

FOX CANYON GROUNDWATER MANAGEMENT AGENCY

A STATE OF CALIFORNIA WATER AGENCY



BOARD OF DIRECTORS

Eugene F. West, Chair, Director, Camrosa Water District
David Borchard, Vice Chair, Farmer, Agricultural Representative
Steve Bennett, Supervisor, County of Ventura
Michael W. Mobley, Director, United Water Conservation District
Tony Trembley, Councilperson, City of Camarillo

EXECUTIVE OFFICER

Jeff Pratt, P.E.

October 28, 2020

Board of Directors
Fox Canyon Groundwater Management Agency
800 South Victoria Avenue
Ventura, CA 93009-1600

SUBJECT: Adopt Resolution 2020-05 Imposing a Fee on Groundwater Extractions to Establish a Reserve Fund to be Used to Pay the Cost and Expenses of Actions and Proceedings Related to the Agency's Groundwater Sustainability Program – (New Item)

RECOMMENDATION: Adopt Resolution 2020-05 imposing a fee of \$20.00 per acre-foot (AF) on groundwater extractions to establish a reserve fund to be used to pay the cost and expenses of legal actions and proceedings related to implementation of the Agency's groundwater sustainability program.

BACKGROUND:

Fox Canyon Groundwater Management Agency (Agency) is a groundwater sustainability agency (GSA) under the Sustainable Groundwater Management Act (SGMA) for all the basins within its statutory boundaries. The Agency also serves as GSA for those portions of the Las Posas Valley, Oxnard and Pleasant Valley Basins that are outside of the Agency's statutory boundaries pursuant to a joint powers agreement with the County of Ventura, except for small areas of these basins being managed by Camrosa Water District.

SGMA ushered in a new era of groundwater regulation in California and required the Agency to adopt a whole new regulatory program. The mandate under SGMA that high- and medium-priority basins be managed under a groundwater sustainability plan for achieving a goal of sustainability within 20 years of implementation has resulted in greater focus on water rights and raised concerns that sustainable groundwater management actions under SGMA may alter or affect competing claims to use or store groundwater. In recognition of this anticipated effect, the Legislature in 2015 enacted comprehensive reform of the procedures for conducting groundwater adjudications.

The Agency has expended considerable resources over the past several years responding to legal challenges to its implementation of SGMA, including: (1) the initiation of a comprehensive adjudication of groundwater rights in the Las Posas Valley Basin (LPV Basin) (Las Posas Valley Water Rights Coalition v. Fox Canyon Groundwater Management Agency, et. al, Santa Barbara County Superior Court Case No. VENCI0059700); (2) a lawsuit by the City of Oxnard seeking to overturn the Agency's adoption of an allocation plan for the Oxnard and Pleasant Valley Basins (OPV Basins) (City of Oxnard v. Fox Canyon Groundwater Management Agency, Los Angeles County Superior Court Case No. 20STCP00929); (3) a reverse validation action challenging the Agency's adoption of a groundwater sustainability plan (GSP) for the LPV Basin (Las Posas Basin Water Rights Coalition v. Fox Canyon Groundwater Management Agency et al, Santa Barbara County Superior Court Case No. 20CV02036); (4) the threat of similar challenges to the adoption of GSPs for the OPV Basins; and (5) the threat of an adjudication of water rights in the OPV

800 South Victoria Avenue, Ventura, CA 93009-1610
(805) 654-2014 or 645-1372 FAX: (805) 654-3350
Website: www.fcgma.org

Item 9 - Page 1 of 9

Basins. The cost of special counsel retained by the Agency to represent its interests in these pending and anticipated proceedings has been paid from the Groundwater Extraction Management Enforcement Surcharge (GEMES) fund, a reserve established in 2006 for that purpose.

At the June 24, 2020, meeting, staff presented your Board with a Fiscal Year (FY) 2020-21 Work Plan and Budget. As part of that presentation, staff advised your Board that the GEMES fund was expected to end the year in a deficit, and provided the option of adopting a fee to restore the fund balance to ensure the Agency has a sufficient reserve to address existing and anticipated litigation. Your Board directed staff to further research this and other options and report back.

