

2025 Environmental and Natural Resources Law: Year in Review

Environmental and Natural Resources Section

Thursday, October 16, 2025

8:30 a.m. -4:30 p.m.

5.0 General CLE credits and 1 Ethics credit (to be applied for)

Oregon State Bar Environmental & Natural Resources Section

2025 Environmental and Natural Resources Section: Year in Review

CLE Planners

Sara Ghafouri, *American Forest Resource Council*
Laura Kerr, *Stoel Rives LLP*
Maureen S. Bayer, *Tonkon Torp LLP*
Hannah Goldblatt, *Advocates for the West*
Lynne I. Dzubow, *McDowell Rackner Gibson PC*
Cassie D. Roberts, *Perkins Coie*
Olivier Jamin, *Davis Wright Tremaine LLP*
Jessica A. Bernardini, *Miller Nash LLP*
Melissa Powers, *Lewis & Clark Law School*
Victor Xu, *Marten Law*
Mary M. Stites, *Northwest Environmental Defense Center*
Rebeka Dawit, *Crag Law Center*

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Melissa Powers, *Advisory Member*
Maureen McGee, *Advisory Member*

SCHEDULE

8:30-8:35 AM **Introductory Remarks**

- Laura Kerr, Stoel Rives LLP, ENR Section Chair
- Sara Ghafouri, American Forest Resource Council, ENR Section Chair-Elect, CLE Chair

8:35-8:40 AM **Transition (5 Minutes)**

8:40-9:40 AM **2025 Oregon Legislative Session Recap**

- Presented by: Maureen McGee, Of Counsel, Tonkon Torp LLP
- Speakers:
    - Oregon State Representative, Ken Helm
    - Cheyenne Holliday, Advocacy Manager, Verde

9:40-9:50 AM **Transition (10 Minutes)**

9:50-10:50 AM **The Future of Wildfire Management on Federal Lands**

- Presented by: Mary Stites, Staff Attorney, Northwest Environmental Defense Center
- Speakers
    - Heath Heikkila, Government Affairs Director, American Forest Resource Council
    - Erin Hogan-Freemole, Staff Attorney, WildEarth Guardians
    - Michael Karnosh, Ceded Lands Manager for the Confederated Tribes of Grand Ronde

10:50-11:00 AM **Break (10 Minutes)**

11:00-12:00 PM **EPA Under the Second Trump Administration**

- Presented by: Maureen Bayer, Of Counsel, Tonkon Torp LLP
- Speakers:
    - Mary Lou Soscia, Retired U.S. EPA
    - Stephen Odell, Partner, Marten Law
    - Victor Xu, Senior Associate, Marten Law

12:00-12:45 pm **Lunch Break (45 minutes)**

12:45-12:55 PM **ENR Diversity Scholarship Recipient Recognition**

- Presented by: Sara Ghafouri, American Forest Resource Council

12:55-1:00 PM **Transition (5 Minutes)**

1:00- 2:00 PM **U.S. Supreme Court Roundup**

- Presented by: Melissa Powers, Professor of Law, Lewis & Clark Law School
- Speakers:
    - Craig Johnston, Professor of Law, Lewis & Clark Law School
    - Adell Amos, Clayton R. Hess Professor of Law, University of Oregon School of Law

2:00-2:10 PM **Transition (10 Minutes)**

2:10-3:10 PM **Environmental Barriers to Oregon's Renewable Energy Transition**

- Presented by: Jessica Bernardini, Associate, Miller Nash LLP
- Speakers:
    - Caroline Moore, Acting Director Energy Program, Oregon Public Utility Commission
    - Mike Goetz, Regulatory Affairs Director, Renewable Northwest
    - Sarah Esterson, Senior Policy Advisor, Energy Facility Siting Council

3:10-3:20 PM **BREAK (10 Minutes)**

3:20-4:20 PM **Privilege, Generative AI in the Practice of Law, and the Intersection of the Two**

- Presented by: Sara Ghafouri, American Forest Resource Council
- Speaker:
    - Nellie Barnard, Schwabe, Williamson & Wyatt

4:20-4:30 PM **Closing Remarks**

- Sara Ghafouri, American Forest Resource Council, ENR Section Chair-Elect, CLE Chair

2025 Oregon Legislative Session Recap

Maureen McGee, Of Counsel, Tonkon Torp LLP

Maureen McGee is an attorney Of Counsel at Tonkon Torp, where she is Co-Chair of the firm's Government Law and Disputes Group and a member of the State Government Relations & Public Policy Group. Before joining Tonkon, Maureen served lawmakers as a Senior Deputy in the Oregon Office of Legislative Counsel, where she provided nonpartisan, policy-neutral, legal drafting services and advice to all 90 members of the legislative assembly on a wide variety of legally and politically complex legislative discussions, with a focus on natural resources, energy, environment and climate policy.

At Tonkon, Maureen now utilizes her deep knowledge of the Oregon legislative process, her code drafting and technical expertise, and her relationships, to offer government affairs services for corporate, trade association, nonprofit and local government clients engaging with Oregon's legislative and executive branches. Maureen also currently serves as the Legislative Liaison for the Environment and Natural Resources Section's board, a role that supports keeping her finger on the pulse of matters relevant to today's audience. She is a graduate of the University of Puget Sound and the University of Oregon School of Law, and is a proud Salem resident.

Representative Ken Helm House District 27, Oregon State Legislature

Ken Helm is the State Representative for Oregon House District 27, including the City of Beaverton and nearby communities. Among his legislative duties, he serves as Co-Chair of the House Committee on Agriculture, Land Use, Natural Resources, and Water, as well as a member of the House Committee on Climate, Energy, and Environment. Representative Helm has also served on committees related to topics such as economic development, judiciary, and revenue. He is a Co-Chair of the Legislature's Water Caucus, a Co-Chair of the Wildlife Caucus, and a member of the Legislature's Environmental Caucus. Representative Helm holds a BA in History and Political Science from Willamette University and a Juris Doctorate from Willamette University College of Law. He built a robust practice in land use law prior to entering the Oregon Legislature in 2015.

Cheyenne Holliday, Director of Policy and Advocacy, Verde

Cheyenne Holliday is a born and raised Oregonian who grew up on a small farm outside of Portland where her family rescues and rehabilitates horses. She has a background in Conflict and Dispute Resolution and has worked as a conflict resolution specialist, facilitator, and mediator. She works at Verde as the Director of Policy and Advocacy to focus on policy development, education, and outreach around economic, environmental, and racial justice issues at both the statewide and national level. In 2020 Cheyenne collaborated on and co-authored the Oregon Water Futures Report

which facilitated a series of conversations with Native, Latinx, Black, and various migrant communities across the state. In her spare time, she also coaches competitive cheerleading to Oregon and Washington youth.


2025 Oregon Legislative Update
Maureen McGee
Of Counsel
Government Relations and Public Policy
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- Agenda:
  - 2025 Session At-A-Glance
  - Natural Resources Legislation
    - Top Policy Areas
    - Legislative Highlights
  - Energy & Environment Legislation
    - Top Policy Areas
    - Legislative Highlights



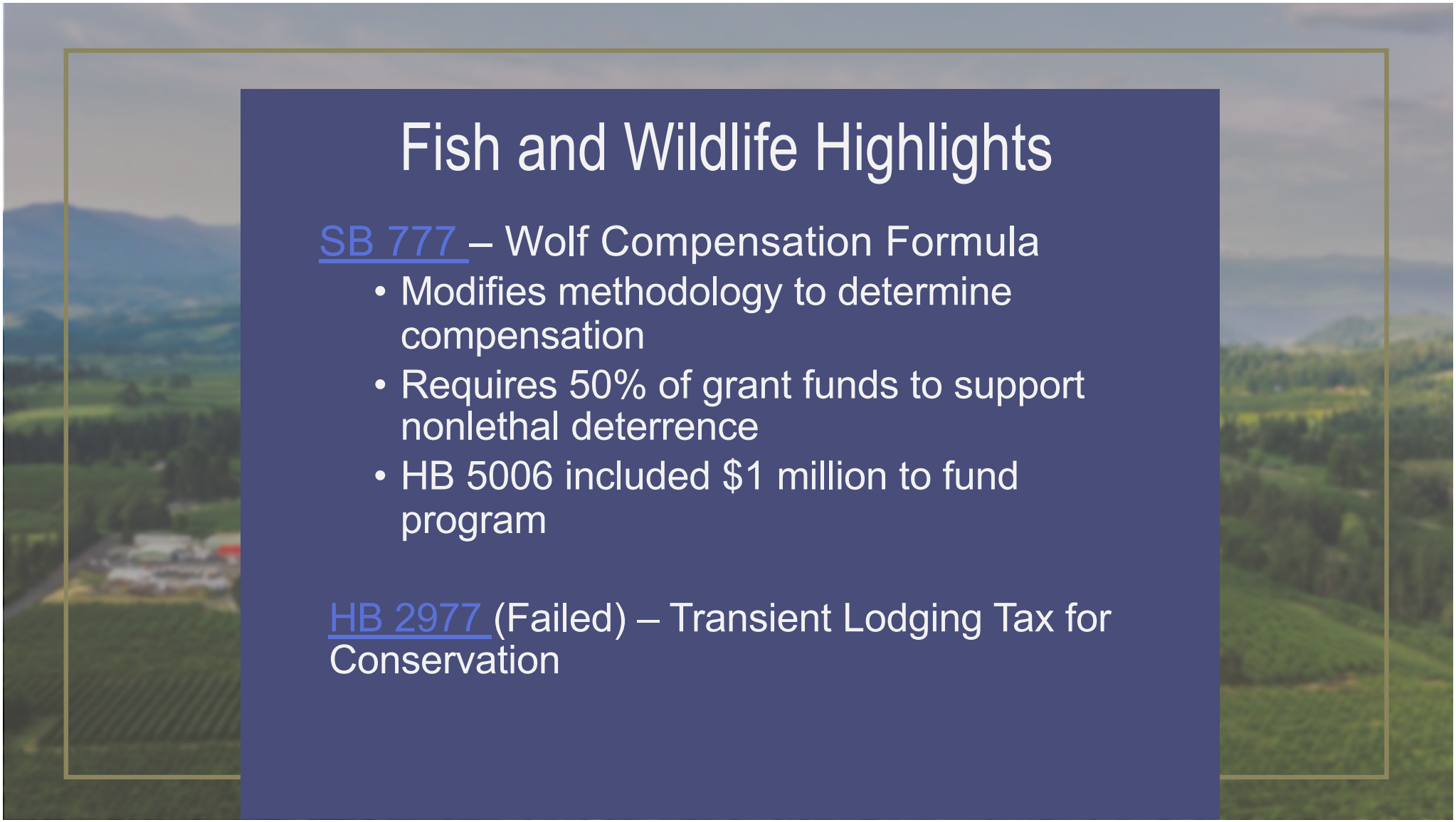
2025 Legislation Session At-A-Glance

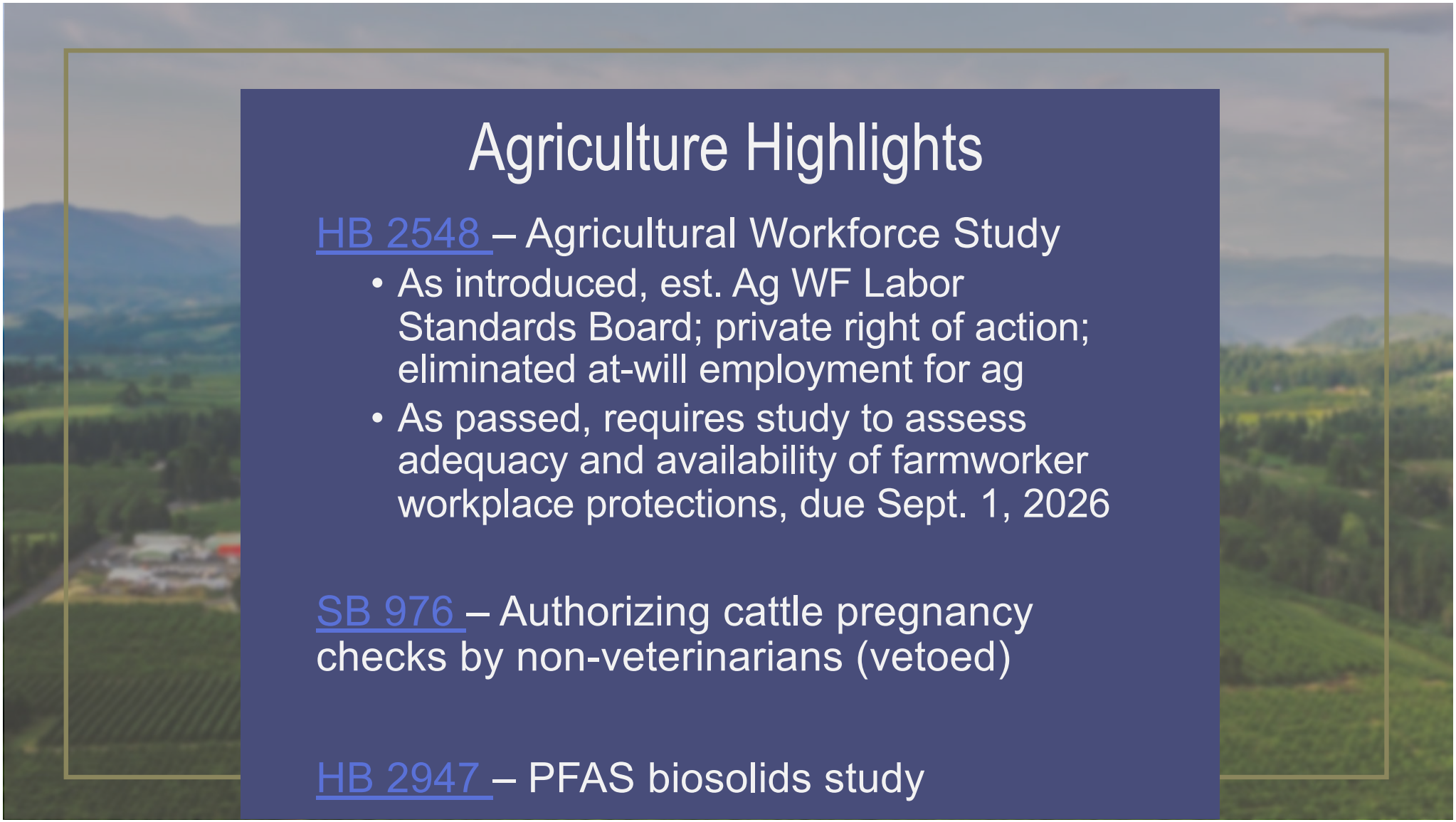
- Convened January 21, 2025; Adjourned June 27, 2025
- Legislation Introduced: 3,466 bills, memorials, resolutions
- Policy Measures that Received a Hearing: 1,433
- Policy Measures Enacted: 571
- Vetoes: 7
- Veto Overrides: 1
- Top Issues: Transportation, Wildfire, Water, State Budget

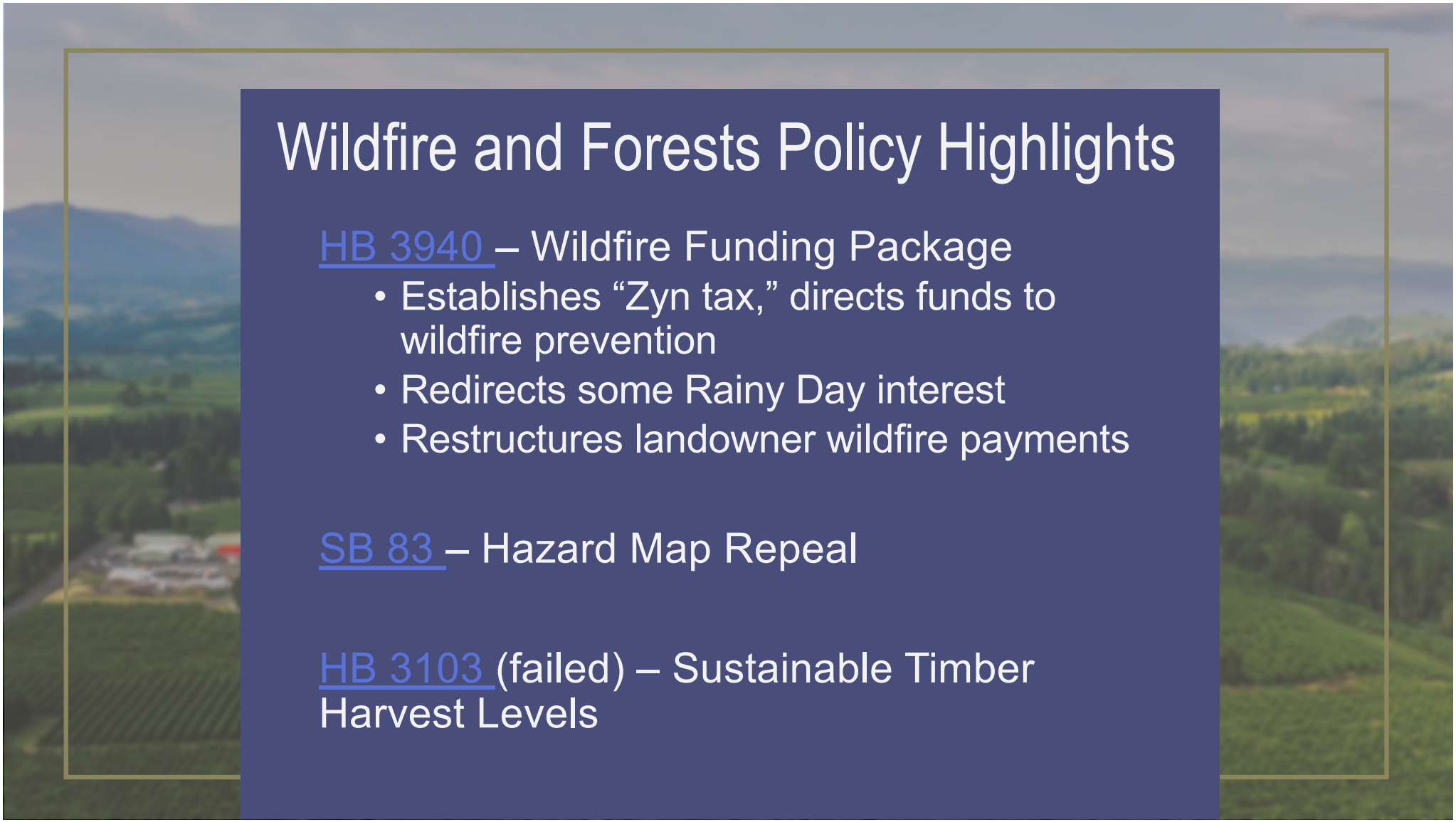
Natural Resources Top Policy Areas

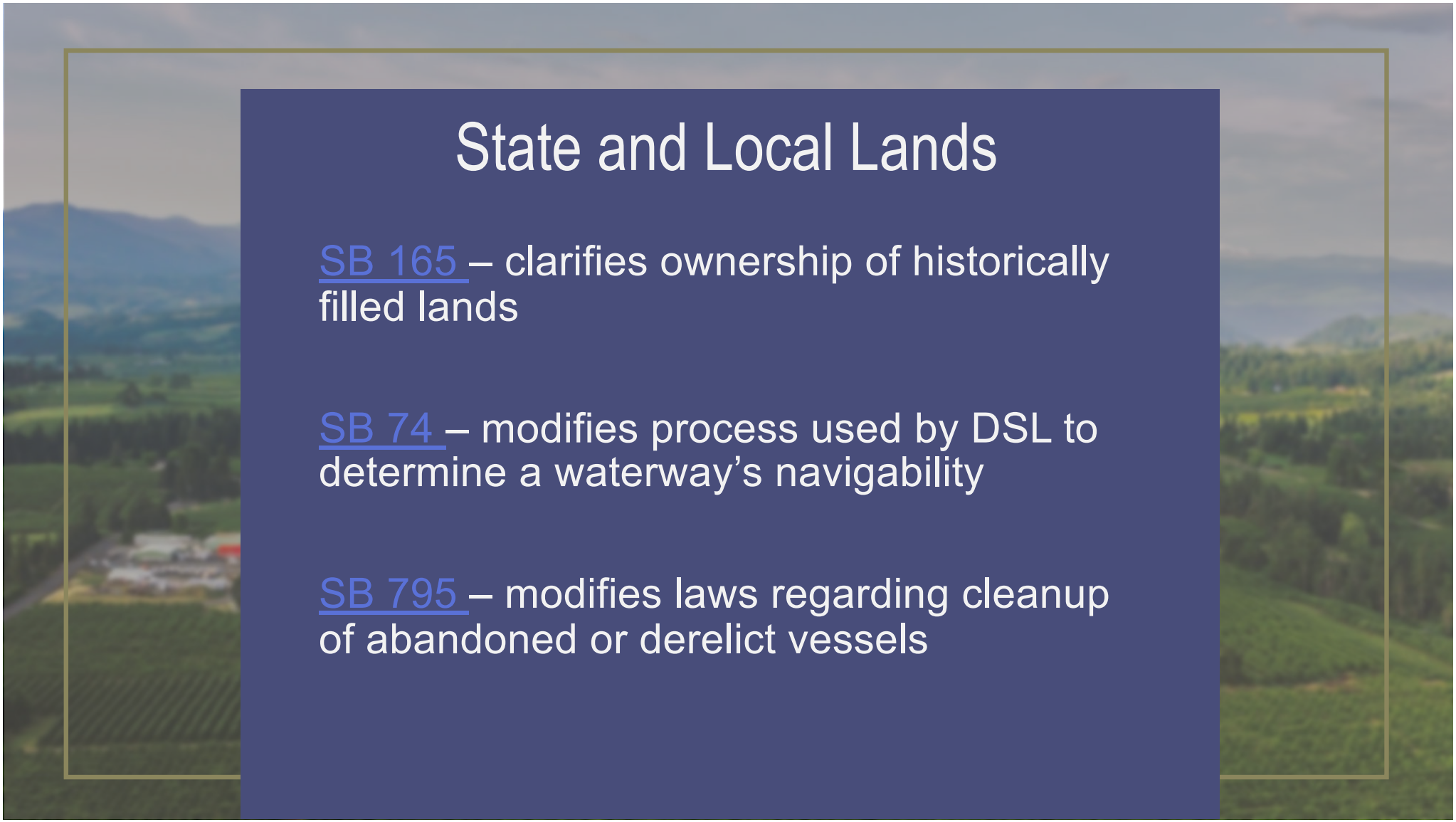
Measures that Received Hearings: 134
Measures Passed: 51

- Fish & Wildlife (27/8)
- Agriculture (26/11)
- Water Quantity (26/10)
- Land Use (12/2)*
- Wildfire (12/6)
- NR Planning & Op (10/2)
- Forests (8/3)


Fish and Wildlife Highlights
SB 777 – Wolf Compensation Formula
• Modifies methodology to determine compensation
• Requires 50% of grant funds to support nonlethal deterrence
• HB 5006 included $1 million to fund program
HB 2977 (Failed) – Transient Lodging Tax for Conservation


Agriculture Highlights
HB 2548 – Agricultural Workforce Study
• As introduced, est. Ag WF Labor Standards Board; private right of action; eliminated at-will employment for ag
• As passed, requires study to assess adequacy and availability of farmworker workplace protections, due Sept. 1, 2026
SB 976 – Authorizing cattle pregnancy checks by non-veterinarians (vetoed)
HB 2947 – PFAS biosolids study


Wildfire and Forests Policy Highlights
HB 3940 – Wildfire Funding Package
• Establishes “Zyn tax,” directs funds to wildfire prevention
• Redirects some Rainy Day interest
• Restructures landowner wildfire payments
SB 83 – Hazard Map Repeal
HB 3103 (failed) – Sustainable Timber Harvest Levels



State and Local Lands

SB 165 – clarifies ownership of historically filled lands

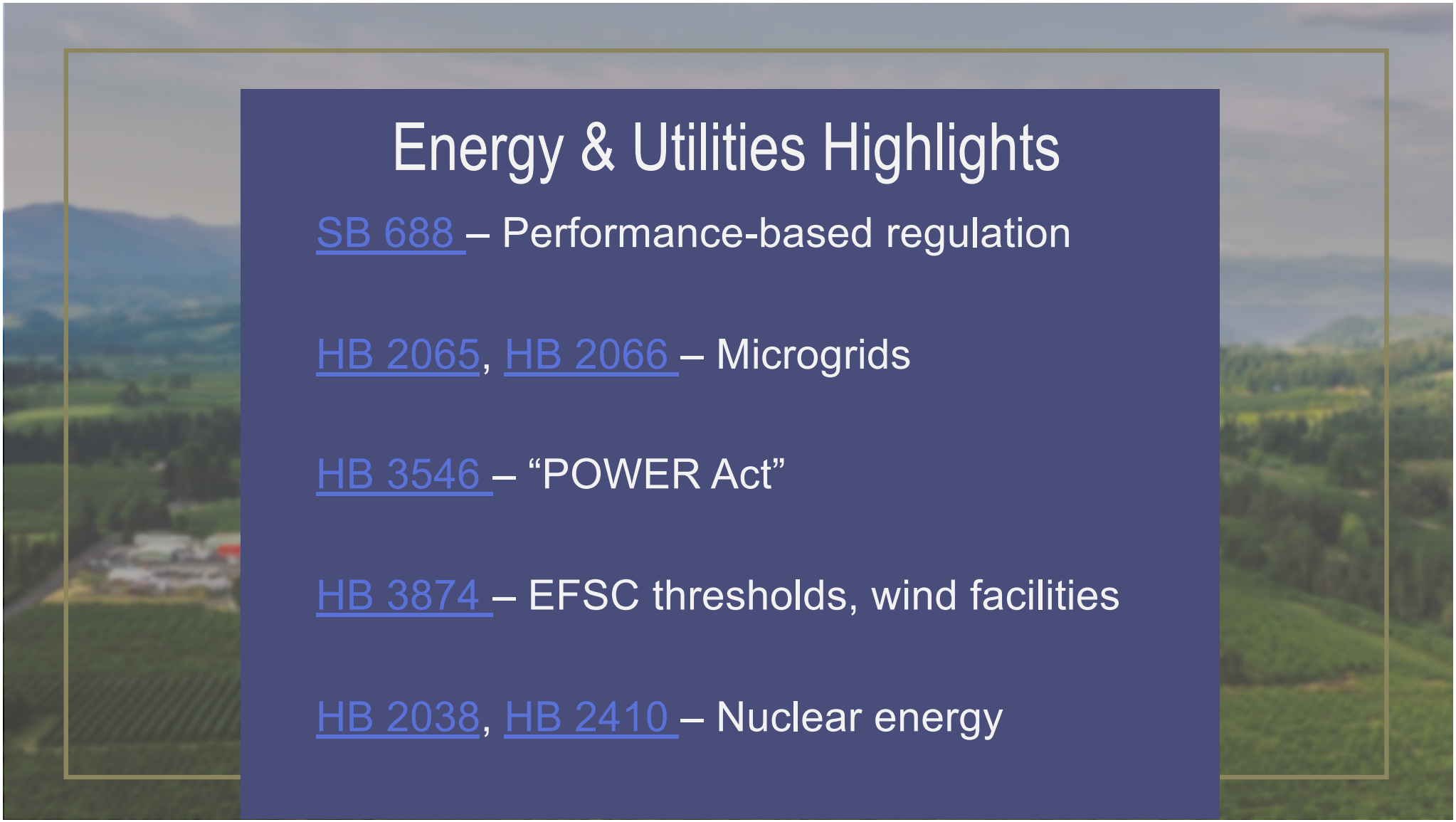
SB 74 – modifies process used by DSL to determine a waterway's navigability

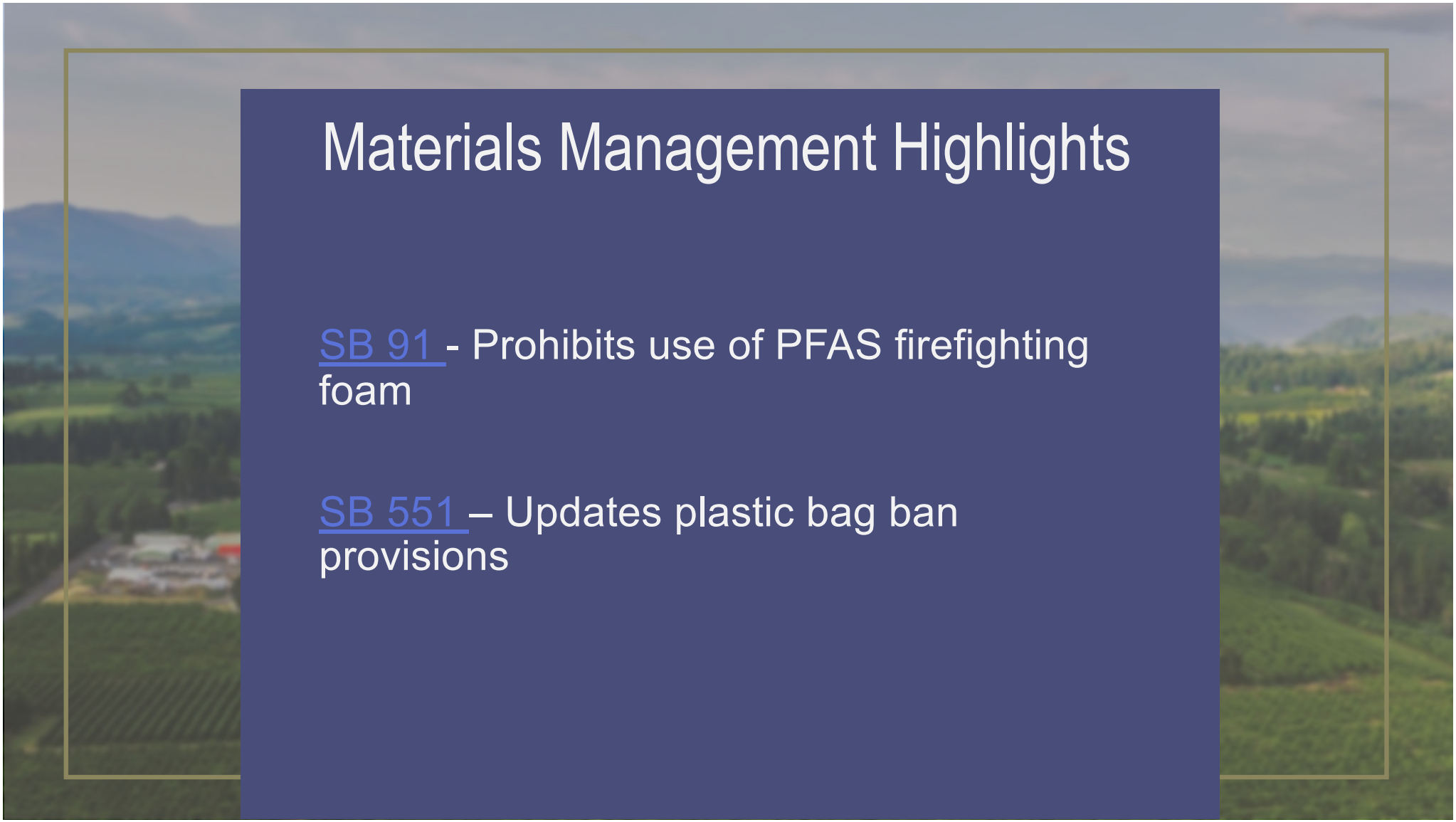
SB 795 – modifies laws regarding cleanup of abandoned or derelict vessels

Energy & Environment Top Policy Areas

Measures that Received Hearings: 99
Measures Passed: 34

- Regulations/Studies (15/3)
- Renewable Energy (14/4)
- Water Quality (12/6)
- Utilities (10/6)
- Energy Efficiency & Backup Power (9/4)
- Nuclear Energy (4/0)
- Materials Management (8/4)
- Waste Management (8/4)


Energy & Utilities Highlights
SB 688 – Performance-based regulation
HB 2065, HB 2066 – Microgrids
HB 3546 – “POWER Act”
HB 3874 – EFSC thresholds, wind facilities
HB 2038, HB 2410 – Nuclear energy



Materials Management Highlights

SB 91 - Prohibits use of PFAS firefighting foam

SB 551 – Updates plastic bag ban provisions

ENR Fee Increases

- SB 793 – DSL fees for easements on state land within the territorial sea
- SB 817 – LUBA fees for motions to intervene and notice of intent to appeal filings
- SB 836 – DOGAMI fees for Mineral Land Regulation and Reclamation Program
- HB 2342 – ODFW license, tag and permit fees
- HB 2343 – ODFW extends recreational fishing endorsements for Columbia Basin until 2032
- HB 2558 – ODFW, modifies and increases fees for outfitters and guides
- HB 2803 – OWRD fees for water right transactions and dam safety (has signing letter)
- HB 2805 – ODA license fees for food establishments
- HB 2806 – ODA fees for commercial weighing or measuring instruments
- HB 2808 – OWRD fees for various permits related to wells
- HB 2809 – ODA pesticide registration fees
- HB 2982 – State Marine Board boating fees to fund
- HB 2370 – PUC fee increases on public utilities

Additional Resources

- Legislative Policy and Research Office (LPRO) 2025 Summary of Legislation Dashboard: https://orleg.maps.arcgis.com/apps/dashboards/397177c164544f69a355da552d7a4d81
- LPRO Summary of Legislation Page: https://www.oregonlegislature.gov/lpro/Pages/summary-of-legislation.aspx
- OSB E-Outlook, “2025 Oregon Legislative Session Environment & Natural Resources Highlights” https://enr.osbar.org/files/2025/08/OSB-ENR-E-Outlook_2025-Issue-2.pdf?_zs=bQJNm&_zl=HW7R3
- Oregon Department of Energy 2025 Legislative Session Report: https://www.oregon.gov/energy/About-Us/Documents/2025-ODOE-Legislative-Report.pdf
- Oregon Public Utility Commission 2025 Legislative Report: https://www.oregon.gov/puc/Documents/2025-Legislative-Report.pdf
- Oregon Department of Land Conservation and Development 2025 Land Use Legislation Report: https://www.oregon.gov/lcd/NN/Documents/2025_Legislative_Report.pdf
- Oregon Department of Agriculture’s 2025 Legislative Session Report: https://www.oregon.gov/oda/about-us/Documents/Board%20of%20Agriculture/2025_09/2025_LegislativeSessionReport_DIGITAL_8-27b.pdf

Thank You!

Maureen McGee

Of Counsel

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2025 Oregon Legislative Session Recap: Water Policy

Presenter:

Representative Ken Helm
House District 27
Oregon State Legislature

2025 Focus Areas

- **Safe and Reliable Drinking Water**
- **Efficient Administrative Processes**
- **Better Sharing of Scarce Resources**
- **Supporting Existing Programs**

Safe and Reliable Drinking Water

- **SB 1154 – Modernization of Groundwater Quality Act**
  Updates processes and coordination for groundwater quality management, including the declaration of management areas and areas of concern, and associated responsibilities such as monitoring and remediation. Lead agencies report to and seek resources from the Legislature.

- **HB 3525 – Drinking Water Quality for Rental Property Wells**
  Requires landlords in groundwater management areas to test drinking water wells and notify tenants and OHA of certain contaminants.

- **SB 830 – Septic System Financial Aid Program Flexibility**
  Allows grants and other assistance rather than only loans and extends eligibility to residential housing providers.

Efficient Administrative Processes

- **HB 3342 – Water Right Transaction Process Improvements**
  Updates OWRD water right transaction processes to help increase administrative efficiency, including topics such as shifting from paper mailings to electronic docs, limiting the length of extensions allowed in certain circumstances, and allowing the agency to decline applications where water is unavailable.

- **HB 3544 – Contested Case Process Improvements**
  Modernizes contested case processes at OWRD and OAH to address and prevent backlogs, including aspects such as standardizing processes, establishing clear schedules, expanding opportunities for settlement, and streamlining production of information.

Better Sharing of Scarce Resources

- **HB 2169 – Water Reuse Program**
  Establishes an interagency team of DEQ, OWRD, OHA, and ODFW to advance water reuse, educate and train state agency staff, and identify barriers and regulatory changes to overcome.
- **HB 3806 – Deschutes Basin Water Bank Authority**
  Provides authority for OWRD to approve a Deschutes River pilot for surface water banking. The bank must also be approved by the Warm Springs Tribe. Flexibility options are provided such as split rate and duty under specified circumstances, along with protections for water loaned through the bank.
- **SB 761 Walla Walla Irrigation District Split Instream Leases Pilot**
  Authorizes an irrigation district within the Walla Walla basin to lease an existing water right for temporary conversion to an in-stream water right, by splitting the rate and duty of the right between existing use and in-stream use

Supporting Existing Programs

- **HB 3364 – OWRD Grant Program Improvements**
  Improvements to existing OWRD grant programs with the aim of making programs more accessible and impactful. Example changes for Feasibility Study Grants include removing the funding cap, reducing the cost match requirement, and broadening eligibility for additional project solutions.
- **HB 2170 – Aquatic Invasive Species Check Station Capacity**
  Aquatic invasive species like Quagga, Golden, and Zebra Mussels are of serious concern across western states. This bill allows state agencies to partner with tribes, irrigation districts, and other local entities to operate additional boat check stations and prevent the spread of invasive species.
- **HB 3372 – Small Commercial Garden Groundwater Exemption**
  Allows up to 3,000 gallons per day from an exempt well to irrigate a half-acre of lawn, personal garden, or commercial garden. Caps the total use when combined with commercial or industrial exempt uses at 5,000 gallons per day.

Examples of bills that did not pass in 2025:

- SB 1153 – Water Right Transfer Processes
- HB 2165 – Well Construction Program Funds
- HB 2168 – Water Well and Septic System Support
- HB 2979 – Food System Resilience Investments
- HB 2984 – Oregon Conservation & Recreation Fund
- HB 3106 – State Water Data Portal
- HB 3121 – Small Water System Resources
- HB 3114 – Chewaucan Basin Resources
- HB 3116 – Place-Based Planning Resources
- HB 3341 – Drinking Water Source Protection
- HB 3527 – Water Ratepayer Assistance
- HB 3528 – Water Equity Funding and Capacity
- HB 3634 – Water Workforce Development

Ongoing Needs

Thank you

Representative Ken Helm

Rep.KenHelm@Oregonlegislature.gov

www.OregonLegislature.gov/Helm

Cheyenne Holliday

Director of Policy and Advocacy,
cheyenneholliday@verdenw.org

- Approach & Oregon Water Justice Framework
- Advocacy in Legislative Sessions
- Working with Attorneys
- SB 1154



VERDE

Water Justice Principles

1. Driven by community priorities, expertise, & needs of the most impacted
2. Protects the environment, improves health, and creates economic inclusion
3. Puts money and power into the hands of frontline communities
4. Does not recreate broken systems
5. Builds social infrastructure, not just construction
6. Invests in projects that match a vision of the future: multi-generational, multi-benefit, and just



WATER JUSTICE ACTION AGENDA AT A GLANCE









Community Advocacy in Legislative Sessions

- Intense and Urgent
  - 3,466 bills introduced in 2025
    - Verde:
      - 17 bills
      - 312 submitted testimony
      - 1,258 emails to lawmakers
- Technical complexity of bills related to water, energy, transportation and land use
- Emotional and often extractive





Attorneys as Partners in Environmental Justice Policy
Verde & Crag Law Center

- Translating Complexities
  - Simplify dense legal and regulatory language
- Grounding Policy in Evidence
  - Pull relevant case studies, data, and precedent
  - Help transform lived experience into credible policy recommendations
- Technical & Strategic Support
  - Collaborate to review and draft bill langele
  - Flag risks and enforcement gaps
- Empowering Community Leadership
  - Behind the scenes ally
- Year Round Collaboration
  - Policy development and legislative session
  - Implementation and rulemaking

SB 1154 - Modernizing the Groundwater Quality Act



Groundwater Quality Management Area

Groundwater Quality Area of Concern

No Designation

Source: Office of Governor Tina Kotek,
https://olis.oregonlegislature.gov/liz/2025R1/Downloads/CommitteeMeetingDocument/308152

Yellow Light - Groundwater Quality Area of Concern

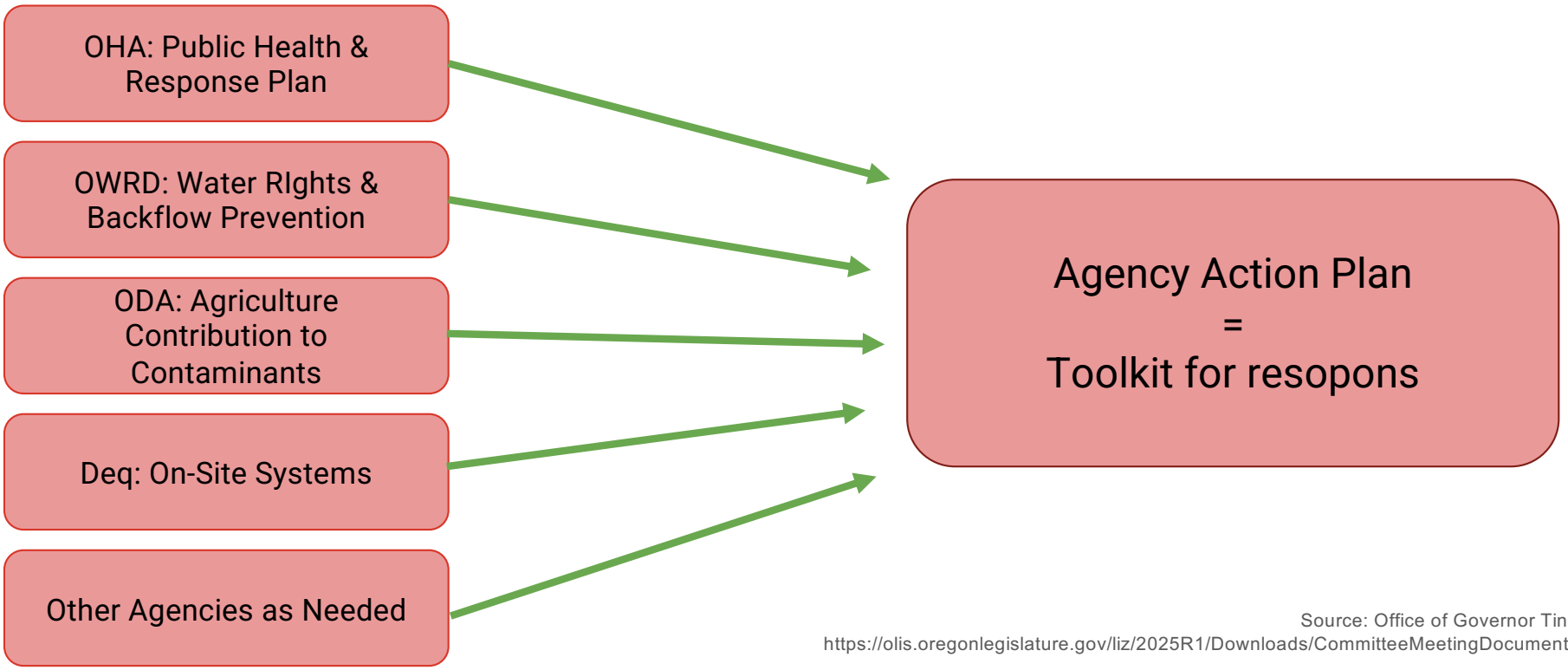
Purpose is to get ahead of problems by promoting **community-led** and **state-supported** efforts to curb contamination hearts before it's too late.

1. State Agency Assessment of situation
2. Create and convene a Local Committee
3. Development of a Voluntary Implementation Plan

Source: Office of Governor Tina Kotek, https://olis.oregonlegislature.gov/liz/2025R1/Downloads/CommitteeMeetingDocument/308152

Red Light - Groundwater Quality Management Area

Create and Implement Customized and Responsive Solutions



Source: Office of Governor Tina Kotek, https://olis.oregonlegislature.gov/liz/2025R1/Downloads/CommitteeMeetingDocument/308152

SB 1154 Impact

It creates accountability, especially to impacted communities by:

- Governor appoints lead agency and inter-agency team
- Clear roles and responsibilities
- Feedback loop with public
- Feedback Loop wit Governor and Legislature

Source: Office of Governor Tina Kotek,
https://olis.oregonlegislature.gov/liz/2025R1/Downloads/CommitteeMeetingDocument/308152

Legislative Session Brief

2025 Regular Session – Energy and Environment

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LEGISLATIVE POLICY AND RESEARCH OFFICE

Air Quality and Climate

This session, Oregon lawmakers considered a wide range of air-quality and greenhouse-gas proposals. These included bills to restrict or authorize specific activities and to update existing goals for reducing emissions. ORS 468A.050 (2023) authorizes the Environmental Quality Commission (EQC) to classify and regulate air-contamination sources and to require registration or reporting when needed. Legislation prohibiting certain air-quality-related activities included prohibiting Department of Environmental Quality (DEQ) from requiring an air curtain incinerator to have a Title V operating permit in House Bill 2332. House Bill 2738 (*not enacted*), would have prohibiting the use of racing vehicles that use leaded fuel on certain racetracks. House Bill 2960 (*not enacted*), would have prohibited the establishment or operation of plastic conversion or depolymerization facilities in Oregon. House Bill 3119 (*not enacted*), would have prohibited the DEQ from implementing or enforcing Advanced Clean Trucks (ACT) regulations. DEQ and EQC have subsequently delayed enforcement of the ACT until 2027.

In addition, lawmakers considered legislation that would have authorized certain activities relating to air quality. Senate Bill 355 (*not enacted*) would have provided grants for air curtain incinerator use for biochar production. House Bill 2663 (*not enacted*) would have authorized vehicle registration permits for pollution control equipment requirements.

Oregon has existing statutory goals to reduce greenhouse-gas (GHG) emissions as part of its broader climate policy framework. This session, members considered proposals to refine statewide GHG reduction targets and to create a new tool to address GHG emissions. House Bill 3477 (*not enacted*) would have modified the state's greenhouse gas reduction goals and established as the policy goal of the state to achieve net-zero emissions as soon as practicable, but no later than 2050. House Bill 3539 (*not enacted*) would have required the Environmental Quality Commission to contract with a third party to study and determine a greenhouse gas reporting emissions factor, at least once every five years, for electricity purchased from unspecified sources. Senate Bill 1187 (*not enacted*) would have established the Climate Superfund Cost Recovery Program with the

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See the **2025 Legislative Summary Report** for Energy and Environment, which highlights policy measures that received a public hearing during Oregon's 2025 Regular Legislative Session.

purpose of adapting to and mitigating effects of climate change and holding parties liable for the costs of climate change.

Electrical Transmissions

Energy Facility Siting Council Authority

Energy Facility Siting Council (EFSC) reviews large energy projects and certain smaller projects that developers voluntarily submit. Projects below legislative size thresholds are generally outside its jurisdiction. Two bills sought to modify EFSC's authority. Senate Bill 1034 (*not enacted*) would have removed provisions allowing EFSC to approve projects inconsistent with a local government's land use plan and regulations. House Bill 3422 (*not enacted*) would have allowed EFSC to grant exceptions to statewide planning goals if specified standards were met.

Energy Efficiency and Backup Power

Microgrids

Oregon's growing energy demands—driven by factors like data center development and increased electrification—have highlighted the need for improved power delivery and backup systems. In response, several legislative measures this session focused on expanding the state's capacity for energy storage and grid alternatives, including battery storage systems, microgrids, distributed power plants, and related tax incentives.

House Bill 2065 ensures that individuals seeking to interconnect a microgrid with a public utility can choose between using the utility or hiring a third-party to conduct the necessary evaluation. House Bill 2066 directs the Public Utility Commission (PUC) to develop a regulatory framework for the ownership and use of microgrids within electric service territories.

Lawmakers considered several backup power-related proposals House Bill 3609 (*not enacted*) would have required electric companies to create programs to procure grid services from customers using distributed power plants. House Bill 3747 (*not enacted*) proposed a refundable income tax credit for purchasing battery storage and solar systems. House Bill 3823 (*not enacted*) aimed to offer property tax exemptions for homes and businesses generating or storing their own energy.

Materials Management

Bottle Bill

Oregon's Bottle Bill, House Bill 1036 (1971), is the nation's longest-standing beverage container-deposit law. Since its passage, it has undergone multiple updates, and nine other states have enacted similar programs. Senate Bill 992 authorizes the Oregon Liquor and Cannabis Commission (OLCC) to approve Bottle Bill program alternative access redemption

centers and modifies the requirements for dealers operating within the alternative access redemption center convenience zone. It also requires OLCC to establish low-impact convenience zones and addresses hours of operation for bottle redemption at dealers.

Food Waste

A 2019 study conducted by Portland State University's Community Environmental Services found that households throw away 6.3 pounds of food per week on average in Oregon. Methane, a greenhouse gas, is produced when food waste goes to landfills. House Bill 3018 (*not enacted*) would have required entities that generate a certain amount of food waste per week to sort and recover food waste and arrange for the food waste to be composted and modified statutes related to food labeling requirements.

Product-Specific Requirements

Lawmakers considered several bills aimed at regulating or limiting the use of specific consumer and industrial products that potentially have negative environmental or health impacts. Senate Bill 139 sets new standards for disposing of sharps and waste pharmaceuticals. Senate Bill 551 bans retailers and restaurants from providing reusable plastic or fabric checkout bags. Senate Bill 91 limits the use of firefighting foam containing PFAS except where federal law requires it.

Other proposals focused on materials that could be added to Oregon's existing product stewardship laws, but did not pass. House Bill 3512 (*not enacted*) would have banned the sale of new products with intentionally added PFAS. House Bill 2062 (*not enacted*) sought to require battery producers to join a producer-responsibility program, and House Bill 3780 (*not enacted*) proposed to remove newspaper from certain producer-responsibility requirements.

Lawmakers also considered Senate Bill 680 (*not enacted*), which would have established that publishing an environmental marketing claim, net zero claim, or reputational advertising that is materially false, misleading, deceptive, or fraudulent as an unlawful trade practice.

Nuclear

Lawmakers considered various policies to provide additional sources of energy to meet growing demand including the nuclear power generation. The state currently has no operating nuclear plants and has maintained a moratorium on new facilities since the 1980s. Under ORS 469.595 and 469.597 (2023), the Energy Facility Siting Council (EFSC) may only approve a nuclear-fueled plant if a federally licensed high-level waste repository exists and voters subsequently approve the project.

Similar to bills introduced in past legislative sessions, multiple measures this session sought to study nuclear energy, including Senate Bill 635 (*not enacted*) and House Bill 2038 (*not enacted*). Efforts to end the moratorium on building nuclear power plants in Oregon included Senate Bill 215 (*not enacted*) and Senate Bill 216 (*not enacted*). House Bill 2410 A (*not enacted*) had elements similar to the other introduced bills, with a referral to voters in Umatilla County on whether to allow EFSC to issue a site certificate for a small modular reactor energy facility demonstration project. It also would have required Oregon Department of Energy, in

cooperation with other entities, to prepare and submit a report that contains certain information related to a small modular reactor energy facility demonstration project.

Renewable Energy

Public Utility Regulatory Policies Act of 1978

The federal Public Utility Regulatory Policies Act of 1978 (PURPA) in ORS 758.505 (2023) requires electric utilities to buy power from certain qualifying non-utility generators. In Oregon, a qualifying facility is a cogeneration plant or a renewable power producer of 80 megawatts or less. House Bill 3863 updates Oregon's implementation by directing the PUC to set an eligibility cap of at least 10 megawatts for standard avoided-cost contracts.

Renewable Portfolio Standard

Oregon's Renewable Portfolio Standard (RPS), created in 2007 and strengthened in 2016, requires large utilities to supply at least 27 percent of their electricity from renewable energy by 2025 and 50 percent by 2040; small utilities must meet a five-percent target. House Bill 3540 (*not enacted*) would have added a single cost cap for utilities meeting both RPS and clean-energy targets. Senate Bill 634 (*not enacted*) proposed allowing all hydropower—not just post-1995 upgrades or low-impact facilities—to count toward RPS compliance.

Small-Scale Renewable Energy Projects

House Bill 2021 (2021) set a 2030 goal that at least 10 percent of the power sold by large utilities come from small-scale renewable projects of 20 megawatts or less or from qualifying biomass facilities. Senate Bill 1178 (*not enacted*) would have required that qualifying resources be non-utility-owned, removed certain capacity limits, and directed utilities to make continuing efforts to increase small-scale renewable supply.

The Oregon Department of Energy's (ODOE) *Study on Small-Scale and Community-Based Renewable Energy Projects* identified that small-scale projects do not benefit from the economies of scale of larger utility-scale projects and that, generally, the costs of renewable energy projects decrease as the project gets larger. Additionally, the study highlighted a lack of available data regarding the development costs of renewable energy projects of various sizes in Oregon. Senate Bill 1160 A (*not enacted*) would have required ODOE to study and report on the financial costs for developing certain qualifying facilities and small-scale renewable energy projects (20 megawatts or less) as well as the potential costs and savings of secondary benefits of their development, such as resiliency or reliability. House Bill 3868 (*not enacted*) would have required ODOE to conduct a study on small-scale renewable energy projects and analyze the accuracy of avoided-cost schedules.

Solar Energy

Lawmakers considered various policies to adjust existing programs related to generating solar energy. Senate Bill 92 (*not enacted*) would have expanded the Community Solar Program by

allowing projects outside a subscriber's service territory, setting higher minimum generation targets, and adding penalties for interconnection delays. House Bill 2656 (*not enacted*) sought to lift local caps on solar net-metering capacity, and House Bill 2063 A (*not enacted*) would have created an Agrivoltaics Task Force to study co-location of agriculture and solar panels.

Wind Energy

In 2022, wind energy accounted for 12.6 percent of Oregon's energy production, generated by 50 operating facilities. Lawmakers considered legislation that addressed how these facilities are sited, operated, and eventually decommissioned. Developers of large wind projects must obtain a site certificate from the Energy Facility Siting Council (EFSC), unless their projects fall within certain acreage limits, in which case they may opt for county-level approval. House Bill 3874 increases the threshold at which developers or local governments can defer siting authority to EFSC—from 50 to 100 megawatts of average capacity—and requires counties to mandate decommissioning plans for wind facilities in that range, ensuring financial assurance to restore sites to a safe, usable condition once the turbines are retired. House Bill 2375 addresses visual impacts of wind turbines by requiring developers to seek federal approval for light-mitigating technology on turbines.

As wind and solar infrastructure ages, disposal and end-of-life impacts are becoming a growing concern. Wind turbines typically last about 30 years, and the U.S. had over 70,000 land-based turbines as of 2022. Solar photovoltaics have a similar lifespan, with most installations occurring since 2017. Senate Bill 218 (*not enacted*) proposed a study of end-of-life waste from solar and wind equipment.

Utilities

This session, members examined how the Public Utility Commission (PUC) oversees utilities, aiming to balance affordability, transparency, and evolving energy demands. House Bill 3179 requires the PUC to consider the cumulative effect of electric utility rate changes on residential customers and allows certain expenses to be financed through rate-recovery bonds. Senate Bill 88 (*not enacted*) would have prohibited passing on some advertising and litigation costs to ratepayers.

Senate Bill 688 authorizes performance-based regulation (PBR), allowing the PUC to link utility earnings more closely to policy goals and customer outcomes. PBR, adopted in at least 17 other states, provides an alternative to traditional cost-of-service ratemaking by rewarding utilities for improved performance rather than simply reimbursing expenses.

House Bill 3546 creates a separate service class and tariff for large energy users (data centers and cryptocurrency mining operations). According to the U.S. Department of Energy, data centers consume 10–50 times more energy per square foot than typical offices, and the U.S. Environmental Protection Agency estimates that a single crypto transaction can use more electricity than six U.S. homes consume in a day.

Senate Bill 685 requires natural gas utilities to provide notice to customers and the PUC if planned hydrogen blending will exceed a 2.5 percent ratio and specifies information required in the PUC notice and on utility websites.

Waste Management

Lawmakers considered a range of measures to manage solid and liquid waste, reflecting concerns about landfill capacity, methane emissions, and the need for reliable wastewater services. Related bills focused on monitoring and planning for solid waste, clarifying local siting authority, and improving financial assistance and oversight for septic and wastewater systems.

Landfills and Waste Facilities

Coffin Butte Landfill is the only landfill in Benton County, and it accepts waste from several counties in the mid-Willamette Valley and Oregon Coast. Senate Bill 726 requires the owner of a municipal solid waste landfill to conduct and report on surface-emissions monitoring. House Bill 3794 establishes a 12-member Task Force on Municipal Solid Waste in the Willamette Valley and requires the Task Force to study, identify, and report on solutions for solid waste disposal in the Willamette Valley.

In December 2023, the Lane Board of County Commissioners approved a contract for the construction of an Integrated Materials and Energy Recovery Facility; it was later determined that the project was incompatible with current zoning. House Bill 3971 (*not enacted*) would have required a county to approve a land use application for an integrated materials and energy recovery facility that is sited on land within the Willamette Valley.

Sanitary, Waste, and Septic Systems

The On-Site Septic System Low-Interest Loan Programs defined in ORS 454.779 (2023) allows Department of Environmental Quality (DEQ) to award grants for the development and administration of loan programs that offer low-interest loans to property owners needing financial assistance for septic system repairs, replacements, or upgrades. Senate Bill 830 modifies provisions the on-site septic system loan program to allow grants or other financial assistance, in addition to loans, to be provided to eligible applicants and extends eligibility to residential housing providers. House Bill 2168 (*not enacted*) would have required the Oregon State University Extension Service to establish a program to provide assistance to households that rely on wells for drinking water or on septic systems for wastewater treatment.

In Oregon, a domestic water supply district is a local government entity established to provide water for domestic use to residents within the district, and in some cases, to individuals outside the district. A sanitary district is a local government entity responsible for managing and providing sanitary services, such as wastewater treatment, sewage disposal, and stormwater management. House Bill 3910 modifies criteria that authorizes a water supply district to exercise the powers of a sanitary district.

Wastewater infrastructure is a system that collects, treats, and disposes of used water from homes, businesses, and industries to protect public health and the environment. Modern wastewater treatment involves physical, chemical, and biological processes to remove solids, nutrients, and harmful microorganisms. Senate Bill 956 (*not enacted*) would have appropriated $10 million to the Oregon Department of Administrative Services, for the purpose of providing a grant to Heard Farms to expand wastewater treatment infrastructure.

Lagoon wastewater treatment systems are designed to hold wastewater in a series of pond-like bodies of water. House Bill 3655 (*not enacted*) would have required DEQ to develop a program for examination and certification of operators of lagoon wastewater treatment systems.

