IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MONTEREY

CALIFORNIA AMERICAN WATER,

Plaintiff,

vs.

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

Defendants.

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT,

Intervenor.

MONTEREY COUNTY WATER RESOURCES AGENCY,

Intervenor.

AND RELATED CROSS-ACTIONS

Case No. M66343

AMENDED DECISION

Action Filed: August 14, 2003
Trial Date: December 13, 2005
Dept.: 21

I. INTRODUCTION

This Decision sets forth the adjudicated rights of the parties to this lawsuit (with certain exceptions noted in section I.D. below), including Plaintiff California American Water, and Defendants the City of Seaside, the City of Monterey, the City of Sand City, the City of Del Rey Oaks, Security National Guaranty, Inc., Granite Rock Company, D.B.O. Development Company No. 27, Muriel E. Calabrese 1987 Trust, Alderwoods Group (California), Inc., Pasadera Country Club, LLC, Laguna Seca Resort, Inc., Bishop, McIntosh & McIntosh, and The York School, Inc. (hereinafter "Water User Defendants") to use the water resources of the Seaside Groundwater Basin ("Seaside Basin" or "Basin") and provides for a physical solution for the perpetual management of the Basin, which long-term management will provide a means to augment the water supply for the Monterey Peninsula.

A. Seaside Groundwater Basin.

The Seaside Basin is located in Monterey County and underlies the Cities of Seaside, Sand City, Del Rey Oaks, Monterey, and portions of unincorporated county areas, including the southern portions of Fort Ord, and the Laguna Seca Area. The boundaries of the Basin are depicted in Exhibit B of this Decision. Generally, the Seaside Basin is bounded by the Pacific Ocean on the west, the Salinas Valley on the north, the Toro Park area on the east, and Highways 68 and 218 on the south. The Seaside Basin consists of subareas, including the Coastal subarea and the Laguna Seca subarea in which geologic features form partial hydrogeologic barriers between the subareas.

B. The Parties.

1. Plaintiff California American Water ("Plaintiff" or "California American") is an investor-owned public utility incorporated under the laws of the State of California. *(See* Pub. Utilities Code, §§ 1001 et seq. and 2701 et seq.) California American produces groundwater from the Seaside Basin and delivers it for use on land within its certificated service area that both overlies portions of the Seaside Basin, and is located outside of the Seaside Basin Area, all within the County of Monterey.

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2. Defendant City of Seaside ("Seaside") is a general law city situated in the County of Monterey. Seaside produces groundwater from the Seaside Basin (1) for use on two city-owned golf courses that overly the Basin, and (2) for municipal water service to its residents. *(See* Call. Const., Art. XI, § 9; Gov. Code, § 38730.)

3. Defendant City of Sand City ("Sand City") is a charter city situated in the County of Monterey. Sand City produces groundwater from the Seaside Basin and delivers it for use on private and publicly owned lands within its incorporated boundaries, all of which overlie the Seaside Basin. *(See* Cal. Const., Art. XI, § 9; Gov. Code, § 38730.)

4. Defendant City of Del Rey Oaks ("Del Rey Oaks") is a general law city situated in the County of Monterey. Land within Del Rey Oaks' incorporated boundaries overlies the Seaside Basin. The two wells Del Rey Oaks presently operates for irrigation of public lands are located outside the Seaside Basin area and are, therefore, excluded from this Stipulation. *(See* Cal. Const., Art. XI, § 9; Gov. Code, § 38730.)

5. Defendant City of Monterey ("Monterey") is a charter city situated in the County of Monterey. Monterey owns and controls land that overlies the Seaside Basin area.

6. Defendant Security National Guaranty, Inc. ("SNG") is a California corporation with its principal place of business in the City and County of San Francisco. SNG's primary business activity is real estate development. As part of its operation, SNG and/or its predecessors-in-interest have produced groundwater from the Seaside Basin. SNG also owns land overlying the Seaside Basin.

7. Defendant Granite Rock Company ("Granite") is a California corporation with its principal place of business in the County of Santa Cruz. Granite's primary business activity is the production and sale of concrete aggregate and building materials. As part of its Seaside concrete and building materials plant, Granite has produced groundwater from the Seaside Basin. Granite also owns land overlying the Seaside Basin.

8. Defendant D.B.O. Development No. 27 ("D.B.O."), erroneously sued herein as D.B.O. Development Company, is a California limited liability company with its principal place of business in the County of Monterey. D.B.O.'s primary business activity is the ownership and

development of real property for commercial, industrial, residential, and public uses. As part of their ownership and development of land overlying the Seaside Basin, D.B.O. and/or its predecessor in interest have produced groundwater from the Basin. D.B.O. also owns and controls land overlying the Seaside Basin.

9. Defendant Muriel E. Calabrese 1987 Trust ("Calabrese") is an irrevocable trust that holds property in the County of Monterey. Calabrese and/or its predecessor in interest have produced groundwater from the Seaside Basin in relation to the operation of its paving, grading and construction business and operation of a concrete batch plant in Sand City. Calabrese also owns and controls land overlying the Seaside Basin.

10. Defendant Alderwoods Group (California), Inc. ("Alderwoods Group"), DBA Mission Memorial Park ("Mission Memorial") is a California corporation with its principal place of business in the County of Monterey. Mission Memorial's primary business activity is the operation of a cemetery in the City of Seaside. As part of maintenance of the cemetery, Mission Memorial has produced groundwater from the Seaside Basin. Mission Memorial also owns land overlying the Seaside Basin.

11. Defendant Pasadera Country Club, LLC ("Pasadera") is a California limited liability company with its principal place of business in the County of Monterey. Pasadera's primary business activity is the operation of a private golf course. As part of its golf course operations, Pasadera has produced groundwater from the Seaside Basin. Pasadera also owns land overlying the Seaside Basin.

12. Defendant Bishop, McIntosh & McIntosh ("Bishop") is a general partnership, with its principal place of business in the County of Monterey. Bishop owns land overlying the Laguna Seca Subarea of the Seaside Basin. Defendant Laguna Seca Resort, Inc.("Laguna Seca") is a California corporation with its principal place of business in the County of Monterey. Laguna Seca's primary business activity is the operation of a public golf course on land owned in fee by Bishop. Laguna Seca operates the golf course pursuant to a lease with Bishop. As part of the golf course's operations, groundwater is produced from the Laguna Seca Subarea of the Seaside Basin for irrigation purposes. Laguna Seca filed a cross-complaint against California

American, and Bishop filed a cross-complaint against California American and all defendants other than Laguna Seca Defendants Laguna Seca Resort, Inc. and Bishop, McIntosh & McIntosh shall collectively be referred to as "Laguna Seca/Bishop." However, the pumping allocation established in Section III.B., below, is held only by Bishop, as the overlying property owner. Laguna Seca is a Water User Defendant now exercising Bishop's pumping allocation and operating the golf course facilities. The damages provided for in Section III.G. shall be based on the Average Gross Annual Income of the entity operating thee golf course facilities, which is now Laguna Seca (Bishop's lessee).

13. Defendant County of Monterey owns land on which is operates the Laguna Seca Park. County of Monterey has produced groundwater from the Seaside Basin for use at Laguna Seca Park. County of Monterey owns land overlying the Seaside Basin.

14. Intervenor Monterey Peninsula Water Management District ("MPWMD") is a district formed pursuant to Water Code Appendix sections 118-1 et seq. MPWMD intervened as a party defendant as against California American, cross-complained against the other parties as a plaintiff, and is a defendant in a cross-complaint filed by Seaside and joined in by City defendants.

15. Intervenor Monterey County Water Resources Agency ("MCWRA") is a duly constituted Water Resources Agency created pursuant to California Water Code Appendix section 52-3 et seq. MCWRA intervened inn this action as a plaintiff as against all parties.

16. Defendant The York School, Inc. ("York" or "York School"), is a nonprofit corporation, founded in 1959 as an independent day school providing college preparatory education. Its primary activity is the operation of a school. York leases approximately 31.4 acres of property from the United States, Department of the Army, on the former Fort Ord. This property is located immediately north of the main campus, across York Road, and is a portion of a larger parcel, approximately 107 acres in size, that is scheduled to be transferred as a public benefit conveyance to York from the federal government. This parcel overlies the Seaside Basin and is subject to this Decision. York has produced groundwater from the Seaside Basin. York is not an agent of the United States, nor can York bind the United States to this Decision.

C. The Complaint.

On or about August 14, 2003, Plaintiff filed a complaint against Defendants and Does 1 through 1,000 requesting a declaration of Plaintiff's and Defendants' individual and collective rights to groundwater and a mandatory and prohibitory injunction requiring the reasonable use and coordinated management of groundwater within the Seaside Basin pursuant to Article X, Section 2 of the California Constitution. The pleadings further allege that Plaintiff and Defendants collectively claim substantially all rights of groundwater use, replenishment and storage within the Seaside Basin area, that the Natural Safe Yield (as defined in Section III.A.) is being exceeded, and that absent a physical solution and coordinated groundwater management strategy, the Seaside Basin is in imminent risk of continued lowering of water levels, increased pump-lifts, diminution of water supply and quality, seawater intrusion, and possible land subsidence. Accordingly, Plaintiff requested: (1) a determination of the Seaside Basin's safe yield; (2) an operating plan for the management of the Basin; (3) a declaration of the rights of the parties named in this Complaint; (4) a declaration and quantification, as part of a physical solution, of the parties' respective rights to make use of the Seaside Basin's available storage space; and (5) the appointment of a Watermaster to administer the Court's Decision. Subsequently, Plaintiff has twice amended its complaint and the operative complaint is now the Second Amended Complaint, which sets forth the same general allegations as the original complaint.

D. Defendants' Responses.

Water User Defendants in this action have all responded to the Complaint pursuant to Answers. In addition, they have all joined in a motion seeking Court approval of a Stipulated Judgment. The Monterey Peninsula Water Management District and the County of Monterey, including the Monterey County Water Resources Agency, did not join in the Stipulation.

On or about September 24, 2003, Intervenor MPWMD filed a complaint in intervention against the defendants named in the Complaint. Defendants to that complaint responded to the cross-complaint pursuant to an Answer, containing a general denial and affirmative defenses.

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Seaside, on or about January 9, 2004, filed a cross-complaint against MPWMD. MPWMD responded to the cross-complaint by filing an Answer, containing a general denial and affirmative defenses.

Laguna Seca, on or about April 23, 2004, filed a cross-complaint against California American. California American responded to the cross-complaint pursuant to an Answer, containing a general denial and affirmative defenses.

Bishop, on or about September 23, 2004, filed a cross-complaint against California American and against all defendants other than Laguna Seca. California American, Granite, Sand city, Alderwoods Group, York School, D.B.O., Monterey, MPWMD, Seaside, and Pasadera responded to the cross-complaint pursuant to Answers containing general denials and affirmative defenses.

SNG, on or about July 26, 2005, filed a cross-complaint against MPWMD. MPWMD responded to the cross-complaint by filing an Answer, containing a general denial and affirmative defenses.

At the conclusion of argument on December 22, 2005, the various defendant cross-complainants agreed that the relief they had sought via their cross-complaints had been subsumed in the litigation of the complaint and complaints in intervention, the answers thereto, and the Settlement Agreement and General Mutual Release executed by all parties save the intervenors and the County of Monterey.