At the September 23, 2020, meeting, staff advised your Board that the Agency is incurring significant legal expenses responding to legal challenges to implementation of its adopted GSPs, that additional litigation has been threatened, and that the Agency needs to develop a new source of funding in order to respond to these challenges since all of its existing operating revenue is needed to continue administration, operation, and maintenance of the Agency and the activities necessary and convenient to implement the GSPs. Your Board directed staff to return with a proposed resolution to impose an increased groundwater extraction charge.

On October 8, 2020, the Agency posted notice on its website of the time and place of today's meeting and made available to the public the data upon which the proposed fee is based. Notice has also been provided by publication pursuant to Section 6066 of the Government Code. On October 14, 2020, the Agency notified the Public Utilities Commission of today's proposed action.

DISCUSSION:

Proposed Resolution No. 2020-05 (attached as Item 9A) imposes a groundwater extraction charge of \$20.00 per AF on all operators, other than small domestic operators, for a period of four years, effective January 1, 2021. Small domestic operators, those extracting 2 acre-feet or less per year, are exempted because they represent a sub-percentile of total extractions. The revenue generated from the proposed fee would be used to pay the cost and expenses of ongoing and anticipated legal actions and proceedings related to the Agency's implementation of SGMA.

Based on projected total groundwater extractions within the Agency's jurisdiction of 118,988 AF per year, which represents recent average pumping, the fee of \$20.00 per AF will generate \$303,952 in the first year, and annual revenue of \$2,379,752. This amount represents the funding needed to address the reasonably anticipated cost of legal actions and proceedings against the Agency over the next four fiscal years. As explained below, this projection of anticipated cost is based on expenditures to date, the cost of similar types of proceedings and reasonably anticipated costs based on the schedule of pending litigation as currently known. Imposition of an extraction charge in the proposed amount to restore the reserve fund is necessary to allow the Agency to carry out its groundwater sustainability program.

Without a reserve fund, the Agency will be unable to adequately respond to the above-described legal challenges and could face significant setbacks in its implementation of SGMA, including the setting aside of its groundwater allocation systems, the invalidation of all three adopted GSPs, the possibility of state intervention under SGMA and the possibility that a judgment entered in an adjudication proceeding will substantially impair the Agency's ability to achieve sustainable groundwater management.

The establishment of a prudent reserve to pay anticipated legal expenses over several years necessarily requires consideration of the facts and circumstances based on existing and threatened litigation, reasonable assumptions based on those facts, and expert opinion regarding the costs associated with complex groundwater litigation and writ proceedings and related groundwater sustainability plan enforcement efforts. Circumstances may change over the next four years resulting in either in an upward or downward adjustment of anticipated fees and cost. Given the many variables associated with the type of

litigation initiated and threatened against the Agency, the proposed resolution contains a provision for an annual review to determine the continued need for and adjustments to the fee.

The proposed fee meets the requirements of a regulatory fee and therefore exempt from being considered a tax requiring voter approval. It represents a reasonable regulatory cost to the Agency for the development and implementation of its groundwater sustainability program. The Agency's regulatory actions under SGMA of regulating and controlling groundwater extractions is an extension of its pre-SGMA role of groundwater management agency for the basins. Prior to SGMA, the Agency was limited to engaging in regulatory actions. Under SGMA, the Agency's regulatory authority has expanded, as has its ability to impose regulatory fees. Because the Agency's groundwater sustainability program and authority under SGMA are relatively new, its implementation can be reasonably be expected to continue to be met with legal challenges. The Agency's ability to implement and enforce its groundwater sustainability program on all water users will be affected by existing and/or anticipated litigation. As such, the Agency has used the best available information, including recent defense costs, and made reasonable assumptions based on pending, anticipated or threatened litigation, to calculate a fair and reasonable regulatory fee that will cover, but not exceed these costs.

The proposed fee is presented as a temporary measure to fund ongoing and reasonably anticipated litigation over the next 4 fiscal years and will cease to be collected on October 1, 2024, absent action by your Board to extend or advance that termination date. In addition, the Agency will conduct annual reviews to consider the continued need for the fee.

