

1 RICHARDS, WATSON & GERSHON
A Professional Corporation
2 JAMES L. MARKMAN (BAR NO. 43536)
jmarkman@rwglaw.com
3 KYLE H. BROCHARD (BAR NO. 293369)
kbrochard@rwglaw.com
4 JACOB C. METZ (BAR NO. 341565)
jmetz@rwglaw.com
5 350 South Grand Avenue, 37th Floor
Los Angeles, California 90071
6 Telephone: 213.626.8484
Facsimile: 213.626.0078

7 Attorneys for Cross-Defendant
8 INDIAN WELLS VALLEY GROUNDWATER
AUTHORITY

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

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

Case No. 30-2021-01187275-CU-OR-CJC
(Related to Case Nos.:
30-2021-01187589-CU-WM-CXC;
30-2021-01188089-CU-WM-CXC;
30-2022-01239487-CU-MC-CJC; 30-2022-
01239479-CU-MC-CJC; 30-2022 01249146-
CU-MC-CJC)

17 **JOINT STATUS CONFERENCE**
STATEMENT OF THE UNITED STATES
OF AMERICA; INDIAN WELLS VALLEY
GROUNDWATER AUTHORITY; CITY OF
RIDGECREST; AND COUNTY OF KERN

18 AND CROSS-COMPLAINTS AND
19 RELATED ACTIONS

20 Date: March 22, 2024
21 Dept: CX101
22 Time: 1:30 p.m.
23 Action Filed: November 19, 2019
24 Trial Date: None Set
25 Hon. William D. Claster
26 [Exempt from filing fees pursuant to Govt. Code
27 § 6103]
28

1 ALESHIRE & WYNDER, LLP
2 W. KEITH LEMIEUX (BAR NO. 161850)
3 klemieux@awattorneys.com
4 2659 Townsgate Road, Suite 226
5 Westlake Village, California 91361
6 Telephone: (805) 495-4770
7 Facsimile: (805) 495-2787
8 Attorney for Cross-Defendant
9 CITY OF RIDGECREST

10 OFFICE OF THE COUNTY COUNSEL
11 COUNTY OF KERN
12 PHILLIP W. HALL (BAR NO. 230019)
13 Deputy County Counsel, Kern County
14 phall@kerncounty.com
15 1115 Truxtun Avenue, Floor 4
16 Bakersfield, California 93301
17 Telephone: (661) 868-3800
18 Facsimile: (661) 868-3809
19 Attorney for Cross-Defendant
20 COUNTY OF KERN

21 TODD KIM
22 Assistant Attorney General
23 Environment and Natural Resources Division

24 DAVID W. GEHLERT (CO Bar No. 21852)
25 Attorneys, U.S. Department of Justice
26 Environment and Natural Resources Division
27 Natural Resources Section
28 999 18th Street, South Terrace, Suite 370
Denver, CO 80202
Telephone: (303) 844-1364
Email: David.Gehlert@usdoj.gov

JUDITH E. COLEMAN (Bar No. 250123)
Senior Attorney, U.S. Department of Justice
Environment and Natural Resources Division
Natural Resources Section
P.O. Box 7611
Washington, D.C. 20044-7611
Telephone: (202) 514-3553
Email: Judith.Coleman@usdoj.gov

Attorneys for UNITED STATES OF
AMERICA

1 **JOINT STATUS CONFERENCE STATEMENT OF THE INDIAN WELLS VALLEY**
2 **GROUNDWATER AUTHORITY, CITY OF RIDGECREST, COUNTY OF KERN, AND**
3 **THE UNITED STATES**

4 The Indian Wells Valley Groundwater Authority (“Authority”), City of Ridgecrest (“City”),
5 County of Kern (“County”), and the United States of America (“United States”) submit this Joint
6 Status Conference Statement in advance of the March 22, 2024 hearing. These parties received a
7 draft status conference statement from the Indian Wells Valley Water District (“District”) on
8 Monday, March 11, 2024. The Authority, City, County, and United States provided edits and
9 comments to the statement by email on Friday, March 15, at about 11 am. At about 1:30 pm, the
10 District emailed stating they would not include any of the edits because they did not have time to get
11 approval of the proposed additions from other parties.

12 The Authority, City, County, and United States are therefore forced to submit this separate
13 Joint Status Conference Statement. The Authority, City, County, and United States, have left the
14 majority of the District’s statement unchanged, and have added their comments, identified by
15 separate headings, underneath the District’s original comment. This is the format that had been used
16 for past Joint Status Conference Statements.

