

## Water

Water is not only a precious resource, it flows through many aspects of the law, including environmental, government relations, ownership rights, transportation, acquisition, development, and federal and state regulation. With a track record that includes the most significant and complex water projects and litigation in the nation, Brownstein is uniquely positioned to expertly handle any water resource or quality issue, in any jurisdiction, nationwide. For more in depth information on our Water Practice please view our Natural Resources Practice page.

### **Representative Matters**

- Represent The Nature Conservancy regarding coastal land use, water, and property tax issues related to The Dangermond Preserve, an approximately 25,000 acre property on the Gaviota Coast of Santa Barbara County, California, including complying with Coastal Commission orders related to Coastal Act violations by a previous owner of the property.
- Successfully represented Golden State Water Company (GSWC) before the honorable Amy Hogue resulting in the Los Angeles Superior Court upholding a longstanding interpretation of the Orange County Water District Act. The court held that recycled water produced within the geographical boundaries of the Santa Ana River watershed does not constitute a “supplemental source” for purposes of calculating the Basin Production Percentage, which is used to determine how much groundwater a producer may pump from the groundwater basin without paying the surcharge, or Basin Equity Assessment. The ruling holds significant implications for the nineteen groundwater producers including 13 cities, an investor owned water utility and five retail water districts that share and pump groundwater from the Orange County Groundwater Basin.
- Secured regulatory approval from the state to permit the expansion of the City of Burbank’s recycled water system. The expansion will maximize the beneficial use of valuable water supplies by shifting a supply of water presently discharged to the LA River and lost to the ocean to non-potable demands such as irrigation of medians and parks and the cooling of power plants. As result, the project will free up a supply sufficient to serve the needs of approximately 3,200 families annually and reduce the City’s dependence on costly imported water supplies.
- Represents a large federal water project on navigating right of way issues across public lands.
- Provides federal representation with the administration and Congress for an entity representing consumer-owned electric systems that contract for the delivery of federal hydropower over the federal transmission system of the Western Area Power Administration from the Colorado River Storage Project.
- A district encountered a dispute with a Local Agency Formation Commission (LAFCO) regarding jurisdiction over annexations and the district’s provision of additional latent services. The district and LAFCO agreed to resolve their dispute through the introduction of special legislation rather than resorting to litigation. Services included drafting special state legislation, working with legislative consultants for the California Assembly and Senate, and governmental relations services.
- Provided legal services to the Central Coast Water Authority for all phases of planning, permitting, environmental compliance, right-of-way acquisition, construction and operation related to a \$600 million drinking water delivery system. The project included 150 miles of pipeline, multiple pumping stations and a water treatment plant. Construction disputes were largely resolved by negotiation, with one dispute being successfully defended in court.
- Successfully defended and settled a complex quiet title action involving competing claims to water rights and access to numerous groundwater wells.
- Since 1991, has served as General Counsel to the Central Coast Water Authority, including coordinating legal services for all phases of planning, permitting, environmental compliance, right-of-way acquisition,

construction and operation related to a \$600 million drinking water delivery system. The project included 144 miles of buried pipeline, multiple pumping stations and a water treatment plant. Resolved construction disputes by negotiation and successfully defended the Authority in related litigation.

