

EXHIBIT 5-A

Implementation and Reimbursement Agreement for Los Padres Dam Gravel Augmentation Project

THIS IMPLEMENTATION AND REIMBURSEMENT AGREEMENT (Agreement) is made and entered into by and between California-American Water Company (California American Water or Cal-Am) 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). California American Water (Cal-Am) is a public utility regulated by the California Public Utilities Commission (CPUC or Commission).

1.2. California American Water has entered into a Memorandum of Agreement with the National Marine Fisheries Service (NMFS) effective January 10, 2018 (MOA), attached hereto as Exhibit A, that, among other things, provides for interim gravel replenishment below Los Padres Dam to maintain spawning gravels downstream of Los Padres Dam (the Project) pending a determination about the future of the dam.

1.3. Since 1994, MPWMD has had an ongoing program to augment spawning habitat for the benefit of steelhead throughout the Carmel River and has an interest in assisting Cal-Am with gravel replenishment at Los Padres Dam.

AGREEMENT

2. Project Activities.

MPWMD shall cooperate with Cal-Am on the Project. A preliminary scope of work is set forth in Exhibit B – Scope of Work. The MOA provides that gravel replenishment amounts, methods and scheduling are to be approved by NMFS. Cal-Am and MPWMD shall agree on the selection method, consultants to retained, and budget, and shall jointly develop a detailed scope of work to submit to NMFS for approval. Cal-Am in its sole discretion shall select the contractor to provide and place replenishment gravel, and shall enter into a contract with the contractor for such work. MPWMD and Cal-Am shall cooperate to carry out the Project as approved by NMFS. The Project is intended to be completed in phases over a three-year period starting with full execution of this Agreement. Cal-Am may request, and MPWMD shall grant, attendance and access to all materials, meetings, and reports associated with the Project.

3. Reporting.

3.1. The Water Management District shall provide to Cal-Am a quarterly report including a summary of work completed on the Project, with a comparison of the budget and schedule for the Project.

EXHIBIT 5-A

3.2 MPWMD shall provide annual summary reports for the Project to Cal-Am, NMFS, and any regulatory agency that requires a report. A final report on the Project will be due within 60 days of completion of the final phase of the Project.

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

4. Invoices and Use of Funds.

4.1. Cal-Am shall reimburse MPWMD for time and material spent for consultant assistance up to a maximum of the amount set forth on Exhibit C - Budget. Any proposed increases to the budget must be approved in writing by Cal-Am. MPWMD shall invoice Cal-Am no more frequently than quarterly for work completed. Such invoice shall itemize all costs and expenses charged and include copies of all corresponding invoices received by the Water Management District from its non-employee vendors and submit such electronically or by hard copy to:

California American Water
J. Aman Gonzalez, Project Manager
511 Forest Lodge Rd, Suite 100
Pacific Grove, CA 93950

Julio.gonzalez@amwater.com

4.2. Cal-Am shall pay the full undisputed amount of the Water Management District's invoice within 45 days of receipt by Cal-Am.

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 Project 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.

4.4 No reimbursement under this Agreement shall be made for work completed after three years from the date of execution of this Agreement.

5. Records and Subsequent Review by California Public Utilities Commission

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 Project. MPWMD shall fully assist and cooperate with Cal-Am in responding to any requests for information, including data requests, received from or issued by the CPUC regarding this Agreement or the Project.

6. Performance.

EXHIBIT 5-A

6.1. The MPWMD and Cal-Am shall meet on an as-needed basis throughout the term of 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 Cal-Am or otherwise paid by Cal-Am's customers unless by its nature an activity requires a cooperative effort.

6.2. In its performance of activities under this Agreement, the MPWMD shall act as independent contractor and the Water Management District and Cal-Am are not an agent or employee of the other. The MPWMD shall have exclusive and complete control over its employees and subcontractors.

7. Term, Termination and Survival

7.1. Unless terminated earlier under the subsequent paragraphs, this Agreement shall remain in effect for three years after the date of execution.

7.2. Cal-Am 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 Cal-Am written notice, in the manner specified in Section 10, 90 calendar days prior to the proposed termination date such that Cal-Am can arrange for alternate performance.

7.4. Any obligation for one party to indemnify another shall survive the termination of this Agreement.

7.5. The obligations under Section 5 shall remain in effect until the expiration of the time Cal-Am 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.

8.2. Notwithstanding any other provision of this Agreement, each Party shall indemnify, defend, protect, hold harmless, and release the other Party, 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) suffered or incurred by such other Party and

EXHIBIT 5-A

arising from or in connection with, or caused by any breach of this Agreement by the indemnifying Party, or any negligent act or omission or willful misconduct of such indemnifying party in the performance of its obligations under this Agreement. 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 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.

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:	District Engineer Monterey Peninsula Water Management District 5 Harris Court, Bldg. G Post Office Box 85 Monterey, California 93942
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California American Water:	Ian Crooks, Vice President, Engineering California-American Water Company 511 Forest Lodge Road, Suite 100 Pacific Grove, California 93950
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EXHIBIT 5-A

With a copy to:

Kathryn Horning, Corporate Counsel
California-American Water Company
655 West Broadway, Suite 1410
San Diego, California 92101

11. Additional Exhibits. This Agreement refers to the following prior documents:

Exhibit A - Settlement Agreement between National Marine Fisheries Service and California American Water;

Exhibit B – Scope of Work;

Exhibit C – Budget

Exhibit D - Schedule

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement effective as of the date it has been executed by both parties.

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

BY: David J. Stoldt
General Manager

CALIFORNIA-AMERICAN WATER COMPANY

BY:
Vice-President, Engineering

EXHIBIT 5-A

**Exhibit A – Settlement Agreement between
National Marine Fisheries Service and
California American Water**

EXHIBIT 5-A

Memorandum of Agreement

THIS Memorandum of Agreement is made by and between California-American Water Company ("CAW"), the U.S. Department of Commerce, National Marine Fisheries Service ("NMFS"), and the California State Coastal Conservancy ("the Conservancy"). Throughout this Memorandum of Agreement, CAW, NMFS and the Conservancy are collectively referred to as the "Parties."

RECITALS

I. Introduction

- 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. NMFS, part of the National Oceanic and Atmospheric Agency ("NOAA") is the federal agency that listed the naturally-spawned populations of South-Central California Coast Steelhead Distinct Population Segment ("SCCC steelhead") as threatened under the ESA and that oversees protection, conservation and recovery of the SCCC steelhead.
- C. The Conservancy is a California State agency established to protect and improve natural lands and waterways.
- D. The Parties have a mutual interest in promoting the conservation and recovery of SCCC steelhead.
- E. In 2016 the State Water Resources Control Board ("SWRCB") issued an amended order ("Amended CDO"), described below, requiring CAW to take certain measures to promote and conserve steelhead and to eliminate unauthorized diversions of water from the Carmel River by December 31, 2021. CAW is also party to a 2009 Settlement Agreement, as amended ("Settlement Agreement") with NOAA, described below, and a 2001 Conservation Agreement ("Conservation Agreement") with NMFS, described below, requiring CAW to take certain measures for the benefit of the SCCC steelhead. CAW and NMFS also have an agreement ("ASR Agreement") with California Department of Fish and Wildlife ("CDFW") and the Monterey Peninsula Water Management District ("MPWMD") establishing protocols for recovery of water from groundwater storage during the recovery season (June 1 through November 30).

