



April 10, 2024

Chief Justice Patricia Guerrero  
And Associate Justices,  
California Supreme Court,  
350 McAllister Street  
San Francisco, CA 94102-4797  
*Via TrueFiling*

**Re: Amicus Letter in Support of Petition for Review of *Mojave Pistachios, LLC v. Superior Court*, Supreme Court Case No. S284252**

Dear Chief Justice Guerrero and Associate Justices:

Pursuant to California Rules of Court, rule 8.500(g), the Western Growers Association, California Farm Bureau Federation, Dairy Cares, American Pistachio Growers, California Association of Winegrape Growers, Agricultural Council of California, California Fresh Fruit Association, and California Citrus Mutual, respectfully submit this amicus letter to urge the Court to grant review in the above-entitled matter. As set forth below, the significant impact of this matter on California agriculture and water rights holders warrants review.

I. THE INTERESTS OF THE CALIFORNIA AGRICULTURAL COMMUNITY

The Western Growers Association, California Farm Bureau Federation, Dairy Cares, American Pistachio Growers, California Association of Winegrape Growers, Agricultural Council of California, California Fresh Fruit Association, and California Citrus Mutual submit this letter as representatives of local and regional farmers throughout the western United States including in the State of California.

Founded in 1926, Western Growers Association (WGA) is a nonprofit association representing local and regional family farmers in California, Arizona, Colorado, and New Mexico. WGA's members grow, pack, and ship over half of the nation's fresh produce including nearly a third of America's fresh organic produce. The California Farm Bureau Federation was founded in 1919 and is an innovative, service-based organization dedicated to being the foremost advocate, protecting the future and quality of life for all California farmers and ranchers. Dairy Cares was formed by the California dairy community in 2001 to work collaboratively to ensure the long-term sustainability of dairy

farms. The American Pistachio Growers is a non-profit trade association representing over 800 grower members in California, Arizona, and New Mexico with the shared goal of increasing global awareness of nutritious, American-grown pistachios. These entities represent an industry that feeds our nation, and their members have a vital interest in the issues presented in this case. The California Association of Winegrape Growers (CAWG) represents growers in every wine region of California. CAWG provides those growers a unified voice, effective advocacy and strong leadership, while promoting the winegrowing industry's long-term success. CAWG works to advance the adoption of sound public policies, and foster awareness and understanding of winegrape growers' contributions to the economy, environment and California communities. Founded in 1919, Agricultural Council of California (Ag Council) is a member-supported organization advocating for more than 15,000 farmers across California, ranging from farmer-owned businesses to the world's best-known brands. Ag Council works tirelessly to keep its members productive and competitive, so that agriculture can remain California's number-one industry and members can continue to produce the highest quality food for the entire world. Established in 1936, the California Fresh Fruit Association (CFFA) is a voluntary public policy association that represents growers, packers, and shippers of California table grape, blueberry, kiwi, pomegranate and deciduous tree fruit communities. CFFA serves as a public policy representative for these growers, shippers and packers, on issues at both the state and federal levels. California Citrus Mutual (California Citrus) was founded by growers in 1977 as a non-profit trade association. California Citrus works to protect and enhance the viability of California's citrus growers. California Citrus' goal is to credibly represent the needs of California's citrus growers to State and Federal elected officials and policymakers, foster communication and cooperation between all segments of the citrus industry, and deliver relevant, timely and unbiased information to the membership.

The fair and consistent interpretation and implementation of the Sustainable Groundwater Management Act (SGMA) and California common law water rights is of the utmost importance to the future of California agriculture. The Appellate Court's decision regarding the Indian Wells Valley Groundwater Authority's prioritization of water rights claims and unadjudicated allocations of the native groundwater bestows a Groundwater Sustainability Agency (GSA), with authority beyond that established by SGMA.

