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12 INDIAN WELLS VALLEY WATER DISTRICT

13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF ORANGE, CIVIL COMPLEX CENTER

16 MOJAVE PISTACHIOS, LLC; et al.,

17 Plaintiffs,

18 v.

19 INDIAN WELLS VALLEY WATER
20 DISTRICT; et al.,

21 Defendants.

Case No. 30-2021-01187275-CU-OR-CJC

*[Related to: Case No. 30-2021-01187589-CU-
WM-CXC; Case No. 30-2021-01188089-CU-
WM-CXC; Case No. 30-2022-01239479-CU-
MC-CJC; Case No. 30-2022-01239487-CU-
MC-CJC; Case No. 30-2022-01249146-CU-
MC-CJC]*

Assigned For All Purposes To:
The Honorable William Claster, Dept. CX101

22
23
24 **NOTICE OF RULING FROM THE**
25 **12/15/23 HEARING AND STATUS**
26 **CONFERENCE**

27 **Next Status Conference:**

Date: March 22, 2024

Time: 1:30 p.m.

Dept.: CX101

1 INDIAN WELLS VALLEY WATER
2 DISTRICT,

3 Cross-Complainant,

4 v.

5 ALL PERSONS WHO CLAIM A RIGHT
6 TO EXTRACT GROUNDWATER IN THE
7 INDIAN WELLS VALLEY
8 GROUNDWATER BASIN NO. 6-54
9 WHETHER BASED ON
10 APPROPRIATION, OVERLYING RIGHT,
11 OR OTHER BASIS OF RIGHT, AND/OR
12 WHO CLAIM A RIGHT TO USE OF
13 STORAGE SPACE IN THE BASIN; et al.,

14 Cross-Defendants.

15 SEARLES VALLEY MINERALS INC.,

16 Cross-Complainant,

17 v.

18 ALL PERSONS WHO CLAIM A RIGHT
19 TO EXTRACT GROUNDWATER IN THE
20 INDIAN WELLS VALLEY
21 GROUNDWATER BASIN NO. 6-54
22 WHETHER BASED ON
23 APPROPRIATION, OVERLYING RIGHT,
24 OR OTHER BASIS OF RIGHT, AND/OR
25 WHO CLAIM A RIGHT TO USE OF
26 STORAGE SPACE IN THE BASIN; et al.,

27 Cross-Defendants.

28 AND RELATED CASES.

**Hearing on IWVGA's Motion re Posting
(CCP § 836(d)(1)(C)):**

Date: March 22, 2024

Time: 1:30 p.m.

Dept.: CX101

**Hearing on IWVWD's Motion for Trial
Setting:**

Date: March 22, 2024

Time: 1:30 p.m.

Dept.: CX101

Complaint Filed: November 19, 2019

Trial Date: None Set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on December 15, 2023, at 1:30 p.m., the Court held (a) a
3 hearing on the Motion for Class Certification and Appointment of Class Counsel (“Class
4 Motion”) of Cross-Defendant Indian Wells Valley Groundwater Authority (“Authority”); and
5 (b) a Status Conference in the above-captioned action and related actions.

6 The Court made the following rulings:

7 1. Ruling on the Class Motion: The Court DENIED without prejudice the Class
8 Motion. The Court GRANTED the unopposed Requests for Judicial Notice submitted in support
9 of opposition to the Class Motion.

10 2. Notice re Decision on Posting: The Court ordered Defendant,
11 Cross-Complainant, and Cross-Defendant Indian Wells Valley Water District (“District”) to give
12 notice (“District’s Posting Notice”) to all parties no later than January 16, 2024 as to whether the
13 District would opt to post a copy of the Notice of Commencement of Groundwater Basin
14 Adjudication (“Adjudication Notice”), Cross-Complaint for Comprehensive Adjudication of the
15 Indian Wells Valley Groundwater Basin No. 6-54 (“Basin”) Pursuant to Section 830 *et seq.* of
16 the Code of Civil Procedure (“Adjudication Cross-Complaint”), and Form Answer to
17 Adjudication Cross-Complaint (“Form Answer”) in a conspicuous place on each of the parcels
18 for which the District did not receive confirmation of delivery of the District’s certified mailing
19 of a copy of the Adjudication Notice, Adjudication Cross-Complaint, and Form Answer to all
20 holders of fee title to property overlying the Basin and to the physical address of the property
21 where the addresses differed, pursuant to Code of Civil Procedure section 836(d)(1)(C). The
22 Court further ordered that if the District opted to post, that the District’s Posting Notice inform
23 all parties of approximately how long the District anticipated the posting to take.

