

**EXHIBIT 21-J**

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

**In the Matter of the Application of CALIFORNIA-  
AMERICAN WATER COMPANY (U210W) for an  
Order Authorizing and Imposing a Moratorium on  
Certain New or Expanded Water Service  
Connections in its Monterey District**

**Application No. 10-05-020  
(Filed May 24, 2010)**

**RESPONSE OF SECURITY NATIONAL GUARANTY, INC. TO AMENDED APPLICATION OF CALIFORNIA  
AMERICAN WATER COMPANY (U210W) FOR AN ORDER AUTHORIZING AND IMPOSING A  
MORATORIUM ON CERTAIN NEW OR EXPANDED WATER SERVICE CONNECTIONS IN ITS MONTEREY  
DISTRICT**

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**July 1, 2010**

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

**In the Matter of the Application of CALIFORNIA-AMERICAN WATER COMPANY (U210W) for an Order Authorizing and Imposing a Moratorium on Certain New or Expanded Water Service Connections in its Monterey District**

**Application No. 10-05-020  
(Filed May 24, 2010)**

**RESPONSE OF SECURITY NATIONAL GUARANTY, INC. TO AMENDED APPLICATION OF CALIFORNIA AMERICAN WATER COMPANY (U210W) FOR AN ORDER AUTHORIZING AND IMPOSING A MORATORIUM ON CERTAIN NEW OR EXPANDED WATER SERVICE CONNECTIONS IN ITS MONTEREY DISTRICT**

Pursuant to Rule 2.6(a) of the California Public Utilities Commission's ("CPUC") Rules of Practice and Procedure, Security National Guaranty Inc. ("SNG") hereby files its Response to the Amended Application 10-05-020 filed by California-American Water Company ("Cal Am") on May 27, 2010.

In its Application, Cal Am seeks authorization to impose a moratorium required in order to comply with Order WRO 2009-0060 issued by the State Water Resources Control Board on October 20, 2009<sup>1</sup> ("CDO"). SNG seeks clarification of the moratorium request by adding clarification that the moratorium does not apply to Cal Am connections based solely upon rights held pursuant to and in accordance with the Seaside Basin Adjudication.

Pursuant to Rule 2.6(a), SNG's Response is timely filed within thirty (30) days of the date the notice of filing of Cal Am's Amended Application first appeared on the Daily Calendar which the ALJ has determined to be June 3, 2010.

**INTERESTS OF SNG**

SNG concurs in the Application filed by Cal Am. However, SNG believes that additional clarification and exemptions are required in order to comply with the provisions of the Seaside Basin Adjudication, Monterey County Superior Court M66343 and further asserts that such clarification of moratorium provisions are consistent with the CDO issued October 20, 2009. SNG further requests the opportunity to be a full hearing participant in the event any other party files a Protest to Cal Am's Application or intervenes. SNG is an interested party as an overlying adjudicated alternative allocation

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<sup>1</sup> Exhibit A to Amended Application filed May 27, 2010.

water right holder under the provisions of the Seaside Basin Adjudication and as owner of lands or parcels APN 011-501-014 and 011-501-004 located within the jurisdictional boundary of the City of Sand City and the County of Monterey, respectively.

Cal Am requests authority to impose a moratorium in order to comply with Order WRO 2009-0060 issued by the State Water Resources Control Board on October 20, 2009.<sup>2</sup> As the application is currently drafted, there appears to be a conflict between the introductory provisions on Page 1 and Page 11 as to where the moratorium provisions apply and the requested relief on Page 9.<sup>3</sup> The difference is that on page 1 and 11 of the Amended Application, the excepted area is within the City of Sand City and on Page 9, the excepted area is only the area in Sand City served by desalination. SNG raises the issue because the MPWMD Ordinance 132 specifically excluded SNG's property from receiving desalinated water<sup>4</sup>, the only property located within Sand City's jurisdictional boundaries, because it has its own adjudicated water supply and desalination water according to the District would be in short supply.<sup>5</sup> It is noteworthy that while SNG was excluded from receiving desalinated water, the MPWMD approved the annexation into the Cal Am service area.<sup>6</sup> In any case, the basis for the exemption is that the referenced areas and systems do not utilize Carmel River water. As discussed in more detail below, SNG believes that the Cal Am introductory statement is the correct statement and the relief sought on Page 9 (b) should exempt all properties located within Sand City's jurisdictional boundaries. The reasoning as expressed more fully below is because all property located within Sand City is served or will be served entirely by desalination water or by adjudicated water rights under the Seaside Basin Adjudication. The CDO recognizes Sand City's extraordinary efforts to develop an additional water supply<sup>7</sup> and also make provision for the additional desalination water produced and not used. When the desalination plant is fully operational, no property in Sand City will utilize any Carmel River water. The CDO also recognizes the Watermaster and Court's authority over the use of water in the Seaside Basin.