The Need for a Reserve

The Agency's enabling legislation recognizes that in order to preserve and manage the groundwater resources within its territory, the Agency needs the ability to participate in legal actions involving groundwater and authorizes it to assume the costs and expenses of those actions (Water Code Appendix, section 121-407). Likewise, SGMA provides for the imposition of regulatory fees to pay the cost of legal actions related to the Agency's groundwater sustainability program (Water Code section 10726.2(f)).

The Agency's existing sources of revenue are extraction fees, surcharges and civil penalties. Of these sources, extraction fees provide the only consistent and reliable means of funding the Agency's operations. The Agency funds certain basic operations through an extraction fee of \$6 per AF, which is the maximum amount it can charge under its enabling legislation. Because revenue generated from this basic extraction fee is insufficient to fund implementation of SGMA, the Agency began collecting a groundwater sustainability fee in 2015, pursuant to the financial authority granted under SGMA. That fee has been increased over the years as the Agency's groundwater sustainability program has expanded and currently stands at \$14 per AF. The combined fee of \$20 per AF is currently adequate to fund the administrative costs of the Agency's groundwater management activities but does not generate sufficient revenue to allow the Agency to respond to legal challenges to its regulatory authority. As noted above, the Agency previously levied a fee to cover the Agency's litigation expenses, but the fee was discontinued in 2008 and the reserves in the GEMES fund will be depleted and no longer be available to bridge this this funding gap.

Effective groundwater management requires that the Agency maintain a sufficient reserve to pay the cost and expenses of actions and proceedings related to its groundwater sustainability program. The level of controversy surrounding the Agency's groundwater management actions has increased significantly since SGMA went into effect, as reflected in the fact that as many as three of the groundwater basins within the Agency's territory may be adjudicated. These adjudications raise important issues of governance and will have a profound impact on how the basins are managed over the next twenty years and beyond and the Agency's role in that process. The ability to retain special counsel with expertise in both SGMA and water rights law is critical to the Agency's ability to exercise the powers granted by SGMA and to achieve groundwater sustainability. The failure to properly respond to these actions and proceedings could lead to

state intervention in the basins or the entry of a judgment that substantially impairs the Agency's ability to sustainably manage those basins.

It may be noted that the Agency's existing reserve, the GEMES fund, has been expended largely due to legal action initiated in the LPV Basin, and that a significant portion of the revenue required to restore that fund is a result of the ongoing adjudication. While it is true that the Agency has expended and will continue to expend significant resources defending actions brought in the LPV Basin, the Agency's groundwater management activities are of equal benefit to all operators within the Agency. The defense of those activities in legal actions brought against the Agency will resolve issues of importance to all operators and further define the scope of the Agency's authority throughout its territory. Moreover, issues raised in the LPV Basin litigation are likely to be raised in other basins.

The GEMES Fund

On April 6, 2006, the Agency adopted Resolution 2006-02, which imposed a \$2 per acre-foot pump charge on groundwater extractions to establish the GEMES fund. This brought the Agency's total pump fee to \$6 per acre-foot which, at the time, was the maximum that the Agency could charge. As originally adopted, the GEMES fee was to remain in place for a period of three years. Revenues generated by the GEMES fee were to be used solely for the purpose of funding enforcement activities, including legal actions and proceedings.

At the February 27, 2008, meeting, the Agency's Board voted to terminate collection of the GEMES fee effective December 31, 2007. By that time, the fee had generated revenue of \$405,363. The Board made three subsequent transfers to the GEMES fund: \$287,511 in FY 2010-11, and \$500,000 in FY 2012-13 and FY 2015-16.

At the beginning of Fiscal Year 2018-19, the GEMES fund showed a balance of \$1,556,829. As of the end of the first quarter (September 20, 2020) of the current fiscal year, the GEMES fund had a \$114,306 deficit.

