

Monterey County

1441 Schilling Place
Salinas, CA 93901



Meeting Agenda - Final

Wednesday, April 7, 2021

8:30 AM

IMPORTANT COVID-19 NOTICE ON PAGE 2-4
AVISO IMPORTANTE SOBRE COVID-19 EN LA PAGINA 2-4

Water Resources Agency Basin Management

Advisory Committee

John Baillie
Deidre Sullivan
Matthew Simis
David Bunn
Bill Lipe
Kevin Piearcy
Amy White
Marisela Cerda
Patrick Breen
Patrick Collins

IMPORTANT NOTICE REGARDING COVID 19 AND PARTICIPATION IN THE BASIN MANAGEMENT ADVISORY COMMITTEE MEETING

The Basin Management Advisory Committee meeting will be held by teleconference in order to minimize the spread of the COVID 19 virus, in accordance with the State of Emergency proclaimed by Governor Newsom on March 4, 2020, Executive Order N 29 20 issued by Governor Newsom on March 17, 2020, and the Shelter in Place Order issued by the Monterey County Health Officer on March 17, 2020, as may be periodically amended.

To participate in this Basin Management Advisory Committee meeting, the public is invited to observe and address the Committee telephonically or electronically. Instructions for public participation are below:

1. For ZOOM participation please join by computer audio at:

<https://montereycty.zoom.us/j/98016048495> OR to participate by phone call any of these numbers below: +1 669 900 6833 US (San Jose) +1 346 248 7799 US (Houston) +1 312 626 6799 US (Chicago) +1 929 205 6099 US (New York) +1 253 215 8782 US +1 301 715 8592 US

Enter this Meeting ID number: 980 1604 8495 PASSWORD: 471712 when prompted. Please note there is no Participant Code, you will just hit # again after the recording prompts you. You will be placed in the meeting as an attendee; when you are ready to make a public comment, if joined by computer audio, please Raise your Hand; and by phone, please push *9 on your keypad.

2. If you wish to comment on a specific agenda item while the matter is being heard, you may participate by the following means:

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3. If you wish to comment on a particular agenda item, please submit your comments in writing via email to Monterey County Water Resources Agency at WRAPubliccomment@co.monterey.ca.us by 5:00 p.m. on the Tuesday prior to the Committee meeting. To assist Agency staff in identifying the agenda item to which the comment relates please indicate the Basin Management Advisory Committee meeting date and agenda number in the subject line. Comments received by the 5:00 p.m. Tuesday deadline will be distributed to the Committee and will be placed in the record.

4. If you wish to make either a general public comment for items not on the day's agenda or to comment on a specific agenda item as it is being heard, please submit your comment, limited to 250 words or less, to the Monterey County Water Resources Agency at WRAPubliccomment@co.monterey.ca.us. In an effort to assist Agency staff in identifying the agenda item relating to your public comment please indicate in the subject line, the meeting body (i.e. Basin Management Advisory Committee) and item number (i.e. Item No. 10). Every effort will

be made to read your comment into the record, but some comments may not be read due to time limitations. Comments received after an agenda item will be made part of the record if received prior to the end of the meeting.

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6. If members of the public want to present documents/Power Point presentations while speaking, they should submit the document electronically by 5:00 p.m. on Tuesday before the meeting at WRAPubliccomment@co.monterey.ca.us. (If submitted after that deadline, staff will make best efforts, but cannot guarantee, to make it available to present during the Committee meeting.)

7. Individuals with disabilities who desire to request a reasonable accommodation or modification to observe or participate in the meeting may make such request by sending an email to WRAPubliccomment@co.monterey.ca.us. The request should be made no later than noon on the Wednesday prior to the Committee meeting in order to provide time for the Agency to address the request.

8. The Chair and/or Secretary may set reasonable rules as needed to conduct the meeting in an orderly manner.

AVISO IMPORTANTE SOBRE COVID 19 Y PARTICIPACIÓN EN LA REUNIÓN DEL COMITE DE ASESOR DE GESTION DE LA CUENCA

La reunión del Comité de Asesor de Gestion de la Cuenca se llevará a cabo por teleconferencia para minimizar la propagación del virus COVID 19, de acuerdo con el Estado de Emergencia proclamado por el Gobernador Newsom el 4 de Marzo del 2020, Orden Ejecutiva N 29 20 emitida por el Gobernador Newsom el 17 de Marzo del 2020, y la Orden de Refugio en el Lugar”) emitida por el Oficial de Salud del Condado de Monterey el 17 de Marzo del 2020, según se pueda enmendar periódicamente.

Para participar en esta reunión del Comité de Asesor de Gestion de la Cuenca el público están invitados a observar y dirigirse al Comité telefónicamente o por vía electrónica. Las instrucciones para la participación pública están a continuación:

1. El público puede observar la reunión ZOOM a través de computadora haciendo clic en el siguiente enlace: <https://montereycty.zoom.us/j/98016048495> O el público puede escuchar a través del teléfono llamando al:

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simplemente presionará # nuevamente después de que la grabación lo solicite.

Se le colocará en la reunión como asistente; cuando esté listo para hacer un comentario público si se une al audio de la computadora, levante la mano; y por teléfono presione * 9 en su teclado.

2. Los miembros del público que desean comentar en un artículo específico de la agenda, mientras que el artículo se este presentando durante la reunión, pueden participar por cualquiera de los siguientes medios:

Cuando el Presidente del Comité solicite comentarios públicos sobre un artículo de la agenda, el anfitrión de la reunión Zoom o su designado, primero determinará quién quiere testificar (entre los que están en la reunión por vía electrónica o telefónica) y luego llamará a los oradores (speakers) y activará la bocina para el orador, uno a la vez. Todo orador, será transmitido por audio en altavoz solamente.

3. Si un miembro del público desea comentar sobre un artículo de la agenda en particular, se le es sumamente recomendable que envíe sus comentarios por escrito por correo electrónico a la Agencia de Administración de Recursos del Agua (Agencia) a WRAPubliccomment@co.monterey.ca.us antes de las 5:00 P. M. el Martes antes de la reunión del Comité. Para ayudar al personal de la Agencia a identificar el número del artículo de la agenda con el cual se relaciona el comentario, se solicita al público que indique la fecha de la reunión del Comité y el número del artículo de la agenda en la línea de asunto. Comentarios recibidos en la fecha límite del Martes a las 5 P.M, serán distribuidos al Comité y serán colocados en el registro.

4. Los miembros del público que deseen hacer un comentario público general para temas que no están en la agenda del día o que deseen comentar en un artículo específico mientras se escucha la presentación, lo pueden hacer enviando un comentario por correo electrónico, preferiblemente limitado a 250 palabras o menos, a WRAPubliccomment@co.monterey.ca.us. Para ayudar al personal de la Agencia a identificar el artículo de la agenda con el cual se relaciona el comentario, se solicita al público que indique el nombre del Comité (por ejemplo: Comité de Asesor de Gestion de la Cuenca) y el número del artículo de la agenda (por ejemplo: Artículo # 10). Se hará todo lo posible para leer el comentario en el registro, pero algunos comentarios pueden no leerse en voz alta debido a limitaciones de tiempo. Los comentarios recibidos después del cierre del período de comentarios públicos sobre un artículo de la agenda serán parte del registro si se reciben antes que termine la reunión del Comité.

5. Si los oradores u otros miembros del público tienen documentos que desean distribuir al Comité para un artículo de la agenda, se les recomienda enviar dichos documentos antes de las 5:00 P.M. el Martes antes de la reunión a: WRAPubliccomment@co.monterey.ca.us. Para ayudar al personal de la Agencia a identificar el número del artículo de la agenda con el cual se relaciona el comentario, se solicita al público que indique la fecha de la reunion del Comité y el número de agenda en la línea de asunto.

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8. El Presidente y / o Secretario pueden establecer reglas razonables según sea necesario para llevar a cabo la reunión de manera ordenada.

Call to Order

Roll Call

Public Comment

Consent Calendar

1. Approve the Minutes of the Basin Management Advisory Committee meetings held on March 3, 2021.

Attachments: [Draft Action Minutes March 3, 2021](#)

Scheduled Matters

2. Consider receiving a report on the Analysis of Groundwater Wells and Extractions in the “Area of Impact” of the 180/400 Foot Aquifer Subbasin and provide input to Staff and Agency Board of Directors

Attachments: [Board Report](#)

3. Consider receiving a report on the DWR Bulletin 74: California Well Standards Update Project and providing input to Staff for upcoming Technical Advisory

Committee meetings.

Attachments: [Board Report](#)
[Final Technical Advisory Committee Kickoff Meeting Summary](#)
[TAC Roster Siting Focus Group](#)
[FG2 Siting Syllabus](#)

Staff Reports

4. Update on Source Water Discussions with Monterey One Water

Attachments: [Source Water Discussions](#)
[New Source Waters - Draft](#)
5. Update on the Well Permitting Process

Attachments: [4 Well Permitting and CEQA](#)
[POWER v Stanislaus Final Decision 27 Aug 20](#)
6. Proposition 1 Implementation Grant Update: *Protection of Domestic Drinking Water Supplies for the Lower Salinas Valley*

Attachments: [Proposition 1 Grant Update](#)
[Opt Out Agreement Template](#)
[Right-of-Entry Agreement Template](#)
7. Update on Well Permit Application Activities

Attachments: [Well Permit Activities Update](#)
8. Update on Groundwater Sustainability Agency activities in the Salinas Valley Basin

Attachments: [7 GSA Activities](#)
[Groundwater Subbasins Map](#)
9. Update on Agency Modeling Activities

Attachments: [Agency Modeling Activities](#)

Calendar

10. Consider future agenda items and set next meeting date

Adjournment



Monterey County

Item No.1

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: WRABMAC 21-020

April 07, 2021

Introduced: 3/31/2021

Current Status: Draft

Version: 1

Matter Type: WRA BMAC Item

Approve the Minutes of the Basin Management Advisory Committee meetings held on March 3, 2021.

Monterey County

1441 Schilling Place
Salinas, CA 93901



Action Minutes - Draft

Wednesday, March 3, 2021

8:30 AM

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AVISO IMPORTANTE SOBRE COVID-19 EN LA PAGINA 2-4

Water Resources Agency Basin Management Advisory Committee

*John Baillie
Deidre Sullivan
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8. El Presidente y / o Secretario pueden establecer reglas razonables según sea necesario para llevar a cabo la reunión de manera ordenada.

Call to Order

The meeting was called to order at 8:30 a.m.

Roll Call

Present: John Baillie, Deidre Sullivan, Matthew Simis, David Bunn, Bill Lipe
Joined after roll call: Kevin Pearcy, Amy White, Patrick Breen

Absent: Patrick Collins

Public Comment

None

Consent Calendar

1. Approve the Minutes of the Basin Management Advisory Committee meetings held on February 3 2021.

Attachments: [Draft Action Minutes February 3, 2021](#)

Upon motion by Matthew Simis, and seconded by Deidre Sullivan, the Committee approved the minutes for the meeting on February 3, 2021.

Ayes: Baillie, Sullivan, Simis, Bunn

Noes: None

Abstain: Lipe

Scheduled Matters

2. Consider receiving a report on Mechanisms and Pathways of Seawater Intrusion

Attachments: [Committee Report](#)
 [Attachment 1 Reference Sheet](#)
 [Attachment 2 Map](#)

Upon motion by Bill Lipe, and seconded by Deidre Sullivan, the Committee received the report.

Ayes: Baillie, Sullivan, Simis, Bunn, Lipe, Pearcy, White, Breen

Noes: None

Abstain: None

3. Consider receiving the draft 2020 Groundwater Level Contour Maps.

Attachments: [Committee Report](#)

Upon motion by Bill Lipe, and seconded by Deidre Sullivan, the Committee received the report.

Ayes: Baillie, Sullivan, Simis, Bunn, Lipe, Pearcy, White, Breen

Noes: None

Abstain: None

4. Consider receiving Draft 2020 Historical Seawater Intrusion Maps.

Attachments: [Committee Report](#)

Upon motion by Bill Lipe, and seconded by Deidre Sullivan, the Committee received the report.

Ayes: Baillie, Sullivan, Simis, Bunn, Lipe, Piearcy, White, Breen

Noes: None

Abstain: None

5. Consider receiving and recommending that the Board of Directors receive the Well Locations Report for the *Protection of Domestic Drinking Water Supplies for the Lower Salinas Valley* Project..

Attachments: [Committee Report](#)
 [Well Locations Report](#)

Upon motion by Bill Lipe, and seconded by Matthew Simis, the Committee received the report and recommended that the Board of Directors receive the Well Locations Report for the Protection of Domestic Drinking Water Supplies for the Lower Salinas Valley Project.

Ayes: Baillie, Sullivan, Simis, Lipe, Piearcy, Breen

Noes: None

Abstain: None

Staff Reports

6. Proposition 1 Implementation Grant Update: *Protection of Domestic Drinking Water Supplies for the Lower Salinas Valley*

Attachments: [Proposition 1 Grant Update](#)

7. Update on Well Permit Activities

Attachments: [Well Permit Activities Update](#)

8. Update on Groundwater Sustainability Agency activities in the Salinas Valley Basin

Attachments: [GSA Activities Update](#)

9. Update on Agency Modeling Activities

Attachments: [Agency Modeling Activities](#)

Calendar

10. Consider future agenda items and set next meeting date

The next meeting date is April 7, 2021.

Adjournment

The meeting adjourned at 9:48 a.m.



Monterey County

Item No.2

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: WRABMAC 21-022

April 07, 2021

Introduced: 4/1/2021

Current Status: Agenda Ready

Version: 1

Matter Type: WRA BMAC Item

Consider receiving a report on the Analysis of Groundwater Wells and Extractions in the "Area of Impact" of the 180/400 Foot Aquifer Subbasin and provide input to Staff and Agency Board of Directors

RECOMMENDATION:

It is recommended that the Basin Management Advisory Committee:

Receive a report on Analysis of Groundwater Wells and Extractions in the "Area of Impact" of the 180/400 Foot Aquifer Subbasin and provide input to Staff and Agency Board of Directors

SUMMARY:

At their March 15, 2021 meeting, the Agency Board of Directors asked staff to evaluate the number of wells and amount of groundwater extraction occurring within the "Area of Impact" of the 180/400 Foot Aquifer Subbasin of the Salinas Valley Groundwater Basin.

DISCUSSION:

Staff will present to the Committee draft information from their initial analysis of wells and groundwater extraction occurring within the "Area of Interest" of the 180/400 Foot Aquifer Subbasin. The Committee will be asked to provide feedback and guidance, which Staff will use to refine and focus their investigations. Based on that feedback and guidance, Staff will continue analysis for possible submittal to the Agency Board of Directors at their April 2021 meeting.

OTHER AGENCY INVOLVEMENT:

None. This work is being done at the direction of the Monterey County Water Resources Agency Board of Directors.

FINANCING:

There is no financial impact in receiving this report.

Funds 111, 116: Data Collection, Processing, Analysis and Reporting

Prepared by: Howard Franklin, Senior Hydrologist, (831) 755-4860
Nicole Koerth, Hydrologist, (831) 755-4860

Approved by: Brent Buche, General Manager



Monterey County

Item No.