E. <u>Joint Motion for Entry of Judgment.</u>

Plaintiff and Water User Defendants filed a Motion for the Entry of Judgment along with a Stipulation for Entry of Judgment, which was opposed by both intervenors. The Motion for Entry of Judgment requested that the Court approve the Stipulation and enter the Judgment. The motion was heard by this Court on December 12, 2005. At the request of the moving parties, it deferred its ruling until it had taken evidence in the trial of this matter.

Having now received the evidence, and having considered written and oral argument from the various parties, the Court denies the Motion for Entry of Judgment. The Court accepts the stipulation of certain of the parties entitled "Settlement Agreement and General Mutual Release"

filed with the Court during trial insofar as the stipulation does not conflict with the ruling set forth herein.

F. Jurisdiction. This Court has jurisdiction to enter a Judgment declaring and adjudicating Plaintiff's and Water User Defendants' rights to the reasonable and beneficial use of groundwater in the Seaside Basin Area, including the imposition of a physical solution, pursuant to Article X, Section 2 of the California Constitution.

II. FINDINGS

A. Importance of Groundwater. Groundwater is an important water supply source for businesses, individuals and public agencies that overlie or Extract groundwater from the Seaside Basin. The overwhelming majority of the groundwater appropriated from the Seaside Basin has been and continues to be dedicated to a public use in accordance with the provisions of the California Constitution, Article X, Section 5. The Plaintiff and the Water User Defendants rely upon continued availability of groundwater to meet their demands. The intervenors, MPWMD and MCWRA, have a legislatively mandated interest in the preservation and enhancement of groundwater in the Basin.

B. Status of the Groundwater Basin.

1. Perennial Natural Safe Yield. The Perennial Natural Safe Yield (as defined in Section III.A. and hereinafter referred to as "Natural Safe Yield") of the Seaside Basin is solely the result of natural percolation from precipitation and surface water bodies overlying the Basin. The Court finds that the Natural Safe Yield of the Basin as a whole, assuming no action is taken to capture subsurface flow exiting the northern boundary of the Basin, is from 2,581 to 2,913 acre feet per year. The Natural Safe Yield for the Coastal Subarea is estimated from 1,973 to 2,305 acre feet per year, and the Natural Safe Yield for the Laguna Seca Subarea is 608 acre feet per year.

2. Groundwater Production. Production records demonstrate that the cumulative annual groundwater production of the Parties from the Seaside Basin area in each of the five (5) years immediately preceding the filing of this action has been between approximately 5,100 and 6,100 acre feet. Therefore, the Court finds that groundwater production has exceeded the Natural

Safe Yield during the preceding five (5) years throughout the Seaside Basin and in each of its subareas. While no one can predict with precision when it will occur, all parties agree continued indefinite production of the Basin Groundwater in excess of the Natural Safe Yield will ultimately result in seawater intrusion, with deleterious effects on the Basin. The evidence demonstrates that the stage is set for such an occurrence in the foreseeable future.

C. Legal Claims.

1. Groundwater Rights. Certain Parties allege that they have produced groundwater openly, notoriously, continuously, and without interruption in excess of the Natural Safe Yield of the Basin for more than five (5) years. As a result, these Parties allege that they have accrued prescriptive rights as articulated by the California Supreme Court in *City of Pasadena v. City of Alhambra* (1948) 33 Cal.2d 908. In defense of these claims, other Parties deny that the elements of prescription have been satisfied, and further allege the affirmative defense of "self help" as recognized in *Pasadena, supra,* 33 Cal.2d at pp. 932-32. Those Parties responsible for public water service also raise Civil Code section 1007 as an affirmative defense against prescription.

The Court finds that there is merit to the claim that certain prescriptive rights have accrued, but also finds that there is merit to the aforementioned affirmative defenses. Accordingly, the Court finds that the Parties collectively possess a variety of rights based in prescription and other original rights (including overlying and appropriative rights). Each Party's right to produce naturally occurring groundwater from the Seaside Basin therefore reflects the amount of their historical production from the Basin, and respects the priority of allocations under California law. The physical solution set forth by this Decision is intended to ultimately reduce the drawdown of the aquifer to the level of the Natural Safe Yield; to maximize the potential beneficial use of the Basin; and to provide a means to augment the water supply for the Monterey Peninsula.

2. Storage Rights. The Court finds that the public interest is served by augmenting the total yield of the Seaside Basin through artificial groundwater recharge, storage, and recovery. It is well established that an entity which artificially recharges a groundwater basin with the intent to later recapture that water maintains an exclusive right to recapture that quantity of water by which said recharge augments the retrievable water supply of the groundwater basin, so long as

such recharge and recapture (i.e., storage) does not materially harm the groundwater basin or any other entity's prior rights associated with the groundwater basin. *(City of Los Angeles v. City of San Fernando* (1975) 14 Ca1.3d 199, 264; *City of Los Angeles v. City of Glendale* (1943) 23 Cal.2d 68, 76-77; see also Water Code, § 7075.) The Court finds, therefore, that the right to store and recover water from the Seaside Basin shall be governed by the provisions of the Decision, and the rules and regulations promulgated by the Seaside Basin Watermaster, the basic provisions of which are described in Section III.H.

3. *De Minimis* Production. The Court finds that production of groundwater by any person or entity less than five (5) acre feet per year is not likely to significantly contribute to a Material Injury (as defined in Section III.A.) to the Seaside Basin or any interest related to the Seaside Basin. Accordingly, this Decision is not intended to govern the production of groundwater by any person or entity that produces a total quantity of groundwater that is less than five (5) acre feet peer year. However, to the extent the Court determines in the future that this exemption has contributed to or threatens to contribute to a Material Injury to the Seaside Basin or any interest related to the Seaside Basin, including any contribution caused by production subject to this exemption in combination with all other production from the Seaside Basin, the Court will modify or eliminate this exemption as it deems prudent pursuant to its reserved jurisdiction provided in Section M.O.

4. Transferability of Seaside Basin Rights. The Court finds that maximum beneficial use of the Seaside Basin's resources is encouraged by the ability to sell and lease production allocations. Such transferability will also provide necessary flexibility to satisfy future water supply needs. Accordingly, the Court finds that production allocations should be assignable, subject to the rules and regulations promulgated by the Watermaster, and subject to certain Parties' participation in the Alternative Production Allocation, described in Section III.B.3, which election will restrict their transfers of water.

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III. DECISION

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

A. Definitions.

1. "Alternative Production Allocation" is the amount of Groundwater that a Producer participating in this allocation method may Produce from a Subarea of the Seaside Basin as provided in Section III.B.3.

2. "Artificial Replenishment" means the act of the Watermaster, directly or indirectly, engaging in or contracting for Non-Native Water to be added to the Groundwater supply of the Seaside Basin through Spreading or Direct Injection to offset the cumulative Over-Production from the Seaside Basin in any particular Water Year pursuant to Section III.L.3.j.iii. It shall also include programs in which Producers agree to refrain, in whole or in part, from exercising their right to produce their full Production Allocation where the intent is to cause the replenishment of the Seaside Basin through forbearance in lieu of the injection or spreading of Non-Native Water.

3. "Base Water Right" is the percentage figure or the fixed amount assigned to each Party as provided in Section III.B.2, which is used to determine various rights and obligations of the Parties as provided in Sections III.B.2, III.B.3, III.L.3.c, and III.L.3.j.iii.

4. "Brackish Water" means water containing greater than 1,000 parts of chlorides to 1,000,000 parts of Water.

5. "Carryover" means that portion of a Party's Production Allocation that is not Extracted from the Basin during a particular Water Year. Each acre-foot of Carryover establishes an acre-foot of Carryover Credit.

6. "Carryover Credit(s)" means the quantity of Water established through Carryover, that a Party is entitled to Produce from the Basin pursuant to Section III.F.

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7. "Coastal Subarea" means those portions of the Seaside Basin that are west of North-South Road, and further as shown on the Basin map attached as Exhibit B to this Decision.

8. "Direct Injection" means a method of Groundwater recharge whereby Water is pumped into the Basin through wells or other artificial channels.

9. "Extraction," "Extractions," "Extracting," "Extracted," and other variations of the same noun or verb, mean pumping, taking, diverting or withdrawing Groundwater by any manner or means whatsoever from the Seaside Basin.

10. "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

11. "Fiscal Year" means the twelve (12) month period from January 1 through December 31.

12. "Groundwater" means all Water beneath the ground surface in the Seaside Basin, including Water from Natural Replenishment, Artificial Replenishment, Carryover, and Stored Water.

13. "Laguna Seca Subarea," or "Laguna Seca Area," means those portions of the Basin that are east of the Southern Coastal Subarea and south of the Northern Inland Subarea, as shown on the Seaside Basin map attached as Exhibit B to this Decision.

14. "Landowner Group" means all Producers that own or lease land overlying the Seaside Basin and Produce Groundwater solely for use on said land, except California American, Seaside (Municipal), Monterey, Del Rey Oaks, and Sand City.

15. "Material Injury" means a substantial adverse physical impact to the Seaside Basin or any particular Producer(s), including but not limited to: seawater intrusion, land subsidence, excessive pump lifts, and water quality degradation. Pursuant to a request by any Producer, or on its own initiative, Watermaster shall determine whether a Material Injury has occurred, subject to review by the Court as provided for in Section M.N.

16. "Natural Replenishment" means all processes by which Water may become a part of the Groundwater supply of the Seaside Basin without the benefit of the Physical Solution and the coordinated management it provides. Groundwater that occurs in the Seaside Basin as a result of the Physical Solution, which is not Natural Replenishment, includes, but is not limited to Storage, Carryover, and Artificial Replenishment.

17. "Natural Safe Yield" or "Perennial Natural Safe Yield" means the quantity of Groundwater existing in the Seaside Basin that occurs solely as a result of Natural Replenishment. The Natural Safe Yield of the Seaside Basin as a whole, assuming no action is taken to capture subsurface flow exiting the northern boundary of the Basin, is from 2,581 to 2,913 acre feet per year. The Natural Safe Yield for the Coastal Subareas is from 1,973 to 2,305 acre feet per year. The Natural Safe Yield for the Laguna Seca Subarea is 608 acre feet per year.

18. "Non-Native Water" means all Water that would not otherwise add to the Groundwater supply through natural means or from return flows from surface applications other than intentional Spreading.

19. "Overdraft" or "Overdrafted" refers to a condition within a Groundwater basin resulting from long-term depletions of the basin over a period of years.

20. "Operating Safe Yield" means the maximum amount of Groundwater resulting from Natural Replenishment that this Decision, based upon historical usage, allows to be produced from each Subarea for a finite period of years, unless such level of production is found to cause Material Injury. The Operating Safe Yield for the Seaside Basin, as a whole, is 5,600 acre feet. The Operating Yield is 4,611 acre feet for the Coastal Subarea and 989 acre feet for the Laguna Seca Subarea. The Operating Yield established here will be maintained for three (3) years from the date of this Decision or until a determination is made by the Watermaster, concurred in by this Court, that continued pumping at this established Operating Yield will cause Material Injury to the Seaside Basin or to the Subareas, or will cause Material Injury to a Producer due to unreasonable pump lifts. In either such event the Watermaster shall determine the modified Operating Yield in accordance with the Principles and Procedures attached hereto as Exhibit A, and through the application of criteria that it shall develop for this purpose.

