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Editors' Note: This issue contains summaries of recent judicial opinions that may be of interest to members of the Environmental & Natural Resources Section. Any opinions expressed herein are of the author alone.

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

Cascadia Wildlands v. Adcock,
No. 6:22-CV-01344-MTK, 2025 WL 1194191 (D. Or. Apr. 24, 2025)

Oregon Natural Desert Ass'n v. Raby,
No. 3:25-cv-363-SI, 2025 WL 1261085 (D. Or. Apr. 30, 2025)

Oregon Wild v. Warnack,
No. 6:24-CV-00949-MTK, 2025 WL 1806613 (D. Or. July 1, 2025)

Wild v. United States Forest Service,
No. 1:22-CV-01007-MC, 2025 WL 1009204 (D. Or. Apr. 4, 2025)

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***Cascadia Wildlands v. Adcock*, No. 6:22-CV-01344-MTK, 2025 WL 1194191 (D. Or. Apr. 24, 2025),** *summarized by* David Samuels, Larkins Vacura Kayser LLP.

Introduction

On April 24, 2025, the U.S. District Court for the District of Oregon Court granted summary judgment for environmental groups challenging a Bureau of Land Management ("BLM") logging plan in Oregon, finding that the agency violated the National Environmental Policy Act ("NEPA") by using inadequate landscape-level averaging instead of site-specific analysis and by failing to prepare an Environmental Impact Statement ("EIS") when substantial questions existed about significant environmental impacts.

Background

In 2016, BLM adopted a Resource Management Plan for Northwestern and Coastal Oregon covering 1.3 million acres of BLM-administered land. As part of developing the plan, BLM issued a "landscape-level" Final EIS ("2016 RMP FEIS"), which acknowledged that implementation of the plan's site-specific projects would require additional NEPA compliance. Contemplated projects included commercial timber production to meet BLM's obligations under the Oregon and California Railroad and Coos Bay Wagon Road Grants Lands Act, 43 U.S.C. § 2601 *et seq.*

In 2022, BLM approved the Siuslaw Harvest Land Base Landscape Plan ("Siuslaw Plan") as part of meeting BLM's timber obligations under the 2016 RMP. The plan calls for a twenty-year commercial logging project harvesting upwards of 2,300 acres per decade from a 13,225-acre area of forestland west of Eugene. Rather than preparing an EIS, BLM prepared an Environmental Assessment ("Siuslaw Plan EA") and issued a Finding of No Significant Impact ("FONSI"), concluding that the project would not significantly affect the environment.

Procedural History

Plaintiffs Cascadia Wildlands and Oregon Wild sued BLM, alleging violations of NEPA and the Administrative Procedure Act. They claimed BLM failed to take a "hard look" at potentially significant environmental impacts and failed to prepare an EIS as required for actions with significant environmental effects. After the Court denied BLM's motion to dismiss, the parties filed cross-motions for summary judgment. The Court issued an Opinion and Order denying BLM's motion and granting Plaintiffs' motion.

The Court's Analysis

1. *Non-Dispositive General Issues*

The Court first addressed BLM's general approach to NEPA compliance. Plaintiffs argued that BLM: (1) improperly omitted nearly all of the project's identified

environmental issues from detailed consideration because they did not align with the agency's "purpose and need" for timber production; and (2) inappropriately "tiered" to the "landscape-level" 2016 RMP FEIS instead of conducting site-specific analysis.[1] BLM countered that Plaintiffs misunderstood the agency's approach and that the Siuslaw Plan EA contained sufficient site-specificity. The Court found these general arguments did not resolve the case in the abstract, noting that the key question was whether BLM failed to take a "hard look" at each specific potentially significant issue raised by the Siuslaw Plan.

