



## David Ivester

### Law Practice

David Ivester focuses on land use, environmental, and natural resource law. He has represented landowners, developers, public entities, energy companies, and other businesses on a wide variety of environmental, land use, land title, and water quality issues before federal, state, and local regulatory agencies and state and federal trial and appellate courts. Mr. Ivester has frequently lectured and written about environmental and land use regulation.

Mr. Ivester regularly represents clients in federal, state, and local regulatory agencies on land use, environmental review, wetlands, endangered species, water quality, and natural resource issues. He has broad experience with the U.S. Army Corps of Engineers, Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service, Federal Energy Regulatory Commission, California Department of Fish and Game, State Water Resources Control Board and the Regional Water Quality Control Boards, California Coastal Commission, California Energy Commission, San Francisco Bay Conservation and Development Commission, and cities and counties.

Mr. Ivester's litigation experience includes federal and state suits involving the Clean Water Act, Endangered Species Act, National Environmental Policy Act (NEPA), Federal Flood Insurance Act, Rivers and Harbors Act, California Environmental Quality Act (CEQA), California Endangered Species Act, Fish and Game Code, Porter-Cologne Act, Permit Streamlining Act, and regulatory takings under the U.S. Constitution.

### Experience

Partner, Stoel Rives LLP and Washburn, Briscoe & McCarthy, San Francisco, California (1983-2005); attorney, Charles Bond PLC, San Francisco, California (1980-82); attorney, Wilhelm, Thompson, Wentholt & Gibbs, Redwood City, California (1978-80); law clerk, Justice Margaret J. Morris, California Court of Appeals, San Bernardino, California (1977-78).

### Contact

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[divester@briscoelaw.net](mailto:divester@briscoelaw.net)

### Education

J.D., University of California  
College of the Law, San  
Francisco, 1977; Note and  
Comment Editor, Hastings  
Constitutional Law Quarterly  
(1976-1977)

B.G.S., University of Michigan,  
1974

### Admissions

State Bar of California United  
States Supreme Court

United States Court of Appeals,  
Ninth and District of Columbia  
Circuits

United States Court of Federal  
Claims

United States District Court,  
Northern District of California

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### Representative Cases

#### Trials & Appeals

*Bay Island Club v. California Coastal Commission.* California Superior Court and Court of Appeal. David represented a coastal landowner in an administrative mandamus proceeding successfully challenging the Coastal Commission's decision granting a permit on the condition the landowner provide public access on its property.

*Masonite Corporation v. County of Mendocino.* California Superior Court. David represented a landowner challenging a mining project on adjacent land based on inadequacy of the County's EIR under CEQA. *Koshman v. Natural Resource Conservation Service.* Federal District Court and Ninth Circuit Court of Appeals. David represented a farmer in a suit successfully challenging a decision by the Natural Resource Conservation Service that he had converted wetlands and was thus ineligible for farm program benefits under the Food Security Act.

*Greenbelt Alliance v. City of Oakley.* California Superior Court and Court of Appeal. David represented KB Home and DR Horton, developers of a 1,255-acre master-planned community in Oakley, California, to defend against a challenge of the project under CEQA.

*People v. Tong.* Federal District Court and California Superior Court. David represented a landowner in federal and state criminal proceedings concerning alleged violations of the Endangered Species Act, Clean Water Act, Fish and Game Code, and Water Code.

*Siskiyou County Farm Bureau v. Department of Fish and Wildlife.* 237 Cal.App.4th 411 (2015). California Court of Appeal. David represented the farm bureau in an appeal concerning regulation of water diversions under the Fish and Game Code.

*Center for Biological Diversity v. Kempthorne.* Federal District Court. David served as California counsel to the American Petroleum Institute, Chamber of Commerce of the United States, National Mining Association, National Association of Manufacturers, and American Iron and Steel Institute in a citizen suit challenging the U.S. Fish and Wildlife Service's decision to list the polar bear as threatened under the Endangered Species Act and limit the Service's consideration of the effects of greenhouse gas emissions on global climate change.

