

California Water Impact Network v. County of San Luis Obispo

Court of Appeal of California, Second Appellate District, Division Six

June 28, 2018, Opinion Filed

No. B283846

Reporter

25 Cal. App. 5th 666 *; 236 Cal. Rptr. 3d 53 **; 2018 Cal. App. LEXIS 662 ***

CALIFORNIA WATER IMPACT NETWORK, Petitioner and Appellant, v. COUNTY OF SAN LUIS OBISPO et al., Respondents; JUSTIN VINEYARDS AND WINERY, LLC, et al., Real Parties in Interest and Respondents.

Subsequent History: [***1] The Publication Status of this Document has been Changed by the Court from Unpublished to Published July 27, 2018.

Prior History: Superior Court of San Luis Obispo County, No. 16CVP-0195, Barry L. LaBarbera, Judge.

[Cal. Water Impact Network v. Cty. of San Luis Obispo, 2018 Cal. App. Unpub. LEXIS 4406 \(Cal. App. 2d Dist., June 28, 2018\)](#)

Core Terms

groundwater, bulletin, permits, ministerial, ordinance, resources, discretionary, requirements, conditions, pollution, parties, contamination, issuing, applications, ministerial act, beneficial use, groundwater, constructed, agencies

Case Summary

Overview

HOLDINGS: [1]-The issuance of permits for the construction of wells to irrigate vineyards under San Luis Obispo County Code, ch. 8.40, which was

a beneficial use under [Cal. Const., art. X, § 2](#), and [Wat. Code, § 106](#), did not require environmental review under the California Environmental Quality Act because permitting was not a discretionary project under [Pub. Resources Code, §§ 21065, 21080, subs. \(a\), \(b\)\(1\)](#), absent any discretionary language regarding groundwater depletion in the ordinance, which incorporated state standards to protect water quality under [Wat. Code, §§ 231, 13800, 13801, subd. \(c\)](#), and made permitting a ministerial act when the requirements were met; [2]-A provision of the ordinance requiring information as necessary to determine if underground waters would be protected did not confer discretion as to groundwater depletion because it meant protected from pollution.

Outcome

Judgment affirmed.

LexisNexis® Headnotes

Environmental Law > Assessment & Information Access > Environmental Assessments

Environmental Law > Administrative Proceedings & Litigation > Judicial Review

Environmental Law > Natural Resources & Public Lands > National Environmental Policy Act

[HN1](#) [↓] **Assessment & Information Access, Environmental Assessments**

Review of whether issuing a permit requires environmental review is de novo. The appellate court examines the petition and the governing ordinance to determine whether the county had a duty to conduct a California Environmental Quality Act (**CEQA**) review, or whether issuing a permit is a ministerial act exempt from **CEQA**.

Real Property Law > Water Rights > Beneficial Use

[HN2](#) [↓] **Water Rights, Beneficial Use**

California policy requires that water resources be put to beneficial use.

Real Property Law > Water Rights > Beneficial Use

[HN3](#) [↓] **Water Rights, Beneficial Use**

Use of water for domestic purposes and irrigation is considered beneficial. [Wat. Code, § 106](#).

Real Property Law > Water Rights > Groundwater

[HN4](#) [↓] **Water Rights, Groundwater**

Groundwater belongs to the State of California, but may be extracted by those with the right to do so, including those whose land overlies the groundwater source. Local agencies manage the appropriation of groundwater through a permitting system.

Environmental Law > Assessment & Information Access > Environmental Assessments

Environmental Law > Natural Resources & Public Lands > National Environmental Policy Act

[HN5](#) [↓] **Assessment & Information Access, Environmental Assessments**

The California Environmental Quality Act applies to projects subject to discretionary approval by the government; it does not apply to ministerial acts. [Pub. Resources Code, § 21080, subds. \(a\), \(b\)\(1\)](#). A project is an activity that may cause either a direct physical change in the environment, or a reasonably foreseeable indirect change, as defined in [Pub. Resources Code, § 21065](#), with tangible physical manifestations that are perceptible by the senses. A discretionary project requires the exercise of judgment or deliberation; it does not encompass situations where the agency merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations. [Cal. Code Regs., tit. 14, § 15357](#). A ministerial action is one involving 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 discretion or judgment in reaching a decision. A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out. [Cal. Code Regs., tit. 14, § 15369](#).

Environmental Law > Assessment & Information Access > Environmental Assessments

Environmental Law > Natural Resources & Public Lands > National Environmental Policy Act

[HN6](#) [↓] **Assessment & Information Access, Environmental Assessments**

The legislative rationale for excluding purely ministerial projects from the California Environmental Quality Act (CEQA) implicitly recognizes that unless a public agency can shape the project in a way that would respond to concerns raised in an environmental impact report (EIR), environmental review would be a meaningless exercise. Absent discretion to deny a permit, an agency has no duty to conduct a CEQA review, no matter what terrible environmental consequences an EIR might reveal. The law administered by an agency is the litmus for differentiating between its discretionary and ministerial functions. The agency may determine what acts are ministerial by analyzing its own laws, as provided in Cal. Code Regs., tit. 14, § 15268, subd. (a), and its view of the scope and meaning of its own ordinance is entitled to great weight unless that view is clearly erroneous or unauthorized.

