

**Ridgecrest City Council  
Successor Redevelopment Agency  
Financing Authority  
Housing Authority  
STAFF REPORT**

**SUBJECT:** Discussion of the Ridgecrest City Council to consider a request to the Indian Wells Valley Water District to finance its Replenishment Fee

**PRESENTED BY:** Keith Lemieux, City Attorney

**Summary:** At the most recent meeting of the Indian Wells Valley Groundwater Authority (IWVGA), the board directed the chair, Scott Hayman, to send a letter to the Indian Wells Valley Water District (Water District) requesting that the Water District consider financing their replenishment fee costs so as to reduce water rates for Water District customers by approximately 75%. As this issue greatly effects the citizens of Ridgecrest, the City Council may wish to consider sending a similar message for presentation at the Water District's next regular meeting on September 13<sup>th</sup> 2021.

**Purpose of the Replenishment fee:** The groundwater supplies in the Indian Wells Valley Groundwater Basin are the only source of water for the City of Ridgecrest. The Water District was historically charged with not only operating the water system but also with preserving and maintaining the groundwater supply – our water future. However, the Water District failed to take the necessary steps to maintain the groundwater supply. Because of this failure, the State Department of Water Resources has determined that the Basin is now a “high priority” basin in a state of “critical overdraft” meaning that we are drawing substantially more water out of the basin than can be supported by rainfall, leading to a chronic lowering of groundwater levels. Accordingly, on May 25th, 2021, Orange County Superior Court Judge Kirk Nakamura found that “there is no dispute the Basin has been in a state of critical overdraft for decades due to over-pumping.”

Recent Basin modeling and hydrological reports show the Basin has been overdrafted for nearly six decades. These reports show that only 7,650 acre foot per year can be pumped from the Basin without endangering water supplies. Yet the Basin's largest pumpers (Indian Wells Valley Water District, Meadowbrook Dairy, Mohave Pistachio and the United States Navy) have each individually reported pumping needs, and/or historic pumping greater than the 7,650. The current combined pumping in the basin amounts to roughly 28,000 acre feet per year or 9.128 billion gallons of water. If this pumping were to continue unabated, the Basin's infrastructure will be unable to meet the Basin's water demands in roughly 43 years.

The most recent basin models show that current rates of pumping will cause damages to 1 in 10 shallow wells by 2030 and increasing to roughly 1 in 4 by 2040. Importantly, these shallow wells provide domestic service to an estimated total of about 1,600 homes. If left unchecked, the direct damages to wells caused by the overdraft will equate to roughly \$17.5 million dollars by 2040. These direct damages to wells are only one cost; additional costs for more intensive and expensive water treatment will likely be substantial due to the loss of water quality as the Basin is further drawn down.

The Sustainable Groundwater Management Act (SGMA) of 2014 requires that these problems be investigated and corrected. The Indian Wells Valley Groundwater Authority (IWVGA) was created by SGMA to create and implement

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a Groundwater Sustainability Plan (or “GSP”) to correct these problems. However, there is no easy or cheap solution. The water available in the Basin is not sufficient to support the current needs of the City and even if this could be achieved through drastic conservation or other measures that would still leave no water for economic growth.

For the community to thrive, the IWVGA must purchase imported water supplies and develop the needed infrastructure to bring it into the Basin while mitigating ongoing damages to the Basin. For that reason, the Authority, after consulting with stakeholders in the community, adopted a GSP that requires pumpers to pay for the water that they remove from the Basin so that replacement water can be bought and returned to the Basin. This ensures that an equal amount of water is returned to the Basin for each unit that is overpumped. The payment for this water is collected through a “replenishment fee.”

It is estimated the construction phase of the importation project will take ten years, with the design phase and environmental review taking five years or less. During the design phase the IWVGA will collect the funds necessary to purchase import supply through the replenishment fee. The construction phase cannot begin until import water supplies have been obtained because it will be necessary to demonstrate ownership of the water rights before we can obtain grant money to fund the construction costs of the conveyance system. This places the Basin on a tight time schedule. As Judge Nakamura explained: “[A]ny further delay in implementing the GSP will cause further harm to the Basin, increase the cost of imported water, and continue to damage shallow wells throughout the Basin.”