24 3. Motion re Posting: The Court reserved **March 22, 2024, at 1:30 p.m., in**
25 **Department CX101** of the Orange County Superior Court, Civil Complex Center, located at 751
26 West Santa Ana Boulevard, Santa Ana, California 92701, for a hearing on a motion to be
27 brought by the Authority (“Authority’s Posting Motion”) if the District’s Posting Notice
28 indicates that the District has opted not to post. The Court further ordered that the Authority’s

1 Posting Motion, if any, shall be filed, served, and briefed pursuant to the Code of Civil
2 Procedure. The Authority's Posting Motion shall brief whether posting is mandatory in light of
3 the Code of Civil Procedure and the Court's December 9, 2022 ruling, among other things.

4 4. Motion re Trial Setting: The Court also reserved **March 22, 2024, at 1:30 p.m.,**
5 **in Department CX101** of the Orange County Superior Court, Civil Complex Center, located at
6 751 West Santa Ana Boulevard, Santa Ana, California 92701, for a hearing on a motion for trial
7 setting to be filed and served by the District pursuant to the Code of Civil Procedure.

8 5. Meet and Confer: The Court ordered the parties to meet and confer regarding
9 scheduling, trial setting, trial phasing, and issues relating to Code of Civil Procedure
10 section 833(d)'s exemption.

11 6. Next Status Conference: The Court set a Status Conference for **March 22, 2024,**
12 **at 1:30 p.m., in Department CX101** of the Orange County Superior Court, Civil Complex
13 Center, located at 751 West Santa Ana Boulevard, Santa Ana, California 92701. The
14 March 22, 2024 Status Conference is scheduled in each of the following related cases: Case
15 No. 30-2021-01187275-CU-OR-CJC; Case No. 30-2021-01187589-CU-WM-CXC, consolidated
16 with Case No. 30-2021-01188089-CU-WM-CXC; Case No. 30-2022-01239479-CU-MC-CJC;
17 Case No. 30-2022-01239487-CU-MC-CJC; and Case No. 30-2022-01249146-CU-MC-CJC.

18 7. Joint Status Conference Statement: The Court ordered the parties to submit one
19 Joint Status Conference Statement, which shall be filed under Case No. 30-2021-01187275-CU-
20 OR-CJC no later than March 15, 2024.

21 8. Notice: The Court ordered the District to give notice.
22

23 ///

1 Attached as Exhibit “A” and incorporated by this reference is a true and correct copy of
2 the Court’s December 15, 2023 Minute Order.

3
4 DATED: December 21, 2023 MURPHY & EVERTZ LLP

5
6
7 By: /s/ Emily L. Madueno

8 Douglas J. Evertz
9 Emily L. Madueno
10 Attorneys for Defendant, Cross-Complainant, &
11 Cross-Defendant
12 INDIAN WELLS VALLEY WATER DISTRICT
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EXHIBIT A

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER**

MINUTE ORDER

DATE: 12/15/2023

TIME: 01:30:00 PM

DEPT: CX101

JUDICIAL OFFICER PRESIDING: William Claster

CLERK: G. Hernandez

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: B. Allen, None

CASE NO: **30-2021-01187275-CU-OR-CJC** CASE INIT.DATE: 02/16/2021

CASE TITLE: **Mojave Pistachios, LLC vs. Indian Wells Valley Water District**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Other Real Property

EVENT ID/DOCUMENT ID: 74170618

EVENT TYPE: Status Conference

EVENT ID/DOCUMENT ID: 74170619

EVENT TYPE: Motion - Other

MOVING PARTY: Indian Wells Valley Groundwater Authority

CAUSAL DOCUMENT/DATE FILED: Notice of Motion, 10/12/2023

APPEARANCES

Appearances noted by way of copy of business cards, and/or Appearance Calendar, attached hereto and incorporated herein by reference.

Hearing held with participants appearing remotely and in person.

