ERIC GARNER, Bar No. 130665
Eric.Garner@bbklaw.com
JEFFREY V. DUNN, Bar No. 131926
Jeffrey.Dunn@bbklaw.com
MAYA MOUAWAD, Bar No. 311737
Maya.Mouawad@bbklaw.com
BEST BEST & KRIEGER LLP
18101 Von Karman Avenue, Suite 1000
Irvine, California 92612
Telephone: (949) 263-2600
Facsimile: (949) 260-0972

Attorneys for Plaintiff and Petitioner
Searles Valley Minerals Inc.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF KERN

SEARLES VALLEY MINERALS INC.,

Petitioner and Plaintiff,

v.

INDIAN WELLS VALLEY GROUNDWATER AUTHORITY, BOARD OF DIRECTORS FOR THE INDIAN WELLS VALLEY GROUNDWATER AUTHORITY, ALL PERSONS INTERESTED IN THE MATTER OF THE VALIDITY OF THE INDIAN WELLS VALLEY GROUNDWATER AUTHORITY'S GROUNDWATER SUSTAINABILITY PLAN FOR THE INDIAN WELLS VALLEY GROUNDWATER BASIN; and DOES 1 through 100,000, inclusive,

Respondents and Defendants.

Case No.

**PETITION FOR WRIT OF MANDATE; COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF; AND TAKINGS CLAIMS UNDER THE CALIFORNIA CONSTITUTION**

Petitioner and Plaintiff Searles Valley Minerals Inc. ("Searles Valley Minerals" or "Plaintiff") alleges:

## INTRODUCTION

1. Searles Valley Minerals files this lawsuit to protect its groundwater rights in the Indian Wells Valley Groundwater Basin ("Basin"), and to stop the collection of an illegal and unfair tax disguised as a "groundwater replenishment fee." Searles Valley Minerals and its predecessors have been relying upon groundwater for over 90 years to keep Searles Valley Minerals an important economic contributor in the local community. Searles Valley Minerals employs more than 700 persons and their jobs are threatened by a new "groundwater replenishment fee" and an added "extraction fee" imposed by the Indian Wells Valley Groundwater Authority (the "Authority"). Unless the fees are enjoined by this Court, Searles Valley Minerals will have to shut down its business and hundreds of people will suffer from job losses.

2. Searles Valley Minerals is a minerals recovery and manufacturing company located in the town of Trona in San Bernardino County. Searles Valley Minerals (and its predecessors in interest) has relied upon groundwater since at least the early 1930's, and has been delivering the water for use at the Searles Valley Minerals operations in the Trona communities, which are comprised of the historic communities of Trona, Westend, Argus and Pioneer Point.

3. There is no potable water supply in the Searles Valley area. Searles Valley Minerals is the only source of potable water supply for the Searles Domestic Water Company ("Searles Domestic"), a wholly-owned subsidiary of Searles Valley Minerals providing treated water for domestic use to Trona communities' residents and businesses.

4. All municipal and domestic water needs of the Trona communities are met with groundwater that Searles Valley Minerals pumps from the Basin and delivers through two pipeline systems that Searles Valley Minerals constructed in the local groundwater basin: the Westend System and the Indian Wells System. The two systems come together in Salt Wells Canyon ("Poison Canyon") where the water is co-mingled and then transported through three pipelines. One pipeline carries domestic and industrial water to the Westend complex. The other

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two pipelines flow to an arsenic treatment plant where the water is treated and then delivered to Searles Domestic and to Searles Valley Minerals' industrial facilities in Trona.

5. The economies of the Trona communities have depended on the industrial and municipal activities of Searles Valley Minerals and its predecessor companies since 1873. Those communities grew with the company and many of them were owned by Searles Valley Minerals' predecessors-in-interest who, in addition to providing local employment opportunities to area residents, have also built community amenities such as stores, recreation halls, swimming pools, theaters and a railroad.

6. Searles Valley Minerals' groundwater rights date back to the earliest groundwater use in the Trona and surrounding communities. Those rights are senior and paramount to all other claimed groundwater rights and are protected by law. The Authority's imposition of the groundwater replenishment extraction "fees" or taxes, ignores Searles Valley Minerals' long-established groundwater rights and the Authority's "groundwater sustainability plan" must be set aside, rescinded or vacated by the Court for all the reasons herein.

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## STANDING

7. Searles Valley Minerals has standing to litigate the petition for writ of mandate and causes of action herein based on Searles Valley Minerals' status as a groundwater pumper in the relevant groundwater basin who is subject to the decisions and actions of defendant Authority.

8. Plaintiff is injured by defendant Authority's groundwater sustainability plan and its groundwater replenishment and extraction "fees" or taxes which ignore Searles Valley Minerals' groundwater rights and cause severe economic harm and damage to Searles Valley Minerals which threaten its continued business operations as well as the jobs and communities that depend on Searles Valley Minerals.

## PRIVATE ATTORNEY GENERAL DOCTRINE

9. Searles Valley Minerals brings this lawsuit pursuant to section 1021.5 of the Code of Civil Procedure and any other applicable legal basis to enforce important rights affecting the public interest.

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## PARTIES

10. Plaintiff Searles Valley Minerals is a corporation organized and existing under the laws of Delaware and authorized to do business in California, and is located in the community of Trona in San Bernardino County. Searles Valley Minerals has prior and paramount rights to groundwater in the Basin.

11. Defendant Authority is a public agency formed pursuant to Government Code section 6500 *et seq.* The Authority was created pursuant to a Joint Exercise of Powers Agreement dated July 16, 2016, by and between the City of Ridgecrest, County of Inyo, County of Kern, County of San Bernardino and the Indian Wells Valley Water District ("JPA Agreement"). The Authority serves as the Groundwater Sustainability Agency for purposes of managing groundwater resources in the Basin in accordance with the Sustainable Groundwater Management Act ("SGMA"), Water Code section 10720 *et seq.*

12. The Basin and Authority encompass three counties: San Bernardino County, Inyo County and Kern County.

13. Defendant Board of Directors for the Indian Wells Valley Groundwater Authority are the governing board for defendant Authority. The Board of Directors are named herein as defendants in their capacities as members of the Board of Directors for the Indian Wells Valley Groundwater Authority only. The Indian Wells Valley Groundwater Authority and its Board of Directors are collectively referred to herein as the "Authority."

14. Defendants named herein as ALL PERSONS INTERESTED IN THE MATTER OF THE VALIDITY OF THE INDIAN WELLS VALLEY GROUNDWATER AUTHORITY'S GROUNDWATER SUSTAINABILITY PLAN FOR THE INDIAN WELLS VALLEY GROUNDWATER BASIN are all persons or entities with any interest in the validity of the Authority's Groundwater Sustainability Plan ("GSP") including its groundwater replenishment fee or assessment.

15. Searles Valley Minerals is informed and believes, and thereon alleges, that respondent and defendant Does 1 through 100,000 are owners, lessees or other persons or entities holding or claiming to hold ownership or possessory interests in real property within the

boundaries of the groundwater basin described herein ("Basin"); extract groundwater from the Basin; claim some right, title or interest to groundwater within the Basin; that they have asserted or will assert claims adverse to Searles Valley Minerals' groundwater rights and claims; or that they are subject to the petition for writ of mandate, complaint for declaratory relief or other allegations herein. Searles Valley Minerals is presently unaware of the true names and capacities of the Doe respondents and defendants, and therefore sues those respondents and defendants by fictitious names. Searles Valley Minerals will seek leave to amend this petition and complaint to add names and capacities when they are ascertained.

## EXHAUSTION OF ADMINISTRATIVE REMEDIES

16. Searles Valley Minerals has exhausted any and all available and required administrative remedies, if any, prior to filing this petition and complaint. Searles Valley Minerals, directly and through its legal counsel, submitted several detailed written comment letters to the Authority, including without limitation a comment letter to the California Department of Water Resources ("DWR"), and participated orally at the Authority's public meetings prior to its adoption of a Basin GSP, Sustainable Yield Report, Engineer's Report, Extraction Fee, and (groundwater) Replenishment Fee. Copies of each of those letters and documents are attached hereto as Exhibit "A" and are incorporated by reference in the allegations of this petition and complaint.

17. Searles Valley Minerals is a member of two advisory committees to respondent and defendant Authority: the Policy Advisory Committee and the Technical Advisory Committee, Searles Valley Minerals actively participated in committee meetings and, in that capacity, submitted written and oral comments to the Authority prior to it taking action on the Authority's GSP, Sustainable Yield Report, Engineer's Report, Extraction Fee, and Replenishment Fee.

18. There are no further administrative procedures available to Searles Valley Minerals providing a remedy to the harms and injury alleged herein.

## GENERAL ALLEGATIONS

### A. The Indian Wells Valley Groundwater Basin

19. The Basin is defined by DWR Bulletin 118 as Basin No. 6-054 and has been

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designated in DWR's SGMA 2019 Basin Prioritization as a high-priority basin subject to critical conditions of overdraft.

20. The Basin is located in the northwestern part of the Mojave Desert and encompasses approximately 382,000 acres or approximately 600 square miles underlying portions of the counties of Kern, Inyo and San Bernardino. The Basin is bordered on the west by the Sierra Nevada Mountain Range, on the north by the Coso Range, on the east by the Argus Range, and on the south by the El Paso Mountains.

21. Searles Valley Minerals is informed and believes and on that basis alleges that approximately 277,204 acres of land (approximately 73 percent of total land overlying the Basin) are situated within the jurisdictional boundaries of the Kern County. Of that, approximately 47 percent (or 129,032 acres) are managed by the Bureau of Land Management ("BLM") as open space, approximately 26 percent (or 71,971 acres) are used by the United States Navy Air Weapons Station China Lake ("Weapons Station"), and the remaining 27 percent (or 76,201 acres) are residential, industrial and agricultural lands.

22. Searles Valley Minerals is informed and believes and on that basis alleges that approximately 66,519 acres of land (approximately 17 percent of total land overlying the Basin) are situated within the jurisdictional boundaries of Inyo County. Of that, approximately 96 percent (or 63,861 acres) are owned by the Weapons Station or managed by the BLM, and the remaining lands primarily comprising the community of Pearsonville (approximately 2,658 acres).

23. Searles Valley Minerals is informed and believes and on that basis alleges that approximately 37,985 acres of land (approximately 10 percent of total land overlying the Basin) are situated within the jurisdictional boundaries of San Bernardino County, with the majority (approximately 98.5 percent or 37,415 acres) controlled by the Weapons Station or managed by BLM and the rest (approximately 1.5 percent) comprised of residential, industrial and/or agricultural lands.

24. Searles Valley Minerals is informed and believes and on that basis alleges that groundwater pumping has exceeded the natural recharge of the Basin since at least the year 1960.

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**B. There is a Dispute Among the Parties Regarding the Extent and Priority of Searles Valley Minerals' Water Rights**

25. Searles Valley Minerals is informed and believes and on that basis alleges that it has appropriative rights and prescriptive rights to groundwater in the Basin. Searles Valley Minerals' groundwater rights date back to at least the early 1930's.

26. Searles Valley Minerals is informed and believes and on that basis alleges that it has prescriptive groundwater rights due to the overdraft conditions in the Basin and because Searles Valley Minerals' groundwater use has met the legal criteria to establish a prescriptive groundwater right.

27. Searles Valley Minerals' groundwater rights predate all other groundwater rights, if any, of other water producers in the Basin including without limitation any groundwater rights claimed by the Indian Wells Valley Water District ("Water District") and Weapons Station.

28. Searles Valley Minerals is informed and believes and on that basis alleges that Weapons Station' groundwater right is junior to Searles Valley Minerals' groundwater rights. Under established federal law, any right to groundwater claimed or asserted by the Weapons Station pursuant to any claimed federal reserved water right only has a priority date which vests on the date of the reservation: The date of the reservation is the time the land is taken out of the public domain by official Congressional action which was December 1947 for the Weapons Station. By that time, however, Searles Valley Minerals was already pumping significant amounts of Basin water. Any amount of water claimed to be reserved to the Weapons Station cannot lawfully include Searles Valley Minerals previously-appropriated water and has priority of use junior to Searles Valley Minerals' use. In any event, any claim of federally-reserved groundwater is limited to the amount necessary to accomplish the purpose of the reservation.

29. SGMA does not give preferential status to any branch of the federal government. (Wat. Code, § 10720.3(b) ["To the extent authorized under federal or tribal law, this part applies to an Indian tribe and to the federal government, including, but not limited to, the United States Department of Defense."].) Therefore, Searles Valley Minerals' senior and paramount appropriative and prescriptive groundwater rights are earlier in time and have priority over any

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water right reserved to Weapons Station or any other Basin groundwater user or groundwater rights claimant.

30. Water District was created in 1955. Under "first in time, first in right" appropriative groundwater rights, Searles Valley Minerals' groundwater rights are senior and paramount to groundwater rights claimed, if any by the Water District. Any Water District appropriative groundwater water right in the Basin is subject to and limited by Searles Valley Minerals' pre-1955 groundwater rights.

31. Searles Valley Minerals has also been delivering Basin water to Searles Domestic since Searles Domestic received its Certificate of Public Convenience in 1944, and has gradually become Searles Domestic's sole source of potable water.

32. Searles Valley Minerals' right to pump water in the Basin for domestic uses is senior to any water right reserved to Weapons Station, and because Water District's groundwater pumping began no earlier than 1955, its appropriative right, if any, to Basin water remains junior to Searles Valley Minerals' rights.

### C. The GSP Includes an Improper Determination of Water Rights in Violation of SGMA and Applicable Water Law

33. Authority adopted its GSP on January 16, 2020 pursuant to Authority Resolution No. 01-20.

34. Authority is required under SGMA, and acknowledges in its GSP, that it must consider "all beneficial uses and users of groundwater" and that "use of water for domestic purposes is the highest use of water and that the next highest use is for irrigation." (Wat. Code, § 10723.2 ["The groundwater sustainability agency shall consider the interests of all beneficial uses and user of groundwater, as well as those responsible for implementing groundwater sustainability plans."]; GSP, p. 5-9.) A copy of the GSP may be accessed at the Authority's website at https://iwvga.org/gsp-chapters.

35. SGMA precludes Authority from adopting a groundwater management plan that "determines or alters [any] water rights" and from making any "binding determination of the water rights of any person or entity." (Wat. Code, §§ 10720.5(b), 10726.8(b).)

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36. The Authority falsely asserts in its GSP that any pumping allocations under the GSP will be "consistent with existing groundwater rights and priorities." (GSP, p. 4-4.)

37. The Authority further asserts in its GSP that the goal of the GSP is "to preserve the character of the community, preserve the quality of life of the [Indian Wells Valley] residents, and sustain the mission at NAWS China Lake." (GSP, p. ES-17.) No other beneficial uses or users, including Searles Valley Minerals, however, are acknowledged as the goal, objective or purpose of the GSP.

38. Searles Valley Minerals has provided documentation in support of Searles Valley Minerals' rights to Basin groundwater throughout the Authority's GSP development process. Nonetheless, Authority proceeded to make internally-inconsistent statements and engage in unauthorized groundwater right priority determinations. Authority's GSP states that Weapons Station may be entitled to Basin groundwater and that regulatory "hurdles" exist as to Authority's ability to impose pumping fees on Weapons Station, and on that basis concludes that "NAWS China Lake [Weapons Station] groundwater production is considered of highest beneficial use" and that "the majority, if not all, of the estimated sustainable yield of 7,650 could be held as a federal right." (GSP, pp. 5-9, 5-10.) Authority's GSP allocated almost all of the groundwater to the Weapons Station, and Authority concluded that some "groundwater pumpers with inferior rights" to Weapons Station will not be granted any pumping allocation. (GSP, p. 5-6.) Stated simply, Authority's action wrongly deprives Searles Valley Minerals of its groundwater rights.

39. The Authority further failed to meet its SGMA obligations and engaged in unauthorized and erroneous interpretation of water law by stating in the GSP that "the City [of Ridgecrest] and Kern County overlying groundwater production rights are superior to all other overlying rights because public entity rights may not be prescribed against." (GSP, p. 5-10.) This conclusion is contrary to California law which provides that water rights held by municipalities and water districts, if any, are deemed appropriative, not overlying, and that "as between appropriators, the one first in time is the first in right." (*City of San Bernardino v. City of Riverside* (1921) 186 Cal. 7, 28; *Orange County Water Dist. v. City of Riverside* (1959) 173 Cal.App.2d 137.) The legal conclusions by the Authority are not supported by relevant facts

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showing that the City of Ridgecrest ("City") has "overlying groundwater production rights" in the Basin. All water used for domestic and agricultural purposes in the City is supplied by the Water District. The City pumps less than 400 acre feet per year for City landscaping irrigation purposes only.

40. As alleged herein, Searles Valley Minerals' appropriative groundwater rights pre-date those of the Water District and are therefore senior in priority.

41. Similarly, defendant Authority provides no supporting findings for its legal conclusion regarding Kern County's alleged overlying groundwater production rights "are superior to all other overlying rights because public entity rights may not be prescribed against." (GSP, p. 5-10.) Kern County has one active well drilled in 1983, pumping an average of 20 acre feet per year for use in its solid waste management operations.

42. Authority's erroneous groundwater rights conclusions are prohibited under SGMA. Authority has proceeded to determine the groundwater right priorities in its GSP, wrongly concluding that any water rights reserved to the Weapons Station take priority over the water rights of all other pumpers in the Basin, including water rights held by Searles Valley Minerals.

43. Defendant Authority further states in the GSP that the remaining pumpers "can and should implement additional conservation measures," implying that Weapons Station and the Water District do not need to conserve groundwater. (GSP, p. 5-10.) This conclusion is contrary to Authority's SGMA obligation to manage the Basin "consistent with Section 2 of Article X of the California Constitution." (Wat. Code, § 10720.5(a); Cal. Const., art. X, § 2. ["[T]he water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare."].)

### D. Authority Failed to Meet its SGMA and its Joint Powers Authority Duties and Obligations

44. Searles Valley Minerals is informed and believes and on that basis alleges that, in

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addition to the requirements imposed by SGMA, pursuant to Authority's JPA Agreement, Authority has a duty to "consider the interests of all beneficial uses and users of groundwater in the Basin" and that nothing in any GSP adopted by Authority "determines or alters surface water rights or groundwater rights under common law or any provision of law that determines or grants" water rights. (JPA Agreement, section 4.03.).

45. Similarly, under the Authority's Bylaws, it "must consider the interests of all beneficial uses and users of groundwater within the Basin." (Authority Bylaws, Article 5, Section 5.6.).

46. Defendant Authority only possesses those powers common to its JPA forming members. (Gov. Code, § 6508, 6509; JPA Agreement, Article IV.) Such power is "subject to the restrictions upon the manner of exercising the power of one of the contracting parties" as designated by the joint exercise of powers agreement. (Gov. Code, § 6509; JPA Agreement, section 4.02.)

47. Authority's members are the City of Ridgecrest, County of Inyo, County of Kern, County of San Bernardino and Water District. The designated member for determining "restrictions upon the manner of exercising . . . powers" is Kern County. (JPA Agreement, section 4.02.) None of the Authority's members are authorized under the law to determine water rights or water right priorities. Authority has engaged in such unauthorized groundwater rights determinations in excess of its limited powers and without regard to the interests of all beneficial uses and users of groundwater in the Basin as required under the JPA Agreement, its bylaws and state and federal water law governing determinations of groundwater rights.

48. Searles Valley Minerals is informed and believes and on that basis alleges that Authority's discretionary action to adopt the GSP in its current form is arbitrary and lacks evidentiary support.

49. Searles Valley Minerals further alleges that the Authority disregarded Searles Valley Minerals' well-documented priority groundwater rights, which Searles Valley Minerals had provided to the Authority during the GSP development process, and instead Authority engaged in making discretionary determinations in excess of its powers under the JPA Agreement

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and applicable law.

**E. Authority's Water Budget and Sustainable Yield Violate SGMA**

50. Searles Valley Minerals is informed and believes and on that basis alleges that the GSP substantially underestimates key components of the Basin's water budget and sustainable yield. Specifically, the GSP underestimates or completely discounts water contributing to the Basin's groundwater resources, including without limitation, return flows, subsurface inflows and other sources of Basin recharge.

51. Pursuant to SGMA regulations, in determining the water budget for the Basin, the GSP "shall rely on the best available information and best available science to quantify the water budget." (Cal. Code Regs., tit. 23, § 354.18.) Authority has not relied on the best available science and instead attempted to create the GSP to fit Authority's biased and erroneous narrative as to the claimed amount of water federally reserved to the Weapons Station.

52. Searles Valley Minerals further alleges on information and belief that Authority's failure to meet its SGMA obligations include deficient and biased analysis of the Basin's water budget and sustainable yield and render Authority's GSP conclusions and related actions legally inadequate. This deficiency and bias are shown, in part, by the fact that the Authority relied on a numerical groundwater model owned and controlled by the Weapons Station. Authority used Weapons Station's model to make erroneous calculations but has not made the numerical groundwater model available to stakeholders or the public despite repeated requests to do so.

53. Searles Valley Minerals is informed and believes and on that basis alleges that the Authority failed to meaningfully engage stakeholders as required under SGMA by insufficiently documenting and explaining the underlying assumptions used in the numerical groundwater model scenarios. This failure denied stakeholders, including Searles Valley Minerals, the substantive and procedural due process mandated by SGMA.

54. By way of example only, the GSP states that the purpose of the Transient Pool is to "facilitate coordinated production reductions and to allow groundwater users to plan and coordinate their individual groundwater pumping termination." (GSP, p. 5-6) But the GSP

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provides no explanation as to why the Transient Pool is limited to 51,000 acre-feet, in view of the large amount of groundwater in storage and the economic dislocations caused by the GSP's groundwater allocations. The GSP does not explain why the Transient Pool water is not transferable even though making the water transferable would allow parties wanting to exit the Basin to be partially compensated for their investment at a negotiated price, while providing other parties with water to support their operations until imported water becomes available.

55. Searles Valley Minerals is informed and believes and on that basis alleges that the Authority, while developing and finalizing the GSP, had already predetermined that most, if not all, of the Basin's alleged sustainable yield is to be allocated to Weapons Station and Water District. This predetermined outcome is evident by the various statements contained in the GSP, as alleged herein.

56. The GSP states that the Annual Pumping Allocation Plan, Transient Pool and Fallowing Program "may" be subject to environmental review. (GSP, sections 5.2.1.5 and 5.2.1.7.) This statement is misleading as it offers only the possibility that such implementation would be exempt from those environmental requirements. SGMA states that the exemption from the environmental review requirements of Division 13 (commencing with Section 21000) of the Public Resources Code ("CEQA") applicable to the preparation and adoption of a GSP do not apply to "a project that would implement actions taken pursuant to a plan." (Wat. Code, § 10728.6.) Further, an activity qualifies as a "project" subject to CEQA if that activity is undertaken, funded, or approved by a public agency and may cause either a direct, or reasonably foreseeable indirect, physical change in the environment. (Pub. Resources Code, § 21065.) Implementation of this management action will likely cause a "direct, or reasonably foreseeable indirect, physical change" in the Basin requiring compliance with CEQA mandates.

57. Authority's GSP states that Management Action No.1 would be presented to Authority's Board for consideration and approval at its June 2020 meeting. This statement not only is contrary to CEQA, but also ignores the numerous acknowledgements throughout the GSP of its serious data gaps which raise significant issues about the accuracy of the Basin's sustainable yield, water budget, sustainability goal and threshold estimates upon which defendant relies in

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implementing this Management Action No. 1 and the other management actions and projects.

58. The GSP states that data tracking is fairly recent (mostly since SGMA came into effect; e.g., GSP, p. ES-15) and that many of the "historical" data points are based on a single measurement recorded at the time of well installation (e.g., GSP, p. ES-16.). The GSP contains numerous other sections similarly centered around legal and factual deficiencies and statements that contravene with established law and thus must be declared null and void.

### F. Authority Passed Resolution 06-20 Adopting a Sustainable Yield Report Based on the Flawed GSP

59. Authority, at its June 18, 2020 public meeting, presented a "Report on the Indian Wells Valley Groundwater Basin's Sustainable Yield of 7,650 acre-feet" (the "Sustainable Yield Report") based on the same deficiencies alleged herein and in the GSP. Authority nonetheless adopted the Sustainable Yield Report at its July 16, 2020 public meeting.

60. Searles Valley Minerals submitted a letter with written comments prior to Authority's adoption of the Sustainable Yield Report outlining several concerns. A true and correct copy of the letter is attached hereto as part of Exhibit "A" and incorporated by reference.

61. As alleged herein, the estimated sustainable yield of 7,650 acre-feet is based on incomplete and inaccurate data.

62. The Authority's staff report that accompanied the Sustainable Yield Report listed the basis for the report, which is primarily related to the Weapons Station's groundwater production alleged water right priority. The staff report stated that the Weapons Station and de minimis groundwater users will not be subject to remedial costs to fix the Basin's overdraft conditions "unless an extractor obtains a court order showing they have quantifiable production rights superior to the Navy's." (Authority Staff Report dated July 16, 2020, re: "Agenda Item No. 9 – Consideration and Adoption of Resolution 06-20 and Related CEQA Findings Adopting the Report on the Indian Wells Valley Groundwater Basin's Sustainable Yield of 7,650 Acre-Feet.")

63. The Authority's statements show the Authority's conclusion that the Weapons Station has superior groundwater rights as against all other groundwater users in the Basin, including Searles Valley Minerals, and that any groundwater user who disagrees would need to

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obtain a court judgment to the contrary. Under federal law, an appropriation that pre-dates the reservation of land for the Weapons Station has priority over the federal reserved groundwater right, if any. Authority's staff report concludes that because of sovereign immunity, this priority should be reversed. Sovereign immunity is a matter of enforcement and does not affect the Authority's legal duty to respect groundwater right priorities established by federal law nor allow Authority to ignore the evidence in the record before it. Authority, however, continued to take the position that Weapons Station is entitled to nearly all the Basin's sustainable yield and that Weapons Station's claimed groundwater right is superior to all other rights in the Basin. Authority's position is not supported by law or the facts.

64. Not only are the Authority's contentions contrary to SGMA which prohibits the Authority from determining groundwater rights, the contentions are not supported by the Weapons Station. U.S. Navy Commander Benson stated in the Authority's June 18, 2020 public meeting that "the Navy agrees to their allocation of 2,041 acre feet . . . and also, that at the request of [Authority] we provided our pumping data from which [Authority] developed their interpretation of what our federal reserve water right might be . . . and that at that point [Authority] decided the allocation from there based on input from other folks . . . the Navy did not direct or tell [Authority] how to do that."

65. Authority even goes as far as to assert that Weapons Station's groundwater rights can be used by non-federal entities at locations outside the boundaries of the Weapons Station. Authority is taking actions (such as adopting ordinances encompassing this assertion that limit pumping amounts of other non-federal pumpers) to allow the Weapons Station's groundwater rights to be used by others at locations not within the Weapons Station land and outside the boundaries of the federal reservation. Such assertions and actions are contrary to established law and are fundamentally flawed because they are premised on the false notion that a claimed federal reserve water right may be transferred off a federal area to non-federal entities.

66. Non-Indian federal reserved water rights are subject to the "primary purpose" standard. (*U. S. v. New Mexico* (1978) 438 U.S. 696, 712-13; *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District* (9th Cir. 2017) 849 F.3d 1262, 1270.) The reserved

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water right only attaches to the primary purposes: the one directly associated with use of the water on the reserved land.

67. Even on the reserved property, the reserved right does not attach to water that is only for a secondary purpose of the reservation. (*U. S. v. New Mexico*, *supra*, 438 U.S. at p. 702.) Water for secondary purposes must be appropriated in the same manner as any other appropriator. (*Id.* at p. 703.)

68. Groundwater uses by Weapons Station outside the boundaries of the federal land and reserved property are not a "primary" purpose to which the Weapons Station's water right attaches. Groundwater uses on the base that are not directly associated with essential Weapons Station activities, such as its golf course are not "primary" under water law. If the Weapons Station wants to use Basin water for those secondary purposes, the Weapons Station may appropriate water pursuant to California law and pay for that water with federal funds. The cost of that groundwater should not be subsidized by Searles Valley Minerals.

### G. Authority Enacted Ordinance No. 02-20 Increasing the Extraction Fee to Cover GSP Costs

69. Authority adopted Ordinance No. 02-20 based on an updated data package released to the public only two days prior to its approval on July 16 2020, amending Ordinance No. 02-18 by increasing the pumping fee to $105 per acre foot ("Extraction Fee"), a 350 percent increase from the existing $30 fee. The purpose of the ordinance is to recover costs associated with the preparation of the GSP. The total cost to prepare the GSP is nearly $7,000,000 — an astounding cost exceeding GSP preparation costs in other California basins.

70. Pursuant to SGMA, a groundwater management agency must make available to the public "at least 20 days prior to the [public] meeting . . . data upon which the proposed fee is based." (Wat. Code, § 10730(b).)

71. Any fee imposed to recover costs associated with the preparation of a GSP, such as the Extraction Fee, must meet an exemption to the definition of a "tax" under article XIII C, section 1(e) of the California Constitution ("Prop 26"). For fees imposed to implement the GSP, such as the imposition of the Replenishment Fee, SGMA requires that the fees comply with

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article XIII D, section 6(a) and 6(b) of the California Constitution ("Prop 218"), which comprise the procedural and substantive requirements of Prop 218. (Wat. Code, § 10730.2(c).)

72. Authority bears the burden of demonstrating that the constitutional requirements are met. A rate study and a cost of service analysis are both necessary to determine that the rates for groundwater extraction fees meet the constitutional requirements, and to provide the evidentiary record supporting the fees. To date, Authority has not completed or released a fee study or offered an analysis to demonstrate that the Extraction Fee is not a tax within the meaning of Prop 26 and Prop 218.

73. Simply stating that the fee is a "regulatory fee" without further analysis is not sufficient to meet the Authority's burden of proof. Absent such analysis and proof, the Extraction Fee is a tax under California law, requiring supermajority voter approval and cannot be imposed administratively as the Authority has done.

74. Ordinance 02-20, in Section 3, also amends prior Ordinance 02-18 to make the Extraction Fee applicable to "all groundwater extractions" yet Authority's staff report states that de minimis groundwater users are exempt from paying the "fee." Excluding nearly 800 de minimis groundwater pumpers from paying the fee under the proposed ordinance lacks adequate legal justification.

75. SGMA allows the imposition of fees on de minimis extractors if the extractors are regulated by the agency. (Wat. Code, § 10730(a).) Authority is regulating de minimis extractors by requiring them to register their wells and submit periodic pumping reports. Authority violates SGMA by requiring a small number of pumpers (less than 60) to bear the burden of covering Authority's substantial GSP costs when other pumpers should be subject to the cost reimbursement and benefit from the GSP. The data package released by the Authority lacks sufficient supporting documentation, was constantly changing, included costs that are improperly categorized as GSP preparation that should be classified as GSP implementation actions (thus subject to different legal and procedural standards), and includes improper reimbursements to certain member agencies. As such, Authority's action on the Extraction Fee violates SGMA requirements and is an illegal and unenforceable tax or fee.

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**H. Authority Adopted an Engineer's Report for the Adoption of a Basin Replenishment Fees Without Complying With Applicable Procedural and Substantive Requirements**

76. Authority adopted its Engineer's Report on July 16, 2020, for purposes of determining a Replenishment Fee in the Basin, which Authority later adopted on August 21, 2020.

77. Scattered throughout the Engineer's Report are Authority's assertions as to the Weapons Station's alleged water rights and Authority's legal interpretations of SGMA provisions that are outside the expertise of the engineers and beyond the general purpose of the report.

78. Under SGMA, Authority may impose fees without seeking voter approval as long as the fees meet one or more exemption from the definition of "taxes" under article XIII C, Section 1(e). To the extent Authority wishes to charge groundwater extraction fees for the purpose of GSP implementation, such fees must meet the requirements of article XIII D, Section 6, subdivisions (a) and (b) of the California Constitution (i.e., Prop 218). (Wat. Code, §§ 10730, 10730.2(c); Cal. Const., art. 13C, § 1, subd. (e); Cal. Const., art. 13D, § 6, subds. (a)-(b).)

79. Authority failed to meet those requirements and set the Replenishment Fee amount at $2,130 per acre-foot without complying with the requisite procedural and substantive legal requirements. Authority's adoption of this Replenishment Fee based on the Engineer's Report is procedurally and substantively deficient under SGMA and therefore not legally enforceable or valid.

**I. Authority Adopted a "Replenishment Fee" Despite Procedural and Substantive Deficiencies**

80. Authority adopted a Replenishment Fee on August 21, 2020, in the amount of $2,130 per acre foot. As explained by the Authority's Director Gleason at a public forum on August 13, 2020, Authority will use the Replenishment Fee funds to purchase permanent water rights in the Central Valley and Authority hopes to then sell or lease those purchased rights to landowners *outside* the Basin. Authority then hopes to be able to some day build extensive and costly infrastructure to bring the imported water into the Basin. Authority has not yet even identified the source of that imported water or when it will be purchased, if ever.

81. Authority's Notice that was sent in relation to this Replenishment Fee is defective procedurally and substantively, and therefore Authority's adoption of the Replenishment Fee violates the California Constitution. In any event, the "burden [to establish the fee's validity] shall be on [Authority] to demonstrate compliance." (Cal. Const., art. 13D, § 6.)

82. There was ambiguity as to where or how protests to the Replenishment Fee were to be submitted for the Authority's consideration, which Authority did not clarify until August 19, 2020 - two days before the hearing at which the Replenishment Fee was to be considered.

83. Further, the Notice must be sent to the record owner of each "parcel upon which the fee or charge is proposed for imposition." (Cal. Const., art. 13D, § 6, subd. (a).) However, information shared by the Authority's Clerk and Authority's Director Gleason confirmed that the Notice was sent to *all* owners of parcels (19,952 in total) located within the Basin, regardless of whether the Fee will be imposed upon those parcels, e.g., the Weapons Station, BLM and de minimis pumpers. Notice was sent to residents of the City of Ridgecrest and land served by small mutual water companies, all of which Authority exempts from the Replenishment Fee, as well as to the Weapons Station and BLM who are legally exempt from the Fee.

84. As alleged herein, approximately 302,000 acres of land out of the total 382,000 acres overlying the Basin (approximately 79 percent) are owned by federal government's Weapons Station or controlled by the BLM. The effect of sending the Notice to all those federal entities is that it erroneously inflates the base number used for the Notice and wrongfully increases the total number of protests that would be required to constitute a majority protest under Prop 218. As a result, Authority made it nearly impossible for Searles Valley Minerals and others to make a majority protest for purposes under Prop 218, a violation of the constitutional rights of those subject to the Replenishment Fee, including Searles Valley Minerals.

85. Defendant Authority must rescind the Notice. Authority must send a new notice only to the owners of parcels that are going to be subject to the Replenishment Fee. Authority's action approving the Replenishment Fee based on the defective Notice is contrary to California law, and the fee is illegal and unenforceable.

86. The Replenishment Fee amount "shall not exceed the proportional cost of the

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service attributable to the parcel" upon which the Replenishment Fee is to be imposed. (Cal. Const., art. 13D, § 6, subd. (b)(3).) In effect, Authority is prohibited from subsidizing a benefit to certain pumpers using fees collected from other pumpers.

87. Authority has the burden of demonstrating compliance with article XIII D, section 6. Authority has failed to show that the costs of service attributable to the pumpers exempt from the Replenishment Fee (e.g., the Navy, select mutual water companies, de minimis pumpers, and others) are not subsidized by Searles Valley Minerals and other pumpers subject to the Replenishment Fee.

88. By exempting the Navy Weapons Station, select mutual water companies, de minimis pumpers, and others, the Authority is forcing Searles Valley Minerals to subsidize the cost of groundwater management activities attributable to the exempted groundwater users. This subsidy violates Prop 218, article XIII D, Section 6, subdivision (b) of the California Constitution.

89. Authority intends to take on the significant task of developing a $52,800,000 Basin groundwater augmentation project within a five-year period, without taking into account the time needed for compliance with CEQA pre-requisites or funding availability. Authority cannot reasonably or lawfully rely on funding this project by extracting fees from pumpers who, for the most part, cannot reasonably afford the Replenishment Fee or qualify for a loan to pay the fees. By ignoring this reality, Authority is acting in a manner that is contrary to law including Authority's SGMA duties and obligations to consider the interests of beneficial uses and users in the Basin when managing the Basin.

90. Furthermore, and without providing any valid legal basis, Authority extended exemptions from the Replenishment Fee to anyone who has "permission to extract unused portions of the Navy's estimated Federal Interest." (see the "Indian Wells Valley Groundwater Authority Engineer's Report For the Adoption of a Basin Replenishment Fee" dated June 18, 2020, p. 26.) As alleged herein, this exemption is contrary to law. The result is an inequitable and illegal imposition of the Replenishment Fee by extending those alleged rights to pumpers who normally would not be exempt from paying the Replenishment Fee. Authority nonetheless

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proceeded to adopt the Replenishment Fee, without disclosing the actual number of protest letters received.

91. By adopting this Replenishment Fee, Authority engaged in unauthorized groundwater rights determinations and in actions contrary to procedural and substantive law Authority's actions are not supported by federal law or state law, including SGMA, and are therefore arbitrary, inequitable and unenforceable.

**FIRST CAUSE OF ACTION**

**(Petition for Writ of Mandate – Against the Authority)**

92. Searles Valley Minerals re-alleges and incorporates by reference each and all of the preceding paragraphs as though fully set forth herein.

93. As explained above, Authority engaged in misinterpretation and erroneous application of law, and Authority abused its discretion with respect to determining groundwater right priorities in the course of preparing and adopting the GSP. Authority's decisions and actions alleged herein are arbitrary, capricious, lack proper evidentiary support, disregard Searles Valley Minerals' groundwater rights, and are prejudicial to Searles Valley Minerals.

94. Authority ignored the information provided by Searles Valley Minerals and other groundwater users submitted during Authority's GSP development and adoption process. Searles Valley Minerals and others submitted written and oral comments to the Authority in an effort to correct misstatements contained in the GSP but Authority proceeded with the adoption of the GSP on January 16, 2020.

95. Authority ignored information that Searles Valley Minerals submitted to the Authority regarding its Sustainable Yield Report and Engineer's Report. Specifically, Searles Valley Minerals provided information to the Authority regarding its misstatements as to water rights similar to those in the GSP, but Authority proceeded to adopt the Sustainable Yield Report and Engineer's Report.

96. Under Section 10726.6 of the Water Code, actions and determinations by the Authority are subject to judicial review pursuant to Section 1085 of the Code of Civil Procedure ("Section 1085").

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97. Under Section 1085, mandamus can compel the Authority to perform an official act required by law. Mandamus may also issue to compel the Authority both to exercise discretion (if required by law to do so) and to exercise such discretion under applicable law. Further, Section 1085 authorizes this court to issue a writ of mandate to "compel the performance of an act which the law specifically enjoins."

98. This court is also authorized under Section 1094.5 of the Code of Civil Procedure to review the Authority's actions and to issue a writ of mandate to set aside an action that is improperly taken by the Authority.

99. Water Code section 10730 authorizes the Authority to adopt the Extraction Fee. The Extraction Fee is a tax requiring supermajority voter approval unless the Authority is able to prove, by a preponderance of evidence, that: (1) the Extraction Fee is not a tax, (2) that the amount is no more than necessary to cover the reasonable costs relating to the GSP or regulation, and (3) that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the GSP activities.

100. Authority has not met this burden. As such, the Extraction Fee is a tax, imposed illegally and without voter approval.

101. With respect to the Replenishment Fee, Water Code section 10730.2 requires that the Authority comply with article XIII D, section 6, subdivisions (a) and (b) of the California Constitution. Authority has refused and continues to refuse to comply with the California Constitution, article XIII D, section 6, subdivisions (b)(2) and (b)(3).

102. Article XIII D, section 6, subdivision (b)(2), requires that revenues derived from the Replenishment Fee "shall not be used for any purpose other than that for which the [Replenishment Fee] was imposed." Authority adopted the Replenishment Fee for the stated purpose of purchasing permanent water rights in the Central Valley, and then to sell or lease those speculative rights to landowners outside the Basin, and then later use the speculative sale proceeds to someday, if ever, build costly infrastructure needed to bring imported water into the Basin. Authority has not yet identified the source of that imported water or its timing. Authority, therefore, has not based the amount of the Replenishment Fee on the cost of the activities for

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which it is imposed.

103. Article XIII D, section 6, subdivision (b)(3) provides that the "amount of [the Replenishment Fee] imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel." Certain pumpers are exempt from the Replenishment Fee, including the Weapons Station, BLM, small mutual water companies and de minimis pumpers, even though the Replenishment Fee is intended to pay for groundwater management activities benefiting such exempt pumpers. The Navy and BLM alone own or control nearly 79 percent of property overlying the Basin but are not required to pay any of the costs of groundwater management. As a result, the Replenishment Fee exceeds the proportional share of the cost of groundwater management activities attributable to Searles Valley Minerals because it must also cover the cost of groundwater activities attributable to pumpers exempt from the fee.

104. Additionally, article XIII D, subdivision (a) requires that the Notice be mailed only to the owners of property upon which the Replenishment Fee will be imposed, and only those owners will have the opportunity to protest at the public hearing. If a majority of such property owners submit written protests against the Replenishment Fee, the Authority would be prohibited from adopting the Fee. By sending the Notice to exempt pumpers, the Authority has artificially inflated the total number of property owners required to submit written protests, in a manner that is inconsistent with article XIII D, section 6, subdivision (a).

105. There is a clear, present and ministerial duty upon the part of the Authority to comply with these constitutional mandates as alleged herein.

