

# Special Report Addendum

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FIGHTING MANDATORY HOOKUP



## INTRODUCTION

Across the country, local governments seek to expand public water systems and prevent private water wells from being used in their communities. Driven mainly by a need to pay for extremely costly pipelines, mandatory connection is often seen as a key component of expanding public water systems.

Mandatory connection generally requires water users to connect to the public water system. In most circumstances, the provision also requires any existing water wells to be capped and their use discontinued. In some cases, the mandate will allow continued use of existing water wells, but require that the landowner pay a minimum monthly water fee, even though no public water is being used. In almost every case, new water wells are prohibited.

Water Systems Council often receives emails and phone calls from well contractors, water well owners, and state associations about mandatory connection, restrictions on private water wells, and bans on new water wells. Although all politics are local (more on that later), some principles apply to combatting all of these actions that seek to eliminate or minimize water wells.

This publication attempts to provide guidelines for successfully fighting against these actions. The January 2019 4th Updated Version of Water Systems Council's *Special Report, An Analysis of Mandatory Hookup Law: Cases and Statutes*, should be read in conjunction with this publication. The Special Report summarizes mandatory connection law in each of the 50 states.

## FIRST, ASK: CAN THEY DO THAT?

The first question to ask in these situations is whether the entity (local government or water district) imposing the requirements has the authority to do so. Each state legislature creates the local governments, water districts, and similar entities in their state.

The general rule in the United States is that local governments, water districts, and similar entities only have the authority specifically granted to them in writing by the state legislature. Although Alaska, Iowa, Massachusetts, Montana, New Jersey, New Mexico, Ohio, Oregon, South Carolina, and Utah have a different rule, the first question to ask remains the same: ***Can they do that?***

Ask the entity mandating connection or imposing requirements to provide you with a local ordinance allowing the action and the state authority allowing the requirements. Obtain written copies of both, and do not allow the entity to proceed without obtaining this information. Once you acquire this information, provide the copies to an attorney for their review and analysis.

Often, the water authority will abandon the efforts to restrict water wells at this stage, when no authority can be found for the action. If the dispute cannot be resolved at this stage, more formal action will be necessary. The next sections detail how water well users, water well contractors, state associations, and other interested parties can band together to challenge mandatory connection and other restrictions on water wells.

# ROAD MAP TO SUCCESSFULLY CHALLENGING MANDATORY CONNECTION

## START TODAY!

**Do not wait until a problem arises before getting involved.** Most water issues are state and local issues. You should know your state and local representatives, and they should know you. All politics are local. Water Systems Council can help you fight these actions, but state and local legislators want to hear from people who can vote for them.

**Be active in local and state government.** Show up for meetings where groundwater is not on the agenda, volunteer for committees and boards that deal with groundwater, and get to know your state and local representatives. For example, at least one member of the Georgia Association of Groundwater Professionals plays golf with his state legislator on a regular basis. Every so often, they happen to talk about state or local actions impacting the water well industry. This well contractor has access and trust. It works.

**When state and local legislators encounter water well issues, they should think of you.** They should seek you out for advice. The groundwork for that begins now. Several years ago, a groundwater forum in Maryland was held on a Saturday morning. It had snowed the night before, and the roads were icy. Over 100 people showed up, including members of the Maryland-Delaware Water Well Association. After the forum, local government officials were heard to exclaim, *“Did you see the well contractors here?”* It matters. The government officials were impressed. When groundwater issues came up later, these officials called the well contractors who had attended.

Participating in these activities takes time away from your business. However, if local and state legislatures act without your input, water well contractors may go out of business. Water well contractors must make time for involvement in local and state activities that impact the industry.

## BE INVOLVED IN STATE AND NATIONAL ASSOCIATIONS

Since all politics are local, state groundwater and water well associations are key. **When an issue arises, your first phone call should be to your state association.** The state association knows you because you are active. The state association is your communications network with water well professionals across the state and the nation. Your state association should have state legislative days where members visit the state legislature and talk with their representatives. You may not be asking for anything, but these visits are important so that the state legislators know who you are.

