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**BEFORE THE PUBLIC UTILITIES COMMISSION**  
**OF THE STATE OF CALIFORNIA**

Application of California-American Water  
Company (U210W) for Authorization to Increase  
its Revenues for Water Service by \$55,771,300 or  
18.71% in the year 2024, by \$19,565,300 or 5.50%  
in the year 2025, and by \$19,892,400 or 5.30% in  
the year 2026.

A.22-07-001  
(Filed July 1, 2022)

**REBUTTAL TESTIMONY OF JONATHAN MORSE**

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Dated: May 25, 2023

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5 its Revenues for Water Service by \$55,771,300 or  
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8  
9 **REBUTTAL TESTIMONY OF JONATHAN MORSE**

10 **I. BACKGROUND**

11 Q1. Please provide your name and business address.

12 A1. My name is Jonathan Morse. My business address is 520 Capitol Mall, Sacramento, CA  
13 95814.

14  
15 Q2. Have you previously provided your qualifications in this proceeding?

16 A2. Yes, they were included in my Direct Testimony served on July 1, 2022.  
17

18 **II. PURPOSE OF TESTIMONY**

19 Q3. What is the purpose of your testimony?

20 A3. The purpose of my testimony is to address recommendations made by the Public  
21 Advocates Office ("Cal Advocates"). I will cover Special Requests 10, 12, 14, and 18.  
22 Additionally, I will address Cal Advocates' recommendation regarding keeping open and  
23 closing memorandum and balancing accounts.  
24

25 **III. CALIFORNIA PUBLIC ADVOCATES – SPECIAL REQUESTS**

26 **A. Special Request #10 – Rate Mitigation Plan for Recently Acquired Systems**

27 Q4. Can you please describe California American Water's Special Request #10?  
28

1 A4. Yes. Special Request #10 contains two parts. First, that certain elements of the approved  
2 consolidation of Meadowbrook customers onto the Northern Division tariff and rates be  
3 delayed in order to mitigate rate impacts. Second, that certain existing and proposed  
4 surcharges be made applicable to its recently acquired systems. Special Request #10 is  
5 discussed in Mr. Linam's Direct Testimony, Section IV.  
6

7 Q5. What is Cal Advocates' recommendation for Special Request #10?

8 A5. Cal Advocates recommends approval of the rate mitigation plan for California American  
9 Water's recently acquired systems, provided that Cal Advocates' recommended rate  
10 design structure for Meadowbrook is adopted and that California American Water's  
11 request to include the Full Cost Balancing Account ("FCBA") in all of its acquisitions is  
12 denied as described in the testimony of Mr. Merida.<sup>1</sup>  
13

14 Q6. Does California American Water agree with Cal Advocates position on Special Request  
15 #10?

16 A6. No. California American Water and Cal Advocates agree on one of the principle aims of  
17 Special Request #10 which is to gradually move Meadowbrook on to Sacramento's rate  
18 design. Cal Advocates maintains that its proposed rate design for Meadowbrook should  
19 be adopted as a part of Special Request #10. California American Water disagrees.  
20 California American Water believes its proposed rate design for Meadowbrook better  
21 balances the following factors: (1) gradualism and mitigating rate impacts of  
22 consolidation; (2) conservation efforts; and (3) socioeconomic factors. As described in  
23 rebuttal testimony of Bahman Pourtaherian at Section III.M, Cal Advocates proposes a  
24 common tier 1 breakpoint of 6 ccf for all ratemaking areas, including Meadowbrook,  
25 without consideration of customer and operational needs, specific geographic conditions,  
26 or supply limitations which are rate design guidelines outlined in D.16-12-026. Further  
27

---

28 <sup>1</sup> *Report on the Results of Operations Water Consumption, Rate Design and Special Requests  
10, 12, 17, 18, 19, and 20, April 13, 2013 ("Merida"), p. 50, lines 3-6.*

discussion of the Meadowbrook proposed rate design can be found in the rebuttal testimony of Mr. Pourtaherian at Section III.M.

Q7. Does California American Water agree with Cal Advocates recommendations on treatment of surcharges for recently acquired systems?

A7. Partially. California American Water and Cal Advocates agree to the following: (1) Fruitridge Vista would start receiving the Consolidated Expense Balancing Account (“CEBA”) surcharge in 2024; (2) Bass Lake would receive the Customer Assistance Program (“CAP”) and CEBA in 2024; (3) East Pasadena, Bellflower, and Warring would receive the CAP and CEBA surcharges in 2024. California American Water does not agree with Cal Advocates’ position on the Full Cost Balancing Accounts (FCBAs) as proposed in Special Request #2 and the associated surcharges. Cal Advocates argues that the FCBA should be rejected because it is “substantially the same as the MCBA, which was barred from use in D.20-08-047” and therefore FCBA surcharges would not apply.<sup>2</sup>

With Special Request #2, California American Water requests Full Cost Balancing Accounts (FCBAs) for all service areas except for Ventura and San Diego *if* California American Water’s Essential Service Balancing Account (ESBA) decoupling mechanism is denied.<sup>3</sup> Under this scenario, fully metered recently acquired service areas would be covered by the FCBA which would mean East Pasadena, Bellflower, and Warring beginning in 2024 and Fruitridge and Bass Lake when fully metered in 2025. An FCBA differs from an Incremental Cost Balancing Account (ICBA) as an FCBA factors in changes not only to unit price but also variance in changes in the supply mix from

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<sup>2</sup> *Report on the Results of Operations Water Consumption, Rate Design and Special Requests 10, 12, 17, 18, 19, and 20*, updated May 8, 2023 (“Merida Updated”), p. 49, ln 5-6.

<sup>3</sup> Direct Testimony of Jeff Linam at Section IV.B; Rebuttal Testimony of Wes Owens at Section IV.A.2.

1 authorized to actual.<sup>4</sup> As discussed in the rebuttal testimony of Mr. Owens at Section  
2 IV.A.2, the risk to both customers and California American Water for variances outside  
3 the California American Water’s control between forecasted and actual costs would be  
4 substantially mitigated by establishment of an FCBA. Also stated in the rebuttal  
5 testimony of Wes Owens at Section IV.A.2, Cal Advocates does not address California  
6 American Water’s request for an FCBA on its merits. Instead, Cal Advocates states that  
7 the FCBA is “substantially the same as the Essential Service Cost Balancing Account,  
8 part of Cal Am’s WRS Plan” and “consistent with the recommendation against the WRS  
9 Plan... the Commission should deny this request.”<sup>5</sup> California American Water’s request  
10 for the FCBA in certain districts is not tied to the approval of the WRSP. Special Request  
11 #2 was included in California American Water’s July 1<sup>st</sup> filing, so it predates the WRSP  
12 request, and thus is mutually exclusive from the WRSP. If the Commission approves the  
13 WRSP then Special Request #2 is moot. If the Commission denies the WRSP then  
14 Special Request #2 is still an outstanding issue and should be considered on its own  
15 merit. Cal Advocates’ recommendation that Special Request #2 should be denied because  
16 they believe the WRSP should be rejected is circular reasoning and should be rejected.  
17 Therefore, should the WRSP be denied, recently acquired systems should be included in  
18 the FCBA.

19  
20 **B. Special Request #12 – Subsequent Rate Changes**

21 Q8. Can you describe Special Request #12?

22 A8. Yes, in Special Request #12 California American Water requests explicit Commission  
23 authorization to incorporate into new rates any rate changes that occurred after this  
24 proceeding opened and acknowledgement that these changes will also need to be placed  
25 into present rates for the determination of the actual rate increase caused by this

26  
27 <sup>4</sup> Direct Testimony of Jeff Linam at Section IV.B.

28 <sup>5</sup> *Report on the Memorandum and Balancing Accounts & Special Requests 2, 3, 6, 13, 14, and 16*, April 13, 2023 (“Dawadi”), p. 48, lines 9-13.

1 application. To effectuate this request, there are two components to integrate into the  
2 calculation of new rates. The first is to correct the “present rates” that will appear in the  
3 Commission’s final decision (for the purposes of comparing “present rates” against the  
4 newly adopted rates). The second is to ensure that the revenue requirement model for the  
5 new rates includes the rate changes subsequent to this GRC application. For example,  
6 since “offsettable” expense filings reflect an increase in the unit cost for wholesale water  
7 purchases, that unit cost must be incorporated into the estimated test-year production  
8 costs to reflect true operating costs going forward. This is discussed in Mr. Linam’s  
9 Direct Testimony, Section IV. Please also refer to Section IV.D. of the Direct Testimony  
10 of Bahman Pourtaherian, for a complete discussion on the “present rate revenue” in this  
11 application and Section V of Mr. Linam’s direct testimony for how the revenue  
12 requirement and requests in this GRC will coordinate with other Commission  
13 proceedings.

