

Memorandum of Understanding

Among the California-American Water Company (“CAW”),
the State Coastal Conservancy (“the Conservancy”), and
the National Marine Fisheries Service (“NMFS”)

Regarding
Dam Removal and Conveyance of Real Property,
San Clemente Dam, Carmel River, Monterey County, California

Pertinent Facts

- A. CAW is a California corporation and an investor-owned water utility regulated by the California Public Utilities Commission.
- B. The Conservancy is an agency of the State of California within the Resources Agency, charged with enhancing and protecting coastal resources.
- C. The Division of Safety of Dams (“DSOD”), whose purpose is to protect people against loss of life and property from dam failure, is a division of the California Department of Water Resources (“DWR”), which is charged with improving and sustaining California’s water resources.
- D. NMFS is an agency of the federal government within the Department of Commerce, charged in part with conserving and protecting natural resources.
- E. The Monterey Peninsula Regional Park District (“the District”) is a Special District whose purpose is to protect and preserve open space, habitat, and environmental quality, and to promote appropriate public recreational and educational activities.
- F. CAW owns the San Clemente Dam (“the dam”), located on the Carmel River in Monterey County approximately 18 miles upstream from the mouth of the river in Monterey Bay, as shown on Exhibit A, which is incorporated by reference and attached. The dam is an obsolete structure built in 1921, and now serves no water storage, flood-control, or electrical generation function.
- G. The Carmel River and the area surrounding the dam constitute valuable watershed area and habitat for many species of plants and animals.

- H. DSOD has determined that the dam presents a safety hazard, and is requiring CAW to remediate the hazard. In December 2007, DWR completed the San Clemente Dam Seismic Safety Project Final Environmental Impact Report/Environmental Impact Statement (“EIR/EIS”), under the California Environmental Quality Act and the National Environmental Policy Act, analyzing alternatives for addressing the safety issues. Alternatives reviewed include buttressing the dam and removing it. DWR certified the Final EIR on December 31, 2007.
- I. Buttressing the dam would resolve the immediate safety issue, but would provide no additional benefit in that the dam has nearly filled with sediment and does not completely fulfill its original purposes.
- J. The dam constitutes a significant barrier to steelhead trout, a threatened species under the federal Endangered Species Act; and a partial barrier to the dispersal of the California red-legged frog, also a federally threatened species.
- K. The Conservancy, the Resources Agency, and NMFS, as well as other state and federal resource agencies, seek removal of the dam and sequestration of the accumulated sediment to obtain multiple public environmental benefits. These benefits include restoring access to 25 miles of spawning and rearing habitat for steelhead trout, restoring the natural sediment supply to the downstream river and beach, restoring the ecological connectivity of the river and riparian corridor, and providing new public recreational opportunities.
- L. The Conservancy has funded several recent studies concluding that removal of the dam and restoration of the habitat are physically and financially feasible.
- M. CAW will file an application or amend its current application with DSOD that is consistent with the project approved by DSOD in the Notice of Determination. The parties expect that DWR would be amenable to removal of the dam provided that the project can be accomplished in a reasonable time.
- N. CAW is amenable to removal of the dam instead of buttressing it, provided that the project will satisfy the concerns of DWR and otherwise meet the needs of CAW, as indicated in this memorandum of understanding (“the MOU”), and provided that the project will not cost CAW more than dam buttressing, consistent with CAW’s obligations to its ratepayers and to the California Public Utilities Commission.
- O. As part of the project, CAW is willing to convey to the District approximately 928 acres (“the property,” as described in Exhibit B, which is incorporated by

reference and attached) around and near the dam, for habitat and recreational purposes, and for watershed protection.

In light of the facts above, the parties agree as follows:

1. Purpose

The purpose of this MOU is to state in concept the willingness and ability of the parties to implement and provide or obtain funding for removal of the San Clemente Dam, including re-routing a section of the Carmel River, sequestration of sediment, land transfer, and restoration of habitat for steelhead trout and other species; in an affordable and timely manner that satisfies the dam-safety concerns of DWR. These tasks are collectively referred to below as “the dam-removal project” or “the project.”

