

# Discretionary Well Permitting Update & Status

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Stanislaus County  
Water Advisory Committee  
January 30, 2019



# Agenda

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Post PEIR Streamlining

Coordination with GSAs and GSPs

Recent Court Decisions on Well Permitting

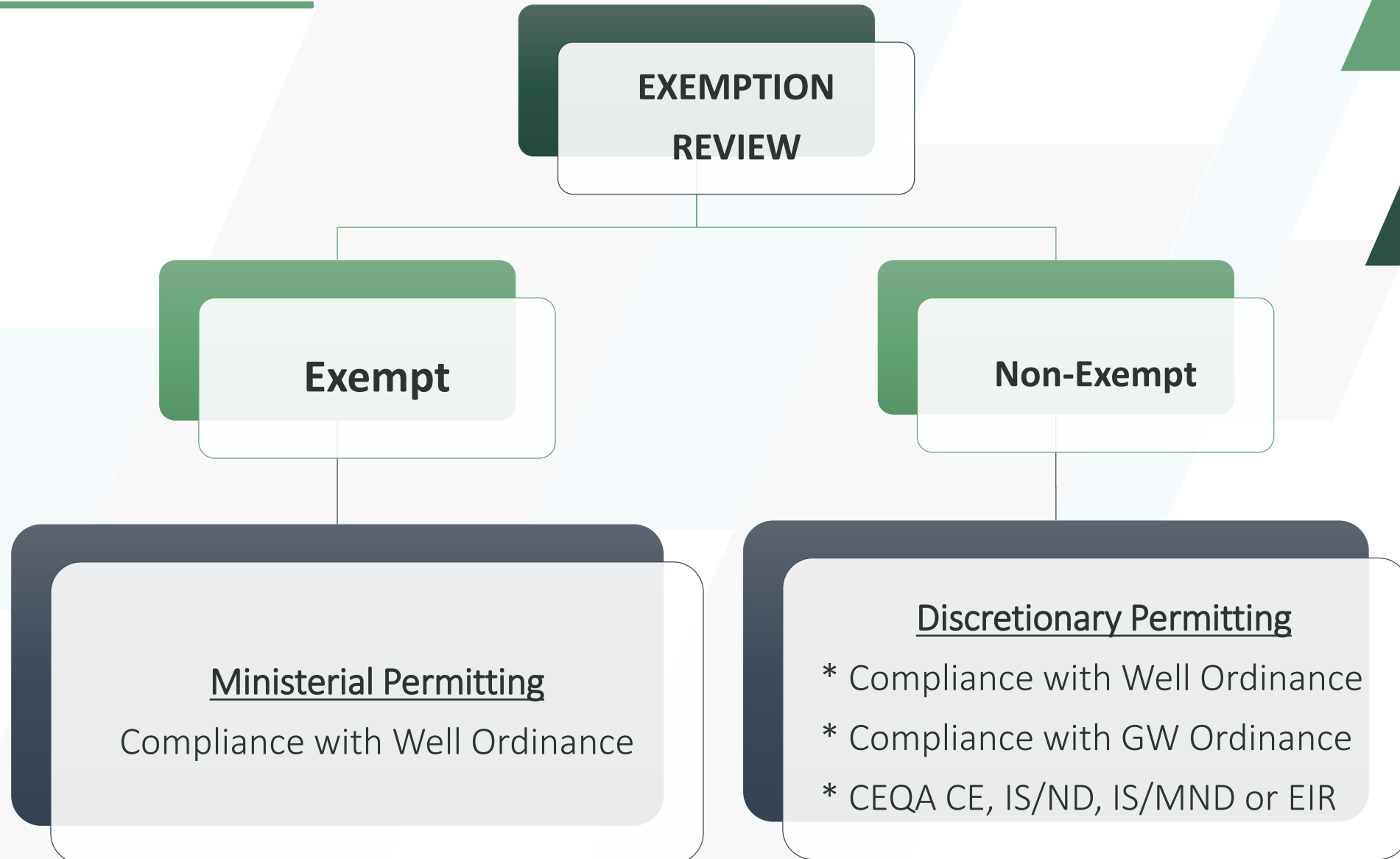




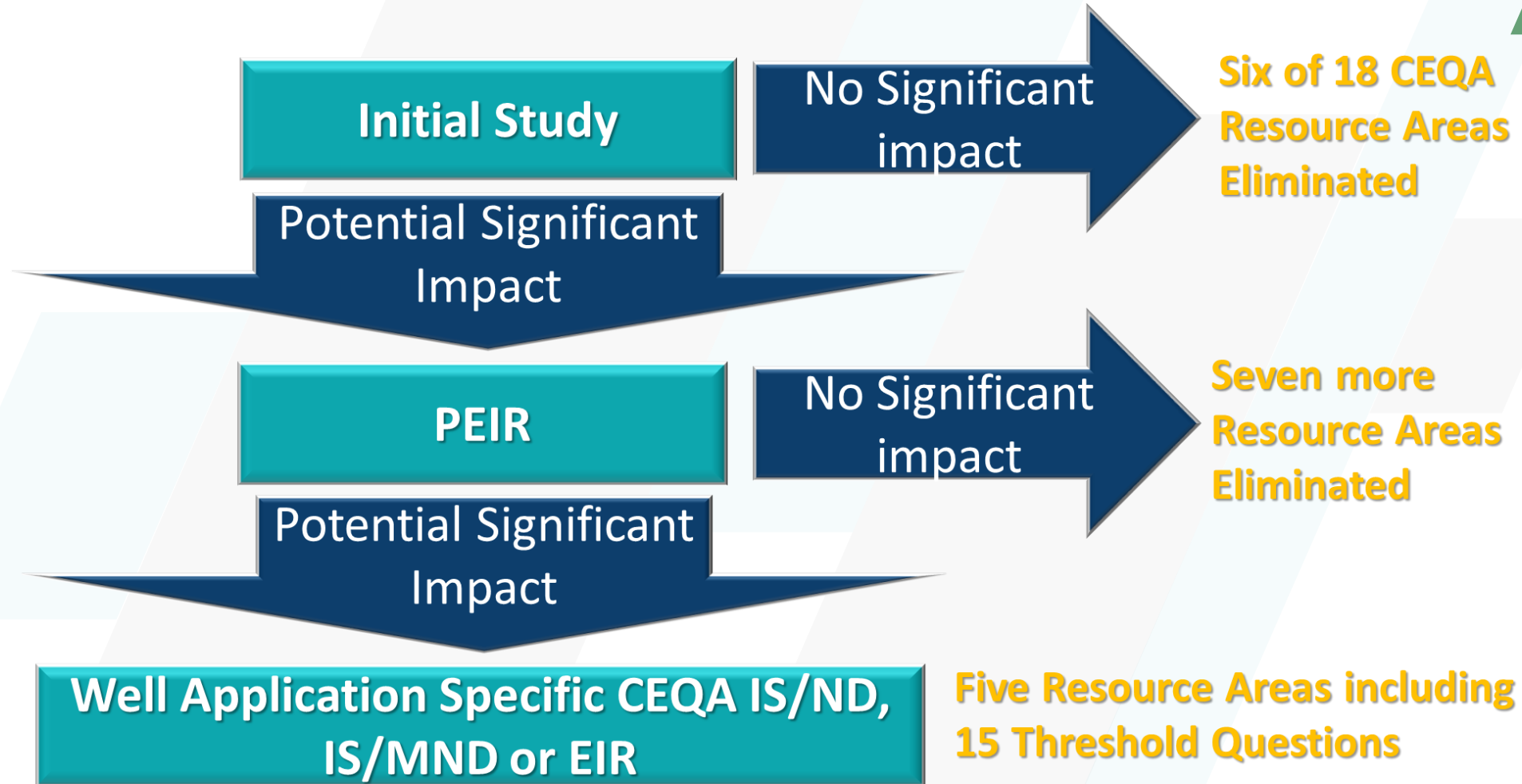
# Post-PEIR Streamlining

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# Stanislaus County Well Permitting Process



