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INDIAN WELLS VALLEY GROUNDWATER AUTHORITY
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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF KERN**

12 **[Exempt from filing fees by Gov. Code § 6103]**

13 INDIAN WELLS VALLEY)
GROUNDWATER AUTHORITY, a Joint)
14 Powers Authority,)

15 Plaintiff,)

16 vs.)

17 INYO KERN COMMUNITY SERVICES)
DISTRICT, and DOES 1 through 100,)
18 inclusive,)

19 Defendants.)
20)
21)
22)
23)
24)
25)
26)
27)
28)

Case No.

**COMPLAINT FOR PRELIMINARY AND
PERMANENT INJUNCTION; RECOVERY
OF DELINQUENT GROUNDWATER
EXTRACTION FEES; IMPOSITION OF
CIVIL PENALTIES**

1 Plaintiff INDIAN WELLS VALLEY GROUNDWATER AUTHORITY (hereinafter
2 “Plaintiff” or “IWVGA”), by and through their attorneys of record, bring this suit against Defendant
3 INYO KERN COMMUNITY SERVICES DISTRICT (hereinafter “Defendant”), and DOES 1 through
4 100, inclusive, and in support thereof, states as follows:

5 **PARTIES**

6 1. Plaintiff IWVGA is a joint powers agency duly organized and existing under and by
7 virtue of the laws of the State of California. IWVGA was formed in July 2016, by five public agencies
8 and formally became a Groundwater Sustainability Agency, (an official agency authorized by the
9 Department of Water Resource to prepare a Groundwater Sustainability Plan), in 2017, pursuant to the
10 Sustainable Groundwater Management Act of 2014 (SGMA; Water Code §§ 10720, et seq.) The
11 agency is governed by a seven-member Board of Directors consisting of one director from each public
12 agency and two non-voting associate directors representing the United States Department of the
13 Interior Bureau of Land Management and the United States Navy Naval Air Weapons Station China
14 Lake. IWVGA maintains offices at 500 W. Ridgecrest Blvd., Ridgecrest, CA 93555.

15 2. Defendant Inyo Kern Community Services District is a public entity extractor who
16 extracts groundwater for irrigation and consumption by the residents of the district located in the
17 Indian Wells Valley in Kern County.

18 3. Plaintiff is ignorant of the true names and capacities of defendants sued herein as DOES
19 1 through 100, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff is
20 informed and believes and thereon alleges, that each of the defendants designated as “DOE” herein is
21 legally responsible in some manner for the acts, occurrences, damages and liabilities alleged herein
22 and thereby, actively and proximately caused or contributed to the various injuries and damages
23 referred to herein. Plaintiff will amend this complaint to allege their true names and capacities when
24 ascertained.

25 **VENUE AND JURISDICTION**

26 4. This Court has jurisdiction to hear the subject matter of this complaint. This court also
27 has jurisdiction over each defendant, as both are incorporated in California and therefore effectively
28 domiciled within the state for purposes of personal jurisdiction.

1 5. Venue is proper in this Court: the defendants reside in, and the acts and omissions
2 complained of herein, occurred in Kern County. See Code Civ. Pro. § § 393, 394(a).

3 **GENERAL ALLEGATIONS APPLICABLE TO ALL CAUSES OF ACTION**

4 **FACTUAL BACKGROUND**

5 **Purpose of the Sustainable Groundwater Management Act and IWVGA**

6 6. Groundwater in California is used by 85% of the population, mostly by the agriculture
7 industry as the main water source for crops. For years, groundwater use has been poorly managed and
8 under-regulated to a point where the state is facing major depletion. Groundwater is particularly
9 crucial in California, because the dearth of surface water means that it supplies between one-third and
10 two-thirds of the state's freshwater supply, depending on climatic conditions. It is being pumped in
11 excess of the natural rate of replenishment, which in turn is lowering the groundwater table, a
12 phenomenon called "overdraft" that can cause severe land subsidence and other long-term
13 environmental problems.

