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November 19, 2020

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VIA EMAIL (APRILN@IWVWD.COM)

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

RE: Comments on Items not on Agenda and on Agenda Items 6-7, 9–12 and 16

Dear Members of the IWVGA Board of Directors:

On behalf of Mojave Pistachios, LLC and the Nugent Family Trust (collectively, “Mojave”) we provide comments on an item not on the Board Agenda for November 19, 2020, along with comments on the following Agenda Items: (i) Agenda Item 7 (Meter Compliance Update and Staff Recommendation on Changes to the Policy and Amendment of Ordinance 01-20 with First Read of Ordinance 04-20); (ii) Agenda Item 9 (Consideration of Amending Ordinance No. 02-18 re Extraction Fees); (iii) Agenda Item 10 (Consideration and Approval of Option Agreement for the Purchase of Recycled Water from City of Ridgecrest); (iv) Agenda Item 11 (Consideration and Approval of Resolution 08-20 Establishing a Recycled Water Program); (v) Agenda Item 12 (Consideration and Discussion of a Potential Fallowing Valuation and Potential Transfer Market in the Transient Pool); and (vi) Agenda Items 6 and 16 (Expenditure Approval and Monthly Financial Report).

I. Comments on Items Not on Agenda

As a government body subject to the Brown Act, the IWVGA must provide access to the materials comprising the Board packet in a timely manner pursuant to Government Code section 54954.1. By its prior comments dated June 18, 2020 and July 15, 2020, Mojave asked the IWVGA to begin releasing Board packets in a timely manner to facilitate public participation and raised the issue that the IWVGA’s failure to timely provide Board packets along with each meeting agenda chills public participation and runs contrary to SGMA’s broad overarching requirements to establish stakeholder engagement as critical to achieving improved outcomes, optimizing resources, building broad support, and reducing conflict. (See e.g., Wat. Code §§ 10720.1, 10723.4 *et seq.*, 10725.2, 10730(b)(2).)

Unfortunately, the IWVGA’s practice of belatedly releasing its Board packets has continued. The Board packet for the November 19, 2020 meeting was released to the public just prior to noon on November 18, 2020, less than 24 hours in advance of the Board meeting and several days after the release of the agenda. Mojave reiterates its previous requests and again asks the Board to timely release all meeting materials when the agenda is posted, consistent with Government Code section 54954.1, which requires the IWVGA to distribute its Board packets “at the time the agenda is posted pursuant to Section 54954.2

and 54956 or upon distribution to all, or a majority of all, of the members of a legislative body, **whichever occurs first.**" (Gov. Code § 54954.1 [emphasis added].)

II. Agenda Item 7: Comments on the Meter Compliance Update and Staff Recommendation on Changes to the Policy and Amendment of Ordinance 01-20 with First Read of Ordinance 04-20

In the Staff Report for Agenda Item 7, Staff recommends that the Board amend Ordinance 01-20 to allow small mutual and co-op well owners/operators and others that can demonstrate pumping volumes of under 10 acre-feet ("AF") per year to apply in writing for a Board variance from the requirements of Articles 2 and 3 of Ordinance 01-20. Additionally, the amendments would allow others pumping "solely for residential purposes" that can demonstrate a "severe economic hardship" to apply in writing for a variance.

Mojave is not opposed, in principle, to this amendment, although it seems unlikely that groundwater use "solely for residential purposes" will exceed 10 AF per year. We note, however, that the Board has not yet addressed Mojave's request for a variance from certain requirements of Ordinance 01-20 and Resolution 02-20 that we submitted to the Clerk of the Board on November 9, 2020. ([Attachment 1](#).) Mojave submitted its variance request pursuant to the oral responses by IWVGA Staff and Decision-makers to our October 15, 2020 comment letter requesting specific amendments to Ordinance 01-20. We ask for and appreciate the agency's prompt attention to our variance request.

