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Natural Resource & Environmental Law: An Idaho Year in Review

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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

1. Minamata Convention on Mercury art. 1, Oct. 10, 2013, 27 U.N.T.S. 17, available at <https://treaties.un.org/doc/Treaties/2013/10/20131010%2011-16%20AM/CTC-XXVII-17.pdf>.

2. *Convention, MINAMATA CONVENTION ON MERCURY*, <http://www.mercuryconvention.org/Convention> (last visited Nov. 5, 2014).

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.

10. *Countries, MINAMATA CONVENTION ON MERCURY*, <http://www.mercuryconvention.org/Countries/tabid/3428/Default.aspx> (last visited Nov. 5, 2014).

11. *Id.*

12. See Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331, available at <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>.

¹³ See, e.g., Minamata Convention on Mercury, *supra* note 1.

A. Judicial Branch

1. Supreme Court of the United States Cases¹⁴*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.¹⁵ 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.¹⁶ 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.¹⁷

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.¹⁸ Meaning, greenhouse gases can be treated as a pollutant that is subject to regulation for the best available technology requirement.¹⁹

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.²⁰ The Supreme Court decision solidified the traditional authority for states to provide tort remedies through their discretion, including torts caused by toxic chemical contaminants.²¹

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.²² The Transport Rule prohibits states "from emitting any air pollutant in amounts which will...contribute significantly" to other states noncompliance with the EPA regulat-

14. For reference to United States Supreme Court Decisions by term, see *Opinions*, SUP. CT. OF THE U.S., <http://www.supremecourt.gov/opinions/opinions.aspx> (last visited Nov. 5, 2014).

15. *Util. Air Regulatory Grp. v. EPA*, 134 S. Ct. 2427, 2437–38 (2014).

16. *Id.* at 2441–42.

17. *Id.* at 2449.

18. *Id.* at 2448–49.

19. *Id.*

20. *CTS Corp. v. Waldburger*, 134 S. Ct. 2175, 2189 (2014).

21. *Id.*

22. *See EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584, 1609–10 (2014).

ed national air quality standards.²³ 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.²⁴ 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.²⁵ The EPA is allowing states to create implementation plans to achieve the required reductions in pollution.²⁶ However, where states have not created a plan the EPA has the option to create a federal plan that states must implement.²⁷

2. United States Court of Appeals for the Ninth Circuit²⁸

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.²⁹ The Ninth Circuit determined that the use of sub-regions for determining fishing restrictions did not violate the Endangered Species Act (ESA).³⁰ 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.³¹

Alaskan Wilderness League v. Environmental Protection Agency

The EPA denied a challenge to a Clean Air Act permit allowing Shell Off-shore Inc. to conduct "pollutant emitting activities" caused by a drill vessel in the Beaufort Sea.³² Additionally, the EPA allowed an exemption from the ambient air regulations for 500 meters surrounding the drill vessel.³³ 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.³⁴ The Court also upheld the 500 meter exemption because it was permissible under the EPA promulgated regulations.³⁵

23. Clean Air Act, 42 U.S.C. § 7410(a)(2)(D)(i) (2012); *EME*, 134 S. Ct. at 1592.

24. *EME*, 134 S. Ct. at 1593.

25. *Id.*

²⁶ *Id.* at 1594

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.³⁶ 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.³⁷ Therefore, the panel reversed the dismissal of the suit.³⁸

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.³⁹ The Ninth Circuit determined that Imperial County and Imperial County Air Pollution Control District has standing to sue under the Clean Air Act.⁴⁰ 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.⁴¹ Overall, this case discusses whether provisions within a NEPA EIS are sufficient to satisfy the statutory requirements.⁴²

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.⁴³ The Company argued that the Secretary's decision violated the Department of Interior Appropriations Act, NEPA, and other federal regulations.⁴⁴ The Court found that it was unable to review the Secretary's discretionary decision on whether to issue the company a new permit.⁴⁵ The Court also determined that the company was unlikely to succeed in proving the Secretary violated any statutory grant of authority.⁴⁶

36. Cal. Sportfishing Prot. Alliance v. Chico Scrap Metal, Inc., 728 F.3d 868, 870–71 (9th Cir. 2013).

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.*

43. Drakes Bay Oyster Co. v. Jewell, 747 F.3d 1073, 1077 (9th Cir. 2013), *cert. denied*, 134 S. Ct. 2877 (2014).

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.⁴⁷ 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.⁴⁸ The BLM removes animals from the area when the population number exceed the declared Appropriate Management Level.⁴⁹ 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.⁵⁰ 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.⁵¹

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.⁵² 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.⁵³ The Court also held that the Corps did not violate the Clean Water Act through its analysis of alternative sites.⁵⁴

League of Wilderness Defenders v. Connaughton

The District Court denied a motion for preliminary injunction to enjoin the Snow Basin logging project in Oregon.⁵⁵ 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.⁵⁶ 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.⁵⁷ The court also held that the preliminary injunction was necessary because plaintiffs showed continuing the project would result in "irreparable harm."⁵⁸ The Court ordered that the case be re-

47. *In Def. of Animals; Dreamcatcher Wild Horse & Burro Sanctuary v. U.S. Dep't of Interior*, 751 F.3d 1054, 1058 (9th Cir. 2014).

48. *Id.* at 1061–62.

49. *Id.* at 1062.

50. *Id.* at 1067.

51. *Id.* at 1071.

52. *Jones v. Nat'l Marine Fisheries Serv.*, 741 F.3d 989, 992 (9th Cir. 2013).

53. *See id.*

54. *Id.* at 1001–02.

55. *League of Wilderness Defenders/Blue Mountains Biodiversity Project v. Connaughton*, 752 F.3d 755, 758 (9th Cir. 2014).

56. *Id.* at 767.

57. *Id.*

58. *Id.*

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.

68. Endangered Species Act, 16 U.S.C. § 1536(a)(2) (2006).

69. *Natural Res. Def. Council v. Jewell*, 749 F.3d 776, 779 (9th Cir. 2014).

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.

74. *Natural Res. Defense Council v. EPA*, 735 F.3d 873, 875 (9th Cir. 2013).

75. *Id.*

76. *Id.*

77. *Id.* at 876.

78. *Id.*

79. *Id.* at 875 (emphasis removed).

80. *Natural Res. Defense Council*, 735 F.3d at 876.

81. *Id.* at 878–79.

82. *Id.* at 875.

83. *Nw. Res. Info. Ctr., Inc. v. Nw. Power & Conservation Council*, 730 F.3d 1008, 1011 (9th Cir. 2013).

“biological objectives, principles, and strategies” for the protection of and assistance to fish and wildlife without speaking to specific operations.⁸⁴ 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.⁸⁵ 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.”⁸⁶

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.⁸⁷ 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.”⁸⁸

Voggenthaler v. Maryland Square

This case concerns the “seepage over several decades of a toxic dry cleaning chemical into the ground.”⁸⁹ 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.⁹⁰ 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.⁹¹ 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.⁹²

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.⁹³ 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.

87. *United States v. Humphries*, 728 F.3d 1028, 1029–30 (9th Cir. 2013).

88. *Id.* at 1030.

89. *Voggenthaler v. Md. Square*, 724 F.3d 1050, 1055 (9th Cir. 2013).

90. *Id.*

91. *Id.*

92. *Id.*

93. *Wash. Env’tl. Council v. Bellon*, 732 F.3d 1131, 1135 (9th Cir. 2013).

claim because they “failed to satisfy the causality and redressability requirements” for standing.⁹⁴

3. United States Court of Appeals for the District of Columbia Circuit⁹⁵

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.⁹⁶ 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”⁹⁷ and under the Clean Air Act the agency must regulate biogenic carbon dioxide as an air pollutant.⁹⁸

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.”⁹⁹ 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.”¹⁰⁰ The Court did not make a determination on the claim, but rather affirmed the District Court dismissal because the claim was not timely filed¹⁰¹ under the Reclamation Act, which required a claim be brought within sixty days.¹⁰²

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.¹⁰³ The Circuit Court found that the EPA acted reasonably regarding the regulations for carbon monoxide standards¹⁰⁴ through reliance on scientific studies and the recommendation of the Clean Air Scientific Advisory

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.cadc.uscourts.gov/internet/opinions.nsf/OpinionsByRDate?OpenView&count=100&SKey=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).

96. *Ctr. for Biological Diversity v. EPA*, 722 F.3d 401, 404 (D.C. Cir. 2013).

97. *Id.* at 412.

98. *Id.* at 414.

99. *Coal River Energy v. Jewell*, 751 F.3d 659, 661 (D.C. Cir. 2014).

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.¹⁰⁵ 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.¹⁰⁶

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.¹⁰⁷ 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.¹⁰⁸ As a result of FERC's segmented analysis, it found that the impacts of the project would be insignificant.¹⁰⁹ The D.C. Circuit Court remanded the case to FERC for the "failure to adequately address the cumulative impacts of the four projects"¹¹⁰ 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.¹¹¹

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."¹¹² Navistar, Inc. was issued a certificate of conformity, which excused their use of the heavy-duty diesel engines.¹¹³ In response, competitor companies brought the petition to challenge the EPA's 2012 rule on procedural and substantive grounds.¹¹⁴ The Court granted the petition from the competitor companies and vacated the EPA's 2012 final rule.¹¹⁵ The Court held that procedurally there was a lack of adequate notice and opportunity for comment on the amendments.¹¹⁶ Additionally, the Court noted that EPA's counsel had identified that vacating the rule would not cause harm to Navistar.¹¹⁷

105. *Id.* at 338.

