NATURAL RESOURCE & ENVIRONMENTAL LAW: AN IDAHO YEAR IN REVIEW

As a unique feature to the 2014 Natural Resource and Environmental Law Edition of the Idaho Law Review, included below are short summaries of many of the changes to federal and state environmental law and policy from July 2013 to July 2014 that have, or could have, an effect on natural resources or environmental law or policy within Idaho’s borders. These summaries are meant to highlight important changes in the law and serve as a research aid for those interested in staying up-to-date on natural resource and environmental law.

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I. INTERNATIONAL LAW

The Minamata Convention on Mercury

The Minamata Convention on Mercury (the Convention) is a multilateral treaty with the purpose to limit the effects of mercury on human health and the environment.¹ The Convention seeks to focus resources and attention on the negative impacts resulting from the use of mercury, which is released into “the atmosphere, soil, and water” under current State regulation.² The Convention focuses on “[c]ontrolling anthropogenic releases of mercury”³ and, to that effect, includes provisions that prohibit opening new mines,⁴ require the removal of existing products and mines,⁵ place controls on air emissions,⁶ increase restrictions on mercury exports,⁷ and increase regulation for small-scale gold mining.⁸

The Convention is open for signature until October 9, 2014⁹ and, currently, 128 States have signed.¹⁰ The United States signed and ratified the Convention on June 11, 2013,¹¹ making the U.S. a party bound by the express provisions and obligated to adhere to the object and purpose of the treaty.¹² Therefore, the U.S. has demonstrated its commitment to reducing human health and environmental hazards caused by the mining and manufacturing of mercury.¹³

II. FEDERAL LAW

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3. Id.
4. Minamata Convention on Mercury, supra note 1, at art. 3(3).
5. Id. at art. 4.
6. Id. at art. 8.
7. Id. at art. 3(6).
8. Id. at art. 7.
9. Id. at art. 29.
11. Id.
A. Judicial Branch

1. Supreme Court of the United States Cases

Utility Air Regulatory Group v. Environmental Protection Agency

The case is a response to the Environmental Protection Agency’s (EPA) interpretation of its authority under the Clean Air Act to tailor current programs under the act to include the regulation of pollution sources for greenhouse gases. The Court’s decision limits the EPA’s authority to impose limits on Greenhouse Gases under the Clean Air Act by holding the Clean Air Act does not permit the EPA to require a source to obtain a Prevention of Significant Deterioration or Title V permit solely based on the potential of the source to produce greenhouse gases. The Court added that the EPA cannot define greenhouse gases as a pollutant to determine a “major emitting facility” for Prevention of Significant Deterioration or for determining a “major source” under the Title V permitting.

Additionally, the Court held that the EPA has the authority to require the use of best available control technology for greenhouse gases, even when the sources are already subject to the Clean Air Act’s provisions of Prevention of Significant Deterioration or Title V permitting requirements. Meaning, greenhouse gases can be treated as a pollutant that is subject to regulation for the best available technology requirement.

CTS Corporation v. Waldburger

The Supreme Court held that the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) only preempts state statutes of limitations on bringing state law environmental tort cases, meaning states’ statute of repose are not preempted. The Supreme Court decision solidified the traditional authority for states to provide tort remedies through their discretion, including torts caused by toxic chemical contaminants.

Environmental Protection Agency v. EME Homer

The Supreme Court upheld the EPA’s Cross-State Air Pollution Rule or Transport Rule, settling the debate over cross state air pollution requirements. The Transport Rule prohibits states “from emitting any air pollutant in amounts which will...contribute significantly” to other states noncompliance with the EPA regulat-
ed national air quality standards. The controversy surrounding the rule was based on the cost-effectiveness of pollution reductions rather than the actual pollution amount that can be contributed to activities within a particular state. The Court applied Chevron deference to the EPA’s determination that the air pollution should be regulated through the cost-effective approach, finding that the EPA can regulate wherever there is a noticeable change in downwind air quality. The EPA is allowing states to create implementation plans to achieve the required reductions in pollution. However, where states have not created a plan the EPA has the option to create a federal plan that states must implement.

2. United States Court of Appeals for the Ninth Circuit

Alaska v. Lubchenco

The State of Alaska and representatives from the fishing industry challenged the National Marine Fisheries Services limitations on commercial fishing in sub-regions of the Pacific Ocean inhabited by the endangered Steller Sea Lions. The Ninth Circuit determined that the use of sub-regions for determining fishing restrictions did not violate the Endangered Species Act (ESA). Additionally, the Court found that the National Marine Fisheries Services used appropriate standards in determining that the previously allowed amount of fishing in these designated sub-regions would result in negative impacts, and possible jeopardy, to the entire sea lion population.

Alaskan Wilderness League v. Environmental Protection Agency

The EPA denied a challenge to a Clean Air Act permit allowing Shell Offshore Inc. to conduct “pollutant emitting activities” caused by a drill vessel in the Beaufort Sea. Additionally, the EPA allowed an exemption from the ambient air regulations for 500 meters surrounding the drill vessel. The Court determined that the EPA reasonably determined that an analysis of the drilling vessel impact on the Clean Air Act’s requirements was not needed prior to obtaining an oil exploration permit. The Court also upheld the 500 meter exemption because it was permissible under the EPA promulgated regulations.

24. Id.
25. Id. at 1594
26. Id.
27. Id.
28. For more information on or copies of published Ninth Circuit Court decisions, see Opinions, U.S. COURTS FOR THE NINTH CIRCUIT, http://www.ca9.uscourts.gov/opinions/ (last visited Nov 5, 2014). Additional environmental cases were heard by the Ninth Circuit that dealt with state law and are not included in these summaries.
29. Alaska v. Lubchenco, 723 F.3d 1043, 1047 (9th Cir. 2013).
30. Id. at 1052.
31. Id. at 1053.
32. Alaskan Wilderness League v. EPA, 727 F.3d 934, 936 (9th Cir. 2013).
33. Id. at 940.
34. Id.
35. Id.
California Sport Fishing Protection Alliance v. Chico Scrap Metal, Inc.

The Court heard an appeal from a District Court decision dismissing a citizen suit under the Clean Water Act that alleged that Chico Scrap Metal violated a National Pollutant Discharge Elimination System permit relating to industrial storm water discharges from their facility. The Ninth Circuit held that the Clean Water Act provision addressing citizen suits, did not bar citizen suits even when the district attorney had filed criminal and civil claims because the state had no filed actions that would require compliance with the storm water permit. Therefore, the panel reversed the dismissal of the suit.

California v. United States Department of Interior

The action is a challenge to an environmental impact statement prepared by the Secretary of the Interior analyzing the effects of water transfer agreements on the Salton Sea in Southern California. The Ninth Circuit determined that Imperial County and Imperial County Air Pollution Control District has standing to sue under the Clean Air Act. However, the Ninth Circuit upheld the District Court decision granting summary judgment in favor of the defendants because the Secretary did not violate the National Environmental Policy Act (NEPA) or the Clean Air Act through the information and analysis included in the EIS. Overall, this case discusses whether provisions within a NEPA EIS are sufficient to satisfy the statutory requirements.

Drakes Bay Oyster Company v. Jewell

Drakes Bay Oyster Company challenged a Secretary of the Interior’s decision to allow the company’s permit for commercial oyster farming to expire. The Company argued that the Secretary’s decision violated the Department of Interior Appropriations Act, NEPA, and other federal regulations. The Court found that it was unable to review the Secretary’s discretionary decision on whether to issue the company a new permit. The Court also determined that the company was unlikely to succeed in proving the Secretary violated any statutory grant of authority.

37. Id. at 878.
38. Id.
39. Cal. ex rel. Imperial Cnty. Air Pollution Control Dist. v. U.S. Dep’t of Interior, 751 F.3d 1113, 1117–18 (9th Cir. 2014).
40. Id. at 1120–22.
41. Id. at 1122–30.
42. Id.
44. Id. at 1077–78.
45. Id. at 1082.
46. Id. at 1088.
In Defense of Animals v. United States Department of the Interior

Plaintiffs brought claims under the Wild Free-Roaming Horses and Burros Act and NEPA, alleging the gathering of wild horses and burros on the border of California and Nevada violated these acts. The claims arise from the Bureau of Land Management’s (BLM) establishment of the Appropriate Management Levels for populations of native species and introduced animals. The BLM removes animals from the area when the population number exceed the declared Appropriate Management Level. The Ninth Circuit determined that the BLM acted within its granted authority when it implemented the gather plan in the area to achieve the Appropriate Management Levels. The Court also held that the BLM did not violate NEPA when it decided not to prepare an environmental impact statement (EIS) because the agency provided sufficient reasoning for how the gather plan would not have a significant effect on the environment.

Jones v. National Marine Fisheries Service

The Plaintiffs claim the Army Corps of Engineers violated the Clean Water Act and NEPA by issuing a permit on a project to mine mineral sands in Oregon. The Ninth Circuit held the Army Corps of Engineers complied with NEPA because the Corps properly considered all relevant risks and was did not violate the act by failing to take into account the cumulative impacts of the proposed action. The Court also held that the Corps did not violate the Clean Water Act through its analysis of alternative sites.

League of Wilderness Defenders v. Connaughton

The District Court denied a motion for preliminary injunction to enjoin the Snow Basin logging project in Oregon. On hearing the appeal, the Ninth Circuit determined that the plaintiffs demonstrated that they would likely prevail on their NEPA claim alleging insufficiency with the Environmental Impact Statement. The Court held that the EIS failed to satisfy NEPA requirements because the discussion of elk habitat was “insufficiently clear” and therefore the analysis was insufficient for determining the effect of elk in the area. The court also held that the preliminary injunction was necessary because plaintiffs showed continuing the project would result in “irreparable harm.” The Court ordered that the case be re-
manded to the District Court for entry of a preliminary injunction until the United States Forest Service completed a supplementary EIS.59

Montana Wilderness Association v. Connell

This case is the result of “environmental groups challeng[ing] the Bureau of Land Management’s (BLM) Resource Management Plan . . . for the Upper Missouri River Breaks National Monument . . . .”60 The Court held that the BLM conformed to the Federal Land Policy and Management Act and NEPA because it thoroughly analyzed and considered the impacts of the program, affirming summary judgment on both claims.61 Additionally, the Court found that the BLM violated the National Historic Preservation Act and remanded the claim, ordering the district court to require the “BLM to conduct Class III surveys with respect to roads, ways and airstrips that have not been subject to recent Class III surveys.”62 A Class III survey is intensive and is “professionally conducted, thorough pedestrian survey of an entire target area… intended to locate and record all historic properties.”63 However, the court clarified by saying the Class III surveys are not required “as a precursor” to the issuance of a Resource Management Plan, though they are advisable.64

Native Village of Point Hope v. Jewell

This claim arises under NEPA and is an action challenging the environmental impact statements addressing proposed leases “for oil and gas development in the Chukchi Sea” off Alaska’s coast.65 The Ninth Circuit held that the Final and Supplemental EIS sufficiently analyzed the information available and accounted for “incomplete or unavailable information.”66 The Court did find that the Final EIS was arbitrary and capricious when it estimated that “there would be one billion barrels of economically recoverable oil.”67

Natural Resources Defense Council v. Jewell

This case deals with the Endangered Species Act (ESA) requirement under section 7(a)(2)68 “that federal agencies must consult with the United States Fish and Wildlife Service [.] or the National Oceanic and Atmospheric Administration’s National Marine Fisheries Service prior to taking any agency action that could affect an endangered or threatened species or its critical habitat.”69 This is required if the agency is able to take any action for the protection of a species.70 The Court held

59. Id. at 767–68.
60. Mont. Wilderness Ass’n v. Connell, 725 F.3d 988, 992, (9th Cir. 2013).
61. Id. at 1001, 1004–05.
62. Id. at 1010.
63. Id. at 1005–06 (quoting BUREAU OF LAND MGMT, BLM MANUAL, IDENTIFYING AND EVALUATING CULTURAL RESOURCES, Sec. 8110, 10.2.21.C.1).
64. Id. at 1009.
65. Native Vill. of Point Hope v. Jewell, 740 F.3d 489, 492 (9th Cir. 2014).
66. Id. at 505.
67. Id. at 494, 505.
70. Id. at 784–85.
that Bureau of Reclamation, which manages the California Central Valley Project, the project at issue in this case,71 was required to consult under the ESA because the agency had the ability to take action to protect the delta smelt,72 which is listed as a threatened species.73

Natural Resources Defense Council v. Environmental Protection Agency

The petitioners challenged an application granted by the EPA for the conditional registration of two different pesticides: AGS-20 and AGS-20 U.74 Under the Federal Insecticide, Fungicide, and Rodenticide Act, any sale of pesticide that has not been registered with the EPA is prohibited.75 The EPA conducted a risk assessment of the pesticides that was published when the permit was granted.76 The petitioners argue that the risk assessment should have used infants to determine the amount of risk to consumers, rather than three-year-old toddlers actually used in the analysis.77 The Court held that the EPA’s use of toddlers to determine risk was “supported by substantial evidence,” and therefore was sufficient for the risk assessment.78 An additional issue with the risk assessment was the rule requiring mitigation if the “margin of exposure” to the pesticides “in the short- or immediate-term is less than or equal to 1,000.”79 The Court vacated the EPA decision concluding there was “no risk concern requiring mitigation for short- and intermediate-term aggregate oral and dermal exposure to textiles that are surface coated” with the pesticides, because the risk assessment determined that contact with the pesticides, as a surface coating, had a “margin of exposure” of 1,000.80 The final challenge to the risk assessment sites the failure of the EPA to analyze additional sources that could increase exposure to consumers.81 The Court found that the EPA’s decision not to analyze these potential sources was “supported by substantial evidence.”82

Northwest Resource Information Center, Inc. v. Northwest Power and Conservation Council

The Northwest Resource Information Center alleged that the Northwest Electrical Power and Conservation Council did not give the required “due consideration” under the Pacific Northwest Electrical Power Planning and Conservation Act to “accommodate[e the] fish and wildlife interests” in the Columbia River Basin with the adoption of the Sixth Northwest Power Plan.83 The Power Plan addressed

71. Id. at 780.
72. Id. at 779, 783.
73. See id. at 780.
75. Id.
76. Id.
77. Id. at 876.
78. Id.
79. Id. at 875 (emphasis removed).
81. Id. at 878–79.
82. Id. at 875.
“biological objectives, principles, and strategies” for the protection of and assistance to fish and wildlife without speaking to specific operations. The Court held that the petitioners failed to show under the Power Act that the Council failed to give the required “due consideration” to fish and wildlife in the Columbia River Basin and therefore would not dispute the Council’s determination. However, the court remanded the Plan to the Council for the purpose of “allowing public notice and comment” on the methods in the Plan for “determining quantifiable environmental costs and benefits,” and for the reconsideration of including a “market price-based estimate of the cost of accommodating fish and wildlife interests.”

