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

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

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

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

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

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

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

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

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

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

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

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

1 American, and Bishop filed a cross-complaint against California American and all defendants  
2 other than Laguna Seca Defendants Laguna Seca Resort, Inc. and Bishop, McIntosh & McIntosh  
3 shall collectively be referred to as "Laguna Seca/Bishop." However, the pumping allocation  
4 established in Section III.B., below, is held only by Bishop, as the overlying property owner.

5 Laguna Seca is a Water User Defendant now exercising Bishop's pumping allocation and  
6 operating the golf course facilities. The damages provided for in Section III.G. shall be based on  
7 the Average Gross Annual Income of the entity operating the golf course facilities, which is now  
8 Laguna Seca (Bishop's lessee).

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

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

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

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

1 C. The Complaint.

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

20 D. Defendants' Responses.

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

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

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

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

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

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

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

20 E. Joint Motion for Entry of Judgment.

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

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

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

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

## 7 **II. FINDINGS**

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

16 B. Status of the Groundwater Basin.

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

25 2. Groundwater Production. Production records demonstrate that the cumulative  
26 annual groundwater production of the Parties from the Seaside Basin area in each of the five (5)  
27 years immediately preceding the filing of this action has been between approximately 5,100 and  
28 6,100 acre feet. Therefore, the Court finds that groundwater production has exceeded the Natural



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

6 C. Legal Claims.

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

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

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

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

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

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

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1 III. DECISION

2 IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

3 A. Definitions.

4 1. "Administrative Year" is the twelve (12)month period from January 1 through  
5 December 31.

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

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

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

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

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

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

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1           8.        “Coastal Subarea” means those portions of the Seaside Basin that are west of  
2 North-South Road, and further as shown on the Basin map attached as Exhibit B to this  
3 Decision.

4           9.        “Direct Injection” means a method of Groundwater recharge whereby Water is  
5 pumped into the Basin through wells or other artificial channels.

6           10.       “Extraction,” “Extractions,” “Extracting,” “Extracted,” and other variations  
7 of the same noun or verb, mean pumping, taking, diverting or withdrawing Groundwater by any  
8 manner or means whatsoever from the Seaside Basin.

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

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

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

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

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

26           16.        “Natural Replenishment” means all processes by which Water may become a  
27 part of the Groundwater supply of the Seaside Basin without the benefit of the Physical Solution  
28 and the coordinated management it provides. Groundwater that occurs in the Seaside Basin as a

1 result of the Physical Solution, which is not Natural Replenishment, includes, but is not limited to  
2 Storage, Carryover, and Artificial Replenishment.

3 17. "Natural Safe Yield" or "Perennial Natural Safe Yield" means the quantity of  
4 Groundwater existing in the Seaside Basin that occurs solely as a result of Natural  
5 Replenishment. The Natural Safe Yield of the Seaside Basin as a whole, assuming no action is  
6 taken to capture subsurface flow exiting the northern boundary of the Basin, is from 2,581 to  
7 2,913 acre feet per year. The Natural Safe Yield for the Coastal Subareas is from 1,973 to 2,305  
8 acre feet per year. The Natural Safe Yield for the Laguna Seca Subarea is 608 acre feet per year.

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

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

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

26 21. "Over-Production" and other variations of the same term means (1) with regard  
27 to all Production from the Seaside Basin, that quantity of Production which exceeds an initially  
28 assumed Natural Safe Yield of 3,000 afy (or such adjusted calculation of Natural Safe Yield as

1 further study of the Basin by the Watermaster shall justify); or (2) with regard to each Producer,  
2 that quantity of Water Produced in any Administrative Year in excess of that Producer's Base  
3 Water Right, as applied to an initially assumed Natural Safe Yield of 3,000 afy (subject to  
4 adjustment as further study shall justify). For a Party producing under the Alternative Production  
5 Allocation, the calculation shall be based upon the Base Water Right assigned to them in Table 1,  
6 infra, only to the extent that Party has elected to convert all or part of an Alternative Production  
7 Allocation into a Standard Production Allocation, pursuant to Section III.B.3.e.

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

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

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

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

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

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

25 28. "Replenishment Assessment" means an assessment levied by the Watermaster  
26 per each acre-foot of Over-Production against each party Over-Producing Groundwater in the  
27 previous Administrative Year. The amount of the assessment shall be sufficient to cover the cost  
28 of Artificial Replenishment in an amount necessary to off-set that Producer's Over-Production,

1 and levied as provide in Section III.L.3.j.iii. The assessment must of necessity be initially  
2 determined based upon the estimated cost of providing Non-Native water to replenish the Basin,  
3 as determined by the Watermaster.