EXHIBIT 5-A

MOA between CAW, NMFS, and the Conservancy 2017

- F. The Parties acknowledge that CAW has completed some of the measures required in the Conservation and Settlement Agreements. In addition, CAW asserts that, 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. Some of these measures, implemented by the MPWMD, 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. CAW also asserts that it has funded a number of other fishery restoration activities, including funding a forbearance agreement with the Trust for Public Land to add approximately 300 afa to the Carmel River over the next three years, part of a larger effort to convert the Rancho Cañada golf course to riparian habitat; helping to fund the removal of the San Clemente Dam, part of the Carmel River Reroute and San Clemente Dam Removal ("CRRDR") Project; facilitating a third-party water right change petition resulting in the dedication of water to instream flows as part of the Carmel River Floodplain Restoration and Environmental Enhancement Project; and development of a program to acquire and cause the dedication of new water sources and/or water rights to offset CAW's unauthorized diversions from the Carmel River and increase instream flows, all at a cost to CAW's ratepayers. And, beginning in early 2009, CAW worked with a stakeholder group comprised of NMFS, CDFW, and MPWMD to evaluate alternatives and reach a consensus on fish passage improvements at Los Padres Dam (LPD). The Los Padres Dam Fish Passage project, including a floating weir surface collector and bypass conduit system, was identified as the preferred downstream fish passage alternative, allowing juvenile and adult steelhead to migrate downstream past LPD. Project components include a behavioral guidance system, floating weir surface collector, fish bypass conduit, bypass access portals, and bypass outfall. CAW placed the facility into service in March 2016 at a cost of about \$5 million.
- G. The Parties also acknowledge that some of the work required under the two Agreements with NOAA and NMFS has not been fully completed and/or is ongoing. In addition, the Amended CDO requires CAW to undertake actions to eliminate unauthorized diversions from the Carmel River and to terminate all unauthorized diversions from the river no later than December 31, 2021, and to take certain actions that benefit SCCC steelhead in the interim.
- H. The Parties agree that additional measures pending completion of the remaining work under the Amended CDO, the Conservation Agreement, and the Settlement Agreement, would facilitate improvements to SCCC steelhead and their Carmel River habitat. NMFS believes that the impacts of LPD are among the challenges to improving their habitat, and that a clear passage channel is critical for upstream and downstream migration of steelhead through the sediment delta. In addition, LPD traps sediment, and may at times have contributed to a starved river condition downstream of LPD, lacking spawning gravels for steelhead and other sized sediment for food production.

EXHIBIT 5-A

MOA between CAW, NMFS, and the Conservancy 2017

- I. The Parties also agree that, prior to implementing such additional measures, one or more studies are necessary to identify and guide the selection of appropriate and feasible interim and longer-term measures, and that studies currently being carried out by third parties, including MPWMD, may assist in this process. This Memorandum of Agreement therefore sets forth a process and schedules for carrying out such studies and for the implementation of certain interim measures. The Parties agree to address longer term additional measures as guided by the studies contemplated in this Memorandum of Agreement within a process and timetable geared toward resolving long term issues with respect to CAW's pumping operations, water withdrawals from the Carmel River and remaining operations. Adherence to the process set forth herein for carrying out the studies and implementing interim measures and the framework and timetable to resolve longer term issues shall demonstrate both commitment and good faith progress toward reaching the long term objectives of the Parties identified in Paragraph L, below.
- J. The Parties recognize that implementation of the measures contemplated by this Memorandum of Agreement may involve other parties, and may require permits and/or authorizations from other regulatory agencies.
- K. Accordingly, the Parties are entering into this Memorandum of Agreement to extend the terms of the Conservation Agreement and Settlement Agreement and implement new terms related to CAW's operations. The Parties also enter into this Memorandum of Agreement to ensure the long-term cooperation between the Parties to achieve the goals set forth in this agreement, which reflect the goals stated in the Conservation and Settlement Agreements.
- L. The goals and objectives of this Memorandum of 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 enforcing 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.
 3. The Conservancy's goal is to restore and enhance coastal resources and coastal watersheds, consistent with Division 21 of the Public Resources Code, including by funding projects that restore and enhance habitat for SCCC steelhead, and/or otherwise aid in the recovery of SCCC steelhead in the Carmel River Watershed.

II. State Water Resources Control Board Orders

- A. CAW's operations on the Carmel River are regulated by a number of agencies pursuant to certain orders and agreements. In 1995, the SWRCB issued Order No. WR 95-10 ("Order 95-10"), mandating that CAW find an alternative supply

EXHIBIT 5-A

MOA between CAW, NMFS, and the Conservancy 2017

for unauthorized diversions of water from the Carmel River and, pending the implementation of an alternative water supply, limit its diversions from the Carmel Valley to 11,284.8 acre-feet ("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 Dam is controlled by an annual agreement among CAW, MPWMD and CDFW.

- B. In 2009, the SWRCB issued Order WR 2009-0060, the Cease and Desist Order ("CDO"), finding that CAW had failed to fully comply with the requirements of Order 95-10, and was in violation of California Water Code Section 1052 from its unauthorized water diversions on the Carmel River. The CDO mandated, among other things, that CAW: a) shall diligently implement actions to eliminate unauthorized diversions from the Carmel River and terminate all unauthorized diversions by December 31, 2016; b) shall not divert water from the Carmel River for new service connections or for any increased use of water at existing service addresses resulting from a change in zoning or use; and, c) shall reduce water diversions by 5% (549 acre-feet per annum [afa]) beginning in October 2009, and increase reductions by an additional 121 afa (cumulative) beginning in October 2011.
- C. In 2016, at CAW's request, the SWRCB issued Order WR 2016-0016, amending in part the CDO ("Amended CDO"). The Amended CDO found that CAW would not terminate its unauthorized diversions by December 31, 2016 because a planned regional desalination plant would not be constructed by that date, and identified instead CAW's plans for the Monterey Peninsula Water Supply Project ("MPWSP"), which included an alternate desalination plant, a water recycling plant, and expansion of facilities for groundwater storage, projects that are undergoing review by permitting agencies and that are anticipated to become operational before December 31, 2021. The Amended CDO, among other things, mandates that CAW terminate all unauthorized diversions by December 31, 2021, establishes interim milestones for the projects identified by CAW, and provides that CAW may withdraw 8,310 afa from the Carmel River beginning October 1, 2015 through December 31, 2021 (with certain exceptions and adjustments as provided in the Amended CDO), with specified reductions to that amount each time a milestone is not met.
- D. The Amended CDO also requires that CAW provide annual funding in the amount of up to \$175,000 for preparation of an annual report evaluating the status of the threatened South-Central California Coast Steelhead Distinct Population Segment ("SCCC Steelhead DPS"), to be prepared if possible by NMFS Southwest Fisheries Science Center ("SWSFC") and, if not possible, for CAW to designate another entity with the requisite expertise that NMFS finds acceptable. If a SWSFC annual report indicates a significant change in the status of the SCCC Steelhead DPS since the previous report, NMFS may provide recommendations

EXHIBIT 5-A

MOA between CAW, NMFS, and the Conservancy 2017

for additional adaptive management measures to be taken with respect to the SCCC Steelhead DPS in the Carmel River.