# The PEIR Process



# Post-PEIR Streamlining

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## Tiering from the PEIR

- Eliminate previously addressed issues and focus on Issues specific to individual applications

## Permitting Guideline Amendment

- Adopt Decision Flow Chart / Analysis Checklist to simplify and standardize evaluation

## Hydrologic Analysis Tools

- Refine/develop standardized tools to evaluate well hydrologic effects

# Flowchart / Checklist Process

**Project Description**  
Does the project information indicate impacts will be less than significant?

Yes

DONE



No

**Screening Analysis**  
Does a screening analysis indicate impacts will be less than significant?

Yes

DONE



No

**Resource Investigation**  
Does site-specific investigation indicate impacts will be less than significant?

Yes

DONE



No

**Mitigation Measures/Permit Conditions**  
Do mitigation measures/permit conditions render impacts less than significant?

Yes

DONE



POTENTIAL IMPACT	1. EVALUATE PROJECT DESCRIPTION		2. SCREENING ANALYSIS		3. RESOURCE INVESTIGATION	
Direct Construction Impacts	Does the nature of the project mean impacts will be less than significant?	<div style="display: flex; flex-direction: column; align-items: center;"> <div style="margin-bottom: 10px;">Yes ➔</div> <div style="margin-bottom: 10px;">STOP</div> <div style="margin-bottom: 10px;">NO ➔</div> <div>PROCEED TO STEP 2</div> </div>	Does screening indicate impacts will be less than significant?	<div style="display: flex; flex-direction: column; align-items: center;"> <div style="margin-bottom: 10px;">Yes ➔</div> <div style="margin-bottom: 10px;">STOP</div> <div style="margin-bottom: 10px;">NO ➔</div> <div>PROCEED TO STEP 3</div> </div>	Does investigation indicate impacts will be less than significant?	<div style="display: flex; flex-direction: column; align-items: center;"> <div style="margin-bottom: 10px;">Yes ➔</div> <div style="margin-bottom: 10px;">STOP</div> <div style="margin-bottom: 10px;">NO ➔</div> <div>PROCEED TO MITIGATION</div> </div>
Direct Operation Impacts		<div style="display: flex; flex-direction: column; align-items: center;"> <div style="margin-bottom: 10px;">STOP</div> <div>PROCEED TO STEP 2</div> </div>		<div style="display: flex; flex-direction: column; align-items: center;"> <div style="margin-bottom: 10px;">STOP</div> <div>PROCEED TO STEP 3</div> </div>		<div style="display: flex; flex-direction: column; align-items: center;"> <div style="margin-bottom: 10px;">STOP</div> <div>PROCEED TO MITIGATION</div> </div>
Indirect Impacts		<div style="display: flex; flex-direction: column; align-items: center;"> <div style="margin-bottom: 10px;">STOP</div> <div>PROCEED TO STEP 2</div> </div>		<div style="display: flex; flex-direction: column; align-items: center;"> <div style="margin-bottom: 10px;">STOP</div> <div>PROCEED TO STEP 3</div> </div>		<div style="display: flex; flex-direction: column; align-items: center;"> <div style="margin-bottom: 10px;">STOP</div> <div>PROCEED TO MITIGATION</div> </div>



# Example: Impact WAT-3

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Would the project cause groundwater drawdown or storage depletion that does not recover over a period of years that includes wet and dry periods, and that will interfere with the ability of other well operators to support existing or permitted land uses, or that will substantially increase the cost to pump groundwater in the area?

