

Water Code § 10721(x). In turn, DWR's SGMA regulations require that the Plan 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 Plan 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. 23 Cal. Code Regs. § 354.28(b). Each of these minimum thresholds must be evaluated and established on the basis of the best available science and information. See *id.*

However, the Plan poorly defines undesirable results and fails to clearly articulate when they are significant and unreasonable. Even when the Plan does try to articulate 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. In fact, the definition of what the Plan constitutes "significant and unreasonable" appears arbitrary and capricious.

To date, the IWVGA's Plan development process has been more focused on proposals (e.g., Management Action No. 1 and related modeling scenarios) that would eliminate overlying groundwater use by non-domestic users than on evaluating and considering the best available scientific information to develop thresholds, projects and management actions to avoid undesirable results and achieve Basin sustainability. One primary driver for proposals to eliminate agricultural and industrial uses of groundwater seems to be the Board's focus on impacts to shallow groundwater wells. See, e.g., Plan at 3-29; August 15, 2019 Board meeting agenda Item 10.B. However, the best available scientific information demonstrates 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.

As explained above, the IWVGA's analysis is not based on an accurate and supportable analysis of the amount of usable water in storage and recharge to the Basin. Failure to correct this analysis will cause a cascade of defects throughout the Plan's discussion of undesirable results, including impacts to shallow wells.

It would be entirely unreasonable, and contrary to SGMA's mandate, to implement draconian restrictions on overlying agricultural water use that would eliminate the entire agriculture industry in the Basin, when it is possible to take discrete physical actions (e.g., deepening existing wells) as part of a monitoring and mitigation program.

VI. Conclusion

It is true that that the California Legislature wanted to bring sustainable groundwater management to our State to protect future generations of Californians. Yet, there is no evidence that it sought to countenance the wholesale devastation of farmers, their families, and the local economy that they sustain by the adoption of SGMA.

George Washington once wrote that "Agriculture is the most healthful, most useful, and most noble employment of man." It is also a vital component of California's thriving economy. The Legislature granted the IWVGA 20 years to monitor conditions and mitigate as required, while inspiring the ingenuity and financing required to augment supply and stretch our precious resources further still; and then, as may be necessary, to fairly distribute the burden of shortages. The IWVGA need not take aim at farming, as is contemplated by the implementation of this Plan.

It is obvious that our objection to the Plan as written is strong. Nevertheless, we are committed to working towards a collaboratively-established sustainable management Plan—one that is based upon best

available science with the objective of respecting private property rights while achieving the Constitutional mandate to maximize the reasonable and beneficial use to water. On behalf of our client, we urge you to correct the present course and embrace the notion that these objectives are not inconsistent.

Sincerely,



Scott S. Slater
Amy M. Steinfeld

Attachment A: Photographs of Mojave's Agricultural Operations and Irrigation Systems in the Indian Wells Valley









Attachment B: Mojave's Overlying Parcels

APN	Parcel Name	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

APN	Parcel Name	Owner	Year acquired	Beneficial Use
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

APN	Parcel Name	Owner	Year acquired	Beneficial Use
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
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

January 8, 2020

VIA Email and Personal Delivery for the Record

Indian Wells Valley Groundwater Authority
Board of Directors
c/o Clerk of the Board
500 Ridgecrest Blvd
Ridgecrest, CA 93555

Indian Wells Valley Groundwater Authority
Water Resources Manager
c/o Stetson Engineers Inc.
861 Village Oaks Drive
Suite 100
Covina, CA 91724

Re: *Indian Wells Valley Groundwater Authority Groundwater Sustainability Plan
December 2019 Public Review Draft – Meadowbrook Dairy Comments*

Dear IWVGA Board, Water Resources Manager and Staff:

On behalf of our client, Meadowbrook Dairy (“Meadowbrook”), we write this letter to provide comments on the Indian Wells Valley Groundwater Authority (“IWVGA” or “Groundwater Authority”) Groundwater Sustainability Plan December 2019 Public Review Draft (“GSP”) for the Indian Wells Valley Groundwater Basin (“Basin”).

I. INTRODUCTORY COMMENTS

Meadowbrook has produced groundwater for reasonable and beneficial purposes on its properties overlying the Basin for decades. The combination of Meadowbrook's history of continuous production, the magnitude of its production, and its business plans to continue operating into the future, distinguish Meadowbrook from other agricultural and most other water users in the Basin.

Founded in 1918, Meadowbrook has for over a century provided consumers with quality, nutritious and safe food. As a family farm, Meadowbrook has always demonstrated a commitment to the communities in which it has operated, including through implementing conservation and environmental best management practices and its use of cutting edge technology. Meadowbrook is optimistic for the future of the Basin, so long as the IWVGA adheres to the letter and intent of the Sustainable Groundwater Management Act ("SGMA").

Meadowbrook has long evidenced its desire to participate in achieving long-term Basin sustainability. To that end, Meadowbrook has provided technical expertise to the IWVGA Technical Advisory Committee ("TAC") through its hydrogeologist, has participated as a member of the IWVGA Policy Advisory Committee ("PAC"), has attended nearly all IWVGA Board meetings, and has provided data and information for the GSP through the Water Resources Manager ("WRM"). Meadowbrook has also verbally commented at public meetings and submitted many letters into the public record.

Meadowbrook remains willing to consider a reasonable and substantial reduction in its groundwater production to help achieve sustainability as long-term participant in the Basin; provided, that such reduction is premised upon a fair, equitable, and legally- and technically-supportable GSP. Meadowbrook is already testing alternative crops that will require less water than alfalfa.

SGMA requires a groundwater sustainability agency ("GSA") to consider the interests of all beneficial uses and users of groundwater, specifically holders of overlying groundwater rights such as agricultural users including farmers, ranchers and dairy professionals. (Water Code § 10723.2.) SGMA expressly

does not authorize a GSA to determine or alter water rights. (Wat. Code § 10720.5). Nor does SGMA authorize a GSA to “take” water rights or other property interests without due process and just compensation.

The IWVGA’s objective should be to achieve Basin sustainability through projects and management actions that are designed to avoid specific undesirable results based upon best available science and information. Instead, the GSP appears designed to eradicate Meadowbrook or eliminate Meadowbrook’s right to produce from the native groundwater supply.

The primary problems with the GSP in its current condition are:

- It is based almost entirely upon modeling scenarios that do not comply with SGMA, the GSP Regulations or California Department of Water Resources (“DWR”) Best Management Practices (“BMPs”).
- The modeling scenarios include assumptions, projects and management actions that were never vetted by or revealed in detail to the TAC, PAC or the public.
- The GSP fails to demonstrate that the Basin will achieve sustainability as defined by SGMA, the GSP Regulations and the DWR Best Management Practices.
- The GSP and particularly the sustainable management criteria do not rely upon best available science and information. Rather, they appear designed to favor certain uses and users of groundwater and to de-prioritize or eliminate agriculture from the Basin.
- The PAC, TAC and public were deprived meaningful participation in the development of the sustainable management criteria and other technical and policy aspects of the GSP.

In light of these issues, DWR is not likely to—nor should it—approve the GSP in its current condition.

II. DWR REGULATIONS AND CRITERIA BY WHICH THE GSP WILL BE EVALUATED.

The DWR Groundwater Sustainability Plan Emergency Regulations, 23 California Code of Regulations Division 2, Chapter 1.5, Subchapter 2 (“GSP Regulations”) outline the requirements and criteria by which DWR will evaluate the GSP. Those criteria are primarily as follows:

GSP Regulation § 355.4 provides that:

“(a) The basin shall be sustainably managed within 20 years of the applicable statutory deadline consistent with the objectives of the Act. The Department shall evaluate an adopted Plan for compliance with this requirement ... [including determining whether] **“The Plan is complete and includes the information required by the Act and this Subchapter...”**

“(b) The Department shall evaluate a Plan that satisfies the requirements of Subsection (a) to determine whether the Plan, either individually or in coordination with other Plans, **complies with the Act and substantially complies with the requirements of this Subchapter. Substantial compliance means that the supporting information is sufficiently detailed and the analyses sufficiently thorough and reasonable**, in the judgment of the Department, to evaluate the Plan, and the Department determines that any discrepancy would not materially affect the ability of the Agency to achieve the sustainability goal for the basin, or the ability of the Department to evaluate the likelihood of the Plan to attain that goal. When evaluating whether a Plan is likely to achieve the sustainability goal for the basin, the **Department shall consider the following:**

(1) Whether 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**.

(2) Whether the Plan identifies **reasonable measures and schedules to eliminate data gaps.**

(3) Whether **sustainable management criteria and projects and management actions are commensurate with the level of understanding** of the basin setting, **based on the level of uncertainty**, as reflected in the Plan.

(4) Whether the **interests of the beneficial uses and users** of groundwater in the basin, **and the land uses and property interests** potentially affected by the use of groundwater in the basin, **have been considered.**

(5) Whether the **projects and management actions are feasible and likely to prevent undesirable results** and ensure that the basin is **operated within its sustainable yield.**

(6) Whether the Plan includes a **reasonable assessment of overdraft conditions** and includes reasonable means to mitigate overdraft, if present.

(7) Whether the Plan will adversely affect the ability of an adjacent basin to implement its Plan or impede achievement of its sustainability goal.

(8) Whether coordination agreements, if required, have been adopted by all relevant parties, and satisfy the requirements of the Act and this Subchapter.

(9) **Whether the Agency has the legal authority and financial resources** necessary to implement the Plan.

(10) **Whether the Agency has adequately responded to comments that raise credible technical or policy issues with the Plan.**

GSP Regulations § 355.4(b).

As set forth in this letter, the GSP fails to satisfy these requirements and criteria. Meadowbrook previously submitted comments on the November 4, 2019 Draft GSP, but received no written responses, and many of those

IWVGA Board, Water Resources Manager and Staff

Re: *Indian Wells Valley Groundwater Authority Groundwater Sustainability Plan December 2019 Public Review Draft – Meadowbrook Dairy Comments*

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comments are not addressed in the GSP. During the SGMA implementation process, Meadowbrook submitted over thirty comment letters to the IWVGA Board, TAC, PAC, and IWVGA Member Agency meetings. An index and those letters are attached to this letter as **Exhibits 1 – 32** and are incorporated by reference.

Meadowbrook's comments on the GSP contained in this letter are organized according to the regulations and criteria by which DWR will review the GSP as described in GSP Regulation § 355.4. While we appreciate the opportunity to review the GSP, we note that it would have been much better for the public to have received drafts of each GSP chapter in advance of the release of the entire GSP. Meadowbrook reserves the right to comment further on the GSP both prior to and following its adoption by the IWVGA.

We urge the IWVGA to carefully consider these comments and the comments submitted by Meadowbrook's consulting engineering firm, Luhdorff & Scalmanini. We recognize that adopting a GSP by January 31, 2020 presents a significant challenge; however, the IWVGA GSP must more importantly comply with SGMA and the GSP Regulations in order to avoid State Water Resources Control Board intervention, and should be amended to incorporate these comments before any significant GSP implementation.

III. THE ASSUMPTIONS, CRITERIA, FINDINGS, AND OBJECTIVES, INCLUDING THE SUSTAINABILITY GOAL, UNDESIRABLE RESULTS, MINIMUM THRESHOLDS, MEASURABLE OBJECTIVES, AND INTERIM MILESTONES ARE NOT REASONABLE AND ARE NOT SUPPORTED BY THE BEST AVAILABLE INFORMATION AND BEST AVAILABLE SCIENCE.

a. GSP SUSTAINABLE MANAGEMENT CRITERIA, OBJECTIVES AND ASSUMPTIONS

i. Applicable Regulatory Requirements and Best Management Practices.

SGMA requires achieving Basin sustainability. Sustainability means avoiding significant and unreasonable undesirable results through the implementation of projects and management actions based upon best available information and science.

SGMA defines undesirable results as one or more of the following effects caused by groundwater conditions occurring throughout the basin:

“(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).)

GSP Regulation § 354.22 and subsequent sections in that article set forth both the substantive and procedural requirements for establishing sustainable management criteria:

“This Subarticle describes criteria by which an Agency defines conditions in its Plan that constitute sustainable groundwater management for the basin, including the process by which the Agency shall characterize undesirable results, and establish minimum thresholds and measurable objectives for each applicable sustainability indicator.”

GSP Regulation § 352.4 provides that DWR:

“[M]ay independently evaluate the appropriateness of model results relied upon by the Agency, and use that evaluation in the Department's assessment of the Plan.”

GSP Regulation § 350.4(d) requires:

“Groundwater conditions must be adequately defined and monitored to demonstrate that a Plan is achieving the sustainability goal for the basin, and the Department will evaluate the level of detail provided considering the basin setting.” (GSP Regulations § 350.4(a).)

“Sustainable management criteria and projects and management actions shall be commensurate with the level of understanding of the basin setting, based on the level of uncertainty and data gaps, as reflected in the Plan.”

The GSP Regulations include the following important defined terms:

“‘Data gap’ refers to a lack of information that significantly affects the understanding of the basin setting or evaluation of the efficacy of Plan implementation, and could limit the ability to assess whether a basin is being sustainably managed.” (GSP Regulation § 351.)

“‘Best available science’ refers to the use of sufficient and credible information and data, specific to the decision being made and the time frame available for making that decision, that is consistent with scientific and engineering professional standards of practice.” (GSP Regulations § 351(h).)

“‘Best management practice’ refers to a practice, or combination of practices, that are designed to achieve sustainable groundwater management and have been determined to be **technologically and economically effective, practicable, and based on best available science.**” (GSP Regulations § 351(i).)

DWR has issued Best Management Practices specifically for establishing sustainable management criteria (“BMP SMC”). BMP Section 3 identifies “Preliminary Activities” that must be completed before a GSA begins the process of developing sustainable management criteria. One of those key preliminary activities is:

“Engage Interested Parties within the Basin. When setting sustainable management criteria, GSAs must consider the beneficial uses and users of groundwater in their basin. Consideration of the potential effects on beneficial uses and users underpin the minimum thresholds. GSAs must explain their decision-making processes and how public input was used in the development of their GSPs. There are specific SGMA requirements for GSAs to engage with interested parties within a basin. For more information about requirements of engagement, refer to the Stakeholder Communication and Engagement Guidance Document.”

The BMP SMC further provides that:

“Setting sustainable management criteria can be a complex, time consuming, and iterative process depending on the complexity of the basin and its stakeholders. GSAs should allow sufficient time for criteria development during the GSP development process. The public should be engaged early in the process so their perspectives can be considered during sustainable management criteria development. To ensure timely stakeholder participation, it may be useful for GSAs to set a timeline for development of the sustainable management criteria.” (p. 33.)

ii. Comments

- The GSP development approach has apparently focused on ways to eliminate private groundwater producers from the Basin, rather than evaluating and considering appropriate sustainable management criteria and identifying appropriate projects and management actions to avoid specific undesirable results and to achieve specific interim milestones, measure objectives and a well-defined sustainability goal. By failing to meet SGMA’s mandates, a GSP based upon the Model Scenario 6 described in the GSP risks placing the Basin on a path to State Water Board intervention.
- Meadowbrook submitted several prior comment letters identifying technical and policy issues regarding the draft sustainability goal language, the sustainable management criteria, and Model Scenario 6.2. Those letters are attached as **Exhibits 30, 31, 32**.
- As detailed in prior Meadowbrook’s prior comment letters, the development process and substance of the sustainable management criteria are fundamentally flawed. The sustainable management criteria were not substantively discussed or vetted publicly by the TAC, PAC or the Board. Instead, the proposed minimum thresholds, interim milestones, and measurable objectives for many of the sustainability indicators generally reflect plotted points on a Model Scenario 6.2 model run that: (1) is based upon numerous modeling assumptions that have never been released to the public despite many PAC-, TAC- and public member requests for that

information; (2) includes predetermined, hard-wired, vague and objectionable projects and management actions that have not been publicly discussed or approved by the Groundwater Authority and are based upon unsubstantiated legal theories; (3) is not based upon best available information and science; and (4) does not address whether or how a set of defined projects and management actions will result in avoiding specifically defined undesirable results.

- The development of sustainable management criteria for the GSP requires significantly greater transparency, detail and data. The GSP’s heavy reliance on Model Scenario 6.2 *outputs and assumptions* in selecting sustainable management criteria is neither appropriate nor consistent with the statutory and regulatory requirements cited above.
- As indicated in this and prior letters, Meadowbrook objects to a GSP based principally upon Model Scenario 6.2, which proposes adversely affects and potentially eliminates Meadowbrook’s water rights.

b. SUSTAINABILITY GOAL

i. Applicable Regulatory Requirements and Best Management Practices

SGMA defines the “sustainability goal” as the existence and implementation of one or more groundwater sustainability plans that achieve sustainable groundwater management by identifying and causing the implementation of measures targeted to ensure that the applicable basin is operated within its sustainable yield. Importantly, “sustainable yield” is defined 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 an undesirable result*. Undesirable results are specifically defined, above. (Wat. Code § 10721.)

In establishing the sustainability goal, SGMA requires the IWVGA to consider the interests of all beneficial uses and users of groundwater, specifically including “holders of overlying groundwater rights including agricultural users, including farmers, ranchers and dairy professionals.” (Wat. Code § 10723.2.)

GSP Regulation § 354.24 requires:

“Each Agency shall establish in its Plan a sustainability goal for the basin that culminates in the absence of undesirable results within 20 years of the applicable statutory deadline. The Plan shall include a description of the sustainability goal, including information from the basin setting used to establish the sustainability goal, a discussion of the measures that will be implemented to ensure that the basin will be operated within its sustainable yield, and an explanation of how the sustainability goal is likely to be achieved within 20 years of Plan implementation and is likely to be maintained through the planning and implementation horizon.”

Importantly, the BMP SMC states that “most of the sustainability goal can only be finalized *after minimum thresholds and undesirable results have been defined, projects and management actions have been identified, and projected impact of those projects and management actions on groundwater conditions have been evaluated.* Therefore, completion of the sustainability goal will likely be one of the final components of the GSP development.”

ii. Comments

Sections 1.2. and 4.2 Sustainability Goal

- Section 1.2 defines the sustainability goal: “*The sustainability goal is to manage and preserve the IWVGB groundwater resource as a sustainable water supply. To the greatest extent possible, the goal is to preserve the character of the community, preserve the quality of life of IWV residents, and sustain the mission at Naval Air Weapon Station (NAWS) China Lake.*”
- The development of the GSP sustainability goal is inconsistent with the applicable statutory, regulatory and best management practices provisions.
- The sustainability goal was determined by the IWVGA staff without any meaningful, public vetting of the sustainable management criteria for each of the sustainability indicators.
- The sustainability goal incorrectly conflates an estimated natural long-term average recharge with sustainable yield. This fails to consider and evaluate

the statutory and regulatory principle of defining and identifying *undesirable results*.

- The sustainability goal fails to indicate how it considers the interests of all beneficial uses and users of groundwater, specifically including holders of overlying groundwater rights including agricultural users, including farmers, ranchers and dairy professionals.

Section 4.2.3. Sustainability Measures

- The purpose of this section is not clear, since neither SGMA nor the GSP Regulations refer to sustainability measures. SGMA and the GSP Regulations require the IWVGA to establish sustainable management criteria, including undesirable results, establish minimum thresholds and measurable objectives for each applicable sustainability indicator.
- This section is duplicative and nearly identical to Section 4.2.4.

c. UNDESIRABLE RESULTS

i. Applicable Regulatory Requirements and Best Management Practices

GSP Regulation § 354.26 requires:

“(a) Each Agency shall describe in its Plan the **processes** and **criteria** relied upon to **define** undesirable results applicable to the basin. Undesirable results occur when **significant and unreasonable** effects for any of the sustainability indicators are caused by groundwater conditions occurring throughout the basin.

(b) The **description of undesirable results** shall include the following:

(1) The **cause** of groundwater conditions occurring throughout the basin that **would lead to or has led to undesirable results** based on information described in the basin setting, and other data or models as appropriate.

(2) The criteria used to define **when and where** the effects of the groundwater conditions cause undesirable results **for each applicable sustainability indicator**. The criteria shall be based on a **quantitative description** of the **combination of minimum threshold exceedances that cause significant and unreasonable effects** in the basin.

(3) Potential **effects on the beneficial uses and users of groundwater, on land uses and property interests**, and other potential effects that may occur or are occurring from undesirable results.

(c) The Agency may need to **evaluate multiple minimum thresholds to determine whether an undesirable result is occurring in the basin**. The determination that undesirable results are occurring may depend upon measurements from multiple monitoring sites, rather than a single monitoring site.

(d) An Agency that is able to demonstrate that undesirable results related to one or more sustainability indicators are not present and are not likely to occur in a basin shall not be required to establish criteria for undesirable results related to those sustainability indicators.”

BMP SMC further provides that:

“GSAs must consider and document the conditions at which each of the six sustainability indicators become significant and unreasonable in their basin, including the reasons for justifying each particular threshold selected The evaluation of significant and unreasonable conditions should identify the geographic area over which the conditions need to be evaluated so the GSA can choose appropriate representative monitoring sites.” (p. 6.)

ii. Comments

Section 4.3. Undesirable Results

- The process by which the GSP developed and identified undesirable results for the applicable sustainability indicators fails to comply with the GSP Regulations and BMPs.
- The GSP does not adequately describe the processes and criteria relied upon to define undesirable results applicable to the Basin, or the basis for determining the point at which undesirable results are both significant and unreasonable. Rather, this section makes broad, vague statements including: *“The reduction of groundwater in storage is directly related to the chronic lowering of groundwater levels.” “Hydrographs of wells taken throughout the IWV demonstrate significant and unreasonable prolonged drawdown causing undesirable results (see Appendix 3-D and Section 3.4.2).” “As discussed in Section 3.4.4.1, TDS samples indicate concentrations have increased over time in areas where high rates of pumping have occurred and indicative of groundwater water quality degradation undesirable results.” “As discussed in Section 3.4.5, land subsidence has historically caused undesirable results to facilities at NAWS China Lake, particularly the SNORT alignment.”*
- The GSP identifies “undesirable results” based upon modeling scenario assumptions and outputs, and not upon reliable, best available science and information. This section states: *“The numerical model was also used to simulate future conditions if the GSP proposed projects and management actions described in Section 5 are implemented to use as a tool for establishing sustainable management criteria (Scenario 6.2).”*

d. UR: REDUCTION OF GROUNDWATER IN STORAGE

i. Applicable Regulatory Requirements and Best Management Practices

SGMA defines undesirable results to include: “... effects caused by groundwater conditions occurring throughout the basin: ... Significant and unreasonable reduction of groundwater storage.” (Wat. Code, § 10721(x)(2).)

ii. Comments

Section 4.3.1. Reduction of Groundwater in Storage Undesirable Results

- The GSP does not adequately describe the processes and criteria relied upon to define undesirable results for loss of groundwater in storage. Rather, this section makes the broad, vague statements: *“The current and prolonged state of overdraft in the IWVGB, due to unsustainable groundwater production, is causing and has caused significant and unreasonable reduction of groundwater in storage.” “Modeling results simulating baseline conditions (no action) indicate a drastic reduction of groundwater in storage will continue in the future. (See Appendix 3-H).”*
- The GSP improperly relies upon “baseline” and “Scenario 6.2” modeling outputs and assumptions as the “criteria” for defining undesirable results. This section states: *“Baseline conditions model results indicate that useable groundwater in storage could be depleted to the point that potential future demands could not be met if the IWVGB is not managed, which would jeopardize all beneficial uses and users in the IWVGB. Scenario 6.2 model results, simulating the proposed projects and management actions, indicate approximately 215,000 acre-feet of groundwater would be removed from storage over the planning horizon, compared to approximately 1.6 million acre-feet estimated to be removed from storage under Baseline conditions.”*
- These assumptions fail to establish or support an amount at which a loss of groundwater in storage is both significant and unreasonable. Likewise, these assumptions fail to establish or support whether and why a loss of no more than 215,000 acre-feet of groundwater in storage would avoid undesirable results.
- Despite the GSP’s express emphasis on loss of storage a primary concern, the GSP acknowledges that the amount of total and usable basin storage remains a significant data gap.
- The GSP fails to state the potential effects on the beneficial uses and users of groundwater, on land uses and property interests, and other potential effects that may occur or are occurring from a specific, quantified loss of groundwater storage as an undesirable result.

- Rather, this section: vaguely refers to a need for *“preservation of groundwater in storage [as] a high priority for the IWVGA”*; declares that *“By preserving the groundwater in storage, the IWVGA can help achieve the sustainability goal by protecting the future of the community, preserving quality of life for the residents of the Basin and sustaining the mission at NAWS China Lake;”* cites liberally to a Navy letter that identified *“groundwater resources”* as the *“number one encroachment concern”* to the Navy without independent analysis or evaluation of the content, assumptions and information upon which that letter is based; and fails to evaluate or address impacts on agricultural, industrial and other beneficial users of groundwater.
- The GSP fails to establish with adequate evidence how undesirable results or minimum thresholds for groundwater elevations may serve as a proxy for establishing undesirable results or minimum thresholds for loss of groundwater in storage as required by GSP Regulation § 354.28(d). Rather, this section broadly and vaguely asserts that: *“In areas in the IWV where the groundwater levels have been steadily declining, the water levels have dropped enough to impact shallow wells, requiring wells to be deepened, re-drilled, or abandoned as a water source”*; cites its own shallow well impact analysis, which is replete with recognized data gaps and uncertainty; and vaguely asserts that *“the number of shallow wells impacted due to the chronic lowering of groundwater levels, which is related to the significant and unreasonable reduction of groundwater in storage (Appendix 3-E).”*
- This section broadly asserts that *“the number of wells estimated to be impacted is the criterion to define significant and unreasonable reduction of groundwater in storage.”* It then, again, compares the *“baseline”* model results against the Model Scenario 6.2. results, and declares, without explanation that: *“number of shallow wells that would be impacted if the proposed projects and management actions are implemented is estimated to be 22, which is a feasible number of wells that can be mitigated.”*
- This section vaguely states that *“The amount of groundwater estimated to be removed from storage with the proposed projects and management actions is the maximum amount of useable groundwater reserves than can be extracted to prevent undesirable results while still providing a margin of safety for future use, uncertainties, and potential changes to the NAWS China Lake mission”*. It fails

to: quantify the undesirable results; define or justify the “margin of safety”; define “future use”; define the “potential changes to the NAWIS China lake mission” or identify the information and assumptions on which those “potential changes” are based.

- This section fails to address the impacts on agricultural users arising from the implementation of the proposed projects and management actions.
- The GSP ignores current information and data which indicates much more groundwater in storage than the assumptions made in the GSP.
- The GSP and Model Scenario 6.2 do not include other potentially significant projects and storage supplies, such as potential storage and use of groundwater in the El Paso area. Rather, this section dismisses, without analysis of sustainable management criteria, the prospect of utilizing El Paso area supplies.

e. UR: CHRONIC LOWERING OF GROUNDWATER LEVELS

i. Applicable Regulatory Requirements and Best Management Practices

SGMA defines undesirable results to include: “...effects caused by groundwater conditions occurring throughout the basin: ... 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.” (Wat. Code, § 10721(x)(1).)

Water Code § 10727.2(b)(4) provides that a GSP: “may, but is not required to, address undesirable results that occurred before, and have not been corrected by, January 1, 2015.”

ii. Comments

Section 4.3.2. Chronic Lowering of Groundwater Levels

- The GSP relies heavily on its shallow well impact analysis, which is replete with recognized data gaps and uncertainty. A primary flaw with that analysis is its failure to define **when and where** the effects of the groundwater conditions cause undesirable results for each applicable sustainability indicator including lowering groundwater levels. That analysis provides inadequate indication of when, where, how or why the estimated number of shallow wells were or will be “impacted”. This is a critical flaw in the GSP, particularly where the GSP simultaneously seeks to eradicate the entire agricultural community through Management Action No. 1.
- The GSP fails to evaluate the severe recent drought conditions in establishing the undesirable results for groundwater levels.
- In describing undesirable results for chronic lowering of groundwater levels and other sustainability indicators, the GSP fails to specifically identify and quantify pre-2015 undesirable results for each sustainability indicator, and whether the GSP seeks to address pre-2015 undesirable results.

f. UR: DEGRADED WATER QUALITY

i. Applicable Regulatory Requirements and Best Management Practices

SGMA defines undesirable results to include: “...effects caused by groundwater conditions occurring throughout the basin: Significant and unreasonable degraded water quality, including the migration of contaminant plumes that impair water supplies.” (Wat. Code, § 10721(x)(4).)

ii. Comments

Section 4.3.3. Degraded Water Quality Undesirable Results

- This section fails to explain why the GSP considers the contaminated, “de-designated” groundwater area below NAWS China Lake to be a “pre-SGMA undesirable result” or why it “will not be addressed by projects and

management actions and will not have sustainable management criteria established for it.”

- As noted by Meadowbrook’s TAC representative and other TAC members, the “de-designated” area comprises potentially hundreds of thousands of acre feet or more of groundwater that could be available for some beneficial use, such as military industrial uses. GSP Figure 4-1 depicts the extensive de-designated area.
- The GSP is inconsistent with SGMA, the GSP Regulations and DWR Best Management Practices in that it simultaneously: ignores the de-designated area below NAWS China Lake, suggests that the Navy has a federal reserved water right that swallows the entire Basin and extends to non-federal entities, and forces potentially all agricultural groundwater users into a temporary pool despite major data gaps on total storage and impacts on shallow wells and without properly establishing sustainable management criteria.
- This section fails to address recent United States Department of Defense reports indicating known PFOS/PFOA contamination at NAWS China Lake, including a DoD report indicating that 7 of 11 NAWS China Lake wells tested above EPA limits by orders of magnitude at 8M parts per trillion, representing one of the highest known contaminated DOD sites in the world. **Exhibit 33.**
- This section fails to explain the criteria used to define **when and where** the effects of the groundwater conditions cause undesirable results for this sustainability indicator. Rather, it merely states that *“Degradation of groundwater quality is considered significant and unreasonable if the quality is degraded such that it is unsuitable for the current beneficial uses in the IWVGB.”* This section also fails to identify or adequately analyze the referenced *“current beneficial uses in the IWVGB”* and at what point a water quality condition becomes *“unsuitable”* for a particular beneficial use. Certain beneficial uses of groundwater can, for example, sustain higher thresholds of TDS than other beneficial uses.

g. UR: LAND SUBSIDENCE

i. Applicable Regulatory Requirements and Best Management Practices

SGMA defines undesirable results to include “...effects caused by groundwater conditions occurring throughout the basin: ... Significant and unreasonable land subsidence that substantially interferes with surface land uses.” (Wat. Code, § 10721(x)(5).)

ii. Comments

Section 4.3.4. Land Subsidence Undesirable Results

- The GSP analysis regarding land subsidence focuses almost exclusively on Navy property interests, but fails to consider in corresponding detail potential land subsidence issues occurring throughout the Basin.
- The GSP analysis regarding land subsidence is inadequate due to its over-reliance on Model Scenario 6.2 and the current “baseline model” run scenario. See comments below regarding model scenario flaws.

h. UR: DEPLETIONS OF INTERCONNECTED SURFACE WATER

i. Applicable Regulatory Requirements and Best Management Practices

SGMA defines undesirable results to include “... effects caused by groundwater conditions occurring throughout the basin: ...Depletions of interconnected surface water that have significant and unreasonable adverse impacts on beneficial uses of the surface water.” (Wat. Code, § 10721(x)(6).)

ii. Comments

Section 4.3.5. Depletions of Interconnected Surface Water Undesirable Results

- The GSP recognizes that interconnected surface water may be critical to support groundwater dependent ecosystems, and that surface flows exist that may support the groundwater system. The GSP then inexplicably indicates, however, that it proposes “no additional sustainable management

criteria” due to “limited data on the relationship of interconnected surface water (springs) to GDEs and GDE’s (sp) direct use of groundwater.”

- The lack of reliable data and analysis for interconnected surface water represents a critical GSP data gap.

i. MINIMUM THRESHOLDS

i. Applicable Regulatory Requirements and Best Management Practices

GSP Regulation § 351(t) defines a “minimum threshold” as “a numeric value for each sustainability indicator used to define undesirable results.”

GSP Regulation § 354.28 requires:

“(a) Each Agency in its Plan shall establish minimum thresholds that quantify groundwater conditions for each applicable sustainability indicator at each monitoring site or representative monitoring site established pursuant to Section 354.36. The numeric value used to define minimum thresholds shall represent a point in the basin that, if exceeded, may cause undesirable results as described in Section 354.26.

