



## MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

---

5 HARRIS COURT, BLDG. G  
POST OFFICE BOX 85  
MONTEREY, CA 93942-0085 • (831) 658-5600  
FAX (831) 644-9560 • <http://www.mpwmd.dst.ca.us>

### MEMORANDUM

**DATE:** November 29, 2006  
**TO:** Carmel River Advisory Committee  
**FROM:** Larry Hampson, Water Resources Engineer  
**SUBJECT:** Packet for December 1, 2006 Committee Meeting

Enclosed is the meeting packet for the next meeting of the Committee, which will be held on:

**Friday, December 1, 2006**  
**10:00 A.M.**  
**Mid-Carmel Valley Fire Station Community Room**

For directions, contact Larry Hampson at the Carmel Valley field office at 659-2543 or by e-mail ([larry@mpwmd.dst.ca.us](mailto:larry@mpwmd.dst.ca.us)).

Please note that a substantial amount of background information about the Committee charge is contained in the May 4, 2006 packet. You may view and download this information at the Committee web page at:

<http://www.mpwmd.dst.ca.us/programs/river/crac/cracinfo.htm>

Enclosure



# MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

---

5 HARRIS COURT, BLDG. G  
POST OFFICE BOX 85  
MONTEREY, CA 93942-0085 • (831) 658-5600  
FAX (831) 644-9560 • <http://www.mpwmd.dst.ca.us>

## **Carmel River Advisory Committee Members**

John Dalessio, Chair  
Lawrence V. Levine,  
Vice Chair  
Thomas D. House, Jr.  
Susan Rogers  
Richard H. Rosenthal  
Clive Sanders  
Marjorie Ingram Viales

## **Public Comment**

Anyone wishing to address the Committee on a matter not listed on the agenda may do so during Public Comment.

## **DRAFT AGENDA CARMEL RIVER ADVISORY COMMITTEE**

\*\*\*\*\*

**Friday December 1, 2006  
10:00 A.M. at**

***Mid-Carmel Valley Fire Station Community Room***

- 1. CALL TO ORDER/ROLL CALL**
- 2. PUBLIC COMMENT**
- 3. CONSENT CALENDAR**
  - A. Approve Minutes from the August 17, 2006 Field Session and Regular Meeting of the Carmel River Advisory Committee Meeting.**
- 4. REVIEW CHARGE TO THE CARMEL RIVER ADVISORY COMMITTEE**
- 5. UPDATE AND DISCUSSION ON CARMEL RIVER WATERSHED ACTIVITIES**
- 6. PRESENTATION ON INTERPRETING WEB DATA FOR THE CARMEL RIVER**
- 7. DISCUSSION OF POTENTIAL MITIGATION MEASURES TO OFFSET IMPACTS OF WATER WITHDRAWALS FROM THE CARMEL RIVER**
- 8. STAFF REPORTS**
  - a. INTEGRATED REGIONAL WATER MANAGEMENT PLANNING**
  - b. CARMEL RIVER LAGOON BARRIER BEACH MANAGEMENT**
- 9. ITEMS TO BE PLACED ON FUTURE AGENDAS**
- 10. ADJOURNMENT**

*Staff notes regarding these agenda items will be available for public review on Wednesday November 29, 2006 at the District office in Monterey.*

U:\Larry\wp\crac\2006\12012006\agenda\_12012006.doc

**MONTEREY PENINSULA WATER MANAGEMENT DISTRICT  
CARMEL RIVER ADVISORY COMMITTEE  
DECEMBER 1, 2006**

**1. CALL TO ORDER/ROLL CALL**

**2. PUBLIC COMMENT** - Anyone wishing to address the Committee on a matter not listed on the agenda may do so during Public Comment.

**3. CONSENT CALENDAR** – Draft minutes from the August 17, 2006 Field Session and Regular Meeting are attached as **Exhibit A**.

**ACTION REQUIRED:** The Consent Calendar contains routine items that will be approved or accepted upon ratification of the Consent Calendar. A Committee member may request that a Consent Calendar item be considered separately by the Committee.

**4. REVIEW CHARGE TO THE CARMEL RIVER ADVISORY COMMITTEE**

**BACKGROUND:** At their February 2, 2006 Regular Meeting, the Committee reviewed the “Charge to the Carmel River Advisory Committee, as adopted by the Board of Directors on December 12, 2005” (see **Exhibit B**). The Committee resolved at the February 2, 2006 meeting to discuss this item further (see Minutes contained in the May 4, 2006 meeting packet). This item was postponed to a future meeting at both the May 4, 2006 and August 17, 2006 regular meetings.

**RECOMMENDATION:** The Committee should review the Charge.

**ACTION REQUIRED:** No action is required.

**5. UPDATE AND DISCUSSION ON CARMEL RIVER WATERSHED ACTIVITIES**

**BACKGROUND:** This is a regular agenda item. Clive Sanders, Administrator for the Carmel River Watershed Conservancy (CRWC), will update the Committee about CRWC activities.

**RECOMMENDATION:** No action is required. This is a discussion item.

**6. PRESENTATION ON INTERPRETING WEB DATA FOR THE CARMEL RIVER**

**BACKGROUND:** Real-time and archived data on Carmel River stage and flow are available over the web for several locations along the Carmel River. At their May 4, 2006 meeting, the Committee requested a presentation on accessing and interpreting this data. Staff will provide information about web links and basic assessment of the data.

**RECOMMENDATION:** No action is required. This is a discussion item.

## **7. DISCUSSION OF POTENTIAL MITIGATION MEASURES TO OFFSET IMPACTS OF WATER WITHDRAWALS FROM THE CARMEL RIVER**

**BACKGROUND:** A discussion of this item was requested by the Committee at the May 4, 2006 Regular Committee Meeting. On July 21, 2006, the California American Water (Cal-Am) submitted Advice Letter No. 652-W to the California Public Utilities Commission (PUC) (attached as **Exhibit C**) requesting the PUC's "... approval to establish the National Oceanic and Atmospheric Administration Endangered Species Act Compliance Costs Memorandum Account ('NOAA/ESA Memo Account') to track compliance payments made by California American Water to the United States Department of Commerce, National Oceanic and Atmospheric Administration ('NOAA') for Federal Endangered Species Act ('ESA') mitigation in its Monterey District. California American Water will seek recovery of these costs in its future Monterey District General Rate Cases ('GRC')."

Under a Settlement Agreement with NOAA Fisheries, California American Water (Cal-Am) will pay NOAA an initial lump sum payment of \$3,500,000 on August 28, 2006. Thereafter, payments of \$1,100,000 are due on the June 29 anniversary of the Settlement Agreement for the life of the Settlement Agreement. The agreement will expire on June 28, 2013, but it can be extended by mutual agreement of California American Water and NOAA. (Settlement Agreement, pp. 3, 5, and 6.) That annual obligation will cease earlier if California American Water succeeds in securing a replacement water supply. Under the Settlement Agreement, the funds will be used by NOAA for mitigation, including improvement to habitat conditions for and production of steel head and recovery of steelhead in the Carmel River Watershed. (Settlement Agreement, p.3.)

The Committee periodically reviews restoration project priorities and makes recommendations to staff and the Board concerning those priorities. Attached as **Exhibit D** is a draft list of projects developed for the Carmel River by NOAA Fisheries. The listed projects have not been prioritized and NOAA Fisheries is in the initial stages of setting up a program to carry out mitigation projects. The Committee may wish to review and comment on this list.

**RECOMMENDATION: No action is required. This is a discussion item.**

## **8. STAFF REPORTS - Staff will report on the following:**

- a) Integrated Regional Water Management Planning (Hampson)
- b) Carmel River Lagoon barrier beach management (Hampson)
- c) Summer/Fall 2006 vegetation management (Christensen)

## **9. ITEMS TO BE PLACED ON FUTURE AGENDAS**

Committee members should bring up any new business at this time to determine whether it should be included on a future meeting's agenda.

