



Sustainable Conservation

April 28, 2016

Sarah Sugar
State Water Resources Control Board, Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812

Dear Ms. Sugar:

Thank you for the opportunity to comment on the issues of fees and processing for temporary permits for groundwater recharge and storage discussed at the staff workshop held on April 26, 2016. Sustainable Conservation has been engaged in an ongoing project to determine the potential of applying flood flows to active agricultural land as a means to increase the amount of groundwater recharge and storage in the San Joaquin Valley. On-farm recharge could serve as a valuable tool in achieving the goals of the Sustainable Groundwater Management Act (SGMA). The issue of water rights has been a primary concern of ours as we have pursued this project. Our concern extends beyond the fees and permitting for projects undertaken under the authority of Governor Brown's emergency declaration to the larger issue of how the State Water Board's permitting process might work with, or impede, the use of groundwater recharge in the implementation of SGMA. We encourage the Water Board to use the emergency declaration as an opportunity to develop an ongoing temporary permitting program specifically for groundwater recharge projects that can facilitate replenishing overdrafted aquifers in compliance with SGMA, provide important monitoring and accounting, and protect fish and wildlife and the interests of other lawful users of water. The following comments are meant to serve as general observations based on some of the questions posed by you at the April 26 workshop, and will be followed by more extensive comments on the larger effort to develop a comprehensive groundwater recharge permitting program.

Regarding fees, we would reiterate the suggestion we made at the workshop that the Water Board work closely with the Department of Water Resources (DWR) and Groundwater Sustainability Agencies (GSAs) to explore ways that Groundwater Sustainability Plan (GSP) implementation and groundwater recharge permitting can be integrated, including the application of GSA fees to permitting.

The integration of SGMA implementation and Water Board permitting for groundwater recharge projects needs to be pursued in a comprehensive manner, not merely in the area of fees. The questions posed by staff in the Permitting Process section of the workshop notice, and some of the comments made during the workshop, point both to some of the potential conflicts and to some possible options for resolving them.

The question concerning a permittee that may not be the party pumping water for beneficial use appears to speak directly to the potential position of a GSA proposing a groundwater recharge program to restore and maintain balance in an overdrafted basin that may be drawn upon later for irrigation or other uses by private landowners and utilities in the greater groundwater basin. This in turn leads to what we believe may be the most important question to consider: "should there be a different level of accounting based on the end use of the water or any other aquifer characteristics?" Staff proposed several possible end uses that could qualify for such a distinction: protecting fish and wildlife v. irrigation/municipal use; long-term storage v. use next



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season; and replenishment of critically overdrafted basins. All of these end uses could be elements of a GSP. We believe that the Water Board should seriously consider creating a comprehensive category for accounting that applies to temporary permits for groundwater recharge for the express purpose of implementing approved GSPs and other provisions of SGMA.

We would appreciate clarification from the Water Board about the meaning of the word “accounting” in this context. Does it mean the determination of whether or not the end use constitutes a beneficial use, or the means by which the beneficial use is monitored and measured for use, recovery, leakage, etc? We would advocate for the broadest possible interpretation, so that recharge expressly and demonstrably intended for SGMA compliance is considered to be a beneficial use, and that the applicable accounting provisions of an approved GSP are accepted as means for a GSA to provide the measurement and monitoring referred to in the workshop questions concerning demonstrations of beneficial use. Recharge that merely maintains the status quo in an overdrafted basin is not sufficient for the intent of SGMA. Sufficient water will need to be put in the aquifer to bring it to a true state of balance and reverse or avoid the undesirable results specified in SGMA. We are not arguing for groundwater recharge to be defined as a beneficial use in all circumstances. We do urge the Water Board to consider groundwater recharge for the express purpose of fulfilling the statutory requirements of SGMA as a beneficial use.

Finally, we would appreciate further clarification on the distinction made in the workshop questions and discussion between “higher flows” and “available flows.” It seems to us that “available flows,” which we assume means flows not already appropriated or otherwise spoken for, should be the criterion used to determine whether water is available for recharge, since, as the workshop notice points out, high flows are not necessarily unallocated flows. Are “available flows” considered to be the same as “excess flows,” or are “excess flows” equal to “higher flows?” We are particularly interested in how the Water Board is working with DWR on the latter’s upcoming report on Water Available for Recharge. ~~(08/10/08)~~ We believe it would behoove both agencies to coordinate definitions and criteria in order to provide the best possible guidance to GSAs in GSP development and SGMA implementation.

Once again, thank you for inviting and considering our comments on fees and processing for temporary groundwater recharge and storage permits. We look forward to sharing the results of our work on on-farm recharge referred to by Board Member D’Adamo at the workshop, and to continuing to participate in the discussion of this important issue. We will also be grateful for whatever clarification you can provide us on some the questions raised above.

Sincerely,

J Stacey Sullivan
Policy Director