(b) The description of minimum thresholds shall include the following:

(1) The information and criteria relied upon to establish and justify the minimum thresholds for each sustainability indicator. The justification for the minimum threshold shall be supported by information provided in the basin setting, and other data or models as appropriate, and qualified by uncertainty in the understanding of the basin setting.

(2) The relationship between the minimum thresholds for each sustainability indicator, including an explanation of how the Agency has determined that basin conditions at each minimum threshold will avoid undesirable results for each of the sustainability indicators.

(3) How minimum thresholds have been selected to avoid causing undesirable results in adjacent basins or affecting the ability of adjacent basins to achieve sustainability goals.

(4) How minimum thresholds may affect the interests of beneficial uses and users of groundwater or land uses and property interests.

(5) How state, federal, or local standards relate to the relevant sustainability indicator. If the minimum threshold differs from other regulatory standards, the Agency shall explain the nature of and basis for the difference.

(6) How each minimum threshold will be quantitatively measured, consistent with the monitoring network requirements described in Subarticle 4.

(d) An Agency may establish a representative minimum threshold for groundwater elevation to serve as the value for multiple sustainability indicators, where the Agency can demonstrate that the representative value is a reasonable proxy for multiple individual minimum thresholds as supported by adequate evidence.

(e) An Agency that has demonstrated that undesirable results related to one or more sustainability indicators are not present and are not likely to occur in a basin, as described in Section 354.26, shall not be required to establish minimum thresholds related to those sustainability indicators.”

BMP SMC provides that:

“A minimum threshold is the quantitative value that represents the groundwater conditions at a representative monitoring site that, when exceeded individually or in combination with minimum thresholds at other monitoring sites, may cause an undesirable result(s) in the basin. GSAs will need to set minimum thresholds at representative monitoring sites for each applicable sustainability indicator **after considering the interests of beneficial uses and**

users of groundwater, land uses, and property interests in the basin.” (p. 8)

BMP SMCs also details “Required Components for all Minimum Thresholds”. It cites the six components required by the GSP Regulations, the information that must be documented for each minimum threshold, and how each minimum threshold should be addressed, including:

“The GSP must include an analysis and written interpretation of the information, data, and rationale used to set the minimum threshold. For instance, if a groundwater level minimum threshold is set to protect shallow domestic supply wells, the GSA should investigate information such as the depth ranges of domestic wells near the representative monitoring site, aquifer dimensions, groundwater conditions, and any other pertinent information.

The GSP must describe the relationship between each sustainability indicator’s minimum threshold (e.g., describe why or how a water level minimum threshold set at a particular representative monitoring site is similar to or different to water level thresholds in nearby representative monitoring sites). The GSP also must describe the relationship between the selected minimum threshold and minimum thresholds for other sustainability indicators (e.g., describe how a water level minimum threshold would not trigger an undesirable result for land subsidence).

The GSP must discuss how groundwater conditions at a selected minimum threshold could affect beneficial uses and users. This information should be supported by a description of the beneficial uses groundwater and identification of beneficial uses, which should be developed through communication, outreach, and/or engagement with parties representing those beneficial uses and users, along with any additional information the GSA used when developing the minimum threshold.

The GSP must discuss relevant standards that pertain to the sustainability indicator and justify any differences between the selected minimum threshold and those standards. For instance, the

GSP will need to justify why a different level was used if a water quality minimum threshold is set at a different level than a state or federal maximum contaminant level (MCL).”

ii. Comments

Section 4.4. Minimum Thresholds

- The GSP’s failure to comply with these statutory, regulatory and best management practices requirements is especially stark. In most instances, the GSP merely **assigned** minimum thresholds based upon Model Scenario 6.2 **assumptions** and **outputs** projected by the implementation of pre-determined projects and management actions.
- The GSP indicates that impacts to groundwater pumpers, land uses, and other interests within the IWVGB were considered when developing minimum thresholds, but fails to explain **how** those interests were considered, particularly agricultural users like Meadowbrook.
- The GSP fails to consider and evaluate multiple potential minimum thresholds at specific representative monitoring sites and how different minimum thresholds would impact beneficial uses and users of water.
- The GSP fails to consider and evaluate data provided by Meadowbrook and also GSP referenced data indicating stabilizing trends in groundwater levels and water quality conditions in the shallow aquifer from which Meadowbrook produces groundwater.
- The GSP fails to consider that certain projects and management actions may not be necessary to avoid specific, appropriate, quantified minimum thresholds in the northwest area if groundwater production levels continue at current levels or are reduced through conservation efforts.
- Instead, the GSP projects a “doomsday” “baseline” scenario, compares that scenario to pre-determined Model Scenario 6.2 assumptions, and then selects minimum thresholds at levels predicated upon those modeling scenarios.

j. MT: REDUCTION OF GROUNDWATER IN STORAGE

i. Applicable Regulatory Requirements and Best Management Practices

The GSP Regulations contain specific requirements for establishing a minimum threshold for the reduction of groundwater in storage. GSP Regulation § 354.28(d) requires:

“The minimum threshold for reduction of groundwater storage shall be a total volume of groundwater that can be withdrawn from the basin without causing conditions that may lead to undesirable results. Minimum thresholds for reduction of groundwater storage shall be supported by the sustainable yield of the basin, calculated based on historical trends, water year type, and projected water use in the basin.”

“An Agency may establish a representative minimum threshold for groundwater elevation to serve as the value for multiple sustainability indicators, where the Agency can demonstrate that the representative value is a reasonable proxy for multiple individual minimum thresholds as supported by adequate evidence.”

BMP SMC provides that:

“The minimum threshold for reduction of groundwater storage is a volume of groundwater that can be withdrawn from a basin or management area, based on measurements from multiple representative monitoring sites, without leading to undesirable results. Contrary to the general rule for setting minimum thresholds, the reduction of groundwater storage minimum threshold is not set at individual monitoring sites. Rather, the minimum threshold is set for a basin or management area.” (p. 10)

“Considerations when establishing the minimum threshold for groundwater storage may include, but are not limited to: What are the historical trends, water year types, and projected water use in the basin? What groundwater reserves are needed to withstand

future droughts? Have production wells ever gone dry? What is the effective storage of the basin? This may include understanding of the: Average, minimum, and maximum depth of municipal, agricultural, and domestic wells. Impacts on pumping costs (i.e., energy cost to lift water). What are the adjacent basin’s minimum thresholds?” (p. 13.)

ii. Comments

Section 4.4.1 Reduction of Groundwater in Storage Minimum Threshold

- The GSP indicates that avoiding loss of storage is a primary concern, but simultaneously lacks critical data and information regarding total and effective Basin storage.
- The GSP simultaneously, and inappropriately, seeks to force agricultural users into a temporary pool allowing them to collectively use no more than 51,000 acre feet of “storage”. The GSP fails to explain the basis for the 51,000 acre-foot figure. Rather, that figure appears to derive from pre-determined Modeling Scenario 6.2 assumptions developed by IWVGA staff and Navy representatives.
- The GSP fails to explain why, specifically, the “*simulated* value of the total loss in storage *at year 2070 after the projects and management actions are implemented* (Scenario 6.2) plus an additional *10 percent* buffer” comprises an appropriate minimum threshold.
- Instead, the GSP must analyze based upon best available science and information, including filling critical data gaps, the questions posed by DWR in its BMP SMC for establishing a minimum threshold for loss of groundwater in storage.
- The GSP fails to establish, based upon best available science and information, the historical trends, water year types and projected water use in the Basin according to water budgets established in accordance with the GSP Regulations (see comments below regarding water budget issues).

- The GSP fails to establish, based upon best available science and information, what groundwater reserves are needed to withstand future droughts.
- The GSP fails to establish, based upon best available science and information, **where, when** and **for what reasons** wells have gone dry.
- The GSP fails to establish, based upon best available science and information, what the effective storage is for the Basin.
- The GSP fails to establish, based upon best available science and information the average, minimum, and maximum depth of municipal, agricultural, and domestic wells.
- The GSP fails to establish, based upon best available science and information, what potential impacts on pumping costs might be, and whether mitigating such costs would be more technically, economically and practically feasible than the full combination of the aggressive proposed projects and management actions.
- The GSP fails to consider or establish appropriate management areas to evaluate potential alternative sustainable management criteria to manage loss of groundwater in storage.

k. MT: CHRONIC LOWERING OF GROUNDWATER LEVELS

i. Applicable Regulatory Requirements and Best Management Practices

The GSP Regulations contain specific requirements for establishing a minimum threshold for chronic lowering of groundwater levels. GSP Regulation § 354.28(c)(1) requires”

“The minimum threshold for chronic lowering of groundwater levels shall be the groundwater elevation indicating a depletion of supply **at a given location** that may lead to undesirable results. Minimum thresholds for chronic lowering of groundwater levels shall be supported by the following: (A) The rate of groundwater elevation decline based on **historical trends**, water year type, and

projected water use in the basin. (B) Potential effects on other sustainability indicators.”

BMP SMC provides that:

“The minimum threshold metric for the chronic lowering of groundwater levels sustainability indicator shall be a groundwater elevation measured at the representative monitoring site.” (p. 10)

“Considerations when establishing minimum thresholds for groundwater levels at a given representative monitoring site may include, but are not limited to: What are the historical groundwater conditions in the basin? What are the average, minimum, and maximum depths of municipal, agricultural, and domestic wells? What are the screen intervals of the wells? What impacts do water levels have on pumping costs (e.g., energy cost to lift water)? What are the adjacent basin’s minimum thresholds for groundwater elevations? What are the potential impacts of changing groundwater levels on groundwater dependent ecosystems? Which principal aquifer, or aquifers, is the representative monitoring site evaluating?” (p. 12).

ii. Comments

Section 4.4.2 Chronic Lowering of Groundwater Levels Minimum Threshold

- The GSP fails to satisfy SGMA, the GSP Regulations and DWR Best Management Practices in establishing minimum thresholds for chronic lowering of groundwater levels.
- The GSP data demonstrates that at the referenced USBR-6 monitoring site near Meadowbrook, groundwater levels are **already achieving the measurable objective** set for that monitoring site and have been since approximately 2011, prior to imposing any of the proposed projects and management actions. See GSP Figure 4-5e. In fact, all three interim milestones for USBR-6 are far **above** the measurable objective. This represents one of the most critical GSP flaws. The GSP fails to explain or justify, based on best available science and information, why Meadowbrook should be required to ultimately cease pumping the native groundwater

supply (or pay for imported water) when the GSP monitoring site nearest Meadowbrook indicates that groundwater levels are already achieving the measurable objective. **Exhibit 40.**

- The GSP fails to explain or support with data, how maintaining current production levels near Meadowbrook will cause undesirable results. By definition, an undesirable result does not exist at a particular monitoring site where the sustainability indicator is operating at the measurable objective.
- The GSP fails to explain how the minimum threshold for USBR-6 was established. This section states generally that minimum thresholds were set at the lower of *“5 feet below the minimum of the simulated groundwater level before groundwater level recovery is anticipated due to the implementation of projects and management actions; or 5 feet below recent minimum historical value.”*
- GSP Figure 4-5e and this section suggest that that the minimum threshold for USBR-6 was established at five feet below a *“recent minimum historical value.”* Figure 4-5e depicts a minimum threshold at 2,166 ft msl. The GSP fails to explain or justify with technical support how groundwater levels at five feet below *“recent minimal historical values”* at USBR-6 causes undesirable results to nearby shallow wells, which the GSP states is the primary basis for the sustainability criteria for chronic lowering of groundwater levels.
- The GSP states that *“the results of the shallow well impact analysis (see Appendix 3-E) is the criteria to define significant and unreasonable chronic lowering of groundwater levels.”* As discussed in this letter, that analysis is replete with critical data gaps and questionable assumptions, and fails to demonstrate when and where those impacts have or are expected to occur.
- The GSP must analyze based upon best available science and information, including filling critical data gaps, the questions posed by DWRs BMP SMC for establishing a minimum threshold for chronic lowering of groundwater levels.

- The GSP fails to establish, based upon best available science and information for each monitoring site, the average, minimum, and maximum depths of municipal, agricultural, and domestic wells.
- The GSP fails to establish, based upon best available science and information for each monitoring site, the screen intervals of those nearby wells.
- The GSP fails to establish, based upon best available science and information for each monitoring site, the average, minimum, and maximum depth of municipal, agricultural, and domestic wells.
- The GSP fails to establish, based upon best available science and information, for each monitoring site, what potential impacts on pumping costs might be, and whether mitigating such costs would be more technically, economically and practically feasible than the full combination of the aggressive proposed projects and management actions.
- The GSP fails to establish, based upon best available science and information for each monitoring site, the potential impacts of changing groundwater levels on groundwater dependent ecosystems.
- The GSP fails to establish, based upon best available science and information for each monitoring site, which principal aquifer, or aquifers, the representative monitoring site evaluating.

I. MT: DEGRADED WATER QUALITY

i. Applicable Regulatory Requirements and Best Management Practices

The GSP Regulations contain specific requirements for establishing a minimum threshold for degraded water quality. GSP Regulation § 354.28(c)(4) requires:

“The minimum threshold for degraded water quality shall be the degradation of water quality, including the migration of contaminant plumes that impair water supplies or other indicator of water quality as determined by the Agency that may lead to undesirable results. The minimum threshold shall be based on the number of supply wells, a volume of water, or a location of an

isocontour that exceeds concentrations of constituents determined by the Agency to be of concern for the basin. In setting minimum thresholds for degraded water quality, the Agency shall consider local, state, and federal water quality standards applicable to the basin.”

BMP SMC provides that:

“The minimum threshold metric for degraded water quality shall be water quality measurements that indicate degradation at the monitoring site. This can be based on migration of contaminant plumes, number of supply wells, volume of groundwater, or the location of a water quality isocontour within the basin. Depending on how the GSA defines the degraded water quality minimum threshold, it can be defined at a site, along the isocontour line, or as a calculated volume.” (p. 10)

“Considerations when establishing minimum thresholds for water quality may include, but are not limited to: What are the historical and spatial water quality trends in the basin? What is the number of impacted supply wells? What aquifers are primarily used for providing water supply? What is the estimated volume of contaminated water in the basin? What are the spatial and vertical extents of major contaminant plumes in the basin, and how could plume migration be affected by regional pumping patterns? What are the applicable local, State, and federal water quality standards? What are the major sources of point and nonpoint source pollution in the basin, and what are their chemical constituents? What regulatory projects and actions are currently established to address water quality degradation in the basin (e.g., an existing groundwater pump and treat system), and how could they be impacted by future groundwater management actions? What are the adjacent basin’s minimum thresholds?” (p. 15)

ii. Comments

Section 4.4.3 Degraded Water Quality Minimum Threshold

- As with other minimum thresholds, the GSP fails to satisfy SGMA, the GSP Regulations and DWR Best Management Practices in establishing minimum thresholds for degraded water quality.
- The GSP fails to establish minimum thresholds at each monitoring site based upon best available science and information. In fact, for USBR-6 near Meadowbrook, GSP Table 4-5 indicates that no sustainable management criteria have been determined at all. For USBR-6, Table 4-5 indicates “ND” for a minimum threshold, interim milestone and measurable objective. ND means “*not determined at this time. As baseline TDS sampling data is gathered, these criteria will be established.*” **Exhibit 41.**
- The GSP recognizes a critical lack of TDS data in the northwest area and other areas of the Basin. It recognizes in this section in fact that “*there are areas where there is not enough reliable data to establish Minimum Thresholds at this time until baseline TDS conditions are established.*”
- The lack of any GSP sustainable management criteria for degraded water quality at the USBR-6 monitoring site is a significant data gap that clearly demonstrates a failure to justify the aggressive projects and management actions that would render nearby agricultural users like Meadowbrook to a temporary pool.

m. MT: LAND SUBSIDENCE

i. Applicable Regulatory Requirements and Best Management Practices

The GSP Regulations contain specific requirements for establishing a minimum threshold for land subsidence. GSP Regulation § 354.28(c)(5) requires:

“The minimum threshold for land subsidence shall be the rate and extent of subsidence that substantially interferes with surface land uses and may lead to undesirable results. Minimum thresholds for land subsidence shall be supported by the following: (A) Identification of land uses and property interests that have been

affected or are likely to be affected by land subsidence in the basin, including an explanation of how the Agency has determined and considered those uses and interests, and the Agency's rationale for establishing minimum thresholds in light of those effects. (B) Maps and graphs showing the extent and rate of land subsidence in the basin that defines the minimum threshold and measurable objectives.”

GSP Regulation § 354.28(d) requires:

“An Agency may establish a representative minimum threshold for groundwater elevation to serve as the value for multiple sustainability indicators, where the Agency can demonstrate that the representative value is a reasonable proxy for multiple individual minimum thresholds as supported by adequate evidence.”

BMP SMC provides that:

“The minimum threshold metric for land subsidence shall be a rate and the extent of land subsidence.” (p. 10.)

“Considerations when establishing minimum thresholds for land subsidence at a given representative monitoring site may include, but are not limited to: Do principle aquifers in the basin contain aquifer material susceptible to subsidence? What are the historical, current, and projected groundwater levels, particularly the historical lows? What is the historical rate and extent of subsidence? What are the land uses and property interests in areas susceptible to subsidence? What is the location of infrastructure and facilities susceptible to subsidence (e.g., canals, levees, pipelines, major transportation corridors)? What are the adjacent basin’s minimum thresholds?” (p. 16.)

ii. Comments

Section 4.4.4 Land Subsidence Minimum Threshold

- See comments above regarding land subsidence undesirable results.

n. MEASURABLE OBJECTIVES AND INTERIM MILESTONES

i. Applicable Regulatory Requirements and Best Management Practices

GSP Regulation § 354.30 requires:

“(a) Each Agency shall establish measurable objectives, including interim milestones in increments of five years, to achieve the sustainability goal for the basin within 20 years of Plan implementation and to continue to sustainably manage the groundwater basin over the planning and implementation horizon.

(b) Measurable objectives shall be established for each sustainability indicator, based on quantitative values using the same metrics and monitoring sites as are used to define the minimum thresholds.

(c) Measurable objectives shall provide a reasonable margin of operational flexibility under adverse conditions which shall take into consideration components such as historical water budgets, seasonal and long-term trends, and periods of drought, and be commensurate with levels of uncertainty.

(d) An Agency may establish a representative measurable objective for groundwater elevation to serve as the value for multiple sustainability indicators where the Agency can demonstrate that the representative value is a reasonable proxy for multiple individual measurable objectives as supported by adequate evidence.

(e) Each Plan shall describe a reasonable path to achieve the sustainability goal for the basin within 20 years of Plan implementation, including a description of interim milestones for each relevant sustainability indicator, using the same metric as the measurable objective, in increments of five years. The description shall explain how the Plan is likely to maintain sustainable groundwater management over the planning and implementation horizon.

(f) Each Plan may include measurable objectives and interim milestones for additional Plan elements described in Water Code Section 10727.4 where the Agency determines such measures are appropriate for sustainable groundwater management in the basin.

(g) An Agency may establish measurable objectives that exceed the reasonable margin of operational flexibility for the purpose of improving overall conditions in the basin, but failure to achieve those objectives shall not be grounds for a finding of inadequacy of the Plan.”

BMP SMC provides that:

“Measurable objectives are quantitative goals that reflect the basin’s desired groundwater conditions and allow the GSA to achieve the sustainability goal within 20 years ... Projects and management actions included in GSPs **should be designed to meet the measurable objectives**, with specific descriptions of how those projects and management actions will achieve their desired goals.” (p. 27, emphasis added.)

“SGMA states that a GSP ‘may, but is not required to, address undesirable results that occurred before, and have not been corrected by, January 1, 2015.’ Once minimum thresholds have been developed and an undesirable result numerically defined, the GSA may evaluate whether that undesirable result was present prior to January 1, 2015. This evaluation is not possible until the GSA has defined what constitutes a significant and unreasonable condition (an undesirable result). If the evaluation indicates that an undesirable result occurred prior to January 1, 2015, the GSA must set measurable objectives to either maintain or improve upon the conditions that were occurring in 2015. The GSA must plan a pathway, indicated by appropriate interim milestones, to reach and maintain the 2015 conditions within the 20-year implementation timeline.” (p. 30).

ii. Comments

Section 4.5 Measurable Objectives and Interim Milestones

- As with other sustainability indicators, the GSP fails to satisfy SGMA, the GSP Regulations and DWR Best Management Practices in measurable objectives and interim milestones.
- The primary flaw with the GSP's proposed measurable objectives and interim milestones is that they are based upon assumptions and outputs from Model Scenario 6.2. and are not based upon best available science and information.
- The measurable objectives and interim milestones are based upon the projects and management actions, whereas SGMA requires a GSA to consider projects and management actions to **meet the measurable objectives**, with specific descriptions of how those projects and management actions will achieve their desired goals.
- The GSP fails to explain or justify in many instances whether, and if so why, it seeks to impose measurable objectives designed to address pre-SGMA conditions. Rather, the GSP appears selectively designate and then ignore certain pre-SGMA conditions (e.g. the de-designated area) while aggressively addressing other pre-SGMA conditions (e.g. loss of groundwater in storage).
- The GSP also fails to explain or justify why, in some areas, the GSP apparently seeks to far exceed the stated measurable objectives. One example is groundwater levels, where Figures 4-5a through 4-5j indicate groundwater levels at nearly every monitoring site achieving levels over the planning and implementation horizon at approximately double the difference between the minimum threshold and the measurable objective. This unexplained objective indicates that the projects and management actions may be unnecessarily aggressive and fail to consider their punitive impacts on beneficial uses and users of groundwater.

IV. THE SUSTAINABLE MANAGEMENT CRITERIA AND PROJECTS AND MANAGEMENT ACTIONS ARE NOT COMMENSURATE WITH THE LEVEL OF UNDERSTANDING OF THE BASIN SETTING, BASED ON THE LEVEL OF UNCERTAINTY, AS REFLECTED IN THE PLAN.

As detailed above and throughout this letter, the GSP fails to establish sustainable management criteria in accordance with SGMA, the GSP Regulations and DWR BMPs. Many of the sustainable management criteria suffer from critical data gaps. Rather than address those data gaps and establish appropriate criteria based upon best available science and information, the GSP assigns sustainable management criteria based upon flawed Model Scenario 6.2 assumptions, projects and management actions that were never vetted by or revealed to the PAC, TAC or the public.

The sustainable management criteria and projects and management actions are also not supported by the GSP's current understanding of the basin setting and in light of current data gaps and uncertainty.

a. PLAN AREA

i. Applicable Regulatory Requirements and Best Management Practices

GSP Regulation § 354.8 requires:

“Each Plan shall include a description of the geographic areas covered, including the following information:

(a) One or more maps of the basin that depict the following, as applicable:

(1) The area covered by the Plan, delineating areas managed by the Agency as an exclusive Agency and any areas for which the Agency is not an exclusive Agency, and the name and location of any adjacent basins.

(2) Adjudicated areas, other Agencies within the basin, and areas covered by an Alternative.

(3) Jurisdictional boundaries of federal or state land (including the identity of the agency with jurisdiction over that land), tribal land, cities, counties, agencies with water management responsibilities, and areas covered by relevant general plans.

(4) Existing land use designations and the identification of water use sector and water source type.

(5) The density of wells per square mile, by dasymetric or similar mapping techniques, showing the general distribution of agricultural, industrial, and domestic water supply wells in the basin, including *de minimis* extractors, and the location and extent of communities dependent upon groundwater, utilizing data provided by the Department, as specified in Section 353.2, or the best available information.

(b) A written description of the Plan area, including a summary of the jurisdictional areas and other features depicted on the map.

(c) Identification of existing water resource monitoring and management programs, and description of any such programs the Agency plans to incorporate in its monitoring network or in development of its Plan. The Agency may coordinate with existing water resource monitoring and management programs to incorporate and adopt that program as part of the Plan.

(d) A description of how existing water resource monitoring or management programs may limit operational flexibility in the basin, and how the Plan has been developed to adapt to those limits.

(e) A description of conjunctive use programs in the basin.

(f) A plain language description of the land use elements or topic categories of applicable general plans that includes the following:

(1) A summary of general plans and other land use plans governing the basin.

(2) A general description of how implementation of existing land use plans may change water demands within the basin or affect the ability of the Agency to achieve sustainable groundwater management over the planning and implementation horizon, and how the Plan addresses those potential effects.

(3) A general description of how implementation of the Plan may affect the water supply assumptions of relevant land use plans over the planning and implementation horizon.

(4) A summary of the process for permitting new or replacement wells in the basin, including adopted standards in local well ordinances, zoning codes, and policies contained in adopted land use plans.

(5) To the extent known, the Agency may include information regarding the implementation of land use plans outside the basin that could affect the ability of the Agency to achieve sustainable groundwater management.

(g) A description of any of the additional Plan elements included in Water Code Section 10727.4 that the Agency determines to be appropriate.”

ii. Comments

Section 2.2.4. Water Supply Source

- This section states that *“The Navy produces and distributes groundwater for the on-station water uses at the NAWS China Lake. However, the majority of Navy-affiliated staff reside off-station, and the water supply needs of the off-station Navy-affiliated staff and their dependents are supplied by either the Water District, Inyokern CSD, or by privately-owned domestic wells.”* The GSP fails to explain or justify how this information is relevant to the Projects and Management Actions. Instead, this appears to reflect IWVGA staff intentions to pursue the unsubstantiated “extended federal reserved water right” theory asserted by IWVGA representatives. **Exhibits 34, 42, 43.**

- This section indicates that Figure 2-5 indicates an estimated 932 groundwater production wells within the Basin. This section fails to identify the source of information for Figure 2-5 or address how the GSP incorporates data for *“the NAWS China Lake’s groundwater production wells for on-station water uses [which] are not shown on Figure 2-5.”*
- The GSP fails to explain how it distinguishes “Large Agriculture” from “Small Agriculture” in Table 2-5, which identifies 18 wells for “Large Agriculture” and 20 wells for “Small Agriculture”.
- The GSP fails to explain whether any Navy wells are accounted for in Table 2-5, and if so, under what beneficial use category(ies).
- This section asserts that approximately 832 of the 932 groundwater production wells are *“domestic/private wells in the IWVGB produced approximately 800 acre-feet (AF) in 2015, or approximately 3% of total groundwater production in 2015.”* It then describes a process by which the IWVGA has only recently begun requiring registration of those wells in order to gather the necessary data to implement the shallow well mitigation program. This represents a critical data gap.
- This section acknowledges that: *“To confirm the number of domestic/private wells in the IWVGB, the IWVGA has implemented a well registration process to obtain information from all users and owners of groundwater extraction facilities in the IWVGB and properly adopt, implement, and administer this GSP. The well registration process has assisted in verifying well existence and location, but there remains some uncertainty in the existence and locations of all domestic/private wells due to a lack of voluntary well registration. This uncertainty will be reduced through future data gap analysis and groundwater allocation verification, both of which will be conducted as GSP implementation actions.”*
- The lack of domestic well data is very prejudicial and harmful to Meadowbrook. In 2018, Meadowbrook repeatedly urged the IWVGA to require registration of all wells in the basin and that a lack of reliable data on domestic wells would result in significant data gaps that would materially impact the adequacy of the GSP. In adopting IWVGA Ordinance No. 02-18, the IWVGA opted at the last minute to remove well registration requirement for *de minimis* extractors due to political reasons.

Consequently, the GSP suffers from a significant and material data gap necessary to properly establish sustainable management criteria. That data gap will not be addressed until long after GSP adoption but the GSP nonetheless indicates pursuing Management Action No. 1 that will eradicate most if not all agriculture from the Basin. Meadowbrook and other stakeholders have voiced these issues many, many times to the IWVGA Board, PAC and TAC. **Exhibits 25, 26, 27.**

- The IWVGA staff recently reported that even after several months of requiring all wells to be registered pursuant to IWVGA Ordinance No. 01-19, only a handful of domestic/private wells have done so.
- The GSP describes “domestic/private” well production as “3% of total groundwater production in 2015”. Yet, the GSP estimate of 800 AFY for this group represents more than 10% of the GSP’s “Current Sustainable Yield.” The failure of the GSP to sufficiently gather data and determine, based on best available science and information, how many “domestic/private” wells exist and how many of those wells are truly *de minimis* as defined by SGMA, represents a significant data gap in this particular Basin. Reports have been made that there are many properties in the Basin with large irrigated areas and that use water horses and other non-domestic purposes.

Section 2.5.2.1. Kern County Land Use

- The GSP fails to identify the actual projected growth rate for the City of Ridgecrest.
- The GSP fails to mention the highly contested and controversial effort by Kern County to downzone Meadowbrook and other agricultural use areas prior to SGAM implementation in approximately 2014.

Section 2.5.2.5. Federal Lands

- The GSP fails to describe the content and implications of Navy’s Comprehensive Land Use Management Plan for land use management and environmental resources management for NAWWS China Lake, and how it might impact water resources management in the Basin.

Section 2.6.4. NAWS China Lake Monitoring Program

- The GSP refers to the Navy’s Basewide Groundwater Monitoring Program to provide groundwater quality and water level data to support the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) process at Installation Restoration Sites and Operable Units located throughout Naval Air Weapons Station China Lake. The GSP attaches a portion of that plan as GSP Appendix 2-A. The GSP fails to analyze the impact of that plan on the GSP, or vice versa.

Section 2.7.2. Salt and Nutrient Management Plan

- The GSP summarizes the current Basin Salt Nutrient Management Plan (“SNMP”) but does not provide any detail as to the contents, findings or recommendations of the SNMP, or how the GSP considers and implements the SNMP into the development of the sustainable management criteria or the projects and management actions.

Section 2.7.5.3. Evaporation/Percolation Ponds

- This section states that: *“The United States Fish and Wildlife Service (U.S. Fish and Wildlife) and the U.S. Navy have taken initial steps to further evaluate the Tui Chubb habitat, including an updated quantification of the habitat’s water demands and an effort to improve the habitat’s water supply conditions. Per discussions with U.S. Fish and Wildlife staff, a potential long-term goal for the Tui Chub includes relocation to a more stable location/environment, which may occur within 5-10 years after IWVGA adoption of this GSP.”*
- It is unfathomable that the IWVGA, through the GSP, would seek to eradicate an entire industry of agricultural groundwater users at an impact of tens if not hundreds of millions of dollars while simultaneously failing to outline plans and actions to address the Tui Chub. A management plan for the Tui Chub should be established, including freeing up as much water as possible for other purposes, before any aggressive actions are taken that might reduce groundwater production by agricultural users.
- The GSP fails to indicate whether the Tui Chub is considered a Groundwater Dependent Ecosystem. The GSP needs to be clear on whether the Tui Chubb meets the definition of a Groundwater Dependent

Ecosystem, which is defined under GSP Regulations § 351(m) as ecological communities or species that depend on groundwater emerging from aquifers or on groundwater occurring near the ground surface.

Section 2.7.6 Groundwater Contamination Clean Up

- This section indicates that: *“Per the Navy’s 2014 INRMP, NAWS China Lake is assessing and remediating areas of past contamination on its ranges through the IRP, including sites of possible and confirmed groundwater contamination. A list of these sites along with their cause of contamination and remediation status is provided in Appendix 2-A.”* It does not, however, address how those contamination remediation efforts might impact water resources management in the Basin.
- This section fails to address recent Department of Defense reports regarding known PFOS/PFOA contamination at NAWS China Lake, including a DOD report indicating that 7 of 11 NAWS China Lake wells tested above EPA limits by orders of magnitude at 8M parts per trillion, representing one of the highest known contaminated DoD sites in the world. **Exhibit 33.**

Section 3.2. History of Water Use in the Indian Wells Valley

- This section provides an interesting history of the Indian Wells Valley and cites several information sources, but fails to evaluate or justify whether those sources are deemed the best available science and information.
- The GSP fails to cite the source of data for the text regarding Searles Valley Minerals water use and infrastructure at pages 3-3 and 3-4.
- The GSP fails to cite the source of data for the text regarding Navy water use at page 3-4.
- The GSP fails to cite the data and source for the referenced USGS and USBR records that are asserted to have documented *“water use in the IWV over the past 70 years”*.
- As Meadowbrook has indicated many times in written and verbal comments, the IWV Cooperative Groundwater Management Group data referenced in this section and attached as Appendix 3-A to the GSP is replete with data gaps, estimates and unanswered questions and

assumptions. The use of such estimates for water budgets and other aspects of the GSP must be appropriately qualified and addressed.

b. BASIN SETTING

i. Applicable Regulatory Requirements and Best Management Practices

SGMA requires GSPs to include:

(a) A description of the physical **setting** and characteristics of the aquifer system underlying the basin that includes the following:

(1) Historical data, to the extent available.

