

James A. Worth, State Bar No. 147207
McMURTREY, HARTSOCK, WORTH & ST LAWRENCE
2001 22nd Street, Suite 100
Bakersfield, California 93301
Telephone No.: 661.322.4417
Fax No.: 661.322.8123
Email: jim@mhwslegal.com

Exempt From Fees Per
Govt. Code § 6103

Douglas J. Evertz, State Bar No. 123066
Emily L. Madueno, State Bar No. 251721
MURPHY & EVERTZ LLP
650 Town Center Drive, Suite 550
Costa Mesa, California 92626
Telephone No.: 714.277.1700
Fax No.: 714.277.1777
Email: devertz@murphyevertz.com
emadueno@murphyevertz.com

Attorneys for Defendant, Cross-Complainant, & Cross-Defendant
INDIAN WELLS VALLEY WATER DISTRICT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE, CIVIL COMPLEX CENTER

MOJAVE PISTACHIOS, LLC; et al.,

Plaintiffs,

v.

INDIAN WELLS VALLEY WATER
DISTRICT; et al.,

Defendants.

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

*[Related to: Case No. 30-2021-01187589-CU-
WM-CXC; Case No. 30-2021-01188089-CU-
WM-CXC; Case No. 30-2022-01239479-CU-
MC-CJC; Case No. 30-2022-01239487-CU-
MC-CJC; Case No. 30-2022-01249146-CU-
MC-CJC]*

Assigned For All Purposes To:
The Honorable William Claster, Dept. CX104

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT**

Date: December 2, 2022
Time: 1:30 p.m.
Dept.: CX104

INDIAN WELLS VALLEY WATER
DISTRICT,

Cross-Complainant,

v.

ALL PERSONS WHO CLAIM A RIGHT
TO EXTRACT GROUNDWATER IN THE
INDIAN WELLS VALLEY
GROUNDWATER BASIN NO. 6-54
WHETHER BASED ON
APPROPRIATION, OVERLYING RIGHT,
OR OTHER BASIS OF RIGHT, AND/OR
WHO CLAIM A RIGHT TO USE OF
STORAGE SPACE IN THE BASIN; et al.,

Cross-Defendants.

SEARLES VALLEY MINERALS INC.,

Cross-Complainant,

v.

ALL PERSONS WHO CLAIM A RIGHT
TO EXTRACT GROUNDWATER IN THE
INDIAN WELLS VALLEY
GROUNDWATER BASIN NO. 6-54
WHETHER BASED ON
APPROPRIATION, OVERLYING RIGHT,
OR OTHER BASIS OF RIGHT, AND/OR
WHO CLAIM A RIGHT TO USE OF
STORAGE SPACE IN THE BASIN; et al.,

Cross-Defendants.

AND RELATED CASES.

Complaint Filed:
Trial Date:

November 19, 2019
None Set

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1. WHAT HAS BEEN DONE IN THE CASE

A. STATUS OF THE PLEADINGS

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1 alternatively, to impose a limited physical solution among Plaintiffs and Defendants. All
2 Defendants have answered the Complaint.

3 In response to the Complaint, on June 16, 2021, the District filed a Cross-Complaint for
4 Comprehensive Adjudication of the Basin, pursuant to the California Streamlined Groundwater
5 Adjudication Statutes (Code Civ. Proc., §§ 830-852) (“Comprehensive Adjudication”). In the
6 Comprehensive Adjudication, the District seeks: (1) a determination of all rights to extract (aka
7 pump) groundwater in the Basin, whether based on appropriation, overlying right, or other basis
8 of right, and all rights to use of storage space within the Basin; (2) entry of judgment based upon
9 the criteria set forth in Code of Civil Procedure section 850; and (3) imposition of a physical
10 solution pursuant to Code of Civil Procedure section 849.

11 The Complaint, the Searles Action (as defined below in paragraph 1.F), and the Mojave
12 Pistachios Action (as defined below in paragraph 1.F) were filed in Kern County Superior Court.
13 On January 13, 2021, the parties to the Searles Action and the Mojave Pistachios Action
14 stipulated to consolidate the two actions and transfer venue to the neutral county of Orange
15 County pursuant to Code of Civil Procedure section 394(a). Because the District expressed its
16 intention to file the Comprehensive Adjudication and Code of Civil Procedure section 838
17 provides that any judge of a superior court of a county overlying the Basin or any part of the
18 Basin shall be disqualified (i.e., the Counties of Inyo, Kern, and San Bernardino), the Parties
19 stipulated to transfer the Comprehensive Adjudication to Orange County with the Searles Action
20 and the Mojave Pistachios Action. On February 8, 2021, the Kern County Superior Court
21 transferred the Comprehensive Adjudication to Orange County Superior Court.

22 B. ASSIGNMENT BY CHAIRPERSON OF THE JUDICIAL COUNCIL OF A
23 JUDGE TO PRESIDE IN ALL PROCEEDINGS

24 On May 20, 2022, at the initial Case Management Conference in the Comprehensive
25 Adjudication, the Court ordered the District to take the lead in requesting that the Chairperson of
26 the Judicial Council assign a judge to preside over all proceedings in the Comprehensive
27 Adjudication, pursuant to Code of Civil Procedure section 838(a)(1). The Court also expressed a
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1 willingness to continue to preside over all of the related cases, including the Comprehensive
2 Adjudication.

3 On August 10, 2022, the Parties and the Indian Wells Valley Groundwater Authority
4 filed in this Court and mailed to the Judicial Council a Joint Request for Assignment by
5 Chairperson of the Judicial Council (Code Civ. Proc., § 838(a)). The Joint Request requested
6 that the Chairperson of the Judicial Council assign a judge to preside in all proceedings in the
7 Comprehensive Adjudication and specifically requested that the Chairperson assign this Court as
8 said judge.

9 The District represents that it attempted to contact the Judicial Council multiple times via
10 telephone calls and emails, without success, to follow up on the status of the Joint Request. As
11 of the filing of this Statement, it does not appear that the Judicial Council has acted upon the
12 Joint Request. The Parties respectfully request that the Court forward a copy of the Joint
13 Request, a copy of which is attached as Exhibit “A,” to the Judicial Council if the Court deems
14 such action appropriate.

15 C. STATUS OF NOTICE AND SERVICE OF THE COMPREHENSIVE
16 ADJUDICATION

17 **(1) Initial Notice of Comprehensive Adjudication (Code Civ. Proc.,**
18 **§ 835).**

19 Code of Civil Procedure section 835 required the District to provide notice of the
20 Comprehensive Adjudication via first-class mail or email to: (a) a groundwater sustainability
21 agency that overlies the Basin or a portion of the Basin; (b) a city, county, or city and county that
22 overlies the Basin or a portion of the Basin; (c) a district with authority to manage or replenish
23 groundwater resources of the Basin in whole or in part; (d) the operator of a public water system
24 or state small water system that uses groundwater from the Basin to supply water service; (e) a
25 California Native American tribe that is on the contact list maintained by the Native American
26 Heritage Commission; (f) the Attorney General, the State Water Resources Control Board, the
27 Department of Water Resources, and the Department of Fish and Wildlife; and (g) a federal
28 department or agency that manages a federal reservation that overlies the Basin or a portion of

the Basin. (Code Civ. Proc., § 835(a)(1)-(7), (b), & (c)(1)(A).) On July 1, 2021, the District filed a Notice of Completion of Providing Notice of the Comprehensive Adjudication to the entities and individuals entitled to receive notice pursuant to Code of Civil Procedure section 835. The July 1, 2021 notice of completion included a list of those entities and individuals to whom the District provided notice.

(2) Mailing of Notice of Commencement of Comprehensive Adjudication, Cross-Complaint, and Form Answer to Basin Property Owners (Code Civ. Proc., § 836).

Code of Civil Procedure section 836 required the District to lodge a Notice of Commencement of Groundwater Basin Adjudication (“Adjudication Notice”) and Form Answer to Adjudication Cross-Complaint (“Form Answer”) with the Court upon filing the Comprehensive Adjudication. (Code Civ. Proc., § 836(a).) The District lodged the Adjudication Notice and Form Answer with the Court on June 16, 2021. Section 836 further required the District to seek and obtain the Court’s approval of the Adjudication Notice and Form Answer. (Code Civ. Proc., § 836(b).) On August 26, 2021, the Court granted the District’s motion and approved the Adjudication Notice and Form Answer. On November 5, 2021, the Court granted the District’s ex parte application and approved modification of the Adjudication Notice and Form Answer to reflect the then-newly assigned department and judicial officer.

