

1 RUSSELL MCGLOTHLIN (S.B. #208826)
rmcglathlin@omm.com
2 KATHERINE TAKAKJIAN (S.B. #324506)
ktakakjian@omm.com
3 O'MELVENY & MYERS LLP
400 South Hope Street
4 18th Floor
Los Angeles, California 90071-2899
5 Telephone: +1 213 430 6000
Facsimile: +1 213 430 6407

6 *Attorneys for Defendant City of Seaside*

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF MONTEREY**
10

11 CALIFORNIA AMERICAN WATER,

12 Plaintiff,

13 v.

14 CITY OF SEASIDE, et al.,

15 Defendants.

16
17 MONTEREY PENINSULA WATER
MANAGEMENT DISTRICT,

18 Intervenor.

19
20 MONTEREY COUNTY WATER
RESOURCES AGENCY,

21 Intervenor.

22
23 AND RELATED CROSS ACTIONS.
24
25
26
27
28

Case No. M66343

[PROPOSED] ORDER

Assigned for All Purposes to the Honorable
Robert O'Farrell

Action Filed: August 14, 2003

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[PROPOSED] ORDER ON MOTION

The Court, having considered the City of Seaside’s Motion for Approval of In Lieu Groundwater Storage Program, in connection with all other papers submitted in this matter, and all argument or evidence presented, finds as follows:

The Program is consistent with the terms of the Decision and with California law and policy. Implementation of the in lieu groundwater storage program proposed by the City does not require the conversion of the City’s alternative production allocation to standard production allocation, and is preferable to all available alternatives. The Program is financially and environmentally prudent, and promotes the highest beneficial use of the water resources available to the Monterey Peninsula.

Good cause having been shown, the Motion is **GRANTED**.

IT IS SO ORDERED.

Dated: _____

By: _____
Hon. Robert O’Farrell
Monterey Superior Court

1 RUSSELL MCGLOTHLIN (S.B. #208826)
rmcglathlin@omm.com
2 KATHERINE TAKAKJIAN (S.B. #324506)
ktakakjian@omm.com
3 O'MELVENY & MYERS LLP
400 South Hope Street
4 18th Floor
Los Angeles, California 90071-2899
5 Telephone: +1 213 430 6000
Facsimile: +1 213 430 6407

6 *Attorneys for Defendant City of Seaside*

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF MONTEREY**
10

11 CALIFORNIA AMERICAN WATER,

12 Plaintiff,

13 v.

14 CITY OF SEASIDE, et al.,

15 Defendants.

16
17 MONTEREY PENINSULA WATER
MANAGEMENT DISTRICT,

18 Intervenor.

19
20 MONTEREY COUNTY WATER
RESOURCES AGENCY,

21 Intervenor.

22
23 AND RELATED CROSS ACTIONS.
24
25
26
27
28

Case No. M66343

**[PROPOSED] ORDER GRANTING
DEFENDANT'S REQUEST FOR
JUDICIAL NOTICE**

Assigned for All Purposes to the Honorable
Robert O'Farrell

Action Filed: August 14, 2003

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[PROPOSED] ORDER

Before the Court is Defendant City of Seaside’s Request for Judicial Notice (“Request”). The Court, having considered the papers filed in support of and in opposition to the Request, all other arguments, and the entire record in this case, hereby **ORDERS** that the Request is **GRANTED**. (See Cal. Evid. Code § 452(d); see also *Craan v. Cty. Of Kern* (Cal. Ct. App. May 23, 2008) 2008 WL 2154045, at *2.)

IT IS SO ORDERED.

Dated: _____

By: _____

Hon. Robert O’Farrell
Monterey Superior Court

1 RUSSELL MCGLOTHLIN (S.B. #208826)
rmcglathlin@omm.com
2 KATHERINE TAKAKJIAN (S.B. #324506)
ktakakjian@omm.com
3 O'MELVENY & MYERS LLP
400 South Hope Street
4 18th Floor
Los Angeles, California 90071-2899
5 Telephone: +1 213 430 6000
Facsimile: +1 213 430 6407

6 *Attorneys for Defendant City of Seaside*

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF MONTEREY**
10

11 CALIFORNIA AMERICAN WATER,
12
13 Plaintiff,
14 v.
15 CITY OF SEASIDE, et al.,
16 Defendants.

17 MONTEREY PENINSULA WATER
MANAGEMENT DISTRICT,
18
19 Intervenor.

20 MONTEREY COUNTY WATER
RESOURCES AGENCY,
21
22 Intervenor.

23 AND RELATED CROSS ACTIONS.
24
25
26
27
28

Case No. M66343

**DEFENDANT CITY OF SEASIDE'S
NOTICE OF MOTION AND MOTION
FOR APPROVAL OF IN LIEU
GROUNDWATER STORAGE
PROGRAM**

Assigned for All Purposes to the Honorable
Robert O'Farrell, Ret.

Action Filed: August 14, 2003

Hearing: October 25, 2019, 1:30 p.m.

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that Defendant City of Seaside hereby moves for an order of
3 the Court approving an in lieu groundwater storage program ("Motion"). This Motion is based
4 upon this notice, the attached memorandum of points and authorities, the attached request for
5 judicial notice, the attached proposed order, all other papers submitted in this action, and upon
6 any other argument or evidence that may be presented at or before the hearing on this Motion.

7 PLEASE TAKE FURTHER NOTICE that the Motion will be heard on October 25, 2019 at
8 1:30 p.m. before The Honorable Robert O'Farrell, Ret. at the Monterey Superior Court,
9 Department 13, located at 1200 Aguajito Road, Monterey, CA 93940.

10
11 Dated: September 4, 2019

RUSSELL MCGLOTHLIN
KATHERINE TAKAKJIAN
O'MELVENY & MYERS LLP

12
13
14
15 By: 

Russell McGlothlin
Attorneys for Defendant

1 **TABLE OF CONTENTS**

2 **Page**

3 MEMORANDUM OF POINTS AND AUTHORITIES 6

4 I. INTRODUCTION 6

5 II. BACKGROUND 6

6 III. ARGUMENT 8

7 A. The Program Is Consistent with the Terms of the Decision. 9

8 a. The City Has a Right to Store Water in the Basin..... 9

9 b. The Decision Does Not Require the City to Convert Its APA to SPA
10 to Undertake In Lieu Storage. 10

11 B. The Program Is Consistent with California Policy. 12

12 a. California Encourages the “Conjunctive Use” of Surface Water and
13 Groundwater Resources..... 12

14 b. California Encourages the Use of Recycled Water for Non-Potable
15 Uses. 12

16 c. In Lieu Storage Is a Preferred Method of Groundwater
17 Replenishment. 13

18 C. Alternative Storage Options Do Not Achieve Maximum Beneficial Use and
19 Would Cause Adverse Results. 13

20 IV. CONCLUSION 14

21

22

23

24

25

26

27

28

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page(s)

Cases

Central and West Basin Water Replenishment Dist. v. Southern Cal. Water Co.,
(2003) 9

City of Barstow v. Mojave Water Agency,
(2000) 23 Cal. 4th 1224 11

City of Los Angeles v. City of San Fernando,
(1975) 14 Cal.3d 199 10, 11

City of Santa Maria v. Adam,
(2012) 211 Cal.App.4th 266 10, 11

Hillside Memorial Park & Mortuary v. Golden State Water Co.,
(2011) 205 Cal.App.4th 534 9

Niles Sand & Gravel Co. v. Alameda County Water Dist.,
(1974) 37 Cal.App.3d 924..... 9

