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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF ORANGE**

Assigned for All Purposes  
Judge Derek W. Hunt

INDIAN WELLS VALLEY  
GROUNDWATER AUTHORITY,

Plaintiff,

v.

MOJAVE PISTACHIOS, LLC, a California  
Limited Liability Company, PAUL G.  
NUGENT, as Trustee of the Nugent Family  
Trust Dated June 20, 2011, MARY E.  
NUGENT, as Trustee of the Nugent Family  
Trust Dated June 20, 2011, and DOES 1  
through 100, inclusive,

Defendant.

Case No. 30-2022-01239479-CU-MC-CJC

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

[Exempt from filing fees pursuant to Govt. Code § 6103]

1 Plaintiff INDIAN WELLS VALLEY GROUNDWATER AUTHORITY  
2 (hereinafter “Plaintiff” or “IWVGA”), by and through their attorneys of record, bring this  
3 suit against Defendants MOJAVE PISTACHIO, LLC, a California Limited Liability  
4 Company (“hereinafter “Mojave Pistachio”), PAUL G. NUGENT, as Trustee of the  
5 Nugent Family Trust Dated June 20, 2011, MARY E. NUGENT, as Trustee of the Nugent  
6 Family Trust Dated June 20, 2011, and DOES 1 through 100, (collectively “Defendants”),  
7 and in support thereof, states as follows:

8 **PARTIES**

9 1. Plaintiff IWVGA is a joint powers agency duly organized and existing under  
10 and by virtue of the laws of the State of California. Pursuant to the Sustainable  
11 Groundwater Management Act of 2014 (SGMA; Water Code §§ 10720, et seq.), the  
12 IWVGA was formed in July 2016, by five public agencies. The IWVGA is the  
13 Groundwater Sustainability Agency (an official agency authorized by the Department of  
14 Water Resource to prepare a Groundwater Sustainability Plan) for the Indian Wells  
15 Valley Groundwater Basin (the “Basin”).

16 2. Defendant Mojave Pistachios, LLC (“Mojave”) is a California limited  
17 liability company, located in Kern County.

18 3. Mojave, together with Defendants Paul G. Nugent and Mary E. Nugent,  
19 Trustees of the Nugent Family Trust dated June 20, 2011, own or lease property overlying  
20 the Basin in Kern County.

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

1           5.       The IWVGA is informed, believes, and thereon alleges that at all times  
2 mentioned in this Complaint, the Defendants, and each of them, were agents, servants,  
3 employees, and/or alter egos of each of the other co-Defendants, and in acting as alleged  
4 in this Complaint were acting in the scope of their authority as such agent(s), servant(s),  
5 employee(s), and alter ego(s), and with the permission and consent of their co-  
6 Defendants.

7           6.       Defendants are farmers who own, lease, and/or operate land overlying the  
8 Basin. Defendants extract groundwater from the Basin for irrigation use in farming  
9 operations; specifically, to grow pistachios.

10          7.       The IWVGA is informed and believes and on that basis alleges that  
11 Defendants own or lease approximately 3,229 acres of land overlying the Basin. The  
12 IWVGA is further informed and believes and on that basis alleges that Defendants have  
13 planted approximately 1,600 acres of this property with pistachio trees.

14          8.       The IWVGA is informed and believes and on that basis alleges that  
15 Defendants started planting their fields with pistachio trees in 2012 and 2013, and then  
16 replanted the original plantings in 2014 and 2015.

17                               **VENUE AND JURISDICTION**

18          9.       This Court has jurisdiction to hear the subject matter of this complaint. This  
19 court also has jurisdiction over each defendant. Mojave is incorporated in California. All  
20 Defendants are located in California and own, lease, or operate property in Kern County.

21          10.       Although Defendants are located in Kern County, IWVGA files this  
22 Complaint in this Court because the parties have related cases (Case Nos. 30-2021-  
23 01187589-CU-WM-CXC; and 30-2021-01187275-CU-OR-CJC) that have been  
24 transferred to this Court pursuant to stipulation of the parties from Kern County Superior  
25 Court. IWVGA and Defendants agree that this Complaint should be heard in the same  
26 court as the related cases.

