



# Welcome



***Cathy Green***  
*Chair of WACO*  
*1<sup>st</sup> Vice President*  
*Orange County Water District*



# WACO Meeting – September 9, 2022

Thank you for joining today's meeting.  
Participants will be muted.

To ask a question:

- Please raise your hand
- Use the chat box (to: Heather - Host)
- Press \*9 to raise hand on phone







I pledge allegiance to the flag  
of the United States of  
America, and to the republic  
for which it stands, one nation  
under God, indivisible, with  
liberty and justice for all.



# WEROC Report



***Vicki Osborn***  
*Director of Emergency  
Management  
WEROC/MWDOC*



# MET Report



***Linda Ackerman***  
*Director, Metropolitan Water District  
of Southern California*



# ACWA Report

- AB 2142 (Gabriel)
- SB 1157 (Hertzberg)
- SB 222 (Dodd)
- State budget for 2022- 2023
- ‘Quench California’ public education campaign
- Legislative proposals
- Upcoming events



***Cathy Green***

*Vice President, ACWA  
1st Vice President, OCWD*





# Program Speaker



**David D. Boyer**

Partner

Atkinson, Andelson, Loya, Ruud  
& Romo





# ***West Virginia v. Environmental Protection Agency - Court's Decision and Implications***

September 9, 2022

---

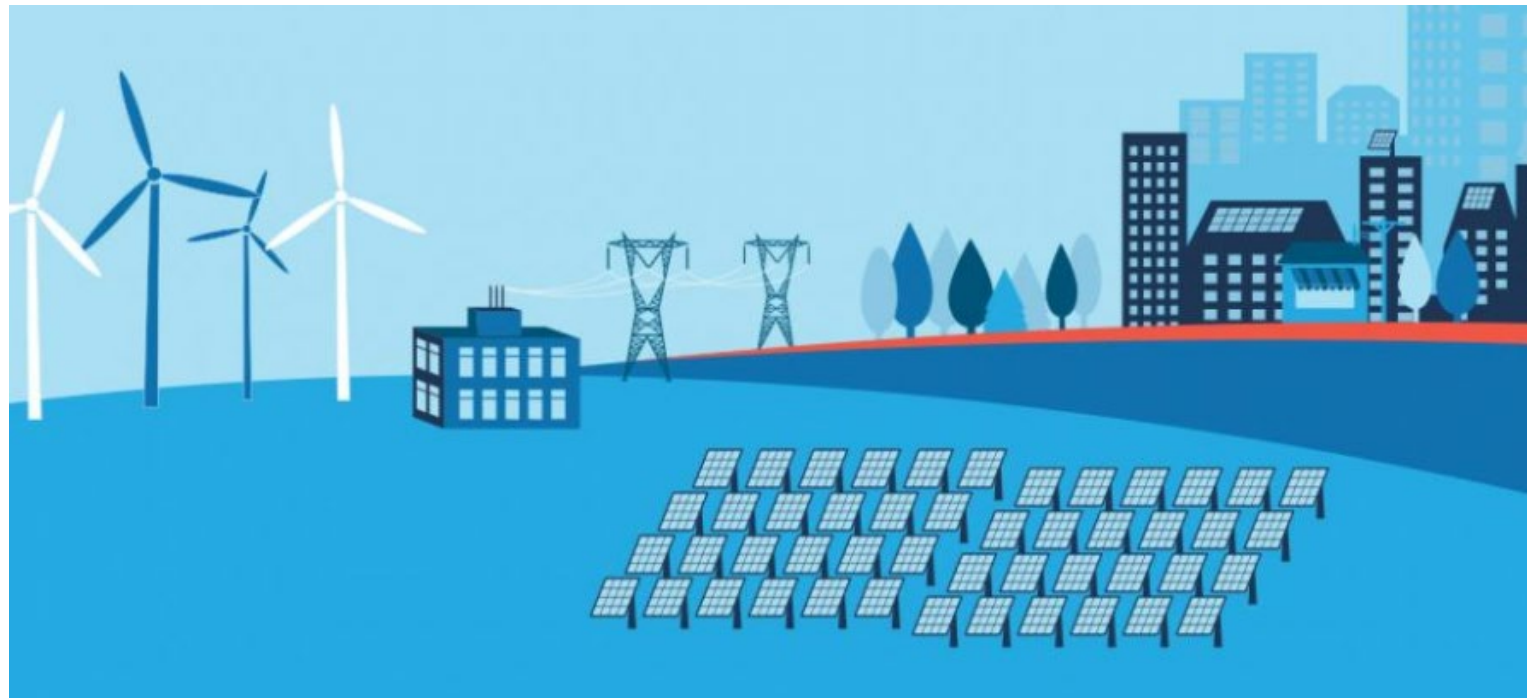
PRESENTED BY:  
Dave Boyer, Partner





# Introduction

- U.S. Supreme Court invalidated EPA's Clean Power Plan
- First comprehensive articulation of "Major Question Doctrine"
- Did not reject Chevron deference



