



**JOINT POWERS AUTHORITY
WYANDOTTE CREEK GROUNDWATER SUSTAINABILITY AGENCY
BOARD MEETING**

Oroville City Council Chambers
1735 Montgomery Street
Oroville, CA. 95965

**August 24, 2023 - 1:00 PM
SPECIAL BOARD MEETING
Meeting Agenda**

Agenda Prepared: 8/22/23

Agenda Posted: 8/23/23, prior to 1:00 pm

REQUESTS TO ADDRESS BOARD

If you would like to address the Board at this meeting, you are requested to complete the blue speaker request form (located on the wall by the agendas) and hand it to the Board Clerk, who is seated on the right of the Council Chamber. The form assists the Clerk with minute taking and assists the Board in conducting an orderly meeting. Providing personal information on the form is voluntary. For scheduled agenda items, please submit the form prior to the conclusion of the staff presentation for that item. Pursuant to Government Code Section 54954.2, the Board is prohibited from taking action except for a brief response from the Board or staff to statements or questions relating to a non-agenda item.

Attend in-person or listen in by one of the methods listed below. The zoom option is for viewing purposes only.

- Zoom Link: <https://zoom.us/j/91028842432?pwd=TVh4SIFHbUhyTG9oeXFnejFWUjEwZz09>
- By Phone – 1-669-900-6833 Passcode: 17351735
- Zoom Application: Meeting ID: 91028842432 Passcode: 17351735
- Email comments accepted until 12pm to publiccomment@cityoforoville.org
- Any materials related to an item on this Agenda are available for public inspection online at www.wyandotecreekgsa.com

CALL TO ORDER / ROLL CALL

1. **Pledge of Allegiance**

2. **Roll Call**

Board Members: Bill Connelly, Janet Goodson, William Bynum, Kyle Daley, Bruce Wristen

Staff Management Team: Butte County – Kamie Loeser, Christina Buck, TWSD – Chris Heindell, Oroville – Matt Thompson, Josh Freitas

SPECIAL AGENDA

Pursuant to Government Code Section 54956 (a), the Board is prohibited from considering any other business at this meeting.

Public Comments or Board Disqualifications: Members of the public may address the Board at this time on the closed session item; comments are limited to three minutes, or another time limit determined by the Chair.

3. **Adjourn to Closed Session:** The Board will recess to Closed Session.

- a. **Conference with Legal Counsel – Potential Litigation** – Pursuant to Government Code Sections 54956.9(a), (d)(2), and (e)(2).

Section 54956.9(a) states: Nothing in this chapter shall be construed to prevent a legislative body of a local agency, based on advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the local agency in the litigation.

Section 54956.9(d)(2) states: A point has been reached where, in the opinion of the legislative body of the local agency on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the local agency.

Section 54956.9(e)(2) states: Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the agency and that are known to a potential plaintiff or plaintiffs, which facts or circumstances shall be publicly stated on the agenda or announced.

- *August 18, 2023 Letter from California Cattlemen’s Association

4. **Closed Session Announcement**

Report on any action taken during the closed session.

ADJOURN THE MEETING

The meeting will adjourn to the Regular Meeting of the Wyandotte Creek GSA Board to be held on August 24, 2023 at 2:00 pm in the Oroville City Council Chambers, 1735 Montgomery Street, Oroville, CA 95965.

Accommodating Those Individuals with Special Needs – In compliance with the Americans with Disabilities Act, the City of Oroville encourages those with disabilities to participate fully in the public meeting process. If you have a special need in order to allow you to attend or participate in our public meetings, please contact the Board Clerk at (530) 538-2535, well in advance of the regular meeting you wish to attend, so that we may make every reasonable effort to accommodate you. Documents distributed for public session items, less than 72 hours prior to meeting, are available for public inspection at City Hall, 1735 Montgomery Street, Oroville, California.

Recordings - All regular meetings are audio recorded.

