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SEARLES VALLEY MINERALS INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

MOJAVE PISTACHIOS, LLC, et al.,

Plaintiffs,

v.

INDIAN WELLS VALLEY WATER DISTRICT, et al.,

Defendants.

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; MOJAVE PISTACHIOS, LLC; JOHN THOMAS CONAWAY; JOHN THOMAS CONAWAY TRUST; JOHN THOMAS CONAWAY LIVING TRUST u/d/t AUGUST 7, 2008; NUGENT FAMILY TRUST; SIERRA SHADOWS

Case No. 30-2021-01187275-CU-OR-CJC
Judge: Hon. William D. Claster, Dept. CX101

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

DEFENDANT, CROSS-DEFENDANT, AND CROSS-COMPLAINANT SEARLES VALLEY MINERALS INC.'S NOTICE OF ENTRY OF COURT ORDER RE: SUPPLEMENTAL BRIEFING AND CONTINUED HEARING

Date: August 5, 2024
Time: 1:30 p.m.
Dept: CX101

Complaint Filed:	11/19/2019
Cross-Complaint Filed:	06/16/2021
Searles Cross-Complaint Filed:	08/17/2021
Phase 1 Trial Date:	04/28/2025

RANCH, LP; SEARLES VALLEY MINERALS INC.; MEADOWBROOK DAIRY REAL ESTATE, LLC; BIG HORN FIELDS, LLC; BROWN ROAD FIELDS, LLC; HIGHWAY 395 FIELDS, LLC; THE MEADOWBROOK MUTUAL WATER COMPANY; UNITED STATES OF AMERICA; PATRICIA DAVIS DBA AMBERGLOW RANCH; PATRICK BLUBAUGH; MICHELLE BLUBAUGH; BRADY'S CAFÉ AND MINI MART; BUTTERMILK ACRES; CHINA LAKE ACRES MUTUAL WATER COMPANY; CHLT WATER GROUP CORPORATION; CITY OF RIDGECREST; BETHANY CONDON; CRESTVIEW WATER SYSTEM; INDIAN WELLS VALLEY CEMETERY INC. DBA DESERT MEMORIAL PARK; DESERT SANDS MUTUAL WATER COOPERATIVE, INC.; DIXIE WATER WELL ASSOCIATION; DONNA SUE WATER COMPANY; DUNE 3 MUTUAL WATER COMPANY LLC; DUNE V WATER COMPANY; DUNE WATER ONE COMPANY; EAST INYOKERN MUTUAL WATER COMPANY; FERRAN WATER COMPANY; JOHN V. FREEMAN; GATEWAY MARKET WATER SYSTEM; GILBERT MUTUAL WATER ASSOCIATION; HAMMAR WATER COOPERATIVE; HERITAGE VILLAGE MASTER COMMUNITY ASSOCIATION; ARTHUR HICKLE; HOMETOWN WATER ASSOCIATION; TERESE FARMS; IAC WATER COMPANY; INYOKERN COMMUNITY SERVICES DISTRICT; JUMPER STREET WATER COOPERATIVE; COUNTY OF KERN; LIFE WATER COOPERATIVE; CAREY MARVIN; MIRAGE STREET WATER COOPERATIVE; NORTHEAST LELITER COOPERATIVE; NTSP, LLC; OWENS PEAK SOUTH WATER COMPANY; OWEN'S PEAK WATER COOPERATIVE; OWENS PEAK WEST WATER COMPANY; DIANA PEARSON; PINON WATER COMPANY; QUIST FARMS; RIDGECREST CHARTER SCHOOL; LARRY SCHILLER; SCOTT SHACKLETT; GALE SHACKLETT; SIMMONS FARM; SOUTH DESERT MUTUAL WATER COMPANY; SWEET WATER COOPERATIVE; FRANCA VILLA WATER COMPANY; TIMOTHY P. VAUGHAN; WARREN WATER SYSTEMS; WEST VALLEY MUTUAL WATER COMPANY; YELLOW BIRD WATER COOPERATIVE; FRANK BELLINO; EL SOLANA MOBILE HOME & RV PARK LLC; SIERRA BREEZE MUTUAL WATER

COMPANY; SUZANNE AMA; DOUGLAS SMITH; JOHN HALL; MARY HALL; MICHAEL KINNE; PLUTO WEST WATER COMPANY; CAMEO KENNELS; LURINE M. NORWOOD; PHILIP M. NORWOOD; MICHELLE RICHTER; SCOTT BOTTORFF; JANIS BOTTORFF; SOPHIE DODGE; PAUL VON SCHLEMMER; JULIE VON SCHLEMMER; DEL SOL WATER COOPERATIVE; DOMESTIC WATER SYSTEMS, INC.; ROBERT DICKSON; SANDY'S OASIS MOBILE HOME PARK; GRANITE CONSTRUCTION WATER SYSTEM; and ROES 1 to 100,000, inclusive,

Cross-Defendants.

AND RELATED CASES.

NOTICE

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that at the June 14, 2024 hearing in the above-captioned matter, the Court heard Searles Valley Minerals Inc.'s ("Searles") Motion to Set a Phase 2 Trial on Safe Yield and a Phase 3 Trial to Adjudicate Groundwater Rights and Establish a Physical Solution ("Motion"). Appearances made by counsel are reflected on the Court's record for the hearing.

The Court provisionally granted the Motion as set forth in the Law & Motion Calendar, Tentative Rulings dated June 14, 2024, for Case No. 21-01187275 captioned *Mojave Pistachios, LLC vs. Indian Wells Valley Water District* ("Tentative Ruling," a true and correct copy of which is attached hereto as **Exhibit A**) as set forth below:

> Searles Valley Minerals, Inc.'s motion for a Phase 2 and Phase 3 trial is provisionally GRANTED. Based on the arguments of the many parties involved in this case, the Court is inclined to set the following additional trial phases:
>
> • Subject to the further briefing discussed below, a Phase 2 trial to adjudicate the safe yield of the Indian Wells Valley Groundwater Basin. During this phase the Court may consider the amount of groundwater in storage provided there is a showing that such storage is relevant to that adjudication.
>
> • A Phase 3 trial to determine all parties' claimed groundwater rights (except the federal reserved water right of the United States, which will be established in Phase 1).
>
> • A Phase 4 trial to determine a physical solution.

(**Ex. A** at p. 16.) At the June 14, 2024 hearing, the Court requested simultaneous supplemental briefing to be filed on or before July 12, 2024. Each "side" shall file a brief of no more than 20 pages. The Indian Wells Valley Water District and the Indian Wells Valley Groundwater Authority offered to lead briefing for their respective "sides." The supplemental briefing should address the following questions raised in the second-to-last paragraph of the Court's Tentative Ruling:

> Along these lines, if "safe yield" and "sustainable yield" are the same thing, how would this Court's determination that the "safe yield" differs from the already-determined "sustainable yield" affect any actions taken by the Authority? For example, if the Court were to find the "safe yield" is far larger than the "sustainable yield" as determined by the Authority, and assuming that finding becomes the basis for a physical solution, how would that affect the legality of the Basin Replenishment Fee and other fees adopted in reliance on the GSP? Put another way, would a physical solution effectively displace the GSP?

(**Ex. A** at p. 17.) No oppositions or replies will be allowed.

The Court continued the hearing on the Motion to August 5, 2024 at 1:30 p.m.