## **10. ADJOURNMENT**

*Draft*  
**MINUTES**

**Exhibit A**

**MONTEREY PENINSULA WATER MANAGEMENT DISTRICT**  
**CARMEL RIVER ADVISORY COMMITTEE**  
*10:00 A.M. Field Session at Carmel River State Beach Parking Lot*  
*11 A.M. (approximately) Regular Meeting at*  
*Mid-Carmel Valley Fire Station Community Room*  
**Thursday, August 17, 2006**

***10:00 A.M. Field Session***

1. CALL TO ORDER/ROLL CALL

MEMBERS PRESENT: Susan Rogers, Tom House, John Dalessio, Marjorie Ingram, Larry Levine, Clive Sanders

MEMBERS ABSENT: Richard H. Rosenthal

PUBLIC PRESENT: Bob Zampatti (Carmel River Steelhead Association), Annette Thorn (Carmel River Lagoon Coalition or CRLC), Jack and Mary Jane Hammerland (CRLC), Margaret Robbins (County Services Area 50)

STAFF PRESENT: Thomas Christensen and Larry Hampson

2. PUBLIC COMMENT –

**No comments were made under this item.**

3. ELECTION OF CHAIR AND VICE-CHAIR FOR FISCAL YEAR 2006-07 – Tom House made a motion to re-elect John Dalessio as Chair and Larry Levine as Vice-Chair. Second by Clive Sanders.

**The motion to re-elect John Dalessio as Chair and Larry Levine as Vice-Chair was unanimously approved.**

[Larry Levine departed for another meeting at the conclusion of this item.]

4. FIELD INSPECTION OF CARMEL RIVER LAGOON AND VICINITY – The group inspected the work done by State Parks at the mouth of the river in July to close the lagoon. Bob Zampatti stated that he was at the meeting because he is interested in steelhead. Annette Thorn, representing the CRLC, asked what can be done to protect Scenic Road from erosion. Larry Hampson described some of the work by the Lagoon Technical Advisory Committee to develop a long term management plan for the lagoon and surrounding area.

The group then inspected the riparian area immediately downstream of Highway 1 in the CALTRANS/State Parks restoration area. In response to questions from Margaret Robbins about maintaining the capacity of the river to pass high flows by removing vegetation, Thomas Christensen

explained MPWMD's vegetation management plan for the river upstream of Highway 1 and suggested that vegetation could be selectively thinned and removed from the floodplain area. Mr. Christensen said that because the focus of the work would be to improve flood capacity, MPWMD would not take the lead in such a project, but could provide technical assistance to a lead agency such as CSA 50 or the Monterey County Water Resources Agency.

5. ADJOURN TO 11 A.M. SESSION – the field session was adjourned at approximately 11:45 a.m. John Dalessio suggested that the Committee reconvene at the field session site.

**The Committee agreed by consensus to reconvene at the field session site.**

***Regular Session***

6. CALL TO ORDER/ROLL CALL

MEMBERS PRESENT: Susan Rogers, Tom House, John Dalessio, Marjorie Ingram, , Clive Sanders

MEMBERS ABSENT: Larry Levine (at another meeting), Richard H. Rosenthal [Note: Mr. Rosenthal called after the meeting to say that he had gone to the mid-Carmel Valley fire department for the 11 a.m. Regular Session.]

PUBLIC PRESENT: Bob Zampatti (Carmel River Steelhead Association), Annette Thorn (Carmel River Lagoon Coalition or CRLC), Jack and Mary Jane Hammerland (CRLC), Margaret Robbins (County Services Area 50)

STAFF PRESENT: Thomas Christensen and Larry Hampson

7. CONSENT CALENDAR – Susan Rogers made a motion to approve the minutes from the May 4, 2006 Regular Meeting. Clive Sanders seconded.

**Approval of the May 4, 2006 Regular Meeting minutes was unanimous.**

8. REVIEW CHARGE TO THE CARMEL RIVER ADVISORY COMMITTEE –

**Item postponed.** [See Item 13.]

[Note at this point, Mr. Dalessio requested that the Committee consider Item 13.]

9. UPDATE AND DISCUSSION ON CARMEL RIVER WATERSHED ACTIVITIES –

**Item postponed.** [See Item 13.]

10. PRESENTATION ON INTERPRETING WEB DATA FOR THE CARMEL RIVER –

**Item postponed.** [See Item 13.]

11. DISCUSSION OF POTENTIAL MITIGATION MEASURES TO OFFSET IMPACTS OF

WATER WITHDRAWALS FROM THE CARMEL RIVER –

**Item postponed.** [See Item 13.]

12. STAFF REPORTS –

**Item postponed.** [See Item 13.]

13. ITEMS TO BE PLACED ON FUTURE AGENDAS –

Mr. Dalessio suggested that items 8, 9, 10, 11, and 12 be deferred to a future meeting.

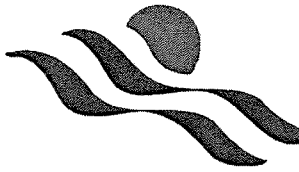
**The Committee agreed unanimously to postpone items 8, 9, 10, 11, and 12 to a future meeting.**

14. ADJOURNMENT – Mr. Sanders made a motion to adjourn. Ms. Rogers seconded.

**The motion to adjourn was unanimously approved.**

The next meeting was set for November 30.

[Note: the meeting date was subsequently changed to Dec. 1.]



# California American Water Company

303 H Street, Suite 250, Chula Vista, California 91910 (619) 409-7700 Fax (619) 409-7701

July 21, 2006

**ADVICE LETTER NO. 652-W**  
(California-American Water Company U 210 W)

CALIFORNIA PUBLIC UTILITIES COMMISSION  
WATER DIVISION

**SUBJECT:** Request to Establish a Memorandum Account to Track Compliance Payments to National Oceanic and Atmospheric Administration in Regards to the Endangered Species Act

California-American Water Company ("California American Water") hereby transmits for filing the following changes in tariff schedules applicable to its Monterey District and which are attached hereto:

<u>Cal. P.U.C.</u> <u>Sheet No.</u>	<u>Title of Sheet</u>	<u>Cancelling Cal P.U.C.</u> <u>Sheet No.</u>
4434-W	Table of Contents	4432-W
4433-W	Preliminary Statement	4427-W

## **PURPOSE**

The purpose of this advice letter is to request the California Public Utilities Commission's ("Commission's") approval to establish the National Oceanic and Atmospheric Administration Endangered Species Act Compliance Costs Memorandum Account ("NOAA/ESA Memo Account") to track compliance payments made by California American Water to the United States Department of Commerce, National Oceanic and Atmospheric Administration ("NOAA") for Federal Endangered Species Act ("ESA") mitigation in its Monterey District. California American Water will seek recovery of these costs in its future Monterey District General Rate Cases ("GRC").



## **BACKGROUND**

California American Water was recently faced with the prospect that NOAA would impose fines as high as \$330 million or more per year for claimed violations of the ESA caused by its Monterey District operations on the Carmel River. Under a Settlement Agreement with NOAA executed on June 29, 2006 (“Settlement Agreement”), attached hereto as Attachment A, California American Water has agreed to make payments to NOAA so that NOAA can finance certain mitigation measures on the Carmel River to assist in protection of listed species. California American Water’s payment for the mitigation would also avoid the likelihood that NOAA would seek to impose fines of \$330 million or more per year and the litigation that likely would result. California American Water’s first payment obligation under the Settlement Agreement – totaling \$3,500,000 – is due on August 28, 2006. California American Water requests Commission authority to establish the NOAA/ESA Memo Account in time to record this first payment obligation under the Settlement Agreement. California American Water accordingly requests that the Commission grant this authority to establish the NOAA/ESA Memo Account effective 30 days after the filing date of this Advice Letter, or August 21, 2006.