14  
15 Q9. What is Cal Advocate’s recommendation for Special Request #12?

16 A9. Cal Advocates states that Commission should allow subsequent rate changes, with the  
17 following stipulations: first, changes to present rate revenue (and proposed rate revenue if  
18 affected) must be included before issuance of a final decision in this GRC; second,  
19 changes to purchased water and purchased power expenses will only be allowed if there  
20 is a need to change the proposed rate revenue.<sup>6</sup>

21  
22 Q10. Does California American Water agree with Cal Advocates position on Special Request  
23 #12?

24 A10. No. Cal Advocates and California American Water agree that subsequent rate changes  
25 should be incorporated into present rates but disagree on the inclusion of subsequent  
26 changes for proposed rates. Cal Advocates states that for proposed rate revenue, only  
27

28 

---

<sup>6</sup> Merida, p. 50-51, lines 20-22 and 1-4.



1 changes to purchased water and power expenses should be included. This would exclude  
2 filings such as capital offsets related to the Pure Water Monterey Expansion (“PWME”)  
3 as authorized in D.22-12-001 among others. D.22-12-001, for example, authorizes  
4 California American Water to file Tier 2 advice letters to incorporate facilities that are in  
5 operation into rates. California American Water made the first of these filings on April 3,  
6 2023, in Advice Letter 1406 which was approved by the Commission on May 19, 2023,  
7 and anticipates another advice letter filing in June 2023. Both of these filings will be  
8 approved, and implemented, prior to a Decision in this GRC proceeding. Since this will  
9 be incorporated into present rates as both California American Water and Cal Advocates  
10 agree is appropriate, it will necessarily also be incorporated into proposed rate revenue  
11 requirement. However, since it will already be in present rate revenue requirement it does  
12 not impact the *increase* between present and proposed rates. Cal Advocates provides no  
13 explanation of why this and other changes to revenue requirements would be excluded in  
14 the calculation of the final 2024 rates authorized in this proceeding. These subsequent  
15 rate changes, which occur on a separate tract from this GRC proceeding, are filed by  
16 California American Water, reviewed by the Water Division and ultimately approved or  
17 denied by the Commission. This request would merely incorporate those approved rate  
18 changes into present and proposed rates in this GRC proceeding. Therefore, the  
19 Commission should grant California American Water’s Special Request #12 as included  
20 in the original filing, without the modifications proposed by Cal Advocates.

21  
22 **C. Special Request #14 – Extension of 15% Cap on WRAM/MCBA Balances**  
23 **and Ability to Collect Balances Beyond the 15% Cap in Extraordinary**  
24 **Circumstances**

25 Q11. Can you describe Special Request #14?

26 A11. Yes, as discussed in Section IV of my direct testimony California American Water  
27 requests that the current 15% cap on the annual amortization of the WRAM/MCBA,  
28 authorized by D.18-12-021 and extended in D.21-11-018, should remain in place as long

1 as there are WRAM/MCBAs balances to be recovered. Additionally, as part of the Water  
2 Resources Sustainability Plan (“WRSP”), California American Water proposes to  
3 maintain the 15% cap, but seeks authorization to collect balances beyond the 15% cap in  
4 extraordinary circumstances where the balances grow large enough that they cannot be  
5 recovered in less than 24 months. This is discussed in Mr. Linam’s Supplemental  
6 Testimony, Section III.

7  
8 Q12. What is Cal Advocate’s recommendation for Special Request #14?

9 A12. Cal Advocates recommends denying Special Request #14 and states it is unfair and  
10 represents a considerable dollar amount of surcharges on customer bills. Cal Advocates  
11 further states that it would be possible for California American Water to levy even higher  
12 surcharges and removal of the cap is inconsistent with reasonable rates.<sup>7</sup>

13  
14 Q13. Does California American Water agree with Cal Advocates recommendation?

15 A13. No. Cal Advocates asserts, without evidence, that the WRAM/MCBA is a “considerable  
16 dollar amount of surcharges on customer bills and a frequent complaint echoed by Cal  
17 Am ratepayers.”<sup>8</sup> Since 2017, California American Water has received seven complaints  
18 about the WRAM/MCBA and as of May 18, 2023 there were 157 public comments on  
19 the docket for this proceeding and the WRAM was mentioned in nine comments.  
20 California American Water serves approximately 187,000 water service customers  
21 throughout the state of California; seven complaints since 2017 and nine mentions in the  
22 public record hardly constitute “a frequent complaint” as Cal Advocates claims.  
23 Additionally, as described in the rebuttal testimony of Wes Owens at Section IV.A.1.c,  
24 Cal Advocates is incorrect in its assertion that the WRAM/MCBA surcharge represents a  
25 significant portion of customer bills in most California American Water service areas. As  
26 shown in the rebuttal testimony of Wes Owens Section IV.A.1.c, for the period identified

27 <sup>7</sup> Dawadi at 51, lines 15-19.

28 <sup>8</sup> Dawadi at 51, lines 15-16.

by Cal Advocates (“by 2014”) WRAM/MCBA surcharges ranged from approximately - 4% to 8% for non-Monterey service areas. With respect to Cal Advocates assertion that “removal of the cap is inconsistent with reasonable rates”<sup>9</sup> as stated in the rebuttal testimony of Wes Owens Section IV.A.1.c, the current WRAM/MCBA and the proposed WRSP are designed to collect Commission approved fixed costs as sales decrease. Since these are Commission approved costs, they are by definition reasonable rates. This Special Request only seeks to align recovery more closely to when costs are incurred. Cal Advocates provides no response to the issue of intergenerational inequities, in which deferring uncollected authorized balances can harm future ratepayers as they become responsible for paying for balances accrued years earlier. In extraordinary cases, where undercollected balances grow very large, California American Water should be able to shorten the amortization period in order to collect authorized balances closer to the time period they are accrued.

**D. Special Request #18 – Monterey Wastewater Phase-In**

Q14. Can you describe Special Request #18?

A14. California American Water requests that the authorized revenue requirement increase approved by the Commission for test-year 2024 for its active and passive wastewater customers be phased-in over the entirety of the applicable rate case three-year period (2024-2026). The details of this phase-in are discussed in Mr. Linam’s Direct Testimony, Section IV.

Q15. What is Cal Advocate’s recommendation for Special Request #18?

A15. Cal Advocates recommends denial of Special Request #18. Cal Advocates argues the phase-in is not necessary because the GRC proposed rate increases do not meet the Commission’s CAPS (deferral of a portion of a general rate increase) criteria.<sup>10</sup> Cal

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<sup>9</sup> Dawadi at 51, lines 15-19.

<sup>10</sup> <https://docs.cpuc.ca.gov/published/Graphics/102121.PDF>.

Advocates also argues a payment plan “masks the true effectiveness of affordability programs such as CAP.”<sup>11</sup>

Q16. Does California American Water agree with Cal Advocates position on Special Request #18?

A16. No. Although the percentage increase proposed by California American Water is below the CAPS threshold, as outlined in the direct testimony of Jeff Linam unlike water customers, wastewater customers are not able to limit discretionary use by using less water that will result in a smaller bill. Also stated in the direct testimony of Jeff Linam, the wastewater service provided by California American Water in Monterey County serves a high number of customers in lower income areas and this phased approach is targeted to benefit not only customers eligible for the Customer Assistance Program (CAP) but also those customers falling just outside the income eligibility guidelines for the CAP program. For these reasons the Commission should adopt Special Request #18.

#### **IV. CALIFORNIA PUBLIC ADVOCATES - MEMORANDUM AND BALANCING ACCOUNT STATUS**

##### **A. Overview**

Q17. Can you provide an overview of what you will cover with respect to Memorandum and Balancing Accounts?

A17. Yes, I will cover California American Water’s position on whether particular memorandum and balancing accounts should remain open or be closed. Issues regarding the actual balances of accounts, and whether (and how) California American Water seeks recovery in this GRC, are covered in the rebuttal testimony of Michael Clarke.

---

<sup>11</sup> Merida, p. 54, lines 19-20.

Q18. Can you provide an overview of Cal Advocates testimony on Memorandum and Balancing Accounts with respect to the status accounts?

A18. Yes, generally Cal Advocates argues that many Memorandum and Balancing Accounts are unnecessary and should be closed. On numerous instances, Cal Advocates argues that costs are “routine business expense”<sup>12</sup> and that California American Water should forecast and include costs in base rates.<sup>13</sup> Cal Advocates uses this blanket argument as the rationale for closing many accounts and in most cases without any discussion as to the specifics of the account or the associated costs. Each of these accounts was previously established by the Commission and met each of the criteria including “exceptional nature” in Standard Practice U-27-W. Cal Advocates’ argument for closing accounts is overly general, unsupported, and without merit. Each account needs to be considered on a case-by-case basis, and I will address each account and whether it should be closed or remain open.