2. Failure to Analyze Specific Environmental Impacts

Plaintiffs argued that BLM failed to take a "hard look" at four specific issues, which the Court examined in turn.

a. Soil Disturbance

Plaintiffs first contended that BLM failed to take a "hard look" at soil disturbance by conducting "landscape-level" averaging across the entire 13,225-acre project area instead of the required site-specific, "harvest-level" analysis, despite BLM's own acknowledgment that a site-specific approach was available and would provide "greater precision" and "site-specificity." BLM argued it conducted the requisite "hard look" through its baseline averaging approach, citing three Ninth Circuit opinions allowing tiering. BLM further offered that any deficiencies in its methodology would be addressed by proposed mitigation measures, including harvest soil surveys at the individual areas of timber production.

The Court found BLM's "landscape-level" averaging approach across the entire project area was "not sufficient" to satisfy NEPA. BLM's own records showed the averaging was "based on guesswork" and an incomplete understanding of which logging methods would be used. These shortcomings "distorted" the resulting data, making the agency's FONSI "irrational and inadequate." The Court also distinguished BLM's supporting cases, finding they involved projects that respectively were thirteen times smaller than in the Siuslaw Plan; allowed for future opportunities for public comment (unlike the Siuslaw Plan); and was exploratory in nature such that specific locations were not yet known (unlike the Siuslaw Plan).

[1] "Tiering" under NEPA allows agencies to avoid duplicating analysis by incorporating by reference the environmental analysis from a broader programmatic document (like an EIS for a regional management plan) into a more site-specific document (like an EA for a particular project), provided the broader document adequately addresses the issues at the appropriate level of detail.

The Court also rejected that future mitigation measures would cure the averaging approach's deficiencies. NEPA's purpose is to force agencies to take a "hard look" at the impact of a project *before* they approve it, not after. BLM's proposal to conduct site-specific field surveys after approval of the Siuslaw Plan therefore fell short of meeting the agency's obligations under NEPA.

b. Noxious Weeds and Invasive Species

Plaintiffs argued that BLM failed to take a "hard look" at noxious weeds and invasive species as part of its consideration. BLM responded that Plaintiffs waived the issue by not raising it with enough specificity during the public comment period. The agency also contended that it had taken the necessary "hard look" at noxious weeds by tiering the Siuslaw Plan EA to the 2016 RMP FEIS and by considering mitigation measures that address any potentially significant impacts.

The Court rejected BLM's waiver argument, finding Plaintiffs had adequately raised the issue in its public comment by asking BLM to consider ways to avoid creating road conditions favorable to spread weeds. On the merits, the Court found that tiering was insufficient because although the 2016 RMP FEIS and Siuslaw Plan EA recognized noxious weeds were a problem in Oregon generally, neither contained site-specific information. Both acknowledged noxious weeds were a significant problem and that timber sales would increase weed infestation, but BLM failed to take a "hard look" by declining detailed analysis despite its own botanist saying invasive-species effects could inform the choice between alternatives.

The Court also found the proposed mitigation measures inadequate, noting the Siuslaw Plan EA acknowledged that "much of the weed infestations expected to result from the action alternatives will not be adequately controlled given current resources." The Court further explained that while mitigation measures are necessary, they are not alone sufficient to meet an agency's NEPA obligations. Consequently, "BLM could not use mitigation alone to cure its failure to adequately consider noxious weeds."

c. Special Status Species

The Court found that BLM failed to conduct required site-specific analysis of impacts on special status species. While acknowledging that 16 special status species were possibly or likely present in the project area, BLM made only conclusory statements that the project would not cause a trend toward listing any of the species as threatened or endangered under the Endangered Species Act. The Court explained that such statements without meaningful explanation are insufficient under NEPA.

d. Cumulative Impacts

The Court agreed that BLM failed to consider cumulative impacts of the Siuslaw Plan combined with an overlapping project. While both projects identified similar effects in overlapping areas, the Siuslaw Plan EA was "completely silent on the cumulative impacts of these projects" except for road construction impacts on stream sediment. The Court found this violated NEPA's requirement to consider cumulative impacts of reasonably foreseeable actions like nearby timber sales.