On September 18, 2001, California American Water and NOAA executed a Conservation Agreement that required California American Water to implement certain measures to mitigate the impact of its pumping operations in the Carmel River in the Monterey District on steelhead trout and their habitat. CAW implemented the mitigation measures under the Conservation Agreement. One of the measures was increasing well capacity in the lower Carmel Valley. By February 2004, it became clear that such increase was not feasible. California American Water and NOAA discussed other mitigation measures but did not reach agreement. On June 2, 2005, NOAA sent a letter to California American Water informing the Company that the measures the Company originally agreed to were insufficient to redress the total effect of California American Water’s operations in the Carmel River. As a result, NOAA demanded that California American Water pay \$5.5 million for mitigation.

As the Commission is well aware, California American Water must pump water from the Carmel Valley Aquifer in order to meet its public utility service obligations and the water demand of its Monterey District customers. The U.S. Fish and Wildlife Service (“USFWS”) and NOAA have alleged, however, that California American Water is engaging in illegal “takes” of listed threatened species by pumping water from the Carmel Valley Aquifer and operating the San Clemente Dam and Los Padres Dam, in violation of the ESA. Under an order of the State Water Resources Control Board (Order 95-10), California American Water has been vigorously pursuing long-term water supply projects to substantially reduce its pumping from the Carmel Valley Aquifer. To that end, in Application No. 04-09-019 California American Water seeks approval to construct a proposed desalination facility, known as the Coastal Water Project. Until California American Water can obtain approval of the Coastal Water Project or obtain alternative sources of water, however, it must continue to pump water from the Carmel Valley Aquifer to serve its Monterey District customers. (*See generally* California American Water’s 2006 Monterey District GRC Application (A.05-02-012), Exh. 1

(Direct Testimony of Jan S. Driscoll), Exh. 18 (Rebuttal Testimony of Jan Driscoll), and Exh. 107 (Supplemental Testimony of Jan S. Driscoll).)

California American Water has for many years faced the regulatory dilemma of meeting its obligation to serve its customers by pumping from the Carmel Valley Aquifer or complying with the ESA only by interrupting or dramatically reducing water service to its Monterey District Customers. (D.98-08-036, *Application of CALIFORNIA-AMERICAN WATER COMPANY (U 210 W) for an Order Allowing Immediate Implementation of Changes to Phase IV of Mandatory Water Conservation Plan and Creation of Related Balancing Account, and for Order to Expedite Processing of All Applications, et al.* (1998) 81 CPUC 2d 648, 653, 1998 Cal. PUC LEXIS 617.)

California American Water Company is between a rock and a hard place. It is caught between the regulatory mission of two government agencies. On the one hand, this Commission requires Cal-Am to serve customers. On the other hand, the Water Resources Control Board requires Cal-Am to abide by its pumping restrictions. As a result of trying to please two entities Cal-Am may incur fines levied by the [SWRCB].

(1998 Cal. PUC LEXIS 617 at \*27.) By executing the Settlement Agreement, California American Water has enabled itself to continue serving its Monterey District customers uninterrupted and avoids the imposition of potentially devastating fines by NOAA for alleged violations of the ESA.

**NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION ENDANGERED SPECIES ACT COMPLIANCE COSTS MEMORANDUM ACCOUNT**

In this advice letter filing, California American Water requests authority to establish the NOAA/ESA Memo Account to record the compliance payments made to NOAA pursuant to the Settlement Agreement for ESA mitigation in California American Water's Monterey District.

Under the Settlement Agreement, California American Water will pay NOAA an initial lump sum payment of \$3,500,000 on August 28, 2006. Thereafter, payments of \$1,100,000 are due on the June 29 anniversary of the Settlement Agreement for the life of the Settlement Agreement. The agreement can be extended by mutual agreement of California American Water and NOAA). (Settlement Agreement, pp. 3, 5-6.) That annual obligation will cease earlier if California American Water succeeds in securing a replacement water supply. Under the Settlement Agreement, the funds will be used by NOAA for mitigation, including improvement to habitat conditions for and production of steelhead and recovery of steelhead in the Carmel River Watershed. (*Id.*, p.3.)

## CALIFORNIA AMERICAN WATER MEETS THE FOUR-PRONGED TEST FOR MEMORANDUM ACCOUNTS

By this Advice Letter, California American Water seeks Commission authority at this time only to establish the NOAA/ESA Memo Account and to track in that account payments California American Water makes to NOAA pursuant to the Settlement Agreement for mitigation measures designed pursuant to the ESA to reduce the impact of California American Water's operations in the Carmel River on steelhead trout. California American Water is not seeking to recover these compliance costs at this time. Customers, the Division of Ratepayer Advocates, and any other appropriate party will have an opportunity to address the actual recovery of these compliance costs in the future Monterey District GRCs.

Under the Settlement Agreement, the payments are for mitigation purposes, not fines. The Division of Ratepayer Advocates (formerly Office of Ratepayer Advocates) executed a settlement agreement with California American Water in the pending Monterey District GRC (A.05-02-012) and agreed that California American Water should be allowed to establish the ESA Memorandum Account to track costs incurred to with comply with ESA requirements. (A.05-02-012, *Compliance Filing to Submit Separate and Conformed Settlement Agreements between the Office of Ratepayer Advocates and California-American Water Company* (October 21, 2005), Exh. 1 (*Settlement Agreement as to Certain Issues for the Monterey District, Including Cost of Capital, between the Office of Ratepayer Advocates and California-American Water Company* (October 20, 2005), para. 4.14(d).) The Commission has in the past approved a settlement agreement allowing California American Water memorandum account treatment for ESA mitigation and compliance. (D.00-03-053, *Application of California American Water Company (U210W) for an Ordering Authorizing it to Increase its Rates for Water Service in its Monterey Division*, 2000 Cal. PUC LEXIS 229, \*88.) Indeed, the Commission has also in the past approved memorandum account treatment for fines when California American Water was faced with the potential choice between having to violate its public utility obligation to serve customers or incurring a fine. (D.98-08-036, *supra*, 1998 Cal. PUC LEXIS 617.) California American Water is seeking this memorandum account at this time due to the fact that a final decision in A.05-02-012 has not been rendered and is likely not to be rendered for some time.

California American Water meets for the four-pronged test for memorandum accounts previously established by the Commission:

(1) The ESA compliance costs are caused by an event of an exceptional nature that is not under the utilities' control if it is to comply with its service obligation. As discussed above and as previously recognized by the Commission (D.98-08-036, *supra*, 1998 Cal. PUC LEXIS 617), California American Water cannot avoid the alleged ESA violations – caused by continuing to pump from the Carmel Valley Aquifer – without negatively impacting its obligation to serve its customers. California American Water's untenable position, therefore, is certainly an "event of an exceptional nature."

(2) The expenses cannot have been reasonably foreseen in California American Water's last GRC filing (A.05-02-012), as the Settlement Agreement was negotiated and executed after the record in that proceeding was submitted.

(3) The expense is of a substantial nature in the amount of money involved - \$3,500,000 due on August 28, 2006 and thereafter \$1,100,000 due on the June 29<sup>th</sup> anniversary of the Settlement Agreement for the life of the Settlement Agreement.

(4) California American Water's customers will benefit by the memorandum account treatment. Memorandum account treatment for the ESA compliance costs enables California American Water to continue to serve its Monterey District customers uninterrupted while protecting itself and its ratepayers from the prospect of severe ESA fines threatened by NOAA. The Monterey District customers would obviously benefit from continued water service. As well, the ESA compliance costs will also be applied to environmental efforts in the area, which will also benefit the local ratepayers. Finally, the Commission has the authority to review all amounts recorded in the memorandum account for reasonableness in future California American Water GRCs for its Monterey District.

### **EFFECTIVE DATE**

California American Water requests that this memorandum account become effective 30 days after the filing date of this Advice Letter, or on August 21, 2006.

### **NOTICE, PROTESTS, AND REPLIES**

California American Water will provide a copy of this advice letter to all parties in A.05-02-012.

