

SUMMARY—Proposed Amendment to AB 3030

- AB 3030 (Water Code Sections 10750 et seq.), adopted in 1992, allows local agencies to develop groundwater management plans. Statewide, about 160 agencies have adopted such plans, including most water districts in the Southern San Joaquin Valley.
- Existing law allows a local agency through its AB 3030 Plan to adopt certain powers under the Water Replenishment District Act (Division 18 of the Water Code), and to charge for groundwater pumped (Sections 10754-10754.3), but it is not clear how a district requires registration of wells, metering of wells and reporting of groundwater production in order to implement groundwater charges.
- Many believe that if groundwater producers were required to pay for the quantity of water they pump (in addition to their pumping costs), that local agencies could further encourage conservation of limited groundwater resources and more equitably allocate the cost of importing water to sustainably manage groundwater basins.
- The purpose of this proposed bill is to further the original intent of AB 3030 to provide through an AB 3030 Plan that a local agency may charge for the use of groundwater and clearly specify the procedures so that local agencies have confidence such charges are properly imposed and will be defensible.
- Under the Water Replenishment District Act provisions incorporated in AB 3030, groundwater charges (called replenishment assessments) are required to be equal per acre foot pumped. One substantive change under this proposal would permit an AB 3030 Plan to incorporate a tiered pricing strategy where users of larger amounts of groundwater (who put a greater strain on the basin) or those putting the groundwater to new uses (which puts an additional strain on the basin not previously experienced) can be charged higher rates to reflect the higher cost to the local agency to obtain additional imported water or develop local supplies.
- Such groundwater charges could only be imposed after a local agency complies with the process to adopt or amend an AB 3030 Plan, which includes transparency and due process by providing for various hearings and the opportunity for landowners to reject the plan through a majority protest process, in addition to the majority protest process otherwise provided under Proposition 218 for any new or increased charge.

An act to add the heading of Article 1 (commencing with Section 10754) to, to add Article 2 (commencing with Section 10754.1) to, Chapter 4 of Part 2.75 of Division 6 of, the Water Code, relating to groundwater.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION I. The heading of Article I (commencing with Section 10754) is added to Chapter 4 of Part 2.75 of Division 6 of the Water Code, to read:

Article 1. Assessment Authority

SEC. 2. Section 10754.2 of the Water Code is repealed.

~~10754.2. (a) subject to Section 10754.3, except as specified in subdivision (b), a local agency that adopts a groundwater management plan pursuant to this part, may impose equitable annual fees and assessments for groundwater management based on the amount of groundwater extracted from the groundwater basin within the area included in the groundwater management plan to pay for costs incurred by the local agency for groundwater management, including, but not limited to, the costs associated with the acquisition of replenishment water, administrative and operating costs, and costs of construction of capital facilities necessary to implement the groundwater management plan.~~

~~(b) The local agency may not impose fees or assessments on the extraction and replacement of groundwater pursuant to a groundwater remediation program required by other provisions of law or a groundwater storage contract with the local agency.~~

SEC. 3. Article 2 (commencing with Section 10754.1) is added to Chapter 4 of Part 2.75 of Division 6 of the Water Code, to read:

Article 2. Alternative Assessment Authority

10754.1. (a) A local agency that adopts a groundwater management plan pursuant to this part may establish equitable fees and assessments for groundwater management based on the amount of groundwater extracted from the groundwater basin within the area included in the groundwater management plan to pay for costs incurred by the local agency for groundwater management, including, but not limited to, the costs associated with the acquisition of replenishment water, administration, operation, the acquisition of lands, and construction of capital facilities necessary to implement the groundwater management plan.

(b) For purposes of this article, the following terms have the following meanings:

(1) "Groundwater charge" means an equitable fee or assessment for groundwater management established pursuant to subdivision (a).

(2) "Operator" means the person or persons operating a groundwater extraction facility. The owner of each groundwater extraction facility shall be conclusively presumed to be the operator unless a satisfactory showing is made to the board of directors of the local agency that the groundwater extraction facility actually is operated by some other person or persons.

