

August 6, 2019

VIA ELECTRONIC MAIL

IWVGA Policy Advisory Committee
c/o Clerk of the IWVGA Board
500 W Ridgecrest Blvd, Ridgecrest, CA 93555

Re: Meadowbrook Dairy Comments on PAC Task
Questions for August 7, 2019 Special PAC Meeting

Dear IWVGA PAC Members:

This letter is being written on behalf of our firm's client, Meadowbrook Dairy ("Meadowbrook"). The purpose of the letter is to provide comments on the "IWVGA Board Tasked Policy Questions, Discussion and Issues Regarding Management Action Modeling Scenario 6, Continued from August 1st PAC Agenda Item 5," which is agenda Item 3 of the August 7, 2019 Special Meeting of the Indian Wells Valley Groundwater Authority ("IWVGA") Policy Advisory Committee ("PAC").

Meadowbrook appreciates the opportunity to comment on Model Scenario 6, to the extent presented (i.e., without the underlying assumptions). To briefly summarize this letter, we first offer several concerns and questions regarding Model Scenario 6 and request that responses be provided promptly by the IWVGA. We also offer constructive suggestions to improve Model Scenario 6 that, if incorporated, could potentially make Model Scenario 6 acceptable to Meadowbrook, subject to further evaluation and discussion, and while reserving all rights and privileges.

Meadowbrook Background

Meadowbrook has produced groundwater for reasonable and beneficial purposes on its properties overlying the Indian Wells Valley Groundwater Basin ("Basin") for decades. The combination of Meadowbrook's history of continuous production, the magnitude of its production, and its business plans to continue operating into the

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future, distinguish Meadowbrook from other agricultural and most other water users in the Basin. SGMA requires a GSA to consider the interests of all beneficial uses and users of groundwater, specifically holders of overlying groundwater rights such as agricultural users including farmers, ranchers and dairy professionals. (Water Code § 10723.2.) SGMA expressly does not authorize a GSA to determine or alter water rights. (Water Code § 10720.5)

Meadowbrook long evidenced its desire to participate in achieving long-term Basin sustainability. To that end, Meadowbrook has provided technical expertise to the TAC through its hydrogeologist, has participated for several years through the PAC, TAC and IWVGA Board meetings, and has provided data and information for the GSP through the Water Resources Manager. Meadowbrook has also verbally commented and submitted many letters into the public record.

Meadowbrook remains willing to consider a reasonable and substantial reduction in its groundwater production to help achieve sustainability as long-term participant in the Basin; provided, that such reduction is premised upon a fair, equitable, and legally- and technically-supportable GSP. Meadowbrook is already testing alternative crops that will require less water than alfalfa.

The IWVGA's objective should be to achieve Basin sustainability through projects and management actions that are designed to avoid undesirable results based on best available science and information, and not to simply eradicate Meadowbrook. SGMA requires achieving sustainability within a 20-year timeframe. The GSP must first clearly understand and identify the Basin's needs; and then, work to address them within that timeframe.

PAC Task Questions

This letter addresses PAC Task Questions "A" and "B" which read as follows:

PAC Task Question "A": "How much water should be allocated to the Ag/Industrial Pool? Is 63,836 AF the right volume? In essence, how much 'mining' of the basin should the IWVGA allow by non-M&I pumpers? Recall that more water 'mined' from the basin results in additional potential impacts to shallow wells that will need to be addressed. Should a portion of the Ag/Industrial Pool be 'ear marked' for dust mitigation?

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PAC Task Question “B”: “How should the Ag/Industrial Pool be allocated to eligible pumpers? On the basis of each producer’s lowest water use during the 2010 through 2014 calculation period or by the percentage of acreage farmed by each producer during the calculation period? Using acreage is an equitable way of correlating water among overlying users. Allocations based on pumping during the calculation period based on the concept of self-help during a prescriptive period. Other thoughts on factors the Authority Board should consider?”

Meadowbrook Comments Responsive to PAC Task Questions

Comment No. 1: Incorporating Comments from August 1, 2019 PAC and TAC Meetings.