- E. The Amended CDO notes that CAW has indicated that it will implement an additional \$2.5 million of projects to improve fish habitat during the four years following adoption of the Amended CDO, including a) improvements to the existing upstream fish passage ladder and trap at Los Padres Dam (\$0.2 million), installation of a fish screen at the inlet pipe in Los Padres Reservoir (\$0.8 million), a pit tagging program (\$1.0 million); and a through- reservoir study for Los Padres Reservoir (\$0.5 million). The Amended CDO provides that if these projects are not implemented according to the plans developed by CAW and NMFS, the SWRCB may revisit the Amended CDO.
- F. Subsequent to the issuance of the Amended CDO, NMFS became aware that installation of a fish screen at the inlet pipe may not provide the benefits initially sought and that installation done at certain times of the year or in a certain manner may result in greater harm to the SCCC Steelhead DPS. NMFS has concluded that CAW should conduct or fund a study to determine the benefits of fish screen installation, before risking possible harm to the steelhead. This study could be conducted as part of ongoing studies.

III. 2001 Conservation Agreement

- A. On September 18, 2001, NMFS and CAW entered into the Conservation Agreement which required CAW to implement certain measures, categorized as Tier I, II and III, to reduce the impact of its operations in the Carmel River on steelhead and their habitat. As described below, CAW has implemented many but not all of the measures.
- B. The Conservation Agreement contained three tiers of activities. Tier I included short- and mid-term (Phase I and II) actions designed to conserve steelhead in the Carmel River. Tier II described the process to be followed to address the California Division of Safety of Dams' ("DSOD") 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.
- C. 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.
- D. 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

EXHIBIT 5-A

MOA between CAW, NMFS, and the Conservancy 2017

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.

- E. 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 agreed that proceeding with the measures set forth in Phase II of Tier I would not be financially prudent.

IV. 2009 Settlement Agreement

- A. On March 3, 2009, NOAA, CAW, and CDFW entered into the Settlement Agreement that required CAW to continue its implementation of the Tier I measures set forth in the Conservation Agreement. The Settlement Agreement also provided as new Tier I Phase II Activities that CAW make annual payments totaling \$11,200,000 to CDFW for mitigation projects to address the impacts of CAW's well-pumping and water withdrawals on the Carmel River ("New Tier I Phase II Activities"). For Tier III, CAW identified the Coastal Water Project ("CWP") as its proposed project for a long-term water supply, and committed to diligently pursue the environmental review and required permits to design, build and operate the CWP. On June 30, 2014, the Settlement Agreement was amended to include the Conservancy as a party for receipt, custody and control of the payments due under the Settlement Agreement.
- B. Paragraph VIII (A) of the 2009 Settlement Agreement noted that the Settlement 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. CAW and NOAA agreed to negotiate in good faith, and using their best efforts, to reach an agreement addressing NOAA's ESA concerns regarding CAW's "remaining operations" that were not covered by the 2009 Settlement Agreement.
- C. Under the 2009 Settlement Agreement (as amended), CAW has paid \$11,200,000 to fund New Tier I Phase II Activities. Moreover, CAW is currently meeting or has met all conditions of Tier I Phase I of the Conservation Agreement.

EXHIBIT 5-A

MOA between CAW, NMFS, and the Conservancy 2017

- D. As identified in the Amended CDO, the CWP and its proposed alternative, the Regional Desalination Plant, were not able to be constructed. CAW has identified as an alternative the MPWSP as its proposed project for a long-term water supply.

AGREEMENT:

NOW, THEREFORE, the Parties hereby agree to the following set of activities for CAW to operate over the next five years

I. Continuation of Tier I Phase I Activities:

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

II. Additional Funding for New Tier I Phase II Activities:

- A. In order to minimize effects resulting from its ongoing water operations, including ongoing water diversions, CAW agrees to pay a total of Five Million Five Hundred Thousand Dollars (\$5,500,000.00) over a period of five (5) years in consecutive annual payments of One Million One Hundred Thousand Dollars (\$1,100,000.00) per year, as specified in Table 1 of this Memorandum of Agreement, which is attached hereto and is part of this Memorandum of Agreement, for New Tier I Phase II Activities as described in the 2009 Settlement Agreement. Each annual payment shall be due and payable on or before July 1. These payments are in addition to any expenditures required by Paragraphs 4 and 5 of the Amended CDO for the annual report on the status of SCCC Steelhead and other conservation projects.
- B. All payments CAW makes under this Memorandum of Agreement shall be used to fund projects to improve habitat conditions for, and production of, SCCC steelhead, including adaptive management of habitat at the former San Clemente Dam site, and/or otherwise aid in the recovery of SCCC steelhead in the Carmel River Watershed (collectively, "projects"). No funds shall be expended for activities or projects that are the responsibility of CAW to complete under this Memorandum of Agreement or any other municipal, state or federal action.
- C. Subject to any required approvals by the California Department of Finance, the Conservancy shall deposit all funds received pursuant to this Memorandum of Agreement into the Coastal Trust Fund. All future payments CAW makes under this Memorandum of Agreement shall be made to the Conservancy in accordance with procedures specified by the Conservancy for transfer of the funds. CAW shall notify all Parties each time a payment is made under the Memorandum of Agreement. The Conservancy shall have custody and control of the payments until they are expended pursuant to this Memorandum of Agreement. The Conservancy 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

EXHIBIT 5-A

MOA between CAW, NMFS, and the Conservancy 2017

expended. Within 60 days of the expiration of this Memorandum of Agreement pursuant to Section IX(A) below, the Conservancy shall prepare a final accounting report to NMFS and CAW. The Conservancy 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 Memorandum of Agreement, but will use 10% of each payment 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), the Conservancy 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. The Conservancy 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. The Conservancy 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 Memorandum of Agreement within the time period this Memorandum of Agreement specifies shall constitute a breach of this Memorandum of Agreement. In the event of a breach, the Conservancy shall notify NMFS and NMFS 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 MPWSP as its proposed project for a long-term water supply to replace unauthorized diversions from the Carmel Valley Aquifer and to reduce reliance upon and protect against overdraft of the Seaside Groundwater Basin. CAW will continue to diligently pursue the environmental review and required permits to design, build and operate the MPWSP. The current schedule contemplates having the MPWSP in full operation by 2021 at the earliest. The Parties recognize that the MPWSP will require extensive environmental review and permits from many federal, state and local agencies over which CAW has no control. CAW will keep NMFS informed of the MPWSP's schedule, progress, potential delays and the reasons therefore. Pending completion of the MPWSP, in order to minimize the effects resulting from its ongoing water operations including ongoing water diversions, CAW will comply with the new Tier I Phase II activities outlined in Paragraph II.A. and will comply with the obligations identified in Paragraph IV.

EXHIBIT 5-A

MOA between CAW, NMFS, and the Conservancy 2017

IV. Activities Related to CAW Remaining Operations

Paragraph VIII (A) of the Settlement Agreement noted that the Settlement Agreement does not address NOAA's ESA concerns with respect to CAW's operations other than well-pumping and water withdrawals from the Carmel River watershed, and requires the Parties to negotiate in good faith, and using their best efforts, to reach an agreement addressing NOAA's ESA concerns regarding CAW's "remaining operations." This Section addresses ESA concerns identified in the 2009 Agreement and additional NMFS' ESA concerns. For purposes of this Memorandum of Agreement, the "remaining operations" of CAW are limited to: Operation and maintenance of Los Padres Dam; Management of water diversions from the Carmel River; General maintenance and drainage of CAW managed roads; and, planning for long term legal authorization for possible future incidental takes of SCCC steelhead (collectively, the "Remaining Operations").

