

RESOLUTION NO. _____

**AN RESOLUTION OF THE BOARD OF DIRECTORS OF THE COUNTY OF MADERA
GROUNDWATER SUSTAINABILITY AGENCY FOR THE DELTA-MENDOTA
SUBBASIN PROVIDING FOR A REFUND OF FEES PAID FOR THE EXTRACTION
OF GROUNDWATER PURSUANT RESOLUTION NO. 2022-087**

RECITALS

WHEREAS, the Sustainable Groundwater Management Act, Water Code sections 10720-10737.8 (“SGMA”) was signed into law on September 16, 2014; and

WHEREAS, SGMA requires that each groundwater basin be managed by a Groundwater Sustainability Agency (“GSA”), or multiple GSAs, and that such management be pursuant to an approved Groundwater Sustainability Plan (“GSP”), or multiple GSPs; and

WHEREAS, the County of Madera (“County”) is the exclusive GSA for the portions of the Delta-Mendota Subbasin that are in unincorporated areas of Madera County, and not otherwise covered by another public agency (hereinafter referred to in the singular as the “County GSA”), and the Board of Supervisors is the ex officio Board of Directors (hereinafter “Board of Directors”) for the County GSA; and

WHEREAS, the County GSA is a participant within the San Joaquin River Exchange Contractors GSP (the “Exchange Contractors GSP”) for the Delta-Mendota Subbasin in accordance with Water Code section 10727.2 to include all the components required by SGMA; and

WHEREAS, on December 17, 2019, the County GSA, adopted the Exchange Contractors GSP for the Delta-Mendota Subbasin; and

WHEREAS, on December 15, 2020, the Board of Directors adopted a Resolution No: 2020-166 adopting an approach to allocating groundwater (the “Allocation Approach”) in the Delta-Mendota Subbasin, allowing parcels meeting certain criteria (hereafter “eligible parcels”) to have access to groundwater classified using two designations:

- a. The SY of native groundwater; and
- b. “Transitional water” (TW) that is continued overdraft of the Subbasins but will incrementally decrease during the GSP implementation period; and

WHEREAS, in furtherance of the Allocation Approach, on June 8, 2021, the County GSA Board of Directors adopted Resolution 2021-069, providing for a per-acre allocation of SY and TW for enrolled eligible parcels within the County GSA based on best available data, to be limited to the use within the eligible parcel, or within a County GSA approved farm unit, that represents a combination of eligible parcels; and

WHEREAS, on August 17, 2021, the Board of Directors adopted Resolution No. 2021-113, establishing groundwater allocation refinements; and

WHEREAS, Water Code section 10730.2, subdivision (a), provides that a GSA that has adopted a GSP “may impose fees on the extraction of groundwater from the basin to fund costs of groundwater management, including, but not limited to, the costs of the following:

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

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WHEREAS, Water Code section 10730.2, subdivision (d), provides that “[f]ees imposed pursuant to this section may include fixed fees and fees charged on a volumetric basis,” and

WHEREAS, Water Code section 10730.2, subdivision (c), provides that “[f]ees imposed pursuant to this section shall be adopted in accordance with subdivisions (a) and (b) of Section 6 of Article XIII D of the California Constitution,” which is part of the law enacted pursuant to Proposition 218; and

WHEREAS, pursuant to SGMA, the County GSA proposed a fixed fee (the “Fee”) on the extraction of groundwater under Water Code section 10730.2, to be imposed on those parcels within the County GSA boundaries that are enrolled in the County GSA’s groundwater allocation program (the “Enrolled Acres”), to provide funds sufficient for the County GSA to cover the costs of groundwater management, and in particular land repurposing for the Delta-Mendota Subbasin; and

WHEREAS, as set forth in a rate study report prepared by Raftelis, Inc. (“Rate Study”), the proposed Fee rate for the Delta-Mendota Subbasin in the Rate Study is \$138.00 per Enrolled Acre for a period of five years (Fiscal Years 2022/2023 through 2026-2007), and represents the average cost of service in each year over the period because the County GSA may not collect more revenue than the cost of providing service; and

