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18 INDIAN WELLS VALLEY WATER DISTRICT

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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**

{00242270.1 }

1 INDIAN WELLS VALLEY WATER  
2 DISTRICT,

3 Cross-Complainant,

4 v.

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

14 Cross-Defendants.

15 SEARLES VALLEY MINERALS INC.,

16 Cross-Complainant,

17 v.

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

27 Cross-Defendants.

28 AND RELATED CASES.

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



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  
28

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

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

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

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

19 Once the Court approves an adjudication notice and form answer, section 836 requires  
20 the party initiating the comprehensive adjudication to (a) identify the assessor parcel numbers  
21 and physical addresses of all real property overlying the basin and the names and addresses of all  
22 holders of fee title to real property overlying the basin using the records of the assessors of the  
23 counties overlying the basin; and (b) mail, by registered mail or certified mail, return receipt  
24 requested, a copy of the adjudication notice, cross-complaint, and form answer to all holders of  
25 fee title to real property overlying the basin and to the physical address of the property where the  
26 owner’s mailing address and the physical address differ. (Code Civ. Proc., § 836(c) &  
27 (d)(1)(A)-(B).) On November 15, 2021, the District filed a Notice of Acquisition of Information  
28 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

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

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

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

- 10 • Inyo County: On January 3, 2022, the District filed a Proof of Publication  
11 confirming publication of the Adjudication Notice in *The Inyo Register*, a  
12 newspaper of general circulation within Inyo County and printed and published in  
13 the City of Bishop, County of Inyo.
- 14 • San Bernardino County: On January 14, 2022, the District filed a Proof of  
15 Publication confirming publication of the Adjudication Notice in the *San*  
16 *Bernardino County Sun*, a newspaper of general circulation within San  
17 Bernardino County and printed and published in the City of San Bernardino,  
18 County of San Bernardino.
- 19 • Kern County: On January 14, 2022, the District filed a Proof of Publication  
20 confirming publication of the Adjudication Notice in *The Daily Independent*, a  
21 newspaper of general circulation within Kern County and printed and published in  
22 the City of Ridgecrest, County of Kern.
- 23 • Kern County: On February 3, 2022, the District filed a Proof of Publication  
24 confirming publication of the Adjudication Notice in *The News Review*, a  
25 newspaper of general circulation within Kern County and printed and published in  
26 the City of Ridgecrest, County of Kern.



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

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

	<u><b>Cross-Defendant</b></u>	<u><b>Status</b></u>
12		
13	1. Mojave Pistachios, LLC	Answered 7/20/21
14	2. John Thomas Conaway	Answered 7/20/21
15	3. John Thomas Conaway Trust	Answered 7/20/21
16	4. John Thomas Conaway Living Trust u/d/t August	Answered 7/20/21
17	7, 2008	
18	5. Nugent Family Trust	Answered 7/20/21
19	6. Sierra Shadows Ranch LP	Answered 7/20/21
20	7. Searles Valley Minerals Inc.	Answered 8/17/21
21		Cross-Complaint Filed 8/17/21
22	8. Meadowbrook Dairy Real Estate, LLC	Answered 1/13/22
23	9. Big Horn Fields, LLC	Answered 1/13/22
24	10. Brown Road Fields, LLC	Answered 1/13/22
25	11. Highway 395 Fields, LLC	Answered 1/13/22
26	12. The Meadowbrook Mutual Water Company	Answered 1/13/22
27	13. The United States of America (“United States”)	Answered 10/25/21
28		

