

American Water Resources Association
2009 SUMMER SPECIALTY CONFERENCE
Adaptive Management of Water Resources II
June 29 – July 1, 2009
Snowbird, UT

Wednesday, July 1

1:30 PM – 3:00 PM

SESSION 38: Panel – Adaptive Management Enters Uncharted Waters: Recent Developments in the Law of Water Quality Trading, Offsets and TMDLs

Panel Participants:

Moderator – Wendy Bowden Crowther,
Clyde Snow and Session PC, Salt Lake City, UT

Jeremy N. Jungreis, Marine Corps Base, Camp Pendleton, CA
Lisa a. Kirschner, Parsons Behle and Latimer, Salt Lake City, UT
David Aladjem, Downey Brand, Sacramento, CA

This law and policy panel will discuss the implications of the Ninth Circuit's decision in *Friends of Pinto Creek v. EPA*--a case which essentially holds that new discharges are prohibited in "impaired" waterbodies until such time as the proposed discharger can demonstrate that all water quality standards will be met after development of a TMDL and commencement of the new discharge. Of potentially great concern to many water resource managers, the court in *Pinto Creek*, unlike previous state court decisions, disapproved EPA's proposed use of adaptive management to achieve TMDL targets over time--instead requiring that new dischargers demonstrate prospective attainment, notwithstanding that great uncertainty as to the receiving water's assimilative capacity remained. New and existing discharges in "impaired" watersheds that are supported by offsets/water quality trading often require adaptive management to ascertain the exact BMP/treatment technology combination that will reduce loading sufficiently to meet water quality standards. *Pinto Creek* and other recent regulatory developments raise not only water quality issues associated with adaptive management, but water resource/quantity implications as well. Water reuse projects may very well be frustrated under today's prevailing law and regulatory regimes--thereby keeping water that would otherwise augment and improve existing supplies out of the watershed and unavailable for beneficial use.