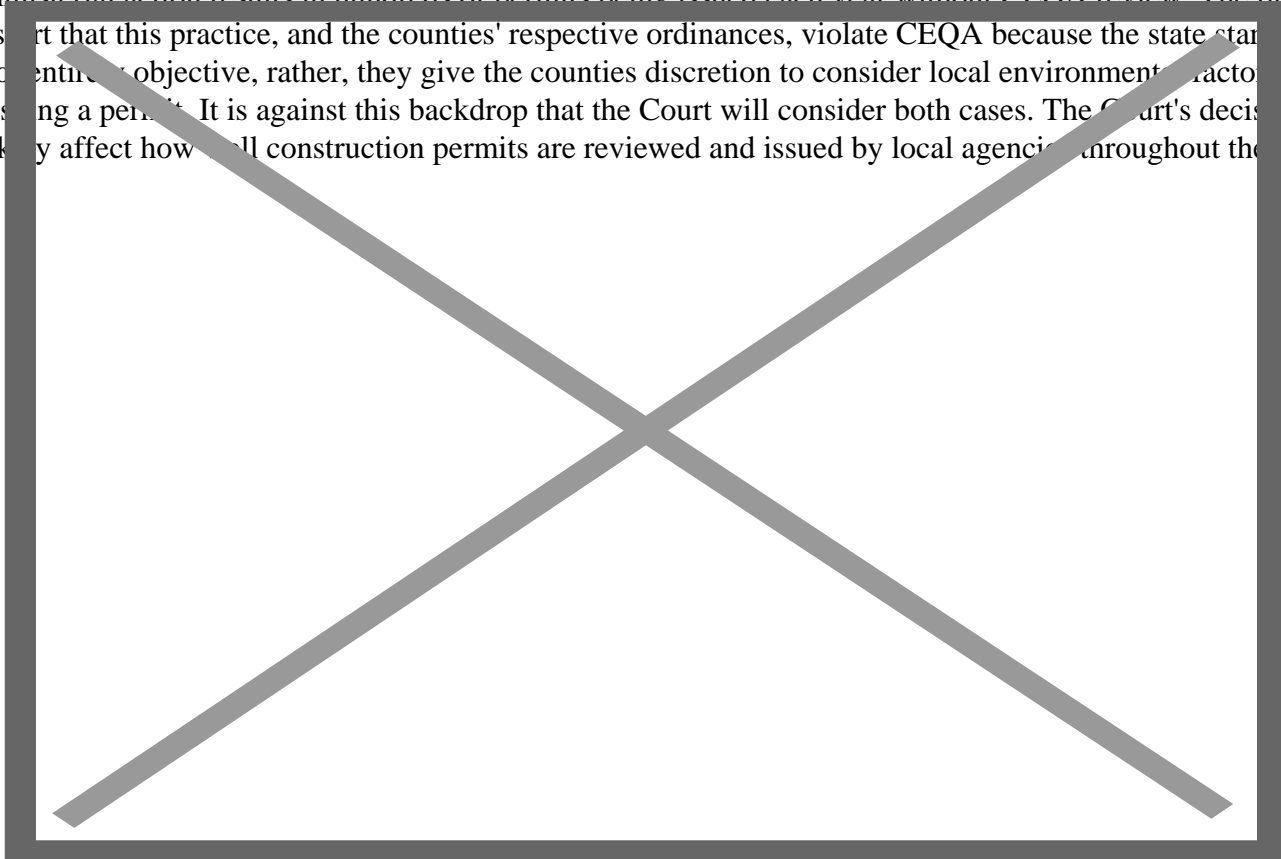


## Supreme Court To Decide If CEQA Review Is Required For Well Permits.

The Supreme Court of California has granted review of two cases to resolve a split among courts of appeal over whether the issuance of well permits pursuant to state standards is subject to CEQA. *California Water Impact Network v. County of San Luis Obispo* and *Protecting Our Water & Environmental Resources v. Stanislaus County*. At the forefront of these cases is whether the standards issued by the Department of Water Resources for well construction give local agencies any discretion when issuing well permits. Water is a critical resource in the state and with enactment of the Sustainable Groundwater Management Act in 2014, groundwater, particularly its sustainable withdrawal and quality, are issues receiving more attention. Consequently, the practice of ministerial approval of well construction permits by local agencies without discretionary environmental review have come under increasing scrutiny. In both *California Water Impact Network* and *Protecting Our Water & Environmental Resources*, plaintiffs alleged that the counties' practice of treating approval of well construction permits as a ministerial action results in hundreds of permits being issued each year without CEQA review. The plaintiffs assert that this practice, and the counties' respective ordinances, violate CEQA because the state standards are not entirely objective, rather, they give the counties discretion to consider local environmental factors when issuing a permit. It is against this backdrop that the Court will consider both cases. The Court's decision will likely affect how well construction permits are reviewed and issued by local agencies throughout the state.



Water

Code Section 13801 requires local agencies to adopt the minimum standards established by DWR for well construction. These standards, in DWR Bulletins No. 74-81 and 74-90, provide guidance on well construction,

location, surface features, seals, casing materials and so forth with the goal of preventing groundwater contamination and pollution. Stanislaus County's well ordinance incorporates both DWR Bulletins, while San Luis Obispo County's ordinance only incorporates DWR Bulletin 74-81, though in practice, the county also applies the standards in DWR Bulletin 74-90. Plaintiffs in the two cases argued that the DWR Bulletins require that the counties exercise discretion when issuing well permits. In *California Water Impact Network*, plaintiff argued that DWR's standards include consideration of the cumulative depletion of groundwater in approving or denying a permit. In *Protecting Our Water & Environment*, plaintiff relied on a provision in DWR Bulletin 74-90 requiring wells to be located an adequate horizontal distance from potential contamination sources. The *California Water Impact Network* court ruled that San Luis Obispo County's