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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. CX101

**DEFENDANT, CROSS-COMPLAINANT,
AND CROSS-DEFENDANT INDIAN
WELLS VALLEY WATER DISTRICT'S
NOTICE RE: DECISION ON POSTING**

{00270593.1 }

DEFENDANT, CROSS-COMPLAINANT, AND CROSS-DEFENDANT INDIAN WELLS VALLEY WATER
DISTRICT'S NOTICE RE: DECISION ON POSTING

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

1 **TO THE HONORABLE COURT AND ALL PARTIES AND THEIR**
2 **ATTORNEYS OF RECORD:**

3 **PLEASE TAKE NOTICE** that Defendant, Cross-Complainant, and Cross-Defendant
4 Indian Wells Valley Water District (“District”) hereby provides notice, as ordered by the Court
5 at the December 15, 2023 Status Conference, of District’s decision whether to opt to post a copy
6 of the Notice of Commencement of Groundwater Basin Adjudication (“Adjudication Notice”),
7 Cross-Complaint for Comprehensive Adjudication of the Indian Wells Valley Groundwater
8 Basin No. 6-54 (“Basin”) Pursuant to Section 830 *et seq.* of the Code of Civil Procedure
9 (“Adjudication Cross-Complaint”), and Form Answer to Adjudication Cross-Complaint (“Form
10 Answer”) in a conspicuous place on each of the parcels for which District did not receive
11 confirmation of delivery of District’s certified mailing of the Adjudication Notice, Adjudication
12 Cross-Complaint, and Form Answer to all holders of fee title to real property overlying the Basin
13 and to the physical address of the property where the addresses differed, pursuant to Code of
14 Civil Procedure section 836(d)(1)(C).

15 **PLEASE TAKE FURTHER NOTICE** that District **will post** pursuant to Code of Civil
16 Procedure section 836(d)(1)(C). District will work towards completing the posting before the
17 next Status Conference on March 22, 2024. In particular:

18 A. District will post through, among other things, companies specializing in posting
19 notice on properties for purposes of litigation, and has retained ILYM Group, Inc., a company
20 that specializes in posting, among other services.

21 B. Method of posting:

22 (1) Single-family residences: Doorknob hangers, taping to the front door, or
23 affixing to front fence or gate.

24 (2) Businesses: Doorknob hangers, taping to the front door, or affixing to
25 front fence or gate.

26 (3) Vacant properties: Papers enclosed in waterproof/weatherproof material
27 staple gunned to a wooden post or zip-tied to fencing.

(4) Apartment buildings/multi-family residential complexes: Papers left in manager's office or affixed to community board.

(5) Mobile home parks: Papers left in manager's office or affixed to community board.

PLEASE TAKE FURTHER NOTICE that despite District's decision to post, it is District's position that it already completed and complied with all service and notice requirements of the California Streamlined Groundwater Adjudication Statutes (Code Civ. Proc., §§ 830-852) and Court orders relating to service and notice, and, thus, has provided notice to all interested parties and effectively joined all interested parties to this comprehensive adjudication. In particular:

A. Initial Notice of Comprehensive Adjudication Provided: Code of Civil Procedure section 835 required District to provide notice of the Comprehensive Adjudication via first-class mail or email to: (1) a groundwater sustainability agency that overlies the Basin or a portion of the Basin; (2) a city, county, or city and county that overlies the Basin or a portion of the Basin; (3) a district with authority to manage or replenish groundwater resources of the Basin in whole or in part; (4) the operator of a public water system or state small water system that uses groundwater from the Basin to supply water service; (5) a California Native American tribe that is on the contact list maintained by the Native American Heritage Commission; (6) the Attorney General, the State Water Resources Control Board, the Department of Water Resources, and the Department of Fish and Wildlife; and (7) a federal 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), 835(b), & 835(c)(1)(A).) On July 1, 2021, District filed a Notice of Completion of Providing Notice Pursuant to Code of Civil Procedure Sections 835(a)(1)-(7), 835(b), and 835(e)(1)(A) (Register of Actions ("ROA") No. 150), confirming that it had provided notice to the entities and individuals entitled to receive notice under section 835. District's March 10, 2023 Notice of Completion of Mailing (Code Civ. Proc., § 836(e)) (ROA No. 946) and supporting declarations (ROA Nos. 947, 948, 949) also confirm satisfaction of these statutory requirements.