There are two ways to respond to this notice. You can send a protest to the Commission and, if you do, you must send a copy of the protest to California American Water; or you can send a response to the Commission with a copy to California American Water if you wish. A protest is a document objecting to the granting in whole or in part of the authority sought in the advice letter. A response is a document that does not object to the authority sought, but nevertheless presents information that the party tendering the response believes would be useful to the Commission in acting on the request.

Within 20 days of the date the Commission accepts the advice letter for filing, a protest must be received by the Water Division and served on California American Water on the same day. A protest must state the facts on which the protest is based, the effect that approval of the advice letter might have on the protestant, and the reasons the protestant believes the advice letter, or a part of it, is not justified. If the protest requests an evidentiary hearing, the protest must state the facts the protestant would present at an evidentiary hearing to support its request for whole or partial denial of the advice letter.

California American Water will provide the Water Division a reply to any protests within five business days after the end of the protest period. California American Water will serve a copy of its response on the protestant on the same day it submits its response to Water Division.

All protests and responses should be sent by both email and U.S. Mail to:

California Public Utilities Commission  
Water Division  
505 Van Ness Avenue  
San Francisco, California 94102  
Email: [water\\_division@cpuc.ca.gov](mailto:water_division@cpuc.ca.gov)  
Facsimile: (415) 703-4426

Copies should also be mailed to the attention of Kevin Coughlan, Director, Water Division at the same above street address or at [kpc@cpuc.ca.gov](mailto:kpc@cpuc.ca.gov).

In addition, protests and all other correspondence regarding this advice letter should also be sent by letter and transmitted via facsimile or electronically to the attention of:

David P. Stephenson  
Director of Rates & Planning  
California-American Water  
Company  
4701 Beloit Drive  
Sacramento, California 95838

Facsimile: (916) 568-4260  
E-Mail: [dstephen@amwater.com](mailto:dstephen@amwater.com)

Lori Anne Dolqueist, Esq.  
Steefel, Levitt & Weiss  
A Professional Corporation  
One Embarcadero Center  
30th Floor  
San Francisco, California 94111

Facsimile: (415) 788-2019  
E-mail: [LDolqueist@steefel.com](mailto:LDolqueist@steefel.com)

If you have not received a reply to your protest from California American Water within 10 business days after the end of the protest period, contact these persons at the phone numbers indicated above.

In accordance with Section III, Paragraph G, of General Order No. 96-A, California American Water is serving copies of this advice filing on the interested parties shown on the attached service list.

Further, in accordance with Public Utilities Code Section 491, notice to the public is hereby given by filing and keeping the advice filing at California American Water's corporate offices at 303 H Street, Suite 250, Chula Vista, California 91910 and at 50 Ragsdale Drive, Suite 100, Monterey, California 93940.

Questions relating to this advice filing should be addressed to Lori Anne Dolqueist, Esq. of Steefel Levitt & Weiss, P.C., at (415) 403-3255 or LDolqueist@steefel.com.



---

David P. Stephenson  
Director of Rates & Planning  
California-American Water Company

# ATTACHMENT A

## SETTLEMENT AGREEMENT

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

### Recitals

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

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

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

D. The goals and objectives of the Conservation Agreement were as follows:

1. NMFS' goal and objective are to protect and conserve Steelhead in the Carmel River, including maximizing the Carmel River Basin's substantial contribution toward recovering this [S]outh [C]entral California Coast Steelhead ESU ["SCCC steelhead"] and to enforce the ESA [Endangered Species Act].

2. Cal-Am's [CAW's] goal and objective are to supply water in accordance with its CPUC Certificate in a manner that complies with the Federal ESA and other regulatory obligations.



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

F. Since September 2001, CAW has implemented all of the measures set forth in Phase I of Tier I of the Conservation Agreement. These measures include ceasing surface water diversions at San Clemente Dam during low flow periods, ceasing diversions from the Upper Carmel Valley Wells during low flow periods, and installing a booster station to move water from the lower Carmel Valley to the Upper Carmel Valley. In addition, as part of an overall effort to protect and enhance SCCC steelhead, CAW and its customers have paid for additional steelhead mitigation measures for many years. These measures, implemented by the Monterey Peninsula Water Management District, include annual fish rescues, the construction 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.

G. Phase II of Tier I of the Conservation Agreement required CAW to maintain a continuous surface flow in the Carmel River as far downstream as possible in AQ3 (a defined area of the Carmel Valley Aquifer) by offsetting CAW water diversions in upstream sections of AQ3 with expanded diversion capability in AQ4, in the lowermost reaches of AQ3, and the Seaside 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.

H. 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 aquifer. Studies showed that any new well in the lower Carmel Valley would likely require surface water treatment and construction of a surface water treatment plant, which was estimated to cost approximately \$5.5 million. In light of CAW's need to focus its financial and personnel resources on a long-term water supply project, rather than those interim measures in the Carmel River, the Parties agree that proceeding with the measures set forth in Phase II of Tier I would not be financially prudent.

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

A G R E E M E N T :

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

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

II. New Tier I Phase II Activities:

A. CAW shall provide funding for projects to improve habitat conditions for, and production of, SCCC steelhead and/or otherwise aid in the recovery of SCCC steelhead in the Carmel River Watershed. CAW shall provide an initial lump sum payment of Three Million Five Hundred Thousand Dollars (\$3,500,000.00) within 60 days of the execution of this Settlement Agreement ("Agreement"). CAW will further provide the sum of One Million One Hundred Thousand Dollars (\$1,100,000.00) on the first anniversary of the Agreement and again on each subsequent anniversary of the Agreement until it expires.

B. NOAA shall, at its sole discretion, select and prioritize the projects to be funded with the money supplied by CAW pursuant to paragraph II. A. NOAA shall consult with CAW on all projects funded under this Agreement.

C. 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. NOAA will not undertake any projects that will 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.

III. Tier III Activities:

CAW has identified the CWP as its proposed project for a long-term water supply to replace 10,730 AF of water that CAW diverts from the Carmel Valley Aquifer, plus approximately 1,000 AF to protect against overdraft of the Seaside Basin. CAW will continue to diligently pursue the environmental review and required permits to design, build and operate the CWP. The current schedule contemplates having the CWP in operation by 2012 at the earliest. The parties recognize that the CWP will require extensive environmental review and permits from many federal, state and local agencies over which CAW has no control. CAW will keep NOAA informed of the CWP's schedule, progress, potential delays and the reasons therefore.

IV. NOAA's Cooperation with CAW and Other Agencies

The parties recognize that the CPUC is CAW's primary regulatory agency. CAW is obligated to serve its customers in a cost-effective manner. CAW must obtain CPUC permission to fund activities such as environmental mitigation, and the rates charged to CAW's customers must be approved by the CPUC. NOAA acknowledges that in CAW's role as a CPUC regulated water provider, that it has an obligation to serve its customers.

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

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

A. California Public Utilities Commission (CPUC)

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

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

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

1. Monterey Bay National Marine Sanctuary (MBNMS)

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

2. California Coastal Commission (CCC)

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

3. State Water Resources Control Board (SWRCB)

The second component of the CWP is aquifer storage and recovery (ASR), which will require water rights permits from SWRCB. NOAA has supported the concept

of ASR for years. NOAA will cooperate with CAW regarding the benefits of diversions to ASR during times of excess flow on the Carmel River. NOAA will meet and confer with CAW to discuss any of its concerns with CAW'S ASR permit applications before commenting publicly.

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

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

5. California Department of Fish & Game (CDF&G)

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

V. Prosecutorial Discretion:

It is the responsibility of NOAA to investigate and take appropriate enforcement action with respect to violations of the ESA involving species under its jurisdiction. In light of the substantial amounts of time and money that have been, and will continue to be, expended by CAW on steelhead conservation measures, NOAA agrees that prosecution of CAW for ESA violations relating to its pumping operations and water withdrawals from the Carmel River is not the preferred course of action.

