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WATER



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Van Ness Feldman is nationally recognized for our extensive, multidisciplinary experience in matters involving the acquisition, distribution, regulation, use, and protection of water. Through a unique combination of legal, policy, and industry experience and knowledge, the firm's attorneys and policy professionals bring creative solutions and a problem-solving mindset to the representation of a wide range of clients including municipalities, drinking water utilities, institutional investors, industrial and technology companies, energy facilities and project developers, public power entities, irrigation districts and farms, individual landowners, property developers, trade associations, NGOs, states, and Native American organizations.

Our water team is highly-skilled at providing creative and persistent counsel that spans the range of legal and policy areas including permitting and regulatory compliance, transactions and market activity, water transfers and contracting, litigation and appeals, mediation and negotiations, legislation, policy advocacy and governmental relations, governance and public law, and sustainability and security.

We also regularly assist clients on a diverse range of water quality, wetlands, and floodplains matters which involve the intersection of complicated technical issues with federal, state, and local regulatory requirements. The firm's attorneys provide strategic advice regarding permitting and compliance, coordinate technical experts, and litigate before administrative boards and state and federal courts to advance clients' interests.

"The team has a strong environmental background. It has both legal and engineering staff that support our work." - Firm Client

WATER QUALITY PERMITTING

We counsel and assist clients on a diverse range of water quality, wetlands, and floodplains matters which involve the intersection of complicated technical issues with federal, state, and local regulatory requirements. The firm's attorneys provide strategic advice regarding permitting and compliance, coordinate technical experts, and litigate before administrative boards and state and federal courts to advance clients' interests.

The firm serves a diverse clientele, which includes leading water and electric utilities, real estate investors and developers, ecosystem traders, mitigation banks, clean technology companies, natural gas and oil production and pipeline interests, renewable energy project developers, federal lands concessioners, and municipalities.

Members of the firm's environmental team have significant experience with the following:

- Clean Water Act (CWA) Section 401 water quality certification orders
- Individual, general and nationwide permits under CWA 404
- Preparation of practicable alternatives analyses under section CWA 404(b)(1) guidelines
- Federal wetland jurisdictional determinations and appeals

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- Floodplain boundary determinations and permitting
- Groundwater contamination
- Reclaimed water
- Isolated wetlands, prior converted croplands, and farmed wetlands
- Safe Drinking Water Act
- Wetland mitigation, restoration, and preservation projects
- Local Critical Areas permitting
- Local Shoreline Management Act permitting
- NPDES permitting
- State waste discharge permitting
- Federal administrative appeals (EPA and Corps)
- State administrative appeals (Pollution Control Hearings Board, Hydraulics Board, Shorelines Hearings Board, Growth Management Hearings Board)
- State water quality and coastal zone management certifications

WATER RIGHTS

Van Ness Feldman represents a wide variety of public, private and individual clients in water rights matters, including municipal and privately- owned water utilities; commercial and industrial entities; individual and corporate landowners; and institutional lenders and investors on the permitting, quantification, and exercise of appropriative and riparian water rights.

- Evaluation of existing water rights.
- Analysis of validity, quantity, relinquishment and forfeiture.
- Analysis of suitability for new uses or project proposals
- Transfers and transactions involving existing water rights
- New permit application proceedings
- Impact analysis and mitigation strategies
- Understanding and managing regulatory agency processes and relationships.
- Multi-party negotiations and settlement of complex matters
- Strategies for dealing with water scarcity
- Familiarity and frequent work with engineers, hydrologists, groundwater scientists, and other technical water professionals
- Instream flow and fisheries
- Water reuse and reclaimed water

WETLANDS & FLOODPLAINS

Van Ness Feldman counsels and assists clients on a diverse range of wetlands and floodplains matters which involve the intersection of complicated technical issues with federal, state, and local regulatory requirements. The firm's attorneys provide strategic advice regarding permitting and compliance, coordinate technical experts, and litigate before administrative boards and state and federal courts to advance clients' interests.

The firm serves a diverse clientele, which includes leading water and electric utilities, real estate investors and developers, ecosystem traders, mitigation banks, clean technology companies, natural gas

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and oil production and pipeline interests, renewable energy project developers, federal lands concessioners, and municipalities.

