

Appendix 8A

Funding Mechanisms Summary



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Technical Memorandum

To: Corning Subbasin GSAs
From: WestWater Research
Date: November 24, 2021
Re: Funding Options, Mechanisms, and Considerations for Implementing SGMA

Background and Purpose

The Corning Subbasin (Basin No. 5-21.51) is located in the northwestern portion of the Sacramento Valley and encompasses approximately 207,020 acres of diverse land uses. Pursuant to the 2014 Sustainable Groundwater Management Act (SGMA), the Corning Subbasin is required to achieve sustainable groundwater conditions by 2042 through the implementation of a Groundwater Sustainability Plan (GSP). The subbasin is co-managed by two Groundwater Sustainability Agencies (GSAs): the Corning Sub-basin GSA (CSGSA) and the Tehama County Flood Control and Water Conservation District GSA (TCFCWCD) (collectively, Corning Sub-basin GSAs). The Corning Sub-basin GSAs are developing a single GSP that will, among other things, identify implementation activities for achieving local groundwater sustainability.

Development of a funding strategy is critical to the successful implementation of the GSP and will ensure that the GSAs can maintain local control and effectively satisfy the groundwater sustainability requirements of SGMA. This memorandum provides an overview of funding considerations and options that can be used by the GSAs to fund their general program administration, projects, and management actions. The memorandum is broken into four primary sections, each of which is described below:

- **Corning Subbasin MOU:** Describes relevant provisions regarding the sharing and allocation of costs among the GSAs.
- **Overview of Funding Needs:** Briefly discusses the anticipated costs of SGMA implementation.
- **Overview of Funding Options:** Presents four primary funding options available to the GSAs.
- **Regulatory Mechanisms for Levying GSA Charges:** Describes three regulatory mechanisms for levying fees and assessments, pursuant to SGMA and other state laws.

Corning Subbasin MOU

In 2020, CSGSA and the TCFCWCD entered into a *Memorandum of Understanding Among Groundwater Sustainability Agencies in the Corning Subbasin* (MOU) to formalize their cooperation in developing and implementing a GSP for the

Corning Subbasin.¹ This MOU includes provisions for the allocation and sharing of costs among the GSAs and any future members to the MOU.

Article 12 of the MOU provides procedures related to funding and future contributions that may be needed to implement the responsibilities of the Corning Sub-basin GSAs under SGMA. As described in this Article, any future cost-sharing allocations shall be agreed to in writing by the MOU members in advance of executing any contracts with consultants, vendors, or other contractors or incurring any expense. There are additional provisions if one of the MOU members agrees to act as the official contracting party for a specific contract.

Members of the MOU may also initiate specific projects to implement or comply with SGMA or the GSP that involve fewer than all the members. Article 11 of the MOU provides that members electing to participate in a project shall enter into a “Project Agreement” specifying the terms and conditions under which the members party to the agreement will participate, including their attributable assets, rights, benefits, and obligations.

The MOU is silent on future funding mechanisms and how the Corning Sub-basin GSAs choose to recover the costs of their SGMA implementation obligations. However, determining these costs and their allocation among the GSAs will need to be a collective effort with the decisions agreed to in writing. How costs are allocated by the GSAs may also influence the funding mechanisms selected by each GSA. The mechanisms selected may differ for each GSA.

Overview of Funding Needs

The Corning Sub-basin GSAs will incur costs to implement the GSP and satisfy SGMA’s various reporting, monitoring, and sustainability objectives. Anticipated costs are broken into two primary categories and described briefly below:

- **General Program Administration:** The costs associated with general program administration include staff salaries and expenses, professional services, outreach, reporting, monitoring, and other activities necessary to carry-out the Corning Sub-basin GSAs’ regular management and recurring obligations under SGMA. Budget categories and individual line items may include:
 - Operational Expenses
 - Management Staff
 - Administrative Support
 - Treasurer & Accounting
 - Audits
 - Insurance
 - Consulting Services
 - Legal Services
 - Materials and Office Supplies
 - Postage and Legal Notices
 - Outreach
 - Fees Studies and Adoption
 - Fee and/or Assessment Collection
 - Grant Application Development
 - General Reserve

¹ *Memorandum of Understanding Among Groundwater Sustainability Agencies in the Corning Subbasin.* Among County of Glenn (on behalf of Corning Sub-basin GSA), Glenn-Colusa Irrigation District (on behalf of Corning Sub-basin GSA), and Tehama County Flood Control and Water Conservation District. Effective as of January 7, 2020.



- Monitoring and Data Collection
 - Annual Data Collection
 - Data Processing and Analysis
 - Groundwater Modelling
 - Data Management System
 - Reporting
 - GSP Annual Report
 - GSP Five-Year Update
 - Other Costs
 - Local Coordination
 - Inter-Basin Coordination
 - Studies and Investigations
 - Grant Cost-Share
- **Projects & Management Actions:** Each GSP must identify projects and management actions that the implementing GSA or GSAs have determined will achieve the sustainability goal of the basin. A variety of projects and management actions have been proposed by the Corning Sub-basin GSAs. Costs associated with these activities may include items such as planning, studies, policy development, engineering, construction, acquisition (e.g., water, land, infrastructure), and recurring O&M. In many cases, it is anticipated that the identified activities will be implemented by other local entities, such as a local water district or community water system. However, it is likely that the GSAs will still serve as active partners and may seek to provide financial support to incentivize implementation of specific projects or management actions carried out by local partners.

