



Christian L. Marsh Partner

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Practice Areas

Air Quality & Climate Change | CEQA / NEPA | Endangered Species | Groundwater Law | Land Use | Pipelines & Terminals | Public Trust Doctrine | Real Property & Land Use Litigation | Recycled Water | Regulatory Law & Business Permitting | Sustainable Groundwater Management Act (SGMA) | Water Law | Water Rights Litigation

Public agencies and private companies turn to Christian Marsh for advice on regulatory and land use entitlement issues governing real estate developments, ground and surface water supply projects, renewable and non-renewable energy facilities, mining operations and processing plants, and port and waterfront developments.

Regardless of the project's size or scope, Christian provides effective and practical advice on matters related to endangered species, water rights, water quality, wetlands, the public trust doctrine, and environmental review under NEPA and CEQA. In addition to compliance counseling on these matters, he helps resolve administrative and threatened judicial enforcement matters alleging "take" of endangered species and unlawful discharges or alterations of streams and wetlands under state and federal law. With a particular emphasis on matters pertaining to NEPA and CEQA review, Christian represents clients in state and federal court, and represented the prevailing parties in consecutive appeals before the California Supreme Court.

Before practicing law, Christian served as an assistant to the Director of the White House Office on Environmental Policy and as special assistant in the U.S. Department of the Interior, where he advised the Deputy Secretary and the Assistant Secretary for Water & Science on endangered species and water policy in the Columbia River basin, the California Bay-Delta, and the U.S.-Mexico border region. As a consequence, Christian has a deep understanding of the regulatory process, and his clients value his insight and skillful approach when advocating before state and federal agencies. He is regularly called upon to represent clients on administrative matters before the U.S. Army Corps of Engineers, Fish & Wildlife Service, NOAA Fisheries, Bureau of Reclamation, California State Water Resources and Regional Water Quality Control Boards, Department of Fish & Wildlife, State Lands Commission, Coastal Commission, Bay Conservation & Development Commission, and local governments.

Experience

Representative Appeals

- *Save the Plastic Bag Coalition v. City of Manhattan Beach*, 52 Cal.4th 155 (2011). Represented appellant City of Manhattan Beach and amici curiae California League of Cities (League) and California State Association of Counties (CSAC) in appeal involving CEQA's fair argument standard. Prevailed on appeal to California Supreme Court.
- *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.
- *San Francisco Baykeeper, Inc. v. California State Lands Commission*, 29 Cal.App.5th 562 (2018). Represented leaseholder in action under public trust doctrine challenging sand mining on tide and submerged lands within San Francisco Bay. Court upheld finding by State Lands Commission that mining leases will not impair trust uses or values.
- *Delaware Tetra Technologies, Inc. v. County of San Bernardino*, 247 Cal.App.4th 352 (2016). Lead counsel for county in defense of two related cases challenging a pre-project MOU regarding the Cadiz Valley Water Conservation, Recovery and Storage Project. Actions asserted claims under CEQA, the County's Desert Groundwater Management Ordinance ("DGMO"), and principles of California water law. Prevailed at trial and on appeal.
- *Center for Biological Diversity v. County of San Bernardino*, 247 Cal.App.4th 326 (2016). Lead counsel for county in two related cases in defense of CEQA action challenging an EIR for the Cadiz Project. Prevailed at trial and on appeal.
- *San Francisco Baykeeper, Inc. v. California State Lands Commission*, 242 Cal.App.4th 202 (2015). Representing leaseholders in action challenging EIR for sand mining operations in San Francisco and Suisun Bays under CEQA and common law public trust doctrine. Prevailed at trial and appeal on all CEQA claims.
- *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.

Representative Trial Court Cases

- *City of Los Angeles v. Inyo County*. Representing largest municipal utility in the United States in action challenging CEQA exemptions for condemnation of three solid waste landfills and appurtenant water rights in the Owens Valley. Prevailed at trial.
- *Environmental Council of Sacramento v. City of Elk Grove*. Successfully defended challenge to addendum to 1,200-acre Southeast Policy Area Strategic Plan EIR adopted to address alternative habitat mitigation approved under city's Swainson's hawk mitigation ordinance.

