Before the State Water Resources Control Board
Public Hearing to Determine Whether to Adopt a Draft Cease and Desist Order Against the California American Water Company
Carmel River, Monterey County

Phase 2
Water Rights Hearings

Written Testimony and Policy Statement of Robert J. Baiocchi
For California Salmon and Steelhead Association

Bob Baiocchi makes the following statements and testimony under oath.

I am filing written testimony and also filing a policy statement collectively together for the following reasons for Phase 2 of the hearing.. Baggett et al of the State Water Board have denied me my due process rights to participate at Phase I of the hearing because of discrimination against me by Baggett et al. The reasons are obvious. I filed a motion with Baggett et al. to have this matter referred to the California Department of Justice for criminal and civil actions against the California American Water Company for the theft of the people's water and for the damage to the people's public trust resources and assets of the Carmel River. Baggett et al ignored my motion. Secondly, my written testimony was denied because I claimed I was a witness to a crime against the people of California and Baggett et al did not want in the hearing records. Thirdly, I was denied the opportunity to testify because Baggett et al alleged I was not disabled. I submitted two declarations to Baggett et al to confirm my disability. My declarations were not good enough for Baggett et al. I then filed two letters from my doctors confirming my disability that I could not travel to Sacramento to testify. Clearly there are reasons why Baggett et al do not want me to testify. Hopefully the courts will bring the reasons to light.

The State Water Board is allowing and has allowed for many, many years legal and illegal diversions of water from the Carmel River without providing any terms and conditions to provide protection measures for the public trust threatened steelhead species (all life stages) and their critical habitat of the Carmel River. Clearly there are reasons why the State Water Board has refrained from providing any protection measures for the people of California public trust steelhead assets of the Carmel River. Hopefully the State Water Board decision in this matter and/or the courts will bring the reasons to light.

There is a proposed stipulated agreement between the California American Water Company and the State Water Board in between the hearings. The proposed agreement will be launched after the parties submitted their testimony. That comes of no surprise to me because of how Baggett et al

has mistreated the people's state's fisheries in all water rights matters that I have been involved with before the Board's staff. In all of the recent formal protest I have filed on behalf of angler organizations, the State Water Board and its staff have not order one gallon of water for endangered and threatened anadromous fisheries. So I request the opportunity to submit written testimony regarding whether the stipulated agreement passes the tests of compliance with the laws of California. Secondly, the Board at a hearing told me that the Board's staff is immune from testifying at hearings when we were concerned over allegations by the Board's staff in the hearing matters and yet in this case that is not true. Finally the Board staff attorney ruled me with exparte violations when I wrote Baggett et al regarding another matter on the Carmel River, yet the attorney for California American Water Company wrote directly to Baggett et al regarding the stipulation agreement matter and was not ruled with exparte violations. Unreasonable triple standards against the people of California.

My name is Robert J. Baiocchi (hereinafter known as "Bob Baiocchi"). I live at Blairsden in Plumas County, California. I have worked for and with the Carmel River Steelhead Association as a consultant on water right matters for many years. I am also the executive director of the California Salmon and Steelhead Association. I qualified as an expert witness on water rights matters at the Bay Delta Hearing before the State Water Resources Control Board (hereinafter known as "SWRCB") in the early 1990s. My knowledge of the Carmel River and its steelhead species and their habitat is based on my long term discussions and relationship with Dr. Roy Thomas, President, Carmel River Steelhead Association and its members, and also based on my review of the records as referenced in my testimony in conducting discovery work. My background is included with this written testimony. I am disabled and unable to travel and attend the hearings and testify in person. I requested the opportunity to testify by teleconference means, subject to cross-examination by all parties and the hearing officers, and its staff. I was required by the Board's Hearing Team to submit two (2) declarations that I cannot travel and attend the hearings. I have testified at other hearings before the SWRCB in person.

The central issues regarding this hearing are quite simply. The illegally diversions of the people's water by the California American Water Company, and the related adverse harm and damage to the public trust steelhead fishery and their habitat of the Carmel River resulting from the unauthorized diversion and use of the people's waters of the Carmel River by the California American Water Company. The third crime against the people of California in my opinion is the failure of the State Water Board and its staff to ever provide any protection measures for threatened steelhead species and their habitat of the Carmel River.

By no means is the California American Water Company "Robin Hood". California American Water Company does not steal water from the rich and give the water to the poor. The California American Water Company sells illegal water diverted from the Carmel River for profit regardless of the effects to the public trust steelhead fishery assets of the Carmel River.

Had the California American Water Company has a legal water right to divert and use the waters of the Carmel River there be no draft Cease and Desist Order and no hearing.