*Materials attached

CALIFORNIA CATTLEMEN'S ASSOCIATION

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August 18, 2023

To Whom It May Concern:

Cattle producers who own and manage land in **Butte, Colusa, Glenn, and Tehama** counties are gravely concerned with the approach adopted by the **Groundwater Sustainability Agencies (GSA's)** in our respective basin/counties. In every basin, non-extractors (or de minimis users who only pump stock water) are being assessed acreage fees by the GSA to generate the funding required to comply with the **Sustainable Groundwater Management Act (SGMA)**. Cattle producers are predominantly rangeland operations that do not use groundwater, and in fact, serve as a net recharge zone for the basins. Many ranchers also have irrigated lands that utilize groundwater. We realize that if drylands are exempted, fees will be higher on irrigated lands, but that is still more equitable than charging rangeland. But it is important to remember that SGMA is about pumping groundwater, not about owning land.

In the attached letter that Butte County Cattlemen submitted to the Vina GSA, you will note that most basins/subbasins in California **DO NOT** charge rangeland. As near as we can determine, only the four-county region (Butte, Colusa, Glenn, Tehama) has adopted acreage fees for non-extractors. All these counties used the same consultant for their respective fee study, and those studies recommended acreage charges as the "simplest and most equitable". It may be the simplest, but it is clearly not the most equitable. GSA boards were told by the consultants, and in some cases by county legal counsel, that all parcels in the basin must be charged. That is simply not true as evidenced by the attached report.



Secondarily, assuming an acreage fee is appropriate for non-extractors (which we strongly disagree with), it is unfair to charge all acres at the same rate. There is a distinct income difference between land types, with farmable land not only using more groundwater, but also having a much greater income potential.

Rangelands are net recharge zones for every basin. Because ranchers do not extract, or at best are de minimis users, rangeland has become one of the most important areas for net recharge of the aquifer.

People impacted by this unfair fee have been ignored and backed into a corner where a lawsuit is their only option. Such lawsuits are certainly possible in Butte County, and we understand are being considered in every other county by both individuals and organizations, and in some cases may already be filed.

In summary, there are three basic principles that GSA Boards, county officials and the consultants need to understand—whether formal legal action is brought or not:

- **SGMA does not require all land in a basin to be charged to comply. Other than Butte, Colusa, Glenn and Tehama, no other county or basin in the state is charging non-extractors on rangeland. Please review the table in the attached letter for examples.**
- **If all acres in a basin were to be charged, a flat fee applied to all land types is extremely unfair. Groundwater pumpers on pasture, orchards, rice, etc. should have the highest fee. Surface water users and rangeland (de minimis or non-extractors) should have a lower fee or not be charged at all (the Wyandotte subbasin has charged differential fees to irrigated and non-irrigated lands, as an example).**



- **Finally, rangelands serve as a net recharge zone for the entire aquifer. Ranchers should be rewarded for providing net recharge and be encouraged to create projects that will aid in that process (stock ponds, shallow flooding, small reservoirs, etc.). Rather than being charged, rangeland owners should be exempted from the fees, or compensated to create net recharge opportunities for the entirety of the basin.**

We would anticipate that each GSA Board and/or staff can provide a response to our concerns to our respective associations by August 25th.

Thank you for your consideration of this difficult issue.

Respectfully,

Steven T. Arnold

Steve Arnold

California Cattlemen's Association President

Butte County Cattlemen's Association Board of Directors

Steve Lambert

Steve Lambert

Butte County Cattlemen's Association President

Stan Avrit
Dave Daley
Kyle Daley
Sean Earley

Holly Foster
Clayton Lambert
Myron Openshaw
Duke Sherwood

Louis Venturini
Doug Wheeler



Glenn-Colusa Cattlemen's Association Board of Directors

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Glenn-Colusa Cattlemen's Association President

Tyler Bucke
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Larry Massa
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Todd Stegall
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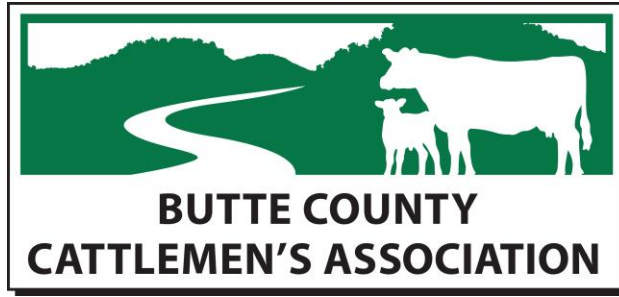
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Steve Zane



Submitted via email to VinaGSA@gmail.com

July 16, 2023

Vina Subbasin Groundwater Sustainability Agency
c/o Vina GSA
P.O. Box 7211
Chico, CA 95927

