

February 2, 2024

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VIA E-MAIL (STEVEJ@STETSONENGINEERS.COM; AKEIGWIN@RGS.CA.GOV)

Indian Wells Valley Groundwater Authority (“IWVGA”)
c/o Steve Johnson, Water Resource Manager
861 S. Village Oaks Drive, Suite 100
Covina, CA 91724

April Keigwin
IWVGA Clerk of the Board of Directors
100 W California Ave.
Ridgecrest, CA 93555

RE: Comments on Indian Wells Valley Groundwater Authority GSP Annual Report for Water Year 2023

Dear Mr. Johnson and Ms. Keigwin:

On behalf of Mojave Pistachios, LLC (“Mojave Pistachios”), we provide these comments on IWVGA’s December 2023 Review Draft Groundwater Sustainability Plan (“GSP”) Annual Report for Water Year 2023 (the “WY 2023 Report” or “Report”). Thank you for this opportunity to provide input on the Report.

We are pleased—and not surprised based on our technical consultant Aquilogic’s evaluation of the Basin—to see the Report’s conclusions that “[d]uring WY 2023, no minimum thresholds were exceeded at the representative monitoring sites” and that **no undesirable results have been observed** with respect to chronic lowering of groundwater levels, reduction of groundwater in storage, and degraded water quality.¹ However, in several respects, the WY 2023 Report obscures this good news and is biased towards distorting the facts to serve the IWVGA’s false narrative that conditions are dire, progress is not occurring, and thus, entire beneficial users and uses of groundwater must be eliminated.

¹ WY 2023 Report, pp. 1, 17-19.

In other respects, identified herein, the WY 2023 Report and the underlying GSP are further deficient or incomplete and we strongly encourage the IWVGA to revise the WY 2023 Report and to amend the GSP to bring it into compliance with applicable legal requirements and to accurately reflect the conditions of the Indian Wells Valley Groundwater Basin (the “Basin”).

I. The Underlying GSP is Flawed, Legally Deficient and Must be Amended and These Necessary Amendments Must be Disclosed in the WY 2023 Report.

California Department of Water Resources’ (“DWR”) guidance on Annual Reports, Periodic Evaluations, and Plan Amendments (“DWR Guidance”)² provides that an annual report must provide “*whether Plan amendments are necessary.*”³

As identified in Mojave Pistachios’ numerous prior comment letters, the GSP is flawed and legally deficient including, without limitation, because GSP Management Action No. 1 (Implement Annual Pumping Allocation Plan, Transient Pool and Fallowing Program) unlawfully eviscerates Mojave Pistachios’ overlying water rights by determining that Mojave Pistachios and other farmers are barred from receiving and not entitled to *any* allocation of the Basin’s native yield. The GSP specifically acknowledges that this unlawful determination is intended to and will have the effect of eliminating agriculture from the Basin. This concern—and others, including IWVGA’s failure to provide meaningful opportunities for diverse stakeholder engagement and errors and omissions in the GSP modeling, calculations, and measures—are discussed extensively in Mojave Pistachios’ previous comment letters on the GSP⁴ and should be rectified in the IWVGA’s 2025 amendments to the GSP.

Unfortunately, the few references in the WY 2023 Report to the upcoming 2025 GSP evaluation and amendment process suggest that the IWVGA has already decided that it will not make any meaningful changes to the GSP to rectify the deficiencies identified by Mojave Pistachios in its prior comments. Where the Report does reference the forthcoming 2025 GSP amendment, the discussion only contemplates amendments to reflect updates to current modeling (which the IWVGA has refused to provide to the public in response to repeated requests by Mojave Pistachios and others) and assessment of groundwater storage loss. Mojave Pistachios and its technical experts, Aquilogic, agree that updates to the IWVGA’s modeling and assessment of groundwater storage (including losses) are warranted because the GSP fails to accurately characterize Basin storage, safe yield, and other

² The DWR Guidance is available at <https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Groundwater-Management/Sustainable-Groundwater-Management/Best-Management-Practices-and-Guidance-Documents/Files/GSP-Implementation-Guidance-Report.pdf>.

³ DWR Guidance, p. 6.

⁴ See, e.g., Mojave Pistachios’ January 8, 2020 comment letter to IWVGA re Comments on the Public Review Draft Groundwater Sustainability Plan (“January 2020 Comment Letter”); Mojave Pistachios’ June 3, 2020 comment letter to the Department of Water Resources (“DWR”) re Comments on the Groundwater Sustainability Plan for the Indian Wells Valley Groundwater Basin (“June 2020 Comment Letter”).

technical deficiencies we have already identified in our prior comments. We also renew our call for transparency and urge the IWVGA to release its model used in preparing the GSP to the public.