Real Property Law > Water Rights > Beneficial Use

Real Property Law > Water Rights > Groundwater

[HN7](#) [↓] **Water Rights, Beneficial Use**

San Luis Obispo County Code, ch. 8.40, addresses wells. This includes wells to extract water for irrigation. San Luis Obispo County Code, § 8.40.020. The purpose of the chapter is to ensure that wells are constructed, repaired, modified or destroyed in such a manner that the groundwater of the county will not be contaminated or polluted and that water obtained from wells will be suitable for beneficial use and will not jeopardize the health, safety or welfare of the people of the county. San Luis Obispo County Code, 8.40.010. Well permit applications submitted to the county must list the proposed well location, depth and use, and describe nearby property lines, sewage disposal systems, water courses or bodies, drainage patterns, existing wells, and access roads. Only licensed well drilling contractors may obtain permits. San Luis Obispo

County Code, § 8.40.040, subds. (a), (c).

Real Property Law > Water Rights > Groundwater

[HN8](#) [↓] **Water Rights, Groundwater**

Well permits shall be issued if they comply with county and state standards. San Luis Obispo County Code, § 8.40.040, subd. (e). County standards require specified well seal depths, which are ministerial. San Luis Obispo County Code, § 8.040.060, subd. (b). Groundwater extraction is limited in the coastal zone to satisfy California's Coastal Act, as provided in San Luis Obispo County Code, § 8.040.065.

Governments > Local Governments > Ordinances & Regulations

Real Property Law > Water Rights > Groundwater

[HN9](#) [↓] **Local Governments, Ordinances & Regulations**

San Luis Obispo County Code, ch. 8.40, incorporates California Department of Water Resources (DWR) well standards. San Luis Obispo County Code, § 8.40.060, subd. (a). DWR sets minimum standards of well construction pursuant to Wat. Code, § 231, to protect the quality of water used or that may be used for any beneficial use. Wat. Code, § 13800. Local agencies are required to adopt a well construction ordinance that meets or exceeds the standards contained in DWR Bulletin 74.81. Wat. Code, § 13801, subd. (c).

Real Property Law > Water Rights > Groundwater

[HN10](#) [↓] **Water Rights, Groundwater**

California Department of Water Resources Bulletin

No. 74-81, entitled "Water Well Standards: State of California," reads: "To ensure the continued utility of our underground resources, they must be protected. Standards for both the construction of water wells and the destruction of abandoned wells can help protect ground water quality." It gives specifications for well construction, including the required distance between wells and sources of contamination (sewers, sewage leech fields, cesspools, animal enclosures); well seals; surface features; casing material, etc. Bulletin No. 74-81 notes that careless well construction can create a physical connection between pollution (unsanitary and inferior-quality water) and usable water, citing water-borne disease outbreaks;, undesirable chemicals, both toxic and nontoxic; and seawater intrusion as adverse effects on groundwater. The bulletin's construction standards aim to prevent contamination and pollution and ensure sanitary water quality.

Real Property Law > Water
Rights > Groundwater

[HN11](#) [↓] **Water Rights, Groundwater**

California Department of Water Resources Bulletin No. 74-7 (1971) specifically addresses San Luis Obispo County. It lists high nitrate concentrations in county groundwater—from waste disposal and use of fertilizers—as a source of public and private concern, and refers to a 1964 typhoid epidemic in Nipomo caused by the pollution of well water with septic tank wastes. The Bulletin adopts standards for the Arroyo Grande Basin to prevent impairment of water quality from improperly constructed, abandoned or defective wells.

Business & Corporate Compliance > ... > Real
Property Law > Zoning > Ordinances

Environmental Law > Natural Resources &
Public Lands > National Environmental Policy
Act

Real Property Law > Water
Rights > Groundwater

[HN12](#) [↓] **Zoning, Ordinances**

Issuance of building permits shall be presumed to be ministerial under the California Environmental Quality Act absent any discretionary provision in the ordinance. [Cal. Code Regs., tit. 14, § 15268, subd. \(b\)](#). A well building permit is a type of building permit. To the extent that grant or denial of the construction permit is governed by fixed design and construction specifications in statute or regulation, the official decision of conformity or nonconformity leaves scant room for the play of personal judgment.

Real Property Law > Water
Rights > Groundwater

[HN13](#) [↓] **Water Rights, Groundwater**

California Department of Water Resources (DWR) standards incorporated into the San Luis Obispo County Code relate to groundwater quality. Nothing in the DWR Bulletins gives the county discretion to impose limitations on water usage. Indeed, DWR Bulletin No. 74-81 states that it is designed to protect groundwater utility; it is not designed to ensure the effective use of these resources through conservation. DWR Bulletin passages expressly allude to protection of groundwater quality, not depletion from overuse. The DWR Bulletins contain technical specifications. The county has not imposed extra conditions beyond the standards imposed by the DWR Bulletins. DWR Bulletin No. 74-81 allows localities to deviate from state standards and enact different standards for unusual conditions. The county did not deviate from DWR standards in adopting San Luis Obispo County Code, § 8.40.060(a): it requires that standards for the construction, repair, modification or destruction of wells shall be as set forth in DWR Bulletins. The standards set forth in the Bulletins are technical

requirements that do not call for the exercise of subjective judgment.

Governments > Legislation > Interpretation

[HN14](#) [↓] **Legislation, Interpretation**

Rules of statutory interpretation prevent courts from rewriting laws. A court's job is simply to ascertain and declare what a statute contains, not to change its scope by reading into it language it does not contain. Courts may not rewrite a statute to conform to an assumed intention that does not appear in its language.

Real Property Law > Water
Rights > Groundwater

[HN15](#) [↓] **Water Rights, Groundwater**

The purpose of San Luis Obispo County Code, ch. 8.40, is to prevent contamination or pollution of groundwater during well construction, repair, modification or destruction. Only an impermissible rewriting of the ordinance would allow a court to infer a legislative intent to condition well permits on pump limits or subsidence monitoring, which have nothing to do with groundwater pollution. The county has no discretion to impose water usage conditions on permits issued under ch. 8.40.