- Represented a Southern California private country club in negotiations with a nearby city for the purchase of reclaimed water for use on the golf course.
- Provide assistance to land use consultant preparing CEQA documentation and processing permits for remediation of oceanfront site in Santa Barbara County, and negotiating and drafting option agreement with non-profit for purchase of site upon completion of remediation. Assisting client in obtaining adequate water supplies for land farming, dust control, and revegetation of impacted site with native plants and in obtaining permits for relocation of major creek. Permitting included Federal, State, and County agencies. Remediation groundbreaking is imminent.
- Counsel to a group of local agencies in Ventura County to draft and negotiate a joint powers agreement to form a Groundwater Sustainability Agency pursuant to the Sustainable Groundwater Management Act.
- Defense of a municipal water provider in response to a water rights complaint filed with the State Water Board by a downstream water provider. The complaint raises numerous water right, water quality and environmental claims. The matter involves unique historical water rights dating back to the establishment of the missions in the mid-1700s.
- Special Counsel, Rancho California Water District. Represent RCWD in negotiations regarding formation of a joint powers agency to own and operate a regional wastewater treatment plant. 2013 to 2016.
- Serves as General Counsel to the Goleta West Sanitary District, a public agency that provides wastewater collection and treatment services to 6000 customers in the Goleta Valley. Brownstein provides the District with advice on public agency operations, including meeting procedures, Brown Act compliance, conflict of interest issues, personnel, and public facility contracting. Brownstein attorneys also draft ordinances and resolutions and negotiate on behalf of the District with other local public agencies, including the University of California, Santa Barbara and the County of Santa Barbara.
- Represents Nestle Waters North America on water and land use matters involving their Chaffee County bottling plant.
- Represents the Interstate Stream Commission in the transfer of water rights on the Pecos River for river augmentation and compact compliance purposes. The case involves 33 rights and is one of the largest transfers in state history.
- Represents the Westlands Water District on Endangered Species Act litigation involving the Bay-Delta in California, a case widely considered one of the most complex ESA litigations in the country.
- Represented NGL Water Solutions Bakken, LLC, a subsidiary of NGL Energy Partners, in its acquisition of two salt water disposal facilities from WaterWorks Corral Creek, LLC, and Saltwater Disposal Systems, LLC. Both facilities are located in the Bakken shale play in North Dakota.
- Drafted joint powers agreement and oversaw the formation of a joint powers authority comprised of the six cities of the Monterey Peninsula. Presently represent the authority as special counsel before the California Public Utilities Commission with respect to a comprehensive replacement water supply project that includes a large desalination plant and potential advanced-treated reclaimed water and groundwater replenishment project. Further representation includes matters before the State Water Resources Control Board concerning compliance with a cease and desist order pertaining to the community's water supply and other related water matters.
- Water rights counsel to association comprised of all agricultural groundwater producers from the Santa Paula Groundwater Basin in Ventura County. Representation has included development of original stipulated judgment adjudicating basin water rights, subsequent amendment of the adjudication judgment, and related matters pertaining to the use and management of basin resources under the judgment. (United Water

Conservation District v. City of San Buenaventura, original March 7, 1996, amended and restated August 24, 2010 (Case No. CV 115611).)

- Water Rights counsel to publicly-traded agricultural firm with properties located throughout the western United States. Representation includes counsel on perfection and protection of water rights, water markets, development matters, and related matters.
- Representing a Central Coast corporation with significant water interest in litigation involving its right to sell water to whom it chooses.
- General counsel to large agricultural mutual water company in Ventura County. Representation includes water rights, infrastructure development, and corporate matters.
- Helped obtain funding to remove a chemical pollutant from drinking water on behalf of a California water distributor.
- Advocated for policy changes and funding related to water efficiency, water reuse, water supply, and groundwater management on behalf of a water agency serving nearly 4 million people.
- On behalf of a coalition of Colorado water districts, was successful in securing passage of federal legislation that secured federal funding for the Upper Colorado and San Juan Fish recovery programs.
- Secured a ruling in the Sacramento Superior Court that validated the eleven year-old Colorado River Quantification Settlement Agreement and related agreements and secured a key component of long-term reliable water supply for San Diego County. Brownstein team's knowledge and experience of the California Environmental Quality Act (CEQA) played a major role in the victory of this litigation.
- Counsel to an Indian tribe in federal legislation which ratifies the tribe's water compact and authorizes federal funding for the tribe's water-related infrastructure projects.
- Represent one of the largest federal water contractors in the United States to ensure that its members have a long-term dependable supply of water to meet project purposes.
- Representation of several municipal providers, a regulated utility, a water district, and a mutual water company, in priority groundwater basins located around the state, with respect to implementation of the Sustainable Groundwater Management Act of 2014.
- General Counsel to the Central Coast Water Authority, a joint powers authority comprised of eight member agencies. CCWA is a wholesale water provider delivering State Water Project water to 13 water districts and private companies in Santa Barbara County, and another 11 water purchasers in San Luis Obispo County.
- Provide federal representation to the Front Range Water Council, which is a coalition of water providers in the Colorado Front Range.
- Obtained reversal in full of two separate, but related trial court decisions denying motions to amend judgments governing the West Coast and Central groundwater basins, which provide local water supplies to the millions of people living and working in the greater Los Angeles region. The motions seek to provide for the conjunctive use and management of the basins, including procedures for use of the basins' available storage space. (Hillside Memorial Park and Mortuary v. Golden State Water Co. (2011) 199 Cal.App.4th 658 (review denied); Water Replenishment Dist. of Southern Cal. v. City of Cerritos (2012) 202 Cal.App.4th 1063 (review denied).)
- On behalf of a national homebuilder, obtained approval of the Water Supply Assessment (SB 610) for development of a 1,500 acre-property in Southern California proposed to include 5,400 residential units and commercial uses. The project water supply included the use of imported water, surface water, groundwater, stormwater and recycled water supplies over a 30-year build-out. The project raised numerous water supply and water quality issues, including the production of groundwater from adjudicated and non-adjudicated basins, groundwater storage, conjunctive use, the delivery and use of imported State Water Project supplies, water re-use, flood protection and stormwater management.