21. "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 Water 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 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.

22. Operating Yield Over-Production means pumping of Native Water by Producers in excess of their Standard Production Allocation or Alternative Production Allocation, as discussed in Section III.L.3.j.iii.

23. "Person" or "Persons" includes individuals, partnerships, associations, governmental agencies and corporations, and any and all types of entities.

24. "Physical Solution" means the efficient and equitable management of Groundwater resources within the Seaside Basin, as prescribed by this Decision, to maximize the reasonable and beneficial use of Water resources in a manner that is consistent with Article X, Section 2 of the California Constitution, the public interest, and the basin rights of the Parties, while working to bring the Production of Native Water to Natural Safe Yield.

25. "Produce," "Produced," or "Production" means (1) the process of Extracting Water or (2) the gross amount of Water Extracted.

26. "Producer" means a Party possessing a Base Water Rights.

27. "Production Allocation" is the amount of Groundwater that a Producer may Produce from a Subarea of the Seaside Basin based on the Parties' election to proceed under either the Standard Production Allocation or the Alternative Production Allocation set forth in Sections III.B.2 and III.B.3, respectively.

28. "Replenishment Assessment" means an assessment levied by the Watermaster per each acre-foot of Over-Production against each party Over-Producing Groundwater in the previous Water Year. The amount of the assessment shall be sufficient to cover the cost of Artificial Replenishment in an amount necessary to off-set that Producer's Over-Production, and levied as provide in Section III.L.3.j.iii. The assessment must of necessity be initially determined based upon the estimated cost of providing Non-Native water to replenish the Basin, as determined by the Watermaster.

29. "Seaside Basin" is the underground water basin or reservoir underlying the Seaside Basin Area, the exterior boundaries of which are the same as the exterior boundaries of the Seaside Basin Area.

30. "Seaside Basin Area" is the territory depicted in Exhibit B to this Decision.

31. "Spreading" means a method of introducing Non-Native Water into the Seaside Basin whereby Water is placed in permeable impoundments and allowed to percolate into the Seaside Basin.

32. "Standard Production Allocation" is the amount of Groundwater that a Producer participating in this allocation method may Produce from a Subarea of the Seaside Basin as provided in Section III.B.2, which is determined by multiplying the Base Water Right by the Operating Yield.

33. "Storage" means the existence of Stored Water in the Seaside Basin.

34. "Storage Allocation" means that quantity of Stored Water in acre feet that a Party is allowed to Store in the Coastal Subarea or the Laguna Seca Subarea at any particular time.

35. "Storage Allocation Percentage" means the percentage of Total Usable Storage Space allocated to each Producer proceeding under the Standard Production Allocation. Producers proceeding under the Alternative Production Allocation are not allocated Storage rights and, consequently, their share of the Total Usable Storage Space is apportioned to the Producers proceeding under the Standard Production Allocation. Pursuant to the terms of Section III.B.3, Parties proceeding under the Alternative Production Allocation enjoy a one-time right to change

to the Standard Production Allocation. Due to the recalculation of the Storage Allocation Percentage necessitated when a Party changes to the Standard Production Allocation, the Watermaster will maintain the up-to-date Seaside Basin Storage Allocation Percentages.

36. "Storage and Recovery Agreement" means an agreement between Watermaster and a Party for Storage pursuant to Section III.L.3.j.xx.

37. "Store" and other variations of the same verb refer to the activities establishing Stored Water in the Seaside Basin.

38. "Stored Water" means (1) Non-Native Water introduced into the Seaside Basin by a Party or any predecessors-in-interest by Spreading or Directly Injecting that Water into the Seaside Basin for Storage and subsequent Extraction by and for the benefit of that Party or their successors-in-interest; (2) Groundwater within the Seaside Basin that is accounted for as a Producer's Carryover; or (3) Non-Native water introduced into the Basin through purchases by the Watermaster, and used to reduce and ultimately reverse Over-Production.

39. "Stored Water Credit" means the quantity of Stored Water augmenting the Basin's Retrievable Groundwater Supply, which is attributable to a Party's Storage and further governed by this Decision and a Storage and Recovery Agreement.

40. "Subarea(s)" means either the Laguna Seca Subarea or the Coastal Subarea.

41. "Total Useable Storage Space" means the maximum amount of space available in the Seaside Basin that can prudently be used for Storage as shall be determined and modified by Watermaster pursuant to Section III.L.3.j.xix, less Storage space which may be reserved by the Watermaster for its use in recharging the Basin.

42. "Transfer" and other variations of the same verb refers to the temporary or permanent assignment, sale, or lease of all or part of any Producer's Production Allocation, Storage Allocation, Carryover Credits, or Stored Water Credits. Pursuant to Section III.B.3., Transfer does not include the use of Water on properties identified in Exhibit C for use under an Alternative Production Allocation.

43. "Water" includes all forms of Water.

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44. "Watermaster" means the court-appointed Watermaster pursuant to Section III.L. of this Decision for the purpose of executing the powers, duties, and responsibilities assigned therein.

45. "Watermaster Rules and Regulations" means those rules and regulations promulgated by the Watermaster consistent with the terms of this Decision.

46. "Water Year" means the twelve (12) month period from October P^{t} through September 30th.

B. Physical Solution.

1. Groundwater Rights. The Parties have Produced Groundwater from the Seaside Basin openly, notoriously, continuously, and without interruption, which Production has been determined to be in excess of the Natural Safe Yield of the Seaside Basin and each of its Subareas for more than five (5) years. Accordingly, Parties have accrued mutual prescriptive rights and/or have preserved their overlying, appropriative, and prescriptive rights against further prescription by self-help. These individual and competitive rights, whether mutually prescriptive, appropriative or overlying rights, can be most efficiently exercised and satisfied by the implementation of this Physical Solution and in the manner expressly set forth herein.

2. Standard Production Allocation. Each Producer is authorized to Produce its Production Allocation within the designated Subarea in each of the first three Water Years. Except for those certain Parties electing to proceed under the Alternative Production Allocation, as set forth in Section III.B.3., each Producer's Production Allocation for the first three Water Years shall be calculated by multiplying its Base Water Right, as set forth in Table 1 below, by that portion of the Operating Yield which is in excess of the sum of the Alternative Production Allocations. The Operating Yield for the Seaside Basin, as a whole, is set at 5,600 acre feet annually (afa). The Operating Yield for the Coastal Subarea is 4,611 afa, with 743 afa committed to Alternative Production Allocations and 3,868 afa committed to Standard Production Allocations. The Operating Yield for the Laguna Seca Subarea is 989 afa, with 644 afa committed to Alternative Production Allocations and 345 afa committed to Standard Production Allocations. The Operating Yield established here will be maintained for three (3) Water Years

from the date Judgment is granted or until a determination is made by the Watermaster, concurred in by this Court, that continued pumping at this established Operating Yield will cause Material Injury to the Seaside Basin or to the Subareas or will cause Material Injury to a Producer due to unreasonable pump lifts. In the event of such Material Injury the Watermaster shall determine the modified Operating Yield in accordance with the Principles and Procedures attached hereto as Exhibit A, and through the application of criteria that it shall develop for this purpose.'

Commencing with the fourth Water Year[2], and triennially thereafter the Operating Yield for both Subareas will be decreased by ten percent (10%) until the Operating Yield is the equivalent of the Natural Safe Yield unless:

a. The Watermaster has secured and is adding an equivalent amount of Non-Native water to the Basin on an annual basis; or

b. The Watermaster has secured reclaimed water in an equivalent amount and has contracted with one or more of the Producers to utilize said water in lieu of their Production Allocation, with the Producer agreeing to forego their right to claim a Stored Water Credit for such forbearance; or

a. Any combination of a and b which results in the decrease in Production of Native Water required by this decision; or

b. The Watermaster has determined that Groundwater levels within the Santa Margarita and Paso Robles aquifers are at sufficient levels to ensure a positive offshore gradient to prevent seawater intrusion.

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[1] If the Operating Yield changes, Standard Production Allocations will be calculated by multiplying the portion of the changed Operating Yield committed to Standard Production Allocations by the Standard Producers' Base Water Rights. This calculation will result in a remaining quantity of water already committed to Standard Production Allocations (due to the Base Water Right percentages assigned to Alternative Producers but which are not used to calculate the Standard Production Allocations), which will be further allocated to the Standard Producers in proportion to their Base Water Rights until no quantity remains unallocated.

[2] As ordered by the Court at the January 12, 2007 hearing, the initial potential 10% reduction in Operating Yield will occur, if at all, on January 1, 2009. The 10% reduction would apply to 75% of the Operating Yield, because 25% of the Water Year would have already elapsed. Assuming the current Operating Yield of 5600 acre-feet, the Basin-wide Operating Yield would be reduced to 3,780 acre-feet for the remainder of the Water Year. Subsequent potential Operating Yield reductions would occur on the Water Year schedule set forth in the MMP.

TABLE 1[3]

Standard Production Allocations

Party:	Percentage of Operating Yield Coastal Subarea
California American Water	77.55%
City of Seaside (Municipal)	6.36%
City of Seaside (Golf Courses)	10.47%
City of Sand City	0.17%
Granite Rock Company	0.60%
SNG	2.89%
D.B.O. Development No. 27	1.09%
Calabrese	0.27%
Mission Memorial Park	0.60%

Producer:	Percentage of Operating Yield for Laguna Seca Sec area
California American Water Company	45.13%
Pasadera Country Club	22.65%
Bishop	28.88%
York School	2.89 %
Laguna Seca County Park	0.45%*

* Because the County of Monterey has not joined in the Settlement Agreement and General Mutual Release, its right to Produce water will be governed by the provisions made for those Producers selecting Alternative Production Allocations.

3. Alternative Production Allocation. The following Parties, which all assert overlying Groundwater rights, have chosen to participate in an Alternative Production Allocation: Seaside with regard to the Groundwater that it Produces for irrigation of its golf courses; Sand City, SNG, Calabrese, Mission Memorial, Pasadera, Bishop, York School, and Laguna Seca.

