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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 FOR THE COUNTY OF MONTEREY

16 CALIFORNIA AMERICAN WATER,

17 Plaintiff,

18 vs.

19 CITY OF SEASIDE; CITY OF MONTEREY;
 20 CITY OF SAND CITY; CITY OF DEL REY
 OAKS; COUNTY OF MONTEREY; SECURITY
 NATIONAL GUARANTY INC.; GRANITE
 21 ROCK COMPANY; D.B.O. DEVELOPMENT
 NO. 27; MURIEL E. CALABRESE 1987 TRUST;
 22 ALDER WOODS GROUP (CALIFORNIA), INC.;
 PASADERA COUNTRY CLUB, LLC; LAGUNA
 23 SECA RESORT, INC.; BISHOP McINTOSH &
 McINTOSH, a general partnership; THE YORK
 24 SCHOOL, INC.; and DOES 1 through 1,000,
 Inclusive,

25 Defendants.

Case No. M66343

POINTS AND AUTHORITIES IN
 SUPPORT OF CITY OF SEASIDE'S AND
 CALIFORNIA AMERICAN WATER'S
 JOINT POST-JUDGMENT MOTION TO
 REQUEST CLARIFICATION OF THE
 COURT'S FINAL DECISION RELATING
 TO THE CALCULATION OF THE OVER-
 PRODUCTION REPLENISHMENT
 ASSESSMENT

[Assigned for all Purposes to the
Honorable Roger D. Randall (Ret.)]

Date: January 12, 2007

Time: 1:30 p.m.

Dept.: 13

CITY OF SEASIDE'S AND CALIFORNIA AMERICAN WATER'S POINTS AND AUTHORITIES IN SUPPORT
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MONTEREY PENINSULA WATER MANAGEMENT DISTRICT, Intervenor
MONTEREY COUNTY WATER RESOURCES AGENCY, Intervenor
AND RELATED CROSS-ACTIONS

HASH AND PARENT
21 East Cervillo Street
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HANSEN AND PARENT
21 East Carrillo Street
Santa Barbara, CA 93101

CITY OF SEASIDE'S AND CALIFORNIA AMERICAN WATER'S POINTS AND AUTHORITIES IN SUPPORT
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1 **I. INTRODUCTION**

2 The concurrently filed post-judgment motion is submitted jointly by the City of Seaside
3 (“City”) and California American Water (“California American”) to request clarification of the
4 Court’s Final Decision, issued on March 27, 2006 (“Decision”), relating to the calculation of the
5 Over-Production Replenishment Assessment (“Over-Production RA”).

6 The Decision requires that all producers producing groundwater pursuant to a Standard
7 Production Allocation (“Standard Producers”) pay a Replenishment Assessment upon all Over-
8 Production during the preceding year. (Decision, pp. 32-33.) The term Over-Production is defined at
9 pages 13 and 14. The definition makes clear that: (a) only Standard Producers pay an Over-
10 Production RA (Alternative Production Allocation Producers do not); and (b) Standard Producers
11 only pay an Over-Production RA on that production that is in excess of their share of an initially
12 assumed Natural Safe Yield of 3,000 acre-feet. The City and California American agree that the
13 Decision provides as much.

14 The City and California American disagree, however, about how each Standard Producer’s
15 portion of the Natural Safe Yield should be determined, and thus what is the appropriate formulaic
16 approach for calculating the Over-Production RA. The City contends that each Standard Producer’s
17 share of the Natural Safe Yield should be determined on a Subarea by Subarea basis (e.g., different
18 calculations for the Laguna Seca and Coastal Subarea s), while California American recommends a
19 basin-wide approach. The City and California American have set forth their respective arguments
20 below for the Court’s consideration. The moving parties respectfully request that the Court clarify
21 the appropriate method to calculate the Over-Production RA upon due consideration of the following
22 arguments.¹

23 **II. THE CITY’S ARGUMENTS**

24 The Decision defines the term “Over-Production,” as the term applies to each individual
25 Producer, as “that quantity of Water Produced in any Administrative Year in excess of that
26 Producer’s *Base Water Right*, as applied to an initially assumed Natural Safe Yield of 3,000 afy

27 _____
28 ¹ At its October 4, 2007 meeting, the Watermaster approved of the City and California American
jointly presenting this issue for the Court’s resolution.