Cross-Defendant Indian Wells Valley Groundwater Authority's Motion for Class Certification and Appointment of Class Counsel (ROA #1060)

The Court hears oral argument and issues its ruling. The Court's ruling is attached hereto and incorporated herein by reference.

Status Conference

Court and counsel discuss the status of the case as set forth on the record.

A Status Conference is scheduled for 03/22/2024 at 01:30 PM in Department CX101.

A joint status conference statement is to be filed on or before 03/15/2024.

Court orders Douglas J. Evertz to give notice.

IN PERSON APPEARANCES:

Kyle Brochard of RWG Law appearing for Indian Wells Valley Groundwater Authority

Keith Lemieux of Aleshire & Wynder appearing for City of RidgeCrest

Jeffrey V. Dunn of Best Best & Krieger appearing for Searles Valley Minerals, Inc.

Derek Hoffman of Fennemore Dowling Aaron appearing for Meadowbrook Dairy

Emily Madueno and Douglas J. Evertz of Murphy & Evertz appearing for Indian Wells Valley Water District

Scott Slater of Brownstein Hyatt Farber Schreck appearing for Mojave Pistachios et al.

David Gehlert and R. Lee Leininger of the United States Department of Justice for The United States

Josh Hiller Attorney R.A. Jeheber Residential Design, Angelo & White No
Inc.

Calendar #8 Case Number: 30-2022-01257316-CU-NP-CXC Case Title: KAMEL vs. HIBBETT, INC., a Delaware corporation,

Event: 09:00 AM - Motion to Seal

Participant	Role	Attorney for	Law Firm/Company Name	Specially Appearing
Ophir Johna	Attorney	Hibbett	Maynard Nexsen	No
John R. Habashy	Attorney	Plaintiff	Lexicon Law, PC	No

Calendar #10 Case Number: 30-2023-01338916-CU-OE-CXC Case Title: Facio vs. KPC Healthcare, Inc.

Event: 09:00 AM - Motion to Compel Arbitration

Event: 09:00 AM - Joinder

Participant	Role	Attorney for	Law Firm/Company Name	Specially Appearing
Jason Fischbein	Defendant	Defendants	Fisher Phillips	No
Omeed Askari	Other		Fisher Phillips	No
Andrew Weaver	Attorney	Plaintiff Facio	Schneider Wallace Cottrell Konecky	No

Calendar #11 Case Number: 30-2021-01187275-CU-OR-CJC Case Title: Mojave Pistachios, LLC vs. Indian Wells Valley Water District

Event: 01:30 PM - Motion - Other

Event: 01:30 PM - Status Conference

Participant	Role	Attorney for	Law Firm/Company Name	Specially Appearing
Nicholas J Karno	Cross-Defendant	City of Los Angeles, through Department of Water & Power	Los Angeles City Attorney's Office	No
Robert Kuhs	Attorney	Granite Construction Company	LeBeau Thelen	No
Elaine Mead	Interested Party			No
Alexandra Abbey	Cross-Defendant		Dep't of the Navy	No
James L Markman	Attorney	Indian Wells Valley Groundwater Authority	Richards, Watson & Gershon	No
Phillip Hall	Attorney	County of Kern; Indian Wells Valley Groundwater Authority	Kern County Counsel	No
Jeff Warren	Attorney	Nominated Counsel for Proposed Small Pumper Class	Klein, DeNatale, Goldner	No
Amy Steinfeld	Attorney	Mojave Pistachios, LLC	Brownstein Hyatt Farber Schreck,	No

			LLP	
Elisabeth Esposito	Plaintiff	Plaintiffs and Cross-Defendants Mojave Pistachios, LLC, et al.	Brownstein Hyatt Farber Schreck, LLP	No
Ann Simshauser	Cross-Defendant	in pro per		No
Jacob Metz	Attorney	Indian Wells Valley Groundwater Authority	Richards, Watson & Gershon	No
Ivo Keller	Attorney	California Water Service Company	SSL Law Firm LLP	No
Noah Golden	Attorney	Department of Fish and Wildlife	California Office of Attorney General	No
Ron Kicinski	Interested Party			No
Joshua Nugent	Interested Party			No
Judith Coleman	Cross-Defendant		U.S. Department of Justice	No
Alexa Penalosa	Attorney	U.S. Department of Justice		No
Stan Rajtora	Cross-Complainant			No
Pat and Don Quist	Cross-Defendant			No
Gary Arnold	Attorney	Little Lake Ranch	Arnold LaRochelle	No
Andrea	Other		BHFS	No
George D Croll	Cross-Complainant			No
Kelly Ridenour	Other			No

