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October 25, 2022

Via Certified Mail and Electronic Mail

Gran Paradiso Property Owners Association, Inc.
Attn: Joseph Herbert
1819 Main Street #610
Sarasota, Florida 34236
jherbert@nhlslaw.com

RE: Gran Paradiso Irrigation Water Matters

Dear Mr. Herbert,

We have reviewed your September 23, 2022 correspondence. As an initial matter, our prior September 6, 2022 correspondence asked for a detailed explanation of the basis for any continuing dispute concerning the West Villages Improvement District's (the "**District**") provision of irrigation water to the Gran Paradiso Property Owners Association, Inc. (the "**Association**"). While the Association's latest correspondence broadly identifies three issues, it does not explain the factual basis for any asserted dispute or claim regarding those issues. Instead, it provides a series of assertions without explaining their basis or how the Association believes they are relevant to any claim the Association purports to have. Nevertheless, we offer the following information in a continued effort to provide relevant information, education, and cooperation.

(1) The validity of charges billed by the District and paid by the Association since 2018.

The first broad "issue" identified in your letter suggests some dispute concerning District bills to the Association dating back to 2018. Your letter also makes a number of assertions that appear related to this issue. First, the Association appears to be asserting that it should only have been billed at rates reflected in the Irrigation Quality Water Use Agreement dated February 20, 2009 (the "**Prior Agreement**") until the parties entered into the Amended and Restated Agreement for the Delivery and Use of Irrigation Quality Water dated December 16, 2020 (the "**Restated Agreement**"). Notably, your letter does not mention the District's adoption of Resolution 2018-18, which established new irrigation rates, nor the parties' First Amendment to Irrigation Quality Water Use Agreement dated January 17, 2019 (the "**Prior Agreement as Amended**"). Your client has a copy of the Prior Agreement as Amended, but a copy is enclosed for your convenience. The Prior Agreement as Amended made several changes to the Prior Agreement and formally reflected

and memorialized the irrigation rates established by the District through adoption of Resolution 2018-18.

The District adopted Resolution 2018-18 pursuant to its authority under section (3)(2)(q) of Chapter 2004-456, *Laws of Florida*, which authorizes and empowers the District to, among other things, "prescribe, fix, establish, and collect rates, fees, rentals, fares, or other charges, and to revise the same from time to time, for property, facilities, and services made available, furnished, or to be furnished by the district." Consistent with such authority, note that section 7 of the Prior Agreement explicitly reserved to the District the right to set and adjust rates, fees, and charges for the provision of irrigation quality water. Resolution 2018-18 was duly passed and adopted on September 13, 2018 and became effective upon its passage. Pursuant to adoption of Resolution 2018-18, our review indicates that the District began charging the Association the newly adopted rates in October 2018. However, despite such rates being effective September 13, 2018, we believe the District's Board intended staff to defer implementation until January 1, 2019. We will bring this issue to the District's Board and recommend a credit reflecting the difference between the amount billed pursuant to Resolution 2018-18 for the October-December 2018 invoice, and the amount that would have been billed for that period under the rate effective immediately prior to adoption of Resolution 2018-18.

Second, the Association appears to be raising some dispute regarding the "Fixed Capital Rate" portion of the District's adopted irrigation rate structure as reflected in Exhibit B to Resolution 2018-18 (referenced as "Capital Recovery" on bills to the Association). To the extent the Association has questions regarding the purpose and basis of this component of the District's irrigation rates, the Rate Study approved by the District and attached as Exhibit A to Resolution 2018-18 explains its basis and purpose, stating in part:

> 2.3 ASSUMPTIONS
> * * *
> Capital Costs
> This portion of the revenue requirement funds the annual renewal & replacement costs of capital assets projected to be incurred by the District. Although the initial supply and distribution infrastructure has and will be funded by other resources, the District maintains the responsibility to maintain and replace this infrastructure. As such, an amount equal to the annual depreciation on existing and projected assets in service is included for purposes of determining the future capital cost requirements of the District. A listing of existing and planned assets was provided in current day dollars, resulting in an annual depreciation expense of approximately $250,000 per year for the defined area reflected in this Study.
> * * *

> 3.2 CAPITAL CHARGE
> The capital charge is based on the cost to replace the system's capital assets represented by the District's projected annual depreciation expense for its current and planned water supply and distribution infrastructure. The charge will be recovered as a fixed monthly rate per ERU that the customer represents. Schedule 5 of Appendix A summarizes the capital charge rate calculation, while Schedule 4 includes a detailed listing of all the assets providing the basis of the annual depreciation expense.

