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July 15, 2020

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**VIA EMAIL (APRILN@IWVWD.COM)**

Indian Wells Valley Groundwater Authority (IWVGA), Board of Directors  
c/o April Nordenstrom, Clerk of the IWVGA Board  
500 W. Ridgecrest Blvd.  
Ridgecrest, CA 93555

RE: Comments on Agenda Items 8 and 9 Regarding Adoption of the Increased Groundwater  
Extraction Fee and the Sustainable Yield Determination

Dear Members of the IWVGA Board of Directors:

On behalf of Mojave Pistachios, LLC and the Nugent Family Trust (collectively, Mojave) and Sierra Shadows Ranch (Sierra Shadows) we provide these comments on Agenda Item 8 (Groundwater Extraction Fee) and Item 9 (Resolution 06-20 and CEQA Findings Adopting the Sustainable Yield Report) for the July 16, 2020 Board meeting. We also join and incorporate the comments made by other groundwater users, including the June 17, July 13, and July 15 comments made by Meadowbrook and the June 18 comments submitted by Searles Valley Minerals. We ask that the Board refrain from adopting any of the items implementing the Groundwater Sustainability Plan (GSP), including Agenda Items 8 and 9, until the comments raised by Mojave, Sierra Shadows, and others are fully addressed.

As noted in our prior comments, the IWVGA's practice of belatedly releasing agenda packages makes it difficult or impossible to provide detailed public comment and inhibits public participation. As in June, when the full Board packet was released only 24 hours in advance of the Board meeting, the partial July Board packet did not become available for public review until 48 hours before the meeting and the final packet was still not available at the time this comment letter was submitted on the afternoon of July 15. We therefore reserve the right to submit further comments related to the issues identified herein.

**I. Agenda Item 8: Comments on Increased Groundwater Extraction Fee**

The \$7,059,574 Groundwater Extraction Fee budget is exorbitant, particularly when compared to the budgets of other groundwater sustainability agencies throughout the state, and reveals a complete lack of financial oversight and management on the part of the Board. A multi-million dollar budget overrun is unacceptable and the \$7 million price tag is unconscionable.

Procedurally, it is inappropriate for the Board to proceed to a second reading and adoption of Ordinance No. 02-20 at the July 16 Board meeting. A second reading is inappropriate because much of the information and data on the Groundwater Extraction Fee initially provided to the public on June 17, 2020 has changed significantly. Also, as raised in our prior comments, the data package should have been

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provided to the public 20 days in advance of the June 18, 2020 public meeting at which the first reading of the ordinance took place. See Water Code § 10730(b).

Substantively, the Groundwater Extraction Fee is deficient because it will be used to fund implementation of the GSP. Fees for GSP implementation, including projects and management actions, may only be adopted pursuant to Water Code section 10730.2, which requires compliance with the procedural requirements set forth in subdivisions (a) and (b) of Section 6 of Article XIII D of the California Constitution. Water Code § 10730.2(c). Fees for GSP implementation cannot be adopted under Water Code section 10730 as proposed.

The following Groundwater Extraction Fee budget line items are related to GSP implementation and therefore cannot be incorporated in the Groundwater Extraction Fee to be adopted pursuant to Water Code section 10730:

- “Stetson – Imported Water Coordination for GSP”
- “Stetson – Allocation Process Development”
- “Stetson – Pumping Verification”
- “Stetson – Sustainable Yield Report”
- “Stetson – Fallowing Program Development”
- “Stetson – Water Importation Marketing Analysis for GSP”
- Any other “Additional Tasks,” to the extent these costs are related to GSP implementation
- “Legal Costs,” to the extent these costs are to defend challenges to the GSP implementation actions
- “IWVGA Support Costs,” to the extent these costs are related to GSP implementation
- “IWVGA Administrative Costs,” to the extent these costs are related to GSP implementation

The budget should also be updated to clarify which tasks are funded by the “City of Ridgecrest Reimbursable Costs,” “County Loan,” and “IWVWD Loan” and explain whether these costs are appropriate for inclusion in the Groundwater Extraction Fee.

The staff report and data package should also be updated to explain why the calculation of the Groundwater Extraction Fee is purportedly based on the “Sustainable Yield Allocation,” developed after completion of the GSP. As raised in our prior comments and our comments below, the Sustainable Yield Allocation (i.e., the allocation of the Navy’s 7,650 acre-foot “federal reserve right” to non-federal pumpers) is fundamentally flawed and is premised on the false notion that a federal reserve right can somehow be transferred off a federal reservation and gifted to non-federal entities. The Sustainable Yield Allocation should therefore not be utilized as a basis for the Groundwater Extraction Fee.

The Groundwater Extraction Fee staff report and data package should also clarify which groundwater users will be required to pay the Fee and the basis for this determination. Will groundwater pumpers subject to the Replenishment Fee be required to pay both the Replenishment Fee and the Extraction Fee? Will pumpers be required to pay the Extraction Fee when utilizing a Transient Pool allotment?

In sum, the IWVGA must remove all budget components related to GSP implementation from the Groundwater Extraction Fee budget, revise the supporting data package and Staff Report as identified above, and provide the revised data package and text of the adopting ordinance to the public at least 20 days prior to the public meeting required to be held before the hearing on adoption of the Groundwater Extraction Fee. Water Code § 10730(b). The Extraction Fee cannot be legally adopted at the July 16, 2020 Board meeting pursuant to the substantive and procedural requirements of SGMA.

## II. Agenda Item 9: Comments on Sustainable Yield Report and Determination

We ask the Board to decline to adopt the Report on the Indian Wells Valley Groundwater Basin's Sustainable Yield of 7,650 acre-feet (Sustainable Yield Report) or to issue the determination that the Navy is entitled to the entire 7,650 AFY sustainable yield (Sustainable Yield Determination) for the following reasons.

First, as set forth in our prior comment letters, the GSP fails to substantiate the conclusion that the sustainable yield of the Basin is 7,650 AFY due to the flaws in the GSP's Basin recharge analysis and the fact that the GSP ignores the vast amount of available groundwater in storage. The poor science in the GSP, which ignores more recent and robust data, does not support the conclusion that the Basin's sustainable yield is truly limited to 7,650 AFY.

Second, the Sustainable Yield Report is premised on a faulty legal foundation. The stated purpose of the report—"determining the colorable legal claims to the Basin's sustainable yield"—is expressly prohibited by SGMA, which prohibits GSAs from issuing water rights determinations. See, e.g., Water Code §§ 10720.5(b); 10720.1(b).

Third, there is no factual or legal support for the Sustainable Yield Report's conclusion that the Navy is entitled to the entire 7,650 AFY sustainable yield of the Basin. The Groundwater Extraction Fee data package explains that, at present, the Navy pumps approximately 1,450 AFY. Moreover, at the June 2020 Board meeting, Commander Benson explained that the Navy "agreed to their allocation of 2,041 acre-feet." There is no basis for granting the Navy the entire sustainable yield of the Basin where the Navy now produces less than 20 percent of the sustainable yield and admits that an allocation of approximately 27 percent of the sustainable yield will suffice in the future.

Fourth, the Sustainable Yield Report falsely states that "all groundwater extractors in the Basin, with the exclusion of De Minimis Extractors and Federal Extractors, will be subject to the costs for overdraft mitigation and augmentation projects." Although this should be the case, it is not what the IWVGA proposes. Rather, the IWVGA posits, without factual or legal support, that some chosen water users should be able to use a portion of the Navy's 7,650 AFY "federal reserve right" for free, while other water users must pay a \$2,230 per acre-foot Replenishment Fee. This is an arbitrary and capricious effort to confiscate private property for the benefit of public agencies and the Navy. This scheme is illegal and raises numerous thorny questions that have yet to be answered, such as:

- What is the factual and legal basis for the determination that de minimis well owners, the City of Ridgecrest, Kern County, the Inyokern Community Services District, "Small Mutuals," and "Trona DM" are entitled to continue pumping at current levels without payment of the Replenishment Fee?
- What is the factual and legal basis for the determination that the Indian Wells Valley Water District is entitled to pump 4,390 AFY without payment of the Replenishment Fee?
- Which water users will be cut back if the Navy increases production over 1,450 AFY, and on what basis?
- Why are some water users being asked to bear the burden of subsidizing overdraft mitigation and augmentation projects, while others can continue pumping at current levels without being asked to share in shortages or increase efficiency?
- Assuming the Basin's entire sustainable yield belongs to the Navy (which it does not), what authority does the IWVGA have to carve up and dole out the vast majority of the sustainable yield to non-federal pumpers?

Fifth, the version of the Sustainable Yield Report attached to the July Board packet continues to object to the pumping data submitted by Mojave as "not timely." The fact is that Mojave's pumping data has been

repeatedly provided to the IWVGA, not just on Mojave's well registration forms, but also in answer to the IWVGA "Pumping Verification Questionnaire." By the letter dated May 26, 2020, we provided notice to the IWVGA and Stetson Engineers that Mojave's answers to the Pumping Verification Questionnaire would be provided later that week. By letter dated May 29, 2020 we then submitted Mojave's Pumping Verification Questionnaire to the IWVGA and Stetson. Nonetheless, the Draft Pumping Verification Report issued by Stetson on June 3, 2020 omitted Mojave from the Transient Pool. Upon discovering this error, we provided written notice of the omission along with copies of our two May 2020 letters including the answers to the Pumping Verification Questionnaire, and asked for confirmation that Mojave would be included in the revised Pumping Verification Report. We never received a response. We followed up again with the IWVGA and Stetson on July 13, 2020. We are still awaiting a response. The IWVGA has now had nearly eight weeks to review and incorporate the data submitted in Mojave's Pumping Verification Questionnaire in the Sustainable Yield Report, the Pumping Verification Report, and any other reports issued by the agency.

Sixth, the staff report for Agenda Item 9 indicates that "[a] matrix of comments and staff responses has been provide[d] along with the Final Draft of the Report." This matrix of comments and responses was still not available for public comment at the time this comment was submitted and it is not clear whether the Sustainable Yield Report dated June 18, 2020 that was provided in the July agenda package is the "Final Draft" referenced in the staff report. The IWVGA should postpone consideration of this item until the public has had a full opportunity to review and comment on all materials related to this item.

Finally, the IWVGA cannot avoid CEQA review on the basis that the Sustainable Yield Determination is a ministerial action or on the basis that it is exempt from CEQA review pursuant to a statutory or categorical exclusion. The Sustainable Yield Determination is one of a group of connected actions to implement the GSP over which the IWVGA has discretionary decision-making authority and that, collectively, will have potentially significant environmental impacts that must be studied prior to adoption in an environmental document, such as an environmental impact report (EIR). As a GSP implementation action, the Sustainable Yield Determination is subject to CEQA and must be analyzed together with each interrelated GSP implementation action such as the Transient Pool and Fallowing Program, the Sustainable Yield Allocation (i.e., the allocation of the Navy's 7,650 acre-foot "federal reserve right" to non-federal pumpers), and the Replenishment Fee. Water Code § 10728.6 ("a project that would implement actions taken pursuant to a [GSP]" is subject to CEQA); 14 Cal. Code Regs. § 15378(a) (under CEQA, "project" is defined as "the whole of an action" that has "a potential for resulting" in a direct or reasonably foreseeable indirect physical change to the environment). Failure to analyze each of the interrelated GSP implementation actions together constitutes segmentation, which is prohibited under CEQA.

As discussed above, the Sustainable Yield Report and Determination—i.e., the determination that the Navy is entitled to 100 percent of the Basin's sustainable yield—is foundational to the IWVGA's decision that some water users may continue to pump for free, while others bear the costs of "overdraft mitigation and augmentation projects." At the June 18, 2020 Board meeting, IWVGA staff and decision-makers acknowledged that the collective result of the GSP implementation actions proposed by the Board will result in agricultural producers leaving the Indian Wells Valley *en masse*. For example, IWVGA Counsel Hall explained:

As we've mentioned earlier, we don't think Ag can absorb the cost of imported water, especially based on what's going on in the State of California with SGMA in this basin. If they can great, but we've had to make our best guess and we don't think they will be in the permanency in buying augmented supplies.



Likewise, Mr. Johnson explained that the Transient Pool is expected to extend the life of overlying agricultural operations for only a few years:

I'll be honest with you, one of the recommendations we got came right from Chairman Gleason was, does it really make sense when you're looking at the Ag folks to ramp them down on the pumping because as you ramp them down they're not gonna have enough water to operate their agricultural operations. So you're basically slowly strangling them by ramping them down on the water supply. And the suggestion was that the same amount of water, why don't we just totalize that during the ramp down period and create a pool, give it to the agricultural pumpers, and as we give it to the pumpers, let them choose how many acres they want to operate, how they want to use that water and they can use it anyway they want. So they can use the water up, farming all of their acreage for three to four years or they could cut back a little bit and do it for five to six years. Basically, give them the choice to use that allocation, allotment I should say, to use that pool water anyway they choose.

Despite the express acknowledgments that the GSP implementation actions will cause a mass exodus of farming from the Basin within a matter of years, and notwithstanding our prior comments, the Board still has not acknowledged the need for CEQA compliance to assess the numerous potentially significant environmental impacts associated with fallowing thousands of acres of agricultural land—an outcome that IWVGA staff *admits* is not speculative.

The Sustainable Yield Determination and the other GSP implementation actions are not, as the IWVGA now claims, ministerial projects because these decisions do not simply require conformance with a fixed standard or objective measurements. Rather, they require exercise of personal judgment by the Board as to the wisdom and manner of carrying out the interrelated projects. There is nothing in SGMA that requires the IWVGA to: (i) grant the entire sustainable yield of the Basin to the Navy; (ii) dole out the 80+ percent of the sustainable yield that the Navy does not use to chosen water users; and (iii) charge agricultural producers exorbitant fees designed, quite simply, to cause farmers to leave the Basin. The claim that the Sustainable Yield Determination is a ministerial action is beyond the pale. We ask the Board to immediately commence preparation of an EIR to evaluate the potentially significant impacts of the GSP implementation actions, including adoption of the Sustainable Yield Determination, the Sustainable Yield Allocation, the Transient Pool and Fallowing Program, and the Replenishment Fee.

As documented in our prior comments and as recognized in the GSP, the climate of the Indian Wells Valley is harsh, with winds that create dust problems for the whole Valley, grounding planes and endangering the health of residents. See, e.g., GSP at p. 3-11 (Indian Wells Valley has an “arid, high desert climate characterized by hot summers, cold winters, and irregular and sparse precipitation” as well as “high winds”). Fallowing of Mojave's farming operations, alone, would result in the death of 215,000 living pistachios trees and create dust and other environmental impacts that would potentially take years and hundreds of thousands of dollars to mitigate. Yet Mojave's operations represent only a fraction of the agricultural production in the Indian Wells Valley—there are many thousands of additional acres that farmers will be forced to leave vacant if the IWVGA adopts the proposed actions to implement the GSP.

There is widespread acceptance that fallowing of agricultural lands, particularly in arid environments such as the Indian Wells Valley, creates the potential for significant environmental impacts, including impacts on air quality, human health, greenhouse gas (GHG) emissions, biological resources, aesthetics, and local economies. Among other things, these studies document that:

- Fallowing of agricultural land causes measurable soil loss in quantities sufficient to degrade air quality. (See, e.g., B.S. Sharratt, “Fugitive dust from agricultural land affecting air quality within the Columbia Plateau, USA,” 116 *WIT Transactions on Ecology and the Environment* 281 (2008);<sup>1</sup> see also Imperial Irrigation District Water Conservation and Transfer Project FEIR/EIS [acknowledging potentially significant impacts associated with fugitive dust and PM10 emissions from fallowing].<sup>2</sup>)
- During wind events, such as those experienced in the Indian Wells Valley, even very small amounts of soil loss caused by fallowing can lead to exceedances of particulate matter (PM10) concentrations above standards imposed by regulatory agencies. (See *id.*)
- There are numerous health effects of particulate matter emissions, such as those caused by fallowing, including premature death in people with heart or lung disease, nonfatal heart attacks, irregular heartbeat, aggravated asthma, decreased lung function, and increased respiratory symptoms, such as irritation of the airways, coughing, or difficulty breathing. (U.S. EPA, “Health and Environmental Effects of Particulate Matter (PM);”<sup>3</sup> J.O. Anderson, “Clearing the air: a review of the effects of particulate matter air pollution on human health,” 8 *Journal of Medical Toxicology* 166 (2012);<sup>4</sup> IARC Monographs, *Outdoor Air Pollution* (Volume 109) (2015).<sup>5</sup>)
- Fallowing agricultural lands creates the potential for increased pesticide and herbicide use to control weeds on fallowed lands. (See Imperial Irrigation District Water Conservation and Transfer Project FEIR/EIS.<sup>6</sup>) In turn, increased pesticide and herbicide use has the potential for significant impacts on biological resources, such as native plant communities and wildlife, and water quality.
- Fallowing of agricultural land has the potential to result in the loss of carbon dioxide sequestering capacity if fallowed lands are not properly retired and soil conservation techniques are not utilized. (See Imperial Irrigation District Water Conservation and Transfer Project FEIR/EIS.)
- Fallowing agricultural lands creates the potential for aesthetic impacts associated with the loss of farmlands. (Cf. S.M. Swinton, et al. “Ecosystem services and agriculture: cultivating agricultural ecosystems for diverse benefits,” 64 *Ecological Economics* 245 (2007)<sup>7</sup> [acknowledging that agriculture provides aesthetic ecosystem services]; B.T. Van Zanten, et al. “A comparative approach to assess the contribution of landscape features to aesthetic and recreational values in agricultural landscapes,” 17 *Ecosystem Services* 87 (2016).<sup>8</sup>)
- Fallowing lands used for the cultivation of agriculture creates regional economic impacts. For example, a recent economic analysis of California’s 2014 drought found that the fallowing of approximately 410,000 acres of agricultural land in the Central Valley, in 2014 alone, resulted in the loss of an estimated 6,722 direct jobs and 15,183 indirect jobs and the loss in \$800 million in lost economic output. (R. Howitt, et al., “Economic Analysis of the 2014 Drought for California Agriculture,” Center for Watershed Sciences, U.C. Davis (July 2014).) Other economic impacts include reduced tax revenues associated with the loss of opportunity for economic utilization of properties currently used for crop production.
- The environmental and economic impacts associated with permanent fallowing of agricultural lands also raise environmental justice concerns related to increased environmental and economic impacts on rural and disadvantaged communities. (See, e.g., K.D. Harris, “Environmental Justice

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<sup>1</sup> Available at: <https://pdfs.semanticscholar.org/b112/63d62120dff1cf4b74a48785faf06abffac3.pdf>.

<sup>2</sup> See: <https://www.iid.com/home/showdocument?id=1843> (Section 3.10, Master Response on Air Quality Issues Associated with Fallowing).

<sup>3</sup> See: <https://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm>.

<sup>4</sup> Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3550231/>.

<sup>5</sup> Available at: <https://publications.iarc.fr/538>.

<sup>6</sup> See: <https://www.iid.com/home/showdocument?id=1843> (Section 3.10, Master Response on Air Quality Issues Associated with Fallowing).

<sup>7</sup> Available at: <https://www.sciencedirect.com/science/article/abs/pii/S0921800907005009?via%3Dihub>.

<sup>8</sup> Available at: <https://www.sciencedirect.com/science/article/abs/pii/S2212041615300619>.

at the Local and Regional Level Legal Background,” State of California Department of Justice (2012).<sup>9</sup>)

Mitigation measures, including the long-term rehabilitation of native plants, will be required to address the environmental impacts caused by fallowing. The environmental impacts of these mitigation measures must be studied. For example, the re-establishment of native plants will require water use, which must be analyzed. Mitigation will also be costly and will require potentially lengthy commitments from local and state agencies. A mitigation cost analysis should therefore be undertaken and the responsible party for each mitigation measure should be identified in the EIR.

Likewise, in addition to the environmental and associated economic impacts identified above, the GSP implementing actions also create the potential for significant land use effects, including conflicts with Kern County land use policies, such as those that promote agriculture. The EIR should therefore include a land use analysis that examines conflicts with existing policies and the potential for future zoning changes necessitated by the IWVGA’s implementing actions.

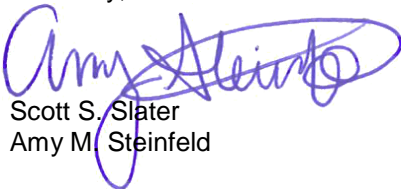
Not surprisingly, given the environmental and related economic impacts outlined above, there are various examples of EIRs that have concluded that fallowing of agricultural land will cause potentially significant impacts, including the Imperial Irrigation District Water Conservation and Transfer Project EIR/EIS, cited above.

Similarly, here, preparation of an EIR is appropriate given the potentially significant environmental impacts of the GSP implementation actions. We therefore ask the Board to postpone adoption of the GSP implementing actions, including adoption of the Sustainable Yield Report/Determination, Transient Pool and Fallowing Program, the Sustainable Yield Allocation, and the Replenishment Fee until such time as the IWVGA prepares an EIR to examine the environmental impacts of the actions, including those related to fallowing, and adopts mitigation measures to mitigate all significant impacts.

### **III. Conclusion**

For the reasons outlined above, in our prior comment letters, and for the reasons identified by others, we urge the IWVGA Board to decline to adopt Agenda Items 8 and 9 related to the Groundwater Extraction Fee and the Sustainable Yield Report.

Sincerely,

  
Scott S. Slater  
Amy M. Steinfeld

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<sup>9</sup> Available at: [https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/ej\\_fact\\_sheet.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/ej_fact_sheet.pdf).

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## **Public Comment for the IWVGA Board, July 16, 2020**

From: Judie Decker, a concerned IWV citizen

The Board has two important issues to vote into policy for this meeting and three scheduled for the August meeting. Yet, the Board continues to hold non public meetings. The so called virtual meeting is a very poor substitute for the ability of the public to attend and speak at your Board meetings. It is an extremely awkward way to communicate and an awkward disconnected way for the Board, staff and public to understand the communication and actions that are taken. **It is unreasonable for you to continue holding essentially non public meetings where the Board is holding public hearings and establishing policy that will, in some cases, forever change an individual's future.**

You created yourselves as this Valley's Groundwater Authority. However, you sit as members elected to other positions which conflict with solving the Basin's water problems. Individually, you are sitting on the Groundwater Authority representing the interests of your constituents who elected you to your various governing positions. This is often a conflict of interest and leads to failure to function in the best interest of groundwater basin sustainability. You need to sit as the Water Authority to represent ALL of the individuals of the Indian Wells Valley. The draft EIR from Kern County regarding a solar facility in Inyokern is not on this agenda. How will the IWVGA respond to additional water use while planning reduction of others water use? **Why is no serious effort being made to address the issue of growth in general at a time when well water levels simply continue down and down? There is no new water so new developments are taking from the already overdrafted existing wells.**

**Governing entities only work when careful research and thoughtful discussion occurs.** Plans must be precise, clear, and carefully communicated. **This has not happened.** After the adoption of the GSP several months passed with nothing. Then in a sudden flurry there are not one but five important policies/resolutions on the June agenda. Some require Public Hearings. Your two public committees had only two weeks to review them with no interaction with Staff or Board. Why? What is the driver in this for this seeming urgency? Please slow down and truly examine the details of what you are trying to do.

These policies are actually the Implementation Plan Section of the GSP that was never finished. The PAC and TAC cannot meet and confer. They must hastily respond in writing. This is a poor use of volunteer talent that you as a Board approved. Furthermore, as stated more than once, in individual replies, the documents dealing with these policies are full of typos, grammatical errors, misplaced words and sentences and in some places just confusing.

Lastly, I ask a question about finances. Where is all the money going to come from to finance the proposals that exist in your ordinances, resolutions and policies? When you Board members look at Staff reports on expenditures and income do you get an exact impression of revenues versus expenses and the long term reliability of this? There still appears to be no detailed financial or execution plan. What happened to the POAM?

The Board has a very difficult job to create and execute a truly viable water management plan for the IWV, but it is a task that you willingly chose for yourselves. Now you need to follow through with this difficult task. Careful precise work and open honest communications are critical to success. Shoving through poorly vetted plans is a sure fire recipe for even more frustration, delays and lawsuits.

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July 15, 2020

**VIA E-MAIL APRILN@IWVWD.COM**

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Re: Comments on Indian Wells Valley Groundwater Authority Agenda Items  
8 and 9 listed on the Indian Wells Valley Groundwater Authority  
(IWVGA) Board of Directors Agenda for the July 16, 2020 Meeting

Dear Chairman Gleason and Board Members:

We respectfully submit the following comments on items 8 and 9 of the July 16, 2020  
IWVGA Board agenda on behalf of our client, Searles Valley Minerals Inc. (Searles Valley).

**I. Agenda item 8: "PUBLIC HEARING AND CONSIDERATION OF DATA  
PACKAGE ON AN INCREASE IN THE CURRENT GROUNDWATER  
EXTRACTION FEE AND ADOPTION OF CEQA FINDINGS AND  
ORDINANCE 02-20"**

Searles Valley has several concerns with the proposed extraction fee, both  
procedurally and substantively.

