DOWNEYBRAND



Melissa A. Thorme
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Practice Areas

Appellate & Writ Practice | CEQA / NEPA | Endangered Species | Environmental Enforcement Defense | Environmental Remediation & Due Diligence | Environmental/Toxics Litigation | Infrastructure | Land Use | Proposition 65 | Recycled Water | Regulatory Law & Business Permitting | Water Quality Law

For over 30 years, industrial and municipal clients have regularly turned to Melissa Thorme to assist in resolving their environmental compliance issues and negotiating or litigating their regulatory enforcement actions.

Melissa counsels numerous businesses, including food processors, lumber companies, agricultural entities, contractors, marinas and boat yards, auto dismantlers, small manufacturing companies, and oil field waste produced water facilities, in addition to sanitation districts, counties, and cities throughout California on matters related to NPDES, wastewater, and recycled water discharge permitting and waivers, TMDLs, and enforcement actions brought by regulatory agencies or in Clean Water Act/Prop. 65 citizen suits. She also assists with stormwater drainage matters for public agencies, vineyards, and food processing businesses.

With a specific focus on stormwater and wastewater regulatory compliance issues, Melissa has successfully negotiated or challenged numerous discharge permits and enforcement actions before administrative agencies and in state and federal courts, with two consolidated permit appeal cases for the cities of Los Angeles and Burbank receiving a published opinion in the California Supreme Court. Melissa has also successfully litigated challenges to invalidate state and U.S. EPA water quality standards set in the Central Valley and Los Angeles regions, and has negotiated many settlement agreements for various clients. In addition to water-related law, Melissa also has experience in complex litigation, CEQA, land use planning, real estate transactions, site investigation and remediation, endangered species compliance, 404 dredge and fill projects, and 401 certification processing.

Experience

- Challenged the water quality standards for salinity applicable in the Southern Delta in state court on behalf of a Central Valley city and succeeded in receiving a writ of mandate instructing the State Water Resources Control Board to review and revise the standards in accordance with state law, namely Water Code sections 13241 and 13242.
- Successfully prosecuted an industrial discharger before the Steering Committee of a southern California

Sanitation District that violated local ordinances and its sewer use permit, securing substantial administrative penalties and permit revocation.

- Settled a $4 million dollar initial Administrative Civil Liability Complaint for Mandatory Minimum Penalties (MMPs) for a small mutual water company in Lake County for a suspended penalty amount of $2.8 million that was completely expunged after the client converted its company into a non-profit and received over $2.5 million in State grant funds to be spent on upgrading its drinking water treatment plant.
- Settled three different enforcement actions by two Regional Water Boards and one County District Attorney against an agricultural operation for alleged unlawful discharges during storm events that funded 2 large Supplemental Environmental Projects (SEPs) to provide clean drinking water to nearby homes and rehabilitate creek beds.
- Succeeded in extricating the state's Department of Corrections and Rehabilitation, a county, a city, a sanitation agency, and at least two industrial stormwater clients from Clean Water Act citizen suits without any litigation or the need for a settlement, and settled numerous other cases for industrial and municipal clients in stormwater and sewer spill cases.
- Settled a proposed Administrative Civil Liability of over $1 million for a single sewer spill for $130,000, plus $120,000 in suspended penalties if this small Central Valley city completes Enhanced Compliance projects aimed at avoiding future spills.
- Tried a multiple week breach of contract case in Federal district court for a public utilities district in Southern California and received a decision finding bad faith breach of contract. The case involved numerous issues relating to engineering, water quality, and regulatory requirements under state and federal law.
- Drafted amicus curiae briefs for the League of California Cities, California State Association of Counties, and the National League of Cities before the U.S. Supreme Court and the Ninth Circuit Court of Appeals in the Natural Resources Defense Council v. Los Angeles County Flood Control District case (USSC Case No. 11-460) and in support of additional review (USSC Case No. 13-901).
- Challenged U.S. EPA's approval and disapproval of water quality standards the Los Angeles Region in Federal court and succeeded in removing the municipal drinking water (MUN) use from waterways in that region that had only been conditionally designated and gaining clarity on regulating using narrative water quality objectives.
- Appealed NPDES permits for the cities of Burbank and Los Angeles all the way to the California Supreme Court in the City of Burbank v. State Water Resources Control Board case, which resulted in a ruling requiring the Water Boards to perform additional state law analysis if requirements more stringent than required by federal law are included in discharge permits. Have done dozens of other permit appeals, many of which are placed in abeyance.
- Represented a Central Coast wastewater treatment plant in a 17-hour adjudicatory hearing before the Central Coast Regional Water Quality Control Board over a million dollar Administrative Civil Liability Complaint related to a sewer spill that occurred during a declared flood emergency. The matter was ultimately settled.
- Specialized expertise in water quality based on a solid science background, which provides a unique understanding of chemical, biological, and ecological ramifications of water quality policies and regulation, as well as a clear understanding of the regulations and their history.

