



Westcas 2015 Annual Conference
San Diego, CA, June 17 – 19, 2015

Recent Western Water Legal Issues

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Overview

1. Drought
2. Colorado River
3. Endangered Species Act
4. Groundwater depletions
5. Tribal groundwater claims
6. Indian reserved rights
7. Other

U.S. Drought Monitor West

June 9, 2015

(Released Thursday, Jun. 11, 2015)

Valid 8 a.m. EDT

Drought Conditions (Percent Area)

	None	D0-D4	D1-D4	D2-D4	D3-D4	D4
Current	26.12	73.88	55.26	34.69	17.52	7.78
Last Week 6/2/2015	25.23	74.77	56.98	35.92	17.99	7.94
3 Months Ago 3/10/2015	29.72	70.28	59.80	29.93	16.62	7.04
Start of Calendar Year 12/30/2014	34.76	65.24	54.48	33.50	18.68	5.40
Start of Water Year 9/30/2014	31.48	68.52	55.57	35.65	19.95	8.90
One Year Ago 6/10/2014	30.93	69.07	60.11	47.10	20.35	4.28

Intensity:

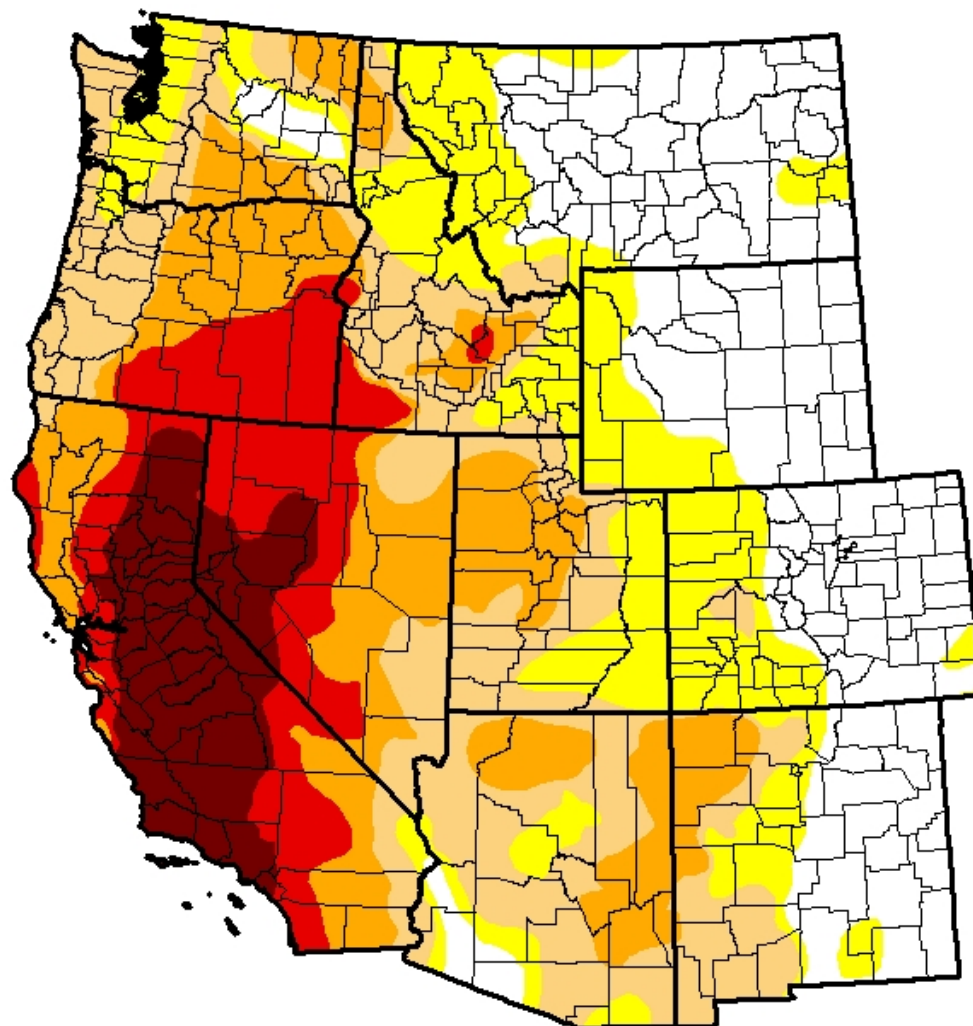
 D0 Abnormally Dry	 D3 Extreme Drought
 D1 Moderate Drought	 D4 Exceptional Drought
 D2 Severe Drought	

The Drought Monitor focuses on broad-scale conditions. Local conditions may vary. See accompanying text summary for forecast statements.

