



Mitigation Plan Policy

Amended June 6, 2022

WITHDRAWAL IMPACT MITIGATION PLAN

Preamble

The purpose of this mitigation plan (Plan) is to establish a dispute-resolution mechanism that existing groundwater users can use to resolve claims that may arise because of groundwater withdrawals from the James City Service Authority's (JCSA) wells in James City County, Virginia.

Pursuant to the Groundwater Act of 1992 and the regulations adopted under it, the Department of Environment Quality (DEQ) issued JCSA groundwater withdrawal permits for the following systems: Central System; Wexford Hills; Racefield; King's Village; Ware Creek Manor; The Retreat; Liberty Ridge; and Westport.

Modeling predictions, developed as part of the record of permit proceedings, project the expected zones of influence of withdrawals from the permitted wells and indicate that the withdrawals are expected to have impacts on existing groundwater users. There may be nonpermitted groundwater users within the area where simulated drawdown exceeds one foot. To safeguard existing groundwater users, JCSA adopted this mitigation plan.

The hope is that claims can be resolved through informal discussions and negotiations between the claimant and JCSA. The procedures of the Plan are designed to be used in addition to such informal discussions and negotiations or other procedures already provided by law. The plan is intended to provide a speedy, nonexclusive, low-cost means of fairly resolving specific claims relating to withdrawals from the permitted wells.

The Plan has six sections:

- Section I contains definitions of certain terms used in the Plan.
- Section II establishes procedures for the filing and initial review of claims.
- Section III establishes a committee for reviewing disputed claims that withdrawals from the permitted wells within the Project have adversely affected a well or wells outside the Project.
- Section IV establishes procedures for resolving disputed claims.
- Section V establishes standards that the committee will apply to resolve disputed claims.
- Section VI addresses administrative matters.

Section I: Definitions
MITIGATION PLAN

Presented below are definitions of terms used in the mitigation plan:

“Adverse Impact” means (a) for Historical Yield, a significant diminution in Historical Yield, or (b) for Historical Beneficial Use, a change in groundwater that renders it unsuitable for the Historical Beneficial Use.

“Claimant” means an Eligible Owner who wants to take advantage of the procedures in the Plan.

“Committee” means the committee established under Section III of the Plan.

“Date of the Plan” means the date on which the DEQ approves the Plan.

“Eligible Owner” means (a) any owner of a well that (i) was lawfully operating as the Groundwater withdrawal permit was issued to the JCSA by the DEQ or, in the case of seasonal or intermittent operation, was lawfully operating within six months before or after that date (or, with respect to agricultural or drought-relief wells, such other date determined by the Committee as necessary to prevent abrogation of documented lawful groundwater rights); and, (ii) is lawfully operating as of the date of making a claim under the Plan (unless, when the claim is made, the well is inoperable as a result of conditions that are the subject of the claim) or (b) any person having a permit or certificate to withdraw groundwater that has satisfied all conditions of that permit or certificate and is otherwise required by law to withdraw water as of the Date of the Plan.

“Historical Beneficial Use” means the actual lawful uses of groundwater from the Well (before the Date of the Plan), such as domestic, agricultural, recreational, commercial, or industrial uses, that can be established to the satisfaction of the JCSA or Committee.

“Historical Yield” means the actual, sustained, lawful average daily yield of the Well before the Date of the Plan that can be established to the satisfaction of the JCSA and/or Committee. For certified or permitted wells, the average daily yield shall be based on withdrawals for any consecutive 12-month period during the previous three years. “JCSA” is the entity to which the permit is issued and the responsible party for mitigating validated well mitigation claims.

“Rebuttable Presumption” means that the JCSA and/or Committee shall assume that Withdrawals are (or are not, as the case may be; see Section V, Paragraph 1) the cause of the claimed Adverse Impact on the Well of the Eligible Owner unless and until evidence tending to disapprove the assumption is presented to the Committee.

“Repairs” means an appropriate process that will restore to the Claimant a supply of water equal to the Historical Yield and Historical Beneficial Use of the water from the Well, including, but not limited to, lowering the existing pump in the Well, installing a larger pump in the Well, drilling a new well, or connecting the user to the County’s public water supply system.