- Substantial Federal court litigation experience, including discovery, taking and defending fact and expert witness depositions, briefing, and oral advocacy.
- Extensive State court experience, including writ practice in Superior Courts and substantial appellate advocacy experience briefing and arguing cases before California Appellate Courts and the California Supreme Court as counsel to parties and amicus curiae.
- Negotiated scores of achievable NPDES permits for municipal and industrial storm water and wastewater discharges throughout California, as well as agricultural waivers, Section 404 permits, 401 Certifications, and waste discharge requirements for dredging projects.
- Administratively and judicially challenged unlawful or unreasonable provisions in numerous NPDES permits for publicly owned treatment plants and municipal separate storm sewer systems where reasonable permits could not be negotiated.
- Defended and settled administrative NPDES permit enforcement actions and Mandatory Minimum Penalty (MMP) actions related to water quality, and citizen suits filed under the Clean Water Act (CWA) and the Resource Conservative and Recovery Act (RCRA) against municipal and industrial clients. Several enforcement defense matters resulted in no penalty or a substantially reduced penalty to the client.
- Commented on, negotiated the terms of, or litigated several Total Maximum Daily Loads (TMDLs), including for chloride, trash, nitrogen, bacteria, mercury, and pesticides, and Site Specific Objectives (SSOs), including for copper, nickel, and cyanide.
- Successfully litigated California Environmental Quality Act (CEQA) cases, including one in Federal court. In other situations, helped draft environmental documents that were never challenged.

Professional & Community Service

- American Bar Association, 1991- present
- Downey Brand LLP, Former Executive Committee Member
- California Association of Sanitation Agencies (CASA), Attorneys Committee and Federal Legislative Committee
- Central Valley Clean Water Association, Associate member
- California Department of Real Estate, Salespersons License 1986-2019, Broker License since 2019
- California Lawyers Association, Environmental Law Section
- Santa Lucia Preserve Community Service District, Board of Directors, 2019 to present
- Putah Creek Council, Board of Directors 2015-2019
- Norwood 4-H Club (Yolo County), Community Club Leader, 2012-2014; 4-H Project Leader 2004-2015
- Association of California Water Agencies (ACWA), Clean Water Sub-Committee and TMDL Workgroup, Former Chair
- Sacramento River Toxic Pollutant Control Program Subcommittees, Former Facilitator
- Riparian Improvement Organization (RIO), Former President

- Tulane University School of Law, Environmental Advocacy class, Former Instructor and Environmental Law Fellow/Co-Director of Environmental Law Clinic

Education

- LL.M., with distinction, Energy and Environmental Law, Tulane University Law School, 1992
- J.D., University of California at Davis School of Law, 1990
- M.S., University of California at Davis, Graduate Group in Ecology, 1988
- B.S., *cum laude*, Environmental and Systematic Biology, California Polytechnic State University, San Luis Obispo, 1985

Honors & Rankings

- AV Preeminent® Rating by Martindale-Hubbell®
- The Martindale-Hubbell® Bar Register of Preeminent Women Lawyers™
- Best Lawyers® 2018 Water Law "Lawyer of the Year" in Sacramento
- Best Lawyers in America©, Water Law, 2008-2024
- Best Lawyers in America©, Environmental Law, Natural Resources Law, 2023-2024
- *Sacramento Magazine*, Top Lawyer, Environmental, Energy & Natural Resources, 2015-2022
- *Super Lawyers*, Northern California Super Lawyer, Environmental Litigation, 2006, 2012-2013, 2016-2022
- *Best Lawyers*, Women in the Law, 2016
- Recipient of two LiFE awards for environmental literature
- Roscoe Hogan Environmental Law Essay Contest, Winner
- LEXIS Excellence in Writing Award, Winner