Once the Court approves an adjudication notice and form answer, section 836 requires the party initiating the comprehensive adjudication to (a) identify the assessor parcel numbers and physical addresses of all real property overlying the basin and the names and addresses of all holders of fee title to real property overlying the basin using the records of the assessors of the counties overlying the basin; and (b) mail, by registered mail or certified mail, return receipt requested, a copy of the adjudication notice, cross-complaint, and form answer to all holders of fee title to real property overlying the basin and to the physical address of the property where the owner’s mailing address and the physical address differ. (Code Civ. Proc., § 836(c) & (d)(1)(A)-(B).) On November 15, 2021, the District filed a Notice of Acquisition of Information Concerning Real Property in the Basin, confirming that it had identified the assessor parcel

1 numbers and physical addresses of all real property in the Basin and the names and addresses of
2 all holders of fee title to real property in the Basin using the records of the assessors of the
3 Counties of Inyo, Kern, and San Bernardino. On December 21, 2021, a mailing company the
4 District retained began mailing by certified mail a cover letter from the District, along with the
5 Adjudication Notice, Comprehensive Adjudication, and Form Answer, to all holders of fee title
6 to property overlying the Basin and to the physical address of the property where the addresses
7 differed. The District mailed to 18,394 addresses between late December 2021 and mid-
8 June 2022.

9 **(3) Providing the Adjudication Notice and Form Answer to Various**
10 **Entities for Posting Online (Code Civ. Proc., § 836).**

11 Code of Civil Procedure section 836 required the District to provide the court-approved
12 Adjudication Notice and Form Answer to the California Department of Water Resources and
13 each county and groundwater sustainability agency that overlies the Basin or a portion of the
14 Basin, so that these entities could post those documents on their websites. (Code Civ. Proc.,
15 § 836(m).) Within fifteen (15) days of the Court's approval of the Adjudication Notice and
16 Form Answer, the District provided them to the California Department of Water Resources, the
17 Counties of Inyo, Kern, and San Bernardino, and the Indian Wells Valley Groundwater
18 Authority. Within fifteen (15) days of the Court's approval of modification of the Adjudication
19 Notice and Form Answer, the District provided the modified documents to those same entities.

20 **(4) Requesting Information from Various Entities (Code Civ. Proc.,**
21 **§ 836.5).**

22 Code of Civil Procedure section 836.5 required the District to request certain information
23 from the State Water Resources Control Board, a local agency designated under Water Code
24 section 5009 as the local agency for a board-designated local area that includes the Basin or a
25 portion of the Basin, and the groundwater sustainability agency that overlies the Basin or a
26 portion of the Basin. (Code Civ. Proc., § 836.5.) Within fifteen (15) days of the Court's
27 approval of the Adjudication Notice and Form Answer, the District requested the required
28 information from the State Water Resources Control Board and the Indian Wells Valley

Groundwater Authority. The District determined that the Basin lacks a local agency for any board-designated local area under Water Code section 5009.

(5) Publication of Notice of Commencement of Comprehensive Adjudication (Code Civ. Proc., § 836).

Code of Civil Procedure section 836 required the District to publish the Adjudication Notice once a week for four consecutive weeks in at least one newspaper of general circulation within each county overlying the Basin. (Code Civ. Proc., § 836(d)(1)(D).) The Basin overlies portions of Inyo, Kern, and San Bernardino Counties. The District completed publication as follows:

- Inyo County: On January 3, 2022, the District filed a Proof of Publication confirming publication of the Adjudication Notice in *The Inyo Register*, a newspaper of general circulation within Inyo County and printed and published in the City of Bishop, County of Inyo.
- San Bernardino County: On January 14, 2022, the District filed a Proof of Publication confirming publication of the Adjudication Notice in the *San Bernardino County Sun*, a newspaper of general circulation within San Bernardino County and printed and published in the City of San Bernardino, County of San Bernardino.
- Kern County: On January 14, 2022, the District filed a Proof of Publication confirming publication of the Adjudication Notice in *The Daily Independent*, a newspaper of general circulation within Kern County and printed and published in the City of Ridgecrest, County of Kern.
- Kern County: On February 3, 2022, the District filed a Proof of Publication confirming publication of the Adjudication Notice in *The News Review*, a newspaper of general circulation within Kern County and printed and published in the City of Ridgecrest, County of Kern.

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(6) Service of the Comprehensive Adjudication on all Cross-Defendants
(Code Civ. Proc., §§ 428.60, 836).

Code of Civil Procedure section 836 provides that “[o]nce the court approves the draft notice [of commencement of comprehensive adjudication], service of that notice in accordance with this section shall substitute for the summons otherwise provided for in civil actions pursuant to Section 412.20.” (Code Civ. Proc., § 836(c).) The District is in the process of serving the Comprehensive Adjudication, the Adjudication Notice, and Form Answer on all named cross-defendants. The cross-defendants named were those entities, individuals, and governmental entities known to the District to be existing pumpers of Basin groundwater. The District hereby reports that the status of service on, and appearance by, the named cross-defendants is as follows:

	<u>Cross-Defendant</u>	<u>Status</u>

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Cross-Defendant

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Cross-Defendant

Status

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17 In addition to naming specific entities, individuals, and governmental agencies as
18 cross-defendants, the District also named All Persons Who Claim a Right to Extract
19 Groundwater in the Indian Wells Valley Groundwater Basin No. 6-54 Whether Based on
20 Appropriation, Overlying Right, or other Basis of Right, and/or Who Claim a Right to Use of
21 Storage Space in the Basin. The District reports that additional cross-defendants have claimed
22 an interest in the Basin's groundwater and have filed answers and/or have appeared in the action
23 as of the date of the filing of this Statement as reflected on the attached Exhibit "B." The District
24 reports that additional cross-defendants have claimed an interest in the Basin's groundwater and
25 have submitted answers to the District, which answers do not appear to have been filed with the
26 Court as of the date of the filing of this Statement, as reflected on the attached Exhibit "C."

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1 D. DEADLINE FOR REMAINING PLEADINGS AND SERVICE OF
2 ADDITIONAL PARTIES

3 The District represents that it has served over 15,000 cross-defendants and potential
4 cross-defendants. A copy of the current service list is attached as Exhibit “D.”

5 The District represents that it is still in the process of serving the Comprehensive
6 Adjudication on: (1) 10 named cross-defendants; and (2) approximately 3,953 certified mailings
7 where return-receipts were not received.

8 **(1) Completing Service of the Comprehensive Adjudication on all**
9 **Cross-Defendants (Code Civ. Proc., §§ 428.60, 836).**

10 The District reports that it has been unable to locate and serve 10 of the 90 named
11 cross-defendants. Where the District is unable to serve those named cross-defendants through
12 traditional means of service, the District will submit an application for an order to serve them by
13 publication.

14 **(2) Providing Notice of Commencement of Comprehensive Adjudication,**
15 **Cross-Complaint, and Form Answer to All Basin Property Owners**
16 **(Code Civ. Proc., § 836).**

17 Following the registered or certified mailing under section 836(d) (see, *supra*, § C(2)), for
18 each parcel of property for which return receipt is not received, Code of Civil Procedure
19 section 836 requires the party initiating the adjudication to post a copy of the Adjudication
20 Notice, Comprehensive Adjudication, and Form Answer in a conspicuous place on the property.
21 (Code Civ. Proc., § 836(d)(1)(C).)

22 The District reports that it has completed the certified mailing process and lacks
23 confirmation of delivery for 3,953 parcels. Therefore, the District faces having to post a copy of
24 the Adjudication Notice, Comprehensive Adjudication, and Form Answer on 3,953 parcels
25 within the Basin. The District is concerned that posting documents on largely vacant desert
26 property will be ineffective to provide real notice to those who did not receive the certified
27 mailing. The District also believes that alternative methods of notice are more likely than
28 posting to result in actual notice to those interested in this comprehensive adjudication.

1 Therefore, on November 2, 2022, the District filed and served a Notice of Motion and Motion for
2 Order Granting Leave to Use Alternative Means to Complete Service under section 836.
3 Through the motion, the District proposes replacing the posting requirement with one alternative
4 method, or a combination of alternative methods, of providing notice. The motion is scheduled
5 for hearing on December 9, 2022 at 9:00 a.m. in this Department.