Further, any assertion the Association "never agreed to pay" such rates or is somehow not subject thereto is baseless. As noted above, Chapter 2004-456, *Laws of Florida*, grants the District broad authority to set rates for services it provides and, in accordance with that authority, the District duly adopted such Fixed Capital Rate component of its rate structure through Resolution 2018-18, effective September 13, 2018. Consistent with this authority, section 7 of the parties' Prior Agreement explicitly reserved the District's right to set and adjust rates, fees, and charges for the provision of Irrigation Quality Water. Moreover, the parties memorialized the rates adopted in Resolution 2018-18 (including the Fixed Capital Rate) in January 2019 in the Prior Agreement as Amended and again—23 months later—in the parties' Restated Agreement.

Third, and finally, the Association appears to be raising some dispute regarding the "Well Availability Rate" component of the District's adopted irrigation rate structure. The Rate Study approved by the District and attached as Exhibit A to Resolution 2018-18 explains the basis and purpose of the Well Availability Rate. For example, the Rate Study states in part:

> 2.3 ASSUMPTIONS
> * * *
> Well Availability Costs
> The District will secure long-term rights to existing and future wells and associated groundwater supply in the service area from developers by written agreement. If the District doesn't have access to this groundwater supply, it would otherwise have to find an alternative source to supply a portion of the irrigation water demands of its customers. For the District, that would likely be in the form of additional purchased reclaimed water from the City of North Port. As such, it is anticipated that the agreement for the use of the groundwater supply rights and wells of developers will include a cost, and that cost has been estimated to be equal to the estimated City of North Port bulk reclaimed water rate for purposes of this Study. The reclaimed water rate from the City of North Port was estimated based on the known reclaimed water rate from Sarasota County, adjusted to account for the rate differential

> between Sarasota County and the City of North Port retail rates. Based on 10,000 gallons of water use per month per ERU, the well availability cost is estimated at about $750,000 per year as shown in Schedule 5 of Appendix A.
> * * *
>
> 3.3 WELL AVAILABILITY CHARGE
> The well availability charge is based on the projected groundwater/well availability expenditure requirements identified herein. The charge will be recovered as a fixed monthly rate per ERU. Schedule 6 of Appendix A summarizes the well availability charge calculation.

In short, the Well Availability Rate reflects the District's cost to secure exclusive, long-term rights to wells and groundwater withdrawals necessary to help ensure it meets customer irrigation demand. It is validly charged for all the same reasons noted above with respect to the District's Fixed Capital Rate. Finally, to the extent the Association is asserting that it is somehow entitled to *receive* payment of a well availability fee *from* the District, the District is not aware of any basis for such assertion and the Association has offered none. To the District's knowledge the wells it uses are owned by the developer, and the Association has never held a permit nor had a legal right to control or withdraw water from any wells utilized by the District to provide irrigation water to its customers.

(2) The validity of the District's use of AGMOD calculations as the limitation for all consumptive water usage, irrespective of whether it is actually groundwater withdrawal or reclaimed water.

The second broad "issue" identified in your letter suggests some dispute over the volumes of irrigation water allocated to the Association. As reflected in section 4 of the Restated Agreement, the District has agreed to make a certain volume of "Irrigation Quality Water" available to the Association as determined by utilizing the Southwest Florida Water Management District's AGMOD modeling software (this quantity is expressed in gallons per day based on annual average daily flow and defined in the Restated Agreement as the "Reserved AADF"). The Restated Agreement explicitly defines "Irrigation Quality Water" as being comprised of treated effluent water as supplemented by ground and surface water. Thus, the parties have agreed by contract that the quantity of irrigation water reserved to the Association is based on all available sources of irrigation quality water available to the District; *not* simply a limitation on groundwater volumes.

