Identifying and Managing the Legal Implications of Artificial Recharge

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 interest to develop an out-of-basin transfer rule came from concerns over the potential implications from artificial recharge projects. The Vina Management Committee has established a process to evaluate implications from artificial recharge projects and to develop a rule to protect Vina groundwater resources including 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 land use policies, expanding urban and agricultural water efficiency technology, waste water recycling or increasing the use of surface water supplies to offset groundwater demand, or through specified groundwater allotments (i.e. on a per acre basis). Groundwater pumping reductions alone would likely lead to reduced agricultural production and impact the economy and communities. Negative impacts from groundwater pumping reductions may be avoided through water conservation programs, recharge (Flood MAR) and/or introduction of surface water supplies (in-lieu). The potential development of water management projects 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. Although the Vina GSA Board directed the development of a rule to regulate out-of-basin transfers, potential artificial/intentional recharge programs pose a wider set of questions and concerns that are in addition to out-of-basin transfers.

Commented [AquA1]: 1) Create a list of County comments/documents that contradicted this now accurate statement.

2) Why is the basin setting work not complete? BC has worked on thie for years!

Commented [AquA2]: Provide data and analysis, not general statements.

The following is the process the Management Team, working through the Vina Stakeholder Advisory Committee, will follow to evaluate implications of artificial recharge projects in order to develop a rule for consideration by the Vina GSA Board.

Process

1. Identify Potential Implications of Artificial Recharge Programs

Developing an effective rule will begin with the evaluation and response to specific questions and concerns about artificial recharge projects. The project will address the range of questions and concerns, including:

- Do local public agencies or corporations that manage a recharge project gain water rights over recharged groundwater?
- What rights could they exercise over recharged water?
- How would this affect other groundwater users, the environment (streams, GDEs, all species), and water quality (surface and groundwater)?

- How could geology and pollution affect a recharge project in the Vina basin?
- Could groundwater users lose their right to pump groundwater or have it limited?
- Are there types of surface water rights that could support recharge without negative implications? [Must define "support recharge" and "negative implications."]
- How would recharge affect downstream water users and needs?
- What are the impacts on urban rate-payers?
- Could artificial/intentional recharge stimulate urban sprawl?
- Could artificial/intentional recharge stimulate expansion of irrigated agricultural demand?
- Could recharge groundwater be available for export out-of-basin?
- Could recharge of groundwater in the Vina area of Butte County benefit users downslope in Butte, Glenn, and Colusa counties?
- 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?
- What are the short and long-term issues that arise from recharge projects elsewhere using actual records, legal cases, and academic analysis?

2. Evaluate Existing Rules
A review of existing rules (Chapter 33 of the Butte County Code, Groundwater Conservation, California Water Code, State Water Project operations), and Fish and Game code will determine if there are any gaps to the identified concerns from artificial recharge projects.

3. Draft Rule to Protect the Vina Subbasin
Recommendations will be proposed that will allow the Vina GSA to protect the Vina subbasin from negative implications from artificial recharge project through enactment of policies and/or rules or state that artificial recharge is filled with too many risks to undertake and no protective draft rule will be necessary.

Implementation
Step 1 - Consultation with the Vina Stakeholder Advisory Committee on the draft scope - This was completed on February 19, 2020. Their input is reflected in this document.
Step 2 – Legal Evaluation - Valerie Kincaid, Vina GSA Counsel, in cooperation with a legal review team will evaluate the questions and concerns about the implications of artificial recharge. The draft evaluation about artificial recharge and a summary of existing rules will be presented for discussion and input to the Vina Stakeholder Advisory Committee. Who will write the final evaluation? Based on the input from the Stakeholder Advisory Committee, the recommendations for or against a Vina subbasin out-of-basin transfer rule or other applicable rules/policies will be developed depending on the Committee vote to or not to proceed with artificial recharge.
Step 3 – Recommendation – The recommendations will be presented to the Vina Stakeholder Advisory Committee for a recommendation to the Vina GSA Board.