

California's Cap and Trade Program under AB 32 – a Primer

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CALIFORNIA’S CAP AND TRADE

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I. Overview

- AB 32 requires California to return to 1990 levels of greenhouse gas (GHG) emissions by 2020. All programs developed under AB 32 contribute to the reductions needed to achieve this goal and will deliver an overall 15% reduction in GHG emissions compared to the “business-as-usual” scenario in 2020 if nothing were done at all.
- The Cap-and-Trade Program will reduce GHG emissions from major sources (covered entities) by setting a firm cap on statewide GHG emissions while employing market mechanisms to cost effectively achieve the emission-reduction goals. The statewide cap for GHG emissions from major sources, which is measured in metric tons of carbon dioxide equivalent (MTCO_{2e}), will commence in 2013 and decline over time, achieving GHG emission reductions throughout the program’s duration. Each covered entity will be required to surrender one compliance instrument, i.e., a permit to emit 1 MTCO_{2e} (the majority of which will be allowances; entities also are allowed to use a limited number of ARB offset credits) for each ton of GHG emissions they emit. Most covered entities will be allocated some allowances, and also will be able to buy additional allowances at auction, purchase allowances from others, or purchase offset credits.
- Scope of Program
 - Covers about 350 businesses, representing 600 facilities.
 - Starts in 2013 for electric utilities and large industrial facilities.
 - Starts in 2015 for distributors of transportation, natural gas, and other fuels.
 - Designed to link with similar trading programs in other states and regions.
- The Cap
 - Set in 2013 at about 2% below the emissions level forecast for 2012.
 - Declines about 2% in 2014.
 - Declines about 3% annually from 2015 to 2020.

II. Mandatory Reporting

- The Cap-and-Trade Program relies on data collected through the Mandatory Reporting of Greenhouse Gas Emissions Regulation (MRR) to identify major sources of GHG emissions in California. The MRR was originally adopted in 2007 and was updated in 2011 to meet the needs of the Cap-and-Trade Program and harmonize with federal EPA mandatory reporting requirements. The MRR requires major emitters, like industrial facilities, fuel and carbon dioxide (CO₂) suppliers, and electricity generators and importers, to report their annual GHG emissions in 2009 and every year thereafter.
- To assist facility operators with mandatory reporting, ARB developed a comprehensive web-based reporting tool to simplify and guide the reporting process. That tool provided facility operators the opportunity to create accounts in the system in which they can assign staff, consultants, and verifiers who will have varying levels of access to enter, modify, or view the facility data. That system will continue to provide the basis for determining the GHG emissions for which entities will have a cap-and-trade compliance obligation. For additional information about mandatory GHG emissions reporting, visit the GHG reporting webpage at <http://www.arb.ca.gov/cc/reporting/ghg-rep/ghg-rep.htm>.
- The mandatory GHG reporting and Cap-and-Trade Regulations require independent third-party verification of GHG data. Submitted GHG emissions reports and underlying data must be verified by independent third parties trained and accredited by ARB and hired by the operator. Verification helps to ensure (1) completeness, accuracy, and consistency in the reported GHG data, and (2) the methods specified in the Regulations have been correctly applied. For offset projects, verification requirements in the Regulations ensure that only real GHG reductions are issued ARB offset credit.
- Annual reporting for sources emitting 10,000 metric tons or more of CO₂-equivalent (MTCO₂e).
 - No threshold for reporting for electricity importers.
 - Abbreviated reporting allows a facility to report combustion emissions using default emissions factors; emissions need not be verified by a third party. Abbreviated reporting for facilities with between 10,000 and 25,000 MTCO₂e.

- Reporting requirements and methods to calculate emissions from fuel combustion vary by fuel type. For pipeline-quality natural gas, a default emissions factor can be used to calculate emissions based on fuel use data. Other fuels generally require carbon testing or use of continuous emissions monitoring systems, due to the likelihood of variable carbon content.

III. Covered Entities

- Starting in 2013, major GHG-emitting sources, such as electricity generation (including imports) and large stationary sources (e.g., refineries, cement production facilities, oil and gas production facilities, glass manufacturing facilities, and food processing plants), that emit more than 25,000 MTCO₂e per year will have compliance obligations under the Cap-and-Trade Program. The program expands in 2015 to include fuel distributors (natural gas and propane fuel providers and transportation fuel providers) to address emissions from transportation fuel, and from combustion of other fossil fuels not directly covered at large sources in the program's initial phase.
- For oil and gas production facilities, the compliance threshold of 25,000 MTCO₂e is aggregated from the geological basin. "Basin" means geological provinces as defined by the American Association of Petroleum Geologists (AAPG). Geologic Note: AAPGCSD Geological Provinces Code Map: AAPG Bulletin, Prepared by Richard F. Meyer, Laurie G. Wallace, and Fred J. Wagner, Jr., Volume 75, Number 10 (October 1991).
- Covered Entities and Thresholds
 - Electrical generating facilities
 - Threshold: 25,000 MTCO₂e per year or more.
 - Imported electricity
 - From specified sources: 25,000 MTCO₂e per year or more.
 - Zero MTCO₂e per year starting in 2015.
 - From unspecified sources: no threshold; all imports have compliance obligations.
 - Industrial and petroleum and natural gas facilities, carbon dioxide suppliers
 - Threshold: 25,000 MTCO₂e per year or more.