(3) "Owner" means the person or persons owning any groundwater extraction facility or any interest therein other than a lien to secure the payment of a debt or other obligation.

(c) A groundwater charge may be imposed on the production of groundwater in accordance with either of the following:

(1) A uniform per acre-foot basis.

(2) A tiered-rate per acre-foot basis that increases based on the quantity of groundwater produced annually or the year in which the production of groundwater commenced from a groundwater extraction facility, or both.

(d) Notwithstanding subdivision (a), a local agency shall not impose fees or assessments on the extraction and replacement of groundwater pursuant to a groundwater remediation program required by other law or a groundwater storage contract with the local agency.

10754.2. (a) Any groundwater charge levied pursuant to this article shall be due and payable to the local agency by each owner or operator within 30 days of the local agency levying the groundwater charge.

(b) If an owner or operator knowingly fails to pay a groundwater charge within 30 days of it becoming due, the owner or operator shall become liable to the local agency for interest at the rate of 1 percent per month on the delinquent amount of the groundwater charge and a 10 percent penalty.

(c) The agency may bring a suit in the court having jurisdiction against any owner or operator of a groundwater extraction facility within the area covered by the groundwater management plan for the collection of any delinquent groundwater charges, interest, or penalties imposed under this article. The court having jurisdiction of the suit may, in addition to any judgment, award interest and costs on any judgment as allowed by law. If the local agency seeks an attachment against the property of any named defendant in the suit, the local agency shall not be required to furnish bond or other undertaking as provided in Title 6.5 (commencing with Section 481.010) of Part 2 of the Code of Civil Procedure.

(d) In the alternative to bringing a suit pursuant to subdivision (c), a local agency may collect any delinquent groundwater charge, and any penalties and interest on the delinquent groundwater charge pursuant to the laws applicable to the local agency or, if a joint powers authority, to the entity designated pursuant to Section 6509 of the Government Code, and in the same manner as would be applicable to the collection of delinquent assessments, water charges, or tolls.

10754.3. (a) Each existing and any new groundwater extraction facility within a local agency shall be registered with the local agency if the local agency's groundwater management plan provides for establishing a groundwater charge pursuant to this article. The registration form for a groundwater extraction facility shall contain all of the following:

(1) Information as to the owner or owners of the parcel of real property upon which a groundwater extraction facility is located.

(2) A general description and location of each groundwater extraction facility.

(3) The name and address of all persons owning an interest in the groundwater extraction facility.

(4) Any other information that the local agency determines to be necessary.

(b) An owner or operator of a groundwater extraction facility that fails to register the

(c) A registration form for a groundwater extraction facility that is submitted in accordance with subdivision (a) shall not be made available for inspection by the public.

10754.4. (a) A local agency may require, through its groundwater management plan, that every groundwater extraction facility be measured by a water-measuring device satisfactory to the local agency no less than 60 days after registration. If water-measuring devices are required by the groundwater management plan, an owner or operator of a groundwater extraction facility

that fails to install a satisfactory water-measuring device within the 60-day time period shall become jointly and severally liable to the local agency for a penalty of one thousand dollars (\$1,000) per groundwater extraction facility lacking a water-measuring device.

(b) All costs associated with the purchase and installation of the water-measuring device shall be borne by the owner or operator of each groundwater extraction facility. The water-measuring devices shall be installed by the local agency or, at the local agency's option, by the owner or operator of the groundwater extraction facility. Water-measuring devices shall be calibrated on a semiannual or annual basis, as determined by the local agency.

10754.5. (a) A local agency may require, through its groundwater management plan, that the owner or operator of each groundwater extraction facility within the local agency file with the local agency on a schedule determined by the local agency, a sworn statement setting forth the total production in acre-feet of groundwater from the facility during the respective period immediately preceding the filing of the statement. Each statement shall include the groundwater extraction facility's registration number or other method of identification assigned by the local agency upon registration and the calibration information for the water-measuring device. Total groundwater production for the applicable period is to be determined using the water-measuring device associated with the groundwater extraction facility. The local agency may require additional information to be contained in a sworn statement. A statement shall be due by a date to be determined by the local agency that is not less than 15 days and not more than 45 days after the conclusion of the proceeding period, whether that period be semiannual or annual.