*Concerned Citizens Coalition of Stockton v. City of Stockton.* California Superior Court. David represented a city in an action attacking the city's transfer of operation and maintenance of its water, stormwater, and wastewater facilities to a private firm on the grounds that the city failed to review the environmental effects under CEQA.

*United States v. Frederic Cline.* Federal District Court. David represented a landowner in Sonoma County, California in administrative enforcement proceedings by the U.S. Army Corps of Engineers and a criminal investigation and civil enforcement action by the U.S. Attorney and Justice Department concerning alleged violations of the Clean Water Act and Rivers and Harbors Act.

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*Careful Objective Development for Monterey County v. County of Monterey.* California Superior Court and Court of Appeal. David represented a citizens group in litigation that successfully challenged a county's approval of a private airport based on the county's violation of CEQA and local zoning ordinances.

*James City County v. EPA.* 12 F.3d 1330 (4th Cir. 1993). U.S. Supreme Court. David appeared as amicus curiae on behalf of the National Association of Home Builders supporting a petition for certiorari to the U.S. Supreme Court in a Clean Water Act suit.

*State Water Resources Control Board v. Office of Administrative Law.* 12 Cal. App. 4th 697 (1993). California Superior Court and Court of Appeal. David represented the Bay Planning Coalition, a nonprofit, in administrative proceedings and litigation that successfully challenged wetland regulations issued by the Regional Water Quality Control Board and State Water Resources Control Board in violation of the Administrative Procedures Act.

*City of Fremont v. Mok Nursery.* California Superior Court. David has testified at deposition and trial as an expert on federal and state regulation of wetlands.

*City of Stockton v. Garibaldi.* California Superior Court. David represented a landowner in an action by a city to take commercial land by eminent domain.

*Cargill, Incorporated v. United States.* 660 F. Supp. 183 (N.D. Cal. 1987). Federal District Court and Ninth Circuit Court of Appeals. David represented Cargill in extensive litigation on the extent of federal authority to regulate wetlands under the Clean Water Act.

*Cashman v. City of Cotati. Federal District Court.* David represented mobile-home-park owners in a suit challenging a city's rent control ordinance for effecting a "regulatory taking" of property without just compensation in violation of the U.S. Constitution.

*Orsi v. City of Salinas.* 219 Cal. App. 3d 1576 (1990). California Court of Appeal. David represented a developer in a suit successfully requiring a city to issue a land use permit owing to the city's failure to timely act on a permit application under the Permit Streamlining Act.

*Coho Salmon v. Pacific Lumber Company.* Federal District Court. David represented Pacific Lumber Company in a citizen suit alleging that logging operations on thousands of acres of forest take threatened coho salmon in violation of the Endangered Species Act.

## **Administrative Matters**

*Gateway Station West.* David represented the developer of a 55-acre residential project in Newark, California, with respect to environmental review under CEQA and obtaining federal, state, and local permits.

*Dublin Ranch.* David represented the developer of a 1,715-acre master-planned community in Dublin, California, with respect to environmental review under NEPA and CEQA, determining the extent of jurisdictional wetlands and streams, and obtaining federal, state, and local permits associated with waters and wetlands, water quality, and wildlife, including federal and state endangered species.

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*Don Pedro and La Grange Hydroelectric Projects.* David represented Turlock Irrigation District and Modesto Irrigation District with respect to water quality certification by the State Water Resources Control Board of two hydroelectric projects licensed by the Federal Energy Regulatory Commission.

*Pastoria Energy Facility.* David represented an energy company on development of a 750-megawatt merchant-class generating facility in Kern County, California, helping obtain federal, state, and local permits concerning energy facility certification, waters and wetlands, air quality, and wildlife, including federal and state endangered species.

