



## News Alert

### California Court of Appeal Upholds Water Transfer EIR

February 9, 2010

On December 19, 2009, the Court of Appeal upheld an Environmental Impact Report prepared by Castaic Lake Water Agency in conjunction with MKB. The EIR analyzed a water transfer of 41,000 acre-feet annually to Castaic from a San Joaquin Valley water district. *Planning and Conservation League, et al. v. Castaic Lake Water Agency* (2009) 180 Cal.App.4th 210 (modified and reh'g denied, Jan. 14, 2010).

In a 2007 trial, MKB attorneys Russ Behrens and David Boyer successfully defeated each argument raised by plaintiffs, with the assistance of special counsel Remy, Thomas, Moose and Manley, LLP. Two environmental groups challenged Castaic's EIR. First, the plaintiffs contended that the Department of Water Resources (DWR) and not Castaic should have served as lead agency. Second, plaintiffs argued the transfers should have been discussed within DWR's EIR analyzing the "Monterey Plus" amendments to the State Water Contracts. Finally, plaintiffs argued Castaic's EIR inadequately analyzed the potential impact of legal uncertainty upon the transfer. The trial court ruled against each of plaintiffs' claims. However, the court found an "analytical hole" in the EIR. The court reasoned that the EIR analyzed the transfer's environmental impacts against each of three possible legal backdrops but failed to explain those scenarios' relevance, leaving the public unable to meaningfully assess the project.

Last month, the Second District Court of Appeal held in favor of Castaic in all respects. First, the Court reversed the only trial court ruling unfavorable to Castaic by finding that the EIR provided the public with an "analytic route" to the conclusion by disclosing and sufficiently analyzing the possible effects of legal uncertainty on the water transfer. Second, the Court affirmed Castaic's decision to serve as lead agency because Castaic showed the water transfer would have "significant independent local utility" within its service area. The ruling resolves a longstanding dispute and will assist Castaic in meeting its water supply obligations. We congratulate MKB attorneys Russ Behrens and David Boyer, along with appellate counsel Eisenberg and Hancock, LLP, for their success in this appeal.

For more information, contact [David Boyer](#) or your MKB attorney at 714-755-3100.

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