

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

In the matter of:

Resolution No. 06-20

**ADOPTING A REPORT ON THE INDIAN
WELLS VALLEY GROUNDWATER BASIN'S
SUSTAINABLE YIELD OF 7,650 ACRE-FEET**

I, April Nordenstrom, 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 Vallejo, was duly passed and adopted by the Board of Directors at an official meeting this 16th day of July, 2020, by the following vote:

AYES: Kicinski, Page, Vallejo, Gleason, Hayman

NOES:

ABSENT:

Clerk of the Board of Directors
Indian Wells Valley Groundwater Authority



RESOLUTION

Section 1. 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 obtain accurate data on all

current and future groundwater extractions and the needs for import supplies.

(c) The attached and incorporated "Report on the Indian Wells Valley Groundwater Basin's Sustainable Yield of 7,650 Acre-Feet" provides an analysis of the legal conditions and limitations and, in particular, the Board's inability to regulate and/or require data from the Federal Groundwater Extractors.

Section 2. 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 that this 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 This Board hereby adopts the attached "Report on the Indian Wells Valley Groundwater Basin's Sustainable Yield of 7,650 Acre-Feet" effective immediately.



**REPORT ON THE
INDIAN WELLS VALLEY GROUNDWATER
BASIN'S SUSTAINABLE YIELD
OF 7,650 ACRE-FEET**

JULY 17, 2020

PREPARED BY:

**STAFF AND CONSULTANTS FOR
THE INDIAN WELLS VALLEY GROUNDWATER AUTHORITY**

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I. PURPOSE

The Indian Wells Valley Groundwater Authority (IWVGA) has determined in its Groundwater Sustainability Plan (GSP) that the Indian Wells Valley Groundwater Basin (IWVGB or Basin) cannot achieve the required sustainability without the development of augmentation and overdraft mitigation projects. To establish fees to finance these projects, the IWVGA must determine who will be specially benefitted by them.

This report examines the use of water in the Basin to determine the “beneficial impacts” of Basin projects as a foundation for setting such fees. This Report will be used for fee setting purposes only and it is not a determination of water rights for any other purpose. This Report is not intended to be the basis for any limitation on groundwater extractions.

II. EXECUTIVE SUMMARY

The analysis relies on, and incorporates where appropriate, all the data used in the adoption of the GSP, the timely responses to Groundwater Extraction Reporting For Pumping Verification Questionnaire 1, and the declassified report on Navy Demographics and Water Requirements at Naval Air Weapons Station (NAWS), China Lake, CA.

The GSP indicated that the IWVGA would review all pumping and make a determination of each producer’s allocation of the sustainable yield for purposes of establishing fees to support groundwater mitigation projects. After reviewing the information provided, this analysis concludes that all groundwater extractors in the Basin, with the exclusion of De Minimis Extractors¹ and Federal Extractors,² are beneficially impacted by IWVGA’s overdraft mitigation and augmentation projects and therefore it is not necessary to establish allocations for any extractor. This conclusion is based on:

- 1) Reported Navy groundwater production rates showing more than convincing evidence that the Basin’s entire sustainable yield is consumed by the Navy’s Federal Reserve Water Right interest;
- 2) The Supremacy Clause of the U.S Constitution which prohibits the IWVGA from limiting, regulating, and/or charging Navy groundwater production in any way;
- 3) The IWVGA’s legal inability to enquire into any challenges to the Navy’s reported production rates even if it had a sufficient basis to do so; and,

¹ As defined by SGMA in Water Code section 10721(e) because SGMA has excluded them from the metering and reporting requirements of SGMA.

² United States Navy; Naval Air Weapons Station (NAWS), China Lake, CA and United States Department of the Interior; Bureau of Land Management.

- 4) The IWVGA's legal inability to adjudicate water rights.

Based on the foregoing, this report concludes that the Basin's entire sustainable yield is subject to a Federal Reserve interest and is therefore beyond the jurisdiction of the Authority to regulate pursuant to Water Code § 10720.3. Accordingly, all groundwater extractors in the Basin, with the exclusion of De Minimis Extractors and Federal Extractors, are extracting water beyond the sustainable yield and will be subject to the costs for overdraft mitigation and augmentation projects, unless an extractor obtains a court order showing they have quantifiable production rights superior to the Navy's. It is therefore not necessary (or possible) to establish any party's allocation of the sustainable yield and all pumping should be treated equally.