In my opinion, the issue in this hearing matter is the adverse harm and damage to threatened steelhead and their habitat in the Carmel River resulting from the unauthorized diversion and pumping of the state's water from the Carmel River by the California American Water Company. Another major issue is that the SWRCB allowed the demise of the threatened steelhead and their habitat to occur before and after Board Order WR 95-10 was issued without providing any protection measures for the people's threatened steelhead species and their habitat of the Carmel River while the California American Water Company continued to unlawfully and also lawfully divert and pump the state's water from the Carmel River. By steelhead protection measures I mean mandatory daily surface flow requirements below all dams and pumps operated by the company to provide flow to the Carmel River Lagoon. Fish need surface flows to survive. There are very little surface flows in the river because of the unauthorized diversions of the people's water by the California American Water Company, including other small legally and illegal diversions.

According to the US National Marine Fisheries Service "The Carmel River is a central California coastal stream that drains a 255 square mile watershed to the Pacific Ocean. The river has two dams on its main stem, the 85-foot high San Clemente Dam located at River mile (RM) 18.6 and the 148-foot high Los Padres Dam located at RM 23.5. Water is lawfully and unlawfully diverted from the Carmel River at numerous points. The California American Water Company has the ability to withdraw and convey surface water from behind the San Clemente Dam to the California American Water Company's Carmel Valley Filter Plant at a rate of 32 acre-feet (1992 data - USNMFS) per day or an instantaneous rate of 16.2 cubic feet per second (cfs). Diversions of water are also taken from the Carmel River Aquifer (underflow), a subterranean flow within the bed and banks of the river that is interconnected to the surface flow of the river. Diversions from the Carmel River Aquifer have a direct effect on surface flows in the Carmel River. The California American Water Company's wells diverting the underflow of the river along the Carmel River are scattered and have a combined capacity of 66.6 acre-feet (1992 Data - USNMFS) per day or an instantaneous rate of 33.6 cfs. Several other commercial wells operated by water users (agricultural, domestic and recreational), likewise divert the

underflow of the Carmel River that affects the surface flows. In addition, there are other diversions taking surface flows in tributaries to the Carmel River." The USNMFS above water supply data is general information that should be upgraded by the Board to shown current and existing diversions of water from the Carmel River by the California American Water Company and also other diverters.

"As a result of the above-mentioned diversions, the Carmel River usually goes dry for more than 8 miles on an annual basis. From June or July until the winter rains begin, the only water remaining in the lower river is in isolated pools that gradually dry up as the underflow of the river supporting the water table is depleted by diversions resulting from the pumping of water. Surface flows from the Carmel River into the Carmel River Lagoon normally recedes after the rainy season in late spring, and ceases in almost all years during summer as rates of water pumped and extracted from the underflow of the river eliminates surface flow and subsurface flow to the lagoon. "

"For over 20 years, excessive water diversions from the Carmel River have had a significant adverse effect upon the aquatic biological resources of the Carmel River". Nehlsen et al. (1991), who listed Carmel River steelhead as being a high risk of extinction, suggested that this population was primarily affected by water withdrawals. Titus et al. (1999) attributed the decline in the population of steelhead in the Carmel River to the extensive water diversions and blocked access to historic spawning and rearing areas upstream of dams. SWRCB Order 95-10 concluded that the California American Water Company diversions are having an adverse effect on the riparian corridor along the river below San Clemente Dam and upon steelhead, which spawn in the river. In 1997, the National Marine Fisheries Service (NMFS – aka NOAA Fisheries) listed steelhead in the South-Central California Coast Evolutionarily Unit (ESU), which includes the steelhead of the Carmel River, as a federally listed threatened species (62 FR 43937, August 18, 1997). In 2000, NMFS (aka NOAA Fisheries) designated the Carmel River as critical habitat for this ESU (65 FR 7764, February 16, 2000), the most important steelhead river in the ESU. Reference: Instream Flow Needs for Steelhead in the Carmel River – Bypass flow recommendations for water supply projects using Carmel River waters; National Marine Fisheries Service; Santa Rosa Office; June 3, 2002. Surface flow conditions in the Carmel River may have changed due to weather conditions and increased pumping, with more applicants demanding and seeking to pump the underflow of the Carmel River. The Board continues to allow water right applications to be filed and noticed. Clearly the Carmel River is over and fully appropriated.

The Carmel River is a very good example how steelhead populations can decline to the point of being nearly extinguished. The USNMFS determined

that the run of steelhead in the Carmel River was 20,000 fish in 1928. Snider (1983) of DFG estimated the mean production of steelhead in the Carmel River during 1964 to 1975 to be 3,177 sea-run fish, about 25% of the historic levels. The mean number of adult steelhead counted at the San Clemente Dam fish ladder during this 12-year period was 821 fish per year. During the drought of 1976 and 1977, zero (0) adults were observed using the fish ladder. During the three-year period from 1988 to 1990, the Carmel River never breached the sand bar at the mouth with the Pacific Ocean, and therefore the river was not accessible to adult steelhead for spawning purposes. I reference the Steelhead Restoration and Management Plan for California; Department of Fish and Game; February 1996.