3. Failure to Prepare an Environmental Impact Statement

The Court found that substantial questions existed regarding whether the Siuslaw Plan may have significant impacts, triggering the requirement for an EIS. The Court identified several intensity factors raising substantial questions, including: (1) cumulative impacts with other projects; (2) potential adverse effects on threatened species and critical habitat; and (3) highly uncertain effects due to lack of site-specific impact information. Under Ninth Circuit precedent, an EIS must be prepared when substantial questions are raised about potential significant impacts.

4. Remedy

The Court ordered BLM to prepare an EIS rather than simply conduct further analysis. The Court explained that when a court determines an agency's FONSI was arbitrary and capricious and substantial questions exist about significant impacts, remand with instructions to prepare an EIS is appropriate.

Conclusion

The Court granted Plaintiffs' motion for summary judgment and denied Defendants' cross-motion. The Siuslaw Plan EA, Decision Record, and FONSI were vacated, and the matter was remanded to BLM for preparation of an EIS. The decision reinforces that landscape-level averaging cannot substitute for site-specific analysis when agencies have made critical decisions to proceed with projects, and that tiering to programmatic documents is insufficient when neither document contains adequate site-specific analysis of potentially significant impacts.

***Oregon Natural Desert Ass'n v. Raby*, No. 3:25-cv-363-SI, 2025 WL 1261085 (D. Or. Apr. 30, 2025),** *summarized by* Emma Cox, Oregon Natural Desert Association.

Introduction

On April 30, 2025, Judge Simon granted a preliminary injunction barring the Bureau of Land Management ("BLM") from authorizing livestock grazing in 13 key Research Natural Areas ("RNAs") that were closed to grazing and reserved for scientific research in BLM's 2015 conservation plan for greater sage-grouse in Oregon (commonly known as the "2015 ARMPA"). The Court held that Plaintiff Oregon Natural Desert Association ("ONDA") was likely to succeed on the merits of its claims under the Administrative Procedure Act ("APA"), Federal Land Policy Management Act ("FLPMA"), and National Environmental Protection Act ("NEPA"); ONDA would suffer irreparable harm in the absence of an injunction; and the balance of equities and public interest weighed in ONDA's favor.

Background

Although the Western sagebrush landscape was once home to millions of sage-grouse, populations have declined dramatically due to habitat fragmentation and destruction from wildfire, climate change, livestock grazing, and other factors. In 2010, the U.S. Fish and Wildlife Service found that sage-grouse warranted protection under the Endangered Species Act. In 2015, to avoid the need for listing the sage-grouse as an endangered species, the BLM and U.S. Forest Service ("USFS") amended 98 land use plans across ten Western states to "avoid the continued decline of [sage-grouse] populations across the species' range." The 2015 ARMPA for Oregon established 15 "key" RNAs in southeastern Oregon to serve as undisturbed benchmarks for scientific study, requiring the RNAs to be closed to grazing within five years. The purpose of the ungrazed key RNAs was to study how specifically identified sagebrush plant communities important to sage-grouse respond in the absence of disturbance from grazing. In a Final Environmental Impact Study ("FEIS") published and supplemented in 2018 and 2020, respectively, BLM stated that these key RNAs are the "minimum number of sites and areas necessary" to generate statistically significant data. Two of the key RNAs had already been closed to grazing prior to 2015, and the other 13 were newly closed to livestock under the 2015 plan.

In 2019, BLM attempted to reopen those 13 key RNAs to grazing, but that decision was enjoined by the Idaho district court. *W. Watersheds Proj. v. Schneider*, 417 F. Supp. 3d 1319, 1335 (D. Idaho 2019). In 2022, BLM still had not completed the 13 key RNA closures, and the Oregon district court held that the agency had unreasonably delayed implementing the grazing closures as required under the 2015 ARMPA. *ONDA v. Bushue*, 644 F. Supp. 3d 813, 844 (D. Or. 2022). The court ordered BLM to "make unavailable to grazing the portions of the key RNAs specified in the 2015 ARMPA without further delay" and ordered that "BLM may not further authorize grazing on any portions of the 13 key RNAs designated

unavailable to grazing" until the Court issued its order on remedy. *Id.* In 2023, the court ordered BLM to keep livestock out of the 21,779 acres on the 13 key RNAs pursuant to a Stipulated Remedy agreed to by ONDA and BLM, while the agency undertook additional public processes to finally implement the grazing closures mandated by the 2015 ARMPA. *ONDA v. Bushue*, 672 F. Supp. 3d 1101 (D. Or. 2023).

