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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF KERN

METROPOLITAN DIVISION

MOJAVE PISTACHIOS, LLC, a California limited liability company; and PAUL G. NUGENT AND MARY E. NUGENT, Trustees of the Nugent Family Trust dated June 20, 2011,

Petitioners and Plaintiffs,

v.

INDIAN WELLS VALLEY GROUNDWATER AUTHORITY, a California joint powers authority; THE BOARD OF DIRECTORS OF THE INDIAN WELLS VALLEY GROUNDWATER AUTHORITY, a governing body; ALL PERSONS INTERESTED IN THE MATTER OF THE VALIDITY OF (1) THE GROUNDWATER SUSTAINABILITY PLAN FOR THE INDIAN WELLS VALLEY GROUNDWATER BASIN, (2) THE REPORT ON THE INDIAN WELLS VALLEY GROUNDWATER BASIN'S SUSTAINABLE YIELD OF 7,650 ACRE-FEET, (3) AMENDMENT TO ORDINANCE NO. 02-18 ESTABLISHING GROUNDWATER EXTRACTION FEES AND THE RULES, REGULATIONS AND PROCEDURES FOR THEIR IMPOSITION, (4) THE ADOPTION OF REPORT ON

Case No.

VERIFIED PETITION FOR WRIT OF MANDAMUS AND COMPLAINT

(1) Writ of Mandate for Violation of SGMA and the California Constitution in Adopting GSP, Code Civ. Proc., § 1085

(2) Writ of Mandate for Violation of SGMA and the California Constitution in Adopting the Extraction Fee, Code Civ. Proc., § 1085

(3) Writ of Mandate for Violation of SGMA and the California Constitution in Adopting the Sustainable Yield Report, Code Civ. Proc., § 1085

(4) Writ of Mandate for Violation of SGMA and the California Constitution in Adopting the Transient Pool and Fallowing Program, Code Civ. Proc., § 1085

(5) Writ of Mandate for Violation of SGMA and the California Constitution in Adopting the Replenishment Fee, Code Civ. Proc., § 1085

(6) Reverse Validation to Determine the Invalidity of the GSP and all Actions Adopted Pursuant to GSP, Code Civ. Proc., § 860, *et seq.*; Wat. Code, § 10726.6

(7) Reverse Validation to Determine the Invalidity of the Extraction Fee, Code Civ.

TRANSIENT POOL AND FALLOWING PROGRAM, AND (5) THE ESTABLISHMENT OF A BASIN REPLENISHMENT FEE; and DOES 1-100, inclusive, Respondents and Defendants.	**Proc., § 860, *et seq*.** **(8) Reverse Validation to Determine the Invalidity of the Sustainable Yield Report, Code Civ. Proc., § 860, *et seq*.** **(9) Reverse Validation to Determine the Invalidity of the Transient Pool and Fallowing Program, Code Civ. Proc., § 860, *et seq*.** **(10) Reverse Validation to Determine the Invalidity of the Replenishment Fee, Code Civ. Proc., § 860, *et seq*.** **(11) Regulatory Taking of Private Property Without Just Compensation, 42 U.S.C., § 1983: U.S. Const., 5th Amend.; Cal. Const., Art. I, § 19** **(12) Regulatory Taking of Private Property Without Just Compensation, 42 U.S.C., § 1983: U.S. Const., 5th Amendment; Cal. Const., Art. I, § 19 [In the Alternative to the Eleventh Cause of Action]** **(13) Physical Taking of Private Property Without Just Compensation, 42 U.S.C., § 1983: U.S. Const., 5th Amendment; Cal. Const., Art. I, § 19 [In the Alternative to the Eleventh Cause of Action]** **(14) Violation of Substantive Due Process, 42 U.S.C., § 1983: U.S. Const., 14th Amendment; Cal. Const., Art. 1, § 7** **(15) Violation of Procedural Due Process, 42 U.S.C., § 1983: U.S. Const., 14th Amendment, Cal. Const., Art. 1, § 7** **(16) Writ of Mandate for Violations of Pub. Res. Code, § 21000, *et seq*.), Code Civ. Proc., §§ 526, 1085, 1094.5** **(17) Declaratory Relief, Code Civ. Proc., § 1060**

I. INTRODUCTION

1. Plaintiffs and Petitioners Mojave Pistachios, LLC and Paul G. Nugent and Mary E. Nugent, Trustees of the Nugent Family Trust dated June 20, 2011 ("Plaintiffs") own property that overlies the Indian Wells Valley Groundwater Basin ("Basin"). Plaintiffs possess vested appurtenant overlying water rights to pump groundwater from the Basin for use on their land. Plaintiffs rely exclusively upon groundwater from the Basin to provide water to their 1,596 acres of productive pistachio trees, a highest best use of water, second only to domestic use in

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California. (Wat. Code, §106.)

2. This action arises from a series of coordinated actions by a governmental entity, the Indian Wells Valley Groundwater Authority ("IWVGA"), that grants Plaintiffs **zero allocation of groundwater** for its existing 1,596 net acre pistachio orchard in a wrongful attempt to condition Plaintiffs' continued use of groundwater upon payment of the highest annual fee on the production of groundwater in California history effective on **January 1, 2021**—all in furtherance of the IWVGA's publicly announced, illegal and unequivocal intention of subordinating Plaintiffs' paramount water rights to that of government entities.

3. In 2014, California enacted the Sustainable Groundwater Management Act ("SGMA") with the directive to bring groundwater in California under sustainable management by 2040. SGMA expressly states that it did not modify water right priorities or groundwater rights under common law and reserved the authority to make such determinations to the courts. (Wat. Code, §§ 10720.5, 10726.8(b).) SGMA requires that a groundwater sustainability agency ("GSA") be designated for each qualifying groundwater basin in California and that a groundwater sustainability plan ("GSP") be prepared to meet the 20-year sustainability objective.

4. The IWVGA's GSP violates SGMA because it fails to respond to Plaintiffs' and others comments and is replete with foundational scientific and analytical errors related, for example, to Basin recharge, storage, and undesirable results. These errors are compounded by the IWVGA's reliance on a groundwater model, within the exclusive control of the United States Navy ("Navy")—the groundwater user to which the IWVGA would cede the entire sustainable yield of the Basin—and which was withheld from the public, despite numerous requests from Plaintiffs to access the model and most importantly, its assumptions, inputs, and parameters.

5. Notwithstanding that SGMA prohibits GSAs from determining the inter-se priorities among competing groundwater users, the IWVGA did precisely that, adopting a legally and technically deficient GSP on January 16, 2020 that deliberately ignored numerous comments identifying fundamental foundational scientific and legal errors, illegally prioritized certain users' water rights, and failed to adequately pursue physical measures to monitor and avoid

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"undesirable results" (measurable physical consequences defined by Water Code section 10721(x)) while protecting existing beneficial uses.

6. Subsequently, in furtherance of its GSP, the IWVGA adopted Ordinance No. 02-20 imposing a $105 per acre-foot ("AF") groundwater extraction fee (the "Extraction Fee"), purportedly necessary "to finance the estimated costs to develop and adopt the GSP," and three actions to implement the GSP: (1) Resolution No. 06-20, adopting a report on the Basin's "sustainable yield" ("Sustainable Yield Report"), reserving 100 percent of the Basin's sustainable yield to the Navy—an entity with sovereign immunity and expressly not subject to SGMA or the GSP; (2) Ordinance No. 03-20, imposing an additional $2,130 per AF fee on groundwater production to be borne *solely by Plaintiffs and a limited number of other non-exempt water users* ("Replenishment Fee"); and (3) Resolution No. 05-20, adopting a "Transient Pool and Fallowing Program," granting certain agricultural producers—but not Plaintiffs—a temporary water allocation. The Sustainable Yield Report, Replenishment Fee, and Transient Pool and Fallowing Program are collectively referred to herein as the "Implementing Actions" because the IWVGA claims they implement the GSP.

7. In contravention of SGMA, the GSA prioritized the use of groundwater based upon its own determination of priorities, established principally on arbitrary characterizations of the scope, priority, and application of federal reserved water rights, including its opinion that Kern County, the City of Ridgecrest, and the Indian Wells Valley Water District—each agencies with a representative member on the Board of Directors of the IWVGA ("IWVGA Board")—can without intent, documentation, precedent, or authorization (formal or otherwise) receive a transfer of a portion of the Navy's inchoate federal reserved water rights.

8. The GSP, Extraction Fee, and Implementing Actions were adopted without compliance with applicable law, specifically without providing Plaintiffs procedural and substantive due process, by denying disclosure of the potential environmental impacts of the Implementing Actions on the environment, such as the fallowing of agricultural land as required by the California Environmental Quality Act ("CEQA"), and the United States and California Constitutions because they are both physical and regulatory takings. The GSP, Extraction Fee,

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and Implementing Actions will cause Plaintiffs immediate and irreparable injury to their property by conditioning their continued use of vested overlying groundwater rights on the payment of fees of approximately $255,600,000.00 over the 20 year period that SGMA provides the IWVGA to attain sustainability.

9. Instead of betraying its responsibilities under SGMA and adopting a GSP and Implementing Actions that determined the relative priority of Plaintiffs' vested water rights without due process of law, IWVGA should have acted in accordance with SGMA and Article X, Section 2 of the California Constitution, exploring physical measures to manage aquifer withdrawals to monitor and avoid "undesirable impacts," over the next 20 years rather than eliminate Plaintiffs' water use by fee exaction.

II. PARTIES

10. Plaintiff and Petitioner Mojave Pistachios, LLC is a California limited liability company that, together with Petitioners and Plaintiffs Paul G. Nugent and Mary E. Nugent, Trustees of the Nugent Family Trust dated June 20, 2011, own or lease approximately 3,229 acres of land overlying the Basin across 83 parcels, all of which overlie the Basin and thereby possess paramount overlying groundwater rights. These parcels and their ownership are further described in **Exhibit A**, attached hereto. Plaintiffs are farmers. Plaintiffs derive their livelihood from farming, including the operations overlying the Basin.

11. Plaintiffs actively produce groundwater from the Basin to irrigate 1,596 net acres of pistachio orchards under reasonably efficient irrigation methods.

12. Agriculture is a permitted land use of Plaintiffs' lands and Plaintiffs commenced cultivation and application of groundwater to beneficial use in accordance with applicable laws and local ordinances and prior to the adoption of SGMA.

13. Plaintiffs, as overlying landowners, hold the paramount right to groundwater. (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1240.) The overlying right is not limited by past water use practices. (*Wright v. Goleta Water Dist.* (1985) 174 Cal.App.3d 74, 87.) The California Legislature has declared that the irrigation of agriculture is one of the highest and best uses of water in the State, second only to domestic use—the use of water for human

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consumption. (Wat. Code, § 106.)

14. In addition to pumping groundwater for overlying agricultural use, Plaintiff and Petitioner Mojave Pistachios, LLC also has a small domestic well, which serves a farm office.

15. Plaintiffs use the least amount of water possible while following best farming practices for pistachios. Specifically, Plaintiffs use drip hose, pressure compensating emitters, water monitoring, and even use deficit irrigation, a practice whereby Plaintiffs apply less than the full water demand of the trees at key times of the year when it does not hurt the trees' production, but does save water and have other benefits. Plaintiffs are committed to using the most modern and efficient irrigation system and actively participate in the California Pistachio Research Board, which supports cutting-edge research.

16. Plaintiffs' crop—pistachios—are a long-lived desert tree that is highly tolerant of saline soil. Pistachios thrive in high summer heat and can survive temperatures up to 118 degrees Fahrenheit. Although peak production is generally reached around 20 years, under favorable conditions, pistachio trees can live and produce for centuries. Plaintiffs' pistachio orchards were planted in 2012, and replanted in 2014. Therefore, Plaintiffs' orchards are expected to reach peak production in approximately 10 years and Plaintiffs' trees have a potential remaining life expectancy of over a century, if conditions are favorable.

17. Plaintiffs require approximately 7,000 acre-feet per year ("AFY") of water for the trees on their existing planted acreage at full maturity using efficient irrigation practices.

18. To date, Plaintiffs' cumulative investments in their farming operations overlying the Basin exceed $32 million, in furtherance of Plaintiffs' production of pistachios for commercial sale.

19. Defendant IWVGA is a California joint powers authority formed on July 15, 2016 under the Joint Exercise of Powers Act (Title 1, Division 7, Chapter 5 of the California Government Code) by five local agencies—the Counties of Kern, Inyo, and San Bernardino, the Indian Wells Valley Water District, and the City of Ridgecrest. The IWVGA also has two "associate" members—the Navy and the United States Bureau of Land Management ("BLM"). The five local agency members of the IWVGA represent less than 35 percent of the water use in

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the Basin. After its formation, Defendant IWVGA elected to become the GSA for the Basin under SGMA and was required under SGMA to prepare a GSP for the Basin by January 31, 2020.

20. Defendant Board of Directors of the IWVGA is the governing body of the IWVGA and is responsible for the decisions at issue herein. The members of the IWVGA Board include: Chairman Mick Gleason, representing Kern County; Vice-chair Scott Hayman, representing the City of Ridgecrest; Director Ron Kicinski, representing the Indian Wells Valley Water District; Director John Vallejo, representing Inyo County; and Director Bob Page, representing San Bernardino County. The members of the IWVGA Board are appointed and not elected to the IWVGA Board. Despite the significant agricultural production and water use in the Basin, no member of the IWVGA Board is dedicated to represent agricultural interests. The members of the IWVGA Board are sued herein only in their official capacities.

21. Unless otherwise described, all future references herein to the IWVGA refer to the IWVGA and the IWVGA Board, collectively.

22. Respondents and Defendants referred to herein as ALL PERSONS INTERESTED IN THE MATTER OF THE VALIDITY OF (1) THE GROUNDWATER SUSTAINABILITY PLAN FOR THE INDIAN WELLS VALLEY GROUNDWATER BASIN, (2) THE REPORT ON THE INDIAN WELLS VALLEY GROUNDWATER BASIN'S SUSTAINABLE YIELD OF 7,650 ACRE-FEET, (3) AMENDMENT TO ORDINANCE NO. 02-18 ESTABLISHING GROUNDWATER EXTRACTION FEES AND THE RULES, REGULATIONS AND PROCEDURES FOR THEIR IMPOSITION, (4) THE ADOPTION OF REPORT ON TRANSIENT POOL AND FALLOWING PROGRAM, AND (5) THE ESTABLISHMENT OF A BASIN REPLENISHMENT FEE are all persons interested in the validity of the GSP, Extraction Fee, Sustainable Yield Report, Transient Pool and Fallowing Program, and/or Replenishment Fee.

23. Plaintiffs are currently unaware of the true names and capacities of Defendants and Respondents DOES 1 through 100, inclusive, and therefore sue those parties by fictitious names. Plaintiffs allege, upon information and belief, that each fictionally named Defendant and Respondent is responsible in some manner for committing the acts upon which this action is

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based or has material interests affected by IWVGA's actions as alleged herein. Plaintiffs will amend this Petition and Complaint to allege their true names and capacities when the same has been ascertained.

III. JURISDICTION AND VENUE

24. This Petition and Complaint is brought pursuant to Code of Civil Procedure sections 526, 1060, 1085, and 1094.5, Water Code sections 10720, *et seq*., Public Resources Code sections 21000, *et seq*., the Fifth and Fourteenth Amendments of the United States Constitution, and the California Constitution, Article I, Sections 7 and 19 and Article XIII D. This Court has jurisdiction over this action pursuant to the above provisions and because the IWVGA is a local agency operating within the jurisdictional limits of the County of Kern.

25. This Court has jurisdiction to review the IWVGA's findings, approvals and actions as described herein and to issue a writ of mandate and declaratory and injunctive relief pursuant to Water Code section 10726.6(e) and Code of Civil Procedure sections 382, 525, *et seq*., 1060 and 1085 on the First through Fifth and Seventeenth Causes of Action.

26. This Court has jurisdiction over this matter with respect to the Sixth through Tenth Causes of Action pursuant to Code of Civil Procedure sections 860, *et seq*., including 863, and Water Code section 10726.6(a).

27. This Court has jurisdiction over this matter with respect to the Eleventh through Fifteenth Causes of Action pursuant to Title 28 of the United States Code section 2201(a) and Section 1060 of the Code of Civil Procedure.

28. This Court has jurisdiction over this matter with respect to the Sixteenth Cause of Action pursuant to Code of Civil Procedure sections 526, 527, 1085, 1094.5 and Public Resources Code sections 21168 and 21168.5.

29. Venue is proper in this Court pursuant to Water Code section 10726.6(b) and Code of Civil Procedure sections 392, 393, 394 and 395 because the GSP, Extraction Fee, and Implementing Actions were adopted in, and impact the residents of, the County of Kern, affects real property located in the County of Kern, because the IWVGA's principal office is located in the County of Kern, and because all of the acts and omissions complained of took place within

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the County of Kern. Further, venue is proper in the Metropolitan Division of this Court pursuant to Kern County Local Rule 1.7.5(d) where the Petition alleges a Cause of Action for the violation of CEQA.

IV. STANDING

30. Plaintiffs are beneficially interested in the subject matter of this proceeding because implementation of the GSP, Extraction Fee, and Implementing Actions will, as a result of the IWVGA's failure to comply with the law, eradicate Plaintiffs' exercise of their overlying rights to the waters of the Basin. Plaintiffs are therefore directly injured by the IWVGA's failure to comply with the requirements of SGMA and other laws and constitutional provisions in connection with the preparation and adoption of the GSP, Extraction Fee, and Implementing Actions. In particular and without limitation, these actions interfere with and infringe upon the overlying water rights held by Plaintiffs.

31. Plaintiffs also have public interest standing because this case involves public rights and the enforcement of public duties. The IWVGA has a mandatory duty to comply with the procedural and substantive requirements of SGMA, CEQA, and the United States and California Constitutions. If successful, this action would enforce the mandates of these laws and so benefit the public interest.

32. Plaintiffs have no other plain, speedy and adequate remedy in the ordinary course of law. (Code Civ. Proc., § 1086.)

V. EXHAUSTION OF ADMINISTRATIVE REMEDIES

33. Plaintiffs have performed all conditions precedent to filing this action and have exhausted the available administrative remedies to the extent required by law. Prior to their adoption, Plaintiffs, individually and through their counsel and technical consultants, presented detailed and specific written and oral comments objecting to the deficiencies in the GSP, Extraction Fee, and Implementing Actions. Plaintiffs' recent written comments included, but are not limited to, their January 8, 2020, June 3, 2020, June 18, 2020, July 15, 2020, August 6, 2020, and two August 19, 2020 comment letters, submitted through counsel, which are attached hereto as exhibits.

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34. Plaintiffs, individually and through their technical consultant, also participated on the two advisory committees of the IWVGA Board— the Policy Advisory Committee and Technical Advisory Committee—from November 16, 2017, when the committees were first formed, until the IWVGA wrongfully, and without adequate notice, adopted Resolution No. 03-20, removing Plaintiffs from both committees. In these ways and others, Plaintiffs participated whole-heartedly in the administrative process that preceded the adoption of the GSP, to the extent the IWVGA's dismissive approach to those proceedings allowed for such participation. The IWVGA ignored Plaintiffs' and other stakeholders' myriad requests to address the deficiencies in the GSP, Extraction Fee, and Implementing Actions prior to their adoption and any further such requests are futile.

35. Plaintiffs have fully exhausted all administrative remedies in that the determinations by the IWVGA adopting the GSP, Extraction Fee, and Implementing Actions are final and no further administrative appeal procedures are provided by law.

VI. ATTORNEYS' FEES

36. In seeking to compel the IWVGA to lawfully discharge its mandatory public duties, Plaintiffs are acting in their capacity as a private attorney general in the interest of and for the benefit of the public pursuant to Code of Civil Procedure section 1021.5, and any other appropriate legal theory to enforce important rights affecting the public interest, including the agricultural community. Issuance of the relief requested in this Petition and Complaint will constitute a significant public benefit by requiring the IWVGA to carry out its duties under SGMA, CEQA, and the United States and California Constitutions.

37. Further, Plaintiffs bring this action on the basis, among other things, that the IWVGA's actions in approving the GSP, Extraction Fee, and Implementing Actions were and continue to be arbitrary and capricious, without basis in law or facts, and so constitute a prejudicial abuse of discretion. Pursuant to Government Code section 800, Code of Civil Procedure section 1021.5, and other applicable law, Plaintiffs are entitled to reasonable attorneys' fees and costs for bringing this action to redress the IWVGA's arbitrary and capricious actions in connection with the IWVGA's approval of the GSP, Extraction Fee, and Implementing Actions.

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VII. DAMAGES ARE AN INADEQUATE REMEDY—CAUSES OF ACTION SUPPORT THE REMEDIES OF A STAY AND/OR INJUNCTION

38. Pursuant to Code of Civil Procedure sections 526 and 1085, the Court may stay or enjoin the operation of any administrative decision or order challenged in this proceeding.

39. The IWVGA has approved the GSP, Extraction Fee, and Implementing Actions, and has proceeded to implement the provisions therein notwithstanding the serious deficiencies identified in this Petition and Complaint. Given the IWVGA's failure to comply with the requirements of SGMA, CEQA, and the United States and California Constitutions in adopting the GSP, Extraction Fee, and Implementing Actions, any action to implement the provisions therein would be undertaken in violation of law and would be null and void. Plaintiffs have no plain, speedy, or adequate remedy at law for the irreparable harm that would result from the implementation of the GSP, Extraction Fee, and Implementing Actions. A stay or preliminary injunction is necessary to restrain the IWVGA from taking additional actions to implement the GSP, Extraction Fee, and Implementing Actions until the IWVGA has fully complied with all applicable legal requirements.

40. In particular, and without limitation, Plaintiffs and the public generally are irreparably harmed by: (1) the significant uncertainty regarding the proper application of SGMA within the Basin, the appropriate role and authorities of the GSA, the legitimacy of the GSP and the loss of time required to prepare a GSP deemed compliant with the requirements of SGMA, delay and jeopardy by the California Department of Water Resources' ("DWR's") expected rejection of the GSP, forcing a re-initiation of the GSP process; (2) the impairment of Plaintiffs' ability to farm, including the ability to finance its land and related businesses dependent upon the cultivation of irrigated agriculture on the property; (3) the immediate curtailment of water use by Plaintiffs specifically and for all other users within just years of the adoption of the GSP, rather than 2040; (4) the failure to consider and adopt Basin-wide physical measures that may result in an optimization of water use in accordance with Article X, Section 2 of the California Constitution; and (5) the failure to disclose and consider environmental impacts attributable to the fallowing of land that will be necessitated by the adoption of the Implementing Actions.

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41. No public interest or benefit is impaired by granting of an injunction as continued actions under the GSP, Extraction Fee, and Implementing Actions is contrary to the public interest in furthering the reasonable use of water, avoiding uncertainty, adhering to the legislative direction of SGMA reserving the responsibility for determining the relative priority of groundwater rights to the judiciary, and failure to evaluate and consider potential adverse impacts on the environment as required by CEQA.

42. A stay or injunction will not harm the IWVGA because the IWVGA is required by SGMA to achieve sustainability by 2040, not 2020. Plaintiffs are informed and believe and so allege that a stay or injunction sufficient to allow the IWVGA to revise the GSP, Extraction Fee, and Implementing Actions so as to comply with SGMA and other applicable laws would only minimally reduce groundwater storage in the Basin and that the small amount of loss of storage, if any, during the stay or injunction period would not cause harm to the Basin or the IWVGA and can be furthered reduced by the imposition of a groundwater level monitoring plan.

VIII. SGMA BACKGROUND

43. SGMA was passed by the California Legislature and signed by the Governor in September 2014. SGMA's purpose is to ensure better local and regional management of groundwater use, with a goal of having sustainable groundwater management in California by 2040 or 2042, depending on the basin in question.

44. A GSA, such as IWVGA, is a local agency that implements SGMA and serves as the primary entity responsible for implementing sustainable groundwater management. SGMA defines "sustainable groundwater management" as "the management and use of groundwater in a manner that can be maintained during the planning and implementation horizon without causing undesirable results." (Wat. Code, § 10721(v).)

45. In high and medium-priority basins, GSAs are required to develop and implement a GSP. GSPs are detailed road maps for how groundwater basins will be sustainably managed. SGMA requires that GSPs for groundwater basins designated as "subject to critical conditions of overdraft" be prepared and submitted to the DWR by January 31, 2020. (Wat. Code, § 10720.7(a)(1).) In all other high- and medium-priority basins, GSPs must be submitted to DWR

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by January 31, 2022. (*Id*. at § 10720.7(a)(2).)

46. A GSP must be designed to achieve basin sustainability and is required to include measurable objectives and milestones in five-year increments to achieve basin sustainability within 20 years. (Wat. Code, § 10727.2(b)(1).) The GSP shall also include, among other things, a description of the physical setting and characteristics of the aquifer system underlying the basin, a planning and implementation horizon, components related to the monitoring and managing of groundwater levels within the basin, and monitoring protocols that will detect changes in groundwater levels. (See *id*. at § 10727.2(a)–(g).)

47. DWR's SGMA regulations (Title 23 of the California Code of Regulations, Division 2, Chapter 1.5, Subchapter 2) ("SGMA Regulations") require that a GSP include a water budget accounting for historical, current, and projected annual inflows to and outflows from the basin, together with the volume of water in the basin. The water budget is then used to calculate the basin's sustainable yield, which is defined as the "maximum amount of water, calculated over a base period representative of long-term conditions in the basin, and including any temporary surplus, that can be withdrawn annually from a groundwater supply without causing an undesirable result." (Wat. Code, § 10721(w) [emphasis added].)

48. A GSP must rely upon the "best available information and science" to quantify the water budget and to provide an understanding of "historical and projected hydrology, water demand, water supply, land use, population, climate change, sea level rise, groundwater and surface water interaction, and subsurface groundwater flow." (See generally, 23 Cal. Code Regs., § 354.18.)

49. After adopting the GSP, the GSA must submit the GSP to DWR, which then posts the GSP on its website and establishes a period of no less than 60 days to receive public comments on the GSP. (23 Cal. Code Regs., § 355.2(b)–(c).)

50. The GSP must be timely submitted, contain the necessary information required by SGMA, cover the entire basin, and address any earlier deficiencies identified by DWR. (23 Cal. Code Regs., § 355.4(a).)

51. If a GSP meets these conditions, DWR considers 10 factors to determine "whether

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[the GSP] is likely to achieve the sustainability goal for the basin." (23 Cal. Code Regs., § 355.4(b).) The factors include whether the GSP: (1) has reasonable assumptions, criteria, findings and objectives; (2) implements reasonable measures to eliminate data gaps; (3) uses sustainable management criteria and projects and management actions commensurate with the level of understanding of the basin setting; (4) considers the beneficial uses and users of the groundwater and other interests affected by it; (5) uses feasible projects and management actions; (6) includes a reasonable assessment of overdraft conditions; (7) adversely affects an adjacent basin; (8) has coordination agreements which conform with SGMA and have been adopted by all relevant parties; and whether the GSA: (9) has the legal authority and financial ability to implement the GSP; and (10) has adequately addressed all credible comments and concerns. (*Id*. at § 355.4(b)(1)–(10).)

52. SGMA provides two fee authorities relevant here. First, a GSA may impose fees pursuant to Water Code section 10730(a) to fund the costs of a groundwater sustainability program, including but not limited to "preparation, adoption, and amendment of a [GSP], and investigations, inspections, compliance assistance, enforcement, and program administration, including a prudent reserve," as well as "permit fees and fees on groundwater extraction or other regulated activity." (Wat. Code, § 10730(a).)