Water Quality

Emerging Contaminants

Lawmakers also explored research investments to understand and manage emerging contaminants. House Bill 2947 funds Oregon State University to study PFAS in biosolids applied to certain agricultural fields. Senate Bill 526 (*not enacted*) would have addressed microplastics by requiring new washing machines to include microfiber filters.

Groundwater Protection and Drinking Water Safety

Groundwater contamination in the Lower Umatilla Basin Groundwater Management Area, designated in 1990 due to elevated nitrate levels, has made the region a focal point for protecting drinking water, ecosystems, and public health. In 2022, Morrow County declared a state of emergency over the area's high nitrate levels. In response, Senate Bill 1154 updates Oregon's Groundwater Quality Protection Act, originally enacted in 1989. The bill increases state processes for identifying, coordinating, and remediating areas of groundwater contamination. It expands monitoring, planning, and remediation requirements, increases coordination between state and local entities, and authorizes the Governor to direct agencies to take necessary actions to safeguard public health and water resources. Together with SB 1154's systemic updates, lawmakers also considered targeted measures to safeguard household drinking water. House Bill 3525 requires landlords with exempt wells in groundwater management areas to test drinking water and share results with tenants and OHA, while House Bill 3526 (*not enacted*) would have expanded well-testing and disclosure requirements in real estate transactions.

Oregon's public water systems, which serve Oregonians not connected to domestic wells, are regulated by the PUC to ensure they provide safe and reliable water at reasonable rates. In rare cases, water utilities are unable to fulfill these obligations. Senate Bill 845 authorizes the PUC to order the sale of such a water utility to another entity under limited circumstances.

Conversations regarding confined animal feeding operations (CAFOs) and their potential impact on water quality were continued from previous sessions. Senate Bill 80 (*not enacted*) would have prohibited permitting for large CAFOs located in a ground water management area.

Water Reuse

Oregon's first water reuse policy was enacted in 1990, and while water reuse programs have since been established for resource benefits such as irrigating crops, maintaining green spaces, and supporting certain industrial activities, communities reported challenges navigating the multi-agency regulatory framework. House Bill 2169 addresses these barriers

by creating an interagency water reuse team to streamline interagency collaboration and ultimately expand water reuse across the state.

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Legislative Session Brief

2025 Regular Session – Natural Resources

LPRO
LEGISLATIVE POLICY AND RESEARCH OFFICE

Agriculture

This session, lawmakers considered multiple bills to update pesticide regulation and improve oversight by the Oregon Department of Agriculture (ODA); Senate Bill 360 exempts employees using battery-powered devices from certain pesticide licensing requirements and directs ODA to develop related training standards while House Bill 2809 raises the pesticide registration fee cap from $400 to $550. Two additional measures would have further strengthened safety and training: House Bill 2679 (*not enacted*) would have classified pesticides containing neonicotinoids as restricted use for most residential applications, and House Bill 3010 (*not enacted*) would have funded the completion of Oregon State University's Spanish-language pesticide safety training program.

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See the **2025 Legislative Summary Report** for Natural Resources, which highlights policy measures that received a public hearing during Oregon's 2025 Regular Legislative Session.

Questions about fertilizer accumulation in groundwater and drinking water prompted related proposals to increase monitoring and reporting. Senate Bill 833 updates labeling and reporting requirements for soil-enhancing products, while Senate Bill 747 (*not enacted*) would have required large irrigated farm operations to report fertilizer use annually to ODA.

Oregon's cattle industry is a significant part of the state's agricultural economy, consistently ranking among the top five agricultural commodities in value of production. Implemented by ODA, the livestock identification and inspection program aims to verify ownership prior to a cattle sale, shipment out of state, or slaughter. Senate Bill 1019 increases livestock brand inspection fees—previously raised by House Bill 2509 (2023)—authorizes a self-inspection program, and directs the Legislative Policy and Research Office (LPRO) to study the program, and submit a report by December 31, 2025. Senate Bill 976, vetoed by Governor Kotek, sought to address limited veterinary capacity in rural areas by allowing trained, non-veterinarians to perform cattle pregnancy checks under ODA-set conditions. The measure also proposed establishing a Task Force on Equine Dentistry.

Oregon's meat processing infrastructure, largely overseen by federal U. S. Department of Agriculture inspection programs, remains limited, with few facilities and long wait times.

Senate Bill 809 expands state-level capacity by authorizing ODA's State Meat inspection program to include poultry.

In addition to its role in regulating crops and livestock, ODA oversees a variety of programs that were revised during this session. Senate Bill 1076 (*not enacted*) would have expanded the agency's authority to oversee animal welfare programs by creating a licensing program for animal breeders, extending oversight beyond rescue entities to include breeder operations. House Bill 2805 removes the cap on food establishment license fees, allowing ODA to authorize annual increases of up to three percent. House Bill 2806 allows annual increases for commercial weighing or measuring instruments under ODA's weights and measures program.

Fish and Wildlife

Beavers and Other Co-Existence

Beaver management remained another focal point. Following their removal from Oregon's 'predatory animal' list in 2023, House Bill 3932 extends protections by restricting harvest in designated areas critical to water quality. Additional proposals sought to incentivize coexistence. House Bill 3143 (*not enacted*) would have established a grant program for farmers living with beavers while Senate Bill 354 (*not enacted*) would have expanded relocation efforts. The legislature broadened its approach to coexistence through House Bill 2978, which directs the Oregon Department of Transportation and the Oregon Department of Fish and Wildlife to coordinate on reducing wildlife-vehicle collisions via a new advisory group. House Bill 3657 (*not enacted*) would have established a broader wildlife damage prevention and compensation pilot program.

Fish Hatcheries

Fish hatchery rearing programs aim to sustain opportunities for sport, commercial, and Tribal fishers while conserving naturally produced native fish. Until the closure of its facilities in 2023, the Oregon Hatchery Research Center conducted research on hatchery and wild salmonids. House Bill 2345 modifies authorized expenditures from the Oregon Hatchery Research Center Fund, renames the fund, and extends its sunset to January 2, 2039. Senate Bill 221 establishes a fall Chinook fish incubation nursery pilot program. Senate Bill 512 (*not enacted*), was another research-focused bill regarding the effects of water temperature and predation by nonnative fish on hatchery released fish from the Rock Creek Hatchery.

Sustained Program Funding for ODFW

Continued funding for Oregon Department of Fish and Wildlife's wildlife programs was pursued through multiple mechanisms. Targeted fee measures advanced, including House Bill 2342, which raises wildlife license and tag fees, House Bill 2343, which extends Columbia Basin sport fishing endorsements through 2032, and Senate Bill 812, which makes the Landowner Preference Program permanent. By contrast, broader revenue proposals, such as House Bill 2977 (*not enacted*), which would have increased the transient lodging tax by 1.25

percent and House Bill 3856, (*not enacted*), which would have created a new income tax surcharge of 0.13 percent.

Wolves

Oregon's wolf depredation compensation program, created in 2011 with the intention to provide financial assistance to livestock producers for non-lethal deterrence and losses caused by wolves, continues to draw attention as ranchers, counties, and the state negotiate the balance between prevention and compensation. In 2024, 69 confirmed wolf depredations were recorded, a slight decline from 73 the year before. Senate Bill 777 seeks to resolve ongoing disputes by clarifying eligibility for compensation, capping payments at $25,000 per animal, and allowing counties to establish standardized compensation rates. To sustain the program, Senate Bill 5502 appropriates $1 million for the biennium. Other proposed funding vehicles for the program were not successful.

Forests

Forest Health and Restoration Investments

Several measures were aimed at funding on-the-ground resilience projects. Senate Bill 339 A (*not enacted*) proposed $3.1 million for an integrated pest management program to combat Sudden Oak Death, a tree disease first recognized in the 1990s. House Bill 3135 A (*not enacted*) would have funded western juniper removal and associated monitoring.

Governance and Forest Management

One of the most significant shifts in recent years was the establishment of the Elliott State Research Forest. Senate Bill 1546 (2022) created the forest, and in October 2024 the State Land Board formally launched it as a public research forest in collaboration with Oregon State University and the Department of State Lands. Senate Bill 147 officially updates the forest's name as the Elliott State Research Forest and transfers management from the State Board of Forestry to the State Land Board. Other proposals sought to expand state oversight in other areas, including House Bill 3103 A (*not enacted*), which would have directed the inclusion of a sustainable timber harvest level in ODF's long-range management plan, and House Bill 3846 (*not enacted*), which would have authorized ODF to assume long-term management of the Ochoco National Forest.

Workforce, Capacity, and Innovation

In 2024, the Legislature passed Senate Bill 1552, initiating the Oregon Forest Operations and Management Workforce Study. The study highlighted the need to modernize training pathways and broaden access to forestry and trades careers, emphasizing workforce readiness for addressing wildfire risk, housing demand, and forest health. This session, Senate Bill 494 directs the Department of Administrative Services to study workforce classifications and compensation for forestry and wildfire positions, while Senate Bill 1061 establishes a lumber

grading training pilot through Oregon State University Extension, including a process for recognizing lumber graded under the program.

Geology and Mining Industries

Consistent with recent legislative sessions, few proposals focused on Oregon's geology and mining industries. In 2025, the only measure enacted was Senate Bill 836, which raises fees collected by the Department of Geology and Mineral Industries to support the Mineral Land Regulation and Reclamation Program.

Invasive Species

Oregon's Aquatic Invasive Species (AIS) Prevention Program was established in 2009 to address the spread of non-native plants and animals that threaten ecosystems and infrastructure. Zebra, quagga, and golden mussels, in particular, pose risks to freshwater food chains and water systems, with recent detections in the Snake River and California's Sacramento River Delta prompting heightened monitoring. The program, jointly managed by Oregon Department of Fish and Wildlife and the State Marine Board, requires AIS permits for watercraft, operates inspection stations, and runs the *Clean, Drain, Dry* education campaign.

House Bill 2170 authorizes state agencies to partner with Tribal governments, local governments, and service districts to operate AIS check stations, inspect watercraft, and conduct decontamination, with agreements subject to monitoring and performance review. House Bill 2982, which addresses funding for aquatic invasive species management, increases fees for aquatic invasive species permits, biennial certificates of number or registration, and waterway access permits. The measure removes the prior exemption for nonmotorized boats over 10 feet, instead applying fees to all nonmotorized boats and sailboats, except boats under 10 feet used for whitewater recreation on designated waters. House Bill 2981 (*not enacted*) would have appropriated designated funds to multiple entities for aquatic invasive species work.

Senate Bill 576 (*not enacted*), addressing non-aquatic invasive species, would have appropriated $2 million to the Oregon Department of Agriculture for eradication of Japanese beetle grubs.

Land Use

Senate Bill 100 (1973) established Oregon's statewide land use planning system, requiring all cities and counties to adopt comprehensive plans consistent with 19 statewide planning goals. One of the aims of the program is to preserve certain farmland for commercial farming and ranching through exclusive farm use (EFU) zoning, intended to prevent nonfarm uses incompatible with agriculture. Over time, the Legislative Assembly has approved exemptions for other uses. Similarly, Oregon's forestlands are protected under the land use system through forest zoning, which prioritizes resource related uses such as timber production and limits development to preserve working forests.

Proposals to modify uses in EFU and forest zones were considered but none ultimately passed. These included Senate Bill 77 (*not enacted*), which would have expanded allowable home occupations and parking, Senate Bill 78 (*not enacted*), which would have proposed new size limits for replacement dwellings, and Senate Bill 788 (*not enacted*), which would have permitted weddings and events on farmland in low-population counties east of the Cascades.

Lawmakers considered broader proposals focused on public participation, another important pillar of Oregon's land use goals. House Bill 2950 A (*not enacted*) would have directed the Department of Land Conservation and Development to review Goal 1 of Oregon's statewide land use planning system. House Bill 3013 (*not enacted*) would have authorized community members to challenge improperly acknowledged land use decisions.

Large energy facility developers must obtain a site certificate from the Energy Facility Siting Council (EFSC) which regulates where and how facilities can be built in accordance with zoning laws. House Bill 3422 (*not enacted*) would have given EFSC authority to override certain statewide planning goals if the policy underlying the goal is considered inapplicable and the proposed facility cannot reasonably be sited in areas that do not require an exception.

Marine and Coastal Management

Oregon's coast is a nationally unique resource, managed through a mix of land use, natural resources, and marine authorities spanning several state agencies. This session, lawmakers considered a range of proposals addressing marine species and habitats, shoreline management, and ocean infrastructure, reflecting ongoing efforts to balance habitat protection, climate resilience, and industry needs. Proposals affecting marine species and habitats included House Bill 2557 (*not enacted*), which would have restricted octopus farming for human consumption, and House Bill 2965 (*not enacted*), which would have established standards for aquaculture facilities. Ecosystem management was also addressed through House Bill 3580 (*not enacted*), which would have created a Task Force on Eelgrass Resources, and House Bill 3587 (*not enacted*), which directed management efforts for rocky habitat sites.

To support climate resilience along Oregon's coast, Senate Bill 504 directs the Land Conservation and Development Commission to adopt rules for nature-based shoreline stabilization. Nonstructural methods such as native plantings, logs, and vegetative mats aim to reduce erosion and protect habitat while avoiding hard infrastructure like bulkheads and retaining walls. House Bill 2925 streamlines ocean shore permitting by allowing the Oregon Parks and Recreation Department to issue general authorization permits for certain improvements.

Oregon Department of State Lands's (DSL) role in managing the territorial sea was addressed in Senate Bill 793, which authorizes DSL to set fees for utility easements in the territorial sea, used to construct and maintain infrastructure such as utility lines on the ocean floor. House Bill 3486 (*not enacted*), would have strengthened ocean research by revising membership requirements for the Research Vessel Council and providing funding for the Oceangoing Research Vessel Program, including a dive vessel, dock, and dive platform.

Parks and Outdoor Recreation

This session, lawmakers focused on refining rules, definitions, fees, and agency operations governing outdoor recreation rather than creating new programs.

House Bill 2163 expands Oregon Department of Fish and Wildlife's consideration of people with disabilities to include individuals with intellectual or developmental disabilities that impair their ability to hold or operate standard angling or shellfish harvesting equipment. House Bill 2558 updates outfitter and guide regulations, increasing registration fees, introducing a uniform fee for crew members, and raising civil penalties for noncompliance.

The Oregon Parks and Recreation Department (OPRD) manages state parks, historic sites, and recreational programs across the state. Its funding primarily comes from state lottery revenue and user fees, which has prompted lawmakers to explore additional funding mechanisms to support the agency's responsibilities. State Capitol State Park is currently maintained by OPRD, while the Department of Administrative Services oversees its management. In order to free up funding, Senate Bill 565 (*not enacted*) proposed transferring control of the park to OPRD and directing the agency to further study sustainable funding options for its operations. Senate Bill 929 (*not enacted*), another effort that did not receive funding, would have completed the Oregon Coast Trail, which stretches 425 miles along the Oregon coast, though 40 gaps currently require hikers to use state and local roads.

State and Local Lands

The legislature passed several bills clarifying the Oregon Department of State Lands's (DSL) legal authority and management responsibilities for Oregon's navigable waterways and filled lands. Navigable waterways are held in trust for the public and are significant for activities such as navigation, fishing, recreation, and habitat protection. Filled lands are former waterway areas that have been artificially filled, often to support urban or industrial development, and continue to raise questions of ownership and use.

Senate Bill 74 modifies the process DSL uses to determine a waterway's navigability, Senate Bill 165 clarifies the ownership of historically filled lands, created by filling publicly owned waterways before 1963, and Senate Bill 795 modifies laws governing the cleanup of abandoned or derelict vessels left without authorization on state land or waterways for extended periods of time or in poor conditions that pose safety, environmental, or navigational risks.

Water Quantity

Water policy has been a recurring focus of the Oregon Legislature in recent years, and it remained central this session. Lawmakers considered measures on water rights, basin-specific management, groundwater, and institutional modernization.

Basin-Specific Flexibility and Local Tools

Lawmakers also established trial runs with basin-specific, time-limited tools. House Bill 3806 creates a pilot program for a Deschutes River water bank, while Senate Bill 761 authorizes a Walla Walla Basin pilot allowing eligible districts to lease or temporarily convert water rights to in-stream use under defined conditions. House Bill 2801 extends the Oregon Water Resources Department's (OWRD) authority to approve leases or temporary transfers of determined claims in the Upper Klamath Basin until adjudication is complete. House Bill 3116 (*not enacted*) would have funded place-based water planning, a voluntary, locally led, and tailored pilot program to address specific water resource needs and challenges of the location in which planning efforts take place, but it was not enacted.

Groundwater Use and Well Management

Although domestic use is a small share of groundwater withdrawals statewide (with irrigation accounting for about 80 percent), in rural areas over 90 percent of Oregonians rely on groundwater for drinking water. The legislature authorized OWRD to increase fees for well construction and permitting through House Bill 2808. Bills aimed to address groundwater decline, such as House Bill 3800, (*not enacted*) and House Bill 2813, (*not enacted*); well construction, such as House Bill 2165, (*not enacted*); and household assistance for wells or septic systems, such as House Bill 2168, (*not enacted*), did not pass.

Institutional and Data Modernization

Several bills aimed to modernize OWRD's processes, data systems, and interagency coordination. Lawmakers advanced efforts to modernize Oregon's water management framework, with a focus on improving data access, streamlining administration, and updating conservation programs. House Bill 3342 seeks to make water rights management more efficient by authorizing electronic processes, revising deadlines, and granting new rule-making authority to the Water Resources Department among other provisions. (See Water Rights Transfers and Oversight). Complementing these administrative changes, House Bill 3364 updates the state's conservation, reuse, and storage program, reflecting evolving needs in water supply management. Another proposal, House Bill 3106 (*not enacted*), would have expanded the Oregon Water Data Portal, first created by the legislature in 2021 and, as of July 2025, operating as a pilot project. The bill proposed establishing an integrated water data team to further develop the portal as a centralized resource for public access to water and infrastructure information, but it did not pass.

Water Rights Transfers and Oversight

Under Oregon law, water is a public resource, and most uses require the possession of a water right. These rights may be transferred to change the place of use, point of diversion, or type of use, but not enlarged in ways that harm other rights. This session, legislators passed House Bill 3342, which includes provisions to revise the transfer process by adding a preliminary review step, updating notice requirements, and clarifying when OWRD must deny a transfer. While current law limits broad public interest review in the water right transfer process, several proposals sought to expand environmental oversight but did not pass:

House Bill 3501 (*not enacted*) would have reduced OWRD's ability to consider public interest impacts; Senate Bill 427 (*not enacted*) would have restricted transfers that reduce streamflows; and Senate Bill 1153 (*not enacted*) would have barred transfers harmful to aquatic habitat or water quality while giving Tribes a formal role in the process.

Wildfire

In 2024, Oregon experienced its most severe wildfire season on record, burning over 1.9 million acres. Early extreme heat and frequent lightning led to events such as the Durkee Fire, which burned 294,265 acres, one of the largest fires in the United States that year. The Oregon Department of Forestry (ODF) incurred over $318 million in suppression costs before Federal Aid, depleting its budget and triggering emergency legislative relief and federal loan requests.

This session, the legislature focused on long-term wildfire funding and support for response organizations. House Bill 3940 partially achieves this goal by creating a dedicated wildfire fund supported by a new tax on oral nicotine products and redirecting interest from the state's rainy-day fund. Efforts to fund risk reduction programs, such as Senate Bill 82 (*not enacted*), which would have provided funding for grant-supported wildfire risk reduction projects led by the Oregon Conservation Corps. Lawmakers also addressed concerns over the statewide wildfire hazard map, created by Senate Bill 762 (2021) to identify risk areas and guide defensible space and building codes. Senate Bill 83 and Senate Bill 75 repeal the statutory requirements for the map in response to public concerns about property values and insurance rates, eliminating the map altogether. At the same time, Senate Bill 85 directs the Department of Consumer and Business Services, the State Fire Marshal, ODF, and insurance-industry stakeholders to develop wildfire mitigation strategies aimed at reducing risk and improving insurance affordability.

Legislators also debated how to allocate responsibility and improve accountability in wildfire prevention and response. Senate Bill 863 allows the Oregon State Fire Marshal to recover suppression costs from individuals responsible for fires due to negligence or malice.

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TO: Interested Persons, Local Governments, and State Agencies

FROM: Alexis Hammer, J.D., Legislative and Policy Manager
Alyssa Bonini, J.D., Legislative and Policy Analyst
Aurora Dziadul, Legislative and Policy Analyst

DATE: August 11, 2025

SUBJECT: **2025 Land Use Legislation Report**

Introduction

This report describes legislation passed in the 2025 Oregon Legislative Session related to state land use statutes or the land use planning programs administered by the Department of Land Conservation and Development (DLCD or department) and regulated by the Land Conservation and Development Commission (LCDC or commission). This report is also available on the DLCD website. This report summarizes each legislative measure but does *not* provide a comprehensive breakdown of each bill. Therefore, we recommend this report be used as a reference and that readers refer to the bills and their history directly for a full picture of legislative intent and law. **Please consult an attorney for legal advice about these bills.**

This report includes links to the Oregon Legislative Information System (OLIS) page for each bill. From those pages, readers can access bill language, measure history, and related testimony.

State law requires DLCD to notify local governments when new statutory requirements require changes to local comprehensive plans, regional framework plans, or ordinances implementing these plans.* The application of these statutory changes should be determined by local planning staff and legal counsel.

Note: sections where the deadline for local government compliance is different from the bill's effective date are bolded.

*Oregon Law (ORS 197.646) requires that "*a local government shall amend its acknowledged comprehensive plan, regional framework plan, and land use regulations implementing the plan, by a self-initiated post-acknowledgment process under ORS 197.610 to 197.625 to comply with … a new statutory requirement.*" Furthermore, this statute requires that, "*when a local government does not adopt amendments to a comprehensive plan, a regional framework plan and land use regulations implementing the plan as required by … this section, the new statutory … requirements apply directly to the local government's land use decisions.*"

DLCD 2025-27 Budget

The table below provides an overview of DLCD's full 2025-27 Legislatively Adopted Budget, including current service level and policy option package (POP) investments in SB 5528, as well as funding to support work directed in HB 2138, HB 2258, and SB 504.

	2023-25 Legislatively Approved†	2025-27 Current Service Level	2025-27 Legislatively Adopted‡
General Fund	$50,842,495	$38,379,997	$49,533,762
Other Funds	$19,645,485	$9,229,191	$12,898,404
Federal Funds	$14,034,680	$9,706,699	$14,049,024
Total Funds	$84,522,660	$57,315,887	$76,481,190
Positions / Full-Time Equivalent	108 / 92.07	103 / 102.59	111 / 110.22

Total grant funding available to local governments: $16,828,021

SB 5528 – DLCD Budget Bill

Chief Sponsor(s): at the request of Oregon Department of Administrative Services
Effective date: June 26, 2025

Summary:
Package 100: *DLCD Budget Adjustments ($198,790 General Fund (GF), $162,753 Other Funds (OF), -$65,677 Federal Funds (FF); 1 position/1.41 FTE)*
Fully funds a policy analyst position, increases natural resource specialist position authority to 1.0 FTE, eliminates climate resiliency position, adds position authority — with GF match — for two federally funded planner positions.

***Package 101**: Repurpose CGI Grant Funds (2 positions / 2.0 FTE)*
Uses Community Green Infrastructure grant funding to continue two limited duration positions to administer the grant program through the 2025-27 biennium.

***Package 501**: HH-HAPO Budget Adjust & Continue Grant Funds ($3,528,069 GF)*
Invests an additional $3,500,000 for Housing Accountability and Production (HAPO) assistance grants and funds the approved HAPO manager position reclassification.

***Package 503**: HH-Increase Housing Planning TA Funding ($1,700,000 GF)*
Provides funding to complete capacity and urbanization rulemaking and adds $1,500,000 for housing-related assistance grants.

***Package 504**: HH-TA Funding for Wetlands Planning ($500,000 GF)*
Provides funding for local governments to complete wetlands planning to support housing production.

† Includes adjustments through December 2024 Emergency Board.
‡ Numbers subject to change with final reconciliation.

***Package 506**: HH-Track Housing Production by Program ($300,000 GF)*
Provides funding to collect and analyze housing data to understand the outcomes of state housing policies and programs.

***Package 801**: LFO Analyst Adjustments ($158,121 GF)*
Provides a one-time reappropriation of $398,000 to complete the Offshore Wind Roadmap, includes $260,000 (one-time funding) to help pay costs of new positions provided in the 2024 Legislative Session that were added to the 2025-27 budget at a lower pay step than at which they were hired, phases out $500,000 from SB 1564 (2024), with $50,000 remaining to complete housing model code work by January 1, 2026.

***Package 802**: Vacant Position Reductions (-$338,447 GF; -1 position / -1.0 FTE)*
Eliminates a vacant Information Systems Specialist 8 position.

HB 5006 – Close of Session Bill
Chief Sponsor(s): at the request of Oregon Department of Administrative Services
Effective date: June 30, 2025

Summary:
***Section 62:** Collins Creek Land Acquisition Partnership ($4,500,000 FF)*
Increases expenditure limitation (one-time) to pass through federal grant funding to Confederated Tribes of Siletz Indians for the Collins Creek property acquisition.

***Section 224:** Statewide Adjustments ($315,369 GF, $6,460 OF, -$91,988 FF)*
Adjusts the department's budget for changes in Attorney General rates, and Department of Administrative Services state government service charges, and other charges for services.

Key Legislation
Housing
HB 2347 – Technical Fixes to Housing Legislation
Chief Sponsor(s): at the request of Governor Tina Kotek for Department of Land Conservation and Development
Effective date: January 1, 2026

Summary:
Technical fixes to HB 2001/2889 (2023): Allows DLCD to allocate housing planning grants to Tribal governments. Updates the deadline for cities to report housing permitting and production data to be at the discretion of the department. Corrects a scrivener's error related to city reports on implementation of housing production strategies.

Technical fix to HB 4064 (2022): Clarifies that local governments may only apply housing development standards to manufactured housing units that they would to site-built housing units of the same type.

Technical fix to SB 1537 (2024): Clarifies criteria for determining a complete application for a developer opting into new housing development criteria for their pending application.

Moves a statute outlining local governments' responsibility to approve an application for a permit, subdivision, or construction of needed housing from ORS 197.522 into ORS 197A.

Changes references to “single-family” and “multifamily” housing in land use statutes (ORS 197, ORS 197A, ORS 215, ORS 227, ORS 329A, and ORS 418) to “single-unit” and “multiunit.”

SB 48 – SB 1537 (2024) Technical Fixes

Chief Sponsor(s): Senate Interim Committee on Housing and Development
Effective date: September 26, 2025

Summary:[§]
Land use regulations: Clarifies that the “goal post” provisions — where a housing developer can opt into new housing development standards that have been adopted since their application was submitted and deemed complete — only apply within urban growth boundaries (UGBs).

Clarifies that when a city applies to the Housing Accountability and Production Office (HAPO or Office) for an exemption to the mandatory adjustment provisions, the period they are not subject to those provisions while the Office assesses the application is only applicable for the initial application.

One-time UGB site additions: Clarifies the definition of “site” used in the one-time UGB amendment provisions to mean: “a lot or parcel or any combination of lots and parcels that are contiguous or separated from one another by a street or road with or without common ownership.”

Amends the land need eligibility criteria for the one-time UGB amendment procedures by further clarifying that the applicable “tract” “[c]onsists of one or more lots or parcels with or without common ownership and that abut each other or are separated by only a street or a road.”

Specifies that cities are vested in their housing need eligibility data at the time of issuing public notice (i.e., that data carries forward in their application).

Allows cities to accept agreements, letters, or equivalent assurances to provide utility services to UGB expansion areas. Specifies that only a property owner of a proposed site accepted by the city has standing for judicial review of a UGB amendment decision.

Clarifies a technical error that inadvertently made only Metro eligible for the one-time UGB land exchange option.

HB 2138 – Middle Housing and Infill Development

Chief Sponsor(s): at the request of Governor Tina Kotek for Office of the Governor
Effective date: June 30, 2025 (sections where the deadline for local government compliance is different from the bill’s effective date are bolded below)
DLCD Appropriation: $3,891,599

Summary:
Middle housing: Requires counties to allow siting of middle housing on unincorporated urban lands (UULs). Defines UULs as within a UGB, zoned for urban development and not for future urbanization, and within the boundaries of public service providers.

[§] This summery covers Sections 1-8 of SB 48. Other sections of the bill are technical changes to the Moderate-Income Revolving Loan Fund, which is operated by the Oregon Housing and Community Services Department (OHCS). For more information, please visit their site.

Amends the definitions of cottage cluster, duplex, triplex, and quadplex to include detached units. Changes the allowed footprint of a cottage cluster from 900 square feet to a "small footprint." **Changes to the cottage cluster definition do not become operative until January 1, 2028.**

Adds a definition of "zoned for residential use" to ORS 197A.420 for purposes of defining where middle housing must be sited in a jurisdiction. This definition dictates that the land must be within a UGB, have base zoning that allows for residential uses and allows the development of a detached single-unit dwelling, is not zoned primarily for uses other than residential or future urbanization, and is incorporated or a UUL.

Directs cities and counties that are required to allow middle housing to permit it on lots that have an existing single-unit dwelling, accessory dwelling unit (ADU), single-unit dwelling and ADU, or a duplex. Allows those lots to be divided through a middle housing land division process. Prohibits cities and counties from requiring a traffic impact analysis or traffic-related exactions for middle housing projects of 12 units or less and on a lot created by a land division more than five years prior.

Requires local governments to implement a density bonus for producing an affordable or accessible homeownership unit, where the developer will receive an additional one unit for a duplex or triplex development and an additional two units for a quadplex, cottage cluster, or townhouse development. Allows local governments to implement a more localized density bonus instead.

Makes the due date for city and county compliance with these provisions January 1, 2027.

Requires the Department of Administrative Services (DAS) to publish a maximum sales price and income eligibility by region for purposes of administering the density bonus.

Single-room occupancies: Requires local governments to allow up to three times the number of single-room occupancy units permitted by the maximum density on a lot. Prohibits local governments from requiring more parking for a single room occupancy unit than they would for one-third of a regular unit (such as three single room occupancy units counting as one unit for purposes of parking requirements). Specifies that residential care facilities as defined in ORS 443.400 are not included under these provisions. **Makes the due date for city and county compliance with these provisions January 1, 2027.**

Promoting housing density: Invalidates prohibitive covenants and restrictions to developing ADUs, middle housing, or other housing types that would be developed below the maximum density of the zone in place before January 1, 2020. **Becomes operative January 1, 2027.**

Requires local governments to apply clear and objective standards to tree removal codes related to housing development.

Expedited and middle housing land divisions: Defines a single middle housing development for purposes of qualifying for a middle housing land division (MHLD). Allows nonconforming units on a lot to qualify for a MHLD. Allows a local government to require or not require separate utilities for water and wastewater. Provides that a local government may only prohibit subsequent land divisions if the minimum density for the zoning of the land has been met. Directs cities and counties to develop a simultaneous subdivision and MHLD application

process. Removes the noticing requirement and local appeals process for MHLDs and expedited land divisions.

Rulemaking: Directs LCDC to adopt rules by January 1, 2028, with a focus on increasing development efficiency, implementing findings from the SB 1537 (2024) Section 5 studies, and conforming with the policy objectives of ORS 197A.025, on:

- Siting and design standards for manufactured middle housing,
- Siting and design standards for accessory dwelling units and single-room occupancies,
- Defining "small footprint" and "community amenity" for cottage clusters,
- Amending existing siting and design standards for middle housing,
- Defining permissible criteria for discretionary review,
- Developing model system development charges (SDCs) for residential development, and
- Estimating reasonable zoned capacity for an inventory of buildable lands.

Directs LCDC to provide a report to the Legislature on the feasibility of a safe harbor for local governments who utilize the model SDC method by July 1, 2028.

HB 2316 – Home Start Lands (State-Owned Lands for Housing)

Chief Sponsor(s): Representative Mannix
Effective date: September 26, 2025

Summary: Directs the Department of Administrative Services (DAS) to identify lands owned by the state inside UGBs to designate as Home Start Lands if they are better used for housing than their current use. DAS may also identify land that can be exchanged for real property of equal value to designate as Home Start Lands. Prescribes that local governments may nominate lands to DAS for designation of Home Start Lands. These lands must be subject to an affordability covenant making them available to low- or moderate-income households.

Dictates that Home Start Lands can be used for single-unit dwellings, middle housing, or more dense housing if the zoning permits. Provides exceptions for using the lands including a slope of 25 percent or greater, the property being within a 100-year floodplain, or otherwise regulated for land use goal protections. States that the development must meet the local government's minimum density requirements and clear and objective standards as outlined in ORS 197A.400. Terminates Home Start Lands designation after three years of non-development or if DAS or the local government decides to terminate it.

Specifies conditions of disposition of land including selling, transferring, or leasing for 99 years. Dictates that the housing developed must be available for sale or for lease to households of low- or moderate- income for a period of 30 years. Dictates that a notice of sale must be published at least once weekly for three weeks in a local newspaper in the county where the land for sale is. Outlines capital improvements developers must complete, and what assistance is available from DAS. States that proceeds of the sale of land must be placed in the newly created Home Start Lands Fund to implement the program. Requires that a home for sale be the owner's primary residence (nine months out of a year) for at least five years after purchase. Requires DAS to coordinate with the Department of State Lands (DSL), and optionally, HAPO, to administer the above sections. Provides a property tax exemtpion framework for up to five years.

HB 2258 – Oregon Homes (Preapproved Residential Site Criteria)

Chief Sponsor(s): House Interim Committee on Housing and Homelessness
Effective date: June 24, 2025
DLCD Appropriation: $631,806

Summary: Allows LCDC to adopt rules requiring local governments to issue land use decisions on lots meeting certain criteria. Those lots must be lawfully established, within a UGB, zoned to allow residential use, within a specified size and slope range, not in areas protected for natural resources or hazards, and vacant or partially vacant. Approved residential developments must be either single-family, middle housing, or small multiunit housing types. The commission may also establish the procedures for approval at the local level, allowable variances, design standards, and land use standards including specific tree protections. Directs LCDC to adopt the first rules by January 1, 2027. Allows the Department of Consumer and Business Services (DCBS) to establish preapproved building plans or approve plans submitted by developers and coordinate the land use approvals established by LCDC.

HB 3031 – Housing Infrastructure Financing Program

Chief Sponsor(s): at the request of Governor Tina Kotek for Oregon Business Development Department
Effective date: July 1, 2025

Summary: Directs the Oregon Infrastructure Finance Authority (OIFA) to create housing infrastructure financing as grants or loans to local jurisdictions in Oregon including intergovernmental entities and federally recognized tribes. These funds can be used to develop or improve infrastructure or site development (including privately owned sites) projects related to transportation, water, wastewater, storm water, or for increasing capacity of these systems due to specific proposed housing developments. Outlines the criteria to qualify for these funds. The criteria address the number of housing units, locations within and not within UGBs, city population numbers, density priorities, affordable housing covenants, and timelines. Provides an existing definition for "housing authority" and allows for partnerships between housing authorities and housing developers with criteria for what the written agreement must contain. Directs the OIFA on how the funds should be apportioned. Directs HAPO to assist in the development of requirements and prioritization of funding. Directs OIFA to coordinate with OHCS with respect to the Housing Project Revolving Loan Fund. Allows the Oregon Business Development Department (OBDD) to adopt rules for the implementation of this section. The new Housing Infrastructure Project Fund will have its own State Treasury fund distinct and separate from the General Fund. OBDD may accept donations, grants, contributions, or gifts from non-state sources for deposit into the fund. The fund will earn interest and be continuously appropriated to OBDD.

The program is funded through SB 5531, which includes authorization for $10,000,000 in lottery bond proceeds. HB 5006 provides allocation for program staff of $1,200,000 in Lottery Funds and $1 of expenditure limitation from the Housing Infrastructure Project Fund. OBDD is required to bring projects back to the legislature for consideration in 2026.

SB 974 – Residential Development Application Approval Processes

Chief Sponsor(s): Senator Anderson, Senator Jama, Senator Broadman, and Senator Meek
Effective date: September 26, 2025 (alternative dates for local government compliance are noted below)

Summary:
Engineering review timelines: Defines "final engineering plans" and establishes a timeline for when local governments must approve these plans for residential development applications within a UGB — 30 days to establish completeness of the application, 120 days to review and issue a decision, and optional, mutually agreed upon extensions for up to 245 days total.

Urban housing applications: Applies new review process criteria to applications for an upzone, a planned unit development, or a variance for residential development on residentially zoned or planned for land within an urban growth boundary, and calls them "urban housing applications." The first issuance of a decision on the application must be done without a public hearing. Clarifies how the urban housing applications are appealable to the Land Use Board of Appeals. **Sets the operative date for cities to conform with the urban housing application processing requirements as July 1, 2026.**

Design standards: Prohibits a local government from applying design standards to residential developments inside UGBs with 20 or more units (except for multifamily buildings). Design standards do not include building height, setbacks, and other regulations pertaining to health, environment, and safety. **Repeals design standard provisions on January 1, 2033.**

SB 10 – Technical Change to Moderate-Income Housing Predevelopment Loans Program

Chief Sponsor(s): Senator Wagner
Effective date: April 7, 2025

Summary: HB 2001 (2023) established the Moderate-Income Housing Predevelopment Loans program to provide financing and refinancing to local governments and housing developers for residential predevelopment costs. SB 10 moves that program from the Oregon Facilities Authority to the Network for Oregon Affordable Housing through a pass-through grant from Oregon Housing and Community Services.

HB 3505 – Residential Sprinkler System Development Charges

Chief Sponsor(s): Representative Marsh
Effective date: January 1, 2026

Summary: Prohibits a local government from imposing a new or increased system development charge on a residential development for the installation of a sprinkler system or the increased capacity of a water meter for the sprinkler system.

HB 3144 – Manufactured Housing CC&Rs

Chief Sponsor(s): Representative Marsh *Effective date:* January 1, 2026
Summary: Deems a provision in a recorded instrument void and unenforceable if it restricts siting manufactured housing and was executed on or after the effective date of the bill. Makes void and unenforceable a provision in a governing document that restricts manufactured

housing siting. Extends the sunset for the Manufactured and Marina Communities Dispute Resolution Advisory Committee established by SB 586.

HB 3145 – Funding for Affordable Manufactured Housing

Chief Sponsor(s): Representative Marsh, Senator Anderson, Representative Diehl, Representative Bowman, Representative Gamba, and Senator Patterson
Effective date: September 26, 2025

Summary: Directs Oregon Housing and Community Services (OHCS) to use Local Innovation and Fast Track (LIFT) funding for manufactured homes. Allows up to five recipients or locations. Prescribes preferences for funding such as geographical diversity and Oregon-sourced materials. Dictates that recipients must cooperate on the report required by Section 5. Prescribes that $25,000,000 of LIFT funding should be used for these purposes if not otherwise obligated. Directs OHCS to contract with the Network for Oregon Affordable Housing (NOAH) to convene a public-private advisory committee to offer guidance on project proposals, which is to consist of representation from DLCD, DCBS, the Oregon Housing Stability Council, local governments, private firms, and individuals in the development community. The committee will provide recommendations for project approval to OHCS. NOAH will also provide technical assistance and support industry awareness and funding. Directs OHCS to submit a report to the Legislature by September 15, 2027, on the activities of the program and contractor. **Repeals bill provisions on January 2, 2028.** Appropriates $650,000 to OHCS to contract with NOAH.

Urbanization

SB 1129 – Urban Reserves Rulemaking

Chief Sponsor(s): Senator Broadman
Effective date: May 27, 2026

Summary: Directs LCDC to amend rules relating to urban reserves by January 1, 2026 to allow local governments to:

- Assign lower priority to exception and non-resource lands containing subdivisions or planned unit developments as compared to other exception and non-resource lands, and
- Assign lower priority to the inclusion of otherwise high priority lands if it is difficult or cost prohibitive to service them with urban services.

HB 2647 – City of Monmouth UGB Land Exchange

Chief Sponsor(s): Representative Evans and Senator Patterson
Effective date: January 1, 2026

Summary: Allows the City of Monmouth to complete a UGB land exchange instead of the process outlined in SB 1537 (2024). Allows it to remove 90 or fewer acres of land which have:

- More than 25 percent of its acreage mapped as flood hazards or wetlands,
- Not been annexed by the city,
- Not been designated for residential use, and
- Not been served by city sewer service.

Allows the city to bring in 75 or fewer net residential acres to the UGB, which must have:

- Not more than 25 percent of its acreage mapped as hazards or floodplains,
- Ability to be connected to water and sewer services, and
- Owners that consent to addition to the UGB and annexation to the city.

HB 3921 – City of Roseburg UGB Land Exchange

Chief Sponsor(s): Representative Osborne and Senator Brock Smith
Effective date: May 28, 2025

Summary: Requires the Director of the DLCD to issue an order acknowledging the UGB exchange for the City of Roseburg that was submitted on October 22, 2024. Deems all urban growth boundary adjustments, city boundaries, comprehensive plan amendments and land use regulations approved and acknowledged, notwithstanding ORS Chapter 197 and other state land use planning laws and rules.

HB 2356 – Metro Service District Annexation

Chief Sponsor(s): Representative McLain (at the request of Metro Regional Government)
Effective date: January 1, 2026

Summary: Notwithstands requirements of ORS 268.354 and ORS 198 to automatically bring properties annexed by a city into the metropolitan service district of that urban growth boundary.

Resource Lands

HB 3681 – EFSC Contested Cases and Transmission Line Condemnation

Chief Sponsor(s): Representative Gamba
Effective date: January 1, 2026

Summary: Modifies the Energy Facility Siting Council (EFSC) contested case process for site certificate applications and changes the review criteria for a certificate of public convenience and necessity for overhead transmission lines.

Directs the Public Utility Commission (PUC) to consider certificate petitions without requiring petitioner to first obtain required state or local land use approvals.

Clarifies that in proceedings for condemnation, a certified copy of a high voltage transmisison line cite certificate is conclusive evidence that the line is a public use and is necessary for public convenience.

HB 3874 – Wind Energy Project Size Increase for ESFC Site Certification

Chief Sponsor(s): Representative Helm, Representative Gamba, and Representative Owens
Effective date: January 1, 2026

Summary: Increases minimum size for wind energy project to get an EFSC site certificate from 50 megawatts to 100 megawatts. Wind projects generating at least 50 megawatts and less than 100 megawatts are required to provide a decommissioning plan with financial assurances that the site will be restored to a “useful, nonhazardous condition.”

Counties are responsible for approving requirements during construction and operation of wind energy projects between 50-100 megawatts and ensuring they are safely and properly removed from the landscape at the end of their lifecycle.

SB 75 – Wildfire Home Hardening Requirements Clarification

Chief Sponsor(s): Senate Interim Committee on Natural Resources and Wildfire
Effective date: January 1, 2026

Summary: Corrects an error in ORS 215.291 and ORS 215.495 clarifying when home hardening building code and defensible space requirements apply. Removes wildfire hazard language and related regulatory requirements for home hardening building codes and defensible space for rural homes for purposes of developing an accessory dwelling unit on lands zoned for rural residential uses, or replacement dwellings on lands zoned for farm or forest uses.

SB 83 – State Wildfire Map Repeal and Defensible Space / Replacement Dwelling Requirements

Chief Sponsor(s): Senate Interim Committee on Natural Resources and Wildfire
Effective date: June 26, 2025

Summary:[**] Repeals the state wildfire hazard map created by SB 762 (2021) — and revised by SB 80 (2023) — and its application to defensible space requirements, accessory dwelling units and replacement dwellings, building codes, comprehensive planning, and other areas. Changes existing statute related to ORSC R327 building code standards for wildfire hazard mitigation, defensible space and the wildland urban interface (WUI), fire protection for lands outside of forest protection districts, and Oregon Conservation Corps Program for grant-supported fuels reduction projects. Makes adoption of R327 building code and defensible space standards optional for local governments. Includes conforming amendments related to replacement dwellings on farm and forest land and ADUs in areas zoned for residential development.

Defensible space: Amends ORS 426.392 (minimum defensible space requirements and rules) to remove reference to the state wildfire map, including the ability for local governments to administer, consult on, and enforce defensible space requirements based on the map. Defines defensible space as “a natural or human-made area in which material capable of supporting the spread of fire has been treated, cleared or modified to slow the rate and intensity of advancing wildfire and allow space for fire suppression operations to occur.” Directs the State Fire Marshal (SFM) to create a defensible space model code for inclusion in the community risk-reduction program but prohibits the SFM from requiring local governments to adopt it. The SFM may assist local governments to facilitate the creation of defensible space.

Wildland urban interface: Amends ORS 477.015 (urban interface protections and definitions) to:

- Define “wildland” as forestland or “an unimproved area that contains enough unmanaged vegetation, at any time of the year, to constitute a fire hazard in the judgment of the forester, regardless of how the areas is zoned or taxed,” and
- Revise the definition of “wildland-urban interface” to mean a “geographic area in which there is a concentration of dwellings in an urban or suburban setting near wildland.”

[**] This summary does not include changes to ORS 476.690 relating to the Wildfire Programs Advisory Council.

Among other things, directs the Department of Consumer and Business Services (DCBS) to adopt the wildfire hazard mitigation code standards from Section R327 of the 2023 Oregon Residential Specialty Code, and prohibits DCBS from requiring local governments to adopt them.

Comprehensive planning: Amends ORS 197.716 to remove reference to statute requiring the Oregon Department of Forestry (ODF) to adopt a definition of the "wildland urban interface."

Accessory dwelling units and replacement dwellings: Revises ORS 215.495 to remove reference to the statewide wildfire hazard map and map-related provisions in statutes authorizing a county to approve ADUs and replacement dwellings in high wildfire hazard zones.

Removes requirements for ADUs to comply with applicable state/local defensible space standards if identified on the state wildfire map as located in the WUI.

Removes requirement for ADUs or replacement dwellings to be altered, restored, or replaced to comply with the construction provisions in Section R327 of the Oregon Residential Specialty Code.

SB 85 – Wildfire Risk Report

Chief Sponsor(s): Senate Interim Committee on Natural Resources and Wildfire
Effective date: May 28, 2025

Summary: Requires DCBS and the SFM — in collaboration with the Department of Forestry and insurance industry representatives — to evaluate and develop community-based wildfire risk mitigation actions, programs, and strategies to reduce wildfire risks and improve insurance affordability in Oregon.

Requires DCBS and SFM to submit a report to the State Wildfire Programs Director, the Wildfire Programs Advisory Council, and the interim legislative committees related to wildfire by February 2, 2026.

Ocean and Coastal

HB 2925 – Ocean Shores Permitting

Chief Sponsor(s): at the request of Governor Tina Kotek for State Parks and Recreation Department
Effective date: January 1, 2026

Summary: Revises Oregon Parks and Recreation Department's (OPRD) permitting process for ocean shore improvements and expands notice requirements. Authorizes OPRD to issue emergency permits under specific circumstances and creates a framework for general authorization permits for ocean shore improvements that are similar in nature, have predictable effects and relate to low-impact, restorative, or conservation-focused projects. Applies to OPRD permit applications submitted on or after the bill's effective date.

HB 3963– Offshore Wind Roadmap Extension

Chief Sponsor(s): Representative Gomberg
Effective date: September 26, 2025

Summary: Extends the deadline from September 1, 2025, to January 1, 2027, for the Department of Land Conservation and Development to complete Oregon's Offshore Wind Roadmap as directed by HB 4080 (2024).

SB 179 – Landowner Immunity

Chief Sponsor(s): Senate Interim Committee on Judiciary
Effective date: January 1, 2026

Summary: Makes the 2024 temporary changes to immunity for landowners who allow public use of land without charge for recreational purposes permanent.
Allows local governments included in ORS 174.116 to opt into ORS 105.668, which limits liability from ordinary negligence claims arising from the use of trails or structures on public easements or unimproved rights of way by foot, equine, bicycle or other nonmotorized means.

Adds immunity to ORS 105.688 for improved paths, trails, roads and other rights of way that are used by the public to access land for recreational purposes and limits immunity for improvement, design, or maintenance that was completed in a manner constituting gross negligence or reckless, wanton or intentional misconduct, or for which the actor is strictly liable.

Adds to the "recreational purposes" defined in ORS 105.672 the non-exclusive list of outdoor activities including running, walking, and bicycling.

SB 504 – Nonstructural, Nature-Based Solutions to Shoreline Stabilization Rulemaking

Chief Sponsor(s): Senator Brock Smith
Effective date: January 1, 2026
DLCD Appropriation: $268,488

Summary: Directs LCDC to adopt rules by January 1, 2028, to allow, define, and provide guidance on nonstructural, nature-based solutions to be used for shoreline stabilization in estuaries, coastal shorelands, and the ocean shore. Allows the Department of State Lands (DSL) and the State Parks and Recreation Department (OPRD) to adopt conforming rules by January 1, 2029.

In its rulemaking, DLCD is directed to, at a minimum:

- Define "nonstructural, nature-based solutions".
- Provide guidance for the use of nonstructural, nature-based solutions to minimize harmful impacts from flooding and erosion.
- Require that nonstructural, nature-based solutions conform with statewide land use planning goals and is prioritized over structural solutions to address erosion and flooding.
- Not change rules allowing ODOT to use structural shoreline stabilization methods.

The rules advisory committee (RAC) must include the following interests:[††]

- Coastal engineering professionals
- Restoration professionals
- Environmental and recreational organization representatives
- Tribal representatives
- Land owners/managers
- Fish and wildlife professionals
- Local government officials

SB 793 – Department of State Lands Territorial Sea Fees

Chief Sponsor(s): at the request of Governor Tina Kotek for Department of State Lands
Effective date: June 20, 2025

Summary: Modifies and increases DSL rulemaking authority to adopt new rules for establishing fees for easements on state land, including the territorial sea. Easements on state land within the territorial sea need to adhere to specific policies for routing and installing infrastructure.

Previously, DSL charged a one-time application fee of $5,000 for easements within the territorial sea and $750 for easements on other state lands. Moving forward, application and renewal fees must be reasonably calculated to offset the cost to DSL for granting and renewing easements. Requires the Director of DSL to adopt the rules by January 1, 2027.

Administrative and Miscellaneous

HB 2005 – Siting of Psychiatric and Behavioral Health Care Facilities

Chief Sponsor(s): Representative Kropf and Representative Andersen
Effective date: June 30, 2025

Summary:[‡‡] Requires local governments to allow by right a residential treatment facility or residential home within a UGB on lands zoned for residential commercial, employment, and industrial uses under specific criteria, in addition to public lands (excluding park lands). There are exceptions for lands that have natural resource or hazard restrictions or cannot be provided with public services. Does not require local governments to update any analyses related to land use goals. Exempts these decisions from the Land Use Board of Appeal's (LUBA) authority. Requires a local government to issue a decision within 120 days.

Within an urban growth boundary, requires a local government to allow by right a mental or psychiatric hospital on lands zoned for commercial, employment, and industrial uses, as well as public lands (excluding park lands), and where it is adjacent to an existing or pending crisis stabilization center. Exceptions are made for lands that have natural resource or hazard restrictions or cannot be provided with public services. Does not require local governments to update any analyses related to land use goals. Exempts these decisions from LUBA authority. Requires a local government to issue a decision within 120 days. Requires a local government

[††] HB 3569 (2025) requires the sponsoring legislator to be invited to serve as a non-voting member on legislatively mandated RACs that are appointed on or after January 1, 2026.
[‡‡] This summery covers Sections 58-63 of HB 2005. Other sections are not relevant to land use.

to allow by right a crisis stabilization center within a UGB if the property is owned by a public body and adjacent to an existing or pending mental or psychiatric hospital.

Repeals ORS 197.670, which addresses existing zoning requirements and prohibitions for residential homes and facilities.

HB 2256 – Private Right to Action for Conservation-Purchased Lots

Chief Sponsor(s): Representative Fragala, Senator Prozanski, and Senator Manning, Jr.
Effective date: January 1, 2026

Summary: ORS 92.018 establishes buyer's remedies for purchasing an illegally established unit of land, which includes individual action against the seller for damages. HB 2256 amends ORS 92.018 to establish that a purchaser does not have individual right to action if it is a holder (such as a government entity, trust, or Tribal government per ORS 271.715), the unit of land was separately described in an instrument executed before January 1, 2025, and the unit of land has a conservation easement. If the unit of land is subsequently sold within five years for non-conservation purposes, the new buyer may have individual right to action against the original buyer.

HB 2658 – Frontage Improvements for Building Alterations

Chief Sponsor(s): Representative Evans
Effective date: January 1, 2026

Summary: Prohibits a municipality over 15,000 in population from requiring a frontage improvement as a condition of approval for a construction permit to alter or renovate an existing building, so long as there is no increase to the square footage, the alteration cost does not exceed a limit set by the director of the DCBS, and the changes do not result in a change of occupancy classification. Sets alteration cost limit initially at $150,000, with annual increases due to the Consumer Price Index. If frontage improvements along a state highway are required for final action on a permit or zone change, requires ODOT or the municipality to coordinate on if design, engineering, or construction plans already exist. Makes these provisions applicable to all size cities on January 1, 2031.

HB 2069 – Tribal Task Force

Chief Sponsor(s): Representative Sanchez
Effective date: June 24, 2025

Summary: Creates the Governor's Task Force on Tribal Consultation to identify and clarify requirements of state agencies to engage in Tribal consultation, to be completed by December 31, 2026.

HB 3136 – Real Estate Professionals on Planning Commissions

Chief Sponsor(s): Representative Breese-Iverson, Senator Meek, and Senator Anderson
Effective date: January 1, 2026

Summary: Amends regulations regarding participation on county and city planning commissions to specify that only when a planning commission has five or fewer members is there a two-person limit on participating persons that can be involved in selling or developing real estate.

HB 3560 – Childcare Facility Siting Expansion

Chief Sponsor(s): Representative Marsh, Representative Neron, Senator Reynolds, Representative Andersen, Representative Bowman, Representative Chotzen, Representative Dobson, Representative Fragala, Representative Gamba, Representative Helm, Representative Hudson, Representative Kropf, and Representative E. Levy
Effective date: January 1, 2026

Summary: Changes zoning requirements to allow child care centers as an outright use on land zoned for multiunit residential and institutional uses. Relocates the child care facility siting statute from ORS 329 to ORS 197. Modifies the definition of "child care center" to include a preschool recorded program, school-age recorded program or a parent cooperative. Inside Metro's UGB, this bill permits child care centers in areas zoned for multiunit residential densities of at least 17 units per acre. Outside of the Metro UGB, this bill permits child care centers on residential lands zoned for densities of 12 units per acre or greater and on commercial and industrial land, but not heavy industrial land. Local governments may not add additional conditions of approval before allowing a child care center to co-locate with a conditional institutional use. **Local governments must update their land use laws to comply by January 1, 2027.**

HB 3569 – Legislators as Non-Voting Members on Rules Advisory Committees

Chief Sponsor(s): Representative Gamba
Effective date: January 1, 2026

Summary: Requires an agency that appoints a rules advisory committee regarding rules implementing legislation to invite one of the following to serve on the committee as a nonvoting member:

- The first chief sponsor or first chief sponsor's designee of the relevant legislation, or
- The chair or chair's designee of the committee that sponsored the legislation.

Applies to advisory committees appointed on or after the effective date.

SB 817 – LUBA Fee Increase

Chief Sponsor(s): at the request of Governor Tina Kotek for Land Use Board of Appeals
Effective date: January 1, 2026

Summary: Increases LUBA fees for filing a notice of intent to appeal from $300 to $350 and a motion to intervene from $100 to $200.

SB 967 – Local Improvements IGAS

Chief Sponsor(s): Senator Broadman and Senator Nash
Effective date: January 1, 2026

Summary: Allows local governments to enter into an intergovernmental agreement for purposes of allocating authority over local improvements within a UGB. Requires local improvements to still comply with applicable land use regulations.

SB 1099 – Preschools in Places of Worship

Chief Sponsor(s): Senator Starr and Senator Anderson
Effective date: June 3, 2025

Summary: Requires local governments to allow preschool or pre-kindergarten education on land where places of worship are allowed.

Contact Information

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Legislative Summary Report

Energy and Environment

LPRO LEGISLATIVE POLICY AND RESEARCH OFFICE

This Legislative Summary Report highlights Energy and Environment policy measures that received a public hearing in a policy committee during the **2025** regular legislative session. The report is organized by subtopics and includes the measure number; the measure status: enacted [✓] or not enacted [✗]; and a brief description of the measure.

Energy and Environment Subtopics:

- Agency Programs
- Air Quality
- Climate & Emissions
- Electrical Transmissions
- Energy Efficiency & Backup Power
- Invasive Species
- Materials Management
- Nuclear
- Regulations & Studies
- Renewable Energy
- Utilities
- Waste Management
- Water Quality

Agency Programs

SB 828 ✗ The measure would have established the Grid Resilience Matching Fund and appropriated money in the Fund to the Oregon Department of Energy (ODOE) to provide state matching funds to leverage federal grant funding for grid resilience projects and related administrative costs.

Air Quality

SB 355 ✗ The measure would have appropriated $1 million General Fund moneys to the Oregon Department of Forestry for a pilot grant program that promotes air curtain use for biochar production.

Note: This measure is cross-listed in the Summary of Legislation Summary Report on Natural Resources.

HB 2332 ✓ The measure prohibits the Oregon Department of Environmental Quality from requiring an air curtain incinerator to have a Title V operating permit under certain circumstances.

HB 2663 ✗ The measure would have authorized a vehicle dealer to issue a temporary registration permit for a motor vehicle that lacks proof of compliance with pollution control equipment requirements. It would have required the dealer to give written notice to the purchaser that the Department of Transportation will not issue stickers, registration, and plates until proof of compliance is provided.

HB 2738 ✗ The measure would have prohibited the use of racing vehicles that use leaded fuel on racetracks located within the limits of a city with a population of 500,000.

HB 2960 ✗ The measure would have prohibited the establishment or operation of plastic conversion or depolymerization facilities in Oregon.

HB 3119 ✗ The measure would have prohibited the Oregon Department of Environmental Quality from implementing or enforcing the Advanced Clean Trucks regulations before January 1, 2027.

Note: This measure is cross-listed in Summary of Legislation Summary Report on Transportation and Infrastructure.

HB 3729 ✓ The measure prohibits the Department of Environmental Quality, the Environmental Quality Commission, or a regional air quality control authority from requiring a person to operate a crematory incinerator at a temperature greater than 1,600 degrees Fahrenheit.

