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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF KERN

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MOJAVE PISTACHIOS, LLC, JOHN THOMAS CONAWAY, an individual, JOHN THOMAS CONAWAY TRUST, JOHN THOMAS CONAWAY LIVING TRUST U/D/T AUGUST 7, 2008, NUGENT FAMILY TRUST, and SIERRA SHADOWS RANCH LP, Plaintiffs, v. INDIAN WELLS VALLEY WATER DISTRICT, SEARLES VALLEY MINERAL INC., MEADOWBROOK DAIRY, and All Persons Unknown, Claiming Any Legal Or Equitable Right, Title, Estate, Lien, Or Interest In The Property Adverse To Plaintiff's Title, Or Any Cloud On Plaintiff's Title To The Property, and DOES 1 through 20, Inclusive Defendants.	Case No. **VERIFIED COMPLAINT FOR QUIET TITLE, DECLARATORY RELIEF AND INJUNCTION IMPOSING A PHYSICAL SOLUTION: NOT GENERAL ADJUDICATION** (Code Civ. Proc. §§ 387(A) & (B), 526, 833(b)(1)-(3), 1060, 760.020, 761.020.)

Plaintiffs, Mojave Pistachios, LLC, Nugent Family Trust, John Thomas Conaway, John Thomas Conaway Trust, John Thomas Conaway Living Trust u/d/t August 7, 2008, and Sierra Shadows Ranch LP (collectively "Plaintiffs") allege as follows:

I. INTRODUCTION

1. 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 capable." Groundwater is an important water supply source for businesses, individuals, and public agencies that overlie or extract water from the Indian Wells Valley Groundwater Basin ("Basin"). The protection, conservation and efficient use of groundwater is vitally important to the health, safety, and welfare of the region. Plaintiffs bring this Complaint to impose a "physical solution" among the named parties to preserve and protect the Basin's water supply and water quality, the investment-backed expectations of agriculture, and the economy that is dependent upon that supply. So long as there is a case or controversy among the parties this Court has the power and the Constitutional duty to impose a "physical solution" if one is presented. (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 288; *see City of Lodi v. East Bay Mun. Dist.* (1936) 7 Cal.2d 316, 341). Plaintiffs do not seek a comprehensive adjudication of all rights to groundwater as defined by Code of Civil Procedure § 832(c) and instead seek specified relief expressly exempted therefrom as provided in Code of Civil Procedure § 833(b)(1)-(3) and pursuant to the principles set forth in *Tulare Irrigation District v. Lindsay-Strathmore Irrigation District* (1935) 3 Cal.2d 489 and its progeny. Consequently, a precise quantification of individual rights among the parties is not sought or required in this instance but may be addressed by the Court in the future under its continuing jurisdiction. (*City of Santa Maria*, 211 Cal.App.4th at 298.)

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to Code of Civil Procedure §§ 526 and 1060.

3. Venue is proper in this Court because the lands, water rights, and other real property that are the subject of this action are principally located within the County of Kern.

III. PARTIES

4. Plaintiff Mojave Pistachios, LLC ("Mojave") owns and controls land, as described in Exhibit A, that in its entirety overlies portions of the Basin within the County of Kern. Mojave pumps groundwater from the Basin for the irrigation of agriculture on its overlying land, one of the highest and best uses of water in the State (Water Code § 106) using reasonably efficient

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water irrigation practices that conform to the local custom and habit of similarly situated users (Water Code § 100.5).

5. John Thomas Conaway ("John Conaway") owns and controls land, as described in Exhibit A, that in its entirety overlies portions of the Basin within the County of Kern. John Conaway pumps groundwater from the Basin for the irrigation of agriculture on its overlying land under reasonably efficient irrigation practices that conform to the local custom and habit of similarly situated users (Water Code § 100.5).

6. John Thomas Conaway Trust ("Conaway Trust") owns and controls land, as described in Exhibit A, that in its entirety overlies portions of the Basin within the County of Kern. The Conaway Trust pumps groundwater from the Basin for the irrigation of agriculture and residential purposes on its overlying land under reasonably efficient irrigation practices that conform to the local custom and habit of similarly situated users (Water Code § 100.5).

7. John Thomas Conaway Living Trust ("Conaway Living Trust") owns and controls land, as described in Exhibit A, that in its entirety overlies portions of the Basin within the County of Kern. The Conaway Living Trust pumps groundwater from the Basin for the irrigation of agriculture on its overlying land under reasonably efficient irrigation practices that conform to the local custom and habit of similarly situated users (Water Code § 100.5).

8. Sierra Shadows Ranch LP ("Sierra") owns and controls land, as described in Exhibit A, that in its entirety overlies portions of the Basin within the County of Kern. Sierra pumps groundwater from the Basin for the irrigation of agriculture on its overlying land under reasonably efficient irrigation practices that conform to the local custom and habit of similarly situated users (Water Code § 100.5).

9. Nugent Family Trust ("Nugent Trust") owns and controls land, as described in Exhibit A, that in its entirety overlies portions of the Basin within the County of Kern. The Nugent Trust pumps groundwater from the Basin for the irrigation of agriculture on its overlying land under reasonably efficient irrigation practices that conform to the local custom and habit of similarly situated users (Water Code § 100.5).