This definition is consistent with, and designed to ensure compliance with, the District's Water Use Permit No. 20-003872.022 (the "WUP"). For example, Special Condition 23 of the WUP requires the District to "comply with allocated irrigation quantities, which are determined

by multiplying the total irrigated acres by the total allocated inches per acre per season per actual crop grown." Special Condition 14 similarly states that the District "shall not exceed the quantity determined by multiplying the total irrigated acres by the total allocated acre-inches per irrigated acre per season for each crop type." Such quantities are determined using the Water Management District's AGMOD modeling program and are determined irrespective of source. See, for example, Section 2.4.3.1.1 of the Water Use Permit Applicant's Handbook, Part B, incorporated by reference in section 40D-2.091(1)(a) of the *Florida Administrative Code*, which states:

> The District allocates irrigation-related water use based on AGMOD and other methods as described below. For each individual crop or plant type, the Permittee shall not exceed the quantity determined by multiplying the total irrigated acres by the total allocated acre-inches per irrigated acre per season.

While being subject to such limitation, the District is also required by Special Condition 22 to conserve groundwater and restrict use to limited circumstances:

> The Permittee shall prioritize the sources for landscape irrigation and maximize the use of reclaimed water and stormwater before utilizing ground water for augmentation of the irrigation lakes. The permitted quantities for the groundwater withdrawals associated with landscape irrigation may only be accessed when reclaimed water is unavailable; the quantity of reclaimed water is insufficient to meet the irrigation demand; or if the use of reclaimed water is no longer economically, technically, or environmentally feasible. If the quantity of reclaimed water available is insufficient to meet the irrigation demand, only that quantity necessary to make up the insufficiency may be accessed from the groundwater withdrawals, not to exceed the authorized groundwater allocation. Augmentation for aesthetic purposes only is strictly prohibited.(648)

Thus, the WUP establishes an overall allocated irrigation quantity, and the District is only allowed to utilize groundwater where alternative sources are insufficient to meet such quantity. The WUP does not authorize the District to utilize groundwater as part of a plan to heedlessly exceed such total irrigation quantity. In other words, by regulatory design the WUP is intended to conserve all water resources and is certainly not carte blanche to use groundwater at the whim of the District's irrigation customers. This is further reflected by the provision in Special Condition 23 that subjects the District to reporting requirements when allocated irrigation quantities are exceeded, including explanation of why quantities were exceeded, what measures were taken to meet allocated quantities, and a plan to bring the permit into compliance.

Special Condition 15 of the WUP also explicitly requires implementation of the District's water conservation plan. Section 2.2 of that plan provides that "The WVID will supply water to meet the customers demand based on the [Water Management District's] AGMOD irrigation allocation program." Again, this water conservation plan relates to all sources of irrigation water. Consistent with all of the forgoing, and as initially noted above, the District allocates the Association an irrigation quantity based on AGMOD. That quantity applies regardless of source and is designed and intended to ensure the District complies with the requirements above, including conserving all water resources in order to meet quantities allocated to the Association and the District's other irrigation customers while limiting groundwater use to only those circumstances where it is absolutely necessary.

(3) The validity of the Restated Agreement.

The third broad "issue" raised by your letter is the validity of the Restated Agreement. Simply put, we are not aware of any basis for such dispute and the Association's most recent letter offers none. The Restated Agreement was duly approved and executed by both parties. The District adopted the form of agreement that constitutes the Restated Agreement to reflect updated termination and suspension rules duly adopted by the District and to establish an updated and uniform form of agreement to be used by the District with all irrigation customers. The Restated Agreement also reflects the then-current rates charged pursuant to Resolution 2018-18 as determined by the District's reasonable and rational Rate Study and adopted pursuant to the legal authority granted by the Florida Legislature in Chapter 2004-456, *Laws of Florida*.

Beyond the three forgoing "issues," your letter proposes that the Association may cease paying some portion of future bills. We have no idea on what basis the Association is asserting any legal right to unilaterally withhold partial payment of future bills. Nor is it clear why the Association believes the District could, or should, agree to such a proposal. Note that under the current Restated Agreement, the District may suspend provision of irrigation water for delinquent payment. Further, the District has separate contractual obligations to pay for well and groundwater rights which costs are funded by the Well Availability Rate charged to the District's customers. By contract, the District is only excused from failure to make such payments if it diligently pursues collection of such from delinquent customers, including any applicable penalties, and discontinues the supply of irrigation water to the delinquent customer.

