

# IWVGA ADMINISTRATIVE OFFICE

*Memorandum*

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**TO:** IWVGA Board Members **DATE:** December 17, 2020

**FROM:** IWVGA Staff

**SUBJECT:** ADOPTION, Ordinance No. 05-20 – Amending Ordinance No. 02-18 Establishing Groundwater Extraction Fees and the Rules, Regulations and Procedures For Their Imposition.

## **DISCUSSION**

On June 21, 2018, the Indian Wells Valley Groundwater Authority (“IWVGA”) Board of Directors (“Board”) set the original Groundwater Extraction Fee at \$30.00 per acre feet (“A/F”) to finance the development and adoption of the Groundwater Sustainability Plan (“GSP”). Ordinance No. 02-18 – Establishing Groundwater Extraction Fees and the Rules, Regulations and Procedures for their Imposition was subsequently adopted on July 19, 2018 and the fee became effective September 1, 2018.

The fee was intended to generate \$1,522,384.00 in approximately 24 months to finance the estimated costs to develop and adopt the GSP. The fee only generated around \$750,000 due to less than estimated pumping by those subject to the fee. This, along with additional tasks and costs to develop the GSP created a budget deficit and cashflow problem that needed to be addressed. The Board directed staff to develop a revised groundwater extraction fee (“Revised Fee”) to address the GSP development costs and time needed to pay off these costs.

Consequently, the IWVGA Board adopted Ordinance No. 02-20 “Amending Ordinance No. 02-18 Establishing Groundwater Extraction Fees and the Rules, Regulations and Procedures for Their Imposition” on July 16, 2020. The fee was increased from \$30.00 to \$105.00 per A/F and became effective September 1, 2020.

Following adoption of Ordinance No. 02-20, multiple lawsuits were filed against the IWVGA, in part, challenging the validity of the Revised Fee based on procedural and substantive grounds. Although staff believes Ordinance No. 02-20 was properly adopted and is valid, staff recommends the Board readopt the Groundwater Extraction Fee increase to \$105. Ordinance No. 05-20 is one component of readopting the fee increase. Staff believes it is more cost effective and time efficient to readopt the fee increase and address the alleged deficiencies in Ordinance No. 02-20 than to defend the challenges in the pending lawsuits.

By adoption of Ordinance No. 05-20, the Board will readopt the fee increase from \$30.00 to \$105.00 initially done in July 2020. The estimated costs and revenues needed that were used for the July fee increase remain the same. No new or additional costs have been added to the budget items to support the fee increase. It is important to note that adoption of Ordinance No. 05-20 does not mean that the IWVGA agrees that Ordinance No. 02-20 is invalid for any grounds.

### Authority to Increase Fees:

The existing Groundwater Extraction Fee was imposed pursuant to California Water Code Section 10730 (“Section 10730”), which was enacted through the California Sustainable Groundwater Management Act (“SGMA”). Section 10730 authorizes the IWVGA to not only impose, but also increase a fee pursuant to Section 10730. Accordingly, staff recommends the IWVGA Board increase the amount of the existing fee. Section 10730(a) states in part as follows:

- (a) A groundwater sustainability agency may impose fees, including, but not limited to, permit fees and fees on groundwater extraction or other regulated activity, to fund the costs of a groundwater sustainability program, including, but not limited to, preparation, adoption, and amendment of a groundwater sustainability plan, and investigations, inspections, compliance assistance, enforcement, and program administration, including a prudent reserve.

In addition, Water Code Section 10725.2(a) authorizes the IWVGA to “perform any act necessary or proper to carry out the purposes of this part” [SGMA].

### Exempted Pumpers:

As with the original extraction fee, *de minimis* pumpers<sup>1</sup>, the United States Navy (“Navy”) and United States Department of Interior Bureau of Land Management (“BLM”) remain exempt from the revised extraction fee<sup>2</sup>.