III. Agenda Item 9: Comments on the Consideration of Amending Ordinance No. 02-18 re Extraction Fees

Agenda Item 9 proposes to set a new public meeting for December 17, 2020 for consideration of proposed Ordinance No. 05-20, which is "intended to address any procedural or substantive challenges to the Revised [Extraction] Fee" adopted pursuant to Ordinance No. 02-20. The Staff Report explains that the revision is necessary to address the "multiple lawsuits . . . challenging the validity of the Revised Fee."

As the Board is aware, Mojave believes that Ordinance No. 02-20 is both procedurally and substantively deficient. It is not clear, however, from the materials supporting Agenda Item 9 that the IWVGA will rectify each of the deficiencies identified in our June 18, 2020 and July 15, 2020 comment letters, which are incorporated herein by reference. Mojave asks that the Board address each previously identified deficiency and reserves the right to submit further comment on Ordinance No. 05-20 as supporting information becomes available.

Mojave also hereby requests a refund of the excess Extraction Fees paid (i.e., the difference between the \$30/AF and \$105/AF fees) from the September 1, 2020 effective date of Ordinance No. 02-20 to the present. Mojave remitted a total Extraction Fee payment of \$44,897.37 at \$105/AF for its pumping in September and October 2020. At \$30/AF, the total bill should have been \$12,827.82, amounting to an overpayment of \$32,069.55.

IV. Agenda Items 10 and 11: Comments on Consideration and Approval of: (a) Option Agreement for the Purchase of Recycled Water from City of Ridgecrest and (b) Resolution 08-20 Establishing a Recycled Water Program

The Staff Report for Item 10 recommends that the Board execute an Option Agreement with the City of Ridgecrest for the purchase of up to 2,016 AFY of treated water from the City's wastewater treatment plant. In turn, the Staff report for Item 11 recommends that the Board adopt Resolution 08-20, establishing a recycled water program.

Although Mojave supports opportunities to optimize the use of recycled water, several questions, including those raised in Mojave's October 15, 2020 comment letter, must be clarified before the Board approves the Option Agreement and Resolution 08-20. First, what does the IWVGA propose to do with the up to 2,016 AFY of recycled water to be purchased? Will the water be served directly to customers or used to recharge the Basin? How will the recycled water be distributed? The Staff Report for Item 11 suggests that the water will be made available to "large permanent users of groundwater," but on what basis are users selected? Second, how does the IWVGA propose to fund purchase of the treated water? Will it impose yet another fee on water users?

The Staff Reports and section 1.3 of the Option Agreement indicate that the IWVGA "agrees" that the recycled water "shall be put to municipal or industrial uses either located within the City or for the direct benefit of the citizens of the City." Mojave objects the exclusion of agriculture and believes that the water should also be made available for agricultural uses, given that citizens within the City of Ridgecrest directly benefit from the agriculture industry in the Indian Wells Valley. There is no legitimate basis to exclude agriculture from the ability to use this recycled water, as raised in our October 15, 2020 comment letter, which is hereby incorporated by reference. Moreover, as raised in Mojave's prior comments, it is unjust that select water users granted an Annual Pumping Allocation should be allowed to pump some or all of their allocation for free, and then to have an opportunity to avoid most of the Replenishment Fee by paying only \$158.75 per AF (per the Staff Report for Item 11), while other water users must pay the \$2,130 per acre-foot Replenishment Fee.

Mojave asks that the IWVGA decline to approve either the Option Agreement or Resolution 08-20 as presently drafted. Like the IWVGA's other programs and proposals, these two proposals, as presently formulated, are problematic because they favor certain water users at the expense of others, in violation of SGMA and other laws.