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

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

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

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

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

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

19 35. "Storage Allocation Percentage" means the percentage of Total Usable Storage  
20 Space allocated to each Producer proceeding under the Standard Production Allocation.  
21 Producers proceeding under the Alternative Production Allocation are not allocated Storage rights  
22 and, consequently, their share of the Total Usable Storage Space is apportioned to the Producers  
23 proceeding under the Standard Production Allocation. Pursuant to the terms of Section III.B.3,  
24 Parties proceeding under the Alternative Production Allocation enjoy a one-time right to change  
25 to the Standard Production Allocation. Due to the recalculation of the Storage Allocation  
26 Percentage necessitated when a Party changes to the Standard Production Allocation, the  
27 Watermaster will maintain the up-to-date Seaside Basin Storage Allocation Percentages.

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

3           37.     “Store” and other variations of the same verb refer to the activities establishing  
4 Stored Water in the Seaside Basin.

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

11           39.     “Stored Water Credit” means the quantity of Stored Water augmenting the  
12 Basin’s Retrievable Groundwater Supply, which is attributable to a Party’s Storage and further  
13 governed by this Decision and a Storage and Recovery Agreement.

14           40.     “Subarea(s)” means either the Laguna Seca Subarea or the Coastal Subarea.

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

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

24           43.     “Water” includes all forms of Water.

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

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1           45.     “Watermaster Rules and Regulations” means those rules and regulations  
2 promulgated by the Watermaster consistent with the terms of this Decision.

3     B.     Physical Solution.

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

12           2.     Standard Production Allocation. Each Producer is authorized to Produce its  
13 Production Allocation within the designated Subarea in each of the first three Administrative  
14 Years. Except for those certain Parties electing to proceed under the Alternative Production  
15 Allocation, as set forth in Section III.B.3., each Producer’s Production Allocation for the first  
16 three Administrative Years shall be calculated by multiplying its Base Water Right, as set forth in  
17 Table 1 below, by that portion of the Operating Yield which is in excess of the sum of the  
18 Alternative Production Allocations. The Operating Yield for the Seaside Basin, as a whole, is set  
19 at 5,600 acre feet annually (“afa”). The Operating Yield for the Coastal Subarea is 4,611 afa,  
20 with 743 afa committed to Alternative Production Allocations and 3,868 afa committed to  
21 Standard Production Allocations. The Operating Yield for the Laguna Seca Subarea is 989 afa,  
22 with 644 afa committed to Alternative Production Allocations and 345 afa committed to Standard  
23 Production Allocations. The Operating Yield established here will be maintained for three (3)  
24 Administrative Years from the date Judgment is granted or until a determination is made by the  
25 Watermaster, concurred in by this Court, that continued pumping at this established Operating  
26 Yield will cause Material Injury to the Seaside Basin or to the Subareas or will cause Material  
27 Injury to a Producer due to unreasonable pump lifts. In the event of such Material Injury the  
28 Watermaster shall determine the modified Operating Yield in accordance with the Principles and

1 Procedures attached hereto as Exhibit A, and through the application of criteria that it shall  
2 develop for this purpose.<sup>1</sup>

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

- 6 a. The Watermaster has secured and is adding an equivalent amount of Non-Native  
7 water to the Basin on an annual basis; or
- 8 b. The Watermaster has secured reclaimed water in an equivalent amount and has  
9 contracted with one or more of the Producers to utilize said water in lieu of their  
10 Production Allocation, with the Producer agreeing to forego their right to claim a  
11 Stored Water Credit for such forbearance; or
- 12 c. Any combination of a and b which results in the decrease in Production of Native  
13 Water required by this decision; or
- 14 d. The Watermaster has determined that Groundwater levels within the Santa  
15 Margarita and Paso Robles aquifers are at sufficient levels to ensure a positive  
16 offshore gradient to prevent seawater intrusion.

17 **TABLE 1<sup>2</sup>**

18 **Standard Production Allocations**

19 <b>Party:</b>	<b>Percentage of Operating Yield Coastal Subarea</b>
20 California American Water	77.55%
21 City of Seaside (Municipal)	6.36%
22 City of Seaside (Golf Courses)	10.47%
City of Sand City	0.17%

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

<sup>2</sup> 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.