106. *Id.*

107. *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1307 (D.C. Cir. 2014).

108. *Id.*

109. *Id.* at 1308.

110. *Id.* at 1320.

111. *Id.* at 1319.

112. *See Non-Conformance Penalties for On-Highway Heavy Heavy-Duty Diesel Engines*, 77 Fed.Reg. 4678 (Jan. 31, 2012).

113. *Daimler Trucks N. Am. v. EPA*, 745 F.3d 1212, 1213 (D.C. Cir. 2013).

114. *Id.* (referencing *Mack Trucks, Inc. v. EPA*, 62 F.3d 87, 96 (D.C. Cir. 2012)).

115. *Id.*

116. *Id.*

117. *Id.*

El Paso Natural Gas Co. v. United States

This case deals with multiple environmental claims regarding environmental hazards on Native American Land in Arizona.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).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.¹²⁰ The D.C. Circuit Court affirmed the dismissal of the RCRA claims based on the pleadings in the case,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.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.¹²³

The second claim is also based on RCRA and deals with a dump site on Highway 160.¹²⁴ 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."¹²⁵ In the D.C. Circuit, the Tribe argued that the release of liability did not apply groundwater remediation, which falls under RCRA.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.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.¹²⁸ The Company alleges that the government should not be able to make this claim because it cannot bring a citizen suit under the statute¹²⁹ and the claim is "legally deficient because it contains only conditional allegations."¹³⁰ The D.C. Circuit Court affirmed the District Court ruling, finding the U.S. and its agencies could file contin-

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.

119. *Id.* at 868–69.

120. *Id.* at 869–70.

121. *Id.* at 870.

122. *Id.* at 879–80.

123. *Id.* at 870.

124. *El Paso Natural Gas Co.*, 750 F.3d at 870.

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.* at 885.

130. *El Paso Natural Gas Co.*, 750 F.3d at 886.

gent RCRA counterclaims¹³¹ and that these contingent claims, which rely on the outcome of the principle action of a claim, are permissible.¹³²

Finally, the Tribe brought claims under the "Mill Tailings Act and related [EPA] regulations."¹³³ 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.

136. *El Paso Natural Gas Co.*, 750 F.3d at 888.

137. *Mississippi v. EPA*, 723 F.3d 246, 251 (D.C. Cir. 2013), *amended and superseded on reh'g*, 744 F.3d 1334 (D.C. Cir. 2013), *cert. denied sub nom.*, *Util. Air Regulatory Grp. v. EPA*, No. 13-1235, 2014 WL 1457864 (U.S. Oct. 6, 2014).

138. *Id.* at 273–74.

139. *Id.* at 270.

140. *Id.*

141. *Id.* at 271 (quoting 42 U.S.C. § 7409(b)(2) (2012)).

142. *Monroe Energy, LLC v. EPA*, 750 F.3d 909, 911 (D.C. Cir. 2014).

143. *Id.*

the "advanced biofuel and total renewable fuel volumes under the cellulosic biofuel waiver provision."¹⁴⁴ 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 2010.¹⁴⁵ Meaning, the time-frame to challenge the decision passed.¹⁴⁶ 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.¹⁴⁷

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.¹⁴⁸ Under the EPA rule, two subcategories of sewage sludge incinerators were required to implement maximum achievable control technology (MACT).¹⁴⁹ 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.¹⁵⁰ Therefore, without vacating the current standards set by the EPA in the rule, the Court remanded portions of the rule to the EPA.¹⁵¹ 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.¹⁵²

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.¹⁵³ The D.C. Circuit Court found the rule valid under the Clean Air Act because the EPA has "substantial discretion in setting the NAAQS."¹⁵⁴

144. *Id.* at 915.

145. *Id.* at 919.

146. *Id.*

147. *See id.* at 919–21.

148. *Nat'l Ass'n of Clean Water Agencies v. EPA*, 734 F.3d 1115, 1118 (D.C. Cir. 2013).

149. *Id.*

150. *Id.* at 1119.

151. *Id.* at 1161.

152. *Id.*

153. *Nat'l Ass'n of Mfrs. v. EPA*, 750 F.3d 921, 922 (D.C. Cir. 2014).

154. *Id.*

National Environmental Development Association's Clean Air Project v. Environmental Protection Agency

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.¹⁵⁵ 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.¹⁵⁶ In this case, the D.C. Circuit vacated the *Summit* Directive as contrary to law.¹⁵⁷

National Mining Association v. McCarthy

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.¹⁵⁸ First, for the evaluation of particular Clean Water Act permits, the Army Corps of Engineers and the EPA adopted the Enhanced Coordination Process.¹⁵⁹ 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.¹⁶⁰ The second agency action is a Final Guidance issued by the EPA regarding Clean Water Act permits.¹⁶¹ One portion of the Final Guidance recommends that States increase requirements for Section 402 permits.¹⁶²

The District Court granted summary judgment for the plaintiffs on both claims.¹⁶³ 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 Act¹⁶⁴ and does not change the standard for a Section 404 permit.¹⁶⁵ 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.¹⁶⁶ Only after the denial of a section 402 permit could a claim be brought under this cause of action.¹⁶⁷

155. *Summit Petroleum Corp. v. EPA*, 690 F.3d 733, 735 (6th Cir. 2012).

156. *Nat'l Envtl. Dev. Ass'n's Clean Air Project v. EPA*, 752 F.3d 999, 1003 (D.C. Cir. 2014).

157. *Id.* at 1011.

158. *Nat'l Mining Ass'n v. McCarthy*, 758 F.3d 243, 246 (D.C. Cir. 2014).

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.¹⁶⁸ The petitioners argue that the 2013 Rule is at odds with the Clean Air Act provisions.¹⁶⁹ 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*.¹⁷⁰ 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."¹⁷¹ 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.¹⁷²

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.¹⁷³ This rule exempts from RCRA's "mandate all fuels deemed comparable to non-hazardous-waste-derived fossil fuels because they satisfy EPA[] specifications."¹⁷⁴ 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."¹⁷⁵ Therefore, the Court vacated the Comparable Fuel Exclusion.¹⁷⁶

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.¹⁷⁷ 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.¹⁷⁸ 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.¹⁷⁹ 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

168. *Natural Res. Def. Council v. EPA*, 749 F.3d 1055, 1057 (D.C. Cir. 2014).

169. *Id.*

170. *Id.* at 1060, 1064.

171. *Id.* at 1057.

172. *Id.* at 1064.

173. *Natural Res. Def. Council v. EPA*, 755 F.3d 1010, 1013 (D.C. Cir. 2014).

174. *Id.*

175. *Id.* (emphasis in original).

176. *Id.*

177. *Okla. Dep't of Env'tl. Quality v. EPA*, 740 F.3d 185, 187 (D.C. Cir. 2014).

178. *Id.*

179. *Id.*

Indian reservation" unless either the Tribe or the EPA demonstrates jurisdiction.¹⁸⁰ However, until a demonstration is made, the state implementation plan will be controlling.¹⁸¹

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).¹⁸² 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."¹⁸³ The Petitioners argue that this exclusion violates the plain language of RCRA that requires "the regulation of hazardous wastes used as fuel."¹⁸⁴ 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.¹⁸⁵ 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."¹⁸⁶ The Court held that this standard was not met, and therefore vacated the Gasification Exclusion Rule.¹⁸⁷

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."¹⁸⁸ 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.¹⁸⁹ Overall, the Court addressed the EPA's process for determining many 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.¹⁹⁰

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.¹⁹¹ The EPA denied the petition, citing uncertainty in funding and limited resources for implementing and enforcing regulations under the Clean Air Act.¹⁹² The EPA did however, make it

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.*

191. *WildEarth Guardians v. EPA*, 751 F.3d 649, 652 (D.C. Cir. 2014).

192. *Id.* at 651.

clear that their decision was in no way a determination of whether coal mines should be regulated under the Act.¹⁹³ Additionally, the EPA stated that it may in the future revisit the issue.¹⁹⁴ The environmental groups contend that the EPA did not have sufficient reasons to deny the petition under the Clean Air Act requirements.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.¹⁹⁶ Therefore, the EPA's denial of the petition was consistent with its authority.¹⁹⁷

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.¹⁹⁸ The environmental groups argued that the Final Environmental Impact Statement allowing the competitive lease bidding did not adequately address global climate change¹⁹⁹ or local pollution.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.²⁰¹ The D.C. Circuit Court found that the environmental groups did have standing,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."²⁰³ Therefore, the Circuit Court affirmed the District Court decision.²⁰⁴

3. United States District Court for the District of Idaho

i. Reported Cases

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.²⁰⁵ First, the conservation group alleged the Forest Service violated NEPA by failing to

193. *Id.*

194. *Id.*

195. *Id.*

196. *WildEarth Guardians*, 751 F.3d at 651.

197. *Id.*

198. *WildEarth Guardians v. Jewell*, 738 F.3d 298, 303 (D.C. Cir. 2013).