The Court further ordered the parties to meet and confer on a joint statement containing the parties' position(s) on timing assuming the Court will hold a Phase 2 trial on safe yield consistent with its Tentative Ruling. The joint statement should address issues including potential trial dates, a discovery schedule, and how the parties anticipate discovery and trial preparation for Phase 2 trial may overlap and coordinate with discovery and trial preparation for the Phase 1 trial already set. The joint statement may also make recommendations on whether the Court should appoint a special master, including a recommendation as to potential special masters the Court could appoint.

Attached as **Exhibit B** is a true and correct copy of the Court's June 14, 2024 Minute Order.

The Court ordered Searles to provide notice on the above items relevant to its Motion.

Dated: June 21, 2024

BEST BEST & KRIEGER LLP

By: _____
ERIC GARNER
JEFFREY V. DUNN
WENDY Y. WANG
ALISON K. TOIVOLA

Attorneys for Defendant, Cross-Defendant, and Cross-Complainant
SEARLES VALLEY MINERALS INC.

Exhibit A

LAW & MOTION CALENDAR
TENTATIVE RULINGS

June 14, 2024

9:00 A.M. & 1:30 P.M.

CX-101

JUDGE WILLIAM D. CLASTER

Department CX101 Phone Number: (657) 622-5301

The Court will hear oral argument on all matters at the time noticed for the hearing. If you would prefer to submit the matter on your papers without oral argument, please advise the clerk by calling (657) 622-5301. The Court will not entertain a request for continuance nor filing of further documents once the ruling has been posted.

APPEARANCES: Appearances, whether remote or in person, must be in compliance with new Code of Civil Procedure §367.75, California Rules of Court, Rule 3.672, and Superior Court of California, County of Orange, Appearance Procedure and Information, Civil Unlimited and Complex, located at https://www.occourts.org/media-relations/covid/Civil_Unlimited_and_Complex_Appearance_Procedure_and_Information.pdf.

COURT REPORTERS: Official court reporters (i.e. court reporters employed by the Court) are **NOT** provided for any matters in this department. If a party desires a record of a law and motion proceeding, it will be the party's responsibility to provide a court reporter. Parties must comply with the Court's policy on the use of privately retained court reporters which can be found at:

- Civil Court Reporter Pooling; and
- For additional information, please see the court's website at Court Reporter Interpreter Services for additional information regarding the availability of court reporters.

- Civil Limited, Unlimited and Complex (Updated June 11, 2020)

#	CASE NAME	MATTER
1	***	***
2	**21-01224571** Ceja vs. Ware Disposal, Inc.	**Plaintiff Roberto Ceja's Notice of Motion and Motion for Preliminary Approval of Class Action Settlement ROA 148** The Court has reviewed the briefing filed in response to the previous minute order. Plaintiff's motion for preliminary approval of class action settlement is GRANTED as to the parties' settlement agreement, as amended by Amendments No. 1 and 2. As to the class notice, the Court orders that the notice packet *not* include the proposed objection form. It should consist of the notice, the opt-out form, and the workweek dispute form. The motion for final approval shall be heard on December 5, 2024 at 9:00 a.m. in Department CX101. Moving papers are due 16 court days before the hearing. Please submit a revised proposed order that conforms to the foregoing, includes the date of the final approval hearing, and updates all dates that are calculated in reference to the date preliminary approval is granted.
3	**18-00983799** People vs. Anthony J. Rackauckas	**1. Plaintiffs People for the Ethical Operations of Prosecutors and Law Enforcement, Bethany Webb, Theresa Smith, and Tina Jackson's Notice of Motion and Motion for Monetary Sanctions CCP 2023.010, 2023.030, 2031.230, and 2031.310 ROA 844** **2. Plaintiffs People for the Ethical Operations of Prosecutors**

and Law Enforcement, Bethany Webb, Theresa Smith, and Tina Jackson's Notice of Motion and Motion to File Under Seal Plaintiffs' Motion for Monetary Sanctions ROA 948

MOTION FOR SANCTIONS

Plaintiffs move for monetary sanctions against the Orange County Sheriff's Department ("OCSD," formally, Don Barnes sued in his official capacity as Orange County Sheriff). For the reasons set forth below, the motion is DENIED.

OCSD has filed a document purporting to be objections to Plaintiffs' supporting evidence. Rather than setting forth specific objectionable items and the basis for the objection, as required by the Rules of Court, OCSD filed a six-page brief filled with invective. The Court declines to consider OCSD's evidentiary objections on the grounds that they are improperly formatted.

GROUNDS FOR RULING

I. Background

At issue on this motion is OCSD's response to Plaintiffs' requests for production of documents. The parties have extensively met and conferred over these requests over many months, and they have been the subject of numerous informal discovery conferences—all efforts undertaken to avoid formal motion practice. (Indeed, with the exception of a motion to compel directed to a single MOU, Plaintiffs have never formally objected to OCSD's response to their second set of RFPs.)

The discovery requests at issue require OCSD to search what all parties agree is a massive amount of ESI. Plaintiffs now contend OCSD failed to submit to an authorized method of discovery, made evasive responses to discovery, and failed to obey a prior order compelling further response. (CCP §§ 2023.230(d), (f); 2031.310(i).)

The record reflects that Plaintiffs and OCSD met and conferred regarding the search terms to use for searching the ESI, that Plaintiffs proposed specific search terms, and that OCSD agreed to use those search terms. The record also reflects that OCSD's original search query may have combined Plaintiffs' search terms in a way that made the query impossible for OCSD's Microsoft e-discovery software to parse. (Compare Schwab Decl. Ex. P (Plaintiffs' terms) with Ex. O (original query).) During a deposition of an OCSD witness, Plaintiffs learned of an email that was responsive to the agreed search terms but wasn't turned over. This led to further discussions between Plaintiffs and OCSD.

The record further reflects that when a new OCSD employee took over e-discovery responsibilities, he began investigating why this email wasn't produced in response to the original search query. He eventually escalated

the issue to Microsoft technical support, which informed him that the original query used terms not compatible with Microsoft e-discovery software. However, the software's response to the original query didn't return an error, even though the terms weren't compatible with it. (Patel Decl. ¶¶ 12-16.) Eventually, Plaintiffs and OCSD jointly met with Microsoft representatives to discuss these issues. (Patel Decl. ¶ 19.)

II. Discussion

A. Second Set of RFPs

At least insofar as the motion is based on OCSD's responses to the second set of RFPs, Plaintiffs have never moved to compel further responses to that set (with the limited exception of the MOU). OCSD objected to the wording of these requests, to their breadth, and to the undue burden a response would allegedly impose. As things currently stand, these objections have never been challenged. The Court cannot say OCSD failed to submit to an authorized method of discovery or made evasive responses when its objections were properly preserved and remain outstanding. And because Plaintiffs never moved to compel on these requests, OCSD cannot have failed to obey a prior order compelling further response.

B. Comparison to Federal Authority

Plaintiffs' principal authority is *Qualcomm Inc. v. Broadcom Corp.* (S.D.Cal. 2008) 2008 WL 66932 (vacated in part on other grounds, 2008 WL 638108). There, the magistrate judge recommended $8 million in sanctions against Qualcomm for failure to produce approximately 46,000 documents in discovery. Plaintiffs cite *Qualcomm*'s statement that "[a]n adequate investigation should include an analysis of the sufficiency of the document search and, when electronic documents are involved, an analysis of the sufficiency of the search terms and locations." (*Id.*, at *11.) They argue OCSD's search of ESI failed to meet this standard, and sanctions are warranted. The Court disagrees for several reasons.