In 2025, BLM further amended its sage-grouse ARMPA, again eliminating or reducing the size of all but one of the 13 key RNAs closed to grazing under the 2015 plan. BLM also introduced new definitions for the terms "baseline reference areas" and "relatively unaltered," describing these as areas "functioning within a normal range of variability" and allowing grazing levels up to 20% which BLM stated left the landscape "practically undisturbed." ONDA challenged the 2025 ARMPA under the APA, FLPMA, and NEPA, and requested a preliminary injunction to reinstate the 2015 ARMPA to halt grazing until the Court decides ONDA's claims.[2]

The Court's Analysis

1. *Likelihood of Success on the Merits*

    a. *APA General Principles*

The Court first addressed general APA principles implicated by ONDA's claims under FLPMA and NEPA. The foundation of ONDA's FLPMA and NEPA claims is that BLM's decision to cut the size and area of key RNAs in the 2025 ARMPA was arbitrary and capricious because the agency failed to adequately explain its change of direction. ONDA argued that BLM failed to provide "good reasons" for changing the policy after BLM maintained from 2015–2020 that the key RNAs were considered the "minimum number" of areas, size, and placement necessary to provide statistically meaningful information and support a "coherent" research plan.

Although BLM presented some discussion as to why it was reducing the key RNAs, the Court held that BLM failed to specifically explain why this policy departure would still provide a valuable scientific baseline for the large-scale research BLM sought to undertake in the key RNAs. The Court found that ONDA was likely to

[2] Meanwhile in a related case in which a grazing permittee had separately challenged the lawfulness of the 2015 ARMPA, the Oregon district court ruled for ONDA and BLM, holding that the 2015 ARMPA complied with the APA, FLPMA, and Taylor Grazing Act. *Cahill Ranches, Inc. v. Bureau of Land Management*, 766 F. Supp. 3d 1079 (D. Or. 2025). The rancher's appeal is currently stayed in the Ninth Circuit Court of Appeals.

succeed on the merits of its FLPMA and NEPA claims to the extent that they were grounded in BLM's insufficient explanation of how the 2025 ARMPA still achieves the research purpose of the 2015 ARMPA.

b. FLPMA Claim

The Court then turned to ONDA's FLPMA claim. Four of the key RNAs overlap with Wilderness Study Areas ("WSAs"), which must be managed to preserve their suitability for future preservation as wilderness under FLPMA. ONDA argued that since the overlapping WSAs and key RNAs were allocated as closed to grazing for scientific research under the 2015 ARMPA, they cannot be reopened unless the new grazing satisfies the FLPMA non-impairment requirement or an exception to that requirement as articulated in BLM's binding WSA management manual.
The Court rejected BLM's argument that grazing was excepted as a "legacied use," finding that the exemption only applied to uses that already exist. Since the 2015 ARMPA closed grazing on key RNAs, the status quo was "no grazing," and opening them to grazing in 2025 constituted a new land use allocation—and thus the exemption was inapplicable.

ONDA also argued that the management of the key RNAs was not in accordance with the 2015 ARMPA and thus did not comply with FLPMA. BLM claimed that opening a substantial portion of the key RNAs to grazing did not alter the purpose of the 2015 nor the 2025 ARMPA. However, after examining BLM's 2018 and 2020 FEIS statements, the Court found that BLM intended the key RNAs to serve as an ungrazed control area to study the impacts of grazing. The Court held that allowing even light grazing appeared to contradict that purpose and that since BLM gave no adequate explanation for this conflicting policy change, ONDA was likely to succeed on the merits of its FLPMA claim.

c. NEPA Claim

Next, the Court addressed ONDA's NEPA claim. The Court held that ONDA was also likely to succeed on the merits of its NEPA claim that BLM failed to take a "hard look" at the environmental consequences (to sage-grouse conservation) of abandoning the network of baseline research areas the agency had previously determined was the "minimum number" needed to produce reliable science.
First, the Court found that BLM's decision to define the important phrase "relatively unaltered" for the first time in the 2025 Record of Decision likely meant BLM failed to analyze the environmental impacts of allowing grazing on key RNAs and deprived ONDA and the public the opportunity to participate and give feedback.