53. Water Code section 10730(b) describes the process to adopt or increase a fee. The GSA must "[p]rior to imposing or increasing a fee, hold at least one public meeting, at which oral or written presentations may be made as part of the meeting." (Wat. Code, § 10730(b)(1).) The GSA must provide notice of the meeting, consistent with Government Code section 6066, except that the GSA must make available to the public the data upon which the proposed fee is based, "at least 20 days prior to the meeting." (*Id*. at § 10730(b)(2)–(3).)

54. Water Code section 10730 does *not* permit a GSA to use a fee adopted pursuant to that section to pay for any projects and management actions to implement a GSP. Fees used to fund projects and management actions must be adopted pursuant to the authority and procedures outlined in Water Code section 10730.2.

55. Specifically, Water Code section 10730.2 allows a GSA that adopts a GSP to

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"impose fees on the extraction of groundwater from the basin to fund costs of groundwater management, including, but not limited to, the costs of the following: (1) Administration, operation, and maintenance, including a prudent reserve. (2) Acquisition of lands or other property, facilities, and services. (3) Supply, production, treatment, or distribution of water. (4) Other activities necessary or convenient to implement the plan." (Wat. Code, § 10730.2(a).)

56. Additionally, fees adopted pursuant to Water Code section 10730.2 to fund the costs of groundwater management must comply with the requirements set forth in subdivisions (a) and (b) of Section 6 of Article XIII D of the California Constitution. (Wat. Code, § 10730.2(c).)

57. Subdivisions (a) and (b) of Section 6 of Article XIII D of the California Constitution mandate that:

> (a) . . . . An agency shall follow the procedures pursuant to this section in imposing or increasing any fee or charge as defined pursuant to this article, including, but not limited to, the following:
> (1) The parcels upon which a fee or charge is proposed for imposition shall be identified. The amount of the fee or charge proposed to be imposed upon each parcel shall be calculated. The agency shall provide written notice by mail of the proposed fee or charge to the record owner of each identified parcel upon which the fee or charge is proposed for imposition, the amount of the fee or charge proposed to be imposed upon each, the basis upon which the amount of the proposed fee or charge was calculated, the reason for the fee or charge, together with the date, time, and location of a public hearing on the proposed fee or charge.
> (2) The agency shall conduct a public hearing upon the proposed fee or charge not less than 45 days after mailing the notice of the proposed fee or charge to the record owners of each identified parcel upon which the fee or charge is proposed for imposition. At the public hearing, the agency shall consider all protests against the proposed fee or charge. If written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge.
>
> (b) . . . A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements:
> (1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service.
> (2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was

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> imposed.
> (3) The amount of a fee or charge 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.
> (4) 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.
> (5) No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners.
>
> Reliance by an agency on any parcel map, including, but not limited to, an assessor's parcel map, may be considered a significant factor in determining whether a fee or charge is imposed as an incident of property ownership for purposes of this article. In any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance with this article.

(Cal. Const., Art. XIII D, Sec. 6, subd. (a)–(b).)

58. Particularly relevant here, the fee shall not exceed the proportional cost of the service attributable to the parcel. (Cal. Const., Art. XIII D, Sec. 6, subd. (b)(3).) If an agency is to charge different rates to different customer classes, it must demonstrate the differential costs of providing water service to the customer classes. (*City of Palmdale v. Palmdale Water District* (2011) 198 Cal.App.4th 926.)

59. SGMA provides two mechanisms to challenge fees adopted pursuant to Water Code sections 10730 and 10730.2. First, a person may bring a "judicial action or proceeding to attack, review, set aside, void, or annul the ordinance or resolution imposing a new, or increasing an existing, fee . . . within 180 days following the adoption of the ordinance or resolution" pursuant to section 1085 of the Code of Civil Procedure. (Wat. Code, § 10726.6(c), (e).) Second, "Any person may pay a fee . . . under protest and bring an action against the governing body in the superior court to recover any money that the governing body refuses to refund. Payments made and actions brought under this section shall be made and brought in the manner provided

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for the payment of taxes under protest and actions for refund of that payment in Article 2 (commencing with Section 5140) of Chapter 5 of Part 9 of Division 1 of the Revenue and Taxation Code, as applicable." (*Id.* § 10726.6(d).) Plaintiffs challenge the ordinances adopting the Extraction Fee and Replenishment Fee under the first mechanism—i.e., by way of a writ of mandate pursuant to section 1085 of the Code of Civil Procedure.

60. SGMA grants GSAs the ability to validate a GSP pursuant to Code of Civil Procedure sections 860, *et seq*. SGMA further provides that actions taken by a GSA are subject to judicial review under Code of Civil Procedure section 1085. (Wat. Code, § 10726.6(e).) A court reviewing an agency's action under Code of Civil Procedure section 1085 must consider: (1) whether the agency acted within the scope of its delegated authority; (2) whether the agency employed fair procedures in reaching its decision; and (3) whether the agency action was reasonable, and not arbitrary or capricious. (*Cal. Hotel & Motel Assn. v. Industrial Welfare Com.* (1979) 25 Cal.3d 200, 212.) In doing so, the court "must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." (*Ibid*.)

61. SGMA expressly provides that it does not disturb or alter common law water rights. In adopting SGMA, the Legislature declared its intent: "*to preserve the security of water rights* in the state to the greatest extent possible consistent with the sustainable management of groundwater." (Wat. Code, §10720.1(b) [emphasis added].) SGMA also prohibits a GSA from making "a binding determination of the water rights of any person or entity." (*Id*. at 10726.8(b).) Further, SGMA provides that: "[n]othing 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." (*Id*. at §10720.5(b).) The duty, power, and authority to determine or alter groundwater rights is reserved exclusively to the courts. (*Hillside Mem'l Park & Mortuary v. Golden State Water Co.* (2011) 205 Cal.App.4th 534, 549.)

62. California Constitution Article X, section 2 declares "the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are

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capable." Groundwater is an important water supply source for businesses, individuals, and public agencies that overlie or extract water from the Basin. The protection, conservation and efficient use of groundwater is vitally important to the health, safety, and welfare of the region.

63. One of the bundle of property rights owned by a landowner is the right to extract groundwater from land overlying a basin and put it to reasonable and beneficial use. (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1240.)

IX. STATEMENT OF FACTS

A. The Basin: Groundwater Characteristics and SGMA Status

64. The Indian Wells Valley is one of a series of valleys (or basins) on the eastern flank of the Sierra Nevada Mountains that include Rose Valley immediately to the north and Owens Valley further north. Indian Wells Valley is separated from most of Rose Valley by volcanic rocks of the Coso Range (see **Figure 1**). Salt Wells Valley and Searles Valley are located east of Indian Wells Valley, and Fremont Valley is located to the south. Indian Wells Valley is separated from Searles Valley by the Argus Range and Spangler Hills, and from Fremont Valley by the Summit Range and El Paso Hills.

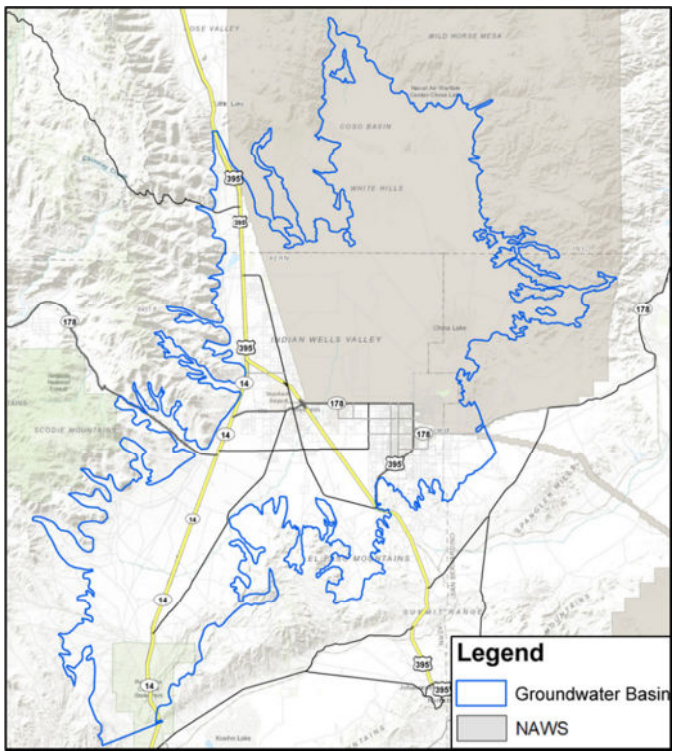

Figure 1: Indian Wells Valley

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65. The Basin is approximately 597 square miles (382,000 acres) in area.

66. Although most of the Basin is located in Kern County, portions of the Basin also extend into Inyo and San Bernardino Counties (see **Figure 1**).

67. The Basin is defined by DWR Bulletin 118 as Basin No. 06-054.

68. In its June 2014 CASGEM Basin Prioritization Process, DWR designated the Basin as medium-priority, based on a ranking score of 14.8 priority points.

69. Despite this initial, relatively low priority score, in its 2016 Bulletin 118 Interim Update, DWR designated the Basin as "subject to critical conditions of overdraft."

70. Subsequently, in DWR's 2019 SGMA Basin Prioritization, the Basin was re-prioritized from medium- to high-priority.

71. Based on the Basin designation as "subject to critical conditions of overdraft," SGMA required the IWVGA to prepare and submit a GSP to DWR by January 31, 2020.

72. Plaintiffs allege, on information and belief, that groundwater pumping in the Basin began in the late 1800s for agricultural and domestic (i.e., single home, private wells) purposes, and increased in the early 1900s as agriculture in Indian Wells Valley and mineral recovery operations in Searles Valley expanded. Plaintiffs further allege, on information and belief, that only after 1943, with construction of the Navy's Naval Air Weapons Station China Lake ("NAWS") and development of the City of Ridgecrest did military and municipal use begin. Plaintiffs allege, on information and believe, that prior to 1943, groundwater production was in the range of a few thousand AFY.

73. Plaintiffs allege, on information and believe, that groundwater production from the Basin has ranged primarily between about 20,000 AFY to approximately 28,000 AFY over the past 40 years, with peaks in the early to mid-1980s. According to pumping data collected by the Indian Wells Valley Water District, as of 2016, approximately 28,500 AFY of groundwater was pumped from the Basin.

74. Plaintiffs allege, on information and belief, that the Indian Wells Valley is a geologic basin that has been infilled with up to 6,500-feet of unconsolidated sediments, which contain groundwater under perched, unconfined to semi-confined, and confined conditions. The

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total groundwater contained within these sediments is referred to as groundwater storage or groundwater-in-storage. This groundwater storage has accumulated over thousands to tens of thousands of years and represents a "groundwater savings account." The rate of annual recharge (input) to this storage can be viewed as the annual "water income" to the Basin; whereas, the pumping of groundwater from the Basin (output) can be viewed as the annual "water expenses." Groundwater storage within the Basin can be drawn upon to meet current needs, so long as this loss of storage is considered reasonable under the facts and circumstances of the case. Failing to put groundwater that is presently within storage to reasonable beneficial use for the benefit of people, industry and the general economy of the region is unreasonable and wasteful if the resulting change in storage will not cause significant and unreasonable adverse impacts (undesirable results).

75. Plaintiffs are informed and believe, and on that basis allege, that total groundwater in storage (all depths and all quality) is between 67 and 94 million AF. Plaintiffs allege, on information and belief, that the estimated total quantity of currently usable groundwater (<1,000 ppm total dissolved solids ("TDS")) in storage in the first 200 feet of saturated sediments in the Basin is between seven to nine million AF of fresh groundwater (i.e., 250 to 320 years of groundwater supply at 2016 pumping rates). Beyond the currently usable groundwater, as defined above, deeper groundwater and groundwater of poorer quality could be put to beneficial use within the Basin, increasing the volume of groundwater available for use and extending the timeframe for that use further.

76. Prior to the GSP, several investigations into the quantity of recharge to the Basin have been undertaken over the years. Plaintiffs are informed and believe, and on that basis allege, that studies undertaken by various researchers over the past 100 years estimate a range of recharge from a low of 5,976 AFY to as high as 39,000 AFY (DRI, 2016; USGS, 2018).

77. The estimates of recharge by the various researchers, as summarized by DRI (2016) and USGS (2018), have ranged as follows:

a. Anderson et al. (1992) 15,000

b. Austin (1988) >30,000 AFY

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c.	Bean (1989)	9,700 AFY
d.	Berenbrock and Martin (1991)	9,806 AFY
e.	Bloyd and Robson (1971)	9,795 AFY
f.	Brown and Caldwell (2009)	7,840 AFY
g.	Dutcher and Moyle (1973)	11,000 AFY
h.	Epstein et al. (2010)	12,000 AFY
i.	Kunkel and Chase (1969)	15,000 AFY
j.	Lee (1913)	27,000 AFY
k.	Reitz et al. (2016)	7,325 AFY
l.	St. Amand (1986)	11,000 AFY
m.	Thompson (1929)	39,000 AFY
n.	Thyne et al. (1999)	8,026 AFY
o.	Todd (2014)	9,806 AFY
p.	USGS (2018)	8,680 (for 1981-2010)
q.	USGS (2018)	5,976 (for 2000-2013)
r.	Watt (1993)	9,851 AFY

78. The California Supreme Court has declared that "safe yield" is the maximum amount of groundwater that can be withdrawn from a groundwater basin without causing undesirable results, after the withdrawal of any temporary surplus. (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, disapproved in part on unrelated grounds *in City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1247.) The California Legislature similarly defined "sustainable yield" under SGMA as "the maximum quantity of water, calculated over a base period representative of long-term conditions in the basin and including any temporary surplus, that can be withdrawn annually from a groundwater supply without causing undesirable results." (Wat. Code, § 10721(w).)

79. Plaintiffs are informed and believe, and on that basis allege, that Safe Yield and Sustainable Yield have the same general meaning.

80. SGMA defines undesirable results to include the following:

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> (1) Chronic lowering of groundwater levels indicating a significant and unreasonable depletion of supply if continued over the planning and implementation horizon. Overdraft during a period of drought is not sufficient to establish a chronic lowering of groundwater levels if extractions and groundwater recharge are managed as necessary to ensure that reductions in groundwater levels or storage during a period of drought are offset by increases in groundwater levels or storage during other periods.
> (2) Significant and unreasonable reduction of groundwater storage.
> (3) Significant and unreasonable seawater intrusion.
> (4) Significant and unreasonable degraded water quality, including the migration of contaminant plumes that impair water supplies.
> (5) Significant and unreasonable land subsidence that substantially interferes with surface land uses.
> (6) Depletions of interconnected surface water that have significant and unreasonable adverse impacts on beneficial uses of the surface water.

(Wat. Code, § 10721(x).)

81. Plaintiffs are informed and believe, and on that basis allege, that no undesirable results have been identified that are attributable to the historical groundwater production in the Basin.

82. Plaintiffs are informed and believe, and on that basis allege, that continuing groundwater pumping at current rates for the foreseeable future will not cause significant and unreasonable loss of storage in the Basin. In addition, Plaintiffs allege, on information and belief, that no other undesirable results would occur in the Basin from continued groundwater pumping at current rates for a period of 20 years or considerably more.

83. Plaintiffs are informed and believe, and on that basis allege, that even without any new supplies being made available to the Basin, groundwater production at current rates could continue unabated for a minimum of 20 years and cause a reduction in storage of approximately 500,000 AF, with a corresponding reduction in groundwater levels by approximately 25 feet in the center of the Basin, distant from Plaintiffs' properties. Plaintiffs allege, on information and belief, this continued withdrawal would cause an additional approximately 6 percent depletion of currently usable groundwater storage. That is, the Basin would still contain 94 percent of the currently usable groundwater storage (and 99 percent of total groundwater storage) in the Basin.

84. Plaintiffs are informed and believe, and on that basis allege, that operating a

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groundwater basin in a manner that maintains more than 50 percent of the groundwater in storage that existed in 2015 is safe, sustainable and consistent with the mandate of California Constitution Article X, section 2 to maximize the beneficial use of water under reasonable means provided there are no significant and unreasonable adverse impacts on the Basin or vested rights.

B. Formation of the IWVGA, GSA Designation, and Plaintiffs' Attempts to Become Involved in Basin Governance

85. Plaintiffs hold a vested interest in achieving long-term Basin sustainability because their farming operations depend on the continued availability of groundwater and the health of the Basin. Accordingly, Plaintiffs participated earnestly and cooperatively through the entire GSA formation and GSP adoption process.

86. Before the IWVGA was formed, Plaintiffs actively participated in the Indian Wells Valley Cooperative Groundwater Management Group, a long-standing local data-sharing group comprised of the major groundwater producers and government agencies in the Indian Wells Valley. This group contributed much of the historical groundwater production information and stream flow data to the IWVGA.

87. In 2015, after the passage of SGMA and prior to the formation of the IWVGA, Plaintiffs formed the Mojave Mutual Water Company and sought membership on the GSA for the Basin through a joint powers authority or other agreement as allowed pursuant to Water Code section 10723.6(b). Plaintiffs' request to participate as a member of GSA was denied by the agencies that now comprise the IWVGA.

88. On July 15, 2016, the IWVGA was formed as a California joint powers authority pursuant to the 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").

89. Membership was limited to only five local agency members—the Counties of Kern, Inyo, and San Bernardino, the Indian Wells Valley Water District, and the City of Ridgecrest. The IWVGA also has two "associate" members—the Navy and the BLM. Both associate members enjoy federal sovereign immunity from regulation under the GSP and are not

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bound in any way by its provisions. The five local agency members of the IWVGA represent less than 35 percent of the water use in the Basin and no member of the IWVGA Board is dedicated to represent agricultural interests.

90. The IWVGA Board adopted Resolution No. 02-16 on December 8, 2016 to establish the IWVGA as the exclusive GSA for the entirety of the Basin.

91. After the IWVGA denied Plaintiffs' attempt to participate in the Basin governance process through obtaining membership on the IWVGA Board, certain of the now-members of the IWVGA promised to develop a committee modeled after the Kern County Planning Commission as a means to put policy decisions in the hands of independent policy and technical committees. This was not implemented.

92. Instead, the IWVGA Board formed an eleven-person, voting-member Policy Advisory Committee ("PAC") to advise the Board on policy-related matters and to develop non-binding proposals on policy matters pertaining to the GSP. The IWVGA Board also established a Technical Advisory Committee ("TAC") for the stated purpose of giving interested parties an opportunity to review and conduct a thorough evaluation of each technical element of the GSP prior to its finalization by Stetson Engineers Inc., the IWVGA's Water Resources Manager. Instead of playing a meaningful advisory role, the PAC and the TAC became afterthoughts, serving as tokens with little input into the IWVGA Board's decisions.

93. The failure to give agricultural producers a seat at the table, or at least elect IWVGA Board members through a popular vote, was prejudicial to Plaintiffs. For example, the Kern County representative on the IWVGA Board, Supervisor Mick Gleason, a former Navy Captain and Commanding Officer of NAWS, publicly stated that his "job" was to protect the Navy and that he believed agriculture has no future in the Indian Wells Valley, including as published in the following sources:

- "The satisfaction I will get from [finalizing the GSP] will be significant because we give it to the Navy and say 'you have no worries, we don't have a threat to our base because we have a sustainment plan.'" ("Gleason reflects on time in office, cites reason for not running," The Ridgecrest Daily Independent (October 1,

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2019).)

- "We need to preserve the Navy's mission in the Indian Wells Valley. And that has implications that dwarf other decisions. . . . **Now the strategy is emphatically and clearly and empirically that our job is to preserve the Navy base and to preserve the Navy mission because it is being encroached upon. Before, when we did not have that clear articulation of encroachment, we thought it was [encroachment] but we weren't sure. The Navy had to take a position. Now they are taking a position. That means that now from my perspective that I need to take that position**. . . ." ("Gamechanger: Gleason reacts to Navy encroachment letter," The Ridgecrest Daily Independent (March 8, 2019) [emphasis added].)
- "I think the agriculture community has seen its heyday . . . . With SGMA (Sustainable Groundwater Management Act) and recent decisions in water allocations, and politics in Sacramento, agriculture has seen better days." ("Gleason muses on MALDEF settlement," The Ridgecrest Daily Independent (April 6, 2018).)

94. Other members of the IWVGA Board also indicated that the Navy's desires were paramount. Director Ron Kicinski, representing the Indian Wells Valley Water District, for example, acknowledged that the Navy was in the "driver's seat" of the GSP development process:

> When the Navy came out formally and said that they are considering groundwater an encroachment issue that is something we've got to solve, otherwise they are going to say it's encroachment on the mission of the base. And them being the major economic driver of the area, that means a lot . . . they are the major economic driver and they are in the driver's seat. When they say encroachment . . . it means a lot to what we are going to do, how we are going to do it and how fast we need to do it. The point is we can't fail. ("Navy to GA: Groundwater 'No. 1 encroachment issue,'" The Ridgecrest Daily Independent (February 22, 2019).)

95. Additionally, notwithstanding Water Code section 106, which declares the use of water for irrigation of agriculture one of this highest beneficial uses in the state, IWVGA Special Counsel summarized discussions regarding "deprioritiz[ing]" water use for agricultural

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production, determining that water use for agriculture "should not be considered a reasonable use of water," and that the "priority goal" should be "serving Navy employees:"

> There were proposed bases which have been presented [to the IWVGA Authority board for consideration] which would **deprioritize agricultural production**, including the purported priority of "Health and Safety" water, which presumably would include some amount of gallons per person per day which the District could serve with a first priority, the statutory priority of municipal and industrial water over agricultural water and **the assertion that agricultural use of water in the Basin under present circumstances should not be considered a reasonable use of water**. . . . The City of Ridgecrest has become established to perform the core role of facilitating the Navy Mission at the China Lake base, so that **preserving a water priority for the District and others serving Navy employees for base operations should constitute the priority goal for the allocation plan**. . . . It was stated that the Authority Board desires options presented for its consideration of an allocation plan. . . . Those concepts might be applied to protect water production by the district and others in proportion to the connections of ratepayers which include a person who works at the Naval Base. **It was noted that agricultural uses would be very likely to be terminated by application of those principles relatively quickly**, be bought out or be ramped down over an agreed period of time." (Memorandum from IWVGA Board Special Counsel James L. Markman to David Janiec re "Report from March 8 and March 29, 2019 Meetings on IWVGWA Allocation Plan" (April 1, 2019) [Emphasis added].)

96. Although Plaintiffs' efforts to have a seat on the GSA were rebuffed, Plaintiffs continued to pursue a positive working relationship with all stakeholders in the Indian Wells Valley. Early in the process, Plaintiffs earnestly pursued conversations with the Kern County Board of Supervisors and the Indian Wells Valley Water District in attempts to find cooperative and collaborative agreement on how to implement SGMA in the Indian Wells Valley. Even after, from Plaintiffs' perspective, IWVGA decision-makers failed to reciprocate or make any effort in good faith to engage in meaningful dialogue, Plaintiffs actively participated in the PAC until April 2020 as a representative for large agriculture, providing constructive input, through voluntary data sharing, and serving as a member of several subcommittees.

97. In addition, Plaintiffs provided over $100,000 in funds to support the Indian Wells Valley Brackish Water Study Group, which is evaluating the use of brackish groundwater

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resources to supplement shallow, fresh, groundwater supplies. Plaintiffs have also funded scientific studies, the purchase of monitoring equipment, and payment of other costs incurred by the TAC or PAC. Additionally, Plaintiffs, with their technical consultants, worked collaboratively with local groundwater producers to develop a white paper, supported by parties that represent over 80 percent of groundwater production in the Basin (including the Indian Wells Valley Water District), on groundwater management in the Basin under SGMA. The paper presented an approach to achieve sustainability and compliance with SGMA along with long-term viability for the local community and economy.

C. The IWVGA's Decision-Making Process in Removing Plaintiffs from the IWVGA Advisory Committees was Infirm

98. Until April 2020, Plaintiffs, individually and through their technical consultants, were active members of the TAC, representing "large agriculture." Plaintiffs, individually and through their technical consultants, provided extensive comments and suggestions on groundwater technical issues, including technical memoranda, sustainability criteria, and management goals and objectives. In addition to participating in the subcommittees of the IWVGA, Plaintiffs, with their technical consultants, provided ongoing technical support and significant financial funding to the Indian Wells Valley Brackish Groundwater Feasibility Program.

99. On April 16, 2020, however, the IWVGA Board summarily, and without notice, removed Plaintiffs and their technical consultants from the membership of the PAC and the TAC through adoption of Resolution No. 03-20.

100. The April 16, 2020 IWVGA Staff Report states that the Board's rationale for its action was Plaintiffs' "failure to pay the Groundwater Extraction Fee set forth in Ordinance 02-18" in late 2019 and early 2020. Yet, as acknowledged in the Staff Report, Plaintiffs had already agreed to make payment of all past and currently fees due fees totaling $26,613.84. Plaintiffs allege, therefore, on information and belief, that the IWVGA's action was purely punitive, given that the agency had already received assurances that Plaintiffs would rectify the payment error.

101. Plaintiffs are informed and believe, and on that basis allege, that they were treated

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differently from similarly situated users by the IWVGA Board. Plaintiffs are informed and believe, and on that basis allege, that the IWVGA Board was on notice that other groundwater users in the Basin had also been late in paying their groundwater extraction fees. Yet, only Plaintiffs were singled out for removal from the PAC and TAC.

102. At the time Plaintiffs were removed from the PAC and TAC, membership on the committees did not require timely payment of fees and the IWVGA had no policy requiring or permitting expulsion of PAC and TAC members for late payment. Plaintiffs therefore had no notice that expulsion from the PAC or TAC could be a consequence for missing payment deadlines.

103. The IWVGA's actions were without support in law, regulation, or policy. Plaintiffs are informed and believe and on that basis allege that Plaintiffs' expulsion from the PAC and TAC represented the culmination of a multi-year process devised by IWVGA decision-makers that was designed to silence Plaintiffs' dissenting opinions that opposed the IWVGA's discrimination against agriculture and opposed the requirements, set forth in the GSP and Implementing Actions, that agriculture bear almost the entire responsibility for the curtailment in pumping required to implement the GSP.

D. The IWVGA Failed to Proceed in the Manner Required by Law in Preparing and Adopting the GSP on January 16, 2020.

104. The IWVGA released a public review draft of the GSP in December 2019.

105. On January 8, 2020, Plaintiffs, through their counsel, submitted to the IWVGA a detailed letter providing extensive comments on the December 2019 public review draft of the GSP. A true and correct copy of Plaintiffs' comment letter is attached hereto as **Exhibit B**, and incorporated herein by reference as though fully set forth herein.

106. Numerous other stakeholders also submitted comment letters on the December 2019 GSP draft. These letters include the January 8, 2020 comment letters submitted by Meadowbrook Dairy through their attorneys and technical consultant. Plaintiffs allege, on information and belief, that true and correct copies of Meadowbrook Dairy's two January 8, 2020 comment letters are attached hereto respectively as **Exhibits C and D**. These comments are

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incorporated herein by reference as though fully set forth herein.

107. After a public hearing, on January 16, 2020, the IWVGA adopted the GSP through Resolution No. 01-20. Although the comment letters on the December 2019 public review draft of the GSP identified numerous deficiencies and gaps in the document, the final GSP is not significantly different from the December 2019 public review draft. Therefore, Plaintiffs, through their counsel, and other stakeholders submitted additional comment letters to DWR in June 2020, urging that DWR hold the IWVGA accountable to rectify the numerous deficiencies in the GSP. A true and correct copy of Plaintiffs' letter to DWR is attached hereto as **Exhibit E**, and incorporated herein by reference as though fully set forth herein. Likewise, Plaintiffs allege, on information and belief, that true and correct copies of Meadowbrook Dairy's two June 2, 2020 comment letters to DWR are attached hereto respectively as **Exhibits F and G**. These comments are incorporated herein by reference as though fully set forth herein.