10. Defendant Indian Wells Valley Water District ("IWVWD") is a County Water

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District formed pursuant to Water Code § 30000 *et seq.* on January 24, 1955 by the consolidation of several small water companies serving domestic water users in the general area of the City of Ridgecrest. The name was changed from Ridgecrest County Water District to IWVWD on January 19, 1970 to reflect that its service area extended beyond the City of Ridgecrest. IWVWD appropriates groundwater from the Basin and delivers it for use on land within its service area that overlies portions of the Basin within the County of Kern.

11. Defendant Searles Valley Minerals Inc. ("SVM") has appropriated groundwater from the Basin and exports the water more than twenty miles for use at its industrial mining operations and as a source of water supply for the community of Trona in Searles Valley, located in the County of San Bernardino County. SVM has appropriated water for industrial purposes for decades. In 2007, SVM was acquired by Nirma Ltd. and its owner is now one of the largest soda ash manufacturers in the world. SVM is a significant employer, with employees that reside in Kern and San Bernardino Counties.

12. Defendant Meadowbrook Dairy ("Meadowbrook") owns and controls land that overlies portions of the Basin. Meadowbrook pumps groundwater from the Basin for the irrigation of agriculture on its overlying land, one of the highest and best uses of water in the State. (Water Code § 106.)

13. Each of the defendants identified as DOES 1 through 20, inclusive, may claim some right, title or interest to the Basin and/or its water, and such claim is, or may be, adverse to Plaintiffs' claims or rights. Plaintiffs are unaware of the true names and identities of DOES 1 through 20, and therefore sues by such fictitious names, and may amend this pleading to reflect their true identities and capacities once ascertained.

IV. GENERAL ALLEGATIONS

A. Geographic Setting

14. 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 Rose Valley by volcanic rocks of the Coso Range (see **Figure 1**). Salt Wells Valley and Searles Valley are located east of

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ephemeral flows or flows at springs along their course to maintain riparian habitat along sections of their reach.

17. Most surface flows that reach the Indian Wells Valley floor rapidly percolate into the alluvial sediments. However, during larger storm events, surface flows can reach China Lake playa, located in the east central portion of Indian Wells Valley. China Lake is an ephemeral desert playa. Evaporation from the playa is the primary natural discharge point for surface water and groundwater in Indian Wells Valley. This evaporation leads to the accumulation of salts in near-surface soils and saline groundwater beneath the playa with total dissolved solids (TDS) concentrations in excess of 10,000 milligrams per liter (mg/L) or parts per million (ppm).

C. <u>Hydrogeologic Setting</u>

18. Indian Wells Valley is a closed, groundwater basin (#6-54), as described in *Bulletin 118: California's Ground Water* (California Department of Water Resources, 2016). Groundwater in the Basin is present in three main hydro-stratigraphic units (HSUs):

- A shallow, generally brackish (TDS between 1,000 and 10,000 ppm), aquifer perched above fine-grained sediments in the east-central portion of the Basin, ranging in saturated thickness from zero to 130 feet (referred to in TetraTech [2003] as the Shallow Hydrogeologic Zone [SHZ]).

- An unconfined to semi-confined, Basin-wide aquifer above deeper, lacustrine deposits, ranging in saturated thickness from 300 to 600 feet, and with TDS concentrations ranging from <500 ppm (south, west, and central Indian Wells Valley) to over 1,000 ppm (north and east Indian Wells Valley) (referred to in TetraTech [2003] as the Intermediate Hydrogeologic Zone [IHZ]).

- A confined, Basin-wide aquifer beneath the overlying lacustrine deposits ranging in saturated thickness from 300 feet (north and east) to over 3,000 feet (south, west, and central), and with TDS concentrations ranging from <500 ppm (southern half of Indian Wells Valley) to over 1,000 ppm (northern half of Indian Wells

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Valley) (referred to in TetraTech [2003] as the Deep Hydrogeologic Zone [DHZ]).

D. Groundwater Conditions

D.1 Groundwater Pumping

19. As of 2018, approximately 932 groundwater wells had been installed in the Indian Wells Valley. The majority of the wells are located south of the Naval Air Weapons Station ("NAWS"), between the City of Ridgecrest and community of Inyokern, or along the Brown Road/Highway 395 corridor in the northwest part of the Indian Wells Valley. The wells are concentrated in more developed areas and areas where agricultural activity is occurring (ECORP, 2012).

20. Groundwater pumping in the Indian Wells Valley 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. Only after 1943, with construction of NAWS and development of the City of Ridgecrest did military and municipal use begin. Prior to 1943, groundwater production was in the range of a few thousand acre-feet per year (AFY). According to pumping data collected by IWVWD, as of 2016, approximately 28,500 AFY of groundwater is pumped from the Indian Wells Valley.

D.2 Groundwater Levels

21. Groundwater levels in the Ridgecrest and Intermediate Pumping Areas are declining at a rate of 1.0 to 1.5 feet per year. The greatest volume of groundwater is extracted from the IWVWD Southwest Well Field, which has been determined to contain a significant quantity of high-quality groundwater.

22. Groundwater production from the Indian Wells Valley has ranged primarily between about 20,000 AFY to approximately 28,000 AFY over the past 40 years, with peaks in early to mid-1980s.

23. Current depth to groundwater varies throughout the Basin. In the northeast, east, and southern parts of the Indian Wells Valley, groundwater is less than 100 feet below ground surface (bgs). In the vicinity of China Lake, the groundwater is close to or at the surface. In the

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northwestern and central part of the Basin, including most of the western half of NAWS, the depth to groundwater varies from approximately 100 to 200 feet bgs. In the area south of NAWS, including the City of Ridgecrest and community of Inyokern, the Intermediate Pumping Area (generally including the area south of NAWS, east of Victor Street, and north of Ridgecrest Boulevard), and the Southwest Pumping Area, the depth to groundwater ranges from 200 to 400 feet bgs (KCWA, 2014).