Second, BLM did not consider replacement acreages and areas for the key RNAs reopened to grazing despite the agency's prior finding that the 13 key RNAs established in the 2015 ARMPA were the minimum size and area for statistically meaningful research. Although ONDA raised concerns several times throughout the NEPA process that the reduction in key RNAs would diminish their scientific value, BLM did not address those concerns. The agency also did not explain why grazed land could replace ungrazed land as a scientific baseline. Thus, the Court held that BLM likely violated NEPA's requirements intended to ensure meaningful public participation and informed agency decision-making, in issuing the 2025 ARMPA.

2. Irreparable Harm

ONDA argued that the organization's interests in science-based land management and visiting and enjoying the undisturbed research areas would be irreparably harmed if BLM were allowed to implement the 2025 ARMPA and resume livestock grazing in the key RNAs.

The Court held that absent an injunction, the renewal of grazing, even on a cyclical basis, would threaten the landscape's recovery, thus satisfying irreparable damage to the undisturbed landscape. Further, the Court held that without a preliminary injunction preserving the ungrazed condition of the key RNAs, which by now extended back to 2022, it would be difficult for scientists to justify funding for research proposals, as without baseline data the areas would be of little value to sage-grouse conservation efforts.

3. Equities and Public Interest Test

Since the government is a party, the Court considered the hardship and public interest factors together. The Court found that the public interest factor weighed in ONDA's favor as ONDA was likely to succeed on the merits of its claims, and the resources BLM would expend in reworking its permits were not overly burdensome. The Court rejected BLM's argument that the 2025 ARMPA would reduce wildfire risk because it was based solely on opinions and personal experiences. Without scientific evidence that livestock grazing reduces the risk of catastrophic wildfire or an imminent wildfire threat, this concern did not outweigh other public interest factors.

Finally, the Court held that the hardship to private ranchers, such as Cahill Ranches, Inc., alleged from being unable to graze on the key RNAs did not overcome the public interest in protecting the sagebrush landscape and avoiding irreparable environmental harm. The Court noted that ranchers have access to other grazing allotments. Additionally, since this case could be resolved in as quickly as one year,

any economic harm would be surpassed by the irreparable damage one season of grazing would inflict on scientific baseline areas in important sagebrush habitat.

Conclusion

The Court enjoined BLM from authorizing livestock grazing in any of the portions of the 13 key RNAs that were made unavailable in the 2015 ARMPA. It ordered that the measures outlined in the 2023 Stipulated Remedy from the *Bushue* case shall remain in effect until the Court adjudicates the merits of ONDA's claims.

***Oregon Wild v. Warnack*, No. 6:24-CV-00949-MTK, 2025 WL 1806613 (D. Or. July 1, 2025),** *summarized by* Taylor Harwood, American Forest Resources Council.

Introduction

On July 1, 2025, the Court granted Plaintiff Oregon Wild's and WildEarth Guardians' Motion to Complete and/or Supplement the Administrative Record, finding that the Defendant United States Forest Service ("Forest Service") failed to properly include nine specific documents from Plaintiff Oregon Wild's public comments in the administrative record.

Background

This case centers on the Forest Service's approval of the Youngs Rock Rigdon Project ("Project") in the Upper Middle Fork Willamette Watershed.

Forest Service issued a draft Environmental Impact Statement ("EIS") in July 2021 and solicited public comment during which Plaintiff Oregon Wild submitted a detailed 120-page comment, including a discussion of the impacts of logging on climate, carbon emissions, and carbon storage, with reference to supporting scientific literature. In March 2023, Forest Service responded to Oregon Wild's Comment and issued a final EIS for the Project with a final Record of Decision ("ROD") issued in December 2023.