Mojave further disagrees that the proposed project is exempt from CEQA on the grounds that "this stage is focused on initial design feasibility only." CEQA is triggered when a public agency proposes to "approve" a project. (Pub. Res. Code § 21080(a); CEQA Guidelines § 15004.) "Approval" is defined as any decision that commits the agency to a "definite course of action in regard to a project," as opposed to "mere interest" or "inclination to support" a project. (CEQA Guidelines §§ 15352(a), 15004(b)(4).) CEQA forbids agencies from undertaking actions that could have a significant adverse effect on the environment, or limit the choice of alternatives or mitigation measures, before complying with CEQA. (CEQA Guidelines § 15004(b)(2).) The test, therefore, is whether the agency has retained discretion to adopt an alternative, impose mitigation measures, or disapprove the project together, once CEQA review is completed. (*See Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116.) Here, sufficient discretion has not been retained and CEQA is triggered where the IWVGA proposes to both execute an Option Agreement for a project "intended to augment the local water supply" and adopt Resolution 08-20, which authorizes a program that would allow the purchase of approximately 2,000 AFY, the environmental impacts of which have admittedly not been analyzed.

V. Agenda Item 12: Comments on Consideration and Discussion of a Potential Fallowing Valuation and Potential Transfer Market in the Transient Pool

No Staff Report or other supporting materials were provided for Agenda Item 12 (Consideration and Discussion of a Potential Fallowing Valuation and Potential Transfer Market in the Transient Pool). Therefore, at this time Mojave is unable to provide further comments to aid in the Board's consideration of this item. However, Mojave asks the Board to consider its prior comments on Agenda Item 10 (Board Consideration and Discussion on a Fallowing Valuation and Potential for a Transfer Market in the Transient Pool) submitted on October 15, 2020, which are hereby incorporated by reference. Mojave also reserves the right to submit future comments on this item.

VI. Agenda Items 6 and 16: Comments on Expenditure Approval and Monthly Financial Report Regarding IWVGA Financial Reporting and Fiscal Responsibility

The IWVGA continues to report its financial position without adhering to accountancy best practices. The IWVGA has also opposed requests for a Finance Committee, which would increase fiscal oversight and transparency. The shortcomings in financial reporting and recordkeeping were highlighted in a recent letter from the IWVGA's own auditing firm, Brown and Armstrong. Poor reporting hampers the public's ability to understand how their fees and tax dollars are being spent.

The IWVGA is proposing to approve \$186,487.35 in new bills with \$636,949.74 in outstanding unpaid bills per the information provided in the Board packet. This is on top of \$1,210,466 in liabilities owed to the IWVGA's own parent agencies. The Stetson Engineering bill is again between \$50,000 and \$100,000 per month and clearly evidences the excess spending of the IWVGA. The bills to be approved by consent with no discussion include questionable expenses ranging from t-shirts and Boot Barn purchases to meals and lodging. Financial oversight and prudence appear to be severely lacking.

VII. Conclusion

We thank you for your attention to our comments on these items and urge the IWVGA to address each comment prior to action at the November 19, 2020 Board meeting.

Sincerely,



Scott S. Slater
Amy M. Steinfeld

ATTACHMENT 1

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November 9, 2020

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VIA EMAIL (APRILN@IWVWD.COM)

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

RE: Request for Variance from Ordinance 01-20 and Resolution 02-20 Metering Requirements

Dear Members of the IWFVA Board of Directors:

On March 19, 2020, the IWFVA Board of Directors adopted Ordinance 01-20 requiring Groundwater Extractors in the Indian Wells Valley Groundwater Basin to install at their own expense a Water Meter and an Hour Meter on each Extraction Facility and Resolution 02-20 Adopting Groundwater Well Flowmeter Standards for the Indian Wells Valley Groundwater Basin. Pursuant to Article 2, Section 6 of Ordinance 01-20, “[i]f special circumstances exist which make it impossible for a Groundwater Extractor to meet either of the metering requirements of [Ordinance 01-20], the Groundwater Extractor may make a written request for an alternative measuring requirement in writing and ... set forth a specific alternative method for measuring Extractions from the Extraction Facility.”

On behalf of Mojave Pistachios, LLC and the Nugent Family Trust (collectively, “Mojave”) we respectfully submit this request for an exemption from certain requirements of Ordinance 01-20 and Resolution 02-20 as set forth below.

