

## Environmental and Land Use Representative Matters

### Water/Wastewater

- ***Deaton v. United States***, No. 03-0701 (S.Ct.) (cert. Denied, April 5, 2004). K&L Gates was counsel for amicus curiae California Farm Bureau, filing in support of Petition for Certiorari in a case raising the question of whether for purposes of Clean Water Act jurisdiction, "waters of the United States" includes remote ditches that may occasionally carry rainwater which ultimately has the potential for draining into navigable in fact waters several miles away.

- ***United States of America v. Adam Bros. Farming, Inc., et al.***, No. CV 00-07409 CAS (C.D. Ca). K&L Gates is counsel for a commercial farming operation in parallel civil and criminal enforcement actions alleging violations of section 404 of the Clean Water Act based on allegations that the company failed to obtain a permit before maintaining an isolated irrigation ditch.

- ***In re: USGen New England, Inc. Brayton Point Station***. (Environmental Appeals Board, filed November 4, 2003). K&L Gates is providing counseling and advice regarding appeal of state and federal NPDES permit conditions calling for closed loop recycling to address thermal discharge issues.

- ***United States v. Allegheny Ludlum Corporation, Civil Action No. 95-0990*** (W.D. Pa. 2001). K&L Gates represented Allegheny Ludlum in a civil enforcement action where EPA sought a \$30 million penalty for thousands of alleged violations of discharge permits for five of the steel manufacturer's facilities. EPA asserted claims based on two novel theories: whether permit violations were established by monitoring data taken for operational purposes and not in compliance with 40 CFR part 136; and whether one of the steel manufacturer's facilities caused interference at the POTW to which it discharged. The jury rejected all claims based on these two theories. The penalty phase of the trial was a bench trial, and included issues concerning appropriate plant design and operations, alleged economic benefit and EPA's BEN model, and alleged ecological harm caused by permit noncompliance. Following the bench trial, the District Court assessed a penalty of approximately \$8 million. However, on April 28, 2004, the Third Circuit vacated the penalty and remanded the case to the District Court.

- Confidential Client. K&L Gates is representing a national company in connection with a criminal investigation into alleged improper waste water testing and document falsification activities concerning discharge limits contained in permits issued by POTW's at facilities at various locations around the nation.

- ***Southeastern Federal Power Customers Inc. v. Corps of Engineers, et al.***, No. 1:00-CV-02975-TPJ (D.D.C.2001). K&L Gates is representing the Florida Department of Environmental Protection in a dispute over water rights allocation issues relating to the Apalachicola-Chattahoochee-Flint River ("ACF") Compact, as well as issues under the National Environmental Policy Act, the Endangered Species Act, the Water Supply Act and the Flood Control Act.

- Major Electric Utility, Mid-Atlantic Region, U.S. K&L Gates is representing the operator of a major electric generation facility in state proceedings concerning renewal of Clean Water Act §316 thermal variances and related issues.