108. Plaintiffs are informed and believe and thereon allege that the GSP was rushed to completion and is replete with foundational scientific and analytical errors. The GSP must be invalidated, including for the reasons set forth below.

i. The GSP is Flawed because its Primary Objective—to Protect the Navy—was predetermined

109. Plaintiffs allege, on information and belief, that IWVGA decision-makers had already determined, prior to the adoption of the GSP, that the primary goal in managing the Basin should be the protection of the Navy, and that water use by agricultural pumpers should be eradicated.

110. Plaintiffs allege, on information and belief, that this bias towards the Navy and against agriculture can be seen in many public statements by IWVGA decision-makers and staff prior to adoption of the GSP. These statements include, but are not limited to, the statements of IWVGA Board members and counsel set forth herein.

111. Plaintiffs allege, on information and belief, that the core elements of the GSP are based on the IWVGA's primary objective—to reserve the Basin's entire native supply to the Navy—when the Navy does not pump a quantity of groundwater equal to or greater than the

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annual recharge rate—to assign the alleged unused reserved right to other GSA member entities and force all other Basin users to immediately cease pumping or pay for imported water and infrastructure and related projects.

112. Plaintiffs allege, on information and belief, that the primary objective of the GSP—protection of the Navy—expressly conflicts with the stated legislative purpose of SGMA to "provide for the sustainable management of groundwater basins." (Wat. Code, § 10720.1(a).)

113. This approach lacks support in the law and the facts because, for example, the GSP fails to evaluate the actual impacts of pumping by specific users in specific areas of the Basin including whether said pumping causing or contributes to undesirable results. Plaintiffs allege, on information and belief, that evidence generated by the IWVGA during the GSP development process indicated that the most severe pumping depression in the Basin has been identified near Navy production wells, whereas water levels at properties owned by other pumpers are already operating at the GSP's measurable objective.

ii. The GSP Fails to Incorporate and Respond to Stakeholder Comments

114. Prior to the IWVGA's adoption of the GSP, Plaintiffs, individually and through their counsel and technical consultants, and other interested parties submitted extensive written and oral comments on draft versions of the GSP. Regardless of their legal and technical merit, the IWVGA ignored the vast majority of these comments without substantively addressing these comments in a response to comments or taking any other corrective action in violation of SGMA and related requirements.

115. SGMA requires GSAs to "consider the interests of all beneficial uses and users of groundwater," such as "[a]gricultural users, including farmers" like Plaintiffs. (Wat. Code, § 10723.2.) Moreover, SGMA commands that GSAs "shall encourage the active involvement of diverse social, cultural, and economic elements of the population within the groundwater basin prior to and during the development and implementation of the groundwater sustainability plan." (*Id.* at § 10727.8(a); see also 23 Cal. Code Regs., § 354.10.) Under the SGMA Regulations, failure to adequately consider and respond to stakeholder comments or to fully consider impacts

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on overlying uses and users of groundwater is grounds for finding a GSP inadequate. (23 Cal. Code Regs., §§ 355.2(e)(3), 355.4(b)(4), (10).)

116. Likewise, the IWVGA's Communication and Engagement Plan sets forth objectives including "making use of local knowledge, creating improved outcomes, building trust, reducing conflict, increasing credibility, building partnerships, promoting stakeholder buy-in and broader public awareness, understanding, knowledge, and support for all voices and perspectives;" "includes the promise that the public's contribution will influence the decision;" and promotes "communicat[ion] to all how their input affected the decision." (GSP Appendix 1-E at 8–9.)

117. The IWVGA violated these authorities in failing to respond to comments on the GSP raised by Plaintiffs and other stakeholders. For example, in response to all comments in seven entire sections of Mojave's January 8, 2020 comment letter on the GSP, the IWVGA responded: "Comment related to legal positions and not specifically relevant to the GSP." (GSP Appendix 1-F [GSP Comment and Responses Matrix] at 43–44.) The IWVGA asserted this response, for example, to Plaintiffs' comments that agricultural water users should be included in the permanent allocation system and that all users—not just agricultural producers—should share proportionately in the shortage to avoid prioritizing access to water in a manner that infringes on the water rights of one class of water users to subsidize another class of users. (*Id.*)

118. Likewise, in response to each of Plaintiffs' comments regarding the technical inadequacies in the GSP, the IWVGA responded cursorily: "The best available information was used at the time the analyses for the GSP were conducted." (GSP Appendix 1-F at 44.)

119. IWVGA's remaining responses to Plaintiffs' comments were: "Comment noted" (applicable to every comment in four sections of Plaintiffs' comment letter), "The best available information was used at the time the analyses for the GSP were conducted" (applicable to every comment in four sections of Plaintiffs' comment letter), and "Comment addressed in Section 5.2.1.5" (applicable to one section of Plaintiffs' comment letter). (GSP Appendix 1-F at 43–44.) For example, in response to Plaintiffs' comments that the GSP should more clearly explain how the allocation system would work, how the federal government would be treated under the

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allocation system, and why the "Transient Pool Allocation" given to agricultural users would not be transferrable, the IWVGA cursorily "noted" the comments without any attempt to further clarify the GSP or address Plaintiffs' concerns in a single response to comments. (*Id.*)

120. Then, at the IWVGA's January 16, 2020 hearing on the GSP, IWVGA legal counsel made the following "legal statement" pertaining to various comments, including those submitted by Plaintiffs, that the IWVGA characterized as "legal" in nature:

> The Water Resources Manager has referred to legal counsel legal comments received in connection with public comment to the GSP. We have advised the JPA as follows.
>
> The GSP is a technical document that describes the physical conditions of the basin and sets out the process for managing adverse impacts. It is not intended as a determination of water rights of pumpers in the Basin. It is also not a legal brief. We have advised the JPA that water used or contemplated to be used by the Federal Government in connection with the operation of China Lake Naval Weapons Test Center is beyond the jurisdiction of the JPA's regulatory authority. Under the process outlined by the GSP, the JPA will make a technical determination of the potential scope of this water use. The remaining water, if any, will be available for all water users. The JPA will then set the fees necessary to replenish the water used beyond the safe yield by all users except the Navy.
>
> The legal comments we have reviewed are beyond the scope of this portion of the GSP process. Many of these comments present an analysis of the JPA's statutory authority or the interaction between state and federal law. Others legal issues concern objections to actions that the JPA has yet to take. Finally, several comments are based on the false presumption that the JPA is making a determination regarding water rights.
>
> Each of these legal comments is beyond the scope of the GSP currently before the JPA board. While the JPA has no desire to curtail responses to the GSP, we have advised that responding to these legal arguments is not productive to the current GSP adoption. (January 16, 2020 IWVGA "Legal Statement.")

121. Section 355.4(b)(4) and (10) of DWR's SGMA Regulations require that the GSP determine whether the beneficial uses of groundwater in the basin and the affected land use and property interests have been considered and whether there has been a response to credible technical and policy issues raised by stakeholders. (23 Cal. Code Regs., § 355.4(b)(4), (10).)

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Plaintiffs allege, on information and belief, that the identification of beneficial use, land use designations, and the character of property interests all involve a mix of legal, policy and technical disciplines. Therefore, the IWVGA wrongly evaded its obligations under SGMA to respond to public comments by labeling certain comments as "legal" in nature.

122. The IWVGA also acted contrary to its own Communication and Engagement Plan (GSP Appendix 1-E) in failing to respond to Plaintiffs' and others' comments.

iii. The IWVGA Failed to Provide Meaningful and Transparent Opportunities for Stakeholder Engagement

123. Under SGMA, the IWVGA was required to consider the interests of all beneficial uses and users of groundwater in the GSP development process, including interests of Plaintiffs, among other overlying groundwater rights holders with vested property rights. (Wat. Code, § 10723.2.) SGMA recognizes that the expertise of stakeholders, including overlying owners, is critical in ensuring that GSAs use the best available information and science throughout the GSP development process.

124. Likewise, the JPA Agreement and the IWVGA's bylaws require the IWVGA to consider the interests of all beneficial uses and users of groundwater in the Basin.

125. The IWVGA's process for public engagement and involvement, however, was lacking in several respects. First, Plaintiffs are informed and believe, and on that basis allege, that the IWVGA developed modeling scenarios in closed session meetings in violation of SGMA's requirements to involve beneficial users of groundwater. Plaintiffs further are informed and believe, and on that basis allege, that the groundwater model was developed prior to the formation of the TAC and the modeling scenarios were developed without direct and meaningful input from the TAC. Although summary information regarding various modeling scenarios was presented at meetings of the IWVGA Board, the underlying assumptions were insufficiently documented and explained to the public. Likewise, the IWVGA failed to clearly articulate how the modeling scenarios would inform the GSP and management actions to be taken thereunder. These issues frustrated meaningful public participation in the GSP development process, contrary to SGMA, and denied stakeholders due process.

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126. For example, in its January 8, 2020 comments on the GSP, Plaintiffs renewed prior requests that the assumptions for each modeling scenario under consideration be detailed and promptly provided to the public along with a clear explanation of how the IWVGA incorporated the modeling scenarios into the GSP and implementation of GSP Management Action No. 1. Again, the IWVGA concluded that no response to this comment—or any of the comments in this section of the comment letter—was warranted on the basis that it was "related to legal positions and not specifically relevant to the GSP." (GSP Appendix 1-F at 43.) The IWVGA's position fails to comply with SGMA, which grants the public a right to understand the factual and technical underpinnings of the GSP. (See, e.g., 23 Cal. Code Regs., § 355.4(b)(1) [asking "[w]hether the assumptions, criteria, findings, and objectives, including the sustainability goal, undesirable results, minimum thresholds, measurable objectives, and interim milestones are reasonable and supported by the best available information and best available science."].) The IWVGA also failed to comply with SGMA when it shrugged off comments requesting such information as "not specifically relevant to the [GSP]."

127. Further, Plaintiffs are informed and believe, and on that basis allege that the IWVGA does not own or control the model, authored by the Desert Resources Institute ("DRI") that provides the technical foundation for the GSP. Plaintiffs allege on information and belief that, instead, the model is owned and controlled by the Navy—the groundwater user to which the IWVGA later reserved the Basin's entire sustainable yield even though they were not using it—and the Navy's permission is necessary to modify any model parameter. The Navy model has not been peer reviewed, and despite Plaintiffs' requests, the IWVGA refused to release the model to stakeholders.

128. In Plaintiffs' January 8, 2020 comments on the GSP, Plaintiffs renewed their prior requests that the Navy model be made available to Plaintiffs and other stakeholders. The IWVGA failed to respond to this request, instead characterizing all comments in the relevant section as "related to legal positions and not specifically relevant to the GSP." (GSP Appendix 1-F at 43.) The IWVGA's position that a public request for disclosure of a model is a "legal position" is unsupported by SGMA. (See, e.g., 23 Cal. Code Regs., §§ 352.4(f) [setting forth the standards for

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groundwater and surface water models used for a GSP], 355.4(b)(10) [asking whether the GSP adequately responded to comments that raise "technical or policy issues with the Plan"].)

129. Plaintiffs allege, on information and belief, that the IWVGA's development of modeling scenarios, particularly Scenario 6.2, also was deficient because the IWVGA's pumping allocation objectives were determined internally by IWVGA staff, fed into the model developed by the Navy's contractor, and cemented into the fabric of the GSP without public comment and before the sustainable management criteria were even considered.

130. Additionally, public review and participation was stunted because the Public Review Draft of the GSP was not available for public review until December 11, 2019, leaving little time for the IWVGA to consider and incorporate public comments.

131. Furthermore, between December 11 and 27, 2019, different versions of the GSP sections were made available on the IWVGA's website, making it unclear which version controlled or whether the draft of the GSP had changed, given the lack of any guidance regarding specific changes that were made.

132. These issues frustrate meaningful public participation in the GSP development in violation of SGMA and the IWVGA's JPA Agreement and Bylaws and deny stakeholders due process.

iv. The GSP Fails to Consider the Interests of Beneficial Uses and Users of Groundwater and Fails to Ensure Consistency with Common Law Water Rights

133. In violation of SGMA and the IWVGA's own JPA Agreement and Bylaws, the GSP fails to consider the interests of all beneficial uses and users of groundwater, specifically holders of overlying groundwater rights such as agricultural users including farmers, like Plaintiffs. (Wat. Code, § 10723.2.)

134. Instead, the GSP suggests that agricultural users are a threat to the Basin that must be "restricted," and declares that irrigation for agricultural purposes is not a reasonable use of water, notwithstanding Water Code section 106, which deems irrigation the second highest priority use following domestic use, and Plaintiffs' lawful right to use its property for agricultural

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purposes. (See *Abatti v. Imperial Irrigation District* (2020) 52 Cal.App.5th 236, 279–80.)

135. GSP Management Action No. 1 is to implement the "Annual Pumping Allocation Plan, Transient Pool and Fallowing Program" ("Management Action No. 1"). (GSP at 5-4.) Within Management Action No. 1, the "primary initial management action is the establishment of annual groundwater pumping allocations"—called "Annual Pumping Allocations"—of the sustainable yield of the Basin. (*Ibid*.) "These Annual Pumping Allocations will be used for the purpose of assigning pumping fees," i.e., because any user not granted an Annual Pumping Allocation must pay a fee to continue pumping water, provided the user's pumping is not using an allotment granted under the "Transient Pool." (*Id*. at 5-4, 5-6.) These fees, called "Augmentation Fees" in the GSP, and later called the "Replenishment Fee" by the IWVGA, are a per-AF fee "sufficient for the acquisition of supplemental water supplies." (*Id*. at 5-6.)

136. Section 5 of the GSP explains that only certain users that produced groundwater during the Base Period, defined as January 1, 2010 through December 31, 2014, will receive an Annual Pumping Allocation. (GSP at 5-5 to 5-6.) The remaining groundwater users—which the GSP terms "groundwater pumpers with inferior rights"—will not be given an Annual Pumping Allocation. (*Id.* at 5-6.) Instead, the GSP explains that the inferior right holders will be "eligible" to receive some unspecified share of the "Transient Pool," which is a "limited *non-transferable one-time allocation of water to be used prior to 2040*." (*Ibid.* [emphasis added].)

137. The Transient Pool was "created to facilitate coordinated production reductions and to allow groundwater users to plan and coordinate their individual groundwater pumping termination." (GSP at 5-6.) The Transient Pool is only 51,000 AFY, to be shared amongst all eligible recipients. Plaintiffs allege, on information and belief, that each users' share of the Transient Pool is sufficient only for a few years of continued groundwater production. Those groundwater users that are assigned a Transient Pool allotment may be enrolled in a "Fallowing Program," under which the user can elect to "sell their Transient Pool Allocation back to the IWVGA." (*Ibid.*) "[O]nce all water in the Transient Pool has been consumed (or sold through the Fallowing Program . . .), the Transient Pool will cease" and pumpers have two options: (1) cease pumping or (2) pay a fee to continue pumping. (*Ibid*.)

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138. Any water production in excess of either an Annual Pumping Allocation or a Transient Pool allotment will be subject to a fee (later termed the "Replenishment Fee") "in an amount that is determined to be sufficient for the acquisition of supplemental water supplies." (GSP at 5-6.)

139. Groundwater users that the IWVGA deems to hold "inferior rights" will not be granted an Annual Pumping Allocation, but will instead receive a Transient Pool allotment, only if eligible. (GSP at 5-6.) As to eligibility for the Transient Pool, the GSP explains: "All groundwater pumpers who were producing groundwater during the Base Period and who are not given an Annual Pumping Allocation will be eligible to receive a Transient Pool Allocation." (*Ibid*.)

140. SGMA requires the IWVGA to consider the interests of all beneficial uses and users of groundwater, including holders of overlying groundwater rights such Plaintiffs. (Wat. Code, § 10723.2.) SGMA also expressly forbids the IWVGA from determining or altering water rights. (*Id.* at § 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."]; *id*. at 10726.8(b) ["Nothing in this part shall be construed as authorizing a local agency to make a binding determination of the water rights of any person or entity . . ."]; see also *id.* at § 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."].) Despite SGMA's clear requirements, Management Action No. 1 and the underlying modeling scenarios considered by the IWVGA Board unlawfully attempt to determine the water rights of the users in the Basin and eviscerate the overlying rights held by Plaintiffs and other overlying owners.

141. The GSP explains that "with the implementation of the Annual Pumping Allocation Plan, Transient Pool and Fallowing Program, [Basin] groundwater production is anticipated to reduce to around 12,000 AFY *plus any agricultural pumping as part of the Transient Pool program in the first year of implementation*." (GSP at 5-7 [emphasis added]; see

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also *id*. at 5-6 [only pumpers assigned a Transient Pool allotment (i.e., agricultural pumpers) may be enrolled in the Fallowing Program].) The GSP therefore reflects the fact that the IWVGA had *already determined and adjudicated* that certain groundwater users, including agricultural pumpers, hold "inferior rights" and will not receive any Annual Pumping Allocation, but must share in some portion of the Transient Pool or else "elect" to participate in the Fallowing Program, if eligible. (See, e.g., GSP at 5-6 ["The IWVGA recognizes that the safe yield is significantly lower than current pumping and *some groundwater pumpers with inferior rights will not be granted any Annual Pumping Allocations*."] [emphasis added]; *id*. at 5-7 ["agricultural pumping" relegated to Transient Pool and Fallowing Program, rather than Annual Pumping Allocation Plan].)

142. The GSP also made determinations as to which groundwater users hold "superior" rights. For example, the GSP determines that "NAWS China Lake groundwater production is considered of highest beneficial use" and 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 at 5-10.) The GSP further explains that: "The beneficial uses of other groundwater users, including agricultural and industrial users, will subsequently be evaluated based on water rights priorities. . . . Current groundwater production that has existed and has been continuous prior to the establishment of NAWS China Lake will be given a priority over more recent pumping that has occurred since the [Basin] has been documented to be in overdraft conditions." (*Id*. at 5-10 to 5-11.)

143. Plaintiffs allege, on information and belief, that this is an application of a priority system among competing claimants to water based upon the perceived relative value of the claimants' water rights. In making such priority determinations, the GSP violates SGMA's mandate that the GSP shall not determine or alter water rights. (Wat. Code, §§ 10720.5(b), 10726.8(b), 10720.1(b).) The GSP's water rights determinations also run contrary to established precedent holding that in the absence of an appropriator having established prescriptive rights in a court of competent jurisdiction, all overlying owners hold prior and paramount rights superior to all appropriators as a matter of law. (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th

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1224, 1240–41.) Finally, the GSP's water rights determinations are illegal because they usurp the role of the court. (*Hillside Mem'l Park & Mortuary v. Golden State Water Co.* (2011) 205 Cal.App.4th 534, 549 [the duty, power, and authority to determine or alter groundwater rights is reserved exclusively to the courts].)

144. The GSP's exclusion of Plaintiffs from the Annual Pumping Allocation system also violates Plaintiffs' due process rights because it infringes on Plaintiffs' overlying water rights—property rights. This exclusion deprives Plaintiffs of property without due process based on an unlawful determination of Plaintiffs' water rights. Additionally, the allocation scheme is arbitrary and capricious and lacks any reasonable relation to a proper legislative purpose because it fails to respect Plaintiffs' water rights in violation of SGMA. At the same time, the GSP lacks any evidence that Plaintiffs' pumping causes undesirable results or that that the effects of Plaintiffs' pumping are different than pumping by any groundwater users granted an Annual Pumping Allocation. Plaintiffs thus allege on information and belief, that the GSP fails to establish a reasoned justification for its Annual Pumping Allocation system and instead arbitrarily and capriciously relies on IWVGA's unlawful determinations of water rights to formulate the Annual Pumping Allocation.

v. GSP Management Action No. 1 Violates the Constitution Because it Requires Groundwater Users Excluded from the Annual Pumping Allocation Plan to Unlawfully Subsidize Users Awarded an Allocation

145. The GSP explains that groundwater production in excess of either an Annual Pumping Allocation or an allotment of the 51,000 AF Transient Pool will be subject to a yet-undetermined fee, later named the "Replenishment Fee," "in an amount that is determined to be sufficient for the acquisition of supplemental water supplies." (GSP at 5-6.) To continue operations in the Basin, groundwater users excluded from the Annual Pumping Allocation but given a Transient Pool allotment are required to pay the Replenishment Fee once their Transient Pool allotment is used up. Pumpers excluded from both the Annual Pumping Allocation and Transient Pool must pay the Replenishment Fee as soon as it takes effect on January 1, 2021.

146. Therefore, the groundwater producers excluded by the IWVGA from receiving an Annual Pumping Allocation would be responsible for payment of the majority of the

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Replenishment Fee. Plaintiffs allege, on information and belief, that the result of the structure set up in the GSP is to require users excluded from receiving an Annual Pumping Allocation to subsidize payment for acquisition of supplemental water supplies, which will benefit all groundwater producers, not just those that financed the acquisition of the supplemental supplies.

147. Structuring GSP Management Action No. 1 in such a way as to require certain classes of groundwater users (i.e., those excluded from the Annual Pumping Allocation Plan) to subsidize other classes of users violates the constitutional requirement that fees shall bear a reasonable relationship to the payor's burdens on, or benefits received from the governmental activity. (Cal. Const., Art. XIII D, Sec. 6, subd. (b)(3) ["The amount of a fee or charge 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."]; *City of San Buenaventura v. United Water Conservation Dist.* (2017) 3 Cal.5th 1191, 1214 ["To qualify as a nontax 'fee' under article XIII C, as amended, a charge must satisfy both the requirement that it be fixed in an amount that is 'no more than necessary to cover the reasonable costs of the governmental activity,' and the requirement 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 governmental activity.'"].)

vi. The GSP Fails to Support its Denial of Proportional Allocations to All Groundwater Users on the Basis of Beneficial Uses

148. Through comments on the public review draft of the GSP, Plaintiffs and other stakeholders asked the IWVGA to develop a system of proportional allocations, under which each groundwater user would receive an allocation based on the cumulative requirements of all beneficial uses. The IWVGA rejected this approach and instead developed the unequal system described herein, under which some water users get Annual Pumping Allocations, some users get one-time Transient Pool allotments, and some users, like Plaintiffs, are excluded entirely from both an Annual Pumping Allocation and a Transient Pool allotment. The GSP fails to provide a proper basis for the rejection of a proportional allocation system.

149. For example, the GSP makes the claim that "[e]conomically viable agricultural

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operations cannot be sustained with a greatly reduced water supply (pumping allocation)." (GSP at 5-8). However, Plaintiffs allege on information and belief that the result of entirely excluding agricultural pumpers from an Annual Pumping Allocation will be to eviscerate the economic viability of agricultural operations in the Basin. The GSP fails to acknowledge or assess the economic harm to agricultural pumpers associated with their exclusion from an Annual Pumping Allocation and, in some cases, the Transient Pool and Fallowing Program.

150. Likewise, the GSP makes the claim that "domestic and municipal users would not be able to meet basic health and safety requirements under a proportional reduction allocation." (GSP at 5-8 to 5-9.) This claim is unsupported by evidence or explanation. The GSP does not assess or analyze the amount of water required for human consumption and basic sanitation, nor does it demonstrate why a proportional allocation system would be insufficient to meet "basic health and safety requirements."

151. Moreover, Plaintiffs allege, on information and belief, that many of the water users ultimately granted an Annual Pumping Allocation use water for non-"health and safety requirements," such as the irrigation of landscaping.

152. The GSP also concludes that "proportional reductions to reach the Current Sustainable Yield are infeasible because the majority of individual groundwater users would not have a large enough allocation to maintain an acceptable quality of life and the drastic community changes would impact the support of NAWS China Lake." (GSP at 5-8.) This infeasibility finding, however, is unsupported and the GSP fails to explain what is meant by "an acceptable quality of life," "drastic community changes," and "the support of NAWS China Lake." Moreover, the GSP fails to explain why "the support of NAWS China Lake" is a relevant factor, given that the GSP indicates that the Navy will be exempt from the payment of any fees or water use restrictions. (See GSP at 5-5 [the Navy will be exempt from payment of fees and has not provided an accounting of its water right], 5-10 [the Navy's groundwater production will not be restricted or regulated].)

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vii. The GSP Fails to Substantiate the Need for Immediate Cutbacks, which Violated Article X, Section 2 of the California Constitution

153. Under the GSP, any groundwater users not given an Annual Pumping Allocation or a Transient Pool allotment will be immediately required to pay the Replenishment Fee.

154. Ultimately, the IWVGA wrongfully excluded Plaintiffs from both the Annual Pumping Allocation system and the Transient Pool.

155. As to users granted a Transient Pool allotment, Plaintiffs allege, on information and belief, that the Transient Pool allotment will only be sufficient for most users to continue pumping for a few years before they are also required to pay the Replenishment Fee. The GSP fails to provide a reasoned basis for immediate cutbacks.

156. Article X, section 2 of the California Constitution and the California common law calls for the management of groundwater in a manner that optimizes the reasonable and beneficial use of water. (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 288; *California American Water Company v. City of Seaside* (2010) 183 Cal.App.4th 471, 480.) SGMA allows a GSA 20 years to attain sustainability. (Wat. Code, § 10727.2(b).) The GSP ignores the directive of maximizing use within the framework established by SGMA and the California Constitution.

viii. The Fallowing Program is Inadequate to Compensate Landowners for their Investments

157. Management Action No. 1 provides that all groundwater users assigned a Transient Pool allotment (e.g., certain agricultural producers) would be eligible for enrollment in a Fallowing Program. (GSP at 5-6.) Under the Fallowing Program, eligible groundwater pumpers could "elect to sell their Transient Pool Allocation back to the IWVGA." (*Id.*) The GSP explains that the IWVGA and participating groundwater pumpers "may also explore alternative uses for the fallowed land, which may include use as enhanced habitat or grazing lands. (*Id.* at 5-7.) The GSP estimates that the IWVGA's costs incurred pursuant to the Fallowing Program will be approximately $9 million. (*Id.* at 5-11.)

158. The GSP, however, fails to provide any support for the idea that the $9 million available under the Fallowing Program is sufficient to compensate landowners for their

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investments. Plaintiffs alone, which have been wrongfully excluded from the Fallowing Program, have expended more than $32 million on their agricultural properties overlying the Basin. The Fallowing Program is therefore inadequate to protect participating water users' investment-backed expectations and adequately compensate agricultural producers.

ix. The GSP Takes the Water Rights of Overlying Landowners Like Plaintiffs

159. Plaintiffs are overlying landowners with fully vested overlying water rights. By the GSP's exclusion of Plaintiffs and other water users from the Annual Pumping Allocation system and/or the Transient Pool, the water available to Plaintiffs for reasonable and beneficial use will be taken by the IWVGA pursuant to the GSP and made available for public use by the Navy and the other public agencies given an Annual Pumping Allocation, including Kern County, the City of Ridgecrest, and the Indian Wells Valley Water District. (See, e.g., *Casitas Mun. Water Dist. v. United States* (Fed. Cir. 2008) 543 F.3d 1276, 1296; *Tulare Lake Basin Water Storage Dist. v. United States* (2003) 59 Fed.Cl. 246, 248–50; *Baley v. United States* (2017) 134 Fed. Cl. 619, 668.)

160. Plaintiffs' overlying water rights are entitled to protection under SGMA, which mandates that common law water rights be protected and preserved. (Wat. Code, §§ 10720.5(b), 10726.8(b).) The California Supreme Court has previously declared that the Legislature, let alone the IWVGA, cannot limit vested inchoate appurtenant water rights for nonuse. (*Tulare Irrigation District v. Lindsay-Strathmore Irrigation Dist.* (1935) 3 Cal.2d 489, 530–531.) Whatever authority that may exist to address unexercised overlying rights in the context of a comprehensive groundwater adjudication post-SGMA (Code Civ. Proc., § 830(b)(7)), those rules do not apply to exercised rights such as Plaintiffs' and do not extend to IWVGA in the adoption of a GSP.