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 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 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**

<b>Party:</b>	<b>Coastal Subarea</b>
Seaside (Golf Courses)	540 afa
SNG	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

1 Injury. If the Watermaster determines, based on substantial evidence, that the Production of  
2 Brackish Water by Sand City is causing a Material Injury to the Seaside Basin or to the rights of  
3 any Party to this Decision as set forth herein, the Watermaster may impose conditions on such  
4 Production of Brackish Water that are reasonably necessary to prevent such Material Injury.

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

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

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

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1 consideration of the Seaside Basin's hydrogeologic characteristics, the Watermaster may  
2 discount the quantity of Water that may be Extracted pursuant to a Carryover Credit.

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

16 1. Damages from an Intrusion shall be calculated based upon the losses incurred by  
17 the Water User Defendant that are caused by the Intrusion. These losses may include the loss of  
18 crop yield and associated income, measured against the average achieved over the preceding five  
19 (5) years from the date of the loss. Where an Intrusion occurs with respect to a Water User  
20 Defendant's exercise of an Alternative Production Allocation for golf course irrigation (i.e., an  
21 Intrusion to a "Golf Course Water User"), the Intrusion may cause discoloration, thinning and  
22 damage to the golf course turf and may require replacement of golf course turf and other golf  
23 course landscaping. Such conditions may, in turn, cause the loss of income from reduced golf  
24 course facilities usage and loss of good will. It may be difficult to quantify such damages to a  
25 sum certain. Accordingly, where a Golf Course Water User demonstrates that an Intrusion  
26 caused discoloration, thinning or loss of golf course turf, the following criteria shall be utilized to  
27 determine damages for an Intrusion to a Golf Course Water User.

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a. Lost Income.

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.

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.

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

13       H.       Allowed Storage.

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

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

1           3.       California American Storage Allocation. All Storage Allocation held by  
2 California American shall be held in trust by California American: (i) first for the benefit of  
3 California American's retail Water service customers within its service territory on the Monterey  
4 Peninsula and the County of Monterey and cities within its service territory which it serves; and  
5 (ii) then for other purposes as California American deems appropriate. In the event of a reduction  
6 in service from the Seaside Basin, California American will allocate service, including that which  
7 is associated with its Storage Allocation, in a manner that is consistent with and proportionate to  
8 its historic deliveries to all then current customers. Further, to the extent that California American  
9 has excess Storage Allocation available after meeting its responsibilities to its retail Water service  
10 customers within its service territory on the Monterey Peninsula and the cities which it serves,  
11 upon request by the County of Monterey, Monterey, Seaside, Sand City, or Del Rey Oaks,  
12 California American shall make available portions of its Storage Allocation within the Coastal  
13 Subarea for use by the requesting city in the Coastal Subarea as provided herein. Specifically, the  
14 city's request shall be made in writing and generally describe the public purpose and proposed  
15 use of the Storage Allocation by the requesting city. California American shall not deny the  
16 request unless making the requested portion of the Storage Allocation available to the city would  
17 unreasonably interfere with California American's ability to operate its system or to otherwise  
18 provide service to its customers. Should California American not be able to accommodate all  
19 requests by all cities without unreasonably interfering with its operations and service  
20 responsibilities, first priority to excess Storage Allocation shall be given to each respective city  
21 requesting the use of a portion of the Storage Allocation up to an amount equal to the percentage  
22 that the total quantity of Water delivered by California American for retail service to the  
23 requesting city bears to the total quantity of Water delivered to all cities at the date the Decision  
24 is entered. Notwithstanding the paramount rights of each city described in this section, 5 percent  
25 of any Storage Allocation held in trust by California American will be reserved for *de minimis*  
26 Storage opportunities and made available for the benefit of any requesting city on the basis of  
27 first in time, first in right. Additionally, provision of Storage Allocation by California American  
28 to a requesting city shall not be construed as a waiver of California American's rights under

1 section 1501 et seq. of the California Public Utilities Code or consent to duplication of its retail  
2 Water service. Moreover, California American shall not charge any fee for use of its Storage  
3 Allocation by Monterey, Seaside, Sand City, or Del Rey Oaks. However, the capital or other  
4 value of California American's Storage Allocation shall belong to California American. Finally,  
5 no city may request use of California American's Storage Allocation unless it has first used all of  
6 its own Storage Allocation as provided herein.