- Fuel suppliers
 - Starting in 2015.
 - Threshold: 25,000 MTCO₂e per year or more from GHG emissions that would result from full combustion or oxidation of the quantities of the fuels, identified in section 95811(c) through (f) of Title 17, Cal. Code Regs., which are imported and/or delivered to California.

- Opt-in Participants
 - Opt-in participants are voluntarily listed as covered entities, but are under the applicability threshold for their industry (e.g., 25,000 or more MTCO₂e per data year).
 - An opt-in covered entity is subject to all reporting, verification, enforcement, and compliance obligations that apply to covered entities. An opt-in covered entity may be eligible to receive freely allocated allowances.
 - After the end of any given compliance period an opt-in covered entity may choose to opt out of the program provided its annual emission levels for any data year remain below the inclusion thresholds. An entity choosing to opt out of the program must either fulfill its compliance obligations as required or surrender allowances equivalent to all the directly allocated allowances it has received from the budget years for the compliance period in question. An opt-in covered entity that wishes to opt out of this program must apply to the Executive Officer of ARB.

- Voluntarily Associated Entities (VAE)
 - A VAE is an entity not identified as a covered entity or opt-in covered entity that intends to hold California compliance instruments. An entity may apply to the Executive Officer for approval as a VAE.
 - VAEs are not covered entities but voluntarily participate in the cap-and-trade market in order to:
 - Retire, purchase, hold, or sell compliance instruments.
 - Operate offset projects registered with ARB.
 - Verify GHG emissions and emission reductions.
 - Operate over-the-counter clearinghouses or trading facilities handling transactions of compliance instruments.

IV. Allowances

- An allowance is a tradable permit to emit one MTCO₂e . The total number of allowances provided by ARB each year will be equivalent to the annual allowance budget specified in the Regulations. Each allowance will have a unique serial number.
- As part of the Cap-and-Trade Program, ARB will hold allowance auctions and sales from the ARB allowance price containment reserve to allow market participants to acquire allowances directly from ARB. ARB conducted the first quarterly auction on November 14, 2012 and plans to conduct the first quarterly reserve sale on March 8, 2013. The Auction and Reserve Sale Administrator administers all auctions and reserve sales. Auction and reserve sale participants will have to register for the auction, or submit a bid for reserve sales, and meet financial regulatory requirements in order to participate in an auction or reserve sale.
- Sources of Allowances
 - Free allocation by ARB to industry.
 - Auction.
 - ARB allowance price containment reserve.
 - Trading with other program participants.

What Does a Covered Entity Need to Do?

1. Register with ARB. All entities must register with ARB to create an account in which to hold allowances. They must disclose under penalty of perjury the following information:
 - Name and basis for qualifying for registration.
 - Any direct or indirect associations with other registered entities.
 - All registered entities for whose benefit compliance instruments are held.
 - Registration creates two types of accounts in the tracking system:
 - Holding Accounts
 - Compliance AccountsAll entities holding compliance instruments must have a Holding Account. Covered and opt-in entities will meet their compliance obligations by transferring allowances and offsets from their Holding Accounts to their Compliance Accounts. VAEs, which have no compliance obligation, will only have a Holding Account.

- Entities must register before holding California compliance instruments.
 - Registration deadlines:
 - Covered entities reporting GHG emissions under the MRR by January 1, 2012 would register by March 31, 2012.
 - Covered entities subject to reporting under the MRR after January 1, 2012 would register within 90 days of notifying ARB of their reporting obligation.
2. Report emissions annually under the MRR.
3. Acquire compliance instruments:
 - Allowances.
 - Offsets -- can be used to meet only 8% of total compliance obligations.
4. Surrender compliance instruments to match surrender obligation, that is, that portion of an entity's compliance obligation for which it is required in any given year to surrender compliance instruments (less than annual emissions levels during the first one or two years of a compliance period, and more at the end of a compliance period).

V. Offset System

- Offsets can only be used to meet up to 8% of the total compliance obligations.
- Sources of Offsets
 - CARB-approved offset projects.
 - Destruction of ozone depleting substances.
 - Urban forests projects.
 - U.S. forest projects.
 - Livestock projects.
 - Sector-based offsets.
 - None approved yet.
 - Reducing Emissions from Deforestation and Forest Degradation (REDD) – expected to be first sector-based offset program approved; would be outside the U.S.
 - Offsets can be freely sold, traded, or transferred if they have not been surrendered or retired.
- Tracking of Allowances and Offsets
 - All compliance instruments, whether emission allowances or offset credits, will exist solely within an ARB centralized allowance tracking system.
 - All transfers of compliance instruments must be reported to ARB within three days of settlement of the transaction.
 - Both parties to the transfer must report account numbers, the serial numbers of the compliance instruments to be transferred, the date of the transaction, and the price that was paid.
 - Failure to report is a violation subject to penalties and ARB rejection of the transaction, which may cause the instrument to lose value.
- Trading and Enforcement
 - The Regulations expressly prohibit any trading involving:
 - A manipulative device.
 - A corner on or attempt to corner the market.
 - Fraud, attempted fraud, or false or inaccurate reports.
 - For a violation of the Regulations, civil and criminal penalties in the Health & Safety Code would apply and, in instances where a signature is required, perjury statutes would also apply for violation of these regulation provisions.