E. Groundwater in Storage

24. 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 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).

25. The total volume of groundwater storage can be quantified by ascertaining 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 – referred to as the specific yield or effective porosity.

26. The volume of groundwater in storage is equal to the volume of the sediments in the Basin and multiplied by the specific yield. The quantification can be accomplished for the Basin as a whole using an average value of specific yield or for various hydro-stratigraphic units (HSUs) with differing values of specific yield. Both of these methods can and have been used by

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Plaintiffs, Defendants and others to estimate the volume of groundwater in storage in the Basin.

27. 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. The estimated total quantity of currently usable groundwater (<1,000 ppm TDS) in storage in the Basin is between seven (7) to nine (9) million AF of fresh groundwater in the first 200 feet of saturated soil. Beyond the currently usable groundwater, deeper groundwater and groundwater of poorer quality could be put to beneficial use within the Basin.

F. Future Storage of Water in the Basin

28. The Legislature has declared that the policy of this state is to "encourage conjunctive use of surface and groundwater" (Water Code § 1011.5) and that conjunctive use is facilitated by the use of available aquifer storage capacity.

29. Plaintiffs are informed and believe, and on that basis allege, that storage capacity exists in the Basin because over the past 44 years, capacity has been created by groundwater withdrawals dewatering storage without causing significant and unreasonable impacts (undesirable results) in the Basin.

30. Plaintiffs are informed and believe, and on that basis allege, that groundwater is presently found at a depth between 100 and 400 feet bgs and that this unsaturated soil (vadose zone) is available to store water imported from distant sources or developed locally (e.g., enhanced recharge at percolation basins).

31. The use of the available storage capacity in the Basin to maximize the reasonable and beneficial use of water and avoid waste is consistent with the directives of Article X, section 2 of the California Constitution. (*See City of San Fernando v. City of Los Angeles* (1975) 14 Cal.3d 199.)

G. Total Safe/Sustainable Yield

32. 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.) The California Legislature similarly defined "sustainable

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yield":

> "'Sustainable yield'" means 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." (Water Code § 10721(w).)

33. Plaintiffs are informed and believe, and on that basis allege, that Safe Yield and Sustainable Yield have the same general meaning and that undesirable results include all of the following:

- chronic lowering of groundwater levels
- significant and unreasonable loss of groundwater storage
- significant and unreasonable land subsidence
- significant and unreasonable water quality degradation
- significant and unreasonable seawater intrusion
- surface water depletions that result in significant and unreasonable impacts to groundwater-dependent ecosystem

34. 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.

35. Plaintiffs are informed and believe, and on that basis allege, that the total recharge to the Basin has been estimated by various researchers over the past 30 years with estimates that range from a low of 6,000 AFY to as high as 39,000 AFY (USGS, 2018).

36. Plaintiffs are informed and believe, and on that basis allege, that the average annual groundwater pumping over the past 44 years has been approximately 26,000 AFY and groundwater levels in the center of the Basin, distant from Plantiffs' properties, have been declining between 0.5 and 1.5 feet/year.

37. Over the past ten years, even with continued increasing pumping at Plaintiffs properties and a persistence of drought conditions in California, groundwater levels beneath and in the vicinity of Plaintiffs' properties have declined slightly in some areas and remained stable in

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other areas. In many other parts of the Basin, groundwater levels have remained relatively stable, and in some areas have even increased.

H. Continued Groundwater Production

38. 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 addition, no other undesirable results would occur from continued groundwater pumping at current rates for a period of 20 years or more.

39. 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. This continued withdrawal would cause an additional ~6% depletion of currently usable groundwater storage (and 1% of total groundwater storage), and cumulative historic depletion of currently usable groundwater by approximately 15% of the original usable groundwater storage (and 3% of total groundwater storage) in the Basin. That is the Basin would still be 85% full of currently usable groundwater (and 97% full of total groundwater).

40. Plaintiffs are informed and believe, and on that basis allege, that operating a groundwater basin in a manner that maintains more than 50% 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.

41. Plaintiffs are informed and believe, and on that basis allege, that there are no significant and unreasonable adverse impacts on Defendants that are attributable to Plaintiffs' groundwater use specifically. Additionally, Plaintiffs are informed and believe, and on that basis allege, that the continuation of projected beneficial uses by Plaintiffs and Defendants will not cause significant and unreasonable impacts to the Basin, to groundwater levels, land subsidence, water quality, or surface water dependent ecosystems provided that the timing and manner of their groundwater use is coordinated under a physical solution.

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42. Plaintiffs are informed and believe, and on that basis allege, that there are as many as 100 small, *de minimus* groundwater users (those relatively insignificant quantities of groundwater pumping) that overlie the Basin with wells at shallow depths that may be: (i) unpermitted and unsafe; (ii) perforated or drilled to a level unreasonably shallow; and/or (iii) interfering with other small, *de minimus* users.

43. Plaintiffs are informed and believe, and on that basis allege, that the small and *di minimus* users may, and in some cases, lack the required physical infrastructure and the financial means to take reasonable and prudent actions that are sufficient to ensure the continued operation of their wells with a potential lowering of the water table.

44. Plaintiffs are informed and believe, and on that basis allege, that the failure to impose a physical solution will result in potential constraint on individual and cumulative groundwater use by the parties and the failure to optimize the reasonable and beneficial use of groundwater as required by California Constitution Article X, section 2.

