

FOX CANYON GROUNDWATER MANAGEMENT AGENCY

A STATE OF CALIFORNIA WATER AGENCY



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INTERIM EXECUTIVE OFFICER

Arne Anselm

September 25, 2024

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

SUBJECT: Public Hearing on and Adoption of Resolution 2024-05 Extending a Groundwater Extraction Fee at the Current Rate of \$20 per Acre-Foot to Maintain a Reserve Fund to be Used to Pay the Cost and Expenses of Actions and Proceedings Related to the Agency's Groundwater Sustainability Program – (Returning Item)

RECOMMENDATION: Adopt Resolution 2024-05, attached as Exhibit 12A, extending a fee of \$20.00 per acre-foot (AF) on groundwater extractions to maintain a reserve fund to be used to pay the cost and expenses of legal actions and proceedings related to the 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 requires that high- and medium-priority basins be managed under a groundwater sustainability plan for achieving a goal of sustainability within 20 years of implementation. This 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 four (4) years responding to legal challenges to its implementation of SGMA, including:

- a. The 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. VENC10059700)
- b. 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)

- c. 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)
- d. A legal challenge to the adoption of an allocation ordinance for the LPV Basin (Las Posas Water Rights Coalition v. Fox Canyon Groundwater Management Agency et al, Santa Barbara County Superior Court Case No. 21CV07314)
- e. The initiation of a comprehensive adjudication of the OPV Basins (OPV Coalition, Inc. v. Fox Canyon Groundwater Management Agency, Santa Barbara County Superior Court Case No. VENC100509700)
- f. A reverse validation action brought by plaintiffs in the OPV Basins adjudication challenging the Agency's adoption of GSPs for the OPV Basins (Ibid.), and
- g. A legal challenge to the adoption of an allocation ordinance for the OPV Basins brought by plaintiffs in the OPV Basins adjudication (Ibid.).

The current and anticipated status of litigation is discussed in more detail below.

The cost of special counsel retained by the Agency to represent its interests in these actions and proceedings has been paid from revenue collected by a fee established by Resolution 2020-05, attached as Exhibit 12B, adopted on October 28, 2020. Resolution 2020-05 which imposed a fee of \$20 per acre-foot on groundwater extractions through September 30, 2024. That fee was calculated based on the anticipated costs based upon the best available information and enacted for a period of four years through September 30, 2024, subject to further extension by the Agency. The Agency continues to incur significant legal expenses responding to legal challenges to implementation of SGMA and needs to maintain a source of funding 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. Unless the fee established under Resolution 2020-05 is extended, the Agency will lose an important source of funding for its groundwater sustainability program.

On August 23, 2024, 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 (attached as Exhibit 12C). On August 30, 2024, the Agency notified the Public Utilities Commission of today's proposed action (also attached as part of Exhibit 12C).

On September 13, 2024, your Board voted to continue this matter to today's meeting.

DISCUSSION:

Proposed Resolution No. 2024-05 (attached as Exhibit 12A) extends a groundwater extraction charge at the existing rate of \$20.00 per AF on all operators, other than small domestic operators, for a period of 4 years, effective October 1, 2024. 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 121,000 AF per year, which represents recent average pumping, the fee of \$20.00 per AF will generate annual revenue of \$2,242,000. This annual amount represents the funding needed to address the reasonably anticipated cost of legal actions and proceedings against the Agency over the next 4 Fiscal Years (FY). As explained below, this projection of anticipated costs 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.

Continuation 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. More details about the reserve fund are included below in the section on the existing litigation reserve fund.

Without a reserve fee, the Agency will be unable to adequately respond to the above-described and reasonably anticipated legal challenges and could face significant setbacks in its implementation of SGMA, including the setting aside of its groundwater allocation system in the OPV Basins, the invalidation of adopted GSPs in those basins, 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 extension of a \$20/AF reserve fee 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 4 years resulting in either an upward or downward adjustment of anticipated fees and costs. Given the many variables associated with the type of litigation initiated 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 is 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 and the procedures for conducting groundwater adjudications have changed, 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 and anticipated litigation to calculate a fair and reasonable regulatory fee that will cover, but not exceed these costs.

