

# ISB ENVIRONMENT & NATURAL RESOURCES SECTION

## Spring 2009 Newsletter

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### Website Featured Link

The ENR Section Website is up and running with a comprehensive list of links with information on environmental and natural resources law, cases, and policies. This month's featured link is the Idaho Water Resources Water Supply Information webpage. At this page you can access water flow and reservoir supply information for by multiple state and federal agencies. <http://www.idwr.idaho.gov/water/supply/supply.htm>

## Idaho Environmental and Natural Resource News

### Omnibus Wilderness Bill – Owyhee Initiative Passes

The Owyhee Initiative is a collaborative effort with a broad representation, started by the Owyhee County Commissioners in 2001, to address and resolve decades-old land management issues in Owyhee County, Idaho. On March 25, 2009, the House of Representatives passed legislation containing the Owyhee Initiative language, completing the cycle started when the Senate passed the same legislation a few days earlier on March 19, 2009. The legislation now heads to the President's desk for signature. The Owyhee Initiative will designate 517,000 acres of public land as the Owyhee-Bruneau Wilderness, in six units, release 199,000 acres of wilderness study areas to non-wilderness multiple use management and designate 316 miles of Wild and Scenic Rivers. Find out more at: <http://crapo.senate.gov/issues/owyhee/initiative.cfm#Legislation>

### WR Grace and Executive Indicted for Endangering Residents of Libby, Montana

The US Department of Justice indicted WR Grace and seven current and former executives on February 7, 2009, for knowingly

endangering residents of Libby, Montana, and concealing information about the health affects of its asbestos mining operations. According to the indictment, W.R. Grace and its executives, as far back as the 1970's, attempted to conceal information about the adverse health effects of the company's vermiculite mining operations and distribution of vermiculite in the Libby, Montana community. The defendants are also accused of obstructing the government's cleanup efforts and wire fraud. To date, according to the indictment, approximately 1,200 residents of Libby area have been identified as suffering from some kind of asbestos-related abnormality. Read the summary and press release at: [http://www.usdoj.gov/opa/pr/2005/February/05\\_enrd\\_048.htm](http://www.usdoj.gov/opa/pr/2005/February/05_enrd_048.htm)

### "The Wetland Banks of Idaho" – Important Financing Tool in Mitigation Banking

The WBI is a financial mitigation tool expected to play a key role in establishing multiple, on-site wetland mitigation banks in the State of Idaho. Development projects that cause unavoidable damage to wetlands are

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# CLEs & Section Happenings

## ENR Section Vice President Vacancy

Thank you to Judi Brawer for serving as our Vice-Chairwoman, we appreciate your service and input. Ms. Brawer will be taking advantage of new opportunities outside the legal field, including participation in the publication Idaho Women's Journal. Check out her work at: <http://www.idahowomensjournal.com/>

The ENR Section is looking for someone to take Ms. Brawer's position. Let Erika Malmen and Courtney E. Beebe know if you are interested.

## ENR Section Lunch CLE Materials

The ENR Section Website has CLE materials posted on it from the Floodplain Management CLE of February 26, 2009, and the 2009 ARRA Stimulating Idaho's Infrastructure CLE of March 18, 2009. Visit the ENR Section Website for more CLE materials, it is updated monthly.

## ENR Section Sponsors May 2009 Advocate

The May 2009 Advocate, sponsored by the ENR Section, is on its way! This great issue contains articles regarding the Endangered Species Act, Idaho Crop Burning Rules, the Clean Water Act and NPDES Permit Issues, and the 2009 American Recovery and Reinvestment Act. Also, the winner of the photo contest will be on the cover and the other submissions included in the magazine.

## ENR Chairwoman's Survey

Look for an email regarding a survey of the future development of the ENR Section from the ISB and Chairwoman Erika Malmen. Please give your feedback, it is much appreciated.

# Idaho Environmental and Natural Resource News

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encouraged to use mitigation banks to offset the impacts. A mitigation bank is a wetland, stream or other aquatic resource area that has been restored, established, enhanced or preserved for the purpose of providing compensation for unavoidable impacts to aquatic

resources permitted under Section 404 of the Clean Water Act. The Wetlands Mitigation Group, LLC, will propose sites. More information can be found through the Army Corps of Engineers Walla Walla District.

## Cases and Publications of the Quarter

### Summer v. Earth Island Institute: 129 S.Ct 1142 (2009)

On March 3, 2009, the United States Supreme Court addressed the question of: Whether a group of environmental organizations had established standing to contest a series of Forest Service regulations, and whether the challenge was ripe for review under the APA. In another 5-4 sharply divided ruling, the Supreme Court ruled that environmental groups lack the necessary standing to overturn an entire U.S. Forest Service regulation.

### Carcieri v. Salazar

The question presented in this cases whether the Narrangansett Tribe may receive benefits under the Indian Reorganization Act of 1934 if the Tribe was not federally recognized on the date of enactment, and whether the Rhode Island Indian Claims Settlement Act foreclosed the Tribe's right to exercise sovereignty over land in the state. The Supreme Court ruled that the Interior Department erred in putting a parcel of land into trust for an American Indian tribe not recognized in the the Indian Reorganization Act of 1934.