14 7. In 1980, the Department of Water Resources (DWR) noted that of California's 450
15 groundwater basins, 40 were in overdraft and 11 were identified as being in "critical" conditions.
16 Groundwater levels have dropped to 50 feet below historic levels—up to 100 feet below in the San
17 Joaquin Valley. Knowing how much groundwater is being taken out and used is difficult, because
18 there is generally no reporting requirement. Managing groundwater is also challenging, because it
19 does not adhere to property lines and freely moves underground. With few incentives and fewer
20 regulations to conserve groundwater, California farms have planted higher-value crops that require
21 year-round irrigation and have drilled deeper wells to retrieve groundwater from sinking aquifers.

22 8. California enacted the SGMA in 2014 to better manage groundwater supplies over the
23 long-term in order to achieve sustainable groundwater management in California by 2042. SGMA is
24 premised on the principle that groundwater is best suited to be managed at the local level, if possible.
25 SGMA directs local agencies to work together to create a plan to balance the amount of water pumped
26 out and put back into a basin. The goal of these plans, known as Groundwater Sustainability Plans
27
28

1 (“GSPs”), is long-term sustainability of basins. Sustainable basins are defined as basins not afflicted
2 by one of six undesirable conditions, most significantly, chronic overdraft.

3 9. The local agencies that implement the SGMA are the primary entities responsible for
4 reaching groundwater sustainability. In areas where groundwater users and local agencies are unable
5 or unwilling to sustainably manage their groundwater, SGMA authorizes State Water Board
6 intervention. SGMA technically applies to all 515 groundwater basins and sub-basins in California,
7 but it is only the 127 high-and medium-priority basins that are required to develop groundwater
8 sustainability plans. These 127 basins account for 96% of California's groundwater. These basins
9 must adopt GSPs by 2020 or 2022 (depending on the basin) and have until 2040 or 2042 to attain
10 sustainability.

11 10. Under SGMA, a combination of local agencies may form a GSA through a joint exercise
12 of powers agreement. A "local agency" refers to a local public agency that has water supply,
13 management, and land use obligations within the groundwater basin. The purpose of the GSAs is to
14 develop the necessary GSP to achieve long-term sustainability of the basin. Groundwater
15 sustainability plans under SGMA must outline measurable objectives and interim milestones to
16 achieve the sustainability goal for the basin within a 20-year time frame.

17 11. GSP's need to include a physical description of the basin, including groundwater levels,
18 groundwater quality, subsidence, and groundwater-surface water interaction; data on historical and
19 projected water demands and supplies; and monitoring and management provisions. In addition,
20 GSP's must consider integration with local county and city general plans, the possible hydrologic
21 connection between adjacent basins, and the interests of all beneficial uses and users of groundwater
22 including overlying property owners, municipal well owners, public water systems, local land use
23 agencies, environmental users, surface water users, the federal government, Native American tribes in
24 California, disadvantaged communities, and listed monitoring entities.

IWVGA’s Ordinance Requires All Non-De Minimis Groundwater Extractors to Self-Report Water Usage Data

12. The Indian Wells Valley Groundwater Basin (designated basin number 6-054 in the DWR’s Bulletin No. 118) (“Basin”), is designated as a high-priority sub-basin subject to critical conditions of overdraft.

13. Current groundwater extractions from the Basin are estimated to be roughly four times the sustainable yield--the “sustainable yield” is the maximum quantity of water, calculated over a base period representative of long-term conditions in the basin and including any temporary surplus, that can be withdrawn annually from a groundwater supply without causing an undesirable result.

14. 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.

15. Pursuant to SGMA, the IWVGA was required to submit a GSP for the Basin by January 31, 2020. SGMA requires that the Basin fully implement the GSP and achieve the sustainability goal within 20 years after adoption of this plan. In order to develop its sustainability plan in accordance with GSP Emergency Regulations (Cal. Code Regs., Tit. 23, Div. 2, Ch. 1.5, Sub Ch. 2) IWVGA must, among other requirements, develop a historical water budget of the Basin and a groundwater-surface water flow model, which requires an understanding of the historical and present quantity of water being pumped from wells throughout the Basin.

16. The IWVGA adopted the GSP through Resolution No. 01-20 on January 16, 2020.

17. The IWVGA determined in its GSP that the Basin cannot achieve the required sustainability without the development of augmentation and overdraft mitigation projects.

