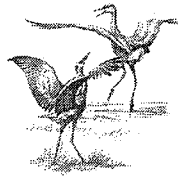


EXHIBIT 15-H

**CALIFORNIA ENVIRONMENTAL LAW PROJECT**

A Non-Profit Legal Corporation



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MPWMD

Of Counsel

Laurens H. Silver, Esq.  
P.O. Box 667  
Mill Valley, CA 94942  
Tel: 510.237-6598 Fax: 510.237-6598

February 11, 2009

Ralph Rubio, Chairman  
Seaside Groundwater Basin Watermaster  
2600 Garden Road, Suite 228  
Monterey, CA 93940-0810

Re: Water Connection Permit – Security National Guarantee (Watermaster Letter of September 19, 2008)

Dear Mr. Rubio:

This letter is intended to supplement my letter of February 5, 2009, and to comment on a letter dated February 5, 2009 written to me by James W. Kassel of the SWRCB, concerning the Application of California-American Water Company for a Water Distribution Permit To Serve Monterey Bay Shores Ecoresort. I am forwarding a copy of this letter to you, as you are not copied on this letter. In his letter Mr. Kassel states:

“The Water supply for this project will be up to 90 AFY from the Seaside Groundwater Basin. The Seaside Groundwater Basin Adjudication Judgment of March 27, 2006 allocated 149 AF to Security National Guaranty, Inc. (SNG) for use on the property of this project. The judgment does not restrict the production of water to the subject parcel through SNG’s onsite wells. Water may also be produced from another offsite well owned by another entity and delivered to the SNG parcel, so long as the well is within the Seaside Groundwater Basin.”

In connection with Mr. Kassel’s interpretation of the meaning of the Adjudication Decision, with respect to the SNG application, Sierra Club would like to iterate its position taken in its February 5, 2009 letter to you. In that letter, Sierra Club stated:

Rather, as the Watermaster noted in his letter, if the overlying landowner

wished to use water off-site and transfer its production allocation for use by others, it was authorized to do so under the Decision by electing to change all or a portion of its Alternative Production Allocation to the Standard Production Allocation. Decision III B3(e) p.21. If SNG wishes to contract with Cal-Am to pump water off-site for use on its property it may do so only by electing to produce under the Standard Production Allocation. Under III M2 (p.42), the parties may assign and transfer any portion of their respective Production Allocation for use within the Basin. This would be the exclusive procedure for SNG to follow as allowed under the Decision, if it wishes to have water purveyed to it from off-site wells.

In sanctioning SNG's proposal, the Watermaster has created special benefits to SNG that are clearly not intended under the Decision. First it has improperly "enhanced" SNG's overlying right by allowing it to sever the appurtenant pumping right from its land. Secondly, it has improperly granted SNG immunity from the 10% reduction requirement in production from the Basin that the Court had mandated for Standard Production Allocation pumpers. Had SNG done what the Decision contemplates in connection with the transfer or assignment of rights and elected to become a Standard Production Allocation producer, SNG's 149 acre foot production allocation would be subject to the 10% reduction requirement.

Sierra Club's position, then, is that since the Adjudication Decision specifically prohibits holders of the Alternative Production Allocation from transferring their water rights (allocation) for use on any other property, but shall be limited to use on the respective properties (Decision, IIIB3(a)), if SNG wishes to engage Cal-Am to pump from an off-site well, it must elect to proceed under a Standard Production Allowance (and be subject to the mandatory reduction requirements under the Adjudication Decision). Sierra Club believes that SNG has only one option under the Adjudication Decision if it wishes to proceed with its off-site pumping scheme – it must proceed to elect a Standard Production Allocation (at least with regard to the amount needed for the project).

In this respect, as qualified above, Sierra Club does not quarrel with Mr. Kassell's characterization of the Adjudication Decision.

I would also like to note that while under the common law, a riparian right may under certain circumstances be "severed" when land is subdivided and cut off from contact with a stream, see Hudson v. Daily, 156 Cal 617, 624-625 (1909), there is no case law authority that a pumping right can be severed from the overlying right so long as the water is conveyed to the overlying land for use there. In any event, the Adjudication Decision itself supplants the common law relating to overlying rights. It contemplates severance of the overlying pumping right, by permitting a holder of an Alternative Production Allocation to elect to proceed under a Standard Production Allocation. This "severance" however, which promotes transferability of pumping rights within the aquifer effectively "transmutes" the common-law overlying right into a transferable interest in water, which, under the Decision, can be effectuated only through an election to proceed under a Standard Production Allocation.

In the last paragraph of its February 5, 2009 letter, Sierra Club asked for your "prompt

Ralph Rubio, Chairman  
Seaside Groundwater Basin Watermaster  
February 11, 2009  
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reconsideration of your opinion". Since the City of Seaside maintains a Municipal Water System, which includes 3 water wells, and is an Alternative Allocation Producer under the Decision, Sierra Club believes that it would be appropriate for you acting as Watermaster, to apply to Judge Randall, for an opinion, as set forth in the Adjudication Decision, rather than to render a decision or reconsideration. Please set this matter on the agenda for the March 4, 2009 Watermaster Board meeting.

Sincerely  
CALIFORNIA ENVIRONMENTAL LAW PROJECT

Laurens H. Silver  
On behalf of Ventana Chapter, Sierra Club

cc: Darby Fuerst, MPWMD  
Victoria Whitney  
Sheri Damon, Esq.





