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## United States v. Alpine Land & Reservoir Co., 174 F.3d 1007 (9th Cir. 1999)

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permits to five large municipalities in Arizona. During the notice and comment period, Defenders of Wildlife objected to the draft permits because they did not include numeric limitations to ensure compliance with the state water quality standards. The EPA revised the drafts but still did not include numeric limitations. Defenders of Wildlife were unable to obtain administrative relief within the EPA and therefore sought review in Federal Court.

The Ninth Circuit considered whether the EPA's decision to issue the permits without requiring numerical compliance with state standards was arbitrary, capricious, or an abuse of discretion. The court first looked to see if the language of the Clean Water Act governing the issuance of EPA permits was clear. Since the language was clear, the court did not need to determine if the EPA's decision was arbitrary, capricious, or an abuse of discretion. The court focused on the express language of the statute.

The statutory provision in question specifically distinguished between industrial and municipal storm-sewer discharges. The statute then stated that municipal storm-sewer discharges must be reduced to the maximum extent practicable. The court found that the provision requiring industrial storm-sewer discharges to comply with state law was intentionally left out of the provision for municipal storm-sewer discharges. This interpretation gave the EPA discretion to determine what pollution controls were necessary. The EPA determined that the best management practices were appropriate for municipal storm-sewer discharges, and actual numeric limitations were unnecessary. Thus the court denied the petition for review.

*Rebekah King*

**United States v. Alpine Land & Reservoir Co., 174 F.3d 1007 (9th Cir. 1999)** (holding that the federal court has continuing and exclusive jurisdiction to hear appeals from decisions of the Nevada State Engineer involving federally adjudicated water rights and that the federal court did not abuse its discretion by enjoining the Nevada state court proceeding).

A dispute occurred concerning the jurisdiction of the United States District Court for the District of Nevada ("Federal Court") to hear appeals concerning water rights owned by the United States Fish and Wildlife Service ("FWS") adjudicated under the Alpine and Orr Ditch Decrees ("Decrees"). The Federal Court adjudicated the original water rights of the Newlands Reclamation Project in the Decrees in the early 1900's.

On April 4, 1996, FWS filed two applications to change the place and manner of use of their water rights with the State Engineer. Churchill County ("County") filed a protest to each application. The State Engineer granted one of the applications and FWS withdrew the

other. In November, the County filed an appeal in the Third Judicial District Court of the State of Nevada ("State Court") which denied a motion by the State Engineer requesting dismissal of the appeal for lack of jurisdiction. The State Court held that it properly had jurisdiction by narrowly construing federal precedent which held that the Federal Court maintained appellate jurisdiction over State Engineer decisions involving federally decreed water rights.

On August 11, 1997, the State Engineer filed a motion in Federal Court asking it to enjoin further State Court proceedings. Meanwhile, the County filed a motion in the State Court to enjoin the federal proceedings, which the State Court granted. However, on September 17, 1997, the Federal Court issued an injunction holding that the State Court injunction enjoining the federal proceeding was void. In addition, the Federal Court held that it maintained exclusive jurisdiction over water rights issues in FWS applications.

The County appealed to the Ninth Circuit arguing that the Federal Court's jurisdiction was limited to decisions made by the State Engineer, which implicate federal interests in the operation of the Newlands Reclamation Project. In addition, the County argued that the Federal Court improperly enjoined the State Court proceeding.

The Ninth Circuit Court of Appeals held that the jurisdiction of the Federal Court over the dispute was both continuing and exclusive. In addition, it held that the Federal Court did not abuse its discretion in enjoining the State Court proceeding. The court held that the Federal Court had continuing jurisdiction based on previous consistent interpretation of the Decrees to provide for Federal Court review of decisions of the State Engineer regarding the type of application filed by FWS. In addition, the Court of Appeals previously had interpreted Nevada law to provide for Federal Court review of State Engineer decisions specifically on Federal Court decreed water rights.

In reaching its holding, the court reasoned that an arrangement permitting State Court appellate jurisdiction of a federal judgment would frustrate the purposes of the Federal Court. Additionally, the court reasoned that exclusive jurisdiction was appropriate because the jurisdiction was properly characterized as *in rem* jurisdiction. The court stated that because the Federal Court was the first to gain jurisdiction over a res, the Federal Court should maintain exclusive jurisdiction over that res. Finally, the court held that the Anti-Injunction Act ("Act") did not bar the Federal Court from enjoining the state proceeding because the Act provided an exception permitting federal courts to enjoin state proceedings "where necessary in aid of jurisdiction." The court held that the actions of the federal court fell into this exception permitting it to enjoin the State Court action.

*Julie E. Hultgren*