Sections 7 and 8 of the Corning Sub-basin GSP provide more detailed descriptions of the SGMA implementation activities planned by GSAs and their estimated costs, which will continue to be refined throughout the GSP implementation horizon.

Overview of Funding Options

GSAs have the flexibility to use multiple sources of funding to support GSP implementation. Four primary options are described below:

- **GSA Charges:** GSAs may levy fees and assessments within their respective jurisdictions, pursuant to the applicable requirements and authorities of SGMA, Proposition 13, Proposition 26, and Proposition 218. California Water Code (CWC) § 10730 *et seq.* describes the various financial authorities provided to GSAs to fund the costs of their sustainability program and groundwater management. SGMA specifically authorizes GSAs to impose charges to fund the cost of administration, operations, permitting, property and services acquisitions, water supply, a prudent reserve, and other activities necessary or convenient to implement the plan. Multiple types of charges may be implemented by GSAs and these may also be imposed upon different units of measure. Charges that are adopted by the GSAs may be adjusted periodically as new needs are identified and new data becomes available. Additional discussion on GSA charges is provided in later sections of this memorandum.
- **Grants:** Grant funding from local, state, federal, and other sources can be pursued to support all applicable implementation activities. Grants are an opportunistic source of funding. The availability of grant funding may vary widely from year to year depending on which programs are soliciting grant applications, the total grant funding made available through such programs, and to what purpose awarded grant funding may be applied (i.e. planning, technical support, project implementation, etc.). In many cases, grants sought by the GSAs will



also require an agency cost-share that will need to be funded through in-kind services and/or agency revenues. Grant funds are typically application-based and not guaranteed. An overview of potential near-term grant and cost-share funding opportunities that may be available to the GSAs is provided in Section 8 and Appendix 8B of the GSP.

- **Partner Funding:** It is expected that the GSAs will work collaboratively with other local agencies and stakeholders to implement projects and management actions that achieve the Corning Subbasin's Sustainability Goal. Some GSA activities may receive funding support from local partners. In addition, some activities may be implemented by a local partner using their own sources of funding and not require a financial contribution from the GSAs. The GSAs will coordinate with local partners to incentivize activities that improve sustainable groundwater management and support their implementation.
- **Bonds and Borrowing:** Bonds and borrowing are a viable source of funding for infrastructure and other capital-intensive projects. Bonds can serve as low-cost sources of financing and are typically issued by public agencies in the form of General Obligation Bonds or Revenue Bonds. These bonds are secured by encumbering one or more sources of revenue and/or other assets available to the agency. Should the GSAs seek to issue bonds, they will need to have established self-funding mechanisms that generate the revenues necessary to service the debt payments.

Regulatory Mechanisms for Levying GSA Charges

Fees or assessments that may be levied by the GSAs are governed by the provisions of SGMA, Proposition 13, Proposition 26, and/or Proposition 218. Taxes, assessments, and fees that may be imposed by local governments are distinctly defined in California, and their levying requires specific procedures as detailed in the state's Constitution pursuant to the provisions of the aforementioned Propositions. A brief definition of each charge type is provided below:

- **Tax:** Any levy, charge, or exaction of any kind, except for charges that meet one of seven exemptions.² Taxes are either general or special.³
 - **General:** Any tax imposed for a general governmental purpose. General taxes may only be imposed, extended, or increased upon a vote and majority approval by the electorate. Special purpose agencies do not have the power to levy general taxes.⁴
 - **Special:** Any tax imposed for a specific purpose. A special tax may only be imposed, extended, or increased by a local agency upon a 2/3 approval by the electorate.⁵
- **Fee:** Any charge that meets one of six exemptions to the definition of a tax. These include charges for specific benefits, specific services, reasonable regulatory costs, use of government property, violations of law, and conditions of property development.⁶
- **Property Related Fees:** Property related fees are charges other than taxes and assessments imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property related service. These fees are exempt from the definition of tax under the seventh exemption.⁷
- **Assessments:** Any levy or charge upon real property by an agency conferring a special benefit upon the property. Assessments are exempt from the definition of tax under the seventh exemption.⁸

² California Constitution Article XIII C, Section 1 (e)

³ California Constitution Article XIII C, Section 2 (a)

⁴ California Constitution Article XIII C, Section 1 (a), Section 2 (a), Section 2(c)

⁵ California Constitution Article XIII C, Section 1 (d), Section 2 (d)

⁶ California Constitution Article XIII C, Section 1 (e) (1) – (6)

⁷ California Constitution Article XIII D, Section 2 (e); California Constitution Article XIII C, Section 1 (e) (7)

⁸ California Constitution Article XIII D, Section 2 (b); California Constitution Article XIII C, Section 1 (e) (7)



Passed in 1978, Proposition 13 amended the California Constitution to limit the extent and increase of ad valorem taxes on real property and created a new category of special taxes for local governments that require a two-thirds majority vote to increase. Proposition 218 was passed in 1996 to establish new substantive and procedural requirements for levying special assessments and introduced a new category of property related fees and charges that may be levied by local governments. Proposition 26 was passed in 2010 and defines all revenue measures imposed by government agencies as taxes unless expressly exempted under one of seven categories for local governments or one of five categories for state government.