United States of America v. Humphries

This is a criminal law case that affirms a district court conviction under the Resource Conservation and Recovery Act (RCRA) for the illegal storing of hazardous waste without a permit. The Court held that the jury received proper instruction, that under RCRA, the disposal of hazardous waste begins with an act of disposal and not “an individual’s subjective decision to dispose.”

Voggenthaler v. Maryland Square

This case concerns the “seepage over several decades of a toxic dry cleaning chemical into the ground.” The Court affirmed the district court’s decision to reject the argument that applying the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to soils and groundwater contamination that stays within a state border violates the Commerce Clause. Additionally, under CERCLA, the court found that summary judgment for the plaintiffs against the current owner of the polluting land should be remanded to allow the owner an opportunity to show that the situation falls within one of the CERCLA exceptions for a bona fide perspective purchasers. The court also reversed the grant of summary judgment under the Resource Conservation and Recovery Act against the owner and operators due to procedural issues.

Washington Environmental Council v. Bellon

Under the Clean Air Act, plaintiffs pursued a citizen suit to compel regional agencies, including the Washington State Department of Ecology, to regulate greenhouse gas emissions from the five oil refineries in the state of Washington. The Court held that the non-profit conservation groups lacked standing to bring the

84. Id. at 1014.
85. Id. at 1015–18.
86. Id. at 1011.
88. Id. at 1030.
89. Voggenthaler v. Md. Square, 724 F.3d 1050, 1055 (9th Cir. 2013).
90. Id.
91. Id.
92. Id.
claim because they “failed to satisfy the causality and redressability requirements” for standing.  

3. United States Court of Appeals for the District of Columbia Circuit

*Center for Biological Diversity v. Environmental Protection Agency*

This case was brought in response to a rule issued by the EPA “deferring regulation of ‘biogenic’ carbon dioxide… for three years” because of scientific uncertainty on the importance or effect on the carbon cycle. The Court vacated the Deferral Rule because it could not “be justified under any of the administrative law review doctrines relied on by the EPA” and under the Clean Air Act the agency must regulate biogenic carbon dioxide as an air pollutant.

*Coal River Energy, LLC v. Jewell*

This action was brought by a coal miner operator arguing that the Surface Mining Control and Reclamation Act provision requiring that operators of coal mines “must pay a fee for each ton of coal” produced by mining “could not constitutionally be applied to coal sold for export.” The claim was based on the Export Clause of the Constitution which states “No Tax or Duty shall be laid on Articles exported from any state.” The Court did not make a determination on the claim, but rather affirmed the District Court dismissal because the claim was not timely filed under the Reclamation Act, which required a claim be brought within sixty days.

*Communities for a Better Environment v. Environmental Protection Agency*

Three non-profit environmental and wildlife organizations brought a claim against the EPA for a 2011 determination “to retain the same primary standards and continue without a secondary standard” for regulating the levels of carbon monoxide under the Clean Air Act. The Circuit Court found that the EPA acted reasonably regarding the regulations for carbon monoxide standards through reliance on scientific studies and the recommendation of the Clean Air Scientific Advisory Board.

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94. Id.

95. For more information on or copies of published cases decided by the U.S. Court of Appeals for the D.C. Circuit, see *Opinions*, U.S. CT. OF APPEALS, D.C. CIRCUIT, http://www.caec.uscourts.gov/Internet/opinions.nsf/OpinionsByRDate?OpenView&count=100&5Key=201406 (last visited Nov. 5, 2014). Additional environmental cases were heard by the D.C. Circuit Court that do not have an effect on Idaho. See, e.g., Conservation Force, Inc. v. Jewell, 733 F.3d 1200 (D.C. Cir. 2013).


97. Id. at 412.

98. Id. at 414.


100. Id. (quoting U.S. CONST. art. I, § 9, cl. 5).

101. Id. at 664.

102. Id. at 662–63.

103. Communities for a Better Env’t v. EPA, 748 F.3d 333, 334 (D.C. Cir. 2014).

104. Id.
Committee. Additionally, the court found that the non-profit organizations did not have standing to challenge the EPA decision because the petitioners did “not present[] a sufficient showing that carbon monoxide at the level permitted by the EPA would worsen global warming” in comparison to the secondary regulatory standards wanted by the petitioners.

Delaware Riverkeeper Network v. Federal Energy Regulatory Commission

Petitioners argue that the Federal Energy Regulatory Commission (FERC) violated NEPA by issuing a certificate of public convenience and necessity to a gas pipeline company for a project consisting of adding forty miles of pipeline infrastructure over five different segments. The petitioners argue NEPA was violated due to the FERC segmenting the environmental review of the project from three other similar projects within the area, which meant the review failed to address the cumulative effects of all four projects on the environment. As a result of FERC’s segmented analysis, it found that the impacts of the project would be insignificant. The D.C. Circuit Court remanded the case to FERC for the "failure to adequately address the cumulative impacts of the four projects" due to the segmented analysis because "there were clear indications in the record that the ...projects were functionally and financially interdependent" and the environmental impact should reflect the overall effect on the environment.

Daimler Trucks North America LLC v. Environmental Protection Agency

In 2012 the EPA established nonconformance penalties, a "penalty for engines temporarily unable to meet a new or revised emission standard," for reductions of nitrogen oxide under the Clean Air Act for "heavy heavy-duty diesel engines." Navistar, Inc. was issued a certificate of conformity, which excused their use of the heavy-duty diesel engines. In response, competitor companies brought the petition to challenge the EPA’s 2012 rule on procedural and substantive grounds. The Court granted the petition from the competitor companies and vacated the EPA’s 2012 final rule. The Court held that procedurally there was a lack of adequate notice and opportunity for comment on the amendments. Additionally, the Court noted that EPA’s counsel had identified that vacating the rule would not cause harm to Navistar.

105. Id. at 338.
106. Id.
108. Id.
109. Id. at 1308.
110. Id. at 1320.
111. Id. at 1319.
114. Id. (referencing Mack Trucks, Inc. v. EPA, 62 F.3d 87, 96 (D.C. Cir. 2012)).
115. Id.
116. Id.
117. Id.
This case deals with multiple environmental claims regarding environmental hazards on Native American Land in Arizona.\textsuperscript{118} First, the Appellants, the Navajo Tribe and the El Paso Natural Gas Company, petitioned the district court decision under the Resource Conservation and Recovery Act of 1976 (RCRA).\textsuperscript{119} The District Court dismissed the RCRA claims regarding a federal waste facility because the EPA and Bureau of Indian Affairs (BIA) reached an administrative settlement under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), which it found barred the courts from hearing the hazardous waste removal or remedial action.\textsuperscript{120} The D.C. Circuit Court affirmed the dismissal of the RCRA claims based on the pleadings in the case,\textsuperscript{121} but did not share in the district Court's finding that a CERCLA settlement completely barred the claim due to an analysis of congressional intent.\textsuperscript{122} However, the D.C. Circuit determined that the action should have been dismissed without prejudice, and remanded the claim to the district court to enter a conforming judgment.\textsuperscript{123}

The second claim is also based on RCRA and deals with a dump site on Highway 160.\textsuperscript{124} The District Court dismissed the claim as moot due to Congress "authoriz[ing] and appropriat[ing] funds for a cleanup site in 2009 and... the Tribe assumed responsibility for the cleanup and agreed to a release of liability."\textsuperscript{125} In the D.C. Circuit, the Tribe argued that the release of liability did not apply groundwater remediation, which falls under RCRA.\textsuperscript{126} The D.C. Circuit vacated the District Court decision and held that the RCRA claims regarding the highway site were not moot in regard to groundwater and remanded the claim to the District Court to determine the merits of the claim.\textsuperscript{127}

The D.C. Circuit Court also addressed the Government's contingent RCRA counterclaim—a means for the government to ensure that all responsible parties are held accountable for their portion of the cleanup responsibility—against El Paso Natural Gas, which the District Court dismissed without prejudice.\textsuperscript{128} The Company alleges that the government should not be able to make this claim because it cannot bring a citizen suit under the statute\textsuperscript{129} and the claim is "legally deficient because it contains only conditional allegations."\textsuperscript{130} The D.C. Circuit Court affirmed the District Court ruling, finding the U.S. and its agencies could file contin-

\textsuperscript{118} El Paso Natural Gas Co. v. United States, 750 F.3d 863, 869–71 (D.C. Cir. 2014). The tribe also brought claims under the American Indian Agricultural Resource Management Act and the Indian Lands Open Dump Cleanup Act of 1994 that are not discussed in this summary. See id. at 870–71.
\textsuperscript{119} Id. at 868–69.
\textsuperscript{120} Id. at 869–70.
\textsuperscript{121} Id. at 870.
\textsuperscript{122} Id. at 879–80.
\textsuperscript{123} Id. at 870.
\textsuperscript{124} El Paso Natural Gas Co., 750 F.3d at 870.
\textsuperscript{125} Id.
\textsuperscript{126} Id.
\textsuperscript{127} Id.
\textsuperscript{128} Id.
\textsuperscript{129} Id. at 885.
\textsuperscript{130} El Paso Natural Gas Co., 750 F.3d at 886.
gent RCRA counterclaims and that these contingent claims, which rely on the outcome of the principle action of a claim, are permissible.\(^{131}\)

Finally, the Tribe brought claims under the "Mill Tailings Act and related [EPA] regulations."\(^{132}\) The District Court erroneously dismissed the Mill Tailings Act claims based on the belief that any claim with the scope of the mandatory waiver in section 7915(a)(1) of the Act was precluded from judicial review.\(^{134}\) The Circuit Court found that the Administrative Procedure Act allowed review of the claims.\(^{135}\) However, the court affirmed the District Court dismissal of the claims under Rule 12(b)(6).\(^{136}\)

**Mississippi v. Environmental Protection Agency**

This opinion addresses the EPA revisions to the primary and secondary National Ambient Air Quality Standards (NAAQS) for ozone.\(^ {137}\) The D.C. Circuit court denied challenges to the EPA's determination with regard to primary NAAQS standards, but remanded the "secondary NAAQS to [the] EPA for reconsideration."\(^ {138}\) For the Primary standards, the Court determined that the EPA's departure from the Clean Air Scientific Advisory Committee recommendation was not a violation of authority due to the failure of the recommendation to state the scientific reasoning for its determination.\(^ {139}\) Therefore, the EPA using scientific uncertainty and "more general public health policy considerations" adheres to the statutory requirements.\(^ {140}\) Additionally, the court discussed the failure of the EPA in analysis of the secondary standards to determine the level of protection required to "protect the public welfare from any known or anticipated adverse effects associated with the presence of [ozone] in the ambient air," meaning the explanation of the secondary standard was in violation of the Clean Air Act.\(^ {141}\)

**Monroe Energy, LLC v. Environmental Protection Agency**

Under the Clean Air Act, the EPA issued the 2013 Renewable Fuel Standards.\(^ {142}\) The Petitioner and Intervenor, both independent petroleum refiners, argued that the rule should be vacated for three reasons: the EPA (1) "declined to reduce the total renewable fuel volume;" (2) "failed to address a malfunction of the credit system;" and (3) did not pass the fuel standards until after the statutory deadline.\(^ {143}\) The Court found that the EPA has broad discretion to determine whether to reduce

131. *Id.*
132. *Id.*
133. *Id.*
134. *Id.* at 887–88.
135. *Id.* at 870.
138. *Id.* at 273–74.
139. *Id.* at 270.
140. *Id.*
141. *Id.* at 271 (quoting 42 U.S.C. § 7409(b)(2) (2012)).
143. *Id.*
the "advanced biofuel and total renewable fuel volumes under the cellulosic biofuel waiver provision." Additionally, the Court determined that the hardship caused to refiners and importers by EPA placed obligations was no longer a contestable issue due to the reaffirmation of the rule in 2010. Meaning, the time-frame to challenge the decision passed. The Court also found that the EPA decision to promulgate the rule after the statutory deadline was reasonable due to the complex and novel issue at hand and that it was not in violation due to the deadline extension for compliance.

**National Association of Clean Water Agencies v. Environmental Protection Agency**

The EPA determined that sewage sludge incinerators were "solid waste incineration units" and established emission standards for them under the Clean Air Act. Under the EPA rule, two subcategories of sewage sludge incinerators were required to implement maximum achievable control technology (MACT). The Court found that sewage sludge incinerators fell within the definition of solid waste incineration units under the Clean Air Act. However, the Court did determine that the EPA's "methodology in setting emission standards" did not adequately demonstrate that the emission estimations behind the promulgation of the rule were reasonable. Therefore, without vacating the current standards set by the EPA in the rule, the Court remanded portions of the rule to the EPA. The Court asked that the EPA further explain and clarify: (1) the applicability of the "Clean Water Act Part 503 regulations control for other non-technology factors;" (2) identified "issues related to [the] upper prediction limit and [variable] analysis;" and (3) the statistical formula and variables used on limited data to determine emissions for the incinerators.

**National Association of Manufacturers v. Environmental Protection Agency**

This case arises in response to the EPA rule, which restricted the amount of fine particle matter allowed emissions under the primary National Ambient Air Quality Standards (NAAQS) as part of the statutory authority afforded to the agency under the Clean Air Act. The D.C. Circuit Court found the rule valid under the Clean Air Act because the EPA has "substantial discretion in setting the NAAQS."
The Sixth Circuit Court held that the determination of adjacency for regulating a multiple pollutant-emitting activity as a single stationary source cannot be found with only "mere functional relatedness" for Title V permitting under the Clean Air Act. In response, the EPA released a directive—the Summit Directive—stating that interrelatedness would not be used to determine adjacency in the Sixth Circuit, but would continue to evaluate interrelatedness in other jurisdictions. In this case, the D.C. Circuit vacated the Summit Directive as contrary to law.