17 **1. WHAT HAS BEEN DONE IN THE CASE**

18 A. **STATUS OF THE PLEADINGS**

19 On November 19, 2019, Plaintiffs filed a Complaint for Quiet Title, Declaratory Relief and
20 Injunction Imposing a Physical Solution: Not General Adjudication against District, Searles, and
21 Meadowbrook. All Defendants have answered. In response to Plaintiffs’ complaint, on
22 June 16, 2021, District filed a Cross-Complaint for Comprehensive Adjudication of the Indian Wells
23 Valley Groundwater Basin (“Basin”) pursuant to the California Streamlined Groundwater
24 Adjudication Statutes (Code Civ. Proc., §§ 830-852) (“Adjudication”). Searles has also filed a
25 cross-complaint seeking a comprehensive groundwater rights adjudication. Unless extended by
26 Stipulation among the parties, the Complaint, which includes a request for imposition of a physical
27 solution, must commence no later than November 18, 2024.
28

1 **Response of the Indian Wells Valley Groundwater Authority, City of Ridgecrest and**
2 **County of Kern**

3 There is no requirement that trial in the Adjudication must commence in 2024. If the five-
4 year deadline is applicable to the Adjudication, it will not run until June 2026, five years after the
5 District’s cross-complaint was filed. (Code Civ. Proc., § 583.310; *Tomales Bay Oyster Corp. v.*
6 *Superior Court in and for City and County of San Francisco* (1950) 35 Cal.2d 389, 393 [“a cross-
7 complaint is not subject to mandatory dismissal under section 583 until the lapse of five years from
8 the filing of the cross-complaint”].) Moreover, “[i]t is settled...that in computing the five-year period
9 the time during which, for all practical purposes, going to trial would be impossible, whether this
10 was because of total lack of jurisdiction in the strict sense, or because proceeding to trial would be
11 both impracticable and futile, is to be excluded.” (*City of Pasadena v. City of Alhambra* (1949) 33
12 Cal.2d 908, 916 (“*Pasadena*”), internal quotations omitted [complaint was filed on September 23,
13 1937, and the trial commenced on May 18, 1944]; see also Code Civ. Proc., § 583.340(c).)

14 The “Complaint” the District claims must commence trial by November 2024 was filed by
15 Mojave Pistachios, LLC; John Thomas Conaway; John Thomas Conaway Trust; John Thomas
16 Conaway Living Trust u/d/t August 7, 2008; Nugent Family Trust; and Sierra Shadows Ranch LLP
17 (collectively, “Mojave”) against some, but not all of the parties in the Adjudication. The operative
18 pleading is now a First Amended Verified Complaint. (See ROA 47.) The United States, the
19 Authority, the County of Kern, the City of Ridgecrest, the Inyokern Community Service District, “de
20 minimis extractors,” and others are not defendants to the Complaint. The Complaint defines “de
21 minimis extractors” as those that “extract for domestic purposes, two acre-feet or less per year” and
22 alleges that pumping by those parties is “negligible” and “has not caused substantial injury to
23 Plaintiffs or the Basin.” (ROA 47, First Amended Verified Complaint, p. 10, ¶ 21(a).) Mojave further
24 states that “De minimis extractors are customarily excluded from broader litigation among competing
25 water rights holders as their joinder is unnecessary to grant the requested relief.” (*Id.*, p. 11, ¶ 21(d).)

26 Since the Adjudication was filed in June 2021, none of the status conference statements have
27 discussed the Complaint other than to say it was filed and the defendants to that pleading have all
28 answered. (See ROA 350, 354, 405, 691, 863, 942, 985.) The Complaint alleges that Mojave has a

1 water right to which it seeks to quiet title. The District’s motion to set a Phase 1 trial, and its proposal
2 to have an initial phase on water in storage and the federal reserved water right of the United States,
3 will have no effect on the Complaint, to which the United States is not a party.

4 The Authority believes Mojave’s Complaint should be dismissed. Although all of the parties
5 to Complaint have been present for over three years there have been no efforts to conduct any
6 discovery or, despite repeated assertions that they were all willing, mediation. If Mojave does not
7 wish to dismiss the Complaint, the Authority believes that after Initial Disclosures have been served
8 it will be possible to set a Phase 1 trial to determine whether Mojave has any water right at all.
9 Mojave’s Complaint suggests it agrees with this assertion. (See ROA 47, pp. 5-11.)

10 The Court of Appeal raised serious concerns as to the reasonableness of Mojave’s water usage
11 (*Mojave Pistachios, LLC v. Superior Court of Orange County* (2024) 99 Cal.App.5th 605, fn 22),
12 and there are also serious questions as to whether Mojave exercised self-help during periods of
13 overdraft such that any overlying right that may have once existed for its properties has been lost to
14 prescription. In its First Amended Complaint, Mojave claims the parties not joined as defendants
15 there—including the United States, City of Ridgecrest, County of Kern, Inyokern Community
16 Service District, “Small Mutual”, de minimis, and more, whose estimated extractions in 2020 were
17 more than 3,000 AFY—are unnecessary “for this Court to confirm Plaintiffs’ overlying water rights,
18 determine the priority of Plaintiffs’ rights vis-à-vis those Defendants....” (ROD 47, pp. 5-11, ¶ 21(b)
19 [“de minimis extractors need not be joined for this Court to confirm Plaintiffs’ overlying water
20 rights”]; ¶ 22(b) [“Joinder of the water users identified in Paragraph 17(c)-(f) is unnecessary to afford
21 the relief sought by Plaintiffs for the reasons set forth in Paragraph 21(b)”].)