Per our prior September 6 correspondence, we reiterate our request that the Association provide a detailed explanation of the basis for any continuing dispute regarding the District's provision of irrigation water and cooperate to ensure the Association brings its irrigation usage into line with its correct AGMOD allocation.

We look forward to hearing from you and request that the Association implement appropriate measures to preserve records, documents, and any other potentially relevant evidence given the Association's threat of litigation.

Sincerely,

Joseph Brown
Lindsay Whelan
Counsel to the West Villages Improvement District

cc (via e-mail): Association Board of Directors:
Steve Glunt- sgluntgpboard@gmail.com
John Meisel- jmeiselgpboard@gmail.com
Pam Kantola- pkantolagpboard@gmail.com
Victor Dobrin- vdobringpboard@gmail.com
Tom Porada- tom@porada.com
Jim Cranston- capt.jimcranston.gppoa@gmail.com
John Luczynski, WVID Chairman- john.luczynski@mattamycorp.com
William Crosley, WVID District Manager- wcrosley@sdsinc.org
Richard Ellis, WVID District Engineer- rellis@dewberry.com
Mike Smith, WVID Operations Manager- msmith@sdsinc.org
Lindsay Whelan, WVID General Counsel- lindsay.whelan@kutakrock.com

FIRST AMENDMENT TO IRRIGATION QUALITY WATER USE AGREEMENT

This **First Amendment** (the "Amendment") is made and entered into this 17th day of January, 2019, by and between:

West Villages Improvement District, a local unit of special-purpose government established pursuant to Chapter 189, *Florida Statutes*, and whose address is 2501-A Burns Road, Palm Beach Gardens, Florida 33410 (the "District"); and

Gran Paradiso Property Owners Association, Inc., a Florida corporation, whose address is 20125 Renaissance Boulevard, Venice, FL 34293 (the "Customer").

RECITALS

WHEREAS, WVID and the Customer have previously entered into that certain *Irrigation Quality Water Use Agreement*, dated February 10, 2009 (the "Agreement") relating to, among other things, WVID's provision of Irrigation Quality Water (as defined therein) to the Customer; and

WHEREAS, Section 7 of the Agreement provides that WVID has the right to set and adjust rates, fees, and charges for the provision of Irrigation Quality Water; and

WHEREAS, on September 13, 2018, after public hearing and in accordance with WVID's enabling legislation, WVID adopted Resolution 2018-18 approving a revised rate schedule for the provision of irrigation quality water to users within WVID; and

WHEREAS, Section 17(D) of the Agreement provides that WVID or the Customer may amend the Agreement with the mutual written consent of both parties; and

WHEREAS, the parties accordingly desire to amend the Agreement to update the rates currently set forth therein to reflect the rates currently in effect and to address any other ancillary matters.

NOW, THEREFORE, based upon good and valuable consideration and the mutual covenants of the parties, the receipt of which and sufficiency of which are hereby acknowledged, WVID and the Customer agree as follows:

SECTION 1. INCORPORATION OF RECITALS. The recitals stated above are true and correct and are incorporated as a material part of this Amendment.

SECTION 2. AMENDMENT OF AGREEMENT. The Agreement shall be amended as follows:

A. Section 2(A) of the Agreement is hereby deleted and replaced in its entirety with the following:

This Agreement shall commence as of its Effective Date (the "Initial Term") and, unless otherwise terminated as otherwise authorized or provided in this Agreement, it shall run concurrently with the term of that certain *Irrigation Water Supply Agreement* recorded as Instrument No. 2018159052 in the Official Records of Sarasota County, Florida, as may be amended from time to time.

B. Section 7(B) of the Agreement is hereby deleted and replaced in its entirety with the following:

The current rates charged by WVID, which are subject to change from time to time as provided by law, this Agreement, and WVID's agreement with its Reclaimed Water provider(s), is set forth in **Exhibit A**, attached hereto and incorporated herein by this reference. Such rates shall be effective commencing January 1, 2019.