(2) Groundwater levels, groundwater quality, subsidence, and groundwater-surface water interaction.

(3) A general discussion of historical and projected water demands and supplies.

(4) A map that details the area of the basin and the boundaries of the groundwater sustainability agencies that overlie the basin that have or are developing groundwater sustainability plans.

(5) A map identifying existing and potential recharge areas for the basin. The map or maps shall identify the existing recharge areas that substantially contribute to the replenishment of the groundwater basin. The map or maps shall be provided to the appropriate local planning agencies after adoption of the groundwater sustainability plan. (Wat. Code § 10727.2(a).)

SGMA also requires GSPs to include:

A description of the consideration given to the applicable county and city general plans and a description of the various adopted water resources-related plans and programs within the basin and an assessment of how the groundwater sustainability plan may affect those plans. (Wat. Code, § 10727.2(g).)

GSP Regulation § 351(g) defines the basin setting as:

“The information about the physical setting, characteristics, and **current** conditions of the basin as described by the Agency in the hydrogeologic conceptual model, the groundwater conditions, and the water budget, pursuant to Subarticle 2 of Article 5.”.

GSP Regulation § 354.12 introduces requirements for the Basin Setting:

“This Subarticle describes the information about the physical setting and characteristics of the basin and current conditions of the basin that shall be part of each Plan, including the identification of data gaps and levels of uncertainty, which comprise the basin setting that serves as the basis for defining and assessing reasonable sustainable management criteria and projects and management actions.”

The GSP Regulations set forth further specific requirements for the Basin Setting in GSP Regulations §§ 354.12 to 354.20, which are addressed individually below.

ii. Comments

- The GSP fails to establish the Basin Setting in accordance with SGMA, the GSP Regulations and DWR BMPs.
- The Basin setting is replete with critical data gaps, and a failure to establish water budgets as required by the GSP Regulations.

c. HYDROGEOLOGICAL CONCEPTUAL MODEL

i. Applicable Regulatory Requirements and Best Management Practices

GSP Regulation § 354.14 requires:

- (a) Each Plan shall include a descriptive hydrogeologic conceptual model of the basin based on technical studies and qualified maps that characterizes the physical components and interaction of the surface water and groundwater systems in the basin.

(b) The hydrogeologic conceptual model shall be summarized in a written description that includes the following:

(1) The regional geologic and structural setting of the basin including the immediate surrounding area, as necessary for geologic consistency.

(2) Lateral basin boundaries, including major geologic features that significantly affect groundwater flow.

(3) The definable bottom of the basin.

(4) Principal aquifers and aquitards, including the following information:

(A) Formation names, if defined.

(B) Physical properties of aquifers and aquitards, including the vertical and lateral extent, hydraulic conductivity, and storativity, which may be based on existing technical studies or other best available information.

(C) Structural properties of the basin that restrict groundwater flow within the principal aquifers, including information regarding stratigraphic changes, truncation of units, or other features.

(D) General water quality of the principal aquifers, which may be based on information derived from existing technical studies or regulatory programs.

(E) Identification of the primary use or uses of each aquifer, such as domestic, irrigation, or municipal water supply.

(5) Identification of data gaps and uncertainty within the hydrogeologic conceptual model.

(c) The hydrogeologic conceptual model shall be represented graphically by at least two scaled cross-sections that display the information required by this section and are sufficient to depict major stratigraphic and structural features in the basin.

(d) Physical characteristics of the basin shall be represented on one or more maps that depict the following:

(1) Topographic information derived from the U.S. Geological Survey or another reliable source.

(2) Surficial geology derived from a qualified map including the locations of cross-sections required by this Section.

(3) Soil characteristics as described by the appropriate Natural Resources Conservation Service soil survey or other applicable studies.

(4) Delineation of existing recharge areas that substantially contribute to the replenishment of the basin, potential recharge areas, and discharge areas, including significant active springs, seeps, and wetlands within or adjacent to the basin.

(5) Surface water bodies that are significant to the management of the basin.

(6) The source and point of delivery for imported water supplies.

ii. Comments

Section 3.3 Hydrogeologic Conceptual Model

- The GSP fails to establish a hydrogeological conceptual model that contains all of the information required by GSP Regulation § 354.14. Notable required but missing information includes the definable bottom of the basin, the principal aquifers and aquitards, the physical properties of aquifers and aquitards, including the vertical and lateral extent, hydraulic conductivity, and storativity, and structural properties of the basin that restrict groundwater flow within the principal aquifers.
- The GSP's reliance and emphasis on Kern County's 2014 Todd Report is misplaced. The Todd Report was generated for purposes of Kern County's land use planning purposes and for not SGMA planning purposes. The author of the Todd Report indicated that the purposes of the Todd Report

were limited in their scope and that further study and analysis would be required for SGMA planning purposes.

Section 3.3.1. Geology and Hydrogeology

- The information on geology and hydrogeology is based primarily on reports dating back to 1960. As the GSP must be based upon the best available science and information, the GSP should be revised utilizing the most sophisticated data, such as the SkyTEM project referenced elsewhere in the GSP.

d. GROUNDWATER CONDITIONS AND WATER BUDGET

i. Applicable Regulatory Requirements and Best Management Practices

GSP Regulation § 354.16 requires:

“Each Plan shall provide a description of current and historical groundwater conditions in the basin, including data from January 1, 2015, to current conditions, based on the best available information that includes the following:

(a) Groundwater elevation data demonstrating flow directions, lateral and vertical gradients, and regional pumping patterns, including:

(1) Groundwater elevation contour maps depicting the groundwater table or potentiometric surface associated with the current seasonal high and seasonal low for each principal aquifer within the basin.

(2) Hydrographs depicting long-term groundwater elevations, historical highs and lows, and hydraulic gradients between principal aquifers.

(b) A graph depicting estimates of the change in groundwater in storage, based on data, demonstrating the annual and cumulative change in the volume of groundwater in storage between seasonal

high groundwater conditions, including the annual groundwater use and water year type.

(c) Seawater intrusion conditions in the basin, including maps and cross-sections of the seawater intrusion front for each principal aquifer.

(d) Groundwater quality issues that may affect the supply and beneficial uses of groundwater, including a description and map of the location of known groundwater contamination sites and plumes.

(e) The extent, cumulative total, and annual rate of land subsidence, including maps depicting total subsidence, utilizing data available from the Department, as specified in Section 353.2, or the best available information.

(f) Identification of interconnected surface water systems within the basin and an estimate of the quantity and timing of depletions of those systems, utilizing data available from the Department, as specified in Section 353.2, or the best available information.

(g) Identification of groundwater dependent ecosystems within the basin, utilizing data available from the Department, as specified in Section 353.2, or the best available information.”

The GSP Regulations including the following defined terms:

‘Water year’ refers to the period from October 1 through the following September 30, inclusive, as defined in the Act. (GSP Regulation § 351(am).)

‘Water year type’ refers to the classification provided by the Department to assess the amount of annual precipitation in a basin.” (GSP Regulation § 351(an).)

‘Seasonal high’ refers to the highest annual static groundwater elevation that is typically measured in the Spring and associated with stable aquifer conditions following a period of lowest annual groundwater demand. (GSP Regulation § 351(ad).)

‘Seasonal low’ refers to the lowest annual static groundwater elevation that is typically measured in the Summer or Fall, and associated with a period of stable aquifer conditions following a period of highest annual groundwater demand. (GSP Regulation § 351(ae).)

GSP Regulation § 354.18 requires:

“(a) Each Plan shall include a water budget for the basin that provides an accounting and assessment of the total annual volume of groundwater and surface water entering and leaving the basin, including historical, current and projected water budget conditions, and the change in the volume of water stored. Water budget information shall be reported in tabular and graphical form.

(b) The water budget shall quantify the following, either through direct measurements or estimates based on data:

(1) Total surface water entering and leaving a basin by water source type.

(2) Inflow to the groundwater system by water source type, including subsurface groundwater inflow and infiltration of precipitation, applied water, and surface water systems, such as lakes, streams, rivers, canals, springs and conveyance systems.

(3) Outflows from the groundwater system by water use sector, including evapotranspiration, groundwater extraction, groundwater discharge to surface water sources, and subsurface groundwater outflow.

(4) The change in the annual volume of groundwater in storage between seasonal high conditions.

(5) If overdraft conditions occur, as defined in Bulletin 118, the water budget shall include a quantification of overdraft over a period of years during which water year and water supply conditions approximate average conditions.

(6) The water year type associated with the annual supply, demand, and change in groundwater stored.

(7) An estimate of sustainable yield for the basin.”

GSP Regulations Section § 354.18 includes further specific requirements with respect to current, historical and projected water budgets, including the assumptions and information to be used in developing those water budgets:

“(c) Each Plan shall quantify the current, historical, and projected water budget for the basin as follows:

(1) Current water budget information shall quantify current inflows and outflows for the basin using the most recent hydrology, water supply, water demand, and land use information.

(2) Historical water budget information shall be used to evaluate availability or reliability of past surface water supply deliveries and aquifer response to water supply and demand trends relative to water year type. The historical water budget shall include the following:

(A) A quantitative evaluation of the availability or reliability of historical surface water supply deliveries as a function of the historical planned versus actual annual surface water deliveries, by surface water source and water year type, and based on the most recent ten years of surface water supply information.

(B) A quantitative assessment of the historical water budget, starting with the most recently available information and extending back a minimum of 10 years, or as is sufficient to calibrate and reduce the uncertainty of the tools and methods used to estimate and project future water budget information and future aquifer response to proposed sustainable groundwater management practices over the planning and implementation horizon.

(C) A description of how historical conditions concerning hydrology, water demand, and surface water supply availability or reliability have impacted the ability of the Agency to operate the

basin within sustainable yield. Basin hydrology may be characterized and evaluated using water year type.

(3) Projected water budgets shall be used to estimate future baseline conditions of supply, demand, and aquifer response to Plan implementation, and to identify the uncertainties of these projected water budget components. The projected water budget shall utilize the following methodologies and assumptions to estimate future baseline conditions concerning hydrology, water demand and surface water supply availability or reliability over the planning and implementation horizon:

(A) Projected hydrology shall utilize 50 years of historical precipitation, evapotranspiration, and streamflow information as the baseline condition for estimating future hydrology. The projected hydrology information shall also be applied as the baseline condition used to evaluate future scenarios of hydrologic uncertainty associated with projections of climate change and sea level rise.

(B) Projected water demand shall utilize the most recent land use, evapotranspiration, and crop coefficient information as the baseline condition for estimating future water demand. The projected water demand information shall also be applied as the baseline condition used to evaluate future scenarios of water demand uncertainty associated with projected changes in local land use planning, population growth, and climate.

(C) Projected surface water supply shall utilize the most recent water supply information as the baseline condition for estimating future surface water supply. The projected surface water supply shall also be applied as the baseline condition used to evaluate future scenarios of surface water supply availability and reliability as a function of the historical surface water supply identified in Section 354.18(c)(2)(A), and the projected changes in local land use planning, population growth, and climate.

(d) The Agency shall utilize the following information provided, as available, by the Department pursuant to Section 353.2, or other data of comparable quality, to develop the water budget:

(1) Historical water budget information for mean annual temperature, mean annual precipitation, water year type, and land use.

(2) Current water budget information for temperature, water year type, evapotranspiration, and land use.

(3) Projected water budget information for population, population growth, climate change, and sea level rise.”

GSP Regulations § 354.18 further requires:

(e) Each Plan shall rely on the best available information and best available science to quantify the water budget for the basin in order 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. If a numerical groundwater and surface water model is not used to quantify and evaluate the projected water budget conditions and the potential impacts to beneficial uses and users of groundwater, the Plan shall identify and describe an equally effective method, tool, or analytical model to evaluate projected water budget conditions.

(f) The Department shall provide the California Central Valley Groundwater-Surface Water Simulation Model (C2VSIM) and the Integrated Water Flow Model (IWFM) for use by Agencies in developing the water budget. Each Agency may choose to use a different groundwater and surface water model, pursuant to Section 352.4.”

GSP Regulations § 352.4 provides in relevant part that:

“(f) Groundwater and surface water models used for a Plan shall meet the following standards:

(1) The model shall include publicly available supporting documentation.

(2) The model shall be based on field or laboratory measurements, or equivalent methods that justify the selected values, and calibrated against site-specific field data.

(3) Groundwater and surface water models developed in support of a Plan after the effective date of these regulations shall consist of public domain open-source software.

(g) The Department may request data input and output files used by the Agency, as necessary. The Department may independently evaluate the appropriateness of model results relied upon by the Agency, and use that evaluation in the Department's assessment of the Plan.”

ii. Comments

Section 3.3.4.1. Water Budget Elements

- The GSP summarizes only selected prior recharge studies but fails to explain the basis for that selection. All relevant prior recharge studies should be listed and explained, including the USGS study referenced in the GSP.
- The GSP indicates that “*The location of all groundwater production wells in the IWV is shown in Figure 2-5.*” The location of NAWS China Lake wells is not depicted, which represents a significant data gap.
- As addressed earlier, the GSP acknowledges that data for domestic groundwater well production is limited, and IWVGA staff have recently reported that only a handful of domestic well owners have registered their wells. The GSP must address and fill this data gap particularly given the

GSP's stated emphasis on seeking to minimize impacts on shallow wells as a primary basis for sustainable management criteria.

- The GSP does not recognize Meadowbrook's water conservation efforts and reduced groundwater production in recent years as compared to its historical production. Rather, the GSP paints "Agricultural" groundwater use collectively as having recently expanded and that it is expected to expand further "unless restricted". The GSP must instead comply with the GSP Regulations with respect to current and future water budgets.
- The GSP fails to explain the relevance of the content regarding groundwater production by the IWVWD and domestic wells "to Navy-affiliated staff ... and their dependents that reside off-Station." That information is no more relevant than IWVWD production data for any of its other customers. The only apparent purpose for including this language seems to be an attempt to support the IWVGA's theory of an "extended" off-reservation federal reserved water right for the Navy. Meadowbrook and others have submitted multiple letters outlining the legal flaws in that theory. **Exhibits 30, 31, 32.**
- The GSP indicates that "water uses on NAWS China Lake include potable water for office buildings, laboratories, residences, and schools." The GSP does not evaluate or detail the Navy's current water use in the context of the Navy's primary purpose as defined by United States Supreme Court case law regarding federal reserved water rights.

Section 3.3.4.2. Historical Water Budgets

- The GSP Regulations require the GSP to include historical water budgets. As set forth above, GSP Regulation § 354.18(a), (b) and (c)(2) contain specific requirements for establishing the historical water budget.
- The GSP historical water budget fails to comply with GSP Regulation § 354.18.

Section 3.3.4.3 Current Water Budget

- The GSP Regulations require the GSP to include a current water budget. As set forth above, GSP Regulation § 354.18(a), (b) and (c)(1) contain specific requirements for establishing the current water budget.
- The GSP current water budget fails to comply with GSP Regulation 354.18.
- The “current water budget” information in the GSP baldly states that: *“In more recent years, agricultural water demands have increased resulting in higher groundwater extractions compared to the long-term average. Reductions in the ET occurring at China Lake Playa and subsurface flow to the Salt Wells Valley also require water balance adjustments.”* It then states without explanation that *“The current average estimated water budget for IWV is defined as the years 2011 to 2015 and is shown in Table 3-7.”*
- The GSP “current water budget” fails to quantify outflows from the groundwater system by water use sectors. Instead, it inappropriately singles out asserted trends in *“agricultural water demands”* and then, without explanation, describes a *“current water budget”* based on years 2011 to 2015.
- The GSP fails to quantify the change in annual volume of groundwater in storage between seasonal high conditions.
- The GSP fails to quantify the water year type associated with the annual supply, demand, and change in groundwater stored. This is particularly important considering that 2011-2015 included record drought years.
- The GSP fails to quantify current inflows and outflows for the basin using the most recent hydrology, water supply, water demand and land use information. Instead, it inexplicably identifies *“2011 – 2015”* as the *“current water budget”* years and does not show how this designation complies with GSP regulatory requirements.
- The GSP fails to use water years rather than calendar years.
- The GSP fails to explain or provide a quantification of overdraft over a period of years during which water year and water supply conditions approximate average conditions.

- The GSP fails to use current water budget information for temperature, water year type, evapotranspiration, and land use, in developing the water budget.
- The GSP fails to present the current water budget in both tabular and graphical form.

Projected Water Budgets – Not Addressed in the GSP

- GSP Regulations § 354.18 also require the GSP to quantify projected water budgets. GSP Regulations § 354.18(c)(3) details the type of information and assumptions to be used for projected water budgets, as set forth above.
- The GSP does not include projected water budgets as required by the GSP Regulations.
- The GSP instead “projects” water use broadly based on the unrevealed assumptions, projects and management actions of Model Scenario 6.2.
- The GSP’s “future baseline” condition modeling scenario does not comply with the required assumptions to be used in establishing projected water budgets under GSP Regulations § 354.18(c)(2)(A).

Section 3.3.5 Sustainable Yield

- Importantly, BMP SMC explains the “Role of Sustainable Yield Estimates in SGMA” as follows: “SGMA does not incorporate sustainable yield estimates directly into sustainable management criteria. **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.**” (p. 32, emphasis added.)
- The GSP’s use of the terms: “sustainable yield,” “Current Sustainable Yield,” and “Future Sustainable Yield” is both confusing and inconsistent with SGMA, the GSP Regulations and the BMP SMC. Neither SGMA nor the GSP Regulations define or distinguish between a “current” and “future” sustainable yield. Rather, a basin’s sustainable yield is intrinsically linked to avoiding specific, undesirable results. The GSP concept of “current” and “future” sustainable yield appears to be based primarily on total Basin

inflows and outflows, rather than an evaluation based upon sustainable management criteria or appropriately defined current and projected water budgets.

- The GSP conflates an “estimated long-term average natural recharge to the IWVGB” with “sustainable yield” and frequently refers to an objective of making “pumping equal to sustainable yield”. The primary problem is that using a basin-wide average recharge estimate fails to meet the definitional requirement of “operating within the sustainable yield” which inherently requires avoiding specifically and locally defined, quantified, technically- and legally-supportable *undesirable results*. Meadowbrook has submitted multiple letters to the IWVGA citing GSP regulatory requirements and DWR BMPs highlighting these and related issues, which have not been addressed.
- The GSP fails to explain the basis for the “*Artificial Recharge*” figure of 3,500AF and why that figure is considered an appropriate amount for the Basin.
- The GSP Recognizes a continuing loss of storage even after full implementation of Model Scenario 6.2, but fails to analyze that continuing loss in terms of avoiding undesirable results throughout the Basin.

Section 3.4. Current and Historical Groundwater Conditions and Hydrology

- GSP Regulations § 354.16 requires:

“Each Plan shall provide a description of current and historical groundwater conditions in the basin, including data from January 1, 2015, to current conditions, based on the best available information that includes the following:

- (b) A graph depicting estimates of the change in groundwater in storage, based on data, demonstrating the annual and cumulative change in the volume of groundwater in storage between seasonal high groundwater conditions, including the annual groundwater use and water year type.

(d) Groundwater quality issues that may affect the supply and beneficial uses of groundwater, including a description and map of the location of known groundwater contamination sites and plumes.

(e) The extent, cumulative total, and annual rate of land subsidence, including maps depicting total subsidence, utilizing data available from the Department, as specified in Section 353.2, or the best available information.

(g) Identification of groundwater dependent ecosystems within the basin, utilizing data available from the Department, as specified in Section 353.2, or the best available information.”

- The GSP fails to satisfy the requirements of GSP Regulations § 354.16.

Section 3.5.4 Baseline Conditions

- GSP Regulation §351(e) defines “baseline” or “baseline conditions” as: “**historic** information used to project future conditions for hydrology, water demand, and availability of surface water and to evaluate potential sustainable management practices of a basin.” GSP Regulation § 354.18 and related sections contain detailed requirements and assumptions to establish historic, current and future water budgets, as set forth above.
- The GSP does not comply with the GSP Regulations with respect to the “baseline” conditions used in Model Scenario 6.2 or the water budget.
- For example, the GSP established “baseline conditions” using the numerical model “*with the purpose of understanding future projected conditions if the GSP were not implemented ... under ‘no action’ conditions.*” This section describes using selective input data for precipitation, streamflow and recharge data, but does not explain how that information complies with the assumptions required for baseline and projected water budget information detailed in GSP Regulation § 354.18.
- As another example, this section indicates that “*historical groundwater extractions were evaluated for establishing future baseline pumping conditions. The most recent pumping data were used for the majority of groundwater producers.*”

Through stakeholder outreach efforts during the development of the baseline conditions, some agriculture representatives provided estimates to use for future conditions that reflected their projected water demands. Pumping was distributed monthly throughout each year with the peak months in the summer when irrigation needs are the greatest. The upper graph in Figure 3-22 shows the annual and cumulative pumping assumptions used for the baseline pumping.” These assumptions are not consistent with the requirements of the GSP Regulations, including but not limited to GSP Regulations §§ 351 and 354.18 which require, for example, that: **projected water budgets shall be used to estimate future baseline conditions** of supply, demand, and aquifer response to Plan implementation; the projected water budget must use specific **methodologies and assumptions to estimate future baseline conditions**; those specifics include using **50 years of historical precipitation, evapotranspiration, and streamflow information** as the baseline condition for estimating future hydrology, and the **most recent land use, evapotranspiration, and crop coefficient information** as the **baseline condition for estimating future water demand**.

- As described above, the GSP contains no section or analysis for projected water budgets.

Section 3.5.5. Numerical Model Scenario 6.2.

- GSP Regulation § 352.4 requires:

“(f) Groundwater and surface water models used for a Plan shall meet the following standards: (1) The model shall include **publicly available supporting documentation**. (2) The model shall be based on **field or laboratory measurements**, or equivalent methods that justify the selected values, and calibrated against site-specific field data. (3) Groundwater and surface water models developed in support of a Plan after the effective date of these regulations **shall consist of public domain open-source software**.”

- Section 3.5 memorializes that: *“The recalibrated model provides the historical water budgets and are the platform used for the SGMA simulations of baseline conditions and management scenarios. Model assumptions, construction, and performance are detailed in Appendix 3-H.”*

- The GSP fails to discuss, address or evaluate the merits of Model Scenarios 1, 2, 3, 4, 5, or 6.1.
- The GSP fails to mention that Model Scenarios 3, 4, 5, 6.1 and 6.2. received no prior input from the TAC, the TAC model ad hoc committee or the PAC prior to being presented to those committees and the public.
- As reflected in the Draft GSP Appendix, Model Scenario 6.2 was developed by the IWVGA Attorneys, the WRM and the Navy's modeling contractor in multiple iterations, all without any meaningful prior input from the PAC, TAC or the public. Model Scenario 6 results comprise the **foundation** for the GSP, including the sustainability goal, sustainable management criteria and projects and management actions.
- The GSP does not explain the close involvement of the Navy in developing the modeling scenarios. As reflected in the Navy's letter of November 7, 2018, the Navy agreed to transfer the model's "maintenance, further development, and configuration management to the IWV GA," but "with a condition of this transfer that the Navy shall be a participant of the model's configuration management process that oversees, recommends, and dispositions any changes to the model's capability and functionality." It reiterates that "The Navy shall be a participant of the model's configuration management process that oversees, recommends, and dispositions any changes to the model's capability and functionality." **Exhibit 38.**
- Detailed Model Scenario 6.2 assumptions have never been revealed to the PAC, TAC or the public. Meadowbrook has submitted multiple comments letters detailing the legal, technical, procedural and practical flaws in Model Scenario 6.2, which remain unresolved.
- The GSP provides "*a summary of the assumptions for Scenario 6.2.*" but fails to provide the detailed information necessary to comply with SGMA, the GSP Regulations and DWR Best Management Practices.
- The GSP summarizes the Model Scenario 6.2 assumptions for Management Action No. 1: Pumping Allocations as follows:
- "*Pumping: Allocations were assumed to begin February 2020 and were based on pumping history and the highest beneficial uses of groundwater.*" This fails to

explain: what the specific allocations were assumed for each pumper, including Meadowbrook; what information was used for “*pumping history*” and the criteria assumptions used for allocating according to “*highest beneficial uses*” of groundwater. Clearly, specific assumptions were made in assigning specific allocations to specific pumpers Model Scenario 6.2; however, neither the model documentation nor the GSP details what those assumptions are.

- “*Groundwater producers who did not continuously pump groundwater from 2010 to 2014 were assumed to cease pumping.*” This fails to explain: which specific groundwater producers were assumed to cease pumping; what data was used to determine whether and how much pumping occurred from 2010 to 2014.
- “*Domestic and municipal pumpers were assigned an allocation equivalent to their highest continuous annual pumping from 2010 to 2014.*” This fails to explain which producers were considered “*domestic and municipal pumpers*”; the pumping allocations assigned to those pumpers; the reason for using the “*highest continuous annual pumping*” amount rather than the lowest continual annual pumping; and what data was used to determine how much pumping occurred from 2010 to 2014.
- “*Pool Allocations: A pool of water was allocated for agricultural and industrial use.*” This fails to explain: why agricultural and industrial use is targeted for inclusion in the pool; the meaning of “*industrial use*”; which agricultural and industrial users specifically were included in the pool.
- “*Portions of the pool were allocated to agriculture and industrial groundwater producers based on historical irrigated acres and historical water use.*” This fails to explain: what the specific allocations were; what data was used to determine “*historical irrigated acres and historical water use*”; and the specific criteria used for those allocations; why the GSP inexplicably removes Searles Valley Minerals from the pool, and how the removal of Searles Valley Minerals from the pool impacts the Model Scenario 6.2 assumptions and results.
- “*Although these allocations could be used at the discretion of the groundwater producer, for modeling purposes, it was assumed that current pumping rates*

continued until the individual pool allocations were exhausted.” This fails to identify the assumptions used for “*current pumping rates*”. It also fails to consider or address the impact on modeling results if entities in the pool significantly reduce annual groundwater production rates.

- *“Lease Market: A lease market for unused groundwater allocations was assumed to be created driven by the relative economic value of the water to the users for modeling purposes, it was assumed possible sellers include some large agriculture, the IWVWD, and the City of Ridgecrest; possible buyers include some large agriculture and industrial users.”* This does not explain why this version of the GSP no longer includes a “*lease market*” and now instead expressly prohibits those in the pool from transferring their allocations to any entity other than to the IWVGA through the following program. The GSP fails to explain why Section 5 has removed the lease market concept, nor does it explain who made the decision to remove the transferability concept that was included in the model scenario.
- *“Project No. 1: Imported Water. Imported water used for groundwater replenishment is assumed to begin in 2035. Imported water is used to offset pumping over the sustainable yield of the IWVGB.”* This fails to explain which pumpers, in which quantities, and in what locations, production is offset by imported water.
- *Project No. 2: Recycled Water. Recycled water for direct non potable use and for injection is assumed to begin in 2025. Recycled water is assumed to be used by the City of Ridgecrest and Searles.* This fails to explain the specific quantities of recycled water assumed to be used by the City of Ridgecrest, Searles Valley Minerals, and other potential users, and over what period of time.
- *“Project No. 6: Pumping Optimization. Pumping was optimized to prevent additional lowering of groundwater levels near pumping depressions by redistributing pumping from the Southwest and Southeast regions of the IWVGB to the Northwest region where less pumping is anticipated over time. For the purposes of modeling, it was assumed that some of the IWVWD and Searles Valley Minerals pumping would be relocated.”* This fails to explain: the “*pumping depressions*” are referenced here; where, exactly Model Scenario 6.2. assumes IWVWD and Searles Valley Minerals pumping would be relocated; the quantity of that relocated production; the justification for removing

Meadowbrook from the very area that IWVWD and Searles Valley Minerals would be relocated, in terms of sustainable management criteria; how relocation of IWVWD pumping to the “Northwest region” complies with the terms of the publicly-referenced agreement between IWVWD and Mojave Pistachios that has been described to prohibit IWVWD from producing groundwater in that northwest area.

- “Growth: IWVWD groundwater pumping was assumed to increase by 1% annually.” This fails to explain the growth assumptions outside of the IWVWD service territory.
- The GSP fails to explain why 2070 basin total production of 14,000 AFY assumed in Model Scenario 6.2. has been reduced to 12,000 AFY in GSP Section 5.
- The GSP states at page 3-46 states that “Additional Scenario 6.2 water budgets at specific years are provided in Table 3-8.” Table 3-8 on page 3-27 does not provide that information.

Section 3.6. Existing Monitoring Network and Evaluation

- “The wells in the existing monitoring program have varying supporting data, with limited well log and construction data. Table 3-10 summarizes existing wells monitored for groundwater levels by different management areas within the IWVGB.” The GSP does not describe the “varying supporting data, with limited well log and construction data”. This represents a critical data gap.
- The reference to “management areas within the IWVGB” is confusing because the IWVGA has not considered or established management areas as defined by SGMA and the GSP Regulations.

e. MANAGEMENT AREAS

i. Applicable Regulatory Requirements and Best Management Practices

GSP Regulation § 351(r) defines a management area as:

“[A]n area within a basin for which the Plan may identify different minimum thresholds, measurable objectives, monitoring, or

projects and management actions based on differences in water use sector, water source type, geology, aquifer characteristics, or other factors.”

GSP Regulation § 354.20 further provides that:

“(a) Each Agency may define one or more management areas within a basin if the Agency has determined that creation of management areas will facilitate implementation of the Plan. Management areas may define different minimum thresholds and be operated to different measurable objectives than the basin at large, provided that undesirable results are defined consistently throughout the basin.

(b) A basin that includes one or more management areas shall describe the following in the Plan:

(1) The reason for the creation of each management area.

(2) The minimum thresholds and measurable objectives established for each management area, and an explanation of the rationale for selecting those values, if different from the basin at large.

(3) The level of monitoring and analysis appropriate for each management area.

(4) An explanation of how the management area can operate under different minimum thresholds and measurable objectives without causing undesirable results outside the management area, if applicable.

(c) If a Plan includes one or more management areas, the Plan shall include descriptions, maps, and other information required by this Subarticle sufficient to describe conditions in those areas.

ii. Comments

- The GSP fails to consider or establish management areas, despite requests by Meadowbrook and other stakeholders.

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- The GSP simultaneously seeks to improperly treat agriculture as a water use sector management area by forcing agricultural users into a temporary pool and through fallowing as described in Management Action No. 1.
- As noted in this letter, the USBR-6 monitoring site indicates that groundwater levels near Meadowbrook are already operating at the designated measurable objective. The GSP should but fails to consider establishing appropriate management areas to reflect important varying conditions throughout the Basin.

V. THE PLAN DOES NOT INCLUDE A REASONABLE ASSESSMENT OF OVERDRAFT CONDITIONS OR REASONABLE MEANS TO MITIGATE OVERDRAFT, IF PRESENT.

SGMA provides that:

For purposes of establishing undesirable results, “**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.” (Wat. Code § 10721(x)(1).)

SGMA Chapter 11 further provides, regarding State Intervention that:

“Condition of long-term overdraft” means the condition of a groundwater basin where the average annual amount of water extracted for a long-term period, generally 10 years or more, exceeds the long-term average annual supply of water to the basin, plus any temporary surplus. Overdraft during a period of drought is not sufficient to establish a condition of long-term overdraft if extractions and 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.” (Wat. Code 10735(a).)

Section 2.2.1. Setting

- This section states that: *“The IWVGB is designated Basin Number 6-054 by DWR and is included in DWR Bulletin No. 118 entitled “California’s Ground Water”, dated September 1975. Bulletin 118 noted that recharge in the IWVGB averaged about 10,000 acre-feet per year (AFY) while extractions (as of 1968) were about 12,500 AFY, implying that overdraft conditions have existed since at least the 1960s. DWR Bulletin 118 was updated in January 1980 and designated Bulletin 118-80. Table 8 of Bulletin 118-80 noted that there is evidence of*

groundwater overdraft in the IWVGB. Table 1 of Bulletin 118-16 (dated January 2016) indicates the IWVGB is subject to critical conditions of overdraft."

- These references reflect the fact that there is a wide range of estimates regarding the Basin's average annual native recharge, and that the actual rate of recharge varies and requires further evaluation, particularly for this GSP that places major emphasis on managing groundwater according to an estimated annual recharge figure without duly considering and establishing sustainable management criteria at each selected monitoring site.