“Well” means a well that is the subject of a claim.

“Withdrawals” means withdrawals from any well(s) subject to the Permit.

Section II: Filing and Initial Review of Claims

1. Any Eligible Owner who believes that Withdrawals may have caused an Adverse Impact on his or her Well may become a Claimant by submitting to JCSA a written request for mitigation of the Adverse Impact or for reimbursement for the costs of Repairs, or both (the “claim”). For ensuring accurate assessments of such a claim, it must be filed within 90 days of the time that the Claimant determines that Withdrawals may have caused an Adverse Impact on the Well. If the Claimant wants a temporary water supply or other interim relief, the claim shall indicate that desire. The Claimant shall allow JCSA, their employees, and their agents reasonable access to the property and the allegedly affected Well as necessary to determine the merits of the claim, including tests and inspections of the well.
2. A timely claim may be filed only after JCSA initiates groundwater withdrawals from the permitted wells.
3. As part of filing a claim, the Claimant must provide documentation showing:
 - (a) that the Claimant is the owner of the Well;
 - (b) that the Well:
 - (1) was lawfully operating as of the Date of the Plan or, in the case of seasonal or intermittent operation, was lawfully operating within six months before or after that date; or, with respect to agricultural or drought-relief wells, such other date determined by the JCSA or Committee as necessary to prevent abrogation of documented lawful groundwater rights; and
 - (2) was lawfully operating as of the date the claim was made under the Plan (unless when the claim was made, the Well was inoperable as a result of the claimed Adverse Impact).
 - (c) that the Claimant has a certificate or a permit for withdrawing groundwater from the Well (if applicable) and has satisfied all conditions imposed by the certificate, the permit, or the applicable law;
 - (d) the depths of the Well, the pump, and the screens (if available);
 - (e) the location of the Well with enough specificity to locate and identify it in the field;
 - (f) the Historical Yield of the Well (if applicable);
 - (g) the Historical Beneficial Use of the Well;
 - (h) the quality of the water in the Well (if applicable); and
 - (i) the reasons the Claimant believes Withdrawals have caused an Adverse Impact on the Well.
4. If Claimant within the indicated area of impact states in writing that he/she is out of water from a well that is located within the aquifer covered by the permit, JCSA will accept responsibility for providing water for human consumptive needs within seventy-two hours of receipt of said notice and will continue to provide such water during the claim review period.

If after review, the JCSA denies the claim, the Claimant shall reimburse the JCSA all costs associated with providing the water during the claim review period; provided, should the Claimant elect to have the denial reviewed by the Committee, JCSA shall continue to provide the emergency water supply at the written request of Claimant during the Committee's review. Should the Committee uphold the JCSA's denial, Claimant shall reimburse JCSA all costs associated with providing emergency water supply.

5. Within five business days after receiving a claim, JCSA will notify the Claimant in writing that JCSA:
 - (a) agrees to mitigate the claimed Adverse Impact or reimburse the Claimant, or both;
 - (b) denies the claim; or
 - (c) needs documentation required under Paragraph 3 of this Section, or additional documentation from the Claimant to respond to the claim.

If JCSA denies the claim or any part of it, the notice will:

- (1) state the reasons the claim, or any part of it, was denied;
 - (2) include a copy of the Plan; and
 - (3) advise the Claimant that he or she may seek resolution of the claim by invoking the procedures in Section III and Section IV of the Plan.
6. Within 15 business days of receiving all documentation requested pursuant to Paragraph 5(c) of this Section, JCSA will notify the Claimant in writing that it:
 - (a) agrees to mitigate the claimed Adverse Impact or reimburse the Claimant, or both; or
 - (b) denies the claim. If JCSA denies the claim or any part of it, the notice will:
 - (1) state the reasons that the claim or any part of it was denied;
 - (2) include a copy of the Plan; and
 - (3) advise the Claimant that he or she may seek resolution of the claim by invoking the procedures in Section III and Section IV of the Plan.
7. A Claimant whose claim, or any part of the claim, has been denied may seek resolution of the claim by invoking the procedures in Section III and Section IV of the Plan.

