

September 17, 2020

RE: Grave Concerns Regarding the Governance of Groundwater Resources in the Indian Wells Valley

In preparation for this week's IWVGA Board meeting I would like to make some observations that I think should be considered by all those directly represented by the IWVGA Board of Directors as well as those adversely impacted by the Board and those completely unrepresented.

- The current makeup of the Board does not include direct - even indirect - representation of most of the major water users in the Indian Wells Valley. To the contrary, the Board has been dominated by Kern County Supervisor Mick Gleason, ostensibly on behalf of an entity that pumps virtually no groundwater. For a reason only known to Supervisor Gleason, his sole interest is looking out for the interests of the Navy; an entity that is not subject to the GSP and is immune from its regulations. In fact, the named entities with direct representation constitute less than one-third of the water used in the Indian Wells Valley. The largest entities actually subject to the GSP *with no representation* - the Navy not being one of them - are Searles Valley Minerals, Meadowbrook Dairy and Mojave Pistachios. There are many other users without representation, notably smaller agricultural interests. The decision to exclude these water users seems politically motivated to assure an outcome that shuts down all other business in the Indian Wells Valley - other than the Navy - by allocating them zero water other than from the temporary transient pool.
- The governance of the GA has been very poor. There were initial talks of including the major stakeholders in the planning process, even if they did not have a vote on the GA Board. The GA has simply rubber-stamped Gleason's plan. Of particular note, Gleason appears to have secured total control of the Ridgecrest City representative, who inexplicably votes against the direction of the City Council, the entity he represents. This gives Gleason dictatorial control of the GA through a super-majority voting structure that denies any representation to San Bernardino County residents and businesses. Many have noted the deficiencies in governance and the lack of "following the rules," notably the Brown Act, that transforms public meetings into the theater of the absurd, performed in an alternate reality.
- The Navy has been portrayed by Gleason as having the power and the "will" to requisition all the water in the Indian Wells Valley without compensation to other water users. While the Navy itself seems willing to be reasonable and peacefully co-exist, Gleason prefers a "takes-no-prisoners" approach and offers no options to the residents and businesses of the Indian Wells Valley, outside of those related to the United States Navy. However, the real Navy, contrary to Gleason's representations, seems to recognize that a prolonged fight over water in Indian Wells Valley is not in the Navy's best interests or anyone else's.
- The Board has taken actions that have denied meaningful participation to many interested parties. The Board has been dominated by Chairman Gleason who has made clear his stance that the GA is here to support the Navy and "get ag out of the valley." Objections that the

process has not been collaborative are routinely dismissed by Gleason and the Kern County Counsel, Phil Hall.

- Farming in the Indian Wells Valley became instantly impossible the moment the Board passed the Replenishment Fee. I cannot speak to the economics of other crops in the IWV, but for Mojave Pistachios, I can assure you that it cannot pay the Replenishment Fee. After adding pumping costs, this fee makes groundwater in the Indian Wells Valley the most expensive water supply in the State of California. No one pays more on a per-acre-foot basis. No agricultural crop in California can afford water which exceeds the cost of desalination in San Diego.
- The cost of the IWVGA is so excessive it is hard to explain. Comparisons to other groundwater authorities show how far out of reasonableness this GA has become. The IWVGA routinely approves expenses of over \$100,000 per month and appears to have a philosophy that they have no one to hold them fiscally accountable - as an unelected body, they answer to no one. The spending by the GA is not sustainable and will not result in solutions for water management in the IWV. The September Board Agenda has several items of expense listed, with the Stetson Engineers bill at a whopping \$147,792.99. This GA needs new leadership and direction, a budget that has been through a vetting process and a finance committee composed of those who will pay the fees. The original budget estimate provided by Stetson and GA staff to support the GA and prepare the GSP has been grossly exceeded - in fact, spending has been more than double what was projected. To date, almost \$6 million has been spent, vastly more than virtually any other GSA in the state on a comparative basis.
- The setting of the Replenishment Fee was done without input from those who will pay the bulk of that fee. Mojave Pistachios was not asked how the fee might effect their operation. The basis of the Replenishment Fee is sketchy, based on inadequate information and lacks key elements that would be needed to determine whether the plan to import water is even feasible. Buying State Water Allotment with the hope of getting that water to Indian Wells Valley seems farfetched, at best. Recent estimates for Delta Conveyance place improvements at a cost of more than \$15.5 billion, if it can be built. Representations that the GA could sell the water received annually under the State Water Allotment demonstrates an arrogant ignorance of the way in which entitlement is allocated and transferred and the variability of supply during dry-years, the annual cost of which is estimated to increase substantially in the future as a result of climate change.
- Perhaps it is obvious (but still worth stating) that the GA is effectuating a "taking" of water rights with their Replenishment Fee by setting this fee so high that we cannot exercise these rights. If a governing board takes actions that effectively removes your ability to use your property, such actions are a taking of private property.
- Lastly, the GA appears to believe that it can determine water rights and bases many of its overreaching actions on this mistaken belief. The GA should limit its scope to what is allowed by state law. The Legislature actually intended to "Preserve the security of water rights in the State to the greatest extent possible consistent with the sustainable management of groundwater."

(Water Code §10720.1). They also stated that nothing in SGMA modifies the rights or priorities to use groundwater, and a groundwater management agency cannot determine groundwater rights. (Water Code §10720.2). Does anyone believe that the GA is honoring these requirements?

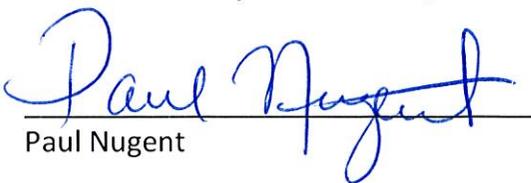
Overall, I would like all those elected and appointed representatives that have any authority or have helped support the Indian Wells Valley Groundwater Authority to hold that body responsible for its actions. The Indian Wells Valley Groundwater Authority:

- has not allowed good governance.
- ignored the letter and spirit of the Sustainable Groundwater Management Act.
- failed to include any meaningful input from the stakeholders across the basin.
- willfully disregarded basic principles of scientific investigations to rush to unsupported and preconceived conclusions.
- shows blatant disregard for financial accountability by spending over \$7 million in local and state taxpayer monies on a Groundwater Sustainability Plan that calls for additional spending of over \$100 million on ill-defined projects.
- implemented a Replenishment Fee that is ridiculous.
- rushed to a GSP that does not consider the economic fallout for many in the IWV and Trona.
- is setting the IWVGA up for prolonged litigation that will require large expenditures by the GA and its member agencies (notably IWWVD) and will delay implementation of a fair and logical path forward for water users.
- injected uncertainty for the IWV. Many resent the actions taken by the GA because of its unknown future effects on their monthly budget and which may even result in a major employer going out of business.

There is still a chance to rectify the poor choices made by the IWVGA. This will take a concerted effort by those on the GA Board to go back to the basics and invite all stakeholders to have a part in the decision-making process. Mick Gleason leaves the Kern County Board of Supervisors and the IWVGA in December. He will take his dictatorial and divisive attitudes with him and I ask all of you to take responsible actions that defer the imposition of the GSP until a fresh set of representatives can consider the consequences - intended and unintended - of proceeding on the present course.

I'm happy to discuss the issues brought forth in this letter at any time. Mojave Pistachios remains committed to protecting its interests and all property rights in the IWV.

On behalf of Mojave Pistachios,


Paul Nugent