I also refer you to the written testimony of Dr. Roy Thomas regarding the adverse effects and harm to steelhead species and their critical habitat in the Carmel River. Dr. Thomas has over 30 years of experience in rescuing steelhead in the Carmel River and he knows the many issues facing the Carmel River steelhead species and their habitat.

Representing the Carmel River Steelhead Association, I prepared a 60-day notice letter of intent to sue the US National Marine Fisheries Service with referenced exhibits because of violations of the federal Endangered Species Act. The 60-day notice of Intent to sue letter was signed by Dr. Thomas representing the Carmel River Steelhead Association and served upon the officials of the USNMFS and the US Department of Justice. The Carmel River Steelhead Association has not filed a lawsuit yet.

I also prepared a formal complaint that was to be filed by the Carmel River Steelhead Association with the SWRCB. To date and to the best of my knowledge the Carmel River Steelhead Association did not file the formal complaint with the SWRCB. Based on my research in the development of the draft formal complaint and in my opinion, the following is true:

"The SWRCB mission's is to preserve, enhance and restore the quality of California's water resources, and ensure their proper allocation and efficient use for the benefit of present and future generations."

The SWRCB has a responsibility and duty to carry out the California Water Code; California Code of Regulations, Title 23; Article X, Section 2 of the California Constitution; the Public Trust Doctrine, California Fish and Game Code 5937, and other statutes.

The SWRCB has a duty and responsibility to carry out Section 100 of the California Water Code. Section 100 of the California Water Code declares that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable

use or unreasonable method of use of water be prevented, and that the conservation of such water is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from an natural stream or watercourse in this State is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water.

The SWRCB has a responsibility and duty to carry out Section 102 of the California Water Code. Section 102 of the California Water Code declares that all water within the State is the property of the people of the State, but the right to the use of water may be acquired by appropriation in the manner provided by law.

The SWRCB has a responsibility and duty to carry out Section 104 of the California Water Code. Section 104 of the California Water Code declares that the people of the State have a paramount interest in the use of all the water of the State and the State shall determine what water of the State, surface and underground, can be converted to public use or controlled for public protection.

Section 1052 of the California Water Code the diversion and use of the state's water other than authorized is a trespass. The SWRCB has a responsibility and duty to carry out Section 1052 of the California Water Code and prevent unauthorized diversion and use of the state's water pursuant to the required intent of the California Legislature under Section 1825 of the California Water Code, which states that is the intent of the Legislature that the State should take vigorous action to enforce the terms and conditions of existing permits and licenses to appropriate water and to prevent the unlawful diversion of water.

The Mono Lake Decision explains the relationship between the public trust doctrine and the appropriative water rights doctrine, including the duty and authority of the SWRCB and the courts to safeguard public trust uses.

I reference National Audubon Society v. Superior Court (1983) 33 Cal.3d 419, 189 Cal Rptr. 346, 658 P.2d 709, cert. denied 464 U.S. 977.

Carmel River steelhead species are public trust resources and assets and the property of the people of the state of California. The people own the public trust steelhead resources and assets of the Carmel River. In my opinion, the SWRCB is a trustee agency and has a duty to protect the people's public trust fisheries when ordering water rights, and making decision on water rights matters affecting the fishery trust assets.

The flow of Carmel River and the quality of that flow are under the jurisdiction of the State Water Resources Control Board and the Regional Water Quality Control Board. The fish and other aquatic life, wildlife (mammals, birds, reptiles, etc) is under the jurisdiction of the California Department of Fish and Game. The Carmel River steelhead is listed as threatened under the Federal ESA and is under the jurisdiction of the United States National Marine Fisheries Services.

I am a non-attorney. But I am a student of the law. In reading many public trust papers prepared by Mr. Felix Smith, the following is important for the SWRCB to understand and carry out.

The California Supreme Court in Eddy v. Simpson (3 Cal 249 - 1853) stated "It is laid down by our law writers that the right of property in water is usufructuary, and consists not so much of the fluid itself as the advantage of its use." In the context of a water right--a user of water must respect the rights and interests of others and is not to alter the integrity of that water as a water supply or an ecosystem for aquatic life. In this case the listed steelhead are of concern.