Meadowbrook received the PAC Task Questions just moments after the August 1 PAC meeting began. Meadowbrook representatives made several comments on the record at that meeting, which are incorporated again here by reference.

Comment No. 2: Meadowbrook Is Entitled to and Should Hold a Permanent Allocation of Groundwater Production in Any Allocation Framework Considered by the IWVGA.

As detailed further below, Modeling Scenario 6 appears to be based on primary assumptions that Meadowbrook will cease operating in the Basin, and that the Indian Wells Valley Water District will then produce the same or a similar quantity of groundwater that Meadowbrook has been producing, using Meadowbrook’s wells. Put simply, Model Scenario 6 appears to reveal a plan to first take Meadowbrook’s water rights by capping Meadowbrook’s production and requiring it to cease operating, and then “take” its groundwater wells. Enclosed as Attachment “A” is a copy of the May 29, 2019 invoice of Appraiser Lynne Rickard that the IWVGA approved for payment at the June 20, 2019 IWVGA Board Meeting, which is described as “Restricted Appraisal Report, 1,554.69 Acres, Irrigated & Unirrigated Land, Kern County, CA.” Meadowbrook objects to any taking of its water rights, land, wells and other property.

As an overlying user with historic, continuous groundwater production, Meadowbrook is entitled to and should hold a permanent allocation of groundwater in any allocation framework considered by the IWVGA. Both SGMA and California groundwater rights law militate against the proposed allocation scheme that protects

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the “Domestic Group” while simultaneously eliminating agricultural and industrial producers.

Comment No. 3: The PAC Task Questions Are Predicated Upon Improper and Unexplained Premises.

The PAC Task Questions are written in a way that assumes, without explanation, that “Ag/Industrial” aka “Non-Domestic” groundwater producers (that are also confusingly referenced as “Non-M&I”) should be deprioritized in the proposed groundwater allocation scheme. For example, the “Domestic Group” members are not required to reduce groundwater pumping (with the exception of the City of Ridgecrest that would use recycled water when available), whereas the Non-Domestic Group is required to cease production altogether at some point in the future. Similarly, the PAC Task Questions implicitly describe the Domestic Group as producers of groundwater whereas the Non-Domestic Group is pejoratively labeled as “mining” the basin.

If the IWVGA’s primary concern is “loss of storage,” then it seems that all producers should be required to reduce production, not just a targeted group of pumpers. If the IWVGA is concerned with impacts to shallow wells, then the IWVGA should explain why it assumes only Non-Domestic Group production threatens those wells and why Domestic Group production does not. The data and evidence presented to date negates those assumptions. SGMA and groundwater rights law also militate against these assumptions.

Comment No. 4: The IWVGA Should List, Describe and Explain All Assumptions Used for Model Scenario 6.

The PAC cannot provide meaningful input on any modeling scenario that was developed, directed, discussed, and deployed exclusively in closed session meetings of the IWVGA Board. The PAC must be informed of and must clearly understand the detail of the assumptions on which Modeling Scenario 6 is based. At the August 1, 2019 TAC and PAC meetings, Meadowbrook requested that all assumptions for Modeling Scenario 6 be provided to the PAC prior to the August 7 Special PAC meeting. No such assumptions were provided with the agenda packet for the August 7 Special Meeting. Meadowbrook again requests that the assumptions for Modeling Scenario 6 be detailed and provided promptly to the PAC, the TAC and the public.

The need for transparency was acutely demonstrated at the August 1 PAC meeting. At that meeting, the Water Resources Manager representative revealed—when directly

asked— that the “pumping location optimization” component of Model Scenario 6 is based on the assumptions that the Meadowbrook will “use up” its storage allocation, cease operating in the Basin, and that the IWVWD will begin pumping at least 3,000 AFY, and then more in the future, from existing groundwater wells in the North Brown Road area, including Meadowbrook’s existing groundwater wells. In other words, Modeling Scenario 6 is premised upon an assumption that Meadowbrook’s water rights, and then its wells and land, will be taken without just compensation and due process. The IWVGA has not indicated the means by which that taking will occur. This is a critical and obviously controversial and objectionable assumption.