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: WRABMAC 21-022

April 07, 2021

Introduced: 4/1/2021

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Prepared by: Howard Franklin, Senior Hydrologist, (831) 755-4860
Nicole Koerth, Hydrologist, (831) 755-4860

Approved by: Brent Buche, General Manager



Monterey County

Item No.3

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: WRABMAC 21-023

April 07, 2021

Introduced: 4/1/2021

Current Status: Agenda Ready

Version: 1

Matter Type: WRA BMAC Item

Consider receiving a report on the DWR Bulletin 74: California Well Standards Update Project and providing input to Staff for upcoming Technical Advisory Committee meetings.

RECOMMENDATION:

It is recommended that the Basin Management Advisory Committee:

Receive a report on the DWR Bulletin 74: California Well Standards Update Project and provide input to Staff for upcoming Technical Advisory Committee meetings.

SUMMARY:

The California Department of Water Resources (DWR) is in the process of updating the State Well Standards, known as Bulletin 74, which was last updated in 1991. Upon completion of the update, Bulletin 74 will be submitted to the State Water Resources Control Board for adoption into a Statewide Model Well Ordinance (<https://water.ca.gov/well-standards>).

DWR has formed a Technical Advisory Committee (TAC) as part of the updating process and, as the MCWRA Board of Directors was informed in January 2021, Staff Hydrologist Amy Woodrow ("Staff") has been selected by DWR to participate on the TAC.

DISCUSSION:

TAC Process

The TAC process is designed to occur in two phases; each phase involves meetings of several small focus groups of TAC members during which the focus group discusses a specific aspect of the Well Standards. The first phase occurs from March - June 2021 and the second from November 2021 - February 2022. The full TAC will reconvene in August 2022 to preview the Public Review Draft and again in December 2022 to preview the Final Standards before DWR submits them to the State Water Resources Control Board for adoption into the Model Well Ordinance.

As a TAC participant, Staff will serve as a liaison to MCWRA's stakeholders by soliciting input and reporting on outcomes from the DWR Bulletin 74: California Well Standards Update Project. Outreach by Staff will be provided through updates to the Basin Management Advisory Committee ("BMAC") and the MCWRA Board of Directors.

Focus Groups

Focus group topics for the first phase include Water Well Siting and Design, Sealing Materials and

Placement, Large Diameter Infiltration/Recharge Wells, Non-Vertical Wells, and Destruction. Focus group topics for the second phase include Water Wells, Monitoring Wells, Cathodic Protection Wells, and Geothermal Heat Exchange Wells.

Staff has been assigned to the Water Well Siting and Design focus group for the first phase and the Water Wells focus group for the second phase.

Meetings To-Date

The first TAC Plenary meeting was held on March 1, 2021 to kick off the DWR Bulletin 74 Update Project, review the TAC Charter, and address questions from TAC members. A summary of that meeting is provided as Attachment 1.

Meetings of three focus groups occurred in March 2021; Staff participated in the Water Well Siting and Design Focus Group (“Focus Group”) meeting on March 15, 2021 (Attachment 2). The Focus Group meeting covered the following topics: depth of annular surface seals, sealing-off strata, inter-aquifer seals, setbacks, and floodproofing a wellhead.

The Focus Group discussion was guided by a series of questions posed by DWR. Background reading was required of TAC members prior to the Focus Group meeting to support and provide context to the discussion questions, summarized below with additional detail in Attachment 3.

1. Depth of Annular Seal
 - a. Can we do better than “somewhat arbitrary” “customs and practices” for annular surface seal lengths?
 - b. What would an annular surface seal depth based on geology look like?
 - c. CCDEH/CGA comments recommend a single fixed minimum annular surface seal depth of 50 feet regardless of hydrogeologic conditions and intended well use. This recognizes that the mechanism for contamination is the same, no matter the intended use of the well. If one single depth is applied, what should the depth be?
 - d. What are the advantages and disadvantages of requiring that the annular surface seal be extended from the ground surface to the top of the uppermost screen interval (minus gravel reservoir + transition seal, as needed)?
2. Sealing-off Strata
 - a. How can it be assured that existing undesirable groundwater quality is being identified to support decisions about sealing off strata as required by the current Standards (i.e., what are the available tools and techniques and what is a reasonable level of effort)?
 - b. Are the efforts described in response to above Question reasonable and practical for all water wells (e.g. municipal, domestic, industrial, and agricultural)?
 - c. What should be the course of action in the absence of sufficient water quality information?
3. Inter-Aquifer Seals
 - a. For protecting aquifers from future contamination, is it a best practice to separate adjacent aquifers (of known or unknown water quality) with inter-aquifer seals?
 - b. What current well logging practices can be used to consistently identify aquifers as defined in Bulletin 74?
 - c. Can inter-aquifer seals be required for the protection of the aquifer in a way that is

consistent and enforceable?

4. Setbacks

- a. Are minimum separation distances an important aspect of the well system for protecting the aquifer from contamination via the well structure? How?
- b. If important, can the empirically-based minimum separation distances in Bulletin 74 be improved?
- c. As an alternative to the empirically-based setbacks in Bulletin 74, what would a standard for site-specific setbacks look like?

5. Floodproofing a Wellhead

- a. Should all wells be protected from flooding at the same level as community water supply wells (e.g., 100-year)?
- b. How do we deal with areas below mean sea level such as exist in the Sacramento-San Joaquin River Delta?
- c. Should the Standards specify “alternate means of production?” What are they?

Opportunities for Participation

Staff will provide regular updates to BMAC and the MCWRA Board of Directors. Meeting summaries and discussion questions from the Focus Group will be shared. Responses to the Focus Group questions from Committee members, Directors, and the public will be brought back to the TAC.

Meetings of the Focus Groups and Plenary meetings of the TAC are available to the public via YouTube live stream, though there is not a mechanism for the public to provide real-time input during the meetings.

Members of the public can also participate in the update process by receiving email updates from DWR, submitting comments directly to DWR through an online comment portal or via email, and providing comments once the public review draft is released in September 2022. Details on these engagement opportunities is available at <https://water.ca.gov/well-standards>.

OTHER AGENCY INVOLVEMENT:

The DWR Bulletin 74: California Well Standards Update Project is being coordinated by the California Department of Water Resources. County staff from the Environmental Health Bureau are members of the California Conference of Directors of Environmental Health (CCDEH) which, in collaboration with the California Groundwater Association (CGA), are also active participants in the DWR Bulletin 74: California Well Standards Update Project.

FINANCING:

Fund 132

Prepared by: Amy Woodrow, Hydrologist, (831) 755-4860
Howard Franklin, Senior Hydrologist, (831) 755-4860



Monterey County

Item No.

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FINANCING:

Fund 132

Prepared by: Amy Woodrow, Hydrologist, (831) 755-4860
Howard Franklin, Senior Hydrologist, (831) 755-4860



Bulletin 74 Technical Advisory Committee

Plenary Meeting #1 Summary

Plenary Meeting #1

March 1, 2021, 1:00 pm – 5:00 pm

Virtual Meeting

Meeting Summary

California Department of Water Resources (DWR) hosted the first DWR Bulletin 74 Update Project Technical Advisory Committee (TAC) meeting with support from the Kearns & West facilitation team and Luhdorff & Scalmanini Consulting Engineers (LSCE) technical team. For a full list of attendees, please see the end of the meeting summary.

This meeting summary contains a general description of presentation topics and summaries of opening remarks, question-and-answer sessions, and TAC discussions.

Welcome, Introductions, and Agenda Review

Julie Leimbach, facilitator from Kearns & West, welcomed attendees to the first TAC Plenary meeting. The meeting objectives were the following:

- Kick off and review the public engagement process for the DWR Bulletin 74 Update Project.
- Convene the TAC for the first time.
- Reflect collected interests and concerns and gather additional input.
- Review the TAC Charter and gather input.
- Review the Focus Group proposed issues areas.
- Provide background on DWR Bulletin 74 Update Project in context of groundwater management.

The TAC members answered the following two poll questions:

- Where are you Zooming in from?
- What sector do you represent?

Opening Remarks

Kamyar Guivetchi, DWR Manager, Division of Planning, thanked TAC members for donating their time and bringing a broad diversity of expertise and experience. He noted that, unlike past well standard update efforts, DWR is fully resourced to complete this update process. The Bulletin 74 Well Standards Update Project is included in both DWR's Strategic Plan, in the Sustainable Groundwater Management Office strategic guidance, as well as the California Water Resilience Portfolio. The project will also improve the consistency among the well standards and merge the multiple update processes.

The TAC's work will inform the creation of a public review draft, which will provide an opportunity for more input. This will all be important in creating standards that are effective and prevent the contamination of our water resources, a key ingredient in ensuring we have sustainable groundwater resources.

DWR Well Standards within the Groundwater Context

Vicki Kretsinger Grabert, LSCE President and Senior Principal Hydrologist, and Carl Hauge, Retired DWR Chief Hydrogeologist, presented on DWR Bulletin 74: California Well Standards (Well Standards) within the groundwater context.

Kretsinger Grabert presented on the following topics:

- DWR Bulletin 74 Update Project vision and mandate
- Other groundwater quality protection laws and programs
- Coordination between water quality programs
- Well structures as potential conduits for contaminants.
- Importance of TAC contributions

Hauge presented on the history of groundwater management and regulations and how they relate to the DWR Bulletin 74 Update Project. He

provided an overview of the following topics:

- Chronology of authorization for well standards
- Which issues are not included in well standards
- Minimum statewide standards
- The State Water Resources Control Board (SWRCB) Model Well Ordinance
- Other agencies with well standards
- Importance of preventing groundwater contamination

State Water Resources Control Board Model Well Ordinance Process

John Borkovich, SWRCB Groundwater Monitoring Section Chief with the Division of Water Quality, presented on the Model Well Ordinance Process and noted the following:

- The SWRCB and Regional Water Boards, collectively referred to as the Water Boards, have assembled a team for this process, including staff from the Division of Water Quality, Division of Drinking Water, the Groundwater Ambient Monitoring and Assessment (GAMA) Program, as well the Regional Water Boards.
- The Water Boards will update the Model Well Ordinance 12-16 months after the conclusion of the DWR Bulletin 74 Update Project.
- The process will include SWRCB approval and submittal to the Office of Administrative Law.

DWR Well Standards Vision and Plan

Julie Haas, DWR Senior Engineer and Project Manager for the DWR Bulletin 74 Update Project, presented on the project vision and plan. She covered the following:

- History of stakeholder engagement in developing well standards
- DWR Bulletin 74 Update Project Team Composition
- TAC Purpose, Process, Schedule, Focus Groups, and Selection Process

Technical Advisory Group members then answered a series of questions about what was in and out of scope for the DWR Bulletin 74 Update Project.

Haas then reviewed the Project Vision and Guiding Principles.

TAC Interest Survey Results

Leimbach presented the results of the TAC Interest Survey, which was filled out by prospective TAC members. Over 100 applicants representing a diversity of sectors responded to the survey. Leimbach presented a high-level summary of the interests submitted by TAC applicants.

Break

Question and Answer Session

Below is a summary of questions and comments on the proceeding section and the responses from the project team.

- Question (Q): When will the Draft (Geothermal Heat Exchange Well) Well Standards be made available for TAC members to review?
 - Answer (A): DWR has prepared an Administrative Draft of the Geothermal Heat Exchange Well Standards, however it is not releasing it yet, because it may be revised based on input collected during the Phase 1 Focus Groups (March – June 2021). Phase 1 Focus Groups are primarily reviewing current bulletins and research and gathering information and input. Phase 2 Focus Group members will be reviewing draft sections of the Well Standards, including the Draft GHEW Standards. The Updated Well Standards are scheduled to be released for Public Review by Fall 2022.
- Q: How long will TAC members have to review materials before Focus Group Meetings?
 - A: Focus Group members should review the Focus Group Syllabus, which includes a guide to important reference materials and watch the pre-recorded Preview Webinar. The Syllabus will be sent out 3-4 weeks before the first meeting of each Focus Group and the prerecorded Preview Webinar will be sent out 1 week before the first Focus Group meeting.
- Q: The Guiding Principles mention that DWR will use discretionary language in the Updated Well Standards when there is good reason to do so: Is it DWR's objective to set the level of discretion such that CEQA review is not triggered?
 - A: No, that is not our objective. DWR's objective is to prepare standards that are protective of groundwater quality. As noted in

the Guiding Principle, discretion has been built in intentionality because there is so much variability with each well. Local enforcing agencies are given flexibility in implementing the standards. DWR is aware that vague language can make the standards difficult to interpret and enforce. So, we will be revisiting language in the Well Standards in consideration of what will be protective and enforceable.

TAC Charter & TAC Process Goals and Rules

Leimbach reviewed the TAC Charter and provided an overview of TAC purpose, roles and responsibilities, and schedule. She highlighted the following key points:

- The TAC will support DWR in an advisory capacity.
 - The TAC will provide input to DWR to develop updated Well Standards that are enforceable, protective, and based on the current state of knowledge and best practices.
 - DWR has final authority over the Updated Well Standards, which will be submitted to the State Water Resources Control Board for adoption into a Statewide Model Well Ordinance.
- The TAC will meet in two phases, which will be followed by the Public Review period. The meeting schedule has been posted to the TAC Box site.
 - Meeting materials for the TAC Plenary will be provided at least 1 week in advance.
 - Syllabus for Focus Groups will be sent out 3-4 weeks before the first meeting of each Focus Group and the prerecorded Preview Webinar will be sent out 1 week before the first Focus Group meeting.
 - Summaries for each meeting will be available 2 weeks following each TAC Plenary and Focus Group meeting.
 - Focus Groups will be the primary forum for providing input and discussing key unresolved issues.
 - TAC members are invited to observe any Focus Group meetings via the live stream link.
 - Primary and Alternate Focus Group members should coordinate

on attending meetings and sharing information.

- TAC members are expected to:
 - Prepare for and attend all TAC Plenary and Focus Group meetings.
 - Each Focus Group will be provided with a Meeting Syllabus which outlines key unresolved issues, discussion questions, and the reading materials and videos that have been posted to the Focus Group Box folder.
 - Collect input from and disseminate information to constituents.
 - Identify areas of uncertainty in the Well Standards.
 - Provide written feedback when requested.
 - Contribute to a rich discussion, research additional information, and learn about other TAC member interests. Consensus is not expected amongst TAC members.
- TAC Process Guiding Principles
- TAC Ground rules
- Guidelines for External Communications

Focus Groups and Issue Areas Overview

Till Angermann, LSCE Principal Hydrogeologist, gave an overview of the topics that will be covered in the first two Focus Groups:

- Sealing Materials & Placement Focus Group Topics:
 - Sealing Material Selection
 - Radial Thickness of Seal
 - Maximum Aggregate Size for Cement-Based Sealing Material
 - Verification of Seal Placement
 - Provisions to Allow Alternate Sealing Materials
- Water Well Siting & Design Focus Group Topics:
 - Sealing Material Selection
 - Radial Thickness of Seal
 - Maximum Aggregate Size for Cement-Based Sealing Material

- Verification of Seal Placement
- Provisions to Allow Alternate Sealing Materials

TAC Charter Breakout and Report-Out

The Technical Advisory Committee split into breakout groups to discuss questions and comments about the charter.

Leimbach reported on some of the questions and comments from the TAC Charter breakout sessions. Below is a summary of questions, comments, and responses.

General Comments

- Some TAC members were ready to approve the Charter.
- The Charter is well organized.
- Meeting summaries will be useful for the TAC members.