161. The GSP excludes Plaintiffs from receiving an Annual Pumping Allocation on the erroneous alleged basis that agricultural pumpers hold "inferior rights," but does not compensate Plaintiffs for this exclusion. This determination violates both SGMA and Plaintiffs' constitutional rights.

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x. The GSP Wrongfully Prohibits the Transfer of Transient Pool Shares

162. The GSP explains that the 51,000 AF Transient Pool will be allocated among certain agricultural pumpers excluded from the Annual Pumping Allocation system. (GSP at 5-6.) These shares, however, are non-transferrable. (*Id.*)

163. Plaintiffs allege, on information and belief, that transferability of Transient Pool allotments would ensure that groundwater goes to the highest and best use, consistent with Article X, Section 2 of the California Constitution.

164. In Plaintiffs' comments on the public review draft of the GSP, Plaintiffs asked the IWVGA to update the GSP to explain the basis and rationale for the IWVGA's determination that shares of the Transient Pool should be non-transferrable. The IWVGA failed to respond substantively to this comment and the adopted GSP is deficient because it fails to provide any basis for its determination that Transient Pool shares are non-transferrable.

xi. The GSP is Devoid of any Scientific or Policy Rationale for Setting the Transient Pool at 51,000 AF

165. The 51,000 AF Transient Pool represents only a small proportion of GSP's estimate of the amount of usable water in storage in the Basin.

166. The GSP, however, fails to articulate any scientific and/or policy rationale for setting the Transient Pool allotment at 51,000 AF, as opposed to some other number.

167. Plaintiffs allege, on information and belief, that the 51,000 AF Transient Pool is woefully insufficient to allow agricultural production to continue until imported water is available in the Basin, which the GSP estimates will not occur until approximately 2035. (GSP at 5-7.) Therefore, agricultural pumpers and others denied Annual Pumping Allocations will be heavily impacted by payment of the Replenishment Fee.

168. Plaintiffs allege, on information and belief, that the best available information and science demonstrates that the Transient Pool could be expanded to provide sufficient water for agricultural pumping to continue until imported water is brought into the Basin.

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xii. The GSP Fails to Analyze the Impacts of Excluding Certain Users from the Annual Pumping Allocation system and/or the Transient Pool

169. SGMA requires the IWVGA to consider the interests of all beneficial uses and users of groundwater, including holders of overlying groundwater rights such Plaintiffs. (Wat. Code, § 10723.2.) The IWVGA's JPA Agreement and bylaws require the same.

170. Plaintiffs allege, on information and belief, that groundwater users excluded from either or both the Annual Pumping Allocation System and/or the Transient Pool will be detrimentally impacted from that exclusion. These detrimental impacts include, but are not limited to, forcing the excluded pumpers out of business due to the costs of payment for the Replenishment Fee.

171. Plaintiffs further allege that the GSP is flawed because it fails to analyze the impacts of Management Action No. 1 on agricultural pumpers and other water users that are excluded from the Annual Pumping Allocation system and/or the Transient Pool.

xiii. The GSP Underestimates Basin Recharge and Omits Key Recharge Studies and Estimates

172. The GSP adopts the average annual Basin recharge developed by DRI and designates this recharge figure as the "sustainable yield" of the Basin. (GSP at 3-14 ["The average annual recharge developed by DRI is 7,650 AF per year (McGraw et al, 2016; Garner et al, 2017). The recharge zones identified by DRI are shown in Figure 3-11. The total area of recharge is about 770 square miles. The area and estimated annual recharge in each zone are shown in Table 3-3."]; *id*. at 5-4, fn. 44 ["The safe yield is equal to the long-term average natural recharge of the basin, currently estimated to be 7,650 AFY. The current estimate of the sustainable yield, defined by SGMA as the maximum quantity of water that can be withdrawn annually without causing undesirable results, is also currently estimated to be 7,650 AFY. The sustainable yield may change as projects and management actions are implemented that artificially recharge the basin and increase the volume of water that can be withdrawn annually without causing undesirable results."].)

173. The GSP includes the following "selected" recharge estimates in Table 3-4:

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Table 3-4: Natural Recharge Estimates from Selected Recharge Studies (AFY).

Recharge Study	Natural Recharge Estimate (AFY)
Brown and Caldwell (2009)	8,900
Epstein et al. (2010)	5,800 to 12,000
Todd Engineers (2014) [1]	6,100 to 8,900
USGS Basin Characterization Model (Draft, 2018)[27]	8,680 (1981-2010) 5,980 (2000-2013)
Desert Research Institute (McGraw et al. 2016)	7,650

1 Excludes estimates of recharge from excess irrigation and distribution system leakage.

174. The GSP fails to explain on what basis these natural recharge estimates were "selected" and why various recharge estimates were omitted.

175. In particular, the GSP does not explain why the recharge estimates from the 2014 report by Todd Engineers were cherry picked to omit estimates of recharge from irrigation return flows and to account for distribution system leakage. (GSP at 3-16.) No explanation is provided as to why only natural recharge is included, despite the fact that the GSP acknowledges that agricultural use is approximately 50 percent of total water use. (*Id*. at 3-5.) Plaintiffs allege, on information and belief, that irrigation return flows contribute a substantial source of recharge to the Basin; it is therefore improper to exclude return flows from recharge estimates and by extension the sustainable yield calculation. It is also improper and inconsistent to exclude known recharge from agricultural return flows when the GSP acknowledges that "the sustainable yield may change as projects and management actions are implemented that artificially recharge the [B]asin." (*Id*. at 5-4, fn. 44.)

176. Additionally, the GSP's recharge analysis is flawed because no explanation is provided as to why the DRI recharge estimate (7,650 AFY) was used as the sustainable yield, as opposed to any of the other "selected" recharge studies. (See GSP at 3-21 to 3-23 [7,650 AFY used as the sustainable yield].)

177. As raised in Plaintiffs' comment letter on the public review draft of the GSP, there are serious technical concerns with the DRI recharge estimate. Namely, as Plaintiffs explained:

> [The estimate is based on the loss of storage of approximately 25,000 AFY over many years from sediments assumed in the DRI model to have an average specific yield of 22 percent. This value is very high for the sediments present in the Basin, especially where the groundwater is semi-confined and confined. Use of a more

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reasonable value for specific yield would lower the volume of water lost from storage, resulting in a much higher estimate of recharge.

xiv. The GSP Conflates Recharge with the Sustainable Yield

178. The GSP conflates the "estimated long-term average natural recharge to the [Basin]" with "sustainable yield" and refers to its objective of making "pumping equal to sustainable yield." (See, e.g., GSP at ES-11 ["DRI, in coordination with the IWV TAC, has estimated the long-term average natural recharge to the IWVGB has been 7,650 AFY. This is considered the Current Sustainable Yield of the Basin."].)

179. The focus on a Basin-wide average natural recharge estimate fails to meet the definitional requirement of "operating within the sustainable yield," which requires avoiding specifically and locally defined and quantified undesirable results that are technically and legally supported.

180. This approach runs contrary to DWR's Best Management Practices for Sustainable Management Criteria, which expressly explain that "SGMA does not incorporate sustainable yield estimates directly into sustainable management criterial. *Basin-wide pumping within the sustainable yield estimate is neither a measure of, nor proof of sustainability.* Sustainability under SGMA is only demonstrated by avoiding undesirable results for the six sustainability indicators." (DWR Best Management Practices Sustainable Management Criteria at 32 [emphasis added].) The GSP provides no basis for the decision to deviate from express DWR Best Management Practices.

xv. The GSP Underestimates Basin Storage and Fails to Support Storage Estimates

181. The Indian Wells Valley is a geologic basin that has been infilled with up to 6,500-feet of unconsolidated sediments. These sediments contain groundwater under perched, unconfined to semi-confined, and confined conditions. The total volume of groundwater storage is a function of the total volume of the aquifer, including the sediment grains and water in the pore space, and the percentage of that volume that contains available groundwater.

182. Plaintiffs allege, on information and belief, that there are two basic methods for

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calculating the volume of groundwater storage: analytical calculations using sediment volume and specific yield, and numerical calculations using the structure of the DRI (Navy) groundwater flow model employed by the IWVGA. The GSP employed the former approach to evaluating Basin storage.

183. The GSP notes with respect to total basin storage that three sources were considered:

- Kunkel and Chase (1969), which estimated 720,000 AF of groundwater in storage underlying 64,000 acres of the Basin to a depth of 100 feet below the water level of March 1954;
- Dutcher and Moyle (1973), which estimated that in 1921 there was 2,200,000 AF of groundwater in storage underlying 70,800 acres of the Basin to a depth of 200 feet of saturated aquifer below groundwater contour levels; and
- USBR (1993), which estimated there was 1,020,000 AF to 3,020,000 AF of groundwater in storage underlying 59,200 acres of the Basin, based on the assumption of usable water in the100 to 300 feet of saturated aquifer below groundwater contour levels. (GSP at 3-25.)

184. All of the above estimates, however, are for limited areas (59,200 to 70,800 acres) of the overall Basin, which the GSP acknowledges extends across 382,000 acres. The GSP therefore underestimates the amount of water in storage in the Basin. (GSP at 2-1 [Basin underlies approximately 382,000 acres].)

185. Plaintiffs allege, on information and belief, that if the storage analysis within each of these studies were expanded to the entire Basin, the estimate for the volume of water in storage would increase significantly, which would in turn affect the GSP's undesirable results analysis.

186. Plaintiffs further allege, on information and belief, that IWVGA did not articulate a basis for failure to use the Navy's model to estimate the volume of water in storage as of 2019, despite the fact that the GSP states the model was used to calculate annual changes of groundwater storage based on historical pumping. (GSP at 3-26.)

187. In Plaintiffs' January 8, 2020 comments on the public review draft of the GSP,

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submitted through their counsel, Plaintiffs asserted that the following questions must be answered to inform the ultimate question of how much water is stored in the Basin:

- What is the total volume of the basin within the model domain?
- What is the total volume of water (all qualities) within the basin within the model domain?
- How much water is in Layer 1 of the model?
- How much water is in Layers 2–3 of the model?
- How much water in in Layers 4–6 of the model?
- How much of the water within these layers is fresh versus brackish?
- Where are the fresh versus brackish resources located within the basin volume?

188. The IWVGA adopted the GSP without updating the model to examine the amount of water in storage in the Basin or answer any of these questions.

xvi. The Undesirable Results Analysis Fails to Incorporate the Best Available Science and Information

189. SGMA requires that each GSP be capable of meeting SGMA's sustainability goal, which means avoiding statutorily defined, significant and unreasonable undesirable results through implementation of projects and management actions. (Wat. Code, §§ 10727, 10727.2, 10721(u), (v), (x).)

190. In turn, the SGMA Regulations require that the GSP establish minimum numeric thresholds which represent a point in the Basin that, if exceeded, may cause undesirable results. (23 Cal. Code Regs., § 354.28(a).) Among other things, the GSP must also explain which information and criteria were relied upon by the IWVGA to justify each minimum threshold, explain how the minimum thresholds will avoid undesirable results, and explain how the established minimum thresholds may affect the interests of beneficial uses and users of groundwater. (*Ibid.*) Each of these minimum thresholds must be evaluated and established on the basis of the best available science and information. (*See id.*)

191. The GSP's undesirable results analysis fails to comply with these requirements. The GSP poorly defines undesirable results and largely fails to clearly articulate when they are

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significant and unreasonable. Where the GSP attempts to define what is significant and unreasonable, the articulation is based on weak and biased scientific analysis, particularly with regard to water in storage, recharge estimates, and domestic well impacts.

192. For example, the GSP fails to provide any compelling analysis regarding threats to shallow groundwater wells and the best available information and science that this threat is theoretical and unsupported (i.e., speculative, at best). Even if it were not, a physical solution exists to mitigate impacts to users of shallow wells.

193. Likewise, the GSP's failure to incorporate the best available and most accurate information and science regarding Basin recharge and storage causes defects throughout the GSP's discussion of undesirable results, including impacts to shallow wells.

xvii. In Addition to the Examples Above, the GSP Otherwise Fails to Comply with SGMA and DWR's SGMA Regulations

194. The comment letters by Plaintiffs and other stakeholders detail many other specific violations of SGMA and the SGMA Regulations and deviations from DWR's GSP Best Management Practices and Guidance Documents. The identified deficiencies include, but are not limited to:

a. The GSP selects a hydrogeologic period and baseline conditions for the historical water budget that do not follow standard practices or SGMA Regulations, which specify the GSP should review information "extending back a minimum of 10 years, or as is sufficient to calibrate and reduce the uncertainty of the tools and methods used." (23 Cal. Code Regs., § 354.18(C)(2)(B).)

b. The GSP selects hydrogeologic conditions for 2011 to 2015 for the historical water budget and baseline conditions, which corresponds to drought climatic conditions, rather than select a 10 year period as required by the SGMA Regulations (see, e.g., Exh. D at 3, 12, & 69).

c. Relatedly, the GSP lacks adequate historical data, stating that data tracking is only fairly recent and that certain historical data points are based only on a single measurement recorded at the time of well installation. (See, e.g., GSP at ES-15,

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ES-16 ["The existing TDS database has 2,051 water quality data from 1920 to present. Most of the data have been collected during field work that included only a limited number of wells, or a one-time sample when the well was drilled."].)

a. The GSP water budget did not consider climate change as required by the SGMA Regulations (23 Cal. Code Regs., § 354.18(c)(3)(A), (d)(3), (e)) or utilize the approach recommended by DWR's GSP Best Management Practices and Guidance Documents.

b. The IWVGA did not operate its TAC consistent with its bylaws, for example, IWVGA failed set agendas and provide adequate time to review meeting materials in advance of the meeting.

c. IWVGA's process to develop, *inter alia*, the groundwater model, sustainable management criteria, including measurable objectives, interim objectives, minimum thresholds, and undesirable results, and projects and management actions lacked adequate peer review.

d. The IWVGA allegedly selected sustainable management criteria using Model Scenario 6.2 that is based on (1) an unreleased model that does not rely on the best available information and science, includes project and management actions, and fails to adequately demonstrate avoidance of undesirable results, rather than employ the processes described in DWR's SGMA Regulations and GSP Best Management Practices and Guidance Documents (see, e.g., Exh. C at 11–12).

e. The GSP fails to explain why it did not use the most current estimated available storage from both the DRI (Navy) model and the IWVGA Water Resources Manager evaluations that estimate usable groundwater storage of over ten (10) million acre feet, which indicate the Basin has experienced a fraction of the amount of lost storage (i.e., a loss of 0.3% of storage per year between 1992 and 2015) over the approach selected in the GSP that overestimates loss of storage (see Exh. D at 12).

f. The GSP fails to justify the selection of 10 wells to monitor sustainable

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management criteria when DWR GSP Best Management Practices recommend a minimum of 24-60 monitoring well locations for a basin of this size and water usage (see Exh. D at 20).

g. The GSP fails to explain the logic behind the contaminated, "de-designated" groundwater area below China Lake and why it "will not be addressed by projects and management actions," given that this "de-designated" area comprises hundreds of thousands of acre-feet or more of groundwater that could be available for beneficial uses and users (see Exh. C at 19–20, 37; Exh. D at 73).

h. The GSP's Annual Pumping Allocation, which grants some users all of their present demand, fails to comply with SGMA's 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."].)

i. The GSP misleadingly states that the Annual Pumping Allocation Plan, Transient Pool and Fallowing Program "may" be subject to environmental review. (See, e.g., GSP at 5-11.) This statement is misleading because it offers only the possibility that such implementation would be exempt from those environmental requirements, whereas SGMA expressly provides that projects to implement a GSP are subject to CEQA. (Wat. Code, § 10728.6.)

195. Plaintiffs further hereby incorporate all other stakeholder comment letters submitted to IWVGA, and any and all alleged deficiencies contained therein, by reference as though fully set forth herein.

196. Plaintiffs furthermore hereby incorporate all other stakeholder comment letters submitted to DWR regarding the GSP, and any and all alleged deficiencies contained therein, by

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reference as though fully set forth herein

E. The IWVGA Failed to Proceed in the Manner Required by Law in Adopting the Extraction Fee on July 16, 2020

197. On July 16, 2018, IWVGA adopted Ordinance No. 02-18, Establishing the Rules, Regulations and Procedures for the Imposition and Collection of Groundwater Extractions Fees (the "Initial Extraction Fee"). The Initial Extraction Fee was set at $30 per AF of water extracted from the Basin, and was purportedly intended to finance the estimated costs to develop and adopt the GSP.

198. On June 17, 2020, hours in advance of the Board's June 18, 2020 meeting, IWVGA released draft Ordinance No. 02-20, Amending Ordinance No. 02-18 Establishing Groundwater Extraction Fees and the Rules, Regulations and Procedures for Their Imposition, along with an associated June 18, 2020 Staff Report containing the limited data available on the proposed fee increase. Ordinance No. 02-20 was proposed to adopt the revised Extraction Fee pursuant to Water Code section 10730.

199. Plaintiffs submitted a comment letter, through their counsel, addressing several substantive and procedural defects in the revised Extraction Fee on June 18, 2020 prior to the IWVGA Board meeting, notwithstanding the fact that the IWVGA allowed less than 24 hours for public comment on the late-released agenda packet. A true and correct copy of Plaintiffs' June 18, 2020 comment letter is attached hereto as **Exhibit H**, and incorporated herein by reference as though fully set forth herein.

200. 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 ("Proposition 26") or be adopted by supermajority voter approval.

201. The IWVGA bears the burden of proof under the preponderance of evidence standard that the Extraction Fee is not a tax. Simply stating that the fee is a "regulatory fee" without further analysis is not sufficient to meet the IWVGA's burden of proof. Absent such analysis and proof, the Extraction Fee is a tax under California law, requiring supermajority voter

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approval and cannot be imposed administratively as the IWVGA has done.

202. As detailed in Plaintiffs' comments, the proposed Extraction Fee suffered serious substantive and procedural flaws. Plaintiffs notified the IWVGA that the Extraction Fee was flawed because it would be used to pay for projects and management actions to implement the GSP. Water Code section 10730 does not allow funding GSP implementation with a fee adopted pursuant this statute. Rather, for fees imposed to implement the GSP, SGMA requires that such a fee shall be adopted in compliance with the procedures set forth in Water Code section 10730.2, which include compliance with specific requirements set forth in Article XIII D, Section 6 of the California Constitution.

203. Plaintiffs' comments provided several example budget items listed in the June 18, 2020 Staff Report that would be disallowed under Water Code section 10730, including: "Brackish Water Study Coordination; Imported Water Coordination for GSP; Allocation Process Development; and Fallowing Program Development." Plaintiffs explained that because these budget items pertained to projects and management actions under the GSP, these items must be paid through a fee legally adopted under the procedures set forth in Water Code section 10730.2.

204. Additionally, Plaintiffs notified the IWVGA that the Extraction Fee could not be validly adopted at the June 18, 2020 IWVGA Board meeting under the procedures set forth in Water Code section 10730(b)(3) which requires a GSP to "make available to the public data upon which the proposed fee is based" "[a]t least 20 days prior to" the public meeting required to be held before fee adoption. (Wat. Code, § 10730(b)(1)–(3).)

205. The IWVGA scheduled Ordinance No. 02-20 for discussion at its July 16, 2020 meeting.

206. Within hours of release of the Board packet for the July 16, 2020 IWVGA Board meeting, Plaintiffs, through their counsel, again submitted comments dated July 15, 2020 on the proposed Extraction Fee. A true and correct copy of Plaintiffs' July 15, 2020 comment letter is attached hereto as **Exhibit I**, and incorporated herein by reference as though fully set forth herein.

207. In those comments, Plaintiffs questioned the need for the $7,059,574 Extraction Fee budget and raised the issue that the budget still contained the following line items that could

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not be adopted pursuant to Water Code section 10730 because they are necessary to implement the GSP and therefore must be paid for with a fee validly adopted under Water Code section 10730.2:

- "Stetson – Imported Water Coordination for GSP;"
- "Stetson – Allocation Process Development;"
- "Stetson – Pumping Verification;"
- "Stetson – Sustainable Yield Report;"
- "Stetson – Fallowing Program Development;"
- "Stetson – Water Importation Marketing Analysis for GSP;"
- Any other "Additional Tasks," to the extent these costs are related to GSP implementation;
- "Legal Costs," to the extent these costs are to defend challenges to the GSP implementation actions;
- "IWVGA Support Costs," to the extent these costs are related to GSP implementation; and
- "IWVGA Administrative Costs," to the extent these costs are related to GSP implementation.

208. Plaintiffs, through their counsel, also asked for clarification of the nature of other budget line items, which appeared potentially related to GSP implementation.

209. Procedurally, Plaintiffs' letter identified that it was inappropriate for the Board to proceed to adopt the Extraction Fee Ordinance because much of the information and data on the Extraction fee initially provided to the public on June 17, 2020 had changed significantly and the IWVGA had not met the procedural requirements set forth in Water Code section 10730(b), requiring provision of supporting data to the public at least 20 days in advance of the public meeting held prior to fee adoption.

210. Plaintiffs' letter also identified that the calculation of the Extraction Fee was unsupported because it was purportedly based on the "Sustainable Yield Allocation" developed by the IWVGA after completion of the GSP. Under this Sustainable Yield Allocation, the Navy

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would be allowed to continue current pumping of 1,450 AFY and certain other pumpers, including "De Minimis Wells," the City of Ridgecrest, Kern County, Indian Wells Valley Water District, Inyokern CSD, mutual water companies, and domestic users in the town of Trona would be allowed to use the portion of the Basin's sustainable yield allocated to the Navy, but not used by the Navy. Plaintiffs' letter explained that reliance on the Sustainable Yield Allocation is flawed for reasons including that a federal reserved water right cannot be transferred off a federal reservation (i.e., the Navy base) and gifted to or exercised by non-federal entities.

211. Finally, Plaintiffs' letter raised the issue that it was unclear which groundwater users would be subject to the Extraction Fee and the basis for this determination.

212. Despite these comments by Plaintiffs and others, the IWVGA unanimously adopted the Extraction Fee as proposed at the July 16, 2020 IWVGA Board meeting. The Extraction Fee provides that "all groundwater extractions from and within the Basin shall be subject to measurement and the Groundwater Extraction Fee of ten dollars and fifty cents ($10.50) per tenth (.10) of an acre foot for all groundwater extracted from the Basin. The Groundwater Extraction Fee shall be determined and paid monthly with water extraction measurements rounded down to the nearest tenth (.10) of an acre foot per month." Thus, the Extraction Fee is now $105 per AF—nearly 3.5 times the Initial Extraction Fee.

213. At the July 16, 2020 IWVGA Board meeting Indian Wells Valley Water District legal counsel Jim Worth admitted that changes had been made to the Extraction Fee data package after June 25, 2020 and within the 20 days prior to July 16, 2020 meeting, but contended that the changes were limited only to "taking things away" and that "more things could be taken away in the future as well:"

> We posted a data package June 20, June 25th, 20 days prior to the public meeting that were that we're conducting right now. The only change was a staff report and it really contains reductions in the fee and not, and **we haven't added anything since June 25th, only taking things away. And more things could be taken away in the future as well.** So I do believe we have met the 20-day notice requirement and again, I've said this a couple times now staff worked closely with Stetson and Heather in particular, in identifying tasks that we believe are quote preparation costs and appropriate under 10730.2, 10730 I'm sorry. So I believe that the

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> expenditures are appropriate and that the notice has been met and I'll defer to Phil and Keith if they think, if they have a different opinion.

214. As to the question of which pumpers would bear the Extraction Fee, Mr. Worth explained:

> The pumpers that are going to be subject to this groundwater extraction fee are going to be those that are identified in the data package. The pumpers, if you're pumping transient pool water that will not be subject to this fee. There's no, as to the second question, there's no link between the groundwater extraction fee and the replenishment fee. There will be some pumpers that are required to pay the replenishment fee and pay the groundwater extraction fee and then there are some that will just pay the groundwater extraction fee. We're still going through some of the processes so I can't give you a specific list of who's going to be subject to the replenishment fee, that process is still going forward but that's my answer.

The data package, however, does not specify which groundwater users are subject to the fee.

215. IWVGA staff and decision-makers did not otherwise meaningfully respond to the concerns raised by Plaintiffs.

216. Given the IWVGA's failure to address Plaintiffs' concerns, the Extraction Fee is deficient in the following ways, among others:

a. The Extraction Fee was illegally adopted pursuant to Water Code section 10730 because it will fund various items that can only be funded pursuant to a fee validly adopted under Water Code section 10730.2. The Extraction Fee cannot legally be used to pay for the projects and management actions specified in its proposed budget under Water Code section 10730, which is limited to fees used to pay for the costs of a groundwater sustainability program, including, but not limited to, preparation, adoption, and amendment of a GSP, and investigations, inspections, compliance assistance, enforcement, and program administration, including a prudent reserve. (Wat. Code, § 10730(a).) Section 10730 does not permit a GSA to use a fee to pay for any projects and management actions to implement a GSP. Such fees must be adopted pursuant to the authority and procedures outlined in

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Water Code section 10730.2, namely certain Constitutional requirements including: (1) identifying the parcels upon which the fee shall be imposed, (2) calculating the fee to be imposed for each parcel, (3) providing written notice by mail of the proposed fee to the record owner of each parcel, the amount of the fee to be imposed upon each parcel, the basis upon which the amount of the proposed fee was calculated, and the reason for the fee, together with the date, time, and location of a public hearing on the proposed fee or charge, (4) conducting a public hearing upon the proposed fee or charge not less than 45 days after mailing the notice of the proposed fee to the record owners of each identified parcel, (5) considering all protests against the proposed fee at a public hearing, and (6) if written protests against the proposed are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge. (Cal. Const., Art. XIII D, Sec. 6, subd. (a).) IWVGA did not comply with any of these procedural requirements in adopting the Extraction Fee. As such, to the extent the Extraction Fee was adopted to fund projects and managements fees, it was adopted for an illegal purpose and must be set aside.

b. Moreover, IWVGA has failed to provide sufficient information to evaluate whether certain identified budget items are ineligible to be financed through a fee adopted under Water Code section 10730. The IWVGA failed to meet its obligation to provide sufficient documentation associated with each budget item in order to provide pumpers with the ability to assess whether the proposed fee increase complies with SGMA.

c. Further, nowhere in its Extraction Fee adoption findings did IWVGA address the applicability of the California Constitutional requirements for the imposition of fees (see Cal. Const., Arts. XIII C [Proposition 26] and XIII D [Proposition 218].) Where IWVGA did not make findings that adoption of the Extraction Fee is exempt from the requirements of Proposition 26 and/or Proposition 218, the procedural and substantive requirements set forth therein should have been

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complied with, but were not. (Cal. Const., Art. XIII C, Sec. 1, subd. (e)(7) [specifying, *inter alia*, that "local government bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax"].)

d. Pursuant to the procedural requirements set forth in Water Code section 10730(b), IWVGA could not legally adopt the Extraction Fee at its July 16, 2020 meeting because the data on which the proposed fee was based changed within the 20 days leading up to adoption of the Extraction Fee. Therefore, the IWVGA failed to comply with the requirement that "at least 20 days prior to the meeting" it provide the public with the data upon which the proposed fee is based. (Wat. Code, § 10730(b)(3).)

e. The Extraction Fee is also invalid because its calculation is based on the illegally-adopted Sustainable Yield Allocation, which itself lacks a valid legal basis because, *inter alia*, the Navy's federal reserve water right cannot be transferred off the Navy base and gifted to or exercised by non-federal entities.

f. Finally, the Extraction Fee must be set aside because it was adopted without specificity as to which groundwater users would be subject to the fee.