(b) If statements of groundwater production are required by the local agency in its groundwater management plan, the board of the local agency may determine, by resolution, that additional reports or statements are necessary or useful to carry out the purposes of this article.

The board shall give notice of the adoption of the resolution by immediately publishing it in each affected county pursuant to Section 6061 of the Government Code. Effective 30 days after the publication, the owner or operator of each groundwater extraction facility in the local agency shall file with the local agency the report or statement required by the resolution, at the times and in the manner and form as are provided in the resolution.

(c) If the filing of groundwater production statements is required by the groundwater management plan, an owner or operator of a groundwater extraction facility that fails to file a groundwater production statement within the time period provided for shall become jointly and severally liable to the local agency for a penalty of one thousand dollars (\$1,000) per groundwater extraction facility without a filed groundwater production statement per month beginning on the date the first penalty could have been imposed by the local agency.

(d) Groundwater production statements shall not be subject to disclosure pursuant to Section 6254.16 of the Government Code.

10754.6. (a) If the groundwater management plan requires statements of groundwater production pursuant to Section 10754.5 and the board of the local agency has probable cause to believe that the production of groundwater from any groundwater extraction facility is in excess of that disclosed by the statements covering the facility or if no statement is filed covering the facility, then the board of the local agency may cause an investigation and report to be made concerning the production of groundwater from that groundwater extraction facility, including, but not limited to, the accuracy of the water-measuring device. The board of the local agency may make a determination fixing the amount of groundwater production from the groundwater extraction facility at an amount not to exceed the maximum production capacity of the facility for purposes of levying a groundwater charge. If a water-measuring device is permanently

attached to the groundwater extraction facility, the record of production as disclosed by the water-measuring device shall be presumed to be accurate unless the contrary is established by the local agency after investigation.

(b) After the board of the local agency makes a determination fixing the amount of groundwater production pursuant to subdivision (a), a written notice of the determination shall be mailed to the owner or operator of the groundwater extraction facility at the address as shown by the local agency's records. A determination made by the local agency shall be conclusive on the owner or operator and the groundwater charges based on the determination together with any interest and penalties shall be payable immediately unless within 10 days after the mailing of the notice the owner or operator file with the board of directors of the local agency a written protest setting forth the ground or grounds for protesting the amount of production or the groundwater charges, interest, and penalties. If a protest is filed pursuant to this subdivision, the board of the local agency shall hold a hearing to determine the total amount of the groundwater production and the groundwater charges, interest, and penalties. The determination by the board at the hearing shall be conclusive if based upon substantial evidence. Notice of the hearing shall be mailed to each protestant at least 10 days before the date fixed for the hearing. Notice of the determination by the board at the hearing shall be mailed to each protestant. The owner or operator shall have 20 days from the date of mailing of the determination to pay the groundwater charges, interest, and penalties determined by the board.

10754.7. (a) Where applicable, the board shall authorize, and the local agency shall make, a refund in whole or in part of any groundwater charges paid pursuant to Section 10754.1 to an owner or operator who has erroneously overstated the production of groundwater in any sworn statement for a period required pursuant to Section 10754.5 and overpaid the groundwater

charges for that period. A refund shall be made only upon compliance by the owner or operator with this section.

(b) Any owner or operator, within one year of the last day for filing of a sworn statement for the period in question, may file a verified application with the local agency on a form to be furnished by the local agency and containing the information the local agency may require to request a refund of that portion of any groundwater charge claimed to have been paid by reason of the owner or operator's erroneous overstatement of groundwater production. If incomplete information is contained in the application or if the board desires other or further information than called for by that application, the additional information shall also be furnished by a verified statement within 30 days of mailing of written notice of request for the information to the owner or operator at his or her address as shown by the local agency's records, or the application shall be deemed abandoned. A request by the board for additional information shall not cause any application otherwise timely filed to be considered as not filed within the one year period. The board may authorize and the local agency may pay any refund claimed without a hearing but no application shall be denied in whole or in part without a hearing being accorded to the applicant in which the applicant shall have the burden of proof. Any determination by the board on a matter in connection with an application shall be final and conclusive upon the owner or operator.

