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VIA EMAIL (APRILN@IWWVD.COM)

Indian Wells Valley Groundwater Authority (IWVGA) Board of Directors
c/o April Nordenstrom, Clerk of the IWVGA Board
500 W. Ridgecrest Blvd.
Ridgecrest, CA 93555

RE: Request to Correct Procedural Deficiencies in Replenishment Fee Notice & Protest Procedure

Dear Members of the IWVGA Board of Directors:

On behalf of Mojave Pistachios, LLC, the Nugent Family Trust, and Sierra Shadows Ranch, we are writing to raise several deficiencies in the Notice of Public Hearing on a Basin Replenishment Fee (Replenishment Fee Notice) that must be corrected pursuant to Article XIID, section 6(a)–(b) of the California Constitution. The Replenishment Fee Notice must then be recirculated to the owners of the properties on which the fee is proposed and the August 21, 2020 Replenishment Fee adoption hearing must be rescheduled in accordance with the procedural requirements set forth in Article XIID of the California Constitution.

First, the Replenishment Fee Notice is problematic because it requires submission of an “original signature” by each protestant. This purported requirement is not found in law (see Cal. Const. Art. XIID, § 6(a)–(b); Water Code § 10730.2), and given the ongoing COVID pandemic, serves as an illegitimate barrier to public protest and participation in the Replenishment Fee adoption process. Particularly given the extenuating circumstances presented by a global pandemic and the adverse impact that this colossal fee will have on the local farming community, the IWVGA should accept electronic protest submissions and the Replenishment Fee Notice should be updated to clarify that electronic submissions will be accepted.

Second, the Replenishment Fee Notice should be updated to include instructions for delivery of protests in the event that the August 21, 2020 IWVGA Board hearing is not open to the public, as has been the case with the last four IWVGA Board meetings held in April, May, June, and July of this year. In fact, on August 5, IWVGA staff confirmed that given the ongoing severity of COVID in California, the August 21, 2020 hearing will likely again be closed to the public. Therefore, at a minimum, if the IWVGA Board refuses to reschedule the hearing for a later date at which the public can participate in person, the Replenishment Fee Notice should be updated to provide instructions for in-person delivery of protests, if protests cannot be filed at the hearing as stated in the notice.

Relatedly, in light of the COVID pandemic, the Replenishment Fee Notice should be revised to include the virtual location (e.g., web address) at which the Replenishment Fee hearing will be available to the public electronically. The Replenishment Fee Notice must also be updated to explain how the public may participate telephonically or through other electronic means. (See Cal. Const. Art. XIID, § 6(a)(1).)

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Additionally, pursuant to Article XIID, section 6(a)(1), the IWVGA should make available to the public the list of parcels upon which the IWVGA has determined that the Replenishment Fee should be imposed. The Replenishment Fee Notice states that “Federal Interests and De Minimis users,” along with “residents in IWVGA registered small mutual and the Inyokern Community Services District are exempted” from the Replenishment Fee. Therefore, parcels owned by these users cannot be counted in the majority protest procedure—i.e., because these parcels are not “parcels upon which a fee or charge is proposed for imposition.” (Cal. Const. Art. XIID, § 6(a)(1).) We ask the IWVGA to make available the list of parcels on which the fee is proposed to be imposed to verify that parcels owned by exempted water users will not be counted in the protest procedure.

Further, the Replenishment Fee Notice must be updated to explain the basis for the amount of the fee proposed. (Cal. Const. Art. XIID, § 6(a)(1).) The Notice puzzlingly explains, on the one hand, that the fee “will cover the estimated imported water purchase costs of \$2,112 per acre foot extracted and \$17.50 per acre foot extracted to cover the estimated costs to mitigate damages to the IWVGA registered shallow wells because of the ongoing overdraft while import supplies are secured and brought into the Basin,” but also that “it is estimated to take five years to fund the purchase [of imported water] at which time the charge will cease and the infrastructure construction phase will begin.” Which is it? Will the \$2,112 per acre-foot component of the Replenishment Fee be charged until imported water is “brought into the Basin,” or for approximately five years until “infrastructure construction” begins? The Replenishment Fee Notice must be updated to specify the amount and basis of the fee, as required under Article XIID, section 6.

Finally, the Replenishment Fee Notice must be revised to accurately set forth the basis for the IWVGA’s decision to exempt “residents in IWVGA registered small mutual and the Inyokern Community Services District.” The Replenishment Fee Notice states that these owners are exempted from the fee “though Navy pronouncement that its water needs include off-Stations demands for its workforce, and their dependents.” Navy officials, however, have directly contradicted this stated rationale. For example, at the July 16, 2020 meeting of the IWVGA Board, Navy Commander Benson explained:

The IWVGA alone made the decision to use the Navy’s pumping data to estimate the federal reserved water right. Additionally, the IWVGA made the allocation decisions to transfer the IWVGA estimated federal reserved water right. The Navy didn’t direct, or ask, or apply that the IWVGA should transfer the estimated federal reserved water right balance.

Therefore, the Replenishment Fee Notice cannot rely on “Navy pronouncement” as the basis for the convoluted federal reserve right carryover scheme that is foundational to the IWVGA’s identification of the parcels on which the fee is proposed for imposition. The Notice must therefore be updated to provide a new explanation. (Cal. Const. Art. XIID, § 6(a)(1).)

We request that the IWVGA revise the Replenishment Fee Notice to correct the identified issues. The Notice must then be recirculated to the record owners of the parcels on which the Replenishment Fee is proposed for imposition. (Cal. Const. Art. XIID, § 6(a).) The August 21, 2020 hearing must also be rescheduled for a new date that is not less than 45 days after mailing of the revised notice. (Cal. Const. Art. XIID, § 6(a)(2).) Thank you for your attention to these important issues.

Sincerely,



Scott S. Slater
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