Climate & Emissions

SB 1187 ✗ The measure would have established the Climate Superfund Cost Recovery Program with the purpose of adapting to and mitigating effects of climate change and holding parties liable for the costs of climate change. In addition, the measure would have required certain agencies to create a resilience implementation strategy to identify eligible climate change adaptation projects; and disperse funds to implement eligible projects.

HB 2067 A ✗ The measure would have directed the Oregon Department of Energy to establish by rule a rebate program for the purchase of battery-powered leaf blowers. It would have established the Commercial Landscape Equipment Rebate Fund and appropriated $2 million for deposit into the Fund.

HB 2961 A ✗ The measure would have modified the state building code requirements that must be met for electrical service capacity for charging electric vehicles (EV) and EV charging stations in each newly constructed multifamily residential building with 10 or more residential dwelling units or mixed-use building consisting of privately owned commercial space and 10 or more residential dwelling units.

Note: This measure is cross-listed in the Summary of Legislation Summary Report on Housing, Development, and Homelessness.

HB 3170 ✗ The measure would have revised definitions and requirements for a grant program that supports Resilience Hubs and Networks and appropriated money from the General Fund for program grants.

HB 3477 ✗ The measure would have modified the state's greenhouse gas reduction goals and established as the policy goal of the state to achieve net-zero emissions as soon as practicable, but no later than 2050.

HB 3597 A ✗ The measure would have modified rebate amounts and eligibility and program requirements for qualifying vehicle programs.

Electrical Transmission

SB 969 ✗ The measure would have prohibited the Energy Facility Siting Council from exercising jurisdiction over a renewable energy facility or transmission line that is sited wholly within federal lands and is subject to review under the National Environmental Policy Act.

HB 3087 ✗ The measure would have created an income or corporate excise tax credit for the amount paid by an owner of an eligible generation facility for transmission services.

HB 3628 ✗ The measure would have established the Oregon Electric Transmission Authority to accelerate the expansion of electric transmission capacity in Oregon. It would have established the Tribal Advisory Council on Electric Transmission to advise the Authority and its board on issues relevant to the Indian Tribes in Oregon and provide recommendations on how the Authority may best address those issues. The measure would have required the Authority to identify and establish electric transmission corridors with statewide significance. It would have required certain electric utilities to collect a non-bypassable transmission authority charge from all retail electricity consumers until 2032 and allowed a public utility recover in rates the capital costs of a transmission project under certain circumstances.

HB 3681 ✓ The measure modifies the Energy Facility Siting Council contested case process for site certificate applications and changes the review criteria for a certificate of public convenience and necessity for overhead transmission lines.

HB 3927 ✗ The measure would have required the Oregon Department of Energy (ODOE) to study the need to expand electric transmission infrastructure in this state and submit a report, would have established the Oregon Electric Transmission Expansion Fund to develop and complete two electric transmission expansion projects, and would have appropriated $8 billion to ODOE for each of the next five biennia.

Energy Efficiency & Backup Power

SB 827 ✓ The measure expands direction to the Oregon Department of Energy (ODOE) to provide rebates for the purchase, construction, or installation of energy storage systems that will be paired at the time of installation with previously purchased and installed solar electric systems and authorizes ODOE to include provisions for consumer protection in rulemaking efforts regarding the rebate program.

HB 2064 ✗ The measure would have required the Oregon Public Utility Commission and Oregon Department of Consumer and Business Services to take certain actions related to microgrids. It would have permitted local governments to take certain actions to prepare for and encourage microgrid development.

HB 2066 ✓ The measure requires the Oregon Public Utility Commission to conduct an investigation to establish a regulatory framework for allowing the ownership, deployment, and use of microgrids and community microgrids within the service territories of electric companies.

HB 2567 ✓ The measure modifies components of the Heat Pump Deployment Program by revising eligibility criteria, funding distribution, and rebate structures.

HB 3081 A ✗ The measure would have required the Oregon Department of Energy (ODOE), when providing information, technical assistance, and assistance in identifying contractors and financing options related to available energy efficiency incentives and programs, to provide information in multiple languages, conduct outreach, and establish a statewide navigation and support system. It would have required ODOE to create a statewide clearinghouse for energy and energy efficiency incentive programs that focus on certain criteria.

HB 3609 ✗ The measure would have required electric companies to develop and file with the Oregon Public Utility Commission a distributed power plant program for the procurement of grid services from customers of the electric company who enroll in the program.

HB 3653 ✓ The measure allows authorized state agencies to enter into energy performance contracts without requiring a competitive procurement if the authorized state agency follows rules that the Attorney General adopts, negotiates a performance guarantee, and enters into the contract with a qualified energy service company that the Oregon Department of Energy prequalifies and approves.

HB 3747 ✗ The measure would have established a refundable income tax credit for the purchase of battery energy storage systems and solar photovoltaic electric systems for tax years beginning on or after January 1, 2026, and before January 1, 2032.

HB 3823 ✗ The measure would have given a property tax break to a business that generated or stored energy for its own use, excluded utilities from the tax break, and given a property tax break for property installed at a residence to generate or store energy for use there.

Invasive Species

SB 576 ✗ The measure would have appropriated $2,000,000 to the Department of Agriculture for the purpose of eradicating Japanese beetle grubs.

Materials Management

SB 91 ✓ The measure defines "PFAS firefighting foam" as a foam substance that contains intentionally added perfluoroalkyl or polyfluoroalkyl substances that is used to control or extinguish fire. The measure prohibits a fire department and employee or volunteer of the fire department from using PFAS firefighting foam, except as required by the Federal Aviation Administration or other federal law.

SB 139	✓	The measure allows for the consolidation of sharps and waste pharmaceuticals into a single container that meets specific safety standards. It requires the contents to be managed as infectious waste and stipulates that sharps can only be stored in the containers for no more than seven days and requires sharps consolidated with waste pharmaceuticals to be treated by incineration in an incinerator that is authorized to accept sharps and waste pharmaceuticals under a permit issued by a state or federal agency.
SB 551	✓	The measure modifies the definition of "single-use checkout bag" and prohibits retailers and restaurants from providing reusable plastic or fabric checkout bags to customers.
SB 992	✓	The measure authorizes the Oregon Liquor and Cannabis Commission to approve one or more Bottle Bill program alternative access redemption centers and modifies the requirements for dealers operating within the alternative access redemption center convenience zone. It requires OLCC to establish low-impact convenience zones. The measure also addresses hours of operation and the type of containers that a winery is required to accept for return.
HB 2062 A	✗	The measure would have prohibited producers of batteries or battery-containing products from selling, offering for sale, or distributing batteries or battery-containing products in or into Oregon unless they participated in a battery producer responsibility organization that successfully implemented a battery producer responsibility program.
HB 3018 A	✗	The measure would have required entities that generate a certain amount of food waste per week to sort and recover food waste and arrange for the food waste to be composted. It also would have modified Oregon Revised Statutes related to food labeling requirements.
HB 3512	✗	The measure would have prohibited a person from manufacturing, selling, offering for sale, or distributing in or into Oregon a new covered product that contains an intentionally added perfluoroalkyl or polyfluoroalkyl substance, with the exception of the sale or resale of used covered products.
HB 3780	✗	The measure would have removed newspaper from some state producer responsibility laws.

Nuclear

SB 215 ✗ The measure would have referred to the voters to approve or reject a requirement that there be a licensed repository for the disposal of high-level radioactive waste before a site certificate for a nuclear-fueled thermal power plant could be issued and a requirement that a proposed site certificate for a nuclear-fueled thermal power plant be submitted to the electors of this state for their approval or rejection.

SB 216 ✗ The measure would have repealed the requirements that there be a licensed repository for the disposal of high-level radioactive waste before a site certificate for a nuclear-fueled thermal power plant may be issued and that a proposed site certificate be submitted to the electors of this state for their approval or rejection.

SB 635 ✗ The measure would have directed the Oregon State University to conduct a feasibility study on nuclear energy generation in Oregon and submit the report to Legislative Assembly.

HB 2410 A ✗ The measure would have allowed the Energy Facility Siting Council (EFSC) to issue a site certificate for a small modular reactor energy facility demonstration project located in Umatilla County if EFSC finds that certain criteria are met. It would have required ODOE, in cooperation with other entities, to prepare and submit a report that contains certain information related to a small modular reactor energy facility demonstration project. The measure would have established the Umatilla County SMR Demonstration Project Report Fund. The Act would have referred provisions of the measure to the people of Umatilla County for their approval or rejection at the next regular general election held throughout Oregon.

Regulations & Studies

SB 680 ✗ The measure would have defined "environmental marketing claim," "net zero claim," and "reputational advertising" and would have made it an unlawful trade practice to publish or cause to be published an environmental marketing claim, net zero claim, or reputational advertising that is materially false, misleading, deceptive, or fraudulent. The measure would have made a person doing so liable for damages of up to $200.

Note: This measure is cross-listed in the Summary of Legislation Summary Report on Civil Law.

SB 825 ✓ The measure requires rules adopted by the Oregon Department of Energy (ODOE) related to reporting requirements for the State Agency Facility Energy Design program to minimize costs to state agencies and duplication of reporting requirements for building Energy Performance Standards for Covered Commercial Buildings Program (ORS 469.275 to 469.291). It further eliminates reporting requirements associated with biennial reports to the Small-Scale Local Energy Loan Program Fund (SELP) as well as the Small-Scale Local Energy Project Administration and Bond Sinking Fund.

SB 843 ✓ The measure removes the requirement that the Public Utility Commission provide a biennial report to the Legislative Assembly on the volumetric incentive rates pilot program.

SB 1102 ✗ The measure would have required the State Department of Energy to study energy and to submit findings to the Legislative Assembly.

HB 2038 A ✗ The measure would have required the Oregon Department of Energy, in consultation with the Public Utility Commission and the Pacific Northwest Electric Power and Conservation Planning Council, to study particular aspects of nuclear energy and submit a report.

HB 2063 A ✗ The measure would have established the Agrivoltaics Task Force staffed by the Oregon Department of Land Conservation and Development.

Note: This measure is cross-listed in Summary of Legislation Summary Report on Natural Resources.

HB 2065 ✓ The measure requires individuals to have the option, when applying to a public utility for authority to interconnect a community microgrid or microgrid with the public utility's transmission or distribution system, to either agree to have the public utility, or contract with a third-party consultant, to conduct a required study or engineering evaluation of the interconnection.

HB 2985 A ✗ The measure would have modified provisions relating to the administrative proceedings of the Oregon Public Utility Commission. It also would have repealed Oregon Revised Statute (ORS) 756.450 (declaratory rulings); ORS 756.512 (notice of complaint to defendant; responsive pleadings; and setting cause for hearing); ORS 756.521 (public hearings; record required; and furnishing transcripts); and ORS 756.543 (issuance of subpoenas and failure to comply).

HB 3107 ✗ The measure would have modified how the Oregon Department of Environmental Quality and any applicant, permittee, or regulated entity may enter into an agreement to take certain actions.

HB 3171 ✗ The measure would have changed what a county must include in an energy resilience plan required under Oregon Revised Statute 215.141. It also would have directed the county when developing a plan to engage with specified communities and consider certain factors.

HB 3173 A ✗ The measure would have established the OregonFlora Program at Oregon State University (OSU) to compile and provide data regarding vegetation that grows without cultivation in this state. The measure would have required the Higher Education Coordinating Commission to make a grant to OSU each biennium as appropriated by the Legislative Assembly and would have appropriated $400,000 from the General Fund to the Commission to be distributed to OSU for implementation in the 2025-2027 biennium.

HB 3261 ✗ The measure would have established the 16-member Task Force on Renewable Diesel and required the Task Force to submit a report to the Legislative Assembly no later than December 15, 2026.

HB 3539 ✗ The measure would have required the Environmental Quality Commission (EQC), or the Department of Environmental Quality at the direction of the EQC, to contract with a third party to study and determine a greenhouse gas reporting emissions factor, at least once every five years, for electricity purchased from unspecified sources.

HB 3580 A ✗ The measure would have established the Taskforce on Eelgrass Resources.

HB 3868 ✗ The measure would have required the Oregon Department of Energy to conduct a study on small-scale renewable energy projects.

Renewable Energy

SB 92 ✗ The measure would have allowed a community solar project to be located outside a subscriber's utility service territory. In addition, the Oregon Public Utility Commission would have been required to establish increasing minimum targets for community solar generation each utility must accommodate as well as establish penalties on an electric company for unreasonably delaying the interconnection process.

SB 218 ✗ The measure would have required the Department of Environmental Quality (DEQ) to have studied the impacts of waste from solar or wind renewable energy facilities and submitted findings to the Legislative Assembly.

SB 634 ✗ The measure would have expanded eligible electricity for the Renewable Portfolio Standard (RPS) to include all hydroelectric power, not just post-1995 upgrades or certified low-impact facilities.

SB 1034 ✗ The measure would have modified the criteria by which the Energy Facility Siting Council (EFSC) evaluated proposed energy facilities for compliance with statewide planning goals and eliminated provisions that allowed EFSC to approve a facility even if it did not meet the local government's land use plan and regulations.

SB 1160 A ✗ The measure would have required the Oregon Department of Energy (ODOE) to study and report on the financial costs for developing certain qualifying facilities and small-scale renewable energy projects (20 megawatts or less) as well as the potential costs and savings of secondary benefits of their development such as resiliency or reliability.

SB 1178 ✗ The measure would have modified the existing requirement that certain electric companies source 10 percent of their electricity from small-scale renewables or certain biomass facilities to require that the small-scale renewables or biomass be owned by non-utilities. It would have required electric companies to make best efforts to continually increase the annual percentage of electricity sold that is generated by small-scale renewable energy facilities through 2030 and removed capacity-based limits.

HB 2375 ✓ The measure requires a person who is developing or repowering a wind energy facility to apply to the Federal Aviation Administration and, if applicable, the Federal Communications Commission, for approval for the installation and use of light-mitigating technology systems. It prohibits a city or county from issuing a permit on a wind energy facility unless the applicant provides proof they are in compliance with the measure.

HB 2566 A ✗ The measure would have broadened allowable proposed community renewable energy grant program–funded projects and consultation requirements that federally recognized Oregon Indian Tribes, public bodies, or consumer-owned utilities could have submitted to the Oregon Department of Energy to include stand-alone energy resilience projects.

HB 2656 ✗ The measure would have prohibited the Oregon Public Utility Commission or a relevant governing body of utilities from setting a maximum amount of cumulative generating capacity of solar net-metering systems that is allowed to be interconnected.

HB 3422 ✗ The measure would have allowed the Energy Facility Siting Council (EFSC) to allow an exception to a one or more statewide planning goals for siting an energy facility if EFSC found that the following standards were met: 1) reasons justify why the state policy embodied in the applicable goal should not apply; and 2) areas that do not require a new exception cannot reasonably accommodate the proposed facility.

Note: This measure is cross-listed in Summary of Legislation Summary Report on Natural Resources.

HB 3540 ✗ The measure would have provided for a single limit on the cost of compliance for an electric utility that is required to comply with a renewable portfolio standard and the statutory clean energy targets.

HB 3863 ✓ The measure requires the Oregon Public Utility Commission to establish an eligibility cap at no less than 10 megawatts for the use of standard avoided costs rates and contracts for the purchase of energy or energy and capacity from qualifying facilities under the Public Utility Regulatory Policies Act of 1978.

HB 3874 ✓ The measure increases the threshold for a developer or a local government's governing body, in consultation with the developer to elect to defer regulatory authority to the Energy Facility Siting Council for obtaining a site certificate, from 50 to 100 megawatts of average wind energy capacity. It also requires counties to require decommissioning plans, including bonding or other security as financial assurance, for wind facilities generating 50 to 100 megawatts, to restore site to a useful, nonhazardous condition.

HB 3963 ✓ The measure extends the deadline for the Department of Land Conservation and Development to draft and submit a report to the Legislative Assembly on the department's activities to develop an Offshore Wind Roadmap and its assessment of enforceable state policies related to offshore wind energy development off the Oregon coast.

Utilities

SB 88 ✗ The measure would have prohibited electric and gas utilities from charging ratepayers for costs related to advertising, political activities, litigation, fines, and certain other expenses. It would have also directed the Public Utility Commission to cap cost recovery related to contested case proceedings.

SB 577 ✗ The measure would have required an electric utility to recover the costs associated with storing waste generated by energy facilities as part of their rates and would have required energy facility developers to disclose the costs of waste storage prior to developing an energy facility.

SB 685 ✓ The measure requires a natural gas utility to provide notice to affected customers and the Public Utility Commission (PUC) if the utility plans to increase the amount of hydrogen that is blended with natural gas and the amount of hydrogen the utility is planning to blend results in the ratio of the volume of hydrogen to natural gas exceeding 2.5 percent. The measure specifies information required in the PUC notice and on utility websites.

SB 688 ✓ The measure authorizes the Public Utility Commission (PUC) to adopt a framework for carrying out performance-based regulation of electric companies. It allocates $974,013 in Other Funds to PUC to support the public investigation, development, and implementation of the performance-based ratemaking framework.

SB 845 ✓ The measure authorizes the Public Utilities Commission to order the sale of an incumbent water utility if it cannot reasonably be expected to provide safe and/or adequate service to customers and establishes conditions for acquisition approval.

SB 1143 A ✗ The measure would have directed the Public Utility Commission to establish a pilot program that allows each natural gas company to develop a utility-scale thermal energy network pilot project to provide heating and cooling services to customers.

HB 2370 ✓ The measure increases the annual fee amount that the Oregon Public Utility Commission may impose on public utilities from 0.45 percent to 0.55 percent of the utility's gross operating revenues derived within Oregon in the preceding calendar year.

HB 3247 ✗ The measure would have prohibited the Oregon Public Utility Commission from authorizing or approving a plan by an electric company to retire an electric power generating facility that provides reliable or dispatchable electricity unless the electric company had acquired a presently available generating resource that could provide reliable or dispatchable electricity in an amount that is equal to or greater than the amount of reliable or dispatchable electricity that is provided by the electric power generating facility that the electric company proposes to retire.

HB 3336 ✓ The measure requires electric companies, when filing a resource or grid investment plan with the Oregon Public Utility Commission (PUC) to conduct an analysis of multiple strategies, including strategies that use grid enhancing technologies and requires electric companies to file a strategic plan for using grid enhancing technologies.

HB 3546 ✓ The measure requires the Oregon Public Utility Commission to create a classification of service for large energy use facilities with their own tariff schedule.

Waste Management

SB 726 ✓ The measure requires the Environmental Quality Commission to establish rules for surface emissions monitoring and mitigation of methane gas emissions from municipal solid waste landfills located in Benton County. The measure requires, as of January 1, 2027, the owner or operator of a municipal solid waste landfill to conduct surface emissions monitoring and report data as specified to the Department of Environmental Quality.

SB 830 ✓ The measure modifies provisions of an existing on-site septic system loan program to allow grants or other financial assistance, in addition to loans, to be provided to eligible applicants and extends eligibility to residential housing providers. The measure specifies that residences used to provide short-term lodging are not eligible.

SB 1067 ✗ The measure would have authorized a city within Marion County to control or direct the disposal, transfer, or material or energy recovery of any solid waste generated within the city and to enter into related contracts.

HB 2168 ✗ The measure would have required the Oregon State University Extension Service to establish a program to provide assistance to households that rely on wells for drinking water or on septic systems for wastewater treatment and appropriated $2.5 million from the General Fund for implementation. The measure would have also appropriated from the General Fund $5 million to the Oregon Water Resources Department for deposit into the Water Well Abandonment, Repair, and Replacement Fund and $5 million to the Oregon Department of Environmental Quality for Oregon's low-interest loan programs for residential or small business on-site septic systems.

Note: This measure is cross-listed in the Summary of Legislation Summary Report on Natural Resources.

HB 3655 ✗ The measure would have required the Oregon Department of Environmental Quality, in consultation with public and private stakeholders, to develop a program for examination and certification of operators of lagoon wastewater treatment systems.

HB 3794 ✓ The measure establishes the 12-member Task Force on Municipal Solid Waste in the Willamette Valley. It requires the Task Force to study and identify solutions for solid waste disposal in the Willamette Valley and review the findings and recommendations of the Regional Sustainable Materials Management Plan Task Force convened by Benton County. The measure requires the Task Force to submit a report no later than December 15, 2026, and sunsets the Task Force and reporting requirements on December 31, 2026.

HB 3910 ✓ The measure modifies criteria that authorizes a water supply district to exercise the powers of a sanitary district. It requires the district to hold a public hearing and obtain written consent from any existing sanitary district or other service provider operating within the area.

HB 3971 ✗ The measure would have defined integrated materials and energy recovery facility and required a county to approve a land use application for an integrated materials and energy recovery facility that is sited on land within the Willamette Valley that is owned by local government, located outside of an urban growth boundary, and zoned for industrial, light industrial, or public facilities use. The measure would have allowed a local government to approve or deny an application without a hearing and would have made the approval or denial not a land use decision and subject only to the writ of review by circuit or county courts.

Note: This measure is cross-listed in Summary of Legislation Summary Report on Housing, Development, and Homelessness.

Water Quality

SB 80 ✗ The measure would have prohibited the Department of Environmental Quality and the Department of Agriculture (ODA) from issuing a National Pollutant Discharge Elimination System permit or a Water Pollution Control Facilities permit to new or expanding large confined animal feeding operations (CAFOs), or to existing CAFOs expanding into a Tier 2 large CAFO as designated by ODA, if located within a groundwater management area.

SB 526 ✗ The measure would have prohibited the sale of new clothes washers, after January 1, 2030, unless the washers were equipped with a built-in or in-line microfiber filtration system.

SB 956 ✗ The measure would have appropriated $10 million to the Oregon Department of Administrative Services, for the purpose of providing a grant to Heard Farms to expand wastewater treatment infrastructure.

SB 1154 ✓ The measure modifies processes for managing ground water quality contamination concerns, including the declaration of ground water quality concern areas and ground water quality management areas and related responsibilities. It requires coordination among state agencies and local entities to address these areas, including monitoring, action planning, and remediation strategies. It authorizes the Governor to appoint agencies to develop an agency assessment, prepare an action plan, implement regulations, and take necessary actions to address ground water quality, while allowing for increased monitoring, reporting, and coordination to protect public health and water resources.

Note: Governor Tina Kotek issued a signing letter – see the signing letter for SB 1154.

SB 1189 ✓ The measure authorizes the construction and installation of a new publicly owned treatment works facility within the North Santiam Basin prior to the issuance of a Department of Environmental Quality (DEQ) water quality permit, provided construction begins between April 15 and June 6, 2025. It requires the facility's owner to have an applicable DEQ permit to operate the treatment works or discharge waste into state waters and that any discharges comply with the permit's terms and conditions. The measure states that the owner is still required to obtain any other required permits. The measure sunsets January 2, 2027.

HB 2169 ✓ The measure requires the Oregon Department of Environmental Quality to establish an Interagency Water Reuse Development Team that includes the Oregon Water Resources Department, the Oregon Health Authority, the Oregon Department of Agriculture, and the Oregon Department of Fish and Wildlife to encourage and expand water reuse in Oregon.

Note: This measure is cross-listed in the Summary of Legislation Summary Report on Natural Resources.

HB 2947 ✓ The measure appropriates $800,000 from the General Fund for distribution to Oregon State University (OSU) and requires the OSU Extension Service and the OSU College of Agricultural Sciences (CAS) in collaboration with the Oregon Department of Environmental Quality and Oregon wastewater service providers to study the occurrence and distribution of perfluoroalkyl and polyfluoroalkyl substances found in biosolids applied to agricultural fields that do not produce crops intended for human consumption. The measure also requires the OSU Extension Service and CAS to submit a progress report and a final report to agriculture-related interim committees of the Legislative Assembly.

Note: This measure is cross listed in the Summary of Legislation Summary Report on Natural Resources.

HB 3314 A ✗ The measure would have appropriated a total of $1.02 million from the General Fund to the Department of Administrative Services to be distributed to the Human Access Project to work in partnership with Oregon State University to mitigate harmful algal blooms in the Ross Island lagoon.

HB 3341 ✗ The measure would have appropriated $5 million from the General Fund to the Oregon Watershed Enhancement Board for deposit in the Community Drinking Water Enhancement and Protection Fund.

HB 3525 ✓ The measure requires landlords to collect and test samples of drinking water for certain contaminants if the dwelling unit is located in a groundwater management area and has one or more exempt wells as a source of drinking water. It requires landlords to provide test results to the tenant and the Oregon Health Authority (OHA), establishes requirements for associated testing laboratories and OHA, and adds certain restrictions to the use of test result data.

HB 3526 ✗ The measure would have modified well testing requirements and disclosure for real estate transactions that include an exempt well.

HB 3814 ✓ The measure authorizes the Environmental Quality Commission and the Department of Environmental Quality (DEQ) to issue a permit for a portion of a water body to be used as a mixing zone for wastewater discharge from seafood processing facilities, if not prohibited by federal law and DEQ determines that the mixing zone does not pose a risk to public health. It specifies that facilities using this permit must implement best management practices, based on a site-specific investigation, to prevent external fecal contamination from entering their wastewater.

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Enrolled
House Bill 2169

Introduced and printed pursuant to House Rule 12.00. Presession filed (at the request of House Interim Committee on Agriculture, Land Use, Natural Resources, and Water for Representatives Ken Helm, Mark Owens)

CHAPTER .....

AN ACT

Relating to water reuse; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) The Legislative Assembly finds and declares that it is the policy of this state to encourage water reuse and to expand opportunities for water reuse in this state in a manner that protects public health and the environment.

(2) The Legislative Assembly finds and declares that it is the policy of this state that agencies of state government, as defined in ORS 174.111, work together to encourage and expand opportunities for water reuse by overcoming institutional and regulatory barriers and funding constraints and improving policies and internal operations related to water reuse.

SECTION 2. (1) The Department of Environmental Quality shall establish and lead an interagency water reuse team. The Water Resources Department, the Oregon Health Authority, the State Department of Agriculture and the State Department of Fish and Wildlife shall participate in the water reuse team. Other agencies of state government, as defined in ORS 174.111, shall participate in the water reuse team as requested by the Department of Environmental Quality. The Department of Environmental Quality may enter into interagency agreements to support the participation of other agencies of state government in the water reuse team.

(2) The Department of Environmental Quality, with support from the water reuse team where appropriate, and in consultation with municipal wastewater utilities, industry stakeholders and other interested parties, shall:

(a) Provide training and education to state agency staff, potential reuse project applicants and the public on the benefits and drivers of water reuse projects and the state policy to encourage and expand opportunities for water reuse in a manner that protects public health and the environment;

(b) Identify and work toward resolution of, with respect to the development of water reuse projects, internal barriers within agencies, information needs within agencies and conflicts between agencies, to better enable state agencies to encourage and support expanded water reuse in this state;

(c) Evaluate environmentally protective approaches that have been successfully employed by other state water reuse programs and that may be appropriate for water reuse in this state;

(d) Identify and propose regulatory changes needed to overcome barriers to water reuse in a manner that protects public health and the environment, including, but not limited to, changes to state agency policies and internal guidance, administrative rules and state statutes;

(e) Work to improve interagency collaboration and resolve conflicts, consistent with each agency's designated role and responsibilities, to encourage water reuse projects in a manner that protects public health and the environment;

(f) Ensure that information and agency contacts regarding water reuse are current and accessible to the public;

(g) Promote consistent and timely responsiveness to requests for information from the public or other government agencies regarding water reuse;

(h) Develop technical assistance guidance, or other resources, for local governments, industries and nongovernmental organizations seeking permitting and the development of water reuse programs; and

(i) Establish goals and performance metrics on water reuse development in this state.

SECTION 3. No later than December 15 of each odd-numbered year, the Department of Environmental Quality, in coordination with the interagency water reuse team established under section 2 of this 2025 Act, shall submit a report in the manner provided by ORS 192.245 to the interim committees of the Legislative Assembly related to the environment. The report must describe the progress made toward achieving the water reuse development goals established under section 2 (2)(i) of this 2025 Act.

SECTION 4. Section 3 of this 2025 Act is repealed on January 2, 2032.

SECTION 5. Notwithstanding any other provision of law, the General Fund appropriation made to the Department of Environmental Quality by section 1 (2), chapter _____, Oregon Laws 2025 (Enrolled Senate Bill 5520), for the biennium beginning July 1, 2025, for water quality, is increased by $295,126 to carry out sections 1 to 3 of this 2025 Act.

SECTION 6. This 2025 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2025 Act takes effect July 1, 2025.

Passed by House June 13, 2025

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Timothy G. Sekerak, Chief Clerk of House

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Julie Fahey, Speaker of House

Passed by Senate June 19, 2025

.....
Rob Wagner, President of Senate

Received by Governor:

.....M.,....., 2025

Approved:

.....M.,....., 2025

.....
Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2025

.....
Tobias Read, Secretary of State

Enrolled
House Bill 3525

Sponsored by Representatives HARTMAN, OWENS, HELM; Representatives GAMBA, GOMBERG, LIVELY, MCDONALD, NATHANSON, WALTERS, Senators MANNING JR, MEEK, PHAM K

CHAPTER .....

AN ACT

Relating to exempt wells that supply ground water for domestic purposes.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2025 Act is added to and made a part of ORS chapter 90.

SECTION 2. (1) As used in this section:

(a) "Contaminants" includes arsenic, coliform bacteria, lead and nitrates.

(b) "Exempt well" means a well used for purposes exempt under ORS 537.545 (1)(b) or (d).

(2) If a dwelling unit has an exempt well or wells as a source of drinking water and is within a ground water management area, as defined in ORS 468B.150, the landlord shall collect and test samples of drinking water for the unit.

(3) A landlord shall ensure that each source for which drinking water is collected under subsection (5)(a) of this section is tested as follows:

(a) The water must be tested for arsenic no later than 30 days after installing the exempt well.

(b) Except as provided in subsection (4) of this section, the drinking water must be tested for each contaminant at least once each year.

(4) Following a test that indicates that the drinking water does not contain contaminants that exceed the maximum contaminant levels in drinking water as most recently published by the United States Environmental Protection Agency, the landlord is not required to test drinking water for contaminants for four years, if the test is:

(a) The first test conducted for the dwelling unit;

(b) The first test conducted after an extension allowed under this subsection; or

(c) The second successful annual test conducted over two consecutive years following a failed test.

(5) A landlord subject to this section:

(a) Shall collect samples of water from a dwelling unit's primary faucet used for drinking and cooking water and may collect supplementary samples of water from a dwelling unit's other faucets of drinking water or from a dwelling unit's wellhead;

(b) May delegate the landlord's duty to collect samples of drinking water under paragraph (a) of this subsection to a tenant if the landlord and the tenant agree to the delegation in writing and the agreement is made in good faith and for adequate consideration; and

(c) Shall, when submitting samples of drinking water collected under this section to a laboratory for testing:

(A) Inform the laboratory that the testing is required pursuant to this section; and

(B) Request that the laboratory report the results of the test to the Oregon Health Authority.

(6) A laboratory conducting a test pursuant to this section:

(a) Must be accredited under the environmental laboratory accreditation program established under ORS 438.615;

(b) Shall electronically report the results of the test to the authority in a form and manner prescribed by the authority, which may include reporting of the results through electronic mail using a spreadsheet; and

(c) Shall send the full laboratory report to the landlord, and to the tenant if requested by the landlord, in a form showing the absence or presence of coliform bacteria and the concentration of other contaminants in milligrams per liter or parts per million.

(7) Each time the landlord has drinking water tested for a contaminant under this section, the landlord shall provide the results of the test to the tenant within 30 days after receiving the results in a form:

(a) As provided to the landlord under subsection (6)(c) of this section; or

(b) Showing only the tests performed and whether the dwelling unit passed or failed each test and notifying the tenant that the tenant may obtain or inspect the full laboratory report upon request. This form must be substantially in the format adopted by the authority under subsection (10)(a) of this section.

(8) Prior to entering into a rental agreement for a dwelling unit for which a landlord must collect and test drinking water under this section, the landlord must provide to the tenant written notice providing:

(a) That the dwelling unit has an exempt well as a source of drinking water and is within a ground water management area, as defined in ORS 468B.150;

(b) The dates and the results of the most recent test for each contaminant, in a form described in subsection (7) of this section, or a statement that the contaminant has not yet been tested for; and

(c) The latest date by which the next test for each contaminant must be conducted.

(9) If the results of a test conducted under this section indicate that the drinking water collected under this section contains any amount of coliform bacteria or an amount of other contaminants that exceeds the maximum contaminant levels in drinking water as most recently published by the United States Environmental Protection Agency, the landlord shall, as soon as practicable:

(a) Provide the results of the test to the tenant as required under subsection (7) of this section;

(b) Provide the tenant with the handout adopted by the authority under subsection (10)(b) of this section; and

(c) Thereafter retest the exempt well according to a schedule set by rule by the authority, notwithstanding subsections (3) and (4) of this section.

(10) The authority shall adopt rules to implement this section, including rules specifying the content of:

(a) A form that a landlord subject to this section must use to provide information described in subsection (7)(b) of this section. The form must include:

(A) A section that must be filled out by the landlord to indicate, in plain language, whether the dwelling unit passed or failed each test; and

(B) A section that may be filled out by the landlord to indicate the absence or presence in the drinking water of coliform bacteria and the concentration of other contaminants in milligrams per liter or parts per million.

(b) A handout providing information on testing drinking water for contaminants and the impact that drinking water that contains contaminants can have on a person's health.

(11) This section does not apply to a dwelling unit that is part of a premises subject to regulation under ORS 448.119 to 448.285, 454.235 and 454.255, as described in ORS 448.119.

(12) Information received by the authority under this section may only be used as provided in this section and for the benefit of the landlord, tenant or applicant of the dwelling unit. Any records collected or created by the authority under this section must note that the data has not been controlled for quality and may not be used for determining location-specific ground water quality.

SECTION 2a. If Senate Bill 1154 becomes law, section 2 of this 2025 Act is amended to read:

Sec. 2. (1) As used in this section:

(a) "Contaminants" includes arsenic, coliform bacteria, lead and nitrates.

(b) "Exempt well" means a well used for purposes exempt under ORS 537.545 (1)(b) or (d).

(2) If a dwelling unit has an exempt well or wells as a source of drinking water and is within a ground water **quality** management area, as defined in ORS 468B.150, the landlord shall collect and test samples of drinking water for the unit.

(3) A landlord shall ensure that each source for which drinking water is collected under subsection (5)(a) of this section is tested as follows:

(a) The water must be tested for arsenic no later than 30 days after installing the exempt well.

(b) Except as provided in subsection (4) of this section, the drinking water must be tested for each contaminant at least once each year.

(4) Following a test that indicates that the drinking water does not contain contaminants that exceed the maximum contaminant levels in drinking water as most recently published by the United States Environmental Protection Agency, the landlord is not required to test drinking water for contaminants for four years, if the test is:

(a) The first test conducted for the dwelling unit;

(b) The first test conducted after an extension allowed under this subsection; or

(c) The second successful annual test conducted over two consecutive years following a failed test.

(5) A landlord subject to this section:

(a) Shall collect samples of water from a dwelling unit's primary faucet used for drinking and cooking water and may collect supplementary samples of water from a dwelling unit's other faucets of drinking water or from a dwelling unit's wellhead;

(b) May delegate the landlord's duty to collect samples of drinking water under paragraph (a) of this subsection to a tenant if the landlord and the tenant agree to the delegation in writing and the agreement is made in good faith and for adequate consideration; and

(c) Shall, when submitting samples of drinking water collected under this section to a laboratory for testing:

(A) Inform the laboratory that the testing is required pursuant to this section; and

(B) Request that the laboratory report the results of the test to the Oregon Health Authority.

(6) A laboratory conducting a test pursuant to this section:

(a) Must be accredited under the environmental laboratory accreditation program established under ORS 438.615;

(b) Shall electronically report the results of the test to the authority in a form and manner prescribed by the authority, which may include reporting of the results through electronic mail using a spreadsheet; and

(c) Shall send the full laboratory report to the landlord, and to the tenant if requested by the landlord, in a form showing the absence or presence of coliform bacteria and the concentration of other contaminants in milligrams per liter or parts per million.

(7) Each time the landlord has drinking water tested for a contaminant under this section, the landlord shall provide the results of the test to the tenant within 30 days after receiving the results in a form:

(a) As provided to the landlord under subsection (6)(c) of this section; or

(b) Showing only the tests performed and whether the dwelling unit passed or failed each test and notifying the tenant that the tenant may obtain or inspect the full laboratory report upon re-

quest. This form must be substantially in the format adopted by the authority under subsection (10)(a) of this section.

(8) Prior to entering into a rental agreement for a dwelling unit for which a landlord must collect and test drinking water under this section, the landlord must provide to the tenant written notice providing:

(a) That the dwelling unit has an exempt well as a source of drinking water and is within a ground water **quality** management area, as defined in ORS 468B.150;

(b) The dates and the results of the most recent test for each contaminant, in a form described in subsection (7) of this section, or a statement that the contaminant has not yet been tested for; and

(c) The latest date by which the next test for each contaminant must be conducted.

(9) If the results of a test conducted under this section indicate that the drinking water collected under this section contains any amount of coliform bacteria or an amount of other contaminants that exceeds the maximum contaminant levels in drinking water as most recently published by the United States Environmental Protection Agency, the landlord shall, as soon as practicable:

(a) Provide the results of the test to the tenant as required under subsection (7) of this section;

(b) Provide the tenant with the handout adopted by the authority under subsection (10)(b) of this section; and

(c) Thereafter retest the exempt well according to a schedule set by rule by the authority, notwithstanding subsections (3) and (4) of this section.

(10) The authority shall adopt rules to implement this section, including rules specifying the content of:

(a) A form that a landlord subject to this section must use to provide information described in subsection (7)(b) of this section. The form must include:

(A) A section that must be filled out by the landlord to indicate, in plain language, whether the dwelling unit passed or failed each test; and

(B) A section that may be filled out by the landlord to indicate the absence or presence in the drinking water of coliform bacteria and the concentration of other contaminants in milligrams per liter or parts per million.

(b) A handout providing information on testing drinking water for contaminants and the impact that drinking water that contains contaminants can have on a person's health.

(11) This section does not apply to a dwelling unit that is part of a premises subject to regulation under ORS 448.119 to 448.285, 454.235 and 454.255, as described in ORS 448.119.

(12) Information received by the authority under this section may only be used as provided in this section and for the benefit of the landlord, tenant or applicant of the dwelling unit. Any records collected or created by the authority under this section must note that the data has not been controlled for quality and may not be used for determining location-specific ground water quality.

SECTION 3. Before June 1, 2027, and notwithstanding section 2 (3)(b) of this 2025 Act, for each dwelling unit that is subject to section 2 (2) of this 2025 Act on the operative date specified in section 4 of this 2025 Act, the landlord shall sample and test for all contaminants as described in section 2 (5) of this 2025 Act.

SECTION 4. (1) Section 2 of this 2025 Act becomes operative on January 1, 2027.

(2) The Oregon Health Authority may take any action before the operative date specified in subsection (1) of this section that is necessary for the authority to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the authority by section 2 of this 2025 Act.

Passed by House June 20, 2025

Repassed by House June 27, 2025

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Timothy G. Sekerak, Chief Clerk of House

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Julie Fahey, Speaker of House

Passed by Senate June 26, 2025

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Rob Wagner, President of Senate

Received by Governor:

.....M.,....., 2025

Approved:

.....M.,....., 2025

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2025

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Tobias Read, Secretary of State

Legislative Summary Report

Natural Resources

This Legislative Summary Report highlights Natural Resources policy measures that received a public hearing in a policy committee during the **2025** regular legislative session. The report is organized by subtopics and includes the measure number; the measure status: enacted [✓] or not enacted [✗]; and a brief description of the measure.

Natural Resources Subtopics:

- Agriculture
- Fish & Wildlife
- Forests
- Geology & Mining Industries
- Invasive Species
- Land Use
- Natural Resources Planning & Operations
- Outdoor Recreation
- State & Local Lands
- Water Quantity
- Wildfire

Agriculture

SB 208	✗	The measure would have directed the Oregon Department of Agriculture (ODA), in partnership with Oregon State University (OSU), to study the potential for reducing methane emissions by developing livestock feed through commercial seaweed production.
SB 360	✓	The measure exempts employees using a battery-powered device to apply pesticides from certain pesticide licensing requirements and requires the Department of Agriculture to develop standards and training materials to safely apply pesticides using machine-powered devices.
SB 733	✓	The measure revises the definition of the term 'potentially dangerous dog' to include a dog that injures or kills livestock, defined as ratites, horses, mules, hinnies, donkeys, cattle, llamas, alpacas, sheep, goats, swine, domesticated fowl, and any fur-bearing animal bred and maintained commercially or otherwise within pens, cages, or hutches.

SB 747 ✗ The measure would have required the Department of Agriculture (ODA) to establish a reporting system for fertilizer application to irrigated agricultural land. It would have required owners of at least 200 acres of irrigated land to submit annual reports to ODA and would have authorized ODA to use the data to prevent overapplication. It would have authorized the Department of Environmental Quality to access annual report information and required ODA to report annually on fertilizer application and related prevention and education efforts.

SB 809 ✓ The measure includes poultry in in the State Meat Inspection Program and requires the Oregon Department of Agriculture to impose inspection requirements that are at least equal to federal requirements under the Poultry Products Inspection Act.

SB 833 ✓ The measure modifies labeling requirements for certain soil-enhancing products and changes reporting requirements for filing a semiannual tonnage report with the Oregon Department of Agriculture.

SB 887 A ✗ The measure would have directed the Director of the Department of Agriculture (ODA) to hire an Organic Policy Special Assistant to monitor national organic trends and regulations, support state and federal advocacy, promote organic trade, address data gaps and import substitution, strengthen infrastructure for organic processing, and integrate organic practices into ODA programs.

SB 976 ✓ The measure would have authorized trained individuals without a veterinary medicine license to perform cattle pregnancy checks, authorized the Oregon Department of Agriculture to set conditions for practice, and created a Task Force on Equine Dentistry.

Note: Vetoed by Governor Tina Kotek – see the veto letter for SB 976.

SB 986 ✗ The measure would have appropriated $1,200,000 to the Department of Agriculture for the brand inspection program.

SB 1019 ✓ The measure revises Oregon's livestock brand registration and inspection program.

HB 2063 A ✗ The measure would have established the Agrivoltaics Task Force staffed by the Oregon Department of Land Conservation and Development.

Note: This measure is cross-listed in the Summary of Legislation Summary Report on Energy and Environment.

HB 2164 ✗ The measure would have appropriated money from the General Fund to the Oregon Department of Agriculture (ODA) to hire up to two full-time staff members for Oregon's inspection program for the processing and sale of meat products. It would have required ODA to ensure that new staff members prioritize slaughter-specific facilities, facilities in rural and underserved communities, and new state-sponsored facilities in an equitable manner across Oregon.

HB 2166 ✗ The measure would have directed the Oregon Department of Agriculture to submit a report on the economic competitiveness of Oregon's agricultural sector to an agriculture-related interim committee of the Legislative Assembly.

HB 2408 A ✗ The measure would have appropriated a total of $23.5 million from the General Fund to the Higher Education Coordinating Commission to be allocated to Oregon State University (OSU) for the agricultural experiment station and its branch stations, the OSU Extension Service, and the Forest Research Laboratory.

HB 2679 ✗ The measure would have required the Oregon Department of Agriculture to classify as a restricted-use pesticide any pesticide that contains a chemical belonging to the neonicotinoid class of chemicals. It would have prohibited people from applying a restricted neonicotinoid pesticide to a residential landscape, with some exceptions.

HB 2730 A ✗ The measure would have established a beginning farmer and rancher incentive program in the Oregon Department of Agriculture.

HB 2805 ✓ The measure removes the current cap on license fee increases charged by the Oregon Department of Agriculture (ODA) to food establishments and instead authorizes ODA to annually increase license fees for food establishments by up to three percent.

HB 2806 ✓ The measure authorizes the Oregon Department of Agriculture to increase license fees charged for a commercial weighing or measuring instrument by up to seven percent on July 1 in each year in 2026 and 2027, and up to three percent annually thereafter, up to a newly established limit.

HB 2809 ✓ The measure increases the upper limit on pesticide registration fees charged by the Oregon Department of Agriculture (ODA) from $400 to $550 and authorizes ODA to take any action necessary for implementation before January 1, 2026.

HB 2947 ✓ The measure appropriates $800,000 from the General Fund for distribution to Oregon State University (OSU) and requires the OSU Extension Service and the OSU College of Agricultural Sciences (CAS) in collaboration with the Oregon Department of Environmental Quality and Oregon wastewater service providers to study the occurrence and distribution of perfluoroalkyl and polyfluoroalkyl substances found in biosolids applied to agricultural fields that do not produce crops intended for human consumption. The measure also requires the OSU Extension Service and CAS to submit a progress report and a final report to agriculture-related interim committees of the Legislative Assembly.

Note: This measure is cross-listed in the Summary of Legislation Summary Report on Energy and Environment.

HB 3010 A ✗ The measure would have appropriated funding to complete the development of the Spanish language version of the online precertification training program offered by the Oregon State University (OSU) Pesticide Safety Education Program. It would have appropriated funding for OSU to, in cooperation with the Oregon Department of Agriculture, develop and implement a statewide program of culturally appropriate Spanish language pesticide education.

HB 3131 ✗ The measure would have appropriated $17.3 million from the General Fund to the Oregon Watershed Enhancement Board (OWEB) for deposit in the Oregon Agricultural Heritage Fund (OAHF) and established OWEB's maximum limit for expense payment from the OAHF as $17.3 million.

HB 3141 ✓ The measure designates the third Tuesday of March of each year as Oregon Farmer and Rancher Day.

HB 3193 A ✗ The measure would have appropriated $10,000,000 to the Oregon Health Authority to establish a permanent fund to provide financial support for farmworkers who lose income or wages due to a qualifying disaster.

Note: This measure is cross-listed in the Summary of Legislation Summary Report on Labor and Employment.

HB 3487 ✓ The measure allows counties receiving grasshopper suppression funds from the Department of Agriculture to use up to eight percent of those funds for administrative expenses.

HB 3871 A ✗ The measure would have established the Animal Welfare Trust to provide grants to entities that provide veterinary support services in low-income households or underserved communities.

Fish & Wildlife

SB 221	✓	The measure directs the Oregon Department of Fish and Wildlife to encourage one or more entities participating in the salmon and trout enhancement program to establish and fund projects under a fall Chinook fish incubation nursery program. It sunsets the nursery program and associated reporting requirements on January 2, 2040.
SB 222 A	✗	The measure would have appropriated $1 million to the Oregon Department of Fish and Wildlife (ODFW) to establish a program to monitor and support programs to eradicate smallmouth bass within rivers other than the Columbia River that drain into the Pacific Ocean.
SB 354	✗	The measure would have directed the Oregon Department of Fish and Wildlife (ODFW) to include in a program for the voluntary relocation of beavers, the voluntary relocation of beavers from western Oregon to areas in central and eastern Oregon in which beavers are native, to provide watershed enhancements.
SB 511	✗	The measure would have directed the Department of State Lands (DSL) to collaborate with the Department of Fish and Wildlife to develop a Salmon Credit Pilot Program that would encourage and create a financial incentive for landowners to engage in voluntary salmonoid habitat restoration projects within the Coquille or Coos watershed basins. It would have established a Salmon Credit Trust Fund, provided reimbursement options for credit purchasers, and required federal collaboration for necessary permits, with a six-year limit on project approval after the establishment of the federal permit.
SB 512 A	✗	The measure would have appropriated $1.4 million dollars from the General Fund to the State Fish and Wildlife Commission for the Department of Fish and Wildlife (ODFW) to study the effects of water temperature and predation by nonnative fish on hatchery releases of coho, winter steelhead, and chinook salmon from the Rock Creek Hatchery, and to identify alternative release strategies to reduce predation.
SB 769	✗	The measure would have allowed a county to be exempt from the current statute banning the use of dogs to hunt cougars if approved by county voters. It would have required an exempt county to notify the Department of Fish and Wildlife if the county had been determined to be exempt.
SB 777	✓	The measure modifies the Wolf Depredation Compensation Program by specifying that compensation is provided to individuals who suffer probable or confirmed losses or injury of livestock or working dogs, capping compensation at $25,000 per animal, and authorizing counties to establish compensation rates capped at specified multipliers applied to fair market value.

SB 812	✓	The measure makes provisions related to the issuance of landowner preference tags for hunting deer, elk, or antelope on one's property permanent.
SB 985	✗	The measure would have appropriated $2,000,000 of General Fund moneys to the Wolf Management Compensation and Proactive Trust Fund.
SB 1131	✗	The measure would have directed the Department of Administrative Services (DAS) to provide a grant of $1,500,000 to the Chintimini Wildlife Center for building or upgrading wildlife enclosures, accessible pathways, and related facilities to enhance education, outreach, and visitor experiences. It also would have made available an additional $500,000 if the center secured matching funds of the same amount from other sources. A total of $2,000,000 from the General Fund would have been appropriated to DAS.
HB 2167 A	✗	The measure would have appropriated $3.5 million from the General Fund to the Higher Education Coordinating Commission for distribution to Oregon State University's Veterinary Diagnostic Laboratory to support faculty and personnel working on chronic wasting disease and zoonotic diseases.
HB 2342	✓	The measure incrementally raises fees for specific wildlife licenses, tags, and permits, along with certain fishing and vessel permit fees over a six-year period. It establishes the Marine Fisheries Enhancement Fund Subaccount and authorizes the Oregon Department of Fish and Wildlife to impose ocean endorsement fees, which will be deposited into the Subaccount.
HB 2343	✓	The measure extends the sunset on the Columbia River Fisheries Enhancement Fund and extends authorization for the Fish and Wildlife Commission to collect a recreational fishing endorsement fee to fish for salmon, steelhead, and sturgeon in the Columbia Basin until 2032.
HB 2345	✓	The measure renames the Oregon Hatchery Research Center Fund the Oregon Hatchery Monitoring and Maintenance Fund. It modifies authorized expenditures of the Fund, removes certain reporting requirements, and extends the current sunset on the Fund from January 2, 2027, to January 2, 2039.
HB 2403	✗	The measure would have allowed the establishment of one or more predator damage control districts within a county to have funded county services to prevent, reduce, and mitigate property damage from predatory animals.
HB 2557	✗	The measure would have prohibited a person from raising or selling octopus for the purpose of human consumption while specifically exempting octopus raised for the purpose of facilitating the keeping of octopus as pets, or laboratory research. Violations would have been subject to civil penalties as set by the Oregon Fish and Wildlife Commission, up to $6,500.

HB 2773 A	✗	The measure would have directed the Oregon Department of Fish and Wildlife to use dedicated lottery bond funds to establish a grant program for building and improving public facilities that improve fishing access and that are located inside an urban growth boundary.
HB 2965	✗	The measure would have established requirements for aquaculture facilities, and it would have created the Aquatic Animals Fund.
HB 2977 A	✗	The measure would have increased the state transient lodging tax from 1.5 percent to 2.75 percent. It would have specified the net revenue from one percentage point of the increase have been distributed to the Recovering Wildlife Fund Subaccount, and the net revenue from 0.25 percentage point increase to have been distributed to the Department of State Police, the Oregon Department of Agriculture, the Oregon Department of Fish and Wildlife, and the Department of Justice.
HB 2978	✓	The measure modifies the Department of Transportation's (ODOT) Wildlife-Vehicle Collision Program. It directs ODOT and the Department of Fish and Wildlife (ODFW) to establish an advisory group and modifies ODOT's reporting requirements.
HB 2980	✗	The measure would have directed the Oregon Department of Fish and Wildlife (ODFW) to establish the Wildlife Stewardship Program with certain duties. It would have required the program to administer a grant program to support licensed wildlife rehabilitation centers that hold and treat injured and orphaned wildlife, and it would have appropriated $200,000 to ODFW for the grant program.
HB 2984	✗	The measure would have appropriated $1.5 million from the General Fund to the Oregon Department of Fish and Wildlife for deposit into the Oregon Conservation and Recreation Fund to carry out activities related to water that serve to protect, maintain, or enhance fish and wildlife resources in Oregon.
HB 3143	✗	The measure would have established the Landowners Living with Beavers Grant Program Subaccount in the Oregon Conservation and Recreation Fund and appropriated $1.5 million for deposit into the subaccount.
HB 3596	✗	The measure would have directed the Oregon Department of Fish and Wildlife to study mule deer in the Steens Mountain herd range area.
HB 3657 A	✗	The measure would have appropriated $600,000 from the General Fund to the Oregon Department of Agriculture (ODA) and directed ODA to establish and implement a wildlife damage prevention and compensation pilot program.
HB 3856	✗	The measure would have established a new personal income tax of 0.13 percent and transferred tax revenue to the State Wildlife Fund for specified purposes.

HB 3932 ✓ The measure prohibits, with specified exceptions, the taking of beavers in designated areas and requires the Oregon Department of Fish and Wildlife (ODFW) to publish a map identifying these areas.

Note: Governor Tina Kotek issued a signing letter – see the signing letter for HB 3932.

Forests

SB 147 ✓ The measure renames the Elliott State Forest to the Elliott State Research Forest and transfers management responsibilities from the State Board of Forestry to the State Land Board.

SB 339 A ✗ The measure would have appropriated $3.1 million to the Oregon Department of Forestry to carry out an integrated pest management program to combat the plant disease Sudden Oak Death.

SB 355 ✗ The measure would have appropriated $1 million General Fund moneys to the Oregon Department of Forestry for a pilot grant program that promotes air curtain use for biochar production.

Note: This measure is cross-listed in the Summary of Legislation Summary Report on Energy and Environment.

SB 494 ✓ The measure directs the Department of Administrative Services (DAS) to study classification and compensation of forestry and wildland fire positions in state government, addressing wage and management compression, identifying deficiencies in the span of control of the Department of State Forestry, and providing recommendations.

SB 1061 ✓ The measure requires the Director of the Oregon State University Extension Service to establish a lumber grading training pilot program and directs the Oregon Department of Consumer and Business services to establish a process by which lumber graded under the pilot program may be obtained and used.

HB 3103 A ✗ The measure would have directed the State Forester under the authority and direction of the Oregon Board of Forestry to adopt by rule a sustainable timber harvest level (STHL) and to the degree consistent with other legal requirements, manage available state lands to produce the STHL.

HB 3135 A ✗ The measure would have appropriated money from the General Fund to the Oregon Department of Administrative Services for the grant program for treatment of western juniper, program administration, and associated monitoring.

HB 3846 ✗ The measure would have authorized the Oregon Department of Forestry to enter into a lease agreement with the United States Forest Service or other relevant federal agency to assume management authority and responsibility for the Ochoco National Forest for no less than 15 years.

Geology & Mining Industries

SB 836 ✓ The measure increases various fees charged by the Department of Geology and Mineral Industries (DOGAMI) for the Mineral Land Regulation and Reclamation Program.

Invasive Species

HB 2170 ✓ The measure authorizes the Department of Fish and Wildlife, the State Marine Board, or the Department of Agriculture to form agreements with Tribal governments, local governments, or local service districts to allow those partners to assist in operating aquatic invasive species check stations, inspection of recreational or commercial watercraft, and decontamination of any watercraft found with aquatic invasive species. It requires agreements formed to specify functions and activities of the partner and include provisions for monitoring and performance review. The measure requires that check stations operated under these agreements must comply with current check station laws.

HB 2981 A ✗ The measure would have appropriated moneys to various entities for work related to aquatic invasive species.

HB 2982 ✓ The measure increases boating fees for the issuance and renewal of an aquatic invasive species permit, the biennial fee for the original or renewal certificate of number or registration, and fees for waterway access permits. The measure removes the provision that limits waterway access permit fees for boats over 10 feet in length. Instead, it establishes that the fee will be charged to any nonmotorized boats and sailboats, regardless of size, with the exception of nonmotorized boats under 10 feet in length that are used for whitewater recreation activities on designated waters.

Land Use

SB 77	✗	The measure would have added provisions for allowable home occupations and parking conditions on exclusive farm use, forest use, or mixed farm and forest use land.
SB 78	✗	The measure would have added size limitations to replacement dwellings located on lands zoned for farm or forest use, establishing a maximum size of no more than 2,500 square feet or not more than 10 percent of the floor area being replaced.
SB 788	✗	The measure would have added weddings and event venues as authorized uses on lands zoned for farm use east of the summit of the Cascade Range in counties with a population fewer than 90,000 if the events were conducted outdoors or in farm buildings.
SB 817	✓	The measure increases Land Use Board of Appeals fees for motion to intervene and notice of intent to appeal filings.
HB 2135	✗	The measure would have modified the applicability of current restrictions on local governments to, except as required by state building code, (1) prohibit the installation or use of battery-charged fences, (2) impose certain installation or operational requirements; or (3) require additional permits for certain nonresidential alarm systems and battery-charged fences to apply to properties zoned to allow for commercial or industrial use and not used for residential use.
HB 2256	✓	The measure specifies that a government entity, charitable organization, or federally recognized Indian Tribe that purchases unlawfully established land is not entitled to damages or equitable relief against the seller if the deed indicates that the purchaser uses the property for conservation purposes.
HB 2950 A	✗	The measure would have directed the Department of Land Conservation and Development to appoint an advisory committee to recommend draft amendments to the Statewide Land Use Planning Goal on Citizen Involvement (Goal 1) and would have required the Land Conservation and Development Commission (LCDC) to then amend the goal by rule. The department, with the assistance of the advisory committee, would have been directed to study and develop recommendations for the public participation processes used by LCDC to amend, implement, and review land use goals.

HB 3013 ✗ The measure would have established that if a permit or zone change is based on a comprehensive plan or land use regulation that fails to gain acknowledgement, the change is void and without further effect and any improvements or use based on the change must be halted and removed. A person who participated in an appeal of, or submitted testimony in opposition to, the unacknowledged change would have been allowed to bring a claim in circuit court seeking specified actions whether they appealed or sought a stay of the change or if the approval of the change was a land use decision.

HB 3346 A ✗ The measure would have required the Department of Land Conservation and Development, in consultation with the Departments of Revenue, Energy, and Water Resources, to study and submit a report to an interim legislative committee on issues regarding small-scale renewable energy facilities sited in areas classified as critical groundwater areas east of the Cascade Mountains.

HB 3422 ✗ The measure would have allowed the Energy Facility Siting Council (EFSC) to allow an exception to a one or more statewide planning goals for siting an energy facility if EFSC found that the following standards were met: 1) reasons justify why the state policy embodied in the applicable goal should not apply; and 2) areas that do not require a new exception cannot reasonably accommodate the proposed facility.

Note: This measure is cross-listed in the Summary of Legislation Summary Report on Energy and Environment.