The Alternative Production Allocation provides the aforementioned Parties with a prior and paramount right over those Parties Producing under the Standard Production Allocation to Produce the amount set forth in Table 2 in perpetuity, and said Alternative Production shall not be

[3] Certain Parties including Seaside (Golf Courses), Sand City, SNG, Calabrese, Mission Memorial, Pasadera, Bishop and York School hold an Alternative Production Allocation in the fixed amount shown in Table 2. If any of these Parties subsequently elects to convert to the Standard Production Allocation, then the Base Water Right shown in Table 1 for such converting Party will be used to determine that Party's Standard Production Allocation consistent with the terms provided in Section III.B.3.e.

subject to any reductions under Section III.B.2 or at such times as the Watermaster determines to reduce the Operating Yield in accordance with Section III.L.3.j.ii., subject to the following terms:

a. The Alternative Production Allocation may not be transferred for use on any other property, but shall be limited to use on the respective properties (including subdivisions thereof) identified in Exhibit C;

b. The Party electing the Alternative Production Allocation may not establish Carryover Credits or Storage rights;

c. The Party electing the Alternative Production Allocation is obligated to adopt all reasonably Feasible Water conservation methods, including methods consistent with generally accepted irrigation practices;

d. In the event a Party electing the Alternative Production Allocation is required to utilize reclaimed Water for irrigation purposes, pursuant to the terms of sections 13550 and 13551 of the California Water Code, that Party shall have the first opportunity to obtain and substitute reclaimed Water for its irrigation demands. Should that Party not pursue such substitution with due diligence, any other Party may provide reclaimed Water for the irrigation purpose pursuant to the terms of sections 13550 and 13551 of the California Water Code. Under either circumstance, the Party providing the reclaimed Water for substitution shall obtain a credit to Produce an amount of Groundwater equal to the amount of substituted reclaimed Water in that particular Water Year, provided that such credit shall be reduced proportionately to all reductions in the Operating Yield in accordance with Section III.L.3.j.ii. The Alternative Production Allocation of the Party utilizing the reclaimed Water shall be debited in an amount equal to the reclaimed Water being substituted.

e. In the event that this Court, the Watermaster, or other competent governmental entity requires a reduction in the Extraction of Groundwater from the Seaside Basin or either of its Subareas, then Parties exercising a Standard Production Allocation in the affected subarea shall reduce their Groundwater Extractions *pro rata* to accommodate the required reduction. Only after such Parties exercising a Standard Production Allocation reduce their Extractions to zero, may Parties exercising an Alternative Production Allocation in the affected

subarea be required to reduce their Groundwater Extractions. In such case, those Parties exercising an Alternative Production Allocation shall reduce their pumping in an amount correlative to each other in accordance with the California law pertaining to allocation of rights to Overdrafted Groundwater basins between overlying landowners.

TABLE 2

Alternative Production Allocations

Party:	**Coastal Subarea**
Seaside (Golf Courses)	540 afa
S NG	149 afa
Calabrese	14 afa
Mission Memorial	31 afa
Sand City	9 afa

Producer:	**Alternative Production Allocation**
Pasadera	251 afa
Bishop	320 afa
York School	32 afa
Laguna Seca County Park	41 afa*

* The County of Monterey possesses certain water rights based upon its use of water from the aquifer for maintenance of Laguna Seca Park. Its historic Production of Groundwater has averaged 41 afy. It has not joined in the stipulation of the other Producers, but is entitled to draw up to 41 afy from the Laguna Seca Subarea as if it were a party to the Alternative Production Allocations.

At any time prior to the expiration of the initial three-year operating period of this Decision, as designated in Section III.B.2, any of the aforementioned Parties, except the County of Monterey, may choose to change all or a portion of their Alternative Production Allocation to the Standard Production Allocation method set forth in Section III.B.2 and shall be entitled to all of the privileges associated with said Production Allocation as set forth herein (e.g., transferability, Storage rights, and Carryover rights). A Party choosing to change to the Standard Production Allocation shall do so by filing a declaration with the Court, and serving said declaration on all other parties. Once a Party chooses to change to the Standard Production Allocation method set forth in Section III.B.2, that Party shall not be allowed to thereafter again choose to participate in the Alternative Production Allocation. The Parties under the Standard

Production Allocation shall not be allowed at any time to change from the Standard Production Allocation to the Alternative Production Allocation.

C. Production of Brackish Water. Sand City shall have the right to Produce Brackish Water from the brackish Groundwater aquifer portion of the Coastal Subarea of the Seaside Basin for the purpose of operating its proposed desalinization plant, said Production being limited to the Aromas Sands Formation, so long as such Production does not cause a Material Injury. Upon receiving a complaint supported by evidence from any Party to this Decision that the Production of Brackish Water by Sand City is causing a Material Injury to the Seaside Basin or to the rights of any Party to this Decision as set forth herein, the Watermaster shall hold a noticed hearing. The burden of proof at such hearing shall be on the Party making the complaint to show, based on substantial evidence, that the Production of Brackish Water by Sand City is causing a Material Injury. If the Watermaster determines, based on substantial evidence, that the Production of Brackish Water by Sand City is causing a Material Injury to the Seaside Basin or to the rights of any Party to this Decision as set forth herein, the Watermaster may impose conditions on such Production of Brackish Water that are reasonably necessary to prevent such Material Injury.

D. Injunction of Unauthorized Production. Each Producer is prohibited and enjoined from Producing Groundwater from the Seaside Basin except pursuant to a right authorized by this Decision, including Production Allocation, Carryover, Stored Water Credits, or Over-Production subject to the Replenishment Assessment. Further, all Producers are enjoined from any Over-Production beyond the Operating Yield in any Water Year in which Watermaster has declared that Artificial Replenishment is not available or possible.

E. No Abandonment. It is in the interest of reasonable beneficial use of the Seaside Basin and its Water supply, that no Producer be encouraged to take and use more Water in any Water Year than is actually required, Therefore, failure to Produce all of the Water to which a Producer is entitled hereunder for any amount of time shall, in and of itself, not be deemed to be, or constitute an abandonment of such Producer's Base Water Right or Production Allocation, in whole or in part. The Water unused by any Party (either as Production or Carryover) will

otherwise contribute to the ongoing efficient administration of the Decision and the Physical Solution.

F. Right to Carryover Unused Production Allocation; Carryover Credits. Except for those certain Parties electing to proceed under the Alternative Production Allocation, as set forth in Section III.B.3., for the first three Water Years each Producer who, during a particular Water Year, does not Extract from the Basin a total quantity equal to such Producer's Standard Production Allocation for the particular Water Year may establish Carryover Credits, up to the total amount of that Producer's Storage Allocation; provided, however, in no circumstance may the sum of a Producer's Storage Credits and Carryover Credits exceed that Producer's available Storage Allocation. Use (Extraction) of Carryover Credits shall be governed as otherwise provided in this Decision and the Watermaster Rules and Regulations. In consideration of the Seaside Basin's hydrogeologic characteristics, the Watermaster may discount the quantity of Water that may be Extracted pursuant to a Carryover Credit.

G. Damages and Prohibition on Enjoining Municipal Pumping. The Parties recognize that California American's pumping is for municipal purposes, including drinking Water supplies for most of the Monterey Peninsula, including within all of the Defendant Cities and to all of the Defendant landowners. In this context, if California American's Groundwater pumping causes an "Intrusion" upon a Water User Defendant's Production Allocation, then it shall compensate the Water User Defendant for damages caused by this Intrusion. An "Intrusion" occurs when a Water User Defendant exercising an Alternative Production Allocation is directed by the Watermaster, this Court or any other competent governmental entity to reduce its Groundwater pumping to a level below that Water User Defendant's Alternative Production Allocation, while California American continues pumping Groundwater from the same subarea. This damages provision does not alter the priority of the Alternative Production Allocation over the Standard Production Allocation pursuant to Section III.B.3, and is intended to address potential exigent circumstances that might arise regarding California American's municipal water service.

1. Damages from an Intrusion shall be calculated based upon the losses incurred by the Water User Defendant that are caused by the Intrusion. These losses may include the loss of

crop yield and associated income, measured against the average achieved over the preceding five (5) years from the date of the loss. Where an Intrusion occurs with respect to a Water User Defendant's exercise of an Alternative Production Allocation for golf course irrigation (i.e., an Intrusion to a "Golf Course Water User"), the Intrusion may cause discoloration, thinning and damage to the golf course turf and may require replacement of golf course turf and other golf course landscaping. Such conditions may, in turn, cause the loss of income from reduced golf course facilities usage and loss of good will. It may be difficult to quantify such damages to a sum certain. Accordingly, where a Golf Course Water User demonstrates that an Intrusion caused discoloration, thinning or loss of golf course turf, the following criteria shall be utilized to determine damages for an Intrusion to a Golf Course Water User.

a <u>Lost Income.</u>

i. The Golf Course Water User's "Average Gross Annual Income" shall be determined by summing its gross annual income from each of the five (5) years preceding the year of the Intrusion and dividing that sum by five, except where a Golf Course Water User (Pasadera) has not been in operation for seven (7) years at the time of the Intrusion, the Average Gross Annual Income shall be determined by summing the gross annual income from each of the three years preceding the year of the Intrusion and dividing that sum by three;

ii. The Golf Course Water User's gross annual income during the year of an Intrusion shall be subtracted from its Average Gross Annual Income, with the resulting difference constituting the amount of lost income damages for that year of Intrusion; and

iii. If an Intrusion occurs in two or more years within a five-year period, damages shall be calculated using an Average Gross Annual Income based on the last consecutive five-year period preceding the first year of Intrusion, or if a Golf Course Water User (i.e., Pasadera) has not been in operation for a full seven (7) years at the time of the Intrusion, damages shall be calculated using an Average Gross Annual Income based on the last consecutive three-year period proceeding the first year of Intrusion. Gross Annual Income shall not be calculated based upon a year in which an Intrusion occurred.

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iv. Water User Defendants shall make Feasible efforts to mitigate damages caused by an Intrusion (e.g., including use of evapotranspiration rates to schedule turf grass irrigation).

b. Property Damage/Out-of-Pocket Repair Costs.

i. Actual costs of repairing and/or replacing golf course turf and/or other golf course landscaping and associated labor costs shall be added to the lost income damages calculated as set forth in subparagraph (1), above.

ii. The Golf Course Water User shall make Feasible efforts to mitigate damages by employing the best irrigation practices, including use of evapotranspiration rates to schedule turf grass irrigation.

2. A damages Claim with all substantiating gross annual income data shall be provided to California American within 120 days after December 31 of the year in which the Intrusion occurred. California American shall accept or reject the Claim within 30 days thereafter. If within 35 days after receipt of a Claim, California American fails to notify the claimant of California American's acceptance or rejection of that Claim, such Claim is deemed accepted. If the Claim is affirmatively accepted, payment will be made at the time of Claim acceptance. If the Claim is deemed accepted by California American's failure to timely accept or reject the Claim, payment will be made within 30 days after the date the Claim is deemed accepted. If the Claim is rejected, all or in part, the Water User Defendant may proceed to a hearing before the Court to determine the appropriate damages, considering the above referenced criteria. The hearing shall be by motion with all supporting documentation and contest thereto submitted and supported by declaration.

H. Allowed Storage.

1. Public Resource. Underground Storage within the Seaside Basin is and shall remain a public resource. Subject to this paramount public right, the Parties hereto shall be permitted to utilize available Storage space for bona fide Groundwater Storage projects. This use shall be subject to the supervision of the Watermaster and this Court and shall be governed by the following more specific provisions.