The following sections describes three primary regulatory mechanisms and charge structures available to the GSAs for generating revenues that have been successfully implemented in other basins. The focus is on revenues intended to recover the costs of general program administration and operational expenses. These mechanisms may also be used to fund projects and management actions. Although not addressed in the main body of this memorandum, GSAs also have the authority to impose penalty charges and late fees (see **Attachment 1** for more information).

The discussion provided herein is not legal advice or a recommendation on the legality of individual mechanisms within the context of SGMA. The Corning Sub-basin GSAs should coordinate with and receive proper advice from their respective Legal Counsels prior to selecting any mechanisms described herein.

Regulatory Fee (Proposition 26)

As amended by Proposition 26, the California Constitution Article XIII C, Section 1 (e) considers any levy, charge, or exaction imposed by a local government to be a tax unless the charge is one of the following:

1. **Special Benefit:** Imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege;
2. **Specific Service:** Imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product;
3. **Reasonable Regulatory Cost:** 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;
4. **Use of Property:** Imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property;
5. **Fine or Penalty:** A fine, penalty, or other monetary charge imposed by the judicial branch of government or a local government, as a result of a violation of law;
6. **Condition on Property Development:** Imposed as a condition of property development; or
7. **Assessments or Property Related Fees:** Assessments and property-related fees imposed in accordance with the provisions of Article XIII D of the California Constitution.

Local government agencies bear the burden of proving “by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor’s burdens on, or benefits received from, the governmental activity.”

The Corning Sub-basin GSAs are granted regulatory fee authority under CWC § 10730 (a) – (e) and may consider levying a fee on permits, groundwater extractions, or other regulated activities under this statute pursuant to Proposition



26's exemption #3 for "reasonable regulatory costs".⁹ There is a limited exception granted to *de minimis* extractors (i.e. a person who extracts 2 AF or less per year for domestic purposes; see **Attachment 2** for additional considerations regarding the regulation and charging of *de minimis* extractors).¹⁰ A regulatory fee adopted by a GSA may be used to fund the costs of a groundwater sustainability program, including, but not limited to:

- Preparation, adoption, and amendment of a groundwater sustainability plan;
- Investigations, inspections, compliance assistance, and enforcement,
- Program administration; and
- A prudent reserve.

If the GSAs were to adopt a regulatory fee, they would need to satisfy the following requirements:

- **Public Meeting:** Hold at least one public meeting prior to imposing or increasing the fee.
- **Public Notice:** Notice the time and place of the meeting with a general explanation of the fee being considered, including public notice pursuant to Government Code § 6066 and distribution on the GSAs' website(s) and by mail to interested parties requesting such a notice.
- **Fee Information:** Make public at least 20 days prior to the public meeting the data upon which the proposed fee would be based.
- **Adoption Method:** Adopt the fee either by Ordinance or Resolution.

Collection of a regulatory fee by the GSAs could either be undertaken using their own billing system or, as authorized CWC § 10730 (d) and upon request, through the respective county of each GSA in the same manner that the county collects municipal ad valorem taxes (i.e. property tax roll).

Examples of other GSAs that have adopted regulatory fees under Proposition 26's regulatory cost exemption include:

- **Salinas Valley Basin Groundwater Sustainability Agency (SVBGSA)** – In 2019, SVBGSA adopted an Agricultural Fee of \$4.79/irrigated acre and a Connection Fee of \$2.26/connection for each parcel of real property with a connection to a small or public water system.¹¹ The cost of service and rate methodology was designed through a fee study.¹² The fees were considered by the GSA to be regulatory fees.
- **Kings River East Groundwater Sustainability Agency (KREGSA)** – In 2018, KREGSA adopted a volumetric charge of \$1.45/acre-foot (AF) pumped and nominal fee of \$3,250/year for areas that have a lack of deep groundwater pumping from the alluvium but maintain a responsibility to contribute to the GSA

⁹ Note: Although CWC § 10730 (a) – (e) does not specifically cite Article XIII C Section 1 (e) (3) of the California Constitution (i.e. exemption #3), the water code section title of "Regulatory Fees Authority..." and its language describing the potential funding purposes of the authorized fees is most consistent with constitutional exemption #3 for fees imposed for reasonable regulatory costs.

¹⁰ Note: Subsection (a) of CWC § 10730 states that a GSA "shall not impose a fee pursuant to this subdivision on a *de minimis* extractor unless the agency has regulated the users pursuant to this part."

¹¹ *Resolution No. 2019-03. Charging a Groundwater Sustainability Fee to fund the Salinas Valley Basin Groundwater Sustainability Agency's implementation of the regulatory program known as the Sustainability Groundwater Management Act.* March 14, 2019.

¹² *Salinas Valley Basin Groundwater Sustainability Agency 2018 Regulatory Fee Study.* Prepared by Hansford Economic Consulting. February 4, 2019.



administration and overhead.¹³ The cost of service and rate methodology was designed through a fee study.¹⁴ The fees were considered by the GSA to be regulatory fees.