C. Section 15 of the Agreement is hereby deleted in its entirety.

D. Section 17(I) of the Agreement is hereby deleted and replaced in its entirety with the following:

Unless expressly provided herein, every notice, demand, consent, approval or other document or instrument required or permitted to be given to any party to this Agreement shall be in writing and shall be delivered in person to sent by registered or certified mail, to the following addresses (or such other address as any party may designate from time to time in writing):

(1) For Customer:

Gran Paradiso Property Owners Association, Inc.
20125 Renaissance Boulevard
Venice, FL 34293
Attn: Grant Gorski

(2) For WVID:

West Villages Improvement District
c/o Special District Services, Inc.
2501-A Burns Road
Palm Beach Gardens, Florida 33410
Attn: Todd Wodraska

With a Copy to:

Hopping Green & Sams, P.A.
119 South Monroe Street, Suite 300
Tallahassee, Florida 32301

Attn: District Counsel

E. Exhibit C of the Agreement is hereby deleted and replaced in its entirety with the following:

EXHIBIT C

SCHEDULE OF IRRIGATION WATER RESERVATION

YEAR	2019	2020	2021	2022	2023
RESERVED AADQ* FOR GRAN PARADISO LOTS, ROADS AND COMMON AREAS	400,000	440,000	480,000	520,000	558,700
RESERVED PDQ** FOR GRAN PARADISO LOTS, ROADS, AND COMMON AREAS	1,240,000	1,373,000	1,506,000	1,639,000	1,770,700

* ANNUAL AVERAGE DAILY QUANTITY IN GALLONS PER DAY (GPD)
** PEAK DAILY QUANTITY IN GALLONS PER DAY (GPD)

SECTION 3. AFFIRMATION OF THE AGREEMENT. The Agreement is hereby affirmed and continues to constitute a valid and binding agreement between the parties. Except as described in Section 2, nothing herein shall modify the rights and obligations of the parties under the Agreement. All of the remaining provisions remain in full effect and fully enforceable.

SECTION 4. AUTHORIZATION. The execution of this Amendment has been duly authorized by the appropriate body or official of WVID and the Customer, both WVID and the Customer have complied with all the requirements of law, and both WVID and the Customer have full power and authority to comply with the terms and provisions of this Amendment.

SECTION 5. EXECUTION IN COUNTERPARTS. This Amendment may be executed in any number of counterparts, each of which when executed and delivered shall be an original; however, all such counterparts together shall constitute, but one and the same instrument.

[Signatures on Next Page]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment, effective the day and year first written above.

ATTEST:

Secretary

WEST VILLAGES IMPROVEMENT DISTRICT

Chairman, Board of Supervisors

ATTEST:

Witness

GRAN PARADISO PROPERTY OWNERS ASSOCIATION, INC.

By:
Print: Matthew Koratich
Its: President

Exhibit A: Current Rates for the Provision of Irrigation Quality Water

EXHIBIT A

Current Rates for the Provision of Irrigation Quality Water

Proposed Reclaimed Water Rates[1] Per 1 ERU

Rates	Tier 1[3]	Tier 2[3]
Variable Operating/ Usage Rate[2]	$0.66	$1.32
Fixed Capital Rate	$1.25	$1.25
Fixed Well Availability Rate	$3.75	$3.75

[1] Rates may be increased by the District at the beginning of each fiscal year by an amount not to exceed the greater of: i) 5.5% (i.e. the 10-year average of the United States CPI- Water and Sewerage Maintenance Series at the time of adoption of these rates), or ii) the year-over-year change in the United States CPI- Water & Sewerage Maintenance Series without the need for a further public hearing.

[2] Monthly operating/usage fees will ultimately be calculated per each 1,000 gallons utilized monthly.

[3] Tier 2 operating rates will apply for those customers exceeding 1.5 times their estimated irrigation demands of 10,000 kgal/month.

ERUs Per Customer Class

Product Type	Metric	ERU
Single-Family[1] Residential Unit	1 unit	1
Multi-Family[2] Residential Unit	1 unit	.33
Commercial Irrigable Acres[3]	.075 irrigable acres	1
Recreational Irrigable Acres[4]	.075 irrigable acres	1

[1] A single-family unit is defined as a building containing not more than two (2) dwellings.

[2] A multi-family unit is defined as a building containing more than two (2) dwellings.

[3] Irrigable acreage for commercial property is calculated based on 16% of the net developable area (i.e. gross land area less major roadway right-of-way and wetland areas) for ach parcel.

