

SGMA Compliance & GSP Preparation: Revenue Generation

Mono County Tri-Valley Groundwater Management District
Board of Directors Meeting
Chalfant Community Center
July 12, 2017 at 7:00 PM

Stacey Simon and Jason Canger
Mono County Counsel's Office





Review of SGMA Requirements

- All high- and medium-priority basins must be managed by a Groundwater Sustainability Plan (GSP)
- Local agencies must decide whether to become a Groundwater Sustainability Agency (GSA)
- GSAs with jurisdiction in high- and medium-priority basins must prepare and adopt GSPs by January 31, 2022
- Once adopted, GSAs are responsible for implementing GSPs and their provisions to ensure the basin sustainability goal and management objectives are achieved





SGMA Requirements: District Responsibilities

- If District becomes a GSA for the Owens Valley Groundwater Basin, it will have two major responsibilities:
 - GSP Preparation – prepare a plan for the portion of the Basin within the District’s boundaries which complies with the requirements of SGMA
 - Long-Term Compliance – ensure groundwater use and the activities of users within the District comply with SGMA requirements and provisions of the GSP prepared by the District to ensure the basin is managed sustainably





GSP Preparation: Components

- Physical setting and characteristics of the basin
- Measurable objectives and interim milestones to achieve basin sustainability within 20 years
- Provisions regarding monitoring and management of GW levels/quality; relationship between surface water flow/quality and GW extraction; subsidence, overdraft, and mitigation efforts; recharge and replenishment efforts
- Planning and implementation horizon
- Consideration of county and city general plans and water resources related programs





GSP Preparation: Process and Costs

- 2-Part process to GSP preparation
- Part 1 – Research, Study, Education, and Outreach
 - Review literature, technical documents, hydrologic data, environmental and planning documents regarding the basin
 - Canvas wells to determine groundwater levels, conditions, and use
 - Develop groundwater flow model for evaluation of management activities
 - Local community/stakeholder presentations, education, and outreach
- Part 2 – Preparing Plan and Components
 - Develop drafts of GSP components, including the basin sustainability goal and management objectives
 - Staff review and comment on draft GSP components
 - Prepare revised draft GSP components
 - Final review and adoption of GSP





SGMA Compliance: Process and Tasks

- GSP implementation
 - Monitoring to ensure compliance with GSP requirements and limitations
 - Review extraction and use reports from extractors
 - Enforcement of GSP requirements
- Prepare annual reports on groundwater elevation, extraction, recharge, in-lieu use, basin storage capacity, total water use
- Periodically evaluate GSP to determine whether actions are meeting management objectives and basin's sustainability goal
- Amend GSP if necessary





SGMA Compliance: Costs

- Staff or consultant GSP implementation costs
 - Monitor groundwater extraction and use throughout the basin
 - Review data to determine whether basin sustainability goal and plan's management objectives are being met
 - Administrative and civil enforcement
 - CONTINUAL
- Staff or consultant data review and report preparation
 - ANNUAL
- Staff and/or consultant evaluation of data and GSP effectiveness
 - PERIODIC





Revenue Authority Available to District

- Tri-Valley Groundwater Management District Act (TVGMDA)
- Sustainable Groundwater Management Act (SGMA)
- Revenue authority of both TVGMDA and SGMA are supplemental to the authority provided in other statutes
 - Under TVGMDA, District may exercise powers in Act and those provided to it in other laws such as SGMA
 - Under SGMA, authorities made available to GSAs are supplemental to all other authorities available to local agencies
- Constitutional Limitations on Charges (Propositions 26 and 218)



Revenue Authority: TVGMDA GW Export Fees

- Fees on groundwater exports
 - Based on amount of water exported
 - District may decide whether to apply or not to apply to extractors of minimum amounts
- Process
 - District must adopt an ordinance
 - Ordinance becomes effective within 30 days of adoption
 - Subject to limitations imposed on “regulatory fees”

Revenue Authority: TVGMDA Assessments

- Assessments on persons that will benefit from District construction projects, management activities, planning, and studies (i.e., GSP implementation)
 - Board may create “zones of benefit” to provide specific or enhanced benefits to specific areas in the District, and separately assess groundwater users in those zones
- Process
 - District must adopt a ordinance
 - May create “zones of benefit” for specific areas within District by adopting resolution
 - Subject to limitations of Proposition 218

