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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF ORANGE**

Assigned for All Purposes

Judge Derek W. Hunt

11
12 INDIAN WELLS VALLEY
GROUNDWATER AUTHORITY,

13 Plaintiff,

14 v.

15 SEARLES VALLEY MINERALS INC.,
and DOES 1 through 100, inclusive,

16 Defendant.
17

Case No. 30-2022-01239487-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 (hereinafter
2 “Plaintiff” or “IWVGA”), by and through its attorneys of record, bring this suit against
3 Defendants SEARLES VALLEY MINERALS INC., a Delaware corporation, and DOES 1
4 through 100 (collectively, “Defendants”), and in support thereof, states as follows:

5 **PARTIES**

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

13 2. Defendant Searles Valley Minerals, Inc. (“Searles”) is a Delaware
14 corporation authorized to do business in California.

15 3. Searles is a minerals recovery and manufacturing company located in the
16 town of Trona in San Bernardino County.

17 4. Searles supplies potable water for the Searles Domestic Water Company
18 (“Searles Domestic”), a wholly-owned subsidiary of Searles providing treated water for
19 domestic use to residents and business in Trona.

20 5. Searles extracts groundwater from the Basin from wells located in Kern
21 County for use in its minerals recovery and manufacturing operations and to provide
22 water to Searles Domestic.

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

1 Plaintiff will amend this complaint to allege their true names and capacities when
2 ascertained.

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

9 **JURISDICTION**

10 8. This Court has jurisdiction to hear the subject matter of this complaint. This
11 court also has jurisdiction over each defendant. Searles is a Delaware corporation that
12 does business in California, and the acts and omissions complained of herein occurred in
13 California.

14 9. IWVGA files this Complaint in this Court because the parties have related
15 cases (Case Nos. 30-2021-01187589-CU-WM-CXC; and 30-2021-01187275-CU-OR-
16 CJC) that have been transferred to this Court pursuant to stipulation of the parties Kern
17 County Superior Court. IWVGA and Defendants agree that this Complaint should be
18 heard in the same court as the related cases.

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

20 **FACTUAL BACKGROUND**

21 **The Sustainable Groundwater Management Act ("SGMA")**

22 10. Groundwater in California is used by 85% of the population, mostly by the
23 agriculture industry as the main water source for crops. For years, groundwater use has
24 been poorly managed and under-regulated to a point where the state is facing major
25 depletion. Groundwater is particularly crucial in California, because the dearth of surface
26 water means that groundwater supplies between one-third and two-thirds of the state's
27 freshwater supply, depending on climatic conditions. In many groundwater basins,
28 groundwater is being pumped in excess of the natural rate of replenishment, which in turn

1 is lowering the groundwater table, a phenomenon called "overdraft" that can cause severe
2 land subsidence and other long-term environmental problems.

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

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

13 13. California enacted SGMA in 2014 to better manage groundwater supplies
14 over the long-term in order to achieve sustainable groundwater management in California.
15 SGMA is premised on the principle that groundwater is best suited to be managed at the
16 local level, if possible. SGMA directs local agencies to work together to create a plan to
17 balance the amount of water pumped out and put back into a basin. The goal of these
18 plans, known as Groundwater Sustainability Plans ("GSPs"), is long-term sustainability of
19 basins. Sustainable basins are defined as basins not afflicted by one of six undesirable
20 conditions, most significantly, chronic overdraft.

21 14. The local agencies that implement SGMA are the primary entities
22 responsible for reaching groundwater sustainability. In areas where groundwater users and
23 local agencies are unable or unwilling to sustainably manage their groundwater, SGMA
24 authorizes State Water Board intervention. SGMA technically applies to all 515
25 groundwater basins and sub-basins in California, but it is only the 127 basins that are
26 designated as high-and medium-priority basins that are required to develop groundwater
27 sustainability plans. These 127 basins account for 96% of California's groundwater. These
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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.

15. 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 a GSA 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.

16. 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

17. 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.

18. 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.

1 19. The GSP's Baseline Model projects that without changes to the severe
2 overdraft the groundwater infrastructure in the Basin will not be able to produce the
3 needed water by 2065.

4 20. Pursuant to SGMA, the IWVGA was required to submit a GSP for the Basin
5 by January 31, 2020. SGMA requires that the Basin fully implement the GSP and achieve
6 the sustainability goal within 20 years after adoption of this plan.

