

FILED

MAY 11 2009

CONNIE MAZZEI
CLERK OF THE SUPERIOR COURT
DEPUTY

1 THOMAS D. ROTH, State Bar No. 208601
2 Law Offices of Thomas D. Roth
3 One Market, Spear Tower, Ste. 3600
4 San Francisco, California 94105
5 Telephone: (415) 293-7684
6 Facsimile: (415) 435-2086

7 SHERI L. DAMON, State Bar No. 166427
8 Damon Law Offices
9 618 Swanton Road
10 Davenport, California 95017
11 Telephone: (831) 345-3610
12 Facsimile: (831) 423-8382

13 Attorneys for Defendant,
14 SECURITY NATIONAL GUARANTY, INC.

S. HANS

15 SUPERIOR COURT OF STATE OF CALIFORNIA

16 COUNTY OF MONTEREY

17 CALIFORNIA AMERICAN WATER,

18 Plaintiff,

19 v.

20 CITY OF SEASIDE et al.,

21 Defendants.

Case No. M66343

**ORDER AFTER HEARING ON
SNG'S MOTION TO ENFORCE AND
CLARIFY THE AMENDED DECISION**

Date: April 29, 2009

Time: 1:30 p.m.

Department: 15

Assigned for all purposes to the
Honorable Roger D. Randall (Ret.)

22 MONTEREY PENINSULA WATER
23 MANAGEMENT DISTRICT

24 Intervenor.

25 Security National Guaranty, Inc.'s ("SNG") Motion to Enforce and Clarify the
26 Amended Decision came on for hearing before this Court on April 29, 2009 at 1:30 p.m.
27
28

1 Having read the motion, the points and authorities, the declarations and documents
2 filed by the Parties, the records and pleadings herein, and having heard argument of counsel,
3 the Court grants declaratory relief regarding certain issues raised by the parties.
4

5 **IT IS HEREBY ORDERED:**

- 6 1. Holders of water rights in the Seaside Basin ("Basin") are entitled to use specified
7 amounts of the available water, as set forth in the Amended Decision, and the usage by
8 holders of those rights needs to be accomplished in the manner most beneficial to
9 preservation of the integrity of the Basin. Therefore, for example, production and use
10 of water from inland wells is preferable to use of water from wells adjacent to the
11 seashore.
- 12 2. The efficient usage of water from the Seaside Basin may require that Basin water be
13 temporarily stored with water from non-basin sources.
- 14 3. Any attempts by any agency or organization to impose obligations on the use of Basin
15 water rights must be viewed with concern for the integrity of the Physical Solution.
- 16 4. Accordingly, the Court declares that the MONTEREY PENINSULA WATER
17 MANAGEMENT DISTRICT (MPWMD) has water distribution permitting authority
18 granted by law but the MPWMD cannot exercise that authority in contravention of the
19 Physical Solution imposed by the Amended Decision for management of the Basin.
- 20 5. The Court declares that the Physical Solution governs the environmental aspects of
21 Seaside Basin ground water usage, and further holds that no Party to this adjudication
22 can require environmental review under the California Environmental Quality Act
23 (CEQA) with regard to such usage.
- 24 6. To the extent that the findings of the MPWMD denying the application of SNG and
25 California American Water (CAW) are inconsistent with the principles set forth
26 hereinabove, and in particular Findings 17 through 21 and specifically to the extent that
27 any of the findings reference a need for CEQA review of the impact of the application
28

1 on Seaside Basin production the findings impinge upon the decision and cannot stand.
2 7. As a matter of law, commingling of water and storage from different sources does not
3 transmute Carmel River water into Seaside Basin water, nor Seaside Basin water into
4 Carmel River water. MPWMD has authority to require an accounting of water quantity
5 to satisfy itself that no Carmel River water is being used but it cannot make
6 environmental decisions based upon mere storage of water from two sources. So, for
7 example, if there is a wheeling agreement between Parties within the Seaside Basin
8 which includes a provision for "front loading" or "prior to delivery" production of
9 water from the Seaside Basin that was adequate to cover draw down by another Party
10 with adjudicated water rights, there would be no issue as to Carmel river water.

11 Based on the foregoing,


12 **IT IS FURTHER ORDERED:**

- 13 A. The MPWMD is ordered to set aside its denial of the SNG and CAW joint application
14 for water distribution permit, and in particular its Findings Numbered 17 through 21;
- 15 B. The MPWMD is ordered to reopen its hearing on the matter of the SNG/CAW
16 application and to reconsider the application in light of this ruling;
- 17 C. The request of SNG to declare certain MPWMD rules ministerial is denied because
18 resolution of this matter requires no such finding;
- 19 D. The request of SNG for attorneys' fees is denied on the ground that the relief sought in
20 the motion primarily benefits the moving parties as opposed to other users of the Seaside
21 Basin's resources.
- 22 E. The Court specifically denies MPWMD's argument that administrative mandamus is
23 the proper procedural vehicle for reviewing these issues. The Motion concerns the
24 interpretation, implementation and enforcement of the Amended Decision and is within the
25 jurisdiction of this Court pursuant to the reserved jurisdiction clause of the Amended Decision
26 and the inherent authority of this Court.
- 27 F. The MPWMD is ordered to reopen, reconsider and make a final determination

28

1 concerning SNG's and CAW's permit application filed September 15, 2008 on or before June
2 10, 2009, at a regular or special meeting, as necessary, after taking into account the findings
3 and declarations set forth and clarified in this Order.

4 **SO ORDERED.**

5
6 
7 **Honorable ROGER D. RANDALL**
8 **Judge of the Superior Court**
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28