22 These assertions, and the undisputed fact that the Basin has been in overdraft since at least
23 the 1960s, suggests a Phase 1 trial as to whether Mojave has a colorable claim to an overlying water
24 right, may, in fact, be the most expeditious means of moving both the Complaint and the Adjudication
25 forward. (See ROA 47, Mojave’s First Amended Verified Complaint, p. 18, ¶ 47 [“the average annual
26 groundwater pumping over the past 44 years has been approximately 26,000 AFY and groundwater
27
28

1 levels in the center of the Basin, distant from Plaintiffs’ properties, have been declining between .5
2 and 1.5 feet/year”].)

3 But, again, the Authority believes these questions are better addressed with full briefing after
4 Initial Disclosures have been provided.

5 **Response of the United States**

6 The United States was not, and cannot be, joined to the 2019 Complaint. Further because the
7 Complaint expressly did not initiate a general adjudication, it has no bearing on when trial in this
8 proceeding must begin. Accordingly, to the extent Code Civ. Proc., § 583.310 is applicable it cannot
9 require trial to begin on Nov. 18, 2024.

10 B. **STATUS OF NOTICE AND SERVICE**

11 On January 16, 2024, District filed and served a Notice re: Decision on Posting, providing
12 notice, as ordered by the Court at the December 15, 2023 Status Conference, of District’s decision
13 whether to opt to post a copy of the Cross-Complaint, Notice of Commencement of Groundwater
14 Basin Adjudication, and Form Answer to Adjudication Cross-Complaint pursuant to Code of Civil
15 Procedure section 836, subdivision (d)(1)(C). District’s January 16th notice confirmed District will
16 post. District commenced posting on February 26, 2024 and anticipates it will have completed all
17 posting on or before March 22, 2024. District will file a notice of completion of posting with proof
18 of service immediately upon confirmation of completion of the posting.

19 “Compliance with the service and notice provisions of [the Streamlined Act] shall be deemed
20 effective service of process of the [cross-]complaint and notice on all interested parties of the
21 comprehensive adjudication for purposes of establishing in rem jurisdiction and the comprehensive
22 effect of the comprehensive adjudication.” (Code Civ. Proc., § 836(j).) District has completed and
23 complied with all notice and service requirements required by Code of Civil Procedure section 830
24 *et seq.* and Court orders regarding notice and service and, thus, has provided notice to all interested
25 parties and effectively joined all interested parties to the Adjudication. District compliance satisfies
26 the McCarran Amendment, thereby securing jurisdiction over the federal government. (Code Civ.
27 Proc., § 830(b)(6).)
28

1 District requests that the Court issue an Order to Show Cause as to any party who objects to
2 (1) District’s compliance with all applicable service and notice provisions of Chapter 7 of Title 10 of
3 Part 2 of the Code of Civil Procedure and all Court Orders relating to service and notice of this
4 Adjudication; (2) the Court’s in rem jurisdiction over all interested parties to this Adjudication; and
5 (3) the comprehensive effect of this Adjudication is established; and direct any objecting party to
6 immediately—and no later than 30 days from March 22, 2024—show cause as to why the Court
7 should not confirm District’s compliance, the Court’s in rem jurisdiction, and the Adjudication’s
8 comprehensiveness under the McCarran Amendment.

9 **Response of the Indian Wells Valley Groundwater Authority, City of Ridgecrest and**
10 **County of Kern**

11 On February 29, 2024, the Authority filed a response to the District’s notice that it would post
12 notice of the adjudication as required by Section 836 of the Code of Civil Procedure. As discussed
13 in that response, the District must provide the Court with proof that it has complied with all of the
14 notice and posting provisions in Section 836, by declarations from those with personal knowledge.
15 The District, to date, has not provided proof, by persons with personal knowledge, as to who was
16 mailed notice, who received the mailings, or for which properties the mailings were returned.

17 The Authority, City, and County do not necessarily object to the Court issuing an Order to
18 Show Cause (“OSC”) on the issue of the District’s service. However, the Order needs to be directed
19 to the District to prove with competent evidence that it has completed the notice and service
20 requirements in Code of Civil Procedure section 836. Issuing an OSC that would require parties who
21 have not received notice to appear and contest that to which they are not aware does not solve
22 anything. It is the District’s burden to establish jurisdiction over all those in the Basin.

23 **Response of the United States**

24 An Order to Show Cause requiring parties to dispute this Court’s jurisdiction will not serve
25 to solidify the Court’s jurisdiction because jurisdiction can be challenged at any time. The United
26 States agrees that the District is obligated to prove compliance with the notice and service provisions
27 required for a comprehensive adjudication.
28

1 C. PAYMENT OF COMPLEX FEES

2 On February 18, 2022, the Court previously granted District’s Motion for Order Temporarily
3 Suspending the Requirement to Pay the Initial Appearance Fee. The Court suspended the filing fee
4 through February 28, 2023 to allow the thousands of persons and entities owning property overlying
5 the Basin, most of whom are either de minimis pumpers or non-pumpers, to file an answer. District
6 requests that the Court reinstate the filing fee waiver through June 30, 2024 to allow interested
7 persons who are taking notice of District’s recent postings, which inform them that they have sixty
8 (60) days in which to answer, to file an answer.