6 E. DE MINIMIS PAUSE

7 Pursuant to Code of Civil Procedure section 833(d), if the court finds that claims of right
8 to pump only “minor” quantities of water, not exceeding five acre-feet of water per year, would
9 not have a material effect on the groundwater rights of other parties, the court may exempt those
10 claimants with respect to those claims from the comprehensive adjudication. (Code Civ. Proc.,
11 § 833(d).) Under the Sustainable Groundwater Management Act of 2014 (“SGMA”), a “de
12 minimis” pumper is defined as a person who extracts, for domestic purposes, two acre-feet of
13 groundwater or less per year. (Wat. Code, § 10721(e).) The Indian Wells Valley Groundwater
14 Authority currently exempts de minimis pumpers from the payment of the Authority’s
15 Replenishment Fee and certain other GSP-related programs. No determination among the
16 Parties has been made as to whether to exempt de minimis pumpers; however, the United States’
17 position is that the McCarran Amendment’s waiver of sovereign immunity for a comprehensive
18 adjudication requires joinder of all water right users and potential claimants. The Parties propose
19 that the Court pause or put off the required participation by potential de minimis pumpers for at
20 least 180 days / six months while the Parties and the Court further identify potential de minimis
21 pumpers and evaluate whether or to what extent such pumpers need to be included in a physical
22 solution to manage the Basin.

23 F. RELATED PROCEEDINGS, LITIGATION, AND ALTERNATIVE DISPUTE
24 RESOLUTION

25 **(1) Related Proceedings and Litigation.**

26 (a) *Searles Valley Minerals Inc. v. Indian Wells Valley Groundwater*
27 *Authority; et al.*, OCSC Case No. 30-2021-01188089-CU-WM-CXC (the “Searles Action”)
28 (consolidated with the Mojave Pistachios Action, which is the lead case; related to the

1 Comprehensive Adjudication; and pending before The Honorable William Claster): On
2 September 29, 2020, Searles filed a Petition for Writ of Mandate; Complaint for Declaratory
3 and Injunctive Relief; and Takings Claims under the California Constitution against the Indian
4 Wells Valley Groundwater Authority and the Authority’s Board of Directors (collectively, the
5 “Authority”). On or about August 25, 2021, Searles filed a First Amended Petition for Writ of
6 Mandate and Complaint for Declaratory and Injunctive Relief; and Takings Claim under the
7 California Constitution. Through its petition, Searles challenges the validity of the Authority’s
8 Groundwater Sustainability Plan adopted on January 16, 2020 (“GSP”). A status conference in
9 this matter is set to occur on December 2, 2022 in this Department.

10 (b) *Mojave Pistachios, LLC; et al. v. Indian Wells Valley*
11 *Groundwater Authority; et al.*, OCSC Case No. 30-2021-01187589-CU-WM-CXC (the
12 “Mojave Pistachios Action”) (consolidated with the Searles Action; related to the
13 Comprehensive Adjudication; and pending before The Honorable William Claster): On
14 September 30, 2020, Mojave Pistachios, LLC and Paul G. Nugent and Mary E. Nugent,
15 Trustees of the Nugent Family Trust dated June 20, 2011 (collectively, “Mojave Pistachios”)
16 filed a Petition for Writ of Mandamus and Complaint against the Authority. On or about
17 August 25, 2021, Mojave Pistachios filed a Second Amended Petition for Writ of Mandamus
18 and Complaint. Through its petition, Mojave Pistachios alleges, inter alia, that the Authority
19 adopted an illegal and technically deficient GSP. A status conference in this matter is set to
20 occur on December 2, 2022 in this Department.

21 (c) *Indian Wells Valley Groundwater Authority v. Mojave Pistachios,*
22 *LLC; et al.*, OCSC Case No. 30-2022-01239479-CU-MC-CJC (related to the consolidated case
23 of OCSC Case No. 30-2021-01187589; related to the Comprehensive Adjudication; and
24 pending before The Honorable William Claster): On January 5, 2022, the Authority filed a
25 Complaint for Preliminary and Permanent Injunction; Recovery of Delinquent Groundwater
26 Fees; and Civil Penalties against Mojave Pistachios. Through its complaint, the Authority seeks
27 to enjoin Mojave Pistachios from operating groundwater wells without payment of Basin
28 Replenishment Fees, delinquent groundwater extraction charges, and civil penalties. Mojave

Pistachios filed an Answer on April 11, 2022. A status conference in this matter is set to occur on December 2, 2022 in this Department.

(d) *Indian Wells Valley Groundwater Authority v. Searles Valley Minerals Inc.; et al.*, OCSC Case No. 30-2022-01239487-CU-MC-CJC (related to the consolidated case of OCSC Case No. 30-2021-01187589; related to the Comprehensive Adjudication; pending before The Honorable William Claster): On January 5, 2022, the Authority filed a Complaint for Preliminary and Permanent Injunction; Recovery of Delinquent Groundwater Fees; and Civil Penalties against Searles. Through its complaint, the Authority seeks to enjoin Searles from operating groundwater wells without payment of Basin Replenishment Fees, delinquent groundwater extraction charges, and civil penalties. Searles filed an Answer on April 19, 2022. A status conference in this matter is set to occur on December 2, 2022 in this Department.

(e) *Mojave Pistachios, LLC, et al. v. Indian Wells Valley Groundwater Authority, et al.*, Orange County Superior Court Case No. 30-2022-01249146-CU-MC-CJC (related to the consolidated case of OCSC Case No. 30-2021-01187589; related to the Comprehensive Adjudication; and pending before The Honorable William Claster): On March 9, 2022, Mojave Pistachios filed a Complaint for Refund of Extraction Fees Paid against the Authority, seeking to recover fee payments levied by the Authority pursuant to Ordinance No. 02-20, as later amended by Ordinance Nos. 02-20 and 05-20, which impose a \$105 per acre-foot groundwater extraction fee, which the Authority states is necessary to finance the estimated costs to develop and adopt the GSP. On August 24, 2022, the Court stayed the matter pending a resolution of the Mojave Pistachios Action. A status conference in this matter is set to occur on December 2, 2022 in this Department.

(f) *Indian Wells Valley Groundwater Authority v. Inyo Kern Community Services District*, Kern County Superior Court Case No. BCV-22-100281 (Notice of Related Case filed by Mojave Pistachios on April 26, 2022, but not yet acted upon): On February 1, 2022, the Authority filed a Complaint for Preliminary and Permanent Injunction; Recovery of Delinquent Groundwater Extraction Fees; Imposition of Civil Penalties against the

1 Inyokern Community Services District. Through its complaint, the Authority seeks to enjoin
2 Inyokern Community Services District from operating groundwater wells without payment of
3 Basin Replenishment Fees, delinquent groundwater extraction charges, and civil penalties.
4 Inyokern Community Services District's deadline to respond to the complaint is November 18,
5 2022.

6 **(2) Alternative Dispute Resolution.**

7 (a) DWR Facilitation: The District has requested from the California
8 Department of Water Resources ("DWR"), and DWR has offered, facilitation support services
9 to foster discussions among Basin stakeholders towards promoting the long-term sustainability
10 of the Basin, and discussing constructive solutions for the Basin. DWR has committed several
11 hundred hours to the facilitation process for the Basin. The Parties have participated in the
12 DWR facilitation process. DWR's first public meeting for Basin stakeholders occurred on
13 May 17, 2022 in Ridgecrest and via live stream. Subsequently, DWR met with 48 Basin
14 stakeholders over the summer. On October 4, 2022, DWR held a second public meeting for
15 Basin stakeholders to report on its stakeholder assessment results. As a byproduct of the DWR
16 Facilitation, a confidential Technical Working Group was voluntarily formed to collaboratively
17 evaluate the size and characteristics of the Basin and to develop a best-estimate safe yield,
18 potential management strategies, and physical solution that would maximize beneficial use of
19 Basin groundwater without causing undesirable results. (See, *infra*, § 2.)

20 (b) Mediation: The Parties have expressed a willingness to
21 participate in confidential mediation but believe that formal mediation is premature at this time.

22 G. ISSUES OF JURISDICTION

23 The United States is participating in the Comprehensive Adjudication pursuant to the
24 McCarran Amendment (43 U.S.C. § 666; *United States v. District Court in and for Eagle*
25 *County*, 401 U.S. 520 (1971).)

26 The Parties are not aware of any additional issues regarding jurisdiction, venue, or
27 arbitration clauses.

1 H. PAYMENT OF COMPLEX FEES

2 The District filed a Motion for Order Temporarily Suspending the Requirement to Pay
3 the Initial Appearance Fee. On February 18, 2022, the Court granted the District's Motion and
4 suspended the requirement to pay the initial appearance fee, but only through April 29, 2022. At
5 the May 20, 2022 initial Case Management Conference, the Court again suspended the
6 requirement to pay the initial appearance fee, but only through July 31, 2022. Exhibit B lists 142
7 potential cross-defendants who have submitted answers to the District which do not appear to
8 have been filed with the Court. The District requests that the Court extend the fee waiver
9 through February 28, 2023 to give those listed on Exhibit B an opportunity to file and serve their
10 answers, as well as those named cross-defendants identified above who were recently served or
11 who have submitted an answer to the District without having filed it with the Court yet.