In People v. Truckee Lumber Co. (116 Cal 397, 48 Pac 374 -1897) the California Supreme Court advised that the fish within our waters constitute the most important constituent of property, the general ownership and right to its use is in the people of the state. The Court also advised that the dominion of the state, for the purposes of protecting its sovereign rights in the fish within its waters and their preservation for the common enjoyment of its citizens is not confined. It extends to all waters supporting fish or that they utilize for spawning or other purposes, and through which they have freedom of passage to and from the public fishing grounds of the state. There are a variety of public trust interests in addition to fish and a fishery in a stream (Cal Trout Inc. v. SWRCB 207 Cal. App. 3d 585 –1989). The Public Trust imposes a trustee obligation on the State on behalf of all the people, for publicly owned properties and interests. What this trusteeship entails can best be understood by reviewing a charitable trustee's obligations. Such a trustee has two basic obligations. The first is to safeguard trust assets from decline. The second is to increase trust assets. The trustee must develop as well as conserve assets under his protection. Conservation and development of the steelhead resource requires initiative, shrewd investment, and prudent management. A trustee must actively seek out conservation and protection opportunities, evaluate them wisely, and act upon them as is appropriate.

The California Supreme Court in Marks v. Whitney (6 Cal. 3d 251, 491 P. 2d 374, 98 Cal. Rptr. 790 - l97l) helped redefine the scope of the State's interest in navigable waters and tidelands. The Court recognized and clarified that uses encompassed within the tidelands trust, in addition to the traditional

purposes of navigation, fishery and commerce, also included the preservation of those areas in their natural state as open space and as environments which provide food and habitat for birds and marine life and which favorably affect the scenery and the climate of the area. The California Court recognized that tidelands, with their plant and animal life, the water over them and in the sand, gravel or mud substrate, all interact and are valuable ecosystems in themselves that have public trust uses and values.

Ecologist studying freshwater systems recognize that sand, gravel, rock or mud substrate of a stream with its plant and animal life, the water over them and the water that passes through the substrate, all interact and are valuable ecosystems in themselves that have public trust uses and values.

In the Mono Lake Decision (National Audubon Society v. Superior Court Alpine County (33 Cal 3d 4l9, l89 Cal Rpt. 346 -l983), the California Supreme Court ruled that long established water rights are subject to limitations protecting the public trust in navigable waters. The Court's decision was an expression for the State to treat common heritage resources, wherever they are found, under its public trust authority. The Court recognized that instream flow; the streambed, riparian vegetation and associated components of the aquatic ecosystems interact and have similar uses and values as the tidelands discussed in Marks v. Whitney.

Clearly the SWRCB has a duty and responsibility not only to prevent the unlawful diversion and use of the state's water of the Carmel River that has affected the Carmel River steelhead species and their habitat, but also to protect Carmel River steelhead and their habitat resulting from harm and damage in all decisions ordered by the SWRCB affecting the Carmel River trust assets pursuant to the Public Trust Doctrine.

I reference Carmel River; Public Trust Doctrine and In Good Condition; Felix Smith; Retired Field Supervisor, U.S. Fish and Wildlife Service; September 2007

Synopsis of Board Order 95-10

"The California-American Water Company (Cal-Am) currently diverts water from the Carmel River and supplies the water, primarily, for use outside of the watershed to users on the Monterey Peninsula. Four complaints were filed with the State Water Resources Control Board (SWRCB) against Cal-Am for its diversion of water from the Carmel River. The complaints generally allege that Cal-Am: (a) does not have the legal right to divert water from the river and (b) diversions are adversely affecting public trust resources in the river. The SWRCB concludes that Cal-Am: (a) does not have the legal right for about 10,730 acre-feet annually which is currently

diverted from the river (about 69 percent of the water currently supplied to Cal Am users) and (b) diversion are having an adverse affect on the public trust resources of the river. This order directs Cal-Am to: (a) diligently proceed in accord with a time schedule to obtain rights to cover its existing diversion and use of water and (b) implement measures to minimize harm to public trust resources. Requires Cal-Am to reduce the quantity, which is currently being pumped from the river. Because water is not available for appropriations by direct diversion in the river during the summer months, Cal-Am must either obtain the right to additional water supplies from: (a) sources other than the river, (b) a storage project similar to the New Los Padres (NLP) project proposed by the Monterey Peninsula Water Management District *District), or (c) contact with the District for supply from the proposed NLP project."

I reference Under Order Finding Against Respondent, in part, and directing Corrective Actions; Synopsis on page ii of Board Order 95-10.

