

ATTACHMENT 1

**AGREEMENT FOR COLLECTION OF SPECIAL
TAXES, FEES, AND ASSESSMENTS**

THIS AGREEMENT is made and entered into this ___ day of _____, 20___, by and between the COUNTY OF MONTEREY, a political subdivision of the State of California, hereinafter referred to as "County" and the Salinas Valley Basin Groundwater Sustainability Agency, a Joint Powers Authority of the State of California, hereinafter referred to as "Agency".

WITNESSETH:

WHEREAS, Government Code Sections 29304 and 51800 authorize the County to recoup its collection costs when the County collects taxes, fees, or assessments for any School District, Special District, zone or improvement District thereof; and

WHEREAS, Water Code Section 10730 (d) authorizes the Agency to request that any fee it adopts be collected in the same manner as ordinary municipal ad valorem taxes upon request to the County Auditor – Controller; and

WHEREAS, when requested by the Agency, it is in the public interest that the County collect on the County tax rolls the special taxes, fees, and assessments for the Agency;

NOW, THEREFORE, IT IS AGREED by and between the parties hereto as follows:

1. County agrees, when requested by Agency as hereinafter provided, or as required by law, to collect on the County tax rolls the special taxes, fees, and assessments of Agency, and of each zone or improvement district thereof.
2. When County is to collect Agency's special taxes, fees, and assessments, Agency agrees to notify the Auditor-Controller of the County on or before the 1st day of August of each fiscal year of the Assessor's parcel numbers and the amount of each special tax, fee, or assessment to the County, and including, but not limited to, any act of omission or assessment to be so collected. Provided, however, to be effective, the notice must be received by the Auditor-Controller by said date.
3. County may charge the sum of 0.25% of the Original Charge for each special tax, fee, or assessment that is to be collected on the County tax rolls by the County for the Agency.
4. Agency warrants that the taxes, fees, or assessments imposed by Agency and collected pursuant to this Agreement comply with all requirements of state law, including but not limited to Articles XIII C and XIII D of the California Constitution (Proposition 218). Agency has requested, on County's behalf, an opinion from their legal advisor stating that the tax, fee, or assessment complies with state law, and specifically analyzing compliance with Proposition 218 and any other applicable law. Said opinion is attached hereto as "Exhibit A" and incorporated by reference into this Agreement. Agency also agrees to reaffirm the validity of the tax, fee or assessment each time it requests the County to collect such tax, fee or assessment pursuant to this Agreement.

5. Agency hereby releases and forever discharges County and its officers, agents and employees from any and all claims, demands, liabilities, costs and expenses, damages, causes of action, and judgments, in any manner arising out of Agency's responsibility under this agreement, or other action taken by Agency in establishing a special tax, fee, or assessment and implementing collection of special taxes, fees, or assessments as contemplated in this Agreement.
6. Agency agrees to and shall defend, indemnify and save harmless County and its officers, agents and employees ("indemnified parties") from any and all claims, demands, liabilities, costs and expenses, damages, causes of action, and judgments, in any manner arising out of any of Agency's responsibility under this agreement, or other action taken by Agency in establishing a special tax, fee, or assessment and implementing collection of special taxes, fees, or assessments as contemplated in this Agreement. If any judgment is entered against any indemnified party as a result of action taken to implement this Agreement, Agency agrees that County may, in its sole discretion, offset the amount of any costs, expenses or judgment paid by County or by any indemnified party from any monies collected by County on Agency's behalf, including property taxes, special taxes, fees, or assessment. County may, but is not required to, notify Agency of its intent to implement any offset authorized by this paragraph. Agency also agrees that the County may require that some or all of any costs, expenses or judgments required to be paid by the County because of any judgment relating to the assessment or collection of special taxes, fees or assessments contemplated by this Agreement be paid directly by the Agency and not by way of offset.
7. Agency agrees that its officers, agents and employees will cooperate with County by answering inquiries made to Agency by any person concerning Agency's special tax, fee, or assessment, and Agency agrees that its officers, agents and employees will not refer such individuals making inquiries to County officers or employees for response.
8. Agency shall not assign or transfer this Agreement or any interest herein and any such assignment or transfer or attempted assignment or transfer of this agreement or any interest herein by Agency shall be void and shall immediately and automatically terminate this Agreement.
9. This Agreement shall be effective for the 2019-20 fiscal year and shall be automatically renewed for each fiscal year thereafter unless terminated as hereinafter provided.
10. Either party may terminate this Agreement for any reason for any ensuing fiscal year by giving written notice thereof to the other party prior to May 1st of the preceding fiscal year.