Focus Group Structure

- Q: Why are there five Focus Groups in the Phase 1 and four Focus Groups in Phase 2?
 - A: TAC members have not been assigned to the same number of Focus Groups. Focus Groups vary in size and composition due to different needs for sector representation and varying levels of interest.
- Q: What will the meeting structure of Focus Groups be?
 - A: Julie Leimbach will facilitate the Focus Groups and Julie Haas will synthesize and reflect back comments received during the meetings. Till Angermann and Scott Lewis will actively participate in the meetings.
- Q: How will DWR ensure that all ideas are heard?
 - A: DWR has intentionally made Focus Groups small enough to encourage discussion and representative of multiple sectors. The facilitator also has the responsibility to ensure all ideas are heard and documented.
- Q: How will we capture topics that fall outside of the scope of the Focus Group and TAC meetings? Will we keep a parking lot of topics?
 - A: DWR plans to develop a white paper with outstanding questions and recommended areas for future research. DWR will

consider using a “parking lot” to capture additional TAC input for this white paper.

- Q: How will consensus be documented?
 - A: The TAC is not expected to reach consensus. DWR will consider all input from TAC members and document areas of agreement and divergence.
- Q: Will any of these meetings be conducted in person?
 - A: Currently, all meetings have been planned as virtual meetings. The project team will consider in-person meetings if conditions improve.
- Q: When are different Focus Groups meeting?
 - A: The TAC and Focus Group meeting schedule is posted on the TAC Box Site.

Focus Group Members: Primaries and Alternates

- Q: Can TAC members attend different Focus Groups?
 - A: TAC members can observe any Focus Group meeting via the YouTube live stream. If appropriate, TAC members are encouraged to coordinate with primary or alternate Focus Group members as well. In the interest of promoting equitable and productive discussions, TAC members will not be able to change Focus Group assignments.
- Q: How do observers access materials for the Focus Group meetings?
 - A: Through the TAC Box Site via the link emailed to them. The Box link can be shared with individuals or groups but should not be posted to a website.
- Q: Where is the list of Focus Group primary and alternate members?
 - A: The roster for each Focus Group is on the Box site. These rosters will be updated shortly to reflect some recent changes to the TAC and Focus Groups.
- Q: If Focus Group members cannot attend a Focus Group meeting, can they assign their own alternates?
 - A: Focus Group members should notify the facilitation team if they cannot attend a meeting. The project team may first ask

another TAC member to serve as an alternate.

- Q: How do alternates watch Focus Group meetings?
 - A: If the primary member is attending the meeting, then alternates can watch via the YouTube live stream. It is important that only the primary or the alternate member attends the meeting to keep the Focus Groups small enough for productive discussions and avoid overrepresentation from any particular group.

Materials

- Q: Do the Focus Group meeting materials include the Draft Well Standards?
 - A: The Administrative Draft will not be available for review in Phase 1. The meeting materials include a syllabus with background information and discussion questions. Portions of the Administrative Draft language may be available for review by the Focus Groups in Phase 2. The DWR Project Team will consider the input from Phase 2 Focus Groups as it prepares the Public Review Draft.
- Q: Will there be action items for the Focus Groups?
 - A: Focus Group meetings may result in action items. For example, if Focus Group members identify new information or research, then there may be an action item for the Focus Group to share this information.
- Q: How do Focus Group members share additional reference material?
 - A: Focus Group members are invited to send additional reference material to Julie Haas or the Kearns & West Facilitation Team so that DWR can consider sharing with the rest of the Focus Group.

External Communications & Livestream YouTube

- Q: How is it possible to avoid having information sent to the media?
 - A: TAC members are asked to refrain from providing materials to the media so that views or perspectives are not attributed to other TAC members in the media out of context. The links to the Focus Groups materials and YouTube live streams are available to any interested party upon request.

- Q: Will the recordings of the TAC and Focus Group meeting live streams be made available for viewing?
 - A: TAC Plenary and Focus Group meetings will be live streamed on YouTube. The recordings will not be shared publicly and will only be used for notetaking purposes.

Draft Well Standards

- Q: Will DWR provide the rationale for any reduction in the explanatory language in the Updated Well Standards?
 - A: The Project Team is reducing explanatory language because DWR has received feedback asking to make the Well Standards language more concise. DWR will provide succinct documentation to explain the basis for these changes.
- Q: Will there be opportunities to review takeaways before the Updated Draft are developed?
 - A: At the end of each Focus Group meeting, the Kearns & West Facilitation Team will distribute high level meeting summaries, including takeaways. Focus Group members are invited to email the Facilitation Team if any key takeaways are missing from the summaries.

Model Well Ordinance Process

- Q: How will the Water Boards conduct outreach for the Model Well Ordinance process?
 - A: There will be a public process, including opportunities to provide comment. It will be important to work through the chain of command for comments, which may be limited to supervisors and senior district engineers. The exact opportunities for outreach and input are still to be determined.

Questions Not Addressed During the Meeting

The following question was not answered in the meeting, but a response was prepared for this summary.

- Q: What is the deliverable of the TAC process?
 - A: DWR will consider input from The TAC to produce a Public Review Draft. TAC members themselves will not produce a

deliverable. As stated in the Charter, "DWR may request written feedback on draft content during the TAC process, however, as a rule, all input should be provided during the TAC Focus Group meetings."

Review Next Steps & Action Items

Leimbach thanked everyone for attending and closed the meeting.

Next Plenary TAC Meeting: Monday, June 21, 2021, 1:00 – 5:00 PM

Attendance

*Denotes California Groundwater Association Representative

+Denotes California Conference of Environmental Health Directors Representative

#Denotes Groundwater Resources Association of California Representative

Technical Advisory Committee

- | | |
|--|---|
| <ul style="list-style-type: none">• David Abbott, Consulting Geologist*• David Alaniz, San Bernardino County Department of Public Health+• Ed Anderson, Baroid Industrial Drilling Products• Juan Anzora, Orange County Health Agency• Chris Beegan, State Water Resources Control Board• Dana Booth, Sacramento County• Jim Brookshire, Roadrunner Drilling & Pump Co., Inc.• Kevin Brown, State Water Resources Control Board• Aaron Button, State Water | <ul style="list-style-type: none">Resources Control Board• Alexandra Calderon, San Bernardino County Department of Public Health+• Bill Cameron, Valley Water• Kassy Chauhan, Fresno Irrigation District/North Kings Groundwater Sustainability Agency• Tom Christopherson, Groundwater Solutions Group LLC• Chris Coppinger, Geoscience Support Services Inc.• Bill De Jong, Torrent Resources• Bill DeBoer, Montgomery and |
|--|---|

Associates#

- Randy Dockery, Gregg Drilling LLC
- Mike Duffy, Valley Water
- Adrienne Ellsaesser, Blackwater Consulting Engineers, Inc.
- Larry Ernst, Affinity Engineering
- David Field, Orange County Water District
- Jim Finegan, Kleinfelder, Inc.
- Dave Fulton, Diamond Well Drilling
- Jacob Gallagher, Ellingson-DTD
- Christopher Guerre, CA Department of Toxic Substances Control
- Thomas Henderson, Eastern Municipal Water District
- Mark Howard, Layne Christensen Company
- Erin Huang, Jacobs
- Chris Hunley, Sacramento County Environmental Management Department
- Vicki Jones, Merced County Department of Public Health+
- Misty Kaltreider, Solano County, Department of Resource Management
- Kristine Kim, Riverside County, Department of Environmental Health+
- Russell Kyle, Kyle Groundwater
- Dave Landino, Landino Drilling*
- Bill Leever, Orange County Water District
- Mike Maggiora, Maggiora Bros. Drilling*
- Kevin McGillicuddy, Roscoe Moss Company
- Dan McGrew, Farwest Corrosion
- Steve McKim, American Construction and Supply, Inc.
- Tylor McMillan, Tylor McMillan's Well Service, LLC*
- Lisa Meline, Meline Engineering Corporation
- Mark Metzner, Greensleeves LLC
- Mike Meyer, Michael Meyer Well Consulting*
- Michelle Myers, Alameda County Water District
- Jane Nguyen, Orange County Health Care Agency+
- Travis Pacheco, Torrent Resources
- Keith Packard, East Bay Municipal Utility District

- Michael Palmer, de maximis, inc.
- Adam Questad, Geosyntec Consultants
- Greg Reyes, Riverside County, Department of Environmental Health+
- Ali Rezvani, State Water Resources Control Board
- John Ricker, County of Santa Cruz Health Service Agency (Retired)+
- Patrick Sarafolean, Minnesota Department of Health
- Mike Schumacher, Pacific Surveys, LLC
- Adnan Siddiqui, Regional Water Quality Control Board, Los Angeles Region 4
- Ronald Sorenson, Sorensen Groundwater Consulting, Inc.
- Brandon Steets, Geosyntec Consultants
- Jim Strandberg, Woodard & Curran#
- Brian Villalobos, Geoscience Support Services Inc.
- Dave Vossler, West Yost
- Todd Wallbom, CA Department of Toxic Substances Control
- Jeremy Wire, Geoconsultants, Inc.*

- Amy Woodrow, Monterey County Water Resources Agency
- Joe Zilles, Kleinfelder, Inc.

Department of Water Resources (DWR)

- James Albertoni
- Eric Gorman
- Julie Haas, Project Manager
- Jason Preece
- Mark Souverville
- Debbie Spangler
- David Sullivan

Presenters

- John Borkovich, State Water Resources Control Board
- Kamyar Guivetchi, DWR
- Carl Hauge, Retired DWR
- Vicki Kretsinger Grabert, LSCE

Luhdorff & Scalmanini Consulting Engineers (LSCE)

- Till Angermann
- Scott Lewis

Kearns & West Facilitation Team

- Sharon Hu
- Jack Hughes
- Julie Leimbach

Water Well Siting and Design Focus Group

Name	Employer	Alternate
David Abbott	Consulting Geologist	Jeremy Wire, Geoconsultants, Inc.
Chris Coppinger	Geoscience Support Services Inc.	Russell Kyle, Kyle Groundwater
Bill DeBoer	Montgomery and Associates	
Mike Duffy	Valley Water	
Adrienne Ellsaesser	Blackwater Consulting Engineers, Inc.	
Larry Ernst	Affinity Engineering	
Christopher Guerre	CA Department of Toxic Substances Control	Todd Wallbom, CA Department of Toxic Substances Control
Mark Howard	Layne Christensen Company	
Vicki Jones	Merced County Department of Public Health	Alexandra Calderon, San Bernardino County Department of Public Health
Ali Rezvani	State Water Resources Control Board	
Patrick Sarafolean	Minnesota Department of Health	
Mike Schumacher	Pacific Surveys, LLC	Michael Ridder, Pacific Surveys, LLC
Adnan Siddiqui	Regional Water Quality Control Board, Los Angeles Region 4	Kevin Brown, State Water Resources Control Board
Amy Woodrow	Monterey County Water Resources Agency	

Focus Group on Water Well Siting and Design

- Syllabus

Discussion Topics:

1. Depth of Annular Surface Seal
2. Sealing-off Strata
3. Inter-Aquifer Seals
4. Setbacks
5. Floodproofing a Wellhead

Introduction

The annular surface seal, the sealing of poor-quality strata, inter-aquifer seals, setbacks, floodproofing a wellhead, and other surface construction features (e.g., openings, air vents, backflow prevention, etc.) all contribute toward preventing the well structure from allowing:

- the entry of contaminated surface water to usable groundwater, and
- the mixing of poor-quality groundwater with usable groundwater.

Each of these components of the well structure has vulnerabilities and can fail. To achieve an acceptable level of risk, all of the components work together as a protective system, with each component adding redundancy.

1. Depth of Annular Surface Seal

Background

Combined Bulletin 74-81 & 74-90 *Section 9.A Minimum Depth of Annular Surface Seal* specifies different minimum seal depths for water wells ranging from 20 to 50 feet, depending on the intended use of the well (irrigation, domestic, public supply, industrial, etc). These minimum seal depths were developed based on existing "customs and practices" and "industry consensus" (letter from Edwin A. Ritchie to John DeLucchi, dated May 11, 1982). However, it was acknowledged that the optimal depth for the annular surface seal was not known and that the minimum standards were "somewhat arbitrary."

Notwithstanding *Section 13 Sealing-off Strata*, the Bulletin implicitly allows,

depending on subsurface conditions, the annular space between the bottom of the annular surface seal and the first screened interval to be filled with non-sealing material (e.g., gravel). *Section 23 Requirements for Destroying Wells* allows the annular space between the bottom of the annular surface seal and the first screened interval to be filled with non-sealing material (e.g., gravel). In both of these sections, the Standards assume that groundwater quality is known.

The current Standards do not take into consideration potential future changes in hydrogeologic conditions such water quality degradation or variation in groundwater levels due to seasonal and long-term natural processes or anthropogenic activities.

Questions

1. Can we do better than “somewhat arbitrary” “customs and practices” for annular surface seal lengths?
2. What would an annular surface seal depth based on geology look like?
3. CCDEH/CGA comments recommend a single fixed minimum annular surface seal depth of 50 ft regardless of hydrogeologic conditions and intended well use. This recognizes that the mechanism for contamination is the same, no matter the intended use of the well. If one single depth is applied, what should the depth be?
4. What are the advantages and disadvantages of requiring that the annular surface seal be extended from the ground surface to the top of the uppermost screen interval (minus gravel reservoir + transition seal, as needed)?

2. Sealing-off Strata

Background

In *Section 13, Sealing-off Strata*, the term “strata” is used interchangeably with “aquifer.” The current Standards do not define “strata,” but give the following definition of “aquifer:”

Aquifer. A geologic formation, group of formations or part of a formation that is water bearing and which transmits water in sufficient quantity to supply springs and pumping wells.

Combined Bulletin 74-81 & 74-90 *Section 13. Sealing-off Strata* states:

“In areas where a well penetrates more than one aquifer, and one or more of the aquifers contains water that, if allowed to mix in sufficient quantity, will result in a significant deterioration of the quality of water in the other aquifer(s) or the quality of water produced, the strata producing such poor-quality water shall be sealed off to prevent entrance of the water into the well or its migration to other aquifer(s).”

The current Standards further specify that a seal be placed opposite the entirety of the poor-quality aquifer plus at least 10 feet into the confining layers. Placement of such a seal serves to:

- Prevent migration of poor-quality water to another aquifer via the annular space
- Add protection from poor-quality water entering a compromised well casing (e.g., due to corrosion)
- Improve eventual well destruction

Improved well destruction is thought to be achieved by placing the seal during construction directly in the annular space as opposed to perforating the blank casing and pushing sealant through the perforation into the annular space during destruction.

The current Standards do not describe or prescribe the scope of efforts to identify aquifers of poor-quality water. In practice, such data are typically not collected.

Questions

1. How can it be assured that existing undesirable groundwater quality is being identified to support decisions about sealing off strata as required by the current Standards (i.e., what are the available tools and techniques and what is a reasonable level of effort)?
2. Are the efforts described in response to above Question 1 reasonable and practical for all water wells (e.g., municipal, domestic, industrial, and agricultural)?
3. What should be the course of action in the absence of sufficient water quality information?

3. Inter-Aquifer Seals

Background

The current Standards do not include provisions for inter-aquifer seals. Inter-aquifer seals are placed against confining layers between aquifers. The purpose of inter-aquifer seals is to:

- Improve eventual well destruction of a single casing well with multiple screened sections, as explained above in the second to last paragraph in *Sealing-off Strata Background*
- Facilitate partial well destruction to maintain water quality objectives at the well head
- Prevent the exchange of water between aquifers (e.g., in the case of a nested monitoring wells with multiple casings in one borehole that monitor different distinct aquifers)

Inter-aquifer seals do not prevent the exchange of water between aquifers through wells with screens in more than one aquifer.