III. INTRODUCTION

The IWVGA is the exclusive Groundwater Sustainably Agency (GSA) for the IWVGB. As such, the Sustainable Groundwater Management Act (SGMA) requires IWVGA to adopt, monitor, and implement a Groundwater Sustainability Plan (GSP) that achieves Basin sustainability by 2040. After considerable public examination of the technical data by the IWVGA Board and two separate committees, the IWVGA determined that the Basin's sustainability cannot be achieved through pumping reductions alone because the annual sustainable yield of 7,650 acre-feet (af) is insufficient to meet the Basin's most minimal needs; let alone the anticipated minimal needs of the Basin which require an additional importation of *at least* 5,000 af annually. Accordingly, the IWVGA also concluded that Basin sustainability must rely on a combination of mitigation and augmentation projects.³

The GSP generally described certain projects that would benefit the Basin and provided a rough estimate of the attendant costs but it did not assign benefits and/or describe who should pay for a project. When making these determinations the IWVGA is controlled by extensive regulatory provisions in California law including the requirement that the GSA may only charge those receiving a beneficial impact from the overdraft mitigation and augmentation projects⁴

IV. GENERAL BASIN DESCRIPTION

The Basin has been listed as a high priority basin in critical overdraft and, as such, the IWVGA was required to adopt a GSP to achieve Basin sustainability by no later than January 31, 2020. On January 16, 2020, the IWVGA adopted its GSP which outlined the IWVGA's plans and strategies to achieve Basin sustainability by no later than 2040.

³ The data and supporting conclusions are more thoroughly described below and in the IWVGA's GSP, adopted on January 16, 2020.

⁴ Additional provision of law also requires that the charges be applied proportionately. A flat rate volumetric charge by definition meets the proportionate requirements.

As more thoroughly discussed in the GSP, there are several unique factors that drive any analysis of this Basin and its unique groundwater production challenges:

- 1) The Basin has an arid, high desert, climate with the long-term natural recharge achieving an annual basin sustainable yield of 7,650 af.
- 2) The Basin is solely dependent on groundwater and the minor use of recycled water.
- 3) Current estimated Basin outflows are approximately four (4) times the estimated inflows.
- 4) In areas of groundwater production, the Basin groundwater levels are dropping by approximately 0.5 to 2.5 feet annually.
- 5) The GSP's Baseline Model projects that without changes to the severe overdraft the groundwater infrastructure in the Basin will not be able to produce the needed water by 2065.
- 6) The Basin does not have access to imported water supplies and up to 50 miles of infrastructure will need to be built to obtain access to imported water supplies from the Delta.
- 7) The majority of the Basin (approximately seventy-nine percent (79%)) overlies federal lands that cannot be regulated and/or charged for basin management activities by state and local agencies such as a GSA.
- 8) Through the efforts of groups like the Indian Wells Valley Groundwater Cooperative Group (IWVGCG), estimates of Basin production have been compiled since the 1970s that have documented severe overdraft conditions but there have been no infrastructure projects built to transport imported water supplies to the Basin.

A driving factor in the GSP's determination that sustainability cannot be achieved through extraction reductions alone is the estimated/reported Basin outflows which are approximately four (4) times the estimated inflows to the Basin. These overdraft conditions have caused groundwater levels to drop by approximately 0.5 feet to 2.5 feet annually near pumping areas. These declines in groundwater levels have historically and will continue to exceed the depths of some wells in the Basin leading to costly mitigation measures to deepen and/or replace Basin wells. Additionally, these declines in groundwater levels will cause increases in pumping costs due to the additional lifts required to produce groundwater from these lower depths. It is also reasonable to assume that these declines will lead to a degradation in water quality as contaminants will become more concentrated in the Basin's reduced groundwater storage.

V. GSP IMPORTATION MANAGEMENT ACTION

Having concluded that the Basin cannot be brought into sustainability through extraction reductions alone, the GSP includes a management strategy of importing an average of 5,000 af of water annually. This is believed to be the minimum amount of water needed to achieve sustainability. While this level of water importation anticipates the likely cessation of large-scale agricultural uses in the Basin due to the increased cost for surface water, it does not prevent such a use.

At present, the Basin has no access to imported water supplies and up to 50 miles of infrastructure will need to be built to obtain access to imported water supplies from the Delta. As a result, a portion of the significant costs associated with infrastructure construction (roughly \$46 million for a Los Angeles Aqueduct Project or \$150 million for an AVEK Project) will be borne by the present farming operations.

