For more than 50 years, the Central and West Coast basins have been among the most intensively managed groundwater aquifers in California. These two adjacent basins underlie 43 cities and provide water for more than 4 million people in southeastern Los Angeles County. Currently, stewardship of the water supply falls to a patchwork of local and state agencies that have often been in conflict with one another. As a result of these conflicts, the basins have not been managed as efficiently as possible, and most of their storage capacity has gone unused. This may soon change with an agreement—referred to as the “Big Gulp”—that was recently developed among California’s state and local water agencies, public and private water purveyors, and local cities. Although the courts must first approve it, the Big Gulp would create a framework for underground water storage and recapture in the previously unused empty aquifer space of the two basins.

The basins were adjudicated in the early 1960s to settle ongoing disputes among various water users. The two ensuing judgments imposed a “physical solution” in each basin that quantified users’ rights to extract groundwater, created an exchange pool for producers without access to supplemental water, and appointed the Department of Water Resources (DWR) as watermaster. The respective judgments acknowledged the potential future importance of the dewatered aquifer space, but they provided no rules for its use. The resulting uncertainty in the rights and responsibilities of those parties who would store water underground has prevented investment in the type of conjunctive-use projects that California needs to deal with present and future water shortages.

California is facing one of the worst water crises in its history. Even as the population continues to grow, the water supply is becoming both smaller and less reliable. Climate change and other factors have shrunk the annual snowpack, and what snow is left is subject to sudden thaws that increase the frequency and intensity of flooding. Environmental litigation and regulation have dramatically reduced state water project deliveries through the delta, cutting off a large portion of the water normally relied on by Southern California. To meet the challenges posed by the current drought, the DWR recommends that local groundwater agencies engage in conjunctive-use projects, including the management and use of available aquifer space for artificial recharge. During wet years, excess surface water supplies can be imported and stored in the basins; in dry years, this stored water can be withdrawn to offset water shortages and provide an emergency supply.

The Big Gulp’s most important amendment to the judgments would establish 450,000 acre-ft of available dewatered space for active conjunctive use. The larger portion 174,000
acre-ft, would be designated as basin operating reserve for the Water Replenishment District (WRD) of Southern California’s basin replenishment program, which could also temporarily be used by individual storage projects when not needed by the WRD. The remaining 112,800 acre-ft of space would be assigned to individual storage accounts that could be filled with imported water spread or injected into the basin and unused carryover water that has been authorized for production but has not been extracted. A community storage pool with 130,500 acre-ft of capacity would be set aside for periodically cycled individual accounts. Finally, a regional storage set-aside of 32,600 acre-ft would provide for special watermaster-approved projects for the benefit of the region as a whole.

Additional proposed amendments would increase the flexibility and utility of adjudicated water rights. By allowing carryover conversion, a party can convert unused single-year carryover water rights to long-term stored water, which creates a larger buffer of water for dry years. The stored water may—as with existing water rights—be transferred between parties to the judgments if the transfers don’t cause harm to other rights holders who may override large transfers by majority protest. The ability to bank water for future use and transfer it to other parties will increase the value and utility of the water rights. The Big Gulp would also create a new watermaster to administer management for the basins with more local control and input from stakeholders.

This is not the first time that basin rights holders have tried to clarify storage issues. In 2001, Central Basin parties sought an amendment to the judgments that would have created the right to use the dewatered aquifer space for storage commensurate with the adjudicated rights to extract groundwater. The WRD opposed the motion, partly because it considered the dewatered space a public resource to be managed for public benefit. That effort was defeated at trial, and the California Court of Appeals in affirming the decision held that “extraction and storage are different physical processes; establishing a hydrologic link between them is not sufficient to show that a legal interest in one creates an interest in the other” (Central and West Basin Water Replenishment District, etc. v. Southern California Water Company, et al, 2003, 109 Cal.App.4th 891, 910). In the wake of this decision, the stakeholders for the basins engaged in a mediated negotiation to reach a compromise solution—the Big Gulp. The proposal has won the support of the Central Basin Water Association, the West Basin Water Association, WRD, DWR, many local cities, and various public and private water producers.

Southern California’s current water crisis requires immediate action. Although local control of groundwater is encouraged by the state, local politics have stymied conjunctive-use projects in the past; such obstructionism is no longer acceptable. The region simply can’t rely on historical supplies of imported water from the State Water Project, the Colorado River, and the Owens River Valley. Long-term changes in both climate and population require that the underground storage capacity for the basins be put to use to build a buffer against future water demands. A comprehensive physical solution for groundwater storage and recapture would establish the legal and institutional certainty necessary for investment in such projects. Developing this local supply will increase reliability and efficiency by capturing and reusing previously wasted resources. The Big Gulp promises to create a governance structure to promote use of the basins’ storage space and is dedicated to the principles of local control, stakeholder participation, and transparent administration.

About Brownstein Hyatt Farber Schreck

Founded in 1968, the law firm of Brownstein Hyatt Farber Schreck practices in the areas of real estate, natural resources, public policy, corporate law, and litigation. Although the firm has played an integral role in water issues for the past decade, its recent merger with the California firm of Hatch & Parent has made it a dominant US law firm in the area of water law and policy. For more information about the firm’s water group, contact Mark Mathews at mmathews@bhfs.com or (303) 223-1179 or Stephanie Osler Hastings at shastings@bhfs.com or (805) 882-1412. To visit the firm’s website, go to www.bhfs.com.