#### **B. Credit Card Memorandum Account**

Q19. Does California American Water agree that this account should be closed?

A19. No. Cal Advocates argues that these fees are routine business expenses but provides no evidence to support this statement. More importantly, as discussed in the rebuttal testimony of Patrick Pilz Section V on Special Request #16, these costs cannot be included in base rates without violating PUC § 755.5. Until a solution for the treatment of waived credit card fees, including the manner of excluding CAP customers from paying, is determined and new rates are implemented, this memorandum account should remain open. If the Commission approves Special Request #16, and any outstanding

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<sup>12</sup> Dawadi pg 15, ln 8-9; pg 26, ln 18-20; pg 31, ln 15-19; pg 32, ln 10-13; pg 50, ln 12.

<sup>13</sup> Dawadi pg 15, ln 8-9; pg 18, ln 20-21; pg 19, ln 12-13; pg 20, ln 7-8; pg 24, ln 5-7; pg 25, ln 4-5; pg 25, ln 20-21; pg 26, 20-21; pg 31, 16-17; pg 38, ln 22-23; pg 41, ln 2-4; pg 42, ln 21-23.

1 balances including interest in the Credit Card Memorandum Account is transferred to the  
2 CEBA, then the account can be closed.

3  
4 **C. Water Contamination Litigation Memorandum Account**

5 Q20. Does California American Water agree that this account should be closed?

6 A20. No. Cal Advocates recommends WCLMA be closed because the balance is zero and  
7 there has been no recent account activity. Cal Advocates recommendation does not make  
8 sense in light of recent and impending State and Federal actions regarding Per- and  
9 polyfluoroalkyl substances (“PFAS”).

10  
11 In 2016, the Environmental Protection Agency (“EPA”) health advisory for  
12 Perfluorooctanoic acid (“PFOA”) and Perfluorooctanesulfonic acid (“PFOS”) (two of the  
13 many variations collectively referred to as PFAS) was 70 parts per trillion (“ppt”).  
14 California’s notification levels were 5.1 for PFOA and 6.5 for PFOS; response levels  
15 were 10 ppt for PFOA and 40 ppt for PFOS. Prior to installing treatment, PFOS was  
16 detected at the Nut Plains well at levels over 100 ppt.

17  
18 It is my understanding that in 2023 the EPA announced proposed maximum contaminant  
19 levels of 4.0 ppt each for PFOA and PFOS, which are so low to be at the non-detect  
20 level. EPA expects these Maximum Contaminant Levels (“MCLs”) to become final  
21 some time in 2023. It is likely that PFAS levels above these MCLs will be detected in  
22 additional wells. EPA is also proposing to designate PFOA and PFOS as hazardous  
23 substances under The Comprehensive Environmental Response, Compensation, and  
24 Liability Act (“CERCLA”), which could substantially affect the cost to treat and dispose  
25 of byproducts, as well as increase liability. California American Water is still evaluating  
26 the new MCLs and how it may affect our operations company wide. California  
27 American Water currently has one well involved in pending litigation over PFAS, the Nut  
28 Plains well in Sacramento. That matter has been pending since late 2020 in the multi-

1 district litigation involving PFAS contamination claims, and it will be some time before  
2 adjudication, unless there is a settlement.

3  
4 Given these new proposed enforceable levels, it is possible that litigation could become  
5 more widespread, and the costs for both litigation and treatment are likely to be  
6 substantial but remain uncertain. Therefore, California American Water requests keeping  
7 this account open.

8  
9 **D. Group Insurance Balancing Account**

10 Q21. Does California American Water agree that this account should be closed?

11 A21. No. Cal Advocates argues that the balancing account removes California American  
12 Water's incentive to controls cost, obscures the true cost of service, and does not meet the  
13 exceptional nature criteria of Standard Practice U-27-W.<sup>14</sup> Cal Advocates provides no  
14 evidence or analysis that supports any of its claims.

15  
16 First, balancing account treatment does not remove the incentive to control cost or  
17 obscure the true cost of service. The Commission authorized the two-way Group  
18 Insurance Balancing Account in D.18-12-021 to track the difference between the total  
19 requested net group insurance costs on a per-employee basis and the actual level of new  
20 group insurance costs incurred on a per employee basis.<sup>15</sup> D.18-12-021 states "The  
21 Commission recognizes the difficulty in forecasting annual insurance expenses given the  
22 significant variability and volatility in insurance costs" and in D.18-12-021 the  
23 Commission states:

24  
25 We agree with Cal-AM that since American Water negotiates the insurance for  
26 Cal-AM and Cal-Am is only 5% of American Water in terms of employees, Cal-

27 <sup>14</sup> Dawadi, pp 18 ln 22-23 and pp 19 ln 1.

28 <sup>15</sup> D.18-12-021 at 228.

1 Am does not have much control of the negotiations or its insurance costs. Thus,  
2 we find that balancing account will not affect Cal-Am's incentives to negotiate  
3 lower prices.

4  
5 Furthermore, we find that there is significant variability in Cal-Am's group  
6 insurance expenses. American Water's recorded insurance costs from 2011 to  
7 2016 show significant variability in not only the insurance costs that American  
8 Water incurred by also the rate of these cost changes.<sup>16</sup>

9  
10 As stated by the Commission in D.18-12-021, the existence of a group insurance  
11 balancing account has no bearing on California American Water's incentives regarding  
12 costs because costs are negotiated at the American Water level and therefore outside the  
13 control of California American Water. Additionally, D.21-11-018 authorized  
14 continuation of this balancing account and Cal Advocates did not object.

15  
16 As shown in Table 1 below, Group Insurance expenses varied annually fairly  
17 significantly between 2017 and 2022. In comparing authorized to actual expenses, some  
18 years authorized expense exceeds actual and in some years the reverse is true. The  
19 balancing account ensures neither the customer nor the Company is made to pay the  
20 difference when authorized costs are below or above actual costs. In cases where  
21 authorized expense exceeds actual (2017, 2021, and 2022) the customer is made whole  
22 and when authorized expense is below authorized (2018-2020) the Company is made  
23 whole.

24  
25  
26  
27  
28 

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<sup>16</sup> D.18-12-021 at 229.



**Table 1**

	Authorized Expense	Actual Expense	Variance \$	Variance %
2017	\$ 3,301,114	\$ 2,813,196	\$ (487,918)	-14.78%
2018	\$ 2,168,272	\$ 2,852,039	\$ 683,767	31.54%
2019	\$ 2,224,647	\$ 2,878,727	\$ 654,080	29.40%
2020	\$ 2,279,818	\$ 3,132,620	\$ 852,802	37.41%
2021	\$ 3,936,456	\$ 3,321,662	\$ (614,795)	-15.62%
2022	\$ 4,204,135	\$ 3,234,009	\$ (970,126)	-23.08%

Cal Advocates' recommendation should be denied, and the Group Insurance Balancing Account should remain open.

**E. Pension and Other Post-Employment Benefits (“OPEB”) Balancing Accounts**

Q22. Does California American Water agree that the Pension Balancing Account and the OPEB Balancing Accounts should be closed?

A22. No. Cal Advocates recommends these two accounts be closed based on its claims that the balancing accounts remove California American Water’s incentive to controls cost, obscure the true cost of service, and do not meet the exceptional nature criteria of Standard Practice U-27-W.<sup>17</sup> Again, Cal Advocates provides no evidence or analysis that supports any of its claims and its recommendations should be rejected.

The Pension Balancing Account and the OPEB Balancing Account were first established through California American Water’s 2010 GRC (A.10-07-007) via a partial settlement in D.12-06-016.<sup>18</sup> Parties agreed to continue these accounts in California American Water’s 2013 GRC (A.13-07-002) and through D.15-04-007 the Commission reauthorized these

<sup>17</sup> Dawadi, pp 19, ln 13-17 and pp 20, ln 8-12.

<sup>18</sup> A.10-07-007, *Partial Settlement Agreement Between the Division of Ratepayer Advocates, The Utility Reform Network and California-American Water Company on Revenue Requirement Issues*, filed July 28, 2011 (“Partial Settlement”).