The Plaintiffs brought the case alleging that the EPA exceeded its statutory authority under both the Surface mining Restoration Act and the Clean Water Act through two separate agency actions. First, for the evaluation of particular Clean Water Act permits, the Army Corps of Engineers and the EPA adopted the Enhanced Coordination Process. This process allows the EPA to evaluate Section 404 mining permit applications and discuss with the Corps which permits would likely result in harm to water sources. The second agency action is a Final Guidance issued by the EPA regarding Clean Water Act permits. One portion of the Final Guidance recommends that States increase requirements for Section 402 permits.

The District Court granted summary judgment for the plaintiffs on both claims. In reviewing the decision on the Enhanced Coordination Process, the Circuit Court held that the EPA and Corps were within their granted authority because it is not barred by the Clean Water Act and does not change the standard for a Section 404 permit. Under the Final Guidance challenge, the Circuit Court held based on precedent that this was not a final agency action and therefore not reviewable by the courts. Only after the denial of a section 402 permit could a claim be brought under this cause of action.

155. Summit Petroleum Corp. v. EPA, 690 F.3d 733, 735 (6th Cir. 2012).
157. Id. at 1011.
159. Id.
160. Id.
161. Id.
162. Id. at 248.
163. Nat’l Mining Ass’n, 758 F.3d at 246.
164. Id. at 253.
165. Id. at 249.
166. Id. at 247.
167. Id.
Natural Resource Defense Council v. Environmental Protection Agency

This case deals with the EPA's statutory authority to promulgate rules under the Clean Air Act, specifically the 2013 Rule. The petitioners argue that the 2013 Rule is at odds with the Clean Air Act provisions. The Court held that the EPA regulation of emissions in the 2013 Rule was a valid exercise of the broad authority granted by the Clean Air Act and the *Chevron* Doctrine. Additionally, Petitioners challenged the EPA decision to establish an "affirmative defense for private civil suits in which plaintiffs sue sources of pollution and seek penalties for violations of emission standards." The Court held that the creation of this affirmative defense did not fall within the statutory authority granted to the EPA and therefore was invalid.

Natural Resource Defense Council and Sierra Club v. Environmental Protection Agency

This case arises as a challenge to a 1998 EPA rule that creates an exemption under Section 6924(q) of the Resource Conservation and Recovery Act of 1976 (RCRA) called the Comparable Fuels Exclusion. This rule exempts from RCRA's "mandate all fuels deemed comparable to non-hazardous-waste-derived fossil fuels because they satisfy EPA[] specifications." In an analysis of the plain language of Section 6924(q) of RCRA, the D.C. Circuit Court held that the rule violated the plain language of the statute, which the court determined required the EPA to "establish standards applicable to all fuel derived from hazardous waste." Therefore, the Court vacated the Comparable Fuel Exclusion.

Oklahoma Department of Environmental Quality v. Environmental Protection Agency

The EPA has the statutory authority to establish a federal implementation plan in Indian Country under the Clean Air Act. In this case, The State of Oklahoma challenged the EPA federal implementation plan for the purpose of achieving national air quality standards for non-reservation Indian Country. The State argued that the EPA did not make a showing that it had jurisdiction on the non-reservation land, which the EPA requires tribes to demonstrate prior to regulating non-reservation areas. The Court held that the state "has regulatory jurisdiction under the Clean Air Act over land within its territory and outside the boundaries of an

169. Id.
170. Id. at 1060, 1064.
171. Id. at 1057.
172. Id. at 1064.
174. Id.
175. Id. (emphasis in original).
176. Id.
178. Id.
179. Id.
Indian reservation” unless either the Tribe or the EPA demonstrates jurisdiction. However, until a demonstration is made, the state implementation plan will be controlling.

_Sierra Club v. Environmental Protection Agency_

The Sierra Club and the Louisiana Environmental Action Network brought this claim in response to the 2008 EPA rule that exempts “certain hazardous residuals left over from the petroleum refining process” from regulation under the Resource Conservation and Recovery Act (RCRA). This is known as the Gasification Exclusion Rule because it applies when residuals from the petroleum refining process "are inserted into gasification units to produce synthesis gas." The Petitioners argue that this exclusion violates the plain language of RCRA that requires "the regulation of hazardous wastes used as fuel." The Court found that RCRA does not require that all hazardous wastes used as fuel must be subjected to all the regulation under the Act. However, the Court reiterated the EPA’s requirement under RCRA to promulgate rules that the EPA reasonably decides "may be necessary to protect human health and the environment." The Court held that this standard was not met, and therefore vacated the Gasification Exclusion Rule.

_White Stallion Energy v. Environmental Protection Agency_

This case was brought in response to the 2012 EPA emission standards for many of the "listed hazardous air pollutants emitted by coal- and oil-fired electric utility steam generating units." Despite the EPA’s rule provisions being challenged by state, industry, labor, and environmental petitioners, the D.C. Cir. Court denied all the petitions that challenged the 2012 emission standards final rule. Overall, the Court addressed the EPA’s process for determining may of the emission standards and regulations and found that the EPA acted reasonably in determining and promulgating the 2012 final rule under the Clean Air Act.

_WildEarth Guardians v. Environmental Protection Agency_

Environmental groups petitioned the EPA to initiate rulemaking to regulate coal mines as a stationary source under the Clean Air Act. The EPA denied the petition, citing uncertainty in funding and limited resources for implementing and enforcing regulations under the Clean Air Act. The EPA did however, make it

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180. _Id._ at 195.
181. _Id._
182. _Sierra Club v. EPA_, 755 F.3d 968, 970 (D.C. Cir. 2014).
183. _Id._ (internal quotation marks omitted).
184. _Id._
185. _Id._ at 980.
186. _Id._ (quoting RCRA, 42 U.S.C. §6924(q) (2012)).
187. _Id._
188. _White Stallion Energy Center v. EPA_, 748 F.3d 1222, 1229 (D.C. Cir. 2014).
189. _Id._
190. See generally _id._
192. _Id._ at 651.
clear that their decision was in no way a determination of whether coal mines should be regulated under the Act.\textsuperscript{193} Additionally, the EPA stated that it may in the future revisit the issue.\textsuperscript{194} The environmental groups contend that the EPA did not have sufficient reasons to deny the petition under the Clean Air Act requirements.\textsuperscript{195} The D.C. Circuit denied the review of the petition, finding that the EPA ruling should receive a high level of deference based on precedent stating that agencies have a broad discretion to determine how to use the limited resources at their disposal.\textsuperscript{196} Therefore, the EPA’s denial of the petition was consistent with its authority.\textsuperscript{197}

\textit{WildEarth Guardians v. Jewell}

Petitioners, environmental groups, challenged a Bureau of Land Management decision that offered two tracts of land adjacent to the Antelope Coal mine in the Wyoming River Powder Basin for competitive lease bidding.\textsuperscript{198} The environmental groups argued that the Final Environmental Impact Statement allowing the competitive lease bidding did not adequately address global climate change\textsuperscript{199} or local pollution.\textsuperscript{200} The District Court granted summary judgment to the defendants after finding the plaintiffs did not have standing to bring one claim and failed on the merits for the remaining arguments.\textsuperscript{201} The D.C. Circuit Court found that the environmental groups did have standing,\textsuperscript{202} but still found that the claims failed on the merits because the agency actions should be given deference unless they are “arbitrary and capricious.”\textsuperscript{203} Therefore, the Circuit Court affirmed the District Court decision.\textsuperscript{204}

3. United States District Court for the District of Idaho

i. Reported Cases

\textit{Greater Yellowstone Coalition v. United States Forest Service}

In response to a "proposed expansion of an all-terrain vehicle trail" in Caribou Targhee National Forest, an environmental conservation organization brought claims under two federal environmental statutes against the U.S. Forest Service.\textsuperscript{205} First, the conservation group alleged the Forest Service violated NEPA by failing to

\begin{thebibliography}{99}

\bibitem{193} Id.
\bibitem{194} Id.
\bibitem{195} Id.
\bibitem{196} \textit{WildEarth Guardians}, 751 F.3d at 651.
\bibitem{197} Id.
\bibitem{198} WildEarth Guardians v. Jewell, 738 F.3d 298, 303 (D.C. Cir. 2013).
\bibitem{199} Id. at 302.
\bibitem{200} Id. at 306.
\bibitem{201} \textit{WildEarth Guardians}, 738 F.3d at 306-07.
\bibitem{202} Id.
\bibitem{203} Id. at 308.
\bibitem{204} Id. at 302.
\end{thebibliography}
consider all of the effects on the wilderness from an ATV trail. The District Court held that the Forest Service did in fact violate NEPA because the Environmental Assessment (EA) failed to "properly disclose and analyze the effects of the Project . . . on the Wilderness area," meaning the Forest Service acted in an arbitrary and capricious manner. The Court clarified that this issue could be remedied with an updated EA and the Forest Service did not need to complete an environmental impact statement in order to comply with the statute. Under additional NEPA claims, the Court determined that the Forest Service complied with the statute in "considering the soil issues and final location of the trail" and in addressing the sedimentation effects on a threatened fish species, and therefore did not need to complete a supplement EA for these considerations.

Second, the environmental coalition claims the Forest Service project violates the National Forest Management Act (NFMA) because it does not comply with the Forest Management Plan. The District Court held that the project complied with the Forest Plan standards and guidelines for the protection of soils and the protection of aquatic resources. Overall, the court found that the ATV trial project complied with NFMA.

Idaho Wool Growers Association v. Vilsack

In 2003, the Forest Service revised the Payette National Forest Land and Resource Management Plan, which resulted in several challenges including that the revision failed to adequately address issues with domestic sheep on the Big Horn Sheep population. As a result, the Forest Service released a draft Supplementary Environmental Impact Statement (SEIS) that considered the effects of alternative plans on the Big Horn Sheep population. Then in 2010, the Forest Service released the Final Supplemental Environmental Impact Statement (FEIS) and Record of Decision on the Forest Plan. The Plaintiffs claim the defendants violated NEPA in three different ways.

First, the plaintiffs claimed that defendants inadequately explained the assumption that domestic sheep transmit deadly bacteria to Big Horn Sheep. On this claim, the Court held that the defendants made a reasonable decision in light of expert agency comments and that the assumption was valid when evaluating the unavailable or incomplete information. Second, plaintiffs claimed that the FEIS

206. Id. at 4.
207. Id.
208. Id. at 12–13.
209. Id. at 8.
211. Id. at 8.
212. Id. at 13.
213. Id. at 14.
214. Id. at 17.
217. Id.
218. Id.
219. Id. at 1089.
220. Id. at 1089.
failed to account for other potential risks to the Big Horn Sheep population besides domestic sheep grazing. The Court held that the defendants took a "hard look" at other potential risk factors to the Big Horn Sheep population, and therefore did not violate NEPA under this claim. And finally, the plaintiffs claimed that the FEIS relied on insufficient models and data. The Court determined that the Plaintiffs' arguments were not based on information or model shortcomings, but rather took issue with the methodology of the decisions. The Court found that the defendants' actions were not arbitrary and capricious even when addressing uncertainties. Therefore, the Court granted the defendants' motion for summary judgment on the issues.

**United States v. Federal Resources Corporation**

The Government brought a claim against a former mine operator under the Comprehensive Environmental Response, Compensation, and Liability Act to recover the cost of environmental cleanup at a mining site in Bonner County, Idaho. As is available under CERCLA, the defendants counterclaimed, alleging that the government was contributorily liable for the environmental cleanup costs at the site because of its responsibility as an "owner, operator, or arranger." The District Court found that the government had established the five factors for a prima facie CERCLA recovery case: the cleanup site was a facility, the hazardous substance was released, that the Government did incur costs with the response, and the defendants are in the class of people liable under the statute. Additionally, the Court determined that the government cleanup response was consistent with the requirements under the National Oil and Hazardous Substance Pollution Contingency Plan (NCP) because it was not "arbitrary and capricious.

With regard to the Counterclaim, the defendant bears the "burden of proving that a reasonable basis for apportionment exists," under the NCP. The Court held the operator failed to demonstrate that the cost of the cleanup should be divided and harm apportioned between defendants and the government. The Court also found under the CERCLA counterclaim that Government was not responsible as "an arranger" of waste disposal.

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222. *Id.* at 1093.
223. *Id.* at 1094.
224. *Id.* at 1095–96.
225. *Id.* at 1099.
226. *Id.*
229. *Id.*
230. *Id.* at *6
231. *Id.* at *1, *6.
232. *Id.* at *9 (quoting Burlington N. & Santa Fe Ry. Co., 566 U.S. 599, 614 (2009)).
233. *Id.* at *14–15.
Valley County, Idaho v. United States Department of Agriculture

Valley County brought claims under NEPA against the United States Department of Agriculture and the United States Forest Service for the closure of "unauthorized" roads prior to completing an evaluation of the potential environmental impacts. The Payette National Forest (PNF) Plan from 2003 identified environmental issues with the continued use of unauthorized roads on Forest Service land, and in response issued additional regulations. The PNF then prepared a Final Environmental Impact Statement in 2007 for determining a road and trail system, including an evaluation of the impact from the roads on water quality. However, the Final EIS did not directly evaluate the impact from nearly a thousand miles in unauthorized road, but instead used a proxy methodology not explained in the FEIS. Based on these facts, the Court held that the EIS, and the Record of Decision based on the EIS, violated NEPA and granted the motion for summary judgment on this claim filed by the county.

The County also alleged that a 2010 environmental assessment (EA) and finding of no significant impact violated NEPA. The 2010 EA evaluated travel within the area, and included two alternatives to the proposed plan but rejected considering an alternative plan with large scale road closures that would have resulted in increased environmental benefits but strong public disfavor. Based on the EA, the Forest Service issued a project plan decision notice and a finding of no significant impact, meaning an EIS is not required. The Court rejected this challenge, finding that the EA conducted an in-depth analysis of the project effected areas, and granted summary judgment to the Forest Service on the 2010 EA NEPA claim.

ii. Unreported Cases

Alliance for the Wild Rockies v. Brazell

In this case, Plaintiffs sought an injunction to stay three different timber sales almost immediately prior to when they were scheduled to begin. Plaintiffs made claims under the Endangered Species Act, The National Forest Management Act, NEPA, and claims of irreparable harms and public interests. The Court denied the Plaintiff's Motion for Injunction Pending the Ninth Circuit Appeal finding that many of the Plaintiffs' claims were addressed in the court's "ruling on the cross motions of summary judgment" and that Plaintiffs "failed to satisfy either the Wi-
ter test or the sliding scale test.” Overall, the court determined that the agencies did not abuse their discretion and complied with federal law in completing the timber sales for the purpose of fire prevention and aquatic health.