18. On July 16, 2020, the IWVGA passed and adopted Resolution No. 06-20, and adopted a Sustainable Yield Report. The Sustainable Yield Report found the Basin has an arid, high desert, climate with the long-term natural recharge achieving an annual basin sustainable yield of 7,650 acre feet per year (AFY).

19. On July 19, 2018, the Board of IWVGA adopted Ordinance 02-18 “Establishing Groundwater Extraction Fees and the Rules and Regulations and Procedures for Their Implementation” (“the Ordinance”). The Ordinance pertains to all non-de minimis extractors within

1 the basin, as defined in California Water Code section 10721(e) to mean “a person who extracts, for
2 domestic purposes, two acre-feet or less per year”.

3 20. Section 4 of the Ordinance states, “No later than August 20, 2018, a Groundwater
4 Extraction Facility within the boundaries of the Basin shall be registered with the Authority by the
5 Groundwater Extractor.”

6 21. Section 6 of the Ordinance states, “Before the 10th day of each calendar month, the
7 Groundwater Extractor shall self-report the necessary data from its Groundwater Extraction Facility on
8 the self-reporting form provided by the Authority and pay the Groundwater Extraction Fee set forth in
9 Section 3 above.”

10 22. On August 21, 2020, pursuant to California Water Code Section 10730.2, the IWVGA
11 Board of Directors passed Ordinance 03-20, establishing a “Basin Replenishment Fee” of \$2,130 per
12 acre foot of water extracted from Basin. The Basin Replenishment Fee went into effect January 1,
13 2021.

14 23. The Basin Replenishment Fee is designed to provide funding for two projects: (1) the
15 augmentation/importation of water supplies and (2) the mitigation of damages to shallow wells, which
16 will continue to occur until augmented supplies are delivered to the basin.

17 24. Basin sustainability cannot be achieved through pumping reductions alone because the
18 annual sustainable yield is insufficient to meet the Basin’s most minimal needs. As such, augmentation
19 projects are required

20 25. The augmentation projects must be immediately funded because the IWVGA anticipates
21 that demand for imported water will increase throughout the State due to drought conditions and the
22 requirements of SGMA and so too will the price of importing water increase. If the IWVGA does not
23 promptly raise revenue to secure the rights to such imported water, that cost could quickly become
24 prohibitive.

25 26. The shallow well mitigation program is needed immediately because it will take some
26 time to build the required infrastructure to augment the Basin's supplies and during that time it is
27 impossible to reduce water supply demands to a level that does not cause impacts to shallow wells.
28

1 27. Pursuant to Ordinance 03-20, beginning on February 15, 2021, and every month
2 thereafter on, or before, the 15th day of the month, those pumpers subject to the Basin Replenishment
3 Fee must submit payment for the prior calendar month's extractions.

4 28. The Basin Replenishment Fee is projected to be a 5 year fee, after which the projects
5 would be funded and the fee would end.

6 29. Defendants are subject to the Basin Replenishment Fee and are required to pay \$2,130
7 per acre foot of water extracted from the Basin.

8
9 **IWVGA is Empowered to Order an Operator to Cease Extraction of Groundwater Until
all Delinquent Fees are Paid**

10 30. Defendant has extracted water from the Basin after January 1, 2021 and has not paid the
11 Basin Replenishment Fee to the IWVGA.

12 31. As required by the Ordinance, Defendant was required to, but failed to pay any
13 groundwater extraction charges on the extraction of groundwater from its wells.

14 32. Defendant has continuously failed to pay the groundwater extraction fee since they
15 rejected the bill of their fee for the billing period of June 2021 through July 2021.

16 33. On July 27, 2021, Plaintiff received Defendant's submitted their "Monthly Report
17 Form" reflecting a bill due of \$2,772.51 along with a letter that stated "On July 14, 2021, the Inyokern
18 Community services District (ICSD) board voted to decline to pay the IWV GA groundwater
19 assessment fee. Several issues were raised in the discussion leading up to the vote."