Finally, we urge the IWVGA to update its WY 2023 Report to acknowledge that additional amendments to the GSP are necessary to correct the other deficiencies discussed below and identified in our prior comments.

II. The WY 2023 Report Fails to Acknowledge Significant Fiscal, Environmental, Technical and Legal Deficiencies Associated with the Pipeline Project and Reveals that the IWVGA has Wrongly Excluded Reasonable Alternatives to the Pipeline Project.

Mojave Pistachios disagrees with the Report's characterization of the "*Initiation of Design of the Imported Water Interconnection Project*" (the "Pipeline Project") as one of the water year's "significant achievements."⁵ Rather, as numerous commenters have identified, the Pipeline Project is a fiscal, environmental and legal disaster in the making.

Mojave Pistachios submitted comments to the IWVGA on the Pipeline Project on August 30, 2023⁶ and September 12, 2023,⁷ and provided comments to the U.S. Bureau of Land Management ("BLM") on November 3, 2023.⁸ Each of these letters expressed significant concerns with the Pipeline Project including that the potential funding sources identified by IWVGA are highly uncertain, that the funding gap will be borne by the citizens of the Indian Wells Valley, and that the Pipeline Project will have significant impacts including to disadvantaged communities, protected species, agricultural resources, water resources, energy, and air quality (including GHG emissions).⁹ Furthermore, Mojave Pistachios and others have raised concerns that the IWVGA has violated CEQA by committing to the advance the Pipeline Project, as proposed, without the requisite CEQA analysis.¹⁰ The WY 2023 Report fails to acknowledge these concerns.

⁵ WY 2023 Report, p. 2.

⁶ See Mojave Pistachios' August 30, 2023 comment letter re Scoping Comments on Proposed Indian Wells Valley Groundwater Authority Imported Water Pipeline Project ("August 30 Comment Letter").

⁷ See Mojave Pistachios' September 12, 2023 comment letter re Comments on Indian Wells Valley Groundwater Authority Agenda Item 11 Board Direction and Possible Approval of Funding Path for Imported Water Pipeline Project ("September 12 Comment Letter").

⁸ See Mojave Pistachios' November 3, 2023 comment letter to BLM re National Environmental Policy Act (NEPA) Scoping Comments on Proposed Indian Wells Valley Groundwater Authority Imported Water Pipeline Project ("November 3 BLM Comment Letter").

⁹ See August 30 Comment Letter at pp. 4-5.

¹⁰ See September 12 Comment Letter at pp. 3-4. Additionally, the IWVGA heard comments at its January 10, 2024 Board meeting on agenda item 9 ("Authorize Release of Request for Bids for Utility Potholing Services for the Imported Water Pipeline") that issuing contracts for ground-disturbing activity along the proposed pipeline alignment—before that alignment is even studied in compliance with CEQA—constitutes pre-commitment to the proposed project and violates CEQA.

Instead of focusing solely on importing water hundreds of miles via the proposed Pipeline Project, the IWVGA should look to local alternatives and practical management actions that would obviate or reduce the need for imported water by avoiding entirely or mitigating local impacts potentially attributable to continuing the beneficial use of native groundwater. These include groundwater well spacing requirements, management zones identifying reasonable depth to water for wells, mitigation plans and programs to deepen existing, shallow wells and the construction of new wells to serve existing needs, the development of local water sources, including recycled water and brackish water, the construction of facilities to facilitate the voluntary recharge of water from emergency discharges to the Basin by the Los Angeles Department of Water and Power as has previously occurred in 2017 and 2023,¹¹ and conservation efforts.

Unfortunately, however, the WY 2023 Report reveals that the IWVGA has wrongly written off these solutions. For example, with respect to brackish water, the Report suggests that the IWVGA has given up on its investigation into the use of brackish water because *“the U.S. Navy has not permitted drilling or sampling of brackish water on NAWS China Lake . . . additional project phases are unlikely to be pursued.”*¹² This conclusion is overly broad. The brackish water project may be infeasible at the current location AND depth (i.e., proximate to the location of monitoring well NR-1 and at 2,000 feet below ground surface). However, there are intermediate depths that will be evaluated to determine if a brackish water project outside the boundaries of NAWS China Lake is feasible. Additionally, the brackish water project team is keen to restart discussions with the Navy regarding access for evaluation of brackish groundwater resources beneath the NAWS China Lake. The amount of brackish water within the Basin is significant, and long-term feasibility should not be ruled out at this time. Moreover, we are informed that the NAWS China Lake is already producing groundwater off the base on leased or private land and transporting it back to the base for its use. If it is pumping native groundwater in this manner, we see no reason why locating the brackish desalting facilities would be a problem for the Navy, even though it would not be authorized under its Federal Reserve Right.

