

## THE 2017 CLAY AWARDS

The 21st Annual California Lawyer Attorneys of the Year

### ENVIRONMENTAL



*Center for  
Biological  
Diversity  
v. County  
of San  
Bernardino*



**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

MICHELLE OUELLETTE  
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## Defending public-private enterprise to attain fresh water from Mojave desert

Led by partner Michelle Ouellette, a Best Best & Krieger LLP team won an appellate affirmance in May rejecting challenges to a water project designed as a public-private enterprise to pump fresh water from a Mojave Desert aquifer for a region desperate to boost water supplies.

Lawsuits by the Center for Biological Diversity, the San Bernardino Valley Audubon Society and the Sierra Club's San Gor-

gonio Chapter, among others, contended that the project was improperly approved under the California Environmental Quality Act. They also claimed the Santa Margarita Water District, Ouellette's client, was wrongly designated as the project's lead agency. San Bernardino County's approval of the project also was unsuccessfully contested. *Center for Biological Diversity v. County of San Bernardino*, G051058 (Cal. App. 4th Dist., filed Aug.

31, 2012). Best Best & Krieger functions as the water district's general counsel; Ouellette is its CEQA counsel.

Colleagues Sarah E. Owsowitz and Jennifer J. Lynch were key members of Ouellette's winning team, Ouellette said.

"CEQA is complicated and so are water district partnerships," Ouellette said. "This project provides a stable water source." As the appellate panel noted, the proposed project to pump fresh groundwater from

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an underground aquifer located below property owned by renewable resources company Cadiz Inc. spawned six related lawsuits. Ouellette defended the project for years, prevailing at both trial and appellate levels.

Originally nine cases were filed to derail the project. “We had months and months of motions and status hearings,” Ouellette said.

The panel held that Ouellette’s client was properly designated as the lead agency and that the environmental impact report describing the project was accurate and not misleading. “We conclude that the Project is consistent with the EIR’s purpose and objectives because it will conserve water otherwise lost to brine and evaporation, and will improve water supplies throughout many areas of the State of California,” wrote Associate Justice Richard D. Fybel for a unanimous panel. The water will flow as far west as Orange County.

The project will reclaim fresh water that would otherwise be contaminated when it flows from the aquifer to dry lakes, where it mixes with highly sa-

linated groundwater, becoming unusable as fresh water, before evaporating. The result of the favorable outcome will allow users in some parts of Southern California to receive an annual average of 50,000 acre-feet of water over 50 years.

The wins were a long time coming. Ouellette said she was on vacation in Russia in 2015 when she got a call from her assistant to let her know she had prevailed at the trial court level. The case had been transferred to Orange County Superior Judge Gail A. Andler, who has since retired. “I’ll never forget toasting the victory with a lot of vodka, then running around the block in St. Petersburg screaming, which really isn’t done in Russia. Then I called and pranked my client. I said, ‘Sit down.’ He said, ‘Oh, God, how bad is it?’ Then I gave him the good news. It seems like this case has been running my entire life.”

Under CEQA, public agencies like her client have to look at the environmental impacts of their projects before they approve them, but there isn’t much case law on how that requirement functions in the lead agency

context where a public-private partnership is involved, such as Santa Margarita Water District’s deal with Cadiz, known as the Cadiz Valley Water Conservation, Recovery and Storage Project.

Yet such compacts are becoming more common, Ouellette said. “Increasingly financially strapped public agencies need to work with private entities to get things done,” she said. Absent the favorable ruling, San Bernardino County would have been forced to assume the lead agency role. “That would have slowed things down and made everything much more complicated,” she said. “We felt very confident about our legal arguments, but with CEQA, one never knows.”

Writing about the win for a bar association journal, Ouellette quoted hydrologists Ramon Llamas and Emilio Custodio on the significance of water in the West: “No resource is as vital to California’s urban centers, agriculture, industry, recreation, scenic beauty and environmental preservation as its liquid gold.”

— John Roemer

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