Re: Protest to Per-Acre Fees Charged to Non-Extractors within the Vina Subbasin

Dear Vina GSA Directors:

At its June 14, 2023 Fee Informational Webinar, the Vina Subbasin Groundwater Sustainability Agency (Vina GSA) proposed imposing a uniform fee of \$3.09 per acre on all assessable parcels within the Subbasin. In anticipation of the July 26, 2023 Public Hearing at which Vina GSA will consider adopting this proposed fee, the Butte County Cattlemen's Association (BCCA) wishes to raise considerable concerns that operators of non-irrigated rangelands have regarding the per-acre fee proposal.

BCCA is a voluntary membership association representing cattle producers throughout Butte County, including several BCCA members who own and manage cattle ranching operations within the boundaries of the Vina GSA and would be subject to the per-acre fee currently being contemplated by the GSA. Typical ranching operations on non-irrigated rangelands do not rely on groundwater extraction (or extract water only on a *de minimis* basis, primarily for domestic use), instead sourcing water under surface water rights. As a result, **non-irrigated rangelands do not contribute to Vina GSA's status as an overdrafted, high-priority groundwater basin.** Given this reality, **it is inappropriate to assess upon owners of non-irrigated rangeland parcels the same per-acre fee that is applied to extractors.** Moreover, because livestock ranching typically requires significantly larger acreages of land than farming and other land uses, imposition of a per-acre fee unjustifiably imposes a disproportionate burden on owners of non-irrigated rangelands.

Indeed, Vina GSA has yet to demonstrate what "regulated activity" governed by the Sustainable Groundwater Management Act (SGMA) justifies imposition of a per-acre fee on owners of non-irrigated rangelands and other non-extractors. Further, Vina GSA has failed to properly analyze an alternative fee arrangement which would charge a per-acre fee *only to groundwater extractors* – those whose activity implicates the groundwater sustainability purpose of SGMA and the GSA.

For the reasons detailed below, BCCA asks that the Vina GSA reject the proposed uniform per-acre fee at the July 26 public hearing and undertake a thorough analysis of an alternative fee arrangement imposing a per-acre fee *only upon groundwater extractors* within the Subbasin. Alternatively, we ask that Vina GSA adopt an alternate fee arrangement at its July 26 meeting, either explicitly exempting non-irrigated rangelands and other non-extractors or providing a mechanism via which non-extractors can opt out of the fee.

I. Vina GSA has failed to identify what “regulated activity” justifies the fee on non-extractors under the Sustainable Groundwater Management Act

The Proposition 218 Fee Report cites to Water Code § 10730 for the GSA’s authority to “impose fees, including, but not limited to, permit fees and fees on groundwater extraction or other regulated activity.”¹ Given that owners of non-irrigated rangelands would be subject to the per-acre fee without obtaining a permit or extracting groundwater, Vina GSA’s purported authority to levy the fee on non-irrigated acreage is presumably tied to “other regulated activity.” However, the Fee Report does not identify what “other regulated activity” governed by Part 2.74 of Division 6 of the Water Code justifies imposition of a per-acre fee upon owners of non-irrigated rangelands.

The Vina GSA appears to take the position that *land ownership within the Vina Subbasin* is the “other regulated activity” justifying fee imposition upon non-irrigated rangelands, a position at odds with SGMA. The Fee Report claims that “SGMA requires every acre in each high and medium priority subbasin to be managed by a GSA and guided to sustainability through a GSP,”² and the Notice of Public Hearing suggests that “Each acre in the Vina Subbasin...will receive the local management services of the Vina GSA.”³

However, while GSAs may be charged with management within a basin or subbasin identified by geographic boundaries outlined in Bulletin 118, SGMA requires not the management of *land* but rather sustainable *groundwater* management. Tellingly, Vina GSA does not cite any provision of SGMA nor to the California Code of Regulations for the proposition that SGMA mandates management of “Each acre” of land within the Subbasin. Simply put, there is no legal basis for a suggestion that merely owning non-irrigated lands having no effect on groundwater sustainability is properly the basis of a fee imposed under SGMA.

