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LITIGATION AND EMERGING CONTAMINATION

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ABSTRACT: Water supplies have been increasingly impacted by emerging contamination, causing great concern among water entities and other parties relying on those impacted sources for beneficial use. Federal and State regulators have been limited in their ability to aggressively pursue enforcement action in light of limited financial and technological resources to force the polluters to abate and control the spread of contamination. Amidst increasing demand and growing populations, water purveyors have grown increasingly concerned about this absence of aggressive enforcement, as the potential loss of groundwater supplies to emerging contamination threatens to exacerbate the scarcity of available water resources.

Several water purveyors responded to the threat posed by emerging contaminants by proactively investigating the extent of the contamination, identifying the likely sources of contamination, and developing a plan to remediate the contaminant plumes. However, because it may cost many millions of dollars to implement abatement and clean-up plans, in many instances, the only viable means to implement those plans involved the pursuit of cost recovery actions against the polluters.

Through the use of litigation, regulatory agency pressure, and the use of government funds, water entities have employed a variety of mechanisms to address emerging contamination in their water supplies. By actively pursuing these polluters to contribute to the clean-up costs, these agencies have obtained funds necessary to abate the contamination and restore adversely impacted water sources to beneficial use. This presentation will address examples where water suppliers were able to use litigation to address risks posed by emerging contaminants.

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