7 21. The IWVGA adopted the GSP through Resolution No. 01-20 on January 16,
8 2020.

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

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

16 24. The United States Navy claims a federal reserve right to groundwater in the
17 Basin dating back to the establishment of the Naval Air Weapons Station China Lake
18 ("NAWS China Lake") in 1943. At its high point in 1970, reported on-Station production
19 of groundwater for the NAWS China Lake alone exceeded the entire sustainable yield for
20 the Basin by approximately 5%.

21 25. The IWVGA does not have the ability to regulate the United States Navy.

22 26. The IWVGA is informed and believes and on that basis alleges that Searles
23 has reported a yearly production since 2010 of as much as 2,743 acre-feet of Basin
24 extractions (approximately 36% of the Basin's sustainable yield).

25 27. The IWVGA is informed and believes and on that basis alleges that Searles's
26 production of groundwater from the Basin is primarily for an industrial use in a different
27 basin, the Searles Valley Groundwater Basin, which is located approximately 24 miles
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1 northeast of the City of Ridgecrest and the water used provides no known return flow to
2 the Basin.

3 28. In addition to the NAWS China Lake and Defendants, municipal water
4 districts, business, and other agricultural interests also rely on groundwater from the Basin.

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

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

13 31. Basin sustainability cannot be achieved through pumping reductions alone
14 because the annual sustainable yield is insufficient to meet the Basin’s most minimal
15 needs. As such, augmentation projects are required

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

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

25 34. Pursuant to Ordinance 03-20, beginning on February 15, 2021, and every
26 month thereafter on, or before, the 15th day of the month, those pumpers subject to the
27 Basin Replenishment Fee must submit payment for the prior calendar month’s extractions.
28

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

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

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

6 37. Defendant has extracted water from the Basin after January 1, 2021 and has
7 not paid the Basin Replenishment Fee to the IWVGA.

8 38. On April 19, 2021, the IWVGA notified Defendants by Certified Mail that
9 the IWVGA would hold a hearing on May 6, 2021, to determine whether to order
10 Defendants to cease production of all groundwater from the Basin until all fee payments
11 are made current.

12 39. The April 19, 2021 notice advised Defendants that during the May 6, 2021
13 hearing, Defendants would be provided with the opportunity to address the IWVGA Board
14 of Directors regarding Defendants' groundwater extractions, and the possible actions the
15 IWVGA may take regarding Defendants' failure to pay the required fee.

16 40. The April 19, 2021 notice advised Defendants that the production of
17 groundwater by Searles for domestic purposes in the Trona community was not the subject
18 of the hearing and not in jeopardy of cessation.

19 41. On May 6, 2021, the IWVGA held a public hearing regarding Defendants'
20 failure to pay the Replenishment Fee. Defendants participated in that hearing and claimed
21 that Searles cannot provide water to Searles Domestic if water is not also supplied to, and
22 used by, Searles' mineral facilities.

23 42. The IWVGA Board continued the May 6, 2021 hearing to June 9, 2021, to
24 allow IWVGA staff to seek additional information regarding the infrastructure of Searles'
25 pipeline that feeds Searles Domestic.

26 43. On May 25, 2021, the IWVGA notified Defendants by Certified Mail that
27 the IWVGA would hold a hearing on June 9, 2021 to determine whether to order
28

1 Defendants to cease production of all groundwater from the Basin until all fee payments
2 are made current.

3 44. The May 25, 2021 notice advised Defendants that during the June 9, 2021
4 hearing, Defendants would be provided with the opportunity to address the IWVGA Board
5 of Directors regarding Defendants' groundwater extractions, and the possible actions the
6 IWVGA may take regarding Defendants' failure to pay the required fee.

7 45. The May 25, 2021 notice advised Defendants that the production of
8 groundwater by Searles for domestic purposes in the Trona community was not the subject
9 of the hearing and not in jeopardy of cessation.

10 46. On May 28, 2021, Stetson Engineers Inc. ("Stetson"), as Water Resource
11 Manager for the IWVGA, sent Defendants a letter requesting information regarding
12 Defendants' claims made at the May 6, 2021 public hearing that Searles cannot provide
13 water to Searles Domestic if water is not also supplied to, and used by, Searles' mineral
14 facilities.