HB 3587 A ✗ The measure would have directed the Oregon Department of Land Conservation and Development to coordinate development and implementation of site management plans for rocky habitat management sites as designated in the Territorial Sea Plan (TSP). The measure would have appropriated funding and directed the Oregon Ocean Science Trust to establish and execute a competitive grant program to implement nonregulatory management programs for rocky habitat management sites in the TSP.

HB 3858 A ✗ The measure would have clarified that the remainder parcel after dividing off a portion of land from a lawfully established unit of land is still considered a lawfully established unit of land even if the remainder is not separately described in a deed or land sales contract, provided (1) the subtracted unit of land was created in compliance with all applicable planning, zoning, and subdivision or partition ordinance and regulations, or (2) the subtracted unit of land was created by deed or land sales contract, if there were no applicable planning, zoning, or subdivision or partitions ordinances or regulations.

Natural Resources Planning & Operations

SB 504	✓	The measure directs the Land Conservation and Development Commission to adopt rules to guide the use of nonstructural, nature-based solutions used for shoreline stabilization in estuaries, coastal shorelands, and the ocean shore.
SB 565 A	✗	The measure would have directed the State Parks and Recreation Department (OPRD) to explore sustainable funding options to address revenue shortfalls in state park operations. It also would have granted control of State Capitol State Park to OPRD, limiting the Department of Administrative Services' authority to the Capitol Area.
SB 579	✗	The measure would have appropriated $950,000 from the General Fund to the State Fire Marshal for distribution to Central Douglas Fire and Rescue to add living quarters to the Umpqua fire station.
SB 713	✗	The measure would have authorized the State Treasurer, at the request of the Department of Administrative Services, to issue $15 million in lottery bonds by June 30, 2026, to fund levee projects. The net proceeds would have been required to be transferred to the Oregon Business Development Department for deposit into the Levee Project Grant Fund to provide grants for inspecting, certifying, and repairing levees.
SB 714	✗	The measure would have authorized the State Treasurer to issue bonds in an amount that would produce not more than $20 million for the 2025–2027 biennium and not more than $25 million for the 2027–2029 biennium to provide funds to the Columbia Corridor Flood Safety Fund to support grants that would cover project expenses.
SB 793	✓	The measure establishes authority for the Department of State Lands to adopt by rule application and renewal fees, as well as compensation rates, for easements on state land within the territorial sea to construct, maintain and decommission water, gas, electric, communication or telecommunication service lines, fixtures, or other facilities.
SB 1076 A	✗	The measure would have authorized the Department of Agriculture (ODA) to charge fees for animal rescue entity licenses and to establish an animal breeder licensing program. It would have authorized ODA to investigate animal breeders to ensure compliance and would have appropriated General Fund moneys to ODA for the animal breeder licensing program.
HB 2979	✗	The measure would have appropriated a total of $8 million from the General Fund to the Oregon Department of Administrative Services for distribution to the Oregon Community Food System Network and the Oregon Farmers Market Association.

HB 3486 A ✗ The measure would have required at least one member of the Research Vessel Council to be a trained scientist from the University of Oregon with at least five years of marine research experience. It would have appropriated $306,000 from the General Fund to the Higher Education Coordinating Commission (HECC) for distribution to the Oceangoing Research Vessel Program to be used for 30 days of research per year on two research vessels operated by the University of Oregon Institute of Marine Biology and $110,000 from the General Fund to HECC to be expended for the purchase of a dive vessel and for the construction of a dock for a dive vessel and a dive platform.

HB 3786 A ✗ The measure would have appropriated a total of $3 million from the General Fund for deposit in the Oregon Ocean Science Fund to provide competitive grants for specified purposes.

Outdoor Recreation

SB 301 ✗ The measure would have required the State Marine Board to have studied issues related to the safe operation of boats and to submit a report to the Legislative Assembly.

Note: This measure was introduced as a placeholder.

SB 929 A ✗ The measure would have appropriated $100,000 to the State Parks and Recreation Department and designated $1,000,000 of lottery revenues for the purpose of continuing to develop the Oregon Coast Trail.

HB 2163 ✓ The measure expands the Department of Fish and Wildlife's consideration of people with disabilities to include individuals with intellectual or developmental disabilities that impair their ability to hold or operate standard angling or shellfish harvesting equipment such as rods, reels, clam guns, shovels, and similar tools.

HB 2558 ✓ The measure modifies the definition of "charter guide" and "crew member" in the context of outfitter and guide laws, modifies the current registration fee structure to increase fees for resident outfitters and guides, and creates a new registration fee for crew members. The modified registration fee structure and new registration fees are to be applied uniformly, regardless of state of residence. The measure also increases civil penalties for boating outfitters and guides that fail to comply with registration and safety requirements.

HB 2925 ✓ The measure modifies permitting procedures for ocean shore permitting and emergency permits for certain ocean shore alterations. The measure further authorizes Oregon Parks and Recreation Department to, through rule, establish a general authorization permit for ocean shore improvements under certain conditions.

State & Local Lands

SB 74	✓	The measure modifies the process used by the Department of State Lands to determine a waterway's navigability.
SB 165	✓	The measure clarifies ownership of historically filled lands, which were created by filling in publicly owned waterways prior to 1963.
SB 795	✓	The measure modifies laws regarding the cleanup of abandoned or derelict vessels.

Water Quantity

SB 427	✗	The measure would have required that proposed water right transfers not diminish streamflow, applying to applications filed and changes proposed on or after January 1, 2026.
SB 761	✓	The measure permits the Oregon Water Resources Department to, until January 2, 2030, approve an application by eligible districts in the Walla Walla basin to lease all or a portion of an existing water right for temporary conversion to an in-stream water right under certain conditions.
SB 1153	✗	The measure would have required that a water right transfer not result in a loss of in-stream habitat for sensitive, threatened, or endangered aquatic species in certain stream reaches nor contribute to water quality impairment in certain streams. The measure would also have allowed federally recognized Tribes to elect to review water right transfer applications in specific counties and provided information on the applications to the Water Resources Department.
HB 2165	✗	The measure would have appropriated $830,415 from the General Fund to the Oregon Water Resources Department for costs related to well construction and compliance.

HB 2168 ✗ The measure would have required the Oregon State University Extension Service to establish a program to provide assistance to households that rely on wells for drinking water or on septic systems for wastewater treatment and appropriated $2.5 million from the General Fund for implementation. The measure would have also appropriated from the General Fund $5 million to the Oregon Water Resources Department for deposit into the Water Well Abandonment, Repair, and Replacement Fund and $5 million to the Oregon Department of Environmental Quality for Oregon's low-interest loan programs for residential or small business on-site septic systems.

Note: This measure is cross-listed in the Summary of Legislation Summary Report on Energy and Environment.

HB 2169 ✓ The measure requires the Oregon Department of Environmental Quality to establish an Interagency Water Reuse Development Team that includes the Oregon Water Resources Department, the Oregon Health Authority, the Oregon Department of Agriculture, and the Oregon Department of Fish and Wildlife to encourage and expand water reuse in Oregon.

Note: This measure is cross-listed in the Summary of Legislation Summary Report on Energy and Environment.

HB 2801 ✓ The measure extends the period during which the Water Resources Department (OWRD) may approve leases or temporary transfers of a determined water right claim in the Upper Klamath Basin until the Klamath County Circuit Court issues a water rights decree that either affirms or modifies the Findings of Fact and Order of Determination issued as part of the Klamath River Basin Adjudication. It requires the Director of OWRD to notify the standing or interim committees of the Legislative Assembly related to natural resources, and Legislative Counsel, of the Court's final determination, no later than 30 days after the court issues its decree.

HB 2803 ✓ The measure increases certain fees charged by the Oregon Department of Water Resources for water right transactions and dam safety.

Note: Governor Tina Kotek issued a signing letter – see the signing letter for HB 2803.

HB 2808 ✓ The measure increases the fees charged by the Oregon Department of Water Resources for obtaining a start card for new well construction; acquiring, renewing, or reinstating a water well constructor's license; securing a permit for well construction, alteration, abandonment, or conversion without a licensed well constructor; and for certain continuing education courses. The measure applies retroactively for fees charged for services provided on or after July 1, 2025.

HB 2813 A ✗ The measure would have established the Groundwater Conservation Reserve Enhancement Program Match Fund and would have directed all money from the Fund to be continuously appropriated to the Oregon Water Resources Department (OWRD) to provide the state contribution to water users who cancel groundwater rights as part of enrollment in the federal Conservation Reserve Enhancement Program in areas in which OWRD is not allowing new groundwater rights for irrigation. It further would have appropriated $500,000 from the General Fund to OWRD for deposit in the Fund to provide the state contribution for water users who cancel groundwater rights as part of enrollment in the Harney Valley Groundwater Conservation Reserve Enhancement Program.

HB 2988 A ✗ The measure would have required the Oregon Water Resources Department, in consultation with the Department of Environmental Quality, the Oregon Department of Fish and Wildlife, the Oregon Health Authority, as well as other state agencies and interested parties, to identify and reduce barriers to, as well as develop technical assistance resources for, expanding aquifer recharge and aquifer storage and recovery in Oregon.

HB 3106 A ✗ The measure would have created the Integrated Water Data Team, the Integrated Water Data Portal, and the Integrated Water Data Account.

HB 3114 A ✗ The measure would have directed the Oregon Consensus at Portland State University (Oregon Consensus) and Oregon State University (OSU) to continue a collaborative process for developing a shared understanding of water management in the Chewaucan River watershed and adopting an action plan. The measure would have appropriated $305,000 General Fund moneys to the Higher Education Coordinating Commission for distribution to Oregon Consensus and $150,000 General Fund moneys to OSU.

HB 3116 A ✗ The measure would have appropriated money from the General Fund to the Oregon Water Resources Department for the implementation of the place-based water planning program, water basin assessments, the Water Resources Department Water Supply Fund, and for grants that support the advancements of specific state-recognized place-based integrated water resources plans.

HB 3121 A ✗ The measure would have appropriated $2.5 million from the General Fund to the Oregon Department of Administrative Services (DAS). It would have directed DAS to distribute the moneys to the Oregon Association of Water Utilities in order to provide technical assistance, develop a water utility training center, and hire three staff to support small and very small community water systems in Oregon.

HB 3342 ✓ The measure modifies the Water Resources Department's (OWRD) management of Oregon's water rights system by updating application processes, allowing electronic communication and payments, and revising deadlines. It updates public notice and comment rules and requires OWRD to maintain a list of restricted water sources. It also authorizes the Water Resources Commission (WRC) to withdraw water from appropriation by rule instead of order and changes timelines for protests and final orders.

HB 3364 ✓ The measure modifies the Water Conservation, Reuse, and Storage Program and the Water Supply Development Account.

HB 3372 ✓ The measure expands the types of exempt water uses from a domestic well to include watering a commercial garden not exceeding one-half acre in size and limits all types of exempt water uses for lawn and garden watering to up to 3,000 gallons of water per day. It also specifies that the existing limit for combined water usage for both industrial and commercial purposes does not include water for a lawn or commercial garden. The measure defines commercial garden and excludes locations where cannabis plants in the family Cannabaceae are grown, unless grown by a licensed person. Commercial gardens in the Lower Umatilla Basin Groundwater Management Area are not eligible for the measure's expanded water use exemptions; this restriction sunsets on January 2, 2028.

HB 3419 ✗ The measure would have required the Oregon Water Resources Department to study rules related to water and to submit a report to a water-related interim committee of the Legislative Assembly by September 15, 2026.

HB 3484 A ✗ The measure would have increased the General Fund appropriation for the Oregon Water Resources Department for positions related to water right transaction processing activities.

HB 3501 ✗ The measure would have made changes to the application process for certain water right transfers and it would have prohibited the Oregon Water Resources Department from considering whether the proposed change would have impaired or been detrimental to the public when evaluating an application.

HB 3527 A ✗ The measure would have established the Public Drinking Water, Stormwater, and Sewer Ratepayer Assistance Fund, directed the Oregon Housing and Community Services Department to provide grants from Fund moneys to qualified organizations to distribute water, sewer, and stormwater bill payment assistance to low-income residential households, and appropriated $11 million in General Fund moneys to the assistance program.

HB 3528 ✗ The measure would have allocated $3.2 million from the General Fund to the Higher Education Coordinating Commission (HECC) for distribution to the University of Oregon, intended for the Climate Solutions Center to research and address the water needs of environmental justice communities and to provide grant awards. Additionally, the measure would have allocated $800,000 from the General Fund to HECC for distribution to Portland State University, intended for the Institute for Tribal Government, to study the water needs of tribal communities and offer grants.

HB 3544 ✓ The measure establishes a standard process and timeline for handling all contested case processes on new water right and water right transfer applications.

HB 3800 ✗ The measure would have renamed the Greater Harney Valley Groundwater Area of Concern to Harney Basin Groundwater Management Area (HBGMA), and it would have established certain authorities and duties for the Oregon Water Resources Department related to the HBGMA.

HB 3806 ✓ The measure authorizes the Oregon Water Resources Commission to approve a Deschutes River water bank pilot program if the charter is approved by the Confederated Tribes of the Warm Springs and adheres to all requirements. It sunsets the pilot program on January 2, 2034.

Wildfire

SB 75 ✓ The measure removes references to the statewide wildfire hazard map and map-related provisions in statutes authorizing a county to approve accessory dwelling units and replacement dwellings in high wildfire hazard zones.

SB 82 A ✗ The measure would have modified consultations required for a grant process that supports work conducted by the Oregon Conservation Corps Program (OCC Program) and would have appropriated funding for grant-supported projects related to the OCC Program.

SB 83 ✓ The measure repeals the statewide wildfire map and its application to defensible space requirements, the wildland-urban interface, the Wildfire Programs Advisory Council, agency reporting requirements and administration, seller's property disclosure agreement, comprehensive planning, accessory dwelling units and replacement dwellings, building codes, and the small forestland grant program.

SB 85 ✓ The measure requires the Department of Consumer and Business Services and the Department of the State Fire Marshal, in collaboration with the Department of Forestry and insurance industry representatives, to evaluate and develop community-based wildfire risk mitigation strategies to reduce wildfire risks and improve insurance affordability in Oregon.

SB 432 ✗ The measure would have required certain foresters and forest protection agencies to participate in fire management response planning for fires that originate on lands owned or managed by the United States Forest Service (USFS) and if a fire originated on USFS lands, to implement the response planning.

SB 863 ✓ The measure establishes a process for the Oregon State Fire Marshal to recover fire suppression costs from a person who is willful, malicious, or negligent in the origin or subsequent spread of a fire.

HB 2817 ✓ The measure eliminates permit closure as an option for restricting access to forestland exposed to fire danger.

HB 3172 A ✗ The measure would have required the Oregon Department of the State Fire Marshal, in collaboration with the Department of Consumer and Business Services, to establish and implement the Wildfire Prepared Structure Program grant program to facilitate the retrofitting of certain dwellings and structures to be resistant and resilient to wildfire.

HB 3940 ✓ The measure raises and moves money to pay for wildfire costs and makes certain changes to laws related to forests and fire protection. It imposes a tax on the distribution of oral nicotine products and directs the revenues to purposes related to wildfire. It directs a portion of the interest from the Rainy Day Fund to purposes related to wildfire. The measure removes the end date for completion of certain wildfire risk reduction projects. It makes certain changes related to the forest products harvest tax, forest protection districts, minimum assessments and surcharges, the Emergency Fire Cost Committee, forestland acreage assessments, zones for fire protection in certain areas and rural fire protection districts.

HB 3944 ✗ The measure would have repealed provisions related to building code standards for wildfire hazard mitigation, defensible space requirements, fire protection for lands outside forest protection districts and the wildfire hazard map; made changes related to defensible space; and made changes related to the wildland-urban interface.

HB 3947 ✗ The measure would have changed Oregon's surplus revenue "kicker" estimate to fund wildfire prevention and response.

HB 3984 A ✕

The measure would have rendered an electric company liable for federal income taxes imposed on amounts received by a wildfire plaintiff in relation to a civil action for wildfires ignited between January 1, 2020, and January 1, 2025, and allowed a wildfire plaintiff to file a motion for supplemental judgment to recover the same. The measure would have created an associated exemption to the Oregon tax code. The measure would have set out legislative findings and intent to establish wildfire safety standards, and authorized the Public Utility Commission (PUC) to implement and enforce such standards. It would have required an electric company to apply with the PUC for a wildfire safety certification and set out associated standards and criteria. It would have required the PUC to have a third-party expert conduct a study and examine issues related to catastrophic wildfire risk and recovery, and developed a range of scenarios for a balanced solution that would have been reported to the Legislative Assembly in 2026.

Note: This measure is cross-listed in the Summary of Legislation Summary Report on Civil Law.

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OUR MISSION IN MOTION

ODA's 2025 Legislative Session Report



Marking the conclusion of the 2025 legislative session, the final policy and budget bills were signed into law in early August. For ODA, this session is defined by both challenge and opportunity, and I am proud of what we accomplished together for the people of Oregon. Guided by our shared vision of "a resilient tomorrow for generations to come," we navigated a complex legislative landscape to achieve outcomes that will strengthen our agency from the ground up.

This session, our strategic planning and persistent hard work translated into tangible success. The Legislature's landmark investment in **Project OneODA** is a direct affirmation of our collective voice. This funding represents our commitment to providing modern technology and infrastructure to the staff at ODA and the Oregonians that they serve.

In a tight fiscal environment, we worked closely with legislators to secure the tools necessary to manage our budget for the 2025-27 biennium. A series of bills providing fee authority for our core regulatory programs gives us the flexibility needed to manage operational costs.

As an agency, we are entrusted with the resources and responsibilities to build a stronger, more resilient ODA and community in Oregon. This report aims to go beyond the headlines and connect the decisions made at the State Capitol to the daily responsibilities of our staff; the successes detailed here were built on the foundation of their dedication and expertise.

With gratitude,

Lisa Charpilloz Hanson
Director

OREGON DEPARTMENT OF AGRICULTURE

2025 SESSION IN REVIEW

Seizing Opportunity, Ensuring Stability

The outcomes of this session can be understood through three core themes:

1. **Strategic Modernization:** ODA's achievement in securing nearly $9.4M for **Project OneODA** will launch a comprehensive overhaul of our agency's technological infrastructure, workflows, and processes.

2. **Fiscal Stability:** Lawmakers recognized the critical nature of our regulatory programs by passing a suite of bills that provide fee authority necessary for the 2025-27 biennium, creating a more stable funding environment.

3. **Enhanced Capabilities:** Beyond funding, the Legislature granted ODA a set of more precise and powerful tools. From new civil penalty authority to updating program models, these changes reflect a high degree of trust in agency expertise and allow us to more efficiently carry out our agency mission.

The 83rd Oregon Legislative Assembly began on January 21, 2025 and concluded its work on June 27, 2025.

One of ODA's primary goals in this biennium is **modernization**, and the legislature has provided our agency with the necessary tools and trust to accomplish this objective.

This report details the outcomes of the legislative session, not solely as a list of legislative actions, but as a narrative of our agency's progress. It is designed to connect the results of the 2025 session to the on-the-ground work performed in all of ODA's programs.

2025-27 BUDGET

The 2025-27 Legislatively Adopted Budget is more than a financial document; it reflects ODA's strategic priorities and opportunities, as well as the difficult legislative decisions needed to balance the state's budget.

For the 2025-27 biennium, the Legislature approved a total budget for ODA of **$187M**, supporting 493 positions and 395.85 Full-Time Equivalent (FTE) staff. This budget is built from four (4) distinct funding sources, each with a specific purpose:

General Fund - Taxpayer dollars allocated for a wide range of state services.

Lottery Funds - Dedicated funds, primarily for programs related to water quality and natural resource protection.

Other Funds - Revenue generated by the agency itself through fees, licenses, and charges for services. This is ODA's largest funding source, directly supporting the work of our regulatory programs.

Federal Funds - Grants and agreements with federal partners like the USDA and FDA to carry out specific programs and initiatives.

ODA 2025-27 Legislatively Adopted Budget Summary

	2023-25 Legislatively Adopted Budget	2025-27 Current Service Level	2025-27 Legislatively Adopted Budget
General Fund	$57,988,648	$40,620,844	$43,042,447
General Fund Debt Svc	-	-	$1,563,352
Lottery Funds	$9,323,768	$9,924,467	$10,014,286
Project OneODA - Pkg 120	-	-	$9,435,000
Other Funds	$97,593,748	$99,227,688	$99,203,854
Federal Funds	$24,616,353	$19,220,464	$23,782,039
Total Funds	$189,522,517	$168,993,463	$187,040,978
Positions	523	507	493
Full-Time Equiv (FTE)	402.26	391.09	395.85

The Legislature balances the state budget, which involves difficult decisions having meaningful impacts. The 2025-27 budget includes several critical investments that will directly enhance our ability to serve the people of Oregon. It also underscores the critical importance of ODA's fee-funded programs, with "Other Funds" being our largest single revenue source.

Key Highlights in the Coming Biennium

MODERNIZATION

The centerpiece of the 2025-27 budget is **Project OneODA**, a transformative investment that will modernize the agency's information technology infrastructure from the ground up. Staff feedback on technological challenges was heard and acted upon at the highest levels, and the resulting project is the single most important action we are taking to address the goals mapped out in our Strategic Plan. **Project One ODA** will be funded through a combination of General Fund and bonds, and will enable better collaboration across programs while also improving public service delivery.

TARGETED PROGRAM INVESTMENTS

Beyond the headline investment in technology, the budget includes key enhancements for specific programs. Our Wolf Depredation Compensation & Financial Assistance Grant Program will receive a one-time General Fund appropriation of $1M, and our Pesticide Certification & Training (C&T) program will be able to increase capacity through a nearly $900K infusion in Other Funds which will add three positions critical to implementing our EPA-approved plan.

REDUCTIONS & REALIGNMENTS

To secure the above investments while operating within a challenging fiscal environment, the budget also includes a few reductions that are part of a broader strategy to prioritize our most critical needs. Among the reductions are the legislature's elimination of funding for our Japanese Beetle Eradication program, the elimination of two vacant positions, and a reduction in services and supplies for the farm mediation program.

Policy in Action: New Tools to Protect, Promote, & Prosper

The 2025 legislative session was not just about funding; it was about refining and strengthening the ability to carry out our mission. The Legislature granted ODA a suite of more precise authorities through a number of bills that passed; in doing so, the Legislature is not just telling ODA *what* to do, but is providing more sophisticated tools for *how* to do this work.

- Food Safety & Animal Health
- Pesticides, Feeds, & Fertilizers
- Agriculture Industry
- Agency Governance & Operations

HB 2805: Permanent Authority for Food Safety License Fees [effective: 1/1/26]
For our Food Safety Program staff, this provides funding predictability by making ODA's authority to annually increase fees permanent.

HB 3604: Rules for Entities Taking Possession of a Cat [effective: 9/26/25]
Provides legal clarity by establishing protections for animal rescue entities (AREs) that take in stray cats, and details how licensed entities should administer surrendered cats.

HB 2809: Increasing the Pesticide Registration Fee Cap [effective: 9/26/25; fees 1/1/26]
This law increases the statutory maximum for pesticide registration fees as a cap managed over time, giving our Pesticides Program financial flexibility for the future.

HB 2684: School Integrated Pest Management (IPM) Requirements [effective: 1/1/26]
Requires that school IPM plans be reviewed at least once every 5 years and available to the public, assisting our staff involved in compliance & outreach.

HB 2806: Fee Authority for Weights & Measures Fees [effective: 1/1/26]
Gives authority to annually increase license fees for commercial weighing & measuring instruments, to address rising costs and provide financial stability to the program.

SB 162: Hemp Program Inspection Authority [effective: 6/9/25]
Protects consumers and closes a gap in oversight for our Hemp Program inspectors, giving unambiguous authority to inspect all hemp material on-site (not just growing plants).

SB 809: Clarifying Poultry in the State Meat Inspection Program [effective: 1/1/26]
Resolves any ambiguity and solidifies authority for our inspectors, by explicitly including poultry products under the state meat inspection program.

SB 832: Expanding Civil Penalty Authority [effective: 1/1/26]
Provides a new enforcement tool to our Animal Health & Feeds Program staff, by granting authority to impose civil penalties for violations of law related to animal diseases & commercial animal feeds.

SB 360: Pesticide Licensing Exemption for Battery-Powered Devices [effective: 9/26/25]
Modernizes the law and streamlines regulation for low-risk application methods by creating a narrow exemption for certain qualifying employees.

SB 833: Label Requirements for Soil-Enhancing Products [effective: 1/1/26]
Updates registration and labeling guidance for the industry, ensuring clarity and accuracy in the marketplace.

SB 1019: Modernizing the Brands Program [effective: 6/26/25]
Increases fees for brand registration & renewal, and livestock identification inspection services. Includes additional updates to modernize the program.

SB 777: Modifying the Wolf Depredation Grant Program [effective: 1/1/26]
Modifies the methodology used to award grants, carefully balancing compensation for losses with proactive conflict prevention.

HB 3569: Inviting Legislators to Rules Advisory Committees (RACs) [effective: 9/26/25]
Requires state agencies to invite legislators to participate as non-voting members at certain RACs.



OSB Environment & Natural Resources Section

E–OUTLOOK

ENVIRONMENTAL HOT TOPICS AND LEGAL UPDATES

Year 2025 Environmental & Natural Resources Law Section
Issue 2 OREGON STATE BAR

Editors' Note: Any opinions expressed herein are those of the author alone.

2025 Oregon Legislative Session
Environment & Natural Resources Highlights

Maureen McGee

Tonkon Torp

Oregon's 2025 Legislative session began on January 21, 2025 and adjourned on June 27, 2025. With relatively new leadership in both chambers and budgetary pressures looming large, this year's legislature faced distinct challenges from previous long legislative sessions. Ultimately, the primary theme of the session was fiscal uncertainty—a theme that will continue into the foreseeable future.

Legislative Session Overview

Legislators introduced a record 3,466 bills in 2025. Coupled with less prioritization by leadership and Committee Chairs than in past long sessions, this led to overscheduled hearings and a particularly hectic early session marked by bottlenecks related to timelines, analysis, and stakeholder's ability to effectively engage. Following the April mid-session deadline for bills to move out of policy committee or die, legislators found that many of the bills that did continue to progress still needed technical fixes. Some bills died simply because the administrative requirements were not met. The rushed nature of the committee process revitalized discussions on bill limits for long sessions, and it is expected that this topic will likely resurface in 2026.

As the second half of the session shifted focus towards the budget, legislators anxiously watched risks to state funding sources rise and economic uncertainty grow alongside increasing federal policy uncertainty. The May Revenue Forecast, upon which the budget is ultimately built, showed a $500 million decline from previously anticipated revenues. This tasked legislative budget writers with making significant cuts from the Governor's and Co-Chairs' proposed biennial budgets, while also looking to set money aside in case of future federal cuts—particularly cuts to education and health care programs.

Within this context, the 2025 session did not feature any of the signature climate or environmental packages that have been a hallmark of Oregon policymaking in recent biennia. Instead, legislators grappled extensively with how to address imminent major challenges in a constrained budget environment, namely wildfire and water. The agricultural community engaged in a pitched battle over a proposal to establish an Agricultural Workforce Labor Standards Board, while also making a successful push for updating and funding Oregon's wolf depredation program. Other environmental conversations centered on several aspects of materials management, and the legislature authorized significant fee increases across many agency programs.

Adjacent to environment and natural resources policy, discussions regarding energy affordability, reliability, and resilience also loomed large, resulting in an unprecedented number of bills passed that affect the Public Utility Commission (PUC). PUC ratemaking, microgrids, the role of nuclear generation in meeting Oregon's energy needs and climate goals, and significant transmission challenges were all topics of hot discussion. For those interested in these policy areas, the Oregon Department of Energy has published a detailed 2025 Legislative Session Report, and the PUC has published its own 2025 Legislative Report with a focus on PUC operations.

Transportation discussions gave rise to by far the most dramatic events of session. A precipitous shortfall in transportation funding across state and local programs in Oregon has been well-documented for several years, and a new transportation funding package was anticipated to be the hallmark of the 2025 Legislature. The Joint Committee on Transportation held a statewide roadshow and numerous other hearings on how to develop a package focused on maintenance, preservation and agency accountability, but the real negotiations happened largely behind closed-doors and with little momentum. An initial proposed package, House Bill (HB) 2025, was not released publicly as legislation until June 9, just three weeks before the Constitutionally-mandated end of session. HB 2025 would have been the largest tax increase in Oregon history and faced strong opposition. With one contentious hearing in late June, the replacement of a key Democratic dissenter, and a formal conduct complaint against a Transportation Committee Co-Chair, the package died. Attempts in the final moments of session to approve a narrower investment in ODOT also

failed, and the legislature ultimately adjourned without passing a transportation funding package. This spurred the Governor to announce immediate layoffs at the Oregon Department of Transportation and to take charge of negotiations for charting a path forward. As of this writing, those layoffs have been put on hold as legislators prepare to convene in special session, beginning August 29, to hash out a revised transportation funding package.

Below you will find a more detailed description of the shape of legislative discussions on environment and natural resource issues, organized by topic area. The narratives and "legislation of interest" outlined below are intended to highlight major themes; they are not exhaustive.

For more detailed information, the Oregon Legislative Policy and Research Office (LPRO) publishes Legislative Summary Reports covering every measure that received a public hearing in policy committee, available on the LPRO website. These materials are organized by topic and subtopic and are an excellent resource. Be mindful that revenue measures are not included in the LPRO Summary Reports. Instead, revenue measures are made available on the Legislative Revenue Office website, and state budget information is made available on the Legislative Fiscal Office website, in both instances under a "publications" tab. Revenue measure and budget information from the 2025 session had yet to be posted at the time of this article's publication.

Air Quality, Climate and General Environmental Protection

The 2025 session featured little focus on climate, emissions, and general environmental protection, with no legislation in this policy area ultimately advancing. However, this session did see a marked uptick in advocacy for broad concepts to apportion responsibility and liability for climate and environmental risk.

At the forefront was Senate Joint Resolution (SJR) 28, proposing referral of an amendment to the Oregon Constitution to broadly establish a "fundamental right to a clean, safe and healthy environment," to allow for any person to obtain equitable relief to enforce the right and to receive prevailing party fees if successful. Although SJR 28 did not advance beyond an initial public hearing, advocates have proposed the same general concept as Initiative Petition 45, currently in the process of qualification for the November 2026 ballot.

Other broad-based environmental legislation that failed, but that could become the subject of future discussion, included proposals to make it an unlawful trade practice to engage in "greenwashing" (Senate Bill [SB] 680); to place a moratorium on fossil fuel investments by the State Treasury (SB 681); and to establish a Climate Superfund Cost Recovery Program

utilizing a strict liability, polluter pays model, to address greenhouse gas emissions (SB 682 and SB 1187).

Momentum also grew to reconsider Oregon's Climate Protection Program (CPP), as the transportation funding debate began opening the door to discussions for repealing and replacing the CPP with a Cap & Invest model, under which certain emissions-market generated revenues would be directed into the Highway Trust Fund. In the last week of session Speaker Fahey introduced House Concurrent Resolution (HCR) 42, a resolution declaring the legislature's intent to reduce proposed transportation taxes if the Legislative Assembly enacts a cap-and-invest program, and it is likely that we will see some discussion on the CPP and Cap and Invest during the 2026 short Legislative Session.

Early-session conversations on air quality and climate focused heavily on industry pushback to DEQ's implementation of California's Advanced Clean Trucks rule. While legislative efforts to delay Oregon's implementation of the rule did not move forward, DEQ has announced enforcement discretion for Model Years 2025 and 2026. On June 12, 2025, President Trump signed resolutions purporting to overturn California's ability (and therefore other states' abilities) to adopt Advanced Clean Trucks, and other vehicle emissions rules—those resolutions are currently the subject of litigation.

Very little movement otherwise occurred this session on air quality policy, with just several bills crossing the finish line that focused narrowly on certain incinerators. Other environmental protection discussions focused on PFAS, a topic that continues to garner more attention both nationally and in Oregon.

Legislation of Interest

Passed:

- HB 2332: Prohibits DEQ from requiring Title V permit for air curtain incinerators
- HB 3729: Crematory incinerator temperature requirements
- SB 91: Prohibits use of "PFAS firefighting foam" with exceptions
- HB 2684: Requires review of school integrated pest management plans every five years

Failed:

- SJR 28: Constitutional referral to establish fundamental right to clean, healthy environment
- SB 680: Greenwashing liability
- SB 681: Moratorium on fossil fuel investments by State Treasury

- SB 682 and SB 1187: Separate formulations of Climate Superfund Cost Recovery Program
- HB 2067: Rebate program for battery-powered leaf blowers
- HB 2961: State building code changes to increase EV charging in new buildings in metro areas
- HB 3477: State greenhouse gas reduction goal updates
- HB 3119: Delaying implementation of Advanced Clean Trucks rules
- HB 3052: PFAS study
- HB 3512: PFAS ban
- HCR 42: Resolution to replace certain transportation funding increases with Cap & Invest

Water

Legislators considered a broad slate of water bills this session, with 26 bills ultimately receiving hearings that addressed water quantity policy, and another 12 addressing water quality. Discussions on water policy during 2025 were a priority both for Governor Kotek, and for the bipartisan Water Caucus leaders Representative Ken Helm (D, House District 27) and Representative Mark Owens (R, House District 60), who also serve as Co-Chairs of the House Committee on Agriculture, Land Use, Natural Resources, and Water.

Although several controversial water-related bills were not passed, three important water-related bills of note that did pass include: legislation expanding exempt well use for small farms (HB 3372); legislation establishing a standardized process for contested-case proceedings under Oregon's water laws (HB 3544); and a significant piece of legislation to tighten the water rights application process (HB 3342). HB 3342, in particular, includes imposition of a strict seven-year development deadline for new water right permits, a requirement for OWRD to complete an initial review of a transfer application, a requirement for OWRD to deny or limit changes to the point of appropriation for a groundwater right if the proposed point of appropriation is a source of groundwater that is restricted (with qualifications), and other efficiency-focused reforms.

The legislature also passed two of the Governor's priority water quality bills, SB 1154 and HB 3525, to address water quality and transparency. SB 1154 updates the state's Groundwater Quality Protection Act, first passed in 1989, giving state agencies more authority to coordinate and intervene early in Oregon's contaminated groundwater areas. HB 3525 mandates well water testing in certain areas, seeking to ensure safe drinking water for residences relying on wells. Although HB 3525 received early support from

environmental groups, several withdrew their support when the bill was amended to reduce enforcement.

A separate water quality bill, HB 2947, requires a study, to be completed in 2028, on PFAS in biosolids applied to agricultural fields that do not produce crops intended for human consumption. The legislature also passed several increases to fees charged by OWRD. Stakeholders expect water policy to continue to be a significant topic of discussion in 2026.

Legislation of Interest

Passed:

- HB 3372: Expands exempt well use on small farms
- HB 3544: Establishes uniform processes for water-related contested case proceedings
- HB 3342: Modifies laws related to regulation and administration of water rights
- SB 1154: Groundwater Quality Protection Act update
- HB 3525: Drinking water well testing by landlords for rented dwelling units
- HB 2169: Establishes state policy on water reuse and interagency water reuse team
- HB 2803: Increases fees for water right transactions and dam safety
- HB 2808: Increases certain well fees
- SB 1154: Groundwater protection act
- HB 2947: PFAS study in biosolids applied to land

Failed:

- SB 1153: Prohibiting in-stream habitat loss due to water transfers
- HB 3419: Water use reporting (review the -2 and -3 amendments and staff measure summary)
- SB 80: CAFO moratorium in ground water management areas
- HB 2988: Aquifer recharge and aquifer storage and recovery

Wildfire

Wildfire was a topic of considerable discussion this legislative session, as legislators faced difficult decisions on how to sustainably fund wildfire mitigation and suppression, revise wildfire hazard maps, and grapple with policies regarding utility wildfire mitigation and liability.

Ahead of the session, legislators set out to identify a dedicated revenue source to raise $300 million for the 2025-27 biennium, convening "Fire 35"—a 35-member legislative workgroup

tasked with developing new wildfire funding sources. While the efforts of that group resulted in various funding proposals—including a bottle bill surcharge and reducing the state income tax kicker—those options were scrapped in the face of opposition. Ultimately, the legislature adopted HB 3940, establishing a new "Zyn tax" on nicotine pouches and directing those funds toward wildfire prevention; redirecting a portion of interest earned on the rainy-day fund to purposes related to wildfire; restructuring how landowners pay for fire protection; and creating a grant program for retrofitting dwellings for wildfire resilience. The legislature also appropriated funds to ODF for ongoing wildfire costs through the end-of-session budget package, HB 5006. This funding, while helpful, will total around $271 million for the biennium—well short of legislators' goals—and is largely considered just a first step in addressing mounting wildfire costs. It is all but guaranteed that wildfire funding will continue to be a significant conversation in future sessions.

Separately, SB 83 repealed the controversial wildfire maps developed following the passage of SB 762 in 2021. Despite almost unanimous support, the legislature took all session (and some procedural posturing) to accomplish this repeal, with the final vote not occurring until the last week of session.

While policy proposals on utility wildfire mitigation and liability ultimately failed, the conversations centered on two issues: potential development of a safety certificate process to set clear standards and increase utility accountability on wildfire mitigation as proposed in HB 3666, and how to more effectively and swiftly compensate wildfire victims for damages. SB 926 and, later, HB 3984 proposed varying paths forward on the latter issue but did not succeed.

Legislation of Interest

Passed:

- HB 3490: Funding package for wildfire suppression, rate relief and mitigation
- SB 83: Hazard map repeal
- SB 863: State Fire Marshal recovery of fire suppression costs from a person who is willful, malicious, or negligent in the origin or subsequent spread of a fire.

Failed:

- HB 3666: Utility wildfire safety certifications
- SB 926: Prohibiting recovery from customers by utility of certain wildfire litigation costs
- HB 3984: Utility liability for federal income taxes imposed on amounts received by wildfire plaintiff in relation to civil action for wildfires ignited between specified dates

Wildlife

Wildlife policy discussions in 2025 largely centered on Oregon's Wolf Depredation Compensation and Financial Assistance Grant Program. Established in 2011 as a complement to the Oregon Wolf Plan, the program makes grant money available to counties to compensate those who suffer loss, injury, or missing livestock due to the presence of wolves in their area. SB 777, which passed with strong bipartisan support, makes the first major update to the program in over a decade. The bill modifies the methodology used to determine compensation for confirmed and probable wolf kills of livestock and requires counties to allocate at least 50% of grant program funds toward nonlethal deterrence, aiming to both reduce conflict and improve accountability. The final budget reconciliation bill, HB 5006, included $1 million to fund the program. While this was significantly less than proponents had hoped for, it is anticipated that requests for additional funding may be introduced in the 2026 short session.

Legislators also considered, but ultimately rejected, a bill to increase Oregon's statewide transient lodging tax by 1.25 percent and to direct the proceeds to Oregon Department of Fish and Wildlife's (ODFW) imperiled species recovery work. Although the bill passed the House with a three-fifths majority vote (as Constitutionally required for bills raising revenue) and cleared the Senate Rules Committee, it ultimately died without receiving a Senate floor vote due to the filing of a minority report in the waning days of session that delayed action.

Legislation of Interest

Passed:

- SB 777: Wolf compensation fund formula
- HB 3932: Prohibits taking beavers, with exceptions, in certain areas for water benefit
- HB 2978: Wildlife collision program
- HB 2982: Boat fee increase to fund aquatic invasive species prevention
- SB 812: Permanent extension of landowner preference program
- HB 2342: Hunting and fishing fee increases

Failed:

- HB 2977: Increase transient lodging tax for conservation
- HB 2980: Establishing Wildlife Stewardship Program
- HB 3657: Wildlife damage prevention and compensation pilot program

Agriculture

In addition to actively engaging in the water, wildfire and wildlife conversations, the biggest fight for the agricultural community in 2025 concerned agricultural employment. HB 2548, as introduced, would have established an Agricultural Workforce Labor Standards Board within the Bureau of Labor and Industries (BOLI), established a private right of action for enforcement of standards adopted by the board, and eliminated at-will employment for agriculture. The Standards Board would have been charged with establishing minimum standards for working conditions of agricultural workers, such as compensation and work schedules. Advocates argued that agricultural workers have historically been excluded from major workforce protections and that this approach would provide farmworkers with a stronger and necessary voice. However, a coalition of farms and small businesses argued that Oregon already boasts some of the strongest labor laws in the nation and that they apply equally to farmworkers. The coalition also raised significant concerns that HB 2548 would duplicate many of Oregon's existing farmworker protections and increase challenges for Oregon farmers already struggling with labor shortages and rising costs—particularly given the recent implementation of new farmworker overtime pay requirements that took effect in 2023.

The legislature ultimately passed HB 2548, but in a significantly amended form: the bill now calls for a study, to be completed September 1, 2026, to assess the adequacy and availability for existing workplace protections for farmworkers. This timing will align with release of a final report on the initial effects of Oregon's farmworker overtime laws, providing an informative comparison for policymakers attempting to balance the economic viability of our state's agricultural sector—Oregon's longest-standing industry—and appropriate worker protections.

Legislation of Interest

Passed:

- HB 2548: Agricultural workforce study (amended Workforce Labor Standards Board bill)
- SB 1019: Revisions to livestock brand registration and inspection program and fee increase
- SB 809: Adding poultry to State Meat Inspection Program
- HB 2809: Increasing pesticide registration fees
- SB 976: Authorizing trained individuals without veterinary license to do cattle pregnancy checks – Governor Kotek vetoed on August 7, 2025.

Failed:

- HB 2063: Establishing Agrivoltaics Task Force
- SB 887: Requiring Director of Agriculture to employ organic policy special assistant
- HB 2164: Appropriating money for two additional full-time staff for meat inspection program
- HB 2166: Agriculture economic competitiveness study
- HB 2679: Restricting neonicotinoid use
- SB 747: Fertilizer use reporting system for property over 200 acres

Forests

With wildfire policy making up a major portion of natural resource discussions, arguably little attention was otherwise given to forest and forestry policy during the 2025 session. Likely the most contentious bill in this arena was HB 3103. That bill would have directed the State Forester, under the authority and direction of the Oregon Board of Forestry, to adopt by rule a sustainable timber harvest level (STHL) and to the degree consistent with other legal requirements, manage available state lands to produce the STHL. While forestry industry advocates argued that the bill would simply hold ODF accountable to businesses and counties that benefit from timber sales by providing certainty in the agency's timber harvest sales projections, opponents pushed back, asserting the bill would undermine conservation efforts. The bill passed out of policy committee with unanimous support but did not progress through the budget process.

Despite a tough budget cycle, the legislature did also invest additional resources in implementation of the Private Forest Accord (PFA), including investments in PFA mitigation grants and to support the activities of the PFA Adaptive Management Program Committee and the Independent Research and Science Team.

Legislation of Interest

Passed:

- SB 147: Elliott State Research Forest technical clean-up
- SB 494: Forestry and wildland fire position classification and compensation study
- SB 1061: OSU lumber grading training pilot program

Failed:

- HB 3103: Sustainable timber harvest levels
- SB 339: Sudden Oak Death integrated pest management program
- HB 3135: Additional funding for western juniper treatment grant program

Geology and Mineral Industries

The single bill of interest in this subject area is SB 836, which increases various fees charged by the Department of Geology and Mineral Industries (DOGAMI) for the Mineral Land Regulation and Reclamation Program. This program is a field-based, statewide, fee-funded regulatory program that regulates upland and underground mining, oil and gas well drilling and geothermal well drilling. The fee increases contained in SB 836 are the first since 2021, and include significant increases across the program.

Legislation of Interest

Passed:

- SB 836: Mineral Land Regulation and Reclamation Program fee increases

Materials and Waste Management

Legislators brought several proposals during the 2025 session to expand producer responsibilities for materials management, including a bill to create a new extended producer responsibility (EPR) program for batteries (HB 2062), and another for requiring entities that produce food waste to recover and dispose of it via composting (HB 3018). These efforts did not move forward. However, advocates were successful in advancing some updates to Oregon's plastic bag ban via SB 551. Although that bill originally included new restrictions on the use of single-use items at lodging establishments—like tiny shampoo bottles—and restrictions on providing single-use plastic utensils or condiment packaging, those provisions were stripped out prior to passage of the bill.

Discussions on the implementation of Oregon's Plastic Pollution and Recycling Modernization Act (RMA) also loomed large in 2025, despite little legislation being introduced and none advancing in this area. The RMA is an expansive new packaging EPR program in Oregon that is intended to shift more responsibility for managing packaging waste to the manufacturer through requiring producers to pay fees used to cover the costs of expanded and updated recycling programs throughout the state. Enabling legislation for the RMA was originally passed in 2021 and, as of July 1, 2025, Oregon was the first of several U.S. states that have passed such laws to roll out its program. Prior to implementation, both the regulated entities under the program and waste haulers charged with expanding their operations had long been raising concerns over cost and timing. However, no legislative appetite developed for any changes or delays to implementation, and some of the concerns raised early in session were addressed via administrative action. On July 30, the National Association of Wholesaler-Distributors filed suit against DEQ alleging that the RMA is unconstitutional, likely setting the stage for discussions on the RMA to continue into future sessions.

Legislation of Interest

Passed:

- SB 551: Plastic bag ban

Failed:

- HB 2960: Prohibition on advanced recycling
- HB 3981: Delay implementation of responsible end market timing for RMA
- SB 526: Microfiber filters in wash machines
- HB 2062: Battery EPR
- HB 3018: Food waste composting and labeling requirements

Enrolled
Senate Bill 1154

Sponsored by COMMITTEE ON NATURAL RESOURCES AND WILDFIRE

CHAPTER .....

AN ACT

Relating to ground water; creating new provisions; amending ORS 215.213, 215.283, 448.150, 448.268, 454.779, 468B.050, 468B.150, 468B.162, 468B.169, 468B.171, 468B.175, 468B.177, 468B.179, 468B.180, 468B.182, 468B.184, 468B.186, 468B.188, 468B.219, 537.525, 537.615, 537.620, 537.621, 537.780, 540.435, 561.191, 568.909, 568.930 and 634.016; and repealing ORS 468B.183 and 468B.187.

Be It Enacted by the People of the State of Oregon:

GROUND WATER QUALITY CONCERN AREAS

SECTION 1. ORS 468B.150 is amended to read:

468B.150. As used in ORS 448.268, 448.271 and 468B.150 to 468B.190:

[*(1) "Area of ground water concern" means an area of the state subject to a declaration by the Department of Environmental Quality under ORS 468B.175 or the Oregon Health Authority under ORS 448.268.*]

[*(2)*] **(1)** "Contaminant" means any chemical, ion, radionuclide, synthetic organic compound, microorganism, waste or other substance that does not occur naturally in ground water or that occurs naturally but at a lower concentration.

(2) "Contaminant of concern" means a contaminant present in ground water at levels which have resulted in a declaration of a ground water quality concern area or a ground water quality management area.

(3) "Ground water quality concern area" means an area of the state subject to a declaration under ORS 468B.175.

[*(3)*] **(4)** "Ground water **quality** management area" means an area in which contaminants in the ground water have exceeded the levels established under ORS 468B.165, and the affected area is subject to a declaration under ORS 468B.180.

[*(4)*] **(5)** "Fertilizer" has the meaning given that term in ORS 633.311.

[*(5)*] **(6)** "Pesticide" has the meaning given that term in ORS 634.006.

SECTION 2. ORS 468B.175 is amended to read:

468B.175. [*(1) If, as a result of its statewide monitoring and assessment activities under ORS 468B.190, the Department of Environmental Quality confirms the presence in ground water of contaminants suspected to be the result, at least in part, of nonpoint source activities, the department shall declare an area of ground water concern. The declaration shall identify the substances confirmed to be in the ground water and all ground water aquifers that may be affected.*]

(1) The Department of Environmental Quality shall recommend that the Environmental Quality Commission declare a ground water quality concern area if, based on the results of

the department's monitoring and assessment activities under ORS 468B.190, or through the review of other relevant data and information, the department:

(a) Confirms the presence of ground water contaminants suspected to be the result, at least in part, of nonpoint source activities; and

(b) Based on the best available information, finds that one or more of the factors identified in subsection (2) of this section is present.

(2) Before recommending a declaration of a ground water quality concern area under subsection (1) of this section, the department must find that:

(a) A significant number of wells or other sensitive receptors monitored by the department, including domestic wells, have been or will be affected by ground water contamination;

(b) Nonpoint sources have been identified as possible sources of contamination but require additional investigation to understand appropriate interventions; or

(c) Deterioration of water quality in the area could lead to an exceedance of the thresholds described in ORS 468B.180 within 20 years unless remedial action is taken.

(3) A declaration of a ground water quality concern area by the commission must identify:

(a) Each contaminant of concern that has been confirmed to be present in the ground water; and

(b) Ground water aquifers that may be affected by a contaminant of concern.

[*(2) Before declaring an area of ground water concern, the agency making the declaration shall have a laboratory confirm the results that would cause the agency to make the declaration.*]

(4) Before recommending that the commission declare a ground water quality concern area, the department shall:

(a) Ensure that sample results utilized to develop the recommendation have been produced or verified by an accredited laboratory;

(b) Ensure that data and results utilized to develop the recommendation were collected in accordance with a quality assurance project plan or a similar document; and

(c) Submit to the commission, and make publicly available, the methodology utilized to evaluate the results and conduct the data evaluation that would cause the department to make the recommendation.

SECTION 3. ORS 468B.177 is amended to read:

468B.177. **(1)** After a declaration of [*an area of ground water concern, the Department of Environmental Quality, in consultation with other appropriate state agencies, shall:*] **a ground water quality concern area, the Governor shall establish an interagency team and designate a lead agency. The Governor shall consider the primary contaminant of concern and the respective expertise, statutory responsibilities and regulatory authority of each relevant agency when making the lead agency designation. The interagency team shall include the Department of Environmental Quality, the Water Resources Department and the Oregon Health Authority and may include the State Department of Agriculture, the State Department of Geology and Mineral Industries and other agencies with responsibilities or authorities related to a contaminant of concern or remedial actions needed to address a contaminant of concern.**

(2) The lead agency and other agencies participating in the interagency team shall enter into intergovernmental agreements as necessary to carry out the duties of the interagency team.

[*(1) Within 90 days, appoint a ground water management committee in the geographic area overlying the ground water aquifer;*]

[*(2) Focus research and public education activities on the area of ground water concern;*]

[*(3) Provide for necessary monitoring in the area of ground water concern;*]

[*(4) Assist the ground water management committee in developing, in a timely manner, a draft and final local action plan for addressing the issues raised by the declaration of an area of ground water concern; and*]

[*(5) If not developed by the ground water management committee, develop a draft and final local action plan.*]

(3) The interagency team shall:

(a) Based on the best available information, develop, in a timely manner, an agency assessment and outreach plan that:

(A) Identifies potential sources of contaminants of concern contributing to ground water quality deterioration;

(B) Identifies existing authorities, programs or actions of the agencies in the interagency team that are relevant to a contaminant of concern, identifies those authorities, programs or actions that are reasonably appropriate for implementation and includes a rationale for selecting the reasonably appropriate authorities, programs or actions;

(C) Identifies best management practices to address known sources of contamination in the ground water quality concern area;

(D) Identifies strategies to share information with, coordinate with and educate likely sources of a contaminant of concern on best management practices; and

(E) Provides initial plans for implementing the actions described in section 6 of this 2025 Act; and

(b) Develop a monitoring plan and establish timelines and targets for trend analyses for the thresholds established under ORS 468B.180 for each contaminant of concern to evaluate the effectiveness of the actions taken pursuant to the ground water quality concern area designation.

(4) The interagency team shall develop publicly accessible information that facilitates understanding of the scope and extent of contamination, including but not limited to a visual representation of the geographic scope of the contamination.

(5) The interagency team shall prepare a draft of the agency assessment and outreach plan and provide the draft to the ground water management committee appointed under ORS 468B.179 and appropriate county officials for comment. The interagency team shall prepare a final agency assessment and outreach plan after receiving the comments of the committee and appropriate county officials.

(6) As applicable, the lead agency shall routinely report to the agency's respective board or commission.

(7) Designation as a lead agency does not expand the authority of a lead agency beyond that otherwise provided for by law.

SECTION 4. ORS 468B.179 is amended to read:

468B.179. (1)**(a)** [*Upon the request of a local government, or as required under ORS 468B.177 or 468B.182, the Department of Environmental Quality, in consultation with other appropriate state agencies,*] **Within a reasonable time after completion of the draft agency assessment and outreach plan under ORS 468B.177, the lead agency, in consultation with the interagency team,** shall appoint a ground water management committee. The ground water management committee shall be composed of at least seven members representing a balance of interests in the area affected by the declaration**, including at least two homeowners or tenants that rely on a domestic well in the area for drinking water that has been affected by a contaminant of concern**.

(b) The ground water management committee shall develop and implement a local voluntary implementation plan, as provided in subsection (2) of this section, and provide comments to the interagency team on the draft agency assessment and outreach plan for the purpose of aligning the efforts of the committee and the interagency team.

(c) The ground water management committee shall review and provide comments on the draft agency assessment and outreach plan to the interagency team within 120 days of receiving the draft.

[*(2) After a declaration of an area of ground water concern, the ground water management committee shall develop and promote a local action plan for the area of ground water concern. The local action plan shall include but need not be limited to:*]

[*(a) Identification of local residential, industrial and agricultural practices that may be contributing to a deterioration of ground water quality in the area;*]

[*(b) An evaluation of the threat to ground water from the potential nonpoint sources identified;*]

(2)(a) Upon completion of the final agency assessment and outreach plan, the ground water management committee shall develop and promote a local voluntary implementation plan for the ground water quality concern area that is consistent with the agency assessment and outreach plan.

(b) The local voluntary implementation plan must include:

(A) Voluntary actions that will be promoted and prioritized for implementation by the local community to address sources of contamination in the ground water quality concern area;

(B) Measurable objectives, quantitative targets and timelines, where appropriate; and

(C) A periodic review and amendment process informed by trend analyses conducted by members of the interagency team pursuant to ORS 468B.177.

(c) The local voluntary implementation plan may include:

[*(c)*] **(A)** [*Evaluation and*] Recommendations of alternative practices **or best management practices**;

[*(d)*] **(B)** Recommendations regarding demonstration projects needed in the area **that have the potential to address contaminants of concern**;

[*(e)*] **(C)** Recommendations of public education and research specific to that area that would assist in addressing the issues related to the [*area of ground water concern*] **ground water quality concern area**; [*and*]

[*(f)*] **(D)** Methods of implementing best practicable management practices to improve ground water quality in the area[.]**; and**

(E) Recommendations for local governments and organizations to assist with public education and outreach regarding awareness of well water quality, health considerations, treatment options and prevention of ground water contamination.

(3) [*The availability of the draft local action plan and announcement of a 30-day public comment period shall be publicized in a newspaper of general circulation in the area designated as an area of ground water concern.*] **A draft of the local voluntary implementation plan shall be made available for public comment for a period of 30 days.** Suggestions provided to the ground water management committee during the public comment period shall be considered by the ground water management committee in determining the final [*action*] **local voluntary implementation** plan.

(4) The ground water management committee may request the [*department*] **lead agency** to arrange for technical advice and assistance from appropriate state agencies and higher education institutions.

(5) A ground water management committee preparing [*or carrying out an action plan in an area of ground water concern*] **a local voluntary implementation plan in a ground water quality concern area** or in a ground water **quality** management area may apply for a grant under ORS 468B.169 for limited funding for staff or for expenses of the ground water management committee.

SECTION 5. Sections 6 and 7 of this 2025 Act are added to and made a part of ORS 468B.150 to 468B.190.

SECTION 6. Consistent with the final agency assessment and outreach plan developed under ORS 468B.177, the interagency team shall take the following actions:

(1) The Department of Environmental Quality shall:

(a) Working with contract agents, as defined in ORS 454.605, where applicable, compile available information regarding alternative sewage disposal systems, nonwater-carried sewage disposal facilities and subsurface sewage disposal systems as those terms are defined in ORS 454.605, including the age and location of individual systems or facilities; and

(b) Encourage voluntary inspections of alternative sewage disposal systems, nonwater-carried sewage disposal facilities and subsurface sewage disposal systems as those terms are defined in ORS 454.605.

(2) The State Department of Agriculture shall:

(a) Review water quality management plans, as defined in ORS 568.900, applicable to agricultural lands for potential plan revisions to identify voluntary practices specific to the contaminant of concern.

(b) Identify stewardship agreement opportunities pursuant to ORS 541.973, if appropriate.

(c) Consider and prioritize watersheds and subwatersheds within a ground water quality concern area for focused outreach and compliance efforts.

(d) Where feasible, partner with local entities, including soil and water conservation districts, watershed councils or the Oregon State University Extension Service, to deliver outreach, technical assistance or implementation support consistent with this subsection.

(3) The Oregon Health Authority shall:

(a) Prepare a preliminary assessment that:

(A) Identifies public health risks to domestic well users and public water systems due to potential contamination of drinking water supplies;

(B) Identifies strategies to work with the local public health authority, or authorities, public water systems and local health partners to communicate potential public health risks from contaminants in drinking water;

(C) Identifies other appropriate response strategies; and

(D) Estimates the cost of a public health response to the contamination.

(b) Prepare accessible and language-appropriate outreach and education materials regarding the public health risks of the contaminant of concern and recommended actions to reduce health risks, including guidance about testing domestic well water and other domestic well safety information, and:

(A) Disseminate the materials and related information to the public in the ground water quality concern area, subject to available resources; and

(B) Provide the materials to the local public health authority or other appropriate local officials for dissemination to community members that depend on domestic wells.

SECTION 7. (1) Upon completion of the final agency assessment and outreach plan developed under ORS 468B.177, the lead agency shall submit the plan in a report to the Governor and the Joint Committee on Ways and Means or the Joint Interim Committee on Ways and Means in the manner provided by ORS 192.245. The report must identify resources necessary to implement the plan and may include requests for funding necessary to implement the plan.

(2)(a) No later than December 15 of each even-numbered year during which a lead agency is responsible for the implementation of a final action plan, the lead agency shall submit a report in the manner provided by ORS 192.245 to the Joint Interim Committee on Ways and Means. The report must describe the interagency team's progress in implementing the plan and include an assessment of the most recent monitoring results relative to historical contamination levels and the information described in ORS 468B.177 (3)(a)(B). The report may include requests for funding.

(b) In lieu of submitting a report described in paragraph (a) of this subsection, the Department of Environmental Quality may include the information required under paragraph (a) of this subsection in the report required under ORS 468B.162.