The IWVGA and Water Resources Manager must answer many other questions regarding the Model Scenario 6 assumptions, including but not limited to:

- Which groundwater wells the Water District or any other entity plans to utilize in the North Brown Road area in Modeling Scenario 6?
- Which wells cease operating, and when, under Modeling Scenario 6?
- Which wells continue operating, and at what levels of groundwater production, under Modeling Scenario 6?
- How much groundwater is in storage in the Basin? Preliminary estimates stated by the Water Resources Manager have ranged from approximately 1 million to nearly 2.5 million acre feet. Establishing a clear statement of total available groundwater in storage based upon best available science and information is essential to establishing a numerical minimum threshold for loss of storage as a sustainability indicator under SGMA and the DWR Regulations and Best Management Practices. In any event, the total proposed 63,836 acre-feet assigned to the Non-Domestic “pool” represents a mere fraction of the total groundwater in storage, and is unacceptably low.
- How much usable groundwater is in storage in the Basin? Does the Water Resources Manager and the IWVGA deem all usable water usable for all purposes, or does it consider that some water will be usable for some purposes (e.g. industrial) and not others (e.g. domestic)?
- Does the IWVGA seek to *raise* water levels and storage over time, or does it seek to maintain certain levels in manner that reasonably considers all relevant factors,

including economic factors. This issue pertains to establishing appropriate Sustainable Management Criteria.

- What are the cost, quantity and timing assumptions for bringing supplemental water into the Basin? Capitol Core was scheduled to produce a technical memorandum to the Board by July 31, 2019. Capitol Core's directives were, we understand, also developed, directed, discussed, and deployed in closed session meetings of the IWVGA Board. Meadowbrook requests again that the Capitol Core technical memorandum be promptly provided to the PAC, the TAC and the public.
- Will the "Non-Domestic Group" be required to pay pumping fees to fund bringing supplemental water supplies into the Basin, including infrastructure costs?

Additionally, the TAC has not been given an opportunity to review and vet the technical assumptions underlying Model Scenario 6 or the concerns raised at the August 1 TAC meeting. This is not consistent with the IWVGA Bylaws which state that the TAC "will assist the Water Resources Manager in the preparation of the GSP and will work collaboratively with other committees of the Board." (Bylaws, Section 5.11.) The Bylaws also require that "The Water Resources Manager shall attend and set the agenda of each TAC meeting so that each technical element of the GSP is presented to the TAC, in draft, to afford the TAC a reasonable opportunity to review and conduct a thorough evaluation prior to finalization of that technical element." Model Scenario 6 (as well as 3, 4 and 5) were not developed in accordance with the IWVGA Bylaws.

The assumptions for Modeling Scenario 6 should be set forth in detail and promptly provided to the TAC, PAC and the public. Meadowbrook reserves the right to comment further on Modeling Scenario 6 once those assumptions have been presented and Meadowbrook has been afforded an adequate opportunity for review and consideration.

Comment No. 5: The PAC Task Questions Are Not Appropriate Policy Questions—They Are Technical and Legal Questions.

As indicated above, evaluating Modeling Scenario 6 first requires transparency and understanding of the technical assumptions on which it is based. The PAC Task Questions also require an understanding of water rights law and principles. Asking the PAC members, none of whom are attorneys, to opine for example on whether

allocations should be based upon principles of correlative rights, prescriptive rights and self-help, or some other legal premise, invites comments and positions from members who may not have a sufficient legal understanding of those principles.

