CEQA / NEPA

Downey Brand's natural resources lawyers have particular expertise in analyzing environmental impacts and defending litigation under the California Environmental Quality Act (CEQA) and its federal counterpart, the National Environmental Policy Act (NEPA).

Compliance

Our attorneys with expertise in environmental impact review regularly develop and implement CEQA and NEPA compliance strategies that keep projects on track and legally defensible. These attorneys are often called upon to evaluate the appropriate level of environmental review for a given project – including whether the project may be exempt from review – and to assess alternative compliance strategies. They also evaluate negative declarations, environmental impact reports, and environmental impact statements for legal adequacy, and revise those documents as needed to ensure compliance and minimize litigation risk. Our CEQA/NEPA attorneys provide this advice to public agencies and private applicants across a wide variety of water supply, oil & gas, renewable energy, mining, commercial, residential, and infrastructure projects throughout California.

The projects on which we advise often require integrated review under CEQA, NEPA, and other state and federal regulatory requirements, such as the Clean Water Act, Porter-Cologne Water Quality Control Act, Fish and Game Code (Lake and Streambed Alteration Agreements), Endangered Species Act (California and Federal), Bald and Golden Eagle Protection Act, National Historical Preservation Act, and AB 32, to name a few. Our in-depth experience with these requirements allows us to work closely with the relevant state and federal regulatory agencies, and to deftly weave the required analysis and permitting into the environmental impact review process.

Litigation

When necessary, we litigate CEQA and NEPA challenges in both state and federal courts and in administrative proceedings before state and federal regulatory agencies (e.g., California Public Utilities Commission and United States Bureau of Land Management). Downey Brand has successfully defended many projects against CEQA and NEPA claims at trial and on appeal, including before the California Supreme Court and the Ninth Circuit Court of Appeals.

Selected Experience

Representative Water Projects

- *Cadiz Valley Water Conservation, Recovery, and Storage Project, San Bernardino County*. Advised the County, a responsible agency, on evaluation and approval of groundwater pumping project in the Mojave Desert proposed to recover up to 50,000 acre feet of native groundwater annually over a 50-year period. The plan was approved by the Board of Supervisors on October 1, 2012.
- *Camanche Permit Extension, Amador and Calaveras Counties*. Advised East Bay Municipal Utility District on CEQA review of application to the State Water Resources Control Board to divert and store up to 125 million gallons per day (140,000 acre-feet per year) of surface water from the Mokelumne River for

municipal purposes. Issues addressed by the EIR included the environmental baseline, impact analysis, cumulative impacts, and alternatives.

Representative Infrastructure, Real Estate Development, and Brownfields Redevelopment

- *Bridgeway Square Apartments, City of Rancho Cordova*. Assisted residential real estate developer on land use entitlements and supplemental environmental review under CEQA for 199-unit apartment building in the City of Rancho Cordova.
- *Concord Naval Weapons Station, Contra Costa County*. Advising the East Bay Regional Park District on all land-use aspects of the transfer and reuse of approximately 2,200 acres of the former naval base, including remediation and land use controls, NEPA and CEQA compliance, and permitting and consultations under the Clean Water Act, Endangered Species Act, and federal and state laws governing historical and cultural resources.
- *East Cypress Corridor Project, Contra Costa County*. Represented national homebuilders on environmental review of a 1,255-acre master-planned community under NEPA and CEQA and obtained permits associated with surface waters and wetlands, water supply, and endangered fish and wildlife.
- *Vista Grande Drainage Basin Improvement Project, San Francisco and San Mateo Counties*. Representing the City of Daly City on a joint environmental document being prepared under CEQA and NEPA for a $120 million stormwater management and infrastructure project, including the replacement and enhancement of existing infrastructure, installation of constructed wetlands, and management of water levels within the historical lake basin. Advising client on regulatory and permitting requirements for federal special use permits, land use entitlements, and federal and state permits associated with surface waters and wetlands, coastal development, and sovereign lands administered by the California State Lands Commission.
- *Religious Facility and Cemetery, Santa Clara County*. Representing South Valley Islamic Community in connection with CEQA review of proposed project – including mosque, community center, and cemetery – in San Martin, California.

Representative Energy and Mining Projects

- *Distribution Station, Los Angeles County*. Advised public water and energy agency on CEQA compliance for an EIR for the construction of a new electrical power distribution station.
- *Lease and Permit Extensions for Bay and Western Delta Sand Mining, San Francisco, Solano, and Contra Costa Counties*. Advising two aggregate mining operators on all permits and entitlements for mining up to 1.35 million cubic yards of construction-grade alluvial sand annually from the San Francisco Bay, Suisun Bay, and western Delta. Advised the clients on completion of the Project EIR with the California State Lands Commission and helped secure permits from the Bay Conservation and Development Commission and the Regional Water Quality Control Board.
- *Oil Drilling and Production, Santa Barbara County*. Comprehensive CEQA review of oil wellfield and infrastructure needed to deliver recycled water for production process. Significant issues included compliance with California's cap and trade program, climate change impacts and mitigation, and consultations with federal and state wildlife agencies on endangered species.
- *Photovoltaic Solar Project, Inyo County*. Advised public water and energy agency on an EIR for a 200

megawatt photovoltaic solar farm.