1 accounts through a Settlement.<sup>19</sup> In California American Water’s 2016 GRC (A.16-07-  
2 002), again parties agreed to leave these accounts open and the Pension and OPEB  
3 Balancing Accounts were again reauthorized in D.18-12-021.<sup>20</sup> In California American  
4 Water’s 2019 GRC (A.19-07-004) the request to keep the accounts open was unopposed  
5 by Cal Advocates and were reauthorized through settlement in D.21-11-018.<sup>21</sup> These  
6 accounts were established more than ten years ago and reauthorized in past three  
7 consecutive GRCs and all of conditions that necessitate the accounts still apply. As  
8 discussed in the rebuttal testimony of Mr. Popiolek, Pension and OPEB costs can vary  
9 significantly from year-to-year, are not under California American Water’s control, nor  
10 can they be accurately forecasted. As described in the testimony of Mr. Popiolek, the  
11 Company is seeing extreme volatility in this expense. This fluctuation is outside  
12 California American Water’s control and is substantial in nature. Additionally, the  
13 balancing accounts protect customers if the expenses were to significantly decrease in the  
14 future, as well as to allow California American Water the opportunity to claim in a future  
15 GRC the increased levels of cost. Thus, the Pension and OPEB Balancing Accounts meet  
16 *all* of the requirements to track costs, including the “exceptional nature.” Cal Advocates  
17 offers no evidence to their assertion the accounts remove “Cal Am’s incentive to control  
18 costs and can obscure the true cost of service decided in this GRC. Additionally, this  
19 account does not meet the “exceptional nature” criteria outlined in Commission Standard  
20 Practice U-27-W.”<sup>22</sup> Furthermore, various other Water Utilities regulated by the CPUC  
21 have Pension Balancing Accounts including California Water Service Company, Golden  
22 State Water Company, San Jose Water Company, Liberty Utilities, and Great Oaks Water  
23 Company. In the case of Liberty and Great Oaks, these balancing accounts were re-

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25 <sup>19</sup> A.13-07-002, D.15-04-007, Attachment A, Settlement, pp 167-169.

26 <sup>20</sup> D.18-12-021, pp 227.

27 <sup>21</sup> D.21-11-017, pp 121-122.

28 <sup>22</sup> Dawadi pp 19, ln 13-18 and pp 20, ln 8-13.

authorized in 2023 in each of their most recent GRC decisions.<sup>23</sup> Cal Advocates' recommendation should be rejected and the Pension and OPEB Balancing Accounts should remain open. As shown in Tables 2 and 3 below, Pension and OPEB expenses varied annually fairly significantly between 2017 and 2022.

Table 2 – Pension

	Authorized Expense	Actual Expense	Variance \$	Variance %
2017	\$ 1,883,842	\$ 1,796,896	\$ (86,946)	-4.62%
2018	\$ 1,482,872	\$ 968,100	\$ (514,772)	-34.71%
2019	\$ 1,482,872	\$ 1,444,480	\$ (38,392)	-2.59%
2020	\$ 1,482,872	\$ 1,941,800	\$ 458,928	30.95%
2021	\$ 1,353,006	\$ 1,911,600	\$ 558,594	41.29%
2022	\$ 1,353,006	\$ 2,031,360	\$ 678,354	50.14%

Table 3 – Other Post Employment Benefits

	Authorized Expense	Actual Expense	Variance \$	Variance %
2017	\$ 520,968	\$ 211,994	\$ (308,974)	-59.31%
2018	\$ 76,263	\$ (525,333)	\$ (601,596)	-788.85%
2019	\$ 67,892	\$ (933,098)	\$ (1,000,990)	-1474.38%
2020	\$ 69,576	\$ (1,154,060)	\$ (1,223,636)	-1758.70%
2021	\$ (1,084,156)	\$ (1,293,355)	\$ (209,199)	19.30%
2022	\$ (1,084,156)	\$ (1,338,984)	\$ (254,828)	23.50%

In comparing authorized to actual expenses, authorized exceeds actual in some years and in some years the reverse is true. The balancing account ensures neither the customer nor the Company is made to pay the difference when authorized costs are below or above actual costs. In cases where authorized expense exceeds actual (2017-2019 for Pension and 2017-2022 for OPEB) the customer is made whole and when authorized expense is

<sup>23</sup> D.23-02-003 (Liberty) and D.23-04-004 (Great Oaks).

below authorized (2020-2022 for Pension) the Company is made whole. For OPEB, the variance was in customers' favor in every year.

Cal Advocates' recommendation should be denied, and the Pensions and OPEB Balancing Accounts should remain open.

**F. Monterey Wastewater Purchased Power Balancing Account**

Q23. Does California American Water agree that this account should be closed?

A23. No, Cal Advocates states that if a statewide ICBA is adopted, "there is no need for a separate purchased power balancing account for Monterey Wastewater" and this account can be added to the statewide ICBA and this account can be closed.<sup>24</sup> Cal Advocates is incorrect, this account would still be needed because Wastewater and Water have separate tariffs and therefore separate preliminary statements. Because of this tariff issue, two accounts and two preliminary statements will still be required. Additionally, if California American Water's Water Resources Sustainability Plan (WRSP) is approved, California American Water would need to continue this account for the same reason.

**G. Chromium-6 Memorandum Account**

Q24. Does California American Water agree that the Chromium-6 Memorandum Account should be closed?

A24. Yes, once the balance is transferred to the CEBA with interest through the transfer date, the account can be closed.

**H. Sustainable Groundwater Management Act Memorandum Account**

Q25. Does California American Water agree that the Sustainable Groundwater Act Memorandum Account ("SGMA") should be closed?

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<sup>24</sup> Dawadi, pg 21, 15-20.

1 A25. No. California American Water supplies groundwater to customers in a number of basins  
2 impacted by SGMA. It is my understanding that Northern California, Department of  
3 Water Resources (“DWR”) initially rejected the Groundwater Sustainability Plan  
4 (“GSP”) for the critically over-drafted Merced Subbasin in November 2021 and ordered  
5 further work by the Groundwater Sustainability Agency’s (“GSA”) to address  
6 deficiencies. The revised plan was just approved in March 2023 and the cost of  
7 compliance and the impact on the California American Water’s Meadowbrook system are  
8 still being evaluated. GSPs were submitted in January 2022 for the medium and high  
9 priority basins and subbasins covered by the Yolo GSA, West Placer GSA, Sacramento  
10 Central Groundwater Authority, and Sacramento Groundwater Authority. Those GSPs  
11 are currently under review by DWR, and it is unknown what additional studies or  
12 management actions may be needed in those areas to correct deficiencies in those plans.  
13 The GSP for the Santa Rosa Plain Basin was accepted by DWR in January 2023. In each  
14 of these instances the groundwater sustainability agencies are still waiting for DWR to  
15 complete review of their plans or determining the costs needed to comply with the final  
16 approvals or conditions including additional modeling, studies, data collection and  
17 management actions (well metering, active and passive recharge investments, well  
18 moratoria, and additional land use planning coordination). Budgeting for the GSA’s are  
19 still on a year-to-year basis and most GSAs are tackling questions of long-term funding  
20 and budget needs in 2023 and 2024 now that plans have been submitted and the costs of  
21 compliance are becoming better defined. Therefore, accurately forecasting these costs is  
22 not possible at this time and these costs are not incorporated in the forecasted revenue  
23 requirement included in the 2022 GRC filing. Therefore, this account should remain open  
24 to track costs for California American Water to request for future recovery.

25  
26 **I. Water-Energy Nexus Program Management Memorandum Account**

27 Q26. Does California American Water agree that the Water-Energy Nexus Program  
28 Management Account should be closed?

1 A26. Yes, once the balance is transferred to the CEBA with interest through the transfer date,  
2 the account can be closed.

3  
4 **J. Public Safety Power Shut-off (“PSPS”) Memorandum Account**

5 Q27. Does California American Water agree that the Public Safety Power Shut-off  
6 Memorandum Account should be closed?

7 A27. No, California American Water filed for the PSPS Memorandum Account through  
8 Advice Letter 1275 in late 2019 which was approved by the Commission in February of  
9 2020. The purpose of the account is to record incremental Operation and Maintenance  
10 expenses and carrying costs of the new facilities costs, that are not otherwise covered in  
11 California American Water’s revenue requirement, to address public safety needs in the  
12 event of a proposed or declared Public Safety Power Shut-Off (PSPS) event by an electric  
13 utilities that provide electric service to California American Water’s ratemaking areas,  
14 including advanced preparation costs.

15  
16 Additionally, the Commission approved PSPS Memorandum Accounts for California  
17 Water Service Company and Golden State Water Company in late 2019 which were filed  
18 in Advice Letters 2342-A and 1781-WA respectively.

19  
20 The timing, frequency, and magnitude of these types of events is unknown which makes  
21 forecasting these expenses very challenging, if not impossible, and reflects a primary  
22 reason this account was requested by California American Water in Advice Letter 1275.  
23 This rationale has not changed; therefore, this account should remain open. Additionally,  
24 although Cal Advocates states that Cal Am “should forecast and include this expense in  
25 base rates” California American Water did not do so in this GRC. Therefore, if the  
26 Commission eliminates this account in this GRC California American Water would have  
27 no opportunity for cost recovery, forecasted or deferred, for these uncontrollable costs for  
28 the three-year period 2024-2026.