Environmental Law > Assessment &
Information Access > Environmental
Assessments

Environmental Law > Natural Resources &
Public Lands > National Environmental Policy
Act

[HN16](#) [↓] **Assessment & Information Access, Environmental Assessments**

The California Environmental Quality Act (*CEQA*) does not apply to an agency decision simply

because the agency may exercise some discretion in approving the project or undertaking. Instead, to trigger *CEQA* compliance, the discretion must be of a certain kind; it must provide the agency with the ability and authority to mitigate environmental damage to some degree.

Real Property Law > Water
Rights > Groundwater

[HN17](#) [↓] **Water Rights, Groundwater**

San Luis Obispo County's well permitting ordinance, as set forth in San Luis Obispo County Code, ch. 8.40, does not become discretionary merely because it states that an applicant must include any information as may be necessary to determine if underground waters will be protected. San Luis Obispo County Code, § 8.40.040, subd. (a)(6). The subcontext of this provision is whether underground waters will be protected from contamination or pollution. San Luis Obispo County Code, § 8.40.010. The ordinance does not give the county discretion to shape a well permit to mitigate potential environmental damage arising from groundwater overuse. The instruction to applicants to include all necessary information does not transform the inquiry into a discretionary review.

Real Property Law > Water
Rights > Groundwater

[HN18](#) [↓] **Water Rights, Groundwater**

No aspect of San Luis Obispo County's well permitting ordinance, as set forth in San Luis Obispo County Code, ch. 8.40, or the California Department of Water Resources standards it incorporates, supports an interpretation that well permits are discretionary. Instead, the statutory scheme imposes fixed technical requirements. When those requirements are met, issuance of a well permit is a ministerial act.

Headnotes/Syllabus

Summary

[*666] CALIFORNIA OFFICIAL REPORTS
SUMMARY

The trial court sustained a demurrer and dismissed a petition for a writ of mandate seeking to compel [California Environmental Quality Act \(Pub. Resources Code, § 21000 et seq.\)](#) review prior to the issuance of permits for the construction of wells (San Luis Obispo County Code, ch. 8.40) to irrigate vineyards. (Superior Court of San Luis Obispo County, No. 16CVP-0195, Barry T. LaBarbera, Judge.)

The Court of Appeal affirmed, holding that environmental review was not required because the issuance of permits for irrigation, a beneficial use ([Cal. Const., art. X, § 2](#), and [Wat. Code, § 106](#)), was not a discretionary project ([Pub. Resources Code, §§ 21065, 21080, subds. \(a\), \(b\)\(1\)](#)) absent any discretionary language regarding groundwater depletion in the ordinance, which incorporated state standards to protect water quality ([Wat. Code, §§ 231, 13800, 13801, subd. \(c\)](#)) and made permitting a ministerial act when the requirements were met. A provision of the ordinance requiring information as necessary to determine if underground waters would be protected did not confer discretion as to groundwater depletion because it meant protected from pollution. (Opinion by Perren, J., with Gilbert, P. J., and Tangeman, J., concurring.)

Headnotes

CALIFORNIA OFFICIAL REPORTS
HEADNOTES

[CA\(1\)](#) [↓] (1)

Waters § 3—Public Policy—Beneficial Use.

California policy requires that water resources be put to beneficial use.

[CA\(2\)](#) [↓] (2)

Waters § 3—Public Policy—Beneficial Use— Domestic Purposes and Irrigation.

Use of water for domestic purposes and irrigation is considered beneficial ([Wat. Code, § 106](#)).

[CA\(3\)](#) [↓] (3)

Waters § 33—Waters Subject to Appropriation— Groundwater—Local Permitting.

Groundwater belongs to the State of California, but may be extracted by those with the right to do so, including those whose land overlies the groundwater source. Local agencies manage the appropriation of groundwater through a permitting system.

[CA\(4\)](#) [↓] (4)

Pollution and Conservation Laws § 1.6— California Environmental Quality Act—Projects— Discretionary or Ministerial.

The [California Environmental Quality Act \(Pub. Resources Code, § 21000 et seq.\)](#) applies to projects subject to discretionary approval by the government; it does not apply to ministerial acts ([Pub. Resources Code, § 21080, subds. \(a\), \(b\)\(1\)](#)). A project is an activity that may cause either a direct physical change in the environment, or a reasonably foreseeable indirect change ([Pub. Resources Code, § 21065](#)), with tangible physical manifestations that are perceptible by the senses. A discretionary project requires the exercise of judgment or deliberation; it does not encompass situations where the agency merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations ([Cal. Code Regs., tit. 14, § 15357](#)). A ministerial action is one involving 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 discretion or judgment in reaching a decision. A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out ([Cal. Code Regs., tit. 14, § 15369](#)).

[CA\(5\)](#) [↓] (5)

Pollution and Conservation Laws § 1.6— California Environmental Quality Act—Projects— Discretionary or Ministerial.

The legislative rationale for excluding purely ministerial projects from the [California Environmental Quality Act \(CEQA; Pub. Resources Code, § 21000 et seq.\)](#) implicitly recognizes that unless a public agency can shape the project in a way that would respond to concerns raised in an environmental impact report (EIR), environmental review would be a meaningless exercise. Absent discretion to deny a permit, an agency has no duty [*668] to conduct a [CEQA](#) review, no matter what terrible environmental consequences an EIR might reveal. The law administered by an agency is the litmus for differentiating between its discretionary and ministerial functions. The agency may determine what acts are ministerial by analyzing its own laws ([Cal. Code Regs., tit. 14, § 15268, subd. \(a\)](#)), and its view of the scope and meaning of its own ordinance is entitled to great weight unless that view is clearly erroneous or unauthorized.

