PROVOST&PRITCHARD
CONSULTING GROUP

455 W Fir Ave, Clovis, CA 93611 • (559) 449-2700
www.provostandpritchard.com

MEMORANDUM

To:	Chuck Kinney Mid-Kings River GSA
From:	Lynn Groundwater, PE
Subject:	Proposition 26 Cost of Service Study
Date:	July 22, 2026

PROPOSITION 26 COST OF SERVICE STUDY

BACKGROUND

Miscellaneous fees levied by state and local governmental agencies in California must comply with the requirements of Proposition 26, a constitutional amendment approved by California voters in November 2010. Proposition 26 significantly broadened the definition of a tax by providing that charges imposed by state and local governments are presumed to be taxes unless they fall within one of several specified exceptions.

Proposition 26 fees are distinct from water utility service rates, which are considered property-related fees and are governed by Proposition 218. Under Proposition 26, local agency fees that qualify under one of seven constitutional exceptions are not considered taxes and therefore do not require voter approval.

The seven exceptions include:

1. Fees imposed for a specific benefit or privilege provided directly to an individual that do not exceed the reasonable cost of providing that benefit or privilege.
2. Fees imposed for a specific government service or product provided directly to the fee payer that do not exceed the reasonable cost of providing the service or product.
3. Charges imposed to recover reasonable regulatory costs, including costs associated with issuing licenses and permits, conducting investigations, inspections, audits, and enforcement activities.
4. Charges for entrance to or use of government property.
5. Fines and penalties imposed for violations of law.
6. Charges imposed as a condition of property development.
7. Assessments and property-related fees imposed pursuant to Proposition 218.

APPLICABILITY TO MKRGSA FEES

The groundwater extraction fees proposed by the Mid-Kings River Groundwater Sustainability Agency (MKRGSA) qualify as regulatory fees under Proposition 26. The fees are intended to recover costs incurred by the Agency in implementing and complying with the Sustainable Groundwater Management Act (SGMA) and the adopted Groundwater Sustainability Plan (GSP).

The proposed fees are derived from the Agency's budget and are directly linked to the cost of groundwater sustainability activities. Furthermore, groundwater users are charged in proportion to their estimated groundwater extraction, ensuring that the fee structure reasonably allocates costs based on groundwater use and associated impacts.

Accordingly, the fees satisfy the Proposition 26 regulatory fee exception because:

1. The fees recover costs associated with SGMA compliance and groundwater sustainability management.
2. The fees do not exceed the reasonable cost of providing the regulatory program and associated mitigation measures.
3. Costs are allocated proportionally based on groundwater extraction volumes.
4. The fees are directly connected to the groundwater users whose activities necessitate the regulatory program and associated mitigation measures. There is a direct cause-and-effect between groundwater pumping and the programs being mitigated. Furthermore, the extent of the program being mitigated is proportional the pumping volume.

RELEVANT LEGAL PRECEDENT

Recent litigation involving Madera County GSA's SGMA assessment[1] provides additional support for the validity of groundwater sustainability fees under Proposition 26. In that case, the court ruled that the County's SGMA assessment constituted a lawful assessment rather than an unlawful tax requiring voter approval. It was concluded that the assessment was imposed to fund groundwater sustainability activities mandated by SGMA and that a sufficient nexus existed between the assessment and the benefits and services provided to assessed properties.

The court specifically found that funding groundwater sustainability programs such as groundwater recharge projects, domestic well mitigation, land repurposing initiatives, demand-reduction programs, and other GSP implementation activities constituted legitimate groundwater management activities that could be funded through assessments and fees without voter approval. As a result, the court rejected claims that the assessment should have been treated as a tax under Proposition 218.

GROUNDWATER SUSTAINABILITY MITIGATION PROGRAMS

The proposed extraction fee will fund several mitigation programs intended to address groundwater sustainability impacts associated with groundwater pumping within the MKRGSA. Implementing these programs will provide the benefit to the individuals who pump groundwater by supporting compliance with SGMA and mitigating potential damages. The programs are as described below.

[1] Valley Groundwater Coalition v. County of Madera, et al., Madera County Superior Court, Case No. MCV087677 (filed 2022).

WELL MITIGATION PILOT PROGRAM

A pilot program will be implemented to address impacts associated with dry domestic wells. Current evaluations have identified four domestic wells that are presently dry and eligible for mitigation under the pilot program. An additional well may qualify for connection to a municipal water system pending further evaluation.

DRY WELL MITIGATION PROGRAM

Following completion of the pilot program, MKRGSA will implement its broader Dry Well Mitigation Program consistent with the Agency's Dry Well Mitigation Policy. Program expenditures are anticipated to be lower during the initial implementation period. A mitigation fund will be established to be timely and responsive to future mitigation activities, with annual funding levels adjusted based on observed program demand and fund balances.