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

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

15 5. Carryover. Each Producer operating under the Standard Production Allocation  
16 shall have the right to use their respective Storage Allocation to Store any Carryover Water  
17 subject to the provisions of this Decision. Unused (not Extracted) Stored Water Credits and  
18 Carryover Credits shall be carried over from year to year for the first three Administrative Years.  
19 Thereafter Carryover Water withdrawal is subject to a percentage decrease consistent with  
20 percentage decreases in the Operating Yield, according to the terms of this Decision. Due to the  
21 hydrogeologic characteristics of the Seaside Basin, naturally occurring losses of stored Water  
22 may require Watermaster to discount the percentage of Stored Water that may be Extracted.  
23 Watermaster shall study the efficiencies of Storage in the Seaside Basin and set a uniform  
24 percentage for withdrawals of Stored Water.

25 6. Injection and/or Spreading. Each Producer operating under the Standard  
26 Production Allocation, and the Watermaster, and certain public agencies, shall have the right to  
27 Store Water by Direct Injection, Spreading, or other artificial means so long as such Storage does  
28 not cause Material Injury to any other Party. Except as provided in Section III.H.5., no Producer

1 herein granted a Storage Allocation may Store Water in the Seaside Basin without first executing  
2 a Storage and Recovery Agreement with Watermaster, pursuant to Section III.L.3.j.xx. Each  
3 Storage and Recovery Agreement shall further define the terms and conditions by which a  
4 Producer may exercise its Storage Allocation and associated Stored Water Credits.

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

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

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

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1 L. Appointment of Watermaster; Watermaster Administrative Provisions.

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

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

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

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

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

27 b. Term of Office. Each new Watermaster board shall assume office at the  
28 first regular meeting in January of every second year. Each Watermaster board member shall

1 serve for a two-year term, subject to the retained jurisdiction of the Court. Should a vacancy arise  
2 on the Watermaster board for any reason, the respective entity or group from which that vacancy  
3 arises shall appoint a replacement representative in the manner prescribed by Watermaster Rules  
4 and Regulations. Such replacement shall complete the remainder of the term of the vacated  
5 office. Within 30 days of the appointment of any new Watermaster board member, any Party  
6 may file a motion with the Court challenging the appointment. The Court, acting *sua sponte*, may  
7 reject any Watermaster board appointment within the 30-day period. Challenges shall be based  
8 on allegations that the appointed board member does not possess the requisite skills necessary to  
9 effectively serve as a member of the Watermaster board.

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

17 d. Organization. At the first meeting of each newly comprised Watermaster  
18 board, the Watermaster shall elect a chairman and a vice-chairman from its membership. It shall  
19 also select a secretary, a treasurer and such assistant secretaries and assistant treasurers as may be  
20 appropriate, any of whom may, but need not, be representatives appointed to Watermaster.

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

25 f. Regular Meetings. The Watermaster shall hold regular meetings at places  
26 and times to be specified in the Watermaster Rules and Regulations. Its first meeting must be  
27 held within 15 days from the date Judgment is granted in this case. Notice of the scheduled or  
28 //

1 regular meetings of the Watermaster and of any changes in the time or place thereof shall be  
2 mailed to all Parties and interested Persons as provided for in Section III.P.2.

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

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

18 i. Appointment of the Initial Watermaster Board. The initial Watermaster  
19 board, which shall take office immediately from the date Judgment is granted, shall be composed  
20 of the duly authorized representatives of California American, Seaside, Sand City, Del Rey Oaks,  
21 Monterey, MCWRA, MPWMD, and two individuals to be designated by the landowners as the  
22 initial representatives of the Landowner Group for the Coastal and Laguna Seca Subareas,  
23 respectively.

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

27 i. Preparation of Monitoring and Management Plan. Within sixty  
28 (60) days from the date Judgment is granted, Watermaster will prepare a comprehensive

1 monitoring and management plan for the Seaside Basin (“Monitoring and Management Plan”).  
2 The Monitoring and Management Plan must be consistent with the criteria set forth in Exhibit A.

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

14           iii.       Artificial Replenishment and Replenishment Assessments. Each  
15 Administrative Year, the Watermaster will determine a Replenishment Assessment for Artificial  
16 Replenishment of the Seaside Basin necessary to offset the cumulative Basin Over-Production  
17 (as defined in Section III.A.21.), and levy a Replenishment Assessment. Said Replenishment  
18 Assessment does not apply to Production under an Alternative Production Allocation so long as  
19 such Production is within the fixed amount established for that Producer in Table 2 of Section  
20 III.B.3. Funds so generated may be accumulated for multiple Administrative Years, if necessary,  
21 and shall be utilized solely for replenishment of the Basin Groundwater supply with Non-Native  
22 water.