1 B. Adjudication Notice Provided to Others for Posting Online: Code of Civil
2 Procedure section 836 required District to provide the court-approved Adjudication Notice and
3 Form Answer to the California Department of Water Resources and each county and
4 groundwater sustainability agency that overlies the Basin or a portion of the Basin, so that these
5 entities could post those documents on their websites. (Code Civ. Proc., § 836(m).) District's
6 March 10, 2023 Notice of Completion of Mailing (Code Civ. Proc., § 836(e)) (ROA No. 946)
7 and supporting declarations (ROA Nos. 947, 948, 949) confirm satisfaction of this statutory
8 requirement.

9 C. Certified Mailing to All Basin Property Owners Completed: Section 836 required
10 District to (1) identify the assessor parcel numbers and physical addresses of all real property
11 overlying the Basin and the names and addresses of all holders of fee title to real property
12 overlying the Basin using the records of the assessors of the counties overlying the basin; and
13 (2) mail, by registered mail or certified mail, return receipt requested, a copy of the
14 court-approved Adjudication Notice, court-approved Form Answer, and Adjudication
15 Cross-Complaint to all holders of fee title to real property overlying the Basin. (Code Civ. Proc.,
16 §§ 836(c) & 836(d)(1)(A)-(B).) On November 15, 2021, District filed a Notice of Acquisition of
17 Information Concerning Real Property in the Basin (Code Civ. Proc., § 836(d)(1)(A)) (ROA
18 No. 220), confirming that it had identified the assessor parcel numbers and physical addresses of
19 all real property overlying the Basin and the names and addresses of all holders of fee title to real
20 property overlying the Basin using the records of the assessors of the Counties of Inyo, Kern, and
21 San Bernardino. On March 10, 2023, District filed a Notice of Completion of Mailing (Code
22 Civ. Proc., § 836(e)) (ROA No. 946) and supporting declarations (ROA Nos. 947, 948, 949),
23 confirming that it had completed the certified mailing process.

24 D. Publication of Adjudication Notice Completed: Section 836 also required District
25 to publish the Adjudication Notice once a week for four consecutive weeks in at least one
26 newspaper of general circulation within each county overlying the Basin. (Code Civ. Proc.,
27 § 836(d)(1)(D).) The Basin overlies portions of Inyo, Kern, and San Bernardino Counties. On
28 January 3, 2022, District filed a Proof of Publication (ROA No. 232) confirming publication of

1 the Adjudication Notice in *The Inyo Register* (a newspaper of general circulation within Inyo
2 County and printed and published in the City of Bishop) at least once a week for four
3 consecutive weeks. On January 14, 2022, District filed a Proof of Publication (ROA No. 243)
4 confirming publication of the Adjudication Notice in the *San Bernardino County Sun* (a
5 newspaper of general circulation within San Bernardino County and printed and published in the
6 City of San Bernardino) at least once a week for four consecutive weeks. Also on
7 January 14, 2022, District filed a Proof of Publication (ROA No. 245) confirming publication of
8 the Adjudication Notice in *The Daily Independent* (a newspaper of general circulation within
9 Kern County and printed and published in the City of Ridgecrest) at least once a week for four
10 consecutive weeks. On February 3, 2022, District filed a Proof of Publication (ROA No. 283)
11 confirming publication of the Adjudication Notice in *The News Review* (a newspaper of general
12 circulation in Kern County and printed and published in the City of Ridgecrest) at least once a
13 week for four consecutive weeks. District’s March 10, 2023 Notice of Completion of Mailing
14 (Code Civ. Proc., § 836(e)) (ROA No. 946) and supporting declarations (ROA Nos. 947, 948,
15 949) confirm these publications.

16 E. Service on All Named Cross-Defendants Completed: Section 836 provides that
17 “[o]nce the court approves the draft notice [of commencement of comprehensive adjudication],
18 service of that notice in accordance with this section shall substitute for the summons otherwise
19 provided for in civil actions pursuant to Section 412.20.” (Code Civ. Proc., § 836(c).) Under
20 section 836, the party initiating the comprehensive adjudication “shall serve any known person
21 that pumps groundwater who would not otherwise be served pursuant to [the certified mailing
22 requirement].” (Code Civ. Proc., § 836(g).) District identified those entities, individuals, and
23 governmental entities within the Basin most likely to claim an interest in the Basin’s
24 groundwater—the known pumpers of Basin groundwater—and named them as cross-defendants
25 in the comprehensive adjudication. District’s March 10, 2023 Notice of Completion of Mailing
26 (Code Civ. Proc., § 836(e)) (ROA No. 946) and supporting declarations (ROA Nos. 947, 948,
27 949) confirm service on all named cross-defendants.