### Public Engagement:

Before imposing or increasing a fee, a GSA shall hold a public meeting, “at which oral or written presentations may be made” (Section 10730(b)). The GSA must provide notice prior to the meeting, pursuant to California Government Code Section 6066, including the time and place of the public meeting, “a general explanation of the matter to be discussed and a statement that the data required by this section is available.” *Id.* At least 20 days prior to the meeting, the GSA “shall make available to the public data upon which the proposed fee is based. *Id.* After the public meeting, the fee shall be imposed or increased “only by ordinance or resolution.”

At the November 19, 2020 IWVGA board meeting, the Board discussed readopting the Groundwater Extraction Fee and directed staff to set the public meeting for December 17, 2020. Staff was also directed to make available to the public, the data upon which the proposed fee is based no later than 20 days prior to the public meeting. Note that one challenge to Ordinance No. 02-20 was that the “Data Package” was not made available to the public at least 20 days prior to the July IWVGA board meeting. The data upon which this proposed fee is based was made available to the public on November 24, 2020 which should address any concerns in this regard. All procedural and notice requirements have been met.

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1 “De minimis extractor” means a person who extracts, for domestic purposes, two acre-feet or less per year (California Water Code Section 10721(e)).

2 For purposes of this Proposal, any reference to groundwater pumpers excludes *de minimis* extractors, the Navy and BLM unless otherwise specified.

### Gap Funding Requirement:

Initially, it is important to note that although the GSP has been adopted, GSP preparation costs don't necessarily end upon adoption. In this regard, the tasks identified as budget "Expenditures" have been determined to include, "preparation, adoption ... of a GSP, and investigations, inspections, compliance assistance, enforcement, and program administration" costs authorized under Section 10730, and not "groundwater management" costs covered by Section 10730.2. Another challenge to Ordinance No. 02-20, is that some budget items are beyond the scope of Section 10730 and include "groundwater management" subject to Section 10730.2, not Section 10730.

The original estimates used for the original fee were made in June 2018. Since that time, staff has become more knowledgeable about what is needed to complete the GSP. Staff, along with the Water Resources Manager ("WRM"), updated the original costs estimated to prepare the GSP and provided "Revised Estimates" based on actual billings and updated estimates. In addition to "Revised Estimates", a number of "Additional Tasks" and costs required to prepare and adopt the GSP were included. The work on most of these "Additional Tasks" began prior to adoption of the GSP and can only be "preparation" costs authorized by Section 10730. Additional revenue has also been added. The following provides an overview of the items included in this revised budget (see Table on page 5 and Exhibit 2, Data Package for supporting attachments for budget items).

Expenditures: The "Original Estimate" column shows the original estimates used to calculate the original fee, excepting the Proposition 1 grant award of \$646,000 for SDAC projects which is not included as the SDAC projects are fully funded by the grant and have no impact on the GSP budget or the fee. As shown, the Gap Funding needed was originally estimated at \$1,522,384. The "Revised Estimate" column provides updated cost estimates from the original fee and has "Additional Tasks" not included in the original fee calculation. The Revised Estimates were used to calculate the Revised Fee. The "Variance" column provides the difference between original and revised estimates.

The WRM estimated the total cost of developing and adopting the GSP to be about \$3.1 million which was very close to budget. The \$87,600 for the USGS Recharge Study remains the same. The WRM initially identified \$435,250 in estimated costs not covered by the Proposition 1 grant for the WRM's support of the IWVGA. Those "support costs" increased to \$991,402 and were largely complete prior to GSP adoption.

The WRM identified "Additional Tasks" undertaken to complete the GSP and are estimated at \$934,992. Some contend these "Additional Tasks" are not "preparation" costs authorized by Section 10730. However, the work on most of these "Additional Tasks" began before GSP adoption. For example, the work on "Data Management System Development" was complete prior to GSP adoption. DWR Technical Support Services, Brackish Water Study Coordination, and Imported Water Coordination for GSP were part of GSP preparation and were complete by March 2020. Allocation Process Development was largely complete by GSP adoption. These "Additional Tasks" may have different start and finish dates, but they are "preparation, adoption ... of a GSP, and investigations, inspections, compliance assistance, enforcement, and program administration" costs authorized under Section 10730 (see Backup for Stetson "Additional Costs" Included in Extraction Fee, Exhibit "B", Data Package).