	<u>Cross-Defendant</u>	<u>Status</u>
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2	14. Patricia Davis dba Amberglow Ranch	Answered 4/8/22 as Patricia L.
3		Davis
4	15. Patrick Blubaugh	Answered 3/25/22
5	16. Michelle Blubaugh	Answered 3/25/22
6	17. Brady's Café and Mini Mart	Served 10/18/22
7	18. Buttermilk Acres	Served 8/14/22
8	19. China Lake Acres Mutual Water Company	Answered 3/16/22
9	20. CHLT Water Group Corporation	Served 10/13/22
10	21. City of Ridgecrest	Answered 2/18/22, 3/7/22
11	22. Bethany Condon	Served 1/4/22
12		Answer received by District; unclear
13		whether filed
14	23. Crestview Water System	C.C.P. § 835 initial notice of
15		Comprehensive Adjudication mailed
16		to cross-defendant on 6/24/21;
17		District will personally serve if
18		Answer not received
19	24. Indian Wells Valley Cemetery Inc. dba Desert	Served 10/7/22
20	Memorial Park	
21	25. Desert Sands Mutual Water Cooperative, Inc.	Served 7/5/22
22	26. Dixie Water Well Association	Answered 7/6/22
23	27. Donna Sue Water Company	Served 11/13/22
24		Answer received by District; unclear
25		whether filed
26		

	<u>Cross-Defendant</u>	<u>Status</u>
28.	Dune 3 Mutual Water Company LLC	Served 6/22/22 Answer received by District; unclear whether filed
29.	Dune V Water Company	Served 11/1/22
30.	Dune Water One Company	Served 6/27/22
31.	East Inyokern Mutual Water Company	Answered 4/5/22
32.	Ferran Water Company	Served 1/6/22 Answer received by District; unclear whether filed
33.	John V. Freeman	Answered 4/4/22
34.	Gateway Market Water System	Answered 4/4/22 as Vicki Rizzardini as Trustee for the Herbert M. Rizzardini and Vicki Rizzardini Joint Living Trust
35.	Gilbert Mutual Water Association	C.C.P. § 835 initial notice of Comprehensive Adjudication mailed to cross-defendant on 6/24/21; District will personally serve if Answer not received
36.	Hammar Water Cooperative	Answered 3/15/22
37.	Heritage Village Master Community Association	Answered 3/17/22
38.	Arthur Hickle	Dismissed 11/21/22
39.	Hometown Water Association	Answered 7/22/22
40.	Terese Farms	Answered 3/1/22
41.	IAC Water Company	Answered 4/26/22
42.	Inyokern Community Services District	Answered 6/21/22

	<u>Cross-Defendant</u>	<u>Status</u>
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2	43. Jumper Street Water Cooperative	Served 11/1/22
3	44. County of Kern	Answered 4/4/22
4	45. Life Water Cooperative	Served 11/1/22
5	46. Carey Danielle Marvin	Answered 4/29/22
6	47. Mirage Street Water Cooperative	Served 10/18/22
7	48. Northeast Leliter Cooperative	Served 10/18/22
8		Answer received by District; unclear
9		whether filed
10	49. NTSP, LLC	Served 1/5/22 and 1/10/22
11	50. Owens Peak South Water Company	Served 10/18/22
12	51. Owen's Peak Water Cooperative	Served 10/14/22
13	52. Owens Peak West Water Company	Answered 1/29/22
14	53. Diana Pearson	Served 1/5/22
15	54. Pinon Water Company	Answered 3/8/22
16	55. Quist Farms	Answered 3/1/22
17	56. Ridgecrest Charter School	Served 1/5/22
18	57. Larry Schiller	Served 1/8/22
19	58. Scott Shacklett	Answered 3/28/22
20	59. Gale Shacklett	Answered 3/28/22
21	60. Simmons Farm	Answered 3/1/22
22	61. South Desert Mutual Water Company	C.C.P. § 835 initial notice of
23		Comprehensive Adjudication mailed
24		to cross-defendant on 6/24/21;
25		District will personally serve if
26		Answer not received
27	62. Sweet Water Cooperative	Served 7/5/22

