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RICHARD W. VIERING
CLERK, U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

8 UNITED STATES DISTRICT COURT
9 IN THE NORTHERN DISTRICT OF CALIFORNIA

JF

10 SIERRA CLUB, a not-for-profit California Corporation,
11 and CARMEL RIVER STEELHEAD ASSOCIATION,

CV

09 2870

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF RS

12 Plaintiffs,

13 v.

14 CALIFORNIA AMERICAN WATER COMPANY, dba)
15 CALIFORNIA AMERICAN WATER, a California)
16 Corporation,)

17 Defendant)

18 GARY LOCKE, SECRETARY OF THE UNITED)
19 STATES, DEPARTMENT OF COMMERCE, in his)
20 official capacity, Defendant (Joinder under FRCP 19(a))
21 as a Necessary Party))
22 and)

23 DR. JANE LUBCHENKO, ADMINISTRATOR,)
24 NATIONAL OCEANIC AND ATMOSPHERIC)
25 ADMINISTRATION, in her official capacity,)
26 Defendant (Joinder under FRCP 19(a) as a Necessary)
27 Party))
28 and)

RODNEY MCINNIS, REGIONAL ADMINISTRATOR,)
SOUTHWEST REGION, NATIONAL MARINE)
FISHERIES SERVICE, in his official capacity,)
Defendant (Joinder under FRCP 19(a) as a Necessary)
Party)

1
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

JURISDICTION

1
2
3 1. This court has jurisdiction under 28 USC §1331 (federal question jurisdiction) and under
4 16 USC §1540(g)(1), which confers jurisdiction on the district courts to enforce provisions of the
5 Endangered Species Act and regulations promulgated pursuant to authority under the Act. This case
6 arises under the Endangered Species Act, 16 USC §1531 et. seq. It is an action under the citizen
7 enforcement provision of the ESA. 16 USC §1540 (g)(1), which establishes a federal cause of action for
8 any person to enforce provisions of the Endangered Species Act in United States District Courts. 16
9 USC §1540(g)(1) provides that “any person may commence a civil suit to enjoin any person...who is
10 alleged to be in violation of any provision of this chapter or regulation issued under the authority
11 thereof.” Plaintiffs request this Court to enjoin diversions from the Carmel River in Monterey County
12 that “harm” South Central California Coast Steelhead in such a manner as to constitute a “taking” under
13 the ESA, Section 9 (a)(1), 16 USC §1538(a)(1).

VENUE

14
15 2. Under 16 USC §1540(g)(3)(A), venue is proper in any judicial district in which a
16 violation of the ESA occurs. California American’s unlawful takings of South California Central Coast
17 Steelhead attributable to its diversions of water from the Carmel River occur within Monterey County in
18 the Northern District of California.

INTRA-DISTRICT JURISDICTION

19
20 3. This case involves diversions of water from the Carmel River undertaken by California-
21 American Water Company, a California corporation, in Monterey County in violation of the “takings”
22 prohibition of Section 9 of the ESA, 16 USC §1538(a)(1).

**PARTIES
PLAINTIFFS**

23
24 4. The Sierra Club is a national nonprofit organization of approximately 1.3 million
25 members and supporters dedicated to exploring, enjoying, and protecting the wild places of the earth; to
26 practicing and promoting the responsible use of the earth’s ecosystems and resources; to educating and
27 enlisting humanity to protect and restore the quality of the natural and human environment; and to using
28 all lawful means to carry out these objectives. Roughly 195,000 members live in the state of California.

1 The Sierra Club's concerns encompass protecting the Carmel River Steelhead and protecting the riparian
2 habitat of the Carmel River. Sierra Club members use the riparian habitat of the Carmel River and the
3 River for recreational, educational, and scientific activities within the scope of the Club's purposes. The
4 presence of steelhead as a natural feature of the River enhances its members recreational experiences as
5 well as their esthetic appreciation of the natural beauty of the River and its riparian habitat.

6 5. Carmel River Steelhead Association (hereafter CRSA) is a California §501(c)(3)
7 charitable corporation dedicated to protecting the steelhead population and its habitat in the Carmel
8 River Watershed in Monterey County. The CRSA has volunteered hundreds of hours annually in
9 rescuing steelhead that have been stranded in the lower reaches of the Carmel River. The CRSA has
10 been rescuing steelhead in the Carmel River for the last 15years, and is embarking already this June on
11 fish rescues in the River and its tributaries.

