

Water Quality Law

Downey Brand's Water Quality Law lawyers represent clients in California on wastewater, stormwater, recycled water, oil field produced water, and agricultural discharge permitting, as well as Basin Planning, and water quality standards adoption and implementation under the Federal Clean Water Act and California's Porter-Cologne Water Quality Control Act.

Downey Brand's lawyers understand the law and the science. This comprehensive knowledge translates into more advantageous results in compliance counseling, negotiation with relevant regulatory agencies, and advocacy at the Regional Water Quality Control Boards (Regional Boards), State Water Resources Control Board (State Water Board), and U.S. Environmental Protection Agency (USEPA). Our Water Quality attorneys work closely with individual clients to come up with the best strategy possible for dealing with the applicable regulatory agencies. Often these strategies involve coordinating with technical experts in planning, engineering, and consulting firms to achieve legally sound and technically feasible water quality standards, implementation measures, and discharge permits.

Regulatory Assistance

- Assists **municipalities** with Publicly Owned Treatment Works (POTWs) and Municipal Separate Storm Sewer Systems (MS4s) with wastewater and stormwater permit compliance strategies and advice.
- Assists **developers and contractors** with 401 certification, 404 dredge and fill permits, Storm Water Pollution Prevention Plans (SWPPPs) and construction stormwater permitting and compliance.
- Assists **industrial clients**, such as auto dismantlers, marinas, lumberyards, manufacturers, and mines with regulatory issues related to the Industrial General Stormwater Permit, and compliance with pretreatment requirements, Best Available Technology (BAT), benchmarks, Numeric Action Levels (NALs), and industry specific effluent limit guidelines, and defends against Proposition 65 discharge cases.
- Assists **agricultural dischargers and food processors** with agricultural runoff control, Title 27 compliance, and waivers of Waste Discharge Requirements (WDRs).
- Assists **oil field produced water disposal facilities and mining facilities** come into compliance with rapidly changing regulatory and monitoring requirements.
- Represents POTWs revising ordinances regulating indirect industrial dischargers and establishing enforcement programs for pre-treatment violations. Advises POTWs on enforcement of ordinances, including claims against indirect dischargers.
- Negotiates reasonable terms for Total Maximum Daily Loads (TMDLs), including those for chloride, nitrogen, bacteria, mercury, and pesticides.
- Provides detailed, site-specific comments on proposed water quality regulations, including Basin Plan amendments, water quality standards (WQS) and groundwater objectives adoption, TMDLs, Site Specific Objectives (SSOs), and Salt/Nutrient Management Plans.
- Provides clients with counsel familiar with Regional Board, State Water Board, and USEPA functions and staff to help clients navigate through the maze of water quality regulatory issues, including responding to information requests, inspections, and Water Code section 13267 letters, Notice of Violation (NOVs), Cleanup and Abatement Orders (CAOs), and Cease and Desist Orders (CDOs).
- Permit Negotiation and Compliance – provides regulatory and wastewater permitting advice to municipal,

commercial, agricultural and industrial dischargers throughout the state, including the negotiation of WDRs, Water Recycling Requirements (WRRs), and federal National Pollutant Discharge Elimination System (NPDES) permit requirements with the relevant Regional Board staff.

- Regularly appears before the relevant Regional Board and State Water Board in administrative hearings, and has successfully challenged inappropriate requirements included in permits or other orders before the State Water Board and, if necessary, in Superior Court via a petition for writ of mandate or complaint for declaratory relief.

Enforcement Defense Expertise

- Successfully defends against administrative penalties under state and federal law in Clean Water Act (CWA) citizen suits and Proposition 65 discharge cases filed by third parties.
- Effectively defends enforcement actions before administrative tribunals and in state and federal courts, including challenging actions for Mandatory Minimum Penalties (MMPs), Administrative Civil Liability (ACL) penalties, CAOs, Time Schedule Orders (TSOs), and CDOs.
- Favorably resolves many enforcement actions through the negotiation of advantageous settlement agreements, often without the need for litigation.

Litigation Assistance

- Possesses extensive administrative appeal and litigation experience against USEPA and the State Water Board and Regional Boards related to discharge permits, water quality standards, and TMDLs.
- Successfully litigates cases against the USEPA regarding inappropriate approval and disapproval of provisions, including overturning the conditional Municipal Drinking Water (MUN) beneficial use designations contained in the Los Angeles Regional Board's Basin Plan. Also filed and settled on favorable terms federal and state lawsuits challenging two Trash TMDLs in Los Angeles.

Selected Experience

- Received a Regional Water Board order overruling staff recommendation to close a produced water facility in Kern County within two weeks, getting an extension of two years.
- Sued USEPA over underground regulations related to NPDES permit requirements for numeric effluent limitations and chronic toxicity testing in federal district court and the Ninth Circuit Court of Appeals.
- Settled a \$4 million dollar initial Administrative Civil Liability (ACL) Complaint for Mandatory Minimum Penalties (MMPs) for Riviera West Mutual Water Company in Lake County for a suspended penalty amount of \$2.8 million that was completely expunged after the company converted into a non-profit corporation and received \$2.5 million in State grant funds to be spent on upgrading its drinking water treatment plant.
- 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.
- Succeeded in extricating a city, a county, a sanitation agency, and at least two light industrial 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.
- 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 – argued December 4, 2012 with ruling on January 8, 2013).
- 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, 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.

Trade Groups

- American Bar Association Section of Environment, Energy, and Resources
- Association of California Water Agencies (ACWA)
- Association of Women in Water, Energy & Environment (AWWEE)
- California Association of Sanitation Agencies (CASA)
- California Construction and Industrial Materials Association (CalCIMA)
- California Stormwater Quality Association (CASQA)
- Groundwater Resources Association (GRA)
- Northern California Water Association (NCWA)
- Water Education Foundation