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

**FACTUAL BACKGROUND**

**The Sustainable Groundwater Management Act (“SGMA”)**

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

12. In 1980, the Department of Water Resources (DWR) noted that of California's 450 groundwater basins, 40 were in overdraft and 11 were identified as being subject to "critical" conditions of overdraft. Groundwater levels have since dropped to 50 feet below historic levels—up to 100 feet below in the San Joaquin Valley.

13. Knowing how much groundwater is being taken out of a basin and used is difficult, because there is generally no reporting requirement. Managing groundwater is also challenging, because it does not adhere to property lines and freely moves underground. With few incentives and fewer regulations to conserve groundwater, California farms have planted higher-value crops that require year-round irrigation and have drilled deeper wells to retrieve groundwater from sinking aquifers.

14. California enacted the SGMA in 2014 to better manage groundwater supplies over the long-term in order to achieve sustainable groundwater management in California. SGMA is premised on the principle that groundwater is best suited to be managed at the local level, if possible. SGMA directs local agencies to work together to create a plan to balance the amount of water pumped out and put back into a basin. The goal of these plans, known as Groundwater Sustainability Plans (“GSPs”), is long-term sustainability of

basins. Sustainable basins are defined as basins not afflicted by one of six undesirable conditions, most significantly, chronic overdraft.

15. The local agencies that implement the SGMA are the primary entities responsible for reaching groundwater sustainability. In areas where groundwater users and local agencies are unable or unwilling to sustainably manage their groundwater, SGMA authorizes State Water Board intervention. SGMA technically applies to all 515 groundwater basins and sub-basins in California, but it is only the 127 basins that are designated as high-and medium-priority basins that are required to develop groundwater sustainability plans. These 127 basins account for 96% of California's groundwater. These basins must adopt GSPs by 2020 or 2022 (depending on the basin's priority designation) and achieve sustainability in the basin within 20 years of the implementation of the plan.

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

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

## **The Basin and the Basin Replenishment Fee**

18. The Basin (designated basin number 6-054 in the DWR's Bulletin No. 118) is designated by DWR as a high-priority sub-basin subject to critical conditions of overdraft.

19. 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.

20. 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.

21. 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.

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

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

24. On July 16, 2020, the IWVGA passed and adopted Resolution No. 06-20, and adopted a Sustainable Yield Report. The Sustainable Yield Report provides that 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).

25. The Sustainable Yield Report found that the United States Navy claims a federal reserve right to groundwater in the Basin dating back to the establishment of the Naval Air Weapons Station China Lake ("NAWS China Lake") in 1943. At its high point

1 in 1970, the Navy reported on-Station production of groundwater for the NAWS China  
2 Lake alone exceeded the entire sustainable yield for the Basin by approximately 5%.

3 26. The IWVGA does not have the power to regulate the United States Navy in  
4 any way.

5 27. Defendants have reported that their groundwater extractions from the Basin  
6 were 800 acre feet in 2012; 325 acre-feet in 2013; 3,700 acre feet in 2014; 4,000 acre-feet  
7 in 2015; 4,100 acre-feet in 2016; 3,040 acre feet in 2017; 3,668 acre feet in 2018; and  
8 3,342 acre feet in 2019.

9 28. The IWVGA is informed and believes and on that basis alleges that  
10 Defendants plan to increase their groundwater extractions to roughly 7,000 AFY, nearly  
11 the entire sustainable yield of the Basin, when their pistachio trees reach maturity.

12 29. In addition to the NAWS China Lake and Defendants, municipal water  
13 districts, small mutual water companies, individual homes, businesses, and other  
14 agricultural interests also rely on groundwater from the Basin.

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

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

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

26 33. The augmentation projects must be immediately funded because the IWVGA  
27 anticipates that demand for imported water will increase throughout the State due to  
28 drought conditions and the requirements of SGMA and so too will the price of importing

1 water increase. If the IWVGA does not promptly raise revenue to secure the rights to such  
2 imported water, that cost could quickly become prohibitive.