11. County's waiver of breach of any one term, covenant, or other provision of this Agreement, is not a waiver of breach of any other term, nor subsequent breach of the term or provision waived.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

SALINAS VALLEY BASIN GROUNDWATER
SUSTAINABILITY AGENCY

By: _____
Gary Petersen, General Manager

Approved as to form:

Agency Counsel

COUNTY OF MONTEREY

By: _____

Approved as to form:



Deputy County Counsel

EXHIBIT A



Salinas Valley Basin
Groundwater Sustainability Agency

MEMORANDUM

TO: Monterey County Auditor - Controller
FROM: Leslie J. Girard, Agency Counsel
SUBJECT: Opinion re: Legality of SVBGSA Groundwater Sustainability Fee

I am providing this opinion to you pursuant to the contract between the Salinas Valley Basin Groundwater Sustainability Agency ("SVBGSA") and the County of Monterey for the collection of the SVBGSA's recently adopted Groundwater Sustainability Fee ("Fee"). The Fee was adopted by the SVBGSA's Board of Directors on March 14, 2019, pursuant to Water Code section 10730. Enclosed is the staff report for the item, which I prepared and which addresses the legality of the Fee.

It is my opinion that the adoption and charging of the Fee comply in all respects with applicable state laws, specifically Propositions 218 and 26, for the reasons set forth in the staff report, which is incorporated herein by reference.

Dated: July 11, 2019

Leslie J. Girard
Agency Counsel

LJG:ljg
enclosure
cc: Gary Petersen, SVBGSA General Manager



BOARD OF DIRECTORS STAFF REPORT

MEETING DATE: March 14, 2019

AGENDA ITEM: 8.a

SUBJECT: Consideration of a resolution establishing a regulatory fee known as the SVBGSA Groundwater Sustainability Fee

RECOMMENDATION:

SVBGSA staff recommends that the SVBGSA Board of Directors ("Board") adopt a resolution charging a regulatory fee, to be known as the SVBGSA Groundwater Sustainability Fee, within the management area (as defined) of the SVBGSA to fund its activities implementing the regulatory program known as the Sustainable Groundwater Management Act ("SGMA").

BACKGROUND:

The Joint Powers Authority Agreement ("Agreement") that formed the SVBGSA reads in part:

Failure to be Financially Sustainable

In the event that the Agency [SVBGSA] does not take the necessary actions to create a sustainable revenue stream necessary to fully finance its operating budget by the end of Fiscal Year 2018 – 2019 this Agreement shall terminate and the Agency shall be dissolved, unless otherwise agreed to by amendment to this Agreement approved unanimously by all then-existing Members.

To address these matters the Board entered into an agreement with Hansford Economics to complete a fee study that could meet the criteria set forth in the Agreement. The study has been completed and a Report prepared, which is enclosed as Attachment A (an "Errata" memo, noting a correction to Table 13 on page 37 is included at the end of the Report). The fee study was subject to much outreach to stakeholders and interested parties, as is described in the Report.

The Report sets forth the basis upon which a regulatory fee ("Fee") is to be charged with in the management area of the SVBGSA. A resolution establishing and charging the Fee ("Resolution") is enclosed as Attachment B (an underline/strikeout from a previous version is enclosed as Attachment C).

DISCUSSION:

Basics of the Fee

As a joint powers authority under California law, whose members include the County of Monterey, the jurisdiction of the SVBGSA technically includes the entirety of the County. Notwithstanding this technical jurisdiction, the SVBGSA was established to be the Groundwater Sustainability Agency for the Salinas Valley Groundwater Basin ("Basin") (with limited exceptions). Accordingly, the Resolution defines a "management area" within which the Fee would be charged. The management area includes those parcels of real property within the Basin, and those adjacent to the Basin, that use water derived by any means from within the Basin (the rationale being that those properties using water derived from within the Basin benefit from a sustainable Basin).