WHEREAS, on April 12, 2022, the Board of Directors, at a duly noticed public meeting, authorized staff to commence a proceeding under Proposition 218, as required by SGMA, for the proposed Fee as set forth in the Rate Study; and

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WHEREAS, on May 2, 2022, pursuant to the requirements of Proposition 218, notices for the proposed Fee were sent by mail to all identified affected property owners within the County GSA for the Delta-Mendota Subbasin, providing the proposed Fee rate, the basis for the Fee, the affected property owner's right to protest the Fee, and the time, place, and location of the public hearing on June 21, 2022; and

WHEREAS, in the above-referenced Proposition 218 notice, affected property owners were informed that to protest the Fee, they would either need to send a letter to the Chief Clerk of the Madera County Board of Supervisors, 4th floor, 200 West Fourth Street, Madera, CA, 93637, which would include the property owner's name, property owner's signature, and assessor's parcel number (APN), or appear in person on June 21, 2022, at Board of Supervisors' Chambers, 200 W. 4th Street, Madera, CA, 93637, at 10:30 a.m. to deliver the protest in person; and

WHEREAS, on June 21, 2022, the Board of Directors conducted a duly noticed public hearing for the proposed Fee to (1) determine whether there was a majority protest for the Fee, and if not, (2) to consider whether to adopt the Fee; and

WHEREAS, at the hearing, the Chief Clerk to the Madera County Board of Supervisors received and tabulated all protests of the proposed Fee made both prior to and during the hearing, and the protests did not amount to a majority of the affected parcels where notice of the proposed Fee was provided; and

WHEREAS, after it was determined that there was no majority protest for the Fee, the Board took action to adopt the Fee by resolution (Resolution No. 2022-087), and authorized the Director of the County Department of Water and Natural Resources to annually request the County Treasurer-Tax Collector to collect the Fee and provide the

County Auditor-Controller with the required information no later than August 1 of each year, or to cause the direct billing of the Fee if necessary; and

WHEREAS, the Fee was included on the 2022-2023 Madera County Property Tax Bill (secured tax roll for fiscal year July 1, 2022-June 30, 2023) that was sent out by the County Treasurer-Tax Collector's office on September 15, 2022, noting that the first installment was due by December 12, 2022 to avoid delinquency, and the second installment was due by April 10, 2023 to avoid delinquency; and

WHEREAS, on September 16, 2022, an unincorporated association named Valley Groundwater Coalition ("VGC") filed a petition for writ of mandate and complaint (the "Action") in the Madera County Superior Court (Case No. MCV087677) challenging the legality of the Fee under the California Constitution (Proposition 218 and Proposition 26), as well as setting forth a claim based on an alleged violation of California's Public Records Act; and

WHEREAS, on October 5, 2022, VGC filed a Motion for Preliminary Injunction ("Motion") in the subject Action, asking the Court to enjoin the County from collecting the Fee during the pendency of the action; and

WHEREAS, prior to the hearing on the Motion, which was initially set for December 2, 2022, and later set for December 6, 2022, the County Treasurer-Tax Collector's office received payments of the Fee from some of the ratepayers; and

WHEREAS, at the hearing for the Motion on December 6, 2022, the Superior Court granted the Motion, and signed an order ("Order"), a true and correct copy of which is attached hereto as **Exhibit A**, enjoining the County during the pendency of the action from imposing and/or collecting the Fee "beyond any fees that have already been

voluntarily paid, reserving jurisdiction regarding fees already paid;” and

WHEREAS, while the County disagrees with the entirety of the Order, and recognizes that the Order does not require the County to refund Fees that have already paid, the County nevertheless believes that in the situation presented it would be expedient to direct the County Treasurer-Tax Collector to issue refunds to those ratepayers that have already paid one or both installments of the Fee, reserving the right seek future payment of the Fee should VGC ultimately be unsuccessful in challenging the Fee.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors for the County GSA, as follows:

1. The recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The 2022-2023 tax year GSP Project Fee – Delta-Mendota Subbasin (direct charge 86052) will be removed from all current year secured property tax bills for the affected ratepayers.
3. The County Treasurer-Tax Collector and Auditor-Controller are directed to work with Megabyte (the property tax software vendor) to request all direct charges for direct charge 86052 be removed from the 2022-2023 Secured property tax bill for current year charges.
4. Ratepayers that have already paid either one or both installments of the Fee on the 2022-2023 property tax statement will be sent a refund of the Fee by March 15, 2023, or as soon thereafter that would be practicable.
5. Payments submitted by ratepayers for the 2022-2023 property tax

statement that did not include the Fee will be posted after the direct charges are removed.

6. Nothing in this Resolution shall be construed as an admission of liability by the County or the County GSA in the subject Action or shall be construed as a waiver of any defense that has been raised by the County in the Action or may be raised in the future. The Board reserves the right to amend this Resolution based on any order of the Superior Court, or other court of competent jurisdiction in the subject Action.

7. The County Treasurer-Tax Collector and Auditor-Controller, as well as the Director of the Department of Water and Natural Resources, are hereby authorized and directed to take further actions as may be necessary to implement the intent and purposes of this Resolution.

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The foregoing Resolution was adopted this _____ day of _____,
2022, by the following vote.

Director Frazier voted: _____

Director Rogers voted: _____

Director Poythress voted: _____

Director Gonzalez voted: _____

Director Wheeler voted: _____

Chairman, Board of Directors

ATTEST:

Clerk, Board of Directors

Approved as to Legal form:
COUNTY COUNSEL

Michael R.

By Linden

Digitally signed by: Michael R.
Linden
DN: CN = Michael R. Linden email
= mlinden@lozanosmith.com C =
US O = LOZANO SMITH
Date: 2022.12.15 15:11:32 -08'00'

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EXHIBIT A

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**SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF MADERA**

VALLEY GROUNDWATER COALITION,
an unincorporated association,

Petitioner and Plaintiff,

vs.

COUNTY OF MADERA, a political
subdivision of the State of California; and
DOES 1-25, inclusive,

Respondents and Defendants.

Case No.: MCV087677

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**[PROPOSED] ORDER GRANTING
PRELIMINARY INJUNCTION**

Date: December 6, 2022
Time: 10:00 a.m.
Dept.: 40
Hon: Judge D. Lynn Collet

Plaintiff VALLEY GROUNDWATER COALITION's motion for preliminary injunction came on regularly for hearing by the court this date in accordance with an Order to Show Cause issued by this court on October 4, 2022. Plaintiff appeared by counsel Patrick J. Gorman and Michael C. Titus of Wild, Carter & Tipton; Defendant COUNTY OF MADERA appeared by counsel Michael R. Linden of Lozano Smith.

On proof made to the court's satisfaction, and good cause appearing:

IT IS ORDERED that during the pendency of this action the COUNTY OF MADERA and its officers, agents, employees, representatives, and all persons acting in concert or participating with it, are enjoined and restrained from engaging in, committing, or performing, directly or indirectly, by any means whatsoever, any of the following acts:

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1 a. Imposing and/or collecting any "fees", "rates", and/or "GSP Project Fees" enacted
2 under Madera County Resolution Nos. 2022-086 and 2022-087 against landowners in

3 the Madera Subbasin and Delta-Mendota Subbasin *beyond any fees that have*
4 *already been voluntarily paid, Reserving Jurisdiction regarding fees already paid.*
IT IS FURTHER ORDERED that, before this order shall take effect, plaintiff must file a

5 written undertaking in the sum of \$ 10,000, as required by Code of Civil Procedure
6 section 529, for the purpose of indemnifying defendants for the damages as they may sustain by
7 reason of this preliminary injunction if the court finally decides that plaintiff is not entitled to it.

8 IT IS FURTHER ORDERED that the preliminary injunction as set forth above shall issue
9 on plaintiff's filing a written undertaking in the sum specified above.

10 The court reserves jurisdiction to modify this injunction as the ends of justice may require.

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12 Date: 12-6-2022


13 Judge of the Superior Court
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