12 DEFENDANTS

13 6. California American Water (Cal-Am), a California corporation, is a wholly owned
14 subsidiary of American Water Works Company, Inc. California American Water is a privately-owned
15 Class A regulated water and wastewater utility. California American provides water service within
16 Monterey County to the cities of the Monterey Peninsula and to the Carmel Valley. It produces water
17 from the Carmel River by diversions from the Carmel River and by pumping from the alluvium of the
18 Carmel River. Additionally it pumps water from the aquifer below the Seaside Basin to service the
19 Monterey Peninsula.

20 7. Gary Locke, Secretary Of The United States Department Of Commerce, in his official
21 capacity; Dr. Jane Lubchenko, Administrator, National Oceanic and Atmospheric Administration, in her
22 official capacity; Rodney Mcinnis, Regional Administrator, Southwest Region, National Marine
23 Fisheries Service, in his official capacity, are named as necessary parties under FRCP 19 (a). The
24 necessary parties have negotiated a Settlement Agreement with California American relating to the
25 conservation of the SCCC Steelhead Distinct Population Segment and have interests that may be
26 implicated in the subject of this action. The Settlement Agreement provides that the necessary parties
27 are exercising their enforcement discretion not to prosecute California American for Section 9 takings in
28 return for promises by California American to pay certain moneys for steelhead conservation.

PLAINTIFFS' NOTICE OF INTENT TO SUE

8. Sierra Club and CRSA have sent notice of their intention to file this lawsuit by a letter dated March 18, 2008 to:

Carlos M. Gutierrez,
Secretary of Commerce,
U.S. Department of Commerce
14th & Constitution Ave., Room 5516
Washington, DC 20230

David Berger
General Manager
Monterey Peninsula Water Management District
P.O. Box 85
Monterey, CA 93942

William T. Hogarth
Assistant Administrator for Fisheries
National Marine Fisheries Service
1315 East West Highway I SSMC3
Silver Spring, MD 20910

Rodney McInnis, Regional Administrator,
Southwest Regional Office,
National Marine Fisheries Service
501 West Ocean Boulevard, Suite 4200
Long Beach, CA 90802-4213

B. Kent Turner, President
California American Water Co.
P. O. Box 951
Monterey, CA 93940

John MacCamman, Director,
Interim Director
California Department of Fish and Game
1416 Ninth Street
Sacramento, CA 95814

Tam M. Doduc, Chair,
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812

9. This letter constitutes the notice required by Section 11(g)(2)(A)(i) of the ESA, 16 U.S.C. § 1540(g)(2)(A)(i), prior to commencement of legal action. As such, it was intended to notify the above-listed organizations that Sierra Club and CRSA intend to take whatever legal steps may be necessary to prevent continued unauthorized takes of steelhead by California American and to seek injunctive relief. Since the Notice, California-American has not ceased making diversions from the Carmel River and its alluvium that give rise to "takings" under the ESA. This letter is attached as Exhibit G to Plaintiffs' Request for Judicial Notice.

10. Steelhead is the name commonly applied to the anadromous form of *Oncorhynchus mykiss*. Steelhead in the Carmel River are part of the South-Central California Coast Distinct Population Segment, which the National Marine Fisheries Service ("NMFS") first listed as a threatened

1 Evolutionary Significant Unit on August 18, 1997. 62 Fed.Reg. 43937 et seq. (listing the SCCC
2 Evolutionary Significant Unit), and again in 2006. 71 Fed.Reg. 834 et seq. (Jan. 5, 2006) (listing the
3 SCCC Distinct Population Segment (“DPS)) (codified at 50 C.F.R §223.102 (c)(16)). NMFS designated
4 critical habitat for South Central California Coast Steelhead on September 2, 2005. 70 Fed. Reg. 52488,
5 52516-17 (codified at 50 C.F.R. § 226.211). The critical habitat for the SCCC Steelhead DPS includes
6 the Carmel River and the Carmel River Lagoon.