- *Atherton Cove Property Owners Association v. San Joaquin Area Flood Control Agency*. Helped defend challenge to multi-million dollar flood control facility on the San Joaquin River brought under CEQA and grants of sovereign lands under the public trust doctrine. Prevailed at trial.
- *Communities for a Better Environment v. San Joaquin Valley Air Pollution Control District*. Representing real party in interest in defense of action under CEQA and the Air District's air quality rules to enjoin operation of crude oil terminal. Prevailed at trial.
- *Kern Water Bank Authority v. City of Bakersfield*. Lead counsel for groundwater bank in challenge to an EIR for the city's Kern River Flow and Municipal Water Program, a program designed to appropriate additional surface waters in proceedings before the State Water Resources Control Board. Prevailed at trial.
- *Foothill Conservancy v. East Bay Municipal Utility District*. Defense against lawsuit brought under CEQA to set aside programmatic EIR for long-term water supply management program.
- *Natural Resources Defense Council v. Locke*. Served as local counsel to Makah Indian Tribe, amicus curiae in defense of NOAA Fisheries' Pacific Northwest groundfish management plans under the Administrative Procedures Act (APA), NEPA, and the Magnuson-Stevens Fisheries Management Act.

Representative Energy and Mining Projects

- *San Francisco Bay Sand Mining, San Francisco, Solano, and Contra Costa Counties*. Counseled clients on permits and entitlements for mining construction-grade sand from San Francisco and Suisun Bays. Advised on completion of EIR and helped secure approvals from wildlife and regulatory agencies, including California Department of Fish & Wildlife, National Marine Fisheries Service, and the Bay Conservation & Development Commission.
- *Southern Owens Valley Solar Ranch, Inyo County*. Advised water and power agency on an EIR for 200-megawatt photovoltaic solar farm.
- *Santa Maria Oil Drilling & Production Plan, Santa Barbara County*. Represented energy company on EIR for expansion and development of oil wellfield and construction of pipeline for importation of recycled water for oil production activities. The EIR addressed major issues including climate change and air quality, endangered species, public safety and emergency response, and water quality.
- *Utility-Scale Solar Power Plants, California and Nevada*. Advised developer on regulatory strategies under NEPA and CEQA for development of thermal-solar power plants in California and Nevada with planned output of 750 megawatts.
- *El Dorado/Ivanpah Transmission Project, San Bernardino County*. Represented two utility-scale solar developers in supporting CEQA compliance for new substation and transmission line upgrades approved by the California Public Utilities Commission.

Representative Real Estate Development Projects

- *Santa Clara Square, City of Santa Clara*. Advised city on CEQA compliance for 334-acre planned community development project. This infill, mixed-use residential development comprises 1,800 apartment units, 40,000 square feet of retail, 4,500 square feet of office, and 38,000 square feet of amenities.
- *Arambel Business Park/KDN Retail Center, City of Patterson*. Represented landowner and developer on

water supply assessment and CEQA compliance for 950-acre commercial, business, and light industrial development.

- *Fairfield Station Specific Plan, City of Fairfield.* Represent landowner on mixed-use project. Successfully negotiated a plan for development and preservation of vernal pool habitat for Contra Costa goldfields and California tiger salamander.
- *Sanctuary Master Development Plan, City of Stockton.* Represented private development company on permits and entitlements for a 2,000-acre mixed-use project. Advised the client on all aspects of CEQA and ESA compliance and helped evaluate and prepare the EIR and Water Supply Assessment.
- *Marina Center Mixed Use Project, City of Eureka.* Represented landowner and developer on 43-acre brownfield mixed-use redevelopment project on permitting and entitlement issues, including certification of the project's EIR. The EIR addressed major issues including climate change, coastal wetlands, site remediation, cultural resources, traffic, and wastewater.
- *East Cypress Corridor Specific Plan, City of Oakley.* Represented landowner and homebuilders on a 1,255-acre master-planned community, and lead efforts to conduct NEPA and CEQA review and obtain all federal, state, and local permits associated with surface waters and wetlands, water quality, water supply, and threatened and endangered species.