In contrast, in the Central Valley of California, which is home to some of the most significant water projects in the world, including the State Water Project, the Central Valley Project, and numerous water banking projects, these significant infrastructure cost burdens have already been incurred and seasonal fluctuations and surpluses can be captured for later use. And yet, even with this significant economic advantage, the Central Valley is expected to see very significant reductions in crop lands due to import water supply costs.⁵ Kern County alone is expected to see upwards of 185,000 acres of currently farmed land in the Central Valley to be permanently fallowed as a result of SGMA implementation.⁶

Additionally, State Water Contractors often have “first right of refusal” provisions which allow a landowner within that State Water Contractors’ boundaries to match any purchase price offered by the Authority. As a result, farmers in this Basin are at a significant disadvantage compared to competing farmers in the Central Valley.

Nevertheless, the conceptual design of the import infrastructure can support a very significant agricultural use in the Basin if there is such a demand. The facilities have been sized to take advantage of seasonally available surpluses and as a result the facilities have the capacity to deliver up to 20,000 acre-feet per year (afy) if the water was delivered on a continuous basis. Accordingly, an increased volume of imported water up to 20,000 afy, depending on the delivery schedule, would be possible. To the extent there are any additional costs, those costs would be limited to the water purchase and the associated transfer costs for that water, including operation and maintenance costs for the associated water banks and State or Federal water projects. These costs are the same for each acre foot (af) of imported water delivered and

⁵ Public Policy Institute of California; Water and the Future of San Joaquin Valley Report (February 2019).

⁶ Indian Wells Valley Groundwater Authority Water Marketing Strategy Technical Memo (August 2019).

therefore, a volumetric pumping fee set at an expected annual production of 5,000 af would also be adequate for an expected delivery of up to 20,000 af annually as the costs would rise in direct proportion to the excess delivery volume. In the remote chance that the 5,000 af importation project has been inadequately sized, IWVGA will readjust once such commitments are received. In this instance, those commitments will be reflected through the payment of an adopted Replenishment Fee which will be first used for the purchase of import water supplies and mitigation of the impacts on shallow wells.

Accordingly, this management action is not a determination of water rights nor a restriction on their use. Rather, all groundwater extractors may produce groundwater provided they pay the appropriate fees to augment and mitigate their extractions. While this action will not directly limit groundwater extraction by any individual entity, it is anticipated that the water supply market costs will result in voluntary extraction reductions thereby assisting in achieving sustainability.

VI. ANALYSIS LIMITED TO SUSTAINABLE YIELD OF 7,650 ACRE FEET

SGMA, and in particular Water Code section 10730.2, provides for the adoption of a groundwater extraction fee to fund sustainability projects. The authority provided in section 10730.2, in addition to any powers a groundwater sustainability agency has under any other law.

Under California law, in order to be subject to a fee to pay for the costs of an importation project, the payer must directly and specially benefit from that project. California law prohibits the GSA from charging for general benefits such as an increase in property value due to further community development. Accordingly, fees to pay for the costs to import water can only be charged to those that actually use the imported water.

Parties that have a legal right to extract a portion of the native sustainable yield are not benefitted by the imported water to the extent that their pumping can be ascribed to the native sustainable yield. If a groundwater user cannot meet their needs through their portion of the Basin's sustainable yield, they must be subject to the fee.

Accordingly, this Report is drafted for the sole purpose of determining the colorable legal claims to the Basin's sustainable yield, which has been established as 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. There is no need to identify the claims to the use of water above the sustainable yield as all users of such water shall be subject to the fee based on their actual use.

VII. NON-FEDERAL PUMPING DATA

The GSP shows that Basin extractions have been documented over the past 70 years: first, by the U.S. Geological Survey (USGS) with U.S. Navy participation and then by the U.S. Bureau of Reclamation (USBR). And then, for a period of roughly 20 years, starting in the mid 1990's, the annual production tally was maintained by the IWV Cooperative Group. Additional supporting data is more thoroughly provided and described in the IWVGA's GSP, adopted on January 16, 2020.

In early 2020, the IWVGA required each non-De minimis and non-Federal extractor in the Basin to provide it with pumping data to be used in the development of this Report. With a few notable exceptions, the majority of the significant pumpers in the Basin submitted timely pumping verification documentation to the IWVGA for inclusion in this Report.