LPV Basin Adjudication

In 2018, the Agency was named as a defendant in a lawsuit filed by a coalition of landowners in the LPV Basin. The lawsuit alleged, among other things, that the Agency was failing to properly implement SGMA and sought a court order enjoining the Agency from using funds from the GEMES account to defend its implementation of SGMA. The Agency was successful in getting several of plaintiffs' claims dismissed, but the court let stand a claim that surcharges imposed pursuant to Emergency Ordinance E constitute an impermissible tax under Proposition 26.

Plaintiffs also sought a comprehensive adjudication of groundwater rights in the basin. All owners of land were served with the adjudication action, many of whom became parties to the action. The case was eventually transferred to Santa Barbara County Superior Court and deemed complex litigation. A court-ordered mediation process began in June of 2019 and is still ongoing. Last month, the trial court entered a partial statement of decision approving a stipulation to settle certain "Phase 1 Issues," including, overdraft, prescription and the allocation of total safe yield to non-overlying groundwater users.

The trial court is expected to set a schedule for mediation and litigation of the remaining issues in the adjudication that includes a trial on the inter se allocation issue in July 2021, and a trial on a physical solution and basin governance in March 2022. Unless a global settlement of all issues in the adjudication is reached, an appeal of one or more of the trial court decisions is expected. If an appeal is filed, it could take up to two years, or until sometime in 2024, for a final judgment to be entered. Groundwater adjudications are also known to result in significant post-judgment litigation activity, so the Agency's involvement in the action may last for several years beyond 2024.

As noted, Phase 1 of the LPV Basin Adjudication is complete, and the court and parties currently are working to define the scope of Phase 2 of the adjudication while, at the same time, pursuing mediation efforts. The

anticipated focus of litigation efforts during the current fiscal year will include ongoing mediation and negotiations aimed at settling as many issues as possible, regular case management conferences, additional discovery, focusing in particular on data collected and maintained by the Agency and expert discovery and other trial preparation activity leading up to a Phase 2 trial on individual allocations currently proposed to begin in June 2021. The time estimate for the trial ranges from 2 to 4 weeks.

Legal services during FY 2021-22 will include post-trial briefing and work to address future phasing and case management issues with the court. The latest case management order contemplates that Phase 3 will deal primarily with the adoption of a physical solution and the manner in which the physical solution will be implemented and the basin adaptively managed. The court's proposed schedule anticipates that the parties will engage in negotiations and/or mediation between July 2021 and October 2021, followed by fact and expert discovery through February 2022, culminating (absent resolution through settlement) in a March 2022 trial. Based on positions taken by the parties to date, the governance issue is expected to be the subject of extensive legal briefing. A Phase 3 trial will be a significant and critically important event for the Agency.

The budget for FY 2022-23 includes a contingency for the possibility that the Phase 3 trial will not conclude prior to July 2022 and will last beyond the current time estimate of up to four weeks, followed by post-trial briefing, and a likely appeal. For FY 2023-24 and 2024-25, the budget estimates reflect a significant reduction in litigation activity but include a contingency for anticipated and ongoing post-judgment and appellate proceedings. Estimated legal expenses are listed in Table 1 (Item 9B).

LPV Basin GSP Reverse Validation Action

Following the Agency's adoption of a GSP for the LPV Basin on December 13, 2019, plaintiffs in the adjudication action filed a separate "reverse validation" action against the Agency. That action seeks a court order requiring the Agency to set aside its adoption of the GSP and prohibiting the Agency from imposing any reductions on groundwater pumping or taking any other actions to implement the GSP. No hearing has been set in that action, but a trial is expected to take place in late 2021.

Legal expenses incurred during the current fiscal year reflect the fact that plaintiffs filed their validation action in Santa Barbara County Superior Court. Because SGMA provides that the action must be filed in the county in which the Agency's principal office is located, the Agency brought a motion to transfer venue to Ventura County. Plaintiffs opposed the Agency's motion and filed a motion to have the validation action consolidated with the adjudication. The court denied both motions and ordered the cases coordinated, which means that the validation action can proceed on a more expedited basis than the adjudication but will be heard by the same judge to avoid conflicting procedural or substantive rulings.