From a procedural standpoint, the data package that the IWVGA is relying on to  
calculate the extraction fee was released on July 14 and presents revenue and expenditures  
estimates that differ from the data package released on June 17. Pursuant to Section 10730(b) of  
the Water Code, a groundwater management agency must make available to the public "at least  
20 days prior to the [public] meeting . . . data upon which the proposed fee is based." As such, a  
Board action on the proposed fee two days after its release of the underlying data to the public  
would be in violation of the Sustainable Groundwater Management Act (SGMA) requirements.

In addition, any fee imposed to recover costs associated with the preparation of a  
Groundwater Sustainability Plan (GSP) must meet an exemption to the definition of a "tax"  
under article XIII C, section 1(e) of the California Constitution (commonly known as Proposition



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26). For fees imposed for the purpose of implementing the GSP, such as the imposition of groundwater extraction fees, Water Code section 10730.2(c) requires that the fees comply with article XIII D, section 6(a) and 6(b) of the California Constitution, which comprise the procedural and substantive requirements of Proposition 218. The groundwater sustainability agency bears the burden of demonstrating that the requirements have been met. A rate study and cost of service analysis are necessary to determine that the rates for groundwater extraction fees meet these requirements, and to provide the evidentiary record supporting the fees. To date, the IWVGA has not completed or released a fee study or offered an analysis to demonstrate that the fee is not a tax within the meaning of Proposition 26 and 218. Simply stating that the fee is a “regulatory fee” without further analysis is not sufficient to meet the agency’s burden of proof. Absent such analysis and proof, the fee may be deemed a tax under California law, requiring supermajority voter approval and cannot be imposed administratively as the IWVGA is intent on doing.

From a substantive standpoint, the new Ordinance 02-20, in Section 3, amends the prior Ordinance 02-18 to make the groundwater extraction fee applicable to “all groundwater extractions” yet the staff report states that de minimis pumpers are exempt from paying the fee. Excluding the nearly 800 de minimis pumpers from paying the fee under the proposed ordinance lacks adequate justification. Section 10730(a) of the Water Code allows the imposition of fees on de minimis extractors if the extractors are regulated by the agency. The IWVGA is regulating de minimis extractors by requiring them to register their wells and submit periodic pumping reports. Therefore, it would be inconsistent with SGMA and inequitable for a small number of pumpers (less than 60) to bear the burden of paying this substantial fee that other pumpers should be subject to and receive a benefit from. In addition, Searles Valley is concerned that the data package lacks sufficient supporting documentation, is constantly changing, includes costs that are improperly categorized as GSP preparation that should be classified as GSP implementation actions (thus subject to different legal and procedural standards), and includes improper reimbursements to member agencies. Further, the total cost to prepare the GSP is an astounding \$7 million—far exceeding GSP preparation costs in other basins.

**II. Agenda item 9: “BOARD CONSIDERATION AND ADOPTION OF RESOLUTION 06-20 AND RELATED CEQA FINDINGS ADOPTING THE REPORT ON THE INDIAN WELLS VALLEY GROUNDWATER BASIN’S SUSTAINABLE YIELD OF 7,650 ACRE-FEET**

As expressed in prior written letters and correspondence to the IWVGA and this Board, the estimated sustainable yield of 7,650 acre-feet is based on incomplete and inaccurate data. Taking any action based on this estimate ignores the numerous acknowledgements throughout the IWVGA’s own GSP of serious data gaps and raises doubts about the accuracy of not only the sustainable yield estimate but also the water budget, sustainability goal and





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threshold estimates upon which IWVGA relies in considering this Agenda item. The GSP expressly states in several sections that data tracking is fairly recent (mostly since SGMA came into effect) and that many of the “historical” data points are based on a single measurement recorded at the time of well installation. IWVGA should start with a higher sustainable yield estimate until it can improve its threshold data.

More importantly, the IWVGA continues to make the argument on behalf of the U.S. Navy as to the Navy’s quantifiable right to basin water and the priority thereof, asserting that the Navy is entitled to nearly all the basin’s sustainable yield and that its right is superior to the right of all other pumpers in the basin. Such a position is not supported by law or facts. Under federal law, an appropriation that predates the reservation of land for the Navy base, such as Searles Valley’s appropriation, has priority over the Federal Reserved Right. (See *Cappaert v. United States* (1976) 426 U.S. 128.) The report relied on for this Agenda item seems to conclude that because of sovereign immunity, this priority should be reversed.

Sovereign immunity is a matter of enforcement and does not relieve the IWVGA from its obligation to respect priorities established by federal law nor allow it to ignore the factual evidence in the record before it. Not only is IWVGA’s conclusion and potential action contrary to water law, it is also contrary to the IWVGA’s authority under SGMA which prohibits the IWVGA from determining water rights. Searles Valley has presented the IWVGA with written documentation related to both these points on multiple occasions. At the June 18 IWVGA Board meeting, an audio recording of which is in IWVGA’s possession, Navy Commander Benson called into the public meeting on behalf of the Navy and stated that the Navy has been willing to accept an allocation of 2,041 acre-feet per year and that the Navy submitted certain reports and letters to the IWVGA as to its historical water usage but that any determinations regarding the Navy’s water rights in the basin were reached by the IWVGA on its own, not pursuant to any claim asserted by the Navy. Thus, even the Navy does not support the conclusions advanced by the IWVGA about the Navy’s water rights.

The IWVGA also goes as far as asserting that the Navy’s water rights can be used by other entities at locations not within the boundaries of the base and not on the federally reserved property, and is taking actions (such as adopting ordinances encompassing this assertion that limit pumping amounts of other non-federal pumpers) to make sure this is accomplished. Such assertions and actions are contrary to established law. Non-Indian federal reserved water rights are subject to the “primary purpose” standard. (*U. S. v. New Mexico* (1978) 438 U.S. 696, 712-13; *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District* (9th Cir. 2017) 849 F.3d 1262, 1270.) The U.S. Supreme Court differentiated between primary and secondary purposes of the reservation, whereby the reserved water right only attaches to the primary purposes: the one directly associated with use of the water on the reserved land.



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Even on the reserved property, the reserved right does not attach to water that is only for a secondary purpose of the reservation. (*U. S. v. New Mexico, supra*, 438 U.S. at p. 702.) Water for secondary purposes must be appropriated in the same manner as any other appropriator. (*Id.* at p. 703.) The court explained that “the agencies responsible for administering the federal reservations have also recognized Congress’ intent to [appropriate funds to] acquire under state law any water not essential to the specific purposes of the reservation.” (*Ibid.*) Therefore, water uses by the Navy outside the boundaries of the base and reserved property cannot possibly be construed as a “primary” purpose to which the Navy’s water rights attach. By the same token, water uses on the base that are not directly associated with essential Navy activities are not “primary” under federal water law. If the Navy wishes to use basin water for those secondary purposes, it may appropriate and pay for that water from its appropriated funds, and should not be subsidized by monies collected from other pumpers in the basin. Unfortunately, it appears the IWVGA is intent on continuing to take actions contrary to the facts and law.

We appreciate the IWVGA’s consideration of these comments. Please contact me should you have any questions.

Sincerely,

Eric L. Garner  
of BEST BEST & KRIEGER LLP

cc: Burnell Blanchard, Searles Valley Minerals Inc.  
Camille Anderson, Searles Valley Minerals Inc.  
Jeff Dunn, Best Best & Krieger LLP  
Maya Mouawad, Best Best & Krieger LLP

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July 13, 2020  
File No. 18-1-021

**Sent via e-mail:** [apriln@iwvwd.org](mailto:apriln@iwvwd.org)  
[stevej@stetsonengineers.com](mailto:stevej@stetsonengineers.com)

Indian Wells Valley Groundwater Authority  
Board of Directors  
c/o Clerk of the Board  
500 W. Ridgecrest Blvd  
Ridgecrest, CA 93555

Mr. Steve Johnson, P.E.  
Indian Wells Valley Groundwater Authority Water Resources Manager  
Stetson Engineers Inc.  
861 S. Village Oaks Drive, Suite 100  
Covina, CA 91724

**SUBJECT: INDIAN WELLS VALLEY GROUNDWATER AUTHORITY TECHNICAL ADVISORY COMMITTEE MEMBER COMMENTS ON JUNE AND JULY AGENDA ITEMS REGARDING REPORTING POLICY FOR NEW GROUNDWATER WELLS, GROUNDWATER EXTRACTION FEE, SUSTAINABLE YIELD REPORT AND TRANSIENT POOL AND FALLOWING PROGRAM**

Dear Mr. Johnson:

This letter is being written on behalf of our client, Meadowbrook Dairy ("Meadowbrook"). This letter is submitted in response to the Indian Wells Valley Groundwater Authority ("GA" or "IWVGA") Water Resources Manager's ("WRM") request for input from Technical Advisory Committee ("TAC") members on the following items:

1. Resolution 05-20 – Establishing a Reporting Policy for All New Groundwater Extraction Wells in the Basin (dated June 18, 2020).
2. Ordinance 02-20 and Supporting Data Package amending Ordinance 02-18 Establishing Groundwater Extraction Fees and the Rules, Regulations and Procedures for their Imposition and Supporting Data Package Providing an Increased Pumping Fee (dated June 18, 2020).
3. Report on the Indian Wells Valley Groundwater Basin's Sustainable Yield of 7,650 Acre-feet (dated June 18, 2020).
4. Report on Transient Pool and Fallowing Program (dated June 18, 2020).

As mentioned several times during past TAC discussions, throughout the groundwater management development process implemented by the IWVGA, and even more recently in 2020 when the TAC has not had one meeting or the opportunity to provide meaningful input on any technical matters, the lack of

transparency that has occurred is very disappointing. We have a few general statements that we would like to include on this topic prior to providing comments on the items noted above:

- All four documents currently being reviewed were developed without any input from the PAC or TAC. As vice chair of the TAC, I offered to schedule a videoconference meetings with other TAC members in an attempt to meaningfully engage in discussing the subject items noted above, unfortunately this offer was denied and considered “not to be realistic”.
- Request for review times for PAC and TAC members has been extremely short. This issue has been mentioned many times by multiple PAC, TAC members as well as the general public, and it is very unfortunate that these issues have not been taken seriously or corrected by the GA and continue to occur.
- Given the known data gaps in the basin, and as recently noted by the request from the IWVGA to get access to perform aquifer testing on large agricultural wells along North Brown Road, discussions on sustainable yield and implementation of pumping fees should be postponed and addressed after these critical data gaps have been addressed, perhaps during the 5 year GSP update (which has also been discussed several times and is occurring in several other “critically overdrafted” basins in the State). This delay would allow additional time for more detailed information to be collected, analyzed, and reviewed by all stakeholders in the area and not just a select few (who obviously have preconceived ideas).
- A balanced water budget does not prove sustainability, it is only one component that helps identify aquifer interactions. The IWVGA needs to evaluate all sustainable management criteria. This specific item has been mentioned several times and has also been ignored and not corrected.
- Per GSP regulations, referencing a baseline model run is not determinative of current or projected basin management conditions. Basin-wide water budgets should include both historical, current, and projected (over a 50-year planning and implementation horizon, including climate change). The current baseline model does not represent an accurate baseline scenario.
- As a point of clarification, the 7,650 AFY was never agreed upon by the TAC. Multiple members of the TAC recommended using a range of values since the actual sustainability of the basin is unknown and will be until further basin characterization occurs. In addition, other sustainable management criteria should be utilized to better characterize how different areas of the aquifer respond to pumping. Only then should specific basin management decisions be developed by the stakeholders in those areas.
- DWR has not reviewed this GSP, and there are technical decisions currently being developed behind closed doors based on technically flawed information that will be identified by DWR during their review. These technical flaws will need to be addressed and resolved (in an transparent manner) prior to implementation of the GSP. LSCE and many other stakeholder representatives have submitted multiple letters to the GA and to DWR identifying GSP technical flaws.

## **IWVGA TAC COMMENTS - RESOLUTION 05-20 NEW WELL REQUIREMENTS – ESTABLISHING A REPORTING POLICY FOR ALL NEW GROUNDWATER EXTRACTION WELLS IN THE BASIN:**

- This resolution should not apply to replacement of existing wells.
- Page 5, paragraph 1, “California Water Code Section 10725, SGMA grants the Authority the power to establish regulations, requires that groundwater extraction wells within the Authority’s jurisdiction be formally registered with the Authority.
  - Per California Code 10726.4.2, “A limitation on extractions by a groundwater sustainability agency shall not be construed to be a final determination of rights to extract groundwater from the basin or any portion of the basin.”
  - Per California Code 10726.4.4.b, “This section does not authorize a groundwater sustainability agency to issue permits for the construction, modification, or abandonment of groundwater wells, except as authorized by a county with authority to issue those permits. A groundwater sustainability agency may request of the county, and the county shall consider, that the county forward permit requests for the construction of new groundwater wells, the enlarging of existing groundwater wells, and the reactivation of abandoned groundwater wells to the groundwater sustainability agency before permit approval.”
- The report describes “Material Injury” as “pumping or storage of groundwater that causes material physical harm to the Basin, any Subarea, or any Producer/Party, including, but not limited to, overdraft, degradation of water quality by introduction of contaminants to the aquifer by a Party and/or transmission of those introduced contaminants through the aquifer, liquefaction, land subsidence, and other material physical injury caused by elevated or lowered groundwater levels.”
  - What agency/authority/member will conduct a study to determine if a new well will cause a material injury?
  - How will the material injury be evaluated?
  - What is an acceptable/inacceptable level of Material Injury?
  - Will the public get the opportunity to review the new well request?
  - Will the public get the opportunity to review the study regarding the new well’s potential material injury?
  - Who has the final say over the new well request?
  - What assurances will landowners who are not represented by the current IWVGA have that their request will be honestly technically evaluated without bias?
  - Are there any public objections that may put a hold or rejection to the new well request?
- Page 4, paragraph 4, last sentence “If fully mitigated, Material Injury shall no longer be considered to be occurring.” The IWVGA must expand on this point.
  - When is a Material Injury fully mitigated?

- What are the criteria used to determine when a Material Injury has been fully mitigated?
- Page 6, paragraph 6, line 2, “To complete the monthly production reporting form...”, water flow meter reading within 5 days of the first day of each month should be considered sufficient. The full volume of water will be captured by the subsequent month so that all water is accounted for. This will provide some flexibility in the flow meter reading schedule.

**IWVGA TAC COMMENTS - ORDINANCE 02-20 – AMENDING ORDINANCE NO. 02-18 ESTABLISHING GROUNDWATER EXTRACTION FEES AND THE RULES, REGULATIONS AND PROCEDURES FOR THEIR IMPOSITION AND SUPPORTING DATA PACKAGE PROVIDING FOR AN INCREASE PUMPING FEE**

1. According to the GA, from September 2018 through August 2020, the initial \$30/AF fee was expected to generate \$1,522,384 (approximately \$63,500/month). Through May 2020, the IWVGA reported having collected \$750,000, about \$36,000/month or a little over half what was initially anticipated.
  - a. Will the proposed increase in fees potentially trigger more “entities” not wanting to pay the fee, in essence creating a smaller and smaller pool of pumpers to pay the amount needed to finance SGMA GSP development costs that have already been incurred?
  - b. Why didn’t the IWVGA develop a program so that all beneficial users (including federal agencies and de minimis users) have the opportunity to support the funding program.
2. Cost Itemization Table Comments
  - a. Meadowbrook Dairy objected to the initial, extensive GSP Prep budget of \$3 million. Please confirm whether any of the Stetson cost items in Rows 3 through 10 were not already included in that \$3 million budget.
  - b. Some of the IWVGA Admin Costs appear irrelevant or redundant and should not be included such as:
    - i. GSA Board Meetings (what constitutes these costs?)
    - ii. Financial Management, Budget Development and Admin (appears redundant and overlapping)
    - iii. Insurance (wouldn’t insurance be required regardless of SGMA activities?)
    - iv. Legal Costs - why should all stakeholder help pay these? Seems as if these should not be included as part of GSP development as they are for future projected expenses not directly related to GSP development that has already occurred.
    - v. Reserve: If this has not been revised and was already accounted for in the original fees, why is it being counted again as part of the additional expenditure amount?
  - c. Under Additional Tasks, many of these Stetson tasks should have been part of the GSP development cost of \$3 million or appear unrelated to what is required to be in a GSP and pertain instead to GSP projects and management actions, such as:

- i. GSP management, workshop/meetings, coordination with DWR (should have been included originally)
  - ii. Allocation process development, pumping verification, following program, brackish water study coordination, imported water, sustainable yield allocation, annual report, audit, rules/regulations (how are these relevant to GSP development?)
3. County and IWVWD Loans: were there terms for repayment of these loans over a period of time that is supposed to correlate to the term of this supplemental fee of one year? Or did the terms allow for a longer repayment period?
4. How is the Prop 1 grant match of \$1.5 million allocated among the various parties? Should that be separate from this fee increase or accounted for in the “in kind services” amounts?
5. LSCE has not seen a GSP development cost that is this grossly over inflated in all the involvement we have had in the Central Valley subbasins that even approach half of what is estimated here in the \$6 million plus amount. The fee structure does not incentivize fiscal responsibility of the IWVGA. The voting power of the GSA should be weighted in favor of the entities being levied the most.
6. Page 1, Discussion, paragraph 2, sentence 2: “due to less than estimate pumping but those subject to the fee” – what was the estimated pumpage, and what is the actual pumpage?
7. Page 1, Discussion, paragraph 2, sentence 3: “additional studies and costs to develop the GSP” – who’s fault is that? Why wasn’t it completed prior to the GSP? What are those studies? How does the IWVGA justify moving forward with aggressive GSP implementation measures (fallowing, transient pool, allocating the entire basin to the Navy) while simultaneously recognizing the GSP is not complete?
8. Page 2, Paragraph 2, when is the Public Engagement?
9. Page 2, Paragraph 2, line 5, the GSA shall make the data available to the public for review and comments at a minimum 20 days prior to the public meeting.
10. Page 2, Paragraph 4, line 7, “legal costs, originally estimated at \$200,000...”
  - a. All parties have acquired additional legal costs to review and discuss the GSP. Shall the legal cost for all pumpers/members be included and distributed evenly?
11. Page 2, Paragraph 4, line 5, “Additional Fees needed to complete the GSP...”
  - b. The Additional Tasks are listed on Page 4 within the Budget Table. Stetson is the only consultant listed. Why are the majority of Stetson’s costs round numbers?
12. Page 4, Stetson IWVGA/TAC/PAC Coordination.
  - a. The original estimate was \$144,250. The revised estimate is \$543,677. This is an increase of 277%. Please justify this cost, especially considering the consistent failure of PAC and TAC engagement by the IWVGA



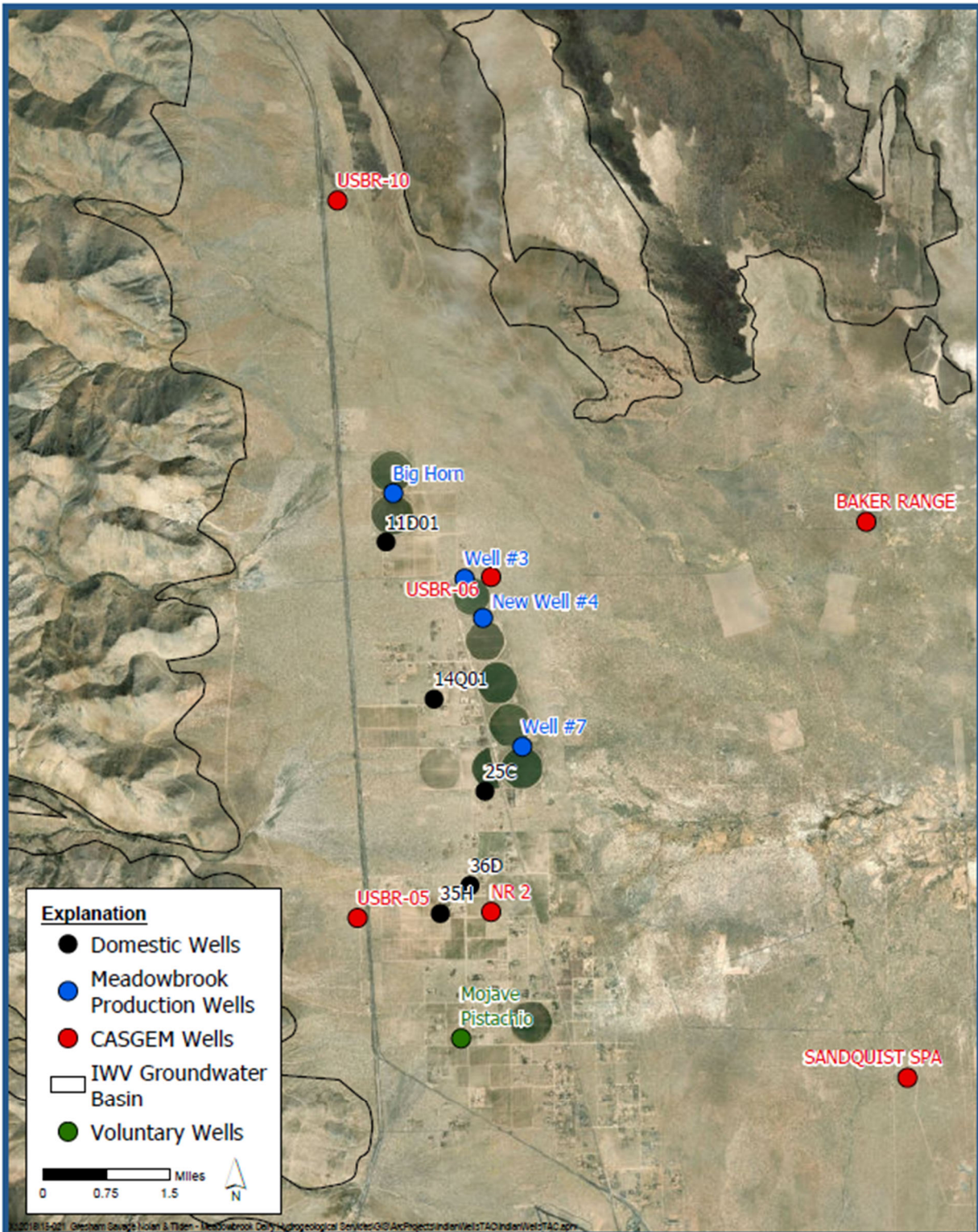
- b. All parties have spent more money than originally estimated for the TAC/PAC Coordination. Should the consultant fees and legal fees for all pumpers/members be included?
13. Page 4, City of Ridgecrest Reimbursable Costs
  - a. What “services and facilities” (page 2, paragraph 4, lines 8 and 9) did the City provide that cost \$210,466? Provide breakdown of cost.
  - b. Does the IWVGA foresee any additional need for the City’s services and facilities?
  - c. Page 29, City of Ridgecrest Reimbursable Costs – Budget Breakdown: the reimbursement cost for 2016 through 2019 is \$210,465.93, which included Total Attorney Costs, Total Chamber use costs, and Total IT Support.
    - i. Are the legal fees considered “services”? The IWVGA should not reimburse these fees. Other IWVGA member agencies have paid their own attorney fees as in kind services. The City should do the same.
    - ii. Page 2, paragraph 4, line 7, the legal fees are a separate line item. Has the Ordinance double counted the legal fees?
14. Page 5, paragraph 2, line 1, provide justification for the stated groundwater pumped volume of 10,000 AF.
15. Page 6, paragraph 2, line 1: “commencing on the first day of each month...,” it seems like it would be sufficient if the pumper/member read and reported within 5 days of the first day of the month. This would provide some flexibility to the pumpers/members.
16. Page 6, paragraph 5, line 6, “interest at a rate of one (1) percent per...”
  - a. When the IWVGA collects the penalty fees, where does this money go? What account/fund/budgetary-line-item tracks this sum of money?
17. The IWVGSP is the most expensive GSP in the state, the costs to develop this GSP are out of control, the technical analysis does not align with SGMA, which all are a direct representation of the lack of management and leadership of the IWVGA. Many members of the PAC (including Judy Decker), the TAC and the public have several times recommended that a finance committee be formed, and again unfortunately the IWVGA has ignored these recommendations.