Calendar #11 Case Number: 30-2021-01187589-CU-WM-CXC Case Title: Mojave Pistachios, LLC vs. Indian Wells Valley Groundwater Authority

Event: 01:30 PM - Status Conference

Participant	Role	Attorney for	Law Firm/Company Name	Specially Appearing
Elaine Mead	Interested Party			No
Phillip Hall	Attorney	Indian Wells Valley Groundwater Authority	Kern County Counsel	No
Elisabeth Esposito	Attorney	Plaintiffs and Cross-Defendants Mojave Pistachios, LLC, et al.	Brownstein Hyatt Farber Schreck, LLP	No
Noah GoldenKrasner	Attorney	Department of Fish and Wildlife	California Attorney General	No
Joshua Nugent	Interested Party			No
Andrea C Morales	Other		BHFS	No

Timothy K Parker	Cross-Complainant	No
Ed Imsand	Other	No

Calendar #11 Case Number: 30-2022-01239479-CU-MC-CJC Case Title: Indian Wells Valley Groundwater Authority vs. Mojave Pistachios, LLC,

Event: 01:30 PM - Status Conference

Participant	Role	Attorney for	Law Firm/Company Name	Specially Appearing
Elaine Mead	Interested Party			No
Phillip Hall	Attorney	Indian Wells Valley Groundwater Authority	Kern County Counsel	No
Amy Steinfeld	Attorney	Mojave Pistachios, LLC	Brownstein Hyatt Farber Schreck, LLP	No
Elisabeth Esposito	Attorney	Defendants Mojave Pistachios, LLC, et al.	Brownstein Hyatt Farber Schreck, LLP	No
Joshua Nugent	Interested Party			No
Brian Hamilton	Attorney	Potential Class Counsel	Downey Brand LLP	No

Calendar #11 Case Number: 30-2022-01239487-CU-MC-CJC Case Title: Indian Wells Valley Groundwater Authority vs. Searles Valley Minerals Inc.

Event: 01:30 PM - Status Conference

Participant	Role	Attorney for	Law Firm/Company Name	Specially Appearing
Elaine Mead	Interested Party			No
Phillip Hall	Attorney	Indian Wells Valley Groundwater Authority	Kern County Counsel	No
Amy Steinfeld	Attorney	Mojave Pistachios	Brownstein Hyatt Farber Schreck, LLP	No
Joshua Nugent	Interested Party			No
Ed Imsand	Other			No

Calendar #11 Case Number: 30-2022-01249146-CU-MC-CJC Case Title: Mojave Pistachios, LLC vs. Indian Wells Valley Groundwater Authority

Event: 01:30 PM - Status Conference

Participant	Role	Attorney for	Law Firm/Company Name	Specially Appearing
Elaine Mead	Interested Party			No

James Worth	Attorney	Indian Wells Valley Water District	McMurtrey, Hartsock, Worth & St. Lawrence	No
Phillip Hall	Attorney	Indian Wells Valley Groundwater Authority	Kern County Counsel	No
Amy Steinfeld	Attorney	Mojave Pistachios	Brownstein Hyatt Farber Schreck, LLP	No
Elisabeth Esposito	Attorney	Petitioners and Plaintiffs Mojave Pistachios, LLC, et al.	Brownstein Hyatt Farber Schreck, LLP	No
Joshua Nugent	Interested Party			No

Calendar # Case Number: 30-2021-01232738-CU-FR-CXC Case Title: Azadian vs. Reed

Event: 08:30 AM - Ex Parte

Participant	Role	Attorney for	Law Firm/Company Name	Specially Appearing
Zachariah Tomlin	Attorney	Defendants Gregory and Carolyn Reed	WFBM, LLP	No
Christopher Lawler	Attorney	Drilco, Inc.	Orland Law Group	No
Stephan Mihalovits	Attorney	SCC Construction	Gray Duffy, LLP	No
Sarah Sakr	Attorney	Legacy C D M, Inc.	Lewis Brisbois	No
Richard Herman	Cross-Complainant	Plaintiffs	Richard Herman	Yes