12 **2. CORE LEGAL AND FACTUAL ISSUES - - PROPOSED PHASE 1 TRIAL**

13 This is a complex case procedurally and substantively. It involves the determination of
14 all rights to extract and store groundwater within the Basin among hundreds of pumpers and
15 thousands of users and/or potential users of Basin groundwater. The Comprehensive
16 Adjudication seeks a physical solution pursuant to Code of Civil Procedure section 849. The
17 Basin is also subject to the groundwater management requirements of SGMA. This is one of the
18 first applications of the California Streamlined Groundwater Adjudication Statutes. Potential
19 issues include, but are not limited to, estimating the quantity of water in storage, determining a
20 safe yield, determining water rights, and evaluating a potential physical solution that maximizes
21 the reasonable and beneficial use of water and appoints a watermaster for future administration
22 of the decree. (See Code Civ. Proc., § 834.)

23 The phrase "physical solution" is used in water rights cases to describe an often agreed
24 upon or judicially imposed resolution of the conflicting claims to water in a manner that
25 advances the constitutional rule of *maximizing* the reasonable and beneficial uses of the State's
26 water supply without causing undesirable results. (*California American Water v. City of*
27 *Seaside* (2010) 183 Cal.App.4th 471, 480; *City of Santa Maria v. Adam* (2012) 211 Cal.App.4th
28 266, 288.) Although a trial court may impose a physical solution to achieve the practical

1 allocation of water among competing interests consistent with the Constitutional mandate to
2 maximize reasonable and beneficial use, the physical solution must recognize established water
3 rights.

4 An essential component to the determination of water rights is the concept of “safe
5 yield.” Safe yield is established after consideration of the physical characteristics of the Basin,
6 its size, the quantity of groundwater in storage, and the potential that unregulated production
7 would cause “undesirable results.”

8 Safe yield has been defined by the California Supreme court as “the maximum quantity
9 of water which can be withdrawn annually from ground water supply under a given set of
10 conditions without causing an undesirable result.” (*City of Los Angeles v. City of San*
11 *Fernando* (1975) 14 Cal.3d 199, 278.) “[O]verdraft only occurs if extractions from the basin
12 exceed its safe yield plus any . . . temporary surplus.” (*Id.* at 280.)¹ An “undesirable result” is
13 customarily equated with the unregulated lowering of the groundwater table and physical
14 impacts such as land subsidence, water quality degradation, and salt water intrusion.”²

15 Safe yield is ultimately set by the trial court and is very generally the maximum quantity
16 of pumping of water from a basin that may be maintained without causing undesirable results.
17 (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 278.) The imposition of a
18 physical solution is customarily coupled with the Court maintaining continuing jurisdiction over
19 the Basin and the parties and to administer the decree and ensure the efficacy of the physical
20 solution within the characteristics of the Basin over time. (See *Hillside Memorial Park &*
21 *Mortuary v. Golden State Water Company* (2011) 205 Cal.App.4th 534, 547. See also Code
22 Civ. Pro., § 852.)

23 Water rights can be determined by stipulation, in accordance with applicable law. Once
24 determined, water rights can be managed pursuant to a physical solution, often pursuant to a

25
26 ¹ The common law definition is strikingly similar to the definition of “Sustainable Yield” under SGMA. (Wat.
27 Code, § 10721(w) [defining “sustainable yield” as “the maximum quantity of water, calculated over a base period
representative of long-term conditions in the basin and including any temporary surplus, that can be withdrawn
annually without causing an undesirable result.”].)

28 ² See Wat. Code, § 10721(x)(1)-(6).

1 stipulation. Water management can be overseen by a “watermaster” and enforced by the court
2 under the physical solution/judgment.

3 Consistent with the collaborative opportunity provided by the DWR Facilitation and in
4 furtherance of pursuing a physical solution, a group of technical consultants, including
5 hydrologists, hydrogeologists, geohydrologists, groundwater modelers, geologists, and
6 engineers, has regularly met at least every other week for months (“Technical Working
7 Group”). The Technical Working Group consists of representatives of the major pumpers in the
8 Basin except for the United States. As a major pumper, the United States has been invited and
9 encouraged to participate in the Technical Working Group and the Parties hope that the United
10 States will soon have technical consultants retained to do so. Communications and discussions
11 between and among the members of the Technical Working Group are subject to a
12 confidentiality agreement. So far, the Technical Working Group has met to analyze all
13 available data relating to Basin groundwater and to perform additional analyses regarding the
14 Basin’s safe yield and the total groundwater in storage.

15 Code of Civil Procedure section 840 empowers the Court, in managing a comprehensive
16 adjudication, to consider “[d]ividing the case into phases to resolve legal and factual issues.”
17 (Code Civ. Proc., § 840(b)(5).) The District anticipates that the case will be at issue by Spring
18 2023 and, based thereon, the Parties recommend that the Court target September 2023 for the
19 first phase of trial. The Parties further recommend that the first phase of trial be used to
20 determine the safe yield and the total groundwater in storage. The Parties are hopeful, based on
21 the work and progress of the Technical Working Group, that this first phase can be a “prove-up”
22 trial rather than a contested trial.

23 Upon a court determination of both safe yield and storage, the Parties intend to diligently
24 work towards developing an equitable physical solution. If necessary, the Parties will engage in
25 formal mediation and/or propose additional phases of trial. The Parties understand that before
26 adopting any physical solution, the Court must consider the Groundwater Sustainability Plan
27 adopted by the Indian Wells Valley Groundwater Authority. (Code Civ. Proc., § 849(b).)

1 **3. DISCOVERY ISSUES**

2 **A. INITIAL DISCLOSURES**

3 Code of Civil Procedure section 842 provides, “Except as otherwise stipulated by the
4 parties or ordered by the court, within six months of appearing in a comprehensive adjudication,
5 a party shall serve on the other parties and the special master, if one is appointed, an initial
6 disclosure” that includes certain information, such as the quantity of groundwater extracted from
7 the Basin, the type of water rights claimed, a general description of the purpose to which the
8 groundwater has been put, and the location of each well or other source through which the party
9 extracts groundwater. (Code Civ. Proc., § 842(a).)

10 The District, Plaintiffs, and Searles previously stipulated to extend the time for exchange
11 of initial disclosures under section 842. On February 3, 2022, the Court entered the amended
12 stipulated Order between the District and Plaintiffs and on February 9, 2022, the Court entered
13 the stipulated Order between the District and Searles. Both Orders extend the time for the
14 exchange of initial disclosures to a date to be agreed upon by the parties and/or ordered by the
15 Court.

16 At the May 20, 2022, Case Management Conference, the Court ordered that discovery
17 and exchange of initial disclosures shall remain stayed for all parties until further order of the
18 Court, subject to the parties submitting a stipulation to lift any portion of the stay or a motion to
19 that effect. (Notice of Ruling from the 5/20/22 Status Conference, filed May 26, 2022.) The
20 Parties again request the Court order that the time for exchange of initial disclosures for all
21 parties that have appeared in this matter be further continued to a date consistent with the Orders
22 of February 3, 2022, February 9, 2022, and May 20, 2022. The Parties also believe it is
23 premature to set a discovery schedule until the exchange of initial disclosures. The Parties
24 request a stay on discovery pending exchange of the initial disclosures.

25 Code of Civil Procedure section 840 empowers the Court, in managing a comprehensive
26 adjudication, to consider “[l]imiting discovery to correspond to the phases” of trial. (Code Civ.
27 Proc., § 840(b)(7).) Once the Court begins to set dates for trial of certain issues, the Parties
28 recommend that the Court then set a deadline for the exchange of expert disclosures and lift the

discovery stay as to the issues to be tried during that phase of trial. The Parties would submit a proposed discovery schedule and order for the Court's consideration.

B. DOCUMENTS AND ELECTRONICALLY STORED INFORMATION

The District proposes that when a party first produces documents, each party shall select a unique three letter prefix for the bates numbering of the documents it produces in this case. The District shall keep an index of prefixes. The Parties shall meet and confer on selecting protocols for the discovery and production of electronically stored information.

C. FILING AND E-SERVICE

Pursuant to rule 2.251 of the California Rules of Court and Code of Civil Procedure sections 839 and 1010.6, the Parties request that the Court order that all service be made by electronic service, subject to exception based on a proper showing that electronic service poses an undue hardship on a party. Electronic service by 5:00 p.m. shall be deemed same-day personal service. The Parties request that the Court provide or authorize the use of a web-based electronic service system through which parties would register and through which the electronic posting of documents automatically effectuates service on all parties. (Cal. Rules of Court, Rule 3.751; Code Civ. Proc., § 830(b)(2).) The Parties further request that the Court order that all filings be made by electronic filing. The Parties submit a proposed order, attached as Exhibit "E," to provide for electronic filing, service, and case management through Case Anywhere.

