

PEIR pertaining to the Stanislaus County Groundwater Ordinance: Next Steps

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The PEIR was certified June 26, now what?

- ✓ Two ways the PEIR can be used to streamline well permitting
 - Tiering
 - Streamlined permit and CEQA review
- ✓ Return to ministerial permitting when feasible
- ✓ Permitting after GSPs are adopted
- ✓ Recent court decisions and their implications

Current Well Permitting Process

Exemption
Review

Exempt

Ministerial Permitting

- Determine Compliance with County Code Ch 9.36 (Well Ordinance)

Non-Exempt

Discretionary Permitting

- Determine Compliance with Ch 9.36
- Evaluate Compliance with County Code Ch 9.37 (Groundwater Ordinance)
- CEQA IS/ND, IS/MND or EIR

Apply Permit Conditions, Receive Fees, Issue Permit

Ministerial Permitting

(CEQA Guidelines § 15369)

Little or no personal judgment as to the wisdom or manner of an action

Determine conformity with statutes, ordinances or regulations

Involves only fixed standards or objective measurements

Apply the law to the facts as presented



Discretionary Permitting (CEQA Guidelines § 15357)

Requires the exercise of judgment or deliberation when a public agency decides whether to approve or disapprove the action

Triggers CEQA review of direct and indirect consequences



Post-PEIR Streamlining of Well Permitting

Exemption
Review

**Streamlining
Process**

Exempt

Non-Exempt

Ministerial Permitting

- Determine Compliance with Ch 9.36

Discretionary Permitting

- Determine Compliance with Ch 9.36
- Evaluate Compliance with Ch 9.37
- CEQA IS/ND, IS/MND or EIR

Apply Permit Conditions, Receive Fees, Issue Permit

Possibilities for Streamlining

Tiering

- Incorporate the broader PEIR by reference and focus only on issues specific to the individual applications

Permitting Guideline Amendment

- Adopt a decision flow chart and analysis checklist approach in the permitting implementation guidelines to simplify evaluation and documentation

What is Tiering?

- ✓ Per CEQA Guidelines § 15168, a PEIR:
 - Considers broad alternatives and program-wide mitigation strategies, giving greater flexibility for early implementation of appropriate groundwater management strategies;
 - Ensures better consideration of cumulative impacts; and
 - Avoids duplicative reconsideration of basic issues and allows reduction in paperwork.

What is Tiering?

- ✓ Per CEQA Guidelines § 15152, tiering allows a subsequent CEQA document to:
 - Incorporate general discussions from a broader EIR by reference and concentrate solely on issues specific to the later project;
 - Eliminate repetitive discussions of the same issues, and focus on the actual issues ripe for decision; and
 - Be limited to project effects that were not previously examined, or that can be decreased or avoided.

Initial Study

No Significant
impact

**Six of 18
Resource Areas
Eliminated**

Potential Significant
Impact

PEIR

No Significant
impact

**Seven more
Resource Areas
Eliminated**

Potential Significant
Impact

Well Application Specific Analysis

**Five Resource Areas
Comprising 15 Threshold
Questions Remaining**

Permitting Guideline Amendment

- ✓ Adopt a Decision Flowchart/Evaluation Checklist approach
- ✓ For each remaining resource area and threshold question:
 - Identify evaluation “Departure Points” (Where under a given set of circumstances the evaluation can be deemed complete;
 - Identify documentation requirements for each Departure Point; and
 - Create a checklist to guide and document the 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 or permit conditions render impacts less than significant?

Yes

DONE

Hypothetical Example 1 – Redundant Well

- ✓ Scenario: Install a new well to supplement an old well with declining yield.
- ✓ Analysis:
 - Old well not abandoned, so new well is not a replacement well
 - New well located adjacent to old well on developed property
 - Well completed in same aquifer and combined groundwater demand does not change
 - Work scheduled outside raptor breeding season (Oct – Jan)

Project Description

No biological habitat, cultural resource, hydrologic or land use impacts; No noise impacts if well is > 250 feet from site boundary

Yes

DONE

No

Screening Analysis

Not adjacent to sensitive habitat; work during non-nesting season

Yes

DONE

No

Resource Investigation

Yes

No

Mitigation Measures/Permit Conditions

Yes

Hypothetical Example 2 – Lot Split Well

- ✓ Scenario: Install a well on developed agricultural property developed to accommodate a lot split.
- ✓ Analysis:
 - Well completed in same aquifer and combined groundwater demand for the property does not change
 - Well is located near, but not adjacent to the old well
 - Work scheduled outside raptor breeding season (Oct – Jan)