Plaintiffs brought an action challenging Defendant's ROD and final EIS, alleging violations of the National Environmental Policy Act ("NEPA") and the Administrative Procedure Act ("APA"). Judicial Review under the APA is based on the "whole record." 5 U.S.C. § 706. The whole record "consists of all documents and materials directly or indirectly considered by agency decision-makers." *Thompson v. U.S. Dep't of Labor*, 885 F.2d 551, 555 (9th Cir. 1989) (citations omitted). Defendant filed the administrative record in this case on October 15, 2024. Nine specific articles ("Exhibits") that were referenced in Plaintiff Oregon Wild's public comment were absent from the record. Plaintiffs sought a Motion to Complete and/or supplement the administrative record with the Exhibits.

The issue before the court was whether there was evidence that the Exhibits within Plaintiff Oregon Wild's public comment were indirectly before agency decision-makers.

Court's Analysis

Generally, an agency is entitled to a presumption that the administrative record is complete. *Blue Mountains Biodiversity Project v. Jeffries*, 99 F.4th 438, 445 (9th Cir. 2024). But, a plaintiff may overcome that presumption if they can "(1) identify reasonable, non-speculative grounds for its belief that the documents were

considered by the agency and not included in the record, and (2) identify the materials allegedly omitted from the record with sufficient specificity, as opposed to merely proffering broad categories of documents that are likely to exist." *Audubon Soc'y of Portland v. Zinke*, 2017 WL 6376464, at *4 (D. Or. Dec. 12, 2017) (internal citation omitted). The Ninth Circuit has not clearly defined what it means for documents to be "indirectly" considered by agency decision-makers, but the Ninth circuit has favorably cited the proposition that documents "may not have literally passed before the eyes of the decision-makers" to have been indirectly considered. *In re United States*, 875 F.3d 1200, 1207 (9th Cir. 2017), *vacated on other grounds*, 583 U.S. 29 (2017) (quoting *GeorgiaCarry.org, Inc. v. U.S. Army Corps of Eng'rs*, 212 F.Supp.3d 1348, 1352 (N.D. Ga. 2016)).

The Court found that Plaintiffs presented sufficient non-speculative grounds to rebut the presumption that the administrative record is complete with respect to the Exhibits because Oregon Wild's comments contained extensive citations, Defendants responded to those comments and could not have done so without at least indirectly considering the Exhibits as they were central to Oregon Wild's main points.

The Court held that because Plaintiffs have shown that the Exhibits were indirectly before Defendants, then the Exhibits were part of the administrative record and must therefore be included to complete the administrative record.
The Court found that it did not need to consider Plaintiffs' alternative argument, that the record should be supplemented because the Exhibits fall within the exception to the record review rule and supplement the record with the Exhibits, because Plaintiffs adequately demonstrated that the Exhibits were indirectly before Defendants and therefore part of the administrative record.

Conclusion

The Court granted Plaintiffs' Motion to Complete and/or Supplement the administrative record with the Exhibits which were indirectly considered by the Forest Service.

***Wild v. United States Forest Service*, No. 1:22-CV-01007-MC, 2025 WL 1009204 (D. Or. Apr. 4, 2025),** *summarized by* Max Yoklic and Eric Nissen, NewSun Energy.

Introduction

In 2022, Oregon Wild and WildEarth Guardians ("Plaintiffs") challenged U.S. Forest Service ("USFS") authorization of three commercial log thinning projects of approximately 29,000 acres in the Fremont-Winema National Forest pursuant to a categorical exclusion covering "timber stand and/or wildlife habitat improvement activities" subject to certain limitations ("CE-6"). *See* 36 C.F.R. 220.6(e)(6). Plaintiffs alleged that (1) USFS's decision to invoke CE-6 was arbitrary and capricious under the Administrative Procedures Act ("APA") because CE-6 contains an implied acreage limit and an Environmental Assessment or Environmental Impact Statement was required; and (2) CE-6 as applied to the projects violates the requirements of the National Environmental Policy Act ("NEPA") itself.