9 D. REQUESTS FOR ENTRY OF DEFAULT

10 To date, District has not filed any requests for entry of default. If and when District does
11 request defaults, it does not seek to exempt any party from the binding effect of any judgment. Any
12 entry of default in the Adjudication will not insulate a defaulted party from the binding effect of a
13 judgment; defaulted parties remain bound by any judgment entered after default as in other civil
14 actions, including quiet title actions, once the plaintiff or cross-complainant “proves up” the default.
15 (E.g., Code Civ. Proc., §§ 585(b), 764.010; *Nickell v. Matlock* (2012) 206 Cal.App.4th 934, 941-942
16 [before entering judgment in a quiet title action, the court must hold evidentiary hearing at which
17 defaulting party may appear and present evidence, but default still may be taken and defaulted party
18 will still be bound by the judgment,]; 1 Weil & Brown, *Cal. Practice Guide: Civ. Proc. Before Trial*
19 (Rutter 2023 ed.) §§ 5:194, 5:271.) Any judgment in a comprehensive adjudication binds all parties,
20 including defaulted parties, defaults neither offend the McCarran Amendment nor defeat jurisdiction
21 over the federal government. (See 43 U.S.C. § 666; Code Civ. Proc., § 836(j).)

22 **Response of the Indian Wells Valley Groundwater Authority, City of Ridgecrest and**
23 **County of Kern**

24 The District cannot default those who have not been served.

25 E. STATUS OF PARTICIPATION BY DE MINIMIS PUMPERS

26 Under the Sustainable Groundwater Management Act of 2014 (“SGMA”), a “de minimis”
27 pumper is defined as a person who extracts, for domestic purposes, two acre-feet of groundwater or
28 less per year. (Wat. Code, § 10721(e).) The Authority currently exempts de minimis pumpers from

1 the payment of its Replenishment Fee and certain other Groundwater Sustainability Plan (“GSP”)-
2 related programs. No party has requested, nor has the Court determined, that any claim of right to
3 extract groundwater from the Basin is exempt from the Adjudication under Code of Civil Procedure
4 sections 833, subdivision (d) or 851. District, with others, intends to present a proposed judgment
5 and physical solution that will include all de minimis pumpers in the way nearly every prior
6 adjudication has included them: preserving their groundwater rights.

7 The Court has paused or stayed participation by “de minimis” parties since the initial Case
8 Management Conference on May 20, 2022.

9 At the December 15, 2023 hearing on the Authority’s Motion for Class Certification and
10 Appointment of Class Counsel to certify a class of de minimis pumpers, the Court denied the motion
11 without prejudice. It is District’s position that through its compliance with all applicable service and
12 notice provisions of Chapter 7 of Title 10 of Part 2 of the Code of Civil Procedure and all Court
13 Orders relating to service and notice, in rem jurisdiction and the comprehensive effect of this
14 Adjudication have been established and, therefore, there is no need for class certification for a class
15 of small pumpers.

16 **Response of the Indian Wells Valley Groundwater Authority, City of Ridgecrest and**
17 **County of Kern**

18 The above paragraph does not address the de minimis issue, which has been raised at every
19 status conference since the Adjudication was filed. Under Code of Civil Procedure section 833(d)
20 those who extract only “minor quantities of water” may be exempted if those claims “would not have
21 a material effect on the groundwater rights of other parties.” Section 851 states that the judgment in
22 this action will be binding on those “*whose claims have not been exempted....*” (Emphasis added.)
23 Mojave alleges in its First Amended Complaint (ROA 47) that there are de minimis users in the basin
24 who extract “negligible amounts of water” and whose presence is not required, which suggests that
25 those extractors should be exempt under Section 833(d). In answering Plaintiff’s allegations, the
26 District claimed to not have sufficient information to admit or deny Mojave’s claims. (ROA 153, pp.
27 6-7.) As such, whether there are extractors in the Basin who could or should be exempted under
28 Section 833(d) is an open question.

1 In its response to the District’s motion on phasing, the United States stated its position that
2 the status of the de minimis pumpers and their involvement or exemption from the Adjudication
3 should be conclusively resolved at an early stage. The Authority, City, and County agree. Whether
4 this issue can be addressed with legal briefing, or an evidentiary hearing should be discussed at the
5 status conference.

6 **Statement of the United States**

7 The United States concurs that the question of how to address the possible exemption of
8 claims pursuant to Section 833(d) should be discussed at the status conference. Moreover, the United
9 States suggests that the issue may be an appropriate subject for phase one of trial.

10 F. **STATUS OF RELATED PROCEEDINGS**

11 (1) *Mojave Pistachios, LLC; et al. v. Indian Wells Valley Groundwater Authority;*
12 *et al.*, OCSC Case No. 30-2021-01187589-CU-WM-CXC (the “Mojave Pistachios Action”)
13 (consolidated with the Searles Action; related to all cases listed on the caption; and pending before
14 The Honorable William Claster): On September 30, 2020, Mojave Pistachios, LLC and Paul G.
15 Nugent and Mary E. Nugent, Trustees of the Nugent Family Trust dated June 20, 2011 (collectively,
16 “Mojave Pistachios”) filed a Petition for Writ of Mandamus and Complaint against Authority. On
17 January 6, 2023, Mojave Pistachios filed a Fourth Amended Petition for Writ of Mandamus and
18 Complaint. Through its petition, Mojave Pistachios alleges, inter alia, that Authority adopted a GSP
19 on January 16, 2020 that is illegal and technically deficient.