2. In General. Except for those certain Parties electing to proceed under the Alternative Production Allocation as set forth in Section 111.B.3., each Producer is entitled to Store Water in the Basin as provided for in this Decision and Watermaster's Rules and Regulations up to the amount of their Storage Allocation. Each Producer's Allowed Storage Allocation in each Subarea shall be calculated by multiplying its Storage Allocation Percentage by the Total Useable Storage Space, less space reserved by the Watermaster as herein below set forth. The initial Storage Allocation Percentages are equal to the Base Water Rights, Table 1, less Storage reserved for the Watermaster and certain public agencies. Parties with an Alternative Production Allocation are entitled to their Storage Production Allocation when they elect to change to Standard Production Allocation

3. California American Storage Allocation. All Storage Allocation held by California American shall be held in trust by California American: (i) first for the benefit of California American's retail Water service customers within its service territory on the Monterey Peninsula and the County of Monterey and cities within its service territory which it serves; and (ii) then for other purposes as California American deems appropriate. In the event of a reduction in service from the Seaside Basin, California American will allocate service, including that which is associated with its Storage Allocation, in a manner that is consistent with and proportionate to its historic deliveries to all then current customers. Further, to the extent that California American has excess Storage Allocation available after meeting its responsibilities to its retail Water service customers within its service territory on the Monterey Peninsula and the cities which it serves, upon request by the County of Monterey, Monterey, Seaside, Sand City, or Del Rey Oaks, California American shall make available portions of its Storage Allocation within the Coastal Subarea for use by the requesting city in the Coastal Subarea as provided herein. Specifically, the city's request shall be made in writing and generally describe the public purpose and proposed use of the Storage Allocation by the requesting city. California American shall not deny the request unless making the requested portion of the Storage Allocation available to the city would unreasonably interfere with California American's ability to operate its system or to otherwise provide service to its customers. Should California American not be able to accommodate all

requests by all cities without unreasonably interfering with its operations and service responsibilities, first priority to excess Storage Allocation shall be given to each respective city requesting the use of a portion of the Storage Allocation up to an amount equal to the percentage that the total quantity of Water delivered by California American for retail service to the requesting city bears to the total quantity of Water delivered to all cities at the date the Decision is entered. Notwithstanding the paramount rights of each city described in this section, 5 percent of any Storage Allocation held in trust by California American will be reserved for *de minimis* Storage opportunities and made available for the benefit of any requesting city on the basis of first in time, first in right. Additionally, provision of Storage Allocation by California American to a requesting city shall not be construed as a waiver of California American's rights under section 1501 et seq. of the California Public Utilities Code or consent to duplication of its retail Water service. Moreover, California American shall not charge any fee for use of its Storage Allocation by Monterey, Seaside, Sand City, or Del Rey Oaks. However, the capital or other value of California American's Storage Allocation shall belong to California American. Finally, no city may request use of California American's Storage Allocation unless it has first used all of its own. Storage Allocation as provided herein.

4. Determination of Total Useable Storage Space. Watermaster shall determine and declare the Total Useable Storage Space in the Basin, and may annually adjust the Total Useable Storage Space pursuant to Section III.L.3.j.xix of this Decision,. If and when Watermaster adjusts the Total Useable Storage Space in the Basin, each Producer's Storage Allocation shall be adjusted accordingly.

Each Storage Allocation is of the same legal force and effect, and each is without priority with reference to any other Producer's Storage Allocation. Watermaster shall, however, consider each proposal to Store Water independently pursuant to Section III.L.3.j.xx.

5. Carryover. Each Producer operating under the Standard Production Allocation shall have the right to use their respective Storage Allocation to Store any Carryover Water subject to the provisions of this Decision. Unused (not Extracted) Stored Water Credits and Carryover Credits shall be carried over from year to year for the first three Water Years.

Thereafter Carryover Water withdrawal is subject to a percentage decrease consistent with percentage decreases in the Operating Yield, according to the terms of this Decision. Due to the hydrogeologic characteristics of the Seaside Basin, naturally occurring losses of stored Water may require Watermaster to discount the percentage of Stored Water that may be Extracted. Watermaster shall study the efficiencies of Storage in the Seaside Basin and set a uniform percentage for withdrawals of Stored Water.

6. Injection and/or Spreading. Each Producer operating under the Standard Production Allocation, and the Watermaster, and certain public agencies, shall have the right to Store Water by Direct Injection, Spreading, or other artificial means so long as such Storage does not cause Material Injury to any other Party. Except as provided in Section III.H.5., no Producer herein granted a Storage Allocation may Store Water in the Seaside Basin without first executing a Storage and Recovery Agreement with Watermaster, pursuant to Section III.L.3.j.xx. Each Storage and Recovery Agreement shall further define the terms and conditions by which a Producer may exercise its Storage Allocation and associated Stored Water Credits.

I. Injunction Against Unauthorized Storage. Each Producer is enjoined and restrained from Carrying Over or Storing any quantity of Water in the Seaside Basin greater than that Producer's Storage Allocation. Further, each Producer is enjoined from Storing any Water in the Seaside Basin except as provided in Section III.H.5. (establishment of Carryover Credits) or as authorized by a Storage and Recovery Agreement issued by Watermaster pursuant to Section III.L.3.j.xx.

J. Measurement of Extractions and Storage. All Producers shall install, maintain, and use adequate measuring devices on all Groundwater Production facilities as directed by Watermaster and report accurate measurements of all Groundwater Produced from the Seaside Basin in the manner required by Watermaster's Rules and Regulations. Such measuring devices shall not conflict with any monitoring devices required by MPWMD. All Producers shall comply with the provisions for measurement of any Storage of Water in the Seaside Basin, as provided in Watermaster's Rules and Regulations, and as may be further provided for in a Storage and Recovery Agreement issued by Watermaster for such Storage.

K. Order of Accounting for the Production of Groundwater. Unless otherwise requested by a Producer in writing to Watermaster, Watermaster shall account for all Production of Water form the Seaside Basin by a Producer in any Water Year as follows: Production shall first be deemed Production of that Producer's Production Allocation up to that Producer's total Production Allocation, and thereafter shall be deemed Production of that Producer's Carryover Credits, if any, and thereafter shall be deemed Production of that Producer's Stored Water Credits, if any. So long as consistent with this section, Watermaster may prescribe administrative rules within its Rules and Regulations concerning the method and manner of accounting for the Production of Groundwater.

L. Appointment of Watermaster; Watermaster Administrative Provisions.

1. Establishment of Watermaster. A Watermaster shall be established for the purposes of administering and enforcing the provisions of this Decision and any subsequent instructions or orders of the Court. The Watermaster shall consist of thirteen (13) voting positions held among nine (9) representatives. California American, Seaside, Sand City, Monterey, and Del Rey Oaks shall each appoint one (1) representative to Watermaster for each two-year term of Watermaster. The Landowner Group shall appoint two (2) representatives to Watermaster for each two-year term of Watermaster. The MPWMD shall have one (1) representative and the MCWRA shall have one (1) representative. The representatives elected to represent the Landowner Group shall include one (1) representative from the Coastal Subarea and one (1) representative from the Laguna Seca Subarea. The California American representative shall possess three (3) voting positions; the. Seaside, MPWMD, and MCWRA representatives shall each possess two (2) voting positions; and every other representatives shall posses one (1) voting position. Each representative from the Landowner Group shall carry one-half of the Landowner Representative vote. Each representative under the Landowner Group may also act as an alternate for the other.

The right to assign a representative to Watermaster and the representative's respective voting power shall only transfer upon permanent sale of 51 percent or more of the Party's Base Water Right, but not upon the lease of any portion of the member's Base Water Right.

2. Quorum and Agency Action. A minimum of six (6) representatives shall be required to constitute a quorum for the transaction of Watermaster affairs. Unless otherwise provided herein, the affirmative vote of seven (7) voting positions shall be required to constitute action by Watermaster.

3. Qualification, Nomination, Election, and Administrative Procedures.

a. Qualification. Any duly authorized agent of the entities or groups provided for in Section III.L.1. is qualified to serve as a representative on the Watermaster board.

b. Term of Office. Each new Watermaster board shall assume office at the first regular meeting in January of every second year. Each Watermaster board member shall serve for a two-year term, subject to the retained jurisdiction of the Court. Should a vacancy arise on the Watermaster board for any reason, the respective entity or group from which that vacancy arises shall appoint a replacement representative in the manner prescribed by Watermaster Rules and Regulations. Such replacement shall complete the remainder of the term of the vacated office. Within 30 days of the appointment of any new Watermaster board member, any Party may file a motion with the Court challenging the appointment. The Court, acting *sua sponte,* may reject any Watermaster board appointment within the 30-day period. Challenges shall be based on allegations that the appointed board member does not possess the requisite skills necessary to effectively serve as a member of the Watermaster board.

c. Nomination and Election of Landowner Representative. The nomination and election of the Landowner Group representatives shall occur in November of every second year in the manner designated by Watermaster Rules and Regulations. The nomination and election of the Landowner Group representatives shall be by cumulative voting with each member of the Landowner Group entitled to one (1) vote for each acre-foot of annual entitlement under the member's Alternative Production Allocation. Voting rights may only be transferred upon permanent sale of 51 percent or more of the Landowner Party's Base Water Right.

d. Organization. At he first meeting of each newly comprised Watermaster board, the Watermaster shall elect a chairman and a vice-chairman from its membership. It shall

also select a secretary, a treasurer and such assistant secretaries and assistant treasurers as may be appropriate, any of whom may, but need not, be representatives appointed to Watermaster.

e. Minutes. Minutes of all Watermaster meetings shall be kept and shall reflect a summary of all actions taken by the Watermaster. Copies thereof shall be furnished to all Parties and interested Persons as provided for inn Section III.P.2. Copies of minutes shall constitute notice of any Watermaster action therein reported.

f. Regular Meetings. The Watermaster shall hold regular meetings at places and times to be specified in the Watermaster Rules and Regulations. Its first meeting must be held within 15 days from the date Judgment is granted in this case. Notice of the scheduled or regular meetings of the Watermaster and of any changes in the time or place thereof shall be mailed to all Parties and interested Persons as provided for in Section III.P.2.

g. Special Meetings. Special meetings of the Watermaster may be called at any time by the chairman or vice chairman or by any three (3) representatives appointed to Watermaster by written notice delivered personally or mailed to all Parties and interested Persons as provided for in Section III.P.2., at least twenty-four (24) hours on a business day before the time of each such meeting in the case of personal delivery, and five (5) days' notice prior to such meeting in the case of mail if the special meeting is being called under urgent circumstances. If a special meeting is called and no urgent circumstance exists, then at least ten (10) days' notice must be provided to all Parties. The notice shall specify the time and place of the special meeting and the business to be transacted at such meeting. No other business shall be considered at such meeting.

h. Meeting Procedures. Watermaster shall designate the procedure for conducting meetings within its Rules and Regulations. Rules and regulations for conducting meetings shall conform to the procedures established for meetings of public agencies pursuant to the California Open Meetings Law ("Brown Act"), California Government Code section 54950 et seq., as it may be amended from time to time.

i. Appointment of the Initial Watermaster Board. The initial Watermaster board, which shall take office immediately from the date Judgment is granted, shall be composed

of the duly authorized representatives of California American, Seaside, Sand City, Del Rey Oaks, Monterey, MCWRA, MPWMD, and two individuals to be designated by the landowners as the initial representatives of the Landowner Group for the Coastal and Laguna Seca Subareas, respectively.

