

ISB ENVIRONMENT & NATURAL RESOURCES SECTION

Winter 2010 Newsletter

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Website Featured Link

The Idaho Parks and Recreation Department is on everyone's mind this legislative session. Find out more about this state agency at <http://parksandrecreation.idaho.gov/>.

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Idaho Environmental and Natural Resource News

Idaho Courts Poultry Industry

Idaho is among several states watching to see if a California animal cruelty law drives flocks of big egg farms there to fly the coop. California voters in 2008 approved Proposition 2, banning cramped cages for laying hens by 2015. Neither Idaho nor Nevada, where officials are aggressively courting the Golden State egg industry, have restrictions on "battery cages" that leave chickens little room to spread their wings. Senator Corder, Senate Agriculture Committee chairman, does want to revamp rules governing where and how giant poultry farms are operated to skirt pitfalls that accompanied explosive growth of Idaho's dairy industry. Find out more at: <http://www.rgj.com/article/20100208/NEWS12/100208011/1321/>

news/Idaho-Nevada-prepare-for-California-egg-exodus

Idaho Wolf Lawsuits Continue to Hover Around Courtrooms

The Wilderness Act of 1964 requires managers to use the least intrusive tools necessary for management and requires them to explore all alternatives first. It also says nothing in the act prevents states from managing the wildlife, which by law, they control.

The Wilderness Society led five other groups into the legal fray the first week of February, by filing a suit in the District of Idaho claiming the impact of helicopter use for monitoring and research of wolves in the Frank Church / Wilderness of No Return Wilderness "violates the Forest Service's obligation to protect the wilderness character of the Frank Church-River of No Return Wilderness."



Cases and Publications of the Quarter

Delta Smelt Consolidated Cases, --- F.Supp.2d ----, 2009 WL 3823934 (E.D. Cal. Nov. 13, 2009) (“Delta Smelt”):

U.S. District Court Judge Oliver Wanger has ordered the Bureau of Reclamation (“Reclamation”) to analyze the impacts on the human environment of water diversions meant to protect the delta smelt, a tiny fish found only in the Sacramento-San Joaquin Estuary that is listed as threatened under the Endangered Species Act (the “ESA”). Combined with a three-year drought in California, plaintiffs allege that the water restrictions have had adverse economic and environmental consequences throughout the state. Addressing claims related to the Central Valley Project and State Water Project (the “Projects”) under the National Environmental Policy Act (“NEPA”), the court ruled in favor of plaintiff water districts and against defendant-intervenor environmental groups.

South Carolina v. North Carolina, Docket No. 138 (Original Jurisdiction):

South Carolina filed suit against North Carolina in October 2007

after North Carolina approved an inter-basin transfer from the Catawba River, diverting it beyond the river basin. South Carolina contends that the case concerns the two states and the two states only. Meanwhile, the three intervening parties that are on the side of North Carolina argue that they should be allowed to participate to protect their interests. At issue before the justices was the decision by a special master to allow the parties to intervene. On Jan. 20, 2010, a divided Supreme Court allowed two non-state entities to intervene, but ruled that the city of Charlotte lacks a “compelling interest” to join the

CLEs & Section Happenings

Annual Water Reuse Conference, May 19-20, 2010

The Idaho Department of Environmental Quality invites you to attend the annual water reuse conference, to be held this year on May 19-20 in Boise. The conference website is: www.deq.idaho.gov/2010IdahoWaterReuseConference

Enforcement of Clean Water Act Violations to Increase

U.S. Environmental Protection Agency (“EPA”) has issued a Clean Water Act Enforcement Action Plan (“CWA Action Plan”), which promises to overhaul and increase federal and state water quality enforcement, particularly against concentrated animal feeding operations, industrial and construction sites, and municipal separate stormwater systems. The CWA Action Plan proposes (1) targeted enforcement at the most important water pollution problems, including both point and non-point pollution sources; (2) strengthened oversight of state water quality compliance and enforcement, including possible direct EPA action where state enforcement is perceived as lacking; and (3) improved transparency and accountability, including mandatory nationwide electronic reporting of water quality permit data and reports. EPA has not settled on particular targets, but is expected to focus on mining companies, large livestock farms, municipal wastewater treatment plants, and construction companies. www.epa.gov/oecaerth/civil/cwa/actionplan.

Did You Know ?

* Did you know that most counties require that natural gas drillers obtain a Conditional Use Permit in order to conduct exploratory drilling? In order to conduct experimental or “wild cat” drilling wells, a drilling company not only needs a permit from the Department of Lands and leases from the surface rights owners, but most counties regulate the activity of drilling by requiring a conditional use permit under the Local Land Use Planning Act and county codes. Most counties use the Conditional Use Permit process to address concerns regarding hydrofracking and water contamination.

* Did you know that it can take upwards of 10 years for the Nuclear Regulatory Commission to approve an application for a new nuclear plant? According to current statistics, the Nuclear Regulatory Commission requires so much information regarding the site plan and operational plan, that an application to build a new nuclear plant may run upwards of \$100 million dollars and take upwards of 10 years to approve.