Speaking Engagements / Events

- *Clean Water Act at 50: What's Next for California Clean Water Laws?*, Webinar hosted by California Water Environment Association (CWEA), October 5, 2022
- *What To Know For The Next Wet Season And Beyond*, Presenter, Storm Water Awareness Week Webcasts, September 28-29, 2016
- *Use of Recycled Oil Field Wastewater for Irrigation of Food Crops*, Co-presenter, Tchobanoglous Water

Lecture, April 7, 2016

- *History of Monticello Dam*, Moderator, Celebrate Putah Creek Conference, April 3, 2016
- *The Battle Over Chronic Toxicity Testing*, Presenter, ACWA Water Quality Committee Meeting, February 2016
- *Industrial Stormwater Issues*, Panelist, California League of Food Processors, December 15, 2014
- *Clean Water Act Liability*, Presenter, CWEA Operators Conference, October 15, 2014
- *Stormwater Showdown*, Presenter, Citizen Suit Enforcement - Stormwater Awareness Week, September 15, 2014
- *Legal Update on Storm Water Regulation*, Presenter, League of California Cities, 2014 City Attorneys' Spring Conference, May 20, 2014
- *Complying with Storm Water Requirements*, Presenter, Association of General Contractors Legal Meeting, February 2014
- *Cross-Disciplinary Issues Related to the Regulation of Waste Water Storm Water*, Presenter, Downey Brand CLE, January 2014
- *Your 'Stay Out of Jail' Card - Learn about Clean Water Act Compliance*, Presenter, Nevada Water Laws and Regulations, December 2013
- *Complying with Stormwater and Surface Water Management Regulations*, Presenter, Current Issues in Water Law Conference, November 2013
- *Receiving Water Limitations Lessons and Litigation*, Co-presenter, California Stormwater Quality Association (CASQA) Conference, September 2013
- *Nitrates in Groundwater - The New Water Quality Battleground*, Presenter, Argent Communications 28th Annual California Water Law & Policy Conference, April 23, 2013
- *Citizens versus Stormwater: the Malibu Citizen Suit Litigation*, Co-presenter, California Stormwater Quality Association (CASQA) Conference, November 2012
- *Water in the Vineyard: The World of Overlapping Regulation*, Co-presenter, CEB Wine Law Forum, September 2012
- *Educational Seminar on the Vineyard Waiver*, Presenter, Winegrowers of Napa County, June 2012
- *Is It Really Toxic? - Panel on Whole Effluent Toxicity (WET) Regulation*, Panelist, ABA Environment, Energy, and Resources Law Summit, October 2011
- *Fighting Back - Defending a Citizen Lawsuit*, Presenter, California Association of Sanitation Agencies (CASA) Annual Conference, August 2011

Publications

- *Status of Stormwater Regulation in California*, State Bar of California, Environmental Law News, Vol. 23, No. 2, Fall 2014
- *Consumer Advocacy Group, Inc. Issues Prop 65 Notices to Grocers Alleging Presence of Arsenic in Rice*,