Statutes

Gov. Code § 38730 7

Wat. Code § 100..... 12

Wat. Code § 1011.5..... 12

Wat. Code § 13550..... 11, 12

Wat. Code § 13551..... 11

Wat. Code § 275..... 12

Wat. Code §§ 13500-13557 12

Wat. Code §§ 13575-13583 12

Other Authorities

Cal. Dept. of Water Resources, *Water Available for Replenishment - Final Report, Appendix C*
(April 2018) p. 7, at <https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Groundwater-Management/Data-and-Tools/Files/Statewide-Reports/WAFR/Final/Appendix-C-for-Water-Available-for-Replenishment---Final-Report.pdf>
[as of Aug. 14, 2019] 13

Cal. State Water Resources Control Board, *Recycled Water Policy* (May 21, 2009) at
https://www.waterboards.ca.gov/water_issues/programs/water_recycling_policy/docs/finalapprovedpolicy_020309.pdf [as of August 21, 2019]..... 13

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES
(continued)

Page(s)

S. Hastings and D. Johnson, Municipal Water Reuse In An Increasing Complex Regulatory Environment (May 4, 2018) p. 6, at <https://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2018/Spring-Conference-2018/5-2018-Spring;-Hastings-Johnson-Municipal-Water-Re.aspx> [as of Aug. 14, 2019] 12

Constitutional Provisions

Cal. Const., Article X, § 2..... 9, 12, 14

Cal. Const., Article XI, § 9..... 7

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendant, City of Seaside (“City”) applied to the Watermaster of the Seaside
4 Groundwater Basin for an in lieu storage program that will promote the maximum beneficial use
5 of recycled water. The proposed program would substitute recycled water in lieu of the current
6 use of approximately 450 acre feet per year (“AFY”) of groundwater produced from the Seaside
7 Groundwater Basin, for irrigation of the City’s Bayonet and Blackhorse Golf Courses. After
8 review of the application, the Watermaster determined that the Decision was unclear as to
9 whether the Watermaster possesses the authority to approve the proposed in lieu storage program
10 and instructed the City to file this Motion for the Court’s consideration of this matter. By this
11 Motion, the City seeks the Court’s direction to the Watermaster respecting approval of the
12 proposed in lieu storage program.

13 **II. BACKGROUND**

14 Seaside Groundwater Basin (“Basin”) is located in northern coastal Monterey County. It
15 underlies the Cities of Seaside, Sand City, Del Rey Oaks, Monterey, and portions of
16 unincorporated county areas, including the southern portions of the former Fort Ord and the
17 Laguna Seca Area. The Basin contains 52,030 acre-feet of usable storage, and is one of
18 approximately two dozen groundwater basins in California that have been adjudicated by the
19 courts and are now subject to judicial management. On February 9, 2007, Judge Randall entered
20 the amended decision (“Decision”) governing water rights in the Basin. The Decision:

- 21 • calculates the “safe yield” of the Basin;
- 22 • implements a series of 10% triennial rampdowns in allowed annual production
23 until the total Basin production is no more than the natural safe yield;
- 24 • allocates the allowed annual production between the parties;
- 25 • establishes two “classes” of adjudicated production rights:
 - 26 ○ Standard Production Allocation (“SPA”), which generally reflects the
27 characteristics of an *appropriative* groundwater right under the common
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

law; and

- Alternative Production Allocation (“APA”), which generally reflects the characteristics of an *overlying* groundwater right under the common law;
- allows for groundwater replenishment and storage;
- permits “carryover” of unused SPA from year to year;
- allows for transfers of SPA;
- establishes the Seaside Groundwater Basin Watermaster to assist in the implementation of the Decision and the management of the Basin;
- requires the Watermaster to assess administrative budget and replenishment assessments to finance its administrative activities and Basin replenishment; and
- reserves continuing jurisdiction to the Court to modify the Decision as appropriate and to resolve any disputes.

The Decision continues to control today.

The City is a general law city situated in the County of Monterey. The City produces groundwater from the Basin for two primary purposes: (1) the provision of municipal water service to its residents, and (2) use on two City-owned golf courses—the Bayonet and Blackhorse Golf Courses (“the Courses”)—that overlie the Basin. (*See* Cal. Const., Art. XI, § 9; Gov. Code, § 38730.) As one of the parties to the Decision, the City has both APA and SPA. The City’s SPA applies to its municipal system, while its APA is appurtenant to the Courses. In 2010, a Declaration by the Watermaster allotted the City a maximum storage amount of 2,361 acre-feet in the Basin, roughly 7.4% of the Basin’s total usable storage allocation. (*See* Exhibit A to the Declaration of Russell McGlothlin accompanying the City’s concurrently filed Request for Judicial Notice.)

Pursuant to the terms of the Decision, on June 5, 2019, the City submitted to the Watermaster an application for execution of a Storage and Recovery Agreement for the proposed in lieu storage program (“Program”) pursuant to Section III.3.L.3.j.xix of the Decision. The application was subsequently reviewed by the Watermaster at its regular board meeting on

1 August 7, 2019. The proposed Program will substitute recycled water, purchased from Marina
2 Coast Water District (“MCWD”), for irrigation of the Courses in lieu of the current use of
3 approximately 450 AFY of groundwater produced from the Basin. This substitution will achieve
4 replenishment and storage of water in the Basin. Under the terms of the Program, delivery of
5 recycled water to the Courses will be metered and reported to the Watermaster on a schedule and
6 pursuant to appropriate terms to be set forth in the storage and recovery agreement. The quantity
7 of recycled water applied annually at the Courses will establish the amount of water “stored”
8 annually in the Basin via in lieu storage.

9 Stored water will be recaptured by the City at its Well Number 4 (or a future planned
10 replacement for this well), and subsequently be used to serve anticipated projects, such as the
11 Campus Town and Main Gate projects, for which there is presently insufficient allocation.¹ The
12 Program will also allow the City to recover some of the stored water to serve the City’s municipal
13 water system. This will offset demand exceedances in excess of the City’s SPA for its municipal
14 system resulting from the rampdown in SPA pursuant to the Decision’s provisions.

15 The Watermaster’s board considered the City’s application for the Program at its August
16 7, 2019 board meeting. The board was generally supportive of the Program, but concluded that
17 the Decision is unclear as to whether it authorizes the Watermaster to approve the Program. It
18 thus instructed the City to bring this Motion for consideration of the application by the Court. At
19 the board’s direction, Watermaster staff also prepared a letter addressed to the Court discussing
20 the matter. Watermaster staff instructed the City to include the letter with this Motion. A true and
21 correct copy of that letter is attached as Exhibit B to the Declaration of Russell McGlothlin
22 accompanying the City’s concurrently filed Request for Judicial Notice.

23 **III. ARGUMENT**

24 If approved, the Program will positively affect the City, its residents, the Basin, and the
25 environment. As discussed in more detail below, approval of the Motion is supported by sound
26 legal precedent and policy. The proposed Program is in accord with the terms of the Decision and
27

28 ¹ Pursuant to the Fort Ord Reuse Authority’s water allocation program.

1 conforms to the Golden Rule of California water law and policy: “that the water resources of the
2 State be put to beneficial use to the fullest extent of which they are capable, and that the waste or
3 unreasonable use or unreasonable method of use of water be prevented.” (Cal. Const. Art. X, § 2.)

4 **A. The Program Is Consistent with the Terms of the Decision.**

5 *a. The City Has a Right to Store Water in the Basin.*

6 In the Watermaster’s Declaration of Total Usable Storage Space (February 3, 2010), the
7 City was granted 2,361 acre-feet of storage in the Basin. This storage space is a derivative of the
8 City’s SPA. But as a public agency, the City need not rely on that allocation alone to make use of
9 storage space in the Basin for public purposes. Section III.H.1 of the Decision provides that
10 “Underground Storage within the Seaside Basin is and shall remain a public resource.”² Public
11 agencies—like the City—have the right to store water by “Direct Injection, Spreading, or other
12 artificial means.” (Decision, Section III.H.6.) The City therefore has a right to make use of
13 unused storage space within the Basin for public purposes. It seeks to assert this right through in
14 lieu substitution of recycled water for an existing non-potable use of potable groundwater. While
15 this substitution happens to be on City-owned golf courses, the City could do a similar
16 substitution of *any* non-potable demand as a means of establishing in lieu storage.