20 The Mojave Pistachios Action was stayed pursuant to an April 26, 2023 order of the Court of
21 Appeal, Fourth Appellate District, Division Three after Mojave Pistachios filed a petition for writ of
22 mandate in that court on February 21, 2023. On February 8, 2024, the Court of Appeal issued its
23 published opinion denying the petition for writ of mandate. (*Mojave Pistachios LLC, v. Superior*
24 *Court* (2024) 99 Cal.App.5th 605 [318 Cal.Rptr.3d 180], reh’g denied (Mar. 4, 2024).) On February
25 23, 2024, Mojave Pistachios petitioned the Court of Appeal for rehearing, and rehearing was denied
26 on March 4, 2024. The appellate court’s February 8, 2024 opinion dissolved the stay upon finality
27 of the opinion—March 9, 2024. Mojave Pistachios intends to file a petition for review with the
28 California Supreme Court and seek a stay if review is granted.

1 Mojave Pistachios has elected to prepare the administrative record. The Authority filed an
2 answer to Mojave Pistachios’ Fourth Amended Petition and Complaint on April 24, 2023, just two
3 days before the Court of Appeal stayed this action. The administrative record has not been prepared
4 in the consolidated cases due to the Court of Appeal-imposed stay. Its timing may be further
5 influenced by Searles’ contemplated amendment of its complaint to add a Public Records Act cause
6 of action (see, *infra*, § 1.F(2) for further discussion) and by a further stay of proceedings in the event
7 review is granted by the California Supreme Court. The Authority, the City of Ridgecrest, the County
8 of Kern, and the United States do not join this paragraph.

9 A status conference in the Mojave Pistachios Action is set to occur on March 22, 2024 in this
10 Department.

11 **Response of the Indian Wells Valley Groundwater Authority**

12 Following Mojave’s initiation of this complaint, the Department of Water Resources
13 (“DWR”) approved the Authority’s GSP. Neither Mojave nor Searles challenged DWR’s approval.
14 The Authority is evaluating whether to file a motion to bifurcate this action to have Mojave’s (and
15 Searles’, see below) challenge to the Authority’s GSP bifurcated and heard first. The Authority’s
16 motion, if filed, would also address the proper scope of the Court’s review of a DWR-approved GSP,
17 under SGMA, and whether DWR is now an indispensable party.

18 (2) *Searles Valley Minerals Inc. v. Indian Wells Valley Groundwater Authority;*
19 *et al.*, OCSC Case No. 30-2021-01188089-CU-WM-CXC (the “Searles Action”) (consolidated with
20 the Mojave Pistachios Action, which is the lead case; related to all cases listed on the caption; and
21 pending before The Honorable William Claster): On September 29, 2020, Searles filed a Petition
22 for Writ of Mandate; Complaint for Declaratory and Injunctive Relief; and Takings Claims under the
23 California Constitution against Authority and Authority’s Board of Directors. On or about August
24 25, 2021, Searles filed a First Amended Petition for Writ of Mandate and Complaint for Declaratory
25 and Injunctive Relief; and Takings Claim under the California Constitution. Through its petition,
26 Searles challenges the validity of the GSP.

27 This case is consolidated with the Mojave Pistachios Action and, therefore, the stay imposed
28 by the Court of Appeal on April 26, 2023 also applied to the Searles Action.

1 The Authority filed an Answer to Searles’ First Amended Petition and Complaint on
2 April 24, 2023, just two days before the Mojave Pistachios Action was stayed. Given that the
3 administrative records for both the Mojave Pistachios and Searles Actions are likely to be mostly
4 similar, the administrative record has not been prepared in the consolidated cases. Moreover, Searles
5 intends to file a motion for leave to amend its operative complaint to add a Public Records Act cause
6 of action for Authority’s failure to comply with Searles’ request for public records for the
7 administrative record. The Authority, the City of Ridgecrest, the County of Kern, and the United
8 States do not join this paragraph.

9 A status conference in the Searles Action is set to occur on March 22, 2024 in this
10 Department.

11 **Response of the Indian Wells Valley Groundwater Authority**

12 Following Searles’ initiation of this complaint, the Department of Water Resources (“DWR”)
13 approved the Authority’s GSP. Neither Mojave nor Searles challenged DWR’s approval. The
14 Authority is evaluating whether to file a motion to bifurcate this action to have Searles’ (and
15 Mojave’s, see above) challenge to the Authority’s GSP bifurcated and heard first. The Authority’s
16 motion, if filed, will also address the proper scope of the Court’s review of a DWR-approved GSP,
17 under SGMA, and whether DWR is now an indispensable party.

18 The Authority has complied with its obligation under the Public Records Act. Even if Searles
19 had a claim to the contrary that is a different lawsuit for a different venue.