4. RECOMMENDED DATES AND TIMES

A. NEXT STATUS CONFERENCE

The Parties recommend the next status conference be set in approximately 90 days / three months.

B. SCHEDULE AND FILING DEADLINES FOR PROPOSED MOTIONS

The Parties will meet and confer on the issues of a first phase of trial, filing deadlines, discovery schedules, and potential motions and will provide further information and recommendations before the next scheduled status conference.

1 **4. SUMMARY OF REQUESTS**

2 Based on the foregoing report, the Parties respectfully request that the Court consider
3 taking the following actions:

4 A. Filing Fee: The District requests that the Court extend the fee waiver through
5 February 28, 2023.

6 B. Expert Disclosures: Continue to refrain from setting a deadline for expert
7 disclosures until setting a phased trial and then set disclosures deadlines in phases as to the issues
8 to be tried during that phase.

9 C. Discovery Stay: Continue the stay on initial disclosures and discovery until
10 setting a phased trial and then lift the discovery stay in phases as to the issues to be tried during
11 that phase.

12 D. Electronic Service and Filing: Enter an Order in the form of the attached
13 Exhibit "E" to provide for electronic filing, service, and case management through Case
14 Anywhere.

15 E. Next Status Conference: Set a further status conference in approximately 90
16 days.

17 DATED: Nov. 23, 2022 BROWNSTEIN HYATT FARBER SCHRECK, LLP

18
19
20 By: /s/ Elisabeth L. Esposito

21 Scott S. Slater
22 Robert J. Saperstein
23 Amy M. Steinfeld
24 Elisabeth L. Esposito
25 Attorneys for Plaintiffs & Cross-Defendants
26 MOJAVE PISTACHIOS, LLC;
27 JOHN THOMAS CONAWAY;
28 JOHN THOMAS CONAWAY TRUST;
JOHN THOMAS CONAWAY LIVING TRUST u/d/t
August 7, 2008;
NUGENT FAMILY TRUST;
SIERRA SHADOWS RANCH LP

1 DATED: Nov. 23, 2022

MURPHY & EVERTZ LLP

2
3
4 By: /s/ Douglas J. Evertz

5 Douglas J. Evertz

6 Emily L. Madueno

7 Attorneys for Defendant, Cross-Complainant, &
Cross-Defendant

8 INDIAN WELLS VALLEY WATER DISTRICT

9 DATED: Nov. 23, 2022

FENNEMORE LLP

10
11
12 By: /s/ Derek R. Hoffman

13 Derek R. Hoffman

14 Byrin Romney

15 Attorneys for Defendants & Cross-Defendants

MEADOWBROOK DAIRY REAL ESTATE, LLC;

16 BIG HORN FIELDS, LLC;

BROWN ROAD FIELDS, LLC;

17 HIGHWAY 395 FIELDS, LLC;

18 THE MEADOWBROOK MUTUAL WATER
COMPANY

19 DATED: Nov. 23, 2022

BEST BEST & KRIEGER LLP

20
21
22 By: /s/ Jeffrey V. Dunn

23 Eric L. Garner

24 Jeffrey V. Dunn

Wendy Wang

25 Attorneys for Defendant, Cross-Defendant, &
Cross-Complainant

26 SEARLES VALLEY MINERALS INC.

EXHIBIT A

James A. Worth, State Bar No. 147207
McMURTREY, HARTSOCK, WORTH & ST LAWRENCE
2001 22nd Street, Suite 100
Bakersfield, California 93301
Telephone No.: 661.322.4417
Fax No.: 661.322.8123
Email: jim@mhwslegal.com

Exempt From Fees Per
Govt. Code § 6103

Douglas J. Evertz, State Bar No. 123066
Emily L. Madueno, State Bar No. 251721
MURPHY & EVERTZ LLP
650 Town Center Drive, Suite 550
Costa Mesa, California 92626
Telephone No.: 714.277.1700
Fax No.: 714.277.1777
Email: jmurphy@murphyevertz.com
devertz@murphyevertz.com
emadueno@murphyevertz.com

Attorneys for Defendant, Cross-Complainant, & Cross-Defendant
INDIAN WELLS VALLEY WATER DISTRICT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE, CIVIL COMPLEX CENTER

MOJAVE PISTACHIOS, LLC; et al.,

Plaintiffs,

v.

INDIAN WELLS VALLEY WATER
DISTRICT; et al.,

Defendants.

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

*[Related to: Case No. 30-2021-01187589-CU-
WM-CXC; Case No. 30-2021-01188089-CU-
WM-CXC; Case No. 30-2022-01239479-CU-
MC-CJC; Case No. 30-2022-01239487-CU-
MC-CJC; Case No. 30-2022-01249146-CU-
MC-CJC]*

Assigned For All Purposes To:
The Honorable William Claster, Dept. CX104

**JOINT REQUEST FOR ASSIGNMENT
BY CHAIRPERSON OF THE JUDICIAL
COUNCIL (C.C.P. § 838(a))**

Complaint Filed: November 19, 2019
Trial Date: None Set

INDIAN WELLS VALLEY WATER
DISTRICT,

Cross-Complainant,

v.

ALL PERSONS WHO CLAIM A RIGHT
TO EXTRACT GROUNDWATER IN THE
INDIAN WELLS VALLEY
GROUNDWATER BASIN NO. 6-54
WHETHER BASED ON
APPROPRIATION, OVERLYING RIGHT,
OR OTHER BASIS OF RIGHT, AND/OR
WHO CLAIM A RIGHT TO USE OF
STORAGE SPACE IN THE BASIN; et al.,

Cross-Defendants.

SEARLES VALLEY MINERALS INC.,

Cross-Complainant,

v.

ALL PERSONS WHO CLAIM A RIGHT
TO EXTRACT GROUNDWATER IN THE
INDIAN WELLS VALLEY
GROUNDWATER BASIN NO. 6-54
WHETHER BASED ON
APPROPRIATION, OVERLYING RIGHT,
OR OTHER BASIS OF RIGHT, AND/OR
WHO CLAIM A RIGHT TO USE OF
STORAGE SPACE IN THE BASIN; et al.,

Cross-Defendants.

AND RELATED CASES.

1 Defendant, Cross-Complainant, and Cross-Defendant Indian Wells Valley Water District
2 (the “District”); Plaintiffs and Cross-Defendants Mojave Pistachios, LLC, John Thomas
3 Conaway, John Thomas Conaway Trust, John Thomas Conaway Living Trust u/d/t August 7,
4 2008, Nugent Family Trust, and Sierra Shadows Ranch LP (collectively, “Plaintiffs”);
5 Defendant, Cross-Defendant, and Cross-Complainant Searles Valley Minerals Inc. (“Searles”);
6 Defendants and Cross-Defendants Meadowbrook Dairy Real Estate, LLC, Big Horn Fields,
7 LLC, Brown Road Fields, LLC, Highway 395 Fields, LLC, and the Meadowbrook Mutual Water
8 Company (collectively, “Meadowbrook”); Cross-Defendant the United States of America (the
9 “United States”); and the Indian Wells Valley Groundwater Authority (“Authority”) together
10 respectfully request that:

11 1. Pursuant to Code of Civil Procedure section 838(a)(1), the Chairperson of the
12 Judicial Council assign a judge to preside in all proceedings in the above-captioned matter,
13 which constitutes a comprehensive adjudication of a groundwater basin thereby effecting
14 disqualification of all Judges of the Superior Courts of California for the Counties of Inyo, Kern,
15 and San Bernardino.

16 2. The Chairperson of the Judicial Council assign the judge before whom the
17 above-captioned matter currently is pending and to whom the above-captioned matter currently
18 is assigned for all purposes, The Honorable William D. Claster, Judge of the Superior Court of
19 California for the County of Orange, as the judge assigned to preside in all proceedings in the
20 above-captioned matter.

21
22 The foregoing requests are made with reference to the following facts and circumstances:

23 **The Pleadings in the Comprehensive Adjudication**

24 A. On November 19, 2019, Plaintiffs filed a Complaint for Quiet Title, Declaratory
25 Relief and Injunction Imposing a Physical Solution: Not General Adjudication against the
26 District, Searles, and Meadowbrook in the above-captioned matter. On August 3, 2020,
27 Plaintiffs filed a First Amended Complaint for Quiet Title, Declaratory Relief and Injunction
28 Imposing a Physical Solution: Not General Adjudication (the “Complaint”). Through their

1 Complaint, Plaintiffs seek: (1) to quiet title to their water rights in the Indian Wells Valley
2 Groundwater Basin, Basin No. 6-54 (the “Basin”); (2) a declaration of their overlying water
3 rights to extract and store groundwater within the Basin; and (3) to impose a limited physical
4 solution among Plaintiffs, the District, Searles, and Meadowbrook and to enjoin the District,
5 Searles, and Meadowbrook from inconsistent conduct.