Section 3.3.4.4. Overdraft Conditions

- The GSP frequently refers broadly to "pumping centers", "areas of depression", and areas of "declining water levels" but fails to consider and incorporate information and comments supplied by Meadowbrook indicating water levels and water quality at its production wells have shown stabilizing trends over recent years.
- The GSP mischaracterizes water level trends for USBR-6. The GSP indicates that USBR-6 "*demonstrate[s] significant prolonged groundwater level declines near pumping centers.*" In fact, that data indicates recent stabilizing trends, particularly in the shallow aquifer.
- The GSP cites three studies dated 1969, 1973 and 1993 regarding estimated groundwater in storage. Those estimates range from 1,020,000 AF to 3,020,000, and are based upon very different hydrogeologic assumptions. The GSP selects one of those studies without stated technical justification and estimates based upon rough pumping estimates, a total of 1,750,000 AF in storage.
- The GSP groundwater storage estimate represents a significant data gap. The GSP expressly recognizes "*a number of limitations and sources of uncertainty with these estimates*" but nonetheless places extreme emphasis on avoiding "*loss of storage*" as a primary management objective and even seeks to limit total agricultural production to a mere and one-time fraction of the total storage. The GSP offers no current analysis of the amount of water in storage. The GSP must use best available science and information. GSP Regulation § 354.14 require the hydrogeological conceptual model to

include extensive information pertaining to groundwater in storage, including information regarding the definable bottom of the basin, principal aquifers and aquitards, lateral basin boundaries, including major geologic features that significantly affect groundwater flow, and related technical information yielding reliable estimated groundwater in storage.

- Notwithstanding the GSP's recognition that the total available groundwater in storage represents a significant data gap, this section offers no additional information or plan to investigate the amount of water in storage.
- SkyTEM information and related, more current data indicates total Basin groundwater in storage could range as high as 6 to 8 million acre feet, or possibly more.

VI. THE PLAN DOES NOT CONSIDER THE INTERESTS OF THE BENEFICIAL USES AND USERS OF GROUNDWATER IN THE BASIN, OR THE LAND USES AND PROPERTY INTERESTS POTENTIALLY AFFECTED BY THE USE OF GROUNDWATER IN THE BASIN.

a. CONSIDERATION OF ALL BENEFICIAL USES AND USERS

i. Applicable Regulatory Requirements and Best Management Practices

SGMA requires Groundwater Sustainability Agencies to consider the interests of all beneficial uses and users of groundwater, specifically including “holders of overlying groundwater rights including agricultural users, including farmers, ranchers and dairy professionals.” (Wat. Code § 10723.2.)

ii. Comments

- The GSP fails to explain how it considered the interests of holders of overlying groundwater rights including agricultural users, including farmers, ranchers and dairy professionals, including Meadowbrook.
- The GSP Regulations governing sustainable management criteria include requirements to consider beneficial uses and users of water, as referenced above. The GSP fails to explain how it considered beneficial uses and users in the process of developing the sustainable management criteria.
- Records obtained through the Freedom of Information Act indicate that two of the “Big Three” voting member representatives of the IWVGA Board have **pre-determined** that the Navy will have “the main right on which all other allocations are based” and that determination will be based largely, if not primarily, on economic considerations rather than federal and state water rights laws and principles. An email among Navy representatives dated March 7, 2019 with the subject line “FRWR Request” reads as follows:

“After the TAC meeting, I was approached by [REDACTED], the IWVGA chair, and he is also requesting that the Navy provide the FRWR. He is also claiming that it needs to be the main right on which all other allocations are based. With two board members now calling for the FRWR, I further expect that the

request for that number **will be made public** at the next IWVGA Board meeting.

[REDACTED] and I will make sure to prepare a reply in advance of the meeting.

Additionally, after today's TAC meeting I was informed that a new proposal will be presented **during the IWV attorney meeting scheduled for tomorrow. In addition to examining the water rights subject, someone will also** be proposing examining the **economic impacts** that each major stakeholder has on the community **to determine allocation rights**. This is **very much predicated on the China Lake EIA brochures** that show we are the largest **economic driver** in the basin. I have [REDACTED].

V/r

[REDACTED]

Naval Air Weapons Station"

Exhibit 39.

- The reference "FRWR" refers to the federal reserved water right. This pre-determination is not consistent with the process outlined in Section 5 of the GSP, it suggests that the groundwater allocation ordinance process set forth in Section 5 of the GSP has already been determined without due process, and it may be in violation of the Brown Act and the Joint Powers Agreement. IWVGA counsel has already recognized Brown Act issues arising from the "Big Three" provisions of the Joint Powers Agreement when two of the "Big Three" representatives coordinate on matters outside of publicly noticed meetings. **Exhibit 36.**
- At the very least, this certainly evidences a failure to appropriately consider the interests of all beneficial uses and users, including agricultural users in the Indian Wells Valley.
- See additional comments below regarding apparent motivations and presumptions surrounding implementation of Management Action 1, and

the summary of comments made by IWVGA Board Members attached.
Exhibit 43.

Section 1.3. Beneficial Uses and Users

- This section states: *“The following beneficial users and uses have been identified in the IWVGB: Municipal, Domestic (De Minimis private wells owners and mutuals/co-ops), City/County, NAWS China Lake, Industrial, Large Agriculture, Small Agriculture, Environmental (including wildlife habitat and Groundwater Dependent Ecosystems)”*.
- This section does not address the existence or identify of other potential beneficial uses and users in the Basin.
- This section describes users but not uses of water.
- This section fails to describe the assumed beneficial uses of water by NAWS China Lake.
- This section fails to describe the assumed beneficial uses of water by *“Industrial”*.
- This section fails to explain the difference between Large and Small Agriculture.

b. CONSIDERATION OF LAND USES AND PROPERTY INTERESTS

i. Comments

- Prior to SGMA, Kern County attempted unsuccessfully to significantly alter zoning for Meadowbrook’s properties and other agricultural properties in the Basin. The SGMA process appears to be a continuation of Kern County’s efforts to eradicate agriculture from the Basin.
- The issues raised in this comment letter regarding Model Scenario 6.2., the intention to force agricultural users into a temporary pool, the aggressive timeline to implement the temporary pool and following, the fee structures presently imposed and to be imposed on agricultural users, all while elevating Navy interests and in spite of significant data gaps and lack of

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transparency, evidence failure of the GSP and the IWVGA to consider the land uses and property interests of Meadowbrook.

VII. THE PROJECTS AND MANAGEMENT ACTIONS ARE NOT DEMONSTRABLY FEASIBLE, NOT LIKELY TO PREVENT UNDESIRABLE RESULTS NOR ENSURE THAT THE BASIN IS OPERATED WITHIN ITS SUSTAINABLE YIELD; AND THE PLAN FAILS TO SHOW THAT THE AGENCY HAS THE LEGAL AUTHORITY AND FINANCIAL RESOURCES NECESSARY TO IMPLEMENT THE PLAN.

a. PROJECTS AND MANAGEMENT ACTIONS

i. Applicable Regulatory Requirements and Best Management Practices

GSP Regulation § 354.44 requires:

“(a) Each Plan shall include a description of the projects and management actions the Agency has determined will achieve the sustainability goal for the basin, including projects and management actions to respond to changing conditions in the basin.

(b) Each Plan shall include a description of the projects and management actions that include the following:

(1) A list of projects and management actions proposed in the Plan with a description of the measurable objective that is expected to benefit from the project or management action. The list shall include projects and management actions that may be utilized to meet interim milestones, the exceedance of minimum thresholds, or where undesirable results have occurred or are imminent. The Plan shall include the following:

(A) A description of the circumstances under which projects or management actions shall be implemented, the criteria that would trigger implementation and termination of projects or management actions, and the process by which the Agency shall determine that conditions requiring the implementation of particular projects or management actions have occurred.

(B) The process by which the Agency shall provide notice to the public and other agencies that the implementation of projects or management actions is being considered or has been implemented, including a description of the actions to be taken.

(2) If overdraft conditions are identified through the analysis required by Section 354.18, the Plan shall describe projects or management actions, including a quantification of demand reduction or other methods, for the mitigation of overdraft.

(3) A summary of the permitting and regulatory process required for each project and management action.

(4) The status of each project and management action, including a time-table for expected initiation and completion, and the accrual of expected benefits.

(5) An explanation of the benefits that are expected to be realized from the project or management action, and how those benefits will be evaluated.

(6) An explanation of how the project or management action will be accomplished. If the projects or management actions rely on water from outside the jurisdiction of the Agency, an explanation of the source and reliability of that water shall be included.

(7) A description of the legal authority required for each project and management action, and the basis for that authority within the Agency.

(8) A description of the estimated cost for each project and management action and a description of how the Agency plans to meet those costs.

(9) A description of the management of groundwater extractions and recharge to ensure that chronic lowering of groundwater levels or depletion of supply during periods of drought is offset by increases in groundwater levels or storage during other periods.

(c) Projects and management actions shall be supported by best available information and best available science.

(d) An Agency shall take into account the level of uncertainty associated with the basin setting when developing projects or management actions.”

GSP Regulation § 351 (al) further provides that:

“‘Water use sector’ refers to categories of water demand based on the general land uses to which the water is applied, including urban, industrial, agricultural, managed wetlands, managed recharge, and native vegetation.”

ii. Comments

Section 5.2.1 Management Action No. 1: Implement Annual Pumping Allocation Plan, Transient Pool and Fallowing Program

- As described earlier in this letter, it appears that two of the “Big Three” voting member representatives of the IWVGA Board have **pre-determined** that the Navy will have “the main right on which all other allocations are based” and that determination will be based largely, if not primarily, on economic considerations rather than federal and state water rights laws and principles.
- On February 22, 2019, the IWVGA Chair was reported to have stated publicly: “When the Navy came out formally and said 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.” **Exhibit 43.**
- On March 4, 2019, the Kern County representative of the IWVGA was reported to have stated publicly: “...I want the Navy and this community to understand that Kern County, all five supervisors, stand behind you. We will support the Navy and we will support this community in any vote that I make.” **Exhibit 43.**

- The content of the March 7, 2019 email [**Exhibit 39**] accurately predicted the positions taken by counsel for certain parties during the March 2019 attorney allocation meetings, as reflected in IWVGA special counsel's summary reports given to the IWVGA. The report for the meeting of March 8th indicates describes "a list of concepts and issues raised which could be presented to the Authority Board for consideration... 1. 1. There were proposed bases which have been presented 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. 2. 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.**" **Exhibit 34.**
- On March 8, 2019, the Kern County representative of the IWVGA was reported to have stated publicly: "All I know is from my perspective, it's [Navy encroachment letter] a game-changer. Because the strategic imperative is now changed. We need to preserve the Navy's mission in the Indian Wells Valley. And that has implications that dwarf other decisions...now that the letter has been released in my mind, it changes the over-arching strategy of what we are trying to do. **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. The way I read it [the letter], their federal reserve right will not just include the water that they are using on the base today but will include all the water required by all their employees and their families.**" **Exhibit 43.**
- Likewise, the attorney allocations meeting report of March 29, 2019 reflects continued entrenched efforts to deprioritize agriculture and elevate Navy interests in 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.” Exhibit 34.

- The Navy’s letter to the IWVGA dated June 17, 2019, attached to the GSP as Appendix 5-A, raises many questions that have not been addressed by the IWVGA, including questions contained in Meadowbrook’s prior comment letters and through many verbal comments at public IWVGA Board, PAC and TAC meetings that comprise the public record of the IWVGA.
- On October 1, 2019, the Kern County representative of the IWVGA was reported to have stated publicly: “I think we are on the very edge of getting that [IWVGA Groundwater Sustainability Plan] done. We need to get it done and get it moving. The satisfaction I will get from that 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.” **Exhibit 43.**
- By directive of the United States Office of the Under Secretary of Defense in memorandum entitled, “Water Rights and Water Resources Management on Department of Defense Installation and Ranges in the United States and Territories,” NAWS China Lake was ordered in May 2014 to gather and organize within six months of that memorandum, a “permanent record containing all existing documentation establishing its water rights ... [and] determine the amount of water used at each installation and range.” It was further directed to identify within one year all water sources, including those supplied on site and by third parties. **Exhibit 35.** Assuming NAWS China Lake complied with this directive, it would have gathered all such information and data by May 2015. The GSP fails to indicate whether and to what extent such information was requested, obtained, evaluated by the IWVGA and utilized in preparing the GSP.
- IWVGA staff has further evidenced a pre-determined intention to allocate Meadowbrook (and other agricultural groundwater users) ZERO acre-feet of the IWVGA’s estimated annual basin native supply. At the October 3,

2019 PAC and TAC meetings, the Water Resources Manager distributed to the PAC and TAC a document entitled, “Introduction to Sustainable Yield Allocation Chart” which rendered Meadowbrook a “0” allocation to produce groundwater from the native yield, would force Meadowbrook into a temporary pool—without due process or just compensation. **Exhibit 42.**

- That allocation chart, without citation to any supporting legal authority, would allocate nearly the entire IWVGA estimated annual basin recharge to the Navy, and relegate all agricultural water users including Meadowbrook to an unidentified and unquantified “Pool” that would require them to cease pumping once depleted (i.e. consistent with Management Action No. 1)—without due process or just compensation. The allocation chart is based upon other unrevealed though highly questionable and untenable legal theories and factual assumptions. See Meadowbrook’s addressing similar issues in Model Scenario 6, and related concerns. **Exhibits 30, 31, 32.**
- Management Action No. 1 is clearly built upon assumptions contained in Model Scenario 6.2. For example, this section indicates that the “*total allocations from Transient Pool are anticipated to be limited to no more than 51,000 acre feet.*” The GSP Appendix 3-H summarizes the Model Scenario 6 assumptions in the PowerPoint presentation slides contained in that section. Under “Scenario 6 Summary”, it states: “*Draft summary of concepts for Scenario 6 was developed in coordination with the Attorneys*”¹. “*Final model inputs provided to DRI after finalizing the summary of concepts with the Attorneys*”. “*Discussion of Scenario 6 results and goals with DRI.*” “*Second iteration of Scenario 6 (6.2) developed to further evaluate imported water requirement*”.
- Meadowbrook and many other parties have requested many times that the Model Scenario 6.2 assumptions and criteria be made publicly available, but the IWVGA has not released those details. **Exhibits, 30, 31, 32.**
- The GSP fails to identify The GSP fails to identify based upon best available science and information how much groundwater is in storage in the Basin.

¹ This refers only to attorneys for the IWVGA—neither counsel for Meadowbrook nor, to our knowledge, counsel for any other large producer, was consulted in the development of Model Scenario 6.2 (or Scenarios 3, 4, 5, or 6.1).

Preliminary estimates stated by the Water Resources Manager have ranged from approximately 1 million to nearly 2.5 million acre feet. Establishing a clear statement of total available groundwater in storage based upon best available science and information is essential to establishing a numerical minimum threshold for loss of storage as a sustainability indicator under SGMA and the DWR Regulations and BMPs.

- The GSP fails to identify based upon best available science and information how much usable groundwater is in storage in the Basin. Nor does the GSP state whether it deems all usable water usable for all purposes, or whether some water will be usable for some purposes (e.g. industrial) and not others (e.g. domestic).
- The GSP fails to explain or provide technical justification for the 51,000 AF figure proposed for the “Transient Pool”.
- The GSP fails to explain or provide technical justification for how a 51,000 AF Transient Pool management action satisfies SGMA’s requirements to avoid undesirable results in at specific monitoring sites.
- The GSP fails to explain or provide technical justification for why the Transient Pool was reduced from the amount proposed in prior IWVGA staff materials, or to explain the technical and legal basis for Kern County Counsel’s recent public comment that, if adjusted from Model Scenario 6.2., the Transient Pool figure would “only go lower”.
- The GSP is replete with references indicating that agricultural users will be relegated to the temporary pool, suggesting that no agricultural user will be allocated a permanent allocation to the native supply.
- The GSP allocation management action attempts to regulate groundwater users according water use sectors without defining water use sectors.
- The November 2019 Draft GSP contained provisions that transient pool allocations would be transferable. The GSP has inexplicably removed those transferability provisions. Please state the reasons for removing the transferability provisions.

- Water Code Section 10726.2 authorizes an Agency to acquire real and personal property rights by grant, purchase, lease, contract, etc., or to provide for a program of **voluntary** fallowing of agricultural lands, it does **not** authorize an Agency to force agricultural fallowing or to take property rights without due process and just compensation.
- Any taking of Meadowbrook’s property rights—including water rights—requires due process and just compensation. If the IWVGA or the Navy considers “taking” property or water rights to be necessary in order for the Navy’s mission to be sustained, that will require due process and just compensation. Management Action No. 1 and the projected \$9 million fallowing program do not satisfy the constitutional and statutory requirements.
- The allocation ordinance process described in Management Action No. 1 indicates that the IWVGA will assign allocations based upon its evaluation of water rights, priorities and other factors. IWVGA attorneys have already indicated in the October 2019 “Sustainable Yield Allocation Chart” their position that the Navy has a federal reserved water right that could exceed the entire average basin recharge, citing the June 2019 letter from the Navy as a basis for that assertion. The “extended” federal reserved water right concept is not based on established case law. How then, can any producer, especially Meadowbrook, expect to receive a fair, factual and legally-supported process and determination of an allocation for Meadowbrook when that determination will be based on recommendations made presumably by the same IWVGA staff that produced the October 2019 allocation chart and two of the “Big Three” voting representatives of the IWVGA Board who have pre-determined that the Navy will have “the main right on which all other allocations are based” and that determination will be based largely, if not primarily, on economic considerations rather than federal and state water rights laws and principles?
- The GSP does not explain how imposition of an allocation framework will satisfy SGMA and the Regulations’ requirements to avoid **specific undesirable results**.

- The discussion in this section regarding a Navy federal reserved water right and other water right priorities and interests is a legal argument, and highlights the due process concern identified above.
- The GSP fails to explain how IWVGA member agencies that produce groundwater will participate in the allocation ordinance process, and how conflict of interest does not arise for those agencies to make determinations of their own allocations.
- The GSP fails to explain whether the IWVGA intends to recognize an allocation for the Navy in the amount of 2,041 AF in accordance with the Navy's prior request, and if so, to provide any justification for doing so when the Navy's June 2019 letter indicates a much lower current Navy demand on the base at approximately 1,450 AFY. Section 2.7.3.3. indicates that *"In October 2018, the Navy estimated its short-term future water needs on the installation to be approximately 2,041 AFY, which includes a 25% increase in current water use."* A 25% increase over 1,450 AFY is closer to 1,800 AFY.
- The GSP fails to explain whether, when or how the IWVGA has ever questioned or objectively evaluated the merit of using a 2,041 AF figure for a Navy allocation, and if so, to provide the justification for doing so.
- GSP Section 1.4. Agency Information states: *"A large portion of the lands overlying the northern and northeastern portion of the IWVGB is Federal property owned and managed by the U.S. Navy for NAWS China Lake (see Section 2.2.2). NAWS China Lake consists of two major land areas: the North Range, encompassing 606,926 acres, and the South Range, encompassing 503,510 acres. The North Range lies in portions of Inyo, Kern, and San Bernardino counties and the South Range is located entirely within San Bernardino County. Mainsite and Headquarters areas, which are in the southern boundary of the North Range, adjoin the City of Ridgecrest on the south. The NAWS China Lake laboratories and ranges support the Navy's Research, Development, Acquisition, Test, and Evaluation (RDAT&E) of cutting-edge weapons systems critical to national defense and create over 9,900 direct, indirect, and induced jobs within the region."* The GSP fails to identify the source of this information, including whether it was derived from the Navy economic materials referenced in the March 7, 2019 email referenced above. The GSP fails to indicate whether it has evaluated the extent to which NAWS China Lake operations in the North and South

Ranges, respectively, rely upon the IWVGB as a source of water supply, whether NAWS China Lake operations in the North Range draw water from sources other than the IWVGB, whether NAWS China Lake operations in the South Range draw water from sources other than the IWVGB, whether NAWS China Lake operations in either the North or South Ranges have access to water supplies other than the IWVGB, such as from other groundwater basins, whether the GSP assumptions regarding Navy water demands include NAWS China Lake operations for the entirety of North and South Ranges, or whether the GSP evaluated potential sources of water supply for the Navy beyond the IWV Basin.

- The GSP indication that imposing Management Action No. 1 will result in *“rising groundwater levels”* in certain areas, particularly North Brown Road, is evidence that the management action overreaches, especially where the cost of that action is the unlawful taking of extensive agricultural property and water rights in the Indian Wells Valley.
- The Draft GSP fails to address how applications for new groundwater production in the Basin will be addressed.
- The Draft GSP fails to address CEQA and NEPA requirements for Management Action No. 1 and for all other Projects and Management Actions. Section 1.1 states: *“The proposed projects and management actions will need to be fully developed and/or designed after adoption of the GSP. These projects and management actions may be required to comply with environmental compliance regulations, including the preparation of CEQA and/or National Environmental Policy Act (NEPA) reviews before they are implemented.”* This could dramatically impact implementation and should have been at least preliminarily evaluated in the GSP document.
- The Draft GSP fails to explain the basis for the \$9 million figure for the *“Following Program”*. It also fails to answer Meadowbrook’s question if that figure is in any way based upon the IWVGA’s prior appraisal of Meadowbrook property which was performed without prior notice to Meadowbrook.
- The GSP fails to explain whether the \$9 million figure is based upon stripping Agriculture of groundwater production rights before *“taking”* the

properties, or the basis for determining whether that \$9 million figure is adequate.

- The GSP cites often (and often exclusively) to Water Code § 10725.2(a), which states “A groundwater sustainability agency may perform any act necessary or proper to carry out the purposes of this part.” This section does not, however, authorize the IWVGA to perform acts that contravene SGMA, including implementing projects and management actions that are not supported by sustainable management criteria based upon best available science and information or that fail to comply with other substantive and procedural requirements imposed by SGMA and the GSP Regulations. Nor does it authorize an Agency to violate the constitutional prohibition of taking without due process and just compensation.
- The GSP fails to explain how Management Action No. 1 would be affected or modified when further study reveals a significantly greater volume of groundwater in storage, a higher annual average natural recharge, or other potentially significant changes to the Model Scenario 6.2. assumptions and criteria.
- In any allocation process, Meadowbrook is entitled to and must receive a permanent allocation. Meadowbrook has already indicated many times a willingness to “ramp down”—even significantly—in order to achieve sustainability. Sustainability must be in accordance with SGMA, however, and not based upon politically-driven decision making devoid of best available science and information.

Section 5.3.1 Project No. 1: Develop Imported Water Supply

- Development of an imported water supply is critically important to achieving Basin sustainability.
- Further details regarding the nature, scope, costs, funding and impacts of an imported water supply must be developed and considered, including publicly.
- The imported water project should be vetted thoroughly before implementing other significant groundwater management actions that

would significantly impact existing beneficial uses and users of groundwater.

- After properly establishing minimum thresholds and other sustainable management criteria, the IWVGA can evaluate potential necessary mitigation programs while developing, evaluating and vetting the imported water project.

Section 5.3.2 Project No. 2: Optimize Use of Recycled Water

- Maximizing available recycled water is critically important to achieving Basin sustainability.
- Further details regarding the nature, scope, costs, funding and impacts of potential recycled water projects must be developed and considered, including publicly.
- The recycled water projects should be vetted thoroughly before implementing other significant groundwater management actions that would significantly impact existing beneficial uses and users of groundwater.
- After properly establishing minimum thresholds and other sustainable management criteria, the IWVGA can evaluate potential necessary mitigation programs while developing, evaluating and vetting recycled water projects.
- The GSP indicates the IWVGA would pay for feasibility studies and infrastructure to fund Searles Valley Minerals—a private entity—retrofitting to use recycled or brackish water. The GSP fails to specify the source of those funds or the authority for or justification of that concept. The GSP fails to explain whether the IWVGA would use fees generated by private pumpers it seeks to eradicate from the Basin to fund studies and projects specifically to benefit other private pumpers that it determines should not be eradicated, and how doing so would not comprise an improper gift of public funds.
- The GSP fails to indicate a similar willingness on the part of the IWVGA to reach out to other private pumpers, like Meadowbrook, to discuss potential

conservation measures, feasibility studies, and the use of potential alternative supplies, as it suggests doing for Searles Valley Minerals.

Section 5.3.3 Project No. 3: Basin-wide Conservation Efforts

- Maximizing water conservation is critically important to achieving Basin sustainability.
- Further details regarding the nature, scope, costs, funding and impacts of water conservation programs must be developed and considered, including publicly.
- The water conservation programs should be vetted thoroughly before implementing other significant groundwater management actions that would significantly impact existing beneficial uses and users of groundwater.
- After properly establishing minimum thresholds and other sustainable management criteria, the IWVGA can evaluate potential necessary mitigation programs while developing, evaluating and vetting conservation programs water projects.
- The IWVGA should consider all feasible conservation measures, both voluntary and mandatory, for all uses and users of groundwater. The GSP currently and improperly targets agricultural users by forcing them into a one-time use temporary pool while simultaneously imposing no mandatory or voluntary conservation measures on other uses and users of groundwater. This represents a failure to consider all beneficial uses and users of groundwater.
- The GSP indicates the IWVGA would pay for feasibility studies and infrastructure to fund Searles Valley Minerals—a private entity—retrofitting to use recycled or brackish water. The GSP fails to specify the source of those funds. The GSP fails to explain whether the IWVGA would use fees generated by private pumpers it seeks to eradicate from the Basin to fund studies and projects specifically to benefit other private pumpers that it determines should not be eradicated, and how doing so would not comprise an improper gift of public funds.

- The GSP fails to indicate a similar willingness on the part of the IWVGA to reach out to other private pumpers, like Meadowbrook, to discuss potential conservation measures, feasibility studies, and the use of potential alternative supplies, as it suggests doing for Searles Valley Minerals.

Section 5.3.4 Project No. 4: Shallow Well Mitigation Program

- As Meadowbrook has previously indicated, the IWVGA should develop a shallow well mitigation plan based upon best available science and information, *before* considering imposing any significant pumping limitations. By contrast, the GSP seeks to impose the harsh Management Action No. 1 allocation and fallowing process before implementing the shallow well mitigation program.
- The GSP reference to “*financial hardships*” fails to acknowledge the economic impacts to agricultural users who stand to face tens if not hundreds of millions of dollars in impact that would result from the Projects and Management Actions.
- The GSP fails to explain or demonstrate specifically whether, when or how Meadowbrook’s groundwater production impairs any specific shallow wells. The IWVGA has not and cannot answer this question. Yet, the IWVGA still proposes forcing Meadowbrook into a temporary pool and ultimately forcing it out of business, while requiring no conservation from the Indian Wells Valley Water District and other well owners it intends to “protect”, only to then move the Indian Wells Valley Water District and potentially other large producers to the very place that Meadowbrook has operated for decades!

Section 5.3.5 Project No. 5: Dust Control Mitigation Program

- The GSP fails to explain the basis for the \$19 million figure for “*Dust Mitigation*”, and why the GSP deems dust mitigation more important and to be funded more than double that of fallowing.
- It is worth noting that “dust control” has been a primary focus of the written comments submitted to the IWVGA by the TAC member appointed by the Kern County representative of the IWVGA Board. **Exhibit 37.**

Section 5.3.6 Project No. 6: Pumping Optimization Project

- The GSP fails to identify which existing groundwater wells the Indian Wells Valley Water District or any other entity would utilize in the North Brown Road area in Modeling Scenario 6.2, or alternatively, where new wells would be drilled.
- The GSP fails to identify which wells cease operating, and when, under Modeling Scenario 6.2.
- The GSP fails to identify which wells continue operating, and at what levels of groundwater production, under Modeling Scenario 6.2.
- The GSP fails to explain the basis for the \$23 million figure for “*Pumping Optimization*”.

Section 5.4 Conceptual Projects Still Under Consideration

- As a participating member of the Brackish Water Group, Meadowbrook supports the further evaluation of brackish water supplies.
- The potential use of brackish water supplies by the entities noted in the GSP in lieu of groundwater should be vetted and considered *before* considering imposing any significant pumping limitations.

Section 6.2 Schedule for Implementation

- The aggressive, prescriptive nature of the Draft GSP leaves little room for adaptive management as required by SGMA.
- The GSP fails, for example, to consider how the sustainable management criteria and projects and management actions should be adjusted when the IWVGA recognizes new and more accurate data for groundwater in storage, potential future additional conservation by Meadowbrook and other producers, the introduction of brackish water supplies, and other projects and management actions not yet sufficiently evaluated.

**b. LEGAL AUTHORITY AND FINANCIAL RESOURCES
NECESSARY TO IMPLEMENT THE PLAN**

**i. Applicable Regulatory Requirements and Best Management
Practices**

SGMA Chapters 5 and 8 outline the powers and authorities of Groundwater Sustainability Agencies.

GSP Regulation § 354.6(d),(e) requires that a GSP must include: the legal authority of the Agency, with specific reference to citations setting forth the duties, powers, and responsibilities of the Agency, demonstrating that the Agency has the legal authority to implement the Plan, and an estimate of the cost of implementing the Plan and a general description of how the Agency plans to meet those costs.

ii. Comments

Section 6.3.1 Implementation Costs

- See detailed comments on Section 5 above, regarding issues pertaining to GSP implementation costs for specific projects and management actions.

Section 6.3.2 Potential Funding Sources

- The IWVGA has severe current and projected funding gaps, as noted at recent IWVGA Board meetings.
- The Draft GSP identifies potential project capital costs in excess of \$350 million, and potential annual costs in nearly of \$10 million. The GSP provides insufficient detail on how those costs will be funded, including how they might impact the various beneficial users of groundwater.
- The GSP fails to provide an estimated range of the contemplated “Administration Fees”, “Mitigation Fees” or “Augmentation Fees”. An estimate of the potential GSP implementation fees is critical to inform stakeholders regarding GSP impacts.
- The GSP fails to note that the current \$30/acre fee is among the highest, if not the highest, GSP-development fee in California, notwithstanding

IWVGA's receipt of over \$1.5 million in grant funding. It also fails to note that the fee was imposed over the strenuous objection of many parties who submitted extensive comment letters into the record. See Meadowbrook comment letters attached as **Exhibits 25, 26, 27**.

- Meadowbrook is supportive of the IWVGA seeking and exhausting all potential sources of federal, state and local grant funding and related financing, in order to minimize acute local cost impacts.
- The IWVGA must comply with California Constitutional and statutory requirements in implementing any fees under Water Code 10730.2.

VIII. THE IWVGA HAS NOT RESPONDED TO COMMENTS THAT RAISE CREDIBLE TECHNICAL OR POLICY ISSUES WITH THE PLAN.

i. Applicable Regulatory Requirements and Best Management Practices.

GSP Regulation § 354.10. requires:

“Each Plan shall include a summary of information relating to notification and communication by the Agency with other agencies and interested parties including the following:

(a) A description of the beneficial uses and users of groundwater in the basin, including the land uses and property interests potentially affected by the use of groundwater in the basin, the types of parties representing those interests, and the nature of consultation with those parties.

(b) A list of public meetings at which the Plan was discussed or considered by the Agency.

(c) Comments regarding the Plan received by the Agency and a summary of any responses by the Agency.

(d) A communication section of the Plan that includes the following: (1) An explanation of the Agency's decision-making process. (2) Identification of opportunities for public engagement and a discussion of how public input and response will be used. (3) A description of how the Agency encourages the active involvement of diverse social, cultural, and economic elements of the population within the basin. (4) The method the Agency shall follow to inform the public about progress implementing the Plan, including the status of projects and actions.”

ii. Comments

Section 1.4.1. Organization and Management Structure of the IWVGA

- The GSP does not mention that the 17-month-long formation process of the IWVGA was highly controversial. During the early stages of the formation

of the IWVGA Joint Powers Authority, The Meadowbrook Mutual Water Company engaged in good faith to participate as a board member in collaboration with the other IWVGA member agencies. Those efforts were met with stiff resistance from most of the member agencies, particularly Kern County and the City of Ridgecrest. Meadowbrook submitted multiple comment letters to each of the IWVGA member agencies on this matter.

Exhibits 1 – 9.