A review of the information shows that the majority of the extractions in the Basin are undertaken by six large producers. Two of these pumpers, the Indian Wells Valley Water District (IWVWD) and Meadowbrook Dairy, have each reported historical extractions that have exceeded the Basin sustainable yield in a given year. Since 2010, the IWVWD and Meadowbrook Dairy have each reported a maximum annual extractions of approximately one-hundred percent (100%) (7,634 af) and one-hundred and seventeen percent (117%) (8,920 af) of the sustainable yield, respectively. A fourth extractor, Mojave Pistachio, reported estimated future extraction demands at tree maturity of 7,200 af, or roughly 94% of the Basin sustainable yield.⁷

Adding further complexity, one extractor (Searles Valley Minerals Inc) has reported a yearly production since 2010 of as much as 2,743 af of Basin extractions (approximately thirty-six percent (36%) of the Basin's sustainable yield). Searles Valley Minerals Inc.'s production is primarily for an industrial use in a different basin, the Searles Valley Groundwater Basin, which is located approximately 24 miles northeast of the City of Ridgecrest and the water used provides no known return flow to the IWVGB.

Collectively, the above noted production above alone is nearly three and a half (3.5) times the estimated inflows to the Basin. Without changes to the Basin's severe overdraft condition, the Baseline Model run projects that the Basin's groundwater infrastructure will not be able to produce the needed water by 2065.

VIII. FEDERAL PUMPING DATA

Roughly seventy-nine percent (79%) of the land overlying the Basin are federal lands owned by the Bureau of Land Management (BLM) and/or the Naval Air Weapon Station China Lake (NAWS

⁷ Mojave Pistachios did not timely submit historical pumping data in response to Groundwater Extraction Reporting for Pumping Verification Questionnaire 1. Estimated future pumping demands were reported to the IWVGA by Mojave Pistachio on their Well Registration forms.

China Lake). In accordance with long standing principles of federalism, these federal lands cannot be regulated by the State of California, and by extension IWVGA, in any way. As a result, the IWVGA is unable to charge these federal lands with any of the costs associated with any importation or mitigation projects regardless of whether or not these lands are benefited.

SGMA recognizes that the IWVGA has no legal authority to require that the federal government provide any pumping information under existing law in Water Code section 10720.3(c), which expressly provides that any participation by the federal government shall be voluntary. SGMA further recognizes the Navy's Federal Reserve Water Right (FRWR) as distinct from water rights that are based in state law and directs that the FRWR be respected in full. Moreover, SGMA expressly provides that federal law shall prevail in the case of any conflict between federal and state law (Water Code Section 10720.3(d)). SGMA also directs that the IWVGA consider the interests of all beneficial uses and users of groundwater, listing the federal government, including, but not limited to, the military and managers of federal lands among those interests (Water Code Section 10723.2).

On June 17, 2019, the Navy provided a report titled Navy Demographics and Water Requirements at Naval Air Weapons Station (NAWS), China Lake, CA. In that report, the Navy provided fairly detailed data on its pumping history; however, the Navy expressly declined to provide its FRWR, thus, leaving it to IWVGA to estimate the Navy's FRWR from the provided data for the purpose of related fee determinations. To assist the GSA in making that determination, the Navy provided the following information:

- 1) The FRWR IS NOT limited to the current on base demand of 2,041 af.
- 2) The FRWR dates back to the establishment of the base in 1943.
- 3) The FRWR would likely be established, if ever, through litigation.
- 4) The water requirements of the Navy cannot be determined solely by the Navy's recent direct production amounts.
- 5) Since the Navy mission at NAWS 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.

Each of these assertions by the Navy have significant legal effect, and to one degree or another, each have been challenged by other extractors in the Basin. It should also be noted that while these assertions have been challenged, they have only been challenged in a very generic sense. To date, the IWVGA is unaware of, and has not been provided, any colorable legal argument that would even suggest that the IWVGA has any ability to regulate the Navy and/or consider, let alone determine, these disputes between the Navy and the other pumpers.

The Navy has asserted that its FRWR dates back World War II when it began the development of the Naval Ordnance Test Station in 1943. The development included the construction of hundreds of industrial and residential buildings, roads, runways, and other necessary infrastructure. As development by the Navy continued, more groundwater wells were drilled to supply the increased water demands. Most of the Indian Wells Valley's new permanent residents were associated with the naval operations and lived on Navy property during the 1940s and into the 1970s. The growth of the naval operations led to the incorporation of the City of Ridgecrest in 1963.

While other basins in California may also face this dilemma of an undefined FRWR that "must be respected in full," this Basin is uniquely burdened because a more than convincing argument can be made that the entire sustainable yield is assumed by the FRWR. In fact, at its high point in 1970, a more than rational point for determining the FRWR, reported Navy on-Station production alone exceeded the Basin' sustainable yield by approximately five percent (5%).