A. CAW's Obligations with Respect to Operation, Maintenance and Potential Removal of Los Padres Dam

Los Padres Dam ("LPD") is a 148-foot high earth fill dam on the Carmel River located at river mile 24.8 built in 1948. The original storage capacity behind LPD was 3,030 acre-feet. Current storage is approximately 1,731 acre-feet. There is a fish ladder just downstream of the dam that extends from the Carmel River to a tank located about 100 feet up the left bank (facing downstream). Fish that swim into the ladder enter the tank and are held there until CAW operators transfer them to a truck and deliver them to a release site near the reservoir upstream of the LPD. CAW currently possesses an appropriative right to divert water to storage in the Los Padres Reservoir from October 1 to May 31 under License 11866, whose face amount is 3,030 afa. Subject to certain conditions, License 11866 also requires the licensee to maintain a flow of not less than five cubic feet per second in the channel of the Carmel River directly below the outlet structure of LPD.

NMFS believes that removing LPD would provide sufficient access to the upper watershed for spawning and rearing of steelhead, and that removal of LPD would alleviate the need for any additional mitigation/take coverage for impacts to steelhead from CAW's operations at LPD. However, the water stored behind LPD is currently used each year to maintain flows as far downstream as possible during the summer rearing season for juvenile steelhead. Removal of LPD should not occur, if at all, until the impacts of removal on the river system are assessed and alternative water sources are in place to ensure stored water is not needed during the low flow season. Additionally, prior to removal of LPD, CAW must receive approval from the SWRCB for a change in method and place of diversion under License 11866 such that CAW's diversion rights are fully protected. The Parties agree that SWRCB approval of such a water rights change petition is a condition precedent to removal of LPD.

While LPD remains in place, NMFS believes that measures to ensure safe unimpeded passage over or past the dam are critical for upstream and downstream steelhead migration.

EXHIBIT 5-A

MOA between CAW, NMFS, and the Conservancy 2017

1. Study Evaluating Feasibility of Removal of LPD

a. By June 30, 2019, CAW will complete a study ("LPD Feasibility Study") to evaluate the feasibility of removal of the LPD dam. The Parties agree that the LPD Feasibility Study must include analysis of the loss of water storage for summer flows and the benefits of access to the upper watershed if LPD is removed. The LPD Feasibility Study must also evaluate options for permanent unimpeded upstream and downstream passage and management of sediment if LPD is left in place. In addition, the LPD Feasibility Study should include an analysis of technical, environmental, economic and permitting issues, and an analysis of any impact on CAW's water rights, including an assessment of whether SWRCB approval may be obtained for a change to CAW's permitted diversions to storage at Los Padres Reservoir.

b. To assist in preparing the LPD Feasibility Study, CAW may rely on ongoing studies for which CAW has provided \$1.0 million in funding to MPWMD for certain studies concerning the fate of LPD ("MPWMD Studies"). As of the date of this Memorandum of Agreement, MPWMD anticipates completion of the MPWMD Studies by the end of 2018. CAW and NMFS agree to meet by June 30, 2018 to discuss the status of the MPWMD Studies, to determine what, if any, additional studies by CAW may reasonably be necessary for completion of the LPD Feasibility Study. If CAW and NMFS agree that additional studies are necessary, they may agree on an extended deadline for completion of the LPD Feasibility Study.

The MPWMD Studies include the following individual component studies:

i) LPD Fish Passage Feasibility Study: MPWMD and CAW are facilitating a study of volitional and other fish passage improvements to help inform the long-term management of LPD and the decision of whether to introduce improvements that would allow upstream volitional passage or improve the existing trap and transport program. Potential volitional fish passage alternatives will be identified and evaluated concurrently with the existing trap and transport program, and at least one upstream volitional alternative will be carried throughout the study. The study will consider technical feasibility (including both engineering feasibility and fish passage feasibility), biological feasibility, and economic feasibility (including financial feasibility and a cost effectiveness analysis), and will evaluate whether upstream passage facilities can also act in the downstream direction to provide enhanced opportunities for downstream migration. MPWMD anticipates that a draft fish passage feasibility report would be completed by the end of 2017.

ii) Los Padres Dam and Reservoir Alternatives and Sediment Management Study: MPWMD and CAW are facilitating a study to evaluate the effects of five alternatives to address sediment at LPD: (1) a no action alternative; (2) dam removal; (3) dredging reservoir sediments; (4) reservoir storage

EXHIBIT 5-A

MOA between CAW, NMFS, and the Conservancy 2017

expansion; and (5) sediment management (evaluating alternatives that would result in a sustaining long-term surface storage while minimizing downstream impacts on aquatic habitat). MPWMD anticipates a completion date in the second quarter of 2018, but completion could be delayed if permits are required from the Army Corps of Engineers and/or CDFW. In addition to the meeting to occur prior to June 30, 2018 identified in Section IV.A.1.b, above, to discuss the status of all of the studies, CAW and NMFS agree to meet by March 31, 2018, to discuss the status of this Sediment Management Study, to determine whether additional studies on interim sediment removal by CAW are necessary to complete the Sediment Management Study, and, if additional studies are needed, to determine a reasonable deadline for completion of those studies.

iii) Carmel River Basin Hydrologic Model: MPWMD is facilitating preparation of a hydrologic model to address freshwater availability in the Carmel River watershed, document water storage capabilities of surface water storage facilities and storage in the aquifer system, and refine and develop surface water/groundwater models to help better understand the aquifer system. The model will be used to estimate daily water availability in the Carmel River with various current and future demands, operational changes, and water supply alternatives scenarios. U.S. Geological Survey has agreed to calibrate the model and is expected to complete work in the spring of 2017. MPWMD anticipates a study completion date in the fourth quarter of 2017.

iv) Instream Flow Incremental Method Study of the Carmel River: MPWMD is facilitating preparation of an instream flow assessment for the Carmel River to support a variety of studies and efforts in connection with managing the Carmel River lagoon, evaluating options for the future of LPD, and evaluating operational changes due to proposed water supply projects that replace Carmel River diversions. Habitat typing was completed in 2015 and transects were selected in cooperation with CDFW in early 2016. Flow measurements were completed in 2016 and a 2-D daily time step hydraulic model to simulate passage in critical riffles in the lower river has been calibrated. Big Sur River habitat suitability criteria were validated for use in a 1-D daily time step habitat simulation model for the middle and upper portions of the river. MPWMD anticipates completion of the study in the second quarter of 2017.

Once the individual MPWMD studies are completed, MPWMD plans to consolidate the results to determine feasible options for LPD. MPWMD anticipates completing its studies of LPD alternatives by the end of 2018.

EXHIBIT 5-A

MOA between CAW, NMFS, and the Conservancy 2017

c. Within three months after completion of the LPD Feasibility Study, CAW and NMFS agree to meet to discuss the results of the LPD Feasibility Study. The parties may also determine that additional studies are needed, and a schedule for completion of additional studies will be developed at that time. Representatives from MPWMD and CDFW may also participate in the meeting and provide input.

d. CAW will make its final determination whether to remove the dam within six months following completion of the LPD Feasibility Study, unless the Parties agree that additional studies are necessary and agree to a later deadline.

e. . If removal of LPD is found to be feasible and the Parties agree to removal CAW agrees to submit necessary petitions to the SWRCB for a Change of Method of Diversion, requesting a change from storage to direct diversion from wells for diversions under License 11866, and a Change of Point of Diversion, requesting to change the point of diversion to the lowermost wells in Sub-unit 3 of the Carmel Valley Alluvial Aquifer. Any changes to License 11866 must fully protect CAW's diversion rights, and SWRCB approval of such changes must be received prior to the removal of LPD. Changing the point of diversion for CAW's water right under License 11866 would also alleviate NMFS' ESA concerns related to CAW's operations from pumping under License 11866.

f. If found feasible, and the Parties agree to removal, CAW further agrees to remove LPD within five years after an alternative water supply, as described in the Final Environmental Impact Report/Environmental Impact Statement for the MPWSP, is implemented, subject to reasonable extensions based on permitting or other authorization requirements, or other conditions beyond CAW's control.