45. Plaintiffs are informed and believe, and on that basis allege, that the establishment and imposition of a coordinated groundwater withdrawal schedule within a year and over a period of years among Plaintiffs and Defendants will avoid adverse impacts on the Basin, the wells pumped by Defendants, as well as any small and *de minimus* groundwater users that also overlie the Basin. In the unlikely event there is an impact on the Defendants or small and *de minimus* groundwater users, Plaintiffs are informed and believe, and on that basis allege, that the impacts can be fully mitigated by established protocols for early warning by monitoring water levels and deepening existing wells, drilling new wells or connecting to a regional supply system.

46. Plaintiffs are informed and believe, and on that basis allege, that each of the Defendants presently extract water from the Basin through wells and apply the water to municipal, domestic, agricultural, commercial and/or industrial uses.

47. Plaintiffs further contend that regardless of claim of right, purpose of use or priority in time, if Defendants' continued extractions are coordinated with Plaintiffs' under a physical solution, the continued lowering of groundwater levels in the vicinity of their own wells can be managed to avoid well interference and impacts to the Basin, the Defendants and small

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and *de minimus* users.

FIRST CAUSE OF ACTION

(Quiet Title Against All Defendants)

48. Plaintiffs incorporate by reference the allegations set forth in the preceding paragraphs of this Complaint.

49. Plaintiffs own and control land, as described in Exhibit A, in their entirety, that overlie the Basin and have appurtenant overlying water rights.

50. Plaintiffs acquired their properties with the intention of beneficially using groundwater from the Basin on their overlying lands in the cultivation of agriculture and residential purposes under reasonable and efficient means.

51. Plaintiffs purchased their land in the years as described in Exhibit A, and began actively preparing the land for beneficial uses.

52. Plaintiffs made reasonable due diligence investigations prior to purchasing their properties and concluded that the wells located on the properties were located in a portion of the Basin with a long-term sustainable supply of groundwater that could be produced without regard to groundwater use practices occurring elsewhere in the Basin.

53. To date, Mojave has invested in excess of $25 million dollars in land, trees, and infrastructure for the purpose of irrigating its land to raise pistachios.

54. To date, Plaintiffs John Thomas Conaway, Conaway Trust, Conaway Living Trust, and Sierra have invested in excess of $8 million dollars in land, trees, and infrastructure for the purpose of irrigating its land for agriculture.

55. To date, the Nugent Trust has invested in excess of one million dollars in land, trees, and infrastructure for the purpose of irrigating its land for agriculture.

56. Plaintiffs further allege that they have produced groundwater from the Basin in an open, continuous, manner without physical or legal interference in its access to its supply as Plaintiffs have used groundwater continuously and uninterrupted, and that Plaintiffs have paramount overlying water rights that are correlative with Meadowbrook and superior to those of the appropriator defendants, IWVWD and SVM.

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57. Plaintiffs are informed and believe, and on that basis allege, that each of Defendants dispute the preceding contentions, and thus an actual controversy has arisen and now exists between Plaintiffs and Defendants as to whether the existing and planned beneficial uses of water can be reasonably accommodated through the imposition of a physical solution.

58. Plaintiffs are informed and believe, and on that basis allege, that all Defendants claim ownership of groundwater rights that are or may be adverse to Plaintiffs' groundwater rights. Unless and until a physical solution is declared and implemented, the groundwater available to all common law water rights will be insufficient to meet their collective needs.

59. Plaintiffs are informed and believe, and on that basis allege, that Defendants' adverse claims of groundwater rights and resistance to the imposition of a physical solution constitute clouds on Plaintiffs' title to their properties and appurtenant overlying property rights.

60. An action that arises out of the recovery of or title to real property is governed by a five-year statute of limitations. (*See* C.C.P. § 318 [five-year statute of limitations applies to recovery of real property or its possession]; C.C.P. § 319 [five-year statute of limitations applies to actions arising out of title to real property or to rents or profits out of the same].) Real property rights include overlying rights to extract groundwater. (*City of Barstow v. Mojave Water Agency* (2000) 23 Ca1.4th 1224, 1240.)

61. The statute of limitations on an action to quiet title continues to accrue against a plaintiff who is in "exclusive and undisputed possession" of his property. Plaintiffs remain in sole, exclusive possession of their land and produce groundwater from the Basin in quantities sufficient to satisfy the reasonable and beneficial use requirements of their agricultural uses, unless interrupted by the actions of Defendants. Consequently, Plaintiffs' quiet title action continues to accrue and is not time barred by any statute of limitations.

62. Plaintiffs' request is not a prayer for a comprehensive adjudication as defined by Code of Civil Procedure § 832(c) and instead seeks relief consistent with Code of Civil Procedure § 833(b)(1)-(3) and the principles of *Tulare Irrigation Dist. v. Lindsay Strathmore Irrigation Dist.* (1935) 3 Cal.2d 489 and its progeny.

63. Plaintiffs' prayer is for a declaration that they individually possess overlying rights

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upon their proof of control and ownership of land, which in its entirety overlies the groundwater basin, (*Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 297-298), sufficient for existing reasonable and beneficial uses and expected future uses. (*Tulare Irrigation Dist. v. Lindsay-Strathmore Irrigation Dist.* (1935) 3 Cal.2d 489, 535).