[4] Irrigable acreage for recreational property (i.e. golf courses, parks, athletic facilities, etc.) is calculated based on an estimate of the irrigable area for the property as conducted by a Professional Engineer.

Norton Hammersley
Norton, Hammersley, Lopez & Skokos, P.A.

Joseph M. Herbert
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jherbert@nhlslaw.com
Trial Practice and Dispute Resolution Group

September 23, 2022

VIA ELECTRONIC MAIL

West Village Improvement District
Attn: Lindsay Whelan
19503 S West Villages Parkway, #A3
Venice, FL 34292
Lindsay.Whelan@KutakRock.com

RE: GP POA Irrigation

Dear Ms. Whelan:

We thank you for your response dated September 6, 2022. It seems clear that the parties are in disagreement about a number of relevant facts (and, apparently in some instances, the law) as it relates to elements of the instant irrigation dispute. We have carefully reviewed the materials you provided, but do not find them to support the positions being asserted by your client. Indeed, your response has made our client question whether WVID has any intention of addressing the primary issues the POA has raised. Nevertheless, our client remains as interested as your client in avoiding unnecessary litigation, so we invite the WVID to continue efforts to resolve the dispute on mutually agreeable terms.

Often parties are best able to resolve disputes when they share a common understanding of the core issues and of the foundational facts and circumstances surrounding them. Absent such an understanding, parties tend to engage in a lengthy and expensive--but ultimately fruitless--exchange of position statements. Accordingly, rather than focusing on our many disagreements with the assertions and arguments contained in your response, we would like to take this opportunity to try to clarify those core issues and seek some consensus on the foundational facts and circumstance.

From our perspective, the core issues are (1) the validity of charges billed by WVID and paid by the POA since 2018; (2) the validity of WVID's use of its AGMOD calculations for groundwater withdrawal as the limitation for all consumptive water usage, irrespective of whether it is actually groundwater withdrawal or reclaimed water; and (3) the validity of the December, 2020, "Restated Agreement" (please note that you erroneously addressed an imaginary assertion that our client is contesting the 2009 "Prior Agreement").

As to the foundational facts and circumstances, we offer the following assertions in hopes that your client will either agree with them or provide some meaningful and understandable factual explanation for its disagreement:

1. The 2009 "Prior Agreement" was in effect from the date of that Agreement through at least December 16, 2020. If your client disagrees, please explain when and how the 2009 Agreement ceased to be effective at some earlier date.

2. The only purported modification of the 2009 "Prior Agreement" is the 2022 "Restated Agreement" executed by a developer-controlled POA shortly before turnover to the homeowners. If your client disagrees, please explain the basis for the disagreement.

3. Every modification embodied in the Restated Agreement benefits WVID at the expense of the Gran Paradiso POA. If your client disagrees, please identify the contract modifications that your client believes benefitted the Gran Paradiso POA rather than WVID.

4. Gran Paradiso used an average of 497,775 gpd of reclaimed water and only 149,163 gpd of groundwater from DID's 74 and 75 during the 12-month period ending July 2022. If your client disagrees, kindly indicate what your client believes is average daily volume of groundwater and the average daily volume of reclaimed water used by Gran Paradiso during that period.

5. The WUP does not purport to limit the use of reclaimed water. If your client disagrees, please identify the specific provision(s) in the WUP that impose such a limitation.

6. The WUP does not state any requirement that each end-user's consumption of irrigation water is restricted to an AGMOD-calculated volume. If your client disagrees, please identify the specific provision(s) in the WUP that impose such a requirement.

7. WVID began charging the Gran Paradiso POA for capital costs (labelled as a "capital recovery fee") upon adoption of the new irrigation rate structure in 2018; no such capital costs were charged prior to that, and Gran Paradiso has never agreed to pay such capital costs. If your client disagrees, please identify capital costs that were charged to Gran Paradiso POA prior to implementation of the 2018 rate structure and identify the specific provisions of any document in which the Gran Paradiso POA purportedly agreed to pay such capital costs.

8. The "capital recovery fees" charged by WVID reflect charges for assets that had not yet been constructed or put into operation when the charges commenced. If your client disagrees, please explain the basis for such disagreement.

9. The "well availability fee", implemented by WVID in the new rate structure in October 2018, has WVID paying the Master Developer for availability of the wells with no correlation to actual usage or water withdrawn from the wells. If your client disagrees, please explain the basis for such disagreement.