Members of the firm's team have significant experience with the following:

- Clean Water Act (CWA) Section 401 water quality certification orders
- Individual, general and nationwide permits under CWA 404
- Preparation of practicable alternatives analyses under section CWA 404(b)(1) guidelines
- Federal wetland jurisdictional determinations and appeals
- Floodplain boundary determinations and permitting
- National Flood Insurance Program (NFIP)
- Biological Opinions (BiOPs)/Endangered Species Act Compliance
- Groundwater contamination
- Reclaimed water
- Isolated wetlands, prior converted croplands, and farmed wetlands
- Wetland mitigation, restoration, and preservation projects
- Local Critical Areas permitting
- Local Shoreline Management Act permitting
- NPDES permitting
- State waste discharge permitting
- Federal administrative appeals (EPA and Corps)
- State administrative appeals (Pollution Control Hearings Board, Hydraulics Board, Shorelines Hearings Board, Growth Management Hearings Board)
- State water quality and coastal zone management certifications

MUNICIPAL WATER SUPPLY & CONTRACTING

Van Ness Feldman represents numerous cities and water utilities across the country on a wide array of water rights and water supply matters. The firm regularly assists clients with the negotiation of water supply agreements, risk allocation and cost sharing, strategic planning, regional governance, and associated planning processes. The firm's attorneys are well-versed in municipal law, contracting authority, state and federal agency roles, and crafting agreements in emerging areas such as water banking, drought insurance, and mitigation.

LEGISLATION, FUNDING & INFRASTRUCTURE DEVELOPMENT

Members of the firm have played crucial roles in the development of significant water-related legislation at the federal and state level, and in the implementation of legislation authorizing and funding water resource development projects. Van Ness Feldman regularly assists clients with the development and execution of a comprehensive legislative strategy to achieve specific business and policy objectives.

The firm assists business and municipal clients with the planning and development of complex water and wastewater facilities and infrastructure including devising innovative strategies, contracting mechanisms, and governance structures. The firm regularly works on treatment plants, water distribution systems, groundwater wells and wellfield management, river diversion stations, pipelines and conveyance facilities, storage and reservoirs, reclaimed water facilities, impact mitigation systems. The firm's water attorneys recently assisted a coalition of municipal water utilities to conceive, draft and pass state legislation, and

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implement an interlocal governance structure that has gained national recognition as a model.

TRANSACTIONS & DUE DILIGENCE

Van Ness Feldman represents institutional investors, corporations and municipalities in opportunity analysis, due diligence, acquisition of project and landscape assets, and mergers and acquisitions. Frequently, water assets are a high value element of an overall transaction, with water increasingly having more value than the associated land. The firm's water lawyers have advised international industrial companies, Fortune 500 technology companies, energy firms, real estate holding companies, and cities in evaluating and acquiring water assets as standalone investments or as an element of a larger venture.

WATER TRANSFERS & MARKETING

Van Ness Feldman is active in advising clients seeking to purchase or sell water rights or water entitlements. Van Ness Feldman assists clients with transfers and transactions involving existing water rights, including due diligence, purchase and sale, leases, and easements concerning both land and water rights. In addition, the firm has strong experience in obtaining governmental approval of transactions, defending agency approvals from third party challenge, and developing and implementing mitigation strategies.

- Purchase and sale
- Management of regulatory agency processes and relationships
- Appeals of adverse agency actions and decisions
- Defense of agency approvals from third party challenge
- Development and implementation of mitigation strategies
- Project governance, mitigation, water supply, forbearance, water and wastewater service, and development agreements; dry year leases
- Frequent work with economists, brokers, and appraisers

LITIGATION & ADJUDICATIONS

Van Ness Feldman regularly represents clients in water litigation in a variety of forums including local or regional boards and commissions, general stream adjudications, appeals of adverse agency actions and decisions, defense of agency approvals from third party challenge, and appellate courts. The firm has deep experience in representing groups and coalitions as friend of the court (*amicus curiae*) in proceeding of broad consequence. Increasingly, water disputes are resorting to mediation, facilitated negotiation, and alternative dispute resolution techniques due to the large number of parties, complexity of the issues, high cost and risk of litigation, and uncertain outcomes. The firm's water lawyers have substantial experience settling disputes for clients in these diverse settings and in serving as mediators to assist other parties reach resolution.

CORPORATE WATER SUSTAINABILITY & SECURITY

Van Ness Feldman is at the forefront of assisting corporations to inventory water assets and needs, assess risks and opportunities, develop strategic plans, and implement programs to protect water interests for the long term. The firm's attorneys are involved in policy development in the emerging areas of climate change, the water-energy nexus, sustainable policies and practices, and other public policy touchstones to advance client goals.

WATER POLICY

Van Ness Feldman attorneys have played crucial roles in the development of significant water-related

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legislation, including the most recent efforts to reauthorize the Clean Water Act and to implement legislation authorizing and funding water resource development projects. In addition, the firm has been able to use this knowledge to take a leadership role in the creation and administration of coalitions on major water-related national issues such as wetlands, endangered species, and risk assessment. The firm also regularly assists clients with the development and execution of a comprehensive legislative strategy to achieve specific business and policy objectives.

SAFE DRINKING WATER ACT & PUBLIC HEALTH

Van Ness Feldman also assists clients with drinking water regulation, source and treatment and contracting issues, public water utility matters, water system formation and regulation, water utility planning, and regulatory compliance. Van Ness Feldman regularly provides counsel on public policy and legislative advocacy, rulemakings, and understanding new and proposed water legislation and rules.

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