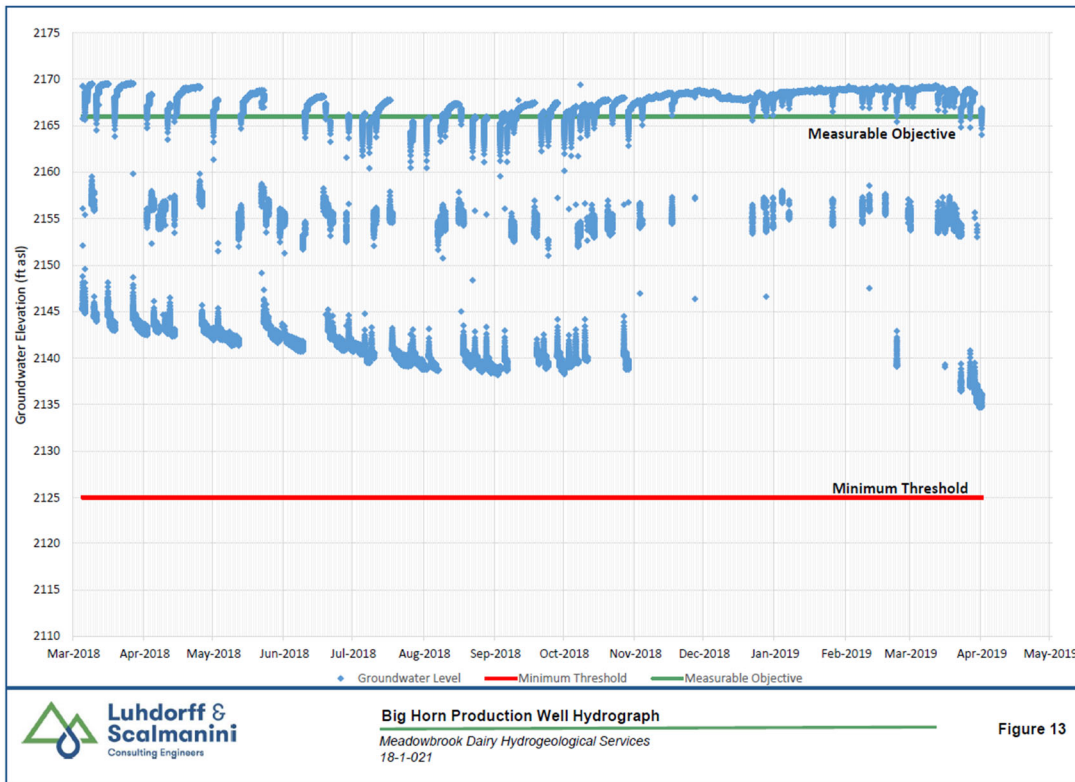
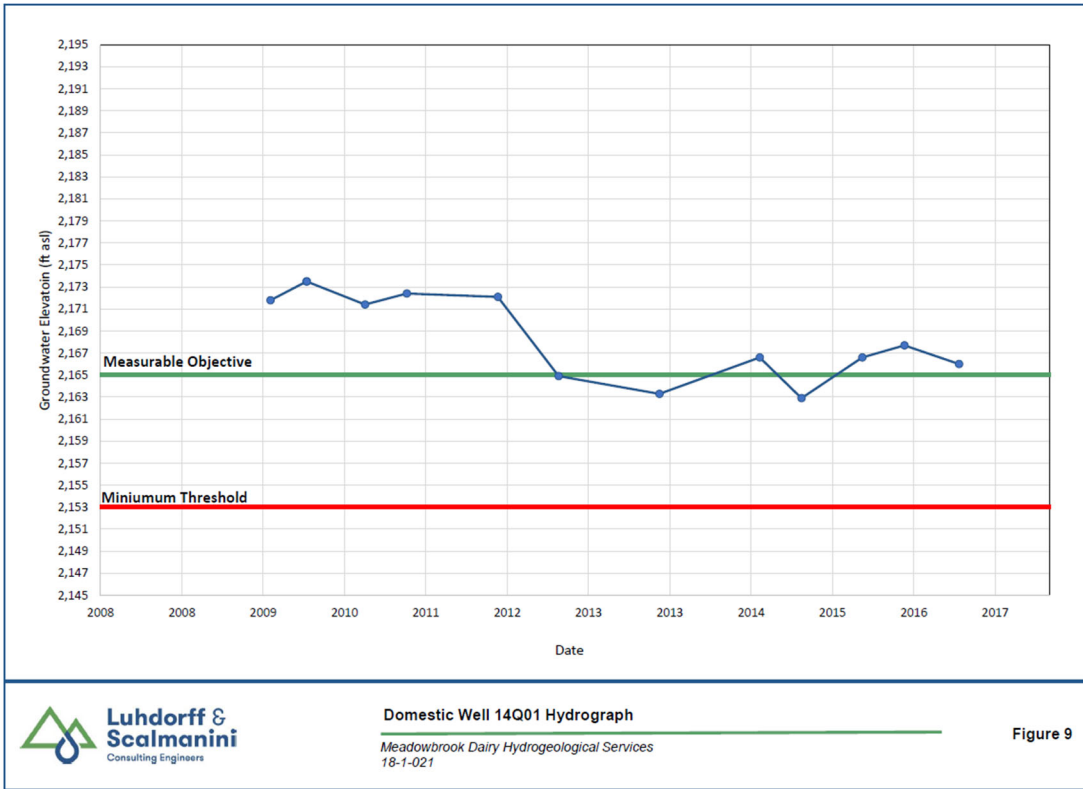
## **IWVGA TAC COMMENTS - REPORT ON TRANSIENT POOL AND FALLOWING PROGRAM FINAL DRAFT 6-14-20**

- Page 1, second paragraph. Please provide a reference for the statement “The IWVGB, which has been in an overdraft condition for nearly 6 decades, serves as the sole supply of potable water for the Indian Wells Valley community and NAWS China Lake”
- Page 1, second paragraph – Please include all groundwater users including more specific details on how many farms use IWVGB to supply their agricultural operations and the crops.
- Page 2, table. Please include a Table number. Also, in Column 2 (Estimated Volume (AFY), please include a reference to subscript 1 (or remove). In addition, estimate volume should be

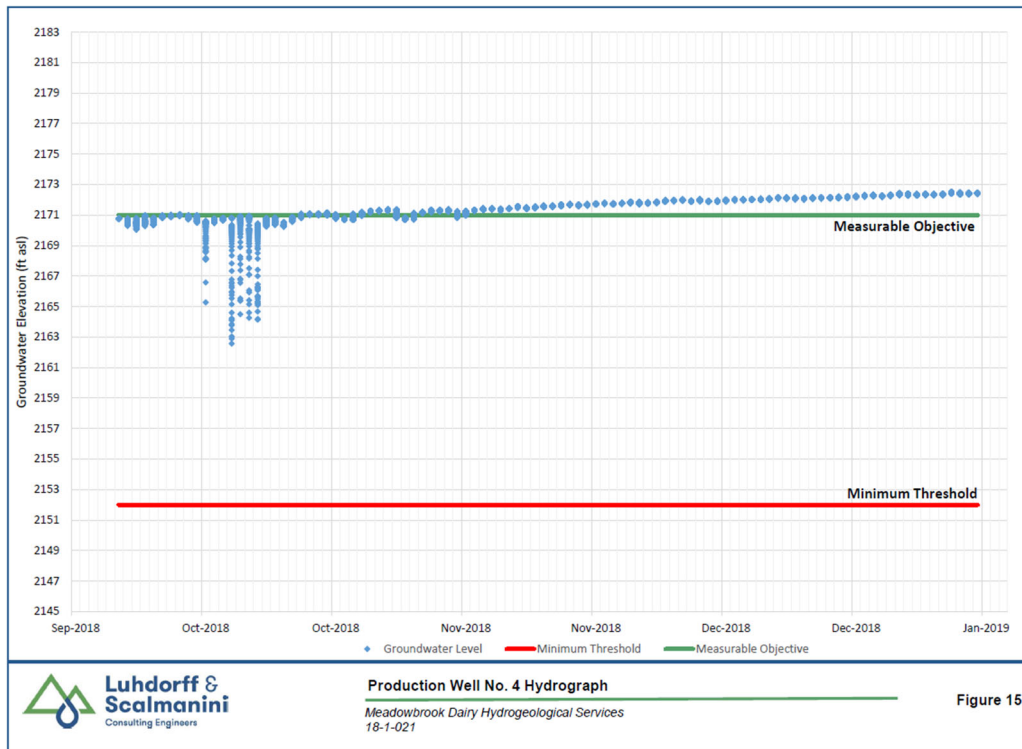
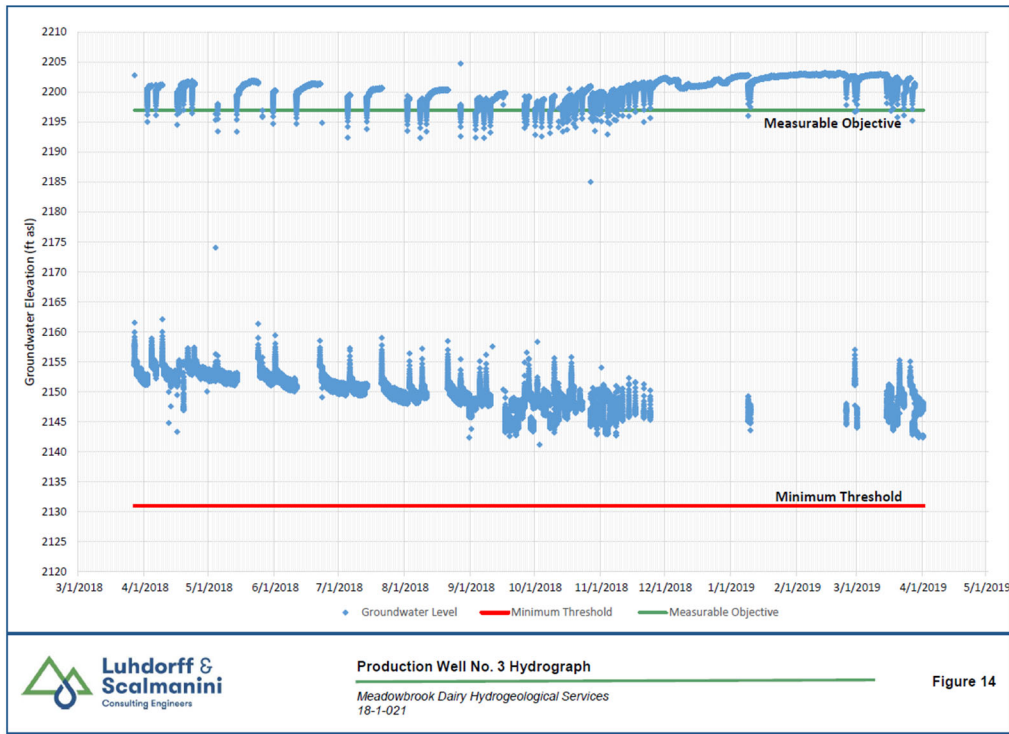
presented as a range and not assigned a single value as estimated recharge volumes will vary annually. Please also provide mountain front recharge contribution from both the IWVGB and the El Paso GB.

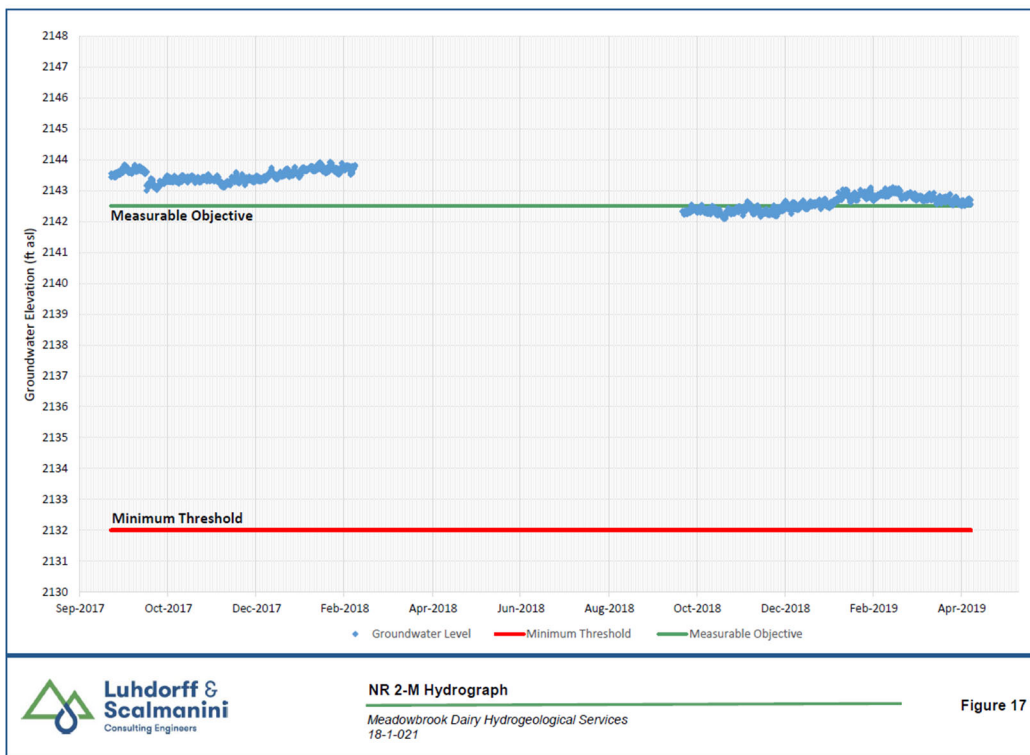
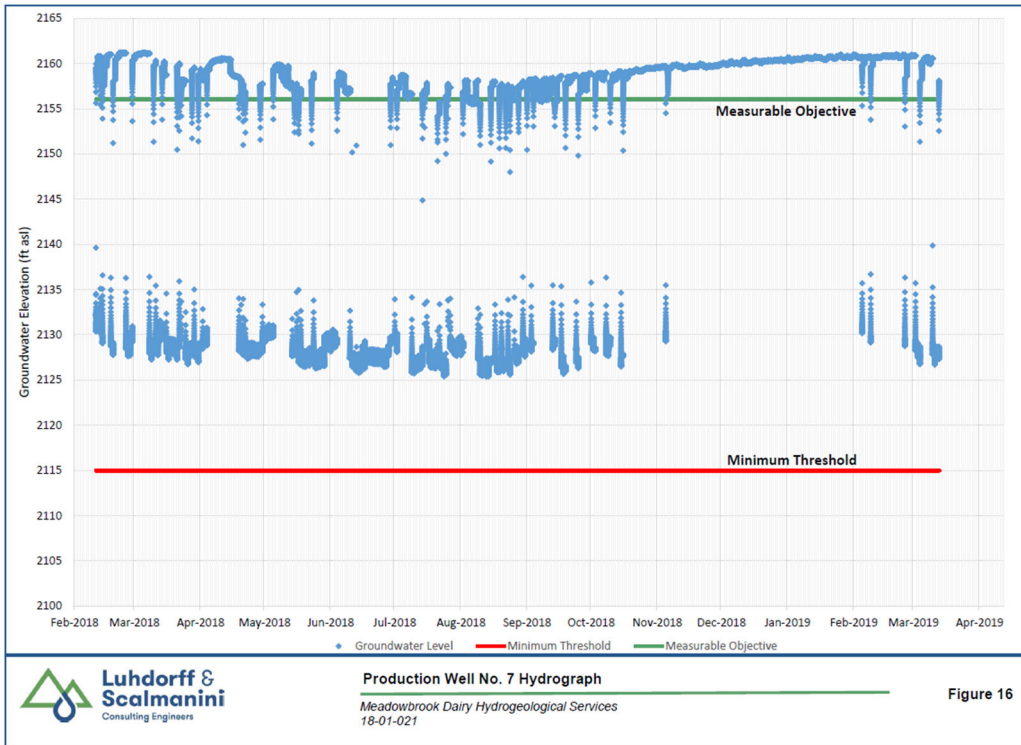
- Page 2, second paragraph. Please remove the phrase “After careful public consideration” as this is not a correct statement
- Page 2, third paragraph. Please include statement that acknowledges that voluntary pumping and IWV Cooperative Group monitoring information has not been verified.
- Page 2, fourth paragraph. As discussed, several times, the 7,650 AF annual recharge estimate is incorrect and will vary from year to year. Groundwater elevation information should be utilized to better understand the fluctuations in storage. Please include a statement to reflect the use of groundwater elevation change.
- Page 3, second paragraph, second sentence, please include a reference figure on where these changes in groundwater levels are occurring, and please also estimate the approximate sustainable yield in these specific areas, based upon sustainable management criteria supported by best available science and information.
- Page 4, first paragraph – Again, why is the GA referencing a singular sustainable yield value? Instead, all relevant sustainable management criteria information including groundwater elevation changes should be factored into the analysis. There are specific areas in the basin (i.e. in the Northwest Area) that currently operate at the sustainable yield for that area (i.e. groundwater levels have been generally stabilizing for the last few years).
- Please **reference figures** below on the subsequent pages that illustrate the applicable well(s) location, hydrographs (groundwater levels) that have been stable for the last several years, and why additional sustainability indicators (as in these examples groundwater levels and the applicable measurable objective and measurable threshold) that could also be utilized in helping to understand the sustainable yield of the basin. This information was provided to IWVGA staff, but unfortunately was ignored. The information and data demonstrate there is no technically justified reason to force Meadowbrook to fallow its land or to force it to pay for imported water to offset its pumping.

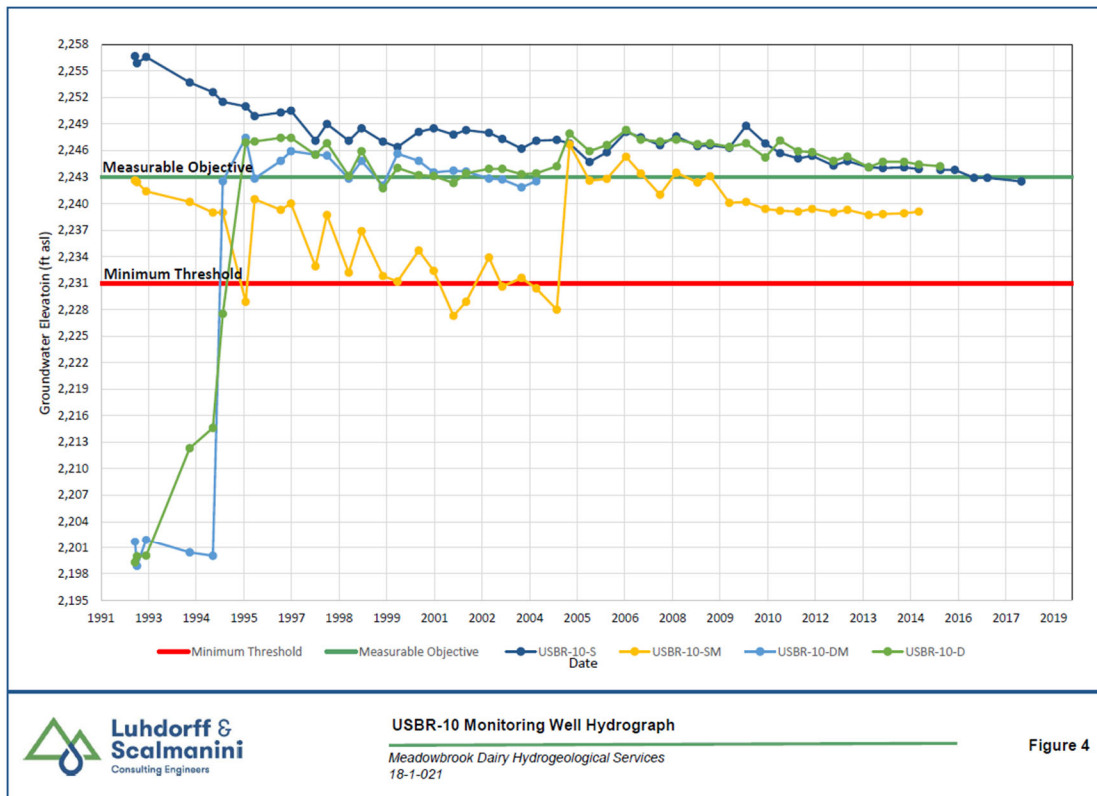
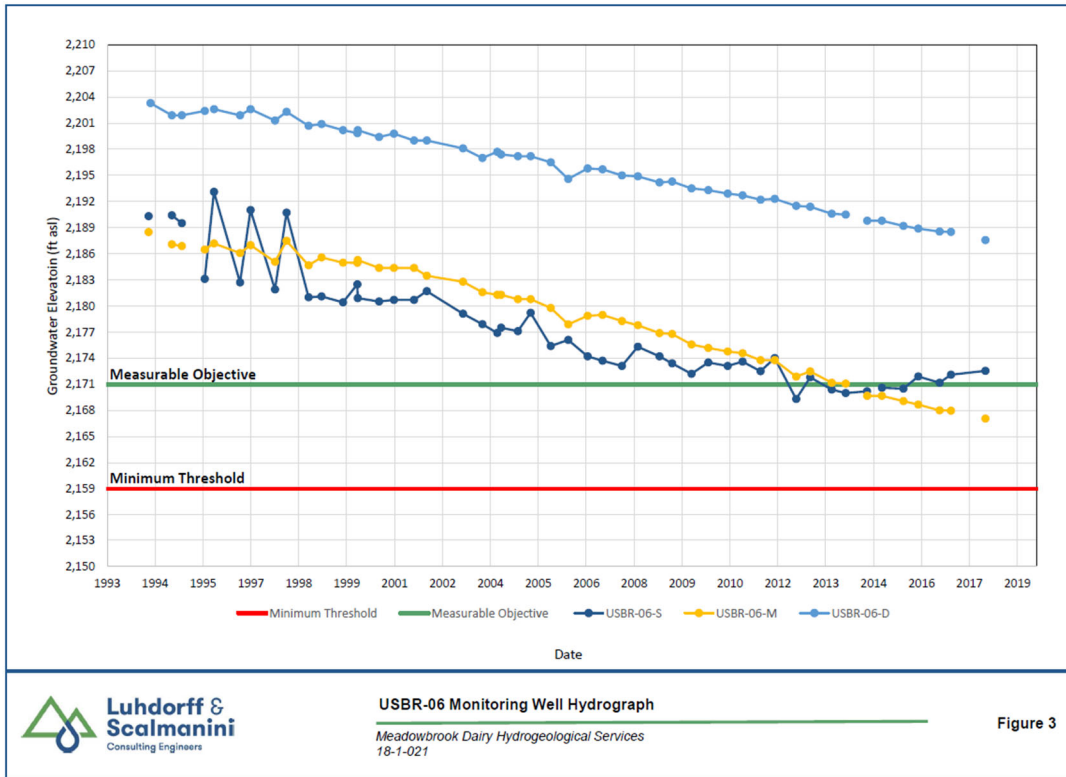




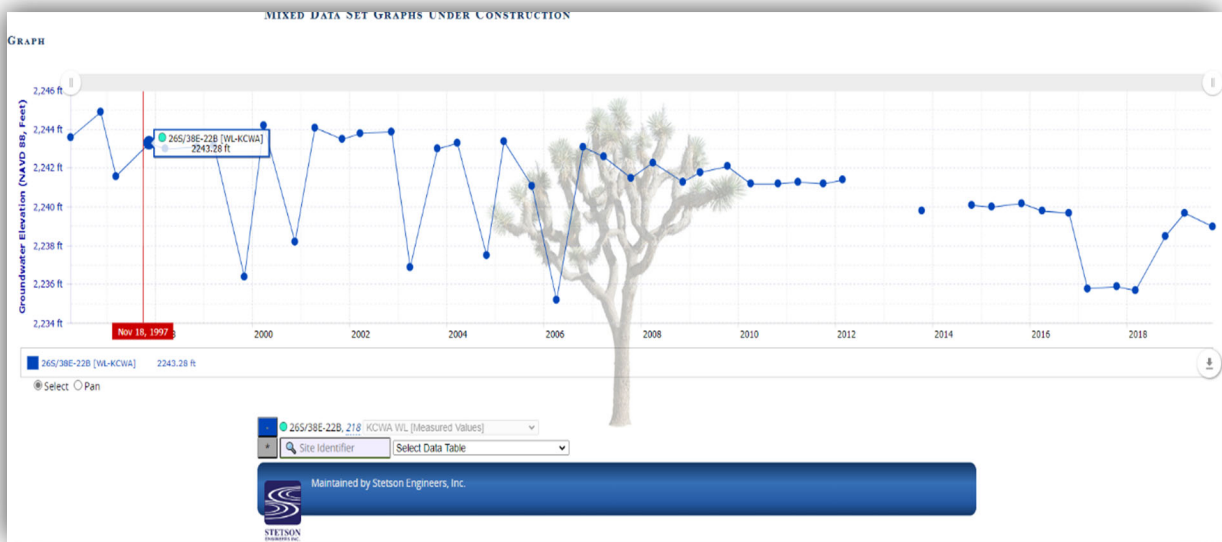






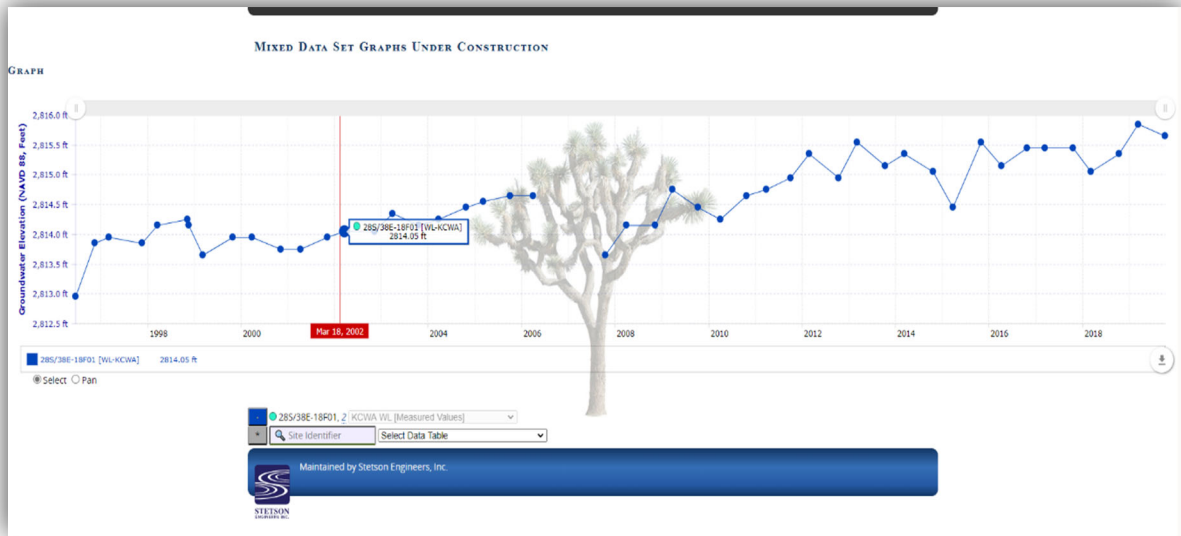


- Previous work conducted by Stetson Engineers prior to working for the GA together with other IWVGA member agency technical representatives, estimated vast sustainable yield within the northwest area alone where Meadowbrook produces groundwater, that could sustain thousands of acre feet of pumping each year. Again, more than enough justification to implement the management area concept that was continually ignored by this GA. The IWVGA and WRM have ignored this data and information.
- In addition, hydrographs compiled by Stetson illustrate that domestic water levels in the Northwest area have been stable, consistent with the point Meadowbrook has repeatedly made by the GA has ignored. (see **Figure below**). Amazingly, the GA instead demands agriculture be fallowed in the name of protecting shallow wells when the GA has also not even conducted the very technical work it admits is required to understand and mitigate shallow wells.



