



Legislation/Litigation Update

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Notable Legislation 116th Congress

- ▶ H.R. 644, Navajo Utah Water Rights Settlement
- ▶ S. 886, Reclamation Water Settlement Fund (markup July 17)
 - ▶ 10 year extension
 - ▶ Navajo Arizona and Fort Belknap extensions to complete settlements (RWSF priorities to funds)
 - ▶ Authorization for the Kickapoo NRCS studies and additional funding and an extension for the Aamodt settlement
 - ▶ \$90M cap for annual allocation in a single year for a single settlement
 - ▶ Unused NN-AZ funds allowed to be re-purposed toward the Lower Colorado River Basin Development Fund
 - ▶ Removes the litigation pre-requisite (direct-to-settlement not disincentivized), and clarifies purpose for Indian water rights settlements.
- ▶ H.R. 2800, H.R. 2741, S. 1473, H.R. 2626, H.R. 2570, S. 1372, H.R. 2533, H.R. 2377, H.R. 1976 - PFAS



Notable Litigation

- ▶ Kisor v. Wilkie – regarding Seminole/Auer deference to an agency's reasonable interpretation of its own ambiguous regulation. 19 states, (including AZ, ID, KS, NE, NV, OK, TX, UT, and WY) filed an amicus brief supporting the petition for cert. S.Ct. declined to overturn Auer, but in a 9-0 remand decision, did narrow the scope of when Auer deference is appropriate (whether regulation is truly ambiguous, whether agency has an official position and not a convenient litigation argument, and whether the issue is specifically within the agency's area of expertise.)
- ▶ Agua Caliente – Phase II Dist. Ct. decision, the tribe lacks standing because they have not demonstrated injury to use water of a sufficient quality or quantity to fulfill the purposes of the reservation, nor that the defendant water districts have interfered with the tribes' right to use the aquifer's pore spaces to store its reserved water rights. (Appeal?) Phase III – quantifying the reserved water rights

Notable Litigation

- ▶ Hawaii Wildlife Fund v. County of Maui – CWA jurisdiction over point source pollutants conveyed through non-point source groundwater; May 16 **amicus brief** of 20 states (incl. AK, ID, KS, MT, NE, OK, TX, UT, WY) – states have authority over gw, let them handle it.
- ▶ CA v. BLM – reinstate 2015 BLM Fracking Rule; CA MSJ filed June 3
- ▶ WOTUS Cases – **Texas court granted States' MSJ on APA grounds** (motions for reconsideration this Fall). Georgia court held MSJ hearings in December, North Dakota still waiting.
- ▶ TX v. NM (Rio Grande Compact) – Ongoing discovery
- ▶ Gold King Mine Cases (NM, NN, UT) – MDL pre-trial consolidation. Court dispensed with various MTDs, Answers filed, scheduling order for discovery issued June 5
- ▶ MS v. TN – cross boundary groundwater pumping, evidentiary hearing May 2019, post-hearing briefs due in August-September
- ▶ Sturgeon v. Frost (II) – NPS asserted title to Alaska river under federal reserved water rights doctrine, to assert federal regulatory authority over the bed and banks—**S.Ct. recognized that a reserved water right is usufructuary and not a title to the river**, and has nothing to do with NPS authority to ban hovercrafts.