F. <u>The IWVGA Failed to Proceed in the Manner Required by Law in Adopting the Sustainable Yield Report on July 16, 2020</u>

217. The IWVGA adopted the Sustainable Yield Report and all the findings therein in Resolution No. 06-20, Adopting a Report on the Indian Wells Valley Groundwater Basin's Sustainable Yield of 7,650 AF, dated June 18, 2020. Although Resolution No. 06-20 is dated June 18, 2020, it was not actually adopted until the IWVGA Board's July 16, 2020 meeting.

218. The IWVGA released its draft Sustainable Yield Report in June 2020, just hours in advance of the IWVGA's June 18, 2020 Board meeting.

219. Plaintiffs submitted a comment letter to the IWVGA Board, through their counsel, regarding the deficiencies identified in the draft Sustainable Yield Report on June 18, 2020. (Exh. H.)

220. The IWVGA failed to address Plaintiffs June 18, 2020 comments and issued a

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substantially similar final version of the Sustainable Yield Report just prior to the July 16, 2020 IWVGA Board meeting. Again Plaintiffs, through their counsel, submitted comments on the Sustainable Yield Report on July 15, 2020. (Exh. I.) Again, the IWVGA ignored Plaintiffs' comments. On July 16, 2020 over Plaintiffs objections the IWVGA adopted the Sustainable Yield Report.

221. As noted in Plaintiffs' comment letters, the Sustainable Yield Report states that its purpose is "determining the colorable legal claims to the Basin's sustainable yield." The Sustainable Yield Report concludes "the Basin's entire [7,650 AFY] sustainable yield is subject to [the Navy's] Federal Reserve interest and is therefore beyond the jurisdiction of the Authority to regulate pursuant to Water Code § 10720.3." On this basis, the Sustainable Yield Report determines that allocations should not be awarded to any pumpers. It further concludes that all groundwater users in the Basin, except "De Minimis Extractors" as defined in Water Code section 10721(e) and "Federal Extractors," including the BLM and the Navy, "are beneficially impacted by IWVGA's overdraft mitigation and augmentation projects and therefore it is not necessary to establish allocations for any extractor." Accordingly, the Sustainable Yield Report finds that all groundwater extractors, other than De Minimis Extractors and Federal Extractors "are extracting water beyond the sustainable yield and will be subject to the costs for overdraft mitigation and augmentation projects, unless an extractor obtains a court order showing they have quantifiable production rights superior to the Navy's." Therefore, the Sustainable Yield Report determines: "all pumping should be treated equally."

222. As raised in Plaintiffs' comment letters, the Sustainable Yield Report suffers from numerous flaws. First, there is an inadequate factual basis because the GSP fails to substantiate the conclusion that the sustainable yield of the Basin is truly 7,650 AFY due to the flaws in the GSP's Basin recharge analysis and because the GSP ignores the vast amount of usable groundwater in storage that could be produced to satisfy existing groundwater dependent beneficial uses without causing a single "undesirable result" and that monitoring and physical mitigation measures could reduce any identified risk to insignificance. Plaintiffs allege, on information and belief, that there are no undesirable results at the current pumping rate of

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approximately 28,500 AFY—there is no subsidence, no water quality degradation, and no direct evidence of adverse impacts on domestic wells attributable to groundwater pumping—projected maximum depletion is approximately 0.15 percent per annum.

223. Second, the Sustainable Yield Report is flawed because there is no factual or legal support for the Sustainable Yield Report's conclusion that the Navy is entitled to the entire 7,650 AFY sustainable yield of the Basin. Figure 1 of Sustainable Yield Report itself acknowledges that the Navy's current production is approximately 1,400 AFY, and on a declining trend. (See Sustainable Yield Report, Figure 1.) Consistent with Figure 1 of the Sustainable Yield Report, the Groundwater Extraction Fee data package explains that, at present, the Navy pumps approximately 1,450 AFY. Further, in a letter to the IWVGA dated June 17, 2019, the Navy explained that in November 2018 it "provided a figure of 2,041 acre-feet per year [to the IWVGA] as the amount of water the installation could agree to use under a GSP." Consistent with that letter, at the June 18, 2020 IWVGA Board meeting, NAWS Commander Benson explained that the Navy "agreed to their allocation of 2,041 acre-feet." There is no basis for granting the Navy the entire sustainable yield of the Basin where the Navy now produces less than 20 percent of the Basin's sustainable yield as determined by the Sustainable Yield Report and admits that an allocation of approximately 27 percent of the sustainable yield will suffice in the future.

224. Third, the Sustainable Yield Report is premised on a faulty legal foundation. The stated purpose of the report—"determining the colorable legal claims to the Basin's sustainable yield"—is expressly prohibited by SGMA, which forecloses GSAs from issuing water rights determinations. (See, e.g., Wat. Code, §§ 10720.5(b), 10720.1(b), 10726.8(b).) A determination that the Navy is entitled to the entire sustainable yield of the Basin and that the Navy holds paramount rights "unless an extractor obtains a court order showing they have quantifiable production rights superior to the Navy's" is inherently a water rights determination. Such determinations cannot be made by a GSA. Rather, the duty, power, and authority to determine or alter groundwater rights is reserved exclusively to the courts. (*Hillside Mem'l Park & Mortuary v. Golden State Water Co.* (2011) 205 Cal.App.4th 534, 549.)

225. Fourth, the Sustainable Yield Report falsely states that "all groundwater extractors

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in the Basin, with the exclusion of De Minimis Extractors and Federal Extractors, will be subject to the costs for overdraft mitigation and augmentation projects." Although this should be the case, it is not what the IWVGA actually proposed or adopted. Rather, through the allocations awarded in the Replenishment Fee, the IWVGA selectively foisted the entire burden of "overdraft mitigation and augmentation projects" on Plaintiffs and select other water users by exempting the City of Ridgecrest, Kern County, the Indian Wells Valley Water District, Inyokern CSD, mutual water companies, domestic users in the town of Trona, and the Navy from payment of the Replenishment Fee. The IWVGA's rationale is that these chosen water users are able to use a portion of the Navy's 7,650 AFY "federal reserved water right" through what the IWVGA calls "Navy pronouncement." Plaintiffs assert this is an arbitrary and capricious effort to confiscate private property for the benefit of public agencies and the Navy. This scheme is illegal and raises numerous questions that the IWVGA failed to address, including:

- What is the factual and legal basis for the determination that the exempted users are entitled to continue pumping at current levels without payment of the Replenishment Fee?
- Which water users will be cut back if the Navy increases production over 1,450 AFY, and on what basis?
- Why are Plaintiffs and certain other water users being asked to bear the burden of subsidizing overdraft mitigation and augmentation projects, while others can continue pumping at current levels without being asked to share in shortages or increase efficiency?
- Assuming the Basin's entire sustainable yield belongs to the Navy (which it does not), what authority does the IWVGA have to carve up and dole out most of the sustainable yield to non-federal pumpers?

226. Finally, as set forth in Section IX.I., the IWVGA failed to proceed in the manner required by law in adopting the Sustainable Yield Report without studying the environmental impacts of the decision as required under CEQA. The Sustainable Yield Report will have potentially significant environmental impacts associated with widespread fallowing resulting

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from the IWVGA's strategic elimination of agriculture, including, but not limited to, impacts on air quality, human health, greenhouse gas emissions, biological resources, aesthetics, and local economies.

G. The IWVGA Failed to Proceed in the Manner Required by Law in Adopting the Transient Pool and Fallowing Program on August 21, 2020

227. The IWVGA adopted the Transient Pool and Fallowing Program and all findings in the report thereon in Resolution No. 05-20, Adoption of Report on Transient Pool and Fallowing Program, dated August 21, 2020.

228. The IWVGA's Transient Pool and Fallowing Program relies on the Pumping Verification Report received, adopted, and filed on August 20, 2020, but not pursuant to an IWVGA Board resolution. Plaintiffs' challenge to the Transient Pool and Fallowing Program adopted on August 21, 2020 incorporates a challenge to the underlying Pumping Verification Report received, adopted, and filed on August 20, 2020.

229. The report on the Transient Pool and Fallowing Program concludes that Plaintiffs are "'potentially' qualified Base Period agricultural pumpers" on the basis that Plaintiffs pumped groundwater during the "Base Period" of January 1, 2010 through December 31, 2014. The IWVGA, however, omitted Plaintiffs from the Transient Pool and Fallowing Program on the basis that Plaintiffs "did not timely submit the required Pumping Verification Questionnaire. As such, the Authority is unable to properly verify the needed data and it would be legally inappropriate to include and/or consider them for the Transient Pool."

230. A true and correct copy of the Pumping Verification Questionnaire ("Questionnaire") referenced in the report on the Transient Pool and Fallowing Program is attached hereto as **Exhibit J**. The Questionnaire identifies a March 1, 2020 due date, but does not provide notice to the answering party that failure to submit the requested data on or before March 1, 2020 carries a forward forfeiture of the right to participate in the yet undefined Transient Pool and Fallowing Program.

231. Plaintiffs, through their counsel, submitted a comment letter to the IWVGA Board regarding the deficiencies identified in the draft report on the Transient Pool and Fallowing

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Program on June 18, 2020. (Exh. H.)

232. The IWVGA failed to address Plaintiffs' June 18, 2020 comments and issued a substantially similar final version of the report on the Transient Pool and Fallowing Program just prior to the August 21, 2020 special IWVGA Board meeting.

233. Again, Plaintiffs, through their counsel, submitted comments on the Transient Pool and Fallowing Program, along with comments on the Pumping Verification Report, on August 19, 2020. A true and correct copy of Plaintiffs' August 19, 2020 comment letter is attached hereto as **Exhibit K**, and incorporated herein by reference as though fully set forth herein. Again, the IWVGA ignored Plaintiffs' comments. On August 20, 2020 and August 21, 2020 over Plaintiffs' objections the IWVGA adopted the Pumping Verification Report and Transient Pool and Fallowing Program, respectively.

234. The Pumping Verification Report and Transient Pool and Fallowing Program suffer from numerous fatal flaws.

235. First, contrary to the Sustainable Yield Report's conclusion that "all pumping [other than by de minimis and federal users] should be treated equally," the water users relegated to the Transient Pool and Fallowing Program *are not* being treated equally. These users are being given a meager one-time allocation sufficient for only a few years of continued production. At the same time, the IWVGA's Replenishment Fee Ordinance grants permanent allocations to other water users, including the Navy, the City of Ridgecrest, Kern County, Indian Wells Valley Water District, Inyokern CSD, mutual water companies, and de minimis well owners that provide all or the majority of their current pumping needs on an annual basis. It is discriminatory to grant permanent allocations to some water users, while agricultural producers in the Transient Pool and Fallowing Program are granted a one-time allotment sufficient for only a few years of continued pumping. Accordingly, the Transient Pool and Fallowing Program makes decisions regarding the priority of competing uses that have no basis in common law. The failure to treat water users engaged in the cultivation of agriculture the same as other water users in the Basin violates SGMA, lacks any rational basis, fails to respect common law water rights, and violates the California Constitution.

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236. Second, the Transient Pool and Fallowing Report and the underlying Pumping Verification Report are deficient because each fails to justify Plaintiffs' exclusion. The Pumping Verification Report entirely omits the pumping data submitted by Plaintiffs. Likewise, the Transient Pool and Fallowing Program omits Plaintiffs from the program on the basis that Plaintiffs "did not submit the required Pumping Verification Questionnaire." In fact, Plaintiffs, through their counsel, submitted the Pumping Verification Questionnaire ("Questionnaire") to the IWVGA and its consultants repeatedly throughout the spring and summer of 2020:

- By letter dated May 26, 2020 Plaintiffs, through their counsel, provided notice to the IWVGA and Stetson Engineers Inc. ("Stetson"), the IWVGA's Water Resources Manager, that Mojave's answers to the Questionnaire would be provided later that week. A true and correct copy of Plaintiffs' May 26, 2020 letter is attached hereto as **Exhibit L**, and incorporated herein by reference as though fully set forth herein.
- By letter dated May 29, 2020 Plaintiffs, through their counsel, then submitted their answers to the Questionnaire to the IWVGA and Stetson. Nonetheless, the draft Pumping Verification Report issued by Stetson on June 3, 2020, which was foundational to the Transient Pool and Fallowing Program, omitted Plaintiffs from the Report. A true and correct copy of Plaintiffs' May 29, 2020 letter is attached hereto as **Exhibit M**, and incorporated herein by reference as though fully set forth herein.
- Upon discovering this error, Plaintiffs, through their counsel, sent a June 8, 2020 email to Joseph Montoya of Stetson in response to Mr. Montoya's invitation for comment on the draft Pumping Verification Report. In the June 8, 2020 email, Plaintiffs notified Mr. Montoya of the omission, provided Plaintiffs' two May 2020 letters including the answers to the Questionnaire, and asked for confirmation that Plaintiffs would be included in the revised Pumping Verification Report. A true and correct copy of Plaintiffs' June 8, 2020 email is attached hereto as **Exhibit N**, and incorporated herein by reference as though fully set forth herein.

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Plaintiffs never received a response from Mr. Montoya, despite the fact that new information submitted by other pumpers was rightfully incorporated into the Pumping Verification Report in response to comments on the draft Report.

- When the materials for the June 18, 2020 IWVGA Board meeting were released Plaintiffs discovered that they had again been excluded from the Transient Pool and Fallowing Program on the basis that Mojave "did not submit the required Pumping Verification Questionnaire," despite Plaintiffs' three prior letters and emails. Therefore, Plaintiffs clarified in their June 18, 2020 comment letter and oral comments at the June 18 meeting that Plaintiffs had in fact submitted the Questionnaire. (See, e.g., Exh. H at p. 7 ["The Transient Pool structure is also deficient because it fails to justify Mojave's exclusion. The Report on the Transient Pool and Fallowing Program wrongfully claims that [Plaintiffs] 'did not submit the required Pumping Verification Questionnaire.' In fact, the questionnaire was submitted to the IWVGA and Stetson in May 2020. Additionally, the questionnaire was re-submitted to Stetson on June 8, 2020, upon learning that [Plaintiffs] had been erroneously excluded from the Draft Pumping Verification Report. We request that this immediately be remedied."].)
- After receiving no substantive response to Plaintiffs' June 18, 2020 comments, Plaintiffs, through their counsel, submitted a second email on July 13, 2020, this time addressed to Mr. Montoya and Steve Johnson of Stetson, the Clerk of the IWVGA Board, and Jim Markman, one of the IWVGA's legal counsel. This email again outlined the history detailed above and asked for confirmation that Plaintiffs would be added to the Pumping Verification Report and Transient Pool and Fallowing Program, now that the IWVGA and Stetson had the benefit of 1.5 months to incorporate the answers to Mojave's Questionnaire into the Transient Pool Report. A true and correct copy of Plaintiffs' July 13, 2020 email is attached hereto as **Exhibit O**, and incorporated herein by reference as though fully set forth herein. Again, this email was met with silence.

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- Finally, Plaintiffs, through their counsel, recounted this history in their August 19, 2020 comment letter on the Pumping Verification Report and the adoption of the Transient Pool and Fallowing Program and again asked to be included in the Transient Pool and Fallowing Program. (Exh. K.) Again, the IWVGA denied this request.

237. In excluding Plaintiffs from both the Pumping Verification Report and Transient Pool and Fallowing Program, the IWVGA failed to identify a single policy, regulatory, or factual circumstance of any kind to exclude the known data submitted by Plaintiffs from consideration. Plaintiffs assert that the IWVGA's failure to acknowledge and account for known, actual water use by a multi-million dollar going agricultural concern and excluding Plaintiffs from the Pumping Verification Report and Transient Pool and Fallowing Report—when there was nearly three months and multiple IWVGA public meetings to correct the situation—is arbitrary and capricious.

238. Plaintiffs' exclusion from the Transient Pool and Fallowing Program also runs contrary to the GSP, which provides: "All groundwater pumpers who were producing groundwater during the Base Period and who are not given an Annual Pumping Allocation will be eligible to receive a Transient Pool Allocation." (GSP at 5-6.) As acknowledged in the report on the Transient Pool and Fallowing Program, Plaintiffs produced groundwater during the Base Period defined as January 1, 2010 through December 31, 2014.

239. Plaintiffs assert that the IWVGA's decision to exclude Plaintiffs from the Pumping Verification Report and ultimately from the Transient Pool and Fallowing Program amounts to an arbitrary multi-million dollar penalty. As modeled by the IWVGA prior to adoption of the GSP in Model Scenario 6.2, Plaintiffs would have held 4,292 AF of the Transient Pool, which amounts to a value in excess of $9 million dollars, based on the Replenishment Fee of $2,130 per AF. Even with a smaller Transient Pool than modeled under Scenario 6, the IWVGA's wrongful decision constitutes the arbitrary adoption of a multi-million dollar penalty—or the deprivation of a multi-million dollar property right—without due process.

240. The penalty is illegal because Plaintiffs were never provided with the requisite

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notice. Specifically, the Questionnaire fails to notify the respondent that failure to submit the Questionnaire on March 1, 2020 is grounds for exclusion from the Pumping Verification Report and Transient Pool and Fallowing Program. In other words, the IWVGA failed to disclose to Plaintiffs or any other pumper that the failure to respond by a certain date carried a forward forfeiture of the right to participate in a program not yet formulated, let alone finalized. Without the requisite notice, the IWVGA's multi-million dollar penalty on Plaintiffs violates basic principles of due process that cannot withstand constitutional scrutiny.

241. The IWVGA singled out Plaintiffs in refusing to accept Plaintiffs' June 8, 2020 comments on the draft Pumping Verification Report. This refusal is arbitrary because the IWVGA accepted new information from other pumpers in response to Stetson's June 3, 2020 request for comment on the draft Pumping Verification Report. The IWVGA never contended that the information submitted by Plaintiffs was incorrect. The IWVGA's disparate treatment of Plaintiffs is arbitrary and capricious, violates constitutional due process protections, and is wholly without evidentiary support of any kind.

242. The IWVGA further failed to comply with applicable law in adopting the Transient Pool and Fallowing Program because it purports to condition participation in the Transient Pool and Fallowing Program on "a release of any and all claims against the IWVGA and its members on a form approved by counsel for the IWVGA." The condition is an unconstitutional condition. (*San Diego County Water Authority v. Metropolitan Water Dist. of Southern California* (2017) 12 Cal.App.5th 1124, 1159–60.)

243. Finally, as set forth in Section IX.I., the IWVGA failed to proceed in the manner required by law in adopting the Transient Pool and Fallowing Program without studying the environmental impacts of the decision as required under CEQA. The Transient Pool and Fallowing Program will have potentially significant environmental impacts associated with widespread fallowing resulting from the IWVGA's strategic elimination of agriculture, including, but not limited to, impacts on air quality, human health, greenhouse gas emissions, biological resources, aesthetics, and local economies.

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H. The IWVGA Failed to Proceed in the Manner Required by Law in Adopting the Replenishment Fee on August 21, 2020

244. The Replenishment Fee is a SGMA fee adopted pursuant to Water Code section 10730.2, which requires compliance with specific Proposition 218 requirements.

245. As explained by the IWVGA's Director Gleason at a public forum on August 13, 2020 and as further discussed at the IWVGA's August 21, 2020 adoption hearing, the IWVGA proposes to use the Replenishment Fee funds to purchase a water right entitlement. The IWVGA hopes to then sell or lease those purchased rights to landowners *outside* the Basin until the construction of extensive and costly infrastructure to bring the imported water into the Basin can be financed, analyzed, and approved. Plaintiffs allege, on information and belief, that the IWVGA has not yet even identified the source of that imported water or when it will be purchased, if ever.

246. The IWVGA first issued its Staff Report and Draft Engineer's Report on the adoption of the $2,130 per AF Replenishment Fee in advance of its June 18, 2020 Board meeting. The June 18, 2020 Staff Report on the Replenishment Fee explains that "De Minimis extractors and Federal extractors are exempt from the Replenishment Fee, as well as those that have *permission to extract unused (inchoate) portions of the Navy's estimated Federal Reserve Water Right Interest*"—termed a "carryover" extraction—and entities pumping water pursuant to a Transient Pool allotment.

247. On June 18, 2020, prior to the IWVGA Board meeting, Plaintiffs submitted, through their counsel, comments on the proposed Replenishment Fee asking the IWVGA to correct several inadequacies in the fee proposal before mailing the Proposition 218 notices required for adoption of the fee pursuant to Water Code section 10730.2 and the California Constitution, Article XIII D, Section 6. (Exh. H.)

248. The IWVGA nevertheless proceeded to mail the Proposition 218 notice ("Proposition 218 Notice"). Plaintiffs are informed and believe and on that basis allege that the IWVGA mailed the Proposition 218 notice to each property owner overlying the Basin as reflected on the assessor's tax rolls for each county, rather than only the property owners subject to the fee. A true and correct copy of the Proposition 218 Notice received by Plaintiffs is attached

hereto as **Exhibit P**, and incorporated herein by reference as though fully set forth herein.

249. Plaintiffs timely submitted protests to the Replenishment Fee on August 10, 2020 and August 12, 2020, as well as comment letters regarding the Replenishment Fee's various procedural and substantive inadequacies on August 6, 2020 and August 19, 2020. True and correct copies of Plaintiffs' protests letters are attached hereto as **Exhibits Q and R**, and incorporated herein by reference as though fully set forth herein. True and correct copy of Plaintiffs' August 6, 2020 and August 19, 2020 comment letters are attached hereto as **Exhibit S** and **Exhibit T**, respectively, and incorporated herein by reference as though fully set forth herein.

250. IWVGA adopted the Replenishment Fee on August 21, 2020 over the objections of Plaintiffs and the protests of thousands of property owners. The IWVGA, however, did not disclose at the August 21, 2020 hearing how many protests it received.

i. The Replenishment Fee is based on substantive legal deficiencies

251. The Replenishment Fee adopted by the IWVGA rests on a flawed theory that the Navy's federal reserved water right can be "carried over" and utilized off the Navy base for non-federal purposes. As stated in the Proposition 218 Notice, it is presumed that the Navy will supply "residential 'carryover' water in accordance with the following chart which shows the current estimated carryover." The chart included in the Proposition 218 Notice is reproduced below in **Figure 2**.

Pumping Group	Current Estimated Navy Use/Carryover	Augment Supply Need
Navy	1,450	0
De Minimis Wells	800	0
City of Ridgecrest	373	0
Kern County	18	0
IWVWD	4,390	2,117
Inyokern CSD	102	0
Small Mutuals	300	0

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Trona DM	217	0
SVM	0	2,413
Total	7,650	4,530

Figure 2. Proposition 218 Notice "Navy Carryover" Chart

252. Accordingly, the Replenishment Fee is based upon a scheme where certain non-federal pumpers, "that have permission to extract unused portions of the Navy's estimated Federal Reserve Water Right interest," are exempt from payment of the Replenishment Fee. These non-federal parties will receive free water supplies at the expense of Plaintiffs and other pumpers that are not exempt from the Replenishment Fee.

253. This scheme is unsupported in the law because the Navy's federal reserved water right, whatever it is, cannot be transferred to non-federal entities. The right, whatever its quantity, is both appurtenant to and limited by the four corners of the federal reservation, here the Navy base. By law, an inchoate federal reserved water right extends only to the federal land withdrawn from the public domain and to the primary purpose of the federal reservation. (See, e.g., *Cappaert v. United States* (1976) 426 U.S. 128, 138 ["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 . . . acquires a reserved right in unappropriated water which vests on the date of the reservation . . . In determining whether there is a federally reserved water right implicit in a federal reservation of public land, the issue is whether the Government intended to reserve unappropriated and thus available water."]; *Agua Caliente Band of Cahuilla Indians v. Coachella Water Dist.* (9th Cir. 2017) 849 F.3d 1262, 1268–69 [explaining that the Supreme Court has emphasized that, under the doctrine of federal reserved water rights, the government reserves "only 'that amount of water necessary to fulfill the purpose of the reservation, no more'" and that the United States must "'acquire water in the same manner as any other public or private appropriator'" where "'water is only valuable of a secondary use of the reservation'" (quoting *United States v. New Mexico* (1978) 438 U.S. 696, 701, 702)].) As an inchoate right appurtenant to specific land, for specifically designated federal purposes, it is not legally possible to "carry-

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over," transfer, or assign a federal reserved water right or to exclude others from pumping groundwater that is not required by the Navy.

254. Likewise, in California, for a water right to be transferable, there must be both a willing transferee and transferor and it must not cause injury to any legal user. (See, e.g., *North Kern Water Storage Dist. v. Kern Delta Water Dist.* (2007) 147 Cal.App.4th 555, 559; *Barton v. Riverside Water Co.* (1909) 155 Cal. 509, 517-518.) Where these criteria are met, paperwork must be drawn up to effectuate the transfer. Plaintiffs are informed and believe, and therefore allege that none of these pre-requisites have been met.

255. The Replenishment Fee's "Navy carryover" scheme is also unsupported by the facts. Whereas the Proposition 218 Notice states that the water users shown in the table above (**Figure 2**) will be exempted from the fee "through Navy pronouncement," NAWS Commander Benson expressly stated at the July 16, 2020 IWVGA Board meeting that the Navy "did not direct, ask or imply that the IWVGA should transfer" the Navy's water right to any third party. In other words, the Navy denies that it has ever issued the "pronouncement" relied upon by the IWVGA.

256. Further, the transfer or "carryover" of the Navy's federal reserved water right to non-federal users violates the substantive requirements of Proposition 218 which requires, *inter alia*, that "[t]he amount of a fee or charge 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." (Cal. Const., Art. XIII D, Sec. 6, subd. (b)(1)–(4).) The purported "transfer" of the Navy's federal reserved water rights to certain groundwater users will allow those users to obtain "free" water, while the remaining water users are being asked to subsidize the acquisition of a water right entitlement funded by the fee. The Replenishment Fee therefore violates Proposition 218's proportionality requirement where it will be selectively imposed on some—but not all—water users, yet will fund the acquisition of a water right entitlement that will benefit all users of groundwater.

257. The discussion in the Engineer's Report for the Replenishment Fee of the IWVGA's assertions as to the Navy's alleged water rights and the IWVGA's legal interpretations

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of SGMA provisions is also inappropriate because such matters are legal in nature, outside the expertise of the engineers, and beyond the general purpose of the report.

258. Additionally, as set forth in Section IX.I., the IWVGA failed to proceed in the manner required by law in adopting the Replenishment Fee without studying the environmental impacts of the decision as required under CEQA. The Replenishment Fee will have potentially significant environmental impacts associated with widespread fallowing resulting from the IWVGA's strategic elimination of agriculture, including, but not limited to, impacts on air quality, human health, greenhouse gas emissions, biological resources, aesthetics, and local economies.

ii. The Replenishment Fee is was adopted through a procedure that did not comply with the requirements of Proposition 218

259. Proposition 218 mandates that property-related fees, including the Replenishment Fee, can only be adopted if certain procedures are followed. They include the following:

> (1) The parcels upon which a fee or charge is proposed for imposition shall be identified. The amount of the fee or charge proposed to be imposed upon each parcel shall be calculated. The agency shall provide written notice by mail of the proposed fee or charge to the record owner of each identified parcel upon which the fee or charge is proposed for imposition, the amount of the fee or charge proposed to be imposed upon each, the basis upon which the amount of the proposed fee or charge was calculated, the reason for the fee or charge, together with the date, time, and location of a public hearing on the proposed fee or charge.
> (2) The agency shall conduct a public hearing upon the proposed fee or charge not less than 45 days after mailing the notice of the proposed fee or charge to the record owners of each identified parcel upon which the fee or charge is proposed for imposition. At the public hearing, the agency shall consider all protests against the proposed fee or charge. If written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge.

(Cal. Const., Art. XIII D, Sec. 6, subd. (a).)