Additionally, the IWVGA should explain the legal assumptions upon which other aspects of Modeling Scenario 6 is based, including:

- Why are all Domestic Group producers exempt from reducing production? Why aren't the Domestic Group producers considered to be "mining" the basin?
- Is Modeling Scenario 6 based upon the same untested theory of an "extended federal reserved water right" that Model Scenario 4 was tenuously based upon? If so, what is the legal basis for extending federal reserved water rights to production located outside of the Navy base? What is the legal basis for extending federal reserved water rights to producers other than the Navy, such as in the form of limiting ramp down for other producers? What is the legal basis for asserting an expanded federal reserved water right if the Navy "expands the base" as has been described by the Water Resources Manager and members of the IWVGA Board? What does the IWVGA consider the Navy's "primary purpose" and "secondary purpose(s)" to be in the context of United States Supreme Court case law and other appellate authorities regarding federal reserved water rights? Is not the Navy's primary purpose with respect to NAWS the development and testing of weapons, and a secondary purpose (which would be subject to state law including SGMA) the training for the use of such weapons? What is the legal basis or document that the IWVGA deems supporting a Navy primary purpose that would include providing domestic water supply into perpetuity both on and off the base for an unlimited and undefined population?
- As stated at both the June 27 PAC Meeting and the August 1 PAC and TAC meetings, Meadowbrook was not a signatory to the 2014 "Farmer's Letter". Someone other than Meadowbrook inscribed an acreage estimate onto the annotated letter that was presented to the PAC. Meadowbrook's acreage under cultivation is higher than the 890 acres that was handwritten onto that document and included in the Table 1 summary for Model Scenario 6.
- Regarding PAC Task Question "B" regarding legal principles for allocation methodologies, the IWVGA lacks important production information for several of the listed entities, which information may be provided through the pending Groundwater Well Registration Ordinance. It would be helpful to consider this

question once that information is available for consideration. In either view, Meadowbrook is entitled to and should receive a permanent allocation.

Comment No. 6: Sustainable Management Criteria Must Be Meaningfully Discussed and Considered as Required by SGMA.

SGMA requires achieving Basin sustainability, which means avoiding statutorily defined, significant and unreasonable undesirable results through implementation of projects and management actions. SGMA defines undesirable results as one or more of the following effects caused by groundwater conditions occurring throughout the basin:

- (1) Chronic lowering of groundwater levels indicating a significant and unreasonable depletion of supply if continued over the planning and implementation horizon. Overdraft during a period of drought is not sufficient to establish a chronic lowering of groundwater levels if extractions and groundwater recharge are managed as necessary to ensure that reductions in groundwater levels or storage during a period of drought are offset by increases in groundwater levels or storage during other periods.
- (2) Significant and unreasonable reduction of groundwater storage.
- (3) Significant and unreasonable seawater intrusion.
- (4) Significant and unreasonable degraded water quality, including the migration of contaminant plumes that impair water supplies.
- (5) Significant and unreasonable land subsidence that substantially interferes with surface land uses.
- (6) Depletions of interconnected surface water that have significant and unreasonable adverse impacts on beneficial uses of the surface water.

(Water Code § 10721(x).)

For each of these undesirable results (except seawater intrusion), the IWVGA is legally required to evaluate and establish appropriate numerical sustainable management criteria based upon best available science and information.

The IWVGA's GSP development approach thus far has apparently focused on ways to eliminate private groundwater producers from the Basin, rather than evaluating and considering appropriate sustainable management criteria and identifying appropriate projects and management actions to avoid specific undesirable results and to achieve

specific interim milestones, measure objectives and a well-defined sustainability goal. By failing to meet SGMA's mandates, a GSP based upon Model Scenario 6 risks placing the Basin on a path to State Water Board intervention.