Section III. The Committee

1. Resolution of disputed claims under the Plan will be administered by a committee of three (the Committee) constituted and empowered as stated below.
2. The membership of the Committee will consist of:
 - (a) one representative selected by the Claimant,
 - (b) one representative selected by JCSA, and
 - (c) one representative selected by mutual agreement of the members of the Committee described in items (a) and (b). If the representatives of the Claimant and JCSA are unable to select a third representative, such representative shall be selected by the Dispute Resolution Center, 701 E. Franklin Street, Suite 712, Richmond, Virginia 23219, after consultation with the representatives of Claimant and JCSA and the Department of Geology at the College of William and Mary, Williamsburg, Virginia 23187. Each member of the Committee shall have technical expertise in groundwater supply issues and shall have a baccalaureate or graduate degree in geology or hydrogeology or an equivalent professional certification in geology or hydrogeology or, solely for the member described in item (c), a degree or certification in any other technical or scientific discipline deemed adequate either by the selecting members or by the Dispute Resolution Center.
3. JCSA shall reimburse the members of the Committee and the Dispute Resolution Center for reasonable time spent at a rate prevailing in the area for experts in the above-listed fields and for direct costs incurred in administering the Plan. The Claimant may, at his or her option, choose to provide the reimbursement for the member of the Committee selected by the Claimant and provide up to one half of the reimbursement for the third member selected by both parties.

Section IV. Claim Resolution Procedures

1. If after the filing and initial review of his or her claim pursuant to Section II of the Plan, the Claimant finds JCSA's offer of mitigation or reimbursement inadequate or JCSA informs the Claimant that JCSA will not mitigate the claimed Adverse Impact or reimburse the claimant, the Claimant may accept JCSA's decision or may elect to pursue the claim under the claim resolution procedures set out in this Section of the Plan ("Claim Resolution Procedures"). To pursue the claim, the Claimant shall notify JCSA that he or she is initiating the disputed claim Resolution Procedures of the Plan by referring his or her claim to the Committee. At the same time, the Claimant shall identify a person qualified under Section II, Paragraph 2, to serve as the Claimant's representative on the Committee.
2. Within five business days after receiving such notice from the Claimant, JCSA shall identify its representative on the Committee, shall notify the Claimant and the Claimant's representative of the identity of the JCSA representative, and shall instruct the two representatives to select a third member within ten business days.
3. Within ten business days of the selection of its third representative, the Committee shall establish a reasonable deadline for submittal of all documentation it needs to evaluate the claim. Both the Claimant and JCSA must abide by this deadline. The Committee shall reach a decision on the claim by majority vote within 15 business days after the Claimant and JCSA have submitted all documentation the Committee needs to evaluate the claim. The Committee shall take whatever

steps it deems necessary to reach a decision, but the decision must be based on the standards in Section V of the Plan.

4. If the Committee decides that the claim qualifies for mitigation or reimbursement to any extent under the Plan, it shall approve the claim to that extent and shall, within five business days, notify the Claimant and JCSA of the approval, specifying in writing the reasons for its decision. JCSA shall, as directed by the Committee, mitigate the claimed Adverse Impact as soon as practicable, or shall reimburse the Claimant within ten business days for the amount awarded by the Committee, or both.
5. If the Committee decides that the claim does not qualify for mitigation or reimbursement under the Plan, it shall notify the Claimant and JCSA of that decision, specifying in writing the reasons for the decision.
6. JCSA reserves the right, under circumstances that it believes constitute intentional abuse of the process established by the Plan, to refuse to convene the Committee. Such circumstances include the filing of a frivolous or fraudulent claim. If JCSA exercises its right to refuse to convene the Committee, JCSA shall notify the Claimant in writing, specifying the reason(s) for the refusal. The Claimant may then, at his or her own risk, convene the Committee. A Claimant convening the Committee pursuant to this paragraph shall be responsible for all costs of convening the Committee, including reimbursement of the members of the Committee for reasonable time spent (at the prevailing rate for experts in the field) and all direct costs incurred by the Committee in evaluating the claim. If the Committee convened pursuant to this paragraph finds in favor of the Claimant, JCSA shall reimburse the Claimant for the costs of convening the Committee and, in addition, shall be liable to the Claimant for a penalty that shall be established by the Committee. The penalty shall not exceed 100 percent of all costs incurred by the Claimant in convening the Committee.