1 (subject to adjustment as further study shall justify).” (Decision, pp. 13-14, emphasis added.) The
2 City contends that the initially assumed Natural Safe Yield of 3,000 acre-feet per year (“afy”) should
3 be divided between the Basin’s two Subarea s, and the quantity of Natural Safe Yield not consumed
4 by APA Producers within each Subarea should then be divided among the SPA Producers within
5 each Subarea .

6 A. **A Subarea by Subarea Approach is More Consistent with the Decision’s**
7 **Terms and Structure, and is More Logical and Fair in that it Reflects the**
8 **Significant Hydrologic Distinction Between the Subarea s**

9 The City contends that California American’s approach is inconsistent with the terms of the
10 Decision. The Decision defines “Over-Production” as Production in excess of each Producer’s
11 “Base Water Right.” The term “Base Water Right” is defined in relation to each Producer’s share of
12 the production right in *each Subarea* , and *not basin-wide*. (Decision, pp. 11, 17-19 [Tables 1].)

13 Further, the allocations of SPA set forth at pages 17 through 19 of the Decision are distinguished by
14 Subarea . Indeed, *nowhere* in the Decision are the concepts of Base Water Right or SPA referenced
15 as basin-wide calculations, but are instead consistently referenced in relation to each of the Subarea
16 s. A basin-wide approach simply was not pursued by the Parties, nor set forth in the Decision.

17 Moreover, there is significant hydrologic distinction between the two Subarea s. While
18 groundwater does flow out of the Laguna Seca Subarea into the southern portion of the Coastal
19 Subarea , there are numerous hydrogeologic reasons to treat the Natural Safe Yield in each Subarea
20 separately, including:

- 21 • different sources of recharge,
- 22 • an anticline that largely impedes hydrologic continuity (Trial Transcript, Vol. 6, pp.
23 1129, 1203-1204),
- 24 • different means, sources, and locations of basin recharge with replenishment water,
- 25 • absence of well interference between the Subarea s,
- 26 • and different potential threats (e.g., the threat of seawater intrusion is limited to the
27 Coastal Subarea).

28 For these and other distinguishing reasons, it is fairer and logical to utilize a separate Natural
Safe Yield for each Subarea .

1 **B. The Decision Sets Forth a Separate Natural Safe Yield for Each Subarea , But**
2 **Should Also Divide the 3,000 AFY of Initially Assumed Safe Yield Between the**
3 **Subarea s Within the Definition of “Over-Production”**

4 The Decision sets forth a separate Natural Safe Yield for each Subarea . The Decision states
5 that: (a) the Natural Safe Yield for the Coastal Subarea is between 1,973 afy and 2,305 afy; (b) the
6 Natural Safe Yield for the Laguna Seca Subarea is 608 afy; and (c) the Natural Safe Yield for the
7 Seaside Basin as a whole is between 2,581 afy and 2,913 afy. (Decision, p. 13.) While the
8 definition of “Natural Safe Yield” separates the safe yield by Subarea , the definition of “Over-
9 Production” does not. Therefore, the City proposes that the appropriate method to resolve this
10 ambiguity over the calculation of the Over-Production RA is to amend the definition of “Over-
11 Production” to allocate the “initial assumed Natural Safe Yield of 3,000 afy” between the Basin’s
12 two Subarea s. The following discussion proposes a fair and logical means to do so.

13 The first step would be to allocate to each Subarea the maximum acre-feet of safe yield per
14 Subarea set forth within the definition of Native Safe Yield: 608 afy for Laguna Seca and 2,305 afy
15 for Coastal. The remainder of the initial assumed Natural Safe Yield is 87 afy ($3,000 - [608+2,305]$
16 $= 87$). This quantity should be divided between the Subarea s. However, 36 afy should first be
17 deducted from the 87 afy and allocated to the Laguna Seca Subarea to cure an ambiguity in the
18 Decision. The cumulative APA for the Laguna Seca Subarea (644 afy) is 36 afy higher than the
19 Natural Safe Yield stated for the Laguna Seca Subarea of 608 afy.² Because APA Producers are not
20 obligated to pay an Over-Production RA (Decision, p. 32), there is 36 afy of potential annual
21 production in excess of the Laguna Seca Subarea’s Natural Safe Yield for which no Producer is
22 specifically obligated to pay an Over-Production RA. However, the Decision collectively obligates
23 the Producers to pay an Over-Production RA for all cumulative Production in excess of the initially
24 assumed Natural Safe Yield of 3,000 AFY. (Decision, pp. 13-14, and 32.) Therefore, there is