The WY 2023 Report also demonstrates that, in addition to ignoring the local alternatives to the Pipeline Project, the IWVGA has improperly elevated the Pipeline Project above other potential projects to deliver imported water to the Basin. Specifically, the Report states that:

“In WY 2023, the Phase 1 Surface Percolation Replenishment Study Technical Memorandum was completed. The study identified locations for potential recharge basins for further investigation with the goal of ultimately assessing feasibility to develop a surface spreading project.”

¹¹ The WY 2023 Report should be updated to disclose the amounts of these emergency discharges, which the IWVGA has acknowledged exceeded 12,500 acre-feet in 2023 alone, and other missing sources of recharge to the Basin described in Section VII, below.

¹² WY 2023 Report, p. 46.

The IWVGA staff and TAC concluded that surface percolation would not be feasible in the IWVGB due to the hydrogeology and depth to water. Consequently, a treated imported water project to deliver water directly to water users in the Indian Wells Valley was determined to be the most feasible imported water project.”¹³

We disagree with this conclusion given that mountain-front recharge provides the majority of the annual water input to the aquifers in the Basin regardless of the hydrogeology and depth to water. Additionally, only surface percolation has been considered, which is one of two direct methods of artificial recharge. The second method, which has not yet evaluated, is subsurface percolation utilizing deep, large diameter recharge wells.

III. Aside from Issues with the Pipeline Project, the Report’s Discussion of Progress on GSP Management Action No. 1 is Incomplete, Flawed, and Inaccurate.

First, because GSP Management Action No. 1 unlawfully saddles severely disadvantaged communities and ratepayers with the most unaffordable SGMA fees adopted in California history and unlawfully determines that Mojave Pistachios and other farmers are barred from receiving and not entitled to *any* allocation of the Basin’s native yield, the WY 2023 Report must—to achieve consistency with California law and the DWR Guidance—be updated to identify that GSP Management Action No. 1 will be amended in 2025 to rectify this issue.¹⁴

Second, in its discussion of GSP Management Action No. 1, the WY 2023 Report states that because Mojave Pistachios “*did not pay the replenishment fee in WY 2023 and continue to not pay the fee,*” this has “*impeded the implementation of the GSP and has called into the question of the accuracy of some self-reported groundwater production data.*”¹⁵ This statement is both misleading and unfounded. While the IWVGA’s annual groundwater allocation and the replenishment fee are the subject of litigation, Mojave Pistachios has not hindered implementation of the GSP by any means and has, in fact, paid significant fees to the IWVGA. Specifically, to date, **Mojave Pistachios has paid the IWVGA in excess of one million dollars in Extraction Fees**, which were levied by the IWVGA for the express purpose of funding “*a portion of the estimated costs to develop and adopt the [GSP].*”¹⁶ Along with these monthly fees, Mojave Pistachios has provided the IWVGA with accurate groundwater production data measured by metering equipment that has been approved by the IWVGA. The final version of the Report should be corrected to so clarify.

¹³ WY 2023 Report, p. 11.

¹⁴ See DWR Guidance, p. 6; January 2020 Comment Letter at p. 9.

¹⁵ WY 2023 Report, p. 8.

¹⁶ See, e.g., IWVGA Ordinance No. 02-20, § 1(c).

Mojave Pistachios also strongly disagrees with the Report's statement that the IWVGA's "*fees encourage and incentivize individual water saving and conservation practices.*"¹⁷ In reality, the IWVGA's fees are punitive, illegally targeted on agriculture and exorbitant, particularly when compared to the budgets of other groundwater sustainability agencies throughout the state.

The WY 2023 Report also raises serious questions related to the legal foundation for and necessity of the replenishment fee, adopted pursuant to GSP Management Action No. 1. The replenishment fee was adopted for the specific purpose of purchasing a water right entitlement. Under the requirements of Prop 218, the fee cannot legally be dedicated to another purpose. The WY 2023 Report, however, states that instead of purchasing a water right entitlement, IWVGA is now "considering the option of joining AVEK with annexation into the AVEK service area," further calling into question the entire premise of the fee.¹⁸

IV. The WY 2023 Report Demonstrates that the GSP's Predicted "Undesirable Results" Are Not Materializing.

The WY 2023 Report affirms that **no undesirable results have been observed** for any of the three sustainability indicators that have been monitored: chronic lowering of groundwater levels, reduction of groundwater in storage, and degraded water quality.¹⁹

With respect to water quality, the WY 2023 Report (Figure 7-2) actually shows that TDS levels have improved since the 1950s.

