

# ISB ENVIRONMENT & NATURAL RESOURCES SECTION

## Fall 2009 Newsletter

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### In This Issue

- 1 Website Featured Link
- 1 Idaho Environmental and Natural Resource News
- 2 Cases and Publications of the Quarter
- 2 CLEs & Section Happenings
- 2 Book a Month Reading Challenge
- 2 Did You Know
- 3 ENR Section Website

### Website Featured Link

The Idaho Invasive Species Fund is in effect! The new law requires boaters, motorized vessels and non (including rafts, kayaks, canoes, and drift boats), are required to purchase and display an IISF sticker on the vessel in order to launch and legally operate in Idaho. The Department of Agriculture is the overseeing authority and you can purchase your sticker at: <http://parksandrecreation.idaho.gov/stickerpurchase.aspx>

### Idaho Environmental and Natural Resource News

#### **Nelson v. Big Lost Irrigation District**

Idaho Supreme Court Docket No. 35543, 2009 Opinion No. 116: In this case the Idaho Supreme Court concluded that 1) the District Court did not err in ruling that the 1936 decree does not limit the irrigation district's discretion to adopt the universal shrink method of apportioning conveyance losses, and 2) the District Court err in ruling that the universal shrink method of apportioning conveyance losses is lawful.

#### **Adams, et al, v. Dupont and U.S**

On August 24, 2009, a jury in U.S.

District Court in Boise presided over by Judge B. Lynn Winmill found the BLM and chemical manufacturer E.I. DuPont de Nemours and Co. negligent in four sample cases of the lawsuit filed by a coalition of farmers. The jury awarded the four plaintiffs more than \$17.5 million. With more than 100 more plaintiffs still to prove their damages during the next phase of the proceedings, Houtsma said, the total damages could exceed \$200 million. But with that many plaintiffs and the high possibility of appeals, the Oust case could drag on for years.



#### **DO YOU HAVE SOMETHING TO SUBMIT?**

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).

# Cases and Publications of the Quarter

## **United States v. Bailey, 571 F.3d 791 (8th Cir. 2009)**

Eighth Circuit joined the First Circuit in holding that the United States has jurisdiction over wetlands if the site at issue either: (a) has "a continuous surface connection to bodies that are 'waters of the United States' in their own right, so that there is no clear demarcation between 'waters' and wetlands"; or (b) has "a significant nexus to waters that are or were navigable in fact or that could reasonably be so made" so that, "either alone or in combination with similarly situated lands in the region," the site "significantly affect[s] the chemical, physical, and biological integrity of the covered waters more readily understood as 'navigable.'"

## **EPA Issues Mandatory Greenhouse Gas Reporting Rule; Monitoring To Begin January 1, 2010**

On September 22, 2009, EPA released final regulations that require approximately 10,000 facilities to report their greenhouse gas (GHG) emissions annually.[1] Covered facilities must begin monitoring January 1, 2010, and file their first annual reports by March 31, 2011. The reporting rule generally applies to facilities that emit more than 25,000 tons of GHG a year, although some sources with lower emissions also will

be subject to the rule. EPA estimates that the reporting rule will cover about 85 percent of GHG emissions in the United States.

## **SCOTUS 2009 Term: No Ninth Circuit Cases**

SCOTUS will hear only one environmental case this term - Stop the Beach Renourishment v. Florida Department of Environmental Protection (Docket 08-1151; Supreme Ct. Florida). The issue is whether Florida's Supreme Court violated the Constitution's regulatory takings clause when it upheld a plan to create a state-owned public beach between private waterfront land and the Gulf of Mexico.

# CLEs & Section Happenings

## **Swan Falls CLE October 28, 2009**

Join the ENR Section for a CLE on October 28, 2009, by Michael Orr on the Swan Falls litigation. Look for an email notice with the time and place.

## **BNSF v. United States CLE November 2009**

Look for an email notice for an upcoming CLE on the impact of BNSF v. United States case on liability.

# Book a Month Reading Challenge

Fall is for hunting, so take a shot at one of these books on one of America's greatest pursuits:

## **One Man, One Rifle, One Land: Hunting All Species of Big Game in North America**

by J.Y. Jones, Safari Press (2001)

## **Beyond Wolves: The Politics of Wolf Recovery and Management**

by Martin A. Nie, University of Minnesota Press (2003). Survey of regional wolf recovery and management programs and the resulting politics and policies.

## **The Gigantic Book of Hunting Stories**

by Jay Cassell (2008)

## **Idaho's Greatest Mule Deer**

by Ryan Hatfield of Council, Idaho (2004)

## **Idaho's Greatest Elk**

by Ryan Hatfield of Council, Idaho (2006)

Do you have something to Submit? Email your submittals to [cbeebe@payettecounty.org](mailto:cbeebe@payettecounty.org).

# Did You Know ?

\* Did you know that the Idaho Open Meeting Law was revised this legislative session? Among the many changes in effect in 2009, public officials are subject to a civil penalty of up to \$50 for any violation of the Open Meeting Law. Second and subsequent violations can result in a penalty of up to \$500 and any "intentional" violation is subject to a civil penalty of up to \$500. In addition, the new law further restricts the circumstances under which governing bodies of public agencies may meet behind closed doors in "executive session." The amendments also clarify the procedure for amending a public meeting agenda before and during the meeting and provide a procedure by which governing bodies of public agencies can cure a violation of the Open Meeting Law.

\*Did you know that EPA issued a Regulatory Guidance Letter 07-02 reinterpreting the permit exception for irrigation and drainage ditches in Section 404(f)(1)(c)? According to RGL 07-02, which replaces the 1989 Memorandum on the same subject, irrigation and drainage ditch maintenance and construction are exempt from the 404 permit requirement if certain criteria are met. But watch out for Section 404(f)(2)'s recapture provision, the interpretation remains rather tight.

# ENR Section Website

Check out the ENR Section Website at [http://isb.idaho.gov/member\\_services/sections/enr/enr.html](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](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 November 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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