

## RECORD STRENGTH

### *A Strong Administrative Record Means Better Results*

Decisions affecting land use, the environment and water resources are often made by local, state and federal agencies. Proposed projects, policies and programs are approved or rejected by county and city commissions and county boards of supervisors and city councils, by regional water quality control boards, by regional water agencies, by California state agencies such as the State Water Resources Control Board, the California Coastal Commission and the California Department of Fish & Game, and by federal agencies such as the United States Environmental Protection Agency, the United States Fish & Wildlife Service, the National Marine Fisheries Service, and the Bureau of Reclamation.

Many of the decisions made by these agencies are the result of formal administrative hearings in which written and oral evidence is submitted. The relative strength or weakness of the written and oral submissions during these hearings often determines whether agency decisions are upheld by reviewing courts and whether agencies give serious consideration to particular concerns. This is true regardless of whether the concerns are being raised by public agencies, stakeholders, or nonprofit groups. Equally important, if a party that participates in administrative hearings wants to later seek judicial review of what the agency decided, the issues that can be raised and the evidence relied upon in such litigation are usually limited to the evidence and issues raised during the administrative process. If an issue or evidence is not a part of the “administrative record” it will likely be barred from consideration in subsequent litigation.

Strong participation in the administrative hearing process can be critical to parties achieving their goals. Yet all too often parties (especially nonprofit environmental and conservation groups) do not participate effectively and forcefully in the administrative hearing process because they lack the staff resources or in-house expertise needed for such participation. This is where *Record Strength* services provided by Holder Law Group and Water and Power Law Group can come into play.

### *What Does Record Strength Offer?*

Jason Holder of Holder Law Group and Paul Kibel of Water and Power Law Group have each represented agencies, project proponents, and nonprofit groups in administrative hearings and in litigation regarding agency decision-making for more than two decades. This work has involved projects, policies and programs under review by local, state, and federal agencies. Holder and Kibel have effectively advanced their clients’ objectives in myriad contexts involving complex environmental statutory and regulatory regimes bearing upon a wide range of projects and their settings.

Coordinating closely with their clients, Holder and Kibel have helped ensure that key legal issues are clearly raised and that the most persuasive evidence available is submitted during the administrative process, with an eye towards both impacting agency decision-making (to avoid litigation) and ensuring that if litigation ensues key issues have been preserved for judicial review with a strong administrative record to support these claims. Relying on their deep understanding of common issues and broad professional networks, Holder and Kibel have also helped clients find appropriate litigation counsel if judicial review of agency decision-making is needed.

*Record Strength's* available services include:

- advising clients on effective administrative process participation;
- serving as counsel of record for clients — providing, as necessary and appropriate:
  - written submissions and oral presentations in administrative proceedings;
  - declarations in support of client submissions to agencies;
  - identification and retention of technical experts to submit opinions and provide live testimony during administrative proceedings and substantive and strategic coordination with such experts; and
- advising clients on potential litigation concerning an agency's action.

### **An Example – Microplastic Pollution of California Waterways**

In the course of their work, Holder and Kibel have represented parties concerning microplastic pollution of California's waterways and offshore waters. Microplastics present hazards to fish and aquatic ecosystems as well as drinking water supplies. A leading source of microplastics pollution is the breakage of plastic tensils in artificial turf used as landfill covers, landscaping and athletic fields. The tensils degrade, break and make their way into adjacent waterways. There are ongoing administrative processes and agency hearings for projects, programs and policies under consideration related artificial turf and microplastic pollution. *Record Strength* is available to assist clients focused on impacting agency decision-making pertaining to microplastic pollution.

### **An Example – Water Supply for Projects**

Holder and Kibel have represented parties regarding how increased water supply demands for new projects can reduce surface water instream flows and contribute to groundwater overdraft. Such projects include new commercial and residential projects, new energy projects, new commercial cannabis projects, and the conversion of open space/rangeland to irrigated crops such as orchards and vineyards. Reductions of instream flows and falling groundwater tables can adversely impact water quality, fisheries and drinking water and irrigation supplies for existing customers. *Record Strength* is available to assist and support clients focused on ensuring that water supply for new projects does not further degrade and deplete surface water and groundwater resources.

### **An Example – Climate Change Impacts, Action, and Adaptation**

Holder and Kibel have represented clients in connection with climate action and adaptation planning and in connection with individual project contribution to greenhouse gas (GHG) emissions. Absent effective and enforceable mitigation measures, large-scale development projects, especially those proposed in previously undeveloped areas, may contribute considerably to significant cumulative climate impacts. Conversely, infill projects located close to transit resources that are also consistent with clearly defined and enforceable measures can help the state achieve ambitious GHG reduction targets. Climate Action Plans that include robust measures to reduce GHGs have the potential to promote more sustainable land use patterns and practices. *Record Strength* is available to assist and support clients focused on ensuring that large development projects appropriately analyze and mitigate GHG emissions and that agencies incorporate meaningful and enforceable reduction measures in plan-level documents.

### **For more information about *Record Strength* contact:**

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