

NINTH CIRCUIT REVIEW EDITOR'S NOTE

I am very proud to present the 2011 Ninth Circuit Environmental Review. This review contains thirty-one summaries of Ninth Circuit Court of Appeals decisions on environmental and natural resources topics, issued between March 2011 and March 2012. The review also includes two chapters authored by Ninth Circuit Review members that closely examine issues arising from two of the summarized opinions.

In the first chapter, Ricky Nelson examines how parties injured by environmental contamination from federal facilities might seek compensatory damages for Resource Conservation and Recovery Act (RCRA) violations under the Federal Tort Claims Act (FTCA). Historically, such claims were either barred by the discretionary function exception (DFE) of the FTCA or were dismissed for attempting to indirectly enforce RCRA using the FTCA. Yet, the plaintiff in the Ninth Circuit's recent decision in *Myers v. United States* overcame the DFE, circumvented indirect enforcement, and brought an FTCA claim against the government for compensatory damage. The chapter discusses the enforcement mechanisms of RCRA and the FTCA, the obstacles posed by the DFE and indirect enforcement, and how *Myers* provides a means for overcoming these obstacles and achieving *covert* RCRA enforcement using agency guidelines.

In the second chapter, Andrew B. Erickson explores the conservation of Greater Yellowstone Ecosystem grizzly bears, focusing particular attention on the Endangered Species Act's (ESA) requirement that the United States Fish & Wildlife Service (FWS) ensure the existence of adequate regulatory mechanisms before delisting a species. In *Greater Yellowstone Coalition v. Servheen*, the Ninth Circuit ultimately determined that FWS, federal, and state conservation measures suffice for adequate regulatory mechanisms. The chapter probes weaknesses in the court's analysis and recommends that future decisions place special emphasis on the adequacy of state regulatory mechanisms to conserve the population.

The Ninth Circuit Environmental Review is composed of five *Environmental Law* members selected for their outstanding writing and analytical abilities. Each member is responsible for writing these complex summaries in addition to their regular source-checking duties. I want to thank this year's members for their attention to detail and enthusiasm. It is my hope that these opinions-in-miniature continue to be a useful legal resource for students and practitioners in the environmental and natural resources arena. These summaries accurately reflect the varied and dynamic environmental issues present in the westernmost States and Territories.

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2011 Ninth Circuit Review Editor