25 ² The reason for this derivation appears to be a change made between to the Producer’s proposed
26 stipulated judgment and the Decision. The Decision increased the APA provided to the County of
27 Monterey for use at the Laguna Seca County Park from 5 afy (within the proposed stipulated
28 judgment) to 41 afy (within the Decision). Because the total APA was set at the original estimate of
Natural Safe Yield for the Laguna Seca Subarea (608 afy), this change resulted in a 36 afy increase
in the APA for the Laguna Seca Subarea but not an equivalent increase in the Natural Safe Yield for
the subarea.

1 potentially 36 afy of excess production in the Laguna Seca Subarea that must be accounted for in
2 some manner. Deducting 36 afy from the 87 afy and allocating the 36 afy to the Laguna Seca
3 Subarea resolves this potential problem.

4 After deducting the 36 afy from the 87 afy, 51 afy remain. This relatively small amount of
5 yield can then be proportionately divided between the two Subareas. Each Subarea's proportionate
6 share may be determined by dividing the initial Natural Safe Yield for each Subarea (i.e., 2,305 afy
7 for Coastal and 644 afy for Laguna Seca [608+36]) by the total initial basin-wide Natural Safe Yield
8 i.e., 2,949 afy [2,305 + 644]), and then multiplying the resulting percentage against the remaining 51
9 afy.

10 This exercise results in a division of the "initial assumed Natural Safe Yield of 3,000 afy"
11 between the Subareas (i.e., the "Adjusted NSY") as follows: 2,345 afy for the Coastal Subarea and
12 655 afy for the Laguna Seca Subarea.³ To determine each SPA Producer's share of the Adjusted
13 NSY in each Subarea, all actual APA Production within the Subarea during the preceding year
14 must be subtracted from the respective subarea's Adjusted NSY. This is necessary because APA
15 Producer's are exempted from the obligation to pay an Over-Production RA.

16 After subtracting the APA Production, the subarea's remaining Adjusted NSY ("SPA NSY")
17 can then be proportionately divided among the SPA Producer within the respective Subarea. An
18 individual SPA Producer's share of the Subarea's SPA NSY may be determined by dividing the
19 individual SPA allocation by the total SPA allocation for the Subarea, and then multiplying the
20 resulting percentage against the subarea's SPA NSY. An individual SPA Producer's Over-
21 Production RA is determined by subtracting the Producer's share of the subarea's SPA NSY from
22

23
24 ³ The parties did not introduce a comprehensive analysis of the natural safe yield within the
25 respective subareas at trial. However, on cross-examination, the District's witness, Darby Fuerst
26 acknowledged that the safe yield for the Laguna Seca Subarea could be as high 990 afy, but that
27 some of the recharge that supports that yield occurs westward and down-gradient of the major
28 production wells. (Trial Transcript, Vol. 6, pp. 1102-1103.) No evidence was produced to suggest
that the natural safe-yield for each of the respective subareas cannot be adjusted slightly, as proposed
here, to remedy the ambiguity relating to the calculation of the Over-Production RA. However,
should future experience demonstrate that too much production is occurring from either subarea
without an equivalent amount of artificial recharge, the Court may adjust the natural safe yield
within either subarea, as appropriate at that time, pursuant to the Court's reserved jurisdiction.

1 the Producer's actual SPA Production, and then multiplying the resulting figure by the budgeted per
2 acre-foot Replenishment Assessment.