j. Duties, Powers and Responsibilities of the Watermaster. To assist the Court in the administration and enforcement of the provisions of this Decision, the Watermaster shall have and is limited to the following duties, powers, and responsibilities:

i. Preparation of Monitoring and Management Plan. Within sixty (60) days from the date Judgment is granted, Watermaster will prepare a comprehensive monitoring and management plan for the Seaside Basin ("Monitoring and Management Plan"). The Monitoring and Management Plan must be consistent with the criteria set forth in Exhibit A.

ii. Declaration of Operating Yield. Based upon the evidence at trial concerning historic Production in the Basin, the Court sets the Operating Yield for the Seaside Basin, as a whole, as 5,600 acre feet. The Operating Yield for the Coastal Subarea is 4,611 acre feet and 9889 acre feet for the Laguna Seca Subarea. The Operating Yield established here will be maintained for three (3) years from the date Judgment is granted, or until a determination is made by the Watermaster, concurred in by this Court, that continued pumping at this established Operating Yield will cause Material Injury to the Seaside Basin or to the Subareas or will cause Material Injury to a Producer due to unreasonable pump lifts. In that event, the Watermaster shall determine the modified Operating Yield in accordance with the Principles and Procedures attached hereto as Exhibit A, and through the application of criteria that it shall develop for this purpose.

iii. Artificial Replenishment and Replenishment Assessments. Each Water Year, the Watermaster will determine a Replenishment Assessment for Artificial Replenishment of the Seaside Basin necessary to offset the cumulative Basin Over-Production (as defined in Section III.A.21.), and levy a Replenishment Assessment. Said Replenishment Assessment does not apply to Production under an Alternative Production Allocation so long as such Production is within the fixed amount established for that Producer in Table 2 of

Section III.B.3. Funds so generated may be accumulated for multiple Water Years, if necessary, and shall be utilized solely for replenishment of the Basin Groundwater supply with Non-Native water.

An additional Watermaster Replenishment Assessment shall be levied after the close of each Water Year against all Producers that incurred Operating Yield Over-Production during the Water Year. Said assessment shall be in addition to the Replenishment Assessment addressed in Section III.A.21. The Replenishment Assessment based upon Operating Yield Over-Production shall be levied against the Parties participating in the Alternative Production Allocation for only such Production that exceeds the Parties' respective fixed Alternative Production Allocation identified on Table 2. In the event Watermaster cannot procure Artificial Replenishment Water to offset Operating Yield Over-Production during the ensuing Water Year, the Watermaster shall so declare in December and no Operating Yield Over-Production then in effect may occur during the ensuing Water Year. Funds generated by the Operating Yield Over-Production Assessment shall be utilized by the Watermaster to engage in or contract for Replenishment of the Operating Yield Over-Production occurring in the Preceding Water Year as expeditiously as possible.

Replenishment Assessments based on Over-Production and on Operating Yield Over-Production shall be assessed within 60 days of the end of each Water Year on a per acre-foot basis on each acre-foot, or portion of an acre-foot, of Over-Production, and payment shall be due no later than January 15th of the following year. The per acre-foot amount of the Replenishment Assessments shall be determined and declared by Watermaster in October of each Water Year in order to provide Parties with advance knowledge of the cost of Over-Production in that Water Year.

Payment of the Replenishment Assessment shall be made by each Producer incurring a Replenishment Assessment within 40 days after the mailing of a statement for the Replenishment Assessment by Watermaster. If payment by any Producer is not made on or before said date, the Watermaster shall add a penalty of 5 percent thereof to such Producer's statement. Payment required of any Producer hereunder may be enforced by execution issued outside of this Court, by order of this Court, or by other proceedings by the Watermaster or by any Producer on the

Watermaster's behalf. All proceeds of Replenishment Assessments shall be used to procure Non-Native water, including, if appropriate, substitute reclaimed water.

iv. Budget Assessments. The Watermaster budget for each Fiscal Year, and for the initial funding of the Monitoring and Management Plan, shall be funded by Budget Assessments. The Watermaster budget will be composed of three separate budgets. The first budget is solely for the funding of the Monitoring and Management Plan. The initial, onetime funding for the Monitoring and Management Plan shall not be in excess of $1,000,000. The annual budget for the Monitoring and Management Plan shall not be in excess of $200,000 for the first Fiscal Year, and thereafter as determined by the Watermaster. The Budget Assessment for the Monitoring and Management budget shall be assessed against each Producer (except *those in the Landowner Group) by multiplying the amount of the Monitoring and Management Plan budget for the ensuing Fiscal Year by the following percentages:

(1)	California American	91%
(2)	City of Seaside	7%
(3)	Granite Rock Company	1%
(4)	D.B.O. Development No. 27	1%

At such times as a Party within the Coastal Subarea chooses to change its Alternative Production to a Standard Production Allocation that Party will be assessed a proportionate share of the Budget Assessment for the Monitoring and Management Plan Budget based upon a modification of the percentages to include any new Standard Production.

The administrative budget shall be fixed at $100,000 annually for the first Fiscal Year, and thereafter as determined by the Watermaster. The Budget Assessment for the administrative budget shall be assessed against each Producer (except those inn the Landowner Group) by multiplying the amount of the budget for the ensuing Fiscal Year by the following percentages:

(1)	California American	83%
(2)	City of Seaside	14.4%
(3)	City of Sand City	2.6%

The Replenishment Budget shall be calculated based upon the anticipated cost of obtaining replenishment water, and shall be assessed as set forth in Section III.A.21, and in Section III.L.3.j.iii.

Except for the initial Budget Assessment which shall be due 30 days from the date Judgment is granted, payment of the Administrative Assessment and the Monitoring and Management Assessment, subject to any adjustment by the Court as provided in Section III.N., shall be made on or before January 15t^{h} of the Fiscal Year for which the assessments have been levied. If such payment by any Producer is not made on or before said date, the Watermaster shall add a penalty of 5 percent thereof to such Producer's statement. Payment required of any Producer hereunder may be enforced by execution issued outside of this Court, by order of this Court, or by other proceedings by the Watermaster or by any Producer on the Watermaster's behalf.

v. Reports, Information, and Records. The Watermaster will require Parties to furnish such reports, information, and records as may be reasonably necessary to determine compliance or lack of compliance by any Party with the provisions of this Decision.

vi. Requirement of Measuring Devices. The Watermaster will require all Parties owning or operating any Groundwater Extraction and/or Storage facilities to install appropriate Water measuring devices, and to maintain said Water measuring devices at all times in good working order at such Party's own expense. Such devices shall not interfere with any measuring gauges required by MPWMD.

vii. Inspections by the Watermaster. The Watermaster will make inspections of Water Production facilities and measuring devices at such times and as often as may be reasonable under the circumstances, and to calibrate or test such devices.

viii. Collection of Arrears. The Watermaster will undertake any and all actions necessary to collect the arrears of any Party with regard to any and all components of the Budget Assessment and/or the Replenishment Assessment.

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ix. Hearing Objections; Review and Approvals. The Watermaster will hear all objections and/or review and determine approval or denial of the action(s) of any Party as provided for by any other provision of this Decision.

x. Annual Report. The Watermaster will prepare, file with the Court and mail to each of the Parties on or before the 15th day of November, an annual report for the preceding Water Year, the scope of which shall include but not be limited to the following:

- Groundwater Extractions;
- Groundwater Storage;
- Amount of Artificial Replenishment, if any, performed by Watermaster;
- Leases or sales of Production Allocation;
- Use of imported, reclaimed, or desalinated Water as a source of Water for Storage or as a Water supply for lands overlying the Seaside Basin;
- Violations of the Decision and any corrective actions taken;
- Watermaster administration costs;
- Replenishment Assessments;
- All components of the Watermaster budget; and
- Recommendations.

xi. Annual Budget and Appeal Procedure in Relation Thereto. The Watermaster will annually adopt a tentative budget for each Fiscal Year stating the anticipated expense for administering the provisions of this Decision, including reasonable reserve funds. The adoption of each Fiscal Year's tentative budget shall require the affirmative vote of seven (7) voting positions. The Watermaster shall mail a copy of said tentative budget to each of the Producers hereto at least 60 days before the beginning of each Fiscal Year. The Landowner Group representative shall not participate in any vote concerning the approval of the Watermaster budget.(f If any Producer hereto has any objection to said tentative budget, it shall present the same in writing to the Watermaster within 15 days after the date of mailing of said tentative budget by the Watermaster. If no objections are received within said period, the tentative budget shall become the Final budget. If objections are received, the Watermaster shall, within 10 days

thereafter, consider such objections, prepare a Final budget, and mail a copy thereof to each Producer, together with a statement of the amount assessed to each Producer (Administrative Assessment). Any Producer may apply to the Court within 15 days after the mailing of such Final budget for a revision thereof based on specific objections thereto in the manner provided in Section III.N. The Producer challenging the budget shall make the payments otherwise required of them to the Watermaster, despite the filing of the request for revision with the Court. Upon any revision by the Court, the Watermaster shall either remit to the Producers their pro rata portions of any reduction in the budget, or credit their accounts with respect to their Administrative Assessment for the next ensuing Fiscal Year, as the Court shall direct. The amount of each Producer's Budget Assessment shall be determined as provided in Section III.L.3.j.iv.

Any money in Watermaster's budget not expended at the end of any Fiscal Year shall be applied to the budget of the succeeding Fiscal Year.

xii. Rules and Regulations. The Watermaster will adopt and amend from time to time such Rules and Regulations as may be reasonably necessary to carry out its duties, powers and responsibilities under the provisions of this Decision. The Rules and Regulations and any amendments thereto, shall be effective on such date after the mailing thereof to the Parties as is specified by the Watermaster, but not sooner than thirty (30) days after such mailing. The Watermaster shall adopt initial Watermaster Rules and Regulations within ninety (90) days from the date Judgment is granted.

xiii. Acquisition of Facilities. The Watermaster may purchase, lease, acquire and hold all necessary property and equipment as necessary to perform the duties, powers, and responsibilities provided to Watermaster by this Decision; provided, however, that Watermaster shall not acquire any interest in real property in excess of year-to-year tenancy for necessary quarters and facilities.

xiv. Employment of Staff and Consultants. The Watermaster may employ such administrative, engineering, geologic, accounting, legal, or other specialized personnel or consultants as may be deemed appropriate to the carrying out of its duties, powers,

and responsibilities and to require appropriate bonds from all officers and employees handling the Watermaster funds.

xv. Investment of Funds. The Watermaster may hold and invest any and all funds that the Watermaster may possess in investments authorized from time to time for public agencies in the State of California.

xvi. Borrowing. The Watermaster may borrow in anticipation of receipt of assessment proceeds an amount not to exceed the annual amount of assessments levied but uncollected.

xvii. Contracts. The Watermaster may enter into contracts for the performance of any administrative power herein granted.

xviii. Cooperation with Public and Private Entities. The Watermaster may act jointly or cooperate with any public or private entity to the end that the purposes of the Physical Solution may be fully and economically carried out. Where it is more economical to do so, Watermaster is directed to use such facilities of a public or private entity as are available to it to execute the duties, powers, and responsibilities provided to Watermaster under this Decision.

xix. Declaration of Total Usable Storage Space. The Watermaster will declare the Total Useable Storage Space and periodically issue adjustments to the same.

