



Kevin M. O'Brien Partner

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Practice Areas

Public Trust Doctrine | Recycled Water | Regulatory Law & Business
Permitting | Sustainable Groundwater Management Act (SGMA) | Water
Law | Water Rights Litigation

Kevin O'Brien assists clients throughout California in water rights, water quality, endangered species, and environmental matters. His clients include water districts, cities, counties, private landowners, real estate developers, wineries and mining companies.

Kevin represents clients in a broad array of matters relating to water. He handles major administrative proceedings before the California State Water Resources Control Board (SWRCB) to obtain, modify and protect water rights. He serves as trial counsel in water cases in state and federal courts. And he assists clients in structuring and negotiating transactions relating to the transfer of water rights. Kevin regularly works with various local, state and federal agencies on water matters including the California Department of Water Resources, the California Department of Fish and Wildlife, the U.S. Bureau of Reclamation and the National Marine Fisheries Service.

Kevin has a reputation for solving problems. Clients refer to his calm, respectful approach as a proven asset when working with opposing counsel and agency decision-makers. Sacramento Lawyer magazine has described him as a lawyer who “advocates principled positions that reflect the law and are intended to achieve a solution for all the parties, not just his clients.”

Kevin is a former Managing Partner of Downey Brand.

Experience

- Since the 1990s, Kevin has represented a group of northern California water agencies in proceedings before the SWRCB relating to the Sacramento-San Joaquin Bay-Delta Estuary.
- He successfully handled a major water right proceeding before the SWRCB that established substantial new appropriative water rights on the Santa Ana River in southern California.
- He has handled numerous administrative and litigation matters relating to the Salinas River and the Salinas Valley Groundwater Basin in Monterey County, California.

- He has served as trial counsel in two groundwater basin adjudications – the Seaside Basin in Monterey County and the Santa Maria Basin in Santa Barbara and San Luis Obispo Counties, California.
- He serves as general counsel to a joint exercise of powers agency that serves as the Groundwater Sustainability Agency for the Yolo Subbasin, in accordance with the Sustainable Groundwater Management Act (SGMA). He also regularly advises clients on SGMA matters.
- He has served as an expert witness on water-related issues in two cases. This work included testimony at trial and at an arbitration hearing.
- He successfully negotiated a water supply agreement between his client, a real estate developer, and a public water district for the provision of a water supply for a 1,600-acre master-planned community located in Madera County, California.
- He negotiated and successfully implemented one of the first major transfers of State Water Project water from an agricultural water district located in Kern County to a municipal water purveyor located in Contra Costa County, California.

Professional & Community Service

- American Bar Association, Section of Environment, Energy and Resources. Past Chair, Water Resources Committee
- University of California, Davis Extension. Former instructor, Groundwater Law
- Sacramento County Bar Association, Environmental Law Section
- California Lawyers Association, Real Property Law Section, Former member, Executive Committee
- California Lawyers Association, Environmental Law Section
- Solicitor's Honors Program, U.S. Department of the Interior, Former attorney-advisor
- Capital Public Radio. Past Chair, Board of Directors
- Eureka Schools Foundation, Past President

Education

- J.D., University of Denver College of Law, 1980
- A.B., University of California at Davis, 1977

Honors & Rankings

- AV Preeminent® Rating by Martindale-Hubbell®
- Best Lawyers in America®, Water Law, Environmental Law, 2015-2021
- Best Lawyers® 2019 Environmental Law "Lawyer of the Year" in Sacramento
- *Super Lawyers*, Northern California Super Lawyer, Environmental, 2012-2020

- *Sacramento Magazine*, Top Lawyer, Environmental, Energy & Natural Resources, 2015-2020
- *Sacramento Business Journal*, Best of the Bar, 2015-2019

