

IWVWD responds to public questions on adjudication lawsuit

By Michael Smit For The Daily Independent
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At the Indian Wells Valley Water District board meeting on June 9, Water District board and staff answered questions on its water adjudication lawsuit that aims to determine water rights of all parties in the Indian Wells Valley.

The questions came from John “Skip” Gorman. Gorman is a member of the Ridgecrest City Council, a governing body often seen to be at odds with the Water District on the topic of water sustainability plans, but Gorman said that he was asking these questions just as a member of the public and not as a City Council representative.

Gorman had two questions. Why did the Water District start the adjudication lawsuit? Should de minimis water users — generally meaning private well owners — feel threatened by the lawsuit?

Background

In 2014, California signed into law the Sustainable Groundwater Management Act, which requires groundwater basins to be brought into sustainable yield — effectively meaning that water in must roughly equal water pumped out.

The Indian Wells Valley Groundwater Authority formed to meet that requirement for the IWV groundwater basin. IWVGA has a board with five voting members from local public agencies in the area: Kern County, Inyo County, San Bernardino County, the City of Ridgecrest, and the Water District.

IWVGA put together a groundwater sustainability plan which primarily focuses on sustainability by building and running a water pipeline from Antelope Valley to IWV. While IWVGA has been awarded some grant funding for the project and aims to achieve more, it will still likely be an expensive project for the IWV.

The Water District voted to approve IWVGA's plan in 2020, but the relationship between the Water District and the rest of the IWVGA has soured. The Water District currently opposes the IWVGA's pipeline project. In addition, the Water District now believes the IWV basin has far more water in storage than the IWVGA plan states, and that it receives nearly double the amount of natural recharge per year than the IWVGA plan states.

Why did the Water District initiate the adjudication?

The Water District initiated a comprehensive adjudication in 2021. The adjudication aims to determine the water rights of all parties in the IWV basin, and it's also become an avenue that pits the Water District and the IWVGA against each other as the Water District is using the adjudication to dispute the IWVGA's data on how much water is in the basin and how much recharge it gets.

Water District board members have said they believe if it's proven that the basin has more water and recharges with more water annually — and if farming is reduced in the valley — there may be no need for an imported water pipeline to support the valley's current needs.

However, the adjudication itself costs money as legal fees mount year upon year.

Gorman asked the Water District why the adjudication was initiated. Water District legal counsel Jim Worth responded first, saying that the only way to get the Navy to participate in a lawsuit to determine local water rights is through a comprehensive adjudication.

"Everyone is aware of federal sovereignty," Worth said. "They understand the importance that it is for the federal government's water right to be assigned."

He continued to explain that this means every water pumper must be pulled into the lawsuit, including private well owners.

"If the District were to exempt de minimis, we've been told by the Navy attorney, that doesn't meet the definitions of a comprehensive groundwater adjudication," Worth said.

Should de minimis users feel threatened by the adjudication?

In this context, "de minimis water user" means someone who pumps an amount of water low enough to be considered negligible. Most are private well owners, of which the IWV has many across its remote landscape.

IWVGA staff have stated that the Water District's adjudication lawsuit puts private well owners at risk of reducing or even losing their water rights. Many cannot represent themselves or find representation in the lawsuit, and IWVGA legal counsel has said it's likely the court will assign them a default ruling on their water rights and they'll have to live with what the court decides.

At one point in the adjudication, the idea came up of assigning counsel to the entire class of de minimis water users, but the Water District opposed that idea. Since then, IWVGA legal counsel has portrayed the Water District as a threat to private well owners.

At the Water District board meeting, Gorman said, "The de minimis users is a group that doesn't speak for itself very much. In this whole issue, they feel slightly at a disadvantage and slightly threatened by the adjudication exercise."

He continued, "Should de minimis water users, like myself, feel threatened now that we're this deep into the adjudication?"

"No," Worth said. "Look at the appendix. You're in there. De minimis is considered."

"I believe the reason de minimis pumpers are scared right now is because of the scare tactic narrative put on by [IWVGA]," Worth said.

He said California law requires de minimis water pumpers to be protected, and the Water District is just doing what is needed to quantify the water rights in the IWV.

Regarding class counsel, Worth said of roughly 30 water adjudications that have occurred in California, only one has received class counsel for de minimis pumpers.

Water District board member David Saint-Amand said, "[IWVGA] attempted to convince the judge that they should represent the de minimis users and the judge received several hundred letters from de minimis users saying 'Under no circumstances should the Groundwater Authority be allowed to represent us.'"

Other members of the public also had questions. Renee Westa-Lusk asked what the Water District is doing proactively to protect private well owners.

Worth said that it's a matter of litigation and he won't discuss it.

April Keigwin spoke to point out that the Water District's documents show \$1.8 million in legal fees for the adjudication over the past year, and she cautioned that other adjudications in California that started for very similar reasons have gone on for 19 years.

Saint-Amand responded by saying that building and maintaining the pipeline — by the Water District's estimate — could double or triple the water bill for Water District customers.