Mitigation measures may include:

1. Emergency water supplies, including bottled water and temporary water tank services.
2. Technical assistance to evaluate well performance and identify feasible remedies.
3. Deepening, redrilling, replacement, or rehabilitation of domestic wells.
4. Investigation of well failures to determine whether groundwater declines attributable to regional pumping are a contributing factor.

WATER QUALITY MITIGATION

Declining groundwater levels can adversely affect groundwater quality. The Water Quality Mitigation Program will address such impacts through measures that may include installation and operation of point-of-entry or point-of-use treatment systems to ensure safe and reliable domestic water supplies.

SUBSIDENCE MITIGATION

Groundwater pumping can contribute to land subsidence, which can adversely affect public and private infrastructure. Subsidence mitigation activities may include monitoring, assessment, repair, rehabilitation, or capacity improvements for affected infrastructure systems.

EXTRACTION FEE METHODOLOGY

The proposed extraction fee is based on the estimated cost of SGMA-related mitigation activities, project development, and ample mitigation fund, divided by the allowable groundwater pumping volume within the MKRGSA.

Because the fee is calculated using allowable pumping volumes, the charge is directly related to groundwater use and proportionately allocated among groundwater users. This approach establishes a reasonable relationship between the fee payer, the regulated activity, and the cost of the regulatory program. The extraction fee is derived from the variable-cost component of the Agency's proposed five-year budget.

Variable costs represent expenses that are expected to increase or decrease in proportion to groundwater pumping volumes and include:

1. Dry well mitigation;
2. Water quality mitigation; and

3. Subsidence mitigation.

The estimated allowable groundwater pumping volumes used in the calculation reflect the Agency's transition toward sustainable groundwater management and are projected to decline over time until sustainable yield conditions are achieved.

Water Year	Available Acre-Feet
2027	195,000
2028	190,241.73
2029	184,981.59
2030	179,721.45
2031	175,338.00

VARIABLE COST BUDGET

Prop 26 Variable Costs	2027	2028	2029	2030	2031
Well Mitigation Pilot Program	$200,000	$160,000	-	-	-
Dry Well Mitigation	$500,000	$2,000,000	$2,000,000	$800,000	$200,000
Water Quality Mitigation	$350,000	$500,000	$300,000	$100,000	$100,000
Subsidence Mitigation	$750,000	$1,000,000	$1,000,000	$1,000,000	$1,000,000
Total Variable Costs	$1,800,000	$3,660,000	$3,300,000	$1,900,000	$1,300,000
Cost per Acre-Foot	**$9.23**	**$19.24**	**$17.84**	**$10.57**	**$7.41**

The resulting volumetric extraction fee is calculated by dividing annual variable costs by the estimated groundwater extraction volume for each year. Fees for dry well, water quality, and subsidence mitigation will be collected as needed to maintain a minimum threshold.

GROUNDWATER PUMPING ESTIMATES

Groundwater pumping within the MKRGSA is determined either by reporting direct meter values or estimated using evapotranspiration (ET). Well owners may choose to report either meter data or have their groundwater pumping estimated using the ET method.

The ET method estimates groundwater pumping by taking into account precipitation and surface water application. In addition, an irrigation efficiency is estimated based on crop type. This method provides a consistent basis for estimating groundwater use where direct measurements are unavailable.

PROCEDURE FOR CHALLENGING PUMPING ESTIMATES

Landowners seeking to challenge groundwater pumping estimates using well meter data may do so provided they demonstrate that the meter data are accurate and reliable.

To support such a challenge, a landowner must provide:

1. A meter calibration certification demonstrating that testing has been completed within the previous five years.
2. Manufacturer specifications and installation requirements for the meter.

3. Documentation demonstrating that the meter has been installed in accordance with manufacturer recommendations.
4. Documentation demonstrating that the meter is maintained in accordance with manufacturer recommendations.

These requirements are intended to ensure that alternative pumping data used for fee calculations are accurate, reliable, and consistent across all groundwater users.

CONCLUSION

The proposed groundwater extraction fee is structured as a regulatory fee authorized under Proposition 26. The fee is designed to recover the reasonable costs of implementing SGMA-required groundwater sustainability programs, including dry well mitigation, water quality mitigation, and subsidence mitigation. Costs are allocated proportionally based on groundwater extraction volumes, establishing a direct relationship between the regulated activity and the costs incurred by the Agency. Accordingly, the proposed fee satisfies the requirements of Proposition 26 and does not constitute a tax requiring voter approval.