6 B. In response to the Complaint, on June 16, 2021, the District filed a
7 Cross-Complaint for Comprehensive Adjudication of the Basin pursuant to the California
8 Streamlined Groundwater Adjudication Statutes (Code Civ. Proc., §§ 830-852) (the
9 “Comprehensive Adjudication”). Through the Comprehensive Adjudication, the District seeks:
10 (1) a determination of all rights to extract (aka pump) groundwater in the Basin, whether based
11 on appropriation, overlying right, or other basis of right, and all rights to use of storage space
12 within the Basin; (2) entry of judgment based upon the criteria set forth in Code of Civil
13 Procedure section 850; and (3) imposition of a physical solution pursuant to Code of Civil
14 Procedure section 849.

15 16 **Related Cases**

17 C. *Searles Valley Minerals Inc. v. Indian Wells Valley Groundwater Authority; et al.*,
18 Orange County Superior Court Case No. 30-2021-01188089 (the “Searles Action”). On
19 September 29, 2020, Searles filed a Petition for Writ of Mandate; Complaint for Declaratory and
20 Injunctive Relief; and Takings Claims under the California Constitution against the Indian Wells
21 Valley Groundwater Authority (the “Authority”) and the Authority’s Board of Directors. On or
22 about August 25, 2021, Searles filed a First Amended Petition for Writ of Mandate and
23 Complaint for Declaratory and Injunctive Relief; and Takings Claim under the California
24 Constitution. Through its petition, Searles challenges the validity of the Groundwater
25 Sustainability Plan adopted by the Authority and its Board of Directors on January 16, 2020 (the
26 “GSP”).

27 D. *Mojave Pistachios, LLC; et al. v. Indian Wells Valley Groundwater Authority; et*
28 *al.*, Orange County Superior Court Case No. 30-2021-01187589 (the “Mojave Pistachios

1 Action”). On September 30, 2020, Mojave Pistachios, LLC and Paul G. Nugent and Mary E.
2 Nugent, Trustees of the Nugent Family Trust dated June 20, 2011 (collectively, “Mojave
3 Pistachios”) filed a Petition for Writ of Mandamus and Complaint against the Authority and its
4 Board of Directors. On or about August 25, 2021, Mojave Pistachios filed a Second Amended
5 Petition for Writ of Mandamus and Complaint. Through its petition, Mojave Pistachios alleges,
6 *inter alia*, that the Authority and its Board of Directors adopted an illegal and technically
7 deficient GSP. A hearing on Mojave Pistachios’ Motion for Leave to Amend to file a Third
8 Amended Petition is set to occur on August 26, 2022.

9 E. *Indian Wells Valley Groundwater Authority v. Mojave Pistachios, LLC; et al.*,
10 Orange County Superior Court Case No. 30-2022-01239479 (the “Authority v. Mojave
11 Pistachios Action”). On January 5, 2022, the Authority filed a Complaint for Preliminary and
12 Permanent Injunction; Recovery of Delinquent Groundwater Fees; and Civil Penalties against
13 Mojave Pistachios. Through its complaint, the Authority seeks to enjoin Mojave Pistachios from
14 operating groundwater wells without payment of Basin replenishment fees, delinquent
15 groundwater extraction charges, and civil penalties.

16 F. *Indian Wells Valley Groundwater Authority v. Searles Valley Minerals Inc.*,
17 Orange County Superior Court Case No. 30-2022-01239487 (the “Authority v. Searles Action”).
18 On January 5, 2022, the Authority filed a Complaint for Preliminary and Permanent Injunction;
19 Recovery of Delinquent Groundwater Fees; and Civil Penalties against Searles. Through its
20 complaint, the Authority seeks to enjoin Searles from operating groundwater wells without
21 payment of Basin replenishment fees, delinquent groundwater extraction charges, and civil
22 penalties.

23 G. *Mojave Pistachios, LLC; et al. v. Indian Wells Valley Groundwater Authority; et*
24 *al.*, Orange County Superior Court Case No. 30-2022-01249146 (the “Second Mojave Pistachios
25 Action”). On March 9, 2022, Mojave Pistachios filed a Complaint for Refund of Extraction Fees
26 Paid against the Authority and its Board of Directors. Through its complaint, Mojave Pistachios
27 seeks to recover fee payments levied by the Authority and its Board of Directors pursuant to
28 Ordinance No. 02-18, as later amended by Ordinance Nos. 02-20 and 05-20, which impose a

1 \$105 per acre-foot groundwater extraction fee, which the Authority and its Board of Directors
2 state is necessary to finance the estimated costs to develop and adopt the GSP. A hearing on the
3 demurrer by the Authority and its Board of Directors to Mojave Pistachios' complaint is set for
4 August 26, 2022.

5 H. Code of Civil Procedure section 838(d) provides that "an action against a
6 groundwater sustainability agency that is located in a basin that is being adjudicated pursuant to
7 this chapter shall be subject to transfer, coordination, and consolidation with the comprehensive
8 adjudication, as appropriate, if the action concerns the adoption, substance, or implementation of
9 a groundwater sustainability plan, or the groundwater sustainability agency's compliance with
10 the timelines in the Sustainable Groundwater Management Act."

11 I. The Comprehensive Adjudication, the Searles Action, the Mojave Pistachios
12 Action, the Authority v. Mojave Pistachios Action, the Authority v. Searles Action, and the
13 Second Mojave Pistachios Action have all been deemed related.

14
15 **Venue Transfers**

16 J. The Complaints in the Comprehensive Adjudication, the Searles Action, and the
17 Mojave Pistachios Action were filed in Kern County Superior Court.

18 K. On or about January 13, 2021, the parties to the Searles Action and the Mojave
19 Pistachios Action stipulated to consolidate the two actions and transfer venue to the neutral
20 county of Orange County, pursuant to Code of Civil Procedure section 394(a).

21 L. On January 15, 2021, the Kern County Superior Court entered an order
22 transferring the consolidated Searles Action and Mojave Pistachios Action to Orange County
23 Superior Court.

24 M. Because the District had expressed its intention to file the Comprehensive
25 Adjudication and Code of Civil Procedure section 838 provides that any judge of a superior court
26 of a county overlying the Basin or any part of the Basin shall be disqualified (i.e., the Counties of
27 Inyo, Kern, and San Bernardino), Plaintiffs, the District, Searles, and Meadowbrook stipulated to
28

1 transfer the Comprehensive Adjudication to Orange County Superior Court with the consolidated
2 Searles Action and Mojave Pistachios Action.

3 N. On January 28, 2021, the Kern County Superior Court entered an order
4 transferring the Comprehensive Adjudication to Orange County Superior Court.

5
6 **Status of the Comprehensive Adjudication**

7 O. Initial Notice of Comprehensive Adjudication (Code Civ. Proc., § 835). Code of
8 Civil Procedure section 835 required the District to provide notice of the Comprehensive
9 Adjudication via first-class mail or email to a number of federal and state public agencies and
10 entities, operators of water systems, and Native American tribes. (Code Civ. Proc.,
11 § 835(a)(1)-(7), (b), & (c)(1)(A).) On July 1, 2021, the District filed a Notice of Completion of
12 Providing Notice of the Comprehensive Adjudication to the entities and individuals entitled to
13 receive notice pursuant to Code of Civil Procedure section 835. The notice stated that the
14 Comprehensive Adjudication is pending in Orange County Superior Court.

15 P. Mailing of the Adjudication Notice, Cross-Complaint, and Form Answer to Basin
16 Property Owners (Code Civ. Proc., § 836). Code of Civil Procedure section 836 required the
17 District to mail, by registered mail or certified mail, return receipt requested, a copy of the
18 Notice of Commencement of Groundwater Basin Adjudication (the “Adjudication Notice”),
19 cross-complaint, and form answer to all holders of fee title to real property overlying the basin.
20 (Code Civ. Proc., § 836(c) & (d)(1)(A)-(B).) The District reports that on December 21, 2021, a
21 mailing company the District retained began mailing a cover letter from the District, along with
22 the Adjudication Notice, the cross-complaint, and a form answer, to all property owners in the
23 Basin. The District further reports that it has completed that mailing process, having mailed to
24 over 18,000 addresses. The mailed documents stated that the Comprehensive Adjudication is
25 pending in Orange County Superior Court.