- Represent largest agricultural water district in the United States in connection with a dispute regarding the Department of the Interior's management of the district's water supply.
- Brownstein attorneys won a broad reversal of the trial court's judgment in the complex, coordinated Quantification Settlement Agreement (QSA) cases. The trial-court judgment invalidated twelve of the historic QSA-related agreements, but as a result of this appellate decision, the largest agriculture-to-urban water transfers in United States history, and numerous Colorado River programs that have been created by the United States and other Colorado River Basin states based on the QSA, will continue to be implemented while the remaining issues are decided on remand by the trial court.
- Brownstein is co-counsel for the Southern Nevada Water Authority in a six-week hearing before the Nevada State Engineer on SNWA's Clark, Lincoln, and White Pine Counties Groundwater Development Project. The case involves a 25,000 square mile region of east central Nevada and issues concerning groundwater modeling, basin of origin claims and environmental compliance.
- Representing private company for negotiation of implementation of agreement with a California municipal water district for design, construction, finance and operation (DBFO) of new water treatment facility.
- Represented seller of Sacramento River water rights to the 2009 Drought Water Bank, including negotiation of water transfer agreement, acquisition of regulatory approvals and defense against environmental litigation. This water transfer was based on water conservation and groundwater substitution.
- Formed mutual water company to serve new development in Los Angeles County, California, and negotiated water supply agreement.
- Conducted an inventory of water supplies and resource management for American States Water Company, an investor-owned utility that owns 42 utility systems in California and Arizona.
- Successfully defended mutual water company board of directors and management against challenge by shareholders to water transfers implemented by the company.
- Negotiated the purchase of up to 19,500 AFY of water supplies from the Sacramento River for use in providing water utility service to new land development in Sutter County, on behalf of Golden State Water Company.
- Negotiated agreement for project to line the historic All American Canal with concrete, allowing the conservation and transfer of 87,700 AFY from Imperial Irrigation District to San Diego County Water Authority. Brownstein attorneys also defended the project against transboundary litigation by groundwater users and environmental groups in Mexico.
- Represented Golden State Water Company for the purchase of capacity in the Randall-Bold Water Treatment Plant owned by Contra Costa Water District.
- East Cherry Creek Valley Water and Sanitation District (ECCV) acquired shares in the Burlington Ditch and sought to convert them to municipal use. Water users opposing the application argued that the proposed change would injure their water rights by allowing ECCV to use more water after the change than the Burlington farmers had when using the water for agricultural purposes. In 2008, the Division 1 water court agreed and found ECCV's proposed use injurious, on May 31, 2011 the Colorado Supreme Court affirmed the decision. Brownstein led a group of five opposers at trial and on appeal.
- Represent a major California water district in an appeal to the Ninth Circuit concerning an endangered species in the San Joaquin Valley in California.
- Representing Westlands Water District with litigation against the U.S. Bureau of Reclamation regarding failure to implement an adequate drainage system throughout the District.
- Helped obtain funding for an innovative bioremediation project to remove a chemical pollutant from drinking water.
- Counsel, Santa Ana Watershed Project Authority v. Orange County Sanitation District, JAMS Reference No. 1210030062 (2013) representing SAWPA.

