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**WESTCAS 2015 Fall Conference**  
*Tucson, AZ, October 28 – 30, 2015*

# **Legal Updates**

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# Overview

1. *Bear Valley Mutual Water Co. v. Sally Jewell*
2. *Coyote Lake v. City of Lubbock*
3. *Agua Caliente Update*
4. Water Quality cases
  - *EDC v. EPA*
  - *Waterkeepers v. EPA*
5. Water Transfers Rule
  - *ONRC v USBOR*



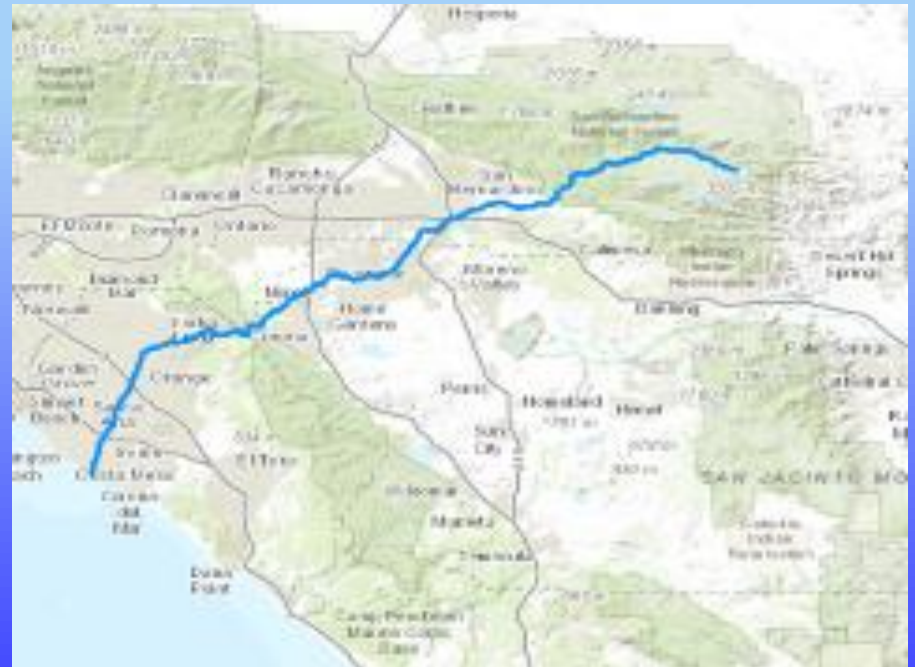
# ***Bear Valley Mutual Water Co. v. Sally Jewell (DOI) et al.***

- Case number: 790 F.3d 977 (9th Cir. 2015).
- Background – The Santa Ana Sucker case
- 9<sup>th</sup> Circuit decision – June 25, 2015
  - Pet for Cert  
Sept 22, '15



# ***Bear Valley Mutual Water Co. v. Sally Jewell et al.***

- Petition for a writ of certiorari to the US Supreme Court filed on September 22<sup>nd</sup>
- Response due November 25, 2015



# Bear Valley - Petitioners Arguments

- Circuit split with 10<sup>th</sup> Cir – NEPA does apply
- 9<sup>th</sup> Cir not following Sup Ct precedent – stmts of statutory policy can still include enforceable, mandatory duties
  - ESA Section 2(c)(2): It is further declared to be the policy of Congress that Federal agencies **shall** cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species

# ***Coyote Lake Ranch v. City of Lubbock***

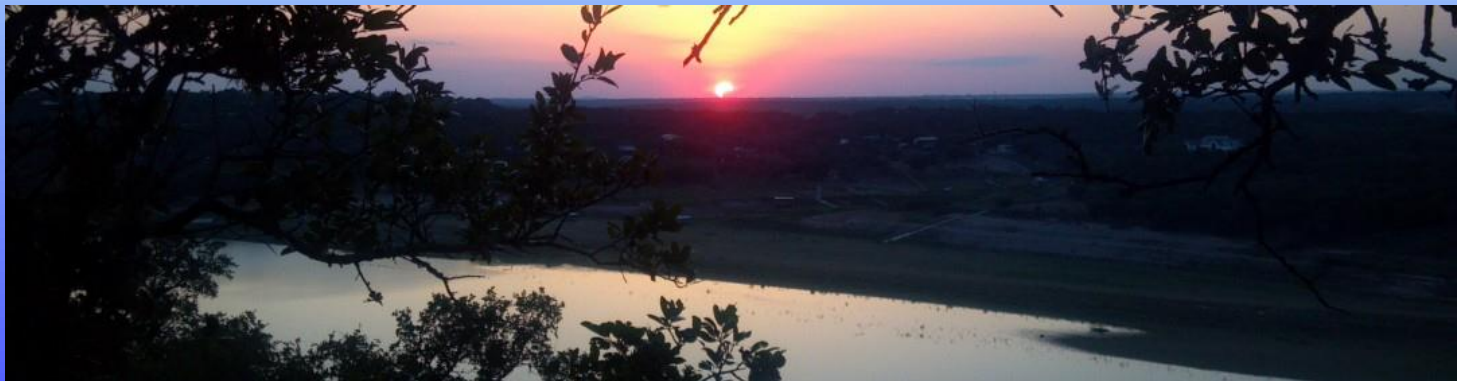
- Case number: 14-0572, in the Supreme Court of the State of Texas
- Background
- Issue: does accommodation doctrine apply to ground water?
- Accommodation doctrine – an oil & gas concept – cannot unreasonably interfere with surface if reasonable alternatives exist