Calendar # Case Number: 30-2022-01239759-CU-MT-CXC Case Title: Moon vs. County of Orange

Event: 08:30 AM - Ex Parte

Participant	Role	Attorney for	Law Firm/Company Name	Specially Appearing
Richard Herman	Attorney	Moon et all	Richard Herman	Yes
Zachary Schwartz	Attorney	Defendant T. Carrillo	Koeller Nebeker Carlson Haluck, LLP	No

Calendar # Case Number: 30-2022-01291272-CU-FR-CXC Case Title: Wimber vs. Scott

Event: 09:00 AM - Status Conference

Event: 09:00 AM - Demurrer to Amended Complaint

Event: 09:00 AM - Joinder

Event: 09:00 AM - Demurrer to Amended Complaint

Participant	Role	Attorney for	Law Firm/Company Name	Specially Appearing
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Casey S Hale

Attorney

Nominal Defendant

Brown and Streza,
LLP

No

MOJAVE PISTACHIOS, LLC v. INDIAN WELLS VALLEY WATER DISTRICT 21-1187275

The motion of Cross-Defendant Indian Wells Valley Groundwater Authority (“Authority”) for Class Certification is DENIED without prejudice.

The unopposed Requests for Judicial Notice submitted in support of opposition to the motion are GRANTED. The Court declines to rule on Cross-Complainant Indian Wells Valley Water District’s (“District”) objections to the Declaration of Stephen Johnson, and the Authority’s objections to the Declarations of Timothy Parker and Charles Krieger as those declarations are not relevant to the Court’s ruling.

I. **OVERVIEW**

This lawsuit and the related actions involve adjudication of various parties’ rights to groundwater in the Indian Wells Valley Basin. Among the claims at issue in a number of the lawsuits is the validity and implementation of the Authority’s Groundwater Sustainability Plan (GSP), and the Authority’s attempt to collect groundwater extraction fees from some of the extractors.

This particular case began as a lawsuit by Mojave Pistachios and others seeking to quiet title to its groundwater rights in the Basin, along with related relief. In response, the District, on June 16, 2021, filed a cross-complaint for determination of all groundwater rights in the Basin, or a Comprehensive Adjudication pursuant to CCP §§ 830-852. The Authority intervened in the Comprehensive Adjudication on March 16, 2022.

Pursuant to CCP § 835, the District provided notice of the Comprehensive Adjudication to multiple parties following the Court’s approval of an Adjudication Notice and form answer. Pursuant to CCP § 836, the District also gave mail notice (return receipt requested) of the action to property owners in the Basin at approximately 18,000 addresses. For those parcels of property for which a return

MOJAVE PISTACHIOS, LLC v. INDIAN WELLS VALLEY WATER DISTRICT 21-1187275

receipt was not received, CCP § 836(d)(1)(C) requires the posting of the Adjudication notice and form answer in a conspicuous place on the parcel.

Arguing that the posting of notices on 3,953 parcels for which no return receipt was received was neither appropriate nor reasonably calculated to provide the requisite notice, the District applied to this Court for an order permitting alternative means to complete service pursuant to CCP § 836(i). That motion was unopposed and was granted on December 9, 2022.

Now, more than one year after that ruling, the Authority seeks to certify a cross-defendant class of “Small Pumpers.” The primary stated reasons for seeking such certification are (1) to ensure proper joinder of all property owners pursuant to the McCarran Amendment (43 U.S.C. § 666) because the United States is a party, and (2) to protect the Small Pumpers’ interests with respect to the proposed Comprehensive Adjudication.

II. THE USE OF CLASS ACTIONS IN COMPREHENSIVE ADJUDICATIONS

Before addressing application of the specific criteria supporting a class action here, the Court addresses several preliminary issues.

First, although it appears from the evidence that 31 of 32 Comprehensive Adjudications in California have occurred without the need for a certified class, there is no legal impediment to a class action in appropriate circumstances. Indeed, CCP § 840(b)(9) provides that a court may consider “Forming a class or classes of overlying groundwater rights holders pursuant to the criteria in [CCP] section 382.”