*Idaho Conservation League v. Magar*

The Idaho Conservation League (ICL) filed a citizen suit alleging the defendant discharged, and would continue to discharge, pollutants into the South Fork Palouse River without a permit in violation of the Clean Water Act. The ICL requested that the District Court rule in its favor for civil penalties, injunctive relief, and declaratory relief. The Court held that Magar was in violation of the Clean Water Act under the citizen suit provision due to admitting past illegal discharges and potential future discharges without a National Pollutant Discharge Elimination System (NPDES) permit. In response, the Court granted the ICL’s Motion for Summary Judgment.

*Idaho Conservation League v. United States Forest Service*

The Plaintiff, the Idaho Conservation League (ICL), alleges that the Forest Service violated the Healthy Forest Restoration Act and requested injunctive relief in response to the "timber and fire management project... in the Fern Hardy Resource Area." The Forest Service project includes "commercial timber harvest, prescribed burning, fuel breaks, vegetation management," and management of roadways. The District Court granted the ICL's Motion for Summary Judgment and the requested declaratory relief, while remanding the project to the Forest Service to add to the environmental assessment (EA) to include additional alternative action because the EA did not discuss most of the environmental impacts.

*Maughan v. Vilsack*

Plaintiffs filed a motion for preliminary injunction pending appeal and expedited ruling to prohibit the "further implementation or facilitation of the wolf management program" established by the Idaho Department of Fish and Game. The Plaintiffs were required to show that there were serious legal questions on the issue for the District Court to grant relief, irreparable injury, and substantial injury to

246. *Id.* at *3, *5.
247. *Id.* at *2.
249. *Id.*
250. *Id.* at *7.
251. *Id.*
253. *Id.*
254. *Id.* at *12.
other interested parties or the public interest.256 The Court found that the plaintiff failed to establish the necessary factors and ruled to deny the plaintiff’s motion.257

_Nez Perce Tribe v. United States Forest Service_

The plaintiffs filed a preliminary injunction to stop a transport company from transporting mega-loads, or large equipment, over Highway 12, which passes through the Nez Perce-Clearwater National Forest and along designated Wild and Scenic Rivers.258 Prior to granting the transport companies access to the highway, the Forest Service reviewed the transport company’s proposal to determine the potential impacts on National Forest land.259 The Forest Service asked the state for time to complete the analysis; however, the state granted the permit prior to the Forest Service determination.260 The Forest Service sent notice to the transport company that it had not granted permission for use of the highway, but the transport company sent a mega-load down the highway without consent from the Forest Service.261 This case was brought in response to a second scheduled transport over the highway.262

The Court determined that the Forest Service was required to consult with the Tribe to act consistently with the Forest Management Plan under the National Forest Management Act.263 The Court determined that the Forest Service had enforcement authority over the stretches of highway within National Forest Lands, and therefore had the authority to close the highway.264 The District Court held that the Forest Service was required to close Highway 12 between mileposts 74 and 174 to mega-load transport until the Forest Service finished the review of the effects of the mega-load transport on the environment and consulted with the Nez Perce Tribe about the transport and effects.265

_WildEarth Guardians v. Mark_

Several environmental groups filed a claim seeking a temporary restraining order against the United States Forest Service for an injunction to stop a wolf and coyote derby, a contest hunt that specifically targeted wolves and coyotes near Salmon, Idaho.266 Generally in Idaho, permits are not required for hunting coyotes and wolves have a designated hunting season with an overall take limit.267 While special use authorization is required for certain purposes on Forest Service land, it

256. _Id._ at *1–2.
257. _Id._ at *2.
259. _Id._
260. _Id._
261. _Id._
262. _Id._
263. _Id._ at *5.
265. _Id._ at *8.
267. _Id._
is not required for hunting because it is a noncommercial recreational activity.\(^{268}\) The Forest Service determined that the wolf and coyote derby also fell within this exception to special authorization requirements as a noncommercial recreational activity, meaning no Forest Service permit was required.\(^{269}\) The Court determined that the plaintiffs did not meet the burden necessary for the court to issue a temporary restraining order because the wolf and coyote derby applied with Idaho state law and therefore plaintiffs failed to show irreparable harm from the derby that would not otherwise be seen in a regular hunting season.\(^{270}\)

B. Legislative Branch\(^{271}\)  \(^{272}\)

**Freedom to Fish Act**

In order to allow public access to waters, the Chief of the Army Corps of Engineers is prohibited from establishing a restricted area on waters downstream of a dam.\(^{273}\) The legislation is retroactive, and requires that the Chief of the Army Corps of Engineers cease implementing any restrictive areas below the dams taken between August 12, 2012, and June 3, 2013, the date of enactment.\(^{274}\) Any restrictive barriers put in place during that time must be removed.\(^{275}\)

**Hydropower Regulatory Efficiency Act of 2013**

This legislation amends the Public Utility Regulatory Policies of 1978 (PURPA) by allowing the Federal Energy Regulatory Commission (FERC) to exempt small hydroelectric power plants up to 10,000 kilowatts from licensing requirements.\(^{276}\) The Federal Power Act licensing provisions are also amended to revise the limitation on “maximum installation capacity of qualifying conduit hydropower facilities.”\(^{277}\) Importantly, any person, state, or municipality that wishes to take advantage of the revision must file a notice of intent with FERC.\(^{278}\) FERC then has fifteen days to make a determination of whether the facility meets the

\(^{268}\) Id.

\(^{269}\) Id. at *1–2.

\(^{270}\) Id. at *5.

\(^{271}\) For more information on legislative materials passed or pending before Congress see *Legislation-113th Congress*, CONGRESS.GOV, https://www.congress.gov/search?q={%22source%22%3A%22%22%22legislation%22%22%22%22%22congress%22%3A%22%3A 113} (last visited Oct. 27, 2014).

\(^{272}\) Although this section does not include any legislative materials that have not been signed into law, one pending bill before Congress is particularly interesting because it deals specifically with Idaho: The Idaho County Shooting Range Land Conveyance Act with the purpose of “require[ing] the Secretary of the Interior to convey certain federal land” to Idaho. Idaho County Shooting Range Land Conveyance Act, H.R. 5040, 113th Cong., § 1 (2013). The bill would require the Bureau of Land Management to transfer approximately thirty one acres of land for the purpose of a shooting range. Idaho County Shooting Range Land Conveyance Act at § 1.


\(^{274}\) Id. § 2.

\(^{275}\) Id. § 2.

\(^{276}\) Id. § 3.


\(^{278}\) Id.
qualifying criteria. Additionally, the legislation waives license requirements for conduit hydroelectrical facilities that meet three criteria.

Community Fire Safety Act of 2013

This legislation amends the Safe Drinking Water Act, allowing fire hydrants as an exemption to prohibitions against the “use of lead pipes, solder, and flux.” Additionally, the Administrator of the Environmental Protection Agency (EPA) is directed to communicate with the National Drinking Water Advisory Council for advice on the necessary changes to federal regulations regarding lead, and to request the Council to identify sources of lead that may be present in drink water distributions systems.

Agricultural Act of 2014

In addition to dealing with commodities, trade, nutrition, credit, rural development, research, energy, and crop insurance, the Agriculture Act also directly addresses many environmental issues. Title II of the Act deals with conservation including a reserve program, a stewardship program, an Environmental Quality Incentives Program, an Agricultural Conservation Easement Program, Regional Conservation Partnership Program, and other conservation programs. Each of these programs is addressed in its own section, which sets forth the purpose and requirements under the Act.

Title VIII addresses forestry and reauthorizes the Cooperative Forestry Assistance Act of 1987 Programs, the rural revitalization technologies program, and the Office of International Forestry. In addition to reauthorizing forestry programs, the legislation repeals four forestry programs. Furthermore, the Secretary of Agriculture is directed to designate critical areas in the National Forest System.

279. Id.
280. Id.
285. Id. §§ 4001–4214.
286. Id. §§ 5001–5404.
287. Id. §§ 6001–6210.
288. Id. §§ 7101–7606.
289. Id. §§ 9001–9015.
291. Id. §§2001-2713.
293. Id. §§ 2101.
294. Id. §§ 2201–2208.
295. Id. § 2301.
297. Id. §§ 2501–2508.
298. Id. §§ 2001–2508.
299. Id. § 8101.
300. Id. § 8201.
301. Id. § 8202.
to identify deteriorating forest health conditions caused by plant disease, insect infestation, drought, or certain types of storm damage and to identify any future risk of insect infestations or plant disease outbreaks and take preventative measures. The Secretary is also directed to revise the forest inventory strategic plan.

Horticulture is addressed in Title X, which includes the Reducing Regulatory Burdens Act of 2013. Under the Reducing Regulatory Burdens Act, the EPA is prohibited from requiring a permit under the Clean Water Act for a discharge from a point source into navigable waters of a pesticide that is authorized under the Federal Insecticide, Fungicide, and Rodenticide Act, with specific exceptions included. The Horticulture section also establishes the national clean plant network for diagnostic and pathogen elimination services to both “produce clean propagative plant material . . . and maintain . . . blocks of pathogen-tested plant material,” while repealing the coordinated plant management program.

Other miscellaneous provisions address environmental concerns and requirements, including directing the Secretary of Agriculture to “address the decline of managed honey bees and native pollinators” and stating that the EPA must not require, and may not require a state to require, a permit for a “discharge from run-off resulting from . . . silviculture activities.”

National Integrated Drought Information System Reauthorization Act of 2014

This amendment to the original National Integrated Drought Information System Act of 2006 is implemented to ensure that the National Integrated Drought Information System (NIDIS) Program’s purpose is “to better inform and provide for more timely decisionmaking to reduce drought related impacts and costs.” The NIDIS Program will be responsible for “provid[ing] an effective drought early warning system;” communicating information with parties acting in drought planning; providing information on the differences in regional conditions; “coordinat[ing] and integrat[ing] Federal research and monitoring;” building upon available programs and partnerships; and “monitoring activities related to drought.” Additionally, the legislation requires that Congress receive a report within eighteen months from enactment on the NIDIS Program from the Under Secretary of Commerce for Oceans and Atmosphere.
Water Resources Reform and Development Act of 2014

This Act was created with the stated purpose “to provide for improvements to the rivers and harbors of the United States, to provide for the conservation and development of water and related resources, and for other purposes.” Title I addresses program reforms and streamlining, which includes the establishment of several new programs and provides requirements for these and revised programs requiring action from different federal agencies. Importantly, Congress acknowledged the importance of considering a water resource bill during every session of Congress.

Title II addresses navigation, including subsections on inland waterways and port and harbor maintenance. The inland waterways section sets forth requirements for projects involving construction or rehabilitation for navigation infrastructure that is authorized after the enactment of the Act and is funded in part from the Inland Waterways Trust Fund, in addition to providing requirements for specific projects and general agency requirements for inland waterways. Similarly, the port and harbor maintenance section sets forth requirements for specific projects and general agency requirements under the Act.

Safety improvements and addressing extreme weather events is covered in Title III, including dam safety, levee safety, and additional safety improvements and risk reduction measures. The Title amends the National Dam Safety Program Act, several of the Water Resources Development Acts, and requires specific agency action. These sections should be referenced when formulating or implementing safety improvements or addressing extreme weather events on water systems.

River Basins and coastal areas are addressed in Title IV, and each provision is based on a specific project or regional area. Importantly, this section specifically addresses Idaho. Under this section the Secretary of the Army is directed to research the potential for implementing projects on the Columbia, Missouri, and Yellowstone Rivers in Idaho and Montana relating to aquatic ecosystem restoration and flood risk reduction to address issues with extreme weather. The projects should be implemented to mitigate damage to communities, water users, and fish and wildlife from extreme weather occurrences. Additionally, the Act amends the Water Resource Development Act of 1999 to aid water-related environmental

316. Id. §§ 1001–1052.
317. Id. § 1052.
319. Id. §§ 2101–2107.
320. Id. § 2002.
322. Id. §§ 2102–2107.
323. Id. § 3001.
324. Id. §§ 3011–3017.
325. Id. §§ 3021–3029.
326. Id. §§3001-3029.
328. Id. §§ 4001–4014.
329. Id. §§ 4007–4008.
330. Id. § 4007.
331. Id.
infrastructure and resource protection and developments in several states including Idaho.  

Water Infrastructure Financing is addressed in Title V. In an amendment to the Clean Water Act, the EPA Administrator is given the authority to grant states funding for establishing a water pollution control revolving fund. The Act also amends the State Revolving Fund Program, including adding requirements on states involved in the Program. This Title also addresses Innovative Financing Pilot Projects by establishing the Water Infrastructure Finance and Innovation Act of 2014.

Title VI deals with deauthorization and backlog prevention and states three purposes. First, to identify eighteen billion dollars in water resource development projects that should no longer be constructed. Second, to create a process to deauthorize these projects. Finally, to identify projects that are able to be or should be constructed. This section includes provisions to achieve these purposes.

Lastly, Title VII addresses water resources infrastructure, which directs the Secretary of the Army to submit a “Report to Congress on Future Water Resources Development” and to carry out feasibility studies on specific water projects in several different states.

Harmful Algal Bloom and Hypoxia Research and Control Amendments Act of 2014

This amendment to the original Harmful Algal Bloom and Hypoxia Research and Control Act of 1998 addresses changes to the requirements for the Inter-Agency Task Force on Harmful Algal Blooms and Hypoxia. Through the Task force, the Under Secretary of Commerce for Oceans and Atmosphere must establish a program for the issue and develop a “comprehensive research plan and action strategy to address marine and freshwater harmful algal blooms and hypoxia.” In addition, the Task Force must identify and promote the development of new technologies designed to mitigate harmful algal bloom and hypoxia conditions. The administrator of the EPA is required to add to the research and ensure that research

332. Id. § 4008.
334. Id. § 5001.
335. Id. §§ 5001–5006.
336. Id. § 5002.
337. Id. §§ 5023–5035.
338. Id. §§ 6001–6005.
340. Id.
341. Id.
342. Id. §§ 6001–6005.
343. Id. § 7001.
344. Id. § 7002.
346. Id.§ 5.
347. Id.§ 4.
efforts are not duplicated by any other programs authorized under any law. Overall, the goal of this legislation is to add research, programs, and monitoring to add in the mitigation of damage from Harmful Algal Bloom and Hypoxia.