As is more fully set forth in the Report, the Fee will include two components: the Agricultural Fee and the Connection Fee. The study determined that it would be appropriate to allocate costs based on the percentage of use within the Basin – 90% agricultural and 10% non-agricultural or domestic. Thus, the creation of the Agricultural Fee, based on agricultural use, and the Connection Fee, based on domestic, or non-agricultural, use.

The Agricultural Fee will be charged to those parcels of real property bearing an Assessor's Parcel Number that include "Irrigated Acres," such acres being defined as all real property classified as Monterey County Assessor Land Use Codes 4C, 4D, 4F, 4G, 4K, and 4N, whether or not all of the acres bearing the same APN upon which the Fee is imposed are currently irrigated, and whether or not the acres are irrigated with groundwater or surface water. The Agricultural Fee will be \$4.79 per Irrigated Acre per year.

The Connection Fee is to be charged each "Small Water System," and each parcel of real property with a connection to a "Public Water System," and will be \$2.26 per Connection per year. A Small Water System is defined as a water system with 2 to 14 connections that is regulated by the County Health Department pursuant to Monterey County Code Chapter 15.04, and a Public Water System is defined as a system for the provision of water for human consumption through pipes or other constructed conveyances that has 15 or more connections or regularly serves at least 25 individuals daily at least 60 days out of the year.

The General Manager will be authorized to request the County to collect the Agricultural Fee in the same manner as ad valorem property taxes, as is authorized by SGMA. Similarly, the General Manager will be authorized to request the collection of the Connection Fee for Small Water Systems in the same manner as ad valorem property taxes. For Public Water Systems, each year those systems will be asked to provide a list of properties with connections, so that the Connection Fee may be collected with property taxes; if the system does not provide a list, the system will be billed directly based upon the number of reported connections.

The Resolution provides for an appellate process first to the General Manager, and then

to the Executive Committee, whose determination shall be final with no further appeal to the Board of Directors (the aggrieved party may resort to litigation). The Resolution also provides for late payment penalties as permitted by SGMA. Finally, the Resolution provides for annual review of the financing needs of the SVBGSA in order to stay within the requirements of the California Constitution and state law, and for a periodic review of the methodology for the Fee to determine if a different methodology is necessary or appropriate.

Legality of the Fee

The most recent California Supreme Court case regarding the implementation of a regulatory fee is the case *City of San Buenaventura v. United Water Conservation District*, 3 Cal. 5th 1191 (2017). In that case, the District (a water conservation district) imposed a fee, including on the City, to pay for the District's services in managing groundwater basins for the benefit of the public. The fee was not levied under SGMA (although the court discussed SGMA in its decision) but was levied under different provisions of the Water Code.

In relevant part, the City alleged that it bore a disproportionate burden under the fee compared to other groundwater pumpers due to the Water Code requirement that a charge for non-agricultural use be between three and five times the amount charged for agricultural use (the District's rate to the City was three times that for agricultural use).

In its decision, the Court reviewed the history of the law relating to regulatory fees as an exception to "taxes" under Article XIII C of the California Constitution and thus not requiring a vote of either the electorate or of property owners. In sum, the Court reaffirmed prior rulings that found a two-part test: 1) the fee must be fixed in an amount "no more necessary to cover the reasonable costs of the governmental activity;" and 2) "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." The Court also noted that "[i]n pursuing a constitutionally and statutorily mandated conservation program, cost allocations for services provided are to be judged by a standard of reasonableness with some flexibility permitted to account for system-wide complexity." Finally, quoting a prior decision, the Court held:

'A regulatory fee does not become a tax simply because the fee may be disproportionate to the service rendered to individual payors. [Citation.] The question of proportionality is not measured on an individual basis. Rather, it is measured collectively, considering all rate payors. . . . [Thus] permissible fees must be related to the overall cost of the governmental regulation. They need not be finely calibrated to the precise benefit each individual fee payor might derive. What a fee cannot do is exceed the reasonable cost of regulation with the generated surplus used for general revenue collection.'