Second, although there is no specific time frame in which class certification may be sought, the Authority’s bringing this motion one and one-half years after it

intervened in the Comprehensive Adjudication raises a number of questions. As noted above, one of the primary stated reasons for bringing this motion is to rectify the District's purported failure to post per CCP § 836(d)(1)(C). Yet if the Authority felt that the District's motion for alternative methods of service instead of posting was not adequate for McCarran Amendment purposes, then it should have objected to it when it was before the Court. Now, a year later and after the District has provided service via alternate means, the Authority raises for the first time the argument that posting under the statute is mandatory and cannot be waived. Whether this position is correct is not before the Court at the moment. However, given the circumstances, it is hard not to conclude that this belated argument suggests the Authority has alternative motives for seeking certification of a Small Pumper class.

Along these lines, the Authority's newfound concern for the Small Pumpers' interests comes into play as the District and other parties are on the verge of presenting their Technical Working Group's proposed judgment and physical solution for the Court's consideration. Although the Authority apparently has not seen that proposal, it plainly will oppose it as demonstrated by the parties' disputes over sustainable/safe yield from the Basin. Presumably, the Authority expects that the class that it seeks to certify will support that opposition.

This latter point is evidenced not only by the Authority's bringing the motion on behalf of other parties, but also by its initial request that its attorneys represent the class going forward. While the Authority appears to have backed off that request in the face of opposition suggesting conflicts of interest, there can be little doubt that the intent was to build support for the Authority's opposition to the Technical Working Group's proposal.

III. **APPLICATION OF CLASS CERTIFICATION CRITERIA**

MOJAVE PISTACHIOS, LLC v. INDIAN WELLS VALLEY WATER DISTRICT 21-1187275

A plaintiff seeking class certification is required to “demonstrate the existence of an ascertainable and sufficiently numerous class, a well-defined community of interest, and substantial benefits from certification that render proceeding as a class superior to the alternatives. In turn, the community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.” (*Brinker Restaurant Corporation v. Superior Court* (2012) 53 Cal.4th 1004, 1021 [internal quotes and citations omitted].) These elements are typically referred to as (1) ascertainability; (2) numerosity; (3) commonality; (4) typicality; (5) adequacy; and (6) superiority.

A. Ascertainability and Numerosity

The Authority seeks to certify the following overall class:

“All private persons and entities that own real property overlying the Indian Wells Valley Groundwater Basin No. 6-54 (the “Basin”) who extract, for use on property overlying the Basin, five acre-feet or less of groundwater per year from the Basin, including de minimis extractors referred to in California Water Code section 10721, subdivision (e), and California Code of Civil Procedure section 833, subdivision (d) (the “Small Pumper Class” or “Class”).”

There is no dispute that the class is ascertainable or sufficiently numerous to support class certification.

B. Commonality

The Authority contends that common questions predominate since the Small Pumpers, as *de minimis* users, all have the same common rights to extract groundwater in their proportionate fair share, and also have common defenses

MOJAVE PISTACHIOS, LLC v. INDIAN WELLS VALLEY WATER DISTRICT 21-1187275

against competing water rights claims. In its Reply, the Authority argues that the Small Pumpers need separate representation since the Technical Working Group's proposed solution undoubtedly will not respect their "established water rights."

Oppositions to the motion (filed by the District, Mojave Pistachios and Searles) dispute that common issues predominate. Among other things, they point out that members of the putative class have differing rights and depending on the amount of water pumped and competing uses for the water (i.e., domestic, agricultural, etc.) Other differences between putative members include those users who pump between 2- and 5-acre feet per year and therefore are subject to the Authority's extraction and replenishment fees, and those who pump less than 2 acre feet and are not subject to those fees.

The Authority responds that these differences can be addressed through the use of sub-classes, and that in any case the "small producers . . . cannot employ individual legal counsel to ward off the continued overdraft sought by the Large Pumpers which could deprive their homes of water." (Reply, p.16)

In the Court's view, the commonality question is a close call that perhaps could be clarified with supplemental briefing and evidence regarding the purported differences between the various class members. However, such briefing is unnecessary as the motion is being denied for other reasons.