Idaho Wilderness Water Resources Protection Act

Under the legislation, the Secretary of Agriculture, in the United Stated Department of Agriculture, is directed to issue special use authorization for the continued operation and construction of a “water storage, transport, or diversion facility [that is] located on National Forest system land in the Frank Church-River of No Return Wilderness and the Selway-Bitterroot Wilderness” if certain conditions are met. The conditions are: (1) the facility existed when the area was “designated part of the National Wilderness Preservation System;” (2) the facility has been used continuously to “deliver water for a beneficial use on non-Federal owner’s land;” (3) the owner has a valid water right that predates the wilderness designation; and (4) relocation is not practicable or feasible.

C. Executive Branch

1. Executive Orders

Executive Order 13648 – Combating Wildlife Trafficking

President Obama used his constitutional authority to create a policy for combating the international crisis of wildlife trafficking consisting of “[t]he poaching of protected species and the illegal trade in wildlife.” The executive order recognizes the growing need for international response by identifying the growth of wildlife trafficking into a global criminal pandemic by contributing to “the illegal economy, fuelling instability, and undermining [State] security.” These concerns, combined with the importance of the survival of protected wildlife species, demonstrate that the U.S. has tangible interests in preventing wildlife trafficking.

To assist the international community in the fight against wildlife trafficking, and protect U.S. interests, the executive order creates domestic responsibilities for executive departments and agencies to combat wildlife trafficking through rules and regulations based on the listed objectives. Additionally, the executive order established a Presidential Task Force on Wildlife Trafficking to determine a national strategy for achieving the purposes and objectives of the order. In furtherance of this goal, the Task Force will create an Advisory Council to make recom-
mendations for additional assistance. The specific goals and requirements for each established group are set out within the executive order and serve to aid in combating wildlife trafficking.

Executive Order 13650 – Improving Chemical Facility Safety and Security

Improving chemical facility safety and security is a valid U.S. concern due to the inherent risk that comes with handling and storing chemicals and the necessity of these chemicals to the U.S. economy. Despite current federal programs developed to reduce safety and security risks with hazardous chemicals, executive departments and agencies still can take additional measures “to further improve chemical facility safety and security in coordination with owners and operators.” This is evident from continuing hazardous chemical spills and other similar tragedies.

The executive order establishes the Chemical Facility Safety and Security Working Group co-chaired by the “Secretary of Homeland Security, the Administrator of the [EPA], and the Secretary of Labor,” which is responsible for improving operational coordination with other levels of government. Along with the responsibility to coordinate with State, Local, and Tribal governments, the Group is also responsible for enhanced federal coordination including the creation of a pilot program to determine the best practices for chemical facility safety and security. The Group shall also be responsible for creating unified standard operating procedures for determining and responding to risks in chemical facilities and identifying measures to enhance information collecting and sharing between responsible agencies. Overall, the Group is responsible for developing and implementing the best practices for the manufacturing, storage, distribution, and use of hazardous chemicals.

Executive Order 13652 – Continuance of Certain Federal Advisory Committees

Consistent with the constitution and the Federal Advisory Committee Act the president extended twenty-six advisory committees until September 30, 2015. As a result, the Trade and Environmental Policy Advisory Committee, the President’s Council of Advisors on Science and Technology, the Advisory Group on Prevention, Health Promotion, and Integrative and Public Health, and the President’s Global Development Council were continued by the executive order.

357. Id. at 40,622.
360. Id.
361. Id.
362. Id.
363. Id. at 48,030–31.
364. Id. at 48,031.
367. Id. at 61,817–18.
Executive Order 13653 – Preparing the United States for the Impacts of Climate Change

In response to the pervasive and varied impacts of climate change, the executive order acknowledges the need for the federal government to manage potential issues through “deliberate preparation, close cooperation, and coordinated planning.” The executive order seeks to coordinate cooperation between “Federal, State, local, tribal, private-sector, and non-profit sector” to benefit the economy, environment, and natural resources through awareness and resilience. The executive order identifies previous actions taken to increase scientific findings and assessments to improve climate change action and promulgates a modernization of federal programs to support climate resilient investment.

In furtherance of this goal, the executive order establishes the Council on Climate Preparedness and Resilience, and in coordination with States, local governments, tribes, and agencies, is responsible for evaluating issues impacted by climate change. The executive order specifies the agencies necessary to determine policies to aid watersheds, natural resources, ecosystems, and communities in becoming resilient to climate change. These agencies are charged with providing evaluations of policies to reduce identified sources of climate change and to build on policies already implemented. Additionally, the executive order establishes the State, Local, and Tribal Leaders Task Force on Climate Preparedness and Resilience to provide recommendations to the president and the Council on Climate Preparedness and Resilience.

369. Id.
370. Id.
371. Id. at 66,821.
372. Id. at 66,819–20.
373. Id. at 66,820.
375. Id. at 66,823.
2. Agency Materials

i. Final Agency Rules Specific to Idaho

Environmental Protection Agency

Idaho; Amalgamated Sugar Company Nampa Best Available Retrofit Technology Alternative

This rule approves Idaho’s regional haze state implementation plan (SIP), including the revision to the Best Available Retrofit Technology (BART) for The Amalgamated Sugar Company located in Nampa, Idaho. The EPA found that a "stricter emission limit for oxides of nitrogen [\(\text{NO}_x\)], a stricter emission limit for particulate matter [\(\text{PM}_{2.5}\)], and an alternative control measure" meet the visibility protection requirements under the Clean Air Act.

Idaho; Franklin County Portion of the Logan Nonattainment Area, Fine Particulate Matter Emissions Inventory

This rule approves the Idaho Department of Environmental Quality’s revision to the State Implementation Plan (SIP) to address Clean Air Act requirements for Franklin County. The rule approves a "baseline emissions inventory contained in IDEQ’s submittal as meeting the requirement to submit a comprehensive, accurate,
and current inventory of direct' fine particulate matter and fine particulate matter precursor emissions.\textsuperscript{383}

\textit{Idaho; Franklin County; Fine Particulate Matter Control Measures}\textsuperscript{384}

In this rule, the EPA finalized a limited approval of a revision to the State Implementation Plan addressing fine particulate matter in a nonattainment area under the Clean Air Act.\textsuperscript{385} The revision adds control measures for fine particulate matter and reduces the sources of emissions.\textsuperscript{386}

\textit{Idaho; Incorporation by reference; Update}\textsuperscript{387}

This EPA rule partially approves a submission to revise the Idaho State Implementation Plan (SIP) "to update the incorporation by reference of Federal air quality regulations into the SIP and make minor edits and clarifications."\textsuperscript{388} The EPA granted limited approval to the incorporation by reference of the "updates to the Federal nonattainment new source review" because it was remanded to the EPA by the courts.\textsuperscript{389} In addition, "the EPA is partially disapproving Idaho's incorporation by reference of two provisions of the Federal prevention of significant deterioration [] permitting rules that" were vacated by the court.\textsuperscript{390} The EPA made the decision to take no action of the incorporation by reference of another portion of the prevention of significant deterioration permitting rules.\textsuperscript{391}

\textit{Idaho; Infrastructure Requirement for the 2008 Lead National Ambient Air Quality Standards}\textsuperscript{392}

This rule becomes effective on June 29, 2014 and approves the State Implementation Plan (SIP) submitted by Idaho on February 14, 2012.\textsuperscript{393} The EPA determined that the National Ambient Air Quality Standards set forth for lead complied with the 2008 rules promulgated under the Clean Air Act for infrastructure requirements.\textsuperscript{394} Therefore, the revised SIP is approved and finds that the state law
complies with the federal requirements and does not impose additional requirements.\textsuperscript{395}

\textbf{United States Department of Agriculture}\textsuperscript{396}

\textit{Idaho Roadless Rule}\textsuperscript{397}

The Forest Service made three changes to the Idaho Roadless Rules regarding Forest Service Lands.\textsuperscript{398} First, it modified "the boundaries for the Big Creek, Grandmother Mountain, Pinchot Butte, Roland Point, and Wonderful Peak Idaho Roadless areas on the Idaho Panhandle National Forests," which added lands acquired by the Forest Service within the Roadless areas and lands adjacent to those areas.\textsuperscript{399} Second, the rule corrects mapping areas regarding the "Forest Plan Special Areas in the Salmo-Priest and Upper Priest Idaho Roadless Area."\textsuperscript{400} Finally, the rule makes an administrative correction to the Kootenai National Forest list by adding Buckhorn Ridge as an Idaho Roadless Area.\textsuperscript{401}

\textit{ii. Agency Notices Specific to Idaho}

\textbf{Department of Agriculture}


The United States Forest Service gave notice of intent to prepare an Environmental Impact Statement (EIS) regarding "livestock grazing on all or portions of the Pocatello, Midnight, and Michaud allotments."\textsuperscript{402} The notice summarized the purpose of the livestock grazing in these areas, the proposed action the forest service would undertake, and available alternatives to the current proposed action, and information regarding how the final decision will be made.\textsuperscript{403} Generally, the EIS would address the reauthorization of livestock grazing within the forest service project area, while improving the environment within the area through the "implementation of a grazing management strategy."\textsuperscript{404}

\begin{flushleft}
\textsuperscript{395} Id.
\textsuperscript{396} The United States Department of Agriculture (USDA) has published 139 rules in the Federal Register in 2014 so far. See Agriculture Department, FED. REG., https://www.federalregister.gov/index/2014/agriculture-department#fr-index-rules (last updated Oct. 4, 2014). Additionally, the USDA published a final rule regarding assessment rates for Irish Potatoes grown within certain Counties in Idaho that is not included in this summary because it deals with agricultural marketing rather than a specific environmental issue. For more information on this rule See Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Decreased Assessment Rate, 77 Fed. Reg. 22,357, 22,357 (Apr. 22, 2014); 40 C.F.R. § 945 (2014).
\textsuperscript{397} Idaho Roadless Rule, 36 CFR § 294, 294.22 (2014).
\textsuperscript{398} 36 CFR § 294.22.
\textsuperscript{400} Id.
\textsuperscript{401} Id.
\textsuperscript{403} Id.
\textsuperscript{404} Id.
\end{flushleft}
Intermountain Region, Boise National Forest, Idaho City Ranger District; Idaho; Becker Integrated Resource Project

The United States Forest Service gave notice that it will prepare an environmental impact statement for the Becker integrated Resource Project, which falls within the Middle Crooked River Watershed outside of Idaho City, Idaho. The Forest Service identified four purposes of the project that address environmental quality, restoration, recreation, and local economy. In addition to other provisions, the project will include “vegetation management and fuels treatment,” several actions regarding national forest service roads in the area, and removing culverts to improve fish habitat and travel.

Nez Perce-Clearwater National Forests; Idaho; Notice to Proceed with Forest Plan Revision

The Department of Agriculture through the Forest Service began a revision of the Nez Perce-Clearwater National Forest Plan with the final goal of a revised Forest Land Management Plan to determine the management of the forest resources for the at least a decade. However, an interdisciplinary team refinement of the Forest Plan is not expected to be available until 2019, and comment will be included until the record of decision is signed by the Forest Service.

Department of Energy

Crystal Springs Hatchery Program

The Bonneville Power Administration (BAP) published notice of intent to prepare an environmental impact statement (EIS) regarding a proposal for establishing a hatchery in Bingham County, Idaho for both Chinook salmon and Yellowstone cutthroat trout. The general purpose of the hatchery is to “protect, mitigate, and enhance fish and wildlife affected by the development and operation” of dams within the Columbia River Basin. The United States Forest Service will aid in the preparation of the EIS for the purpose of determining whether it will grant the special use permit for the project, which is required since it is proposed on Forest Service land.
In addition, the notice states the BPA’s intent to prepare a floodplain and wetland assessment as required by Department of Energy regulations. The assessment will be included in the EIS and will address the means to minimize possible harm to any floodplains or wetlands within the scope of the project.

**Department of Interior**

_Bureau of Land Management (BLM) Director’s Response to the Idaho Governor’s Appeal of the BLM Idaho State Director’s Governor’s Consistency Review Determination_

This notice is a response to recommendations made by the Governor of Idaho regarding the Proposed Land Use Plan Amendments included in the Gateway West Final Environmental Impact Statement (EIS). The Bureau of Land Management (BLM) denied the Governor’s recommendations by finding that his determinations were “outside the scope of the Governor’s Consistency Review process,” to which the Governor appealed the State Director’s determination. The BLM Director issued a final response to the Governor’s appeal that affirmed the State Director’s decision to deny the Governor’s recommendations.

_Camas National Wildlife Refuge, Jefferson County, Idaho- Draft Comprehensive Conservation Plan and Environmental Assessment_

The United States Fish and Wildlife Service gave notice that the draft conservation plan and environmental assessment for the Camas National Wildlife refuge in Hamer, Idaho is available and open for public review and comment. The refuge was created with the purpose of being a sanctuary and “breeding ground for migratory birds and other wildlife.” The draft conservation plan and environmental assessment describes how the Fish and Wildlife Service plans to manage the refuge over a fifteen year time frame.