106. Searles Valley Minerals has a clear, present and beneficial right to the performance of that duty.

107. Searles Valley Minerals does not have an adequate remedy at law.

108. It is an abuse of discretion for Authority to disregard, alter or modify Searles Valley Minerals' rights to Basin groundwater. Searles Valley Minerals respectfully petitions this court for writ of mandate or peremptory writ to set aside the GSP, Sustainable Yield Report, Engineer's Report, Extraction Fee and Replenishment Fee adopted by the Authority and to

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compel the Authority to perform its legal duties to manage the Basin consistent with the California Constitution and applicable law including and water right priorities established under the law, and to refrain from making water right and water right priority determinations which the Authority, an agency formed under the laws of the State of California, is expressly prohibited from making under California law.

**SECOND CAUSE OF ACTION**

**(Declaratory Relief - Prior and Paramount Groundwater Rights )**

109. Searles Valley Minerals re-alleges and incorporates by reference each and all of the preceding paragraphs as though fully set forth herein.

110. Searles Valley Minerals alleges that it has prior and paramount appropriative and prescriptive rights to Basin groundwater that date back to the 1930's or earlier.

111. The right of any other groundwater user does not extend to water appropriated by Searles Valley Minerals prior to December 1947.

112. Authority misinterpreted water law in the course of preparing and adopting the GSP without due regard for Searles Valley Minerals' groundwater rights.

113. An actual controversy has arisen between Searles Valley Minerals and defendants. Searles Valley Minerals alleges that defendants dispute Searles Valley Minerals' contentions in this petition and complaint. Searles Valley Minerals desires a judicial declaration that Searles Valley Minerals' groundwater rights to pump and use Basin water are prior and paramount to any other Basin groundwater user or claimant.

114. Further, an actual, present and substantial controversy exists between Searles Valley Minerals on the one hand, and the Authority on the other, with respect to whether the Replenishment Fee complies with Water Code section 10730.2, and article XIII D, section 6. Searles Valley Minerals contends that the Replenishment Fee, and the defective GSP, Engineer's Report and Sustainable Yield Report upon which the Replenishment Fee is based, violate the procedural and substantive requirements set forth in article XIII D, section 6. Authority contends that it has complied with such requirements.

115. Further, an actual, present and substantial controversy exists between Searles

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Valley Minerals on the one hand, and the Authority on the other, with respect to whether the Extraction Fee complies with Prop 26. Searles Valley Minerals contends that the Extraction Fee failed to meet its burden under Prop 26 to show that the Extraction Fee is not a tax. Authority contends that it has complied with such requirements.

116. Searles Valley Minerals and Authority are entitled to a judicial declaration that the Replenishment Fee violates and/or is in violation of California constitution, article XIII D, section 6, and Water Code section 10730.2, that the Extraction Fee violates Prop 26 and Prop 218 requirements.

**THIRD CAUSE OF ACTION**

**(Regulatory Taking of Private Property Without Just Compensation, Cal. Const., art. I, § 19)**

117. Searles Valley Minerals re-alleges and incorporates by reference each and all of the preceding paragraphs as though fully set forth herein

118. An actual controversy has arisen and now exists as to whether the Authority's adoption of the GSP, Sustainable Yield Report, Engineer's Report, Extraction Fee and the Replenishment Fee constitute an unlawful taking of property for public use without just compensation.

119. Article I, Section 19 of the California Constitution prohibits the taking of private property for public use without just compensation.

120. A groundwater right is an interest in real property that has value independent of any land upon which it is exercised. Searles Valley Minerals holds rights to Basin groundwater.

121. SGMA requires the Authority to consider the interests of all beneficial uses and users of groundwater, including holders of groundwater rights such as Searles Valley Minerals. (Wat. Code, § 10723.2.) .

122. SGMA also expressly forbids the Authority from determining or altering water rights. (Wat. Code, § 10720.5(b) ["Nothing in this part, or in any groundwater management plan adopted pursuant to this part, determines or alters surface water rights or groundwater rights under common law or any provision of law that determines or grants surface water rights."]; see

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also Wat. Code, § 10720.1(b) ["…It is the intent of the Legislature to preserve the security of water rights in the state to the greatest extent possible consistent with the sustainable management of groundwater."].).

123. Despite SGMA's requirements, Authority attempted to determine Searles Valley Minerals' water rights in a way that is inconsistent with applicable law. Authority's GSP implemented through the Sustainable Yield Report, Engineer's Report, Extraction Fee and Replenishment Fee deprive Searles Valley Minerals of all economically beneficial use of their water rights. The Replenishment Fee is set at such a level that there is no economically beneficial use of Searles Valley's water rights that would justify the payment of $2,130 per acre-foot. Accordingly, Authority's actions deprived Searles Valley Minerals of all economically beneficial use of their water rights without just compensation, thereby committing a categorical taking.

124. Searles Valley Minerals is entitled to just compensation for the total deprivation of all economically beneficial use of their groundwater rights, in such amount as shall be determined at trial.

## FOURTH CAUSE OF ACTION

**(Regulatory Taking of Private Property Without Just Compensation, Cal. Const., art. I, § 19 [In the Alternative to the Third Cause of Action])**

125. Searles Valley Minerals re-alleges and incorporates by reference each and all of the preceding paragraphs as though fully set forth herein

126. If the Court finds that Authority's actions did not deprive Searles Valley Minerals of all economically beneficial use of their water rights as alleged in the Third Cause of Action, then Searles Valley Minerals alleges in the alternative that Authority committed an unlawful taking by depriving Searles Valley Minerals of any pumping allocation and forcing Searles Valley Minerals to pay the Replenishment Fee to continue exercising Searles Valley Minerals' groundwater rights. Authority's actions lack a real and substantial relationship to the public welfare.

127. Authority's GSP, Sustainable Yield Report, Engineer's Report, Extraction Fee and Replenishment Fee unlawfully interfere with Searles Valley Minerals' reasonable, investment-

backed expectations in its business operations. Authority's GSP and actions implementing the GSP will make it economically infeasible for Searles Valley Minerals to continue its operations, forcing Searles Valley to let go of several hundred Searles Valley Minerals employees.

128. Authority has offered no compensation to Searles Valley Minerals rendering its minerals extraction and manufacturing activities and other business operations infeasible and effectuating an unconstitutional taking of both Searles Valley Minerals' groundwater rights and economic benefits from Searles Valley Minerals' business operations. Accordingly, Authority's actions constitute an unlawful taking without just compensation under the California Constitution.

129. Searles Valley Minerals is entitled to just compensation in such amount as shall be determined at trial.

**FIFTH CAUSE OF ACTION**

**(Physical Taking of Private Property Without Just Compensation, California Const., art. I, § 19 [In the Alternative to the Third Cause of Action])**

130. Searles Valley Minerals re-alleges and incorporates by reference each and all of the preceding paragraphs as though fully set forth herein.

131. If the Court finds that the Authority's actions did not deprive Searles Valley Minerals of all economically beneficial use of their groundwater rights as alleged in the Third Cause of Action, then Searles Valley Minerals alleges in the alternative that the Authority committed an unlawful physical taking by erroneously deeming the entire Basin's sustainable yield to be reserved by the Weapons Station, and then putting that groundwater to public use without compensating Searles Valley Minerals. What the Authority claims as a transfer of federal reserved rights is in reality an unlawful taking of Searles Valley Minerals' groundwater rights. Because the Basin groundwater given to the Weapons Station will be physically unavailable to Searles Valley Minerals due to Authority's adopted GSP, Sustainable Yield Report, Engineer's Report and Replenishment Fee, this claimed transfer and its related actions constitute a physical taking.

132. Authority's GSP, Engineer's Report, Sustainable Yield Report and Replenishment Fee do not maintain the status quo, but proactively take groundwater resources that would have

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been used by Searles Valley Minerals, and instead appropriate them for Authority's intended public use by the Weapons Station and other users, which Authority has arbitrarily determined to be a recipient of transferred federal reserved rights, if any.

133. Searles Valley Minerals is entitled to just compensation for the taking of their groundwater rights, in such amount as shall be determined at trial.

**PRAYER FOR RELIEF**

WHEREFORE, Searles Valley prays for the following relief:

1. For a judicial declaration that the GSP, the Sustainable Yield Report, Engineer's Report, extraction fee and its groundwater replenishment fee violate applicable law including the Water Code and CEQA;

2. For the issuance of a writ of mandate or peremptory writ to compel the Authority to (a) rescind, remove and vacate its adoption of the GSP, the Sustainable Yield Report, Engineer's Report, extraction fee and the groundwater replenishment fee; and (b) perform their legal duty to manage the Basin consistent with the groundwater rights and priorities established under the law, and to refrain from making groundwater rights priority determinations inconsistent with Searles Valley Minerals' groundwater rights.

3. For a judgment declaring any conclusions, analysis, references, proposed projects and management actions contained in the GSP, the Sustainable Yield Report and Engineer's Report are based on defendant Authority's unauthorized, erroneous and inadequate interpretation of water law and water right priorities to be null and void;

4. For a temporary restraining order, preliminary injunction and permanent injunction to stop the imposition of the groundwater replenishment and extraction fees upon Searles Valley Minerals;

5. For relief under Code of Civil Procedure section 526a;

6. For attorney and experts' fees, and other costs and expenses incurred in this action; and

7. Such other relief as the court deems just and proper.

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IRVINE, CALIFORNIA 92612

Dated: September 29, 2020

BEST BEST & KRIEGER LLP

By: _____

ERIC L. GARNER
JEFFREY V. DUNN
MAYA MOUAWAD
Attorneys for Petitioner and Plaintiff
Searles Valley Minerals Inc.

LAW OFFICES OF
BEST BEST & KRIEGER LLP
18101 VON KARMAN AVENUE, SUITE 1000
IRVINE, CALIFORNIA 92612

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

VERIFICATION

I have read the foregoing **PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** and know its contents.

☐ I am a party to this action. The matters stated in it are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☒ I am Vice President of Operations for Searles Valley Minerals Inc., a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I have read the foregoing document(s). I am informed and believe and on that ground allege that the matters stated in it are true.

☐ I am one of the attorneys of record for _____, a party to this action. Such party is absent from the county in which I have my office, and I make this verification for and on behalf of that party for that reason. I have read the foregoing document(s). I am informed and believe and on that ground allege that the matters stated in it are true.

Executed at TRONA, California on September 29, 2020.

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

Burnell Blanchard

# EXHIBIT A

Searles Valley Minerals

13200 Main Street
Trona, California 93562

August 14, 2020

Indian Wells Valley Groundwater Authority
500 W. Ridgecrest Blvd.
Ridgecrest, CA 93555

Subject: **Protest Letter re-Notice of Public Hearing on a Basin Replenishment Fee (Notice) to be considered at the public hearing to be held on August 21, 2020 at 10:00 a.m. in the Chambers of the City Council located at 100 W. California Ave., Ridgecrest.**

Dear Chairman Gleason and Board Members:

Searles Valley Minerals Inc. (SVM) respectfully submits this letter in protest of the Basin Replenishment Fee that the Indian Wells Valley Groundwater Authority (Authority) will consider at the public hearing scheduled on August 21, 2020. This protest letter includes a separate protest filed on behalf of each of the following Assessor Parcel Numbers (each, an APN), and should be counted as 6 separate protests:

| APN | Address | Name of Property Owner on Record | Statement on SVM's relationship to the Property |
|---|---|---|---|
| **352-095-08-00** | 2865 Inyokern Rd. Inyokern CA 93527 | Searles Valley Minerals Operations Inc | Property Owner |
| **352-095-27-00** | | Searles Valley Mineral Operations Inc | Property Owner |
| **352-262-06-00** | | Searles Valley Minerals Operations Inc | Property Owner |
| **454-080-01-00** | | Searles Valley Minerals Operations Inc | Property Owner |
| **478-020-15-00** | 309 W Ridgecrest Blvd. Ridgecrest, CA 93555 | Searles Valley Minerals Operations Inc | Property Owner |
| **508-030-04-00** | | Searles Valley Minerals Operations Inc | Property Owner |

The Notice is defective procedurally and substantively and therefore an action by the Indian Wells Valley Groundwater Authority Board (Board) adopting the proposed Basin Replenishment Fee (Fee) is not consistent with the California Constitution, thus not permitted and unenforceable. The Fee is not permitted under the law and the "burden shall be on the agency to demonstrate compliance." (Cal. Const., art. 13D, § 6.)

**1. The Proposed Basin Replenishment Fee Violates SGMA and Prop 218 Procedural Requirements.** Groundwater management agencies may impose fees for different purposes under the Sustainable Groundwater Management Act (SGMA), pursuant to Water Code sections 10730 and 10730.2, so long as the fees are "adopted in accordance with subdivisions (a) and (b) of Section 6 of Article XIII D of the California Constitution" (aka, Prop 218). The Notice sent by the Authority regarding the Fee is procedurally defective in several areas and the Authority must not take action on the Notice until the defects are corrected:

a. ***The Notice was sent to parcels not subject to the Fee.*** Article XIII D, section 6(a) states that written notice for the imposition of a fee must be sent to the record owner of each "parcel upon which the fee or charge is proposed for imposition." (Cal. Const., art. 13D, § 6, subd. (a).) However, information shared by the Authority Clerk indicates that the notice was sent to *all* owners of parcels located within the Basin, regardless of whether the fees will be imposed upon those parcels, e.g., the Navy and de minimis pumpers. This violates SGMA and California Constitutional requirements. The practical effect is that it inflates the base number for the Notice, making it nearly impossible to achieve majority protest for purposes of Prop 218, in violation of the constitutional rights of those subject to the Fee, including SVM. The Board must rescind this Notice and send a new notice only to the owners of parcels that are going to be subject to the Fee. An action by the Board approving the Fee based on the defective Notice is contrary to California law and, therefore, unenforceable.

b. ***The proposed Fee is not permitted.*** Article 6, subdivision (b)(4) of the California Constitution states "No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with Section 4." (Cal. Const., art. 13D, § 6, subd. (b)(4).) The Notice states that the Fee will be used to purchase water entitlements and that it is "estimated to take five years" to actually acquire those entitlements "at which time the charge will cease and the infrastructure construction phase will begin." (see Notice) Therefore, there is no *actually used* or *immediately available* service pursuant to which the Fee may be based, as required under Section 6 of article XIII D of the California Constitution (Section 6). The timing for which a service will actually be received by SVM, i.e., actual water,

may take several years *after* the water entitlements are acquired, which acquisition itself remains speculative at this time. Therefore, the Fee is not permitted under Section 6. Also, the Fee may not be imposed under Section 4 of article XIII D the California Constitution (Section 4) unless it complies with its requirements, which the Notice does not. Section 4 allows an agency to impose *assessments* associated with a "capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the property related service being provided" but only in proportion to a *special benefit* received, not a general benefit received by all properties. It also provides that parcels "owned or used by any agency, the State of California or the United States shall not be exempt from assessment unless the agency can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit." (Cal. Const., art. 13D, § 4, subd. (a).) To date, the Authority has not provided any clear and convincing evidence that those exempt from the Fee would not receive a benefit as a result of the Fee. Further, the Notice does not specify any project or public improvement conferring a special benefit on SVM as required by Section 4. Therefore, the Fee is not permitted under Section 6 or Section 4. An action by the Board to approve the Fee is a direct violation of the California Constitution and thus not enforceable.

**2. The Proposed Basin Replenishment Fee Violates SGMA and Prop 218 Substantive Requirements.**

a. ***The Fee is based on a flawed sustainable yield analysis.*** The basic premise for the calculation of the Fee is that the sustainable yield of the Basin is 7,650 AFY, which severely underestimates the Basin's sustainable yield based on several published hydrological studies on the Basin. SVM had previously provided the Authority with several written letters on this issue. SVM disagrees with the assumptions used in the Authority's Groundwater Sustainability Report (GSP) which are based on incomplete and inaccurate data. The GSP needs to be revised to properly include water recharge amounts and sources in the Basin. The inclusion of those omitted sources and amounts of recharge would result in a sustainable yield amount that substantially exceeds the Authority's estimate and would, as result, significantly reduce the amount of water that the Authority needs to purchase in order to achieve Basin sustainability. We respectfully refer the Authority to prior letters submitted by SVM on this point. This Notice is substantively defective because it is based on a fundamentally flawed GSP.

b. ***The Fee exceeds the proportional cost of the service .*** Further, pursuant to Section 6, subd. (b)(3), the Fee amount "shall not exceed the proportional cost of the service attributable to the parcel" upon which the Fee is to be imposed. In effect, Section 6 prohibits an agency from

subsidizing a benefit to certain pumpers using fees collected from other pumpers. The Authority has not demonstrated by clear and convincing evidence that the pumpers exempt from the Fee (e.g., the Navy, select mutuals, de minimis pumpers, etc.) will not receive a benefit, whether directly or indirectly, paid for by SVM and other pumpers subject to the Fee.

**3. The Proposed Replenishment Fee of $2,130 per acre foot is Excessive, Inequitable and Unsupported by Adequate Documentation.** The Authority appears to plan to take on the significant task of developing a $52,800,000 Augmentation Project in a five-year period, without taking into account the time needed for compliance with CEQA pre-requisites or funding availability. The Authority cannot reasonably rely on funding this project by extracting fees from pumpers who, for the most part, cannot reasonably afford such fees or qualify for a loan to pay the fees. This is contrary to Authority's obligation under SGMA to consider the interests of beneficial uses and users in the basin when managing the basin. Furthermore, and without providing any valid legal basis, the exemption from the proposed Fee is being extended to anyone who has "permission to extract unused portions of the Navy's estimated "Federal Interest." This exemption is contrary to water law. The result is an inequity and illegality in the imposition of the Fee by extending those alleged rights to pumpers who normally would not be exempt from paying the fee. If the Authority adopts this proposed Fee imposition scheme, the Authority would effectively be engaging in a water rights determination that is not supported under federal law or state law, including SGMA, and is therefore arbitrary, inequitable and unenforceable under the law.

**4. The Engineering Report Upon Which the Fee is Based Inappropriately Contains Legal Conclusions.** Peppered throughout the report are assertions as to the U.S. Navy's alleged water rights and legal interpretations of SGMA provisions that fall outside the area of expertise of the preparers and the general purpose of the report. SVM hereby objects to any and all such statements, conclusions, recommendations and references as erroneous and lacking in legal foundation and authority. SVM reiterates its position that its water rights are senior to other pumpers in the Basin, including any federal reserved water rights claimed by the U. S. Navy and by the Indian Wells Valley Water District and respectfully refers the Authority to prior letters submitted by SVM on this point.

SVM reserves the right for further comment on this item and any related future items presented to the Board at a later date. If you have any questions about SVM's comments, please contact me at 760-372-2306 or email me at blanchar@svminerals.com.

Sincerely,

Burnell Blanchard
Vice President- Operations
Searles Valley Minerals Inc.

**Searles Valley Minerals PAC Comments**
**on the Indian Wells Valley Groundwater Authority Board Meeting**
**Former Agenda Item 11**
**Board Consideration and Adoption of Engineer's Report for the Adoption of a Basin Replenishment Fee**
**August 5, 2020**

Board Consideration and Adoption of Engineer's Report for the Adoption of a Basin Replenishment Fee

From the perspective of a member of the Policy Advisory Committee, this Engineer's report invites several comments and raises several questions contained herein.

The main concept that Searles Valley minerals objects to in this report and several previous reports that have been authored by the IWVGA is the novel idea advanced by the US Navy that their Federal Reserved Water Rights (FRWR) extend to their workforce and the families, that reside off-Station as stated on page 14 of the Engineer's Report *"…the full Navy water requirements are the combination of the on-Station requirements and those of the Navy workforce and their dependents off-Station."* In addition, the IWVGA claims that the Navy can choose to extend their Federal Reserve Water Rights, which remain unstated as to amount, to other pumpers in the IWV Basin, with permission from the Navy, as stated in the Staff Report section of Agenda Item 11, third paragraph: "As also provided for in the Report, De Minimis extractors and Federal extractors are exempt from the Replenishment Fee, as well as those that have permission to extract unused portions of the Navy's estimated Federal Reserve Water Right interest (carryover extractions discussed below)." SVM disputes the concept that any pumper can have permission to extract unused portions of a Federal Reserve Water Right interest and that the water extracted under that "permission" would have rights attached to it that are identical to the Navy's federal reserved water rights. The Indian Wells Groundwater Authority ("Authority") has not provided a single legal authority to support such assertion and could not provide any such legal authority because it does not exist.

SVM disagrees with the oft-repeated concept stated in the Staff Report in the third paragraph of page 2: *"As noted in the Report, the Navy has asserted that its water needs include the off-Station demands for its workforce and their dependents, so it is presumed that the Navy will supply water to its workforce through those off-Station water providers in accordance with the following chart,"* and section 1.1 on page 7 *"Likewise, those that have permission to extract unused portions of the Navy's estimated Federal Reserve Water Right interest (carry over extractions) shall not be subject to this Replenishment Fee for those carry over extractions."* Does this statement mean the US Navy will now be functioning as a water company, giving personal information on its personnel to "off-Station water providers" to make sure there is equitable distribution and no charge to its workforce? None of the Navy letters provided by the Authority make the assertion that the Authority continues to put forth.

The argument made on page 9 of this report that the Navy's decision to shift its workforce off Station in the 1970s implies that now in 2020 the water demands of the Navy were transferred off the federal reservation with its personnel is nonsensical. We ask that the Authority provide the legal grounds for its assertion that federal reserved water rights follow the Navy's workforce, living on privately-owned property, no matter where located. The Authority's assertion is not supported by law.

SVM objects to and does not agree with Section 2.6 Navy Federal Reserve Water Right Transfer since it is unsupported by law. Assuming that the statement: *"it is presumed that the Navy will provide its unused FRWR to those that supply water to its workforce through agreements with those water providers,"* remains unchanged in the adoption of this report, how exactly will the agreements be made? What will be the nature of the agreements and how will they be structured? Will they be transferrable? Will they be based on the addresses of Navy civilian and military personnel off-Station? What about businesses and vendors that the Navy uses for its activities on the NAWS base?

Other parts of this report are equally concerning, raising questions and inviting discussion and comment.

1. Sections 1.0, 1.1, and 8.0, the Engineer's Report make the flawed recommendation that the Mitigation Fee (Shallow Well Mitigation Fee) and the Augmentation Fee (Augmentation Project Fee) should be combined based on the specious logic that the Mitigation Fee "is paid by the same group as the Augmentation Fee…" SVM objects to this proposal because it is contrary to known accounting best practices, violates elementary principles of financial transparency, dilutes spending accountability and hampers the financial controls necessary to improve spending efficiency and prevent waste, fraud and abuse. Even the Engineer's Report proposing this nonsensical accounting practice acknowledges that the Mitigation Fee *"…is a separate fee with a separate cost analysis…"* It's not only bad financial practice, but bad project management practice to dump multiple accounting streams into one bucket. In this day of cheap, simple off-the-shelf Excel-based accounting, billing and project management software, this proposal is naïve at best; suspect at worst. The fees should be billed and accounted for separately.

2. In footnote 4 on page 26 of the report, the IWVGA states that *"The funds collected for the Augmentation Project may also be used to fund the IWVGA Fallowing Program which will preserve Basin supplies and in effect equate to a purchase of water supplies."* This statement deserves more than a footnote, especially given that *"Revenues derived from the fee may not be used for any purpose other than that for which the fee or charge was imposed."* The concept announced here for the first time by the Board, via a so-called Engineer's Report, attempts to implement a policy change. As stated in the Notice of Public Hearing on a Replenishment Fee, the fee *"…will cover the estimated imported water purchase costs of $2,112 per acre foot extracted and $17.50 per acre foot extracted to cover the estimated costs to mitigate damages to IWVGA registered shallow wells…"* It does not cover transient pools, fallowing programs or any other programs and activities beyond those identified and expressly communicated to the public.

   Additionally, lumping consulting fee costs, legal costs, administrative costs and project costs together is bad accounting practice, bad government practice and bad project management practice. It inevitably leads to a loss of financial control, project cost overruns and worse; waste, fraud and abuse. A relevant recent example of the certain risks and financial downside consequent to this flawed practice can be seen in the loss of control and severe cost overrun resulting from the IWVGA's mishandling of fee monies authorized by Ordinance No. 20-18—Establishing Groundwater Extraction Fees and Rules, Regulations and Procedures adopted July 19, 2018. This "Fee was intended to generate $1,522,384… to finance the costs to develop and adopt the GSP." As stated in the IWVGA Staff memorandum dated June 18, 2020, "Total expenditures for preparation of the GSP are now estimated at $6,982,905." For perspective, this increase in GSP development costs is 350% greater than projected originally.

Upon reviewing the table provided with the Staff memorandum that summarizes the funding gap, one finds the kind of commingling of funds the IWVGA is attempting to institutionalize via the Engineer's Report. This example of poor financial controls and the consequent mishandling of public monies collected from groundwater extraction fees provides sufficient reason not to combine separate cost centers as proposed in Section 8.1, Purpose of the Proposition 218 Engineer's Report.

3. Costs to mitigate the impacts on the 2.5% (22 wells) of shallow wells that *"…are anticipated to be impacted within the next few years…*" should be borne by all users of the IWV Groundwater Basin (Basin) since all users have contributed to aggregate basin over-pumping, including the impacted shallow well users. Certainly, no individual user, or user group is identifiable as having contributed uniquely to a handful of shallow wells having problems.
4. In section 4.3, page 20, under the substantive requirements of Section 6 of article XIII D, bullet point #2 states *"Revenues derived from the fee may not be used for any purpose other than that for which the fee or charge was imposed."* and bullet point#4 states "*The fee may not be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property. Fees based on potential or future use of a service are not permitted."* At this time, there are no projects being implemented, or close to being implemented, so the replenishment fee would be a future use of service and therefore not permitted.
5. On page 26, the arbitrary imposition of a five-year time frame to gather funds to purchase a permanent allocation of augmented water poses an undue burden on those who use water in this basin, especially since a project has yet to be planned, approved or funded. What is the Authority's plan should this project prove infeasible?

These last few comments are also included for discussion.

6. Actions taken by the IWVGA will cause some of the undesirable results listed on page 12 in Section 2.4., including, "*jeopardy to beneficial uses…*" which will greatly impact both agricultural and industrial uses and users and "*Financial impacts to all groundwater users…*" which will also greatly impact both agricultural and industrial uses and users. In addition, the last bullet point is incorrect as fallowing of agricultural land as dictated by the IWVGA is more likely than declining water tables to generate dust in the IWV. The Authority should conduct an environmental analysis as required under the California Environmental Quality Act (CEQA) to determine impacts.
7. The IWVGA statements in section 5.3.2 Wastewater Recycling, seem to contradict its earlier statements in the GSP, Section 5.3.2, Project No. 2: Optimize Use of Recycled Water. Is the IWVGA planning on working with the City of Ridgecrest to optimize the use of recycled water?
8. Throughout this report, the IWVGA uses the terms Federal extractors and non-Federal extractors, including on page 21, "As a result, a volumetric pumping fee on all non-Federal extractors will meet both the proportionality and availability prongs of the California law." These terms lack specificity and appear to change meaning within this report. SVM would like to see a definition of Federal Extractors and non-Federal extractors in this report.
9. In section 2.2 Basin Water Supplies, third paragraph, SVM wants to clarify that it has been pumping water from the IWV since 1930, long before the US Navy land was officially taken out of the public domain by Congressional action in 1947.

10. In the last paragraph on page 8 it should read Naval Ordnance Test Station.
11. What is the process for determining de minimis extractors, other than voluntary registration? Will that be an annual determination based on actual pumping? How will the Authority know if a de minimus extractor no longer qualifies since fewer than 20% of the more than 800 estimated de minimus extractors have registered? For example, if a pumper extracts more than 2 AFY in any given year, does that pumper lose de minimus status? If so would they be subject to this fee? If not, why not?

Indian Wells
(760) 568-2611
Irvine
(949) 263-2600
Manhattan Beach
(310) 643-8448
Ontario
(909) 989-8584

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW

300 South Grand Avenue, 25th Floor, Los Angeles, CA 90071
Phone: (213) 617-8100 | Fax: (213) 617-7480 | www.bbklaw.com

Riverside
(951) 686-1450
Sacramento
(916) 325-4000
San Diego
(619) 525-1300
Walnut Creek
(925) 977-3300
Washington, DC
(202) 785-0600

**Eric L. Garner**
(951) 826-8269
eric.garner@bbklaw.com

June 3, 2020

Craig Altare
Chief, GSP Review Section
California Department of Water Resources
901 P Street, Room 213
Sacramento, CA 94236
Craig.Altare@water.ca.gov

**Subject: Comments on the Indian Wells Valley Groundwater Sustainability Plan**

Dear Mr. Altare:

Searles Valley Minerals Inc. (Searles) thanks the Department of Water Resources (DWR) for the opportunity to provide comments for consideration during your review of the Indian Wells Valley Groundwater Sustainability Plan (IWV GSP).

Searles is a minerals recovery and manufacturing company that uses a proprietary solution mining technique to selectively extract minerals from a brine solution that is recycled continuously through the mineral deposits found in Searles Lake. It is located in the town of Trona, San Bernardino County, CA. The manufacturing facilities are located in the communities of Trona and Westend which are separated by approximately five miles. The local communities in Searles Valley have depended on the industrial and municipal activities of Searles and its predecessor companies since the founding of the San Bernardino Borax Mining Company in 1873. The communities grew with the growth of those companies and many of the communities were owned by the companies who built the housing and amenities like stores, recreation halls, swimming pools, theaters and a railroad to support population growth.

Searles owns and operates five (5) extraction wells in the Indian Wells Valley that pump water from the Indian Wells Valley basin and transports that water to the Searles Valley area for industrial and municipal beneficial uses, including for Searles' mining operations, as well as to supply water through the Searles Domestic Water Company (SDWC) to Searles Valley communities wholly dependent upon that appropriated water for their domestic water supply. SDWC is a wholly-owned subsidiary of Searles, regulated by the CPUC.

Searles has actively participated in the IWV GSP development process and has representatives on both the Public Advisory Committee and the Technical Advisory Committee of the Indian Wells Valley Groundwater Authority (IWVGA), the agency responsible for developing and implementing the IWV GSP. Searles has submitted numerous written and verbal comments to IWVGA. A copy of our most recent comment letter to the IWVGA is attached to this letter as Exhibit A and the comments contained therein incorporated here by this reference.

SGMA legislation states "*It is the intent of the Legislature to preserve the security of water rights in the state to the greatest extent possible consistent with the sustainable management of groundwater…"* and "*The groundwater sustainability agency shall consider the interests of all beneficial uses and users of groundwater, as well as those responsible for implementing groundwater sustainability plans."* The GSP developed by the IWVGA reflects neither of these two principles. Searles' concerns are primarily focused on the following:

1. Erroneous interpretation by IWVGA of water rights law with respect to Searles' water rights and relying on that erroneous interpretation in (a) analyzing issues related to the sustainable yield in the IWV GSP and (b) engaging in a determination of water right priorities in the basin which also violates the express legislative intent of the Sustainable Groundwater Management Act (SGMA).

2. Adoption of projects and management actions without taking compliance with the California Environmental Quality Act (CEQA) into account as part of the implementation timeline or the time it takes to obtain approvals or permits from other agencies. The IWV GSP describes many large, complex projects and actions that the IWVGA would like to implement. However, details are scarce and timetables are overly optimistic and unrealistic. The proposed schedule does not allow time for data to be collected and individual projects to be evaluated. It does not use sustainability indicators to evaluate project effectiveness. The proposed schedule of actions and projects is front loaded and does not allow time for groundwater users to prepare for any changes to their water usage or cost of pumping water.

3. Estimating the water budget, sustainable yield, sustainability goal and threshold estimates based on data that is, at best, incomplete. The GSP relies upon modeling scenarios from unstated assumptions and data inputs. In fact, IWVGA modeling scenario 6.2 forms the basis for prevention and/or mitigation of any undesirable results of groundwater pumping. However, there are noteworthy data gaps in the information used to build this model. The most significant data gap is in the range of estimates of groundwater storage. Data gaps also exist for groundwater levels throughout the basin, groundwater conditions in the El Paso sub-region, subsidence, TDS data, recharge amounts, pumping by de

minimis users and groundwater dependent ecosystems. In spite of the data gaps, the modeling scenario outputs were used to set many of the measurable objectives and minimum thresholds for the sustainability indicators. The inability to quantify the error inherent to gaps in the source data means the validity of modeling scenario 6.2 is indeterminate.

4. Lack of transparency in the modeling used to determine the water budget and sustainable yield for the basin. Despite repeated requests, specific data and assumptions that were used to develop model 6.2 have never been released to the TAC, PAC or members of the public. Beneficial users and members of the public offered to pay directly for additional model runs with updated data and information. All requests for transparency about the models and modeling process were denied or went unanswered by the IWVGA Board. Consequently, the uncertainty inherent in the input data, in the output from different modeling scenarios and the sustainability indicators chosen is never quantified and remains unknown.

5. Arbitrary imposition of Augmentation Fees that the small communities that rely on the basin water cannot afford. The GSP calls for immediate implementation of Management Action No. 1. This action will impact all groundwater basin pumpers except US Naval Air Weapons Station (NAWS), China Lake and de minimis pumpers. It calls for immediate implementation of Pumping Allocation Plans, a Transient Pool and Fallowing Program, but does so without providing any information about allocation amounts, fee amounts or specific information about the Fallowing Program. The IWVGA promised to provide this necessary information on, or before April 15, 2020 (section 5.2.1.7). They reneged on this promise and instead submitted their GSP to the DWR without providing any specific information in the plan about the requisite implementation details for Management Action No. 1.

6. Inadequate funding mechanism for the multitude of projects listed in the IWV GSP. The estimated costs for these large, multiyear projects are presented in GSP sections 5 and 6. Cost estimates are approximate and high and funding sources have yet to be determined. Pumping fees alone cannot cover the cost of these projects. The Indian Wells Valley is home to about 36,000 people. The major employer is the US Navy,from which the IWVGA does not intend to collect any pumping fees. The small basin communities cannot afford to pay for projects of this size without substantial government assistance. That potential assistance is not yet identified and hypothesized assistance is not necessarily available.

These concerns are further elaborated in the copy of the letter attached as Exhibit A. The concerns expressed in that letter remain in effect and are heightened following the IWVGA's adoption of the IWV GSP.

We understand that DWR's review of the submitted GSPs is not generally for the purpose of assessing water right claims contained in GSPs and that your review is primarily focused on the technical aspects of those plans. However, we believe the extent to which the IWVGA has relied on its interpretation of water rights law to formulate the IWV GSP warrants deeper examination by DWR.

To that end, Searles Valley would like to provide DWR with a brief overview of its water rights in the basin. This information was also provided in writing to IWVGA during and after the IWV GSP development process, copies of which are attached for your reference as Exhibit B and Exhibit C. Searles has appropriative rights and prescriptive rights to groundwater in the IWV basin. Searles' water rights have ripened into prescriptive rights due to the overdraft conditions in the basin and because Searles' pumping has met the legal criteria of notice, adversity, open and notorious, hostile and under a claim of right to establish a prescriptive right. Searles' rights date back to at least the early 1930's when land was purchased in the basin by Searles' predecessor in interest, American Potash & Chemical Corporation (APCC), containing a well that was drilled in 1912. APCC began transporting basin water to Searles Valley in 1942 through the China Lake gap area.

Searles' right to groundwater in the basin predates the rights of the other water producers including without limitation any water rights claimed by the Indian Wells Valley Water District (IWVWD), which was created in 1955, and NAWS. NAWS' water right dates to December 1947 when Congress took official action to reserve the land. Searles has provided the IWVGA with a written memorandum dated September 5, 2019 explaining this fact.

Under well-established federal law, any right to groundwater claimed or asserted by NAWS pursuant to the federal reserved water right doctrine has a priority date which vests on the date of the reservation. The date of the reservation is the time the land is taken out of the public domain by official Congressional action. Here that was December 1947, by which time Searles was already pumping substantial amounts of basin water. The amount of water reserved cannot include already appropriated water, like the Searles water here, and is limited to the amount necessary to accomplish the purpose of the reservation. (*Cappaert v. U. S.* (1976) 426 U.S. 128, 138-139.) Therefore, Searles' appropriative rights and prescriptive rights are earlier in time and have a priority over any water right reserved to NAWS.

Indian Wells Valley Water District was created in 1955. Because it did not begin pumping before 1955, its appropriative right to BASIN water is junior to Searles' appropriative and prescriptive rights. Therefore, because of the "first in time, first in right" prior appropriation doctrine, IWVWD has a priority junior to the water Searles had appropriated before IWVWD. (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 279; *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1241; *Irwin v. Phillips* (1855) 5 Cal. 140, 147; *Pleasant Valley Canal Co. v. Borror* (1998) 61 Cal.App.4th 742, 776; *El Dorado Irrigation Dist. v. State Water Resources Control Bd.* (2006) 142 Cal.App.4th 937, 961; *Nicoll v. Rudnick* (2008) 160 Cal.App.4th 550, 556.) Thus Indian Wells Valley Water District's appropriative water right in the basin is subject to and limited by Searles' pre-1955 water rights.

In addition to the above, Searles has been delivering basin water to SDWC since SDWC received its Certificate of Public Convenience in 1944, and has gradually become SDWC's sole source of domestic water. Domestic use of water has long been recognized under the law as the highest use of water, followed by irrigation. (Wat. Code, § 106.) This overarching principle applies no matter the priority right. (*El Dorado Irrigation Dist. v. State Water Resources Control Bd.* (2006) 142 Cal.App.4th 937, 961.) At its core, this principle recognizes the human right to "safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes." (Wat. Code, § 106.3.) The right to acquire and hold rights to water used for human consumption is protected under the law "to the fullest extent necessary for existing and future uses." (Wat. Code, § 106.5.) No court has ever prevented a municipal water system from pumping water for domestic uses because of a competing overlying right priority. Therefore, Searles' right to pump water in the basin for domestic uses is senior to any water right reserved to NAWS. Further, as stated earlier, because IWVWD began pumping in 1955 or later, its appropriative right to basin water remains junior to Searles'.

Searles continues to be concerned with IWVGA's position with respect to the basin's sustainable yield as reflected in the IWV GSP. In essence, the IWVGA is substantially reserving the sustainable yield to NAWS without regard to the other beneficial uses and users of the basin water. By way of example, Appendices 3-A, 4-A and 5-A of the IWV GSP show that NAWS intends to increase its baseline water consumption from an actual pumping rate of 1,450 AFY in CY2017 to a projected 6,530 AFY to support an undefined future growth of the NAWS mission. This represents a 350% increase in groundwater pumping and over 85% of the basin's sustainable yield.

Rather than considering "the interests of all beneficial uses and users of groundwater" as required by SGMA, the goal of the IWV GSP is "to preserve the character of the community, preserve the quality of life of the IWV residents, and sustain the mission at NAWS China Lake." No other beneficial uses or users are acknowledged as the goal, objective or purpose of the GSP

developed and presented to the DWR by the IWVGA. This deference to the interests of one stakeholder at the expense of other stakeholders violates SGMA.

We also would like to inform you that the IWVGA board has announced that it will be adopting extraction allocations of basin water shortly after the time period reserved by DWR for submittal of comments on GSPs. Therefore, Searles hereby reserves the right to submit further comments for DWR's consideration at that time.

We appreciate DWR's consideration of these comments. If you have any questions please contact me at (213) 787-2561 or eric.garner@bbklaw.com.

Sincerely,

Eric L. Garner
Managing Partner
of BEST BEST & KRIEGER LLP

ELG/mb

Attachments:

- Exhibit A: Searles Comment Letter to IWVGA, dated January 8, 2020.
- Exhibit B: Memorandum provided to IWVGA dated September 5, 2019, Re: Effective date of federal reserved rights.
- Exhibit C: Searles' responses to "IWVGA QUESTIONNAIRE 1"

# Exhibit A

Lagerlof Senecal Gosney & Kruse LLP

301 North Lake Avenue
10th Floor
Pasadena, CA 91101-5123
Phone: 626.793.9400
Fax: 626.793.5900
www.lagerlof.com

*Established 1908*

January 8, 2020

Mr. Don Zdeba
IWVGA Acting General Manager
don.zdeba@iwvwd.com

Re: **Searles Valley Minerals's Comments To Public Review Draft**

Dear Mr. Zdeba:

We are attorneys for Searles Valley Minerals. We have the following comments to section 5.2.1 (Annual Pumping Allocation Plan, Transient Pool and Fallowing Program). Camille Anderson will be sending additional comments by Searles Valley Minerals to the document as a whole.

1. **Searles's pre-Navy water rights for industrial use should be respected.**

The Plan recognizes that extraction allocations under Water Code section 10726.4(a)(2) should be consistent with federal and state water rights. That section provides, "A limitation on extractions by a groundwater sustainability agency shall not be construed to be a final determination of rights to extract groundwater from the basin or any portion of the basin." The Plan claims that its Annual Pumping Allocations do not determine water rights because they do not prohibit the pumping of groundwater, but the imposition of a significant Augmentation Fee for pumping over the Allocation has the effect of significantly burdening the exercise of water rights. Therefore, the Allocations should be consistent with water rights.

Searles has provided evidence of its pre-Navy appropriations, and will do so again in connection with the Plan's implementation process. An appropriation that pre-dates the reservation of land for the Navy base has priority over the Federal Reserved Right. (See *Cappaert v. United States* (1976) 426 U.S. 128, 138.) The Plan seems to say that because of sovereign immunity, this priority should be reversed: "The IWVGA does not have legal authority to restrict, assess, or regulate production for NAWS China Lake; therefore, NAWS China Lake groundwater production is considered of highest beneficial use." (page 5-10) But this does not follow. Sovereign immunity is a matter of enforcement and does not affect the IWVGA's obligation to respect priorities established by federal law.

Therefore, Searles should receive an Allocation in the full amount of its pre-Navy appropriation.

**2. Searles Domestic Water Company's municipal use priority is separate from Searles's pre-Navy water rights.**

The list of groundwater pumpers for domestic use on page 5-10 should include Searles Domestic Water Company, which supplies water for municipal and domestic use in the Searles Valley. The priority for this use does not depend on whether Searles Valley Minerals has a pre-Navy water right for its industrial use. Therefore, Searles Domestic Water Company should receive an allocation equal to its use during the Base Period, in addition to the allocation for Searles's pre-Navy water right.

