

Date of Hearing: April 16, 2024

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Diane Papan, Chair

AB 2799 (Vince Fong) – As Amended March 21, 2024

**SUBJECT:** Sustainable groundwater management: small farms: fees

**SUMMARY:** Requires groundwater sustainability agencies (GSA) to consider the efforts of small farms to recharge groundwater when assessing fees on pumpers. Specifically, **this bill:**

- 1) Requires a GSA to consider the efforts of small farms to recharge groundwater when assessing fees on pumpers.
- 2) Defines “small farm” as a farm with a gross income of \$250,000 or less.

**EXISTING LAW:**

- 1) Provides, under the Sustainable Groundwater Management Act (SGMA), that local agencies must sustainably manage groundwater in high- or medium-priority basins by 2040. Defines sustainable management of groundwater as the avoidance of the following six “undesirable results:” (a) chronic lowering of groundwater levels; (b) reduction of groundwater storage; (c) seawater intrusion; (d) degraded water quality; (e) land subsidence; and (f) depletions of interconnected surface water (Water Code § 10720 *et seq.*).
- 2) Requires a local agency or group of local agencies to form a GSA in all high- and medium-priority basins by January 1, 2017. A local agency may submit an alternative plan for review by the Department of Water Resources if it had been managing groundwater prior to the enactment of SGMA [Water Code § 10735.2(a)(1)].
- 3) Authorizes a GSA to impose fees, including permit fees, fees on groundwater pumping, or fees on other regulated activity to fund the costs of a groundwater sustainability program (Water Code § 10730).
- 4) Authorizes a GSA that adopts a groundwater sustainability plan (GSP) to impose fees on groundwater pumping to fund the costs of groundwater management. Provides such the adoption of such fees shall be adopted in accordance with Proposition 218 (Water Code § 10730.2).

**FISCAL EFFECT:** Unknown. This bill is keyed non-fiscal.

**COMMENTS:**

- 1) **Purpose of this bill.** The author notes that a number of farmers voluntarily recharged groundwater during last year’s wet winter. These efforts benefitted the whole industry and some communities threatened by flooding; however, the author maintains “these farmers received no credit towards their water use bills for this voluntary groundwater recharge and flood management. The author argues this bill “recognizes the commendable efforts of farmers to voluntarily recharge the groundwater basins during extreme flood events, like those that took place during the winter and spring of 2023. [GSAs] should consider the

beneficial effects of these actions when determining their fee assessments on small farms across the state.”

- 2) **Background.** Passed in 2014, SGMA provides a comprehensive framework to manage groundwater resources in overdrafted groundwater basins (i.e., those basins deemed high- or medium-priority by DWR). To comply with SGMA, local agencies in overdrafted basins had to form a GSA by 2017 and develop GSPs by 2020 or 2022 that will lead to sustainable groundwater management over 20 years. SGMA defines sustainable groundwater management as the avoidance of “undesirable results” (see #1, above, under Existing Law). SGMA’s explicit intent is to keep management of groundwater resources at the local level while allowing for state intervention if local agencies are unsuccessful or get off track in meeting their sustainability goals. SGMA also intends for GSAs to have flexibility to address conditions unique to their particular basin and states that it does not alter groundwater rights.

Each GSA will have to determine how to finance the groundwater sustainability program outlined in their respective GSPs. SGMA grants GSAs new and specific fee authorities for this purpose. This authority is subject to other requirements in the California Constitution and law (e.g., Proposition 218). According to guidance by DWR, four common funding mechanisms that are available to GSAs are: (1) regulatory fee; (2) property related fee; (3) benefit assessment; and (4) special taxes. Each of these mechanisms has different requirements for their adoption and collection. These requirements may include documentation of the cost of the service for which a fee will be assessed (e.g., “fee study” or “engineer’s report”), public notice and hearing to allow for input on a proposed fee, and approval by a simple majority or two-third’s majority at an election on the proposed fee. See Table 1 for a brief overview.

Table 1. Comparison of SGMA Implementation Funding Options.

<b>Funding Mechanism</b>	<b>Regulatory Mechanism</b>	<b>Ballot Required</b>	<b>Approval</b>	<b>Collection</b>	<b>Public Outreach Requirements</b>
Regulatory Fee	Proposition 26	No	Board Approval	Direct or County Tax Roll	Public Meeting Notice
Property Fee	Proposition 218	No	No Majority Protest and Board Approval	Direct or County Tax Roll	Mailed Notice to impacted customers, Public Hearing
Benefit Assessment	Proposition 218	Yes	No Majority Protest and Board Approval	County Tax Roll	Mailed Notice to impacted customers, Public Hearing
Special Tax	California Government Code	Yes	Two-thirds approval from electorate	County Tax Roll	Mailed Notice to impacted customers, Public Hearing

Source: *Resource Guide: Funding SGMA Implementation* by DWR.

This bill will most likely result in GSAs needing to consider additional factors when documenting the cost of the service for which a fee may be assessed.

- 3) **Double-referral.** This bill has also been referred to the Committee on Agriculture.
- 4) **Related legislation.** AB 828 (Connolly) of the current legislative session exempts groundwater use by managed wetlands and small community water systems serving disadvantaged communities from specified authorities of GSAs (e.g., fees) to regulate groundwater pumping under SGMA. AB 828 is currently pending in the Senate.

AB 2874 (Beth Gaines), Chapter 139, Statutes of 2016, requires a GSA to notify the California Public Utilities Commission (PUC) before imposing or increasing a fee authorized by SGMA in a groundwater basin that includes a water corporation regulated by the PUC.

AB 939 (Salas), Chapter 667, Statutes of 2015, among other provisions, extends from 10 days to 20 days the review period during which data used for setting fees under SGMA is publicly available.

SB 13 (Pavley), Chapter 255, Statutes of 2015, among other provisions, clarifies that a local agency's powers to enforce fees and regulatory requirements are limited to that local agency's own boundaries.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

None on file

##### **Opposition**

None on file

**Analysis Prepared by:** Pablo Garza / W., P., & W. / (916) 319-2096