7 11. The Carmel River was perennial until diversions began at the old Carmel Dam at about
8 river mile (rm) 18 in 1882. A larger but still small concrete arch dam, San Clemente, was built in 1921
9 at rm 18.6, approximately in the middle of the watershed, and a somewhat larger earth-fill dam, Los
10 Padres, was built in 1948 at rm 23.5. The initial storage capacities of the dams were 1,300 acre feet (af)
11 at San Clemente, and 3,200 af at Los Padres. Water stored at Los Padres is released into the river, and
12 re-diverted for use at San Clemente. Beginning in the 1950’s, diversions from the dam were augmented
13 by diversions from wells in Carmel Valley. The average unimpaired annual flow in the river is
14 approximately 100,000 acre feet, and diversions for domestic and municipal uses by California American
15 Water Company are now approximately 11,000 acre feet. Other diversions are approximately 2,000 af.
16 Flow is highly variable within and between years, however, and in some years all of the flow is diverted.
17 Moreover, surface storage is dwindling. The pool behind San Clemente is now almost entirely filled
18 with sediment, and the pool behind Los Padres is about half full. California-American owns and
19 operates both dams under state license.

20 12. The seasonal dry periods in the river below San Clemente Dam increased with diversions.
21 In the early 1960’s, as diversions from wells in the Carmel Valley increased, riparian vegetation began
22 to die, with consequent bank erosion during wet winters. This erosion peaked in 1983. For many years,
23 the only summer flow in the river below San Clemente Dam was ~1 cfs seepage around the dam, plus
24 inflow from minor tributaries. Beginning in 1983, the Monterey Peninsula Water Management District
25 (“MPWMD”) began requiring Cal-Am to release some water from San Clemente Dam for re-diversion
26 by the downstream wells, and over time the required releases increased until the SWRCB effectively
27 prohibited dry season diversions from San Clemente in 2002. However, the river continues to go dry
28 each summer at some point downstream from about rm 9, and the flows above that point are reduced by

1 the diversions from California-American wells that pump from the Carmel River alluvium. Rearing
 2 habitat for steelhead in the Carmel River extends from migration barriers on the upper river and its
 3 tributaries to the seasonally dry reach of channel in the Carmel Valley. Half the available spawning
 4 habitat is above Los Padres Dam.

5 13. The factors for decline for Carmel River steelhead are habitat blockages, dewatering from
 6 urban water diversions and habitat degradation, agricultural and urban development on floodplains and
 7 riparian areas, and artificial breaching of estuaries during periods when they are normally closed off
 8 from the ocean by a sandbar. Water diversions by California-American, accounting for 85% of
 9 diversions from the Carmel River are a principal factor in the decline of the steelhead population in the
 10 river.

11 14. In 1995 the State Water Resources Control Board recognized many of these same factors
 12 regarding the decline in Carmel River Steelhead in WRO 95-10, which found that:

13 When San Clemente Dam was constructed in 1921 (RM 18.5), a fish ladder
 14 was also built. (MPWMD:289,8-8.) Access to a major portion of the steelhead
 15 spawning and rearing habitat was effectively eliminated in 1949 with the
 16 construction of Los Padres Dam at RM 23.5. (CRSA:5,2.) Although a fish trap
 17 was installed downstream of the dam and captured adults transported into the
 reservoir, the facility proved ineffective at maintaining steelhead populations.
 (MPWMD:289,8-8.)

18 Annual counts of steelhead passing through the San Clemente fishway began
 19 in 1961. The critical dry years of 1976-77 and 1987-92, drought, and diversion by
 20 Cal-Am from its wells have combined to reduce water available to steelhead and
 21 have also reduced the steelhead population to remnant levels. Only one fish was
 recorded in 1991 and 15 fish in 1992. (MPWMD:337,49.) Past reviews of Carmel
 River environmental problems have identified flow reduction and habitat
 alteration as major factors associated with steelhead decline. (SWRCB:42,III-44.)

22 Paralleling the declining steelhead population during this period was the
 23 rising urban demand for water. Originally, the Monterey Peninsula water supply
 24 was diverted entirely from the two reservoirs and from surface flow. When
 25 demand exceeded the developed surface resources, wells drilled in the Carmel
 Valley alluvium aquifer were added to supplement supply. In recent times, dry
 26 season surface flows below the Narrows at RM 10 have been depleted in most
 years as a result of heavy ground water pumping. This results in the stranding and
 27 death of many juvenile fish as surface flow recedes. (DFG:4,32.)”

28 State Water Resources Control Board, WRO 95-10, at 27-28 (July 6, 1995). (Plaintiffs’ Request
 for Judicial Notice, Exhibit D).