Featured Article:

Protecting the Bull Trout: Fish & Wildlife Proposes Large Expansion of the Bull Trout's Critical Habitat

By Peter Barton, attorney at Givens Pursley LLP

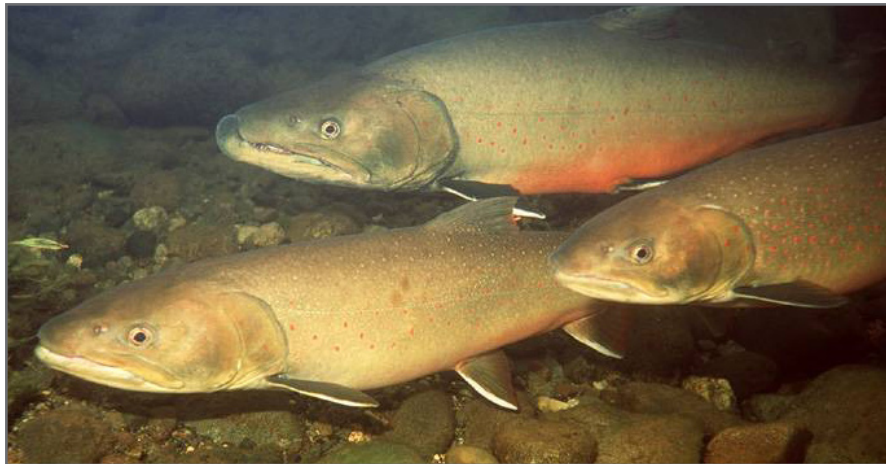
On January 14, 2010, the U.S. Fish & Wildlife Service ("Fish & Wildlife") proposed a large expansion of areas to be deemed critical habitat for the bull trout. See 75 Fed. Reg. 2270 (Jan. 4, 2010). Bull trout, a threatened species under the Endangered Species Act (the "ESA"), 16 U.S.C. §§ 1531 et seq., range throughout the Columbia River and Snake River basins, extending east to headwater streams in Montana, Idaho, Oregon, and Canada. Fish & Wildlife considers the decline of bull trout populations to be primarily

due to habitat degradation and fragmentation, blockage of migratory corridors, poor water quality, past fisheries management practices, impoundments, dams, water diversions, and the introduction of

non-native species. In 2005, Fish & Wildlife, pursuant to the ESA, designated certain areas as necessary for the protection of the bull trout. As a result of a 2006 lawsuit in the U.S. District Court for the District of Oregon, *Alliance for the Wild Rockies v. Allen*, No. 04-1813-JO (D. Or., filed Jan. 5, 2006), Fish & Wildlife agreed to revise its 2005 rule. The January 14, 2010 proposed rule is the result, with Fish & Wildlife dramatically expanding the proposed critical habitat to approximately 23,000 miles of streams and 533,000 acres of reservoirs and lakes. The principally affected States are Idaho and Montana, with lesser coverage in Washington, Oregon, and Nevada.

Critical-habitat designations identify habitat areas that provide essential life cycle needs for the species, based on the best scientific data available. Under Section 3 of the ESA, "critical habitat" is defined as

(1) the specific areas within the geographical area occupied by the species, at the time it was listed under the ESA, on which are found those physical or biological features (a) essential to the conservation of the species and (b) which may require special management considerations or protection and (2) specific areas outside the geographical area occupied by the species at the time it was listed, upon a determination that such areas are essential for the conservation of the species.



Fish & Wildlife proposed a greater proportion of occupied habitat and more unoccupied habitat for protection in areas where bull trout have demonstrated less resiliency, redundancy, and representation. Fish & Wildlife concluded that

its previously designated areas were inadequate to ensure the conservation of the species and so proposed additional areas outside the geographical area occupied by the species at the time it was listed. A primary consideration was to restore connectivity among bull trout populations. Fish & Wildlife sought to avoid including developed areas such as lands covered by buildings, pavement, and other structures because Fish & Wildlife believes such lands lack the physical and biological features essential for bull trout.

The proposed rule is open to public comment until March 15, 2010. Fish & Wildlife was to hold a public hearing in Boise on February 25, 2010, from 7 p.m. to 9 p.m.

DO YOU HAVE SOMETHING TO SUBMIT?

If you would like to include an article in the upcoming newsletter, please contact Courtney E. Beebe at courtney.beebe@deq.idaho.gov.

ENR Section Website

Check out the ENR Section Website at http://isb.idaho.gov/member_services/sections/enr/enr.html. 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.

Book a Month Reading Challenge

Got Fish? As we look forward to opening day, read up on one of Idaho's great natural resources:

Trout and Salmon of North America
by Robert Behnke (September 4, 2002)

Steelhead Fly Fishing
by Trey Combs (February 1, 1999)

Cutthroat: Native Trout of the West
by Pat Trotter (July 16, 2008)

Do you have a book to recommend? Email your submittals to cbbeebe@payettecounty.org.

The ENR Section produces quarterly newsletters to keep members apprised of upcoming events. Our next newsletter is scheduled for release in May 2010. If you would like to include an item in the upcoming newsletter, please contact Courtney E. Beebe at courtney.beebe@deq.idaho.gov.

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