

Implementation of the Sustainable Groundwater Management Act (SGMA) was always going to be tricky. Part of the necessary growing pains of SGMA is determining how the revolutionary statute interacts with traditional tenets of water law. As with any other sweeping legislative change, SGMA does not provide direct answers for every practical question which arises as the law is put into place.

Take SGMA's so called "six deadly sins" – the undesirable results that newly formed groundwater sustainability agencies (GSAs) are tasked with avoiding, running the gamut from seawater intrusion to subsidence. One of the ways to combat undesirable results is to implement a more robust groundwater recharge program – diverting high surface water flows during wet years (as we just experienced) to aquifers. In fact, we've begun to see innovative projects, such as [Recharge Net Metering](#) and [Flood-MAR](#), sprout up in the wake of SGMA to do exactly that. But how do we get water for those projects in the first place?

To get a surface water permit in California, an applicant must tell the State Water Resources Board (the Board) what the water will ultimately be used for, referred to as the "beneficial use". A permit will not be granted without approval from the Board agreeing that the proposed use of water is beneficial. Common beneficial uses – for example, irrigation and drinking water – are well established. However, beneficial use definitions are largely from an earlier era, and do not really contemplate the use of surface water to address groundwater problems like SGMA's undesirable results. [Our issue brief](#) pointed to a number of legal gaps, including in clear definitions of when recharging water to an aquifer is considered a beneficial use, and details on how an applicant might go about proving the beneficial use.

Earlier this month, the Board released a [fact sheet](#) that helps to fill these gaps. The Board considers the use of surface water to address most SGMA undesirable results to be a beneficial use. However, many SGMA-related beneficial uses contain qualifiers that applicants will need to be aware of. For example:

- Recharge to address chronic lowering of groundwater levels is generally not a beneficial use, unless the applicant can show raising groundwater levels would provide a direct benefit, such as guaranteeing shallow domestic wells have water. How an applicant demonstrates "direct benefit" isn't outlined, but one would assume it will require the applicant to bring facts and figures quantifying the expected benefits and showing who would benefit.
- Recharge can be used to fight land subsidence, but depends on the "severity and likelihood of the threatened subsidence." When, exactly, the Board decides subsidence

is severe enough to warrant a groundwater recharge project is unclear. Subsidence is fairly common, and none of it is good.

- Finally, recharge for the benefit of interconnected surface water requires the applicant to state how the water will be used once it reaches a surface stream. It's not enough to say the recharged water will eventually make it to a surface stream and help restore or strengthen hydrological connections.

Crucially, the Board also [added a section to its website](#) allowing the public to follow applications seeking to address these concerns. A lot of the nuances addressed above – such as when the Board considers subsidence “severe” enough to warrant a recharge permit – won't be fully understood until the Board actually receives permits and makes a decision to grant or deny. By allowing the public to track SGMA-related permits, water users can track how the Board's administration of groundwater recharge permits evolves and how those questions are answered. The importance of this function reflects the need to develop, refine and adjust both the Board's approach and stakeholders' understanding over time. This is an example of regulatory implementation as process, and the Board deserves credit for supporting it.

Overall, this is a positive step in continuing to weave SGMA into existing California water law. Recharge projects will undoubtedly be a piece of SGMA's success. It's good to see the Board supporting that role.