1 15. According to a 2006 annual mitigation report by the Monterey Peninsula Water District:

2 About 1.5 miles of habitat between Boronda Road and Robles del Rio and up
3 to nine miles of habitat below the Narrows may dry up, depending on the magnitude
4 of streamflow releases at San Clemente Dam, seasonal air temperatures and water
5 demand. Beginning as early as April or May of each dry season, the District rescues
6 juvenile steelhead from the habitat in these reaches. The goal of this program is to
7 help maintain a viable steelhead population by transplanting juveniles to permanent
8 river habitats downstream of San Clemente Dam (if it is available), and/or rearing
9 juvenile steelhead at the Sleepy Hollow Steelhead Rearing Facility, located just
10 downstream of San Clemente Dam, if habitat is not available.”

11 (Plaintiffs' Request for Judicial Notice, Exhibit B5).

12 16. In response to the dewatering of the river, the MPWMD and the CRSA conduct
13 annual fish rescues, and the MPWMD operates a rearing facility, as noted above. According to
14 the 2005-2006 MPWMD annual monitoring report, a total of 20,821 steelhead were rescued
15 from the mainstem Carmel River, including 20,289 young-of-the-year (YOY), 489 older
16 juveniles, and one smolt. There were 43 mortalities in July through September 2005, associated
17 with the MPWMD rescues.

18 17. Although the fish rescue efforts are helpful, they do not prevent the death of an unknown
19 but presumably large number of juvenile steelhead that perish as flows decline to the level at which
20 rescues occur, or that avoid capture. The mortality figures given above represent fish that perish during
21 the course of the rescue. The rescues cause stress, and many of those successfully rescued will die in
22 the fish rescue facility operated by MPWMD.

23 LEGAL STATUS OF CALIFORNIA-AMERICAN DIVERSIONS AND PREVIOUS 24 REGULATORY ACTIONS

25 18. In 1995, in response to Complaints filed by the CRSA and the Sierra Club, with respect
26 to California-American's diversions from the Carmel River and its alluvium, the SWRCB ruled in
27 WRO 95-10 that water in the Carmel Valley alluvial aquifer is “flowing in a known and definite
28 channel” and therefore legally is part of the river. The Board determined that Cal-Am's Carmel Valley
wells require a permit to appropriate water from the SWRCB, which Cal-Am to this date has not

1 obtained. Accordingly, the SWRCB found that Cal-Am was diverting water unlawfully from the
2 Carmel River.

3 19. In WRO 95-10, the SWRCB also found that Cal-Am had rights to divert only 3,376
4 acre-feet annually (afa). The SWRCB found that: "Cal-Am is diverting about 10,730 afa from the
5 Carmel River or its underflow without a valid basis of right." (Order 95-10 at 39). The SWRCB also
6 found that Cal-am's diversions were "having an adverse effect on: the riparian corridor along the river
7 below San Clemente Dam at RM 18.5, wildlife which depend on the instream flows, and riparian
8 habitat, and steelhead which spawn in the river." Accordingly, SWRCB ordered Cal-Am to
9 immediately reduce its diversions from the river by 20%, to divert water as far downstream as
10 practicable, and to take other remedial mitigation measures.

11 20. WRO 95-10 has since been modified by WRO 98-04 and WRO 2002-02, but the
12 essential terms of the order remain unchanged. The Board has imposed additional constraints on
13 California American's pumping from the River alluvium. In WRO 2002-02, the SWRCB ordered Cal-
14 Am to take additional steps to move its diversions downstream during "low flow periods," that is,
15 during times when stream flow in the Carmel River at the Don Juan Bridge (RM 10.8) gage is less than
16 20 cfs for five consecutive days. However, Cal-Am continued to divert 11,285 afa. In dry months most
17 of its production from the Carmel River comes from its most downstream wells. In other words,
18 although Condition 2 in WRO 95-10 ordered Cal-Am to "diligently implement" one or more actions "to
19 terminate its unlawful diversions from the Carmel River", the SWRCB has tolerated Cal-Am diversions
20 of about 7,900 afa (without a valid basis of right) for an interim period without it obtaining an
21 appropriation permit, pending the obtaining of an alternative water supply or valid appropriation
22 permits, or the construction of a New Los Padres Dam (which was rejected by the voters in 2001). As
23 of this date, no alternative water supply has been obtained; Cal-Am has obtained no permit to divert
24 7700 afy from the River and voters have rejected New Los Padres Dam.