20 (3) *Indian Wells Valley Groundwater Authority v. Mojave Pistachios, LLC; et al.*,
21 OCSC Case No. 30-2022-01239479-CU-MC-CJC (related to all cases listed on the caption; and
22 pending before The Honorable William Claster): On January 5, 2022, Authority filed a Complaint
23 for Preliminary and Permanent Injunction; Recovery of Delinquent Groundwater Fees; and Civil
24 Penalties against Mojave Pistachios. Through its complaint, Authority seeks to enjoin Mojave
25 Pistachios from operating groundwater wells without payment of Basin Replenishment Fees,
26 delinquent groundwater extraction charges, and civil penalties. Mojave Pistachios filed an Answer
27 on April 11, 2022. A status conference in this matter is set to occur on March 22, 2024 in this
28 Department.

1 The Authority contends the case is at issue and the Authority requests that a trial date be set.
2 The Authority filed a motion for preliminary injunction, which is scheduled to be heard on April 12,
3 2024.

4 (4) *Indian Wells Valley Groundwater Authority v. Searles Valley Minerals Inc.*,
5 OCSC Case No. 30-2022-01239487-CU-MC-CJC (related to all cases listed on the caption; and
6 pending before The Honorable William Claster): On January 5, 2022, Authority filed a Complaint
7 for Preliminary and Permanent Injunction; Recovery of Delinquent Groundwater Fees; and Civil
8 Penalties against Searles. Through its complaint, Authority seeks to enjoin Searles from operating
9 groundwater wells without payment of Basin Replenishment Fees, delinquent groundwater
10 extraction charges, and civil penalties. Searles filed an Answer on April 19, 2022. A status
11 conference in this matter is set to occur on March 22, 2024 in this Department.

12 The Authority contends the case is at issue and requests that a trial date be set. The Authority
13 also intends to file a motion for preliminary injunction in this action. No motion for preliminary
14 injunction has been filed yet.

15 (5) *Mojave Pistachios, LLC; et al. v. Indian Wells Valley Groundwater Authority;*
16 *et al.*, OCSC Case No. 30-2022-01249146-CU-MC-CJC (related to all cases listed on the caption;
17 and pending before The Honorable William Claster): On March 9, 2022, Mojave Pistachios filed a
18 Complaint for Refund of Extraction Fees Paid against Authority, seeking to recover fee payments
19 levied by Authority pursuant to Ordinance No. 02-18, as later amended by Ordinance Nos. 02-20 and
20 05-20, which impose a \$105 per acre-foot groundwater extraction fee that Authority states is
21 necessary to finance the estimated costs to develop and adopt the GSP. On August 24, 2022, the
22 Court sustained the Authority's demurrer to the complaint, and stayed the matter pending a resolution
23 of the Mojave Pistachios Action. A status conference in this matter is set to occur on March 22, 2024
24 in this Department.

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

1 Extraction Fees; Imposition of Civil Penalties against ICSD. Through its complaint, Authority seeks
2 to enjoin ICSD from operating groundwater wells without payment of Basin Replenishment Fees,
3 delinquent groundwater extraction charges, and civil penalties. ICSD filed an Answer on November
4 18, 2022. This action is not pending in this Court.

5 The parties are conducting good faith settlement negotiations in an effort to settle the matter
6 completely. If settlement negotiations are unsuccessful, ICSD intends to move to transfer this action
7 to the Orange County Superior Court pursuant to Code of Civil Procedure section 394 and to
8 coordinate or consolidate it with the cases listed in the caption. It is Authority’s position that this
9 action is not related to the Adjudication or the cases related to the Adjudication. It is ICSD’s position
10 that the Authority has waived any objection by failing to timely respond to the Notice of Related
11 Case pursuant to California Rules of Court, rule 3.300, subdivision (g). A status conference in this
12 matter is set to occur on April 2, 2024.

13 **Response of the Indian Wells Valley Groundwater Authority**

14 This case is not before this Court, nor is it related.

15 G. **THIS COURT’S JURISDICTION OVER THE ADJUDICATION PURSUANT TO**
16 **THE STREAMLINED GROUNDWATER ADJUDICATION STATUTES**

17 District’s position is that the California Streamlined Groundwater Adjudication Statutes
18 (Code Civ. Proc., §§ 830-852, “Streamlined Act”) establish a procedure that, if followed, provides
19 for the conduct of a comprehensive adjudication consistent with, and in satisfaction of, the McCarran
20 Amendment. (Code Civ. Proc., § 830(b)(6).) In other words, satisfying all notice and service
21 requirements under Code of Civil Procedure section 830 *et seq.* and related court orders, as District
22 contends it has, establishes a court’s jurisdiction over all those claiming an interest or potential
23 interest in extraction of water from, or use of storage space within, the Basin, including de minimis
24 pumpers and non-users. District will seek to bind all joined parties, including all minor water
25 pumpers and non-users, through a final judgment and physical solution, subject to the Court’s
26 continuing jurisdiction. (See, *supra*, §§ 1.B, 1.D, 1.E.)