**K. Central Basin Contamination Memorandum Account**

Q28. Does California American Water agree that this account should be closed?

A28. No, California American Water filed for this Memorandum Account in June 2021 through Advice Letter 1338, and it was authorized by the CPUC in August 2021. As stated in 1338:

As reported in California American Water's pending general rate case, Application (A.) 19-07-004, the Arlington Well and the 48th Street Well have both been shut down due to elevated Trichloroethylene ("TCE"). Both the Arlington Well and 48th Street Well are in California American Water's Baldwin Hills service area. California American Water is not aware at this time of any responsible parties being identified as the potential source of this contamination. California American Water is installing wellhead treatment on both wells. The rate at which the carbon filter media need to be replaced, however, significantly exceeded the original project estimates. The increased frequency in filter changes will result in substantial unexpected costs. California American Water anticipates that treatment will be complete and production from these wells will commence in 2022.

It is my understanding that as of May 2023, California American Water only has modeled data for media replacement. Of the two wells, only the 48th Street well is active with treatment, and the Arlington well is inactive awaiting project completion. The 48th Street well has only been active since July 20, 2022. Additionally, initial flow rates can begin lower than design flow rates and increase over time as the Company monitors which results in a longer initial period between media change outs. Until the Arlington Well is run and California American Water knows current steady state contamination levels it

1 will have to reply upon vendors modeling based on assumed levels. Additionally, initial  
2 flow rates can begin lower than design flow rates and increase over time which results in  
3 a longer initial period between media change outs.

4  
5 Given that California American Water is still relying on modeled data for replacement  
6 media, the account should remain open.

7  
8 **L. Drinking Water Fees Memorandum Account**

9 Q29. Does California American Water agree that this account should be closed?

10 A29. Yes, California American Water established the Drinking Water Fees Memorandum  
11 Account through Advice Letter 1350 which was approved the CPUC in January 2022. As  
12 stated in the advice letter, the account will sunset upon implementation of the rates  
13 associated with this GRC proceeding.

14  
15 **M. TCP Litigation Proceeds Memorandum Account**

16 Q30. Do you agree with Cal Advocates' recommendation that the Commission should require  
17 the \$3.6 million in the TCP Litigation Memorandum Account should be transferred to the  
18 CEBA and returned to ratepayers?

19 A30. No. The Commission approved the TCP Litigation Memorandum Account effective  
20 December 16, 2021, to record and track TCP settlement proceeds related to  
21 contamination of the Malaga Well.<sup>25</sup> As stated in the Direct Testimony of Ian Crooks,  
22 California American Water settled a suit pertaining to the 1,2,3-TCP contamination of the  
23 Malaga Well. (Crooks Direct, Section XV.F.4.) As explained during discovery,

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<sup>25</sup> See Attachment 1 - Advice Letter 1351



1 California American Water will be spending the entire settlement on the Malaga Well  
2 Replacement and TCP Treatment project (I15-600110).<sup>26</sup>

3  
4 Pursuant to D.10-10-018, only “net proceeds” are appropriate for allocation between  
5 customers and shareholders. Net proceeds are defined as follows:

6  
7 Gross proceeds received minus all (1) reasonable legal expenses related to  
8 litigation, (2) costs of remedying plants, facilities, and resources to bring the  
9 water supply to a safe and reliable condition in accordance with General Order  
10 103-A standards, and (3) all other reasonable costs and expenses that are the  
11 direct result and would not have to be incurred in the absence of such  
12 contamination, including all relevant costs already recovered from ratepayers (for  
13 which they have been, or will be, repaid or credited).

14  
15 Here, there will be no “net proceeds” to allocate to customers because all \$3.6 million in  
16 settlement funds will be used to construct a new well with treatment. Cal Advocates’  
17 recommendation, which ignores California American Water’s testimony and discovery  
18 responses, does not comply with D.10-10-018 and should be rejected.

19  
20 Furthermore, as described in the Supplemental Direct Testimony of Bahman Pourtaherian  
21 (pg 4) in response to data request JMI-17-Q1.b, California American Water identified  
22 contributions related to the Malaga Well Replacement and TCP Treatment Project  
23 (project code I15-600110) that had not been incorporated into the Results of Operations  
24 (“RO”) Model. The RO Model has been updated to reflect a contribution of \$3,657,558  
25 for this project. This treatment is in conformance with General Accounting Instructions  
26 provided in the CPUC’s Uniform System of Accounts (see USOA General Accounting

27  
28 <sup>26</sup> See Attachment 2, California American Water’s Response to Cal Advocates Data Request  
JMI 17 Q001.a.

Instructions paragraph 15 – Water Contamination Proceeds) which provides accounting instructions that apply to all transactions involving contamination proceeds. The USOA provides that when the proceeds are used for construction, and when the plant is placed into service, the proceeds should be credited to Contributions in Aid of Construction. This is consistent with the treatment of the proceeds in Cal Am’s Updated RO Model. Further, it is my understanding that Cal Advocates also proposes to reduce the budget for the capital project proposed to address the contamination issue (Menda, pg 14, starting at line 16). So, Cal Advocates proposes to refund the contamination proceeds to customers through the CEBA account, and to use the same proceeds to reduce the capital improvement budget for the proposed treatment project. If Cal Advocates dual recommendations are adopted the contamination proceeds would be double counted. When combined with the appropriate treatment in conformance with the USOA Accounting Instructions, as incorporated in Cal Am’s Updated RO Model, the contamination proceeds would be triple counted. Clearly, such treatment would remove any incentive for water utilities to pursue contamination litigation. In fact, such treatment would create a de facto penalty for water companies to do so. For these reasons Cal Advocates’ recommendation to refund contamination proceeds to customers through the CEBA should be denied.

**N. Endangered Species Act Memorandum Account**

Q31. Does California American Water agree that the Endangered Special Act Memorandum Account should be closed?

A31. No, as stated in the direct testimony of Mike Clarke, this memorandum account is for tracking unforeseen requirements by government agencies to comply with Endangered Species Act related requirements. Cal Advocates' statement that “complying with federal legislation is not a new or unforeseeable expense and is part of routine operation of a utility” reflects a clear misunderstanding by Cal Advocates regarding the current regulatory environment.

1 For example, California American Water's 2018 Memorandum of Understanding with  
2 the National Marine Fisheries Service and the California Coastal Conservancy<sup>27</sup> requires  
3 California American Water to undertake a study evaluating the feasibility of removing  
4 Los Padres Dam. If California American Water elects to leave the dam in place, there are  
5 several actions that would be required to protect steelhead passage upstream of the dam,  
6 address sediment buildup behind the dam, and replenish gravel downstream of the dam.  
7 Until the final action is determined, NMFS has requested that California American Water  
8 undertake a Habitat Conservation Plan. The Habitat Conservation Plan would require  
9 interim steps to protect steelhead which would likely be a substantial cost but are as yet  
10 unknown. Thus, directly contrary to Cal Advocates' statement, the type and cost of the  
11 activities that will be required by California American Water are outside of California  
12 American Water's control and cannot be reasonably forecasted. Cal Advocates'  
13 recommendation should be rejected and the account remain open.  
14

15 **O. Seaside Groundwater Basin Memorandum Account**

16 Q32. Does California American Water agree that the Seaside Groundwater Basin  
17 Memorandum Account should be closed?

18 A32. As stated in the direct testimony of Mike Clarke, California American Water  
19 acknowledges that this account is closed but requests authorization, as D.21-11-018  
20 granted, to reestablish the account when needed. California American Water will file a  
21 Tier 2 advice letter when it expects to incur costs from the Seaside Basin Watermaster in  
22 the future and to transfer outstanding balances, if any, to the CEBA for refund or  
23 recovery. The advice letter will alert Commission staff that California American Water  
24 will begin recording these costs, which may be substantial.  
25  
26  
27

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28 <sup>27</sup> See Attachment 3 - CAW - NMFS - CCC MOA-Fully executed.

**P. Seaside Groundwater Basin Balancing Account**

Q33. Does California American Water agree that the Seaside Groundwater Balancing Account should be closed?

A33. No. Similar to the Endangered Species Act Memorandum Account, Cal Advocates' claims that payments made to Seaside Basin Watermaster are routine business expenses reflects a lack of understanding regarding the Seaside Basin.