*Pleasanton Municipal Golf Course.* David represented a city in its development of a golf course in Pleasanton, California, helping determine the extent of jurisdictional waters and wetlands and obtain federal and state permits associated with waters and wetlands, water quality, and wildlife, including federal and state endangered species.

*Flying Cloud Casino.* David represented Buena Vista Rancheria of Me- Wuk Indians with respect to environmental review and approval of a gaming facility on tribal lands and associated improvements on adjoining lands in Amador County, California.

*Listing of Endangered Species and Designation of Critical Habitat.* David represented landowners and trade organizations with respect to various federal and state proposals to list species as endangered or threatened or designate lands as critical habitat.

*Elk Grove Town Center.* David represented General Properties, developer of a 295-acre regional shopping mall, commercial, and residential project in Elk Grove, California, regarding environmental review under CEQA and NEPA, and obtaining federal, state, and local permits, including those associated with waters and wetlands.

*Eldorado-Ivanpah Transmission Project.* David represented BrightSource Energy and First Solar in Public Utilities Commission proceedings on environmental review and approval of an electric transmission project designed to connect renewable energy projects.

*Vaca Valley Business Park.* David represented Chevron Land and Development Company regarding development of a 450-acre business park in Vacaville, California, including environmental review under NEPA and CEQA and obtaining federal, state, and local permits associated with waters and wetlands, water quality, and wildlife, including federal and state endangered species.

*Ladera Project.* David represented Rancho Mission Viejo on a 2,390-acre master-planned community in Orange County, California, with respect to obtaining federal, state, and local permits associated with waters and wetlands, water quality, and wildlife, including federal and state endangered species.

*Solar Evaporation Ponds Expansion Project.* David represented a mineral mining firm with respect to a 30,000-acre expansion of a solar evaporation mining operation on the Great Salt Lake in Utah, including review and approval by the Corps of Engineers.

*East Cypress Corridor Project.* David represented KB Home and DR Horton, developers of a 1,255-acre master-planned community in Oakley, California, with respect to environmental review under NEPA and CEQA and obtaining federal, state, and local permits associated with waters and wetlands, water quality, water supply, and wildlife, including federal and state endangered species.

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### Professional Activities & Memberships

Member, Board of Directors, Center for Natural Lands Management (2004-2019)

Member, Board of Directors, Bay Planning Coalition (2012-present); Alternate Member, Board of Directors, (1982-2012); Chairman, Board of Directors (2012-2014); Chairman, Wetland and Endangered Species Committee (1989-2006)

Member, Advisory Board, California Land Use Law and Policy Reporter (1992-2011)

Member, Editorial Board, California Land Use Law and Policy Reporter (2011-2018)

Member, Advisory Board, California Environmental Law and Regulatory Reporter (1991)

Member, Legal Action Committee, California Building Industry Association (2013-present)

Member, Environmental Issues Committee, Legal Action Committee, and Water Quality Task Force, California Building Industry Association (1993-2005)

Member, American Bar Association, Section on Natural Resources, Energy, and Environmental Law (1983-present)

Member, American Agricultural Law Association (2018-present)

President, San Francisco Chapter, International Network of Boutique Law Firms (2014-2018)

### Selected Publications

“Are ‘Wetlands’ Really ‘Waters of the State’?,” *California Water Law and Policy Reporter*, Vol. 31, No. 4, January 2021

“Defining ‘The Waters’ Congress Intended the Clean Water Act to Regulate: Does Justice Kennedy’s ‘Significant Nexus’ Notion Hold Water?” *California Land Use Law & Policy Reporter*, Vol. 26, No. 9, June 2017

“The U.S. Supreme Court Holds that Landowners Can Sue the Army Corps of Engineers to Challenge Its Jurisdictional Determinations under the Clean Water Act,” *California Land Use Law & Policy Reporter*, Vol. 25, No. 10, July 2016

“Over the Top (of the Banks)—California Department of Fish and Wildlife and Its Claims of Expanded Streambed Jurisdiction,” *California Land Use Law & Policy Reporter*, Vol. 25, No. 1, October 2015