23           An additional Watermaster Replenishment Assessment shall be levied after the close of  
24 each Administrative Year against all Producers that incurred Operating Yield Over-Production  
25 during the Administrative Year. Said assessment shall be in addition to the Replenishment  
26 Assessment addressed in Section III.A.21. The Replenishment Assessment based upon  
27 Operating Yield Over-Production shall be levied against the Parties participating in the Alternative  
28 Production Allocation for only such Production that exceeds the Parties’ respective fixed



1 Alternative Production Allocation identified on Table 2. In the event Watermaster cannot procure  
2 Artificial Replenishment Water to offset Operating Yield Over-Production during the ensuing  
3 Administrative Year, the Watermaster shall so declare in December and no Operating Yield Over-  
4 Production then in effect may occur during the ensuing Administrative Year. Funds generated  
5 by the Operating Yield Over-Production Assessment shall be utilized by the Watermaster to  
6 engage in or contract for Replenishment of the Operating Yield Over-Production occurring in the  
7 Preceding Administrative Year as expeditiously as possible.

8 Replenishment Assessments based on Over-Production and on Operating Yield  
9 Over-Production shall be assessed on a per acre-foot basis on each acre-foot, or portion of an  
10 acre-foot, of Over-Production. The per acre-foot amount of the Replenishment Assessments  
11 shall be determined and declared by Watermaster in January of each Administrative Year in order  
12 to provide Parties with advance knowledge of the cost of Over-Production in that Administrative  
13 Year.

14 Payment of the Replenishment Assessment shall be made by each Producer incurring a  
15 Replenishment Assessment within 40 days after the mailing of a statement for the Replenishment  
16 Assessment by Watermaster. If payment by any Producer is not made on or before said date, the  
17 Watermaster shall add a penalty of 5 percent thereof to such Producer's statement. Payment  
18 required of any Producer hereunder may be enforced by execution issued outside of this Court,  
19 by order of this Court, or by other proceedings by the Watermaster or by any Producer on the  
20 Watermaster's behalf. All proceeds of Replenishment Assessments shall be used to procure  
21 Non-Native water, including, if appropriate, substitute reclaimed water.

22 iv. Budget Assessments. The Watermaster budget for each  
23 Administrative Year, and for the initial funding of the Monitoring and Management Plan, shall be  
24 funded by Budget Assessments. The Watermaster budget will be composed of three separate  
25 budgets. The first budget is solely for the funding of the Monitoring and Management Plan.  
26 The initial, one-time funding for the Monitoring and Management Plan shall not be in excess of  
27 \$1,000,000. The annual budget for the Monitoring and Management Plan shall not be in excess  
28 of \$200,000 for the first Administrative Year, and thereafter as determined by the Watermaster.

1 The Budget Assessment for the Monitoring and Management budget shall be assessed against  
2 each Producer (except those in the Landowner Group) by multiplying the amount of the  
3 Monitoring and Management Plan budget for the ensuing Administrative Year by the following  
4 percentages:

- |   |     |                           |     |
|---|-----|---------------------------|-----|
| 5 | (1) | California American       | 91% |
| 6 | (2) | City of Seaside           | 7%  |
| 7 | (3) | Granite Rock Company      | 1%  |
| 8 | (4) | D.B.O. Development No. 27 | 1%  |

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

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

- |    |     |                     |       |
|----|-----|---------------------|-------|
| 18 | (1) | California American | 83%   |
| 19 | (2) | City of Seaside     | 14.4% |
| 20 | (3) | City of Sand City   | 2.6%  |

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

24 Except for the initial Budget Assessment which shall be due 30 days from the date  
25 Judgment is granted, payment of the Budget Assessment, subject to any adjustment by the Court  
26 as provided in Section III.N., shall be made by each Producer prior to the beginning of the  
27 Administrative Year to which the Budget Assessment relates, or within 40 days after the mailing  
28 of the tentative budget, whichever is later. If such payment by any Producer is not made on or

1 before said date, the Watermaster shall add a penalty of 5 percent thereof to such Producer's  
2 statement. Payment required of any Producer hereunder may be enforced by execution issued  
3 outside of this Court, by order of this Court, or by other proceedings by the Watermaster or by  
4 any Producer on the Watermaster's behalf.