- This section states in part that: *“In addition, the Board members representing the County of Kern, the City of Ridgecrest, and the Indian Wells Valley Water District are considered principal voters. That is, no Board action may be approved by the Board unless it receives the affirmative vote from no less than two (2) of the Board members representing the County of Kern, the City of Ridgecrest, and/or the Indian Wells Valley Water District. The U.S. Navy and the BLM hold two Associate Member positions that have a representative non-voting seat on the Board. Although they do not have the power to vote on any Board action or proposal, the Associate Members’ position entitles them to full participation in public Board meetings and discussions.”*
- The GSP fails to indicate whether the Navy or BLM representatives attended or participated in any closed session meetings of the IWVGA Board.
- The GSP indicates that *“All IWVGA Board meetings are held in accordance with the Ralph M. Brown Act, set forth in the California Government Code sections 54950, et seq.”* but does not mention the IWVGA board member “pre-meeting” practices that were deemed by counsel to be in violation of the Brown Act when pumping fees were being considered. **Exhibit 36.**

Section 1.4.2.1. Policy Advisory Committee (PAC)

- This section indicates that *“The Board established an eleven-person, voting-member Policy Advisory Committee (PAC) to advise the Board on all policy-related matters of the Board and to develop non-binding proposals on policy matters pertaining to the GSP.”*
- As memorialized in many comment letters and verbal comments on the record by Meadowbrook representatives and others, despite

Meadowbrook’s significant efforts to persuade the IWVGA to establish the PAC and obtain representation on the PAC, the PAC was only rarely engaged in the manner required by the IWVGA Bylaws. **Exhibits 11- 21, 24-29.**

Section 1.4.2.2. Technical Advisory Committee (TAC)

- This section indicates that *“The Board also established a Technical Advisory Committee (TAC) for the express purpose of giving interested parties a reasonable opportunity to review and conduct a thorough evaluation of each technical element of the GSP prior to its finalization by the WRM ... The WRM sets the agenda of each TAC meeting so that each technical element of the GSP is presented to the TAC, in draft, to afford the TAC a reasonable opportunity to review and conduct a thorough evaluation of each element.”*
- The IWVGA Bylaws require that the TAC “will assist the Water Resources Manager in the preparation of the GSP and will work collaboratively with other committees of the Board.” (Bylaws, Section 5.11.) The Bylaws also require that “The Water Resources Manager shall attend and set the agenda of each TAC meeting so that each technical element of the GSP is presented to the TAC, in draft, to afford the TAC a reasonable opportunity to review and conduct a thorough evaluation prior to finalization of that technical element.”
- In actuality, the TAC was largely deprived of the opportunity to review each technical element of the GSP in draft and was most frequently deprived of a reasonable opportunity to review and conduct a thorough evaluation prior to finalization of each technical element. The IWVGA Board, PAC and TAC meeting minutes, videos, reports and summaries are replete with comments memorializing this significant substantive and procedural failure. Those failures ranged from, for example, almost always distributing substantive materials to the TAC and PAC only minutes before their actual meetings, to completely bypassing the TAC and PAC in the development of Model Scenarios 3, 4, 5, 6.1 and 6.2.
- Meadowbrook made a concerted effort to assist in the productive development of the GSP, including proposing schedules, timeframes and administrative processes to assist the PAC and TAC in developing the

technical and policy aspects of the GSP. Nonetheless, for well over a year, the TAC and PAC were given no meaningful direction from the IWVGA, and became bogged down, at no fault of their own, in administrative and procedural challenges. **Exhibits 24, 28, 29.**

- The GSP acknowledges that “As stated in Article 5.12 of the IWVGA By-Laws, TAC members must have a formal education and experience in a groundwater-related field while also maintaining an understanding of the technical aspects of the IWVGB or similar basins in California.” The GSP fails to note, however, that the IWVGA Board did not adhere to this requirement in all cases. As one example, the Kern County representative to the IWVGA Board nominated a TAC member that did not meet the requisite criteria of Bylaws Article 5.12. The Kern County representative disclosed having a financial, employer/employee relationship with that TAC representative and then abstained from voting to approve of the resolution appointing that individual to the TAC due to a conflict of interest. The IWVGA June 2019 meeting minutes memorialize this process. **Exhibit 34.**

GSP Appendix

- The Appendix includes two comment letters previously submitted by the Navy. The Appendix does not list, attach or reference even one of the many detailed comment letters submitted by Meadowbrook and other parties. **Exhibits 1-32.**

IX. CONCLUSION

Meadowbrook recognizes and appreciates the challenge presented by SGMA. In achieving Basin sustainability, SGMA and the GSP Regulations require GSAs to comply with substantive, technical and procedural requirements. In haste to meet the January 31, 2020 GSP submission deadline, the IWVGA has, unfortunately, failed to meet the statutory and regulatory requirements for the GSP. These deficiencies render the GSP subject DWR rejection, and ultimately State Water Board intervention.

The GSP deficiencies outlined in this letter, in prior Meadowbrook letters and in the many comments submitted by other parties, can and must be corrected.

GSP Regulation § 353.10 provides:

“An Agency may withdraw a Plan at any time by providing written notice to the Department, and may amend a Plan at any time pursuant to the requirements of Section 355.10.”

GSP Regulation § 355.10. further provides:

“(b) An Agency may amend a Plan at any time, and submit the amended Plan to the Department for evaluation pursuant to the requirements of this Subchapter.

(c) The Department shall evaluate the amended portions of the Plan and any new information that is relevant to the amendments or other Plan elements. Portions of the Plan that have not been amended will not be evaluated unless the Department determines the proposed amendment may result in changed conditions to other areas or to other aspects of the Plan.

(d)(1) An amended Plan that has been submitted, but not yet approved by the Department, shall be evaluated during the initial evaluation period, in accordance with Sections 355.2 and 355.4.”

The IWVGA’s ultimate objectives must be SGMA compliance and avoiding State Water Board intervention. In light of the many GSP deficiencies outlined in this letter and in comments submitted by other parties, Meadowbrook urges the IWVGA to continue to engage the PAC, TAC and other stakeholders in

IWVGA Board, Water Resources Manager and Staff

Re: *Indian Wells Valley Groundwater Authority Groundwater Sustainability Plan December 2019 Public Review Draft – Meadowbrook Dairy Comments*

January 8, 2020

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correcting those deficiencies before implementing any significant projects and management actions or imposing new fees. This process must include developing and evaluating appropriate sustainable management criteria, alternative projects and management actions and modeling scenarios to achieve Basin sustainability in accordance with SGMA, the GSP Regulations and DWR Best Management Practices.

Finally, any allocation of native Basin groundwater supplies must include a permanent allocation for Meadowbrook.

Very truly yours,



Derek R. Hoffman, Attorney for
GRESHAM SAVAGE
NOLAN & TILDEN,
A Professional Corporation

DRH:mdd

Enclosures

cc: E. Teasdale
Client

MEADOWBROOK DAIRY

EXHIBIT LIST

TAB	DESCRIPTION	DATE
1.	Letter re Indian Wells Valley Groundwater Sustainability Agency	January 12, 2016
2.	Letter re Indian Wells Valley Groundwater Sustainability Agency	January 25, 2016
3.	Letter re Indian Wells Valley Groundwater Sustainability Agency	April 15, 2016
4.	Letter re Request to Join Indian Wells Valley Groundwater Cooperative Groundwater Management Group	June 17, 2016
5.	Letter re Proposed Joint Exercise of Powers Agreement Creating the Indian Wells Valley Groundwater Authority [I WVWD Board of Directors]	July 11, 2016
6.	Letter re Proposed Joint Exercise of Powers Agreement Creating the Indian Wells Valley Groundwater Authority [San Bernardino County Board and Chief Executive Officers]	July 11, 2016
7.	Letter re Proposed Joint Exercise of Powers Agreement Creating the Indian Wells Valley Groundwater Authority [Inyo County Board of Supervisors and Water Department Directors]	July 11, 2016
8.	Letter re July 19, 2016 Board of Supervisors Meeting, Agenda Item 19 – Proposed Joint Exercise of Powers Agreement Creating the Indian Wells Valley Groundwater Authority [Kern County Board of Supervisors and County of Kern]	July 18, 2016
9.	Letter re August 3, 2016 City of Ridgecrest City Council Meeting, Agenda Items 5 and 6 – Proposed Joint Exercise of Powers Agreement Creating the Indian Wells Valley Groundwater Authority [City Council and City of Ridgecrest]	August 2, 2016
10.	Letter re October 20, 2016 Indian Wells Valley Groundwater Authority Board Meeting Agenda Item 6 – Policy and Technical Advisory Committees	October 19, 2016
11.	Letter re October 20, 2016 Indian Wells Valley Groundwater Authority Board Meeting Agenda Item 5 – Minutes of September Board Meeting	October 19, 2016
12.	Letter re Meadowbrook Representative on Technical Advisory Committee	November 11, 2016
13.	Letter re November 17, 2016 Board Meeting	November 16, 2016
14.	Letter re February 16, 2017 IWVGA Board Meeting Agenda Item 7 – IWVGA Bylaws with Revised Policy Advisory Committee Composition	February 15, 2017
15.	Letter re Indian Wells Valley Groundwater Authority Proposed Bylaws [Inyo County Board of Supervisors]	March 8, 2017
16.	Letter re Indian Wells Valley Groundwater Authority Proposed Bylaws [San Bernardino County Board of Supervisors]	March 8, 2017

MEADOWBROOK DAIRY

EXHIBIT LIST

TAB	DESCRIPTION	DATE
17.	Letter re Indian Wells Valley Groundwater Authority Proposed Bylaws [Indian Wells Valley Water District]	March 8, 2017
18.	Letter re Indian Wells Valley Groundwater Authority Proposed Bylaws [City of Ridgecrest City Council]	March 8, 2017
19.	Letter re March 15, 2017 Ridgecrest City Council Meeting, Agenda Item 11 – Indian Wells Valley Groundwater Authority Proposed Bylaws	March 15, 2017
20.	Letter re March 16, 2017 IWVGA Board Meeting Agenda Items 6 and 7 – IWVGA Bylaws and PAC Charter	March 16, 2017
21.	Letter re Policy Advisory Committee Meeting	June 29, 2017
22.	Letter re Urgent Agenda Item for July 20, 2017, Board meeting to Timely Secure Millions of Dollars in Grant Funding for SGMA Implementation in the Indian Wells Valley	July 11, 2017
23.	Letter re IWVGA October 19, 2017 Board Meeting Agenda Item 9.a. Comments Regarding Draft Proposition 1 Grant Funding Application	October 17, 2017
24.	Letter re Indian Wells Valley Technical Advisory Committee Potential Action Schedule January 18, 2018 IWVGA Board Meeting – Agenda Item 8	January 16, 2018
25.	Letter re IWVGA March 15, 2018 Board Meeting – Agenda Item 10: Pumping Fees	March 14, 2018
26.	Letter re IWVGA April 5, 2018 Workshop – Meadowbrook Dairy Comment Letter on Proposed Water Code Section 10730 Fee	April 4, 2018
27.	Letter re IWVGA May 17, 2018 Board Meeting – Meadowbrook Dairy Comment Letter on Agenda Item 7 Regarding Proposed Groundwater Fee Ordinance and Resolution	May 16, 2018
28.	Letter re IWVGA PAC and TAC May 31, 2018 Meetings – Proposed PAC/TAC Procedures	May 30, 2018
29.	Letter re IWVGA June 21, 2018 Board Meeting – Meadowbrook Dairy Comment Letter on Agenda Items 10 and 11 Regarding PAC/TAC Procedures and TAC Report	June 20, 2018
30.	Letter re Meadowbrook Dairy Comments on PAC Task Questions for August 7, 2019 Special PAC Meeting	August 6, 2019
31.	Letter re Meadowbrook Comments – GSP Draft Sustainability Goal Language	October 15, 2019
32.	Letter re Meadowbrook PAC Member Comments on November 4, 2019 Draft GSP	November 15, 2019
33.	Navy - PFAS Report August 2017	August 31, 2017
34.	Report from March 8 and March 29, 2019 Meetings on IWVGWA Allocations Plan	April 1, 2019

MEADOWBROOK DAIRY

EXHIBIT LIST

TAB	DESCRIPTION	DATE
35.	DOD Memo re Water Rights and Water Resource Management on DoD Installations	May 23,2014
36.	The News Review - Attorney: GA 'crossed the line' Groundwater committee addresses Brown Act Violation	July 30, 2018
37.	IWVGA Meeting Minutes June 20, 2019	June 20, 2019
38.	Navy letter re IWVGWA Groundwater Model	November 7, 2018
39.	Navy correspondence re allocations	March 7, 2019
40.	GSP Figure 4-5e	December 2019 GSP Public Review Draft
41.	GSP Table 4-5	December 2019 GSP Public Review Draft
42.	IWVGA Staff Introduction to Sustainable Yield Allocation Chart	October 2019
43.	Public Comments Made by IWVGA Board Members summary and articles	Various dates

EXHIBIT 1

January 12, 2016

VIA OVERNIGHT MAIL and EMAIL board@co.kern.ca.us
(Courtesy Hand Delivery)

Kern County Board of Supervisors
1115 Truxtun Avenue, Fifth Floor
Bakersfield, CA 93301

Re: *Indian Wells Valley Groundwater Sustainability Agency*

To the Members of the Board of Supervisors for the County of Kern:

This firm represents Meadowbrook Dairy and Meadowbrook Mutual Water Company ("Meadowbrook"), one of the largest agricultural groundwater producers in the Indian Wells Valley ("Valley"). Meadowbrook owns approximately 1600 acres of land within the Indian Wells Valley, most of which has been used to grow alfalfa since the 1970s. Recently, in the development of the Indian Wells Valley Land Use Management Plan, Meadowbrook graciously agreed that approximately 300 acres of its Valley land could be down-zoned out of agriculture, at the County's request.

Meadowbrook has deep roots and a vested interest in the Valley, and particularly in the Indian Wells Valley Groundwater Basin ("Basin"). As a steward of the Basin's water supply for nearly half a century, Meadowbrook is keenly aware of the Basin's importance to the local economy and to the well-being of the County and its residents.

Meadowbrook recognizes the importance of the County's leadership in organizing a Groundwater Sustainability Agency ("GSA") for the Basin as required by the Sustainable Groundwater Management Act of 2014 ("SGMA"). Both Meadowbrook's principals and members of this law firm have attended several meetings of what has been casually referred to as "GSA-eligible entities" regarding plans for the formation of an Indian Wells Valley GSA.

While we are optimistic that the SGMA process will ultimately yield an effective long-term Groundwater Sustainability Plan (“GSP”) for the Basin, we also recognize that only a broadly representative GSA will be successful and accomplish that statutorily mandated objective.

The California legislature agrees.

In September 2015, California *Water Code* Section 10723.6 (part of SGMA) was amended by California Senate Bill 13 (“SB 13”), specifically to provide that both water corporations regulated by the California Public Utilities Commission (“PUC”) and mutual water companies are entitled to fully participate in the SGMA process as members of a GSA. Also in September 2015, Senator Pavley, who authored SB 13, as well as one of the three companion bills that collectively comprise SGMA, wrote a letter to the Senate explaining the purpose and intent of SB 13. Her letter states, in part, that:

“Section 10723.6 (b) is intended to prevent local agencies from excluding PUC-regulated water corporations from an executive management role in a GSA, to give these regulated public water suppliers the authority necessary to fully participate in a GSA and to clarify that public agency approval is not necessary.”

She continues:

“Indeed, for many years, the Sacramento Groundwater Authority has successfully managed groundwater resources in the region through a joint powers authority whose members have long included PUC-regulated water corporations.”

The principles outlined by Senator Pavley apply equally to PUC-regulated water corporations and mutual water companies alike, as reflected by the statutory text of Senate Bill 13, which treats both types of entities in the exact same way. Senator Pavley also clarifies that these entities are eligible to hold board member positions on a GSA formed through a joint powers authority (“JPA”) and do not require the permission of public agencies to do so.

By way of example, Senator Pavley mentions the Sacramento Groundwater Authority, which is a JPA that includes both PUC-regulated water corporations

and multiple mutual water companies as members of its Board of Directors.

Notably, the Sacramento Groundwater Authority recently filed a Notice of Intent to Form a GSA which, once established, will provide a helpful precedent for GSAs which have been formed as JPAs, and which include both PUC-regulated water corporations and multiple mutual water companies as its members.

As an eligible board member of any prospective Indian Wells Valley GSA, Meadowbrook Mutual Water Company wishes to go on record as asserting its right to fully participate in the GSA formation and implementation processes.

We are aware that several GSA-formation meetings and conference calls have been held among ostensibly "GSA-eligible entities," from which Meadowbrook has been excluded. It is our understanding that the next such conference call is scheduled to take place this Thursday, January 14th at 9:30am. Meadowbrook respectfully requests that the County provide us with the call-in information for this Thursday's call so that Meadowbrook and its counsel may participate. Meadowbrook also respectfully requests the locations, dates and times for all subsequent meetings and conference calls among truly GSA-eligible entities.

On behalf of Meadowbrook, we look forward to partnering with the County and with other truly GSA-eligible entities in carrying out SGMA's objectives for the Indian Wells Valley Groundwater Basin, beginning with the formation of a broadly representative GSA.

Very truly yours,



Mark A. Ostoich, of
GRESHAM SAVAGE
NOLAN & TILDEN,
A Professional Corporation

MAO/MDD/DRH

cc: Kern County Counsel

EXHIBIT 2

January 25, 2016

VIA EMAIL

Supervisor Mick Gleason, County of Kern
Ala Christensen, County of Kern
Supervisor Matt Kingsley, County of Inyo
Bob Harrington, Ph. D, Inyo County Water department
Supervisor Robert Lovingood, County of San Bernardino
Ron Frame, County of San Bernardino
Bob Page, County of San Bernardino
Mayor Peggy Breeden, City of Ridgecrest
Director Peter E. Brown, Indian Wells Water District
Director Charles D. Griffin, Indian Wells Water District
Don Zdeba, Indian Wells Water District
Michael Stoner, U.S. Navy

Re: *Indian Wells Valley Groundwater Sustainability Agency*

To the Members of the Board of Supervisors for the County of Kern:

This letter is written on behalf of our clients, Meadowbrook Dairy and Meadowbrook Mutual Water Company ("Meadowbrook"). As one of the largest agricultural groundwater producers with overlying groundwater rights in the Indian Wells Valley ("Valley"), Meadowbrook has a vested interest in the long-term management of the Indian Wells Valley Groundwater Basin ("Basin").

Over the past several weeks, Meadowbrook has attended the hearings of several public agencies and working groups in the Valley regarding the implementation of the Sustainable Groundwater Management Act of 2014 ("SGMA"), and particularly the formation of a Groundwater Sustainability Agency ("GSA") for the Basin. Frequently heard comments suggest that there is uncertainty and confusion regarding the rights of private stakeholders like mutual water companies to fully participate in a GSA, including a GSA that is formed as a Joint Powers Authority ("JPA").

We remain optimistic that the SGMA process will ultimately yield an effective long-term Groundwater Sustainability Plan for the Basin, because the California legislature has recognized that only a broadly representative GSA will be successful and accomplish the statutorily mandated objectives.

In September 2015, California Senate Bill 13 ("SB 13") amended California *Water Code* Section 10723.6 (part of SGMA) specifically to provide that both water corporations regulated by the California Public Utilities Commission ("PUC") and mutual water companies are entitled to fully participate in the SGMA process as members of a GSA. At that time, Senator Pavley, who authored SB 13 as well as one of the three companion bills that comprise SGMA, wrote a letter to the Senate explaining the purpose and intent of SB 13. Her letter states, in part, that:

"[Water Code] Section 10723.6 (b) is intended to prevent local agencies from excluding PUC-regulated water corporations from an executive management role in a GSA, to give these regulated public water suppliers the authority necessary to fully participate in a GSA and to clarify that public agency approval is not necessary."

She continues:

"Indeed, for many years, the Sacramento Groundwater Authority has successfully managed groundwater resources in the region through a joint powers authority whose members have long included PUC-regulated water corporations."

The principles outlined by Senator Pavley apply equally to mutual water companies and PUC-regulated water corporations alike, as shown in the statutory text of SB 13, which treats both types of entities in the exact same way and removes language from *Water Code* Section 10723.6(b) that had previously required local agencies' approval. In fact, the Sacramento Groundwater Authority that Senator Pavley refers to is a JPA that includes both mutual water companies and private water users, as well as PUC-regulated water corporations, as voting members of its Board of Directors.

Notably, the Sacramento Groundwater Authority has already filed its Notice of Intent to Form a GSA and will be deemed the exclusive GSA for its area upon the close of business today. Other JPAs also exist that include mutual water companies with voting powers as board members.

In short, Senator Pavley clarifies that mutual water companies are eligible to hold

board member positions on a GSA formed through a JPA and that they do not require the permission of public agencies to do so. Both her letter and the structure of the Sacramento Groundwater Authority reflect “best practices” principles for managing groundwater. They are also consistent with the JPA law, including California *Government Code* Section 6525, which provides in relevant part that:

“(a) Notwithstanding any other provision of this chapter, a mutual water company may enter into a joint powers agreement with any public agency for the purpose of jointly exercising any power common to the contracting parties.

(c) For purposes of this section, “mutual water company” has the same meaning as the term does in Section 14300 of the Corporations Code.”

On behalf of Meadowbrook, we are concerned by the rapid pace at which Kern County is expressly determining whether to exclude all mutual water companies from holding board member positions on the GSA, as reflected in Agenda Item 23 and the accompanying resolution proposed for adoption at the Kern County Board of Supervisors’ Regular Meeting this Tuesday, January 26, 2016.

Kern County Counsel recently rejected our written request to participate in the GSA-formation meetings and conference calls being held exclusively among representatives of ostensibly “GSA-eligible” public entities. At the very least, counsel for each public agency, the large mutual water companies and other large private groundwater stakeholders in the Valley, must have a meaningful dialogue about the formation and structure of the GSA before any official action is taken in that regard.

We therefore urge the Kern County Board of Supervisors to refrain from adopting any resolution pertaining to the structure of the proposed Indian Wells Valley GSA until after those discussions have taken place. We likewise urge all public agencies seeking to participate in the GSA to engage in the same dialogue before adopting such resolutions or further directing staff regarding GSA matters.

As an eligible board member of any prospective Indian Wells Valley GSA, Meadowbrook Mutual Water Company is eager to join with the County and with

Kern County Board of Supervisors
Re: Indian Wells Valley Groundwater Sustainability Agency
January 25, 2016
Page 4

other truly GSA-eligible entities implementing SGMA for the Basin, beginning with the formation of a broadly representative GSA.

Very truly yours,



Mark A. Ostoich, of
GRESHAM SAVAGE
NOLAN & TILDEN,
A Professional Corporation

MAO/MDD/DRH

cc: Kern County Board of Supervisors clerkofboard@co.kern.ca.us
Theresa Goldner tgoldner@co.kern.ca.us
Rod Stiefvater RodS@RTSAgribus.com
Paul Nugent nugentag@gmail.com
Antonio Rossman ar@landwatwer.com
Anthony Brown anthony.brown@aquilogic.com
Tim Parker tim@pg-tim.com
Tom Bunn, Esq. TomBunn@lagerlof.com

EXHIBIT 3

April 15, 2016

VIA EMAIL

Supervisor Mick Gleason, County of Kern
Supervisor Matt Kingsley, County of Inyo
Supervisor Robert Lovingood, County of San Bernardino
Mayor Peggy Breeden, City of Ridgecrest
Director Peter E. Brown, Indian Wells Valley Water District
Director Charles D. Griffin, Indian Wells Valley Water District
Alan Christensen, County of Kern
Ron Frame, County of San Bernardino
Bob Harrington, Ph. D, Inyo County Water Department
Bob Page, County of San Bernardino
Michael Stoner, U.S. Navy
Don Zdeba, Indian Wells Water District

Re: *Indian Wells Valley Groundwater Sustainability Agency*

To the above representatives of public agencies situated within the Indian Wells Valley ("Valley"):

On behalf of our clients, Meadowbrook Dairy and Meadowbrook Mutual Water Company ("Meadowbrook"), we wish to address a number of concerns regarding the process by which the Groundwater Sustainability Agency ("GSA") is being developed for the Indian Wells Valley.

Our office has appeared for several months before the governing boards and other representatives of various public agencies in the Valley, including those of Kern County, Inyo County, San Bernardino County, the City of Ridgecrest, and the Indian Wells Valley Water District, in an effort to secure meaningful participation for Meadowbrook in the GSA formation and Groundwater Sustainability Plan ("GSP") development processes. We have also attended many meetings of the Indian Wells Valley Cooperative Groundwater Management Group and the "open" meetings of the self-described "GSA Eligible Agencies" (like that of today's date), and we have reached out to counsel and other public agency representatives to host conference calls and request meetings.

Kern County Counsel has repeatedly declined our requests to participate in the monthly GSA formation meetings and conference calls. Written letters and appearances at public meetings have been Meadowbrook's primary means of expressing its views and protecting its interests.

At the early stages of this process, much of the discussion focused on the potential membership of the GSA Board of Directors. Kern County representatives were presented with a proposed draft Joint Powers Agreement that was prepared by Mojave Mutual Water Company ("Mojave"), which Meadowbrook supported in concept, and which would have included broad representation of stakeholder interests on the GSA Board. Kern County rejected that proposal.

In an effort to identify a potentially viable alternative for Meadowbrook, Mojave, Searles Valley Minerals ("Searles") and other private well owners to meaningfully participate in the GSA, we collectively explored the concept of a "Groundwater Sustainability Plan Development Committee" ("GSP Development Committee"). The primary function of which is to develop GSP proposals for the GSA Board's approval, and to participate in the implementation of the GSP.

During the course of negotiating the GSP Development Committee concept, Meadowbrook came to believe that the GSP Development Committee could in fact provide a legitimate and sufficient means for its meaningful participation in the GSA. Kern County representatives assured us repeatedly that the GSA would provide for meaningful participation for Meadowbrook, Mojave and Searles.

Working collectively with Mojave and Searles, we made what appeared to be significant progress with representatives of the various "GSA Eligible Agencies" on a GSP Development Committee concept outline. Kern County Counsel presented a February 9, 2016 version of the concept outline to the Kern County Board of Supervisors, and the Indian Wells Valley Water District subsequently approved a motion in March supporting essentially the same version, in which Meadowbrook, Mojave and Searles were specifically identified as members of the GSP Development Committee.

Since early March, however, we have come to learn that Kern County representatives appear to be driving the proposed GSP Development Committee concept in reverse, pushing for changes that would effectively negate the many months of negotiations and discussions. Recent information even suggests that large private interests like Meadowbrook, Mojave and Searles would not only be potentially excluded from the

GSP Development Committee, but that the Committee would be nothing more than a mere advisory committee with no role in *developing* the GSP—the very purpose for which the Committee has been proposed from the beginning.

The March 3, 2016 and March 18, 2016 meeting notes of the closed “GSA Eligible Agencies” monthly meetings, which are posted (usually a month late) on the Kern County website, suggest a fundamental disconnect regarding the GSP Development Committee concept, with an intent to potentially exclude Meadowbrook from any GSA participation, let alone meaningful participation as we have been promised for months.

According to the March 3, 2016 “GSA Eligible Agency” meeting notes published on the Kern County website, Kern County representatives stated:

“It is optimistic to hope that MWCs will agree to be on a Development Committee that is not actually developing the GSP”

“Vision is that GSA staff will prepare a draft GSP”

“Formulation will lie with the staff and not Development committee”

“GSP Development Committee is really Citizen’s Advisory Committee”

“GSA selects members”

As reflected in those same meeting notes, Indian Wells Valley Water District representatives rightly observed:

“Note that we are backing away from GSP Development Committee in terms of what MWCs thought it was”

“MWCs see themselves as active participant in development of the GSP”

Even representatives of the City of Ridgecrest acknowledged Kern County representatives’ extreme change in direction:

“Looks like we are backing away from listening and honoring what MWCs are requesting - in terms of membership”

It further appears that while seeking to fundamentally change the GSP Development

Committee concept, without benefit of any public knowledge or participation, Kern County representatives have no intention of negotiating further with Meadowbrook, Mojave and Searles. Meeting notes from the March 18, 2016 “GSA Eligible Agencies” meeting state that *“Kern County suggested that this group should not discuss further the GSP Development Committee concept until after JPA is formed – the City agreed”*.

We are also informed that a draft Joint Powers Authority agreement is nearing completion, but our repeated requests for a copy of the most current version have gone unanswered. Based on the March 3, 2016 version—now six weeks out of date—the language in Section 7.04 regarding “Committees of the Board” provides no reasonable assurances of the viability, role, longevity, or composition of the GSP Development Committee.

Instead, the March 3, 2016 JPA draft reflects an intent to relegate any GSP Development Committee details to the GSA Bylaws, which itself raises other concerns that we have repeatedly expressed. In fact, Kern County Counsel recently stated that the bylaws could simply be amended when the “Development Committee’s role ‘morphs,’” suggesting that the GSA might ultimately eradicate the GSP Development Committee—or what is left of it.

As memorialized in a March 5, 2016 article in *The Daily Independent*, Ridgecrest City Attorney Mr. Keith Lemieux reviewed a then recent Kern County Grand Jury Report entitled, “Hidden Governments, Joint Powers Authorities in California.” The report specifically highlights the lack of transparency in Joint Powers Authorities within Kern County. Mr. Lemieux is quoted saying that “the City has taken to heart their comments about transparency and we will assure that that is adhered to, as is required by law.” He is further quoted stating that “I would propose that we agree with their commitment to transparency and that we will take these comments to heart when we are crafting the new joint powers agreement that we are considering.”

From Meadowbrook’s perspective, the process of the GSA formation for the Indian Wells Valley over the last six months has been anything but transparent. Meadowbrook—one of the largest and oldest pumpers in the Valley—has approached this process in good faith, endeavoring to explore the GSP Development Committee as a potentially viable avenue for securing meaningful participation in the management of the Valley’s groundwater resources. In return, Meadowbrook is being systematically relegated to a back seat in the GSA development process.

From a legal standpoint, the Sustainable Groundwater Management Act ("SGMA"), as amended by California Senate Bill 13 (2015), provides that mutual water companies are entitled to fully participate in the SGMA process. Senator Pavley, who authored Senate Bill 13, explained that it is intended to prevent local agencies from excluding mutual water companies and regulated water corporations from participating in GSAs at an executive management level.

We appreciate that Kern County and other "GSA Eligible Agencies" have committed to involve Meadowbrook, Mojave and Searles, as well as other stakeholders, in the GSP Development Committee; however, we cannot ignore the troubling comments that have recently been made by certain agency representatives. We trust that each of the "GSA Eligible Agencies" will remain fully committed to completing the GSP Development Committee framework consistent with the spirit of our negotiations over the past months, and to providing for truly meaningful participation for Meadowbrook, Mojave and Searles on the GSP Development Committee and in implementing the GSP that it will develop.

We remain eager to work with stakeholders in developing meaningful solutions to the groundwater management issues confronting the Indian Wells Valley.

Very truly yours,



Mark A. Ostoich, of
GRESHAM SAVAGE
NOLAN & TILDEN,
A Professional Corporation

MAO/MDD/DRH

cc: Kern County Board of Supervisors
Theresa Goldner tgoldner@co.kern.ca.us
Rod Stiefvater RodS@RTSAgribus.com
Paul Nugent nugentag@gmail.com
Antonio Rossman ar@landwatwer.com
Anthony Brown anthony.brown@aquilogic.com
Tim Parker tim@pg-tim.com
Tom Bunn, Esq. TomBunn@lagerlof.com
Client

EXHIBIT 4

June 17, 2016

VIA EMAIL AND U.S. MAIL

Indian Wells Valley Cooperative Groundwater Management Group
500 West Ridgecrest Blvd.
P.O. Box 1329
Ridgecrest, CA 93555

Re: Request to Join Indian Wells Valley Cooperative
Groundwater Management Group

Dear Ms. Thomas:

On behalf of behalf of our clients, Meadowbrook ("Meadowbrook"), please accept this letter as a request to join and become a signatory of the Indian Wells Valley Cooperative Groundwater Management Group. Meadowbrook is one of the largest and oldest pumpers in the Indian Wells Valley ("Valley").

Please contact me at your convenience to discuss the foregoing.

Sincerely,



Michael Duane Davis, of
GRESHAM SAVAGE
NOLAN & TILDEN,
A Professional Corporation

MDD:JES

cc: U.S. Bureau of Land Management
City of Ridgecrest
County of Kern – Board of Supervisors 1st District
Eastern Kern County Resources Conservation District
Indian Wells Valley Water District
Inyokern Community Services District
Kern County Water Agency
Naval Air Weapons Station Environmental Project Office
Searles Valley Minerals

EXHIBIT 5

July 11, 2016

VIA EMAIL

The Board of Directors of the Indian Wells Valley Water District
Don Zdeba, General Manager

Re: *Proposed Joint Exercise of Powers Agreement Creating the Indian Wells Valley
Groundwater Authority*

To the members of the Board of Directors ("Board") of the Indian Wells Valley
Water District ("District"):

On behalf of our clients, Meadowbrook Dairy and Meadowbrook Mutual
Water Company ("Meadowbrook"), we urge this Board not to adopt the proposed
"*Joint Exercise of Powers Agreement Creating the Indian Wells Valley Groundwater
Authority*" ("Joint Powers Agreement") in its current form as presented on the agenda
of the District's July 11, 2016 Board meeting.