The proposed reserve 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, 2028, 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 reserve fee.

The Need for a GEMES Reserve Fee

The Agency's enabling legislation recognizes that 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 primary source of revenue is extraction fees. 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 adjusted over the years as the Agency's groundwater sustainability program has expanded and currently stands at \$29 per AF. The combined fee of \$35 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 reserve fee to cover the Agency's litigation expenses, but the fee will terminate on October 1, 2024, unless extended by your Board. The Designated GEMES Account ended FY 2023-24 with a negative balance of (\$920,552) and is projected to be negative (\$2,995,552) at the end of FY 2024-25 unless the reserve fee is extended by your Board.

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 adjudications of 3 of the groundwater basins within the Agency's territory have been filed. 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 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 legal proceedings in the LPV Basin have been largely resolved with entry of judgment in the adjudication and dismissal of the writ claims. Nonetheless, it is reasonable to require operators in this basin to continue to contribute to the reserve fund because the Agency's existing reserve has been expended largely due to proceedings in the LPV Basin and must be restored to ensure that the Agency is able to respond to ongoing and anticipated legal challenges to its groundwater sustainability program, including the ongoing adjudication of the OPV Basins. Moreover, the judgment in the LPV Basin adjudication is currently being appealed, so that proceeding is not yet concluded. And while the Agency's projected legal expenses over the next four years are far higher for actions brought in the OPV Basins, the Agency's groundwater management activities are of equal benefit to all operators within the Agency in light of the precedent these actions set and the fact that the basins themselves are interconnected. 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.

The Existing Litigation Reserve Fund

On October 28, 2020, the Agency adopted Resolution 2020-05, which imposed a \$20 per acre-foot pump charge 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. The reserve fee provides revenue to the Agency's Groundwater Extraction Management Enforcement Surcharge (GEMES) fund established in 2006¹ for the purpose of retaining special counsel to represent Agency interests. At the time of Resolution 2020-05, the Designated GEMES Account (GEMES Fund) had a deficit of \$114,306. As originally adopted, Resolution 2020-05 was to remain in place for a period of 4 years unless extended by the Board. Revenues generated by the fee imposed by Resolution

¹ Resolution 2006-04: <https://s42135.pcdn.co/wp-content/uploads/2022/09/Resolution-2006-04.pdf>

2020-05 were used solely for responding to legal challenges to the Agency's groundwater sustainability program.

At the beginning of FY 2023-24, the Designated GEMES Account showed a negative balance of (\$1,590,801). As of the end of the Fiscal Year (June 30, 2024), the Designated GEMES Account had a negative balance of (\$920,522). The fees collected under Resolution 2020-05 have provided the sole source of revenue for the Designated GEMES Account over the past four years.

LPV Basin Adjudication

In 2018, a coalition of landowners in the LPV Basin who were dissatisfied with a proposed allocation system being considered by the Agency filed for a comprehensive adjudication of groundwater rights in the basin. After more than 5 years of litigation, a judgment was entered in Santa Barbara County Superior Court in July of 2023. The judgment imposed a physical solution for the LPV Basin and appointed the Agency as the Watermaster with responsibility to implement the physical solution. It provides a basis for the Agency to comply with its obligations under SGMA and authorizes the Agency to levy and collect assessments from water rights holders in the LPV Basin to cover the costs of compliance with and enforcement of the judgment. These costs include status conferences and responding to requests for judicial review of the Agency's basin management actions.

