NINTH CIRCUIT TAKES A “HARD LOOK” AT NEPA AND THE ESA

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I. INTRODUCTION

The Ninth Circuit issued well over two dozen published opinions in the environmental law area in 2004. 1 This Article addresses eleven opinions that involve the Endangered Species Act (ESA) and the National Environmental Policy Act (NEPA). 2 The cases under those topics are as follows:


1. In addition to the Endangered Species Act (ESA) and the National Environmental Policy Act (NEPA), the Ninth Circuit’s other environmental opinions issued in 2004 pertain to, inter alia, the Clean Water Act, the Clean Air Act, the Comprehensive Environmental Response, the Compensation and Liability Act, and the Resource Conservation Recovery Act.

2. Some of the decisions covered in this Article also contain holdings that bear on the Marine Mammal Protection Act (MMPA), the National Forest Management Act (NFMA), and the Wilderness Act, which are briefly discussed herein.

3. 358 F.3d 1181 (9th Cir. 2004) (dismissing appeals challenging district court remand order regarding listing of coho salmon for lack of jurisdiction).

4. 375 F.3d 884 (9th Cir. 2004) (holding that a bison capture facility permit in Montana did not violate ESA or NEPA).

5. 378 F.3d 1059 (9th Cir. 2004) (holding a critical habitat analysis flawed based on incorrect definition of “adverse modification”).

6. 382 F.3d 1159 (9th Cir. 2004) (denying costs to defendants after appeal dismissed as moot, where the plaintiffs were actually the prevailing parties under the ESA).

7. 386 F.3d 879 (9th Cir. 2004) (upholding awarding fees and costs under ESA despite dismissal of appeal as moot).

8. 361 F.3d 1108 (9th Cir. 2004) (requiring EIS to address impact of tanker traffic increases re permit to extend oil refinery dock).

9. 371 F.3d 475 (9th Cir. 2004) (holding that NEPA requires EIS before approving whaling quota for tribe).

10. 376 F.3d 853 (9th Cir. 2004) (extending deference to agency despite NEPA irregu-

11. 379 F.3d 738 (9th Cir. 2004) (holding that timber harvesting project as part of watershed restoration violated NEPA and NFMA because Forest Service was too vague regarding past timber harvests and used outdated and faulty data regarding health of habitat).

12. 381 F.3d 886 (9th Cir. 2004) (holding that EIS must assess impacts of commercial packstock permits; Wilderness Act claims remanded).

13. 383 F.3d 1082 (9th Cir. 2004) (holding that no EIS is required for accidental missile explosion threat).