Instead, we request that the District demonstrate leadership among the
prospective JPA public agency members by requiring that the Joint Powers Agreement
clearly and specifically establish the specific provisions that will provide "meaningful
participation" for Meadowbrook and other private pumpers in the Joint Powers
Agreement itself. We recognize and appreciate the District's recent efforts to define
"meaningful participation" for Meadowbrook and other private pumpers, and we
believe this can be accomplished with minimal revisions to the Joint Powers
Agreement that would reflect the "Groundwater Sustainability Plan Development
Committee Conceptual Outline" that the Board approved in March as part of
Resolution No. 16-03.

Under the Sustainable Groundwater Management Act ("SGMA"), a
Groundwater Sustainability Agency ("GSAs") for the Indian Wells Valley ("Valley")
does not need to be formed until June 30, 2017. There is plenty of time to adopt a
minimally revised Joint Powers Agreement that sets forth the basic membership,
functions and duties of private pumpers on a clearly defined "GSP Development
Committee," and then establish the GSA. On behalf of Meadowbrook, we ask that the
Board resolve to incorporate into the Joint Powers Agreement the revisions reflected in
the partial redline enclosed with this letter as "Attachment "A".

Since 1910

Concerns with the Proposed Joint Powers Agreement

Based on our experience over the past several months, and on the current language of Section 7.04 of the Joint Powers Agreement (entitled "Committees of the Board"), neither Meadowbrook nor any other private pumper has any reasonable assurance that they will have participation on a committee of the Joint Powers Authority; or that it will, in fact, afford meaningful participation in the development and implementation of the Groundwater Sustainability Plan ("GSP"). Instead, we are informed by the unanimously-approved minutes of the closed "GSA-Eligible Agencies" meetings that, according to Kern County representatives, the "*Vision is that GSA staff will prepare a draft GSP,*" that "*Formulation will lie with staff and not [a] Development committee,*" and that a "*GSP Development Committee is really Citizen's Advisory Committee.*" ("GSA Eligible Agency" meeting notes of March 3, 2016 posted on Kern County Website.)

Those alarming statements lead to only one inescapable conclusion, that Kern County, and possibly other prospective GSA members, has no intention of legitimately including Meadowbrook or other private pumpers in the GSP development and implementation processes. Regrettably, it is becoming increasingly likely that the only way for private pumpers to meaningfully participate in the process of achieving sustainability for the Indian Wells Valley Groundwater Basin ("Basin") under SGMA might be through litigation.

Meadowbrook is one of the largest and oldest pumpers in the Valley with well-established overlying rights to groundwater. As such, it is in the best interests of all groundwater users in the Basin to include Meadowbrook in the process of achieving the shared objective of long-term Basin sustainability. Indeed, regarding the development of GSPs, Kern County Counsel stated during the June 7, 2016 Board of Supervisors Meeting, that:

"If we want to avoid costly litigation over the assumptions and the outcomes of the GSPs, it truly behooves the County to ensure that GSPs are impartially developed to ensure meeting the needs of all water users in the basin, which is what SGMA demands. Any less of a result, even in perception only, will result in years of litigation that would stagnate economic development in the County." (Emphasis added).

At that same meeting, Supervisor Mick Gleason stated: "My main theme is fair representation of people in the white space," and that he is ""interested in developing

trusting relationships in all elements of the GSP.”

In light of these statements regarding SGMA implementation on the West side of Kern County, we cannot fathom why Kern County would take a contrary approach here in this Valley. The Joint Powers Agreement must establish the basic membership, functions and duties of a GSP Development Committee in order to more clearly define “meaningful participation” for private pumpers, including Meadowbrook, domestic well owners and others. Instead, the current proposed Joint Powers Agreement has entirely removed the language in an earlier draft that referred to the establishment of a “groundwater sustainability plan development committee.”

Under the Joint Powers Agreement as written, a nebulous, Joint Powers Authority Board-appointed committee (which, according to Section 7.04 could apparently be dissolved “at any time” through “a vote” of the JPA Board) does not “ensure that [the] GSP [will be] impartially developed to ensure meeting the needs of all water users in the basin,” nor does it engender “trusting relationships in all elements of the GSP.”

Accountability for Stakeholder Inclusion Under SGMA

As we have stated for months, SGMA was amended by California Senate Bill 13 to clarify that mutual water companies are entitled to fully participate in the SGMA process. The author of Senate Bill 13 further explained that it is intended to prevent local agencies from excluding mutual water companies and regulated water corporations from participating in GSAs at an executive management level. The term “GSA Eligible Agencies” was a misnomer from the beginning and been perpetually misconstrued as a way to justify excluding Meadowbrook and other similar entities from participating in the GSA formation process in the Valley.

SGMA requires GSAs to consider the interests of beneficial uses and users of groundwater. Those “interests” specifically include holders of overlying groundwater rights such as agricultural users, domestic well owners, public water systems, local land use planning agencies, and others. (Water Code § 10723.2.) When submitting its notice of intent to become a GSA to the California Department of Water Resources (“DWR”), the prospective Indian Wells Valley Groundwater Authority will be required to explain how those very “interests will be considered in the development and operation of the groundwater sustainability agency and the development and implementation of the agency’s sustainability plan.” (Water Code § 10723.8(a)(4).) The prospective Indian Wells Valley Groundwater Authority will also be required to

submit with that notice a copy of the Joint Powers Agreement, any bylaws or ordinances of the Authority, service area maps, and other materials.

By clearly establishing a GSP Development Committee in the Joint Powers Agreement consistent with our proposed revisions, the Indian Wells Valley Groundwater Authority can satisfy those legal requirements, which will be triggered and then due just thirty (30) days after deciding to become a GSA. (Water Code § 10723.8(a).)

SGMA also requires GSAs to maintain a list of “persons interested in receiving notices regarding plan preparation, meeting announcements, and availability of draft plans, maps, and other relevant documents.” (Water Code. § 10723.4.) If Kern County, and by extension the GSA, sees the “committee or committees” described in the second paragraph of Section 7.04 of the proposed Joint Powers Agreement (regarding “meaningful participation”) as a mere “citizen’s advisory committee(s)” comprised of “interested persons,” then such committees will have no legitimate voice in the development or implementation of the GSP.

The SGMA language quoted above suggests that “interested persons” are merely informed of decisions that have already been made by the GSA, such as the “availability of draft plans.” Meadowbrook is obviously much more than a mere “interested person”—it is one of the largest private pumpers in the Basin and has been for decades!

Accountability for Stakeholder Inclusion Under the GSP Regulations

On June 8-9, 2016, Associate Director and Managing Senior Mediator with the Center for Collaborative Policy (“CPC”), Dave Ceppos, delivered a presentation at a conference of the Groundwater Resources Association of California. As you know, DWR contracted with the CPC to provide facilitators, including Dale Schaefer, to assist with SGMA implementation throughout California. The subject of the June conference was “Developing Groundwater Sustainability Plans for Success.” Mr. Ceppos’ presentation was entitled, “Stakeholder Engagement, Administrative Approaches and Lessons Learned,” during which he made the following statements:

- “Being collaborative will get you across the finish line; not being collaborative will not get you there.”
- “To you water agencies: the ‘junk-yard dog’ is not the right way to go

here. Junk yard dogs may be useful elsewhere, but not for SGMA implementation.”

- Emphasizing the importance of establishing “authentic” roles for stakeholders, he stated that “while the Brown Act does not require everything to be done in public until the GSA is formed, you must strike a balance with that and you will be held accountable for that under the GSP Regulations.”
- He described the level of accountability for public involvement in the GSP development and implementation process as being “much higher than CEQA involvement. You must show *how* you engaged them, and it must be *meaningful*. It’s a higher standard than you are used to.”
- Regarding the use of committees, he stated, “being too exclusive will make you pay later. It is better to involve people *now*, even if it’s large, than exclude them and pay the negative consequences.”

Mr. Ceppos is correct that GSAs will be held accountable for the manner in which they involve stakeholders in the development and implementation of GSPs. The Department of Water Resources’ recently adopted “GSP Regulations” (Cal. Code Regs. Tit. 23, Div. 2, Ch. 1.5, Sub Ch. 2, approved by the California Water Commission on May 18, 2016) establish the requirements for GSPs and the standards by which GSPs will be evaluated for approval by DWR. Section 354.10 of the GSP Regulations, entitled “Notice and Communication,” within the Article entitled “Plan Contents” provides as follows:

“Each Plan shall include a summary of information relating to notification and communication by the Agency with other agencies and interested parties including the following:

(a) A description of the **beneficial uses and users of groundwater** in the basin, including the land uses and property interests potentially affected by the use of groundwater in the basin, the types of parties representing those interests, **and the nature of consultation with those parties.**

(b) A list of public meetings at which the Plan was discussed or considered by the Agency.

(c) Comments regarding the Plan received by the Agency and a summary of any responses by the Agency.

(d) A **communication section of the Plan** that includes the following:

- (1) An explanation of the Agency's **decision-making process.**
- (2) Identification of **opportunities for public engagement and a discussion of how public input and response will be used.**
- (3) A description of **how the Agency encourages the active involvement of diverse social, cultural, and economic elements of the population within the basin.**
- (4) The method the Agency shall follow to inform the public about progress implementing the Plan, including the status of projects and actions." (Emphasis added.)

Both the GSP Regulations and Mr. Ceppos' experience and sound practical guidance demand a well-defined GSP Development Committee in the proposed Joint Powers Agreement.

Other Joint Powers Authorities, GSAs and Management Structures Provide Meaningful Representation of Private Pumpers.

In response to both SGMA's mandates and good policy of broad stakeholder involvement, representatives of the various prospective GSA public agency members in this Valley were presented back in January 2016 with a proposed draft Joint Powers Agreement prepared by Mojave Mutual Water Company ("Mojave"), that included broad representation of stakeholder interests on the GSA Board. Kern County, however, rejected that proposal.

Nevertheless, there are many examples of joint powers authorities managing groundwater basins throughout California that have agricultural representatives, small domestic well owner representatives and mutual water company representatives on their boards of directors. We have identified examples many times in public hearings and prior comment letters over the past six months, such as the Sacramento Groundwater Authority and the Sacramento Central Groundwater Authority, to name a couple.

In addition to those examples, there are similar broadly-representative groundwater management authorities and GSAs in California that are responsible for managing other basins deemed by DWR to be in a **condition of critical overdraft**. The Fox Canyon Groundwater Management Agency ("Fox Canyon"), for example, is a GSA managing Bulletin 118 Basin Numbers 4-4.02 (Oxnard) and 4-5 (Pleasant Valley) with a five-member board comprising representatives of: (1) the County of Ventura; (2) the United Water Conservation District; (3) a group of seven small water districts

and **mutual water companies**; (4) the five incorporated cities within Fox Canyon's jurisdictional area; and (5) **farmers**. Fox Canyon is a special act district and one of the SGMA-mandated exclusive GSAs listed in Water Code Section 10723. In other words, the California Legislature expressly named Fox Canyon, with its five-member Board including both **mutual water company** and **farmer representatives**, as the **exclusive** GSA for its management area.

Notably, Kern County's Berkeley-based outside legal counsel is specifically acknowledged and thanked for his input in a March 2016 publication of UC Berkeley Law's Wheeler Water Institute, entitled "Designing Effective Groundwater Sustainability Agencies: Criteria for Evaluation of Local Governance Options."¹ The report states that "designing institutions for sustainable groundwater management is one of the most pressing challenges for SGMA implementation." (Report, p. 7.) The report identifies several criteria by which GSA structures should be evaluated, including but not limited to participation, representation, accountability and transparency. The report defines "participation" as:

"direct, meaningful stakeholder engagement in the decision making process. Local governments should develop effective mechanisms for substantive participation by a broad stakeholder base during GSA formation, as well as during subsequent **planning and implementation phases." (Report, p. 9.)**

For months now, Meadowbrook has sought a voice in the GSA formation process to no avail. We have approached this process in good faith with one objective: to obtain a commitment for well-defined and meaningful participation in the GSA from the inception of the process. A well-defined GSP Development Committee in the proposed Joint Powers Agreement would provide a clear, straightforward framework consistent with legal and regulatory mandates, good policy and common sense.

The Joint Powers Agreement Should Be Revised to Clearly Establish The GSP Development Committee.

As the first local public agency in the Indian Wells Valley to consider the proposed Joint Powers Agreement, the District is presented with a unique opportunity to show leadership and do the right thing. Kern County Counsel has refused to

¹ The report can be found at: https://www.law.berkeley.edu/wp-content/uploads/2016/02/CLEE_GroundwaterGovernance_2016-03-08.pdf

incorporate our requested minor revisions to prior drafts of the Joint Powers Agreement in the past, saying that “policy” provisions like Section 7.04 regarding committee membership should be decided “in public” and “not behind closed doors.” That characterization is misleading. Several versions of the GSP Development Committee Conceptual were discussed in public hearings, including before the Kern County Board of Supervisors on February 9, 2016. More to the point, this comment letter and the attached proposed revisions are presented to this Board at a publicly noticed regular meeting for consideration, just like our prior comment letters and appearances.

It is also worth noting that, unless there have been violations of the Brown Act, no complete board of any of the various prospective GSA member public agencies in the Valley has made any policy decisions that are now reflected in the Joint Powers Agreement, because the entire Joint Powers Agreement itself was negotiated and drafted “behind closed doors.” In a January 13, 2016 letter, Kern County Counsel expressly rejected Meadowbrook’s request to participate in the “GSA Eligible Agency” meetings and teleconferences, stating that:

“the staff meetings have been among representatives of public agencies that are eligible to form a [GSA] in the Indian Wells Valley. These staff members have no authority to approve any formation but are instead seeking to outline the possible approaches that their agencies, holding the common requisite police powers to become members of a GSA through a joint exercise of powers, will propose to their own governing boards and the general public.”

Kern County released incomplete and outdated drafts of the Joint Powers Agreement from time to time; however, with the exception of the early resolutions adopted by some of the public agencies regarding board membership on the GSA, Meadowbrook is unaware of any public meeting during which policy decisions now already drafted into the proposed Joint Powers Agreement, including voting, funding and committee membership, were ever discussed before any public agency board.

Supervisor Gleason repeatedly voices extreme urgency to complete the GSA formation process for the Valley as quickly as possible, threatening that a failure to do so will result in regulation of the Basin by the State Water Board. In reality, the Valley does not have time to form an inadequate GSA that does not sufficiently include broad stakeholder interests. Note also that if the State Water Board finds that a GSA is not

Board of Directors of the Indian Wells Valley Water District

Re: *Proposed Joint Exercise of Powers Agreement Creating the Indian Wells Valley Groundwater Authority*

July 11, 2016

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timely formed because of delays caused by litigation, the State Water Board "shall" not designate a basin as probationary for the period of time equal to the delay caused by the litigation. (Water Code § 10735.2(d).)

Likewise, obtaining a court-ordered physical solution would by definition involve significant participation of all pumpers and stakeholders in the Basin and would be a viable alternative to, or mandate upon, a GSP. (Water Code §§ 10733.6(b)(2), 10737.4, 10737.6, 10737.8.)

Again, we urge the Board not to adopt the proposed Joint Powers Agreement unless and until it is revised to clearly establish the basic membership, functions and duties of a defined GSP Development Committee. We recognize that the GSA Bylaws may be an appropriate place to establish the details of the GSP Development Committee. But if the District and the other prospective GSA public agency members are unwilling to make even the minor revisions that we are requesting, we must assume that the GSA has no intention of affording direct, meaningful private pumper participation in the development and implementation of the GSP.

We have great confidence that the District will continue to assert a leadership role to ensure the meaningful participation of Meadowbrook and other private pumpers, large and small, in the SGMA process. At this time, we are seeking memorialization of that commitment in the proposed Joint Powers Agreement.

Very truly yours,



Mark A. Ostoich, of
GRESHAM SAVAGE
NOLAN & TILDEN,
A Professional Corporation

MAO/MDD/DRH

cc: Client (w/encl.)

Enclosure

Attachment "A"

Article VII: Board Meetings and Actions

Section 7.04 – Committees of the Board.

The Board may from time to time establish advisory committees for the purpose of making recommendations to the Board on the various activities of the Authority. The establishment of any committee and its duties shall require the vote of the Board of Directors and the activities of the committee shall be subject to the provisions of the Ralph M. Brown Act (Government Code sections 54950, *et seq.*). Committees shall exist for the term specified in the action creating the committee and the Board may dissolve a committee at any time through a vote of the Board of Directors.

The Board shall ensure that the development of the GSP includes the meaningful participation of all water users in the Basin including but not limited to the General Members, Associate Members, regulated public water utilities, mutual water companies and other private well pumpers.

[New] Section 7.05 – Groundwater Sustainability Plan Development Committee

Irrespective of any committees that are established by the Board pursuant to Section 7.04, The Board shall ensure this meaningful participation through the establishment of one or more committees a Groundwater Sustainability Plan Development Committee ("GSP Development Committee") is hereby established and shall be maintained.- The GSP Development Committee is composed of one representative each of three or more of the voting GSA Members, one representative of the U.S. Navy, one representative of the Bureau of Land Management, one representative of Mojave Mutual Water Company, one representative of Meadowbrook Mutual Water Company, one representative of Searles Valley Minerals, and one or more at-large private pumper representative(s), which will contain members from the above groups so long as their participation does not violate the State ethics and conflict of interest laws, including Government Code sections 1090 *et seq.*, or any other law.

The Board shall assign the responsibility for developing a non-binding GSP proposal, including any individual portions or elements of the GSP, to the GSP Development Committee, which GSP proposal shall be submitted to the Board for final consideration and approval. Upon adoption, the GSP Development Committee shall continue to meet regularly and advise the Board concerning the administration and any later modifications of the GSP. The Board may appoint a technical subcommittee for the purpose of assisting the GSP Development Committee. The Bylaws adopted by the Board pursuant to Section 8.05 shall contain provisions for the operation of the GSP Development Committee, which provisions shall be prepared and proposed by the GSP Development Committee to the Board for final consideration and approval.

EXHIBIT 6

July 11, 2016

VIA EMAIL

San Bernardino County Supervisor Josie Gonzales

[SupervisorGonzales@sbcounty.gov]

San Bernardino County Supervisor Curt Hagman

[SupervisorHagman@sbcounty.gov]

San Bernardino County Supervisor Robert Lovingood

[SupervisorLovingood@sbcounty.gov]

San Bernardino County Supervisor James Ramos

[SupervisorRamos@sbcounty.gov]

San Bernardino County Supervisor Janice Rutherford

[SupervisorRutherford@sbcounty.gov]

San Bernardino County Chief Executive Officer Gregory Devereaux

[Greg.Devereaux@cao.sbcounty.gov]

Re: *Proposed Joint Exercise of Powers Agreement Creating the Indian Wells Valley Groundwater Authority*

To the members of the Board of Supervisors ("Board") of the County of San Bernardino ("San Bernardino County"), and the San Bernardino County Chief Executive Officer:

On behalf of our clients, Meadowbrook Dairy and Meadowbrook Mutual Water Company ("Meadowbrook"), we urge this Board not to adopt the proposed "Joint Exercise of Powers Agreement Creating the Indian Wells Valley Groundwater Authority" ("Joint Powers Agreement") in its current form as presented on the agenda of the Board's July 12, 2016 Board meeting.

Instead, we request that San Bernardino County demonstrate leadership among the prospective JPA public agency members by requiring that the Joint Powers Agreement clearly and specifically establish the specific provisions that will provide "meaningful participation" for Meadowbrook and other private pumpers in the Joint Powers Agreement itself. We believe this can be accomplished with minimal revisions to the Joint Powers Agreement that would clearly establish a "Groundwater Sustainability Plan Development Committee" ("GSP Development Committee"), as we have urged San Bernardino County and the other prospective JPA public agency members to do for months now.

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SAN DIEGO 550 West C Street, Suite 1810 • San Diego, California 92101
LOS ANGELES 333 South Hope Street, 35th Floor • Los Angeles, California 90071

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Under the Sustainable Groundwater Management Act ("SGMA"), a Groundwater Sustainability Agency ("GSAs") for the Indian Wells Valley ("Valley") does not need to be formed until June 30, 2017. There is plenty of time to adopt a minimally revised Joint Powers Agreement that sets forth the basic membership, functions and duties of private pumpers on a clearly defined GSP Development Committee, and then establish the GSA. On behalf of Meadowbrook, we ask that the Board resolve to incorporate into the Joint Powers Agreement the revisions reflected in the partial redline enclosed with this letter as "Attachment "A".

Concerns with the Proposed Joint Powers Agreement

Based on our experience over the past several months, and on the current language of Section 7.04 of the Joint Powers Agreement (entitled "Committees of the Board"), neither Meadowbrook nor any other private pumper has any reasonable assurance that they will have participation on a committee of the Joint Powers Authority; or that it will, in fact, afford meaningful participation in the development and implementation of the Groundwater Sustainability Plan ("GSP"). Instead, we are informed by the unanimously-approved minutes of the closed "GSA-Eligible Agencies" meetings that, according to Kern County representatives, the "Vision is that GSA staff will prepare a draft GSP," that "Formulation will lie with staff and not [a] Development committee," and that a "GSP Development Committee is really Citizen's Advisory Committee." ("GSA Eligible Agency" meeting notes of March 3, 2016 posted on Kern County Website.)

Those alarming statements lead to only one inescapable conclusion, that Kern County, and possibly other prospective GSA members, has no intention of legitimately including Meadowbrook or other private pumpers in the GSP development and implementation processes. Regrettably, it is becoming increasingly likely that the only way for private pumpers to meaningfully participate in the process of achieving sustainability for the Indian Wells Valley Groundwater Basin ("Basin") under SGMA might be through litigation.

Meadowbrook is one of the largest and oldest pumpers in the Valley with well-established overlying rights to groundwater. As such, it is in the best interests of all groundwater users in the Basin to include Meadowbrook in the process of achieving the shared objective of long-term Basin sustainability. Indeed, regarding the development of GSPs, Kern County Counsel stated during the June 7, 2016 Board of Supervisors Meeting, that:

“If we want to avoid costly litigation over the assumptions and the outcomes of the GSPs, it truly behooves the County to ensure that GSPs are impartially developed to ensure meeting the needs of all water users in the basin, which is what SGMA demands. Any less of a result, even in perception only, will result in years of litigation that would stagnate economic development in the County.”
(Emphasis added).

At that same meeting, Kern County Supervisor Mick Gleason stated: “My main theme is fair representation of people in the white space,” and that he is “interested in developing trusting relationships in all elements of the GSP.”

In light of these statements regarding SGMA implementation on the West side of Kern County, we cannot fathom why Kern County would take a contrary approach here in this Valley. The Joint Powers Agreement must establish the basic membership, functions and duties of a GSP Development Committee in order to more clearly define “meaningful participation” for private pumpers, including Meadowbrook, domestic well owners and others. Instead, the current proposed Joint Powers Agreement has entirely removed the language in an earlier draft that referred to the establishment of a “groundwater sustainability plan development committee.”

Under the Joint Powers Agreement as written, a nebulous, Joint Powers Authority Board-appointed committee (which, according to Section 7.04 could apparently be dissolved “at any time” through “a vote” of the JPA Board) does not “ensure that [the] GSP [will be] impartially developed to ensure meeting the needs of all water users in the basin,” nor does it engender “trusting relationships in all elements of the GSP.”

Accountability for Stakeholder Inclusion Under SGMA

As we have stated for months, SGMA was amended by California Senate Bill 13 to clarify that mutual water companies are entitled to fully participate in the SGMA process. The author of Senate Bill 13 further explained that it is intended to prevent local agencies from excluding mutual water companies and regulated water corporations from participating in GSAs at an executive management level. The term “GSA Eligible Agencies” was a misnomer from the beginning and been perpetually misconstrued as a way to justify excluding Meadowbrook and other similar entities from participating in the GSA formation process in the Valley.

SGMA requires GSAs to consider the interests of beneficial uses and users of groundwater. Those “interests” specifically include holders of overlying groundwater rights such as agricultural users, domestic well owners, public water systems, local land use planning agencies, and others. (Water Code § 10723.2.) When submitting its notice of intent to become a GSA to the California Department of Water Resources (“DWR”), the prospective Indian Wells Valley Groundwater Authority will be required to explain how those very “interests will be considered in the development and operation of the groundwater sustainability agency and the development and implementation of the agency’s sustainability plan.” (Water Code § 10723.8(a)(4).) The prospective Indian Wells Valley Groundwater Authority will also be required to submit with that notice a copy of the Joint Powers Agreement, any bylaws or ordinances of the Authority, service area maps, and other materials.

By clearly establishing a GSP Development Committee in the Joint Powers Agreement consistent with our proposed revisions, the Indian Wells Valley Groundwater Authority can satisfy those legal requirements, which will be triggered and then due just thirty (30) days after deciding to become a GSA. (Water Code § 10723.8(a).)

SGMA also requires GSAs to maintain a list of “persons interested in receiving notices regarding plan preparation, meeting announcements, and availability of draft plans, maps, and other relevant documents.” (Water Code § 10723.4.) If Kern County, and by extension the GSA, sees the “committee or committees” described in the second paragraph of Section 7.04 of the proposed Joint Powers Agreement (regarding “meaningful participation”) as a mere “citizen’s advisory committee(s)” comprised of “interested persons,” then such committees will have no legitimate voice in the development or implementation of the GSP.

The SGMA language quoted above suggests that “interested persons” are merely informed of decisions that have already been made by the GSA, such as the “availability of draft plans.” Meadowbrook is obviously much more than a mere “interested person” – it is one of the largest private pumpers in the Basin and has been for decades!

Accountability for Stakeholder Inclusion Under the GSP Regulations

On June 8-9, 2016, Associate Director and Managing Senior Mediator with the Center for Collaborative Policy (“CPC”), Dave Ceppos, delivered a presentation at a conference of the Groundwater Resources Association of California. As you know,

DWR contracted with the CPC to provide facilitators, including Dale Schaefer, to assist with SGMA implementation throughout California. The subject of the June conference was "Developing Groundwater Sustainability Plans for Success." Mr. Ceppos' presentation was entitled, "Stakeholder Engagement, Administrative Approaches and Lessons Learned," during which he made the following statements:

- "Being collaborative will get you across the finish line; not being collaborative will not get you there."
- "To you water agencies: the 'junk-yard dog' is not the right way to go here. Junk yard dogs may be useful elsewhere, but not for SGMA implementation."
- Emphasizing the importance of establishing "authentic" roles for stakeholders, he stated that "while the Brown Act does not require everything to be done in public until the GSA is formed, you must strike a balance with that and you will be held accountable for that under the GSP Regulations."
- He described the level of accountability for public involvement in the GSP development and implementation process as being "much higher than CEQA involvement. You must show *how* you engaged them, and it must be *meaningful*. It's a higher standard than you are used to."
- Regarding the use of committees, he stated, "being too exclusive will make you pay later. It is better to involve people *now*, even if it's large, than exclude them and pay the negative consequences."

Mr. Ceppos is correct that GSAs will be held accountable for the manner in which they involve stakeholders in the development and implementation of GSPs. The Department of Water Resources' recently adopted "GSP Regulations" (Cal. Code Regs. Tit. 23, Div. 2, Ch. 1.5, Sub Ch. 2, approved by the California Water Commission on May 18, 2016) establish the requirements for GSPs and the standards by which GSPs will be evaluated for approval by DWR. Section 354.10 of the GSP Regulations, entitled "Notice and Communication," within the Article entitled "Plan Contents" provides as follows:

“Each Plan shall include a summary of information relating to notification and communication by the Agency with other agencies and interested parties including the following:

(a) A description of the **beneficial uses and users of groundwater** in the basin, including the land uses and property interests potentially affected by the use of groundwater in the basin, the types of parties representing those interests, **and the nature of consultation with those parties.**

(b) A list of public meetings at which the Plan was discussed or considered by the Agency.

(c) Comments regarding the Plan received by the Agency and a summary of any responses by the Agency.

(d) A **communication section of the Plan** that includes the following:

(1) An explanation of the Agency’s **decision-making process.**

(2) Identification of **opportunities for public engagement and a discussion of how public input and response will be used.**

(3) A description of **how the Agency encourages the active involvement of diverse social, cultural, and economic elements of the population within the basin.**

(4) The method the Agency shall follow to inform the public about progress implementing the Plan, including the status of projects and actions.” (Emphasis added.)

Both the GSP Regulations and Mr. Ceppos’ experience and sound practical guidance demand a well-defined GSP Development Committee in the proposed Joint Powers Agreement.

Other Joint Powers Authorities, GSAs and Management Structures Provide Meaningful Representation of Private Pumpers.

In response to both SGMA’s mandates and good policy of broad stakeholder involvement, representatives of the various prospective GSA public agency members in this Valley were presented back in January 2016 with a proposed draft Joint Powers

Agreement prepared by Mojave Mutual Water Company (“Mojave”), that included broad representation of stakeholder interests on the GSA Board. Kern County, however, rejected that proposal.

Nevertheless, there are many examples of joint powers authorities managing groundwater basins throughout California that have agricultural representatives, small domestic well owner representatives and mutual water company representatives on their boards of directors. We have identified examples many times in public hearings and prior comment letters over the past six months, such as the Sacramento Groundwater Authority and the Sacramento Central Groundwater Authority, to name a couple.

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“direct, meaningful stakeholder engagement in the decision making process. Local governments should develop effective mechanisms for substantive participation by a broad stakeholder base during GSA formation, as well as during subsequent planning and implementation phases.” (Report, p. 9.)

For months now, Meadowbrook has sought a voice in the GSA formation process to no avail. We have approached this process in good faith with one objective: to obtain a commitment for well-defined and meaningful participation in the GSA from the inception of the process. A well-defined GSP Development Committee in the proposed Joint Powers Agreement would provide a clear, straightforward framework consistent with legal and regulatory mandates, good policy and common sense.

The Joint Powers Agreement Should Be Revised to Clearly Establish The GSP Development Committee.

As a prospective general member of the Authority, San Bernardino County is presented with an opportunity now to show leadership and do the right thing. Kern County Counsel has refused to incorporate our requested minor revisions to prior drafts of the Joint Powers Agreement in the past, saying that “policy” provisions like Section 7.04 regarding committee membership should be decided “in public” and “not behind closed doors.” That characterization is misleading. Several versions of a “GSP Development Committee Conceptual Outline” consistent with the language in Attachment “A” to this letter were discussed in public hearings, including before the Kern County Board of Supervisors on February 9, 2016. More to the point, this comment letter and the attached proposed revisions are presented to this Board at a publicly noticed regular meeting for consideration, just like our prior comment letters and appearances.

It is also worth noting that, unless there have been violations of the Brown Act, no complete board of any of the various prospective GSA member public agencies in the Valley has made any policy decisions that are now reflected in the Joint Powers Agreement, because the entire Joint Powers Agreement itself was negotiated and drafted “behind closed doors.” In a January 13, 2016 letter, Kern County Counsel expressly rejected Meadowbrook’s request to participate in the “GSA Eligible Agency” meetings and teleconferences, stating that:

“the staff meetings have been among representatives of public agencies that are eligible to form a [GSA] in the Indian Wells Valley. These staff members have no authority to approve any formation but are instead seeking to outline the possible approaches that their agencies, holding the common requisite police powers to become members of a GSA through a joint exercise of powers, will propose to their own governing boards and the general public.”

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Kern County Supervisor Mick Gleason repeatedly voices extreme urgency to complete the GSA formation process for the Valley as quickly as possible, threatening that a failure to do so will result in regulation of the Basin by the State Water Board. In reality, the Valley does not have time to form an inadequate GSA that does not sufficiently include broad stakeholder interests. Note also that if the State Water Board finds that a GSA is not timely formed because of delays caused by litigation, the State Water Board “shall” not designate a basin as probationary for the period of time equal to the delay caused by the litigation. (Water Code § 10735.2(d).)

Likewise, obtaining a court-ordered physical solution would by definition involve significant participation of all pumpers and stakeholders in the Basin and would be a viable alternative to, or mandate upon, a GSP. (Water Code §§ 10733.6(b)(2), 10737.4, 10737.6, 10737.8.)