Questions

1. For protecting aquifers from future contamination, is it a best practice to separate adjacent aquifers (of known or unknown water quality) with inter-aquifer seals?
2. What current well logging practices can be used to consistently identify aquifers as defined in Bulletin 74 (see Terminology)?
3. Can inter-aquifer seals be required for the protection of the aquifer in a way that is consistent and enforceable?

4. Setbacks

Background

Combined Bulletin 74-81 & 74-90 *Section 8.A Separation* states (emphasis added):

“All water wells shall be located an **adequate** horizontal distance from known or potential sources of pollution and contamination. Such sources include, but are not limited to...”

The Bulletin specifies numerical minimum horizontal separation distances (i.e.,

setbacks) between water wells and known or potential sources of pollution or contamination as follows:

Potential Pollution or Contamination Source	Minimum Horizontal Separation Distance Between Well and Known or Potential Source
Any sewer (sanitary, industrial, or storm; main or lateral)	50 feet
Watertight septic tank or subsurface sewage leaching field	100 feet
Cesspool or seepage pit	150 feet
Animal or fowl enclosure	100 feet

In this context, the Bulletin states that these horizontal separation distances (emphasis added):

“... are generally considered **adequate** where a significant layer of unsaturated, unconsolidated sediment less permeable than sand is encountered between ground surface and groundwater. These distances are based on present knowledge and past experience. Local conditions may require greater separation distances to ensure groundwater quality protection.”

The Bulletin does not explain what “adequate” means. This has caused confusion, including a false sense of security that the Standards ensure the safety of the well’s end user. For example, California Department of Health Services (2006, p. 13) states:

“The Department of Water Resources (DWR) has developed statewide construction standards for all new wells in California that provide adequate safety for public water supply wells.”

However, the Standards were not developed with the goal of ensuring safe drinking water. The long-standing interpretation of the law is that DWR is responsible for establishing standards for well construction, maintenance,

abandonment, and destruction to prevent the well structure from allowing:

- the entry of contaminated surface water to usable groundwater, and
- the mixing of poor-quality groundwater with usable groundwater.

Setbacks, as presently specified in the Standards, may at once be ineffective and excessively restrictive:

- There are many pollution sources that are not included in the list.
- Setbacks do not include non-point pollution sources.
- Vertical separation is as least as critical as lateral separation for the purpose of reducing the risk of a contaminant reaching a well intake.
- The Standards state that LEA's may approve lesser setback distances, but this is not applied consistently.

Questions

1. Are minimum separation distances an important aspect of the well system for protecting the aquifer from contamination via the well structure? How?
2. If important, can the empirically-based minimum separation distances in Bulletin 74 be improved?
 - A. Keep as-is?
 - B. Revise/expand list of pollutant point-sources?
 - C. Revise horizontal distances?
 - D. Different setbacks for different water wells (e.g., public water supply wells vs. agricultural irrigation wells)?
3. As an alternative to the empirically-based setbacks in Bulletin 74, what would a standard for site-specific setbacks look like?
 - A. What is the scope of the analysis?
 - B. Who does the analysis?
 - C. Does the analysis come with a "warranty" or "certification?" What is the extent of the "warranty?"
 - D. Does LEA review/approve the analysis?

5. Floodproofing a Wellhead

Background

Combined Bulletin 74-81 & 74-90 *Section 8.C. Flooding and Drainage* states:

"If possible, a well should be located outside areas of flooding. The top of the well casing shall terminate above grade and above known levels of flooding caused by drainage or runoff from surrounding land. For community water supply wells, this level is defined as the:

"...floodplain of a 100 year flood..." or above "...any recorded high tide...", (Section 64417, Sitting Requirements, Title 22 of the California Code of Regulations.)

If compliance with the casing height requirement for community water supply wells and other water wells is not practical, the enforcing agency shall require alternate means of protection.

Surface drainage from areas near the well shall be directed away from the well. If necessary, the area around the well shall be built up so that drainage moves away from the well."

In many places, Combined Bulletin 74-81 & 74-90 refers to non-specific "known flood levels" or "areas of flooding."

Questions

1. Should all wells be protected from flooding at the same level as community water supply wells (e.g., 100-year)?
2. How do we deal with areas below mean sea level such as exist in the Sacramento-San Joaquin River Delta?
3. Should the Standards specify "alternate means of protection?" What are they?

Terminology

Annular Seal [1] An interval of low permeability in the annular space constructed by placing approved materials. The primary purpose of the annular seal is minimizing vertical flow in the annular space. Secondary purposes of the annular seal include: protecting casing against corrosion or degradation, ensuring structural integrity of the casing, and stabilizing the borehole.

Annular Surface Seal [1] The uppermost annular seal that extends from essentially ground surface to a depth prescribed in the Standards.

Annular Space [2] The space between two well casings or between the casing and the wall of the drilled hole.

Aquifer [2] A geologic formation, group of formations or part of a formation that is water bearing and which transmits water in sufficient quantity to supply springs and pumping wells.

Surface Seal [1] The annular seal that extends over the length of the conductor casing between the outside of the conductor casing and the borehole wall.

Transition Seal [1] A seal placed between the top of the gravel pack and the bottom of the interval to be sealed for the purpose of preventing sealing material from infiltrating the gravel pack.

Notes

[1] DWR working definition

[2] Appendix A of the combined ADA-compliant Standard provided to the TAC

Reading Material

Prepare for the Focus Group meetings by reviewing the Essential Reading Materials below.

Essential and Optional Reading Materials listed below are provided in the shared file folder at <https://cadwr.box.com/s/6vl5zi31atgkhpvd65n5z xu8phbgfco4>

Essential Reading Material

DWR Combined Bulletin 74-81/90 (web-based document):
Water Wells, Sections 8, 9, 10, and 13

DDW Minimum Horizontal Distances Form

Supplemental Figures for Focus Group on Water Well Siting & Design

JDSUPRA.com article: "Supreme Court of California Weighs In on Blanket Categorization of Well Construction Permit Approvals as Ministerial" September 2, 2020 (Summary of POWER v Stanislaus County Court Decision)

Optional Reading Material

Ed Ritchie & DeLucchi Correspondence re: Basis of Annular Seal Depths in Bulletin 74

CDHS. 2006. Initial Statement of Reasons Waterworks Standards Title 22 CCR. California Department of Health Services. November 9, 2006.

Protecting our Water and Environmental Resources (POWER) et al. vs. County of Stanislaus. California Supreme Court decision. August 27, 2020.

Letter to Monterey County board of supervisors regarding amendments to chapter 15.08 of the Monterey County Code. December 22, 2020.



Monterey County

Item No.4

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: WRABMAC 21-028

April 07, 2021

Introduced: 4/1/2021

Current Status: Draft

Version: 1

Matter Type: WRA BMAC Item

Update on Source Water Discussions with Monterey One Water

Update on Source Water Discussions with Monterey One Water

SUMMARY:

Staff at Monterey One Water (M1W) and the Monterey County Water Resources Agency (MCWRA) have been working to understand and agree upon the distribution of water sources entering M1W's wastewater treatment plant. Although most of the water sources and their rights are defined in the Amended and Restated Water Recycling Agreement (ARWRA), there are some discrete sources where ownership has not been agreed to.

DISCUSSION:

After months of discussion and work the staff of both agencies have agreed to the allocation of six water sources not defined in the ARWRA. The attached table is a summary of identified water sources and agreed upon allocation. This item is for information only and no action is required.

OTHER AGENCY INVOLVEMENT:

None

FINANCING:

There is no financial impact in receiving this update.

Prepared by: Brent Buche, General Manager, (831) 755-4860

Attachments

Attachment 1 – Summary of Water Sources and Allocation Table



DRAFT Use of Source Waters for Recycling



Source Water	MCWRA and M1W Agree	Allocated To	Notes
1. Wastewater Inflow from within M1W's 2001 Boundary	X	MCWRA/M1W/MCWD	Defined in ARWRA Section 4.01 Includes M1W and MCWD Allotments
2. Reclamation Ditch	X	MCWRA/M1W	Defined in ARWRA
3. Blanco Drain	X	MCWRA/M1W	Defined in ARWRA
4. Salinas Industrial Wastewater	X	MCWRA/M1W	Defined in ARWRA & Salinas Agreement
5. Local Waste Sump #1	X	M1W	
6. Local Waste Sump #2	X	M1W	
7. Approved PWM Project & MCWD AWPB Backwash	X	M1W	
8. Proposed Modifications AWPB Backwashes	X	M1W	
9. SVRP Backwash	X	MCWRA	
10. Boronda	X	50% MCWRA/50% M1W	Defined in ARWRA
11. Farmworker Housing	X	50% MCWRA /50% M1W	Defined in ARWRA
12. SRDF Filter Backwash	X	MCWRA	
13. Salinas Pond #3	X	To be determined	
14. Other areas outside M1W's 2001 Boundary (if quantified)	X	50% MCWRA/50% M1W	Defined in ARWRA



Monterey County

Item No.5

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: WRABMAC 21-024

April 07, 2021

Introduced: 4/1/2021

Current Status: Draft

Version: 1

Matter Type: WRA BMAC Item

Update on the Well Permitting Process

Update on Well Permitting Process

SUMMARY:

A California Supreme Court opinion in *Protecting Our Water and Environmental Resources v. County of Stanislaus (POWER)* was issued on August 27, 2020. In short, the *POWER* opinion held that some permit issuances may be considered discretionary and subject to review under the California Environmental Quality Act (CEQA). *POWER* has resulted in the County re-evaluating its existing well ordinance and well permitting process, alongside many other counties in California.

DISCUSSION:

The Monterey County Health Department, Environment Health Bureau (EHB) is the entity that issues well permits in Monterey County. As a result of the *POWER* opinion (Attachment 1), EHB now receives input from staff with the Office of the County Counsel, County of Monterey Housing & Community Development, and an outside consultant as needed to determine what, if any, level of CEQA review is necessary for each well permit.

The Monterey County Water Resources Agency (MCWRA) continues to provide EHB with recommendations on technical aspects of well permitting in addition to fulfilling specific tasks related to well permitting where MCWRA is called out in the 2010 Monterey County General Plan. MCWRA is not involved in any CEQA-related activities associated with the well permitting process.

OTHER AGENCY INVOLVEMENT:

The Monterey County Health Department, Environmental Health Bureau issues well permits.

FINANCING:

There is no financial impact in receiving this update.

Prepared by: Amy Woodrow, Hydrologist, (831) 755-4860
Howard Franklin, Senior Hydrologist, (831) 755-4860

Attachments

Attachment 1 – *POWER v Stanislaus* Final Decision

**IN THE SUPREME COURT OF
CALIFORNIA**

PROTECTING OUR WATER AND ENVIRONMENTAL
RESOURCES et al.,

Plaintiffs and Appellants,

v.

COUNTY OF STANISLAUS et al.,

Defendants and Respondents.

S251709

Fifth Appellate District

F073634

Stanislaus County Superior Court

2006153

August 27, 2020

Justice Corrigan authored the opinion of the Court, in which
Chief Justice Cantil-Sakauye and Justices Chin, Liu, Cuéllar,
Kruger, and Groban concurred.

PROTECTING OUR WATER AND ENVIRONMENTAL
RESOURCES v. COUNTY OF STANISLAUS
S251709

Opinion of the Court by Corrigan, J.

The California Environmental Quality Act (CEQA or the Act; Pub. Resources Code, § 21000 et seq.)¹ regulates activities carried out, funded, or approved by the government. Any government action that may directly or indirectly cause a physical change to the environment is a “project.” (§ 21065; see § 21060.5 [“[e]nvironment” defined].) Generally, the issuance of a permit is a project (§ 21065, subd. (c)) because it could authorize a physical environmental change. Projects can be either discretionary or ministerial actions. Unless exempted, discretionary projects require some level of environmental review; ministerial projects do not. (§ 21080, subds. (a), (b)(1).) This case involves the distinction between discretionary and ministerial projects.

Stanislaus County (County) issues well construction permits under an ordinance that incorporates state well construction standards. It categorically classifies a subset of those projects as ministerial. Plaintiffs² challenge that classification practice, alleging the permit issuances are actually discretionary projects requiring CEQA review. They

¹ Unless noted, all statutory references are to the Public Resources Code.

² Plaintiffs are Protecting Our Water and Environmental Resources and the California Sportfishing Protection Alliance.

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Opinion of the Court by Corrigan, J.

seek declaratory and injunctive relief to stop the classification practice. The trial court found the permit issuances are ministerial and the Court of Appeal reversed. We hold the blanket classification of all these permit issuances as ministerial is unlawful. County may be correct that many of its decisions are ministerial. However, as we explain, under the ordinance authorizing the issuance of these permits, some of County's decisions may be discretionary. Accordingly, classifying all issuances as ministerial violates CEQA. Plaintiffs are entitled to a declaration to that effect. But they are not entitled to injunctive relief at this stage, because they have not demonstrated that *all* permit decisions covered by the classification practice are discretionary.

I. BACKGROUND

A. *The CEQA Framework*

CEQA was enacted to (1) inform the government and public about a proposed activity's potential environmental impacts; (2) identify ways to reduce, or avoid, those impacts; (3) require project changes through alternatives or mitigation measures when feasible; and (4) disclose the government's rationale for approving a project. (*California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 382 (*Building Industry*)). CEQA embodies a central state policy requiring "state and local governmental entities to perform their duties 'so that major consideration is given to preventing environmental damage.'" (*Friends of the Eel River v. North Coast Railroad Authority* (2017) 3 Cal.5th 677, 711, quoting § 21000, subd. (g).) Accordingly, CEQA prescribes how governmental decisions will be made whenever an agency undertakes, approves, or funds a project. (*Union of Medical*

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Marijuana Patients, Inc. v. City of San Diego (2019) 7 Cal.5th 1171, 1185 (*Medical Marijuana Patients*).

Under CEQA, an agency uses “a multistep decision tree.” (*Medical Marijuana Patients, supra*, 7 Cal.5th at p. 1185; see also Cal. Code Regs., tit. 14, § 15002, subd. (k).)³ Once an activity is determined to be a project, the next question is whether the project is exempt. (CEQA Guidelines, §§ 15002, subd. (k)(1), 15061, subd. (a).) Many types of projects, as well as all ministerial ones, are exempted. (§ 21080, subd. (b)(1) [exemption for ministerial projects]; CEQA Guidelines, § 15268, subd. (a) [same]; see generally §§ 21080, subd. (b), 21080.01–21080.07; CEQA Guidelines, §§ 15300–15333.)

If an agency concludes a particular project is exempt, it may file a notice of exemption, citing legal and factual support for its conclusion. (§ 21152, subd. (b); CEQA Guidelines, § 15062, subd. (a).) If the project is discretionary and does not qualify for any other exemption, the agency must conduct an environmental review. (*Medical Marijuana Patients, supra*, 7 Cal.5th at p. 1186.) A required environmental review proceeds in stages. The agency conducts an initial study to assess potential environmental impacts. (CEQA Guidelines, §§ 15002, subd. (k)(2), 15063, subd. (a).) If there is no substantial evidence that the project may significantly affect the environment, the agency prepares a negative declaration and environmental

³ CEQA is “implemented by an extensive series of administrative regulations promulgated by the Secretary of the Natural Resources Agency.” (*Medical Marijuana Patients, supra*, 7 Cal.5th at p. 1184.) These regulations can be found at title 14, division 6, chapter 3 of the California Code of Regulations, and will be referred to as the “CEQA Guidelines.”

