

## Rate Setting with a Divining Rod



**Groundwater Fees With SGMA**

**2020 CSMFO Annual Conference**



**Brownstein Hyatt  
Farber Schreck**



1

# Introductions



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2

## Pre-GSP Fee Authority Water Code § 10730

3

### Pre-GSP Fee Authority (Water Code § 10730)

#### Authority to Impose Fees

#### Purpose

*Water Code 10730. Regulatory Fees Authority; Limited Exception for De Minimis Extractors.*

(a) A groundwater sustainability agency **may impose fees, including, but not limited to, permit fees and fees on groundwater extraction or other regulated activity, to fund the costs of a groundwater sustainability program, including, but not limited to, preparation, adoption, and amendment of a groundwater sustainability plan, and investigations, inspections, compliance assistance, enforcement, and program administration, including a prudent reserve.** A groundwater sustainability agency **shall not impose a fee pursuant to this subdivision on a de minimis extractor unless the agency has regulated the users pursuant to this part.**

(exception)

(b) (1) Prior to imposing or increasing a fee, a groundwater sustainability agency shall hold at least one public meeting, at which oral or written presentations may be made as part of the meeting.

(2) Notice of the time and place of the meeting shall include a general explanation of the matter to be considered and a statement that the data required by this section is available. The notice shall be provided by publication pursuant to Section 6066 of the Government Code, by posting notice on the Internet Web site of the groundwater sustainability agency, and by mail to any interested party who files a written request with the agency for mailed notice of the meeting on new or increased fees. A written request for mailed notices shall be valid for one year from the date that the request is made and may be renewed by making a written request on or before April 1 of each year.

4

## Pre-GSP Fee Authority (Water Code § 10730)

**Water Code 10730 (Cont.)**

(3) At least 20 days prior to the meeting, the groundwater sustainability agency shall make available to the public data upon which the proposed fee is based.

(c) Any action by a groundwater sustainability agency to impose or increase a fee shall be taken only by ordinance or resolution.

(d) (1) As an alternative method for the collection of fees imposed pursuant to this section, a groundwater sustainability agency may adopt a resolution requesting collection of the fees in the same manner as ordinary municipal ad valorem taxes.

(2) A resolution described in paragraph (1) shall be adopted and furnished to the county auditor-controller and board of supervisors on or before August 1 of each year that the alternative collection of the fees is being requested. The resolution shall include a list of parcels and the amount to be collected for each parcel.

(e) The power granted by this section is in addition to any powers a groundwater sustainability agency has under any other law.

5

## Post-GSP Fee Authority (Water Code § 10730.2)

**CA Constitution Art. XIII C, § 1 (Prop. 26)**

...

(e) As used in this article, "tax" means any levy, charge, or exaction of any kind imposed by a local government, except the following:

(1) A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.

(2) A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.

(3) A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.

(4) A charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property.

(5) A fine, penalty, or other monetary charge imposed by the judicial branch of government or a local government, as a result of a violation of law.

(6) A charge imposed as a condition of property development.

(7) Assessments and property-related fees imposed in accordance with the provisions of Article XIII D. (i.e. Prop 218)

The local government bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity.

6

## Post-GSP Fee Authority (Water Code § 10730.2)

**Art. XIII C, § 2 (Prop. 26)**

CA Constitution, Art. XIII C, § 2. Local Government Tax Limitation.

Notwithstanding any other provision of this Constitution:

(a) All taxes imposed by any local government shall be deemed to be either general taxes or special taxes. Special purpose districts or agencies, including school districts, shall have no power to levy general taxes.

(b) No local government may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote. A general tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved. The election required by this subdivision shall be consolidated with a regularly scheduled general election for members of the governing body of the local government, except in cases of emergency declared by a unanimous vote of the governing body.

(c) Any general tax imposed, extended, or increased, without voter approval, by any local government on or after January 1, 1995, and prior to the effective date of this article, shall continue to be imposed only if approved by a majority vote of the voters voting in an election on the issue of the imposition, which election shall be held within two years of the effective date of this article and in compliance with subdivision (b).

(d) No local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote. A special tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved.