1 F. District Launched an Adjudication Website: Though not statutorily mandated or
2 suggested, upon filing the Adjudication Cross-Complaint, on June 16, 2021, District launched a
3 website for the adjudication and created a link to it from its own website. District's adjudication
4 website provides the public with key dates, such as the status conferences, and instructions on
5 how to participate in Court hearings; general information about the adjudication; important
6 documents, including the Adjudication Cross-Complaint, Adjudication Notice, Form Answer,
7 and status conference reports; a sample completed Form Answer; frequently asked questions;
8 and contact information for District's counsel. District's March 10, 2023 Notice of Completion
9 of Mailing (Code Civ. Proc., § 836(e)) (ROA No. 946) and supporting declarations (ROA
10 Nos. 947, 948, 949) discuss District's adjudication website.

11 G. District Hosted Public Workshops: On December 14, 2021 and January 26, 2022,
12 District held workshops for the public concerning this comprehensive adjudication, even though
13 such workshops were not statutorily mandated or suggested. District sought to educate the
14 public about the comprehensive adjudication, to assist the public in understanding how to
15 participate, and to answer the public's questions. District held both workshops in person and
16 simultaneously broadcast them on YouTube, where they were also recorded. District posted
17 links to both recordings on its adjudication website. District's March 10, 2023 Notice of
18 Completion of Mailing (Code Civ. Proc., § 836(e)) (ROA No. 946) and supporting declarations
19 (ROA Nos. 947, 948, 949) discuss District's public workshops.

20 H. District Communicated with the Public: District's counsel not only provided its
21 contact information to the public, but it also replied to emails and answered or returned telephone
22 calls from the public. Since its certified mailing of the Adjudication Cross-Complaint,
23 Adjudication Notice, and Form Answer, District has communicated with at least 450 members of
24 the public to provide general information about this comprehensive adjudication and how to
25 participate, and to answer questions. District's March 10, 2023 Notice of Completion of Mailing
26 (Code Civ. Proc., § 836(e)) (ROA No. 946) and supporting declarations (ROA Nos. 947, 948,
27 949) discuss District's responses to inquiries from the public.

1 I. District Increased its Community Outreach Efforts: Though not statutorily
2 mandated or suggested, District has increased its community outreach efforts with an increased
3 presence on social media, such as Facebook, with posts providing the public information about
4 this comprehensive adjudication, among other water issues. District’s March 10, 2023 Notice of
5 Completion of Mailing (Code Civ. Proc., § 836(e)) (ROA No. 946) and supporting declarations
6 (ROA Nos. 947, 948, 949) discuss District’s community outreach efforts.

7 J. District has Fostered Publicity of this Comprehensive Adjudication: Though not
8 statutorily mandated or suggested, District has fostered and encouraged local news outlets to
9 publicize groundwater issues facing the Basin, including this comprehensive adjudication. As a
10 result, this comprehensive adjudication has garnered significant press coverage. District’s
11 General Manager submits a quarterly column to *The Daily Independent*, a Ridgecrest newspaper
12 and, since District initiated this comprehensive adjudication, he has used his quarterly column to
13 notify readers of the adjudication. District’s March 10, 2023 Notice of Completion of Mailing
14 (Code Civ. Proc., § 836(e)) (ROA No. 946) and supporting declarations (ROA Nos. 947, 948,
15 949) discuss how District has fostered publicity of this comprehensive adjudication.

16 K. The Goal is Due Process: The purpose of notice under Code of Civil Procedure
17 section 836, as with any notice requirement, is to satisfy constitutional due process requirements.
18 (See generally Sen. Com. on Judiciary, Analysis of Assem. Bill No. 1390 (2015-2016 Reg.
19 Sess.) as amended July 6, 2015, pp. 10-12.) Due process requires notice and an opportunity to be
20 heard. (*Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 313; *Koshak v.*
21 *Malek* (2011) 200 Cal.App.4th 1540, 1547; *Kash Enterprises, Inc. v. City of Los Angeles* (1977)
22 19 Cal.3d 294, 307-308.) Notice satisfies due process if it is “reasonably calculated, under all
23 the circumstances, to apprise interested parties of the pendency of the action and afford them an
24 opportunity to present their objections.” (*Mullane, supra*, 339 U.S. at 314; *Koshak, supra*, 200
25 Cal.App.4th at 1547.) “[W]hen notice is a person’s due, process which is a mere gesture is not
26 due process. The means employed must be such as one desirous of actually informing the
27 absentee might reasonably adopt to accomplish it. The reasonableness and hence the
28 constitutional validity of any chosen method may be defended on the ground that it is in itself

1 reasonably certain to inform those affected . . . or . . . that the form chosen is not substantially
2 less likely to bring home notice than other of the feasible and customary substitutes.” (*Mullane*,
3 *supra*, 339 U.S. at 315.)