NOTE: Section 8 was deleted by amendment. Subsequent sections were not renumbered.

GROUND WATER QUALITY MANAGEMENT AREAS

SECTION 9. ORS 468B.180 is amended to read:

468B.180. (1) The Department of Environmental Quality shall **recommend that the Environmental Quality Commission** declare a ground water **quality** management area if, [*as a result of information provided to the department or from its statewide*] **through** monitoring and assessment activities under ORS 468B.190, **or through the review of other relevant data and information,** the department confirms that, as a result of suspected nonpoint source activities, there is present in the ground water:

(a) Nitrate contaminants at levels greater than 70 percent of the levels established pursuant to ORS 468B.165; or

(b) Any other contaminants at levels greater than 50 percent of the levels established pursuant to ORS 468B.165.

(2) A declaration [*under subsection (1) of this section*] **of a ground water quality management area by the commission** shall identify [*the substances*] **each contaminant of concern** detected in the ground water and [*all*] ground water aquifers that may be affected.

(3) Before [*declaring*] **recommending the declaration of** a ground water **quality** management area under [*subsections (1) and (2)*] **subsection (1)** of this section, the [*agency*] **department** shall [*have a second laboratory confirm the results that cause the agency to make the declaration.*]**:**

(a) Ensure that sample results utilized to develop the recommendation have been produced or verified by an accredited laboratory;

(b) Ensure that data and results utilized to develop the recommendation were collected in accordance with a quality assurance project plan or a similar document; and

(c) Submit to the commission, and make publicly available, the methodology utilized to evaluate the results and conduct the data evaluation that would cause the department to make the recommendation.

(4) After a declaration under subsection (2) of this section, a state agency may exercise within the ground water quality management area any of the agency's authorities or responsibilities related to the prevention or control of ground water contamination in a ground water quality concern area, regardless of whether the ground water quality management area was previously declared a ground water quality concern area.

SECTION 10. ORS 468B.182 is amended to read:

468B.182. **(1)** After the declaration of a ground water **quality** management area, the [*Department of Environmental Quality, in consultation with other appropriate state agencies,*] **lead agency designated under ORS 468B.184** shall appoint a ground water management committee for the affected area if a ground water management committee has not already been appointed under ORS [*468B.177*] **468B.179**. **A ground water management committee appointed under this section must include two homeowners or tenants that rely on a domestic well in the area for drinking water that has been affected by a contaminant of concern.** If the affected area had previously been designated [*an area of ground water concern*] **a ground water quality concern area**, the same ground water management committee appointed under ORS [*468B.177*] **468B.179** shall continue [*to address the ground water issues raised as a result of the declaration of a ground water management area*] **to advise the interagency team**.

(2) A ground water management committee appointed under this section or ORS 468B.179 shall act solely to advise state agencies and the interagency team on the development and implementation of local elements of the action plan developed under ORS 468B.184.

SECTION 11. ORS 468B.184 is amended to read:

468B.184. (1) After a ground water **quality** management area is declared, the [*Department of Environmental Quality*] **Governor** shall **establish an interagency team and** designate a lead agency responsible for developing an action plan**, as provided in this section.** [*and request other agencies to assume appropriate responsibilities for preparation of a draft action plan within 90 days after the declaration.*] **If the affected area had previously been designated a ground water quality concern area, the Governor may establish the same interagency team and designate the same lead agency designated under ORS 468B.177. If no lead agency and interagency team has been previously designated and established, the Governor, in designating a lead agency,**

shall consider the primary contaminant of concern and its predominant sources, and the respective expertise, statutory responsibilities and regulatory authority of each relevant agency. The interagency team shall include the Department of Environmental Quality, the Oregon Health Authority and the Water Resources Department. The interagency team may include the State Department of Agriculture and the State Department of Geology and Mineral Industries or other agencies with responsibilities or authorities related to a contaminant of concern.

(2) The lead agency and other agencies participating in the interagency team shall enter into intergovernmental agreements as necessary to carry out the work of the interagency team.

(3) The [*agencies*] **interagency team** shall develop an action plan to **inform well users of ground water contamination,** reduce existing contamination and [*to*] prevent further contamination of the affected ground water aquifer. The action plan shall include, but need not be limited to:

(a) Identification of practices that may be contributing to the contamination of ground water in the area;

(b) Consideration of all reasonable alternatives for reducing the contamination of the ground water to a level below that level requiring the declaration of a ground water **quality** management area;

(c) [*Recommendations*] **Identification** of mandatory actions**, including actions under sections 14, 15, 19 and 20 of this 2025 Act,** that, when implemented, will reduce the contamination to a level below that level requiring the declaration of ground water **quality** management area **or a ground water quality concern area**;

(d) A proposed time schedule for:

(A) Implementing the [*lead agency's recommendations*] **action plan**;

(B) Achieving estimated reductions in concentrations of [*the ground water*] contaminants **of concern, including periodic benchmarks for measuring progress toward estimated reductions**; and

(C) Public review of the action plan;

(e) Any applicable provisions of a local [*action*] **voluntary implementation** plan developed for the area under a declaration of [*an area of ground water concern*] **a ground water quality concern area**; [*and*]

(f) Required amendments of affected city or county comprehensive plans and land use regulations in accordance with the schedule and requirements of periodic review set forth in ORS chapters 197 and 197A to address the identified ground water **quality** protection and management concerns[.]**;**

(g) Any actions included in the agency assessment and outreach plan developed under ORS 468B.177, if applicable; and

(h) Existing authorities, programs or actions of the agencies in the interagency team that are relevant to a contaminant of concern, those authorities, programs or actions that are reasonably appropriate for implementation and a rationale for selecting the reasonably appropriate authorities, programs or actions.

[*(2) If a ground water management area is located on agricultural lands or in an area designated as an exclusive farm use zone under ORS 215.203, the State Department of Agriculture shall be responsible for developing the portion of the action plan that addresses farming practices as defined in ORS 30.930.*]

SECTION 12. ORS 468B.186 is amended to read:

468B.186. (1) After completion and distribution of the draft action plan under ORS 468B.184, the lead agency shall provide a 60-day period of public comment on the draft action plan and the manner by which members of the public may review the plan or obtain copies of the plan. **The lead agency shall provide copies of the plan to appropriate county officials for comment.** [*A notice of the comment period shall be published in two issues of one or more newspapers having general circulation*

in the counties in which the designated area of the ground water emergency is located, and in two issues of one or more newspapers having general circulation in the state.]

(2) Within [*60*] **90** days after the close of the public comment period, the lead agency shall complete a final action plan. All suggestions and information provided to the lead agency **by the public or by county officials** during the public comment period shall be considered by the lead agency and when appropriate shall be acknowledged in the final action plan.

(3)(a) Upon completion of the final action plan, the lead agency shall submit the final action plan in a report to the Governor and the Joint Committee on Ways and Means or the Joint Interim Committee on Ways and Means in the manner provided by ORS 192.245. The report may include requests for funding necessary to implement the plan.

(b)(A) No later than December 15 of each even-numbered year during which a lead agency is responsible for the implementation of a final action plan, the lead agency shall submit a report in the manner provided by ORS 192.245 to the Joint Interim Committee on Ways and Means. The report must describe the interagency team's progress in implementing the plan and include an assessment of the most recent monitoring results relative to historical contamination levels and the information described in ORS 468B.184 (3)(h). The report may include requests for funding.

(B) In lieu of submitting a report described in subparagraph (A) of this paragraph, the Department of Environmental Quality may include the information required under subparagraph (A) of this paragraph in the report required under ORS 468B.162.

(4) Within 180 days of completion of the final action plan, each agency that is responsible for implementing all or part of the plan shall initiate proceedings to adopt rules as necessary to carry out the agency's duties under the action plan. If two or more agencies are required to initiate rulemaking proceedings under this section, the agencies shall consult with one another to coordinate the rules. The agencies may consolidate the rulemaking proceedings.

SECTION 13. ORS 468B.188 is amended to read:

468B.188. (1) If, after implementation of the action plan developed by [*affected agencies*] **the interagency team** under ORS 468B.184 to 468B.187, the ground water improves so that the levels of contaminants no longer exceed the levels established under ORS 468B.180, the **Environmental Quality Commission, upon the recommendation of the** Department of Environmental Quality**,** shall determine whether to repeal the ground water **quality** management area declaration and to establish [*an area of ground water concern*] **a ground water quality concern area**.

(2) Before the declaration of a ground water **quality** management area is repealed under subsection (1) of this section, the department [*of Environmental Quality*] must [*find*] **provide to the commission a finding** that, according to the best information available, a new or revised local [*action*] **voluntary implementation** plan exists that will continue to improve the ground water in the area and that the department [*of Environmental Quality*] finds can be **voluntarily** implemented at the local level without the necessity of state enforcement authority.

(3) Before [*the Department of Environmental Quality terminates*] **relevant state agencies, in consultation with the interagency team, terminate** any mandatory controls imposed under the action plan created under ORS 468B.184 to 468B.187, the ground water management committee must produce a local [*action*] **voluntary implementation** plan that includes provisions necessary to improve ground water **quality** in the area and that the [*department*] **interagency team** finds can be **voluntarily** implemented at the local level without the necessity of state enforcement authority.

SECTION 14. After a declaration of a ground water quality management area under ORS 468B.180, and consistent with the action plan developed under ORS 468B.184 and 468B.186, the State Department of Agriculture, as necessary to control a relevant contaminant of concern:

(1) Shall adopt and implement area-specific rules, as provided in ORS 561.191 and 568.900 to 568.933, to regulate the contaminant of concern.

(2) May make available stewardship agreement opportunities, pursuant to ORS 541.973.

SECTION 15. (1) After a declaration of a ground water quality management area under ORS 468B.180, the Oregon Health Authority shall, in consultation with local health authori-

ties, develop and implement a public health response plan. The public health response plan shall be based on the preliminary assessment prepared under section 6 (3) of this 2025 Act. If no preliminary assessment has been prepared under section 6 (3) of this 2025 Act, the Oregon Health Authority shall prepare a preliminary assessment before developing the public health response plan under this section.

(2) Upon completion of the public health response plan, the authority shall submit the plan in a report to the Governor and the Joint Committee on Ways and Means or the Joint Interim Committee on Ways and Means in the manner provided by ORS 192.245 with a request for funding necessary to implement the plan.

SECTION 16. Section 17 of this 2025 Act is added to and made a part of ORS chapter 215.

SECTION 17. Notwithstanding any other provision of this chapter or ORS chapter 195 or 197, a county may provide, or may enter into an agreement with a city or district including under ORS 195.065 to 195.085 to provide, water or wastewater services for residential dwelling units that are within a ground water quality concern area declared under ORS 468B.175 or a ground water quality management area declared under ORS 468B.180 and not within an urban growth boundary. The provision of services under this section or ORS 215.213 (1)(c)(D) or 215.283 (1)(c)(D) may not be used to authorize the rezoning of property for urban uses or used as the basis for an exception under ORS 197.732 (2)(a) or (b).

SECTION 18. Section 19 of this 2025 Act is added to and made a part of ORS 454.605 to 454.755.

SECTION 19. (1) After a declaration of a ground water quality management area under ORS 468B.180, if the best available information indicates that a residential subsurface sewage disposal system or alternative sewage disposal system may be a significant contributing source of contamination to the area, the Department of Environmental Quality or a contract agent may, subject to subsection (2) of this section, enter on to private property at reasonable times to inspect the residential subsurface sewage disposal system or alternative sewage disposal system.

(2)(a) Before carrying out an inspection under this section, the department or contract agent shall give notice to the property owner and any tenant residing at the property that an inspection is authorized under this section and take reasonable steps to arrange a convenient time for the inspection with the property owner and resident, as applicable. The notice must provide information regarding resources and technical assistance available to the property owner to address a malfunctioning subsurface sewage disposal system or alternative sewage disposal system.

(b) If the property owner or tenant refuses to allow entry pursuant to this section after receiving notice, and after reasonable efforts by the department or contract agent to arrange a convenient time for inspection, the department or contract agent may request the Attorney General to seek from a court of competent jurisdiction an order requiring the property owner or tenant to allow entry.

(3) If the department determines that a subsurface sewage disposal system or an alternative sewage disposal system inspected under subsection (1) of this section is being operated or maintained in violation of any rule adopted pursuant to ORS 454.625, the department shall give written notice of the violation to the person in control of the system as provided in ORS 454.635.

(4) In addition to the requirements of ORS 454.635:

(a) A notice resulting from an inspection under this section must be accompanied by information regarding resources and technical assistance available to the property owner to remedy the violation; and

(b) The period of time for taking remedial action, as provided in the order described in ORS 454.635 (3), must be reasonable and take into account any resources or technical assistance available to the property owner.

(5) The department may not impose a civil penalty for a violation of any rule adopted under ORS 454.625 as a result of an inspection carried out under this section unless:

(a) The period for remedying the violation provided in the order described in ORS 454.635 (3) has lapsed; and

(b) Notice of the violation complied with ORS 454.635 and subsection (4) of this section.

(6) The department shall grant an extension of the time for the person receiving the notice to take remedial action if the following conditions are met:

(a) The person against which the civil penalty would be issued meets the definition of a low income household as defined in ORS 456.270; and

(b) The person is eligible for and has applied for financial assistance to remedy the violation and:

(A) The application was denied due to lack of available funds or resources; or

(B) The application is pending and may be approved.

SECTION 20. (1) Notwithstanding any contrary provision of law, and subject to subsection (2) of this section, the Water Resources Department may approve an application under ORS 537.615 by a public water system to appropriate ground water in a ground water quality management area declared under ORS 468B.180 for expanded group domestic use in an amount of water equivalent to the amount of water provided by abandoned water wells that, prior to being abandoned, had used water as provided in:

(a) ORS 537.545 (1)(d); or

(b) If used by a household, ORS 537.545 (1)(b) and (d).

(2) The department may not approve an application described in subsection (1) of this section unless:

(a) The amount of equivalent water described in subsection (1) of this section is less than or equal to 5,000 gallons per abandoned well per day, unless a higher amount is established by the Water Resources Commission by rule; and

(b) The impact of the proposed public water system well on hydraulically connected surface water bodies is similar to or less than the cumulative impact of the abandoned water wells described in this section.

(3) The Water Resources Commission may adopt rules as necessary to implement this section.

SECTION 21. ORS 468B.183 and 468B.187 are repealed.

AMENDMENTS TO STATUTES

SECTION 22. ORS 448.268 is amended to read:

448.268. **(1)** If, as a result of its activities under ORS 448.150, **or through the review of other relevant data,** the Oregon Health Authority confirms the **persistent and prevalent** presence in ground water drinking water supplies of contaminants resulting at least in part from suspected nonpoint source activities, the authority shall **recommend that the Environmental Quality Commission** declare [*an area of ground water concern*] **a ground water quality concern area**. The declaration **by the commission** shall identify the substances confirmed in the ground water and [*all*] ground water aquifers that may be affected.

(2) Before recommending that the commission declare a ground water quality concern area, the authority shall:

(a) Ensure that sample results utilized to develop the recommendation have been produced or verified by an accredited laboratory;

(b) Ensure that data and results utilized to develop the recommendation were collected in accordance with a quality assurance project plan or a similar document; and

(c) Submit to the commission, and make publicly available, the methodology utilized to evaluate the results and conduct the data evaluation that would cause the authority to make the recommendation.

SECTION 23. ORS 448.150 is amended to read:

448.150. (1) The Oregon Health Authority shall:

(a) Conduct periodic sanitary surveys of drinking water systems and sources, take water samples and inspect records to ensure that the systems are not creating an unreasonable risk to health. The authority shall provide written reports of the examinations to water suppliers and to local public health administrators, as defined in ORS 431.003.

(b) Require regular water sampling by water suppliers to determine compliance with water quality standards established by the authority. These samples shall be analyzed in a laboratory approved by the authority. The results of the laboratory analysis of a sample shall be reported to the authority by the water supplier, unless direct laboratory reporting is authorized by the water supplier. The laboratory performing the analysis shall report the validated results of the analysis directly to the authority and to the water supplier if the analysis shows that a sample contains contaminant levels in excess of any maximum contaminant level specified in the water quality standards.

(c) Investigate any water system that fails to meet the water quality standards established by the authority.

(d) Require every water supplier that provides drinking water that is from a surface water source to conduct sanitary surveys of the watershed as may be considered necessary by the authority for the protection of public health. The water supplier shall make written reports of such sanitary surveys of watersheds promptly to the authority and to the local health department.

(e) Investigate reports of waterborne disease pursuant to ORS 431.001 to 431.550 and 431.990 and take necessary actions as provided for in ORS 446.310, 448.030, 448.115 to 448.285, 454.235, 454.255 and 455.680 to protect the public health and safety.

(f) Notify the Department of Environmental Quality of a potential ground water **quality** management area if, as a result of its water sampling under paragraphs (a) to (e) of this subsection, the authority detects the presence in ground water of:

(A) Nitrate contaminants at levels greater than 70 percent of the levels established pursuant to ORS 468B.165; or

(B) Any other contaminants at levels greater than 50 percent of the levels established pursuant to ORS 468B.165.

(2) The notification required under subsection (1)(f) of this section shall identify the substances detected in the ground water and all ground water aquifers that may be affected.

(3)(a) The authority by rule may adopt a schedule of fees to be assessed on water suppliers to partially defray the costs of the authority related to performance of the duties prescribed by this section and ORS 448.155 (1), 448.175 (1) and 448.255. The fee schedule shall be graduated based on the size and type of the water system owned or operated by a water supplier.

(b) Not more than once each calendar year, the authority may increase the fees established by rule under this subsection. The amount of the annual increase may not exceed the anticipated increase in the costs of the authority related to performance of the duties prescribed by this section and ORS 448.155 (1), 448.175 (1) and 448.255 or three percent, whichever is lower.

SECTION 24. ORS 468B.162 is amended to read:

468B.162. (1) The Department of Environmental Quality shall coordinate the [*following:*]

[*(a)*] interagency management of ground water **quality** as necessary to achieve the goal set forth in ORS 468B.155.

[*(b) The regulatory activities of any affected state agency responding to the declaration of a ground water management area under ORS 468B.180. As used in this subsection "affected state agency" means any agency having management responsibility for, or regulatory control over the ground water resource of this state or any substance that may contaminate the ground water resource of this state.*]

(2)**(a)** The Department of Environmental Quality shall provide staff for project oversight and for those activities authorized under ORS 468B.165 to 468B.188, including scheduling meetings, providing public notice of meetings and other group activities and keeping records of group activities.

(b) Notwithstanding paragraph (a) of this subsection, the department shall provide staff support for projects or activities related to a ground water quality concern area or a ground water quality management area only as directed by the lead agency designated under ORS 468B.177 or 468B.184.

(3) In addition to its duties under subsection (1) of this section, the department shall, on or before January 1 of each odd-numbered year, prepare a report to the Legislative Assembly. The report shall include the status of ground water in Oregon, efforts made in the immediately preceding year to protect, conserve and restore Oregon's ground water resources and grants awarded under ORS 468B.169.

SECTION 25. ORS 468B.169 is amended to read:

468B.169. (1) Any person, state agency, political subdivision of this state or ground water management committee organized under ORS 468B.179 or 468B.182 may submit to the Department of Environmental Quality a request for funding, advice or assistance for a research or development project related to ground water quality as it relates to Oregon's ground water resource.

(2) The request under subsection (1) of this section shall be filed in the manner, be in the form and contain the information required by the department. [*The requester may submit the request either to the department or to a ground water management committee organized under ORS 468B.179 or 468B.182.*]

(3) The department shall approve only those requests that meet the criteria established by the department under ORS 468B.171.

SECTION 26. ORS 468B.171 is amended to read:

468B.171. (1) Of the moneys available to the Department of Environmental Quality to award as grants under ORS 468B.169, not more than one-third shall be awarded for funding of projects directly related to issues pertaining to a ground water **quality** management area.

(2) The department may award grants for the following purposes:

(a) Research in areas related to ground water including but not limited to hydrogeology, ground water quality, alternative residential, industrial and agricultural practices;

(b) Demonstration projects related to ground water including but not limited to hydrogeology, ground water quality, alternative residential, industrial and agricultural practices;

(c) Educational programs that help attain the goal set forth in ORS 468B.155; and

(d) Incentives to persons who implement innovative alternative practices that demonstrate increased protection of the ground water resource of Oregon.

(3) Funding priority shall be given to proposals that show promise of preventing or reducing ground water contamination caused by nonpoint source activities.

(4) In awarding grants for research under subsection (2) of this section, the department shall specify that not more than 10 percent of the grant may be used to pay indirect costs. The exact amount of a grant that may be used by an institution for such costs may be determined by the department.

(5) In accordance with the applicable provisions of ORS chapter 183, the Environmental Quality Commission shall adopt by rule guidelines and criteria for awarding grants under this section.

SECTION 27. ORS 468B.050 is amended to read:

468B.050. (1) Except as provided in ORS 468B.053 or 468B.215, without holding a permit from the Director of the Department of Environmental Quality or the State Department of Agriculture, which permit shall specify applicable effluent limitations, a person may not:

(a) Discharge any wastes into the waters of the state from any industrial or commercial establishment or activity or any disposal system.

(b) Construct, install, modify or operate any disposal system or part thereof or any extension or addition thereto.

(c) Increase in volume or strength any wastes in excess of the permissive discharges specified under an existing permit.

(d) Construct, install, operate or conduct any industrial, commercial, confined animal feeding operation or other establishment or activity or any extension or modification thereof or addition

thereto, the operation or conduct of which would cause an increase in the discharge of wastes into the waters of the state or which would otherwise alter the physical, chemical or biological properties of any waters of the state in any manner not already lawfully authorized.

(e) Construct or use any new outlet for the discharge of any wastes into the waters of the state.

(2) The Department of Environmental Quality or the State Department of Agriculture may issue a permit under this section as an individual, general or watershed permit. A permit may be issued to a class of persons using the procedures for issuance of an order or for the adoption of a rule. Notwithstanding the definition of "order" or "rule" provided in ORS 183.310, in issuing a general or watershed permit by order pursuant to this section, the State Department of Agriculture or Department of Environmental Quality:

(a) Is not required to direct the order to a named person or named persons; and

(b) May include in the order agency directives, standards, regulations and statements of general applicability that implement, interpret or prescribe law or policy.

(3) When deciding whether to issue a permit to a confined animal feeding operation under this section, the Department of Environmental Quality or the State Department of Agriculture shall consider any relevant determination by the Water Resources Department pursuant to ORS 468B.216 (2).

(4) Notwithstanding subsection (2) of this section, the Department of Environmental Quality or the State Department of Agriculture may not issue a general NPDES or WPCF permit to a new large confined animal feeding operation that:

(a) Is located in a ground water **quality** management area declared under ORS 468B.180; and

(b) Applies manure, litter, wastewater or processed waste to land within the ground water **quality** management area.

(5) Subsection (4) of this section does not apply to the issuance of water quality permits to regulate stormwater.

(6) The State Department of Agriculture or the Department of Environmental Quality may define "confined animal feeding operation" by rule for purposes of implementing this section.

(7) As used in this section:

(a) "New large confined animal feeding operation" has the meaning given that term in ORS 468B.215.

(b) "NPDES" and "WPCF" have the meanings given those terms in ORS 561.255.

SECTION 28. ORS 468B.219 is amended to read:

468B.219. (1) The State Department of Agriculture may issue a nutrient application permit.

(2) As applicable, the permit must concern, but need not only concern:

(a) The rate of nutrient application.

(b) The source of the nutrients.

(c) The placement of the nutrients.

(d) The timing of nutrient application.

(e) The volume of wastewater applied to the surface of the lands per time period.

(3) Except as authorized under an NPDES or WPCF permit, a person may apply manure, litter, wastewater or processed waste from a confined animal feeding operation on lands in a ground water **quality** management area declared under ORS 468B.180 only if the person holds a permit under this section.

(4) A person that holds a permit under this section shall provide the confined animal feeding operation from which the person receives manure, litter, wastewater or processed waste with a copy of the permit.

(5) The department may adopt rules to implement this section, including rules that establish:

(a) Recordkeeping requirements for a person that holds a permit under this section.

(b) Criteria for inspections to ensure compliance with this section.

(c) Fees for permits under this section.

(6) As used in this section, "NPDES" and "WPCF" have the meanings given those terms in ORS 561.255.

SECTION 29. ORS 215.213 is amended to read:

215.213. (1) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), the following uses may be established in any area zoned for exclusive farm use:

(a) Churches and cemeteries in conjunction with churches.

(b) The propagation or harvesting of a forest product.

(c) Utility facilities necessary for public service, [*including wetland waste treatment systems but*] not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height[. *A utility facility necessary for public service may be established as provided in*]**, but including**:

(A) **Utility facilities as provided in** ORS 215.275; [*or*]

(B) [*If the utility facility is an associated transmission line*] **Utility facilities that are associated transmission lines**, as defined in ORS 215.274 and 469.300[.]**;**

(C) Wetland waste treatment systems; or

(D) Facilities and service lines needed to provide water or wastewater services allowed under section 17 of this 2025 Act.

(d) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator. Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel size requirements under ORS 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel.

(e) Nonresidential buildings customarily provided in conjunction with farm use.

(f) Subject to ORS 215.279, primary or accessory dwellings customarily provided in conjunction with farm use. For a primary dwelling, the dwelling must be on a lot or parcel that is managed as part of a farm operation and is not smaller than the minimum lot size in a farm zone with a minimum lot size acknowledged under ORS 197.251.

(g) Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (2)(a) or (b).

(h) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (2)(a) or (b).

(i) One manufactured dwelling or recreational vehicle, or the temporary residential use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. The governing body or its designee shall provide for periodic review of the hardship claimed under this paragraph. A temporary residence approved under this paragraph is not eligible for replacement under paragraph (q) of this subsection.

(j) Climbing and passing lanes within the right of way existing as of July 1, 1987.

(k) Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.

(L) Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.

(m) Minor betterment of existing public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.

(n) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a county inventory as historic property as defined in ORS 358.480.

(o) Creation, restoration or enhancement of wetlands.

(p) A winery, as described in ORS 215.452 or 215.453.

(q) Alteration, restoration or replacement of a lawfully established dwelling, as described in ORS 215.291.

(r) Farm stands if:

(A) The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

(B) The farm stand does not include structures designed for occupancy as a residence or for activity other than the sale of farm crops or livestock and does not include structures for banquets, public gatherings or public entertainment.

(s) An armed forces reserve center, if the center is within one-half mile of a community college. For purposes of this paragraph, "armed forces reserve center" includes an armory or National Guard support facility.

(t) A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this paragraph. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this paragraph. An owner of property used for the purpose authorized in this paragraph may charge a person operating the use on the property rent for the property. An operator may charge users of the property a fee that does not exceed the operator's cost to maintain the property, buildings and facilities. As used in this paragraph, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines or design by a person on the ground.

(u) A facility for the processing of farm products as described in ORS 215.255.

(v) Fire service facilities providing rural fire protection services.

(w) Irrigation reservoirs, canals, delivery lines and those structures and accessory operational facilities, not including parks or other recreational structures and facilities, associated with a district as defined in ORS 540.505.

(x) Utility facility service lines. Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

(A) A public right of way;

(B) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or

(C) The property to be served by the utility.

(y) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application of reclaimed water, agricultural or industrial process water or biosolids, or the onsite treatment of

septage prior to the land application of biosolids, for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under this chapter. For the purposes of this paragraph, onsite treatment of septage prior to the land application of biosolids is limited to treatment using treatment facilities that are portable, temporary and transportable by truck trailer, as defined in ORS 801.580, during a period of time within which land application of biosolids is authorized under the license, permit or other approval.

(z) Dog training classes or testing trials, which may be conducted outdoors or in farm buildings in existence on January 1, 2019, when:

(A) The number of dogs participating in training does not exceed 10 dogs per training class and the number of training classes to be held on-site does not exceed six per day; and

(B) The number of dogs participating in a testing trial does not exceed 60 and the number of testing trials to be conducted on-site is limited to four or fewer trials per calendar year.

(aa) A cider business, as described in ORS 215.451.

(bb) A farm brewery, as described in ORS 215.449.

(2) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), the following uses may be established in any area zoned for exclusive farm use subject to ORS 215.296:

(a) A primary dwelling in conjunction with farm use or the propagation or harvesting of a forest product on a lot or parcel that is managed as part of a farm operation or woodlot if the farm operation or woodlot:

(A) Consists of 20 or more acres; and

(B) Is not smaller than the average farm or woodlot in the county producing at least $2,500 in annual gross income from the crops, livestock or forest products to be raised on the farm operation or woodlot.

(b) A primary dwelling in conjunction with farm use or the propagation or harvesting of a forest product on a lot or parcel that is managed as part of a farm operation or woodlot smaller than required under paragraph (a) of this subsection, if the lot or parcel:

(A) Has produced at least $20,000 in annual gross farm income in two consecutive calendar years out of the three calendar years before the year in which the application for the dwelling was made or is planted in perennials capable of producing upon harvest an average of at least $20,000 in annual gross farm income; or

(B) Is a woodlot capable of producing an average over the growth cycle of $20,000 in gross annual income.

(c) Commercial activities that are in conjunction with farm use, including the processing of farm crops into biofuel not permitted under ORS 215.203 (2)(b)(K) or 215.255.

(d) Operations conducted for:

(A) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, not otherwise permitted under subsection (1)(g) of this section;

(B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298;

(C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

(D) Processing of other mineral resources and other subsurface resources.

(e) Community centers owned by a governmental agency or a nonprofit community organization and operated primarily by and for residents of the local rural community, hunting and fishing preserves, public and private parks, playgrounds and campgrounds. Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Land Conservation and Development Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296 (1). A public park or campground may be established as provided

under ORS 195.120. As used in this paragraph, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appliance.

(f) Golf courses on land determined not to be high-value farmland as defined in ORS 195.300.

(g) Commercial utility facilities for the purpose of generating power for public use by sale. If the area zoned for exclusive farm use is high-value farmland, a photovoltaic solar power generation facility may be established as a commercial utility facility as provided in ORS 215.447. A renewable energy facility as defined in ORS 215.446 may be established as a commercial utility facility.

(h) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.

(i) A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203 (2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

(j) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.

(k)(A) Commercial dog boarding kennels; or

(B) Dog training classes or testing trials that cannot be established under subsection (1)(z) of this section.

(L) Residential homes as defined in ORS 197.660, in existing dwellings.

(m) The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission or insect species. Insect species shall not include any species under quarantine by the State Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.

(n) Home occupations as provided in ORS 215.448.

(o) Transmission towers over 200 feet in height.

(p) Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.

(q) Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.

(r) Improvement of public road and highway related facilities such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels.

(s) A destination resort that is approved consistent with the requirements of any statewide planning goal relating to the siting of a destination resort.

(t) Room and board arrangements for a maximum of five unrelated persons in existing residences.

(u) A living history museum related to resource based activities owned and operated by a governmental agency or a local historical society, together with limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of the metropolitan urban growth boundary. As used in this paragraph:

(A) "Living history museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events; and

(B) "Local historical society" means the local historical society, recognized as such by the county governing body and organized under ORS chapter 65.

(v) Operations for the extraction and bottling of water.

(w) An aerial fireworks display business that has been in continuous operation at its current location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's permit to sell or provide fireworks.

(x) A landscape contracting business, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.

(y) Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located.

(z) Equine and equine-affiliated therapeutic and counseling activities, provided:

(A) The activities are conducted in existing buildings that were lawfully constructed on the property before January 1, 2019, or in new buildings that are accessory, incidental and subordinate to the farm use on the tract; and

(B) All individuals conducting therapeutic or counseling activities are acting within the proper scope of any licenses required by the state.

(aa) Child care facilities, preschool recorded programs or school-age recorded programs that are:

(A) Authorized under ORS 329A.250 to 329A.450;

(B) Primarily for the children of residents and workers of the rural area in which the facility or program is located; and

(C) Colocated with a community center or a public or private school allowed under this subsection.

(3) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), a single-family residential dwelling not provided in conjunction with farm use may be established on a lot or parcel with soils predominantly in capability classes IV through VIII as determined by the Agricultural Capability Classification System in use by the United States Department of Agriculture Soil Conservation Service on October 15, 1983. A proposed dwelling is subject to approval of the governing body or its designee in any area zoned for exclusive farm use upon written findings showing all of the following:

(a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use.

(b) The dwelling is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, location and size of the tract. A lot or parcel shall not be considered unsuitable solely because of its size or location if it can reasonably be put to farm use in conjunction with other land.

(c) Complies with such other conditions as the governing body or its designee considers necessary.

(4) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), one single-family dwelling, not provided in conjunction with farm use, may be established in any area zoned for exclusive farm use on a lot or parcel described in subsection (7) of this section that is not larger than three acres upon written findings showing:

(a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use;

(b) If the lot or parcel is located within the Willamette River Greenway, a floodplain or a geological hazard area, the dwelling complies with conditions imposed by local ordinances relating specifically to the Willamette River Greenway, floodplains or geological hazard areas, whichever is applicable; and

(c) The dwelling complies with other conditions considered necessary by the governing body or its designee.

(5) Upon receipt of an application for a permit under subsection (4) of this section, the governing body shall notify:

(a) Owners of land that is within 250 feet of the lot or parcel on which the dwelling will be established; and

(b) Persons who have requested notice of such applications and who have paid a reasonable fee imposed by the county to cover the cost of such notice.

(6) The notice required in subsection (5) of this section shall specify that persons have 15 days following the date of postmark of the notice to file a written objection on the grounds only that the dwelling or activities associated with it would force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use. If no objection is received, the governing body or its designee shall approve or disapprove the application. If an objection is received, the governing body shall set the matter for hearing in the manner prescribed in ORS 215.402 to 215.438. The governing body may charge the reasonable costs of the notice required by subsection (5)(a) of this section to the applicant for the permit requested under subsection (4) of this section.

(7) Subsection (4) of this section applies to a lot or parcel lawfully created between January 1, 1948, and July 1, 1983. For the purposes of this section:

(a) Only one lot or parcel exists if:

(A) A lot or parcel described in this section is contiguous to one or more lots or parcels described in this section; and

(B) On July 1, 1983, greater than possessory interests are held in those contiguous lots, parcels or lots and parcels by the same person, spouses or a single partnership or business entity, separately or in tenancy in common.

(b) "Contiguous" means lots, parcels or lots and parcels that have a common boundary, including but not limited to, lots, parcels or lots and parcels separated only by a public road.

(8) A person who sells or otherwise transfers real property in an exclusive farm use zone may retain a life estate in a dwelling on that property and in a tract of land under and around the dwelling.

(9) No final approval of a nonfarm use under this section shall be given unless any additional taxes imposed upon the change in use have been paid.

(10) Roads, highways and other transportation facilities and improvements not allowed under subsections (1) and (2) of this section may be established, subject to the approval of the governing body or its designee, in areas zoned for exclusive farm use subject to:

(a) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or

(b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993.

(11) The following agri-tourism and other commercial events or activities that are related to and supportive of agriculture may be established in any area zoned for exclusive farm use:

(a) A county may authorize a single agri-tourism or other commercial event or activity on a tract in a calendar year by an authorization that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract, if the agri-tourism or other commercial event or activity meets any local standards that apply and:

(A) The agri-tourism or other commercial event or activity is incidental and subordinate to existing farm use on the tract;

(B) The duration of the agri-tourism or other commercial event or activity does not exceed 72 consecutive hours;

(C) The maximum attendance at the agri-tourism or other commercial event or activity does not exceed 500 people;

(D) The maximum number of motor vehicles parked at the site of the agri-tourism or other commercial event or activity does not exceed 250 vehicles;

(E) The agri-tourism or other commercial event or activity complies with ORS 215.296;

(F) The agri-tourism or other commercial event or activity occurs outdoors, in temporary structures, or in existing permitted structures, subject to health and fire and life safety requirements; and

(G) The agri-tourism or other commercial event or activity complies with conditions established for:

(i) Planned hours of operation;

(ii) Access, egress and parking;

(iii) A traffic management plan that identifies the projected number of vehicles and any anticipated use of public roads; and

(iv) Sanitation and solid waste.

(b) In the alternative to paragraphs (a) and (c) of this subsection, a county may authorize, through an expedited, single-event license, a single agri-tourism or other commercial event or activity on a tract in a calendar year by an expedited, single-event license that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract. A decision concerning an expedited, single-event license is not a land use decision, as defined in ORS 197.015. To approve an expedited, single-event license, the governing body of a county or its designee must determine that the proposed agri-tourism or other commercial event or activity meets any local standards that apply, and the agri-tourism or other commercial event or activity:

(A) Must be incidental and subordinate to existing farm use on the tract;

(B) May not begin before 6 a.m. or end after 10 p.m.;

(C) May not involve more than 100 attendees or 50 vehicles;

(D) May not include the artificial amplification of music or voices before 8 a.m. or after 8 p.m.;

(E) May not require or involve the construction or use of a new permanent structure in connection with the agri-tourism or other commercial event or activity;

(F) Must be located on a tract of at least 10 acres unless the owners or residents of adjoining properties consent, in writing, to the location; and

(G) Must comply with applicable health and fire and life safety requirements.

(c) In the alternative to paragraphs (a) and (b) of this subsection, a county may authorize up to six agri-tourism or other commercial events or activities on a tract in a calendar year by a limited use permit that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract. The agri-tourism or other commercial events or activities must meet any local standards that apply, and the agri-tourism or other commercial events or activities:

(A) Must be incidental and subordinate to existing farm use on the tract;

(B) May not, individually, exceed a duration of 72 consecutive hours;

(C) May not require that a new permanent structure be built, used or occupied in connection with the agri-tourism or other commercial events or activities;

(D) Must comply with ORS 215.296;

(E) May not, in combination with other agri-tourism or other commercial events or activities authorized in the area, materially alter the stability of the land use pattern in the area; and

(F) Must comply with conditions established for:

(i) The types of agri-tourism or other commercial events or activities that are authorized during each calendar year, including the number and duration of the agri-tourism or other commercial events and activities, the anticipated daily attendance and the hours of operation;

(ii) The location of existing structures and the location of proposed temporary structures to be used in connection with the agri-tourism or other commercial events or activities;

(iii) The location of access and egress and parking facilities to be used in connection with the agri-tourism or other commercial events or activities;

(iv) Traffic management, including the projected number of vehicles and any anticipated use of public roads; and

(v) Sanitation and solid waste.

(d) In addition to paragraphs (a) to (c) of this subsection, a county may authorize agri-tourism or other commercial events or activities that occur more frequently or for a longer period or that do not otherwise comply with paragraphs (a) to (c) of this subsection if the agri-tourism or other commercial events or activities comply with any local standards that apply and the agri-tourism or other commercial events or activities:

(A) Are incidental and subordinate to existing commercial farm use of the tract and are necessary to support the commercial farm uses or the commercial agricultural enterprises in the area;

(B) Comply with the requirements of paragraph (c)(C), (D), (E) and (F) of this subsection;

(C) Occur on a lot or parcel that complies with the acknowledged minimum lot or parcel size; and

(D) Do not exceed 18 events or activities in a calendar year.

(12) A holder of a permit authorized by a county under subsection (11)(d) of this section must request review of the permit at four-year intervals. Upon receipt of a request for review, the county shall:

(a) Provide public notice and an opportunity for public comment as part of the review process; and

(b) Limit its review to events and activities authorized by the permit, conformance with conditions of approval required by the permit and the standards established by subsection (11)(d) of this section.

(13) For the purposes of subsection (11) of this section:

(a) A county may authorize the use of temporary structures established in connection with the agri-tourism or other commercial events or activities authorized under subsection (11) of this section. However, the temporary structures must be removed at the end of the agri-tourism or other event or activity. The county may not approve an alteration to the land in connection with an agri-tourism or other commercial event or activity authorized under subsection (11) of this section, including, but not limited to, grading, filling or paving.

(b) The county may issue the limited use permits authorized by subsection (11)(c) of this section for two calendar years. When considering an application for renewal, the county shall ensure compliance with the provisions of subsection (11)(c) of this section, any local standards that apply and conditions that apply to the permit or to the agri-tourism or other commercial events or activities authorized by the permit.

(c) The authorizations provided by subsection (11) of this section are in addition to other authorizations that may be provided by law, except that "outdoor mass gathering" and "other gathering," as those terms are used in ORS 197.015 (10)(d), do not include agri-tourism or other commercial events and activities.

SECTION 30. ORS 215.283 is amended to read:

215.283. (1) The following uses may be established in any area zoned for exclusive farm use:

(a) Churches and cemeteries in conjunction with churches.

(b) The propagation or harvesting of a forest product.

(c) Utility facilities necessary for public service, [*including wetland waste treatment systems but*] not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height[. *A utility facility necessary for public service may be established as provided in*]**, but including**:

(A) **Utility facilities as provided in** ORS 215.275; [*or*]

(B) [*If the utility facility is an associated transmission line*] **Utility facilities that are associated transmission lines**, as defined in ORS 215.274 and 469.300[.]**;**

(C) Wetland waste treatment systems; or

(D) Facilities and service lines needed to provide water or wastewater services allowed under section 17 of this 2025 Act.

(d) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator. Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel size requirements under ORS 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel.

(e) Subject to ORS 215.279, primary or accessory dwellings and other buildings customarily provided in conjunction with farm use.

(f) Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (2)(a) or (b).

(g) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (2)(a) or (b).

(h) Climbing and passing lanes within the right of way existing as of July 1, 1987.

(i) Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.

(j) Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.

(k) Minor betterment of existing public road and highway related facilities such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.

(L) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a county inventory as historic property as defined in ORS 358.480.

(m) Creation, restoration or enhancement of wetlands.

(n) A winery, as described in ORS 215.452 or 215.453.

(o) Farm stands if:

(A) The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

(B) The farm stand does not include structures designed for occupancy as a residence or for activity other than the sale of farm crops or livestock and does not include structures for banquets, public gatherings or public entertainment.

(p) Alteration, restoration or replacement of a lawfully established dwelling, as described in ORS 215.291.

(q) A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this paragraph. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this paragraph. An owner of property used for the purpose authorized in this paragraph may charge a person operating the use on the property rent for the property. An operator may charge users of the property a fee that does not exceed the operator's cost to maintain the property, buildings and facilities. As used in this paragraph, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines or design by a person on the ground.

(r) A facility for the processing of farm products as described in ORS 215.255.

(s) Fire service facilities providing rural fire protection services.

(t) Irrigation reservoirs, canals, delivery lines and those structures and accessory operational facilities, not including parks or other recreational structures and facilities, associated with a district as defined in ORS 540.505.

(u) Utility facility service lines. Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

(A) A public right of way;

(B) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or

(C) The property to be served by the utility.

(v) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application of reclaimed water, agricultural or industrial process water or biosolids, or the onsite treatment of septage prior to the land application of biosolids, for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under this chapter. For the purposes of this paragraph, onsite treatment of septage prior to the land application of biosolids is limited to treatment using treatment facilities that are portable, temporary and transportable by truck trailer, as defined in ORS 801.580, during a period of time within which land application of biosolids is authorized under the license, permit or other approval.

(w) A county law enforcement facility that lawfully existed on August 20, 2002, and is used to provide rural law enforcement services primarily in rural areas, including parole and post-prison supervision, but not including a correctional facility as defined under ORS 162.135.

(x) Dog training classes or testing trials, which may be conducted outdoors or in preexisting farm buildings, when:

(A) The number of dogs participating in training does not exceed 10 dogs per training class and the number of training classes to be held on-site does not exceed six per day; and

(B) The number of dogs participating in a testing trial does not exceed 60 and the number of testing trials to be conducted on-site is limited to four or fewer trials per calendar year.

(y) A cider business, as described in ORS 215.451.

(z) A farm brewery, as described in ORS 215.449.

(2) The following nonfarm uses may be established, subject to the approval of the governing body or its designee in any area zoned for exclusive farm use subject to ORS 215.296:

(a) Commercial activities that are in conjunction with farm use, including the processing of farm crops into biofuel not permitted under ORS 215.203 (2)(b)(K) or 215.255.

(b) Operations conducted for:

(A) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005 not otherwise permitted under subsection (1)(f) of this section;

(B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298;

(C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

(D) Processing of other mineral resources and other subsurface resources.

(c) Private parks, playgrounds, hunting and fishing preserves and campgrounds. Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Land Conservation and Development Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296 (1). As used in this paragraph, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appliance.

(d) Parks and playgrounds. A public park may be established consistent with the provisions of ORS 195.120.

(e) Community centers owned by a governmental agency or a nonprofit community organization and operated primarily by and for residents of the local rural community. A community center authorized under this paragraph may provide services to veterans, including but not limited to emergency and transitional shelter, preparation and service of meals, vocational and educational counseling and referral to local, state or federal agencies providing medical, mental health, disability income replacement and substance abuse services, only in a facility that is in existence on January 1, 2006. The services may not include direct delivery of medical, mental health, disability income replacement or substance abuse services.

(f) Golf courses on land:

(A) Determined not to be high-value farmland, as defined in ORS 195.300 (10); or

(B) Determined to be high-value farmland described in ORS 195.300 (10)(c) if the land:

(i) Is not otherwise described in ORS 195.300 (10);

(ii) Is surrounded on all sides by an approved golf course; and

(iii) Is west of U.S. Highway 101.

(g) Commercial utility facilities for the purpose of generating power for public use by sale. If the area zoned for exclusive farm use is high-value farmland, a photovoltaic solar power generation facility may be established as a commercial utility facility as provided in ORS 215.447. A renewable energy facility as defined in ORS 215.446 may be established as a commercial utility facility.

(h) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport, as used in this section, means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.

(i) Home occupations as provided in ORS 215.448.

(j) A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203 (2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

(k) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.

(L) One manufactured dwelling or recreational vehicle, or the temporary residential use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. The governing body or its designee shall provide for periodic review of the hardship claimed under this paragraph. A temporary residence approved under this paragraph is not eligible for replacement under subsection (1)(p) of this section.

(m) Transmission towers over 200 feet in height.

(n)(A) Commercial dog boarding kennels; or

(B) Dog training classes or testing trials that cannot be established under subsection (1)(x) of this section.

(o) Residential homes as defined in ORS 197.660, in existing dwellings.

(p) The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission or insect species. Insect species shall not include any species under quarantine by the State Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.

(q) Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.

(r) Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.

(s) Improvement of public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels.

(t) A destination resort that is approved consistent with the requirements of any statewide planning goal relating to the siting of a destination resort.

(u) Room and board arrangements for a maximum of five unrelated persons in existing residences.

(v) Operations for the extraction and bottling of water.

(w) Expansion of existing county fairgrounds and activities directly relating to county fairgrounds governed by county fair boards established pursuant to ORS 565.210.

(x) A living history museum related to resource based activities owned and operated by a governmental agency or a local historical society, together with limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of an urban growth boundary. As used in this paragraph:

(A) "Living history museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events; and

(B) "Local historical society" means the local historical society recognized by the county governing body and organized under ORS chapter 65.

(y) An aerial fireworks display business that has been in continuous operation at its current location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's permit to sell or provide fireworks.

(z) A landscape contracting business, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.

(aa) Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located.

(bb) Equine and equine-affiliated therapeutic and counseling activities, provided:

(A) The activities are conducted in existing buildings that were lawfully constructed on the property before January 1, 2019, or in new buildings that are accessory, incidental and subordinate to the farm use on the tract; and

(B) All individuals conducting therapeutic or counseling activities are acting within the proper scope of any licenses required by the state.

(cc) Guest ranches in eastern Oregon, as described in ORS 215.461.

(dd) Child care facilities, preschool recorded programs or school-age recorded programs that are:

(A) Authorized under ORS 329A.250 to 329A.450;

(B) Primarily for the children of residents and workers of the rural area in which the facility or program is located; and

(C) Colocated with a community center or a public or private school allowed under this subsection.

(3) Roads, highways and other transportation facilities and improvements not allowed under subsections (1) and (2) of this section may be established, subject to the approval of the governing body or its designee, in areas zoned for exclusive farm use subject to:

(a) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or

(b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993.

(4) The following agri-tourism and other commercial events or activities that are related to and supportive of agriculture may be established in any area zoned for exclusive farm use:

(a) A county may authorize a single agri-tourism or other commercial event or activity on a tract in a calendar year by an authorization that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract, if the agri-tourism or other commercial event or activity meets any local standards that apply and:

(A) The agri-tourism or other commercial event or activity is incidental and subordinate to existing farm use on the tract;

(B) The duration of the agri-tourism or other commercial event or activity does not exceed 72 consecutive hours;

(C) The maximum attendance at the agri-tourism or other commercial event or activity does not exceed 500 people;

(D) The maximum number of motor vehicles parked at the site of the agri-tourism or other commercial event or activity does not exceed 250 vehicles;

(E) The agri-tourism or other commercial event or activity complies with ORS 215.296;

(F) The agri-tourism or other commercial event or activity occurs outdoors, in temporary structures, or in existing permitted structures, subject to health and fire and life safety requirements; and

(G) The agri-tourism or other commercial event or activity complies with conditions established for:

(i) Planned hours of operation;

(ii) Access, egress and parking;

(iii) A traffic management plan that identifies the projected number of vehicles and any anticipated use of public roads; and

(iv) Sanitation and solid waste.

(b) In the alternative to paragraphs (a) and (c) of this subsection, a county may authorize, through an expedited, single-event license, a single agri-tourism or other commercial event or activity on a tract in a calendar year by an expedited, single-event license that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract. A decision concerning an expedited, single-event license is not a land use decision, as defined in ORS 197.015. To approve an expedited, single-event license, the governing body of a county or its designee must determine that the proposed agri-tourism or other commercial event or activity meets any local standards that apply, and the agri-tourism or other commercial event or activity:

(A) Must be incidental and subordinate to existing farm use on the tract;

(B) May not begin before 6 a.m. or end after 10 p.m.;

(C) May not involve more than 100 attendees or 50 vehicles;

(D) May not include the artificial amplification of music or voices before 8 a.m. or after 8 p.m.;

(E) May not require or involve the construction or use of a new permanent structure in connection with the agri-tourism or other commercial event or activity;

(F) Must be located on a tract of at least 10 acres unless the owners or residents of adjoining properties consent, in writing, to the location; and

(G) Must comply with applicable health and fire and life safety requirements.

(c) In the alternative to paragraphs (a) and (b) of this subsection, a county may authorize up to six agri-tourism or other commercial events or activities on a tract in a calendar year by a limited use permit that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract. The agri-tourism or other commercial events or activities must meet any local standards that apply, and the agri-tourism or other commercial events or activities:

(A) Must be incidental and subordinate to existing farm use on the tract;

(B) May not, individually, exceed a duration of 72 consecutive hours;

(C) May not require that a new permanent structure be built, used or occupied in connection with the agri-tourism or other commercial events or activities;

(D) Must comply with ORS 215.296;

(E) May not, in combination with other agri-tourism or other commercial events or activities authorized in the area, materially alter the stability of the land use pattern in the area; and

(F) Must comply with conditions established for:

(i) The types of agri-tourism or other commercial events or activities that are authorized during each calendar year, including the number and duration of the agri-tourism or other commercial events and activities, the anticipated daily attendance and the hours of operation;

(ii) The location of existing structures and the location of proposed temporary structures to be used in connection with the agri-tourism or other commercial events or activities;

(iii) The location of access and egress and parking facilities to be used in connection with the agri-tourism or other commercial events or activities;

(iv) Traffic management, including the projected number of vehicles and any anticipated use of public roads; and

(v) Sanitation and solid waste.

(d) In addition to paragraphs (a) to (c) of this subsection, a county may authorize agri-tourism or other commercial events or activities that occur more frequently or for a longer period or that do not otherwise comply with paragraphs (a) to (c) of this subsection if the agri-tourism or other commercial events or activities comply with any local standards that apply and the agri-tourism or other commercial events or activities:

(A) Are incidental and subordinate to existing commercial farm use of the tract and are necessary to support the commercial farm uses or the commercial agricultural enterprises in the area;

(B) Comply with the requirements of paragraph (c)(C), (D), (E) and (F) of this subsection;

(C) Occur on a lot or parcel that complies with the acknowledged minimum lot or parcel size; and

(D) Do not exceed 18 events or activities in a calendar year.

(5) A holder of a permit authorized by a county under subsection (4)(d) of this section must request review of the permit at four-year intervals. Upon receipt of a request for review, the county shall:

(a) Provide public notice and an opportunity for public comment as part of the review process; and

(b) Limit its review to events and activities authorized by the permit, conformance with conditions of approval required by the permit and the standards established by subsection (4)(d) of this section.

(6) For the purposes of subsection (4) of this section:

(a) A county may authorize the use of temporary structures established in connection with the agri-tourism or other commercial events or activities authorized under subsection (4) of this section. However, the temporary structures must be removed at the end of the agri-tourism or other event or activity. The county may not approve an alteration to the land in connection with an agri-tourism or other commercial event or activity authorized under subsection (4) of this section, including, but not limited to, grading, filling or paving.

(b) The county may issue the limited use permits authorized by subsection (4)(c) of this section for two calendar years. When considering an application for renewal, the county shall ensure compliance with the provisions of subsection (4)(c) of this section, any local standards that apply and conditions that apply to the permit or to the agri-tourism or other commercial events or activities authorized by the permit.

(c) The authorizations provided by subsection (4) of this section are in addition to other authorizations that may be provided by law, except that "outdoor mass gathering" and "other gathering," as those terms are used in ORS 197.015 (10)(d), do not include agri-tourism or other commercial events and activities.

NOTE: Sections 31 and 32 were deleted by amendment. Subsequent sections were not renumbered.

SECTION 33. ORS 537.525 is amended to read:

537.525. **(1)** The Legislative Assembly recognizes, declares and finds that the right to reasonable control of all water within this state from all sources of water supply belongs to the public, and that in order to [*insure*] **ensure** the preservation of the public welfare, safety and health it is necessary that:

[*(1)*] **(a)** Provision be made for the final determination of relative rights to appropriate ground water everywhere within this state and of other matters with regard thereto through a system of registration, permits and adjudication.

[*(2)*] **(b)** Rights to appropriate ground water and priority thereof be acknowledged and protected, except when, under certain conditions, the public welfare, safety and health require otherwise.

[*(3)*] **(c)** Beneficial use without waste, within the capacity of available sources, be the basis, measure and extent of the right to appropriate ground water.

[*(4)*] **(d)** All claims to rights to appropriate ground water be made a matter of public record.

[*(5)*] **(e)** Adequate and safe supplies of ground water for human consumption be assured, while conserving maximum supplies of ground water for agricultural, commercial, industrial, thermal, recreational and other beneficial uses.

[*(6)*] **(f)** The location, extent, capacity, quality and other characteristics of particular sources of ground water be determined.

[*(7)*] **(g)** Reasonably stable ground water levels be determined and maintained.

[*(8)*] **(h)** Depletion of ground water supplies below economic levels, impairment of natural quality of ground water by pollution and wasteful practices in connection with ground water be prevented or controlled within practicable limits.

[*(9)*] **(i)** Whenever wasteful use of ground water, impairment of or interference with existing rights to appropriate surface water, declining ground water levels, alteration of ground water temperatures that may adversely affect priorities or impair the long-term stability of the thermal properties of the ground water, interference among wells, thermal interference among wells, overdrawing

of ground water supplies or pollution of ground water exists or impends, controlled use of the ground water concerned be authorized and imposed under voluntary joint action by the Water Resources Commission and the ground water users concerned whenever possible, but by the commission under the police power of the state except as specified in ORS 537.796, when such voluntary joint action is not taken or is ineffective.

[*(10)*] **(j)** Location, construction, depth, capacity, yield and other characteristics of and matters in connection with wells be controlled in accordance with the purposes set forth in this section.

[*(11)*] **(k)** All activities in the state that affect the quality or quantity of ground water shall be consistent with the goal set forth in ORS 468B.155.

(2) The Legislative Assembly finds and declares that expanded group domestic use for a public water system located in a ground water quality management area declared under ORS 468B.180 using an amount of water equivalent to the amount of water provided by abandoned water wells as provided in section 20 of this 2025 Act ensures the preservation of the public welfare, safety and health.

SECTION 34. ORS 537.615 is amended to read:

537.615. (1) Any person or public agency intending to acquire a wholly new right to appropriate ground water or to enlarge upon any existing right to appropriate ground water, except for any purpose exempt under ORS 537.545, shall apply to the Water Resources Department for and be issued a permit before withdrawing or using the ground water.

(2) The application for a permit shall be in a form prescribed by the department and shall contain:

(a) The name and post-office address of the applicant.

(b) The nature of the use by the applicant of the ground water for which the application is made.

(c) The dates of the beginning and completion of the construction of any well or other means of developing and securing the ground water.

(d) The date when the ground water will be completely applied to the proposed beneficial use.

(e) The amount of ground water claimed.

(f) If the ground water is to be used for irrigation purposes, a description of the lands to be irrigated, giving the number of acres to be irrigated in each 40-acre legal subdivision.

(g) The depth to the water table, if known.

(h) The location of each well with reference to government survey corners or monuments or corners of recorded plats.

(i) The proposed depth, diameter and type of each well, and the kind and amount of the casing.

(j) The estimated capacity of each well and each well pump in gallons per minute, and the horsepower of each well pump motor.

(k) If the ground water is artesian or other ground water not requiring pumping, the rate of flow in gallons in such manner as the Water Resources Commission may prescribe.

(L) If the ground water supply is supplemental to an existing water supply, identification of any application for a permit, permit, certificate or adjudicated right to appropriate water made or held by the applicant.

(m) Any other information as the department considers necessary to evaluate the application.

(3) Each application for a permit shall be accompanied by any maps and drawings the department considers necessary.

(4) The map or drawing required to accompany the application shall be of sufficient quality and scale to establish the location of the proposed point of diversion and the proposed place of use identified by tax lot, township, range, section and nearest quarter-quarter section along with a notation of the acreage of the proposed place of use, if appropriate. In addition, the department shall accept locational coordinate information, including latitude and longitude as established by a global positioning system. If the application is for a water right for a municipal use, the map need not identify the proposed place of use by tax lot.

(5) Each application for a permit to appropriate water shall be accompanied by the examination fee set forth in ORS 536.050 (1).

(6) If the proposed use of the water is for a mining operation as defined in ORS 517.952, the applicant shall provide the information required under this section as part of the consolidated application under ORS 517.952 to 517.989.

(7) Notwithstanding any contrary provision of law, an application under this section may request the issuance of a permit to appropriate ground water for expanded group domestic use for a public water system in an amount of water equivalent to the amount of water provided by abandoned water wells as provided in section 20 of this 2025 Act.