Author:

David Miskus

NOAA/NWS/NCEP/CPC

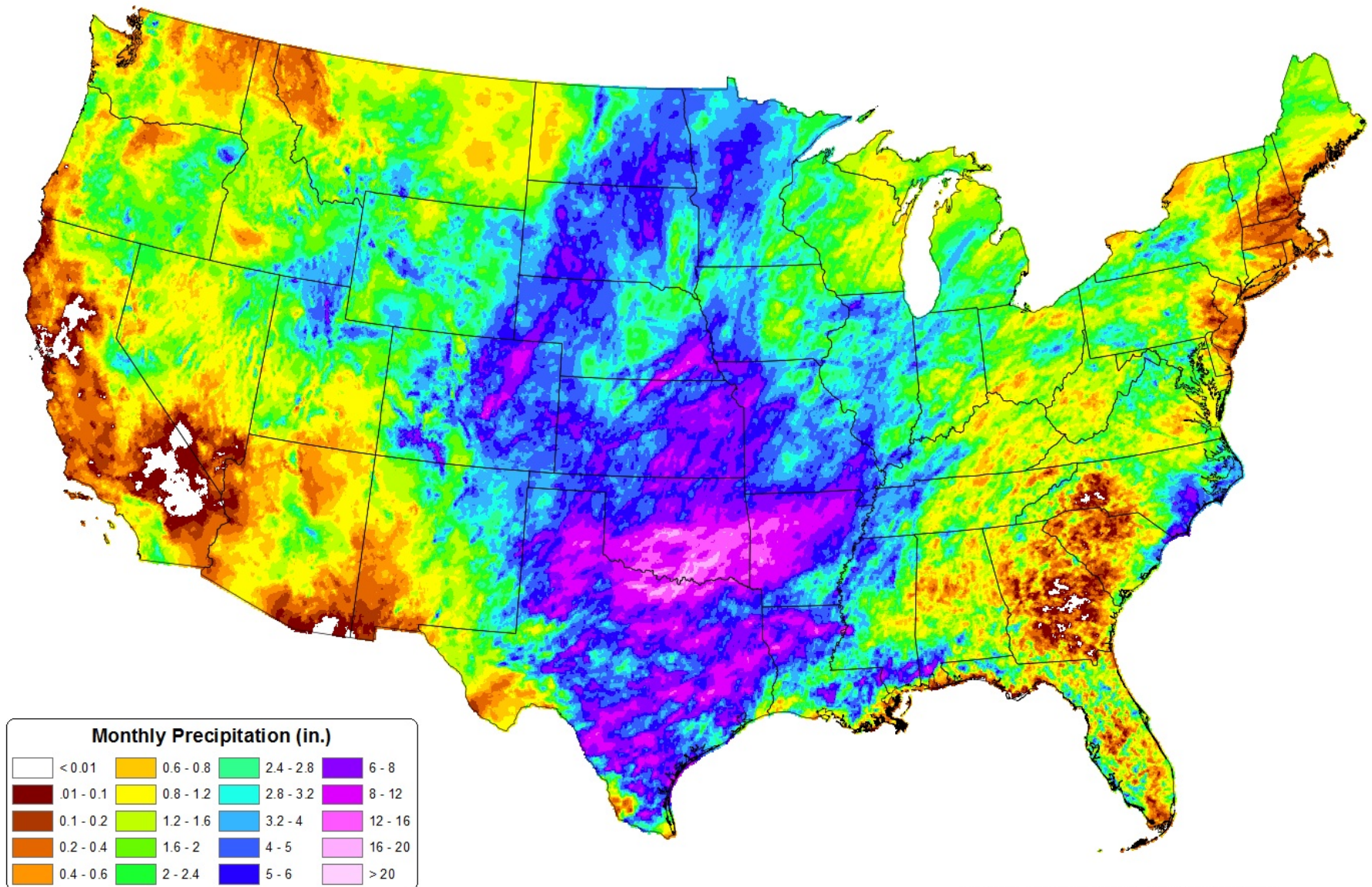


<http://droughtmonitor.unl.edu/>

Total Precipitation: 01 May 2015 - 21 May 2015

Period ending 7 AM EST 21 May 2015

(Map created 22 May 2015)





Drought in the West

- Lake Mead has hit a record low of 1,078 feet
 - 140 feet below what it was 15 years ago
- California and Nevada, in particular, hit hardest
 - Curtailment down to all but the most senior rights

Drought

- Solutions?
 - E.g., DOI's WaterSMART Program
- Money for implementing changes?
 - Federal contributions
 - Obama Drought Federal Aid Package



TCEQ v. Texas Farm Bureau 2015 WL 1544586 (Apr. 2, '15)

- Texas Court of Appeals ruled that TCEQ Drought Rules which purported to exempt municipal domestic and power purposes from normal priority administration, are invalid.

TCEQ v. Texas Farm Bureau 2015 WL 1544586 (Apr. 2, '15)

- Current status: Motion for extension of time to appeal granted on May 13, 2015

The Colorado River

- Moving Forward Phase I Report
- Pilot System Conservation Program



The Colorado River

- American Rivers designation



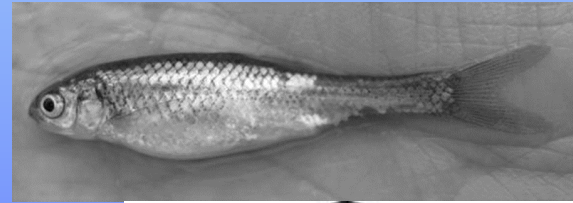
Endangered Species Act Interplay in times of Drought

- Conflicts between protection of endangered species and beneficial use of federal project water



Wild Earth Guardians v. Bureau of Reclamation, et al.