process for issuing well construction permits was ministerial. The court examined the DWR Bulletins and found that nothing in the standards authorizes the county to consider the cumulative depletion of groundwater when issuing a well permit. The primary purpose of the DWR standards is to protect water quality, not quantity. Furthermore, the court stated that even if the County could impose additional requirements pursuant to DWR's standards, it had not exercised that authority. The *Protecting Our Water & Environment* court reached an opposite conclusion. It identified a specific provision in DWR Bulletin 74-90 as requiring a local agency to use its discretion when reviewing a proposed well construction permit. Section 8(A) of the Bulletin pertains to well location and provides that "All water wells shall be located an *adequate* horizontal distance from known or potential sources of pollution and contamination" (emphasis added). Section 8(A) lists in a chart the recommended distances from various potential contamination sources but also states that appropriate distances for individual wells requires an evaluation of existing and future site conditions. The court found this language to require local agencies to make a subjective determination with regards to well location. What is "adequate" depends on specific features and local conditions of a well, not fixed standards or technical criteria and a local agency making this determination would use discretion to determine adequate spacing. Because Stanislaus County's well construction ordinance incorporates DWR Bulletin 74-90, the court held that issuance of well construction permits under the ordinance are a discretionary act subject to CEQA. These cases tee up for the Court whether the DWR Bulletins for well construction contain purely objective standards or if subjective determinations are required to account for the different factors involved in permitting individual wells. Relatedly, the Court may also examine how the counties' ordinances incorporate and implement the DWR Bulletins. Given the backdrop of these cases, the Court is also likely to opine on the policy and practical implications of its decision. As the *Protecting Our Water & Environment* court recognized, requiring Stanislaus County to complete a CEQA analysis on the hundreds of well permits issued each year may be burdensome and costly, but is required if the county has discretion to dictate how well construction is carried out. The Court will first review *Protecting Our Water & Environmental Resources* and has deferred action on *California Water Impact Network* pending disposition of the former case. *California Water Impact Network v. County of San Luis Obispo* (Justin Vineyards and Winery, LLC), 25 Cal. App. 5th 666 (2018), *Protecting Our Water & Environmental Resources v. Stanislaus County*, F073634 (2018) (unpublished)

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