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	<u><b>Cross-Defendant</b></u>	<u><b>Status</b></u>
	63. Franca Villa Water Company	Served 10/12/22
	64. Timothy P. Vaughan	Served 10/18/22
	65. Warren Water Systems	Served 11/1/22
	66. West Valley Mutual Water Company	Served 10/13/22 Answer received by District; unclear whether filed
	67. Yellow Bird Water Cooperative	Answered 7/11/22
	68. Frank Bellino	Answer received by District; unclear whether filed
	69. El Solana Mobile Home & RV Park LLC	Served 1/3/22
	70. Sierra Breeze Mutual Water Company	Served 1/18/22 Answer received by District; unclear whether filed
	71. Suzanne Ama	Answered 3/9/22
	72. Douglas Smith	Served 1/11/22
	73. John Hall	Served 1/3/22
	74. Mary Hall	Served 1/3/22
	75. Michael Kinne	Served 1/12/22
	76. Pluto West Water Company	Served 10/19/22
	77. Cameo Kennels	District will personally serve if Answer not received
	78. Lurine M. Norwood	Served 1/5/22
	79. Philip M. Norwood	Served 1/5/22
	80. Michelle Richter	Certified mailing attempted; District will personally serve if Answer not received

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	<u>Cross-Defendant</u>	<u>Status</u>
1		
2	81. Scott Bottorff	Served 10/14/22
3	82. Janis Bottorff	Served 10/14/22
4	83. Sophie Dodge	Served 1/4/22
5	84. Paul Von Schlemmer	Dismissed 11/21/22
6	85. Julie Von Schlemmer	Dismissed 11/21/22
7	86. Del Sol Water Cooperative	Served 7/9/22
8	87. Domestic Water Systems, Inc.	District will personally serve if
9		Answer not received
10	88. Robert Dickson	Served 1/5/22
11	89. Sandy's Oasis Mobile Home Park	Served 11/1/22
12	90. Granite Construction Water System	Answered 3/28/22 as Granite
13		Construction Company, erroneously
14		named as Granite Construction
15		Water System
16		

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."

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

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

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

13 (e) *Mojave Pistachios, LLC, et al. v. Indian Wells Valley*  
14 *Groundwater Authority, et al.*, Orange County Superior Court Case  
15 No. 30-2022-01249146-CU-MC-CJC (related to the consolidated case of OCSC Case  
16 No. 30-2021-01187589; related to the Comprehensive Adjudication; and pending before The  
17 Honorable William Claster): On March 9, 2022, Mojave Pistachios filed a Complaint for  
18 Refund of Extraction Fees Paid against the Authority, seeking to recover fee payments levied by  
19 the Authority pursuant to Ordinance No. 02-20, as later amended by Ordinance Nos. 02-20 and  
20 05-20, which impose a \$105 per acre-foot groundwater extraction fee, which the Authority  
21 states is necessary to finance the estimated costs to develop and adopt the GSP. On August 24,  
22 2022, the Court stayed the matter pending a resolution of the Mojave Pistachios Action. A  
23 status conference in this matter is set to occur on December 2, 2022 in this Department.

24 (f) *Indian Wells Valley Groundwater Authority v. Inyo Kern*  
25 *Community Services District*, Kern County Superior Court Case No. BCV-22-100281 (Notice  
26 of Related Case filed by Mojave Pistachios on April 26, 2022, but not yet acted upon): On  
27 February 1, 2022, the Authority filed a Complaint for Preliminary and Permanent Injunction;  
28 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.)<sup>1</sup> 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.”<sup>2</sup>

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 <sup>1</sup> 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 <sup>2</sup> 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).)  
28

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

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

3 **B. DOCUMENTS AND ELECTRONICALLY STORED INFORMATION**

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

8 **C. FILING AND E-SERVICE**

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

20 **4. RECOMMENDED DATES AND TIMES**

21 **A. NEXT STATUS CONFERENCE**

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

24 **B. SCHEDULE AND FILING DEADLINES FOR PROPOSED MOTIONS**

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

28



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

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18

19

20

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27

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28

JOHN THOMAS CONAWAY TRUST;

JOHN THOMAS CONAWAY LIVING TRUST u/d/t

August 7, 2008;

NUGENT FAMILY TRUST;

SIERRA SHADOWS RANCH LP

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DATED: Nov. 23, 2022

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