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

7 35. Pursuant to Ordinance 03-20, beginning on February 15, 2021, and every  
8 month thereafter on, or before, the 15th day of the month, those pumpers subject to the  
9 Basin Replenishment Fee must report their extractions and submit payment for the prior  
10 calendar month's extractions.

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

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

15 **Defendants' Failure to Pay the Basin Replenishment Fee**

16 38. Defendants have extracted water from the Basin after January 1, 2021 and  
17 have not paid the Basin Replenishment Fee to the IWVGA.

18 39. On May 25, 2021, the IWVGA notified Defendants by Certified Mail that  
19 the IWVGA would hold a hearing on June 9, 2021, to determine whether to order  
20 Defendants to cease production of all groundwater from the Basin until all fee payments  
21 are made current.

22 40. The notice advised Defendants that during the June 9, 2021 hearing  
23 Defendants would be provided with the opportunity to address the IWVGA Board of  
24 Directors regarding Defendants' groundwater extractions, and the possible actions the  
25 IWVGA may take regarding Defendants' failure to pay the required fee.

26 41. On June 9, 2021, the IWVGA held a public hearing regarding Defendants'  
27 failure to pay the Replenishment Fee. Defendants participated in that hearing.  
28



42. Following the public hearing on June 9, 2021, the IWVGA's Board of Directors adopted Resolution No. 04-21 finding that Defendants have not paid the Basin Replenishment Fee, as required by Ordinance No. 03-20.

43. Through Resolution No. 04-21 the IWVGA ordered:

- a. Defendants to cease production of all groundwater from the Basin until all fee payments are made current along with interest at a rate of 1% per month on the delinquent amount as well as a 10% penalty on the delinquent amount.
- b. That if Defendants continue to extract water from the Basin without paying the Basin Replenishment Fee following the effective date of Resolution No. 03-20, legal counsel for the IWVGA shall initiate court proceedings to enforce the IWVGA's order.

44. As of the date of this action, Defendants have not paid the IWVGA the Basin Extraction Fee for water Defendants' have extracted from the Basin after January 1, 2021. The IWVGA are informed and believe that Defendants are still extracting water from the Basin for their farming operations.

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

- (a) A groundwater fee levied pursuant to this chapter shall be due and payable to the groundwater sustainability agency by each owner or operator on a day established by the groundwater sustainability agency.
- (b) If an owner or operator knowingly fails to pay a groundwater fee within 30 days of it becoming due, the owner or operator shall be liable to the groundwater sustainability agency for interest at the rate of 1 percent per month on the delinquent amount of the groundwater fee and a 10-percent penalty.

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

10  
11 (d) In the alternative to bringing a suit pursuant to subdivision (c), a  
12 groundwater sustainability agency may collect any delinquent  
13 groundwater charge and any civil penalties and interest on the delinquent  
14 groundwater charge pursuant to the laws applicable to the local agency  
15 or, if a joint powers authority, to the entity designated pursuant to Section  
16 6509 of the Government Code. The collection shall be in the same  
17 manner as it would be applicable to the collection of delinquent  
18 assessments, water charges, or tolls.

19  
20 (e) As an additional remedy, a groundwater sustainability agency, after a  
21 public hearing, may order an owner or operator to cease extraction of  
22 groundwater until all delinquent fees are paid. The groundwater  
23 sustainability agency shall give notice to the owner or operator by  
24 certified mail not less than 15 days in advance of the public hearing.

25  
26 (f) The remedies specified in this section for collecting and enforcing fees  
27 are cumulative and may be pursued alternatively or may be used  
28 consecutively as determined by the governing body.

1           46. In short, Water Code section 10730.6 provides IWVGA with enforcement  
2 mechanisms to enforce a recalcitrant groundwater extractor's compliance with the  
3 Ordinance. The IWVGA is entitled to bring a suit for the collection of Defendants'  
4 delinquent groundwater fees, interest at a rate of 1 percent per month, and a 10-percent  
5 penalty.