VI. Compliance Period

- A compliance period is the time during which the compliance obligation is calculated. The years 2013-2014 are the first compliance period, the years 2015-2017 are the second compliance period, and the years 2018-2020 are the third compliance period. At the end of each compliance period, each facility will be required to turn in compliance instruments (surrender), including allowances and a limited number of ARB offset credits, equivalent to their total GHG emissions throughout the compliance period, minus the compliance instruments that were surrendered during the compliance period.

- Compliance Periods
 - First compliance period: 2013-2014. Scope includes:
 - All electricity generated in or imported into California. The first deliverer of electricity into the state is the capped entity (the one that must purchase and surrender allowances).
 - Large industrial facilities emitting more than 25,000 MTCO₂e per year. Examples include oil refineries and cement manufacturers.
 - Second compliance period: 2015-2017. Scope expands to:
 - Distributors of transportation fuels (including gasoline and diesel), natural gas, and other fuels. The regulated entity will be the fuel provider that distributes the fuel upstream (not the gas station).
 - Third compliance period: 2018-2020.

VII. Auction Overview

- The auction process is specifically designed to protect against collusion, market power, and/or price manipulation. An independent market monitor will review the auction procedures and provide recommendations to ARB on how to ensure fair and competitive auctions.
- Prior to any transfer of auctioned allowances, ARB must first certify the results of the auction. Auctions will take place quarterly, and registered covered entities, opt-in covered entities, and VAEs can bid on allowances.
- Auctions
 - Allowances sold in bundles of 1,000 MTCO₂e.
 - Sealed bids, single round.
 - Unlimited bids allowed, though purchase limits apply.
 - Participants: covered entities, opt-in covered entities, VAEs.
 - Auction registration 30 days prior.
 - Entities awarded allowances from highest to lowest bid price until all allowances are sold.
 - If number of lowest price winning bids exceeds number of allowances left, lottery will take place at that bid level to sell remaining allowances by units of 1,000.
 - Lowest bid price awarded for allowances is the auction settlement price for all successful bidders.
 - Unsold future vintage allowances will be held and placed into the next auction.
 - Purchase limits for 2012-2014 auctions:
 - 15% of allowances offered for covered entities.
 - 4% of allowances offered for other participants.
- Advance Auctions
 - Sale of future vintage allowances.
 - Cannot be used for current compliance period.
 - 10% of a future year's allowance budget will be auctioned early.
 - Purchase limit: 25%.

Allowance Price Containment Reserve

- 4.6% of all allowances placed into the Reserve.
 - 1% of allowances in 2013-2014.
 - 4% of allowances in 2015-2017.
 - 7% of allowances in 2018-2020.
- Available only to covered entities, not other registered participants (e.g., VAEs).

Table 3. Statistical Results from California ARB Quarterly Auction 1

ARB held its first auction of GHG allowances on November 14, 2012. The auction included a Current Auction of 2013 vintage allowances and an Advance Auction of 2015 vintage allowances. Below are key data and information on the results of the auction.

Current Auction of 2013 Vintage Allowances

Total 2013 Allowances Available for Sale: 23,126,110
Total 2013 Allowances Sold at Auction: 23,126,110
Total Submitted Bids Divided by Total 2013 Allowances Available for Sale: 3.10
Auction Reserve Price: \$10.00
Settlement Price Per Allowance: \$10.09
Allowances Purchased by Compliance Entities: 97.0%
Bid Price Summary Statistics:
Maximum Price: \$91.13
Minimum Price: \$10.00
Mean Price: \$13.75
Median Price: \$12.96

Advance Auction of 2015 Vintage Allowances

Total 2015 Allowances Available for Sale: 39,450,000
Total 2015 Allowances Sold at Auction: 5,576,000
Total Submitted Bids Divided by Total 2015 Allowances Available for Sale: 0.14
Auction Reserve Price: \$10.00
Settlement Price Per Allowance: \$10.00
Allowances Purchased by Compliance Entities: 91.0%
Bid Price Summary Statistics:
Maximum Price: \$17.25
Minimum Price: \$10.00
Mean Price: \$11.07
Median Price: \$10.59

VIII. Accounts

The Regulations for the Cap-and-Trade Program under AB 32 provide for four types of accounts:

- Holding Account
 - Compliance instruments for surrender in a given year and in future years. The Regulations limit the number of allowances a market participant can hold at any one time.