Status of Carmel River Steelhead Species and Their Habitat

For over 20 years, excessive water diversions from the Carmel River have had a significant adverse effect upon the aquatic biological resources of the Carmel River. Nehlsen et al. (1991), who listed Carmel River steelhead as being a high risk of extinction, suggested that this population was primarily affected by water withdrawals. Titus et al. (1999) attributed the decline in the population of steelhead in the Carmel River to the extensive water diversions and blocked access to historic spawning and rearing areas upstream of dam. SWRCB Order 95-10 concluded that Cal-Am diversions are having an adverse effect on the riparian corridor along the river below San Clemente Dam and upon steelhead, which spawn in the river. In 1997, the National Marine Fisheries Service (NMFS – aka NOAA Fisheries) listed steelhead in the South-Central California Coast Evolutionarily Unit (ESU), which includes the steelhead of the Carmel River as a federally listed threatened species (62 FR 43937, August 18, 1997). In 2000, NMFS (aka NOAA Fisheries) designated the Carmel River as critical habitat for this ESU (65 FR 7764, February 16, 2000).

I reference: Instream Flow Needs for Steelhead in the Carmel River – Bypass flow recommendations for water supply projects using Carmel River waters; National Marine Fisheries Service; Santa Rosa Office; June 3, 2002.

Restoration of California's anadromous fish population is mandated by "The Salmon. Steelhead Trout, and Anadromous Fisheries Act of 1988 (SB2261) which states that it is the policy of the State of California to significantly increase the natural production of salmon and steelhead by the end of the century (2000), which has passed. The completion of the

"Steelhead Restoration and Management Plan for California" in February 1996 by the California Department of Fish and Game is an important feature of "The Salmon. Steelhead Trout, and Anadromous Fisheries Act of 1988".

The Steelhead Restoration and Management Plan focuses on restoration of native and naturally produced (wild) stocks of steelhead because these stocks have the greatest value, as the people's public trust assets, for maintaining genetic and biological diversity. Goals for steelhead restoration and management are: (1) increase natural production, as mandated by The Salmon, Steelhead Trout, and Anadromous Fisheries Act of 1988, so that steelhead populations are self-sustaining and maintained in good condition, as required by California Fish and Game Code 5937. Also, the California Steelhead Plan provides for the restoration of degraded habitat and restores access to historic spawning and rearing habitats.

The Carmel River is a very good example how steelhead populations can decline to the point of being nearly extinguished. The USNMFS determine that the run of steelhead in the Carmel River was 20,000 fish in 1928. Snider (1983) of DFG estimated the mean production of steelhead in the Carmel River during 1964 to 1975 to be 3,177 sea-run fish, about 25% of the historic levels. The mean number of adult steelhead counted at the San Clemente Dam fish ladder during this 12-year period was 821 fish per year. During the drought of 1976 and 1977, zero (0) adults were observed using the fish ladder. During the three-year period from 1988 to 1990, the Carmel River never breached the sand bar at the mouth with the Pacific Ocean, and therefore the river was not accessible to adult steelhead for spawning purposes.

I reference the Steelhead Restoration and Management Plan for California; Department of Fish and Game; February 1996.

I believe the following is true and correct:

1. **The SWRCB has failed to enforce Board Order 95-10. Board Order 95-10 was illegal and violated Section 100, Section 102 and Section 1825 of the California Water Code and also violated Article X, Section 2 of the California Constitution, and also other statutes of the State of California.**

2. **The SWRCB unlawfully authorized Cal-Am to continue to unlawfully divert and use the people's water from the Carmel River and the unlawful diversion and use of the Carmel River water continues without enforcement actions by the SWRCB. The unauthorized diversion and use of the people's water from the Carmel River is illegal. The unlawful diversion and use of the people's water from the**

Carmel River by Cal-Am is the unreasonable diversion and use, and unreasonable method of diversion and use of the state's water.

3. **The SWRCB unlawfully gave Cal-Am an unlawful waiver in Board Order 95-10 to unlawfully divert and use the people's water of the Carmel River. The unauthorized diversion and use waiver by the SWRCB of the Carmel River water by Cal-Am is illegal. The unlawful diversion and use of the people's water from the Carmel River by Cal-Am is the unreasonable diversion and use, and unreasonable method of diversion and use of the state's water.**

4. **The SWRCB failed to require in Board Order 95-10 mandatory daily flow requirements below Los Padres Dam and San Clements Dam downstream to provide spawning habitat for Carmel River adult steelhead. Carmel River steelhead species were listed as threatened in August 1997 under the protection of the provisions of the Federal Endangered Species Act. The unlawful diversion and use of the people's water from the Carmel River by the California American Water Company is the unreasonable method of diversion and use of the state's water that adversely affected Carmel River steelhead and their historic spawning habitat in the Carmel River watershed.**

The SWRCB must take the following actions:

5. **Board Order WR 95-10 must be amended by the SWRCB to provide for surface flows at all times in the Carmel River below Los Padres Dam and San Clemente Dam to the Carmel River Lagoon to maintain and keep in good condition threatened steelhead species and their critical habitat pursuant to California Fish and Game Code 5937 and other state and federal statutes. The amendment of Board Order 95-10 must also include the following protection measures: (a) Surface flows al times into the Carmel River Lagoon; (b) Management Plan for the Carmel River Lagoon; (c) Protection of water quality below Los Padres Dam resulting from the effects of Hydrogen Sulfide; (d) Maintain and install a new fish ladder at Los Padres Dam and other improvements; (e) Removal of the San Clemente Dam by the California American Water Company; (f) Removal of sediment below San Clemente Dam caused by San Clemente Reservoir by the California American Water Company; (g) Double the steelhead population to historic levels; (h) Prevent the taking of steelhead species in the Carmel River by unauthorized diversion and pumping by the California American Water Company; (i) and other protection measures not noted.**

6. **Pursuant to the provisions of the California Water Code, the California American Water Company must be fined the maximum**

amount of money by the SWRCB for the unauthorized diversion, pumping, and use of the state's water. Said fine money must fund and must repair the harm and damage caused by the unauthorized diversion and use of the state's water to the people's threatened steelhead species and their critical habitat of the Carmel River.

7. **The California American Water Company must be required by the SWRCB to fund all past and future volunteer steelhead rescue work for the protection of threatened steelhead species by the Carmel River Steelhead Association and other parties.**

8. **The SWRCB must refer this Cease and Desist Order to the California Department of Justice for criminal actions against officials of the California American Water Company for the harm and damage caused by the Company to state property (threatened steelhead species and their critical habitat).**

Thank you for the opportunity to testify.

Respectfully Submitted

Signed by Bob Baiocchi

Bob Baiocchi

Dated: July 8, 2008

Attachment: Bob Baiocchi Background

References

1. **Board Order 95-10; SWRCB; July 6, 1995;**
2. **Instream Flow Needs for Steelhead in the Carmel River; USNMFS; June 3, 2002;**
3. **Guidelines for Maintaining Instream Flows to Protect Fisheries Resources Downstream of Water Diversions in Mid-California Coastal Streams; Update of the May 22, 2000 Guidelines; June 17, 2002; Draft; US National Marine Fisheries Service and the California Department of Fish and Game;**
4. **The Effects of Summer Dams on Salmon and Steelhead in California Coastal Watersheds and Recommendations for Mitigating Their**

Impacts; US National Marine Fisheries Service, Southwest Region, Santa Rosa Office; June 23, 2001;

5. **Sediment Removal From Freshwater Salmonid Habitat; Guidelines to NOAA Fisheries Staff for the Evaluation of Sediment Removal Actions from California Streams; NOAA Fisheries [USNMFS], Southwest Region; April 19, 2004;**
6. **Habitat Protection Policy; US National Marine Fisheries Service, Southwest Region; Adopted June 8, 1978 and Revised October 25, 1991;**
7. **NMFS National Gravel Extraction Policy; US National Marine Fisheries Service; August, 1996;**
8. **Fish Screening Criteria for Anadromous Salmonids; US National Marine Fisheries Service; January 1997;**
9. **USNMFS Scott Creek Lagoon; Abstract; (2007); Bond, Hansen, Hayes and McFarlane, US National Marine Fisheries Service staff, Santa Cruz; undated;**
10. **USNMFS Coastal Lagoon; Abstract; (2007); Bond, Hansen, Hayes and McFarlane, US National Marine Fisheries Service staff, Santa Cruz; undated;**
11. **Steelhead Restoration and Management Plan for California; DFG; February, 1996; at Carmel River;**
12. **Juvenile Steelhead Population Counts; Carmel River; 1973 to 2002; (Chart); Monterey Peninsula Water Management District; (2007);**
13. **Density of Juvenile Steelhead Populations at Selected Stations in the Carmel River, Monterey County, California – 1990 to 2002; Monterey Peninsula Water Management District; (2007);**
14. **Settlement Agreement between US National Marine Fisheries Service and California American Water Company; Steelhead; Carmel River; June 29, 2006;**
15. **Lagoon Ecology of Central Coast Steelhead and Tidewater Goby; Jerry Smith, Department of Biological Sciences, San Jose State; undated;**
16. **Surface Water Dynamics at the Carmel River Lagoon Water Years 1991 though 2005, Prepared by Greg W. James, Monterey Peninsula Water Management District; Technical Memorandum 05-01; October, 2005;**
17. **Informational/Staff Report; Item 27; Carmel River Lagoon; Monterey Peninsula Water Management District; January 26, 2006;**
18. **Final Implementation Plan for Mitigation Programs Fiscal Years 1997-2001; Monterey Peninsula Water Management District; October, 1998;**
19. **San Clemente Dam Fish Ladder Counts (Chart); Years 1962 to 2002; Monterey Peninsula Water Management District;**
20. **San Clemente Dam Fish Ladder Counts (Chart); Years 2000; Monterey Peninsula Water Management District;**

