

SOMACH, SIMMONS & DUNN
A Professional Corporation
STUART L. SOMACH, ESQ. (SBN 090959)
SANDRA K. DUNN, ESQ. (SBN 119161)
NICHOLAS A. JACOBS, ESQ. (SBN 210091)
813 Sixth Street, Third Floor
Sacramento, CA 95814-4407
Telephone: (916) 446-7979
Facsimile: (916) 446-8199

Attorneys for Plaintiff and Cross-Defendant
CALIFORNIA AMERICAN WATER

FILED

MAR 27 2006

LISA M. GALDOS
CLERK OF THE SUPERIOR COURT
~~D. VALENZUELA~~ DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MONTEREY

CALIFORNIA AMERICAN WATER,

Plaintiff,

vs.

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

Defendants.

MONTEREY PENINSULA WATER
MANAGEMENT DISTRICT,

Intervenor.

MONTEREY COUNTY WATER
RESOURCES AGENCY,

Intervenor.

AND RELATED CROSS-ACTIONS

//

Case No. M66343

[PROPOSED] STATEMENT
OF DECISION

Action Filed: August 14, 2003

(Assigned to Hon. Roger D. Randall, Ret.)

1 Introduction

2 On January 12, 2006, the Court issued a lengthy Tentative Decision setting forth the
3 adjudicated rights of the various parties named in the litigation to use the water resources of the
4 Seaside Groundwater Basin. The Tentative Decision also established a physical solution, which
5 provides for the long-term management of the Seaside Basin. Plaintiff California American Water
6 and Defendants Alderwoods Group, Bishop McIntosh & McIntosh, York School, Laguna Seca
7 Resort, Pasadera Country Club, Granite Rock Company, D.B.O. Development Company No. 27,
8 Muriel Calabrese 1987 Trust and the City of Seaside filed requests to clarify and/or modify the
9 Tentative Decision, or joined in such requests by other parties, within the time allowed by Rule 232
10 of the California Rules of Court for requesting a Statement of Decision. Those requests
11 summarily granted by the Court in its Minute Order issued on February 7, 2006 are reflected in
12 the attached final Decision which is fully incorporated herein and adopted as part of this Statement
13 of Decision. The attached final Decision also reflects changes to the Tentative Decision based
14 upon the following amplified conclusions of the Court as stated herein in response to Parts I and II
15 of the Joint Request to Clarify and Modify Tentative Decision by Bishop, McIntosh & McIntosh,
16 et al. and paragraphs 5, 16(1) and 16(2) of California American's Request to Clarify Tentative
17 Decision.

18 Standard Production Allocation

19 On the basis of evidence presented at trial the Court concludes that groundwater production
20 within the Seaside Groundwater Basin exceeds the Natural Safe Yield and that a physical solution,
21 which ultimately reduces the drawdown of the aquifer to the level of Natural Safe Yield, must be
22 established to prevent seawater intrusion and the consequent deleterious effects on the Basin.
23 Maintaining a positive offshore gradient in the groundwater basin through a reduction in pumping
24 will minimize the potential for seawater intrusion. The evidence also establishes, however, that the
25 alternative water supplies necessary to augment the water supplies of the Seaside Groundwater
26 Basin are not presently available and, therefore, flexibility must be provided in the physical solution
27 to allow the continued delivery of water for municipal purposes, including drinking water, so long
28 as there is no material injury to the Seaside Groundwater Basin.

1 Implementation of the physical solution by those parties with a Standard Production
2 Allocation will therefore be in the manner expressly set forth below and in the attached final
3 Decision. (Decision at p. 17, line 12 – p. 18, line 16.)

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

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

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

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

c. Any combination of a and b which results in the decrease in production
of Native Water required by this Decision; or

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

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

1 Alternative Production Allocations

2 Certain Parties to the litigation assert overlying groundwater rights which have a priority
3 over those Parties asserting appropriative groundwater rights. By the final Decision, those
4 Parties asserting an overlying right to groundwater from the Seaside Basin are provided an
5 Alternative Production Allocation. Consistent with the hierarchy, or priority, of groundwater
6 rights established by California water law, the Alternative Production Allocation provides the
7 aforementioned Parties with a prior and paramount right over those Parties Producing under the
8 Standard Production Allocation to Produce the amount set forth in Table 2 in perpetuity, and said
9 Alternative Production shall not be subject to any reductions under Section III.B.2 of the
10 Decision or at such times as the Watermaster determines to reduce the Operating Yield in
11 accordance with Section III.L.3.j.ii., subject to the terms expressly set forth in the Decision. (See
12 Decision at p. 19, line 17 – p. 20, line 22.)