- Compliance Account
 - Compliance instruments in the compliance account must be surrendered.
 - Compliance instruments cannot be transferred back to the Holding Account once in the Compliance Account. Allowances once placed in a Compliance Account are permanently retired for compliance purposes.

- Limited Use Holding Account
 - For utilities holding allowances prior to auction.

- Exchange Clearing Holding Account
 - For VAEs.

Under the Regulations, these accounts contain specific holding and purchase limits:

- The Regulations impose holding limits and auction purchase limits to prevent participants from acquiring market power.

- Non-utility covered entities may purchase no more than 15% of allowances sold at any auction; other entities are limited to 4% of allowances sold at auction.

IX. Surrender and Trading

- Starting in 2014, entities must annually surrender allowances equal to 30% of their verified emissions from the year before (they have to verify and report their emissions every year). At the end of each compliance period, each entity must surrender allowances or offsets equal to the remainder of the total MTCO_{2e} it has emitted in the past three years, for which it has not already surrendered compliance instruments.
- Surrender of Allowances
 - Compliance instrument vintage must be the same as or precede the compliance year.
 - Reserve allowances surrendered can be any vintage.
 - Does not apply to allowances used to satisfy an excess emissions obligation.
 - Years one and two of any compliance period: annual surrender = 30% of emissions from previous year.
 - Surrender by following November 1.
 - If you exceed the threshold in any of the three years preceding the start of a compliance period or in the first year of the period, you are a covered entity for the entire compliance period. If you exceed the threshold in the second year, you are a covered entity for the rest of the compliance period. If you exceed in the third year (or second year of first compliance period), you are a covered entity for the rest of the compliance period; however, the triennial surrender is not due the following year but is added to your triennial obligation for the next compliance period.
 - Triennial surrender is the remainder of what you have not surrendered for your emissions from that compliance period.
- Holding Limit: ARB designed its holding limit to reduce the chance that any group of market participants could become pivotal suppliers. The holding limit is designed to prevent an entity from holding sufficient allowances to be in a position to execute a “squeeze.” The holding limit applies only to allowances and not to all compliance instruments. If a transfer would result in an exceedence of a holding limit, the transfer will not be completed by the administrator.
- One entity can acquire a compliance instrument for another without a beneficial holding relationship if the other entity’s account is designated as the destination for the transfer.
- Transaction prices and quantities will be released to the public.

X. Penalties and Fines

- Untimely Surrender
 - Must surrender four compliance instruments for each compliance instrument not timely surrendered.
 - Covered entity given time to acquire additional allowances.
 - Three of the four compliance instruments provided for untimely surrender must be allowances.
 - One of the four compliance instruments may be an offset.
 - Untimely surrender obligation is due within five days of the first auction or reserve auction following the original surrender date.
 - Three out of four allowances for an untimely surrender will go to the general auction Holding Account.
 - One of the four compliance instruments will be retired.
 - 90-day grace period if untimely surrender as a result of invalidation of an offset.

- CARB amended the original regulation to provide additional time to acquire additional compliance instruments for an untimely surrender – extended to after an auction and a reserve sale has occurred.

- Normally, CARB can seek penalties for each violation, for any part of a day in which the violation occurred. If a violation of the regulation requiring timely surrender occurred each day that surrender did not happen, a covered entity would potentially have a penalty of a 4-to-1 allowance surrender obligation for each day its surrender was untimely. CARB realized that if a covered entity suddenly had to acquire such a significant number of allowances in a very short time to keep the violation from occurring on additional days, it could create great market volatility. Accordingly, an untimely surrender is treated as a one-time violation, triggering the 4-to-1 allowance surrender obligation only once.

Thomas A. Henry

Experience

Thomas Henry is a California mining attorney and partner of the firm practicing in the Environment, Land Use and Natural Resources group. His primary focus is on mining, land use, oil and gas, Endangered Species Act, and NEPA/CEQA law.

Before joining Stoel Rives, Thomas was a partner with Downey Brand LLP in Sacramento.

Representative Work

- Represents mining, development and oil companies and other commercial and industrial project proponents on issues of CEQA compliance.
- Represents oil and gas companies in CEQA litigation, local agency oil and gas ordinances, title opinions, permitting issues and leases.
- Represents mining companies regarding environmental due diligence for mine acquisitions.
- Represents mining companies regarding California's pit backfill requirements.
- Represents mining companies in complying with the California Surface Mining and Reclamation Act and federal mining laws, including obtaining approval of mining permits and reclamation plans.
- Represents developers, vineyards and mining companies in complying with California lake and streambed alteration requirements, including negotiating Streambed Alteration Agreements.
- Represents developers and mining companies in obtaining Clean Water Act Section 404 permits for fill activities.
- Represents developers and vineyards in obtaining Clean Water Act Section 401 water quality certifications from State and Regional Water Quality Control Boards, including drafting appeals of water quality certification determinations.
- Represents mining companies in determining vested rights status.
- Represents private project proponents in litigation regarding CEQA compliance and design review.