# Introduction

- Could constrain climate change in agency decisions
- Relied upon by future litigants
- 6-3 Decision
  - Chief Justice Roberts - Majority Opinion
  - Justice Gorsuch - Concurring Opinion
  - Justice Kagan - Dissent





# Presentation Overview

- Legal Background
- Decision - Factual Background
- Decision - Majority, Concurring and Dissenting Opinions
- Impact - Nationally and Locally

# Legal Background

- Chevron Doctrine
- Major Question Doctrine
- Clean Air Act





# Decision - Factual Background

- Three Main Regulatory Programs
  - National Ambient Air Quality Standards (NAAQS) Program
  - Hazardous Air Pollutants (HAP) Program
  - New Source Performance Standards Program



# Decision - Factual Background

- October 2015 - Two New Rules re: Carbon Dioxide
  - First Rule - New power plants
  - Second Rule - Existing power plants





# Decision - Factual Background

- Generation Shifting-Three Ways
  - Reduce plants electricity production
  - Build new facility or invest in another facility
  - Cap and trade regime



# Decision - Factual Background

- Clean Power Plan never goes into effect
  - U.S. Supreme Court stays plan
  - DC Circuit hears oral argument
  - EPA repeals rule
  - DC Circuit rules
  - US Supreme Court granted certiorari



# Decision - Majority

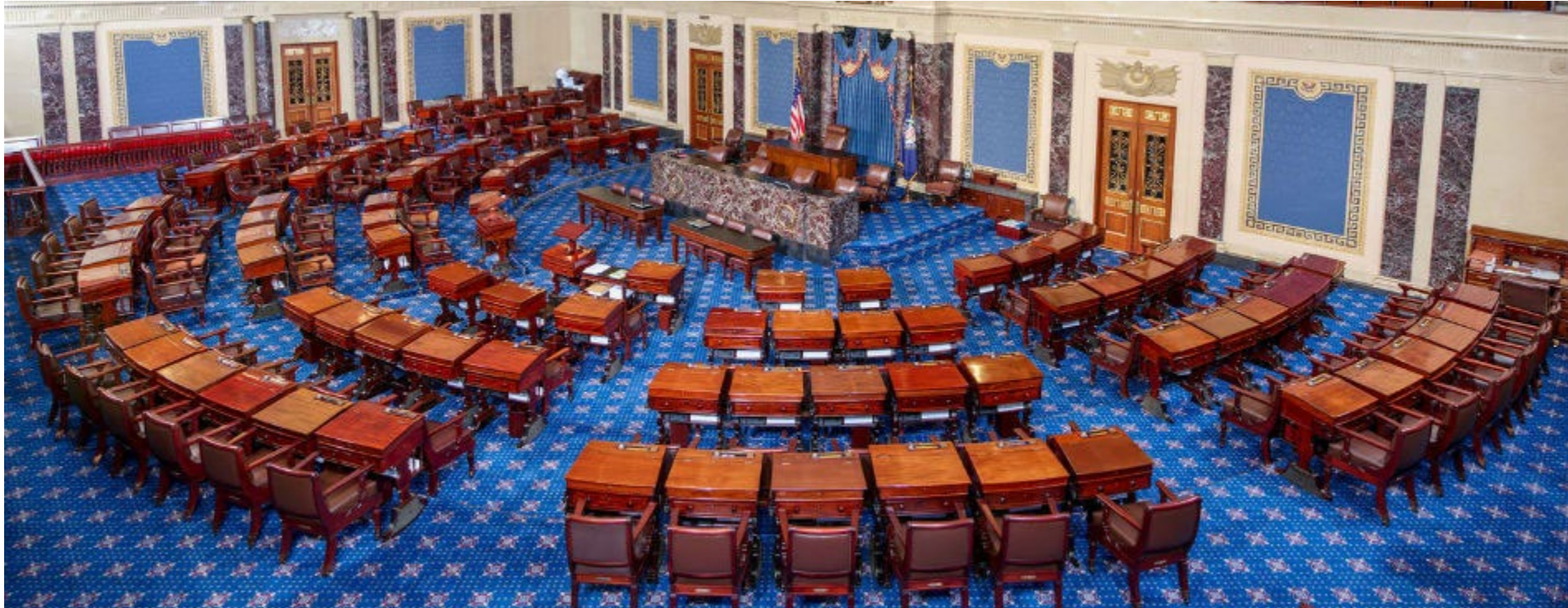
- Standing
- Major Question Doctrine





# Decision - Majority

- Major Question Doctrine—Doctrine Implicated When:
  - Agency's claim of authority pertains to an issue of vast economic and political significance
  - Where Congress has not clearly empowered the agency to take such extraordinary action