The state association should have a lobbyist. Even if no bills have been introduced in a particular session (yet), you need someone with their ears to the ground so when a last minute item arises, they know. Yes, a lobbyist costs money, but a good lobbyist is worth the money paid.

**The state association should have a legislative committee.** In that way, members can alternate responsibility for helping to monitor developments. The Virginia Water Well Association is very active in legislative matters. At least one member, with no previous lobbying or governmental experience, became a valuable citizen-lobbyist in his own right by spending time at the state capital and talking to state legislators. State and local legislators listen to well contractors, particularly once you build your reputation as honest and knowledgeable. A hardworking citizen can often be the most effective person to talk to a legislator since those citizens are unpaid and speak from the heart. Democracy works best when citizens talk to the legislators.

**State associations should also lead the charge in being proactive.** Well contractors should anticipate issues and propose legislation to regulate themselves. The water well industry is better served when knowledgeable contractors help write regulations, rather than allow a state agency to write the regulations with no input from the industry.

## ASSEMBLE YOUR PROFESSIONAL TEAM

**When a local or state government action threatens the water well industry, first contact the state association.** After that, contact an attorney and perhaps a hydrogeologist. The state association may have some people in mind. If the action is legislative, contact a lobbyist. Ideally, the state association has already retained these professionals so that the professional can immediately get to work when a serious situation arises. In any case, make sure that you assemble a team of knowledgeable professionals.

Few lawyers specialize in water or water well issues like mandatory connection. You should provide the attorney with as much background information as possible, and have them contact your state association. Water Systems Council may be able to provide assistance to the attorney. Your membership in Water Systems Council pays for itself many times over when your professionals can tap into the existing knowledge of Water Systems Council staff and consultants.

**A hydrogeologist or other scientific or engineering professional may be more important than the attorney, depending on the situation.** When a position can be submitted with solid scientific and engineering evidence and data, the position becomes much more persuasive. The local or state legislative body may have acted impulsively, based on false or misleading information, or may have acted without any information at all. In addition, you will want to make sure that your position can be backed with science and data so that your credibility remains strong.

## **EDUCATE, EDUCATE, EDUCATE!**

**The most important thing you can do is to educate the public, legislators, judges, lawyers, and others about the issues.** Often, misconceptions cause people to blame domestic water wells where blame should be elsewhere. You must make sure that the FACTS get out to everyone. You can also consult with Water Systems Council about public relations campaigns. As with everything else, education also starts today. Constantly be aware of things you and the state association can do to build knowledge and relationships. Hold workshops for the public and invite state and local legislators, state agency representatives, and local health department and related personnel. Invite local and state legislators to speak at your events.

**WSC has employed various educational initiatives to counter efforts to pass local and state laws that would be detrimental to the industry and run counter to science.** One local government proposed an ordinance that would require all water users to use ONLY public water. Not only would that requirement prove extremely costly to local businesses and homeowners, but the treated local water would have been toxic to the local agricultural crops. WSC organized an educational workshop in conjunction with the state association, local water well contractors, and local legislators (who had crafted the ordinance) were invited to attend. The local legislators were grateful for the knowledge and withdrew the ordinance.

In another state, the state legislature proposed a bill that declared that the state “owned” all of the groundwater in the state. WSC organized another workshop and invited state legislators. The objective, balanced information presented at the workshop helped to ensure that bill did not pass.

**Perhaps most importantly, make sure that the elected officials and public know how much money private water wells save the community.** Running pipes for public water is very expensive! Make sure the local government has considered the option of private water wells and has looked at the costs carefully. WSC has put together a list of case studies that you can show public officials. (*See Appendix*) These case studies show how much money private wells save for the community.

## BE COLLABORATIVE, NOT HOSTILE

**In all of your dealings, remain professional and non-adversarial.** The attorney can be the bad guy, you should remain friendly and professional. You can catch more flies with honey than with vinegar.