Alternately, the Fee Report appears to suggest that a per-acre fee is justified “to achieve and maintain SGMA compliance for all landowners within the VGSA service area.”⁴ This justification again misconstrues the provisions of SGMA. SGMA requires that all high- and medium- priority basins be sustainably managed, whether by a local GSA developing and implementing a GSP or by the State Water Resources Control Board (SWRCB) intervening and managing the basin directly. *There is no requirement for individual landowners to comply with*

¹ VINA SUBBASIN GROUNDWATER SUSTAINABILITY AGENCY, VINA SUBBASIN GROUNDWATER SUSTAINABILITY PLAN IMPLEMENTATION: PROPOSITION 218 FEE REPORT 8 (May 2023) [hereinafter FEE REPORT].

² *Id.* at 9.

³ VINA SUBBASIN GROUNDWATER SUSTAINABILITY AGENCY, NOTICE OF HEARING TO ADOPT PROPOSED FEE (June 2023).

⁴ FEE REPORT, *supra* note 1, at 2.

SGMA – that obligation is on either the GSA or the SWRCB. While landowners may be *regulated* by whichever entity is managing the basin, the landowner does not have an independent duty to comply with SGMA.

SGMA prohibits a GSA from “impos[ing] a fee...on a de minimis extractor *unless the agency has regulated the users pursuant to [Part 2.74 of Division 6].*”⁵ Given that Vina GSA proposes to impose a per-acre fee upon *all* landowners, it is incumbent upon the GSA to identify which “other regulated activity” justifies imposition of fees upon those who do not extract groundwater or who extract less than two acre-feet per year for domestic purposes⁶ in compliance with Water Code § 10730(a).

II. Fees levied on owners of non-irrigated rangelands are disproportionate to “the cost of service attributable to” such landowners

The Fee Report explains that “Proposition 218 requires that Fees levied to each parcel owner be proportional to the cost of service attributable to that customer.”⁷ The report further states that the “primary objective of the Vina GSA Fee is to ensure that the cost of the service provided is allocated in a fair and equitable manner to those lands receiving the benefit of service.”⁸ In short, the benefit of the service to landowners within the Vina Subbasin must be proportional to the cost of providing that service.

The service the Vina GSA proposes to provide is SGMA compliance.⁹ As explained above, SGMA compliance is not the direct responsibility of individual landowners. As a result, the service Vina GSA proposes to provide is perhaps better understood as local groundwater management (as opposed to management by the SWRCB).

While local management is a valuable service for groundwater extractors, it does not provide the same service to owners of non-irrigated rangelands. Furthermore, because non-irrigated rangeland has a very different effect on SGMA compliance than irrigated farmland, it is difficult to understand how a uniform per-acre fee across the subbasin is consistent with the proportionality requirement of Proposition 218.

A. Value of Avoiding State Intervention

The Fee Report explains that “The SWRCB fee schedule, if applied to the Vina GSA area, would cost overlying users of groundwater significantly more than current estimates under the local management option.”¹⁰ This assertion is correct as applied overlying groundwater users, but neglects to acknowledge that overlying landowners *not* extracting groundwater do not share in this benefit.

⁵ CAL. WATER CODE § 10730(a) (*emphasis added*).

⁶ *See id.* at § 10721(e) (defining a “De minimis extractor” as “a person who extracts, for domestic purposes, two acre-feet or less per year”).

⁷ FEE REPORT, *supra* note 1, at 21.

⁸ *Id.* at 23.

⁹ *Id.* at 10 (“This Report is limited to the proposed assessments to fund the Vina GSA’s annual operations and to comply with the requirements of the SGMA legislation forecast over the next five years.”).

¹⁰ *Id.* at 8.

The Fee Report illustrates the benefit to groundwater users by using the example of a 40 acre farm using 3.0 acre-feet per acre. Under the proposed fee, such an extractor would pay \$123 per year, while under SWRCB management the fee could range from \$5,100 to \$6,900 per year.

The Fee Report does not provide an example of a cattle ranch. Using the example of a 2,500-acre cattle ranch with two homes, a landowner would pay \$7,725 per year under the Vina GSA-proposed fee. Under SWRCB management, however, the landowner would pay nothing, as the homes are *de minimis* uses and there is no other groundwater use (at most, such a landowner would be on the hook for \$100/year for *de minimis* wells under SWRCB management)¹¹.