- Brownstein was lead counsel in a federal district court litigation concerning the validity of Biological Opinions issued under the Endangered Species Act. This case affects the water supply for 20 million people.
- Litigation challenging State Board issued NPDES general permit for stormwater discharges associated with construction activities as violating the federal Clean Water Act and California's Porter-Cologne Act.
- Lead counsel for Central Coast Water Authority in three cases involving validation and CEQA challenges to 1990's amendments to State Water Project contracts, and revised amendments that resulted from settlement of previous litigation challenges, and CEQA compliance for both.
- Represented two private equity firms in successful bid for and acquisition of SouthWest Water Company (SWWC), a publicly-traded, investor-owned water utility with operations in several states in the western and southeastern United States. Brownstein attorneys provided strategic advice, performed due diligence, assisted with the merger and acquisition, and acquired regulatory approvals for the transaction from state public utility commissions. This is the first successful public-to-private conversion of a water company in the past decade, and SWWC was one of only 13 publicly-traded companies in the United States. The transaction matter was nominated for Water Deal of the Year at the Global Water Awards held in Berlin as part of the 2011 Global Water Summit.
- Counsel to one of California's largest wholesale water suppliers with respect to its compliance with the federal and state Endangered Species Acts for water supply and flood control operations in four major watersheds draining to the San Francisco Bay. The project included the development of a 50-year, multispecies habitat conservation plan (HCP) and associated implementation agreement and environmental compliance (CEQA and NEPA) documents; acquisition of incidental take permits from the NMFS, USFWS and the CDFG for approximately 25 covered terrestrial and aquatic species; and implementation of a complex, multi-agency settlement of a water rights complaint alleging violations of the public trust and CDFG Section 5937, including acquisition of the State Water Resources Control Board's approval of the settlement.
- Appeal surrounding challenges to the validation proceedings and CEQA compliance for a group of contracts between local, state, and federal governments regarding California water agencies' allocation of water from the Colorado River and the transfer of water from Imperial Irrigation District to San Diego County Water Authority .
- Hearing before the State Water Resources Control Board concerning a draft Cease and Desist Order limiting diversions from the Carmel River.
- Protected Bottling Plant from interference by City Council resulting from pressure by non-profit groups adverse to bottled water industry.
- Served as underwriter's counsel in connection with the delivery of \$39,355,000 Mojave Water Agency, Revenue Certificates of Participation, Series 2009A.
- Served as underwriter's counsel in connection with \$130,080,000 Orange County Water District, Revenue Refunding Certificates of Participation, Series 2009A.
- Special Water Counsel, City of Indio. Assisted City of Indio in disputes and litigation regarding water use and management of the Coachella Groundwater Basin. 2008 to 2014.
- General Counsel, Chino Basin Watermaster, under the case Chino Basin Municipal Water District v. City of Chino, San Bernardino Superior Court Case No. RCV 51010. 2000 to 2012.
- Lead Counsel, Antelope Valley Groundwater Adjudication, Los Angeles Superior Court, Judicial Council Coordination Proceeding 4408 representing long-time water user landowners. 2002 to 2016.
- Prepared a paper on behalf on the governors of the 8 Great Lakes States, recognized as the "Lochhead Paper." Recommended an interstate compact as a framework for comprehensive management of water withdraws from the Great Lakes basin. The "Lochhead Paper" initiated a successful effort by the states

toward negotiation of a Great Lakes Compact, which was approved by Congress and signed by the President.

