

RESOLUTION NO. 2022-086

**AN RESOLUTION OF THE BOARD OF DIRECTORS OF THE COUNTY OF MADERA
GROUNDWATER SUSTAINABILITY AGENCY FOR THE MADERA SUBBASIN
ADOPTING FEES ON THE EXTRACTION OF GROUNDWATER PURSUANT TO
WATER CODE SECTION 10730.2 AND SUBDIVISIONS (A) AND (B) OF SECTION 6
OF ARTICLE XIII D OF THE CALIFORNIA CONSTITUTION**

RECITALS

WHEREAS, the Sustainable Groundwater Management Act, Water Code sections 10720-10737.8 ("SGMA") was signed into law on September 16, 2014; and

WHEREAS, SGMA requires that each groundwater basin be managed by a Groundwater Sustainability Agency ("GSA"), or multiple GSAs, and that such management be pursuant to an approved Groundwater Sustainability Plan ("GSP"), or multiple GSPs; and

WHEREAS, the County of Madera ("County") is the exclusive GSA for the portions of the Madera Subbasin that are in unincorporated areas of Madera County, and not otherwise covered by another public agency (hereinafter referred to in the singular as the "County GSA"), and the Board of Supervisors is the ex officio Board of Directors (hereinafter "Board of Directors") for the County GSA; and

WHEREAS, on December 17, 2019, the County GSA, along with the Madera Irrigation District GSA, the City of Madera GSA, and the Madera Water District GSA, adopted a GSP (the "Joint GSP") for the portions of the Madera Subbasin within the control of these GSAs that described a "sustainable yield" ("SY") of native groundwater (water that naturally exists in the Subbasin from seepage and percolation) of approximately 0.5 acre-feet per acre; and

//

WHEREAS, on December 15, 2020, the Board of Directors adopted a Resolution No: 2020-166 adopting an approach to allocating groundwater (the “Allocation Approach”) in the Subbasins, allowing parcels meeting certain criteria (hereafter “eligible parcels”) to have access to groundwater classified using two designations:

- a. The SY of native groundwater; and
- b. “Transitional water” (TW) that is continued overdraft of the Subbasins but will incrementally decrease during the GSP implementation period; and

WHEREAS, in furtherance of the Allocation Approach, on June 8, 2021, the County GSA Board of Directors adopted Resolution 2021-069, providing for a per-acre allocation of SY and TW for enrolled eligible parcels within each County GSA based on best available data, to be limited to the use within the eligible parcel, or within a County GSA approved farm unit, that represents a combination of eligible parcels; and

WHEREAS, on August 17, 2021, the Board of Directors adopted Resolution No. 2021-113, establishing groundwater allocation refinements; and

WHEREAS, Water Code section 10730.2, subdivision (a), provides that a GSA that has adopted a GSP “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(;)” and

//

WHEREAS, Water Code section 10730.2, subdivision (d), provides that “[f]ees imposed pursuant to this section may include fixed fees and fees charged on a volumetric basis,” and

WHEREAS, Water Code section 10730.2, subdivision (c), provides that “[f]ees 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,” which is part of the law enacted pursuant to Proposition 218; and

WHEREAS, Proposition 218 was adopted on November 6, 1996, adding Articles XIII C and XIII D to the California Constitution; and

WHEREAS, Article XIII D of the California Constitution imposes certain procedural and substantive requirements for property related fees and charges (as defined); and

WHEREAS, the County GSA has proposed a fixed fee (the “Fee”) on the extraction of groundwater under Water Code section 10730.2, to be imposed on those parcels within the County GSA boundaries that are enrolled in the County GSA’s groundwater allocation program, to provide funds sufficient for the County GSA to cover the costs of implementing GSP projects, including groundwater recharge, participation in the proposed Sites Reservoir, land repurposing, and domestic well mitigation; and

WHEREAS, a rate study report (“Report”) to determine the amount of revenue required for the aforementioned projects and management actions for the Fee was conducted by Raftelis, an independent consulting firm; and

WHEREAS, the proposed rate the Report for the Fee is an annual rate of \$246.00, which was calculated per acre of land enrolled in the County GSA’s allocation program