13 Replenishment Assessment

14 In accordance with California law, Parties with junior water rights (designated in the final
15 Decision as Standard Producers) are responsible for bearing the costs of carrying out a Physical
16 Solution intended to ensure an adequate water supply for both senior and junior water rights.
17 (See *Lodi v. East Bay Municipal Utility District* (1938) 7 Cal.2d 677, 788; *Peabody v. Vallejo*
18 (1935) 2 Cal.2d 351, 379-380, 383-384; *Montecito Valley Water Company v. Santa Barbara*
19 (1904) 144 Cal. 578, 592, 602; *Eckel v Springfield Tunnel & Development Co.*, (1927) 87
20 Cal.App. 617, 625.)

21 As part of the Physical Solution established in the final Decision, the Court directs the
22 Watermaster to impose replenishment assessments to fund projects to augment the water
23 supplies in the Seaside Basin. Implementation of the replenishment assessments by the
24 Watermaster is to be consistent with the priority of water rights and the doctrine of physical
25 solution as set forth in California water law. Therefore, the Replenishment Assessment for
26 production over the natural Safe Yield applies only to Parties exercising a Standard Production
27 Allocation and does not apply to parties producing groundwater pursuant to an Alternative
28 Production Allocation. Accordingly, the attached Decision at page 14, line 4 states:

1 For a Party producing under the Alternative Production Allocation, the
2 calculation shall be based upon the Base Water Right assigned to them in Table 1,
3 infra, only to the extent that Party has elected to convert all or part of an Alternative
4 Production Allocation into a Standard Production Allocation, pursuant to Section
5 III.B.3 e.

6 In addition, the following footnote is added to Table 1 on page 18, lines 26-28, of the
7 Decision:

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

15 Section III.L.3.j.iii. of the final Decision entitled "Artificial Replenishment and
16 Replenishment Assessment" states in full at p. 32, line 14 – p. 33, line 21:

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

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

Replenishment Assessments based on Overproduction and Operating
Yield Over-Production shall be assessed on a per acre-foot basis on each acre-
foot, or portion of an acre-foot, of Over-Production. The per acre-foot amount of
the Replenishment Assessments shall be determined and declared by
Watermaster in January of each Administrative Year in order to provide Parties

1 with advance acknowledge of the cost of Over-Production in that Administrative
2 Year.

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

13 California American Obligation to Augment Water Supply

14 The Court charges California American to, on a long-term and short-term basis, augment
15 the water supplies in the Seaside Basin. Water supplies developed to fulfill California
16 American's water supply augmentation obligation may result in the replenishment of the Seaside
17 Basin. To the extent that California American's expenditures associated with augmentation of
18 water supplies provide water to replenish the Basin, these costs will be credited towards
19 California American's Replenishment Assessment for Over-Production. The final Decision on
20 page 41, line 24, after Regulatory Authorization, is modified to provide a new sub-paragraph (d)
21 as follows:

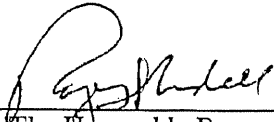
22 d. Credit Toward Replenishment Assessment. California
23 American's expenditures for water supply augmentation may also provide
24 replenishment water for the Basin. Accordingly, on an annual basis, California
25 American will provide the Watermaster with an accounting of all expenditures it
26 has made for water supply augmentation that it believes have or will also result in
27 replenishment of the Basin. The Watermaster shall review these expenditures
28 and ^{if it concurs} reduce California American's Replenishment Assessment obligation, for that
year, by an amount equal to the amount claimed by California American. To the
extent that the Watermaster ^{disputes} any of the claimed amounts, it shall provide
California American with an explanation of its contest and allow California
American an opportunity to meet and confer on the disputed amount. In the event
that the Watermaster and California American cannot ^{reach an agreement} resolve their dispute, the
matter ^{may} will be referred to the Court through a request filed by the Watermaster.

California American
RJR

1 Conclusion

2 This "Statement of Decision" along with the final Decision attached hereto shall
3 constitute the full Statement of Decision provided for in Rule 232 of the California Rules of
4 Court.

5 *March 22*
6 Dated: ~~February~~ *March* 22, 2006

By 
The Honorable Roger D. Randall

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

On February 15, 2006, I served a true and correct copy of

X (by mail) on all parties in said action listed below, in accordance with Code of Civil Procedure §1013a(3), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At Somach, Simmons & Dunn, mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business, in a United States mailbox in the City of Sacramento, California.

below: (by facsimile transmission) to the person at the address and phone number set forth

SEE ATTACHED SERVICE LIST

Susan Bentley

SERVICE LIST

J. Terry Schwartz
Craig A. Parton
Price, Postel & Parma
200 E. Carrillo Street, Suite 400
Santa Barbara, CA 93101-2190
Facsimile: (805) 965-3978
jts@ppplaw.com
cap@ppplaw.com

Attorneys for Intervenor Monterey
Peninsula Water Management District

Thomas D. Roth
Law Offices of Thomas D. Roth
One Market, Spear tower, Suite 3600
San Francisco, CA 94105
Facsimile: (415) 435-2086
rothlaw1@comcast.net

Attorneys for Defendant
Security National Guaranty, Inc.