7

**Post-GSP Fee Authority  
Water Code § 10730.2**

8

## Post-GSP Fee Authority (Water Code § 10730.2)

**Water Code 10730.2****Authority****Water Code 10730.2. Additional Fee Authority Following Adoption of a Plan.**

(a) A groundwater sustainability agency that adopts a groundwater sustainability plan pursuant to this part **may impose fees on the extraction of groundwater from the basin to fund costs of groundwater management**, including, but not limited to, the costs of the following:

**Purpose**

- (1) **Administration, operation, and maintenance, including a prudent reserve.**
- (2) **Acquisition of lands or other property, facilities, and services.**
- (3) **Supply, production, treatment, or distribution of water.**
- (4) **Other activities necessary or convenient to implement the plan.**

**Procedures**

(c) Fees imposed pursuant to this section shall be adopted in accordance with subdivisions (a) and (b) of Section 6 of **Article XIII D of the California Constitution**.

**Types of Fees**

(d) Fees imposed pursuant to this section may include fixed fees and fees charged on a volumetric basis, including, but not limited to, fees that increase based on the quantity of groundwater produced annually, the year in which the production of groundwater commenced from a groundwater extraction facility, and impacts to the basin.

(e) The power granted by this section is in addition to any powers a groundwater sustainability agency has under any other law.

9

## Post-GSP Fee Authority (Water Code § 10730.2)

**Substantive Requirements**

**CA Constitution, Art. XIII D, § 6(b).** Requirements for Existing, New or Increased Fees and Charges. A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements:

- (1) **Revenues** derived from the fee or charge shall **not exceed the funds required to provide the property related service**.
- (2) **Revenues** derived from the fee or charge shall **not be used for any purpose other than** that for which the **fee or charge was imposed**.
- (3) The **amount of a fee or charge** imposed upon any parcel or person as an incident of property ownership shall **not exceed the proportional cost of the service** attributable to the parcel.
- (4) **No fee or charge may be imposed** for a service **unless that service is actually used by, or immediately available to**, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with Section 4.
- (5) **No fee or charge may be imposed** for **general governmental services** including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners.

10

## **HYPOTHETICAL CASE STUDY – ANY BASIN GSA**

11

### **Fee Goals**

- ✓ Fiscally responsible
- ✓ Equitable
- ✓ Legal defensible
- ✓ Implementable (data)
- ✓ Buy-in from stakeholders



12

## Potential Pre-GSP Fee Legal Vehicles

### **Prop. 26** (CA Constitutional Art. XIII C)

- ☐ 1) Specific benefit/service exception
- ☐ 2) Reasonable regulatory costs exception
- ☐ 3) Special tax: Approval by 2/3 vote

### **Prop. 218** (CA Constitutional Art. XIII D)

- ☐ 4) Property-related fee (subject to majority protest process)
- ☐ 5) Special assessment (approval by 2/3 vote)

### **Water Code 10730** (SGMA)

- ☐ 6) Permit fees and fees to fund the cost of a groundwater sustainability program

13

## Pre-GSP Fee Structure Options

1. Metered extraction fee
2. Estimated usage extraction fee
3. Flat parcel fee
4. Voluntary/obligatory contributions from member agencies
5. Parcel tax
6. Special assessment

14

## Metered Extraction Fee

### Data requirements:

- Metered data

### Benefits:

- Equitable
- Long-term solution

### Disadvantages:

- Expensive for both the property owner and the GSA
- Not timely
- GSA not yet authorized to require meter installation



15

## Estimated Usage Extraction Fee

### Data requirements:

- Metered water usage (when available)
- Self-reported water usage (when available)
- Irrigated land area and land usage

### Benefits:

- Data availability
- Timely

### Disadvantages:

- Imperfect data
- Static data



16



## Flat Parcel Fee

### Data requirements:

- Parcel size data

### Benefits:

- Data availability
- Timely

### Disadvantages:

- Less equitable
- Potentially less defensible



17

## Voluntary Contributions from Member Agencies

### Data requirements:

- Not applicable

### Benefits:

- Expeditious
- Low effort

### Disadvantages:

- Inequitable (burden falls on utility rate payers)
- Potentially not defensible (see above)
- Not sustainable as a long-term solution

18

## Parcel Tax (Special Tax)

### Data & effort requirements:

- County parcel data
- Special tax election process  
(requires 2/3 vote approval)