In August 2003, California American Water filed a complaint in Monterey Superior Court, Case No. M66343, seeking appointment of a Watermaster and adjudication of the groundwater rights for the Basin on the basis that use was exceeding replenishment and there was an imminent risk to water supply and quality. In February 2007, the Superior Court issued the Amended Decision, finding that Basin pumping must be reduced over time to avoid adverse Basin impacts. Groundwater levels, however, continue to drop, creating a potential for saltwater intrusion.<sup>28</sup> Although the long-term needs of the Basin related to water quality and replenishment cannot be foreseen, the Watermaster is obligated to take actions to address these issues. Addressing these needs may come with substantial impact on costs charged to California American Water by the Watermaster. These costs could relate to additional staff time or installation of additional monitoring wells. Again, and directly contrary to Cal Advocates' position, the type and cost of the activities that will be required may be substantial, are outside of California American Water's control and cannot be reasonably forecasted. Cal Advocates' recommendation should be rejected, and the account remain open.

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<sup>28</sup> See <https://www.seasidebasinwatermaster.org/Other/2022%20Seawater%20Intrusion%20Analysis%20Report%20Board%20Final%2011-24-22.pdf> at page 1 ("Continued pumping in excess of recharge and freshwater inflows, coastal groundwater levels well below sea level, and ongoing seawater intrusion in the nearby Salinas Valley all suggest that seawater intrusion could occur in the Basin.")

**Q. Cease and Desist Order – Penalties and Fines Memorandum Account**

Q34. Does California American Water agree that the Cease-and-Desist Order – Penalties and Fines Memorandum Account should be closed?

A34. No. Cal Advocates does not provide any rationale for closing this account and its recommendation should be rejected. In 2009, the SWRCB adopted Order WR 2009-0060, a Cease-and-Desist Order (“CDO”) requiring California American Water to undertake additional measures to reduce diversions from the Carmel River, including prohibiting new service connections, and to terminate all such diversions no later than December 31, 2016. In 2016, the SWRCB adopted Order WR 2016-0016, which partially supersedes Orders 95-10 and 2009-0060. Order 2016-0016 extended the date by which California American Water must terminate all unlawful diversions from the Carmel River from December 31, 2016 to December 31, 2021. For the year ended December 31, 2022, California American Water has complied with the diversion limitations contained in the 2016 Order. Continued compliance with the diversion limitations in 2023 and future years may be impacted by a number of factors, including, without limitation, continued drought conditions in California and the exhaustion of water supply reserves, and will require successful development of alternate water supply sources sufficient to meet customer demand. The Orders remain in effect until California American Water certifies to the SWRCB, and the SWRCB concurs, that California American Water has obtained a permanent supply of water to substitute for past unauthorized Carmel River diversions. While California American Water cannot currently predict the likelihood or result of any adverse outcome associated with the Orders, further attempts to comply with the Orders may result in material additional costs and obligations to California American Water, including fines and penalties against California American Water in the event of noncompliance with the Orders. Therefore, this account continues to meet the requirements of Standard Practice U-27-W and should remain open.

**R. Memorandum Account for Environmental Compliance Issues for Acquisitions**

Q35. Does California American Water agree that the Memorandum Account for Environmental Compliance Issues for Acquisitions should be closed?

A35. No, this account tracks costs associated with environmental improvements and compliance issues for any utility that both California American Water acquires and the Commission approves inclusion of in the account. This would include acquisition of troubled water systems, as well. Not having this account would discourage investor-owned utilities from acquiring systems if they are not able to track such costs incurred when they acquire systems.

The Memorandum Account for Environmental Compliance Issues for Acquisitions goes back at least as far as 2015 and has been repeatedly held in the public interest. In approving California American Water's acquisition of the Dunnigan Water System, the Commission authorized the memorandum account to track environmental and compliance-related costs.<sup>29</sup> Since then, the Commission has repeatedly authorized the account in subsequent acquisitions. For example, in seeking approval of California American Water's acquisition of the Rio Plaza Water System, the company requested "Commission approval to expand the currently authorized 'Memorandum Account for Environmental Improvement and Compliance Issues for Acquisitions' and to allow the same costs as may be required in the Rio Plaza Acquisition as were allowed already in the approved account as related to the acquisition of service areas in Dunnigan, Geyserville, and Meadowbrook."<sup>30</sup> This account has not been controversial, with Cal

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<sup>29</sup> See D. 15-11-012, issued Nov. 10, 2015 (approving establishment of a memorandum account to track required environmental improvements and compliances issues).

<sup>30</sup> A.17-12-006, *Application of California-American Water Company (U-210-W), Rio Plaza Water Company, Inc. (U-319-W), and John Chris Nickel, Sr., Trustee for the John C. Nickel Trust for an Order Authorizing the Sale of all Shares of Rio Plaza Water Company, Incl, to California-American Water Company and Approval of Related Matters*, filed Dec. 1, 2017, at p. 17.

Advocates routinely not opposing it. Thus, in issuing its decision approving the Rio Plaza acquisition, the Commission first observed that “Cal Advocates concurred that if the acquisition is approved, Cal-Am should be able to include Rio Plaza in that Memorandum Account.”<sup>31</sup> The Commission then approved the account for that acquisition, as it has subsequently done in approving California American Water’s acquisition of the Hillview Water Company,<sup>32</sup> Fruitridge Vista Water Company,<sup>33</sup> Bellflower Municipal Water System,<sup>34</sup> Warring Water Company,<sup>35</sup> East Pasadena Water Company,<sup>36</sup> and most recently Bass Lake Water Company.<sup>37</sup> This should not be a controversial issue. The Commission has repeatedly held the account to be in the public interest and on every occasion requested by California American Water over the last several years approved inclusion of new acquisitions in the account. Indeed, in recently approving Suburban Water System’s acquisition of the Sativa County Sativa District, the Commission specifically found “the costs to address the environmental compliance and required improvements meet the four-pronged test for establishing a new memorandum

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<sup>31</sup> D.19-04-015, p. 36.

<sup>32</sup> D.19-11-003, p. 9 (Cal Advocates did not object to expanding to Memorandum Account for Environmental Improvements and Compliance Issues for Acquisitions), p. 10 (“The request to expand the existing environmental memorandum account will be granted”).

<sup>33</sup> D.19-12-038, p. 26, Ordering Paragraph 7.

<sup>34</sup> D.22-10-003, p. 33, Ordering Paragraph 5 (“The request of California-American Water Company (Cal-Am) to track costs of environmental improvements and compliance relating to Cal-Am’s acquisition of the assets of the Bellflower Municipal Water System in Cal-Am’s Memorandum Account for Environmental Improvements and Compliance Issues for Acquisitions is approved”).

<sup>35</sup> D. 22-08-005, p. 33 (“Cal-Am’s request to expand the currently authorized memorandum account entitled “The Memorandum Account for Environmental Improvements and Compliance issues for Acquisitions” is granted. This is consistent with decisions in prior acquisitions and in the public interest”).

<sup>36</sup> D.21-08-002, p. 2 (“Cal-Am’s request to expand the currently authorized memorandum account entitled ‘The Memorandum Account for Environmental Improvements and Compliance issues for Acquisitions’ is unopposed and should be granted. This is consistent with decisions in prior acquisitions and is in the public interest.”).

<sup>37</sup> D.23-04-007, p. 21.

accounts...” and then approved the memorandum account for Suburban.<sup>38</sup> Thus, there is no basis for closing California American Water’s account. It should remain open.

**S. Rio Plaza Transaction Memorandum Account**

Q36. Does California American Water agree that the Rio Plaza Memorandum Account should be closed?

A36. Yes, the transaction is completed and once the balance is transferred to the CEBA with interest through the transfer date, the account can be closed.

**T. Fruitridge Vista Transaction Memorandum Account**

Q37. Does California American Water agree that the Fruitridge Vista Transaction Memorandum Account should be closed?

A37. Yes, the transaction is completed and once the balance is transferred to the CEBA with interest through the transfer date, the account can be closed.

**U. East Pasadena Transaction Memorandum Account**

Q38. Does California American Water agree that the East Pasadena Transaction Memorandum Account should be closed?

A38. Yes, the transaction is completed and once the balance is transferred to the CEBA with interest through the transfer date, the account can be closed.

**V. East Pasadena Purchased Power Balancing Account**

Q39. Does California American Water agree that the East Pasadena Purchased Power Balancing Account should be closed?

A39. California American Water requests that this account remain open until East Pasadena has been integrated for ratemaking purposes into California American Water’s Southern

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<sup>38</sup> D.22-04-010, pp. 28-29.



1 Division as requested in this GRC. Once the ratemaking integration is implemented, East  
2 Pasadena will be rolled into the Essential Service Balancing Account (EBSA) assuming  
3 the decoupling mechanism is approved or the Full Cost Balancing Account (FCBA)  
4 assuming the decoupling mechanism is denied. Once this transition occurs and any  
5 balance including interest is transferred to the CEBA the account can be closed.  
6

7 **W. East Pasadena Purchased Water Balancing Account**

8 Q40. Does California American Water agree that the East Pasadena Purchased Water  
9 Balancing Account should be closed?