199. *Id.* at 302.

200. *Id.* at 306.

201. *WildEarth Guardians*, 738 F.3d at 306-07.

202. *Id.*

203. *Id.* at 308.

204. *Id.* at 302.

205. *Greater Yellowstone Coalition v. U.S. Forest Serv.*, No. 4:12-cv-00384-REB, 2014 WL 1319760, 4 (D. Idaho Mar. 31, 2014).

consider all of the effects on the wilderness from an ATV trail.²⁰⁶ 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.²⁰⁷ 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.²⁰⁸ 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"²⁰⁹ and in addressing the sedimentation effects on a threatened fish species,²¹⁰ and therefore did not need to complete a supplement EA for these considerations.²¹¹

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.²¹² The District Court held that the project complied with the Forest Plan standards and guidelines for the protection of soils²¹³ and the protection of aquatic resources.²¹⁴ Overall, the court found that the ATV trail project complied with NFMA.²¹⁵

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.²¹⁶ 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.²¹⁷ Then in 2010, the Forest Service released the Final Supplemental Environmental Impact Statement (FEIS) and Record of Decision on the Forest Plan.²¹⁸ The Plaintiffs claim the defendants violated NEPA in three different ways.²¹⁹

First, the plaintiffs claimed that defendants inadequately explained the assumption that domestic sheep transmit deadly bacteria to Big Horn Sheep.²²⁰ 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.²²¹ Second, plaintiffs claimed that the FEIS

206. *Id.* at 4.

207. *Id.*

208. *Id.* at 12–13.

209. *Id.* at 8.

210. *Greater Yellowstone Coalition*, 2014 WL 1319760 at 10.

211. *Id.* at 8.

212. *Id.* at 13.

213. *Id.* at 14.

214. *Id.* at 17.

215. *Greater Yellowstone Coalition*, 21014 WL 1319760 at 18.

216. *Idaho Wool Growers Ass. v. Vilsack*, 7 F.Supp.3d 1085, 1088 (D. Idaho 2014).

217. *Id.*

218. *Id.*

219. *Id.* at 1089.

220. *Id.* at 1089.

221. *Idaho Wool Growers Ass.*, 7 F.Supp.3d at 1090–91.

failed to account for other potential risks to the Big Horn Sheep population besides domestic sheep grazing.²²² 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.²²³ And finally, the plaintiffs claimed that the FEIS relied on insufficient models and data.²²⁴ 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.²²⁵ The Court found that the defendants' actions were not arbitrary and capricious even when addressing uncertainties.²²⁶ Therefore, the Court granted the defendants' motion for summary judgment on the issues.²²⁷

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.²²⁸ 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."²²⁹ 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.²³⁰ 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."²³¹

With regard to the Counterclaim, the defendant bears the "burden of proving that a reasonable basis for apportionment exists," under the NCP.²³² 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.²³³ The Court also found under the CERCLA counterclaim that Government was not responsible as "an arranger" of waste disposal.²³⁴

222. *Id.* at 1093.

223. *Id.* at 1094.

224. *Id.* at 1095–96.

225. *Id.* at 1099.

²²⁶ *Id.*

227. *Idaho Wool Growers Ass.*, 7 F.Supp.3d at 1100.

228. *United States v. Fed. Res. Corp.*, No. 2:11-cv-00127-BLW-RCT, 2014 WL 3400477, *1 (D. Idaho July 14, 2014).

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.

234. *Fed. Res. Corp.*, 2014 WL 3400477 at *1, *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.²³⁵ 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.²³⁶ 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.²³⁷ 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.²³⁸ 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.²³⁹

The County also alleged that a 2010 environmental assessment (EA) and finding of no significant impact violated NEPA.²⁴⁰ 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.²⁴¹ 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.²⁴² 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.²⁴³

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.²⁴⁴ Plaintiffs made claims under the Endangered Species Act, The National Forest Management Act, NEPA, and claims of irreparable harms and public interests.²⁴⁵ 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 *Win-*

235. Valley Cnty., Idaho v. U.S. Dep't of Agric., 998 F. Supp. 2d 919, 922 (D. Idaho 2014).

236. *Id.*

237. *Id.*

238. *Id.*

239. *Id.* at 928.

240. *Id.* at 926.

241. Valley Cnty., Idaho, 998 F. Supp. 2d at 924.

242. *Id.*

243. *Id.* at 926, 928.

244. Alliance for the Wild Rockies v. Brazell, No. 3:12-CV-00466-MHW, 2014 WL 3732649, at

*1 (D. Idaho July 25, 2014).

245. *Id.* at *2-5.

ter test or the sliding scale test."²⁴⁶ 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.²⁴⁷

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.²⁴⁸ The ICL requested that the District Court rule in its favor for civil penalties, injunctive relief, and declaratory relief.²⁴⁹ 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.²⁵⁰ In response, the Court granted the ICL's Motion for Summary Judgment.²⁵¹

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."²⁵² The Forest Service project includes "commercial timber harvest, prescribed burning, fuel breaks, vegetation management," and management of roadways.²⁵³ 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.²⁵⁴

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.²⁵⁵ 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.

248. *Idaho Conservation League v. Magar*, No. 3:12-CV-00337-CWD, 2014 WL 2533769, at *1 (D. Idaho June 5, 2014).

249. *Id.*

250. *Id.* at *7.

251. *Id.*

252. *Idaho Conservation League v. U.S. Forest Serv.*, No. 2:12-CV-00004-REB, 2014 WL 912244, at *1 (D. Idaho Mar. 10, 2014).

253. *Id.*

254. *Id.* at *12.

255. *Maughan v. Vilsack*, No. 4:14-CV-0007-EJL, 2014 WL 295256, at *1 (D. Idaho Jan. 27, 2014).

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.

258. *Nez Perce Tribe v. U.S. Forest Serv.*, No. 3:13-CV-348-BLW, 2013 WL 5212317, at *1 (D. Idaho Sept. 12, 2013).

259. *Id.*

260. *Id.*

261. *Id.*

262. *Id.*

263. *Id.* at *5.

264. *Nez Perce Tribe*, 2013 WL 5212317, at *7.

265. *Id.* at *8.

266. *WildEarth Guardians v. Mark*, No. 4:13-CV-00533-CWD, 2013 WL 6842771, at *1 (D. Idaho Dec. 27, 2013).

267. *Id.*

qualifying criteria.²⁷⁹ Additionally, the legislation waives license requirements for conduit hydroelectrical facilities that meet three criteria.²⁸⁰

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.”²⁸¹ 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.²⁸²

Agricultural Act of 2014

In addition to dealing with commodities,²⁸³ trade,²⁸⁴ nutrition,²⁸⁵ credit,²⁸⁶ rural development,²⁸⁷ research,²⁸⁸ energy,²⁸⁹ and crop insurance,²⁹⁰ the Agriculture Act also directly addresses many environmental issues.²⁹¹ Title II of the Act deals with conservation including a reserve program,²⁹² a stewardship program,²⁹³ an Environmental Quality Incentives Program,²⁹⁴ an Agricultural Conservation Easement Program,²⁹⁵ Regional Conservation Partnership Program,²⁹⁶ and other conservation programs.²⁹⁷ Each of these programs is addressed in its own section, which sets forth the purpose and requirements under the Act.²⁹⁸

Title VIII addresses forestry and reauthorizes the Cooperative Forestry Assistance Act of 1987 Programs,²⁹⁹ the rural revitalization technologies program,³⁰⁰ and the Office of International Forestry.³⁰¹ In addition to reauthorizing forestry programs, the legislation repeals four forestry programs.³⁰² Furthermore, the Secretary of Agriculture is directed to designate critical areas in the National Forest System

279. *Id.*

280. *Id.*

281. Community Fire Safety Act of 2013, Pub. L. No. 113-64, § 2, 127 Stat. 668 (2014).

282. Community Fire Safety Act § 3.

283. Agricultural Act of 2014, Pub. L. No. 113-79, §§ 1101–1615, 128 Stat. 649, 658-713 (2014).

²⁸⁴ Agricultural Act of 2014 §§ 3001-3208.

285. *Id.* §§ 4001–4214.

286. *Id.* §§ 5001–5404.

287. *Id.* §§ 6001–6210.

288. *Id.* §§ 7101–7606.

289. *Id.* §§ 9001–9015.

290. Agricultural Act of 2014 §§ 11001–11028.

291. *Id.* §§ 2001–2713.

292. *Id.* §§ 2001–2008.

293. *Id.* §§ 2101.

294. *Id.* §§ 2201–2208.

295. *Id.* § 2301.

296. Agricultural Act of 2014 § 2401.

297. *Id.* §§ 2501–2508.

298. *Id.* §§ 2001–2508.

299. *Id.* § 8101.

300. *Id.* § 8201.

301. *Id.* § 8202.