("Enrolled Acre") and rounded to the nearest whole dollar; and

WHEREAS, the proposed Fee rate in the Report of \$246.00 per Enrolled Acre is for a period of five years (Fiscal Years 2022/2023 through 2026-2007), and represents the average cost of service in each year over the period because the County GSA may not collect more revenue than the cost of providing service; and

WHEREAS, under subdivision (a)(1) of Section 6 of Article XIII D of the California Constitution, "[t]he agency shall provide written notice by mail of the proposed fee or charge to the record owner of each identified parcel upon which the fee or charge is proposed for imposition, the amount of the fee or charge proposed to be imposed upon each, the basis upon which the amount of the proposed fee or charge was calculated, the reason for the fee or charge, together with the date, time, and location of a public hearing on the proposed fee or charge;" and

WHEREAS, under subdivision (a)(2) of Section 6 of Article XIII D of the California Constitution, "[t]he agency shall conduct a public hearing upon the proposed fee or charge not less than 45 days after mailing the notice of the proposed fee or charge to the record owners of each identified parcel upon which the fee or charge is proposed for imposition," and "[a]t the public hearing, the agency shall consider all protests against the proposed fee or charge, and "[i]f written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge;" and

WHEREAS, on April 12, 2022, the Board of Directors, at a duly noticed public meeting, authorized staff to commence a proceeding under Proposition 218, as required by SGMA, for the proposed Fee rate as set forth in the Report prepared by Raftelis; and

WHEREAS, on May 2, 2022, notices for the proposed Fee were sent by mail to all identified affected property owners within the County GSA for the Madera Subbasin, providing the proposed Fee rate, the basis for the rate, the affected property owner's right to protest the Fee, and the time, place, and location of the public hearing on June 21, 2022; and

WHEREAS, in the above-referenced Proposition 218 notice, affected property owners were informed that to protest the Fee, they would either need to send a letter to the Chief Clerk of the Madera County Board of Supervisors, 4th floor, 200 West Fourth Street, Madera, CA, 93637, which would include the property owner's name, property owner's signature, and assessor's parcel number (APN), or appear in person on June 21, 2022, at Board of Supervisors' Chambers, 200 W. 4th Street, Madera, CA, 93637, at 10:30 a.m. to deliver the protest in person; and

WHEREAS, on June 21, 2022, the Board of Directors conducted a duly noticed public hearing for the proposed fee to (1) determine whether there was a majority protest for the Fee, and if not, (2) to consider whether to adopt the Fee; and

WHEREAS, at the hearing, the Chief Clerk to the Madera County Board of Supervisors received and tabulated all protests of the proposed Fee made both prior to and during the hearing, and the protests did not amount to a majority of the affected parcels where notice of the proposed fee was provided; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors for the County GSA, as follows:

1. The recitals set forth above are found to be true and correct and are incorporated herein by reference.

2. The Report is hereby received and approved.
3. The Fee is hereby charged on the terms and conditions set forth in Attachment 1, attached hereto and incorporated herein by reference.
4. The Director of the County Department of Water and Natural Resources (“Department Director”) is authorized and directed to annually request the County Treasurer-Tax Collector to collect the Fee in the same manner as ad valorem property taxes and provide the County Auditor-Controller with the required information no later than August 1 of each year.
5. If the Fee is not able to be collected in the same manner as ad valorem property taxes for any reason, the Department Director is hereby authorized and directed to cause the direct billing of the Fee.
6. The Board, as presented by the Department Director, shall conduct an annual financial review of the Fee.
7. The Department Director is hereby authorized and directed to take further actions as may be necessary to implement the intent and purposes of this Resolution.

//

//

//

//

//

//

//

//

* * * * *

The foregoing Resolution was adopted this 21ST day of JUNE, 2022, by the following vote.



Director Frazier voted:

yes

Director Rogers voted:

yes

Director Poythress voted:

yes

Director Gonzalez voted:

yes

Director Wheeler voted:

absent

Brett Oyler
Chairman, Board of Directors

ATTEST:

Helen Scrivner
Clerk, Board of Directors

Approved as to Legal form:
COUNTY COUNSEL

Michael R.

By Linden

Digitally signed by: Michael R. Linden
DN: CN = Michael R. Linden email = mlinden@lozanosmith.com C = US O = LOZANO SMITH
Date: 2022.06.06 09:36:43 -07'00'