Jacqueline M. Zischke
Virginia A. Hines
Lombardo & Gilles
318 Cayuga Street
P.O. Box 2119
Salinas, CA 93902-2119
Facsimile: (831) 754-2011
Jacqui@lomgil.com

Attorneys for Defendant
Laguna Seca Resort, Inc.

Robert Allan Goodin
Anne Hartman
James Squeri
Goodin, MacBride, Squeri, Ritchie &
Day, LLP
505 Sansome, Suite 900
San Francisco, CA 94111
Facsimile: (415) 398-4321
jsqueri@gmssr.com
ahartman@gmssr.com

Attorneys for Defendant
Pasadera Country Club, LLC

James Heisinger
Heisinger Buck Morris et al.
P. O. Box 5427
Carmel, CA 93921-5427
Facsimile: (831) 625-0145
jim@carnellaw.com

Attorneys for Defendant
City of Sand City

David C. Sweigert
Fenton & Keller
2801 Monterey-Salinas Highway
P.O. Box 791
Monterey, CA 93942-0791
Facsimile: (831) 373-7219
dsweigert@fentonkeller.com
rscholl@fentonkeller.com

Attorneys for Defendant
D.B.O. Development Company

1 Rob Wellington
2 Wellington Law Offices
3 857 Cass Street, Suite D
4 Monterey, CA 93940
Facsimile: (831) 373-7106
attys@wellingtonlaw.com

Attorneys for Defendant
City of Del Rey Oaks

5 Scott S. Slater, Esq.
6 Hatch and Parent
7 21 East Carrillo Street
8 Santa Barbara, CA 93101-2782
Facsimile: (805) 965-4333
sslater@hatchparent.com
shoch@hatchparent.com

Attorneys for Defendant
City of Seaside

9 Donald G. Freeman, City Attorney
10 Law Offices of Perry and Freeman
11 P.O. Box 805
12 Carmel, CA 93921
13 Facsimile: (831) 624-5839
14 klglegal@hotmail.com

Attorneys for Defendant
City of Seaside

15 Deborah Mall
16 Office of the City Attorney
17 City Hall
18 Monterey, CA 93940
19 Facsimile: (831) 373-1634
mall@ci.monterey.ca.us

Attorneys for Defendant
City of Monterey

20 Mark Pearson
21 Iverson, Yoakum, Papiano & Hatch
22 1 Wilshire Bldg., 27th Fl.
23 624 S. Grand Avenue
24 Los Angeles, CA 90017
25 Facsimile: (213) 629-4563
26 mpearson@iyph.com

Attorneys for Defendant
Alderwoods Group (California), Inc.

27 Brian Finegan
28 Law Offices of Brian Finegan
P.O. Box 2058
Salinas, CA 93902
Facsimile: (831) 757-9329
brian@bfinegan.com

Attorneys for Defendant
Granite Rock Company

Michael Albov
Hudson, Martin, Ferrante & Street
P.O. Box 112
Monterey, CA 93942-0112
Facsimile: (831) 375-0131
michaelalbov@hudsonmartin.com

Attorneys for Defendant
Muriel E. Calabrese 1987 Trust

1 David Laredo
2 DeLay & Laredo
3 606 Forest Avenue
4 Pacific Grove, CA 93950
Facsimile: (831) 646-0377
dave@laredolaw.net

Attorneys for Intervenor Monterey
Peninsula Water Management District

5 James J. Cook
6 Horan, Lloyd, Karachale, et al.
7 499 Van Buren Street
Monterey, CA 93940
Facsimile: (831) 373-8302
jcook@horanlegal.com

Attorney for Defendant The York
School

8 Eric N. Robinson
9 Kronick, Moskovitz, Tiedemann &
Girard
10 400 Capitol Mall, 27th Floor
11 Sacramento, CA 95814
Facsimile: (916) 325-4555
erobinson@kmtg.com

Attorneys for
Bishop McIntosh & McIntosh

12 Dennis LeClere
13 Office of County Counsel
County of Monterey
14 168 West Alisal St., 3rd Floor
Salinas, CA 93901-2680
15 Facsimile: (831) 755-5283
leclered@co.monterey.ca.us

Attorneys for County of Monterey

16 Kevin M. O'Brien
17 Downey, Brand
18 555 Capitol Mall, 10th Floor
Sacramento, CA 95814
Facsimile: (916) 444-2100
19 kobrien@downeybrand.com

Attorneys for Intervenor Monterey
County Water Resources Agency