2. Dam removal

- a. The Conservancy will contract for preparation of the final design and engineering plans for the project.
- b. With the assistance of NMFS as appropriate, the Conservancy will contract for preparation of permit applications and will assume the lead role in coordinating with regulatory agencies for permits related to project implementation.
- c. The Conservancy and CAW will continue working, with assistance from NMFS as appropriate, to secure project assistance from the Innovative Readiness Training (“IRT”) Program of the Department of Defense. CAW will submit an application or serve as a co-applicant to IRT if necessary to obtain the services of the IRT.
- d. CAW will submit to the agencies the Conservancy determines has jurisdiction over the project permit applications prepared by the Conservancy or its agents.
- e. CAW will manage construction of the project (including hiring contractors) as designed by the Conservancy or its agents.
- f. CAW will implement required mitigation and monitoring measures during project construction.

3. Post-construction mitigation and monitoring requirements

- a. The Conservancy and CAW will cooperate to develop a strategy for implementation of post-construction mitigation and monitoring required under the California Environmental Quality Act and project permits. Approaches may include the shifting of mitigation and monitoring responsibilities through contracts.
- b. The Conservancy will oversee the development of a long-term maintenance plan, including monitoring, to help ensure the integrity of project structures and identify and rectify potential problems, particularly with the sequestered sediment, before impacts occur.

4. Land Transfer

- a. As part of the project, CAW will convey to the District approximately 928 acres around and near the dam. If the District is unable or unwilling to accept some or all of the property, CAW will convey the property to the State of California on behalf of the Conservancy, subject to State approval processes; or, at the Conservancy's option, to the Conservancy's designee. However, the grantee or substitute grantee must be an entity qualified under the U.S. Internal Revenue Code to receive donations of real property.
- b. CAW will convey the property at no cost, subject to agreed retained access and utility easements.
- c. Use of the property following conveyance will be limited through appropriate instruments to open space, watershed and habitat protection and enhancement, scientific investigation, and public recreation and education.
- d. CAW will continue to own the land until the dam-removal project is complete, unless early transfer of the property or portions of it is feasible. Early conveyance of the property is subject to the approval processes of the grantee.
- e. CAW will immediately allow the Conservancy to begin "due diligence" investigation of the property, including, but not limited to, conducting an appraisal, title review, and environmental site assessment. CAW will allow the Conservancy and its agents access to the property as necessary to complete this work, subject to mutually agreeable terms of entry.

5. Costs

- a. Project costs include all costs for final design and engineering, additional technical studies and review required, environmental review and permitting, project construction, design and implementation of required mitigation and monitoring measures, project management, and project administration (including financial audits).
- b. CAW will contribute an amount equivalent to the agreed estimated cost, which includes a 25 percent contingency, of buttressing the dam, as described in the final EIR (“CAW’s contribution”). This cost is anticipated to be no less than \$50 million. Buttressing costs will be estimated based on a third-quarter 2009 construction start date.
- c. The Conservancy will undertake to secure up to \$35 million from state, federal, and private foundation sources (“the public funders”). These sources are expected to include, among others, the Conservancy, the Resources Agency, the Wildlife Conservation Board, the Department of Fish and Game, and NMFS though each of these entities must formally act to approve a contribution. Nothing in this paragraph is intended to supplant, alter, or amend any existing protocols for obtaining funding. NMFS will provide, as appropriate, information to assist the Conservancy in this effort. The parties will enter into agreements with the funders as necessary to secure the funding.
- d. The Conservancy and CAW will evenly divide the costs of final design and engineering, and permits. CAW’s payment of these costs shall count towards CAW’s contribution.
- e. Any assistance from the IRT Program will be credited to the public funders as part of their contribution to the project.
- f. CAW will assist the Conservancy in securing private foundation funding for the project.
- g. If the actual project costs are greater than or equal to CAW’s contribution, then CAW will pay its full contribution.
- h. If the actual project costs are less than CAW’s contribution, then the state-agency signatories will cooperate with the California Public Utilities Commission in determining which entities are entitled to the difference.

- i. Any performance by the National Marine Fisheries Service under this MOU is subject to the availability of appropriated funds and the Antideficiency Act, 31 U.S.C. 1341.

6. Liability

- a. Liability for failure of the project design will be borne by the design team. The Conservancy will require that CAW be indemnified and named as an additional insured on the insurance policy of the final design contractor.
- b. The Conservancy will continue to analyze protection from potential liability for project design, through insurance, indemnification, or some other mechanism, and will work with the Resources Agency, the Governor's Office and, as appropriate, the Legislature, to try to obtain the necessary protection.
- c. CAW will be responsible for ensuring that the project is constructed as provided in the final design and permits by providing project management services. CAW will require that the Conservancy be indemnified and named as an additional insured on the insurance policies of the construction contractors.
- d. If IRT participates in the project and requires a hold harmless agreement, the Conservancy will seek to have the State provide it.
- e. To the extent allowed by law, the District will be held harmless for liability resulting from the project. The Conservancy will explore the appropriate method of providing this assurance, with assistance from CAW.