xx. Review of Storage Applications; Regulation of Storage; Issuance of Storage and Recovery Agreements. The Watermaster will review applications for Storage in the Seaside Basin, regulate the Storage of Non-Native Water in the Seaside Basin, and issue Storage and Recovery Agreements, all as provided below. All applications for Storage in the Seaside Basin shall be considered and voted on before a noticed meeting of the Watermaster. However, all such applications shall be approved absent the issuance of findings that a Material Injury to the Seaside Basin or Producers will or is likely to occur as a result of the proposed Storage program and no reasonable conditions could be imposed to eliminate such risk. If a Storage application is approved, the Watermaster shall issue a Storage and Recovery Agreement. The Storage and Recovery Agreement may include, among other possible elements and/or provisions, the following conditions to avoid Material Injury: (1) the quantity of Water authorized

to be Spread or Directly Injected into the Seaside Basin, (2) the location of the authorized Spreading or Direct Injection, (3) the location(s) where the Water may be recaptured, (4) the particular Water quality characteristics that are required pursuant to the Storage and Recovery Agreement, (5) the amount of Water that may be recaptured pursuant to the Stored Water Credits calculated by Watermaster, (6) any other terms and conditions deemed necessary to protect the Seaside Basin and those areas affected by the Seaside Basin. Such Storage and Recovery Agreements may provide for different locations for introduction and Extraction of Stored Water if deemed appropriate by the Watermaster.

xxi. Monitoring and Study of the Seaside Basin and All Seaside Basin Activities. The Watermaster will monitor and perform or obtain engineering, hydrogeologic, and scientific studies concerning all characteristics and workings of the Seaside Basin, and all natural and human-induced influences on the Seaside Basin, as they may affect the quantity and quality of Water available for Extraction, that are reasonably required for the purposes of achieving prudent management of the Seaside Basin in accord with the provisions of this Decision.

xxii. Relocation of Authorized Production Locations. The Watermaster will order relocation of the authorized quantity of Production pursuant to any Producer's Production Allocation from a specific location or from a specific aquifer within the same Subarea of the Seaside Basin, provided that it allows equivalent Production from any other location/aquifer in the Seaside Basin within the same Subarea that would not also create a reasonable potential for Material Injury. Watermaster may only order relocation of Production after issuing findings that a Material Injury has occurred or is likely to occur as a result of the then-authorized quantity and geographic distribution of Production. Watermaster may not order the relocation of Production by any Producer that is a member of the Landowner Group.

xxiii. Water Quality. The Watermaster will take any action within the Seaside Basin, including, but not limited to, capital expenditures and legal actions, which in the discretion of Watermaster is necessary or desirable to accomplish any of the following:

· Prevent contaminants from entering the Groundwater supplies of the Seaside Basin, which present a significant threat to the Groundwater quality of the Seaside Basin, whether or not the threat is immediate;

· Remove contaminants from the Groundwater supplies of the Seaside Basin presenting a significant threat to the Groundwater quality of the Seaside Basin;

· Determine the existence, extend, and location of contaminants in, or which may enter, the Groundwater supplies of the Seaside Basin;

· Determine Persons responsible for those contaminants; and

· Perform or obtain engineering, hydrologic, and scientific studies as may be reasonably required for any of the foregoing purposes.

xxiv. Other Specified Powers Pursuant to Decision Terms. The Watermaster will undertake any other powers, duties, or responsibilities provided through any other provision of this Decision.

xxv. No Power to Alter Allocation or Rights. Watermaster has no power to adjust any Producer's Base Water Right or the formula for determining Production Allocation, except to accommodate the intervention of a new Party pursuant to Section 1110.1.b. However, should an adjustment of Base Water Right and/or Production Allocation within a Subarea be required to accommodate the intervention of a new Party, no adjustment shall be made to the Base Water Right or Production Allocations possessed by any Party operating under the Alternative Production Allocation within the Landowner Group until the Production Allocations for that Subarea possessed by Parties operating underthe Standard Production Allocation have been reduced to zero.

xxvi. Effect of Non-Compliance by Watermaster With Time Provisions. Failure of the Watermaster to perform any duty, power or responsibility set forth in this Decision within the time limitation herein set forth shall not deprive the Watermaster of authority to subsequently discharge such duty, power, or responsibility, except to the extent that any such failure by the Watermaster may have rendered some otherwise required act by a Party impossible.

xxvii. Public Records. Watermaster shall conform to the procedures established under the California Public Records Act, California Government Code section 54950 et seq., as it may be amended from time to time.

M. Additional Provisions of Physical Solution.

In order to provide flexibility to the injunctive provisions set forth in Section III.D of this Decision, and to assist in a Physical Solution to meet Water requirements in the Basin, the determination of rights and responsibilities, and the injunctive provisions so set forth are subject to the following provisions:

1. California American Obligation to Augment Water Supply

a. Long-Term Supplemental Water Supplies. California American shall undertake all reasonable best efforts to promptly and diligently pursue, and if necessary collaborate with other entities, to obtain and develop sufficient long-term supplemental Water supplies to augment the Water supply available for its service territory within Monterey County.

b. Interim Supplemental Water Supplies. During the interim period, until long-term supplemental Water supplies are available, California American shall undertake all reasonable best efforts to ensure that it has sufficient Water supplies to meet all present Water supply needs, including the Water credits allocated to the various political subdivisions pursuant to the MPWMD's Water Allocation Program, in such quantities as set forth in Exhibit D, and the Water credits issued to various properties pursuant to the MPWMD's Water Allocation Program.

c. Regulatory Authorization. California American's duties under Sections III.M.1.a and III.M.1.b above will be measured and construed in the context that there are various regulatory approvals that must be obtained for California American to successfully implement the measures reasonably contemplated to secure supplemental Water. For example, it is acknowledged and understood that California American's ability to complete a supplemental Water supply project will require approvals and authorizations from the State Water Resources Control Board ("SWRCB") and the California Public Utilities

Commission ("CPUC"). Accordingly, California American will not be considered in default under this Section III.M.1 if it uses reasonable best efforts to obtain the required approvals and authorizations.

d. Credit Toward Replenishment Assessment. California American's expenditures for water supply augmentation may also provide replenishment water for the Basin. Accordingly, on an annual basis, California American will provide the Watermaster with an accounting of all expenditures it has made for water supply augmentation that it contends has or will result in replenishment of the Basin. The Watermaster shall review these expenditures and if it concurs reduce California American's Replenishment Assessment obligation, for that year, by an amount equal to the amount claimed by California American. To the extent that the Watermaster rejects any of the claimed amounts, it shall provide California American with an explanation for the rejection and allow California American an opportunity to meet and confer on the disputed amount. In the event that the Watermaster and California American cannot agree, the matter may be referred to the Court through a request filed by California American.

2. Assignment and Transfer of Production Allocation. Subject to other provisions of this Decision, and any applicable Watermaster Rules and Regulations, the Parties may assign and transfer any portion of their respective Production Allocation either on an annual Water Year basis or in perpetuity to any Person for use within the Basin.

The Parties may also assign and transfer the right to Extract any quantity of Water associated with an existing Stored Water Credit or Carryover Credit, subject to other provisions of this Decision, and any applicable Watermaster Rules and Regulations.

3. Export of Groundwater Outside of Subarea or Seaside Basin.

a. Exports Authorized from the Coastal Subarea. Producers may export Water Produced from the Coastal Subarea for reasonable and beneficial uses within another Subarea of the Seaside Basin. Only California American may export water outside the Basin, and then only to provide water to its current customers. This means that, in any Water Year, any Producer may export from the Coastal Subarea up to, but not in excess of, a quantity

equal to the sum of that Producer's Production Allocation, plus Stored Water Credits, plus Carryover Credits. Export of Groundwater in excess of a Producer's total rights (Production Allocation, plus Stored Water Credits, plus Carryover Credits), however, is prohibited.

b. Exports of Natural Replenishment Water Prohibited from the Laguna Seca Subarea. Exports from the Laguna Seca Subarea of Natural Replenishment Water and Carryover Credits not caused by Artificial Replenishment are prohibited.

c. Portability Authorized Within Subareas; Portability Prohibited Between Subareas. Any Producer may change the location of its Production facilities within its respective Subarea or join other Production facilities within its Subarea, so long as such relocation does not cause a Material Injury or threat of Material Injury to the Basin or interfere with the Production by any pre-existing Production facilities operated by another Producer(s). No Party may Produce Groundwater from the Coastal Subareas pursuant to any right recognized by this Decision in the Laguna Seca Subarea, and vice versa.

N. Watermaster Decision Review Procedures. Any action, decision, rule or procedure of the Watermaster pursuant to this Decision shall be subject to review by the Court on its own motion or on timely motion by any Party, as follows:

1. Effective Date of the Watermaster Action. Any order, decision or action of the Watermaster pursuant to this Decision on noticed specific agenda items shall be deemed to have occurred on the date of the order, decision or action.

2. Notice of Motion. Any Party may, by a regularly noticed motion, petition the Court for review of the Watermaster's action or decision pursuant to this Decision. The motion shall be deemed to be filed when a copy, conformed as filed with the Court, has been delivered to the Watermaster together with the service fee established by the Watermaster sufficient to cover the cost to photocopy and mail the motion to each Party. The Watermaster shall prepare copies and mail a copy of the motion to each Party or its designee according to the official service list which shall be maintained by the Watermaster according to Section III.P.2. A Party's obligation to serve notice of a motion upon the Parties is deemed to be satisfied by filing the motion as provided herein. Unless ordered by the Court, any such

petition shall not operate to stay the effect of any Watermaster action or decision that is challenged.

3. Time for Motion. A motion to review any Watermaster action or decision will be filed within thirty (30) days after such Watermaster action or decision, except that motions to review Budget Assessments and Replenishment Assessments hereunder shall be filed within fifteen (15) days of mailing of notice of the Assessment.

4. De Novo Nature of Proceedings. Upon filing of a petition to review a Watermaster action, the Watermaster shall notify the Parties of a date when the Court will take evidence and hear argument. The Court's review shall be de novo and the Watermaster decision or action shall have no evidentiary weight in such proceeding.

0. Reserved Jurisdiction and Other Remedies.

1. Continuing Jurisdiction.

a. Jurisdiction Reserved. Full jurisdiction, power and authority are retained by and reserved by the Court upon the application of any Party or by the Watermaster, by a noticed motion to all Parties, to make such further or supplemental orders or directions as may be necessary or appropriate for interpretation, enforcement, or implementation of this Decision. The Court may also modify, amend or amplify any of the provisions of this Decision upon noticed motion to all the Parties. The Court, through its reserved and retained jurisdiction, however, shall not have the authority to adjust any Producer's Base Water Right or Production Allocation, except to accommodate the intervention of a new Party pursuant to Section 111.0.1.b. However, should an adjustment of Base Water Right and/or Production Allocation within a Subarea be required to accommodate the intervention of a new Party, no adjustment shall be made to the Base Water Right or Production Allocations possessed by any Party operating under the Alternative Production Allocation within the Landowner Group until the Production Allocations within that Subarea possessed by Parties operating under the Standard Production Allocation have been reduced to zero.