While the Fee Report claims that “properties will receive SGMA compliance benefits with local representation for substantially lower costs” under the proposed fee,¹² this assertion is simply untrue as applied to non-irrigated rangelands. As described above, non-irrigated rangeland would have significantly lower costs if the SWRCB managed the basin. While state intervention is generally not a desired outcome for the community, it cannot be argued that owners of non-irrigated rangeland are financially better off under the proposed fee.

B. Comparison of Cost Per Acre-Foot

Recognizing that SGMA compliance is fundamentally about managing the groundwater resources, it is useful to compare the impact of the fee on different land uses based on the proposed fee’s effective cost per acre-foot of water used. While cattle on most non-irrigated rangeland in the Vina Subbasin drink water from surface water sources, for purposes of this comparison we will assume that livestock water is provided from groundwater.

To estimate water use for the 2,500-acre cattle ranch discussed above, assume that 10 acres is required to support one pair (a cow and calf) for a seven-month grazing season. During the season the pair will drink approximately 6,000 gallons, which equates to approximately 0.0018 acre-feet of water per acre grazed. At a fee of \$3.09 per acre, the cost of water consumed would be approximately \$1,717 per acre-foot.¹³

Compare this to an irrigated farm using three acre-feet per acre.¹⁴ At a fee of \$3.09 per acre, the cost of water for the farm is approximately \$1.03 per acre-foot.

When the proposed fee is viewed from the perspective of approximate water use, the owner of non-irrigated rangeland is paying more than 1,600 times what the owner of an irrigated parcel is paying – *assuming* that cattle are watered from groundwater, which is typically not the case. Given that SGMA is fundamentally about managing groundwater use, it is difficult to understand the basis for charging parcels with no or very low intensity water use a fee that is effectively 1,600 times greater than parcels with a high intensity water use.

¹¹ *Id.* at 9 (“The SWRCB fees would be as follows...De minimis wells (less than or equal to 2 AF per year) would be Fee \$100 per year.”).

¹² *Id.* at 23.

¹³ $\$7,725 / (0.0018 \text{ acre-feet of water per acre} * 2,500 \text{ acres}) = \$1,16.67/\text{acre-foot}$.

¹⁴ This is the example used by Vina GSA in the Fee Report. FEE REPORT, *supra* note 1, at 9.

III. More Equitable and Proportional Alternatives are Available

The most equitable and proportional alternative to the proposed uniform fee would be to only charge a fee to parcels that extract groundwater. This approach is used in the Consumnes Subbasin, Merced Subbasin, Salinas Valley Basin, and others. The Vina GSA did not consider this alternative, but only considered approaches that applied fees to all parcels within the subbasin. While some funding options did attribute a greater share of the costs to irrigated parcels, none would have *excluded* parcels that did not use groundwater as is done in the subbasins mentioned above.

While it is true that the uniform option is used in other subbasins, the characterization in the Technical Memorandum stating that the “Uniform option is also proven and has been utilized successfully by many GSAs throughout California”¹⁵ is overstated. In the presentation for the March 28, 2023 Vina GSA public workshop on fees, a table states that “Charge per Acre, for parcels subject to the charge within the GSA service area” was the “most common charge structure.”¹⁶ While this could imply that these basins use a uniform fee for all acreage, it is important to note the inclusion of the phrase “*for parcels subject to the charge within the GSA service area*” within that section of the table. Many basins, like those identified above, use a per-acre fee, but only apply that fee to irrigated acres and not to non-irrigated acres.

The March 28 workshop presentation also includes a table comparing SGMA related fees in 11 other GSA areas.¹⁷ While the table is titled “GSA Charge Comparison - \$/Acre” not all the fees represented in the table are in fact “\$/Acre” fees. For example, the table indicates a \$105 fee from Indian Valley Wells Groundwater Authority. However, the Indian Valley Wells fee is actually assessed per acre-foot of *extracted groundwater*.¹⁸ This is also the case for the \$10/acre fee reported in the Tri-County Water Authority GSA. This fee is actually an *extraction fee* of \$10/acre-foot.¹⁹ Such extraction fees, by nature, are not imposed on lands which do not extract groundwater, such as non-irrigated rangelands.