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414. _Id._ at 30,114.
415. _Id._ at 30,114.
417. _Id._ at 30,114.
418. _Id._
419. _Id._
421. _Id._
422. _Id._
Draft Environmental Impact Statement for the Proposed Smokey Canyon Mine, Panels F and G Lease and Mine Plan Modification Project, Caribou County, Idaho

The Department of the Interior, through the Bureau of Land Management, and the Department of Agriculture, through the United States Forest Service, have made available a draft environmental impact statement under NEPA for the proposed Smokey Mountain Canyon Mine.\(^{423}\) Mining operations have taken place in the Smokey Mountain Canyon Mine since 1984, and mining plans and leases were approved for panels F and G in 2008.\(^{424}\) The proposed lease and mine plan modifications deal with Federal phosphate leases.\(^{425}\) Meanwhile, "regional mitigation strategies for cumulative effects from phosphate mining to wildlife habitat are currently being developed" in Idaho.\(^{426}\) The final environmental impact statement will analyze and support the agencies’ decision on whether to approve the proposed lease and mine modifications.\(^{427}\)


The Bureau of Land Management, in accordance with NEPA and the Federal Land Policy and Management Act (FLPMA), created a draft resource management plan amendment to address domestic sheep grazing and concerns of the impact of that grazing on big horn sheep habitat and health.\(^{428}\) The Supplemental EIS will address domestic sheep grazing in four allotments to determine the potential impacts on the big horn sheep population and health, and the tribal and economic interests in livestock grazing.\(^{429}\)

Idaho and Southwest Montana Greater Sage-Grouse Draft Land Use Plan Amendments and Environmental Impact Statement

The Bureau of land management and the Forest Service in accordance with NEPA and the Federal Land Policy Management Act published notice that the Draft Land Use Plan (LUP) Amendments and Draft Environmental Impact Statement (EIS) for managing sage-grouse within the region is available.\(^{430}\) These Draft LUP and Draft EIS pertain to only one of fifteen different planning efforts regarding the Greater Sage-Grouse Planning Strategy undertaken by the BLM and Forest Service.\(^{431}\) The area discussed in the Draft LUP and Draft EIS is estimated at 49.1

\(^{424}\) Id. at 31,132.
\(^{425}\) Id.
\(^{426}\) Id.
\(^{427}\) Id.
\(^{429}\) Id.
\(^{431}\) Id. at 65, 704.
million acres that covers many different types of ownership and identifies areas as either preliminary priority habitat and preliminary general habitat.\textsuperscript{432}

**Environmental Protection Agency**

*Final Modification of the National Pollutant Discharge Elimination System General Permit for Small Suction Dredges in Idaho*

A National Pollutant Discharge Elimination System general permit was issued by the EPA in 2013 for Morese Creek and contained an inconsistency with the federal intent regarding the total maximum daily load (TMDL).\textsuperscript{433} The EPA then gave notice that it intended to modify the permit complete with a comment period.\textsuperscript{434} The Final general permit “includes the tributaries of Mores, Elk or Grimes creeks in the loading allocations of the TMDL.”\textsuperscript{435} The EPA noted that the new provisions of the general permit went into effect on April 14, 2014.\textsuperscript{436}

*Adequacy Status of the Idaho, Northern Ada County PM\textsubscript{10} (Particle Matter) State Implementation Plan for Transportation Conformity Purposes*

The EPA published this notice to inform the public that the Northern Ada County State Implementation plan that addresses the motor vehicle emissions budgets for “particulate matter with an aerodynamic diameter of a nominal 10 microns or less”—The PM\textsubscript{10} State Implementation Plan and updated Maintenance Plan—conform to the national standards for transportation emissions.\textsuperscript{437} The standards within the SIP and maintenance plans now serve as the standard for transportation conformity determinations and must be adhered to by Idaho agencies.\textsuperscript{438}

**III. IDAHO STATE LAW**
A. Judicial Branch

1. Idaho Supreme Court Cases

**A&B Irrigation v. Spackman**

This case arises as an appeal from the district court’s decision to affirm a final order from the Director of the Idaho Department of Water Resources. Senior surface water users in the state challenge the “methodology established by the Director for material injury caused by the pumping of junior groundwater rights holders.” The Court held that “the Director may employ a baseline methodology as a staring point for considering material injury,” which is independent from the water right quantity. The Court determined that the Director’s action was appropriate based on an analysis of the two principles of prior appropriation, which apply to both surface and groundwater: first in time is first in right and the requirement for application of the water to a beneficial use. The Court finished the analysis with three conclusions: (1) The Director can establish a pre-season management plan for allocation of water resources [using] a baseline methodology” that must conform to Idaho law requirements; (2) “senior right holder may initiate a delivery call based on allegations that specified provisions of the management plan will cause [ ] material injury;” and (3) "junior right holders effected by the delivery call may respond" and attempt to show that the "call would be futile or is otherwise unfounded." These conclusions also contained the evidentiary requirements to succeed on a claim.

The Court also found that the conjunctive management rule governing the use of surface and groundwater within a basin, "require that out-of-priority diversions only be permitted" if there is an applicable mitigation plan. Additionally, this


440. Additionally, the Idaho District Court Case Decisions are not available online, notwithstanding the First District. For access to the First District’s Court Cases follow the link for the district on the Idaho Courts website. See Idaho District Courts, State of Idaho Judicial Branch, http://www.isc.idaho.gov/district-courts (last visited Oct 1, 2014).

441. For all Idaho Supreme Court Decisions See Idaho Supreme Court Civil Opinions, IDAHO SUPREME COURT, http://www.isc.idaho.gov/appeals-court/isc_civil (last visited Sep. 20, 2014); See also Idaho Supreme Court Criminal Opinions, IDAHO SUPREME COURT, http://www.isc.idaho.gov/appeals-court/isc_criminal (last visited Sep. 20, 2014). Interestingly, there are several developer/property development and subdivision cases, which although they could effect environmental law, as a subsect of public land law, are more accurately within the property realm. See e.g., Sky Canyon Properties, LLC v. Golf Club at Black Rock, LLC, No. 114 (Nov. 26, 2013).


443. Id.

444. Id. at 836, 155 Idaho at 648.

445. Id. at 838-39, 155 Idaho at 650-51.

446. Id. at 841, 155 Idaho at 653.

447. Id.

448. Id. at 18.
case establishes that clear and convincing is the evidentiary standard for determining material injury to water user.\(^{449}\)

B. Legislative Branch\(^ {450}\)

1. Session Laws

*House Bill 48- Injection Wells*

In dealing with injection wells, the legislation provides the authority to decommission Class II injection wells when an owner is financially unable to.\(^ {451}\) Additionally, the legislation requires the director of the Department of Water Resources to “require good and sufficient security” when permitting a class II Injection well.\(^ {452}\)

*House Bill 49- Injection Wells*

This legislation amends existing law regarding injection wells by defining “Class II Injection Well.”\(^ {453}\) Class II Injection wells is a “deep injection well used to inject fluids,” which are usually waste fluids from the process of producing natural gas or oil.\(^ {454}\) Additionally, the legislation establishes a fee for filing a permit application for each Class II injection well for construction and use.\(^ {455}\) The current filing fee of $100 for each deep injection well would remain the same, with the exception of a filing fee of $2,500 required for each Class II injection well requiring a permit.\(^ {456}\)

*House Bill 50 – Hydropower*

This legislation provides that a hydropower water right will be automatically renewed unless the director of the Department of Water Resources issues an order prior to the end of the permit’s term.\(^ {457}\) This solidifies the director’s right to review

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\(^{449}\) *Id.* at 21.

\(^{450}\) For additional legislative resources see *Subject Index, IDAHO LEG.*, http://legislature.idaho.gov/legislation/2013/topicind.htm#E (last visited Sep. 9, 2014) [hereinafter *Subject Index 2013*]; *Subject Index, IDAHO LEG.*, http://legislature.idaho.gov/legislation/2014/topicind.htm#E (last visited Sep. 9, 2014) [hereinafter *Subject Index 2014*]. Additionally, this article does not include information relating to the appropriations or funding of natural resources or the environment, nor changes in administrative process fees within the state. However, this legislation is available on the Idaho Legislature website. See *Subject Index 2013*; See *Subject Index 2014*. One statute of note is related to the distribution of cigarette tax moneys, which allocates a certain portion of the funding to the secondary aquifer planning, management and implementation fund for state aquifer stabilization. 2014 Idaho Sess. Laws Ch. 115 (2014). This section does not address any concurrent or joint resolutions during the legislative session.

\(^{451}\) 2013 Idaho Sess. Laws 90.

\(^{452}\) *Id.*

\(^{453}\) *Id.* at 91.

\(^{454}\) *Id.*

\(^{455}\) *Id.* at 93.

\(^{456}\) *Id.*

\(^{457}\) *Id.* at 95–96.
the water right, but does not require the director to establish a specific term of years after which the water right will expire and a new permit must be filed.\(^{458}\)

**House Bill 93- Forest and Range Fire**

This legislation adds and amends existing law by adding a section that defines “nonprofit rangeland fire protection association.”\(^{459}\) Additionally, the legislation identifies the necessary requirements to establish a nonprofit rangeland fire protection association.\(^{460}\)

**House Bill 131-Water**

This legislation relates to establishing water rights.\(^{461}\) Under the amended legislation, water permit holders have the opportunity for additional development time if there was a loss of development time due to “state, county, city, or other local government” actions.\(^{462}\) Additionally, the legislation allows the Department of Water Resources to allow extensions for larger water right permit holders if an application is filed with sufficient showing of good cause for an extension.\(^{463}\)

**House Bill 132- Forest and Range Fire**

As a means to limit the recovery for fires caused by a “negligent or unintentional act.”\(^{464}\) When a fire is caused by an unintentional negligent act, the damages are limited to the “reasonable costs for controlling or extinguishing” the fire, and actual and objectively verified loss.\(^{465}\) Timber owners are entitled to recover the market value of lost timber along with additional demonstrated damages.\(^{466}\)

**House Bill 141- Exemptions from Property Tax: Wells**

This legislation amends existing law to provide a property tax exemption for wells drilled in pursuance of the production of oil, gas or hydrocarbon condensate.\(^{467}\) Specifies that the well must be used for this purpose in order for the tax exemption to apply.\(^{468}\)

**House Bill 271 – Water Quality**

In addressing water quality, the bill amends the existing law in order to clarify the Director of the Department of Environmental Quality considerations in deter-
mining beneficial uses. Additionally, the bill provides that the Director should consult with basin advisory groups and watershed advisory groups.

**House Bill 371 – Forest Products Commission**

This legislation relates to the Idaho Forest Products Commission and amends existing law “relating to advisory member” of the commission, “relating to the composition” of the Commission, and to “revise assessment provision and [] make technical corrections.”

**House Bill 390 – Environmental Quality Department**

In addressing environmental quality, the bill amends existing law regarding plats and vacations by amending the definition of “sanitary restriction.” The written approval needed for construction of a building is now required from the director of the Department of Environmental Quality, rather than from the state Department of Health and Welfare.

**House Bill 392 – Water Quality**

The bill amends existing water quality law to revise provisions for Tier II analysis from “insignificant activity or discharge” to “insignificant degradation.” The bill also provides guidelines for determining when degradation is significant. If degradation is determined insignificant then further Tier II analysis is not required.

**House Bill 398 – Fish and Game**

In an attempt to increase revenue, this bill allows the fish and game increased authority to discount “to encourage the purchase of licenses in consecutive years or to encourage the purchase of multiple tags and permits.” This discount in fees is meant to increase the amount of licenses purchased regularly.

**House Bill 399 – Fish and Game**

This bill lowers the age from twelve to ten to be able to hunt big game in Idaho. However, the requirement that a licensed hunter must be present is still in place. Additionally, the bill makes a clarification stating that those with a nonres-

469. Id. at 945.
470. Id. at 945.
472. Id. at 139.
473. Id. at 140.
474. Id. at 143.
475. Id.
476. Id. at 144.
477. Id. at 592.
478. See id.
479. Id. at 221.
480. Id. at 221–22.
ident three-year hunting license are able to fish for three consecutive days during each year in which they are licensed. 481

**House Bill 406 – Environmental Quality**

In dealing with environmental quality, it amends existing law to add additional penalties for violations of environmental quality standards. 482 As a means to achieve this goal, the bill provides civil penalties, requires compliance with “certain public participation requirements in administrative and civil enforcement proceedings,” 483 and creates criminal violations as penalties. 484 Additionally, it authorizes the Department of Environmental Quality to “pursue approval of [National Pollutant Discharge Elimination System] NPDES program.” 485

**House Bill 410 – Injection Wells**

The House bill amends the definition of injection well to mean “any feature that is operated to allow injection which also meets at least one (1) of the following criteria: A bored, drilled or driven shaft whose depth is greater than the largest surface dimension; A dug hole whose depth is greater than the largest surface dimension; An improved sinkhole; or A subsurface fluid distribution system.” 486

**House Bill 412 – Water Resources Department**

This legislation amends existing law regarding the qualification requirements for the director of the Idaho Department of Water Resources. 487 The revision includes increased education and experience requirements, with an emphasis on the ability to interpret Idaho water law. 488

**House Bill 431 – Domestic Cervidae (Elk)**

This legislation calls for brain tissue samples from at least ten percent of all domestic cervidae to be submitted by the owner for testing of chronic waste disease and that an inspection of all farms and ranches be done at least every five years. 489 Additionally, to fund the Idaho Department of Agriculture’s regulatory responsibilities, the legislation increases the inventory fee per head and creates a per head fee for export, import, and transfer. 490

481. *Id.* at 224.
482. *Id.* at 94.
483. *Id.* at 92.
484. *Id.*
485. *Id.*
486. *Id.* at 314.
487. *Id.* at 304.
488. *Id.*
489. *Id.* at 90–91.
490. *Id.* at 91.
House Bill 467 – Fish and Game

This legislation allows increase in controlled hunt permits by allowing them to be issued for bear and turkey. Additionally, bear and turkey are included in wildlife subject to special depredation hunts for the management of the wildlife population on any game preserve within the state.

House Bill 470 – Wolf Depredation Control Board

The legislation establishes a Wolf Control Fund and a State Board responsible for managing the fund. The fund is financed by fees from sportsmen and livestock industries. The Board is then responsible for using the money in the fund when there are depredation issues, between wolves and wildlife or livestock, for wolf control.

House Bill 526 – Public Waters

The legislation amends existing law regarding the use of public waters outside of the state. The legislation revises the application requirements for a permit to transport water out of the state. The Director of the Idaho Water Resources Department will review all applications for aquifer recharge within the state that have a place of use outside the state. Additionally, the legislation limits the language of the law and brings all withdrawals of water for use outside of the state within the scope of the statute, Idaho Code § 42-401.

Senate Bill 1003 – Fish and Game

This legislation amends existing law, allowing Idaho Fish and Game to revise the junior and youth hunting licenses to create a combined youth hunting license from the many different licenses currently available. However, some current age limitations on hunting requirements remain unchanged. Additionally, the legislation allows those with a trapping license to trap wolves. Overall, the legislation amends hunting licenses within the state.