Cost of Service Fee (Proposition 218)

Proposition 218 created an amendment to the California Constitution which added Article XIII D, Section 6. This new section defines property related fees and charges, including those associated with water, sewer, and refuse services, and provides procedures for their imposition or increase. Pursuant to Proposition 26 and the exemptions described therein, property related fees under Article XIII D of the California Constitution are not a tax. A fee or charge proposed to be imposed, extended, or increased by a local agency under Section 6 of Article XIII D must meet the following requirements:

- **Cost of Service:** Revenues derived from the fee or charge may not exceed the funds required to provide the property related service.
- **Intended Purpose:** Revenues derived from the fee or charge may not be used for any purpose other than that for which the fee or charge was imposed.
- **Proportional Cost:** The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.
- **Available Service:** No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question.
- **Not a General Government Service:** No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners.

Procedures for adopting a fee under this Section include:

- **Parcel Identification and Notice:** Identifying the parcels on which the fee will be imposed, the amount of the fee to be imposed on each parcel, and provide written notice by mail to the record owner of each parcel.
- **Notice Information:** In the notices mailed to landowners, describing the proposed fee or charge, the amount that would be imposed, the basis upon which the fee or charge is calculated, and the date and time and location of a public hearing on the proposed fee or charge by the local agency.
- **Public Hearing:** Holding a public hearing upon the proposed fee or charge not less than 45 days after mailing notices to the landowners, and considering all protests against the proposed fee or charge presented by owners of the identified parcels.
- **Majority Protest:** Adopting the proposed fee or charge in the absence of a majority protest of the owners of the identified parcels.

CWC § 10730.2 (a) – (e) grant GSAs additional fee authority to impose fees on groundwater extractions from the basin to fund groundwater management. These fees may include fixed fees and fees charged on a volumetric basis, which may include fees that increase based on the quantity of groundwater produced annually, the year in which groundwater production commenced from an extraction facility, and the impacts to the basin. These fees are to be imposed in accordance with subdivisions (a) and (b) of Section 6 of Article XIII D of the California Constitution, which are the same subdivisions required for property related fees and charges for water, sewer, and refuse services. Fees charged by GSAs under this authority may be used to fund costs such as:

¹³ Resolution No. 2018-02-01. Resolution of the Board of Directors of the Kings River East Groundwater Sustainability Agency Adopting a Groundwater Fee. February 1, 2018.

¹⁴ Kings River East Groundwater Sustainability Agency Groundwater Fee Study. Prepared by Lechowicz & Tseng Municipal Consultants. December 19, 2017.



- Administration, operation, and maintenance, including a prudent reserve.
- Acquisition of lands or other property, facilities, and services.
- Supply, production, treatment, or distribution of water.
- Other activities necessary or convenient to implement the plan.

Collection of a cost of service fee by the GSAs could either be undertaken using their own billing system or through the respective county of each GSA using the property tax roll.

Examples of other GSAs that have adopted property related fees and charges under Proposition 218 include:

- **Glenn Groundwater Authority (GGA)** – In 2019, GGA adopted a Groundwater Sustainability Operations Fee of \$1.61/acre.¹⁵ The fee was charged to all acres located within the GSA, except for parcels located within the Cities of Willows and Orland (which agreed to instead pay the equivalent sum for the lands within their boundaries), and tax-exempt parcels such as federal and state lands (excluding those owned by member agencies of the GGA). The fee was developed through a fee study.¹⁶
- **McMullin Area Groundwater Sustainability Agency (MAGSA)**: In 2018, MAGSA adopted a property-related water service charge of \$19/acre on all acres within the GSA’s jurisdiction, excluding parcels of 2 acres or less which were assumed to be *de minimis* extractors of groundwater.¹⁷ The fee was intended to fund the cost of administration and activities related to planning and implementing local projects aimed at achieving SGMA’s mandates. The cost of service and rate design was developed through a fee study.¹⁸

Special Benefit Assessment (Proposition 218)

Proposition 218 created an amendment to the California Constitution which added Article XIII D, Section 4. This section provides procedures under which local agencies may levy an assessment on parcels that would confer a special benefit upon them. Special benefits are specifically defined as a particular or distinct benefit over and above general benefits conferred on real property located in the district or to the public at large. A general enhancement of property value does not constitute a “special benefit.”

Requirements for imposing a special benefit assessment include:

- **Proportional Benefit:** The assessment must be proportional to the special benefit derived by each parcel.
- **Benefit Nexus:** The proportional benefit shall be determined in relationship to the capital cost of the public improvement, the maintenance and operation expenses of a public improvement, or the cost of a property related service being provided.
- **Exclusion of General Benefits:** Only special benefits may be assessed, and any general benefits must be separated out.
- **Limited on Exemptions:** Parcels owned by local agency, state, and federal lands may not be exempted from the assessment unless the local agency proposing the assessment can demonstrate with clear and convincing evidence that the publicly owned parcels receive no special benefit.

¹⁵ Resolution No. 2019-01. Resolution Certifying the Results of a Proposition 218 Majority Protest Proceeding and Setting the Authority’s Operations Fee. July 8, 2019.

¹⁶ Fee Study for the Glenn Groundwater Authority Intended to Comply with Proposition 218 Procedures for Establish Groundwater Sustainability Operations Fee. Prepared by Provost & Pritchard Consulting Group. May 2019.

¹⁷ Board of Directors Meeting: Minutes (June 6, 2018). McMullin Area Groundwater Sustainability Agency. June 6, 2018.

¹⁸ McMullin Area Groundwater Sustainability Agency Fee Study Final Report. Prepared by Lechowicz & Tseng Municipal Consultants. April 12, 2018.