26 Q. Providing the Adjudication Notice and Form Answer to Various Entities for
27 Posting Online (Code Civ. Proc., § 836). Code of Civil Procedure section 836 required the
28 District to provide the Adjudication Notice and form answer to the California Department of

1 Water Resources and each county and groundwater sustainability agency that overlies the Basin
2 or a portion of the Basin, so that these entities could post those documents on their websites.
3 (Code Civ. Proc., § 836(m).) The District reports that it provided the Adjudication Notice and
4 form answer to the California Department of Water Resources, the Counties of Inyo, Kern, and
5 San Bernardino, and the Indian Wells Valley Groundwater Authority. These documents stated
6 that the Comprehensive Adjudication is pending in Orange County Superior Court.

7 R. Publication of the Adjudication Notice (Code Civ. Proc., § 836). Code of Civil
8 Procedure section 836 required the District to publish the Adjudication Notice once a week for
9 four consecutive weeks in at least one newspaper of general circulation within each county
10 overlying the Basin. (Code Civ. Proc., § 836(d)(1)(D).) The Basin overlies portions of Inyo,
11 Kern, and San Bernardino Counties. The District reports having completed publication in the
12 three counties between January 3, 2022 and February 3, 2022. The published Adjudication
13 Notice stated that the Comprehensive Adjudication is pending in Orange County Superior Court.

14
15 **Judicial Assignment**

16 S. The Comprehensive Adjudication, the Searles Action, and the Mojave Pistachios
17 Action were previously pending before, and assigned for all purposes to, The Honorable Kirk H.
18 Nakamura until he retired and then before and to The Honorable James J. Di Cesare until he
19 retired.

20 T. The Comprehensive Adjudication, the Searles Action, the Mojave Pistachios
21 Action, the Authority v. Mojave Pistachios Action, the Authority v. Searles Action, and the
22 Second Mojave Pistachios Action are all pending before, and assigned for all purposes to, The
23 Honorable William D. Claster.

24 U. On May 20, 2022, at the initial Case Management Conference in the
25 Comprehensive Adjudication, the Court, with The Honorable William D. Claster presiding,
26 expressed a willingness to continue to preside over all of the related cases, including the
27 Comprehensive Adjudication. The Court ordered the District to take the lead in requesting that
28

1 the Chairperson of the Judicial Council assign a judge to preside over all proceedings in the
2 Comprehensive Adjudication, pursuant to Code of Civil Procedure section 838(a)(1).

3
4 DATED: August 10, 2022

MURPHY & EVERTZ LLP

5
6 */s/ Douglas J. Evertz*

7 By: _____

Douglas J. Evertz

8 Emily L. Madueno

9 Attorneys for Defendant, Cross-Complainant, &
Cross-Defendant

10 INDIAN WELLS VALLEY WATER DISTRICT

11
12
13 DATED: August 10, 2022

BROWNSTEIN HYATT FARBER SCHRECK, LLP

14
15 */s/ Elisabeth L. Esposito*

16 By: _____

Scott S. Slater

17 Robert J. Saperstein

Amy M. Steinfeld

18 Elisabeth L. Esposito

Attorneys for Plaintiffs & Cross-Defendants

19 MOJAVE PISTACHIOS, LLC;

20 JOHN THOMAS CONAWAY;

JOHN THOMAS CONAWAY TRUST;

21 JOHN THOMAS CONAWAY LIVING TRUST u/d/t
August 7, 2008;

22 NUGENT FAMILY TRUST;

23 SIERRA SHADOWS RANCH LP

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DATED: August 10, 2022

BEST BEST & KRIEGER LLP

By: /s/ Jeffrey V. Dunn

Eric L. Garner
Jeffrey V. Dunn
Wendy Y. Wang
Sarah Christopher Foley
Daniel L. Richards
Amanda K. Wells
Attorneys for Defendant, Cross-Defendant, &
Cross-Complainant
SEARLES VALLEY MINERALS INC.

DATED: August 10, 2022

FENNEMORE LLP

By: /s/ Derek R. Hoffman

Derek R. Hoffman
Byrin Romney
Attorneys for Defendants & Cross-Defendants
MEADOWBROOK DAIRY REAL ESTATE, LLC;
BIG HORN FIELDS, LLC;
BROWN ROAD FIELDS, LLC;
HIGHWAY 395 FIELDS, LLC;
THE MEADOWBROOK MUTUAL WATER
COMPANY

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DATED: August 10, 2022

U.S. DEPARTMENT OF JUSTICE

By: /s/ R. Lee Leininger

R. Lee Leininger
David W. Gehlert
Attorneys for Cross-Defendant
UNITED STATES OF AMERICA

DATED: August 10, 2022

RICHARDS, WATSON & GERSHON

By: /s/ James L. Markman

James L. Markman
B. Tildon Kim
Kyle H. Brochard
Jack Hensly
Attorneys for Cross-Defendant
INDIAN WELLS VALLEY GROUNDWATER
AUTHORITY

EXHIBIT B

EXHIBIT C

EXHIBIT D

EXHIBIT E

James A. Worth, State Bar No. 147207
McMURTREY, HARTSOCK, WORTH & ST LAWRENCE
2001 22nd Street, Suite 100
Bakersfield, California 93301
Telephone No.: 661.322.4417
Fax No.: 661.322.8123
Email: jim@mhwslegal.com

Exempt From Fees Per
Govt. Code § 6103

John C. Murphy, State Bar No. 94192
Douglas J. Evertz, State Bar No. 123066
Emily L. Madueno, State Bar No. 251721
MURPHY & EVERTZ LLP
650 Town Center Drive, Suite 550
Costa Mesa, California 92626
Telephone No.: 714.277.1700
Fax No.: 714.277.1777
Email: jmurphy@murphyevertz.com
devertz@murphyevertz.com
emadueno@murphyevertz.com

Attorneys for Defendant, Cross-Complainant, & Cross-Defendant
INDIAN WELLS VALLEY WATER DISTRICT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE, CIVIL COMPLEX CENTER

MOJAVE PISTACHIOS, LLC; et al.,

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v.

INDIAN WELLS VALLEY WATER
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MC-CJC; Case No. 30-2022-01249146-CU-
MC-CJC]*

Assigned For All Purposes To:
The Honorable William Claster, Dept. CX104

**[PROPOSED] ORDER AUTHORIZING
ELECTRONIC FILING AND SERVICE –
CASE ANYWHERE LLC**

INDIAN WELLS VALLEY WATER
DISTRICT,

Cross-Complainant,

v.

ALL PERSONS WHO CLAIM A RIGHT
TO EXTRACT GROUNDWATER IN THE
INDIAN WELLS VALLEY
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WHETHER BASED ON
APPROPRIATION, OVERLYING RIGHT,
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STORAGE SPACE IN THE BASIN; et al.,

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SEARLES VALLEY MINERALS INC.,

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ALL PERSONS WHO CLAIM A RIGHT
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INDIAN WELLS VALLEY
GROUNDWATER BASIN NO. 6-54
WHETHER BASED ON
APPROPRIATION, OVERLYING RIGHT,
OR OTHER BASIS OF RIGHT, AND/OR
WHO CLAIM A RIGHT TO USE OF
STORAGE SPACE IN THE BASIN; et al.,

Cross-Defendants.

AND RELATED CASES.

Complaint Filed:
Trial Date:

November 19, 2019
None Set

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Pursuant to Code of Civil Procedure section 187 and California Rules of Court, rules 2.253(b) and 3.751 and the joint request of the major pumpers within the subject basin as made in the Joint Case Management Conference for the Case Management Conference on December 2, 2022, the Court makes this Order to reduce the costs of litigation and to facilitate case management, document retrieval, and case organization. The Court finds that entry of this Order is necessary for the just, expeditious, and efficient litigation of this case and that compliance with the terms of this Order will not result in unnecessary hardship or significant prejudice to any of the parties in this matter.

1. To facilitate case management, document retrieval, and case organization, the parties will utilize the services of Case Anywhere LLC (“Case Anywhere”) and its litigation system (“Case Management System”) for providing electronic filing, electronic service, storage, and delivery of court-filed and discovery-related documents through a secure website. Counsel of record for any party to this case must sign up with Case Anywhere and will be individually responsible for payment of applicable Case Anywhere fees. Unrepresented parties may, but are not required to, sign up with Case Anywhere. The Court, at its option, may also use Case Anywhere and the Case Management System for these purposes as well as to communicate with counsel of record.