6           47. Pursuant to Water Code section 10730.6(e), the IWVGA has ordered  
7 Defendants to cease extraction of groundwater following the June 9, 2021 meeting of the  
8 IWVGA Board of Directors.

9           48. The IWVGA is informed and believes and on that basis alleges that  
10 Defendants have continued to extract groundwater from the Basin after June 9, 2021.

11                                   **FIRST CAUSE OF ACTION**  
12 **FOR INJUNCTIVE RELIEF PURSUANT TO WATER CODE SECTION 10730.6(e)**  
13 **(AGAINST ALL DEFENDANTS)**

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

16           50. Defendants have violated and remain in violation of Ordinance 03-20, which,  
17 with exceptions not relevant here, requires non-de minimis extractors within the Basin to  
18 pay a Basin Replenishment Fee of \$2,130 per acre foot of water extracted from the Basin.

19           51. Water Code section 10730.6(e) states that "[a]s an additional remedy, a  
20 groundwater sustainability agency, after a public hearing, may order an owner or operator  
21 to cease extraction of groundwater until all delinquent fees are paid. The groundwater  
22 sustainability agency shall give notice to the owner or operator by certified mail not less  
23 than 15 days in advance of the public hearing."

24           52. The IWVGA notified Defendants of a public hearing set by IWVGA for June  
25 9, 2021, to address Defendants' failure to pay the required fee.

26           53. On June 9, 2021, following a public hearing, the IWVGA adopted  
27 Resolution No. 04-21, which ordered Defendants to cease extractions of groundwater  
28

1 from the Basin until Defendants have paid all delinquent fees, penalties, and interest. A  
2 copy of that resolution is attached to this Complaint as Exhibit A.

3 54. Defendants continue to extract groundwater from the Basin in violation of  
4 the IWVGA's order.

5 55. The IWVGA has no plain, speedy, or adequate remedy at law, and injunctive  
6 relief is necessary.

7 56. Accordingly, IWVGA now desires a judicial order requiring that Defendants,  
8 their agents, attorneys, servants, representatives and employees, and all other persons who  
9 act in concert and participation with Defendants, to cease extracting groundwater from the  
10 Basin until and unless Defendants remedy their delinquent payments.

11 **SECOND CAUSE OF ACTION**  
12 **FOR COLLECTION OF DELINQUENT GROUNDWATER EXTRACTION**  
13 **CHARGES PURSUANT TO WATER CODE SECTION 10730.6**  
14 **(AGAINST ALL DEFENDANTS)**

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

17 58. Water Code § 10730.6 authorizes the IWVGA to levy a delinquency penalty,  
18 order an operator to cease extraction of groundwater until all delinquent fees are paid,  
19 and/or bring suit for their recovery.

20 59. Defendants were informed of their duty to pay the Basin Replenishment Fee.  
21 Defendants have thus knowingly failed to pay the Basin Replenishment Fee and are  
22 subject to the cumulative effect of the remedies provided in Water Code § 10730.6.

23 60. There is currently due and owing to plaintiff from Defendants unpaid  
24 groundwater extraction charges for the extraction of groundwater by Defendants from  
25 January 2021 to present date.

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**THIRD CAUSE OF ACTION**  
**FOR CIVIL PENALTIES PURSUANT TO WATER CODE SECTION 10730.6**  
**(AGAINST ALL DEFENDANTS)**

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

62. Water Code section 10730.6(b) states, “If an owner or operator knowingly fails to pay a groundwater fee within 30 days of it becoming due, the owner or operator shall be liable to the groundwater sustainability agency for interest at the rate of 1 percent per month on the delinquent amount of the groundwater fee and a 10-percent penalty.”

63. Defendants have negligently or intentionally violated the Act and the Ordinance No. 03-20 by failing to pay the Basin Replenishment Fee from January 2021 to present date.