(c) Any refund authorized to be paid pursuant to this section may be paid only out of moneys realized from groundwater charges levied pursuant to Section 10754.1. An owner or operator may elect to have a refund the owner or operator is owed by the board credited to the owner or operator against any subsequent groundwater charges that might become due and owing from the owner or operator. No refunds shall be made except as authorized by this section.

10754.8. (a) (1) The superior court of the county in which the major portion of the local agency lies may issue a temporary restraining order to prohibit the operation of a groundwater extraction facility upon the filing by the local agency with the court of a verified petition or complaint naming the owner or operator of a groundwater extraction facility as the defendant and setting forth any of the following:

(A) That the groundwater extraction facility has not been registered with the local agency.

(B) That a satisfactory water-measuring device has not been installed, if required.

(C) That the owner or operator has not filed a groundwater production statement, if required.

(D) That the owner or operator is delinquent in the payment of a groundwater charge.

(2) A temporary restraining order issued pursuant to this subdivision shall be returnable to the court on or before 10 days after its issuance.

(b) (1) The court may issue and grant an injunction restraining and prohibiting the named defendant from the operation of any groundwater extraction facility if it is established by the preponderance of the evidence at a hearing that the defendant has failed to do any of the following:

(A) Register the groundwater extraction facility with the local agency.

(B) Install a satisfactory water-measuring device, if required.

(C) File a groundwater production statement, if required.

(D) Pay a groundwater charge, penalty, or interest under this article.

(2) The court may provide that an injunction issued pursuant to this subdivision shall be stayed for a period, not to exceed 10 days, to permit the defendant to register the groundwater extraction facility; to install a water-measuring device, to file a groundwater production statement, or to pay the delinquent groundwater charge, penalty, or interest.

(c) Service of process shall be made by posting a copy of the summons and complaint upon the groundwater extraction facility or the parcel of land upon which the groundwater extraction facility is located and by personal service of summons and complaint upon the named defendant.

(d) The right to proceed for injunctive relief as provided in this section shall be in addition to any other right otherwise allowed by law and any penalties or other remedies provided for in this article. The procedure provided in Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure regarding injunctions shall be followed except as otherwise provided in this section.

10754.9. In any judicial action authorized by this article, the court shall direct that the local agency or owner or operator of a groundwater extraction facility be awarded the reasonable attorney's fees and costs relating to the matter authorized pursuant by this article if the local agency or owner or operator of a groundwater extraction facility prevails on a petition or complaint.

10754.10. Before a local agency may levy a water management assessment pursuant to this article or otherwise fix and collect fees for the replenishment or extraction of groundwater pursuant to this part, the local agency shall comply with the provisions of Section 6 of Article XIII D of the California Constitution.

10754.11 . Nothing in this Article shall affect or interfere with the authority of the local agency to levy and collect taxes, assessments, charges and tolls as otherwise provided by law.

SEC. 4. Section 10754.3 of the Water Code is repealed.

~~10754.3. Before a local agency may levy a water management assessment pursuant to Section 10754.2 or otherwise fix and collect fees for the replenishment or extraction of groundwater pursuant to this part, the local agency shall hold an election on the proposition of whether or not the local agency shall be authorized to levy a groundwater management assessment or fix and collect fees for the replenishment or extraction of groundwater. The local agency shall be so authorized if a majority of the votes cast at the election is in favor of the proposition. The election shall be conducted in the manner prescribed by the laws applicable to the local agency or, if there are no laws so applicable, then as prescribed by laws relating to local elections. The election shall be conducted only within the portion of the jurisdiction of the local agency subject to groundwater management pursuant to this part.~~