While the judgment provides a separate funding source for the Agency's post-judgment legal costs, several parties have appealed and asked that the judgment be reversed, and the case remanded to the trial court for further proceedings. These parties recently filed their opening briefs and appellate briefing is expected to be completed by the end of the year. Oral argument is expected to be scheduled for early 2025. A decision from the Court of Appeal is expected during the first half of next year. Because this is the first adjudication initiated under SGMA, there is a higher than usual possibility that the California Supreme Court will grant review of the Court of Appeal's decision. Because there is a possibility that the judgment will be reversed, there is a corresponding possibility that the Agency will lose its ability to levy assessments as Watermaster under the judgment. As noted, funds collected by the Agency as Watermaster may only be used for purposes authorized under the judgment and would not be available for use outside the LPV Basin or for purposes unrelated to implementation and enforcement of the judgment.² It is therefore prudent for the Agency to continue to collect pump fees from operators in the LPV Basin to maintain its GEMES Fund. Moreover, while future litigation costs for the LPV Basin adjudication will likely be far lower than previously incurred, there is a need to continue collecting fees from these pumpers to restore funding of the reserve to ensure that the Agency can adequately respond to pending and future challenges to its implementation of SGMA.

Legal services during FY 2024-25 may include appellate briefing and oral argument before the Court of Appeal. The budget for FY 2025-26 includes a contingency for the possibility that the California Supreme Court will grant review of the Court of Appeal decision and/or that the Court of Appeal will remand the case to the trial court for further proceedings. For FY 2026-27 and FY 2027-28, the budget estimates reflect a significant reduction in litigation activity but include a contingency for further trial court and appellate proceedings. Estimated legal expenses are detailed in the below table and are listed in attached Exhibit 12D.

² The judgment combines the Agency's role as GSA for the LPV Basin with its new authority as Watermaster and therefore costs incurred with implementation and enforcement of the judgment may be viewed as related to the Agency's groundwater sustainability program. However, it would be administratively impractical for staff to monitor these costs for purposes of determining whether they are related to SGMA implementation and would thus qualify for payment from the GEMES Fund. It is therefore reasonable and prudent to fund all costs related to implementation and enforcement of the judgment from the basin assessment authorized under the judgment.

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 sought 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. Plaintiffs dismissed this action in 2023 as part of a settlement agreement in the LPV Basin adjudication. Legal expenses incurred in this proceeding are detailed in the table below and are listed in attached Exhibit 12D.

LPV Basin Allocation Ordinance Legal Challenge

On December 14, 2020, the Agency adopted a new allocation for the LPV Basin. In response, plaintiffs in the comprehensive adjudication filed a separate action asking the court to block implementation of the ordinance and to award damages for the taking of their property rights. Plaintiffs voluntarily dismissed this action in 2022 rather than proceed with a hearing on the merits. Legal expenses incurred in this proceeding are identified in Table 1, below.

Table 1						
Legal Expense Projections						
		FY 2024-25	FY 2025-26	FY 2026-27	FY 2027-28	FY 2028-29
Las Posas Valley Basin Adjudication						
Special Counsel		\$ 250,000	\$ 100,000	\$ 100,000	\$ 50,000	\$ -
County Counsel		\$ 30,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ -
Oxnard and Pleasant Valley (OPV) Basins Adjudication - Potential Litigation						
Special Counsel		\$ 1,300,000	\$ 1,500,000	\$ 1,250,000	\$ 750,000	\$ 250,000
County Counsel		\$ 90,000	\$ 90,000	\$ 75,000	\$ 50,000	\$ 50,000
OPV Basins GSP Reverse Validation Action - Potential Litigation						
Special Counsel		\$ -	\$ -	\$ -	\$ -	\$ -
County Counsel		\$ -	\$ -	\$ -	\$ -	\$ -
City of Oxnard Writ Petition¹						
Special Counsel		\$ 825,000	\$ 75,000			
County Counsel		\$ 40,000	\$ 20,000	\$ -	\$ -	\$ -
Potential Litigation						
Special Counsel		\$ 100,000	\$ 250,000	\$ 150,000	\$ 100,000	\$ 100,000
County Counsel		\$ 40,000	\$ 50,000	\$ 40,000	\$ 40,000	\$ 40,000
Subtotals						
Special Counsel		\$ 2,475,000	\$ 1,925,000	\$ 1,500,000	\$ 900,000	\$ 350,000
County Counsel		\$ 200,000	\$ 180,000	\$ 135,000	\$ 110,000	\$ 90,000
Total		\$ 2,675,000	\$ 2,105,000	\$ 1,635,000	\$ 1,010,000	\$ 440,000

1. Includes approximate fees and costs, \$600,000, Agency may be ordered to pay City as prevailing party on the writ proceeding.

i **Table 1** - Legal Expense Projections (See also Exhibit 18D)

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 alleged 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.