[CA\(6\)](#) [↓] (6)

Waters § 35—Methods of Appropriation—Well Permits—Requirements.

San Luis Obispo County Code, ch. 8.40, addresses wells. This includes wells to extract water for irrigation (San Luis Obispo County Code, § 8.40.020). The purpose of the chapter is to ensure

that wells are constructed, repaired, modified or destroyed in such a manner that the groundwater of the county will not be contaminated or polluted and that water obtained from wells will be suitable for beneficial use and will not jeopardize the health, safety or welfare of the people of the county (San Luis Obispo County Code, § 8.40.010). Well permit applications submitted to the county must list the proposed well location, depth and use, and describe nearby property lines, sewage disposal systems, water courses or bodies, drainage patterns, existing wells, and access roads. Only licensed well drilling contractors may obtain permits (San Luis Obispo County Code, § 8.40.040, subds. (a), (c)).

[CA\(7\)](#) [↓] (7)

Waters § 35—Methods of Appropriation—Well Permits—Requirements.

Well permits shall be issued if they comply with county and state standards (San Luis Obispo County Code, § 8.40.040, subd. (e)). County standards require specified well seal depths, which are ministerial (San Luis Obispo County Code, § 8.040.060, subd. (b)). Groundwater extraction is limited in the coastal zone to satisfy [California's Coastal Act of 1976 \(Pub. Resources Code, § 30000 et seq.\)](#) (San Luis Obispo County Code, § 8.040.065).

[CA\(8\)](#) [↓] (8)

Waters § 35—Methods of Appropriation—Well Permits—Requirements.

San Luis Obispo County Code, ch. 8.40, incorporates California Department of Water Resources (DWR) well standards (San Luis Obispo County Code, § 8.40.060, subd. (a)). DWR sets minimum standards of well construction ([Wat. Code, § 231](#)) to protect the quality of water used or that may be used for any beneficial use ([Wat. Code, § 13800](#)). Local agencies are required to adopt a well construction ordinance that meets or exceeds

the standards contained in DWR bulletin No. 74.81 abandoned or defective wells.
([Wat. Code, § 13801, subd. \(c\)](#)).

[CA\(9\)](#) [↓] (9)

Waters § 35—Methods of Appropriation—Well Permits—Requirements.

California Department of Water Resources bulletin No. 74-81, entitled [*669] “Water Well Standards: State of California,” reads: “To ensure the continued utility of our underground resources, they must be protected. Standards for both the construction of water wells and the destruction of abandoned wells can help protect ground water quality.” It gives specifications for well construction, including the required distance between wells and sources of contamination (sewers, sewage leech fields, cesspools, animal enclosures); well seals; surface features; casing material, etc. Bulletin No. 74-81 notes that careless well construction can create a physical connection between pollution (unsanitary and inferior-quality water) and usable water, citing water-borne disease outbreaks; undesirable chemicals, both toxic and nontoxic; and seawater intrusion as adverse effects on groundwater. The bulletin's construction standards aim to prevent contamination and pollution and ensure sanitary water quality.

[CA\(10\)](#) [↓] (10)

Waters § 35—Methods of Appropriation—Well Permits—Requirements.

California Department of Water Resources bulletin No. 74-7 (1971) specifically addresses San Luis Obispo County. It lists high nitrate concentrations in county groundwater—from waste disposal and use of fertilizers—as a source of public and private concern, and refers to a 1964 typhoid epidemic in Nipomo caused by the pollution of well water with septic tank wastes. The bulletin adopts standards for the Arroyo Grande Basin to prevent impairment of water quality from improperly constructed,

[CA\(11\)](#) [↓] (11)

Pollution and Conservation Laws § 1.6—California Environmental Quality Act—Projects—Ministerial—Issuance of Building Permits—Well Permits.

Issuance of building permits shall be presumed to be ministerial under the [California Environmental Quality Act \(Pub. Resources Code, § 21000 et seq.\)](#) absent any discretionary provision in the ordinance ([Cal. Code Regs., tit. 14, § 15268, subd. \(b\)](#)). A well building permit is a type of building permit. To the extent that grant or denial of the construction permit is governed by fixed design and construction specifications in statute or regulation, the official decision of conformity or nonconformity leaves scant room for the play of personal judgment.

[CA\(12\)](#) [↓] (12)

Waters § 35—Methods of Appropriation—Well Permits—Requirements.

California Department of Water Resources (DWR) standards incorporated into the San Luis Obispo County Code relate to groundwater quality. Nothing in the DWR bulletins gives the county discretion to impose limitations on water usage. Indeed, DWR bulletin No. 74-81 states that it is designed to protect groundwater utility; it is not designed to ensure the effective use of these resources through conservation. DWR Bulletin passages expressly allude to protection of groundwater quality, [*670] not depletion from overuse. The DWR bulletins contain technical specifications. The county has not imposed extra conditions beyond the standards imposed by the DWR bulletins. DWR bulletin No. 74-81 allows localities to deviate from state standards and enact different standards for unusual conditions. The county did not deviate from DWR standards in

adopting San Luis Obispo County Code, § 8.40.060(a): it requires that standards for the construction, repair, modification or destruction of wells shall be as set forth in DWR bulletins. The standards set forth in the Bulletins are technical requirements that do not call for the exercise of subjective judgment.

[CA\(13\)](#) [↓] (13)

Statutes § 20—Construction—Judicial Function—Ascertaining Content Without Rewriting.