**3. The Water District should not receive any preference based on serving water to the Navy workforce.**

On page 5-10, the Plan quotes the Navy's response that "[s]ince the Navy mission at China Lake requires its workforce, the full Navy water requirements are the combination of the on-Station requirements and those of the Navy workforce and their dependents off-Station." Searles is pleased that the Plan does not claim that the Federal Reserved Right extends to production by third parties to serve Navy personnel off-Station, which Searles believes is not supported by any legal authority.

**4. The IWVGA does not have authority to impose an Augmentation Fee.**

The statutes referred to in section 5.2.1.8, Legal Authority, do not authorize the imposition of an Augmentation Fee. Specifically, Water Code section 10725.4 authorizes *investigations* to propose and update fees, and not the fees themselves. Nothing in SGMA authorizes discriminatory fees to enforce an allocation plan.

**5. The Plan does not provide sufficient justification for the limited amount in the Transient Pool nor for its non-transferability**.

The Plan states that the purpose of the Transient Pool is to "facilitate coordinated production reductions and to allow groundwater users to plan and coordinate their individual groundwater pumping termination." (page 5-6) But the Plan provides no explanation why the Transient Pool is limited to 51,000 acre-feet, in view of the large amount of groundwater in storage and the economic dislocations that the Allocation will cause. The Plan also does not explain why the Transient Pool water is not transferable. Making the water transferable would allow parties wishing to exit the Basin to be partially compensated for their investment at a negotiated price, while providing other parties with water to support their operations until imported water is available.

**6. The anticipated timing of the approval and implementation of the allocation ordinance is inconsistent with Section 10728.6 of the Water Code and the California Environmental Quality Act ("CEQA") requirements.**

The Plan states that the Annual Pumping Allocation Plan, Transient Pool and Fallowing Program *may* be subject to environmental review. This statement is misleading as it offers the possibility that such implementation would be exempt from those environmental requirements. Section 10728.6 of the Water Code expressly states that the exemption from the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code applicable to the preparation and adoption of a groundwater sustainability plan (GSP) does not apply to "a project that would implement actions taken pursuant to a plan." Further, an activity qualifies as a "project" subject to CEQA if that activity is undertaken, funded, or approved by a public agency and may cause either a direct, or reasonably foreseeable indirect, physical change in the environment. (Pub. Resources Code, § 21065; *Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171.) It is difficult to imagine how the implementation of this management action would not cause a "direct, or reasonably foreseeable indirect, physical change" in the basin. Therefore, Sections 5.2.1.5 and 5.2.1.7 of the Plan must be amended to reflect an affirmative commitment by IWVGA to conduct an environmental review prior to the adoption of an allocation ordinance and an accordingly more realistic implementation timeline.

**7. This Management Action No.1 is based on incomplete and inaccurate data and thus its implementation must be deferred until the monitoring network is better developed.**

The Plan states in Section 5.2.1.7 that Management Action No.1 would be presented to IWVGA Board for consideration and approval at its June 2020 meeting. This not only is contrary to CEQA requirements, but also ignores the numerous acknowledgements throughout the Plan of serious data gaps which put into question the accuracy of the basin's sustainable yield, water budget, sustainability goal and threshold estimates upon which IWVGA relies in implementing this Management Action No. 1 and the other management actions and projects. The Plan expressly states in several sections that data tracking is fairly recent (mostly since SGMA came into effect; e.g., page ES-15) and that many of the "historical" data points are based on a single measurement recorded at the time of well installation (e.g., see page ES-16.) It is advisable that management actions, including without

limitation Management Action No. 1, be deferred until such time as better monitoring data is in put place but no earlier than the first Plan update is due to DWR, i.e., at least until 2025.

Very truly yours,

Thomas S. Bunn, III

TSB::jlb

cc: Camille Anderson (anderson@svminerals.com)



Lagerlof Senecal Gosney & Kruse LLP

# Exhibit B

Lagerlof Senecal Gosney & Kruse LLP

301 North Lake Avenue
10th Floor
Pasadena, CA 91101-5123
Phone: 626.793.9400
Fax: 626.793.5900
www.lagerlof.com

*Established 1908*

To: IWVGA

From: Lagerlof, Senecal, Gosney & Kruse, LLP

Date: September 5, 2019

Re: Effective date of federal reserved rights

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## QUESTION PRESENTED

Federal reserved water rights vest on the date land in the public domain is withdrawn and reserved for a federal purpose. In the case of China Lake, when was the public domain land withdrawn and reserved for the use of the Navy as a Naval Ordnance Testing Center and proving range?

## BRIEF ANSWER

It appears that the withdrawal and reservation of public domain land for the use of the Navy as a Naval Ordnance Testing Center and proving range was accomplished by Public Land Order 431, which was published in the Federal Register on December 31, 1947.

## DISCUSSION

The U.S. Supreme Court, in *Cappaert v. United States*[1], articulated the test for determining when the government reserves a water right in connection with a withdrawal of public domain land: "This court has long held that when the Federal Government withdraws its land from the public domain and reserves it for a federal purpose, the Government, by implication, reserves appurtenant water then unappropriated to the extent needed to accomplish the purpose of the reservation. In so doing the United States acquires a reserved right in unappropriated water which vests on the date of the reservation and is superior to the rights of future appropriators."[2]

During World War II, Congress enacted temporary laws that increased the authority and powers of the President and the executive branch to expedite the prosecution of the war effort.[3]

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[1] (1976) 426 U.S. 128.
[2] *Id.* at 138.
[3] See, e.g. Second War Powers Act, 1942, Pub. L. No. 507, § 201, 56 Stat. 176, 177 (1942) (authorizing the Secretary of the Navy to acquire and dispose of property deemed necessary for military, naval, or other war

Pursuant to these temporary powers granted by Congress and the President, the Secretary of the Navy, by order dated November 8, 1943, established the Naval Ordnance Test Station (now the Naval Air Weapons Station China Lake) ("NAWS").[4] This order did not mention the property on which NAWS would be located. A copy of the order is attached as **Exhibit B**.

The property proposed to be acquired for NAWS consisted mostly of public domain land, but also included land owned by the State of California and private parties.[5] While the temporary wartime powers granted to the Secretary of the Navy authorized him to acquire property necessary for military, naval, or other war purposes, the Secretary of the Navy did not have the power to withdraw and reserve public domain land itself. This power was reserved to Congress, the President[6], and the Secretary of the Interior[7]. A letter dated December 31, 1943, from the Secretary of the Navy confirmed that the proposed land NAWS remained in the public domain. In this letter the Secretary of the Navy requested "that the Department of the Interior take the necessary action to transfer complete control and jurisdiction over all of the public domain lands in the [proposed area for NAWS] to the Navy Department and that all revocable permits affecting such land, in favor of private parties, be cancelled."[8]

The public domain land for NAWS was finally withdrawn by means of Public Land Order 431, which was signed on December 19, 1947 and published in the Federal Register on December 31, 1947.[9] Through this order, the Department of the Interior withdrew and reserved the described public domain land for an indefinite term "for the use of the Navy Department as a Naval Ordnance Testing Center and proving range."[10] A map obtained from the Bureau of Land Management website that shows the location of NAWS (described as "Naval Air Warfare Center China Lake")[11] and that has the townships described in Public Land Order 431 highlighted is attached as **Exhibit G**. Attached as **Exhibit H** is the Master Title Plat for Township 23 South Range 40 East of the Mount Diablo Meridian[12]. This document, which shows the status of public domain land and mineral titles for the particular township, also indicates that the public domain land for NAWS was not withdrawn until December 19, 1947.

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purposes) http://legisworks.org/congress/77/publaw-507.pdf; Exec. Order No. 9262, 7 Fed. Reg. 9105 (Nov. 10, 1942) (authorizing the Secretary of the Navy to perform and exercise certain additional functions, duties and powers) https://www.govinfo.gov/content/pkg/FR-1942-11-10/pdf/FR-1942-11-10.pdf. Attached as **Exhibit A**.

[4] Albert B. Christman, History of the Naval Weapons Center, China Lake, California, Vol. 1: Sailors, Scientists, and Rockets, 194 (Naval History Division 1971).

[5] J.D. Gerrard-Gough & Albert B. Christman, History of the Naval Weapons Center, China Lake, California, Vol. 2: The Grand Experiment at Inyokern, 23-26 (Naval History Division 1978) https://ia800108.us.archive.org/29/items/DTIC_ADA177734/DTIC_ADA177734.pdf. Attached as **Exhibit C**.

[6] Pub. L. No. 303, § 1, Ch. 421, 847 (June 25, 1910) https://www.loc.gov/law/help/statutes-at-large/61st-congress/session-2/c61s2ch421.pdf. Attached as **Exhibit D**.

[7] Exec. Order No. 9337, 8 Fed. Reg. 5516 (Apr. 28, 1943) https://www.govinfo.gov/content/pkg/FR-1943-04-28/pdf/FR-1943-04-28.pdf. Attached as **Exhibit E**.

[8] History of the Naval Weapons Center, China Lake, California, Vol. 2, 24-25. See **Exhibit C**.

[9] Pub. Land Order No. 431, 13 Fed. Reg. 8895 (Dec. 31, 1947) https://www.govinfo.gov/content/pkg/FR-1947-12-31/pdf/FR-1947-12-31.pdf. Attached as **Exhibit F**.

[10] *Id.* See **Exhibit F**.

[11] https://glorecords.blm.gov/LandCatalog/Catalog

[12] https://glorecords.blm.gov/details/lsr/default.aspx?dm_id=60173&sid=cqzfjhx4.hnc

Lastly, attached as **Exhibit I**, is a copy of what appears to be a Navy document that also supports the position that the public domain land for NAWS was not withdrawn until December 19, 1947. This document was included as "Appendix C Legal Description for NAWS China Lake" to a RCRA Application prepared by a consultant for the Navy.[13]

[13] RCRA Part B Permit Application for the Burro Canyon Open Burn/Open Detonation Facility Naval Air Weapons Station China Lake, California December 2007 (Eighth Revision) https://www.epa.gov/sites/production/files/2015-08/documents/naws-china-lake-ca.pdf.

# Exhibit A

from time to time establish uniform rates for each type of property with respect to which such protection is made available, and, in order to establish a basis for such rates, such Corporation shall estimate the average risk of loss on all property of such type in the United States. Such protection shall be applicable only (1) to such property situated in the United States (including the several States and the District of Columbia), the Philippine Islands, the Canal Zone, the Territories and possessions of the United States, and in such other places as may be determined by the President to be under the dominion and control of the United States, (2) to such property in transit between any points located in any of the foregoing, and (3) to all bridges between the United States and Canada and between the United States and Mexico: *Provided*, That such protection shall not be applicable after the date determined by the Secretary of Commerce under this subsection to property in transit upon which the United States Maritime Commission is authorized to provide marine war-risk insurance. The War Damage Corporation, with the approval of the Secretary of Commerce, may suspend, restrict, or otherwise limit such protection in any area to the extent that it may determine to be necessary or advisable in consideration of the loss of control over such area by the United States making it impossible or impracticable to provide such protection in such area.

Limitation of protection.

*Proviso.* U. S. Maritime Commission.

Area over which U. S. no longer in control.

"(b) Subject to the authorizations and limitations prescribed in subsection (a), any loss or damage to any such property sustained subsequent to December 6, 1941, and prior to the date determined by the Secretary of Commerce under subsection (a), may be compensated by the War Damage Corporation without requiring a contract of insurance or the payment of premium or other charge, and such loss or damage may be adjusted as if a policy covering such property was in fact in force at the time of such loss or damage."

Losses sustained subsequent to December 6, 1941.

SEC. 3. The amount of notes, bonds, debentures, and other such obligations which the Reconstruction Finance Corporation is authorized to issue and have outstanding at any one time under existing law is hereby increased, in addition to the increase authorized in section 2 of this Act, by $2,500,000,000.

Increase of RFC lending authority.

*Post*, pp. 326, 695, 697, 698.

*Ante*, p. 175.

Approved, March 27, 1942.

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[CHAPTER 199]

AN ACT

To further expedite the prosecution of the war.

March 27, 1942
[S. 2208]
[Public Law 507]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

Second War Powers Act, 1942.

## TITLE I—EMERGENCY POWERS OF THE INTERSTATE COMMERCE COMMISSION OVER MOTOR AND WATER CARRIERS

SEC. 101. Section 204 of the Interstate Commerce Act, as amended (U. S. C., 1940 ed., title 49, sec. 304), is hereby amended by adding after subsection (d) thereof the following:

49 Stat. 547; 54 Stat. 922.

"(e) The Commission shall have authority with respect to motor carriers, to be exercised under similar circumstances and procedure, equivalent to the authority it has with respect to other carriers under section 1 (15) of part I, and shall have authority, to the extent necessary to facilitate the prosecution of the war and not in contravention of State laws and regulations with respect to sizes and weights of motor vehicles, to make reasonable directions with respect to equip-

Authority with respect to motor carriers.

41 Stat. 476. 49 U. S. C. § 1 (15).

ment, service, and facilities of motor carriers, and to require the joint use of equipment, terminals, warehouses, garages, and other facilities; and motor carriers shall be subject to the same penalties for failure to comply with action taken by the Commission under this paragraph as other carriers for failure to comply with action taken by the Commission under section 1 (15) of part I.

Modification of orders, permits, etc.

"(f) Notwithstanding any other applicable provision of this Act, to the extent that it may be in the public interest, the Commission may modify, change, suspend or waive any order, certificate, permit, license, rule, or regulation issued under this part."

SEC. 102. Subsection (a) of section 210a of said Act, as amended (U. S. C., 1940 ed., title 49, sec. 310a (a)), is hereby amended by striking out the words "but for not more than an aggregate of one hundred and eighty days".

52 Stat. 1238.

SEC. 103. Subsection (a) of section 311 of said Act, as amended (U. S. C., 1940 ed., title 49, sec. 911 (a)) is hereby amended by striking out the words "but not for more than an aggregate of one hundred and eighty days".

Water carriers.
54 Stat. 943.

## TITLE II—ACQUISITION AND DISPOSITION OF PROPERTY

SEC. 201. The Act of July 2, 1917 (40 Stat. 241), entitled "An Act to authorize condemnation proceedings of lands for military purposes", as amended, is hereby amended by adding at the end thereof the following section:

50 U. S. C. § 171.

Authority of Federal officers and agencies.

"SEC. 2. The Secretary of War, the Secretary of the Navy, or any other officer, board, commission, or governmental corporation authorized by the President, may acquire by purchase, donation, or other means of transfer, or may cause proceedings to be instituted in any court having jurisdiction of such proceedings, to acquire by condemnation, any real property, temporary use thereof, or other interest therein, together with any personal property located thereon or used therewith, that shall be deemed necessary, for military, naval, or other war purposes, such proceedings to be in accordance with the Act of August 1, 1888 (25 Stat. 357), or any other applicable Federal statute, and may dispose of such property or interest therein by sale, lease, or otherwise, in accordance with section 1 (b) of the Act of July 2, 1940 (54 Stat. 712). Upon or after the filing of the condemnation petition, immediate possession may be taken and the property may be occupied, used, and improved for the purposes of this Act, notwithstanding any other law. Property acquired by purchase, donation, or other means of transfer may be occupied, used, and improved, for the purposes of this section prior to the approval of title by the Attorney General as required by section 355 of the Revised Statutes, as amended."

40 U. S. C. §§ 257, 258.

41 U. S. C. prec. § 1 note; Supp. I, prec. § 1 note.

40 U. S. C. § 255.

## TITLE III—PRIORITIES POWERS

National defense contracts.

SEC. 301. Subsection (a) of section 2 of the Act of June 28, 1940 (54 Stat. 676), entitled "An Act to expedite national defense, and for other purposes", as amended by the Act of May 31, 1941 (Public Law Numbered 89, Seventy-seventh Congress), is hereby amended to read as follows:

55 Stat. 236.
41 U. S. C., Supp. I, prec. § 1 note.

Acquisition, etc., of naval vessels or aircraft.

"SEC. 2. (a) (1) That whenever deemed by the President of the United States to be in the best interests of the national defense during the national emergency declared by the President on September 8, 1939, to exist, the Secretary of the Navy is hereby authorized to negotiate contracts for the acquisition, construction, repair, or altera-

54 Stat. 2643.
50 U. S. C., app. prec. § 1 note.

Machine tools.

Priority in deliveries.

*Provisos.*
Reports to Congress.

Restriction.

49 Stat. 2039.
41 U. S. C. § 43.

Bonds.

40 U. S. C. §§ 270a-270d; Supp. I, §§ 270a-270d.

Cost-plus contracts.

Fixed fee.

Deliveries under land-lease contracts, etc.

55 Stat. 31.
22 U. S. C., Supp. I, §§ 411-419.

Allocation of material or facilities.

tion of complete naval vessels or aircraft, or any portion thereof, including plans, spare parts, and equipment therefor, that have been or may be authorized, and also for machine tools and other similar equipment, with or without advertising or competitive bidding upon determination that the price is fair and reasonable. Deliveries of material under all orders placed pursuant to the authority of this paragraph and all other naval contracts or orders and deliveries of material under all Army contracts or orders shall, in the discretion of the President, take priority over all deliveries for private account or for export: *Provided*, That the Secretary of the Navy shall report every three months to the Congress the contracts entered into under the authority of this paragraph: *Provided further*, That contracts negotiated pursuant to the provisions of this paragraph shall not be deemed to be contracts for the purchase of such materials, supplies, articles, or equipment as may usually be bought in the open market within the meaning of section 9 of the Act entitled 'An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes', approved June 30, 1936 (49 Stat. 2036; U. S. C., Supp. V, title 41, secs. 35–45): *Provided further*, That nothing herein contained shall relieve a bidder or contractor of the obligation to furnish the bonds under the requirements of the Act of August 24, 1935 (49 Stat. 793; 40 U. S. C. 270 (a) to (d)): *Provided further*, That the cost-plus-a-percentage-of-cost system of contracting shall not be used under the authority granted by this paragraph to negotiate contracts; but this proviso shall not be construed to prohibit the use of the cost-plus-a-fixed-fee form of contract when such use is deemed necessary by the Secretary of the Navy: *And provided further*, That the fixed fee to be paid the contractor as a result of any contract entered into under the authority of this paragraph, or any War Department contract entered into in the form of cost-plus-a-fixed-fee, shall not exceed 7 per centum of the estimated cost of the contract (exclusive of the fee as determined by the Secretary of the Navy or the Secretary of War, as the case may be).

"(2) Deliveries of material to which priority may be assigned pursuant to paragraph (1) shall include, in addition to deliveries of material under contracts or orders of the Army or Navy, deliveries of material under—

"(A) Contracts or orders for the government of any country whose defense the President deems vital to the defense of the United States under the terms of the Act of March 11, 1941, entitled 'An Act to promote the defense of the United States';

"(B) Contracts or orders which the President shall deem necessary or appropriate to promote the defense of the United States;

"(C) Subcontracts or suborders which the President shall deem necessary or appropriate to the fulfillment of any contract or order as specified in this subsection (a).

Deliveries under any contract or order specified in this subsection (a) may be assigned priority over deliveries under any other contract or order; and the President may require acceptance of and performance under such contracts or orders in preference to other contracts or orders for the purpose of assuring such priority. Whenever the President is satisfied that the fulfillment of requirements for the defense of the United States will result in a shortage in the supply of any material or of any facilities for defense or for private account or for export, the President may allocate such material or facilities in such manner, upon such conditions and to such extent as he shall deem necessary or appropriate in the public interest and to promote the national defense.

"(3) The President shall be entitled to obtain such information from, require such reports and the keeping of such records by, make such inspection of the books, records, and other writings, premises or property of, any person (which, for the purpose of this subsection (a), shall include any individual, partnership, association, business trust, corporation, or any organized group of persons, whether incorporated or not), and make such investigations, as may be necessary or appropriate, in his discretion, to the enforcement or administration of the provisions of this subsection (a). Obtaining information and making investigations.

"(4) For the purpose of obtaining any information, verifying any report required, or making any investigation pursuant to paragraph (3), the President may administer oaths and affirmations, and may require by subpena or otherwise the attendance and testimony of witnesses and the production of any books or records or any other documentary or physical evidence which may be relevant to the inquiry. Such attendance and testimony of witnesses and the production of such books, records, or other documentary or physical evidence may be required at any designated place from any State, Territory, or other place subject to the jurisdiction of the United States: *Provided*, That the production of a person's books, records, or other documentary evidence shall not be required at any place other than the place where such person resides or transacts business, if, prior to the return date specified in the subpena issued with respect thereto, such person furnishes the President with a true copy of such books, records, or other documentary evidence (certified by such person under oath to be a true and correct copy) or enters into a stipulation with the President as to the information contained in such books, records, or other documentary evidence. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. No person shall be excused from attending and testifying or from producing any books, records, or other documentary evidence or certified copies thereof or physical evidence in obedience to any such subpena, or in any action or proceeding which may be instituted under this subsection (a), on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be subject to prosecution and punishment or to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify or produce evidence, documentary or otherwise, after having claimed his privilege against self-incrimination, except that any such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. The President shall not publish or disclose any information obtained under this paragraph which the President deems confidential or with reference to which a request for confidential treatment is made by the person furnishing such information, unless the President determines that the withholding thereof is contrary to the interest of the national defense and security; and anyone violating this provision shall be guilty of a felony and upon conviction thereof shall be fined not exceeding $1,000, or be imprisoned not exceeding two years, or both. Authority to obtain testimony and evidence. *Proviso.* Production of documentary evidence. Witness fees and mileage. Privilege against self-incrimination. Disclosing confidential information. Penalty.

"(5) Any person who willfully performs any act prohibited, or willfully fails to perform any act required by, any provision of this subsection (a) or any rule, regulation, or order thereunder, whether heretofore or hereafter issued, shall be guilty of a misdemeanor, and shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than one year, or both. Misdemeanors.

"(6) The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of Jurisdiction of violations.

the United States and the courts of the Philippine Islands shall have jurisdiction of violations of this subsection (a) or any rule, regulation, or order or subpena thereunder, whether heretofore or hereafter issued, and of all civil actions under this subsection (a) to enforce any liability or duty created by, or to enjoin any violation of, this subsection (a) or any rule, regulation, order, or subpena thereunder whether heretofore or hereafter issued. Any criminal proceeding on account of any such violation may be brought in any district in which any act, failure to act, or transaction constituting the violation occurred. Any such civil action may be brought in any such district or in the district in which the defendant resides or transacts business. Process in such cases, criminal or civil, may be served in any district wherein the defendant resides or transacts business or wherever the defendant may be found; and subpena for witnesses who are required to attend a court in any district in any such case may run into any other district. No costs shall be assessed against the United States in any proceeding under this subsection (a).

Venue.

Service of process.

Nonliability for damages.

"(7) No person shall be held liable for damages or penalties for any default under any contract or order which shall result directly or indirectly from compliance with this subsection (a) or any rule, regulation, or order issued thereunder, notwithstanding that any such rule, regulation, or order shall thereafter be declared by judicial or other competent authority to be invalid.

Exercise of power through departments, etc.

"(8) The President may exercise any power, authority, or discretion conferred on him by this subsection (a), through such department, agency, or officer of the Government as he may direct and in conformity with any rules or regulations which he may prescribe."

## TITLE IV—PURCHASE BY FEDERAL RESERVE BANKS OF GOVERNMENT OBLIGATIONS

Federal Reserve Act, amendment.
49 Stat. 706.
12 U. S. C. § 355.

SEC. 401. Subsection (b) of section 14 of the Act of December 23, 1913 (38 Stat. 265), otherwise known as the Federal Reserve Act, as amended, is hereby amended by striking out the proviso therein and inserting in lieu thereof the following: "*Provided*, That any bonds, notes, or other obligations which are direct obligations of the United States or which are fully guaranteed by the United States as to principal and interest may be bought and sold without regard to maturities either in the open market or directly from or to the United States; but all such purchases and sales shall be made in accordance with the provisions of section 12A of this Act and the aggregate amount of such obligations acquired directly from the United States which is held at any one time by the twelve Federal Reserve banks shall not exceed $5,000,000,000."

*Proviso.*

48 Stat. 168.
12 U. S. C. § 263.
*Post*, p. 647.

## TITLE V—WAIVER OF NAVIGATION AND INSPECTION LAWS

SEC. 501. The head of each department or agency responsible for the administration of the navigation and vessel inspection laws is directed to waive compliance with such laws upon the request of the Secretary of the Navy or the Secretary of War to the extent deemed necessary in the conduct of the war by the officer making the request. The head of such department or agency is authorized to waive compliance with such laws to such extent and in such manner and upon such terms as he may prescribe either upon his own initiative or upon the written recommendation of the head of any other Government agency whenever he deems that such action is necessary in the conduct of the war.

## TITLE VI—POWER TO REQUISITION

Requisitioning of property for national defense.
50 U. S. C., Supp. I, app. § 721.

SEC. 601. The last paragraph of section 1 of the Act of October 16, 1941 (55 Stat. 742), entitled "An Act to authorize the President of the United States to requisition property required for the defense of the United States", is amended by deleting subdivision (3) thereof, so that the paragraph will read as follows:

"Nothing contained in this Act shall be construed—

Limitations.

"(1) to authorize the requisitioning or require the registration of any firearms possessed by an individual for his personal protection or sport (and the possession of which is not prohibited or the registration of which is not required by existing law),

"(2) to impair or infringe in any manner the right of any individual to keep and bear arms."

50 U. S. C., Supp. I, app. § 721.

SEC. 602. The second sentence of the first paragraph of section 1 of the Act of October 16, 1941 (55 Stat. 742), entitled "An Act to authorize the President of the United States to requisition property required for the defense of the United States", is amended by striking out the words "on the basis of the fair market value of the property at" and inserting in lieu thereof the words "as of"; and at the end of such sentence, before the period, inserting the words ", in accordance with the provision for just compensation in the fifth amendment to the Constitution of the United States", so that such sentence will read as follows: "The President shall determine the amount of the fair and just compensation to be paid for any property requisitioned and taken over pursuant to this Act and the fair value of any property returned under section 2 of this Act, but each such determination shall be made as of the time it is requisitioned or returned, as the case may be, in accordance with the provision for just compensation in the fifth amendment to the Constitution of the United States."

Determination of amount of just compensation.

55 Stat. 742.
50 U. S. C., Supp. I, app. § 722.

## TITLE VII—POLITICAL ACTIVITY

18 U. S. C. § 61h.
*Post*, p. 986.

SEC. 701. Subsection (a) of section 9 of the Act of August 2, 1939 (53 Stat. 1148), entitled "An Act to prevent pernicious political activities", as amended, is hereby amended by adding in the second sentence after the word "thereof" the words "except a part-time officer or part-time employee without compensation or with nominal compensation serving in connection with the existing war effort, other than in any capacity relating to the procurement or manufacture of war material".

## TITLE VIII—PROTECTION OF WAR INDUSTRIES AND PROTECTION OF RESOURCES SUBJECT TO HAZARDS OF FOREST FIRES

Assignment of CCC manpower.
*Post*, p. 569.

SEC. 801. The President is empowered to direct the Administrator of the Federal Security Agency to assign the manpower of the Civilian Conservation Corps to the extent necessary to protect the munitions, aircraft, and other war industries, municipal water supply, power and other utilities, and to protect resources subject to the hazards of forest fires.

## TITLE IX—FREE POSTAGE FOR SOLDIERS, SAILORS, AND MARINES

SEC. 901. Any first-class letter mail matter admissible to the mails as ordinary mail matter which is sent by a member of the military or naval forces of the United States (including the United States Coast

Guard), while on active duty or in the active military or naval service of the United States, to any person in the United States, including the Territories and possessions thereof, shall be transmitted in the mails free of postage, subject to such rules and regulations as the Postmaster General shall prescribe.

## TITLE X—NATURALIZATION OF PERSONS SERVING IN THE ARMED FORCES OF THE UNITED STATES DURING THE PRESENT WAR

Nationality Act of 1940, amendment.
8 U. S. C., Supp. I, § 809.
*Post*, pp. 198, 779, 1041, 1043, 1085.

SEC. 1001. The Act of October 14, 1940 (54 Stat. 1137; U. S. C., 1940 ed., title 8, secs. 501–907), entitled "An Act to revise and codify the nationality laws of the United States into a comprehensive nationality code", is hereby amended by adding thereto a new title as follows:

### "TITLE III

Aliens in armed forces during present war.
54 Stat. 1140, 1150.
8 U. S. C. §§ 703, 726.

"SEC. 701. Notwithstanding the provisions of sections 303 and 326 of this Act, any person not a citizen, regardless of age, who has served or hereafter serves honorably in the military or naval forces of the United States during the present war and who, having been lawfully admitted to the United States, including its Territories and possessions, shall have been at the time of his enlistment or induction a resident thereof, may be naturalized upon compliance with all the requirements of the naturalization laws except that (1) no declaration of intention and no period of residence within the United States or any State shall be required; (2) the petition for naturalization may be filed in any court having naturalization jurisdiction regardless of the residence of the petitioner; (3) the petitioner shall not be required to speak the English language, sign his petition in his own handwriting, or meet any educational test; and (4) no fee shall be charged or collected for making, filing, or docketing the petition for naturalization, or for the final hearing thereon, or for the certification of naturalization, if issued: *Provided*, *however*, That (1) there shall be included in the petition the affidavits of at least two credible witnesses, citizens of the United States, stating that each such witness personally knows the petitioner to be a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States, (2) the service of the petitioner in the military or naval forces of the United States shall be proved by affidavits, forming part of the petition, of at least two citizens of the United States, members or former members during the present war of the military or naval forces of the noncommissioned or warrant officer grade or higher (who may be the witnesses described in clause (1) of this proviso), or by a duly authenticated copy of the record of the executive department having custody of the record of petitioner's service, showing that the petitioner is or was during the present war a member serving honorably in such armed forces, and (3) the petition shall be filed not later than one year after the termination of the effective period of those titles of the Second War Powers Act, 1942, for which the effective period is specified in the last title thereof. The petitioner may be naturalized immediately if prior to the filing of the petition the petitioner and the witnesses required by the foregoing proviso shall have appeared before and been examined by a representative of the Immigration and Naturalization Service.

Waiver of certain requirements.

*Proviso.*
Evidence of good character, etc.

Proof of service.

Filing of petition.

*Post*, p. 187.

Immediate naturalization.

Persons not within jurisdiction of naturalization court.

"SEC. 702. During the present war, any person entitled to naturalization under section 701 of this Act, who while serving honorably in the

military or naval forces of the United States is not within the jurisdiction of any court authorized to naturalize aliens, may be naturalized in accordance with all the applicable provisions of section 701 without appearing before a naturalization court. The petition for naturalization of any petitioner under this section shall be made and sworn to before, and filed with, a representative of the Immigration and Naturalization Service designated by the Commissioner or a Deputy Commissioner, which designated representative is hereby authorized to receive such petition in behalf of the Service, to conduct hearings thereon, to take testimony concerning any matter touching or in any way affecting the admissibility of any such petitioner for naturalization, to call witnesses, to administer oaths, including the oath of the petitioner and his witnesses to the petition for naturalization and the oath of renunciation and allegiance prescribed by section 335 of this Act, and to grant naturalization, and to issue certificates of citizenship: *Provided*, That the record of any proceedings hereunder together with a copy of the certificate of citizenship shall be forwarded to and filed by the clerk of a naturalization court in the district in which the petitioner is a resident and be made a part of the record of the court.

Petition.

Conduct of proceedings.

54 Stat. 1157.
8 U. S. C. § 735.

*Proviso.*
Record of proceedings.

"SEC. 703. The ninety days' notice required by subsection (b) of section 326 of this Act to be given by the clerk of the naturalization court to the Commissioner may be waived by the Commissioner in his discretion. In any petition in which such notice is waived the Commissioner shall cause the clerk of court to be notified to that effect.

Waiver of notice to Commissioner.
54 Stat. 1150.
8 U. S. C. § 726 (b).

"SEC. 704. The provisions of this title shall not apply to (1) any person who during the present war is dishonorably discharged from the military or naval forces or is discharged therefrom on account of his alienage, or (2) any conscientious objector who performed no military duty whatever or refused to wear the uniform: *Provided*, That citizenship granted pursuant to this title may be revoked as to any person subsequently dishonorably discharged from the military or naval forces in accordance with Section 338 of this Act; and such ground for revocation shall be in addition to any other provided by law.

Persons ineligible.

*Proviso.*
Revocation of citizenship.

54 Stat. 1158.
8 U. S. C. § 738.

"SEC. 705. The Commissioner, with the approval of the Attorney General, shall prescribe and furnish such forms, and shall make such rules and regulations, as may be necessary to carry into effect the provisions of this Act.

Forms; rules and regulations.

## TITLE XI—ACCEPTANCE OF CONDITIONAL GIFTS TO FURTHER THE WAR PROGRAM

SEC. 1101. To further the war program of the United States, the Secretary of the Treasury is authorized to accept or reject on behalf of the United States any gift of money or other property, real or personal, or services, made on condition that it be used for a particular war purpose.

Authority to accept or reject gifts.

SEC. 1102. The Secretary of the Treasury may convert into money, at the best terms available, any such gift of property other than money.

Gifts other than money.

SEC. 1103. There shall be established on the books of the Treasury a special deposit account to be designated as the "War Contributions Fund", into which shall be deposited all money received as a result of such gifts.

"War Contributions Fund."

SEC. 1104. The Secretary of the Treasury, in order to effectuate the purposes for which gifts accepted under this title are made, shall from time to time allocate the money in such special deposit account to such of the various appropriations available for the purchase of

Allocation of funds.

war material and the furtherance of the war program of the United States as in his judgment will best effectuate the intent of the donors, and such money is hereby appropriated and shall be available for expenditure for the purposes of the appropriations to which allocated.

Report to Congress.

SEC. 1105. The Secretary of the Treasury shall include in his Annual Report to the Congress a summary of the gifts made and accepted under this title.

Penal provisions.

SEC. 1106. Whoever shall solicit any gift of money or other property, and represent that such gift is being solicited for the use of the United States, with the intention of embezzling, stealing, or purloining such gift, or converting the same to any other use or purpose, or whoever, having come into possession of any money or property which has been donated by the owner thereof for the use of the United States, shall embezzle, steal, or purloin such money or property, or convert the same to any other use or purpose, shall be guilty of a felony and upon conviction thereof shall be fined not more than $5,000 or imprisoned for not more than five years, or both.

## TITLE XII—COINAGE OF 5-CENT PIECES

Metallic content.

SEC. 1201. Notwithstanding any other provision of law, the Director of the Mint shall cause the metallic content of all 5-cent pieces coined after the effective date of this title and prior to December 31, 1946, to be one-half silver and one-half copper: *Provided*, That the Director of the Mint, with the approval of the Secretary of the Treasury and the Chairman of the War Production Board, is authorized to vary the proportions of silver and copper and to add other metals if such action would be in the public interest. Such 5-cent pieces shall be deemed to be minor coins or coinage and not silver coins, subsidiary silver coins, silver coinage, or subsidiary silver coinage within the meaning of the monetary laws of the United States.

*Proviso.*

To be deemed minor coins or coinage.

Allocation of silver bullion.

SEC. 1202. For the coinage of such 5-cent pieces the Secretary of the Treasury is hereby authorized to allocate to the Director of the Mint, at such times and in such amounts as the Secretary deems necessary, any silver bullion in the monetary stocks of the United States not then held for redemption of any outstanding silver certificates. Silver so allocated shall be accounted for by entries in the fund established for the purchase of metal for minor coinage: *Provided*, That the value of any silver bullion accounted for in said fund shall not be considered for the purpose of determining the statutory limit of said fund: *Provided further*, That the gain from the minor coinage provided for by this title shall be accounted for by entries in the minor coinage profit fund.

Accounting.

*Provisos.*

Standards.

SEC. 1203. No silver-copper ingots shall be used for the minor coinage provided for by this title which differ from the legal standard by more than ten-thousandths. In adjusting the weight of such minor coins there shall be no greater deviation allowed than four grains for each piece.

To be deemed copper coins.

SEC. 1204. For the purpose of section 3529 of the Revised Statutes (U. S. C., title 31, sec. 341), the 5-cent pieces provided for by this title shall be deemed to be copper.

Use of redeemed pieces after Dec. 31, 1946.

SEC. 1205. Upon redemption any 5-cent pieces coined in accordance with the provisions of this title shall after December 31, 1946, be allocated to the Director of the Mint for melting and for subsidiary silver coinage. Any 5-cent pieces coined in accordance with the provisions of this title but not issued by the Mint may after December 31, 1946, be allocated, in such amounts and at such times as the Secretary of the Treasury in his discretion may determine, to the Director of the Mint for melting and for subsidiary silver coinage. All 5-cent

pieces allocated to the Director of the Mint in accordance with this section shall be accounted for by entries in the fund established for the purchase of silver bullion for subsidiary silver coinage. Upon coinage into subsidiary silver coins of the metal contained in the 5-cent pieces so allocated, the gain shall be accounted for by entries in the silver-profit fund.

SEC. 1206. This title shall become effective sixty days after approval. Effective date of title.

## TITLE XIII—INSPECTION AND AUDIT OF WAR CONTRACTORS

SEC. 1301. The provisions of section 10 (l) of an Act approved July 2, 1926 (44 Stat. 787; 10 U. S. C. 310 (l)) (giving the Government the right to inspect the plant and audit the books of certain Contractors), shall apply to the plant, books, and records of any contractor with whom a defense contract has been placed at any time after the declaration of emergency on September 8, 1939, and before the termination of the present war: *Provided*, That, for the purpose of this title, the term "defense contract" shall mean any contract, subcontract, or order placed in furtherance of the defense or war effort: *And provided further*, That the inspection and audit authorized herein, and the determination whether a given contract is a "defense contract" as defined above, shall be made by a governmental agency or officer designated by the President, or by the Chairman of the War Production Board.

Authority to inspect plants and audit books.
*Post*, p. 1015.

54 Stat. 2643.
50 U. S. C., app., proc. § 1 note.
*Provisos.*
"Defense contract."

SEC. 1302. For the purpose of obtaining any information or making any inspection or audit pursuant to section 1301, any agency acting hereunder, or the Chairman of the War Production Board, as the case may be, may administer oaths and affirmations and may require by subpena or otherwise the attendance and testimony of witnesses and the production of any books or records or any other documentary or physical evidence which may be deemed relevant to the inquiry. Such attendance and testimony of witnesses and the production of such books, records, or other documentary or physical evidence may be required at any designated place from any State, Territory, or other place subject to the jurisdiction of the United States: *Provided*, That the production of a person's books, records, or other documentary evidence shall not be required at any place other than the place where such person resides or transacts business, if, prior to the return date specified in the subpena issued with respect thereto, such person furnishes such agency or the Chairman of the War Production Board, as the case may be, with a true copy of such books, records, or other documentary evidence (certified by such person under oath to be a true and correct copy) or enters into a stipulation with such agency or the Chairman of the War Production Board, as the case may be, as to the information contained in such books, records, or other documentary evidence. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. No person shall be excused from attending and testifying or from producing any books, records, or other documentary evidence or certified copies thereof or physical evidence in obedience to any such subpena, or in any action or proceeding which may be instituted under this section, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be subject to prosecution and punishment or to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify or produce evi-

Obtaining testimony and evidence.

*Proviso.*
Production of documentary evidence.

Witness fees and mileage.
Privilege against self-incrimination.

dence, documentary or otherwise, after having claimed his privilege against self-incrimination, except that any such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. Such agency or the Chairman of the War Production Board shall not publish or disclose any information obtained under this title which such agency or the Chairman of the War Production Board deems confidential or with reference to which a request for confidential treatment is made by the person furnishing such information, unless such agency or the Chairman of the War Production Board determines that the withholding thereof is contrary to the interest of the national defense and security; and anyone violating this provision shall be guilty of a felony and upon conviction thereof shall be fined not exceeding $1,000, or be imprisoned not exceeding two years, or both.

Disclosure of confidential information.

Penalty.

Aid of U. S. court in obtaining evidence.

SEC. 1303. In case of contempt by, or refusal to obey a subpena issued to, any person, any agency acting hereunder, or the Chairman of the War Production Board, as the case may be, may invoke the aid of any court of the United States within the jurisdiction of which any investigation or proceeding under this title is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, records, or other documentary or physical evidence. And such court may issue an order requiring such person to give testimony or produce any books, records, or other documentary or physical evidence touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found. Any person who shall, without just cause, fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, records, or other documentary or physical evidence, if in his power to do so, in obedience to the subpena of any agency acting hereunder, or the Chairman of the War Production Board, as the case may be, shall be guilty of a misdemeanor, and, upon conviction, shall be subject to a fine of not more than $5,000, or to imprisonment for a term of not more than one year, or both.

Service of process.

Penalty.

"Person."

SEC. 1304. For purposes of this title the term "person" shall include any individual, partnership, association, business trust, corporation, or any organized group of persons, whether incorporated or not.

## TITLE XIV—UTILIZATION OF VITAL WAR INFORMATION

Special investigations and reports.

SEC. 1401. The Secretary of Commerce shall, at the direction of the President, and subject to such regulations as the President may issue, make such special investigations and reports of census or statistical matters as may be needed in connection with the conduct of the war, and, in carrying out the purpose of this section, dispense with or curtail any regular census or statistical work of the Department of Commerce, or of any bureau or division thereof. Any person who shall refuse or willfully neglect to answer any questions in connection with any special investigations made under this section, or who shall willfully give answers that are false, shall upon conviction thereof be fined not exceeding $500 or imprisoned for a period of not exceeding sixty days, or both.

Offenses and penalties.

Availability of information to Government agencies.