## BUILD COALITIONS WITH LIKE-MINDED GROUPS

**Most state water well and groundwater associations are relatively small. Although small groups can make a huge difference, building coalitions multiples the impact.** State farm bureaus, home builders' associations, and state realtor associations are likely candidates for groups to team up with to fight attempts to limit water wells. However, the relationships should be established before the problems arise. Your lobbyist can help with this.



## **BUILD AN ARMY OF SUPPORTERS, BUT HAVE A MANAGEMENT COMMITTEE**

**When something happens, you want to gather as many people as possible to join together to fight the battle.** Challenging mandatory connection and water well restrictions entails certain costs. The more people to share the costs, the better. More importantly, the more people that you have contacting state and local legislators, the better chance you have to change the course of action.

**Your customers can be your strongest allies.** You should have a list of customers and you should be communicating with your customers on a regular basis. Do you have a maintenance agreement with your customers? Do you send them postcards or newsletters to remind them of maintenance matters? YOU SHOULD! Then, when the government attempts to take their property rights, you can mobilize an army of satisfied customers who will help you secure your rights and theirs.

However, with the benefits of a large group of people challenging governmental action comes some disadvantages. When there are too many cooks, the food is often spoiled. It is also difficult to make decisions and keep information confidential. You should have a core group of three people that manage the battle, but keep the others informed of what is going on. Your attorney, scientific experts, and state and national associations will want one point of contact. Choose wisely.

**The battles can be costly.** State associations should build war chests now, and continue to do so. However, when a number of people can group together, the cost can be spread among all of the people. Get commitments, and money, up front. Experience shows that people are eager to get involved at first, but quickly drop out when money and real action are necessary.

**Never threaten litigation unless you are willing to take the lawsuit to the end.** Once the lawsuit is filed, turning back is difficult. The group of supporters must be informed of this reality.

## UNDERSTAND THE ROLE OF POLITICS

Sometimes you will have a strong legal argument against the action you are fighting. Those facts make the battle easier. However, often your legal case is weak. You should not give up. A political case almost always exists in your favor. If you have a group of people supporting you, and you have built relationships with legislators, you can bring political pressure to bear on the situation.

Again, talk to your state association, Water Systems Council, or the National Groundwater Association. Consider all possibilities and use whatever political capital you have. Write letters to the editors (Water Systems Council or your state association can help), send emails, have lunch with people, play golf, and get the word out. Powers exist in numbers.

## BE READY TO JUMP INTO ACTION

If someone moves forward with a bill, ordinance or action to limit water wells, you should be ready to jump into action if you have followed the advice in this publication. Contact your state association and attorney immediately. Have your state association contact Water Systems Council and the National Groundwater Association. Ask the first question, *“Can they do that?”*

If a local government or public water entity is attempting mandatory connection or telling you that you can't use your water, ask them where they get the authority for that action.

## CONCLUSIONS

In today's world, it is likely that a local or state government or other entity will attempt to take action to limit water wells. **Water well professionals must be ready now to deal with things that arise tomorrow.** Be proactive, build relationships, prepare a war chest, and gather the resources that you will need to fight the good fight. Help make your state association strong so that they can help fight the battle. And, remember, it ain't over until it's over. The battlefield can move between court, administrative agencies, and legislatures, as well as between state, local and federal venues. Be prepared for all possibilities.

## HOW WSC CAN HELP

Your membership in Water Systems Council pays for itself many times over when you can tap into the existing knowledge of Water Systems Council staff and consultants. To join, visit [WaterSystemsCouncil.org](http://WaterSystemsCouncil.org) or contact:

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## 10 QUESTIONS TO ASK IF MANDATORY CONNECTION COMES TO YOUR COMMUNITY

Sometimes government officials or public water suppliers move forward with their plans despite proactive efforts to prevent mandatory connection. In other situations, mandatory connection provisions seemingly come from nowhere, with no advance warning. In these situations, you need to be prepared to immediately ask the tough questions to the officials attempting to impose restrictions.