- Complaint for Declaratory and Injunctive Relief filed on July 24, 2014
- Rio Grande Silvery Minnow v. Keys
- Alleges that the Defendants have failed to use their mandated discretion (through water storage, releases, and diversions) to protect endangered species



Groundwater Depletions: Texas v. New Mexico and Colorado

- Case still pending in U.S. Supreme Court
- Issue
 - Whether New Mexico is in violation of the Rio Grande Compact



Texas v. New Mexico and Colorado

- Allegations
 - Texas alleges it is being shorted water apportioned to it under the 1938 Rio Grande Compact

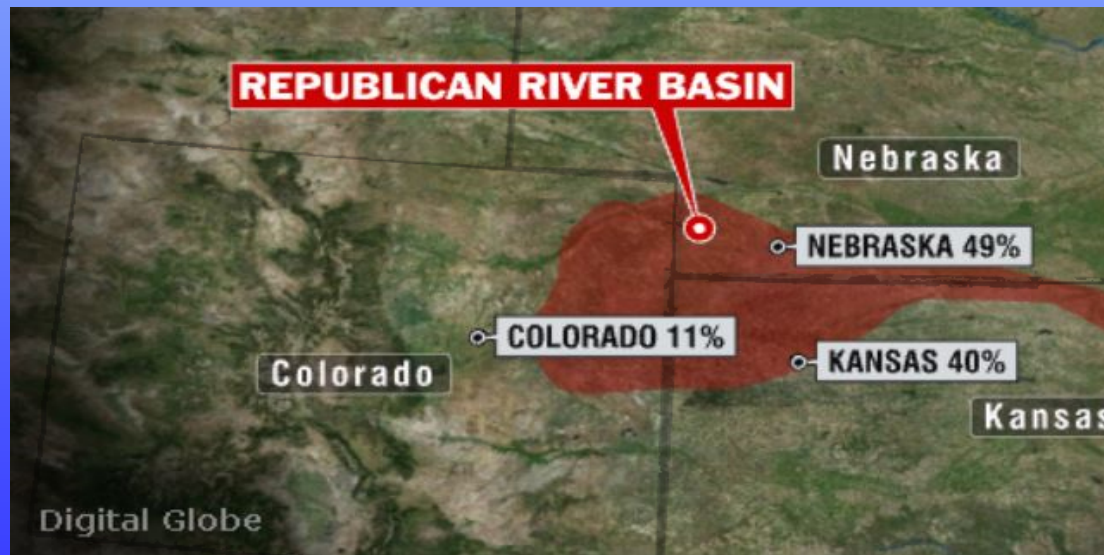


Braggs v. Edwards Aquifer Authority 421 S.W.3d 118 (2013)

- Court of Appeals of Texas (San Antonio) found that the Edwards Aquifer Authority was liable for a “taking” because it was the state agency responsible for permitting and regulating ground water withdrawals
- On May 1, 2015 the Texas Supreme Court denied petitions for review

Recent Interstate Compact Case

- Kansas v. Nebraska, 135 S.Ct. 1042 (2015).
 - Issue
 - Did Nebraska violate the 1943 Republican River Compact



Kansas v. Nebraska

- Decision March 9, 2015
 - By a 5-4 vote the US Sup Ct held Nebraska must disgorge profits; and that Court could use its equitable powers to amend “accounting procedures” going forward to no longer charge Neb. for imported water from Platte River Basin.

Montana v. Wyoming

- Special Master's Second Interim Report – December 29, 2014
- Wyoming shorted MT in only 2 years, for small amounts



Tribal Groundwater Claims

- Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District et al.
2015 WL 1600065 (C.D. Cal. Mar. 20, 2015)



Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District et al.

- Issues before the court:
 1. Whether the Tribe's federal reserved water rights include groundwater resources
 2. Whether the Tribe may assert aboriginal title to groundwater underlying its reservation

Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District et al.

- Defendants arguments
 - Federalism and comity mitigate against an extension of the *Winters* doctrine to groundwater; major impact on state control of groundwater
 - The Tribe is able to function adequately under California's groundwater law ("correlative rights") without resort to the *Winters*' doctrine.

Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District et al.

- Holding:
 - US District Court ruled that federal reserved water rights extend to groundwater, but the Tribe's aboriginal right of occupancy was extinguished long ago, therefore, the Tribe has no derivative right to groundwater on that basis.

Indian Water Rights



Hopi Tribe v. U.S., 782 F.3d 662 (2015).

- U.S. Court of Appeals Fed Circuit found a fiduciary duty could not be inferred under the *Winters* doctrine to make United States responsible for providing adequate drinking water

Random but recent case

- *Frees v. Tidd*, 14SA234 (Colo Sup Ct. - June 1, '15)
- Junior's hydropower use of senior user's water on way through ditch allowed

Questions?

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