21. **San Clemente Dam Removal; Coastal Conservancy; January 18, 2007;**
22. **San Clemente Dam Safety Project; Alternatives; Draft EIS/EIR; California American Water Company; April 2006;**
23. **Hydrogen sulfide (Los Padres Dam); Wikipedia Write-up; 2007;**
24. **Carmel River Steelhead Association; Prepared by Frank Emerson, CRSA; Steelhead Rescue; Carmel River and its Tributaries; 2002, 2003, 2004, 2005, et al;**
25. **Carmel River Steelhead Report; Kevin Urquhart, Fisheries Biologist; Monterey Peninsula Water Management District and former fisheries biologist from California Department of Fish and Game; September 19, 2007;**
26. **Carmel River; Robles Del Rio Station 11143200; USGS Water Supply Records; August 1957 to September 2006; US Geological Survey;**
27. **Carmel River; Robles Carmel Station 11143250; USGS Water Supply Records; August 1962 to September 2006; US Geological Survey;**
28. **Carmel River Flows at Highway 1 Bridge; Water Years (October thru August); 2005; 2006; 2007; Monterey Peninsula Water Management District;**
29. **Carmel River Flows below Los Padres Dam; Water Years (October thru August); 2005; 2006; 2007; Monterey Peninsula Water Management District;**
30. **Carmel River Flows at Don Juan Bridge; Water Years (October thru August); 2005; 2006; 2007; Monterey Peninsula Water Management District;**
31. **Carmel River Flows at Sleepy Hollow; Water Years (October thru August); 2005; 2006; 2007; Monterey Peninsula Water Management District;**
32. **Los Padres Dam Fish Passage Facilities; Site Visit of April 18, 2006; Letter to Dennis McEwan, Supervisor, Native Anadromous Fish Team, California Department of Fish and Game from Marcin Whitman, Hydraulic Engineer, California Department of Fish and Game; dated May 4, 2006; Copied to NOAA Fisheries;**
33. **Carmel River Brood Stock Project; Carmel River Steelhead Association; California EPA Data Base; (2007);**
34. **Carmel River Fish Rearing; Carmel River Steelhead Association; California EPA Data Base; (2007);**
35. **Carmel River Habitat Restoration Project; Carmel River Steelhead Association; California EPA Data Base; (2007);**
36. **Mono Lake Decision; National Audubon Society v. Superior Court (1983) 33 Cal.3d 419, 189 Cal Rptr. 346, 658 P.2d 709, cert. denied 464 U.S. 977;**
37. **Carmel River; Public Trust Doctrine and In Good Condition; Felix Smith; Retired Field Supervisor, U.S. Fish and Wildlife Service; September 2007;**

38. **Provisions of the Federal Endangered Species; see Section 7 and Section 10, and also see Recovery Planning; NOAA Fisheries;**
39. **Settlement Agreement (MOU) Between California-American Water Company and US Department of Commence and NOAA Fisheries; Taking of Carmel River Steelhead; June 29, 2006;**
40. **California Fish and Game Commission Policy for Steelhead Rainbow Trout;**
41. **Water Rights Application; Quail Lodge; Application 30117; Carmel River;**
42. **Water Rights Application; Carmel Valley Ranch; Application 30106; Carmel River;**
43. **Water Rights Applicant; Hacienda Carmel; Application 30112; Carmel River**
44. **Water Rights Application; Holman Ranch Holdings; Application 31646; Carmel River;**
45. **Water Rights Application; Margaret Eastwood Estate and Clint Eastwood; Application 20905B; Carmel River;**
46. **Change Petition; WR Applications 7130B and 20808; Monterey Peninsula Water Management District, Petitioner; ASR Project; Carmel River; Cancellation of Hearing by Hearing Officer Art Baggett of the SWRCB; Denial of Protest by the Carmel River Steelhead Association by Hearing Officer Art Baggett of the SWRCB;**
47. **Surface Flows; Carmel River; USGS Hydrologic Unit Code 18060012; Monterey County; WY August 1962 to September 2006;**
48. **Carmel River Steelhead Association; Fish Rescue; Main Stem Carmel River; Cachagua Creek; Garzas Creek and Robinson Canyon; 2003 – 2004 – 2005;**
49. **Carmel River Steelhead Association; Steelhead Counts; Fish Ladders; Los Padres Dam and San Clemente Dam; 2003;**
50. **Carmel River Steelhead Association; Steelhead Counts Over Los Padres Dam; 1995 to 2002;**
51. **The Carmel River Steelhead Fishery and MPWMD Restoration Project; Using Department of Fish and Game Funding; MPWMD; Not Dated;**
52. **Carmel River Fishery (Steelhead) and Population Surveys; 1990-2002; MPWMD**
53. **Adult (Steelhead Migration) Migration; San Clemente Dam Fish Ladder; 1960 to 2002; and 2000; MPWMD;**
54. **Carmel River Fishery (Steelhead) and Population Surveys; Juvenile Steelhead; 1973 to 2002 (Density) and 1990 to 2002 (Main Stem); MPWMD;**
55. **MPWMD Mitigation Program; Executive Summary; Annual Report; 2005 –2006; June 2006; MPWMD;**
56. **Letter to the Editor; The Herald; July 14, 1997; Water Allocation; MPWMD;**