The procedure for adopting the special benefit assessment includes:

- **Engineer’s Report:** A detailed engineer’s report prepared by a registered professional engineer certified by the State of California that supports the assessment.
- **Notice to Landowners:** Provide written notice to each record owner of the parcels proposed to be assessed, including the amount of each of their respective assessment, the total assessment amount chargeable to the entire local agency, the duration of payments, reason and basis for the assessment, information regarding the public hearing, and description of the voting procedures.
- **Ballots for Landowners:** Each notice mailed to landowners must include a ballot allowing the landowner to express their support or opposition to the proposed assessment.
- **Public Hearing:** The agency shall conduct a public hearing on the proposed ordinance not less than 45 days after mailing notice of the proposed assessment to the record owners of each identified parcels and, at the public hearing, consider all protests against the proposed assessment and tabulate the ballots.
- **Adoption: Affirmative Vote and Majority Protest:** The proposed assessment may be adopted if there is not a majority protest. A majority protest exists if, upon conclusion of the public hearing, the ballots submitted in opposition to the assessment exceed the ballots submitted in favor. The ballots are weighted in proportion to the financial obligation of each affected property.

Pursuant to CWC § 10730.8, SGMA does not limit the authority or ability of GSAs to levy or collect assessments as otherwise provided by law. Collection of a special benefit assessment by the GSAs would occur through the respective county of each GSA using the property tax roll.

Examples of other GSAs that have levied special benefit assessments under Proposition 218 include:

- **Greater Kaweah Groundwater Sustainability Agency (GKGSA):** In 2021, GKGSA adopted an assessment of \$10/acre for all parcels greater than 4 acres within the GSA.¹⁹ The Proposition 218 election concluded with approximately 85% of the acres voting in favor of the assessment and allowing a six-year budget schedule for assessments not to exceed \$10/acre per year. The assessments are intended to fund the GSA’s administration and components of the GSP’s administration implementation. As required by Proposition 218, an Engineer’s Report determining the benefits was completed.²⁰
- **North Fork Kings Groundwater Sustainability Agency (NFKGSA):** In 2018, NFKGSA adopted an assessment of \$10/acre for all acres located within the GSA.²¹ The Proposition 218 election concluded with approximately 94% of ballots voting in favor of the assessment. The assessments are intended to fund GSA administration, GSP development, and implementation over a five-year budget period. As required by Proposition 218, an Engineer’s Report determining the benefits was completed.²²

Comparison & Summary

Three regulatory mechanisms for levying charges were described in the above section. Each varies in their respective adoption procedures, applicability for recovering costs, and requirements for demonstrating the fair and reasonable relationship of the imposed charge to the benefit received by the payor. Each mechanism has been successfully implemented by GSAs in other subbasins to levy charges and generate revenues to fund their SGMA responsibilities.

¹⁹ *Minutes of the Public Hearing & Meeting of the Board of Directors held May 10, 2021.* Greater Kaweah Groundwater Sustainability Agency.

²⁰ *Engineer’s Report for Greater Kaweah GSA Proposition 218 Procedures for Benefit Assessments.* Prepared by Provost and Pritchard Consulting Group. March 2021.

²¹ *North Fork Kings Groundwater Sustainability Agency Public Hearing Meeting Minutes.* May 9, 2018.

²² *Engineer’s Report for the North Fork Kings Groundwater Sustainability Agency Proposition 218 Procedures for Benefit Assessments.* Prepared by Provost and Pritchard Consulting Group. January 2018.



The GSAs should carefully evaluate the applicability, legal defensibility, and ease of implementation when considering each method’s selection. **Table 1** provides a summary comparison of each regulatory mechanism.

Table 1. Comparison of Regulatory Mechanisms for Levying GSA Charges

Regulatory Mechanism	Charge Type	General Applicability	Approval	Ballot Count	Collection	Fee Study Requirement
Proposition 26	Regulatory Fee	Reasonable regulatory costs	Board Approval	n/a	GSA or County Tax Roll	n/a (Demonstrate Reasonable Cost)
Proposition 218	Cost of Service Fee (Water)	Property-related service	Majority Protest & Board Approval	Total ballots by count	GSA or County Tax Roll	n/a (Demonstrate Cost of Service)
	Special Benefit Assessment	Special benefit of public improvement or property-related service	Affirmative Vote, Majority Protest, & Board Approval	Submitted ballots by financial obligation	County Tax Roll	Engineer’s Report

Ultimately, each GSA will need to select their own approach and preferred regulatory mechanisms. Different conditions present within the jurisdiction of each GSA may lead to the agencies choosing different methods. Failure to develop a reliable source of self-funding will challenge the abilities of the GSAs to the successfully implement SGMA and risk state intervention (see **Attachment 3**).