Professional Honors and Activities

- Listed in *Best Lawyers in America*® (currently: Oil & Gas Law), 2012-2013
- Member, California Independent Petroleum Association
- Member, Sacramento Petroleum Association
- Member, California Construction and Industrial Materials Association
- Member, Environmental Law Section, Sacramento County Bar Association
- Member, Environmental Law Section, State Bar of California
- Member, Rocky Mountain Mineral Law Foundation



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Education

- University of California, Davis, School of Law, J.D., 1998
- University of Texas, Austin, B.A.A., 1982

Admissions

- California

Thomas A. Henry

Presentations

- "How to Use a Title Opinion," 30th Annual West Coast Landmen's Institute, Dana Point, California, Sept. 2012
- "Off or On? Examining OMR's AB 3098 Listing Procedures," California Construction and Industrial Materials Association Annual Education Conference, Monterey, California, Oct. 2011
- "CEQA -- Its Role In and Effect On the Permitting Process," 29th Annual West Coast Landmen's Institute, Santa Barbara, California, Sept. 2011
- "Regulatory Trends in California," Industrial Mineral Association-North America Annual Meeting & National Industrial Sand Association 75th Anniversary Celebration, The Lodge at Sonoma Renaissance Resort and Spa, Sonoma, California, Sept. 2011
- "Resolving Conflicts Between Oil and Gas and Renewable Energy Development," Bakersfield Association of Petroleum Landmen, Jan. 18, 2011
- "AB 32 and SB 97: California's Laws Regulating Greenhouse Gas Emissions and Climate Change and Their Related Impacts on Project Timelines and Permitting," 28th Annual West Coast Land Institute, Shell Beach, California, Sept. 23, 2010
- PITFALL - "Landman Harry's Adventure in California's Land Use Jungle," Bakersfield Association of Petroleum Landmen, Nov. 17, 2009
- "National Environmental Policy Act" and "Wetlands Regulations," Lorman Education Services, Zoning and Land Use in California, 2005
- "2004 Mining Law Update," American Association of Professional Landmen, 2005
- "2003 Mining Law Update," American Association of Professional Landmen, 2004
- "2002 Mining Law Update," American Association of Professional Landmen, 2003
- "Streambed Alteration Agreements and Notifications," Construction Materials Association Conference, 2003
- "How to Avoid a Prop. 65 Lawsuit," Construction Materials Association of California Operators Conference for the Construction Materials Industry, 1999

Publications

- "State Supreme Court Sets Environmental Baseline" (coauthor), *The Daily Journal*, Apr. 1, 2010
- "2000 Year in Review" (coauthor), Public Lands Section, American Bar Association
- "1999 Year in Review" (coauthor), Public Lands Section, American Bar Association

Michael N. Mills

Experience

Michael Mills is an oil and gas attorney in the firm's Sacramento office specializing in environmental, permitting and litigation matters. He is a partner in the Environment, Land Use and Natural Resources group and is also active in the firm's Property Tax section. Beyond oil and gas and environmental law, Mike's practice involves a wide spectrum of natural resources matters, including mining, land use and eminent domain. Mike has a great deal of experience with federal and state hazardous waste laws and regulations, the California Environmental Quality Act (CEQA), and regulatory, permitting and title issues associated with oil and gas exploration and production. His oil and gas expertise extends to land, title and permitting issues unique to development of California's Monterey Shale. In addition to being an experienced California oil and gas attorney, Mike also maintains specific skills in the areas of property tax assessments and the California Public Records Act, as well as land use, valuation and condemnation issues arising from the California High-Speed Rail project.

Representative Work and Engagements

Oil and Gas

- Representation of major and independent oil and gas companies in negotiating, reviewing and drafting oil and gas exploration and production agreements, including joint operating agreements, farmout agreements, pooling/unit agreements, leases and surface use agreements, easements, and purchase and sale agreements.
- Conducting due diligence for acquisition of oil and gas leases and fee interests, including advice on compliance with terms of affected joint operating agreements, farmout agreements and leases.
- Preparation of acquisition, division order and drilling title opinions.
- Due diligence for regulatory, permitting, title and environmental issues in connection with the acquisition of an underground natural gas storage facility in Northern California.
- Counseling and advice on subsurface trespass issues and well set-back requirements.
- Counseling and advice for operators and mineral lessees on forced entry procedures.
- Lead counsel for Fortune 500 oil and gas company in CEQA litigation to challenge residential development for lack of analysis of impacts to mineral resources.
- Representation of national oil and gas company in dispute over surface access rights in connection with residential development in Contra Costa County, California.
- Representation of development company in dispute over surface access rights in connection with commercial development in San Joaquin County, California.
- Representation of oil and gas company in lawsuit by property owners challenging company's use of road right-of-way for natural gas pipeline.