The California Department of Water Resources has issued a Best Management Practices ("BMP") specifically for establishing sustainable management criteria. Section 3 of that BMP identifies "Preliminary Activities" that must be completed before a GSA begins the process of developing sustainable management criteria. Those include, at a minimum:

- **"Understanding the Basin Setting.** A thorough understanding of the historical and current state of the basin is necessary before sustainable management criteria can be set. Much of this understanding is gained in the development of a hydrogeologic conceptual model, water budget, and description of groundwater conditions. For more information, see the Hydrogeologic Conceptual Model BMP, Water Budget BMP, and Modeling BMP." Currently, only a draft GSP Chapter 1, and partial draft GSP Chapter 3 have been presented to the PAC, TAC and public. TAC members submitted comments letters on partial draft Chapter 3 that were not circulated to the TAC, not discussed at the TAC meetings and not responded to by the WRM.
- **"Inventory Existing Monitoring Programs.** Minimum thresholds and measurable objectives are set at individual representative monitoring sites. GSAs should compile information from existing monitoring programs (e.g., number of wells and their construction details, which aquifers they monitor). As sustainable management criteria are set, monitoring networks may need to be expanded and updated beyond those used for existing, pre-SGMA monitoring programs. Additional information on monitoring networks is included in the Monitoring Networks and Identification of Data Gaps BMP." Currently, draft GSP Chapter 3 contains no content regarding the existing monitoring network.
- **"Engage Interested Parties within the Basin.** When setting sustainable management criteria, GSAs must consider the beneficial uses and users of groundwater in their basin. Consideration of the potential effects on beneficial uses and users underpin the minimum thresholds. GSAs must explain their decision-making processes and how public input was used in the development of their GSPs. There are specific SGMA requirements for GSAs to engage with interested parties within a basin. For more information about requirements of engagement,

refer to the Stakeholder Communication and Engagement Guidance Document.” The IWVGA’s development of modeling scenarios exclusively through closed session meetings contravenes SGMA’s requirements.

SGMA, the DWR GSP Regulations and Sustainable Management Criteria BMP include many other requirements for establishing sustainable management criteria.

Suggested Modifications to Model Scenario 6 for Consideration

Notwithstanding Meadowbrook’s serious concerns with Model Scenario 6, most of which are outlined above, it acknowledges and appreciates the efforts of the Water Resources Manager and the IWVGA’s Special Counsel in developing and considering creative management solutions for this particularly challenging Basin.

On behalf of Meadowbrook, we offer the following suggested modifications for the Board’s consideration in refining Modeling Scenario 6, and we remain willing to negotiate potential solutions toward achieving a consensus-based GSP:

- Eliminate the requirement that all Non-Domestic Group production of assigned pool volume cease by 2040.
- Incorporate permanent allocations to most Non-Domestic Group members, specifically including Meadowbrook. Such Non-Domestic Group members would hold both permanent allocations and also an assigned portion of the pool.
- Require reductions in Domestic Group production to occur over the sustainability timeframe. Imposing reductions to the Domestic Group increases the likelihood of a successful marketing of Non-Domestic Group water allocations.
- To the extent that Non-Domestic Group production is tied to a definable, limited amount of allowable loss of groundwater in storage, the Non-Domestic Group should also be entitled to priority use of demonstrable increases in groundwater in storage over time, such as for example, increases in actual annual natural recharge and increases in the *determination* of annual natural recharge derived through Basin monitoring and improved data and study.

On behalf of Meadowbrook, we appreciate the opportunity to comment on Model Scenario 6. We look forward to receiving input from the Board in response to the comments and questions raised in this letter and at the PAC and TAC meetings, and

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we also look forward to achieving a collaboratively-established groundwater sustainability plan for the Basin.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Derek Hoffman", with a stylized flourish at the end.

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

DRH:mdd:mao

Enclosure

cc: Client
E. Teasdale

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ATTACHMENT “A”

LYNN E. RICKARD, ARA
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BAKERSFIELD, CA 93303
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Fax: (661) 328-9950

May 29, 2019

Mr. James A. Worth
McMurtrey, Hartsock & Worth
2001 22nd Street, Suite 100
Bakersfield, CA 93301

RE: Meadowbrook Ranch

APPRAISAL

File 19-1580

Restricted Appraisal Report, 1,554.69 Acres, Irrigated & Unirrigated Land, Kern County, CA

Appraisal Fee

\$2,000.00

Tax I.D. #545-68-8747

THANK YOU

Terms: Due Upon Receipt