Attachment 1: Penalty Charges and Late Fees under SGMA

A GSA may impose penalties and late fees under various conditions. These charges should not be considered a reliable or direct source of funding. Pursuant to CWC § 10732, a GSA may impose civil penalty charges that may be levied against persons who violate rules, regulations, ordinances, or resolutions adopted by the agency. In addition, a GSA under CWC § 10730.6 may impose late fees in the event that fees charged by the agency are delinquent. The extent of the penalty charges and late fees depends on the violation:

- **Penalty Fee for General Violation:** Any person who has violated a rule, regulation, ordinance, or resolution adopted by a GSA is liable for a civil penalty not to exceed \$1,000 plus \$100 for each additional day on which the violation continues if the person fails to comply within 30 days of receiving notice of their violation from the GSA.
- **Penalty Fee for Over-Extraction:** A GSA that has adopted rules, regulations, ordinances, or resolutions limiting the volume of water that a person may extract may impose a civil penalty not to exceed \$500/AF extracted in excess of the person's authorized extraction. This penalty may be in addition to penalties for general violations and any fee imposed on their extraction.
- **Late Fee:** If an owner or operator knowingly fails to pay a groundwater fee within 30 days of it becoming due, the entity is liable to the GSA for interest at a rate of 1% per month on the amount of the delinquent fee and a 10% penalty.

One example of a GSA that has authorized over-extraction penalties is describe below:

- **Eastern Tule Groundwater Sustainability Agency (ETGSA):** ETGSA has adopted a set of Rules and Regulations that limit groundwater extractions within its jurisdiction and provides for a system of pumping allocations.²³ In 2021, ETGSA adopted over-extraction penalties under a two-tiered structure.²⁴ Irrigated parcels are granted a Transitional Tier 1 Penalty Allocation to pump in excess of the sustainable yield. The adopted Tier 1 penalty rate was \$245/AF. Pumping in excess of an entity's Tier 1 and other allocations incurs a Tier 2 penalty of \$500/AF. In addition, any Tier 2 volumes pumped are deducted from the entity's future Tier 1 allocations.

²³ *Third Amended Rules and Regulations of the Eastern Tule Groundwater Sustainability Agency*. Amended May 18, 2021.

²⁴ *Resolution 2021-04 of the Eastern Tule Groundwater Sustainability Agency Joint Powers Authority: Imposition of Groundwater Extraction Penalties*. July 9, 2021.



Attachment 2: De Minimis Extractors

A *de minimis* extractor is defined in CWC § 10721(e) as “a person who extracts, for domestic purposes, two acre-feet or less per year”. *De minimis* extractors are provided with several exemptions in SGMA related to reporting and fees that are relevant to consider when developing a funding mechanism.

Unlike other groundwater users, CWC § 10725.8 exempts *de minimis* extractors from being required to install a water measuring device on their well or reporting annual extractions to the GSA. In addition, CWC § 10730(a) states that a “groundwater sustainability agency may impose fees, including, but not limited to, permit fees and fees on groundwater extraction or other regulated activity... [but a] groundwater sustainability agency shall not impose a fee pursuant to this subdivision on a *de minimis* extractor unless the agency has regulated the users pursuant to this part.”

Both exemptions may limit the ability a GSA to impose charges on *de minimis* extractors, particularly charges based on groundwater use. The exemptions described are not afforded to other low-volume users, such as residential users who receive supplies from a local water system, wells used for stock-watering purposes, or any other non-domestic purpose or use above 2 AF per year. Although the term *de minimis* is well defined in SGMA, the operating phrase “has regulated” in relation to the statute on fee exemptions is not. Potential interpretations of “regulate” may include, but are not limited to:

- Noticing
- Requesting information
- Implementing policies, projects, and/or management actions that affect *de minimis* extractors

Any potential charges should be carefully considered by the GSA Boards in coordination with their respective Legal Counsels to ensure they do not conflict with the exemptions provided to *de minimis* users. In addition, the cost-benefit of identifying, charging, and otherwise regulating *de minimis* users should be reviewed before undertaking any such activities.



Attachment 3: State Intervention Fees

The State Water Resources Control Board (SWRCB) may designate the Corning Subbasin as a probationary basin if the GSAs fail to develop an adequate sustainability plan or fail to implement the GSP successfully (see CWC § 10735 et seq.). Groundwater extraction reporting is required for probationary basins and fees would be levied by the SWRCB on entities required to report, which may include *de minimis* groundwater extractors if reporting by these users is necessary to manage the basin (see CWC § 5200 et seq.). Annual extraction reports would be due by December 15 for extractions made in the preceding water year. The SWRCB’s filing fees, as of November 2021, are provided in **Table A3.1**.

Table A3.1. SWRCB Filing Fees for Probationary Basins

Fee Category	Fee Amount	Applicable Parties
Base Filing Fee	\$300 per well	All extractors required to report (excludes de minimis extractors).
Unmanaged Area Rate	\$10 per AF (metered); \$25 per AF (unmetered)	Extractors in unmanaged areas (excludes de minimis extractors).
Probationary Rate	\$40 per AF	Extractors in probationary basins (excludes de minimis extractors).
Interim Plan Rate	\$55 per AF	Extractors in probationary basins where the State Water Board determines an interim plan is required (excludes de minimis extractors).
De Minimis Fee	\$100 per well	De minimis extractors in probationary basins.
Automatic Late Fee	25% per month	Extractors that do not file reports by the due date.



Appendix 8B

Overview of Grants Available

8B OVERVIEW OF POTENTIAL GRANT FUNDING OPPORTUNITIES

This document summarizes the potential grant funding sources from the United States Bureau of Reclamation (USBR), CALFED Bay-Delta Program, and Natural Resources Conservation Service (NRCS) for funding Corning Subbasin GSP projects. Only the relevant information is summarized below. Grants may also include other project types or serve different applicant types that are not applicable to the Subbasin. The information summarized is from past grant releases, information regarding schedule and funding amounts for new grant releases is generally available a few months in advance. This summary does not include California Department of Water Resources (DWR) grants that are available for SGMA projects.