The water supply, rights, priorities and management within the Seaside Basin were addressed by the Court in Monterey County Superior Court Order M66343 and a comprehensive "Amended Decision" was entered on February 9, 2007. It is the February 9, 2007 base order which is commonly referred to

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<sup>2</sup> Exhibit A to Amended Application filed May 27, 2010.

<sup>3</sup> On Page 1 of the Moratorium Application filed May 27, 2010, the moratorium would apply to new or expanded water service connections except within: (a) the City of Sand City; (b) the unincorporated community of the Del Monte Forest; and (c) the Ralph Lane, Chular, Bishop, Ambler Park, Ryan Ranch, Hidden Hills, and Toro subsystems.

<sup>4</sup> Ordinance 132, Exhibit 7, Page 8, Paragraph 4

<sup>5</sup> Ordinance 132, Exhibit 7, Page 8

<sup>6</sup> MPWMD minutes October 15, 2007, Item 20

<sup>7</sup> CDO, Page 55

as the "Amended Decision" or "Seaside Basin Adjudication Decision" and is attached hereto as Exhibit 1. SNG, Cal Am, the Monterey Peninsula Water Management District ("MPWMD"), City of Seaside, Sand City, County of Monterey, among others, are all parties to the Seaside Basin Adjudication Order. There are several provisions of the Seaside Basin Adjudication Decision of pertinent note and relevance to Cal Am's amended application. One, is that water rights and use were adjudicated<sup>8</sup>; two, the management provisions in Adjudication Decision provide for and at times require that parties pump at more strategic places in the Basin<sup>9</sup>; and third, to facilitate management, the Adjudication Order also provides for pumpers to "combine" or "wheel" each others water under the portability provisions<sup>10</sup>. In 2006, SNG received adjudicated rights to 149 afy of alternative production water in the Seaside Basin Adjudication. Cal Am agreed to serve SNG its adjudicated water rights and in September 2008, Cal Am and SNG approached the MPWMD for a water distribution permit. In October 2008, the Seaside Basin Watermaster reviewed the application and concluded that moving the SNG pumping inland and having Cal Am do the pumping and deliver the SNG water back to the SNG property was consistent with the adjudication decision and an overall benefit to the basin. Unfortunately, the MPWMD denied the permit application for a panoply of reasons, however, that denial was set aside by a Court Order dated May 11, 2009 and the MPWMD was ordered to rehear the Water Distribution Permit application. That Court Order clarified, among other things, that Cal Am's service of SNG adjudicated water rights from inland wells not only protects the Seaside Basin but also does not impact the Carmel River when coupled with a pre-pumping Agreement.<sup>11</sup> The May 11, 2009 order also restates existing water law that simple mixing of water sources does not transmute the water supply from Seaside Basin water to Carmel River Water or vice versa. Accordingly, on May 18, 2009, Cal Am and SNG entered into a pre-pumping agreement a copy of which is attached as Exhibit 8. The Court of Appeal for the Sixth District affirmed the May 11, 2009 order in full. As the moratorium application is currently drafted, unless an Adjudicated water right holder fell within one of the five exemptions, it appears to preclude Cal Am from serving those Adjudicated Water rights, even if the Watermaster and/or Court concluded it was beneficial to move pumping inland to address the integrity of the Seaside Basin and even if there was no impact on the Carmel River. Thus, without clarification, the moratorium appears to limit the Courts' and Watermasters' ability to order Cal Am to serve another's water right and arguably interferes with efficient management of the Seaside Basin by conflicting with the portability, transfer and management of Production Allocations provided for under the terms of the Adjudication Decision. A moratorium is also contrary to the existing applications, pre-pumping agreements and Court Orders regarding benefit to the Seaside Basin.