Rules of statutory interpretation prevent courts from rewriting laws. A court's job is simply to ascertain and declare what a statute contains, not to change its scope by reading into it language it does not contain. Courts may not rewrite a statute to conform to an assumed intention that does not appear in its language.

[CA\(14\)](#) [↓] (14)

Waters § 35—Methods of Appropriation—Well Permits—Scope.

The purpose of San Luis Obispo County Code, ch. 8.40, is to prevent contamination or pollution of groundwater during well construction, repair, modification or destruction. Only an impermissible rewriting of the ordinance would allow a court to infer a legislative intent to condition well permits on pump limits or subsidence monitoring, which have nothing to do with groundwater pollution. The county has no discretion to impose water usage conditions on permits issued under ch. 8.40.

[CA\(15\)](#) [↓] (15)

Pollution and Conservation Laws § 1.6—California Environmental Quality Act—Projects—Discretionary or Ministerial.

The [California Environmental Quality Act \(CEQA; Pub. Resources Code, § 21000 et seq.\)](#) does not

apply to an agency decision simply because the agency may exercise some discretion in approving the project or undertaking. Instead, to trigger [CEQA](#) compliance, the discretion must be of a certain kind; it must provide the agency with the ability and authority to mitigate environmental damage to some degree.

[CA\(16\)](#) [↓] (16)

Waters § 35—Methods of Appropriation—Well Permits—Scope.

San Luis Obispo County's well permitting ordinance (San Luis Obispo County Code, ch. 8.40) does not become discretionary merely because it states that an applicant must include any information as may be necessary to determine if underground waters will be protected (San Luis Obispo County Code, § 8.40.040, subd. (a)(6)). The subcontext of this provision is whether underground waters will be protected from contamination or pollution (San Luis Obispo County Code, § 8.40.010). The [*671] ordinance does not give the county discretion to shape a well permit to mitigate potential environmental damage arising from groundwater overuse. The instruction to applicants to include all necessary information does not transform the inquiry into a discretionary review.

[CA\(17\)](#) [↓] (17)

Pollution and Conservation Laws § 1.6—California Environmental Quality Act—Projects—Discretionary or Ministerial—Issuance of Well Permits.

An environmental group did not and could not plead a cause of action requiring San Luis Obispo County to comply with the [California Environmental Quality Act \(CEQA; Pub. Resources Code, § 21000 et seq.\)](#) before issuing well permits under San Luis Obispo County Code, ch. 8.40. No aspect of that ordinance, or the

California Department of Water Resources standards it incorporates, supports an interpretation that well permits are discretionary. Instead, the statutory scheme imposes fixed technical requirements. When those requirements are met—and there was no allegation otherwise—issuance of a well permit is a ministerial act. [CEQA](#) does not apply to the ministerial act of issuing a well permit.

[*Manaster & Selmi, Cal. Environmental Law & Land Use Practice (2018) ch. 21, § 21.05; Cal. Forms of Pleading and Practice (2018) ch. 418, Pollution and Environmental Matters, § 418.32.*]

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Roll Law Group, Courtney Vaudreuil, Johnny Traboulsi, Sophie-Nic Froelich and Robert Donnelly Thornton for Real Party in Interest and Respondent Justin Vineyards and Winery, LLC.

Stoel Rives, Timothy M. Taylor, Carissa M. Beecham, Wesley A. Miliband and Eric R. Skanchy for Real Party in Interest and Respondent Lapis Land Company, LLC.

Adamski Moroski Madden Cumberland & Green, Thomas D. Green and Michelle L. Gearhart for Real Parties in Interest and Respondents Paso Robles Vineyards, Inc., and Moondance Partners, LP.

Judges: Opinion by Perren, J., with Gilbert, P. J., and Tangeman, J., concurring.

Opinion by: Perren, J.

Opinion

[*672]

[**55] **PERREN, J.**—The County of San Luis Obispo (County) issues well permits without

conducting a [California Environmental Quality Act \(CEQA; Pub. Resources Code, § 21000 et seq.\)](#) review. Appellant California [***2] Water Impact Network petitioned for a writ of mandate to compel County to comply with [CEQA](#). County asserted that well permits are ministerial actions exempt from [CEQA](#). The trial court agreed with County and dismissed appellant's petition on demurrer.

Appellant relies on chapter 8.40 of the San Luis Obispo County Code, which is intended to prevent groundwater pollution or contamination during well construction. We conclude that issuance of a well permit is a ministerial action under the ordinance. If an applicant meets fixed standards, County must issue a well permit. The ordinance does not require use of personal or subjective judgment by County officials. There is no discretion to be exercised. [CEQA](#) does not apply. We affirm.

FACTS AND PROCEDURAL HISTORY

In 2016, County issued permits to construct wells on land belonging to four agricultural enterprises, who are the real parties in interest.¹ Real parties in interest's operations, mostly vineyards, are 160 acres to over 400 acres in size. The well depths range from 500 to 1000 feet. County authorized the wells without conducting a [CEQA](#) review.

Appellant petitioned for a writ of mandate, challenging real parties in interest's well permits. As amended, the petition alleges [***3] that County made a discretionary decision to issue permits allowing real parties in interest to extract groundwater; this requires environmental review under [CEQA](#). The petition states, “As a result of its de facto policy of processing all well permit applications as ministerial, the County has conducted no analysis whatsoever of the cumulative impacts associated with its ongoing approval of several dozen, if not hundreds, of well

¹Real parties in interest are Lapis Land Company, LLC; Justin Vineyards and Winery, LLC; Paso Robles Vineyards, Inc.; and Moondance Partners, LP.

construction permits over the past several years.”