- *Photovoltaic Solar Project, Riverside County*. Advised a utility-scale solar developer with respect to NEPA and CEQA compliance and preparation and review of CEQA findings for its proposed 150-megawatt, 1,200-acre solar photovoltaic power plant on federal lands administered by the Bureau of Land Management, as well as associated endangered species and other natural resources authorizations under state and federal law.
- *Photovoltaic Solar Project, San Bernardino County*. Advised a utility-scale solar developer with respect to NEPA and CEQA compliance for its proposed 358-megawatt photo-voltaic power plant in unincorporated San Bernardino County.
- *Solano Wind Project, Solano County*. CEQA review for 128-megawatt project involving 75 wind turbine generators and associated transmission in the Collinsville-Montezuma Hills Wind Resource Area, including review of avian and bat mortality, air traffic control radar, construction-related air quality emissions, and aesthetics.
- *Surface Mining Operation, Alameda County*. Advised a global building materials company on CEQA compliance, county permitting requirements, and streambed alteration agreements with respect to the amendment of its existing use permits for a 925-acre surface mining operation.

Litigation

- *Save the Plastic Bag Coalition v. City of Manhattan Beach,* 52 Cal.4th 155 (2011). Prevailed on review in the California Supreme Court regarding proper application of CEQA's fair argument standard.
- *San Francisco Baykeeper, Inc. v. California State Lands Commission*, 242 Cal.App.4th 202 (2015). Represented two leaseholders in CEQA/public trust action challenging EIR for sand mining leases in San Francisco and Suisun Bays. Prevailed at trial and on appeal on all claims brought under CEQA, including with respect to the environmental baseline, cumulative impacts, recirculation, thresholds of significance, and consultation with trustee agencies.
- *Delaware Tetra Technologies, Inc. v. County of San Bernardino*; *Center for Biological Diversity v. County of San Bernardino*. Assisted in defense of County as responsible agency in six coordinated actions challenging groundwater project under CEQA and the County's Desert Groundwater Management Ordinance. Prevailed at trial and on appeal on all claims. Appeal resulted in two published decisions (— Cal.App.4th — (2016 WL 2742702) and — Cal.App.4th — (2016 WL 2742824) and four unpublished decisions..
- *Sunnyvale West Neighborhood Ass'n. v. City of Sunnyvale City Council*, 190 Cal.App.4th 1351 (2010). Defended EIR prepared by City of Sunnyvale for a major transportation infrastructure project, in both the trial court and the appellate court. Case resulted in key appellate decision regarding selection of a baseline for CEQA impacts analysis.
- *City of Santee v. County of San Diego,* 186 Cal.App.4th 55 (2010). Prevailed for the California Department of Corrections and Rehabilitation in the first published appellate decision to apply the California Supreme Court's ruling in *Save Tara*, which pertains to whether or not a particular activity involves a sufficient "commitment" and thus constitutes a definite course of action for purposes of triggering CEQA review.
- *Friends of the Kings River v. County of Fresno*, Fresno Co. Sup. Ct. (2013). Prevailed in defending against challenge to use permit and reclamation plan for an aggregate mine under CEQA and SMARA.

- *Eldorado-Ivanpah Transmission Project*, *San Bernardino County (2011).* Represented two utility-scale solar developers in opposing requests for rehearing in administrative proceedings before the California Public Utilities Commission. The rehearing requests alleged that the Commission violated CEQA in approving a substation and transmission line upgrades needed for new solar energy resources in the Ivanpah Valley.
- *Masonite Corporation v. County of Mendocino*, 215 Cal.App.4th 230 (2013). Represented landowner in action challenging an Environmental Impact Report (EIR) under CEQA and California planning and zoning laws. Prevailed on appeal.
- *Bertani v. City of Vacaville*, 2005 Cal.App. Unpub. LEXIS 5552 (2005). Defense against CEQA and zoning code challenges to commercial shopping center. Prevailed at trial and on appeal.
- *Santa Teresa Citizens Action Group v. City of San Jose*, 114 Cal.App.4th 689 (2003). Defense against suit challenging construction of a pipeline for delivery of reclaimed water to a new energy facility brought by a private water company under CEQA, California planning laws, and the common law public trust doctrine. Prevailed at trial and on appeal.
- *Stockton Citizens for Sensible Planning v. City of Stockton*, 48 Cal.4th 481 (2010). Represented landowner in defense of claim that approval of a shopping center violated CEQA, the California Constitution, and California planning and zoning laws. Prevailed on appeal to California Supreme Court.

Trade Groups

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- American Bar Association's Environment, Energy, and Resources Section
- Association of Women in Water, Energy and the Environment
- California State Bar's Environmental Law Section
- Urban Land Institute