In order to estimate the total cost of this action, staff evaluated the total fees incurred to date, and reviewed the cost of similar proceedings. The estimated costs are included in the budget estimates for the LPV Basin Adjudication for Fiscal Years 2020-21 and 2021-22. Estimated legal expenses are listed in Table 1 (Item 9B).

City of Oxnard Writ Petition

On December 2, 2019, the City of Oxnard ("City") filed a petition for writ of mandate in Ventura County Superior Court seeking to set aside the Agency's adoption of the ordinance establishing an allocation system for the Oxnard and Pleasant Valley groundwater basins (OPV Ordinance). The City alleges in the petition that the OPV Ordinance should be invalidated because it violates the Agency's enabling legislation, the California Environmental Quality Act ("CEQA") and SGMA. In addition to the request for writ relief, the City seeks recovery of its attorney's fees. At the City's request, the case was transferred to the Los Angeles County Superior Court where it is currently venued.

The parties are currently in the process of compiling and certifying the voluminous administrative record of the proceedings leading up to the Board's adoption of the OPV Ordinance. That process is expected to be completed by the end of 2020. The parties will then exchange legal briefs in advance of a trial which has been set for May 13, 2021.

In order to estimate the total cost of this action, staff evaluated the total fees incurred to date, and reviewed the cost of a prior writ proceeding brought against the Agency by Pleasant Valley County Water District in 2015. Pleasant Valley's writ petition contained allegations similar to those currently being made by the City, namely, that the Agency's adoption of an ordinance violated its enabling legislation and CEQA. The Agency successfully defended the ordinance in proceedings at both the trial court and appellate levels. The Agency's cost of defense of that proceeding was also compared to the fees charged by County Counsel in several writ proceedings handled on behalf of the County of Ventura, and which involved a similar level of effort and included claims that, such as in the City's writ action, that a local ordinance violated CEQA and other State law. The result of that analysis is reflected in the spreadsheet attached to the Agency's Legal Reserve Fee Rate Study Outline. Estimated legal expenses are listed in Table 1 (Item 9B).

OPV Basins Adjudication – Potential Litigation

The Agency's adoption of the OPV ordinance also triggered claims by a coalition of agricultural operators that implementation of the ordinance will cause one or more parties to seek a comprehensive adjudication of the OPV Basins. In response to these claims, the Agency has been participating in a facilitation process being conducted by the Consensus Building Institute and has entered into tolling agreements with both agricultural and municipal and industrial operators. The tolling agreement applies to any claims these operators may bring against the Agency in relation to adoption of the OPV ordinance, as well as its adoption of groundwater sustainability plans for the OPV Basins and includes any action for a comprehensive adjudication of groundwater rights.

If a comprehensive adjudication of these basins is filed, it is anticipated that it will require resolution of many of the same issues which are being litigated in the LPV Basin adjudication, including the interrelationship between the Agency's groundwater management authority under SGMA and the court's authority to adjudicate water rights and order a physical solution for the basins. Accordingly, a schedule and budget for this adjudication can be reasonably expected to track the Agency's experience in the LPV Basin adjudication.

Although the parties continue to work through facilitated proceedings to avoid the initiation of a comprehensive groundwater adjudication in the OPV basins, for budgeting purposes, it is prudent to assume that an adjudication will be initiated by the end of the calendar year, or in the first quarter of 2021. The primary focus of special counsel through the end of 2020 will be participation in the facilitation process and ad hoc legal committee and work to develop a deeper understanding of the legal and hydrological issues in these basins. If litigation is initiated, the first several months of the adjudication will be focused primarily on issues involving service of process, case management, and initial disclosures. In either event, it is also anticipated that significant efforts toward a negotiated resolution will continue over the remainder of this fiscal year.

If an adjudication is initiated, the expectation is that the first substantive phases will focus on basin boundaries and safe yield of the basins. Because these are issues of critical importance to the Agency and also overlap with issues that may be presented in a writ proceeding challenging the GSPs for these basins, the expectation is that the Agency will be actively involved in these first phases of the adjudication. Given the current focus on trying to reach a negotiated solution on these issues, the expectation is that either formal or informal negotiations will continue during FY 2021-22 in tandem with extensive discovery, including expert discovery that will help inform those negotiations. While much of the technical work has been completed, we also expect there to be supplemental technical analysis and a need to formally retain an expert or experts in support of the next phases.