Speaking Engagements / Events

- *Deltas in the Delta*, Panelist, 28th Annual Environmental Law Conference at Yosemite®, October 19, 2019
- *Questions of Common Supply: SGMA Requirements for Interconnected Surface Water and Groundwater*, Moderator, 2019 California Water Law Symposium - California Groundwater: SGMA & Beyond, February 2, 2019
- *Water Pressures, USA Rice's Sustainability Theater*, Co-Presenter, 2018 USA Rice Outlook Conference, December 6, 2018
- *2018 ACWA Legal Briefing & CLE Workshop Presented by Downey Brand LLP*, ACWA 2018 Fall Conference & Exhibition, November 27, 2018
- *Can California Successfully Integrate Groundwater and Surface Water Under SGMA?*, Presenter, Groundwater Resources Association, Sacramento Branch Meeting, November 14, 2018
- *Groundwater Law and Hydrology*, Instructor, UC Davis Extension, January 31, 2018
- *California's Water Law, Policy and Regulation: Coping with Drought, Floods and the New Federal Administration*, Argent Communications 32nd Annual California Water Law & Policy Conference, June 12-13, 2017
- *Cal WaterFix and Proposed Delta Tunnels*, Presenter, CLE International Western Water Law Conference: Doctrine & Practice - Drought & Deals, February 9-10, 2017
- *Cal WaterFix Change Petition*, Panelist, 13th Annual California Water Law Symposium, January 21, 2017
- *SGMA Checkpoint: Where Are We Two Years Later?*, Presenter, CLE International 24th Annual California Water Law Conference, November 15, 2016
- *California's Water Law, Policy and Regulation: Coping with the Challenges of Unpredictable Supply*, Co-Chair and Presenter, Argent Communications 31st Annual California Water Law & Policy Conference, June 13-14, 2016
- *Water Use*, Panelist, Sacramento Metro Chamber, Perspectives on Agriculture, Food & Water Symposium, September 25, 2015
- *The Long and Winding Road: Litigation over Biological Opinions for Delta Operations - The BiOps through the Courts*, Co-Chair and Presenter, Argent Communications 30th Annual California Water Law & Policy Conference, June 15, 2015
- *Groundwater Adjudications in the Age of Sustainable Groundwater Management*, Presenter, Association of California Water Agencies Spring 2015 Conference, May 6, 2015
- *The Status of the Bay-Delta Conservation Plan: The Sacramento Valley Perspective*, Co-Chair and Presenter, Argent Communications 29th Annual California Water Law & Policy Conference, June 19-20, 2014
- *Principles of California Groundwater Law*, Co-Chair and Presenter, Argent Communications 28th Annual

California Water Law & Policy Conference, April 22, 2013

- *California Water 2012: The Impacts of Recent Litigation and Regulation on Water Law Principles and Practice*, Co-Chair and Presenter, Argent Communications 27th Annual California Water Law & Policy Conference, April 19-20, 2012
- *The San Ynez Reconsultation with NMFS*, Co-Chair and Presenter, Argent Communications 26th Annual California Water Law & Policy Conference, June 14, 2011
- *A Look at the Regional Desalination Project in Monterey County*, Panelist, Association of California Water Agencies, January 2011
- *Water Users Impacts: Upstream, In-Delta and Export*, Presenter, Argent Communications 25th Annual California Water Law & Policy Conference, April 22, 2010
- *Principles of Groundwater Law, Hydrology and Management*, Lecturer, UC Davis Extension, 2001 - Current