Project Description

No biological habitat, cultural resource, or land use impacts; No noise impacts if well is > 250 feet from site boundary

Yes

DONE

No

Screening Analysis

Not adjacent to sensitive habitat; work during non-nesting season; interference drawdown < 5 ft to domestic and <20 ft to irrigation wells

Yes

DONE

No

Resource Investigation

Yes

No

Mitigation Measures/Permit Conditions

Yes

Hypothetical Example 3 – Irrigation Well for New Orchard on Previously Uncultivated Land

- ✓ Scenario: Install a well to allow conversion of a property from rangeland to an orchard.
- ✓ Analysis:
 - Well represents a new groundwater demand, all potential undesirable results must be evaluated
 - Conversion of rangeland is made possible by the well, and must be evaluated as an indirect consequence of the project
 - Work is scheduled during raptor breeding season (Feb – Sep)

Project Description

No noise impacts if well is > 250 feet from site boundary

Yes

DONE

No

Screening Analysis

Impacts to habitat, cultural resources, hydrology and land use rules out by desk top study and site reconnaissance

Yes

DONE

No

Resource Investigation

No Resource Investigation required

Yes

No

Mitigation Measures/Permit Conditions

Nesting survey if work is performed during the nesting season; stop work if unexpected cultural resources are discovered

Yes

DONE

Return to Ministerial Well Permitting?

- ✓ Per State CEQA Guidelines § 15268:
 - Determination of what is "ministerial" is most appropriately made based on the public agency's own analysis.
 - Certain permits can be presumed ministerial "in the absence of any discretionary provision contained in the local ordinance or other law establishing the requirements for the permit."
 - Public agencies should identify permits they deem ministerial in their implementing regulations or ordinances.

Approach to Ministerial Well Permitting

- ✓ Amend the Well Permitting Implementation Guidelines
 - Adopt checklist approach for projects similar to Examples 1 and 2 that does not require personal judgment or discretion
 - Identify and itemize the well permit types that are presumed to be ministerial
- ✓ Determine whether an amendment to the Groundwater Ordinance is needed to support return to ministerial permitting for some well types

Well Permitting after GSP Adoption

- ✓ After GSPs are adopted:
 - Permits for wells consistent with GSPs will be exempt;
 - Permits for wells not consistent with GSPs will be non-exempt;
 - GSAs will advise County whether applications for new wells are consistent with GSPs; and
 - County will process permits accordingly.
- ✓ County is developing implementation guidelines for post-GSP well permitting; will solicit comments from GSAs

Post-GSP Well Permitting Process

GSA Advises County on Well Compliance with GSP*

Compliant

Ministerial Permitting

- Determine Compliance with Ch 9.36

Non-Compliant

Discretionary Permitting

- Determine Compliance with Ch 9.36
- Evaluate Compliance with Ch 9.37
- CEQA IS/ND, IS/MND or EIR

Apply Permit Conditions, Receive Fees, Issue Permit

* Ordinance allows County to require applicants to provide substantial evidence that their well will be compliant.

Recent Court Decisions

- ✓ CWIN v. San Luis Obispo County (June 2018)
 - Appeals Court (2nd District) found well permitting by SLO County is not discretionary
- ✓ POWER v. Stanislaus County (July 2018)
 - Appeals Court (5th District) found all well permitting by Stanislaus County is discretionary
- ✓ ELF v. SWRCB (August 2018)
 - Appeals Court (3rd District) found Counties must consider public trust issues when issuing well permits for wells near groundwater-connected streams

Potential Future Well Permitting Process?

GSA Evaluates Well Compliance
with GSP

Compliant

Discretionary Permitting

- Determine Compliance with Ch 9.36
- Evaluate Impacts on Public Trust Resources
- CEQA IS/ND, IS/MND or EIR

Non-Compliant

Discretionary Permitting

- Determine Compliance with Ch 9.36
- Evaluate Compliance with Ch 9.37 (including Public Trust Resources)
- CEQA IS/ND, IS/MND or EIR

Apply Permit Conditions, Receive Fees, Issue Permit

Questions?