SEC. 1402. That notwithstanding any other provision of law, any record, schedule, report, or return, or any information or data contained therein, now or hereafter in the possession of the Department

of Commerce, or any bureau or division thereof, may be made available by the Secretary of Commerce to any branch or agency of the Government, the head of which shall have made written request therefor for use in connection with the conduct of the war. The President shall issue regulations with respect to the making available of any such record, schedule, report, return, information or data, and with respect to the use thereof after the same has been made available. No person shall disclose or make use of any individual record, schedule, report, or return, or any information or data contained therein contrary to the terms of such regulations; and any person knowingly and willfully violating this provision shall be guilty of a felony and upon conviction thereof shall be fined not exceeding $1,000, or be imprisoned not exceeding two years, or both.

Regulations.

Unauthorized disclosures.

Penalty.

SEC. 1403. For purposes of this title the term "person" shall include any individual, partnership, association, business trust, corporation, or any organized group of persons, whether incorporated or not.

"Person."

## TITLE XV—TIME LIMIT AND SHORT TITLE

SEC. 1501. Titles I to IX, inclusive, and titles XI and XIV of this Act, and the amendments to existing law made by any such title, shall remain in force only until December 31, 1944, or until such earlier time as the Congress by concurrent resolution, or the President, may designate, and after such amendments cease to be in force any provision of law amended thereby shall be in full force and effect as though this Act had not been enacted; but no court proceedings brought under any such title shall abate by reason of the termination hereunder of such title.

SEC. 1502. This Act may be cited as the "Second War Powers Act, 1942".

Short title.

Approved, March 27, 1942, 3 p. m. Eastern War Time

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[CHAPTER 200]

## AN ACT

To amend certain provisions of the Internal Revenue Code relating to the production of alcohol.

March 27, 1942
[H. R. 6543]
[Public Law 508]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That section 2883 of the Internal Revenue Code (relating to transfer of spirits at registered distilleries) is amended by adding at the end thereof the following:

Internal Revenue Code, amendments.
53 Stat. 335.
26 U. S. C. § 2883.
*Ante*, p. 17.

"(d) Under regulations to be prescribed by the Commissioner and approved by the Secretary, distilled spirits of any proof may be removed in approved containers, including pipe lines, from any registered distillery (including registered fruit distilleries) or internal revenue bonded warehouse to any other registered distillery (including registered fruit distilleries) or internal revenue bonded warehouse for redistillation and removal as provided in (c): *Provided*, That in case of removals of distilled spirits to any registered distillery (including registered fruit distilleries) for redistillation, the receiving distiller shall undertake to assume liability for the payment of the tax on the spirits from the time they leave the warehouse or distillery, as the case may be: *Provided further*, That any such spirits of one hundred and sixty degrees of proof or greater may be removed without redistillation from any internal revenue bonded warehouse as provided in (c): *Provided further*, That such spirits may be stored in tanks in any internal revenue bonded ware-

Removal of spirits for redistillation, etc.

*Provisos.*
Tax liability.

Spirits of 160° of proof or greater.

Storage.

# FEDERAL REGISTER

VOLUME 7 NUMBER 221

*Washington, Tuesday, November 10, 1942*


## *The President*

### EXECUTIVE ORDER 9262

AUTHORIZING THE SECRETARY OF THE NAVY TO PERFORM AND EXERCISE CERTAIN ADDITIONAL FUNCTIONS, DUTIES, AND POWERS

By virtue of the authority vested in me by the Constitution and laws of the United States, and particularly by Title I of the First War Powers Act, 1941, approved December 18, 1941 (55 Stat. 838), as President of the United States and Commander in Chief of the Army and Navy of the United States, it is hereby ordered as follows:

1. The Secretary of the Navy is hereby authorized to perform and exercise the same functions, powers, and duties, on behalf of the Navy Department, as are authorized to be performed and exercised by the Secretary of War, on behalf of the War Department, by the provisions of subdivisions (a) and (b) of section 1 of the act entitled "An Act to expedite the strengthening of the national defense", approved July 2, 1940 (54 Stat. 712), as continued in effect by Public Law 580, 77th Congress, approved June 5, 1942.

2. Any provision of any Executive order, and any provision, rule, or regulation of any officer, department, board, commission, bureau, agency or instrumentality of the Government of the United States conflicting with this order are superseded to the extent of such conflict.

3. This order shall become effective as of the date hereof, and shall continue in force and effect until the termination of Title I of the First War Powers Act, 1941.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
*November 5, 1942.*

[F. R. Doc. 42-11595; Filed, November 6, 1942; 2:40 p. m.]

### EXECUTIVE ORDER 9263

REVOKING THE DESIGNATIONS OF CORDOVA, ALASKA, AND MAHUKONA, HAWAII, AS CUSTOMS PORTS OF ENTRY

By virtue of the authority vested in me by section 1 of the act of August 1, 1914, 38 Stat. 609, 623 (U.S.C., title 19, sec. 2), the designations of Cordova, Alaska, and Mahukona, Hawaii, as customs ports of entry in Customs Collection District No. 31 (Alaska) and Customs Collection District No. 32 (Hawaii), respectively, are hereby revoked.

This order shall become effective on the thirtieth day from the date hereof.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
*November 5, 1942.*

[F. R. Doc. 42-11596; Filed, November 6, 1942; 2:40 p. m.]

### EXECUTIVE ORDER 9264

EXTENSION OF THE PROVISIONS OF EXECUTIVE ORDER NO. 9001 OF DECEMBER 27, 1941, TO CONTRACTS OF THE DEPARTMENT OF COMMERCE

By virtue of the authority vested in me by Title II of the First War Powers Act, 1941, approved December 18, 1941 (Public Law 354, 77th Congress), and as President of the United States, and deeming that such action will facilitate the prosecution of the war, I hereby extend the provisions of Executive Order No. 9001 of December 27, 1941,[1] to the Department of Commerce with respect to all contracts made or to be made by it relating to the prosecution of the war; and subject to the limitations and regulations contained in such Executive Order, I hereby authorize the Secretary of Commerce and such other officers as he may designate, to perform and exercise, as to the Department of Commerce, all of the functions and powers vested in and granted to the Secretary of War, the Secretary of the Navy, and the Chairman of the United States Maritime Commission by such Executive Order.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
*November 5, 1942.*

[F. R. Doc. 42-11597; Filed, November 6, 1942; 2:40 p. m.]

[1] 6 F.R. 6787.

CONTENTS



(Continued on next page)

# Exhibit B

Op13C-jc
Serial 232213

8 November 1943

R-1564-Naval Ordnance Test Station, Inyokern, California--
Establishment of.

ACTION: ALL SHIPS AND STATIONS

1. A station, having for its primary function the research, development, and testing of weapons, and having additional function of furnishing primary training in the use of such weapons, is hereby established and designated

U. S. Naval Ordnance Test Station,
Inyokern, California,

as an activity of the Eleventh Naval District.

2. Bureaus and offices concerned take necessary action.

FRANK KNOX
Secretary of the Navy

# Exhibit C

HISTORY OF THE NAVAL WEAPONS CENTER, CHINA LAKE, CALIFORNIA • VOLUME 2

# THE GRAND EXPERIMENT AT INYOKERN

transferred to the Naval Air Station, Holtville, California. But these were critical months as they covered the peak of the training for the operational squadrons of which 28 Fleet and one Army Air Force Squadron were trained between January and July 1944.

But the brief sojourn of CASU-53 at Inyokern during the first few hectic months of the Station's career gave more than a badly needed "hand at the pump." Like AODU-1 and the visiting Fleet squadrons, it helped lay the foundations of what would become NOTS' own Naval Air Facility.

## LAND ACQUISITION

"Worthless desert land" was the description generally applied to the area by those who had reconnoitered it by air and land in the summer and fall of 1943. But by the time Burroughs assumed command in December, it was quite clear there were some people who for quite diverse reasons felt it was far from worthless.

The first volume of this series describes the problems of obtaining permission to use the land and the airstrip for the duration of the war. But this was only half the battle. For NOTS to be a permanent research and development center, as called for in the mission, it was essential that the Navy acquire clear title. To put millions of dollars into facilities and to stake out a large share of the future of Navy research and development in weaponry on land that could be withdrawn did not appear reasonable to Burroughs nor to the Bureau of Ordnance leadership.

Whatever had been their hopes for resolving the land problem promptly, these soon disappeared at the time Burroughs came on board, and the complexities and intensity of the problems became apparent.

Some of the land was in the public domain; other parcels had been homesteaded. There was land claimed for mining, and even for curative mineral baths. Cattlemen held grazing rights on some critical land areas. The legal difficulties attendant to acquiring the various properties were often compounded by questions of easement, airspace, and mineral rights. The Navy negotiators faced a wide spectrum of claimants including private individuals, companies, and other government agencies.

The most immediate problem to be resolved concerned a sister service, the U.S. Army, who held a strong prior claim on the

Inyokern airfield. This unpretentious two-runway airfield was originally built in 1933 under the National Recovery Act by the County of Kern with the assistance of the Civil Aeronautics Authority. On September 2, 1942, the Interdepartmental Air Traffic Control Board, formed a year earlier by President Franklin D. Roosevelt to resolve land claims by military and civilian aviation groups, approved the assignment of the Inyokern airfield to the U.S. Army Fourth Air Force for use as a dispersal field and a glider school, which never materialized. The lease issued at that time gave the government exclusive use of the property for the duration of the national emergency plus six months.

Apart from resurfacing the runways, the Army had not implemented any plans for the use of the airfield. Through the persistence of Admiral Mitscher, and considerable bartering among the services, the Interdepartmental Air Traffic Control Board on October 29, 1943, reassigned the use of the airfield and the adjacent "danger area" near dry China Lake to the Navy for experimental test operations. This was an acknowledgement that, among the various possible government uses, the Navy's needs should be recognized and supported. It was also a clear signal that plans and work could be started on the Station, but one that left the question of title unresolved.

Similarly, only a temporary solution was found for the problem of acquiring the large tract of land needed for the ranges, the Station headquarters, and the community. Fortunately, most of the original area planned for the new Station was in the public domain. Also, considering the vastness of the first claim (estimated to be 650 square miles), relatively few people were involved. Burroughs reported that only 27 people were actually moved from the area encompassed by the original claim. Despite the limited number of people involved, the problems incurred by their dispossession were complex, and in some cases, personally distressing.

The process of acquiring lands efficiently and with minimum stress on their proprietors demanded a close working relationship between NOTS and Navy offices, particularly the Bureau of Ordnance and the Bureau of Yards and Docks. The cooperation of all these with the Department of the Interior was also essential. This latter relationship in respect to NOTS, although never antagonistic, was not close.

The Secretary of the Navy on December 31, 1943, requested "that the Department of the Interior take the necessary action to

transfer complete control and jurisdiction over all of the public domain lands in the area described . . . to the Navy Department and that all revocable permits affecting such land, in favor of private parties, be cancelled."[18]

The Department of the Interior had a different point of view. Since the beginning of the national emergency, the Department had been assailed by ever-increasing demands of the military services for vast tracts of the public domain. Although the Department recognized how essential it was to meet these wartime needs, it also believed that it was in the public interest to preserve the means for reversing the trend after the war.

As sound as the policy might have been for the lands used for wartime training and maneuvers, it did not take into account the need for a permanent weapon research and development center. This was the first of the Navy's many unsuccessful efforts in succeeding decades to convince other agencies of government that NOTS was being developed and would continue to be supported as a *permanent* research, development, and test center.

The humble cow presented one of the biggest land problems of the wartime years. When the Navy came to the Indian Wells Valley, a few stockmen held Department of the Interior grazing licenses for some of the public lands planned for inclusion within the military reservation. The stockmen protested the impending loss of these rights to Congress. To satisfy them, the Navy agreed to allow grazing in specific areas. The animals were allowed on the land at the owner's risk, and prior permission was to be obtained to enter the area for roundup, feeding, branding, or any other purpose. By the end of the war only about ten stockmen still operated under this agreement. However, despite their small number, they complicated the Navy's attempts to have the land transferred under its exclusive control. The arrangement, for example, led one commissioner of the General Land Office to conclude:

> Inasmuch as your Department proposes to permit grazing on these lands to continue under the jurisdiction of the Department of the Interior and apparently will make only intermittent or seasonal use thereof, it would appear that the primary jurisdiction over the lands should remain in this Department.[19]

The commissioner proposed that when the Navy desired to use that portion of the ranges occupied by cattle, the cognizant ranchers should be notified early enough to round up and remove the stock in time for the Navy to proceed with the tests. The proposal was received with profound dismay by Burroughs and project managers

who were planning complex tests with rockets and other weapons. Tests of untried weapons from fast-moving aircraft required scheduling flexibility and buffer zones free of people around target areas. The same managers could visualize long test "holds" during which aircraft, range instrumentation, and hundreds of test personnel would be kept idly waiting for the word that the last cow had exited the danger area.

Those familiar with the past history of ordnance perhaps saw the ordinary cow again changing the history of Navy proving grounds as it did in 1918, when civilian litigants claimed that a cow was severely traumatized by a shell that exploded on its grazing pasture. Molly Skinner, the cow's owner, complained to the Navy Department that the frightened animal had refused to give milk since the incident. As reported in the Dahlgren Laboratory's history, the affair was satisfactorily closed when the Naval Proving Ground's Commanding Officer purchased the cow for $30.00 and had her transported by barge to a farm near the Proving Ground.[20] Despite a certain retrospective humor in this incident, it dramatically illustrated the need for longer firing ranges and was instrumental in bringing about the eventual move to Dahlgren, Virginia.

But NOTS was not an old proving ground. It was the new hope of the Navy for a place where, finally, there would be sufficient space to conduct all manner of experimental work. If nothing else, the prospect of handling the cows through a mixed chain of command—from NOTS headquarters, to Interior Department officials, to stockmen, to cowboy, and ultimately to cow—hardened the Navy's conviction as to the necessity of obtaining exclusive control over the land vital to its operations.

The first land acquisition of 650 square miles seems to have met comparatively little resistance from the mining interests. This was probably because the Station's confines at the northern boundary fell short of a concentration of mining claims in the Coso and northern Argus Ranges. This original boundary would have given a firing range of about 25 miles from the launching area at the south end of dry China Lake, a distance that appeared to be ample by comparison with any existing U.S. proving ground of the period. But rocketry and weaponry in general were moving at a rapidly accelerating pace by 1944. A review of the increased ranges of planned weapons already on the drawing board made it evident that not only longer ranges but also more firing ranges would be needed in the near future. This trend was becoming increasingly apparent in those first months that

Burroughs operated his headquarters at the Inyokern airfield. But as with the total bag of land acquisition problems, there was no immediate solution. Most of the land problems that he inherited upon arrival would be with him and his successors in one form or another for many years to come.

## INITIAL CONSTRUCTION

Most of the early construction story is told in a later chapter devoted to that subject. The major highlights of the first months are presented here, however, because it is important to an understanding of the NOTS story to note the incredible speed with which the building was started. It is also important to recognize the difficulties imposed in those first months because of the attempt to acquire the land and to start this enormous construction job at the same time that the command had to begin air and ground operations to support the training of squadrons in the use of the new rocket weapons.

For every great cause there is a skeptic. History hints that one chief skeptic as to the long-range survival of NOTS was the man most responsible for the Station's initial construction, Captain A. K. Fogg, Civil Engineer Corps. But personal feelings had nothing to do with performance. Fogg was a dedicated naval officer who knew how to carry out orders. He had been told that, in addition to his regular position as the Public Works Officer for the Eleventh Naval District, he would be the Acting Officer in Charge of Construction for NOTS.

Fogg worked out of San Diego, and it is not certain that he ever visited the Station on which he was responsible for starting the construction. But his presence on the desert was not important, for as Head of the District's Public Works he was able to bring the wartime resources of the District to bear on the immediate problems of getting the new Station under way.

It did not appear to Burroughs that Fogg shared the same enthusiasm that was felt by ordnance officers like himself who were elated over the prospect of realizing, at last, a complete naval ordnance facility for new experimental work. As these ordnance officers and the equally enthusiastic CalTech scientists contrived plans for what seemed to be an endless list of technical facilities, Fogg was shaking his head as if thinking, "This can't go on; at the end of the war this will all fall apart."

At their working level, the two captains, Burroughs and Fogg,

# Exhibit D

exclusive. The franchise hereby granted shall not be construed to be exclusive and shall be subject to all general laws now in force or which may hereafter be enacted respecting railway companies.

"SEC. 12. This act shall go into effect and be law from and after the date of its approval by the governor of the Territory of Hawaii, subject, however, to the approval of the Congress of the United States. Time of taking effect.

"Approved this twenty-sixth day of April, A. D. 1909.

"WALTER F. FREAR,
"Governor of the Territory of Hawaii."

SEC. 2. That Congress may at any time alter, amend, or repeal said Act. Amendment, etc.

Approved, June 25, 1910.

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CHAP. 420.—An Act Granting certain public lands to the State of Colorado for the use of the State Agricultural College, for agriculture, forestry, and other purposes. June 25, 1910. [H. R. 24012.] [Public, No. 302.]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Interior is hereby authorized and directed to convey to the State of Colorado, for the use and benefit of the State Agricultural College, at Fort Collins, Colorado, for experimental, educational, and kindred uses in forestry, agriculture, horticulture, grazing, stock raising, and such other uses included in the work of experiments and instruction at said college, and the experiment station connected therewith, one thousand six hundred acres of vacant, unoccupied, unentered, and nonmineral land, or so much thereof as the state board of agriculture may select and designate, upon the payment therefor of the sum of one dollar and twenty-five cents per acre. Public lands. Granted to Colorado for State Agricultural College.

SEC. 2. That said land shall be selected by said state board of agriculture from any vacant, unoccupied, and unentered, nonmineral public land in township seven north, ranges seventy, seventy-one, seventy-two, seventy-three, and seventy-four west, of the sixth principal meridian, in the county of Larimer, State of Colorado, and the tracts so selected shall not contain less than forty nor more than one hundred and sixty acres each. Selection.

Approved, June 25, 1910.

---

CHAP. 421.—An Act To authorize the President of the United States to make withdrawals of public lands in certain cases. June 25, 1910. [H. R. 24070.] [Public, No. 303.]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the President may, at any time in his discretion, temporarily withdraw from settlement, location, sale, or entry any of the public lands of the United States including the District of Alaska and reserve the same for water-power sites, irrigation, classification of lands, or other public purposes to be specified in the orders of withdrawals, and such withdrawals or reservations shall remain in force until revoked by him or by an Act of Congress. Public lands. Temporary withdrawals by President for power sites, irrigation, etc., authorized.

SEC. 2. That all lands withdrawn under the provisions of this Act shall at all times be open to exploration, discovery, occupation, and purchase, under the mining laws of the United States, so far as the same apply to minerals other than coal, oil, gas, and phosphates: *Provided*, That the rights of any person who, at the date of any order of withdrawal heretofore or hereafter made, is a bona fide occupant or claimant of oil or gas bearing lands, and who, at such date, is in diligent prosecution of work leading to discovery of oil or gas, shall not be affected or impaired by such order, so long as such occupant or claimant shall continue in diligent prosecution of said work: *And provided further*, That this Act shall not be construed as a recognition, Mining rights continued. Exceptions. *Provisos.* Rights of bona fide oil or gas claimants. Status of prior claims.

abridgment, or enlargement of any asserted rights or claims initiated upon any oil or gas bearing lands after any withdrawal of such lands made prior to the passage of this Act: *And provided further*, That there shall be excepted from the force and effect of any withdrawal made under the provisions of this Act all lands which are, on the date of such withdrawal, embraced in any lawful homestead or desert-land entry theretofore made, or upon which any valid settlement has been made and is at said date being maintained and perfected pursuant to law; but the terms of this proviso shall not continue to apply to any particular tract of land unless the entryman or settler shall continue to comply with the law under which the entry or settlement was made: *And provided further*, That hereafter no forest reserve shall be created, nor shall any additions be made to one heretofore created within the limits of the States of Oregon, Washington, Idaho, Montana, Colorado, or Wyoming, except by Act of Congress.

Homestead, etc., settlements excepted.

Restriction on new forest reserves.

Report of withdrawals to Congress.

SEC. 3. That the Secretary of the Interior shall report all such withdrawals to Congress at the beginning of its next regular session after the date of the withdrawals.

Approved, June 25, 1910.

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June 25, 1910.
[H. R. 24149.]
[Public, No. 304.]

**CHAP. 422.**—An Act To create, establish, and enforce a miner's labor lien in the Territory of Alaska, and for other purposes.

Alaska.
Miner's labor lien.
Persons entitled.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That every miner or other laborer who shall labor in or upon any mine or mining ground for another in the Territory of Alaska in digging, thawing, conveying, hoisting, piling, cleaning up, or any other kind of work in producing any mineral-bearing sands, gravels, earth, or rock, gold or gold dust, or other minerals, or shall aid or assist therein by his labor as cook, engineer, fireman, or in cutting and delivering wood used in said work, or in work in any like capacity in producing the dump, shall, where his labor directly aided in such production, have a lien upon the dump or mass of mineral-bearing sands, gravels, earth, or rocks, and all gold and gold dust, or other minerals therein, and all gold and gold dust extracted therefrom, for the full amount of wages for all the time which he was so employed as such laborer in producing the said dump, within one year next preceding his ceasing to labor thereon; and to the extent of thel abor of the said miner or other laborer actually employed or expended thereon, within one year next prior to ceasing to labor thereon, the said lien shall be prior to and preferred over any deed, mortgage, bill of sale, attachment, conveyance, or other claim, whether the same was made or given prior to such labor or not: *Provided*, That this preference shall not apply to any such deed, mortgage, bill of sale, attachment, conveyance, or other claim given in good faith and for value prior to the approval of this Act.

Preference of lien.

*Proviso.*
Prior valid deeds, etc., not affected.

Notice to be filed.

SEC. 2. That every laborer, within ninety days after the completion of the performance of the work or labor mentioned in the foregoing section who shall claim the benefit thereof, must, personally or by some other person for him, file for record in the recording precinct where the labor was performed a claim of lien containing a statement of his demand under oath, substantially in the following form:

Form.

NOTICE OF LABORER'S LIEN.

Territory of Alaska, ——— precinct, ss:

——— ———, claimant, against ——— ———, defendant.

Notice is hereby given that ——— ———, claimant, claims a lien upon (describing the dump or mass of mineral-bearing sands, gravels, earth, or rock, and its location with reasonable certainty) in the ———

# Exhibit E

# FEDERAL REGISTER

VOLUME 8 NUMBER 83

*Washington, Wednesday, April 28, 1943*


## The President

### PROCLAMATION 2583

NATIONAL MARITIME DAY, 1943

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS the sailing of the steamship *The Savannah* on May 22, 1819, from Savannah, Georgia, on the first successful transoceanic voyage under steam propulsion made a significant contribution to the advancement of transportation by sea; and

WHEREAS in commemoration of this achievement the Congress by joint resolution approved May 20, 1933 (48 Stat. 770) designated May 22 of each year as "National Maritime Day" and requested the President to issue annually a proclamation calling upon the people of the United States to observe that day; and

WHEREAS the support of our overseas forces and the rendering of aid to our allies depend upon the steady movement of cargo along the ocean tracks—a movement now maintained by the courageous seamen of our merchant marine in resolute defiance of the enemy above, beneath and on the surface of the seas:

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, do hereby call upon the people of the United States to observe May 22, 1943 as National Maritime Day by displaying the flag at their homes or other suitable places, and I direct that the flag be displayed on all Government buildings on that day.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the City of Washington this 24th day of April in the year of our Lord nineteen hundred and forty-three and of the Independence of the United States of America the one hundred and sixty-seventh.

[SEAL]

FRANKLIN D ROOSEVELT

By the President:

CORDELL HULL,
*Secretary of State.*

[F. R. Doc. 43-6496; Filed, April 27, 1943; 11:06 a. m.]

### EXECUTIVE ORDER 9336

AUTHORIZING FINANCING ARRANGEMENTS TO FACILITATE THE PROSECUTION OF THE WAR

By virtue of the authority vested in me by the Constitution and statutes of the United States, and particularly by the First War Powers Act, 1941 (approved December 18, 1941), and as President of the United States, and in order to facilitate the prosecution of the war, it is ordered as follows:

1. The Office of Lend-Lease Administration and the War Shipping Administration are hereby authorized, without regard to the provisions of law relating to the making, performance, amendment or modification of contracts, to enter into guaranties, agreements of indemnification, agreements to provide funds, and other financing arrangements with the War Department, the Navy Department, and the Maritime Commission in connection with any loans, discounts, advances, contracts, guaranties, or commitments made pursuant to Executive Order No. 9112 of March 26, 1942,[1] for the benefit or on behalf of the Office of Lend-Lease Administration or the War Shipping Administration, respectively, and to pay out funds in accordance with the terms of any such guaranty, agreement, or other financing arrangement so entered into.

2. The authority hereby conferred may be exercised by the Lend-Lease Administrator or the War Shipping Administrator or, in their discretion and by their direction respectively, through any other official or officials of the Office of Lend-Lease Administration or the War Shipping Administration. The Lend Lease Administrator and the War Shipping Administrator may confer upon any such official or officials the power to make further delegations of such powers within their respective offices.

3. Complete data shall be maintained by the Office of Lend-Lease Administration and the War Shipping Administration as to all guaranties, agreements, and other financing arrangements which they respectively make pursuant to this Executive order. The Lend-Lease Ad-

[1] 7 F.R. 2367.

(Continued on next page)

**IMPORTANT NOTICE**

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THE PRESIDENT



REGULATIONS AND NOTICES



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FEDERAL REGISTER

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ministrator and the War Shipping Administrator shall make available for public inspection, as they may respectively deem compatible with the public interest, so much of such data as does not cover restricted, confidential, or secret transactions.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
*April 24, 1943.*

[F. R. Doc. 43-6458; Filed, April 26, 1943; 12:44 p. m.]

## EXECUTIVE ORDER 9337

AUTHORIZING THE SECRETARY OF THE INTERIOR TO WITHDRAW AND RESERVE LANDS OF THE PUBLIC DOMAIN AND OTHER LANDS OWNED OR CONTROLLED BY THE UNITED STATES

By virtue of the authority vested in me by the act of June 25, 1910, ch. 421, 36 Stat. 847, and as President of the United States, it is ordered as follows:

Section 1. The Secretary of the Interior is hereby authorized to withdraw or reserve lands of the public domain and other lands owned or controlled by the United States to the same extent that such lands might be withdrawn or reserved by the President, and also, to the same extent, to modify or revoke withdrawals or reservations of such lands: *Provided*, That all orders of the Secretary of the Interior issued under the authority of this order shall have the prior approval of the Director of the Bureau of the Budget and the Attorney General, as now required with respect to proposed Executive orders by Executive Order No. 7298 of February 18, 1936, and shall be submitted to the Division of the Federal Register for filing and publication: *Provided, further*, That no such order which affects lands under the administrative jurisdiction of any executive department or agency of the Government, other than the Department of the Interior, shall be issued by the Secretary of the Interior without the prior concurrence of the head of the department or agency concerned.

Section 2. This order supersedes Executive Order No. 9146 of April 24, 1942, entitled "Authorizing the Secretary of the Interior to Withdraw and Reserve Public Lands".[1]

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
*April 24, 1943.*

[F. R. Doc. 43-6460; Filed, April 26, 1943; 3:15 p. m.]

## *Regulations*

### TITLE 7—AGRICULTURE

### Chapter III—Bureau of Entomology and Plant Quarantine

[B. E. P. Q. 527]

### PART 301—DOMESTIC QUARANTINE NOTICES

#### JAPANESE BEETLE QUARANTINE REGULATIONS MODIFIED

§ 301.48–c *Administrative instructions; places released from restrictions.* Pursuant to the authority conferred upon the Chief of Bureau of Entomology and Plant Quarantine by the fourth proviso of § 301.48, Chapter III, Title 7, Code of Federal Regulations (Notice of Quarantine No. 48, on account of the Japanese beetle), all restrictions of the rules and regulations of the above-named quarantine as they relate to the village of Silver Creek, Chautauqua County, N. Y., and the town of Woodstock, Shenandoah County, Va., ar hereby removed, effective April 26, 1943, it having been determined that the application of control measures through soil treatment of infested areas now completed or in progress makes it safe to remove the restrictions as they relate to the above-named village and town.

(7 CFR § 301.48; sec. 8, 39 Stat. 1165, 44 Stat. 250; 7 U.S.C. 161)

Done at Washington this 21st day of April 1943.

[SEAL] P. N. ANNAND,
*Chief.*

[F. R. Doc. 43-6503; Filed, April 27, 1943; 11:20 a. m.]

[1] 7 F.R. 3067.

# Exhibit F

THE NATIONAL ARCHIVES OF THE UNITED STATES 1934

# FEDERAL REGISTER

VOLUME 12 NUMBER 254

Washington, Wednesday, December 31, 1947

## TITLE 3—THE PRESIDENT

### EXECUTIVE ORDER 9915

DELEGATING TO THE SECRETARY OF AGRICULTURE THE AUTHORITY VESTED IN THE PRESIDENT BY SECTION 4 (b) OF THE JOINT RESOLUTION APPROVED DECEMBER 30, 1947

By virtue of the authority vested in me by sections 4 (b) and 5 of the Joint Resolution approved December 30, 1947, entitled "Joint Resolution to aid in the stabilization of commodity prices, to aid in further stabilizing the economy of the United States, and for other purposes," and as President of the United States, the powers, authority, and discretion vested in the President under section 4 (b) of the aforesaid joint resolution, reviving and reenacting Title III of the Second War Powers Act, 1942, for certain purposes, are hereby included within the powers, authority, and discretion delegated to the Secretary of Agriculture under Executive Order No. 9280 of December 5, 1942 (7 F. R. 10179), as amended or modified by Executive Orders No. 9322 of March 26, 1943 (8 F. R. 3807), No. 9334 of April 19, 1943 (8 F. R. 5423) and No. 9577 of June 29, 1945 (10 F. R. 8087).

The said Executive orders are modified accordingly.

HARRY S. TRUMAN

THE WHITE HOUSE,
*December 30, 1947.*

[F. R. Doc. 47-11491; Filed, Dec. 30, 1947; 10:45 a. m.]

## TITLE 5—ADMINISTRATIVE PERSONNEL

### Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

LISTS OF POSITIONS EXCEPTED

Under authority of section 6.1 (a) of Executive Order 9830, the Commission, at the request of the agencies concerned, has determined that the positions listed below should be excepted from the competitive service. Effective upon publication in the FEDERAL REGISTER, § 6.4 (a) is therefore amended as follows:

§ 6.4 *Lists of position excepted from the competive service*—(a) *Schedule A.*

* * *

(1) *Entire Executive Civil Service.* (i) Positions of Chaplain and Chaplain's Assistant.

* * * * *

(3) *Treasury Department.* * * *

(viii) Until December 31, 1948, positions of Chief National Bank Examiner, Assistant Chief National Bank Examiner, District Chief National Bank Examiner, National Bank Examiner, and Assistant National Bank Examiner in the Office of the Comptroller of the Currency, whose salaries are paid from assessments against National Banks and other financial institutions.

(ix) Until December 31, 1948, positions of State Director and Deputy State Director of the U. S. Savings Bond Division.

* * * * *

(16) *The Tax Court of the United States.* * * *

(ii) Until December 31, 1948, a clerk of the Court and a Chief Deputy Clerk.

* * * * *

(47) *National Advisory Committee for Aeronautics.* (i) Six alien scientists having special qualifications in the field of aeronautical research where such employment is deemed by the Chairman of the National Advisory Committee for Aeronautics to be necessary in the public interest.

(Sec. 6.1 (a) E. O. 9830, Feb. 24, 1947, 12 F. R. 1259)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] H. B. MITCHELL,
*President.*

[F. R. Doc. 47-11420; Filed, Dec. 30, 1947; 9:00 a. m.]

## TITLE 6—AGRICULTURAL CREDIT

### Chapter II—Production and Marketing Administration (Commodity Credit)

PART 245—IRISH POTATOES

SUBPART—1948 ACREAGE GOALS

GENERAL

Sec.
245.127 Applicability of §§ 245.127 to 245.141, inclusive.

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## CONTENTS

### THE PRESIDENT



### EXECUTIVE AGENCIES

further deliveries of, or from processing or using material under priority control and may be deprived of priorities assistance.

(k) *Communications.* All applications and reports required to be filed hereunder, and all communications concerning this order, shall, unless otherwise directed, be addressed to Office of Materials Distribution, Department of Commerce, Washington 25, D. C., Ref.: M-131.

NOTE: The reporting provisions of this order have been approved by the Bureau of the Budget pursuant to the Federal Reports Act of 1942.

Issued this 30th day of December 1947.

OFFICE OF MATERIALS DISTRIBUTION,
By RAYMOND S. HOOVER,
*Issuance Officer.*

APPENDIX A—INSTRUCTIONS FOR CUSTOMER'S FORM OMD-2945 APPLICATION UNDER ORDER M-131

(1) *Who should file.* The cases in which applications on Form OMD-2945 should be filed for authorization under Order M-131 are explained in that order: paragraph (c)—cinchona bark; paragraph (d)—quinidine.

(2) *Where forms may be obtained.* Copies of Form OMD-2945 may be obtained at the address stated in paragraph (3) below.

(3) *Number of copies.* Five copies shall be prepared, of which three shall be forwarded to Office of Materials Distribution, Department of Commerce, Washington 25, D. C., Ref.: M-131, one forwarded to the supplier with whom applicant's order is placed, and the fifth retained for applicant's file. At least one of the copies filed with the OMD shall be signed by applicant by a duly authorized official. Where the application is solely for authorization to use from inventory, no copy need be prepared for suppliers.

(4) *Special instructions for filling out form.* Observe the instructions on the form together with the instructions given below:

(a) *Heading.* Under "Unit of Measure" specify "Pounds" in the case of cinchona mark and "Ounces" in the case of quinidine.

(b) *Column 1.* If the application concerns cinchona bark, specify in Column 1 the grade or variety. If the application concerns quinidine, specify in Column 1 the form of quinidine involved; for example, quinidine alkaloid, quinidine sulfate, etc. (It is not necessary to use a separate set of applications for each form of quinidine requested.)

(c) *Column 2.* Specify the quantity (in pounds) for cinchona bark and (in ounces) for quinidine.

(d) *Column 3.* In Column 3 specify the exact name of the product or products in the manufacture or preparation of which the cinchona bark, or quinidine will be used or incorporated. Distributors ordering for resale will specify "Resale." If purchase is for inventory, specify "Inventory."

(e) *Column 4.* In Column 4 specify ultimate use to be made of the primary product, for example, "cardiac," and if the purpose is to fill Army, Navy, or other government agencies' contracts, state the contract number. If the purpose is for export by the applicant to countries other than Canada, the Form OMD-2945 must first be sent to Department of Commerce, Office of International Trade, together with application for an export license. If the export license is granted, OIT will then affix the export license number to Form OMD-2945 and forward the document to OMD. (See paragraph (f) of M-131 for OMD policy regarding authorizations for export.)

APPENDIX B—INSTRUCTIONS FOR SUPPLIER'S FORM OMD-2946 APPLICATION UNDER ORDER M-131

(1) *Who should file.* Under paragraph (d) of Order M-131, suppliers must obtain authorization on Form OMD-2946 before delivering quinidine which is subject to the order. (Some exceptions from this requirement are explained in that paragraph.) No such application is required for cinchona bark.

(2) *Where forms may be obtained.* Copies of Form OMD-2946 may be obtained at the address shown in paragraph (3) below.

(3) *Number of copies.* Four copies shall be prepared, of which three shall be forwarded to Office of Materials Distribution, Department of Commerce, Washington 25, D. C., Ref.: M-131, the fourth to be retained by the supplier. Each producer who has filed application on Form OMD-2945 specifying himself as his supplier, shall list his own name as customer on Form OMD-2946 and shall list his request for allocation in the manner prescribed for other customers.

(4) *Special instructions for filling out form.* Follow the instructions on the form except where they conflict with the specific instructions given below:

(a) *Heading.* In the heading under "Name of chemical", specify "Quinidine". Under "Order No.", specify "M-131"; under "Unit of measure", specify "Ounces".

(b) *Column 1.* Specify the names of customers. A producer requiring permission to use a part or all of his own production of quinidine subject to the order shall list his own name in Column 1 as customer. After completing the list of customers, insert "Total small order deliveries (estimated)" for anticipated small deliveries under paragraph (d) (2) of M-131.

(c) *Column 2.* List each form of quinidine for which orders for delivery during the applicable month have been received as indicated in the Form OMD-2945 filed with the applicant by his customers.

(d) *Column 3.* Specify total quantity to be delivered to each customer named in Column 1, and total estimated quantity to be delivered on the "Small order deliveries" mentioned in Column 1. Do not include quantities to be delivered from stocks not subject to Order M-131.

(e) *Table II.* Each producer will report production, deliveries and stocks of quinidine (from all sources) as required by Table II, Columns 8 to 16, inclusive. Distributors and importers will enter in Columns 9, 11 and 14 "Receipts" instead of "Production". In Column 8 the supplier will specify each form of quinidine for which orders for delivery during the applicable month have been received, as indicated in the Form OMD-2945 filed with him by his customers.

[F. R. Doc. 47-11430; Filed, Dec. 30, 1947; 8:45 a. m.]

# TITLE 34—NAVY

## Chapter I—Department of the Navy

PART 3—TABULATION OF EXECUTIVE ORDERS, PROCLAMATIONS, AND PUBLIC LAND ORDERS APPLICABLE TO THE NAVY

WITHDRAWING PUBLIC LANDS IN CALIFORNIA FOR USE OF THE NAVY DEPARTMENT

CROSS REFERENCE: For addition to the tabulation contained in § 3.6, see Public Land Order 431 under Title 43, Chapter I, *infra*, withdrawing and reserving certain lands in California for the use of the Navy Department as a Naval Ordnance Testing Center and proving range.

# TITLE 36—PARKS AND FORESTS

## Chapter I—National Park Service, Department of the Interior

[Gen. Order 68]

PART 3—NATIONAL CAPITAL PARK REGULATIONS

DISTRICT OF COLUMBIA

DECEMBER 24, 1947.

§ 3.101 *Schedule of Minimum Collateral (General Order No. 68).* (a) Hereafter persons arrested and taken to the Metropolitan Police Precincts for violation of certain regulations promulgated for the protection of the Park System of the District of Columbia, as set forth on the Schedule of Minimum Collateral attached hereto, will be handled as follows:

(1) The determination of whether the individual arrested should be permitted to deposit collateral or whether the collateral to be deposited should be required in an amount greater than the minimum provided in the Schedule of Minimum Collateral, will rest with the determination of the arresting officer. In no event may the arresting officer recommend a lesser amount of collateral than the minimum as set forth on the attached schedule.

(2) Experience since 1938 has clearly demonstrated that permitting the forfeiture of collateral for minor offenses has eliminated the necessity for the police force to appear in court, if the person arrested elects to forfeit. As in the past, forfeiture of collateral for violation of National Capital Parks Regulations will be handled in a manner similar to forfeiture of collateral for violation of certain Metropolitan Police regulations.

(3) Whenever a U. S. Park Policeman makes an arrest for an offense covered by the attached schedule, he will follow up the case and notify this office of the disposition of the case as promptly as possible.

(b) A resolution has been issued by the Honorable George P. Barse, Chief Judge of the Municipal Court for the District of Columbia, as of the 6th day of December 1947, adopting the schedule of minimum collaterals attached to this section as the official collateral list until further order of the Court.

(c) General Order No. 24, dated April 28, 1938, is hereby revoked as of the effective date of this section.

(d) This section shall become effective as of the 2d day of January 1948, and shall, together with the attached Schedule of Minimum Collateral, be published in the FEDERAL REGISTER.

IRVING C. ROOT,
*Superintendent,*
*National Capital Parks.*

SCHEDULE OF MINIMUM COLLATERAL

A schedule of minimum collateral to be accepted for violations of certain regulations promulgated for the protection of the park system of the District of Columbia, in accordance with the provisions of the act of Congress, approved July 1, 1898 (30 Stat. 570) as amended:

| Violations | N. C. P. Regulation— | Collateral | Violations | N. C. P. Regulation— | Collateral |
|---|---|---|---|---|---|
| Trees, shrubs, plants:<br>Removing or injuring, trees, shrubs, plants, grass and other vegetation. | 3.10 (a) | *$5.00 | Vagrancy:<br>Sleeping, loafing, in park areas by day and night by persons having no lawful employment and no lawful means of support realized from a lawful occupation and unable to establish residence. | 3.26 (c) | $10.00 |
| Hitch, tie, fasten, nail, anchor, screw, or otherwise attach any wire, cable, chain, rope, cord, sign, poster advertisement, notice, handbill, board or other article to any tree, shrub, or plant, without permission. | 3.10 (c) | 2.00 | * * * * * | | |

NOTE 1: Where the specified cash collateral is $25 or more, the amount of bond in lieu of said cash collateral shall be $100.

NOTE 2: Attention is directed to the fact that the foregoing amounts represent only "minimum" collateral. This amount may be increased depending on the seriousness of the violation, this is particularly true in cases of violations preceded by the (*) asterisk.

Approval recommended:

GEORGE MORRIS FAY,
*United States Attorney,*
*District of Columbia.*

Approved this the 6th day of December 1947.

GEORGE P. BARSE,
*Chief Judge,*
*The Municipal Court for*
*the District of Columbia.*

[F. R. Doc. 47-11411; Filed, Dec. 30, 1947; 10:29 a. m.]

# TITLE 43—PUBLIC LANDS: INTERIOR

## Chapter I—Bureau of Land Management, Department of the Interior

### Appendix—Public Land Orders

[Public Land Order 430]

WASHINGTON

REVOKING EXECUTIVE ORDER NO. 7695 OF AUGUST 23, 1937, WITHDRAWING PUBLIC LANDS FOR USE OF THE WAR DEPARTMENT FOR MILITARY PURPOSES

By virtue of the authority vested in the President by the act of June 25, 1910, 36 Stat. 847, as amended by the act of August 24, 1912, 37 Stat. 497 (43 U. S. C. 141-143) and pursuant to Executive Order No. 9337 of April 24, 1943 (3 CFR, Cum. Supp.), it is ordered as follows:

Executive Order No. 7695 of August 23, 1937, temporarily withdrawing the following-described public lands for the use of the War Department for military purposes, is hereby revoked:

WILLAMETTE MERIDIAN

T. 30 N., R. 2 W.,
Sec. 13, S½SE¼;
Sec. 24, NE¼.

The areas described aggregate 240 acres.

