Environmental/Toxics Litigation

Downey Brand's Environmental Law Practice Group has the legal skills and the science-based knowledge to provide a strategy for success. We have litigated hundreds of cases in federal and state courts and in front of administrative agencies throughout California and beyond. Our environmental litigation attorneys initiate and defend lawsuits for private industry, municipalities, and special districts at the trial and appellate level and frequently resolve these actions before trial through mediation, consent decrees, or private settlement agreements.

Our environmental litigation attorneys have extensive experience handling lawsuits seeking millions to hundreds of millions of dollars in damages, penalties, or required expenditures related to requested injunctions at some of the largest contaminated sites in California and for some of the largest public and privately held corporations in the United States. Our work on complex, multi-party CERCLA, RCRA, and Clean Water Act litigation and related property damage actions is extensive and our work is well respected. On these litigation actions, Downey Brand represents clients from industry sectors that include aerospace, forest products, energy, petroleum refining and distribution, maritime and transportation industries, manufacturers, and agribusiness. Our environmental litigation attorneys also have defended clients against hazardous waste and waste discharge enforcement and penalty actions brought by local, state, and federal agencies, including the U.S. Environmental Protection Agency, the California Attorney General, and local district attorneys. Downey Brand attorneys are also experienced in insurance coverage determination and issues involving environmental and government claims

Our Water Quality practice is virtually unparalleled in the State, negotiating and litigating hundreds of discharge and dredging permits, including successfully arguing one of the only water quality cases heard by the California Supreme Court (*City of Burbank, et al, v. SWRCB/LARWQCB*, 35 Cal.4th 615 (2005)). Our water quality lawyers have established relationships over the last 25 years with the staff and board members at several Regional Water Quality Control Boards and at the State Water Resources Control Board. Knowing the people and the laws that regulate water quality through NPDES and WDR permits, makes Downey Brand's lawyers uniquely qualified to handle the defense of administrative enforcement actions or citizen suits under the Clean Water Act and Proposition 65 related wastewater, recycled water or storm water discharges, and to advise on other regulatory issues (e.gs., TMDLs, site specific objectives, variances, salt/nutrient management plans.)

Selected Experience

- ***Santa Monica Baykeeper and NRDC v. City of Malibu* (U.S. District Court, Central District of California, Case No. 2:08-cv-01465-AHM –PLA).** Defended the City of Malibu in a Clean Water Act citizen suit filed by two environmental organizations alleging storm water discharge violations under the Countywide Municipal Separate Storm Sewer System (MS4) Permit, violations of the discharge prohibition to Areas of Special Biological Significance (ASBS), and nuisance. After four years of intense litigation, extensive documentary, written, and witness discovery, numerous discovery motions, and several motions for partial summary judgment and 26 motions in limine, the case was settled in early 2012 on terms favorable to the City near the eve of trial.
- ***Patterson Environmental Response Trust v. Autocare 2000, Inc., et al* (U.S. District Court, Eastern District of California, Case No. F-01-9906 OWW LJO).** As common counsel to a PRP Trust, Downey Brand coordinated and conducted successful cost recovery efforts against hundreds of responsible parties (through both voluntary settlements prior to and during litigation), including allocating millions of gallons of waste volume and recovering multiple millions of dollars from previously unidentified responsible parties who contributed waste to an abandoned use oil recycling facility for which emergency response was required under Unilateral Administrative Order issued by the EPA. In addition to the successful cost recovery efforts Downey Brand led the successful completion of the $10 million cleanup and negotiated final settlement with EPA on behalf of all settling parties.
- ***City of San Diego v. National Steel & Shipbuilding Company* (U.S. District Court, Southern District of California, Case No. 09 CV 02275).** We currently represent a multinational defense contractor that operates at a shipyard in San Diego Harbor in a $70 million dollar clean-up of sediment in San Diego Bay. The matter involves parallel administrative and federal court proceedings involving multiple parties that owned and operated at and in the vicinity of the shipyards during the last 100 years. The actions including cost recovery and allocation, insurance disputes and extensive mediation. The administrative proceedings involved several days of evidentiary hearings focused on a Clean Up and Abatement Order (CAO) for the largest proposed sediment remediation project in the San Diego Bay, and the first site where the Regional Board required an Environmental Impact Report. Some settlements have been negotiated in multiple settlement conferences with the U.S. Magistrate Judge and court appointed mediator. Motions to approve settlements are currently pending before the U.S. District Court for the Southern District of California.
- ***City of San Diego v. Kinder Morgan Energy Partners L.P., et al.* (U.S. District Court, Southern District of California, Case No. 07-cv-01883).** Defended Kinder Morgan against tort and statutory claims stemming from alleged petroleum releases to the soil and groundwater beneath City-owned Qualcomm Stadium. Plaintiff sought $400 million in compensatory damages, punitive damages, and more than $10 million in civil penalties. The extensive discovery involved nearly 50 percipient depositions, 30 expert witnesses, 325 interrogatories, the exchange of more than 1 million pages of documents between the parties, and more than 100,000 pages of documents produced in response to third party subpoenas. After more than five years of litigation,

the Court granted Kinder Morgan's motion for summary judgment and Daubert motions eliminating all of plaintiff's claims. The case is currently pending before the Ninth Circuit Court of Appeal.