27 ///

28 ///

1 **Response of the Indian Wells Valley Groundwater Authority, City of Ridgecrest and**
2 **County of Kern**

3 The District’s contentions are not enough to obtain jurisdiction over the United States or any
4 other party that was not personally served. This section is related to notice, service, and de minimis
5 issues, addressed in other paragraphs above. The District needs to provide proof to the Court that it
6 has complied with the notice and service provisions in Streamlined Act.

7 **Response of the United States**

8 The Court should make findings regarding the District’s compliance with the notice and
9 service required for this adjudication to be comprehensive under California law. See CCP section
10 836(j). Further, the parties and the Court should discuss the potential effect of Section 833(d) on this
11 Court’s jurisdiction over the United States.

12 H. **INITIAL DISCLOSURES**

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

20 The exchange of initial disclosures has been stayed by the Court for all parties since the May
21 20, 2022 Case Management Conference. The Parties propose the Court lift the stay on initial
22 disclosures and set a deadline for their exchange to occur by all parties, including de minimis
23 pumpers, within 60 days of March 22, 2024. Attached as Exhibit “A” is a proposed form for
24 voluntary use in making initial disclosures as required under Code of Civil Procedure section 842.

25 **Response of the Indian Wells Valley Groundwater Authority, City of Ridgecrest and**
26 **County of Kern**

27 Because service is not complete the deadline for the exchange of the Initial Disclosures of
28 those that have not yet appeared should not be set. The Authority agrees that, as to those that have

1 appeared, the Court should issue an order requiring Initial Disclosures be exchanged. As for the Form
2 that the District intends to include with this statement, the Authority, City and County do not agree
3 with the form and it should not be approved by the Court.

4 The Form proposed by the District is not likely to elicit sufficient information, and is a trap
5 for the unwary and the unrepresented. As the Court is aware, this case will involve claims of
6 prescriptive rights. “[A]n appropriative taking of water which is not surplus ... may ripen into a
7 prescriptive right where the use is actual, open and notorious, hostile and adverse to the original
8 owner, continuous and uninterrupted for the statutory period of five years, and under claim of right.”
9 (*Pasadena, supra*, 33 Cal.2d 908, 926–927.) Importantly, an overlying landowner (such as Mojave)
10 can lose its water rights where “overlying rights have been prescribed except to the extent of such
11 maximum annual self-help by production during the prescriptive period.” (*Hi-Desert County Water*
12 *Dist. v. Blue Skies Country Club, Inc.* (1994) 23 Cal.App.4th 1723, 1733; see also *Pasadena, supra*,
13 33 Cal.2d 908, 931-32 [“If the original owners of water rights have ... failed to pump for a five-year
14 period, then there would be no interference ... and the wrongdoers would have perfected prior
15 prescriptive rights to the full amount which they pumped”].)

16 The Authority does not believe that it is disputed, or disputable, that the Basin has been in
17 overdraft for 60 plus years. Under Water Code section 10720.5(a), “no extraction of groundwater
18 between January 1, 2015, and the date of adoption of a groundwater sustainability plan [here January
19 16, 2020] ... may be used as evidence of, or to establish or defend against, any claim of prescription.”
20 The District’s Form is likely only to elicit useful information for 2011-2015, and possibly 2020 to
21 the present, but will not address important overdraft periods, such as from 1989 to 2003 when prior
22 statement from Mojave indicate no pumping on its property. Under Water Code section 842(a)(12),
23 the Initial Disclosures are required to include “[a]ny other facts that tend to prove the party’s claimed
24 water right.” In this case, those “other facts” will require disclosure of the quantity of groundwater
25 extracted by a party or its predecessor for a period greater than just 10 years.

26 The Form should not be approved by the Court as it is likely to mislead people into disclosing
27 less information than will ultimately be required here.

28

1 **Response of the United States**

2 Initial disclosures are an important predicate to making informed decisions regarding phasing
3 of this trial. Accordingly, the United States supports exchange of initial disclosures by those parties
4 who have appeared. Sixty days is a reasonable time in which to do so.

5 I. **TRIAL SETTING MOTION**

6 On February 23, 2024, District filed and served a motion to set trial in the Adjudication (“Trial
7 Setting Motion”). (ROA, 1204.) On February 23, 2024, Plaintiffs and Meadowbrook filed and served
8 joinders to the Trial Setting Motion. (ROA, 1207, 1211.) On February 27, 2024, Searles filed and
9 served a joinder to the Trial Setting Motion. (ROA, 1215.) The Authority and the United States filed
10 oppositions to the motion on March 11, 2024. The Trial Setting Motion is set for hearing on
11 March 22, 2024, concurrent with the Status Conference. The Trial Setting Motion is set for hearing
12 on March 22, 2024, concurrent with the Status Conference.

13 J. **BASIN BOUNDARY**

14 In the Trial Setting Motion, District requests the Court issue an Order to Show Cause
15 regarding the Basin boundary. (See, *supra*, § 1.I(2).) SGMA and the Streamlined Act presume the
16 Basin boundary is as defined in DWR’s Bulletin 118 Report. (Code Civ. Proc., §§ 832(a), 841; Wat.
17 Code, §§ 10721(b), 10722.) Neither Authority nor any other party sought to change the Basin
18 boundary through the DWR Basin Boundary Modification processes in 2016 or 2018, or alleged in
19 its answer in this Adjudication its intention to seek adjustment of the Basin’s boundary under Code
20 of Civil Procedure section 836, subdivision (a)(2)(B). To preserve valuable party and judicial
21 resources, the Court should issue an Order to Show Cause, as sought through the Trial Setting
22 Motion, to confirm that the Basin boundary will be as set forth by the current Bulletin 118 Report.