Appellant alleges that County “prejudicially abused its discretion by approving the well permits without first evaluating whether it may have significant individual or cumulative impacts on the environment, in violation of [CEQA](#).” The petition requests an order directing County to set aside its actions in issuing well permits and comply with [CEQA](#) before approving or denying the well applications.

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County and real parties in interest demurred. They argued that [CEQA](#) does not apply to the issuance of well construction permits, a purely ministerial function under County ordinance. County asserted that the only issue with respect to well construction relates [*56] to water *quality*, to prevent contamination of groundwater; depletion of groundwater supply *quantity* [***4] is not an issue. In County's view, a permit must be approved once it determines that the applicant is a licensed drilling contractor who will comply with the technical requirements specified by ordinance.

Appellant countered that County bypassed public disclosure of potentially significant impacts to groundwater resources by characterizing its review of well applications as purely ministerial, failing to evaluate the severity of the impacts and identify mitigation measures with the benefit of public review and comment. Appellant asserted that County has broad discretion to impose environmental conditions on well permits, beyond the objective requirements specified in state Department of Water Resources (DWR) bulletins.

The trial court concluded that the standards for issuing a well drilling permit are ministerial, with no discretion to shape a project to address environmental concerns. Accordingly, [CEQA](#) did not apply. The court sustained the demurrers and entered judgment for respondents.

DISCUSSION

1. Review

[HNI](#)[↑] Review is de novo. ([Committee for Green Foothills v. Santa Clara County Bd. of Supervisors \(2010\) 48 Cal.4th 32, 42 \[105 Cal. Rptr. 3d 181, 224 P.3d 920\]](#).) We examine the petition and the governing ordinance to determine whether County had a duty to conduct a [CEQA](#) review, or whether issuing a permit is a ministerial [***5] act exempt from [CEQA](#). ([San Bernardino Associated Governments v. Superior Court \(2006\) 135 Cal.App.4th 1106, 1113–1114 \[38 Cal. Rptr. 3d 293\]](#) [demurrer was properly sustained as a matter of law because an agency's action was ministerial].)

2. Overview: State Water Policy Principles

[HN2](#)[↑] [CA\(1\)](#)[↑] (1) State policy requires that water resources be put to beneficial use. Our Constitution declares that “the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the [*674] interest of the people and for the public welfare.” ([Cal. Const., art. X, § 2.](#)) [HN3](#)[↑] [CA\(2\)](#)[↑] (2) Use of water for domestic purposes and irrigation is considered beneficial. ([Wat. Code, § 106.](#))

[HN4](#)[↑] [CA\(3\)](#)[↑] (3) Groundwater belongs to the state, “but may be extracted by those with the right to do so, including those whose land overlies the groundwater source.” ([Delaware Tetra Technologies, Inc. v. County of San Bernardino \(2016\) 247 Cal.App.4th 352, 358 \[202 Cal. Rptr. 3d 145\]](#).) Local agencies manage the appropriation of groundwater through a permitting system. ([City of Santa Maria v. Adam \(2012\) 211 Cal.App.4th 266, 278 \[149 Cal. Rptr. 3d 491\]](#).)

3. Discretionary Versus Ministerial Acts

[HN5](#)[↑] [CA\(4\)](#)[↑] (4) [CEQA](#) applies to projects subject to discretionary approval by the

government; it does not apply to ministerial acts. (*Pub. Resources Code, § 21080, subds. (a), (b)(1).*) A project is an activity that may cause either [***6] a direct physical change in the environment, or a reasonably foreseeable indirect change (*Id., § 21065*) with “tangible physical manifestations that are perceptible by the senses” (*Martin v. City and County of San Francisco (2005) 135 Cal.App.4th 392, 403 [37 Cal. Rptr. 3d 470]*).

[**57] A discretionary project “requires the exercise of judgment or deliberation”; it does not encompass situations where the agency “merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations.” (*Cal. Code Regs., tit. 14, § 15357.*)

A ministerial action is one “involving 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 discretion or judgment in reaching a decision. A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out.” (*Cal. Code Regs., tit. 14, § 15369.*)

[HN6](#)^[↑] [CA\(5\)](#)^[↑] (5) The legislative rationale for excluding purely ministerial projects from [CEQA](#) “implicitly recognizes that unless a public agency can shape the project in a way that would respond to concerns raised in an EIR [environmental impact report] ... environmental review would be [***7] a meaningless exercise.” (*Mountain Lion Foundation v. Fish & Game Com. (1997) 16 Cal.4th 105, 117 [65 Cal. Rptr. 2d 580, 939 P.2d 1280]*.) Absent discretion to deny a permit, an agency has no duty to conduct a [CEQA](#) review, no matter what ““terrible environmental consequences”” an environmental impact report might reveal. (*Leach v. City of San Diego (1990) 220 Cal.App.3d 389, 394 [269 Cal. Rptr. 328]*.)

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The law administered by an agency is “the litmus for differentiating between its discretionary and ministerial functions.” (*People v. Department of Housing & Community Dev. (1975) 45 Cal.App.3d 185, 192 [119 Cal. Rptr. 266]*.) The agency may determine what acts are ministerial by analyzing its own laws (*Cal. Code Regs., tit. 14, § 15268, subd. (a)*), and its view of the scope and meaning of its own ordinance is entitled to great weight unless that view is clearly erroneous or unauthorized. (*Friends of Davis v. City of Davis (2000) 83 Cal.App.4th 1004, 1015 [100 Cal. Rptr. 2d 413]*.) Here, the law being administered by County is chapter 8.40 of the County Code.