491. Id. at 306.
492. Id. at 305.
493. Id. at 500-01.
494. Id. at 501-02.
495. Id. at 501.
496. Id. at 614.
497. Id.
498. Id.
501. Id.
502. Id. at 172.
503. See id. at 168.
In addition to the one year or lifetime hunting and fishing licenses currently available from Fish and Game, the agency will now be offering a three-year license. The license will cost three times the annual license fee, but will require only one vendor issuance fee, resulting in a small decrease in overall cost for license purchasers. Other Licensing through Fish and Game will not be affected.

**Senate Bill 1024 - Sheep and Goat Health Board**

This legislation revises the provisions regarding the membership of the Idaho Sheep and Goat Health Board to include goat producers. Additionally, it allows the State to audit the Board’s funds at any time.

**Senate Bill 1049 - Oil and Gas Conservation Commission**

This legislation modifies the membership of the oil and gas conservation commission to knowledgeable experts and stakeholders appointed by the Governor. The legislation also outlines the requirements and duties of the Oil and Gas Conservation Commission, including authorization to appoint committees to advise on pertinent issues. The legislation changes the filing requirements for certain applications from the Idaho Department of Land to the Oil and Gas Conservation Commission.

**Senate Bill 1061 - Threatened and Endangered Species**

This legislation creates a statutory framework relating to all activities regarding the introduction or reintroduction of a threatened or endangered species under the Endangered Species Act (ESA). Overall, the state maintains its primacy over the fish and wildlife within the borders by requiring state “consultation and approval.” The legislation creates the Office of Species Conservation in the office of the Governor to oversee the implementation of federal recovery plans.

**Senate Bill 1260 - Hazardous Waste Management**

For dealing with hazardous waste management, the definition of “restricted hazardous waste” was amended. The definition clarified the laws and regulations used define what does and does not constitute restricted hazardous waste.

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504.  Id. at 179–80, 182.
505.  See generally id. at 177–82.
506.  Id. at 177–79, 180-81
507.  Id. at 223.
508.  Id. at 225.
509.  Id. at 467.
510.  Id. at 467–68, 469.
511.  Id. at 470–71.
512.  Id. at 346.
513.  Id. at 347.
514.  Id. at 346.
Senate Bill 1266 – Bees

This legislation is meant to exempt honey producers from paying fees and taxes for indoor winter storage of their hives within the state prior to moving the hives to another state. However, honey producers still must register with the Idaho Department of Agriculture.

Senate Bill 1278 – Fish and Game

This bill revises the provisions for fishing rights for nonresident disable American veterans. Under the revision, the requirement that nonresident disable American veterans hunt with a qualified association in order to receive reduced fees is removed. The revisions will simplify the ability for nonresident disable American veterans to purchase a hunting license or tags.

Senate Bill 1344 – Flood Control

For dealing with flood control issues, the legislation amends and adds to existing law. The legislation states the powers and duties of commissioners. Importantly, commissioners are able to establish compensation and reimbursement provisions. The director of the Idaho Department of Water Resources must approve any district actions that will alter a stream channel, unless certain exception conditions are met. Additionally, the legislation clarifies the permitting requirements when there is a flooding emergency, including local government approval is not need to conduct a flood fight under certain conditions.

Senate Bill 1346 – State Lands

The Idaho Department of Parks and Recreation leases moorage sites on Hidden Lake and this legislation is meant to preserve the float homes on the lake. The legislation amends existing law to allow increase in the lengths of leases for certain float home moorage cites based on lessees agreement to construct a land-based sewer system which will transfer to the state at no cost.

516. Id.
517. Id. at 123-24.
518. Id. at 122-23.
519. Id. at 664.
520. Id. at 666.
521. Id.
522. Id. at 183.
523. Id. at 184.
524. Id.
525. Id. at 186-87.
526. Id. at 185.
527. Id. at 362.
528. Id.
Senate Bill 1376 – Dairy Environmental Control Act

Generally this bill adds to existing law relating to the Dairy Environmental Control Act. Additionally, it repeals some of the previous law regarding the act. Overall, the goal of the Act is to create a “responsible dairy industry within the state,” while focusing on the protection of natural resources, including but not limited to, groundwater and surface water.

2. Legislative Materials

House Bill 38 – Comprehensive State Water Plan

This addresses the comprehensive state water plan. Specifically, it adds to existing law by ratifying and approving the Idaho Water Resource Board adopted Comprehensive State Water Plan.

House Bill 143 - Invasive Species

This bill, in addressing invasive species, repeals and adds to existing law. The bill creates additional fees for certain vessels, which will allow them to receive an invasive species permit and associated sticker. The sticker must be displayed according to the specific provisions in the bill or it will be found unlawful. The bill also provides for violations, penalties, and enforcement.

House Bill 146 – Fish and Game

This bill establishes the procedure to verify depredation by deer, elk, or antelope. The bill allows Idaho Fish and Game to declare a feeding emergency for livestock due to the wildlife depredation. Additionally, the bill provides for a winter feeding area away from the site of depredation.

House Bill 208 - Livestock

This bill allows the Idaho State Cattle Association, with State Brand Board recommendation, to require an assessment of up to twenty-five cents per head on cattle, horses, and mules for use in the Animal Damage Control Program and the Idaho Sheep and Goat Health Board Account. This would change the current

529. See generally id. at 719–23.
530. Id.
531. Id.
533. See id.
535. Id. at § 1(1)-(2).
536. Id. at § 1(2)(a).
537. Id. at § 1(7)(a)-(b).
539. Id.
540. Id.
541. H.R. 208, 62d Leg., 1st Reg. Sess. § 1(c) (Idaho 2013).
ceiling for assessment from five cents per head.\textsuperscript{542} Importantly, Dairy cattle and commercial feedlot cattle are exempt from the assessment increase.\textsuperscript{543}

\textit{House Bill 277 – Well Construction Standards}

This bill amends existing law to add requirements for well construction for the purpose of irrigation and drainage.\textsuperscript{544} The new rule would require “use of approved sealing materials and required annular space” of “at least eighteen (18) feet.”\textsuperscript{545}

\textit{House Bill 336- Wolves}

In order to account for wolf depredation, this bill provides for the deposit of specific proceeds, some of which will be allocated to the Wolf Depredation Account.\textsuperscript{546} The bill also includes other information on the allocation and transfer of money as a result of gray wolf depredation.\textsuperscript{547} Additionally, the bill increases gray wolf tag fees.\textsuperscript{548}

\textit{House Bill 411 – Water Resources Department}

Under this bill, the director of the Idaho Department of Water Resources is given the authority to return pending applications to appropriate water back to the applicants when the application is to appropriate water in an area where a moratorium has been issued.\textsuperscript{549} This is in response to the large amount of applications for water in areas within the state where there is a moratorium that is unlikely to be withdrawn.\textsuperscript{550}

\textit{House Bill 469 – Outfitters and Guides Licensing Board}

As a means to avoid a loss of public hunting access, a moratorium was placed on “accepting and processing applications for outfitted turkey and waterfowl hunting.”\textsuperscript{551} This bill is meant to codify that moratorium and ensure that the twenty-five year moratorium on outfitted turkey and waterfowl stays in place.\textsuperscript{552}

\textit{House Bill 473 – Environmental Protection Agency}

This bill declares that the United States Constitution does not authorize certain federal authority to regulate and therefore the state has a duty to “prevent en-
forcement of certain regulations and to provide exceptions.” Specifically, the bill declares that the EPA does not have certain regulatory authority, and therefore those regulations found by the legislature to be out of the scope of the U.S. Constitution or the statutory authority granted by congress “shall be considered null and void.”

*House Bill 486 – Conservation Easements*

In addressing conservation easements, this bill repeals the law relating to taxation of conservations easements, Idaho Code § 55-2109, which states that property with a conservation easement is to be taxed at market value as if the conservation easement were not in place.

*House Bill 506 – Property Taxation-Electricity Producers*

This bill amends existing law to ensure that only property used for the actual production of electricity or as a substation will receive the tax exemptions for the production of electricity by means of wind energy or by means of geothermal energy.

*House Bill 571 – Easements over land owned by Irrigation and Drainage Entities*

This legislation clarifies the authority that the state has to “exercise eminent domain for any concurrent public use of the property of an irrigation or drainage entity.” Firstly, the state cannot condemn land that is used by an irrigation or drainage entity owner who provides those service to entitled landowners. Secondly, the legislation clarifies that the state maintains the authority to condemn these properties for concurrent public uses. Additionally, the legislation has an emergency clause that applies the legislation retroactively and can be used to resolve any pending litigation on the issue.

*Senate Bill 1069- Solid Waste Disposal*

When a county or city desires to modify a solid waste facility by “alteration, addition, expansion, or any other modification” where it may result in “release of any state or federally regulated pollutant” or “increase the discharge” of a regulated pollutant, which requires a new or modification of a permit, it must provide a notification of hearings.

554. Id. at § 1.
556. IDAHO CODE § 55-2109 (2012).
559. Id. at § 1.
560. Id.
561. Id. at § 2.
Senate Bill 1220 – Fish and Game

This bill will amend the particulars for reimbursement for illegal take of wildlife.\textsuperscript{563} The minimum reimbursement penalty will apply to all wildlife the fish and game commission has classified as protected in addition to any specifically identified within the bill, but does not expand the reimbursement penalty to unprotected wildlife or predatory wildlife.\textsuperscript{564} Additionally, the bill makes a correction to the classification of Chinook salmon, stating that only “wild Chinook salmon” is subject to the reimbursable penalty.\textsuperscript{565}

Senate Bill 1345 – Water

This legislation amends existing law for water rights and provides that beneficial water uses should be protected through the coordination of diversions and releases from storage reservoirs and water delivery or drainage facilities.\textsuperscript{566} Additionally, the legislation also states that water rights shall not be diminished due to diversions or releases of water whether to protect life or property unless specific conditions are met.\textsuperscript{567}

Senate Bill 1373 – Water Quality

This senate bill is meant to add to existing law to address additional concern regarding water quality.\textsuperscript{568} The bill authorizes the Department of Environmental Quality to regulate certain “water quality pollutant trading and other water quality attainment innovations.”\textsuperscript{569} The bill requires water quality standards to be developed “to support and maximize opportunities for water quality pollutant trading and other innovative, voluntary means of attaining and maintaining water quality standards.”\textsuperscript{570}

Senate Bill 1412 – Water

The legislation addresses issues regarding storage water as a use.\textsuperscript{571} Firstly, without a water right, water may be used for “fire abatement” and “defined forestry practices” equitable to the holder of a water right.\textsuperscript{572} Secondly, new appropriations of water should not decrease the amount of water in the State’s reservoir systems, which will be determined by the director of the Department of Water resources.\textsuperscript{573} Lastly, release of water for flood control from Arrowrock Reservoir, Anderson Ranch Reservoir, and Lucky Peak Reservoir according to described agreements

\begin{thebibliography}{99}
\item Id. at § 1.
\item Id.
\item Id. at § 1.
\item Id.
\item Id.
\item Id. at § 1.
\item Id. at § 2.
\end{thebibliography}
will not decrease storage water rights unless the water released is applied to the beneficial use in accordance with the water right.\textsuperscript{574}

C. Executive Branch

1. Executive Orders\textsuperscript{575}

\textit{Executive Order 2013-01 - Continuing the Idaho Strategic Energy Alliance}

\textit{Repealing and Replacing Executive Order 2009-05}

With a purpose of “promoting the development of nonrenewable and renewable energy resources…while maintaining the integrity of Idaho’s natural resources,” the order continues the Idaho Strategic Energy Alliance.\textsuperscript{576} The Alliance is charged with providing information and analysis to “elected officials, stakeholders, and the public” with a focus on “production of affordable, reliable and sustainable energy; cost-effective energy efficiency and conservation;” communication between entities involved in energy regulation and production; and a general increase on energy production in Idaho.\textsuperscript{577}

\textit{Executive Order 2013-06 – Appointment of Members of the Board of Environmental Quality}

The executive order requires the appointment of members to the Idaho Board of Environmental Quality according to the provisions and requirements in Idaho Code section 39-105(1)(a) and section 128 of the Clean Air Act.\textsuperscript{578} The Board will be “authorized to make final administrative appeal determinations regarding air quality permits and enforcement orders.”\textsuperscript{579}

\textit{Executive Order 2014-07 – Assignments of All-Hazard Prevention, Protection, Mitigation, Response and Recovery Functions to State Agencies in Support of Local and State Government Relating to Emergencies and Disasters}

This executive order outlines the general responsibilities of agencies and the specific responsibilities of different state agencies during times of natural or manmade disaster.\textsuperscript{580} Included in this list of agencies are environmental agencies within the state including the Department of Agriculture, the Idaho Department of Fish and Game, the Department of Lands, and the Department of Environmental Quality.\textsuperscript{581}

\textsuperscript{574} Id. at § 3.
\textsuperscript{575} For all executive orders over the past year see Executive Orders, IDAHO, http://gov.idaho.gov/mediacenter/execorders/ (last visited Sep. 15, 2014).
\textsuperscript{577} Id.
\textsuperscript{579} Id.
\textsuperscript{581} Id. § 3.
2. Idaho Agency Law.\textsuperscript{582}

i. Final Rules

**Idaho Department of Agriculture**

*Bacterial Ring Rot Caused by Clavibacter Michiganensis of Potato*\textsuperscript{583}

This temporary rule identifies the severity of Bacterial Ring Rot and how it can affect the quality of potatoes in Idaho.\textsuperscript{584} Additionally, the rule recognizes how it is easily spread, including "by potato seed and contaminated equipment."\textsuperscript{585} This rule requires mandatory testing and reporting of Bacterial Ring Rot, while requiring the department to engage in trace back investigations.\textsuperscript{586}

**Brucellosis**\textsuperscript{587}

This rule "establishes a process through which a producer obtains a required permit prior to movement of any cattle out of the Designated Surveillance Area (DSA)."\textsuperscript{588} In addition, the rule allows the Department of Agriculture to provide better surveillance in the Greater Yellowstone Area, in which cattle have the greatest risk of exposure to wildlife infected with Brucellosis.\textsuperscript{589} This rule adds increase assurance that infected livestock will not be sold without proper disease testing.\textsuperscript{590}

**Domestic Cervidae**\textsuperscript{591}

This rule amends § 02.04.19.022 of the Idaho Administrative Code “to specify which forms of unique identification will be acceptable for producers exporting out of the state to utilize within their herds."\textsuperscript{592} Additionally, the rule strives to maintain compliance with Animal and Plant Health Inspection Service National Chronic Wasting Disease Herd Certification Program through additional provisions referencing and explaining the federal-state cooperative program.\textsuperscript{593}


\textsuperscript{583}. Idaho Admin. Code r. 02.06.27 (2014).

