



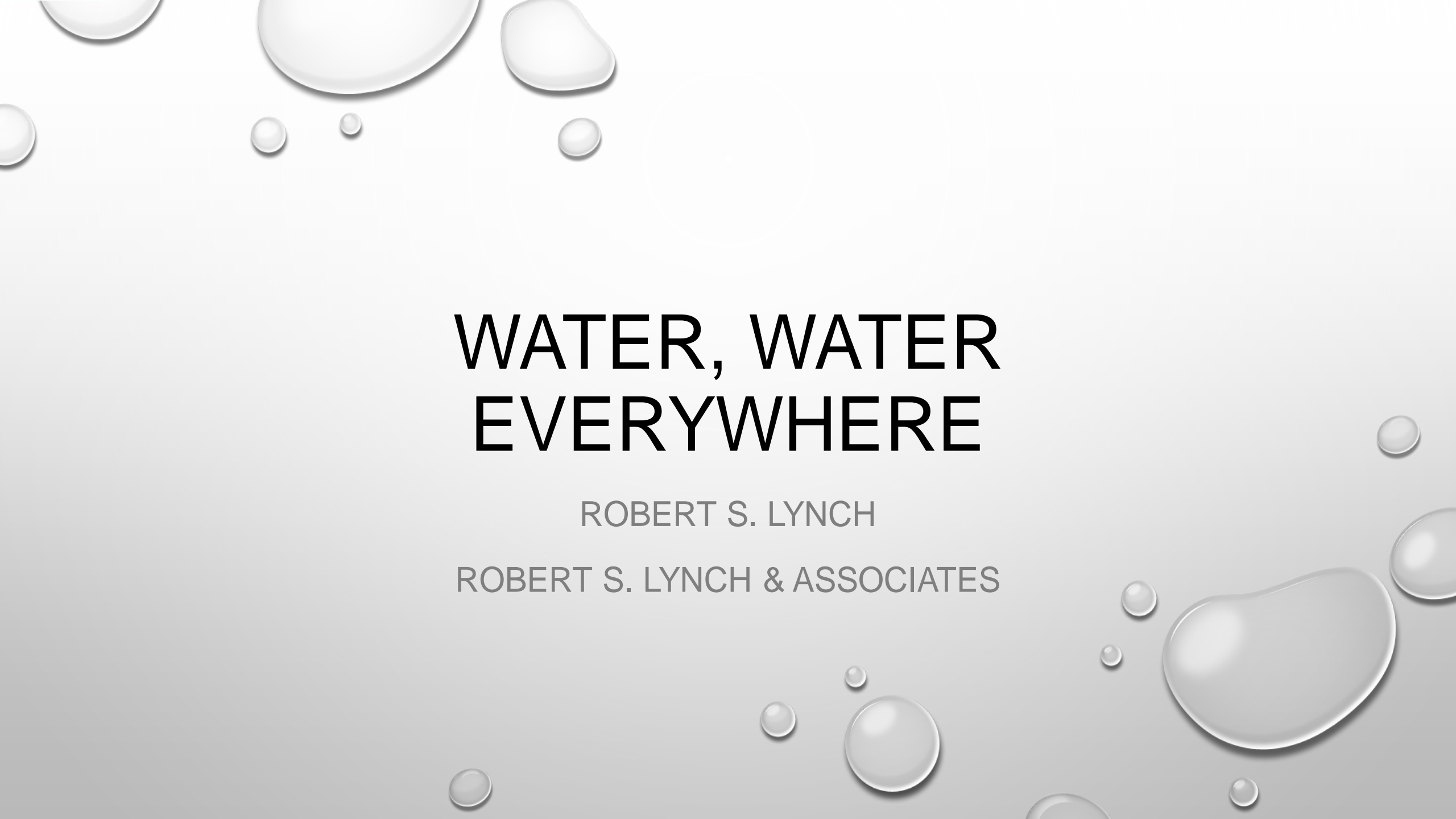
Legal & Regulatory Conference

IN PARTNERSHIP WITH

GRIDLIANCE

A background image showing a group of people in a professional setting, likely a conference. The image is partially obscured by a blue overlay. In the foreground, a man in a dark suit is seen from the side, looking towards a woman with long blonde hair who is speaking. Other people are visible in the background, slightly out of focus.

