



OF COUNSEL

Roderick E. Walston

✉ roderick.walston@bbklaw.com

☎ (925) 977-3304 📍 Walnut Creek



Roderick E. Walston has litigated — and is litigating — many of the nation’s most significant water rights cases, and has garnered impactful, precedent-setting victories at both the U.S. Supreme Court and the California Supreme Court. Having held several high-level legal positions within both the California and federal governments, Rod is now of counsel in Best Best & Krieger LLP’s Environmental & Natural Resources practice group. During his career, Rod has litigated many of California’s most important natural resources and environmental cases, particularly at the appellate level. His practice includes:

- State Water Rights and Water Quality Laws
- Federal Reclamation Laws
- The Clean Water Act
- The Endangered Species Act
- Public Trust Issues
- Land Use Regulation
- Constitutional Taking Issues

Rod is of counsel in BBK’s Walnut Creek office and served as the top lawyer for the U.S. Department of the Interior, and as head of the California Attorney General’s Public Rights Division, which handles all litigation in the natural resources, environmental and water law areas.

Rod has handled several historic, precedent-setting water rights cases, including *National Audubon Society v. Superior Court*, 33 Cal.3d 419 (1983), which held that the public trust doctrine applies to regulation of

CORE PRACTICES

Endangered Species
Environmental Law & Natural Resources
Environmental Litigation
Public Agency Litigation
Water
Municipal Law
Special Districts

water, and *California v. United States*, 438 U.S. 645 (1978), which held that federal water projects must comply with state water laws.

Rod has recently handled, or is working on, other important water rights cases that will have regional, statewide and even national impacts. These cases include:

- *Agua Caliente Tribe v. Coachella Valley Water District and Desert Water Agency*, 849 F.3d 1262 (9th Cir. 2017), which held that the federal reserved water rights doctrine applies to groundwater;
- *Environmental Law Foundation v. State Water Resources Control Board and Siskiyou County*, 26 Cal.App.5th 844 (2018), which held that California's public trust doctrine applies to groundwater;
- *Agua Caliente Tribe v. Riverside County, et al.*, 749 Fed.Appx. 650 (9th Cir. 2019), which held that county possessory interest taxes are valid as applied to non-Indian lessees on Indian reservations and
- *Mineral County v. Lyon County et al.*, No. 75917, pending in the Nevada Supreme Court, addresses whether Nevada's public trust doctrine authorizes reallocation of water rights.

Rod has written numerous amicus briefs in the U.S. Supreme Court on behalf of states, national governors and county associations, and water agencies, and others, addressing significant issues concerning federal environmental laws — as in *Rapanos v. United States*, 547 U.S. 715 (2006), which established the circumstances under which the Clean Water Act applies to non-navigable waters, such as wetlands, and *Nat'l Ass'n of Homebuilders v. Defenders of Wildlife*, 551 U.S. 644 (2007), which held that the Endangered Species Act does not override Clean Water Act requirements that federal permit programs must be transferred to states.

Prior to joining BBK, Rod served as deputy solicitor/acting solicitor of the U.S. Department of the Interior (2002-2004); general counsel of the Metropolitan Water District of Southern California (2000-2002); special counsel of the California Attorney General's Office (1999-2000); chief assistant of the California Attorney General's Public Rights Division (1991-1999); and deputy attorney general of the State of California (1963-1991).

Best Lawyers in America lists Rod for Natural Resources and Water Law every year since 2008. The International Municipal Lawyers Association recognized him in 2015 with the Amicus Service Award for his work on *Los Angeles County Flood Control District v. the Natural Resources Defense Council*. The State Bar of California honored him with the "Public Lawyer of the Year Award" in 2004 and he received the United States Supreme Court "Best Brief Award" from the National Association of

EDUCATION & ADMISSIONS

Education

Stanford Law School, J.D.

Columbia University, B.A., cum laude

Bar Admissions

California

LANGUAGES

English

Attorneys General in 1997 (for brief submitted in *Bennett v. Spear*, 520 U.S. 154).

While at Stanford Law School, he served as editor for the *Stanford Law Review*. He is admitted to the U.S. Supreme Court, California Supreme Court and the U. S. Court of Appeals (First, Second, Third, Ninth and Eleventh circuits, District of Columbia Circuit and Federal Circuit).

Notable Experience

- *California v. United States*, 438 U.S. 645 (1978) U.S. Supreme Court held that federal agencies must comply with state water laws in operating federal reclamation projects.
- *California v. Sierra Club*, 451 U.S. 287 (1981) U.S. Supreme Court held that private parties cannot enforce Rivers and Harbors Act of 1899.
- *California v. Federal Energy Regulatory Commission*, 495 U.S. 490 (1990) U.S. Supreme Court held that federally licensed hydropower projects are not subject to state regulatory water laws.
- *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987) U.S. Supreme Court held that states cannot apply civil regulatory laws on Indian reservations and therefore cannot regulate on-reservation tribal gambling operations.
- *California v. Texas, et al.*, 450 U.S. 977 (1981) U.S. Supreme Court issued temporary restraining order preventing Texas and other states from imposing embargo against fruits and vegetables imported from California as result of infestation of Mediterranean fruit fly.
- *Environmental Protection Agency v. California*, 426 U.S. 200 (1976) U.S. Supreme Court held that federal agencies are not required to comply with state permit requirements under Clean Water Act.
- *National Audubon Society v. Superior Court*, 33 Cal.3d 419 (1983) California Supreme Court held that public trust doctrine applies to water rights, and state has right to modify past water rights decisions affecting Mono Lake to protect public trust values.
- *O.W.L. Foundation v. City of Rohnert Park*, 168 Cal.App.4th 568 (2008) California Court of Appeal, in first appellate interpretation of California's water supply assessment statute, upheld City's assessment of water supplies.