302. Agricultural Act of 2014 §§ 8001–8006.

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.³⁰³ The Secretary is also directed to revise the forest inventory strategic plan.³⁰⁴

Horticulture is addressed in Title X,³⁰⁵ which includes the Reducing Regulatory Burdens Act of 2013.³⁰⁶ 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 pesticides that is authorized under the Federal Insecticide, Fungicide, and Rodenticide Act, with specific exceptions included.³⁰⁷ 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,”³⁰⁸ while repealing the coordinated plant management program.³⁰⁹

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”³¹⁰ and stating that the EPA must not require, and may not require a state to require, a permit for a “discharge from runoff resulting from [the listed] . . . silviculture activities.”³¹¹

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.”³¹² 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.”³¹³ 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.³¹⁴

303. *Id.* §§ 8203–8204.

304. *Id.* §§ 8301.

305. Additional provisions within Title X-Horticulture are not addressed in this summary. Agricultural Act of 2014 §§ 10001–10017.

306. *Id.* § 10005.

307. Reducing Regulatory Burdens Act of 2013, H.R. 935, 113th Cong. §2 (2013).

308. *Agricultural Act of 2014* § 10007(e).

309. *Id.* § 10002.

310. *Id.* § 7209.

311. *Agricultural Act of 2014* § 12313.

312. National Integrated Drought Information System Reauthorization Act of 2014, Pub. L. No. 113-86, § 2, 128 Stat. 1015, 1015 (2014).

313. *Id.* § 2.

314. *Id.* § 2.

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.”³¹⁵ 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.³¹⁶ Importantly, Congress acknowledged the importance of considering a water resource bill during every session of Congress.³¹⁷

Title II addresses navigation, including subsections on inland waterways³¹⁸ and port and harbor maintenance.³¹⁹ The inland water ways section set 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,³²⁰ in addition to providing requirements for specific projects and general agency requirements for inland waterways.³²¹ Similarly, the port and harbor maintenance section sets forth requirements for specific projects and general agency requirements under the Act.³²²

Safety improvements and addressing extreme weather events is covered in Title III, including dam safety,³²³ levee safety,³²⁴ and additional safety improvements and risk reduction measures.³²⁵ The Title amends the National Dam Safety Program Act, several of the Water Resources Development Acts, and requires specific agency action.³²⁶ These sections should be referenced when formulating or implementing safety improvements or addressing extreme weather events on water systems.³²⁷

River Basins and coastal areas are addressed in Title IV, and each provision is based on a specific project or regional area.³²⁸ Importantly, this section specifically addresses Idaho.³²⁹ 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.³³⁰ The projects should be implemented to mitigate damage to communities, water users, and fish and wildlife from extreme weather occurrences.³³¹ Additionally, the Act amends the Water Resource Development Act of 1999 to aid water-related environmental

315. Water Resources and Development Reform Act, Pub. L. No. 113-121, 128 Stat 1193 (2014).

316. *Id.* §§ 1001–1052.

317. *Id.* § 1052.

318. *Id.* §§ 2002–2013.

319. *Id.* §§ 2101–2107.

320. *Id.* § 2002.

321. Water Resources and Development Reform Act §§ 2002–2013.

322. *Id.* §§ 2102–2107.

323. *Id.* § 3001.

324. *Id.* §§ 3011–3017.

325. *Id.* §§ 3021–3029.

326. *Id.* §§ 3001–3029.

327. Water Resources and Development Reform Act §§ 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.³³²

Water Infrastructure Financing is addressed in Title V.³³³ 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.³³⁴ The Act also amends the State Revolving Fund Program,³³⁵ including adding requirements on states involved in the Program.³³⁶ This Title also addresses Innovative Financing Pilot Projects by establishing the Water Infrastructure Finance and Innovation Act of 2014.³³⁷

Title VI deals with deauthorization and backlog prevention and states three purposes.³³⁸ First, to identify eighteen billion dollars in water resource development projects that should no longer be constructed.³³⁹ Second, to create a process to deauthorize these projects.³⁴⁰ Finally, to identify projects that are able to be or should be constructed.³⁴¹ This section includes provisions to achieve these purposes.³⁴²

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”³⁴³ and to carry out feasibility studies on specific water projects in several different states.³⁴⁴

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.³⁴⁵ 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.”³⁴⁶ In addition, the Task Force must identify and promote the development of new technologies designed to mitigate harmful algal bloom and hypoxia conditions.³⁴⁷ The administrator of the EPA is required to add to the research and ensure that research

332. *Id.* § 4008.

333. Water Resources and Development Reform Act §§ 5001–5035.

334. *Id.* § 5001.

335. *Id.* §§ 5001–5006.

336. *Id.* § 5002.

337. *Id.* §§ 5023–5035.

338. *Id.* §§ 6001–6005.

339. Water Resources and Development Reform Act § 6001.

340. *Id.*

341. *Id.*

342. *Id.* §§ 6001–6005.

343. *Id.* § 7001.

344. *Id.* § 7002.

345. *See generally* Harmful Algal Bloom and Hypoxia Research and Control Amendments Act of 2014, Pub. L. No. 113-124, 128 Stat. 1379 (2014).

346. *Id.* § 5.

347. *Id.* § 4.

efforts are not duplicated by any other programs authorized under any law.³⁴⁸ 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.³⁴⁹

Idaho Wilderness Water Resources Protection Act

Under the legislation, the Secretary of Agriculture, in the United States 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.³⁵⁰ 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.³⁵¹

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.”³⁵² 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.”³⁵³ 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.³⁵⁴

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.³⁵⁵ 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.³⁵⁶ In furtherance of this goal, the Task Force will create an Advisory Council to make recom-

348. *Id.* § 4.

349. *Id.* § 603A.

350. Idaho Wilderness Water Resources Protection Act, Pub. L. No. 113-136, § 2, 128 Stat. 1739 (2014).

351. *Id.*

352. Exec. Order No. 13,648, 78 Fed. Reg. 40,621 (July 1, 2013).

353. *Id.*

354. *Id.*

355. *Id.*

356. *Id.*

mendations for additional assistance.³⁵⁷ The specific goals and requirements for each established group are set out within the executive order and serve to aid in combatting wildlife trafficking.³⁵⁸

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.³⁵⁹ 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.”³⁶⁰ This is evident from continuing hazardous chemical spills and other similar tragedies.³⁶¹

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.³⁶² 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.³⁶³ 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.³⁶⁴ Overall, the Group is responsible for developing and implementing the best practices for the manufacturing, storage, distribution, and use of hazardous chemicals.³⁶⁵

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, 2015.³⁶⁶ 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.³⁶⁷

357. *Id.* at 40,622.

358. *See generally* Exec. Order No. 13,648, 78 Fed. Reg. 40,621.

359. Exec. Order No. 13,650, 78 Fed. Reg. 48,029 (Aug. 1, 2013).

360. *Id.*

361. *Id.*

362. *Id.*

363. *Id.* at 48,030–31.

364. *Id.* at 48,031.

365. *See generally* Exec. Order No. 13,650, 78 Fed. Reg. 48,029.

366. Exec. Order No. 13,652, 78 Fed. Reg. 61,817 (Sep. 30, 2013).

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.”³⁶⁸ 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.³⁶⁹ 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.³⁷⁰

In furtherance of this goal, the executive order establishes the Council on Climate Preparedness and Resilience,³⁷¹ and in coordination with States, local governments, tribes, and agencies, is responsible for evaluating issues impacted by climate change.³⁷² The executive order specifies the agencies necessary to determine policies to aid watersheds, natural resources, ecosystems, and communities in becoming resilient to climate change.³⁷³ These agencies are charged with providing evaluations of policies to reduce identified sources of climate change and to build on policies already implemented.³⁷⁴ 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.³⁷⁵

368. Exec. Order No. 13,653, 78 Fed. Reg. 66,819 (Nov. 1, 2013).

369. *Id.*

370. *Id.*

371. *Id.* at 66,821.

372. *Id.* at 66,819–20.

373. *Id.* at 66,820.

374. Exec. Order No. 13,653, 78 Fed. Reg. at 66,820.

375. *Id.* at 66,823.

2. Agency Materials³⁷⁶

i. Final Agency Rules Specific to Idaho

Environmental Protection Agency³⁷⁷*Idaho; Amalgamated Sugar Company Nampa Best Available Retrofit Technology Alternative*³⁷⁸

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.³⁷⁹ The EPA found that a "stricter emission limit for oxides of nitrogen [], a stricter emission limit for particulate matter [], and an alternative control measure" meet the visibility protection requirements under the Clean Air Act.³⁸⁰

*Idaho; Franklin County Portion of the Logan Nonattainment Area, Fine Particulate Matter Emissions Inventory*³⁸¹

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.³⁸² The rule approves a "baseline emissions inventory contained in IDEQ's submittal as meeting the requirement to submit a comprehensive, accurate,

376. The ABA completes a Year in Review for Environment, Energy, and Resource Law each year. Therefore, this article will cover final rules and notices that specifically address Idaho from July 2013 to July 2014, not any general changes that effect or could affect Idaho Natural Resource or environmental law. For the complete analysis of federal law see *The Year in Review Home*, ABA, http://www.americanbar.org/publications/year_in_review_home.html (last visited Oct. 27, 2014).

For all federal agency action see *2013 Federal Register Index*, FED. REG., (Dec. 31, 2013), <https://www.federalregister.gov/index/2013>; see also *2014 Federal Register Index*, FED. REG., (Oct. 14, 2014), <https://www.federalregister.gov/index/2014>. Additionally, for help researching environmental rules see also *Suggested Environmental Searches*, FED. REG., <https://www.federalregister.gov/environment> (last visited Oct. 27, 2014).