Original Trial Court Decision

The trial court denied the first claim, deciding that the plain language of CE-6 does not contain an acreage limit. *Wild v. United States Forest Service*, No. 1:22-CV-01007-MC, 2023 WL 5002473 at *6 (D. Or. Aug. 4, 2023).[3] On the second claim, the trial court determined that Plaintiffs' as applied challenge to CE-6 was time barred under *Wind River Mining Corporation v. United States*, 946 F.2d 710 (9th Cir. 1991) (tolling of statute of limitations until injury for substantive, but not procedural, claims). While Plaintiffs characterized the claim as substantive, the trial court decided that it was procedural because it alleged that USFS failed to follow a process required by NEPA when applying CE-6 and, therefore, Plaintiffs' challenge to the validity of CE-6 accrued when the categorical exclusion was promulgated in 1992. *Wild*, 2023 WL 5002473 at *8.

Ninth Circuit Decision

On appeal, the Ninth Circuit affirmed the trial court's decision on the first claim, finding that the plain language of CE-6 does not support an implied acreage limitation. *Wild v. United States Forest Service*, No. 23-35579, 2024 WL 4286965 at *1 (9th Cir. 2024). On the second claim, the Ninth Circuit noted the U.S. Supreme Court holding in *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*, 603 U.S. 799, 825 (2024), that the statute of limitations for *any* APA claim does not begin to accrue until the plaintiff is injured by final agency action, and stated that "*Wind River*'s rule has likely been abrogated." *Id.* at *3. The Ninth Circuit vacated and remanded the trial court decision to reconsider whether the second claim was time barred under *Corner Post*. *Id.*

[3] *See also* ENR Case Notes, Vol. 47 (Nov. 2023) (summarizing the trial court's decision).

***Wild v. United States Forest Service*, No. 1:22-CV-01007-MC, 2025 WL 1009204 (D. Or. Apr. 4, 2025),** *summarized by* Max Yoklic and Eric Nissen, NewSun Energy.

Trial Court Decision on Remand

On remand, Plaintiffs sought leave to amend their original complaint to add a facial challenge to CE-6 and add GO Alliance as a third plaintiff. *Wild v. United States Forest Service*, No. 1:22-CV-01007-MC, 2025 WL 1009204 at *1 (D. Or. Apr. 4, 2025). Defendants argued that the proposed amendments and joinder would be dilatory, prejudicial, and futile. *Id.* Specifically, Defendants argued that granting Plaintiffs leave to amend was prejudicial because doing so would exceed the scope of the Ninth Circuit mandate. *Id.* at *2. The trial court determined that it was free to address the issue of leave to amend under the rule in *Nguyen v. United States*, 792 F.2d 1500, 1502 (9th Cir. 1986), because the Ninth Circuit mandate did not explicitly address the possibility of amendments. *Id.* at *1. In addition, the trial court determined that Defendants were not prejudiced because: (1) both parties would have to reformulate their arguments under *Corner Post*; (2) the original claims and the new facial challenge to CE-6 rely on the same theories and evidence; and (3) GO Alliance did not seek additional claims or separate relief. *Id.* at *2. Finally, the court noted that requiring Plaintiffs or GO Alliance to file a separate lawsuit would be judicially inefficient. *Id.* at *3.

Conclusion

Oral argument on the parties' motions for summary judgement is scheduled for November. The Court's decision on the merits as to whether Plaintiffs' claims are time-barred may be one of the first applications of *Corner Post* by an Oregon court. It will be interesting to see the Court's treatment of the case, especially considering the dissenting opinion in *Corner Post* suggesting that the majority opinion may "invite and enable a wave of regulatory challenges . . . [and a] tsunami of lawsuits against agencies that . . . have the potential to devastate the functioning of the Federal Government." 603 U.S. at 865 (Jackson, J., dissenting). Stay tuned.