

## IWVGA ADMINISTRATIVE OFFICE

### STAFF REPORT

**TO:** IWVGA Board Members

**DATE:** January 21, 2021

**FROM:** IWVGA Staff

**SUBJECT: AGENDA ITEM NO. 14 - PUBLIC HEARING AND BOARD CONSIDERATION AND ADOPTION OF RESOLUTION 01-21 REVISING THE TRANSIENT POOL AND FALLOWING PROGRAM AND ADOPTION OF RELATED CEQA FINDINGS**

### DISCUSSION

As the Board is aware, the Transient Pool and Fallowing Program was adopted last August through resolution number 05-21. Pursuant to this Resolution, those that receive a Transient Pool allotment in the program will have one of three choices. They may:

- 1) Reject the Transient Pool allotment and continue pumping in accordance with the Basin Replenishment Fee and any other applicable fees; or,
- 2) Accept the Transient Pool allotment and the associated mitigation fee; or,
- 3) Accept the Transient Pool allotment and negotiate a sell of their allotment to the Groundwater Authority through the Fallowing Program.

The implementation of the Fallowing Program did not occur on the schedule proposed by the Resolution. In fact, the Resolution contemplates a Fallowing Program that requires negotiation between the Authority and the qualified pumpers with direct and substantial involvement by the Water District. These negotiations did not take place as proposed, however, because of the Water District's failure to support and stated opposition to the funding for this Program. As a result, qualified pumpers have not received the information necessary to make their election under the existing Program in the time frame initially scheduled.

Moreover, the Water District recently sent a letter to the Groundwater Authority stating there is a need for further "discussions" regarding the Programs so that "final details" can be "worked out". The obvious implication being that the Water District is reconsidering its opposition to the Fallowing Program as "more effective discussions" could not take place without that the funding predicate for the Program.

Since adoption of the Transient Pool Program, staff has had the opportunity to discuss the Program with both qualified pumpers as well as other parties who desire to obtain Transient Pool Water. At a prior meeting, the Board expressed an intention to revise the Transient Pool Program to specifically allow for

the transfer of allotments to other parties under certain circumstances. The enclosed Resolution revises the original program to specifically include additional language to account for the possibility of transfer of Transient Pool Water both as between qualified pumpers and, with the Board's approval, to certain other parties.

Mindful of these factors and the imposition of certain fees on January 1st, 2021, staff proposes to provide the qualified pumpers with a 60-day rescission period, under which time they may without condition rescind their acceptance of their Transient Pool allotment. If rescinded any pumping that occurs during the rescission period will be retroactively subjected to all applicable fees, which would include the Basin Replenishment Fee, the Groundwater Extraction Fee and the Mitigation Fee.

These proposed revisions do not revise the portions concerning the Fallowing Program. For the reasons stated above, several of the actions required by the Fallowing Program have not taken place on a timely basis. As a result, the schedule set forth in the Fallowing Program is not manageable. Staff will propose new language to this section once staff receives clear direction regarding this matter from the Board.

Staff has reviewed the matter and determined that the Board's proposed action today is exempt from further environmental review on several grounds. Among those is a determination that this action is exempted from further review by SGMA and that the action is not a project, is mandated by law, is ministerial, does not include a discretionary act, will not have a significant effect on the environment, and is provided statutorily and categorical exemptions.

Specific attention is drawn to California Public Resources Code section 21080(b)(8) and CEQA Guidelines section 15273(a) which provides express exemptions from further environmental review for this action. Additional attention is drawn to CEQA Guidelines section 15061(b)(3) which exempts non-projects and section 15321 which exempts enforcement actions. Furthermore, this action is exempt because it involves administrative activities that will not result in direct or indirect physical changes in the environment as provided for in CEQA Guidelines section 15061(b)(3) and 15378(b)(5). Moreover, this action is exempt from further environmental review pursuant to CEQA Guidelines section 15307 and 15308 as it's an action by a regulatory agency to assure the maintenance, restoration, enhancement or protection of the environment and natural resources.

#### **RECOMMENDED BOARD ACTION(S)**

Therefore, it is recommended that the Board:

- 1) Open the public hearing and take comment;
- 2) Close the public hearing;
- 3) Make findings that the action is exempt from further CEQA review because the action is ministerial, does not include a discretionary act, is mandated by law and is provided statutorily and categorical exemptions, and will not have a significant effect on the environment;
- 4) Adopt Resolution 01-21 adopting an "Amended Report on Transient Pool and Fallowing Program.

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

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**In the matter of:**

**Resolution No. 01-21**

## **ADOPTION OF AMENDED REPORT ON TRANSIENT POOL AND FALLOWING PROGRAM**

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I, April Keigwin, Clerk of the Board of Directors for the Indian Wells Valley Groundwater Authority, do certify that the following resolution, on motion of Director Page, seconded by Director Peters, was duly passed and adopted by the Board of Directors at an official meeting this 21st day of January 2021, by the following vote:

**AYES:** Hayman, Peters, Page, Vallejo

**NOES:** Rajtora

**ABSENT:**

Clerk of the Board of Directors  
Indian Wells Valley Groundwater Authority



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### **WHEREAS:**

- (a) The Sustainable Groundwater Management Act requires the IWVGA to bring the Basin into sustainability by 2040 at the latest to make ongoing reports on extractions and progress; and,
- (b) In order to meet those requirements the IWVGA must take regulatory actions to meet the required sustainability mandate of State law.
- (c) The Board has considered, agrees with and incorporates herein all of the findings made by Staff, including but not limited to, the determinations regarding CEQA provided for in the record and staff report.

**IT IS RESOLVED** by the Board of Directors of the Indian Wells Valley Groundwater Authority, as follows:

1. This Board finds that the recited facts are true and that it has the jurisdiction to consider, approve, and adopt this Resolution.
2. This Board incorporates and makes all the findings recommended by staff, whether verbally or in their written reports.
3. This Board finds all of the CEQA determinations made in the staff report and the record are true and hereby incorporates them in there entirety.
4. This Board hereby adopts the attached "Amended Report on Transient Pool and Fallowing Program" effective immediately. This report revises and replaces the Report adopted pursuant to Resolution 05-20.
5. As set forth in the attached Report, the Qualified Pumpers will have until February 1, 2021 to elect to enter the Transient Water Program. No fees, other than the Mitigation Fee, will be assessed against Qualified Pumpers who elect to enter the program including fees incurred as of January 1, 2021. Qualified Pumpers may elect to leave the program on or before April 1. Qualified Pumpers who leave the program before April 1 will rescind any waiver of claims and any pumping that occurs during the recission period will be retroactively subjected to all applicable fees, which would include the Basin Replenishment Fee, the Groundwater Extraction Fee and the Mitigation Fee.