Request for Variance from List of Approved Water Meters

Pursuant to Article 2, Section 4 of Ordinance 01-20, Water Meters must be installed in conformance with the IWFVA’s “Groundwater Well Flowmeter Standards.” Mojave requests a variance that would allow it to install a meter not included in Appendix A of Resolution 02-20 which provides the list of “Acceptable Meters.” Specifically, Mojave requests authorization to utilize meters produced by **Water Specialties McCrometer, Inc.** that meet industry standards for agricultural uses. Table 1, below, lists the specific meters utilized by Mojave on each of its wells.

Request for Variance from Hour Meter Requirements

Pursuant to Article 2, Section 5 of Ordinance 01-20, Hour Meters must be installed as a secondary metering requirement. Mojave requests a variance from this requirement because Mojave’s electric demand for each well can be tracked by separate means. Likewise, Mojave requests a variance from any meter testing requirements applicable to Hour Meters pursuant to Article 3 of Ordinance 01-20. Each of Mojave’s wells listed in Table 1 currently operate using electricity that is separately metered. Adding an additional hourly measuring device would be unnecessarily duplicative.

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Los Angeles, CA 90067
main 310.500.4600

Table 1: Wells metered for electricity usage with meter information.

Meter Location	Type	Serial Number
MEANS 1	WATER SPECIALTIES McCROMETER, INC.	20132197-12
MEANS 2 ¹	WATER SPECIALTIES McCROMETER, INC.	20132196-12
OFFICE	WATER SPECIALTIES McCROMETER, INC.	20200356-10
LELITER 360	WATER SPECIALTIES McCROMETER, INC.	20111308-12
LELITER 220	WATER SPECIALTIES McCROMETER, INC.	20171261-12
LEROY	WATER SPECIALTIES McCROMETER, INC.	20120125-10
COYOTE TRAIL	WATER SPECIALTIES McCROMETER, INC.	20120734-12
S COOLEY	WATER SPECIALTIES McCROMETER, INC.	20130661-12
N COOLEY	WATER SPECIALTIES McCROMETER, INC.	20190932-10

Request for Approval of Additional Contractors as Authorized Meter Testers and Installers

Appendix B of Resolution 02-20 contains a list of “Approved Contractors for Meter Testing.” Mojave requests authorization to use two contractors not on this list, **Cal-West Rain, Inc. and S.A. Camp Pump & Drilling Company**, as approved meter testers and installers. Both companies are experienced pump and irrigation contractors, whose services include meter sales, installation, and testing. Therefore, both companies have the necessary expertise for meter testing pursuant to Ordinance 01-20.

Request for Deadline Extension

Mojave has shut down its wells for the winter, drained its irrigation system, and has paused electrical service to the wells. To accomplish the meter testing contemplated by Ordinance 01-20, Mojave would need to re-commence operation of its wells to run water through its system to check meter accuracy. This water, however, would be wasted because it cannot be applied to the trees, given that the trees need to go dormant before it freezes and the application of water can interfere with this important biological process. Therefore, Mojave requests an extension of the November 23, 2020 compliance deadline set forth in the IWVGA Acting General Manager’s September 22, 2020 letter to **the earlier of two weeks after the wells begin operating again or March 31, 2021**. This extension would prevent the waste of water, the unnecessary expenditure of funds on electricity and re-winterizing Mojave’s irrigation system, and would accommodate time for the IWVGA’s response to this variance request.

¹ The combined measurements from the two Means meters have been reported together as “Means” on the monthly reporting forms submitted by Mojave to the IWVGA.

Conclusion

We believe these variance requests fully comply with the intent of Ordinance 01-20, Resolution 02-20, and the objectives of the IWVGA. Should you have any questions please contact Amy Steinfeld at the contact information listed above. We thank you for your attention to our request and look forward to your response.

Sincerely,



Scott S. Slater
Amy M. Steinfeld