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

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

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

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

VI. Term of Agreement:

A. This Agreement shall commence on the date of signature by the last Party executing this Agreement, and shall expire (i) on the calendar day immediately preceding the expire on the seventh (7<sup>th</sup>) anniversary of this Agreement or (ii) upon CAW's compliance with Ordering Paragraph 2 of the State Water Resources Control Board Order 95-10, whichever occurs first.

B. The term of this Agreement may be extended by mutual consent of the Parties.

VII. Miscellaneous Provisions:

A. Although this Agreement does not address NOAA's ESA concerns with respect to any of CAW's operations other than well-pumping and water withdrawals, the Parties agree that they will negotiate in good faith using their best efforts to reach an agreement by August 31, 2006, to address NOAA's ESA concerns regarding CAW's remaining operations. Any subsequent agreement may include an extension of the term of this Agreement.

B. Either of the Parties may issue a press release regarding the contents of this Agreement after the other Party has been given adequate opportunity to review and comment on the draft press release.

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

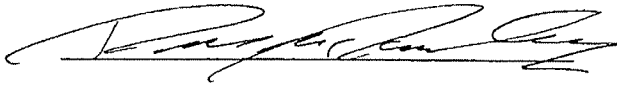
D. This written Agreement and the Conservation Agreement signed by the Parties on September 18, 2001, shall constitute the sole and entire agreement between the Parties and supersede any prior agreements and understandings whether oral or otherwise. The terms and conditions of the Conservation Agreement,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

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

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

G. If CAW breaches section II.A of this Agreement by failing to provide any funding required under II A. within the time period set forth in this paragraph, NOAA shall give CAW written notice of such breach and demand that the funding be provided within ten (10) business days of receipt of such notice by CAW.

ACCEPTED ON BEHALF OF CALIFORNIA-AMERICAN WATER COMPANY BY:



Paul Townsley  
California-American Water Company

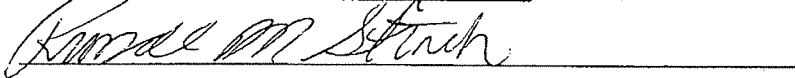
DATED: June 29, 2006


ACCEPTED ON BEHALF OF THE DEPARTMENT OF COMMERCE BY:



Michele Kuruc  
Office of General Counsel for Enforcement & Litigation, NOAA

DATED: June 29 2006



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

DATED: June 29, 2006

<b>CALIFORNIA PUBLIC UTILITIES COMMISSION</b> <b>Advice Letter Filing Summary Sheet</b>	(Date Filed / Received Stamp by CPUC)
--	---------------------------------------

Company Name: California-American Water Company	CPUC Utility Number U - 210 - W
---	---------------------------------

Address: 4701 Beloit Dr.

City, State, Zip: Sacramento, CA 95838

AL #: 652-W      Requested Effective Date: August 21, 2006	<input checked="" type="checkbox"/> Resolution Required?
--	--

	Contact Name:	Email Address:	Phone No.:	Fax No.:
Filer	David P. Stephenson	<a href="mailto:dstephen@amwater.com">dstephen@amwater.com</a>	(916) 568-4222	(916) 568-4260
Alternate	Lori Anne Dolqueist	<a href="mailto:L.Dolqueist@steefel.com">L.Dolqueist@steefel.com</a>	(415) 403-3255	No. Tariff Sheets: 2

(Name, email address & Phone and FAX numbers *are required for "Filer"*)

Annual Revenue Change: \$0.00 \_\_\_\_\_ % \_\_\_\_\_

Tariff Schedules: Table of Contents 4434-W; Preliminary Statement 4433-W

Subject of filing: Request for authorization to establish National Oceanic and Atmospheric Administration Endangered Species Act Compliance Costs Memorandum Account

(Service(s) included)

Authorization for filing: \_\_\_\_\_  
 (Resolution #, Decision #, etc.)

Related Advice Letter(s): \_\_\_\_\_  
 (Similar service, replacement filing)

Notes/Comments: \_\_\_\_\_  
 (Other information & reference to advice letter, etc.)

**Send Protest and/or Correspondence within 20 days to:**

Director, Water Division  
 505 Van Ness Ave., San Francisco, CA 94102

**and if you have email capability, also email to:**

[water\\_division@cpuc.ca.gov](mailto:water_division@cpuc.ca.gov)

**Protest also must be served on utility:**

(see utility advice letter for more information)

(FOR CPUC USE ONLY)

WTS Program/Activity/Type  
\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Resolution Required

WD Suspension on: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Comm. Suspension on: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Resolution No.: W - \_\_\_\_\_

*Rev. 04/01/05*

Supv. / Analyst \_\_\_\_\_ / \_\_\_\_\_

Due Date to Supv.: \_\_\_\_\_

Analyst Completion Date: \_\_\_\_\_

Supervisor Approval Date: \_\_\_\_\_

AL / Tariff Effective Date: \_\_\_\_\_

Notes: \_\_\_\_\_



TABLE OF CONTENTS

The following listed tariff sheets contain all effective rates and rules affecting the charges and services of the Utility, together with other pertinent information:

<u>SUBJECT MATTER OF SHEET</u>	<u>C.P.U.C. SHEET NO.</u>
TITLE PAGE	4107-W
TABLE OF CONTENTS	4434-W, 4425-W, 4422-W (T) 4431-W, 4045-W, 4046-W, 4251-W
PRELIMINARY STATEMENTS	4143-W, 4433-W (T)
SERVICE AREA MAP	
California-American Water Company	4129-W
Baldwin Hills	995-W, 996-W
Coronado	2235-W
Duarte	1633-W, 941-W, 942-W
Felton	4130-W
Larkfield	4313-W
Montara	4132-W
Monterey Peninsula	4316-W, 2740-W, 2741-W 2742-W, 2752-W, 2744-W 2745-W, 4315-W, 4293-W, 944-W, 945-W, 947-W/955-W, 957-W/964-W, 966-W/969-W, 971-W/984-W, 4042-W, 4043-W
Sacramento	4133-W, 4151-W, 4135-W, 4136-W 4137-W, 4138-W, 4139-W, 4140-W 4141-W, 4142-W,
San Marino	935-W/937-W, 513-W, 1986-W
Village	2607-W

(Continued)

PRELIMINARY STATEMENT

(continued)

F. Credit Card Memorandum Account

The purpose of the Credit Card Memorandum Account is to track avoided costs of check processing due to customers paying by credit card. This memo account will be credited \$1,50 per credit card transaction as specified in Advice letter 640-A. The memorandum account will remain open until the time of the next general rate case filing for each district.

At the time of the rate case decision in each district, the avoided check processing fees will be credited back to all customers as a sur-credit over the appropriate time period.

G. Sarbanes-Oxley Memorandum Account

The purpose of the Sarbanes-Oxley Memorandum Account is to track California American Water's allocated share of expenses incurred by its parent company, American Water Works, to comply with the audit, reporting, certification and all other requirements pursuant to the Sarbanes-Oxley Act of 2002, 107 PL 204. The memorandum account will remain open until the time of the next rate case filing for the General Office.

H. National Oceanic and Atmospheric Administration Endangered Species Act ("NOAA/ESA") Memorandum Account

(N)

The purpose of the NOAA Memorandum Account is to track compliance payments made by California American Water to the United States Department of Commerce National Oceanic and Atmospheric Administration ("NOAA") for Federal Endangered Species Act ("ESA") mitigation in its Monterey District. California American Water will seek recovery of these costs in its future Monterey District general rate case.

(N)

(TO BE INSERTED BY UTILITY)

ISSUED BY

(TO BE INSERTED BY C.P.U.C.)

