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## City of Watsonville v. State Dep't. of Health Serv., 35 Cal. Rptr. 3d 216 (Cal. Ct. App. 2005)

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Thus, while the United States had no authority to extinguish water rights granted by the Decree, it possessed the power to represent the Tribe's interests in order to quantify the Tribe's water rights. Additionally, the court declined to address the Tribe's argument of an absence of privity on grounds of comity.

The court reasoned that the dismissal without prejudice of all defendants claiming only tributary rights from the Globe Equity litigation indicated the convenience of separate adjudication of the water rights to the mainstem of the River and its tributaries. The court applied the transactional test for determining the identity of claims, and found that prior claims brought by the United States on behalf of the Tribe regarding the mainstem of the River were not part of the same transaction as claims to the River's tributaries. Ultimately, the court affirmed and remanded the order of the superior court holding that the Decree had preclusive effect to any claims made by the Tribe and the United States to additional water from the mainstem of the Gila River, and that the Decree had no preclusive effect to claims made by any party to water from the Gila River's tributaries.

*Matthew Smith*

## CALIFORNIA

**City of Watsonville v. State Dep't. of Health Serv., 35 Cal. Rptr. 3d 216 (Cal. Ct. App. 2005)** (holding that state law preempted a conflicting city ordinance because the subject was of statewide concern and the state law that fully regulated the subject was reasonably related and narrowly tailored to avoid infringing on legitimate municipal interests).

California's Health and Safety Code required the City of Watsonville ("City") to fluoridate the public water system, because the City's water system had more than 10,000 service connections. Before completing the fluoridation project, the City passed Measure S, a ballot initiative that prohibited introducing any substance into the City's drinking water supply unless approved by the United States Food and Drug Administration for safety and effectiveness. Since Measure S effectively prohibited fluoridation of the City's water supply, the City stopped the fluoridation process. The California Department of Health Services ("DHS") ordered the City to fluoridate and comply with section 116410 of the Health and Safety Code. The City sought declaratory and injunctive relief from the Superior Court of Santa Cruz County, California. The trial court concluded state law preempted Measure S and the City had to follow the requirements of state law.

The City appealed to the Sixth Appellate District Court of Appeals. The court determined an actual conflict existed, because state law fully

regulates fluoridation of public water systems having more than 10,000 hookups. The legislature intended to preempt local government ordinances that prohibit fluoridation of drinking water by public water systems with 10,000 or more service connections. Measure S conflicted with state law because it regulated an area fully occupied by state law.

The court established that public health and water quality were matters of statewide concern. The cost of healthcare and the protection and maintenance of dental health of Californians of all ages and the cost of healthcare were also statewide concerns. Similarly, water quality was a statewide concern because DHS developed comprehensive drinking water standards, including standards for fluoride. The legislature dictated that statewide standards were set and local health officers were to enforce, not create, the standards. Since the legislature implemented the fluoridation of public water systems to improve the dental health of all citizens, the fluoridation project was a statewide concern.

The court determined the state law was reasonably related to the identified state concern and narrowly tailored. The state's water fluoridation law promoted public health by protecting and maintaining dental health and insured the quality of the state's drinking water. The court concluded that the state law did not have any significant effect on other municipal affairs. Therefore, state law preempted Measure S. Accordingly, the court affirmed the trial court's judgment that Measure S was void and without effect.

*Tomi L. Hanson*

**Benicia Harbor Corp. v. City of Benicia, No. A108725, 2006 Cal. App. Unpub. LEXIS 1162 (Cal. Ct. App. Feb. 8, 2006)** (holding that the California Environmental Quality Act required a party contesting a certified environmental impact report to exhaust its administrative remedies first and that the environmental impact report did comply with the California Environmental Quality Act).

Benicia Harbor Corporation ("Benicia Harbor") appealed the decision of the Solano County Superior Court denying their petition for a writ of mandate. On appeal, Benicia Harbor argued that the certified environmental impact report ("EIR") pertaining to the City of Benicia's ("City") Marina Area Storm Drainage Project ("Project") violated the California Environmental Quality Act ("CEQA") on several grounds, and that the City inadequately responded to the questions raised by Benicia Harbor during the public comment period. The Project proposed to replace the existing storm drain facility in the marina where Benicia Harbor is located because it no longer functioned properly, causing occasional localized flooding.

On appeal, Benicia Harbor specifically argued three reasons for the deficiency of the EIR. First, the EIR allegedly did not contain an