Responding to the current drought conditions confronting California, state and federal water project officials have announced cutbacks in anticipated water deliveries this summer and fall from both the Central Valley Project (CVP) and State Water Project. It's with that sobering backdrop that a recent decision from the U.S. Court of Appeals for the Ninth Circuit is particularly noteworthy.

In an important ruling involving California water rights, the Ninth Circuit has rejected the claim of a Northern California water agency that it is exempt under California water law from drought-mandated cutbacks to federal water deliveries from the CVP. In Tehama-Colusa Canal Authority v. U.S. Department of the Interior, a unanimous panel of Ninth Circuit judges spurned Tehama-Colusa's claim that California's "area of origin" laws insulate them from any such cutbacks, at the expense of other California water users.

The history of the American West is littered with disputes over diversions of water for export to other regions. But those controversies have been particularly bitter and hard-fought in California. Witness Los Angeles' importation of water from the Owens Valley in the Eastern Sierra Nevada region, a nefarious strategy that largely destroyed the Valley's environment and that was only thinly fictionalized in the classic movie, *Chinatown*. Also, John Muir's losing battle over the O'Shaughnessy Dam that flooded the Hetch Hetchy Valley in Yosemite National Park and facilitated construction of California's first peripheral canal by the City of San Francisco to transport water from Yosemite to San Francisco and its suburbs.

In an effort to prevent further such episodes, the California Legislature enacted a number of so-called "Area of Origin" laws over the course of the 20th century. Those statutes are designed to reserve for the areas of the state where water originates some sort of right to that water to serve local, future needs which is paramount to the rights of downstream areas. One such set of laws–California Water Code sections 11460-11465–was passed to alleviate concerns that the federal government's construction of the CVP in the 1930's and 40's would result in inadequate water supplies for local users.

The Tehama-Colusa Canal Authority's legal argument before the Ninth Circuit was as straightforward as it was sweeping: it conceded that droughts experienced by California in 2008 and 2009 required the U.S. Bureau of Reclamation to reduce its overall CVP water deliveries to its customers. Tehama-Colusa also acknowledged that provisions in its water supply contracts with the Bureau explicitly authorized such cutbacks in times of drought. Nevertheless, said Tehama-Colusa, California's area of origin laws require that federal operators of the CVP deliver to it full water allocation irrespective of drought conditions, and impose the resulting shortfall exclusively on *other* recipients of CVP water. (Under the

U.S. Supreme Court's landmark decision in *California v. United States*, the federal government is generally required to comply with California water rights law in its operation of the CVP.)

Rejecting this argument, the Ninth Circuit held in *Tehama-Colusa* that California's area of origin laws required no such result. The Court of Appeals noted that the relevant water rights permit was and is held by the federal government as operator of the CVP–not by Tehama-Colusa or its members. By contrast, Tehama-Colusa's "right" to CVP water is based simply on its contract with the Bureau of Reclamation. And that contract, as noted above, expressly authorizes the Bureau to impose reductions in CVP water deliveries to Tehama-Colusa when drought conditions so require. Accordingly, the Ninth Circuit concluded, Tehama-Colusa holds "no water permits issued by [the State of California] that would establish priority under" California's area of origin laws.

The decision in *Tehama-Colusa* is plainly correct as a matter of legal interpretation, and also sound public policy. A contrary ruling would have further disrupted the already-constrained water supplies of the CVP in years of less-than-normal water supplies. (Indeed, projected effects of climate change make *ongoing* water shortages the likely "new normal" both in California and many other portions of the American West.) But acceptance of Tehama-Colusa's position would also have constituted a most extreme application of California's area of origin laws–one that would have dramatically disrupted the state's water rights system in general.

A related point: it's quite remarkable, given the potential sweep of California area of origin laws, that they have generated precious few reported judicial opinions interpreting those laws' scope and application. To date, the most comprehensive treatment of those laws is found not in any decision from an appellate court but, rather, in an obscure 1955 opinion from the California Attorney General.

In retrospect, the Ninth Circuit's decision in *Tehama-Colusa* was predictable and welcome. But there will be future cases–most likely litigated in the state courts–that will test California's area of origin laws in a far less sweeping and radical fashion than that urged by the unsuccessful Tehama-Colusa Canal Authority. As more and more Californians fight over a steadily shrinking supply of water, the state's area of origin laws are likely to play an increasingly prominent role in charting the Golden State's water future.