“EPA and the Corps of Engineers Propose a Rule Defining—and Expanding—the Scope of their Regulatory Jurisdiction over Waters and Wetlands,” *California Land Use Law & Policy Reporter*, Vol. 3, No. 9, June 2014

“Conservation Easements,” *Environmental Law News*, Vol. 22, No. 2, Environmental Law Section, and *California Real Property Journal*, Vol. 31, No. 3, Real Property Law Section, State Bar of California (Fall 2013)

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“Renewable Energy: Streamlining Review Under NEPA and the ESA,” *TRENDS*, Vol. 42, No. 2, ABA Section of Environment, Energy and Resources (November/December 2010)

“The Supreme Court Draws a Line,” *National Wetlands Newsletter*, Environmental Law Institute (Mar.-Apr. 2001)

“Environmental Quality – Endangered Species,” *The California Municipal Law Handbook*, League of California Cities (1997)

“Digging Is Not Dumping: Federal Court Invalidates Regulations Restricting Excavation in Wetlands,” *Environmental Law News* (Environmental Law Section of State Bar of California) (winter 1996)

“Babbitt v. Sweet Home Chapter of Communities: When Is Habitat Modification a Take?” *Resource* (Natural Resources Subsection of Real Property Law Section of State Bar of California) (spring 1996)

“The Endangered Species Act Prohibits Habitat Modification—Sometimes: Babbitt v. Sweet Home Chapter of Communities for a Greater Oregon,” *California Land Use Law and Policy Reporter* (July 1995)

“Wetland Policy: Federal and State Reforms Move Ahead,” *California Land Use and Policy Reporter* (Nov. & Dec. 1993)

“Listing of Species Has Broad Implications,” *Environmental Law*, San Francisco Daily Journal (May 27, 1993)

(Contributor) Kostka & Zischke, *Practice Under the California Environmental Quality Act* (CEB 1993)

“Endangered Species: On the Edge of Habitat—and the Law,” *California Land Use and Policy Reporter* (Jan. 1993)

“Guide to Wetlands Regulation,” *Land Use Forum* (CEB) (spring 1992) “Defining Wetlands—A Balance of Policy, Practicality and Science,” *Seventh Symposium on Coastal and Ocean Management*, National Oceanic and Atmospheric Administration, Long Beach, California (July 8-12, 1991)

“Other Federal Laws and Regulations Protecting Wildlife,” *Developer’s Guide to Endangered Species Regulation* (Homebuilder Press, National Association of Home Builders, 1996)

Note, “The Constitutional Right to Know,” *Hastings Constitutional Law Quarterly* (1977)

## Lectures & Presentations

“Clean Water Act: New Developments in the Trump Administration and Courts,” 23rd Annual Conference on Western Water Law, CLE International, Las Vegas, Nevada, February 8-9, 2018

“The Clean Water Act and the Scope of Federal Power,” University of Denver Water Law Review Tenth Annual Symposium, Denver, Colorado, April 7, 2017

“Update on New Critical Habitat Rules for Both Designation and Adverse Modification,” Endangered Species in California, Law Seminars International, Long Beach, California, June 2-3, 2016

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“You Mean Just Having a Water Right Isn’t Good Enough? How the ESA, Streambed Alteration Agreements, and the Clean Water Act are Curtailing the Exercise of Water Rights,” ACWA 2015 Fall Conference, Association of California Water Agencies, Indian Wells, California, December 1-4, 2015

“Conservation Easements – The Primer,” State Bar of California, Real Property Law Section Retreat, Lake Tahoe, California (May 4, 2012)

“Project Permitting: Clean Water Act, Clean Air Act, and Endangered Species Act,” Tribal Energy and the California Market Conference, Law Seminars International, Cabazon, California (June 23, 2008)

