



Legislation/Litigation Update

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Notable Federal Litigation

- **Narrative Criteria:** San Francisco v. EPA (S. Ct.) – 3/4/25, 5-4 decision that §1311(b)(1)(C) does not authorize EPA to issue NPDES permits with "end result" provisions, such as conditioning compliance on the quality of receiving waters. Determining the necessary steps to meet WQS is EPA's responsibility (in this context). This does not preclude narrative criteria that EPA and states use to require permittees to follow certain best practices
- **CWA exemptions for agricultural irrigation, 33 U.S.C. §1342(1)(1):** (California Grasslands Bypass Project) Pacific Coast Federation of Fisherman's Assn v. Conant (9th Cir.) – oral arguments held October 2024, decision pending
- **CEQ Rulemaking authority:** Marin Audubon Society v. FAA (D.C. Cir.) and Iowa v. CEQ (ND Dist. Ct.) both held that CEQ was created solely as an advisory body and that it lacks rulemaking authority (vacating an Air Tour Management Plan for national parks and the 2024 NEPA Rule—and calling into question the 2020 NEPA Rule and the 1978 NEPA Rule

Notable Federal Litigation

► Cases stayed through the Administration transition

- **2023 WOTUS Rule:** TX v. EPA (S. TX Dist. Ct.) and WV v. EPA (ND Dist. Ct.)
- **Florida assumption of CWA 404 authority:** Center for Biological Diversity v. Regan (D.C. Cir.) and Miccosukee v. EPA (S. FL Dist. Ct.)
- **2023 CWA 401 Water Quality Certification Improvement Rule:** Louisiana v. EPA (W. LA Dist. Ct.)
- **EPA preemptive veto, CWA 404:** Alaska v. United States (Federal Claims Ct.), Alaska v. EPA (AK Dist. Ct.)
- **EPA Rule re: State WQS to protect Tribal Reserved Treaty Rights** (89 FR 35717): Idaho v. EPA (ND Dist. Ct.)

Notable State Litigation

- Utah Physicians for a Healthy Environment et al. v. Utah Department of Natural Resources, et al – **Public Trust** case against Utah agencies regarding the management of water in the Great Salt Lake (MTD partially granted 3/27/25)
- Indian Wells Valley Water District (California groundwater basin adjudication, triggered by SGMA safe yield requirements) – 4/28/25 Trial scheduled for Phase I of the adjudication; will address **the federal government's reserved water rights claims to groundwater** for BLM, USFS, and DOD (China Lake)
- Arizona v. Fondomonte - Arizona's AG brought this **nuisance action** in an effort to enjoin Fondomonte (an alfalfa grower that is a subsidiary of a Saudi Arabian company) from **excessively pumping groundwater** in violation of A.R.S. § 13-2917, and to require the defendant to establish an abatement fund. Arizona alleged adverse effects on public health and safety, land subsidence, water quality degradation, a rapidly dropping water table, with anticipated damage to infrastructure and worsening groundwater shortages in the Ranengras Basin if the pumping isn't stopped

Notable Legislation 119th Congress

Extending NPDES Permit Terms up to 10 years: H.R. 2093

➤ **ESA Amendments:** H.R. 1897

➤ **Tribal settlements**

- Northern Montana Water Security Act (Ft. Belknap) (S. 241/H.R. 907)
- Northeastern Arizona Indian Water Rights Settlement Act (Navajo, Hopi, San Juan Southern Paiute) (S. 953/H.R. 2025)
- Tule River Tribe Reserved Water Rights Settlement Act (CA) (S. 689)
- Zuni Indian Tribe Water Rights Settlement Act (NM) (S. 564/H.R. 1444)
- Navajo Nation Rio San Jose Stream System Water Rights Settlement Act (H.R. 1324/S.565)
- Ohkay Owingeh Rio Chama Water Rights Settlement Act (NM) (H.R. 1323/S. 563)
- Rio San Jose and Rio Jemez Water Settlements Act (NM) (H.R. 1332/S. 562)
- Technical corrections to various settlements: Aamodt & Taos (S. 640), Crow (S. 240/H.R. 726), and Shoshone Paiute (S. 546)

➤ **Water Data:** Mesonet/Forecasting (S. 590/S. 613); Atmospheric Rivers (S. 322)

➤ **Reclamation:** Every Drop Counts (small storage reservoirs (H.R. 338); keeping IIJA funds available for technical/financial assistance for groundwater recharge, storage, and source substitution projects (H.R. 337); abandoned mine lands and waters program (H.R. 167)