57. **Final Study Plan for Long Term Adaptive Management Plan of the Carmel River State Beach and Lagoon; June 2005; TAC Members: California Coastal Commission; California Department of Fish and Game; California State Parks; Monterey County Public Works Department; MPMWD; NOAA Fisheries; US Army Corps of Engineers; and US Fish and Wildlife Service; Stakeholders: Carmel River Steelhead Association; Big Sur Land Trust; California American Water Company; California University Monterey Bay; Carmel River Lagoon Coalition; Carmel River Watershed Conservancy; and Monterey County Service Area 50. Note: Absent Representatives for the SWRCB and the Division of Water Rights in TAC Committee;**
58. **Final Report; Discharge into State Water Quality Protection Areas [Carmel Bay et al]; Southern California Coastal Water Research Project; Contract 01-187-250; June 2003 – Adoption of Protection Areas of Biological Significance [Carmel Bay et al] by State Water Resources Control Board; June 2003;**
59. **Thormton, Edward B. Professor, Littoral Processes and River Breaching at Carmel River Beach, Naval Postgraduate School; October 2005; 12 pages;**
60. **Watson, F.G.R. and Casagrande, J., 2004. Potential Effects of Groundwater Extraction on Carmel Lagoon, California. The Watershed Institute, California State University Monterey Bay, Report No. Wi-2004-09;**
61. **Surface Water Dynamics at the Carmel River Lagoon; WY 1991 to 2005; MPWMD; October 2005;**
62. **Carmel River Lagoon Water Levels; WY 1992 to 2005; 2006; 2007; 2008; MPWMD;**
63. **Does Loss of the Estuary Equal Loss of Anadromy in Southern Steelhead; US National Marine Fisheries Service [Bond, Hansen, and McFarlane USNMFS]; Scott Creek, Central California Coastal Stream;**
64. **Lagoon Ecology of Central Coast Steelhead and Tidewater Goby; Jerry J. Smith, Department of Biological Science, San Jose State University;**
65. **Winter Steelhead Rearing and Residence Patters in a California Coastal Lagoon; Estuarine Research Federation (EDF); Conference Abstract; R.A. Bush, Un Cal Davis, John Muir Institute of the Environment;**
66. **Denial by NOAA Fisheries of Rescuing Steelhead in Carmel River Lagoon; Letter From Roy Thomas, President, Carmel River Steelhead Association to NOAA Fisheries; July 2007;**
67. **Monterey Peninsula Water Management District Home Page; Citing Water Permits and Conservation; Water Resources Management; Water Supply Projects; Programs; Document Library; Meetings; et al; MPWMD;**

68. **Letter to Editor of The Carmel Pine Cove From Darby Fuerst, General Manager, MPWMD; Carmel River Wells; MPWMD;**
69. **Draft Evaluation of Seawater Desalination Projects Proposed for Monterey Peninsula; Submitted to MPWMD; GEI; July 10, 2007;**
70. **Seaside Groundwater Basin Aquifer Storage and Recovery Project; Phase 1; MPWMD; July 14, 2005;**
71. **Monterey Peninsula Water Management District; Annual Report; 2006**
72. **Rules and Regulations of the MPWMD; Carmel River Streambank, Streambed, Riparian et al; Carmel River; MPWMD;**
73. **MPWMD Mitigation Program Annual Reports; 2000 to 2006; MPWMD;**
74. **Steelhead Trout Life Cycle; Napa County Conservation District; undated;**
75. **Threatened and Endangered Species System; TESS; US Fish and Wildlife Service; Undated; State of California, 309 species;**
76. **California Red-Legged Frogs; Listed for Protection; federal ESA; Classification; Critical Habitat; Analysis; History; and Recovery Plan; US Fish and Wildlife Service;**
77. **US Department of Justice v. Luke D. Brugnara; Little Arthur Creek; Pajaro Creek Watershed; Threatened Steelhead; Blockage of Spawning and Rearing Habitat; "Real Estate Developer Facing Charges of Poaching Steelhead Trout in Gilroy"; San Jose Mercury; April 11, 2008.**