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Education

- University of California, Davis, School of Law, J.D., 1997
Order of the Coif
Senior Notes and Comments Editor,
U.C. Davis Law Review
- University of California, Davis, B.S.,
Environmental Toxicology (minor in
English), 1994, *summa cum laude*
- Dana Curtis Mediation, Appellate
Mediation Training Program,
Certificate of Completion, 2010

Admissions

- California
- U.S. District Courts for the Eastern,
Southern, Northern and Central
Districts of California
- U.S. Court of Appeals for the Ninth
Circuit
- U.S. Bankruptcy Court for the Eastern
District of California

Michael N. Mills

- Counseling and advice in connection with leases for underground gas storage project.
- Representation of oil and gas company in contract litigation involving joint operating agreement for natural gas field in Sutter County, California.
- Representation of oil and gas company in contract litigation involving terms of farmout agreement for natural gas field in San Joaquin County, California.

Mining

- Lead counsel for mining company in litigation brought against the Department of Conservation challenging procedures relating to a mine's removal from the AB 3098 List.
- Lead counsel for mining company in complex environmental enforcement action brought by the California Attorney General's Office to require remediation of abandoned mine in Tuolumne County, California.
- Lead counsel for mining industry plaintiffs challenging validity of certain financial assurance regulations under the Surface Mining and Reclamation Act.
- Lead counsel for mining company subsidiary in complex enforcement action brought by the Alaska Department of Environmental Conservation to require the cleanup of an abandoned fuel bunker in Juneau, Alaska.
- Lead counsel for trustee of trust established under court-ordered settlement to oversee funds dedicated to, and management of, remediation of abandoned gold mine.
- Advise and counsel mining clients on CEQA compliance and related permitting matters.
- Lead counsel in defense of aggregate mining company in CEQA lawsuit challenging approval of mine expansion in Merced County, California.
- Lead counsel in defense of national aggregate mining company in CEQA lawsuit challenging approval of mine expansion in Butte County, California.
- Representation of national aggregate mining company in CEQA lawsuit challenging approval of mine expansion in Fresno County, California.
- Representation of national aggregate mining company in CEQA challenge to municipal ordinance requiring conditional use permit for federally approved mitigation bank.
- Representation of mining company in assessment appeal proceeding in Amador County, California.

Environmental Litigation and Administrative Enforcement Proceedings

- Lead counsel for property owner defendant in complex CERCLA action filed in the U.S. District Court for the Central District of California seeking contribution resulting from contamination within the El Monte Operable Unit of the San Gabriel Valley Superfund Site.
- Lead counsel for property owner defendant in complex CERCLA action filed in the U.S. District Court for the Eastern District of California seeking contribution for soil and groundwater contamination.
- Lead counsel for property owner in negotiation of Corrective Action Consent Agreement with California Department of Toxic Substances Control.
- Defended public water agency in complex environmental action brought in the U.S. District Court for the District of Arizona asserting claims under CERCLA, RCRA and Clean Water Act, as well as other claims.
- Defended second largest generator and coordinated representation of joint defense group in municipality's CERCLA cost-recovery action brought in the U.S. District Court for the Northern District of California.
- Common counsel to group of cooperating parties in cleanup of multiparty Superfund site under supervision of the U.S. Environmental Protection Agency.

Michael N. Mills

- Representation of trust established under court-ordered settlement to oversee funds dedicated to, and management of, remediation of solvent contamination to soil and groundwater in San Joaquin County, California.
- Representation and advice on legal and regulatory issues concerning soil and groundwater cleanup projects throughout Northern and Central California.

California Environmental Quality Act (CEQA) Compliance and Litigation

- Advise clients with respect to CEQA compliance and related requirements.
- Evaluate projects for compliance with CEQA in preparation for litigation.
- Lead counsel for plaintiffs in CEQA lawsuit challenging the City of Oakland, California's proposed ordinance to ban plastic carry-out bags.
- Lead counsel in defense of Fortune 500 oil company in CEQA challenge to drilling permits issued by the Department of Conservation, Division of Oil, Gas, and Geothermal Resources.
- Lead counsel for Fortune 500 oil and gas company in CEQA litigation to challenge residential development for lack of analysis of impacts to mineral resources.
- Lead counsel in defense of residential developer in CEQA lawsuit challenging approval of residential subdivision in San Bernardino County, California.
- Lead counsel in defense of hunting club in CEQA lawsuit challenging approval of shooting range facility.
- Defense of public agency in CEQA challenge arising from proposed residential development project.

Property Tax

- Lead counsel for county in dispute with special district over property tax administration fees (successfully argued case before the California Court of Appeal, Third Appellate District).
- Lead counsel for hydroelectric facility in assessment appeals in Lassen County, California and Shasta County, California.
- Lead counsel for multiple public entities in unjust enrichment action seeking portion of previously refunded property taxes following successful assessment challenge.
- Representation of public agencies in both litigation and administrative proceedings involving Proposition 218 challenges to governmental assessments of property.
- Counsel for municipal utility district for property tax issues relating to real property acquisitions.

Land Use, Real Estate and Eminent Domain

- Lead counsel for Fortune 500 telecommunications company in land use dispute concerning zoning and site placement of cell phone tower.
- Advice and counseling to affected landowners in connection with California High Speed Rail Authority's anticipated condemnation proceedings.
- Lead counsel for major oil and gas exploration and production company for condemnation issues affecting mineral rights.
- Defense of property rights of major oil and gas exploration company in numerous eminent domain actions brought by the State of California.
- Lead counsel for property owner in real estate purchase dispute involving contaminated property.
- Representation of landowner in connection with negotiations over municipal public improvements to avoid flooding of private property.
- Representation of commercial real estate leasing firm in various litigation matters.