Again, we urge the Board not to adopt the proposed Joint Powers Agreement unless and until it is revised to clearly establish the basic membership, functions and duties of a defined GSP Development Committee. We recognize that the GSA Bylaws may be an appropriate place to establish the details of the GSP Development Committee. But if San Bernardino County and the other prospective JPA public agency members are unwilling to make even the minor revisions to the proposed Joint Powers Agreement that we are requesting, we must assume that the GSA has no

San Bernardino County Board of Supervisors and Chief Executive Officer
*Re: Proposed Joint Exercise of Powers Agreement Creating the Indian Wells Valley Groundwater
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July 11, 2016
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intention of affording direct, meaningful private pumper participation in the development and implementation of the GSP.

We have great confidence that San Bernardino County will show leadership now, before establishing the Indian Wells Valley Groundwater Authority, to ensure the meaningful participation of Meadowbrook and other private pumpers, large and small, in the SGMA process. At this time, we are seeking memorialization of that commitment in the proposed Joint Powers Agreement.

Very truly yours,



Mark A. Ostoich, of
GRESHAM SAVAGE
NOLAN & TILDEN,
A Professional Corporation

MAO/MDD/DRH

cc: B. Page (w/encl.) [bpage@sbcounty.gov]
Client (w/encl.)

Enclosure

Attachment "A"

Article VII: Board Meetings and Actions

Section 7.04 – Committees of the Board.

The Board may from time to time establish advisory committees for the purpose of making recommendations to the Board on the various activities of the Authority. The establishment of any committee and its duties shall require the vote of the Board of Directors and the activities of the committee shall be subject to the provisions of the Ralph M. Brown Act (Government Code sections 54950, *et seq.*). Committees shall exist for the term specified in the action creating the committee and the Board may dissolve a committee at any time through a vote of the Board of Directors.

The Board shall ensure that the development of the GSP includes the meaningful participation of all water users in the Basin including but not limited to the General Members, Associate Members, regulated public water utilities, mutual water companies and other private well pumpers.

[New] Section 7.05 – Groundwater Sustainability Plan Development Committee

Irrespective of any committees that are established by the Board pursuant to Section 7.04, The Board shall ensure this meaningful participation through the establishment of one or more committees a Groundwater Sustainability Plan Development Committee ("GSP Development Committee") is hereby established and shall be maintained.- The GSP Development Committee is composed of one representative each of three or more of the voting GSA Members, one representative of the U.S. Navy, one representative of the Bureau of Land Management, one representative of Mojave Mutual Water Company, one representative of Meadowbrook Mutual Water Company, one representative of Searles Valley Minerals, and one or more at-large private pumper representative(s), which will contain members from the above groups so long as their participation does not violate the State ethics and conflict of interest laws, including Government Code sections 1090 *et seq.*, or any other law.

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EXHIBIT 7

July 11, 2016

VIA EMAIL

Inyo County Supervisor Jeff Griffiths [jgriffiths@inyocounty.us]
Inyo County Supervisor Matt Kingsley [mkingsley@inyocounty.us]
Inyo County Supervisor Rick Pucci [supervisor.pucci@gmail.com]
Inyo County Supervisor Mark Tillemans [mtillemans@inyocounty.us]
Inyo County Supervisor Dan Totheroh [dtotheroh@inyocounty.us]
Bob Harrington, Inyo County Water Department [bharrington@inyocounty.us]

Re: *Proposed Joint Exercise of Powers Agreement Creating the Indian Wells Valley Groundwater Authority*

To the members of the Board of Supervisors ("Board") of the County of Inyo ("Inyo County"), and Inyo County Water Department Director:

On behalf of our clients, Meadowbrook Dairy and Meadowbrook Mutual Water Company ("Meadowbrook"), we urge this Board not to adopt the proposed "Joint Exercise of Powers Agreement Creating the Indian Wells Valley Groundwater Authority" ("Joint Powers Agreement") in its current form as presented on the agenda of the Board's July 12, 2016 Board meeting.

Instead, we request that Inyo County demonstrate leadership among the prospective JPA public agency members by requiring that the Joint Powers Agreement clearly and specifically establish the specific provisions that will provide "meaningful participation" for Meadowbrook and other private pumpers in the Joint Powers Agreement itself. We believe this can be accomplished with minimal revisions to the Joint Powers Agreement that would clearly establish a "Groundwater Sustainability Plan Development Committee" ("GSP Development Committee"), as we have urged Inyo County and the other prospective JPA public agency members to do for months now.

Under the Sustainable Groundwater Management Act ("SGMA"), a Groundwater Sustainability Agency ("GSAs") for the Indian Wells Valley ("Valley") does not need to be formed until June 30, 2017. There is plenty of time to adopt a minimally revised Joint Powers Agreement that sets forth the basic membership, functions and duties of private pumpers on a clearly defined GSP Development

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Committee, and then establish the GSA. On behalf of Meadowbrook, we ask that the Board resolve to incorporate into the Joint Powers Agreement the revisions reflected in the partial redline enclosed with this letter as "Attachment "A".

Concerns with the Proposed Joint Powers Agreement

Based on our experience over the past several months, and on the current language of Section 7.04 of the Joint Powers Agreement (entitled "Committees of the Board"), neither Meadowbrook nor any other private pumper has any reasonable assurance that they will have participation on a committee of the Joint Powers Authority; or that it will, in fact, afford meaningful participation in the development and implementation of the Groundwater Sustainability Plan ("GSP"). Instead, we are informed by the unanimously-approved minutes of the closed "GSA-Eligible Agencies" meetings that, according to Kern County representatives, the "*Vision is that GSA staff will prepare a draft GSP,*" that "*Formulation will lie with staff and not [a] Development committee,*" and that a "*GSP Development Committee is really Citizen's Advisory Committee.*" ("GSA Eligible Agency" meeting notes of March 3, 2016 posted on Kern County Website.)

Those alarming statements lead to only one inescapable conclusion, that Kern County, and possibly other prospective GSA members, has no intention of legitimately including Meadowbrook or other private pumpers in the GSP development and implementation processes. Regrettably, it is becoming increasingly likely that the only way for private pumpers to meaningfully participate in the process of achieving sustainability for the Indian Wells Valley Groundwater Basin ("Basin") under SGMA might be through litigation.

Meadowbrook is one of the largest and oldest pumpers in the Valley with well-established overlying rights to groundwater. As such, it is in the best interests of all groundwater users in the Basin to include Meadowbrook in the process of achieving the shared objective of long-term Basin sustainability. Indeed, regarding the development of GSPs, Kern County Counsel stated during the June 7, 2016 Board of Supervisors Meeting, that:

"If we want to avoid costly litigation over the assumptions and the outcomes of the **GSPs**, it truly behooves the County to ensure that **GSPs** are impartially developed to ensure meeting the needs of **all** water users in the basin, which is what SGMA demands. Any less of a result, even

in perception only, will result in years of litigation that would stagnate economic development in the County.” (Emphasis added).

At that same meeting, Kern County Supervisor Mick Gleason stated: “My main theme is fair representation of people in the white space,” and that he is ““interested in developing trusting relationships in all elements of the GSP.”

In light of these statements regarding SGMA implementation on the West side of Kern County, we cannot fathom why Kern County would take a contrary approach here in this Valley. The Joint Powers Agreement must establish the basic membership, functions and duties of a GSP Development Committee in order to more clearly define “meaningful participation” for private pumpers, including Meadowbrook, domestic well owners and others. Instead, the current proposed Joint Powers Agreement has entirely removed the language in an earlier draft that referred to the establishment of a “groundwater sustainability plan development committee.”

Under the Joint Powers Agreement as written, a nebulous, Joint Powers Authority Board-appointed committee (which, according to Section 7.04 could apparently be dissolved “at any time” through “a vote” of the JPA Board) does not “ensure that [the] GSP [will be] impartially developed to ensure meeting the needs of all water users in the basin,” nor does it engender “trusting relationships in all elements of the GSP.”

Accountability for Stakeholder Inclusion Under SGMA

As we have stated for months, SGMA was amended by California Senate Bill 13 to clarify that mutual water companies are entitled to fully participate in the SGMA process. The author of Senate Bill 13 further explained that it is intended to prevent local agencies from excluding mutual water companies and regulated water corporations from participating in GSAs at an executive management level. The term “GSA Eligible Agencies” was a misnomer from the beginning and been perpetually misconstrued as a way to justify excluding Meadowbrook and other similar entities from participating in the GSA formation process in the Valley.

SGMA requires GSAs to consider the interests of beneficial uses and users of groundwater. Those “interests” specifically include holders of overlying groundwater rights such as agricultural users, domestic well owners, public water systems, local land use planning agencies, and others. (Water Code § 10723.2.) When submitting its

notice of intent to become a GSA to the California Department of Water Resources (“DWR”), the prospective Indian Wells Valley Groundwater Authority will be required to explain how those very “interests will be considered in the development and operation of the groundwater sustainability agency and the development and implementation of the agency’s sustainability plan.” (Water Code § 10723.8(a)(4).) The prospective Indian Wells Valley Groundwater Authority will also be required to submit with that notice a copy of the Joint Powers Agreement, any bylaws or ordinances of the Authority, service area maps, and other materials.

By clearly establishing a GSP Development Committee in the Joint Powers Agreement consistent with our proposed revisions, the Indian Wells Valley Groundwater Authority can satisfy those legal requirements, which will be triggered and then due just thirty (30) days after deciding to become a GSA. (Water Code § 10723.8(a).)

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The SGMA language quoted above suggests that “interested persons” are merely informed of decisions that have already been made by the GSA, such as the “availability of draft plans.” Meadowbrook is obviously much more than a mere “interested person” — it is one of the largest private pumpers in the Basin and has been for decades!

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presentation was entitled, "Stakeholder Engagement, Administrative Approaches and Lessons Learned," during which he made the following statements:

- "Being collaborative will get you across the finish line; not being collaborative will not get you there."
- "To you water agencies: the 'junk-yard dog' is not the right way to go here. Junk yard dogs may be useful elsewhere, but not for SGMA implementation."
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- He described the level of accountability for public involvement in the GSP development and implementation process as being "much higher than CEQA involvement. You must show *how* you engaged them, and it must be *meaningful*. It's a higher standard than you are used to."
- Regarding the use of committees, he stated, "being too exclusive will make you pay later. It is better to involve people *now*, even if it's large, than exclude them and pay the negative consequences."

Mr. Ceppos is correct that GSAs will be held accountable for the manner in which they involve stakeholders in the development and implementation of GSPs. The Department of Water Resources' recently adopted "GSP Regulations" (Cal. Code Regs. Tit. 23, Div. 2, Ch. 1.5, Sub Ch. 2, approved by the California Water Commission on May 18, 2016) establish the requirements for GSPs and the standards by which GSPs will be evaluated for approval by DWR. Section 354.10 of the GSP Regulations, entitled "Notice and Communication," within the Article entitled "Plan Contents" provides as follows:

"Each Plan shall include a summary of information relating to notification and communication by the Agency

with other agencies and interested parties including the following:

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(4) The method the Agency shall follow to inform the public about progress implementing the Plan, including the status of projects and actions." (Emphasis added.)

Both the GSP Regulations and Mr. Ceppos' experience and sound practical guidance demand a well-defined GSP Development Committee in the proposed Joint Powers Agreement.

Other Joint Powers Authorities, GSAs and Management Structures Provide Meaningful Representation of Private Pumpers.

In response to both SGMA's mandates and good policy of broad stakeholder involvement, representatives of the various prospective GSA public agency members in this Valley were presented back in January 2016 with a proposed draft Joint Powers Agreement prepared by Mojave Mutual Water Company ("Mojave"), that included

broad representation of stakeholder interests on the GSA Board. Kern County, however, rejected that proposal.

Nevertheless, there are many examples of joint powers authorities managing groundwater basins throughout California that have agricultural representatives, small domestic well owner representatives and mutual water company representatives on their boards of directors. We have identified examples many times in public hearings and prior comment letters over the past six months, such as the Sacramento Groundwater Authority and the Sacramento Central Groundwater Authority, to name a couple.

In addition to those examples, there are similar broadly-representative groundwater management authorities and GSAs in California that are responsible for managing other basins deemed by DWR to be in a **condition of critical overdraft**. The Fox Canyon Groundwater Management Agency ("Fox Canyon"), for example, is a GSA managing Bulletin 118 Basin Numbers 4-4.02 (Oxnard) and 4-5 (Pleasant Valley) with a five-member board comprising representatives of: (1) the County of Ventura; (2) the United Water Conservation District; (3) a group of seven small water districts and **mutual water companies**; (4) the five incorporated cities within Fox Canyon's jurisdictional area; and (5) **farmers**. Fox Canyon is a special act district and one of the SGMA-mandated exclusive GSAs listed in Water Code Section 10723. In other words, the California Legislature expressly named Fox Canyon, with its five-member Board including both **mutual water company** and **famer representatives**, as the **exclusive** GSA for its management area.

Notably, Kern County's Berkeley-based outside legal counsel is specifically acknowledged and thanked for his input in a March 2016 publication of UC Berkeley Law's Wheeler Water Institute, entitled "Designing Effective Groundwater Sustainability Agencies: Criteria for Evaluation of Local Governance Options."¹ The report states that "designing institutions for sustainable groundwater management is one of the most pressing challenges for SGMA implementation." (Report, p. 7.) The report identifies several criteria by which GSA structures should be evaluated, including but not limited to participation, representation, accountability and transparency. The report defines "participation" as:

¹ The report can be found at: https://www.law.berkeley.edu/wp-content/uploads/2016/02/CLEE_GroundwaterGovernance_2016-03-08.pdf

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“direct, meaningful stakeholder engagement in the decision making process. Local governments should develop effective mechanisms for substantive participation by a broad stakeholder base during GSA formation, as well as during subsequent planning and implementation phases.” (Report, p. 9.)

For months now, Meadowbrook has sought a voice in the GSA formation process to no avail. We have approached this process in good faith with one objective: to obtain a commitment for well-defined and meaningful participation in the GSA from the inception of the process. A well-defined GSP Development Committee in the proposed Joint Powers Agreement would provide a clear, straightforward framework consistent with legal and regulatory mandates, good policy and common sense.

The Joint Powers Agreement Should Be Revised to Clearly Establish The GSP Development Committee.

As a prospective general member of the Authority, Inyo County is presented with an opportunity now to show leadership and do the right thing. Kern County Counsel has refused to incorporate our requested minor revisions to prior drafts of the Joint Powers Agreement in the past, saying that “policy” provisions like Section 7.04 regarding committee membership should be decided “in public” and “not behind closed doors.” That characterization is misleading. Several versions of a “GSP Development Committee Conceptual Outline” consistent with the language in Attachment “A” to this letter were discussed in public hearings, including before the Kern County Board of Supervisors on February 9, 2016. More to the point, this comment letter and the attached proposed revisions are presented to this Board at a publicly noticed regular meeting for consideration, just like our prior comment letters and appearances.

It is also worth noting that, unless there have been violations of the Brown Act, no complete board of any of the various prospective GSA member public agencies in the Valley has made any policy decisions that are now reflected in the Joint Powers Agreement, because the entire Joint Powers Agreement itself was negotiated and drafted “behind closed doors.” In a January 13, 2016 letter, Kern County Counsel expressly rejected Meadowbrook’s request to participate in the “GSA Eligible Agency” meetings and teleconferences, stating that:

“the staff meetings have been among representatives of public agencies that are eligible to form a [GSA] in the Indian Wells Valley. These staff members have no authority to approve any formation but are instead seeking to outline the possible approaches that their agencies, holding the common requisite police powers to become members of a GSA through a joint exercise of powers, will propose to their own governing boards and the general public.”

Kern County released incomplete and outdated drafts of the Joint Powers Agreement from time to time; however, with the exception of the early resolutions adopted by some of the public agencies regarding board membership on the GSA, Meadowbrook is unaware of any public meeting during which policy decisions now already drafted into the proposed Joint Powers Agreement, including voting, funding and committee membership, were ever discussed before any public agency board.

Kern County Supervisor Mick Gleason repeatedly voices extreme urgency to complete the GSA formation process for the Valley as quickly as possible, threatening that a failure to do so will result in regulation of the Basin by the State Water Board. In reality, the Valley does not have time to form an inadequate GSA that does not sufficiently include broad stakeholder interests. Note also that if the State Water Board finds that a GSA is not timely formed because of delays caused by litigation, the State Water Board “shall” not designate a basin as probationary for the period of time equal to the delay caused by the litigation. (Water Code § 10735.2(d).)

Likewise, obtaining a court-ordered physical solution would by definition involve significant participation of all pumpers and stakeholders in the Basin and would be a viable alternative to, or mandate upon, a GSP. (Water Code §§ 10733.6(b)(2), 10737.4, 10737.6, 10737.8.)

Again, we urge the Board not to adopt the proposed Joint Powers Agreement unless and until it is revised to clearly establish the basic membership, functions and duties of a defined GSP Development Committee. We recognize that the GSA Bylaws may be an appropriate place to establish the details of the GSP Development Committee. But if Inyo County and the other prospective JPA public agency members are unwilling to make even the minor revisions to the proposed Joint Powers Agreement that we are requesting, we must assume that the GSA has no intention of

Inyo County Board of Supervisors and Water Department Director

Re: *Proposed Joint Exercise of Powers Agreement Creating the Indian Wells Valley Groundwater*

Authority

July 11, 2016

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affording direct, meaningful private pumper participation in the development and implementation of the GSP.

We have great confidence that Inyo County will show leadership now, before establishing the Authority for the Valley, to ensure the meaningful participation of Meadowbrook and other private pumpers, large and small, in the SGMA process. At this time, we are seeking memorialization of that commitment in the proposed Joint Powers Agreement.

Very truly yours,



Mark A. Ostoich, of
GRESHAM SAVAGE
NOLAN & TILDEN,
A Professional Corporation

MAO/MDD/DRH

cc: Client (w/encl.)

Enclosure

Attachment "A"

Article VII: Board Meetings and Actions

Section 7.04 – Committees of the Board.

The Board may from time to time establish advisory committees for the purpose of making recommendations to the Board on the various activities of the Authority. The establishment of any committee and its duties shall require the vote of the Board of Directors and the activities of the committee shall be subject to the provisions of the Ralph M. Brown Act (Government Code sections 54950, *et seq.*). Committees shall exist for the term specified in the action creating the committee and the Board may dissolve a committee at any time through a vote of the Board of Directors.

The Board shall ensure that the development of the GSP includes the meaningful participation of all water users in the Basin including but not limited to the General Members, Associate Members, regulated public water utilities, mutual water companies and other private well pumpers.

[New] Section 7.05 – Groundwater Sustainability Plan Development Committee

Irrespective of any committees that are established by the Board pursuant to Section 7.04, The Board shall ensure this meaningful participation through the establishment of one or more committees a Groundwater Sustainability Plan Development Committee ("GSP Development Committee") is hereby established and shall be maintained.- The GSP Development Committee is composed of one representative each of three or more of the voting GSA Members, one representative of the U.S. Navy, one representative of the Bureau of Land Management, one representative of Mojave Mutual Water Company, one representative of Meadowbrook Mutual Water Company, one representative of Searles Valley Minerals, and one or more at-large private pumper representative(s), which will contain members from the above groups so long as their participation does not violate the State ethics and conflict of interest laws, including Government Code sections 1090 *et seq.*, or any other law.

The Board shall assign the responsibility for developing a non-binding GSP proposal, including any individual portions or elements of the GSP, to the GSP Development Committee, which GSP proposal shall be submitted to the Board for final consideration and approval. Upon adoption, the GSP Development Committee shall continue to meet regularly and advise the Board concerning the administration and any later modifications of the GSP. The Board may appoint a technical subcommittee for the purpose of assisting the GSP Development Committee. The Bylaws adopted by the Board pursuant to Section 8.05 shall contain provisions for the operation of the GSP Development Committee, which provisions shall be prepared and proposed by the GSP Development Committee to the Board for final consideration and approval.

EXHIBIT 8

July 18, 2016

VIA EMAIL [board@co.kern.ca.us]

Kern County Supervisor Mick Gleason, First District
[district1@co.kern.ca.us]

Kern County Supervisor Zack Scrivner, Second District
[district2@co.kern.ca.us]

Kern County Supervisor Mike Maggard, Third District
[district3@co.kern.ca.us]

Kern County Supervisor David Couch, Fourth District
[district4@co.kern.ca.us]

Kern County Supervisor Leticia Perez, Fifth District
[district5@co.kern.ca.us]

Re: *July 19, 2016 Board of Supervisors Meeting, Agenda Item 19 – Proposed Joint Exercise of Powers Agreement Creating the Indian Wells Valley Groundwater Authority*

To the members of the Board of Supervisors (“Board”) of the County of Kern (“Kern County”):

On behalf of our clients, Meadowbrook Dairy and Meadowbrook Mutual Water Company (“Meadowbrook”), we urge this Board not to adopt the proposed “*Joint Exercise of Powers Agreement Creating the Indian Wells Valley Groundwater Authority*” (“Joint Powers Agreement”) in its current form as presented in Item 19 of agenda for the Board’s July 19, 2016 meeting.

Instead, we request that Kern County demonstrate leadership among the prospective JPA public agency members by requiring that the Joint Powers Agreement clearly and specifically establish the specific provisions that will provide “meaningful participation” for Meadowbrook and other private pumpers in the Joint Powers Agreement itself. We believe this can be accomplished with minimal revisions to the Joint Powers Agreement that would clearly establish a “Groundwater Sustainability Plan Development Committee” (“GSP Development Committee”), as we have urged Kern County and the other prospective JPA public agency members to do for months now.

Under the Sustainable Groundwater Management Act (“SGMA”), a Groundwater Sustainability Agency (“GSA”) for the Indian Wells Valley (“Valley”)

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does not need to be formed until June 30, 2017. There is plenty of time to adopt a minimally revised Joint Powers Agreement that sets forth the basic membership, functions and duties of private pumpers on a clearly defined GSP Development Committee, and then establish the GSA. On behalf of Meadowbrook, we ask that the Board resolve to incorporate into the Joint Powers Agreement the revisions reflected in the partial redline enclosed with this letter as "Attachment "A".

Concerns with the Proposed Joint Powers Agreement

On January 26, 2016, this Board continued for two weeks its hearing regarding the adoption of a resolution regarding the structure of the GSA for Valley. The primary stated reason for the continuance was to provide an opportunity for the County to deliver private pumpers, including Meadowbrook, with sufficient assurances that the proposed GSP Development Committee concept would provide meaningful participation in the GSA and GSP processes.

Mojave Mutual Water Company ("Mojave"), Meadowbrook and Searles Valley Minerals ("Searles") presented Kern County Counsel with a proposed *GSP Development Committee Conceptual* ("Conceptual Outline") which endeavored to better define "meaningful participation." At the February 9, 2016 Board of Supervisors meeting, Kern County Counsel presented to this Board a revised version of the Conceptual Outline that included changes not previously discussed with or mentioned to Mojave, Meadowbrook and Searles, and then conveyed to the Board her interpretation of the Conceptual Outline as an attempt by the private pumpers to "control" the development of the GSP, which clearly not the intent. To the contrary, the February 8, 2016 version of the Conceptual Outline that was presented to Kern County Counsel defined the "GSP Development Committee Members" to include:

- One representative each of three or more of the voting GSA members
- One representative of the U.S. Navy
- One representative of Mojave Mutual Water Company
- One representative of Meadowbrook Mutual Water Company
- One representative of Searles Valley Minerals
- One or more at-large private pumper representative(s)

Since February, the Bureau of Land Management ("BLM") decided to participate as an Associate Member of the Board of the prospective GSA Board.

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Re: July 19, 2016 Board of Supervisors Meeting, Agenda Item 19 – Proposed Joint Exercise of Powers Agreement Creating the Indian Wells Valley Groundwater Authority

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Consequently, the proposed GSP Development Committee language in Attachment "A" to this letter *adds* the BLM to group listed above as a member of the GSP Development Committee. Meadowbrook has always supported an inclusive group for the GSP Development Committee.

The Kern County Administrative Office ("CAO") report for tomorrow's Board meeting, entitled "Request for Approval of a Joint Exercise of Powers Agreement Creating the Indian Wells Valley Groundwater Authority" ("Report") states on page 1, that on January 12, 2016, "your Board directed that the GSA in the IWV Basin must ensure the meaningful participation of the Department of the Navy." Notably absent from the CAO report, however, is Section 2 of the Board's February 9, 2016 Resolution, in which:

"The Board also directs staff to ensure that the GSA includes the meaningful participation of the Department of the Navy, the Bureau of Land Management, mutual water companies and other private well owners. For the Department of the Navy, meaningful participation means having a non-voting member position on the GSA Board of Directors. For all other water users, including mutual water companies and other private well owners, meaningful participation means the ability to participate on a groundwater sustainability plan development committee, provided that such participation does not violate the State ethics and conflict of interest laws, including Government Code §§ 1090 et. seq. or any other law." (Emphasis added.)

The current version of the Joint Powers Agreement does not comply with the Board's directives from February 9, 2016. Whereas the March 3, 2016 version of the Joint Powers Agreement specifically referenced in Section 7.04 a "groundwater sustainability plan development committee," the current version of the Joint Powers Agreement presented now to the Board does not even reference a groundwater sustainability development committee and refers instead merely to a "committee or committees of the Board."

Based on our experience over the past several months, and on the current language of Section 7.04 of the Joint Powers Agreement (entitled "Committees of the Board"),

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Those alarming statements, combined with the direct removal from Section 7.04 of any express reference to a “groundwater sustainability plan development committee,” *on the same day those comments were made*, lead to only one inescapable conclusion, that Kern County, and possibly other prospective GSA members, has no intention of legitimately including Meadowbrook or other private pumpers in the GSP development and implementation processes. Regrettably, it is becoming increasingly likely that the only way for private pumpers to meaningfully participate in the process of achieving sustainability for the Indian Wells Valley Groundwater Basin (“Basin”) under SGMA might be through litigation.

Meadowbrook is one of the largest and oldest pumpers in the Valley with well-established overlying rights to groundwater. As such, it is in the best interests of all groundwater users in the Basin to include Meadowbrook in the process of achieving the shared objective of long-term Basin sustainability. Indeed, regarding the development of GSPs, Kern County Counsel stated during the June 7, 2016 Board of Supervisors Meeting, that:

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implementation of the agency’s sustainability plan.” (Water Code § 10723.8(a)(4), emphasis added.) The prospective Indian Wells Valley Groundwater Authority will also be required to submit with that notice a copy of the Joint Powers Agreement, any bylaws or ordinances of the Authority, service area maps, and other materials.

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Both the GSP Regulations and Mr. Ceppos' experience and sound practical guidance demand a well-defined GSP Development Committee in the proposed Joint Powers Agreement.

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In response to both SGMA's mandates and good policy of broad stakeholder involvement, representatives of the various prospective GSA public agency members in this Valley were presented back in January 2016 with a proposed draft Joint Powers Agreement prepared by Mojave, that included broad representation of stakeholder interests on the GSA Board. Kern County representatives, however, rejected that proposal.

Nevertheless, there are many examples of joint powers authorities managing groundwater basins throughout California that have agricultural representatives, small domestic well owner representatives and mutual water company representatives on their boards of directors. We have identified examples many times in public hearings and prior comment letters over the past six months, including at hearings before this Board, such as the Sacramento Groundwater Authority and the Sacramento Central Groundwater Authority, to name a couple.

In addition to those examples, there are similar broadly-representative groundwater management authorities and GSAs in California that are responsible for managing other basins deemed by DWR to be in a **condition of critical overdraft**. The Fox Canyon Groundwater Management Agency (“Fox Canyon”), for example, is a GSA responsible for managing Bulletin 118 Basin Numbers 4-4.02 (Oxnard) and 4-5 (Pleasant Valley) with a five-member board comprising representatives of: (1) the County of Ventura; (2) the United Water Conservation District; (3) a group of seven small water districts and **mutual water companies**; (4) the five incorporated cities within Fox Canyon’s jurisdictional area; and (5) **farmers**. Fox Canyon is a special act district and one of the SGMA-mandated exclusive GSAs listed in Water Code Section 10723. In other words, the California Legislature expressly named Fox Canyon, with its five-member Board including both **mutual water company** and **farmer representatives**, as the **exclusive** GSA for its management area.

Notably, Kern County’s Berkeley-based outside legal counsel for water matters is specifically acknowledged and thanked for his input in a March 2016 publication of UC Berkeley Law’s Wheeler Water Institute, entitled “Designing Effective Groundwater Sustainability Agencies: Criteria for Evaluation of Local Governance Options.”¹ The report states that “designing institutions for sustainable groundwater management is one of the most pressing challenges for SGMA implementation.” (Report, p. 7.) The report identifies several criteria by which GSA structures should be evaluated, including but not limited to participation, representation, accountability and transparency. The report defines “participation” as:

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For months now, Meadowbrook has sought a voice in the GSA formation process to no avail. We have approached this process in good faith with one objective: to obtain a commitment for well-defined and truly meaningful participation in the GSA from the inception of the process. A well-defined GSP Development Committee in the proposed Joint Powers Agreement would provide a clear, straightforward framework consistent with legal and regulatory mandates, good policy and common sense.

The Joint Powers Agreement Should Be Revised to Clearly Establish The GSP Development Committee

As a prospective general member of the Authority, Kern County is presented with an opportunity now to show leadership and do the right thing. Kern County Counsel has refused to incorporate our requested minor revisions to prior drafts of the Joint Powers Agreement in the past, saying that “policy” provisions like Section 7.04 regarding committee membership should be decided “in public” and “not behind closed doors.” That characterization is misleading. Several versions of the Conceptual Outline consistent with the language in Attachment “A” to this letter were discussed in public hearings, including before this Board on February 9, 2016. More to the point, this comment letter and the attached proposed revisions are presented to this Board at a publicly noticed regular meeting for consideration, just like our prior comment letters and appearances.

It is also worth noting that, unless there have been violations of the Brown Act, no complete board of any of the various prospective GSA member public agencies in the Valley has made any policy decisions that are now reflected in the Joint Powers Agreement, because the entire Joint Powers Agreement itself was negotiated and drafted “behind closed doors.” In a January 13, 2016 letter, Kern County Counsel expressly rejected Meadowbrook’s request to participate in the “GSA Eligible Agency” meetings and teleconferences, stating that:

“the staff meetings have been among representatives of public agencies that are eligible to form a [GSA] in the Indian Wells Valley. These staff members have no authority to approve any formation but are instead seeking to outline the possible approaches that their agencies,

holding the common requisite police powers to become members of a GSA through a joint exercise of powers, will propose to their own governing boards and the general public.”

Kern County released incomplete and outdated drafts of the Joint Powers Agreement from time to time; however, with the exception of the early resolutions adopted by some of the public agencies regarding board membership on the GSA, Meadowbrook is unaware of any public meeting during which policy decisions now already drafted into the proposed Joint Powers Agreement, including voting, funding and committee membership, were ever discussed before any public agency board.

We note that agenda Item 33(F) of tomorrow’s Board meeting memorializes the Board’s receipt of the Kern County Grand Jury Final Report entitled, “Kern County Groundwater – Cooperation or Conflict,” dated June 16, 2016 (“Grand Jury Report”). The Grand Jury Report discusses the Grand Jury’s February 2016 report that described joint powers authorities in Kern County as “hidden governments” that often lack transparency, accountability, and accessibility. The Grand Jury Report describes the SGMA processes in Kern County both on the west side of the County and in this Valley and provides recommendations to avoid the pitfalls of existing joint powers authorities described in the February 2016 report.

Consistent with our comments above, the Grand Jury Report cites the GSP Regulations regarding the requirement to involve beneficial users of groundwater, and then specifically states that: “[n] addition to entities that have groundwater rights, the interests of all water users need to be taken into account. These users therefore have a right to participate in the planning process.” (Page 4, third full paragraph, emphasis added.) It also finds that while “[a] number of agencies have been involved in the SGMA process...many agencies, individuals and areas with small farms or small housing developments that depend on pumped water have not been advised of the process.” (Page 6, Finding F6.) The Grand Jury Report bears the signature of Kern County Counsel.

Supervisor Gleason repeatedly voices extreme urgency to complete the GSA formation process for the Valley as quickly as possible, threatening that a failure to do so will result in regulation of the Basin by the State Water Board. In reality, the Valley does not have time to form an inadequate GSA that does not sufficiently include broad stakeholder interests. Note also that if the State Water Board finds that a GSA is not

Kern County Board of Supervisors

Re: July 19, 2016 Board of Supervisors Meeting, Agenda Item 19 – Proposed Joint Exercise of Powers Agreement Creating the Indian Wells Valley Groundwater Authority

July 18, 2016

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timely formed because of delays caused by litigation, the State Water Board “shall” not designate a basin as probationary for the period of time equal to the delay caused by the litigation. (Water Code § 10735.2(d).)