First, the above language in *Qualcomm* is dicta. The sanctions order in *Qualcomm* was based on the magistrate judge's finding that Qualcomm intentionally withheld the documents at issue because they would severely undercut Qualcomm's arguments. The magistrate judge then "[a]ssume[d] *arguendo* that Qualcomm did not know about the suppressed emails." (*Ibid.*) It was in this counterfactual context that the magistrate judge discussed the proper standards for what constitutes an adequate search.

Second, in this case, OCSD used Plaintiffs' chosen search terms, but those terms were either input incorrectly or were unable to be parsed by Microsoft's e-discovery software. In *Qualcomm*, on the other hand, the most relevant search terms weren't used *at all*. As the magistrate judge explained, the documents at issue would have been produced had Qualcomm simply "us[ed] the JVT, avc and H.264 search terms," all terms highly relevant to the issues in the case. (*Ibid.*) Here, the problem isn't "sufficiency of the search terms" themselves, but those terms' failure to interact properly with the software.

Third, Plaintiffs complain that OCSD chose not to use industry-standard e-discovery software and chose not to hire experienced e-discovery vendors, unlike OCDA. The Court shares those concerns and expressed them in the order on Plaintiffs' first motion for sanctions against OCSD. But *Qualcomm* doesn't stand for the proposition that a reasonable inquiry *requires* the use of particular e-discovery software or the retention of an experienced vendor. As OCSD points out in opposition, Plaintiffs appear to demand a perfect inquiry, not a reasonable one.

C. Cooperation

Upon review of the papers and based on what occurred in numerous IDCs, the Court is left with the sense that (1) OCSD has attempted to work cooperatively with Plaintiffs and (2) OCSD now stands to be punished for its attempted cooperation. Consider this motion from OCSD's standpoint. Almost a year ago, OCSD could have told Plaintiffs it believed its responses were sufficient, and Plaintiffs (after at least one IDC) would have to move to compel anything further. Instead, Plaintiffs and OCSD attended seven IDCs, spent months meeting and conferring, with Plaintiffs proposing specific terms for OCSD to run, OCSD agreeing to search for those terms, and the parties even discussing search result issues with Microsoft. Now, at the end of that process, Plaintiffs claim OCSD's responses are *still* deficient, but all of this meeting and conferring cost over $900,000 in attorney's fees, with a $400,000 sanction presented as a reasonable alternative.

What reason is there for OCSD to be cooperative if this is the reward? Suppose OCSD had told Plaintiffs to file a motion to compel in the first instance, and suppose Plaintiffs won that motion. OCSD would be looking at a potential fee award that is a fraction of what Plaintiffs seek now.

For all of the foregoing reasons, the Court concludes, in its discretion, that the motion for sanctions should be denied.

III. Further Comment

Although not necessary to the outcome of the motion, the Court feels it must make the following comments.

First, while the Court believes OCSD's characterization of this motion as a "jackpot" is inappropriate, Plaintiffs' fee request ($400,000 against a lodestar of nearly $900,000) is unreasonably large. This is due, in no small part, to serious overstaffing. At IDCs and status conferences, four or five attorneys routinely appeared. Whether or not all that time is considered billable under Munger Tolles & Olson's internal accounting rules, it is unreasonable to send four or five attorneys to a status conference or an IDC. If the Court had awarded sanctions here, it would have awarded *substantially* less than the amount sought by Plaintiffs.

Second, the inflammatory tone of OCSD's briefing is beyond the bounds of

civility and professionalism expected in this Court. Some examples are set forth below:

- "The many glaring legal scholarship failures which infect the Schwab Declaration are an unpardonable omission given the vast assemblage of Plaintiffs' counsel who evidently populate this case. . . . That none of these attorneys could evidently be bothered to review and apply governing California declaration law has plainly produced the train wreck Schwab 'Declaration' now before the Court." (ROA 923, 5:23-27.)

- "[T]he unsworn Schwab Declaration is chiefly devoted to a cringeworthy demand for jackpot-like sums of taxpayer monies." (ROA 923, 6:12-13.)

- "Needless to say, this – and other similar inexplicable decisions – do not exactly advance Mr. Schwab's unsworn claim that he is worth '$1,275.00 per hour.'" (ROA 923, 6:26-27.)

- A two-paragraph footnote comparing Plaintiffs to the Jacobins, Russia under Lenin, and China under Mao Tse-Tung because Schwab forgot to include "under penalty of perjury" language in his declaration (which was later corrected in a notice of errata). (ROA 923, 7:18-28.)

- "Plaintiffs are now before the Court with the entirely shrill, wholly ridiculous claim that they are supposedly entitled to '$400,000' . . . ." (ROA 928, 6:12-13.)

- "Yes, the Court read that correctly. And it is frankly difficult to know where to begin attacking Plaintiffs' altogether cringeworthy position." (ROA 928, 6:17-18.)

- "[T]heir formal requests are hopeless chunks of linguistic gristle." (ROA 928, 14:18.)

- "Plaintiffs' latest hyperventilated briefing represents an astoundingly tone-deaf response by Plaintiffs to the Court's unambiguous civility admonitions." (ROA 928, 15:14-15.)

- "To no one's surprise given their cringeworthy vocabulary to date . . . ." (ROA 928, 18:13.)

- "The defense frankly does not expect Plaintiffs to dispense something intellectually or spiritually stirring when they receive one of their briefs." (ROA 928, 19:10-11.)

- "Needless to say, demonizing adversaries in this manner is the sort of thing that cheapens our profession, our nation's history and our language. The Court deserves better. And so, frankly, does Sheriff Barnes." (ROA 928, 19:14-16.)

Such inflammatory language raises more questions than it answers. Incredibly, OCSD accuses Plaintiffs of being "tone deaf" to the Court's "civility admonitions" when that is exactly what OCSD is guilty of. As set forth above, the Court believes sanctions are improper because OCSD has acted cooperatively throughout this lengthy meet-and-confer process. OCSD could have made that argument dispassionately, but instead, it chose to launch a thoroughly uncivil and unprofessional assault on Plaintiffs and their counsel. Indeed, OCSD's tone leaves the Court wondering if Plaintiffs' concerns about the OCSD's tactics are perhaps meritorious. But suspicions

		are not a substitute for conclusions the Court has drawn from record evidence. Actually, OCSD put it best: "Needless to say, demonizing adversaries in this manner is the sort of thing that cheapens our profession, our nation's history and our language. The Court deserves better. And so, frankly, does Sheriff Barnes." Going forward, should OCSD fail to heed its own admonishment, then the Court will be inclined to award sanctions regardless of the merits of the underlying dispute. **MOTION TO SEAL** Plaintiffs' motion to seal their opening papers in support of the motion for sanctions is GRANTED pursuant to the terms of the parties' protective order. Discovery motions are not subject to CRC 2.550 et seq.
4	**23-01359416** Monroe vs. No Ordinary Moments, Inc.	Plaintiff Milania Monroe's Notice of Motion and Motion to Compel Defendant No Ordinary Moments, Inc.'s Responses to the First Set of Interrogatories; Request for Sanctions Against No Ordinary Moments, Inc. for $4,860.00 ROA 27 **Continued to 08/02/2024 at 9:00 a.m. in Department CX101.**
5	**21-01188280** Kemp vs. Accurate Background, Inc.	Plaintiff R. Kemp's Notice of Motion and Motion for Preliminary Approval of Class Action Settlement **ROA 309** Plaintiff's motion for preliminary approval of class action settlement is CONTINUED to August 9, 2024 at 9:00 a.m. in Department CX101 to permit the parties to respond to the following items of concern. Any supplemental briefing shall be filed on or before July 29, 2024. If a revised settlement agreement and/or class notice is submitted, a redline showing all changes, deletions and additions must be submitted as well. *As to the Settlement:* 1. Are there any other pending actions that may be affected by this settlement? 2. Why is this a claims-made settlement? The class is relatively small, and Defendant, which produced background reports on every class member, presumably has access to class member contact information. This isn't a case of potentially unknown class members (such as a class of unknown persons who bought mislabeled groceries). Absent a compelling reason for a claims requirement, the Court's strong preference is for all class members to receive payment unless they opt out. 3. Please provide 180 days, rather than 90 days, for class members to cash their checks. 4. Please disclose any connections counsel or the parties have to the chosen cy pres.