POTENTIAL IMPACT	1. EVALUATE PROJECT DESCRIPTION		
Direct Operation Impacts	Is the proposed well located within the Northern Triangle AND outside of the County-designated Groundwater Level Management Zone identified in the memorandum dated October 26, 2017?	YES ➔	STOP. Conclude Less Than Significant Impact
		NO ➔	Proceed with a Hydrograph Analysis per the Discretionary Well Permit Program under the County Groundwater Ordinance. ➔

## 2. SCREENING ANALYSIS

Does a Hydrograph Analysis performed using the methodology described in the October 26, 2017 memorandum indicate that groundwater drawdown and storage depletion in the area surrounding the proposed well will not be significant and unreasonable over the SGMA Planning Horizon under current management conditions?

Specify Attachment No.: \_\_\_\_\_

**YES**  
➔

**STOP. Conclude Less Than Significant Impact**

**NO**  
➔

**Proceed with a Groundwater Resources Investigation per the Discretionary Well Permitting Program under the County Groundwater Ordinance.**

**OR**

**Prepare a Groundwater Extraction Offset Plan per the Discretionary Well Permitting Program under the County Groundwater Ordinance.**



### 3. RESOURCE INVESTIGATION

Does the Groundwater Extraction Offset Plan demonstrate how the proposed groundwater demand will be completely offset, or do the results of a Groundwater Resource Investigation demonstrate that the proposed extraction will not result in, or contribute to, "Undesirable Results" as defined in the County Groundwater Ordinance?

Specify Attachment No.: \_\_\_\_\_

**YES**  
➔

**STOP. Conclude Less Than Significant Impact**

**NO**  
➔

**Deny Permit based on proposed project description or Submit to Board of Supervisors with Statement of Overriding Considerations**



# Coordination with GSAs and GSPs

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# County Responsibilities

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## *Water Code § 13801, 13803 and 13808*

- Adopt a Well Ordinance that meets or exceeds State Well Standards
- Adopt any subsequent RWQCB well permitting requirements
- Collect supplemental information for well permits in critically overdrafted basins (SB252)

## *Government Code § 65352.5*

- Consult with GSAs and consider the effect of GSPs on proposed General Plan Updates or Amendments

## *Water Code 10726.4*

- Can submit permit applications to GSAs for review prior to approval

# GSA Responsibilities

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## ***Water Code § 10726.4***

- Can develop Well Spacing Standards/Operating Regulations
- Can regulate groundwater extractions
- Review Well Permit Applications if provided by Permitting Agencies
- Does not have well permitting authority unless granted by a Permitting Agency (but many Permitting Agencies are on GSAs)

## ***Government Code § 65352.5***

- Analyze the effect of GSP on proposed General Plan Updates or Amendments

# CEQA Guidelines Appendix G (as amended)

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## *X. Hydrology and Water Quality – Would the Project:*

- (b) Substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin?
- (e) Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan?