17 California courts have long recognized the public nature of subterranean storage space and
18 the right of public agencies to make use of such storage space for the public welfare. (*See e.g.*,
19 *Niles Sand & Gravel Co. v. Alameda County Water Dist.* (1974) 37 Cal.App.3d 924, 933-934
20 [discussing a public servitude applicable to storage space]; *see also Central and West Basin*
21 *Water Replenishment Dist. v. Southern Cal. Water Co.* (2003) 109 Cal.App.4th 891, 904-905
22 [explaining that underground storage space is a public resource and that California Constitutional
23 policy requires it be put to use for the public welfare]; *accord Hillside Memorial Park &*
24 *Mortuary v. Golden State Water Co.* (2011) 205 Cal.App.4th 534, 539-540.)

25
26 ² The Decision’s statement that “subsurface storage space is a public resource is amply
27 supported by the Constitution and Water Code.” (*See Central and West Basin Water*
Replenishment Dist. v. Southern Cal. Water Co. (2003) 109 Cal.App.4th 891, 905.)

1 The City is *not* requesting to use its APA as a basis for its proposed storage program.³ Nor
2 is the City seeking to transfer the APA associated with the Courses for use on another property.
3 Such endeavors would be barred by Sections III.A.35 and III.B.3.a of the Decision, respectively.
4 Rather, the City *is* entitled to store water in the Basin both in relation to its express storage
5 allocation of 2,361 acre-feet, and generally as a public agency, making use of public groundwater
6 storage resources. The Courses will only serve as a means of introducing recycled water into the
7 Basin through in lieu storage methods. Under the Program, the City’s APA will remain
8 appurtenant to the Courses.

9 *b. The Decision Does Not Require the City to Convert Its APA to SPA to*
10 *Undertake In Lieu Storage.*

11 Some may read the Decision and conclude that the City should be required to convert its
12 APA (currently appurtenant to the Courses) into SPA to facilitate the Program. Section III.B.3.e
13 of the Decision allows a pumper to convert APA to SPA and thereafter transfer the new SPA
14 away from the property to which the APA was initially allocated. Once converted, the new SPA
15 is subject to all rampdowns, which will amount to a greater than a 50% reduction when the final
16 triennial rampdown goes into effect in 2021. The City, though, is not proposing to convert its
17 APA to SPA and transfer the SPA. It intends to leave the APA appurtenant to the property and
18 substitute recycled water for the exercise of the APA. Consequently, the City will store water, the
19 Basin will benefit from the higher water levels for so long as the stored water remains in the
20 Basin, and a non-potable demand will switch from potable groundwater to recycled supplies, all
21 consistent with water management policy. The stored water credited to the City would also be
22 consistent with the developed water doctrine; that is, a party responsible for introducing new
23 water to a groundwater basin has an exclusive right to recover the augmented and recoverable
24 yield attributable to their actions—i.e., a fruits-of-one’s-labor standard. (*See City of Los Angeles*
25 *v. City of San Fernando* (1975) 14 Cal.3d 199, 256-262; *City of Santa Maria v. Adam* (2012) 211
26 Cal.App.4th 266, 301; 304-307.)

27 _____
28 ³ The Decision allocates storage rights only to SPA producers.

1 The City acknowledges that Section III.B.3.d of the Decision creates some ambiguity in
2 relation to the City’s proposed Program. That section provides:

3 In the event a Party electing the Alternative Production Allocation is required to utilize
4 reclaimed Water for irrigation purposes, pursuant to the terms of sections 13550 and
5 13551 of the California Water Code, that Party shall have the first opportunity to
6 obtain and substitute reclaimed Water for its irrigation demands. Should that Party not
7 pursue such substitution with due diligence, any other Party may provide reclaimed
8 Water for the irrigation purpose pursuant to the terms of sections 13550 and 13551 of
9 the California Water Code. Under either circumstance, the Party providing the
10 reclaimed Water for substitution shall obtain a credit to Produce an amount of
11 Groundwater equal to the amount of substituted reclaimed Water in that particular
12 Water Year, *provided that such credit shall be reduced proportionately to all*
13 *reductions in the Operating Yield in accordance with Section III.L.3.j.ii.* The
14 Alternative Production Allocation of the Party utilizing the reclaimed Water shall be
15 debited in an amount equal to the reclaimed Water being substituted. (emphasis
16 added.)

17 This section provides that the party substituting recycled water for a non-potable demand,
18 consistent with statutory requirements, will be credited with a production amount equivalent to
19 the amount of the substitution. The section also provides, however, that the credit will be reduced
20 proportionately to all rampdown then in effect. The reduction requirement mirrors the APA-to-
21 SPA conversion provisions in Section III.B.3.e., which immediately follows in the Decision. That
22 is, if APA is stripped from the appurtenant parcel for use elsewhere, the use becomes akin to an
23 appropriative groundwater right, which is junior in priority to overlying rights,⁴ and thus is
24 properly burdened by necessary rampdowns in basin yield. The “credit” afforded to a party
25 substituting recycled water, however, is not like an APA-to-SPA conversion (i.e., a conversion of
26 an overlying right to an appropriative right). Instead, the credit is akin to a *developed* water right
27 credited to a party introducing new water to the basin that would not exist but for the party’s
28 actions. As noted above, a developed water right is properly quantified by the amount of
29 augmented and recoverable yield attributable to such efforts. (See *San Fernando*, 14 Cal.3d at
30 256-262; *Santa Maria*, 211 Cal.App.4th at 301; 304-307.)

31 Again, the City is not proposing to convert its APA to SPA; the APA will remain
32 appurtenant to the golf course parcels. It just substituting existing potable groundwater

33 _____
34 ⁴ See *City of Barstow v. Mojave Water Agency* (2000) 23 Cal. 4th 1224, 1241.

1 production to create stored water. Consistent with the policies inherent in the developed water
2 doctrine, the City should receive the full fruits of its labor; the stored water credit should equal
3 the amount of the augmented and recoverable yield.

4 **B. The Program Is Consistent with California Policy.**

5 a. *California Encourages the “Conjunctive Use” of Surface Water and*
6 *Groundwater Resources.*

7 Conjunctive use is the coordinated use of surface water (including recycled water) and
8 groundwater resources to optimize water supply management and benefits. Conjunctive use
9 allows entities to maximize the utility from a portfolio of water resources. The California Water
10 Code proclaims that it is state policy to “encourage conjunctive use of surface water and
11 groundwater supplies . . .” (Wat. Code § 1011.5.) The Program is a prime example of conjunctive
12 use; it utilizes recycled water and in lieu storage to allow the City to accumulate stored water in
13 the Basin, which will in turn benefit the Basin and the water supplies of the City.