# ***Coyote Lake Ranch v. City of Lubbock***

- Texas Supreme Court heard oral arguments on October 14<sup>th</sup>
- Importance of this case



# ***Agua Caliente Band of Cahuilla Indians v. Desert Water Agency, et al***

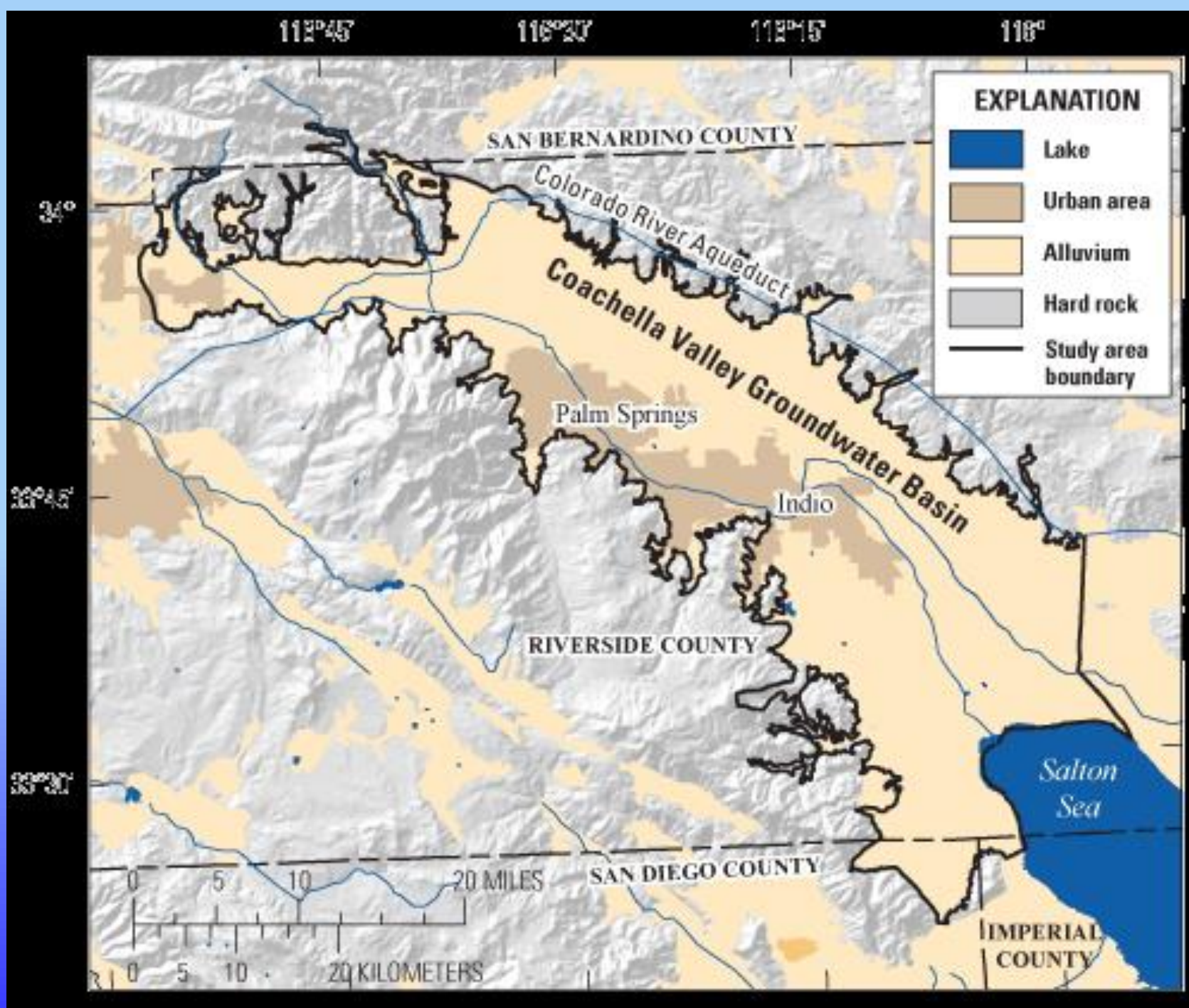
- Case number: 15-55896 in US Court of Appeal 9th Circuit
- History of case
- District Court found *Winters* Doctrine applies to groundwater
- Certified its order for appeal





# ***Agua Caliente Band of Cahuilla Indians v. Desert Water Agency, et al***

- Latest Developments
  - On October 9 Water Agencies filed brief with the 9<sup>th</sup> Circuit
  - Argues that Tribe does not need groundwater because already granted surface water in the federal reservation.
  - Water needs limited to primary purposes - domestic, stockwatering, power, irrigation – satisfied by surface water
  - Conflicts with state groundwater law



# Water Quality – some cases of interest

- *Environmental Defense Center v. EPA* - Phase II MS4 settlement – Aug.'15
  - EPA must revise small community urban runoff rules by Nov. '16
  - EPA must decide if forest road runoff regulation necessary, by May '16





# Water Quality

- *Waterkeeper Alliance Inc., v. EPA*, 15-2091 (2nd Circuit 2015)
  - Challenge to EPA's Industrial Stormwater Permit, formally known as the Multi Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP)



# Water Transfers Rule

- *Oregon Natural Resources Center Action v. Bureau of Reclamation*, 798 F.3d 933 (9th Cir. 2015)
  - Ct. of Apps decision Aug. 21, '15: BOR did not need discharge permit b/c water bodies involved in the transfer were not “meaningfully distinct.”
  - Avoided analyzing case under EPA’s Water Transfers Rule



# Questions?

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