



Brownstein's Natural Resource Group Secures Decisive Appellate Victory for Much Needed, New Water Supply

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On May 10, the California Court of Appeal issued six opinions upholding the environmental review and approvals for the Cadiz Valley Water Conservation, Recovery and Storage Project (Project). The Project is a public-private partnership designed to use water from a vast and underutilized aquifer underlying Cadiz's property in the Eastern Mojave Desert and will secure 50,000 acre-feet of reliable water annually for the next 50 years to mitigate California's drought crisis. Through active management and employing a state-of-the-art groundwater protection program, the Project will pump groundwater that is lost annually through evaporation from nearby dry lakes, and will put this water to beneficial use in Southern California. The decision also addresses important groundwater management issues and principles of groundwater law, providing clarity in light of recent legislation.

The Court of Appeal upheld the environmental impact report (EIR) certified by the Santa Margarita Water District (SMWD), rejecting a variety of California Environmental Quality Act (CEQA) claims brought by the Center for Biological Diversity and mining company, Delaware Tetra Technologies Inc. In response to the challengers' claim that the County of San Bernardino (County) should have served as lead agency for the Project instead of SMWD, the court found that the challengers "myopically and improperly consider[ed] only the pumping portion of the Project."

Specifically, the Court held that SMWD "was properly designated as the lead agency because it is jointly carrying out the Project with the property owner, Cadiz, and because it is the agency with the principal authority for approving and supervising the Project as a whole." The court also rejected claims that the EIR improperly deferred mitigation, and that the Project Description was inaccurate.

In two of the six related cases, the court rejected challenges to approvals by the County and SMWD of a Memorandum of Understanding (MOU). The court held that the MOU did not require environmental review under CEQA before its approval because the MOU did not commit either the County or SMWD to a definite course of action, nor did the MOU result in any potential physical environmental impacts.

In another two of the related cases, the court upheld the County's approval of a Groundwater Monitoring Mitigation and Management Plan (GMMMP) relating to the groundwater pumping portion of the Project. The court examined the role of the County as a responsible agency, and held that the County met its legal obligations under the County's groundwater management ordinance and under common law. The opinions highlight several important groundwater management issues—a hot topic in light of recent groundwater legislation—and affirm the discretion of local agencies to tailor groundwater regulation to meet the unique nature of each aquifer. The decision also confirms important principles of groundwater law: (1) groundwater ordinances must be consistent with California's constitutional directive to maximize beneficial use of water resources while preventing waste; (2) the law allows for flexibility and "does not set specific standards or methods for groundwater management"; and (3) overdraft and the amount of surplus groundwater available for appropriation in a particular basin are fact-specific determinations.

For the last six years, Brownstein's Natural Resources group has played an integral role in development of the Project, preparation of the EIR and the defense of litigation challenging the Project. Scott Slater led the negotiations and Project development on behalf of Cadiz and Fenner Valley Mutual Water Company. Diane De

Felice and Amy Steinfeld used their CEQA and water law expertise to assist in the preparation of the EIR and other Project documents that led to successfully defending the Project in the trial and appellate courts.

Meet The Team

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