Revenue Authority: TVGMDA Enforcement

- Enforcement action to recover fees owed
- Process
 - District must file petition with superior court after notice and hearing to all affected persons prior to bringing enforcement action
 - Not subject to limitations of Propositions 26 and 218



Revenue Authority: SGMA Extraction Fees

- Fees on groundwater extraction and other regulated activity to fund SGMA groundwater sustainability program
 - GSP preparation, investigations, compliance assistance, enforcement, administration, and a prudent reserve
 - May not impose on de minimis extractors unless District regulates such extractors under SGMA
- Agreements with private parties to assist or facilitate GSP implementation
- NOTE: SGMA mandates that groundwater extractors pay the cost of purchasing and installing water-measuring devices
 - De minimis extractors exempt
- NOTE: SGMA authorities are supplemental to all other authorities available to District





Revenue Authority: SGMA Extraction Fees

- Process
 - Must make available to public the data on which a groundwater extraction fee is based
 - Must provide notice and a hearing prior to imposing or increasing a groundwater extraction fee
 - Groundwater extraction fee must be adopted by ordinance or resolution
- NOTE: Groundwater extraction fees are not subject to Prop 218 limitations and procedures but are subject to Prop 26 limitations





Revenue Authority: Constitutional Limits

- Propositions 26 and 218
 - Constitutional provisions that impose substantive and procedural restrictions on local governments and special districts' authority to impose new or increased levies and charges
 - In general, the restrictions apply to “taxes”, “assessments” and “property-related fees”, but do not apply to “regulatory fees”



Revenue Authority: Constitutional Limits

- Definition of Assessment
 - “[A]ny levy or charge upon real property by an agency for a special [and direct] benefit conferred upon the real property,” including but not limited to a “special assessment,” “benefit assessment,” “maintenance assessment,” and “special assessment tax”
- Procedural Limitations
 - Parcels to receive benefit must be identified, and costs and benefits calculated in a detailed engineer’s report
 - Each parcel may only be charged for the special benefit it receives; any “general” benefit received must be separated out and cannot be charged as part of the assessment
 - Assessment may not be imposed if majority of property owners protest

Revenue Authority: Constitutional Limits

- Regulatory Fee - definition
 - “A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof”
 - Covers a wide range of local government fees to pay for regulatory activities
 - Imposed to pay for programs that regulate the activity or business of the fee payor and NOT to mitigate or offset the impacts of the fee payers’ activities
 - Valid despite the absence of any perceived “benefit” accruing to the fee payer

Revenue Authority: Constitutional Limits

- Regulatory Fee – substantive limitations
 - Amount of fee is no more than necessary to cover the reasonable costs of the regulatory activity
 - Demonstrating that a fee is no more than necessary to cover the reasonable cost of the regulated activity is satisfied by estimating the approximate cost of the activity and showing that this cost is equal to or greater than the fee revenue to be received
 - Manner in which fee is allocated to each payer is fair or reasonable in relation to each payer's burdens on, or benefits received from, the governmental activity.
 - Fees need not be “finely calibrated” to the precise burden imposed or benefit received by each individual payer

Revenue Authority: Putting It All Together

- District may impose (1) Groundwater Export Fees and Assessments under TVGMDA and (2) Groundwater Extraction Fees under SGMA
- Groundwater Export Fees
 - Imposed for reasonable cost of issuing permits for the export of groundwater
 - Not subject to Prop 218 procedural limitations
 - Amount of fee cannot be more than reasonable cost of export permit program and allocation of fee among exporters must be fair or reasonable in relation to each payer's relative burdens on or benefits from the export program
- Assessments
 - Imposed on areas that will benefit from planning, studies, or any management program that is different from other areas within the District
 - Subject to Prop 218 limitations
 - Engineer must prepare report that identifies and calculates the special benefit for assessed parcels
 - Assessment fails if majority of assessed property owners protest
- Groundwater Extraction Fees
 - Imposed for reasonable cost of administering sustainable GW program, including permits for extraction
 - Unclear whether subject to Proposition 218 (case pending before S.Ct.)
 - If not governed by Prop 218, then Prop 26 would apply and the amount of fee cannot be more than reasonable cost of administering program and allocation of fee among extractors must be fair or reasonable in relation to each extractor's relative burdens on or benefits from the program

QUESTIONS

Jason Canger
Deputy County Counsel
Mono County Counsel's Office
(760) 924-1712
jcanger@mono.ca.gov