With respect to chronic lowering of groundwater levels, the GSP predicted impacts to shallow wells resulting from this undesirable result. Appendix 3-E – Shallow Well Impact Analysis, Figure 10 – Estimated Impacts to Shallow Wells: Baseline (No Action) Scenario indicated that, by 2023, approximately 19 wells should have gone dry. In the 2021 Annual Report it was noted that no applications for well replacement were received under the Shallow Well Mitigation Program. In the 2022 Annual Report it was noted that two applications had been received, were being evaluated, and decisions would be made in 2023. In the 2023 Annual Report, one shallow well mitigation was approved, one partial mitigation was approved, two were rejected, and one was redirected to another program. These results demonstrate just how deeply flawed and biased the IWVGA's model is with respect to overestimating impacts on shallow wells.

Additionally, Figure 5-6 of the 2023 Annual Report shows that the majority of the largest groundwater level changes are occurring south of Highway 178 and Highway 395, a significant distance south from where our client, Mojave Pistachios, operates. Compounding this, Attachment G: WY 2023

¹⁷ WY 2023 Report, p. 13.

¹⁸ WY 2023 Report, p. 9.

¹⁹ WY 2023 Report, pp. 17-19.

Groundwater Production Estimate, shows that groundwater declines in the vicinity of our client's operation and the adjacent Meadowbrook Farms are significantly lower than those observed further to the south (see Figure 5-6), despite Mojave Pistachios' and the adjacent Meadowbrook Farms' pumping. These results again tie back to the inaccurate quantification of basin storage and safe yield documented in the GSP.

V. The WY 2023 Report Reveals that IWVGA Is Failing to Implement DWR's Recommended Corrective Actions.

As acknowledged in Section 3.3 of the Report, "*DWR provided seven [Recommended Corrective Actions] RCAs to be considered by the IWVGA prior to the first Periodic Evaluation of the GSP.*"²⁰ Table 3-3 of the Report provides IWVGA's progress updates on each RCA.

The first RCA recommends IWVGA "[p]rovide additional information on the required, ongoing communications elements required in the GSP regulations" and "[a]ddress Communication & Engagement Plan."²¹ In response to the latter, the Report summarily states that "*Ongoing communication with the public occurs regarding relevant and important GSP implementation topics.*"²² However, as previously stated in Mojave Pistachios' prior comments,²³ communication on the part of the IWVGA has been, and continues to be, lacking. Seemingly, the only additional measure taken by the IWVGA after adoption of the GSP to attempt to improve communications was to send a postcard to all residents of the Indian Wells Valley warning of the imminent risk of wells drying up and failing. This unwarranted and inappropriate attempt at furthering the IWVGA's biased narrative through fearmongering did nothing to improve communications.

The Basin is not served by inflammatory propaganda furthering the IWVGA's rhetoric that the sky is falling. It is not. What the Basin and its stakeholders need is for the IWVGA to actually listen to the expertise of stakeholders to ensure that the IWVGA is using the best available information and science throughout the GSP development and implementation process.

RCAs 2, 3, 4, 5, and 6 rely on the output of the DRI model to evaluate future conditions and predict undesirable results. Again, we reiterate our call for transparency and urge the IWVGA to release the model used in preparing the GSP to the public.

²⁰ WY 2023 Report, p. 20.

²¹ WY 2023 Report, pp. 20- 21.

²² WY 2023 Report, p. 21.

²³ See January 2020 Comment Letter at p. 3; June 2020 Comment Letter at p. 7.

VI. Storage

Groundwater storage within the Basin has been inaccurately characterized and drastically underestimated in the GSP. Management actions based on the smaller volume of water in storage as described in the GSP are not appropriate given the significantly larger volume of fresh water that is available in the Basin.

VII. Sustainable Yield and Recharge

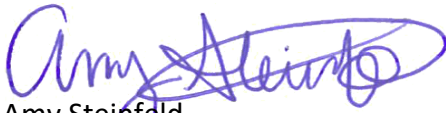
Safe yield within the Basin has been inaccurately characterized and underestimated in the GSP. Management actions based on the lower safe yield as described in the GSP are not appropriate given the larger safe yield that may safely be extracted from the Basin.

Relatedly, the GSP and the WY 2023 Report fail to accurately reflect all sources of recharge to the Basin including leakage from the Los Angeles Aqueduct, recharge from Aqueduct releases (which the IWVGA has acknowledged exceeded 12,500-acre feet in 2023 alone), irrigation return flows, water distribution system leakage, and percolation from wastewater spreading. These sources of recharge have important implications on the safe yield of the Basin, which as stated above, has been underestimated in the GSP and annual reports.

VIII. Conclusion

We urge IWVGA to revise its WY 2023 Report to address these comments, including to accurately characterize the state of the Basin and identify GSP amendments that are necessary to correct the GSP's technical and legal deficiencies.

Sincerely,



Amy Steinfeld
Elisabeth L. Esposito

cc:

Paul Gosselin, DWR Deputy Director for Sustainable Groundwater Management