14 b. *California Encourages the Use of Recycled Water for Non-Potable Uses.*

15 California policy encourages the use of recycled water because it maximizes the beneficial
16 use of the state’s water resources. (*See* Cal. Const. Art. X, § 2; Wat. Code § 100; *see also* Wat.
17 Code § 275.) Indeed, the California Legislature has declared that, when recycled water is
18 available, using *potable* water for *non-potable* uses “is a waste and unreasonable use of water
19 within the meaning of Section 2 of Article X of the California Constitution.” (*See* Wat. Code §
20 13550.) To further its policy of promoting the maximum beneficial use of recycled water for non-
21 potable uses, the Legislature enacted the Water Recycling Law (Wat. Code §§ 13500-13557) and
22 the Water Recycling Act of 1991 (Wat. Code §§ 13575-13583). The former includes policies
23 promoting the use of recycled water to supplement water supplies, while the latter encourages the
24 formation of recycled water delivery agreements and mandates the use of recycled water when
25 available.⁵ Given the unprecedented water crisis facing the state, California has adopted policies

26 _____
27 ⁵ S. Hastings and D. Johnson, *Municipal Water Reuse In An Increasing Complex Regulatory*
28 *Environment* (May 4, 2018) p. 6, at <https://www.cacities.org/Resources-Documents/Member->

1 to promote and increase the use of recycled water; this includes a goal to substitute “as much
2 recycled water for potable water as possible by 2030.”⁶ The Program promotes these policies.

3 c. *In Lieu Storage Is a Preferred Method of Groundwater Replenishment.*

4 In lieu storage is a common means of recharging groundwater with surface supplies for
5 conjunctive use. In lieu storage occurs when a non-native water supply is substituted for the use
6 of native groundwater production. In lieu storage accomplishes two key objectives: (1) it avoids
7 the necessity of creating or using infrastructure to inject or spread water for replenishment, and
8 (2) it avoids any necessary treatment prior to said injection or spreading.⁷ The California
9 Department of Water Resources recognizes the benefits achieved from groundwater
10 replenishment “through in-lieu recharge when recycled water replaces source water supplied by
11 groundwater.”⁸

12 **C. Alternative Storage Options Do Not Achieve Maximum Beneficial Use and**
13 **Would Cause Adverse Results.**

14 If the Program is not approved, the City will be forced to pursue other storage options.
15 One option would be *direct* injection and recovery of water through an aquifer storage and
16 recovery well (“ASR Well”). A direct injection project would make use of the City’s dedicated
17 storage space in the same manner as previously authorized by the Watermaster on behalf of
18 Plaintiff, California American Water Company. (See Exhibit C to the Declaration of Russell

19 _____
20 [Engagement/Professional-Departments/City-Attorneys/Library/2018/Spring-Conference-2018/5-2018-Spring;-Hastings-Johnson-Municipal-Water-Re.aspx](#) [as of Aug. 14, 2019].

21 ⁶ Cal. State Water Resources Control Board, Recycled Water Policy (May 21, 2009), at
22 https://www.waterboards.ca.gov/water_issues/programs/water_recycling_policy/docs/finalapprovedpolicy_020309.pdf [as of August 21, 2019].

23 ⁷ The method of replenishment directly impacts the requirements for water quality for storage
24 of surface water underground. “[A]n in-lieu project may only need to consider the willingness of
25 users to accept the quality of water from a surface water project, while a project that proposes to
26 inject surface water directly into an aquifer may be required to meet stricter water quality
27 standards.” (Cal. Dept. of Water Resources, Water Available for Replenishment - Final Report,
28 Appendix C (April 2018) p. 7, at <https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Groundwater-Management/Data-and-Tools/Files/Statewide-Reports/WAFR/Final/Appendix-C-for-Water-Available-for-Replenishment---Final-Report.pdf> [as
of Aug. 14, 2019] (hereafter Water Available For Replenishment).)

⁸ Water Available for Replenishment, *supra* n.7 at p. 35.

1 McGlothlin accompanying the City’s concurrently filed Request for Judicial Notice.) Such a
2 program, however, would require the City to spend several million dollars to construct an ASR
3 Well. Such use of public funds would be strikingly wasteful given the readily available alternative
4 means to undertake storage of the recycled water through in lieu means. The physical
5 construction of an ASR Well could also have a negative environmental impact in relation to the
6 drilling, land use, power, and other consumptive behaviors required to artificially inject water into
7 the Basin.

8 Further, if the City were precluded from engaging in in lieu storage as proposed, the City
9 would continue to use potable groundwater to irrigate the Courses. This result would contravene
10 state policy that encourages maximum use of recycled water and the California Constitutional
11 policy of achieving optimal utility from available water resources. (*See supra* pp. 7-8; Cal. Const.
12 Art. X, § 2.) The same would likely be the result if the Program were approved, but the City were
13 required to incur the reductions resulting from an APA-to-SPA conversion. Such outcome would
14 effectively more than double the cost of recycled water to create an acre-foot of stored water and
15 the City would obtain less than half of the benefits. Under such circumstances, the financial and
16 water supply consequences would force the City to pursue direct injection instead of in lieu
17 replenishment as proposed. Given that the Basin is not harmed in any way from an in lieu
18 approach in comparison to a direct injection approach, it would be unjust and counter to sound
19 policy to require an APA-to-SPA conversion and the resulting reduction.

20 The Court should avoid an interpretation of the Decision that yields such
21 counterproductive results. In the alternative, if the Court were to interpret the Decision to
22 preclude approval of the Program, in the interest of advancing the public policies discussed
23 herein, the Court should exercise its continuing jurisdiction to amend the Decision so that the
24 Program may be approved as proposed. (Decision, Section III.O.1.A [authorizing the Court to
25 “modify, amend or amplify any of the provisions of this Decision”].)

26 **IV. CONCLUSION**

27 By its application, the City has proposed an in lieu storage program that is consistent with
28

1 RUSSELL MCGLOTHLIN (S.B. #208826)
rmcglathlin@omm.com
2 KATHERINE TAKAKJIAN (S.B. #324506)
ktakakjian@omm.com
3 O'MELVENY & MYERS LLP
400 South Hope Street
4 18th Floor
Los Angeles, California 90071-2899
5 Telephone: +1 213 430 6000
Facsimile: +1 213 430 6407

6 *Attorneys for Defendant City of Seaside*
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF MONTEREY**
10

11 CALIFORNIA AMERICAN WATER,

12 Plaintiff,

13 v.

14 CITY OF SEASIDE, et al.,

15 Defendants.
16

17 MONTEREY PENINSULA WATER
MANAGEMENT DISTRICT,

18 Intervenor.
19

20 MONTEREY COUNTY WATER
RESOURCES AGENCY,

21 Intervenor.
22

23 AND RELATED CROSS ACTIONS.
24
25
26
27
28

Case No. M66343

**DECLARATION OF RUSSELL
MCGLOTHLIN IN SUPPORT OF
MOTION FOR APPROVAL OF IN
LIEU GROUNDWATER STORAGE
PROGRAM**

Assigned for All Purposes to the Honorable
Robert O'Farrell

Action Filed: August 14, 2003

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF RUSSELL MCGLOTHLIN

I, Russell McGlothlin, declare and state:

1. I am a member in good standing of the State Bar of California, an attorney at O'Melveny & Myers LLP, and counsel of record for the City of Seaside ("City"). I make this declaration in support of the City's Motion for Approval of In Lieu Groundwater Storage Program.

2. I have personal knowledge of the matters set forth in this declaration and if called to testify to the facts stated herein, I could and would do so competently.

Exhibits

3. Attached hereto as Exhibit A is a true and correct copy of the Seaside Basin Watermaster's Declaration of Total Usable Storage Space, dated February 3, 2010.

4. Attached hereto as Exhibit B is a true and correct copy of the Letter from the Seaside Basin Watermaster Board of Directors, dated August 12, 2019.

5. Attached hereto as Exhibit C is a true and correct copy of an Agreement or Storage and Recovery of Non-Native Water from the Seaside Groundwater Basin, made between California American Water Company and the Seaside Basin Watermaster, entered into on October 21, 2011.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed on September 4, 2019.