\textsuperscript{584}. Id.


\textsuperscript{586}. Id. at 17–18.

\textsuperscript{587}. Idaho Admin. Code r. 02.04.20.123 (2014).


\textsuperscript{589}. 13-11 Idaho Admin. Bull. 18 (Nov. 6, 2013).

\textsuperscript{590}. Id.

\textsuperscript{591}. Idaho Admin. Code r. 02.04.19.022 (2014).

\textsuperscript{592}. 13-7 Idaho Admin. Bull. 18 (July 3, 2013).

\textsuperscript{593}. Id. at 22.
Idaho Fertilizer Law

This rule “incorporate[s] by reference information and updates contained in the 2014 Official Publication of the Association of American Plant Food Control Officials [] as they pertain to the methodology and practice of conducting regulatory fertilizer registration and label review.” This results in the rule being consistent with national standards.

Idaho Soil and Plant Amendment Act

This rule “incorporate[s] by reference information and updates contained in the 2014 Official Publication of the Association of American Plant Food Control Officials [] as they pertain to the methodology and practice of conducting regulatory soil and plant amendment registration and label review.” This results in the rule being consistent with national standards.

Importation of Animals

This rule amends the “Domestic Cervidae import requirements” to make the administrative code consistent with National Chronic Wasting Disease Herd Certification Program. Additionally, the rule amended the definition of equine infectious anemia import testing requirements for horses designated to slaughter, the Coggins Test. The rule “establish[es] a time limit for imported horses to be designated to slaughter that have entered [the state] without a valid Coggins Test.”

Invasive Species

Under this rule three different definitions were added to the Idaho Administrative Code rules governing invasive species: energy crop invasive species, facility, and trap crop invasive species. The rule also amends section 103 by removing the transport permit requirement for bullfrogs and section 104 by “extend [ing] transport permit validity to five (5) years.” Sections 105 and 106 were added to create a method of application for Energy Crop Invasive Species Possession/Production Permits and Trap Crop Invasive Species Permits, respectively.
Additionally, the rule amends certain invasive species lists “to update scientific and common names and to add hybrids of certain listed invasive species.”

Noxious Weeds

This rule adds water hyacinth—eichhornia crassipes—to the Statewide EDRR Noxious Weed List and removes the statewide monitor list from the rules governing noxious weeds.

Pesticide and Chemigation Use and Application

In response to a recommendation from the Pesticide Advisory Committee, the rule states that pesticide licensing exam scores and recertification credits are valid for one year. The rule allows a “one year time period for new or renewing licensees to obtain an applicator license without a penalty” and establishes a time frame “for inactive licensees to renew their licenses before they will be required to retest.”

Pesticide and Chemigation Use and Application

This rule amends the Rules Governing Pesticide and Chemigation Use and Application “to allow pesticide use on certain new seed crops...without the need for an established residue tolerance,” making the list “essentially the same as the State of Washington’s.” The rule adds “endive, parsnip, sugar and garden beets, Swiss chard, collards, lettuce, dill, kohlrabi, and mustard” seeds.

Planting of Beans

This rule requires that all lots of “soybean seed and... seeds from other related plant species for planting... be tested for bean diseases of concern and nematodes that do not occur in Idaho.” This rule protects seed production within the state and requires a minimum of one inspection a year during the growing season.
Rapeseed Production and Establishment of Rapeseed Districts\textsuperscript{620}  

This rule consolidates the seven different growing districts into District I and District II to reflect the current status and practice of growing edible and industrial rapeseed.\textsuperscript{621}

Idaho Fish and Game Commission

Fish

This rule adds definitions for "single-point hook" and "watercraft."\textsuperscript{622} A single-point hook “is used to limit fishing tackle to prevent snagging” and limit "illegal harvest or unintended mortality,” which is increasingly important in tributary river systems with salmon and steelhead.\textsuperscript{623} Watercraft is defined to "limit angler conflict and address safety concerns." \textsuperscript{624}

Fish\textsuperscript{625}

In protection of the sturgeon, only "catch-and-release” angling is allowed for sturgeon.\textsuperscript{626} This rule is meant to keep the sturgeon in the water, which keeps the fish healthy.\textsuperscript{627} This rule is added to replace a rule that was inadvertently removed in 2008.\textsuperscript{628}

Taking of Big Animals\textsuperscript{629}

The rule removes language requiring that an adult accompanying a youth hunter with a Nonresident Junior Mentored Tag must have a tag for hunting “valid in the same area” as the Nonresident Junior Mentored Tag.\textsuperscript{630} The rule still requires the accompanying adult to have a tag for the same species.\textsuperscript{631}

Taking of Big Animals\textsuperscript{632} and Taking of Game Birds\textsuperscript{633}

These rules slightly change the wording of the rule provisions to conform with statutory language and each allows “for designating a controlled hunt tag from a parent or grandparent to his or her minor child or grandchild.”\textsuperscript{634}

\textsuperscript{620} \textit{Idaho Admin. Code} r. 02.06.13.050 (2014).
\textsuperscript{624} Id.
\textsuperscript{625} Id. 13-10 Idaho Admin. Code r. 13.01.11 (2013).
\textsuperscript{627} Id.
\textsuperscript{628} Id.
\textsuperscript{629} Id. 13-10 Idaho Admin. Code r. 13.01.08.250.01.h (2014).
\textsuperscript{631} Id. 13-10 Idaho Admin. Bull. 112 (Oct. 2, 2013).
\textsuperscript{632} Id. 13-10 Idaho Admin. Code r. 13.01.08 (2014).
\textsuperscript{633} Id. 13-10 Idaho Admin. Code r. 13.01.09 (2014).
Department of Environmental Quality

Control of Air Pollution in Idaho\textsuperscript{635}

Under this rule, the DEQ incorporates by reference 40 CFR Part 62, subpart HHH entitled “Federal Plan Requirements for Hospital/Medical/Infections Waste Incinerators Constructed on or Before December 1, 2008” into the Rules for the Control of Air Pollution in Idaho.\textsuperscript{636} This revision “allows DEQ to maintain EPA approval to regulate these sources” of air pollution.\textsuperscript{637}

Control of Air Pollution in Idaho\textsuperscript{638}

This rule “updates citations to federal regulations incorporated by reference at Section 107 to include those revised as of July 1, 2013.”\textsuperscript{639} Overall, the rule is meant to ensure that the “Rules for the Control of Air Pollution in Idaho is consistent with federal regulations.”\textsuperscript{640}

Water Quality Standards\textsuperscript{641}

Due to the EPA “disapproval of the water quality standards provision that exempts, from Tier II antidegradation review, those activities or discharges determined to be insignificant,” the DEQ revised the rule dealing with “insignificant degradation.”\textsuperscript{642} Additionally, the rule addressing the “treatment of water bodies that do not support designated beneficial uses” was revised, making it consistent with water quality standards that have been adopted since its enactment.\textsuperscript{643}

Department of Lands

Idaho Forest Practices Act\textsuperscript{644}

The Idaho Department of Environmental Quality completed water quality audits in 2000 and 2004 and since then the Idaho Forest Practices Act Advisory Committee “has been working . . . to develop a science-based streamside tree-retention rule (shade rule).”\textsuperscript{645} The shade rule “allow[s] forest landowners to select from two options that are meant to address both shade and large wood recruitment in streams.”\textsuperscript{646} Included in the changes to the rule: (1) an amendment creating “new minimum standing tree requirements for both sides of all Class I and Class II streams in [ ] forestlands; (2) addition of a provision addressing minimum standing

\begin{thebibliography}{9}
\bibitem{635} Idaho Admin. Code r. 58.01.01.107 (2014).
\bibitem{637} Id.
\bibitem{638} Idaho Admin. Code r. 58.01.01.107 (2014).
\bibitem{640} Id.
\bibitem{641} Idaho Admin. Code r. 58.01.02.052.08.a, 58.01.02.055 (2014).
\bibitem{643} Id. at 334–35.
\bibitem{644} Idaho Admin. Code r. 20.02.01.010, 20.02.01.030 (2014).
\bibitem{646} Id.
\end{thebibliography}
tree requirements: (3) the removal of three rule subparagraphs, which “eliminate[es] the [former] streamside-protection rule sections defining tree retention in riparian, streamside areas;” and addition of two subsections to define “Forest Type” and “Relative Stocking.” An additional change was made to the rule prior to adoption after the public comment period to “protect filtering and shade effects of streamside vegetation adjacent to all Class II streams following harvesting and hazard management activities.

**Outfitters and Guides Licensing Board**

Under Idaho Law, and outfitter can be a private landowner. Accordingly, the rule seeks to “clarify and enhance the ability of private landowners to allow public access to their private lands.” These rule amendments also clarifies outfitted use and license requirements “when outfitted facilities and service are provided by the landowner or someone authorized by the landowner.”

**Parks and Recreation**

*Administration of Park and Recreation Areas and Facilities*

This rule increases the fees caps "by [ten dollars] per night for all Idaho state park campsites and by [fifty dollars] per night for all Idaho states park Camper Cabins and Yurts." The current required fee for all campsite types is available in the Idaho Administrative Code.

*Administration of Park and Recreation Areas and Facilities*

This rule increases fees caps "for the Winter Access Program passes offered by Harriman and Ponderosa State Parks." This rule also adds two new pass types to address customer needs: the Individual Season Pass and the Couples Season Pass.

*Administration of Park and Recreation Areas and Facilities*

This temporary rule "clarifies and delineate[s] lease terms for Cottage site leases and for Float home Moorage site leases with Heyburn State Park" in compli-
ance with Senate Bill 1346, which was passed during the latest legislative session.658

ii. Notice of Final Decisions

**Department of Environmental Quality**

**Big Wood Tributaries Temperature TMDL 2013 Addendum**

The Department of Environmental Quality issued a final decision on the Big Wood River Tributaries Total Maximum Daily Loads Addendum.659 The decision "addresses four (4) assessment units on Idaho's 2010 Section 303(d) list that are water quality impaired."660 The Addendum has been submitted to the EPA for approval under the Clean Water Act.661

**Couer D'Alene Lake and River SBA and TMDL- 2013 Fernan Lake Addendum**

The Department of Environmental Quality issued a final decision on the Couer d’Alene Lake and River Small Business Administration and Total Maximum Daily Loads-2013 Fernan Addendum.662 The decision "addresses one (1) assessment unit/pollution combination identified in Idaho's 2010 integrated report."663 The Addendum has been submitted to the EPA for approval under the Clean Water Act.664

**Cow Creek TMDL Addendum**

The Department of Environmental Quality issued a final decision on the Cow Creek Total Maximum Daily Loads 2013 Addendum.665 The decision "addresses two (2) assessment unit(s)/pollutant combinations listed as impaired on Idaho's 2010 Section 303(d) list."666 The DEQ found that one unit/pollutant was water quality impaired, but "recommended delisting the other unit/pollutant combination as unassessed."667 The Addendum has been submitted to the EPA for approval under the Clean Water Act.668

**Lake Walcott 2013 Addendum: Marsh Creek**

The Department of Environmental Quality issued a final decision on the Lake Walcott Total Maximum Daily Loads 2013 Addendum.669 The decision "addresses
two (2) assessment units [] that are water quality impaired," one of which is on Idaho's 2010 Section 303(d) list. The Addendum has been submitted to the EPA for approval under the Clean Water Act.

**Lower Payette River TMDL 2013 Addendum**

The Department of Environmental Quality issued a final decision on the Lower Payette River Total Maximum Daily Loads 2013 Addendum. The decision "addresses two (2) assessment units." One unit is on Idaho's 2010 Section 303(d) list, while another unit is not listed but is impaired. The Addendum has been submitted to the EPA for approval under the Clean Water Act.

**Mid Snake River/Succor Creek Tributaries Sediment TMDL 2013 Addendum**

The Department of Environmental Quality issued a final decision on the Mid Snake River/Succor Creek Tributaries Sediment Total Maximum Daily Loads Addendum. The decision "addresses seven (7) assessment units on Idaho's 2010 Section 303(d) list that are impaired for sediment." The Addendum has been submitted to the EPA for approval under the Clean Water Act.

**Palisades Subbasin TMDL 2013 Addendum and Five Year Review**

The Department of Environmental Quality issued a final decision on the Palisades Subbasin Total Maximum Daily Loads 2013 Addendum and Five Year Review. The decision "addresses three (3) assessment units . . . on Idaho's 2010 Section 303(d) list" that are impaired for sediment. The Addendum has been submitted to the EPA for approval under the Clean Water Act.

**Pashimeror River Subbasin in TMDL 2013 Addendum and Five Year Review**

The Department of Environmental Quality issued a final decision on the Pashimeror River Subbasin Total Maximum Daily Loads 2013 Addendum and Five Year Review. The decision "addresses twenty-five (25) assessment unit[s]/pollutant combinations listed as impaired on Idaho's 2010 Section 303(d) list." The Addendum has been submitted to the EPA for approval under the Clean Water Act.

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670. *Id.*
671. *Id.*
673. *Id.*
674. *Id.*
675. *Id.*
677. *Id.*
678. *Id.*
680. *Id.*
681. *Id.*
683. *Id.*
684. *Id.*
Upper (North Fork) Couer D'Alene River Temperature TMDL Addendum

The Department of Environmental Quality issued a final decision on the Upper (North Fork) Couer d'Alene Temperature Total Maximum Daily Loads Addendum. The decision "addresses fifty-four (54) assessment units on Idaho's 2010 Section 303(d) list that are impaired for temperature exceedances. The Addendum has been submitted to the EPA for approval under the Clean Water Act."

V. CONCLUSION

As with all areas of law, natural resource law and environmental law are constantly evolving. Changes in law and policy on both the federal and state level affect Idaho's management of its environment and resources. Hopefully, this year in review highlights some of these important and recent changes to provide a starting point for additional research into specific areas of natural resource or environmental law.

Ashley C. Williams

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686. Id.
687. Id.