- Page 4, second paragraph. Based on preliminary analysis by others (LSCE, 2020), during some years (i.e. 2019), there could be up to 11,000 AFY of groundwater entering the IWVGB, and up to 6,000 AFY entering into the El Paso Area. As illustrated below, groundwater levels in El Paso area have been increasing (see **Figure below**). Given these quantities of water, and if sustainable management criteria were factored into the analysis, demand reduction could meet supply demands.





- Page 4, third paragraph. The GSP Baseline model run is not an accurate baseline run or consistent with SGMA or the GSP Regulations. Instead, it is being politically used by the IWVGA as a scare tactic to attempt to justify taking its unreasonable and technically unjustified management actions.
- The Transient pool concept was not developed through a transparent process and was developed by entities that have a preconceived self-imposed mandate to protect to only protect the Navy.
- Page 4, fourth paragraph. The current model was developed by the Navy without any oversight (lack of transparency) by other groundwater stakeholders in the basin. The model has not been properly peer-reviewed by a third-party entity and is therefore not considered technically useful to all stakeholders in the basin. In addition, the current model does not factor in climate change into future model predictions (as required by DWR) and therefore the “ramping-down” is biased towards current model baseline conditions. Also, why is ramping down occurring only for agricultural entities? Please explain why non-ag stakeholders made this decision without developing or utilizing future model scenarios that would represent all stakeholders in the basin.
- Page 5, second paragraph. Please provide additional details on all calculations, as this information as presented now is not clear to the public on how the 51,000 AF was artificially developed and did not take into consideration other sustainable management criteria when developed.
- Page 5, second paragraph, last sentence. Regarding Wet years, please provide details on how the current model has the ability to simulate Wet years. In addition, during the Wet years, what will the change to the current GA estimate of 7,650 AFY be and how will that water be distributed to all stakeholders in the basin?
- Page 5, third paragraph. SGMA law does not determine a five-year base period. Please explain how the GA derived the base period. This is a term frequently utilized in adjudicated groundwater basins, but SGMA does not authorize the GA to determine water rights.

- Page 6, first paragraph. There was an attempt by TAC to utilize a management area concept, which would have allowed specific stakeholders in an identified management area to develop specific land management changes (e.g. changes in crop types), but this approach was completely dismissed by the GA.
- Page 6, fifth paragraph. The reference shallow well mitigation program should be been postponed (like most other GSP's in the state) until the number of shallow well users are identified (currently it is considered less than conservative estimate) through the data gap analysis process. Therefore, the current shallow well mitigation program costs developed are not considered accurate or applicable. This program, and a re-evaluation of fees should occur during the 5-year GSP update. Based on this lack of knowledge, all other related fees (i.e. development/engineering costs, total administration and implementation/capital costs and number of potentially impacted shallow wells) and related extraction fees are not relevant at this time and should be discussed AFTER data gaps have been filled.
- Page 7, second paragraph. Please provide additional details in this document on how the verification volumes of pumping occurred.
- Page 8, first paragraph. What is the proposed fee for IWVGA to purchase transient pool allotment water, and given the current financial burden, how does the IWVGA intend to generate revenue to purchase this water?
- Page 9, last paragraph. The valuation of the transient pool allocations is vague.

#### **IWVGA TAC COMMENTS - SUSTAINABLE YIELD REPORT FINAL DRAFT 6-14-20**

- Page 1, first paragraph, first sentence. The IWVGA determined the “sustainable yield” based solely on information provided to them by the WRM, without incorporating technical content from the TAC and others. Sustainability can be achieved by other means (i.e. development of management areas, allocation of pumping to all users, not just a select few, etc.) Several times during the development of the GSP, TAC members requested the WRM evaluate the use of management areas. Several members of the TAC supported this concept as it could define management areas based on differences in water use sector, water source type, geology, and aquifer characteristics. The proposed management areas could have been assigned different minimum thresholds and measurable objectives to reflect actual basin conditions in each area, taking a more refined and technically supportable approach. However, the GA failed to address this concept and therefore rejected the idea without justification or any public discussion. Below is a summary of benefits in using management areas that were identified by TAC members but never presented to or evaluated by the GA, resulting in a GSP that does not represent all groundwater users in the basin.
  - Identify areas that have unique characteristics and management challenges for focused groundwater management
  - Develop minimum thresholds/measurable objectives with different methodology than the rest of the basin or other management areas with potentially denser monitoring, if needed
  - Can set up separate projects and management actions and fees focused only on the management area

- Highlight specific management areas and their characteristic to the public and the state
- Page 1, fourth paragraph, item #2 and #3. As a major stakeholder in the basin, the Navy could offer to further conserve, reduce pumping or apply federal funding resources to support sustainability for all. The GA does not appear to have considered or requested this. Unfortunately, the current dynamic of the GA has made it very clear that its sole priority is to protect the Navy. Other stakeholders have not been adequately represented well throughout the entire GSP development process.
- Page 2, second paragraph, third sentence. The IWVGA board has relied entirely on the WRM to provide them information on the annual “sustainable yield”. Input from at least one of the referenced “separate committees” (the TAC) was predominately ignored. The proposed sustainability value of 7,650 AFY was pre-determined by utilizing a model, funded and controlled by the NAVY. No other stakeholders in the basin were allowed to review the model code and therefore the current range presented is not considered representative of the actual basin sustainable yield. The sustainable yield is only one component that needs to be addressed in the GSP and GSP implementation actions, and it should be addressed in terms of ranges reflecting water year type (as determined by several other authors through previous studies) rather than as a static figure. The sustainable yield should be a derivative of sustainability management criteria (i.e. water levels, water quality, etc.). In addition, as noted previously (including by Stetson Engineers) the annual recharge could in the Northwest Basin area alone could be and is likely much greater than 7,650 AFY. Sustainable Management Criteria should be utilized to determine sustainability, and not just outputs from a biased model that was developed without valuable input from all stakeholders in the basin.
- Page 3, first paragraph, item #1. Natural recharge will change depending on the water year type and should be incorporated into any future analysis.
- Page 3, first paragraph, item #3. Current estimated Basin outflows are not really understood (i.e. there are several pumpers that have not reported pumping, locations of all de-minimums pumpers are not known).
- Page 3, first paragraph, item #4. As stated, the reported statement that basin groundwater levels are dropping by approximately 0.5 to 2.5 feet would suggest that certain areas of the basin respond to pumping differently and therefore different management areas should have been implemented to address the range of pumping and impacts. It should also be noted, that in certain areas of the basin (El Paso, the northwest area in which Meadowbrook is located) water levels have remained unchanged and, in some cases, increased.
- Page 3, first paragraph, item #5. The GSP’s model baseline is not a correct baseline, as noted above and in LSCE’s prior comment letters submitted to the GA and to DWR.
- Page 3, first paragraph, item #6. There are landowners that have property located less than 50 miles from potential imported water supplies, but unfortunately these landowners do not have adequate representation in the basin, so their opinions have largely been ignored.
- Page 3, first paragraph, item #7. Regardless of the IWVGA’s ability to regulate federal lands, there are options were the federal lands could volunteer to implement similar conservation and allocations management activities, but unfortunately the IWVGA board members have

attempted only to protect the Navy at all other pumpers' expense and has not explored such options.

- Page 3, first paragraph, item #8. All pumping information provided to the IWV Cooperative Groundwater Management Group should be considered estimates only, and not utilized for planning purposes as it has not been verified.
- Page 3, last paragraph, second sentence. Overdraft conditions vary depending on the location within the basin, again an opportunity to implement management areas should have been developed and not ignored by this GA.
- Page 3, last paragraph, last sentence. It may be reasonable to assume in some areas water quality may decline, but in other areas, water quality has not changed that much. Again, an excellent opportunity to develop specific management areas that would have allowed a more systematic approach to managing areas that have water quality issues that exceed minimum thresholds. Notably, the GA did not establish any sustainable management criteria at the monitoring location near Meadowbrook's wells, citing a lack of GA data.
- Page 4, first paragraph. Last sentence. An illustration of a prime example of how this GA has decided to penalize large-scale agriculture and attempt to drive them out of the basin. Again, if management areas had been at least considered, these entities could have implemented land use changes (if need be), including the reduction in pumping.
- Page 7, first paragraph, last sentence. Please clarify whether and how IWVGA anticipates NAWS to help cover costs associated with importation? What options have been or are being explored? Which options appear feasible, and how feasible?
- Page 7, second paragraph. Given the unique circumstances of the Basin, the federal government should have provided this information, not only to help better understand the hydrogeologic conditions beneath their property, but also as good groundwater stewards of the basin and to help promote future over prosperity of the area.
- Page 7, third paragraph. Has there been an independent third-party peer-review of this report? If so, please provide that report to the TAC. If not, then please have an independent review prepared prior to making any further groundwater management decisions designed to drive entities out of the basin if they are either not affiliated with the Navy or do not have a rate payer funding stream (i.e. IWVWD).
- Page 8, third paragraph. Please provide all relevant pumping records (similar format as the pumping verification reporting required by other pumpers in the basin) to support the GA's findings and assumptions relative to the reported pumping volumes presented by the Navy.
- Page 8, last paragraph. Please include population information on Figure 1 (i.e. what was the relative population of the City during this same time period?).
- Page 10, Figure 2. The sustainable yield varies annually, so please adjust this value to be more represent the known variations in sustainable yield.
- Page 10, last paragraph. Alternative options could have been discussed to help address the significant water production issues with the Navy. Please explain why alternative discussions did not occur, and who were the technically competent people that decided not to try to think

outside the box and develop an approach that would benefit all users in the basin and not just a select few (who coincidentally are represented on the board).

- Page 12, last paragraph. Reference to 117% of the Basin's sustainable use should be removed. As stated, several times over the last few years, the sustainable yield values change over time, and change in storage is just one of the sustainable management's criteria that needs to be addressed. Any further discussion on sustainable yield must also include the other sustainable management criteria.

Thank you for considering our comments and recommendations. Despite the GA's previous handling of TAC and PAC comments, we expect that responses to all comments from all letters and the public for this review will be reviewed, categorized, and addressed in writing.

Sincerely,

LUHDORFF & SCALMANINI  
CONSULTING ENGINEERS

A handwritten signature in blue ink, appearing to read 'Eddy Teasdale', with a long horizontal stroke extending to the right.

Eddy Teasdale, P.G., C.HG  
Supervising Hydrogeologist

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July 13, 2020

**VIA Email**

Indian Wells Valley Groundwater Authority  
Board of Directors  
c/o Clerk of the Board [apriln@iwwvd.com]  
500 W. Ridgecrest Blvd  
Ridgecrest, CA 93555

Re: Meadowbrook Dairy Comments Regarding Reporting Policy for New Groundwater Wells, Groundwater Extraction Fee, Sustainable Yield Report and Transient Pool and Fallowing Program, all dated June 18, 2020

Dear IWVGA Board Members:

On behalf our client, Meadowbrook Dairy (“Meadowbrook”), we write to express significant concerns and to provide comments on each of the following items that were released by the Indian Wells Valley Groundwater Authority (“IWVGA” or “Groundwater Authority”) at its June board meeting dated June 18, 2020, which are also scheduled to be considered for adoption at its July 16, 2020 Board Meeting or a subsequent IWVGA Board Meeting:

- Resolution 05-20 – Establishing a Reporting Policy For All New Groundwater Extraction Wells in The Basin
- Ordinance No. 02-20 – GSP Pump Fee Increase Adjustment
- IWVGA Sustainable Yield Report
- IWVGA Transient Pool And Fallowing Program

Meadowbrook reserves the right to provide further comments on each of these items as further revisions or drafts are released or considered, as well as on the Replenishment Fee and Proposition 218 Engineer’s Report that was also released by the IWVGA in June.

First, as general comment, the process of receiving Policy Advisory Committee (“PAC”) and Technical Advisory Committee (“TAC”) comments on these critical items

has been woefully inadequate. Rather than finding a way to hold a PAC and TAC meeting to facilitate real-time, engaged discussion, the Water Resources Manager (“WRM”) directed TAC and PAC members to send letters to the WRM merely to be posted on the IWVGA website, and to merely bring their comments to the July Groundwater Authority meeting “along with the public”. **(Exhibit 1)**.

The TAC Vice Chair offered to host an online TAC meeting. The WRM instead indicated that “after discussing with GA legal counsel” and “in person PAC/TAC meeting, Zoom or conference call does not appear to be realistic at this time.”

Why not? What was “not realistic”? IWVGA General Counsel has indicated publicly that the timing for adopting the various reports is a *policy* matter and *not a legal matter*. The IWVGA has not adopted or discussed publicly any *policy* driving these aggressive timelines. The IWVGA is ignoring the very committees it promised to meaningfully engage on substantive policy and technical GSP elements. Instead, the IWVGA is silencing stakeholders by refusing to hold meaningful TAC and PAC meetings on what are the most controversial issues of the GSP implementation.

Each IWVGA Board Member has declared publicly that they value the PAC and TAC, that they want to engage them, that they want their input. At one point, IWVGA Chair Gleason said the TAC would be the “workhorse” in developing the GSP (which, has since been shown time and again not to be the case). Yet, the IWVGA Board Members appear now to stand idly by and allow staff to bypass PAC and TAC meetings on matters of critical importance, effectively taking advantage of unprecedented COVID-19 pandemic conditions that have severely debilitated public engagement.

The IWVGA should have found a way to hold at least one PAC and TAC meeting on each of these critical GSP implementation matters. The City of Ridgecrest—one of the IWVGA Member agencies—has held meetings with in-person public attendance in June (the evening before the IWVGA June meeting, in fact). Instead, the IWVGA has not authorized a single PAC or TAC meeting since the GSP was adopted in January. The only significant recent interaction between the IWVGA and its committees was, notably, the IWVGA’s removal of targeted PAC/TAC members in a clearly orchestrated public display of disaffection for certain Agricultural representatives.

The actions of the IWVGA during the rollout of these GSP implementation items in 2020 demonstrate that the IWVGA does not actually seek meaningful public engagement or input from its Policy and Technical Advisory Committees.



**I. RESOLUTION 05-20 – ESTABLISHING A REPORTING POLICY FOR ALL NEW GROUNDWATER EXTRACTION WELLS IN THE BASIN**

Meadowbrook previously submitted written comments on this item dated June 17, 2020, which are attached again here for reference. **(Exhibit 2)**. Meadowbrook also joins and incorporates the comments made by Searles Valley Minerals in its letter dated June 18, 2020, and by Mojave Pistachio in its letter dated June 18, 2020.

The proposed resolution exceeds the authority of the IWVGA. California *Water Code* section 10726.4(b) provides that counties retain jurisdiction for groundwater well permitting, and that a groundwater sustainability agency may not limit construction of groundwater wells in a manner that is not “consistent with the applicable elements of the city or county general plan, unless there is insufficient sustainable yield in the basin to serve a land use designated in the city or county general plan.” A groundwater sustainability agency “may request of the county, and the county shall consider, that the county forward permit requests for the construction of new groundwater wells” but it may not force a county to do so. The proposed resolution fails to address how such coordination would occur. If adopted, it would result in an onerous, confusing and inconsistent regulatory quandary for new well applications.

Since the IWVGA has determined (improperly and without supporting law or evidence) that the “entire sustainable yield” belongs to the Navy, is it the policy of the IWVGA that there is “insufficient sustainable yield in the basin” to serve all other land use designations in the City and Counties’ general plans, such that no new wells may be constructed other than for the Navy? The policy makes no attempt to address land use general plan consistency requirements.

The IWVGA’s application of “sustainable yield” is contrary to SGMA. As detailed below and extensively in Meadowbrook’s prior letters to the IWVGA, sustainable yield is tied to avoiding specifically defined undesirable results. The IWVGA and GSP lack technical data to indicate the presence of undesirable results near Meadowbrook’s wells. In fact, actual data indicates water levels, for example, are already operating at or above the GSP’s identified measurable objectives (and, consequently, the minimum thresholds) at the nearest GSP monitoring locations. How then, does the IWVGA purport to reconcile its misapplication of SGMA “sustainable yield” with respect to this proposed new well policy?

As detailed in Meadowbrook’s prior correspondence to the IWVGA, the “material injury” component of the policy is vague, overbroad, and inconsistent with SGMA.

Rather, the language is simply copied and pasted from rules and regulations imposed in adjudicated groundwater basins where SGMA does not apply and the adjudication judgment governs.<sup>1</sup> The policy is also vague and should be clarified that it does not apply to replacement wells.

The IWVGA has received numerous comments and concerns regarding needed revisions to the policy. It must be significantly revised and presented for further evaluation prior to being considered for adoption.

## **II. ORDINANCE NO. 02-20 – GSP PUMP FEE INCREASE**

The proposed increase to the “GSP Development Fee” shocks the conscience. If adopted, it will be borne largely and inequitably by the very agricultural pumpers that the GSP is expressly designed to eradicate. Meadowbrook submitted multiple, extensive comment letters to the IWVGA when the current \$30 fee was adopted in 2018. Those comments were ignored by the IWVGA. This proposed fee increase suffers from many of the same critical flaws.

The IWV Water District representative on the IWVGA declared the increase in fees was shocking and concerning. Yet, none of the IWVGA Board Members have required staff to provide (at least not to the public) a detailed explanation of each line item detailing the need, appropriateness and basis for each cost category. It is, of course, much more convenient to ignore such questions when it’s agricultural or district ratepayer (i.e. “other people’s”) money being spent with reckless abandon.

This GSP is among the most, if not the most, expensive GSP in the state of California. IWVGA General Counsel attempted to minimize this fact at the June meeting by asserting other GSPs have “hidden costs” because of the way they are administratively structured. While it is notable that Joint Powers Authorities in Kern County have been found by the Grand Jury to be rife with opaque and bloated budgets (see prior Meadowbrook letters in the record to which the IWVGA also never responded), IWVGA General Counsel has failed to point to any other specific GSP that exceeds the cost of the IWVGA GSP. The GSP fees are also higher than even the State Water Board probationary and interim plan fees for basins that fail to comply with SGMA and require State Water Board intervention.

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<sup>1</sup> The IWVGA’s approach in treating SGMA implementation as an adjudication is, unfortunately, not surprising given its patterns to date.

IWVGA Board Members and staff have repeatedly rejected (and even derided) requests for years from Meadowbrook and members of the public for an open, Brown Act complaint IWVGA Finance Committee. Only recently has this become recognized by some members of the IWVGA Board as “an idea worth thinking about.” At the June 2020 meeting Director Kicinski actually called for a Finance Committee to be established in order to bring much needed transparency to IWVGA finances. Meadowbrook supports that directive but we aren’t holding our breath that it will actually occur, as Chairman Gleason has repeatedly rejected the idea and even bullied Director Kicinski at that meeting over a comment suggesting that Chairman Gleason was not communicating with his constituents over the fee.” Notably, Chairman Gleason has not made any outreach effort to Meadowbrook or any agricultural entity that we are aware of regarding the fee increase. This is unfortunate and inconsistent with SGMA’s mandate that the IWVGA must consider the interests of all beneficial uses and users of water.

a. **The Listed Expenses are Vague and Do Not Fall Within Water Code 10730 Fee Categories**

The scope of expenses that may funded by a Water Code Section 10730(a) are not without limits:

“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. A groundwater sustainability agency shall not impose a fee pursuant to this subdivision on a de minimis extractor unless the agency has regulated the users pursuant to this part.”

The fee may not be used to pay for GSP projects and management actions, which must instead be funded by fees imposed under *Water Code* 10730.2 (and are also subject to Proposition 218 requirements).

The Data Package fails to delineate between costs used to develop the GSP that are properly within *Water Code* 10730, from costs that are not properly chargeable under 10730. The fee improperly charges costs for GSP projects and management actions

that the GSP indicated would be adopted and implemented by separate ordinances or resolutions and presented in more detail *following GSP adoption*.

The Data Package is also vague and unclear. IWVGA staff should present a revised and complete staff report providing a detailed explanation of each expense item in the Data Package, and justify, *in writing*, how the IWVGA considers each item to comply with the *Water Code* Section 10730(a) categories. Notably, the “Additional Tasks” totaling hundreds of thousands of dollars all fall within GSP project and management actions, which must be funded instead under *Water Code* 10730.2.

**b. The Assumptions and Information on Pumping are Vague, Unexplained and Unfair.**

The fee will charge compliant pumpers who have registered their wells and reported their pumping, while failing to enforce the fee upon non-compliant pumpers, thereby resulting in unfair and unlawful subsidies.

The staff report estimates “groundwater pumping by those subject to the fee is 10,000 A/F annually.” (Staff Report p. 5). At the June 2020 IWVGA Board meeting, IWVGA general counsel stated “it’s actually 10,738 acre feet.” The staff report fails to identify in detail the basis for the 10,000 A/F figure, and why it varies from IWVGA general counsel’s higher pumping figure. Which entities are included? Which entities are excluded? What data is it based upon? The IWVGA must be specific in explaining and justifying who is being charged, and the basis for those calculations.

The staff report provides no analysis or consideration of the interests of beneficial uses and users of water. It further assumes “anticipated pumping” based on the “Sustainable Yield Report”. Behind this masked statement is the reality: the IWVGA wants agriculture and other non-governmental entity pumpers to pay the lion’s share of this GSP that is designed to eliminate them from this Basin.

Notably, the Draft Pumping Verification Report prepared by the WRM states that the WRM could **not** substantiate pumping figures claimed by the City, Kern County and other pumpers, and has instead relied upon information voluntarily provided to the Indian Wells Valley Cooperative Groundwater Management Group (“Cooperative Group”). This failure of verification comprises a significant data gap that must be addressed and verified before any increase in pumping fees is imposed, especially on pumpers like Meadowbrook that submitted actual data to the WRM to support its pumping information.

Domestic well owners should not be exempt from the fee; rather, they should participate in funding this GSP that treats them so generously (while eradicating agricultural users who are expected to pay full freight, and more). *Water Code* Section 10730(a) states that: "A [GSA] shall not impose a fee pursuant to this subdivision on a de minimis extractor unless the agency has regulated the users pursuant to this part." The IWVGA adopted an ordinance requiring all de minimis groundwater users to register their wells and has therefore "regulated [those pumpers] pursuant to this part." A failure to include "de minimis" pumpers in shouldering a fair share the burden of the *Water Code* Section 10730 fee is unfair and does not reflect the shared use of the groundwater basin resource. It also fails to require those users' engagement in sharing the burden of water conservation and sustainability.

As a collective group, "de minimis" pumpers in this basin are still not yet well understood by the IWVGA, and the vast majority (approximately more than two-thirds) have not registered their wells, as reported publicly each month by the WRM. At the very least, the Data Package currently estimates at least 800 "de minimis wells". Assuming each of those pumpers pumped two acre feet, then this group pumps more than 20% of the IWVGA's (claimed) "sustainable yield" of 7,650 AFY. Yet, the proposed fee would have this group pay **nothing**. The IWVGA and staff assertion that the IWVGA "cannot" impose fees on de minimis users is false<sup>2</sup> and represents misguided IWVGA policy that must be reconsidered.

Moreover, the proposed fee increase fails to refund or credit Meadowbrook for overpayments Meadowbrook has made since the original \$30 fee was adopted, which overpayments are the result of non-compliant, now-known pumpers who failed to pay some or all of the \$30 fee. The Data Package must be adjusted to account for this inequitable result, which impacts not just Meadowbrook but all other pumpers who have dutifully paid the pump fees.

c. **The IWVGA Failed to Release the Data Package At Least 20 Days Prior to the Hearing.**

*Water Code* Section 10730(b)(3) requires that: "At least 20 days prior to the meeting, the groundwater sustainability agency shall make available to the public data upon which the proposed fee is based."

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<sup>2</sup> See also the written comments submitted by the IWV Water District technical consultant dated July 6, 2020, also stating this fact and pointing out that other Groundwater Sustainability Agencies are charging fees to de minimis users and expect them to participate in achieving groundwater sustainability process.