The lands are subject to the provisions of Executive Order No. 3893 of August 13, 1923, placing certain lands in former military reservations under the control of the Secretary of the Interior for disposition as provided in the act of July 5, 1884, 23 Stat. 103, or as may be otherwise provided by law.

C. GIRARD DAVIDSON,
*Assistant Secretary of the Interior.*

DECEMBER 19, 1947.

[F. R. Doc. 47-11413; Filed, Dec. 30, 1947; 8:59 a. m.]

[Public Land Order 431]

CALIFORNIA

WITHDRAWING PUBLIC LANDS FOR USE OF NAVY DEPARTMENT

By virtue of the authority vested in the President and pursuant to Executive Order No. 9337 of April 24, 1943 (3 CFR, Cum. Supp.), it is ordered as follows:

Subject to valid existing rights, the public lands within the following-described areas are hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral-leasing laws and reserved for the use of the Navy Department as a Naval Ordnance Testing Center and proving range:

MOUNT DIABLO MERIDIAN

T. 20 S., R. 38 E.
T. 21 S., R. 38 E.,
Sec. 1 to 4, inclusive, secs. 9 to 16, inclusive,
Secs. 21 to 28, inclusive, and secs. 33 to 36, inclusive.
T. 22 S., R. 38 E.,
Secs. 1 to 4, inclusive, secs. 9 to 16, inclusive,
Secs. 21 to 28, inclusive, and secs. 33 to 36, inclusive.
T. 23 S., R. 38 E.,
Secs. 1 to 4, inclusive, secs. 9 to 16, inclusive,
Secs. 21 to 28, inclusive, and secs. 33 to 36 inclusive.
T. 24 S., R. 38 E., partly unsurveyed,
Secs. 1, 2, and 3,
Sec. 4, E½, and NW¼,
Sec. 9, NE¼, and E½SE¼,
Secs. 10 to 15, inclusive,
Sec. 16, NE¼NE¼,
Sec. 22, E½ and E½W½,
Secs. 23 to 26, inclusive,
Sec. 27, E½,
Sec. 34, E½NE¼,
Secs. 35, and 36.
T. 25 S., R. 38 E.,
Sec. 1,
Sec. 2, E½, lots 1 and 2 in the NE¼,
Sec. 12, N½, SE¼, and E½SW¼,
Sec. 13, E½,
Sec. 24, E½NE¼, and NE¼SE¼.
T. 20 S., R. 39 E., unsurveyed.
Ts. 21, 22, 23, 24, S., R. 39 E.
T. 25 S., R. 39 E.,
Secs. 1 to 29, inclusive,
Sec. 30, N½, SE¼, lot 1 of SW¼,
Sec. 31, E½, lot 1 of NW¼,
Secs. 32 to 36, inclusive.
T. 26 S., R. 39 E.,
Secs. 1 to 5, inclusive,
Sec. 6, NE¼, E½SE¼,
Secs. 8 to 16, inclusive,
Sec. 17, E½, E½NW¼,
Sec. 20, NE¼, E½SE¼,
Secs. 21 to 24, inclusive.
T. 20 S., R. 40 E., part unsurveyed.
Ts. 21, 22, 23, 24, and 25 S., R. 40 E.
T. 26 S., R. 40 E.,
Secs. 1 to 27, inclusive,
Secs. 34, 35, and 36.
T. 20 S., R. 41 E., part unsurveyed.
Ts. 21, 22, 23, and 24 S., R. 41 E.
T. 25 S., R. 41 E., unsurveyed.
T. 26 S., R. 41 E.,
Secs. 1 to 24, inclusive,
Sec. 25, N½, N½S½,
Secs. 26 to 31, inclusive,
Sec. 32, lots 2, 3, and 4, N½, N½S½,
Sec. 33, NW¼, W½NE¼, NE¼NE¼,
Sec. 34, NW¼NW¼.
T. 27 S., R. 41 E.,
Sec. 5, lot 4,
Sec. 6, N½.
T. 20 S., R. 42 E.,
Secs. 5 to 8, inclusive, unsurveyed,
Secs. 17 to 20, inclusive, unsurveyed,
Secs. 29 to 32, inclusive, unsurveyed.
T. 21 S., R. 42 E.,
Secs. 3 to 10, inclusive, secs. 15 to 22, inclusive,
Secs. 27 to 34, inclusive.
T. 22 S., R. 42 E.,
Secs. 3 to 10, inclusive, secs. 15 to 22, inclusive,
Secs. 27 to 34, inclusive.
T. 23 S., R. 42 E.,
Secs. 3 to 10, inclusive, secs. 15 to 22, inclusive,
Secs. 27 to 34, inclusive.
T. 24 S., R. 42 E.,
Secs. 3 to 10, inclusive, secs. 15 to 22, inclusive,
Secs. 27 to 34, inclusive.
T. 25 S., R. 42 E., unsurveyed,
Sec. 1, W½W½,
Secs. 2 to 11, inclusive, secs. 14 to 22, inclusive,
Sec. 23, W½, W½E½,
Sec. 26, W½, W½E½,
Secs. 27 to 34, inclusive,
Sec. 35, W½.
T. 26 S., R. 42 E.,
Secs. 3 to 10, inclusive, secs. 15 to 21, inclusive,
Sec. 29, N½,
Sec. 30, Lots 1, 2, 3, NE¼, N½SE¼.

The areas described, including both public and nonpublic lands, aggregate approximately 649,360 acres.

This order is subject to (1) the classification of lands as power sites made by the Order of November 11, 1929 of the Secretary of the Interior (Power Site Classification No. 241), (2) the withdrawal for classification and pending enactment of legislation made by Executive Order No. 4231 of May 25, 1925, and (3) the transmission line withdrawal of July 14, 1938, under Federal Power Commission Project No. 1396 so far as such orders affect any of the above-described lands.

This order shall take precedence over but not modify (1) the withdrawals and reservation of lands for public use, made by Executive Orders of December 1, 1913 (Public Water Reserve No. 13), August 8, 1914 (Public Water Reserve No. 22), and April 17, 1926 (Public Water Reserve No. 107), (2) the withdrawal for stock driveway purposes made by the order

of January 21, 1933, of the Secretary of the Interior (Stock Driveway No. 235), (3) the order of April 8, 1935, of the Secretary of the Interior establishing California Grazing District No. 1, and (4) Executive Order No. 6206 of July 16, 1933 withdrawing lands in aid of proposed legislation for the protection of the water supply of the city of Los Angeles, so far as such orders affect the above-described lands.

It is intended that the lands described herein shall be returned to the administration of the Department of the Interior when they are no longer needed by the Navy Department for the purpose for which they are reserved.

C. GIRARD DAVIDSON,
*Assistant Secretary of the Interior.*

DECEMBER 19, 1947.

[F. R. Doc. 47-11414; Filed, Dec. 30, 1947; 8:59 a. m.]

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[Public Land Order 432]

CALIFORNIA

WITHDRAWING PUBLIC LAND FOR A FIRE LOOKOUT STATION AND REVOKING EXECUTIVE ORDER NO. 8492 OF JULY 23, 1940

By virtue of the authority vested in the President by the act of June 25, 1910, c. 421, 36 Stat. 847, as amended by the act of August 24, 1912, c. 369, 37 Stat. 497 (43 U. S. C. 141–143), and pursuant to Executive Order No. 9337 of April 24, 1943 (3 CFR, Cum. Supp.), it is ordered as follows:

Subject to valid existing rights and the provisions of existing withdrawals, the following-described public land in California is hereby temporarily withdrawn from settlement, location, sale, or entry, and reserved and set apart under the jurisdiction of the Department of the Interior for use by the California State Division of Forestry as a lookout station site for Federal and State cooperative forest fire-protection work:

MOUNT DIABLO MERIDIAN

T. 32 N., R. 6 W.,
Sec. 3, that part of the E½SE¼ exclusive of lots 5 and 6.

The area described contains 34.67 acres.

Executive Order No. 8492 of July 23, 1940, withdrawing 1.01 acres in the above-described area and reserving it for use as a fire lookout station in connection with Federal and State cooperative forest-protection work, is hereby revoked.

C. GIRARD DAVIDSON,
*Assistant Secretary of the Interior.*

DECEMBER 22, 1947.

[F. R. Doc. 47-11416; Filed, Dec. 30, 1947; 8:59 a. m.]

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## Chapter II—Bureau of Reclamation, Department of the Interior

PART 400—ORGANIZATION AND PROCEDURE

DELEGATIONS OF AUTHORITY

Sections 400.40 to 400.47, inclusive, of Part 400 (11 F. R. 177A-202) are rescinded and the following substituted therefor:

§ 400.40 *Commissioner.* Delegations of authority by the Secretary to the Commissioner may be found in §§ 4.100, 4.411, 4.412 and 421.2 of this title.

§ 400.41 *Other officers.* Redelegations of authority by the Commissioner to officers of the Bureau of Reclamation may be found in Part 406 of this chapter.

§ 400.42 *Regional Counsel.* Delegations of authority by the Secretary to Regional Counsel covering adjustment of tort claims may be found in § 4.21 of this title.

(Sec. 3, 60 Stat. 238; 5 U. S. C. Sup. 1002)

MICHAEL W. STRAUS,
*Commissioner of Reclamation.*

DECEMBER 24, 1947.

[F. R. Doc. 47-11429; Filed, Dec. 30, 1947; 8:54 a. m.]

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PART 406—REDELEGATIONS OF AUTHORITY BY THE COMMISSIONER OF RECLAMATION

Part 406 (11 F. R. 9701) is amended to read as follows:

Sec.
406.1 Assistant Commissioners.

WATER CONSERVATION AND UTILIZATION PROJECTS

406.10 Regional Directors.

FEDERAL RECLAMATION PROJECTS

406.20 Regional Directors.

CONSTRUCTION, SUPPLY AND SERVICE CONTRACTS

406.40 Chief Engineer, Regional Directors, District Managers and Project Heads.
406.50 Director of Supply; Chief, Supply Services Division, Denver; Chief, Procurement Section, Denver; Regional Supply Officers; Regional Procurement Officers; and District Supply Officers.
406.60 Purchasing agents.

REGION 1

406.100 Columbia Basin project.

AUTHORITY: §§ 406.1 to 406.100, inclusive, issued under 44 Stat. 657, 55 Stat. 842, 43 U. S. C. 373a, 16 U. S. C. Sup. 590z-11, 43 CFR 4.100, 4.411, 4.412. The following is a codification of redelegations made by Commissioner's Memoranda and Circular Letters, as cited herein.

§ 406.1 *Assistant Commissioners.* The Assistant Commissioners of Reclamation may severally exercise the powers and authorities conferred upon the Commissioner by the Secretary of the Interior in 43 CFR, 1946 Supp., 4.411 and 4.412 and amendments thereof. (Comm. Memo. No. 4 Rev., Aug. 26, 1947)

WATER CONSERVATION AND UTILIZATION PROJECTS

§ 406.10 *Regional Directors.* With respect to Federal Water Conservation and Utilization projects, within his region, a Regional Director may:

(a) *Appraisal, purchase or exchange of land.* In connection with acquisitions for the construction or operation and maintenance of project works, make or approve appraisals or reappraisals of lands, interests therein (including improvements on rights of way reserved under the act of August 30, 1890, 26 Stat. 391, 43 U. S. C. 945, and on similar rights of way), and water rights in all cases where the amounts involved do not exceed $50,000 for a property in one ownership, and contract for and effect the purchase or exchange of lands, interests in lands, or water rights so appraised at appraised value. All appraisals involving lands, interests in lands, or water rights not exceeding $500 in value may, in the discretion of the Regional Director concerned, be made or approved by the Bureau's officer in charge of the project involved. (Circular Letter 3285, Jan. 12, 1945)

(b) *Water rights.* Initiate, prosecute and perfect water rights in the name of the United States, pursuant to the provisions of State law and in conformity with applicable interstate agreements; and file applications, notices, petitions, and all other documents necessary to protect, secure and maintain such water rights in good standing. (Circular Letter 3285, Jan. 12, 1945)

(c) *Public notices.* Issue public notices and other notices to water users and water users' organizations under the Water Conservation and Utilization Act (53 Stat. 1418; 16 U. S. C., Sup. 590y to 590z-10), as amended, and repayment contracts made thereunder. (Circular Letter 3501, June 9, 1947)

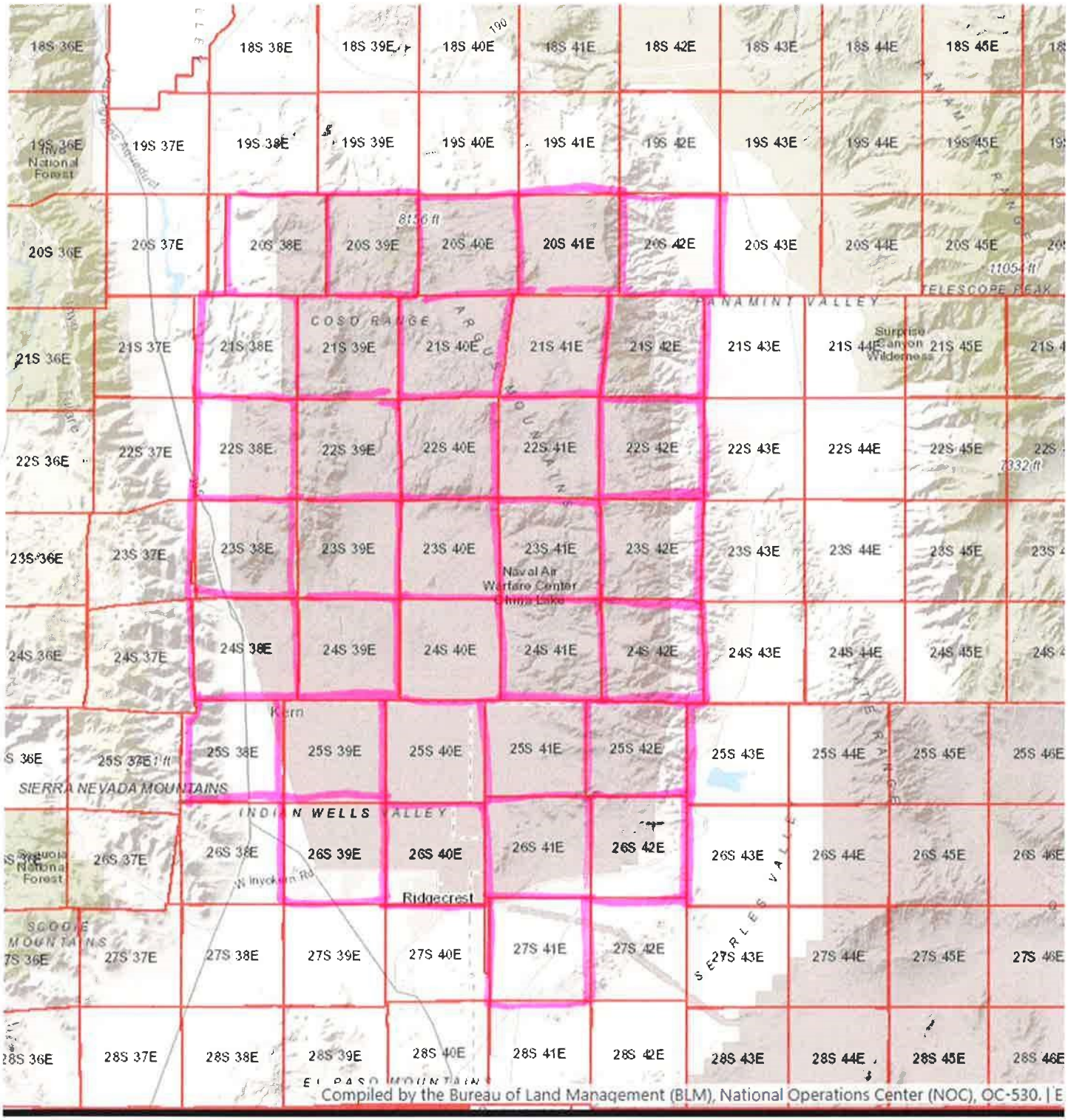
FEDERAL RECLAMATION PROJECTS

§ 406.20 *Regional directors.* With respect to Federal reclamation projects, within his region, a Regional Director may:

(a) *Appraisal, purchase or exchange of lands.* In connection with acquisitions for the construction or operation and maintenance of project works, make or approve appraisals or reappraisals of lands, interests therein (including improvements on rights of way reserved under the act of August 30, 1890, 26 Stat. 391, 43 U. S. C. 945, and on similar rights of way), and water rights in all cases where the amounts involved do not exceed $50,000 for a property in one ownership, and contract for and effect or authorize the Bureau's officer in charge of any project (herein called the project officer) to contract for and effect the purchase or exchange of lands, interests in lands, or water rights so appraised at their appraised value. All appraisals involving lands, interests in lands, or water rights not exceeding $500 in value may, in the discretion of the Regional Director concerned, be made or approved by the project officer. (Circular Letter 3288, Sup. No. 1, Oct. 11, 1946)

(b) *Relocation of properties, etc.* In any case where the expenditure of funds by the United States is estimated not to exceed $25,000, contract for the relocation of properties; the right to construct project facilities across private property, including the property of States and political subdivisions thereof; the exchange or replacement of water and water rights; or the adjustment of water rights; and in connection therewith execute in the name of the Secretary, all necessary grants or conveyances, but any grant or conveyance involving withdrawn public lands shall be executed only with the concurrence of the Director of the

# Exhibit G


18S 36E
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18S 41E
18S 42E
18S 43E
18S 44E
18S 45E
19S 36E
19S 37E
19S 38E
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19S 43E
19S 44E
19S 45E
Inyo National Forest
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20S 38E
20S 39E
20S 40E
20S 41E
20S 42E
20S 43E
20S 44E
20S 45E
8136 ft
11054 ft
TELESCOPE PEAK
COSO RANGE
PANAMINT VALLEY
21S 36E
21S 37E
21S 38E
21S 39E
21S 40E
21S 41E
21S 42E
21S 43E
21S 44E
21S 45E
Surprise Canyon Wilderness
22S 36E
22S 37E
22S 38E
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Naval Air Warfare Center China Lake
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Kern
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25S 45E
25S 46E
SIERRA NEVADA MOUNTAINS
INDIAN WELLS VALLEY
Sequoia National Forest
26S 37E
26S 38E
26S 39E
26S 40E
26S 41E
26S 42E
26S 43E
26S 44E
26S 45E
26S 46E
N Inyokern Rd
Ridgecrest
SCODIE MOUNTAINS
SEARLES VALLEY
27S 36E
27S 37E
27S 38E
27S 39E
27S 40E
27S 41E
27S 42E
27S 43E
27S 44E
27S 45E
27S 46E
28S 36E
28S 37E
28S 38E
28S 39E
28S 40E
28S 41E
28S 42E
28S 43E
28S 44E
28S 45E
28S 46E
EL PASO MOUNTAIN
Compiled by the Bureau of Land Management (BLM), National Operations Center (NOC), OC-530.

# Exhibit H

# TOWNSHIP 23 SOUTH RANGE 40 EAST OF THE MOUNT DIABLO MERIDIAN, CALIFORNIA

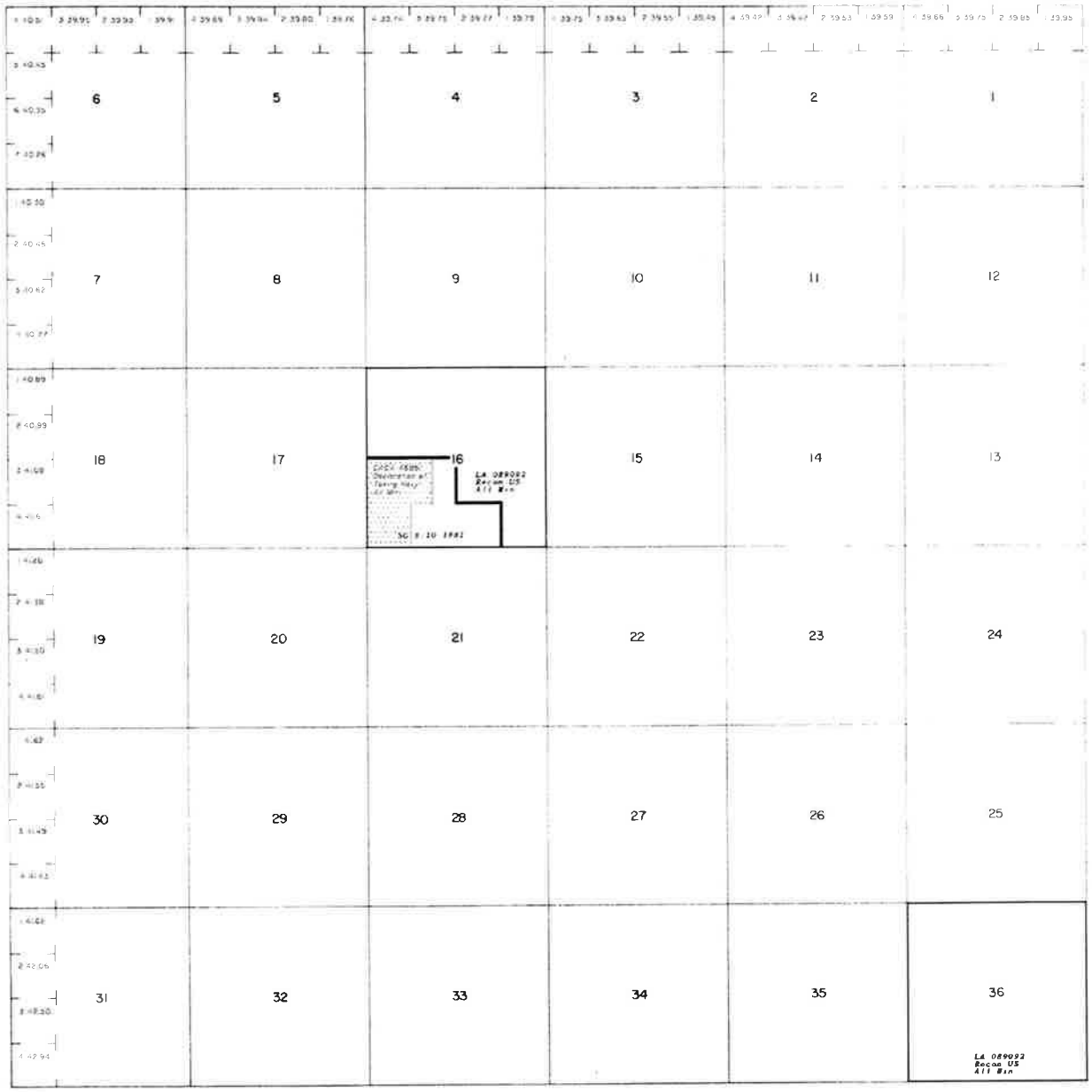
INYO COUNTY

BAKERSFIELD DISTRICT SEC 3

RIDGECREST FIELD OFFICE

STATUS OF PUBLIC DOMAIN
LAND AND MINERAL TITLES

## MT PLAT




| INDEX TO SEGREGATED TRACTS | | | | |
|---|---|---|---|---|
| RESURVEY TRACT NO | ORIGINAL SURVEY T | N | SEC | SUBDIVISION |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

All Tp included in Wdl Calif Gr Dist No 1
SC 4/8/1935

All Tp included in Wdl Dept of Navy PLO 431
12/19/1947

All Tp within designated California Desert
Conserv Area Act of Cong 10/21/1976

All Tp included in Wdl Dept of Navy, Act of Cong 10/31/1994

FOR ORDERS EFFECTING DISPOSAL OR USE OF UNIDENTIFIED LANDS REFER TO INDEX OF MISCELLANEOUS DOCUMENTS

| CURRENT TO | CURRENT TO |
|---|---|
| 3-31-2015 | VH |
| | |

| USE PLATS: ML-C Sheet |
|---|
| |

SCALE in Chains

10 5 0 10 20 30 60

**WARNING STATEMENT**

This plat is the Bureau's Record of Title, and should be used only as a graphic display of the township survey data. Records between do not reflect title changes which may have been affected by lateral movements of rivers or other bodies of water. Refer to the cadastral surveys for official survey information.

MD Mer

T. 23S

R. 40E

# Exhibit I

# RCRA PART B PERMIT APPLICATION

# for the

# BURRO CANYON

# OPEN BURN/OPEN DETONATION

# FACILITY

## NAVAL AIR WEAPONS STATION
## CHINA LAKE, CALIFORNIA

**DECEMBER 2007**
**(Eighth Revision)**

# APPENDIX C

## Legal Description for NAWS China Lake

# FIVE

# REAL ESTATE AND RESTRICTED AIRSPACE

This section provides descriptions of the following subjects, current as of March 1980 unless stated otherwise:

- NWC land areas, a real estate summary
- NWC planned actions for acquistion and disposal of land
- restricted airspaces to which NWC has access

## NWC LAND AREAS

The NWC land areas consist of the two major land areas, the China Lake Complex and the Randsburg Wash/Mojave B Complex, and several small non-contiguous land areas (see Fig. 7, page 5-2). These land areas and their methods of acquisition are discussed below.

The majority of the land acquired by the Navy is public domain land withdrawn for military use; some NWC land areas have been withdrawn for an indefinite term and others withdrawn for a specific time period. Withdrawal is the withholding for a special purpose, such as military use, of an area of Federal land from settlement, sale, location, or entry under some or all of the general land laws, including the mining or mineral leasing laws. The Navy has acquired fee interest to several areas of land that were formerly segregated from the public domain as State school lands; these lands were acquired by the Federal Government through land exchange conducted by the Bureau of Land Management (BLM), Department of the Interior. The Navy also leases use of certain State school lands. The Navy has acquired certain former privately owned lands and mineral interests through the methods of negotiated purchase in some cases, and through civil complaint in condemnation in others.

## CHINA LAKE COMPLEX

The 604,849 acres of the China Lake Complex are located in three counties: Kern, Inyo, and San Bernardino. The land falls in three categories: land withdrawn from the public domain, former State school lands, and former privately owned lands and mineral claims (see Fig. 8, page 5-5).

Disposal-by-sale of 115 acres of land and 600 Wherry housing units was completed in January, 1980. These assets were formerly a part of the NWC China Lake Complex. The figures shown below for acres of former privately owned land in Kern County, and the overall total acres in the China Lake Complex, reflect the completion of the Wherry housing disposal action.

| Land Category | Kern County | Inyo County | San Bernardino County | Total Acres |
|---|---|---|---|---|
| Public Domain | 23,233 | 427,999 | 73,635 | 524,867 |
| Former State School Lands | 1,040 | 22,938 | 1,520 | 25,498 |
| Former Private Lands (Fee) | 46,121 | 7,309 | 1,054 | 54,484 |
| Total | 70,394 | 458,246 | 76,209 | 604,849 |

The public domain land was acquired by withdrawal for an indefinite term by means of Public Land Order No. 431 of 19 December, 1947, as amended by the following Public Land Orders (PLO):

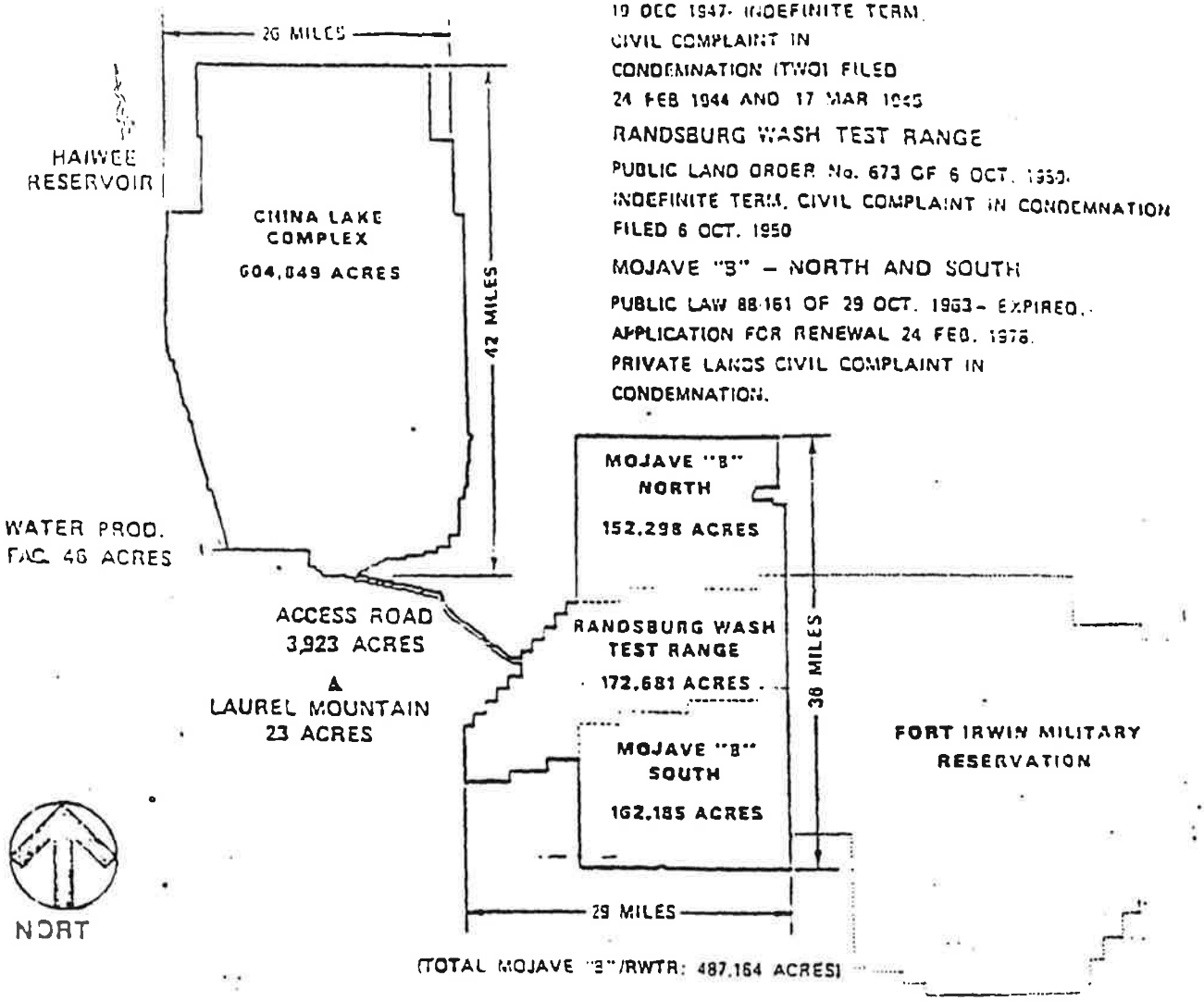
- PLO No. 1005 of 3 September 1954
- PLO No. 2916 of 30 January 1963
- PLO No. 3209 of 30 August 1963
- PLO No. 4300 of 9 October 1967

With the exception of PLO No. 4300, all the Public Land Orders are exclusive withdrawals, meaning that the land is withheld from sale or any other action under the existing general land laws.

The former State school lands were acquired by the Federal Government by means of a land exchange conducted by BLM, Department of the Interior. The State of California conveyed fee ownership of the State school lands in the China Lake Complex to the Federal Government by deed dated 23 July, 1953. The deed of conveyance also included State school lands in Randsburg Wash.

The former privately owned lands and mineral claims were acquired in fee by the following Civil Complaints in Condemnation:

- Civil 3472-H, filed 24 February, 1944
- Civil 311-ND, filed 17 March, 1945




CHINA LAKE COMPLEX

PUBLIC LAND ORDER No. 431 OF 19 DEC 1947- INDEFINITE TERM. CIVIL COMPLAINT IN CONDEMNATION (TWO) FILED 24 FEB 1944 AND 17 MAR 1945

RANDSBURG WASH TEST RANGE

PUBLIC LAND ORDER No. 673 OF 6 OCT. 1950. INDEFINITE TERM. CIVIL COMPLAINT IN CONDEMNATION FILED 6 OCT. 1950

MOJAVE "B" – NORTH AND SOUTH

PUBLIC LAW 88-161 OF 29 OCT. 1963 – EXPIRED. APPLICATION FOR RENEWAL 24 FEB. 1978. PRIVATE LANDS CIVIL COMPLAINT IN CONDEMNATION.

WATER PRODUCTION FACILITIES AT INYOKERN AIRPORT

CIVIL COMPLAINT IN CONDEMNATION FILED 15 MAR 1973

ACCESS ROAD

PUBLIC LAND ORDER No. 3450 OF 23 SEPT. 1964- INDEFINITE TERM–

LAUREL MOUNTAIN

23 ACRES SEE TEXT

SALTON SEA TEST RANGE

21,821 ACRES SEE TEXT

WHIRL TOWER

3,720 ACRES SEE TEXT

TOTAL NWC REAL ESTATE 1,121,546 ACRES*

* TOTAL NWC REAL ESTATE DOES NOT INCLUDE CORONA REAL ESTATE 481 ACRES SEE TEXT

# Exhibit C

Searles Valley Minerals

# IWVGA QUESTIONNAIRE 1
# NOTICE OF GROUNDWATER EXTRACTION REPORTING FOR PUMPING VERIFICATION

**Response from Searles Valley Minerals Inc.**
**February 28, 2020**

# History of Searles Valley Minerals and Potable Water Use in Searles Valley

**General Overview:**

Searles Valley Minerals, Inc (SVM) is a minerals recovery and manufacturing company that uses a proprietary solution mining technique to selectively extract minerals from a brine solution that is recycled continuously through the mineral deposits found in Searles Lake. It is located in the town of Trona, San Bernardino County, CA. The manufacturing facilities are located in the communities of Trona and Westend which are separated by approximately five miles. The residential communities of Pioneer Point and Argus are near Trona.

The unincorporated desert communities located in Searles Valley have a total population of approximately 2100 people. The communities share a county library, San Bernardino County Sheriff substation, numerous churches and gas stations, an elementary school and high school, a community pool, restaurants and a general store. The communities are located at the northernmost edge of San Bernardino County, near the Inyo County line. The average rainfall varies from 2 to 5 inches a year. There is no potable water in Searles Valley. Because of the high mineral content of the soil, plants do not grow well in Searles Valley. The local Trona High School has the only dirt football field in the United States.

The communities in Searles Valley have depended on the industrial and municipal activities of SVM and its predecessor companies since the founding of the San Bernardino Borax Mining Company in 1873. The communities grew with the growth of the companies and many of the communities were owned by the companies who built amenities like stores, recreation halls, swimming pools, theaters and a railroad to support the burgeoning life of the communities. The population in Searles Valley peaked in the 1970s and has experienced a decline since then. The current population is approximately half the recorded peak population.

**Current Potable Water Mining, Distribution and Use:**

SVM currently owns five (5) wells in the Indian Wells Valley that pump potable water to the Searles Valley. All wells are metered (one of the wells is temporarily out of service and is scheduled to be re-drilled in CY2020). The municipal and domestic water needs of all Trona communities are met with water from the Indian Wells Valley Groundwater Basin (IWVGB or BASIN). The potable and non-potable water requirements of the SVM production facilities are also met with water from the IWVGB. Brackish water of varying salinity and total dissolved solids (TDS) provides most of the process water used in the minerals recovery and production processes. SVM has a water purchase agreement with the Searles Domestic Water Company (SDWC) to supply it with “surplus water” in an amount not to exceed 200,000,000 gallons per year. SDWC, a wholly owned subsidiary of SVM, serves approximately 800 households.

There are currently two pipeline systems that transport potable water from the wells in the IWVGB to Searles Valley; the Westend System and Indian Wells System. There are three (3) wells on the 28.5 miles long Indian Wells System: IW30, IW35, and IW36 which can produce 430 gpm, 750 gpm and 1,200 gpm, respectively. There are two (2) wells on the 20 miles long Westend System: WE2 and WE4 which can produce 700 gpm and 1,500 gpm, respectively. The Westend System pipeline was installed in 1930 and connected wells in the IWVGB with Searles Valley via a steel pipeline that ran parallel with CA Hwy. 178. After several expansions and upgrades, the current pipeline traverses the same route as the original and consists of a combination of steel, transite and PVC pipe. The Indian Wells System was installed in 1942. It connected an operational circa 1912 well and pipeline system and a nearby new well to Searles Valley by means of a transite pipeline. This pipeline crosses land later taken over by NAWS and then runs along Salt Wells Canyon (Poison Canyon), parallel with CA Hwy. 178. Today it consists of transite, steel, concrete-lined steel and PVC pipe.

The Westend System and the Indian Wells System meet in Salt Wells Canyon (Poison Canyon) where the water is mingled and then transported through three pipelines. One pipeline carries domestic and industrial water to the Westend complex. The other two pipelines flow to an arsenic treatment plant. The treated water is then sent to SDWC for municipal and domestic use and to the Trona industrial facilities for municipal and industrial use.

**Timeline History of Searles Valley Minerals Inc.:**

**1873** – John Searles and three partners stake claims to 640 acres in Searles Valley and form the San Bernardino Borax Mining Company (SBBM).
**1895 –** The Pacific Coast Borax Company (PCBC) buys SBBM.
**1908 –** California Trona Company is formed and leases buildings and equipment from SBBM to mine 258 claims.
**1913 –** California Trona Company becomes American Trona Corporation.
**1914 –** The Trona Railway Company completes 31 miles of track from Trona to the Searles Station junction with the Southern Pacific Railroad.
**1914 –** American Trona Corporation establishes the company-owned town of Trona, CA.
**1916 –** PCBC and The Solvay Company form the Borosolvay Company.
**1916 –** The Borosolvay Company forms the town of Borosolvay, CA south of Trona
**1918 –** PCBC leases land to build the Westend Chemical Company.
**1926 –** American Trona Corporation becomes American Potash & Chemical Corporation (APCC).
**1926 –** Westend Chemical Company (WCC) begins full-scale operation.
**1930**—WCC drills its first well near Windy Acres Ranch in IWVGB and begins transporting water to Searles Valley via a 19-mile long drill steel pipe, supplying water for both industrial and municipal uses in Searles Valley.
**1931**—WCC drills its second well (Well 1) in IWVGB near Fox Ranch and extends its 19-mile long pipeline to Well 1.
**1940**—WCC drills its third well (Well 2) in IWVGB near its second well (Well 1). This well (Well 2) is still in use today.

**1942**—APCC acquires land near Bonewits Ranch containing an operational well that was drilled in 1912 and begins transporting potable water to Searles Valley via a pipeline through the China Lake gap area (Well 22).
**1942**—APCC drills a second well (Well 23) near its first well (Well 22).
**1946**—WCC drills its fourth well (Well 3) in the IWVGB.
**1950**—APCC drills Well 30 in the IWVGB, completes work in 1951.
**1953**—APCC drills Well 34 also known as Pribus Well in the IWVGB.
**1956** – Stauffer Chemical Company acquires Westend Chemical Company (WCC).
**1965**—Stauffer drills Well 4 in the IWVGB.
**1967** – Kerr-McGee Corporation acquires APCC.
**1974**—Kerr-McGee buys the Westend Chemical Company from Stauffer Chemical Company.
**1989**—Kerr-McGee drills Well 35 in the IWVGB.
**1990**—Kerr-McGee drills Well 36 in the IWVGB.
**1990** – D. George Harris and Associates acquires the Soda Products Division of the Kerr-McGee Chemical Corporation (both the Trona and Westend plants) and forms the North American Chemical Company.
**1998** – IMC Global, Incorporated acquires North American Chemical Company.
**2004** - Sun Capital acquires IMC Chemicals, Incorporated and renames the business Searles Valley Minerals, Incorporated.
**2008** - Nirma Ltd. acquires Searles Valley Minerals, Incorporated.

Note: Documents related to the transfer of ownership of predecessor companies and relevant property deeds are available upon request.

**History of Potable Water:**

Prior to the 1930's the community of Westend, and the surrounding households, were supplied with potable water from springs in the Argus Mountains in Inyo County. This was supplemented with potable water transported via rail from Cantil and brackish water for non-potable domestic needs.

Prior to the 1940's, the community of Trona and the smaller surrounding desert communities were supplied with domestic water from a collection of small local springs in the Argus Mountains in Searles Valley. The water from these springs was collected and transported by about 40 miles of pipeline to Trona. This system is called the Mountain Springs System (MSS). Brackish water and treated condensate from the industrial processes supplemented this spring water to meet domestic water needs. The water treatment plant used to supply treated condensate for domestic water needs ceased operations in 1942.

In 1930, the Westend Chemical Company (WCC), later Stauffer Chemical Company, completed its first well in the IWVGB at Windy Acres Ranch. This well was connected to Searles Valley with a 19-mile long, 5-inch diameter, drill steel pipe. In 1931, a second well was completed in the IWVGB at a location west of Fox Ranch and was connected to Searles Valley via an extension of the original 5-inch drill steel pipe. When completed this WCC system consisted of over 20 miles

of 5-inch drill steel pipe that transported water from an established system of wells in the IWVGB to Hwy. 178, then along Hwy. 178 through Salt Wells Canyon (Poison Canyon) and into Searles Valley along the Trona Railway Company right-of-way. The aggregate pumping from this water system was, at least, 180 gpm (291 AFY). Upon completion of this pipeline, the domestic water for the Westend community began to be supplied by the IWVGB (Westend System) pipeline.

The WCC pipeline was expanded beginning in 1940 with the addition of another well in the Fox Ranch area (current well 2) and the replacement of approximately 10 miles of the original 5-inch diameter drill steel pipe with new 8-inch diameter welded steel pipe. The additional well increased total system flow to 350 gpm (565 AFY). The replacement of the original 5-inch drill steel pipe with new 8-inch welded steel pipe was fully completed in 1945-1946 to enable the addition of more pumping capacity.