On June 9, 2023, the court ruled on the City's petition for writ of mandate finding, in part, that the OPV Ordinance violated the Agency's enabling legislation. On March 27, 2024, the Agency revised its ordinance to conform with the court's ruling. The City subsequently filed a motion to compel compliance with the writ of mandate which is set for hearing on September 26, 2024. The City has also filed a motion for attorney's fees.

OPV Basins Adjudication

On June 15, 2021, a coalition of agricultural operators in the OPV Basins filed for a comprehensive adjudication of groundwater rights in those basins. The deadline for parties to appear in the adjudication elapsed earlier this year and the court recently issued a case management order dividing the case into 3 phases. Phase 1, which is expected to be set for trial in FY 2024-25, will consist of a determination of total safe yield and total native safe yield of the OPV Basins. During FY 2024-25, the parties are expected to engage in both expert and non-expert discovery in advance of the Phase 1 trial.

The court's case management order also defined the scope of Phases 2 and 3 of the adjudication. Phase 2 will consist of an adjudication of all claimed rights to use groundwater in the OPV Basins, including any federal reserved water rights claims. Phase 3 will consider a physical solution for the OPV Basins. A trial on Phase 2 issues is projected to take place in FY 2025-26, and Phase 3 trial in FY 2026-27. Any appeals following entry of judgment would proceed during FY 2027-28 and beyond.

The comprehensive adjudication of the OPV Basins will require resolution of many of the same issues which were 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.

OPV Basins GSPs Reverse Validation Action

Plaintiffs in the OPV Basins comprehensive groundwater adjudication have also brought a legal challenge to the Agency's adoption of GSPs for the OPV Basins. On January 5, 2024, the court granted plaintiffs' motion to stay litigation of this claim pending resolution of the adjudication. While plaintiffs argued that resolution of the adjudication may avoid the need to litigate this claim, it is prudent for the Agency to budget for this claim to proceed at some point.

In order to estimate the cost of litigating this claim, staff evaluated a similar claim brought against the Agency to invalidate the LPV Basin GSP. The Agency's estimated budget for this proceeding was also compared to the fees incurred in the City of Oxnard writ petition. The costs are projected to be somewhat higher due to the need to address the validity of 2 separate GSPs which will result in a significantly larger administrative record and the potential for additional briefing.

OPV Basins Allocation Ordinance Legal Challenge

Plaintiffs in the OPV Basins comprehensive adjudication also seek to overturn the Agency's allocation ordinance for those basins on the grounds that it violates the California Environmental Quality Act (CEQA) and common law water rights. As with their claims against the GSPs, plaintiffs successfully moved for a stay of litigation of their ordinance challenge.

The estimated cost of this proceeding is expected to be similar to what the Agency expended in the City of Oxnard writ petition. Both cases involve challenges to the Agency's allocation ordinance and include claims

that the Agency adopted the ordinance in violation of CEQA and other law. In order to estimate the total cost of this writ proceeding, staff performed a similar analysis to that discussed above for the reverse validation action and costs incurred in the City of Oxnard writ petition, including a review of the cost of similar proceedings. The costs are projected in Exhibit 12D to be somewhat higher due to the need to address the validity of 2 separate GSPs which will result in a significantly larger administrative record and the potential for additional briefing.

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

Given the amount of the proposed fee, the constitutional limitations on the Agency's revenue measures and the importance of the proposed revenue measure, it is prudent to budget for a 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.

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, appellants in the LPV Basin adjudication argue that the judgment unlawfully circumvents Proposition 218. This issue of constitutional limitations on the Agency's authority to levy fees and assessment is likely to generate ancillary litigation during implementation of the physical solution in the LPV Basin. In addition, the Agency will need to consider reducing cumulative extractions below the initial allocations established by the allocation ordinance for the OPV Basins. When that occurs, it is reasonably foreseeable that additional litigation against the Agency will be brought.