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review ends. (§ 21080, subd. (c)(1); CEQA Guidelines, §§ 15002, subd. (k)(2), 15063, subd. (b)(2), 15070, subd. (a).) If potentially significant environmental effects are discovered, but the project applicant agrees to changes that would avoid or mitigate them, the agency prepares a mitigated negative declaration (§ 21080, subd. (c)(2); CEQA Guidelines, § 15070, subd. (b)), which also ends CEQA review. (*Medical Marijuana Patients*, at pp. 1186–1187.) Finally, if the initial study reveals substantial evidence that the project may have a significant environmental impact and a mitigated negative declaration is inappropriate, the agency must prepare and certify an environmental impact report (EIR) before approving the project. (§ 21080, subd. (d); CEQA Guidelines, §§ 15002, subd. (k)(3), 15063, subd. (b)(1); *Medical Marijuana Patients*, at p. 1187.)

B. Rules Regarding Project Classification

A permit issuance decision can be discretionary or ministerial depending on the circumstances. Those terms are defined in the CEQA Guidelines. A project is discretionary when an agency is required to exercise judgment or deliberation in deciding whether to approve an activity. (CEQA Guidelines, § 15357.) It is distinguished from a ministerial project, for which the agency merely determines whether applicable statutes, ordinances, regulations, or other fixed standards have been satisfied. (*Ibid.*) Ministerial projects are those for which “the law requires [an] agency to act . . . in a set way without allowing the agency to use its own judgment” (CEQA Guidelines, § 15002, subd. (i)(1).) They involve “little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special

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discretion or judgment in reaching a decision.” (CEQA Guidelines, § 15369.)

The CEQA Guidelines encourage agencies to classify ministerial projects on either a categorical or individual basis. (CEQA Guidelines, § 15268, subds. (a), (c).) That classification may be challenged for abuse of discretion. (*Sierra Club v. County of Sonoma* (2017) 11 Cal.App.5th 11, 23 (*County of Sonoma*).) As explained below, the nature and scope of judicial review under this standard depends on whether the determination being evaluated is factual or legal in character. (See *post*, Pt. II.B.)

C. County Well Permitting Ordinances

Two chapters of the Stanislaus County Code govern well permit issuance. Chapter 9.36 regulates the location, construction, maintenance, abandonment, and destruction of wells that might affect the quality and potability of groundwater. (Stanislaus County Code, § 9.36.010.) Chapter 9.37 regulates the extraction and export of groundwater. (Stanislaus County Code, § 9.37.040.)⁴

1. Chapter 9.36

Chapter 9.36, enacted in 1973, requires a permit from the county health officer to construct, repair, or destroy a water well. (Stanislaus County Code, § 9.36.030.) The chapter sets standards for each activity and conditions permit approval on compliance. (Stanislaus County Code, § 9.36.030.) Here, we

⁴ All designated references to Chapter 9.36 and Chapter 9.37 are to title 9 of the Stanislaus County Code.

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consider only well construction permits. Many permit standards are incorporated by reference to a state Department of Water Resources bulletin.⁵

Four of these incorporated state standards are relevant here. Section 8.A of the bulletin (Standard 8.A) addresses the distance between proposed wells and potential sources of contamination. It requires that all wells “be located an adequate horizontal distance” from those sources.⁶ The standard lists

⁵ Section 9.36.150 of the Stanislaus County Code provides that, except as otherwise provided, standards for well construction “shall be as set forth in Chapter II of the Department of Water Resources Bulletin No. 74.” The bulletin referred to in this section was first published in 1968, as Department of Water Resources Bulletin No. 74, *Water Well Standards: State of California*. (Dept. of Water Resources, Bulletin No. 74-90, June 1991, p. 3 [detailing the publication history of Bulletin No. 74].) In 1981, a revised version was published as Bulletin No. 74-81. In 1991, a supplement was issued as Bulletin No. 74-90. The bulletin and its supplement (collectively, Bulletin No. 74) have been described as “a 90-page document filled with technical specifications for water wells.” (*California Groundwater Assn. v. Semitropic Water Storage Dist.* (2009) 178 Cal.App.4th 1460, 1469.) Under Water Code section 13801, subdivision (c), counties are required to adopt well construction ordinances that meet or exceed the standards in Bulletin No. 74. Many counties have incorporated the bulletin’s standards for well design and construction into their well permitting ordinances.

⁶ Potential contamination sources include: storm sewers; septic tanks; sewage and industrial waste ponds; barnyards and stable areas; feedlots; solid waste disposal sites; and pipelines and storage tanks for petroleum and other chemicals, pesticides, and fertilizers.

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separation distances that are generally considered adequate for specific situations. For example, it notes that a well should be located at least 50 feet from any sewer line; 100 feet from any watertight septic tank or animal enclosure; and 150 feet from any cesspool or seepage pit. However, the standard makes clear that the distances are not intended to be rigidly applied. It notes that: “[m]any variables are involved in determining the ‘safe’ separation distance;” “[n]o set separation distance is adequate and reasonable for all conditions;” and “[d]etermination of the safe separation distance for individual wells requires detailed evaluation of existing and future site conditions.” It also provides that “[c]onsideration should . . . be given to adequate separation from sites or areas with known or suspected soil or water pollution or contamination.” Significantly, it allows the agency to increase or decrease suggested distances, depending on attendant circumstances.

The other relevant state standards are taken from Sections 8.B, 8.C, and 9 of Bulletin No. 74.⁷ Standard 8.B provides that, “[w]here possible, a well shall be located up the ground water gradient from potential sources of pollution or contamination.” Under Standard 8.C, “[i]f possible, a well should be located outside areas of flooding.” Standard 9 requires that a well’s “annular space” be “effectively sealed” and establishes minimum surface seal depths.

Chapter 9.36 also allows for variance permits. The county health officer “may authorize an exception to any provision of this chapter when, in his/her opinion, the application of such provision is unnecessary.” (Stanislaus County Code,

⁷ These will be referred to as Standards 8.B, 8.C, and 9.

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§ 9.36.110.) When authorizing a variance, the health officer may prescribe “such conditions as, in his or her judgment, are necessary to protect the waters of the state.” (Stanislaus County Code, § 9.36.110.)

2. Chapter 9.37

In 2014, County’s board of supervisors amended Chapter 9.37 to prohibit the unsustainable extraction and export of groundwater. (Stanislaus County Code, § 9.37.040, subd. A.) The amendment requires that future permit applications satisfy both Chapter 9.36 and Chapter 9.37, unless exempt from the latter.⁸ (Stanislaus County Code, § 9.37.045, subd. A.)

D. County’s Classification of Well Construction Permits

In 1983 County adopted its own CEQA regulations which generally classified issuance of all well construction permits as ministerial projects unless the county health officer granted a variance. A variance permit was designated as a discretionary project, triggering environmental review. As enacted, County’s regulations provided that the issuance of a nonvariance well construction permit was presumed to be ministerial “[i]n the absence of any discretionary provision contained in the relevant ordinance.” The parties stipulated that County’s practice has been to treat *all* nonvariance permit issuances as ministerial. This practice ignores the quoted clause, which mirrors language in CEQA Guidelines, section 15268, subdivision (b). We address County’s practice here.

⁸ Chapter 9.37 exempts, inter alia, wells that extract two acre-feet or less per year. (Stanislaus County Code, §§ 9.37.050, subd. A.2, 9.37.030, subd. 10.)

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Since 2014, County has evaluated permit applications as follows. First, it determines whether an application is exempt from Chapter 9.37. If not exempt, approval or denial is classified as discretionary. Second, if the application is exempt from Chapter 9.37, County determines whether it seeks a variance under Chapter 9.36. Third, if the application is exempt from Chapter 9.37 *and* does not seek a variance, its approval or denial is classified as a ministerial project. This third classification is challenged here. Plaintiffs argue that even if an application is exempt from Chapter 9.37 and seeks no variance under Chapter 9.36 its approval is still a discretionary project.

E. This Litigation

In January 2014, plaintiffs filed this action alleging “a pattern and practice” of approving well construction permits without CEQA review. They assert that all permit issuance decisions are discretionary projects because County can “deny [a] permit or require changes in the project as a condition of permit approval to address concerns relating to environmental impacts.” For example, a permit application could be denied or ordered modified if the distance between the proposed well and a potential contamination source is deemed inadequate (Standard 8.A) or if the proposed well is situated in a flooding area when it could be located elsewhere (Standard 8.C). Plaintiffs urge that, because determining compliance with Chapter 9.36’s standards requires the exercise of subjective judgment, the projects are discretionary. Plaintiffs seek a declaration that County’s practice of approving misclassified permits without environmental review is “unlawful,” and seek

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to enjoin County from issuing any more permits until it changes its policy.⁹

The case was submitted on stipulated facts. The trial court ruled that County's approval of all nonvariance permits was ministerial. The Court of Appeal reversed, concluding that "issuance of well construction permits is a 'discretionary' decision." The appellate court acknowledged that many of the decisions County might make under Chapter 9.36 would be ministerial. Specifically, it concluded that County's determinations under Standards 8.B, 8.C, and 9 were all ministerial acts. However, it found that County's compliance determination under Standard 8.A involved sufficient discretionary authority to make the issuance of all permits under Chapter 9.36 discretionary.

We granted County's petition for review. Plaintiffs have asked us to also reconsider the Court of Appeal's conclusions regarding Standards 8.B and 8.C. We decline to do so as we explain below.

II. DISCUSSION

Whether County's issuance of the challenged permits is discretionary or ministerial depends on the circumstances. As a result, County may not *categorically* classify all these projects as ministerial. For the same reason, plaintiffs have not demonstrated that *all* issuance decisions are properly designated as discretionary.

⁹ In a separate action, plaintiffs sought writs of mandate to invalidate 60 individual well construction permits issued by County without environmental review. That litigation ultimately settled, and plaintiffs dismissed the action.

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A. Discretionary v. Ministerial Projects

Distinguishing discretionary projects from ministerial ones turns on whether the exercise of judgment or deliberation is required in making the decision. (CEQA Guidelines, § 15357.) The “key question is whether the public agency can use its subjective judgment to decide whether and how to carry out or approve [the] project.” (*Ibid.*; see also CEQA Guidelines, § 15002, subd. (i).) “Whether an agency has discretionary or ministerial controls over a project depends on the authority granted by the law providing the controls over the activity.” (CEQA Guidelines, § 15002, subd. (i)(2).)

Ministerial projects are those in which the agency merely determines “conformity with applicable statutes, ordinances, regulations, or other fixed standards.” (CEQA Guidelines, § 15357; see also CEQA Guidelines, § 15369.) If the law requires an agency “to act on a project in a set way without allowing the agency to use its own judgment,” the project is ministerial. (CEQA Guidelines, § 15002, subd. (i)(1).) Under the guidelines, certain actions, including the issuance of a building permit, are presumed to be ministerial “[i]n the absence of any discretionary provision contained in the local ordinance or other law establishing the requirements for the permit, license, or other entitlement for use.” (CEQA Guidelines, § 15268, subd. (b).) As noted, County used this same quoted language when articulating its own CEQA regulations in 1983.

Courts have developed a functional test to further refine this distinction. (*Friends of Juana Briones House v. City of Palo Alto* (2010) 190 Cal.App.4th 286, 302 (*Friends of Juana Briones House*)). Like the CEQA Guidelines, the functional test focuses on the scope of an agency’s discretion. The “‘touchstone’” is

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whether the relevant “approval process . . . allows the government to shape the project in any way [by requiring modifications] which could respond to any of the concerns which might be identified” by environmental review. (*Friends of Westwood, Inc. v. City of Los Angeles* (1987) 191 Cal.App.3d 259, 267 (*Friends of Westwood*); see also *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 117.) If so, the project is discretionary. On the other hand, a project is ministerial “when a private party can *legally compel* approval without any changes in the design of its project which might alleviate adverse environmental consequences.” (*Friends of Westwood*, at p. 267.) “The statutory distinction between discretionary and purely ministerial projects implicitly recognizes that unless a public agency [is authorized to] shape the project in a way that would respond to concerns raised in an EIR, or its functional equivalent, environmental review would be a meaningless exercise.” (*Mountain Lion*, at p. 117.)

Under the functional test, a decision is ministerial if the agency has no discretionary authority to deny or shape the project. (*Leach v. City of San Diego* (1990) 220 Cal.App.3d 389, 393; see also *Health First v. March Joint Powers Authority* (2009) 174 Cal.App.4th 1135, 1144–1145.) Further, even if a statute grants an agency *some* discretionary authority over an aspect of a project, the project is ministerial for CEQA purposes if the agency lacks authority to address *environmental* impacts. In *McCorkle Eastside Neighborhood Group v. City of St. Helena* (2018) 31 Cal.App.5th 80, for example, the agency’s power to conduct an aesthetic design review did not make a project discretionary because the agency “lack[ed] . . . any discretion to address environmental effects.” (*Id.* at p. 94; see also *Friends of*

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Juana Briones House, supra, 190 Cal.App.4th at p. 308 [discretionary authority to *delay* a project did not render its approval discretionary].)

Conversely if the agency is empowered to disapprove or condition approval of a project based on environmental concerns that might be uncovered by CEQA review, the project is discretionary. In a ministerial decision, the laws, regulations, and other standards are policy decisions made by the enactors. The agency's role is to apply those standards as adopted. If an agency refuses to approve a ministerial project, an affected party may seek a writ of mandate, ordering that approval be granted because the enacted standards have been satisfied. For discretionary decisions, on the other hand, the policy makers have empowered the agency to make individualized judgments in light of the particular circumstances involved.

Friends of Westwood, supra, 191 Cal.App.3d 259 held the issuance of a building permit for a major construction project was discretionary. (*Id.* at p. 262.) Under its code the city could require project modifications to ensure adequate ingress and egress for public streets, and to minimize interference with traffic flow. (*Id.* at p. 274.) The city also had discretion to allow departures from certain standards established by the city council, and exempt the project from conforming to the city's general plan. (*Id.* at pp. 274–275.) Finally, the city exercised its discretion by treating a proposed tower as two separate structures to satisfy area density ratios. (*Id.* at p. 275.)

Similarly, *Miller v. City of Hermosa Beach* (1993) 13 Cal.App.4th 1118 held that issuing a hotel building permit was a discretionary project. As part of the permit approval process, the applicant was required to obtain analyses of traffic impacts,

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soil settlement, and effects on a downstream sewer line. (*Id.* at p. 1141.) The court concluded that the applicant could not have legally compelled approval without making changes to alleviate adverse environmental consequences revealed during the permitting process. (*Id.* at p. 1142.) Thus, the project was discretionary. (*Ibid.*)

These Courts of Appeal have employed the functional test to help determine whether individual project approvals were ministerial or discretionary. The question before us is slightly different. It is not whether a specific decision was ministerial, but instead whether, in at least some circumstances, Standard 8.A requires County to exercise discretion, and whether its classification of all such permits as ministerial is permissible in light of this possibility. Because we are not called upon to rule on the status of any individual permit, the functional test has no direct application here. Nevertheless, the factors set forth by the Courts of Appeal will be helpful in evaluating the propriety of County's categorical classification.