ADVICE LETTER NO. 652

D. P. STEPHENSON

DATE FILED \_\_\_\_\_

NAME

EFFECTIVE \_\_\_\_\_

DECISION NO. \_\_\_\_\_

MGR - RATES & REGULATION

RESOLUTION NO. \_\_\_\_\_

TITLE

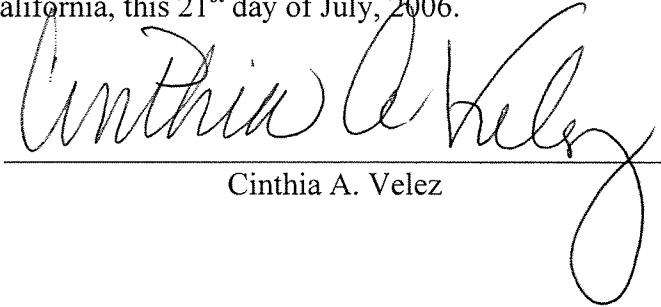
**CERTIFICATE OF SERVICE**

I hereby certify that I have caused to be served this day the following:

*Advice Letter No. 652-W of California-American Water Company (U 210 W)*

upon all parties via e-mail (where e-mail addresses are available) and/or by U.S. Mail, first class postage prepaid, at the addresses attached to the original of this Certificate.

Executed at San Francisco, California, this 21<sup>st</sup> day of July, 2006.

  
Cinthia A. Velez

City of Monterey  
City Hall  
Monterey, CA 93940  
Attn: City Clerk

Residents Water Committee  
27195 Meadows Road  
Carmel, CA 93923  
Attn: Pat Bernardi

Ross G. Hubbard  
City of Pacific Grove  
c/o City Manager's Office  
300 Forest Ave, 2<sup>nd</sup> floor  
Pacific Grove, CA 93950

Karen Crouch  
City Clerk,  
Carmel-By-The-Sea  
PO Box CC  
Carmel-by-the-Sea, CA 93921

City of Sand City  
City Hall  
California & Sylvan Avenues  
Sand City, CA 93955  
Attn: City Clerk

City of Seaside  
City Hall  
440 Harcourt Avenue  
Seaside, CA 93955  
Attn: City Clerk

Monterey Peninsula Water Mgmt Dist.  
P.O. Box 85  
Monterey, CA 93942  
Attn: Mr. Ray Millard

Ann Anderson  
County Clerk  
County of Monterey  
P.O. Box 1728  
Salinas, CA 93902

City of Del Rey Oaks  
City Hall  
650 Canyon Del Rey Road  
Del Rey Oaks, CA 93940  
Attn: City Clerk

Bishop Water Company  
11552 Hidden Hills Road  
Carmel Valley, CA 93924

Alco Water Service  
249 Williams Road  
Salinas, CA 93901

Hoge, Fenton, Jones, & Appel, Inc.  
P.O. Box 791  
Monterey, CA 93942  
Attn: Thomas H. Jamison  
Attn: Ronald F. Scholl

Pebble Beach Company  
P.O. Box 1767  
Pebble Beach, CA 93953  
Attn: Steven Eimer

Sung Han  
California Public Utilities Commission  
Room 3200  
505 Van Ness Avenue  
San Francisco, CA 94102

Richard Andrews  
General Manager  
Pebble Beach Community Svcs. District  
Forest Lake and Lopez Roads  
Pebble Beach, CA 93953

Administrative Law Judge Christine  
Walwyn  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

Monica L. McCrary  
California Public Utilities Commission  
Legal Division, Room 5134  
505 Van Ness Avenue  
San Francisco, CA 94102

Miriam L. Stompler  
Attorney at Law  
County of Santa Cruz  
701 Ocean Street, Room 505  
Santa Cruz, CA 95060

Harriet Burt  
California Public Utilities Commission  
Public Advisor Office, Room 2103  
505 Van Ness Avenue  
San Francisco, CA 94102-3214

Fred L. Curry  
California Public Utilities Commission  
Water Advisory Branch, Room 3106  
505 Van Ness Avenue  
San Francisco, CA 94102-3214

Diana Brooks  
California Public Utilities Commission  
Room 4102  
505 Van Ness Avenue  
San Francisco, CA 94102-3214

Frances M. Farina  
DeLay & Laredo  
389 Princeton Ave.  
Santa Barbara, CA 93111

Lou Haddad  
5 Deer Stalker Path  
Monterey, CA 93940

David C. Laredo  
Attorney at Law  
DeLay & Laredo  
606 Forest Ave  
Pacific Grove, CA 93950

David A McCormick  
Department of Defense  
901 N. Stuart Street Rm 700  
Arlington, VA 22203-1837

Richard Andrews  
Pebble Beach Community Services District  
Forrest Lake and Lopez Roads  
Pebble Beach, CA 93953

Fort Ord Reuse Authority  
100 12<sup>th</sup> Street, Bldg 2880  
Marina, CA 93922

San Jose Water Company  
374 W. Santa Clara St  
PO Box 229  
San Jose, CA 95196

City of Pacific Grove  
City Attorney  
300 Forest Ave 2<sup>nd</sup> floor  
Pacific Grove, CA 93950

Lloyd Lowery Jr.  
Noland, Hammerly, Etienne & Hoss  
P.C.  
333 Salinas St  
PO Box 2510  
Salinas, CA 93902-2510

Thomas Jamison  
Fenton & Keller, P.C.  
2801 Monterey Salinas Highway  
Po Box 791  
Monterey, CA 93942

Edward W. O'Neill  
Davis Wright Tremaine LLP  
One Embarcadero Center, Suite 600  
San Francisco, CA 94111-3834

Jeffrey P. Gray  
Davis Wright Tremaine LLP  
One Embarcadero Center, Suite 600  
San Francisco, CA 94102

Carmel Area Wastewater District  
3945 Rio Road  
Carmel, CA 93923

Monterey Regional Water Pollution  
Control Agency (MRWPCA)  
5 Harris Court Road. Bldg D.  
Monterey, CA 93940

Marc J. Del Piero  
4062 El Bosque Drive  
Pebble Beach, CA 93953-3011

Danilo Sanchez  
California Public Utilities  
Commission, DRA  
505 Van Ness Avenue  
San Francisco, CA 94102

Michael Depaul  
Noland, Hamerly, Etienne & Hoss  
333 Salinas Street  
Salinas, CA 93902-2510

Darryl D. Kenyon  
Monterey Commercial Property  
Owners Association  
P.O. Box 398  
Pebble Beach, CA 93953

Virginia Hennessey  
Monterey County Herald  
P.O. Box 271  
Monterey, CA 93942

Norman Furuta  
Department of Navy  
2001 Junipero Serra Blvd, Suite 600  
Daly City, CA 94014-3890

Tanya A. Gulesserian  
Adams Broadwell Joseph &  
Gardoza  
601 Gateway Blvd, Suite 1000  
South San Francisco, CA 94080

Jondi Gumz  
Santa Cruz Sentinel  
207 Church Street  
Santa Cruz, CA

Robin Tokmakian  
League of Women Voters  
252 Chestnut  
Pacific Grove, CA 93950

Reed V. Schmidt  
Bartle Wells Associates  
1889 Alcatraz Avenue  
Berkeley, CA 94703-2714

Joe Rosa  
Pajaro-Sunny Mesa Comm. Serv.  
District  
136 San Juan Road  
Watsonville, CA 95076

Dennis Le Clere  
Deputy County Counsel  
County of Monterey  
230 Church St Bldg 1  
Salinas, CA 93901-5100

Tod Landis  
Felton Flow  
P.O. Box 688  
Ben Lomand, CA 95005

Ann L. Trowbridge  
Attorney at Law  
Downey Brand, LLP  
555 Capitol Mall, 10<sup>th</sup> Floor  
Sacramento, CA 95814

San Lorenzo Valley Water District  
13060 Central Ave  
Boulder Creek, CA 95006

California Dept of Health Services  
Division of Drinking Water &  
Environmental Management  
PO Box 997416  
Sacramento, CA 95899-7413

