

Resolution No. 2020-05

of the Fox Canyon Groundwater Management Agency

A RESOLUTION 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

WHEREAS, the Fox Canyon Groundwater Management Agency (the Agency) is a groundwater sustainability agency under the Sustainable Groundwater Management Act (the Act) for all the basins within the Agency's statutory boundaries (Basins); and

WHEREAS, the Agency has entered into a joint powers agreement with the County of Ventura through which the Agency exercises all powers of a groundwater sustainability agency in areas overlying the Basins that are outside the Agency's statutory boundaries; and

WHEREAS, the Act at Water Code section 10730(a) authorizes a groundwater sustainability agency to impose fees on groundwater extractions to fund the costs of a groundwater sustainability program, including, but not limited to, preparation, adoption, and amendment of a groundwater sustainability plan, and investigations, inspections, compliance assistance, enforcement, and program administration, including a prudent reserve; and

WHEREAS, the Act at Water Code section 10726.2(f) authorizes a groundwater sustainability agency to commence, maintain, intervene in, defend, compromise, and assume the cost and expenses of any and all actions and proceedings; and

WHEREAS, beginning in calendar year 2018, and continuing to the present, the Agency has been named in a series of actions and proceedings which challenge the Agency's implementation of, and authority under, the Act; and

WHEREAS, the Agency reasonably anticipates the filing of additional actions and proceedings in response to its adoption and implementation of groundwater sustainability plans for the Basins, including, but not limited to, actions and proceedings in response to the Agency's adoption and implementation of groundwater management actions described therein; and

WHEREAS, beginning in fiscal year 2017/18, and continuing to the current fiscal year, the Agency has incurred significant legal expenses related to the pending and anticipated actions and proceedings; and

WHEREAS, the Agency anticipates incurring ongoing significant legal expenses over the next several fiscal years related to actions and proceedings which challenge the Agency's ability to fully exercise the powers and authorities granted under the Act; and

WHEREAS, the Agency's existing groundwater extraction fees are currently adequate to fund administration of the Agency's groundwater sustainability program, but do not generate sufficient revenue to fund the ongoing cost and expenses of legal actions and proceedings brought against the Agency; and

WHEREAS, the continued legal representation of the Agency's interests in these actions and proceedings is necessary to allow the Agency to carry out its groundwater sustainability program and to achieve sustainable groundwater management in accordance with the Act; and

WHEREAS, the continued legal representation of the Agency's interest in these pending and anticipated actions and proceedings will provide benefits to all water users within the Basins because, among other things, the claims that have been or are anticipated are capable of repetition and resolution of these matters has the potential to create binding precedent and/or create a model for dispute resolution, resolving issues of importance to all operators and further define the scope of the Agency's authority; and

WHEREAS, it is necessary to impose a fee on groundwater extractions to establish a reserve fund to be used to pay the cost and expenses of legal actions and proceedings related to the Agency's groundwater sustainability program; and

WHEREAS, the legal reserve fee was calculated based on the best honest viewpoint of the anticipated costs in light of the facts and circumstances currently known about 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; and

WHEREAS, the Board found and determined that based on the evidence presented, the proposed fee is a legitimate regulatory fee to be imposed on the groundwater extractions that is: (a) reasonably related and not more than necessary to the cost of enforcing actions and proceedings related to the Agency's implementation of groundwater sustainability plans for the Basins, (b) bears a fair or reasonable relationship to the payor's burdens on the groundwater system or benefits from implementation of the Agency's groundwater sustainability plans, and (c) is not levied for unrelated revenue purposes because the funds will be earmarked and placed in a designated legal reserve fund; and

WHEREAS, the data upon which the proposed fee is based has been made available to the public for at least 20 days prior to adoption of this Resolution; and

WHEREAS, prior to adoption of this Resolution, the Agency held the public meeting required under Section 10730, subdivision (b), of the Act, notice of which was given as required by law.

NOW, THEREFORE, IT IS HEREBY RESOLVED AND ORDERED as follows:

1. The above recitals are true and correct and material to this Resolution.
2. In making its findings, the Board relied up on and hereby incorporates by reference the staff report and attachments, staff presentation, public comments and other related materials presented at the public meeting.
3. Effective January 1, 2021, a fee of twenty dollars (\$20.00) per acre-foot shall be imposed on groundwater extractions from facilities within the Basins. The fee imposed by this Resolution shall be due and payable to the Agency by each owner or operator of an extraction facility in the manner provided in chapter 2.0 of the Agency Ordinance Code.

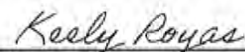
4. The revenue derived from the fee imposed under this Resolution shall be earmarked and placed in a separate fund used solely for the purpose of paying the cost and expenses of actions and proceedings related to the Agency's implementation of groundwater sustainability plans for the Basins.
5. The fee imposed under this Resolution shall not be collected from any person who extracts, for domestic purposes, two (2) acre-feet per year or less.
6. The fee imposed under this Resolution shall terminate automatically on October 1, 2024, and shall be applied only to groundwater extracted through September 30, 2024, unless the Agency Board of Directors takes affirmative action to terminate the fee, or to extend it to such other date as the Board selects.
7. Every twelve (12) months following adoption hereof, the Agency shall hold a public meeting to consider the continued need for, and adjustments to, the fee imposed by this Resolution.

On motion by Director Mobley, and seconded by Director Trembley the foregoing resolution was passed and adopted on October 28, 2020, by the following vote.

AYES - 5
NOES - 0
ABSTAINS - 0
ABSENT - 0

By: 
Eugene F. West, Chair, Board of Directors
Fox Canyon Groundwater Management Agency

ATTEST: I hereby certify that the above is a true and correct copy of Resolution No. 2020-05.

By: 
Keely Royas, Clerk of the Board