Michael N. Mills

- Defense of public agency landowners in eminent domain proceedings.

California Public Records Act Litigation and Public Agency Litigation

- Lead counsel in defense of multiple public agencies in litigation brought under the California Public Records Act.
- Lead counsel for hunting club in lawsuit against State of California agency arising from streambed alteration issues.

Water Rights Litigation

- Lead counsel for hydroelectric project operator in complex RICO action brought in the U.S. District Court for the Eastern District of California involving claims over disputed water rights.
- Representation of water right holders in Judicial Council Coordination Proceeding JC 4118: the Bay-Delta Decision 1641 Litigation.
- Representation of water agency in suit against State of California agency for nonpayment of assessments.
- Representation of county water agency in complex lease dispute with lessee over construction of flood control and water quality project.

Civil Writs and Other Engagements

- Representation of fresh produce company in commercial dispute over repairs made to industrial weighing scale.
- Lead counsel in defense of county in writ of mandate proceeding challenging selected site for water pumping facility.
- Representation of corporate defendant in complex litigation relating to closure of landfill in Amador County, California.

Published Opinions

- 138 Cal.App.4th 574 (2006).
- 105 Cal.App.4th 1155 (2003).
- 308 F.Supp.2d 1137 (2003).
- 213 F.Supp.2d 1208 (2002).

Professional Honors and Activities

- Member, State Bar of California, Environmental Law Section
- Panel Mediator, California Court of Appeal, Third Appellate District, Appellate Mediation Program
- Member and former President, former First Vice President, former Second Vice President, former Secretary/Treasurer and former Director-at-Large, Bar Council; Chair, Nominating Committee; member, Environmental Law Section, Sacramento County Bar Association
- Member and former President, Vice President, Programs Director and Secretary, Sacramento Chapter, Federal Bar Association
- Member, Natural Resources Section, American Bar Association
- Member and former Treasurer, Asian/Pacific Bar Association of Sacramento
- Member, Rocky Mountain Mineral Law Foundation
- Member, California Independent Petroleum Association
- Member, Sacramento Petroleum Association
- Member, Western States Petroleum Association

Michael N. Mills

Presentations

- "Strategies for Complying with California's Cap & Trade Program," Kern County Bar Association, Bakersfield, California, Dec. 12, 2012
- "How to Use A Title Opinion," 30th Annual West Coast Landmen's Institute, Dana Point, California, Sep. 27, 2012
- "Resolving Conflicts Between Solar Energy and Oil and Gas Development," PV America West, San Jose, California, Mar. 19-21, 2012
- "Getting the Most from the Consultant/Attorney Team," Stoel Rives LLP, Sacramento, California, Feb. 2, 2012
- "More Fracking Regulations? The Public's Sudden Interest in Hydraulic Fracturing," Bakersfield Association of Professional Landmen, Bakersfield, California, Jan. 10, 2012
- "Off or On? Examining OMR's AB 3098 Listing Procedures," California Construction and Industrial Materials Association Annual Education Conference, Monterey, California, Oct. 12, 2011
- "Are Your Taxes Too High?," California Construction and Industrial Materials Association Annual Education Conference, Monterey, California, Oct. 11, 2011
- "CEQA -- Its Role In and Effect On the Permitting Process," 29th Annual West Coast Landmen's Institute, Santa Barbara, California, Sept. 29, 2011
- "Onshore Oil Production and Regulation in California," Environmental Law Symposium, University of California, Davis, School of Law, Apr. 1, 2011
- "Resolving Conflicts Between Oil and Gas and Renewable Energy Development," Bakersfield Association of Professional Landmen, Jan. 18, 2011
- "AB 32 and SB 97: California's Laws Regulating Greenhouse Gas Emissions and Climate Change and Their Related Impacts on Project Timelines and Permitting," 28th Annual West Coast Landmen's Institute, Shell Beach, California, Sept. 23, 2010
- "The Resurgence of Biomass Facilities - What You Need to Know to Develop, Permit and Finance Your Project," Tulare, California, Feb. 9, 2010
- "PITFALL - Landman Harry's Adventure in California's Land Use Jungle," Bakersfield Association of Professional Landmen, Nov. 17, 2009
- "Do's and Don'ts for Expert Witnesses," Groundwater Resources Association, 2005
- "Applying Environmental Toxicology to Environmental Problems - The Interconnection of Law and Science," U.C. Davis, Department of Environmental Toxicology, 2000

Publications

- "Will California's 33% Renewable Portfolio Standard Survive a Commerce Clause Challenge by Other States? A Recently Filed Colorado Case May Provide the Answer," *The Override*, Los Angeles Association of Professional Landmen, May 2011
- News Alert, "California High-Speed Rail: It's Coming Fast! The Central Valley is the Early Winner of Stimulus Funds," Nov. 22, 2010
- Comment, "Inequality Creates Exceptions: Limiting *United States v. Mendoza* to Its Policy Rationale," *U.C. Davis Law Review*, 1997