IWVGA Administrative Costs originally estimated at \$161,500 have been reduced to \$24,968. The City of Ridgecrest Reimbursable Costs originally estimated at \$210,466 for services

and facilities increased \$76,667 for a new total of \$287,133. Legal costs, originally estimated at \$200,000, have been increased \$500,000 for anticipated litigation. The Water Importation Marketing Analysis consists of costs needed for GSP development (\$102,349). Water importation costs not needed for GSP development are not included and have been tracked and paid by those needing an imported water supply. The \$500,000 advance by Kern County has also been included as this advance must be repaid. The \$500,000 advance by the Indian Wells Valley Water District has been removed and will be used by the District as a “credit” against future Replenishment Fees. Finally, the reserve in the amount of \$227,268 has been removed. Total expenditures for preparation of the GSP are now estimated at \$6,559,574. (see Exhibit 2, Data Package for supporting documents).

Revenue: The California Department of Water Resources (“DWR”) awarded the IWVGA a Proposition 1 grant award of \$1.5 million for development of the GSP. The GSP development grant award requires a \$1.5 million local match. More than two-thirds (\$1,157,300) of the local match requirement was achieved with in-kind services and existing investments by parties in the Basin. The Initial General Member Agency Contribution of \$75,000 reflects the \$15,000 provided by each of the 5 General Members pursuant to the Joint Exercise of Powers Agreement creating the IWVGA (Section 9.02). The Proposition 1 Distressed Counties Grant total is \$250,000 which includes payment for the USGS Recharge Study and other GSP support costs. The total Proposition 1 Distressed Counties Grant revenue has been increased from \$170,000 to \$225,501 based on monies received. The revenue from the Pumping Fee, originally estimated at \$1,522,384, has been reduced to just over \$750,000 based on actual revenue collected. Finally, the Proposition 68 grant of \$300,000 has been added as revenue as well. Total revenue is now estimated at \$5,027,984.

The following table summarizes all of these estimated financial impacts resulting in a total estimated Gap funding requirement of \$1,531,590 which the proposed pumping fee would address:

Budget Items	Original Estimate	Revised Estimate	Variance
<b>EXPENDITURES</b>			
<b>GSP Preparation</b>	<b>\$3,102,600</b>	<b>\$3,086,960</b>	<b>\$15,640</b>
<b>USGS Recharge Study</b>	<b>\$87,600</b>	<b>\$87,600</b>	
<b>IWVGA Support Costs</b>	<b>\$435,250</b>	<b>\$991,402</b>	
Stetson-IWVGA /TAC/PAC Coordination	\$144,250	\$543,677	(\$399,427)
Stetson-Prop 1 Application/Reporting	\$103,000	\$207,468	(\$104,468)
Stetson-Schedule/Budget Management (POAM)	\$52,000	\$34,779	\$17,221
Stetson-Groundwater Pumping Fee Support	\$121,500	\$190,710	(\$69,210)
Stetson-Database Management Coordination (Ramboll)	\$10,000	\$10,298	(\$298)
Stetson - CASGEM Coordination	\$4,500	\$4,470	\$30
<b>IWVGA Administrative Costs</b>	<b>\$161,500</b>	<b>\$24,968</b>	
GSA Board Meetings	\$42,000		\$42,000
Consultant Management and GSP Development	\$24,500		\$24,500
Financial Management	\$8,500		\$8,500
Community Outreach	\$21,000		\$21,000
Budget Development & Admin	\$12,500		\$12,500
PAC/TAC Meetings	\$19,000	\$6,142	\$12,858
Travel	\$6,000	\$635	\$5,365
Insurance	\$15,000	\$9,967	\$5,033
Conferences/Training	\$3,000		\$3,000
Miscellaneous	\$10,000	\$8,224	\$1,776
<b>City of Ridgecrest Reimbursable Costs</b>	<b>\$210,466</b>	<b>\$287,133</b>	<b>(\$76,667)</b>
<b>Legal Costs</b>	<b>\$200,000</b>	<b>\$646,519</b>	<b>(\$446,519)</b>
<b>Reserve</b>	<b>\$227,268</b>		<b>\$227,268</b>
<b>Additional Tasks</b>		<b>\$934,992</b>	
Stetson - Data Management System Development		\$48,596	(\$48,596)
Stetson - Model Review		\$31,300	(\$31,300)
Stetson - GSP Management		\$39,634	(\$39,634)
Stetson - DWR Technical Support Services		\$10,096	(\$10,096)
Stetson - Brackish Water Study Coordination		\$23,113	(\$23,113)
Stetson - Imported Water Coordination for GSP		\$46,075	(\$46,075)
Stetson - Allocation Process Development		\$226,470	(\$226,470)
Stetson - Prop 68 Application/Processing		\$105,383	(\$105,383)
Stetson - Pumping Verification		\$125,000	(\$125,000)
Stetson - Sustainable Yield Report		\$15,000	(\$15,000)
Stetson - GSP Annual Report		\$40,000	(\$40,000)
Stetson - Following Program Development		\$25,000	(\$25,000)
Stetson - Allocation Workshop/Meetings		\$8,000	(\$8,000)
Stetson - Develop GSP Rules/Regulations		\$10,000	(\$10,000)
Stetson - Coordination with DWR on GSP		\$30,000	(\$30,000)
Stetson/DRI - Review of Groundwater in Storage and HCM		\$42,700	(\$42,700)
Audit		\$6,276	(\$6,276)
Water Importation Marketing Analysis for GSP		\$102,349	(\$102,349)
<b>County Loan</b>		<b>\$500,000</b>	<b>(\$500,000)</b>
<b>Total Expenditures</b>	<b>\$4,424,684</b>	<b>\$6,559,574</b>	<b>(\$2,134,890)</b>
<b>REVENUE</b>			
<b>Proposition 1 Grant Award</b>			
GSP Preparation	\$1,500,000	\$1,500,000	
<b>In-kind Services</b>	<b>\$1,157,300</b>		
U.S. Navy/Federal/Searles in-kind Services	\$1,097,300	\$1,097,300	-
IWVWD/CITY in-kind Services	\$60,000	\$80,000	\$20,000
<b>Initial General Member Agency Contribution</b>	<b>\$75,000</b>	<b>\$75,000</b>	
<b>Proposition 1 Distressed Counties Grant</b>	<b>\$170,000</b>	<b>\$225,501</b>	<b>\$55,501</b>
<b>Pumping Fee</b>		<b>\$750,183</b>	<b>(\$772,201)</b>
<b>Kern County Loan</b>		<b>\$500,000</b>	<b>\$500,000</b>
<b>IWVWD Loan</b>		<b>\$500,000</b>	<b>\$500,000</b>
<b>Prop 68</b>		<b>\$300,000</b>	<b>\$300,000</b>
<b>Total Revenue</b>	<b>\$2,902,300</b>	<b>\$5,027,984</b>	<b>\$603,300</b>
<b>Gap Funding Needed</b>	<b>\$1,522,384</b>	<b>(\$1,531,590)</b>	<b>(\$1,531,590)</b>

Calculation of Fees:

The standard volumetric fee is imposed on each Groundwater Extractor pumping groundwater and would be based on the amount of groundwater pumped. Groundwater Extraction Fees would be imposed based on the amount of groundwater pumped in relation to the funds required to prepare the GSP. We know that \$1,531,590 is needed to finance GSP preparation (Table, page 5). Since the original groundwater extraction fee was imposed, the IWVGA now requires monthly reporting by groundwater pumpers and pumping verifications are required as well. All of the sources have been used to refine and confirm anticipated pumping. These pumpers include the City, Kern County, IWVWD, Inyokern CSD, small mutuals and Searles Valley Minerals. (See Table of Current Estimated Pumping Subject to Fee attached as Exhibit 3 to the Data Package).

Estimated groundwater pumping by those subject to the fee is 10,000 A/F annually. A Groundwater Extraction Fee of \$105 per acre foot would generate \$1,531,590 in approximately 18 months.

Below are alternatives to collect the \$1,531,590 based on 10,000 A/F of annual pumping. Staff's recommended amount for the Revised Fee is in parenthesis depending on the duration of the fee selected.