Based on recent sales, it has been estimated that the cost per acre foot of imported water is roughly \$10,500 per acre foot of delivered water entitlement. This works out to a fee of \$2,112 per acre foot of water produced over five years if the purchase is not financed over a longer term. Under the adopted GSP, the Water District will need to bring into the Basin approximately 2,500-acre feet of water entitlement to meet its needs moving forward. This comes at a cost of approximately 25 million dollars. These funds are collected from the Water District based on their monthly pumping and paid to the IWVGA so that IWVGA can use these funds to acquire new water rights. Recently, the IWVGA announced that they had made their first offer to purchase water rights based on the funds that had been paid so far.

**Water District Fees:** The Water District has had an ambivalent and sometimes adversarial relationship with the GSP and its implementation. The Water District, along with other stakeholders in the Policy Advisory Committee, contributed to the creation of the GSP. The Water District also voted in favor of adopting the GSP which requires that the Water District import water into the basin to replenish pumping and contemplates the adoption of the replenishment fee to pay for the cost of imported water.

Next, the Water District voted to adopt the “Report on The Indian Wells Valley Groundwater Basin’s Sustainable Yield of 7,650 Acre-Feet” (also known as the “Sustainability Report”). The Sustainability Report examined the use of water in the Basin to determine the “beneficial impacts” of Basin projects as a foundation for setting the replenishment fee. It concluded that all the groundwater available in the Basin is in effect owned by the federal government and is therefore beyond the jurisdiction of the IWVGA to regulate. As a result, all pumping by all other

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parties in the Basin, including the Water District, would need to be replaced with imported water. This meant that the Water District approved a report that indicated that all *its pumping could be subject to the replenishment fee*.

However, when it came time to adopt the replenishment fee the Water District changed course. The fee was not assessed on pumping that was put to the benefit of the Navy and would therefore fall under the federal right. This meant that it was necessary to identify Water District uses that benefited the Navy such as water used for the domestic needs of Navy personnel. The IWVGA determined that 4,390 acre feet of the approximately 7,600 acre feet of annual Water District pumping fell into this category and would be exempt from the fee. The Water District disagreed with this assessment and requested a greater exception without providing a justification.

The fee was nevertheless adopted as proposed and implemented with the expectation that the Water District would seek and obtain long term financing of its obligation. (In fact, the notice for the fee which the Water District representative voted to mail to all the potential water users in the basin expressly provided that long term financing was contemplated.)

Rather than finance the replenishment fee, in an apparent effort to assign “blame” for its costs, the Water District added the fee as a line item to their water bill. Water District customers that have called the Water District to complain about the amount of the bill have been directed to the IWVGA. This appears to be part of strategy to apply pressure to the IWVGA by stoking anger among the rate payers who are subject to the unnecessarily high rates.

**Financing the Fee:** The Water District currently charges the replenishment fee at \$1.70 per hundred cubic foot on each customer's water bill for an average increase of \$25.00 per month (\$300.00 per year) for the typical customer. Financing these fees over a 30-year term could result in a discount of approximately 75% in the current impact to the ratepayers.

Based on work provided by financial analysts, payments on a 30-year bond would reduce this fee from \$1.70 per HCF to \$0.42 per HCF. This could result in an average monthly charge of \$6.20 instead of the current average Water District charge of \$25.00. The savings equates to approximately \$18.80 per month (or \$226.00 per year) for the average District customer.

Despite these significant savings, Water District has not publicly considered financing its needed entitlement since the adoption of the replenishment fees over a year ago. Additionally, Water District staff have admitted that the Water District has not even obtained financial analysts or “hard numbers” on a Water District financing package for its entitlement needs. Moreover, at a recent workshop, Water District staff’s recommendation that a financial analyst be engaged to look at the Water District’s SGMA and litigation costs was expressly rebuffed by the board members, including a former Water District representative on the IWVGA. It would appear, therefore that the Water District's failure to consider this issue is not merely an oversight but part of an intentional strategy.

**New Spending by the District:** This issue is compounded by the significant increase in spending that the Water District has recently planned. The Water District recently filed a general groundwater adjudication -- a special kind of lawsuit in which all people who draw, or could draw, water from a groundwater basin must prove that they have

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the lawful right to do so. In this way the Water District has filed suit against every landowner in the basin as well as the City, the County of Kern, all farmers, and numerous other water producers.

As you can imagine, these cases are extremely time consuming and expensive to litigate. In fact, the Water District recently budgeted nearly *one million dollars a year* to prosecute this case; roughly 10% of its annual operating budget. Similar cases have taken decades to complete. Therefore, this Water District lawsuit can conservatively be expected to cost the Water District's rate payers from *five to ten million dollars* or more -- or to put it another way nearly one-half the costs for the Water District's import entitlement needs.