4. The County Well Construction Ordinance

[HN7](#)^[↑] [CA\(6\)](#)^[↑] (6) Chapter 8.40 of the County Code addresses wells. This includes wells to extract water for irrigation. (*Id., § 8.40.020.*)² The purpose of the chapter is to ensure that wells are constructed, repaired, modified or destroyed “in such a manner that the ground water of this county will not be contaminated or polluted and that water obtained from wells will be suitable for beneficial use and will not jeopardize the health, safety or welfare of the people of this county.” (§ 8.40.010.)

Well permit applications submitted to County must list the proposed well [***8] location, depth and use, and describe nearby property lines, sewage disposal systems, water courses or bodies, drainage patterns, existing wells, and access roads. Only licensed well drilling contractors may obtain permits. (§ 8.40.040(a), (c).)

[HN8](#)^[↑] [CA\(7\)](#)^[↑] (7) Well permits “shall be issued” if they comply with County and state standards. (§ 8.40.040(e).) County standards require specified well seal depths, which appellant concedes are ministerial. (§ 8.040.060(b).) Though groundwater extraction is limited in “the coastal zone” to satisfy the California Coastal Act of 1976 (*Pub. Resources Code, § 30000 et seq.*) (County Code, § 8.040.065), appellant concedes that real

² Unlabeled section references are to the County Code.

parties in interest's wells are not within “the coastal zone.” This leaves open only the [**58] question of whether state standards, set forth in DWR bulletins, require County to exercise discretion before issuing a well permit. (§ 8.040.060(a).)

5. State DWR Standards Incorporated into County Code Chapter 8.40

[HN9](#)^[↑] [CA\(8\)](#)^[↑] (8) County Code chapter 8.40 incorporates DWR well standards. (§ 8.40.060(a).) DWR sets “minimum standards of well construction” (*Wat. Code, § 231*) to “protect the quality of water used or that may be used for any [*676] beneficial use” (*id.*, [§ 13800](#)). Local agencies are required to adopt a well construction ordinance “that meets or exceeds the standards contained in [DWR] Bulletin 74-81.” (*Id.*, [§ 13801, subd. \(c\).](#))

[HN10](#)^[↑] [CA\(9\)](#)^[↑] (9) DWR bulletin No. 74-81, entitled “Water [***9] Well Standards: State of California,” reads: “To ensure the continued utility of our underground resources, they must be protected. Standards for both the construction of water wells and the destruction of abandoned wells can help protect ground water quality.” It gives specifications for well construction, including the required distance between wells and sources of contamination (sewers, sewage leech fields, cesspools, animal enclosures); well seals; surface features; casing material, etc.

DWR bulletin No. 74-81 notes that careless well construction can create a physical connection between pollution (unsanitary and inferior-quality water) and usable water, citing “water-borne disease outbreaks,” “undesirable chemicals, both toxic and nontoxic,” and “seawater intrusion” as adverse effects on groundwater. The bulletin's construction standards aim to prevent “contamination and pollution” and ensure sanitary water quality.³

³Section 8.40.060(a) does not list DWR bulletin No. 74-90, a supplement to bulletin No. 74-81. However, County admittedly uses bulletin No. 74-90. The supplement pursues the theme that

[HN11](#)^[↑] [CA\(10\)](#)^[↑] (10) DWR bulletin No. 74-7, from 1971, specifically addresses County. It lists “high nitrate concentrations” in County groundwater—from waste disposal and use of fertilizers—as a source of public and private concern, and refers to a 1964 typhoid epidemic in Nipomo caused [***10] by the pollution of well water with septic tank wastes. The bulletin adopts standards for the Arroyo Grande Basin “to prevent impairment of water quality” from improperly constructed, abandoned or defective wells.

6. County Code Chapter 8.40 Is Ministerial and Does Not Purport To Give County Any Discretion

[CA\(11\)](#)^[↑] (11) Section 8.40.040(e) states that well permits “shall be issued” if state and County standards are met. Appellant cites no case in which a landowner who wished to construct a well was subject to a full [CEQA](#) review requiring an environmental impact report. [HN12](#)^[↑] Issuance of building permits “shall be presumed to be ministerial” under [CEQA](#) absent any discretionary provision [*677] in the ordinance. (*Cal. Code Regs., tit. 14, § 15268, subd. (b)*; see *Friends of Juana Briones House v. City of Palo Alto (2010) 190 Cal.App.4th 286, 302–303 [118 Cal. Rptr. 3d 324]*.) A well building permit is a type of building permit. So long as technical standards and objective measurements are met, County must issue a well permit to licensed contractors. “To the extent that grant or denial of the construction permit [**59] is governed by fixed design and construction specifications in statute or regulation, the official decision of conformity or nonconformity leaves scant room for the play of personal judgment.” (*People v. Department of Housing & Community Dev., supra, 45 Cal.App.3d at p. 193.*)

“Improperly constructed ... wells are a potential pathway for introducing poor quality water, pollutants, and contaminants to good-quality ground water” by allowing them to enter the well bore or pass into an aquifer. While recommending “*minimum* statewide standards for the protection of ground water quality,” bulletin No. 74-90 notes that local agencies “may need to adopt more stringent standards for local conditions to ensure ground water quality protection.”

[CA\(12\)](#)^[↑] (12) Appellant concedes that County standards (relating to well seal depths) are ministerial, [***11] but argued below that state standards give County discretion to deny permits based on the cumulative depletion of groundwater.⁴ However, [HN13](#)^[↑] state DWR standards incorporated into the County Code relate to groundwater *quality*. The effect of real parties in interest's wells on groundwater quality is not at issue here, and nothing in the DWR bulletins gives County discretion to impose limitations on water usage. Indeed, DWR bulletin No. 74-81 states that it is designed to protect groundwater utility; it is not designed to ensure “the effective use of these resources” through conservation. DWR bulletin passages cited in appellant's brief expressly allude to “protection of groundwater *quality*,” not depletion from overuse. (Italics added.)