In 1942, American Potash and Chemical Corp. (APCC) established an Indian Wells Valley (IWVGB) well at Bonewits Ranch by acquiring land that already contained an operational well drilled in 1912. Thirteen thousand feet of original 8-inch diameter redwood pipe connected this well to an 8-inch diameter transite pipeline that transported potable water a distance of 28.45 miles from the Bonewits Ranch to Searles Valley. This APCC potable water pipeline transported water from Bonewits Ranch through the China Lake gap area along the old Salt Wells Valley Road to Salt Wells Canyon (Poison Canyon) where it then ran parallel to the WCC steel pipeline along HWY 178 into Searles Valley. In 1942, APCC completed an additional well on the Bonewits Ranch to a depth of 300 ft. using a 14-in casing to a depth of 148 ft. and a 12-in casing to a depth of 212 feet. This new well (Well 23) was also connected to the APCC transite pipeline and added 335 gpm (471 AFY) of capacity to the APCC system. In 1943, APCC pumped 649 AFY through this pipeline.

Potable water continued to be supplied to Pioneer Point (Point of Rocks), Trona, Argus and surrounding communities by the Mountain Springs System (MSS) while water from IWVGB was being used in the APCC industrial facilities and surplus IWVGB water was supplied to the communities. There were four (4) APCC tanks that stored potable water. The first 3 tanks received water from the IWVGB. The fourth tank, the largest at 750,000 gallons, received water from MSS and surplus water from the IWVGB. This APCC tank provided water to the plants and a portion of this water was sold to Searles Domestic Water Company (SDWC) for distribution and stored in one of its two tanks. The 68,300-gallon SDWC tank received water only from the MSS. The thirty-three (33) springs and 4 wells of the Mountain Springs system supplied a highly variable 49-86 AFY of water to the community from 1943-1952. Pioneer Point only received MSS water.

On or about November 8, 1943, construction began on a temporary Naval Ordnance Testing Center (NOTS) in Inyokern. The temporary NOTS facility was relocated to its current location in January 1944. On December 31, 1947, the public lands that now constitute the Naval Air Weapons Station China Lake (NAWS) were withdrawn from all forms of appropriation under the public land laws and reserved for the use of the Navy Department as NOTS pursuant to Public

Land Order 431. NOTS development subsequently encroached on the APCC system of water pipelines.

In 1943, the Searles Domestic Water Company (SDWC) was incorporated. It was formed as a wholly owned subsidiary of American Potash and Chemical Company (APCC). The SDWC received its Certificate of Public Convenience from the California Railroad Commission in January 1944. The SDWC had a water purchase agreement with APCC allowing it to buy surplus water that was chlorinated for resale to the community. SDWC initially sourced its water from the MSS. In 1945 the water provided to SDWC by the MSS was 57.9 AFY. By 1948, some part of the water supplied to SDWC for domestic use in the communities was sourced from the IWVGB. The SDWC initially provided water for domestic uses to the communities of Pioneer Point (Point of Rocks), Argus and Trona. Their service area eventually expanded to include Westend, Borosolvay and South Trona.

By 1952, the communities in Borosolvay and South Trona received their domestic water directly from the IWVGB, via the Indian Wells Valley 8-inch line. The other communities of Argus, Trona, and Pioneer Point continued to receive a mixture of MSS and IWVGB water, with the majority of water coming from the IWVGB. As population increased and domestic water demand grew, the MSS proved increasingly difficult to maintain as a reliable domestic water source. It was eventually abandoned. By 1980, domestic water for the communities of Trona, Argus, Pioneer Point and the surrounding areas was only coming from the IWVGB systems.

## 1. What legal form of water right, or rights, are YOU claiming in the BASIN?

Searles Valley Minerals ("SVM") has appropriative rights and prescriptive rights to groundwater in the BASIN. SVM's rights have ripened into prescriptive rights due to the overdraft conditions in the BASIN and because SVM's pumping has met the legal criteria of notice, adversity, open and notorious, hostile and under a claim of right to establish a prescriptive right. SVM's rights date back to the early 1930's or earlier when land was purchased in the BASIN by SVM's predecessor in interest, American Potash & Chemical Corporation (APCC), containing a well that was drilled in 1912. APCC began transporting BASIN water to Searles Valley in 1942 through the China Lake gap area.

SVM's right to groundwater in the BASIN predates the rights of the other water producers in the BASIN including without limitation any water rights claimed by the Indian Wells Valley Water District (IWVWD), which was created in 1955, and the Naval Air Weapons Station China Lake (NAWS). NAWS' water right dates to December 1947 when Congress took official action to reserve the land. (See memorandum provided to IWVGA dated September 5, 2019, Re: Effective date of federal reserved rights, included by reference.)

Under well-established federal law, any right to groundwater claimed or asserted by NAWS pursuant to the federal reserved water right doctrine has a priority date which vests on the date of the reservation. The date of the reservation is the time the land is taken out of the public domain by official Congressional action. Here that was December 1947, by which time SVM was already pumping substantial amounts of BASIN water. The amount of water reserved cannot include already appropriated water, like the SVM water here, and is limited to the amount necessary to accomplish the purpose of the reservation. (*Cappaert v. U. S.* (1976) 426 U.S. 128, 138-139.) Therefore, SVM'S appropriative rights and prescriptive rights are earlier in time and have a priority over any water right reserved to NAWS.

Indian Wells Valley Water District was created in 1955. Because it did not begin pumping before 1955, its appropriative right to BASIN water is junior to SVM's appropriative and prescriptive rights. Therefore, because of the "first in time, first in right" appropriative doctrine, IWVWD has a priority junior to the water SVM had appropriated before IWVWD. (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 279; *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1241; *Irwin v. Phillips* (1855) 5 Cal. 140, 147; *Pleasant Valley Canal Co. v. Borror* (1998) 61 Cal.App.4th 742, 776; *El Dorado Irrigation Dist. v. State Water Resources Control Bd.* (2006) 142 Cal.App.4th 937, 961; *Nicoll v. Rudnick* (2008) 160 Cal.App.4th 550, 556.) Thus Indian Wells Valley Water District's appropriative water right in the BASIN is subject to and limited by SVM's pre-1955 water rights.

In addition to the above, SVM has been delivering BASIN water to Searles Domestic Water Company (SDWC) since SDWC received its Certificate of Public Convenience in 1944, and has gradually become SDWC's sole source of domestic water. Domestic use of water has long been

recognized under the law as the highest use of water, followed by irrigation. (Wat. Code, § 106.) This overarching principle applies no matter the priority right. (El Dorado Irrigation Dist. v. State Water Resources Control Bd. (2006) 142 Cal.App.4th 937, 961.) At its core, this principle recognizes the human right to "safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes." (Wat. Code, § 106.3.) The right to acquire and hold rights to water used for human consumption is protected under the law "to the fullest extent necessary for existing and future uses." (Wat. Code, § 106.5.) No court has ever prevented a municipal water system from pumping water for domestic uses because of a competing overlying right priority. Therefore, SVM's right to pump water in the BASIN for domestic uses is senior to any water right reserved to NAWS. Further, as stated earlier, because IWVWD began pumping in 1955 or later, its appropriative right to BASIN water remains junior to SVM's

2. Are YOUR groundwater extractions only used to provide potable water to customers? (if yes skip to Question 29).

   No. Searles Valley Minerals groundwater extractions are not only used to provide potable water to customers.

3. State the total number of acres of real property that are currently being served by YOUR groundwater extractions from the BASIN.

   a. If the current number of acres is less than in the past, please explain.

The total number of acres of real property that are being served by SVM groundwater extractions from IWVGB is approximately 3741, as follows*:

SVM directly serves approximately 1,560 acres of real property that it owns.

SVM also serves an additional 477 acres that are not owned by SVM or served by SDWC.

The total number of acres served by the SDWC through water pumped in the BASIN by SVM is approximately 1,704 acres.

The acres served currently are less than the past because operations facilities, such as Borosolvay, are no longer operating and the number of households in Searles Valley has decreased since the population peak in the 1970's.

*Note that SVM calculates acreage amount by assessor's parcel number (APN). If anything on the parcel was served water, the whole parcel is counted, as well as its acreage.

4. State the total number of acres of real property overlying the BASIN that have been served by YOUR groundwater extractions from the BASIN.

   a. If the current number of acres is less than in the past, please explain.

   There are no acres of real property overlying the BASIN that are being served from our IWVGB water extractions today, nor have there been any acres served in the recent past.

   As far as we have been able to determine, a minor amount of acreage overlying the BASIN was historically served by SVM groundwater extractions in the past. Anecdotal evidence has one residence being served in the past by well 34.[1] In addition, the well on the Bonewits ranch served several nearby residences for a period of time in the early 1940's.[2] The number of acres historically served is unknown.

[1] Personal Communication from Greg Corrion, Feb. 20, 2020

[2] Pg 51, Ritchie, 1942, Feb. 11, American Potash and Chemical Corporation Research and Development Department, X-19 Indian Wells Valley Water

5. State the total number of acres of real property overlying the BASIN you own that does not receive water from YOUR groundwater extractions or a public potable water purveyor.

   a. If the current number of acres is less than in the past, please explain.

   Searles Valley Minerals owns 1420.1 acres of real property overlying the BASIN that do not currently receive water from our groundwater extractions or a public potable water system.

   The current number of acres overlying the BASIN that SVM currently owns is approximately 120 acres less than in the past. After Kerr-McGee purchased Westend from Stauffer Chemical Company, it divested (sold or donated) some of the land holdings in Ridgecrest and Kern County that were originally owned by Westend Chemical Company and Stauffer Chemical Company.

6. State the year in which groundwater extractions for the benefit of YOUR real property began.

Groundwater extractions began in 1930 with Well 1K1[3] also known as Well 97D in the 1942 Ritchie Report[4]. It was drilled by Westend Chemical Corporation (WCC), a predecessor in interest to SVM, and was located in the BASIN at T27S, R40E, Section 1. This well was connected to Searles Valley with a 19-mile long, 5-inch diameter, drill steel pipe. In 1931, WCC drilled another well near the Fox Ranch, Well 33P3[4]. It was known by the company as Well 1. WCC's third well, Well 4B2[4] was drilled in 1940 near Well 1 in the Fox Ranch area and was also known as Well 2. Well 2 is still in use today.

American Potash and Chemical Company (APCC), also a predecessor in interest to SVM, purchased land in the BASIN in 1942 which had an operational well that had been drilled in 1912, on that land. According to Ritchie, 1942 and Guthrie, 1942, this land was purchased for that well. A pipeline was constructed to transport the BASIN water from that well to Searles Valley. On August 1, 1942, another well was drilled by APCC, near the original well and connected to the same pipeline that then carried water from both the "1912" well and the "1942" well to Searles Valley.

[3] Moyle W. R., 1963, May, Data on Water Wells in Indian Wells Valley Area, Inyo, Kern and San Bernardino Counties, California, State of California, Department of Water Resources Bulletin 91-9, USGS

[4] Page 24, Ritchie, 1942

7. State the types of uses groundwater has been put to on YOUR real property.

   The types of uses groundwater has been put to on SVM property are industrial, municipal and domestic, including sanitary, safety (eyewash stations and safety showers), fire (fire hydrants, fire trucks) and wildlife habitat (a mandated CA Dept. of Fish and Wildlife, Lahontan Water Board and BLM bird sanctuary and bird rescue station).

8. State the methods by which groundwater is used on YOUR real property.

Groundwater method of delivery is through two pipelines from the Indian Wells Valley Groundwater Basin (IWVGB) into Salt Wells Canyon (Poison Canyon). The water is mixed in Salt Wells Canyon and then transported by three pipelines into Searles Valley. Part of the water is stored in tanks and then distributed directly to Westend through pipelines. The rest is transported through pipelines where it is treated in an arsenic treatment facility and distributed to both the SVM facilities and the SDWC. This water is also stored in multiple tanks for distribution through internal piping systems. Its final uses are industrial, municipal and domestic, and wildlife habitat.

See Appendix 2 map of distribution system: Corrion, G., *Searles Valley Minerals Potable and Brackish Water Systems*, SVM Autocad File 61-GA-0020, September 21, 2017

9. If YOUR groundwater extractions are used for agricultural purposes, state the specific crops and/or commodities that YOUR groundwater extractions have supported in each year since 1937.

   This question is not applicable. SVM does not use water for agricultural purposes.

10. If YOUR groundwater extractions are used for agricultural purposes, state the total number of acres used to produce each crop and/or commodity with YOUR groundwater extractions in each year since 1937.

    This question is not applicable. SVM does not use water for agricultural purposes.

11. If YOUR groundwater extractions are used for agricultural purposes, state the total yearly consumptive use in acre feet of water per acre for such purpose it supported in each year since 1937.

    This question is not applicable. SVM does not use water for agricultural purposes.

12. If YOUR groundwater extractions are used for agricultural purposes, identify what mechanisms have been used to measure groundwater extractions used to produce crops and/or commodities with YOUR groundwater extractions in each year since 1937.

    This question is not applicable. SVM does not use water for agricultural purposes.

13. State the total number of legal parcels currently served by YOUR groundwater extractions from the BASIN.

    a. If the current number of parcels is less than in the past, please explain.

The total number of legal parcels currently served by SVM groundwater extractions from the basin is 781, as follows:

The total number of legal parcels owned by Searles Valley Minerals that are served by our groundwater extractions is 17.

The total number of parcels served by the Searles Domestic Water Company (SDWC) is 760[5].

In addition, SDWC donates water to the Trona Community Swimming Pool owned by Trona Joint Unified School District, on 1 parcel of land.[6]

SDWC donates water to the Trona Cemetery. The Trona Cemetery is located on two (2) parcels of land owned by San Bernardino County.[6]

SVM donates water to the Trona Airport which is a public airport owned by the Bureau of Land Management, on 1 parcel.[7]

[5] Searles Domestic Water Company Spreadsheet, Premise data as of 2/7/20

[6] Personal Communication with Audrey Schuyler from SDWC, email dated 2/18/2020

[7] https://inyocounty.maps.arcgis.com/apps/InformationLookup/index.html?appid=6bedcd87e1a04ddba99b70e89b4293cf

14. State the Assessor Parcel Numbers (APNs) for each parcel currently served by YOUR groundwater extractions from the BASIN.

The following APN numbers are SVM-owned parcels served by our groundwater extractions from the IWV basin.

| APN Number | Acres |
|---|---|
| 0485-041-35 | 52 |
| 0485-041-37 | 3 |
| 0485-041-36 | 3 |
| 0485-041-33 | 5 |
| 0486-061-34 | 25 |
| 0486-061-04 | 40 |
| 0485-031-13 | 12 |
| 0485-031-14 | 42 |
| 0485-031-16 | 5 |
| 0485-041-38 | 128 |
| 0483-051-02 | 317 |
| 0486-051-23 | 40 |
| 0485-022-16 | 6 |
| 0486-051-36 | 1 |
| 038-300-02 | 240 |
| 038-300-03 | 160 |
| 038-300-14 | 480 |

The spreadsheet titled SDWC Premise Data of Active Service Connections, in Appendix 3 states the APN's for each parcel served by the Searles Domestic Water Company.

Trona Swimming Pool is APN 0485-041-28.[8]
Trona Cemetery is APN 0485-041-28 for the older section and APN 0485-021-21 for the newer section.[8]
The Trona airport is APN 038-300-20.[9]

[8] Personal Communication with Audrey Schuyler, Manager SDWC, email dated 2/18/20
[9] https://inyocounty.maps.arcgis.com/apps/InformationLookup/index.html?appid=6bedcd87e1a04ddba99b70e89b4293cf

15. State the number of active groundwater wells currently providing service to YOUR real property.

There are currently 5 groundwater wells in the BASIN providing service to SVM property and the other properties relying on SVM production as described in the answer to Question No. 13. Four of these wells are currently operating, the fifth is temporarily idle. The breakdown is as follows:

There are two named systems: Indians Wells System and Westend System.

- There are three wells on the Indian Wells System: IW30, IW35, and IW36.
    - Well IW30 was completed in 1951[10] and replaced Well 22 which was drilled in 1912.
        - IW30 is temporarily idle and awaiting re-drilling in CY2020.
    - Well IW35 was completed in 1989[11]
    - Well IW36 was completed in 1990[12] and replaced Well 34, which was drilled in 1953.
- There are two wells on the Westend System: Well 2 and Well 4.
    - WE2 was drilled in 1940[13] and replaced the Windy Acres Well drilled in 1930.
    - WE4 was drilled in 1965[14].

[10] Pg 1, Pg 3,Well 30 Data, SVM Internal Documents
[11] Pg 1, Well 35 Data, SVM Internal Documents
[12] Pg 1, Well 36 Data, SVM Internal Documents
[13] Pg 1, Well 2 Data, SVM Internal Documents
[14] Pg 1, Well 4 Data, SVM Internal Documents

16. State the locations, via Assessor Parcel Number (APN), for each active groundwater well that has provided service to YOUR real property.

1) Well IW36 is located on parcel 1 of APN352-095-27
2) Well IW30 is located on parcel 5 of APN352-095-08
3) Well IW35 is located on parcel 10 of APN454-080-01
4) Well WE4 is located on parcel 18 of APN508-030-04
5) Well WE2 is located on parcel 25 of APN478-020-15.[15]

See Appendix 1 for locations.

[15] Chicago Title Insurance Company, Schedule A, March 19, 2004 with notes from Greg Corrion

17. State the locations, via Assessor Parcel Number (APN), for each inactive groundwater well that has provided service, or may have provided service, to YOUR real property.

The locations of each inactive well are stated in the table below. Some APN numbers are unknown.

**INACTIVE WELL LOCATIONS**

| USGS ID | Year Drilled | Section Description | APN # | Company | Company ID |
|---|---|---|---|---|---|
| 25D1 | 1912 | T26S, R39E, S25 | 352-095-08 | AP&CC | Well 22 |
| 25D2 | 1942 | T26S, R39E, S25 | 352-095-08 | AP&CC | Well 23 |
| 30E2 | 1953 | T26S, R40E, S30 | 454-080-01 | AP&CC | Well 34, also called Pribus |
| 33P3 | 1931 | T26S, R40E, S33 | 067-050-13 | WCC | WE 1, (Well 97C Ritchie, 1942) |
| 1K1 | 1930 | T27S, R40E, S1 | unk | WCC | Windy Acres Well, (Well 97D, Ritchie, 1942) |
| 4B1 | 1946 | T27S, R40E, S4 | 478-010-04 or 478-010-12 | WCC | WE 3 |
| 4A1 | 1959 | T27S, R40E, S4 | unk | WCC | |
| 4A2 | 1959 | T27S, R40E, S4 | unk | WCC | |
| 5A1 | 1959 | T27S, R40E, S5 | unk | WCC | |
| 5B1 | 1959 | T27S, R40E, S5 | unk | WCC | |
| 5H1 | 1959 | T27S, R40E, S5 | unk | WCC | |

18. State the date of construction for each active groundwater well that has provided service to YOUR real property.

1) Well IW30 was drilled in 1950[16] and completed in 1951[16]. It is also known as Well 25E1 in Moyle, 1963. Well IW 30 replaced Well 22, drilled in 1912.
2) Well IW35 was drilled in 1989[17].
3) Well IW36 was drilled in 1990[18] and replaced Well 34 which was drilled in 1953.
4) Well WE2 was drilled in 1940[19]. It is also known as Well 4B2 in Moyle, 1963 and Well 97B in Ritchie, 1942. This well replaced the Windy Acres Well, drilled in 1930.
5) Well WE4 was drilled in 1965[20].

[16] Well 30 Data
[17] Well 35 Data
[18] Well 36 Data
[19] Well 2 Data
[20] Well 4 Data

19. State the date of construction for each inactive groundwater well that has provided service, or may have provided service, to YOUR real property.

Inactive groundwater wells in the IWVGB that provided service or may have provided service to SVM real property and properties reliant on SVM production in the BASIN are listed in the table below.

**INACTIVE WELL DRILLING DATES**

| USGS ID[21] | Date Drilled[21] | Section Description[21] | Company[21] | Company ID |
|---|---|---|---|---|
| 25D1 | 1912 | T26S, R39E, S25 | AP&CC | Well 22 |
| 25D2 | Aug. 1, 1942[22] | T26S, R39E, S25 | AP&CC | Well 23 |
| 30E2 | 1953 | T26S, R40E, S30 | AP&CC | Well 34, Also called Pribus Well |
| 33P3 | 1931 | T26S, R40E, S33 | WCC | WE 1, (Well 97C Ritchie, 1942) |
| 1K1 | 1930 | T27S, R40E, S1 | WCC | Windy Acres Well, (Well 97D, Ritchie, 1942) |
| 4B1 | Dec. 18, 1946[23] | T27S, R40E, S4 | WCC | WE 3 |
| 4A1 | 1959 | T27S, R40E, S4 | WCC | |
| 4A2 | 1959 | T27S, R40E, S4 | WCC | |
| 5A1 | 1959 | T27S, R40E, S5 | WCC | |
| 5B1 | 1959 | T27S, R40E, S5 | WCC | |
| 5H1 | 1959 | T27S, R40E, S5 | WCC | |

[21] Moyle W. R., 1963
[22] Well 23 Data
[23] Well 3 Data

20. State the date each inactive well that has provided service to YOUR real property became inactive.

The dates that each inactive well that has provided service to SVM real property and property reliant on SVM production in the BASIN became inactive is stated in the table below. Note that additional research is needed to determine whether wells 4A1, 4A2, 5A1, 5B1 and 5H1 have historically been in service.[30]

**DATES INACTIVE WELLS BECAME INACTIVE**

| USGS ID | Year Drill | Company | Company ID | Year Inactive |
|---|---|---|---|---|
| 25D1 | 1912 | AP&CC | Well 22 | Dec. 6, 1950[24] |
| 25D2 | Aug. 1, 1942 | AP&CC | Well 23 | March 1964?[25] |
| 30E2 | 1953 | AP&CC | Well 34, also called Pribus | Feb. 6, 1991[26] |
| 33P3 | 1931 | WCC | WE 1, (Well 97C Ritchie, 1942) | April 10, 1987[27] |
| 1K1 | 1930 | WCC | Windy Acres Well, (Well 97D, Ritchie, 1942) | before 1942[28] |
| 4B1 | Dec. 18, 1946 | WCC | WE 3 | Dec. 5, 1986[29] |
| 4A1 | 1959 | WCC | | Unknown |
| 4A2 | 1959 | WCC | | Between 1959-1960[30] |
| 5A1 | 1959 | WCC | | Between 1959-1960[30] |
| 5B1 | 1959 | WCC | | 1959-dry[30] |
| 5H1 | 1959 | WCC | | Between 1959-1960[30] |

[24] Well 22 Data
[25] Well 23 Data
[26] Well 34 Data
[27] Well 1 Data
[28] Pg 27, Ritchie, 1942
[29] Well 3 Data
[30] Moyle, 1963

21. State the reason(s) a well providing service to YOUR real property became inactive.

Windy Acres Well, Well USGS 1K1, 97D became inactive due to "poor quality" water.[31]
Well USGS 5B1 was dry.[32]
Well 22, USGS 25D1 sanded up and had low flow rate[33] and was replaced with another well on the same parcel.
The USGS named wells 5A1, 5H1 and 4A2 were destroyed shortly after drilling for unknown reasons[32].
There is no readily available information about well 4A1 which appears to have never been in use but we are not completely certain.
Other wells became inactive because of sanding, not able to provide enough flow or have been replaced with other wells.

[31] Ritchie, 1942
[32] Moyle, 1963
[33] Turnbull, W. A., 1952, January, Engineering Department Report on Potable Water System, Internal APCC Report

22. Identify, by name, address, telephone number each PERSON that has operated a well that has provided service to YOUR property since 1937.

Searles Valley Minerals and its predecessor companies have operated all wells that have provided service to SVM property and to other properties reliant on SVM production in the BASIN, since before 1937.

Currently the person responsible for the operation of the wells in the IWVGB is the Lake Manager.
Steven Kourakos: 760-372-2215, 1320 Main St. Trona, CA 93562

23. Identify what mechanisms have been used to measure groundwater extractions by each well that has served YOUR real property since 1937.

All wells currently in use are metered. Although wells in the past were metered, we have no documentation on the type of mechanism that was used on wells that are no longer in use.

**WELL METERS**

| Company ID | USGS ID | Year Drilled | Previous Meter | Current Meter |
|---|---|---|---|---|
| Well 22 | 25D1 | 1912 | unknown | Well not in use |
| Windy Acres, 97D | 1K1 | 1930 | unknown | Well not in use |
| WE-1, 97D | 33P3 | 1931 | unknown | Well not in use |
| WE-2, 97B | 4B2 | 1940 | McCrometer MW500-6 | Yokogawa-AFX150c-6 |
| Well 23 | 25D2 | 1942 | unknown | Well not in use |
| WE-3 | 4B1 | 1946 | unknown | Well not in use |
| Well 30 | 25E1 | 1951 | McCrometer MW500-6 | Yokogawa-AFX150c-6 |
| Well-34, Pribus | 30E2 | 1953 | unknown | Well not in use |
| WE-4 | | 1965 | McCrometer MW500-6 | Yokogawa-AFX150c-6 |
| Well 35 | | 1989 | McCrometer MW500-6 | Yokogawa-AFX150c-6 |
| Well 36 | | 1990 | McCrometer MW500-6 | Yokogawa-AFX150c-6 |

24. Identify what mechanisms have been used to measure groundwater extractions for YOUR real property.

As stated in question 23 above, all wells currently in use are metered. Although wells in the past were metered, we have no documentation on the type of mechanism that was used on wells that are no longer in use.

**WELL METERS**

| Company ID | USGS ID | Year Drilled | Previous Meter | Current Meter |
|---|---|---|---|---|
| Well 22 | 25D1 | 1912 | unknown | Well not in use |
| Windy Acres, 97D | 1K1 | 1930 | unknown | Well not in use |
| WE-1, 97D | 33P3 | 1931 | unknown | Well not in use |
| WE-2, 97B | 4B2 | 1940 | McCrometer MW500-6 | Yokogawa-AFX150c-6 |
| Well 23 | 25D2 | 1942 | unknown | Well not in use |
| WE-3 | 4B1 | 1946 | unknown | Well not in use |
| Well 30 | 25E1 | 1951 | McCrometer MW500-6 | Yokogawa-AFX150c-6 |
| Well-34, Pribus | 30E2 | 1953 | unknown | Well not in use |
| WE-4 | | 1965 | McCrometer MW500-6 | Yokogawa-AFX150c-6 |
| Well 35 | | 1989 | McCrometer MW500-6 | Yokogawa-AFX150c-6 |
| Well 36 | | 1990 | McCrometer MW500-6 | Yokogawa-AFX150c-6 |

25. State the date that groundwater extractions from the BASIN began for YOUR property.

As stated for question number 6 previously, groundwater extractions in the BASIN by SVM and its predecessors in interest began in 1930 with Well 1K1[34] also known as Well 97D in the 1942 Ritchie Report . It was drilled by Westend Chemical Corporation (WCC), a predecessor in interest to SVM, and was located at T27S, R40E, Section 1. This well was connected to Searles Valley with a 19-mile long, 5-inch diameter, drill steel pipe. In 1931, WCC drilled another well near the Fox Ranch, Well 33P3.[34] It was known by the company as Well 1. WCC's third well, Well 4B2[34] was drilled in 1940 near Well 1 in the Fox Ranch area and was also known as Well 2. Well 2 is still in use today.

American Potash and Chemical Company, also a predecessor in interest to SVM, purchased land in 1942 which had an operational well that had been drilled in 1912. According to Ritchie, 1942 and Guthrie, 1942, this land was purchased for that well. A pipeline was constructed to transport BASIN water from that well to Searles Valley. On August 1, 1942, APCC drilled another well near the original well and connected to the same pipeline that then carried water from both the "1912" well and the "1942" well to Searles Valley.

[34] Moyle, 1963

26. State the yearly quantity of water that YOU contend has been extracted from the Basin for YOUR property for each year commencing with 1937. Identify all DOCUMENTS that support YOUR response to the preceding question. Produce all DOCUMENTS identified in the preceding question.

Note that because there were two separate companies with pipelines transporting water from the IWVGB to Searles Valley, records show separate production until 1975. This separation is shown on the spreadsheet below.

| WATER PRODUCTION FROM INDIAN WELLS VALLEY BASIN | | | | | |
|---|---|---|---|---|---|
| | WCC/ Stauffer | | APCC/ Trona | Total Company | |
| YEAR | AFY | | AFY | AFY | Reference/Notes |
| 1930 | unknown | | | | Ritchie, 1942 |
| 1931-1939 | At least 291 | | | **At least 291** | Moyle, 1963 |
| 1940 | 565 | | | **565** | Ritchie, 1942 |
| 1941 | 565 | | | **565** | Ritchie, 1942 |
| 1942 | 565 | | 161 | **726** | Turnbull, 1952 , Ritchie, 1942 |
| 1943 | 565 | | 649 | **1213** | Turnbull, 1952 |
| 1944 | 565 | | 651 | **1215** | Turnbull, 1952 |
| 1945 | 565 | | 628 | **1192** | Turnbull, 1952 |
| 1946 | 565 | | 626 | **1190** | Turnbull, 1952 |
| 1947 | 565 | | 674 | **1238** | Turnbull, 1952 |
| 1948 | unk | | 577 | **unk** | Turnbull, 1952 |
| 1949 | unk | | 537 | **unk** | Turnbull, 1952 |
| 1950 | unk | | 368 | **unk** | Turnbull, 1952 |
| 1951 | unk | | 346 | **unk** | APCC Internal Production Report |
| 1952 | unk | | 345 | **unk** | APCC Internal Production Report |
| 1953 | unk | | 375 | **unk** | APCC Internal Production Report |
| 1954 | 837 | | 392 | **1230** | Mulqueen 1979, APCC Internal Production Report |
| 1955 | unk | | 370 | **unk** | APCC Internal Production Report |
| 1956 | unk | | 398 | **unk** | Stauffer Chemical bought WCC |
| 1957 | unk | | 433 | **unk** | APCC Internal Production Report |
| 1958 | 1212 | | 396 | **1609** | Mulqueen 1979, APCC Internal Production Report |
| 1959 | 1328 | | 411 | **1740** | Mulqueen 1979, APCC Internal Production Report |
| 1960 | 1339 | | 370 | **1710** | Mulqueen 1979, APCC Internal Production Report |
| 1961 | 1369 | | 469 | **1839** | Mulqueen 1979, APCC Internal Report |
| 1962 | 1474 | | 601 | **2076** | Mulqueen 1979, APCC Internal Report |

| | WCC/ Stauffer | | APCC/ Trona | Total Company | |
|---|---|---|---|---|---|
| YEAR | AFY | | AFY | AFY | Reference/Notes |
| 1963 | 1486 | | 650 | **2137** | Mulqueen 1979, APCC Internal Report |
| 1964 | 1257 | | 660 | **1918** | Mulqueen 1979, APCC Internal Report |
| 1965 | 1539 | | unk | **unk** | Mulqueen, 1979 |
| 1966 | 1677 | | 786* | **2464** | Mulqueen 1979, APCC Internal Report |
| 1967 | 1642 | | 899 | **2543** | Mulqueen 1979, APCC Internal Report |
| 1968 | 1649 | | 999 | **2649** | Mulqueen 1979 |
| 1969 | unk | | 1069* | **unk** | APCC internal prod rept |
| 1970 | 1640 | | 1028 | **2668** | APCC Int. prod rept, Sonia, Bornemann ltr 1971 |
| 1971 | unk | | 1178 | **unk** | APCC internal prod rept |
| 1972 | unk | | 1117 | **unk** | APCC internal prod rept |
| 1973 | unk | | 1210 | **unk** | Mulqueen 1979 |
| 1974 | 1741 | | 1119 | **2860** | Mulqueen 1979 **Kerr McGee buys Westend** |

| Date | SVM Prod. | |
|---|---|---|
| YEAR | AFY | Reference/Notes |
| 1975 | **2781** | IWVGA Spreadsheet |
| 1976 | **2911** | IWVGA Spreadsheet |
| 1977 | **3315** | IWVGA Spreadsheet |
| 1978 | **3081** | IWVGA Spreadsheet |
| 1979 | **3081** | IWVGA Spreadsheet |
| 1980 | **2887** | IWVGA Spreadsheet |
| 1981 | **3065** | IWVGA Spreadsheet |
| 1982 | **2887** | IWVGA Spreadsheet |
| 1983 | **2476** | IWVGA Spreadsheet |
| 1984 | **2307** | IWVGA Spreadsheet |
| 1985 | **2397** | IWVGA Spreadsheet |
| 1986 | **2557** | IWVGA Spreadsheet |
| 1987 | **2560** | IWVGA Spreadsheet |
| 1988 | **2560** | IWVGA Spreadsheet |
| 1989 | **2320** | IWVGA Spreadsheet |
| 1990 | **2505** | IWVGA Spreadsheet |
| 1991 | **2406** | IWVGA Spreadsheet |
| 1992 | **2528** | IWVGA Spreadsheet |
| 1993 | **2607** | IWVGA Spreadsheet |
| 1994 | **2607** | IWVGA Spreadsheet |
| 1995 | **2710** | IWVGA Spreadsheet |
| 1996 | **2620** | IWVGA Spreadsheet |
| 1997 | **2522** | IWVGA Spreadsheet |
| 1998 | **2527** | IWVGA Spreadsheet |

| Date | | SVM Prod. | |
|---|---|---|---|
| YEAR | | AFY | Reference/Notes |
| 1999 | | 2537 | IWVGA Spreadsheet |
| 2000 | | 2701 | IWVGA Spreadsheet |
| 2001 | | 2732 | IWVGA Spreadsheet |
| 2002 | | 2564 | IWVGA Spreadsheet |
| 2003 | | 2561 | IWVGA Spreadsheet |
| 2004 | | 2470 | IWVGA Spreadsheet |
| 2005 | | 2504 | IWVGA Spreadsheet |
| 2006 | | 2591 | IWVGA Spreadsheet |
| 2007 | | 2530 | IWVGA Spreadsheet |
| 2008 | | 2521 | IWVGA Spreadsheet |
| 2009 | | 2535 | IWVGA Spreadsheet |
| 2010 | | 2587 | IWVGA Spreadsheet |
| 2011 | | 2458 | IWVGA Spreadsheet |
| 2012 | | 2743 | IWVGA Spreadsheet |
| 2013 | | 2706 | IWVGA Spreadsheet |
| 2014 | | 2679 | IWVGA Spreadsheet |
| 2015 | | 2518 | IWVGA Spreadsheet |
| 2016 | | 2377 | IWVGA Spreadsheet |
| 2017 | | 2706 | Internal Water Production Records |
| 2018 | | 2679 | Internal Water Production Records |
| 2019 | | 2578 | Internal Water Production Records |

*Data estimated due to missing month.

See attached internal water production reports pumping documentation in separate attachment. See IWVGA Spreadsheet data in Appendix 4. See attached reference material.

1. Ritchie, *X-19 Indian Wells Valley Water*, American Potash and Chemical Corporation Research and Development Department, Feb. 11, 1942
2. Turnbull, W. A., *Engineering Department Report on Potable Water System*, Internal APCC Report, January, 1952
3. Mulqueen, S. P., *History of the Searles Valley Water System*, Internal Report, May 30, 1979

27. State the initial pumping depths and standing water level for each active groundwater well that has provided service to YOUR real property. Identify all DOCUMENTS that support YOUR response to the preceding question. Produce all DOCUMENTS identified in the preceding question.

1) Well 30: Well depth was 387 ft. Initial pumping level was 183.75 ft. The standing water level was 180 ft.[35]

2) Well 35: Well depth was 850 ft. The initial pumping level was 246 ft. The standing water level was 233 ft.[36]

3) Well 36: Well depth was 1145 ft. The initial pumping level was 320 ft. The standing water level was 249 ft.[37]

4) Well 2: Well depth was 375 ft. The initial pumping levels and standing water levels are unknown. The pumping level was 131 ft in 1948. The static water level in 1948 was 116 ft.[38]

5) Well 4: Well depth was 866 ft. The initial pumping level was 231 ft. The standing water level was 214 ft.[39]

[35] Bonewits Ranch South Well-No. 30 Static and Pumping Levels, Internal APCC Report, 1953
[36] Well 35 data
[37] Well 36 data
[38] Well 2 data
[39] Well 4 data

28. State the initial pumping depths and standing water level for each inactive groundwater well that has provided service to YOUR real property. Identify all DOCUMENTS that support YOUR response to the preceding question. Produce all DOCUMENTS identified in the preceding question.

INACTIVE WELL STANDING AND INITIAL WATER LEVEL

| USGS Well ID | Year Drilled | Section Desc. | Original Company | Company Well ID | Initial Pumping Depth | Initial Standing Water Level |
|---|---|---|---|---|---|---|
| 25D1 | 1912 | T26S, R39E | AP&CC | Well 22 | unknown | 175 ft in 1947[40] |
| 25D2 | 1942 | T26S, R39E | AP&CC | Well 23 | 184.3 ft[41] | 162 ft[41] |
| 30E2 | 1953 | T26S, R40E | AP&CC | Well 34, Also called Pribus | 193.5 [42] ft in 1955 | 153 ft[43], 161 ft in 1955[43] |
| 33P3 | 1931 | T26S, R40E | WCC | WE 1, (Well 97C Ritchie, 1942) | 119 ft[44] | 114 ft[44] |
| 1K1 | 1930 | T27S, R40E | WCC | Windy Acres Well, (Well 97D, Ritchie, 1942) | unknown | unknown |
| 4B1 | 1946 | T27S, R40E | WCC | WE 3 | unknown | unknown |

[40] Well 22 data
[41] Bonewits Ranch East Well-No. 23 Static and Pumping Levels, Internal APCC Report, 1953
[42] APCC Manager Office correspondence to F. E Branch Sept. 26, 1955, Pribus Ranch Deepwell Pump Test, Well 34 data
[43] Well 34 data
[44] Well 1 data

29. If YOUR groundwater extractions are used to provide potable water to customers, state the date upon which YOUR ground extractions for this purpose began.

The Searles Domestic Water Company (SDWC) was incorporated as a wholly owned subsidiary of American Potash and Chemical Company in 1943 and granted a Certificate of Public Convenience in 1944 from the California Railroad Commission[45] (now, the California Public Utilities Commission or CPUC). As stated earlier, American Potash and Chemical Company is a predecessor in interest to SVM. The CA Department of Public Health issued SDWC a potable water supply permit in January, 1944 to supply potable water from the Inyo-Kern wells (Indian Wells System installed by APCC in 1942) and the Mountain Springs System (MSS)[46], located in Searles Valley.

Most of the water provided to SDWC when it was first formed was from the MSS. Because the potable water provided to the SDWC was from two sources, it is unknown exactly when water from the IWVGB was provided to SDWC. According to data from Turnbull 1952[47] shown below, by 1948, SDWC used more water than was provided by the MSS. Therefore, by 1948, SDWC must have been provided a certain amount of water from the Indian Wells Valley.

| Year | IWVGB Pumped(gal) | Mtn Springs System (gal) | Plant Use (gal) | SDWC Use (gal) |
|---|---|---|---|---|
| 1942 | 52,416,000 | 23,116,000 | 20,280,000 | |
| 1943 | 211,449,000 | 20,000,000 | 25,114,000 | |
| 1944 | 212,197,000 | 19,038,000 | 31,114,000 | 8,811,000 |
| 1945 | 204,692,000 | 23,498,000 | 46,306,000 | 18,552,000 |
| 1946 | 203,875,000 | 24,363,000 | 60,428,000 | 21,289,000 |
| 1947 | 219,719,000 | 27,886,000 | 56,930,000 | 24,374,000 |
| 1948 | 188,110,000 | 22,160,000 | 33,629,000 | 31,442,000 |
| 1949 | 175,012,000 | 16,003,000 | 34,415,000 | 45,957,000 |

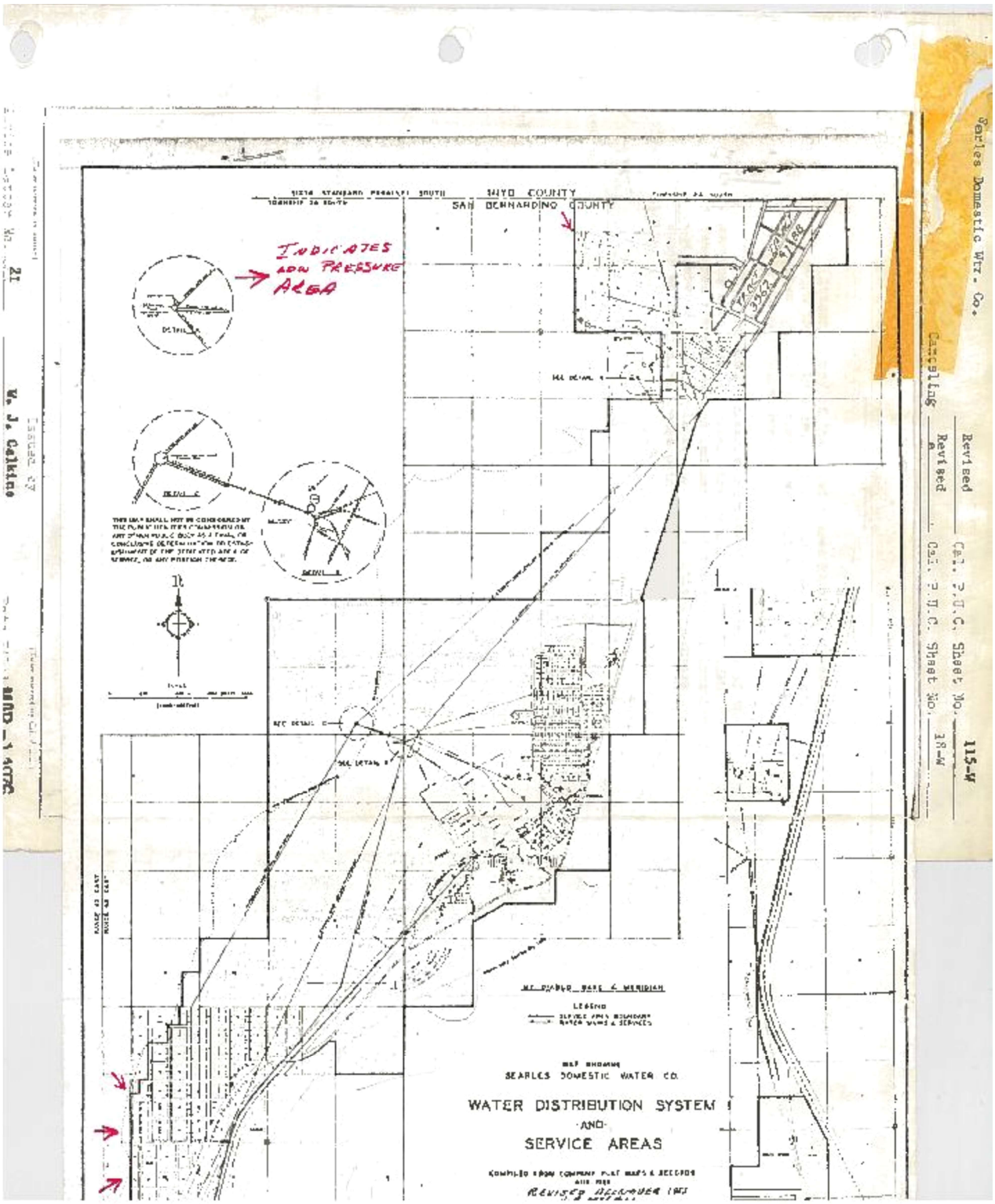
Over time, the amount of water from the MSS being provided to the SDWC decreased to become a minor amount, approximately 6% in 1960's and 2% by the late 70's. By 1980, according to CPUC records, all potable water being provided to the SDWC and its customers was extracted from the IWVGB by SVM.