This list of questions was compiled to both put the authorities on notice that you are serious and get the answers you need. The answers should weaken the mandatory connection push significantly and allow you and your allies to move forward in an effort to defeat mandatory connection.

1. What authority do you have to impose mandatory connection (or put restrictions on wells)? Ask to see the local ordinance or state statute.
2. Have you gotten a legal opinion on whether you are allowed to do this? If yes, show me the legal opinion.
3. What is the purpose of the requirement?
4. Are you using mandatory connection to raise revenues? To subsidize public sewer?
5. Do you have any evidence that the water wells in the area are contaminated or are not producing sufficient water?
6. What will be the total cost of the project? How many households? Total cost per household?
7. Have you looked at less costly options (like allowing people to keep their existing water wells)?
8. Will you be able to pay for the project without forcing people to connect to the system?
9. What will be the environmental impact of the project?
10. What documents or communications do you have relating to this matter? Have your attorney assist you in filing a Freedom of Information Act request for copies. Make sure you include a request for costs and engineering studies.

## APPENDIX: CASE STUDIES

### BEN HILL COUNTY, GEORGIA

- Originally 20 houses and 2 churches on failing PWS run and paid for by Ben Hill County. Estimates to repair existing PWS: \$600,000.
- County covered costs to drill shared wells for 2 churches and 8 rental homes owned by the churches.
- This left 12 owner occupied homes:
  - Cluster of three homes shared one well
  - Second cluster of three homes shared one well
  - Six individual wells drilled
- Where there were shared wells, property owners entered into Georgia Water Rights Agreement with other homeowners hooking up to said well.
- Cost to drill wells was \$6,400 per well. Wells equipped with 1.5 horsepower pump for multiple hook ups.
- County spent \$30,000 on this project. 8 new wells cost \$51,200; total project cost was \$81,200.

**COST SAVINGS OF \$518,500 OR 86%**



## APPENDIX: CASE STUDIES

### CANDLER, NORTH CAROLINA

The Holly Ridge subdivision was developed in 1990 in three phases, with 4 wells serving 29 lots. Over the years, the well houses and well equipment fell into severe disrepair. Owners of the 24 homes served by these wells -- including 45 adults and 18 minor children -- were unable to pay for replacement well systems.

- Repairs were made to 3 of the wells and the 4th was decommissioned as it was no longer viable.
- Costs for repairs:
  - Materials (pumps, tanks, controls, wire): \$15,618
  - Well contractor: \$24,025
  - Well house debris removal: \$951
  - Well house materials: \$3,767
  - Well house contractor: \$3,000
  - **TOTAL: \$47,361**
- Cost for installation of a public water supply system:
  - 3,000 ft. of 8" main to subdivision entrance @ \$125/foot: \$375,000
  - 9,925 ft. of 8" main from entrance to homes: \$1,240,625
  - Meters for 24 homes: \$38,136
  - New pump station and tank for high elevation homes: \$1,250,000
  - Engineering fees for new pump station: \$34,850
  - Plumbing connections to homes: \$34,850
  - **TOTAL: \$3,188,611**

**COST SAVINGS OF \$3,141,250 OR 99%**



## APPENDIX: CASE STUDIES

### BULVERDE, TEXAS

Since 1994, the Salazar family has lived without a water supply to their home. Sadly, the Salazar's story is more common than most are aware. In many rural areas of the U.S., a water well is the only option that makes sense as connecting to a local public water supply is either cost prohibitive or simply not an option.

- Costs for water well installation:
  - Materials (pumps, tanks, controls, wire): \$13,554.27
  - Well contractor (labor): \$4,420
  - **TOTAL: \$17,974**
- Cost for connection to public water supply system:
  - Extension of water main-2,904 ft. @ \$20/ft.: \$58,080
  - Tap fee and road cuts: \$4,000
  - Plumbing from main to home: \$21,112
  - Stop valve: \$150
  - Rock saw rental: \$150
  - **TOTAL: \$84,092**

**COST SAVINGS OF \$66,118 OR 79%**





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