IWVGA Pumping Fee Alternatives	
<b>Required Fund Gap</b>	\$1,531,590
<b>Assumed Total Pumping</b>	10,000 acre-feet
<b>Duration (Years)</b>	<b>Fee</b>
1	\$153.16 (\$155)
15 months	\$122.53 (\$125)
1.5	\$102.11 (\$105)
2	\$76.58 (\$80)

Staff is recommending a revised Groundwater Extraction Fee of (\$105) which should finance the final costs to prepare the GSP in approximately 18 months.

Groundwater Extractors Identification and Well Registration:

Existing Groundwater Extractors who would be charged the proposed fee were identified using well registrations required by Ordinance 02-18 imposing the original fee and Ordinance 01-19 which required all wells to be registered by October 1, 2019. (See list of registered non de minimis wells attached as Exhibit 4 to the Data Package). IWVGA and County records and other available public documents were also used to identify pumpers subject to the fee. The list of wells in IWV basin continues to be updated and verified.

Groundwater Extraction Measurement Method:

On March 19, 2020, the Board adopted Ordinance No. 01-20 – Requiring the Installation of, Use and Reporting on Metering Equipment for Groundwater Extraction Facilities in the Indian Wells Valley Groundwater Basin. Ordinance No.01-20 requires non de minimis pumpers to install an approved water meter on all wells. The Board also adopted Resolution No. 02-20 – Adopting Groundwater Well Flowmeter Standards for the Indian Wells Valley Groundwater Basin. The Resolution sets standard specifications and provides a list of approved meters and contractors to install and test the wells. The IWVGA requires monthly reporting by groundwater pumpers and pumping verifications as well. Moving forward, extractions will be measured using water meters that have been approved by the WRM.

Groundwater Extraction Reporting and Fee Payment.

Commencing on the first day of each month, Groundwater Extractors shall read and record the needed data for the measuring method used by the Groundwater Extraction Facility. By the 10<sup>th</sup> day of each calendar month, the Groundwater Extractor shall self-report the needed data from their Groundwater Extraction Facility on the self-reporting form provided by the IWVGA. Additionally, the Groundwater Extractor shall simultaneously pay the Groundwater Extraction Fee provided for on the Form. Payments would be made to the IWVGA. Payments not made with thirty (30) days of becoming due would be considered delinquent. The reporting and payment terms will not change for the revised fee.

If unusual circumstances exist, a Groundwater Extractor may request that their Groundwater Extraction Facility be placed on a modified reporting and billing schedule approved by both the IWVGA’s General Manager and the Water Resources Manager.

Delinquent Accounts:

Water Code Section 10730.6 of SGMA authorizes the IWVGA to collect groundwater fees imposed pursuant to Section 10730 and provides multiple remedies that the IWVGA may pursue to collect delinquent accounts. As prescribed by California Water Code section 10730.6, if the owner and/or operator of a Groundwater Extraction Facility knowingly fails to pay the Groundwater Extraction Fee within thirty (30) days of it becoming due, it is delinquent and the owner and/or operator shall be liable to the IWVGA for interest at a rate of one (1) percent per month on the delinquent amount of the Groundwater Extraction Fee and a ten (10) percent penalty on the delinquent amount of the Groundwater Extraction Fee.

As an additional remedy, the IWVGA may, after a public hearing, order an owner and/or operator to cease extraction of groundwater until all delinquent fees, interests and penalties are paid. In such an instance, the IWVGA shall give notice to the owner and/or operator by certified mail not less than 15 days in advance of the public hearing.

These above cited rights are additional rights to those rights which the IWVGA may otherwise be prescribed by law.