[45] CA Railroad Commission Decision No. 36822, Order of Public Convenience, 1944
[46] CA Department of Public Health Letter to SDWC January, 12, 1944
[47] Table 1 and Table 2, Turnbull 1952

30. If YOUR groundwater extractions are used to provide potable water to customers, provide a map depicting the areas served by YOUR groundwater extractions.

The California PUC regulated SDWC service area was originally described in the 1948 PUC decision.[48] In 1952, this area was amended to include an approximate additional 464 acres.[49]
See official CPUC map on the next page.[50]
See appendix 5 map from Clark 1958 SDWC Report with shading.

[48] Pg 1-2, 1948, CA -PUC Decision 41615, Expanded Order of Public Convenience, Application 29234
[49] Pg 2, 1952 CA-PUC Decision No. 48049 Application 32337
[50] Map Showing SDWC Water Distribution and Service Areas, Cal PUC Sheet 115-W Revised Dec. 1955


INDICATES
ADM PRESSURE
AREA
SAN BERNARDINO COUNTY
SEARLES DOMESTIC WATER CO.
WATER DISTRIBUTION SYSTEM
AND
SERVICE AREAS
Searles Domestic Wtr. Co.
Revised
Cancelling
Revised
Cal. P.U.C. Sheet No. 115-W
Cal. P.U.C. Sheet No. 18-W
W. J. Calkins
21
MAR 1 1976

31. If YOUR groundwater extractions are used to provide potable water to customers, state the number of acres within the area served by YOUR groundwater extractions.

The Searles Domestic Water Company (SDWC) is a wholly owned subsidiary of Searles Valley Minerals. The SDWC is a California PUC (CPUC) regulated water company that purchases surplus BASIN water produced by SVM and, in turn, SDWC sells the water to those customers in its Searles Valley service area. A map of this service area is shown in Question 30 and Appendix 4.

The number of acres within the SDWC CPUC regulated service area that is served by SVM groundwater extractions is approximately 1,704.

32. If YOUR groundwater extractions are used to provide potable water to customers, state the number of connections served potable water by YOUR groundwater extractions.

In 2018, the latest SDWC CPUC report, there were 805 active service connections.[51]

[51] SDWC CPUC 2018 Annual Report

33. If YOUR groundwater extractions are used to provide potable water to customers, state the yearly quantity of water that YOU contend has been extracted from the BASIN to serve your customers since 1937.

The Searles Domestic Water Company was incorporated in 1943 and granted a Certificate of Public Convenience in 1944 from the California Railroad Commission, now CPUC. The CA Department of Public Health issued SDWC a potable water supply permit in January, 1944 to supply potable water from the Inyo-Kern wells (Indian Wells System installed by APCC in 1942) and the Mountain Springs System (MSS), located in Searles Valley.

As stated in Question 29, water produced from wells in the BASIN was supplied to the SDWC by 1948 or earlier. The exact amount supplied at the time is unknown, but at a minimum was 23 AFY in 1948. Over time, the amount of water from the MSS being provided to the SDWC decreased to become a minor amount. By 1980, according to CPUC records, all potable water being provided to the SDWC and its customers was extracted from the IWVGB by SVM.

Because the MSS water was not separated out from the IWVGB water in most of the CPUC documents, the amount of water extracted from the IWVGB that was provided to the SDWC is calculated from the total amount provided to SDWC, minus the total MSS water. MSS water from 1952 to 1960, highlighted in red, is not stated on CPUC documents, so is assumed to be the 1951 higher number for this whole period for the purposes of this chart.

Note that the amount of water purchased from SVM for use by the SDWC for its customers does not equal the amount of water provided to the SDWC customers due to water losses.

| Year | Total Purchased Water (1000 Gallons) | AFY | Mountain Springs System (Gallons) | MSS (AFY) | Water Provided to SDWC Customers (AFY) | Water provided to SDWC from IWVGB. Negative is assumed to be 0. |
|---|---|---|---|---|---|---|
| 1943 | | | 20,000,000 | 61.4 | | |
| 1944 | unknown | | 19,038,000 | 58.4 | 25 | (34) |
| 1945 | 18,851 | 58 | 23,498,000 | 72.1 | 53 | (19) |
| 1946 | 21,284 | 65 | 24,363,000 | 74.8 | 65 | (10) |
| 1947 | 24,353 | 75 | 27,886,000 | 85.6 | 71 | (14) |
| 1948 | 31,968 | 98 | 22,160,000 | 68.0 | 91 | 23 |
| 1949 | 46,222 | 142 | 16,003,000 | 49.1 | 134 | 85 |

| Year | Total Purchased Water (1000 Gallons) | AFY | Mountain Springs System (Gallons) | MSS (AFY) | Water Provided to SDWC Customers (AFY) | Water provided to SDWC from IWVGB. Negative is assumed to be 0. |
|---|---|---|---|---|---|---|
| 1950 | 48,439 | 149 | 19,898,000 | 61.1 | 140 | 79 |
| 1951 | 53,671 | 165 | 22,599,000 | 69.4 | 157 | 88 |
| 1952 | 48,386 | 148 | 22,599,000 | 69.4 | 160 | 91 |
| 1953 | 58,139 | 178 | 22,599,000 | 69.4 | 170 | 101 |
| 1954 | 50,958 | 156 | 22,599,000 | 69.4 | 175 | 106 |
| 1955 | 76,189 | 234 | 22,599,000 | 69.4 | 206 | 137 |
| 1956 | 84,166 | 258 | 22,599,000 | 69.4 | 232 | 163 |
| 1957 | 84,012 | 258 | 22,599,000 | 69.4 | 231 | 162 |
| 1958 | 91,668 | 281 | 22,599,000 | 69.4 | 235 | 166 |
| 1959 | 91,514 | 281 | 22,599,000 | 69.4 | 249 | 180 |
| 1960 | 88,529 | 272 | 22,599,000 | 69.4 | 238 | 168 |
| 1961 | 91,301 | 280 | 5520000 | 16.9 | 260 | 243 |
| 1962 | 96,021 | 295 | 5520000 | 16.9 | 274 | 257 |
| 1963 | 94,559 | 290 | 5520000 | 16.9 | 273 | 256 |
| 1964 | 101,873 | 313 | 5520000 | 16.9 | 288 | 271 |
| 1965 | 108,926 | 334 | 3153600 | 9.7 | 334 | 324 |
| 1966 | 117,849 | 362 | 4406400 | 13.5 | 320 | 306 |
| 1967 | 115,622 | 355 | 4406400 | 13.5 | 320 | 306 |
| 1968 | 124,972 | 384 | 4467600 | 13.7 | 445 | 432 |
| 1969 | 125,849 | 386 | 4467600 | 13.7 | 451 | 437 |
| 1970 | 123,490 | 379 | 4467600 | 13.7 | 444 | 430 |
| 1971 | 126,272 | 388 | 4467600 | 13.7 | 463 | 450 |

| Year | Total Purchased Water (1000 Gallons) | AFY | Mountain Springs System (Gallons) | MSS (AFY) | Water Provided to SDWC Customers (AFY) | Water provided to SDWC from IWVGB. Negative is assumed to be 0. |
|---|---|---|---|---|---|---|
| 1972 | 132,030 | 405 | 4467600 | 13.7 | 480 | 466 |
| 1973 | 134,117 | 412 | 4467600 | 13.7 | 489 | 475 |
| 1974 | 141,156 | 433 | 4467600 | 13.7 | 494 | 480 |
| 1975 | 143,288 | 440 | 4467600 | 13.7 | 516 | 502 |
| 1976 | 155,872 | 478 | 4467600 | 13.7 | 570 | 556 |
| 1977 | 167,966 | 515 | 4467600 | 13.7 | 603 | 589 |
| 1978 | 164,719 | 506 | 4467600 | 13.7 | 582 | 568 |
| 1979 | 170,022 | 522 | 4467600 | 13.7 | 617 | 603 |
| 1980 | 172,869 | 531 | 0 | 0 | 636 | 636 |
| 1981 | 181,482 | 557 | 0 | 0 | 637 | 637 |
| 1982 | 153,709 | 472 | 0 | 0 | 568 | 568 |
| 1983 | 143,236 | 440 | 0 | 0 | 518 | 518 |
| 1984 | 151,569 | 465 | 0 | 0 | 534 | 534 |
| 1985 | 162,593 | 499 | 0 | 0 | 576 | 576 |
| 1986 | 154,500 | 474 | 0 | 0 | 568 | 568 |
| 1987 | 145,408 | 446 | 0 | 0 | 538 | 538 |
| 1988 | 142,477 | 437 | 0 | 0 | 542 | 542 |
| 1989 | 139,187 | 427 | 0 | 0 | 404 | 404 |
| 1990 | 135,936 | 417 | 0 | 0 | 417 | 417 |
| 1991 | 120,374 | 369 | 0 | 0 | 340 | 340 |
| 1992 | 124,463 | 382 | 0 | 0 | 337 | 337 |

| Year | Total Purchased Water (1000 Gallons) | AFY | Mountain Springs System (Gallons) | MSS (AFY) | Water Provided to SDWC Customers (AFY) | Water provided to SDWC from IWVGB. Negative is assumed to be 0. |
|---|---|---|---|---|---|---|
| 1993 | 120,368 | 369 | 0 | 0 | 328 | 328 |
| 1994 | 125,584 | 385 | 0 | 0 | 338 | 338 |
| 1995 | 122,225 | 375 | 0 | 0 | 335 | 335 |
| 1996 | 114,515 | 351 | 0 | 0 | 319 | 319 |
| 1997 | 100,348 | 308 | 0 | 0 | 294 | 294 |
| 1998 | 107,088 | 329 | 0 | 0 | 282 | 282 |
| 1999 | 104,300 | 320 | 0 | 0 | 290 | 290 |
| 2000 | 107,779 | 331 | 0 | 0 | 293 | 293 |
| 2001 | 95,799 | 294 | 0 | 0 | 274 | 274 |
| 2002 | 95,681 | 294 | 0 | 0 | 280 | 280 |
| 2003 | 94,474 | 290 | 0 | 0 | 276 | 276 |
| 2004 | 97,323 | 299 | 0 | 0 | 284 | 284 |
| 2005 | 93,432 | 287 | 0 | 0 | 273 | 273 |
| 2006 | 91,667 | 281 | 0 | 0 | 268 | 268 |
| 2007 | 90,611 | 278 | 0 | 0 | 265 | 265 |
| 2008 | 85,045 | 261 | 0 | 0 | 249 | 249 |
| 2009 | 82,830 | 254 | 0 | 0 | 244 | 244 |
| 2010 | 80,128 | 246 | 0 | 0 | 234 | 234 |
| 2011 | 75,123 | 231 | 0 | 0 | 207 | 207 |
| 2012 | 76,255 | 234 | 0 | 0 | 223 | 223 |
| 2013 | 70,282 | 216 | 0 | 0 | 205 | 205 |

| Year | Total Purchased Water (1000 Gallons) | AFY | Mountain Springs System (Gallons) | MSS (AFY) | Water Provided to SDWC Customers (AFY) | Water provided to SDWC from IWVGB. Negative is assumed to be 0. |
|---|---|---|---|---|---|---|
| 2014 | 66,792 | 205 | 0 | 0 | 195 | 195 |
| 2015 | 58,262 | 179 | 0 | 0 | 179 | 179 |
| 2016 | 61,348 | 188 | 0 | 0 | 179 | 179 |
| 2017 | 63,145 | 194 | 0 | 0 | 185 | 185 |
| 2018 | 64,156 | 197 | 0 | 0 | 188 | 188 |

34. If YOUR groundwater extractions are used to provide potable water to customers, identify what mechanisms have been used to measure groundwater extractions by each well that has served YOUR customers since 1937.

As stated in question 23, the measurement mechanisms are stated in the table below

**WELL METERS**

| **Company ID** | **USGS ID** | **Year Drilled** | **Previous Meter** | **Current Meter** |
|---|---|---|---|---|
| Well 22 | 25D1 | 1912 | unknown | Well not in use |
| Windy Acres, 97D | 1K1 | 1930 | unknown | Well not in use |
| WE-1, 97D | 33P3 | 1931 | unknown | Well not in use |
| WE-2, 97B | 4B2 | 1940 | McCrometer MW500-6 | Yokogawa-AFX150c-6 |
| Well 23 | 25D2 | 1942 | unknown | Well not in use |
| WE-3 | 4B1 | 1946 | unknown | Well not in use |
| Well 30 | 25E1 | 1951 | McCrometer MW500-6 | Yokogawa-AFX150c-6 |
| Well-34, Pribus | 30E2 | 1953 | unknown | Well not in use |
| WE-4 | | 1965 | McCrometer MW500-6 | Yokogawa-AFX150c-6 |
| Well 35 | | 1989 | McCrometer MW500-6 | Yokogawa-AFX150c-6 |
| Well 36 | | 1990 | McCrometer MW500-6 | Yokogawa-AFX150c-6 |

35. If YOUR groundwater extractions are used to provide potable water to customers, identify what mechanisms have been used to measure groundwater use by each of YOUR customers since 1937.

SDWC, since it received its original Certificate of Public Convenience in 1944 from the California Railroad Commission has had meters on all of its customer connections.[52]

The number of active service connections since 1944 and the number and type of meters used to measure use on the pipe systems are shown in the table below and are taken from the SDWC CPUC reports from 1944 to 2018. Data is missing for 2010.

Currently, the majority of meters are 5/8 x 3/4 Badger Recordall Disc Meters. The 1.5 and 2 inch meters are a mixture of Hersey turbine and Badger disc meters. Two of the 2-in meters are compound meters. Low flow is measured by disc and high flow is measured by turbine. In 2019, the 4-in meter no longer exists and instead there is a 2-in Badger M170 disc meter. The 6-in meter is now an 8-in Yokogawa Magnetic Flow Meter.

**Number of Metered Service Connections and Meters by Year**

| Year | Metered Active Service connections | Population (est) | Number and Size of Meters |
|---|---|---|---|
| 1943 | | | |
| 1944 | 170 | | |
| 1945 | 198 avg, 202 end | 1000 | 199-3/4 in, 3-2 in |
| 1946 | 212 avg, 215 end | 1000 | 212-3/4 in, 3-2 in |
| 1947 | 262 avg, 300 end | 1200 | 297-3/4 in, 3-2 in |
| 1948 | 423 avg, 705 end | 2500 | 720-3/4 in meters, 3-2 in |
| 1949 | 733 avg, 751 end | 2500 | 761-3/4 in, 3-2 in |
| 1950 | 763 avg, 765 end | 2700 | 793-3/4 in, 3-2 in |
| 1951 | 779 avg, 789 end | 3000 | 825-3/4 in, 3-2 in |
| 1952 | 807 avg, 818 end | 3500 | 862-3/4 in, 3-2 in |
| 1953 | 881 avg, 996 end | 4000 | 1080-3/4 in, 3-2 in |
| 1954 | 1022 avg, 1043 end | 4500 | 1120-5/8 in, 9-2 in |
| 1955 | 1180 | 4700 | 1158-5/8x3/4 in, 1-1in, 12-1.5 in, 17-2-in |
| 1956 | 1136 | 4740 | 1198-5/8x3/4 in, 1-1 in, 12-1.5 in, 17-2 in |
| 1957 | 1153 | 4750 | 1232-5/8x3/4 in, 1-1 in, 12-1.5 in, 17-2 in |
| 1958 | 1209 | 4500 | 1316-5/8x3/4 in, 1-1 in, 12-1.5 in, 17-2 in |
| 1959 | 1164 | 4500 | 1294-5/8x3/4 in, 13-1.5 in, 15-2 in, 1-3 in |
| 1960 | 1187 | 4500 | 1291-5/8x3/4 in, 13-1.5 in, 15-2 in, 1-3 in |
| 1961 | 1254 | 4500 | 1322-5/8x3/4 in, 11-1.5 in, 15-2 in, 1-3 in |

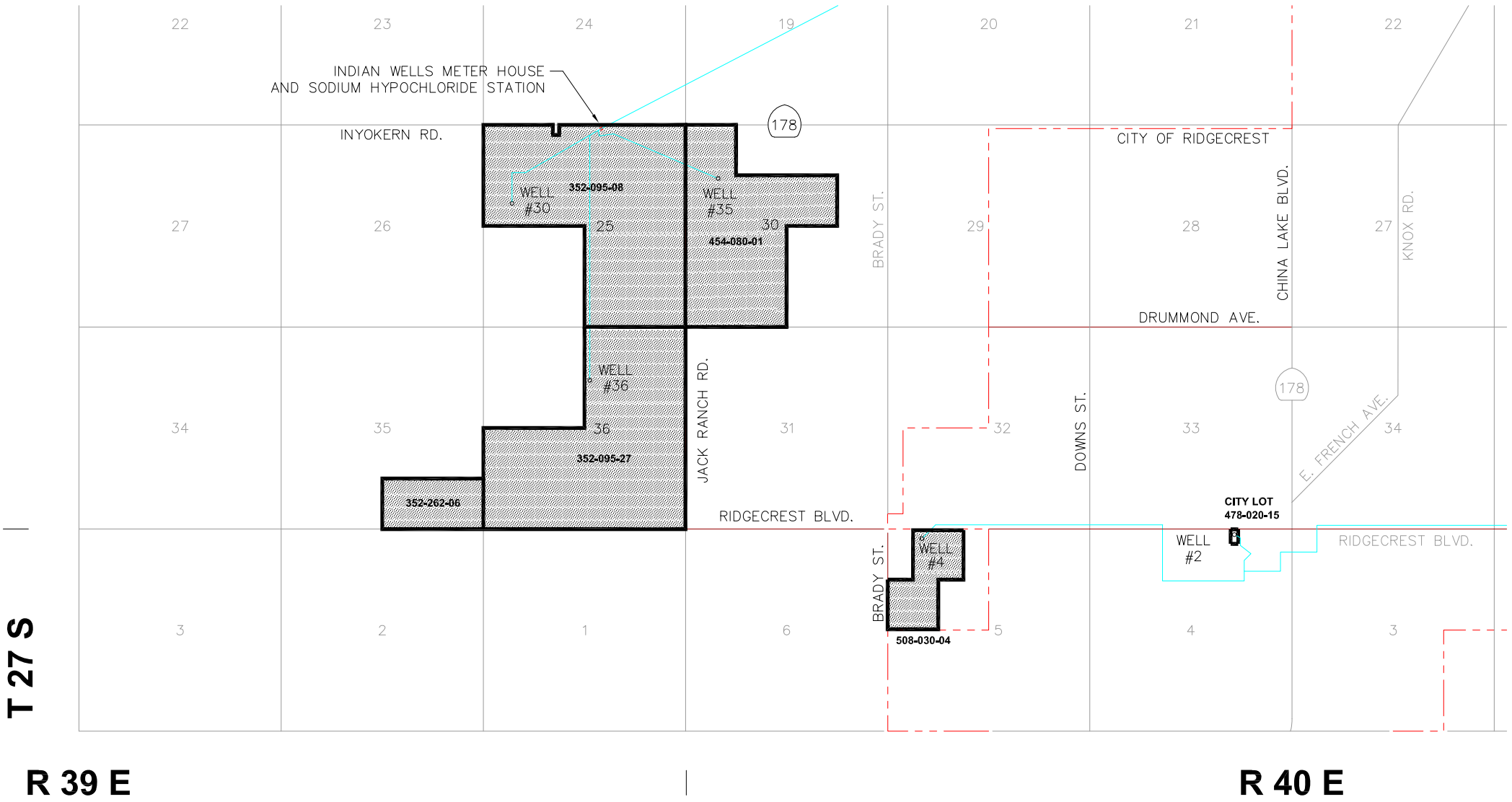
[52] Pg. 6, CA Railroad Commission Decision No. 36822, Order of Public Convenience, 1944

| Year | Metered Active Service connections | Population (est) | Number and Size of Meters |
|---|---|---|---|
| 1962 | 1277 | 4500 | 1296-5/8x3/4 in, 9-1.5 in, 15-2 in, 1-3 in |
| 1963 | 1253 | 4500 | 1315-5/8x3/4 in, 10-1.5 in, 14-2 in, 1-3 in |
| 1964 | 1297 | 4500 | 1320-5/8x3/4 in, 7-1.5 in, 2-2 in |
| 1965 | 1334 | 4500 | 1371-5/8x3/4 in, 1-1in, 14-2 in, 1-3in |
| 1966 | 1352 | 4500 | 1377-5/8x3/4 in, 1-1 in, 13-2 in, 1-3 in |
| 1967 | 1361 | 4500 | 1359-5/8x3/4 in, 1-1 in, 1-1.5 in, 13-2 in, 1-3 in |
| 1968 | 1317 | 5000 | 1367-5/8x3/4 in, 1-1 in, 1-1.5 in, 16-2 in, 1-3 in |
| 1969 | 1319 | 5000 | 1382-5/8x3/4 in, 1-1 in, 2-1.5 in, 16-2 in, 1-3 in |
| 1970 | 1312 | 5000 | 1385-5/8x3/4 in, 1-1 in, 2-1.5 in, 17-2 in, 1-3 in |
| 1971 | 1328 | 5000 | 1389-5/8x3/4 in, 1-1 in, 2-1.5 in, 17-2 in, 1-3 in |
| 1972 | 1335 | 5000 | 1394-5/8x3/4 in, 1-1 in, 2-1.5 in, 17-2 in, 1-3 in |
| 1973 | 1339 | 4400 | 1355-5/8x3/4 in, 7-1.5 in, 11-2 in, 1-3 in, 1-4 in |
| 1974 | 1372 | 4700 | 1363-5/8x3/4 in, 1-1 in, 10-1.5 in, 9-2 in, 1-3 in, 1-4 in |
| 1975 | 1386 | 4500 | 1362-5/8x3/4 in, 1-1 in, 9-1.5 in, 7-2 in, 1-3 in, 1-4 in |
| 1976 | 1523 | 5200 | 1537-5/8x3/4 in, 8-1.5 in, 8-2 in, 1-3 in, 2-4 in |
| 1977 | 1580 | 5200 | 1578-5/8x3/4 in, 9-1.5 in, 7-2 in |
| 1978 | 1581 | 5000 | 1578-5/8x3/4 in, 10-1.5 in, 11-2 in |
| 1979 | 1552 | 5000 | 1581-5/8x3/4 in, 11-1.5 in, 8-2 in |
| 1980 | 1581 | 4700 | 1584-5/8x3/4 in, 9-1.5 in, 13-2 in, 1-4 in |
| 1981 | 1488 | 4700 | 1525-5/8x3/4 in, 10-1.5 in, 13-2 in, 2-4 in |
| 1982 | 1320 | 4070 | 1525-5/8x3/4 in, 10-1.5 in, 13-2 in, 2-4 in |
| 1983 | 1289 | 4070 | 1482-5/8x3/4 in, 10-1.5 in, 9-2 in, 2-4 in, 1-6 in |
| 1984 | 1296 | 4070 | 1396-5/8x3/4 in, 10-1.5 in, 10-2 in, 1-4 in, 1-6 in |
| 1985 | 1289 | 4400 | 1383-5/8x3/4 in, 10-1.5 in, 9-2 in, 2-4 in, 1-6 in |
| 1986 | 1289 | 4000 | 1381-5/8x3/4 in, 9-1.5 in, 14-2 in, 2-4 in, 1-6 in |
| 1987 | 1332 | 4000 | 1374-5/8x3/4 in, 9-1.5 in, 13-2 in, 1-4 in, 1-6 in |
| 1988 | 1324 | 4000 | 1480-5/8x3/4 in, 11-1.5 in, 14-2 in, 1-4 in, 1-6 in |
| 1989 | 1368 | 4000 | 1359-5/8x3/4 in, 10-1.5 in, 13-2 in, 2-4 in, 1-6 in |
| 1990 | 1252 | 3500 | 1346-5/8x3/4 in, 9-1.5 in, 13-2 in, 2-4 in, 1-6 in |
| 1991 | 1222 | 2700 | 1366-5/8x3/4 in, 9-1.5 in, 13-2 in, 2-4 in, 1-6 in |
| 1992 | 1184 | 2700 | 1342-3/4 in, 12-1.5 in, 13-2 in, 2-4 in |
| 1993 | 1181 | 2700 | 1286-3/4 in, 10-1.5 in, 11-2 in, 1-4 in, 1-6 in |
| 1994 | 1181 | 2700 | 1264-3/4 in, 10-1.5 in, 13-2 in, 1-4 in, 1-6 in |
| 1995 | 1147 | 2700 | 1247-3/4 in, 10-1.5 in, 13-2 in, 1-4 in, 1-6 in |
| 1996 | 1030 | 2500 | 1207-3/4 in, 10-1.5 in, 13-2 in, 1-4 in, 1-6 in |
| 1997 | 1000 | 2500 | 1226-3/4 in, 10-1.5 in, 13-2 in, 1-4 in, 1-6 in |
| 1998 | 970 | 2500 | 1204-3/4 in, 10-1.5 in, 13-2 in, 1-4 in, 1-6 in |
| 1999 | 931 | 2300 | 1182-3/4 in, 10-1.5 in, 13-2 in, 1-4 in, 1-6 in |

| Year | Metered Active Service connections | Population (est) | Number and Size of Meters |
|---|---|---|---|
| 2000 | 935 | 2300 | 1151-3/4 in, 10-1.5 in, 13-2 in, 1-4 in, 1-6 in |
| 2001 | 920 | 2100 | 1083-3/4 in, 10-1.5 in, 16-2 in, 1-4 in, 1-6 in |
| 2002 | 920 | 2100 | 1106-3/4 in, 10-1.5 in, 15-2 in, 1-4 in, 1-6 in |
| 2003 | 929 | 2100 | 1063-3/4 in, 8-1.5 in, 15-2 in, 1-4 in, 1-6 in |
| 2004 | 917 | 2100 | 1073-3/4 in, 8-1.5 in, 15-2 in, 1-4 in, 1-6 in |
| 2005 | 923 | 2100 | 1065-3/4 in, 9-1.5 in, 15-2 in, 1-4 in, 1-6 in |
| 2006 | 905 | 2100 | 1058-3/4 in, 9-1.5 in, 15-2 in, 1-4 in, 1-6 in |
| 2007 | 905 | 2100 | 1004-3/4 in, 9-1.5 in, 16-2 in, 1-4 in, 1-6 in |
| 2008 | 898 | 2100 | 1017-3/4 in, 9-1.5 in, 16-2 in, 1-4 in, 1-6 in |
| 2009 | 897 | 2100 | 986-3/4 in, 8-1.5 in, 18-2 in, 1-4 in, 1-6 in |
| 2010 | 908 | unknown | unknown |
| 2011 | 881 | 2100 | 959-3/4 in, 8-1.5 in, 22-2 in, 1-4 in, 1-6 in |
| 2012 | 831 | 2000 | 919-3/4 in, 8-1.5 in, 19-2 in, 1-4 in, 1-6 in |
| 2013 | 811 | 2100 | 929-3/4 in, 8-1.5 in, 19-2 in, 1-4 in, 1-6 in |
| 2014 | 807 | 2000 | 901-3/4 in, 8-1.5 in, 14-2 in, 1-4 in, 1-6 in |
| 2015 | 796 | 1900 | 878-3/4 in, 8-1.5 in, 14-2 in, 1-4 in, 1-6 in |
| 2016 | 787 | 2100 | 870-5/8x3/4 in, 8-1.5 in, 14-2 in, 1-4 in, 1-6 in |
| 2017 | 795 | 2100 | 846-5/8 x3/4 in, 8-1.5 in, 14-2 in, 1-4 in, 1-6 in |
| 2018 | 805 | 2100 | 838-5/8 x3/4 in, 8-1.5 in, 12-2-in, 1-4 in, 1-6 in |

# Appendices

APPENDIX 1: SVM HOLDINGS IN INDIAN WELLS VALLEY

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R 40 E

# Searles Valley Minerals

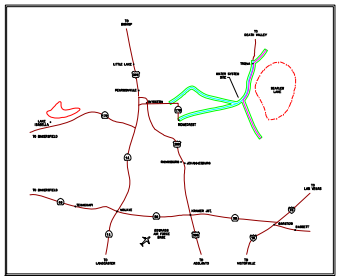
## POTABLE & BRACKISH WATER SYSTEMS

SCALE IN FEET

DRAWN BY: G. CORRION

DATE: SEPTEMBER 21, 2017

AutoCAD FILE: 61-GA-0020



VICINITY MAP

NO SCALE

**INDIAN WELL VALLEY POTABLE PIPELINE SYSTEM RIGHT-OF-WAY # LA 087349**

**WESTEND POTABLE PIPELINE SYSTEM RIGHT-OF-WAY # 089373**

**VALLEY WELLS BRACKISH PIPELINE SYSTEM RIGHT-OF-WAY # LA 087346 AND # CACA 22656**

**SOUTH BRACKISH PIPELINE SYSTEM RIGHT-OF-WAY SYSTEM # CACA 002754**

**PIPELINE MATERIAL ABBREVIATIONS**

| | |
|---|---|
| A.C.P. | ASBESTOS CEMENT PIPE |
| C.C.P. | CEMENT CYLINDER PIPE |
| C.L.S. | CEMENT LINED STEEL PIPE |
| F.R.P. | FIBERGLAS REINFORCED PIPE |
| P.S.S. | PRESSURE SUSTAINING STATION |
| P.R.S. | PRESSURE REDUCING STATION |
| P.V.C. | POLYVINYL CHLORIDE PIPE |




Searles Valley Minerals

POTABLE & BRACKISH WATER SYSTEMS

AutoCAD FILE: 61-GA-0020

# Appendix 3

SDWC Premise Data of Active Service Connections as of 2/7/2020 3:53:50 PM
SEARLES
DOMESTIC
WATER
Premise (APN)
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48501135

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**IWV Ground Water Production Estimates 1975 - Present**

| Year | Meadow-brook Farms (e) | Simmons Ranch (f) | China Lake Acres | City of R/C | SVM | IWVWD | Inyokern CSD | NAWS (c) | Neal Ranch | Private Wells | Quist Farms | Orchards (d) | R/C Heights | S. Leroy (a/b) | Annual Totals |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **1975** | 1516 | | 400 | | 2781 | 2983 | 300 | 5000 | 2000 | | | | 1000 | | 15980 |
| **1976** | 1494 | | 400 | | 2911 | 3099 | 300 | 5000 | 2000 | | | | 1000 | 1600 | 17804 |
| **1977** | 2702 | | 400 | | 3315 | 3063 | 300 | 5000 | 2000 | | | | 1000 | 1600 | 19380 |
| **1978** | 3216 | | 400 | | 3081 | 3357 | 300 | 5000 | 2000 | | | | 1000 | 1600 | 19954 |
| **1979** | 3257 | | 400 | | 3081 | 3402 | 300 | 5154 | 2000 | 2100 | | | 1000 | 1600 | 22294 |
| **1980** | 7515 | | 400 | | 2887 | 3319 | 300 | 4995 | 2041 | 2100 | | | 1000 | 1600 | 26157 |
| **1981** | 10036 | | 400 | | 3065 | 4223 | 300 | 4804 | 2002 | 2100 | | | 1000 | 1600 | 29530 |
| **1982** | 10324 | | 400 | | 2887 | 3963 | 300 | 4450 | 1478 | 2100 | | | 1000 | 1600 | 28502 |
| **1983** | 10087 | | 400 | | 2476 | 4316 | 300 | 4402 | 1752 | 2400 | | | 1000 | 1600 | 28733 |
| **1984** | 10312 | | 400 | | 2307 | 4940 | 300 | 4694 | 1568 | 2400 | | | 1000 | 1600 | 29521 |
| **1985** | 10100 | | 400 | | 2397 | 4981 | 300 | 4002 | 2450 | 2500 | | | 1000 | 1600 | 29730 |
| **1986** | 5389 | | 400 | | 2557 | 5901 | 300 | 4430 | 2353 | 2500 | | | 1000 | 1600 | 26430 |
| **1987** | 4141 | | **Purchased** | | 2560 | 7426 | 300 | 4422 | 1447 | 2500 | | | **Purchased** | **Ranch** | 22796 |
| **1988** | 5255 | | **by** | | 2560 | 7889 | 173 | 3980 | 1195 | 2500 | | | **by** | **Closed** | 23552 |
| **1989** | 7064 | | **IWVWD** | | 2320 | 8725 | 175 | 4205 | **Purchased** | 2650 | | 500 | **IWVWD** | | 25639 |
| **1990** | 6187 | | | | 2505 | 8600 | 170 | 3667 | **by** | 2650 | | 525 | | | 24304 |
| **1991** | 6737 | | | | 2406 | 7700 | 150 | 3364 | **IWVWD** | 2650 | | 525 | | | 23532 |
| **1992** | 7104 | | | | 2528 | 7650 | 141 | 3351 | | 2650 | | 550 | | | 23974 |
| **1993** | 7701 | | | | 2607 | 7800 | 150 | 3411 | | 2650 | | 575 | | | 24894 |
| **1994** | 7504 | | | | 2607 | 8300 | 146 | 3684 | | 2650 | | 575 | | | 25466 |
| **1995** | 7427 | | | | 2710 | 8100 | 125 | 3848 | | 2650 | | 595 | | | 25455 |
| **1996** | 7807 | | | | 2620 | 8504 | 134 | 3367 | | 2650 | | 600 | | | 25682 |
| **1997** | 7800 | | | | 2522 | 8534 | 139 | 2983 | | 2650 | | 625 | | | 25253 |
| **1998** | 7800 | | | | 2527 | 7719 | 102 | 3018 | | 2700 | | 640 | | | 24506 |
| **1999** | 7800 | | | | 2537 | 8242 | 104 | 2541 | | 2700 | | 690 | | | 24614 |
| **2000** | 7800 | | | | 2701 | 8148 | 111 | 2690 | | 2800 | | 725 | | | 24975 |
| **2001** | 8150 | | | | 2732 | 8392 | 97 | 2840 | | 2800 | | 750 | | | 25761 |
| **2002** | 8460 | | | 445 | 2564 | 8865 | 115.6 | 3138 | | 2800 | 750 | 750 | | | 27887.6 |
| **2003** | 9420 | | | 616 | 2561 | 9098 | 126 | 3325 | | 2800 | 750 | 775 | | | 29471 |
| **2004** | 9370 | | | 413 | 2470 | 8992 | 118.4 | 2331 | | 2800 | 750 | 800 | | 950 | 28994.4 |
| **2005** | 9580 | | | 366 | 2504 | 8545 | 135 | 2288 | | 2800 | 750 | 825 | | 1025 | 28818 |
| **2006** | 9460 | | | 385 | 2591.2 | 8864.4 | 135 | 2440 | | 2800 | 750 | 840 | | 1050 | 29315.6 |
| **2007** | 9270 | | | 420 | 2530.4 | 9198.5 | 90.7 | 2533 | | 2800 | 750 | 840 | | 1000 | 29432.6 |
| **2008** | 8957 | | | 392 | 2520.7 | 8564.8 | 118 | 2119 | | 2800 | 750 | 900 | | 1200 | 28321.5 |
| **2009** | 9536 | | | 400 | 2534.5 | 8398.2 | 118 | 1883 | | 2800 | 750 | 925 | | 1125 | 28469.7 |
| **2010** | 9437 | | | 339 | 2586.6 | 7570 | 118 | 1710 | | 2800 | 750 | 925 | | 1050 | 27285.6 |
| **2011** | 9827 | | | 370 | 2457.5 | 7364.25 | 118 | 1734 | | 2800 | 750 | 925 | | 1050 | 27395.75 |
| **2012** | 9876 | | | 348 | 2743 | 7633.45 | 117.927 | 1710 | | 2800 | 750 | 1062 | | 800 | 27840.377 |
| **2013** | 9354 | 918 | | 423 | 2706 | 7531.69 | 117.68 | 1538 | | 1100 | 750 | 2846 | | | 27284.37 |
| **2014** | 7524 | 1,087 | | 392 | 2679 | 7318.7 | 108 | 1618 | | 1100 | 750 | 4087 | | | 26663.7 |
| **2015** | 6517 | 1,003 | | 427 | 2518 | 7050 | 90.532 | 1442 | | 1100 | 750 | 4387 | | | 25284.532 |
| **2016** | 6387 | 918 | | 373 | 2377 | 6411.8 | 102.335 | 1595 | | 1100 | 750 | 4300 | | | 24314.135 |
| **Total** | 315200 | 3926 | 4800 | 6109 | 110530 | 290681.79 | 7546.174 | 139706 | 26286 | 93250 | 11250 | 33062 | 12000 | 26850 | 1081196.9 |
| **Avg.** | 7532 | 1003 | 400 | 410 | 2638 | 6933 | 182 | 3369 | 1878 | 2491 | 750 | 1065 | 1000 | 1343 | 25778 |

(a) Spike Leroy ranch started back up in 2004 with approx. 150 acres of alfalfa x 7

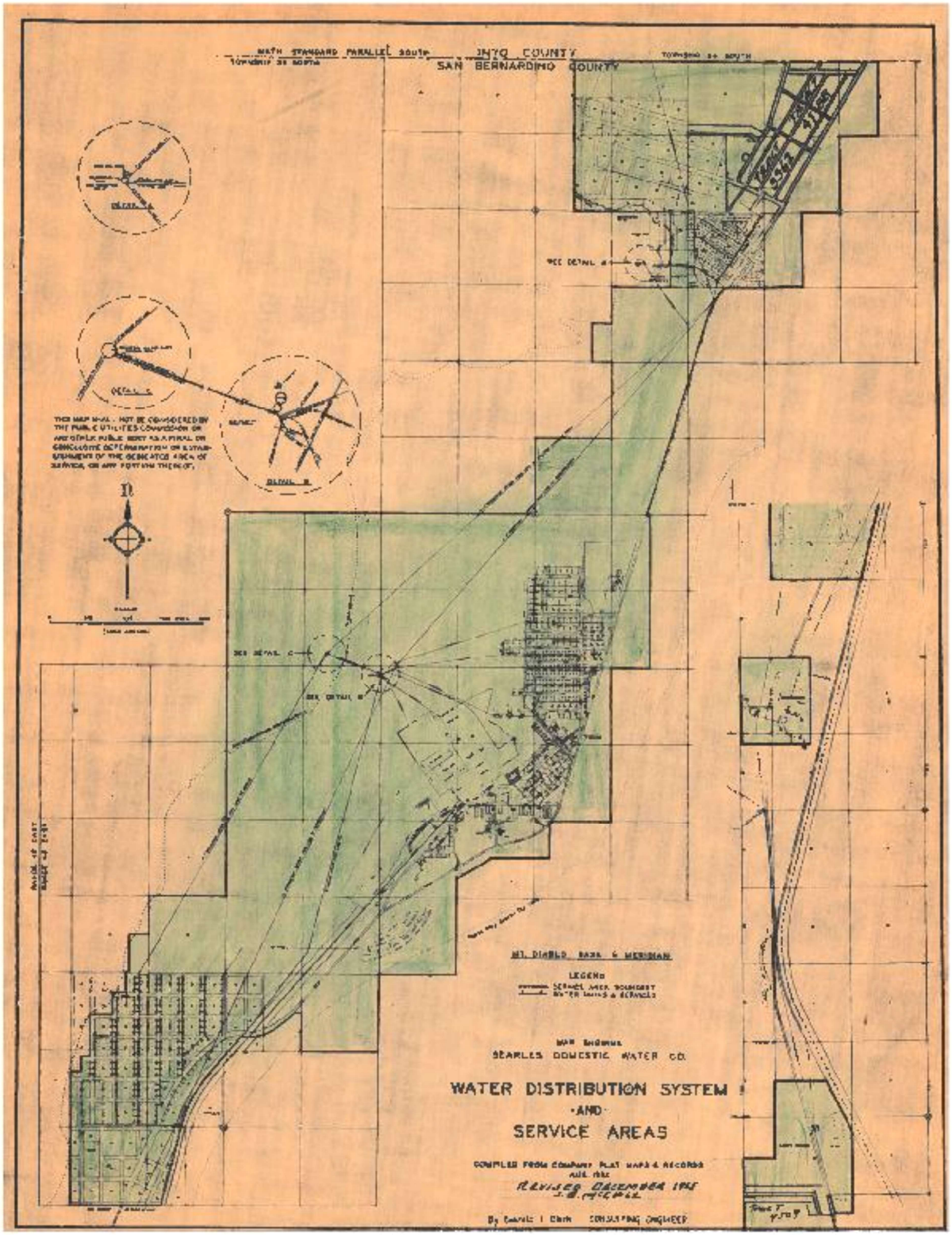
(b) 2012 number is an estimate/converted to pistachio 2013

(c) Navy began aggressive water conservation program in 2007

(d) 2013 number based on March 4, 2014 letter to BOS.
2014/2015/2016 data includes 3,700 and 4,000 AF from Mojave Pistacio "based off the UC Davis Pistachio Cost Study plus dust mitigation."