7. Miscellaneous

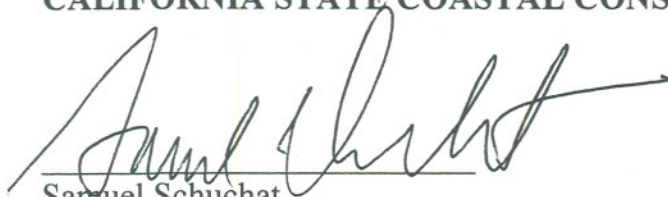
- a. Infeasibility. If the parties find the project to be infeasible for reasons not limited to insoluble physical problems, excessive cost (the reasonable anticipated project costs exceed the funding commitments of the parties at the end of the final design period or after the construction-bid process), or intractable permit problems, CAW will be released from its obligations under the (future) project agreement(s), and the other parties may withdraw from that agreement or those agreements as well. In that case, CAW may pursue other options to address the concerns of DSOD, subject to all

MOU: Removal of San Clemente Dam

regulatory reviews and approvals, and will provide a schedule for filing a new application with DSOD.

- b. Sharing of information. CAW will share with the other parties relevant documents pertaining to the dam and the property.
- c. Cooperation. Each of the parties will use its contacts and abilities to assist the Conservancy in securing necessary authorizations and approvals.
- d. Project authorization. The dam-removal project is subject to a specific, future, binding project agreement or agreements formally authorized by each relevant entity.
- e. Future project-implementation agreement. CAW, the Conservancy, and NMFS intend to enter into a project-implementation agreement within six months of the effective date of this MOU.
- f. Duration of MOU. This MOU shall take effect when fully signed, on the date last signed below. Except as otherwise provided in the MOU, it shall expire if the project is deemed infeasible in accordance with the MOU; or upon execution of the formal project agreement(s); or upon a party's written notice to the other parties that it has decided not to proceed with the project; or upon further mutual agreement.
- g. Authority. The persons signing below represent that they have authority to sign the MOU on behalf of their respective entities.
- h. Signatures and counterparts. This MOU may be signed in counterpart originals, which, when assembled together, shall constitute one original agreement. The Conservancy shall collect and collate the original signature pages, and shall then provide to each signatory entity a copy of the fully signed MOU.

CALIFORNIA STATE COASTAL CONSERVANCY



Samuel Schuchat
Executive Officer

2/6/08
Date

MOU: Removal of San Clemente Dam

CALIFORNIA-AMERICAN WATER CO.

Kent Turner
President

Date

NATIONAL MARINE FISHERIES SERVICE

Rodney R M McInnis

Rodney McInnis
Regional Administrator

2-06-08

Date

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CALIFORNIA STATE COASTAL CONSERVANCY

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Executive Officer

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Kent Turner
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Rodney McInnis
Regional Administrator