10 A40. California American Water requests that this account remain open until East Pasadena  
11 has been integrated for ratemaking purposes into California American Water's Southern  
12 Division as requested in this GRC. Once the ratemaking integration is implemented, East  
13 Pasadena will be rolled into the Essential Service Balancing Account (EBSA) assuming  
14 the decoupling mechanism is approved or the Full Cost Balancing Account (FCBA)  
15 assuming the decoupling mechanism is denied. Once this transition occurs and any  
16 balance including interest is transferred to the CEBA the account can be closed.  
17

18 **X. East Pasadena Pumping Assessment Balancing Account**

19 Q41. Does California American Water agree that the East Pasadena Pumping Assessment  
20 Balancing Account should be closed?

21 A41. California American Water requests that this account remain open until East Pasadena  
22 has been integrated for ratemaking purposes into California American Water's Southern  
23 Division as requested in this GRC. Once the ratemaking integration is implemented, East  
24 Pasadena will be rolled into the Essential Service Balancing Account (EBSA) assuming  
25 the decoupling mechanism is approved or the Full Cost Balancing Account (FCBA)  
26 assuming the decoupling mechanism is denied. Once this transition occurs and any  
27 balance including interest is transferred to the CEBA the account can be closed.  
28

1 Q42. Do you have any other comments regarding Memorandum and Balancing accounts?  
2 A42. Yes, I do. In several instances Cal Advocates argues that costs booked to memorandum  
3 and balancing accounts can be reasonably forecast and so should be included in  
4 Commission authorized revenue requirement and the accounts closed. I have addressed  
5 recommendations for individual accounts above, but it must be noted that when a cost is  
6 booked to a memorandum account it is generally moved “below the line” in the GRC RO  
7 Model. This means the costs are not reflected in the historical expenses provided in the  
8 RO Model and used to forecast future expenses. So, if the Commission does eliminate  
9 these memorandum accounts, an adjustment to forecasted expenses must also be made to  
10 ensure necessary costs are reflected in forecasted expenses.  
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12 Q43. Does this conclude your testimony?  
13 A43. Yes, it does.  
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# ATTACHMENT 1

## PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298



January 31, 2022

Vera Kostikova  
Financial Analyst - Rates & Regulatory  
California-American Water Company  
4701 Beloit Drive  
Sacramento, CA 95838-2434

Dear Ms. Kostikova,

The Water Division of the California Public Utilities Commission has approved California-American Water Company's Advice Letter No. 1351, filed on December 16, 2021, regarding the creation of TCP Litigation Proceeds Memorandum Account (TCPLMA) for all Service Areas.

Enclosed are copies of the following revised tariff sheets, effective December 16, 2021, for the utility's files:

<b>P.U.C.</b>	
<b>Sheet No.</b>	<b>Title of Sheet</b>
10161-W	Preliminary Statement, Summary Table, Sheet 3
10162-W	Preliminary Statement BP. TCP Litigation Proceeds Memorandum Account ("TCPLMA"), Sheet 1
10163-W	Table Of Contents, Sheet 1

Please contact Bradley Leong at [BL4@cpuc.ca.gov](mailto:BL4@cpuc.ca.gov) or 415-703-2307, if you have any questions.

Thank you.

Enclosures

**CALIFORNIA PUBLIC UTILITIES COMMISSION  
DIVISION OF WATER AND AUDITS**

**Advice Letter Cover Sheet**

**Utility Name:** California American Water

**Date Mailed to Service List:** December 16, 2021

**District:** All Service Areas

**CPUC Utility #:** U210W

**Protest Deadline (20<sup>th</sup> Day):** January 5, 2022

**Advice Letter #:** 1351

**Review Deadline (30<sup>th</sup> Day):** January 15, 2022

**Tier**    ☐ 1    ☒ 2    ☐ 3    ☒ Compliance

**Requested Effective Date:** December 16, 2021

**Authorization** D. 10-10-018

**Rate Impact:** \$See AL  
See AL%

**Description:** Creation of TCP Litigation Proceeds  
Memorandum Account (TCPLMA)

The protest or response deadline for this advice letter is 20 days from the date that this advice letter was mailed to the service list. Please see the "Response or Protest" section in the advice letter for more information.

**Utility Contact:** Vera Kostikova

**Utility Contact:** Jonathan Morse

**Phone:** 916-568-4246

**Phone:** 916-568-4237

**Email:** Vera.kostikova@amwater.com

**Email:** Jonathan.morse@amwater.com

**DWA Contact:** Tariff Unit

**Phone:** (415) 703-1133

**Email:** [Water.Division@cpuc.ca.gov](mailto:Water.Division@cpuc.ca.gov)

**DWA USE ONLY**

DATE

STAFF

COMMENTS

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

[ ] APPROVED

[ ] WITHDRAWN

[ ] REJECTED

**Signature:** \_\_\_\_\_

**Comments:** \_\_\_\_\_

**Date:** \_\_\_\_\_

\_\_\_\_\_



4701 Beloit Drive  
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December 16, 2021

ADVICE LETTER NO. 1351

TO THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Pursuant to General Order 96-B, California-American Water Company (U210W) hereby submits for review this advice letter, including tariff sheets applicable to all areas served by California American Water Company.

**Purpose:**

California American Water submits this Tier 2 Advice Letter requesting authority to establish the TCP Litigation Proceeds Memorandum Account (TCPLMA) to track proceeds received from Water Contamination Litigations.

**Background:**

California American Water filed a complaint against a responsible party that manufactured, marketed, distributed, sold, applied, released, discharged, and/or disposed of the chemical 1,2,3-Trichloropropane ("TCP") and/or TCP-containing products, which are the source and cause of any TCP contamination in California American Water's Malaga Way Well in its Suburban-Rosemont System and in Well 13 in its Fruitridge Vista system. California American Water reached a settlement with the defendant and received settlement proceeds to recover future treatment costs. California American Water has not yet used these funds to replace or remediate any plant.

**Discussion:**

California American Water requests authorization to establish a Preliminary Statement ZBP. (TCP Litigation Proceeds Memorandum Account) to record and track TCP settlement proceeds in accordance with the Commission's D.10-10-018 and D.10-12-058.

In OP 4 of D.10-10-018, the Commission concluded:

*"When contamination proceeds arising from damage awards, settlements, government order or insurance are initially received from the funding source, they shall be placed in a memorandum account until the need for making expenditures arises, whereupon an approval to transfer the proceeds to the appropriate dedicated 265 sub-account shall be sought by a Tier 3 advice letter filing."*

In addition, Appendix C of D.10-12-058 concludes:

*(1) "From the time that a utility receives Water Contamination proceeds until the time that plant funded by such proceeds is no longer necessary or useful for public utility service, such proceeds shall be accounted for in the manner summarized in this rule..."*

*(4) "When Water Contamination proceeds are received by a utility, they shall be recorded both in a cash account and, if authorized by the Commission, in a memorandum account. Once the proceeds have been invested in remediation and replacement Plant*

*that has been placed in service, it must place these funds in a designated account, as specified in this order, and transactions associated with each account shall be restricted to the types of proceeds only...”*

The TCP Litigation Proceeds Memorandum Account will reference Appendix C (Rules for the Accounting of Water Contamination Proceeds) of the Commission’s D.10-12-058 to ensure proceeds are accounted for in the manner summarized.

**Tier Designation:**

California American Water submits this as a Tier 2 designation pursuant to General Order No. 96-B.

**Effective Date:**

California American requests an effective date of December 16, 2021, based on the State Water Resources Control Board Emergency regulations and the filing date of this advice letter.

**RESPONSE OR PROTEST<sup>1</sup>**

Anyone may submit a response or protest for this AL. When submitting a response or protest, **please include the utility name and advice letter number in the subject line.**

A **response** supports the filing and may contain information that proves useful to the Commission in evaluating the AL. A **protest** objects to the AL in whole or in part and must set forth the specific grounds on which it is based. These grounds<sup>2</sup> are:

1. The utility did not properly serve or give notice of the AL;
2. The relief requested in the AL would violate statute or Commission order, or is not authorized by statute or Commission order on which the utility relies;
3. The analysis, calculations, or data in the AL contain material error or omissions;
4. The relief requested in the AL is pending before the Commission in a formal proceeding;  
or
5. The relief requested in the AL requires consideration in a formal hearing, or is otherwise inappropriate for the AL process; or
6. The relief requested in the AL is unjust, unreasonable, or discriminatory, provided that such a protest may not be made where it would require relitigating a prior order of the Commission.

A protest may not rely on policy objections to an AL where the relief requested in the AL follows rules or directions established by statute or Commission order applicable to the utility. A protest shall provide citations or proofs where available to allow staff to properly consider the protest.