[*(7)*] **(8)** Notwithstanding any provision of ORS chapter 183, an application for a permit to appropriate ground water shall be processed in the manner set forth in ORS 537.505 to 537.795. Nothing in ORS chapter 183 shall be construed to allow additional persons to participate in the process. To the extent that any provision in ORS chapter 183 conflicts with a provision set forth in ORS 537.505 to 537.795, the provisions in ORS 537.505 to 537.795 shall control.

SECTION 35. ORS 537.620 is amended to read:

537.620. (1) The Water Resources Department shall accept all applications for permits submitted under ORS 537.615 in proper form.

(2) Within 15 days after receiving the application, the department shall determine whether the application contains the information listed under ORS 537.615 (2) and is complete and not defective, including the payment of all fees required under ORS 537.615 (5). If the department determines that the application is incomplete or defective or that not all fees have been paid, the department shall return the fees paid and the application to the applicant to remedy the defect. If an application is complete and not defective, the department shall indorse on the application the date upon which the application was received at the department, which shall be the priority date for any water right issued in response to the application.

(3) Upon determining that an application is complete and not defective, the department shall determine whether the proposed use is prohibited by statute. If the proposed use is prohibited by statute, the department shall reject the application and return all fees to the applicant with an explanation of the statutory prohibition.

(4) If the proposed use is not prohibited by statute, the department shall undertake an initial review of the application and make a preliminary determination of:

(a) Whether the proposed use is restricted or limited by statute or rule or because the proposed use is located within a designated critical ground water area;

(b) **Except for applications described in ORS 537.615 (7),** the extent to which water is available from the proposed source during the times and in the amounts requested; and

(c) Any other issue the department identifies as a result of the initial review that may preclude approval of or restrict the proposed use.

(5) Upon completion of the initial review and no later than 30 days after determining an application to be complete and not defective as described in subsection (2) of this section, the department shall notify the applicant of its preliminary determinations and allow the applicant 14 days from the date of mailing within which to notify the department to stop processing the application or to proceed with the application. If the applicant notifies the department to stop processing the application, the department shall return the application and all fees paid in excess of $310. If the department receives no timely response from the applicant, the department shall proceed with the application.

(6) Within seven days after proceeding with the application under subsection (5) of this section, the department shall give public notice of the application in the weekly notice published by the department. The notice shall include a request for comments on the application and information pertaining to how an interested person may obtain future notices about the application and a copy of the proposed final order.

(7) Within 30 days after the public notice under subsection (6) of this section, any person interested in the application shall submit written comments to the department. Any person who asks to receive a copy of the department's proposed final order shall submit to the department the fee required under ORS 536.050 (1)(p).

SECTION 36. ORS 537.621 is amended to read:

537.621. (1) Within 60 days after the Water Resources Department proceeds with the application under ORS 537.620 (5), the department shall complete application review and issue a proposed final order approving or denying the application or approving the application with modifications or conditions. The department may request the applicant to provide additional information needed to complete the review. If the department requests additional information, the request shall be specific and shall be sent to the applicant by registered mail. The department shall specify a date by which the information must be returned, which shall be not less than 10 days after the department mails the request to the applicant. If the department does not receive the information or a request for a time extension under ORS 537.627 by the date specified in the request, the department may reject the application and may refund fees in accordance with ORS 536.050 (4)(a). The time period specified by the department in a request for additional information shall allow the department to comply with the 60-day time limit established by this subsection.

(2)**(a)** In reviewing the application under subsection (1) of this section, the department shall determine whether the proposed use will ensure the preservation of the public welfare, safety and health as described in ORS 537.525. The department shall presume that a proposed use will ensure the preservation of the public welfare, safety and health if the proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310 (12), if water is available, if the proposed use will not injure other water rights and if the proposed use complies with rules of the Water Resources Commission. This shall be a rebuttable presumption and may be overcome by a preponderance of evidence that either:

[*(a)*] **(A)** One or more of the criteria for establishing the presumption are not satisfied; or

[*(b)*] **(B)** The proposed use would not ensure the preservation of the public welfare, safety and health as demonstrated in comments, in a protest under subsection (7) of this section or in a finding of the department that shows:

[*(A)*] **(i)** The specific aspect of the public welfare, safety and health under ORS 537.525 that would be impaired or detrimentally affected; and

[*(B)*] **(ii)** Specifically how the identified aspect of the public welfare, safety and health under ORS 537.525 would be impaired or be adversely affected.

(b) In lieu of the factors described in paragraph (a) of this subsection, the department shall presume that a proposed use will ensure the preservation of the public welfare, safety and health if the application is for an expanded group domestic use for a public water system located in a ground water quality management area declared under ORS 468B.180 for an amount of water equivalent to the amount of water provided by abandoned water wells as provided in section 20 of this 2025 Act.

(3)**(a)** The proposed final order shall cite findings of fact and conclusions of law and shall include but need not be limited to:

[*(a)*] **(A)** Confirmation or modification of the preliminary determinations made in the initial review;

[*(b)*] **(B)** A brief statement that explains the criteria considered relevant to the decision, including the applicable basin program and the compatibility of the proposed use with applicable land use plans;

[*(c)*] **(C)** An assessment of water availability and the amount of water necessary for the proposed use;

[*(d)*] **(D)** An assessment of whether the proposed use would result in injury to existing water rights;

[*(e)*] **(E)** An assessment of whether the proposed use would ensure the preservation of the public welfare, safety and health as described in ORS 537.525;

[*(f)*] **(F)** A draft permit, including any proposed conditions, or a recommendation to deny the application;

[*(g)*] **(G)** Whether the rebuttable presumption under subsection (2) of this section has been established;

[*(h)*] **(H)** The date by which protests to the proposed final order must be received by the department; and

[*(i)*] **(I)** The flow rate and duty of water allowed.

(b) Notwithstanding paragraph (a) of this subsection, if the application is for an expanded group domestic use for a public water system located in a ground water quality management area declared under ORS 468B.180 for an amount of water equivalent to the amount of water provided by abandoned water wells as provided in section 20 of this 2025 Act, the proposed order need not cite the findings of fact and conclusions of law described in paragraph (a)(B) to (D) of this subsection, except that the order must include a brief statement that explains the criteria considered relevant to the decision and the compatibility of the proposed use with applicable land use plans.

(4) In establishing the flow rate and duty of water allowed, the department may consider a general basin-wide standard, but first shall evaluate information submitted by the applicant to demonstrate the need for a flow rate and duty higher than the general standard. If the applicant provides such information, the department shall authorize the requested rate and duty except upon specific findings related to the application to support a determination that a lesser amount is needed. If the applicant does not provide information to demonstrate the need for a flow rate and duty higher than the general basin-wide standard, the department may apply the general standards without specific findings related to the application.

(5) The department shall mail copies of the proposed final order to the applicant and to persons who have requested copies and paid the fee required under ORS 536.050 (1)(p). The department also shall publish notice of the proposed final order by publication in the weekly notice published by the department.

(6) Any person who supports a proposed final order may request standing for purposes of participating in any contested case proceeding on the proposed final order or for judicial review of a final order. A request for standing shall be in writing and shall be accompanied by the fee established under ORS 536.050 (1)(n).

(7) Any person may submit a protest against a proposed final order. A protest shall be in writing and shall include:

(a) The name, address and telephone number of the protestant;

(b) A description of the protestant's interest in the proposed final order, and if the protestant claims to represent the public interest, a precise statement of the public interest represented;

(c) A detailed description of how the action proposed in the proposed final order would impair or be detrimental to the protestant's interest;

(d) A detailed description of how the proposed final order is in error or deficient and how to correct the alleged error or deficiency;

(e) Any citation of legal authority supporting the protest, if known; and

(f) The protest fee required under ORS 536.050.

(8) Requests for standing and protests on the proposed final order shall be submitted within 45 days after publication of the notice of the proposed final order in the weekly notice published by the department. Any person who asks to receive a copy of the department's final order shall submit to the department the fee required under ORS 536.050 (1)(p), unless the person has previously requested copies and paid the required fee under ORS 537.620 (7), the person is a protestant and has paid the fee required under ORS 536.050 (1)(j) or the person has standing and has paid the fee under ORS 536.050 (1)(n).

(9) Within 60 days after the close of the period for receiving protests, the Water Resources Director shall:

(a) Issue a final order as provided under ORS 537.625 (1); or

(b) Schedule a contested case hearing if a protest has been submitted and if:

(A) Upon review of the issues, the director finds that there are significant disputes related to the proposed use of water; or

(B) Within 30 days after the close of the period for submitting protests, the applicant requests a contested case hearing.

NOTE: Section 37 was deleted by amendment. Subsequent sections were not renumbered.

SECTION 38. ORS 537.780 is amended to read:

537.780. (1) In the administration of ORS 537.505 to 537.795 and 537.992, the Water Resources Commission may:

(a) Require that all flowing wells be capped or equipped with valves so that the flow of ground water may be completely stopped when the ground water is not actually being applied to a beneficial use.

(b) Enforce:

(A) General standards for the construction, alteration, abandonment, conversion or maintenance of wells and their casings, fittings, valves, pumps and [*back-siphoning*] **backflow** prevention devices; and

(B) Special standards for the construction, alteration, abandonment, conversion or maintenance of particular wells and their casings, fittings, valves and pumps.

(c)(A) Adopt by rule and enforce when necessary to protect the ground water resource, standards for the construction, maintenance, abandonment or use of any hole through which ground water may be contaminated; or

(B) Enter into an agreement with, or advise, other state agencies that are responsible for holes other than wells through which ground water may be contaminated in order to protect the ground water resource from contamination.

(d) Enforce uniform standards for the scientific measurement of water levels and of ground water flowing or withdrawn from wells.

(e) Enter upon any lands for the purpose of inspecting wells, including wells exempt under ORS 537.545, casings, fittings, valves, pipes, pumps, measuring devices and [*back-siphoning*] **backflow** prevention devices.

(f) Prosecute actions and suits to enjoin violations of ORS 537.505 to 537.795 and 537.992, and appear and become a party to any action, suit or proceeding in any court or before any administrative body when it appears to the satisfaction of the commission that the determination of the action, suit or proceeding might be in conflict with the public policy expressed in ORS 537.525.

(g) Call upon and receive advice and assistance from the Environmental Quality Commission or any other public agency or any person, and enter into cooperative agreements with a public agency or person.

(h) Adopt and enforce rules necessary to carry out the provisions of ORS 537.505 to 537.795 and 537.992 including but not limited to rules governing:

(A) The form and content of registration statements, certificates of registration, applications for permits, permits, certificates of completion, ground water right certificates, notices, proofs, maps, drawings, logs and licenses;

(B) Procedure in hearings held by the commission; and

(C) The circumstances under which the helpers of persons operating well drilling machinery may be exempt from the requirement of direct supervision by a licensed water well constructor.

(i) In accordance with applicable law regarding search and seizure, apply to any court of competent jurisdiction for a warrant to seize any well drilling machine used in violation of ORS 537.747 or 537.753.

(2) In the administration of ORS 537.505 to 537.795 and 537.992 in a ground water quality management area, as defined in ORS 468B.150, the Water Resources Department shall require compliance with backflow prevention rules.

[*(2)*] **(3)** Notwithstanding any provision of subsection (1) of this section, in administering the provisions of ORS 537.505 to 537.795 and 537.992, the commission may not:

(a) Adopt any rule restricting ground water use in an area unless the rule is based on substantial evidence in the record of the Water Resources Department to justify the imposition of restrictions.

(b) Make any determination that a ground water use will impair, substantially interfere or unduly interfere with a surface water source unless the determination is based on substantial evidence. Such evidence may include reports or studies prepared with relation to the specific use or may be based on the application of generally accepted hydrogeological principles to the specific use.

[*(3)*] **(4)** At least once every three years, the commission shall review any rule adopted under subsection [*(2)*] **(3)** of this section that restricts ground water use in an area. The review process shall include public notice and an opportunity to comment on the rule.

(5) The commission may establish by rule, and enforce, backflow prevention standards for the use of surface water in a ground water quality concern area or a ground water quality management area, as those terms are defined in ORS 468B.150.

SECTION 39. ORS 540.435 is amended to read:

540.435. (1)**(a)** In addition to any other authority of the Water Resources Commission to order installation of a measuring device, if the commission finds accurate water use information necessary because of serious water management problems created by ground water decline, unresolved user disputes or frequent water shortages, the commission by rule may require a water right owner using any surface or ground water source within the state to install a totalizing measuring device and to submit annually a water use report.

(b)(A) In addition to the factors listed in paragraph (a) of this subsection, as necessary to protect public health, the commission may find that ground water contamination in an underground reservoir in a ground water quality concern area or a ground water quality management area, as those terms are defined in ORS 468B.150, is a serious water management problem.

(B) The commission or the Water Resources Department may not, based on a finding under this paragraph, require the installation of a measuring device to measure ground water used for an exempt use under ORS 537.545.

(2) Before the commission implements any requirements under subsection (1) of this section the commission shall:

(a) Cause a hearing to be conducted in the affected area to determine whether a serious management problem exists; and

(b) Allow any affected person an opportunity to present alternative methods or devices that could be used to provide the information necessary to manage the water resource or to alleviate the water management problem.

(3) The watermaster may prohibit the diversion or use of water by anyone who has failed to comply with a commission rule or order requiring installation of measuring devices or submission of a water use report.

SECTION 40. ORS 454.779 is amended to read:

454.779. (1) As used in this section and ORS 454.777:

(a) "Available sewer" means an existing public sewer system that a residence or small business is capable of being connected to:

(A) In compliance with state and local law; and

(B) Without a significant extension of the public sewer system.

(b) [*"Loan program"*] **"Financial assistance program"** means a program **to provide grants, loans or other assistance that is** funded by a **program** grant awarded under this section.

(c)(A) "On-site septic system" means a subsurface on-site sewage treatment and disposal system, including, but not limited to, alternative sewage disposal systems, nonwater-carried sewage disposal facilities and subsurface sewage disposal systems as those terms are defined in ORS 454.605.

(B) "On-site septic system" does not include any system that is designed to treat and dispose of industrial waste.

(d)(A) "Residence" or "residential" means single-unit or multiple-unit housing, whether occupied by the owner or a tenant.

(B) "Residence" or "residential" does not include property used to provide short-term lodging.

[*(d)*] **(e)** "Small business" means a corporation, partnership, sole proprietorship or other legal entity formed for the purpose of making a profit and that generates less than 3,500 gallons of wastewater per day.

(2) The Department of Environmental Quality shall award **program** grants for the purpose of developing and administering [*loan*] **financial assistance** programs [*to provide low-interest loans*] for the purposes described in subsection (3)(b) of this section. The Environmental Quality Commission may adopt rules necessary to implement the provisions of this section.

(3) The department may not disburse **program** grant funds under this section unless the department and the intended **program** grant award recipient first enter into a grant agreement. The grant agreement must:

(a) Provide that a lender that participates in a [*loan*] **financial assistance** program must agree to subordinate the lender's lien to the borrower's consensual mortgage lien.

(b) Require that [*loans*] **financial assistance** provided to **property owners** [*borrowers under a loan program*] must be used for at least one of the following purposes to address a public health and safety risk or to otherwise protect or maintain water quality in the waters of this state:

(A) To repair a damaged, malfunctioning or inoperable residential or small business on-site septic system.

(B) To replace a damaged, malfunctioning or inoperable residential or small business on-site septic system with:

(i) A new, used or reconditioned functional residential or small business on-site septic system;

(ii) A new, used or reconditioned functional cluster on-site septic system; or

(iii) A connection to an available sewer, and to properly decommission and discontinue use of the on-site septic system.

(C) To upgrade a residential or small business on-site septic system with a newer or more advanced on-site septic system. An upgrade may include alterations if the work is part of a repair or if the on-site septic system being upgraded is more than 25 years old.

(D) To replace the waste disposal well or sewage drill hole of an otherwise functional residential or small business on-site septic system.

(E) To conduct a regional evaluation of community, residential or small business on-site septic systems to determine whether repair or replacement is necessary.

(c) Require that, if a residence or small business with a damaged, malfunctioning or inoperable on-site septic system is located within the territory of an available sewer, and is required to connect to the available sewer, [*a loan*] **financial assistance** provided [*under a loan program*] to address the damaged, malfunctioning or inoperable on-site septic system must be used to install a connection to the available sewer and to properly decommission and discontinue use of the on-site septic system.

(d) Require that a loan provided under a [*loan*] **financial assistance** program must be in an amount that covers 100 percent of the costs associated with the purposes under paragraph (b) of this subsection for which the loan is provided, unless the borrower requests and consents to a loan that covers a lower percentage of the costs.

(e) Require that a **program** grant award recipient must provide a mechanism for ensuring compliance with any locally required operation and maintenance of an on-site septic system for which [*a loan*] **financial assistance** is provided [*under a loan program*].

(f) Require that a **program** grant award recipient use accounting, auditing and fiscal procedures that conform to generally accepted government accounting standards.

(4) In selecting **program** grant award recipients under this section, the department shall give preference to applicants that:

(a) [*Prioritize, but do not limit themselves to, providing loans to*] **Provide financial assistance to** low and moderate income **households, residential housing providers** and small business [*applicants*] **property owners** that are unable to obtain traditional financing;

(b) Can demonstrate prior success in offering, underwriting, servicing and managing loans**, or providing other financial assistance,** to:

(A) Members of low and moderate income populations;

(B) Persons with a range of credit qualifications; and

(C) Residential and commercial [*borrowers*] **property owners**; and

(c) Plan to engage additional stakeholders in outreach and marketing efforts for a [*loan*] **financial assistance** program.

(5) In addition to applicants described in subsection (4) of this section, the department shall give preference to applicants that provide financial assistance for the repair, replacement, upgrade or evaluation of residential or small business on-site septic systems located in a ground water quality concern area or a ground water quality management area, as those terms are defined in ORS 468B.150.

SECTION 40a. ORS 561.191 is amended to read:

561.191. (1) The State Department of Agriculture shall develop and implement any program or rules that directly regulate farming practices, as defined in ORS 30.930, that are for the purpose of protecting water quality and that are applicable to areas of the state designated as exclusive farm use zones under ORS 215.203 or other agricultural lands in Oregon, including but not limited to rules related to:

(a) Protection of the quality of surface or ground water;

(b) Wellhead protection areas;

(c) Coastal zone management areas;

(d) [*Areas of ground water concern*] **Ground water quality concern areas, as defined in ORS 468B.150**; and

(e) Ground water **quality** management areas**, as defined in ORS 468B.150**.

(2) Any program or rules adopted by the State Department of Agriculture under subsection (1) of this section shall be designed to assure achievement and maintenance of water quality standards adopted by the Environmental Quality Commission.

(3) If two or more state agencies are required to adopt rules under ORS 468B.150 to 468B.190, the agencies:

(a) Shall consult with one another and coordinate the rules; and

(b) May consolidate the rulemaking proceedings.

(4) Nothing in this section is intended to change or reduce the authority of the Water Resources Commission or the Water Resources Department under ORS chapters 536 to 543.

SECTION 41. ORS 568.909 is amended to read:

568.909. (1) The State Department of Agriculture may describe the boundaries of agricultural and rural lands that are subject to a water quality management plan:

(a) Due to a determination by the Environmental Quality Commission to establish a Total Maximum Daily Load for a body of water under the Federal Water Pollution Control Act (33 U.S.C. 1313);

(b) Due to a declaration of a ground water **quality** management area under ORS 468B.180; or

(c) When an agricultural water quality management plan is otherwise specifically required by state or federal law.

(2) For an area whose boundaries have been designated under this section, the department shall develop and carry out a water quality management plan for the prevention and control of water pollution from agricultural activities and soil erosion. The department shall base the plan and rules adopted to implement the plan upon scientific information.

SECTION 42. ORS 568.930 is amended to read:

568.930. (1) Landowners shall conduct all agricultural activities on agricultural lands within the boundaries of an area subject to a water quality management plan in full compliance with the rules implementing the plan and with all the rules and standards of the Environmental Quality Commission relating to water pollution control. In addition to any other remedy provided by law, any violation of those rules or standards shall be subject to all remedies and sanctions available to the Department of Environmental Quality or the Environmental Quality Commission.

(2) The State Department of Agriculture and the State Board of Agriculture shall consult with the Department of Environmental Quality or the Environmental Quality Commission in the adoption and review of water quality management plans and in the adoption of rules to implement the plans.

(3)(a) The Environmental Quality Commission may petition the State Department of Agriculture for a review of part or all of any water quality management plan and rules implementing the plan. The petition must allege with reasonable specificity that the plan or the rules are not adequate to achieve compliance with applicable state and federal water quality standards.

(b) The State Department of Agriculture, in consultation with the State Board of Agriculture, shall complete its review of a petition submitted under paragraph (a) of this subsection within 90 days of the date of the filing of the petition for review. The State Department of Agriculture may not terminate the review without the concurrence of the Environmental Quality Commission unless the department initiates revisions to the rules implementing the water quality management plan that address the issues raised by the Environmental Quality Commission. If the State Department of Agriculture adopts any revisions in response to a petition by the Environmental Quality Commission, the department shall adopt the revisions not later than two years from the date the Environmental Quality Commission submits the petition, unless the department, with the concurrence of the Environmental Quality Commission, finds that special circumstances require additional time.

(4) A water quality management plan and rules implementing the plan that pertain to a ground water **quality** management area shall be subject to the coordination requirements of ORS 468B.162.

SECTION 43. ORS 634.016 is amended to read:

634.016. (1) Every pesticide, including each formula or formulation, manufactured, compounded, delivered, distributed, sold, offered or exposed for sale in this state shall be registered each year with the State Department of Agriculture.

(2) Every device manufactured, delivered, distributed, sold, offered or exposed for sale in this state shall be registered each year with the department.

(3) The registration shall be made by the manufacturer or a distributor of the pesticide.

(4) The application for registration shall include:

(a) The name and address of the registrant.

(b) The name and address of the manufacturer if different than the registrant.

(c) The brand name or trademark of the pesticide.

(d) A specimen or facsimile of the label of each pesticide, and each formula or formulation, for which registration is sought, except for annual renewals of the registration when the label remains unchanged.

(e) The correct name and total percentage of each active ingredient.

(f) The total percentage of inert ingredients.

(5) The application for registration shall be accompanied by a registration fee to be established by the department for each pesticide and each formula or formulation. The registration fee may not exceed $400 for each such pesticide, or each formula or formulation.

(6) The department, at the time of application for registration of any pesticide or after a declaration of a ground water **quality** management area under ORS 468B.180 may:

(a) Restrict or limit the manufacture, delivery, distribution, sale or use of any pesticide in this state.

(b) Refuse to register any pesticide that is highly toxic for which there is no effective antidote under the conditions of use for which such pesticide is intended or recommended.

(c) Refuse to register any pesticide for use on a crop for which no finite tolerances for residues of such pesticide have been established by either the department or the federal government.

(d) In restricting the purposes for which pesticides may be manufactured, delivered, distributed, sold or used, or in refusing to register any pesticide, give consideration to:

(A) The damage to health or life of humans or animals, or detriment to the environment, that might result from the distribution and use of such pesticide.

(B) Authoritative findings and recommendations of agencies of the federal government and of any advisory committee or group established under ORS 634.306 (10).

(C) The existence of an effective antidote under known conditions of use for which the material is intended or recommended.

(D) Residual or delayed toxicity of the material.

(E) The extent to which a pesticide or its carrying agent simulates by appearance and may be mistaken for human food or animal feed.

(7) The provisions of this section shall not, except as provided herein, apply to:

(a) The use and purchase of pesticides by the federal government or its agencies.

(b) The sale or exchange of pesticides between manufacturers and distributors.

(c) Drugs, chemicals or other preparations sold or intended for medicinal or toilet purposes or for use in the arts or sciences.

(d) Common carriers, contract carriers or public warehousemen delivering or storing pesticides, except as provided in ORS 634.322.

SECTION 44. (1) Notwithstanding the amendments to ORS 468B.150 and 468B.180 by sections 1 and 9 of this 2025 Act, an area subject to a declaration under ORS 468B.180 as of the day immediately preceding the effective date of this 2025 Act shall be deemed to be declared a ground water quality management area on the effective date of this 2025 Act.

(2) If a lead agency determines that a requirement imposed on any state agency, interagency team or ground water management committee by the amendments to ORS 468B.180, 468B.182, 468B.184 or 468B.186 by sections 9 to 12 of this 2025 Act is duplicative or unnecessary because of actions taken in an area described in subsection (1) of this section before the effective date of this 2025 Act, the lead agency may deem the requirement to have been satisfied for purposes of ORS 468B.180, 468B.182, 468B.184 or 468B.186.

SECTION 45. The unit captions used in this 2025 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2025 Act.

Passed by Senate June 17, 2025

.....
Obadiah Rutledge, Secretary of Senate

.....
Rob Wagner, President of Senate

Passed by House June 27, 2025

.....
Julie Fahey, Speaker of House

Received by Governor:

.....M.,....., 2025

Approved:

.....M.,....., 2025

.....
Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2025

.....
Tobias Read, Secretary of State

Enrolled
Senate Bill 830

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with presession filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Tina Kotek for Department of Environmental Quality)

CHAPTER .....

AN ACT

Relating to on-site septic systems; amending ORS 454.777 and 454.779; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 454.777 is amended to read:

454.777. The Legislative Assembly declares it to be the policy of this state to assist the people of this state in protecting public health and safety and the quality of the waters of this state by making [*grants*] **financial assistance** available for [*the development of low-interest loan programs for*] the repair, replacement, upgrade or evaluation of residential or small business on-site septic systems. The Legislative Assembly also declares it to be the policy of this state to support the availability of affordable loans to assist residents to remain in their homes and thereby promote long-term home ownership and sustainable housing opportunities.

SECTION 2. ORS 454.779 is amended to read:

454.779. (1) As used in this section and ORS 454.777:

(a) "Available sewer" means an existing public sewer system that a residence or small business is capable of being connected to:

(A) In compliance with state and local law; and

(B) Without a significant extension of the public sewer system.

(b) [*"Loan program"*] **"Financial assistance program"** means a program **to provide grants, loans or other assistance that is** funded by a **program** grant awarded under this section.

(c)(A) "On-site septic system" means a subsurface on-site sewage treatment and disposal system, including, but not limited to, alternative sewage disposal systems, nonwater-carried sewage disposal facilities and subsurface sewage disposal systems as those terms are defined in ORS 454.605.

(B) "On-site septic system" does not include any system that is designed to treat and dispose of industrial waste.

(d)(A) "Residence" or "residential" means single-unit or multiple-unit housing, whether occupied by the owner or a tenant.

(B) "Residence" or "residential" does not include property used to provide short-term lodging.

[*(d)*] **(e)** "Small business" means a corporation, partnership, sole proprietorship or other legal entity formed for the purpose of making a profit and that generates less than 3,500 gallons of wastewater per day.

(2) The Department of Environmental Quality shall award **program** grants for the purpose of developing and administering [*loan*] **financial assistance** programs [*to provide low-interest loans*] for the purposes described in subsection (3)(b) of this section. The Environmental Quality Commission may adopt rules necessary to implement the provisions of this section.

(3) The department may not disburse **program** grant funds under this section unless the department and the intended **program** grant award recipient first enter into a grant agreement. The grant agreement must:

(a) Provide that a lender that participates in a [*loan*] **financial assistance** program must agree to subordinate the lender's lien to the borrower's consensual mortgage lien.

(b) Require that [*loans*] **financial assistance** provided to **property owners** [*borrowers under a loan program*] must be used for at least one of the following purposes to address a public health and safety risk or to otherwise protect or maintain water quality in the waters of this state:

(A) To repair a damaged, malfunctioning or inoperable residential or small business on-site septic system.

(B) To replace a damaged, malfunctioning or inoperable residential or small business on-site septic system with:

(i) A new, used or reconditioned functional residential or small business on-site septic system;

(ii) A new, used or reconditioned functional cluster on-site septic system; or

(iii) A connection to an available sewer, and to properly decommission and discontinue use of the on-site septic system.

(C) To upgrade a residential or small business on-site septic system with a newer or more advanced on-site septic system. An upgrade may include alterations if the work is part of a repair or if the on-site septic system being upgraded is more than 25 years old.

(D) To replace the waste disposal well or sewage drill hole of an otherwise functional residential or small business on-site septic system.

(E) To conduct a regional evaluation of community, residential or small business on-site septic systems to determine whether repair or replacement is necessary.

(c) Require that, if a residence or small business with a damaged, malfunctioning or inoperable on-site septic system is located within the territory of an available sewer, and is required to connect to the available sewer, [*a loan*] **financial assistance** provided [*under a loan program*] to address the damaged, malfunctioning or inoperable on-site septic system must be used to install a connection to the available sewer and to properly decommission and discontinue use of the on-site septic system.

(d) Require that a loan provided under a [*loan*] **financial assistance** program must be in an amount that covers 100 percent of the costs associated with the purposes under paragraph (b) of this subsection for which the loan is provided, unless the borrower requests and consents to a loan that covers a lower percentage of the costs.

(e) Require that a **program** grant award recipient must provide a mechanism for ensuring compliance with any locally required operation and maintenance of an on-site septic system for which [*a loan*] **financial assistance** is provided [*under a loan program*].

(f) Require that a **program** grant award recipient use accounting, auditing and fiscal procedures that conform to generally accepted government accounting standards.

(4) In selecting **program** grant award recipients under this section, the department shall give preference to applicants that:

(a) [*Prioritize, but do not limit themselves to, providing loans to*] **Provide financial assistance to** low and moderate income **households, residential housing providers** and small business [*applicants*] **property owners** that are unable to obtain traditional financing;

(b) Can demonstrate prior success in offering, underwriting, servicing and managing loans**, or providing other financial assistance,** to:

(A) Members of low and moderate income populations;

(B) Persons with a range of credit qualifications; and

(C) Residential and commercial [*borrowers*] **property owners**; and

(c) Plan to engage additional stakeholders in outreach and marketing efforts for a [*loan*] **financial assistance** program.

SECTION 3. This 2025 Act takes effect on the 91st day after the date on which the 2025 regular session of the Eighty-third Legislative Assembly adjourns sine die.

Passed by Senate March 6, 2025

.....
Obadiah Rutledge, Secretary of Senate

.....
Rob Wagner, President of Senate

Passed by House May 20, 2025

.....
Julie Fahey, Speaker of House

Received by Governor:

.....M.,....., 2025

Approved:

.....M.,....., 2025

.....
Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2025

.....
Tobias Read, Secretary of State

The Future of Wildfire Management on Federal Lands

Heath Heikkila, Government Affairs Director, American Forest Resource Council

Heath Heikkila is the Director of Government Affairs for the American Forest Resource Council (AFRC). Heath has spent over 20 years working at the intersection of government, policy, and communications advocating for solutions to some of the Pacific Northwest's most challenging natural resource issues. Heath is passionate about the things that make the Northwest a great place to live, work, and play – and working with the AFRC team to promote ideas and policies to make it even better. Heath graduated from Eastern Washington University with a B.A. in International Affairs and served as aide in the Washington State Senate before spending 8 years in Washington, D.C. working in both the public and private sectors. He served as a Policy Advisor at the National Oceanic and Atmospheric Administration (NOAA), where he primarily focused on Western environmental and fisheries issues, including Pacific salmon recovery efforts and endangered species act consultations on various activities in the region. Having worked professionally and continuing to split his time between both Washingtons – Washington state and Washington, D.C. – Heath has an appreciation for the uniqueness of the Pacific Northwest and the complexity of the issues that impact AFRC's members and their local communities. In addition to his work advocating for AFRC's members before the U.S. Congress and federal agencies, Heath is also engaged in AFRC's advocacy and state lobbying efforts in support of the active management of Department of Natural Resources state trust lands in Washington state.

Erin Hogan-Freemole, Staff Attorney, WildEarth Guardians

Erin Hogan-Freemole is a staff attorney with WildEarth Guardians, where her litigation focuses on protecting public lands from irresponsible logging, road-building, and livestock grazing. She came to Guardians from Crag Law Center after clerking for Chief Justice Bolger on the Alaska State Supreme Court. Erin holds a J.D. from the University of Colorado and a B.S. in Environmental Sciences from the University of Oregon. Before law school, Erin spent nearly a decade as a wildland firefighter with the U.S. Forest Service, an experience that fostered her love for wild places across the country and her ongoing interest in fire ecology and public lands management.

Michael Karnosh, Ceded Lands Manager for the Confederated Tribes of Grand Ronde

Michael began working for the Grand Ronde Tribe in 1996, shortly after earning his Bachelor's in Forestry from the University of Idaho. For over ten years he worked as a Tribal forester on the Grand Ronde Reservation, earning his Juris Doctor with a Certificate in Environmental and Natural Resources Law from Lewis and Clark Law School in 2005. After passing the Bar Exam in 2006, Michael successfully applied to be the Grand Ronde Tribe's first Ceded Lands Manager, working closely with the Tribal Attorney's Office but not practicing law in the position. The Office of Ceded Lands represents the Tribe's environmental and sovereignty interests over nearly 14 million acres of Tribal homelands. It facilitates government-to-government consultation as well as all kinds of partnerships. Ceded Lands staff have played a part in numerous habitat restoration projects and in the Tribe re-acquiring more than 2,500 acres

Oregon State Bar Environment & Natural Resources Section

Future of Wildfire Management on Federal Lands

October 16, 2025

HEATH HEIKKILA

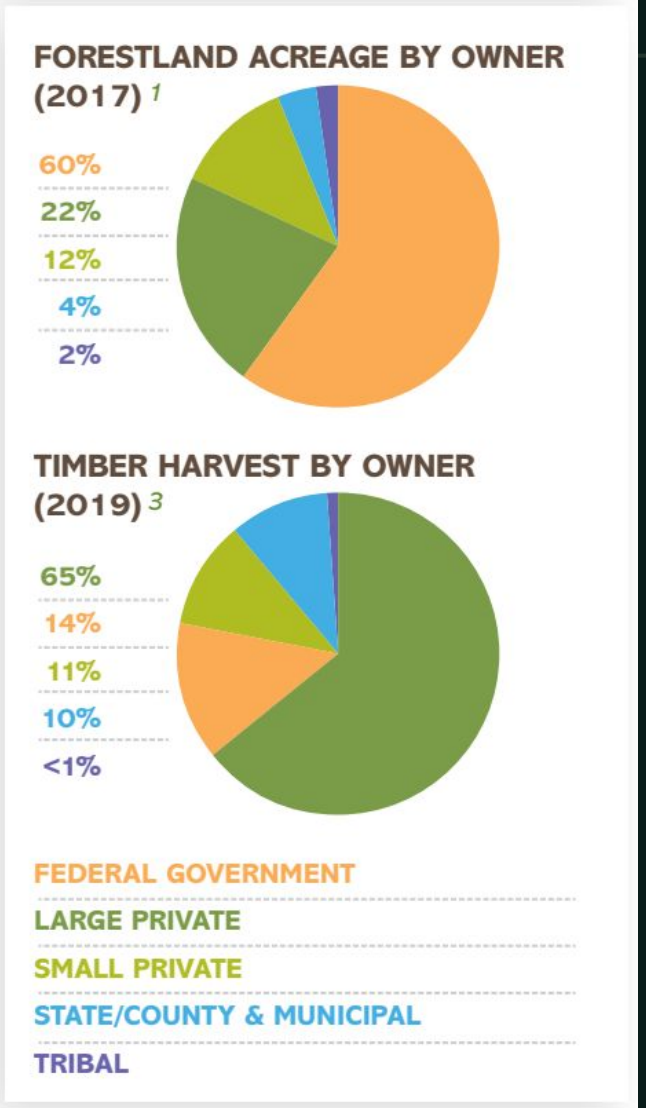
AMERICAN FOREST RESOURCE COUNCIL

Oregon Forests: Basic Data

- 29.8 million forested acres
- 34% private providing 76% of timber harvest
- 60% owned by federal government, 14% of harvest

FORESTLAND OWNERSHIP AND TIMBER HARVEST

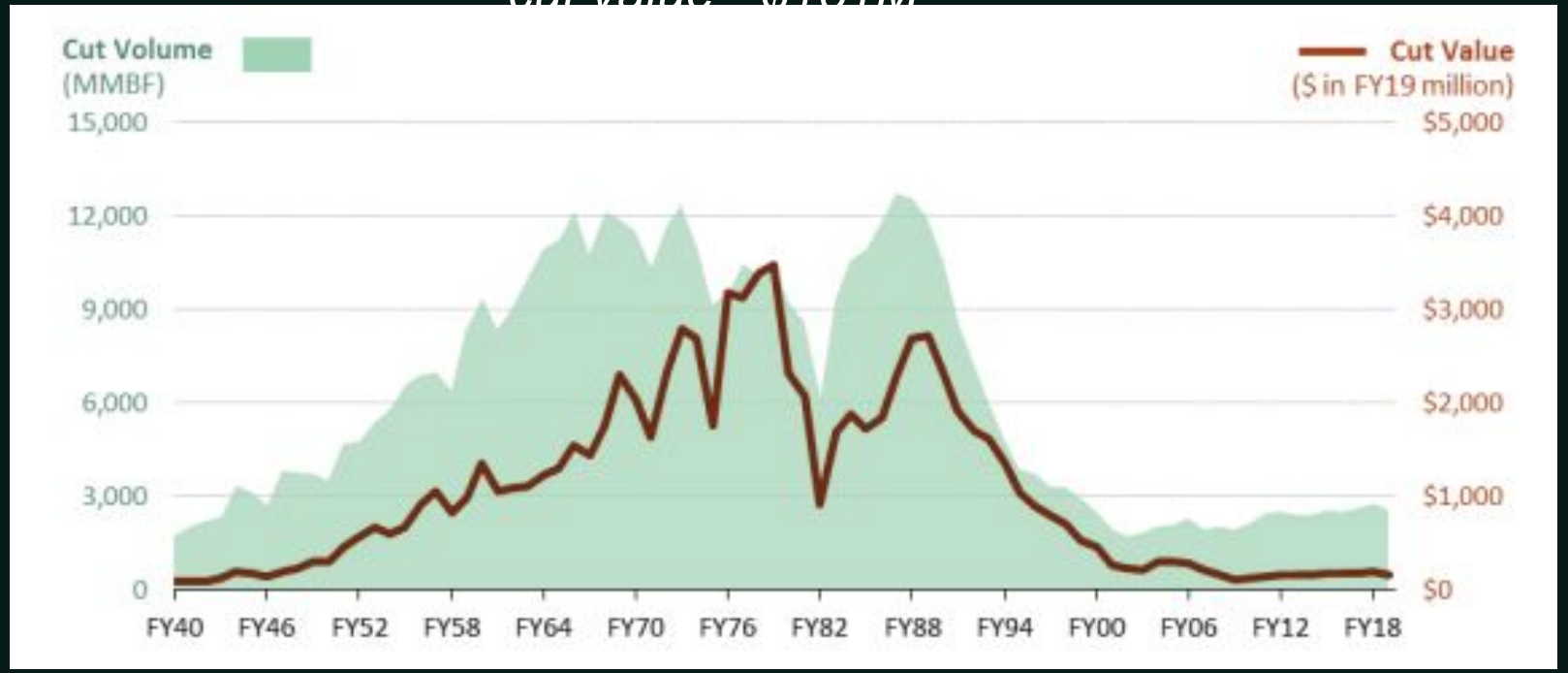
While the federal government manages most of the forestland in Oregon, only a fraction of Oregon's timber harvest happens on federal land, and most of that is from thinning. About 76 percent of the total state harvest comes from private timberlands.



US Forests: Federal Harvests and Value

USFS – 193 million acres

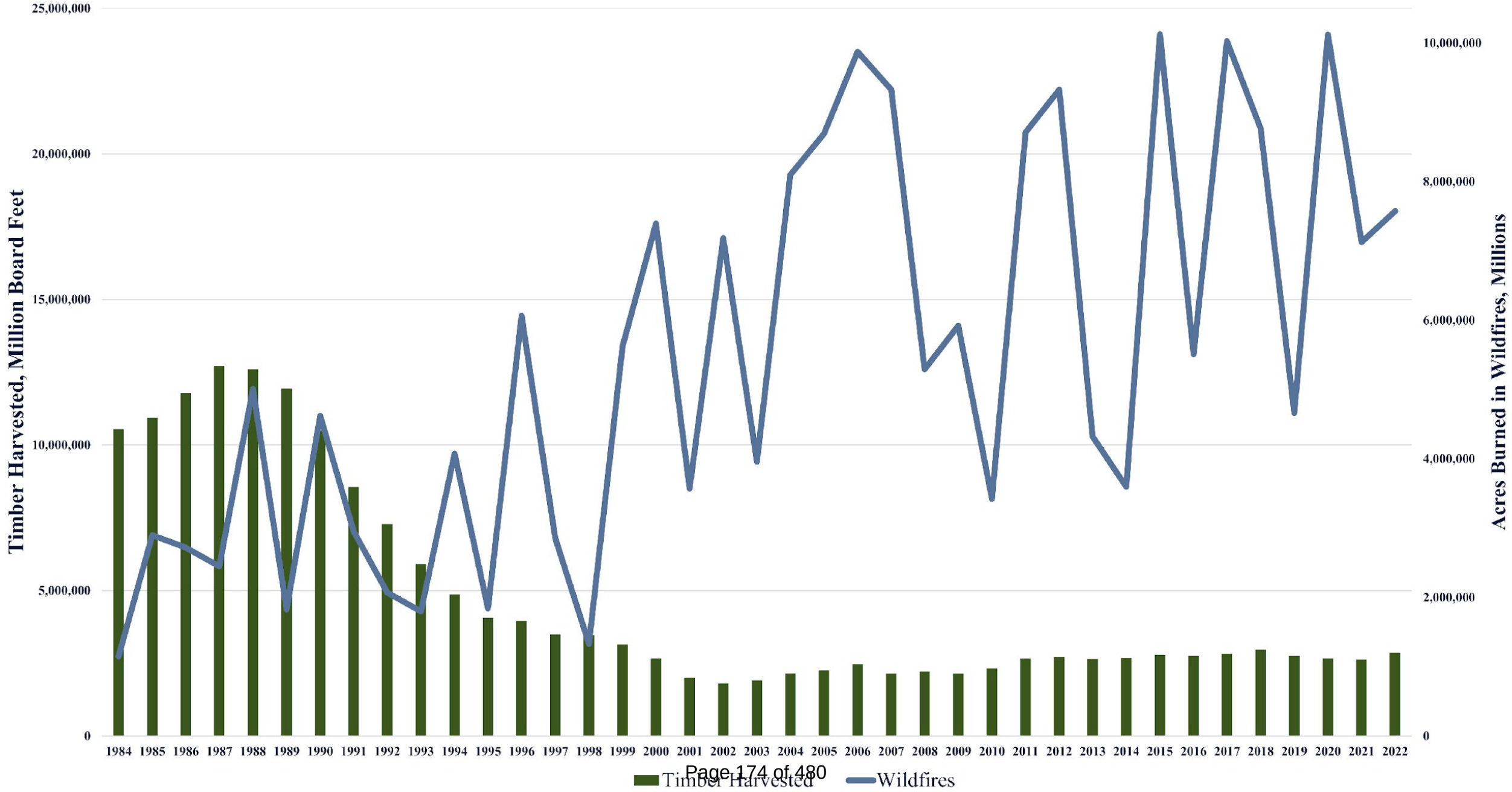
12 BBF, $3 billion cut value. 2024 cut value - $151M



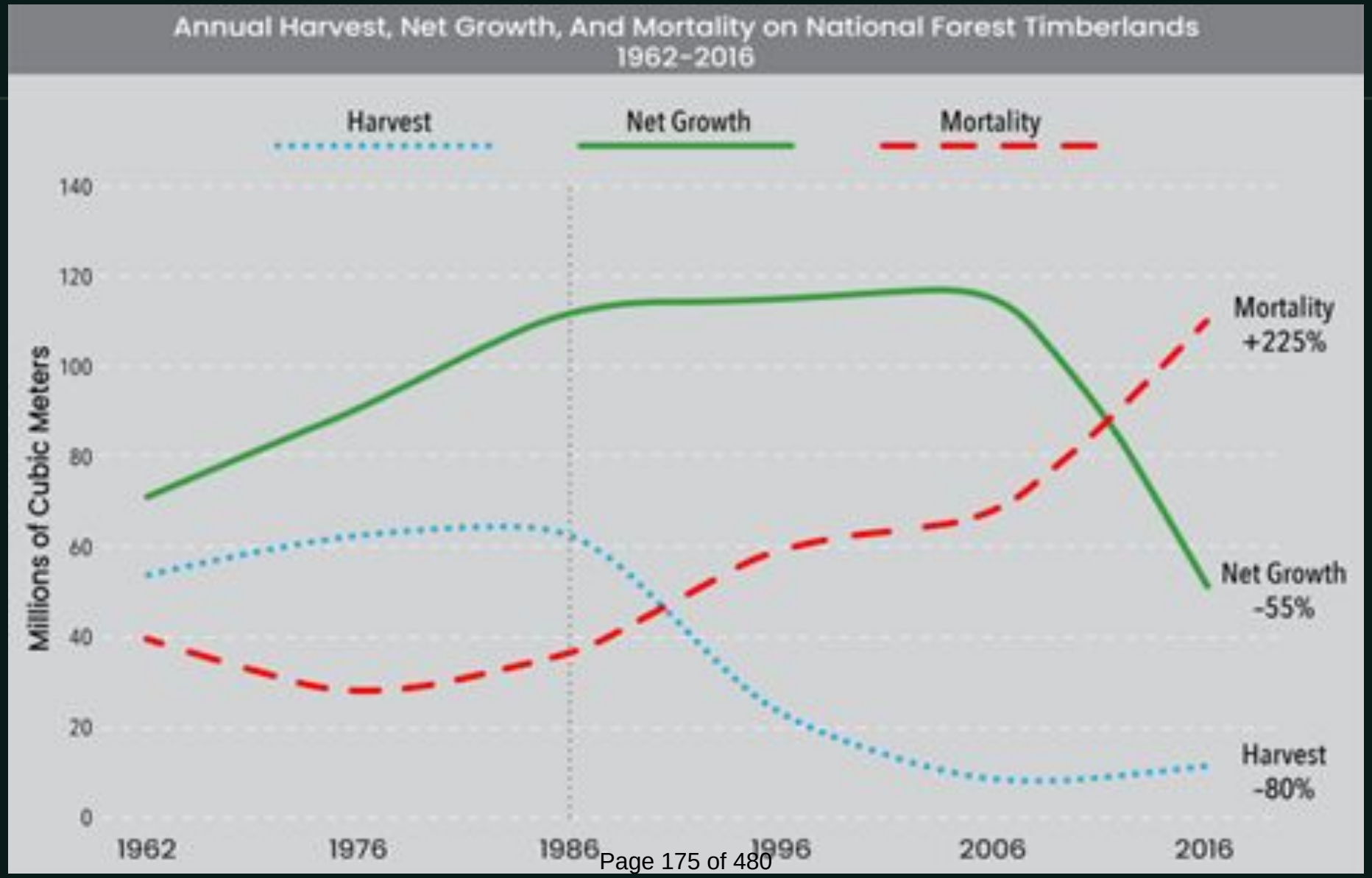
BLM O&C Lands in W. Oregon – 2.1 million acres

~ 1.1 billion board feet historic harvest level; ~230 MMBF current

Timber Harvested vs. Burned on Federal Forests



NATIONAL TRENDS



Trump Timber Policies

Executive Orders declaring the production of timber, lumber, paper, and bioenergy, and wood products is critical to our Nation's well-being.

- Directs Federal Agencies to take specific actions to increase timber supplies and reduce regulatory barriers over defined timelines (overall, agency adopted a 25% goal for increased timber targets)

USDA Secretary Rollins designates 67 million acres under IIJA Sec. 40807 Emergency Situation Determination

USDA/USFS Proposed NEPA Regulations – cumulative effects, change public notice/comment, withdrawal of CEQ regulations.

Recission of the Roadless Rule would remove Clinton-era rule from nearly 60 million acres of USFS lands, forest plan requirements remain in place (NWFP).

ESA regulatory reforms, including rescinding the definition of "harm", blanket 4(d) rule

Trump Administration Streamlining/Reorganization

- Forest Service had an estimated 35,000 employees, down over 5,000 employees so far under Trump (1/5 of non-fire workforce). The agency faced a $750M budget shortfall at end of Biden.
- USDA has announced major reorganization, to close all Forest Service regional offices and consolidate into five USDA hubs. Likely driving employees from regional and DC offices to the actual forests.
- Trump Administration's FY 2026 Budget Request – Forest Service, National Forest System Management - $342M reduction (18%); Forest Service Operations - $391M reduction (34%); BLM Western Oregon Lands – $65M reduction (55%) Congress unlikely to agree to these extreme cuts, but increase also unlikely.
- Forest Service will be looking for partnerships to augment its limited budget – i.e., recent Shared Stewardship agreement with Montana DNRC.
- Funding and staffing are concerns, although timber outputs went down under Biden

Trump Administration Streamlining/Reorganization

- Trump budget proposal for U.S. Wildland Fire Service – consolidating federal wildfire suppression under one agency at the U.S. Department of the Interior.
  - Would also move hazardous fuels funding to DOI, major impacts on Forest Service budget
- Sheehy/Padilla National Wildland Firefighting Service Legislation.
- EO 14308 – Empowering Commonsense Wildfire Prevention and Response – June 12, 2025. Directs federal agencies to streamline wildfire governance, expand partnerships with state, local, and tribal entities, and remove regulatory barriers. Consolidation to the extent practicable and allowable by law.
- DOI Secretarial Order 3443; USDA Secretarial Memo 1078-017. Unification of DOI fire programs and significant restructuring within the Forest Service, but no consolidation.

Reconciliation – "One Big Beautiful Bill"

Reconciliation Bill Included Federal Forest Provisions

- Sections 80313 and 80314 – Mandated timber sale levels for the Forest Service and BLM. 250 mmbf increase annually for USFS. Still well below the forest plans and what is possible.
- Sections 80311 and 80312 – mandates 20-year contracts for the Forest Service (40) and BLM (5). Serious implementation issues.

Here's the math for the required, *minimum* nationwide Forest Service timber sale levels under the Reconciliation bill:

Note: The Reconciliation bill requires FY26 to be based on FY25 (250 mmbf greater than the previous fiscal year). FY25 numbers are not complete yet. FY24 is used as the starting point instead.

Forest Service FY24 Sold Volume: 2.9 billion board feet (bbf)

FY26: 3.15 bbf
FY27: 3.4 bbf
FY28: 3.65 bbf
FY29: 3.9 bbf
FY30: 4.15 bbf
FY31: 4.4 bbf
FY32: 4.65 bbf
FY33: 4.9 bbf
FY34: 5.15 bbf

Another reconciliation bill is possible. What will happen to Secure Rural Schools??

Fix Our Forests Act

House passed Fix Our Forests Act (FOFA) by 279-141 vote, including 64 Democrats. Senate version has been introduced and could move in October or November. Key policies under consideration in a possible FOFA deal:

- *Cottonwood* Fix
- Expands most Cat Ex's from 3,000 to 10,000 Acres
- Fixes to Stewardship Contracting and Good Neighbor Authority, including GNA roads fix.
- Many recommendation from the Bipartisan Wildfire Commission
- Other industry priorities: Hazard Tree CE, Salvage CE, Litigation reforms - unlikely

Litigation Remains Potent Barrier
July 2024 Breakthrough Institute Report

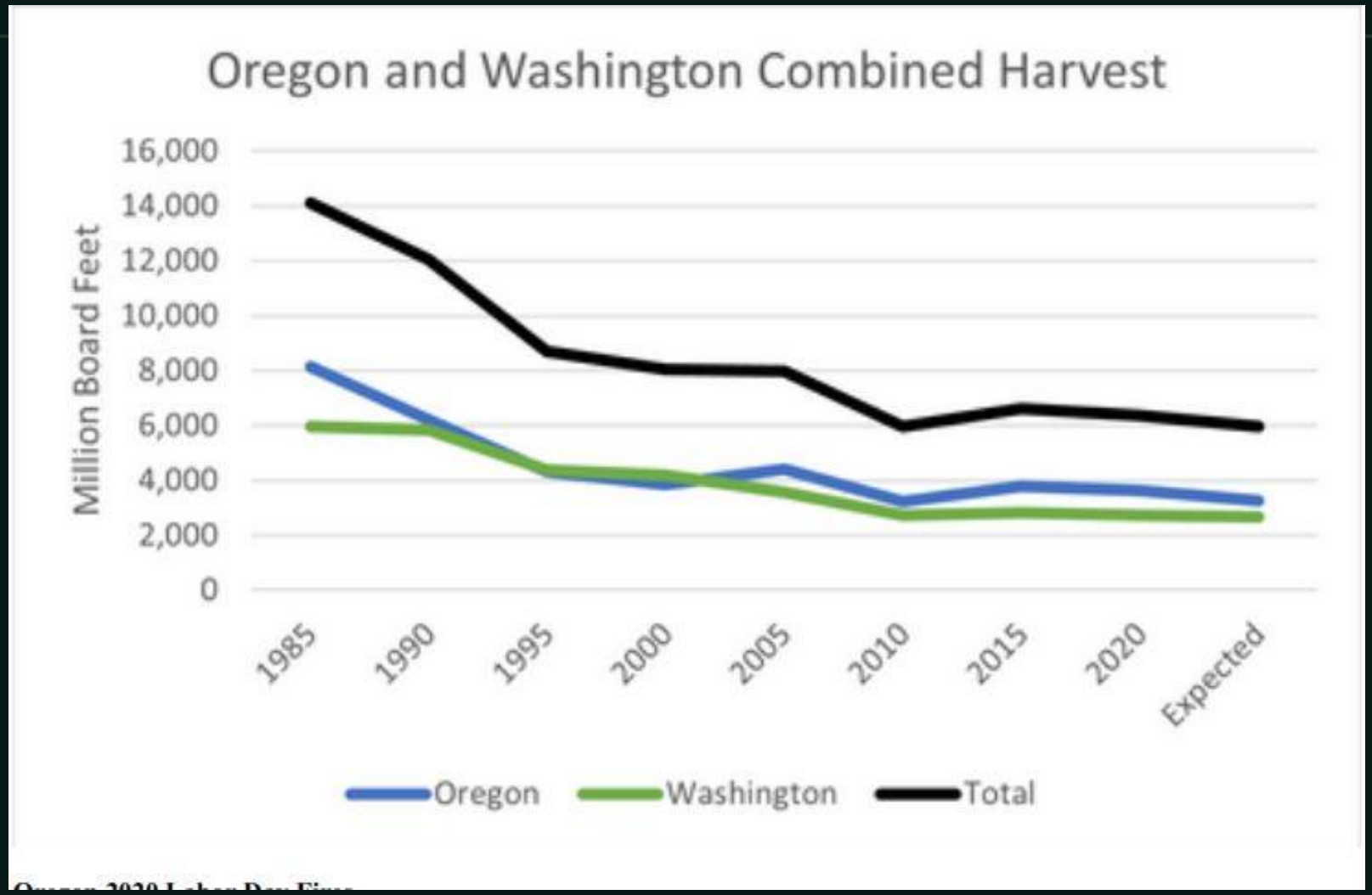
- 387 lawsuits at appellate level between 2013-2022, including 66 forest management projects
- Federal agencies had 79% success rate, 93% for fuels projects
- 10 groups responsible for 67% of the cases filed
- Litigation delayed project implementation by an average of 3.7 years.

Table 6: Top 10 organizations that filed most forest management appeals, 2013–2022.

Rank	Plaintiff	Number of cases	% of total forest management cases
1	Alliance for the Wild Rockies	15	22.4%
2	Cascadia Wildlands	12	17.9%
3	Oregon Wild	10	14.9%
4	Klamath-Siskiyou Wildlands Center	8	11.9%
5	Center for Biological Diversity	8	11.9%
6	Native Ecosystems Council	7	10.5%
7	Conservation Congress	5	7.5%
8	Greenpeace	4	6.0%
9	Earth Island Institute	4	6.0%
10	WildEarth Guardians	3	4.5%

March 21 EO – Ensuring the Enforcement of Federal Rule of Civil Procedure 65(c). Bonds for PI/TRO.

Context -- here's where the PNW is going:



Context – Region Six Treatments:

Region Six – Oregon and Washington:

- 25 million acres of national forest, ~5 million acres of Wilderness
- ~5 million acres identified at risk and in need of treatment
- ~120,000 acres of prescribed fire treatments (2024)
- ~280,000 acres mechanically “treated” (2024) – problems with double counting
- ~35,000 acres of commercial mechanical treatments- .1% of total, .7% of need

Heath Heikkila
American Forest Resource Council

hheikkila@amforest.org

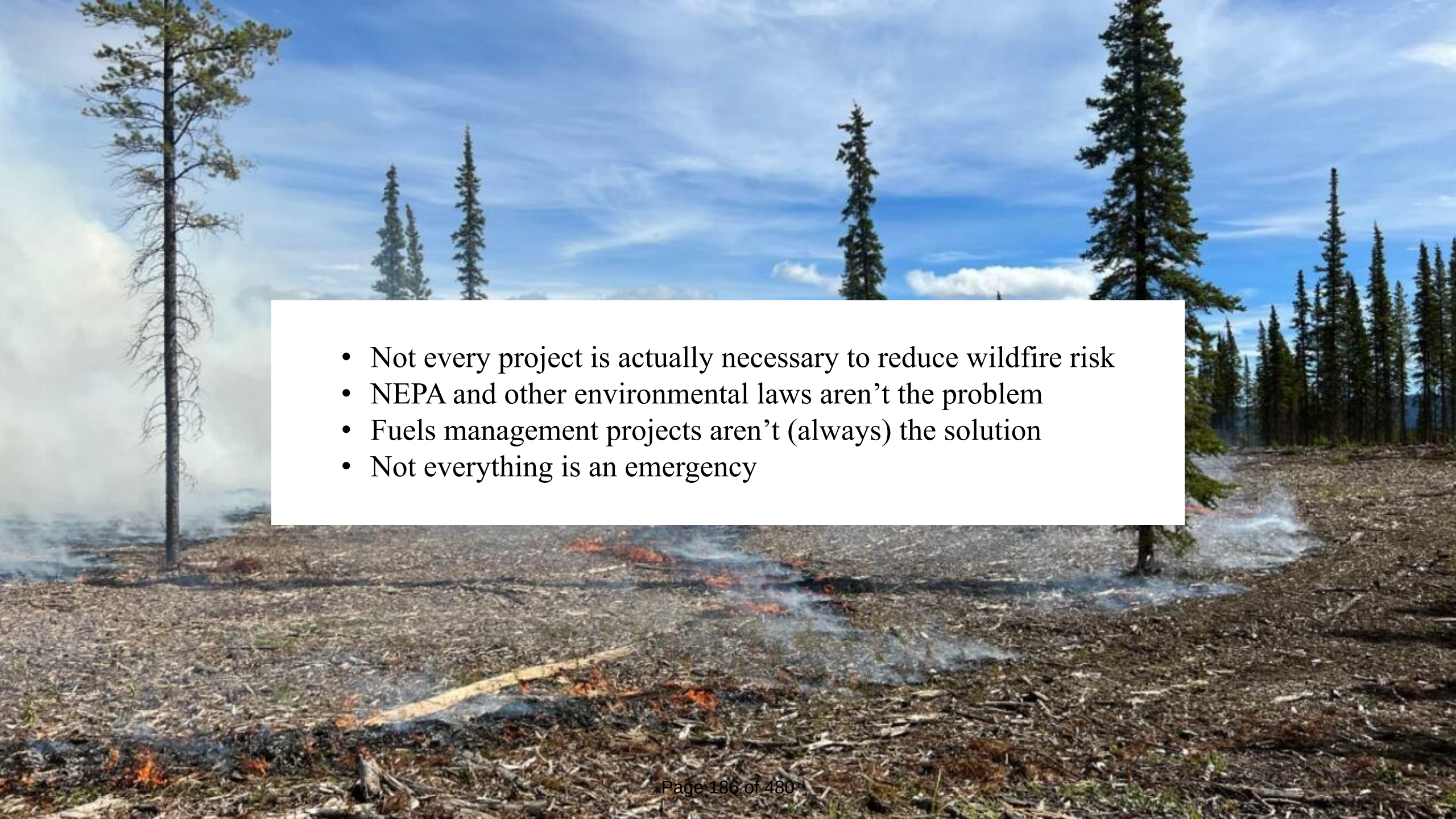
UMPQUA NATIONAL FOREST – POST ARCHIE CREEK FIRE





EMERGENCIES EVERYWHERE FOREVER

Are all agency actions really wildfire management?