California Grocers Association, Online Newsletter, March 2014

Legal Alerts

- *USEPA's New Clean Water Act Section 401 Water Quality Certification Rule Becomes Effective November 27, 2023*, November 6, 2023
- *Supreme Court Denies Review of California Appeals Court Ruling that State Water Board's Duty to Prevent Waste and Unreasonable Use of Water is "Highly Discretionary"*, August 28, 2023
- *Sackett v. EPA: U.S. Supreme Court Redefines Waters of the United States, Eliminating Federal Jurisdiction Over Certain Wetlands and Other Waters*, May 26, 2023
- *California Appeals Court Rules that State Water Board's Duty to Prevent Waste and Unreasonable Use of Water is "Highly Discretionary"*, February 28, 2023
- *State Water Board Adopts New Sanitary Sewer Systems Waste Discharge Requirements*, December 9, 2022
- *Ninth Circuit Court of Appeals Reverses RCRA Citizen Suit Decision Affecting Drinking Water Supply Agencies in California River Watch v. City of Vacaville*, July 7, 2022
- *U.S. Department of Justice Announces New Office of Environmental Justice and Return of Supplemental Environmental Projects*, May 15, 2022
- *Ninth Circuit Finds that Distribution of Drinking Water Containing MCL-Compliant Levels of Hexavalent Chromium Gives Rise to RCRA Liability in Decision that Upends Law of the Circuit*, October 15, 2021
- *Proposed "California Clean Water Act" (AB 377) Would Restrict Ability to Secure Schedules of Compliance in Water Quality Permits or Other Water Quality-Related Orders*, March 5, 2021
- *Clean Water Act Permits Now Required When a Point Source Discharge Through Groundwater is the "Functional Equivalent" of a Direct Discharge to Navigable Waters*, April 24, 2020
- *Compliance with Water Board Requirements During the Coronavirus 2019 (COVID-19) Emergency*, March 20, 2020
- *After Years of Handwringing and Lengthy Stakeholder Negotiations, California Water Board Adopts State Wetland Definition and Procedures for Discharges of Dredge or Fill Material to Waters of the State*, April 4, 2019
- *State Water Resources Control Board Issues Draft Toxicity Policy – What You Need to Know*, November 21, 2018
- *U.S. District Court Holds USEPA Must Regulate Previously Exempted Stormwater Runoff from Specified Commercial, Industrial, and Institutional Sources in Los Angeles*, August 31, 2018
- *U.S. EPA Region 9 Enforcement Priorities Revealed*, April 11, 2018
- *Amendments to the California Industrial General Storm Water Permit on the Horizon*, January 9, 2018
- *Local California Governments Sue Fossil Fuel Companies for Rising Sea Levels*, July 26, 2017
- *DOJ Issues Policy Memo Limiting the Use of Supplemental Environmental Projects in Federal Settlements*,

June 12, 2017

- *Water Board Adopts Revisions to Enforcement Policy That Are Expected to Generally Increase Penalties*, April 4, 2017
- *Short-Lived Climate Pollutant Strategy Outlines a Role for POTWs in Organic Waste Diversion*, March 31, 2017
- *NRDC/WaterKeeper Challenge to 2012 Los Angeles Municipal Storm Water Permit Denied*, February 9, 2017
- *OEHHA Adopts Unclear Amendments to the "Clear and Reasonable Warning" Regulations – Exacerbating Proposition 65 Problems*, September 9, 2016
- *WARNING: Proposed Revisions to Water Boards' Enforcement Policy Will Likely Lead to Higher Penalties*, August 16, 2016
- *U.S. Supreme Court Upholds Hawkes Ruling that Wetland "Jurisdictional Determinations" Are Subject to Judicial Review*, June 13, 2016
- *Update: California Supreme Court Holds Inadvertent Production of Attorney-Client Privileged Documents under a Public Records Act Request Does Not Waive the Privilege*, March 18, 2016
- *EPA's Water Rule Blocked Nationwide*, October 9, 2015
- *ESWR Update: WOTUS Rule Blocked by Federal Judge in North Dakota*, September 2015
- *Showdown at California Supreme Court over Waiver of Attorney-Client Privilege in Public Records after Inadvertent Disclosure*, August 18, 2015
- *State Water Board Adopts Industrial Storm Water General Permit: Prepare!*, April 2014
- *Water Boards Turn Focus Toward Oil Field Waste*, March 3, 2014
- *Ninth Circuit Issues New Ruling in LA County Flood Control Case Contradictory To Its Own Earlier Rulings, Resulting in Compliance Uncertainty*, August 2013
- *State Water Board Solicits Comments on "Final Draft" Industrial Storm Water General Permit*, August 2013
- *Agriculture Meets the Antidegradation Policy*, July 2013
- *Napa/Sonoma Vineyard Waiver Indefinitely Delayed - Feb. 11, 2013*, February 11, 2013
- *U.S. Supreme Court Reverses Ninth Circuit and Reaffirms Water Transfer Precedent in Los Angeles County MS4 Clean Water Act Case*, January 9, 2013

Blogs

- *The End of an Era: U.S. Supreme Court Eliminates Significant Nexus Test in Favor of Relatively Permanent Waters, Ruling in Favor of the Sacketts and States' Rights by Restricting Jurisdictional Waters of the United States*, May 30, 2023
- *California Appeals Court Rules that State Water Board's Duty to Prevent Waste and Unreasonable Use of Water is "Highly Discretionary"*, March 3, 2023