2. Interim measures pending the completion of the LPD Feasibility Study, and, if removal of LPD is found feasible and the Parties agree to removal, pending removal of LPD.

The following interim measures shall be implemented to ensure unimpeded steelhead passage upstream and downstream of the LPD. The Parties agree to make reasonable adjustments to individual deadlines stated below if reservoir levels or river flow regimes create conditions that would make the specified activity infeasible or that could be harmful to steelhead or their habitat if carried out within the time period provided.

a. Los Padres Dam and Reservoir Piping.

Three outlet structures currently exist at LPD to release water from Los Padres Reservoir. They are all tied to one intake pipe located in the reservoir approximately 30 feet from the dam at elevation 950' ("intake pipe"). The intake is approximately 36" in diameter. The intake pipe is currently not screened in accordance with NMFS' fish screen criteria.

EXHIBIT 5-A

MOA between CAW, NMFS, and the Conservancy 2017

i) CAW agrees to conduct or fund a study to investigate juvenile steelhead residence time and behavior in the Los Padres Reservoir to determine the need for screening the intake pipe. The study would inform future conservation actions if LPD remains in place, or pending removal of LPD, and future restoration projects aimed at recovering steelhead in the watershed. NMFS and CAW will agree on a study design by June 30, 2018, including a date for completion of the study and preparation of a final report, taking into consideration the scope of the study, site access, and acquisition of any necessary permits and authorizations. The study would provide valuable information on the behavior and residence time of steelhead in the Los Padres Reservoir.

ii) This study could be undertaken as part of existing studies, including as part of the existing MPWMD studies, the studies required as part of the CDO, or as part of the restoration projects.

b. Steelhead Passage Upstream

NMFS believes that redesigning and/or reconfiguring the existing ladder collecting fish for the trap and transport operation at LPD would improve attraction efficiency.

i) The Parties agree to meet within three months following execution of this Memorandum of Agreement to consider implementation, on an interim basis, of improvements to the trap and transport program including development of standard operating procedures (SOP) as well as design improvements to the existing ladder. Representatives from MPWMD and CDFW may also participate in these meetings and provide input. Any proposed design improvements to the existing ladder must be approved by NMFS prior to installation and must be implemented, following receipt of any necessary discretionary approvals by applicable permitting agencies and consistent with the requirements of such approvals, within six months following execution of this Memorandum of Agreement. The Parties agree to provide reasonable extensions of this deadline to accommodate the acquisition of any permits or other authorizations that may be necessary depending on the improvements selected.

ii) The SOP would include at a minimum the following existing procedures: ensuring trap and transport operators have the appropriate education, training and/or experience; checking the trap daily from Monday through Saturday (including holidays) during the adult steelhead migration season of December through May and after the Carmel Lagoon sandbar is open; increasing the frequency of trap monitoring from December through May when more than one adult steelhead is observed in the trap or immediately downstream of the ladder until adult abundances decrease; checking the trap daily from Monday through Sunday (including holidays) when adult steelhead are moving upriver.

EXHIBIT 5-A

MOA between CAW, NMFS, and the Conservancy 2017

Steelhead adults are assumed to be moving upriver when they are found in the trap any Monday through Saturday; and using best efforts to check the trap at approximately the same time daily to ensure that no fish is kept in the trap longer than necessary.

iii) The following reports to NMFS will also be included in the SOP: weekly notification of trapping activities to NMFS during the adult steelhead migration; notifying NMFS within 24 hours of any steelhead mortalities or injuries within the trap or during transport activities; and providing a written summary on trap and transport operations to NMFS by August 15 of the year following any improvements to the trap and transport program.

c. Steelhead Passage Downstream

A feasibility study was completed in 2009, and the Alternative B—Floating Weir Surface Collector--was selected as the preferred alternative for improving steelhead migration, allowing juvenile and adult steelhead to migrate downstream past LPD. CAW implemented the Floating Weir Surface Collector and associated behavioral guidance system in 2016 to provide smolts, kelts, and juveniles suitable downstream passage while avoiding any potential harm associated with passage over the spillway.

i) CAW will continue to operate the Floating Weir Surface Collector.

d. Stored Sediment

Since the dam was constructed, sediment has been filling in the reservoir, with approximately 40 percent of the reservoir filled as of the execution of this Memorandum of Agreement.

i) CAW agrees to complete a feasibility study for methods to remove sediment behind the LPD and to improve fish passage and to maintain a migration channel in the sediment delta for up and downstream fish passage until LPD is removed. CAW and MPWMD are currently facilitating the LPD and Reservoir Alternatives and Sediment Management Study, which includes an evaluation of alternatives to address sediment behind LPD. MPWMD anticipates completion of the study in the second quarter of 2018, but completion could be delayed if permits are required from the Army Corps of Engineers and/or CDFW. As stated above in IV.A.1.b.ii., CAW and NMFS agree to meet by March 31, 2018 to discuss the status of the MPWMD Sediment Management Study, to determine whether additional studies on interim sediment removal by CAW are necessary, and, if additional studies are needed, to determine a reasonable deadline for completion of those additional studies.

EXHIBIT 5-A

MOA between CAW, NMFS, and the Conservancy 2017

ii) The Parties agree to meet within three months after completion of the sediment removal studies to consider implementation, on an interim basis, of measures to maintain a migration channel in the sediment delta. Any proposed design improvements must be approved by NMFS prior to installation and must be implemented, following receipt of any necessary discretionary approvals by applicable permitting agencies and consistent with the requirements of such approvals, within three months following the Parties' meeting. The Parties agree to provide reasonable extensions of this deadline to accommodate the acquisition of any permits or other authorizations that may be necessary depending on the improvements selected.

e. Downstream Gravel Replenishment

Following receipt of any necessary discretionary approvals by applicable permitting agencies, and consistent with the requirements of any such approvals, CAW agrees to provide for gravel replenishment below the LPD, from sources such as the sediment delta behind LPD or other approved areas on a regular basis. This replenishment shall maintain spawning gravels downstream of LPD pending removal of LPD. Replenishment amounts, methods and scheduling are to be approved by NMFS prior to implementation. The Parties agree to meet within three months following execution of this Memorandum of Agreement to discuss a proposed replenishment plan and scheduling. Representatives from MPWMD and CDFW may also participate in the meeting and provide input. Following receipt of all necessary discretionary approvals by applicable permitting agencies and consistent with the requirements of such approvals, the Parties anticipate that gravel replenishment will begin in the fall of 2018. The Parties agree to meet on a regular basis to discuss status of this project and acquisition of any permits or other authorizations that may be necessary depending on the gravel replenishment methods selected.

3. Required Actions if the LPD is not Removed

If CAW determines not to remove LPD or if removal of the LPD is determined to be infeasible as a result of the MPWMD Studies, the following measures must be addressed to ensure permanent unimpeded passage for steelhead up and downstream of LPD. The Parties agree that these measures will continue as long as the dam remains in place. The Parties acknowledge that certain actions may require CAW to obtain permits or other authorizations from other agencies, and that such permit application processes may create delays beyond CAW's control, affecting CAW's ability to meet the below-listed schedules. CAW will keep the Parties informed of any such delays in obtaining required permits, and the Parties agree to adjust schedules as may be necessary.

a. Passage upstream

The Parties agree that as long as the LPD remains in place, permanent unimpeded upstream passage for adult and juvenile steelhead is necessary.