Publications

- *Alice in Groundwater Land: Water Supply Assessments and Subsurface Water Supplies*, 4 Golden Gate University Environmental Law Journal 131, January 2010
- *Alice in Groundwater Land: Court Defines State Board 'Subterranean Stream' Jurisdiction*, California Water Law & Policy Reporter, October 1, 2006
- *The Governor's Commission Recommendations on Groundwater: Treading Water Until the Next Drought*, 36 McGeorge Law Review 435, 2005
- *Downey Brand's 75 Years of Water Law Practice: A History of Forging the Future*, Sacramento Lawyer, January/February 2003
- *Creating the Current in California Water Law: Downey Brand's Kevin O'Brien*, Sacramento Lawyer, January/February 2003
- *Recent Phase 8 Bay-Delta Settlement*, American Bar Association Water Resources Committee Newsletter, 2001
- *A Tale of Two Coasts: How Two States Link Water and Land Use Planning*, Co-author, Natural Resources & Environment, 1996
- *From D-1485 to Delta Smelt: A Description of the Controversy Surrounding the Bay-Delta Estuary*, Co-author, California Environmental Law & Regulation Reporter, September 1994
- *Water Marketing in California Revisited: The Legacy of the 1987-92 Drought*, Co-author, 25 Pacific Law Journal 1053, 1994
- *Water Service Issues*, California Real Property Journal, December 1991
- *Water Marketing in California*, 19 Pacific Law Journal 1165, 1988
- *New Conditions for Old Water Rights: An Examination of the Sources and Limits of State Authority*, 33rd Annual Rocky Mountain Mineral Law Institute Proceedings, 1988

Legal Alerts

- *California Supreme Court Confirms Certain Groundwater Pumping Charges are Outside Scope of Prop 218*, December 4, 2017
- *Governor Signs Sustainable Groundwater Management Act Part II: Groundwater Adjudications Meet Groundwater Management*, October 13, 2015
- *No End In Sight for California's Drought– Governor Imposes Statewide Water Restrictions*, April 2, 2015
- *Cal Supreme Court Update: Water Use for Frost Protection*, October 3, 2014
- *The New Groundwater Legislation: Opportunities and Challenges*, September 2, 2014
- *Sacramento River Settlement Contractors Ask U.S. Supreme Court to Review Scope of Endangered Species Act*, July 15, 2014
- *Immediate Curtailment of Post-1914 Appropriative Water Rights*, May 29, 2014
- *Farm Lenders and Farming Organizations File Amicus Brief in Crucial Ninth Circuit Water Case*, May 23, 2014
- *Orange County Trial Court Upholds Cadiz Valley Groundwater Project*, May 6, 2014
- *Updated Water Supply Amounts for State and Federal Projects*, April 21, 2014
- *Governor Brown Signs Emergency Drought Legislation Into Law*, March 2014
- *Trial Court Rejects the Fish and Wildlife Department's Novel Expansion of Streambed Alteration Regulations to Existing Water Rights*, January 2013
- *Ninth Circuit Affirms Priority of Water Rights Held by Sacramento River Settlement Contractors In the Face of Endangered Species Act Challenges*, August 2012
- *Court of Appeal Holds That CEQA Is Not Triggered By a Public Agency's Investigation of Sites for a Potential Project*, July 2010
- *California Supreme Court Confirms that the California Constitution Does Not Require Secret Ballots in Proposition 218 Ballot Proceedings*, June 2010
- *First District Court of Appeal Clarifies Calculation of Special Benefits and Proportionality for Assessments Subject to Proposition 218*, January 2010
- *Second District Court of Appeal Upholds EIR for Transfer of 41,000 Acre-Feet Per Year of State Project Water Despite Uncertain Status of the Monterey Agreement*, December 2009
- *First Appellate District: The California Constitution Compels Local Governments to Keep Ballots Confidential in Fee Elections and to Inform the Public of That Fact*, March 2009
- *Rohnert Park Decision: Water Suppliers Given "Substantial Discretion" To Analyze Groundwater Sufficiency for New Developments*, November 2008
- *In a Landmark Case Interpreting Proposition 218, the California Supreme Court Expands the Judiciary's Role in Reviewing the Adequacy of Local Benefit Assessments*, July 2008
- *EPA Excludes Water Transfers From Clean Water Act Permit Requirements*, June 2008

- *California Supreme Court Upholds CALFED Environmental Impact Report, June 2008*
- *Court of Appeal Finds Water Supply Assessments Not Actionable Until Completion of Environmental Review Process, April 16, 2008*
- *Applying Principles from the California Supreme Court's 2007 Decision in Vineyard Area Citizens, Court of Appeals Upholds EIR Against Challenge to Water Supply Analysis, September 2007*