

Western Environmental Law Center Federal Litigation Matters¹

350 Montana v. Bernhardt, 1:19-cv-00012-BMM (D. Mont.) (9th Cir.): Challenge to OSMRE mine permit expansion and coal train transport impacts on grizzlies under NEPA.

350 Montana v. Bernhardt, CV 19-12-M-DWM (D. Mt.): Montana District case re mine expansion and train impacts on grizzlies, following remand. Awaiting Ninth Circuit decision to decide whether any new suit.

Alaska Community Action on Toxics et al v. Council on Environmental Quality, 3:20-cv-05199-RS (N.D. Cal.): challenge to 2020 Trump Administration CEQ NEPA regulations. Case is stayed while CEQ plots a path forward; CEQ has completed phase 1 rulemaking; phase 2 rulemaking expected early spring 2023.

American Petroleum Inst. v. U.S. Dep't of Interior, 2:21-cv-02506-TAD-KK (W.D. La.): Challenge by the American Petroleum Institute against the Biden Administration's oil and gas leasing pause.

American Rivers v. U.S. EPA, No. 3:20-cv-04636-WHA (N.D. Cal.): Northern District of California case challenging Trump revised Section 401 regulations. District court remanded and vacated rule. SCOTUS granted industry motion for a stay. DCT denied motion for indicative ruling. Ninth Cir oral argument on merits Nov. 15.

American Rivers, et al v. American Petroleum Institute, et al, No. 21-16958 (9th Cir.), In re Clean Water Act Rulemaking, 3:20-cv-04636-WHA (N.D. Cal.), California State Water Resources Board v. FERC, Case No. 20-72432, consolidated with Nos. 20-72452, 20-72782, 20-72800, 20-72958, 20-72973) (9th Cir.): Challenge to Trump EPA's rule implementing Section 401 of the Clean Water Act (FERC-licensed projects on the Yuba, Bear, and Merced Rivers) which limited the power of states and tribes to control activities that may result in discharges to water within their territory. District court vacated the rule and remanded it to EPA on 10/21/21; intervenors obtained Supreme Court stay pending their appeal to the Ninth. The district court denied our motion for an indicative ruling that it would have denied remand had it known its vacatur order would be stayed. Industry's appeal to Ninth Circuit briefed, and argued 11/15/22 in San Jose. Awaiting, Cert. petitions, due Jan. 5, 2023. Comments on EPA's proposed 401 rule filed 8/8/2022. Now in a holding pattern.

Capital Trail Vehicle Assoc. v. Forest Service, 22-cv-0015-BM (D. Mont. 2022): Filed motion to intervene to defend good Divide Travel Plan. Briefing now.

Cascade Forest Conservancy, et al v. USFS, 22-35087 (9th Cir.): challenge to USFS proposal to repair the Spirit Lake gate and construct a road across the Pumice Plain at Mount St. Helens to facilitate geotechnical drilling on the Plain. Ninth Circuit LOSS; filed petition for rehearing en banc and exploring political options to stop road construction.

¹ **NOTE: This list is accurate as of March 2023.** Due to the short timeline, we are unable to provide an updated list prior to the hearing on 10/25/23, but, if the Subcommittee requests, will supplement with an updated list at a later time. Some matters on this list have likely been resolved and others added. Matters are listed alphabetically.

Cascadia Wildlands et al v. Adcock et al., 6:22-cv-00767-AA (D. Or.): challenge to N126 project, Eugene BLM LSR condition-based NEPA.

Cascadia Wildlands et al v. Bureau of Land Management, 6:21-cv-01487-MC (D. Or.): challenge to Trump Administration rulemaking eliminating the administrative protest process for timber sales..

Center for Biological Diversity v. Bureau of Land Mgmt., 1:19-cv-02869-REB (D. Colo.): Challenge against BLM's Grand Junction Field Office RMP for failing to take a hard look and consider reasonable alternatives under NEPA.

Center for Biological Diversity v. Bureau of Land Mgmt., 1:20-cv-02484-MSK (D. Colo.): Challenge to BLM's approval of the Uncompahgre Field Office RMP for failing to take a hard look and consider reasonable alternatives under NEPA and for violating FLPMA.

Center for Biological Diversity v. Bureau of Land Mgmt., 1:21-cv-00174-TSC (D.D.C): Challenge to a series of Trump-era BLM planning decisions for violations of NEPA, FLPMA and the Federal Vacancies Reform Act.