## *XIX. Utilities and Service Systems – Would the Project:*

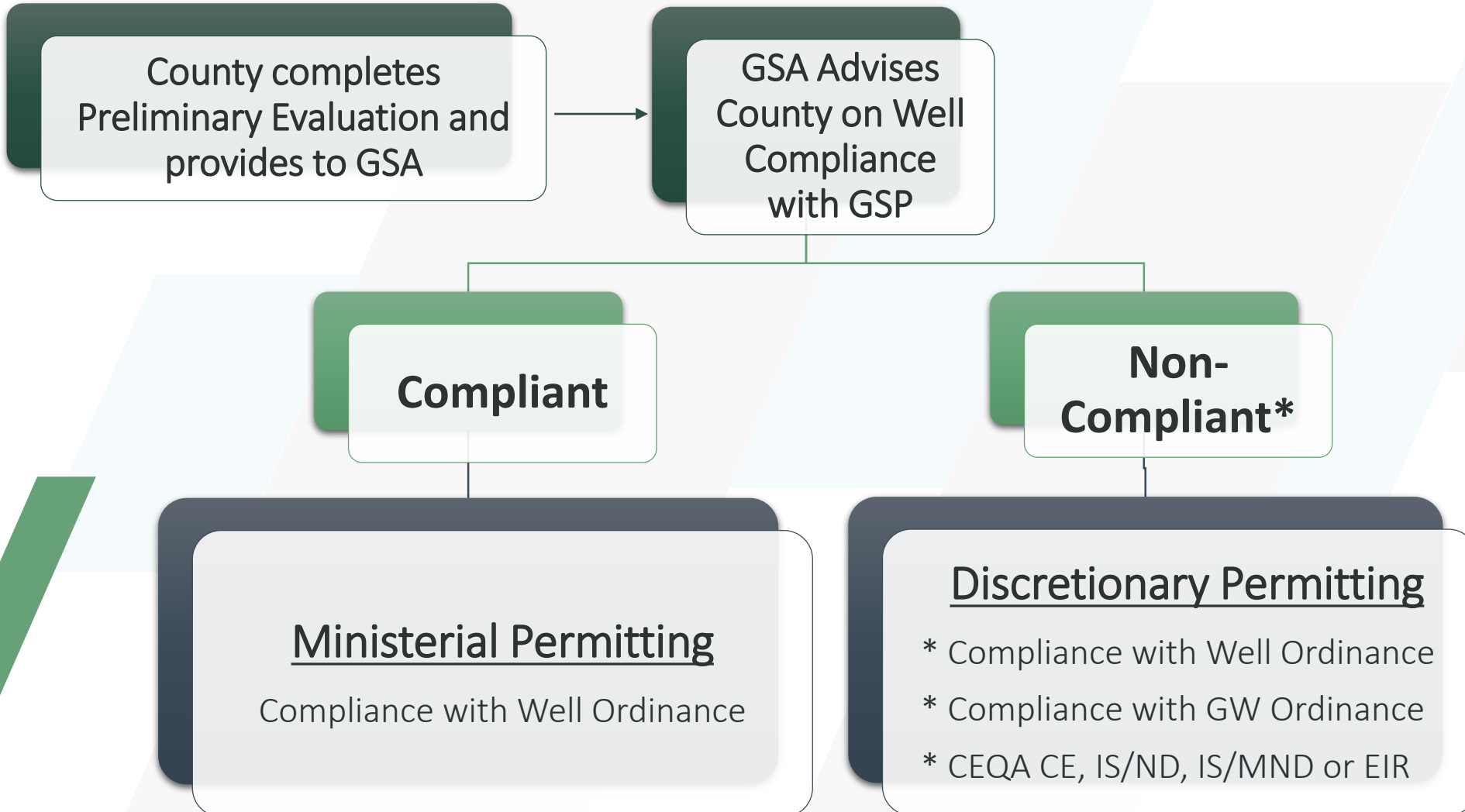
- (b) Have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years?

## *Other Threshold Questions*

- Alignment between SGMA, the County Groundwater Ordinances and threshold questions related to Groundwater-Dependent Ecosystems and Subsidence



# Stanislaus County Well Permitting Process



\* County can require any well operator it deems may not operating a well sustainably to provide substantial evidence of compliance.

# Some Options for Preliminary Well Evaluations

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## *Coordinate Scope with GSA*

- Well-specific details
- Local effects analysis to complement GSP-level management data

## *Well Specific Details*

- Well completion data
- Pumping rate, pumping schedule, water demand and water use

## *Local Effects Analysis*

- Distance-drawdown analysis
- Interference drawdown evaluation
- Local hydrograph analysis (if needed)



# Recent Appellate Court Decisions on Well Permitting

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# CWIN v. San Luis Obispo County

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## Initiated 2016 Shortly After the Recent Drought

- Alleged well permitting is discretionary; CEQA review required
- Alleged due process was violated; County should have considered overdraft

## Appeals Court (2<sup>nd</sup> District) Decision June 2018

- Based on review of State Well Standards, well permitting by County ***is not*** discretionary
- “If an applicant meets fixed Standards, County must issue a well permit”
- Insufficient evidence of due process violation
- Groundwater quantity not required to be considered

# POWER v. Stanislaus County

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Initiated 2014, During  
Recent Drought