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

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

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

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

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

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

- 26 • Groundwater Extractions;
- 27 • Groundwater Storage;
- 28 • 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 Administrative Year stating the anticipated expense for administering the provisions of this Decision, including reasonable reserve funds. The adoption of each Administrative 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 Administrative Year. The Landowner Group representative shall not participate in any vote concerning the approval of the Watermaster budget. 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 Administrative Year, as the Court

1 shall direct. The amount of each Producer's Budget Assessment shall be determined as provided  
2 in Section III.L.3.j.iv.

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

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

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

17 xiv. Employment of Staff and Consultants. The Watermaster may  
18 employ such administrative, engineering, geologic, accounting, legal, or other specialized  
19 personnel or consultants as may be deemed appropriate to the carrying out of its duties, powers,  
20 and responsibilities and to require appropriate bonds from all officers and employees handling  
21 the Watermaster funds.

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

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

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

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

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

10                  xx. Review of Storage Applications; Regulation of Storage; Issuance  
11 of Storage and Recovery Agreements. The Watermaster will review applications for Storage in  
12 the Seaside Basin, regulate the Storage of Non-Native Water in the Seaside Basin, and issue  
13 Storage and Recovery Agreements, all as provided below. All applications for Storage in the  
14 Seaside Basin shall be considered and voted on before a noticed meeting of the Watermaster.  
15 However, all such applications shall be approved absent the issuance of findings that a Material  
16 Injury to the Seaside Basin or Producers will or is likely to occur as a result of the proposed  
17 Storage program and no reasonable conditions could be imposed to eliminate such risk. If a  
18 Storage application is approved, the Watermaster shall issue a Storage and Recovery Agreement.  
19 The Storage and Recovery Agreement may include, among other possible elements and/or  
20 provisions, the following conditions to avoid Material Injury: (1) the quantity of Water authorized  
21 to be Spread or Directly Injected into the Seaside Basin, (2) the location of the authorized  
22 Spreading or Direct Injection, (3) the location(s) where the Water may be recaptured, (4) the  
23 particular Water quality characteristics that are required pursuant to the Storage and Recovery  
24 Agreement, (5) the amount of Water that may be recaptured pursuant to the Stored Water Credits  
25 calculated by Watermaster, (6) any other terms and conditions deemed necessary to protect the  
26 Seaside Basin and those areas affected by the Seaside Basin. Such Storage and Recovery  
27 Agreements may provide for different locations for introduction and Extraction of Stored Water if  
28 deemed appropriate by the Watermaster.

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

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

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

- 19                   •       Prevent contaminants from entering the Groundwater supplies  
20 of the Seaside Basin, which present a significant threat to the Groundwater quality of the  
21 Seaside Basin, whether or not the threat is immediate;
- 22                   •       Remove contaminants from the Groundwater supplies of the  
23 Seaside Basin presenting a significant threat to the Groundwater quality of the Seaside Basin;
- 24                   •       Determine the existence, extent, and location of contaminants in, or  
25 which may enter, the Groundwater supplies of the Seaside Basin;
- 26                   •       Determine Persons responsible for those contaminants; and
- 27                   •       Perform or obtain engineering, hydrologic, and scientific studies as  
28 may be reasonably required for any of the foregoing purposes.

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

4                   xxv. No Power to Alter Allocation or Rights. Watermaster has no  
5 power to adjust any Producer's Base Water Right or the formula for determining Production  
6 Allocation, except to accommodate the intervention of a new Party pursuant to Section III.O.1.b.  
7 However, should an adjustment of Base Water Right and/or Production Allocation within a  
8 Subarea be required to accommodate the intervention of a new Party, no adjustment shall be made  
9 to the Base Water Right or Production Allocations possessed by any Party operating under the  
10 Alternative Production Allocation within the Landowner Group until the Production Allocations  
11 for that Subarea possessed by Parties operating under the Standard Production Allocation have  
12 been reduced to zero.

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

19                   xxvii. Public Records. Watermaster shall conform to the procedures  
20 established under the California Public Records Act, California Government Code section  
21 54950 et seq., as it may be amended from time to time.