20 34. IWVGA mailed notices to Defendant advising it of their failure to comply on two
21 separate occasions: September 3, 2021, and September 17, 2021. The letters have stated, "On July 27,
22 2021 IWVGA Staff received the attached letter from your District stating Inyokern CSD Board had
23 voted against paying the groundwater extraction fees for June 2021 usage. Since that time, IWVGA
24 has not received a July 2021 pumping report or payment for water production in either of those
25 months. Water Code Section 10703.6 expressly provides the board with the following authorities to
26 address violations of Ordinance 02-20: 1) Assessment of a 10% penalty and interest at 1% per month
27 of delinquency, 2) Order the cessation of all groundwater extractions until the violations have been
28

1 cured and all delinquent charges, penalties and interest have been paid and/or, 3) bring suit seeking
2 judicial orders.

3 35. Defendant has failed to respond to every outreach effort. Each contact was sent via
4 certified mail requiring a signature. The letter sent on September 17, 2021, was returned by the post
5 office as unclaimed. Plaintiff has been unable to communicate with the Defendants ever since.

6 36. Defendant was sent a letter by certified mail September 3, 2021, notifying him that a
7 public hearing was set for the IWVGA Board meeting on Thursday, September 8, 2021, during which
8 they would be provided with the opportunity to address the Board regarding the groundwater
9 extractions in their district, and the possible actions the Groundwater Authority may take regarding
10 apparent failure to abide by the provisions of Ordinance 02-18. No response was received.

11 37. Defendant was sent a second letter by certified mail September 17th advising Defendant
12 to “Please contact April Keigwin, Clerk of the Board.... No later than 24 hours prior to the October
13 13, 2021, IWVGA Regular Board Meeting to discuss the information needed to rectify the delinquent
14 status of the account. Defendant did not respond to the second letter nor attend the October 13, 2021,
15 Board meeting.

16 38. Water Code section 10730.6 provides the following with regards to fee collection and
17 enforcement:

18 (a) A groundwater fee levied pursuant to this chapter shall be due and payable to the
19 groundwater sustainability agency by each owner or operator on a day established by the
20 groundwater sustainability agency.

21 (b) If an owner or operator knowingly fails to pay a groundwater fee within 30 days of it
22 becoming due, the owner or operator shall be liable to the groundwater sustainability
23 agency for interest at the rate of 1 percent per month on the delinquent amount of the
24 groundwater fee and a 10-percent penalty.

25 (c) The groundwater sustainability agency may bring a suit in the court having
26 jurisdiction against any owner or operator of a groundwater extraction facility within the
27 area covered by the plan for the collection of any delinquent groundwater fees, interest,
28 or penalties imposed under this chapter. If the groundwater sustainability agency seeks
an attachment against the property of any named defendant in the suit, the groundwater
sustainability agency shall not be required to furnish a bond or other undertaking as
provided in Title 6.5 (commencing with Section 481.010) of Part 2 of the Code of Civil
Procedure.

1 (d) In the alternative to bringing a suit pursuant to subdivision (c), a groundwater
2 sustainability agency may collect any delinquent groundwater charge and any civil
3 penalties and interest on the delinquent groundwater charge pursuant to the laws
4 applicable to the local agency or, if a joint powers authority, to the entity designated
5 pursuant to Section 6509 of the Government Code. The collection shall be in the same
6 manner as it would be applicable to the collection of delinquent assessments, water
7 charges, or tolls.

8 (e) As an additional remedy, a groundwater sustainability agency, after a public hearing,
9 may order an owner or operator to cease extraction of groundwater until all delinquent
10 fees are paid. The groundwater sustainability agency shall give notice to the owner or
11 operator by certified mail not less than 15 days in advance of the public hearing.

12 (f) The remedies specified in this section for collecting and enforcing fees are
13 cumulative and may be pursued alternatively or may be used consecutively as ,
14 determined by the governing body.

15 39. In short, Water Code section 10730.6 provides IWVGA with enforcement mechanisms
16 to enforce a recalcitrant groundwater extractor's compliance with the Ordinance. IWVGA is entitled
17 to bring a suit in the Kern County Superior Court for the collection of Defendant's delinquent
18 groundwater fees, interest at a rate of 1 percent per month, and a 10-percent penalty.

19 40. Pursuant to Water Code section 10730.6(e), IWVGA has ordered Defendant to cease
20 extraction of groundwater based on his default at the duly noticed October 13, 2021, Board meeting.

