monitoring and Lagoon Vegetation and Wildlife Programs. Similarly, at least 95 percent of the Associate Fisheries Biologist hours shall be dedicated to the Fisheries and Lagoon Vegetation and Wildlife Programs. At least 40 percent of the Associate Hydrologist hours shall be dedicated to the Hydrologic Monitoring and Lagoon Vegetation and Wildlife Programs. Lastly, at least 20 percent of the District Engineer hours shall be dedicated to the Riparian Vegetation and Erosion Control and Lagoon Vegetation and Wildlife Programs.

Assist with Lagoon Enhancement Plan Investigations

The MPWMD shall: provide hydrological data to aid the analyses of efforts to augment flow to the lagoon during the low-flow season, including the use of recycled water, monitor water quality, provide technical advice regarding breaching of the sandbar that forms each year between the lagoon and ocean, and facilitate meeting of the Carmel River Lagoon Technical Advisory Committee (CRL-TAC).

Expand Long-Term Monitoring

The MPWMD shall monitor the lagoon and its associated plant communities to evaluate the wetlands' response to groundwater pumping, including changes in hydrology, plant species distribution, and coverage, survey selected cross-sections to track the movement of sediment in the lagoon, and supervise avian studies in the lagoon area.

Identify Feasible Alternatives to Maintain Adequate Lagoon Volume

The MPWMD shall develop and maintain an elevation-area-storage capacity curve for the lagoon and develop seepage rates for percolation through the barrier beach.

Hydrologic Monitoring Activities

The MPWMD shall conduct the following hydrologic monitoring activities: monitor Carmel River hydrology near Carmel; conduct surface water quality monitoring; conduct groundwater water quality chemical analyses, operate streamflow monitoring equipment on a District-wide basis, including operating at least 7 data collection points.

Administrative Costs and Other Program Support

The MPWMD may employ other staff and incur other costs consistent with those shown in Exhibit B.

Exhibit B

Fisheries Program: FY 2012												
Staffing												
Senior Fisheries Biologist											\$100,898	@75%
Associate Fisheries Biologist											\$113,594	@95%
Associate Fisheries Biologist											\$104,048	@95%
Subtotal											\$318,540	
Project Expenditures												
Sleepy Hollow Steelhead Rearing Facility												
General operations and maintenance											\$46,900	
Power											\$58,500	
Road maintenance											\$1,000	
Replacement of standby generator fuel											\$2,800	
Generator maintenance service											\$5,600	
Intake/cold well repair & maintenance											\$19,500	
Subtotal											\$134,300	
Conduct Juvenile Rescues												
Miscellaneous fish rescue supplies											\$2,500	
Water resource assistants											\$20,400	
Seasonal fish rescue workers											\$14,800	
Recalibrate backpack electro-fisher											\$800	
Waders											\$1,300	
On-call fish rescue crew											\$3,200	
Subtotal											\$43,000	
Monitoring Adult Steelhead at San Clemente Dam												
San Clemente Dam fish counter supplies											\$500	
Total											\$496,340	

Riparian Vegetation and Erosion Control Programs: FY 2012						
Staffing						
	Riparian Projects Coordinator				\$112,062	@85%
	River Maintenance Specialist				\$94,035	@100%
	River Maintenance Worker				<u>\$87,404</u>	@100%
				Subtotal	\$293,501	
Project Expenditures (Riparian Mitigations)						
	Operate and maintain District irrigation systems				\$10,000	
	Riparian Corridor Management					
	Maintain & diversify district plantings					
	Seed collection and propagation				\$500	
	Supplemental planting				\$500	
	Riparian corridor maintenance projects				<u>\$1,500</u>	
				Subtotal	\$2,500	
	Riparian Monitoring Program					
	Vegetation & soil moisture monitoring equipment				\$500	
	Field Biology Assistant				\$21,000	
	GS flow (groundwater drawdown model)				<u>\$2,000</u>	
				Subtotal	\$23,500	
	Address Vegetation Hazards & Remove Trash				\$18,000	
				Total	\$347,501	

Hydrologic Monitoring Program: FY 2012						

Staffing										
									Hydrography Program Coordinator	\$118,670 @90%
Project Expenditures										
Carmel Valley										
									Monitor Carmel River Near Carmel	\$14,000
									Water quality chemical analyses	\$2,300
									Miscellaneous maintenance	\$800
									Subtotal	\$17,100
District-wide										
									Streamflow monitoring program	
									Miscellaneous equipment	\$3,000
									Data line rental - 7 sites	\$3,000
									Subtotal	\$6,000
									Total	\$141,770

Other Programs and Administrative Costs: FY 2012											
Staffing											
	Other										\$416,257
Administrative Costs											
	Rent (field office and shop)										\$8,500
	Telephone										\$10,800
	Insurance										\$13,100
	Office Supplies										\$10,200
	Legal										\$63,000
	Vehicle Expense										\$16,000
	Operating supplies										\$5,700
	Data processing										\$21,800
	Utilities										\$9,000
										Subtotal	\$158,100
										Total	\$574,357
										Grand Total	\$1,559,968