EXHIBIT 5-A

MOA between CAW, NMFS, and the Conservancy 2017

i) The Parties agree to meet within three months of a determination that the LPD will remain in place to determine feasible permanent unimpeded upstream fish passage improvements to be implemented, if any. Improvements must be implemented, following receipt of any necessary discretionary approvals by applicable permitting agencies and consistent with the requirements of such approvals, within six months following such meeting, unless the Parties agree on a different date. Representatives of MPWMD and CDFW may also participate in this meeting. Any proposed improvements must be approved by NMFS prior to implementation.

b. Passage downstream

The Parties agree that as long as the LPD remains in place, permanent unimpeded downstream passage for kelts, smolts, and juveniles is necessary.

i) If NMFS determines that continued operation of the Floating Weir Surface Collector pursuant to IV.A.2c provides for unimpeded downstream passage for kelts, smolts, and juveniles, CAW will continue such operation.

ii) If NMFS determines that the interim measures for downstream fish passage implemented pursuant to IV.A.2.c do not provide permanent unimpeded downstream passage for kelts, smolts, and juveniles, the Parties agree to meet within three months of a determination to leave LPD in place to determine feasible permanent unimpeded downstream fish passage improvements to be implemented, if any. Improvements must be implemented, following receipt of any necessary discretionary approvals by applicable permitting agencies and consistent with the requirements of such approvals, within six months following such meeting, unless the Parties agree on a different date. Representatives from MPWMD and CDFW may also participate in the meeting. Any proposed improvements must be approved by NMFS prior to implementation.

c. Stored Sediment

The Parties agree that unimpeded fish passage through the reservoir must be maintained throughout the life of the LPD.

i) The Parties agree to meet within three months of a determination to leave LPD in place to determine feasible measures to improve passage through the reservoir in addition to those identified in IV.A.3.b and c, if any. Improvements must be implemented, following receipt of any necessary discretionary approvals by applicable permitting agencies and consistent with the requirements of such approvals, by within six months following such meeting unless the Parties agree to a different date. Representatives of

EXHIBIT 5-A

MOA between CAW, NMFS, and the Conservancy 2017

MPWMD and CDFW may participate in the meeting. Any proposed improvements must be approved by NMFS prior to implementation.

d. Downstream Gravel Replenishment

The Parties agree that as long as LPD remains in place, gravel replenishment downstream will be necessary for the life of the dam.

i) CAW agrees to continue to provide for gravel replenishment below the LPD, from sources such as the sediment delta behind LPD or other approved areas, on a regular basis. This replenishment shall maintain spawning gravels downstream of LPD. Replenishment amounts, methods and scheduling are to be approved by NMFS prior to implementation.

B. CAW's Obligations with Respect to General Maintenance and Drainage of CAW Managed Roads

NMFS believes that many of the roads managed by CAW are dirt roads with inadequate drainage systems. Some of these roads may be able to be decommissioned now that San Clemente Dam has been removed, while other roads needed for access to CAW property may need to be upgraded and sloped correctly, with proper drainage to avoid sediment runoff into the streams and river. The Parties agree that maintenance and repair activities to prevent sediment runoff into streams and the river from roads and drainages would alleviate the need for any additional mitigation/take coverage for impacts to steelhead from CAW's roads.

1. Required Actions:

a. CAW agrees to complete an assessment of the roads managed by CAW to determine whether any roads managed by CAW are having an adverse impact on SCCC steelhead and their habitat and, if so, which roads need improvement, and which roads may be decommissioned within six months following execution of this Memorandum of Agreement.

b. If any roads managed by CAW are found to have an adverse impact on SCCC steelhead and their habitat, CAW agrees that, following receipt of any necessary discretionary approvals by applicable permitting agencies and consistent with the requirements of such approvals, within six months of completing the assessment described in Section IV.B.1.a, above, it will repair and maintain such dirt roads and drainages necessary for access to CAW operations in such a manner as to prevent sediment runoff into streams. CAW further agrees that maintenance of these roads will be conducted on a regular schedule for the life of the road. The Parties agree that repair and maintenance must provide protection to steelhead equivalent to or better than guidelines set forth in the *Handbook for Forest and Ranch Roads* (Weaver, W.E. and D.K. Hagans, 1994).

EXHIBIT 5-A

MOA between CAW, NMFS, and the Conservancy 2017

c. Within one year of the completion of the Carmel River Reroute and San Clemente Dam Removal (“CRRDR”) Project, CAW agrees to decommission any of its roads that are no longer necessary for access to any CAW facilities or for long-term monitoring of the CRRDR Project.

C. CAW’s Obligations with Respect to Planning for Long Term Legal Authorization for the Possible Future Take of Steelhead

The Parties agree to assess whether incidental take coverage for impacts to steelhead from any remaining CAW operations may be needed. NMFS expects that if LPD remains in place that CAW will apply for and receive an Incidental Take Permit (ITP) for ongoing take of listed steelhead. NMFS also expects that if CAW has applied for an ITP but no permit has been granted, this Agreement will be extended for the purpose of maintaining necessary measures while the permit application is pending.

1. Required Actions:

- a. If LPD remains in place and unless incidental take is otherwise authorized, CAW agrees that, within two years from a decision to leave the LPD in place, CAW will submit an application for an ITP for any remaining take occurring from CAW’s operations on the Carmel River following termination of this Memorandum of Agreement. CAW further agrees that this application will include a Habitat Conservation Plan.
- b. If LPD remains in place and CAW has timely applied but has not yet obtained an ITP, the Parties further agree to meet at least one (1) year prior to the expiration of this Memorandum of Agreement to reach a new agreement on necessary measures for permanent unimpeded upstream and downstream fish passage, sediment management, and downstream gravel replenishment.

V. Annual Report Evaluating Status of Steelhead under the Amended CDO

Pursuant to the Amended CDO, CAW will provide annual funding in the amount of up to \$175,000 for preparation of an annual report evaluating the status of the threatened SCCC steelhead. If possible, NMFS Southwest Fisheries Science Center (SWFSC) will enter into a separate agreement to undertake these annual studies, pursuant to its authority under the Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661-666c, and the Special Studies Authority, 15 U.S.C. § 1525. In the event that SWFSC is not able to prepare the report, CAW will designate another entity with the requisite expertise that NMFS finds acceptable. The annual funding of up to \$175,000 required by CAW under the Amended CDO and under any agreement with SWFSC for preparation of an annual report is in addition to CAW’s commitment to pay \$5.5 million under Section II of this Memorandum of Agreement.

VI. ASR Agreement

CAW and NMFS will continue to cooperate pursuant to the ASR Agreement to allocate water to and from the Aquifer Storage and Recovery Project to offset withdrawal from the

EXHIBIT 5-A

MOA between CAW, NMFS, and the Conservancy 2017

Carmel River that would otherwise occur during the low-flow season, subject to any limitations imposed by the SWRCB.

VII. Take of SCCC Steelhead

NMFS has consulted under section 7 of the ESA to insure that NMFS' entrance into this Memorandum of Agreement is not likely to jeopardize listed species or destroy or adversely modify designated critical habitat. Based on this consultation, NMFS has concluded that it may enter into this Memorandum of Agreement and NMFS' signature indicates that NMFS has reached this conclusion. If for whatever reason the biological opinion is vacated, amended or withdrawn, NMFS will meet with CAW to discuss whether or how the agreement should be modified to insure that NMFS is in compliance with ESA section 7. The Parties' obligations under the Memorandum of Agreement will remain unchanged until the Parties agree on changes to the Memorandum of Agreement. NMFS will in making decisions about bringing or referring enforcement actions and appropriate penalties under Section 9 of the ESA consider CAW's compliance with its obligations under this Memorandum of Agreement an important mitigating factor for any enforcement decision related to any unintentional take of ESA-listed fish.