- Represented the Albuquerque Bernalillo County Water Utility Authority as bond counsel in the issuance of \$55.6 million Joint Water and Sewer System Improvement Revenue Bonds, Series 2008A.
- Represented a coalition of the major Colorado utilities and water districts that utilized the Colorado River, in the negotiation of guidelines for management of federal Colorado River Reservoirs; the adoption of shortage and surplus guidelines and the development of efficiency and conservation measures, that the Secretary of the Interior called the most important agreement on the river since the 1922 Colorado River Compact.
- Mediated and facilitated a basinwide agreement in the Pecos River basin that settled major aspects of a basinwide water adjudication, reduced groundwater depletions and assured compliance with the US Supreme Court decree in *Texas v. New Mexico*. The agreement has been successfully implemented and New Mexico now enjoys a surplus on the Pecos River.
- Represented the Southern Nevada Water Authority in achieving new water supplies to supplement its existing reliance on the Colorado River. Representation included the funding for startup of the Yuma Desalting Plant, the development of ocean desalination facilities and conservation projects in Mexico and the development of in-state water supplies.
- Served as bond counsel to the Albuquerque Bernalillo County Water Utility Authority on the issuance of \$150 million in Joint Water and Sewer System Improvement and Refunding Revenue Bonds.
- Trial counsel for one of California's largest shareholder-owned public water suppliers in complex litigation to adjudicate and control the water resources in the Santa Maria groundwater basin. The case involved more than 1,000 parties who rely on local water resources and two federally-owned reservoirs. After eight years of litigation, the case was resolved through a settlement stipulation among the vast majority of the parties, thereby providing legal certainty with respect to the use and management of the resource.
- Defended CEQA challenge to Spring Water agreement in trial and appellate courts. Provided NEPA, CEQA and land use compliance advice for project development including construction of bottling facility and construction of pipelines in federal forest land.
- Defended CEQA challenge to All American Canal Lining Project in trial and appellate courts.
- Successful negotiation of multi-agency settlement of a water rights complaint alleging violations of the public trust and California Fish and Game Code section 5937, on behalf of one of California's largest wholesale water providers. The settlement provides a perpetual, multimillion-dollar program for the re-operation of numerous dams and associated water supply facilities on three watersheds, including flow enhancements, barrier removals and habitat restoration.
- Served as bond counsel in connection with the issuance of \$38,490,000 Santa Margarita/Dana Point Authority Bonds, Series 2009 for California's Santa Margarita Water District Improvement Districts Nos. 2, 3 and 4 General Obligation Bonds.
- Ongoing representation of multiple buyers and sellers of water rights in the Sacramento River system for negotiation and implementation of water transfers.
- Formed mutual water company to serve new development in El Dorado County, California.
- Representing Golden State Water Company for development of a new water utility service area in Sutter County, California, including water resource and infrastructure planning, negotiation of water supply agreements, and acquisition of certificate of public convenience and necessity from the California Public Utilities Commission.
- Representing private equity project developer for negotiation of groundwater subscription agreements and public-private partnership to construct an 80-mile water supply pipeline in southwest Texas.
- Represented the District before the California State Water Resources Control Board (SWRCB) regarding

renewal of water right permits for a USBR owned reservoir and before the National Marine Fisheries Service with respect to Endangered Species Act compliance for listed steelhead. Representation included coordination with USBR, who holds the water right permits, and other project members holding water right entitlements in the reservoir for environmental compliance with CEQA, development of a biological assessment and biological opinion, and protection of downstream water rights interests.