3 This proposal is presented below as mathematic equations.

4
5 **C. Proposed Approach For Determining The Over-Production RA Shown As**
6 **Mathematic Equations**

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1. **Formulas to Determine Each Subarea's Adjusted NSY**

- a. $3,000 \text{ afy} - 2,913 \text{ afy} = 87 \text{ afy}$ (difference between the initial assumed Natural Safe Yield, set forth in the definition of "Over-Production," and the high range of the basin-wide Natural Safe Yield set forth in the definition of "Natural Safe Yield")
- b. $87 \text{ afy} - 36 \text{ afy} = 51 \text{ afy}$ (remainder after allocating 36 afy to the Laguna Seca Subarea to increase the subarea's Natural Safe Yield from 608 afy to 644 afy to equal the subarea's APA ("Remainder"))
- c. $(644 \text{ afy} / (2,305 \text{ afy} + 644 \text{ afy})) = 21.8\%$ (Laguna Seca Subarea's percentage share of the Natural Safe Yield)
- d. $2,305 \text{ afy} / (2,305 \text{ afy} + 644 \text{ afy}) = 78.2\%$ (Coastal Subarea's percentage share of the Natural Safe Yield)
- e. $51 \text{ afy} \times 21.8\% = 11 \text{ afy}$ (Laguna Seca Subarea's share of the Remainder)
- f. $51 \text{ afy} \times 78.2\% = 40 \text{ afy}$ (Coastal Subarea's share of the Remainder)
- g. $644 \text{ afy} + 11 \text{ afy} = 655 \text{ afy}$ (Adjusted NSY for the Laguna Seca Subarea)
- h. $2,305 \text{ afy} + 40 \text{ afy} = 2,345 \text{ afy}$ (Adjusted NSY for the Coastal Subarea)

2. **Formulas to Determine Each Producer's Share of the Subarea's Adjusted NSY**

Adjusted NSY - actual Subarea APA Production = subarea's SPA NSY

a. Laguna Seca Subarea SPA Producers:

Individual SPA Producer's share of the SPA NSY = Individual SPA/Collective SPA (345 afy) x SPA NSY

b. Coastal Subarea SPA Producers:

Individual SPA Producer's share of the SPA NSY = Individual SPA/Collective SPA (3,868 afy) x SPA NSY

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3. Formula to Determine an Individual SPA Producer's Over-Production RA
- a. Actual SPA Production - Producer's Share of the SPA NSY x Budgeted Replenishment Assessment per acre-foot

D. Proposed Amendment of Decision

To incorporate the proposal discussed above, the City proposes that that definition of Over-Production be amended as follows:

"Over-Production" and other variations of the same term means (1) with regard to all Production from the Seaside Basin, that quantity of Production which exceeds an initially assumed Natural Safe Yield of 3,000 afy (or such adjusted calculation of Natural Safe Yield as further study of the Basin by the Watermaster shall justify); or (2) with regard to each Producer, that quantity of Water Produced in any Administrative Year in excess of that Producer's Base Water Right, as applied to an initially assumed Natural Safe Yield of 3,000 afy (subject to adjustment as further study shall justify). *For purposes of calculating the Over-Production within each Subarea, it shall be initially assumed that the Laguna Seca Subarea's Natural Safe Yield is 655 afy and the Coastal Subarea's Natural Safe Yield is 2,345 afy (subject to adjustment as further study shall justify).* For a Party producing under the Alternative Production Allocation, the calculation shall be based upon the Base Water Right assigned to them in Table 1, *infra*, only to the extent that Party has elected to convert all or part of an Alternative Production Allocation into a Standard Production Allocation, pursuant to Section III.B.3.e.

III. CALIFORNIA AMERICAN'S ARGUMENTS

California American contends that the City advocates for a very complicated, sub-area specific calculation of over-production. California American further contends that the City's approach conflicts with the plain language of the Decision and also fails to appreciate that while extensive expert witness testimony supports the Natural Safe Yield calculation for the Seaside Basin as a whole, the sub-area safe yield figures are the results of compromise and estimate, and were not the subject of similar scientific evidence. As set forth below, California American proposes to calculate each Standard Producer's over-production, and corresponding obligation to pay a replenishment assessment, by reference to the Natural Safe Yield of the Seaside Basin as a whole.