The purpose of SGMA, among other things, is "to enhance local management of groundwater consistent with rights to use or store groundwater and Section 2 of Article X of the California Constitution...[and] to preserve the security of water rights in the state to the greatest extent possible..." (Wat. Code § 10720.1, subd. (b).) Accordingly, SGMA prohibits GSAs from granting allocations on the basis of water rights priority determinations. (Wat. Code, §§ 10720.1(b), 10726.8(b), 10720.5(b), see also 10738.)

Allowing a GSA to prioritize and allocate water rights in place of the judiciary distorts SGMA and turns a century of California law on its head. The rights and



livelihood of California growers and landowners are endangered by sanctioning the GSA's ultra vires actions to unilaterally take water rights without effective recourse.

The WGA, California Farm Bureau Federation, Dairy Cares, American Pistachio Growers, CAWG, Ag Council, CFFA, and California Citrus all have an interest in ensuring that SGMA is implemented fairly and consistently with California law, and that landowners have adequate legal channels to challenge erroneous determinations by the GSAs pursuant to SGMA. This case is of particular importance because many farmers or ranchers as landowners, rely on groundwater that is or may be subject to regulatory action by a GSA, as in this matter. The Appellate Court's decision allowing the GSA's decision to stand notwithstanding the conflict with California Water Code §10738 is inappropriate and erodes confidence in the Statewide regulatory process.

Pursuant to SGMA, the GSAs have no authority to adjudicate groundwater rights among owners. (Wat. Code § 10726.8 ["Nothing in this part shall be construed as authorizing a local agency to make a binding determination of the water rights of any person or entity..."].) Contrary to this statutory limit on its authority, the GSA granted zero annual allocation of groundwater to the landowner's established 1,600-acre farm. The GSA determined that Mojave Pistachios' overlying rights were "inferior" to other pumpers' water rights, contrary to the Legislature's declaration that SGMA preserved overlying water rights and California law.

## II. THE BALANCE OF HARM HEAVILY FAVORS GRANTING REVIEW

The Court of Appeal held that several challenges—including takings of private property rights—are barred under the "pay first litigate later" doctrine because the landowner did not pay the GSA's massive replenishment fee of \$2,130 per acre-foot of groundwater pumped since 2021, which today amounts to a cumulative fee of over \$25 million.

The California Legislature did not intend for SGMA to become a tool used to strip landowners of their water rights. "In enacting this part, it is the intent of the Legislature to do all of the following: (a) To provide for the sustainable management of groundwater basins. (b) To enhance local management of groundwater consistent with rights to use or store groundwater and Section 2 of Article X of the California Constitution. It is the intent of the Legislature to preserve the security of water rights in the state to the greatest extent possible consistent with the sustainable management of groundwater." (Cal. Water Code § 10720.1) (Underscoring added.) Contrary to SGMA's Legislative intent, the Court allowed the GSA to determine that landowners have inferior water rights as a basis to set a replenishment fee, without due process, because the "pay first litigate later" doctrine shields the GSA's entire action.

Under the opinion, the landowner cannot challenge the GSA's decisions to award



them zero allocation or to impose a replenishment fee so large it will put them out of business. This opinion will have catastrophic consequences for all California water rights holders and the implementation of SGMA. If the opinion stands, public agencies across the state can shelter all manner of illegal conduct, including prohibiting groundwater pumping, taking water rights without payment, and imposing multi-million-dollar, unaffordable fees.

According to the California Department of Food and Agriculture, “[o]ver a third of the country’s vegetables and three-quarters of the country’s fruits and nuts are grown in California.” Agriculture is an important staple of both the California and national economies. Agriculture is also important for the feeding of the population. Agricultural landowners in California grow, pack, and ship over half of the nation’s fresh produce including nearly a third of America’s fresh organic produce—all while using groundwater to support the farms.

As the Court deliberates, Western Growers Association, California Farm Bureau Federation, Dairy Cares, American Pistachio Growers, California Association of Winegrape Growers, Agricultural Council of California, California Fresh Fruit Association, and California Citrus Mutual urge the Court to consider the impact of this case on the millions of Americans who rely upon agriculture from the great State of California.