377. The EPA in 2013 published 514 final rules, 402 proposed rules, and 675 Notices, for a total of 1,591 documents. See *Environmental Protection Agency*, FED. REG., <https://www.federalregister.gov/index/2013/environmental-protection-agency> (last visited Oct. 27, 2014). Additionally, the EPA has published 451 rules in 2014 and proposed 357 additional rules. See *Environmental Protection Agency*, FED. REG., <https://www.federalregister.gov/index/2014/environmental-protection-agency> (last visited Oct. 27, 2014).

378. Approval and Promulgation of Implementation Plans; Idaho, 40 C.F.R. §§ 52.672, 52.677 (2014).

379. Approval and Promulgation of Air Quality Implementation Plans; Idaho Amalgamated Sugar Company Nampa BART Alternative, 79 Fed. Reg. 23,273, 23,273 (Apr. 28, 2014). Importantly, the EPA approved and promulgated the original Idaho State Implementation Plan in March 2013. See Approval and Promulgation of State Implantation Plan, 78 Fed. Reg. 16,790, 16,790 (Mar. 19, 2013). The rule was codified. See 40 C.F.R. §52 (2013).

380. Approval and Promulgation of Air Quality Implementation Plans; Idaho Amalgamated Sugar Company Nampa BART Alternative, 79 Fed. Reg. at 23,273.

381. Approval and Promulgation of Implementation Plans; Idaho, 40 C.F.R. § 52.670 (2014).

382. Approval and Promulgation of Implementation Plans; Idaho Franklin County Portion of the Logan Nonattainment Area; Fine Particulate Matter Emissions Inventory, 79 Fed. Reg. 41,904, 41,904 (July 18, 2014).

and current inventory of direct" fine particulate matter and fine particulate matter precursor emissions.³⁸³

*Idaho; Franklin County; Fine Particulate Matter Control Measures*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.³⁸⁵ The revision adds control measures for fine particulate matter and reduces the sources of emissions.³⁸⁶

*Idaho; Incorporation by reference; Update*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."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.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.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.³⁹¹

*Idaho; Infrastructure Requirement for the 2008 Lead National Ambient Air Quality Standards*³⁹²

This rule becomes effective on June 29, 2014 and approves the State Implementation Plan (SIP) submitted by Idaho on February 14, 2012.³⁹³ 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.³⁹⁴ Therefore, the revised SIP is approved and finds that the state law

383. *Id.*

384. Approval and Promulgation of Implementation Plans; Idaho, 40 C.F.R. §§ 52, 52.01–52.39; 52.670–52.691 (2014).

385. Revision to the Idaho State Implementation Plan; Approval of Fine Particulate Matter Control Measures; Franklin County, 79 Fed. Reg. 16, 201, 16,201 (Mar. 25, 2014).

386. *Id.*

387. Approval and Promulgation of Implementation Plans; Idaho, 40 C.F.R. §§ 52, 52.01–52.39; 52.670–52.691 (2014).

388. Approval and Promulgation of Implementation Plans; Idaho, 79 Fed. Reg. 11,711, 11,711 (Mar. 3, 2014).

389. *Id.*

390. *Id.*

391. *Id.*

392. Idaho; Infrastructure Requirement for the 2008 Lead National Ambient Air Quality Standards, 40 CFR § 52, 52.670–52.691 (2014).

393. Approval and Promulgation of Implementation Plans; Idaho: Infrastructure Requirements for the 2008 Lead National Ambient Air Quality Standards, 79 Fed. Reg. 29,358, 29,358 (May 22, 2014).

394. *Id.*

complies with the federal requirements and does not impose additional requirements.³⁹⁵

United States Department of Agriculture³⁹⁶

*Idaho Roadless Rule*³⁹⁷

The Forest Service made three changes to the Idaho Roadless Rules regarding Forest Service Lands.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.³⁹⁹ Second, the rule corrects mapping areas regarding the "Forest Plan Special Areas in the Salmo-Priest and Upper Priest Idaho Roadless Area."⁴⁰⁰ Finally, the rule makes an administrative correction to the Kootenai National Forest list by adding Buckhorn Ridge as an Idaho Roadless Area.⁴⁰¹

ii. Agency Notices Specific to Idaho

Department of Agriculture

Caribou-Targhee National Forest, Westside Ranger District, Idaho: Pocatello, Midnight, and Michaud Allotment Management Plan Revisions

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."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.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 "implement[ation of] a grazing management strategy."⁴⁰⁴

395. *Id.*

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).

397. Idaho Roadless Rule, 36 CFR § 294, 294.22 (2014).

398. 36 CFR § 294.22.

399. Idaho Roadless Rule, 79 Fed. Reg. 33,436, 33,436 (June 11, 2014).

400. *Id.*

401. *Id.*

402. Caribou-Targhee National Forest, Westside Ranger District, Idaho Pocatello, Midnight, and Michaud Allotment Management Plan Revisions, 79 Fed. Reg. 2632, 2632 (Jan. 15, 2014).

403. *Id.*

404. *Id.*

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.⁴⁰⁵ The Forest Service identified four purposes of the project that address environmental quality, restoration, recreation, and local economy.⁴⁰⁶ 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.⁴⁰⁷

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.⁴⁰⁸ 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.⁴⁰⁹

Department of Energy

Crystal Springs Hatchery Program

The Bonneville Power Administration (BAP)⁴¹⁰ 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.⁴¹¹ 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.⁴¹² 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.⁴¹³

405. Intermountain Region, Boise Nat'l Forest, Idaho City Ranger District; Idaho; Becker Integrated Resource Project, 79 Fed. Reg. 46,396, 46396-97 (Aug. 8, 2014).

406. *Id.* at 46,397-98.

407. *Id.* at 46,397.

408. Nez Perce-Clearwater Nat'l Forests; Idaho; Notice to Proceed with Forest Plan Revision, 78 Fed. Reg. 41,782, 41,782 (July 11, 2013).

409. *Id.* at 41,782-83.

410. The Bonneville Power Administration has published five notices in 2014 and no rules. See Office of the Federal Register, 2014 FR Index, *Bonneville Power Administration*, <https://www.federalregister.gov/index/2014/bonneville-power-administration> (last visited Oct. 27, 2014).

411. Crystal Springs Hatchery Program, 79 Fed. Reg. 30,112, 30,112 (May 27, 2014).

412. *Id.* at 30,114.

413. *Id.* at 30,112.

In addition, the notice states the BPA's intent to prepare a floodplain and wetland assessment as required by Department of Energy regulations.⁴¹⁴ 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.⁴¹⁵

Department of Interior⁴¹⁶

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).⁴¹⁷ 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.⁴¹⁸ 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.⁴¹⁹

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.⁴²⁰ The refuge was created with the purpose of being a sanctuary and "breeding ground for migratory birds and other wildlife."⁴²¹ 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.⁴²²

414. *Id.* at 30,114.

415. *Id.* at 30,114.

416. The Department of the Interior published 115 rules, 192 proposed rules, and 1408 notices in 2014, for a total of 1715 documents. See Office of the Federal Register, 2013 FR Index, *Interior Department*, <https://www.federalregister.gov/index/2013/interior-department> (last visited Oct. 27, 2014). Additionally, the Department of the Interior has published 81 final rules, 124 proposed rules, and 1,088 notices so far during 2014. See Office of the Federal Register, 2013 FR Index, *Interior Department*, <https://www.federalregister.gov/index/2014/interior-department> (last visited Oct. 27, 2014).

417. BLM Director's Response to the Idaho Governor's Appeal of the BLM Idaho State Director's Governor's Consistency Review Determination, 78 Fed. Reg. 68,466, 68,466 (Nov. 14, 2013).

418. *Id.*

419. *Id.*

420. Camas National Wildlife Refuge, Jefferson County, Idaho, 79 Fed. Reg. 1654, 1654 (Jan. 9, 2014).

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

Draft Cottonwood Resource Management Plan Amendment for Domestic Sheep Grazing and Supplemental Environmental Impact Statement, Idaho

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

423. Draft Environment Impact Statement for the Proposed Smokey Mountain Canyon Mine, Panels F and G Lease and Mine Plan Modifications Project, Caribou County, Idaho, 79 FED. REG. 31,132, 31,132 (May 30, 2014).

424. *Id.* at 31,132.

425. *Id.*

426. *Id.*

427. *Id.*

428. Draft Cottonwood Resource Management Plan Amendment for Domestic Sheep Grazing and Supplemental Environmental Impact Statement, Idaho, 79 FED. REG. 26,774, 26,774 (May 9, 2014).

429. *Id.*

430. Idaho and Southwest Montana Greater Sage-Grouse Draft Land Use Plan Amendments and Environmental Impact Statement, 78 Fed. Reg. 65,703, 65,703 (Nov. 1, 2013).

