

# Daily Journal

COVER STORY

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## TOP DEFENSE VERDICTS OF 2009

### Keeping Affordable Water Flowing to Thirsty Southern Californians

*Alameda County Flood Control v. California Department of Water Resources*

**Cause:** Northern California water agencies alleged the California Department of Water Resources violated contracts governing the administration of the State Water Project by using revenues from the sale of excess electrical energy to reduce the costs of transporting water to Southern California. They contended the contract required the department to use the revenues to offset the costs of collecting and storing the water.

**Result:** After a six-week trial, a Sacramento County judge held the water department's interpretation of the contract was the correct one.

**Defense team:** James J. Dragna, Tiffany R. Hedgpeth, Colin C. West, Thomas S. Hixson, Bingham McCutchen, Los Angeles and San Francisco

**Plaintiffs:** Pillsbury Winthrop Shaw Pittman, Sacramento

**Judge:** Patricia C. Esagro, Sacramento County Superior Court

When attorneys from Bingham McCutchen took on a case questioning the actions its longtime client, the Metropolitan Water District of Southern California, they were immediately faced with the challenge of compiling an incredibly complex factual record to present to the court.

A group of 14 Northern California water agencies sued the California Department of Water Resources challenging how the water district and 12 additional Southern California-based water contractors allocated the costs of the State Water Project. Citing their interpretation of a contract dating back to the 1950s, the northern agencies argued revenue from sales of excess electrical energy coming from the project's hydroelectric generation facilities should go to the costs of collecting and storing water.

Defense attorneys had to dig for evidence — some dating as far back as the 1930s — to justify their interpretation of the contract and challenge arguments that the southern agencies were unjustly enriched when the state water department credited the revenue to reducing the costs of transporting water.

Most of the people involved in the negotiation of the vague contract were either no longer living or didn't retain the memory to explain its intent. Attorneys tracked down old documents and public statements to support their arguments.

"The challenge for us was trying to explain to the judge what the parties had intended when the parties weren't in the room," said James J. Dragna, a Los Angeles Bingham McCutchen partner.

A key turning point in the case was when the judge refused to grant the plaintiffs' motion to exclude a speech by then-Gov. Pat Brown that eluded to support for the water department's interpretation.

Had the judge not ruled in favor of the defense, Bingham McCutchen attorneys said, the state would have been required to revamp the way it buys and sells water and hydroelectric power.

— Dhyana Levey



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