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Service List and Sign-Up

3. Within five (5) days of this Order, counsel for Defendant, Cross-Complainant, and Cross-Defendant Indian Wells Valley Water District (“District”) shall submit to Case Anywhere a complete and current service list which will contain email addresses where available. Within five (5) days of this Order, counsel of record for each party shall provide the following information to Case Anywhere:

- (a) Office address;
- (b) Office telephone number;
- (c) Office facsimile number;
- (d) The identity of the party or parties represented;
- (e) The identity of attorney(s) of record for the party or parties represented;
- (f) A list of other attorney(s) to be provided access on behalf of the party or parties represented (if any);
- (g) A list of firm professional staff to be provided access on behalf of the party or parties represented (if any);
- (h) Email addresses of all attorneys and professional staff to be provided access on behalf of the party or parties represented; and
- (i) The name and address of the individual designated on behalf of the party or parties represented to receive billing invoices.

Any unrepresented parties opting to sign up with Case Anywhere shall provide similar contact information. This information, whether provided by represented or unrepresented parties, shall be provided to Case Anywhere by email at its support address (support@caseanywhere.com), citing the case title in the subject line, or through the Case Initiation Form located on the Case Anywhere website (<https://www.caseanywhere.com/get-started/initiate-a-new-case>). Each party that signs up with Case Anywhere is responsible for providing up-to-date information for Case Anywhere’s service list. Each user is responsible for ensuring that his or her email account settings will allow receipt of emails from service@caseanywhere.com.

1 **Filing of Documents**

2 4. All documents required to be electronically filed under Orange County Superior
3 Court Local Rules, rule 352 shall be filed in conformity with that rule, the terms of which are
4 incorporated by reference. Rule 352 is available at: [http://www.occourts.org/online-](http://www.occourts.org/online-services/efiling/efiling-civil.html)
5 [services/efiling/efiling-civil.html](http://www.occourts.org/online-services/efiling/efiling-civil.html).

6 **Service of Documents and Website**

7 5. When any party wishes to serve a document, that party shall serve the document
8 according to all the requirements and procedures of this Order. All references to “document” in
9 this Order shall be interpreted to include any exhibits or attachments to the document and shall
10 include both pleadings and discovery-related documents (such as interrogatories, requests for
11 production, deposition notices, and etc.); provided, however, that each party shall determine
12 individually whether to use the Case Management System to serve document productions and
13 correspondence.

14 6. Case Anywhere shall establish and maintain an Internet website (“Case
15 Management Website”) for this litigation. Case Anywhere will post to the Case Management
16 Website all documents served by the parties as provided in this Order and shall serve each
17 document on the parties included on the service list provided to Case Anywhere in accordance
18 with the procedures in this Order.

19 7. Each party shall serve each document via electronic transfer of the document file
20 to Case Anywhere (in Word, WordPerfect, or PDF format) through the Internet. Each party shall
21 title each document the same as the title of the document on the caption page. Each document
22 electronically served pursuant to this Order shall be deemed to have been served under the
23 California Code of Civil Procedure and California Rules of Court.

24 8. After Case Anywhere receives a document, Case Anywhere shall convert such
25 document into PDF format (if it is not already uploaded in PDF format) and post it to the Case
26 Management Website. Proposed orders and other documents directed by the Court to be
27 uploaded in native format should be designated as “not for conversion to PDF format” by the
28 uploading user.

1 9. Case Anywhere shall send an email to all registered users notifying them that the
2 document has been posted to the Case Management Website. The email shall contain a
3 hypertext link to the document.

4 10. Electronic service shall be complete at the time of transmission by a party to Case
5 Anywhere, provided any period of notice or any right or duty to do any act or make any response
6 within any period or on a date certain after service of the document, which time period or date is
7 prescribed by statute or rule of court, shall be extended after service by electronic transmission
8 by two court days, but the extension shall not extend the time for filing a notice of intention to
9 move for new trial, a notice of intention to move to vacate judgment pursuant to Code of Civil
10 Procedure section 663a, or a notice of appeal.

11 11. If a document that is to be filed with the Court is rejected by the Court for filing
12 after it has been posted on the Case Management Website by Case Anywhere, the rejection was
13 caused by an aspect of the caption of the document, and the party seeking to file the document
14 successfully files it with the Court within two (2) court days of its rejection with revisions to the
15 caption only, then the party filing the document shall promptly submit a notice of successful
16 filing, including the date of the filing and the revised page(s) of the caption, to Case Anywhere
17 for posting on the Case Management Website. In all other circumstances in which a document to
18 be filed with the Court is rejected for filing after Case Anywhere has posted it on the Case
19 Management Website, the party that caused the document to be posted shall promptly notify
20 Case Anywhere in writing that the document was rejected by the Court for filing. Case
21 Anywhere shall cause a permanent notation to be placed on the Case Management Website in
22 conjunction with that document memorializing the fact of its rejection.

23 12. All documents posted on the Case Management System will be identified by:
24 (a) the name of the serving counsel of record or unrepresented party; (b) the caption(s) of the
25 case(s) to which the document belongs; and (c) the title of the document set forth in its caption.

26 13. The Case Management System shall contain an index of all documents served in
27 the litigation that is searchable and sortable according to methods that are useful.
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1 14. Access to the Case Management System will be limited to registered users.
2 Registered users will consist of authorized Court personnel, Court-appointed special masters and
3 referees, counsel of record and their designated staff members, parties, consultants, and experts.
4 Case Anywhere will provide each registered user with a username and password to access the
5 Case Management System and the documents served in the litigation. Case Anywhere personnel
6 will perform all administrative functions for the Case Management System, but all initial data as
7 well as additions, deletions, or changes to the service list must be provided by the parties. Any
8 disputes regarding initial data or additions, deletions, or changes to the service list shall be
9 submitted by Case Anywhere to the Court for resolution.

10 15. Every pleading, document, and instrument served electronically shall bear a
11 facsimile or typographical signature of at least one of the attorneys of record (or, if applicable,
12 the signature of an unrepresented party), along with the typed name, address, telephone number,
13 and State Bar of California number of such attorney. Typographical signatures shall be treated
14 exactly as personal signatures for purposes of electronically served documents under the
15 California Code of Civil Procedure and California Rules of Court. The serving party of any
16 document requiring multiple signatures (e.g., stipulations, joint status reports, and etc.) must list
17 thereon all the names of other signatories by means of an “s/___” block for each. By submitting
18 such a document, the serving party certifies that each of the other signatories has expressly
19 agreed to the form and substance of the document and that the serving party has the actual
20 authority to submit the document electronically. The serving party must maintain any records
21 evidencing this concurrence for subsequent production to the Court if so ordered or for
22 inspection upon request by a party.

23 16. Any document transmitted to the Case Management System shall certify in the
24 Proof of Service that a true and correct copy was electronically served by transmission to Case
25 Anywhere.

26 17. This Order, and any modifications to it, shall also apply to any new parties that
27 subsequently enter the action. All such parties must register with Case Anywhere within five (5)
28 days of their first appearance in the case.

1 18. Case Anywhere shall have available to registered users a telephone helpline
2 ((800) 884-3163) and e-mail support (support@caseanywhere.com).

3 **Conclusion of Service**

4 19. Unless otherwise instructed by the Court, Case Anywhere shall maintain the Case
5 Management Website and provide access to registered users until the earlier of the following two
6 events: (a) all parties have exhausted their appeals (or all appeal periods have lapsed) or, if the
7 matter is settled as to all parties, all parties have been dismissed from the case; or (b) the Court
8 instructs Case Anywhere to terminate the service.

9 20. Notwithstanding the above, access for individual counsel of record will be
10 terminated upon the earlier of the following: (a) all parties represented by that counsel of record
11 have been voluntarily dismissed; (b) the counsel of record no longer represents any party in the
12 litigation; or (c) a final judgment for or against each party represented by the counsel of record
13 has been issued and all appeals therefrom have been exhausted or concluded. Access for
14 unrepresented parties will be terminated upon the earlier of the following: (a) the party has been
15 voluntarily dismissed; or (b) a final judgment for or against the party has been issued and all
16 appeals therefrom have been exhausted or concluded. Each counsel of record and unrepresented
17 party is responsible for informing Case Anywhere of the foregoing occurrence.

18 21. Each counsel of record shall notify Case Anywhere if access by any of its
19 registered users shall be terminated for any reason. Upon receipt of such notification, Case
20 Anywhere shall terminate access rights for the indicated individual. Access to the Case
21 Management Website must be maintained for at least one attorney of record for a represented
22 party unless access has otherwise been terminated pursuant to the provisions above.

23 22. Counsel for the District shall give notice of this Order.

24 **IT IS SO ORDERED.**

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26 Dated: _____

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The Honorable William Claster

28 JUDGE OF THE SUPERIOR COURT