SECOND CAUSE OF ACTION

(Declaration of Overlying Rights)

64. Plaintiffs incorporate by reference the allegations set forth in the preceding paragraphs of this Complaint.

65. Plaintiffs allege that they apply groundwater pumped from the land they own and control overlying the Basin for the beneficial use of irrigated agriculture under reasonable and efficient means.

66. Plaintiffs allege that their existing and proposed use of groundwater for irrigation optimizes the use of available groundwater for beneficial purposes under reasonable means.

67. Plaintiffs allege that they collectively made substantial investments in amounts greater than $35 million dollars in land, trees and irrigation infrastructure in support of their irrigated agriculture and practice of using water in accordance with best management practices.

68. Plaintiffs are informed and believe, and on that basis allege that their farming operations in the Indian Wells Valley contribute to the local economy of the region, and have and will continue to employ vendors in support of their businesses.

69. Plaintiffs are informed and believe, and on that basis allege, that due to the specific location of their overlying land and substantial available groundwater there are no significant and unreasonable adverse impacts caused by pumping of groundwater for use on their overlying land to the Basin or to Defendants and that any significant and unreasonable adverse impacts, whatever they may be, are attributable to the groundwater pumping of the Defendants.

70. Plaintiffs are informed and believe, and on that basis allege, that although the cumulative outputs and discharges from the greater Basin exceed its cumulative recharge, the groundwater levels in Plaintiffs' wells, the groundwater produced by Plaintiffs and Plaintiffs' groundwater supply availability have never been adversely impacted by the actions of the

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Defendants.

71. Plaintiffs desire a judicial declaration that (1) they each have overlying rights to extract groundwater from the Basin for existing beneficial use on their overlying land under reasonable means, (2) they have overlying rights to meet the projected reasonable needs to satisfy planned future beneficial uses; (3) the water use by Defendants has not adversely impacted Plaintiffs' overlying property rights; (4) the water use by Plaintiffs has not adversely impacted Defendants' water rights, whatever they may be; and (5) the imposition of a physical solution will maximize the reasonable and beneficial use of groundwater without waste and undesirable results and without causing substantial injury or material expense to the Basin, Plaintiffs or Defendants.

72. Plaintiffs' request is not a prayer for a comprehensive adjudication as defined by Code of Civil Procedure § 832(c) and instead seeks relief as provided in Code of Civil Procedure § 833(b)(1)-(3) and in accordance with the principles of *Tulare Irrigation Dist. v. Lindsay Strathmore Irrigation Dist.* (1935) 3 Cal.2d 489 and its progeny.

73. Plaintiffs seek a declaration of their overlying rights upon proof that they own and control property that, in its entirety overlies the Basin and quantification of all rights is not required at this time provided that the Court maintain continuing jurisdiction to preserve and protect Plaintiffs' overlying right as may necessary in the future. (*Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 297-298.)

THIRD CAUSE OF ACTION

(Declaration of Rights: Storage Capacity)

74. Plaintiffs incorporate by reference the allegations set forth in the preceding paragraphs of this Complaint.

75. Due to the historical use of groundwater from the Basin there is available unsaturated pore space in the Basin ("available storage space") that can be used to store developed water in the Basin for subsequent recapture without adversely affecting Plaintiffs' or Defendants' rights to use the Basin's native groundwater.

76. Plaintiffs further allege that said available storage space was created by the historical groundwater production by Plaintiffs and Defendants or their predecessors-in-interest.

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77. Plaintiffs also allege that Defendants have no right or claim to any developed water that Plaintiffs store in the Basin whether by spreading, injection or the return flows from applied water, and that Plaintiffs have an exclusive right to recapture that amount of developed water that augments the total retrievable supply of groundwater in the Basin.

78. The initiation of groundwater augmentation and storage projects requires substantial capital investment in the form of additional water mains, spreading facilities and/or injection apparatus, recapture wells, etc. Prudent commitments of such capital investments require reasonable certainty in the right to use the available storage space. Therefore, the Court's declaration of the parties' respective rights to make use of the available storage space will facilitate such projects, and thereby, maximize the beneficial use of the Basin.

79. Plaintiffs are informed and believe, and on that basis allege, that Defendants dispute the preceding contentions, and thus an actual controversy has arisen and now exists between Plaintiffs and Defendants.

80. Plaintiffs desire a judicial declaration that (1) the Plaintiffs may, in their discretion, augment the available supply in the Basin by developing water not presently part of the Basin waters by methods such as importation of foreign water, direct injection, percolation, or in-lieu storage, and subsequently extract all such developed water that has augmented the total retrievable groundwater supply; and (2) the aquifer capacity in the Basin is available to Plaintiffs for storage of water on condition that Plaintiffs actions do not substantially and unreasonably interfere with the rights of the Defendants or adversely impact the Basin or the native water therein.

FOURTH CAUSE OF ACTION

(Declaratory Relief: Physical Solution)

81. Plaintiffs incorporate by reference the allegations set forth in the preceding paragraphs of this Complaint.

82. Plaintiffs are informed and believe, and on that basis allege, that there is available fresh groundwater physically beneath their overlying land to meet all of their projected water supply requirements for decades.

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83. Plaintiffs are informed and believe, and on that basis allege that more than 500 feet of fresh groundwater presently exists in the stratigraphic column and is available for production. Plaintiffs further allege that there are no significant and unreasonable adverse impacts attributable to their continued withdrawal within the first 200 feet of the aquifer provided that a coordinated groundwater withdrawal schedule is imposed to set pumping parameters within a year and over a period of years among Plaintiffs and Defendants.