B. Standard of Review

In general, judicial review of agency actions for CEQA compliance extends to “whether there was a prejudicial abuse of discretion.” (§ 21168.5; see *Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 381.) “Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.” (§ 21168.5.) An agency's declaration of a ministerial exemption is reviewed for

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abuse of discretion. (*County of Sonoma, supra*, 11 Cal.App.5th at p. 23.)

In a CEQA case, the appellate court’s review “is the same as the trial court’s: [It] reviews the agency’s action, not the trial court’s decision; in that sense appellate judicial review under CEQA is de novo.” (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 427.) The reviewing court independently determines whether the record “demonstrates any legal error” by the agency and deferentially considers whether the record “contains substantial evidence to support [the agency’s] factual determinations.” (*Ibid.*) When an agency concludes an activity is exempt based on factual considerations, a court reviews for substantial evidence. If the agency’s determination “involves pure questions of law, we review those questions de novo.” (*County of Sonoma, supra*, 11 Cal.App.5th at p. 24.)

As mentioned, CEQA encourages agencies to identify which projects are ministerial on either a categorical or case-by-case basis. (CEQA Guidelines, § 15268, subds. (a), (c).) Here, County *categorically* classifies the permits as ministerial. Unlike a case-by-case approach, County’s categorical treatment does not take into account whether judgment was exercised in deciding to issue a particular permit. County’s position is that the permits are ministerial regardless of the circumstances. This argument rests on County’s legal interpretation of Chapter 9.36. We review that interpretation de novo.

C. Analysis

In determining whether County’s issuance of these permits is a discretionary project, we are guided by the principle

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that CEQA must be interpreted “to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” (*Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259; see also *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 511.) We also consider the Legislature’s objectives: to reduce or avoid environmental damage by requiring project changes when feasible. (*Building Industry, supra*, 62 Cal.4th at p. 382.) Against this backdrop, we conclude County’s practice of *categorically* classifying all the permits as ministerial violates CEQA.

The plain language of Standard 8.A authorizes County to exercise “judgment or deliberation when [it] decides to approve or disapprove” a permit. (CEQA Guidelines, § 15357.) Although the standard sets out distances that are generally considered adequate, it makes clear that individualized judgment may be required. It notes that an “adequate horizontal distance” may depend on “[m]any variables” and “[n]o set separation distance is adequate and reasonable for all conditions.” (Standard 8.A.) The determination for each well “requires detailed evaluation of existing and future site conditions.” (*Ibid.*) The standard does provide a list of minimum suggested distances that are “generally considered adequate,” but notes that “[l]ocal conditions may require greater separation distances.” (*Ibid.*) Where, “in the opinion of the enforcing agency adverse conditions exist,” the standard requires that the suggested distance be increased, or special means of protection be provided. (*Ibid.*) While, under the standard, lesser distances “may be acceptable,” approval of all lesser distances requires agency approval “on a case-by-case basis.” (*Ibid.*)

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This language confers significant discretion on the county health officer to deviate from the general standards, allowing either relaxed or heightened requirements depending on the circumstances. If he or she determines the distance between a proposed well and a contamination source is inadequate, the officer may deny a permit or condition approval on project modifications. (Stanislaus County Code, § 9.36.030.) The permit approval process allows County to shape a well construction project in response to concerns that could be identified by an environmental review. (See *Friends of Westwood*, *supra*, 191 Cal.App.3d at p. 267.) A permit issuance in which County is required to exercise independent judgment under Standard 8.A cannot be classified as ministerial.

County argues against this conclusion. Acknowledging that Standard 8.A affords some flexibility, it maintains that the standard's suggested minimum distances and other technical criteria are objective guideposts constraining its discretion. When read as a whole, it claims Standard 8.A calls for the exercise of "little or no judgment" in reviewing separation distances.

The argument fails. County's position would be much stronger if the objective minimum distances were the *only* criteria the agency was authorized to consider in making the issuance decision. But, as pointed out, that is not the case. Read as a whole, the minimum distances are a starting point, but one around which there is considerable latitude.

Next, County argues that, even if Standard 8.A admits of some discretion, its "well-separation standard is only one part of [a] much larger regulatory scheme." County points out that Chapter 9.36 contains numerous provisions, including

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Standards 8.B, 8.C, and 9, all of which the Court of Appeal found to involve ministerial decisions. Considering the process as a whole, County argues that the decision to issue a permit under Chapter 9.36 is ministerial. County urges that “CEQA is not triggered just because the agency exercises judgment” as to one aspect of a project and that a holding to the contrary will create a “hair trigger” for CEQA review.

This argument is inconsistent with the CEQA Guidelines, which provide that, when a project “involves an approval that contains elements of both a ministerial action and a discretionary action, the project will be deemed to be discretionary.” (CEQA Guidelines, § 15268, subd. (d).) It cannot be reconciled with judicial declarations that a project is discretionary if the government can “shape the project in *any* way which could respond to *any* of the concerns which might be identified” during an environmental review (*Friends of Westwood, supra*, 191 Cal.App.3d at p. 267, italics added), and that any “doubt whether a project is ministerial or discretionary should be resolved in favor of the latter characterization.” (*People v. Department of Housing & Community Dev.* (1975) 45 Cal.App.3d 185, 194.)

Next, County argues that permit issuance is ministerial because it has only limited options under Chapter 9.36 to mitigate potential environmental damage. According to County, all it can do under Standard 8.A is adjust the location of a well to prevent groundwater contamination. Chapter 9.36 does not allow County to address other environmental concerns, like groundwater depletion, nor does it allow County to impose other measures that might prevent contamination, such as regulating the use of pesticides or fertilizers. County argues that, if

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environmental review is required for these permits, it may have to consider environmental impacts that it will have no authority to minimize or mitigate.

The significance of these purported limitations is unclear. Just because the agency is not empowered to do everything does not mean it lacks discretion to do anything.¹⁰ County concedes it has the authority, under some circumstances, to require a different well location, or deny the permit. This is sufficient latitude to make the issuance of a permit discretionary, at least when particular circumstances require County to exercise that authority. While Chapter 9.36 does not also empower County to impose other mitigation measures, that circumstance does not mean the issuance of a permit is not subject to CEQA. If a project is neither ministerial nor exempt, the agency must comply with the Act. (§§ 21002, 21002.1, 21081.)

The CEQA Guidelines do recommend that a public agency identify its actions “deemed ministerial under the applicable laws and ordinances.” (CEQA Guidelines, § 15268, subd. (c).) The agency is encouraged to do so in “its implementing regulations or on a case-by-case basis.” (CEQA Guidelines, § 15268, subd. (a).) But the CEQA Guidelines also provide that projects should be labelled as ministerial when they are the sort “over which the agency has *only* ministerial controls.” (CEQA Guidelines, § 15022, subd. (a)(1)(B), *italics added*.) Read together, the guidelines provide that an agency may

¹⁰ The question here is a narrow one: whether a decision to issue these permits without environmental review is ministerial or discretionary. We are not called upon here to determine the scope of County’s authority once an environmental review process begins. We express no view on that issue.

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categorically classify approvals as ministerial only when its conferred authority is solely ministerial. The agency may classify other types of project approvals as ministerial on a “case-by-case basis.” (CEQA Guidelines, § 15268, subd. (a).)

County argues that its interpretations of Chapter 9.36 and Bulletin No. 74 are entitled to deference. It notes the CEQA Guidelines, which provide that the “determination of what is ‘ministerial’ can most appropriately be made by the particular public agency involved based upon its analysis of its own laws.” (CEQA Guidelines, § 15268, subd. (a).) It also relies on *Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, 1015, which held that “an agency’s view of the meaning and scope of its own ordinance is entitled to great weight unless it is clearly erroneous or unauthorized.” (See also *Sierra Club v. Napa County Bd. of Supervisors* (2012) 205 Cal.App.4th 162, 178.) County’s reliance on these authorities is misplaced. In those cases, the agencies were interpreting their own ordinances. That is not the case here. When it enacted Chapter 9.36, County explicitly incorporated standards from Bulletin No. 74. It is the legal interpretation of those state standards that is at issue here.

It is true that when reviewing a *particular* issuance decision for abuse of discretion the agency’s legal conclusions are reviewed de novo, while its factual determinations are reviewed deferentially for substantial evidence. When an agency determines a particular project is ministerial, it would typically rely on one or more factual determinations. But County is not claiming the ministerial exemption applies to a particular permit. Instead, it claims the exemption applies to an entire category of permits, as a matter of law.

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Of course, we do not simply ignore County's interpretation. It is one of the several tools available to us in determining the legal effect of the incorporated state standards. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7.) But, as we said in *Yamaha*, the amount of deference due is “*situational*.” (*Id.* at p. 12.) It depends on factors indicating that the agency has a comparative interpretive advantage over courts and that its interpretation is “‘probably correct.’” (*Ibid.*; see also *Irvin v. Contra Costa County Employees' Retirement Assn.* (2017) 13 Cal.App.5th 162, 172–173 [warning that according deference to a local agency's interpretation of state law may result in the inconsistent interpretation of that law].) County fails to establish that those factors warrant adopting its interpretation here. It is ultimately for the courts to determine the scope and meaning of an ordinance as a matter of law.

D. Categorical v. Individual Classification

Based on the above analysis, we reject County's argument that the issuance of the permits in question is always ministerial. Because Standard 8.A gives County sufficient authority, at least in some cases, to render those issuances discretionary, County's blanket classification violates CEQA. It enables County to approve some discretionary projects while shielding them from CEQA review.

However, we disagree with the Court of Appeal that the issuance of a permit under Chapter 9.36 is *always* a discretionary project. The fact that an ordinance contains provisions that allow the permitting agency to exercise independent judgment in some instances does not mean that all permits issued under that ordinance are discretionary. *County*

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of *Sonoma*, *supra*, 11 Cal.App.5th 11, illustrates this principle. There, the plaintiff argued that the issuance of a permit was discretionary because many of the governing ordinance’s provisions were “broad and vague and . . . allow[ed] the [county’s Agricultural] Commissioner to exercise discretion.” (*Id.* at p. 18.) The Court of Appeal rejected this argument. It reasoned that most of the provisions potentially conferring discretion did not actually apply to the issuance of the *particular* challenged permit (*id.* at pp. 18, 25–27), and that the few applicable provisions did not authorize the imposition of meaningful modifications (*id.* at pp. 18–19, 27–31). The relevant question was “not whether the regulations granted the local agency some discretion in the abstract, but whether the regulations granted the agency discretion regarding the particular project. . . . [A] regulation cited as conferring discretion must have been relevant to the project.” (*Id.* at p. 25.) Because the discretionary provisions were not relevant to the permit at issue, the court held that the agency properly classified its issuance as ministerial. (*Id.* at p. 32; see also *Prentiss v. City of South Pasadena* (1993) 15 Cal.App.4th 85, 97.) Permits issued under an ordinance are not necessarily discretionary simply because the ordinance contains some discretionary provisions.

The CEQA Guidelines support this conclusion. A discretionary project is one that “*requires* the exercise of judgment or deliberation” when the agency decides to approve or disapprove it. (CEQA Guidelines, § 15357, *italics added*.) If the circumstances of a particular project do not *require* the exercise of independent judgment, it is not discretionary. Additionally, the CEQA Guidelines specifically allow “case-by-case” classifications, indicating that projects approved under a

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particular ordinance can be either discretionary or ministerial depending on the circumstances. (CEQA Guidelines, § 15268, subd. (a).)

Chapter 9.36 incorporates a number of standards that may never come into play in the issuance of a particular permit. Standard 8.A only applies when there is a contamination source near a proposed well. If no contamination source is identified during the permit approval process, the discretion conferred by Standard 8.A will not be involved in that individual issuance decision. As a result, all well construction permits are not necessarily discretionary projects. The same principle would apply to Standards 8.B and 8.C. We have declined to determine whether those provisions confer discretionary authority in some instances. We need not do so here, in light of our analysis of the authority granted by Standard 8.A. Even if Standards 8.B and 8.C might be understood to grant discretionary authority in some cases, we could not conclude that they would always do so. Standard 8.B only applies when a proposed well is downhill from a contamination source. Standard 8.C is only implicated when a proposed well is in a flood area. In other words, like Standard 8.A, Standards 8.B and 8.C may or may not be involved in the issuance of a particular permit.¹¹

¹¹ Plaintiffs have also asked us to review whether (1) any other standards in Bulletin No. 74 are incorporated into Chapter 9.36 and (2) the inclusion of those standards makes permit issuance discretionary. The Court of Appeal declined to address these questions because it found that the discretion conferred by Standard 8.A made permit issuance a discretionary project. These questions should be answered by the Court of Appeal on remand in the first instance.

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County's final argument is that a decision for plaintiffs will result in increased costs and delays in the issuance of well construction permits. But CEQA cannot be read to authorize the categorical misclassification of well construction permits simply for the sake of alacrity and economy. It bears repeating that an individual permit may still be properly classified as ministerial. Moreover, the fact that an individual project is classified as discretionary does not mean that full environmental review, including an EIR, will always be required. The project may qualify for another CEQA exemption or the agency may be able to prepare either a negative declaration or a mitigated negative declaration after its initial study. Any of these circumstances would obviate the need for an EIR.

In summary, when an ordinance contains standards which, if applicable, give an agency the required degree of independent judgment, the agency may not *categorically* classify the issuance of permits as ministerial. It may classify a particular permit as ministerial (CEQA Guidelines, § 15268, subd. (a)), and develop a record supporting that classification.

III. CONCLUSION

The Court of Appeal holding that *all* permit issuances under Chapter 9.36 of the Stanislaus County Code are discretionary is reversed. Plaintiffs are not entitled to a judicial declaration to that effect nor to an injunction requiring County to treat all such permit issuances as discretionary.

However, plaintiffs are entitled to a declaration that County's blanket ministerial categorization is unlawful. The Court of Appeal holding that plaintiffs were entitled to such

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relief is affirmed. The matter is remanded to the Court of Appeal for it to evaluate the questions it declined to answer and to reassess plaintiffs' entitlement to relief.

CORRIGAN, J.

We Concur:

CANTIL-SAKAUYE, C. J.

CHIN, J.

LIU, J.

CUÉLLAR, J.

KRUGER, J.

GROBAN, J.

See next page for addresses and telephone numbers for counsel who argued in Supreme Court.

Name of Opinion Protecting Our Water and Environmental Resources v. County of Stanislaus

Unpublished Opinion XXX NP opn. filed 8/24/18 – 5th Dist.

Original Appeal

Original Proceeding

Review Granted

Rehearing Granted

Opinion No. S251709

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Court: Superior

County: Stanislaus

Judge: Roger M. Beauchesne

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Monterey County

Item No.6

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: WRABMAC 21-027

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Proposition 1 Implementation Grant Update: *Protection of Domestic Drinking Water Supplies for the Lower Salinas Valley*

Update on Proposition 1 Implementation Grant – *Protection of Domestic Drinking Water Supplies for the Lower Salinas Valley* Project

SUMMARY:

Implementation of the *Protection of Domestic Drinking Water Supplies for the Lower Salinas Valley* project (Project) is ongoing. The Project is funded in part by a Proposition 1 Implementation Grant from the State Water Resources Control Board (SWRCB).