Further, several of the fees contained in the table, while still land-based assessments, are not imposed on non-irrigated lands. For example, the table reports a \$10/acre fee in the Cosumnes Groundwater Authority area. However, this fee is only imposed on irrigated lands within the basin. Publicly available DWR crop data is used to determine irrigated lands and an appeals process is available to remedy mischaracterizations.²⁰

Although not accurately reported in the table, the Tri-County Water Authority does collect a SGMA related land-based assessment of \$4/acre. However this assessment is not imposed on

¹⁵ Technical memorandum from Eddy Teasdale, Supervising Hydrologist, and Jacques DeBra, Supervising Water Resource Planner, Luhdorff & Scalmanini Consulting Engineers to Kamie Loeser, Director, Butte County Water and Resource Conservation Department 18 (Apr. 28, 2023) [hereinafter Technical Memorandum].

¹⁶ VINA GROUNDWATER SUSTAINABILITY AGENCY, PUBLIC WORKSHOP ON LONG-TERM FUNDING OPTIONS, slide 30 (Mar. 28, 2023) in FEE REPORT, *supra* note 1, at app. F.

¹⁷ *Id.* at slide 32.

¹⁸ Indian Valley Wells Groundwater Authority, Ordinance 05-20 (Dec. 17, 2020).

¹⁹ Tri-County Water Authority, Resolution 21-08 (July 14, 2021).

²⁰ HDR ENGINEERING, SAN JOAQUIN VALLEY COSUMNES SUBBASIN GROUNDWATER FEE STUDY 11 (June 2021).

“non-farmable lands.”²¹ A similar approach is also used in the Merced Subbasin GSA which collects a land-based assessment only on parcels larger than 2 acres which are identified by the County Assessor’s office as irrigated. An appeal process exists for lands which are mischaracterized.²²

The comparison table also includes fees from GSAs which differ widely in land use makeup from the Vina GSA. For example, the table includes SGMA related fees in the McMullin Area GSA, the North Fork Kings GSA, and the South Fork Kings GSA. However these GSAs (all located in the Kings Subbasin) are almost entirely cropped and irrigated acreage, as can be seen using DWR’s crop layer in the SGMA Data viewer.²³ In comparison, of the 174,327 net assessable acres in the Vina Subbasin, 97,107 (55.7%) are irrigated and 84,328 (48.4%) are non-irrigated.²⁴

Perhaps the best explanation for why the “Uniform option...has been utilized successfully by many GSAs throughout California”²⁵ is that many GSAs appear to use the same template for their required Proposition 218 fee studies. Despite being prepared by different consulting firms, the language in many of these fee studies is nearly identical with only the relevant figures and names changed to fit the specific GSA. This appears to be the case for the Tri-County Water Authority GSA Engineer’s Report (2018), the North Fork Kings GSA Engineer’s Report (2018), Glenn Groundwater Authority Fee Study (2019), Glenn Groundwater Authority GSA Prop. 218 Draft Fee Report (2023), Colusa Groundwater Authority Fee Study (2019), Corning Subbasin GSA Prop. 218 Draft Fee Report (2023), Wyandotte Creek Subbasin GSA Prop. 218 Draft Fee Report (2023), and includes the Vina Subbasin GSA Prop. 218 Fee Report (2023).

A. Information Supporting the Alternative Approach is Readily Available to Vina GSA

Although the Technical Memorandum acknowledges that “specific parcel benefit analysis can be achieved,” this approach was disfavored because it would “increase charge implementation costs.”²⁶ The Fee Report explains that the “Vina GSA does not currently have pumping data for individual parcels, which disallows the Vina GSA from attempting to develop Fees proportional to extractions in a practical, applicable, or defensible manner.”²⁷

While parcel-specific pumping data may not be available, it is not clear why an option that only charges fees to parcels using groundwater was not evaluated. As explained below, it is apparent that the Vina GSA can identify parcels that use groundwater and parcels that are non-irrigated.

²¹ PROVOST & PRITCHARD CONSULTING GROUP, ENGINEER’S REPORT FOR THE TRI-COUNTY WATER AUTHORITY GROUNDWATER SUSTAINABILITY AGENCY: PROPOSITION 218 PROCEDURES FOR BENEFIT ASSESSMENT 14 (MAR. 2018).