8B.1. USBR/NRCS Agricultural Water Use Efficiency Program

- Overview: Under the Interim Federal Action Plan, USBR and the NRCS partner to provide complementary funding opportunities. USBR has authority to provide assistance to entities with water or power delivery authority, whereas NRCS has authority to provide on-farm assistance
 - Goal 1: promote district-level improvements to increase on-farm water use efficiency and conservation projects
 - Goal 2: create new supplies for agricultural irrigation
 - Goal 3: benefit endangered species
- Grant Amounts: \$5M in grants awarded for 2021 and 2022.
- Next submittal window: Not released
- Eligible applicants in Corning Subbasin:
 - Water districts
- Example project types in Corning Subbasin:
 - Canal improvements (i.e., OUWUA pressurized system upgrade)
 - Irrigation efficiency improvements with SCADA technology (i.e., OUWUA irrigation metering upgrade)
 - On-farm groundwater recharge projects

8B.2. USBR CALFED Water Use Efficiency Program

- Overview: Funding for water use efficiency grants with the following objectives:
 - Goal 1: Reduce existing irrecoverable losses, increasing the overall volume of available water
 - Goal 2: Achieve multiple state-wide benefits

- Goal 3: Preserve local flexibility
- Goal 4: Build on existing water use efficiency programs
- Grant amounts: up to \$500k available, at least 50% of total project cost from non-federal sources
- Next submittal window: Through November 30, 2021
- Eligible applicants in Corning Subbasin:
 - Water districts
 - “Organizations with water delivery authority” (i.e., TCCA, GCID)
 - Indian tribes
- Example project types in Corning Subbasin:
 - Canal improvements (i.e., OUWUA pressurized system upgrade)
 - Irrigation efficiency improvements with SCADA technology (i.e., OUWUA irrigation metering upgrade)
 - Groundwater recharge including stormwater runoff management (i.e., City of Corning stormwater capture, other conceptual conjunctive use recharge projects throughout Subbasin)
- Other relevant details:
 - The Bay-Delta Restoration Program: CALFED Water Use Efficiency Grants Program will fund feasible urban and agricultural projects that improve ecosystem health (including protection of endangered and threatened species), water supply reliability, or water quality of the California Bay-Delta through water use efficiency and conservation measures that result in quantifiable and reliable water savings or improved water management.
 - Proposals may include any type of implementation, demonstration, pilot water use efficiency, or conservation projects that have benefits to the California Bay-Delta.
 - Projects that only consist of research or feasibility studies, planning or education will not be funded.
 - Priority will be given to projects that can be completed within two (2) years from the date of award.
 - All projects being considered for award funding will require compliance with the National Environmental Policy Act (NEPA) before any ground-disturbing activity may begin.
 - Routine maintenance projects are not eligible.

- Project cannot use any associated water savings to increase the total irrigated acreage of the eligible applicant, or increase the consumptive use of water

8B.3. USBR WaterSMART Drought Response Program – Drought Resiliency Projects

- Overview: Funding for on-the-ground projects and modeling tools that will increase water reliability, improve water management, and/or provide benefits for fish, wildlife and the environment.
- Grant amounts: up to \$1.5M available, at least 50% of total project cost from non-federal sources
- Next submittal window: Through October 2021
- Eligible applicants in Corning Subbasin:
 - Water districts
 - “Organizations with water delivery authority” (i.e., TCCA, GCID)
 - Indian tribes
- Example project types in Corning Subbasin:
 - Constructing new conveyance system components to increase flexibility to deliver water from different sources (i.e., OUWUA dual-system upgrades)
 - Groundwater recharge including stormwater runoff management (i.e., City of Corning stormwater capture, other conceptual conjunctive use recharge projects throughout Subbasin)
 - Development of water market that would provide a mechanism for willing participants to buy, sell, lease, or exchange water to avoid or reduce water conflicts (no conceptual projects in Subbasin at this time – this may be useful for further implementation funding development)
 - Improving habitat, including restoring habitat to pre-drought conditions. For example, restoring stream banks, managing and enhancing native vegetation, and installing stream flow deflectors in order to enhance pool and riffle habitats (i.e., Arundo removal on Stony Creek)
- Relevant details:
 - These projects are generally in the final design stage, environmental and cultural resources compliance may have been initiated, and the non-Federal funding, necessary permits, and other required approvals have been secured.
 - Proposed projects that are supported by an existing drought plan are prioritized.

- To be eligible for funding, the proposed resiliency project should improve the ability of water managers to continue to deliver water and power during a drought.