- Alleged well permitting is discretionary; CEQA review required
- Alleged due process was violated for nearby well owners

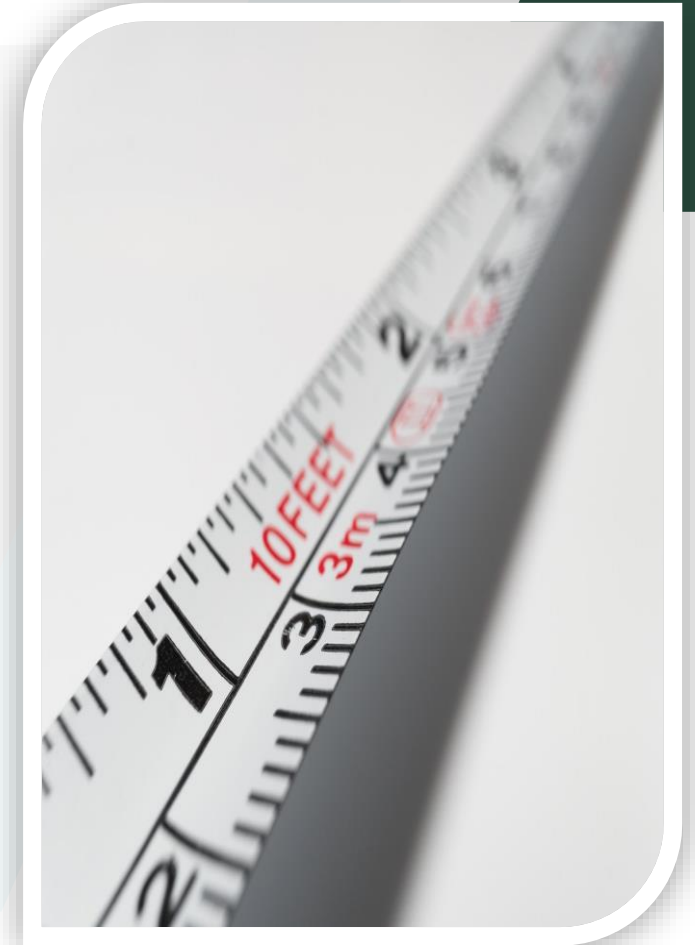
Appeals Court (5<sup>th</sup> District)  
Decision July 2018

- Based on review of State Well Standards, well permitting by County *is* discretionary
- “County retains discretion to determine whether a well will be placed an ‘adequate’ distance from a contamination source”
- Insufficient evidence of due process violation

# Does DWR Bulletin 74-90 Require Discretion?

## Section 8(A):

- “All water wells shall be located an adequate horizontal distance from known or potential sources of contamination.”
- “Local conditions may require greater separation distances...”
- “No set separation distance is adequate and reasonable for all conditions. Determination of safe separation distance ... requires detailed evaluation ...”
- “Where, in the opinion of the enforcing agency adverse conditions exist ...”



# ELF v. SWRCB

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## Initiated 2010, Narrow Appeal

- Originally alleged groundwater extraction near Scott River adversely affected Public Trust resources
- Alleged counties have duty to consider Public Trust resources before issuing well permits

## Appeals Court (3<sup>rd</sup> District) Decision Aug 2018

- Counties must consider Public Trust issues when issuing well permits near Navigable Waters that are groundwater connected
- SGMA does not abrogate application of the Public Trust Doctrine to groundwater resources



# Some Options if Court Decisions are Upheld

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## Work with CSAC on Legislative/Regulatory Solution

Amendment of State Well Standards

Amendment of CEQA Guidelines

Proposal for Categorical Exemption

## Amend County Well Ordinance to Maintain Ministerial Permitting

Identify more prescriptive well seal requirements

Carve out areas or conditions for prescriptive requirements

Identify surface water protection zones

## Refine Permitting Implementation Guidelines

Identify Categorical and Common Sense Exemptions

Update PEIR and refine streamlined CEQA review documentation

Use Management Zones to carve out areas where permitting is easier