### Entergy Corp. v. EPA; PSEG Fossil, LLC v. Riverkeeper, Inc.; Utility Water Act Group v. Riverkeeper Docket No. 07-588

A 6-3 majority of the Supreme Court ruled April 1 that the government may undertake a cost-benefit analysis in deciding whether to institute new regulations on power plants to protect aquatic life. At issue is a 2004 rule regulating water intakes on existing power plants that use at least 50 million gallons of water a day to generate steam for electricity. The rule gives power plants several compliance options -- not just the most expensive but most environmentally beneficial "closed-cycle system" -- after purportedly considering the cost of the technology and environmental benefits. Section 316(b) of the Clean Water Act requires the location, design, construction and capacity of cooling water intake structures to reflect the "best technology available for minimizing adverse environmental impact." In 2007, the 2nd U.S. Circuit Court of Appeals ruled that no such balancing test may be used. Entergy Corp., the Utility Water Act Group and PSEG urged the court to grant review in the case. The Bush administration asked the court not to take the consolidated cases, but said it would back the industry groups if the justices granted cert.

## Did You Know ?

\* Did you know that I.R.C.P. 75 allows for contempt proceedings against individuals and entities without a show cause hearing? Formerly, under I.C. § 7-600 et seq, plaintiffs with a court judgment could institute contempt proceedings against an individual or entity through a show cause proceedings. However, in 2005, I.R.C.P. 75 did away with show cause hearings, and created a procedure for nonsummary and summary contempt proceedings.

\* Did you know that Idaho's limited liability company laws have changed? Formerly under Partnerships in I.C. § 53-200 et seq, limited liability company provisions were repealed in July 1, 2008, and replaced with the uniform limited liability company act I.C. § 30-6-100 et seq. This, however does not apply to the uniform limited liability partnership act which remains in I.C. § 53-200 et seq.

## Legal Resources for Environmental Lawyers

### "Idaho Environmental Guide" – Community Resource for Environmental Regulations

The Idaho Environmental Guide was developed to help elected officials and communities understand and manage their environmental responsibilities while preventing pollution and working toward sustainability. It addresses city and county concerns about air and water quality, and waste management and other environmental topics. The Guide includes a comprehensive list of websites regarding environmental subjects. Request your copy at [www.deq.idaho.gov/ieg](http://www.deq.idaho.gov/ieg).

### American Recovery and Reinvestment Act – Idaho ARRA Funds Websites

The American Recovery and Reinvestment Act focuses on green energy sources and projects that enhance the environment. You can track the stimulus money given to Idaho at [www.accountability.idaho.gov](http://www.accountability.idaho.gov) and the overall stimulus spending at [www.recovery.gov](http://www.recovery.gov).

## Book a Month Reading Challenge

Environmental and Natural Resource lawyers occasionally have a chance to read something besides Environmental Impact Statements and CFRs. This quarter, learn more about Idaho's mining history:

### Idaho's Bunker Hill: The Rise and Fall of a Great Mining Company, 1885-1981

by Katherine G. Aiken (2007)

### Banditti of the Rocky Mountains and Vigilance Committee in Idaho (An Authentic Record of Startling Adventures in Gold Mines of Idaho)

by Ross & Haines (June 1964)

### Gold Town to Ghost Town: The Story of Silver City Idaho

By Julia Welch (University of Idaho Press 1984)

*Read something recently that got you thinking? Want to share a classic title with the ENR Section members? Email your suggested fiction or non-fiction book title to Courtney E. Beebe at [courtney.beebe@deq.idaho.gov](mailto:courtney.beebe@deq.idaho.gov).*

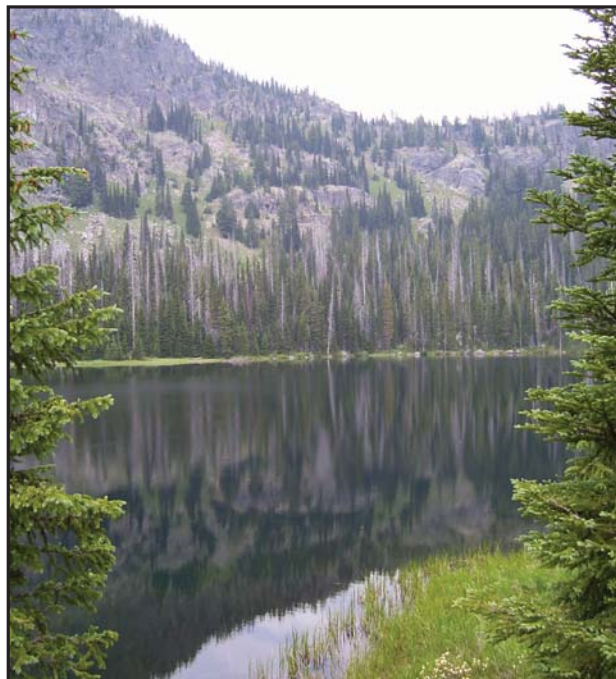




# ENR Section Website

Check out the ENR Section Website at <http://www2.state.id.us/isb/sec/enr/enr.htm>. The website was recently reorganized and updated thanks to help from our section members and the Idaho State Bar. On the website is a schedule of the ENR Section Lunch CLE's and CLE materials, as well as a list of other events, and Meeting Minutes.

New to the website is a comprehensive list of links: Please see the "Legal Resources" heading and scroll through links to state, local and national websites containing commonly used Environmental and Natural Resource legal resources. Thanks to all the members of our section who shared links, and if you have more to contribute, please email your link or the information you would like posted to Courtney E. Beebe at [courtney.beebe@deq.idaho.gov](mailto:courtney.beebe@deq.idaho.gov).



*The ENR Section produces quarterly newsletters to keep members apprised of upcoming events. Our next newsletter is scheduled for release in July 2009. If you would like to include an item in the upcoming newsletter, please contact Courtney E. Beebe at [courtney.beebe@deq.idaho.gov](mailto:courtney.beebe@deq.idaho.gov).*

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