8B.4. USBR WaterSMART Grant Program for Water and Energy Efficiency Projects

- On-the-ground water management improvement projects including projects that conserve water and address water supply reliability.
- Grant amounts: Up to \$2M for 3-yr projects, at least 50% of total project cost from non-federal sources
- Next submittal window: Through November 3, 2021
- Eligible applicants in Corning Subbasin:
 - Water districts
 - “Organizations with water delivery authority” (i.e., TCCA, GCID)
 - Indian tribes
- Example project types in Corning Subbasin:
 - See USBR WaterSMART Drought Response Program

8B.5. USBR WaterSMART Grant Program for Small-Scale Water Efficiency Projects

- Small-scale projects that conserve and use water more efficiently; mitigate conflict risk in areas at a high risk of future water conflict; and accomplish other benefits that contribute to water supply reliability
- Grant amounts: Up to \$75K for 2-yr projects, at least 50% of total project cost from non-federal sources
- Next submittal window: Possibly January to March 2022
- Eligible applicants in Corning Subbasin:
 - Water districts
 - “Organizations with water delivery authority” (i.e. TCCA, GCID)
 - Indian tribes
- Example project types in Corning Subbasin:
 - See USBR CalFED Bay Delta Restoration Program Grants
- Relevant details:

- These projects are generally in the final design stage, environmental and cultural resources compliance may have been initiated, and the non-Federal funding, necessary permits, and other required approvals have been secured.
- Proposed projects that are supported by an existing drought plan are prioritized.
- To be eligible for funding, the proposed resiliency project should improve the ability of water managers to continue to deliver water and power during a drought.

8B.6. USBR WaterSMART Grant Program for Water Marketing Strategy

- Planning activities to develop water marketing strategies that establish or expand water markets or water marketing activities between willing participants.
- Grant amounts: Up to \$400K for 3-yr projects, at least 50% of total project cost from non-federal sources
- Next submittal window: Possibly February to April 2022
- Eligible applicants in Corning Subbasin:
 - Water districts
 - “Organizations with water delivery authority” (i.e. TCCA, GCID)
 - Indian tribes
- Example project types in Corning Subbasin:
 - Development of water market that would provide a mechanism for willing participants to buy, sell, lease, or exchange water to avoid or reduce water conflicts (no conceptual projects in Subbasin at this time – this may be useful for further implementation funding development)

8B.7. USBR WaterSMART Grant Program for Environmental Water Resources Projects

- Support projects focused on environmental benefits that increase the reliability of water resources
- Preferred projects address either the timing or quantity of water available; improve water quality and temperature; or improve stream or riparian conditions for the benefit of plant and animal species, fish and wildlife habitat, riparian areas, and ecosystems.
- Grant amounts: Up to \$2M for 3-yr projects, at least 25% of total project cost from non-federal sources
- Next submittal window: Possibly August to December 2023
- Eligible applicants in Corning Subbasin:

- Water districts
- “Organizations with water delivery authority” (i.e. TCCA, GCID)
- GSAs
- Nonprofit organizations
- Indian tribes
- Example project types in Corning Subbasin:
 - water conservation and efficiency projects that result in quantifiable and sustained water savings and benefit ecological values;
 - water management or infrastructure improvements to mitigate drought-related impacts to ecological values; and
 - watershed management or restoration projects benefitting ecological values that have a nexus to water resources or water resources management.

8B.8. USBR Cooperative Watershed Management Program

- Phase I - Watershed group development, watershed restoration planning, and watershed management project design.
- Grant amounts: Up to \$200K. No non-Federal cost-share required.
- Next submittal window: Possibly November 2021 to January 2022
- Eligible applicants in Corning Subbasin:
 - Water districts
 - “Organizations with water delivery authority” (i.e., TCCA, GCID)
 - Indian tribes
- As part of Phase I activities, applicants may use funding to develop bylaws, a mission statement, complete stakeholder outreach, develop a watershed restoration plan, and watershed management project design.
- Example project types in Corning Subbasin:
 - Develop watershed restoration plans to limit runoff, promote native vegetation, and mitigate impacts of wildfire.

8B.9. USBR Basin Study Program

- Applied Science projects to develop hydrologic information and water management tools and to improve modeling and forecasting capabilities.
- Grant amounts: Up to \$300K at least 50% of total project cost from non-federal sources

- Next submittal window: Possibly November 2021 to January 2022
- Eligible applicants in Corning Subbasin:
 - Local government
 - Universities
 - Non-profit research institutions
 - Water districts
 - “Organizations with water delivery authority” (i.e., TCCA, GCID)
 - Indian tribes
- Example project types in Corning Subbasin:
 - Collect AEM or other geophysical data to improve hydrogeologic conceptual model in Tehama-Tuscan transition zone and western Subbasin

8B.10. USBR Title XVI Authorized Projects (Water reclamation and reuse)

- Funding for planning, design, and construction of specific congressionally authorized water recycling and reuse projects
- Next submittal window: Possibly January to April 2022
- Grant amounts: Typically, between \$1 million and \$6 million at least 75% of total project cost from non-federal sources
- Example projects in Corning Subbasin:
 - Wastewater treatment and reuse project for City of Corning, though from City feedback, this concept is unlikely to be feasible or pursued for the GSP.

8B.11. NRCS Conservation Innovation Strategy Grant Program

- Voluntary program intended to stimulate the development and adoption of innovative conservation approaches and technologies that provide environmental enhancement and protection, in conjunction with agricultural production and forestry management.
- Next submittal window: Possibly early 2022, with applications due in April.
- Grant amounts: Typically, up to \$150,000, with a minimum 50% cost share provided from non-federal sources. Cost share funding can include a combination of cash and in-kind contributions.
- Eligible applicants in the Corning Subbasin:
 - All US-based, non-Federal entities and individuals.

- Example projects in Corning Subbasin
 - Development of groundwater recharge strategies on agricultural lands.
 - Development of market incentives for local water use efficiency.
 - Development of best management practices for agricultural production to protect local surface and groundwater quality.