		5. Please provide an estimate for litigation costs incurred to date. 6. The agreement includes a class wide Civil Code § 1542 waiver. While Plaintiff may waive the protections of § 1542 if he wishes, the Court will not permit such a waiver on a class wide basis. 7. At final approval, please submit contemporaneously made billing records for attorney's fees and costs. The Court will not be inclined to award an amount of fees and costs greater than the amount stated in the notice. 8. At final approval, please submit billing records for administrative costs. The Court will not be inclined to award administrative costs in an amount greater than the amount stated in the notice. 9. At final approval, Plaintiff is to provide a declaration addressing the enhancement factors set forth in *Golba v. Dick's Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251 and *Clark v. Am. Residential Servs. LLC* (2009) 175 Cal.App.4th 785, including the amount of time and effort spent on the litigation. 10. At final approval, the administrator is to provide a high, low, and average for individual settlement payments, along with Plaintiff's individual payout. *As to the Notice:* 1. If the settlement is converted from a claims-made settlement to an opt-out-only settlement, please include opt-out forms with the notice. 2. In section 14 of the notice, please note that the final approval hearing will take place in Department CX101. 3. Does notice need to be given in any languages other than English? 4. If any changes are made to the settlement agreement, please make corresponding changes to the notice. 5. The font size in the actual notice may not be smaller than the font size in the proposed notice provided to the Court.
6	**23-01302431**	**Plaintiff Sandra Palecia's Notice of Motion and Motion for Preliminary Approval of Class and Collective Action Settlement ROA 39**

	Palencia vs. Jk959 Global, Inc.	The Court has reviewed the briefing filed in response to the previous minute order. Plaintiff's motion for preliminary approval of class action settlement is GRANTED as to the current version of the parties' settlement agreement and notice. However, based on the representations of counsel, the Court finds that despite the wording of the class definition in the agreement, the class consists solely of non-exempt production line employees. (See ROA 53 at p. 3 ("the 'Class' definition of 'all non-exempt, hourly paid employees' only includes production line employees like Plaintiff"). The motion for final approval shall be heard on November 21, 2024 at 9:00 a.m. in Department CX101. Moving papers are due 16 court days before the hearing. Please submit a revised proposed order that conforms to the foregoing, includes the date of the final approval hearing, and updates all dates that are calculated in reference to the date preliminary approval is granted.
11	**22-01269664** Bernardo vs FirstElement Fuel, Inc.	**Plaintiff Anthony Bernardo's Notice of Motion and Motion for Preliminary Approval of Class Action and PAGA Settlement ROA 109** The Court has reviewed the briefing filed in response to the previous minute order. Plaintiff's motion for preliminary approval of class action settlement is GRANTED as to the current versions of the settlement agreement and notice. The motion for final approval shall be heard on December 6, 2024 at 9:00 a.m. in Department CX101. Moving papers are due 16 court days before the hearing. Please submit a revised proposed order that conforms to the foregoing, includes the date of the final approval hearing, and updates all dates that are calculated in reference to the date preliminary approval is granted.
	1:30 P.M.	
	22-01239479 Indian Wells Valley Groundwater Authority vs. Mojave Pistachios, LLC,	**1. Plaintiff Indian Wells Valley Groundwater Authority's Notice of Motion and Motion for Preliminary Injunction ROA 63** **2. Order to Show Cause re: Objections to Boundary** **3. Status Conference** Plaintiff Indian Wells Valley Groundwater Authority ("Authority") moves for a preliminary injunction ordering defendants Mojave Pistachios and Mary and Paul Nugent (as trustees, etc.) ("Mojave") to cease pumping groundwater without paying the Authority's Basin Replenishment Fee (enacted in Resolution No. 03-20), including all back fees currently owed. In opposition, Mojave asks that its expert, Anthony Brown, be permitted to give oral testimony at the hearing. Searles Valley Minerals, a party to other cases arising from the Authority's Groundwater Sustainability Plan ("GSP"), has filed a purported joinder in Mojave's opposition. For the reasons set forth below:

1. The motion for a preliminary injunction is GRANTED.
2. The request to let Brown provide oral testimony is DENIED.
3. Searles' joinder is DENIED.

Mojave's request for judicial notice is GRANTED. However, insofar as Mojave seeks notice of court filings, the Court takes notice only of those filings' existence, not the truth of any matter asserted therein.

In ruling on this motion, the Court has carefully considered the Declaration of Rodney Stiefvater, the owner of Mojave Pistachios. (ROA 79) Among other things, that Declaration describes his substantial investment in his farming operation and the purported financial harm to his business if the requested preliminary injunction is granted. Indeed, as acknowledged by the Court of Appeal, the "pay first, litigate later" rule that applies to this case is fairly characterized as "Draconian." (*Mojave Pistachios, LLC v. Superior Court* (2024) 99 Cal.App.5th 605, 613.) If there was a viable way to avoid this purported harm, then the Court would give it serious consideration. However, for the reasons set forth below, there is no path for avoiding an injunction in light of clear precedent this Court is bound to follow.

GROUNDS FOR RULING

I. Background

A. This Case

This is one of several related actions involving the overdrawn Indian Wells Valley Groundwater Basin. The Authority is the Basin's designated groundwater sustainability agency under the Sustainable Groundwater Management Act of 2014. ("SGMA," Water Code § 10720, et seq.) Defendants (collectively "Mojave") own and operate a pistachio orchard in the Indian Wells Valley and pump groundwater from the Basin.

Pursuant to SGMA, the Authority adopted a groundwater sustainability plan ("GSP"). The GSP determined the Basin's groundwater is not sustainable without the development of augmentation and overdraft mitigation projects. The Authority thereafter adopted Ordinance No. 03-20, establishing a "Basin Replenishment Fee" of $2,130 per acre foot extracted. (See Wat. Code § 10730.2(a) (after adoption of a GSP, agency may "may impose fees on the extraction of groundwater from the basin to fund costs of groundwater management")). Not all pumpers within the Basin are subject to the Basin Replenishment Fee, but Mojave is.

The Basin Replenishment Fee went into effect on January 1, 2021. Mojave failed to pay the fee. In June 2021, the Authority adopted Resolution No. 04-21, ordering Mojave to stop pumping until its fee payments are brought current (including interest and penalties). This did not induce Mojave to pay the fee. To date, Mojave has never paid the fee though it has continued

pumping.

B. Pertinent Related Cases

Mojave has challenged the GSP and Basin Replenishment Fee in other cases. In No. 2021-01187275, Judge Nakamura denied Mojave's application for an order preliminarily enjoining the Authority from implementing the GSP and Basin Replenishment Fee, holding its challenge was barred by the "pay first, litigate later" rule. (See ROA 143 in No. 2021-01187275.)