**FOURTH CAUSE OF ACTION**  
**FOR CIVIL PENALTIES PURSUANT TO WATER CODE SECTION 10732**  
**(AGAINST ALL DEFENDANTS)**

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

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

66. On June 9, 2021, after providing the applicable notice to Defendants, the IWVGA held a public hearing regarding Defendants failure to pay the Basin Replenishment Fee following which the IWVGA Board of Directors adopted Resolution No. 04-21.

67. Resolution No. 04-21 ordered Defendants to cease extractions of groundwater from the Basin until Defendants have paid all delinquent fees, penalties, and interest.

68. Pursuant to Water Code section 10732(a), a person who extracts groundwater in violation of a rule, regulation, ordinance, or resolution adopted by the

IWVGA shall: (1) “be subject to a civil penalty not to exceed five hundred dollars (\$500) per acre-foot extracted in excess of the amount that person is authorized to extract”; and (2) “be liable for a civil penalty not to exceed one thousand dollars (\$1,000) plus one hundred dollars (\$100) for each additional day on which the violation continues if the person fails to comply within 30 days after the local agency has notified the person of the violation.”

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

70. Defendants have not paid their delinquent fees, penalties, and interest as required by Resolution No. 04-21 and have continued to extract groundwater from the Basin.

71. The IWVGA seeks civil penalties in the amount to be proven at trial.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff IWVGA requests that the Court enter judgment against Defendants 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 04-21.
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 04-21 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: January 4, 2022

RICHARDS, WATSON & GERSHON  
A Professional Corporation  
JAMES L. MARKMAN  
B. TILDEN KIM  
KYLE H. BROCHARD

By: *James L. Markman*  
JAMES L. MARKMAN  
Attorneys for Plaintiff  
Indian Wells Valley Groundwater Authority

# **EXHIBIT A**



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

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**In the matter of**

**Resolution No. 04-21**

**A RESOLUTION OF THE INDIAN WELLS VALLEY GROUNDWATER SUSTAINABILITY AUTHORITY  
APPROVING AND ADOPTING AN ORDER DIRECTING MOJAVE PISTACHIOS LLC AND NUGENT  
FAMILY TRUST TO PAY ALL OUTSTANDING REPLENISHMENT FEES ALONG WITH INTEREST AND  
APPLICABLE PENALTIES OR CEASE PUMPING WATER FROM THE INDIAN WELLS VALLEY  
GROUNDWATER**

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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  
Peters , seconded by Chairman Hayman , was duly passed and adopted by the Board of  
Directors at an official meeting this 9th day of June 2021, by the following vote:

**AYES:** Hayman, Peters, Vallejo

**NOES:**

**ABSENT:** Rajtora

**ABSTAIN:** Itnyre

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Clerk of the Board of Directors  
Indian Wells Valley Groundwater Authority

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**RESOLUTION**

**THE BOARD OF DIRECTORS OF INDIAN WELLS VALLEY GROUNDWATER AUTHORITY  
RESOLVES AS FOLLOWS:**

**Section 1.     WHEREAS** the Indian Wells Valley Groundwater Authority conducted a  
hearing on June 9th, 2021 at the Ridgecrest City Hall located at 100 W California Ave Ridgecrest  
CA 93555 and reviewed all evidence presented by all interested parties.



**Resolution 04-21**

**EXHIBIT 1**

**ORDER OF THE INDIAN WELLS VALLEY GROUNDWATER AUTHORITY DIRECTING  
MOJAVE PISTACHIOS LLC AND NUGENT FAMILY TRUST TO PAY ALL  
OUTSTANDING REPLENISHMENT FEES ALONG WITH INTEREST AND APPLICABLE  
PENALTIES OR CEASE PUMPING WATER FROM THE INDIAN WELLS VALLEY  
GROUNDWATER BASIN**

Having conducted a hearing on May 6th, 2021, continued to and concluded on June 9th, 2021, at the Ridgecrest City Hall located at 100 W California Ave Ridgecrest CA 93555 and after reviewing all evidence presented by all interested parties, the Indian Wells Valley Groundwater Authority (Authority) finds as follows:

The Authority is the groundwater sustainability agency (GSA) under the Sustainable Groundwater Management Act (SGMA), Water Code section 10720 et seq., charged with managing the Indian Wells Valley Groundwater Basin (Basin). The Basin's sustainable yield of 7,650 acre feet per year (AFY) is insufficient to meet the Basin's most minimal needs and current pumping is estimated to be roughly four times the sustainable yield. "Undesirable results" have already been observed such as infrastructure damage to high value sensitive facilities at the Naval Air Weapons Station (NAWS) China Lake, impact to groundwater dependent ecosystems, increased desertification caused by declining water tables, and jeopardy to domestic, industrial, and agricultural supplies. The State of California has determined that the Basin is currently experiencing critical overdraft and Basin modeling has shown that if the overdraft is left unchecked the Basin's infrastructure will not be able to meet the required water demands in roughly 45 years.

On August 21, 2020, the Authority adopted a Basin Replenishment Fee that provides the funding for two projects: (1) the augmentation/importation of water supplies and (2) the mitigation of damages to shallow wells which will continue to occur until augmented supplies are delivered to the basin. Augmentation projects are required as the Basin's most basic water supply needs alone exceed the Basin's safe yield. This project must be immediately funded because the Authority anticipates that demand for imported water will increase throughout the State due to drought conditions and the requirements of SGMA and so too will the price of importing water increase. If the Authority does not promptly raise revenue to secure the rights to such imported water, that cost could quickly become prohibitive.

Likewise, a shallow well mitigation program is needed immediately because it will take some time to build the required infrastructure to augment the Basin's supplies and during that time it would be impossible to reduce water supply demands to a level that does not cause impacts to shallow wells. The estimated damages that will occur without the implementation and funding of the Shallow Well Mitigation program are set forth in GSP's Shallow Well Impact Analysis. In sum, that analysis provides that without pumping changes 81 shallow wells, roughly 1 in 10, will be substantially impacted by 2030. By 2040, those impacts will increase and 31 wells, or

roughly 1 in 4 will be impacted. These shallow wells provide domestic service to an estimated total of 1,588 homes and the well repair damages alone are estimated at roughly 17.3 million dollars. Additionally, as the Basin's water levels decline even further, its anticipated that water costs would be increased substantially and permanently because of the need for additional water treatment facilities and technologies to combat worsening water quality.

Based on the foregoing the Authority finds that it is necessary to strictly enforce the Replenishment Fee to collect the money needed to promptly address these exigent water supply conditions and avoid further irreparable damage to the Basin. Notably, when compared to the long-term solution costs of imported water supplies, the alternative of continuing to overdraft the Basin without working to the solution is no longer a rational choice given the anticipated damages costs caused by the overdraft.

Based solely on the record for this hearing, the Authority finds that Mojave Pistachios LLC and Nugent Family Trust have not paid the Replenishment Fee as required by Ordinance Number 03-20. Mojave Pistachios LLC and Nugent Family Trust have self-reported to the Authority that they have pumped water without paying the required Replenishment Fee. On that basis, the Authority finds that Mojave Pistachios LLC and Nugent Family Trust are in violation of Ordinance Number 03-20.

**Now therefore,** based on the findings set forth above it is ordered as follows:

1. Pursuant to applicable law, Water Code section 10730.6 and Section 6 of the Indian Wells Valley Groundwater Authority Ordinance Number 03-20, Mojave Pistachios LLC and Nugent Family Trust shall cease production of all groundwater from the Indian Wells Valley Groundwater Basin until all fee payments are made current along with interest at a rate of 1% per month on the delinquent amount as well as a 10% penalty on the delinquent amount.
2. If Mojave Pistachios LLC and Nugent Family Trust continue to engage in the water production prohibited by this Order without paying replenishment fees following the effective date of this Order, legal counsel for the Authority shall initiate court proceedings to enforce this order. In addition, staff may send notice of a further hearing for the Board to consider the imposition of additional penalties pursuant to its legal authority.