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.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).⁴³³ The EPA then gave notice that it intended to modify the permit complete with a comment period.⁴³⁴ The Final general permit “includes the tributaries of Mores, Elk or Grimes creeks in the loading allocations of the TMDL.”⁴³⁵ The EPA noted that the new provisions of the general permit went into effect on April 14, 2014.⁴³⁶

Adequacy Status of the Idaho, Northern Ada County PM₁₀ (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 PM₁₀ State Implementation Plan and updated Maintenance Plan—conform to the national standards for transportation emissions.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.⁴³⁸

III. IDAHO STATE LAW

432. *Id.*

433. Final Modification of the National Pollutant Discharge Elimination System General Permit for Small Suction Dredges in Idaho, 79 FED. REG. 14,507, 14,507 (Mar. 14, 2014).

434. *Id.*

435. *Id.*

436. *Id.*

437. Adequacy Status of the Idaho, Northern Ada County PM₁₀ (Particulate Matter) State Implementation Plan for Transportation Conformity Purposes, 78 FED. REG. 34,095, 34,095 (June 6, 2013).

438. *Id.*

A. Judicial Branch^{439 440}1. Idaho Supreme Court Cases⁴⁴¹*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.⁴⁴² 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."⁴⁴³ The Court held that "the Director may employ a baseline methodology as a starting point for considering material injury," which is independent from the water right quantity.⁴⁴⁴ 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.⁴⁴⁵ 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."⁴⁴⁶ These conclusions also contained the evidentiary requirements to succeed on a claim.⁴⁴⁷

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.⁴⁴⁸ Additionally, this

439. In evaluating the Idaho Court of Appeals cases, there were none necessary for inclusion in this year in review. For all Idaho Court of Appeals Decisions See *Court of Appeals Civil Opinions*, IDAHO SUPREME COURT, http://www.isc.idaho.gov/appeals-court/coa_civil (last visited Sep. 20, 2014); See also *Court of Appeals Criminal Opinions*, IDAHO SUPREME COURT, http://www.isc.idaho.gov/appeals-court/coa_criminal (last visited Sep. 20, 2014).

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 subset 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, 114 (Nov. 26, 2013)).

⁴⁴² *A&B Irrigation v. Spackman*, 315 P.3d 828, 830, 155 Idaho 640, 642 (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 Branch⁴⁵⁰

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 Injections 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

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-

458. *See id.*

459. *Id.* at 135.

460. *Id.* at 135–36.

461. *Id.* at 201.

462. *Id.* at 202.

463. *Id.*

464. *Id.* at 138.

465. *Id.*

466. *Id.*

467. *Id.* at 259.

468. *Id.* at 259.

mining beneficial uses.⁴⁶⁹ Additionally, the bill provides that the Director should consult with basin advisory groups and watershed advisory groups.⁴⁷⁰

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.”⁴⁷¹

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.”⁴⁷² 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.⁴⁷³

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.”⁴⁷⁴ The bill also provides guidelines for determining when degradation is significant.⁴⁷⁵ If degradation is determined insignificant then further Tier II analysis is not required.⁴⁷⁶

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.”⁴⁷⁷ This discount in fees is meant to increase the amount of licenses purchased regularly.⁴⁷⁸

House Bill 399 – Fish and Game

This bill lowers the age from twelve to ten to be able to hunt big game in Idaho.⁴⁷⁹ However, the requirement that a licensed hunter must be present is still in place.⁴⁸⁰ Additionally, the bill makes a clarification stating that those with a nonres-

469. *Id.* at 945.

470. *Id.* at 945.

471. 2014 Idaho Sess. Laws 301.

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.⁴⁹¹ 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.⁴⁹²

House Bill 470 – Wolf Depredation Control Board

The legislation establishes a Wolf Control Fund and a State Board responsible for managing the fund.⁴⁹³ The fund is financed by fees from sportsmen and livestock industries.⁴⁹⁴ 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.⁴⁹⁵

House Bill 526 – Public Waters

The legislation amends existing law regarding the use of public waters outside of the state.⁴⁹⁶ The legislation revises the application requirements for a permit to transport water out of the state.⁴⁹⁷ 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.⁴⁹⁸ 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 § 42-401.⁴⁹⁹

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.⁵⁰⁰ However, some current age limitations on hunting requirements remain unchanged.⁵⁰¹ Additionally, the legislation allows those with a trapping license to trap wolves.⁵⁰² Overall, the legislation amends hunting licenses within the state.⁵⁰³

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.*

499. *Id.*; Idaho Code Ann. § 42-401 (2014).

500. *See* 2013 Idaho Sess. Laws 169.

501. *Id.*

502. *Id.* at 172.

503. *See id.* at 168.

Senate Bill 1004 – Fish and Game

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.⁵⁰⁴ 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.⁵⁰⁵ Other Licensing through Fish and Game will not be affected.⁵⁰⁶

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.⁵⁰⁷ Additionally, it allows the State to audit the Board's funds at any time.⁵⁰⁸

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.⁵⁰⁹ 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.⁵¹⁰ The legislation changes the filing requirements for certain applications from the Idaho Department of Land to the Oil and Gas Conservation Commission.⁵¹¹

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).⁵¹² Overall, the state maintains its primacy over the fish and wildlife within the borders by requiring state “consultation and approval.”⁵¹³ The legislation creates the Office of Species Conservation in the office of the Governor to “oversee the implementation of federal recovery plans.”⁵¹⁴

Senate Bill 1260 – Hazardous Waste Management

For dealing with hazardous waste management, the definition of “restricted hazardous waste” was amended.⁵¹⁵ The definition clarified the laws and regulations used to define what does and does not constitute restricted hazardous waste.⁵¹⁶

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.
 515. 2014 Idaho Sess. Laws 661.

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.⁵¹⁷ However, honey producers still must register with the Idaho Department of Agriculture.⁵¹⁸

Senate Bill 1278 – Fish and Game

This bill revises the provisions for fishing rights for nonresident disable American veterans.⁵¹⁹ Under the revision, the requirement that nonresident disable American veterans hunt with a qualified association in order to receive reduced fees is removed.⁵²⁰ The revisions will simplify the ability for nonresident disable American veterans to purchase a hunting license or tags.⁵²¹

Senate Bill 1344 – Flood Control

For dealing with flood control issues, the legislation amends and adds to existing law.⁵²² The legislation states the powers and duties of commissioners.⁵²³ Importantly, commissioners are able to establish compensation and reimbursement provisions.⁵²⁴ 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.⁵²⁵ 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.⁵²⁶

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.⁵²⁷ The legislation amends existing law to allow increase in the lengths of leases for certain float home moorage sites based on lessees agreement to construct a land-based sewer system which will transfer to the state at no cost.⁵²⁸

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.⁵²⁹ Additionally, it repeals some of the previous law regarding the act.⁵³⁰ 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.⁵³¹

2. Legislative Materials

House Bill 38 – Comprehensive State Water Plan

This addresses the comprehensive state water plan.⁵³² Specifically, it adds to existing law by ratifying and approving the Idaho Water Resource Board adopted Comprehensive State Water Plan.⁵³³

House Bill 143- Invasive Species

This bill, in addressing invasive species, repeals and adds to existing law.⁵³⁴ The bill creates additional fees for certain vessels, which will allow them to receive an invasive species permit and associated sticker.⁵³⁵ The sticker must be displayed according to the specific provisions in the bill or it will be found unlawful.⁵³⁶ The bill also provides for violations, penalties, and enforcement.⁵³⁷

House Bill 146 – Fish and Game

This bill establishes the procedure to verify depredation by deer, elk, or antelope.⁵³⁸ The bill allows Idaho Fish and Game to declare a feeding emergency for livestock due to the wildlife depredation.⁵³⁹ Additionally, the bill provides for a winter feeding area away from the site of depredation.⁵⁴⁰

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.⁵⁴¹ This would change the current

529. *See generally id.* at 719–23.

530. *Id.*

531. *Id.*

532. H.R. 38, 62d Leg., 1st Reg. Sess. (Idaho 2013).

533. *See id.*

534. H.R. 143, 62d Leg., 1st Reg. Sess. §§ 1–2 (Idaho 2013).

535. *Id.* at § 1(1)–(2).

536. *Id.* at § 1(2)(a).

537. *Id.* at § 1(7)(a)–(b).

538. H.R. 146, 62d Leg., 1st Reg. Sess. § 1(1)(c) (Idaho 2013).

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.⁵⁴² Importantly, Dairy cattle and commercial feedlot cattle are exempt from the assessment increase.⁵⁴³

House Bill 277 – Well Construction Standards

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

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.⁵⁴⁶ The bill also includes other information on the allocation and transfer of money as a result of gray wolf depredation.⁵⁴⁷ Additionally, the bill increases gray wolf tag fees.⁵⁴⁸

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.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.⁵⁵⁰

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.”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.⁵⁵²

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-

⁵⁴² *Id.*

⁵⁴³ *Id.*

⁵⁴⁴ H.R. 277, 62d Leg., 2d Reg. Sess. (Idaho 2013).

⁵⁴⁵ *Id.* at § 1(12)(a).

⁵⁴⁶ H.R. 336, 62d Leg., 2d Reg. Sess. (Idaho 2013).

⁵⁴⁷ *Id.* at § 3.

⁵⁴⁸ *Id.* at § 2.

⁵⁴⁹ H.R. 411, 62d Leg., 2d Reg. Sess. (Idaho 2014).

⁵⁵⁰ *Id.*

⁵⁵¹ H.R. 469, 62d Leg., 2d Reg. Sess. (Idaho 2014).