22 M. Additional Provisions of Physical Solution.

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

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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 ~~believes have or will also~~ *Contract has* result in replenishment of the Basin. The Watermaster shall review

1 these expenditures and <sup>if it concerns</sup> reduce California American's Replenishment Assessment obligation,  
2 for that year, by an amount equal to the amount claimed by California American. To the  
3 extent that the Watermaster <sup>rejects</sup> ~~disputes~~ any of the claimed amounts, it shall provide California  
4 American with an explanation <sup>of its rejection</sup> ~~of its contest~~ and allow California American an opportunity to  
5 meet and confer on the disputed amount. In the event that the Watermaster and California  
6 American cannot <sup>agree</sup> resolve their dispute, the matter ~~will~~ be referred to the Court through a  
7 request filed by <sup>California American</sup> ~~the Watermaster~~. <sup>may</sup> ~~the~~ <sub>WTR</sub>

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

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

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

16 a. Exports Authorized from the Coastal Subarea. Producers may export  
17 Water Produced from the Coastal Subarea for reasonable and beneficial uses within another  
18 Subarea of the Seaside Basin. Only California American may export water outside the Basin,  
19 and then only to provide water to its current customers. This means that, in any  
20 Administrative Year, any Producer may export from the Coastal Subarea up to, but not in  
21 excess of, a quantity equal to the sum of that Producer's Production Allocation, plus Stored  
22 Water Credits, plus Carryover Credits. Export of Groundwater in excess of a Producer's  
23 total rights (Production Allocation, plus Stored Water Credits, plus Carryover Credits),  
24 however, is prohibited.

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

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1 c. Portability Authorized Within Subareas; Portability Prohibited

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

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

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

14 2. Notice of Motion. Any Party may, by a regularly noticed motion, petition the  
15 Court for review of the Watermaster's action or decision pursuant to this Decision. The  
16 motion shall be deemed to be filed when a copy, conformed as filed with the Court, has been  
17 delivered to the Watermaster together with the service fee established by the Watermaster  
18 sufficient to cover the cost to photocopy and mail the motion to each Party. The Watermaster  
19 shall prepare copies and mail a copy of the motion to each Party or its designee according to  
20 the official service list which shall be maintained by the Watermaster according to Section  
21 III.P.2. A Party's obligation to serve notice of a motion upon the Parties is deemed to be  
22 satisfied by filing the motion as provided herein. Unless ordered by the Court, any such  
23 petition shall not operate to stay the effect of any Watermaster action or decision that is  
24 challenged.

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

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

5 O.   Reserved Jurisdiction and Other Remedies.

6           1.       Continuing Jurisdiction.

7           a.       Jurisdiction Reserved. Full jurisdiction, power and authority are  
8 retained by and reserved by the Court upon the application of any Party or by the  
9 Watermaster, by a noticed motion to all Parties, to make such further or supplemental orders  
10 or directions as may be necessary or appropriate for interpretation, enforcement, or  
11 implementation of this Decision. The Court may also modify, amend or amplify any of the  
12 provisions of this Decision upon noticed motion to all the Parties. The Court, through its  
13 reserved and retained jurisdiction, however, shall not have the authority to adjust any  
14 Producer's Base Water Right or Production Allocation, except to accommodate the  
15 intervention of a new Party pursuant to Section III.O.1.b. However, should an adjustment of  
16 Base Water Right and/or Production Allocation within a Subarea be required to accommodate  
17 the intervention of a new Party, no adjustment shall be made to the Base Water Right or  
18 Production Allocations possessed by any Party operating under the Alternative Production  
19 Allocation within the Landowner Group until the Production Allocations within that Subarea  
20 possessed by Parties operating under the Standard Production Allocation have been reduced  
21 to zero.

22           b.       Intervention After Decision. Any non-party who is Producing or  
23 proposes to Produce Groundwater from the Seaside Basin in an amount equal to or greater  
24 than five (5) acre feet per year, may seek to become a Party to this Decision through (1) a  
25 stipulation for intervention entered into with the Watermaster or (2) any Party or the  
26 Watermaster filing a complaint against the non-party requesting that the non-party be joined  
27 in and bound by this Decision. The Watermaster may execute said stipulation on behalf of  
28 the other Parties herein, but such stipulation shall not preclude a Party from opposing such

1 intervention at the time of the Court hearing thereon. A stipulation for intervention must be  
2 filed with the Court, and the Court will then consider an order confirming said intervention  
3 following thirty (30) days' notice to the Parties. Thereafter, if approved by the Court, such  
4 intervenor shall be a Party bound by this Decision and entitled to the rights and privileges  
5 accorded under the Physical Solution herein.

6 2. Reservation of Other Remedies.

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

12 b. Claims Between Parties on Matters Unrelated to the Decision.