**RECOMMENDATION**

Staff recommends that your Board:

1. Make a finding that the proposed Ordinance is exempt from further environmental review pursuant to California Environmental Quality Act Guidelines section 15273 and Public Resources Code section 21080(b)(8) because it is the establishment of operational rates and charges. Additionally, it has been determined that this action is exempt from further environmental review pursuant Guidelines section 15061(b)(3) because it can be seen with a certainty that this action will not have a significant effect on the environment. Moreover, it has been determined that this action is exempt from further environmental review pursuant Guidelines section 15378(b)(5) because it involves administrative activities that will not result in direct or indirect physical changes in the environment.
2. ADOPT Ordinance No. 05-20 – Amending Ordinance No. 02-18 Establishing Groundwater Extraction Fees and the Rules, Regulations and Procedures for Their Imposition.
3. Authorize staff to do all things necessary to implement Ordinance No. 05-20 and the Revised Groundwater Extraction Fee.



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**BEFORE THE BOARD OF DIRECTORS OF THE  
INDIAN WELLS VALLEY GROUNDWATER AUTHORITY**

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**In the matter of:**

**Ordinance No. 05-20**

**AMENDING ORDINANCE NO. 02-18  
ESTABLISHING GROUNDWATER  
EXTRACTION FEES AND THE RULES,  
REGULATIONS AND PROCEDURES  
FOR THEIR IMPOSITION**

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**I, April Keigwin, Clerk of the Board of Directors for the Indian Wells Valley  
Groundwater Authority, do certify that the following ordinance, on motion of Director Page,  
seconded by Director Hayman, was duly passed and adopted by the Board of Directors at an  
official meeting this 17<sup>th</sup> day of December 2020, by the following vote:**

**AYES: Hayman, Gleason, Page, Vallejo, Saint-Amand**

**NOES:**

**ABSENT:**

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Clerk of the Board of Directors  
Indian Wells Valley Groundwater Authority

  
Deputy Clerk

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**Section 1. WHEREAS**

(a) On July 19, 2018, the Board of Directors (Board) of the Indian Wells Valley Groundwater Authority (Authority) adopted Ordinance No. 02-18 - Establishing the Rules, Regulations and Procedures For The Imposition and Collection of Groundwater Extractions Fees.

(b) The Groundwater Extraction Fee was set at \$30 per acre foot and became effective September 1, 2018.

(c) The fee was intended to finance a portion of the estimated costs to develop and adopt the

Groundwater Sustainability Plan (GSP). The Groundwater Extraction Fee only raised approximately half of the expected revenue due to less than estimated pumping by those subject to the fee. Additional studies and costs to develop the GSP have created a need for additional funding to prepare the GSP.

(d) The Board directed staff to develop a revised groundwater extraction fee (“Revised Fee”) to address the GSP development costs and time needed to pay off these costs.

(e) On July 16, 2020, the Authority Board adopted Ordinance No. 02-20 – Amending Ordinance No. 02-18 Establishing Groundwater Extraction Fees and the Rules, Regulations and Procedures for Their Imposition”.

(f) Following adoption of Ordinance No. 02-20, multiple lawsuits were filed against the IWVGA, in part, challenging the validity of the Revised Fee. Staff believes it is more cost effective and time efficient to address alleged deficiencies in Ordinance No. 02-20 through the adoption of Ordinance No. 05-20 than to defend the allegations of invalidity in the pending lawsuits.

(f) The Board again directed staff to develop a revised groundwater extraction fee to address alleged deficiencies in Ordinance No. 02-20.

(g) Staff recommends adoption of Ordinance No. 05-20.

**THE BOARD OF DIRECTORS OF INDIAN WELLS VALLEY GROUNDWATER AUTHORITY ORDAINS AS FOLLOWS:**

**Section 2.** This Ordinance shall become effective 30 days from the date of adoption and the entire Ordinance shall be published in accordance with California Government Code section 25124.

**Section 3.** Section 3 of Ordinance No. 02-18 is hereby amended in whole to read as follows:

**Groundwater Extraction Fee.** Effective February 1, 2021, and continuing until rescinded by the Board, all groundwater extractions from and within the Basin shall be subject to measurement and the Groundwater Extraction Fee of ten dollars and fifty cents (\$10.50) per tenth (.10) of an acre foot for all groundwater extracted from the Basin. The Groundwater Extraction Fee shall be determined and paid on a monthly basis with water extraction measurements rounded down to the nearest tenth (.10) of an acre foot per month.

**Section 4.** All other provisions of Ordinance No. 02-18 shall remain in full force and effect.