Center for Biological Diversity v. U.S. EPA, et al., No. 1:22-cv-00486-BAH (D.D.C.): Challenge to EPA's ensure against jeopardy when approving Washington's water quality criteria for cyanide, and EPA and the Services' failure to reinstate consultation on those standards in light on new listing, critical habitat, and new information.

Center for Biological Diversity v. U.S. Dep't of Interior, 1:22-cv-01716-TSC (D.D.C): Challenge to BLM oil and gas drilling permit approvals in the Permian and Powder River basins for failing to take a hard look under NEPA, failing to consult under the ESA, and for violating FLPMA.

Citizens Caring for the Future v. Haaland, 2:23-cv-00060-GBW-KRS (D.N.M.): Challenge to BLM oil and gas leasing decisions for failing to take a hard look at climate under NEPA and for violating FLPMA.

Citizens for a Healthy Community v. U.S. Dep't of Interior, 1:21-cv-01268-REB (D. Colo.): Challenge to BLM's approval of the North Fork Master Development Plan for failing to take a hard look at impacts under NEPA.

Dakota Res. Council v. U.S. Dep't of Interior, 1:22-cv-01853-CRC (D.D.C): Challenge to BLM oil and gas leasing decisions in Montana, Wyoming, Utah, Nevada, New Mexico and Colorado for failing to take a hard look at climate impacts and failing to prepare and EIS under NEPA, and for violating FLPMA.

Diné CARE v. Bernhardt, 1:19-cv-00703-WJ-JFR (D.N.M.): 21-2116 (10th Cir.): Challenge to BLM oil and gas drilling permit approvals for failing to take a hard look at climate and air quality impacts under NEPA.

Diné CARE v. Bureau of Land Mgmt., 1:20-cv-00673-KG-JHR (D.N.M.): Challenge against BLM oil and gas leasing decisions for failing to take a hard look under NEPA.

Diné CARE v. Bureau of Land Mgmt., 1:22-cv-00804-WJ-KK (D.N.M.): Challenge to BLM approval of oil and gas leasing decisions and associated drilling permit authorizations for violations of NEPA.

EPIC v. Van Atta, No. 3:22-cv-03520-TLT (N.D. Cal.): Northern District of California case challenging NMFS Safe Harbor agreements and enhancement permits issued to irrigation districts and ranches immunizing them from liability for taking ESA-listed coho salmon in the Shasta River.

Friends of the Crazy Mountains v. Erickson, CV-19-0066-SPW (D. Mont. 2022): Challenge to Forest Service's management of four public trails being obstructed by landowners. Lost at district court and case on appeal (exploring settlement via mediation).

Friends of the Wild Swan v. Haaland, CV-20-173-DWM (D. Mont. 2021): Challenge to Fed decision not to prepare lynx recovery plan (following earlier order from the court). Case settled and all issues (including fees) resolved and case now on remand. New recovery plan by December, 2024.

Friends of the Wild Swan v. Vermillon, 13-cv-006-DLC (D. Mont. 2015): New wolf regulations in Montana violated our settlement agreement from 2015 which restricted snaring, baits etc. in lynx areas. Resolved issue but Mt. says it wants to make changes to settlement. Expect matter will spark up this year or next.

Grand Canyon Wolf Recovery Project et al. v. Haaland et al., 4:22-cv-00453-JAS (D. Ariz.): Challenge to 2022 ESA Section 10(j) experimental population rule for Mexican wolves; Primarily planning to focus our case on challenging the Service's "non-essential" finding and the I-40 northern boundary issue.

Grand Canyon Wolf Recovery Project v. Haaland, 22-CV-00453 (D. Ariz. 2022): Challenge to new 10(j) rule for Mexican wolf. Focus is on non-essential finding.

Helena Hunter and Anglers Ass'n et al. v. Moore et al., 9:22-cv-00126-DWM (D. Mont.): Challenge to revised forest plan on the Helena-Lewis & Clark in Montana, primarily on the Forest Service's removal of key wildlife standards essential for grizzly bears and Canada lynx.

Klamath-Siskiyou Wildlands Center et al v. United States Fish and Wildlife Service, 1:20-cv-00952-AA (D. Or): challenge to BLM's Poor Windy BiOp.

Klamath-Siskiyou Wildlands Ctr., et al v. BLM, et al., 22-35035 (9th Cir.): challenge to BLM's North Landscape timber sale and FWS' biological opinion on O&C lands in southern Oregon.

Montana Environmental Information Center et al. v. Bernhardt et al., 1:19-cv-00130-SPW-TJC (D. Mont.): Challenge to NEPA analysis supporting expansion of Rosebud Coal Mine.