RUSSELL MCGLOTHLIN
O'MELVENY & MYERS LLP


By: 
Russell McGlothlin
Attorney for Defendant

Exhibit A

NOTICE TO ALL SEASIDE GROUNDWATER PRODUCERS

Pursuant to Section III.3.L.3.j.xix of the Amended Decision Filed February 2, 2007 in the Superior Court of the State of California, in and for the County of Monterey, Case No. M66343 (the “Decision”), the Seaside Basin Watermaster hereby Declares that the Total Usable Storage Space in the Seaside Groundwater Basin (“Basin”) is as follows:

- Total Usable Storage Space in the Coastal and Northern Inland Subareas is 31,770 acre-feet.
- Total Usable Storage Space in the Laguna Seca Subarea is 20,260 acre-feet.
- Total Usable Storage Space in the entire Seaside Groundwater Basin is 52,030 acre-feet.

Pursuant to Section III.B.3.b of the Decision, Alternative Producers do not receive a storage allocation, only Standard Producers receive such an allocation. Pursuant to Section III.H.2 of the Decision, the Seaside Basin Watermaster further Declares that the Total Usable Storage Space in the Basin shall be allocated to the Standard Producers, who are identified in the Decision, as follows:

	Current Allocation (Using Table 1 of the Decision)		
Producer	Operating Yield Allocation Percentage (1)	Usable Storage Allocation Percentage (2)	Useable Storage Allocation (acre-feet)
Coastal and Northern Inland Subareas			
California American Water ⁽³⁾	77.55%	90.60%	28,784
City of Seaside (Municipal)	6.36%	7.43%	2,361
Granite Rock Company	0.60%	0.70%	222
DBO Development No. 27	1.09%	1.27%	403
SUBAREAS TOTAL	85.60%	100%	31,770
Laguna Seca Subarea			
California American Water ⁽³⁾	45.13%	100.00%	20,260
SUBAREA TOTAL	45.13%	100%	20,260
BASIN TOTAL		100%	52,030

Footnotes:

- (1) From Table 1 on page 19 of the Decision.
- (2) Calculated as each Standard Producer’s percentage of the total Standard Producers’ operating yield allocation percentages within each subarea.
- (3) CAW’s Usable Storage Allocation is subject to the provisions and requirements of Section III.H.3 of the Decision.

Pursuant to Section III.H.6 of the Decision, no Producer may store water in the Basin without first executing with the Watermaster a Storage and Recovery Agreement.

Exhibit B

SEASIDE GROUNDWATER BASIN WATERMASTER

Post Office Box 51502, Pacific Grove, CA 93950

(831) 641-0113 • watermasterseaside@sbcglobal.net

August 12, 2019

Board of Directors

Chairman

Paul Bruno

Coastal Subarea

Landowners

Vice Chairman

Troy Thompson

Laguna Seca Subarea

Landowners

Secretary

Laura Paxton

Watermaster

Administrative Officer

Treasurer

Kimberly Drabner

City of Seaside

Mary Adams

Monterey

County/Monterey

County Water

Resources Agency

Dan Albert

City of Monterey

Mary Ann Carbone

City of Sand City

Christopher Cook

California American

Water

John Gaglioti

City of Del Rey Oaks

Ian Oglesby

City of Seaside

George Riley

Monterey Peninsula

Water Management

District

Staff

Technical Program

Manager

Robert Jaques

Administrative Officer

Laura Paxton

Honorable Judge O'Farrell

Monterey Superior Court

1200 Aguajito Road

Monterey, CA 93942

Re: City of Seaside Request for a Watermaster Storage and Recovery Agreement

Your Honor,

The City of Seaside (City), a party to the Adjudication Decision having Standard Production Allocation (SPA) and Alternative Production Allocation (APA) rights, has submitted to the Seaside Groundwater Basin Watermaster (Watermaster) a Watermaster Storage and Recovery Agreement application for in lieu storage as described in a June 5, 2019 letter from Russell McGlothlin, Counsel for City. The Watermaster reviewed the letter (attached) and the application at its August 7, 2019 board meeting.

The Watermaster found the Decision to be clear under Alternative Production Allocation III. B. 3 through subsection d that parties with APA rights are not allowed to store water in the Basin, and use of APA is restricted to overlying parcels. Further, Watermaster found the Decision not clear whether a public agency with both SPA and APA rights can use its SPA storage rights to store in-lieu its un-pumped APA, later recovering the water for use beyond the bounds of the overlying parcel.

The Decision allows parties to convert all or part of an APA to SPA. Parties choosing to do so are subject to triennial ramp downs applied to the APA that significantly reduce, sometimes on the order of 50%, the resulting SPA. The Watermaster seeks Decision clarification to address the allowance for programs such as that proposed by the City of Seaside versus the limitations of an APA party's use and lack of storage rights and the reductions faced when converting to SPA.

Watermaster appreciates the benefits of water stored in the basin and, provided any technical issues that may arise are satisfactorily addressed, does not oppose the proposed City of Seaside program in concept. However Watermaster requests the City file a motion for the court to clarify, with regard to the City of Seaside proposed project:

1. Whether the Decision allows an SPA aquifer storage and recovery program using APA un-pumped water in-lieu of recharge injection and later use beyond the overlying parcel;
2. Or whether Alternative Production Allocation III. B. 3 through subsection d of the Decision would require a party to convert its APA to SPA with applied pumping reductions in order to be eligible for a storage and recovery program using un-pumped water in-lieu of recharge injection.

Sincerely,



Paul B. Bruno, Chair
Watermaster Board of Directors

Exhibit C

**AGREEMENT FOR STORAGE AND RECOVERY
OF
NON-NATIVE WATER
FROM THE
SEASIDE GROUNDWATER BASIN**

THIS AGREEMENT is made and entered into on October 21, 2011, by and between the SEASIDE BASIN WATERMASTER (the "WATERMASTER"), and California – American Water Company, (the "PRODUCER"), as follows:

Recitals

1. The WATERMASTER was created by the Amended Decision of the Monterey County Superior Court, filed February 9, 2007, Case No. M66343 (the "Decision"). This Decision was made for the purposes of managing and protecting the Seaside Groundwater Basin ("Basin") for the benefit of the businesses, individuals, and public agencies that overlie or extract groundwater from the Basin.
2. The PRODUCER has applied to the WATERMASTER for permission to store Non-Native water in, and to subsequently recover that stored water from, the Basin.
3. Under the authorities granted to the WATERMASTER by the Decision, the WATERMASTER has approved PRODUCER's application and hereby grants permission to the PRODUCER to store Non-Native water in, and to recover that stored water from, the Basin, subject to the Terms and Conditions contained in this Agreement.

Terms and Conditions

NOW, THEREFORE, in consideration of the foregoing and the mutual promises contained herein, the parties hereto agree to the following terms and conditions:

1. Definitions. Unless otherwise specifically defined herein, the defined terms shall be given the same definition and meaning set forth in the Decision, as listed in Attachment A.
2. Storage Quantity. The PRODUCER is authorized to store by means of direct injection 2,426 acre-feet per year of Non-Native Water in the Basin. In the event the WATERMASTER revises the Total Usable Storage Space of the Basin in accordance with Section III.H.4 of the Decision, or if one or more Alternative Producers converts entirely or in part from an Alternative Production Allocation to a Standard Production Allocation in accordance with Section III.B.3.e of the Decision, the PRODUCER's Storage Allocation may change, and this may affect the storage quantity authorized by this Agreement. In such instance this Agreement will be modified to reflect these changes.
3. Storage Location(s). The storage of water authorized under paragraph 2 above will be performed at the following location(s):

- A. ASR-1 injection and recovery well located at the Santa Margarita ASR site located at 1910 General Jim Moore Blvd, Seaside, CA 93955.
- B. ASR-2 injection and recovery well located at the Santa Margarita ASR site located at 1910 General Jim Moore Blvd, Seaside, CA 93955.