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b. Intervention After Decision. Any non-party who is Producing or proposes to Produce Groundwater from the Seaside Basin in an amount equal to or greater than five (5) acre feet per year, may seek to become a Party to this Decision through (1) a stipulation for intervention entered into with the Watermaster or (2) any Party or the Watermaster filing a complaint against the non-party requesting that the non-party be joined in and bound by this Decision. The Watermaster may execute said stipulation on behalf of the other Parties herein, but such stipulation shall not preclude a Party from opposing such intervention at the time of the Court hearing thereon. A stipulation for intervention must be filed with the Court, and the Court will then consider an order confirming said intervention following thirty (30) days' notice to the Parties. Thereafter, if approved by the Court, such intervenor shall be a Party bound by this Decision and entitled to the rights and privileges accorded under the Physical Solution herein.

2. Reservation of Other Remedies.

a. Claims By and Against Non-Parties. Nothing in this Decision shall expand or restrict the rights, remedies or defenses available to any Party in raising or defending against claims made by any non-party. Any Party shall have the right to initiate an action against any non-party to enforce or compel compliance with the provisions of this Decision.

b. Claims Between Parties on Matters Unrelated to the Decision. Nothing in this Decision shall either expand or restrict the rights or remedies of the Parties concerning any subject matter that is unrelated to the use of the Seaside Basin for Extraction and/or Storage of Water as allocated and equitably managed pursuant to this Decision.

P. General Provisions.

1. Decision Constitutes Inter Se Adjudication. This Decision constitutes an inter se adjudication of the respective rights of all Parties.

2. Service Upon and Delivery to Parties and Interested Persons of Various Papers. This Decision and all future notices, determinations, requests, demands, objections, reports and other papers and processes Produced from this Court shall be served on all

Parties by first class mail, postage prepaid, addressed to the designee and at the address designated for that purpose in the list attached as Exhibit E to this Decision, or in any substitute designation filed with the Court.

Each Party who has not heretofore made such a designation, within thirty (30) days from the date Judgment is granted, shall file with the Court, with proof of service of a copy upon the Watermaster, a written designation of the Person to whom, and the address at which, all future notices, determinations, requests, demands, objections, reports and other papers and processes to be served upon that Party or delivered to that Party are to be so served or delivered.

A later substitute designation filed and served in the same manner by any Party shall be effective from the date of the filing as to the then future notices, determinations, requests, demands, objections, reports and other papers and processes to be served upon or delivered to that Party.

Watermaster shall maintain at all times a current list of Parties to whom notices are to be sent and their address for purposes of service. Copies of such lists shall be available to any Person. If no designation is made, a Party's designee shall be deemed to be, in order of priority: (a) the Party's attorney of record; (b) if the Party does not have an attorney of record, the Party itself at the address on the Watermaster list.

Watermaster shall also maintain a list of interested Persons that shall include all Persons whom, by written request to Watermaster, request to be added to Watermaster's list of interested Persons. All notices, determinations, requests, demands, objections, reports and other papers and processes required to be delivered to interested Persons shall be delivered to all Parties and all Persons on Watermaster's list of interested Persons.

Delivery to or service upon any Party or interested Person by Watermaster, by any other Party, or by the Court, of any document required to be served upon or delivered to a Party under or pursuant to this Decision shall be deemed made if made by deposit thereof (or by copy thereof) in the mail, first class postage prepaid, addressed to the designee of the Party and at the address shown in the latest designation filed by that Party.

Any Party desiring to be relieved of receiving deliveries from Watermaster may file a waiver of notice on a form to be provided by Watermaster.

3. Decision Binding on Successors. All provisions contained in this Decision are applicable to and binding upon and inure to the benefit of not only the Parties to this action, but also to their respective heirs, executors, administrators, successors, assigns, lessees, licensees and to the agents, employees and attorneys in fact of any such Persons.

Q. The Complaints in Intervention

The Complaint in Intervention of MPWMD seeks declaratory relief regarding its statutory right to manage and control pumping in the Basin, to store water in and Extract water from the Basin, to store and use reclaimed water, to manage all water distribution facilities within the Basin, and "the quantification and prioritization of its water and storage rights". It also sought a Physical Solution for the management of the Basin's water resources, with MPWMD being appointed as Watermaster to administer the Court's judgment. It also sought parallel injunctive relief against the parties to the lawsuit.

The Complaint in Intervention of MCWRA sought declaratory and injunctive relief regarding its right to manage and control water resources including, inter alia, those within the boundaries of the Seaside Basin, and a permanent injunction prohibiting any party to the lawsuit from exercising control "in any fashion" of the Basin in contravention of its water management authority.

On December 12, 2005, the Court asked the parties to brief the issue of whether MPWMD should be designated as Watermaster. Briefs were submitted by MPWMD, Plaintiff, Cal Am, and the City of Seaside. The court had previously received an Amicus brief from the Sierra Club which dealt with the issue of the powers of MPWMD land the effect on those powers if the court were to appoint a Watermaster other than MPWMD. The Court has read and considered each submitted brief. It has also read the Act which created MPWMD (Water Code Appendix, Chapter 118), and has had the benefit of the arguments of the parties concerning the subject. Being so informed it has concluded that the appointment of a collaborative Watermaster does not interfere with the powers of the District.

The District has argued that appointment of a Watermaster other than itself would violate the Separation of Powers doctrine. It urges that the legislature has vested it with the power to regulate pumping, and therefore only it is qualified to serve as Watermaster. On the other hand, the District has asked the Court to adopt a Physical Solution for the Basin. In so arguing, it necessarily concedes that this Court possesses power to regulate use of the Basin beyond any power the District currently possesses. Furthermore, the undisputed evidence in this case has shown that, although the District is empowered to adopt a Groundwater management plan it has never done so. The language of Water Code Section 10753 is instructive regarding the issue of the Separation of Powers:

> "(a) Any local agency, whose service area includes a groundwater basin... <u>that is not subject to groundwater management pursuant to... a court order, judgment, or decree,</u> may... adopt and implement a groundwater management plan."
>
> (Emphasis added.)

Pursuant to the quoted provisions of the foregoing section, the District will not be able in the future to adopt a Groundwater management plan for the Seaside Basin. Clearly the legislature contemplated that courts had the power to develop management plans for aquifer management even if a water management district already existed in a geographical area.

The District further argues that if the Court appoints a Watermaster other than itself, the authority of the Watermaster must not conflict with the MPWMD's authority. It is certainly true that the District possesses certain authority, which it is free to exercise according to the legislative mandate which created it. However, it is apparent the legislature did not intend that all of the powers it granted to the District be held exclusively by the District, else it would not at a later time have created the Monterey County Water Resources Agency and endowed it with many of the powers granted to the MPWMD. Rather, in creating the MCWRA, the legislature mandated that the two agencies cooperate with one another (Water Code Appendix Section 52-85). Similarly, the judgment contemplated in this Decision requires the Watermaster to "... act jointly or cooperate with any public...entity to the end that the purposes of the Physical Solution may be fully... carried out." (Section III.L.3.j.xviii)

On pages 15-16 of its brief, the District lists 9 powers and asserts those powers would "encompass the duties of any appointed watermaster." The Court has compared those 9 asserted powers and has concluded that those powers, to the extent that they exist or are currently being utilized by the District, do not encompass all the duties of a Watermaster appointed by the judgment. Furthermore, to the extent the Watermaster may be given powers akin to those of the District, this Court retains jurisdiction to determine any conflict which may arise in the future. For example, the Decision directs that any metering of Production wells by the Watermaster shall be done in a way which does not conflict with the MPWMD gauging already in place on all producing wells. The MPWMD is still able to develop water resources within its boundaries and can store water for the benefit of the District in the Basin, although it has not to date done either of those things with regard to the Seaside Basin.

One asserted power deserves more precise attention: the asserted "...power and duty to manage and regulate the transferability of the water among users- (Water Code Appendix) Section 328(g)." The plain reading of the referenced section does not encompass the right asserted. Furthermore, to the extent those that section purports to grant the District the power to "...declare rights in the natural flow of any subterranean supply of water..." it is apparent that the legislature did not intent to interfere with the ultimate right of the courts to determine the water rights of parties claiming such rights. To read the section otherwise would be to create a true Separation of Powers issue.

In fairness to the District, it had, of necessity, to confine its analysis of the duties of the proposed Watermaster to those set forth in the Proposed Stipulated Judgment. The Decision, while obviously relying on the structure and format of the Stipulated Judgment, does not track all provisions of said Judgment. For example, many of the concerns of the District revolve around its statutory right to store water in subterranean reservoirs. The Decision preserves that right. Similarly, while the Decision allows the assignment of Production rights (which the District is not empowered to affect by its referenced legislation, Water Code Section 328(g)), it does not provide for the transferability of Storage rights, a matter which might be of concern to the District under certain circumstances.

The District argues that the proposed powers of the Watermaster regarding maintenance and modification of the Operating Safe Yield would conflict with the District's authority. Much of its argument is addressed to language in the Proposed Stipulated Judgment which does not appear in the Decision. The Decision grants certain rights of control to the Watermaster for the purpose of maintaining the viability of the aquifer. However, it does not purport to forbid any regulation of the Basin which may be required by a public agency possessing the power to impose such regulation. In this regard it should be noted that the complaint in this case first raised the issue of the Overdraft status of the Basin, and the initial pleadings of the District stated that it did not know if that were true or not. The Decision does not conflict with any procedure or plan currently in place by the District to establish an Operating Yield for the Basin.

Of concern to the District is the fact that the Watermaster will be empowered to augment the underground water supply. While Water Code Section 118-343 gives the District the power to levy a Groundwater charge for the purpose of augmenting underground water supplies, in fact from the time of its creation in 1977 to the present the District has established no such charge, and has not augmented the underground water supply of the Basin. The fact that the Watermaster is authorized in the contemplated judgment to assess charges for replenishment of the Basin does not prevent the District in the future from undertaking such augmentation, if it determines it is appropriate to do so.

Based upon the evidence adduced at trial, which demonstrated that a collaborative Watermaster will likely provide more tangible results than any single individual or entity Watermaster, the Court has decided to appoint a collaborative board as Watermaster.

The prayer of MPWMD for injunctive relief is denied, except insofar as the court will issue injunctive relief as set forth in the Decision at the request of all parties. The prayer that the Court adopt a Physical Solution for the Seaside Basin is granted. The request for declaratory relief is granted to the extent that the court finds that the statutory rights of MPWMD are not in conflict with the Physical Solution and the appointment of a Watermaster in this proceeding.

The Complaint in Intervention of MCWRA also seeks declaratory and injunctive relief, but does not urge the appointment of itself or any other entity as Watermaster. The request for

injunctive relief is denied as moot, since the lawsuit does not challenge the statutory authority of the Agency. The request for declaratory relief is granted to the extent that the Court finds that the statutory rights of MCWRA are not in conflict with the Physical Solution adopted by the Court in this proceeding.

A statement of decision, if requested by any party, will be prepared by Plaintiff. If no party within ten days of the filing of this Decision specifies controverted issues or makes proposals not covered in the Decision this Decision shall become the Statement of Decision, and Plaintiff shall prepare a judgment thereon.

By

Dated:

9 February 07

Honorable Roger D. Randall