Representative Water Rights, Water Supply and Infrastructure Projects

- *Vista Grande Drainage Basin Improvement Project, San Francisco and San Mateo Counties.* Representing local agency on joint EIR/EIS being prepared under CEQA and NEPA for a multi-million dollar stormwater management project, including replacement of existing infrastructure, installation of constructed wetlands, and management of water levels within drainage basin. Advising client on regulatory and permitting requirements for special use permits and federal and state approvals associated with surface waters and wetlands, endangered species and habitats, coastal development, and sovereign lands.
- *Kern Water Bank Conservation & Storage Project, Kern County.* Representing regional water bank on the Kern River in the preparation of an EIR to support water rights proceeding before the State Water Resources Control Board.
- *Concord Naval Weapons Station, Contra Costa County.* Advising park district on land-use aspects of transfer and reuse of 2,600 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 cultural resources laws.
- *Camanche Permit Extension, Amador and Calaveras Counties.* Advised water and utility district on CEQA compliance for extension of permit to divert and store up to 125 million gallons per day (140,000 acre-feet per year) of surface water for municipal purposes.
- *Cadiz Valley Water Conservation, Recovery, and Storage Project, County of San Bernardino.* Advised county on evaluation and approval of 50-year groundwater management plan for pumping project in Mojave Desert proposed to recover 50,000 acre-feet of native groundwater annually.
- *Water Diversion Project, City of Livermore.* Represented local agency on negotiations with state and federal wildlife and water quality agencies on renewal of wetland permit, water quality certification, and streambed alteration agreement for in-stream placement of diversion works and diversion of water for a municipal golf course.

Professional & Community Service

- San Francisco Bay Planning Coalition, Board of Directors
- California Building Industry Association
- California Association of Sanitation Agencies
- Power Association of Northern California
- Bar Association of San Francisco, Environmental Law Section; Executive Committee, 2010-2015
- California Bar Association, Section on Environmental Law, 2000-present
- California Lawyers Association, Environmental Law Executive Committee, 2016-present
- American Bar Association, Section on Environment, Energy & Resources, 2000-present
- American Bar Association, Endangered Species Committee, Former Chair and Vice-Chair, 2005-2010

Education

- J.D., University of California, Hastings College of the Law, 2000
- B.A., Economics and Politics, University of California at Santa Cruz, 1992

Honors & Rankings

- *Sacramento Magazine*, Top Lawyer, Energy & Natural Resources, Land Use/Zoning, 2016-2019
- *Super Lawyers*, Northern California Super Lawyer, Energy & Resources, 2019
- *Super Lawyers*, Northern California Rising Star, Environmental Litigation, 2009-2010
- Best Lawyers in America[®], Natural Resources Law, 2020
- *Sacramento Business Journal*, Best of the Bar, 2019

Speaking Engagements / Events

- *Public Trust Doctrine: Exploring the Boundaries of an Ancient Doctrine in an Era of Environmental Regulation*, Panelist, 28th Annual Environmental Law Conference at Yosemite®, October 20, 2019
- *County Administration of Groundwater Under CEQA, the Public Trust Doctrine and SGMA - ELF v. SWRCB and POWER v. Stanislaus County*, Co-presenter, County Counsels' Association of California Spring 2019 Land Use Conference, May 2-3, 2019
- *2018 ACWA Legal Briefing & CLE Workshop Presented by Downey Brand LLP*, ACWA 2018 Fall Conference & Exhibition, November 27, 2018
- *The Future of the Public Trust Doctrine in California*, Participant, Round Table Discussion, NACWA/CASA California Legal Forum & Luncheon, November 15, 2018
- *BPC Workshop: CEQA Update and Federal Regulatory Developments 2018*, Bay Planning Coalition's 6th

Annual CEQA Update, October 25, 2018

- *CEQA Mid-Year Update: Case Law & November 2017 Proposed Guidelines*, Speaker, County Counsels' Association of California Spring 2018 Land Use Conference, May 4, 2018
- *CEQA Update: A Perennial Favorite*, Moderator, 26th Annual Environmental Law Conference at Yosemite®, October 22, 2017
- *Biological Resources Sections Dissected*, Presenter, Association of Environmental Professionals (AEP) 2017 State Conference, May 19, 2017
- *Public Trust Implementation on Water Rights: Mono Lake and Beyond*, Panelist, ACWA 2017 Spring Conference, May 9-12, 2017
- *The Public Trust Doctrine: Evolving Role in Land Use and Environmental Decision Making*, Presenter, County Counsels' Association of California Spring 2017 Land Use Conference, May 5, 2017
- *Legal Issues in National Park Management*, Moderator, 25th Annual Environmental Law Conference at Yosemite®, October 22, 2016
- *Hydrology and the Law*, Law Seminars International, September 15, 2016
- *Water Law Litigation and Adjudication Update: Public Trust Doctrine Boundaries for Groundwater and Related Resources*, Presenter, Argent Communications 31st Annual California Water Law & Policy Conference, June 13-14, 2016
- *Ground Water Sustainability, Cadiz Update, Recycled Water, and Basin Adjudication Issues*, Co-presenter, County Counsels' Association of California, Land Use Spring 2016 Study Section Conference, May 6, 2016
- *Land Use and CEQA Litigation Update*, Presenter, League of California Cities City Attorneys' Spring Conference, May 4-6, 2016
- *Does the Public Trust Doctrine Apply to Groundwater?*, Panelist, American Ground Water Trust, Annual California Groundwater Law Conference, April 26, 2016
- *Recent Developments in the Regulation of Streams and Surrounding Resources*, Presenter, CalcIMA 2015 Education Conference, November 15-18, 2015
- *CEQA Update 2015*, Panelist, Bay Planning Coalition, October 6, 2015
- *CEQA Litigation Update, Hot Topics and Trends*, Co-presenter, ACWA Annual CLE Workshop, September 10-11, 2015
- *Local Groundwater Ordinances and Other Management Actions*, Panelist, American Ground Water Trust, Annual California Groundwater Law Conference, May 15, 2015
- *CEQA and Land Use Litigation Update*, Presenter, League of California Cities, 2015 City Attorneys' Spring Conference, May 6, 2015
- *Ground Water Issues In a Drought Era*, Presenter, California State Association of Counties Land Use Study Section Conference, May 1, 2015
- *California's Wetland Area Protection Policy, An Update on the State's Permitting Regime*, Presenter, California Land Use Law & Policy Second Annual Conference, March 9-10, 2015