Also located at the Santa Margarita ASR site is a well blow off pit that normally receives ASR water during injection periods to flush the well injection screens to maximize ASR injection rate.

4. Recovery Location(s). Recovery of water stored at the location(s) described under paragraph 3 above must be performed within the same Subarea of the Basin as the location(s) within which it was stored. Recovery of this water will be performed at some or all of the following location(s):
 - A. Santa Margarita Well #1, 1910 General Jim Moore Blvd, Seaside CA 93955 (Santa Margarita)
 - B. Santa Margarita Well #2, 1910 General Jim Moore Blvd, Seaside CA 93955 (Santa Margarita)
 - C. Ord Grove Well #2, 1987 Park Ct., Seaside CA 93955 (Santa Margarita)
 - D. Paralta Well, 2104 Paralta Ave., Seaside CA 93955 (Santa Margarita)
 - E. Luzern Well #2, 1984 Luzern St., Seaside CA 93955 (Paso Robles)
 - F. Playa Well #3, 1237 Playa Ave., Seaside CA 93955 (Paso Robles)
 - G. Plumas Well #4, 1453 Plumas Ln., Seaside CA 93955 (Paso Robles)
5. Recovery Quantity. The PRODUCER is initially authorized to recover (Extract) the full amount of the water actually Stored in accordance with this Agreement. However, due to the hydrogeologic characteristics of the Seaside Basin, naturally occurring losses of Stored Water may result in the WATERMASTER reducing the percentage of Stored Water that may be Extracted. Should the WATERMASTER determine that this needs to be done, this Agreement will be modified to reflect the reduced quantity of water that the PRODUCER may recover, and the technical basis for this determination will be provided to all PRODUCERS.
6. Water Quality. The PRODUCER hereby certifies that prior to the Non-Native water being introduced into the Basin for Storage in accordance with this Agreement, all such water will meet all of the requirements imposed on the PRODUCER by permits and/or approvals issued to the PRODUCER by the California Regional Water Quality Control Board and any other water quality standards imposed by any other government entity, including without limitation the California Department of Public Health and the Monterey County Department of Environmental Health.

The representative water quality characteristics of the water that will be stored under this Agreement are contained in Attachment B, and are considered by both parties to this Agreement to not pose a threat of harm to the Basin.
7. Carryover of Unused Production Allocation and Carryover Credits. In accordance with Section III.F of the Decision, if during a particular Water Year the PRODUCER does not Extract from the Basin a total quantity equal to the PRODUCER's Standard Production Allocation for the particular Water Year, the PRODUCER may establish Carryover Credits, up to the total amount of the PRODUCER's Storage Allocation.

However, in accordance with the Decision in no circumstance may the sum of the PRODUCER's Stored Water Credits and Carryover Credits exceed the PRODUCER's available Storage Allocation. In accordance with the Decision in consideration of the Seaside Basin's hydrogeologic characteristics, the WATERMASTER may reduce the quantity of Water that may be Extracted pursuant to a Carryover Credit.

In accordance with Section III.H.5 of the Decision, the PRODUCER has the right to use its Storage Allocation to Store any Carryover Water subject to the provisions of the Decision and this Agreement. In accordance with the Decision unused (not Extracted) Stored Water Credits and Carryover Credits may be carried over from year to year, but the amount that may be carried over in any year is subject to a percentage decrease, if a decrease in the Basin's Operating Yield is declared by the WATERMASTER in accordance with Section III.B.2 of the Decision.

8. Measurement and Reporting of Extractions and Storage. In accordance with Section III.J of the Decision, the PRODUCER shall install, maintain, and use adequate measuring devices on all Storage and Extraction facilities as required by the WATERMASTER's Rules and Regulations and this Agreement.

The PRODUCER shall provide to the WATERMASTER, as part of each monthly Production Report, data for the reporting period stating:

- The quantity of water that was stored
- The quantity of stored water that was recovered (Extracted)
- The location(s) where the water was stored
- The location(s) where the water was recovered (Extracted)

9. Indemnification. The PRODUCER shall assume the defense of, indemnify and hold harmless, the WATERMASTER, its officers, agents and employees from all claims, liability, loss, damage or injury of any kind, nature or description arising directly or indirectly from actions or omissions by PRODUCER or any of its officers, agents, employees, or independent contractors relating to this Agreement, , excepting claims, liability, loss, damage or injury which arise from the willful or negligent acts, omissions, or activities of an officer, agent or employee of the WATERMASTER.

10. Successors and Assigns. This Agreement, and all the terms and conditions hereof, shall apply to and bind the successors and assigns of the respective parties hereto; provided that the PRODUCER shall not assign this Agreement without prior written consent of the WATERMASTER.

11. Further Cooperation. Each of the parties agree to reasonably cooperate with each other, and to execute and deliver to the other all such documents and instruments, and to take such further actions, as may reasonably be required to give effect to the terms and conditions of this Agreement.

12. Interpretation. It is agreed and understood by the parties hereto that this Agreement has been arrived at through negotiation and that neither party is to be deemed the party which prepared this Agreement within the meaning of Civil Code §1654. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purpose of the parties and this Agreement.

13. Disputes. If any dispute under this Agreement arises the parties shall first meet and confer in a good faith attempt to resolve the matter between themselves. Each party shall make all reasonable efforts to provide to the other party all the information that the party has in its possession that is relevant to the dispute, so that both parties will have ample information with which to reach a decision. If the dispute is not resolved by meeting and conferring, the matter shall be submitted to the Court for resolution pursuant to the Court's reserved jurisdiction as set forth in the Decision.
14. Modification. This Agreement may be amended, altered or modified only by a writing, specifying such amendment, alteration or modification, executed by authorized representatives of both of the parties hereto.
15. Attorney's Fees and Costs. In the event it should become necessary for either party to enforce any of the terms and conditions of this Agreement by means of court action or administrative enforcement, the prevailing party, in addition to any other remedy at law or in equity available to such party, shall be awarded all reasonable costs and reasonable attorney's fees in connection therewith, including the fees and costs of experts reasonably consulted by the attorneys for the prevailing party.
16. Counterparts. This Agreement may be executed in two counterparts, each of which shall be deemed an original, but both of which shall be deemed to constitute one and the same instrument.
17. Written Notice. Written notice shall be deemed to have been duly served if delivered in person or by mail to the individuals and at the addresses listed below:

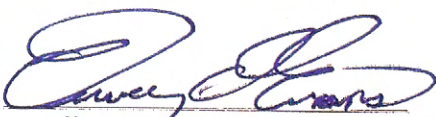
A. WATERMASTER: Chief Executive Officer
Seaside Basin Watermaster
2600 Garden Road, Suite 228
Monterey, CA 93940

B. PRODUCER: General Manager
California American Water
511 Forest Lodge Road, Suite 100
Pacific Grove, CA 93950

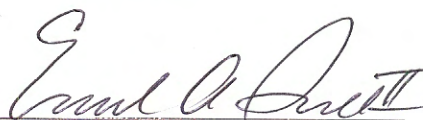
18. Conflicts with the Decision. The PRODUCER's rights under this Agreement are subject to the Decision and in the event of any conflict between the provisions of this Agreement and the Decision, the Decision shall control.
19. Entire Agreement. This Agreement constitutes the entire and complete agreement between the parties regarding the subject matter hereof, and supersedes all prior or contemporaneous negotiations, understandings or agreements of the parties, whether written or oral, with respect to such subject matter.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement consisting of five (5) pages and two (2) attachments in duplicate on the date hereinabove written.