Water Division must receive a response or protest via email (**or** postal mail) within 20 days of the date the AL is filed. When submitting a response or protest, **please include the utility name and advice letter number in the subject line.**

The addresses for submitting a response or protest are:

---

<sup>1</sup> G.O. 96-B, General Rule 7.4.1

<sup>2</sup> G.O. 96-B, General Rule 7.4.2

**Email Address:**

[Water.Division@cpuc.ca.gov](mailto:Water.Division@cpuc.ca.gov)

**Mailing Address:**

Tariff Unit, Water Division, 3<sup>rd</sup> Floor  
California Public Utilities Commission,  
505 Van Ness Avenue  
San Francisco, CA 94102

On the same day the response or protest is submitted to the Water Division, the respondent or protestant shall send a copy of the protest to Cal-Am at:

**Email Address:**

[vera.kostikova@amwater.com](mailto:vera.kostikova@amwater.com)

[sarah.leeper@amwater.com](mailto:sarah.leeper@amwater.com)

[ca.rates@amwater.com](mailto:ca.rates@amwater.com)

**Mailing Address:**

4701 Beloit Drive  
Sacramento, CA 95838

555 Montgomery Street, Suite 816  
San Francisco, CA 94111

4701 Beloit Drive  
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Cities and counties that need Board of Supervisors or Board of Commissioners approval to protest should inform DWA, within the 20 day protest period, so that a late filed protest can be entertained. The informing document should include an estimate of the date the proposed protest might be voted on.

**REPLIES**<sup>3</sup>

The utility shall reply to each protest and may reply to any response. Any reply must be received by DWA within five business days after the end of the protest period, and shall be served on the same day on each person who filed the protest or response to the AL.

The actions requested in this advice letter are not now the subject of any formal filings with the California Public Utilities Commission, including a formal complaint, nor action in any court of law.

This filing will not cause the withdrawal of service, nor conflict with other schedules or rules.

If you have not received a reply to your protest within 10 business days, please contact me at (916) 568-4246.

CALIFORNIA-AMERICAN WATER COMPANY

*/s/ Vera Kostikova*

---

Vera Kostikova  
Financial Analyst - Rates & Regulatory

---

<sup>3</sup> G.O. 96-B, General Rule 7.4.3



<b>Cal P.U.C. Sheet No.</b>	<b>Title of Sheet</b>	<b>Cancelling Cal P.U.C. Sheet No.</b>
10161-W	PRELIMINARY STATEMENT Summary Table Sheet 3	10158-W
10162-W	PRELIMINARY STATEMENT Sheet 1	
10163-W	TABLE OF CONTENTS Sheet 1	10160-W

**CALIFORNIA-AMERICAN WATER COMPANY**

655 W. Broadway, Suite 1410

San Diego, CA 92101

Cancelling

Revised

Revised

Cal. P.U.C. Sheet No.

Cal. P.U.C. Sheet No.

10161-W

10158-W

PRELIMINARY STATEMENT  
Summary Table

Sheet 3

Reference	Account	Tariff
BM	East Pasadena Purchased Water Balancing Account (EPPWBA)	10100-W
BN	East Pasadena Pumping Assessment Cost Balancing Account (EPPACBA)	10101-W
BO	Drinking Water Fees Memorandum Account (DWFMA)	10159-W
BP	TCP Litigation Proceeds Memorandum Account (TCPLMA)	10162-W

(N)

(Continued)

(TO BE INSERTED BY UTILITY)		ISSUED BY	(TO BE INSERTED BY C.P.U.C.)	
Advice	1351	J. T. LINAM	Date Filed	<u>12/16/2021</u>
Decision	D.10-10-018	DIRECTOR - Rates & Regulatory	Effective	<u>12/16/2021</u>
			Resolution	<u></u>

## PRELIMINARY STATEMENT

Sheet 1

**BP. TCP Litigation Proceeds Memorandum Account ("TCPLMA")**

(N)

**1. PURPOSE:**

The purpose of the TCP Litigation Proceeds Memorandum Account ("TCPLMA") is to track litigation awards and settlement proceeds received by California American Water with respect to litigation against manufacturers and distributors referred to as potentially responsible parties (PRPs) that manufactured and distributed products, which contained 1,2,3 trichloropropane (TCP) in California. In addition, California American Water will track application of funds received towards investments in replacement and treatment property.

**2. APPLICABILITY**

All California American Water Service Areas.

**3. ACCOUNTING PROCEDURE**

California American Water shall maintain the TCPLMA in accordance with OP 4 of D.10-10-018 and Appendix C (Rules for the Accounting of Water Contamination Proceeds) of D.10-12-058, making entries as follows:

Investment Entries

- a. A credit or debit entry equal to the amounts recorded in Operations and Maintenance, and Administrative & General Expense Accounts for costs incurred to support TCP litigation action.
- b. A debit or credit entry equal to the amounts obtained in judgements or settlements in the subject litigation.
- c. A debit or credit entry equal to the original cost of capital investments placed in service to replace TCP contaminated property or to treat water for TCP contamination, including such projects that have been completed prior to the adoption of this memorandum account. Capital investments will be recorded by project and by district.

Revenue Requirement Entries

- d. A debit or credit entry equal to the revenue requirement of each capital investment recorded in (c) that is not offset by contamination proceeds and is not included in authorized revenue requirement (including return on investment for company funded plant, income taxes, ad valorem tax, depreciation, and other taxes and fees

**4. RATEMAKING PROCEDURE:**

Currently there is no ratemaking component to this memorandum account. Requests for recovery of any balance are to be processed according to General Order 96-B and Standard Practices or otherwise determined in a Commission decision. Upon Commission review and approval, balances shall be transferred to the appropriate district CEBA's for recovery/refund.

(N)

(Continued)

(TO BE INSERTED BY UTILITY)		ISSUED BY	(TO BE INSERTED BY C.P.U.C.)	
Advice	1351	J. T. LINAM	Date Filed	12/16/2021
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			Resolution	

**CALIFORNIA-AMERICAN WATER COMPANY**

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Cancelling

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Cal. P.U.C. Sheet No.

Cal. P.U.C. Sheet No.

10163-W

10160-W

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(Continued)

(TO BE INSERTED BY UTILITY)		ISSUED BY	(TO BE INSERTED BY C.P.U.C.)	
Advice	1351	J. T. LINAM	Date Filed	12/16/2021
Decision	D.10-10-018	DIRECTOR - Rates & Regulatory	Effective	12/16/2021
			Resolution	

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# ATTACHMENT 2

California-American Water Company

APPLICATION NO. A.22-07-001  
DATA REQUEST RESPONSE

**Response Provided By:** Mark Hernandez  
**Title:** Capital Program Senior Administrator  
**Address:** California American Water  
4701 Beloit Dr  
Sacramento CA 95838  
**Cal Adv Request:** A2207001 CAL ADV DATA REQUEST # JMI-17  
**Company Number:** Cal ADV JMI 17 Q001.a  
**Date Received:** October 19, 2022  
**Date Response Due:** November 2, 2022  
**Subject Area:** Malaga Well

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**DATA REQUEST:**

1. Regarding the Malaga Well Replacement and TCP Treatment project (project code I15-600110), the Direct Testimony of Ian C. Crooks at p. 219:9-11 states that Cal Am settled a lawsuit in 2021 pertaining to the 1,2,3-TCP contamination of the Malaga Well, and the settlement provides “funding to either provide treatment for the Malaga Well or construct a new well with treatment.”

- a. Please indicate, in dollar amount and percent of total project costs, what portion of the costs of the well replacement and treatment is being funded by the 2021 settlement.

**CAL-AM’S RESPONSE**

California American Water incorporates its General Objections as if each is stated fully here. California American Water further objects to the extent this request calls for any legal conclusions. Subject to, but without waiving, these objections, California American Water responds: \$3,657,555.28, the entire settlement, or 51% of Project I15-600110's total estimated cost.

# ATTACHMENT 3

## **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).

- 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.



- 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



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

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

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.



- 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

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.

#### 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.



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

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.



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.

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.

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.



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.

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

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).



- 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

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



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

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 (5<sup>th</sup>) 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

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.



**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	655 West Broadway Suite 1410	Phone: 619-446-4761
	California-American Water Company	San Diego, CA 92101	Fax: 619-230-1096
NMFS	Alecia Van Atta Assistant Regional	777 Sonoma Ave., Rm. 325	Phone: 707-575-6058
	Administrator for California Coastal Office, West Coast Region	Santa Rosa, CA 95404	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

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: \_\_\_\_\_

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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: Dec. 21, 2017

**ACCEPTED ON BEHALF OF THE CALIFORNIA STATE COASTAL CONSERVANCY BY:**

\_\_\_\_\_  
Sam Schuchat  
Executive Officer  
California State Coastal Conservancy

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

**MOA between CAW, NMFS, and the Conservancy 2017**

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**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

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	