84. Plaintiffs are informed and believe, and on that basis allege, that any significant impacts on Defendants, and shallow wells pumped by persons other than Defendants that overlie the Basin can be avoided entirely and completely mitigated by the imposition of a "physical solution" that coordinates pumping among Plaintiffs and Defendants and establishes a mitigation fund to deepen wells to a reasonable well-depth at no material expense to small groundwater users.

85. Plaintiffs are informed and believe, and on that basis allege, that a physical solution can: (i) impose a coordinated pumping plan; (ii) establish early warning groundwater monitoring system; (iii) establish a shared obligation of Plaintiffs and Defendants to mitigate the impact of changes in the groundwater levels on small users with shallow wells in the unlikely event that their wells are significantly and adversely impacted; (iv) avoid "undesirable results"; and (v) optimize the beneficial use of water under reasonable means thereby protecting the economy of the region for the general public and the Indian Wells Valley.

86. Plaintiffs are informed and believe, and on that basis allege, that this "physical solution" will not cause substantial injury or material expense to the Defendants and is best implemented through the services of a court appointed watermaster to assist in administration of the judgment as may be directed by the court under its continuing jurisdiction.

87. Overlying landowners not named or identified in this Complaint may seek relief through intervention and where justified, the Court may issue further orders in furtherance of the physical solution through its continuing jurisdiction.

88. The relief sought herein is confined to the named Plaintiffs and Defendants. Overlying landowners not named or identified in this Complaint that seek the benefit of the

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physical solution may be joined through intervention and where justified, the Court may issue further orders in furtherance of the physical solution under its continuing jurisdiction.

89. Plaintiffs are informed and believe, and on that basis allege, that in absence of a physical solution substantial curtailment in groundwater use for the benefit of any single pumper or group of groundwater pumpers will destroy the economy of the Indian Wells Valley.

90. There is no requirement that the Court quantify the individual rights of the Plaintiffs and Defendants if a physical solution will serve its Constitutional ends; that is maximizing the reasonable and beneficial use of water.

91. The trial court has a Constitutional duty to evaluate the physical solution proposed by the Plaintiff. (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 288; *see* C*ity of Lodi v. East Bay Mun. Dist.* (1936) 7 Cal.2d 316, 341.).

FIFTH CAUSE OF ACTION

(Injunction to Mandate Physical Solution: Enjoin Inconsistent Conduct)

92. Plaintiffs incorporate by reference the allegations set forth in the preceding paragraphs of this Complaint.

93. Defendants failure to coordinate groundwater withdrawals among the Plaintiffs and each of the Defendants in a manner that optimizes the beneficial use of groundwater under reasonable means, avoids "undesirable results" and prevents significant and unreasonable adverse impacts on small, *de minimis* groundwater users, threatens grave and irreparable harm to the Plaintiffs and wrongfully and unlawfully interferes with and threatens to interfere with Plaintiffs' right and entitlement to extract waters from the Basin.

94. The wrongful and threatened conduct of Defendants, unless enjoined and restrained by order of this court, will cause great and irreparable injury and harm to the Basin, will require curtailment of available groundwater supplies as may be required to avoid undesirable results and potential impacts on small, *de minimis* water users and cause Plaintiffs and Defendants to suffer a loss of water required for the beneficial use of irrigation of agriculture under reasonable means.

95. Plaintiffs have no adequate remedy at law for the injuries that would be sustained

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as a proximate result from Defendants' wrongful conduct as alleged herein because it is impossible to accurately estimate the scope of the injury that would result from such wrongful conduct.

96. Plaintiffs are informed and believe, and on that basis allege, that Defendants dispute the preceding contentions, and thus an actual controversy has arisen and now exists between Plaintiffs and Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief on all causes of action:

1. For a declaration that the Plaintiffs have overlying rights to extract groundwater from the Basin for beneficial use of water, and the continued right in relation to the groundwater rights, if any, possessed by Defendants to produce groundwater for use on overlying land without interruption for existing and future reasonable and beneficial uses;

2. For a declaration that Basin groundwater may be used under best management practices for (i) reasonable and beneficial uses on overlying lands and (ii) by municipal and industrial appropriators and (iii) without causing "undesirable results" and conversely that preventing the use of groundwater for unknown, unspecified future uses is speculative, uncertain and unreasonable within the meaning of California Constitution Article X, section 2;

3. For a declaration of the rights of the Plaintiffs and Defendants to develop, augment, store and recover supplemental water in the Basin;

4. For an order imposing a physical solution for the management of the Basin's resources that will optimize the beneficial use of water under reasonable means and avoid "undesirable results" without material injury or substantial expense of Plaintiffs or Defendants and avoid the waste of groundwater;

5. For preliminary and permanent injunctions that prohibit Defendants, and their agents, servants, employees, and all persons acting under, in concert with or for them, or anyone acting through them or on their behalf, from using the Basin resources in a manner that causes "undesirable results" except as is consistent with the Court's judgment;