The Board released a draft data package at the June 18, 2020 Board Meeting. During the discussion, several conflicting and confusing motions were made (also inconsistent with the parliamentary rules adopted by the IWVGA Bylaws at section 2.9) as several Board members raised various questions about the proposed fee, particularly the cost categories. The Board directed staff to further review the cost categories and present a detailed explanation to the Board at the July meeting. The June 18, 2020 materials comprised a draft, and not the complete "data upon which the proposed fee is based." The Board did not release a revised data package at least 20 days prior to the IWVGA July Board meeting and therefore did not comply with the 20-day public release requirement.

Meadowbrook reserves the right to comment on any additional or revised "Data Package" information released by the IWVGA. Notably, as of 11:00am Monday July 13<sup>th</sup> – less than 72 hours prior to the July 16 IWVGA Board Meeting, the IWVGA had not released any additional information.

**d. Violation of IWVGA Joint Powers Agreement**

A Joint Powers Authority like the IWVGA may not adopt any ordinance or resolution that is inconsistent with its Joint Powers Agreement. The IWVGA Joint Powers Agreement provides in Article IX, Section 9.02 that the General Members shall each provide an initial contribution of (a paltry) \$15,000. It continues:

"Notwithstanding the equal amount of initial funds contributed by each of the General Members, the parties intend for future funding contributions to be allocated on a fair, proportional basis (e.g., irrigated acreage, groundwater pumping, population, and/or number of wells.)" Instead, the pump fee is disproportionate and does not attempt to attempt to reconcile or balance the loans and contributions made by IWVGA members in accordance with this JPA provision.

The IWVGA has also failed to adopt an annual budget in compliance with JPA Article 9.07. Rather, the financial "reports" prepared by the IWVGA staff have been a continual source of confusion, opaqueness that have been questioned by board members and the public too many times to count and never resolved or clearly addressed. Again, a Finance Committee providing actual oversight has long been needed.

The City should pay its own legal fees. The Data Package includes a line item: "City of Ridgecrest Reimbursable Costs \$210,466". Included in those costs is \$195,875.93 for "attorney costs". Curiously, the costs listed for 2016 and 2017 are specific and varied

monthly amounts, whereas the figures for 2018 are invariably \$6,500" each month and, for 2019, "4,000" each month. This inconsistency must be explained, as these figures do not appear to reflect actual costs.

More importantly, the City should not be seeking reimbursement of its fees at all, and every other IWVGA Board Member should seriously question and oppose the City's request for preferential treatment contrary to the IWVGA Joint Powers Agreement and the IWVGA's retainer agreement with the City's Attorney as IWVGA General Counsel.

The Retainer Agreement between the IWVGA and City Attorney states under Paragraph 3 of that agreement:

"Compensation to Attorney. Attorney services are provided as "in kind" services from the City of Ridgecrest."<sup>3</sup>

The City and City Attorney should honor their commitment to the IWVGA, the IWVGA Retainer Agreement with the City's Attorney, and the terms of the JPA, and withdraw its request for reimbursement of its legal fees in the amount of \$195,875.93. If the City refuses to withdraw, the IWVGA Board should not approve the request and should instead remove it as a line item from the pumping fee.

It is worth pointing out that as a result of the IWVGA's aggressive and hostile actions toward large private pumpers like Meadowbrook, these pumpers have incurred extensive legal fees of their own to defend themselves from the IWVGA. It is appalling that the IWVGA further seeks to impose on these large private pumpers the legal fees incurred by the IWVGA.

**e. Any Adopted GSP Fee Should be Spread Out Over a Longer Time Period to Minimize Impacts on Pumpers**

The Staff Report provides alternative timelines to spread out the fee but inexplicably recommends imposing the shortest, and therefore most expensive monthly fee at an unbelievable \$225 per acre foot. The IWVGA is required to consider the interests of all beneficial uses and users of groundwater in making such a recommendation. Any fee increase adopted by the IWVGA should be spread out over the longest possible period of time in order to minimize adverse impacts on pumpers subjected to the fee. Here

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<sup>3</sup> The Retainer Agreements for each of the IWVGA's three (3) general counsel firms/entities contain the same commitment to the IWVGA.

again, the IWVGA must consider the interests of the beneficial uses and users of groundwater.

**f. Failure of Compliance with California Constitutional Provisions**

IWVGA General Counsel (i.e., Kern County Counsel) expressly represented to the California Supreme Court that *Water Code* Section 10730 fees “*would receive constitutional review under Proposition 26*” and that “[t]o support application of the exemption for regulatory fees and charges in Proposition 26’s article XIII(e)(3), groundwater regulatory agencies will need to defend their charges as reasonable and fairly apportioned.”

Yet, IWVGA General Counsel (i.e., Kern County Counsel) has repeatedly failed and refused to substantiate or provide any analysis demonstrating Proposition 26 compliance with respect to the initial \$30 pump fee or this proposed \$225 fee. Meadowbrook detailed this issue in its April 5, 2018 letter to the IWVGA Board, and reiterates this issue again here.

Under Article XIII C of the California Constitution (also known as Proposition 26), any special levy, charge or exaction of any kind imposed by a local government is deemed a tax that must be submitted to and approved by a super-majority (two-thirds) approval of voters. To evade designation as a tax, the local government has the burden and must prove that at least one of the specifically enumerated Constitutional exemptions applies.

Neither the staff report nor the Data Package addresses or attempts to substantiate the proposed fee increase under these Constitutional requirements, despite the fact that both Kern County and IWVGA Staff have previously acknowledged that *Water Code* Section 10730 fees must comply with the Constitutional limitations.

In its amicus brief filed in the *City of San Buenaventura v. United Water Conservation District* case, Kern County made the following representations to the California Supreme Court:

- “Groundwater regulatory fees in SGMA would receive constitutional review under Proposition 26, which expressly covers regulatory fees through a specific exemption.”
- “To support application of the exemption for regulatory fees and charges in Proposition 26’s article XIII(e)(3), groundwater regulatory agencies will need to defend their charges as reasonable and fairly apportioned.”



- “This constraint will discipline the section 10730(a) fee structures that future GSAs establish, and in cases where such discipline is lacking, provide for judicial voiding of unreasonable fees.”

We question why the IWVGA has chosen again not to engage a fee consultant or to conduct a fee study necessary to support the proposed fee increase and for compliance with Propositions 26 and 218, particularly when IWVGA Staff previously made that recommendation to the IWVGA Board. The October 2016 IWVGA Staff Report stated:

“The question of whether Proposition 26 applies would need to be addressed. Without knowing the type of fee proposed, it is difficult to determine if Proposition 218 and/or Proposition 26 may apply to imposing a fee under Water Code Section 10730. We proposed (sic) engaging a professional fee consultant with knowledge and experience in Proposition (sic) 218 and 26, and familiarity with SMGA (sic) would be help (sic) the Board consider a groundwater fee.”

Rather than follow Staff’s October 2016 recommendation back then, the Board established its *ad hoc* (i.e., not public) finance committee that met in private and then, months later, developed the \$30 fee that was subsequently adopted by the IWVGA Board.

We assume that, by neither addressing nor evaluating the proposed fee under the analytical framework required of Propositions 26 and 218, the IWVGA has taken the position that those requirements somehow do not apply. As acknowledged by Kern County, however, a failure to structure such fees in accordance with the Constitutional requirements renders the fee subject to voiding. The IWVGA must publicly provide its analysis of the fee in accordance with Propositions 26 and 218 and through vetting by the PAC and TAC, before any fee increase is considered for adoption.

Additionally, Proposition 26 requires the local government has the burden to prove: (1) that a levy, charge, or other exaction is not a tax; (2) that the amount is no more than necessary to cover the reasonable costs of the governmental activity; and (3) that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity.

The IWVGA has not met, nor attempted to meet, its burden to establish that the proposed fees is not a tax. In its current presentation, the fee is a tax requiring super-majority voter approval. The IWVGA has not carried its burden to identify and

establish the applicability of any of the narrow and specific non-tax “fee” exemption provisions.

As described in this letter and in comments submitted by other pumpers, the proposed fee is significantly more than any reasonable cost of the governmental activity here, and does not bear a fair or reasonable relationship to each payor’s burdens on or benefits from the governmental activity. Instead entire groups of pumpers are selectively shielded from paying the fees (de minimis pumpers), while Meadowbrook is expected to pay the fee only to be eradicated from the basin under the GSP it is largely funding.

**g. The Fee Reveals the Unsubstantiated Legal Theory for the Sustainable Yield Report.**

The proposed pump fee further reveals the inherent flaws in the IWVGA’s unfounded legal theories underlying the “Sustainable Yield Report” and “Replenishment Fee Report”. Those Reports purport to protect the IWVGA Member Agencies and other selected users from paying the Replenishment Fee on the assertion that the entire (or most) pumping by those users is an exercise of the *Navy’s* federal reserved water right. This is inconsistent with the application of the proposed GSP pump fee, which is applied to (most) of those same pumpers. The IWVGA is demonstrating further that the development, funding and implementation of this GSP is a political, and not technical or legal process.

**h. Meadowbrook Incorporates Comments made By Other Pumpers**

Meadowbrook joins and incorporates by reference the comments submitted by Searles Valley Minerals dated Jun 18, by Mojave Pistachio dated June 16, and by the IWV Water District through its technical consultant dated July 6, regarding the inherent flaws and issues with the proposed fee.

The IWVGA should not adopt this fee increase and must make significant revisions necessary to comply with SGMA and California Constitution and implementing statutes governing a local agency’s imposition of fees and charges.

### **III. IWVGA SUSTAINABLE YIELD REPORT**

The Sustainable Yield Report is a report crafted to satisfy a preconceived and false notion that the Navy is entitled to the entire natural basin supply (despite currently pumping less than 20% of the IWVGA's estimated basin recharge) and can dole out "unused" water (aka "carry over water") to the IWVGA member agencies and others luckily selected by the IWVGA. This marks a further entrenched effort by the IWVGA to eradicate agriculture, including Meadowbrook, and other private pumpers, from the Basin. Meadowbrook objects to this taking of its water rights and related property interests.

At the January 16, 2020 GSP adoption hearing, IWVGA was advised by its legal counsel not to respond to extensive comments submitted by Meadowbrook and others that raised significant issues with the GSP. The stated reason for that refusal to respond to comments was that the IWVGA deemed the comments to raise "legal" and not "technical" issues. Amazingly, the Sustainable Yield Report is entirely a legal analysis of water rights, in violation of SGMA and the limited authority granted to GSAs. DWR has not even reviewed the GSP, which suffers from extensive flaws and SGMA violations and is not likely to pass DWR review without significant amendments and without addressing major data gaps.

The IWVGA should not adopt this report. The IWVGA is unnecessarily plunging this Basin into controversy, at every stakeholder's expense.

a. **The Sustainable Yield Report Violates SGMA Mandates to Establish and Manage Groundwater In Accordance With Duly Adopted, Technically Supportable Sustainable Management Criteria**

The "Sustainable Yield Report" is improperly named. It fails to provide any meaningful analysis of the basin's sustainable yield as defined by SGMA and the DWR GSP Regulations and Best Management Practices. Instead, it levies an unsubstantiated and targeted attack on Meadowbrook and other private pumpers, and is replete with unsupportable legal theories and assumptions lacking evidence.

By SGMA definition, a sustainable yield is expressly tied to sustainable management criteria and is not synonymous with a static, estimated annual average natural basin recharge. A sustainable yield requires a careful technical evaluation of each of six statutorily defined undesirable results. As reflected in the letters submitted by Meadowbrook's technical consultant and TAC representative, Luhdorff & Scalmanini Consulting Engineers ("LSCE"), groundwater levels at Meadowbrook's properties are

already operating and have for years been operating at or above the measurable objectives (and minimum thresholds) at the relevant GSP monitoring sites. If the GSP and the Sustainable Yield Report were actually based upon SGMA and the GSP Regulations, Meadowbrook would not necessarily be required to reduce pumping at all, or by much, because it is already operating in compliance those sustainable management criteria.

The IWVGA's argument that the Navy "pumps the entire sustainable yield" and that Meadowbrook must therefore fallow or pay the insane Replenishment Fees for all of its pumping completely misses the requirements of SGMA and the GSP Regulations. In fact, as pointed out by Meadowbrook many times, the **worst** pumping depression in the Basin is concentrated near Navy production wells. Yet, the IWVGA conveniently ignores this fact.

As Meadowbrook has also pointed out many times, the IWVGA's use of 7,650 AFY for the "sustainable yield" is flawed and based upon incomplete data and assumptions. The TAC did **not** agree that 7,650 AF accurately represents the Basin's long term natural recharge. The TAC Model Ad Hoc committee urged the IWVGA to utilize a range, including up to 11,000 AFY, and to correct serious flaws in the Navy's groundwater model before running modeling scenarios. The WRM rejected using a range, claiming a lack of funding for modeling scenarios, but nonetheless assured the TAC that 7,650 would be used for modeling scenarios only and not necessarily for the GSP or its implementation.<sup>4</sup> After months of closed session meetings of the Board, and without any meaningful public engagement, the GSP was developed based upon those very Modeling Scenarios.

While attempting to forge ahead with this Sustainable Yield Report, the Groundwater Authority and WRM have signaled recently that the "sustainable yield" of 7,650 AFY, and the IWVGA's understanding of basin conditions in the Brown Road Area near Meadowbrook are not accurate. Just weeks ago, the Water Resources Manager requested permission to use Meadowbrook's groundwater wells to perform needed groundwater basin aquifer performance tests, specifically:

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<sup>4</sup> See comments and evidence submitted by IWV Water District's technical consultant dated July 6, 2020.

“to provide a better representation of the groundwater aquifer in the northwest area of Indian Wells Valley from which to estimate sustainable yield and water supply in the Basin,” to “improve the groundwater model for calculating sustainable yield and groundwater storage calculations in the northwest basin,” and to “refine estimated subflow from Rose Valley into the basin.” **(Exhibit 3).**

Meadowbrook responded promptly to the request with legitimate questions regarding how that information would be used, and whether and how it would affect the GSP implementation, modeling assumptions and decision-making process. **(Exhibit 4.)** Neither the GA nor the WRM ever responded to Meadowbrook’s questions. **(Exhibit 5).**

The WRM also recognizes that the GSP estimates of groundwater in storage are inadequate. Hence, the Pump Fee Data Package line item: “Stetson/DRI – Review of Groundwater in Storage and HCM \$42,700”. HCM stands for Hydrogeological Conceptual Model, which explains basin acquirer characteristics and should have been properly completed prior to adoption of the GSP and any of these significant implementing actions in order to comply with SGMA and the GSP Regulations.

The WRM’s recognition of the flaws with the current GSP assumptions are not surprising in light of prior analysis conducted by Stetson Engineers and technical representatives for what are now IWVGA member agencies, observing extensive water supplies in the Brown Road Area alone that could sustain thousands of acre feet of pumping.

In other words, the WRM recognizes that the true, SGMA-compliant sustainable yield is likely **more** than 7,650 AFY and that the Brown Road Area alone can accommodate significant pumping without causing undesirable results. The Sustainable Yield Report and also the WRM, are silent in response to Meadowbrook’s question: what will happen when further studies determine higher average annual recharge, or greater amounts of groundwater in storage than the GSP currently estimates?

These issues are raised at length in comments previously submitted by Meadowbrook and other pumpers. In fact, the IWVGA GSP provoked more comment letters to DWR than nearly every other submitted GSP. All major pumpers in this Basin, including Meadowbrook, have lodged comment letters to the IWVGA and DWR identifying significant, fundamental flaws with the GSP. The IWVGA has not responded to those comments, and DWR has not even evaluated the GSP. To proceed so rapidly with adopting the “Sustainable Yield Report” based upon the faulty GSP is hostile,

aggressive and inequitable. At the very least, it completely ignores the high SGMA thresholds required for stakeholder engagement.

**b. The Navy Has Repeatedly Indicated its Willingness to Accept an Allocation of 2,041 Acre Feet for the GSP—Which is Still Significantly More than the Navy’s Current and Recent Water Use.**

In November 2018, and again in June 2019, the Navy provided “a figure of 2,041 acre-feet per year as the amount of water the installation could agree to use under a GSP.” (See June 2019 Navy Report). At the June 18, 2020 IWVGA Board Meeting, the Navy Commander reiterated the Navy’s willingness to accept an allocation of 2,041 acre feet. He also clarified that it was the IWVGA and not the Navy, who made determinations regarding the Navy’s Federal Reserved Water Right claim and allocation of “unused” Navy water:

**“The Navy’s agreement to their allocation of 2,041 acre-feet as has been stated. Also, at the request of the GA, we provided our pumping data from which the GA developed their interpretation of what a federal reserved water right might be, as we outlined in our letter as well, and then from that point, the GA decided the allocations from there based on inputs from other folks that goes into this....The Navy did not direct or tell the GA how to do that.”**

(See IWVGA June 2020 meeting recording, Commander Benson, at 2:10:25)

Rather than allocate 2,041 AF to the Navy as the Navy requested, the IWVGA has instead asserted **on behalf of the Navy**, that the Navy is entitled to the entire Basin natural supply “and possibly more” (see Exhibit 6, p. 2), and strangely interpreted a “Federal Reserved Water Right” that applies not only to the Navy but to IWVGA Member Agencies and other anointed Non-Navy pumpers that are located off the Navy base.

**c. The IWVGA Represented that Water Not Needed by the Navy would be Available to All Water Users, but has Reneged on That Commitment.**

The “Legal Statement” prepared by the IWVGA at the January 2020 GSP Adoption hearing (and posted on the IWVGA website) stated:

“We have advised the JPA that water used or contemplated to be used by the Federal Government in connection with the operation of China Lake Naval Weapons Test Center is beyond the jurisdiction of the JPA’s

regulatory authority. Under the process outlined by the GSP, the JPA will make a technical determination of the potential scope of this water use. The remaining water, if any, will be available for all water users. The JPA will then set the fees necessary to replenish the water used beyond the safe yield by all users except the Navy.”(emphasis added)

“The legal comments we have reviewed are beyond the scope of this portion of the GSP process. Many of these comments present an analysis of the JPA’s statutory authority or the interaction between state and federal law. Others legal issues concern objections to actions that the JPA has yet to take<sup>5</sup>. Finally, several comments are based on the false presumption that the JPA is making a determination regarding water rights.”

The Sustainable Yield Report is not consistent with the IWVGA Legal Team’s prior representations. The Sustainable Yield Report also comprises a legal determination of water rights. The Sustainable Yield Report also provides inadequate, if any, independent IWVGA supporting technical analysis or evidence of its assumptions and claims regarding technical issues. The Navy’s June 2019 report<sup>6</sup> indicates the Navy’s current water demand is 1,450 AFY. The remaining Basin natural supply is not “available for all water users” as the IWVGA previously represented. To the contrary, only the IWVGA Member Agencies, “De Minimis Wells” (which have yet to be vetted or to comply with the IWVGA mandatory well registration requirements), Inyokern CSD, “Small Mutuals” (which are not defined), and Trona DM (which is not defined) are anointed to be allowed to use that water.

**d. The Sustainable Yield Report Is an Unlawful Determination of Water Rights and Priorities in Violation of SGMA**

SGMA expressly prohibits the IWVGA from determining or altering water rights. (*Water Code* § 10720.5(b) (“Nothing in this part, or in any groundwater management plan adopted pursuant to this part, determines or alters surface water rights or groundwater rights under common law or any provision of law that determines or grants surface water rights). To the contrary, “It is the intent of the Legislature to preserve the security of water rights in the state to the greatest extent possible consistent with the sustainable management of groundwater.” (*Water Code* § 10720.1(b).

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<sup>5</sup> Those IWVGA actions are being taken now.

<sup>6</sup> See Meadowbrook’s GSP comment letters submitted to the IWVGA and DWR detailing many issues and inconsistencies with the June 2019 Navy letter.

Rather than comply with SGMA and GSP Regulation mandates, the Sustainable Yield Report comprises an unlawful determination and allocation of water rights and priorities. It attempts to mask this reality by declaring itself to be an allocation of fees, but the allocation of those fees is directly predicated upon Sustainable Yield Report's determination of water rights. This ruse is conveniently designed to unlawfully shield the IWVGA Member Agencies and domestic water users from paying their lawfully required share to import water into the Basin.

The IWVGA's determination of the Navy's federal reserved water right is improper, incomplete and not in accordance with SGMA or Federal appellate case law governing federal reserved water rights. The Sustainable Yield Report and Replenishment Fees Report are founded upon the IWVGA's unfounded legal theory that the Navy's federal reserved water right claim—which has not been established by any court of law—extends off the Navy base and even protects pumping by designated non-Navy users.

The entire thrust of the Sustainable Yield Report is clearly an attempt to justify the IWVGA's novel and unsupported legal theory of an "extended federal reserved water right" that extends to protectively cocoon the IWVGA Member Agencies and selected other users deemed worthy by the IWVGA. The report "is drafted for the sole purpose of determining the colorable legal claims to the Basin's sustainable yield which has been established at 7,650 af. In order to make this threshold determination, the IWVGA must examine the history of water use in the Basin in accordance with the principles of California Water Law." (Report, p. 5.)

Even the Ridgecrest City Manager has characterized this as an analysis of water rights. At the June 17 Ridgecrest City Council Meeting, the Ridgecrest City Manager indicated to the City Council that the reason the City is "exempt" from paying the proposed Replenishment Fee is "**because of our water right**". (Perhaps a Freudian Slip after months of IWVGA Closed Session meetings during which the GSP and the Sustainable Yield Report were developed.)

The Sustainable Yield Report and Replenishment Fee Report nearly mirror the IWVGA's "Introduction to Sustainable Yield Allocation Chart" that was released by the IWVGA in October 2019, which was admittedly based upon an IWVGA determination of water rights. (**Exhibit 6**). That chart includes a summary prepared by the IWVGA staff, including the statement: "Counsel for the GA have determined that existing water rights law provides the Navy with a Federal Reserve Water Right (Reserve Right) that is superior to all other water rights in the Basin, with the exception of those rights that were in existence at the time the Base was founded. This



water right extends not only to the Base's current pumping, but to all the water that is necessary for the Base to carry out its mission." (Exhibit 6, p. 2).

It continues to expressly determine water rights of other producers: "Next in order of priority are overlying domestic water users...." "In addition, the GA must recognize the pumping rights of the City of Ridgecrest and Kern County as those rights are superior to all other overlying owners because public entity rights may not be prescribed against." It concludes "there is no native water left for inferior rights holders." (Exhibit 6, p. 2).

The IWVGA Staff have clearly made preconceived determinations of water rights, and both the GSP and the Sustainable Yield Report reflects those notions. Statements made by IWVGA staff that the Sustainable Yield Report is not based on an IWVGA determination of water rights are demonstrably false.

It was IWVGA staff who determined where to "allocate" the "unused Navy water." The Report indicates that:

"the Navy has expressly asserted in the Navy Water Requirements Report that the NAWs China Lake mission requires its workforce and as a result the full Navy water requirements are the combination of the on-Station requirements and those of the Navy workforce and their dependents off-Station. Accordingly, it is presumed that the Navy will provide its unused FRWR to those that supply water to its workforce through agreements with those water providers."

The IWVGA, under the direction of Chairman Gleason, schemed to allocate the entire Basin supply to the Navy *before the Navy issued its June 2019 report that the Sustainable Yield Report cites as gospel*. In its GSP comment letter to DWR, Meadowbrook laid out a chronology of statements made by Chairman Gleason and IWVGA staff revealing the IWVGA planned to allocate all Basin groundwater to the Navy long before the Navy ever issued its June 2019 Report. See Meadowbrook's GSP comment letter submitted to the IWVGA dated January 8, 2020.

The Sustainable Yield Report must identify the legal authorities upon which those determinations were made. (GSP Regulation § 354.44(b)(7) requiring GSP to state the legal authority required for each project and management action, and the basis for that authority within the Agency; see also GSP Regulation § 354.6(d),(e) (requiring a GSP to include the legal authority of the Agency, with specific reference to citations setting forth the duties, powers, and responsibilities of the Agency, demonstrating that the

Agency has the legal authority to implement the Plan). While the Report goes to great lengths to attack Meadowbrook, Searles Valley Minerals, and Mojave Pistachio, it provides no explanation, analysis or evidence supporting the determination of assigning “off Navy base” water to the IWVGA Member Agencies and the other listed users, or for the assigned quantities of those claimed “extended” FRWR. The IWVGA must explain how those determinations were made and the legal authority on which they are based.

Neither the IWVGA, the GSP nor the Sustainable Yield Report cites any legal authority to support the claim that an “unused” Navy federal reserved water right claim can be used other than by the Navy or for use off of the Navy base. Incredibly, IWVGA General Counsel (i.e., Kern County Counsel) has gone so far to assert that even water pumped for dust control at the Kern County Dump is protected by the Navy’s “federal reserve water right.”<sup>7</sup>

The result of the Sustainable Yield Report is that nearly every pumper who is conveniently cocooned within the “extended federal reserved water right” is *not required to reduce pumping at all*—including the City of Ridgecrest (which, ironically, is reported to use water for irrigation of turf at incredibly inefficient application rates at 10 feet per acre) and Kern County which, as stated above, uses water for dust control at the County dump. Other anointed pumpers are those that primarily—but not exclusively—produce water for domestic purposes.

The Sustainable Yield Report fails to explain or provide any analysis as to why the IWVGA deems the selected “carry over” users’ entire or virtually entire pumping to comprise support for the “Navy workforce and their dependents” or the basis for justifying the extent of the “carryover” assigned to those users as inexplicably reflected in Exhibit 3 to the pump fee Data Package.