C. Typicality

The authority seeks appointment of Dr. Donald Decker as class representative. Dr. Decker is part of the putative class and allegedly has the "same claim to an overlying water right." (Authority Motion, p. 16) None of the oppositions to the motion raise this proposed appointment as a basis to deny the motion, although by pointing to inherent conflicts within the putative class, they appear to be

suggesting that Dr. Decker can't adequately represent the interests of the entire class.

D. Adequacy of Counsel

It is well settled that adequacy of representation depends on whether proposed class counsel is qualified to conduct the proposed litigation” (*McGhee v. Bank of America* (1976) 60 Cal. App. 3d 442, 450.)

The oppositions to the motion argue that the proposed class counsel—Richards, Watson & Gershon (“RWG”) cannot represent the class because of conflicts of interest between a current client--the Authority--and the proposed class which they seek to represent. Those conflicts are highlighted in the District’s opposition at pages 19-20 and include: (1) the fact that the Authority regulates groundwater pumpers and has the power to enforce its ordinances and fee requirements against putative class members; (2) the Authority’s GSP allocates the entire sustainable yield to the United States “at the expense of Proposed Class members;” and (3) the Authority’s GSP seeks to eliminate pumping over two acre feet for agricultural use. Mojave’s opposition also points to another conflict by virtue of the GSP’s statement that the overlying groundwater rights of the City of Ridgecrest and Kern County are “superior to all other overlying rights.” (RJN 37, at p. 5-10)

In its Reply, the Authority does not directly address any of these conflicts, instead stating that there is no conflict because it is not asserting “a claim for water rights.” (Reply p. 17) This statement fails to address the above-stated concerns, each of which would seem to put the Authority potentially at odds with the proposed class.

Accordingly, the Court concludes the RWG could not serve as class counsel. Moreover, neither of the other two law firms suggested by RWG for this role have supplied this Court with any information regarding their willingness or qualifications to serve in this role. Additionally, having not even conducted their own conflict checks, these other firms cannot be considered at this time.

Accordingly, the lack of adequate class counsel is a basis for denying class certification.

E. Superiority

When all is said and done, the primary reason for denying class certification is the Court's view that a class action is neither necessary nor a superior way of proceeding. For one thing, the Authority's reliance on the notice issue, i.e., the posting requirement in CCP § 836, as basis for certifying a class should have been raised long ago. Class actions are allowed when proceeding on this basis is a superior means for achieving fair and efficient litigation. *Washington Mutual Bank, FA v. Superior Court* (2001) 24 Cal. 4th 906, 913-14. The Authority did not object to the District incurring substantial time and expense implementing its alternate notice methods. By now claiming those methods are not code-compliant and saying that the problem can be solved by certifying a class, the Authority is not acting efficiently.

Nor does the Authority adequately address the delays and costs associated with class actions. Instead, it points to the advantages of having the putative class weigh in (presumably in support of the Authority's position) when the Technical Working Group presents its proposed physical solution. Yet nothing is said as to how that process will be delayed. Indeed, seeking to certify a class at this point runs counter to the legislative intent behind the so-called Streamlined Act (CCP §§ 830-852) which calls for "conducting a comprehensive adjudication in a manner

MOJAVE PISTACHIOS, LLC v. INDIAN WELLS VALLEY WATER DISTRICT 21-1187275

that promotes efficiency, reduces unnecessary delays, and provides due process.” CCP § 830(b)(2).

Notably, the Act’s provisions address both of the Authority’s main reasons for seeking class certification. It provides methods for giving notice to all property owners (CCP §§ 835-836) and requires the Court to review any proposed physical solution and judgment to ensure it is “consistent with the water rights priorities” of all persons claiming water rights. (*See* CCP § 850). As noted in the oppositions to the motion, in order to properly evaluate a proposed physical solution, the Court is empowered to appoint a neutral expert per Evidence Code § 730 to ensure the putative class members are treated fairly. Of course, even without a class being certified, a knowledgeable property owner like Dr. Decker can lodge his own objections.

The superiority of a class action here is also undercut by virtue of there being over 100 putative class members who object to certifying a class and presumably would opt out of a class if it were certified. Given these pre-certification objections, one key advantage of a class action—having a single representative speak for all of the so-called Small Pumpers—is effectively eliminated.

In short, the Court finds that the benefits of a class action in this case are not superior to alternate means for litigating the Comprehensive Adjudication.