In No. 2021-01187589, Mojave brought a host of challenges to the GSP and actions taken thereunder. The Authority demurred to portions of Mojave's then-operative third amended petition. The Court sustained the demurrer because the challenged causes of action were barred by the "pay first, litigate later" rule. Mojave petitioned for writ review of this ruling. In a published opinion, the Court of Appeal denied the petition. (*Mojave Pistachios, LLC v. Superior Court* (2024) 99 Cal.App.5th 605.)

II. "Pay First, Litigate Later"

"A taxpayer ordinarily must pay a tax before commencing a court action to challenge the collection of the tax. This rule, commonly known as 'pay first, litigate later,' is well established and is based on a public policy reflected in the state Constitution, several statutes, and numerous court opinions." (*County of Los Angeles v. Southern Cal. Edison Co.* (2003) 112 Cal.App.4th 1108, 1116.) In *Mojave Pistachios*, the Court of Appeal held the "pay first, litigate later" rule applies to challenges to fees imposed by groundwater sustainability agencies under the SGMA. (*Mojave Pistachios*, *supra*, 99 Cal.App.5th at p. 631.) "Accordingly, . . . any cause of action that attacks the propriety of the Replenishment Fee or attempts to impede its prompt collection cannot proceed unless Mojave first pays the outstanding amounts owed. This is true even if the challenged fee allegedly violates SGMA and California water law, and *even if Mojave allegedly cannot afford to pay the fee.*" (*Id.*, at p. 633; emphasis added.)

In this action, Mojave doesn't bring its own causes of action that seek to impede collection of the Basin Replenishment Fee. However, "'It is well established that the applicability of [the "pay first, litigate later" rule] does not turn on whether the action at issue specifically seeks to prevent or enjoin the collection of a tax. Instead, the provision bars "not only injunctions but also a variety of prepayment judicial declarations or findings which would impede the prompt collection of a tax." [Citation.] The relevant issue is whether granting the relief sought would have the effect of impeding the collection of a tax. [Citation.]'" (*Water Replenishment Dist. of Southern California v. City of Cerritos* (2013) 220 Cal.App.4th 1450, 1465 (*City of Cerritos*) (quoting *California Logistics, Inc. v. State of California* (2008) 161 Cal.App.4th 242, 247-248).)

City of Cerritos is instructive. There, Cerritos stopped paying a replenishment assessment levied by the Water Replenishment District, and the District sued to collect the fee. The District sought a preliminary injunction requiring Cerritos to either pay the fee or stop pumping water. Even though an interim order in related litigation found the assessment

violated Proposition 218, the Court of Appeal held the "pay first, litigate later" rule required Cerritos to pay the challenged assessment until the related litigation reached a final judgment. Cerritos argued the rule did "not apply because [Cerritos] is not seeking to enjoin the assessment; it is the District that is seeking an injunction. But [Cerritos] is urging a defense seeking '"prepayment adjudication that would effectively prevent the collection of a tax,"' which is barred" by the rule. (*Id.*, at p. 1465.) As a result, Cerritos should have been enjoined from pumping water unless and until it paid the assessment. (*Id.*, at pp. 1464-1470.)

Here, as in *City of Cerritos*, the "pay first, litigate later" rule bars any attempt by Mojave to argue the merits of its challenges to the Basin Replenishment Fee in opposition to the preliminary injunction motion. That Mojave raises these challenges as affirmative defenses (or as arguments made in opposition to the motion) rather than independent causes of action is irrelevant.

III. Preliminary Injunction Standard

"'In deciding whether to issue a preliminary injunction, a court must weigh two "interrelated" factors: (1) the likelihood that the moving party will ultimately prevail on the merits and (2) the relative interim harm to the parties from issuance or nonissuance of the injunction. [Citation.]'" (*Id.*, at p. 1461 (quoting *Butt v. State of California* (1992) 4 Cal.4th 668, 677-678).) "'The trial court's determination must be guided by a "mix" of the potential-merit and interim-harm factors; the greater the plaintiff's showing on one, the less must be shown on the other to support an injunction. [Citation.] Of course, "[t]he scope of available preliminary relief is necessarily limited by the scope of the relief likely to be obtained at trial on the merits." [Citation.] A trial court may not grant a preliminary injunction, regardless of the balance of interim harm, unless there is some possibility that the plaintiff would ultimately prevail on the merits of the claim. [Citation.]'" (*Id.*, at p. 1462 (quoting *Butt*, *supra*, 4 Cal.4th at p. 678).)

IV. Likelihood of Prevailing on Merits

Under *City of Cerritos*, the "pay first, litigate later" rule bars Mojave from arguing the merits of its defenses. As a result, this factor conclusively favors the Authority. In any event, it is undisputed that Ordinance No. 03-20 applies to Mojave, and Mojave has never paid the Basin Replenishment Fee.

Mojave's merits argument in opposition is less "we will win on the merits" and more "the Court should wait." Mojave contends that it intends to petition the United States Supreme Court for certiorari review of the Court of Appeal's decision in *Mojave Pistachios* (the California Supreme Court already has denied review). But (1) Mojave has yet to file such a petition, only a plan to do so, and (2) the odds that certiorari will be granted on any one of the thousands of such petitions filed annually are miniscule.

More generally, Mojave contends its challenges to the GSP (and related actions) in No. 2021-01187589 remain pending, and the Court should resolve those challenges first before deciding this motion. *City of Cerritos*

foreclosures this argument. There, the related litigation had already resulted in an interim ruling that the assessment at issue violated Proposition 218—a more favorable procedural setting for Cerritos than Mojave has here. Nevertheless, the Court of Appeal held that only a final judgment in the related litigation would be reason to avoid application of the "pay first, litigate later" rule.

In short, this factor weighs strongly in favor of injunctive relief.

V. Balancing of Harms

Initially, the Authority argues the "pay first, litigate later" rule bars Mojave from arguing the balancing of harms. While the thrust of the *Mojave Pistachios* opinion tends to support this contention, the *City of Cerritos* suggests otherwise. There, while the Court of Appeal held the "pay first, litigate later" rule applied, it separately evaluated Cerritos' claimed harm. (*City of Cerritos*, *supra*, 220 Cal.App.4th at p. 1469 (finding Cerritos "will not suffer irreparable harm" if injunction is issued).)

Based on *City of Cerritos*, the Court considers Mojave's arguments about the balancing of harms. However, to the extent an argument about the balancing of harms is simply a repackaging of a merits argument, it is barred by the "pay first, litigate later" rule.

A. Presumption of Harm to the Authority

"Where a governmental entity seeking to enjoin the alleged violation of an ordinance which specifically provides for injunctive relief establishes that it is reasonably probable it will prevail on the merits, a rebuttable presumption arises that the potential harm to the public outweighs the potential harm to the defendant. If the defendant shows that it would suffer grave or irreparable harm from the issuance of the preliminary injunction, the court must then examine the relative actual harms to the parties." (*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 72 (footnote omitted).)

The Authority contends the *IT Corp.* presumption applies here. Mojave does not contend otherwise. To the contrary, it says *IT Corp.* "crafted this standard carefully to avoid tilting the scales unfairly in the government's favor." (Opp. at pp. 10-11.) Because both sides agree the *IT Corp.* presumption is applicable here, the Court will apply it.

B. Harm to Mojave

Because the *IT Corp.* presumption applies, Mojave bears the burden of showing "that it would suffer grave or irreparable harm from the issuance of the preliminary injunction." (*IT Corp.*, *supra*, 35 Cal.3d at p. 72.) Mojave offers several arguments for grave or irreparable harm.