Sincerely,

/s/Tracy J. Egoscue  
TRACY J. EGOSCUE  
State Bar License 190842

*for:* WESTERN GROWERS  
ASSOCIATION, CALIFORNIA FARM  
BUREAU FEDERATION, DAIRY  
CARES, AMERICAN PISTACHIO  
GROWERS, CALIFORNIA  
ASSOCIATION OF WINEGRAPE  
GROWERS, AGRICULTURAL COUNCIL  
OF CALIFORNIA, CALIFORNIA FRESH  
FRUIT ASSOCIATION, AND  
CALIFORNIA CITRUS MUTUAL

cc: See attached service list

4



Egoscue Law Group, Inc.  
3834 Pine Avenue  
Long Beach, CA 90807  
562.988.5978 ♦ [www.egoscuelaw.com](http://www.egoscuelaw.com)

**PROOF OF SERVICE**

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 3834 Pine Avenue Long Beach, CA 90807. My electronic service address is donnam@egoscuelaw.com. On April 10, 2024, I served a copy of the within document(s):

**Amicus Letter in Support of Petition for Review of *Mojave Pistachios, LLC v. Superior Court*, Supreme Court Case No. S284252**

- X           by placing the document(s) listed above in sealed envelope(s) to the person(s) at the address(es) set forth below, with the postage thereon fully prepaid.
- X           by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

**SEE ATTACHED SERVICE LIST**

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on April 10, 2024, at Long Beach, California.

\_\_\_\_\_/s/ Donna McDonald\_\_\_\_\_

**SERVICE LIST**

<p><b>BY E-MAIL</b> James L. Markman B. Tilden Kim Kyle H. Brochard Darrelle M. Field Jack Hensley Richards Watson &amp; Gershon 350 South Grand Avenue, 37th Floor Los Angeles, CA 90071 Telephone (213) 626-8484 <a href="mailto:jmarkman@rwglaw.com">jmarkman@rwglaw.com</a> <a href="mailto:TKim@rwglaw.com">TKim@rwglaw.com</a> <a href="mailto:kbrochard@rwglaw.com">kbrochard@rwglaw.com</a> <a href="mailto:jhensley@rwglaw.com">jhensley@rwglaw.com</a></p> <p><i>Attorneys for Respondents/Defendants/Real Parties in Interest Indian Wells Valley Groundwater Authority; Board of Directors of the Indian Wells Valley Groundwater Authority</i></p>	<p><b>BY E-MAIL</b> Phillip Hall Kern County Office of County Counsel 1115 Truxtun Ave., 4th Floor, Bakersfield, CA 93301 Telephone: (661) 868-3826 <a href="mailto:phall@kerncounty.com">phall@kerncounty.com</a></p> <p><i>Attorneys for Respondents/Defendants/Real Parties in Interest Indian Wells Valley Groundwater Authority; Board of Directors of the Indian Wells Valley Groundwater Authority</i></p>
<p><b>BY E-MAIL</b> Wayne Keith Lemieux, Jr. Aleshire &amp; Wynder, LLP 2659 Townsgate Road, Suite 226 Westlake Village, CA 91362-3852 Telephone: (805) 495-4770 <a href="mailto:klemieux@awattorneys.com">klemieux@awattorneys.com</a></p> <p><i>Attorneys for Respondents/Defendants/Real Parties in Interest Indian Wells Valley Groundwater Authority; Board of Directors of the Indian Wells Valley Groundwater Authority</i></p>	<p><b>BY E-MAIL</b> Eric L. Garner Jeffrey V. Dunn Wendy Y. Wang Sarah Christopher Foley Daniel L. Richards Amanda K. Wells Best &amp; Krieger LLP 18101 Von Karman Avenue, Irvine, CA 92612 Telephone: (949) 263-2600 <a href="mailto:Eric.Garner@bbklaw.com">Eric.Garner@bbklaw.com</a> <a href="mailto:Jeffrey.Dunn@bbklaw.com">Jeffrey.Dunn@bbklaw.com</a> <a href="mailto:Wendy.Wang@bbklaw.com">Wendy.Wang@bbklaw.com</a> <a href="mailto:Sarah.Foley@bbklaw.com">Sarah.Foley@bbklaw.com</a> <a href="mailto:Amanda.Wells@bbklaw.com">Amanda.Wells@bbklaw.com</a> <a href="mailto:katrina.wraight@bbklaw.com">katrina.wraight@bbklaw.com</a></p> <p><i>Attorneys for Petitioner/Plaintiff/Real Parties in Interest Searles Valley Mineral, Inc. in related case</i></p>