Montana Environmental Information Center et al. v. Office of the Secretary of the Interior et al., 4:22-cv-00029-BMM (D. Mont.): Challenge pertaining to FOIA request re. records relating to Executive Order 14008, specifically the Report on the Federal Oil and Gas Leasing Program.

Murphy Company, et al v. Donald Trump, 19-35921 (9th Cir.); American Forest Resource Council v. USA, et al., 20-5008 (D.C. Cir.): Defending 2016 expansion of CSNM in southern Oregon against 3 challenges brought by the timber industry and counties.

North Dakota v. U.S. Dep't of Interior, 1:21-cv-00148-DMT-CRH (D.N.D.): Challenge by the State of North Dakota against the Biden Administration's oil and gas leasing pause.

Northwest Environmental Advocates v. U.S. EPA, et al., No. 2:21-cv-01637-BJR (W.D. Wash.): Challenge to EPA's failure to write a TMDL address the dissolved oxygen impairment in Puget Sound.

Northwest Environmental Advocates v. U.S. EPA, et al., No. 22-70053 (9th Cir.): Challenge to EPA denial of NWEA petition to withdraw Washington's NPDES permitting authority over wastewater treatment facilities discharging into Puget Sound because of the agency's consistent failure to impose lawful technology-based and water quality-based effluent limits.

Northwest Environmental Advocates v. U.S. EPA, No. 19-cv-01537 (W.D. Wash.): Challenge to the Environmental Protection Agency's failure to implement the requirements of the Clean Water Act to identify which waterbodies in Washington require cleanup plans and then to develop such plans..

San Luis Valley Ecosystem et al. v. Dallas et al., 1:21-cv-02994-REB (D. Co.): Challenge to revised forest plan on Rio Grande National Forest in SW Colorado under 2012 Planning Rule and NEPA for impacts to Canada lynx and Uncompahgre fritillary butterfly.

Sierra Club v. Hoffman et al., 4:22-cv-00037-DN (D. Utah): Challenge to coal mine expansion, specifically decision to allow expansion of existing mine's lease area.

South Yuba River Citizens League v. FERC, No. 20-72432 (9th Cir.): Successful Ninth Circuit petitions for review of three FERC orders that California waived its authority under Section 401 to impose water quality conditions on Sierra Nevada hydroelectric projects during re-licensing.

State of California et al. v. Bernhardt et al., 4:18-cv-05712-YGR (N.D. Ca.): Challenge to rescission of 2016 Methane Waste Rule.

State of Wyoming et al. v. United States Department of the Interior et al., 2:16-cv-00285-SWS (D. Wyo.): Intervention on behalf of U.S. in defense of 2016 Methane Waste Prevention Rule.

Trails Preservation Alliance et al. v. U.S. Forest Service, 1:18-cv-02354-PAB (D. Co.): Challenge to Rico West Delores travel management decision in SW Colorado; Briefing complete as of Fall 2019 and awaiting decision or scheduling of oral argument; Clients submitted letter to Forest Service requesting supplemental NEPA based on new information (new elk data) in October and following up with a subsequent letter with new elk data in November.

Turlock Irrigation District, et al v. FERC, No. 21-1120 (D.C. Cir.): Representing Defendant intervenors in challenge to FERC's finding that California did not waive its authority under

section 401 of the CWA to review FERC license for two hydroelectric projects on the Tuolumne River.

***Western Org. of Res. Councils v. Bureau of Land Mgmt.*, 4:20-cv-00076-BMM (D. Mont.):** Challenge to the supplemental NEPA analysis prepared for BLM's Miles City and Buffalo Field Office's for failing to take a hard look at climate impacts and reasonable alternatives.

***Western Watersheds Project et al. v. Moore et al.*, 9:22-cv-00149-DLC-KLD (D. Mont.):** Challenge to East Paradise livestock grazing authorizations near Yellowstone NP in MT with major implications on grizzly bear recovery and connectivity.

***Western Watersheds Project et al. v. Perdue et al.*, 4:21-cv-00020-SHR (D. Ariz.):** Challenge to the Forest Service's Stateline Range livestock grazing EA and final decisions under NEPA (three decisions covering 14 allotments and ~300,000 acres in prime Mexican wolf habitat and wilderness areas on the Gila and Apache-Sitgreaves National Forests in NM and AZ).

***WildEarth Guardians et al. v. Bernhardt et al.*, 4:19-cv-00441-CKJ (D. Ariz.):** Challenge to Sonoran Desert Tortoise not warranted finding settled and agency reassessing prior decision; Issued new negative 12-month finding in August; Clients are analyzing FOIA response and will assess potential new litigation via new matter process this fall as necessary.