The reported high point of Navy production in 1970 is not an anomalous instance either. In fact, reported Navy production exceeded the Basin sustainable yield for each of the four years between 1969 and 1972. Moreover, for nine years within the 11-year time period between 1964 and 1974, annual Navy production exceeded 7,000 af. In addition, for nearly two decades (1959 to 1976) annual Navy production exceeded 6,000 af, or nearly eighty percent 80% of the Basin's sustainable yield.

1970 is also very significant because, in that same year, the Navy reports that it made a "strategic divesture" to spur Ridgecrest development and rapid Navy population shifts off-Station. Since then, the Navy has reported a reduction of nearly ninety-five percent (95%) of its on-Station family dwelling units from 2,916 units in 1972 to 192 units in 2019. This drastic and purposeful population shift off-Station transferred Navy water demands from personnel living quarters on-Station to the off-Station water providers in the Ridgecrest, Inyokern and Trona communities and those individuals that invested in their own wells to meet their own domestic needs off-Station.

Figure 1 below provides the historical groundwater production for NAWS China Lake and the IWVWD. IWVWD is the predominant water supplier for the Ridgecrest community that began receiving those off-Station housing shifts in 1972. The increase in IWVWD production as NAWS China Lake production decreases graphically corresponds in part with the shift in Navy population off-Station into the Ridgecrest community. In the mid-2000s, decreases in IWVWD production represent increased conservation within its service area, including even further drastic reductions in the last decade in response to the historic drought conditions experienced statewide.