# Decision - Concurring

- Outlined series of factors establishing statement of sufficient authority



# Decision - Dissent

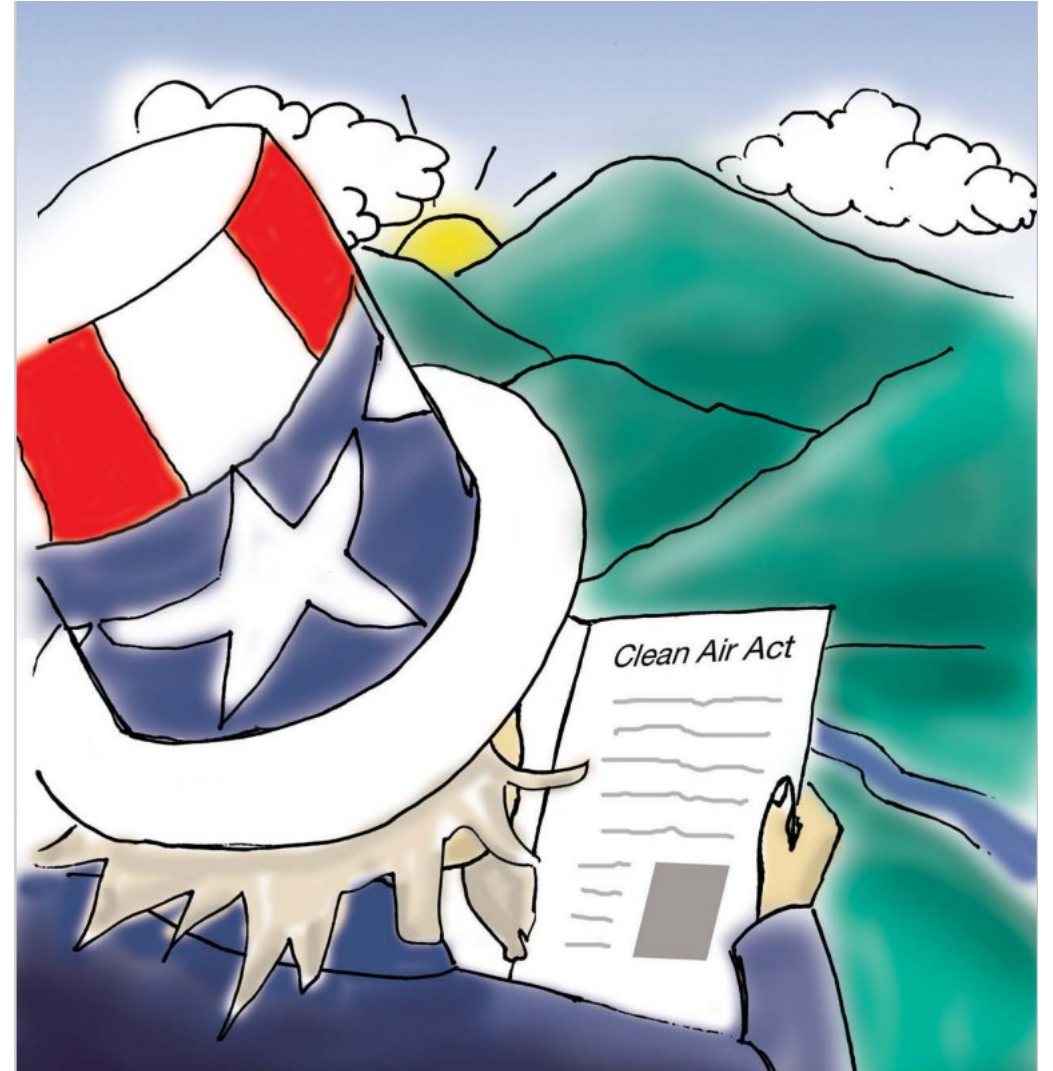
- Key reason for broad delegations is so agency can respond to new and big problems.
- Claim majority has adopted new canon of construction not within text of statute





# Impact - Nationally

- Clean Air Act and climate change
- On other federal administrative actions



# Impact - Nationally

- Examples:
  - Securities and Exchange Commission
  - Federal Trade Commission
  - Federal Workplace Law
  - Clean Water Act
  - Endangered Species Act
  - Toxic Substances Act
  - Safe Drinking Water Act
  - Pandemic Protections
  - Food and Drug Administration



# Impact - Locally

- State Administrative Actions
- Senate Bill 1
- Clean Water Act in California
- Federal water issues impacting California
  - Colorado River
  - Bureau of Reclamation
- US FWS and NMFS rulemaking





# Question & Answer Session

# Thank You

For questions or comments, please contact:

{ David Boyer  
(562) 653-3200  
dboyer@aalrr.com }

**aalrr**  
Atkinson, Andelson  
Loya, Ruud & Romo  
A Professional Law Corporation

# Disclaimer

This AALRR presentation is intended for informational purposes only and should not be relied upon in reaching a conclusion in a particular area of law. Applicability of the legal principles discussed may differ substantially in individual situations. Receipt of this or any other AALRR presentation/publication does not create an attorney-client relationship. The Firm is not responsible for inadvertent errors that may occur in the publishing process.

©2022 Atkinson, Andelson, Loya, Ruud & Romo







# Questions

To be called on to speak:

- **Please raise your hand**
- Use the chat box (to text the host)
- Press \*9 to raise hand on phone



# Thank you

Next WACO meeting:  
Friday, October 7, 2022

Next WACO planning meeting:  
Tuesday, September 20, 2022

14th Annual OC Water Summit:  
Friday, September 16, 2022  
[ocwatersummit.com](http://ocwatersummit.com)

