

**NORTH FORK KINGS GROUNDWATER SUSTAINABILITY AGENCY
GROUNDWATER BANKING POLICY**

BACKGROUND

California law permits a party who has a separate legal right to surface water developed from a source that is separate and distinct from the natural or native groundwater supplies existing in a common Basin aquifer to use the developed water for beneficial use. A party that owns a developed water supply “may use the supply by commingling the water with the native supplies and may subsequently recapture the developed water.” (*City of Los Angeles v. City of Glendale* (1943) 23 Cal.2d 68, 76-78.) The recapture right includes the amount equivalent to the augmentation contributed by the water stored (either by direct recharge or return flows from water deliveries) (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 260.) Banking projects are permitted to recharge, store and recover water placed in the Basin aquifer so long as the quantity recovered does not exceed the amount contributed and none of the banking activities cause injury to any Basin resource or the rights of other users of water in the process. If a person entitled to the use of the water fails to use beneficially all or any part of the water for the purpose for which it was appropriated for a period of five years, that unused water shall revert to the public. (*Water Code Section 1241.*)

OBJECTIVES

The objectives in pursuing this groundwater banking policy on behalf of the NFKGSA include the following:

- Improve groundwater conditions;
- Increase water supplies;
- Assist in meeting GSP objectives;
- Provide flexibility to landowners; and
- Ensure no negative impacts to overlying owners.

POLICY

This policy shall apply to all lands within the NFKGSA’s jurisdictional boundary except those entities which have adopted their own banking policy. A list of such entities is attached hereto as Appendix A.

GROUNDWATER BANKING PROJECTS

If a landowner intends to bank his/her own sources of surface water supply in the underground and subsequently transfer that supply to another party, then the landowner shall comply with the following:

*Banking.*¹ A Landowner within the NFKGSA shall be eligible to develop, operate and maintain a groundwater bank within the NFKGSA provided it enters into a written agreement as defined below with the NFKGSA. Landowner may also contract with a third party to develop, operate and maintain a groundwater bank within the NFKGSA, provided such third party enters into a written agreement as defined below with the NFKGSA.

Facilities Report and Groundwater Banking Agreement. Landowner shall first submit a written facilities report (“Facilities Report”) to NFKGSA staff containing the following information:

- a. The banking site location (Assessor Parcel Number, legal description, and GIS map).
- b. The conveyance and distribution facilities and manner and method of operation.
- c. The recharge facilities and the manner and method of operation.
- d. The recovery facilities (landowner and/or project extraction wells) and the manner and method of operation.
- e. The energy facilities (electric, diesel, solar, etc.).
- f. The schedule for permitting, construction and commencement of operation.
- g. The plan of operation, maintenance, repair and replacement of banking facilities.
- h. The intended source of all banking water supplies (e.g., Kings River water or other local surface waters, Central Valley Project, third party exchange/transfer supplies, other).
- i. The banking accounting, measurement, monitoring and reporting procedure.
- j. A Monitoring and Operational Constraint Plan (MOCP) to ensure that unacceptable impacts to neighboring crops, well flow rates, water levels and quality are prevented and/or adequately mitigated.

Once NFKGSA staff has determined the Facilities Report is complete, Landowner and NFKGSA shall enter into a Groundwater Banking Agreement.

California Environmental Policy Act & Project Approval. Prior to NFKGSA’s approval of the proposed Banking project, and prior to commencement of construction or operation of banking facilities, Landowner shall comply with any applicable California Environmental Policy Act (Public Resources Code §21000, et. seq., “CEQA”) requirements. NFKGSA shall act as the lead agency under CEQA regarding the preparation of documents required to carry out or approve a groundwater banking project authorized pursuant to this policy. Implementation of this policy and the approval of any groundwater banking project pursuant to this policy are subject to compliance with CEQA and the Landowner shall be responsible for the payment of all costs and expenses incurred by the NFKGSA and the Landowner relating to such compliance.

Surface Water Available for Banking. Landowner is solely responsible for locating, purchasing, accessing, or otherwise acquiring, surface water for purposes of banking in the NFKGSA.