4 L. District Completed Service through Means More Likely than Posting to Provide
5 Notice: If due process is the goal, the Court has discretion to specify an alternative procedure for
6 providing notice to owners of property overlying the Basin in place of requiring posting,
7 especially where alternative methods are more likely to result in actual notice. Code of Civil
8 Procedure section 836(i) provides that the Court “may authorize any other procedures it finds
9 appropriate and necessary to provide notice to persons who may hold groundwater rights” in the
10 Basin. (Code Civ. Proc., § 836(i); see also Code Civ. Proc., § 415.10; Wat. Code, § 2527.)
11 Following the Court’s December 9, 2022 ruling (ROA Nos. 888, 890) on District’s unopposed
12 Motion for Order Granting Leave to Use Alternative Means to Complete Service under Code of
13 Civil Procedure section 836, District completed three alternative methods of service. District’s
14 March 10, 2023 Notice of Completion of Mailing (Code Civ. Proc., § 836(e)) (ROA No. 946),
15 supporting declarations (ROA Nos. 947, 948, 949), and Supplement Re: Status of Service to
16 Joint Case Management Conference Statement (ROA No. 944) confirm District completed a
17 targeted digital campaign advertising the Adjudication Notice on the Internet, directed to the
18 greater Ridgecrest and Inyokern areas, plus the small portions of Inyo and San Bernardino
19 Counties within the Basin, and viewed by more than 12,000 people; published a print
20 advertisement in *The Daily Independent*, *The Inyo Register*, and the *San Bernardino County Sun*
21 in a more prominent section of the newspaper outside the legal notices section at least once a
22 week for four consecutive weeks; and included notice of this comprehensive adjudication with
23 each of its January 2023 bills to customers.

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1 M. District's Notice Surpasses Typical Class Notice: The level of notice that District
2 has provided easily surpasses that generally required for class actions. In fact, in class actions, a
3 court may determine that notice to class members is not necessary and, therefore, may not
4 require any notice at all. (Cal. Rules of Court, rule 3.766(c)(1).) If a court requires notice to
5 class members, the court retains significant discretion to determine the manner of notice and may
6 permit notice through publication in a newspaper or magazine, broadcasting on television or the
7 Internet, or mailing by first-class mail. (Cal. Rules of Court, rule 3.766(c)(3), (e), & (f).)

8 Completion of the posting will leave no doubt about District's compliance.

9 **PLEASE TAKE FURTHER NOTICE** that upon proof of completion of the posting,
10 District requests the Court order as follows:

11 1. Based on the foregoing representations of District and those in its July 1, 2021
12 Notice of Completion of Providing Notice Pursuant to Code of Civil Procedure
13 Sections 835(a)(1)-(7), 835(b), and 835(e)(1)(A) (ROA No. 150); November 15, 2021 Notice of
14 Acquisition of Information Concerning Real Property in the Basin (Code Civ. Proc.,
15 § 836(d)(1)(A)) (ROA No. 220); March 10, 2023 Notice of Completion of Mailing (Code Civ.
16 Proc., § 836(e)) (ROA No. 946) and supporting declarations (ROA Nos. 947, 948, 949), and
17 March 10, 2023 Supplement Re: Status of Service to Joint Case Management Conference
18 Statement (ROA No. 944), the Court finds that District has complied with the service and notice
19 provisions of Chapter 7 of Title 10 of Part 2 of the Code of Civil Procedure;

20 2. Pursuant to Code of Civil Procedure section 836(j), the Court finds that such
21 compliance by District with the service and notice provisions of Chapter 7 of Title 10 of Part 2 of
22 the Code of Civil Procedure is deemed effective service of process of the Adjudication
23 Cross-Complaint and Adjudication Notice on all interested parties of this comprehensive
24 adjudication for purposes of establishing in rem jurisdiction and the comprehensive effect of this
25 comprehensive adjudication;

1 3. With in rem jurisdiction secured and the comprehensive effect of this
2 comprehensive adjudication established, the Court finds that any beneficial use previously
3 contemplated in connection with granting the Motion for Class Certification and Appointment of
4 Class Counsel of Cross-Defendant Indian Wells Valley Groundwater Authority has been
5 eliminated and the motion is DENIED with prejudice.

6
7 DATED: January 16, 2024

MURPHY & EVERTZ LLP

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9
10 By: /s/ Douglas J. Evertz

Douglas J. Evertz

Emily L. Madueno

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

INDIAN WELLS VALLEY WATER DISTRICT