²² ZANJERO, ENGINEER’S REPORT FOR THE PHASE 1 FUNDING MECHANISM INTENDED TO COMPLY WITH PROPOSITION 218 PROCEDURES FOR ESTABLISHING GROUNDWATER SUSTAINABILITY PLAN CHARGES 18 (May 2022).

²³ Available online at <https://sgma.water.ca.gov/webgis/?appid=SGMADataViewer#waterbudget>.

²⁴ Technical Memorandum, *supra* note 15, at 15-16.

²⁵ *Id.* at 18.

²⁶ *Id.*

²⁷ FEE REPORT, *supra* note 1, at 9.

Consequently, **the Vina GSA should evaluate a funding option that charges only irrigated parcels as is done in other subbasins.**

In Attachment 4 of the Technical Memorandum, the number of irrigated and non-irrigated parcels is provided, indicating that the Vina GSA can identify parcels using groundwater. Furthermore, both the Vina GSP and the June 16, 2023 presentation indicate that, in addition to knowing which parcels are irrigated and non-irrigated, the Vina GSA has information on the crops grown on each parcel.²⁸

As compliance with SGMA and the analysis, projects, and management actions described in the GSP are based on groundwater use, and because the Vina GSA has the ability to distinguish between irrigated and non-irrigated parcels, a fee applicable only to irrigated parcels could have been evaluated and indeed *should* have been evaluated.

B. Imposing Fees Only Upon Owners of Irrigated Land Will Not Result in Undue Financial Burden to Such Landowners

As discussed above, imposing a uniform per-acre fee upon all acreage places a disproportionate, unjustifiable cost burden upon operators of non-irrigated rangelands. Consequently, BCCA believes that Vina GSA should fully evaluate an alternative which only charges a fee to extractors. Of course, such an alternative would require Vina GSA to recoup the funding shortfall that would result from exempting non-extractors.

One manner in which this could be done is simply by increasing the maximum per-acre fee for extractors above the currently-proposed \$3.09 limit. While this increased fee may be undesirable to extractors, it may nevertheless be appropriate; as the Technical Memorandum notes, “irrigators (those using most of the groundwater resource)...benefit from the majority of total groundwater extractions in the Subbasin and the VGSA’s ability to meet long-term water balance and sustainability metrics.”²⁹

This increased fee burden on extractors can likely be mitigated, however. As noted in the Technical Memorandum, there is a substantial likelihood of Vina GSA receiving grant funding from the Department of Water Resources which will reduce the Proposed Total Assessment for each of the first five assessment years.³⁰ BCCA urges Vina GSA to consider adopting a per-acre fee proposal that exempts non-extractors, with a finding that the grant funds from DWR are likely to substantially address any shortfall resulting from such exemption.

IV. Conclusion

BCCA and its members within the Vina Subbasin appreciate the opportunity to address the Vina GSA regarding the proposed uniform per-acre fee within the Subbasin. As discussed above, we

²⁸ See, e.g., VINA SUBBASIN GROUNDWATER SUSTAINABILITY AGENCY, VINA GROUNDWATER SUBBASIN GROUNDWATER SUSTAINABILITY PLAN 80 fig. 2-14 (Dec. 2021); VINA GROUNDWATER SUSTAINABILITY AGENCY, INFORMATIONAL WORKSHOP ON THE PROPOSED VINA GSA GROUNDWATER FEE, slide 7 (June 14, 2023).

²⁹ Technical Memorandum, *supra* note 15, at 16.

³⁰ *Id.* at 14 tbl. 8.

believe the proposed fee unjustifiably burdens owners of non-irrigated rangelands who do not contribute to groundwater overdrafting within the Subbasin and whose activities are not “regulated” by the GSA within the meaning of SGMA. To address these concerns, we ask that the Vina GSA reject the proposed uniform per-acre fee, instead fully analyzing an alternative charging a per-acre fee only to extractors. Should the GSA approve a fee at its July 26 hearing, we ask that the approved fee explicitly exempt non-extractors or at least provide a mechanism by which such landowners can demonstrate non-extraction and opt out of the fee.

Sincerely,

Steve Lambert, President
Dave Daley, Secretary
Holly Foster, Treasurer
Kyle Daley, Director
Myron Openshaw, Director
Duke Sherwood, Director
Sean Earley, Director
Doug Wheeler, Director
Clayton Lambert, Director
Stan Avrit, Director
Louis Venturini, Director