⁵⁵² *Id.* at § 1(e).

forcement of certain regulations and to provide exceptions.”⁵⁵³ 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.”⁵⁵⁴

House Bill 486 – Conservation Easements

In addressing conservation easements, this bill repeals the law relating to taxation of conservation easements,⁵⁵⁵ 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.⁵⁵⁶

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.⁵⁵⁷

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.”⁵⁵⁸ Firstly, the state cannot condemn land that is used by an irrigation or drainage entity owner who provides those service to entitled landowners.⁵⁵⁹ Secondly, the legislation clarifies that the state maintains the authority to condemn these properties for concurrent public uses.⁵⁶⁰ Additionally, the legislation has an emergency clause that applies the legislation retroactively and can be used to resolve any pending litigation on the issue.⁵⁶¹

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.⁵⁶²

553. H.R. 473, 62d Leg., 2d Reg. Sess. § 1 (Idaho 2014).

554. *Id.* at § 1.

555. H.R. 486, 62d Leg., 2d Reg. Sess. (Idaho 2014).

556. IDAHO CODE § 55-2109 (2012).

557. H.R. 506, 62d Leg., 2d Reg. Sess. § 1 (Idaho 2014).

558. H.R. 571, 62d Leg., 2d Reg. Sess. (Idaho 2014).

559. *Id.* at § 1.

560. *Id.*

561. *Id.* at § 2.

562. S.B. 1069, 62d Leg., 1st Reg. Sess. (Idaho 2013).

Senate Bill 1220 – Fish and Game

This bill will amend the particulars for reimbursement for illegal take of wildlife.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.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.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.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.⁵⁶⁷

Senate Bill 1373 – Water Quality

This senate bill is meant to add to existing law to address additional concern regarding water quality.⁵⁶⁸ The bill authorizes the Department of Environmental Quality to regulate certain “water quality pollutant trading and other water quality attainment innovations.”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.”⁵⁷⁰

Senate Bill 1412 – Water

The legislation addresses issues regarding storage water as a use.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.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.⁵⁷³ Lastly, release of water for flood control from Arrowrock Reservoir, Anderson Ranch Reservoir, and Lucky Peak Reservoir according to described agreements

563. S.B. 1220, 62d Leg., 2d Reg. Sess. (Idaho 2014).

564. *Id.* at § 1.

565. *Id.*

566. S.B. 1345, 62d Leg., 2d Reg. Sess. (Idaho 2014).

567. *Id.* at § 1.

568. S.B. 1373, 62d Leg., 2d Reg. Sess. (Idaho 2014).

569. *Id.*

570. *Id.*

571. S.B. 1412, 62d Leg., 2d Reg. Sess. (Idaho 2014).

572. *Id.* at § 1.

573. *Id.* at § 2.

will not decrease storage water rights unless the water released is applied to the beneficial use in accordance with the water right.⁵⁷⁴

C. Executive Branch

1. Executive Orders⁵⁷⁵

Executive Order 2013-01- Continuing the Idaho Strategic Energy Alliance 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.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.⁵⁷⁷

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.⁵⁷⁸ The Board will be “authorized to make final administrative appeal determinations regarding air quality permits and enforcement orders.”⁵⁷⁹

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 man-made disaster.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.⁵⁸¹

574. *Id.* at § 3.

575. For all executive orders over the past year see *Executive Orders*, IDAHO, <http://gov.idaho.gov/mediacenter/execorders/> (last visited Sep. 15, 2014).

576. Exec. Order No. 2013-01, 2014 Idaho Reg. Text 360571 (2013).

577. *Id.*

578. Exec. Order No. 2013-06, 2014 Idaho Reg. Text 352135 (2013).

579. *Id.*

580. Exec. Order No. 2014-07, 2014 Idaho Reg. Text 362626, §§ 2–3 (2014).

581. *Id.* § 3.

2. Idaho Agency Law⁵⁸²

i. Final Rules

Idaho Department of Agriculture*Bacterial Ring Rot Caused by Clavibacter Michiganensis of Potato*⁵⁸³

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

*Brucellosis*⁵⁸⁷

This rule "establish[es] a process through which a producer obtains a required permit prior to movement of any cattle out of the Designated Surveillance Area (DSA)."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.⁵⁸⁹ This rule adds increase assurance that infected livestock will not be sold without proper disease testing.⁵⁹⁰

*Domestic Cervidae*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."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.⁵⁹³

582. This Section will address the rules within the Idaho Administrative Bulletins proposed by different state agencies that have become part of the Idaho Administrative Code. Additional environmental rules were proposed but have not been included because they have not been adopted. For a complete list of Idaho agencies See *State Directory- State Agencies*, IDAHO.GOV, <http://www.idaho.gov/agency/> (last visited Sep. 27, 2014). For all rules added to the Idaho Administrative Code See *Idaho Administrative Code – 2013 Archive*, IDAHO.GOV, <http://adminrules.idaho.gov/rules/2013/index.html> (last visited Oct. 1, 2014); See *Idaho Administrative Code – 2014 Archive*, IDAHO.GOV, <http://adminrules.idaho.gov/rules/2014/index.html> (last visited Oct. 1, 2014).

583. IDAHO ADMIN. CODE r. 02.06.27 (2014).

584. *Id.*

585. 14-3 Idaho Admin. Bull. 15 (Mar. 5, 2014).

586. *Id.* at 17–18.

587. IDAHO ADMIN. CODE r. 02.04.20.123 (2014).

588. 13-9 Idaho Admin. Bull. 32 (Sep. 4, 2013).

589. 13-11 Idaho Admin. Bull. 18 (Nov. 6, 2013).

590. *Id.*

591. IDAHO ADMIN. CODE r. 02.04.19.022 (2014).

592. 13-7 Idaho Admin. Bull. 18 (July 3, 2013).

593. *Id.* at 22.

*Idaho Fertilizer Law*⁵⁹⁴

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.”⁵⁹⁵ This results in the rule being consistent with national standards.⁵⁹⁶

*Idaho Soil and Plant Amendment Act*⁵⁹⁷

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.”⁵⁹⁸ This results in the rule being consistent with national standards.⁵⁹⁹

*Importation of Animals*⁶⁰⁰

This rule amends the “Domestic Cervidae import requirements” to make the administrative code consistent with National Chronic Wasting Disease Herd Certification Program.⁶⁰¹ Additionally, the rule amended the definition of equine infectious anemia import testing requirements for horses designated to slaughter, the Coggins Test.⁶⁰² 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.”⁶⁰³

*Invasive Species*⁶⁰⁴

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.⁶⁰⁵ 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.”⁶⁰⁶ 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.⁶⁰⁷

594. IDAHO ADMIN. CODE r. 02.06.12.004.01 (2014).

595. 13-9 Idaho Admin. Bull. 40 (Sep. 4, 2013).

596. *Id.*

597. IDAHO ADMIN. CODE r. 02.06.41.004.01 (2014).

598. 13-9 Idaho Admin. Bull. 44 (Sep. 4, 2013).

599. *Id.*

600. IDAHO ADMIN. CODE r. 02.04.21.010, 02.04.21.300, 02.04.21.600, 02.04.21.602 (2014).

601. 13-9 Idaho Admin. Bull. 34 (Sep. 4, 2013); 13-11 Idaho Admin. Bull. 19 (Nov. 6, 2013).

602. 13-9 Idaho Admin. Bull. 34 (Sep. 4, 2013).

603. *Id.*

604. IDAHO ADMIN CODE r. 02.06.09.010, 02.06.09.103, 02.06.09.104.03, 02.06. 02.06.09.806, 02.06.09.807 (2014).

605. 13-8 Idaho Admin. Bull. 16 (Aug. 7, 2013); 13-12 Idaho Admin. Bull. 18 (Dec. 4, 2013).

606. 13-8 Idaho Admin. Bull. 16 (Aug. 7, 2013).

607. *Id.*

Additionally, the rule amends certain invasive species lists “to update scientific and common names and to add hybrids of certain listed invasive species.”⁶⁰⁸

*Noxious Weed*⁶⁰⁹

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.⁶¹⁰

*Pesticide and Chemigation Use and Application*⁶¹¹

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.⁶¹² 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 re-test.”⁶¹³

*Pesticide and Chemigation Use and Application*⁶¹⁴

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.”⁶¹⁵ The rule adds “endive, parsnip, sugar and garden beets, Swiss chard, collards, lettuce, dill, kohlrabi, and mustard” seeds.⁶¹⁶

*Planting of Beans*⁶¹⁷

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.”⁶¹⁸ This rule protects seed production within the state and requires a minimum of one inspection a year during the growing season.⁶¹⁹

608. *Id.*

609. IDAHO ADMIN. CODE r. 02.06.22.100 (2014).

610. 13-8 Idaho Admin. Bull. 29 (Aug. 7, 2013).

611. IDAHO ADMIN. CODE r. 02.03.03.100 (2014).

612. 13-9 Idaho Admin. Bull. 20 (Sep. 4, 2013); 13-11 Idaho Admin. Bull. 16 (Nov. 6, 2013).

613. 13-9 Idaho Admin. Bull. 20 (Sep. 4, 2013).

