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## MEMORANDUM

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To: FPBGSA Board of Directors

From: Scott Nave

Date: June 16, 2021

Subject: Scope of Authority to Undertake Mitigation Measures

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At the June 10th Board meeting, a member of the public questioned whether the Groundwater Sustainability Agency (GSA) can legally fund or mandate that pumpers pay for the removal of invasive vegetation under Sustainable Groundwater Management Act (SGMA). The question arose in the context of a discussion regarding impacts on native vegetation caused by pumping and drought conditions.

The GSA is charged with developing and implementing a groundwater sustainability plan (GSP) to meet sustainability goals under SGMA. (Water Code §10727.) Impacts on groundwater dependent ecosystems (GDE) must be included in the GSP, where appropriate. (Water Code § 10727.4.) One of the hallmarks of SGMA is the State's deference to local authorities to implement GSPs appropriate to their locale. To that end, GSAs have been granted broad statutory authority to implement and carry out a GSP. For instance, SGMA includes the following provisions:

- A groundwater sustainability agency may perform any act necessary or proper to carry out the purposes of this part. (Water Code § 10725.2(a).)
- A groundwater sustainability agency may do the following:
  - (a) ... construct, maintain, alter, and operate any and all works or improvements, within or outside the agency, necessary or proper to carry out any of the purposes of this part. (Water Code § 10726.2.)

- A groundwater sustainability agency may impose fees, including, but not limited to, permit fees and fees on groundwater extraction or other regulated activity, to fund the costs of a groundwater sustainability program, including, but not limited to, preparation, adoption, and amendment of a groundwater sustainability plan, and investigations, inspections, compliance assistance, enforcement, and program administration, including a prudent reserve. (Water Code § 10730(a).)
- A groundwater sustainability agency that adopts a groundwater sustainability plan pursuant to this part 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.(Water Code § 10730.2(a).)
- A groundwater sustainability agency may fund activities pursuant to Part 2.75 (commencing with Section 10750) and may impose fees pursuant to Section 10730.2 to fund activities undertaken by the agency pursuant to Part 2.75 (commencing with Section 10750). (Water Code § 10730.4.)

Each of these statutes evinces the broad authority granted to GSAs to carry out the purposes of SGMA. Thus, in response to the question, we believe that if the data supports the conclusion there is a significant and unreasonable impact on native vegetation as a result of depletion of a groundwater basin caused, at least in part, by pumping that results in non-native vegetation encroaching on and crowding out native vegetation, and removing the non-native vegetation will mitigate that impact, it is within the Board's discretion to consider that as a potential mitigation measure.