State Water Resources Control Board  
PO Box 100  
Sacramento, CA 95812

Gary E. Hazelton  
County Clerk – Recorder  
Santa Cruz County  
701 Ocean Street, Room 210  
Santa Cruz, CA 95060

Kevin Coughlan  
California Public Utilities  
Commission, Water Division  
505 Van Ness Avenue  
San Francisco, CA 94102

Charles J. McKee  
 County Counsel  
 Monterey County  
 230 Church Street, Building I  
 Salinas, CA 93901

Richard E. Nosky, Jr.  
 City Attorney  
 City of Salinas  
 200 Lincoln Avenue  
 Salinas, CA 93901

Jim Heisinger  
 P.O. Box 5427  
 Carmel, CA 93921

Craig A. Marks  
 American Water Company  
 19820 N. 7<sup>th</sup> Street, Ste. 201  
 Phoenix, AZ 85024

Lori Anne Dolqueist  
 Steefel, Levitt & Weiss  
 One Embarcadero Center 30<sup>th</sup> Floor  
 San Francisco, CA 94111

David P. Stephenson  
 California American Water  
 4701 Beloit Drive  
 Sacramento, CA 95838

Efren N. Iglesia  
 Office of the County Counsel  
 County of Monterey  
 60 West Market Street, Suite 140  
 Salinas, CA 93901

Don Freeman  
 City of Seaside  
 City Attorney  
 440 Harcourt Avenue  
 Seaside, CA 93955

William Connors  
 City of Monterey  
 City Attorney  
 399 Madison Street  
 Monterey, CA 93940

Robert Bloor  
 California American Water  
 303 H Street, Suite 250  
 Chula Vista, CA 91910

Christine J. Hammond  
 Steefel, Levitt & Weiss  
 One Embarcadero Center 30<sup>th</sup> Floor  
 San Francisco, CA 94111

Ann Camel  
 City Clerk  
 City of Salinas  
 200 Lincoln Avenue  
 Salinas, CA 93901

Donald G. Freeman  
 City Attorney  
 City of Carmel-By-The-Sea  
 PO Box 805  
 Carmel-by-the-Sea, CA 93921

Gerard A. Rose  
 PO Box 5427  
 Carmel, CA 93921

Lenard G. Weiss  
 Steefel, Levitt & Weiss  
 One Embarcadero Center 30<sup>th</sup> Floor  
 San Francisco, CA 94111

Paul G. Townsley  
 California American Water  
 303 H Street, Suite 250  
 Chula Vista, CA 91910

**MONTEREY PENINSULA WATER MANAGEMENT DISTRICT  
CARMEL RIVER ADVISORY COMMITTEE  
COMMITTEE CHARGE**

*As adopted by the Board of Directors on December 12, 2005*

1. Primary Function

The Carmel River Advisory Committee provides recommendations to the District Board of Directors with regard to management of the Carmel River, and its riparian corridor and to any matter referred to the committee. (Rule 120.A MPWD Rules and Regulations)

2. Process

The Carmel River Advisory Committee meets as needed to review and provide guidance related to management of the Carmel River and its riparian corridor. The Carmel River Advisory Committee meets the definition of a “legislative body” as defined by the Brown Act; therefore, all meetings shall be noticed and open to the public in compliance with the Brown Act.

3. Composition and Structure

- a. The Carmel River Advisory Committee shall be comprised of seven (7) members. Each Director of the District shall appoint one member to this advisory committee. Appointed committee members shall serve a term of two (2) years, which term shall expire on June 30, or on the date the appointing Director vacates office as a member of the MPWMD board of Directors, whichever shall first occur. A vacancy shall be created by resignation or in the event a committee member fails to attend three (3) consecutive regular meetings without good cause as determined by the Board of Directors. Nomination to fill any vacancy or to reappoint any committee member shall be made by the Director’s seat which exercised the original appointment to that position. At the first meeting held in each fiscal year, the committee shall elect a chairperson and vice-chairperson to preside at committee meetings. The committee may adopt rules governing the conduct of its meetings. (Rule 120.B.1 MPWMD Rules and Regulations.)
- b. Committee members shall be required to reside within the boundaries of the Monterey Peninsula Water Management District and shall be knowledgeable about issues relating to the Carmel River. Carmel Valley residents shall be given priority in the selection of committee members. Any committee members currently sitting in a position on the committee shall be allowed to complete their term of duty, regardless of their place of residence. (Rule 120.B.3 MPWMD Rules and Regulations.)
- c. A quorum of four (4) Carmel River Advisory Committee members shall be required for an official meeting to be conducted. Action may be taken by majority vote of those Carmel River Advisory Committee members present.
- d. The General Manager or other designated staff member(s) shall provide support as appropriate.

4. Responsibilities of the Committee

- a. Review the portion of the Five-Year Mitigation Program plans, activities, and budgets related to erosion protection, channel restoration, and protection and enhancement of the riparian corridor along the Carmel River. Make recommendations regarding priorities, suitability, and scheduling of these activities.
- b. Review the effectiveness of the District's streambank restoration program, and make recommendations.
- c. Examine the practical difficulties of implementing erosion protection and riparian corridor restoration projects, and make recommendations to streamline the project development process and to encourage property owners to participate in streambank restoration.
- d. Assist staff in gaining the cooperation of riverfront property owners for carrying out District erosion protection and riparian corridor restoration projects.
- e. Assist staff in public education related to matters for which the Committee has advisory oversight.
- f. Participate in review of Carmel River activities associated with the District's Integrated Regional Water Management Plan.
- g. Advise the Board of Directors as to any matter referred to the Committee by the Board.

**Original:**

U:\staff\word\committees\CRAC\Charge\121205ChargeREV.doc  
A Tavani/1-11-06/CRAC Charge/1 page

This file: U:\Larry\wp\crac\2006\12012006\exhB.doc



**Exhibit D**

[MPWMD note: the text below was originally attached to an e-mail from Joyce Ambrosius of the NOAA Fisheries office in Santa Rosa to MPWMD General Manager David Berger (ca July 24, 2006). Joyce indicated that the list below will be considered for mitigation projects resulting out of the settlement with Cal Am. But NOAA Fisheries has not yet worked out details on how to carry out the mitigation work.]

**DRAFT**

**Potential Mitigation Projects Resulting from Mitigation Workshop,  
November 18, 2005  
(not in order of priority)**

**a. Lagoon Management**

Cal-Am would fund the construction of the Medium-Term Water Recycling project at the Carmel Area Wastewater District. There is a possibility that 30 AF/month could be available to the lagoon from this project.

The second proposal was to restore the Carmel Lagoon to full productive function through the summer juvenile rearing phase. Chronic, persistent loss of freshwater inflow has dropped the lower river water table. The resultant drop in Lagoon Volume and rise in Salinity is creating lethal water quality events that have caused massive juvenile mortalities in many recent years. We propose to restore the water table with reclaimed waste water. The method would be excavate a few acres of ponds in the Odello West fields just "upstream" of the Lagoon S Arm so that treated water is "filtered" through sand into the Aquifer, thereby indirectly raising water levels in the Lagoon all summer above 4 feet. Only at 4 feet and above is the newly created S Arm deep enough for fish habitat, as is true of the Main Bay and North Arms. Additionally the wetlands created may provide Ca. RLF habitat and would certainly create bird habitat.

*Biological Response:* This will add recycled water into the lagoon during the dry season to help offset the lack of river flow into the lagoon. This added flow will help maintain adequate depth and volume in the lagoon, improving water quality and the survival and productivity of juvenile steelhead.

*Funding Costs:* One-time cost for construction of discharge pipe and spreading system and instrumentation for automatic switching from golf courses to lagoon. Costs ~ \$75,000 for instrumentation and construction per CAWD. Estimated annual cost of \$60,000 per year for purchase of waste water.

**b. Pipeline for ASR****c. Tagging Study**

**d. Analyze Angler Catch Data**

**e. Sleepy Hollow Steelhead Rearing (SHSR) Facility Water Intake Upgrade**

Cal-Am would fund improvements to the SHSR Facility water intake.