21 41. Accordingly, IWVGA now desires a judicial order requiring that Defendant cease
22 further groundwater extraction until it registers its well, submits the required water usage data and
23 pays all applicable groundwater fees, interest, and penalties, and upon the condition that Defendant
24 maintain proper registration of said well(s) in accordance with Ordinance 02-18 for the remainder of
25 its use, whatsoever that may be.

26 **FIRST CAUSE OF ACTION**

27 **FOR INJUNCTIVE RELIEF PURSUANT TO WATER CODE SECTION 10730.6(e)**

28 **(AGAINST ALL DEFENDANTS)**

42. Plaintiff IWVGA re-alleges and incorporates by reference each and all the preceding
paragraphs as though fully set forth herein.

1 43. An actual controversy has arisen between IWVGA and Defendants. IWVGA alleges
2 that defendants have violated and remain in violation of the Ordinance, which requires all non-de
3 minimis extractors within the basin to register a Groundwater Extraction Facility with the Authority no
4 later than August 20, 2018, to self-report necessary data from its Groundwater Extraction Facility
5 before the 10th day of each calendar month, and to pay a Basin Replenishment Fee of \$2,130 per acre
6 foot of water extracted from the Basin.

7 44. Water Code section 10730.6(e) states that “As an additional remedy, a groundwater
8 sustainability agency, after a public hearing, may order an owner or operator to cease extraction of
9 groundwater until all delinquent fees are paid. The groundwater sustainability agency shall give notice
10 to the owner or operator by certified mail not less than 15 days in advance of the public hearing.”

11 45. Defendant was sent at least two separate notices of its failure to report their level of
12 water production (September 3, 2021, and September 17, 2021). Defendant was sent a letter on
13 September 3, 2021, notifying him of the public hearing set by IWVGA for September 8, 2021, to
14 address their groundwater extractions and possible actions the Authority could pursue for their present
15 violation of the Ordinance. Defendant missed their September 8th hearing, which was subsequently
16 continued to October 13, 2021. Defendant was informed of this by certified mail on September 17th.
17 Defendant has at all times been properly notified of his failure to log his pumping and failure to pay
18 groundwater extraction fees as well as the possible actions IWVGA may take to enforce the
19 Ordinance. To date, there has been no response by Defendant to this or any of the prior notifications.
20 Defendant did not appear at the October 13, 2021, hearing and the IWVGA Board accordingly ordered
21 it to cease extraction.

22 46. Defendants continue to extract groundwater from the Basin in violation of the IWVGA’s
23 order.

24 47. The IWVGA has no plain, speedy, or adequate remedy at law, and injunctive relief is
25 necessary.

26 48. Accordingly, IWVGA now desires a judicial order requiring that Defendant, their
27 agents, attorneys, servants, representatives and employees, and all other persons who act in concert
28 and participation with Defendant, cease from extracting groundwater from the Basin, until and unless

1 Defendant remedies their delinquent payments, cease further groundwater extraction until they submit
2 the required water usage data and pays all applicable groundwater fees, interest, and penalties, and
3 upon the condition that Defendant maintain proper registration of said well(s) in accordance with the
4 Ordinance for the remainder of their use, whatsoever that may be.

5 **SECOND CAUSE OF ACTION**

6 **FOR COLLECTION OF DELINQUENT GROUNDWATER EXTRACTION CHARGES**

7 **PURSUANT TO WATER CODE SECTION 10730.6**

8 **(AGAINST ALL DEFENDANTS)**

9 49. Plaintiff IWVGA re-alleges and incorporates by reference each and all of the preceding
10 paragraphs as though fully set forth herein.

11 50. Further, an actual, present and substantial controversy exists between IWVGA and
12 Defendant with respect to the fee collection and enforcement provisions of Water Code 10730.6,
13 which authorize IWVGA to levy a delinquency penalty, order an operator to cease extraction of
14 groundwater until all delinquent fees are paid, and/or bring suit for their recovery.

15 51. Defendant was informed of their duty to pay the groundwater extraction fee in the two
16 letters sent to them by the Authority that also informed them of their failure to report their
17 groundwater extraction. Defendant has thus knowingly failed to pay the groundwater extraction fee
18 due and is subject to the cumulative effect of the remedies provided in Water Code 10730.6.