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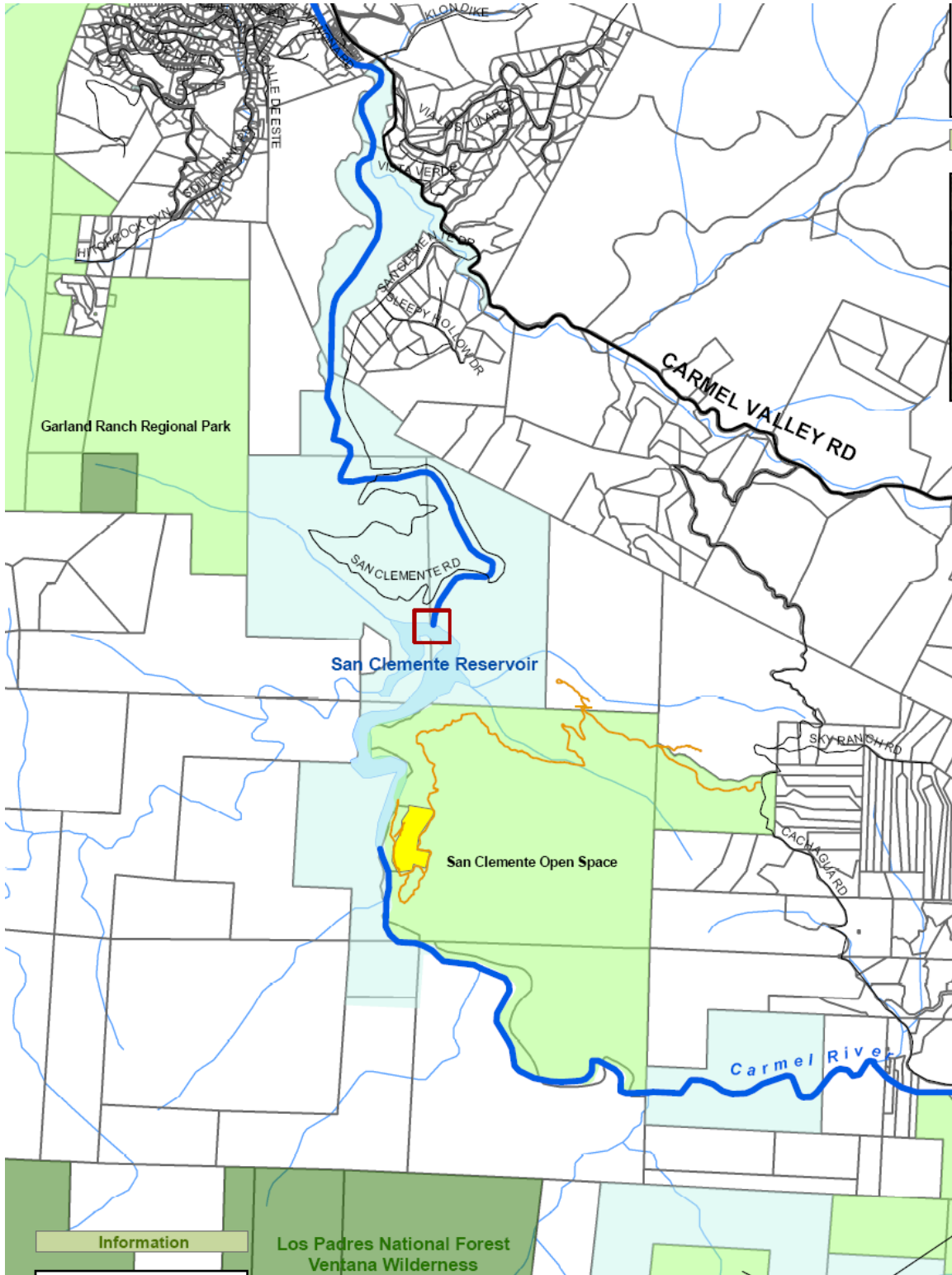
??CALIFORNIA RESOURCES AGENCY

Michael Chrisman
Secretary

Date

Exhibit A

Diagram of real property owned by CAW



MOU: Removal of San Clemente Dam

Exhibit B

**Real Property to Be Conveyed by CAW
Summary Description**

The parcels of land owned by California American Water that are proposed to be transferred as part of the San Clemente Dam By-Pass Project have a total area of approximately 928 acres. There are a total of four parcels, and they generally include the area proximate to San Clemente Dam, as well as land bordering the Carmel River upstream (or south) of San Clemente Dam. The parcels are also generally contiguous.

The first parcel (Parcel # 1) is identified as APN 417051004000, and has an approximate area of 409.3 acres. This parcel is generally located to the northwest and west of San Clemente Dam, and includes a portion of the San Clemente Creek drainage area.

The second parcel (Parcel # 2) is identified as APN 417051005000, and has an approximate area of 295.0 acres. This parcel is located immediately east of Parcel # 1 (described above), and includes the actual dam, the reservoir area, and generally land that is located slightly northeast of San Clemente Dam.

The third parcel (Parcel # 3) is identified as APN 417051011000, and has an approximate area of 179.4 acres. This parcel is immediately south of Parcel # 1 (described above), and is generally located west of the Carmel River. This parcel's northern boundary adjoins the southern boundary of Parcel # 1.

The fourth parcel (Parcel # 4) is identified as APN 417051010000, and has an approximate area of 44.4 acres. This parcel is immediately south of Parcel # 3 (described above), and is generally located southwest of the Carmel River. This parcel's northern boundary adjoins the southern boundary of Parcel # 3.

A general map is attached and identified as Exhibit 1, which shows the general locations of the four parcels proposed for transfer.

It should be noted that this information was obtained from a map entitled "CAL-AM WATER – San Clemente & Los Padres Dam Property". The map was prepared by Bestor Engineers, Inc., dated February 15, 2007. An independent review of this information was not performed for the purposes of the above description.