23 **Response of the Indian Wells Valley Groundwater Authority, City of Ridgecrest and**
24 **County of Kern**

25 No OSC should be set until notice and service are complete and parties have been given an
26 opportunity to appear.

27
28

1 **Response of the United States**

2 The United States agrees that an OSC can be an appropriate means to confirm the boundary
3 of the adjudication. However, no OSC should be set until notice and service are complete and parties
4 have been given an opportunity to appear.

5 **2. RECOMMENDED DATES AND TIMES**

6 A. OSC RE: COMPLETION OF SERVICE AND NOTICE

7 District recommends the Court issue an Order to Show Cause as to any party who objects to
8 (1) District’s compliance with all applicable service and notice provisions of Chapter 7 of Title 10 of
9 Part 2 of the Code of Civil Procedure and all Court Orders relating to service and notice of this
10 Adjudication; (2) the Court’s in rem jurisdiction over all interested parties to this Adjudication; and
11 (3) the comprehensive effect of this Adjudication is established; and direct any objecting party to
12 immediately—and no later than 30 days from March 22, 2024—show cause as to why the Court
13 should not confirm District’s compliance, the Court’s in rem jurisdiction, and the Adjudication’s
14 comprehensiveness under the McCarran Amendment.

15 **Response of the Indian Wells Valley Groundwater Authority, City of Ridgecrest and**
16 **County of Kern**

17 As noted above, it is the District’s burden to show that it has complied with all required
18 service and notice provisions, and it has not met that burden. An OSC that would require parties who
19 have not received notice to appear and contest that to which they are not aware does not do anything.
20 Furthermore, jurisdictional issues can be raised at any time. There does not seem to be a benefit to
21 this request.

22 **Response of the United States**

23 The United States repeats its comments to Section 1.B. regarding the proposed jurisdictional
24 OSC.

25 B. FILING FEE WAIVER

26 District recommends the Court reinstate the initial appearance fee waiver effective
27 immediately through June 30, 2024.

28

1 C. INITIAL DISCLOSURES

2 The Parties recommend the Court lift the stay on initial disclosures and set a deadline for their
3 exchange to occur by all parties who have appeared in the Adjudication, including de minimis
4 pumpers, within 60 days of March 22, 2024.

5 **Response of the Indian Wells Valley Groundwater Authority, City of Ridgecrest and**
6 **County of Kern**

7 As to those parties for whom service is not yet complete, The Authority recommends making
8 Initial Disclosures due 120 days after service is complete.

9 D. NEXT STATUS CONFERENCE

10 The Parties recommend the next status conference be set in approximately sixty (60) days.

11 **Response of the Indian Wells Valley Groundwater Authority, City of Ridgecrest and**
12 **County of Kern**

13 If the deadline for Initial Disclosures is 60 days, there is little reason to hold a status
14 conference on or before the date those disclosures are due. The Court should set the next status
15 conference in approximately 120 days, and order the District to actually meet and confer with *all*
16 *parties*, in person or by Zoom or similar platform, at least 30 days prior to the next status conference.
17 A joint status conference statement should be circulated for comment, after an attempt is made to
18 meet and confer with all parties, and at least 14 days prior to its filing.

19 **Response of the United States**

20 As noted above, the United States believes that Initial Disclosures are an important
21 predicate to making informed decisions regarding phasing of this trial. The United States also
22 believes the adjudication would benefit from informed discussion among the parties prior to the
23 next status conference and suggests that setting a status conference in 120 days will allow sufficient
24 opportunity for that discussion.

25
26
27
28

1 Dated: March 15, 2024

RICHARDS, WATSON & GERSHON
A Professional Corporation

2

By: /s/ Kyle H. Brochard
KYLE H. BROCHARD
Attorneys for Cross-Defendant
INDIAN WELLS VALLEY GROUNDWATER
AUTHORITY

3

4

5

6 Dated: March 15, 2024

ALESHIRE & WYNDER, LLP

7

By: /s/ Keith Lemieux
W. KEITH LEMIEUX
Attorneys for Cross-Defendant
CITY OF RIDGECREST

8

9

10 Dated: March 15, 2024

KERN COUNTY, OFFICE OF COUNTY COUNSEL

11

By: /s/ Phillip W. Hall
PHILLIP W. HALL
Attorneys for Cross-Defendant
COUNTY OF KERN

12

13

14 Dated: March 15, 2024

U.S DEPARTMENT OF JUSTICE

15

By: /s/ David W. Gehlert
David W. Gehlert
Judith E. Coleman
Alexa Penalosa
Attorneys for Cross-Defendant
THE UNITED STATES OF AMERICA

16

17

18

19

20

21

22

23

24

25

26

27

28