WATERMASTER

By 
Dewey Evans
Chief Executive Officer

PRODUCER

By 
Edward Simon
Vice President, Operations

ATTACHMENT A

**DEFINITIONS
(Excerpted from the Decision)**

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

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

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

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

"Groundwater" means all Water beneath the ground surface in the Seaside Basin, including Water from Natural Replenishment, Artificial Replenishment, Carryover, and Stored Water.

"Natural Replenishment" means all processes by which Water may become a part of the Groundwater supply of the Seaside Basin without the benefit of the Physical Solution and the coordinated management it provides. Groundwater that occurs in the Seaside Basin as a result of the Physical Solution, which is not Natural Replenishment, includes, but is not limited to Storage, Carryover, and Artificial Replenishment.

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

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

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

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

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

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

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

"Storage and Recovery Agreement" means an agreement between WATERMASTER and a Party for Storage pursuant to Section III.L.3.j.xx.

"Store" and other variations of the same verb refer to the activities establishing Stored Water in the Seaside Basin.

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

"Stored Water Credit" means the quantity of Stored Water augmenting the Basin's Retrievable Groundwater Supply, which is attributable to a Party's Storage and further governed by this Decision and a Storage and Recovery Agreement.

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

ATTACHMENT B
WATER QUALITY

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

**Comparison of Average Water Quality Characteristics:
Carmel River Basin vs. Seaside Groundwater Basin**

All units are in milligrams per liter

Water Source	Total Dissolved Solids	CATIONS				ANIONS			
		Calcium	Sodium	Magnesium	Potassium	Bicarbonate	Chloride	Sulfate	Nitrate (as NO ₃)
Carmel River	211	55	18	12	1.4	--	11	29	0.8
CV Aquifer Subunit 1	223	40	--	13	--	212	16	--	1.4
CV Aquifer Subunit 2	348	51	--	16	--	256	37	--	1.8
CV Aquifer Subunit 3	502	72	46	26	4.1	149	53	210	0.8
CV Aquifer Subunit 4	641	103	49	30	3.9	212	58	241	0.4
Seaside Basin (Tsm aquifer)	618	85	88	19	5.3	273	120	95	<1.0
WY 2010 Cal-Am injectate	331	41	42	14	3.0	155	26	75	0.3

NOTES:

1. Data source for Carmel River water quality from California-American Water (Cal-Am) annual water quality reports; average surface water for 1990-96.
2. Data source for Carmel Valley (CV) Aquifer Subunit water quality from Cal-Am records: Subunit 1 - Russell #4 well (6 analyses); Subunit 2 - Laurels #6 well (5 analyses); Subunit 3 - Schulte well (14 analyses); Subunit 4 - Canada well (10 analyses).
3. Data source for Seaside Basin (Santa Margarita (Tsm) aquifer) from ASR-1 well 3/21/2001 sample, prior to Tsm injection in basin. Analytic results in *Summary of Operations, Well Construction and Testing, Santa Margarita Test Injection Well* (Padre Associates, Inc., May 2002, Appendix D).
4. Total Dissolved Solids concentrations for CV Subunit 1 and 2 data were derived by multiplying Electrical Conductance by 0.65, per USGS Water-Supply Paper 2254 (John Hem, 1955, page 67).
5. Bicarbonate concentrations for CV and Tsm aquifer data were derived by multiplying Total Alkalinity concentrations by 1.22, as determined from milliequivalent ratio.
6. WY 2010 Cal-Am injectate data are averages from 10 samples collected during ASR operations. Results in *Summary of Operations, Phase 1 ASR Project, Water Year 2010* (Pueblo Water Resources, July 2011 [draft], Table 14).

1 the Decision and responsible water management. In simplest terms, the Program:

- 2 • is permitted under the terms of the Decision as a use of public groundwater storage
- 3 resources by a public agency for public benefit;
- 4 • leaves the City's APA appurtenant to the Courses (i.e., does not seek to transfer
- 5 the APA);
- 6 • does not require the City to convert its APA to SPA;
- 7 • does not rely on APA as a basis for storage inconsistent with the Decision;
- 8 • promotes conjunctive use and the use of recycled water for a non-potable use in
- 9 accordance with California policy;
- 10 • avoids the continued use of potable water for the irrigation of non-potable
- 11 demands on the Courses;
- 12 • weighs favorably considered against all alternative options;
- 13 • avoids unnecessary expenditures of scarce public funds;
- 14 • preserves environmental resources;
- 15 • allows the City to accumulate stored water in the Basin; and
- 16 • facilitates the City's land use and water planning goals.

17 For these reasons, the City urges the Court to approve this Motion.

18
19 Dated: September 4, 2019

RUSSELL MCGLOTHLIN
KATHERINE TAKAKJIAN
O'MELVENY & MYERS LLP

20
21
22
23
24
25
26
27
28

By: 

Russell McGlothlin
Attorneys for Defendant

1 RUSSELL MCGLOTHLIN (S.B. #208826)
rmcglathlin@omm.com
2 KATHERINE TAKAKJIAN (S.B. #324506)
ktakakjian@omm.com
3 O'MELVENY & MYERS LLP
400 South Hope Street
4 18th Floor
Los Angeles, California 90071-2899
5 Telephone: +1 213 430 6000
Facsimile: +1 213 430 6407

6 *Attorneys for Defendant City of Seaside*

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF MONTEREY**
10

11 CALIFORNIA AMERICAN WATER,
12
Plaintiff,
13
v.
14 CITY OF SEASIDE, et al.,
15
Defendants.

Case No. M66343

**DEFENDANT CITY OF SEASIDE'S
REQUEST FOR JUDICIAL NOTICE**

Assigned for All Purposes to the Honorable
Robert O'Farrell

Action Filed: August 14, 2003

16
17 MONTEREY PENINSULA WATER
MANAGEMENT DISTRICT,
18
Intervenor.

19
20 MONTEREY COUNTY WATER
RESOURCES AGENCY,
21
Intervenor.

22
23 AND RELATED CROSS ACTIONS.
24
25
26
27
28

1 PLEASE TAKE NOTICE THAT pursuant to California Code of Civil Procedure section
2 430.30(a), California Evidence Code sections 452 and 453, and California Rules of Court
3 3.1113(a) and 3.1306(c), Defendant City of Seaside ("City") respectfully requests that the Court
4 take judicial notice of Exhibits A, B, and C to the Declaration of Russell McGlothlin
5 ("McGlothlin Declaration"), made in support of the City's concurrently filed Motion for
6 Approval of In Lieu Groundwater Storage Program:

- 7 1. Seaside Basin Watermaster's Declaration of Total Usable Storage Space, dated
8 February 3, 2010, attached to the McGlothlin Declaration as **Exhibit A**.
- 9 2. Letter from the Seaside Basin Watermaster Board of Directors, dated August 12, 2019,
10 attached to the McGlothlin Declaration as **Exhibit B**.
- 11 3. Agreement for Storage and Recovery of Non-Native Water from the Seaside
12 Groundwater Basin, made between California American Water Company and the
13 Seaside Basin Watermaster, entered into on October 21, 2011, attached to the
14 McGlothlin Declaration as **Exhibit C**.

15 California Evidence Code section 452(d) permits the Court to take judicial notice of "[r]ecords of
16 (1) any court of this state or (2) any court of record of the United States or of any state of the
17 United States." (*See Day v. Sharp* (1975) 50 Cal.App.3d 904, 914.) The Court may take judicial
18 notice of the Watermaster's own records. (*See Craan v. Cty. Of Kern* (Cal. Ct. App. May 23,
19 2008) 2008 WL 2154045, at *2 [court taking judicial notice of records of water releases as
20 determined by the Watermaster].) Accordingly, the Court may take judicial notice of the materials
21 attached as exhibits to the McGlothlin Declaration.

