

Introduction to the 2026-2 Edition

The 2026-2 Edition keeps your treatise thoroughly up to date with all the developments affecting the law of federal management and allocation of our natural resources, including:

- Reference in §§ 16:22 to 16:23.10 to the Bureau of Land Management's rescission of its 2024 Landscape Conservation and Health Rule
- Treatment in § 13:65 of a Ninth Circuit decision in *Wilkins v. United States* addressing when a private landowner was reasonably aware that the Forest Service authorized public use of an easement over its land, and elaborating on what amounts to affirmative misconduct when a litigant seeks equitable estoppel against the government
- Coverage in Chapters 16, 17, and 29 of a Montana district court decision vacating a Forest Service approval of a forest treatment project because its use of a condition-based management approach violated the National Forest Management Act, the National Environmental Policy Act, and the Endangered Species Act
- Discussion in of a Ninth Circuit decision upholding a land exchange approved by the Forest Service that provided a mining company with access to a large copper deposit in Arizona despite claims that the approval violated NEPA, the National Historic Preservation Aact, and the Southeast Arizona Land Exchange and Conservation Act
- Coverage in § 19:25 of the reissuance by the Corps of Engineers of nationwide dredge and fill permits, including general definitions and conditions
- Descriptions in §§ 29:12 and 29:13 of a Ninth Circuit decision in *Alaska v. National Marine Fisheries Service* addressing several issues concerning the requirement that the NMFS in designating critical habitat identify physical or biological features that are essential to the conservation of the species, the relevance of foreign national conservation efforts to habitat designation, the scope of agency discretion to exclude areas from critical habitat, and the import of the requirement that the agency designate habitat "to the maximum extent prudent"
- Reference in §§ 29:21 and 21:23 to a Ninth Circuit decision holding that EPA's issuance of water quality criteria under the Clean Water Act is an "agency action" that triggers consultation requirements under the Endangered Species Act
- Coverage in the sections of Chapter 29 that deal with consultation under § 7 of the ESA and the issuance of

incidental take statements of the D.C. Circuit’s decision in *Center for Biological Diversity v. Zeldin*, where the court held that EPA’s delegation to Florida of the authority to issue dredge and fill permits under the Clean Water Act, and the Fish and Wildlife Service’s issuance of a no jeopardy biological opinion for that action, violated § 7

- References in the provisions of Chapter 29 dealing with critical habitat designation and consultation under § 7 of the ESA of an unpublished California federal district court decision in *Center for Biological Diversity v. U.S. Dep’t of the Interior* invalidating four provisions of the regulations implementing the ESA adopted by the FWS in 2019 and 2024
- Discussion in § 32:19 of the Ninth Circuit’s confirmation that the term “public lands” in the Alaska National Interest Lands Conservation Act’s provisions governing the rural subsistence use priority apply includes navigable waters in which the federal government holds federal reserved water rights, and of its conclusion that the Supreme Court did not overrule that interpretation of ANILCA in either *Sturgeon v. Frost* (2019) or *Sackett v. EPA* (2023)