*Biological Response:* Making improvements to the water intake at the facility will ensure the maximum survival of rescued steelhead. Increasing the juvenile survival rate throughout the summer holding period will help increase the number of smolts that can successfully migrate out to the ocean.

*Funding Costs:* Costs to upgrade the water intake at the facility. Costs for improvements could be as high as \$1.5 - \$5 million. Increased funding for fish rescues and operation of SHSR estimated at \$250,000 per year.

**f. Los Padres Reservoir Sediment and Organic Debris Removal**

Cal-Am would dredge the Los Padres Reservoir in order to gain additional storage capacity.

*Biological Response:* Increased storage will prolong summer releases from the dam to help maintain adequate flow in the river as far downstream as possible for juvenile steelhead rearing. This may decrease the length of stream channel drying and the amount of fish rescues needed each summer.

*Funding Costs:* One-time cost for permitting, engineering design and dredging. There may be a potential to sell aggregate to recover some costs. Sediment removal costs estimated at \$9.90/cu yd (per MWH).

**g. Los Padres Dam Fish Passage**

**A.** Cal-Am would study the feasibility of a permanent fish passage facility for the Los Padres Dam to allow for upstream and downstream migration at the dam. The present fish ladders (trap and truck operations) are not adequate for upstream migration and there is no facility for downstream migration of kelts and smolts.

**B.** Cal-Am would design and construct a permanent fish passage facility for the Los Padres Dam to allow for upstream and downstream migration at the dam depending on the outcome of the feasibility study.

*Biological Response:* Adult steelhead will be able to migrate upstream past the Los Padres Dam to spawn in the mainstem and tributaries above the dam. Kelts, smolts, and juveniles will be able to migrate downstream past the dam. Currently kelts and smolts are trapped in the reservoir resulting in high mortalities. This will increase the survival of smolts and juveniles reared above Los Padres Dam, and increase the overall Carmel River steelhead population.

*Funding Costs:* One-time cost for the feasibility study, permitting, engineering and construction of the facility. Average typical fish ladder costs calculated at \$100,000 per vertical foot. Los Padres Dam is 148 feet high. Cost potentially to \$14,800,000.

Maintenance costs as needed.

#### **h. Barrier Beach Sediment Budget Analysis \*\*\***

Cal-Am would fund a sediment transport analysis to the marine environment to determine the long-term trends of sediment replenishment at the barrier beach on the Carmel River Lagoon.

*Biological Response:* The barrier beach at the lagoon is vital to maintaining a lagoon for rearing of smolts and juveniles throughout the year. Understanding the dynamics of sediment transport to the barrier beach will help determine methods to ensure the lagoon remains functional to support steelhead.

*Funding Costs:* One-time cost for the sediment transport analysis. Estimated cost is approximately \$125,000.

\*\*\*

#### **i. Sediment/Gravel Injection**

Cal-Am would dredge sediment/gravels from San Clemente Reservoir and/or Los Padres Reservoir periodically and inject the sediment into the river below each reservoir. The river reaches below each dam have a paucity of spawning gravels and sediment for food production due to the presence of each dam.

*Biological Response:* Injecting sediment/gravels below each dam will increase the potential spawning habitat in that reach of river and will also increase macroinvertebrate production. Increasing the spawning habitat will improve spawning success and therefore help to increase the steelhead population. Increased macroinvertebrate production will increase the food source for juveniles.

*Funding Costs:* Cost to inject 2-4 AF of gravel downstream of Los Padres Dam and San Clemente Dam approximately \$90,000 annually.

#### **j. Carmel River Enhancement - Mainstem and Tributary**

Cal-Am will fund the construction of instream habitat structures placed in areas that are armored and lacking pools to increase juvenile steelhead habitat.

*Biological Responses:* These habitat structures will increase the number of pools which will improve juvenile rearing habitat. They will also increase macroinvertebrate production. In conjunction with the gravel injection program, these pools will also provide resting areas for adults and spawning habitat at the pool tailouts.

*Funding Costs:* One-time cost for permitting and engineering plans. Estimated cost of \$30,000 per habitat structure. Cost for monitoring of habitat structures.

#### **k. Old Carmel River Dam Notching/Removal**

Cal-Am would notch/remove the Old Carmel River Dam to enhance steelhead

passage above the dam. Past repairs and modifications to the dam have not eliminated passage problems for upstream migrants. This project may/may not be included under the San Clemente Dam Seismic Safety Project.

*Biological Response:* Adults would have one less migration barrier to move past during their upstream spawning migration. This will decrease delays to spawning grounds and will preserve the steelhead=s energy reserves for spawning.

*Funding Costs:* One-time cost for permitting, engineering and demolition of dam. Demolition cost approximately \$105,000 (per MWH).

### **l. Los Padres Reservoir Cooling Tower**

Currently, the water temperature and water quality of the release at Los Padres Dam exceeds recommended levels for rearing juvenile steelhead in the reach downstream of the dam. Typically, water temperatures exceed 60 deg F for four to five months each year, 65 deg F for three to four months, and occasionally exceed 70 deg F for up to one month, usually during September. In addition, at times the concentration of H<sub>2</sub>S exceeds levels recommended for continuous exposure and this usually coincides with low dissolved oxygen concentrations and high carbon dioxide concentrations. Installation of an appropriately sized cooling tower at the base of Los Padres Dam would rectify these water quality problems by fully aerating the water prior to release and reducing the water temperature by 5-10 deg F. This would have direct beneficial impacts on river biota by providing water temperature and water quality similar to surface waters in the river upstream of the reservoir.

### **m. Additional Notch in Los Padres Spillway**

The spillway at Los Padres Dam is at an elevation of 1039.83 and the rightmost portion of the spillway is notched with a 0.8-foot deep by 3-foot wide channel. This channel was constructed by the California Department of Fish and Game in 1994 to improve passage conditions for out-migrating smolts. While the spillway notch works well under low flow conditions, several observers have suggested additional improvements to enhance the effectiveness of the notch. In concept, a deeper, but narrower notch would facilitate passage under a wider range of flows. Additional, survey work and analysis of spillway flows is needed to document the potential size of the notch with a goal of maximizing flow through the notch at spillway flows up to 40 cfs.

### **n. Natural Broodstock Program**

The Wild Broodstock program I proposed would consist of capturing smolts through the duration of out migration. The need is to gain as diverse a genetic "bank" or pool as possible, thereby preserving early and late run components that have been severely impacted by flow loss. The HGMP technical advisory team would determine the sample period and locations and methods.

Each year class would be raised in saltwater tanks at a yet to be determined location, ie. Granite Canyon, Monterey Aquarium, Santa Cruz, etc. I have begun inquiries at the Aquarium and Granite Canyon. Once mature they would be released into either Carmel

Bay, Carmel River Lagoon or into the River directly if drought has made entry from Saltwater impossible. Again to be determined by the TAC, Jeffery Jahn has already begun the formation of the TAC for the Sleepy Hollow HGMP. In extremely problematic years, due to prolonged drought, or habitat destruction sufficient to prevent natural spawning (dam failure or sediment event) the brood would be available to provide an egg source for hatching at a rearing facility, thereby preventing loss of an entire year class. It should be remembered that during prolonged critical water shortages the returning adult population dropped to one (1) adult. This was as recently as 1991 and a meager 15 adults counted in 1992. (page 28 SWRCB order 85-10) a remnant from its historic level of 12,000 (page 27 SWRCB order 95-10) Demand for water has continued to rise while no drought protection yet exists. We may well need to capture smolts this year.

Perhaps the Monterey Bay Salmon and Trout Project facility could hold some until a full time location is secured. I believe we must view this as critical to preserve as much of the run timing components and genetic diversity as possible until flow and basic habitat in the Carmel River is restored.

U:\Larry\wp\crac\2006\08172006\exhD.doc