260. The Proposition 218 Notice specifies that a public hearing would be held at which "the Board will consider and it may adopt the Replenishment Fee as provided, or at lower rate, if less than a majority of landowners receiving this notice file written protests prior to the conclusion of the public hearing" and that the "public hearing will be held on August 21, 2020, at the hour of 10:00 a.m. in the Chambers of the City Council, 100 W. California Ave, Ridgecrest, California . . . ." However, the meeting held on August 21, 2020 was not open to the public at the

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Chambers of the City Council, as stated in the Notice. Instead, the meeting was conducted via an online "livestream,"[1] and those wishing to make verbal public comments were directed to a phone line that allowed only a few callers at a time, requiring the caller to call back repeatedly if a busy tone was reached. Plaintiffs allege on information and belief that since March 2020, the IWVGA was holding Board meetings online via livestream due to the COVID-19 pandemic. Therefore, at the time the Proposition 218 Notice was sent out, IWVGA knew that the meeting would likely be conducted via livestream. The IWVGA should have either provided the information to access the livestream in the Notice, or the Notice should have directed the recipients to the IWVGA's website to access that information. Instead, that information was not made available on the IWVGA's website until August 20, 2020, the day before the hearing. The confusion about where or how the meeting would be conducted, and the artificial barrier to providing verbal comment by requiring callers to hang up and hope they were able to call back at a moment when the line was free, served to chill public comment, participation, and potential objections to adoption of the Replenishment Fee in violation of Proposition 218. (Cal. Const., Art. XIII D, Sec. 6, subd. (a)(1).)

261. The Proposition 218 Notice goes on to require that "written protests **MUST** include" a **"[s]igned original signature statement** indicating that the writing is to be considered a written protest on behalf of the parcel." (Emphasis added.) However, this requirement is not found within the law and serves as an illegitimate barrier to public protest and participation in the Replenishment Fee adoption process. Nothing in the law prevents, nor would it be fair to prevent, the submission of electronic protests. This is particularly true given the novel circumstances surrounding the COVID-19 pandemic. Even if the IWVGA could have properly required only original signatures, at the very least the Proposition 218 Notice should have provided instructions for in-person delivery of protests, given that protests could not be filed at the hearing as stated in the notice. Instead, on August 19, 2020, a mere two days before the hearing, the IWVGA posted a document on its website stating that there were two locations where the original signed protested letters could be dropped off: via dropbox at the Indian Wells Valley Water District or at the

[1] Although the "livestream" options had either a 4-second or 22-second streaming delay.

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Ridgecrest Police Department within City Hall. The instructions provided by the IWVGA only two days before the hearing state that "it is HIGHLY advisable that Protest letters be submitted prior to the Friday hearing." The IWVGA's arbitrary requirement for original signatures, failure to provide instructions for the submission of those signatures until a mere two days prior to the hearing —as opposed to the 45 days required under Proposition 218 —and the implication in the IWVGA's instruction document that those wishing to submit protests had only one or two days to arrange for the submission of those protests, assuming that they found their way to the instructions which were not mentioned anywhere in the Proposition 218 Notice itself, served as a barrier to the submission of protests in violation of Proposition 218. (Cal. Const., Art. XIII D, Sec. 6, subd. (a).).

262. The Replenishment Fee Notice was deficient in a further respect. Plaintiffs allege on information and belief that the Replenishment Fee Notice was mailed to all property owners within the Basin. However, Proposition 218 mandates that notice be provided to "to the record owners of each identified parcel **upon which the fee or charge is proposed for imposition**. At the public hearing, the agency shall consider all protests against the proposed fee or charge. If written protests against the proposed fee or charge are presented by a **majority** of owners of the identified parcels, the agency shall not impose the fee or charge." (Cal. Const., Art. XIII D, Sec. 6, subd. (a)(2) [emphasis added].) To comply with the procedures of Proposition 218, IWVGA should only have mailed the Replenishment Fee Notice to owners within the Basin who would be subject to the Replenishment Fee. Because IWVGA provided the Notice to all property owners within the Basin, even those who will *not* be subject to the Replenishment Fee under the federal reserved water right carryover scheme described herein, the number of protests required to form a "majority" has been impermissibly expanded by thousands of participants who have no basis upon which to protest the fee, because they will not be subject to it. In effect, this illegal notice process diluted the protest votes of property owners subject to the exorbitant Replenishment Fee. The IWVGA's adoption of the Replenishment Fee on the basis that the "majority" of property owners did not submit protests was therefore deeply flawed and did not comply with the procedure required under the California Constitution. (Cal. Const., Art. XIII D, Sec. 6, subd. (a).)

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263. The Proposition 218 Notice also failed to accurately describe the basis for the amount of the fee proposed. (Cal. Const., Art. XIII D, Sec. 6, subd. (a)(1).) The Proposition 218 Notice states that the fee "will cover the estimated imported water purchase costs of $2,112 per acre foot extracted and $17.50 per are foot extracted to cover the estimated costs to mitigate damages to the IWVGA registered shallow wells because of the ongoing overdraft while import supplies are secured and *brought into the Basin*" [emphasis added]. But the Notice also states that "it is estimated to take five years to fund the purchase [of imported water] at which time the charge will cease and the infrastructure construction phase will begin." The language in the notice is therefore vague and conflicting. It is unclear if the $2,112 per AF component of the Replenishment Fee will be charged until imported water is "brought into the Basin," or for approximately five years until "infrastructure construction" begins. The timeline for the completion of infrastructure construction, which will require substantial environmental review, will undoubtedly take longer than five years.

264. This language also is flawed because it suggests that the Replenishment Fee will fund efforts to bring water "into the Basin." Whereas, IWVGA Board members clarified at the August 21, 2020 hearing that the Fee would be used only to fund the acquisition of a water right entitlement and that separate funding would need to be secured for construction of the facilities necessary to actually import water to the Basin.

265. In sum, the Proposition 218 Notice fails to answer numerous questions that are integral to property owners' understanding of the fee and their decision on whether to support it. Those questions, *inter alia*, include:

- What is the purpose of the fee?
- Will the fee fund both the purchase water rights and construction of infrastructure to import water to the basin?
- If the fee will not fund infrastructure construction, how will the import projects be funded and who will pay?
- What is the duration of the fee–i.e., for how long will the fee be imposed?
- On which water users will the fee be imposed and how might this change over

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time (e.g., if the Navy ramps up production)?

- Why is this fee thousands of dollars more expensive on a per acre-foot basis than any other post-GSP fee adopted or proposed by any GSA across the state?

266. Because the Proposition 218 Notice contained confusing and contradictory language regarding the basis for the proposed fee, and did not provide property owners with sufficient information upon which to base a decision to protest the fee, it failed to satisfy the requirements of Article XIII D, Section 6 of the California Constitution.

267. Further, the Proposition 218 Notice does not accurately set forth the basis for the IWVGA's decision to exempt certain water users, including "residents in IWVGA registered small mutual and the Inyokern Community Services District." The Replenishment Fee Notice states that these owners are exempted from the fee "though Navy pronouncement that its water needs include off-Station demands for its workforce, and their dependents." Navy officials, however, have directly contradicted this stated rationale. For example, at the July 16, 2020 meeting of the IWVGA Board, Navy Commander Benson explained:

> The IWVGA alone made the decision to use the Navy's pumping data to estimate the federal reserved water right. Additionally, the IWVGA made the allocation decisions to transfer the IWVGA estimated federal reserved water right. The Navy didn't direct, or ask, or apply that the IWVGA should transfer the estimated federal reserved water right balance. (Emphasis added.)

268. As such, the Proposition 218 Notice wrongly relied on a "Navy pronouncement" as the basis for the federal reserved water right carryover scheme that is foundational to the IWVGA's identification of the parcels on which the fee is proposed for imposition. The Proposition 218 Notice was therefore defective and failed to identify the proposed basis for imposition of the fee and to provide the explanation required by law upon which the fee was based. (Cal. Const., Art. XIII D, Sec. 6, subd. (a)(1).) Until the IWVGA rectifies the deficiencies identified herein and recirculates the Proposition 218 Notice, the fee is illegal and unenforceable.

I. The IWVGA Failed to Proceed in the Manner Required by Law in Adopting the Implementation Actions without Compliance with CEQA

269. Although adoption of the GSP itself is exempt from CEQA, SGMA expressly

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provides that actions implementing a GSP are subject to CEQA. (Wat. Code, § 10728.6 ["Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to the preparation and adoption of plans pursuant to this chapter. Nothing in this part shall be interpreted as exempting from Division 13 (commencing with Section 21000) of the Public Resources Code a project that would implement actions taken pursuant to a plan adopted pursuant to this chapter."].)

270. Plaintiffs, through their counsel, submitted five comment letters to the IWVGA notifying the agency of its obligation to conduct CEQA review of the GSP Implementing Actions. (Exhs. B, E, H, I, K.)

271. IWVGA staff expressly acknowledged that implementation of the GSP would lead farmers to cease production. For example, at the June 18, 2020 IWVGA Board meeting, IWVGA staff and decision-makers acknowledged that the collective result of the GSP Implementing Actions proposed by the Board will result in agricultural producers leaving the Indian Wells Valley *en masse*. For example, IWVGA Counsel Phillip Hall explained:

> As we've mentioned earlier, we don't think Ag can absorb the cost of imported water, especially based on what's going on in the State of California with SGMA in this basin. If they can great, but we've had to make our best guess and we don't think they will be in the permanency in buying augmented supplies.

272. Likewise, Mr. Steve Johnson explained that the Transient Pool is expected to extend the life of overlying agricultural operations for only a few years:

> I'll be honest with you, one of the recommendations we got came right from Chairman Gleason was, does it really make sense when you're looking at the Ag folks to ramp them down on the pumping because as you ramp them down they're not gonna have enough water to operate their agricultural operations. So you're basically slowly strangling them by ramping them down on the water supply. And the suggestion was that the same amount of water, why don't we just totalize that during the ramp down period and create a pool, give it to the agricultural pumpers, and as we give it to the pumpers, let them choose how many acres they want to operate, how they want to use that water and they can use it anyway they want. So they can use the water up, farming all of their acreage for three to four years or they could cut back a little bit and do it for five to six years. Basically, give them the choice to use that allocation,

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allotment I should say, to use that pool water anyway they choose.

273. Notwithstanding this acknowledgment and Plaintiffs' prior comments, the IWVGA Board failed evaluate the numerous potentially significant environmental impacts associated with fallowing thousands of acres of agricultural land—an outcome that IWVGA staff *admitted* is not speculative.

274. The Implementing Actions are a group of connected actions to implement the GSP over which the IWVGA has discretionary decision-making authority and that, collectively, will have potentially significant environmental impacts that must be analyzed prior to adoption. Each one of the Implementing Actions is individually subject to CEQA and must also be analyzed together with each interrelated action. (Wat. Code, § 10728.6 ["a project that would implement actions taken pursuant to a [GSP]" is subject to CEQA]; 14 Cal. Code Regs., § 15378(a) [under CEQA, "project" is defined as "the whole of an action" that has "a potential for resulting" in a direct or reasonably foreseeable indirect physical change to the environment].) Failure to analyze each of the interrelated Implementing Actions together constitutes segmentation, which is prohibited under CEQA.

275. The IWVGA wrongly claims that CEQA analysis is unnecessary because each of the Implementing Actions are exempt from CEQA because they are ministerial actions or because they are otherwise statutorily or categorically excluded from CEQA.

276. The Implementing Actions are not, as the IWVGA claims, ministerial projects because these decisions do not simply require conformance with a fixed standard or objective measurements. Rather, they require exercise of personal judgment by the IWVGA Board as to the wisdom and manner of carrying out the interrelated projects. There is nothing in SGMA that requires the IWVGA to implement any one of these decisions in the manner proposed and adopted by the IWVGA.

277. As documented in Plaintiffs' comment letters sent to the IWVGA and as recognized in the GSP, the climate of the Indian Wells Valley is harsh, with winds that create dust problems for the whole Valley, grounding planes and endangering the health of residents. (See, e.g., GSP at p. 3-11 [Indian Wells Valley has an "arid, high desert climate characterized by hot

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summers, cold winters, and irregular and sparse precipitation" as well as "high winds"].)

278. Fallowing of Plaintiffs' farming operations, alone, would result in the death of approximately 215,000 living pistachios trees and create dust and other environmental impacts that would potentially take years and hundreds of thousands of dollars to mitigate. Yet Plaintiffs' operations represent only a fraction of the agricultural production in the Indian Wells Valley—there are many thousands of additional acres that farmers will be forced to leave vacant due to the IWVGA's actions.

279. There is widespread acceptance that fallowing of agricultural lands, particularly in arid environments such as the Indian Wells Valley, creates the potential for significant environmental impacts, including impacts on air quality, human health, greenhouse gas (GHG) emissions, biological resources, aesthetics, and local economies. Among other things, these studies document that:

- Fallowing of agricultural land causes measurable soil loss in quantities sufficient to degrade air quality. (See, e.g., B.S. Sharratt, "Fugitive dust from agricultural land affecting air quality within the Columbia Plateau, USA," 116 WIT Transactions on Ecology and the Environment 281 (2008); see also Imperial Irrigation District Water Conservation and Transfer Project FEIR/EIS [acknowledging potentially significant impacts associated with fugitive dust and PM10 emissions from fallowing].)
- During wind events, such as those experienced in the Indian Wells Valley, even very small amounts of soil loss caused by fallowing can lead to exceedances of particulate matter (PM10) concentrations above standards imposed by regulatory agencies. (See *id.*)
- There are numerous health effects of particulate matter emissions, such as those caused by fallowing, including premature death in people with heart or lung disease, nonfatal heart attacks, irregular heartbeat, aggravated asthma, decreased lung function, and increased respiratory symptoms, such as irritation of the airways, coughing, or difficulty breathing. (U.S. EPA, "Health and Environmental

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Effects of Particulate Matter (PM);" J.O. Anderson, "Clearing the air: a review of the effects of particulate matter air pollution on human health," 8 Journal of Medical Toxicology 166 (2012); IARC Monographs, Outdoor Air Pollution (Volume 109) (2015).)

- Fallowing agricultural lands creates the potential for increased pesticide and herbicide use to control weeds on fallowed lands. (See Imperial Irrigation District Water Conservation and Transfer Project Final Environmental Impact Report ("EIR")/Environmental Impact Statement ("EIS").) In turn, increased pesticide and herbicide use has the potential for significant impacts on biological resources, such as native plant communities and wildlife, and water quality.
- Fallowing of agricultural land has the potential to result in the loss of carbon dioxide sequestering capacity if fallowed lands are not properly retired and soil conservation techniques are not utilized. (See Imperial Irrigation District Water Conservation and Transfer Project FEIR/EIS.)
- Fallowing agricultural lands creates the potential for aesthetic impacts associated with the loss of farmlands. (Cf. S.M. Swinton, et al. "Ecosystem services and agriculture: cultivating agricultural ecosystems for diverse benefits," 64 Ecological Economics 245 (2007) [acknowledging that agriculture provides aesthetic ecosystem services]; B.T. Van Zanten, et al. "A comparative approach to assess the contribution of landscape features to aesthetic and recreational values in agricultural landscapes," 17 Ecosystem Services 87 (2016).)
- Fallowing lands used for the cultivation of agriculture creates regional economic impacts. For example, a recent economic analysis of California's 2014 drought found that the fallowing of approximately 410,000 acres of agricultural land in the Central Valley, in 2014 alone, resulted in the loss of an estimated 6,722 direct jobs and 15,183 indirect jobs and the loss in $800 million in lost economic output. (R. Howitt, et al., "Economic Analysis of the 2014 Drought for California Agriculture," Center for Watershed Sciences, U.C. Davis (July 2014).) Other

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economic impacts include reduced tax revenues associated with the loss of opportunity for economic utilization of properties currently used for crop production.

- The environmental and economic impacts associated with permanent fallowing of agricultural lands also raise environmental justice concerns related to increased environmental and economic impacts on rural and disadvantaged communities. (See, e.g., K.D. Harris, "Environmental Justice at the Local and Regional Level Legal Background," State of California Department of Justice (2012).)

280. Mitigation measures, including the long-term rehabilitation of native plants, will be required to address the environmental impacts caused by fallowing. The environmental impacts of these mitigation measures must be studied. For example, the re-establishment of native plants will require water use, which must be analyzed. Mitigation will also be costly and will require potentially lengthy commitments from local and state agencies. A mitigation cost analysis should therefore also have been undertaken and the responsible party for each mitigation measure should have been identified in the required CEQA analysis.

281. Likewise, in addition to the environmental and associated economic impacts identified above, the Implementing Actions also create the potential for significant land use effects, including conflicts with Kern County land use policies, such as those that promote agriculture. IWVGA was therefore required to prepare a land use analysis that examines conflicts with existing policies and the potential for future zoning changes necessitated by the IWVGA's Implementing Actions.

282. Not surprisingly, given the environmental and related economic impacts associated with fallowing outlined above, there are various examples of EIRs that have concluded that fallowing of agricultural land will cause potentially significant impacts, including the Imperial Irrigation District Water Conservation and Transfer Project EIR/EIS, cited above.

283. Similarly, here, the IWVGA should have prepared an Initial Study and/or EIR given the potentially significant environmental impacts of the Implementation Actions, including those related to fallowing, and should have adopted mitigation measures to mitigate all significant

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impacts associated with the Implementing Actions.

284. Plaintiffs have complied with the requirements of Public Resources Code section 21167.5 by mailing a written notice of commencement of this action to the IWVGA prior to the commencement of this suit, a true and correct copy of which is attached hereto as **Exhibit U**.

FIRST CAUSE OF ACTION

(Writ of Mandate for Violation of SGMA and the California Constitution in Adopting GSP, Code of Civil Procedure, § 1085)

(All Plaintiffs Against Defendants IWVGA, IWVGA Board, and Does 1-100)

285. Plaintiffs re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

286. The GSP was adopted by the IWVGA on January 16, 2020, as Resolution 01-20, Adoption of the Groundwater Sustainability Plan for the Indian Wells Valley Groundwater Basin. On or about March 13, 2020, Plaintiffs and the IWVGA entered into that certain Agreement to Toll the Statute of Limitations Regarding Potential Challenges to the Indian Wells Valley Groundwater Basin Groundwater Sustainability Plan ("First Tolling Agreement"), which tolled "any and all applicable statutes of limitation, without exception, regarding any claims that may be asserted by a Party to this Agreement (whether by petition or complaint) arising from the [IWVGA's] adoption and/or implementation of the GSP . . ." for the period March 13, 2020 "until the earlier of: (i) seven (7) calendar days from the date at which the [IWVGA] formally adopts the Transient Pool and Fallowing Program (as defined within the GSP), or (ii) June 30, 2020." On or about June 18, 2020, Plaintiffs and the IWVGA entered into that certain second Agreement to Toll the Statute of Limitations Regarding Potential Challenges to the Indian Wells Valley Groundwater Basin Sustainability Plan ("Second Tolling Agreement"), wherein the parties agreed to "toll and extend the applicable statute of limitations for each Party to file any Claims (regardless of the cause of action, remedy and the judicial or administrative tribunal) that arise from the adoption and/or implementation of the GSP including any and all actions expressly or impliedly authorized under applicable law" from June 18, 2020 "to September 30, 2020."

287. Petitioners allege that this action is timely brought where the First and Second

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Tolling Agreements effectively tolled any and all applicable statutes of limitations for the period March 13, 2020 through September 30, 2020.

288. As a Basin groundwater user subject to the GSP, Plaintiffs have a beneficial interest and right in the enforcement of the legal duties required of IWVGA under SGMA, DWR's SGMA Regulations, the California Constitution, and all other applicable laws.

289. By adopting the GSP, the IWVGA has a legal duty to protect Plaintiffs' water rights pursuant to the California Constitution and SGMA.

290. Plaintiffs allege that the IWVGA's adoption of the GSP was arbitrary and capricious, and thus a prejudicial abuse of discretion, and that the IWVGA failed to proceed in the manner required by law, where the decision-makers had already determined, prior to the adoption of the GSP, that the primary goal in managing the Basin would be the protection of the Navy, and where such objective expressly conflicts with the stated legislative purpose of SGMA to provide for sustainable groundwater management of groundwater basins.

291. Plaintiffs allege that the IWVGA's adoption of the GSP was arbitrary and capricious and lacking in evidentiary support, and so constitutes a prejudicial abuse of discretion, where the evidence generated by the IWVGA during development of the GSP indicated that the most severe pumping depression in the Basin has been identified near Navy production wells, and whereas water levels at properties owned by other pumpers are already operating at the GSP's measurable objective.

292. Plaintiffs allege that the IWVGA prejudicially abused its discretion, employed unfair procedures, and failed to proceed in the manner required by law by adopting an inadequate GSP which fails to adequately consider the interests of and impacts to all overlying uses and uses of groundwater, including Plaintiffs, and by failing to adequately respond to their comments on the GSP. (Wat. Code, §§ 10732.2, 10727.8(a); 23 Cal. Code Regs., §§ 354.10, 355.2(e)(3), 355.4(b)(4), (10).)

293. Plaintiffs allege that the IWVGA prejudicially abused its discretion, employed unfair procedures, and failed to proceed in the manner required by law by adopting an inadequate GSP which fails to adequately consider the interests of all beneficial users, including Plaintiffs.

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294. Plaintiffs are informed and believe, and on that basis allege that the IWVGA acted in a manner that employed unfair procedures, was arbitrary and capricious and thus a prejudicial abuse of discretion, and failed to proceed in the manner required by law in adopting the GSP where it was based on a sustainable yield that was developed using a biased, undisclosed model that violates SGMA's open public participation process and Plaintiffs' water rights.

295. Plaintiffs allege that the IWVGA acted arbitrarily and capriciously, employed unfair procedures, prejudicially abused its discretion, and failed to proceed in the manner required by law in adopting the GSP which declares that irrigation for agricultural purposes is not a reasonable use of water, in express conflict with Water Code section 106 and Plaintiffs' lawful right to use their property for agricultural purposes.

296. Plaintiffs allege that the IWVGA acted arbitrarily and capriciously, employed unfair procedures, prejudicially abused its discretion, and failed to proceed in the in the manner required by law in adopting the GSP which purports to determine or alter water rights, including Plaintiffs' in express violation of SGMA (Wat. Code, §§ 10720.5(b), 10720.1(b), 10726.8(b)) and established precedent.

297. Plaintiffs allege that the IWVGA acted arbitrarily and capriciously, employed unfair procedures, prejudicially abused its discretion, and failed to proceed in the manner required by law adopting the GSP which deviates from DWR's GSP Best Management Practices and Guidance Documents.

298. Plaintiffs allege that the IWVGA acted arbitrarily and capriciously, employed unfair procedures, prejudicially abused its discretion, and failed to proceed in the manner required by law in adopting the GSP containing management activities, specifically the Annual Pumping Allocation and the Transient Pool and Fallowing Program, which are arbitrary and capricious and lacking in evidence.

299. Accordingly, the IWVGA acted arbitrarily and capriciously, employed unfair procedures, prejudicially abused its discretion, and failed to proceed in the manner required by law in adopting the GSP.

300. Under Code of Civil Procedure Section 1085, mandamus can compel public

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

301. Plaintiffs ask this court for a writ of mandate or peremptory writ to compel IWVGA to perform their legal duties to adopt a GSP which complies with all applicable laws.

302. Plaintiffs allege that unless enjoined and restrained by this Court, the IWVGA will continue to impose its arbitrary and illegal GSP on Plaintiffs and upon other Basin users in violation of SGMA and the United States and California Constitutions.

303. Plaintiffs and other Basin users subject to the GSP will suffer irreparable harm as a result of the IWVGA's continued maintenance, application and implementation of the unconstitutional GSP.

304. Plaintiffs have no plain, speedy, or adequate remedy of law with respect to the IWVGA's unlawful policies and interpretations or its related patterns and practices.

305. Plaintiffs accordingly seek preliminary and permanent injunctive relief prohibiting IWVGA from continuing to implement or apply its newly adopted GSP.

SECOND CAUSE OF ACTION

(Writ of Mandate for Violation of SGMA and the California Constitution in Adopting the Extraction Fee, Code of Civil Procedure, § 1085)

(All Plaintiffs Against Defendants IWVGA, IWVGA Board, and Does 1-100)

306. Plaintiffs re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

307. As a Basin groundwater user subject to the GSP and Extraction Fee, Plaintiffs have a beneficial interest and right in the enforcement of the legal duties required of IWVGA under both SGMA and the California Constitution, and all other applicable laws.

308. SGMA clearly delineates the procedures that must be followed to fund different budget items. Prior to adopting a GSP, the IWVGA was only authorized to adopt fees under Water Code section 10730. Following adoption of its GSP, however, the IWVGA gained the

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supplemental authority to adopt fees under Water Code section 10730.2 which allows GSAs to adopt fees to fund a broader variety of costs, including projects and management actions such as the "[a]cquisition of lands or other property, facilities, and services," the "[s]upply, production, treatment, or distribution of water," and "[o]ther activities necessary or convenient to implement the plan." (Wat. Code, § 10730.2(a).)

309. The IWVGA stated that it adopted its Extraction Fee pursuant to the authority in Water Code section 10730. Fees adopted under Water Code section 10730, however, can only be used to pay for the costs of a groundwater sustainability program, including but not limited to, preparation, adoption, and amendment of a GSP, and investigations, inspections, compliance assistance, enforcement, and program administration, including a prudent reserve.

310. Under Proposition 26, the Extraction Fee is a tax requiring supermajority voter approval unless the IWVGA 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.

311. The IWVGA has not met this burden. Therefore, the Extraction Fee is a tax that has been imposed in violation of the California Constitution and without voter approval. As such, the IWVGA employed unfair procedures, prejudicially abused its discretion, and failed to proceed in the manner required by law in adopting the Extraction Fee.

312. Further, Plaintiffs allege that the budget for the adopted Extraction Fee includes improper budget items which constitute projects and management actions in the GSP. These budget items can only be funded through a legally adopted fee that complies with the substantive and procedural requirements set forth in Water Code section 10730.2.

313. Plaintiffs allege those improper budget items include, but are not limited to:

- "Stetson – Imported Water Coordination for GSP;"
- "Stetson – Allocation Process Development;"
- "Stetson – Pumping Verification;"

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- "Stetson – Sustainable Yield Report;"
- "Stetson – Fallowing Program Development;"
- "Stetson – Water Importation Marketing Analysis for GSP;"
- Any other "Additional Tasks," to the extent these costs are related to GSP implementation;
- "Legal Costs," to the extent these costs are to defend challenges to the GSP implementation actions;
- "IWVGA Support Costs," to the extent these costs are related to GSP implementation; and
- "IWVGA Administrative Costs," to the extent these costs are related to GSP implementation.

314. Because the budget items listed in the above paragraph reflect projects and management actions, IWVGA was required to follow the procedures described in Water Code section 10730.2 to adopt a lawful Extraction Fee.

315. Specifically, fees adopted pursuant to Water Code section 10730.2 "shall be adopted in accordance with subdivisions (a) and (b) of Section 6 of Article XIII D of the California Constitution." (Wat. Code, § 10730.2(c).)

316. Pursuant to Water Code section 10730.2, therefore, IWVGA had a clear duty to comply with the requirements of Section 6 of Article XIII D of the California Constitution before imposing the Extraction Fee.

317. Plaintiffs allege that IWVGA has failed to proceed in the manner required by law, specifically the requirements set forth in subdivisions (a) and (b) of Section 6 of Article XIII D of the California Constitution, and thus acted arbitrarily and capriciously and prejudicially abused its discretion, in adopting the Extraction Fee.

318. Further, even if the budget items described herein were found to be authorized under Water Code 10730, Plaintiffs allege that IWVGA has failed to demonstrate that the Extraction Fee satisfies the Proposition 26 and 218 requirements to adopt a fee or special tax. (See Cal. Const. Art. XIII C, sec. 1, subd. (e)(7) [specifying, inter alia, that "local government

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bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax"].)