For Fiscal Year 2022-23, it is anticipated that the focus of the adjudication will turn to safe yield and prescriptive rights claims. Although the Agency will be a neutral party in a dispute regarding prescriptive rights, it does have a considerable interest in the safe yield of the basins and also possesses information and data that parties will seek through discovery to support, for example, prescription claims and related negotiations. Absent resolution through negotiation, a 3-week trial, on foundational issues in the adjudication, including safe yield is reasonably likely to occur during the fiscal year.

Budget estimates for Fiscal Years 2023-24 and 2024-25 are significantly lower based on an expectation that ongoing facilitation efforts will lead to stipulated resolutions of important issues. Estimated legal expenses are listed in Table 1 (Item 9B).

OPV Basins GSPs Reverse Validation Action – Potential Litigation

Under the applicable statute of limitations, a legal challenge to the Agency’s adoption of GSPs for the OPV Basins needed to be filed by no later than October 2, 2020. The Agency entered into tolling agreements with certain stakeholders to avoid the filing of additional litigation while the OPV facilitation effort is ongoing. As noted, the Agency is expending significant resources in support of that effort and is hopeful that further litigation can be avoided. Nonetheless, given the number and complexity of issues to be resolved, it is prudent to budget for the eventual litigation of these claims.

In order to estimate the total cost of this potential reverse validation action, staff performed a similar analysis to that discussed above for the LPV Basin reverse validation action and City of Oxnard writ petition, including a review of the cost of similar proceedings. The costs are projected to be somewhat higher due to the need to address the validity of two separate GSPs which will result in a significantly larger administrative record and the potential for additional briefing. Estimated legal expenses are listed in Table 1 (Item 9B).

Writ Petition to Set Aside Adoption of Resolution 2020-05 – Potential Litigation

As noted above, plaintiffs in the LPV Basin adjudication sought to prohibit the Agency from using the GEMES fund to defend its implementation of SGMA. Although the court dismissed the claim, it let stand plaintiffs’ Proposition 26 challenge to the Agency’s levying of surcharges which were used to augment the GEMES fund. Given the amount of the proposed fee, the constitutional limitations on the Agency’s revenue measures, the importance of the proposed revenue measure and the demonstrated level of controversy in the LPV Basin adjudication, it is prudent to budget for a similar legal challenge to the proposed fee. Such a challenge would likely come in the form of a petition for writ of mandamus. As noted, writ proceedings typically involve an initial pleading phase, preparation of an administrative record, legal briefing and oral argument before the trial court. If an appeal is filed, this would involve additional legal briefing and oral argument before the appellate court.

In order to estimate the total cost of this potential writ proceeding, staff followed the process described above for other pending and anticipated writ proceedings. Estimated legal expenses are listed in Table 1 (Item 9B).

Other Potential Litigation

Based on known facts and circumstances surrounding the Agency’s adopted and proposed management actions, it is reasonable to assume that the Agency will need to respond to legal actions beyond those described above. For example, the proposed ordinance on today’s agenda that will adopt an interim allocation system for the LPV Basins is likely to draw some type of legal challenge due to the ongoing adjudication action and the interrelationship between the inter se allocation issues in that action and the proposed ordinance. It is also noteworthy that neither the proposed ordinance nor the one adopted for the OPV Basins includes any type of rampdown provision. It is generally acknowledged that the Agency will need to reduce cumulative extractions below the initial allocations established by these ordinances. When that occurs, it is reasonably foreseeable that additional litigation against the Agency will be brought.

Likewise, the Agency will soon embark on the process of developing and adopting a replenishment fee to increase the sustainable yield of the basins. While there is general consensus on the need for replenishment, there is significant disagreement over how it will be funded. There is a substantial likelihood that one or more stakeholders will assert that they are being asked to fund a disproportionate amount of the cost of replenishment and a corresponding likelihood of litigation to challenge the Agency's replenishment fee.