6. For an order appointing a watermaster to administer the judgment as may be

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EXHIBIT A

APN	Address	Owner	Year acquired	Beneficial Use
056-072-05	Cooley	MOJAVE PISTACHIOS LLC	2012	Agriculture
056-072-16	Cooley	MOJAVE PISTACHIOS LLC	2012	Agriculture
056-095-48	Coyote Trail	MOJAVE PISTACHIOS LLC		Agriculture
056-113-45	Leliter 220	MOJAVE PISTACHIOS LLC	2013	Agriculture
056-113-46	Leliter 220	MOJAVE PISTACHIOS LLC	2013	Agriculture
056-113-48	Leliter 220	MOJAVE PISTACHIOS LLC	2013	Agriculture
056-113-53	Leliter 220	MOJAVE PISTACHIOS LLC	2013	Agriculture
056-113-54	Leliter 220	MOJAVE PISTACHIOS LLC	2013	Agriculture
056-113-55	Leliter 220	MOJAVE PISTACHIOS LLC	2013	Agriculture
056-113-56	Leliter 220	MOJAVE PISTACHIOS LLC	2013	Agriculture
056-291-19	Leliter 220	MOJAVE PISTACHIOS LLC	2013	Agriculture
056-292-01	Leliter 220	MOJAVE PISTACHIOS LLC	2011	Agriculture
056-292-02	Leliter 220	MOJAVE PISTACHIOS LLC	2011	Agriculture
056-292-04	Leliter 220	MOJAVE PISTACHIOS LLC	2011	Agriculture
056-113-28	Leliter 360	MOJAVE PISTACHIOS LLC	2011	Agriculture
056-113-29	Leliter 360	MOJAVE PISTACHIOS LLC	2011	Agriculture
056-340-18	Leliter 360	MOJAVE PISTACHIOS LLC	2011	Agriculture
056-340-19	Leliter 360	MOJAVE PISTACHIOS LLC	2011	Agriculture
056-095-08	**Leroy**	**Al & Linda Leroy (leased by Mojave Pistachio LLC)**		Agriculture
064-460-01	Office 80	MOJAVE PISTACHIOS LLC	2012	Agriculture
064-460-02	Office 80	MOJAVE PISTACHIOS LLC	2012	Agriculture
064-460-03	Office 80	MOJAVE PISTACHIOS LLC	2012	Agriculture
064-460-04	Office 80	MOJAVE PISTACHIOS LLC	2012	Agriculture
064-460-05	Office 80	MOJAVE PISTACHIOS LLC	2012	Agriculture
064-460-06	Office 80	MOJAVE PISTACHIOS LLC	2012	Agriculture
064-460-07	Office 80	MOJAVE PISTACHIOS LLC	2012	Agriculture
064-460-08	Office 80	MOJAVE PISTACHIOS LLC	2012	Agriculture
064-460-09	Office 80	MOJAVE PISTACHIOS LLC	2012	Agriculture
064-460-10	Office 80	MOJAVE PISTACHIOS LLC	2012	Agriculture
064-460-11	Office 80	MOJAVE PISTACHIOS LLC	2012	Agriculture
064-460-12	Office 80	MOJAVE PISTACHIOS LLC	2012	Agriculture
064-460-14	Office 80	MOJAVE PISTACHIOS LLC	2012	Agriculture
064-460-15	Office 80	MOJAVE PISTACHIOS LLC	2012	Agriculture
064-460-16	Office 80	MOJAVE PISTACHIOS LLC	2012	Agriculture
064-460-17	Office 80	MOJAVE PISTACHIOS LLC	2012	Agriculture
064-460-32	Office 80	MOJAVE PISTACHIOS LLC	2012	Agriculture
064-460-33	Office 80	MOJAVE PISTACHIOS LLC	2012	Agriculture
064-460-34	Office 80	MOJAVE PISTACHIOS LLC	2012	Agriculture
064-460-35	Office 80	MOJAVE PISTACHIOS LLC	2012	Agriculture
064-082-39	**Switzer**	**William Switzer (leased by Mojave Pistachio LLC)**		Agriculture
064-082-40	**Switzer**	**William Switzer (leased by Mojave Pistachio LLC)**		Agriculture
064-082-42	**Switzer**	**William Switzer Trust (leased by Mojave Pistachio LLC)**		Agriculture
064-082-17	Yo Young	MOJAVE PISTACHIOS LLC	2013	Agriculture
064-084-13	Siebenthal 160	MOJAVE PISTACHIOS LLC	2011	undeveloped
064-084-14	Siebenthal 160	MOJAVE PISTACHIOS LLC	2011	undeveloped
064-084-15	Siebenthal 160	MOJAVE PISTACHIOS LLC	2011	undeveloped
064-084-16	Siebenthal 160	MOJAVE PISTACHIOS LLC	2011	undeveloped
064-132-44	West Airport	MOJAVE PISTACHIOS LLC	2013	undeveloped
064-132-45	West Airport	MOJAVE PISTACHIOS LLC	2013	undeveloped
064-132-46	West Airport	MOJAVE PISTACHIOS LLC	2013	undeveloped
064-132-48	West Airport	MOJAVE PISTACHIOS LLC	2013	undeveloped
064-132-49	West Airport	MOJAVE PISTACHIOS LLC	2013	undeveloped
064-132-50	West Airport	MOJAVE PISTACHIOS LLC	2013	undeveloped
064-132-51	West Airport	MOJAVE PISTACHIOS LLC	2013	undeveloped
064-132-53	West Airport	MOJAVE PISTACHIOS LLC	2013	undeveloped
064-132-54	West Airport	MOJAVE PISTACHIOS LLC	2013	undeveloped
064-132-55	West Airport	MOJAVE PISTACHIOS LLC	2013	undeveloped
064-132-56	West Airport	MOJAVE PISTACHIOS LLC	2013	undeveloped
064-132-57	West Airport	MOJAVE PISTACHIOS LLC	2013	undeveloped
064-150-36	West Airport	MOJAVE PISTACHIOS LLC	2013	undeveloped
064-440-20	Yo Young	MOJAVE PISTACHIOS LLC	2013	undeveloped
056-230-04	Neal Ranch	MOJAVE PISTACHIOS LLC	2014	undeveloped
056-291-17	Neal Ranch	MOJAVE PISTACHIOS LLC	2014	undeveloped
056-291-18	Neal Ranch	MOJAVE PISTACHIOS LLC	2014	undeveloped
056-291-20	Neal Ranch	MOJAVE PISTACHIOS LLC	2014	undeveloped
056-291-21	Neal Ranch	MOJAVE PISTACHIOS LLC	2014	undeveloped
056-293-02	Neal Ranch	MOJAVE PISTACHIOS LLC	2014	undeveloped
056-293-03	Neal Ranch	MOJAVE PISTACHIOS LLC	2014	undeveloped
056-380-12	Neal Ranch	MOJAVE PISTACHIOS LLC	2014	undeveloped
056-380-13	Neal Ranch	MOJAVE PISTACHIOS LLC	2014	undeveloped
056-095-46	W of H395	MOJAVE PISTACHIOS LLC	2013	undeveloped
056-095-47	W of H395	MOJAVE PISTACHIOS LLC	2013	undeveloped