The IWVGA further exceeds its mandate by attempting to adjudicate water use priorities. For a document that repeatedly confesses no IWVGA jurisdiction to determine water rights, the Sustainable Yield Report makes loud and arbitrary

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<sup>7</sup> When pressed on this question by Meadowbrook’s counsel at the June 2020 board meeting, the IWVGA general counsel asserted that “the Navy workforce needs the dump, so yes it’s included.”

We wonder if IWVGA general counsel has ever considered whether the “Navy workforce” or “their dependents,” or perhaps any Navy contractor who’s worked in the Basin, has ever had any need for milk, steak, beef, or any dairy products, all of which have undoubtedly been served in some way by Meadowbrook Dairy alfalfa during the more than 100 years of Meadowbrook’s business operation. If so, then by IWVGA’s logic, Meadowbrook should also be included in the protective cocoon of the “extended federal reserve water right” claim.

declarations of new water law and policy. One such theory asserted is that “growing alfalfa is an unreasonable, and thus an unconstitutional, use of groundwater.” (report, p. 13). It then alleges that Meadowbrook’s recent conservation efforts and partial crop rotation are somehow an “acknowledgement that its prior use was unreasonable and wasteful.” (Id.) This fanciful (and false) statement is exactly the type of inappropriate targeting that has been repeatedly leveled against Meadowbrook by the IWVGA and falls far below SGMA’s requirement to consider Meadowbrook’s interests and overlying water rights. (Water Code 10723.1(a) (requiring IWVGA to “consider the interests of holders of overlying groundwater rights, including agricultural users ... famers, ranchers and dairy professionals.” It also fails to recognize *Water Code* Section 106, which declares (with *actual* force of law) that use of water for irrigation is one of the highest priority uses.

Meadowbrook reiterates that for over one hundred years, its farm’s quality food production has shown up multiple times on the plates of many (if not all!) basin stakeholders in some form of dairy product or meat. One acre of alfalfa produces approximately 2400 gallons of milk. Meadowbrook supports SGMA and the objectives it is designed to meet. Meadowbrook utilizes water saving technology and follows water conservation best management practices, and has already instituted further changes to reduce its groundwater use and produce quality essential food.

**e. The Navy Has Refused to Produce the Documents Upon Which the June 2019 Report Was Based**

What records or information did the IWVGA evaluate besides the Navy’s June 2019 Report? Did the Navy provide to the IWVGA the cited references in the June 2019 Navy Report?

In October 2019, Meadowbrook submitted a Freedom of Information Act Request to the Navy requesting copies of all documents identified as References at Section 7.0 of the May 2019 Matthew L. Boggs report titled “Navy Demographics and Water Requirements at Naval Air Weapons Stations (NAWS), China Lake, CA and referenced in the June 17, 2019 Department of Navy, Naval Air Weapons Station China Lake letter to the IWVGFA Board of Directors. Still today—more than eight (8) months later—the Navy has refused to produce those referenced documents despite multiple follow-up requests from Meadowbrook. This is despite the fact that the Navy produced an email from Mr. Boggs—the author of the report—dated July 15, 2019 that expressly stated that he had each document or could easily get them. (**Exhibit 7**). The Navy’s refusal to produce those documents undermines the legitimacy and reliability of the June 2019 Navy Report.

The IWVGA's claim that it has no authority to "question" or "investigate" the underlying information is patently false. SGMA authorizes a GSA to conduct investigations including regarding "groundwater and groundwater rights" (Water Code § 10725.4(b).) The IWVGA has a duty under SGMA to develop and implement its GSP and projects and management actions based upon best available science and information. To accept the Navy's June 2019 report without any meaningful analysis falls far below that requirement, especially for a GSP that is built entirely around the IWVGA's assessment of the Navy's "federal reserved water right." To then interpret that report and make "presumptions" as to where the Navy would "want its water to go" is arbitrary, capricious and not based upon supportable evidence.

**f. The Sustainable Yield Report Fails to Comply with Federal Law Governing Federal Reserved Water Rights**

In making its determination of the Navy's FRWR, the Sustainable Yield Report fails to recognize, analyze and consider United States Supreme Court and other federal appellate case law that delimits the extent of a federal reserved water right. The doctrine of federal reserved water rights is a doctrine defined and delimited by federal case law. It provides that when Congress reserves lands for federal purposes, it is also presumed to have reserved sufficient un-appropriated waters necessary to meet the primary purpose of the reservation for those lands. *Winters v. United States*, (1908) 207 U.S. 564. This "implied-reservation-of-water doctrine...reserves only that amount of water necessary to fulfill the purpose of the reservation, no more..." (Cappaert v. United States (1976) 426 U.S. 128, 141. Where "water is only valuable of a secondary use of the reservation" the United States must "acquire water in the same manner as any other public or private appropriator." *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water Dist.* (9<sup>th</sup> Cir. 2017) 849 F.3d 1262 (quoting *United States v. Mexico* 1978) 438 U.S. 696, 701, 702.) A federal reserved water right extends only to the federal land withdrawn from the public domain. *Cappaert*, 426 US at 138.

The report boldly declares "were this issue to be litigated, the Navy could, and very probably would, assert that its FRWR extends to entire sustainable yield of the Basin" and that "a more than convincing argument can be made that any reviewing court will agree with the Navy's express assertion that the FRWR began back in 1943." It is difficult to see in those statements where the IWVGA ends and the Navy begins. Despite these self-aggrandizing statements, the report does not cite a single court opinion, statute or any other applicable law or precedent for the IWVGA theory that that Navy's federal reserve water right extends off the base or to non-Navy pumpers. There is also no analysis or citation regarding the actual requirements and limits applicable to a federal reserve water right under applicable Federal appellate case law.

A federal reserve water right is not transferable, absent an adjudicated right establishing that privilege. The Sustainable Yield Report indicates Navy “carryover” water will be pumped by non-Navy users. It fails to cite any supporting legal authority for such an unlawful transfer.

g. Proposition 218 Violations

The Sustainable Yield Report and inherently linked Replenishment Fee Report inherently violate Proposition 218’s proportionality requirements. By shielding selected pumpers from paying the fee on the basis of the unsubstantiated “extended federal reserve water right” theory, the IWVGA shifts nearly the entire burden of the fee onto agricultural users, industrial users and commercial water users. These reports also notably fail to identify a specific project with specific costs to be allocated. Further aggravating this issue is the IWVGA’s failure to identify the specific imported water infrastructure project that it anticipates will be used and built to bring in imported water into the basin, the costs of which are likely hundreds of millions of dollars.

The IWVGA should not adopt this Sustainable Yield Report. It should instead comply with SGMA and develop appropriate, collaborative and technically- and legally-supportable projects and management actions to achieve Basin sustainability, rather than carrying the Navy’s water and effectively eradicating Meadowbrook and other private pumpers from the Basin.

**IV. IWVGA TRANSIENT POOL AND FALLOWING PROGRAM**

The Transient Pool and Fallowing Program suffers from the same shrouded, unsubstantiated legal theories and technical flaws inherent to the GSP and the Sustainable Yield Report. The IWVGA fails to provide any legal or technical justification for attempting to force Meadowbrook into the transient pool and to fallow its property, particularly when the IWVGA has failed to establish the existence of undesirable results associated with Meadowbrook pumping.

This is because the Transient Pool and Fallowing Program is not based upon SGMA or the GSP Regulations and is instead a ploy to eradicate agriculture (or force them to pay for imported water). It presents Meadowbrook with three unreasonable options, all of which are to be thrust upon Meadowbrook involuntarily:

“1) Reject the allotment and continue pumping in accordance with the Basin Replenishment Fee; or,

2) Accept the allotment and associated mitigation fee; or,

3) Accept the allotment and negotiate a sell [sic] of their allotment to the Groundwater Authority through the Following Program”

(Report, p. 6.)

Meanwhile, DWR has not even reviewed the GSP, which is suffers from extreme flaws under SGMA and the GSP Regulations as reflected in the dozens of comment letters submitted to DWR.

a. **The WRM and IWVGA Have Continuously Refused to Release the Modeling Assumptions and Specific Data Used to Concoct the 51,000 AF Transient Pool.**

Meadowbrook and many other producers have asked many times that the IWVGA release the detailed modeling assumptions that were used to determine the 51,000 AF amount for the transient pool. The IWVGA has refused to produce that information, as memorialized in Meadowbrook’s prior comment letters.

The report makes general references to these undefined assumptions but offers no further detail. It refers to “total assumed overpumping”, “presumed augmented water supplies”, “qualified pumpers” and “Base Period criteria.” (Report, p. 5)

In an email dated July 2, 2020, the provided an incomplete explanation replete with question marks:

“1. The Transient Pool was created to help pumpers/operations that may not be able to afford the cost of imported water supplies, with a pathway to phase down/out their pumping/operations over (potentially) several years.

2. AG was (tentatively) identified as the most probable candidates for this program?? Searles appeared to be planning for continued operations with higher water costs?? The remaining pumping (mostly) supports domestic uses. Excludes Navy.

3. The modeling for this was done assuming 2020 as 1st year with “ramp-down” of pumping to the goal of about 12,000afy by 2027 (8 years).
4. For “modeling”, exempt pumpers were—De minimis, Navy, City, County and 86% of domestic for FRWR extension off of the Base.
5. Model Run 4---assumed about 156,000af of total pumping during 8 year period, including 1st two years (grace period) with Coop Group pumping info and AG Baseline pumping, then 6 years of ramp-down pumping to about 12afy/domestic.
6. Model Run 6---assumptions were made as to how the AG folks would use their water and some non-qualified pumping was excluded because of non-continuous during SGMA Base Period. New total 8 year pumping about 153,000af.
7. The domestic pumping for 8 years was a little over 11,000afy---or a little over 89,000af total.
8. Therefore, about 153,000af total pumping for 8 years—less about 89,000af for domestic—leaves about 64,000af for AG Pool. Searles original amount of over 12,000af was then deducted as not appropriate for Transient Pool---for a final Transient Pool of 51,000af.” **(Exhibit 8)**.

This explanation reveals again that the WRM and IWVGA weaponized the Navy’s modeling tool and modeling scenarios and made multiple assumptions and legal theories in developing the Transient Pool and Fallowing Program. References to a “base period,” “non-qualified pumping,” and the underlying premise that “AG” should be exclusively targeted to be forced into the Transient Pool are all critical, unsupported assumptions and theories. The use of “base period” as described by the WRM is particularly derived from adjudicated groundwater basins as a period for testing prescriptive water right claims, self-help claims, and other common law water right principles, but does not, in that vein, recognize Meadowbrook’s pumping during that period as an “overlying” or “self-help” right. In other words, the Transient Pool and Fallowing Program is not based upon best available science and information, SGMA or the GSP Regulations or a complete or consistent application of common law water rights principles; it is based instead upon an improper, incomplete analysis of water rights perpetrated by the IWVGA to favor the Navy and anointed Non-Navy pumpers. It further ignores requests made by stakeholders to incorporate

transferability, and to explain why the transferability provision contained in prior IWVGA documents for Transient Pool was removed.

The IWVGA and WRM should release the modeling tool and detailed modeling scenario assumptions and receive meaningful input and evaluation from the Basin stakeholders. The model should be revised and necessary and reliable data should be developed as required by SGMA to establish groundwater basin conditions and appropriate projects and management actions that reflect basin conditions in the Meadowbrook area and do not improperly seek to eradicate Meadowbrook. Meadowbrook has submitted data, and the WRM is well aware of other supporting evidence, that the Brown Road area where Meadowbrook's pumping occurs can support pumping at or near current production levels without causing undesirable results. The IWVGA's refusal to evaluate and consider such evidence as required by SGMA is arbitrary, capricious and inequitable.

**b. The Allocation Valuation Methodology is Vague and the IWVGA has Not Demonstrated Ability to Fund the Purchase of Transient Pool Allocations.**

The report describes the valuation of Transient Pool Allocations vaguely as follows:

“The value of Transient Pool Allocation [sic], as determined by the Authority, will generally be based upon the estimated net profit generated by the actual exercise of the Transient Pool allocation pumping for its intended agricultural purposes.”

The report provides no detailed criteria, other than that it will be subject to negotiations and that it does not include acquiring any other property interest such as land.

The report fails to address and plan for compliance with CEQA. It fails to address how the IWVGA will take responsibility for and mitigate dust control and other environmental issues that would result from fallowing thousands of acres of agricultural land.

The report also fails to demonstrate how the Groundwater Authority will fund the purchase of Transient Pool Allocations. Notably, no budgeted item is included in the Report or any other IWVGA report or program.

As indicated in Meadowbrook's prior comment letters, Meadowbrook restates its demand that the IWVGA produce to Meadowbrook the “appraisal” that the IWVGA



performed on Meadowbrook's property without Meadowbrook's knowledge or consent.

**c. The Imposed Timing is Aggressive and Abusive**

The report is unbelievably aggressive in its timing. It demands that agricultural producers decide within a period of just six weeks from its initial release date in June to "decide" whether to fallow, sell their temporary allocation or pump it to their eventual demise. Meadowbrook and possibly others of these agricultural entities have been in the basin for decades. The Transient Pool and Fallowing Program is unreasonable in demanding farmers "decide their fate" among the three presented options within just weeks of seeing the report for the first time. IWVGA Staff indicated that the Transient Pool and Fallowing Program has been in development since the GSP was adopted in January 2020, if not earlier.

The report is also confusing and inconsistent in its timelines. It states on page 9 that "offers" are to be made "on/or before August 1, 2020". Lower on that page, it states "initial offer due September 1, 2020." Whether August 1 or September 1, the IWVGA unreasonably expects farmers to evaluate and then relinquish their business operations all in a matter of weeks, based upon a vague program premised upon a flawed and non-compliant GSP that DWR has not even reviewed and for which the IWVGA has not even responded to comments.

In light of its many flaws and issues, the Transient Pool and Fallowing Program should not be adopted in its present form. SGMA authorizes the use of voluntary fallowing as a component of a groundwater sustainably program. This IWVGA fallowing program as presented is not, however, truly voluntary as it indicates transient pool allocations will automatically expire in 20 years regardless of whether they are pumped, and is based upon incomplete data, a faulty model, and unsubstantiated legal theories advanced by the IWVGA on behalf of the Navy. The IWVGA should instead delay implementation of any fallowing program to address and correct these issues and to provide potential fallowing participants more time and better information to evaluate reasonable alternatives.

Implementing the Sustainable Yield Report and Transient Pool and Fallowing Program in their current form would comprise a taking of Meadowbrook's water rights and related property interests without procedural and substantive due process and without just compensation.

Indian Wells Valley Groundwater Authority

July 13, 2020

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Meadowbrook reserves the right to provide further comments on each of the items addressed in this letter, including without limitation, at the July, August or subsequent IWVGA Board meetings.

Very truly yours,



Derek R. Hoffman, of  
GRESHAM SAVAGE  
NOLAN & TILDEN,  
A Professional Corporation

DRH:phg

Enclosures

cc: Kern County Board of Supervisors (c/o Clerk of the Board)  
San Bernardino County Board of Supervisors (c/o Clerk of the Board)  
Inyo County Board of Supervisors (c/o Clerk of the Board)  
Ridgecrest City Council (c/o City Clerk)  
Indian Wells Valley Water District Board of Directors (c/o Clerk of the Board)  
IWVGA PAC Members (c/o Clerk of the Board)  
IWVGA TAC Members (c/o Clerk of the Board)  
Searles Valley Minerals (via counsel)  
Mojave Pistachio (via counsel)

# EXHIBIT 1

**From:** David Janiec <david.janiec1@gmail.com>  
**Date:** June 23, 2020 at 4:42:49 PM MST  
**To:** Tim Carroll <TRCarrollPE@yahoo.com>, Lyle Fisher <lsfisher@iwvisp.com>, West & Irene Katzenstein <wikatzen@mchsi.com>, Nick Panzer <nicholascpanzer@yahoo.com>, Renee Westa-Lusk <westa-lusk@mediacombb.net>, pat quist <patquist93555@gmail.com>, Ed Imsand <mdairy@verizon.net>, "Nugent, Joshua" <Joshua@rtsag.com>, Judie Decker <j.decker@verizon.net>, Don Zdeba <don.zdeba@iwwwd.com>, "Bickauskas, Thomas" <tbickaus@blm.gov>, "Kersey, John D CIV USN NAVFAC SW SAN CA (USA)" <john.kersey@navy.mil>, Lorelei Oviatt <lorelieo@kerncounty.com>, Camille Anderson <anderson@svminerals.com>  
**Cc:** April Nordenstrom <apriln@iwwwd.com>, Steve Johnson <stevej@stetsonengineers.com>, Eddy Teasdale <eteasdale@lsce.com>  
**Subject: Clarification of PAC tasking for July and August**  
**Reply-To:** david.janiec@chinalakealliance.org

PAC Members,

The use of agenda item numbers, coupled with schedule changes during the GA meeting has confused a few of us, my apologies. Here is the latest CLARIFICATION of our tasking as of 1615 (4:15pm), Tuesday, 23 June 2020.

1. The July 16 GA board meeting is scheduled to include actions or discussion on the documents supporting items 8, 9, 10 and 12 from the June 18th GA agenda .  
PAC ACTION: Individual PAC member comments on these documents are due to the PAC chair NLT July 2nd, and copy the GA General Manager/Assistant (April Nordenstrom) and the WRM (Steve Johnson).

Here is the listing of those agenda items and the respective document title for our review:

- Item 8 - RESOLUTION 05-20 – ESTABLISHING A REPORTING POLICY FOR ALL NEW GROUNDWATER EXTRACTION WELLS IN THE BASIN.

- Item 9 - ORDINANCE 02-20 AND SUPPORTING DATA PACKAGE AMENDING ORDINANCE 02-18 TO PROVIDE FOR A NEEDED INCREASE IN THE CURRENT GROUNDWATER EXTRACTION FEE DUE TO INCREASED STUDIES AND LITIGATION COSTS.
- Item 10 - REPORT ON THE INDIAN WELLS VALLEY GROUNDWATER BASIN'S SUSTAINABLE YIELD OF 7,650 ACRE- FEET
- Item 12 - REPORT ON TRANSIENT POOL AND FALLOWING PROGRAM

2. Item #11 - ENGINEER'S REPORT FOR THE ADOPTION OF A BASIN REPLENISHMENT FEE, will be considered by the GA Board at the August 20 meeting.

PAC ACTION: Individual PAC member comments on that document are due to the PAC chair NLT August 7, and copy the GA General Manager/Assistant (April Nordenstrom) and the WRM (Steve Johnson).

3. After staff discussion with GA legal counsel, an in-person PAC/TAC meeting, Zoom, or conference call does not appear to be realistic at this time (for July).

4. The TAC will be reporting separately with the same due dates. April is developing a PAC portal and a TAC portal for committee members to see all committee member comments.

5. At the July GA Board meeting, PAC/TAC members are open to provide their comments during the Comment Period for each agenda item, along with the public.

Regards,  
David Janiec  
PAC Chair

# EXHIBIT 2

June 17, 2020

**VIA Email**

Indian Wells Valley Groundwater Authority  
Board of Directors  
c/o Clerk of the Board [[apriln@iwwvd.com](mailto:apriln@iwwvd.com)]  
500 Ridgecrest Blvd  
Ridgecrest, CA 93555

Re: Meadowbrook Dairy Comments on June 18, 2020 IWVGA Board Meeting  
Agenda Items

Dear IWVGA Board:

This letter is written on behalf of our client, Meadowbrook Dairy (“Meadowbrook”). On Tuesday, June 16<sup>th</sup> at 10:06am—less than 48 hours before the June 18 IWVGA Board Meeting—the IWVGA Clerk of the Board distributed extensive IWVGA meeting agenda packet materials. These materials include a resolution adopting a reporting policy for new wells (Item 8), the self-admitted highly controversial “sustainable yield” report for “consideration and preliminary adoption” (Item 10), and a report on the (also highly controversial) IWVGA transient pool and fallowing program for “consideration and preliminary adoption” (Item 12).

This morning, June 17, 2020 at 8:30am—approximately 24 hours before the IWVGA Board meeting, the Clerk of the Board released the 45-page supporting documents for Ordinance 02-20 for increased groundwater extraction fees (Item 9) and the 116-page staff report and IWVGA Water Resources Manager’s Engineer’s Report for a basin replenishment fee (Item 11).<sup>1</sup>

The IWVGA’s release of these documents has been delayed for months (with the exception, of course, to the Navy, the Indian Wells Valley Water District and other IWVGA member agencies who reviewed, drafted and/or participated in developing the reports). Meadowbrook is reviewing these *extensive* materials and reserves the rights to provide comments to the IWVGA once we have had a meaningful opportunity to review them. This last-minute release of extensive IWVGA meeting materials, without prior review by the Policy Advisory Committee and Technical

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<sup>1</sup> This was followed by a “corrected Engineer’s Report” released afterward today.

IWVGA Board of Directors

Re: *Meadowbrook Dairy Comments on June 18, 2020 IWVGA Board Meeting Agenda Items*

June 17, 2020

Page 2

Advisory Committee, is an IWVGA pattern that is prejudicial to Meadowbrook and others, as reflected in the many GSP comment letters submitted to the California Department of Water Resources.

We offer the following preliminary comments on Item 8: Resolution 05-20 Establishing a Reporting Policy for All New Groundwater Extraction Wells in the Basin:

- The policy should be presented to the PAC and TAC for review and comment prior to adoption by the IWVGA Board. The less-than-48-hour review period provided is insufficient and inconsistent with the Board's adopted stakeholder engagement policy and bylaws.
- The policy does not appear to apply, nor should it apply, to replacement wells.
- The policy confusingly refers to "Material Injury," which appears to be copied and pasted from language contained in rules and regulations imposed in *adjudicated groundwater basins*, but is not defined under SGMA or the GSP Regulations. In other words, the policy is vague and does not conform to applicable statutory and regulatory requirements.
- The policy refers to "Subareas", but as detailed in Meadowbrook's prior comment letters, SGMA and the GSP Regulations do not define "Subareas" and the GSP failed to properly consider and identify Management Areas in accordance with applicable statutory and regulatory requirements. What are the "Subareas" referenced in the policy?

Meadowbrook reserves the right and looks forward to providing further comments on the other items listed on the June 18, 2020 agenda following a meaningful opportunity to review them and as they proceed for consideration and possible adoption at subsequent IWVGA Board meetings.

Very truly yours,



Derek R. Hoffman, Attorney for  
GRESHAM SAVAGE  
NOLAN & TILDEN,  
A Professional Corporation

DRH:phg

cc: E. Teasdale  
Client



# EXHIBIT 3

**From:** Steve Johnson <stevej@stetsonengineers.com>  
**Date:** June 8, 2020 at 12:48:14 PM PDT  
**To:** Eddy Teasdale <eteasdale@lsce.com>  
**Cc:** "Phillip W. Hall" <phall@kerncounty.com>, Don Zdeba <don.zdeba@iwwwd.com>, Jim Worth <jim@mhwlegal.com>, Keith Lemieux <keith@lemieux-oneill.com>, "James L. Markman" <jmarkman@rwglaw.com>, Alan Christensen <achristensen@co.kern.ca.us>, April Nordenstrom <apriln@iwwwd.com>  
**Subject: FW: IWV Basin APT's**

Hi Eddy---In response to your email last week, I asked Jean for input on your question related to --- 3 reasons/benefits for doing APT's at Meadowbrook Wells. One way or another---if you can---please provide a response to the request to access/use Meadowbrook Wells for one or more APT's??

Thanks, Steve

---

**From:** Jean Moran <jeanm@stetsonengineers.com>  
**Sent:** Sunday, June 7, 2020 6:43 PM  
**To:** Steve Johnson <stevej@stetsonengineers.com>  
**Subject:** RE: IWV Basin APT's

Steve,

Reasoning for conducting aquifer tests in the vicinity of Meadowbrook Dairy. Please feel free to call and discuss.

The aquifer performance test (APT), also known as a pumping test, would provide

aquifer property data to refine the existing groundwater model. Updated hydraulic conductivity (K) and storativity (S) data from the APT would replace estimated data with measured data. These new data would provide a better representation of the groundwater aquifer in the northwest area of Indian Wells Valley from which to estimate sustainable yield and water supply in the Basin.

Three reasons that aquifer property data from pumping tests using Meadowbrook production wells would be beneficial:

1. improve the groundwater model for calculating sustainable yield and groundwater storage calculations in the northwest basin.
2. refine estimated subflow from Rose Valley into the basin
3. define vertical gradients in nearby multi-level monitoring wells showing artesian conditions.

