WESTCAS 2015 Fall Conference
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Legal Updates

by Scott Miller, Esq.
miller@waterlaw.com
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
- 9th 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 22nd
- Response due November 25, 2015
Bear Valley - Petitioners Arguments

• Circuit split with 10th Cir – NEPA does apply
• 9th 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 14th
- Importance of this case

- 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

• Latest Developments
  – On October 9 Water Agencies filed brief with the 9th 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?

Scott Miller, Esq.
Patrick, Miller & Noto P.C.
miller@waterlaw.com

(970) 920-1030