Banking Leave Behind. In order to insure that a groundwater banking project will protect the health of the basin and provide some benefit to the NFKGSA, its landowners and water users, Landowner shall leave in storage in the Basin aquifer to the credit of the NFKGSA’s Sustainable

¹ The NFKGSA does not currently intend to directly develop, operate and maintain a groundwater bank itself, but does expressly reserve its authority to revise these principles to include NFKGSA groundwater banking in the future should it be deemed necessary and proper.

Yield² the percentage amount of the total water reported, based on the type of water banked, on an annual basis according to the following table:

WATER SUPPLY	PLACE OF USE NFKGSA
LOCAL SURFACE WATER SUPPLIES ³	10%
IMPORTED SURFACE WATER SUPPLIES ⁴	10%

Procedure. Upon diversions to the bank, Landowner shall report total quantities of water diverted into the underground to the NFKGSA. NFKGSA staff shall then confirm the quantity with the surface water delivery entity, deduct the applicable leave behind percentage, and credit the remaining quantity of water to the Landowner’s surface water bank account.

Place of Use. Any water banked by Landowner shall only be extracted and beneficially used within the boundaries of the North Fork Kings Groundwater Sustainability Agency to the extent provided in the leave behind requirements stated above. Upon board approval, banked water may be used elsewhere within the Kings Subbasin (Bulletin 118, 5-22.08) subject to applicable leave behind requirements based on the circumstances of the project.

Transfers. Any water banked by Landowner may be transferred, provided the transferee will use the transferred water within the boundaries of the North Fork Kings Groundwater Sustainability Agency. Upon board approval, banked water may be transferred for use elsewhere within the Kings Subbasin (Bulletin 118, 5-22.08) subject to applicable leave behind requirements based on the circumstances of the project.

Banking Accounting, Measurement, Monitoring and Reporting Procedure. Landowner shall be responsible for developing and implementing a procedure to accurately account for all banking activities on a monthly and annual basis, including the following: the source of all water delivered to each turnout serving the banking facility, recharge discharges, percolation rates, recharge losses to evaporation and soil profile, net augmentation to storage in the Basin, pumping extractions, amounts of water in storage and recovery, the place of use of all banked water deliveries, and changes in local groundwater conditions (including depth to groundwater, water quantity, quality, groundwater gradient and migration).

² Sustainable Yield has the same meaning and effect as that defined in the NFKGSA’s Groundwater Sustainability Plan.

³ “Local surface water supplies” shall include all water derived from local surface tributaries naturally occurring in the Kings Subbasin.

⁴ “Imported surface water supplies” shall include all other surface waters other than those defined as “Local Surface Water Supplies” and shall include, but not be limited to, waters from: the Central Valley Project, and neighboring subbasins.

Term. Landowner must beneficially use the water within five years from sinking it in the underground. Failure to do so will result in said unused waters reverting to the native supply, as defined in the NFKGSA Groundwater Sustainability Plan, of the NFKGSA.

Water Quality Standards. Landowner shall insure that all water diverted into the underground does not result in unacceptable deterioration of groundwater quality contrary to applicable NFKGSA GSP water quality objectives or as required in any MOCP approved by the NFKGSA.

Legal Compliance. Landowner shall be solely responsible for complying with all applicable Federal, State and local laws, and rules and regulations, including but not limited to CEQA. At the NFKGSA's discretion, Landowner shall provide the NFKGSA with a copy of any permit, order, agreement, environmental document, judgment or other record requested indicating Landowner's compliance with applicable laws.

Facilities. Landowner shall be solely responsible for determining the nature, location and extent of the necessary facilities for banking. All costs of design, permitting, construction, operation, maintenance, repair and replacement and all other costs and expenses of a groundwater banking facility shall be the sole responsibility of Landowner.

Indemnification. Landowner shall indemnify, defend and hold harmless the NFKGSA, its board of directors, officers, employees, agents, assigns on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death, and including attorneys' fees and other costs of litigation, arising out of or connected with the development, operation and maintenance of a groundwater bank.

Administration. Landowner shall reimburse the NFKGSA for its reasonable costs and expenses incurred, as determined by the NFKGSA, to prepare or review the agreements, reports, plans and other documents and materials relating to the administration of this Policy.