- Not every project is actually necessary to reduce wildfire risk
- NEPA and other environmental laws aren’t the problem
- Fuels management projects aren’t (always) the solution
- Not everything is an emergency

Everything is fuels management now

File Code: 2230; 1950
Date: July 21, 2025

Dear Interested Party:

The Quemado Ranger District of the Gila National Forest is proposing to implement construction of a new water system in the Aqua Fria Allotment. (see attached map). A new water system in the Largo Mesa area is needed to provide better grazing management, fuels management, and increase wildlife habitat opportunities on the allotment. The pipeline would distribute water into an area that hasn't seen much grazing activity due to the limitations of water.

Northwest Forest Plan Amendment

- The NWFP has largely not achieved its timber production goals …This proposed amendment is in part designed to improve resistance and resilience to fire where needed and through restoration treatment support economic sustainability in communities affected by forest management in the NWFP area. (3-99 – 100)
- Under existing direction, the NWFP forests are treating approximately 212,440 acres with 4,446 MMBF sold per decade (including salvage treatments). (3-33)
- Proposed action: restoration treatment of 660,000- 810,000 acres per decade (5,900 –13,500 MMBF sold), with additional salvage treatments expected to contribute 33,000 acres and 223 MMBF. (2-23)

The increase in acreage for treatment … is a direct result from identifying that fire as a disturbance process has not been allowed to play its natural role … The total acreage of vegetation treatments to meet these objectives would be achieved through timber harvest, non-commercial thinning, prescribed fire, and naturally ignited wildfires that are beneficial to restoring fire adapted landscapes.

Timber volumes will increase from an average of 55 MMBF currently to about 200 MMBF annually[.]

Over the next two decades under the revised forest plan, total **regeneration harvest** could increase from an average of 8,159 to 12,778 acres per year.

U.S. Fish & Wildlife Service, Biological Assessment for Threatened, Endangered, Proposed Species, and Essential Fish Habitat Assessment, Nez Perce-Clearwater National Forests Land Management Plan Revision (2023)



Why is everything fuels management now?

- Healthy Forests Restoration Act
- Regulatory categorical exclusions
- Emergency authorities
- Public perception?

Healthy Forests Restoration Act Categorical Exclusions

- 16 U.S.C. § 6591b: collaborative restoration projects, up to 3,000 acres, to reduce hazardous fuels or increase resilience to disease and insect infestation
- 16 U.S.C. § 6591d: collaboratively developed “wildfire resilience projects” up to 3,000 acres to reduce hazardous fuels in the wildland-urban interface and near municipal watersheds
- 16 U.S.C. § 6591e: sage grouse and mule deer habitat restoration projects up to 4,500 acres, including to reduce the risk of wildfire
- 16 U.S.C. § 6592b: fuel breaks of up to 1,000 feet in width and up to 3,000 acres, located “primarily” in the wildland-urban interface or a public drinking water source area or an area with very high wildfire hazard potential.

USDA Categorical Exclusions
7 C.F.R. § 1b.4(d)

- (2) “Management and planting type actions” including “prescribed burning” and “Wildlife upland habitat management”
- (30) “Timber stand and/or wildlife habitat improvement activities that do not include the use of herbicides or do not require more than 1 mile of low standard road construction.”
- (34) “Post-fire rehabilitation activities, not to exceed 4,200 acres”
- (36) “Salvage of dead and/or dying trees not to exceed 250 acres, requiring no more than ½ mile of temporary road construction”
- (37) “Commercial and non-commercial sanitation harvest of trees to control insects or disease not to exceed 250 acres, requiring no more than ½ mile of temporary road construction”
- (47) “Forest and grassland management activities with a primary purpose of meeting restoration objectives or increasing resilience” on up to 2,800 acres, including “prescribed burning,” “reforestation,” “vegetation thinning,” and “timber harvesting” with up to 1/2 mile construction or reconstruction of permanent road and 2.5 miles temporary roads

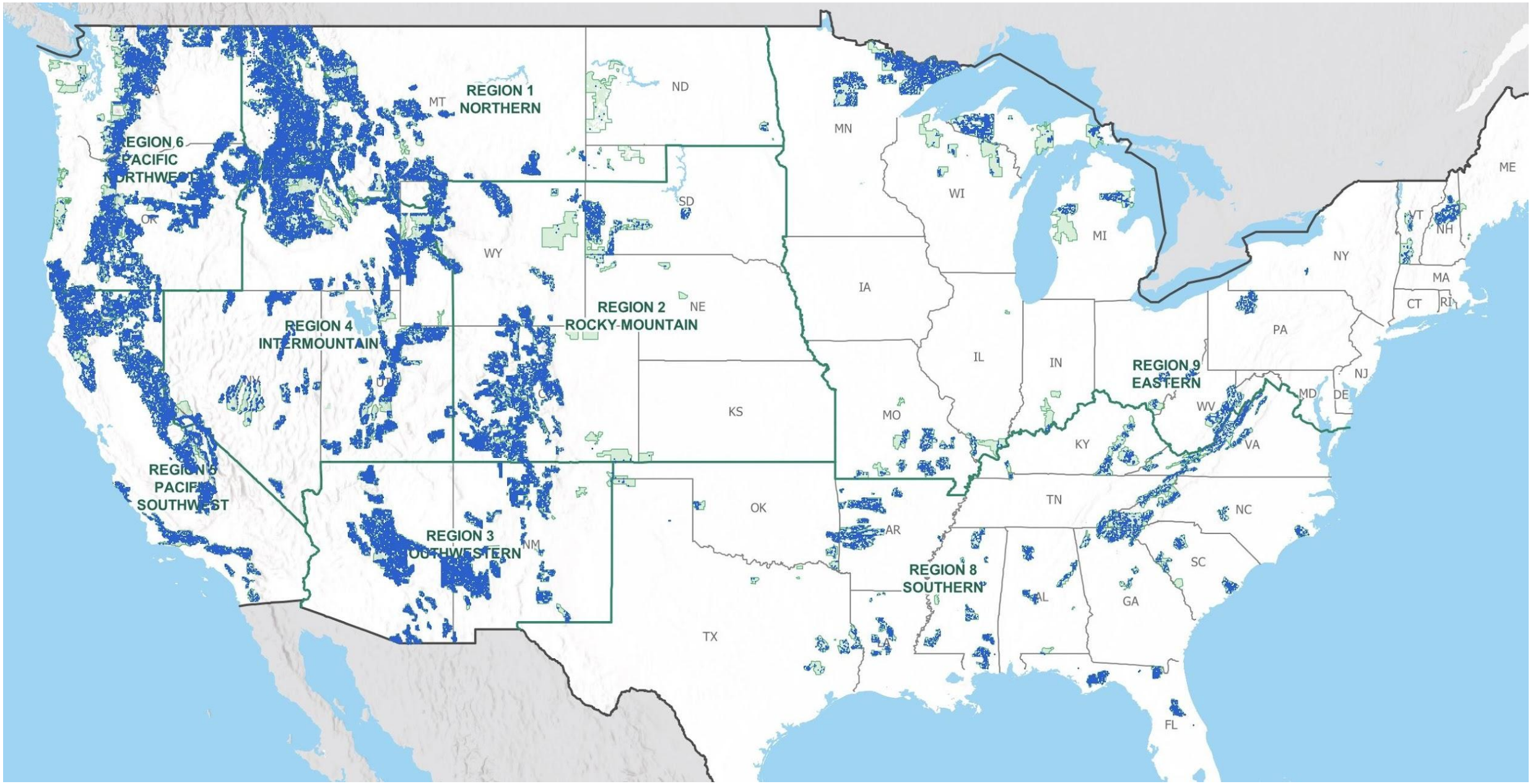
Immediate Expansion of American Timber Production Executive Order 14225 (March 1, 2025)

- "Our inability to fully exploit our domestic timber supply has impeded the creation of jobs and prosperity, contributed to wildfire disasters, degraded fish and wildlife habitats, increased the cost of construction and energy, and threatened our economic security."
- Directs DOI and USDA to "facilitate increased timber production and sound forest management, reduce time to deliver timber, and decrease timber supply uncertainty"
- Directs USFWS and NMFS to "complete a strategy on USFS and BLM forest management projects under section 7 of the [ESA] to improve the speed of approving forestry projects"
- Directs DOI and USDA to adopt other agencies' CEs
- Directs DOI to establish a new CE for "timber thinning" and re-establish a CE for "timber salvage activities."
- Directs agencies to use ESA emergency consultation procedures "to facilitate the Nation's timber production"

Also on March 1, 2025: Executive Order 14223, "Addressing the Threat to National Security from Imports of Timber, Lumber, and their Derivative Products," which calls for an investigation "to determine the effects on the national security of imports of timber, lumber, and their derivative products" and consultation with the Department of War to "evaluate the national security risks associated with imports of timber, lumber, and their derivative products"

USDA Secretary Memorandum 1078-006 (April 3, 2025): Increasing Timber Production and Designating an Emergency Situation on National Forest System Lands

- Implements EO 14225
- "National Forests are in crisis due to uncharacteristically severe wildfires, insect and disease outbreaks, invasive species, and other stressors whose impacts have been compounded by too little active management. … overgrown forests, a growing number of homes in the wildland-urban interface, and more than a century of rigorous fire suppression … have all contributed to what is now a full-blown wildfire and forest health crisis."
- Encompasses 66,940,000 acres of NFS lands rated as very high or high wildfire risk …[and] the 78,800,000 acres of NFS lands designated under Section 602 of the Healthy Forest Restoration Act (HFRA), that are experiencing declining forest health
- Designates **112,646,000 acres** of National Forest System lands as an emergency situation, which is **59 percent** of all National Forest System lands.


REGION 1
NORTHERN
REGION 2
ROCKY-MOUNTAIN
REGION 3
SOUTHWESTERN
REGION 4
INTERMOUNTAIN
REGION 5
PACIFIC
SOUTHWEST
REGION 6
PACIFIC
NORTHWEST
REGION 8
SOUTHERN
REGION 9
EASTERN
MT
ND
MN
OR
SD
WY
WI
MI
NY
ME
VT
NH
MA
CT
RI
NE
IA
IL
IN
PA
NJ
MD
DE
WV
VA
KS
MO
KY
NC
TN
SC
OK
AR
NM
AL
GA
TX
LA
FL

USDA Secretary Memorandum 1078-006 (April 3, 2025)

- Tribes, Alaska Native corporations, and states may request additional areas be included
- At least **50 percent** of the treatment areas supporting this authorized emergency action must be within the designated areas.

Eligible projects shall:

- Reduce wildland fire risk;
- Reduce/mitigate post-fire risks;
- Reduce hazardous fuels;
- Reduce the density of fire-dependent forests;
- Support the durability and resiliency of forests and grasslands; **or**
- Reduce hazardous fuels to help make wildfire response, as well as ingress or egress, safer and more effective

Authorized emergency actions to respond to emergency situations include:

- Salvage of dead or dying trees;
- Harvest of trees damaged by [natural disasters];
- Commercial and noncommercial sanitation harvest of trees …
- Removal of hazardous trees in close proximity to roads and trails;
- Removal of hazardous fuels;
- Restoration of water sources or infrastructure [including watersheds];
- Reconstruction of existing utility lines; and
- Replacement of underground cables.

USDA Secretary Memorandum 1078-006 (April 3, 2025): Increasing Timber Production and Designating an Emergency Situation on National Forest System Lands

- NEPA emergency measures:
  - No need to consider alternatives beyond the preferred alternative and the "no-action" alternative
  - No objection period; projects may be implemented immediately after final decision
- The Forest Service shall also deploy emergency compliance procedures for:
  - Endangered Species Act
  - National Historic Preservation Act
  - Clean Water Act

Endangered Species Act Emergency Consultation 50 C.F.R. § 402.05

- Emergency consultation is initiated as soon as possible upon the onset of an emergency situation, within 48 hours, if possible.
- The USFWS will offer any recommendations possible to minimize the effects of the emergency response actions on listed species or critical habitat. These recommendations are **advisory** and should be followed unless doing so hinders emergency response or creates a threat to human safety.
- Formal consultation shall be initiated as soon as practicable after the emergency is under control. The action agency shall submit information on the impacts to listed species and their habitats to the USFWS, which will issue a biological opinion including the information and recommendations given during the emergency consultation.

Chris French, Acting Associate NFS Chief, Implementation of Secretarial Memo 1078-006 (April 3, 2025)

I am directing all Regional Foresters to develop 5-year strategies, tiered to the national strategy, to increase their timber volume offered, leading to an agencywide increase of 25% over the next 4-5 years. …

District Rangers and Forest Supervisors [should] utilize direct timber sale opportunities with interested purchasers operating on and around forests. … all agency timber sales will use base rates or minimum rates[.]

These projects will not only reduce fire risk and support local economies but also result in timber volume sold.

Line Officers [should] use **innovative and efficient approaches** to meeting the **minimum requirements** of the National Environmental Policy Act (NEPA), Endangered Species Act, National Historic Preservation Act, and other environmental laws[.]

Fix Our Forests Act (H.R.471): More of the Same

Sec. 106(a): Defines “fireshed management projects” to include:

- Conducting hazardous fuels management activities
- Creating fuel breaks and fire breaks
- Removing hazard trees, dead trees, dying trees, or trees at risk of dying
- Removing trees to address overstocking or crowding in a forest stand
- Any combination of activities described in this paragraph

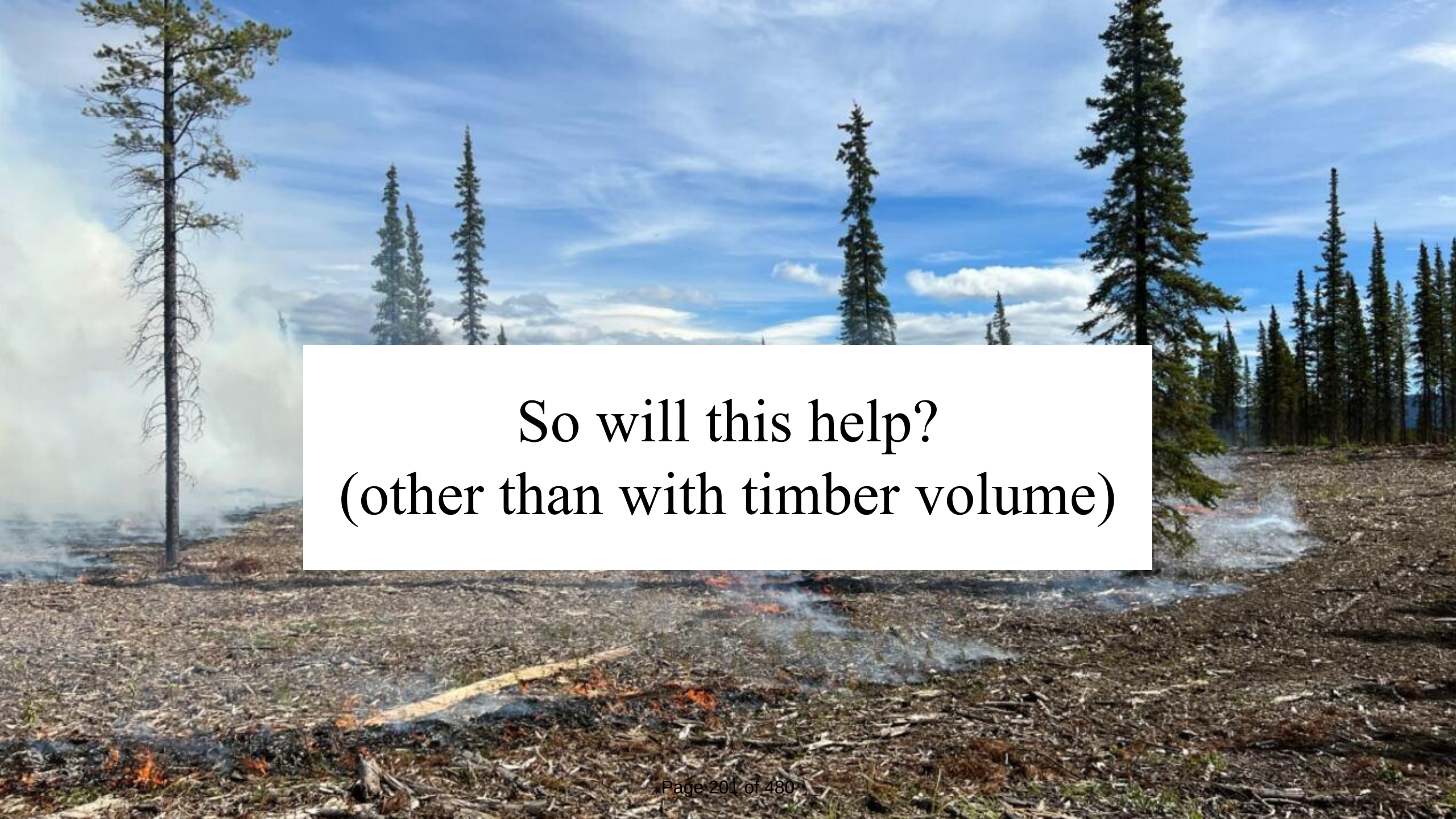
Sec. 106(b): Expands the HFRA CEs from 3,000 to 10,000 acres and allows HFRA CEs in all fire regimes

Sec. 117: Directs the Forest Service to increase opportunities to utilize livestock grazing as a wildfire risk reduction strategy, including by increasing the “use of grazing as a postfire recovery and restoration strategy”

Sec. 121: Limits judicial review and availability of remedy

- Requires a likelihood of success on the merits for an injunction
- Unless the challenged action “poses or will pose a risk of a proximate and substantial environmental harm,” remedy is limited to remand without vacatur, and agency is generally allowed to implement
- All challenges must be brought within 120 days of publication
- Claims are limited to those raised by plaintiffs in administrative proceedings

Sec. 122: Rescinds requirement to conduct ESA reconsultation on land management plans or resource management plans based on new listing, critical habitat determinations, or new information.


So will this help?
(other than with timber volume)

NEPA is the problem!

NEPA has transformed from a modest procedural requirement into a blunt and haphazard tool employed by project opponents (who may not always be entirely motivated by concern for the environment) to try to stop or at least slow down new infrastructure and construction projects. … All of that has led to more agency analysis of separate projects, more consideration of attenuated effects, more exploration of alternatives to proposed agency action, more speculation and consultation and estimation and litigation.
Seven County Infrastructure Coalition v. Eagle County, Colorado, 145 S.Ct. 1497, 1514 (2025).

The United States has an abundance of timber resources that are more than adequate to meet our domestic timber production needs, but heavy-handed Federal policies have prevented full utilization of these resources and made us reliant on foreign producers. … These onerous Federal policies have forced our Nation to rely upon imported lumber, thus exporting jobs and prosperity and compromising our self-reliance.
Executive Order 14225, Immediate Expansion of American Timber Production (March 1, 2025).

… or maybe not

The median time to complete a NEPA project is 131 days. The median time to complete a CE is 105 days, an EA is slightly more than 1 year (392 days), and an EIS is less than 2.5 years (882 days).

Less than 1 percent of all completed NEPA analyses led to litigation, including less than 1 percent of CEs, 2 percent of EAs, and 17 percent of EISs. Another study focusing on fuel-reduction activities between 2006 and 2008 found only 2 percent resulted in litigation.
Forrest Fleischman et al., *US Forest Service Implementation of the National Environmental Policy Act: Fast, Variable, Rarely Litigated, and Declining* 118 J. Forestry 403, 408-14 (2020).

"[M]ost delays in the NEPA process are not intrinsic to the environmental reviews themselves, despite what the opponents say. Rather, most delays are the result of exogenous factors. … Budgetary constraints, lack of communication, and insufficient coordination among bureaucratic authorities and levels of government are some of the external factors that create delays in envi ronmental reviews."
Federico Holm, *Deconstructing a Myth*, Environmental Forum 24, 25 (May/June 2024).

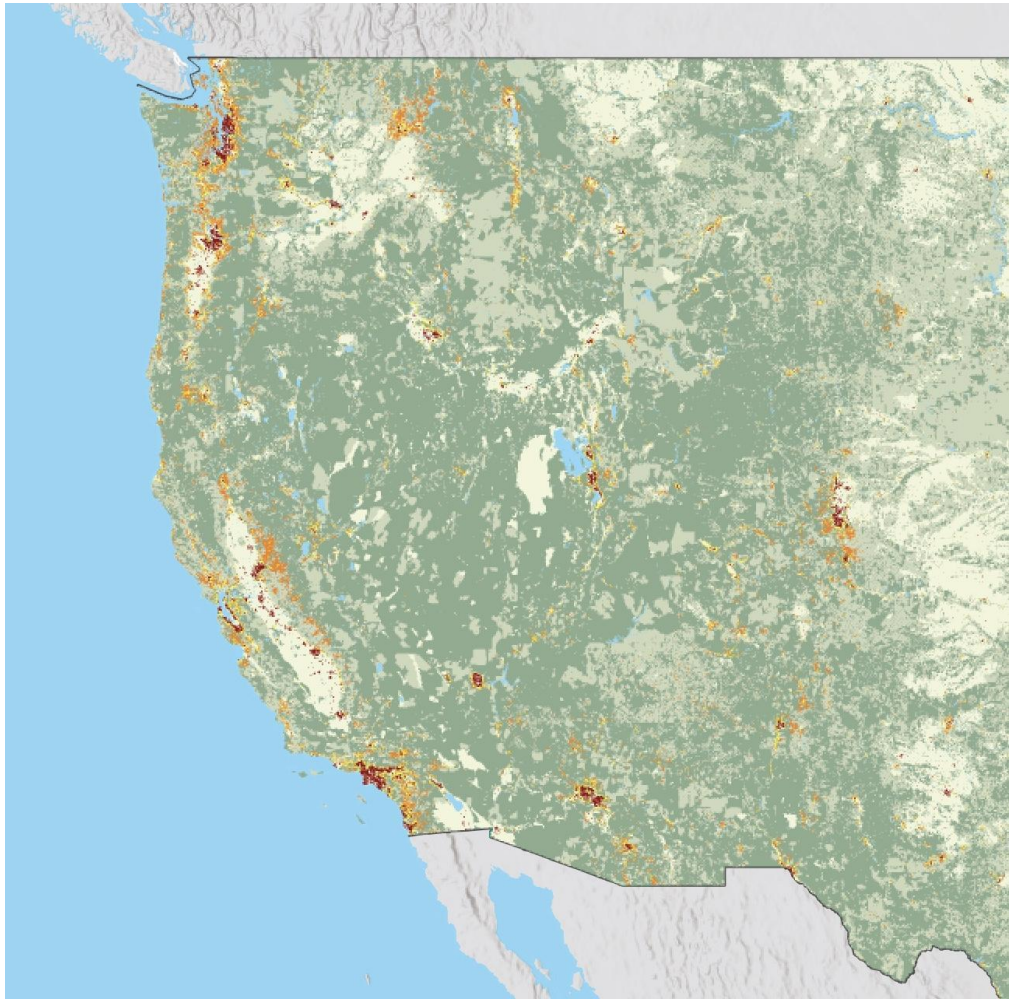
> Historically, NEPA provided a platform that facilitated the transformation of the USFS from a clientelistic agency that primarily served extractive industries to an agency that attempts to balance diverse public values. Two aspects of NEPA facilitated this historical transformation. First, NEPA required the USFS to diversify from an agency that primarily employed foresters to one that employed specialists in the wide variety of disciplines needed to conduct NEPA analyses, who in turn brought new knowledge and perspectives to the agency …
>
> Second, NEPA's public participation requirements inserted new stakeholders into agency decisionmaking and increased public visibility of agency operations. Broad stakeholder participation has increased the agency's ability to meet a multiple-use mandate because politically active citizens advocate for a variety of public forest values, and NEPA's procedural requirements ensure that some consideration is given to these values. … Evidence suggests that citizen engagement enabled by NEPA leads to decisions that are better at both managing public resources and aligning with public values.

Fleishman et al. (2020) at 406-407.

Where are we building houses?

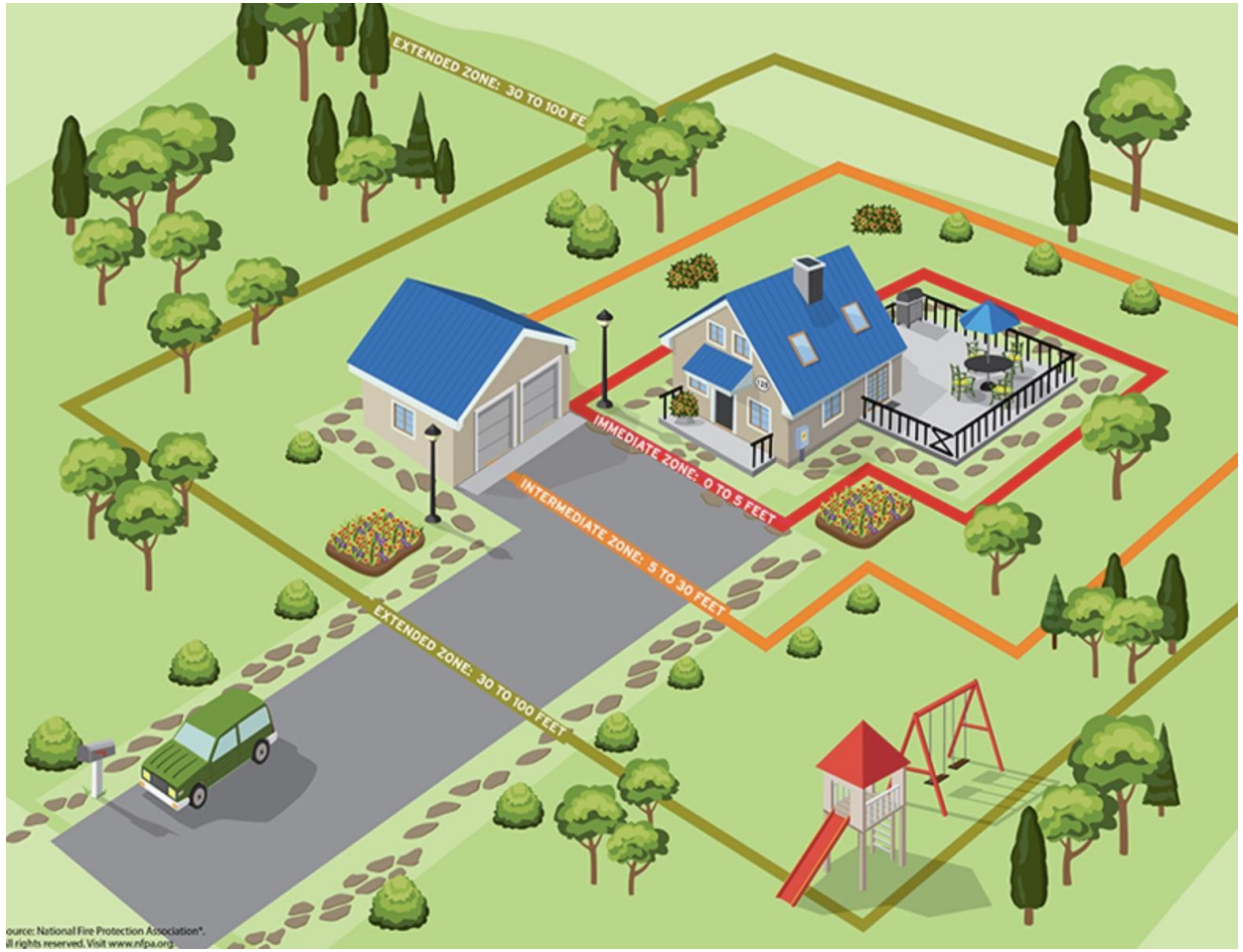
Since 1990, more than 60 percent of new homes in California, Oregon and Washington were built in the wildland-urban interface. The National Academy of Public Administration predicts a 40 percent increase in homes in the WUI between 2001 and 2030. Fire destroyed an average of 3,000 houses in the wildland-urban interface annually over the last decade, according the Federal Emergency Management Administration. And with hotter, drier summers and a longer fire season, experts predict that number to rise.

Ashley Ahearn, OPB, *We're Putting More Homes on Wild Lands and in the Path of Wildfires* (Aug. 15, 2018), https://www.opb.org/news/article/homes-wildfire-wildland-urban-interface-washington-oregon-california/

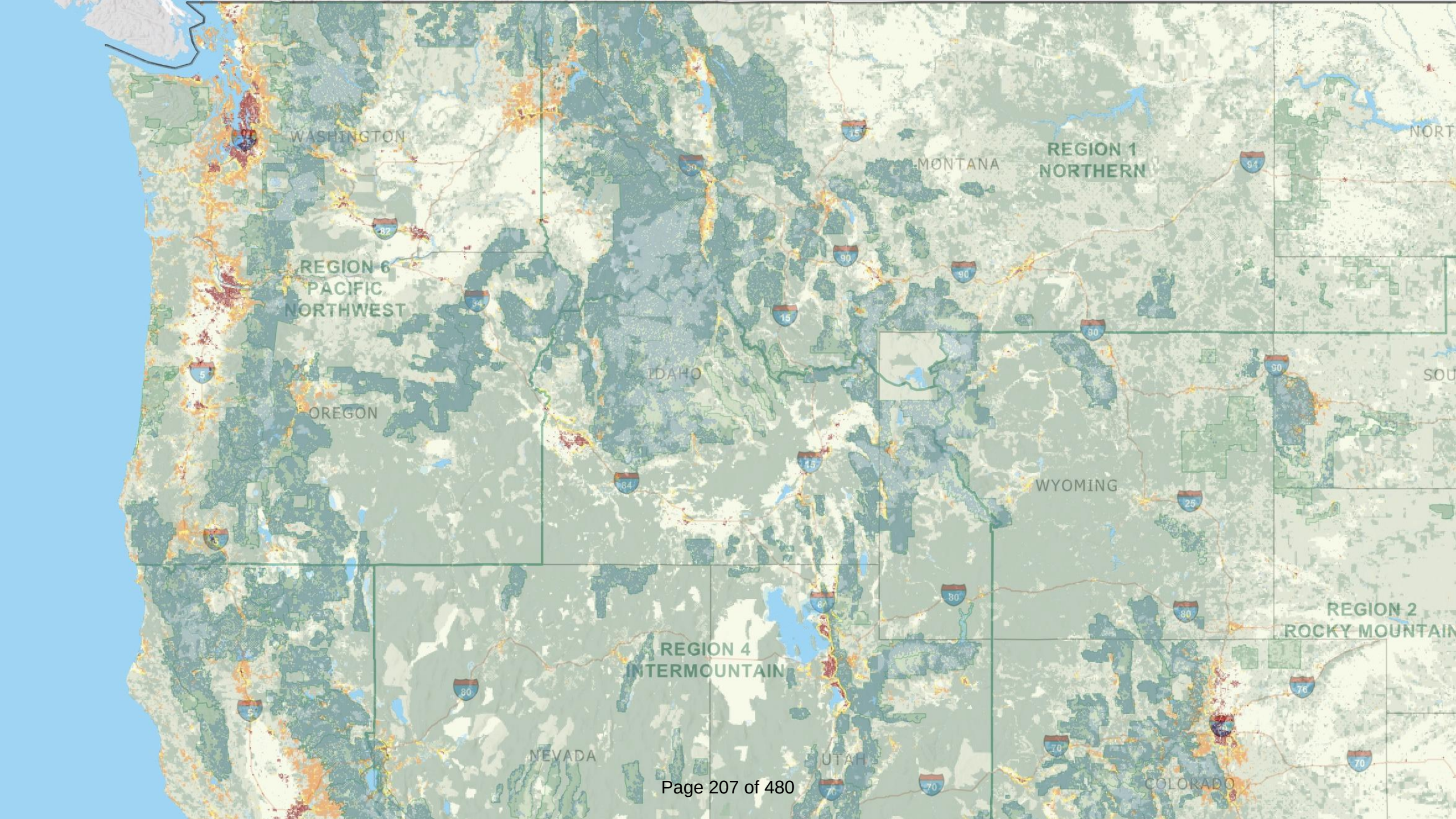


How to keep a wildfire from becoming a disaster

- Research around home destruction vs. home survival in wildfires point to embers and small flames as the main way that the majority of homes ignite in wildfires. Embers are burning pieces of airborne wood and/or vegetation that can be carried more than a mile through the wind can cause spot fires and ignite homes, debris and other objects.
- There are methods for homeowners to prepare their homes to withstand ember attacks and minimize the likelihood of flames or surface fire touching the home or any attachments. Homes ignite due to the condition of the home and everything around it, **up to 200' from the foundation**.
- **Regardless of wildfire intensity** and the distance of embers, research shows **home ignitions are determined by the home and its immediate surroundings.**



National Fire Protection Association, *Preparing Homes for Wildfire*, https://www.nfpa.org/education-and-research/wildfire/preparing-homes-for-wildfire


WASHINGTON
MONTANA
REGION 1
NORTHERN
REGION 6
PACIFIC
NORTHWEST
IDAHO
OREGON
WYOMING
REGION 4
INTERMOUNTAIN
REGION 2
ROCKY MOUNTAIN
NEVADA
UTAH
COLORADO



AMAA COMES HOME: FIRE AND THE GRAND RONDE TRIBE

Michael Karnosh, Ceded Lands Manager
Confederated Tribes of Grand Ronde
October 16, 2025
Troutdale, Oregon

PRESENTATION

- From Time Immemorial…what does that mean?
- Treaties between Tribes and the U.S. are the Supreme Law of the Land
- The Use of Fire as a Cultural Practice
- Government-to-Government Consultation…requirements and best practices
- Beyond Public Notice-and-comment Tribal Engagement…what are “Landback”, “Co-Management”, and “Co-Stewardship”?
- What Could Be

FROM TIME IMMEMORIAL

Originating prior to human memory; from The Time Before. Creation story (ikanum) tells of fire and how it was carried.

SUPREME LAW OF THE LAND

- Enforcement of ratified treaties is one of the activities the Federal government may perform without any interference. U.S. Constitution, Article VI, Clause 2.
- Under the Reserved Rights Doctrine, any rights not expressly given up by Tribes in treaties are retained by them. *U.S. v. Winans*, 198 U.S. 371 (1905).
- Tribes implement and enforce these principles by engaging directly with the United States, its subsidiary governments, and private entities, especially where off-Reservation rights, interests, and benefits are concerned
- Additionally a number of environmental laws and regulations either mandate consultation with affected Tribes or provide a much-needed mechanism for Tribal engagement
- For Grand Ronde, the off-Reservation Tribal interest area includes most of western Oregon, parts of SW Washington, and a small area in N. California.

TRADITIONAL USE OF FIRE

- In 1980 interviews with Hubert (72 at the time) and Agness Mercier (92) noted that "their ancestors made annual trips to Burnt Ridge…large crops of berries were picked and often dried in the same location."





- Use by Grand Ronde Tribal Members for hunting and berry gathering continues today.

WHAT FIRE BRINGS, HAS BROUGHT, WILL BRING AGAIN WITH WISE STEWARDSHIP



- Ancient, living connection between people and place
- These places always included people, part of functioning ecosystem, since time immemorial
- Maintenance of Tribal traditions and culture
- Intergenerational knowledge transfer
- Ecosystem health
- Reduced risk of catastrophic wildfire
- Control of invasive plant species
- Productivity, fertility, ability to manage vegetation for human consumption

GOVERNMENT-TO-GOVERNMENT CONSULTATION (AKA "G2G")

Application via law and regulation: Many if not most of the environmental laws passed in the 1960s-1980s specifically require Tribal consultation pursuant to the Federal Trust Responsibility, even over off-Reservation lands.

- National Environmental Policy Act (NEPA)
- Section 106 of National Historic Preservation Act (NHPA)
- Clean Water Act (CWA) and Clean Air Act (CAA)
- Superfund (CERCLA)
- Northwest Power Act of 1980
- Many others

WHAT IS GOOD G2G?
BEYOND NOTICE-AND-COMMENT

- G2G is an equal, meaningful, ongoing dialogue between sovereigns
- G2G takes place in person
- G2G takes place at the leadership level, where decisions are made/influenced
- G2G takes place before the decision is essentially set in the process
- G2G takes place before public scoping (Tribes are not just "stakeholders")
- G2G takes place once there is something to comment on

LANDBACK, CO-MANAGEMENT, CO-STEWARDSHIP (BUZZWORDS)



These terms are frequently used interchangeably, and there is no standard definition across sovereigns/jurisdictions.

Here is how Grand Ronde staff understand them:

LANDBACK—Refers to the movement to return land in ownership, preferably to the Tribe that originally inhabited it.

CO-MANAGEMENT—Refers to any agreement involving an Indigenous entity that can make management decisions on the ground.

CO-STEWARDSHIP—Similar to Co-Management, the difference being it is limited to implementing (rather than planning or decision making).

WHAT COULD BE COMING IN THE FIRE MANAGEMENT CONTEXT (GOOD & BAD)

- With NGOs and some Local Governments: Co-Stewardship agreements where they contract for use of Tribal crews/equipment/etc. Some degree of Cultural Burning (low-intensity prescribed fire not requiring participants to have red cards).
- With larger NGOs, Regional Governments, and State Agencies: Co-Management agreements where the Tribe has input on short-term Burn Plans and longer-term Management Plans. Some degree of Cultural Burning has been practiced at this level, although relatively small in scale.
- Assuming Federal Land Agencies start back up: both Co-Management and Co-Stewardship agreements have been sought. Everything is on the table, and everything is highly dependent on agency/administrative unit/field office.
- Meanwhile: It appears we got lucky in 2025, but another fire event like western Oregon experienced in 2020 is imminent.

HAYU-MASI
(MANY THANKS)



Digital copies of the handout "Consultation Quick Guide" available from:

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of conservation land to date. The Office of Ceded Lands continues to fight for the protection and restoration of water, air, land, and living things.

EPA Under the Second Trump Administration

Mary Lou Soscia, Retired U.S. EPA

Mary Lou Soscia worked for the US Environmental Protection Agency for 38 years in Washington DC and the Pacific Northwest. Protecting human health and ecosystem restoration in Indian Country throughout the US and especially in the Pacific NW was a key foundation for her work. She provided leadership for the OR human health criteria to protect high tribal fish consumers, the most protective state criteria in the nation at that time. Mary Lou created and led the Columbia River Basin Restoration Program which became a Clean Water Act amendment and received $79 million from Congress in 2021 to reduce toxics to protect human health and increase ecosystem resilience. Mary Lou provided regional leadership for over 25 years on Columbia River water temperature issues and decisions which have become more critical and complex with a warming climate. Mary Lou has committed her retirement years to continued community service and serves on 7 Boards including WaterWatch, Salmon Safe and Human Access Project.

Stephen Odell, Partner, Marten Law

A top-tier litigator who has served in all three branches of the U.S. government, Steve has played a pivotal role in resolving some of the most complex and contentious issues in environmental, natural resources, and energy law in both the public and private sectors for more than 25 years.

Steve represents clients in federal environmental and natural resources litigation and matters involving uses of public lands and resources, federal environmental compliance, and energy development. He joined Marten following a distinguished career as a litigator for the U.S. Justice Department, where he successfully handled many of the most consequential and controversial environmental disputes in the West over the past several decades. These cases involve resources and issues ranging from timber, mining, water quality and use, developed recreation, transportation, grazing, listed species, wetlands, and energy (encompassing production, transmission, and rate-setting) matters. Steve has served as lead litigation counsel in literally hundreds of federal cases at both the appellate and district court levels, and has been at the forefront of multiple key initiatives involving extremely sensitive environmental issues.

Victor Xu, Senior Associate, Marten Law

Victor counsels businesses, municipalities, water districts, and public utilities on water quality, hazardous waste management, natural resources, and other environmental concerns. He is passionate about helping clients navigate the complex regulatory frameworks governing industrial dischargers, public water systems, publicly owned treatment works, and manufacturers.

Victor has broad expertise in litigating issues under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Clean Water Act (CWA), the Federal Tort Claims Act (FTCA), the Federal Land Policy and Management Act (FLPMA), the National Environmental Policy Act (NEPA), state hazardous waste laws, federal Indian

law, tort law, and unfair trade practices statutes. His practice spans federal and state courts in both trials and appeals.

Often, Victor's work intersects with emerging contaminants like PFAS. As a co-author of the PFAS Deskbook (Environmental Law Institute, 2023), and through his robust PFAS practice, Victor is well-versed in the quickly evolving litigation and regulatory landscape surrounding PFAS.

Previously, Victor clerked for the Honorable Harris Hartz in the U.S. Court of Appeals for the Tenth Circuit and the Honorable James Sweeney II in the U.S. District Court for the Southern District of Indiana. Victor graduated from Stanford Law School, where he led a community law pro bono and gained invaluable court experience as a member of the school's criminal prosecution clinic. Before that, he graduated from Stanford University with a Bachelor of Arts in Economics, with distinction.

CLE Materials for "EPA in the Second Trump Administration" Panel

I. Structural changes at EPA
   a. "Five Pillars" of "Powering the Great American Comeback" Initiative
   b. Reduction in force, elimination of research arm of EPA and environmental justice office (announcement)
   c. New Office of State Air Partnerships, Office of Clean Air Act Programs, Office of Applied Science and Environmental Solutions (announcement)
   d. Workforce cut by a quarter (Reuters)

II. Grants termination litigation
   a. Inflation Reduction Act appropriated billions of dollars toward climate and environmental justice grant programs
      i. Greenhouse Gas Reduction Fund (fact sheet)
      ii. Environmental and Climate Justice Program (overview)
   b. Statutory and regulatory framework for grants
      i. 2 CFR pt. 200
      ii. See especially 2 CFR § 200.340 for provisions on grant termination.
      iii. Trump EPA has relied significantly on 2 CFR § 200.340(a)(4) ("award no longer effectuates the program goals or agency priorities")
   c. Department of Education v. California, 604 U.S. __ (2025)
      i. Suggesting cases challenging terminated grants exclusively belong in Court of Federal Claims
   d. National Institutes of Health v. American Public Health Ass'n, 606 U.S. __ (2025)
      i. Splintered shadow docket decision on jurisdictional issues in grants termination litigation
   e. Lower court decisions on specific grant programs
      i. Climate United Fund v. Citibank, N.A., Nos. 25-5122, 25-5123, 2025 U.S. App. LEXIS 22532, 2025 WL 2502881 (D.C. Cir. Sep. 2, 2025) (holding district court lacked jurisdiction to address EPA termination of Greenhouse Gas Reduction Fund grants).
      ii. Appalachian Voices v. United States EPA, Civil Action No. 25-1982 (RJL), 2025 U.S. Dist. LEXIS 169472, 2025 WL 2494905 (D.D.C. Aug. 29, 2025) (similar as to Environmental and Climate Justice Block Grants)

III. Climate and air
   a. Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards (90 FR 36288)
      i. EPA proposes to rescind endangerment finding chiefly based on interpretation that Clean Air § 202 does not authorize greenhouse gas emission based on global climate concern (and partly based on questioning climate science)

ii. Simultaneously proposes to repeal Biden-era greenhouse gas emissions standards for light-, medium-, and heavy-duty vehicles
iii. Implications: could undermine greenhouse gas regulations across sectors and nullify vehicle emissions standards unless Congress acts

b. Proposal to end Greenhouse Gas Reporting Program (announcement)
i. Would eliminate reporting requirements for fuel and industrial gas suppliers; most carbon dioxide injection and storage sites; and large industrial emitters

c. Proposed repeal of Biden-era amendments to Mercury and Air Toxics Standards (90 FR 25535)
i. Proposing to repeal amendments that tightened mercury emissions limits for coal-fired electric generating units; added formaldehyde to the regulated pollutant list; imposed more stringent monitoring requirements

IV. Cleanups and contaminants

a. PFOS/PFOA designation
i. Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances (89 FR 39124)
ii. Announcement last month EPA is retaining the rule and defending it in litigation

b. PFOS/PFOA maximum contaminant levels
i. PFAS National Primary Drinking Water Regulation (89 FR 32532)
ii. EPA Announces It Will Keep Maximum Contaminant Levels for PFOA, PFOS (announcement)
1. Signals future proposed rule to rescind PFAS MCLs other than for PFOA and PFOS

c. Emphasis on presumptive remedies
i. Presumptive Remedies: Policy and Procedures
ii. Deputy Administrator interview on cleanup program priorities

V. Oregon-specific

a. Columbia River Agreement
i. Cancellation of Columbia River Agreement (OPB interview)
ii. Oregon resumes legal battle after Trump administration abandons historic Columbia River agreement (Oregonian article; Seattle Times)

b. Background on the Columbia River Basin Restoration Program (overview)
i. How we pushed the Columbia, the great river of the West, to its limit (Seattle Times)

c. Toxics remediation (OPB article)

U.S. Supreme Court Roundup

Craig Johnston, Clayton R. Hess Professor of Law, University of Oregon School of Law

Craig Johnston is a Professor of Law at Lewis & Clark Law School. Before Professor Johnston joined the faculty in fall 1991, he practiced in Boston, Massachusetts, and Portland, Oregon. As assistant regional counsel with the U.S. Environmental Protection Agency in Boston, Johnston worked on major enforcement matters under both the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA). In Portland he founded the environmental section of the Perkins Coie Portland office and represented clients on compliance and litigation matters. In 1987 he was awarded the EPA Bronze Medal for Commendable Service; in 1985 he received the Bernard F. O'Rourke Award from Northwestern School of Law of Lewis & Clark College for excellence in the field of natural resources. Johnston has published numerous articles in the field of environmental law and has coauthored a casebook on hazardous waste law, published by West. He is also an avid runner and is the organizer of a cross-country relay effort.

Adell Amos, Clayton R. Hess Professor of Law, University of Oregon School of Law

Adell L. Amos holds the Clayton R. Hess Professorship at the UO School of Law and a courtesy appointment at Oregon State University as a member of the graduate faculty for Water Resources and Policy Management program. She teaches regularly in the nationally ranked Environmental and Natural Resources Law Program, including courses in Water Law, Federal Administrative Law, Environmental Conflict Resolution, and Oregon Water Law and Policy.

Professor Amos earned her B.A in 1995 from Drury College and her J.D. in 1998 from the University of Oregon (Coif). She is a member of the Missouri bar, admitted in 1999. After law school, Amos clerked on the Ninth Circuit Court of Appeals for The Honorable Procter Hug, Jr. (then Chief Judge). Amos first joined the faculty in 2005 after practicing environmental and natural resources law with the U.S. Department of Interior. In 2008, Amos accepted a two-year appointment with the Obama Administration in Washington DC as the Deputy Solicitor for Land and Water Resources at the U.S. Department of the Interior. Amos returned to UO in 2011 with renewed energy for the importance of teaching and researching in the area of water resource management, public participation, and the role of law in the policy arena. Most recently, she served as the inaugural director of the campus wide environment initiative. This multi-year year effort culminated in the creation of the Center for Climate Solutions for which she now serves as Director.

Supreme Court Roundup (Quick Version)

Oregon State Bar
Environmental and Natural Resources Law Section

Adell Amos
Clayton R. Hess Professor of Law
University of Oregon, School of Law

October 16, 2025

The 23-24 Term – Admin Law Decisions

- *Corner Post, Inc. v. Board of Governors*

- *SEC v. Jarkesy*

- *Loper Bright Enterprises v. Raimondo*
  - 9th Circuit Focus
  - Other Circuits

The 24-25 Term – Admin Law Decisions

- *McLaughlin Chiropractic Associates, Inc. v. Mckesson Corp*
- *Federal Communications Commission v. Consumers' Research*
- Special Note on *Seven County Infrastructure Coalition v. Eagle County* and *Food and Drug Administration v. Wages and White Lion Investment, LLC* as limitations or exceptions to *Loper Bright*
- Special Note on *Trump v. CASA* and nationwide injunctions

Landscape 2-years Post Loper-Bright

- Express delegations by Congress
- Express Congressional language regarding exercise of discretion
- Best interpretation of the statutory language using traditional tools of statutory interpretation
- Agency focus on establishing best interpretation and specific facts in complex areas
- Role of *Skidmore* deference standard
- Potential race to the courthouse to establish “best” interpretation of statutory language (implications of Corner Post)
- Various standards across district and circuit courts (lack of nation wide injunction)

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

ENVIRONMENTAL PROTECTION AGENCY *v.* CALUMET SHREVEPORT REFINING, L.L.C., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 23–1229. Argued March 25, 2025—Decided June 18, 2025

The Clean Air Act (CAA) establishes a comprehensive venue framework for judicial review of Environmental Protection Agency (EPA) actions designed to ensure proper distribution of cases among federal courts. Under 42 U. S. C. §7607(b)(1), "nationally applicable" EPA actions must be challenged exclusively in the D. C. Circuit, while "locally or regionally applicable" actions ordinarily belong in regional Circuits. However, locally or regionally applicable actions that are "based on a determination of nationwide scope or effect" must be reviewed in the D. C. Circuit if EPA finds and publishes that such basis exists. This tripartite system reflects congressional intent to channel nationally significant EPA actions to the D. C. Circuit while keeping most regionally focused matters in local Circuits.

Under the CAA's renewable fuel program, most domestic refineries must blend specified amounts of ethanol and other renewable fuels into transportation fuels they produce. The Act provides a phased exemption scheme for small refineries—those processing no more than 75,000 barrels of crude oil daily—allowing them to petition EPA for exemptions based on "disproportionate economic hardship." §7545(*o*)(9)(B)(i). Following this Court's decision in *HollyFrontier Cheyenne Refining, LLC* v. *Renewable Fuels Assn.*, 594 U. S. 382, which clarified that small refineries could obtain exemption "extensions" even after their original exemptions had lapsed, the D. C. Circuit remanded pending exemption cases to EPA for reconsideration.

EPA then proposed and ultimately denied 105 small refinery exemption petitions in two omnibus notices issued in April and July 2022. EPA's denials were based on two principal determinations: first, its interpretation that "disproportionate economic hardship" covers only

Syllabus

hardship directly caused by renewable fuel program compliance; and second, its economic theory that Renewable Identification Number (RIN) costs are fully passed through to consumers, creating a presumption against granting exemptions. EPA applied these determinations uniformly while conducting confirmatory reviews of individual refinery circumstances. EPA asserted in its denial notices that the denials were reviewable only in the D. C. Circuit, either as "nationally applicable" actions or, alternatively, as locally applicable actions "based on a determination of nationwide scope or effect."

Small refineries challenged these denials in multiple regional Circuits. Most Circuits either dismissed the challenges for improper venue or transferred them to the D. C. Circuit. However, the Fifth Circuit retained jurisdiction, rejecting EPA's venue arguments and ruling for the refineries on the merits. The Fifth Circuit reasoned that EPA's actions were merely locally applicable because their "*legal* effect" was limited to the petitioning refineries, and that the actions were not based on determinations of nationwide scope or effect because EPA still examined refinery-specific facts before issuing denials.

Held: EPA's denials of small refinery exemption petitions are locally or regionally applicable actions that fall within the "nationwide scope or effect" exception, requiring venue in the D. C. Circuit. Pp. 6–21.

(a) Section 7607(b)(1) creates a two-step inquiry for determining venue. First, courts assess whether an EPA action is nationally applicable or only locally or regionally applicable. If nationally applicable, the case belongs in the D. C. Circuit. If locally or regionally applicable, courts proceed to the second step to determine whether the "nationwide scope or effect" exception applies to override the default rule of regional Circuit review. Pp. 6–13.

(1) To identify the relevant "action," courts must look to the authorizing CAA provision rather than how EPA packages its decisions. The enumerated "actions" in §7607(b)(1) make clear that this provision "treats each activity the Clean Air Act allows the EPA to take as a distinct 'action.'" *Kentucky* v. *EPA*, 123 F. 4th 447, 460. Because the CAA allows "[a] small refinery" to "petition [EPA] for an extension of [its] exemption" and requires EPA to "act on any petition submitted," each EPA denial of a refinery's exemption petition constitutes its own "action" for venue purposes. Pp. 7–8.

(2) An action is "nationally applicable" if it applies "[o]n its face" throughout the entire country, or only "locally or regionally applicable" if it applies only to particular localities or regions. *Sierra Club* v. *EPA*, 926 F. 3d 844, 849. EPA's denial of a single refinery's exemption petition applies only to that refinery, a particular entity in a particular place, making such denials paradigmatically "locally or regionally applicable" actions. Pp. 8–10.

(3) EPA's argument that it can control the unit of "action" for venue purposes by aggregating similar petitions into omnibus notices lacks any statutory limiting principle and would effectively give EPA veto power over venue. EPA's position that any action affecting more than one Circuit is nationally applicable would render actions with plainly local or regional focus "nationally applicable" simply because the locality or region straddles Circuit lines. Pp. 10–13.

(b) Because EPA's actions are locally or regionally applicable, the Court must determine whether the "nationwide scope or effect" exception applies. This exception requires that (1) the action "is based on a determination of nationwide scope or effect," and (2) EPA "finds and publishes that such action is based on such a determination." All agree the second requirement is satisfied. Pp. 13–21.

(1) A "determination" refers to EPA's justifications in taking the action. Determinations are of nationwide "scope" if they apply throughout the country "as a legal matter (de jure)" and of nationwide "effect" if they so apply "as a practical [matter] (de facto)." *Kentucky*, 123 F. 4th, at 465. An EPA action is "based on" a determination of nationwide scope or effect only if that determination "lie[s] at the core of the agency action" and forms the primary explanation for and driver of EPA's action. *Texas* v. *EPA*, 829 F. 3d 405, 419. This requires more than but-for causation; it requires that a justification of nationwide breadth be the most important part of EPA's reasoning. Courts should evaluate this *de novo*. Pp. 13–17.

(2) Applying this framework, EPA's exemption denials were based on determinations of nationwide scope or effect. EPA's interpretation of "disproportionate economic hardship" under §7545(*o*)(9)(B)(i) and its RIN passthrough theory are clear determinations of nationwide scope or effect that apply generically to all refineries regardless of geographic location. These determinations formed the core basis for EPA's denials because EPA used them to reach a presumptive resolution to deny all petitions, then considered refinery-specific factors only to confirm it had no reason to depart from this presumptive disposition. Where EPA relies on determinations of nationwide scope or effect to reach a presumptive resolution, those determinations qualify as the primary driver of its decision. EPA's confirmatory review of refinery-specific facts is "[m]erely peripheral" by comparison. *Texas*, 829 F. 3d, at 419. Pp. 17–18.

(3) The Court rejects EPA's argument that "determination" covers only the resolution of unsettled issues, as well as respondents' argument that "determination" is a term of art applicable only when a CAA provision textually directs EPA to make a "determination" for the entire Nation. The Court also rejects the argument that EPA's consideration of refinery-specific facts precludes the exception's application,

Syllabus

noting that the exception requires an action be "based on," not "based solely on," a determination of nationwide scope or effect. Pp. 18–21.

86 F. 4th 1121, vacated and remanded.

THOMAS, J., delivered the opinion of the Court, in which ALITO, SOTOMAYOR, KAGAN, KAVANAUGH, BARRETT, and JACKSON, JJ., joined. GORSUCH, J., filed a dissenting opinion, in which ROBERTS, C. J., joined.

NOTICE: This opinion is subject to formal revision before publication in the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, pio@supremecourt.gov, of any typographical or other formal errors.

SUPREME COURT OF THE UNITED STATES

No. 23–1229

ENVIRONMENTAL PROTECTION AGENCY, PETITIONER *v.* CALUMET SHREVEPORT REFINING, L.L.C., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[June 18, 2025]

JUSTICE THOMAS delivered the opinion of the Court.

The Clean Air Act (CAA) establishes a tripartite system for determining venue in CAA litigation. Challenges to "nationally applicable" Environmental Protection Agency (EPA) actions belong in the U. S. Court of Appeals for the D. C. Circuit, while challenges to "locally or regionally applicable" EPA actions ordinarily belong in a regional Circuit. 42 U. S. C. §7607(b)(1). But, the CAA makes an exception for local or regional actions that are "based on a determination of nationwide scope or effect" and accompanied by an EPA finding of this basis, which also must be challenged in the D. C. Circuit. *Ibid.* Applying this framework to EPA's 2022 denials of certain small refineries' exemption petitions, we hold that the refineries' challenges belong in the D. C. Circuit. EPA's denials are only locally or regionally applicable, but they fall within the "nationwide scope or effect" exception.

I

A

Section 7607(b)(1)—the CAA's venue provision—governs

where petitioners should file challenges to EPA actions under that statute. As originally enacted, §7607(b)(1) dictated venue only for an enumerated subset of EPA actions. Certain actions with a national reach, such as "any national primary or secondary ambient air quality standard" (NAAQS) were reviewable only in the D. C. Circuit. §1857h–5(b)(1) (1970 ed.). Area-specific "implementation plan[s]" went to "the appropriate" regional Circuit. *Ibid.* Any other unmentioned actions could be heard only in district courts through their general grant of federal-question jurisdiction. *Harrison* v. *PPG Industries, Inc.*, 446 U. S. 578, 584 (1980); see 28 U. S. C. §1331.

