

June 14, 2022

Via email

Board of Directors
Salinas Valley Basin Groundwater Sustainability Agency
P.O. Box 1350
Carmel Valley, CA 93924

Re: Cost apportionment among subbasins – June 14, 2022 Agenda Item 5a

Dear Members of the Board:

LandWatch Monterey County (LandWatch) again urges the Board to develop a proactive and principled method to apportion the differential costs of implementing the six GSPs among the six subbasins. Apportionment requires not just a way to account for differential costs, but to make legally justifiable, hydrologically informed determinations as to the costs and benefits of GSA activities to each subbasin.

The need to differentially apportion the regulatory fee among subbasins has become urgent as the SVGBGSA begins to undertake activities whose costs and benefits will vary widely by subbasin, e.g., feasibility studies and implementation of projects and management actions.

Staff acknowledge that this issue must be addressed. County Counsel states that the equal apportionment approach may not be used in the regulatory fee next year. The June 16, 2022 Staff Report states that the Board will consider the issue in September:

At the May 12, 2022 meeting the Board also directed a new scope of work be requested from Hansford Economic Consulting on an apportionment approach to the fee for future fiscal years. Staff has requested this scope from Ms. Hansford for presentation to the Board in September.

With respect, while Hansford can implement a cost apportionment, Hansford is not likely to be able to provide the necessary hydrological and legal justification for it.

Some apportionment among subbasins – equal or differential – is necessarily implicit in any regulatory fee adopted. Because that apportionment must be justified, **the Board**

should be prepared at the same September meeting to discuss the key apportionment issues and to identify the best currently available information to make the legal and hydrological determinations that will be implicit in the apportionment of the 2023-2024 regulatory fee. Staff should be prepared to identify the kinds of costs that will be included in the 2023-2025 work plan and the 2023-2024 budget that may differentially benefit the six subbasins, e.g., major project feasibility and design expenditures. The Board should then determine whether more information, legal or hydrological, is required before the apportionment decision can be made for the 2023-2024 regulatory fee. The Board should not be caught flat-footed on this issue next spring.

The primary issue in dispute is responsibility of landowners within a GSP for mitigation of conditions outside that GSP area. Determining that responsibility is not simple. Some questions that should be addressed include:

- How is apportionment determined by the DWR evaluation criteria for GSPs at 23 CCR § 355.4(b)(7), "[w]hether the Plan will adversely affect the ability of an adjacent basin to implement its Plan or impede achievement of its sustainability goal?" How should the GSA determine whether a GSP "adversely affects" or "impedes achievement?" What limits the GSA's discretion?
- How are adjudication and physical solution principles governing interconnected basins relevant to apportioning mitigation costs among subbasins?
- How should changes to groundwater management regimes that would affect subbasins differentially be considered in the context of determining whether fees and assessments bear a reasonable relation to benefits? For example, if reservoir reoperation is an alternative to a capital project, how does this affect Proposition 26 fees or Proposition 218 assessments, if at all?
- How are historical investments in and assessments for water projects, investment-backed expectations, and historical changes to groundwater conditions relevant to apportioning mitigation costs among subbasins?
- How should the GSA make necessary apportionment decisions based on the best available information in the six GSPs while acknowledging that this information may change as data gaps are addressed?

Resolving these issues requires data-driven, structured stakeholder engagement because the GSPs cannot be implemented unless stakeholders are willing to forebear Proposition 26 challenges and to vote for Proposition 218 assessments.

LandWatch recommends that the GSA Board convene a subcommittee to consider the apportionment questions identified above with the assistance of legal counsel.

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Proactive consideration of these emerging issues is critical to timely implementation of sustainability projects and management actions. The GSA should not wait for these issues to fester with the expectation that they can be addressed on an ad hoc basis after expenditures are committed.

Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.

A handwritten signature in blue ink, appearing to be 'JR' or similar initials, is centered below the text.

JHF:hs

cc: Donna Meyers, meyersd@svbgsa.org
Emily Gardner, gardnere@svbgsa.org
Michael DeLapa