319. Plaintiffs allege that the IWVGA acted unreasonably and failed to proceed in the manner required by law by failing to meet its obligation to provide Plaintiffs and others with sufficient documentation associated with each budget item in order to assess whether the proposed fee increase complies with SGMA.

320. Plaintiffs allege that the IWVGA employed unfair procedures and failed to proceed in the manner required by law in failing to adopt findings that address the applicability of the California Constitutional requirements for the imposition of fees.

321. Plaintiffs allege that the IWVGA acted arbitrarily and capriciously and thus prejudicially abused its discretion and failed to proceed in the manner required by law in adopting the Extraction Fee which is based on the illegally adopted Sustainable Yield Report, which grants the Basin's entire sustainable yield to the Navy.

322. Plaintiffs allege that the IWVGA acted arbitrarily and capriciously, prejudicially abused its discretion, and failed to proceed in the manner required by law in adopting the Extraction Fee which fails to specify which groundwater users will be subject to the fee.

323. Accordingly, the IWVGA acted arbitrarily and capriciously, employed unfair procedures, prejudicially abused its discretion, and failed to proceed in the manner required by law in adopting the Extraction Fee.

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

325. Plaintiffs petition this court for a writ of mandate or peremptory writ to compel IWVGA to perform their legal duties to comply with the California Constitution and all applicable laws in adopting a legally-compliant extraction fee, and to enjoin or otherwise prevent the implementation of the Extraction Fee as currently adopted.

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326. Plaintiffs further seek, an order, under Code of Civil Procedure section 1085, invalidating the Extraction Fee and refunding any sums paid thereunder.

327. Plaintiffs allege that unless enjoined and restrained by this Court, IWVGA will continue to impose its arbitrary and illegal Extraction Fee on Plaintiffs and upon other Basin users in violation of SGMA and the California Constitution.

328. Plaintiffs and other Basin users subject to the Extraction Fee will suffer irreparable harm as a result of the IWVGA's continued maintenance, application and implementation of the unconstitutional Extraction Fee.

329. Plaintiffs have no plain, speedy, or adequate remedy of law with respect to the IWVGA's unlawful policies and interpretations or its related patterns and practices.

330. Plaintiffs accordingly seek preliminary and permanent injunctive relief prohibiting IWVGA from continuing to implement or apply its newly adopted Extraction Fee.

THIRD CAUSE OF ACTION

(Writ of Mandate for Violation of SGMA and the California Constitution in Adopting the Sustainable Yield Report, Code of Civil Procedure, § 1085)

(All Plaintiffs Against Defendants IWVGA, IWVGA Board, and Does 1-100)

331. Plaintiffs re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

332. As a Basin groundwater user subject to the GSP, and the Sustainable Yield Report adopted on July 16, 2020, as Resolution No. 06-29, Adopting a Report on the Indian Wells Valley Groundwater Basin's Sustainable Yield of 7,650 Acre-feet, Plaintiffs have a beneficial interest and right in the enforcement of the legal duties required of IWVGA under SGMA, the United States and California Constitutions, and all other applicable laws.

333. SGMA requires that GSPs be developed and implemented that achieve sustainable groundwater management by carrying projects and management actions intended to ensure the basin is operated within its sustainable yield and avoid or minimize subsidence. (Wat. Code, § 10720.1.) Consequently, sustainable yield is a crucial and fundamental element for the development of implementation measures of the GSP. Further, SGMA requires that GSPs be

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developed with "active involvement" from the diverse population within the groundwater basin. (*Id*. at § 10727.8(a).)

334. Plaintiffs allege that the IWVGA employed unfair procedures, acted arbitrarily and capriciously, failed to proceed in the manner required by law, and thus acted in a prejudicial abuse of its discretion where the draft Sustainable Yield Report was made available to the public mere hours before the public hearing on June 18, 2020, in violation of SGMA's requirement for public participation. Plaintiffs further allege that the IWVGA employed unfair procedures, acted arbitrarily and capriciously, failed to proceed in the manner required by law, and thus acted in a prejudicial abuse of its discretion in failing to address the comments provided by Plaintiffs and others regarding deficiencies in the Sustainable Yield Report prior to adopting it on July 16, 2020.

335. Plaintiffs allege that the IWVGA acted arbitrarily and capriciously, and so prejudicially abused its discretion and failed to proceed in the manner required by law in adopting the Sustainable Yield Report which erroneously purports to "determin[e] the colorable legal claims to the Basin's sustainable yield," in express violation of Water Code sections 10720.5(b), 10726.8(b), and 10720.1(b), which prohibit GSAs from issuing water rights determinations.

336. Plaintiffs allege that Sustainable Yield Report is premised on factual and legal flaws, all of which were brought to the attention of the IWVGA before its adoption, such that the IWVGA acted arbitrarily and capriciously and thus prejudicially abused its discretion in adopting the Sustainable Yield Report.

337. Plaintiffs allege that the Sustainable Yield Report incorrectly determines that "the Basin's entire sustainable yield is subject to a Federal Reserve interest and is therefore beyond the jurisdiction of the Authority to regulate pursuant to Water Code § 10720.3 . . ." and therefore the IWVGA acted arbitrarily and capriciously and thus prejudicially abused its discretion and failed to proceed in the manner required by law in adopting the Sustainable Yield Report.

338. Plaintiffs allege that the Sustainable Yield Report incorrectly and without evidentiary support determines that allocations should not be awarded to any pumpers, which determination is arbitrary and capricious and so constitutes a prejudicial abuse of discretion.

339. Plaintiffs allege that the Sustainable Yield Report incorrectly concludes that all

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groundwater users in the Basin, except "De Minimis Extractors" as defined in Water Code section 10721(e) and "Federal Extractors," including the BLM and the Navy, "are beneficially impacted by IWVGA's overdraft mitigation and augmentation projects and therefore it is not necessary to establish allocations for any extractor," which conclusion is arbitrary and capricious and so constitutes a prejudicial abuse of discretion.

340. Plaintiffs allege that the Sustainable Yield Report incorrectly finds that all groundwater extractors, other than De Minimis Extractors and Federal Extractors "are extracting water beyond the sustainable yield and will be subject to the costs for overdraft mitigation and augmentation projects, unless an extractor obtains a court order showing they have quantifiable production rights superior to the Navy's" which finding is arbitrary and capricious and so constitutes a prejudicial abuse of discretion.

341. Plaintiffs allege that the Sustainable Yield Report incorrectly determines that "all pumping should be treated equally" and such determination is arbitrary, capricious, lacking in evidence, a prejudicial abuse of discretion, and in violation of the law.

342. Plaintiffs allege that the Sustainable Yield Report is premised on the faulty GSP Basin recharge analysis and ignores the vast amount of usable groundwater in storage, and therefore lacks an adequate factual basis to support the Basin's Sustainable Yield, and thus is arbitrary and capricious and constitutes a prejudicial abuse of discretion.

343. Plaintiffs allege there is no factual or legal support for the Sustainable Yield Report's conclusion that the Navy is entitled to the entire 7,650 AFY sustainable yield of the Basin where the Sustainable Yield Report itself acknowledges that the Navy's current production is less than 1,500 AFY, and on a declining trend, and where the Navy has disclaimed that it needs more than 2,041 AFY in the future. Such conclusion is therefore arbitrary and capricious and constitutes a prejudicial abuse of discretion.

344. Plaintiffs allege that there is no basis for granting the Navy the entire sustainable yield of the Basin where the Navy now produces less than 20 percent of the Basin's sustainable yield and admits that an allocation of approximately 27 percent of the sustainable yield will suffice in the future.

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345. Plaintiffs allege that the Sustainable Yield Report falsely states that "all groundwater extractors in the Basin, with the exclusion of De Minimis Extractors and Federal Extractors, will be subject to the costs for overdraft mitigation and augmentation projects."

346. Plaintiffs allege that instead, the IWVGA arbitrarily, capriciously, and in a prejudicial abuse of its discretion selectively placed the entire burden of "overdraft mitigation and augmentation projects" on Plaintiffs and select other water users by exempting the City of Ridgecrest, Kern County, the Indian Wells Valley Water District, Inyokern Community Services District, mutual water companies, domestic users in the town of Trona, and the Navy from payment of the Replenishment Fee.

347. Plaintiffs allege that the rationale provided by the IWVGA that these chosen water users are able to use a portion of the Navy's 7,650 AFY "federal reserved water right" through a so-called "Navy pronouncement" is an arbitrary and capricious effort to confiscate private property for the benefit of public agencies and the Navy, and therefore constitutes a prejudicial abuse of discretion.

348. Plaintiffs allege that the IWVGA established modeling scenarios used to develop the sustainable yield and other program elements through closed session meetings and without public participation, in contravention of Water Code section 10728.8(a). Plaintiffs are informed and believe and thereon allege that the model which provides the technical foundation for the GSP itself is owned by the stakeholder that will obtain the largest groundwater allocation under the GSP, the Navy.

349. Plaintiffs allege that the Navy's model has not been peer reviewed and despite repeated requests, it has not been made available to stakeholders. Instead, only summary information regarding various modeling scenarios were presented at meetings of the IWVGA Board, but the underlying assumptions for each scenario have been insufficiently documented and explained. Similarly, the IWVGA has not clearly articulated how the modeling scenarios have informed the GSP and the management actions to be taken thereunder.

350. Accordingly, the IWVGA acted arbitrarily and capriciously, employed unfair procedures, prejudicially abused its discretion, and failed to proceed in the manner required by

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law in adopting the Sustainable Yield Report.

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

352. Plaintiffs petition this court for a writ of mandate or peremptory writ to compel IWVGA to perform their legal duties to comply with the Constitution and all applicable laws in adopting an accurate Sustainable Yield Report, and to enjoin or otherwise prevent the implementation of the Sustainable Yield Report as currently adopted.

353. Plaintiffs consequently file this petition for a writ of mandate under Code of Civil Procedure section 1085, seeking an order compelling IWVGA to comply with its mandatory duties and prohibiting and correcting IWVGA's abuse of discretion by, among other things, invalidating the Sustainable Yield Report. Plaintiffs have no speedy, plain or adequate remedy of law but for this remedy.

354. Plaintiffs allege that unless enjoined and restrained by this Court, IWVGA will continue to rely on the arbitrary and illegal Sustainable Yield Report, and to enforce its provisions on Plaintiffs and upon other Basin users in violation of SGMA and the California Constitution.

355. Plaintiffs and other Basin users subject to the Sustainable Yield Report will suffer irreparable harm as a result of the IWVGA's continued maintenance, application and implementation of the unconstitutional Sustainable Yield Report.

356. Plaintiffs have no plain, speedy, or adequate remedy of law with respect to the IWVGA's unlawful policies and interpretations or its related patterns and practices.

357. Plaintiffs accordingly seek preliminary and permanent injunctive relief prohibiting IWVGA from continuing to implement or apply its newly adopted Sustainable Yield Report.

FOURTH CAUSE OF ACTION

(Writ of Mandate for Violation of SGMA and the California Constitution in Adopting the Transient Pool and Fallowing Program, Code of Civil Procedure, § 1085)

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(All Plaintiffs Against Defendants IWVGA, IWVGA Board, and Does 1-100)

358. Plaintiffs re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

359. As a Basin groundwater user subject to the GSP and the Report on Transient Pool and Fallowing Project adopted in conjunction therewith, Plaintiffs have a beneficial interest and right in the enforcement of the legal duties required of IWVGA under SGMA, the California Constitution, and all other applicable laws.

360. The IWVGA adopted Resolution No. 05-20, Adoption of Report on Transient Pool and Fallowing Program, adopting the Transient Pool and Fallowing Program on August 21, 2020. The Transient Pool and Fallowing Program incorporates and relies on the Pumping Verification Report adopted on August 20, 2020. Plaintiffs' challenge to the Transient Pool and Fallowing Program incorporates a challenge to the Pumping Verification Report.

361. Plaintiffs allege that the IWVGA failed to proceed in the manner required by law in adopting the Transient Pool and Fallowing Program which improperly issues water rights determinations, in express violation of SGMA. (See Wat. Code, §§ 10720.5(b), 10720.1(b), 10726.8(b).)

362. Plaintiffs allege that the Transient Pool and Fallowing Program is arbitrary and capricious, and the IWVGA employed unfair procedures and prejudicially abused its discretion in adopting it, for the following reasons.

363. Plaintiffs allege that the Transient Pool provides some participants with a one-time allocation sufficient for only a few years of continued production, while Plaintiffs receive no allocation. A the same time, the IWVGA provides other water users, including the Navy, the City of Ridgecrest, Kern County, Indian Wells Valley Water District, Inyokern CSD, "Small Mutuals," "de minimis" well owners, all or the majority of their current pumping needs on an annual basis. This unequal treatment is arbitrary and capricious, and violates SGMA, common law water rights, and the California Constitution, and is therefore a prejudicial abuse of discretion.

364. Plaintiffs allege that the IWVGA employed unfair procedures, acted arbitrarily and

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capriciously and prejudicially abused its discretion in omitting Plaintiffs from the Transient Pool and Fallowing Program and Pumping Verification Report on the purported basis that Plaintiffs did not timely submit the required Pumping Verification Questionnaire, when Plaintiffs are informed and believe and thereon allege that the IWVGA accepted new information from other pumpers after March 1, 2020 and where the IWVGA failed to give Plaintiffs notice that failure submit the Questionnaire by March 1, 2020 would result in a forfeiture of a right to participate in the Transient Pool and Fallowing Program.

365. Plaintiffs allege that the Fallowing Program's assertion that the value of all agricultural land located within the Basin is $9 million, is incorrect, arbitrary, capricious, lacking in evidence or support, and fails to quantify the amount necessary to purchase water rights from the agricultural operations so that no water would be pumped.

366. Plaintiffs allege that the condition whereby acceptance of a Transient Pool allotment or participation in the Fallowing Program "include a release of any and all claims against the IWVGA and its members on a form approved by counsel for the IWVGA" is illegal, arbitrary, capricious, and unconscionable. There is no nexus between participation in the Transient Pool and the release of legal claims against the IWVGA.

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

368. Plaintiffs petition this court for a writ of mandate or peremptory writ to compel IWVGA to perform their legal duties to comply with the United States and California Constitutions and all applicable laws in adopting an accurate the Transient Pool and Fallowing Program Report and underlying Pumping Verification Report, and to enjoin or otherwise prevent the implementation of the Transient Pool and Fallowing Program Report and Pumping Verification Report as currently adopted.

369. Plaintiffs consequently file this petition for a writ of mandate under Code of Civil

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Procedure section 1085, seeking an order compelling IWVGA to comply with its mandatory duties and prohibiting and correcting IWVGA's abuse of discretion by, among other things, invalidating the Transient Pool and Fallowing Program Report and Pumping Verification Report. Plaintiffs allege that unless enjoined and restrained by this Court, IWVGA will continue to rely on the arbitrary and illegal Transient Pool and Fallowing Program and Pumping Verification Report, and enforce its provisions on Plaintiffs and upon other Basin users in violation of SGMA and the United States and California Constitutions.

370. Plaintiffs and other Basin users subject to the Transient Pool and Fallowing Program will suffer irreparable harm as a result of the IWVGA's continued maintenance, application and implementation of the unconstitutional Transient Pool and Fallowing Program and Pumping Verification Report.

371. Plaintiffs have no plain, speedy, or adequate remedy of law with respect to the IWVGA's unlawful policies and interpretations or its related patterns and practices.

372. Plaintiffs accordingly seek preliminary and permanent injunctive relief prohibiting IWVGA from continuing to implement or apply its newly adopted Transient Pool and Fallowing Program and Pumping Verification Report.

FIFTH CAUSE OF ACTION

(Writ of Mandate for Violation of SGMA and the California Constitution in Adopting the Replenishment Fee, Code of Civil Procedure, § 1085)

(All Plaintiffs Against Defendants IWVGA, IWVGA Board, and Does 1-100)

373. Plaintiffs re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

374. As a Basin groundwater user subject to the Replenishment Fee, Plaintiffs have a beneficial interest and right in the enforcement of the legal duties required of IWVGA under both SGMA and Section 6 of Article XIII D of the California Constitution and all other applicable laws.

375. The IWVGA asserts that it adopted the Replenishment Fee pursuant to its authority under Water Code section 10730.2.

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376. Fees adopted pursuant to Water Code section 10730.2(a) "shall be adopted in accordance with subdivisions (a) and (b) of Section 6 of Article XIII D of the California Constitution." (Wat. Code, § 10730.2(c).) Pursuant to Water Code section 10730.2, therefore, IWVGA has a clear duty to comply with the requirements of Section 6 of Article XIII D of the California Constitution before imposing the Replenishment Fee and the "burden [to establish the fee's validity] shall be on [IWVGA] to demonstrate compliance." (Cal. Const., art. 13D, § 6 .).

377. Plaintiffs are informed and believe and thereupon allege that the funds derived from the Replenishment Fee will be used for purposes other than that which the fee was imposed, which is a violation of Article XIII D, Section 6, subdivision (b)(2) of the California Constitution. The IWVGA adopted the Replenishment Fee for the stated purpose of purchasing permanent water rights outside of the Indian Wells Valley, which would then be sold or leased to landowners outside the Basin until the costly infrastructure needed to bring imported water into the Basin can be approved, financed, and constructed. The IWVGA has not yet identified the source of the imported water to be purchased or its timing. The IWVGA, therefore, has not based the amount of the Replenishment Fee on the cost of the activities for which it is imposed.

378. Plaintiffs also allege that the purported transfer of the Navy's federal reserved water rights to certain groundwater users free of charge, while the remaining groundwater users are subject to the Replenishment Fee, violates Article XIII D, Section 6, subdivision (b)(3) of the California Constitution's proportionality requirement in that the fee will be selectively imposed on only some Basin groundwater users, yet will fund the acquisition of a water right entitlement that will benefit all Basin groundwater users. As such, Plaintiffs allege that the IWVGA prejudicially abused its discretion and failed to proceed in the manner required by law in adopting the Replenishment Fee which is based on an illegal theory that the Navy's federal reserved water right can be "carried over" and transferred off of the Navy base for non-federal purposes by non-federal pumpers. Plaintiffs further allege that Navy has stated that it did "not direct, ask or imply that the IWVGA should transfer" the Navy's water right to any third party.

379. Further, certain pumpers are exempt from the Replenishment Fee, including the Navy, BLM, small mutual water companies and de minimis pumpers, even though the

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Replenishment Fee is intended to pay for groundwater management activities benefiting such exempt pumpers. As a result, in violation of Article XIII D, Section 6, subdivision (b)(3) of the California Constitution, the Replenishment Fee exceeds the proportional share of the cost of groundwater management activities attributable to Plaintiffs because it must also cover the cost of groundwater activities attributable to pumpers exempt from the fee.

380. Plaintiffs allege that IWVGA has also failed to follow the explicit procedural requirements set forth in Article XIII D, Section 6, subdivision (a) for the imposition of fees, as follows:

a. The Proposition 218 Notice failed to provide an accurate location of the public hearing or directions to access the hearing online, which served to chill public comment, participation, and potential objections to adoption of the Replenishment Fee, in violation of Article XIII D, Section 6, subdivision (a)(1) of the California Constitution.

b. The August 21, 2020 public hearing regarding adoption of the Replenishment Fee presented an artificial barrier to public comment by requiring callers to telephone into a phone line that allowed only a few callers at a time, necessitating a caller to try again repeatedly with no guarantee of success if a busy tone was reached, which served to chill public comment, participation, and potential objections to adoption of the Replenishment Fee, in violation of Article XIII D, Section 6, subdivision (a) of the California Constitution.

c. The Proposition 218 Notice arbitrarily, capriciously, and without any basis in law, required written protests to include a signed original signature statement, and failed to provide instructions in the Proposition 218 Notice as to where original signature statements should be submitted—instead providing those instructions online a mere two days before the hearing—which served as an unlawful barrier to the submission of written protests, in violation of Article XIII D, Section 6, subdivision (a) of the California

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Constitution.

d. The Proposition 218 Notice was mailed to all property owners within the Basin, however to comply with the procedures mandated by Proposition 218 it should have been mailed only to owners within the Basin who would be subject to the Replenishment Fee, thus the IWVGA's faulty procedure impermissibly expanded the number of protests required to form a majority by thousands of participants who had no basis upon which to protest the fee because they will not be subject to it, in violation of Article XIII D, Section 6, subdivisions (a) and (a)(2) of the California Constitution.

e. The Proposition 218 Notice failed to accurately describe the basis for the amount of the fee proposed by including vague and conflicting language as to whether the $2,112 per AF component of the Replenishment Fee will be charged until imported water is "brought into the Basin," or for approximately five years until "infrastructure construction" begins. Further, at the August 21, 2020 hearing on the adoption of the Replenishment Fee, IWVGA Board members stated orally that the Fee would be used only to fund the acquisition of a water right entitlement and that separate funding would need to be secured for construction of the facilities necessary to actually import water to the Basin. The failure to accurately describe the basis for the amount of the fee proposed is a violation of Article XIII D, Section 6, subdivision (a)(1) of the California Constitution.

381. Plaintiffs allege the Replenishment Fee was calculated by arbitrary means.

382. Plaintiffs allege that the Replenishment Fee constitutes a financial penalty intended to enforce reduction of consumption and is not for a fee for service.

383. Plaintiffs allege that the Replenishment Fee which attempts to force reduced consumption has a disproportionate effect on the agricultural users in the Basin.

384. Under Code of Civil Procedure section 1085, mandamus can compel public officials to perform an official act required by law. Mandamus may issue to compel an official

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both to exercise discretion (if required by law to do so) and to exercise such discretion under applicable law. Section 1085 authorizes this court to issue a writ of mandate "to compel the performance of an act which the law specifically enjoins."

385. Accordingly, the IWVGA acted arbitrarily and capriciously, relied on faulty data, failed to proceed in the manner required by law, employed unfair procedures, and prejudicially abused its discretion in adopting the Replenishment Fee.

386. Plaintiffs petition this court for a writ of mandate or peremptory writ to compel IWVGA to perform their legal duties to comply with the United States and California Constitutions and all applicable laws in adopting a property-related fee, and to enjoin or otherwise prevent the implementation of the Replenishment Fee as currently adopted.

387. Plaintiffs consequently file this petition for a writ of mandate under Code of Civil Procedure section 1085, seeking an order compelling IWVGA to comply with its mandatory duties and prohibiting and correcting IWVGA's abuse of discretion by, among other things, invalidating Ordinance No. 03-20, Establishment of a Basin Replenishment Fee, and refunding any sums paid thereunder.

388. Plaintiffs allege that unless enjoined and restrained by this Court, IWVGA will continue to impose its arbitrary and illegal Replenishment Fee on Plaintiffs and upon other Basin users in violation of SGMA and the United States and California Constitutions.

389. Plaintiffs and other Basin users subject to the Replenishment Fee will suffer irreparable harm as a result of the IWVGA's continued maintenance, application and implementation of the unconstitutional Replenishment Fee.

390. Plaintiffs have no plain, speedy, or adequate remedy of law with respect to the IWVGA's unlawful policies and interpretations or its related patterns and practices.

391. Plaintiffs accordingly seek preliminary and permanent injunctive relief prohibiting IWVGA from continuing to implement or apply its newly adopted Replenishment Fee.

SIXTH CAUSE OF ACTION

(Reverse Validation to Determine the Invalidity of the GSP and All Actions Adopted Pursuant to the GSP, Code of Civil Procedure, § 860, *et seq.*; Water Code, § 10726.6)

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(All Plaintiffs Against All Defendants)

392. Plaintiffs re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

393. The IWVGA adopted the GSP on January 16, 2020 as part of an invalid effort to implement the requirements of SGMA, as set forth above. Water Code section 10726.6(a) provides *inter alia* that a public agency may validate adoption of a GSP pursuant to the Code of Civil Procedure sections 860, *et seq*. (the "Validation Statutes").

394. Plaintiffs are informed and believe and thereon allege that no public agency has brought suit pursuant to the Validation Statutes.

395. Plaintiffs seek a determination pursuant to Code of Civil Procedure sections 860, *et seq*. that the GSP is invalid, and that the Extraction Fee, Sustainable Yield Report, Transient Pool and Fallowing Program, and Replenishment Fee adopted pursuant to the GSP are invalid.

396. Code of Civil Procedure section 863 provides that any interested person may bring an action to determine the validity of any matter for which a public agency could bring a validation action under Code of Civil Procedure sections 860, *et seq*. Plaintiffs are interested persons within the meaning of Code of Civil Procedure section 863. These actions brought by interested persons are called reverse validation actions.

397. Plaintiffs contend that the GSP and the Extraction Fee, Sustainable Yield Report, Transient Pool and Fallowing Program, and Replenishment Fee adopted pursuant to the GSP fail to comply with California law, including but not limited to SGMA, for the reasons set forth in Paragraphs 104 through 284.

398. Based on the foregoing, Plaintiffs are entitled to judgment and to a declaration pursuant to the Validation Statutes determining that the challenged provisions of the GSP, Extraction Fee, Sustainable Yield Report, Transient Pool and Fallowing Program, and Replenishment Fee are legally deficient, invalid, and inapplicable, as to the contested provisions, which were adopted and/or have been interpreted in a manner contrary to law. Further, Plaintiffs seek a judicial determination that any efforts by the IWVGA to implement the provisions of the GSP, including but not limited to the adoption of the Extraction Fee, Sustainable Yield Report,

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Transient Pool and Fallowing Program, and Replenishment Fee, also are legally deficient, invalid and inapplicable, because those efforts are based on a deficient GSP.

SEVENTH CAUSE OF ACTION

(Reverse Validation to Determine the Invalidity of the Extraction Fee, Code of Civil Procedure, § 860, *et seq*.)

(All Plaintiffs Against All Defendants)

399. Plaintiffs re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

400. Plaintiffs are informed and believe and thereon allege that no public agency has brought suit pursuant to the Validation Statutes.

401. Code of Civil Procedure section 863 provides that any interested person may bring an action to determine the validity of any matter for which a public agency could bring a validation action under the Validation Statutes.

402. Plaintiffs are interested persons pursuant to and in accordance with Code of Civil Procedure section 863.

403. For the avoidance of doubt, Plaintiffs are informed and believe that Plaintiffs are entitled to seek, and by this action do seek, a declaration and judgment that Ordinance No. 02-20 adopting the Extraction Fee is invalid pursuant to the Validation Statutes.

EIGHTH CAUSE OF ACTION

(Reverse Validation to Determine the Invalidity of the Sustainable Yield Report, Code of Civil Procedure, § 860, *et seq*.)

(All Plaintiffs Against All Defendants)

404. Plaintiffs re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

405. Plaintiffs are informed and believe and thereon allege that no public agency has brought suit pursuant to the Validation Statutes.

406. Code of Civil Procedure section 863 provides that any interested person may bring an action to determine the validity of any matter for which a public agency could bring a

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validation action under the Validation Statutes.

407. Plaintiffs are interested persons pursuant to and in accordance with Code of Civil Procedure section 863.

408. For the avoidance of doubt, Plaintiffs are informed and believe that Plaintiffs are entitled to seek, and by this action do seek, a declaration and judgment that Resolution No. 06-20 adopting the Sustainable Yield Report is invalid pursuant to the Validation Statutes.

NINTH CAUSE OF ACTION

(Reverse Validation to Determine the Invalidity of the Transient Pool and Fallowing Program, Code of Civil Procedure, § 860, *et seq*.)

(All Plaintiffs Against All Defendants)

409. Plaintiffs re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

410. Plaintiffs are informed and believe and thereon allege that no public agency has brought suit pursuant to the Validation Statutes.

