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13 Attorneys for Defendant
 14 CALIFORNIA-AMERICAN WATER COMPANY, dba
 15 CALIFORNIA AMERICAN WATER, a California
 16 corporation

17 UNITED STATES DISTRICT COURT
 18 NORTHERN DISTRICT OF CALIFORNIA
 19 (SAN JOSE DIVISION)

20 SIERRA CLUB, a not-for-profit California
 21 Corporation, and CARMEL RIVER
 22 STEELHEAD ASSOCIATION,
 23
 24 Plaintiffs,

25 vs.

26 CALIFORNIA-AMERICAN WATER
 27 COMPANY, dba CALIFORNIA AMERICAN
 28 WATER, a California Corporation,
 Defendant,

GARY LOCKE, SECRETARY OF THE
 UNITED STATES, DEPARTMENT OF
 COMMERCE, in his official capacity,
 Defendant (Joinder under FRCP 19(a) as a
 Necessary Party) and DR. JANE
 LUBCHENKO, ADMINISTRATOR,
 NATIONAL OCEANIC AND
 ATMOSPHERIC ADMINISTRATION, in her
 official capacity, Defendant (Joinder under
 FRCP 19(a) as a Necessary Party) 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).

Case No. CV 09 2870 JF RS

**STIPULATION OF ALL PARTIES RE:
 SUPPLEMENTAL SUBMITTALS ON
 MOTION TO DISMISS AND CASE
 MANAGEMENT; [PROPOSED] ORDER
 THEREON**

Date: December 18, 2009
 Time: 9:00 a.m.
 Ctrm: 3
 Judge: The Honorable Jeremy Fogel

1 Plaintiffs Sierra Club and Carmel River Steelhead Association ("Plaintiffs"), defendants
2 California-American Water Company dba California American Water ("CAW") and defendants
3 Gary Locke, Secretary of the United States Department of Commerce, Dr. Jane Lubchenko,
4 Administrator of the National Oceanic and Atmospheric Administration, and Rodney McInnis,
5 Regional Administrator, Southwest Region, National Marine Fisheries (collectively, the "Federal
6 Agency Defendants") hereby stipulate by and through their respective counsel of record as
7 follows:

8 **RECITALS**

9 WHEREAS, the hearing on CAW's pending Motion to Dismiss this action was continued
10 by the Court, following oral argument on September 18, 2009, to December 18, 2009, to allow for
11 the conclusion of the proceedings before the State Water Resources Control Board ("SWRCB") on
12 the proposed Cease and Desist Order against CAW in connection with WRO 95-10 and a true and
13 correct copy of the transcript of that oral argument and Order Continuing Hearing on Defendant's
14 Motion to Dismiss are collectively attached hereto as **Exhibit A** for the Court's convenience;

15 WHEREAS, the SWRCB adopted Cease and Desist Order WR 2009-0060 (the "CDO")
16 against CAW on October 20, 2009, which requires CAW to cease and desist its diversion of water
17 from the Carmel River in excess of its permitted rights in accordance with a prescribed schedule
18 and conditions;

19 WHEREAS, in November 2009, Petitions for Writ of Mandate were subsequently filed by
20 CAW and by the Monterey Peninsula Water Management District ("MPWMD"), respectively, to
21 challenge the CDO;

22 WHEREAS, on October 30, 2009, the MPWMD moved the Monterey County Superior
23 Court, ex parte, for a stay of the CDO and, on or about November 3, 2009, that court issued a
24 Minute Order granting a stay of the CDO pending the outcome in MPWMD's mandamus
25 proceeding (the "Stay");

26 WHEREAS, on or about November 13, 2009, the SWRCB filed an ex parte application for
27 an order dissolving the Stay, and opposition to that application has been filed by CAW and the
28 MPWMD, respectively;

1 WHEREAS, the Monterey County Superior Court has not yet ruled on the SWRCB's
2 application for an order to dissolve the Stay;

3 WHEREAS, in this action, the Court previously set dates for an Initial Case Management
4 Conference and ADR Deadlines, but it is the understanding of these parties that such dates were
5 implicitly vacated by the continuance of the hearing on CAW's Motion to Dismiss, and the Court's
6 prior order permitting the Federal Agency Defendants not to appear in this action pending the
7 outcome of said Motion to Dismiss;

8 WHEREAS, the parties now wish to stipulate to the filing of Supplemental Requests for
9 Judicial Notice in connection with the pending Motion to Dismiss, and further wish to confirm
10 that the dates previously set for compliance with Federal Rule of Civil Procedure 26(f), Civil L.R.
11 16.8(b) and ADR L.R. 3-5(b) and (c), Federal Rule of Civil Procedure 26(a)(1) and Civil L.R. 16-
12 9, as well as the Initial Case Management Conference set for December 4, 2009, at 10:30 a.m.,
13 have all been vacated pending the outcome of the Motion to Dismiss;

14 NOW, THEREFORE, the parties do hereby Stipulate as follows:

15 **STIPULATION**

16 1. That, on or before December 4, 2009, each party may file a Supplemental Request
17 for Judicial Notice in connection with CAW's pending Motion to Dismiss, to request the Court to
18 take judicial notice of documents subject to such notice and prepared on and after September 16,
19 2009;

20 2. That the parties jointly request the Court to confirm that the dates previously set by
21 the Order Setting Initial Case Management Conference and ADR Deadlines have been
22 VACATED pending the outcome of CAW's Motion to Dismiss and that no further filings are
23 required of the parties pending such outcome.

24 Dated: November 20, 2009

CALIFORNIA ENVIRONMENTAL LAW PROJECT

25 By: /s/ Laurens H. Silver

26 LAURENS H. SILVER
27 Attorneys for Plaintiffs
28 SIERRA CLUB and CARMEL RIVER
STEELHEAD ASSOCIATION

1 Dated: November 20, 2009

ALLEN MATKINS LECK GAMBLE
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PATRICK E. BREEN

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By: /s/ Sandi L. Nichols

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SANDI L. NICHOLS
Attorneys for Defendant
CALIFORNIA-AMERICAN WATER
COMPANY, dba CALIFORNIA
AMERICAN WATER, a California
corporation

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9 Dated: November 20, 2009

UNITED STATES DEPARTMENT OF JUSTICE

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By: /s/ Jay Govindan

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JAY GOVINDAN
Attorneys for Defendants
GARY LOCKE, SECRETARY OF THE
UNITED STATES, DEPARTMENT OF
COMMERCE, in his official capacity;
DR. JANE LUBCHENKO,
ADMINISTRATOR, NATIONAL
OCEANIC AND ATMOSPHERIC
ADMINISTRATION, in her official
capacity; and RODNEY MCINNIS,
REGIONAL ADMINISTRATOR,
SOUTHWEST REGION, NATIONAL
MARINE FISHERIES SERVICE, in his
official capacity

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19 Attestation Regarding Signature: This document is being filed electronically under my user
20 ID and Password. Pursuant to General Order 45, section XB, I hereby attest that concurrence in
21 the filing of this document has been obtained from each of the other signatories to this document.

22 I declare under penalty of perjury under the laws of the United States that the foregoing is
23 true and correct and was executed on November 20, 2009, in San Francisco, California.

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/s/ Sandi L. Nichols
SANDI L. NICHOLS

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[PROPOSED] ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: 11/24/09



The Honorable Jeremy Fogel
United States District Court Judge