DISCUSSION:

Well Reclassification and Destruction Notification Process

MCWRA continued the notification process in March 2021 by sending out reclassification notification letters for fourteen (14) wells and destruction notification letters for twenty-four (24) wells.

The decision to reclassify or destroy a well can be appealed by the well owner or other interested party. Well reclassifications from this round of notifications can be appealed through April 3, 2021; well destruction notifications can be appealed through May 23, 2021.

MCWRA is also continuing to meet with well owners and others who have appealed well reclassification or destruction notifications that were sent in January 2021.

Opt Out Agreements

MCWRA is working with well owners to complete Opt Out Agreements (“Agreement”) for wells that were slated for inclusion in the Project but which well owners would like to retain for future operation (Attachment 1). Briefly, the purpose of the Agreement is to formalize the well owner’s desire to exclude the specific well from the Project, acknowledge withdrawal of the well owner’s appeal to the reclassification notice, and document the well owner’s assumption of responsibility for destruction of the well at such time as it becomes necessary in the future.

On March 10, MCWRA provided the Agreement to the owners of fourteen (14) wells. As of March 29, Agreements have been returned for two (2) wells.

Right-of-Entry Agreements

The terms of MCWRA’s grant agreement with the SWRCB requires that a Right-of-Entry Agreement be completed by each well owner before the well destruction work can begin (Attachment 2).

As of March 29, twenty-nine (29) Right-of-Entry agreements have been provided to the owners of wells where the decision to destroy the well as part of the Project has not been appealed. No Right-of-Entry agreements have been signed and returned to MCWRA.

OTHER AGENCY INVOLVEMENT:

State Water Resources Control Board

FINANCING:

In March 2021, MCWRA received commitments from the Castroville Community Services District and Monterey One Water to provide financial contributions of \$83,000 and \$65,000, respectively, toward the Project. These funds, totaling \$148,000, decrease MCWRA's remaining grant match to \$2,116,801.

There is no financial impact in receiving this update.

Prepared by: Amy Woodrow, Hydrologist, (831) 755-4860
Tamara Voss, Associate Hydrologist, (831) 755-4860

Attachments

Attachment 1 – Opt Out Agreement Template

Attachment 2 – Right-of-Entry Agreement Template

**OPT OUT AGREEMENT
BETWEEN
MONTEREY COUNTY WATER RESOURCES AGENCY
AND
[ENTER WELL OWNER NAME]**

This OPT OUT AGREEMENT ("Agreement") effective as of the last signature date and is by and between the Monterey County Water Resources Agency, hereinafter called "Agency," and [REDACTED], hereinafter called "Owner." Agency and Owner are each a "Party" and collectively the "Parties" to this Agreement.

WHEREAS, Agency Ordinance No. 3790 provides that all wells located in Zone 2B, except for those exempt from destruction pursuant to sections 1.03.03 or 1.03.04 of Ordinance No. 3790, shall be destroyed by the Agency;

WHEREAS, Agency Ordinance No. 3790 provides that the costs of well destruction shall be borne by the Agency, but does not identify a funding source for well destruction tasks;

WHEREAS, Agency's 2017 report *Recommendations to Address the Expansion of Seawater Intrusion* ("Recommendations" report) recommended destruction of wells as described in Ordinance No. 3790;

WHEREAS, on April 24, 2018, the Monterey County Board of Supervisors and Board of Supervisors of the Monterey County Water Resources Agency directed staff to seek grant funding for the destruction of wells in Zone 2B in response to the *Recommendations* report;

WHEREAS, on June 18, 2020, agreement number SWRCB0000000000D1912532 ("Grant Agreement") was executed between the State Water Resources Control Board and Agency to provide financial assistance through a Proposition 1 Implementation Grant for the *Protection of Domestic Drinking Water Supplies for the Lower Salinas Valley* project ("Project");

WHEREAS, the work completion date of the Grant Agreement is February 28, 2023;

WHEREAS, Agency has identified well [REDACTED] ("Well") for destruction as part of the Project, located on APN ### ("Property");

WHEREAS, Section 1.03.06 of Agency Ordinance No. 3790 provides that the decision to destroy a well under Ordinance No. 3790 may be appealed by the well owner and tenant leasing land on which the well is located;

WHEREAS, Owner exercised the right of appeal provided by Ordinance No. 3790 and desires to retain the Well;

WHEREAS, Agency agrees that Owner may retain Well as a [standby, domestic, etc.] well as defined by Ordinance No. 3790; and

WHEREAS, Owner desires to withdraw appeal, and accept the terms and conditions set forth in this Agreement.

NOW THEREFORE, for good and valuable consideration the sufficiency of which is hereby acknowledged, the Parties agree as follows:

I. CONSIDERATIONS.

1. Agency agrees that the Owner may retain the Well as a [standby, domestic, etc] well as defined by Ordinance No. 3790.
2. Owner on behalf of itself, and its successors and assigns in ownership of the Well, expressly waives the option to participate in the Project and hereby assumes full responsibility for destruction of the Well, including the full cost of destruction.
3. Owner agrees that Well shall be destroyed in a manner consistent with well standards in Monterey County Code Chapter 15.08 Water Wells, California Department of Water Resources Bulletins 74-81 and 74-90, or any subsequent updates to these regulations or any new regulations concerning well destruction.
4. Owner acknowledges this Agreement has no bearing on the Owner's ability to drill any type of well on the Property.

II. ATTORNEY FEES AND LIENS.

Parties shall each bear their own costs and attorney fees. If it becomes necessary to engage in legal proceedings to enforce or interpret any of the provisions of this Agreement, the prevailing party will be entitled to recover his or her reasonable attorney fees incurred in connection with such proceedings.

III. SEVERABILITY.

Should any provision of this Agreement be held invalid or illegal, such illegality will not invalidate the remainder of this Agreement. Instead, the Agreement shall be construed as if it did not contain the illegal part, and the rights and obligations of the Party shall be construed and enforced accordingly.

IV. INTERPRETATION.

This Agreement shall be construed and enforced pursuant to the laws of the State of California.

V. REPRESENTATION.

Owner has had the opportunity to be represented by independent legal counsel of its own choice, and this Agreement was prepared with the joint input of all parties and shall not be construed in favor of or against any party to the Agreement. Owner further acknowledges that this Agreement was executed freely and voluntarily and with the for Owner to receive the advice of independent legal counsel.

VI. INDEMNIFICATION.

By signing this Agreement the Owner agrees to indemnify, defend, and hold harmless the Agency, its governing boards, directors, officers, employees, and agents against any claim for loss, injury, damage, expense or liability resulting from or alleging injury to or death of any person or loss of use of or damage to property, arising from or related to the terms of this Agreement. The Owner will reimburse the Agency for any court costs and attorney fees which the Agency may be required by a court to pay as a result of such action. The Agency may, at its sole discretion, participate in the defense of such action.

VII. COUNTERPARTS.

The Parties agree that this Agreement may be executed in counterparts. Each of the undersigned, whether signing separately or on the same document with other Party, agrees to each part of the above Agreement. This Agreement is deemed executed on the date upon which all undersigned have signed this Agreement.

[Page intentionally left blank.]

IN WITNESS WHEREOF, Parties intend to be legally bound and have caused this Agreement to be executed as of the last date of signature.

MONTEREY COUNTY WATER RESOURCES AGENCY

By: _____

Name: Brent Buche

Title: General Manager

Date: _____

OWNER

By: _____

Name:

Title:

Date: _____

**AGREEMENT TO ENTER
AND PERFORM WORK UPON PROPERTY
(Proposition 1 Ground Water Quality Grant Program)**

This agreement ("Agreement") is made and entered into by [PROPERTY OWNER NAME] ("Property Owner") and the Monterey County Water Resources Agency ("Agency") for purposes of destruction of a water well located on the real property owned by the Property Owner, located at APN XXX-XXX-XXX, known as the ("Property"). Agency is a political subdivision of the State of California.

Section 1: Recitals.

a. Agency has entered into a grant agreement for the Proposition 1 Ground Water Quality Grant Program with the California State Water Resources Control Board ("State Water Board") to receive funding for the destruction of groundwater wells to protect the lower Salinas Valley's main groundwater supply for domestic drinking water in the 400-Foot Aquifer. The Grant Agreement is available on the Agency's website at <https://www.co.monterey.ca.us/government/government-links/water-resources-agency/programs/protection-of-domestic-drinking-water-supplies-in-the-lower-salinas-valley>.

b. Agency's project will protect the lower Salinas Valley's main source of domestic drinking water, the 400-Foot Aquifer, from seawater and nitrate contamination due to vertical migration between the 180-Foot Aquifer and the 400-Foot Aquifer by destruction of selected abandoned wells. Preventing nitrates and seawater from vertically entering the 400-Foot Aquifer will protect the water quality of drinking water, provide increased opportunity for recharge and aquifer storage, and help slow the advance of seawater intrusion.

c. Property Owner agrees to allow Agency to destroy Property Owner's water well to prevent the vertical migration of chloride and nitrate contaminated groundwater into aquifers that serve as a drinking water supply.

Section 2: Conditions.

a. Property Owner grants to the Agency, its employees, contractors, subcontractors, and agents, authority to destroy its water well, and access to all lands, easements and rights of way necessary for the purposes of the destruction of water well STATE WELL ID (OWNER WELL NAME). Property Owner grants to the State Water Board, its employees, contractors, subcontractors, and agents, the right of safe and suitable access at reasonable times to all lands, easements, and rights of way, if requested, for the purposes of overseeing the destruction of the water well.

b. Property Owner warrants that it possesses authority, title and/or interest in the Property sufficient to execute this Agreement.

c. All work conducted on the Property shall be conducted in accordance with all state, local and regional laws and requirements. Agency shall obtain all required licenses and permits in connection with well destruction work.

d. It is understood and agreed that at the expiration of this Agreement, the Property will be generally restored to the same condition as before the Agency's entry, except for the well destruction improvements.

Section 3: Effective Date and Term.

This Agreement shall commence effective upon the Agency's execution hereof and shall be effective until the work completion date of the project, February 28, 2023, as agreed to in the Grant Agreement, or any extension thereof granted by the Grant Manager upon request of the Agency. Following completion of the well destruction, the Agency and the State Water Board shall have the right to inspect the project location upon reasonable prior notice if needed until the Records Retention End Date of the Grant Agreement.

Section 4: Indemnification.

Agency shall hold harmless, indemnify, and defend the Property Owner, its officers, directors, agents, lessees, and employees from any and all claims, lawsuits, liabilities, losses and damages of every kind resulting from or in any way related to the Agency's, its officers', agents', employees', subcontractors' and designees', negligent or intentional acts, and errors and omissions in connection with this Agreement. Agency will assume full responsibility for any and all damages proximately caused by Agency's operation under this Agreement, and Agency shall, at its option, either repair or pay of such damages. However, this indemnification will not extend to any loss of use claims by Property Owner's lessees. This indemnification will also not extend to any claim or losses arising out of the sole negligence or willful misconduct of the Property Owner or of the Property Owner's officers, agents, lessees or employees.

Section 5: Notices.

Notices required under this Agreement shall be delivered by first class mail and by electronic mail. Notice shall be deemed effective upon the third day after deposit with the U.S. Postal Service. Notices shall be addressed as follows:

AGENCY

Name: Brent Buche

Address: PO Box 930
Salinas, CA 93902

Telephone: 831-755-4860

E-Mail: bucheb@co.monterey.ca.us

PROPERTY OWNER

Name:

Address:

Telephone:

E-Mail:

Section 6: Entire Agreement.

This Agreement contains the entire agreement between the parties pertaining to the subject matter in it and supersedes all prior and contemporaneous agreements, representations, and understandings of the Parties. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all Parties.

Section 7: Assignment.

No portion of this Agreement may be assigned without the prior written consent of all Parties.

Section 8. Compliance with Applicable Law.

The Parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.

Section 9. Controlling Venue.

This Agreement and all matters relating to it shall be governed by the laws of the State of California. Any action brought relating to this Agreement shall be brought exclusively in the County of Monterey.

Section 10. Expiration of Agreement.

This Agreement shall expire and be of no further force and effect upon the expiration of the term, as defined in Section 3.

Section 11. Section Headings.

The section headings contained in this Agreement are for convenience and identification only and shall not be deemed to limit or define the contents of the section to which they relate.

Section 12. No Presumption Re: Drafter.

The Parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the Parties and their attorneys, and this Agreement reflects their mutual agreement regarding the same. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any party to be the drafter of this Agreement, and therefore no presumption for or against validity or as to any interpretation hereof, based upon the identity of the drafter shall be applicable in interpreting or enforcing this Agreement.

Section 13. Modification.

This Agreement shall not be modified except by written agreement of the Parties.

Section 14. Severability.

If any term, condition or covenant of this Agreement, or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement, or the application of such term, condition or covenant to persons or circumstances other than those as to whom which it is held invalid or unenforceable, shall not be affected thereby, and every provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, Agency and Property Owner execute this Agreement as follows:

Date: _____

Date: _____

MONTEREY COUNTY
WATER RESOURCES AGENCY

PROPERTY OWNER

By: _____

By: _____

Brent Buche
General Manager

Name:
Title:

Approved as to form:

Kelly L. Donlon
Deputy County Counsel



Monterey County

Item No.7

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: WRABMAC 21-029

April 07, 2021

Introduced: 4/1/2021

Current Status: Draft

Version: 1

Matter Type: WRA BMAC Item

Update on Well Permit Application Activities

Well Permit Application Activities Update

SUMMARY/DISCUSSION:

In support of Monterey County's Well Permit Application Program the Agency acts as technical advisor to the program's lead agency, the Environmental Health Bureau (EHB). In accordance with a 1991 interdepartmental Memorandum of Agreement between the Agency and EHB, the Agency performs a comprehensive review process on well permit applications for new wells pumping five acre-feet of water or more per year, as well as for proposed well destructions and repairs.

The Agency provides review and/or advisement to EHB within five (5) business days of receiving new well permit applications. The Agency also reviews final well designs and annular seal depth proposals on an on-going basis and is committed to providing a response to EHB within twenty-four (24) hours of receiving design proposals.

The Agency receives funds that cover staff time for well application review, well completion report processing, and database maintenance from fees collected by EHB. The Agency's fees are defined in Article XI of the Monterey County Fee Resolution.

Table 1 (attached) provides a summation of well permit applications received in the last month for evaluation by Agency staff, categorized by permit type, Agency management area, and aquifer unit. Also included is a tabulation of new well applications reviewed for the fiscal year. This table is provided to the Board of Directors and Basin Management Advisory Committee on a monthly basis.

Publication of the Agency's Report, "Recommendations To Address the Expansion of Seawater Intrusion in the Salinas Valley Groundwater Basin (October, 2017) and subsequent adoption of Interim Urgency Ordinance 5302 and Ordinance 5303 by the Monterey County Board of Supervisors (May 22, 2018 and June 26, 2018, respectively) have led to increased interest in data related to wells in and extractions from the Deep Aquifers (Figure 1).

Figure 2 depicts the history of well installation in the Deep Aquifers by water use category. As illustrated in the chart, a total of fifty-seven (57) wells have been installed in the Deep Aquifers since 1974, with twenty-five (25) of those wells being constructed in the last ten years, including fourteen (14) within the last three years. Figure 2 includes a tabular historical summary of reported annual Deep Aquifer well extractions by water use category.

