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To:	Jamison Crosby, Natural Resources Conservation Manager	From:	Sheryl L. Bratton, County Counsel Chris R.Y. Apallas, Deputy County Counsel
Date:	August 6, 2026	Re:	Treatment of Drain Tile Water as an Alternative Water Supply under the 2025 Rate and Fee Study

QUESTION PRESENTED

Does water collected through drain tiles qualify as an alternative water supply for purposes of receiving the base rate pursuant to the Napa County Groundwater Sustainability Agency (NCGSA) 2025 Rate and Fee Study (Fee Study)?

BRIEF ANSWER

No. Water intercepted and conveyed through subsurface drain tile systems is generally considered “percolating groundwater” under California water law rather than an independent or alternative water supply. California courts have long distinguished percolating groundwater from surface water and have recognized that groundwater moving through the subsurface remains part of the groundwater basin until extracted. The Sustainable Groundwater Management Act (SGMA) similarly defines groundwater broadly as water beneath the surface within the saturated zone and authorizes the NCGSA to regulate groundwater extraction, manage its subbasin, and impose fees to fund groundwater sustainability programs.

In Napa County, some vineyards are equipped with perforated subsurface drain tiles installed below the root zone to lower perched water tables and intercept excess water during the rainy season and convey collected water to discharge points. Because drain tile systems intercept this percolating water that otherwise could potentially move into and through the aquifer or contribute to groundwater storage and basin hydrology, water collected through drain tiles is not "alternative" to groundwater. Instead, it is a part of the groundwater system itself. Treating drain tile water as an alternative water source would be inconsistent with California's groundwater doctrine and SGMA's objective of managing all groundwater extraction affecting basin sustainability. Therefore, an owner's use of drain tile water is ineligible to receive the Fee Study's base rate.

DISCUSSION

On June 30, 2026 four stakeholder groups requested that acreage irrigated with captured, stored winter water be recognized as using an alternative water source for fee-setting, because they argue this practice reduces summer pumping from the deeper aquifer. They contend the County's groundwater model routes captured drainage water to the Napa River and cannot simulate reuse, so the summer pumping it offsets is not credited to the basin. Stakeholders contend recognition would be fair and consistent with sustainability goals because the practice provides the same benefit as other recognized reuse: less summer pumping from the aquifer. They claim that the water would otherwise run off if not captured and assume the Fee Study is for groundwater pumping.

The GSA Board has the discretion to interpret its documents and determine what qualifies as an alternative water supply for purposes of setting fees, however treating drain tile water as an alternative water source would be inconsistent with California's groundwater doctrine and SGMA's objective of managing all groundwater extraction affecting basin sustainability. Therefore, an owner's use of drain tile water should be deemed ineligible to receive the Fee Study's base rate. The stakeholder groups appear to inaccurately characterize the 2025 Fee as a pumping fee, rather than the broader fee for managing basin sustainability that it is.

I. SGMA Authorizes GSA Regulation and Fees for Groundwater and Groundwater-Related Diversions

SGMA defines "groundwater" as "water beneath the surface of the earth within the zone below the water table in which the soil is completely saturated with water but does not include water that flows in known and definite channels"¹. SGMA requires sustainable management of groundwater basins and empowers GSAs to regulate extractions and assess fees to fund GSP implementation and basin management.²

California Water Code section 1200 provides the foundational definition of surface water for purposes of water appropriation. It states: "Whenever the terms stream, lake or other body of water, or water occurs in relation to applications to appropriate water or permits or licenses issued pursuant to such applications, such term refers only to surface water, and to subterranean streams flowing through known and definite channels"³

On December 9, 2025, after complying with all applicable notice requirements, the NCGSA Board of Directors adopted the NCGSA 2025 Rate and Fee Study. The Fee Study sets forth the basis for imposition of a regulatory fee to cover costs associated with NCGSA's basin management. The Fee Study recognized that some agricultural lands may irrigate with alternative water sources other than groundwater, such as recycled water from Napa Sanitation District, or via surface water rights. In recognizing that the users of alternative water sources would potentially receive less benefits from

¹ Cal. Water Code § 10721(g)

² Cal. Water Code §§ 10725.2, 10726, 10730, 10730.2

³ Cal. Water Code § 1200

NCGSA's basin management programs, the study proposed that if greater than 50% of a parcel's irrigation stemmed from alternative sources, then only the study's base rate per planted acre be imposed.

The ordinary meaning of "alternative water supply" as interpreted by NCGSA staff includes surface water, recycled water, desalinated water, or stormwater captured prior to infiltration into soil. None of these waters constitute intercepted groundwater already present within the basin. NCGSA has broad authority to interpret and administer the adopted Fee Study and resolution.⁴

1. Fee authority. A GSA "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"⁵. Fees must be adopted consistently with applicable requirements, including procedural safeguards and proportionality⁶.
2. The scope of GSA fee authority includes groundwater-related diversions. SGMA's definition of "groundwater" expressly excludes only flow "in known and definite channels" and otherwise encompasses subsurface saturated-zone water subject to GSA management. Drain tile interception of water percolating to the saturated-zone is a groundwater-related activity that affects basin storage and recharge and therefore falls within NCGSA regulatory and fee authority⁷.