Civic Activities

- Board Member, U.C. Davis School of Law, King Hall Alumni Association Board of Directors
- President, Spinning Rod Way Neighborhood Watch, 2003-2009
- Moot Court Judge, U.C. Davis School of Law, 2002, 2004-2007

Michael N. Mills

- Alumni Representative, Distinguished Teaching Award Selection Committee, U.C. Davis School of Law, 2009
- Member, CEB Award for Excellence in Legal Research and Writing Selection Committee, U.C. Davis School of Law, 2009-2010

Allison C. Smith

Experience

Allison Smith focuses her practice in environmental and energy law. Her experience includes CEQA and land use litigation, conducting environmental due diligence, and permitting geothermal, solar, wind, biomass and gas-fired energy facilities. Allison also counsels public and private entities on CEQA, Coastal Act, and federal and state air quality and greenhouse gas compliance.

Prior to practicing law, Allison was a volunteer in the Peace Corps in Côte d'Ivoire and taught English in Tokushima, Japan with the Japan Exchange and Teaching Program.

Professional Honors and Activities

- Editor, Climate Change Law and Policy Reporter
- California Bar Association, Environmental Law Section, Environmental Legislation Committee
- American Bar Association, Environment, Energy and Resources Section
- Sacramento County Bar Association, Environmental Law Section

Presentations

- "Strategies for Complying with Current GHG Regulations in California," EUEC 2012 (Feb. 2012)
- "Getting Ready for Greenhouse Gas Requirements in California," Infocast Webinar (Oct. 2011)
- "Land Use Implications of Renewable Energy Projects," Northern California County Counsel Association (July 2010)
- "Renewable Energy Facility Siting," California Bar Association Environmental Law Section Spring Roundtables (June 2009)
- "California's Green Building Standards," LSI Legal and Regulatory Issues in Green Development (Jan. 2009)

Publications

- "Siting Plant (All Scales)" Chapter, *The Law of Biorefineries and Advanced Biofuels*, Stoel Rives LLP, 2012 Edition
- "Sacramento Railyards: How the City of Sacramento is Facilitating Development of the Largest Brownfield Infill Site in America" (coauthor), *California Real Property Journal*, Vol. 29, No. 2, 2011
- "Wind Projects Enter New Permitting Reality: Policies Addressing Wind Development on Federal Lands May Favor the Easiest - Rather Than the Best - Projects" (coauthor), *North American Windpower*, Vol. 8, No. 9, Oct. 2011
- "How to Negotiate Like a Lawyer", *Comstock's Magazine*, March 2011
- "California Adopts its Cap-and-Trade Program for Greenhouse Gas Emissions," *Fresno Bar Journal*, Feb. 2011



Associate

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Education

- Tulane University Law School, J.D., 2005
Certificate in Environmental Law
Member, *Environmental Law Journal*
Order of the Barristers
Willem C. Vis International
Commercial Arbitration Moot Court
Competition, Quarter Finalist
Chair, Tulane Law School Summit on
Environmental Law
Vice President, Environmental Law
Society
- University of Virginia, B.A.,
Environmental Science and
Anthropology, 1996

Admissions

- California
- U.S. District Court, Eastern District,
California

Languages

- French

Allison C. Smith

- Energy Law Alert, "California Adopts its Cap-and-Trade Program for Greenhouse Gas Emissions," Dec. 20, 2010
- "Ailing California Works to Solve Wind Slowdown," (co-author) *North American Windpower*, Oct. 2009
- "Water—Know Your Rights," (co-author) *Wine Business Monthly*, Dec. 2008
- Renewable Energy Law Alert, "Assembly Bill Looks to Accelerate Renewable Procurement in California," Dec. 19, 2008

Renewable + Law Blog Posts

- 2/3/11 Will California's Best Management Practices and Guidance Manual help streamline renewable energy permitting in the California deserts?
- 12/18/10 California Adopts Cap-and-Trade
- 11/2/10 California's Proposed GHG Cap-and-Trade Program Out for Public Comment
- 1/13/10 GEA's Geothermal Energy Finance Forum hits New York
- 10/21/09 California and the U.S. Department of Interior Sign an MOU on Renewable Energy
- 6/8/09 Evaluating Climate Change Impacts under the California Environmental Quality Act: Center for Biological Diversity v. Town of Yucca Valley
- 4/16/09 U.S. EPA Holds Public Hearings in California on Proposed Mandatory Greenhouse Gas Reporting Rule
- 2/20/09 California PUC Proposes Criteria to Evaluate the Viability of Proposed RPS Projects
- 2/12/09 Will California be Able to Regulate GHG Tailpipe Emissions?
- 11/19/08 Governor Schwarzenegger Strikes Again: 33% RPS by 2020 and Streamlined Renewable Energy Permitting in California
- 11/18/08 California's Green Governor To the Rescue?