15 47. On June 2, 2021, Defendants sent Stetson a preliminary response letter
16 stating that Defendants were examining the requested information and expected to provide
17 Stetson with a more detailed response on or before June 4, 2021.

18 48. Prior to the June 9, 2021 hearing, Defendants had not provided any
19 additional information to Stetson to support its claim that Searles cannot provide water to
20 Searles Domestic if water is not also supplied to, and used by, Searles' mineral facilities.

21 49. After reviewing the available documents, information, and regulatory
22 authority, Stetson found no documents, facts or reasons why the cessation of water being
23 delivered to the industrial operations would cause the cessation of water to Trona
24 residents.

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

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1 51. Following the public hearing on June 9, 2021, the IWVGA's Board of
2 Directors adopted Resolution No. 05-21 finding that Defendants have not paid the Basin
3 Replenishment Fee, as required by Ordinance No. 03-20.

4 52. Through Resolution No. 05-21 the IWVGA ordered:

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

13 53. The IWVGA's order through Resolution No. 05-21 does not apply to any
14 groundwater extraction by Searles to meet its continuing obligation to provide water to
15 Searles Domestic in order to meet the demand of all persons within Searles Domestic's
16 service area.

17 54. As of the date of this action, Defendants have not paid the IWVGA the Basin
18 Extraction Fee for water Defendants have extracted from the Basin after January 1, 2021.

19 55. The IWVGA are informed and believe that Defendants are still extracting
20 water from the Basin for their minerals recovery and manufacturing operations.

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

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

26
27 (b) If an owner or operator knowingly fails to pay a groundwater fee
28 within 30 days of it becoming due, the owner or operator shall be liable

1 to the groundwater sustainability agency for interest at the rate of 1
2 percent per month on the delinquent amount of the groundwater fee and a
3 10-percent penalty.

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

14
15 (d) In the alternative to bringing a suit pursuant to subdivision (c), a
16 groundwater sustainability agency may collect any delinquent
17 groundwater charge and any civil penalties and interest on the delinquent
18 groundwater charge pursuant to the laws applicable to the local agency
19 or, if a joint powers authority, to the entity designated pursuant to Section
20 6509 of the Government Code. The collection shall be in the same
21 manner as it would be applicable to the collection of delinquent
22 assessments, water charges, or tolls.

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

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

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

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

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

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

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

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

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

63. The IWVGA notified Defendants of public hearings set by IWVGA for May 6, 2021 and June 9, 2021, to address Defendants' failure to pay the required fee.

64. On June 9, 2021, following a public hearing, the IWVGA adopted Resolution No. 05-21, which ordered Defendants to cease extractions of groundwater from the Basin until Defendants have paid all delinquent fees, penalties, and interest. This order does not apply to any groundwater extraction by Searles to meet its continuing obligation to provide water to Searles Domestic, in order to meet the demand of persons within Searles Domestic's service area.

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

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

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

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

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

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

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

71. There is currently due and owing to plaintiff from Defendants unpaid groundwater extraction charges for the extraction of groundwater by Defendants from 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)

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

73. 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.”

74. Defendants have negligently or intentionally violated SGMA and 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)

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

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

77. On May 6, 2021 and June 9, 2021, after providing the applicable notice to Defendants, the IWVGA held public hearings regarding Defendants failure to pay the Basin Replenishment Fee, following which the IWVGA Board of Directors adopted Resolution No. 05-21. A copy of Resolution No. 05-21 is attached as Exhibit A to this Complaint.

78. Resolution No. 05-21 ordered Defendants to cease extractions of groundwater from the Basin until Defendants have paid all delinquent fees, penalties, and interest. This order does not apply to any groundwater extraction by Searles to meet its

continuing obligation to provide water to Searles Domestic, in order to meet the demand of persons within Searles Domestic's service area.

79. 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."

80. 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).