Accolades

- The Best Lawyers in America®, Lawyer of the Year, Municipal Law, Date TBD
 - Litigation – Municipal Lawyer of the Year in Oakland, Best Lawyers®, 2023–2024
 - The Best Lawyers in America®, Litigation – Environmental, Natural Resources, Water Law, 2008 – 2024
 - International Municipal Lawyers Association Amicus Service Award, 2015
 - “Public Lawyer of the Year Award” from the State Bar of California, 2004
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Professional & Community Involvement

- American Bar Association:
 - Council Member, Section on Environment, Energy and Resources, 2003 - present
 - Chairman, Water Resources Committee, 1988-1990
 - Co-founder and Chairman, annual Water Resources Conference, 1983-1991
 - Western States Water Council, California legal representative; gubernatorial appointee, 1985-2002
 - Association of California Water Agencies, Legal Affairs Committee, 2000-2002
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Thought Leadership

Publications

- “The Public Trust Doctrine: The Nevada and California Supreme Courts’ Divergent Views in Mineral County and National Audubon Society,” *Idaho Law Review*, Volume 58, Issue 2, 2022
- “Does the Public Trust Doctrine Apply to Groundwater? The California Appellate Courts Will Soon Decide,” *BBKnowledge*, Jan. 5, 2016
- “Does the Public Trust Doctrine Apply to Groundwater? The California Supreme Court May Decide,” *BBKnowledge*, Jan. 5, 2015
- “Nation’s Mayors, Cities, Counties & California Water Agencies File U.S. Supreme Court Amicus Brief In Permit Controversy,” *BB&K Legal Alert*, Dec. 16, 2013
- “Ninth Circuit Says Los Angeles County Flood Control District is Liable for River Pollution,” *BBK Legal Alert*, Aug. 9, 2013
- “U.S. Supreme Court Rules Los Angeles County Is Not Responsible for Pollution from Stormwater,” *BBK Legal Alert*, Jan. 9, 2013
- “Dischargers Can Sue Over Clean Water Act Compliance Orders,” *BBK Legal Alert*, March 22, 2012
- “Court of Federal Claims Dismisses Water District Takings Lawsuit,” *BBK Legal Alert*, Dec 7, 2011
- “California Water Law: Historical Origins to the Present,” 29 *Whittier Law Review*, 765, 2008
- “Judicial Deference to Agency Interpretations: The Ups and Downs of the Chevron Doctrine,” *South East Environmental Law Journal*, 2007
- “The Supreme Court Limits the Scope of the Endangered Species Act: National Association of Home Builders v. Defenders of Wildlife,” *California Water Law & Policy Reporter*, October 2007
- “The Federal Commerce and Navigation Powers: Solid Waste Agency’s Undecided Constitutional Question,” *Santa Clara Law Review*, 2002
- “The Constitution and Property: Due Process, Regulatory Takings and Judicial Takings,” *Utah Law Review*, 2001

- “Western Water Law,” *Natural Resources & Environmental*, Winter 1986

Presentations

- “Evolving State and Federal Law,” 2nd Annual California Land Use Law Conference, Continuing Legal Education International, June 13, 2019
- “Examining the Walker River Adjudication: Implications for the Public Trust Doctrine in Nevada,” 2nd Annual Conference: Nevada Water Law, Continuing Legal Education International, Nov. 29, 2018
- “Does a Federal Reserved Right to Surface Water Extend to Groundwater? The Ninth Circuit’s Decision in *Agua Caliente v. Coachella Valley Water District*,” American Bar Association’s 36th Annual Water Law Conference, April 17, 2018
- “Non-Appropriative Water Rights - Public Trust Doctrine and Reserved Groundwater Rights,” CLE International’s Nevada Water Law Conference, Nov. 14, 2017
- “The Scott River Litigation: Does the Public Trust Doctrine Apply to Groundwater Extractions?” Water Law Institute’s 25th Annual California Water Law Conference, Nov. 13, 2017
- “Indigenous Water Rights in California,” Argent Communications Group’s Annual California Water Law & Policy MCLE Conference, June 13, 2017
- “Public Trust Doctrine - Potential Reallocation of Adjudicated Water Rights on the Walker River,” CLE International Western Water Law Conference, Feb. 10, 2017
- “*Agua Caliente v. Coachella Valley Water District, et al.*,” CLE International’s Tribal Water Law’s 5th Annual Conference, Sep. 29, 2016
- “The Public Trust Doctrine as a Limit on Use,” Law Seminars International Sustainable Groundwater in California Seminar, June 6, 2016
- “Addressing Tribal Concerns,” CLE International Law of the Colorado River: Meeting Demand During Unprecedented Drought Conference, May 1, 2015
- “Do Federally Reserved Water Rights Apply to Groundwater?” American Groundwater Trust Groundwater Law Conference, April 26, 2016
- “Developing Groundwater Disputes: A Closer Look — Does the Reserved Rights Doctrine Apply to Groundwater? The Agua Caliente Case,” Argent Communications California Water Law & Policy Conference, June 16, 2015
- “Federal Reserved Water Rights,” CLE International’s Western Water Law Event, Feb. 19, 2015
- “The Endangered Species Act, Regulatory Takings and Water Flows: *Casitas Municipal Water District v. U.S.*,” 27th California Water Law & Policy Conference, April 19, 2012
- “Does the Public Trust Doctrine Apply to Groundwater,” Association of California Water Agencies Fall Conference, Nov. 30, 2011