056-095-05	W of H395	MOJAVE PISTACHIOS LLC	2013	undeveloped
056-095-43	W of H395	MOJAVE PISTACHIOS LLC	2013	undeveloped
056-220-04	4527 BROWN RD, INYOKERN, CA 93527-2307	John Thomas Conaway	1970s	Agriculture
056-220-02	4527 BROWN RD, INYOKERN, CA 93527-2307	John Thomas Conaway	1970s	Agriculture
056-220-08	4527 BROWN RD, INYOKERN, CA 93527-2307	John Thomas Conaway	1970s	Agriculture
056-220-03	4527 BROWN RD, INYOKERN, CA 93527-2307	John Thomas Conaway	1970s	Agriculture
352-360-03	4527 BROWN RD, INYOKERN, CA 93527-2307	John Thomas Conaway Trust	1970s	Agriculture and Domestic
352-360-04	4527 BROWN RD, INYOKERN, CA 93527-2307	John Thomas Conaway Trust	1970s	Agriculture and Domestic
352-360-05	4527 BROWN RD, INYOKERN, CA 93527-2307	John Thomas Conaway Trust	1970s	Agriculture and Domestic
352-360-47	4527 BROWN RD, INYOKERN, CA 93527-2307	John Thomas Conaway Trust	1970s	Agriculture and Domestic
352-360-14	4527 BROWN RD, INYOKERN, CA 93527-2307	John Thomas Conaway Trust	1970s	Agriculture and Domestic
352-360-15	4527 BROWN RD, INYOKERN, CA 93527-2307	John Thomas Conaway Trust	1970s	Agriculture and Domestic
352-360-16	4527 BROWN RD, INYOKERN, CA 93527-2307	John Thomas Conaway Trust	1970s	Agriculture and Domestic
064-090-08	4527 BROWN RD, INYOKERN, CA 93527-2307	John Thomas Conaway Living Trust	1970s	Agriculture
352-360-44	4527 BROWN RD, INYOKERN, CA 93527-2307	John Thomas Conaway & Shirley Ann Conaway	1970s	Agriculture
352-360-45	4527 BROWN RD, INYOKERN, CA 93527-2307	John Thomas Conaway & Shirley Ann Conaway	1970s	Agriculture
352-360-42	4527 BROWN RD, INYOKERN, CA 93527-2307	SIERRA SHADOWS RANCH LP	1970s	Agriculture
352-360-43	4527 BROWN RD, INYOKERN, CA 93527-2307	SIERRA SHADOWS RANCH LP	1970s	Agriculture
352-360-41	4527 BROWN RD, INYOKERN, CA 93527-2307	SIERRA SHADOWS RANCH LP	1970s	Agriculture
352-360-18	4527 BROWN RD, INYOKERN, CA 93527-2307	SIERRA SHADOWS RANCH LP	1970s	Agriculture
352-360-11	6843 LELITER RD, INYOKERN, CA 93527-2242	SIERRA SHADOWS RANCH LP	1970s	Agriculture
352-360-19	4527 BROWN RD, INYOKERN, CA 93527-2307	SIERRA SHADOWS RANCH LP	1970s	Agriculture
352-030-05	4527 BROWN RD, INYOKERN, CA 93527-2307	SIERRA SHADOWS RANCH LP	1970s	Agriculture
352-030-07	4527 BROWN RD, INYOKERN, CA 93527-2307	SIERRA SHADOWS RANCH LP	1970s	Agriculture
352-030-03	4301 MARVIN GARDENS ST , INYOKERN, CA	SIERRA SHADOWS RANCH LP	1970s	Agriculture
352-030-04	4527 BROWN RD, INYOKERN, CA 93527-2307	SIERRA SHADOWS RANCH LP	1970s	Agriculture
064-460-31		Nugent Family Trust	2013	Agriculture
064-082-11		Nugent Family Trust	2013	Agriculture
064-082-61		Nugent Family Trust	2013	Agriculture
064-082-62		Nugent Family Trust	2013	Agriculture
064-082-63		Nugent Family Trust	2013	Agriculture
064-082-64		Nugent Family Trust	2013	Agriculture
064-133-05		Nugent Family Trust	2013	Agriculture
064-133-06		Nugent Family Trust	2013	Agriculture
064-082-13		Nugent Family Trust	2013	Agriculture

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