Two (2) additional permits have been issued for new Deep Aquifers wells but construction has not been completed as of the date of this report. The proposed wells were applied for as replacement wells after the expiration of Ordinance No. 5302, which expired on May 21, 2020.

OTHER AGENCY INVOLVEMENT:

None

FINANCING:

None

Prepared by: Nicole Koerth, Hydrologist, (831) 755-4860
 Amy Woodrow, Hydrologist, (831) 755-4860
 Tamara Voss, Associate Hydrologist (831) 744-4860
 Howard Franklin, Senior Hydrologist, (831) 755-4860

Attachments:

Table 1 - Summary of Well Permits Received

Figure 1- Map showing Deep Aquifer Wells

Figure 2 - Timeline of Well Installation in the Deep Aquifers with Summary of Deep Aquifer
Groundwater Extractions

Table 1. Well Permit Applications Received by Category - February, 2021

Subarea/ Aquifer	Construction	Destruction	Repair	Other	Total	FY (20/21) Total
180-Ft Aquifer	1	1			2	9
400-Ft Aquifer						9
Deep Aquifers						7
East Side		1			1	9
Forebay						10
Upper Valley						5
Outside Zone 2C, Undefined GW Basin	1				1	28
Total	2	2			4	77

Figure 1

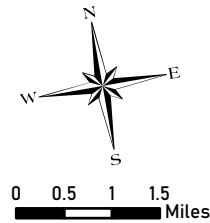
Legend

Deep Aquifer Wells

By Use, Labeled by Year Constructed

- Agricultural
- Municipal
- Industrial
- Domestic
- Monitoring

Area of Impact



Monterey County
Water Resources Agency

Date: 3/1/2021

4 Monitoring Wells
constructed in 2000

2 Monitoring Wells
constructed in 2005

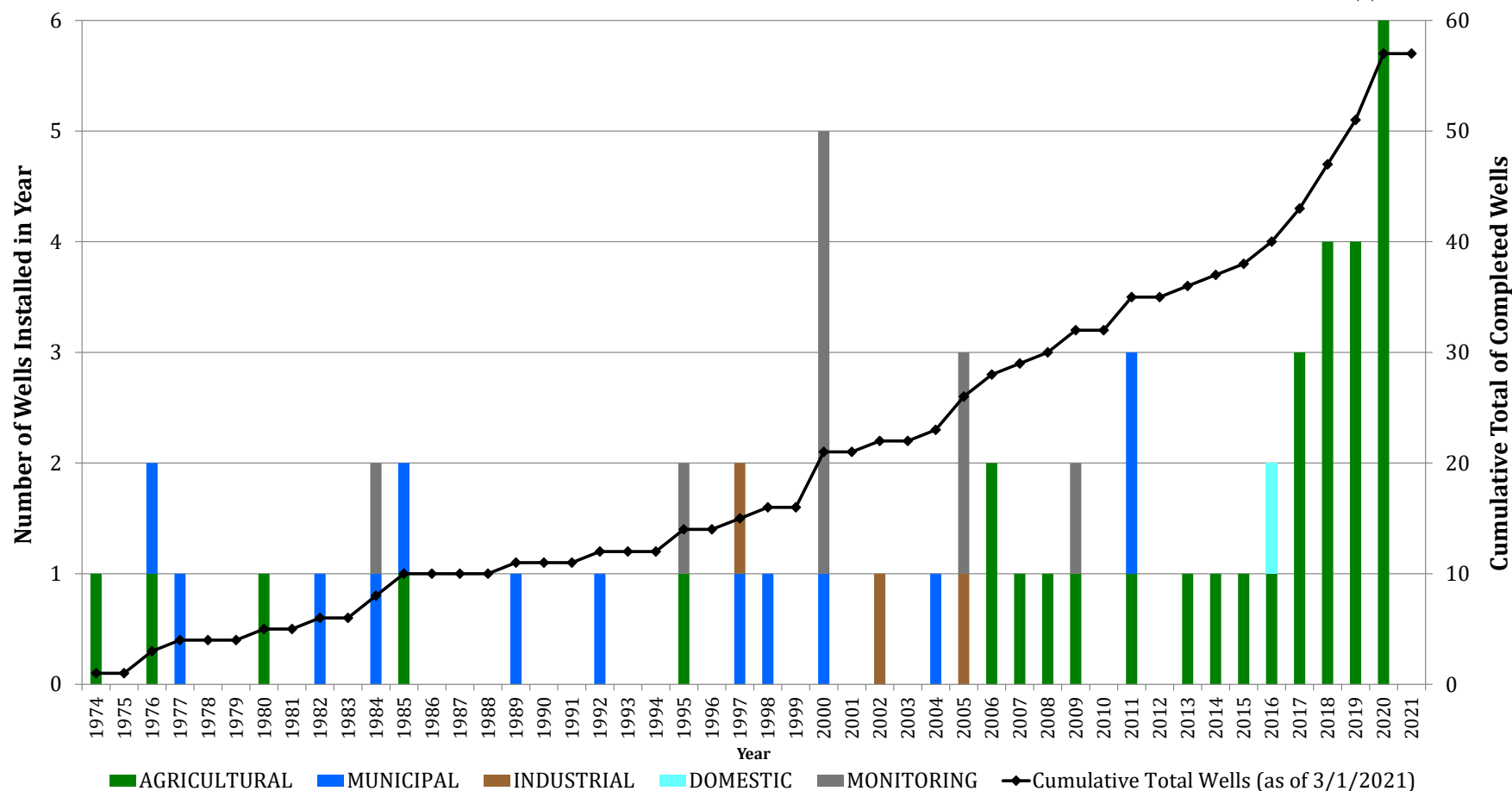
2 Municipal Wells
constructed in 1998 and 2000



Source: MCWRA
Date: 3/1/2021

Figure 2

Timeline of Well Installation in Deep Aquifers of the 180/400 Foot Aquifer Subbasin



Deep Aquifers Groundwater Extraction History Since 1993*

1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
2,054	1,992	2,036	2,137	2,170	1,906	2,056	2,302	2,355	2,399	2,366	2,442	2,358	2,005	1,738	2,004	2,102	1,903	1,803	2,044	1,989	3,784	3,746	3,788	4,116	4,605	4,820
1,507	2,620	2,302	1,990	2,556	1,648	96	1	0	0	0	0	0	0	58	384	696	982	927	1,397	1,097	2,031	2,010	4,194	4,834	4,749	5,331
0	0	0	0	0	0	0	3	13	17	379	305	343	336	393	371	348	333	370	380	523	620	617	569	567	291	196
3,561	4,612	4,338	4,127	4,725	3,554	2,151	2,307	2,368	2,416	2,745	2,747	2,701	2,341	2,189	2,759	3,146	3,218	3,100	3,821	3,608	6,436	6,373	8,551	9,516	9,645	10,347

* Notes: Table includes all reported extraction data for the thirty-four (34) Deep Aquifer production wells that have reported extractions since inception of the Agency's GEMS program in 1993. Data are reported in acre-feet. Colors denote water use category (Municipal, Agricultural, Industrial). An additional twelve (12) recently constructed Deep Aquifers Agricultural production wells have yet to report extractions as of Reporting Year 2019.



Monterey County

Item No.8

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: WRABMAC 21-025

April 07, 2021

Introduced: 4/1/2021

Current Status: Draft

Version: 1

Matter Type: WRA BMAC Item

Update on Groundwater Sustainability Agency activities in the Salinas Valley Basin

Update on groundwater sustainability agency activities in the Salinas Valley Basin

SUMMARY/DISCUSSION:

- Proposition 68 Grant Application
 - In January 2021, the SVBGSA applied for a Sustainable Groundwater Management Program Proposition 68 grant from the Department of Water Resources. MCWRA, Monterey One Water, and the Resource Conservation District of Monterey County assisted with preparation of the grant application. In March 2021, the SVBGSA was notified that the grant application was not successful.
- GSP Development and Implementation
 - The SVBGSA has formed Subbasin Committees, consisting of SVBGSA Directors and stakeholders from each subbasin, that meet every two months to provide input during the development of the remaining five GSPs. Committees for all five subbasins that still require development of GSPs (Eastside, Forebay, Langley, Monterey, and Upper Valley) meet regularly (Attachment 1). The meeting schedule is available on the SVBGSA website at <https://svbgsa.org/meetings/>.
 - Discussions around GSP development in the Forebay subbasin include the Arroyo Seco Groundwater Sustainability Agency (ASGSA). Both agencies are working on an agreement regarding implementation of GSPs in the Forebay subbasin.
 - In March 2021, Agency staff provided comments to the SVBGSA on draft chapters for the Eastside, Langley, and Upper Valley subbasin GSPs.
 - Agency staff meets regularly with SVBGSA staff to discuss projects or other aspects of the implementing Groundwater Sustainability Plans that may involve Agency staff or infrastructure, or impact Agency operations.
- Meeting Participation
 - Agency staff continues to attend meetings of the Arroyo Seco GSA, Marina Coast Water District GSA, and Salinas Valley Basin GSA and their various subcommittees.
 - The Agency is represented on the Advisory Committee of the Salinas Valley Basin GSA and participates in the SVBGSA's Seawater Intrusion Group (SWIG).
 - On March 19, 2021, Agency staff and some members of the Agency's Board of Directors participated in a Strategic Planning meeting with the SVBGSA.

OTHER AGENCY INVOLVEMENT:

Salinas Valley Basin Groundwater Sustainability Agency

FINANCING:

There is no financial impact in receiving this update.

Prepared by: Amy Woodrow, Hydrologist, (831) 755-4860
Howard Franklin, Senior Hydrologist, (831) 755-4860

Attachments

Attachment 1 – Map of Salinas Valley Groundwater Basin Subbasins

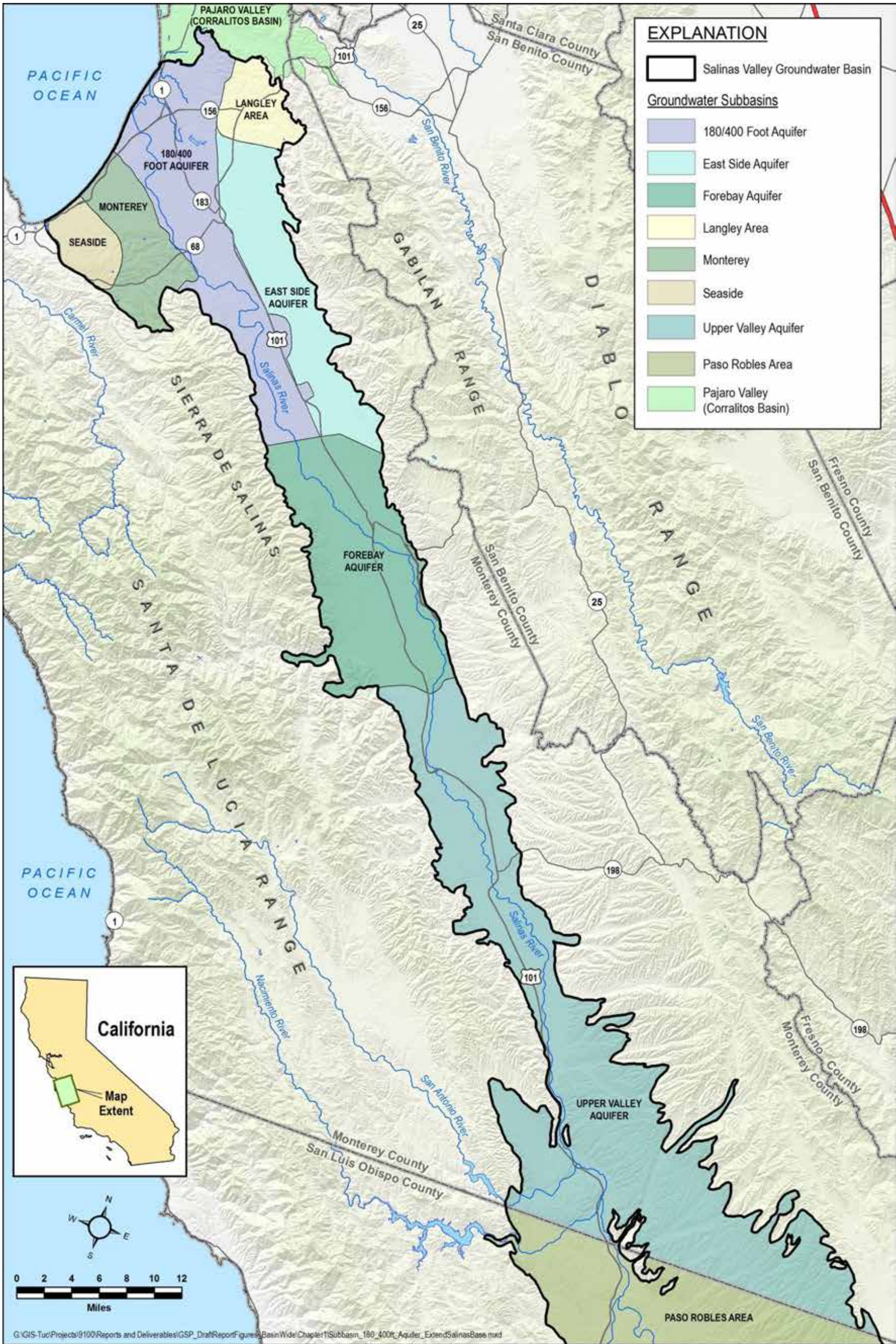


Figure 1-1: Salinas Valley Integrated Groundwater Sustainability Plan Area



Monterey County

Item No.9

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: WRABMAC 21-026

April 07, 2021

Introduced: 4/1/2021

Current Status: Draft

Version: 1

Matter Type: WRA BMAC Item

Update on Agency Modeling Activities

Update on Agency Modeling Activities

SUMMARY:

The Monterey County Water Resources Agency (MCWRA) is utilizing the Salinas Valley Operational Model (SVOM) to model project scenarios and evaluate conditions for the Interlake Tunnel Project. The SVOM is a tool developed by the U.S. Geological Survey and Agency that has been refined for use on this project by Wood Environment & Infrastructure, Inc. (Wood).

MCWRA is also working with the County of Monterey on the Salinas Valley Groundwater Basin Investigation (“Basin Investigation” or “Zone 2C Study”) which, in part, uses the Salinas Valley Integrated Hydrologic Model (SVIHM) to evaluate current and future water conditions and demands within Zone 2C.

DISCUSSION:

- MCWRA is working with Wood to prepare a technical memorandum on results of modeling conducted as part of the Winter Release Scenario. It is expected that this work will be finalized in March 2021.
- MCWRA is coordinating with Wood to develop operational parameters for a “Pre-Salinas Valley Water Project” baseline run. The intent of this modeling effort is to conduct a quantitative comparison of conditions before the SVWP and the existing baseline model, in response to stakeholder questions about the Interlake Tunnel project.
- MCWRA and Wood working closely with another consultant, ICF, to use the SVOM in support of ICF’s work on the Environmental Impact Report for the Interlake Tunnel Project.

OTHER AGENCY INVOLVEMENT

None.

FINANCING:

There is no financial impact for receiving this report.

Prepared by: Amy Woodrow, Hydrologist, (831) 755-4860
Howard Franklin, Senior Hydrologist, (831) 755-4860

Approved by: Brent Buche, General Manager



Monterey County

Item No.10

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: WRABMAC 21-021

April 07, 2021

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Version: 1

Matter Type: WRA BMAC Item

Consider future agenda items and set next meeting date