10. The "well availability fee" paid by the GP POA from October 2018 to present is paid to WVID on a quarterly basis, and WVID then takes the amount paid for the "well availability fee" and forwards that payment to the Master Developer. However, GP POA receives no payment for the wells for which they own that are included in the issuance of permit 3872,

even though the wells owned by GP POA account for 38.5% (149K of 386K 12-month average) of actual groundwater withdrawal associated with WUP 3872. If your client disagrees, please explain the basis for such disagreement.

Our client remains interested in reaching an amicable, reasonable resolution of this dispute. It is certainly willing to pay reasonable and legitimate costs for the groundwater and reclaimed water it receives from WVID for irrigation, as provided for in the 2009 Agreement. But, absent some meaningful and persuasive response to the issues set forth above, our client continues to believe it has been improperly charged more than $330,000 by WVID for irrigation water from October of 2018 through December of 2020. The POA is understandably reluctant to increase this amount while this dispute remains unresolved, particularly considering your client's statement that it would not grant a refund, but only consider a credit, if the parties ultimately agree that there were overcharges. Accordingly, until the dispute is resolved, we propose to pay the undisputed portion of future bills in accordance with the 2009 Agreement and deposit the disputed portion of such bills into an interest-bearing escrow account to be paid out in accordance with the final resolution. Again, if your client disagrees with the establishment of an escrow account until a resolution can be reached, please explain the basis for such disagreement.

Finally, it must be noted that, absent a mutually agreeable resolution, litigation relating to the availability and charges for irrigation water appears inevitable. Though much if not all of WVID'S documents and materials are subject to sunshine law, please consider covering with WVID agents and employees the following litigation document hold.

DEMAND FOR PRESERVATION OF RECORDS, DOCUMENTS, AND EVIDENCE

Your entity may soon become involved in litigation regarding the above-referenced community and matters. You are hereby respectfully demanded to preserve documents, materials, and files that may be used as evidence in the litigation of these matters. The materials and processes we request you preserve are outlined below.

Please ensure your company retains and preserves the following (without limitation to other types of materials pertaining to the above-referenced matters and dispute:

- Any documents and files, including personnel file(s), personal files, and electronic mail folders referencing, discussing, or mentioning the above-referenced dispute, agreements, community, and/or related matters.
- Any previously recorded tapes or recordings of telephone calls specifically referencing, discussing, or mentioning the above-referenced dispute, agreements, community, and/or related matters.
- Any electronic mail specifically referencing, discussing, or mentioning the above-referenced dispute, agreements, community, and/or related matters.
- Any voice mail messages specifically referencing, discussing, or mentioning the above-referenced dispute, agreements, community, and/or related matters.

The relevant period for which data must be protected from initiation of WVID involvement with the underlying community up and through the date of this notice, and any materials subsequent to this notice up to and through the litigation of this case.

In order to ensure this data is protected and preserved, please consider the following steps:

- Discontinue the practice of server backup tape rotation (as appropriate),
- Discontinue the practice of electronic data shredding,
- Discontinue the practice of scheduled destruction of back up media,
- Discontinue the practice of re-imaging of drives,
- Discontinue the practice of drive hardware exchanges, and
- Do not sell, gift, or destroy any computer systems containing such data, documents, recordings, or other materials.

It will be important to effectively communicate your company's retention obligations to those with hands-on access to files, materials, and/or systems (e.g., the information technology department head and members, project management, company management, and other supervisory or administrative personnel). Further, it will be especially important to give specific and pointed direction to persons with motive to delete or destroy such materials and records (e.g., persons that would have been involved in the day-to-day operations pertaining to the construction forming the subject of this action).

Your company has a duty to preserve and keep available (e.g., to not allow the relevant data and materials to move per routines to off-site or deep storage). If your company fails to take reasonable steps to preserve and protect materials, files, and recordings that may be used as evidence in the litigation of this case, it could face serious repercussions for evidence spoliation from a court of competent jurisdiction. Such potential consequences are magnified when your company is made aware of this duty and the dangers of failure to properly preserve materials.

Sincerely,

Norton, Hammersley, Lopez & Skokos, P.A.

Joseph M. Herbert, Esq.