- Represented the Yuma County Water Authority Public Improvement District in the \$20 million acquisition of all senior surface water rights on the North Fork of the Republican River in Colorado, as well as the lease of water rights to the Republican River Water Conservation District for use in Colorado's compliance under the Republican River Compact.
- Served as bond counsel in the issuance of \$750,000 in General Obligation Bonds, Series 2008, for financing public improvements for the Arapahoe Lake Public Park District in Arapahoe County, Colorado.
- Served as bond counsel in the remarketing of \$20,000,000 of General Obligation Variable Rate Bonds, Series 2004, by Bachelor Gulch Metropolitan District in Eagle County, Colorado.
- Special Water Counsel, Arrowhead Lake Association, 2004 to present.
- Defended key California water agency in California Environmental Quality Act (CEQA) challenge to 2003 Quantification Settlement Agreement.
- Served as litigation counsel for California water agency in litigation and appeals challenging the 2003 Quantification Settlement Agreement and related agreements governing Colorado River rights.
- MTBE Contamination - Resolved the matter by coming to an agreement with Shell Oil that they would purchase the City Pumping Station; in addition they would pay for the purchase of substitute property as well as the increased costs in infrastructure development. Shell paid the City over \$8M to accomplish these resolutions.
- Successfully settled reimbursement claim by water company against four major oil companies with no direct evidence of whose MTBE impacted the well.
- Cost recovery/CERCLA suit involving cleanup in the San Gabriel Valley.
- Multiparty litigation with over 1,000 plaintiffs regarding claims of contamination of drinking water causing injury. Successful trial and Supreme Court and Appellate Court results with finding of no liability to water provider clients.
- Represented a public utility district in federal district court in an action commenced by the Forest Service against multiple parties regarding ground and groundwater contamination stemming from the contribution of waste, location of a district wastewater pipeline, and improper operation and closure of a landfill. The case was successfully resolved in the district's favor by entering into a consent decree and settlement agreement, neither of which required payment by the district. The district's legal costs were fully paid as a result of our identifying and obtaining insurance coverage.
- Contamination litigation under common law, litigated/settled in favor of client valued over \$60M.
- Advised private project developers related to proposed desalination plants in Mexico and water supply pipelines to the United States.
- Representing Golden State Water Company in adjudication of the Los Osos groundwater basin in California, including development of a Basin Plan. The Basin Plan is an innovative water resources plan that includes significant projects related to urban water use efficiency improvements, groundwater treatment, water reuse and recycling, prevention of seawater intrusion and establishment of a water market and watermaster.
- Lead Counsel, Santa Ana Water Rights Hearing, State Water Resources Control Board (November-December 2007) representing the Chino Basin Watermaster.
- Lead Counsel, Lake Arrowhead Enforcement Hearing, State Water Resources Control Board (November 2005) representing the Arrowhead Lake Association.

- Santa Maria Groundwater Basin Adjudication Phase III Trial Team Member, Santa Clara County Superior Court (October 2004).
- On behalf of San Diego County Water Authority, negotiated a series of complex agreements between state and federal agencies for the settlement of disputes related to the allocation of Colorado River water, including the largest water transfer in United States history, lining of the All-American Canal and water conveyance.
- Successfully obtained the State of California's approval of the largest agriculture to urban water transfer in the history of the United States, from Imperial Irrigation District to San Diego County Water Authority for up to 200,000 acre-feet per year for 75 years. The matter involved the negotiation of a series of complex agreements between state and federal agencies for the settlement of disputes related to California's allocation of Colorado River water.
- Represent one of the largest water districts in the State of Arizona in connection with the NEPA review of a coal-fire powered plant.
- Representation of multiple groundwater stakeholders (agriculture and other private landowners, municipal providers, regulated utilities, water districts, and mutual water companies), in priority groundwater basins located around the state, with respect to implementation of the Sustainable Groundwater Management Act of 2014.
- Representation of the San Diego County Water Authority in a validation action involving wheeling rates in Metropolitan Water Dist. of Southern California v. Imperial Irr. Dist. (2000) 80 Cal.App.4th.
- Litigation counsel for an association of groundwater producers' efforts to amend an existing adjudication to promote conjunctive use of the West Coast and Central groundwater basins, improve local self-sufficiency and increase overall water supply reliability for the millions of people living and working in the greater Los Angeles area.
- Representation of city in the negotiation and drafting of special legislation to amend the Sustainable Groundwater Management Act to address unique local circumstances. The legislation was adopted. The matter involved complex water rights, tribal rights and groundwater management issues.
- Represents one of the largest federal water contractors in the United States to ensure that its members have a long-term dependable supply of water to meet project purposes.
- Representation of a city in securing the State Water Resources Control Board's approval of the city's wastewater change petition to permit reduced wastewater discharges to a river and expanded recycled water use. The matter involved the prosecution of the petition before the State Board over the objection of third parties and compliance with CEQA. The project reduces the city's use of potable water supplies for non-potable purposes, in furtherance of state law and policy mandating the increased use of recycled water by municipalities. As a result, the project results in increased reliability and sustainability of the city's water supply portfolio and decreased reliance on costly, less reliable imported water supplies.

## **Brownstein Water Blog**

### **Brownstein Water: Current Trends in Water Law & Policy**

**Visit [water.bhfs.com](http://water.bhfs.com) for commentary and analysis of timely water law and policy issues.**

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