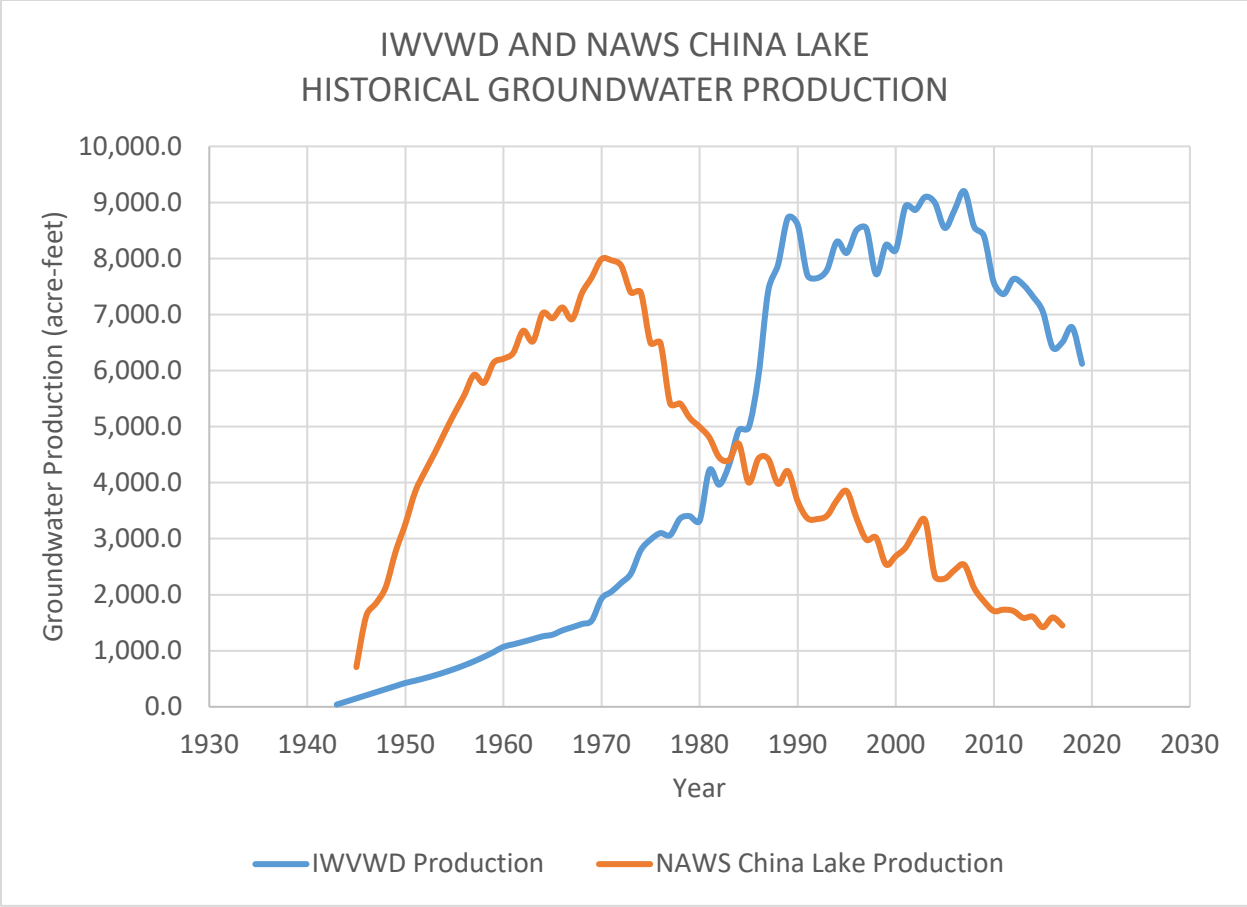


Figure 1: IWVWD and NAWS China Lake Historical Groundwater Production

Historical groundwater production by IWVWD and NAWS China Lake can also be graphically compared to the Basin sustainable yield, as shown in Figure 2.

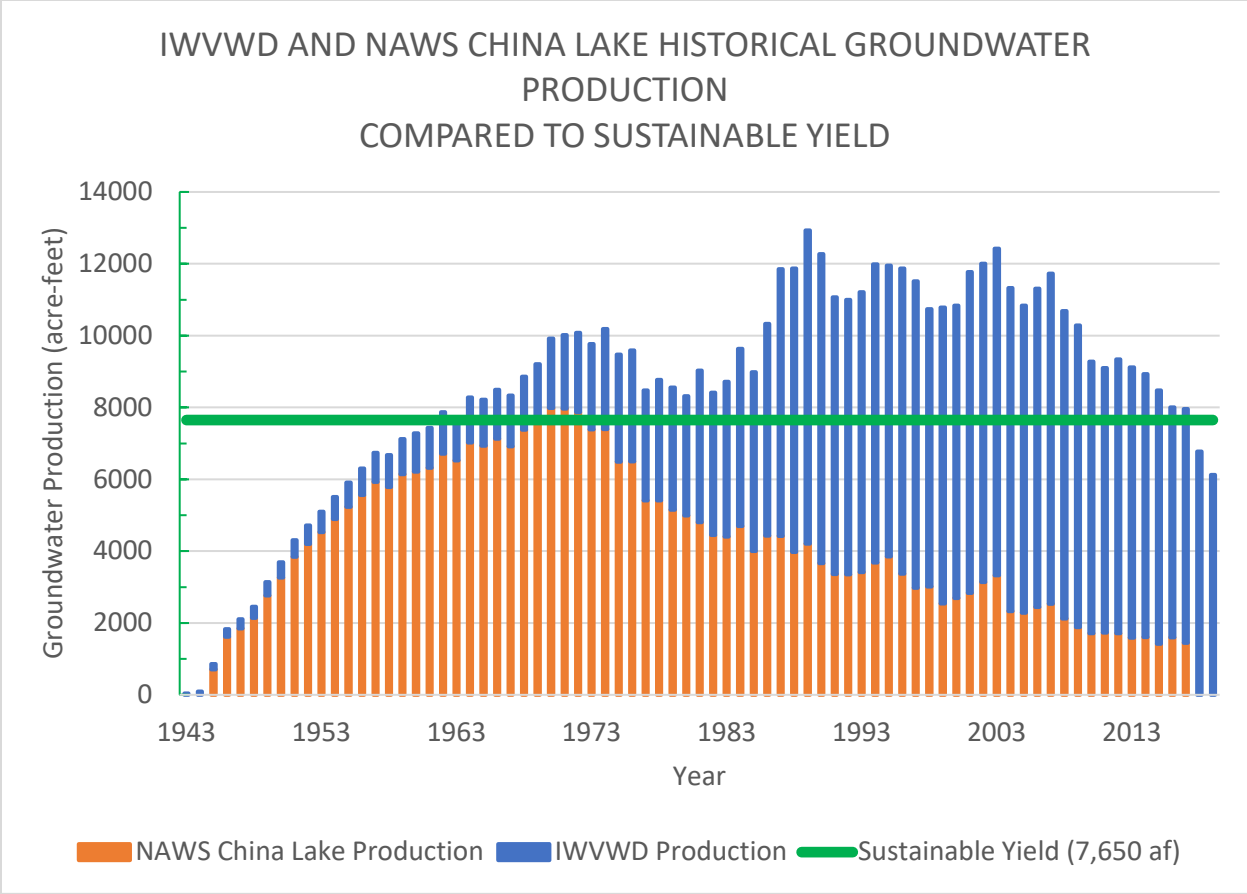


Figure 2: IWWVD and NAWS China Lake Historical Production Compared to Basin Sustainable Yield.