***WildEarth Guardians et al. v. Bucknall et al.*, 9:23-cv-00010-DLC (D. Mont.):** Challenge to Wildlife Services Environmental Analysis and Decision Notice for wildlife damage management in Montana.

***WildEarth Guardians et al. v. Deb Haaland et al.*, 22-15029 (9th Cir.):** Challenge to 2017 Mexican wolf recovery plan on appeal to the Ninth Circuit; Focusing our appeal on the narrow issues of whether an ESA Recovery Plan needs to be based on the best available science and whether a court can review an ESA recovery plan for whether the plan furthers the conservation and survival of the species as required by the ESA.

***WildEarth Guardians et al. v. Steele et al.*, 9:19-cv-00056-DWM (D. Mont.):** Challenge to revised Flathead National Forest forest plan under ESA and Travel Management Rule.

***WildEarth Guardians et al. v. USDOJ et al.*, 22-15626 (9th Cir.):** Challenge to FWS final rule removing federal ESA protections from gray wolves throughout the lower 48 states (excepting Mexican wolves, red wolves, and the already delisted Northern Rocky Mountains population) on behalf of coalition of western-focused conservation organizations.

***WildEarth Guardians et al v. Zinke et al*, 1:17-cv-00080-SPW (D. Mont.):** Challenge to NEPA analysis supporting expansion of Spring Creek Coal Mine in MT.

***WildEarth Guardians v. Bernhardt*, 1:20-cv-00056-RC (D.D.C):** Challenge against a series of BLM oil and gas lease sales in Wyoming, Colorado, Montana, Utah, and New Mexico for failing to take a hard look at climate impacts under NEPA.

WildEarth Guardians v. Bernhardt, 1:21-cv-00175-RC (D.D.C.): Challenge against a series of BLM oil and gas lease sales in Wyoming, Colorado, Montana, Utah, and New Mexico for failing to take a hard look at climate impacts under NEPA.

WildEarth Guardians v. Bureau of Land Mgmt., 4:21-cv-00004-BMM (D. Mont.): Challenge to BLM oil and gas leasing decisions for failing to take a hard look at climate and water resource impacts under NEPA.

WildEarth Guardians v. Haaland, CV-20-183-DWM (D. Mont. 2022): Challenge to Fed decision not to list wolverine.

WildEarth Guardians v. Jewell, 1:16-cv-01724-RC (D.D.C.): Challenge against a series of BLM oil and gas lease sales in Wyoming, Colorado and Utah for failing to take a hard look at climate impacts under NEPA.

WildEarth Guardians v. U.S. Department of Interior, 1:18-cv-00232-EGS (D. DC.): FOIA deadline case; Awaiting next interim installment of responsive records.

WildEarth Guardians v. U.S. Department of Interior, 1:18-cv-00405-TJK (D.D.C.): Challenge re. FOIA request concerning four Secretarial Orders: 3357, 3358, 3359, and 3360 concerning changes to the Department of the Interior's management of energy development on public lands.

WildEarth Guardians v. U.S. Forest Service, No. 1:19-cv-00203-CWD (D. Id.): Idaho District case alleging the Forest Service and FWS failed to reinitiate consultation over the Forest Service's decision to allow states to regulate black bear baiting in grizzly habitat in national forests.

Wilderness Workshop v. Bureau of Land Mgmt., 1:16-cv-01822-LTB (D. Colo.): Challenge against BLM's Colorado River Valley Field Office RMP for failing to take a hard look and consider reasonable alternatives under NEPA.

Wilderness Workshop v. Bureau of Land Mgmt., 1:18-cv-00987-MSK (D. Colo.): Challenge against BLM oil and gas leasing decisions for failing to take a hard look, consider reasonable alternatives, and use of categorical exclusions under NEPA.

Wilderness Workshop v. Bureau of Land Mgmt. et al., 1:22-cv-01216-APM (D.D.C.): challenge to FOIA response concerning BLM practice of lease extensions in and near roadless areas near North Fork Valley in CO.

Willamette Riverkeeper v. U.S. Army Corps of Engineers, No. 6:21-cv-00034 (D. Or.): Oregon District case against NMFS, Corps of Engineers, and FWS for financing/approving the hatchery summer steelhead program in the Willamette River basin.

Wyoming v. U.S. Dep't of Interior, 1:22-cv-00247-SWS (D. Wyo.): Consolidated challenge by the State of Wyoming and the American Petroleum Institute against the Biden Administration's oil and gas leasing pause.