The aquifer testing would provide both hydraulic conductivity (groundwater flow) and storativity (ability for aquifer to store groundwater) in the vicinity of the tested well. This testing would fill an identified data gap; and provide data that were not available for the GSP modeling.

v/r  
Jean



**JEAN MORAN PG CHG** Senior Hydrogeologist T: 760-730-0701  
[jeanm@stetsonengineers.com](mailto:jeanm@stetsonengineers.com)

---

**STETSON ENGINEERS INC.** 785 Grand Ave. Ste 202; Carlsbad, CA 92008

---

**From:** Steve Johnson <[stevej@stetsonengineers.com](mailto:stevej@stetsonengineers.com)>

**Sent:** Friday, June 5, 2020 3:25 PM

**To:** Jean Moran <[jeanm@stetsonengineers.com](mailto:jeanm@stetsonengineers.com)>

**Cc:** Timothy K Parker <[tim@pg-tim.com](mailto:tim@pg-tim.com)>; Eddy Teasdale <[eteasdale@lsce.com](mailto:eteasdale@lsce.com)>; Jean Moran <[jeanm@stetsonengineers.com](mailto:jeanm@stetsonengineers.com)>; Jeff Helsley <[jeffh@stetsonengineers.com](mailto:jeffh@stetsonengineers.com)>; Eddy Teasdale <[eteasdale@lsce.com](mailto:eteasdale@lsce.com)>

**Subject:** RE: IWV Basin APT's

Hey Jean----Talked with Phill, he would like us to provide 3 reasons the APT at Meadowbrook will be beneficial to the Authority and Basin. Send just to me/Stetson---  
Steve

# EXHIBIT 4

June 10, 2020

**VIA ELECTRONIC MAIL**

IWVGA Water Resources Manager  
Attn: Steve Johnson ([stevej@stetsonengineers.com](mailto:stevej@stetsonengineers.com))  
861 S. Village Oaks Dr. #100  
Covina, CA 91724

Re: *Indian Wells Valley – WRM Aquifer Performance Testing Request*

Dear Mr. Johnson:

This letter is in response to your recent email request to Meadowbrook Dairy's technical consultant, Eddy Teasdale, of Luhdorff & Scalmanini, and to Mojave Pistachios, LLC and the Nugent Family Trust's (collectively, "Mojave") technical consultant, Wade Major of Aquilogic, Inc. regarding accessing and using Meadowbrook's and Mojave's groundwater wells to conduct aquifer performance tests ("APTs") for the northwest area of the Indian Wells Valley Groundwater Basin. You have indicated that the testing might be funded by Prop 1 funding, and have asked for a prompt response, which we are endeavoring to provide here.

As indicated in Meadowbrook's and Mojave's many comment letters, correspondence and TAC/PAC/Board communications to the IWVGA, Meadowbrook and Mojave emphasize the importance of using the best available science and information for the development of the GSP. Meadowbrook and Mojave have also repeatedly and consistently supported the application for grant funding for projects benefiting the basin.

Unfortunately, as detailed in Meadowbrook's and Mojave's GSP comment letters and prior correspondence, the GSP and its incredibly overreaching Management Actions

Steve Johnson

Re: *Indian Wells Valley – WRM Aquifer Performance Testing Request*

June 10, 2020

Page 2

are not based upon best available science and information. We refer you to those letters, and the letters recently submitted to DWR by more than twenty other stakeholders identifying significant GSP issues.

**Importantly, the vast majority of Meadowbrook's and Mojave's GSP comments have yet to be addressed by the IWVGA regarding many critically important GSP issues such as Modeling Scenario 6.2, GSP Management Actions, and Sustainable Management Criteria. Also, we have yet to see the IWVGA's "sustainable yield allocations" report, the "transient pool allocation" report, the "fallowing program" guidelines, and many other GSP implementation reports that have been delayed for months and are currently scheduled for release June 18, 2020. The GSP indicates IWVGA intent to allocate the "sustainable yield" to the Navy, relegate Meadowbrook and Mojave to a "temporary pool" that is non-transferable and expires once pumped, and charge Meadowbrook and Mojave exorbitant pumping fees, effectively stripping Meadowbrook and Mojave of their water rights. We await the release of those reports and reserve commenting further until we have a meaningful opportunity to evaluate them.**

In attempting to evaluate your request on such short notice and in light of these critical issues, we requested that WRM provide reasons how such testing would be beneficial to Meadowbrook. In response, your office indicated via email as follows:

"Reasoning for conducting aquifer tests in the vicinity of Meadowbrook Dairy. Please feel free to call and discuss.

The aquifer performance test (APT), also known as a pumping test, would provide aquifer property data to refine the existing groundwater model. Updated hydraulic conductivity (K) and storativity (S) data from the APT would replace estimated data with measured data. These new data would provide a better representation of the groundwater aquifer in the northwest area of Indian Wells Valley from which to estimate sustainable yield and water supply in the Basin.

Three reasons that aquifer property data from pumping tests using Meadowbrook production wells would be beneficial:

1. improve the groundwater model for calculating sustainable yield and groundwater storage calculations in the northwest basin.
2. refine estimated subflow from Rose Valley into the basin

Steve Johnson

Re: *Indian Wells Valley – WRM Aquifer Performance Testing Request*

June 10, 2020

Page 3

3. define vertical gradients in nearby multi-level monitoring wells showing artesian conditions.

The aquifer testing would provide both hydraulic conductivity (groundwater flow) and storativity (ability for aquifer to store groundwater) in the vicinity of the tested well. This testing would fill an identified data gap; and provide data that were not available for the GSP modeling.”

This response reflects what Meadowbrook and Mojave have long asserted—that the GSP is replete with critical data gaps especially in the northwest area. We have also requested many times that the DRI/Navy groundwater model be made available to the TAC, and that the IWVGA provide detailed information of the assumptions used in the IWVGA GSP modeling scenarios. The IWVGA has consistently refused to accommodate that request.

Meadowbrook and Mojave remain willing to participate in developing sound and reliable data and science for the management of the basin; however, it is entirely unclear how the IWVGA/WRM intends to utilize the data in GSP implementation.

Please provide further clarification by responding to these questions:

1. If Meadowbrook and Mojave authorized use of their property for APTs in the northwest area, would the IWVGA be willing to finally make the DRI/Navy groundwater model available to Meadowbrook’s and Mojave’s technical consultants and the TAC?
2. The GSP describes management actions to “allocate the sustainable yield”. If, as indicated in the email response above, the groundwater model is “improved” for “**calculating sustainable yield and groundwater storage** calculations in the northwest basin,” how will those improvements affect the implementation of GSP projects and management actions, **particularly management actions involving allocation of the “sustainable yield” and “temporary allocations” of groundwater in storage?** In other words, would the IWVGA amend or alter its GSP management actions when data indicates greater storage and higher sustainable yield in the northwest area?
3. Where else in the basin is the IWVGA/WRM seeking to perform APTs?



Steve Johnson

Re: *Indian Wells Valley – WRM Aquifer Performance Testing Request*

June 10, 2020

Page 4

4. What other parties have been approached with a request to use wells for APTs?
5. When will the TAC be presented an opportunity to evaluate APT locations and other issues relevant to critical data gaps?

Please be sure to copy Eddy Teasdale and Wade Major in your response. We look forward to hearing from you.

Sincerely,



Derek R. Hoffman, Attorney for  
GRESHAM SAVAGE  
NOLAN & TILDEN,  
A Professional Corporation



Amy M. Steinfeld  
BROWNSTEIN HYATT  
FARBER SCHRECK, LLP

cc: IWVGA General Counsel [P. Hall, K. Lemieux, J. Worth]  
IWVGA Special Counsel [J. Markman]  
A. Christensen  
A. Nordenstrom  
D. Zdeba  
J. Moran  
J. Helsley  
J. Montoya  
W. Major  
A. Brown  
E. Teasdale  
S. Slater  
Clients



# EXHIBIT 5

**From:** [Steve Johnson](#)  
**To:** [Derek Hoffman](#)  
**Cc:** "[Phillip W. Hall \(phall@kerncounty.com\)](#)"; "[James Worth \(jim@mhwlegal.com\)](#)"; "[Keith Lemieux <klemieux@omlowlaw.com> \(klemieux@omlowlaw.com\)](#)"; "[James L. Markman](#)"; "[don.zdeba@iwwwd.com](#)"; "[Alan Christensen \(achristensen@kerncounty.com\)](#)"; "[Reneem@iwwwd.com](#)"; "[apriln@iwwwd.com](#)"; "[Jean Moran](#); "[Jeff Helsley](#); "[Joseph Montoya](#); "[Steinfeld, Amy \(ASteinfeld@bhfs.com\)](#)"; "[Slater, Scott \(SSlater@bhfs.com\)](#)"; "[wade.major@aquilogic.com](#)"; "[Anthony Brown \(anthony.brown@aquilogic.com\)](#)"; "[Eddy Teasdale \(eteasdale@lsce.com\)](#)"; "[Paige H. Gosney](#); "[Michael Duane Davis](#); "[Dina Snider](#)  
**Subject:** RE: IWV Basin Aquifer Performance Testing  
**Date:** Monday, June 15, 2020 12:41:48 PM

---

OK. Thanks Derek.

---

**From:** Derek Hoffman <[Derek.Hoffman@GreshamSavage.com](mailto:Derek.Hoffman@GreshamSavage.com)>  
**Sent:** Monday, June 15, 2020 12:36 PM  
**To:** Steve Johnson <[stevej@stetsonengineers.com](mailto:stevej@stetsonengineers.com)>  
**Cc:** 'Phillip W. Hall (phall@kerncounty.com)' <[phall@kerncounty.com](mailto:phall@kerncounty.com)>; 'James Worth (jim@mhwlegal.com)' <[jim@mhwlegal.com](mailto:jim@mhwlegal.com)>; 'Keith Lemieux <klemieux@omlowlaw.com> (klemieux@omlowlaw.com)' <[klemieux@omlowlaw.com](mailto:klemieux@omlowlaw.com)>; 'James L. Markman' <[JMarkman@rwglaw.com](mailto:JMarkman@rwglaw.com)>; 'don.zdeba@iwwwd.com' <[don.zdeba@iwwwd.com](mailto:don.zdeba@iwwwd.com)>; 'Alan Christensen (achristensen@kerncounty.com)' <[achristensen@kerncounty.com](mailto:achristensen@kerncounty.com)>; 'Reneem@iwwwd.com' <[Reneem@iwwwd.com](mailto:Reneem@iwwwd.com)>; 'apriln@iwwwd.com' <[apriln@iwwwd.com](mailto:apriln@iwwwd.com)>; 'Jean Moran' <[jeanm@stetsonengineers.com](mailto:jeanm@stetsonengineers.com)>; 'Jeff Helsley' <[jeffh@stetsonengineers.com](mailto:jeffh@stetsonengineers.com)>; 'Joseph Montoya' <[JosephM@stetsonengineers.com](mailto:JosephM@stetsonengineers.com)>; 'Steinfeld, Amy (ASteinfeld@bhfs.com)' <[ASteinfeld@bhfs.com](mailto:ASteinfeld@bhfs.com)>; 'Slater, Scott (SSlater@bhfs.com)' <[SSlater@bhfs.com](mailto:SSlater@bhfs.com)>; 'wade.major@aquilogic.com' <[wade.major@aquilogic.com](mailto:wade.major@aquilogic.com)>; 'Anthony Brown (anthony.brown@aquilogic.com)' <[anthony.brown@aquilogic.com](mailto:anthony.brown@aquilogic.com)>; 'Eddy Teasdale (eteasdale@lsce.com)' <[eteasdale@lsce.com](mailto:eteasdale@lsce.com)>; 'Paige H. Gosney' <[Paige.Gosney@GreshamSavage.com](mailto:Paige.Gosney@GreshamSavage.com)>; 'Michael Duane Davis' <[Michael.Davis@greshamsavage.com](mailto:Michael.Davis@greshamsavage.com)>; 'Dina Snider' <[Dina.Snider@GreshamSavage.com](mailto:Dina.Snider@GreshamSavage.com)>  
**Subject:** RE: IWV Basin Aquifer Performance Testing

Steve,

The IWVGA's legal counsel was copied on the initial emails directed solely to Meadowbrook's / Mojave's technical consultants, and I did seek Phill's permission last week to contact you about this. You also previously relayed IWVGA legal counsel responses to Eddy on this matter.

Whether from you directly or from the IWVGA legal counsel, we look forward to hearing back.

Thanks,

Derek

---

**From:** Steve Johnson [<mailto:stevej@stetsonengineers.com>]  
**Sent:** Monday, June 15, 2020 12:26 PM  
**To:** Derek Hoffman  
**Cc:** 'Phillip W. Hall ([phall@kerncounty.com](mailto:phall@kerncounty.com))'; 'James Worth ([jim@mhwlegal.com](mailto:jim@mhwlegal.com))'; 'Keith Lemieux <[klemieux@omlowlaw.com](mailto:klemieux@omlowlaw.com)> ([klemieux@omlowlaw.com](mailto:klemieux@omlowlaw.com))'; 'James L. Markman'; 'don.zdeba@iwwwd.com'; 'Alan Christensen ([achristensen@kerncounty.com](mailto:achristensen@kerncounty.com))'; 'Reneem@iwwwd.com'; 'apriln@iwwwd.com'; 'Jean Moran'; 'Jeff Helsley'; 'Joseph Montoya'; 'Steinfeld, Amy ([ASteinfeld@bhfs.com](mailto:ASteinfeld@bhfs.com))'; 'Slater, Scott ([SSlater@bhfs.com](mailto:SSlater@bhfs.com))'; 'wade.major@aquilogic.com'; 'Anthony Brown ([anthony.brown@aquilogic.com](mailto:anthony.brown@aquilogic.com))';

'Eddy Teasdale ([eteasdale@lsce.com](mailto:eteasdale@lsce.com))'; Paige H. Gosney; Michael Duane Davis; Dina Snider  
**Subject:** RE: IWV Basin Aquifer Performance Testing

Hi Derek—As you know, the letter was submitted by legal counsel(s). therefore, it is really inappropriate for me to respond. I have been in communication with the Authority's Legal Counsel—and—as I think you are also aware---we have a “full plate” for the Authority Board meeting this Thursday.

Talk Soon, Steve

---

**From:** Derek Hoffman <[Derek.Hoffman@GreshamSavage.com](mailto:Derek.Hoffman@GreshamSavage.com)>  
**Sent:** Monday, June 15, 2020 12:18 PM  
**To:** Steve Johnson <[stevej@stetsonengineers.com](mailto:stevej@stetsonengineers.com)>  
**Cc:** 'Phillip W. Hall ([pball@kerncounty.com](mailto:pball@kerncounty.com))' <[pball@kerncounty.com](mailto:pball@kerncounty.com)>; 'James Worth ([jim@mhwlegal.com](mailto:jim@mhwlegal.com))' <[jim@mhwlegal.com](mailto:jim@mhwlegal.com)>; 'Keith Lemieux <[klemieux@omlowlaw.com](mailto:klemieux@omlowlaw.com)>' <[klemieux@omlowlaw.com](mailto:klemieux@omlowlaw.com)>; 'James L. Markman' <[JMarkman@rwglaw.com](mailto:JMarkman@rwglaw.com)>; 'don.zdeba@iwvwd.com' <[don.zdeba@iwvwd.com](mailto:don.zdeba@iwvwd.com)>; 'Alan Christensen ([achristensen@kerncounty.com](mailto:achristensen@kerncounty.com))' <[achristensen@kerncounty.com](mailto:achristensen@kerncounty.com)>; 'Reneem@iwvwd.com' <[Reneem@iwvwd.com](mailto:Reneem@iwvwd.com)>; 'apriln@iwvwd.com' <[apriln@iwvwd.com](mailto:apriln@iwvwd.com)>; Jean Moran <[jeanm@stetsonengineers.com](mailto:jeanm@stetsonengineers.com)>; Jeff Helsley <[jeffh@stetsonengineers.com](mailto:jeffh@stetsonengineers.com)>; Joseph Montoya <[JosephM@stetsonengineers.com](mailto:JosephM@stetsonengineers.com)>; 'Steinfeld, Amy ([ASteinfeld@bhfs.com](mailto:ASteinfeld@bhfs.com))' <[ASteinfeld@bhfs.com](mailto:ASteinfeld@bhfs.com)>; 'Slater, Scott ([SSlater@bhfs.com](mailto:SSlater@bhfs.com))' <[SSlater@bhfs.com](mailto:SSlater@bhfs.com)>; 'wade.major@aquilogic.com' <[wade.major@aquilogic.com](mailto:wade.major@aquilogic.com)>; 'Anthony Brown ([anthony.brown@aquilogic.com](mailto:anthony.brown@aquilogic.com))' <[anthony.brown@aquilogic.com](mailto:anthony.brown@aquilogic.com)>; 'Eddy Teasdale ([eteasdale@lsce.com](mailto:eteasdale@lsce.com))' <[eteasdale@lsce.com](mailto:eteasdale@lsce.com)>; Paige H. Gosney <[Paige.Gosney@GreshamSavage.com](mailto:Paige.Gosney@GreshamSavage.com)>; Michael Duane Davis <[Michael.Davis@greshamsavage.com](mailto:Michael.Davis@greshamsavage.com)>; Dina Snider <[Dina.Snider@GreshamSavage.com](mailto:Dina.Snider@GreshamSavage.com)>  
**Subject:** RE: IWV Basin Aquifer Performance Testing

Hello Steve,

I am following up to inquire when we might expect to receive responses to the questions asked in our June 10, 2020 letter (copy attached for your reference).

Thanks,

Derek

---

**From:** Derek Hoffman  
**Sent:** Wednesday, June 10, 2020 3:49 PM  
**To:** Steve Johnson ([stevej@stetsonengineers.com](mailto:stevej@stetsonengineers.com))  
**Cc:** Phillip W. Hall ([pball@kerncounty.com](mailto:pball@kerncounty.com)); James Worth ([jim@mhwlegal.com](mailto:jim@mhwlegal.com)); Keith Lemieux <[klemieux@omlowlaw.com](mailto:klemieux@omlowlaw.com)> ([klemieux@omlowlaw.com](mailto:klemieux@omlowlaw.com)); James L. Markman; [don.zdeba@iwvwd.com](mailto:don.zdeba@iwvwd.com); Alan Christensen ([achristensen@kerncounty.com](mailto:achristensen@kerncounty.com)); [Reneem@iwvwd.com](mailto:Reneem@iwvwd.com); [apriln@iwvwd.com](mailto:apriln@iwvwd.com); Jean Moran ([jeanm@stetsonengineers.com](mailto:jeanm@stetsonengineers.com)); 'Jeff Helsley' ([jeffh@stetsonengineers.com](mailto:jeffh@stetsonengineers.com)); 'josephM@stetsonengineers.com'; Steinfeld, Amy ([ASteinfeld@bhfs.com](mailto:ASteinfeld@bhfs.com)); Slater, Scott ([SSlater@bhfs.com](mailto:SSlater@bhfs.com)); [wade.major@aquilogic.com](mailto:wade.major@aquilogic.com); Anthony Brown ([anthony.brown@aquilogic.com](mailto:anthony.brown@aquilogic.com)); Eddy Teasdale ([eteasdale@lsce.com](mailto:eteasdale@lsce.com)); Paige H. Gosney; Michael Duane Davis; Dina Snider  
**Subject:** IWV Basin Aquifer Performance Testing

Dear Steve,



Please find the attached letter from Meadowbrook Dairy and Mojave Pistachio in response to the IWVGA Water Resources Manager's recent email correspondence to our clients' technical representatives regarding aquifer performance testing in the northwest basin area.

We look forward to receiving your response.

Thank you,

---

Derek Hoffman  
Shareholder

Gresham Savage Nolan & Tilden, PC  
550 East Hospitality Lane, Suite 300  
San Bernardino, CA 92408-4205  
Office: (909) 890-4499 Ext. 1713  
Fax: (909) 890-9877  
[www.GreshamSavage.com](http://www.GreshamSavage.com)  
[derek.hoffman@greshamsavage.com](mailto:derek.hoffman@greshamsavage.com)

---

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---

Derek Hoffman  
Shareholder

Gresham Savage Nolan & Tilden, PC  
550 East Hospitality Lane, Suite 300  
San Bernardino, CA 92408-4205  
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# EXHIBIT 6

## Introduction to Sustainable Yield Allocation Chart

The Groundwater Authority's (GA) responsibilities are set forth in the Sustainable Groundwater Management Act (SGMA). At its core, SGMA requires that the GA bring the Basin into sustainability through the regulation of groundwater pumping in a manner that is consistent with existing California water rights law. DWR has expressly stated that "SGMA requires local agencies to develop and implement GSPs that achieve sustainable groundwater management by implementing projects and management actions . . ." Consequently, the GA's actual power to achieve sustainability is fundamentally linked to the GA's ability to develop augmentation projects and require that the users of those projects pay their fair share of those augmentation costs.

Accordingly, the attached chart does not reflect a legal determination of anyone's water rights, nor does it prohibit anyone from actually pumping groundwater. This chart merely reflects an analysis of California Water Law to determine the use priorities of the Basin's sustainable yield, which is then used to determine how much, if any, augmentation supply is needed to sustain someone's pumping.

Counsel for the GA have determined that existing water rights law provides the Navy with a Federal Reserve Water Right (Reserve Right) that is superior to all other water rights in the Basin, with the exception of those rights that were in existence at the time at the Base was founded. This water right extends not only to the Base's current pumping, but to all the water that is necessary for the Base to carry out its mission.

Given the Reserve Right's superiority, the GA requested a Navy estimation of its Reserve Right. On June 17, 2019, the Navy formally responded with a response that declined to set forth an express estimation of the Reserve Right. However, the response did expressly provide that the Reserve Right is not limited to the 2,041afy figured provided, in November of 2018, "as the amount of water the installation could agree to use under a GSP."

The response provided the GA with data demonstrating that the Navy's historic water consumption peaked in 1970 at a maximum annual Navy production of 7,988af. The response also provided data demonstrating that the 6,530af was the quantity of water needed to sustain the Navy's current and future mission, including the Navy workforce (military, civilian, contractors and dependents) at the Base.

The Navy's response also expressly provides that, because of the movement of Navy staff and dependents off-Station, "the water requirements of the Navy cannot be determined solely by the Navy's recent direct production amounts". The response further provides that "[s]ince the Navy mission at China Lake requires its workforce, the full Navy water requirements are the combination of the on-Station requirements and those of the Navy workforce and their dependents off-Station."

While Counsel for the GA believe that the provided data could lead to an adjudicated Federal Reserve Water Right of 7,988af, or more, the lower figure of 6,530af in Section 6.0 has been chosen for the purposes of the attached chart.

Next in order of priority are overlying domestic water users that fit the SGMA definition of a de minimus user because their use cannot be limited or reduced under state law. In addition, the GA must recognize the pumping rights of the City of Ridgecrest and Kern County as those rights are superior to all of other overlying owners because public entity rights may not be prescribed against.

Searles Valley Minerals has asserted a claim that it has a water right superior to the Navy's Reserve Right. Given the Navy's sovereign immunity, the GA lacks the authority to conclusively determine the merits of that dispute and as a result 217af for the domestic use in Trona and 2,413af for Searles Valley Minerals operations were chosen for the purposes of the attached chart.

At this point, the sustainable yield of the Basin has been completely allocated and there is no native water left for inferior rights holders. Recognizing that the water used by these inferior rights holders is put to significant and important economic use and to ease the transition from current pumping levels to sustainable pumping levels, the GA proposes to establish a pool of water that will allow the mining of the Basin in the amount of yet to be determined.

### Sustainable Yield Allocation

| Pumping Group                 | Current Est Pumping <sup>1</sup> | Current Rpt Pumping <sup>2</sup> | Sustainable Yield Allocation | Carry Over <sup>3</sup> | Allocation w/ Carry Over | Allowed GSP Pumping | Augment Supply Need |
|-------------------------------|----------------------------------|----------------------------------|------------------------------|-------------------------|--------------------------|---------------------|---------------------|
| Navy                          | 1,450                            | 1,450                            | 6,530                        | —                       | 1,450 <sup>4</sup>       | 1,450               | —                   |
| De minimis Wells <sup>5</sup> | 800                              | —                                | 800                          | 0                       | 800                      | 800                 | 0                   |
| City of Ridgecrest            | 373                              | 115.4                            | 339                          | 0                       | 339                      | 339                 | 0                   |
| Kern County                   | 18                               | 16.3                             | 18                           | 0                       | 18                       | 18                  | 0                   |
| IWVWD                         | 6,507                            | 6,204.9                          | 0                            | 4,461                   | 4,461                    | 6,507               | 2,046               |
| Inyokern CSD                  | 102                              | 133.3                            | 0                            | 102                     | 102                      | 102                 | 0                   |
| Small Mutuals                 | 300                              | 243.6                            | 0                            | 300                     | 300                      | 300                 | 0                   |
| Trona DM                      | 217                              | N/A <sup>6</sup>                 | 0                            | 217                     | 217                      | 217                 | 0                   |
| SVM                           | 2,413                            | 2,703.3                          | 0                            | 0                       | 0                        | 2,413 <sup>7</sup>  | 2,413               |
| Meadowbrook Dairy             | 6,387                            | 4,478.9                          | 0                            | 0                       | 0                        | Pool <sup>8</sup>   | 0                   |
| Mojave Pistachio              | 6,400                            | 4,292.2                          | 0                            | 0                       | 0                        | Pool                | 0                   |
| Quist Farms                   | 693                              | 619.6                            | 0                            | 0                       | 0                        | Pool                | 0                   |
| Sierra Shadows                | 765                              | 74.4                             | 0                            | 0                       | 0                        | Pool                | 0                   |
| Amberglow                     | 62                               | 86.2                             | 0                            | 0                       | 0                        | Pool                | 0                   |
| Terese Farms (Hovaten)        | 310                              | 266.8                            | 0                            | 0                       | 0                        | Pool                | 0                   |
| Hickle                        | 85                               | 5.9                              | 0                            | 0                       | 0                        | Pool                | 0                   |
| Bellino                       | 50                               | FTR                              | 0                            | 0                       | 0                        | Pool                | 0                   |
| Simmons Ranch                 | 918                              | 100.6/FTR <sup>9</sup>           | 0                            | 0                       | 0                        | Pool                | 0                   |
| Blubaugh                      | 1                                | 1.8                              | 0                            | 0                       | 0                        | Pool                | 0                   |
| McGee                         | 400                              | FTR                              | 0                            | 0                       | 0                        | Pool                | 0                   |
| Shacklett                     | 1                                | FTR <sup>10</sup>                | 0                            | 0                       | 0                        | Pool                | 0                   |
| <b>Total</b>                  | <b>28,252</b>                    | <b>—</b>                         | <b>7,687</b>                 | <b>5,080</b>            | <b>7,687</b>             | <b>12,146</b>       | <b>4,459</b>        |



<sup>1</sup> Current estimated pumping reflects the most current/recent available data and does not represent a single reporting year. Sources of data include 1) Production reported by the Cooperative Group for 2016 (and 2017 when available); 2) Production reported to the WRM directly by pumpers; and 3) Production estimates developed during the development of the Baseline model scenario

<sup>2</sup> This Column reflects pumping reported through the GSP Pumping Fee. Those marked FTR have Failed to Report. What if any impacts the FTR will have on pool allocations has yet to be determined.