<p><b>BY E-MAIL</b>  Derek R. Hoffman  Byrin Romney  Fennemore Dowling Arron  8080 N. Palm Avenue, Third Floor  Fresno, CA 93711  Telephone: (559) 432-4500  <a href="mailto:dhoffman@fennemorelaw.com">dhoffman@fennemorelaw.com</a></p> <p><i>Attorneys for Defendants Meadowbrook Dairy Real Estate, LLC, Big Horn Fields, LLC, Brown Road Fields, LLC, Highway 395 Fields, LLC, The Meadowbrook Mutual Water Company in related case</i></p>	<p><b>BY E-MAIL</b>  James A. Worth, Esq.  McMurtrey, Hartsock &amp; Worth  2001 22nd Street, Suite 100  Bakersfield, California 93301  Phone: (661) 322-4417  Fax: (661) 322-8123  <a href="mailto:jim@mhwlegal.com">jim@mhwlegal.com</a>  <i>Attorneys for Real Parties in Interest Indian Wells Valley Water District</i></p>
<p><b>BY E-MAIL</b>  John C. Murphy, Esq.  Douglas J. Evertz, Esq.  Emily L. Madueno, Esq.  Murphy &amp; Evertz LLP  650 Town Center Drive, Suite 550  Costa Mesa, California 92626  Phone: (714) 277-1700  Fax: (714) 277-1777  <a href="mailto:jmurphy@murphyevertz.com">jmurphy@murphyevertz.com</a>  <a href="mailto:devertz@murphyevertz.com">devertz@murphyevertz.com</a>  <a href="mailto:emadueno@murphyevertz.com">emadueno@murphyevertz.com</a></p> <p><i>Attorneys for Real Parties in Interest Indian Wells Valley Water District</i></p>	<p><b>BY E-MAIL</b>  Scott S. Slater, Esq.  Amy M. Steinfeld, Esq.  Elisabeth L. Esposito, Esq.  1021 Anacapa Street, 2nd Floor  Santa Barbara, California 93101  Phone: (805) 963-7000  Fax: (805) 965-4333  <a href="mailto:sslater@bhfs.com">sslater@bhfs.com</a>  <a href="mailto:asteinfeld@bhfs.com">asteinfeld@bhfs.com</a>  <a href="mailto:eesposito@bhfs.com">eesposito@bhfs.com</a></p> <p><i>Attorneys for Petitioners Mojave Pistachios, LLC; and Paul G. Nugent and Mary E. Nugent, Trustees of the Nugent Family Trust dated June 20, 2011</i></p>
<p><b>BY MAIL:</b>  California Courts of Appeal  4<sup>th</sup> District Court of Appeal  Division Three  601 W. Santa Ana Blvd.  Santa Ana, California 92701  Telephone: (714) 571-2600</p>	<p><b>BY MAIL:</b>  Judge William Claster, Dept. CX104  Orange County Superior Court  Civil Complex Center  751 West Santa Ana Blvd.  Santa Ana, CA 92701  Telephone: (657) 622-5303</p>