1. Inability to Pay/Destruction of Business

First, Mojave argues it cannot pay its arrearage and ongoing yearly fee, so an injunction would bankrupt Mojave and result in the closure of its business. This argument is not without evidentiary support. But "'the most severe financial hardship resulting in bankruptcy' is 'not an irreparable injury sufficient to permit judicial intervention' in violation of [the] 'pay first' rule." (*Mojave Pistachios*, *supra*, 99 Cal.App.5th at p. 628 (quoting *Pacific Gas & Electric Co. v. State Bd. of Equalization* (1980) 27 Cal.3d 277, 282).) Put another way, even if this argument is factually true, it isn't legal grounds to avoid the rule that Mojave must pay the fee before challenging it.

In any event, Mojave overreaches when it argues this harm is irreparable. As the California Supreme Court has explained, "*irreparable* injuries" are "ones that cannot be adequately compensated in damages." (*Intel Corp. v. Hamdi* (2003) 30 Cal.4th 1342, 1352 (emphasis original).) The loss of Mojave's business can be compensated in damages. In fact, Mojave's fourth amended petition in No. 2021-01187589 seeks damages "in excess of $200,000,000" flowing from the Authority's adoption of the GSP and subsequent implementing actions, including the Basin Replenishment Fee. (See ROA 612 in No. 2021-01187589, at Prayer for Relief.) Either the harms caused by the Basin Replenishment Fee are compensable in damages or they are not. Mojave cannot take conflicting positions on this question depending on whether it is a plaintiff with affirmative claims for damages or a defendant seeking to avoid an injunction.

Moreover, Mojave's counsel testifies that his scope of retention includes negotiating the purchase of transient pool allocations. (Slater Decl. ¶¶ 14-15.) By way of background, "the Authority established a transient pool of 51,000 acre-feet of groundwater and determined that all qualified agricultural pumpers would receive a transient pool allotment based on their reported agricultural uses. Eligible pumpers could then either (1) reject their allotment and continue pumping while paying the Replenishment Fee, (2) accept their allotment and associated mitigation fee or accept the allotment and negotiate a sale of it to the Authority. Use of the transient pool was voluntary. [¶] Ten agricultural pumpers, including Mojave, were deemed '"potentially" qualified' to participate in the program. Three of those pumpers, including Mojave, failed to timely submit a required pumping verification questionnaire, so the Authority determined they were not eligible to participate. The 51,000 acre-feet in the transient pool were thereafter allotted among the seven eligible agricultural pumpers." (*Mojave Pistachios*, *supra*, 99 Cal.App.5th at p. 620.) The record reflects that transient pool members pay $17.50 per acre-foot for water within their allocation, rather than the $2,130 per acre-foot Basin Replenishment Fee.

Mojave's planned purchase of transient pool allocations could have the effect of drastically lowering the amount of money it owes the Authority. In fact, if Mojave were to purchase 10,440 acre-feet of allocations, it would owe *nothing* in arrears, a point the Authority concedes in reply. (See Opp. at p. 18, Reply at p. 9.) Mojave therefore has the ability to significantly mitigate the harm it claims it will suffer.

2. Destruction of Trees

Mojave also argues that if it is enjoined from pumping water, its pistachio trees will die. It contends the loss of its pistachio trees is an irreparable harm, citing *Christopher v. Jones* (1964) 231 Cal.App.2d 408, 416. But Mojave's pistachio trees are agricultural crops, not plants with a unique aesthetic value. While *Christopher* lends some support to the notion that destruction of crops is an irreparable harm, more recent case law cited by the Authority supports the notion that crop destruction is compensable with damages. Indeed, the Authority's case law arises specifically in the context of pistachio trees grown for agricultural purposes. (See *Santa Barbara Pistachio Ranch v. Chowchilla Water Dist.* (2001) 88 Cal.App.4th 439, 446-448 (discussing different methods of valuing lost pistachio trees).) To the extent there is a conflict between *Christopher* and *Santa Barbara Pistachio Ranch*, the Court will follow the more recent, more factually on-point decision.

Furthermore, Mojave's fourth amended petition in No. 2021-01187589 specifically seeks "just compensation for the taking of . . . pistachio trees." (ROA 612 in No. 2021-01187589 at ¶ 471.) Again, Mojave cannot switch positions on whether the loss of trees is compensable with damages depending on its status as a plaintiff or a defendant.

Since the loss of Mojave's pistachio trees is compensable by damages, it is not an irreparable harm.

C. Conclusion on Harms

Only if Mojave rebuts the *IT Corp.* presumption of harm will Court proceed to a traditional harms-balancing analysis. In order to rebut that presumption, Mojave must show it will suffer grave or irreparable injury if an injunction is entered. For the reasons set forth above, Mojave has not met that burden. The *IT Corp.* presumption therefore carries the day for the Authority.

Because the *IT Corp.* presumption remains unrebutted, the Court will not engage in a traditional harms-balancing analysis. Accordingly, Anthony Brown's testimony going to the harm the Authority will suffer (or not suffer) if an injunction isn't entered is therefore irrelevant. The Court denies Mojave's request to permit Brown's oral testimony at the hearing.

VI. Delay in Seeking Relief

Mojave also contends injunctive relief should be denied because the Authority waited too long to seek it, filing this motion over two years after it first filed suit. While delay in seeking relief can be grounds for denying an injunction, the Court finds that principle inapplicable here. As the Authority points out in reply, the Court made clear that it intended to wait until after the Court of Appeal decided *Mojave Pistachios* to consider injunctive relief in this case. The Authority's motion was filed less than a month after

		Mojave Pistachios was decided. **VII. <u>Alternative Relief</u>** Finally, Mojave asks the Court to consider an alternative remedy. Rather than calculating arrearages and ongoing pumping fees at the $2,130 per acre-foot rate set by Ordinance No. 03-20, it proposes to calculate arrearages and ongoing pumping fees at the $17.50 per acre-foot rate paid by transient pool members. The Court sees no basis to *order* such relief. To be clear, if Mojave *purchases* allocations from transient pool members, it appears Mojave would be entitled to pay $17.50 per acre-foot. But a *Court order* for payment at $17.50 per acre-foot would signal to other pumpers that the Basin Replenishment Fee is effectively unenforceable. Pumpers who are currently deterred from pumping excessive groundwater by the $2,130 per acre-foot fee would rationally respond by increasing their pumping and withholding payment, expecting they would be ordered to pay $17.50 per acre-foot if the Authority filed an enforcement action. **VIII. <u>Searles' Joinder</u>** Searles purports to join in Mojave's opposition. Its joinder is denied because Searles is not a party to this case, and Searles cites no authority allowing a non-party to join in a party's motion or opposition. Searles' statement in the footnote to its joinder that this case was consolidated with *Searles Valley Minerals Inc. v. Indian Wells Groundwater Authority* by the Kern County Superior Court before transfer to Orange County appears to be incorrect. This case was filed in Orange County in the first instance, not in Kern County. To the Court's knowledge, this case has not been consolidated with any other cases, though it is related to the Basin groundwater cases. **IX. <u>Conclusion</u>** As set forth above, the Court finds the Authority is likely to prevail on the merits. And because the *IT Corp.* presumption remains unrebutted, the Court finds the balance of harms favors the Authority. Accordingly, the motion for a preliminary injunction is granted.
	21-01187275 Mojave Pistachios, LLC vs. Indian Wells Valley Water District	1. Defendant, Cross-Defendant, and Cross-Complainant Searles Valley Minerals Inc.'s Notice of Motion and Motion to Set a Phase 2 Trial on Safe Yield and a Phase 3 Trial to Adjudicate Groundwater Rights and Establish a Physical Solution **ROA 1310** 2. Defendants and Cross-Defendants Meadowbrook Daily Real Estate, LLC, Big Horn Fields, LLC, Brown Road Fields, LLC, Highway 395 Fields, LLC, and The Meadowbrook Mutual Water Company's Joinder in Motion to Set a Phase 2 Trial on Safe Yield

and a Phase 3 Trial to Adjudicate Groundwater Rights and Establish a Physical Solution **ROA 1312**