Likewise, the Agency has embarked on the process of developing and adopting a replenishment fee to increase the sustainable yield of the OPV Basins. While there is general consensus on the need for replenishment, there is no consensus on the manner in which 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 an Extended Groundwater Extraction Fee

Staff analyzed revenue projections based on extension of the current fee of \$20 per AF. The projections are based on the average of 2022 and 2023 reported extractions (Table 2, below).

The analysis was based on an October 1, 2024, 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 of each year. The October 1, 2024, effective date would mean that the initial fees would be received in April 2025 for extractions from October 1, 2024, through March 31, 2025.

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

Table 2		
Estimate of Extractions by Period		
Extractions Reported to FCGMA		
2019	114,867.5640	AF/Y
2021	122,794.5310	AF/Y
2022	124,836.1960	AF/Y
Average	120,832.7637	AF/Y
2020 excluded due to transition period from calendar year to Water Year.		

iii **Table 2** - Basis for Projected Fee Revenue (See also Exhibit 18D)

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 3 below.

Table 3					
Projected Fee Revenue					
	FY 2024-25	FY 2025-26	FY 2026-27	FY 2027-28	FY 2028-29
AF¹ Pumped	121,000	121,000	121,000	121,000	121,000
\$20.00	\$2,420,000	\$2,420,000	\$2,420,000	\$2,420,000	\$2,420,000
1. Based on 2018-2019, 2020-2021, 2021-2022 average water years' reported extractions. Water year 2019 -2020 was the transition from calendar year to water year and data was excluded due to inconsistencies.					

iii **Table 3** - Projected Revenue - Estimated Extractions (See also Exhibit 18D)

Revenue and GEMES Fund cashflow are estimated for fee projections for \$20 per AF fees against the estimated legal expenses in Table 4. GEMES Fund balance is projected through FY 2028-29. FY 2023-24 year-end legal expenses and GEMES Fund ending balance are also listed. The estimated fee rates result in a significant negative GEMES Fund balance at the end of the current Fiscal Year.

Table 4
Projected Revenue, Cashflow, and GEMES Fund at \$20/AF Fee

	FY 2024-25	FY 2025-26	FY 2026-27	FY 2027-28	FY 2028-29
Beginning Balance	(\$920,552)	(\$975,552)	(\$660,552)	\$174,448	\$1,584,448
Revenue¹	\$ 2,420,000	\$ 2,420,000	\$ 2,420,000	\$ 2,420,000	\$ -
LPV Reimbursement	\$200,000				
Special Counsel	(\$2,475,000)	(\$1,925,000)	(\$1,450,000)	(\$900,000)	(\$350,000)
County Counsel	(\$200,000)	(\$180,000)	(\$135,000)	(\$110,000)	(\$90,000)
GEMES Acc³	(\$975,552)	(\$660,552)	\$174,448	\$1,584,448	\$1,144,448

1. Revenue based on average pumping
2. One-time reimbursement for LPV Watermaster Rules Appeal approved by your Board on September 13, 2024.
3. GEMES legal reserve account year-end balance.

iv Table 4 - Projected Funds at \$20/AF Fee (See also Exhibit 18D)

Resolution 2024-05

Resolution 2024-05 (Exhibit 18A) would extend a \$20 per AF groundwater extraction fee. The resolution includes, but is not limited to, the following provisions:

- The fees imposed by the resolution would be earmarked and held in a 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, 2028, and be applied only to groundwater extracted through September 30, 2028, 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 extended by the resolution.

CONCLUSION:

Staff recommends your Board adopt Resolution 2024-05 extending a groundwater extraction fee at the current rate of \$20 per acre-foot to maintain 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) 654-3942.

Sincerely,

Arne Anselm
Interim Executive Officer

Attachments:

- Exhibit 18A – Resolution 2024-05
- Exhibit 18B – Resolution 2020-05
- Exhibit 18C – Public Notice Documentation
- Exhibit 18D – Legal Reserve Fee Study and Review Data