As graphically shown in Figure 1 and Figure 2, 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. Additionally, given the historical circumstances and the timing of the base’s establishment, which corresponds with the height of the Navy’s participation in World War II, a more than convincing argument can be made that any reviewing court will agree with the Navy’s express assertion that the FRWR began in 1943.

IX. SGMA POWERS AND LIMITATIONS

Setting aside the very significant water production issues already mentioned, the IWVGA is also faced with an insurmountable legal dilemma because it has no legal authority to coerce or regulate the Navy in anyway. As previously explained, the Navy’s participation is completely voluntary and IWVGA cannot require that the Navy present it with extraction data. In point of fact, IWVGA’s expressed and repeated requests for the Navy’s estimation of its FRWR were repeatedly rebuffed by the Navy’s legal team.

SGMA is groundbreaking legislation that provides IWVGA with numerous powers and authorities for the purpose of locally managing the Basin. However, for all of the powers and authorities granted to IWVGA, the State did not, and could not, provide the IWVGA with the power to regulate the Navy in any way. SGMA acknowledges this fact and expressly provides that the participation of a FRWR holder “shall not subject that holder to state law regarding other proceedings or matter not authorized by federal law” and this “is declaratory of existing law”.

The Constitutional basis for this limitation is found in long standing principles of American federalism which are expressly provided for the Supremacy Clause of the U.S Constitution (Article VI, Clause 2). The Supremacy Clause generally prohibits State regulation of the Federal Government unless Congress clearly and unambiguously waives this sovereign immunity by statute. These legal doctrines are long standing and fundamental to American governance and jurisprudence. The federal sovereign immunity doctrine can be summarized as follows:

The United States and all of its departments and agencies cannot be sued without the United States express consent through a statutory waiver.

Accordingly, this doctrine prohibits any State regulation or lawsuit that does not follow within specific statutory exemptions. Even if there is such a statute allowing the regulation and/or suit, the regulation and/or suit is only permitted to the extent and degree that Congress chooses to allow and Courts are to interpret that allowance narrowly.⁸

There is no such statutory waiver for State regulation of groundwater through SGMA, and as such, the IWVGA has no ability to make any determinations in regards to FRWR disputes. If a groundwater extractor believes that the reported Navy data is in error, or if it disputes any of the five cited assertions by the Navy in regards to the FRWR, that extractor needs to make those assertions directly to the Navy and, if need be, adjudicate the issue with the Navy in Federal Court. The IWVGA simply does not have the legal authority to properly investigate the issue, let alone award any relief against the Navy. Moreover, since the IWVGA does not hold any water rights in the Basin, the IWVGA most likely lacks the legal standing to challenge the Navy’s assertions in court as such actions would most likely be limited to those that have conflicting water claims against the Navy.

As example, the Navy has asserted that its FRWR dates back to World War II. As part of the war effort, the Navy began the development of the Naval Ordnance Test Station in 1943. The development included the construction of hundreds of industrial and residential buildings, roads, runways, and other necessary infrastructure. Searles Valley Minerals on the other hand has asserted to the IWVGA that the FRWR does not begin until some years later. The express purpose

⁸ Notably, in 1952, Congress enacted the McCarran Amendment which waived federal sovereign immunity for the joinder of the United States as a defendant in court for general stream adjudications. Later in 1971, the United States Supreme Court ruled, in *United States v. District Court in and for Eagle County*, 401 U.S. 520 (1971), that the waiver of sovereign immunity under the McCarran Amendment (43 U.S.C § 666) also includes a waiver for the adjudication of FRWR provided that the rights of all competing claimants are adjudicated.

of this assertion is to claim a portion of the Basin's sustainable yield for Searles Valley Minerals instead of the Navy. As previously mentioned, the IWVGA has no ability to require that the Navy respond to this dispute in any degree. In fact, the IWVGA has made the Navy aware of Searles Valley Minerals' claims, but the Navy has not responded to any degree. Clearly, if the IWVGA cannot properly investigate the issue, it cannot make any determination of the issue and the proper and only venue for the determination of Searles Valley Minerals is in a court of law.

