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EXEMPT FROM FILING FEES  
 PER GOV. CODE, § 6103

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 10 COUNTY OF ORANGE, CIVIL COMPLEX CENTER  
 11

12 **MOJAVE PISTACHIOS, LLC, et al.,**  
 Plaintiffs,  
 13  
 14 v.  
 15 **INDIAN WELLS VALLEY WATER**  
**DISTRICT, et al.,**  
 16  
 17 Defendants,

Case No. 30-2021-01187275-CU-OR-CJC

[Related to Case Nos:  
 30-2021-01187589-CU-WM-CXC and  
 30-2021-01188089-CU-WM-CXC]

Assigned For All Purposes to the Honorable  
 William D. Cluster

18 **INDIAN WELLS VALLEY WATER**  
**DISTRICT,**  
 19  
 20 Cross-Complainant,  
 v.  
 21 **ALL PERSONS WHO CLAIM A RIGHT TO**  
**EXTRACT GROUNDWATER IN THE**  
 22 **INDIAN WELLS VALLEY**  
**GROUNDWATER BASIN NO. 6-54**  
 23 **WHETHER BASED ON APPROPRIATION,**  
**OVERLYING RIGHT, OR OTHER BASIS**  
 24 **OF RIGHT, AND/OR WHO CLAIM A**  
**RIGHT TO USE OF STORAGE SPACE IN**  
 25 **THE BASIN, et al.,**  
 26  
 27 Cross-Defendants.

**CALIFORNIA DEPARTMENT OF FISH  
 AND WILDLIFE AND CALIFORNIA  
 DEPARTMENT OF PARKS AND  
 RECREATION'S PHASE 2 TRIAL  
 BRIEF**

Dept: CX101  
 Judge: Honorable William D. Cluster

Trial Date Phase 2: June 8, 2026

Action Filed: November 19, 2019

27 **AND RELATED CASES.**  
 28

1 Cross-Defendants California Department of Fish and Wildlife and California Department  
2 of Parks and Recreation (State Entities) file the following brief in advance of the June 8, 2026,  
3 safe yield trial.

#### 4 **I. INTRODUCTION**

5 The operative Phase 2 Case Management Order states that all parties have agreed that:  
6 “(1) claims regarding public trust issues, such as the needs and health of groundwater dependent  
7 ecosystems, riparian habitat, endangered and threatened species, and other public trust resources,  
8 will not be tried during the Phase 2 Trial on safe yield; (2) by not raising the public trust issues  
9 during the Phase 2 Trial, the State Entities do not waive their right to assert claims regarding  
10 public trust issues; and (3) the State Entities reserve the right to assert claims regarding public  
11 trust issues in a later phase of trial. The State Entities agree that the public trust claim (1) will not  
12 change the Basin safe yield as determined in Phase 2; and (2) will focus primarily on localized  
13 production in areas near groundwater dependent ecosystems involving issues such as local time,  
14 place, and manner of production, particularly in times of drought.” (Second Amended Case  
15 Management Order Re: Phase 2 Trial, filed on November 24, 2025, at pp. 7-8.) The State Entities  
16 support this order and reserve their right to assert public trust resource issues in a later phase of  
17 trial.

18 The Supreme Court has directed that “before state courts and agencies approve water  
19 diversions, they should consider the effects of such diversions upon interests protected by the  
20 public trust, and attempt, so far as feasible, to avoid or minimize any harm to those interests.”  
21 (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 426.) This includes any  
22 groundwater pumping that may affect a public trust resource. (*Environmental Law Foundation v.*  
23 *State Water Resources Control Board* (2018) 26 Cal.App.5th 844, 859.)

24 The public trust resources in the Indian Wells Valley Groundwater Basin No. 6-54 (Basin)  
25 include riparian habitat, groundwater dependent ecosystems, and California and Federal  
26 endangered and threatened species.

1 **II. PHASE 2 TRIAL**

2 The State Entities believe that the goal of the second phase of trial, regarding safe yield,  
3 should be to determine the total amount of water that can be produced without putting the Basin  
4 into overdraft, i.e., without a gradual lowering of the groundwater levels and depletion of supply.  
5 Once the safe yield is determined, the parties can then evaluate how any allocations of that safe  
6 yield, any localized pumping, or any physical solutions may harm public trust resources.

7 Although a safe yield determination may protect certain public trust resources, a safe yield  
8 determination does not require a public trust determination. An evaluation of the safe yield will  
9 determine the average, adjusted figure for net ground water recharge that keeps the groundwater  
10 levels steady over time and that in and of itself will provide some protections for public trust  
11 resources. However, the public trust doctrine encompasses environmental concerns beyond the  
12 scope of the Court’s safe yield analysis, and case law supports the inclusion of the public trust  
13 doctrine in later phases of trial.

14 As such, the State Entities agree with the operative Phase 2 Case Management Order which  
15 states that all parties have agreed that: “(1) claims regarding public trust issues, such as the needs  
16 and health of groundwater dependent ecosystems, riparian habitat, endangered and threatened  
17 species, and other public trust resources, will not be tried during the Phase 2 Trial on safe yield;  
18 (2) by not raising the public trust issues during the Phase 2 Trial, the State Entities do not waive  
19 their right to assert claims regarding public trust issues; and (3) the State Entities reserve the right  
20 to assert claims regarding public trust issues in a later phase of trial. The State Entities agree that  
21 the public trust claim (1) will not change the Basin safe yield as determined in Phase 2; and (2)  
22 will focus primarily on localized production in areas near groundwater dependent ecosystems  
23 involving issues such as local time, place, and manner of production, particularly in times of  
24 drought.” .

25 **CONCLUSION**

26 The State Entities support a Phase 2 trial that determines the safe yield of the Basin. This  
27 determination will establish the long-term average for net ground water recharge that keeps the  
28 groundwater levels steady over time and will therefore be protective of public trust resources.

1 Because this is not the only determination that will be made in this case that will impact public  
2 trust resources and implicate the public trust doctrine, the State Entities reserve the right to assert  
3 claims regarding public trust issues in a later phase of trial.

4  
5 Dated: May 29, 2026

Respectfully submitted,

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15 Agricultural Assn.*

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**DECLARATION OF SERVICE BY ELECTRONIC TRANSMISSION**  
**VIA CASE ANYWHERE**

Case Name: **Mojave Pistachios, LLC, et al. v. Indian Wells Valley Water District, et al.**

Case No.: **30-2021-01187275-CU-OR-CJC**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 300 South Spring Street, Suite 1702, Los Angeles, CA 90013.

On **May 29, 2026**, I caused a true and correct copy of the **CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE AND CALIFORNIA DEPARTMENT OF PARKS AND RECREATION'S PHASE 2 TRIAL BRIEF**, to be electronically transmitted to the parties on the Electronic Service List maintained by Case Anywhere at [www.caseanywhere.com](http://www.caseanywhere.com), in the manner set forth in the Court's Order Authorizing Electronic Service, dated December 2, 2022.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on **May 29, 2026**, at Los Angeles, California.

Ernestina Provencio

\_\_\_\_\_  
Declarant

*/s/ Ernestina Provencio*

\_\_\_\_\_  
Signature

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