19 52. There is currently due and owing to plaintiff from Defendant unpaid groundwater
20 extraction charges for the extraction of groundwater from Defendant's well from June 2021 to present
21 date.

22 **THIRD CAUSE OF ACTION**

23 **FOR CIVIL PENALTIES PUSUANT TO WATER CODE SECTION 10730.6**

24 **(AGAINST ALL DEFENDANTS)**

25 53. Plaintiff IWVGA re-alleges and incorporates by reference each and all of the preceding
26 paragraphs as though fully set forth herein.

27 54. Water Code section 10730.6(b) states, "If an owner or operator knowingly fails to pay a
28 groundwater fee within 30 days of it becoming due, the owner or operator shall be liable to the

1 groundwater sustainability agency for interest at the rate of 1 percent per month on the delinquent
2 amount of the groundwater fee and a 10-percent penalty.”

3 55. Defendant has negligently or intentionally violated the Act and the Ordinance by failing
4 to pay groundwater fees from June 2021 to present date.

5 **FOURTH CAUSE OF ACTION**

6 **FOR CIVIL PENALTIES PURSUANT TO WATER CODE SECTION 10732**

7 **(AGAINST ALL DEFENDANTS)**

8 56. Plaintiff IWVGA re-alleges and incorporates by reference each and all of the preceding
9 paragraphs as though fully set forth herein.

10 57. Defendants are subject to the Basin Replenishment Fee and have failed to pay that fee.

11 58. On October 13, 2021, after providing the applicable notice to Defendants, the IWVGA
12 held a public hearings regarding Defendant’s failure to pay the Basin Replenishment Fee, following
13 which the IWVGA Board of Directors ordered it to cease extraction.

14 59. IWVGA’s Board ordered Defendants to cease extractions of groundwater from the
15 Basin until Defendants have paid all delinquent fees, penalties, and interest.

16 60. Pursuant to Water Code section 10732(a), a person who extracts groundwater in
17 violation of a rule, regulation, ordinance, or resolution adopted by the IWVGA shall: (1) “be subject to
18 a civil penalty not to exceed five hundred dollars (\$500) per acre-foot extracted in excess of the
19 amount that person is authorized to extract”; and (2) “be liable for a civil penalty not to exceed one
20 thousand dollars (\$1,000) plus one hundred dollars (\$100) for each additional day on which the
21 violation continues if the person fails to comply within 30 days after the local agency has notified the
22 person of the violation.”

23 61. Water Code section 10732(b) authorizes the IWVGA to bring an action in the superior
24 court to impose the civil penalty described in subdivision (a).

25 62. Defendants have not paid their delinquent fees, penalties, and interest as required by
26 Resolution No. 05-21 and have continued to extract groundwater from the Basin.

27 63. The IWVGA seeks civil penalties in the amount to be proven at trial.
28

PRAYER FOR RELIEF

WHEREFORE, Plaintiff IWVGA requests that the Court enter judgment against Defendant as follows:

1. For a preliminary and permanent injunction restraining and prohibiting Defendants and their agents, employees and all persons acting in concert with them from operating Defendants’ groundwater wells located within the Basin without paying the Basin Replenishment Fee.
2. For a preliminary and permanent injunction restraining and prohibiting Defendants and their agents, employees and all persons acting in concert with them from operating Defendants’ groundwater wells located within the Basin until Defendants remedy their failure to pay the Basin Replenishment Fee for water extracted from January 1, 2021 to present.
3. For delinquent groundwater extraction charges in an amount according to proof, with interest thereon, at a rate of 1 percent per month;
4. For civil penalties in the sum of 10 percent of the total amount owing;
5. For civil penalties not to exceed five hundred dollars (\$500) per acre-foot extracted following adoption of Resolution 06-21.
6. For civil penalties not to exceed one thousand dollars (\$1,000) plus one hundred dollars (\$100) for each additional day Defendants have failed to comply with Resolution 06-21 after July 9, 2021.
7. For costs of suit, including attorney’s fees, on all causes of action; and
8. For such other and further relief as this Court deems just and proper.

Dated: February 1, 2022

OLIVAREZ MADRUGA LEMIEUX O'NEILL, LLP



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GROUNDWATER AGENCY

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