Likewise, Searles Valley Minerals claims that its production rates prior to 1943 are superior to the Navy's FRWR are not properly venued with the IWVGA. Those claims have been presented to the Navy but they have not been addressed by the Navy to date. It is presumed that when, and if, the Navy ever has to address these claims in a court of law, the Navy will vehemently argue that it is an unreasonable, and thus an unconstitutional, use of groundwater to take roughly thirty-six percent (36%) of an arid high desert basin's sustainable yield for a predominantly industrial use in a completely different basin with no return flows to this Basin. This argument is more than colorable, and may very well find a more than receptive audience, in light of the California Supreme Court's express holdings *Gin S. Chow*⁹ and *Joslin*¹⁰ that:

“[w]hat is a reasonable use or method of use of water is a question of fact to be determined according to the circumstances in each particular case.”

Most notably, the Supreme Court's reasoning in *Joslin* that “such an inquiry cannot be resolved in vacuo isolated from statewide considerations of transcendent important” lead the Court to conclude that *Joslin*'s use was unreasonable in light of the new municipal water supply demands. Whether these arguments are properly placed is not a question for the IWVGA because it simply does not have the legal authority to properly investigate the issue, let alone award any relief against the Navy, because SGMA prohibits the IWVGA from determining water rights.

Meadowbrook Dairy has repeatedly attacked the Navy's assertion that its water requirements cannot be determined solely by the Navy's recent direct production amounts and that the full Navy water requirements are the combination of the on-Station requirements and those of the Navy workforce and their dependents off-Station. Meadowbrook Dairy has actually argued that SGMA prohibits IWVGA from determining water rights and then demanded that the IWVGA determine that Meadowbrook's rights are superior to the Navy's off-Stations requirements. Remarkably, Meadowbrook Dairy has been unable, or unwilling, to provide any legal authority which the IWVGA can rely upon to address this issue and/or give Meadowbrook the permanent water right it demands without quantification. Again, the merits of these issues simply cannot be properly investigated let alone adjudicated by the IWVGA because SGMA prohibits the IWVGA from determining water rights.

Likewise, if and when, the Navy ever has to address this claim in a court of law, it is presumed that the Navy will strongly argue that Meadowbrook Dairy's use of one-hundred and seventeen

⁹ *Gin S. Chow v. City of Santa Barbara* (1933) 217 Cal. 673.

¹⁰ *Joslin v. Marin Municipal Water District* (1967) 67 Cal.2d 132.

percent (117%) Basin's sustainable yield for growing alfalfa is an unreasonable, and thus an unconstitutional, use of groundwater. Although late, Meadowbrook Dairy now seems to acknowledge that its prior use was unreasonable and wasteful as it now claims that it has begun to shift its operations to less water intensive crops. Whether this shift to a less intensive use allows Meadowbrook to insulate itself from the presumed Navy claims is a matter of law for the courts and not the IWVGA.

SGMA did not provide the IWVGA with the ability to adjudicate water rights. In 2015 California adopted SB 266 and AB 1390 to streamline adjudications and harmonize the process with SGMA. These provisions set forth a process for rights holders to determine groundwater rights in manner that does not interfere with the GSA's jurisdiction. Any groundwater producer may invoke this judicial process if they believe that the Federal Interest is less than the entire sustainable yield or they believe they have a superior claim to the sustainable yield. However, until a judicial determination of the scope of Federal Interests is made, the IWVGA must use its best judgment to determine the amount of water that is outside of its jurisdiction.

X. DE MINIMIS EXTRACTOR EXCLUSION

SGMA has excluded De minimis extractors from extraction fees by excluding them from reporting and metering requirements. This exclusion is in accordance with several principles of California Water Law, including Water Code section 106 which expressly provides that:

“It is hereby declared to be the established policy of this State that **the use of water for domestic purposes is the highest use of water** and that the next highest use is for irrigation.” (emphasis added)

XI. CONCLUSION

For all the reasons previously stated, all groundwater extractors in the Basin, with the exclusion of De Minimis Extractors and Federal Extractors, are beneficially impacted by IWVGA's overdraft mitigation and augmentation projects. Primary supporting factors are:

- 1) Reported Navy production rates showing more than convincing evidence that the Basin's entire sustainable yield is assumed by the Navy's Federal Reserve Water Right interest;
- 2) The Supremacy Clause of the U.S Constitution which prohibits the IWVGA from limiting, regulating, and/or charging Navy production in anyway;
- 3) The IWVGA's legal inability to enquire into any challenges to the Navy's reported production rates even if it had a sufficient basis to do so; and,
- 4) The IWVGA's legal inability to adjudicate water rights.

Accordingly, 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.