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

16 P. General Provisions.

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

19 2. Service Upon and Delivery to Parties and Interested Persons of Various  
20 Papers. This Decision and all future notices, determinations, requests, demands, objections,  
21 reports and other papers and processes Produced from this Court shall be served on all  
22 Parties by first class mail, postage prepaid, addressed to the designee and at the address  
23 designated for that purpose in the list attached as Exhibit E to this Decision, or in any  
24 substitute designation filed with the Court.

25 Each Party who has not heretofore made such a designation, within thirty (30) days  
26 from the date Judgment is granted, shall file with the Court, with proof of service of a copy  
27 upon the Watermaster, a written designation of the Person to whom, and the address at which,  
28 all future notices, determinations, requests, demands, objections, reports and other papers and

1 processes to be served upon that Party or delivered to that Party are to be so served or  
2 delivered.

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

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

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

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

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

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

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1 Q. The Complaints in Intervention

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

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

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

23 The District has argued that appointment of a Watermaster other than itself would violate  
24 the Separation of Powers doctrine. It urges that the legislature has vested it with the power to  
25 regulate pumping, and therefore only it is qualified to serve as Watermaster. On the other hand,  
26 the District has asked the Court to adopt a Physical Solution for the Basin. In so arguing, it  
27 necessarily concedes that this Court possesses power to regulate use of the Basin beyond any  
28 power the District currently possesses. Furthermore, the undisputed evidence in this case has

1 shown that, although the District is empowered to adopt a Groundwater management plan it has  
2 never done so. The language of Water Code Section 10753 is instructive regarding the issue of  
3 the Separation of Powers:

4 “(a) Any local agency, whose service area includes a groundwater basin...that is  
5 not subject to groundwater management pursuant to...a court order, judgment, or  
6 decree, may...adopt and implement a groundwater management plan.”

7 (Emphasis added.)

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

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

23 On pages 15-16 of its brief, the District lists 9 powers and asserts those powers would  
24 “encompass the duties of any appointed watermaster.” The Court has compared those 9  
25 asserted powers and has concluded that those powers, to the extent that they exist or are currently  
26 being utilized by the District, do not encompass all the duties of a Watermaster appointed by the  
27 judgment. Furthermore, to the extent the Watermaster may be given powers akin to those of the  
28 District, this Court retains jurisdiction to determine any conflict which may arise in the future.



1 For example, the Decision directs that any metering of Production wells by the Watermaster  
2 shall be done in a way which does not conflict with the MPWMD gauging already in place on all  
3 producing wells. The MPWMD is still able to develop water resources within its boundaries  
4 and can store water for the benefit of the District in the Basin, although it has not to date done  
5 either of those things with regard to the Seaside Basin.

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

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

23 The District argues that the proposed powers of the Watermaster regarding maintenance  
24 and modification of the Operating Safe Yield would conflict with the District's authority. Much  
25 of its argument is addressed to language in the Proposed Stipulated Judgment which does not  
26 appear in the Decision. The Decision grants certain rights of control to the Watermaster for the  
27 purpose of maintaining the viability of the aquifer. However, it does not purport to forbid any  
28 regulation of the Basin which may be required by a public agency possessing the power to

1 impose such regulation. In this regard it should be noted that the complaint in this case first  
2 raised the issue of the Overdraft status of the Basin, and the initial pleadings of the District stated  
3 that it did not know if that were true or not. The Decision does not conflict with any procedure  
4 or plan currently in place by the District to establish an Operating Yield for the Basin.

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

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

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

21 The Complaint in Intervention of MCWRA also seeks declaratory and injunctive relief, but  
22 does not urge the appointment of itself or any other entity as Watermaster. The request for  
23 injunctive relief is denied as moot, since the lawsuit does not challenge the statutory authority of  
24 the Agency. The request for declaratory relief is granted to the extent that the Court finds that  
25 the statutory rights of MCWRA are not in conflict with the Physical Solution adopted by the  
26 Court in this proceeding.

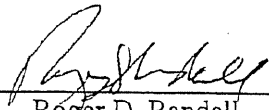
27 A statement of decision, if requested by any party, will be prepared by Plaintiff. If no  
28 party within ten days of the filing of this Decision specifies controverted issues or makes

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proposals not covered in the Decision this Decision shall become the Statement of Decision,  
and Plaintiff shall prepare a judgment thereon.

Dated: ~~February~~ <sup>March 22</sup> \_\_\_\_\_, 2006

By \_\_\_\_\_

Honorable  \_\_\_\_\_  
Roger D. Randall