“Environmental Assessment or Environmental Impact Statement?” CLE International Third Annual NEPA Conference, San Francisco, California (Mar. 2007)

“NEPA in a Nutshell,” CLE International 13th Annual California Wetlands Conference, Sacramento, California (Jan. 2007)

“Wetlands and Endangered Species Regulation in California,” Lorman Education Services, Seminar on Zoning and Land Use in California, Redding, California (Apr. 2006)

“Federal and State Regulatory Hurdles: Water Quality, Wildlife, and Air Quality,” Lorman Education Services, Seminar on Zoning and Land Use in California, San Francisco, California (June 2004)

“Wetlands Regulation: Recent Developments,” State Bar of California, Environmental Law Section, Hot Environmental Legal Issues on the California Central Coast, Santa Barbara, California (July 2002)

“Wetlands and Wildlife Regulation: Recent Developments,” Lorman Education Services, California Zoning and Land Use Seminar, San Francisco, California (Oct. 2001)

Panelist, “Environmental Concerns in Real Estate Transactions,” online seminar, law.com (Jan-Feb. 2001)

“The Year in Review: 1999-2000 Developments in Wetlands Law,” CLE International California Wetlands Conference, San Francisco, California (Sept. 2000)

“1999 Fall Wetlands and Endangered Species Workshop,” Association of Environmental Professionals, Oakland, California (Sept. 1999)

“Update on Federal and State Endangered Species Legislation,” Conference on Recent Water Law and Policy, Water Education Foundation, San Francisco, California (July 1997)

“California Environmental Quality Act and Environmental Planning,” Course on Private Development, Business Management and Urban Planning, San Jose State University, San Jose, California (Apr. 1997)

“Federal and State Endangered Species Programs at the Crossroads,” State Bar of California, Environmental Law Section, Fifth Annual Environmental Law Institute at Yosemite, Yosemite National Park, California (Oct. 1996)

“Wetlands Update: Vernal Pools, Mitigation Banking and Other Concerns,” Conference on California Land Use Law, CLE International, Sacramento, California (June 1996)

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“Getting Water Projects Through the 404 Process,” Conference on Recent Water Law and Policy, Water Education Foundation, San Francisco, California (July 1995)

“Impact of the Endangered Species Act and Wetland Regulation: The Takings Question of the ‘90s?” Conference on Regulatory Takings: Government Regulation vs. Private Property Rights, CLE International, San Francisco, California (Mar. 1995)

“Ecosystem Management and Property Rights,” 1995 Annual Conference, California Licensed Foresters Association, Sacramento, California (Mar. 1995)

“Endangered Species: What’s New,” 20th Annual Edison Electric Institute Biologists’ Task Force Workshop, Monterey, California (Sept. 1994)

“The New Federal and State Wetlands Mitigation Banking Policies,” Wetland Mitigation Banking in California: A Statewide Conference, University of California, Davis Extension, Davis, California (July 1994)

“Wetland Policy: Federal and State Reforms,” 23rd Annual Conference on Environmental Law, American Bar Association Section on Natural Resources, Energy and Environmental Law, Keystone, Colorado (Mar. 1994)

“Balancing Development with Environmental Concerns: How to Procure Project Permits,” Conference on California Land Use Law, CLE International, San Francisco, California (Nov. 1992)

“Perspectives on Policies for Regional Growth Management,” Midyear Real Estate Forecast Conference, Center for Real Estate and Urban Economics, University of California, and California Building Industry Association, San Francisco, California (Apr. 1991)

Chair, “Seminar on Wetlands and Real Estate Development,” Urban Land Institute, Orlando, Florida (Nov. 1990)

“Wetlands Regulation,” Seminar on Realistic Real Estate: Proposition 65 and Other Emerging Trends and Issues, California Building Industry Foundation, Los Angeles, California (Jan. 1989)

“Wetlands, Vernal Pools, and Endangered Species,” Building Industry Association of Northern California, Santa Rosa, California (Dec. 1988)