1 A. **The Language of the Court's Decision Supports Determination of Over-**
2 **Production and Calculation of Replenishment Assessments by Reference to the**
3 **Natural Safe Yield of the Seaside Basin as a Whole**

4 Language in the Court's Decision supports calculating the Standard Producer's
5 Replenishment Assessments based on Over-Production of the Basin as a whole. The Court's
6 Decision plainly states "the Watermaster will determine a Replenishment Assessment for Artificial
7 Replenishment of the Seaside Basin necessary to offset the *cumulative* Basin Over-Production...."
8 (Decision, p. 32, lines 15-16, emphasis added.) Further, the Decision defines Over-Production by
9 reference to Natural Safe Yield of the Basin as a whole:

10 "Over-Production" and other variations of the same term means (1) with regard to all
11 Production from the Seaside Basin, that quantity of Production which exceeds an
12 initially assumed *Natural Safe Yield of 3,000 afy* (or such adjusted calculation of
13 Natural Safe Yield as further study of the Basin by the Watermaster shall justify); or
14 (2) with regard to each Producer, that quantity of Water Produced in any
15 Administrative Year in excess of that Producer's Base Water Right, *as applied to an*
16 *initially assumed Natural Safe Yield of 3,000 afy* (subject to adjustment as further
17 study shall justify).... (Decision, pp. 13-14, emphasis added.)

18 B. **There Has Not Been Sufficient Evidence Presented to the Court to Apportion**
19 **Replenishment Assessments Based on Subareas**

20 At the trial, California American presented significant evidence defining and describing the
21 Seaside Basin as a whole. For instance, Terry Foreman's report reaches conclusions regarding the
22 Natural Safe Yield⁴ of the Seaside Basin as a whole, but not for Subarea s. Timothy Durbin's
23 groundwater model, which relied heavily on data from Mr. Foreman's report, also analyzed the
24 Basin as a whole. No party presented evidence regarding the Natural Safe Yield of specific Subarea
25 s.

26 In reality, the Subarea Natural Safe Yield figures adopted for the Decision were the product
27 of compromise between the parties. The prime example of this compromise is the Natural Safe
28 Yield for the Laguna Seca Subarea , which exactly reflects the sum of the Alternative Production
29 Allocations for that Subarea (608 acre-feet). This was a compromise intended to prevent the
30 Alternative Producers from having to pay a Replenishment Assessment. The Court then set an initial
31 variable Natural Safe Yield for the Coastal Subarea , which was based, in part, by subtracting the

32 ⁴ Of note, Mr. Foreman refers to this concept as "Perennial" Safe Yield in his report and during
33 testimony.

1 Laguna Seca Subarea Natural Safe Yield from the Basin-wide perennial yield described in Mr.
2 Foreman's report (which was described in a range).

3 The circumstances surrounding the setting of each subarea's Natural Safe Yield are pertinent
4 because they demonstrate that the evidence presented at trial characterized the Basin as a whole –
5 not its Subareas. The City of Seaside's portion of this joint motion describes several alleged
6 hydrologic distinctions between the two Subareas (without citation to supporting evidence), but fails
7 to cite to any data or expert opinions that make the nexus between these alleged distinctions and the
8 purported need to determine Replenishment Assessments based on over production in each Subarea.
9 All analysis presented focused on the Basin as a whole and, therefore, it is appropriate to levy
10 Replenishment Assessments based on Over-Production of the Basin as a whole.

11 **C. California American's Formula to Determine Replenishment Assessments**

12 Only Standard Producers pay Replenishment Assessments. California American proposes
13 calculating the Replenishment Assessments by first determining a percentage that reflects each
14 Standard Producer's entitlement to water remaining in either the Natural Safe Yield or the Operating
15 Yield after subtracting the Alternative Production Allocations. This percentage can then be applied
16 to the two Yields to determine the number of acre-feet of water that each Standard Producer may
17 annually produce without paying either a Replenishment Assessment (for production over the
18 Natural Safe Yield) or an Operating Yield Over-Production Assessment. (Decision, pages 32-33.)

19 The percentages and resulting acre-foot entitlements should be calculated by first applying
20 the Coastal Subarea Standard Production Allocation percentages to 3,868, which is the annual acre-
21 foot production available in the Coastal Subarea after subtracting out the 743 acre-feet reserved for
22 the Alternative Producers. (See Decision, p. 17.) The Standard Production Allocation percentages
23 do not total 100 percent, due to the remaining Alternative Production Allocations. Thus, the
24 percentages must be originally applied to the 3,868 figure, and then several times subsequently to the
25 remainder until less than one acre-foot remains. These calculations are shown on Exhibit A. This
26 process results in an allocation of the remaining Coastal Subarea Operating Yield as follows:
27
28

1 California American, 3,504 afa (90.60%); Seaside Municipal, 287 afa (7.4%); DBO, 49 afa (1.3%);
2 and Granite Rock, 27 afa (.7%).