- *CEQA Update 2014*, Panelist, Bay Planning Coalition, October 29, 2014
- *Cadiz Valley Groundwater: The Search for New Supplies and Storage in the Desert*, Panelist, Argent Communications 29th Annual California Water Law & Policy Conference, June 20, 2014
- *Management or Madness: Regulatory Frameworks for Groundwater*, Presenter, American Ground Water Trust, Annual California Groundwater Law Conference, May 20, 2014
- *Water Supply Assessments and County Administration of Groundwater*, Presenter, County Counsels' Association of California, May 2, 2014
- *CEQA Reform 2013: Issues, Proposals & Solutions*, Presenter, Association of California Water Agencies, October 3, 2013
- *CEQA Reform and Litigation*, Presenter, League of California Cities 2013 Annual Conference, September 19, 2013
- *Save the Plastic Bag Coalition and CREED: Breathing Life Into the Fair Argument Standard?*, Presenter, League of California Cities, 2012 City Attorneys' Spring Conference, May 3, 2012
- *CEQA Reform and Water Law*, Presenter, Argent Communications 28th Annual California Water Law & Policy Conference, April 23, 2013
- *Land Use Developments Affecting Water*, Presenter, Argent Communications, April 23, 2013
- *Implementing NEPA and CEQA Projects*, Presenter, National Association of Environmental Professionals, April 3, 2013
- *Finding Ways for Migratory Birds and Renewable Energy to Coexist*, Presenter, Sacramento County Bar Association, June 5, 2012
- *Shifting Sands and Evolving Obligations Under CEQA*, Presenter, State Bar of California, Real Property Law Section, May 6, 2012

Publications

- *California's Public Trust Doctrine Draws Attention in the Courts*, Legal Notes, Western City, February 1, 2019
- *Appellate Ruling Extends Public Trust Doctrine to Groundwater*, The Daily Transcript, September 24, 2018
- *A Compendium of California's Sustainable Groundwater Management Act*, Provided by Downey Brand's Water Law Practice, December 2016
- *Protecting the Environment: Water Supply Planning & Endangered Species*, CEB California Municipal Law Handbook - Chapter Editor, 2012-2013
- *Compliance with Federal, State, and Regional Agency Requirements*, CEB California Land Use Practice - Chapter Editor, 2011-2013
- *The California Supreme Court's Recent Flood of CEQA Decisions*, Los Angeles Lawyer Magazine Vol. 33, No. 10, January 2011
- *Renewable Energy: Streamlining Review Under NEPA and the ESA*, ABA Section of Environment, Energy

& Resources, Trends Newsletter Vol. 42, No. 2, November/December 2010

- *California's New Water Legislation: A Bucket of Reform or But a Drop?*, ABA Section of Environment, Energy & Resources, Natural Resources & Environment Magazine Vol. 25, No. 2, Fall 2010
- *Environmental Impact Assessment*, ABA Environment, Energy & Resources Law, The Year in Review - Chapter Co-Author, January 2010
- *Prairie Dog HCP Upheld: Wildearth Guardians Appeal*, ABA Section of Environment, Energy & Resources, Endangered Species Committee Newsletter Vol. 12, No. 1, January 2010
- *Court Denies Rehearing in Casitas—The Government may be Liable for Diversion of Water for Fish*, ABA Water Resources Committee Newsletter Vol. 11, No. 3, May 2009
- *The Endangered Species Act: It's Time For Reasoned Reform*, ABA Section of Environment, Energy & Resources, Trends Newsletter Vol. 40, No. 5, May/June 2009