Examine Together

The background of the entire page is a light gray gradient. Scattered across this background are numerous water droplets of various sizes. Some are large and prominent, while others are small and subtle. The droplets have a realistic, three-dimensional appearance with highlights and shadows, suggesting they are on a smooth surface.


WATER, WATER EVERYWHERE

ROBERT S. LYNCH

ROBERT S. LYNCH & ASSOCIATES



WHY SHOULD YOU CARE?

- POWER PLANT WATER SUPPLIES
 - FINDING POWER FOR WATER
 - HYDROPOWER YOU HAVE OR WANT
- 

WHAT'S CHANGING

- INTERSTATE GROUNDWATER LAW

- *KANSAS V. NEBRASKA AND COLORADO*, 574 U.S. _____, 135 S.C.T. 1042 (2015)
 - PUMP AND PAY
- *MISSISSIPPI V. TENNESSEE*, NO. 143 ORIGINAL
 - WHOSE GROUNDWATER IS IT?
 - EQUITABLE APPORTIONMENT OR NOT

- INTRASTATE GROUNDWATER LAW

- *SILVER, ET AL. V. PUEBLO DEL SOL WATER CO., ET AL.*; NO. CV-16-0294-PR (ARIZ. AUGUST 9, 2018)
 - UNQUANTIFIED FEDERAL RIGHTS DON'T COUNT
- *DAVIS V. AGUA SIERRA RES.; L.L.C.*, 220 ARIZ. 108, 110, ¶ 10, 203, P3d 506, 509, ¶ 10 (2009)
 - A USUFRUCT IS NOT A PROPERTY RIGHT

- INTERSTATE SURFACE WATER LAW

- *TEXAS V. NEW MEXICO*, NO. 141, ORIGINAL
 - UNIQUE AUTHORITY TO MOLD ORIGINAL ACTIONS
- *FLORIDA V. GEORGIA*, NO. 142, ORIGINAL
 - OYSTER RIGHTS?

WHAT'S CHANGING (CONTINUED)

- THE CLEAN WATER ACT

- WELLS: *HAWAII WILDFIRE FUND V. COUNTY OF MAUI*, 881 F.3d 754 (9TH CIR. 2018), PET. FOR CERT. PENDING
 - “FAIRLY TRACEABLE”
- UNDERGROUND PIPE: *UPSTATE FOREVER V. KINDER MORGAN*, 887 F.3d 637, (4TH CIR. 2018), PETITION DOCKETED NO. 18-268 (SEPTEMBER 4, 2018)
- COOLING TOWERS: *COOLING WATER INTAKE STRUCTURE COALITION V. EPA*, NO. 14-4645 (2ND CIR. JULY 23, 2018)
 - SITE SPECIFIC 316(b) APPLICATION
- WATER TRANSFERS: *STATE OF NEW YORK V. EPA*, 846 F.3d 492 (2ND CIR. 2017), CERT. DEN. FEBRUARY 26, 2108
- “SPIRITUALLY PURE” WATER: *STANDING ROCK SIOUX TRIBE V. ARMY CORPS OF ENGINEERS*, 205 F.SUPP. 3d 4 (D.D.C. 2016)
- SECTION 401 CERTIFICATION: *S.D. WARREN CO. V. MAINE BOARD OF ENVIRONMENTAL PROTECTION*, 547 U.S. 370 (2006)

WHAT'S CHANGING (CONTINUED)

