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Development of an Out-of-Basin Transfer Rule for the Vina Subbasin

On October 10, 2019, the Vina Groundwater Sustainability Agency (GSA) Board voted to direct the Management Committee to draft a rule regulating out-of-basin water transfers pursuant to its authority under Water Code section 10725(c). The Vina Management Committee has established a process to develop the rule for out-of-basin transfers.

Background

While the basin setting work is not completed, data indicate that groundwater elevations in the Vina subbasin have a declining trend line over the past couple of decades. The Vina subbasin is expected to incorporate into the groundwater sustainability plan a menu of water management actions and projects in order to meet a sustainable yield for the basin. Achieving a sustainable yield for the Vina subbasin may require the implementation of groundwater pumping reductions and/or recharge projects. Groundwater pumping reductions can be achieved through water conservation, introduction of surface water supplies to offset groundwater demand, or through specified groundwater allotments (i.e. on a per acre basis). Groundwater allocations alone would likely lead to reduced agricultural production and impact the economy and communities. Negative impacts can be avoided from groundwater pumping reductions through water conservation programs and/or introduction of surface water supplies. Initial water management projects to introduce surface water supplies to the Vina subbasin spurred concern about ownership (privatization) of recharged water, purchased surface water and the resultant potential export of recharged groundwater. To address these concerns, the Vina GSA Board directed the development of a rule to regulate out-of-basin transfers. The following is the process the Management Team, working through the Vina Stakeholder Advisory Committee, will follow to develop this rule for consideration by the Vina GSA Board.

Process

1. Identify Potential Water Sources and Entities that Could Transfer Water
Developing an effective rule will begin with identifying the specific vulnerabilities. The opportunity to transfer water out of the Vina subbasin involve a number of factors including the ownership of water, the legal rights that an entity holds over the water and the physical means to convey the water. A number of potential projects that could be part of the Vina GSP have raised concerns. The following highlights some of the potential projects as they relate to the ownership of groundwater and the ability to transfer it out of the basin. Some of these issues have other concerns, but the purpose of this effort is focused on the ability of entities to transfer water out of the Vina subbasin.

Issue 1: Incorporating a surface water supply to CalWater Chico would allow them to reduce groundwater pumping. Under this scenario, CalWater would purchase a surface water supply through a contract with a local agency (Paradise Irrigation District, Feather River Settlement Contractors, Butte County) who has available surface water.

- Under what circumstances would CalWater gain ownership of in-lieu recharged groundwater?
- What rights could CalWater exercise over recharged groundwater?
- Does it matter who CalWater contracts with?
- Under what circumstances would the owner of the surface water lose their ownership/water right?
- How does the case, City of LA v. City of San Fernando [LA No. 30119. Supreme Court of California. May 12, 1975] apply?

Issue 2: Opportunities exist in the Vina subbasin to recharge storm flow through recharge basins, on-farm flooding, conveyance infrastructure, or recharge ponds. These types of recharge projects are being promoted through DWR's FloodMAR program. Local public agencies conducting recharge projects would need a water right permit from the State Water Resources Control Board.

- Do local public agencies that manage a recharge project gain water rights over recharged groundwater? Who should apply and hold the rights?
- What rights could they exercise over recharged water?
- How would this affect other groundwater users?
- Are there existing rights that could support recharge?

Issue 3: The proposed Tuscan Water District intends to be a water district in the Vina subbasin and a small portion in the Butte subbasin. A formal application to form the Tuscan Water District is expected to be filed with LAFCO in the spring of 2020. Part of their proposed purpose would be to conduct recharge projects (e.g., Issue 2) and become an irrigation water supplier. The Tuscan Water District proposes to reduce individual growers' groundwater pumping by conveying and making surface water supplies available for irrigation. The Tuscan Water District would have to purchase surface water supplies from local agencies in a similar manner as CalWater (Issue 1). One difference is that the proposed Tuscan Water District would be a public agency. The same questions posed for Issue 1 and 2 apply to the proposed Tuscan Water District.

Issue 4: Other scenarios?

2. Evaluate Existing Rules

Based on the identification of out-of-basin transfers, a review of existing rules will determine if there are any gaps. The locally enacted, Chapter 33 of the Butte County Code, Groundwater Conservation, will be evaluated as well as state rules as specified in the California Water Code and the operational rules of the State Water Project.

3. Draft Rule to Protect the Vina Subbasin

Based on the evaluation of existing rules, the legal team will prepare recommendations that will allow the Vina GSA to protect the Vina subbasin from out-of-basin transfers.

Implementation

Step 1 will be involve consultation with the Vina Stakeholder Advisory Committee to evaluate the initial identification of the potential water sources and entities that could transfer water.

Step 2 will involve work by a legal review team. The legal review team will evaluate the types of projects and entities that may have an opportunity to transfer water out of the basin and may request clarification from the Vina Stakeholder Advisory Committee. The legal review team will then develop a draft summary of the rules that would govern the projects in Step 1. This draft summary will be presented for discussion to the Vina Stakeholder Advisory Committee. Based on the input from the Stakeholder Advisory Committee, the legal review team will evaluate existing rules and identify recommendations for a Vina subbasin out-of-basin transfer rule.

Step 3 will involve the recommendations be presented to the Vina Stakeholder Advisory Committee for a recommendation to the Vina GSA Board.