The City is named as a defendant in this lawsuit and it is a direct challenge to the City's ability to irrigate its parks. Water District board members have publicly stated that they believe that water used on City parks should come from import supplies. As a result, the City will need to vigorously defend its water rights from this unwarranted and legally deficient attack in order to ensure that sports fields are available to the public. Unfortunately, the population of the City will be required to pay for both sides of this lawsuit.

In addition to the high cost of bringing this action, the ultimate outcome of this case is likely to also significantly increase costs to the rate payers. At present, the Water District has 4,390 acre feet of annual production that is exempted from the replenishment fee. The Water District is betting that it can somehow obtain an even greater share of the roughly 7,600 acre feet available. Given that the total draw from the basin is in excess of 28,000 acre feet, and given the court's general desire to treat similarly situated parties equally, it is extremely unlikely that the court would find that well over half of the Basin water should go to the Water District.

In fact, the outcome could be very dire. If you assume that nonfederal pumping will be reduced roughly evenly, it is quite possible that the Water District's share of the native safe yield may be found to be less than 1,000 acre feet. If this is the outcome, then the Water District would need nearly 6,000 acre feet per year of entitlement at a current cost of nearly 60 million dollars. This means that the adjudication could cause the Water District to spend millions of dollars only to obtain a judgment that increases their costs by tens of millions of dollars more.

Further, the Water District has recently presented plans to try to use the City's wastewater to replenish the Basin. While this plan is highly laudable in general concept, it is also very costly when done in the direct injection manner proposed by the Water District. The Water District plan would require that wastewater would be treated to a very costly standard, possibly the highest possible standard, and then reinjected into the ground. This is expected to cost *well over 100 million dollars* for initial capital costs and additional millions for project operations and maintenance costs once the project has been completed.

Considering these new costs, we expect that Water District will need to significantly raise their rates beyond even the large rate increase that they have attributed to the replenishment fee. Even if these new rate increases are phased over time, it is likely that they will cause significant economic strain on rate payers and could negatively impact future economic growth. The Water District should do what it can to reduce the impact of these costs on its current ratepayers to accommodate all of the significant spending that it has planned.

**Rate Reform by the District:** The failure by the Water District to properly account for its water needs and finance its water fees places the City's water future at grave risk. By filing an imprudent lawsuit and making the replenishment fee unnecessarily expensive, the Water District apparently hopes to cause unrest against the IWVGA

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and the replenishment fee. This strategy is both reckless in its tactics and its goals. The tactic punishes the citizens of Ridgecrest with unnecessarily high rates while further damaging the basin. Moreover, if achieved, the goal would deny to the City the water resources it needs for sustainability and further economic growth.

Some have argued that it is somehow unwise or unethical to borrow money for this purpose. However, borrowing money for this purpose is both wise, necessary and extremely common. The benefits of new water supplies will be enjoyed not just by the current citizens of Ridgecrest but by future generations who will have that water so that the city can grow and prosper. Financing the fee allows the cost of this benefit to be borne not solely by current ratepayers but also by future ratepayers that will also enjoy the benefits. Failing to finance the fee unreasonably places all the costs on the current ratepayers even though the benefits of the fee will be enjoyed by future ratepayers as well. For this reason, purchases of water rights are routinely financed by low interest tax free bonds for this purpose.

Furthermore, if the fee were to be financed the community would have that money immediately to buy water resources now. As a critically overdrafted basin, this community is ahead of other places in the State when it comes to acquiring water resources. Each year more communities will complete their own GSP and begin their own search for water. At the same time, the water resources have dwindled causing the price to increase. Experts for the IWVGA, with combined professional water experience of well over a hundred years, have unanimously indicated that it is more than reasonable to expect that these prices will sharply increase in the coming months and years as other communities begin their own hunt for water.

In sum, if we have the money available now, we can ensure the stability of the community and the potential for economic growth by acquiring the needed water resources now at a significantly cheaper rate while also protecting the basin from further damages. For these reasons, staff recommends that the City Council appoint a member, or members, to present a prepared statement expressing the concerns contained in this report at the next regular meeting of the Water District.

FISCAL IMPACT:

ACTION REQUESTED:

CITY MANAGER'S RECOMMENDATION: Action as requested.

Submitted by: Keith Lemieux

Action Date: September 1, 2021

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