411. Code of Civil Procedure section 863 provides that any interested person may bring an action to determine the validity of any matter for which a public agency could bring a validation action under the Validation Statutes.

412. Plaintiffs are interested persons pursuant to and in accordance with Code of Civil Procedure section 863.

413. For the avoidance of doubt, Plaintiffs are informed and believe that Plaintiffs are entitled to seek, and by this action do seek, a declaration and judgment that Resolution No. 05-20 adopting the Transient Pool and Fallowing Program is invalid pursuant to the Validation Statutes.

TENTH CAUSE OF ACTION

(Reverse Validation to Determine the Invalidity of the Replenishment Fee, Code of Civil Procedure, § 860, *et seq*.)

(All Plaintiffs Against All Defendants)

414. Plaintiffs re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

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415. Plaintiffs are informed and believe and thereon allege that no public agency has brought suit pursuant to the Validation Statutes.

416. Code of Civil Procedure section 863 provides that any interested person may bring an action to determine the validity of any matter for which a public agency could bring a validation action under the Validation Statutes.

417. Plaintiffs are interested persons pursuant to and in accordance with Code of Civil Procedure section 863.

418. For the avoidance of doubt, Plaintiffs are informed and believe that Plaintiffs are entitled to seek, and by this action do seek, a declaration and judgment that Ordinance No. 03-20 adopting the Replenishment Fee is invalid pursuant to the Validation Statutes.

ELEVENTH CAUSE OF ACTION

(Regulatory Taking of Private Property Without Just Compensation, 42 U.S.C., § 1983: U.S. Const., 5th Amendment; Cal. Const., Art. I, § 19)

(All Plaintiffs Against Defendants IWVGA, IWVGA Board and Does 1-100)

419. Plaintiffs re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

420. An action for declaratory relief is authorized by Title 28 of the United States Code section 2201(a) and Section 1060 of the California Code of Civil Procedure because an actual controversy exists as to the rights and other legal relations of the parties. An actual controversy has arisen and now exists as to whether IWVGA's adoption of (1) the GSP, (2) the Sustainable Yield Report, (3) the Transient Pool and Fallowing Program, and (4) the Replenishment Fee constitutes an unlawful taking of property for public use without just compensation.

421. 42 U.S.C., § 1983 states:

> Every person, who under color of any statute, ordinance, regulation, custom or usage of any state or territory or the District of Columbia subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the constitution and law shall be liable to the party injured in an action at law, suit in equity, or other appropriate proceeding for redress . . .

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422. All individual Defendants to this claim, at all relevant times, were acting under the color of state law in their capacity as officers of the IWVGA, and their acts or omissions were conducted in the scope of their employment.

423. The Fifth Amendment of the United States Constitution and Article I, Section 19 of the California Constitution prohibit the taking of private property for public use without just compensation.

424. Plaintiffs hold vested overlying rights to Basin groundwater. A groundwater right is an interest in real property that has value independent of any land upon which it is exercised.

425. SGMA requires the IWVGA to consider the interests of all beneficial uses and users of groundwater, including holders of overlying and appropriative groundwater rights such Plaintiffs. (Wat. Code, § 10723.2.) The IWVGA's JPA Agreement and Bylaws impose the same requirement.

426. SGMA also expressly forbids the IWVGA from determining or altering water rights. (Wat. Code, §§ 10720.5(b), 10720.1(b), 10726.8(b).) This background legal principle precludes the IWVGA's apparent assertion of authority to determine groundwater rights, enjoin production and order physical measures inconsistent with the objective paramount rights of overlying landowners.

427. Despite SGMA's clear direction to consider all beneficial uses and not determine the relative priority of rights to Basin groundwater, which direction is repeated in the IWVGA's JPA Agreement and Bylaws, the IWVGA administratively determined the relative priority of Plaintiffs' water rights in a way that is inconsistent with background principles of law and then completely invented a presumed (fabricated) transfer of water from the Navy to the Indian Wells Valley Water District, Kern County, City of Ridgecrest, and a handful of others to justify the erroneous allocation. The GSP through implementation of the Annual Pumping Allocation Plan, Transient Pool, Fallowing Program, and Replenishment Fee is based entirely upon the IWVGA's prioritization among competing uses and shifts the immediate burden of shortage to Plaintiffs. The Replenishment Fee is set at such a level that there is no economically beneficial use of Plaintiffs' water rights that can generate sufficient revenue to make the payment of $2,130/AF—

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up to $14,910,000 per year at full maturity and approximately $255,600,000 over the next twenty years, based on Plaintiffs' full production needs of 7,000 AFY. Plaintiffs allege, on information and belief, that the fee of $2,130 per AF is roughly equivalent to the wholesale cost of desalinated water in San Diego County and is the highest charge ever adopted on the production of groundwater, or replenishment thereof, at any time—in any place—in California history. Accordingly, the IWVGA's actions deprived Plaintiffs of all economically beneficial use of their water rights without just compensation, thereby committing a categorical taking.

428. Plaintiffs are entitled to just compensation for the total deprivation of all economically beneficial use of their water rights, in such amount as shall be determined at trial.

TWELFTH CAUSE OF ACTION

(Regulatory Taking of Private Property Without Just Compensation, 42 U.S.C., § 1983: U.S. Const., 5th Amendment; Cal. Const., Art. I, § 19 [In the Alternative to the Eleventh Cause of Action])

(All Plaintiffs Against Defendants IWVGA, IWVGA Board and Does 1-100)

429. Plaintiffs re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein

430. An action for declaratory relief is authorized by Title 28 of the United States Code, section 2201(a) and Section 1060 of the California Code of Civil Procedure because an actual controversy exists as to the rights and other legal relations of the parties.

431. If the Court finds that the IWVGA's actions did not deprive Plaintiffs of all economically beneficial use of their overlying water rights as alleged in the Eleventh Cause of Action, then Plaintiffs allege in the alternative that IWVGA committed an unlawful regulatory taking by depriving Plaintiffs of any Annual Pumping Allocation and forcing them to pay the Replenishment Fee as a pre-condition to the continued enjoyment and exercise of their overlying water rights. These actions lack a real and substantial relationship to the public welfare as there is no legal or scientific requirement that Plaintiffs' production of groundwater be curtailed for the alleged aim of IWVGA meeting its sustainability objective by the year 2040 pursuant to SGMA.

432. The GSP and Implementing Actions do not merely maintain the status quo, but

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proactively take groundwater resources that would have been extracted by Plaintiffs under their vested common law water rights. The IWVGA conditioned future groundwater pumping by Plaintiffs on payment of an exorbitant fee to while not placing the same barrier condition on others and re-appropriated Plaintiffs' water rights for public use by the Navy, and to the Indian Wells Valley Water District, Kern County, and City of Ridgecrest, among others, which the IWVGA has arbitrarily deemed to be the recipient of a putative transfer of the alleged federal reserved water rights attributable to the Navy for use on the Navy's land.

433. The GSP and Implementing Actions interfere with Plaintiffs' reasonable, investment-backed expectations in their pistachio crops. The effect of the IWVGA's GSP and Implementing Actions will make it economically infeasible to sufficiently irrigate those trees, forcing Plaintiffs to let approximately 215,000 living pistachio trees die.

434. IWVGA has offered no compensation to Plaintiffs, rendering agricultural operations infeasible and effectuating an unconstitutional taking of both Plaintiffs' water rights and living pistachio trees. Accordingly, the GSP and Implementing Actions constituted an unlawful regulatory taking without just compensation under the United States and California Constitutions.

435. Plaintiffs are entitled to just compensation for the taking of their water rights and pistachio trees, in such amount as shall be determined at trial.

THIRTEENTH CAUSE OF ACTION

(Physical Taking of Private Property Without Just Compensation, 42 U.S.C., § 1983: U.S. Const., 5th Amendment; Cal. Const., Art. I, § 19 [In the Alternative to the Eleventh Cause of Action])

(All Plaintiffs Against Defendants IWVGA, IWVGA Board and Does 1-100)

436. Plaintiffs re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

437. An action for declaratory relief is authorized by Title 28 of the United States Code, section 2201(a) and Section 1060 of the California Code of Civil Procedure because an actual controversy exists as to the rights and other legal relations of the parties.

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438. If the Court finds that the IWVGA's actions did not deprive Plaintiffs of all economically beneficial use of their water rights as alleged in the Eleventh Cause of Action, then Plaintiffs allege in the alternative that IWVGA committed an unlawful physical taking. Because the Basin groundwater reserved for the Navy and its fabricated transferees (including Kern County, the City of Ridgecrest, and the Indian Wells Valley Water District) will be physically unavailable to Plaintiffs by virtue of the GSP and the Implementing Actions, this constitutes a physical taking.

439. As a purported justification for the unlawful physical taking, the IWVGA exceeded the scope of its authority under SGMA and erroneously deemed the entire Basin's safe yield to be reserved by the Navy under a "federal reserved water right", and then claimed that groundwater was subject to a public use to the exclusion of Plaintiffs without compensating the Plaintiffs for the immediate curtailment of their groundwater rights unless they paid up to $14,910,000 per year to the IWVGA. The IWVGA further exceeded its authority under SGMA by characterizing the use by the IWVGA to be pursuant to a "transfer of federal reserved water rights" from the Navy despite there being no support in law that such a transfer is possible nor any evidence that such transfer occurred. Such action was not a valid exercise of the IWVGA's authority but was instead an unlawful taking of Plaintiffs' groundwater rights.

440. Plaintiffs are entitled to just compensation for the taking of their water rights and pistachio trees, in such amount as shall be determined at trial.

FOURTEENTH CAUSE OF ACTION

(Violation of Substantive Due Process, 42 U.S.C., § 1983: U.S. Const., 14th Amendment; Cal. Const., Art. 1, § 7)

(All Plaintiffs Against Defendants IWVGA, IWVGA Board and Does 1-100)

441. Plaintiffs re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

442. An action for declaratory relief is authorized by Title 28 of the United States Code, section 2201(a) and Section 1060 of the California Code of Civil Procedure because an actual controversy exists as to the rights and other legal relations of the parties.

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443. Plaintiffs' water rights are protected property interests under the Due Process Clauses of the United States and California Constitutions. Plaintiffs are unable to exercise their water rights because no feasible use of groundwater would recoup sufficient revenue to cover that cost.

444. IWVGA deprived Plaintiffs of property without due process of law by, *inter alia*: (i) failing to consider the timely adoption of physical measures that would preserve and protect all water rights in the Basin to enable continued beneficial use of groundwater; (ii) administratively determining without evidence of any kind that the Navy had transferred a federal reserved water right appurtenant to its land to the Indian Wells Valley Water District, Kern County, and the City of Ridgecrest, among others, which IWVGA has arbitrarily deemed to be the recipient without any evidence of the scope of the right, the quantity of the right, or the location of groundwater extraction in support of the right; and (iii) acting in an arbitrary and irrational manner in attempting to render a determination of Plaintiffs' water rights, in violation of SGMA.

445. IWVGA's actions were not necessary to achieve SGMA's statutory mandates, and the disparate treatment of Plaintiffs compared to other pumpers in the Basin does not advance any legitimate government interest.

FIFTEENTH CAUSE OF ACTION

(Violation of Procedural Due Process, 42 U.S.C., § 1983: U.S. Const., 14th Amendment, Cal. Const., Art. 1, § 7)

(All Plaintiffs Against Defendants IWVGA, IWVGA Board and Does 1-100)

446. Plaintiffs re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

447. An action for declaratory relief is authorized by Title 28 of the United States Code, section 2201(a) and Section 1060 of the California Code of Civil Procedure because an actual controversy exists as to the rights and other legal relations of the parties.

448. Plaintiffs' water rights are protected property interests under the Due Process Clauses of the United States and California Constitutions. Plaintiffs are unable to exercise their water rights because no feasible use of groundwater would recoup sufficient revenue to cover that

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cost.

449. IWVGA's actions violated Plaintiffs' procedural due process rights by administratively determining the relative priority of Plaintiffs' overlying rights relative to the potential rights in the Basin, without providing notice and opportunity to be heard. The IWVGA's lack of procedure offered no opportunity to test competing claims and evidence, no chance to cross-examine witnesses, and no ability to examine the water use practices of other groundwater users. The IWVGA's actions were plainly inconsistent with the principle that other than domestic use, the highest and best use of water in California is for irrigation of agriculture. (See *Abatti v. Imperial Irrigation Dist*. (2020) 52 Cal.App.5th 236, 279-80.) IWVGA's actions deprived Plaintiffs of property without due process of law—without considering Plaintiffs' relative priority under common law, and instead allocating priority to persons other than Plaintiffs even though Plaintiffs possess paramount overlying water rights, superior to the appropriators. The IWVGA's actions were targeted specifically at Plaintiffs requiring them to bear the financial burden of implementation and excluding them from the Transient Pool and further deprived Plaintiffs of **any** Annual Pumping Allocation commensurate with their paramount beneficial use under reasonably efficient means and imposing the Replenishment Fee of $2,130 per AF (an approximately $255 million obligation over the next 20 years).

SIXTEENTH CAUSE OF ACTION

(Writ of Mandate for Violations of the California Environmental Quality Act (Public Resources Code, § 21000, *et seq*.), Code of Civil Procedure, §§ 526, 1085, 1094.5)

(All Plaintiffs Against Defendants IWVGA, IWVGA Board and Does 1-100)

450. Plaintiffs re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

451. This Petition is brought pursuant to sections 526, 1085, and 1094.5 of the Code of Civil Procedure; and Public Resources Code sections 21168, 21168.5, and 21168.9.

452. The IWVGA cannot avoid CEQA review on the basis that adoption of the Implementing Actions—the Sustainable Yield Report, Transient Pool and Fallowing Program, and Replenishment Fee—or any other discretionary action to implement the GSP—is a

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ministerial action or on the basis that it is exempt from CEQA review pursuant to a statutory or categorical exclusion.

453. The relied-on exemptions do not apply to the Implementation Actions. Neither the statutory or categorical exemptions were proper to rely on in these circumstances.

454. Plaintiffs allege the Implementing Actions are not ministerial projects because these decisions do not simply require conformance with a fixed standard or objective measurements. Rather, they require exercise of personal judgment by the IWVGA Board as to the wisdom and manner of carrying out the interrelated projects.

455. Each of the Implementing Actions are one of a group of connected actions to implement the GSP over which the IWVGA has discretionary decision-making authority and that, collectively, will have potentially significant environmental impacts that must be studied prior to adoption. The Implementing Actions are individually subject to CEQA and must be analyzed together with each interrelated action. (See Wat. Code, § 10728.6 ["a project that would implement actions taken pursuant to a [GSP]" is subject to CEQA]; 14 Cal. Code Regs., § 15378(a) [under CEQA, "project" is defined as "the whole of an action" that has "a potential for resulting" in a direct or reasonably foreseeable indirect physical change to the environment].) Failure to analyze each of the interrelated Implementation Actions together constitutes segmentation, which is prohibited under CEQA.

456. CEQA Guidelines section 15378 defines a "project" subject to CEQA as "the whole of an action, which has the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is," among other things, "an activity directly undertaken by any public agency including . . . enactment and amendment of zoning ordinances . . . ." (See Pub. Res. Code §§ 21065, 21080.) CEQA includes a "common sense" exemption "[w]here it can be seen with certainty that there is **no possibility** that the activity in question may have a significant effect on the environment." (CEQA Guidelines, § 15061(b)(3) [emphasis added].) The California Supreme Court recently summarized this standard:

[A] proposed activity is a CEQA project if, by its general nature,

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> the activity is capable of causing a direct or reasonably foreseeable indirect physical change in the environment. This determination is made without considering whether, under the specific circumstances in which the proposed activity will be carried out, these potential effects will actually occur. Consistent with this standard, a "reasonably foreseeable" indirect physical change is one that the activity is capable, at least in theory, of causing. (Guidelines, § 15064, subd. (d)(3).) Conversely, an indirect effect is not reasonably foreseeable if there is no causal connection between the proposed activity and the suggested environmental change or if the postulated causal mechanism connecting the activity and the effect is so attenuated as to be "speculative."

(*Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171, 1197.)

457. The IWVGA's determination that its approval of the Implementing Actions is not subject to CEQA pursuant to CEQA Guidelines section 15061(b)(3) is contrary to CEQA's principles. Indeed, CEQA is construed "to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*Union of Medical Marijuana Patients, supra*, 7 Cal.5th at 1184.) The IWVGA's action in adopting the Implementing Actions without environmental review ignores this policy and CEQA's statutory requirements.

458. Plaintiffs allege that the Implementing Actions may result in significant environmental effects that must be studied under CEQA. Plaintiffs further allege that individually and collectively, the Implementing Actions will cause the fallowing of agricultural land across the Basin, as acknowledged on several occasions by IWVGA staff and decision-makers.

459. Despite the express acknowledgments that the Implementation Actions will cause an exodus of farming from the Basin within a matter of years, the IWVGA nevertheless failed to acknowledge the need for CEQA compliance to assess the numerous potentially significant environmental impacts associated with fallowing thousands of acres of agricultural land—an outcome that IWVGA staff admits is not speculative.

460. The fallowing of agricultural lands, particularly in arid environments such as the Indian Wells Valley, creates the potential for significant environmental impacts, including but not limited to impacts on air quality, human health, greenhouse gas (GHG) emissions, biological

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resources, aesthetics, land use and local economies. Mitigation measures will be required to address the environmental impacts caused by fallowing. The environmental impacts of these mitigation measures must be studied under CEQA.

461. Plaintiffs further allege that the Implementing Actions create the potential for significant land use effects, including conflicts with Kern County land use policies, such as those that promote agriculture. Plaintiffs allege that the IWVGA was therefore required to prepare a land use analysis that examines conflicts with existing policies and the potential for future zoning changes necessitated by the Implementing Actions.

462. Despite repeated requests by Plaintiffs, the IWVGA failed to prepare an Initial Study and/or EIR to evaluate the potentially significant impacts of the Implementation Actions, including adoption of the Sustainable Yield Report, the Transient Pool and Fallowing Program, and the Replenishment Fee.

463. Pursuant to CEQA Guidelines section 15300.2, subdivision (c), "A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances."

464. The significant impacts and unusual circumstances described above make it impossible for IWVGA to rely on a categorical exemption to approve the Implementing Actions. There is more than a reasonable possibility under these circumstances that the Implementing Actions will have a significant effect on the environment. Accordingly, IWVGA improperly determined that the Implementing Actions are categorically exempt from CEQA.

465. IWVGA's improper determination that the Implementing Actions are exempt from the provisions of CEQA constitutes a prejudicial abuse of discretion.

466. Plaintiffs allege it is impossible for the IWVGA to support its findings that the Implementing Actions are not subject to CEQA and is not capable of causing a direct or reasonably foreseeable indirect physical change in the environment. Plaintiffs allege, on information and belief, that there is no evidence to support the finding because no analysis was done. The Implementing Actions will have a significant effect on the environment. Accordingly, the IWVGA improperly determined that the Implementing Actions are not subject to CEQA. The

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IWVGA prejudicially abused its discretion; it did not proceed in the manner required by law, failed to make required findings, and failed to support its determination with any evidence.

467. The IWVGA's improper determination that the Implementing Actions are not subject to the provisions of CEQA constitutes a prejudicial abuse of discretion and, as such, the adoption of the Implementing Actions should be set aside.

468. Plaintiffs, other Basin users, and the members of the general public will suffer irreparable harm if the relief requested herein is not granted and the GSP Implementing Actions are allowed to go into effect in the absence of a full and adequate CEQA analysis, such as that which is provided in an Initial Study or EIR, and absent compliance with all other applicable provisions of CEQA.

469. Plaintiffs have no plain, speedy, or adequate remedy of law with respect to the IWVGA's unlawful policies and interpretations or its related patterns and practices.

470. Plaintiffs accordingly seek preliminary and permanent injunctive relief prohibiting IWVGA from continuing to carry out the Implementing Actions until compliance with CEQA is achieved.

SEVENTEENTH CAUSE OF ACTION

(Declaratory Relief, Code of Civil Procedure, § 1060)

(All Plaintiffs Against All Defendants)

471. Plaintiffs re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

472. An actual controversy has arisen and now exists between Plaintiffs and IWVGA in that Plaintiffs contend that the GSP, Extraction Fee, and each of the Implementation Actions is invalid and illegal, and that IWVGA has failed in multiple respects to comply with SGMA, CEQA, and the United States and California Constitutions.

473. Unless and until the Court renders a judgment declaring the rights and responsibilities of the parties under the law, Plaintiffs, other Basin groundwater users, and IWVGA itself will have no certainty as to whether the GSP, Extraction Fee, and the Implementation Actions are proper, forcing Plaintiffs and other Basin groundwater users to

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operate under a scheme that violates their common law water rights and pay fees that they contend are illegal. The matter is urgent because of the severe financial burden that the fees impose upon agricultural users particularly. Forcing farmers to choose between paying improper fees (that they can ill afford) and ceasing or reducing irrigation for crops and other valuable agricultural plantings will jeopardize the viability of existing farms—including Plaintiffs'—and whose businesses would otherwise be able to remain in existence if the current illegal scheme, and fees were not applied to them. For most, their farms are their livelihood.

474. A speedy judicial determination of the rights and obligations of the parties is necessary and appropriate so the parties may ascertain those rights and act accordingly.

475. Plaintiffs have no plain, speedy or adequate remedy at law for the harm that will be caused by IWVGA's continued imposition of the GSP, Extraction Fee, and Implementing Actions at issue in this case. By continuing to impose the arbitrary scheme and fees, IWVGA is failing to perform the legal duties required of it by SGMA, CEQA, and the United States and California Constitutions. Judgment from this Court, declaring the rights and responsibilities of the parties pursuant to Code of Civil Procedure section 1060, is therefore necessary and appropriate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. On the First through Fifth Causes of Action:

   a. Issue a stay, temporary restraining order, preliminary injunction, and permanent injunction prohibiting any actions by the IWVGA pursuant to the adoption and approval of the (1) the GSP, (2) the Extraction Fee, (3) the Sustainable Yield Report, (4) the Transient Pool and Fallowing Program, and (5) the Replenishment Fee, until full compliance is attained with all requirements of SGMA, CEQA, the United States and California Constitutions and all other applicable state and local laws, policies, ordinances, and regulations.

   b. Issue a writ of mandate invalidating the IWVGA's adoption of (1) the GSP, (2) the Extraction Fee, (3) the Sustainable Yield Report, (4) the Transient

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Pool and Fallowing Program, and (5) the Replenishment Fee, and refunding any excess charges paid thereunder and requiring the IWVGA to maintain its former fee structure unless and until it complies with all applicable laws; or

c. Alternatively, issue a peremptory writ to compel the IWVGA to perform its legal duties to comply with SGMA, the United States and California Constitutions, and all applicable laws in adopting a legally-compliant of GSP, Extraction Fee, Sustainable Yield Report, Transient Pool and Fallowing Program, and Replenishment Fee;

2. On the Sixth through Tenth Causes of Action:

a. Issue a declaration finding and declaring that (1) the GSP, (2) the Extraction Fee, (3) the Sustainable Yield Report, (4) the Transient Pool and Fallowing Program, and (5) the Replenishment Fee are invalid;

3. On the Eleventh through Thirteenth Causes of Action:

a. Issue a declaration that the (1) GSP, (2) Sustainable Yield Report, (3) Transient Pool and Fallowing Program, and (4) Replenishment Fee violate the takings clauses of the United States and California Constitutions;

b. Issue a declaration finding and declaring that (1) the GSP, (2) the Sustainable Yield Report, (3) the Transient Pool and Fallowing Program, and (4) the Replenishment Fee are invalid;

c. Award just compensation to Plaintiffs equal to the deprivation of their water rights and pistachio trees, in an amount in excess of $200,000,000 and to be proved at trial;

4. On the Fourteenth and Fifteenth Causes of Action:

a. Issue a declaration finding and declaring that the IWVGA's adoption of the (1) GSP, (2) Sustainable Yield Report, (3) Transient Pool and Fallowing Program, and (4) Replenishment Fee was arbitrary and capricious and an abuse of discretion, and violated Plaintiffs' due process rights under the

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United States and California Constitutions.

b. Award Plaintiffs damages in excess of $200,000,000 and to be determined at trial based on the violation of their due process rights under the United States and California Constitutions.

5. On the Sixteenth Cause of Action:

a. For a stay, temporary restraining order, preliminary injunction, and permanent injunction prohibiting any actions by the IWVGA pursuant to the adoption and approval of the (1) Sustainable Yield Report, (2) Transient Pool and Fallowing Program, and (3) Replenishment Fee, until full compliance is attained with all requirements of CEQA.

b. Issue a peremptory writ of mandamus compelling the IWVGA to:

i. set aside and vacate the adoption of the (1) Sustainable Yield Report, (2) Transient Pool and Fallowing Program, and (3) Replenishment Fee;

ii. suspend any and all activities pursuant to the challenged decisions, determinations, and approvals that could result in an adverse change or alteration to the physical environment until the IWVGA has taken all actions necessary to bring the Sustainable Yield Report, Transient Pool and Fallowing Program, and Replenishment Fee's environmental review, decisions, and determinations into full compliance with CEQA, and the CEQA Guidelines; and

iii. prepare, circulate, review and certify a legally adequate Initial Study and/or EIR before the IWVGA takes any further action on the Sustainable Yield Report, Transient Pool and Fallowing Program, and Replenishment Fee.

6. On the Seventeenth Cause of Action:

a. For Judgment pursuant to Code of Civil Procedure, section 1060, finding and declaring that the IWVGA's adoption of (1) the GSP, (2) the

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Extraction Fee, (3) the Sustainable Yield Report, (4) the Transient Pool and Fallowing Program, and (5) the Replenishment Fee violated the law and are invalid.

b. For a stay preventing the implementation of any measures deemed invalid under Paragraph 6.a. above.

7. For costs of suit and attorney fees as allowed by law, including but not limited to those pursuant to the Code of Civil Procedure section 1021.5; and,

8. For other and further relief as the Court may deem just and proper.

Dated: September 30, 2020

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: _____

SCOTT S. SLATER
AMY M. STEINFELD
ELISABETH L. ESPOSITO
Attorneys for Petitioners and Plaintiffs MOJAVE PISTACHIOS, LLC, a California limited liability company; and PAUL G. NUGENT AND MARY E. NUGENT, Trustees of the Nugent Family Trust dated June 20, 2011

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VERIFICATION

I, the undersigned, declare that I, Rodney T. Stiefvater, am the Chief Executive Officer of Mojave Pistachios, LLC and a duly authorized representative for MOJAVE PISTACHIOS, LLC, a Petitioner/Plaintiff in this action. I have read the foregoing **VERIFIED PETITION FOR WRIT OF MANDAMUS AND COMPLAINT**, know the contents thereof, and I believe the allegations contained herein to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 30 th day of September, 2020, at Bakersfield, California.

Rodney T. Stiefvater

RODNEY T. STIEFVATER

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VERIFICATION

I, the undersigned, declare that I, Paul G. Nugent, am a Trustee of the Nugent Family Trust dated June 20, 2011, a Petitioner/Plaintiff in this action. I have read the foregoing **VERIFIED PETITION FOR WRIT OF MANDAMUS AND COMPLAINT**, know the contents thereof, and I believe the allegations contained herein to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 30th day of September 2020 at Bakersfield, California.

Paul G. Nugent

PAUL G. NUGENT

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VERIFICATION

I, the undersigned, declare that I, Mary E. Nugent, am a Trustee of the Nugent Family Trust dated June 20, 2011, a Petitioner/Plaintiff in this action. I have read the foregoing **VERIFIED PETITION FOR WRIT OF MANDAMUS AND COMPLAINT**, know the contents thereof, and I believe the allegations contained herein to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 30 th day of September 2020 at Bakersfield, California.

Mary E. Nugent

MARY E. NUGENT

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