3. Order to Show Cause re: Objections to Boundary

4. Status Conference

5. Defendant, Cross-Complainant, & Cross-Defendant Indian Wells Valley Water District's Joinder in Searles Valley Minerals Inc.'s Motion to Set a Phase 2 Trial on Safe Yield and a Phase 3 Trial to Adjudicate Groundwater Rights and Establish a Physical Solution **ROA 1320**

Searles Valley Minerals, Inc.'s motion for a Phase 2 and Phase 3 trial is provisionally GRANTED. Based on the arguments of the many parties involved in this case, the Court is inclined to set the following additional trial phases:

- Subject to the further briefing discussed below, a Phase 2 trial to adjudicate the safe yield of the Indian Wells Valley Groundwater Basin. During this phase the Court may consider the amount of groundwater in storage provided there is a showing that such storage is relevant to that adjudication.

- A Phase 3 trial to determine all parties' claimed groundwater rights (except the federal reserved water right of the United States, which will be established in Phase 1).

- A Phase 4 trial to determine a physical solution.

Before setting dates for these next phases, the Court will need information regarding what discovery will be needed for each, whether that discovery can take place while discovery and trial preparation for the Phase 1 trial is ongoing, the projected length of each trial phase, and whether the appointment of a special master pursuant to CCP § 845 will expedite this process. The parties should be prepared to address these and any other trial-related issues at the hearing.

The IWVGA (the "Authority") opposes this motion on a number of grounds, including its assertion that it already has determined the Basin's "sustainable yield," which effectively is the same as the "safe yield." On this basis the Authority argues that a Phase 2 trial on safe yield is redundant and unnecessary.
Significantly, the Authority fails to cite any specific statutory or case law to the effect that its sustainable yield determination is essentially preemptive.

Likewise, the Authority's argument that a physical solution is unnecessary where a basin is managed by a DWR-approved groundwater sustainability plan (GSP) appears to conflict with CCP § 849(b) which provides: "Before adopting a physical solution, the court shall consider any existing groundwater sustainability plan or program." Similar in effect are Water Code §§ 10737.2 and 10737.8.

More to the point, the Authority's claim that the "where necessary" language found in CCP § 849(a) precludes a physical solution in cases where a GSP exists is undercut by Water Code § 10720.5(b): "Nothing in [SGMA], or in any groundwater management plan adopted pursuant to [SGMA], determines or alters surface water rights or groundwater rights under

common law or any provision of law that determines or grants surface water rights." Because physical solutions are imposed "in water-rights cases" to resolve "conflicting claims in a manner that advances the constitutional rule of reasonable and beneficial use of the state's water supply" (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 287), the notion that physical solutions are *categorically* unnecessary when a GSP exists does not follow.

That being said, the Court shares the Authority's concerns about a safe yield determination that conflicts with its own sustainability determination, particularly since counsel for Mojave and Searles acknowledge that these two concepts are essentially equivalent. *See* Slater, 1 *California Water Law and Policy* (2024) § 11.06 ("the statutory definition of 'sustainable yield' is virtually interchangeable with the term 'safe yield.'"); Garner et al., *The Sustainable Groundwater Management Act and the Common Law of Groundwater Rights—Finding a Consistent Path Forward for Groundwater Allocation* (2020) 38 UCLA J. Envtl. L. & Pol'y 163, 173-174 ("Both terms . . . seem indistinguishable in terms of how the yield is measured.")

Along these lines, if "safe yield" and "sustainable yield" are the same thing, how would this Court's determination that the "safe yield" differs from the already-determined "sustainable yield" affect any actions taken by the Authority? For example, if the Court were to find the "safe yield" is far larger than the "sustainable yield" as determined by the Authority, and assuming that finding becomes the basis for a physical solution, how would that affect the legality of the Basin Replenishment Fee and other fees adopted in reliance on the GSP? Put another way, would a physical solution effectively displace the GSP?

Given the potential significance of the answers to the foregoing questions, the Court will discuss further briefing at the hearing.

Exhibit B

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER

MINUTE ORDER

DATE: 06/14/2024 TIME: 01:30:00 PM DEPT: CX101

JUDICIAL OFFICER PRESIDING: William Claster
CLERK: G. Hernandez
REPORTER/ERM: Janet Wood CSR# 9463
BAILIFF/COURT ATTENDANT: B. Allen, None

CASE NO: **30-2021-01187275-CU-OR-CJC** CASE INIT.DATE: 02/16/2021
CASE TITLE: **Mojave Pistachios, LLC vs. Indian Wells Valley Water District**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Other Real Property

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EVENT ID/DOCUMENT ID: 74255754

EVENT TYPE: Order to Show Cause

EVENT ID/DOCUMENT ID: 74255755

EVENT TYPE: Status Conference

EVENT ID/DOCUMENT ID: 74309591

EVENT TYPE: Joinder
MOVING PARTY: Indian Wells Valley Water District
CAUSAL DOCUMENT/DATE FILED: Motion for Joinder re Motion to set a Phase 2 trial and Phase 3 trial, 05/31/2024
Additional events listed on last page.

APPEARANCES

Appearances noted by way of copy of business cards, and/or CourtCall Appearance Calendar, attached hereto and incorporated herein by reference.

1. Defendant, Cross-Defendant, and Cross-Complainant Searles Valley Minerals Inc.'s Notice of Motion and Motion to Set a Phase 2 Trial on Safe Yield and a Phase 3 Trial to Adjudicate Groundwater Rights and Establish a Physical Solution ROA 1310

2. Defendants and Cross-Defendants Meadowbrook Daily Real Estate, LLC, Big Horn Fields, LLC, Brown Road Fields, LLC, Highway 395 Fields, LLC, and The Meadowbrook Mutual Water Company's Joinder in Motion to Set a Phase 2 Trial on Safe Yield and a Phase 3 Trial to Adjudicate Groundwater Rights and Establish a Physical Solution ROA 1312

3. Defendant, Cross-Complainant, & Cross-Defendant Indian Wells Valley Water District's Joinder in Searles Valley Minerals Inc.'s Motion to Set a Phase 2 Trial on Safe Yield and a Phase 3 Trial to Adjudicate Groundwater Rights and Establish a Physical Solution ROA 1320

4. Order to Show Cause re: Objections to Boundary

Hearing held with participants appearing remotely and in person.

Tentative Ruling posted on the Internet.

Order to Show Cause re: Objections to Boundary

A proposed order will be submitted regarding the boundary issue.

Defendants and Cross-Defendants Meadowbrook Daily Real Estate, LLC, Big Horn Fields, LLC, Brown Road Fields, LLC, Highway 395 Fields, LLC, and The Meadowbrook Mutual Water Company's Joinder in Motion to Set a Phase 2 Trial on Safe Yield and a Phase 3 Trial to Adjudicate Groundwater Rights and Establish a Physical Solution and Joinders

The Court hears oral argument and continues the motion to 08/05/2024 at 01:30 PM in this department.