VIII. NMFS' Cooperation with CAW and Other Agencies:

- A. NMFS 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. NMFS acknowledges that in CAW's role as a CPUC regulated water provider, that it has an obligation to serve its customers.
- B. 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.
- C. 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 NMFS' authorization, mission, policies, and its ESA responsibilities, and taking into account the limitations imposed by staff time and resources.
- D. Cooperation shall not be read to create an obligation for NMFS, or any other line office or division of NOAA (e.g., Monterey Bay National Marine Sanctuary [MBNMS]), or any agency of the United States, to endorse, promote, take a position or advocate on behalf of CAW's application for a permit, authorization, or other approval of a particular long-term water supply proposal or the MPWSP.
- E. Nothing in this Memorandum of Agreement may be read to indicate any commitment on the part of NMFS, NOAA, FWS, EPA, or any agency of the United States to grant any permit, authorization, or other approval needed for any particular long-term water supply proposal or for the MPWSP. In particular, nothing in this Memorandum of Agreement may be read to indicate any commitment on the part of NMFS in regards

EXHIBIT 5-A

MOA between CAW, NMFS, and the Conservancy 2017

to its consultation under ESA section 7 and Essential Fish Habitat under the Magnuson-Stevens Act on any federal permit, authorization or approval of a particular long-term water supply proposal or the MPWSP.

F. California Public Utilities Commission

1. NMFS will cooperate in CPUC proceedings related to certification of the Environmental Impact Report/Environmental Impact Statement (“EIR/EIS”) under the California Environmental Quality Act for the MPWSP, and approval of the Certificate of Public Convenience and Necessity for the MPWSP, 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. NMFS 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 NMFS; (2) the penalties applicable to violations of the ESA; and (3) that compliance with the ESA is mandatory.

G. State Water Resources Control Board (“SWRCB”)

If NMFS concludes after CAW completes the study identified in IV.A.2 that installation of a fish screen on the intake pipe upstream of LPD is not warranted, NMFS will cooperate by providing information to the SWRCB as to the findings of the study and the reasons for its conclusions.

H. Other Agencies with Permitting/Regulatory Authority over the MPWSP.

1. Monterey Bay National Marine Sanctuary (“MBNMS”)

CAW has applied for authorization and a special use permit from NOAA’s MBNMS under the National Marine Sanctuaries Act, 16 USC 1431 *et seq.*, for MPWSP’s installation and operation of intake pipes in the Sanctuary, and discharge of waste brine into the sanctuary. NMFS will also provide information to personnel who manage MBNMS regarding the potential benefits for listed threatened steelhead and their habitat of a replacement long-term water-supply project. Nothing in this Memorandum of Agreement may be read to indicate any commitment on the part of NOAA (MBNMS, NMFS, or any line office of NOAA) to grant a NMS permit or authorization for a particular long-term water supply proposal or the MPWSP.

2. California Coastal Commission (“CCC”)

A Coastal Development Permit from CCC is required for the MPWSP. NMFS will cooperate with CAW by explaining to CCC the critical need for threatened

EXHIBIT 5-A

MOA between CAW, NMFS, and the Conservancy 2017

SCCC steelhead and their habitat for the replacement of a long-term water supply for Carmel River.

3. State Water Resources Control Board (“SWRCB”)

The second component of the MPWSP is ASR in the Seaside Basin, which may require additional water rights approvals from SWRCB. NMFS has supported the concept of ASR for years. NMFS will cooperate with CAW regarding the benefits of diversions to ASR during times of excess flow on the Carmel River. NMFS will meet and confer with CAW to discuss any of its concerns with CAW'S ASR permit applications before commenting publicly, unless doing so would be inconsistent with statutory or regulatory authority.

4. U.S. Fish and Wildlife Service (“USFWS”)

NMFS will cooperate with CAW by providing information to USFWS related to the benefits to threatened SCCC steelhead of a replacement long-term water supply project. Nothing in this Memorandum of Agreement may be read to indicate any commitment on the part of FWS in regards to its consultation under ESA Section 7 on any federal permit, authorization or approval for a particular long-term water supply proposal or the MPWSP.

5. California Department of Fish and Wildlife

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

I. Agencies With Permitting/Regulatory Authority for Activities Under This MOA

NMFS commitments with respect to the MPWSP are addressed above. With respect to other approvals or permits for activities under this MOA, NMFS will cooperate with CAW regarding any approvals or permits that may be necessary prior to carrying out any activities contemplated under this Agreement; provided, however, that such cooperation shall not limit any discretion to be exercised by NMFS, NOAA, FWS, EPA, or any agency of the United States to grant any such approval or permit.

IX. Term of Memorandum of Agreement:

- A. This Memorandum of Agreement shall expire 364 calendar days following the fifth (5th) anniversary of the Effective Date of the Memorandum of Agreement. However, the Parties recognize that certain terms and milestones of this Memorandum of Agreement will extend beyond that expiration date. Accordingly, the Parties agree to exercise the meet and confer obligation set forth in Section IX(D) below not later than six (6) months prior to the expiration date in order to negotiate in good faith, and using their best efforts, an amendment to this Memorandum of Agreement. The Parties understand that this amendment may include the extension of any or all of the terms of this Memorandum of Agreement as are relevant at the time, adopting new

EXHIBIT 5-A

MOA between CAW, NMFS, and the Conservancy 2017

terms, or that circumstances may require that the Memorandum of Agreement not be renewed.

- B. Notwithstanding the expiration of this Memorandum of Agreement pursuant to Section IX(A), the Conservancy shall continue to comply with all requirements of the Memorandum of Agreement until such time as all funds paid to the Conservancy by CAW have been expended and the Conservancy has provided a final accounting report to NMFS and CAW, pursuant to Section II(C).
- C. The term of this Memorandum of Agreement may be extended by mutual written consent of the Parties, or as specified in Section IX(A) above.
- D. The Parties recognize that certain terms and milestones of this Memorandum of Agreement will extend beyond the expiration date. By the start of year three of this Memorandum of Agreement NMFS and CAW shall meet and confer regarding: (i) the progress of actions funded by this Memorandum of Agreement to improve habitat conditions for or otherwise aid in the recovery of SCCC steelhead; and (ii) authorizing any take of SCCC steelhead caused by CAW's operations that may remain at the expiration of this Memorandum of Agreement. Either party may call for such meeting no earlier than two years prior to the expiration of this Memorandum of Agreement and no later than six months prior to the expiration of this Memorandum of Agreement. This meet and confer obligation is in addition to the discretion of the parties to extend this Memorandum of Agreement pursuant to Section IX(A) and (C).

X. Effective Date:

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

XI. Miscellaneous Provisions:

- A. By entering into this Agreement, the Parties do not limit their discretion or the discretion of any other governmental agency with permitting or approval jurisdiction over any transaction related to or arising from this Agreement, nor do they make any irreversible and irretrievable commitment of resources. In addition, and notwithstanding anything to the contrary stated herein, any obligation of a Party or any timeline or deadline stated herein shall not limit the discretion of any public agency to consider, approve, reject and/or condition any permit or other approval required for any activity covered in this Agreement, and shall not limit or predetermine any environmental review for such activity. This subsection is not to be construed as altering the commitments set forth in Section VIII.H.
- B. The Parties must comply with all obligations under this Agreement, except any obligation that would violate or otherwise be inconsistent with applicable law. If any obligation would violate or otherwise be inconsistent with applicable law, the Parties must comply with all remaining obligations.