# State Water Resources Control Board



Linda S. Adams  
Secretary for  
Environmental Protection

Division of Water Rights  
1001 I Street, 14<sup>th</sup> Floor ♦ Sacramento, California 95814 ♦ 916.341.5300  
P.O. Box 2000 ♦ Sacramento, California 95812-2000  
Fax: 916.341.5400 ♦ www.waterrights.ca.gov

Arnold Schwarzenegger  
Governor

FEB 05 2009

FEB - 9 2009

Laurens H. Silver, Esq.  
P.O. Box 667  
Mill Valley, CA 94942

Dear Mr. Silver:

## APPLICATION OF CALIFORNIA AMERICAN WATER COMPANY FOR WATER DISTRIBUTION PERMIT TO SERVE MONTEREY BAY SHORES ECORESORT

This letter is in response to your letter dated January 15, 2009 to Victoria Whitney, State Water Resources Control Board (State Water Board) Deputy Director for Water Rights, asking for a determination whether the one-for-one reduction of Condition 2 of State Water Board Order 95-10 applies to the 90 acre-feet per year (AFY) that will be pumped by the California American Water Company (Cal-Am) for the benefit of the Monterey Bay Shores Ecoresort in Sand City. We are also in receipt of your letter to Ms. Whitney dated January 26, 2009 providing your position on this matter in greater detail. Because the State Water Board is currently considering evidence presented at a recent water right hearing with regard to compliance with Order 95-10 and Ms. Whitney is advising the Board on that matter, she has asked me to respond to your request in my capacity as the Chief Enforcement Officer for the Division of Water Rights.

Conditions 2 and 4 of Order 95-10 state:

2. Cal-Am shall diligently implement one or more of the following actions to terminate its unlawful diversions from the Carmel River: (1) obtain appropriative permits for water being unlawfully diverted from the Carmel River, (2) obtain water from other sources of supply and make one-for-one reductions in unlawful diversions from the Carmel River, provided that water pumped from the Seaside aquifer shall be governed by condition 4 of this Order not this condition, and/or (3) contract with another agency having appropriative rights to divert and use water from the Carmel River.
4. Cal-Am shall maximize production from the Seaside aquifer for the purpose of serving existing connections, honoring existing commitments (allocations), and to reduce diversions from the Carmel River to the greatest extent. The long-term yield of the basin shall be maintained by using the practical rate of withdrawal method.

I have reviewed the description of this project on the website of the Monterey Peninsula Water Management District (District) and have discussed the project with District staff. The water supply for this project will be up to 90 AFY from the Seaside Groundwater Basin. The Seaside Groundwater Basin Adjudication Judgment of March 27, 2006 allocated 149 AFY to Security National Guaranty, Inc. (SNG) for use on the property of this project. The judgment does not restrict the production of water to the subject parcel through SNG's onsite wells. Water may also be produced from another offsite well owned by another entity and delivered to the SNG parcel so long as the well is within the Seaside Groundwater Basin. For this project, Cal-Am

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will be using its water distribution system to deliver water to this project from Seaside Groundwater Basin wells offsite of this project parcel. Because of the inter-related nature of Cal-Am's water delivery system, it is my understanding that there is a possibility that Cal-Am could supply this project with Carmel River water.

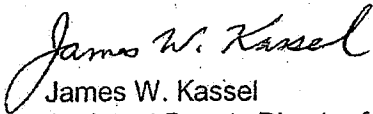
Because the supply of water being supplied from the Seaside Groundwater Basin has been allocated to SNG by the Seaside Groundwater Adjudication, it is my opinion that Order 95-10 does not require Cal-Am to make a one-for-one reduction in its unlawful diversion from the Carmel River. However, Cal-Am should not in any case supply this project with Carmel River water. This would only exacerbate Cal-Am's illegal diversion of water from the Carmel River.

If the District decides to approve this application, I recommend that the District require Cal-Am to implement strict water accounting methods to ensure that any use of Carmel River water does not serve this project. Furthermore, it would be in Cal-Am's interest to include such accounting in its quarterly reports to the State Water Board in order to demonstrate that service to this project does not violate Order 95-10.

I also note that SNG will only be using up to 90 AFY for this project and will have 59 AFY of its groundwater allocation remaining. Cal-Am should consider obtaining the rights to any unused portions of the water allocations from the Seaside Basin groundwater adjudication from SNG and other entities in order to minimize its use of water from the Carmel River. It is my opinion that Cal-Am should undergo these efforts at least in an interim time frame to reduce its unauthorized diversion from the Carmel River until it secures an alternate long term water supply.

Please call me at (916) 341-5446 if you have any questions regarding this matter.

Sincerely,



James W. Kassel  
Assistant Deputy Director for Water Rights

cc: Darby Fuerst, General Manager  
Monterey Peninsula Water Management District  
5 Harris Court Building  
PO Box 85  
Monterey, CA 93942

B. Kent Turner, President  
California American Water Company  
P.O. Box 951  
Monterey, CA 93940

Victoria Whitney, State Water Board Deputy Director for Water Rights

John O'Hagan, Manager, Division of Water Rights Enforcement Section

Reed Sato, Director, State Water Board Office of Enforcement