

2016 NINTH CIRCUIT
ENVIRONMENTAL REVIEW

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NINTH CIRCUIT REVIEW EDITOR'S NOTE

I am pleased to present the 2016–2017 Ninth Circuit Review. This review contains twenty-one summaries of Ninth Circuit Court of Appeals decisions on environmental and natural resource topics issued between January 2016 and January 2017. In addition, the review includes two chapters authored by Ninth Circuit Review members. The chapters explore issues raised in the summarized opinions.

In the first chapter, Sage Ertman argues that the “redefining the source” doctrine under the Clean Air Act’s Prevention of Significant Deterioration program allows polluters and regulators significant discretion to avoid implementing the stringent standards envisaged by that program’s Best Available Control Technology standard for new and modified pollution sources. That problem is particularly acute, Sage argues, in the electricity sector. He argues that cases like the Ninth Circuit’s *Helping Hand Tools v. U.S. Environmental Protection Agency* demonstrate that the courts have been complicit in allowing broad application of the “redefining the source” doctrine, which in turn exacerbates the adverse impacts of climate change associated with greenhouse gas emissions. Sage ultimately proposes remedying that problem either by restricting application of the “redefining the source” doctrine or, alternatively, by abolishing the doctrine altogether.

In the second chapter Giulia Rogers explores the problem of anthropogenic ocean noise pollution and its adverse impacts on marine mammals through the lens of *Natural Resources Defense Council, Inc. v. Pritzker*. That case highlights how the National Oceanic Atmospheric Administration (NOAA) has recently acknowledged the extent of the ocean noise pollution problem and has attempted to address that issue using existing statutory authority, such as the Marine Mammal Protection Act (MMPA). Giulia argues that *Pritzker* highlights how the MMPA can be an effective tool for NOAA to curb ocean noise pollution. But she also explores how *Pritzker* demonstrates the limits of that authority. Finally, she offers recommendations for expanding statutory authority to better tackle the problem of ocean noise pollution.

The Ninth Circuit Review is made up of five *Environmental Law* members. Each member writes and edits summaries throughout the course of the year. This year’s members were thoughtful, attentive, and dedicated to producing quality summaries of often complex and challenging opinions. These summaries are intended to provide readers, including attorneys, academics, and anyone interested in the ever-evolving state of the Ninth Circuit’s environmental jurisprudence, with a succinct overview of each case. The summaries are also meant to flag major issues to facilitate further investigation into those cases that may prove useful to our readers, professionally or otherwise.

The resolution of legal disputes involving environmental and natural resource issues is perhaps more important now than ever. Conservation and environmental protection efforts are increasingly pitted against intransigent industry groups and complacent regulators. How the courts resolve disputes

between those parties may mean the difference between a species' extinction and its preservation, mass deforestation and conservation, polluted waterways and clean ones, hazardous smog and breathable air, and climate change catastrophes and vital control of greenhouse gas emissions. The Ninth Circuit Review has long been, and remains, committed to chronicling how the Ninth Circuit Court of Appeals addresses those issues and others. Thank you for reading.

Dashiell Farewell
2016–2017 Ninth Circuit Review Editor