

Recommendations for and Benefits of Voluntary Registration of De Minimis Wells

by

Policy Advisory Committee Ad hoc Committee on De Minimis Well Registration

1 March 2019

OBJECTIVES

An ad hoc committee of the Policy Advisory Committee (PAC) was tasked with creating recommendations and a list of benefits for voluntary registration of de minimis wells. The committee consisted of Joshua Nugent (PAC representative for Large Agriculture), James Mower (PAC representative for Business Interests), West Katzenstein and Lyle Fisher (PAC representatives for Domestic Well Owners). This ad hoc committee considered public inputs and incorporated them in this report as appropriate. The document below is intended to advise the Indian Wells Valley Groundwater Authority (GA) on the importance of and methods to achieve de minimis well registration.

CALIFORNIA STATE LEGISLATIVE BACKGROUND

The State of California has designated the Indian Wells Valley (I WV) groundwater Basin as a high-priority basin in critical overdraft. This is a result of steadily declining Basin groundwater levels and groundwater quality over at least the last 50 years. The State through its Sustainable Groundwater Management Act (SGMA) has mandated that the I WV establish a GA to manage the groundwater in the Basin and achieve groundwater sustainability by 2040. The GA has been established and the required Groundwater Sustainability Plan (GSP) is under development. This plan is to be submitted to the State for approval by January 31, 2020.

DOMESTIC WELL BACKGROUND

De minimis wells comprise a large majority of the total number of I WV wells and are generally much shallower than the deeper higher-capacity wells used by the major pumpers, such as the I WV Water District, large scale agriculture, Searles Valley Minerals, and the US Navy. The Domestic Well Owners Association is aware of failures of de minimis wells that have occurred due to the constant decline in groundwater levels or brackish water intrusion. **Ongoing failures of de minimis wells would have a significant negative effect on the local economy, including but not limited to the value of real property, quality of life, economic growth, and the continued presence of the Navy.**

SGMA defines a ‘de minimis’ groundwater extractor as a person (or entity) that extracts groundwater in the amount of two acre-feet or less per year, for domestic purposes. These wells are to be considered differently than major pumping wells. SGMA clearly states that de minimis pumpers shall not be required to install metering devices or to report water pumped (Water Code 10725.8e). However, it may be an advantage to individual well owners in some cases to install metering devices and report water pumped voluntarily; for example, to resolve questions on well production.

GROUNDWATER AUTHORITY RESPONSIBILITIES

An essential early responsibility of the GA is to reach out and contact all stakeholders, including the de minimis well owners (Water Code 10723.2). It is critically important that the interests of the de minimis well owners are fully represented in the I WV GSP. It is also essential that de minimis well owners are notified and comply with the management actions authorized by SGMA that appear in the I WV GSP.

The specific management actions in the GSP that will apply to de minimis wells have not yet been developed. These management actions must address the following questions: 1) What is the purpose and SGMA legal basis of the de minimis well registration? 2) How would such registration be made? Through Assessor’s Parcel Number (APN) identification? 3) What information will be required from the de minimis well owners? 4) How

do the de minimis well owners fit into the overall GSP? 5) What are the restrictions placed on the de minimis well owners? 6) What are the responsibilities of the de minimis well owners? These management actions may require de minimis wells to be registered (Water Code 10725.6). Ultimately, appropriate fees may be assessed on these wells once the GSP is adopted (Water Code 10730).

A thorough and effective de minimis well owner contact must be a requirement of the GSP process. Otherwise, there is no basis for well registration.

POLICY ADVISORY COMMITTEE RESPONSIBILITIES

The PAC has the responsibility to advise the GA on public outreach options. This has been completed in the 'Communication and Engagement Plan' developed by the PAC dated April 19, 2018. The public has also offered to the PAC specific recommendations for GA action, which have been forwarded to the GA in the PAC minutes. However, the PAC does not have either the legal protections nor authority required to contact the stakeholders regarding well registration, voluntary or otherwise. The PAC also does not have the responsibility to define the requirements for de minimis well registration or its details.

This committee has identified the following benefits for de minimis well registration:

1. Registration of de minimis wells will ensure that each well owner becomes a formal part of the GSP. Note again, that de minimis wells are excluded by SGMA from metering and reporting of production.
2. Registration will ensure that proper ownership of wells is established.
3. Registration will provide data on individual wells needed by the GA to provide grants to well owners whose wells are damaged by lowering of water levels and declining water quality. Note: The expected occurrence of well failures based on future pumping levels can be predicted using existing data and modeling capabilities.
4. Registration improves an overall understanding of basin well count and location. Kern County records have been found to be inadequate.
5. Registration potentially adds lithographic data, depth to water and water quality to the existing IWV aquifer data base.
6. Registration helps monitor shallow well impacts from declining water levels. Specific data and location for individual impacted wells will refine existing data.
7. Personal information will be protected.

The PAC is willing to further advise the GA on de minimis well registration.