614. IDAHO ADMIN. CODE r. 02.03.03.800 (2014).

615. 13-9 Idaho Admin. Bull. 28 (Sep. 4, 2013); 13-11 Idaho Admin. Bull. 17 (Nov. 6, 2013).

616. 13-9 Idaho Admin. Bull. 28 (Sep. 4, 2013).

617. IDAHO ADMIN. CODE r. 02.06.001 (2014).

618. 13-10 Idaho Admin Bull. 22 (Oct. 2, 2013); 13-12 Idaho Admin. Bull. 19 (Dec. 4, 2013).

619. 13-10 Idaho Admin Bull. 22 (Oct. 2, 2013).

*Rapeseed Production and Establishment of Rapeseed Districts*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.⁶²¹

Idaho Fish and Game Commission*Fish*

This rule adds definitions for "single-point hook" and "watercraft."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.⁶²³ Watercraft is defined to "limit angler conflict and address safety concerns."⁶²⁴

*Fish*⁶²⁵

In protection of the sturgeon, only "catch-and-release" angling is allowed for sturgeon.⁶²⁶ This rule is meant to keep the sturgeon in the water, which keeps the fish healthy.⁶²⁷ This rule is added to replace a rule that was inadvertently removed in 2008.⁶²⁸

*Taking of Big Animals*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.⁶³⁰ The rule still requires the accompanying adult to have a tag for the same species.⁶³¹

*Taking of Big Animals*⁶³² and *Taking of Game Birds*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."⁶³⁴

620. IDAHO ADMIN. CODE r. 02.06.13.050 (2014).

621. 13-11 Idaho Admin. Bull. 20 (Nov. 6, 2013); 13-9 Idaho Admin. Bull. 41 (Sep. 4, 2013).

622. 13-10 Idaho Admin. Bull. 127 (Oct. 2, 2013); 14-1 Idaho Admin. Bull. 29 (Jan. 1, 2014).

623. 13-10 Idaho Admin. Bull. 127 (Oct. 2, 2013).

624. *Id.*

625. IDAHO ADMIN. CODE r. 13.01.11 (2013).

626. 13-10 Idaho Admin. Bull. 131 (Oct. 2, 2013); 41-1 Idaho Admin. Bull. 30 (Jan. 1, 2014).

627. *Id.*

628. *Id.*

629. IDAHO ADMIN. CODE r. 13.01.08.250.01.h (2014).

630. 13-10 Idaho Admin. Bull. 112 (Oct. 2, 2013); 14-1 Idaho Admin. Bull. 24 (Jan. 1, 2014).

631. 13-10 Idaho Admin. Bull. 112 (Oct. 2, 2013).

632. IDAHO ADMIN. CODE r. 13.01.08 (2014).

633. IDAHO ADMIN. CODE r. 13.01.09 (2014).

634. 13-10 Idaho Admin. Bull. 116, 123 (Oct. 2, 2013); 14-1 Idaho Admin. Bull. 25, 28 (Jan. 1, 2014).

*Department of Environmental Quality**Control of Air Pollution in Idaho*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.⁶³⁶ This revision “allows DEQ to maintain EPA approval to regulate these sources” of air pollution.⁶³⁷

*Control of Air Pollution in Idaho*⁶³⁸

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

*Water Quality Standards*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.”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.⁶⁴³

Department of Lands*Idaho Forest Practices Act*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).”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.”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

635. IDAHO ADMIN. CODE r. 58.01.01.107 (2014).

636. 13-8 Idaho Admin. Bull. 319 (Aug. 7, 2013).

637. *Id.*

638. IDAHO ADMIN. CODE r. 58.01.01.107 (2014).

639. 13-8 Idaho Admin. Bull. 320 (Aug. 7, 2013).

640. *Id.*

641. IDAHO ADMIN. CODE r. 58.01.02.052.08.a, 58.01.02.055 (2014).

642. 13-8 Idaho Admin. Bull. 334 (Aug. 7, 2013).

643. *Id.* at 334–35.

644. IDAHO ADMIN. CODE r. 20.02.01.010, 20.02.01.030 (2014).

645. 13-9 Idaho Admin. Bull. 159 (Sep. 4, 2013).

646. *Id.*

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.”⁶⁴⁷ 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.”⁶⁴⁸

Outfitters and Guides Licensing Board

Under Idaho Law, and outfitter can be a private landowner.⁶⁴⁹ Accordingly, the rule seeks to “clarify and enhance the ability of private landowners to allow public access to their private lands.”⁶⁵⁰ 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.”⁶⁵¹

Parks and Recreation

*Administration of Park and Recreation Areas and Facilities*⁶⁵²

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.”⁶⁵³ The current required fee for all campsite types is available in the Idaho Administrative Code.⁶⁵⁴

*Administration of Park and Recreation Areas and Facilities*⁶⁵⁵

This rule increase fess caps “for the Winter Access Program passes offered by Harriman and Ponderosa State Parks.”⁶⁵⁶ This rule also adds two new pass types to address customer needs: the Individual Season Pass and the Couples Season Pass.⁶⁵⁷

Administration of Park and Recreation Areas and Facilities

This temporary rule “clarif[ies] and delineate[s] lease terms for Cottage site leases and for Float home Moorage site leases with Heyburn State Park” in compli-

647. *Id.*

648. 14-1 Idaho Admin. Bull 127 (Jan. 1, 2014).

649. IDAHO CODE ANN. § 26-2102 (2012).

650. 14-1 Idaho. Admin. Bull. 132 (Jan. 1, 2014). *See* 13-10 Idaho Admin. Bull. 356 (Oct. 2, 2013).

651. 14-1 Idaho. Admin. Bull. 132 (Jan. 1, 2014). *See* 13-10 Idaho Admin. Bull. 356 (Oct. 2, 2013).

652. IDAHO ADMIN. CODE r. 26.01.20.250 (2014).

653. 13-10 Idaho Admin. Bull. 360 (Oct. 2, 2013); 14-1 Idaho Admin. Bull. 134 (Jan. 1, 2014).

654. IDAHO ADMIN. CODE r. 26.01.20.250 (2014).

655. IDAHO ADMIN. CODE r. 26.01.20.258.05 (2013).

656. 13-10 Idaho Admin. Bull. 360 (Oct. 2, 2013); 14-1 Idaho Admin. Bull. 136 (Jan. 1, 2014).

657. 14-1 Idaho Admin. Bull. 136 (Jan. 1, 2014).

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

658. 14-5 Idaho Admin. Bull. 69 (May 7, 2014).

659. 13-11 Idaho Admin. Bull. 54 (Nov. 6, 2013).

660. *Id.*

661. *Id.*

662. 13-12 Idaho Admin. Bull. 118 (Dec. 4, 2013).

663. *Id.*

664. *Id.*

665. 14-4 Idaho Admin. Bull. 16 (Apr. 2, 2014).

666. *Id.*

667. *Id.*

668. *Id.*

669. 14-1 Idaho Admin. Bull. 169 (Jan. 1, 2014).

two (2) assessment units [] that are water quality impaired," one of which is on Idaho's 2010 Section 303(d) list.⁶⁷⁰ The Addendum has been submitted to the EPA for approval under the Clean Water Act.⁶⁷¹

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.⁶⁷² The decision "addresses two (2) assessment units."⁶⁷³ One unit is on Idaho's 2010 Section 303(d) list, while another unit is not listed but is impaired.⁶⁷⁴ The Addendum has been submitted to the EPA for approval under the Clean Water Act.⁶⁷⁵

Mid Snake River/Suceccor 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.⁶⁷⁶ The decision "addresses seven (7) assessment units on Idaho's 2010 Section 303(d) list that are impaired for sediment."⁶⁷⁷ The Addendum has been submitted to the EPA for approval under the Clean Water Act.⁶⁷⁸

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.⁶⁷⁹ The decision "addresses three (3) assessment units . . . on Idaho's 2010 Section 303(d) list" that are imp[aired for sediment].⁶⁸⁰ The Addendum has been submitted to the EPA for approval under the Clean Water Act.⁶⁸¹

Pashimeroi 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.⁶⁸² The decision "addresses twenty-five (25) assessment unit[s]/pollutant combinations listed as impaired on Idaho's 2010 Section 303(d) list."⁶⁸³ The Addendum has been submitted to the EPA for approval under the Clean Water Act.⁶⁸⁴

670. *Id.*
 671. *Id.*
 672. 13-11 Idaho Admin. Bull. 53 (Nov. 6, 2013).
 673. *Id.*
 674. *Id.*
 675. *Id.*
 676. 13-11 Idaho Admin. Bull. 52 (Nov. 6, 2013).
 677. *Id.*
 678. *Id.*
 679. 14-1 Idaho Admin. Bull. 168 (Jan. 1, 2014).
 680. *Id.*
 681. *Id.*
 682. 14-2 Idaho Admin. Bull. 22 (Feb. 5, 2014).
 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.⁶⁸⁵ The decision "addresses fifty-four (54) assessment units on Idaho's 2010 Section 303(d) list that are impaired for temperature exceedances."⁶⁸⁶ The Addendum has been submitted to the EPA for approval under the Clean Water Act.⁶⁸⁷

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**

685. 13-09 Idaho Admin. Bull. 233 (Sep. 4, 2013).

686. *Id.*

687. *Id.*

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