

**SEASIDE GROUNDWATER BASIN
WATERMASTER
2600 Garden Road, Suite #228
Monterey, CA 93940**

March 23, 2009

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HAND DELIVERED

Board of Directors
Monterey Peninsula Water Management District
5 Harris Court
Monterey, CA 93942

RE: Application by California American Water Company and Security National Guaranty to Produce and Use Water in the Seaside Groundwater Basin

Dear Members of the Board:

The Seaside Groundwater Basin Watermaster has become aware that your Board recently acted to deny an application by California American Water Company and Security National Guaranty to produce water from the Seaside Groundwater Basin, for use on land owned by Security National Guaranty, which overlays the Seaside Groundwater Basin. For the reasons expressed below, the Seaside Groundwater Basin Watermaster is concerned that your decision may have been based on a misunderstanding of the physical solution ordered by Judge Randall (the "**Physical Solution**") in the judgment ("**Judgment**") entered in the action, *California American Water vs. City of Seaside* (No. M66343, Monterey County), and related legal and policy principles applicable to the use of groundwater from the Seaside Basin. Therefore, the Seaside Groundwater Basin Watermaster requests that you reconsider your recent action in light of these considerations. The Watermaster requests that the District issue findings concerning the following legal and policy principles concurrently with its decision on the instant application:

- Application of the Physical Solution embodied within the Judgment as a comprehensive groundwater management program for the perpetual protection of the Seaside Groundwater Basin;
- The reliability and legal certainty of Alternative Production Allocation groundwater rights declared by the Judgment with respect to the ability to produce such rights in each and every year in the quantities decreed;
- The legality of producing an Alternative Production Allocation right from an off-site location so long as the use of the water is on the overlying parcel identified in the Judgment;

- The technical implications with respect to management of the Seaside Basin, and specifically prevention of seawater intrusion, from redirecting pumping from coastal parcels to more inland locations; and
- The legal and policy appropriateness of allowing water produced by California American Water pursuant to Security National Guaranty's Alternative Production Allocation right to be commingled with water from other sources and water rights, and delivered to the Security National Guaranty parcel, so long as deliveries do not exceed the quantity of water produced pursuant to the Alternative Production Allocation right.

The Watermaster offers the following discussion to assist you in making findings in this matter.

The Physical Solution

Based on the evidence presented during the trial in *California American Water vs. City of Seaside*, Judge Randall found the Seaside Groundwater Basin was in overdraft. Acting under the authority of Article X Section 2 of the California Constitution, Judge Randall made his order for the Physical Solution to the overdraft condition. All of the parties in that case, including the Monterey Peninsula Water Management District are bound by that order.

There are several aspects to the Physical Solution. One aspect of the Physical Solution was to establish the Natural Safe Yield for the Seaside Groundwater Basin. Another aspect of the Physical Solution was to allocate water rights within the Basin among a group of ground water producers. The Physical Solution divides those producers into two distinct classes. The first class is called "Alternative Producers". The second class is called "Standard Producers". The Physical Solution assigns different rights and obligations to members of each of those two classes of producers.

Security National Guaranty's Alternative Production Right

Judge Randall's Physical Solution assigns Security National Guaranty to the class of Alternative Producers. Producers holding an Alternative Production right can legally produce a certain amount of water from the Basin on an annual basis. In the case of Security National Guaranty, the Physical Solution allows it to produce up to 149 acre feet from the Basin each year.

The Physical Solution does not require any reduction of the amount of water which can be produced by an Alternative Producer in the Coastal Subarea. Indeed, the Natural Safe Yield for the Coastal Subarea established by Judge Randall exceeds the cumulative amount of water which could be produced by all of the Alternative Producers in that Subarea by a margin greater than 2:1. As noted in your staff's report, the production or non-production of water from the Basin by an Alternative Producer has no effect on the amount of water which can be produced from the Basin by a Standard Producer under the Physical Solution.

Pursuant to the Physical Solution, the Alternative Production right held by Security National Guaranty is secure and absolutely reliable. The Seaside Groundwater Basin Watermaster also believes that the Alternative Production right satisfies all criteria established for the showing of a sufficient and reliable water supply under S.B. 610 (Water Supply Assessment) and S.B. 221 (Verification of Water Supply) and the California Environmental Quality Act. (See e.g., *O.W.L. Foundation v. City of Rohnert Park* (2008) 168 Cal.App.4th 568, *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412.).

As you are aware, as an act of the Superior Court of the State of California, the Physical Solution ordered by Judge Randall is not subject to review under the California Environmental Quality Act (See: CEQA Guidelines §15379). The Physical Solution itself embodies a comprehensive management program to ensure that the Seaside Basin is protected as a perpetual source of water for the community.

Consistent with common law governing the rights of persons owning property overlying a groundwater basin, the Physical Solution allows Security National Guaranty to cause water to be produced under its Alternative Production right at any location in the Basin, so long as that water is used on the Security National Guaranty property identified in Judge Randall's order. (See e.g., *Hildreth v. Montecito Creek Water Co.* (1903) 139 Cal. 22, 2; *Erwin v. Gage Canal Co.* (1964) 226 Cal.App.2d 189, 192-193; *Turner v. Eastside Canal & Irr. Co.* (1914) 168 Cal. 103, 108.) This principle of law is employed by mutual water companies, and irrigation ditch and canal companies throughout the State of California to pool overlying and analogous riparian rights and produce or divert such rights from a common location.

In fact, the Physical Solution encourages production facilities in the Basin to be located inland, away from the coastline, to prevent seawater intrusion. The Seawater Intrusion Analysis Report recently completed by the Watermaster pursuant to the Physical Solution states at page 53:

- “Ideally, pumping should be equally distributed throughout a basin, and occur relatively far inland.” (emphasis added)
- “...pumping in the basin is concentrated at two large production wells; these wells account for roughly half of the total production from the Seaside Groundwater Basin. The advantage of pumping significant amounts from these two wells is that they are both located away from the coastline. The disadvantage of using these two wells is that they are relatively close to each other.”

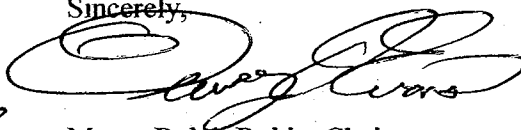
Commingling Water Supplies

Groundwater can be produced by California American Water Company utilizing Security National Guaranty's Alternative Production right and commingled with California American Water Company's other water supplies (such as the Carmel River and the Sand City desalination facility) without violating State Water Resources Control Board Order 95-10. The

commingling of water supplies is generally allowed by law in order to accommodate prudent water management. (See e.g., Water Code § 7075 [allowing foreign water to be diverted into a stream, commingled, and recovered as a means of natural conveyance of water]; see also *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 261-263 and *City of Los Angeles v. City of Glendale* (1943) 23 Cal.2d 68, 76-77 [both opinions acknowledging right to use available underground storage space to store and commingle imported water with native groundwater supply for later recapture of quantity of stored water]). Thus, the Watermaster perceives no justifiable reason to prohibit commingling of California American Water's supplies with water produced pursuant to an Alternative Production Allocation right so long as the quantities delivered to Security National Guaranty do not exceed the quantity produced pursuant to the Alternative Production Allocation right.

The Watermaster appreciates the District's consideration of this letter and the requests made herein. Please direct any comments or questions to my attention.

Sincerely,



for - Mayor Ralph Rubio, Chair

Seaside Groundwater Basin Watermaster

Cc: David Laredo, Esq.