

OVERVIEW OF POSSIBLE POST GSP FEES

NOVEMBER 21, 2019



SGMA – Water Code Section 10730.2

(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:

- (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.**

(b) Until a groundwater sustainability plan is adopted pursuant to this part, a local agency may impose fees in accordance with the procedures provided in this section for the purposes of Part 2.75 (commencing with Section 10750) as long as a groundwater management plan adopted before January 1, 2015, is in effect.

(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.

(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.

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- GSA MAY impose an EXTRACTION FEE on groundwater production in the Basin
- Pay for administration, operation and maintenance, including a prudent reserve.
- Pay for acquisition of lands, property, facilities, and services
- Pay for water supply imports and improvements
- Pay for other activities necessary or convenient for implementing the GSP

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- Fees imposed pursuant this section MAY include:
 - Fixed Fees
 - Volumetric Fees
 - Fees may be tiered based on
 - Quantity of groundwater produced and/or
 - When the groundwater production began

SGMA – Water Code Section 10730.2 Procedural Provisions

- POST GSP Fees are subject to the following PROCEDURAL provisions of Section 6 of Prop 218
 - Public hearing before adoption
 - Written notice to property owners at least 45 days prior to the hearing
 - Notices must generally set forth the reason for the fee and how it will be calculated

SGMA – Water Code Section 10730.2 Substantive Provisions

- POST GSP Fees are subject to the following SUBSTANTIVE provisions of Section 6 of Prop 218
 - Fees CANNOT EXCEED the cost of the service provided to the parcel
 - Fees CANNOT EXCEED the proportional cost of service to the parcel or its class
 - Fees CANNOT be imposed for a service that is not used or available to the parcel
 - Fees CANNOT be imposed for general governmental services.
 - Fees CAN ONLY be imposed on parcels that are specially benefited by the service

SGMA – Water Code Section 10730.2 Special Benefit

- The Supreme Court of California has expressly found that:
 - Special Benefit is “a particular and distinct benefit over and above general benefits. . .”
 - “General enhancement of property value does not constitute a ‘special benefit’”
 - Only the reasonable and proportional special benefit can be assessed
 - If a service provides both a general benefit and a special benefit, the assessing agency MUST separate the general benefits from the special benefits conferred on the parcel and the agency MAY ONLY charge for the special benefits.

Silicon Valley Taxpayers v. Santa Clara (2008) 44 Cal.4th 431

DRAFT POST GSP FEES

- General Administration Fee –
 - Charged to cover the general administration costs of the GA
 - Charged on all groundwater production in the Basin
- 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