This morning the U.S. Supreme Court granted certiorari in two high-profile Clean Water Act cases from the Ninth Circuit Court of Appeals. The justices simultaneously denied review in a major federalism decision, also from the Ninth Circuit, involving an industry challenge to a California Air Resources Board's regulation requiring ships to use low-polluting fuels near the California coast.

I previewed all three cases in a recent post here at Legal Planet. Briefly, *Los Angeles County Flood Control Dist. v. Natural Resources Defense Council*, No. 11-460, arises out of a Ninth Circuit decision interpreting the Clean Water Act's NPDES permit requirements expansively. In its 2011 opinion, the Court of Appeals ruled that Los Angeles County must obtain permits for urban runoff that collects in channelized river systems maintained and "improved" by county flood control agencies.

Decker v. Northwest Environmental Defense Center, No. 11-338, and *Georgia-Pacific West, Inc. v. Northwest Environmental Defense Center*, No. 11-347, are consolidated petitions challenging a controversial 2010 Ninth Circuit decision. That opinion concluded that channelized stormwater runoff from logging roads that eventually flows into streams and rivers requires an NPDES permit from federal regulators under the Clean Water Act. In so ruling, the Court of Appeals held that EPA's so-called silviculture rule does not exempt such logging-related runoff from the Act's permit requirements.

An interesting footnote to these cases: the Supreme Court had requested the views of the U.S. Solicitor General as to whether certiorari should be granted in both cases. (The federal government is not a party in either.) While expressing concerns with the correctness of the Ninth Circuit decisions, the S.G. responded by recommending that the justices deny review in both cases. As reflected in today's order list, the Court disregarded the S.G.'s advice in granting certiorari in both matters.

These cases will be argued before the Supreme Court this fall, with decisions to be issued by June 2013. This brings to three the number of environmental cases currently on the Court's docket for the 2012-13 Term. (The other is a takings case from Arkansas, previously profiled on Legal Planet.)

Meanwhile, California air quality regulators are presumably breathing a sigh of relief that the justices have left standing the Ninth Circuit's 2011 decision in *Pacific Merchant Shipping Assn. v. Goldstene*. That case involved a shipping industry

challenge to a California Air Resources Board regulation requiring marine vessels to use low-sulphur fuels within 24 miles of the California coast. The Ninth Circuit rejected industry's claims that the ARB regulation is preempted by the federal Submerged Lands Act and contravenes dormant Commerce Clause principles. The Solicitor General, while acknowledging that the challenged ARB regulation "raises important and difficult questions" about the extent of federal-state authority in this area, nonetheless advised the Supreme Court to deny certiorari. In *Pacific Merchant Shipping Assn.*, unlike the two Clean Water Act cases, the justices followed the S.G.'s recommendation in denying review.