

January 15, 2021

Amy Steinfeld  
Attorney at Law  
805.882.1409 tel  
asteinfeld@bhfs.com

**VIA E-MAIL**

Indian Wells Valley Groundwater Authority  
Board of Directors  
c/o Clerk of the Board [apriln@iwwvd.com]  
500 W. Ridgecrest Blvd  
Ridgecrest, CA 93555

RE: Request to Defer Replenishment Fee, Transient Pool and Fallowing Program and Related GSP Programs

Dear IWVGA Board Members:

On behalf of Mojave Pistachios, we request that the Indian Wells Valley Groundwater Authority (“IWVGA”) include an agenda item at its January 21, 2021 meeting to consider and to take action deferring implementation of the Replenishment Fee and Transient Pool and Fallowing Program until the California Department of Water Resources (“DWR”) reviews the Groundwater Sustainability Plan (“GSP”) and deems it compliant with the requirements of SGMA, or for a minimum of 90 days. We note that Searles Valley Minerals and the Indian Wells Valley Water District have made similar requests to the IWVGA.

We do not believe that deferral of the Replenishment Fee would require an amendment to the Ordinance. Instead, the IWVGA could simply waive the Replenishment Fee for a minimum of 90 days or postpone implementation of the Replenishment Fee for a minimum of 90 days. This would provide time for the parties to discuss and advance workable solutions with the IWVGA.

By way of background for the benefit of the new IWVGA Board members, in January 2020, the IWVGA adopted its GSP and submitted it to DWR for review. DWR is required by law to review and evaluate the GSP within 24 months of submission by the IWVGA. The GSP is one of the most expensive and controversial in the State. The GSP and its implementation programs essentially allocate all basin groundwater to the Navy—far more than it is actually entitled to or needs—while forcing agricultural, industrial and other water users to fund the major groundwater management programs at astronomical costs, or to cease operating altogether. The GSP’s legal, technical, and equitable flaws are well documented in the record through extensive comment letters to the IWVGA and DWR.

The IWVGA rushed to adopt multiple GSP implementation actions in the Fall of 2020, during an unprecedented pandemic and restrictions on public participation. Those programs included: (1) a \$2,130 per acre foot “Replenishment Fee;” (2) a “Transient Pool and Fallowing Program;” and (3) a “Recycled Water Program.”

Each of these programs has been, and continues to be, challenged by numerous stakeholders in the Indian Wells Valley. The programs lack critical details and clear information, but were nonetheless made to take effect in January 2021—just a few months after adoption and approximately one year before DWR is

22090005

required to complete its review of the GSP. These programs:

- Impose the astonishing and unlawful Replenishment Fee effective January 1, 2021, and would begin collecting the fee in February 2021.
- Exclude Mojave Pistachios from the Transient Pool and Fallowing Program and Recycled Water Program and therefore require Mojave Pistachios to attempt to purchase Transient Pool water (which is non-transferrable under the Transient Pool and Fallowing Program adopted by the IWVGA) or pay the economically devastating Replenishment Fee immediately.<sup>1</sup>

These severe and highly controversial programs are designed to force these parties to make untenable business decisions in unrealistically short timeframes. The Transient Pool and Fallowing Program and Recycled Water Program also require participants to sign a sweeping and unlawful waiver of claims against the IWVGA and its member agencies as a condition of participation. Two lawsuits against the IWVGA have already been filed challenging the GSP and these implementation programs. More lawsuits, potentially including an expensive and lengthy comprehensive groundwater basin adjudication, could follow.

To be clear, we believe that effective, equitable and legally-compliant groundwater basin management solutions exist that could obviate the need for further litigation. The parties, however, require time to conduct further necessary discussions and to advance workable solutions with the IWVGA.

Deferring implementation of these programs pending DWR review and to accommodate necessary discussions is also appropriate as the GSP has not identified any "undesirable results" to the groundwater basin that will occur within the first 24 months from GSP adoption.

Please confirm receipt of this letter and whether the IWVGA will agendize this request. If you have questions or wish to discuss this further, please contact me.

Sincerely,



Amy Steinfeld

---

<sup>1</sup> As demonstrated in the budget spreadsheets released by the IWVGA in December 2020, Mojave Pistachios would also be required to fund the Recycled Water Program through payment of the Replenishment Fee, despite the exclusion of Mojave Pistachios and other agricultural pumpers from participation in the Recycled Water Program.