Legal Alerts

- *Fifth Appellate District Invalidates Kern County Oil and Gas Ordinance*, March 12, 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
- *Third Appellate District Extends Public Trust Doctrine to Groundwater, Finding That Counties Have a Duty to Administer the Trust in Issuing Ministerial Well Permits*, September 7, 2018
- *The California Supreme Court's CEQA Docket Comes To A Dramatic Close For The Year, Resolving That EIRs Need Not Address The Environment's Impacts On A Project*, January 8, 2016
- *California Supreme Court Strictly Interprets State Fully Protected Species Statute and Finds Greenhouse Gas Emissions Analysis Inadequate in Newhall Ranch EIR*, December 2, 2015
- *Update: Berkeley Hillside Case Ends With Victory for Lead Agency in Court of Appeal*, October 30, 2015
- *EPA's Water Rule Blocked Nationwide*, October 9, 2015
- *ESWR Update: WOTUS Rule Blocked by Federal Judge in North Dakota*, September 2015
- *Supreme Court Holds California State University Cannot Avoid Off-Campus Mitigation*, August 5, 2015
- *Appeals Court Decides Crucial Case On State Fish And Wildlife's Extension Of Streambed Alteration Limits To Existing Water Diversions*, June 6, 2015
- *California Supreme Court Delivers Long-Awaited Ruling In Berkeley Hillside*, March 4, 2015
- *Sacramento Trial Court Extends the Public Trust Doctrine to Limit Groundwater Extraction*, July 21, 2014
- *Orange County Trial Court Upholds Cadiz Valley Groundwater Project*, May 6, 2014
- *Trial Court Rejects the Fish and Wildlife Department's Novel Expansion of Streambed Alteration Regulations to Existing Water Rights*, January 2013

Blogs

- *Fifth Appellate District Invalidates Kern County Oil and Gas Ordinance*, March 12, 2020
- *Trump Administration Announces Three Rules Making Sweeping Changes to Federal Endangered Species Act Regulations*, August 20, 2019
- *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
- *First District Rejects "Location Exception" for Project in Earthquake Fault and Landslide Areas and Affirms Class 3 Exemption for Small Residential Projects in the Berkeley Hills*, April 2, 2019
- *California Supreme Court Set to Review Companion Groundwater Cases and Resolve When County-Issued Well Permits May Be Treated As Ministerial and Not Subject to CEQA*, November 27, 2018
- *Bay Planning Coalition Workshop: 2018 CEQA Update and Federal Regulatory Developments*, October 22, 2018
- *Administration Continues its Roll on Regulatory Changes, Proposing Numerous Changes in Rules Governing Federal Endangered Species Act*, July 23, 2018
- *For the First Time in Forty Years, White House Council on Environmental Quality Poised to Propose Major Overhaul of its Implementing Regulations Under NEPA*, July 2, 2018
- *Banning Ranch Conservancy v. City of Newport Beach*, May 2, 2017
- *Downey Brand's Fall 2016 CEQA and Land Use Litigation Update*, October 11, 2016
- *California Supreme Court Rejects "New Project Test" and Defers to Agencies on Whether Project Modifications Require Subsequent Environmental Review*, September 21, 2016
- *Air District CEQA Guidelines Partially Invalidated For Mandating "CEQA-In-Reverse" Analysis, Following Remand From California Supreme Court*, August 22, 2016
- *Appellate District Rejects 'Discovery Rule' in CEQA Cases and Holds Challenge to Richmond Crude-By-Rail Facility Untimely Under 180-day Statute of Limitations*, August 15, 2016
- *Appellate District in Newhall Ranch Case Limits its Jurisdiction to Supervise Agency Compliance with Rulings in CEQA Cases*, July 25, 2016
- *Downey Brand's Spring 2016 CEQA and Land Use Litigation Update*, May 23, 2016
- *Appeals Court Affirms Cadiz Valley Groundwater Project*, May 11, 2016
- *Another Busy Year for CEQA in the California Supreme Court: Arguments Set for May 4 in San Mateo Gardens Case; Four Other Cases Pending*, April 4, 2016