The DWR bulletins contain technical specifications. Appellant does not contend that the applicants here failed to satisfy the specifications. County did not impose extra conditions beyond the standards imposed by the DWR bulletins. (See [Day v. City of Glendale \(1975\) 51 Cal.App.3d 817, 822–824 \[124 Cal. Rptr. 569\]](#) [city imposed discretionary safety conditions on a grading permit it issued to put landfill in 70 acres of canyon]; [Friends of Westwood Inc. v. City of Los Angeles \(1987\) 191 Cal.App.3d 259, 274 \[235 Cal. Rptr. 788\]](#) [city imposed discretionary conditions on a highrise building permit because the project affected public streets outside the [***12] building].)

DWR bulletin No. 74-81 allows localities to deviate from state standards and enact different standards for “unusual conditions.” County did not deviate from DWR standards in adopting section

⁴In its reply brief, appellant disclaims a goal of preserving water supplies. This contradicts appellant's argument to the trial court that the purpose of the ordinance “is to protect groundwater resources ... not just quality, but ... also supply.” Counsel stated, “I think the intent of the standards is to protect the resources, to protect the groundwater supply both in terms of quality and sustainable use in the future.”

8.40.060(a): It reads, “Standards for the construction, repair, modification or destruction of wells shall be as set forth” in DWR bulletins. The standards set forth in the bulletins are technical requirements that do not call for the exercise of subjective judgment.

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[CA\(13\)](#)^[↑] (13) Appellant suggested in the trial court that County could impose additional conditions, for example, pump limits and subsidence monitoring. These are not authorized by County Code chapter 8.40, nor can we imply the possibility of imposing such conditions. [HN14](#)^[↑] Rules of statutory interpretation prevent us from rewriting laws. Our job “is simply to ascertain and declare what the statute contains, not to change its scope by reading into it language it does not contain [Courts] may not rewrite the statute to conform to an assumed intention that does not appear in its language.” ([Vasquez v. State of California \(2008\) 45 Cal.4th 243, 253 \[85 Cal. Rptr. 3d 466, 195 P.3d 1049\]](#).)

[HN15](#)^[↑] [CA\(14\)](#)^[↑] (14) The purpose of County Code chapter 8.40 is to prevent contamination or pollution of groundwater during well construction, repair, modification or destruction. Only an impermissible rewriting [***13] of the ordinance would allow us to infer a legislative intent to condition well permits on pump limits or subsidence monitoring, which have nothing to do with groundwater pollution. County has no discretion to impose water [**60] usage conditions on permits issued under chapter 8.40.

[CA\(15\)](#)^[↑] (15) Appellant's claim that County has *some* discretion in issuing well permits does not affect our analysis. [HN16](#)^[↑] “[CEQA](#) does not apply to an agency decision simply because the agency may exercise *some* discretion in approving the project or undertaking. Instead to trigger [CEQA](#) compliance, the discretion must be of a certain kind; it must provide the agency with the ability and authority to “mitigate ... environmental damage” to some degree.” ([San Diego Navy](#)

[*Broadway Complex Coalition v. City of San Diego* \(2010\) 185 Cal.App.4th 924, 934 \[110 Cal. Rptr. 3d 865\].](#))

[HN17](#)^[↑] [CA\(16\)](#)^[↑] (16) The well permitting ordinance does not become discretionary merely because it states that an applicant must include any “information as may be necessary to determine if underground waters will be protected.” (§ 8.40.040(a)(6).) The subcontext of this provision is whether underground waters will be protected from *contamination or pollution*. (§ 8.40.010.) The ordinance does not give County discretion to shape a well permit to mitigate potential environmental damage arising from groundwater overuse. The [***14](#) instruction to applicants to include all necessary information does not transform the inquiry into a discretionary review.

A new state law addresses groundwater *depletion*. The Legislature enacted the [Sustainable Groundwater Management Act \(SGMA\)](#) in 2014, empowering local agencies to adopt groundwater management plans tailored to community resources and needs. ([Wat. Code, § 10720 et seq.](#)) In 2015, County began implementing groundwater preservation measures. (E.g., County Ord. No. 3307 [requiring groundwater conservation in specified areas]; County Res. No. 2015-288 [regarding a countywide water conservation program].) [*679](#) [SGMA](#) is not addressed in County Code chapter 8.40, the law at issue here. Appellant's concerns about groundwater sustainability do not empower the courts to rewrite County Code chapter 8.40 to hasten appellant's legislative goals. Those goals must be addressed to County's elected officials as they implement [SGMA](#).

[CA\(17\)](#)^[↑] (17) Appellant did not and cannot plead a cause of action requiring County to comply with [CEQA](#) before issuing well permits under County Code chapter 8.40. [HN18](#)^[↑] No aspect of that ordinance, or the DWR standards it incorporates, supports an interpretation that well permits are discretionary. [***15](#) Instead, the statutory scheme imposes fixed technical requirements.

When those requirements are met—and appellant does not allege otherwise—issuance of a well permit is a ministerial act. [CEQA](#) does not apply to the ministerial act of issuing a well permit.

DISPOSITION

The judgment is affirmed. Costs are awarded to respondents, as the prevailing parties on appeal. ([Cal. Rules of Court, rule 8.278\(a\)\(1\)](#).)

Gilbert, P. J., and Tangeman, J., concurred.

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