- DIRECT HYDROLOGIC CONNECTION
 - *SIERRA CLUB V. VIRGINIA ELECTRIC POWER COMPANY*, NO. 17-1895, _____ F.3d _____, (4TH CIR. SEPTEMBER 12, 2018)
 - DIFFUSED PERCOLATION NOT A POINT SOURCE OR A CONVEYANCE
 - KENTUCKY WATERWAYS ALLIANCE; *SIERRA CLUB V. KENTUCKY UTILITIES COMPANY*, NO. 18-5115, 2018 WL 4559315 _____ F.3d _____ (6TH CIR. SEPTEMBER 24, 2018)
 - REJECTING POINT SOURCE AND HYDROLOGIC CONNECTION THEORIES VIZ COAL ASH PONDS
 - TENNESSEE CLEAN WATER NETWORK; *TENNESSEE SCENIC RIVERS ASSOCIATION V. TENNESSEE VALLEY AUTHORITY*, NO. 17-6155, 2018 WL 4559103, _____ F.3d _____, (6TH CIR. SEPTEMBER 24, 2018)
 - REJECTING HYDROLOGIC CONNECTION THEORY
 - EPA PROPOSED DIRECT HYDROLOGIC CONNECTION RULE, 83 FED. REG. 7126 (FEBRUARY 20, 2018)

WHAT'S CHANGING (CONTINUED)

- WOTUS
 - STATE OF GEORGIA, ET AL. V. WHEELER, ET AL., CASE NO. 2:15-CV-79, S.D. GEORGIA (MOTION TO AMEND PRELIMINARY INJUNCTION - SEPTEMBER 26, 2018)
- WHEN IS A CONTRACT NOT A CONTRACT?
 - KLAMATH IRRIGATION DISTRICT V. UNITED STATES, NO. 2007-5115, FEDERAL CIRCUIT – CERTIFICATION ORDER JULY 16, 2018

WHAT ELSE IS CHANGING THE WINTERS DOCTRINE

- A SUPREME COURT-MADE DOCTRINE

- WINTERS V. UNITED STATES, 207 U.S. 564 (1908)
- ARIZONA V. CALIFORNIA, 373 U.S. 546 (1963)
- CAPPART V. UNITED STATES, 426 U.S. 128 (1976)
- UNITED STATES V. NEW MEXICO, 438 U.S. 696 (1978)

- UNANSWERED QUESTIONS

- WHAT IS “NECESSARY”?
- RESERVATION PURPOSE(S)
- WATER QUALITY COMPONENT - *HOPI TRIBE V. UNITED STATES*, 782 F.3d 662 (FED. CIR. 2015)
 - FIDUCIARY DUTY?
- PORE SPACE/VADOSE ZONE “OWNERSHIP”
- AS PROPERTY?
- AS A HUMAN RIGHT?

WHAT ELSE IS CHANGING THE WINTERS DOCTRINE (CONTINUED)

- OTHER COURTS ANSWERS

- *AGUA CALIENTE BAND OF CAHUILLA INDIANS V. COACHELLA VALLEY WATER DISTRICT*, 849 F.3d 1262 (9TH CIR. 2017), CERT. DEN. NOVEMBER 27, 2017
 - WINTERS DOCTRINE APPLIES TO GROUNDWATER
- *STURGEON V. FROST*, NO. 17-494, CERT. GRANTED JUNE 18, 2018, ORAL ARGUMENT NOVEMBER 5, 2018
 - WINTERS DOCTRINE V. HOVERCRAFT
- *IN RE GEN. ADJUDICATION OF ALL RIGHTS TO USE WATER IN GILA RIVER SYS. & SOURCE (GILA III)*, 195 ARIZ. 411, 415, ¶ 7, N. 3, 989, P.2d 739, 743, ¶ 7, N. 3 (1999)
 - WINTERS DOCTRINE APPLIES TO GROUNDWATER

WHAT NOW?

- IT'S OBVIOUS – MONITOR THE CASES
- REREAD YOUR CONTRACTS
- ASSESS THE THREAT
- ENGAGE WHERE NECESSARY

The background is a light gray gradient with several realistic water droplets of various sizes scattered across it. The droplets have highlights and shadows, giving them a three-dimensional appearance. They are located in the top-left, bottom-left, and bottom-right areas of the frame.

THANK YOU!