Likewise, obtaining a court-ordered physical solution would by definition involve significant participation of all pumpers and stakeholders in the Basin and would be a viable alternative to, or mandate upon, a GSP. (Water Code §§ 10733.6(b)(2), 10737.4, 10737.6, 10737.8.)

Again, we urge the Board not to adopt the proposed Joint Powers Agreement unless and until it is revised to clearly establish the basic membership, functions and duties of a defined GSP Development Committee. We recognize that the GSA Bylaws may be an appropriate place to establish the details of the GSP Development Committee. But if Kern County and the other prospective JPA public agency members are unwilling to make even the minor revisions to the proposed Joint Powers Agreement that we are requesting, we must assume that the GSA has no intention of affording direct, meaningful private pumper participation in the development and implementation of the GSP.

We trust that Kern County will show leadership now, before establishing the Indian Wells Valley Groundwater Authority, to ensure the meaningful participation of Meadowbrook and other private pumpers, large and small, in the SGMA process. At this time, we are seeking memorialization of that commitment in the proposed Joint Powers Agreement.

Very truly yours, .



Mark A. Ostoich, of
GRESHAM SAVAGE
NOLAN & TILDEN,
A Professional Corporation

MAO/MDD/DRH

Enclosure

cc: A. Christensen (w/encl.) [achristensen@co.kern.ca.us]
Clerk of the Board (w/encl.) [clerkofboard@co.kern.ca.us]
Client (w/encl.)

Attachment "A"

Article VII: Board Meetings and Actions

Section 7.04 – Committees of the Board.

The Board may from time to time establish advisory committees for the purpose of making recommendations to the Board on the various activities of the Authority. The establishment of any committee and its duties shall require the vote of the Board of Directors and the activities of the committee shall be subject to the provisions of the Ralph M. Brown Act (Government Code sections 54950, *et seq.*). Committees shall exist for the term specified in the action creating the committee and the Board may dissolve a committee at any time through a vote of the Board of Directors.

The Board shall ensure that the development of the GSP includes the meaningful participation of all water users in the Basin including but not limited to the General Members, Associate Members, regulated public water utilities, mutual water companies and other private well pumpers.

[New] Section 7.05 – Groundwater Sustainability Plan Development Committee

~~Irrespective of any committees that are established by the Board pursuant to Section 7.04, The Board shall ensure this meaningful participation through the establishment of one or more committees~~ a Groundwater Sustainability Plan Development Committee ("GSP Development Committee") is hereby established and shall be maintained.- The GSP Development Committee is composed of one representative each of three or more of the voting GSA Members, one representative of the U.S. Navy, one representative of the Bureau of Land Management, one representative of Mojave Mutual Water Company, one representative of Meadowbrook Mutual Water Company, one representative of Searles Valley Minerals, and one or more at-large private pumper representative(s), which will contain members from the above groups so long as their participation does not violate the State ethics and conflict of interest laws, including Government Code sections 1090 *et seq.*, or any other law.

The Board shall assign the responsibility for developing a non-binding GSP proposal, including any individual portions or elements of the GSP, to the GSP Development Committee, which GSP proposal shall be submitted to the Board for final consideration and approval. Upon adoption, the GSP Development Committee shall continue to meet regularly and advise the Board concerning the administration and any later modifications of the GSP. The Board may appoint a technical subcommittee for the purpose of assisting the GSP Development Committee. The Bylaws adopted by the Board pursuant to Section 8.05 shall contain provisions for the operation of the GSP Development Committee, which provisions shall be prepared and proposed by the GSP Development Committee to the Board for final consideration and approval.

EXHIBIT 9

August 2, 2016

VIA EMAIL [rford@ridgecrest-ca.gov]

Mayor Peggy Breeden

[pbreeden@ridgecrest-ca.gov]

Vice Mayor Lori Acton

[lacton@ridgecrest-ca.gov]

Mayor Pro Tem Jim Sanders

[jsanders@ridgecrest-ca.gov]

Council Member Mike Mower

[mmower@ridgecrest-ca.gov]

Council Member Eddie Thomas

[ethomas@ridgecrest-ca.gov]

Re: *August 3, 2016 City of Ridgecrest City Council Meeting, Agenda Items 5 and 6 –
Proposed Joint Exercise of Powers Agreement Creating the Indian Wells Valley
Groundwater Authority*

To the members of the City Council (“City Council”) of the City of Ridgecrest (“City”):

On behalf of our clients, Meadowbrook Dairy and Meadowbrook Mutual Water Company (“Meadowbrook”), we urge the City Council not to adopt the proposed “*Joint Exercise of Powers Agreement Creating the Indian Wells Valley Groundwater Authority*” (“Joint Powers Agreement”) in its current form as presented in Item 5 and included in Item 6 of agenda for the City Council’s August 3, 2016 meeting.

Instead, the City Council should demonstrate leadership and responsible fiscal management as a prospective member of the Indian Wells Valley Groundwater Authority (“Joint Powers Authority”) by requiring that the Joint Powers Agreement clearly and specifically establish the specific provisions that will provide “meaningful participation” for Meadowbrook and other private pumpers in the Joint Powers Agreement itself. We believe this can be accomplished with minimal revisions to the Joint Powers Agreement that would clearly establish a “Groundwater Sustainability Plan Development Committee” (“GSP Development Committee”), as we have urged each of the prospective public agency members of the Joint Powers Authority to do for months now.

City of Ridgecrest City Council

Re: August 3, 2016 City of Ridgecrest City Council Meeting, Agenda Items 5 and 6 – Proposed Joint

Exercise of Powers Agreement Creating the Indian Wells Valley Groundwater Authority

August 2, 2016

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Under the Sustainable Groundwater Management Act (“SGMA”), a Groundwater Sustainability Agency (“GSA”) for the Indian Wells Valley (“Valley”) does not need to be formed until June 30, 2017. There is plenty of time to adopt a minimally revised Joint Powers Agreement that sets forth the basic membership, functions and duties of private pumpers on a clearly defined GSP Development Committee, and then establish the GSA. On behalf of Meadowbrook, we ask that the City Council resolve to incorporate into the Joint Powers Agreement the revisions reflected in the partial redline enclosed with this letter as “Attachment “A”.

Concerns with the Proposed Joint Powers Agreement

As detailed in this letter, Kern County has and continues to lead the GSA formation process down a path of potential conflict. Meadowbrook and other private pumpers have for months repeatedly urged the prospective public agency members of the Joint Powers Authority to establish and define meaningful participation for large private stakeholders in the development and implementation of the Groundwater Sustainability Plan (“GSP”). Instead, the Joint Powers Agreement fails to establish a GSP Development Committee at all.

In February of this year, Mojave Mutual Water Company (“Mojave”), Meadowbrook and Searles Valley Minerals (“Searles”) presented Kern County Counsel and the City Attorney with a proposed *GSP Development Committee Conceptual* (“Conceptual Outline”) which endeavored to better define “meaningful participation.” The Conceptual Outline defined “GSP Development Committee Members” to include:

- One representative each of three or more of the voting GSA members
- One representative of the U.S. Navy
- One representative of Mojave Mutual Water Company
- One representative of Meadowbrook Mutual Water Company
- One representative of Searles Valley Minerals
- One or more at-large private pumper representative(s)

Since February, the Bureau of Land Management (“BLM”) decided to participate as an Associate Member of the Board of the prospective JPA Board. Consequently, the proposed GSP Development Committee language in Attachment “A” to this letter *adds* the BLM to group listed above as a member of the GSP

City of Ridgecrest City Council

Re: August 3, 2016 City of Ridgecrest City Council Meeting, Agenda Items 5 and 6 – Proposed Joint
Exercise of Powers Agreement Creating the Indian Wells Valley Groundwater Authority

August 2, 2016

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Development Committee. Meadowbrook has always supported an inclusive group for the GSP Development Committee.

On February 9, 2016, the Kern County Board of Supervisors adopted a Resolution, in which the “Board direct[ed] staff to ensure that the GSA includes the meaningful participation of the Department of the Navy, the Bureau of Land Management, mutual water companies and other private well owners.” (emphasis added). The Resolution defined “meaningful participation” for the Department of the Navy as “having a non-voting member position on the GSA Board of Directors,” and further defined “meaningful participation” for all other water users in the Valley, specifically including mutual water companies and other private well owners, as “the ability to participate on a groundwater sustainability plan development committee,” subject to compliance with State ethics and conflict of interest laws. (Emphasis added.)

The current version of the Joint Powers Agreement does not comply with Kern County’s February 9, 2016 Resolution. Whereas the March 3, 2016 version of the Joint Powers Agreement specifically referenced in Section 7.04 a “groundwater sustainability plan development committee,” the current version of the Joint Powers Agreement presented now to the City Council does not even reference a groundwater sustainability development committee and refers instead merely to a “committee or committees of the [Joint Powers Authority] Board.”

Based on our experience over the past several months, and on the current language of Section 7.04 of the Joint Powers Agreement (entitled “Committees of the Board”), neither Meadowbrook nor any other private pumper has any reasonable assurance that they will have participation on a committee of the Joint Powers Authority; or that it will, in fact, afford meaningful participation in the development and implementation of the GSP. Instead, we are informed by the unanimously approved minutes of the closed “GSA-Eligible Agencies” meetings that, according to Kern County representatives at those meetings, the “*Vision is that GSA staff will prepare a draft GSP,*” that “*Formulation will lie with staff and not [a] Development committee,*” and that a “*GSP Development Committee is really Citizen’s Advisory Committee.*” (“GSA Eligible Agency” meeting notes of March 3, 2016 posted on Kern County Website.)

Those alarming statements, combined with the direct removal from Section 7.04 of any express reference to a “groundwater sustainability plan development committee,” *on the same day those comments were made,* lead to only one inescapable conclusion, that Kern County, and possibly other prospective GSA members, has no

intention of legitimately including Meadowbrook or other private pumpers in the GSP development and implementation processes.

Regrettably, it is becoming increasingly likely that the only way for private pumpers to meaningfully participate in the process of achieving sustainability for the Indian Wells Valley Groundwater Basin (“Basin”) under SGMA might be through litigation.

Meadowbrook is one of the largest and oldest pumpers in the Valley with well-established overlying rights to groundwater. As such, it is in the best interests of all groundwater users in the Basin to include Meadowbrook in the process of achieving the shared objective of long-term Basin sustainability. Indeed, regarding the development of GSPs, Kern County Counsel stated during the June 7, 2016 Board of Supervisors Meeting, that:

“If we want to avoid costly litigation over the assumptions and the outcomes of the GSPs, it truly behooves the County to ensure that GSPs are impartially developed to ensure meeting the needs of all water users in the basin, which is what SGMA demands. Any less of a result, even in perception only, will result in years of litigation that would stagnate economic development in the County.”
(Emphasis added).

At that same meeting, Kern County Supervisor Gleason stated: “My main theme is fair representation of people in the white space,” and that he is “interested in developing trusting relationships in all elements of the GSP.”

The Joint Powers Agreement must establish the basic membership, functions and duties of a GSP Development Committee in order to more clearly define “meaningful participation” for private pumpers, including Meadowbrook, domestic well owners and others. Instead, the current proposed Joint Powers Agreement has entirely removed the prior language that referred to the establishment of a “groundwater sustainability plan development committee.”

Under the Joint Powers Agreement as written, a nebulous, Joint Powers Authority Board-appointed committee (which, according to Section 7.04 could apparently be dissolved “at any time” through “a vote” of the JPA Board) does not “ensure that [the] GSP [will be] impartially developed to ensure meeting the needs of

all water users in the basin,” nor does it engender “trusting relationships in all elements of the GSP.”

Accountability for Stakeholder Inclusion Under SGMA

As we have stated for months, SGMA was amended by California Senate Bill 13 to clarify that mutual water companies are entitled to fully participate in the SGMA process. The author of Senate Bill 13 further explained that it is intended to prevent local agencies from excluding mutual water companies and regulated water corporations from participating in GSAs at an executive management level. The term “GSA Eligible Agencies” was a misnomer from the beginning and been perpetually misconstrued as a way to justify excluding Meadowbrook and other similar entities from participating in the GSA formation process in the Valley.

SGMA requires GSAs to consider the interests of beneficial uses and users of groundwater. Those “interests” specifically include holders of overlying groundwater rights such as agricultural users, domestic well owners, public water systems, local land use planning agencies, and others. (Water Code § 10723.2.) When submitting its notice of intent to become a GSA to the California Department of Water Resources (“DWR”), the Joint Powers Authority will be required to explain how those very “interests will be considered in the development and operation of the groundwater sustainability agency and the development and implementation of the agency’s sustainability plan.” (Water Code § 10723.8(a)(4), emphasis added.) The Joint Powers Authority will also be required to submit with that notice a copy of the Joint Powers Agreement, any bylaws or ordinances of the Authority, service area maps, and other materials.

By clearly establishing a GSP Development Committee in the Joint Powers Agreement consistent with our proposed revisions, the Joint Powers Authority can satisfy those legal requirements, which will be triggered and then due just thirty (30) days after deciding to become a GSA. (Water Code § 10723.8(a).)

SGMA also requires GSAs to maintain a list of “persons interested in receiving notices regarding plan preparation, meeting announcements, and availability of draft plans, maps, and other relevant documents.” (Water Code § 10723.4.) If the Joint Powers Authority members see the “committee or committees” described in the second paragraph of Section 7.04 of the proposed Joint Powers Agreement (regarding “meaningful participation”) as a mere “citizen’s advisory committee(s)” comprised of

“interested persons,” then such committees will have no legitimate voice in the development or implementation of the GSP.

The SGMA language quoted above suggests that “interested persons” are merely informed of decisions that have already been made by the GSA, such as the “availability of draft plans.” Meadowbrook is obviously much more than a mere “interested person” – it is one of the largest private pumpers in the Basin and has been for decades!

Accountability for Stakeholder Inclusion Under the GSP Regulations

On June 8-9, 2016, Associate Director and Managing Senior Mediator with the Center for Collaborative Policy (“CPC”), Dave Ceppos, delivered a presentation at a conference of the Groundwater Resources Association of California. As you know, DWR contracted with the CPC to provide facilitators to assist with SGMA implementation throughout California, including Dale Schaefer who has been involved in SGMA implementation for this Valley. The subject of the June conference was “Developing Groundwater Sustainability Plans for Success.” Mr. Ceppos’ presentation was entitled, “Stakeholder Engagement, Administrative Approaches and Lessons Learned,” during which he made the following statements:

- “Being collaborative will get you across the finish line; not being collaborative will not get you there.”
- “To you water agencies: the ‘junk-yard dog’ is not the right way to go here. Junk yard dogs may be useful elsewhere, but not for SGMA implementation.”
- Emphasizing the importance of establishing “authentic” roles for stakeholders, he stated that “while the Brown Act does not require everything to be done in public until the GSA is formed, you must strike a balance with that and you will be held accountable for that under the GSP Regulations.”

- He described the level of accountability for public involvement in the GSP development and implementation process as being “much higher than CEQA involvement. You must show *how* you engaged them, and it must be *meaningful*. It’s a higher standard than you are used to.”
- Regarding the use of committees, he stated, “being too exclusive will make you pay later. It is better to involve people *now*, even if it’s large, than exclude them and pay the negative consequences.”

Mr. Ceppos is correct that GSAs will be held accountable for the manner in which they involve or fail to involve stakeholders in the development and implementation of GSPs. The Department of Water Resources’ recently adopted “GSP Regulations” (Cal. Code Regs. Tit. 23, Div. 2, Ch. 1.5, Sub Ch. 2, approved by the California Water Commission on May 18, 2016) establish the requirements for GSPs and the standards by which GSPs will be evaluated for approval by DWR. Section 354.10 of the GSP Regulations, entitled “Notice and Communication,” within the Article entitled “Plan Contents” provides as follows:

“Each Plan shall include a summary of information relating to notification and communication by the Agency with other agencies and interested parties including the following:

(a) A description of the **beneficial uses and users of groundwater** in the basin, including the land uses and property interests potentially affected by the use of groundwater in the basin, the types of parties representing those interests, **and the nature of consultation with those parties.**

(b) A list of public meetings at which the Plan was discussed or considered by the Agency.

(c) Comments regarding the Plan received by the Agency and a summary of any responses by the Agency.

(d) A **communication section of the Plan** that includes the following:

(1) An explanation of the Agency’s **decision-making process.**

(2) Identification of **opportunities for public engagement and a discussion of how public input and response will be used.**

(3) A description of **how the Agency encourages the active involvement of diverse social, cultural, and economic elements of the population within the basin.**

(4) The method the Agency shall follow to inform the public about progress implementing the Plan, including the status of projects and actions.” (Emphasis added.)

Both the GSP Regulations and Mr. Ceppos’ experience and sound practical guidance demand a well-defined GSP Development Committee in the proposed Joint Powers Agreement.

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City of Ridgecrest City Council

Re: August 3, 2016 City of Ridgecrest City Council Meeting, Agenda Items 5 and 6 – Proposed Joint
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Very truly yours,



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MAO/MDD/DRH

Enclosure

cc: Ridgecrest City Attorney [Keith@lemieux-oneill.com] (w/ encl.)

Client (w/encl.)

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The Board shall ensure that the development of the GSP includes the meaningful participation of all water users in the Basin including but not limited to the General Members, Associate Members, regulated public water utilities, mutual water companies and other private well pumpers.

[New] Section 7.05 – Groundwater Sustainability Plan Development Committee

Irrespective of any committees that are established by the Board pursuant to Section 7.04, ~~The Board shall ensure this meaningful participation through the establishment of one or more committees~~ a Groundwater Sustainability Plan Development Committee (“GSP Development Committee”) is hereby established and shall be maintained.- The GSP Development Committee is composed of one representative each of three or more of the voting GSA Members, one representative of the U.S. Navy, one representative of the Bureau of Land Management, one representative of Mojave Mutual Water Company, one representative of Meadowbrook Mutual Water Company, one representative of Searles Valley Minerals, and one or more at-large private pumper representative(s), ~~which will contain members from the above groups~~ so long as their participation does not violate the State ethics and conflict of interest laws, including Government Code sections 1090 *et seq.*, or any other law.

The Board shall assign the responsibility for developing a non-binding GSP proposal, including any individual portions or elements of the GSP, to the GSP Development Committee, which GSP proposal shall be submitted to the Board for final consideration and approval. Upon adoption, the GSP Development Committee shall continue to meet regularly and advise the Board concerning the administration and any later modifications of the GSP. The Board may appoint a technical subcommittee for the purpose of assisting the GSP Development Committee. The Bylaws adopted by the Board pursuant to Section 8.05 shall contain provisions for the operation of the GSP Development Committee, which provisions shall be prepared and proposed by the GSP Development Committee to the Board for final consideration and approval.

EXHIBIT 10

October 19, 2016

VIA EMAIL

The Board of Directors of the Indian Wells Valley Groundwater Authority:

Peggy Breeden (City of Ridgecrest)

[pbreeden@ridgecrest-ca.gov]

Peter Brown (Indian Wells Valley Water District)

[earthlandscaping@gmail.com] and

[Peter.Brown.Director@gmail.com]

Mick Gleason (Kern County Supervisor)

[mgleason@co.kern.ca.us] and

[district1@co.kern.ca.us]

Matt Kingsley (Inyo County Supervisor)

[mkingsley@inyocounty.us]

Robert Lovingood (San Bernardino County Supervisor)

[SupervisorLovingood@sbcounty.gov]

Re: *October 20, 2016 Indian Wells Valley Groundwater Authority Board Meeting
Agenda Item 6 – Policy and Technical Advisory Committees*

To the members of the Board of Directors (“Board”) of the Indian Wells Valley Groundwater Authority (“IWVGA”):

On behalf of Meadowbrook, we appreciate the effort and forward-progress reflected in the Staff Report for Agenda Item 6 of the October 20, 2016 Board Meeting, regarding committees of the IWVGA.

We specifically appreciate staff’s recommendation (which we understand is based upon the recommendation of the Ad Hoc Committee established at the last Board meeting) to designate one of the two Large Agriculture seats of the “Policy Advisory Committee” (“PAC”) specifically for Meadowbrook. This designation marks a significant step toward greater collaboration in the SGMA process. As one point of clarification regarding Meadowbrook’s seat on the PAC, we kindly request that the reference to “Meadowbrook Farms” be changed simply to “Meadowbrook” (since “Farms” is not in the name).

With respect to the proposed “Technical Advisory Committee” (“TAC”) concept, we ask that the Board consider and incorporate a change that we believe to be important, which is to add one additional TAC position for Agriculture. As stated under the “Mission and Objectives” section of the Staff Report, the TAC will be the “workhorse” for the IWVGA. The TAC will serve a vital role to ensure that the important groundwater management decisions of the IWVGA are based on sound and complete technical science. Arriving at a common technical understanding of the dynamic nature of the water resources, demands and management alternatives in the Indian Wells Valley Groundwater Basin (“Basin”) will require both a broad range and depth of technical expertise.

Adding one additional TAC position for Agriculture will further the stated membership objective that each organization represented on the IWVGA and the PAC may nominate one representative to sit on the TAC. More importantly, the TAC, the IWVGA and the Basin will greatly benefit from the technical expertise of the highly-qualified experts supplied by Agriculture PAC members. Finally, an additional TAC position for Agriculture will create an odd—rather than even—number of committee members, which is typical of these types of committees.

We appreciate the Board’s consideration of our comments and respectfully request that they be incorporated into the PAC and TAC proposals being considered for Board approval on October 20th.

Very truly yours,



Mark A. Ostoich, of
GRESHAM SAVAGE
NOLAN & TILDEN,
A Professional Corporation

MAO/MDD/DRH

cc: L. Duffy [lduffy@iwwvd.com]
Client

EXHIBIT 11

October 19, 2016

VIA EMAIL to the Clerk of the Board [lduffy@iwwvd.com]

The Board of Directors of the Indian Wells Valley Groundwater Authority:

Peggy Breeden (City of Ridgecrest)
Peter Brown (Indian Wells Valley Water District)
Mick Gleason (Kern County Supervisor)
Matt Kingsley (Inyo County Supervisor)
Robert Lovingood (San Bernardino County Supervisor)

Re: *October 20, 2016 Indian Wells Valley Groundwater Authority Board Meeting
Agenda Item 5 –Minutes of September Board Meeting*

To the members of the Board of Directors (“Board”) of the Indian Wells Valley Groundwater Authority (“IWVGA”):

On behalf of Meadowbrook, we respectfully request that the minutes for the September 15, 2016 IWVGA Board Meeting be revised to more accurately reflect our comments on one particular item during that meeting. Specifically, page 4 of September 15, 2016 minutes should be corrected to read as follows (the changes are shown in red underline / strike-out):

“Derek Hoffman, legal counsel for Meadowbrook Dairy, noted that it shows promise, ~~agreed-stated that if~~ there should be a TAC as well ~~with-as~~ a 3rd party consultant, ~~then whose~~ selection should include input by the Policy Advisory Committee, noted that Meadowbrook thinks that two seats for AG is underrepresentation, and requested that Meadowbrook be listed by name as a participant of the Advisory Committee.”

Please incorporate these changes to the September 15, 2016 Board meeting minutes, and ensure that this letter is entered into the record.

Board of Directors of the Indian Wells Valley Groundwater Authority
Re: October 20, 2016 Indian Wells Valley Groundwater Authority Board Meeting
Agenda Item 5 –Minutes of September Board Meeting

October 19, 2016

Page 2

We appreciate your attention to this matter, and we also appreciate the staff's efforts to maintain the meeting minutes particularly during these early organizational meetings of the IWVGA.

Very truly yours,



Mark A. Ostoich, of
GRESHAM SAVAGE
NOLAN & TILDEN,
A Professional Corporation

MAO/MDD/DRH

cc: Client

EXHIBIT 12

November 11, 2016

VIA EMAIL

The Board of Directors of the Indian Wells Valley Groundwater Authority:

Peggy Breeden (City of Ridgecrest)

[pbreeden@ridgecrest-ca.gov]

Peter Brown (Indian Wells Valley Water District)

[earthlandscaping@gmail.com] and

[Peter.Brown.Director@gmail.com]

Mick Gleason (Kern County Supervisor)

[mgleason@co.kern.ca.us] and

[district1@co.kern.ca.us]

Matt Kingsley (Inyo County Supervisor)

[mkingsley@inyocounty.us]

Robert Lovingood (San Bernardino County Supervisor)

[SupervisorLovingood@sbcounty.gov]

Re: *Meadowbrook Representative on Technical Advisory Committee*

To the members of the Board of Directors ("Board") of the Indian Wells Valley Groundwater Authority ("IWVGA"):

On behalf of Meadowbrook, we are pleased to inform the Board that Meadowbrook has retained Mr. Eddy Teasdale, P.G., CHg, of Kennedy/Jenks Consultants, as a technical consultant. A copy of Mr. Teasdale's extensive resume is attached. As you can see, Mr. Teasdale is a California Professional Geologist and a Certified Hydrogeologist with over 20 years of experience in a variety of areas pertaining to groundwater and surface water management throughout California (as well as nationally and internationally).

As you know, the types, structure and membership of committees of the IWVGA is critically important to successfully managing groundwater and implementing the Sustainable Groundwater Management Act in the Indian Wells Valley ("Valley"). The subject of committees was discussed at the last two Board meetings. At the October 20, 2016 Board meeting, the Board considered an outline structure for two committees, namely a Policy Advisory Committee ("PAC") which

specifically names Meadowbrook as member, and a Technical Advisory Committee ("TAC") which includes categorical seats (e.g. Voting GSA Members, Associate GSA Members, Agriculture, Domestic Well Owner, etc.). The Board approved the PAC and TAC proposals in draft, subject to consideration of the comments made during the October 20, 2016 Board meeting.

During public comment, Meadowbrook expressed appreciation to the Board for naming Meadowbrook as a member of the PAC. Regarding the TAC structure, Meadowbrook requested, with support from Mojave Pistachios, that the TAC structure include at least two (2) seats for Agriculture, including a seat for Meadowbrook as one of only two major agricultural groundwater producers and one of the largest groundwater pumpers in the Valley. As stated during that meeting, the IWVGA, the TAC and the Basin will greatly benefit from the technical expertise of Meadowbrook's highly qualified technical expert.

On behalf of Meadowbrook, we respectfully reiterate our request that the IWVGA include a seat for Meadowbrook on the TAC. We are confident that Mr. Teasdale will, as a TAC member, provide unique and invaluable insight, skill and expertise toward meeting the objectives of the TAC.

Very truly yours,



Mark A. Ostoich, of
GRESHAM SAVAGE
NOLAN & TILDEN,
A Professional Corporation

MAO/MDD/DRH

Enclosure (E. Teasdale Resume)

cc: L. Duffy [lduffy@iwvwd.com]
A. Christensen [achristensen@co.kern.ca.us]
R. McGlothlin [RMcGlothlin@bhfs.com]
E. Teasdale [EddyTeasdale@kennedyjenks.com]
Client

Resume

Eddy Teasdale, P.G., CHG

Subject Matter Expert – Hydrogeology and Water Resources

Education

BS, Geology, University of Texas, 1996
MS, Hydrogeology, University of Idaho, 2002

Registrations

Professional Geologist, California (7791)
Professional Geologist, Idaho (1561)

Certifications

Certified Hydrogeologist, California (926)

Memberships/Affiliations

National Groundwater Association
Groundwater Resources Association of California
International Association of Hydrogeologists
American Water Resources Association

Areas of Expertise

Groundwater Assessments
Geologic Site Characterization and Assessment
Aquifer Storage and Recovery
Indirect Potable Reuse
Geologic Modeling
Water Resources Evaluation
Litigation Support
Subsidence
Water Supply Wells
Well Rehabilitation
Well Optimization
Environmental Impact Studies
Contaminant Fate and Transport
Hydrogeologic Studies
Aquifer Testing Design and Analysis
Numerical Groundwater Modeling

Professional Summary

Eddy Teasdale has over 20 years of experience working on geological and hydrogeological investigations in the United States and internationally (England, Ireland, North Africa, and Guam). Projects have involved complex, comprehensive geology, hydrogeology, conveyance, flood control, and environmental issues. He has worked in all major aquifer types (alluvial basins, volcanic, carbonate and bedrock terrains). He is an experienced project manager who has successfully managed large, complex projects. He has extensive experience in writing technical reports and working with local, state, and federal regulatory agencies including presenting project information and resolving project issues. Mr. Teasdale's primary areas of technical expertise are in hydrogeologic characterization and groundwater modeling. Mr. Teasdale has served as a subject matter expert for the Professional Geologist and Certified Hydrogeologist exams for the Department of Consumer Affairs in California since 2006. He has assisted in the development, review, grading, and appeals process for the annual hydrogeologist certification exam. Participation in the six member expert team is by invitation only and participants are required to be both licensed and certified in their specialties in addition to having demonstrated extensive applied experience in their respective fields. Mr. Teasdale is the current President of the North Sacramento Valley Groundwater Resources Association and is a member on the technical advisory committee for the Butte County Well Drillers Advisory Group.

Mr. Teasdale has worked on projects for a wide range of clients including:

- Federal - U.S. Bureau of Reclamation (USBR), U.S. Army Corps of Engineers (USACE), U.S. Environmental Protection Agency (USEPA), and the United States International Boundary and Water Commission (USIBWC)
- State of California - California Department of Water Resources (DWR), and California Department of Toxic Substances Control (DTSC)

- Private clients (Shell, Chevron, BNSF, the Boeing Company, First Solar, British Petroleum, Duke Energy, Freeport-McMoran, First-Solar, Anheuser-Bush)
- City, County and Water Districts in California - LA Department of Water and Power, Butte County, Glenn County, South Tahoe PUD, Fresno County, City of Fresno, City of Manteca, City of Sacramento, City of Modesto, City of Winters, Yolo County Flood Control, City of Newman, Three Valley's Water District, Mojave Water Agency, Twenty-Nine Palms, City of Knight's Landing, Yolo County, City of Santa Cruz, San Frisco PUC, Monterrey Regional Water Pollution Agency, Eastern Municipal Water District, Antelope Valley East Kern, Arizona American Water Company.
- Other Consultant Companies (expert witness) – AECOM, SPF

Relevant Publications

Jim Zhang, and Eddy Teasdale, 2015, "An Iterative Method of Modeling Pump and Treat-Injection System with "Partial Treatment" AGU Meeting 2015, San Francisco, CA.

Jim Zhang, and Eddy Teasdale, 2012, "Steady-State Flow Model Calibration Using Multiple Sets of Observed Groundwater Elevation Data" AGU Meeting 2012, San Francisco, CA.

Eddy W. Teasdale, Jim Zhang, and Liz Elliott, 2010, "Using General Head Boundary Conditions in Groundwater Flow Models" AGU Meeting 2010, San Francisco, CA.

Parrish, K.E., R. Nommenson, and E. Teasdale, 2008, Practical Groundwater Cleanup Optimization with a TMR Model, Abstracts for Applications of Optimization Techniques to Groundwater Symposium, Sacramento, California, October.

Eddy W. Teasdale, Jim Zhang, and Kent Parrish, 2007, "An Enhanced Method of MODFLOW Simulation of Groundwater Extraction/Injection through Wells Penetrating Multiple Aquifers" AGU Meeting 2007, San Francisco, CA.

Kent Parrish, Jim Zhang and Eddy Teasdale, 2007. "A Closed-form Equation for Predicting Groundwater Response to Pumping in Homogeneous, Confined Horizontal Aquifer with Unidirectional Flow" AGU Meeting, December 2007, San Francisco, CA.

Eddy Teasdale, Kent Parrish and Ed Titus, Presentation 2007 "Well Field Optimization" 27th Biennial Groundwater Conference and 16th Annual Meeting of the Groundwater Resources Association of California.

Eddy Teasdale, Kent Parrish and Robb Clayton, Presentation 2005 "Groundwater Models;" The Geological Conceptual Approach" 25th Biennial Groundwater Conference and 14th Annual Meeting of the Groundwater Resources Association of California.

"Groundwater Pollution." Presentation: Northern California Natural History Museum without walls lecture series, Chico, CA, October, 2004.

"In-Situ Well Rehabilitation Techniques, Case Studies from the Desert", Presented as an in-house training seminar, Leeds U.K, November, 2003.

John H. Bush, Dean L. Garwood, and Eddy W. Teasdale, Poster, 2002, Re-Interpretation of the Pullman-Moscow Geology, Idaho-Washington: "An Example of the Importance of Geological Mapping to Groundwater Modeling", Idaho Rural Water Development Project, December, 2002.

Xeriscape ("Zeri" scape" your garden, and help in conserving our "groundwater" in the Palouse, Presentation: Latah County, Pullman, and Whitman County, January 2002.