(e) 2005 Brown Road Farming changed to Meadowbrook Farms

## Appendix 5: Map of Water Distribution and Service Areas



Indian Wells
(760) 568-2611
Irvine
(949) 263-2600
Manhattan Beach
(310) 643-8448
Ontario
(909) 989-8584

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW

300 South Grand Avenue, 25th Floor, Los Angeles, CA 90071
Phone: (213) 617-8100 | Fax: (213) 617-7480 | www.bbklaw.com

Riverside
(951) 686-1450
Sacramento
(916) 325-4000
San Diego
(619) 525-1300
Walnut Creek
(925) 977-3300
Washington, DC
(202) 785-0600

**Eric L. Garner**
(213) 787-2561
eric.garner@bbklaw.com
File No. 65352.00001

July 15, 2020

**VIA E-MAIL APRILN@IWVWD.COM**

Indian Wells Valley Groundwater Authority
Board of Directors
c/o Clerk of the Board [apriln@iwvwd.com]
500 W. Ridgecrest Blvd
Ridgecrest, CA 93555

Re: Comments on Indian Wells Valley Groundwater Authority Agenda Items 8 and 9 listed on the Indian Wells Valley Groundwater Authority (IWVGA) Board of Directors Agenda for the July 16, 2020 Meeting

Dear Chairman Gleason and Board Members:

We respectfully submit the following comments on items 8 and 9 of the July 16, 2020 IWVGA Board agenda on behalf of our client, Searles Valley Minerals Inc. (Searles Valley).

## I. Agenda item 8: "PUBLIC HEARING AND CONSIDERATION OF DATA PACKAGE ON AN INCREASE IN THE CURRENT GROUNDWATER EXTRACTION FEE AND ADOPTION OF CEQA FINDINGS AND ORDINANCE 02-20"

Searles Valley has several concerns with the proposed extraction fee, both procedurally and substantively.

From a procedural standpoint, the data package that the IWVGA is relying on to calculate the extraction fee was released on July 14 and presents revenue and expenditures estimates that differ from the data package released on June 17. Pursuant to Section 10730(b) of the Water Code, a groundwater management agency must make available to the public "at least 20 days prior to the [public] meeting . . . data upon which the proposed fee is based." As such, a Board action on the proposed fee two days after its release of the underlying data to the public would be in violation of the Sustainable Groundwater Management Act (SGMA) requirements.

In addition, any fee imposed to recover costs associated with the preparation of a Groundwater Sustainability Plan (GSP) must meet an exemption to the definition of a "tax" under article XIII C, section 1(e) of the California Constitution (commonly known as Proposition

26). For fees imposed for the purpose of implementing the GSP, such as the imposition of groundwater extraction fees, Water Code section 10730.2(c) requires that the fees comply with article XIII D, section 6(a) and 6(b) of the California Constitution, which comprise the procedural and substantive requirements of Proposition 218. The groundwater sustainability agency bears the burden of demonstrating that the requirements have been met. A rate study and cost of service analysis are necessary to determine that the rates for groundwater extraction fees meet these requirements, and to provide the evidentiary record supporting the fees. To date, the IWVGA has not completed or released a fee study or offered an analysis to demonstrate that the fee is not a tax within the meaning of Proposition 26 and 218. Simply stating that the fee is a "regulatory fee" without further analysis is not sufficient to meet the agency's burden of proof. Absent such analysis and proof, the fee may be deemed a tax under California law, requiring supermajority voter approval and cannot be imposed administratively as the IWVGA is intent on doing.

From a substantive standpoint, the new Ordinance 02-20, in Section 3, amends the prior Ordinance 02-18 to make the groundwater extraction fee applicable to "all groundwater extractions" yet the staff report states that de minimis pumpers are exempt from paying the fee. Excluding the nearly 800 de minimis pumpers from paying the fee under the proposed ordinance lacks adequate justification. Section 10730(a) of the Water Code allows the imposition of fees on de minimis extractors if the extractors are regulated by the agency. The IWVGA is regulating de minimis extractors by requiring them to register their wells and submit periodic pumping reports. Therefore, it would be inconsistent with SGMA and inequitable for a small number of pumpers (less than 60) to bear the burden of paying this substantial fee that other pumpers should be subject to and receive a benefit from. In addition, Searles Valley is concerned that the data package lacks sufficient supporting documentation, is constantly changing, includes costs that are improperly categorized as GSP preparation that should be classified as GSP implementation actions (thus subject to different legal and procedural standards), and includes improper reimbursements to member agencies. Further, the total cost to prepare the GSP is an astounding $7 million—far exceeding GSP preparation costs in other basins.

## II. Agenda item 9: "BOARD CONSIDERATION AND ADOPTION OF RESOLUTION 06-20 AND RELATED CEQA FINDINGS ADOPTING THE REPORT ON THE INDIAN WELLS VALLEY GROUNDWATER BASIN'S SUSTAINABLE YIELD OF 7,650 ACRE-FEET

As expressed in prior written letters and correspondence to the IWVGA and this Board, the estimated sustainable yield of 7,650 acre-feet is based on incomplete and inaccurate data. Taking any action based on this estimate ignores the numerous acknowledgements throughout the IWVGA's own GSP of serious data gaps and raises doubts about the accuracy of not only the sustainable yield estimate but also the water budget, sustainability goal and

threshold estimates upon which IWVGA relies in considering this Agenda item. The GSP expressly states in several sections that data tracking is fairly recent (mostly since SGMA came into effect) and that many of the "historical" data points are based on a single measurement recorded at the time of well installation. IWVGA should start with a higher sustainable yield estimate until it can improve its threshold data.

More importantly, the IWVGA continues to make the argument on behalf of the U.S. Navy as to the Navy's quantifiable right to basin water and the priority thereof, asserting that the Navy is entitled to nearly all the basin's sustainable yield and that its right is superior to the right of all other pumpers in the basin. Such a position is not supported by law or facts. Under federal law, an appropriation that predates the reservation of land for the Navy base, such as Searles Valley's appropriation, has priority over the Federal Reserved Right. (See *Cappaert v. United States* (1976) 426 U.S. 128.) The report relied on for this Agenda item seems to conclude that because of sovereign immunity, this priority should be reversed.

Sovereign immunity is a matter of enforcement and does not relieve the IWVGA from its obligation to respect priorities established by federal law nor allow it to ignore the factual evidence in the record before it. Not only is IWVGA's conclusion and potential action contrary to water law, it is also contrary to the IWVGA's authority under SGMA which prohibits the IWVGA from determining water rights. Searles Valley has presented the IWVGA with written documentation related to both these points on multiple occasions. At the June 18 IWVGA Board meeting, an audio recording of which is in IWVGA's possession, Navy Commander Benson called into the public meeting on behalf of the Navy and stated that the Navy has been willing to accept an allocation of 2,041 acre-feet per year and that the Navy submitted certain reports and letters to the IWVGA as to its historical water usage but that any determinations regarding the Navy's water rights in the basin were reached by the IWVGA on its own, not pursuant to any claim asserted by the Navy. Thus, even the Navy does not support the conclusions advanced by the IWVGA about the Navy's water rights.

The IWVGA also goes as far as asserting that the Navy's water rights can be used by other entities at locations not within the boundaries of the base and not on the federally reserved property, and is taking actions (such as adopting ordinances encompassing this assertion that limit pumping amounts of other non-federal pumpers) to make sure this is accomplished. Such assertions and actions are contrary to established law. Non-Indian federal reserved water rights are subject to the "primary purpose" standard. (*U. S. v. New Mexico* (1978) 438 U.S. 696, 712-13; *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District* (9th Cir. 2017) 849 F.3d 1262, 1270.) The U.S. Supreme Court differentiated between primary and secondary purposes of the reservation, whereby the reserved water right only attaches to the primary purposes: the one directly associated with use of the water on the reserved land.

Even on the reserved property, the reserved right does not attach to water that is only for a secondary purpose of the reservation. (*U. S. v. New Mexico*, *supra*, 438 U.S. at p. 702.) Water for secondary purposes must be appropriated in the same manner as any other appropriator. (*Id.* at p. 703.) The court explained that "the agencies responsible for administering the federal reservations have also recognized Congress' intent to [appropriate funds to] acquire under state law any water not essential to the specific purposes of the reservation." (*Ibid.*) Therefore, water uses by the Navy outside the boundaries of the base and reserved property cannot possibly be construed as a "primary" purpose to which the Navy's water rights attach. By the same token, water uses on the base that are not directly associated with essential Navy activities are not "primary" under federal water law. If the Navy wishes to use basin water for those secondary purposes, it may appropriate and pay for that water from its appropriated funds, and should not be subsidized by monies collected from other pumpers in the basin. Unfortunately, it appears the IWVGA is intent on continuing to take actions contrary to the facts and law.

We appreciate the IWVGA's consideration of these comments. Please contact me should you have any questions.

Sincerely,

Eric L. Garner
of BEST BEST & KRIEGER LLP

cc: Burnell Blanchard, Searles Valley Minerals Inc.
Camille Anderson, Searles Valley Minerals Inc.
Jeff Dunn, Best Best & Krieger LLP
Maya Mouawad, Best Best & Krieger LLP

Searles Valley Minerals

13200 Main Street
Trona, California 93562

June 17, 2020

Subject: **Comment letter on "Board Consideration and Adoption of Engineer's Report for the Adoption of a Basin Replenishment Fee, Authorize The Mailing of Notices on the Same and Setting Hearing For August Board Meeting" listed as Item 11 on the Indian Wells Valley Groundwater Authority (IWVGA) Board of Directors Agenda for the June 18, 2020 Meeting**

Dear Chairman Gleason and Board Members:

Searles Valley Minerals (SVM) respectfully submits this comment letter to express its concerns about the "Engineer's Report For the Adoption of a Basin Replenishment Fee" (Report) being presented to the IWVGA Board for setting "the Replenishment Fee $2,130 per acre foot for notice purposes, direct staff to prepare and mail notice, and set a public hearing on the same for the August 20thBoard meeting." In particular, SVM has the following concerns:

**1. The Proposed Replenishment Fee Violates SGMA and Prop 26 Limitations on the Impositions of Fees by a Public Agency.** Groundwater management agencies may impose fees for different purposes pursuant to Water Code sections 10730 and 10730.2, subject to certain requirements. Fees imposed under the Sustainable Groundwater Management Act (SGMA) must meet one or more exemption from the definition of "taxes" under article XIII C, section 1(e) of the California Constitution (i.e. Prop 26), otherwise the fee would be subject to voter approval requirements. This staff recommendation for this Agenda item fails to meet those requirements because it is asking the IWVGB to "set" the Replenishment Fee at the proposed amount without complying with the requisite procedural and substantive legal requirements. Should the IWVGA "adopt" this fee, its action would be procedurally and substantively deficient under SGMA and therefore of not enforceable by the IWVGA.

**2. The Release of Information Related to this Agenda Item Only One Day Prior to the Board Meeting Violates the Ralph M. Brown Act Posting Requirements.** The engineer's report and accompanying staff report were released to the public on June 17, less than 24 hours prior to the scheduled Board meeting. This is a violation of Government Code section 54954.2 of the Ralph M. Brown Act, which requires the posting of agenda and information before the Board at least 72 hours prior to the meeting. Therefore, any action by this Board as to this item is null and void and of no enforcement effect.

**3. The Proposed Replenishment Fee of $2,130 per acre foot is Excessive, Inequitable and Unsupported by Adequate Documentation.** The IWVGA appears to want to take on the significant task of developing a $52,800,000 Augmentation Project in a five-year period, without taking into account the time needed for compliance with CEQA pre-requisites or funding availability. The IWVGA cannot reasonably rely on funding this project by extracting fees from pumpers who, for the most part, cannot reasonably afford such fees or qualify for a loan to pay the fees. This is contrary to IWVGA's obligation under SGMA to consider the interests of beneficial uses and users in the basin when managing the basin. Furthermore, and without providing any valid legal basis, the exemption from the proposed Replenishment Fee is

being extended to anyone who has "permission to extract unused portions of the Navy's estimated Federal Reserve Water Right interest." This exemption is contrary to water law. The result is an inequity and illegality in the imposition of the fee by extending those alleged rights to pumpers who normally would not be exempt from paying the fee. If the IWVGA adopts this proposed fee imposition scheme, the IWVGA would effectively be engaging in a water rights determination that is not supported under federal law or state law, including SGMA, and is therefore arbitrary, inequitable and unenforceable under the law.

**4. The Report Inappropriately Contains Legal Conclusions.** Peppered throughout the report are assertions as to the U.S. Navy's alleged water rights and legal interpretations of SGMA provisions that fall outside the area of expertise of the preparers and the general purpose of the report. SVM hereby objects to any and all such statements, conclusions, recommendations and references as erroneous and lacking in legal foundation and authority.

SVM reserves the right for further comment on this item and any related future items presented to the Board at a later date, including without limitation at the August Board meeting. If you have any questions about SVM's comments, please contact me at 760-372-2306 or email me at anderson@svminerals.com.

Sincerely,
Camille Anderson
Executive Assistant
Searles Valley Minerals

Searles Valley Minerals

13200 Main Street
Trona, California 93562

June 17, 2020

Subject: **Comment letter on "Consideration and Preliminary Adoption of Report on the Indian Wells Valley Groundwater Basin's Sustainable Yield of 7,650 Acre-Feet and Setting Hearing on Same for July Board Meeting" listed as Item 10 on the Indian Wells Valley Groundwater Authority (IWVGA) Board of Directors Agenda for the June 18, 2020 Meeting**

Dear Chairman Gleason and Board Members:

Searles Valley Minerals (SVM) respectfully submits this comment letter to express its concerns about the "Report on the Indian Wells Valley Groundwater Basin's Sustainable Yield of 7,650 acre-feet" (Report) prepared by the IWVGA staff and consultants and presented to the IWVGA Board for "preliminary adoption" at its June 18 meeting. This Agenda item presents numerous concerns to SVM and other pumpers in the Indian Wells Valley Groundwater Basin (Basin). In particular, SVM has the following concerns:

1. **The basis for the conclusions in the report, as confirmed in the Staff Report are not consistent with California water law or SGMA.** The Staff Report lists four (4) bases for the Report, three (3) of which are related to the U.S. Navy water production in the Basin. The Staff Report states that the U.S. Navy and de minimis extractors will not be subject to costs of overdraft and augmentation projects "unless an extractor obtains a court order showing they have quantifiable production rights superior to the Navy's." These statements represent a determination by the IWVGA that the U.S. Navy has water rights in the Basin superior to the water rights of all other pumpers in the Basin. Under federal law, an appropriation that pre-dates the reservation of land for the Navy base has priority over the Federal Reserved Right. (See *Cappaert v. United States* (1976) 426 U.S. 128.) The report seems to conclude that because of sovereign immunity, this priority should be reversed. Sovereign immunity is a matter of enforcement and does not affect the IWVGA's obligation to respect priorities established by federal law nor allow it to ignore the factual evidence in the record before it. Not only is IWVGA's conclusion and potential action contrary to water law, it is also contrary to the IWVGA's authority under the Sustainable Groundwater Management Act (SGMA) which prohibits the IWVGA from determining water rights. SVM has presented the IWVGA with written documentation related to both these points on multiple occasions.. Unfortunately, it appears the IWVGA is intent on continuing to take actions contrary to the facts and law.

2. **The 7,650 acre-feet sustainable yield calculation is flawed.** As we have expressed in prior written letters and correspondence to the IWVGA and this Board, the estimated sustainable yield of 7,650 acre-feet is based on incomplete and inaccurate data. Taking any action based on this estimate ignores the numerous acknowledgements throughout the IWVGA's own Groundwater Sustainability Plan (Plan) of serious data gaps and raises doubts about question the accuracy of not only the sustainable yield estimate but also the water budget, sustainability goal and threshold estimates upon which IWVGA relies in considering this Agenda item. The Plan expressly states in several sections that data tracking is fairly recent (mostly

since SGMA came into effect) and that many of the "historical" data points are based on a single measurement recorded at the time of well installation. IWVGA should start with a higher sustainable yield estimate until it can improve its threshold data.

**3. The recommended Board action to "preliminarily adopt" the report is not authorized under SGMA.** The recommended Board action in the Staff Report appears to introduce a novel concept not founded in the authority granted to the IWVGA under SGMA or the California Government Code. A public agency may adopt resolutions and ordinances imposing lawful rules and regulations within its jurisdiction, but not an *engineering report* and certainly not *preliminarily*. SVM could not find a statutory reference or authority that supports taking such action. Therefore, the categorization of this item as an "action" item is fundamentally flawed and any vote related to it by the IWVGA Board is null and void under California law and of no legal effect.

SVM reserves the right for further comment on this item and any related items presented to the Board at a future Board meeting, including without limitation the July 18, 2020 Board meeting. If you have any questions about SVM's comments, please contact me at 760-372-2306 or email me at anderson@svminerals.com.

Sincerely,

Camille Anderson
Executive Assistant
Searles Valley Minerals

Searles Valley Minerals

**Searles Valley Minerals PAC Comments**
**on the Indian Wells Valley Groundwater Authority Board Meeting,**
**June 18, 2020, Agenda Items 8, 9, 10, 12**

**Agenda item 8—Consideration and Adoption of Resolution 05-20—Establishing a Reporting Policy for all New Groundwater Extraction Wells in the Basin**

Section 10726.4 (a) (2) allows the GA to "control groundwater extractions by regulating, limiting or suspending extractions…construction of new groundwater wells.." but 10726.4 (b) states "This section does not authorize a groundwater sustainability agency to issue permits for the construction, modification, or abandonment of groundwater wells, except as authorized by a county with authority to issue those permits. A groundwater sustainability agency may request of the county, and the county shall consider, that the county forward permit requests for the construction of new groundwater wells, the enlarging of existing groundwater wells, and the reactivation of abandoned groundwater wells to the groundwater sustainability agency before permit approval. "

The IWVGA (GA) lacks the authority to issue well permits, nor can it compel a county overlying a basin within the jurisdiction of the GA to forward permit requests to the GA. Does the GA have a formal written agreement with Inyo, Kern and San Bernardino Counties to forward permit requests for the construction of new groundwater wells? Lacking this formal agreement, how will the IWVGA determine whether a well is de minimus or whether it may cause a material injury to the Basin prior to drilling the well or prior to extraction of groundwater?

Paragraph 4 of the "Requirements for all New Wells" states "Material Injury is defined by the Authority as impacts to the Basin caused by pumping or storage of groundwater that causes material physical harm to the Basin, any Subarea, or any Producer/Party, including, but not limited to, overdraft…" This seems overly broad as to prevent pumping from all new wells, including de minimus, since it is known that the basin is already in overdraft. Is this the intent of the resolution?

Lastly, the process described is incomplete and ambiguous because it states that new well owners who fail to pay the fees or report extractions may be "summoned for a Board Hearing," but doesn't describe the consequences.

**Agenda Item 9-Board Consideration and Introduction of Ordinance 02-20**

It is unclear from the wording of Ordinance 02-20 and the information in Exhibit 3 and Exhibit 4, which pumpers are subject to the imposition of an increased pumping fee. Ordinance 02-18 imposed an extraction fee on all basin pumpers. Ordinance 02-20 amends Ordinance 02-18 for the express purpose of imposing an increased pumping fee. Presumably, the imposition of this increased pumping fee would apply to all of those pumpers paying the original pumping fee imposed by Ordinance 02-18. However, the wording of the IWVGA Staff Memorandum introducing Ordinance 02-20 suggests a much smaller group of pumpers will be paying this new increased fee. Since Ordinance 02-20 amends Ordinance 02-18 for the purpose of increasing current pumping fees, Ordinance 02-20 should apply to all pumpers paying the original fee under Ordinance 02-18. Searles Valley minerals would like the GA Board to confirm that this new fee will apply to the same pumpers who paid the original fee in Ordinance 02-18. In other words, who will be paying this fee?

The Staff Memorandum re: Ordinance No. 02-20 dated June 18, 2020 states in the DISCUSSION section, in a subsection, titled "Groundwater Extractors Identification and Well Registration:" that: "Existing Groundwater Extractors who would be charged the proposed fee were identified using well registrations required by Ordinance 02-18…." It then references and lists those fifty-six (56) identified extractors stating: "(See list of registered non de minimis wells attached as Exhibit 4 to the Data Package)." Then, in the same DISCUSSION section, in a subsection titled "Calculation of Fees:" it states that: "The standard volumetric fee would be imposed on each Groundwater Extractor pumping groundwater and would be based on the amount of groundwater pumped." In this same subsection, the Board and Staff then go on to ignore and contradict the plain language of both subsections by stating that "those subject to the fee "include the City, Kern County, IWVWD, Inyokern CSD, small mutuals and Searles Valley Minerals." This shortened list of pumpers excludes the majority of identified pumpers and much of the groundwater being pumped today. No rationale is provided in the Staff Memorandum, the Revised Groundwater Extraction Fee Data Package, or Ordinance 02-20 for this arbitrary and discriminatory action whereby some among the fifty-six (56) pumpers are deemed exempt from a Revised Groundwater Fee while others are made subject to the fee. In summary, proposed Ordinance 02-20 seeks to impose the burden of an "Increased Pumping Fee" on some pumpers while exempting other pumpers without a stated justification for this discriminatory action.

The Board and Staff refer to a "Supporting Attachment" that is presented in "Exhibit 3: Calculation of Fees." The Supporting Attachment, called "Sustainable Yield Allocation," is an untitled, three-column table of data without any source references. This table does not exist in the GSP submitted to the DWR on Jan 31, 2020; the development and adoption of said GSP being the justification for the initial Groundwater Extraction Fees authorized by Ordinance 02-18 which applied to all pumpers. Nevertheless, this unsourced table is now presented as some kind of supporting document for "Ordinance No. 02-20 – Amending Ordinance No. 02-18…" which is intended to increase pumping fees for some pumpers, but not all pumpers, who extract water from the IWV Groundwater Basin. The Board appends this disconnected table without clarification or comment as part of a "Supporting Data Package Providing for an Increased Pumping Fee" to be implemented by proposed Ordinance 02-20 to "…address the GSP development costs…."

The so-called Sustainable Yield Allocation table appears to have been created ex nihilo for the purpose of somehow justifying a 733% increase in pumping fees for those extractors selected to pay the increased fee while other pumpers are granted a fee increase exemption. The first column of the table presents a summation of "Current Est Pumping" from a group of pumpers that, taken together, represent less than half of the pumping estimated to be occurring today in the IWV Groundwater Basin (Basin). This amount is presented as being 12,180 (AFY?). The second column is confusingly titled "Navy Use/Carryover." No explanation is given for the pumping information in this column, but the total pumping is made to equal the presumed Sustainable Yield of the Basin (7,650 AFY) by reducing the estimated pumping of the IWVWD by one-third and completely eliminating the extraction done by Searles Valley Minerals, Inc (SVM). Notwithstanding the fact that the assumed Basin Sustainable Yield is based on incomplete and inaccurate data, column three posits the concept that the IWVWD will have to partially augment its water supply needs and SVM will have to augment all of its water supply needs. This Sustainable Yield Allocation table operates as a water allocation mechanism which, in this instance, is tantamount to determining water rights. Since the Board is prohibited from determining water rights under the Sustainable Groundwater Management Act (SGMA), this table cannot be used to achieve that outcome. Furthermore, this impermissible water rights allocation mechanism cannot be used to justify

arbitrary and discriminatory Extraction Fees for some extractors while granting fee exemptions to other extractors.

The Board and Staff conclude their Calculation of Fees discussion by referencing an enclosed table titled "IWVGA Pumping Fee Alternatives" wherein exact fee amounts are presented and then inflated by arbitrarily increasing the calculated fees by anywhere from 3% to 15% without any justification and without any apparent recognition of standard accounting rounding conventions. If Board and Staff are going to calculate and present estimated pumping fees to two-decimal accuracy, then they should use standard, recognized rounding conventions to increase these fees to nearest whole numbers and not inflate fees in an arbitrary and inconsistent manner without justification.

In addition, SVM has been informed that total expenditures for GSP preparation at approx. $7,059,574 million is steep compared to other basins!

a. The increase in pumping fee from $30/AF to $140/AF is unreasonable, and there should be a true-up process at the end of the fee imposition period, because:
    i. Not all pumpers have meters, so the data upon which the GA is relying is incomplete
    ii. The GA does not have an accurate list yet of all pumpers; wells were required to be registered by Oct. 1, 2019. Have they? How many are not yet registered? Are all well owners submitting their monthly extraction reports, as required?
    iii. Once more accurate well registration and reporting data is collected, some pumpers would have been paying more than their fair share, therefore a true-up process must be included in the ordinance.
b. This ordinance should not be considered a "second reading" because much of the data underlying the calculations has been amended since the first reading (June 18), therefore, this should be considered a "first reading"
c. Some of the data is questionable. For example, in the "first reading" of June 18, the "original estimate" for GSP preparation was $3MM, now it's $3,102,600—how can the original estimate change?

**Agenda Item No. 10 – Consideration and Preliminary Adoption of Report on the Indian Wells Valley Groundwater Basin's Sustainable Yield of 7,650 Acre-Feet and Setting Hearing on Same for July Board Meeting**

The Staff Report dated June 18, 2020 appears to be written in order to assert, and by so asserting, justify a pre-determined conclusion about Basin overdraft mitigation measures, Basin beneficial uses of water, and, by implication, water rights.

It attempts to determine water rights by first assigning all Basin sustainable yield to the USN without first demonstrating that the Navy currently uses or plausibly will use all of the 7,650 AF sustainable yield of the Basin on the US Navy reservation called Naval Air Weapons Station-China Lake (NAWS). For perspective, NAWS used an average of 1,662 AFY during the Base Period CY2010-CY2014, inclusive. It used 1,450 AFY in CY2017 (NAWS data 6/17/19). It projects to need 2,041 AFY to meet the GSP requirements to mitigate Basin overdraft. The projected NAWS requirement amounts to 27% of the Basin sustainable yield, not the "entire sustainable yield" (100%) alleged in the Staff Report.

Once the Staff and Board chose to assign the entire sustainable yield (7,650 AFY) to NAWS who previously stated that "…2,014 acre-feet per year as the amount of water the installation could agree to

use under a GSP. (6/17/19)", they appear to have conjured a rationale for NAWS to use an additional 5,609 AFY thereby consuming the entire Basin sustainable yield. The Staff and Board assert without evidence that "Reported Navy production rates showing more than convincing evidence that the Basin's entire yield is consumed by the Navy's Federal Reserve Water Right Interest." Again, mere assertion is not evidence.

The tortuous series of assertions that the Staff and board use to grant the "entire sustainable yield" of the Basin to one extractor, NAWS, is then asserted to be a beneficence for the remaining extractors in the Basin who "…are beneficially impacted by the IWVGA's overdraft and augmentation projects." This assertion is unsupported, but is put in the service of the conclusion that is used to open the Discussion section of the Staff Report. Specifically, the Staff asserts that: "…the Board is aware, it has been determined that Basin [sic] cannot achieve sustainability without the development of an augmentation project." This was a foregone conclusion once the "Basin's entire sustainable yield" was granted to NAWS.

1. The title of this report is misleading. There is more than convincing evidence that this report is a discussion about water rights, not about the sustainable yield of 7,650 AFY.

2. In the Executive Summary, SVM does not agree with basing this analysis on the "the declassified report on Navy Demographics and Water Requirements at Naval Air Weapons Station (NAWS), China Lake, CA." The Navy report has not been vetted by any third party, and, although approved for release by NAWS, China Lake, the novel rights claims may not be the position of the US Navy Region, Southwest or the US Navy in general.

3. SVM does not agree with the long list of reasons why the IWVGA could not perform their function of sustainable management of the IWV Groundwater Basin while considering the interests of **all** beneficial uses and users of groundwater, and instead only focuses on the US Navy.

4. In section VIII. Federal Pumping Data, SVM disputes the five claims ascribed to the US Navy as stated in a NAWS China Lake Technical Publication TP8842 by the Naval Air Warfare Center Weapons Division, NAVAIR Ranges.

    a. SVM does not accept the NAWS China Lake desire to consume the whole sustainable yield of the IWVGA Groundwater Basin.

    b. SVM does not agree with the IWVGA choosing US Navy production in the 1970's as a basis for determining possible use water by the Navy in the future.

    c. In the last paragraph of this section, it is stated "were this issue to be litigated, the Navy could, and very probably would, assert that its FRWR extends to entire sustainable yield of the Basin." This is highly speculative and attempts to argue a brief for the US Navy. SVM does not think this statement should be included in the report.

    d. The last sentence of this section states "Additionally, given the historical circumstances and the timing of the base's establishment, which corresponds with the height of the Navy's participation in World War II, a more than convincing argument can be made that any reviewing court will agree with the Navy's express assertion that the FRWR

began in 1943." SVM does not agree with this statement since it is documented in the Federal Register that the land for NAWS was withdrawn from the public domain on Dec. 31, 1947. SVM does not think this statement should be included in the report.

5. In Section IX. SGMA Powers and Limitations, the IWVGA sets up various "straw man" arguments and scenarios about water rights and then proceeds to knock them down with specious arguments. Searles Valley Minerals does not agree with the speculative GA interpretations of the US Navy's legal positions with regards to water rights and presumptions of US Navy arguments in court.

**Agenda Item No. 12 – Consideration and Preliminary Adoption of Report on Transient Pool and Fallowing Program and Setting Hearing on Same for July Board Meeting**

1. In section 1, on page 4, SVM does not agree with the often repeated statement by the IWVGA in numerous reports, "Complicating matters further, the Navy's provided production rates lead to a more than convincing argument that the Navy's Federal Reserve Water Right interest consumes the entire sustainable yield."

2. The first paragraph on page 5 of the report is incoherent.

3. The basis for buying out the allocation as "The value of Transient Pool Allocation, as determined by the Authority, will be generally based upon the estimated net profit generated by the actual exercise of the Transient Pool allocation pumping for its intended agricultural purposes." seems unrealistic.

4. SVM is concerned that the IWVGA has not given an approximate cost of this fallowing program, especially since the IWVGA appears to be using both SVM and the IWVWD as a funding source for all of its programs.

5. CEQA compliance is required before adopting the programs.

Typos for Agenda Item 10, 12

1. There are many typos scattered throughout the Sustainable Yield Report and the Transient Pool and Fallowing Program Report.

Lagerlof Senecal Gosney & Kruse LLP

301 North Lake Avenue
10th Floor
Pasadena, CA 91101-5123
Phone: 626.793.9400
Fax: 626.793.5900
www.lagerlof.com

*Established 1908*

January 8, 2020

Mr. Don Zdeba
IWVGA Acting General Manager
don.zdeba@iwvwd.com

Re: **Searles Valley Minerals's Comments To Public Review Draft**

Dear Mr. Zdeba:

We are attorneys for Searles Valley Minerals. We have the following comments to section 5.2.1 (Annual Pumping Allocation Plan, Transient Pool and Fallowing Program). Camille Anderson will be sending additional comments by Searles Valley Minerals to the document as a whole.

1. **Searles's pre-Navy water rights for industrial use should be respected.**

The Plan recognizes that extraction allocations under Water Code section 10726.4(a)(2) should be consistent with federal and state water rights. That section provides, "A limitation on extractions by a groundwater sustainability agency shall not be construed to be a final determination of rights to extract groundwater from the basin or any portion of the basin." The Plan claims that its Annual Pumping Allocations do not determine water rights because they do not prohibit the pumping of groundwater, but the imposition of a significant Augmentation Fee for pumping over the Allocation has the effect of significantly burdening the exercise of water rights. Therefore, the Allocations should be consistent with water rights.

Searles has provided evidence of its pre-Navy appropriations, and will do so again in connection with the Plan's implementation process. An appropriation that pre-dates the reservation of land for the Navy base has priority over the Federal Reserved Right. (See *Cappaert v. United States* (1976) 426 U.S. 128, 138.) The Plan seems to say that because of sovereign immunity, this priority should be reversed: "The IWVGA does not have legal authority to restrict, assess, or regulate production for NAWS China Lake; therefore, NAWS China Lake groundwater production is considered of highest beneficial use." (page 5-10) But this does not follow. Sovereign immunity is a matter of enforcement and does not affect the IWVGA's obligation to respect priorities established by federal law.

Therefore, Searles should receive an Allocation in the full amount of its pre-Navy appropriation.

**2. Searles Domestic Water Company's municipal use priority is separate from Searles's pre-Navy water rights.**

The list of groundwater pumpers for domestic use on page 5-10 should include Searles Domestic Water Company, which supplies water for municipal and domestic use in the Searles Valley. The priority for this use does not depend on whether Searles Valley Minerals has a pre-Navy water right for its industrial use. Therefore, Searles Domestic Water Company should receive an allocation equal to its use during the Base Period, in addition to the allocation for Searles's pre-Navy water right.

**3. The Water District should not receive any preference based on serving water to the Navy workforce.**

On page 5-10, the Plan quotes the Navy's response that "[s]ince the Navy mission at China Lake requires its workforce, the full Navy water requirements are the combination of the on-Station requirements and those of the Navy workforce and their dependents off-Station." Searles is pleased that the Plan does not claim that the Federal Reserved Right extends to production by third parties to serve Navy personnel off-Station, which Searles believes is not supported by any legal authority.

**4. The IWVGA does not have authority to impose an Augmentation Fee.**

The statutes referred to in section 5.2.1.8, Legal Authority, do not authorize the imposition of an Augmentation Fee. Specifically, Water Code section 10725.4 authorizes *investigations* to propose and update fees, and not the fees themselves. Nothing in SGMA authorizes discriminatory fees to enforce an allocation plan.

**5. The Plan does not provide sufficient justification for the limited amount in the Transient Pool nor for its non-transferability**.

The Plan states that the purpose of the Transient Pool is to "facilitate coordinated production reductions and to allow groundwater users to plan and coordinate their individual groundwater pumping termination." (page 5-6) But the Plan provides no explanation why the Transient Pool is limited to 51,000 acre-feet, in view of the large amount of groundwater in storage and the economic dislocations that the Allocation will cause. The Plan also does not explain why the Transient Pool water is not transferable. Making the water transferable would allow parties wishing to exit the Basin to be partially compensated for their investment at a negotiated price, while providing other parties with water to support their operations until imported water is available.

**6. The anticipated timing of the approval and implementation of the allocation ordinance is inconsistent with Section 10728.6 of the Water Code and the California Environmental Quality Act ("CEQA") requirements.**

The Plan states that the Annual Pumping Allocation Plan, Transient Pool and Fallowing Program *may* be subject to environmental review. This statement is misleading as it offers the possibility that such implementation would be exempt from those environmental requirements. Section 10728.6 of the Water Code expressly states that the exemption from the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code applicable to the preparation and adoption of a groundwater sustainability plan (GSP) does not apply to "a project that would implement actions taken pursuant to a plan." Further, an activity qualifies as a "project" subject to CEQA if that activity is undertaken, funded, or approved by a public agency and may cause either a direct, or reasonably foreseeable indirect, physical change in the environment. (Pub. Resources Code, § 21065; *Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171.) It is difficult to imagine how the implementation of this management action would not cause a "direct, or reasonably foreseeable indirect, physical change" in the basin. Therefore, Sections 5.2.1.5 and 5.2.1.7 of the Plan must be amended to reflect an affirmative commitment by IWVGA to conduct an environmental review prior to the adoption of an allocation ordinance and an accordingly more realistic implementation timeline.

**7. This Management Action No.1 is based on incomplete and inaccurate data and thus its implementation must be deferred until the monitoring network is better developed.**

The Plan states in Section 5.2.1.7 that Management Action No.1 would be presented to IWVGA Board for consideration and approval at its June 2020 meeting. This not only is contrary to CEQA requirements, but also ignores the numerous acknowledgements throughout the Plan of serious data gaps which put into question the accuracy of the basin's sustainable yield, water budget, sustainability goal and threshold estimates upon which IWVGA relies in implementing this Management Action No. 1 and the other management actions and projects. The Plan expressly states in several sections that data tracking is fairly recent (mostly since SGMA came into effect; e.g., page ES-15) and that many of the "historical" data points are based on a single measurement recorded at the time of well installation (e.g., see page ES-16.) It is advisable that management actions, including without

limitation Management Action No. 1, be deferred until such time as better monitoring data is in put place but no earlier than the first Plan update is due to DWR, i.e., at least until 2025.

Very truly yours,

Thomas S. Bunn, III

TSB::jlb

cc: Camille Anderson (anderson@svminerals.com)



Lagerlof Senecal Gosney & Kruse LLP

**Searles Valley Minerals PAC Comments**
**on the Indian Wells Valley Groundwater Authority Board Meeting**
**Former Agenda Item 12**
**REPORT ON TRANSIENT POOL AND FALLOWING PROGRAM**
**August 5, 2020**

Since the IWVGA did not make any substantive changes in this report, despite many comments from SVM and other parties previously submitted in June of 2020, SVM includes both new and previous comments in this August document noting SVM PAC comments.

As SVM has stated numerous times regarding the US Navy's Federal Reserve Water Right, SVM does not agree with the repeated statement in this and other reports that "*the Navy's provided production rates lead to a more than convincing argument that the Navy's Federal Reserve Water Right interest consumes the entire sustainable yield."* As we have stated in several prior letters to the IWVGA, the conclusions presented by the IWVGA on that point lack valid legal and factual support.

A major comment that SVM wants to make on this report is that the deadlines as stated in Section V, Guidelines for Negotiating Value for Fallowing Program, are completely unreasonable. This program has yet to be adopted by the Board. The earliest that could happen is on August 20. That would leave 12 days for an agricultural pumper to decide to fallow their land. In addition, the last date to complete a Fallowing Agreement has moved forward from Dec. 1, 2020 to October 1, 2020 without any justification. The agricultural pumpers livelihoods and futures in the IWV are completely upended by this program, yet the Indian Wells Valley Groundwater Authority, has given them 41 days to decide their future. This is unreasonable and certainly does not encourage anyone to join the Fallowing Program.

As a PAC member, SVM expresses its concern that the IWVGA (Board) has not provided a reasonable cost estimate for the Transient Pool and Fallowing Program in this report. At the same time it appears that the Board is now attempting to make the IWVWD and SVM the funding sources for all of its various programs. For example, the stated purpose of the Basin Replenishment Fee, according to the Public notice sent out to all groundwater extractors, is to "cover the estimated imported water costs of $2,112 per acre foot extracted…" However, in Section 6.2 Revenue Requirements, page 26 of the Engineers Report for the Adoption of a Basin Replenishment Fee, footnote 4 states "[4]The funds collected for the Augmentation Project may also be used to fund the IWVGA Fallowing Program." The PAC has not endorsed this commingling of funds and SVM opposes subsidizing programs that do not fulfill the precisely stated purposes of the Basin Replenishment Fee. Certainly, no specific amount of Replenishment Fee funds has been earmarked for the Transient Pool and Fallowing Program. If no one enters the fallowing program, will the replenishment fee be decreased? Having certain pumpers subsidize benefits received by others is prohibited under California law.

In addition SVM has the following comments:

1. SVM does not agree that, as stated on page 4, "it's not feasible to lower the municipal/domestic demands further than they already have been…" This is inconsistent with California's water conservation legislation (SB 606 and AB 1668) which requires making conservation a way of life and reaching certain conservation goals by certain statutory deadlines. There is no evidence presented by the IWVGA showing that those goals have already been reached and that further

reduction in water use is not feasible. Recycling, conservation and demand reduction have only been adopted superficially in the IWV; primarily by the IWVWD raising rates to **encourage** conservation. A comprehensive conservation program has yet to be implemented. Raising rates further remains a viable option. When water conservation is seriously implemented, we should see the watering of grass in front of City Hall and other government buildings cease.

2. Paragraph one on page 5 of the report lacks a coherent derivation of the presumption that "…the additional 14,000 AF provided…will not actually be pumped and the actual split is likely a 50/50 split…" How is this analysis tied to and derived from current (CY2020) base case pumping? The factual argument is not made for the serial "assumptions" and "presumptions" in this paragraph.
3. In Section II, Transient Pool and Fallowing Program, page 6, the IWVGA has inserted new language that the qualified agricultural pumpers "waive the right to sue the Authority". What is the legal basis for demanding that a participant who chooses to accept the allotment and pay the associated mitigation fee "waive the right to sue the Authority"? This will likely disincentive participation in this program and discourage reduction in pumping.
4. In Section III, Mitigation Fees Charged to Transient Pool, the calculation of fees is presented based on estimates and estimated damage to 22 hypothetical wells. The shallow well mitigation program has not yet been approved, planned or implemented, yet a fee is already being charged. The fees should be delayed until this program is implemented.
5. The basis for buying out the allotments as "The value of Transient Pool allotments, as determined by the Authority, will be generally based upon the estimated net profit generated by the actual exercise of the Transient Pool allotment pumping for its intended agricultural purposes," is unclear. Will it be based on the profitability of whatever crop is currently being grown?
6. CEQA compliance is required before implementing the Transient Pool and Fallowing Program, especially considering that dust mitigation is one of the projects described in the GSP submitted to the DWR with a potential price tag of $19M. Fallowing agriculture will cause dust. The GA admits in the GSP section 5.2.1.5, that this project may be subject to environmental regulations and the preparation of environmental studies. The deadline timelines do not allow for this compliance.
7. In Section IV, Qualified Base Period Pumpers—For Transient Pool, Mojave Pistachios is misspelled in the top two bullet point lists.