3 Second, add California American's Laguna Seca Subarea allocation (no other Standard
4 Producer has a Laguna Seca allocation) of 345 acre-feet to California American's total and
5 recalculate the percentages. This adjustment results in the following allocations and percentages:
6 California American, 3,849 afa (91.4%); Seaside Municipal, 287 afa (6.8%); DBO, 49 afa (1.2%);
7 and Granite Rock, 27 afa (.6%). Unless and until another party becomes a Standard Producer or a
8 transfer of rights occurs between existing Standard Producers, these percentages will remain
9 constant.

10 Third, the percentages can now be applied to either the quantity of Natural Safe Yield or
11 Operating Yield available after accounting for the Alternative Production Allocations. The Natural
12 Safe Yield is established at 3,000 acre-feet, with 1,387 acre-feet of Alternative Production
13 Allocations. Subtracting 1,387 from 3,000 leaves 1,613 acre-feet of the Natural Safe Yield
14 remaining for the Standard Producers to allocate according to their percentages. Applying the
15 percentages, each Standard Producer is entitled to the following quantities of the Natural Safe Yield
16 without paying a Replenishment Assessment: California American, 1,474 afa; Seaside Municipal,
17 110 afa; DBO, 19 afa; and Granite Rock 10 afa. Thus, the Standard Producers must pay a
18 Replenishment Assessment for each acre-foot of water pumped in excess of the Standard Producer's
19 entitlement to the Natural Safe Yield. For example, California American is entitled to pump 3,849
20 afa of the total Basin Operating Yield (3,504 afa in the Coastal Subarea and 345 afa in the Laguna
21 Seca Subarea), but for each acre-foot pumped in excess of 1,474 California American must pay a
22 Replenishment Assessment. In years where California American pumps its maximum entitlement
23 under the current Operating Yield of 5,600 acre-feet, California American would pay a
24 Replenishment Assessment on 2,375 acre-feet.

25 The Operating Yield is set at 5,600 acre-feet, and subtracting the Alternative Production
26 Allocations leaves 4,233 acre-feet remaining. Applying the Standard Producers' adjusted
27 percentages to the remaining quantity of the Operating Yield results in the following allocations for
28

1 purposes of determining Operating Yield Over-Production Replenishment Assessments: California
2 American, 3,869 afa; Seaside Municipal, 288 afa; DBO, 51 afa; and Granite Rock 25 afa. Thus, in a
3 year where replenishment water is available, and assuming the Operating Yield remains 5,600 acre-
4 feet, California American could pump more than 3,869 acre-feet but be obligated to pay an
5 additional Operating Yield Over-Production Replenishment Assessment for each acre-foot pumped
6 in excess of 3,869 acre-feet.

7 **D. The Whole Basin Method of Calculating Replenishment Assessments Does not**
8 **Require Amendments to the Decision or Judgment, but Should Instead be**
9 **Incorporated Into the Rules and Regulations**

10 Watermaster should adopt a rule to reflect the Court's ruling on this matter. If the Court
11 adopts California American's interpretation of the methodology for calculating Replenishment
12 Assessments set forth in the Decision, California American proposes the following rule for adoption
13 by Watermaster:

14 **Replenishment Assessment Calculation Methodology**

15 At the end of each Water Year the Watermaster shall levy an Over-
16 Production Replenishment Assessment for Production by any Party over
17 the Natural Safe Yield of the Seaside Basin. The Over-Production
18 Replenishment Assessment does not apply to Production under an
19 Alternate Production Allocation, so long as such Production is within the
20 fixed amount established for that Alternate Producer in Table 2 of Section
21 III.B.3 of the Judgment. The Watermaster will determine each Producer's
22 Over-Production Replenishment Assessment, if any, by using the
23 following method:

24 1. Multiply the Coastal Subarea Standard Production Allocation
25 percentages by 3,868, which is the annual acre-foot production available in
26 the Coastal Subarea after subtracting out the 743 acre-feet reserved for the
27 Alternative Producers. The Standard Production Allocation percentages do
28 not total 100 percent, due to the remaining Alternative Production
Allocations. Thus, the percentages must be originally applied to the 3,868
figure, and then several times subsequently to the remainder until less than
one acre-foot remains.