25 21. In February, 2008, the SWRCB issued a proposed Cease and Desist Order against
26 California-American Water Company that would significantly curtail its unlawful diversion from the
27 Carmel River (by 15% during the first three years, by 20% for the next 2 years, by 35% for the next to
28 years, and by 50% by 2014) because California American had not ceased its unauthorized diversions,

1 has failed to obtain an alternative water supply to replace its unauthorized diversions from the Carmel
2 River, and has not obtained any permit from the SWRCB to divert water from the Carmel River and its
3 alluvium. Although an eight day evidentiary hearing on the proposed CDO was concluded in August
4 2008, the SWRCB has made no decision on the proposed CDO. The matter remains pending before
5 the State Board.

6 22. On September 18, 2001, NOAA (NMFS) and California-American entered into a
7 Conservation Agreement ("Conservation Agreement"), which required California-American to
8 implement certain measures to reduce the impact of its operations in the Carmel River on steelhead and
9 their habitat. Since September 2001, Cal-Am has implemented the measures set forth in Phase I of Tier
10 I of the Conservation Agreement. These measures include ceasing surface water diversions at San
11 Clemente Dam during low flow periods, ceasing diversions from the Upper Carmel Valley Wells
12 during low flow periods, and installing a booster station to move water from the lower Carmel Valley to
13 the Upper Carmel Valley.

14 23. Phase II of Tier I of the Conservation Agreement required Cal-Am to maintain a
15 continuous surface flow in the Carmel River as far downstream as possible in AQ3 (a defined area of
16 the Carmel Valley Aquifer) by offsetting its water diversions in upstream sections of AQ3 with
17 expanded diversion capability in AQ4, and in the lowermost reaches of AQ3. Phase II required Cal-
18 Am to increase well capacity downstream of, and including, the San Carlos Well by 3.0 to 5.0 cfs.
19 Because the California Department of Health Services determined that extractions from the San Carlos
20 Well constitute groundwater under the influence of surface water, the San Carlos well was taken out of
21 service due to potable water quality concerns, as there is no means of providing surface water treatment
22 at that location. This resulted in no net gain in pumping capacity in the lower aquifer. California-
23 American was therefore unable to comply with Phase II of Tier I of the Conservation Agreement.

24 24. In a Settlement Agreement signed June 29, 2006, Cal-Am and NOAA agreed that in
25 light of Cal-Am's need to focus its financial and personnel resources on a long-term water supply
26 project, rather than those interim measures in the Carmel River, Cal-Am would not be obligated to
27 proceed with the additional measures set forth in the 2001 Conservation Agreement.
28

1 achieve the purposes of various treaties and conventions regarding wildlife protection listed in the ESA.
2 16 U.S.C. § 1531(b).

3 34. An "endangered species" is defined by the ESA as any species which is in danger of
4 extinction throughout all or a significant portion of its range. A "threatened species" means any species
5 which is likely to become an endangered species within the foreseeable future throughout all or a
6 significant portion of its range. 16 U.S.C. §1532(20).

7 35. The ESA provides a means by which the Secretary of Commerce or the Secretary of
8 Interior may designate by regulation any species as threatened or endangered because of any of the
9 following factors:

- 10 (a) the present or threatened destruction, modification or curtailment of its habitat or range;
11 (b) overutilization for commercial, recreational, scientific, or educational purposes;
12 (c) disease or predation;
13 (d) the inadequacy of existing regulatory mechanisms; or
14 (e) other natural or manmade factors affecting its continued existence.

15 36. Section 9(a)(I)(B) of the ESA provides that it is unlawful for any person to "take" any
16 endangered species. 16 U.S.C. § 1538(a)(1)(B). By regulation, NMFS has extended this take
17 prohibition to threatened species, such as the SCCC steelhead DPS. See 16 U.S.C. § 1533(d); 50
18 C.F.R. §§ 223.101 et seq. The §4(d) rule establishing taking regulations pertaining to the SCCC
19 Steelhead ESU contains no applicable exceptions from the take prohibitions with respect to Cal-Am's
20 diversions and operations that impact the SCCC steelhead. See 50 C.F.R. §223.203.

21 37. 16 U.S.C. § 1532 (19) defines "take" as meaning, to "harass, harm, pursue, hunt, shoot,
22 wound, kill, trap, capture, or collect, or attempt to engage in any such conduct." See also 50 CFR
23 §216.3. 50 CFR §222.102 defines "harm" (in the definition of "take") as meaning an act which actually
24 kills or injures fish or wildlife. The definition of "harm" goes on to recite:

25 Such an act may include significant habitat modifications or degradation which
26 actually kills or injures fish or wildlife by significantly impairing essential
27 behavioral patterns, including, breeding, spawning, rearing, migrating, feeding
28 or sheltering.