22 Dated: September 4, 2019

RUSSELL MCGLOTHLIN
KATHERINE TAKAKJIAN
O'MELVENY & MYERS LLP

23
24
25 By: 
26 Russell McGlothlin
27 Attorneys for Defendant
28

1 RUSSELL MCGLOTHLIN (S.B. #208826)
rmcglathlin@omm.com
2 KATHERINE TAKAKJIAN (S.B. #324506)
ktakakjian@omm.com
3 O'MELVENY & MYERS LLP
4 400 South Hope Street
18th Floor
Los Angeles, California 90071-2899
5 Telephone: +1 213 430 6000
Facsimile: +1 213 430 6407

6 *Attorneys for Defendant City of Seaside*
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF MONTEREY**
10

11 CALIFORNIA AMERICAN WATER,

12 Plaintiff,

13 v.

14 CITY OF SEASIDE, et al.,

15 Defendants.
16

17 MONTEREY PENINSULA WATER
MANAGEMENT DISTRICT,

18 Intervenor.
19

20 MONTEREY COUNTY WATER
RESOURCES AGENCY,

21 Intervenor.
22

23 AND RELATED CROSS ACTIONS.
24
25
26
27
28

Case No. M66343

PROOF OF SERVICE

Assigned for All Purposes to the Honorable
Robert O'Farrell

Action Filed: August 14, 2003

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I, Maria Silva, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 400 South Hope Street, 18th Floor, Los Angeles, California 90071-2899. On September 4, 2019, I served the within document(s):

- Defendant City of Seaside's Notice of Motion and Motion for Approval of In Lieu Groundwater Storage Program**
- Defendant City of Seaside's Proposed Order on Motion for Approval of In Lieu Groundwater Storage Program**
- Declaration of Russell McGlothlin in Support of Motion for Approval of In Lieu Groundwater Storage Program**
- Defendant City of Seaside's Request for Judicial Notice**
- Defendant City of Seaside's Proposed Order on Request for Judicial Notice**

by causing the document(s) to be emailed or electronically transmitted to the person(s) at the email addresses set forth below, pursuant to a court order or an agreement of the parties to accept service by email or electronic transmission. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

PLEASE SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on September 4, 2019, at Los Angeles, California.



 Maria Silva

California American Water v. City of Seaside
Monterey County Superior Court Case No. M66343

SERVICE LIST

Lori Girard, Esq.
Anthony Cerasuolo, Esq.
California-American Water Co.
511 Forest Lodge Road, Suite 100
Pacific Grove, CA 93950
Tel.: (831) 646-3240
Fax: (831) 375-4367
Lori.Girard@amwater.com
acerasuolo@amwater.com

**Attorneys for California-American
Water Company**

Dino Pick
Del Rey Oaks City Manager
650 Canyon Del Rey Rd
Del Rey Oaks, CA 93940
Tel.: (831)394-8511
citymanager@delreyoaks.org

City of Del Rey Oaks

Vibeke Norgaard
City Attorney of Sand City
P.O.Box 183
Carmel, CA 93921
Tel.: (831) 624-1971
vibeke@vnorgaardlaw.com

Attorneys for City of Sand City

Charles J. McKee, Esq.
Kelly L. Donlon
Office of County Counsel
168 W. Alisal Street, 3rd Floor
Salinas, CA 93901
Tel.: (831) 755-5045
Fax: (831) 755-5283
mckeecj@co.monterey.ca.us
granti@co.monterey.ca.us

Attorneys for County of Monterey

Robert Donlan, Esq.
Ellison Schneider & Harris LLP
2600 Capitol Ave Ste 400
Sacramento, CA 95816-5905
Tel.: (916) 447-2166
Fax: (916) 447-3512
red@eslawfirm.com

**Attorneys for California-American
Water Company**

Christine Davi, Esq.
Monterey City Attorney's Office
512 Pierce Street
Monterey, CA 93940
Tel.: (831) 646-3915
Fax: (831) 373-1634
davi@monterey.org

Attorneys for City of Monterey

Donald G. Freeman, Esq.
Perry & Freeman
P.O. Box 805
Carmel, CA 93921-0805
Tel.: (831) 624-5339
Fax: (831) 624-5839
klglegal@hotmail.com

Attorneys for City of Seaside

Kevin M. O'Brien, Esq.
Steven P. Saxton, Esq.
Downey Brand LLP
621 Capitol Mall, 18th Floor
Sacramento, CA 95814
Tel.: (916) 444-1000
Fax: (916) 444-2100
kobrien@downeybrand.com
ssaxton@downeybrand.com

Attorneys for County of Monterey

Charles J. McKee, Esq.
Kelly L. Donlon
Office of County Counsel
168 W. Alisal Street, 3rd Floor
Salinas, CA 93901
Tel.: (831) 755-5045
Fax: (831) 755-5283
mckeej@co.monterey.ca.us;
avilajj@co.monterey.ca.us

**Attorneys for Monterey County Water
Resources Agency**

Lisa A. Cole
Granite Rock Company
350 Technology Drive
Watsonville, CA 95076
Tel.: (831) 786-2107
Legal@graniterock.com

Attorneys for Granite Rock Company

Anthony Lombardo, Esq.
Anthony Lombardo & Associates
144 W. Gabilan Street
Salinas, CA 93901
Tel.: (831) 751-2330
Fax: (831) 751-2331
tony@alombardolaw.com

Attorneys for Laguna Seca Resort, Inc.

Frederick L. Kennifer
Johnson, Fantl & Kennifer, LLP
500 Camino El Estero
Monterey, CA 93940
rkennifer@johnsonfantl.com
Tel.: (831) 373-2800

Attorney for York School, Inc.

Paul Bruno, Member
Cypress Pacific Investors, LLC
P.O. Box 400
Marina, CA 93933
Tel.: (831) 384-4081
paul@mpe2000.com

**For Cypress Pacific Investors, LLC,
Successor in Interest to Muriel
Calabrese 1987 Trust**

David C. Sweigert, Esq.
Fenton & Keller
2801 Monterey Salinas Highway
P.O. Box 791
Monterey, CA 93942-0791
Tel.: (831) 373-1241
dsweigert@fentonkeller.com
esalameh@fentonkeller.com

**Attorneys for D.B.O. Development
Company No. 30**

Eric Robinson, Esq.
Kronick, Moskovitz, Tiedemann & Girard
400 Capitol Mall, 27th Floor
Sacramento, CA 95814
Tel.: (916) 321-4500
Fax: (916) 321-4555
erobinson@kmtg.com

**Attorneys for Bishop, McIntosh &
McIntosh**

David Carl Drummond
1600 Amphitheatre Pkwy
Mountain View, CA 94043
(650) 253-4350
daviddrummond@google.com

**Attorneys for
Mission Memorial Park**

Sheri L. Damon, Esq.
Damon Law Offices
618 Swanton Road
Davenport, CA 95017
Tel.: (831) 345-3610
Fax: (831) 337-5212
sheri_damon@comcast.net

**Of Counsel for Security National
Guaranty, Inc.**

Laura Dadiw
Watermaster Executive Officer
P.O. Box 51502
Pacific Grove, CA 93950
Tel.: (831) 641-0113
watermasterseaside@sbcglobal.net

Seaside Groundwater Basin Watermaster

David Laredo, Esq.
DeLay & Laredo
606 Forest Avenue
Pacific Grove, CA 93950
Tel.: (831) 646-1502
Fax: (831) 646-0377
dave@laredolaw.net

**Attorneys for Monterey Peninsula Water
Management District**

Ed Ghandour
Security National Guaranty, Inc.
505 Montgomery Street, 11th Floor
San Francisco, CA 94111
Tel.: (415) 874-3121
Fax: (415) 874-3001
edg.sng@equus-capital.com

For Security National Guaranty, Inc.