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<sup>8</sup> See Amended Decision, Exhibit 1, Page 21

<sup>9</sup> See Amended Decision, Exhibit 1, Page 42, lines 16-22

<sup>10</sup> See Amended Decision, Exhibit 1; Page 43, lines 7-14

<sup>11</sup> California American Water v. City of Seaside, M66343, Order dated May 11, 2009 attached as Exhibit 2 to this Response; Page 2 lines 6-11; and Page 3 lines 2-10

To address SNG's unique circumstances and the legal and factual background surrounding the SNG/Cal Am pumping, SNG suggests, an additional exception on Page 9 be added as follows: "(e) served by water entitlements held pursuant to the Seaside Basin Adjudication Order and pre-pumped prior to service by Cal Am." Additional clarification in the body of the Application or in any CPUC order could emphasize that the moratorium is not intended to interfere with the Seaside Basin Adjudication Orders which water and rights existed prior to the CDO and fall within the ongoing review of the Court and where there is no impact to the Carmel River. This exception language recognizes the Court orders of May 11, 2009 as affirmed by the Court of Appeal on April 1, 2010 relative to Cal Am's service of SNG adjudicated water rights. Cal Am and SNG have a pre-pumping agreement in place dated May 18, 2009 and a moratorium on SNG's connection with Cal Am is not required to meet the terms of the CDO.

The above exception language is consistent with the CDO in that the CDO recognizes that it only applies to diversions from the Carmel River.<sup>12</sup> The CDO also recognizes the authority of the Watermaster to determine the manner in which water may be withdrawn from the Seaside groundwater basin.<sup>13</sup> As the Application currently points out, the crafted exceptions are based upon the concept that no Carmel River water is serving the exception area. Additionally, the State Water Resources Control Board has previously recognized its jurisdictional limitations relative to water use derived solely from the Seaside Basin in previous correspondence with Cal Am, SNG, and others.<sup>14</sup> Finally, the exception language is narrowly tailored to harmonize the moratorium provisions with the CDO, the Seaside Basin Adjudication Orders and the Court of Appeal decision regarding Cal Am's service of SNG's adjudicated water rights.

#### **EXHIBIT LIST**

Appended hereto are the following exhibits which are filed pursuant to Commission Rule 1.5 and in support of this Response.

- Exhibit 1: Adjudication Order Filed February 9, 2007
- Exhibit 2: Order after hearing on SNG's Motion to Enforce and Clarify Amended Decision, Monterey County Superior Court Case No. M66343 filed May 11, 2009
- Exhibit 3: Cal Am v. City of Seaside, et al. 183 Cal. App. 4th 471 (April 1, 2010)
- Exhibit 4: Letter from SWRCB to Laurens Silver regarding Cal Am provision of SNG Seaside Basin Water to SNG and order 95-10 dated February 5, 2009

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<sup>12</sup> CDO, Page 57, "Cal Am shall not divert water from the Carmel River to serve new service connections....."

<sup>13</sup> CDO, Page 62, 9.(c).

<sup>14</sup> Exhibits 4, 5, 6 correspondence from the SWRCB relative to Cal Am service of water produced in the Seaside Basin and SWRCB Order 95-10.

- Exhibit 5: Letter from SWRCB to Cal Am dated January 31, 2006 confirming no impact on the Carmel River
- Exhibit 6: Email from SWRCB dated January 20, 2009 to E. Ghandour and SNG re impact on the Carmel River
- Exhibit 7: MPWMD Staff report, dated January 24, 2008 and Monterey Peninsula Water Management District Ordinance 132
- Exhibit 8: Front Loading Agreement dated May 18, 2009 between Cal Am and SNG

**HEARING SCHEDULE**

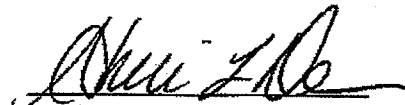
SNG concurs in the proposed schedule set forth in the amended Application.

**CONCLUSION**

For the reasons stated herein, SNG respectfully requests the Commission allow SNG to participate in these proceedings as a full participant.

Dated: July 1, 2010

Respectfully submitted,  
**DAMON LAW OFFICES**



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Attorney for  
Security National Guaranty, Inc.

*Received via email by H. Stern on 7/6/2010.  
Attachments are not included.*