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

82. 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 05-21.
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 05-21 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**

In the matter of:

Resolution No. 05-21


A RESOLUTION OF THE INDIAN WELLS VALLEY GROUNDWATER SUSTAINABILITY AUTHORITY APPROVING AND ADOPTING AN ORDER DIRECTING SEARLES VALLEY MINERALS TO PAY ALL OUTSTANDING REPLENISHMENT FEES ALONG WITH INTEREST AND APPLICABLE PENALTIES OR CEASE PUMPING WATER FROM THE INDIAN WELLS VALLEY GROUNDWATER BASIN FOR ANY PURPOSE EXCEPT PROVIDING WATER TO SEARLES DOMESTIC WATER COMPANY IN AMOUNTS NEEDED AND QUALITY REQUIRED TO MEET THE DEMAND OF ALL PERSONS WHO HAVE A WATER CONNECTION TO AND ARE LOCATED WITHIN THE SERVICE AREA OF THAT COMPANY

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: Itnyre

ABSENT: Rajtora


Clerk of the Board of Directors
Indian Wells Valley Groundwater Authority

RESOLUTION

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

Resolution 05-21

EXHIBIT 1

ORDER OF THE INDIAN WELLS VALLEY GROUNDWATER AUTHORITY DIRECTING SEARLES VALLEY MINERALS TO PAY ALL OUTSTANDING REPLENISHMENT FEES ALONG WITH INTEREST AND APPLICABLE PENALTIES OR CEASE PUMPING WATER FROM THE INDIAN WELLS VALLEY GROUNDWATER BASIN FOR ANY PURPOSE EXCEPT PROVIDING WATER TO SEARLES DOMESTIC WATER COMPANY IN AMOUNTS NEEDED AND QUALITY REQUIRED TO MEET THE DEMAND OF ALL PERSONS WHO HAVE A WATER CONNECTION TO AND ARE LOCATED WITHIN THE SERVICE AREA OF THAT COMPANY

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 Searles Valley Minerals has not paid the Replenishment Fee as required by Ordinance Number 03-20. Searles Valley Minerals has self-reported to the Authority that it has pumped from January 1st to the present without paying the required Replenishment Fee. On that basis, the Authority finds that Searles Valley Minerals is in violation of Ordinance Number 03-20.

Searles Domestic Water Company, a regulated Public Utility, receives water from Searles Valley Minerals as its sole source for providing water to meet the demands of persons within its service area for domestic purposes in the Trona community. The production of water by Searles Valley Minerals for domestic use in Trona is not subject to the Replenishment Fee and the Authority makes no orders herein which will hinder the supply or increase the cost of water put to domestic use in Trona.

Searles Valley Minerals has repeatedly threatened to stop delivering water to Searles Domestic Water Company in the event that it is required to pay the Replenishment Fee and it elects to stop its operations. However, pursuant to California Public Utilities Code section 1826, Searles Valley Minerals has a continuing legal obligation to provide water to ensure sufficient domestic water supply to the residents of Trona if its industrial or other business operations cease for any reason. This obligation is subject to enforcement by the California Public Utilities Commission. Accordingly, the Authority finds that the water supply of Trona cannot be legally disturbed by Searles' election to shut down its other operations.

Moreover, the California Public Utilities Commission regulates the rates that may be charged by a regulated public utility such as Searles Domestic Water Company and since the domestic use in Trona is not subject to the Replenishment Fee, the Authority finds that there is no basis to increase the domestic water supply rates in Trona without a rate setting process held by the California Public Utilities Commission; a process that would be predicated on the fact that the Authority's Replenishment Fee is not charged to the domestic use in Trona.

Searles Valley Minerals has also claimed that the configuration of its water system prevents it from only pumping the water needed to meet the demands of domestic use in the Trona community. Accordingly, this order shall not become effective until July 1, 2021 so that Searles Valley Minerals is afforded a reasonable time to modify its water system to ensure that domestic water service shall not be disturbed in the event that Searles Valley Minerals ceases pumping for its industrial uses rather than paying the Replenishment Fee.

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

1. Subject to the provisions of paragraph 2 below, and pursuant to applicable law, Water Code section 10730.6 and Section 6 of the Indian Wells Valley Groundwater Authority Ordinance Number 03-20, effective July 1, 2021, Searles Valley Minerals 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. This order shall not apply to any groundwater extraction by Searles Valley Minerals to meet its continuing obligation to provide water to Searles Domestic Water Company in order to meet the demand of all persons within the service area of Searles Domestic Water Company.
3. If Searles Valley Minerals intends to not pay the outstanding fees by the effective date of this order, Searles Valley Minerals shall employ all reasonable efforts to maintain, repair or alter its water system so that it is capable of extracting and delivering to Searles Domestic Water Company sufficient water to meet the demand of all persons within the service area of Searles Domestic Water Company in the absence of groundwater extraction for other uses.
4. If Searles Valley Minerals continues 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.