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CONTACT: Carol Thomas-Keefer
650-587-7300 X17
cthomaskeefer@rgs.ca.gov

**COURT OF APPEALS RULES IN FAVOR OF INDIAN WELLS VALLEY GROUNDWATER AUTHORITY
IN FEE CHALLENGE BROUGHT BY DESERT PISTACHIO GROWER**

February 8, 2024 -- Ridgecrest, CA – In a groundbreaking published opinion described as having “great public importance” that could “impact thousands of water users throughout the state for years to come,” the California Court of Appeals denied a request to avoid paying a fee needed to preserve groundwater resources brought by a farmer that used the water to grow pistachio trees in an arid desert. The court also barred any claims for damages associated with the imposition of the fee and questioned the farmer’s right to use water in such a seemingly frivolous manner.

The dispute arose based on a replenishment fee adopted by the Indian Wells Valley Groundwater Authority (IWVGA). The Authority was formed by Kern County, Inyo County, San Bernardino County, the Indian Wells Valley Water District, and the City of Ridgecrest to address the critical overdraft of the Indian Wells Valley Groundwater Basin, which spans approximately 600 square miles across parts of Kern, Inyo, and San Bernardino Counties. With no significant surface water or importation infrastructure, the basin is the region’s sole source of water. The Department of Water Resources has identified the basin as critically overdrafted, with groundwater levels declining since 1945. The IWVGA estimates a loss of groundwater storage of about 25,000 acre-feet per year.

Naval Air Weapons Station China Lake, the largest landholding by the U.S. Navy globally, is situated within the basin, accounting for a portion of groundwater extraction. The remaining area supports residential and agricultural activities, including the party that brought the lawsuit, Mojave Pistachios, which cultivates pistachios in this arid region. Mojave Pistachio claimed the legal right to use nearly all of the available water to support its nut cultivation.

The Sustainable Groundwater Management Act (SGMA) mandates the creation of groundwater sustainability plans. IWVGA’s plan explained that the Basin is solely dependent on groundwater; current outflows are about four times the estimated inflows; groundwater levels are dropping by up to 2.5 feet annually; the Basin does not currently have access to imported water; and up to 50 miles of infrastructure must be built to import water. To finance this critical infrastructure, IWVGA determined the need for a fee from those benefiting from the projects. Ordinance No. 03-20, effective January 2021, instituted a Basin replenishment fee of \$2,130 per acre-foot. From 2021 to the present, Mojave has continued to pump water from the basin at an alarming rate while failing to pay the fee -- claiming instead that payment was unnecessary because the fee was an “illegal infringement on their water rights.”

In a sharply written, published legal opinion, the California Court of Appeals disagreed. The court confirmed the trial court's prior decision to throw out Mojave's legal claims against the fee. In doing so, the court applied the "pay first, litigate later" rule, which is a principle that requires taxpayers to pay a disputed tax before they can challenge it in court. The "pay first" rule is important because it allows for the continuation of revenue collection during litigation, ensuring that government operations reliant on such funds are not interrupted.

Before today, no court had determined whether the "pay first" rule applied in cases challenging fees imposed by a groundwater sustainability agency under SGMA. In a first of its kind decision, the court applied the "pay first" rule to the replenishment fee, stating that any legal challenge to the fee, which is aimed at managing the critically overdrafted groundwater basin, must be preceded by the payment of the fee, even if the fee is contested as violating SGMA or California water law.

As the court noted: "If groundwater extractors like Mojave can challenge a fee without first paying it, that could defeat SGMA's goal of managing overdrafted groundwater basins." The court also found that Mojave Pistachios could not pursue any damages claims against the Authority based on the fee as these claims had also been waived.

In a stunning rebuke of Mojave Pistachio's claims about the size of the fee the court noted Benjamin Franklin's famous quote: "When the well's dry, we know the worth of water." The court reminded them that the fee was not even very high given the costs it intended to pay. "The Replenishment Fee . . . is not grossly out of line with the fees charged by other agencies."

In the most striking part of the decision the court also questioned whether Mojave Pistachios even had any right to water in the first place. The court noted that "groundwater belongs to the state, not any person or entity" and that "water rights holders have the right to "take and use water," but they do not own the water *and cannot waste it* ." The court asked: "Is using the Basin's limited groundwater to irrigate a water-intensive crop like pistachios in the middle of the high desert a "reasonable and beneficial" use of water protected under the California Constitution, particularly considering most of those trees were planted less than 10 years ago?"

The court then asked more pointedly: "does a vested overlying right to groundwater mean a vested overlying right to *free* groundwater?"

With this issue now settled, the Authority will renew its legal motion to require Mojave Pistachios to pay fees for the water that it has improperly used. The Authority will seek to have this matter resolved in the next few months.

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