Section V: Standards for Resolving Disputed Claims

1. To qualify for mitigation of the claimed Adverse Impact or reimbursement of the cost of repairing the claimed Adverse Impact, the Claimant must provide evidence satisfactory to the Committee:
 - (a) that the Claimant is the owner of the Well;
 - (b) that the Well (i) was legally in existence and lawfully operating as the groundwater permit was originally issued by the DEQ; or, in the case of seasonal or intermittent operation, was lawfully operating within six months before or after the issuance of the withdrawal permit or, with respect to agricultural or drought-relief wells, such other date determined by the Committee as necessary to prevent abrogation of documented lawful groundwater rights, and (ii) was lawfully operating as of the date of the making of the claim under the Plan (unless when the claim was made the Well was inoperable as a result of the claimed Adverse Impact); or (iii) the well and withdrawals were permitted or certificated and all conditions in such certificate or permit or otherwise imposed by law to establish groundwater rights have been satisfied before the Date of the Plan;
 - (c) that, on the basis of information compiled pursuant to Section I, other information presented by the Claimant or JCSA, and other inquiries the Committee, the Claimant, or JCSA chooses to undertake, the claimed Adverse Impact was caused by Withdrawals; and

- (d) that the costs of repairs undertaken before initiation of the disputed claim resolution procedures described in Section IV of the Plan were necessary and reasonable.

As to Item (c) above, and only as to a claimed Adverse Impact on Historical Yield, there shall be a rebuttable presumption that Withdrawals are the cause of the claimed Adverse Impact if the Claimant demonstrates that the Well is located in the area of impact as defined by computer models prepared by DEQ.

There shall be a rebuttable presumption that Withdrawals are not the cause of the claimed Adverse Impact on Historical Yield or Historical Beneficial Uses if the Well is located outside the area of impact as defined by computer models prepared by DEQ.

2. Costs beyond those necessary to restore Historical Yield and Historical Beneficial Uses shall be at the Claimant's expense.
3. Any Claimant who has previously been reimbursed by JCSA for repairs as a result of an earlier negotiation or a claim filed under the Plan will not be reimbursed or compensated for correction of faulty or otherwise incorrect repairs related to the earlier negotiations or claim unless such previous repairs were performed under JCSA's supervision.
4. If and to the extent permitted wells owned by third parties and operating under a mitigation plan similar to the Plan are shown to the Committee's satisfaction to have contributed to the Adverse Impact on the Well, JCSA's share of the costs of mitigation or well repair under the Plan shall be allocated in proportion to its share of the damage. Such a determination shall be made by the Committee, but only after the Committee notifies the third-party permittee and provides the permittee an opportunity to participate in the Committee's proceeding.

Section VI: Administration of the Plan; Notice

1. The Committee may, at its discretion, request that JCSA assist it in administrative, accounting, and clerical actions required under the Plan.
2. Notices required under the Plan may be served by hand or certified mail. Notice to JCSA shall be addressed to:

General Manager
James City Service Authority
119 Tewning Road
Williamsburg, VA 23188

3. The Plan is intended to provide a relatively speedy and low-cost means of fairly resolving claims of Adverse Impact attributed to Withdrawals. All remedies and procedures under the Plan are in addition to those otherwise provided by law. Use of the process established by the Plan shall not be a prerequisite to filing the claim of alleged damage from Withdrawals in a court of competent jurisdiction. Costs incurred by either party in implementing the Plan, including without limit the cost of interim water supplies, the costs of investigation, and the costs of well repair or remediation, may be included in claims brought before a court of competent jurisdiction.
4. The DEQ and its staff have no responsibility for the case-by-case administration of the Plan, but nothing in the Plan shall prevent DEQ staff from providing information needed for resolving specific matters before the Committee, at the request and discretion of the Committee.