



**DEPARTMENT OF ENVIRONMENTAL RESOURCES**  
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## MEMORANDUM

**Date:** November 4, 2021  
**To:** Water Well Permit Applicants  
**From:** Stanislaus County Department of Environmental Resources  
**Re:** California Environmental Quality Act Compliance

Historically, like many counties in California, Stanislaus County Department of Environmental Resources (DER) considered most well permit applications to install groundwater wells to be ministerial and exempt from environmental review under the California Environmental Quality Act (CEQA). In 2014, Stanislaus County's practice in issuing permits was challenged in two separate cases (Protecting our Water and Environmental Resources ("POWER") v County of Stanislaus and Coston et al v County of Stanislaus). Both cases argue that County staff must use discretion when issuing the permits and this discretion triggers CEQA.

The County must follow State standards when permitting well construction. Under those State standards, most water well construction permit applications were historically deemed ministerial and the permits issued without additional environmental reviews. The County defended its past practice all the way to the California Supreme Court. The Supreme Court ruled against the County holding that:

*"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.)" Protecting Our Water & Env't Res. v. Cty. of Stanislaus, 10 Cal. 5th 479, 496, 472 P.3d 459, 468 (2020); It went on to say that as a result, those permits "in which County is required to exercise independent judgment under Standard 8.A cannot be classified as ministerial." (Id. at p. 497.)"*

The Supreme Court, having determined that a portion of the ordinance allowed enough discretion to invalidate the ministerial statutory exemption, remanded the case back to the Court of Appeal "for it to evaluate the questions it declined to answer and to reassess plaintiffs' entitlement to relief."

On remand the court of appeal then concluded that in addition to standard 8.A, “Standards 8.B and 8.C confer discretion in at least some circumstances.” Therefore, there are three instances in the state standards when staff must exercise discretion:

- *Section 8.A of the bulletin (Standard 8.A) addresses the distance between proposed wells and potential sources of contamination.*
- *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.’*

So, given the Supreme Court’s and the Court of Appeal’s decisions that in at least 3 instances (where section 8.A, 8.B, and 8.C are at issue) the processing of well construction permits are no longer exempt from CEQA as ministerial projects, staff must then look for other statutory or categorical exemptions that apply or perform the required level of environmental review for that particular well application.

The Department has an outside consultant available to perform the necessary environmental review at the applicant’s expense. As all water well permit applications currently in DER’s possession are impacted by this change, the applicant may cancel any permit applications that are currently in the review process with no additional charges to the applicant.