- ***United States and Fallbrook Public Utility District v. Eastern Municipal Utility District and Rancho California Water District* (U.S. District Court, Central District of California, Case No. CV 04-8182 CBM).** Represented Plaintiff Intervenor Fallbrook Public Utility District in a case brought by the United States on behalf of the United States Marine Corps Base at Camp Pendleton in a case alleging breach of a four party contract and violations of the California Environmental Quality Act (CEQA). The contract at issue related to Defendants' promises to discharge recycled water into the Santa Margarita River for use by the Plaintiffs downstream in a Conjunctive Use Project to supply drinking water to the Base and the water customers in Fallbrook. After several years of intense complex litigation involving military legal counsel, five (5) law firms and the U.S. Attorney's office, with extensive discovery culminating in approximately 25 witnesses and 2000 potential trial exhibits, three of Downey Brand's Litigation and Environmental Law partners teamed up to represent Fallbrook in a 5-week bench trial, where Plaintiffs prevailed and succeeded in securing substantive relief (i.e., overturned the Mitigated Negative Declaration (MND) and required preparation of an Environmental Impact Report (EIR)) and a finding of bad faith breach of contract by one of the Defendants.
- ***SPPI-Sommersville, Inc., et al., v. TRC Companies Inc. & West Coast Homebuilders, Inc. v. Aventis Cropscience USA, Inc., et al.* (U.S. District Court, Northern District of California, Case No. 04-cv-2648 & 04-cv-07-5824).** Defended current and former owners and operators of a hazardous waste landfill against CERCLA, tort, and state statutory claims by a developer stemming from contamination of adjacent properties. Discovery included hundreds of thousands of pages of documents, several hundred interrogatories, dozens of depositions, and 25 expert witnesses. Downey Brand succeeded in significantly narrowing the case on summary judgment and defeated all of plaintiffs' summary judgment motions. Plaintiff accepted a settlement offer that was less than the cost to try the case two days before trial after all pre-trial prep was completed, including motions in limine, jury instructions, exhibit preparation, and related tasks. Defendants represented by other parties paid significantly more to resolve their claims.
- ***San Francisco Baykeeper v. West Bay Sanitary District* (U.S. District Court, Northern District of California, Case No. 3:09-cv-05676-EMC).** Defended a sanitary district against third party citizen suit alleging violation of the Clean Water Act, Porter-Cologne Water Quality Control Act, and local city ordinances for sanitary sewer overflows (SSOs). The case had extensive discovery and extensive deposition practice of party and expert witnesses. As the case neared trial, the case was settled in early 2012. There was no consent decree or settlement agreement containing any substantive requirements required of the District or any continued oversight by Baykeeper, only a requirement to pay Plaintiff's attorneys and expert fees.
- ***CERF SPV I v. Cherokee Investment Partners III, et al.* (U.S. District Court, Eastern District of California, Case No. CV 10-2670).** Represented lender in action against guarantors

who failed to honor their obligation to pay a more than $20 million on a defaulted loan for the redevelopment of contaminated property on the San Francisco Bay front. After significant discovery, expert reports, and while summary judgment motions were pending, Defendants agreed to a buy-out settlement valued at approximately 90% of our client's demand.

- ***City of Burbank and City of Los Angeles v. SWRCB/LARWQCB* (Los Angeles Co., Case Nos. BS 060960, BS 060957).** Downey Brand challenged three NPDES Permits for the two cities. This challenge was successful at the trial court, but much of that success was overturned at the Court of Appeals. The California Supreme Court took the appeal and wrote one of the only published opinions in California on NPDES permitting. The remand resulted in most of the challenged permits' effluent limitations being removed and the cities avoided hundreds of thousands of dollars in Mandatory Minimum Penalties (MMPs) because of the stay in place during the more than six years of litigation.

Trade Groups
Trade Groups

- Association of Women in Water, Energy and Environment (AWWEE)
- Bay Area Clean Water Agencies (BACWA)
- California Association of Sanitation Agencies (CASA)
- California Stormwater Quality Association (CASQA)
- California Resource Management Association
- California Water Environment Association (CWEA)
- Central Valley Clean Water Association (CVCWA)
- Groundwater Resources Association of California (GRA)
- National Association of Clean Water Agencies (NACWA)