2. Second, add California American's Laguna Seca Subarea
allocation (no other Standard Producer has a Laguna Seca allocation) of
345 acre-feet to California American's total and recalculate the
percentages.

1 3. Third, the percentages can now be applied to either the quantity of
2 Natural Safe Yield or Operating Yield available after accounting for the
Alternative Production Allocations.

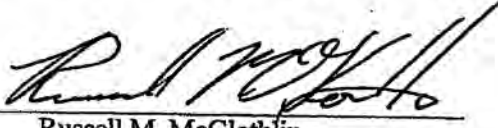
3 **IV. CONCLUSION**

4 For the reasons set forth herein, the City and California American respectfully request that
5 the Court clarify the methodology for calculating the quantity of acre-feet for which a Standard
6 Producer must pay an Over-Production Replenishment Assessment.

7
8
9 Respectfully submitted,

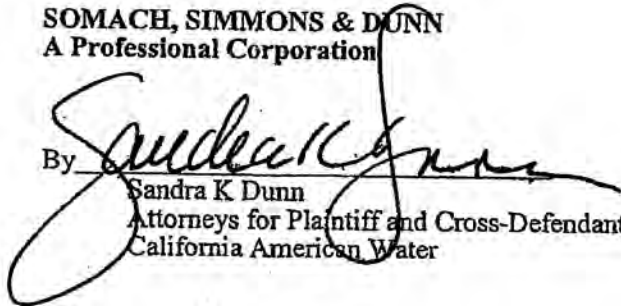
10 **HATCH & PARENT, A Law Corporation**

11
12 DATED: November 28, 2006

13 By 
14 Russell M. McGlothlin
15 Attorneys for Defendant and Cross-
16 Complainant City of Seaside

17 **SOMACH, SIMMONS & DUNN**
18 **A Professional Corporation**

19 DATED: November 28, 2006

20 By 
21 Sandra K. Dunn
22 Attorneys for Plaintiff and Cross-Defendant
23 California American Water
24
25
26
27
28

PROOF OF SERVICE

1
2 STATE OF CALIFORNIA)
3 COUNTY OF) ss
4 SANTA BARBARA)

5 I am employed by Hatch & Parent, A Law Corporation in the County of Santa Barbara,
6 State of California. I am over the age of 18 and not a party to the within action; my business
address is: 21 East Carrillo Street, Santa Barbara, California 93101. On November 29, 2006, I
served the within documents:

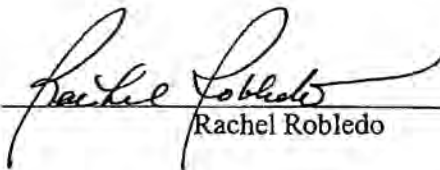
7 **POINTS AND AUTHORITIES IN SUPPORT OF CITY OF SEASIDE'S AND**
8 **CALIFORNIA AMERICAN WATER'S JOINT POST-JUDGMENT MOTION TO**
9 **REQUEST CLARIFICATION OF THE COURT'S FINAL DECISION RELATING TO**
THE CALCULATION OF THE OVER-PRODUCTION REPLENISHMENT ASSESSMENT

- 10 By placing the document(s) listed above in a sealed envelope with postage thereon
11 fully prepaid, in the United States mail at Santa Barbara, addressed as set forth
below.
- 12 By placing the document(s) listed above in a sealed envelope with postage thereon
13 fully prepaid, (with billing directed to sender) picked up by or delivered to an
overnight delivery service in Santa Barbara, California, addressed as set forth below.
- 14 By sending a true copy of the above document to the parties as set forth on the
15 service list at the fax numbers indicated. The facsimile machine used complied with
16 CRC Rule 2003(3), and the transmission was reported as complete and without error.
Pursuant to CRC Rule 2005(i), a transmission confirmation report was properly
17 issued by the transmitting facsimile machine, stating the time and date of such
transmission.

18 **SEE ATTACHED SERVICE LIST**

19 I am readily familiar with the firm's practice of collection and processing correspondence
20 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
21 motion of the party served, service is presumed invalid if postal cancellation date or postage meter
date is more than on day after the date of deposit for mailing in affidavit.

22 I declare under penalty of perjury under the laws of the State of California that the above is
true and correct. Executed on November 29, 2006, at Santa Barbara, California.

23
24
25 
26 Rachel Robledo
27
28

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