1 38. As set forth above, Cal-Am's diversions from the Carmel River and its alluvium "harm"
2 steelhead by significantly impairing essential behavioral patterns, including breeding, spawning,
3 rearing, migrating, feeding, and sheltering.

4 39. This prohibition applies equally to persons engaged in activities that are not intended or
5 designed to take species listed under the ESA, but may do so incidentally. Incidental takings that do
6 not jeopardize the continued existence of a listed species may be authorized by the Secretary pursuant
7 to an incidental take permit issued under Section 10 of the ESA, 16 U.S.C. §1539. Activities involving
8 incidental takings must be conducted in accordance with terms and conditions set out in the section 10
9 permit.

10 40. California American has not obtained an incidental take permit under Section 10 of the
11 ESA, nor has it sought approval by NMFS of a Section 10 habitat conservation plan, regarding the
12 effects of the operation of its diversions on steelhead. In consequence, Cal-Am does not have an
13 incidental take permit for its operation of the Project and is strictly liable under Section 9 and the
14 regulations promulgated under ESA for any taking of threatened steelhead in the SCCC DPS that
15 results in harm to steelhead from such operation. 16 U.S.C. §§ 1533(d), 1539(a)(I)(B); 50 C.F.R. §§
16 224.102, 222.102, 223.101, 223.203.

17 41. In its preface to rule-making governing Take of 14 threatened steelhead ESU's, NMFS
18 stated that activities like those of Cal-Am's diversions and dam operations are likely to result in
19 "takings" of listed steelhead.

20 "NMFS agrees that water diversions and ...may have other deleterious effects
21 on salmonid habitat. These may include impacts on sediment transport, turbidity,
22 and stream flow alterations. ...NMFS has revised the take guidance. One change is
23 the water withdrawals have been added to the list of activities that are likely to injure
24 or kill salmonids." 65 Fed.Reg. at 42422, 42429 (July 10, 2000).

25 42. In its 2000 Take Guidance, NMFS listed the following categories of
26 activities most likely to result in injury or harm to listed salmonids:

27 E. Removing water or otherwise altering streamflow when it significantly
28 impairs spawning, migration, feeding, or other essential behavioral patterns. 65 Fed.
Reg. 42472.

 43. In its rule-making for listing the SCCC steelhead DPS, NMFS identified
"Destruction/alteration of the steelhead habitats for any listed DPS, such as ... draining ... diverting ...

1 altering stream channels or surface or groundwater flow” as an activity that could potentially harm
2 steelhead and result in a violation of the take prohibition in Section 9.” 71 Fed. Reg. 834, 858 (Jan. 5,
3 2006).

4 44. California-American is currently “taking”, and will continue to take, SCCC Steelhead in
5 violation of Section 9 of the ESA without an incidental take permit unless it is enjoined from continuing
6 such taking by this Court. Its diversions are continuing to cause “harm” to SCCC steelhead within the
7 meaning of the ESA and its implementing regulations. Cal Am has been diverting water from the
8 Carmel River and its alluvium in a manner that is resulting in the unlawful taking of steelhead in
9 violation of Section 9 of the ESA.

10 **RELIEF REQUESTED**

11 45. Plaintiffs request a Court Order enjoining California American to reduce and abate its
12 Carmel River diversions to the degree necessary to preserve and prevent harm to the breeding,
13 spawning, rearing, migrating, feeding and sheltering behaviors of South Central California Coast
14 steelhead and to order Cal-Am to take such actions as are necessary to eliminate its unlawful take of
15 South California Central Coast steelhead. (16 U.S.C. §1540(g)(1)(A).

16 46. Plaintiffs request the court to retain jurisdiction to supervise compliance with its orders.

17 47. Plaintiffs request preliminary injunctive relief ordering California American to reduce its
18 diversions by 35% of its annual production, with respect to the 2009-2010 water year on a monthly
19 basis, to begin immediately, and not to cease until the Carmel River is flowing to the ocean with
20 sufficient discharge and duration to allow steelhead to reach and pass over San Clemente Dam.

21 48. Plaintiffs request attorneys fees, costs, and such other relief as may be just and proper.

22
23 Date: 6/25/09

Laurens H. Silver

24 Laurens H. Silver, Esq.
25 California Environmental Law Project
26 Counsel for Sierra Club, Carmel River Steelhead
27 Association
28