3 Cal. 5th at 1211 – 1212 (quoting *California Farm Bureau Federation v. State Water Resources Control Bd*, 51 Cal. 4th 421, 438 (2011)).

Here, there is no question but that, as set forth in the Report, the amount of the Fee is designed only to cover the costs of the SVBGSA's activities in preparing the GSPs and performing other regulatory activities as allowed under SGMA. The Fee therefore would meet the first part of the test.

With respect to the second part, unlike the situation in the *City of San Buenaventura* case, where the Water Code had a statutory multiplier applicable to non-agricultural use, SGMA has no statutorily mandated formula, and each GSA is able to establish its own fee structure. Staff believes the allocation between agricultural and non-agricultural use, based on the total estimated percentage uses for each type (90% agricultural; 10% domestic), as set forth in the Report, bears a fair and reasonable relationship to the burdens on, and benefits to, each class of users with respect to the SVBGSA's activities, and the Fee meets the second part of the test.

In sum, and based upon the facts presented, in this matter the Fee is a regulatory fee and may be charged without a vote of the electorate or of property owners, and without a majority protest proceeding.

At some of the public meetings regarding the Fee, and in some written correspondence to the SVBGSA, questions were raised about whether the Agricultural Fee should be charged those parcels of real property that irrigate with surface water rather than groundwater (as mentioned above, the Agricultural Fee will be charged whether or not the property is irrigated with groundwater or surface water). Communications from Derrick Williams and Howard Franklin, enclosed as Attachments D and E, respectively, demonstrate that groundwater and surface water in the Basin essentially constitute one system, and that surface water users will benefit from a sustainable groundwater basin because surface water supplies will not be depleted. The connection between groundwater and surface water is also reflected in a recent Report of Referee from the California State Water Resources Control Board in litigation concerning the Basin, the relevant portions of which are enclosed as Attachment F. It is therefore appropriate to charge the Agricultural Fee to all users within the Basin because all will benefit. As Attachments D and E reflect, it is also difficult to differentiate between groundwater and surface water where they interface. Consistent with California law, therefore, it is appropriate to charge the same fee on both users because, based on "reasonableness" and "system complexity," the rate is measured "collectively" rather than finely calibrated to each payor.

Finally, reference in some meetings and correspondence has been made about the relationship of the Fee to prior litigation and a judicially approved settlement concerning certain projects in the Basin. Staff believes there is no impact on the ability of the SVBGSA to charge the Fee due to that prior litigation and judicial settlement. The SVBGSA was not in existence at the time of that litigation and settlement, much less a party to it. In addition, that litigation and settlement concerned a discreet project and

has no relation to the regulatory authority of the SVBGSA.

FISCAL IMPACT:

As set forth in the Report, the Fee was based upon an estimate of the SVBGSA's annual operating costs for its regulatory activities, including preparation of GSPs. Accordingly, the Fee is designed to collect only as much revenue as is necessary to pay for those activities on an annual basis. The Fee will be assessed annually, and adjusted appropriately.

In the opinion of Agency Counsel, should the Board adopt the Resolution and charge the Fee, the requirements of the Agreement will be met and the SVBGSA will continue in existence beyond June 30, 2019, even if there is litigation concerning the Fee, although other financial arrangements might be necessary if there is an injunction against collection of the Fee. Should the Board decline to adopt the Resolution, the existence of the SVBGSA will remain in doubt unless a different funding mechanism is established.

ATTACHMENTS: A – Salinas Valley Basin Groundwater Sustainability Agency 2018 Regulatory Fee Study, B – Resolution (clean), C – Resolution (~~underline/strikeout~~), D – Letter from Derrick Williams, E – Letter from Howard Franklin, F – Excerpts from Report of Referee

PREPARED BY:

Leslie J. Girard, Agency Counsel

APPROVED BY:

Gary Petersen, General Manager SVBGSA