GROUNDWATER AUTHORITY ACTION REQUIRED

It is essential that the GA immediately execute its responsibility to directly contact all stakeholders, including a request for voluntary registration of de minimis wells. This request must state the reasons for and benefits of de minimis well registration and its legal basis in SGMA and provide a straightforward user-friendly well registration form. Note: It is not correct or useful to imply that the de minimis well owners are remiss for not completing well registration. The GA at this point has neither clearly defined the registration process, nor formally asked the de minimis well owners to register.

CLOSING COMMENT

The Policy Advisory Committee hopes that this document will assist the Board in taking the action that is necessary to meet the needs of voluntary de minimis well registration. The better the communication the more successful the project will be.



James L. Markman

T 714.990.0901
F 714.990.6230
E jmarkman@rwglaw.com

1 Civic Center Circle, PO Box 1059
Brea, California 92822-1059
rwglaw.com

MEMORANDUM

VIA FACSIMILE

TO: David Janiec (david.janiec@chinalakealliance.org)
Steve Johnson (stevej@stetsonengineers.com)

FROM: James L. Markman *JLM*

DATE: February 28, 2019

SUBJECT: Report from February 15, 2019 Meeting on IWVGWA Allocation Plan

These notes are meant to roughly reflect the subject matter of the above-referenced meeting. Based on recent information, it again needs to be emphasized that these meetings are constructed so that all pumpers may candidly express their positions. No statements made constitute the adopted position of the GSA and, no party speaking is locked into any position.

The first statement made pertained to the necessity of discussing the practicality of suggestions made to be included in the water production allocation. This includes projected amounts of pumping allowed, rampdown, period of commencement of rampdown, projected costs of imported water and any other items to which a financial analysis may be applied. In fact, the meeting was oriented substantially to model runs, and other facts and figures. The sense is that we are under time constraints with management model runs to come which will aid in developing a first draft allocation plan which makes practical sense.

The initial general discussion was followed by a Stetson Engineering presentation (with power point) of three model runs. It was noted that the materials had been presented to TAC. The first model run (referred to as Test Run 1) was a run of 50 years, assuming an approximately 33,000 AF per year pumping level with supply frozen and 7,650 AF per year. This resulted in approximately 25,000 AF per year of mining or negative change in storage for a total 50 year loss of 1.5 million AF. It also was noted that at the end of the 50 years, the model showed no operative pumping occurring. The Basin elevation drawdowns ranged from 10 feet to 70 feet. In addition, TDS increased based on pumping water from lower elevations and from the

movement of water in the Basin in a southwest direction. The increase in TDS was shown to occur more in shallow layers than in deeper layers.

The second test run discussed limited pumping to the 7,650 AF per year (level with supplies). This presented a state of sustainability.

The third model run discussed was referred to as Management Run 1. This run assumed that imported water would arrive by 2030 in the amount of 15,000 AF per year. It also assumed recycled water in the amount of 352 AF per year would be available. It assumed that pumping would start at 31,000 AF per year, that rampdown would commence immediately at 8% per year and that leases would be made so that the District and Searles could offset their rampdowns from water leased to them by Meadowbrook and Mojave Pistachio. This scenario projected sustainable balance at approximately 2030 with a mined amount of approximately 200,000 AF to 250,000 AF.

Following the Stetson model runs presentation, one of the parties presented a new version of the potential allocation plan discussed in January. This plan presented a base water right representing a producer's average amount of pumping from 2004 to 2014 (excepting cliff producers). The base water right also was translated to being expressed as a percentage of total allocated base water rights. The plan next suggested that "operating allocations" be calculated representing any pumper's percentage share of safe yield. Safe yield included augmented yield (the addition of supplemental water) and deductions to deal with undesirable results. Free production allowances then would be calculated so that each producer could pump its share of the natural safe yield free of assessments. There was an assumed amount to so pump equaling 22% of the pumper's operating allocation. This converted prior presentations of assessable water production from all water pumped (referred to as a gross pump tax) to the amount of water production above the free production allowance (a net pump tax). The assessable production would cover administrative fees, project development fees and an excess fee to be used to avoid material harm from occurring in the Basin. The proposal considered cliff pumping parties who would not receive a base water right, would not participate in rampdown and whose right would not be transferrable. Cliff pumpers would pay administrative fees and project development fees and excess fees on production over the cliff pumping amount awarded to them. This proposal excluded Navy production of its Federal Reserved Right and proposed reverting unpumped Navy rights to others with Operating Allocations in the next year or, alternatively, to benefit the Basin. The proposal also proposed treatment for de minimus producers.

There followed presentations by two of the negotiating parties. One suggested that its water rights would be defended, that it would carefully consider any proposals, but would not

subsidize another party's production and that it agreed with a 10 year average to establish base water rights. The second party, a potential cliff pumper, suggested that it be provided a gross amount of water to produce over a 20 year period after which its pumping would fully terminate. This party still is in the process of refining its proposal.

There then was discussion of the negotiating parties providing input on the assumptions to be included in the second Management Model Run even if this meant a delay in the run. Some offered thoughts were beginning assumed total production at 31,000 AF per year, assuming a 5 to 10 year period before commencing rampdown and variable required annual rampdown percentages depending on the party ramping down. This topic remains open. The next meeting is to occur on March 8, 2019.

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