The reserve established by the proposed regulatory fee will be available to fund the Agency's response to this other potential litigation which, like the actions described above, will further the Agency's ability to carry out its powers and authorities under SGMA.

Financial Analysis of a New Groundwater Extraction Fee

Staff analyzed revenue projections for fees ranging from \$15 per AF to \$25 per AF. The projections are based on the average of 2018 and 2019 reported extractions. The analysis was based on a January 1, 2021, effective date for the new fee and semiannual collection of fees under a water-year reporting schedule with periods of October through March and April through September. Fees for the first period would be received in April and for the second in October. The January 1, 2021, effective date would mean that the initial fees would be received in April 2021 for extractions from January 1, 2021, through March 31, 2021. Staff analyzed monthly advanced metering infrastructure (AMI) data for agricultural operators to evaluate the proportion of the annual average extractions during each period. Municipal and industrial (M&I) extractions were assumed to be consistent throughout the year. Domestic extractions were not included in the analysis, because the majority would be considered de minimis and not subject to the fee. Estimated extractions by period are shown in Table 2 (Item 9C).

Revenue projections evaluated for fees ranging from \$15 to \$25 per AF based on the estimated extractions are shown in Table 3 (Item 9D). Revenue and GEMES Fund cashflow are shown in Table 4 (Item 9E) for fee projections for \$15, \$20, and \$25 per AF fees against the estimated legal expenses in Table 1. GEMES Fund balance is projected through FY 2024-25. FY 2019-20 year-end legal expenses and GEMES Fund ending balance are also listed. All three fee rates result in a significant negative GEMES Fund balance of approximately \$1.3 to \$1.5 million at the end of the current fiscal year. That is because only fees for extractions from January through March 2021 would be collected this fiscal year.

A fee of \$15 per AF would generate annual revenue of approximately \$1,785,000 beginning in FY 2021-22, but results in a projected negative GEMES Fund balance for the next four fiscal years until FY 2024-25. A fee of \$20 per AF would generate annual revenue of approximately \$2,380,000, with a projected negative GEMES Fund balance through FY 2022-23. A fee of \$25 per AF would generate annual revenue of approximately \$2,975,000 would bring the GEMES Fund into the black by the end of the next fiscal year (FY 2021-22) and result in a fund balance of approximately \$920,000 by the end of FY 2022-23.

Based on this analysis, staff recommends a fee of \$20 per AF even though the GEMES Fund will carry a projected negative balance through FY 2022-23 based on the revenue and expense projections discussed above. By the end of the fourth year (FY 2023-24) the GEMES Fund is projected to have a reserve balance of approximately \$1,171,000.

Resolution 2020-05

Resolution 2020-05 (Item 9A) would impose a \$20 per AF groundwater extraction fee. The resolution includes the following provisions (not inclusive):

- The fees imposed by the resolution would be earmarked and held in separate fund used solely for paying the cost and expenses of actions and proceedings related to the Agency's implementation of groundwater sustainability plans for the Basins.

- The fee would not be collected from any person who extracts, for domestic purposes, 2 AF per year or less.
- The fee will terminate automatically on October 1, 2024, and be applied only to groundwater extracted through September 30, 2024, unless the Board takes affirmative action to terminate the fee, or to extend it to such other date as the Board selects.
- Every 12 months following adoption, the Agency must hold a public meeting to consider the continued need for, and adjustments to, the fee imposed by the resolution.

CONCLUSION:

Staff recommends your Board adopt Resolution 2020-05 imposing a groundwater extraction fee in the amount of \$20 per acre-foot to fund a reserve fund to be used to pay the cost and expenses of actions and proceedings related to the Agency's groundwater sustainability program. This letter has been reviewed by Agency Counsel. If you have any questions, please call me at (805) 650-4083.

Sincerely,



Kimball R. Loeb, CEG, CHG
Groundwater Manager

Attachment: Item 9A – Resolution 2020-05
Item 9B – Table 1, Estimated Legal Expenses
Item 9C – Table 2, Estimate of Extractions by Period
Item 9D – Table 3, Projected Fee Revenue
Item 9E – Table 4, Revenue and GEMES Fund Cashflow Analysis