II. California Law Treats Drain Tile Water as Percolating Groundwater Unless Shown to Be a Subterranean Stream

California common law distinguishes between percolating groundwater and subterranean streams and defines percolating groundwater as "subsurface water that is not part of a subterranean stream flowing through a known and definite channel . . . and which falls outside the Board's jurisdiction."⁸ The California Supreme Court has long held that underground water is presumed to be percolating unless proved to flow in a "known and definite channel."

Courts presume subsurface water is percolating; the party asserting a subterranean stream must prove that the water flows in a known and definite channel with bed and banks and a course⁹. In *Hanson v. McCue*, (1871) 42 Cal. 303, the court explained that underground water is presumed to be percolating water and that the burden rests on the party claiming a subterranean stream to establish the existence of a known and definite underground channel.

Similarly, modern case law follows these concepts and has adopted a four-part test for determining whether groundwater qualifies as a subterranean stream.¹⁰ The test is: 1) a subsurface

⁴ Cal. Water Code §§ 10725, 10730

⁵ Cal. Water Code § 10730(a)

⁶ Cal. Water Code § 10730(b)–(e)

⁷ Cal. Water Code §§ 10721(g), 10726.4(a), 10730(a)

⁸ *N. Gualala Water Co. v. State Water Res. Control Bd.*, (2006) 139 Cal. App. 4th 1577, 1582.

⁹ *City of Los Angeles v. Pomeroy*, (1899) 124 Cal. 597; *City of Los Angeles v. Hunter*, (1909) 156 Cal. 603)

¹⁰ *N. Gualala Water Co. v. State Water Res. Control Bd.*, (2006) 139 Cal. App. 4th 1577.

channel must be present; (2) the channel must have relatively impermeable bed and banks; (3) the course of the channel must be known or capable of being determined by reasonable inference; and (4) groundwater must be flowing in the channel.

Unless the groundwater extractor can show the subsurface water at issue satisfies this test, then the water is percolating groundwater and governed by groundwater rules, not surface-water law. The test does not contemplate man-made drain tiles as being a subterranean stream.

III. Drain Tile Water is Percolating Groundwater, Not Surface Water or a Subterranean Stream

Drain tiles “are a form of agricultural drainage system that removes excess sub-surface water from fields to allow sufficient air space within the soil, proper cultivation, and access by heavy machinery to tend and harvest crops. While surface water can be drained by pumping, open ditches, or both, tile drainage is often the most effective means of draining subsurface water.”¹¹ The intercepted water originates as percolating groundwater moving through pore spaces under hydraulic gradients, not as flow in a natural subsurface channel with distinct bed and banks.

1. Shallow groundwater consistent with percolation. The hydrologic function of drain tiles is to lower the water table locally by capturing percolating groundwater in the subsurface before it continues through the aquifer. That water does not travel in a “known and definite channel” but instead migrates diffusely through soil and alluvium until intercepted. Under California’s presumption, this water is percolating groundwater.
2. Not a subterranean stream. The artificial tile network itself does not transform percolating groundwater into a subterranean stream because it is merely an engineered collection system.
3. Not surface water. Although tile outlets may discharge to surface drains, the character of the water at the point of collection is subsurface percolating groundwater. Its later conveyance to the surface does not reclassify the *source* as surface water for regulatory purposes when evaluating groundwater impacts and fee applicability.

In a DWR high-or medium-priority basin, SGMA requires GSAs to manage to avoid undesirable results.¹² By intercepting percolating groundwater that would otherwise remain in storage or contribute to lateral or vertical recharge, drain tiles reduce in-basin retention and can exacerbate undesirable results. Treating drain tile water as a groundwater “alternative” would undermine SGMA’s mandate to manage extractions and groundwater-related diversions to achieve sustainability.¹³

Stakeholders’ claims admit that drain tile water is collected subsurface and “captured.” Their assertions that this water would otherwise “run off” is not accurate. Subsurface water is already within

¹¹ (https://en.wikipedia.org/wiki/Tile_drainage, July 27, 2026)

¹² Cal. Water Code §10721(x)

¹³ Cal. Water Code §§ 10726.4(a), 10727.2, 10730.2

the soil and percolates. Staff understand that the primary reason for installing drain tiles is to drain soils around roots which is a viticultural practice, not a water conservation measure.

IV. Alternatives

The Board could elect to interpret drain tile water as an alternative water supply subject only to the base rate and establish the submission requirements necessary to support the request for staff's review. Such an interpretation for purposes of the fee study would appear to contradict broader water law interpretations. Additionally, due to the timing requirements for submitting the fees for inclusion on property tax bills, allowing the base rate for drain tile water could delay implementation of the fee to next fiscal year.

CONCLUSION

The Fee Study's base rate is intended for supplies that are not groundwater and do not diminish basin recharge. Water collected through subsurface drain tiles is percolating groundwater under California law. Drain tile interception removes percolating groundwater from in-basin storage and impairs recharge. It therefore is not an "alternative" to groundwater, but a groundwater-related diversion affecting basin conditions. Consistent with SGMA and the percolating-groundwater presumption, water collected through subsurface drain tiles should not be characterized as an alternative to groundwater.