EXHIBIT 5-A

MOA between CAW, NMFS, and the Conservancy 2017

- C. Any Party may issue a press release regarding the contents of this Memorandum of Agreement.
- D. The provisions of this Memorandum of Agreement shall apply to and be binding upon the Parties and their respective successors and assigns.
- E. The Parties recognize the authority and expertise of the State Water Resources Control Board to regulate, inter alia, CAW's water diversion activity on the Carmel River. Accordingly, CAW's compliance with the conditions and milestones of State Water Resources Control Board Order No. WR 2016-0016 and any future amendments of same occurring within the pendency of this Memorandum of Agreement, are required under this Memorandum of Agreement.
- F. For purposes of this Memorandum of Agreement, a determination that CAW has failed to comply with any condition or milestone of WR2016-0016, and any future amendments of same which occur during the pendency of this Memorandum of Agreement, shall be based on a finding of the State Water Resources Control Board.
- G. Agreement Sections I, II and III of the Conservation Agreement, except any obligations to increase well capacity in the lower Carmel Valley as previously required by Phase II Tier I, Agreement Sections I and II of the 2009 Settlement Agreement as amended, and the ASR Agreement are expressly incorporated herein by reference. Any modification of this Memorandum of Agreement shall be in writing and signed by the Parties.
- H. All notices and communications required under this Memorandum of Agreement shall be made to the Parties through each of the following persons and addresses:

<u>Party</u>	<u>Contact Name/Title</u>	<u>Mailing Address</u>	<u>Phone/Fax</u>
CAW	Richard C. Svindland President California-American Water Company	655 West Broadway Suite 1410 San Diego, CA 92101	Phone: 619-446-4761 Fax: 619-230-1096
NMFS	Alecia Van Atta Assistant Regional Administrator for California Coastal Office, West Coast Region	777 Sonoma Ave., Rm. 325 Santa Rosa, CA 95404	Phone: 707-575-6058 Fax: 707-578-3435
Conservancy	Sam Schuchat Executive Director California State Coastal Conservancy	1550 Clay Street, Suite 1000 Oakland, CA 94612-2530	Phone: 510-286-1015 Fax: 510-286-0470

EXHIBIT 5-A

MOA between CAW, NMFS, and the Conservancy 2017

- I. This Memorandum of 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.

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

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement as of the dates written below.

ACCEPTED ON BEHALF OF CALIFORNIA-AMERICAN WATER COMPANY BY:



Richard C. Svindland
President
California-American Water Company

DATED: Jan 10, 2018

ACCEPTED ON BEHALF OF THE NATIONAL MARINE FISHERIES SERVICE BY:

Barry A. Thom
Regional Administrator, West Coast Region
National Marine Fisheries Service, NOAA

DATED: _____

ACCEPTED ON BEHALF OF THE CALIFORNIA STATE COASTAL CONSERVANCY BY:

Sam Schuchat
Executive Officer
California State Coastal Conservancy

DATED: _____

EXHIBIT 5-A

MOA between CAW, NMFS, and the Conservancy 2017

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Richard C. Svindland
President
California-American Water Company

DATED: _____

ACCEPTED ON BEHALF OF THE NATIONAL MARINE FISHERIES SERVICE BY:



Barry A. Thom
Regional Administrator, West Coast Region
National Marine Fisheries Service, NOAA

DATED: Dec. 21, 2017

ACCEPTED ON BEHALF OF THE CALIFORNIA STATE COASTAL CONSERVANCY BY:

Sam Schuchat
Executive Officer
California State Coastal Conservancy

DATED: _____

EXHIBIT 5-A

MOA between CAW, NMFS, and the Conservancy 2017

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IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement as of the dates written below.

ACCEPTED ON BEHALF OF CALIFORNIA-AMERICAN WATER COMPANY BY:

Richard C. Svindland
President
California-American Water Company

DATED: _____

ACCEPTED ON BEHALF OF THE NATIONAL MARINE FISHERIES SERVICE BY:

Barry A. Thom
Regional Administrator, West Coast Region
National Marine Fisheries Service, NOAA

DATED: _____

ACCEPTED ON BEHALF OF THE CALIFORNIA STATE COASTAL CONSERVANCY BY:



Sam Schuchat
Executive Officer
California State Coastal Conservancy

DATED: 12/20/17

EXHIBIT 5-A

MOA between CAW, NMFS, and the Conservancy 2017

TABLE 1:

Due Date	Payment Amount
July 1, 2017, or 30 days after the Effective Date, whichever date is later	\$1.1 million
July 1, 2018	\$1.1 million
July 1, 2019	\$1.1 million
July 1, 2020	\$1.1 million
July 1, 2021	\$1.1 million
Total:	\$5.5 million

Exhibit B - Scope of Work

EXHIBIT 5-A

Task 1. Project Description MPWMD estimates that up to a maximum of about 1,500 tons of gravel can be placed downstream of the Los Padres Dam spillway plunge pool in a single year, but that additional amounts could be stockpiled for placement at a later date. MPWMD estimates that up to 2,000 tons of gravel could be placed over a period of three years. Cal-Am and the MPWMD shall jointly develop a refined scope of work for the Project including volumes of gravel to be replenished, a map showing stockpile area(s) and placement location(s), and specifications for gravel size and method of placement.

Task 2. NMFS Approval Cal-Am and MWPMD shall seek approval from the National Marine Fisheries Service concerning replenishment amounts, methods and scheduling prior to beginning work on CEQA compliance and making application for permits.

Task 3. CEQA Compliance MPWMD shall be Lead Agency on the Project for compliance with requirements of the California Environmental Quality Act. This Agreement anticipates making a determination that the Project work qualifies as an exempt activity under CEQA Section 15304 (d) – Minor Alterations to Land. MPWMD may retain a qualified consultant to assist with permit applications and acquisition. Cal-Am shall be named as Owner and MPWMD shall act as Agent for the Owner in acquiring permits for the Project.

Task 4. Permit Acquisition Prepare and submit permit applications to the Corps of Engineers, California Department of Fish and Wildlife, Regional Water Quality Control Board, and Monterey County.

Task 5. Contractor Selection Cal-Am shall select the contractor to provide and place replenish gravel. Cal-Am shall enter into a contract with the contractor for such work.

Task 6. MPWMD Project Administration MPWMD shall provide onsite project management during the stockpiling and placement of material.

Exhibit C - Budget

EXHIBIT 5-A

Estimated Costs

	Activity	Amount (\$)
Task		
1	Project description	0
2	Obtain NMFS approval	0
3	CEQA determination	0
4	Permit acquisition (Consultant and application fees)	\$45,000
6	MPWMD Project Administration	0
Optional	Cal-Am Project Administration	\$15,000
	Total	\$60,000

Notes

1. Permit acquisition costs are preliminary.

Exhibit D – Schedule

EXHIBIT 5-A

Description	Deadline
Task 1 and 2 Complete detailed scope of work for review (Cal-Am and MPWMD)	within 60 days of agreement execution
Task 3 CEQA compliance (MPWMD)	within 60 days of NMFS approval of project scope
Task 4 Prepare and submit permit applications to the Corps, CDFW, RWQCB, and Monterey County (MPWMD)	within 60 days of CEQA determination
Task 5 Contractor selection (Cal-Am)	within 60 days of receipt of all permits
Task 6 Onsite project management (MPWMD)	to be provided each construction season (i.e., between July 1 and October 31)