Simultaneous briefing on the issue of the safe yield trial is to be filed no later than 07/12/2024. Briefs are not to exceed 20 pages. No replies will be allowed.

ADDITIONAL EVENTS:

EVENT ID/DOCUMENT ID: 74303221
EVENT TYPE: Joinder
MOVING PARTY: Meadowbrook Dairy Real Estate, LLC, Highway 395 Fields, LLC, the Meadowbrook Mutual Water Company, Big Horn Fields, LLC, Brown Road Fields, LLC
CAUSAL DOCUMENT/DATE FILED: Motion for Joinder, 05/22/2024

EVENT ID/DOCUMENT ID: 74303220
EVENT TYPE: Motion - Other
MOVING PARTY: Searles Valley Mineral Inc.
CAUSAL DOCUMENT/DATE FILED: Motion - Other to Set a Phase Trial 2 on Safe Yield and a Phase 3 Trial to Adjudicate Groundwater Rights and Establish a Physical Solution,

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Calendar #_____
Case Name MOJAVE PISTACHIO
Law Firm U.S. DOJ
Atty Name DAVID GEHLERT
Phone # 303/241-1433
Representing U.S
☐ **Plaintiff** ☐ **Defendant** ☑ **Other**_____

Calendar #_____
Case Name Indian Wells
Law Firm Alcshire & Wynder
Atty Name Keith Lemieux
Phone # 805 206 6952
Representing City of Ridgecrest
☐ **Plaintiff** ☑ **Defendant** ☐ **Other**_____

Judge: William Claster **Department CX101** **Friday, June 14, 2024**

Calendar #7 Case Number: 30-2021-01187275-CU-OR-CJC Case Title: Mojave Pistachios, LLC vs. Indian Wells Valley Water District

Event: 01:30 PM - Joinder

Event: 01:30 PM - Joinder

Event: 01:30 PM - Motion - Other

Event: 01:30 PM - Order to Show Cause

Event: 01:30 PM - Status Conference

Participant	Role	Attorney for	Law Firm/Company Name	Specially Appearing
nick karno	Cross-Defendant	ladwp	city attorney	No
Ann Simshauser trustee of Simshauser Trust	Cross-Defendant			No
Daniel Quinley	Attorney	Robertson's Ready Mix	Jeffer Mangels Butler & Mitchell LLP	No
Noah Golden	Attorney	California Department of Fish and Wildlife	California Attorney General's Office	No
Darien Key	Other			No
Stan Rajtora	Cross-Complainant			No
Nicholas Karno	Attorney	Los Angeles Department of Water & Power	Los Angeles City Attorney's Office	No
Pat and Don Quist	Cross-Defendant			No
Rod Stiefvater	Plaintiff			No
James Worth	Attorney	Indian Wells Valley Water District	McMurtrey, Hartsock, Worth & St. Lawrence	No
Elisabeth Esposito	Attorney	Mojave Pistachios, LLC	Brownstein Hyatt Farber Schreck, LLP	No
ELAINE MEAD	Interested Party			No
Alison K Toivola	Defendant	Searles Valley Minerals Inc	Best Best & Krieger LLP	No
Angela Riddle	Interested Party			No
Allie Abbey	Cross-Defendant		US Navy	No
Brett Stroud	Attorney	BT-OH, LLC	Young Wooldridge, LLP	No

Gary Arnold	Cross-Defendant	Little Lake Ranch, Inc.	Arnold LaRochelle	No
Ron Kicinski	Other			No
Peter Martin	Other		Richards Watson Gershon	No
Armand Ash	Other		LeBeau Thelen, LLP	No
Andrea C Morales	Other		BHFS	No
Rebecka Foote	Other			No
Ron Strand	Interested Party			No
Donna Hocker	Other			No
George Croll	Interested Party			No
Tim Parker	Interested Party			No

Calendar #8 Case Number: 30-2022-01249146-CU-MC-CJC Case Title: Mojave Pistachios, LLC vs. Indian Wells Valley Groundwater Authority

Event: 01:30 PM - Order to Show Cause

Event: 01:30 PM - Status Conference

Participant	Role	Attorney for	Law Firm/Company Name	Specially Appearing
Elisabeth Esposito	Attorney	Mojave Pistachios, LLC	Brownstein Hyatt Farber Schreck, LLP	No
ELAINE MEAD	Interested Party			No
Andrea C Morales	Other		BHFS	No
Rebecka Foote	Other			No

Calendar #9 Case Number: 30-2021-01187589-CU-WM-CXC Case Title: Mojave Pistachios, LLC vs. Indian Wells Valley Groundwater Authority

Event: 01:30 PM - Order to Show Cause

Event: 01:30 PM - Status Conference

Participant	Role	Attorney for	Law Firm/Company Name	Specially Appearing
Elisabeth Esposito	Attorney	Mojave Pistachios, LLC	Brownstein Hyatt Farber Schreck, LLP	No
ELAINE MEAD	Interested Party			No
Tim Parker	Interested Party			No

Calendar #10 Case Number: 30-2022-01239487-CU-MC-CJC Case Title: Indian Wells Valley Groundwater Authority vs. Searles Valley Minerals Inc.

Event: 01:30 PM - Order to Show Cause

Event: 01:30 PM - Status Conference

Participant	Role	Attorney for	Law Firm/Company Name	Specially Appearing
Judith Coleman	Attorney	United States of America	U.S. Department of Justice	No
Elisabeth Esposito	Attorney	Mojave Pistachios, LLC	Brownstein Hyatt Farber Schreck, LLP	No
Robert G Kuhs	Attorney	Granite Construction Company	LeBeau Thelen LPP	No
Alison K Toivola	Defendant	Searles Valley Minerals Inc	Best Best & Krieger LLP	No
Tim Parker	Interested Party			No

Calendar # Case Number: 30-2022-01239479-CU-MC-CJC Case Title: Indian Wells Valley Groundwater Authority vs. Mojave Pistachios, LLC,

Event: 01:30 PM - Motion for Preliminary Injunction

Event: 01:30 PM - Order to Show Cause

Event: 01:30 PM - Status Conference

Participant	Role	Attorney for	Law Firm/Company Name	Specially Appearing
Rebecka Foote	Other			No
James L Markman	Attorney	Indian Wells Valley Groundwater Authority	Richards, Watson & Gershon	No
Brenda Burnett	Interested Party			No
Elisabeth Esposito	Attorney	Mojave Pistachios, LLC	Brownstein Hyatt Farber Schreck, LLP	No
ELAINE MEAD	Interested Party			No
Ron Kicinski	Other			No
Anita Imsand Meadowbrook	Cross-Complainant			No

PROOF OF SERVICE

I, Vanessa Guillen-Becerra, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 2855 East Guasti Road Suite 400 Ontario, California 91761. On June 21, 2024, I served a copy of the within document(s):

DEFENDANT, CROSS-DEFENDANT, AND CROSS-COMPLAINANT SEARLES VALLEY MINERALS INC.'S SEARLES' NOTICE OF ENTRY OF COURT ORDER RE: SUPPLEMENTAL BRIEFING AND CONTINUED HEARING

☒ by uploading to the Case Anywhere website pursuant to the Court Order Authorizing Electronic Service, dated December 2, 2022, thereby servicing the parties on the Service List maintained on the Case Anywhere website

Please see attached Service List.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on June 21, 2024, at Los Angeles, California.

Vanessa Guillen-Becerra