### Benefits:

- Revenue stability if passed

### Disadvantages:

- High level of effort
- Low certainty that measure will be approved by votes
- Long lead time
- Expensive process
- Less equitable



19

## Special Assessment

### Data & effort requirements:

- Land use data for well owners
- Special Assessment process  
(requires majority of weighted votes)

### Benefits:

- Revenue stability if passed
- More equitable than parcel tax

### Disadvantages:

- High level of effort
- Low certainty that measure will be approved by votes
- Long lead time
- Expensive process



20

## GSA Pre-GSP Fee Survey

Name	Legal Authority	Comments
Kings River East Groundwater Sustainability Agency	Prop. 26 (exempt as regulatory cost)	<ul style="list-style-type: none"> <li>\$1.45 per AFY</li> <li>Collected annually</li> <li>\$3,250/year flat fee for member agencies with no significant impact on groundwater</li> </ul>
McMullin Area Groundwater Sustainability Agency	Prop. 218 (property-related fee/water service charge)	<ul style="list-style-type: none"> <li>\$19/acre (excludes parcels of 2 acres or less)</li> <li>Received only 2 written protests; majority protest absent so fees will be implemented</li> </ul>
North Fork Kings Groundwater Sustainability Agency	Prop. 218 (Assessment)	<ul style="list-style-type: none"> <li>\$10/acre</li> <li>Applied equally across all acreage within GSA</li> <li>Weighted votes by acreage (94% in favor)</li> </ul>
South Fork Kings Groundwater Sustainability Agency	Prop. 218 (Assessment)	<ul style="list-style-type: none"> <li>\$9.80/acre</li> <li>Applied equally across all acreage within GSA</li> <li>Weighted votes by acreage (63% of acreage voted; 74% in favor)</li> </ul>
Upper Ventura River Groundwater Agency	Prop. 26 (CA Constitution Article VIII C.)	<ul style="list-style-type: none"> <li>\$79.16 per acre-foot</li> <li>Estimated water usage</li> </ul>
Indian Wells Valley Groundwater Authority	Water Code § 10730	(see next slides)

21

## Indian Wells Valley Groundwater Authority

### Background

- Critically Overdrafted Basin
- Recharge: 7,500 AF/yr
- Pumping: 27,375 AF/yr
- Users: Ag, Municipal, Federal
- GSA Structure: Joint Powers Authority



22

## Indian Wells Valley Groundwater Authority

### Fee Adoption

- Water Code § 10730
- Ordinance No. 02-18
- First Reading: July 19, 2018
- Second Reading: August 16, 2018
- Effective: September 2018

BEFORE THE BOARD OF DIRECTORS OF THE  
INDIAN WELLS VALLEY GROUNDWATER AUTHORITY

In the matter of:

Ordinance No. 02-18

ESTABLISHING GROUNDWATER  
EXTRACTION FEES AND THE RULES,  
REGULATIONS AND PROCEDURES  
FOR THEIR IMPOSITION

### Fee

- Groundwater extraction fee: \$3.00 per 0.1 AF (\$30/AF)

23

## Indian Wells Valley Groundwater Authority

### Implementation

- Fee collected and reported monthly
- Navy, BLM and de minimis pumpers exempt from fee
- Measurement Options
  - (1) Flow meter approved by GSA
  - (2) Electrical records and pump efficiency data calculations
  - (3) Alternative methods approved by GSA

24

## Indian Wells Valley Groundwater Authority

### Current Status

- Fee collected and reported monthly
- Basis for fee revenue estimates/budgets
  - Increased cost = decreased pumping
- Fee implementation timing created cash-flow issues
  - Agriculture pumping season
- Enforcement of payment and reporting by non-de minimis pumpers
- Current fee is for GSP Development
  - Ends when GSP Development costs have been covered

25

## Indian Wells Valley Groundwater Authority

### Future

- Admin Fee
  - Charged to cover the general administration costs of the GA
  - Can be charged on all groundwater production in the Basin
  - Possible candidate for parcel-based fee application
- Remediation Fee
  - Charged to cover the mitigation of shallow well impacts
  - ONLY charged on groundwater production that exceeds the parcel's safe yield allotment
- Augmentation Fee
  - Charged to cover the costs related to importing water
  - ONLY charged on groundwater production that exceeds the parcel's safe yield allotment

26

# Contact



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