<sup>3</sup> In accordance with the priorities and principles of California Water law and communications with the Navy, this column reflects the distribution of the unused portion of the GA estimated Navy Federal Reserve Water Right to the Domestic water providers.

Currently, it is estimated that the Navy is directly using 1,450af on the installation which leads to a total Carry Over of 5,080af (6,530 – 1,450 = 5,080). The Navy has reported a potential future need of 2,041af for direct use on the Base. If and when this increase occurs, the Carry Over of 5,080af will be reduced in direct proportion to the increase on the base (6,530 – 2,041 = 4,498).

<sup>4</sup> For the purposes of this chart, the current estimated on Base use 1,450af is used, rather than, the Navy's reported potential future on Base need of 2,041af.

<sup>5</sup> See Water Code Section 10721(e).

<sup>6</sup> SVM does not break their reporting down to this level for the purposes of the IWWGA pump fee. Trona use is included in the SVM reported value.

<sup>7</sup> This reflects the industrial use by SVM and it's listed as a GSP allowed pumping because there is a presumption that SVM can afford the augment costs.

<sup>8</sup> Pool water is listed because there is an educated presumption that Fee for Augmented Supplies will exceed the rate of return for the water.

<sup>9</sup> Failed to Report since May 2019.

<sup>10</sup> In partial compliance with Well Registration.

# EXHIBIT 7

## **Davis, Bridget M CIV USN NAVFAC SW SAN CA (USA)**

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**From:** Faryan, Mary K CIV USN COMNAVREG SW (US)  
**Sent:** Tuesday, July 16, 2019 8:18 AM  
**To:** Boggs, Matthew L CIV USN NAVALWARCENWPNDIV (USA); Kersey, John D CIV USN NAVFAC SW SAN CA (USA); Benson, Peter R CDR USN (USA); Penix, Steve L CIV USN (US); Warren, Robert J CIV USN (USA); Bork, Stephan A CIV USN NAVFAC SW SAN CA (US); Ostapuk, Kathryn G CIV USN COMNAVREG SW SAN CA (US); Bouvier, Corey A CIV USN NAVALWARCENWPNDIV (USA); Abbey, Alexandra L CIV USN COMNAVREG SW SAN CA (USA); Allen, Margo L CIV USN NAVALWPNSTA CHL CA (US); Haase, Helen K CIV USN COMNAVREG SW SAN CA (US); Battisti, John J LCDR USN (USA); Nichols, Audrey M LCDR USN RLSO SW SAN CA (USA)  
**Subject:** RE: [Non-DoD Source] Letter from the Navy  
**Signed By:** marykay.faryan@navy.mil

Roger all Matt – take care of yourself and don't worry about answering this further – we will hold the line here and circle back later... thx for your late night efforts! ☺ MK

**From:** Boggs, Matthew L CIV USN NAVALWARCENWPNDIV (USA) <matthew.boggs@navy.mil>

**Sent:** Monday, July 15, 2019 7:43 PM

**To:** Faryan, Mary K CIV USN COMNAVREG SW (US) <marykay.faryan@navy.mil>; Kersey, John D CIV USN NAVFAC SW SAN CA (USA) <john.kersey@navy.mil>; Benson, Peter R CDR USN (USA) <peter.benson1@navy.mil>; Penix, Steve L CIV USN (US) <steve.penix@navy.mil>; Warren, Robert J CIV USN (USA) <robert.j.warren1@navy.mil>; Bork, Stephan A CIV USN NAVFAC SW SAN CA (US) <stephan.bork@navy.mil>; Ostapuk, Kathryn G CIV USN COMNAVREG SW SAN CA (US) <kathryn.ostapuk@navy.mil>; Bouvier, Corey A CIV USN NAVALWARCENWPNDIV (USA) <corey.bouvier@navy.mil>; Abbey, Alexandra L CIV USN COMNAVREG SW SAN CA (USA) <alexandra.abbey@navy.mil>; Allen, Margo L CIV USN NAVALWPNSTA CHL CA (US) <margo.allen@navy.mil>; Haase, Helen K CIV USN COMNAVREG SW SAN CA (US) <helen.haase@navy.mil>; Battisti, John J LCDR USN (USA) <john.j.battisti@navy.mil>; Nichols, Audrey M LCDR USN NAVALCIVLAWSUPPACT DC (USA) <audrey.m.nichols@navy.mil>

**Subject:** RE: [Non-DoD Source] Letter from the Navy

Mary Kay --

**Re: Section 7 References:**

#1: We do have a PDF of this; it is currently marked FOUO.

#2: This is a non-Navy publication, and can be found via research libraries.

#3: This is a non-Navy paper, and can be found via research libraries.

#4: We do have a PDF of this; it is currently marked FOUO.

#5: I don't have a good copy of this document. I found a paper copy in the China Lake archives, but didn't make a copy, just notes.

#6: This is an open published book available from University of Oklahoma Press.

#7: This is CA DWR data available on the web.

#8: This is previously released via CNI/EI&E. We do have a copy in our files.

I will note that it is incredibly rare to provide copies of the reference materials associated with a report -- there's the expectation that interested parties will do their own library or research requests.

Re: Origin documents for China Lake, we do have copies of the request for facilities from ADM Mitscher, as well as CAPT Burroughs' formation letter for BuOrd, both from 1943.

In all cases, if you want copies of the documents we hold, as soon as I can get to a working computer that can access our CM/DM system, I can pull them and forward them.

Matt

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/\*\*\*\*\*\  
Matt Boggs  
Naval Air Warfare Center - Weapons Div.  
Chief Engineer, China Lake Ranges (Code 52000MD)  
130 Easy Rd Stop 3006  
China Lake, CA 93555-6109  
  
PH: (760) 939-4404  
DSN: 437-4404  
[matthew.boggs@navy.mil](mailto:matthew.boggs@navy.mil)  
\\*\*\*\*\*/

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**From:** Faryan, Mary K CIV USN COMNAVREG SW (US)  
**Sent:** Monday, July 15, 2019 4:22 PM  
**To:** Kersey, John D CIV USN NAVFAC SW SAN CA (USA); Benson, Peter R CDR USN (USA); Boggs, Matthew L CIV USN NAVAIRWARCENWPNDIV (USA); Penix, Steve L CIV USN (US); Warren, Robert J CIV USN (USA); Bork, Stephan A CIV USN NAVFAC SW SAN CA (US); Ostapuk, Kathryn G CIV USN COMNAVREG SW SAN CA (US); Bouvier, Corey A CIV USN NAVAIRWARCENWPNDIV (USA); Abbey, Alexandra L CIV USN COMNAVREG SW SAN CA (USA); Allen, Margo L CIV USN NAVAIRWPNSTA CHL CA (US); Haase, Helen K CIV USN COMNAVREG SW SAN CA (US); Battisti, John J LCDR USN (USA); Nichols, Audrey M LCDR USN NAVCIVLAWSUPPACT DC (USA)  
**Subject:** RE: [Non-DoD Source] Letter from the Navy

All --

Allie and I have had a few side bar calls with attorneys on the "Boggs Report" - one request was made for the actual referenced documents, Section 7 on Page 10. Do we have those easily available? If so, we should think about potentially transmitting to the GA... I welcome your thoughts on that.

Along those same lines, do we have the source doc that established the base in 1943? That is an important document to support the seniority of the FRWR dating back to this date.

We were told that a new well registration ordinance is being proposed, with the "first reading" at Thursday's Board meeting. Can someone send that along? We will need to recommend some verbiage regarding feds participating as a matter of comity...

I know you are all still in earthquake recovery mode, but with the Board Mtg going forward Thursday, can someone remind me when do we have our next call scheduled.

# EXHIBIT 8



**From:** [Steve Johnson](#)  
**To:** [Derek Hoffman](#)  
**Cc:** [Jeff Helsley](#); [Joseph Montoya](#); [Heather Steele](#)  
**Subject:** **Transient Pool**  
**Date:** Thursday, July 02, 2020 2:14:00 PM

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Hi Derek---You had asked for more information on the calculation of the Transient Pool/51,000af. Here is some additional information---

1. The Transient Pool was created to help pumpers/operations that may not be able to afford the cost of imported water supplies, with a pathway to phase down/out their pumping/operations over (potentially) several years.
2. AG was (tentatively) identified as the most probable candidates for this program?? Searles appeared to be planning for continued operations with higher water costs?? The remaining pumping (mostly) supports domestic uses. Excludes Navy.
3. The modeling for this was done assuming 2020 as 1<sup>st</sup> year with “ramp-down” of pumping to the goal of about 12,000afy by 2027 (8 years).
4. For “modeling”, exempt pumpers were—De minimis, Navy, City, County and 86% of domestic for FRWR extension off of the Base.
5. Model Run 4---assumed about 156,000af of total pumping during 8 year period, including 1<sup>st</sup> two years (grace period) with Coop Group pumping info and AG Baseline pumping, then 6 years of ramp-down pumping to about 12afy/domestic.
6. Model Run 6---assumptions were made as to how the AG folks would use their water and some non-qualified pumping was excluded because of non-continuous during SGMA Base Period. New total 8 year pumping about 153,000af.
7. The domestic pumping for 8 years was a little over 11,000afy---or a little over 89,000af total.
8. Therefore, about 153,000af total pumping for 8 years—less about 89,000af for domestic—leaves about 64,000af for AG Pool. Searles original amount of over 12,000af was then deducted as not appropriate for Transient Pool---for a final Transient Pool of 51,000af.

If you look back at the TAC presentations, I think you will find a lot of these numbers---

I hope this is helpful--Steve

*The page intentionally blank*

July 15, 2020

**VIA Email**

Indian Wells Valley Groundwater Authority  
Board of Directors  
c/o Clerk of the Board [apriln@iwwvd.com]  
500 W. Ridgecrest Blvd  
Ridgecrest, CA 93555

Re: Meadowbrook Dairy **Additional** Comments on IWVGA July 16, 2020 Agenda Item 5 (Continuation of Consideration of Transient Pool and Fallowing Program and New Groundwater Extraction Well Policy), Item 8 (Ordinance 02-20 – Increased Pump Fee) and Item 9 (Sustainable Yield Report).

Dear IWVGA Board Members:

On behalf our client, Meadowbrook Dairy (“Meadowbrook”), this letter provides **additional** comments on Agenda Items 5, 8 and 9 for the July 16, 2020 Board Meeting of the Indian Wells Valley Groundwater Authority (“IWVGA” or “Groundwater Authority”). This letter is in addition to the letter previously submitted by Meadowbrook on July 13, 2020.

As an initial general comment, the process for public engagement and discussion of these critical and highly controversial IWVGA action items is severely debilitated by the limited means by which members of the public are allowed to present comments during COVID-19 conditions. The IWVGA has released extensive documents no more than 48 hours prior to the meeting, and as of the time of drafting this letter, had not yet released the remainder of the agenda packet less than 24 hours prior to the meeting. This conduct severely limits the opportunity for stakeholders to draft and submit written comments – and virtually guarantees the IWVGA Board will not review and meaningfully consider those comments.

The IWVGA Clerk of the Board has further indicated that for *verbal comments* to be read into the record at the meeting, they must be provided as soon as possible prior to the



*meeting*.<sup>1</sup> And, when members of the public *attempt* to call in telephonically to make verbal comments directly to the Board, they are placed on hold, their calls drop, they must call in repeatedly, and the lag between the video streaming and the telephone line results in confusion. Often, as was the case for Meadowbrook in June, comments attempted to be read by the Clerk are not presented until after the IWVGA has already taken action. See June IWVGA minutes under “Closing Comments”.

The rush of the IWVGA to adopt these items during these unprecedented conditions reflects a failure to consider the interests of beneficial uses and users of groundwater and to engage in robust public discourse as required by SGMA, the DWR GSP Regulations and DWR Best Management Practices.

**I. Agenda Item 5 – Continuation of Consideration and Adoption of Transient Pool and Fallowing Program and New Groundwater Extraction Well Policy**

The agenda and staff report indicate that these items have been continued to August 20, 2020. While the additional time for public review is certainly necessary, the staff report is not clear on whether or what changes are being considered by the IWVGA, or whether the IWVGA is merely moving the items back a month. Meadowbrook and others submitted comments raising substantial concerns with both of these items. See Meadowbrook’s July 13, 2020 letter.

Additionally, the staff report statement that “Any dates or deadlines set forth in drafts for said items will be changed/delayed to reflect the additional review period.” This does not clarify issues regarding the inconsistent and vague timelines contained within those reports, particularly as to the Transient Pool and Fallowing Program which imposes inconsistent deadlines. Continuing the already vague and consistent deadlines by one month does not resolve those issues.

Both the Transient Pool and Fallowing Program, and New Groundwater Well Extraction Policy require significant changes, and must not be adopted in their present form, as detailed in letters submitted by Meadowbrook and other major stakeholders.

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<sup>1</sup> No fault is attributed to the Clerk of the Board for this issue.

II. **Agenda Item 8 – Public Hearing and Consideration of Data Package on an Increase in the Current Groundwater Extraction Fee and Adoption of CEQA Findings and Ordinance 02-20**

Please refer and respond to the questions and issues presented in Meadowbrook’s comment letter dated July 13, 2020, which Meadowbrook again incorporates expressly by reference here in addition to the following comments.

a. **The July Data Package for the Fee was Released Just 48 Hours Prior to the Meeting, in Violation of SGMA’s Requirement to Release the Data to the Public at Least 20 Days in Advance**

California *Water Code* 10730(b)(3) provides that: “At least 20 days prior to the meeting, the groundwater sustainability agency shall make available to the public data upon which the proposed fee is based.”

On June 18, 2020, the Board released a “Revised Data Package” purporting to explain the proposed fee increase from \$30 to (a shocking) \$225 per acre foot to purportedly fund the GSP (“June Data Package”). Meadowbrook submitted extensive written comments in its July 13, 2020 letter on this item as well, identifying the many flaws, issues and unanswered questions regarding the June Data Package.

On July 14, 2020 – approximately just **48 hours** before the IWVGA Board Meeting—the Clerk of the Board distributed a further REVISED Data Package containing many changes to the June Data Package, purporting to explain a newly proposed fee increase from \$30 to (a still shocking) \$105 per acre foot.

The Board cannot legally adopt the proposed fee increase on July 16, 2020, because it has not complied with *Water Code* Section 10730’s notice requirements. Adopting the fee on July 16, 2020 subjects the fee to voiding in accordance with *Water Code* Section 10726.6 and other applicable law.

b. **The Staff Report is Misleading Regarding Public Engagement and Consideration of Written Comments.**

The Staff Report indicates that “nine written comments have been received to date”. Does this account for Meadowbrook’s letter dated July 13, 2020? Moreover, it is impossible that any of those letters addressed the July Data Package, because the Staff Report and July Data Package were both released on July 14, 2020 (which also does not

account for the time required to draft the Staff Report prior to its release). The public has not been adequate adequate or SGMA-compliant time to review the July Data Package.

**c. The July Data Package Includes Many Significant Unexplained Changes from the June Data Package and Includes Charges for Projects and Management Actions that Are Not Allowed Under Water Code Section 10730.**

The staff report states that “the tasks identified as ‘Expenditures’ have been determined to be [GSP] ‘preparation’ costs authorized under Section 10730, and not ‘implementation costs’ covered by Section 10730.2.” But the Staff Report provides no explanation or analysis for that “determination.” As noted in Meadowbrook’s and others’ correspondence, the scope of expenses for which a *Water Code* 10730 fee may be charged is *limited*. Meadowbrook has identified multiple “Expenditures” that comprise management of groundwater and not GSP preparation or amendment.

How, for just a few examples, does the IWVGA find: “Allocation Process Development (at \$226,470), “Sustainable Yield Allocation Report” (at \$15,000), “Fallowing Program Development” (at \$25,000), “Imported Water Coordination for GSP” (at \$46,075), or “Brackish Water Study Coordination” (at \$23,113) to comprise “GSP preparation” costs and not to comprise “groundwater management”, particularly where those actions clearly pertain to the specific GSP Projects and Management Actions (“PMAs”)?

Those GSP PMAs include, for example:

- Management Action 1 – Implement Annual Pumping Allocation Plan, Transient Pool, and Fallowing Program
- Project No. 1 – Develop Imported Water Supply
- Conceptual Projects Still under Consideration – Brackish Groundwater Project<sup>2</sup>

The staff report provides no supporting analysis for its conclusive statement that the “Expenditures” in the June or July Data Packages are all authorized within the narrow scope of *Water Code* Section 10730. Notably, the Staff Report attempts to distinguish the “Replenishment Fee” as means to justify the expenditure line items for this Extraction Fee. (Staff Report p. 2.) The Replenishment Fee Report, however, states that

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<sup>2</sup> The Staff Report further does not explain how a *Water Code* 10730 fee can be charged for the brackish water project when the IWVGA Board has it marked “still under consideration”.

it is based upon, and it expressly incorporates by reference, the IWVGA Sustainable Yield Report. It does not follow, and the staff report does not explain, how the “Sustainable Yield Report” expenditure in the Data Package is not a groundwater management related expense that must be adopted pursuant to *Water Code* Section 10730.2 rather than *Water Code* Section 10730. This is one of many issues that must be addressed and amended in the July Data Package.

**d. The July Data Package is Vague, Internally Inconsistent and Provides no New Supporting Data – Just a Revised Staff Report Providing Little or No Explanatory Information.**

The July Data Package contains two Staff Reports, both dated July 16, 2020, but containing conflicting figures. The initial staff report identifies a “gap funding requirement” of \$1,531,590 (p. 3.). The Data Package following the staff report contains *another* staff report, also dated July 16, which confusingly identifies a “gap funding requirement” in the amount of “\$2,031,590” (at *its* page 3 and also shown on *its* spreadsheet at page 4, and again at *its* Exhibit 2 on the untitled spreadsheet confusingly numbered page 4, and yet again on the last unnumbered page of *its* Exhibit 3 on the spreadsheet entitled “IWVGA Pumping Fee Alternatives”.) Notably, both of these figures are different from the June Data Package “gap funding requirement” of \$2,188,082 (at *its* page 3). The “gap funding requirement” is vague and inconsistent in the staff materials and Data Packages.

The Exhibits to the July Data Package contain no new *data* from the June Data Package. Yet, the figures have changes significantly. The only attempted IWVGA explanation is contained in the (also inconsistent) staff reports. We request that the IWVGA provide answers in writing (in other words, supply the *data* (Wat. Code 10730(b)(3)) to the following unanswered questions in the Staff Report:

- Who wrote, and where can the public find, the “nine written comments” that the staff report refers to? (Staff Report, p. 2.)
- What additional written comments did the IWVGA receive, and where are they found? What are the IWVGA responses?
- The staff report indicates that since original estimates for the original fee were made in 2018, “staff has become more knowledgeable about what is needed to complete the GSP.” (p. 2.) What are those additional “needed” items to complete the GSP that was already adopted by the IWVGA and submitted to DWR in January 2020?

- **“Original Estimate”** – Please explain how and why the “Original Estimate” changed from the June Data Package to the July Data Package, when the “Original Estimate” is stated to have occurred two years ago in June 2018.
- **“WRM / IWVGA Support Costs”** – What are the additional WRM “Support Costs” that caused the July Data Package to double since June from \$435,250 to an incredible \$991,402? What is or will be involved in each of the “Additional Tasks” now budgeted at \$934,992? Where is the detail or contract between the IWVGA and the WRM establishing and identifying approved scope of work for those Additional Tasks?<sup>3</sup>
- **“Stetson-IWVGA/PAC/TAC Coordination”** – What caused the nearly five-fold increase to \$543,677, when the PAC and TAC have not had a single meeting since 2019 and when the PAC and TAC have repeatedly expressed many issues regarding failure of their engagement as required by SGMA and the IWVGA Bylaws?
- **“Stetson Groundwater Pumping Fee Support”** – What caused the nearly \$70,000 increase in this line item to \$190,710, and what does/did/will it include?
- **“City of Ridgecrest Reimbursable Costs”** – See Meadowbrook’s July 13 letter stating reasons this reimbursement request is not permissible or appropriate. In addition, the July Data Package Exhibits contain the same June spreadsheet showing (questionable) City legal fees in the amount of \$210,465.93. There is no data supporting the Staff Report’s revised figure of \$287,133 that IWVGA staff now claims for additional *City of Ridgecrest* legal fees.
- **“Legal Costs”** – What was included and what was the basis for the originally estimated \$200,000? What is included and what is the basis for the increase to \$646,519? Whose fees are included? See also Meadowbrook’s July 13 letter addressing this item.

Regarding the “Stetson Additional Tasks” –

- **“Additional Tasks”** – We note that with respect to the “Additional Tasks”, the July Data Package staff report revised the phrase in June from “to complete the preparation of the GSP” to just “to complete the GSP”. (p. 2.) This slight but significant change reflects IWVGA recognition that these additional tasks are not truly for the preparation of the GSP.
- **“Data Management System Development”** – why was this item moved from “IWVGA Support Costs” to “Additional Tasks”? What does it include?

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<sup>3</sup> Notably, the Data Package does not include copies of any existing contract or authorization between the IWVGA and the WRM.

- **“Model Review”** - why was this item moved from “IWVGA Support Costs” to “Additional Tasks”? What does it include? Note, it is not surprising that the IWVGA seeks to review the Navy DRI Model given its many flaws identified by TAC members. Who is conducting that review? Will the TAC be given meaningful involvement? Is that part of the scope and budget?
- **“GSP Management”** – what does this include?
- **“Stetson/DRI – Review of Groundwater in Storage and HCM”** – What does it include? Note, it is not surprising that the IWVGA seeks to review the Navy DRI Model and the amount of groundwater in storage given the WRM’s stated recognition of these critical GSP data gaps (See Meadowbrook July 13 letter and many prior letters on this issue). Who is conducting that review? Will the TAC be given meaningful involvement? Is it part of the scope and budget?
- The IWVGA must explain to the public, in detail, the scope and basis for each of the listed “Additional Tasks” identified on Staff Report Page 4. The Data Package contains no supporting detail for these extensive costs.

Notably, this is the type of analysis that a proper IWVGA Finance Committee would presumably have given the necessary time and attention to address. The Board instead directed staff in June to explain the shocking increase in fees, which neither the staff report nor the Data Package have done. The public, and particularly the pumpers subjected to the fee, are entitled to know and understand how the IWVGA purports to justify the fee increase line items under *Water Code* 10730 and what is specifically included in those costs.

### **III. Agenda Item 9 – Board Consideration and Adoption of Resolution 06-20 and Related CEQA Findings Adopting the Report on the Indian Wells Valley Groundwater Basin’s Sustainable Yield of 7,650 Acre-Feet**

Please see Meadowbrook’s letter of July 13, 2020, detailing many flaws in the report and objections to IWVGA adoption of that report.

Additionally, the July 16, 2020 staff report indicates the attached Sustainable Yield Report included in the agenda packet is a “Final Draft of the Report”. That document is, however, dated June 18 and is still marked “draft” and does not appear to have made any changes to the draft released in June. The staff report also indicates that responses to comments on the report were released to the public. As of the time of this writing – less than 24 hours prior to the board meeting—no such responses to comments were released to the public.

Indian Wells Valley Groundwater Authority

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Meadowbrook reserves the right to provide further comments on each of the items addressed in this letter, including without limitation, at the July, August or subsequent IWVGA Board meetings.

Very truly yours,



Derek R. Hoffman, of  
GRESHAM SAVAGE  
NOLAN & TILDEN,  
A Professional Corporation

DRH:phg

Enclosures

cc: Kern County Board of Supervisors (c/o Clerk of the Board)  
San Bernardino County Board of Supervisors (c/o Clerk of the Board)  
Inyo County Board of Supervisors (c/o Clerk of the Board)  
Ridgecrest City Council (c/o City Clerk)  
Indian Wells Valley Water District Board of Directors (c/o Clerk of the Board)  
IWVGA PAC Members (c/o Clerk of the Board)  
IWVGA TAC Members (c/o Clerk of the Board)  
Searles Valley Minerals (via counsel)  
Mojave Pistachio (via counsel)