In 1977, Congress replaced this patchwork system with the CAA's current scheme, which makes all EPA actions directly reviewable in a federal court of appeals. 91 Stat. 776 (codified as amended at 42 U. S. C. §7607(b)(1)). The amended statute specifies that, in addition to NAAQS and other enumerated actions, "any other nationally applicable . . . final action taken" by EPA under the CAA may be reviewed only in the D. C. Circuit. §7607(b)(1). And, in addition to implementation plans, "any other final action of [EPA] under this chapter . . . which is locally or regionally applicable" ordinarily may be reviewed only in a regional Circuit. *Ibid.* Congress has since amended the CAA to specify additional kinds of actions that fall within these two categories. 91 Stat. 1404; 104 Stat. 2681.

Congress also created a third venue category in the 1977 amendments. This category provided an exception to the default rule that locally or regionally applicable actions should be reviewed in the regional Circuits. Congress instructed that a locally or regionally applicable action must be reviewed in the D. C. Circuit "if [it] is based on a determination of nationwide scope or effect" and "if in taking such action [EPA] finds and publishes that such action is based on such a determination." §7607(b)(1).

B

The EPA actions at issue in this case relate to the CAA's renewable fuel program (RFP). The RFP "requires most domestic refineries to blend a certain amount of ethanol and other renewable fuels into the transportation fuels they produce." *HollyFrontier Cheyenne Refining, LLC* v. *Renewable Fuels Assn.*, 594 U. S. 382, 385 (2021). Each covered refinery's precise obligation turns on its proportional share of various "nationwide volume mandates." *Id.*, at 385–386; see §§7545(*o*)(2)(A)(i), (*o*)(3); 40 CFR §80.1407(a) (2024).

Covered refineries demonstrate compliance through a system of Renewable Identification Number credits (RINs). See 40 CFR §§80.1425, 80.1426(a). A refinery generates RINs whenever it blends renewable fuels, §80.1426(a), and refineries may also buy and sell RINs, 42 U. S. C. §7545(*o*)(5)(B). Thus, each year, a refinery may show compliance "thanks to its own blending efforts, the purchase of credits from someone else, or a combination of both." *HollyFrontier*, 594 U. S., at 386.

The CAA contains a phased exemption scheme for small refineries—*i.e.*, refineries whose "average aggregate daily crude oil throughput for a calendar year . . . does not exceed 75,000 barrels." §7545(*o*)(1)(K). The scheme exempted all small refineries from RFP compliance until 2011. §7545(*o*)(9)(A)(i). It then required EPA to extend this blanket exemption, for at least two years, for all small refineries found by a Department of Energy study to face "disproportionate economic hardship" if subjected to the RFP's obligations. §7545(*o*)(9)(A)(ii). Finally, the scheme allows a small refinery to "at any time petition [EPA] for an extension of [its] exemption . . . for the reason of disproportionate economic hardship." §7545(*o*)(9)(B)(i). We interpreted this last provision in *HollyFrontier*, holding that a small refinery may obtain an "extension" even after its original exemption has lapsed. *Id.*, at 396.

C

This case arose in the aftermath of *HollyFrontier*. Pending that decision, the D. C. Circuit had been holding in abeyance challenges to EPA's resolution of 36 small refineries' exemption petitions for the 2018 compliance year. Afterwards, that court granted EPA's motion for remand without vacatur, so that EPA could reconsider its orders in light of the *HollyFrontier* litigation. Order in *Sinclair Wyoming Refining Co.* v. *EPA*, No. 19–1196 etc. (CADC, Dec. 8, 2021), p. 3. The D. C. Circuit instructed EPA to issue its new decisions within 120 days. *Ibid.*

Shortly thereafter, EPA noticed for public comment a proposal to deny all pending exemption petitions. 86 Fed. Reg. 71000 (2021). EPA's notice set out two principles. *First*, EPA offered its interpretation of "disproportionate economic hardship," the CAA's threshold for an exemption petition to be granted. §7545(*o*)(9)(B)(i). On EPA's view, that phrase covers only hardship that is caused by RFP compliance. App. in No. 22–60266 etc. (CA5), pp. 545–548. *Second*, EPA theorized that, as a matter of economics, small refineries ordinarily do not suffer disproportionate economic hardship as a result of the RFP because "RIN costs are fully passed through to consumers." *Id.*, at 549; see *id.*, at 548–584. Based on this "RIN passthrough" theory, EPA proposed denying all pending petitions "by finding the petitioning refineries do not face [disproportionate economic hardship] caused by compliance with their [RFP] obligations." 86 Fed. Reg. 71000.

After receiving comments, EPA followed through and denied the pending exemption petitions in two omnibus notices. EPA issued the first in April 2022 to deny the 36 petitions subject to the D. C. Circuit's deadline. 87 Fed. Reg. 24300. EPA issued the second in July 2022, to deny an additional 69 petitions from the 2016 to 2021 compliance years. *Id.*, at 34874. In both notices, EPA relied primarily on the principles from its proposal—namely, its statutory

interpretation of "disproportionate economic hardship" and its RIN passthrough theory. App. to Pet. for Cert. 100a, 107a, 242a, 249a. EPA treated the passthrough theory as creating a presumption against granting exemptions, and it examined the petitioning refineries' evidence regarding their specific circumstances to confirm that none of the refineries had rebutted this presumption. See *id.*, at 107a–108a, 163a–168a, 249a–250a, 305a–310a.

EPA also asserted in the denial notices that its denials were reviewable only in the D. C. Circuit. According to EPA, the notices were "'nationally applicable'" actions under §7607(b)(1). *Id.*, at 187a, 328a. Alternatively, if the actions were only "locally or regionally applicable," then EPA invoked the exception for actions "based on a determination of 'nationwide scope or effect.'" *Ibid.* EPA included in both notices a finding that its new statutory interpretation and RIN passthrough theory supplied the relevant determinations of nationwide scope or effect. *Id.*, at 187a–188a, 329a.

Notwithstanding EPA's position, small refineries challenged these denials in a host of regional Circuits. Agreeing with EPA that the litigation belonged in the D. C. Circuit, most of these Circuits either dismissed the petitions for improper venue or transferred them to the D. C. Circuit.[1]

The Fifth Circuit took a different approach. Evaluating the petitions filed by six small refineries (respondents here), the Fifth Circuit held that the litigation was properly before it. The majority rejected the arguments for transfer raised by EPA and a group of intervenors, reasoning that EPA's notices were merely locally or regionally applicable

[1] See, *e.g.*, Orders in *American Rfg. Group, Inc.* v. *EPA*, No. 22–1991 (CA3, Aug. 9, 2022), ECF Doc. 23; *Countrymark Rfg. & Logistics, LLC* v. *EPA*, No. 22–1878 (CA7, July 20, 2022), ECF Doc. 13; *Calumet Mont. Rfg., LLC* v. *EPA*, No. 22–70124 (CA9, Oct. 25, 2022), ECF Doc. 16; *Wyoming Rfg. Co.* v. *EPA*, No. 22–9538 (CA10, Aug. 23, 2022), ECF Doc. 26; see also *Hunt Rfg. Co.* v. *EPA*, 90 F. 4th 1107, 1113 (CA11 2024).

actions, because their "*legal* effect" was limited to the petitioning refineries. 86 F. 4th 1121, 1131–1132 (2023). And, contra EPA, the notices were not based on any determination of nationwide scope or effect. Both EPA's new interpretation and its RIN passthrough theory "fail[ed] to provide the agency with a sufficient basis to adjudicate exemption petitions," because EPA still looked to refinery-specific facts before it issued its denials. *Id.*, at 1133. Accordingly, the case properly belonged in the Fifth Circuit, and the majority proceeded to rule against EPA on the merits, vacating and remanding EPA's denials for further consideration. *Id.*, at 1133, 1142.

Judge Higginbotham dissented on venue grounds. In his view, EPA's denial notices were nationally applicable because they applied throughout the country: EPA applied a consistent approach to small refineries spanning "eighteen different states, in the geographical boundaries of eight different circuit courts." *Id.*, at 1143–1144. And, if the notices were only locally or regionally applicable, then EPA was correct to find that the "nationwide scope or effect" exception applied: EPA's statutory interpretation and its passthrough theory were "core determinations" that have nationwide scope or effect in that they "are applicable to all small refineries no matter the location or market in which they operate." *Id.*, at 1145. We granted certiorari to clarify where venue properly lies. 604 U. S. ___ (2024).

II

Section 7607(b)(1) creates a two-step inquiry for determining venue. At the first step, we assess whether an EPA action is nationally applicable, or only locally or regionally applicable. If the action is nationally applicable, then our inquiry ends: The case belongs in the D. C. Circuit. If the action is locally or regionally applicable, then we proceed to the second step. There, we ask whether the "nationwide scope or effect" exception applies to override the default rule

that locally or regionally applicable actions belong in the regional Circuits. Turning to §7607(b)(1)'s first step, we hold that the actions before us are only locally or regionally applicable.

A

To properly categorize EPA's actions at the first step, we must determine what the relevant "action" is, and what it means for an action to be "nationally applicable" as opposed to "locally or regionally applicable." Once those principles are clarified, the categorization here is straightforward.

1

Because §7607(b)(1) pegs venue to the scope of the EPA action being challenged, our threshold task is to identify the "action" at issue. To do so, we must read "action" in its context. That word means "a thing done." Webster's Third New International Dictionary 21 (1976) (Webster's); see also Black's Law Dictionary 26 (5th ed. 1979) (Black's) ("something done"). But, we could define the "thing done" by EPA in different ways. Both EPA's denials of each individual exemption petition and its aggregation of those denials into omnibus notices are in a sense things done. The former is an "activity the Clean Air Act allows the EPA to take," while the latter is how EPA has chosen to undertake that activity. *Kentucky* v. *EPA*, 123 F. 4th 447, 460 (CA6 2024).

To determine which framing matters for purposes of §7607(b)(1), we look to the example "actions" this provision enumerates. Section 7607(b)(1) lists various examples of EPA actions that qualify as either "nationally applicable" or "locally or regionally applicable." For both these terms, it then provides a catchall for "any other" "final action." And, we "interpret a 'general or collective term' . . . in light of any 'common attribute[s]' shared by" statutory examples of that term. *Southwest Airlines Co.* v. *Saxon*, 596 U. S.

450, 458 (2022).

The enumerated "actions" in §7607(b)(1) make clear that this provision "treats each activity the Clean Air Act allows the EPA to take as a distinct 'action.'" *Kentucky*, 123 F. 4th, at 460. These "actions" all refer to particular exercises of EPA authority undertaken pursuant to particular CAA provisions. For instance, the example of a NAAQS must be understood by reference to §7409(a), which directs EPA to issue a NAAQS "for each air pollutant," and thus indicates that each pollutant-specific standard is its own "action." Likewise, §7607(b)(1)'s example of EPA's approval of an "implementation plan under section 7410" must be read in light of §7410, which makes clear that an implementation plan is a proposal "submitted by a State," and thus indicates that EPA's approval decision is state specific. §7410(a)(2). In each case, the enumerated EPA "action" is defined by reference to the substantive authority under which EPA is acting. See *id.*, at 461.

Accordingly, for both §7607(b)(1)'s enumerated examples and "any other . . . final action taken" by EPA "under this chapter," we must look to the authorizing CAA provision to identify the "action" at hand. This provision makes the CAA's framing of the relevant "action" controlling, regardless of how EPA chooses to package its decisions in the Federal Register.[2]

2

The next question is whether a given action is "nationally applicable" or only "locally or regionally applicable." Because §7607(b)(1) does not define those terms, we presumptively give those terms their ordinary meaning. *Burrage* v. *United States*, 571 U. S. 204, 210 (2014). The word "'[n]ational' contemplates an activity with a nationwide

[2]The Fifth Circuit therefore erred in summarily accepting EPA's characterization of its omnibus notices as the "two EPA actions" at issue in this case. 86 F. 4th 1121, 1129 (2023); see *supra*, at 5–6.

scope," while the words "local" and "regional" relate only to particular "place[s]" or regions. See Black's 845, 923. And, the word "applicable" requires us to ask what the EPA action in question "'ha[s] reference to.'" *Kentucky*, 123 F. 4th, at 459. Put another way, we ask whether the action "[o]n its face" applies throughout the entire country, or only to particular localities or regions. *Sierra Club* v. *EPA*, 926 F. 3d 844, 849 (CADC 2019).

The statutory context supplied by §7607(b)(1)'s enumerated examples confirms the correctness of this ordinary-meaning approach. The actions that §7607(b)(1) identifies as "nationally applicable" facially apply nationwide. For example, courts have identified a NAAQS—a "'*national* primary or secondary ambient air quality standard'"—as "[t]he textbook example of nationally applicable action." *Sierra Club* v. *EPA*, 47 F. 4th 738, 743 (CADC 2022). Conversely, the actions that the CAA enumerates as "locally or regionally applicable" all have more particularized reach. For instance, "the prototypical 'locally or regionally applicable' action" is EPA's approval of a state implementation plan, which, as explained, is state specific. *American Road & Transp. Builders Assn.* v. *EPA*, 705 F. 3d 453, 455 (CADC 2013) (majority opinion of Kavanaugh, J.); *supra*, at 8. Because catchall "clauses are to be read as bringing within a statute categories similar in type to those specifically enumerated," the examples make clear that the ordinary meaning of the terms "nationally applicable" and "locally or regionally applicable" controls. *Federal Maritime Comm'n* v. *Seatrain Lines, Inc.*, 411 U. S. 726, 734 (1973).[3]

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[3] Because 42 U. S. C. §7607(b)(1) requires all actions to be either nationally applicable or locally or regionally applicable, difficult edge cases may arise. For example, if an EPA action must "formally appl[y]" to "the whole country" to be nationally applicable, *Kentucky* v. *EPA*, 123 F. 4th 447, 460 (CA6 2024), then actions could apply to nearly the entire country yet still be locally or regionally applicable, see, *e.g.*, §7545(i)(4). But, if an action that formally applies to only a subset of the country can be

3

Applying these principles here, we treat each EPA denial of a refinery's exemption petition as its own "action" for venue purposes. And, EPA's denial of a single refinery's petition plainly is only locally or regionally applicable.

This conclusion follows from how the CAA defines the submission and evaluation of an RFP exemption petition. The CAA allows "[a] small refinery" to "at any time petition [EPA] for an extension of [its] exemption" from RFP obligations. §7545(*o*)(9)(B)(i). EPA, in turn, is to "evaluat[e] a petition" and then "act on any petition submitted . . . not later than 90 days after the date of receipt of the petition." §§7545(*o*)(9)(B)(ii)–(iii). Thus, the CAA pegs EPA's "actions" under the exemption provision by reference to each individual exemption petition.

Against this backdrop, our classification decision is straightforward. By definition, EPA's denial of a single refinery's exemption petition only applies to that refinery, which is a particular entity located in a particular place. That limited reach makes EPA's denials paradigmatically "locally or regionally applicable" actions. See *Sierra Club*, 926 F. 3d, at 849.

B

We are unpersuaded by EPA's and the intervenors' counterarguments. EPA proffers its omnibus denial notices as the relevant "actions" on the ground that it has the discretion to structure its decisions. According to EPA, it is free to "aggregate similar petitions for joint resolution" in a single "action"—here, its omnibus Federal Register notices—given its right as an agency "'to fashion [its] own rules of

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nationally applicable, see *ATK Launch Systems, Inc.* v. *EPA*, 651 F. 3d 1194, 1197 (CA10 2011), then line-drawing questions may arise, *Kentucky*, 123 F. 4th, at 460–462. This case, however, does not present these issues.

procedure and to pursue methods of inquiry capable of permitting [it] to discharge [its] multitudinous duties.'" Brief for Petitioner 26–27 (quoting *FCC* v. *Pottsville Broadcasting Co.*, 309 U. S. 134, 143 (1940)). But, whatever discretion EPA has to manage its internal affairs, Congress conclusively defined the term "action" in §7607(b)(1) to focus on the specific statutory authority EPA is exercising.

Tellingly, EPA's position that it can control the unit of "action" used to determine venue lacks any statutory limiting principle. If EPA had free rein to group decisions into a single "action" for venue purposes, then it could bundle even unrelated matters into one Federal Register pronouncement that is, in the aggregate, nationally applicable. Such a possibility would effectively give EPA a veto power over venue under the CAA. We see no reason to read §7607(b)(1) to permit such gamesmanship. Absent indication that Congress meant to give a party unfettered control over venue, we will not read a venue provision to confer such broad discretion. Cf. *Deal* v. *United States*, 508 U. S. 129, 133–134 (1993) (disfavoring a reading that would "give a prosecutor unreviewable discretion" as to a sentencing enhancement's applicability).

Because EPA does not dispute that the actions here can be nationally applicable only if it is right that the omnibus denial notices are the relevant "actions," we need not resolve EPA's remaining arguments. At a minimum, however, we note that EPA's theory for distinguishing between nationally applicable and locally or regionally applicable actions cannot withstand scrutiny. EPA argues that any agency action is nationally applicable if it affects more than one Circuit. But, as we have recognized, the term "nationally applicable" bears its ordinary meaning, *supra*, at 8–9, and EPA's view would render actions with a plainly local or regional focus "nationally applicable" simply because the locality or region at issue straddles Circuit lines. For exam-

ple, some EPA air quality control regions cover metropolitan areas that extend into two Circuits. It would defy credulity to say that an EPA action regarding such a region would therefore be nationally applicable rather than locally or regionally applicable. Cf. Brief for Small Refinery Respondents 41 ("Can there be any doubt that an EPA disapproval of a regional implementation plan for only Region 90 (Metropolitan Kansas City) is a 'regionally applicable' action . . . , even though that action touches both the Eighth and Tenth Circuits?"). Whatever the precise line should be, see n. 3, *supra*, EPA's line cannot be it.

EPA justifies its position based on §7607(b)(1)'s language equating regional Circuit review with review in "*the* appropriate circuit." §7607(b)(1) (emphasis added). To be reviewable only in a single "appropriate circuit," EPA contends, the category of "locally or regionally applicable" actions must be limited to those actions affecting only one Circuit. But, in the absence of other evidence, §7607(b)(1)'s use of the definite article "the" is too thin a reed to support EPA's conclusion. See 1 U. S. C. §1 (directing that "words importing the singular include and apply to several persons, parties, or things" "unless the context indicates otherwise").

Finally, we find no merit in the intervenors' arguments for why the denial of an individual refinery's exemption petition should still be considered nationally applicable. According to the intervenors, the individual denials are nationally applicable because they have follow-on effects for the amount of renewable fuel that must be produced under the RFP and because EPA in issuing the denials announced a new standard for adjudicating exemption petitions. But, again, we determine an action's range of applicability by "look[ing] only to the face of the [action], rather than to its practical effects." *American Road & Transp. Builders Assn.*, 705 F. 3d, at 456. Any follow-on implications of EPA's denials have no bearing on our analysis of their facial applicability. Cf. *Sierra Club*, 47 F. 4th, at 744 ("The fact

that 'EPA's interpretive reasoning' may have 'precedential effect in future EPA proceedings . . . does not make [an action] nationally applicable'").

III

Because we conclude that EPA's actions were only locally or regionally applicable, we must proceed to the second step of the §7607(b)(1) inquiry. That is, we ask whether the "nationwide scope or effect" exception applies to override the default of regional Circuit review for locally or regionally applicable actions. This exception channels an action to the D. C. Circuit if (1) it "is based on a determination of nationwide scope or effect," and (2) "in taking such action [EPA] finds and publishes that such action is based on such a determination." §7607(b)(1). Here, all agree that the second requirement is satisfied: EPA included the necessary finding in both its April and June denial notices. *Supra*, at 5. Accordingly, the question before us is whether EPA's exemption denials were "based on a determination of nationwide scope or effect." We conclude that they were.

A

Here too, we begin by laying out the framework for deciding whether an action is "based on a determination of nationwide scope or effect." We conclude that this requirement is met if such a determination supplies a core justification for EPA's action and that courts should evaluate the basis for EPA's determinations *de novo*. Applying that framework, we hold that this case is one in which the "nationwide scope or effect" exception applies.

1

To understand the phrase "based on a determination of nationwide scope or effect," we again turn to ordinary meaning. *Burrage*, 571 U. S., at 210. In particular, we look to the plain meaning of this phrase's component words, which are all terms of everyday usage. And, we read these

words "in their context and with a view to their place in the overall statutory scheme." *Davis* v. *Michigan Dept. of Treasury*, 489 U. S. 803, 809 (1989).

To begin, a "determination" is the "settling and ending of a controversy," or "the resolving of a question by argument or reasoning." Webster's 616; see also 4 Oxford English Dictionary 548 (2d ed. 1989) ("[t]he decision arrived at or promulgated; a determinate sentence, conclusion, or opinion"). In an EPA action, EPA's underlying "determinations are the justifications [it] gives for the action," which "can be found in [its] explanation of its action." *Texas* v. *EPA*, 829 F. 3d 405, 419 (CA5 2016).

In turn, a determination's "scope" and "effect" refer, respectively, to its "formal 'area' of operation" and to its "'operative influence.'" *Kentucky*, 123 F. 4th, at 465; see, *e.g.*, American Heritage Dictionary 1164 (1969) (defining "scope" as the "area covered by a given activity or subject"); Webster's 724 (defining "effect" as "something that is produced by an agent or cause"). An agency's determinations are of "nationwide" scope or effect if they apply "throughout [the] entire nation." *Id.*, at 1505. Taken together, an agency action involves determinations of nationwide "scope" if they apply throughout the country "as a legal matter (de jure)" and determinations of nationwide "effect" if they so apply "as a practical one (de facto)." *Kentucky*, 123 F. 4th, at 465.

Of course, nearly all agency actions can be said to involve justifications of nationwide reach or consequence. For example, most EPA actions presumably rely on EPA's interpretations of its governing statutes.

The key question, then, is the degree of causality contained in the phrase "based on." And, the meaning of that phrase is context dependent. In many cases, it "indicates a but-for causal relationship." *Safeco Ins. Co. of America* v. *Burr*, 551 U. S. 47, 63 (2007). But-for causation is a comparatively lenient standard, which is met so long as a result "would not have occurred in the absence of—that is, but

for—[a party's] conduct." *Burrage*, 571 U. S., at 211 (internal quotation marks omitted). In other cases, however, more is needed. Congress sometimes uses phrases such as "based on" to cover only "core" causes amounting to an action's "*sine qua non*" or "'gravamen.'" See, *e.g.*, *Fry* v. *Napoleon Community Schools*, 580 U. S. 154, 167, 169 (2017); *OBB Personenverkehr AG* v. *Sachs*, 577 U. S. 27, 35 (2015).

Section 7607(b)(1) incorporates the more demanding, "core" understanding of "based on." This constraint follows from the function of the "nationwide scope or effect" exception as just that—an exception. Congress, after all, is unlikely to intend for an exception to swallow the rule. See *Smith & Wesson Brands, Inc.* v. *Estados Unidos Mexicanos*, 605 U. S. ___, ___ (2025) (slip op., at 15). Thus, in this context, but-for causation is inadequate: In almost any case, a determination of nationwide scope or effect will be at least a but-for cause of EPA's action, given that any EPA action is downstream of EPA's conclusions as to what its governing statutes permit or require. But, Congress made regional Circuit review the default for locally or regionally applicable actions, so we must read the "nationwide scope or effect" exception in a way that preserves regional Circuit review as the norm.

It follows that an EPA action is "based on" a particular determination only if that determination "lie[s] at the core of the agency action," so as to form the most important part of the agency's reasoning. *Texas*, 829 F. 3d, at 419. Put more concretely, an EPA action is based on a determination of nationwide scope or effect only if a justification of nationwide breadth is the primary explanation for and driver of EPA's action. A determination of nationwide scope or effect does not rise to this level if EPA also relied in significant part on other, "intensely factual" considerations, or if the key driver of EPA's action is otherwise debatable. *Id.*, at 421; see also *id.*, at 419 ("The default presumption is that

petitions for review of locally or regionally applicable actions 'may only be filed in the United States Court of Appeal for the appropriate circuit'").

2

In deciding whether a particular EPA action is "based on a determination of nationwide scope or effect," courts should assess EPA's reasoning *de novo*. This standard follows from the structure of the "nationwide scope or effect" exception: The exception applies only "*if*" a locally or regionally applicable action is based on a determination of nationwide scope or effect "*and if*" EPA, in taking the action, finds and publishes that the action has this basis. §7607(b)(1) (emphasis added). In other words, the CAA requires both that EPA deem its action to have a qualifying basis and that the action in fact have this basis. This dual formulation does not naturally suggest that courts should simply give EPA's finding deference. Cf. *Regalado Cuellar* v. *United States*, 553 U. S. 550, 565 (2008) (finding it "implausible" to infer that Congress intended a particular meaning, where it used a "more complex formulation").

The upshot is that courts must "make an independent assessment of the scope of [EPA's] determinations." *Texas*, 829 F. 3d, at 421. That is, they should parse the reasoning offered by EPA in taking an action to decide which determinations primarily drove the action. Courts routinely analyze filings to identify their substance, and the language of the "nationwide scope or effect" exception directs them to do the same here.

In so holding, we do not downplay the importance of EPA's role. Because the "nationwide scope or effect" exception can apply only when "EPA so finds and publishes" that it does, EPA can decide whether the exception is even potentially relevant. *Sierra Club*, 47 F. 4th, at 746. And, where EPA does invoke the exception, its explanation for doing so will at a minimum focus the courts' assessment of

the possible determinations of nationwide scope or effect.[4] Thus, EPA's choices will matter, even as courts must assess the bases for EPA's actions themselves.

3

Applying this framework, we conclude that EPA's denials of the small refineries' exemption petitions were based on determinations of nationwide scope or effect. We agree with EPA's finding—published in both its April and June denial notices—that its interpretation of the phrase "disproportionate economic hardship" under §7545(*o*)(9)(B)(i) and its RIN passthrough theory were determinations of nationwide scope or effect that formed the core basis for EPA's denials. *Supra*, at 5.

Both conclusions are clear determinations of nationwide scope or effect: EPA invoked both its statutory interpretation and its passthrough theory in justifying its denials, and both points apply generically to all refineries, regardless of their geographic location. After all, the CAA is a federal statute, and §7545(*o*)(9)(B)(i) by its terms applies nationwide. Likewise, EPA's RIN passthrough theory is a finding about how the national refinery market works. See *supra*, at 4–5.

These conclusions also can be deemed the "basis" for EPA's denials here. EPA decided, in light of the foregoing determinations, that it would presumptively deny all the

[4] This case does not present the question whether, given principles of issue preservation, courts can forgo consideration of determinations that EPA has not itself identified as the basis for its action. Cf. *SEC* v. *Chenery Corp.*, 318 U. S. 80, 88 (1943) (confining review of agency action "to a judgment upon the validity of the grounds upon which the [agency] itself based its action"). But, we expect this issue to be outcome dispositive only in rare cases. As a practical matter, an action is unlikely to be based on a particular determination where EPA has failed, in promulgating the action, to identify that determination as the relevant determination of nationwide scope or effect.

exemption petitions before it. *Supra*, at 4–5. It then considered other, refinery-specific considerations only to confirm that it had no reason to depart from its presumptive disposition. *Supra*, at 5. In this posture, EPA's statutory interpretation and passthrough theory plainly are the most important parts of its reasoning. Or, put another way, where EPA relies on determinations of nationwide scope or effect to reach a presumptive resolution, those determinations qualify as the primary driver of its decision. EPA's confirmatory review of refinery-specific facts is "[m]erely peripheral" by comparison. *Texas*, 829 F. 3d, at 419.

Accordingly, we agree with EPA that the "nationwide scope or effect" exception applies here. The Fifth Circuit should have transferred this case.

B

We are unpersuaded by the counterarguments raised by EPA, respondents, the Fifth Circuit, and the dissent.

Although we agree with EPA's bottom-line position that the "nationwide scope or effect" exception applies, we reject its roundabout approach to the word "determination." EPA argues that "[t]he word 'determination'" in §7607(b)(1) "suggests a resolution of an unsettled issue," such that EPA does not make "determinations" when it "applies a previously established agency rule, policy, or interpretation to new . . . circumstances." Brief for Petitioner 41. We agree with EPA that a "determination" here means the "'settling and ending of a controversy,'" *ibid.*; *supra*, at 14, but nothing in that term or its use in §7607(b)(1) suggests that only novel conclusions count. Rather, given §7607(b)(1)'s focus on the face of the agency action, "determination" is most naturally read to cover any EPA conclusion within the four corners of an action.

Moreover, we do not see how EPA's proposed approach can be squared with its requested disposition. If a "determination" covers only the resolution of an unsettled issue,

it is not obvious why EPA's June denials contain any determinations: EPA's June notice purported to "appl[y] the approach . . . adopted in the April" notice. App. to Pet. for Cert. 80a. EPA attempts to avoid this difficulty by proposing a holistic assessment of novelty that considers factors such as "whether EPA announced the rule or policy at roughly the same time as the challenged agency action itself." Brief for Petitioner 41. But, we do not see how this amorphous test follows even from EPA's view.[5]

Respondents argue that the word "determination" in §7607(b)(1) is a term of art, wherein an agency action can trigger the "nationwide scope or effect" exception only if it is undertaken based on a CAA provision that "textually direct[s] EPA to make a 'determination' for the entire nation." Brief for Small Refinery Respondents 32 (emphasis deleted). But, "determination" is "hardly a rarely used word," and nothing in the CAA's context suggests that Congress meant for its use in §7607(b)(1) to reach only CAA provisions that happen to use some variant of that word. *Bruesewitz* v. *Wyeth LLC*, 562 U. S. 223, 235 (2011). Such a limitation would at best lead to arbitrary outcomes, as Congress did not act in a standardized way when using "determination" as opposed to other words. Compare §7410(k)(3) (not speaking in terms of "determinations") with §7410(k)(6) (requiring a "determination" when EPA "[c]orrect[s]" its actions under §7410(k)(3)). At worst, respondents' approach would render the "nationwide scope or effect" exception meaningless: Respondents have conceded that their term-of-art view may render the exception "a null set, or close to a null set." Tr. of Oral Arg. 103–104. But, Congress would not have gone to the trouble of creating a

[5] EPA also contends that §7607(b)(1)'s "based on" language speaks in terms of but-for causation and that courts should assess the basis for EPA's actions deferentially, through arbitrary-and-capricious review. For the reasons already explained, we reject those contentions. *Supra*, at 14–16.

superfluous exception, so we will not "force [a] term-of-art definitio[n]" where it "plainly do[es] not fit." *Gonzales* v. *Oregon*, 546 U. S. 243, 282 (2006) (Scalia, J., dissenting).

The dissent would similarly limit the "nationwide scope or effect" exception to reach only statutorily enumerated determinations, but its arguments fare no better. The dissent highlights that various CAA substantive provisions require EPA to make particular "determinations" before taking an action. *Post,* at 3–6, 10 (opinion of GORSUCH, J.). But, it does not follow that Congress meant to encompass only statutorily enumerated determinations when it spoke generally in the exception of actions "based on *a determination* of nationwide scope or effect." §7607(b)(1) (emphasis added). And, although some statutes "'distinguis[h] between "considerations" that inform [a] "determination," and the "determination" itself,'" *post*, at 10 (quoting *Commissioner* v. *Zuch*, 605 U. S. ___, ____ (2025) (slip op., at 6); alterations in original), statutes like the one in *Zuch* use "determination" to refer to an agency's ultimate decision, see *id.*, at ___–___ (slip op., at 5–6). In asking whether a determination supplies the basis for an EPA action, §7607(b)(1) uses the term in a different sense. Likewise, the dissent's concern that our test could be difficult for "lower courts and lawyers to apply" is not a problem of our creation. *Post*, at 11. Insofar as the reticulated venue framework that Congress enacted creates difficulty for courts or litigants, "it is a problem for Congress, not one that federal courts can fix." *Lewis* v. *Chicago*, 560 U. S. 205, 217 (2010).

Finally, we are unpersuaded by respondents' argument, accepted by the Fifth Circuit, that the "nationwide scope or effect" exception is inapplicable in light of EPA's consideration of refinery-specific facts. That exception requires that an EPA action be "based on" a determination of nationwide scope or effect, in contrast to another part of §7607(b)(1) where Congress used the phrase "based solely on." Accordingly, EPA's consideration of local facts does not preclude

its invocation of the exception, either generally or here. So long as a determination of nationwide scope or effect served as the primary driver of EPA's action, other, more "peripheral" determinations "are not relevant" for venue purposes. *Texas*, 829 F. 3d, at 419.

* * *

We agree with the Fifth Circuit that EPA's actions here are only locally or regionally applicable, although we clarify that the relevant actions are EPA's individual denials of the small refineries' exemption petitions. But, under a proper understanding of §7607(b)(1), the "nationwide scope or effect" exception applies, and the case belongs in the D. C. Circuit. The Fifth Circuit therefore erred in denying EPA's request to transfer. The judgment of the Court of Appeals is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 23–1229

ENVIRONMENTAL PROTECTION AGENCY, PETITIONER *v.* CALUMET SHREVEPORT REFINING, L.L.C., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[June 18, 2025]

JUSTICE GORSUCH, with whom THE CHIEF JUSTICE joins, dissenting.

Though I would reach a different judgment, the Court and I travel much of the way together. This case involves six small refineries. Each petitioned the Environmental Protection Agency for a hardship exemption from the Clean Air Act's renewable fuel mandates. The agency denied all six refineries' petitions. The question we face does not concern the merits of what EPA did, only where the small refineries' lawsuit challenging the agency's actions should be heard. The Act instructs that litigation over "nationally applicable" EPA "actions" belongs in the D. C. Circuit, while disputes over "locally or regionally applicable" agency "actions" generally belong in a regional circuit. 42 U. S. C. §7607(b)(1). In Parts I and II of its opinion, the Court concludes that these rules presumptively route the dispute before us to a regional circuit because EPA's decision to deny an individual refinery's petition for a hardship exemption is a "locally or regionally applicable" action. With all that, I agree.

But then, in Part III of its opinion, the Court pivots. Even when a case challenges only a "locally or regionally applicable" action, the Court observes, the Act routes it to the D. C.

Circuit if EPA's action "is based on a determination of nationwide scope or effect." Applying a new multistep test it announces, the Court concludes that EPA's actions at issue here were based on such a determination. As a result, the Court holds, the right venue for this case turns out to be the D. C. Circuit after all.

In my view, that pivot is a mistake. The Clean Air Act's venue provision works in harmony with its substantive provisions. Throughout, those substantive provisions direct EPA to make certain "determinations" before it may take certain "actions." When it comes to acting on a small refinery's hardship petition, nothing in the Act's substantive provisions calls on EPA to make a "determination of nationwide scope or effect." Instead, the Act requires the agency to evaluate only whether a particular small refinery seeking an exemption would suffer a hardship without one. Accordingly, the Act's venue provision routes this dispute to a regional circuit, just as the Fifth Circuit recognized below. The Court's new and reticulated test for assessing venue disputes under the Act strikes me as both mistaken and likely to render simple venue questions unnecessarily difficult and expensive to resolve.

I

Start with how I would analyze this case. The Clean Air Act's venue provision, found in 42 U. S. C. §7607(b)(1), supplies three basic rules. First, challenges to "nationally applicable" agency "action[s]" must be brought in the D. C. Circuit. Second, challenges to "locally or regionally" applicable agency "action[s]" must be filed in the appropriate regional circuit. Third, as an exception to the second rule, challenges to locally or regionally applicable agency actions

belong in the D. C. Circuit if they are "based on a determination of nationwide scope or effect."[1] The central question this case poses concerns the relationship between the second and third rules: When is a locally or regionally applicable "action" under the Clean Air Act "based on a determination of nationwide scope or effect"?

As I see it, the Act itself supplies the answer. Working in concert with the Act's venue provision, the Act's substantive provisions tell us what kinds of "actions" the agency is lawfully authorized to take and when those actions may be based on "determinations of nationwide scope or effect." Here, the relevant substantive provisions permit EPA to take a specific "action"—namely, the granting or denying of a small refinery's hardship petition. But, by their terms, those provisions do not call for a nationwide "determination" when the agency acts. Instead, the only decisions EPA must make are refinery-specific ones. Accordingly, the dispute before us belongs in an appropriate regional circuit.

A

To appreciate how the Act's substantive and venue provisions interact, begin with a look at the substantive provisions addressing the renewable fuel standards that lie at the heart of this case.

As a rule, §7545(*o*)(2) requires the Nation's fuel supply to include ethanol or other renewable fuels in fixed amounts that increase over time. See *HollyFrontier Cheyenne Refining, LLC* v. *Renewable Fuels Assn.*, 594 U. S. 382, 385–386 (2021). But the Act also permits EPA to take various actions inconsistent with that general rule if it makes certain determinations. So, for example, §7545(*o*)(7)(A)(i) allows EPA to waive some renewable fuel mandates "based on a

[1] To implicate this exception, EPA must also certify its belief that its action "is based on . . . a determination" of nationwide scope or effect. §7607(b)(1). But that requirement is irrelevant in this case because all agree that EPA satisfied it, so I will not address it further. *Ante*, at 13.

determination" that enforcing them "would severely harm the economy or environment of a State, a region, or the United States." Similarly, EPA may waive renewable fuel requirements "based on a determination . . . that there is an inadequate domestic [fuel] supply." §7545(*o*)(7)(A)(ii). Similarly again, §§7545(b)(4)(C)(ii) and (iii) permit EPA to waive other standards if it "determines that . . . extreme and unusual . . . circumstances exist in a State or region." Beyond those examples, §7545 discusses various other actions the agency may take after making various other determinations. (In all, §7545 uses the word "determination" or one of its cognates more than 70 times.)

Now apply these observations about §7545's substantive provisions to the Act's venue provision. If, for example, EPA waives a renewable fuel standard for a single State under §7545(*o*)(7)(A)(i) "based on a determination" that "implement[ing]" those standards "would severely harm the economy . . . of a State," §7607(b)(1) would route disputes over that action to the appropriate regional circuit. After all, a determination about the economy of a particular State is hardly one of "nationwide scope or effect." §7607(b)(1). On the other hand, if EPA issues such a waiver based on a "determination" that implementing the renewable fuel standard in question "would severely harm the economy [of] the United States," §7607(b)(1) would channel any litigation over that action to the D. C. Circuit.

The substantive provisions at issue in today's companion case illustrate the same point. That litigation revolves around federal air quality standards and the State Implementation Plans (SIPs) States must prepare to meet them. See *Oklahoma* v. *EPA*, 605 U. S. ___, ___–___ (2025) (slip op., at 2–3). Section 7410 sets forth the general rules about what SIPs must contain and how EPA must go about assessing them. But that section also authorizes EPA to take certain actions inconsistent with those rules after making

certain determinations. (For its part, §7410 uses "determination" or one of its cognates more than 20 times.) So, for example, §7410(b) permits EPA to "extend the period for [the] submission of any" SIP for up to 18 months "wherever [the EPA Administrator] determines necessary." And §7410(g) allows EPA to "disapprov[e]" a Governor's decision to suspend a SIP component if the agency "determines" that his decision "does not meet" certain statutory criteria (including whether the suspension is necessary "to prevent substantial increases in unemployment").

Now consider where the Act's venue provision sends disputes about EPA actions under these substantive provisions. Suppose EPA determines that it is "necessary" to extend the submission deadline for SIPs across the country, and the agency acts accordingly pursuant to §7410(b). In those circumstances, an argument might be made that §7607(b)(1) routes disputes about that action to the D. C. Circuit. Cf. *Kentucky* v. *EPA*, 123 F. 4th 447, 466 (CA6 2024). But if EPA acts pursuant to §7410(g) to countermand a Governor's decision to suspend a SIP component based on a determination that his decision defies the Act's terms, §7607(b)(1) would likely send any dispute over that action to a regional circuit.

B

With that much in hand, return to the question whether the Act's venue provision directs this lawsuit to a regional circuit or the D. C. Circuit.

As we have seen, §7545 lays out the Act's substantive renewable fuel standards and generally requires refineries to mix a certain (and regularly increasing) amount of renewable fuels into the transportation fuel they produce. See Part I–A, *supra*; *HollyFrontier*, 594 U. S., at 385–386. But §7545 also allows EPA to exempt small refineries from these mandates "for the reason of disproportionate economic hardship." §7545(*o*)(9)(B)(i). Seeking to take advantage of this

provision, the six small refineries before us individually petitioned EPA for hardship exemptions. See 86 F. 4th 1121, 1129–1130 (CA5 2023). In the end, the agency denied each refinery's request. App. to Pet. for Cert. 251a–252a; *id.*, at 305a–310a. Now, the small refineries seek to challenge EPA's actions in court. That challenge belongs in a regional circuit because nothing in the Act's relevant substantive provisions calls for EPA to act on a determination of nationwide scope or effect.

Just walk through the substantive provisions addressing small refineries one by one. To account for the fact that small refineries may have more difficulty meeting evolving renewable fuel mandates than their larger rivals, Congress in 2005 granted them a blanket exemption until 2011. See §7545(*o*)(9)(A); *HollyFrontier*, 594 U. S., at 386–387. After that, Congress directed EPA to extend a small refinery's exemption "for a period of not less than 2 additional years" if the "Secretary of Energy determines" that the refinery in question "would be subject to a disproportionate economic hardship if required to comply" with the Act's renewable fuel mandates. §7545(*o*)(9)(A)(ii)(II). Even beyond that, Congress permitted a small refinery to petition "at any time" for "an extension" of its "exemption . . . for the reason of disproportionate economic hardship." §7545(*o*)(9)(B)(i). When it comes to deciding whether to grant or deny such a petition, the Act directs EPA to "consul[t] with the Secretary of Energy," consider his "determin[ation]" whether "a" particular "small refinery" would suffer "disproportionate economic hardship if required to comply," and consider "other economic factors." §§7545(*o*)(9)(A)(ii), (B)(ii). Nowhere does the Act call for a determination of nationwide scope or effect. To the contrary, after the blanket exemption for small refineries expired in 2011, all agency actions and determinations became refinery-specific ones.

Any doubt on that score is resolved by comparing these substantive provisions with others we have encountered.

Section 7545(*o*)(7)(A), remember, allows EPA to waive certain renewable fuel standards "based on a determination . . . that implementation of the requirement would severely harm the economy or environment of . . . the United States," or "based on a determination . . . that there is an inadequate domestic [fuel] supply." As that provision illustrates, when it wished to do so, Congress knew how to say that EPA may take a certain action based on a determination of nationwide scope or effect. That we have nothing like that here is a telling sign that the small-refinery provisions work differently and do not task EPA with taking any nationally applicable action or making any determination of nationwide scope or effect. See *Feliciano* v. *Department of Transportation*, 605 U. S. ___, ___ (2025) (slip op., at 6).

EPA's own statements convey the same message. The agency represents that it "'consider[s] each petition on the merits'" and examines "'individual refinery information'" when passing on individual hardship petitions. 86 F. 4th, at 1133. EPA represents, too, that it "determined that none of the petitioning small refineries" merited a hardship exemption only after completing "a thorough evaluation of the data and information provided" by each small refinery. Brief for Petitioner 10; App. to Pet. for Cert. 94a–95a.

To be sure, EPA also highlights two features of its administrative proceedings that, it says, prove the agency took a "nationally applicable action," or at least made a "determination of nationwide scope or effect." For one, EPA emphasizes that it bundled the petitions from the six small refineries before us together with a host of other similar petitions and dispatched them all in a pair of administrative decisions. See Brief for Petitioner 28; 86 F. 4th, at 1129–1130. For another, the agency stresses that, in evaluating each refinery's petition, it relied on a single interpretation of the statutory phrase " 'disproportionate economic hardship' " and a single economic model (the agency's "RIN passthrough theory"). *Ante*, at 5.

The Court correctly holds that none of this transforms EPA's challenged actions into "nationally applicable" actions. *Ante*, at 10. Yes, the agency may choose to bundle petitions together for administrative convenience. And, yes, the agency may apply similar reasoning when faced with similar petitions. But, as the Court recognizes, the only "action" the Act's substantive provisions call on EPA to take is to grant or deny an individual hardship petition—and that is a locally applicable action, not a national one. *Ibid.*

As I see it, this same insight defeats EPA's suggestion that its actions were "based on a determination of nationwide scope or effect." §7607(b)(1). As a matter of administrative convenience, the agency may choose to address a number of petitions collectively rather than separately. And the agency of course may (and, to avoid acting arbitrarily and capriciously, generally must) apply consistent reasoning to like petitions. But the Act's venue provision does not route cases to one circuit or another based on how EPA packages them or the quality or nature of its reasoning. Instead, the Act's venue provision asks whether the agency based its action on a determination of nationwide scope or effect. And, as the Act's substantive provisions make clear, EPA does no such thing when it passes on an individual small refinery's hardship petition.

II

Turn now to how the Court resolves this case. As we have seen, the Court first holds that EPA's decision whether to grant or deny an individual small refinery's hardship petition is a locally or regionally applicable "action." See Part II, *ante*. Accordingly, the Court starts with the (correct) presumption that the suit before us belongs in a regional circuit. *Ibid.* But then, the Court reverses course. While EPA's challenged actions are local or regional ones, the

Court concludes, this case belongs in the D. C. Circuit because the agency's actions were "based on a determination of nationwide scope or effect." See Part III, *ante*. That portion of the Court's opinion strikes me as both mistaken and likely to cause confusion about where Clean Air Act disputes should be heard.

To understand why, consider how the Court proceeds. Pursuing what it calls an "ordinary-meaning" approach, the Court observes that the word "determination" often refers to the "'settling and ending of a controversy.'" *Ante*, at 14 (quoting Webster's Third New International Dictionary 616 (1976)). Extrapolating from that dictionary definition, the Court reasons that "*any EPA conclusion* within the four corners of an action" qualifies as a "determination." *Ante*, at 18 (emphasis added).

But, the Court continues, whether an action is "'based on'" a conclusion of nationwide scope or effect depends on a "degree of causality." *Ante*, at 14. Nor will just any degree of causality do. Proving that some nationwide conclusion (or now, the Court adds, "justification" or "reasoning") is the "but-for" cause of the agency's action will not suffice. *Ante*, at 14–15. Instead, EPA must establish that some nationwide conclusion (or justification or reasoning) qualifies as the "gravamen" or "core" or "driver" of its action. *Ante*, at 15 (internal quotation marks omitted). And when EPA's actions rely "in significant part on . . . 'intensely factual' considerations" or when "the key driver of EPA's action is otherwise debatable," that standard will not be satisfied. *Ibid*.

Applying all those ideas to this case, the Court holds that all of EPA's challenged actions were based on a determination of nationwide scope or effect. That is so, the Court says, because EPA's actions (its decisions to deny the small refineries' petitions) rested at their "core" on a common (or "nationwide") understanding of the statutory phrase "'disproportionate economic hardship'" and a common (or

"nationwide") economic model. *Ante*, at 17 (quoting §7545(*o*)(9)(B)(i)). To be sure, the Court acknowledges, the agency also undertook a "review of refinery-specific facts." *Ante*, at 18. But on the Court's account, those "refinery-specific facts" mattered less to the outcomes here than EPA's statutory interpretation and its economic model. *Ibid*.

I find that chain of reasoning unpersuasive for a few reasons. For one thing, it seems to me pretty far afield from the statutory text. As we have seen, the Clean Air Act's venue provision speaks of actions and determinations, and the Act's substantive provisions do too. And when a substantive provision calls for either a nationally applicable "action" or a "determination" of nationwide scope or effect, it says so. To decide where a case belongs, then, no special judicially devised test is required. Instead, lawyers and judges need only open the statute books, find the relevant substantive provision, and follow its lead. As we have seen, the Court takes just this approach when addressing the meaning of the term "action" in the Act's venue provision. There, it concludes EPA took no nationally applicable "action" because the Act's substantive provisions "pe[g]" an action to a decision to grant or deny an individual hardship petition. *Ante*, at 10; see Part I–B, *supra*. On my view, we should employ that same statute-driven approach to the meaning of "a determination of nationwide scope or effect."

For another thing, the Court's test conflates a determination with the reasons that inform it. Statutes often "distinguis[h] between 'considerations' that inform [a] 'determination,' and the 'determination' itself." *Commissioner* v. *Zuch*, 605 U. S. ___, ___ (2025) (slip op., at 6) (alteration omitted). The Clean Air Act is no different. It authorizes EPA to take certain actions (like waiving renewable fuel mandates or disapproving a single Governor's suspension of a SIP component). The Act authorizes those actions if certain determinations are made (like a determination that enforcing

the renewable fuel mandates would severely harm the national economy or a determination that a Governor's partial SIP suspension doesn't satisfy certain criteria). And to support its determinations, the agency may offer any number of reasons. To avoid accusations of arbitrary and capricious decisionmaking, too, the agency will usually employ consistent reasoning in like cases. See, *e.g.*, *Encino Motorcars, LLC* v. *Navarro*, 579 U. S. 211, 222 (2016). But none of that means we should conflate the determinations EPA must make under the Act with the reasons the agency offers to support them.

For another thing still, I worry that the Court's test will prove tough for lower courts and lawyers to apply in practice. Having conflated a "determination" with the agency's underlying reasoning, the Court must find some way to go about sorting and weighing all the reasons EPA may advance. But just consider what its approach entails. First, lawyers and judges must consult the full scope of the agency's reasoning (in this case, reasoning that runs over 280 pages). See App. to Pet. for Cert. 44a–330a. Next, lawyers and judges must "parse" out which aspects of that reasoning are particular to a locality or region and which are national in scope or effect. *Ante*, at 16. Finally, lawyers and judges must weigh those two sets of reasons against each other and decide which set was the true "driver" of the agency's decision and which was more "peripheral" to it. *Ante*, at 18 (internal quotation marks omitted).

"'[L]itigation over whether the case is in the right court is essentially a waste of time and resources.'" *Navarro Savings Assn.* v. *Lee*, 446 U. S. 458, 464, n. 13 (1980). When it comes to the simple preliminary question where a case should be filed, the rules of the road should be "clear and easy to apply." *Hamer* v. *Neighborhood Housing Servs. of Chicago*, 583 U. S. 17, 25 (2017); see *Hertz Corp.* v. *Friend*, 559 U. S. 77, 94–95 (2010). The test the Court announces today can claim neither of those virtues. For the lawyers

and judges tasked with applying it, I can only wish them luck.

III

To get a sense of the challenges the Court's test poses for future litigants and lower courts, compare this case to its companion. See *Oklahoma* v. *EPA*, 605 U. S. ___ (2025).

As we have seen, that dispute involves SIPs, plans States must submit to EPA outlining how they intend to comply with national air quality standards. See Part I–A, *supra*; §7410. Among other things, a State's SIP must address the Act's "Good Neighbor Provision." *Ohio* v. *EPA*, 603 U. S. 279, 283–284 (2024). Because "air currents can carry pollution across state borders," *id.*, at 283, that provision requires each SIP to contain "adequate" measures to prevent in-state "emissions activity" from interfering with other States' ability to satisfy federal air quality standards, §7410(a)(2)(D). In a single rule, EPA rejected 21 SIPs—including Utah's and Oklahoma's—because, in the agency's view, none satisfied the Act's Good Neighbor provision. *Oklahoma*, 605 U. S., at ___–___ (slip op., at 3–4) (citing 88 Fed. Reg. 9336 (2023)). Now, Oklahoma, Utah, and certain industry groups seek to challenge EPA's actions in court, and they argue that their litigation belongs in a regional circuit. *Oklahoma*, 605 U. S., at ___ (slip op., at 5).

EPA responds that the SIPs case is, in every way that matters, like the small refineries' case and thus belongs in the D. C. Circuit too. After all, the agency points out, it employed a common statutory interpretation and a common methodology to assess each State's proposed SIP—just as it did when considering the small refineries' petitions. If the one case belongs in the D. C. Circuit, EPA argues, so must the other. See Brief for Federal Respondents in No. 23–1067 etc., pp. 30, 34–36; Tr. of Oral Arg. in *Oklahoma* v. *EPA*, O. T. 2024, No. 23–1067 etc., pp. 39, 47.

Along those lines, EPA observes that, in assessing each

SIP, it asked whether the state plan before it would contribute more than "1% of the permissible ozone level to a downwind State." *Oklahoma*, 605 U. S., at ___ (slip op., at 12); Brief for Federal Respondents in No. 23–1067 etc., at 9, 35. In practice, EPA argues, that 1% threshold proved critical. SIPs that "fell under the 1 percent de minimis threshold" were "approved on [that] ground." Tr. of Oral Arg. in No. 23–1067 etc., at 38–39. Meanwhile, all (or nearly all) the SIPs that exceeded the 1% threshold—including Oklahoma's and Utah's—were rejected. See Brief for Federal Respondents in No. 23–1067 etc., at 7; Brief for State of New York et al. as *Amici Curiae* in No. 23–1067 etc., pp. 24–25, n. 20. Accordingly, the agency argues, even if it took a local or regional "action" with respect to each SIP, nationwide determinations proved "essential to EPA's reasoning in disapproving the state plans." Brief for Federal Respondents in No. 23–1067 etc., at 37.

The Court disagrees. As it must under the test it announces, the Court begins by consulting all the various reasons EPA offered (some 60-plus pages of them appear in the Federal Register). *Oklahoma*, 605 U. S., at ___–___ (slip op., at 10–13).[2] In doing so, the Court acknowledges that EPA used a common (or nationwide) statutory interpretation and a common (or nationwide) methodology when assessing all of the SIPs. See *id.*, at ___ (slip op., at 9). The Court recognizes, too, that the 1% threshold played a significant role in separating the SIPs EPA approved from those it rejected. See *id.*, at ___–___ (slip op., at 12–13). Still, when it comes to weighing the role that EPA's common (or nationwide) justifications played, the Court concludes, they were not the "primary drivers" of the agency's challenged actions. *Id.*, at ___ (slip op., at 12). Instead,

[2] See 88 Fed. Reg. 9336 (omnibus rule); 87 Fed. Reg. 31470 (2022) (Air Plan Disapproval; Utah); *id.*, at 9798 (Air Plan Disapproval; Arkansas, Louisiana, Oklahoma, and Texas).

"factual determinations particular to the State at issue" predominated. *Id.*, at ___ (slip op., at 10) (internal quotation marks omitted). Relying on that assessment, the Court holds that Oklahoma's and Utah's lawsuit challenging EPA's rejection of their SIPs belongs in a regional circuit. *Id.*, at ___ (slip op., at 13).

Maybe that's right. But I can certainly imagine arriving at the opposite outcome under the Court's test. After all, EPA used a common statutory interpretation and a common methodology when assessing all of the SIPs, proceeding much as it did when evaluating the small refineries' hardship petitions. In both cases, too, the agency factored in certain local considerations, like individual "Stat[e] circumstances" in the SIPs case, *id.*, at ___ (slip op., at 10), and individualized "data and information" in the small refineries' case, App. to Pet. for Cert. 94a–95a. Of course, the Court thinks EPA leaned more heavily on individualized reasons in the SIPs case, and more heavily on common ones in the small refineries' case. *Oklahoma*, 605 U. S., at ___ (slip op., at 11). But without any objective standard for weighing which predominates, there seems to me ample room for good-faith disagreement between litigants and among lower courts. And it is just that kind of ambiguity that promises protracted and expensive venue litigation going forward.

To avoid that problem, I would resolve the SIPs case the same way I would resolve the small refineries' case: by looking to the Act itself. Section 7410(k)(3) requires EPA to approve or disapprove SIPs and, in passing on them, to assess whether each individual State has or has not complied with its obligations under federal law. See *id.*, at ___ (slip op., at 3). Nowhere does that substantive provision call for a nationally applicable action or task EPA with making a determination of nationwide scope or effect. And no more is needed to know that, under the Act's venue provision, the SIPs dispute before us belongs in a regional circuit. *Id.*, at

Article

The Impact of *Loper Bright v. Raimondo*: An Empirical Review of the First Six Months

Robin Kundis Craig†

One of the most impactful decisions of the U.S. Supreme Court's 2023–2024 term was Loper Bright Enterprises v. Raimondo*, which overruled the forty-year-old administrative law doctrine of* Chevron *deference. This doctrine allowed federal agencies to interpret ambiguities in the statutes that they administer. Courts cited* Chevron *over 18,000 times in its forty-year existence, or roughly 450 times a year—more than once a day, on average. Small wonder, then, that in the first six months after the Supreme Court decided* Loper Bright*, courts cited it more than 400 times.*

This article provides an empirical review of what courts are doing with Loper Bright *in the initial aftermath of the Supreme Court's decision. It offers three main observations. First, state courts react differently to* Loper Bright *depending on their own state administrative review standards and on whether the case before them involves federal law, with the most negative reaction coming from the Hawai'i Supreme Court and the most accepting reactions coming from states that never had or that have already eliminated the state equivalent of* Chevron *deference. Second, in the absence of additional guidance from the Supreme Court, lower federal courts are already diverging regarding what* Loper Bright *means for federal administrative law decisions, particularly with respect to other forms of administrative law deference,*

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such as Skidmore *and* Auer *deference. Finally, a decided difference has emerged between how the lower federal courts are treating new administrative rules, invalidating them almost 84 percent of the time, and how they treat all other federal activities, especially federal agency orders. While many of these rules would have been vulnerable regardless of* Loper Bright*, it remains worth watching how federal court review of new agency rules continues to unfold.*

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INTRODUCTION

On June 25, 1984, the U.S. Supreme Court decided *Chevron U.S.A. Inc. v. Natural Resources Defense Council*,[1] a case challenging the U.S. Environmental Protection Agency's (EPA's) implementation of the federal Clean Air Act.[2] Specifically, in 1981, the EPA promulgated a regulation that resolved an ambiguity in how to apply the Act's definition of "stationary source" by adopting a plant-wide definition of "stationary source."[3] Under this interpretation, if a single facility had several sources of air emissions, the entire facility would be treated as one source, as if it were enclosed under a bubble with only one vent at the top.[4]

The U.S. Supreme Court upheld the EPA's interpretation by inventing what became known as *Chevron* deference.[5] According to the *Chevron* Court:

> When a court reviews an agency's construction of the statute which it administers, it is confronted with two questions. First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.[6]

Thus, when giving *Chevron* deference to a federal agency, federal courts accepted an agency's reasonable construction of an ambiguous statute, even if the agency's interpretation was not what the court itself would have come up with.[7]

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1. 467 U.S. 837 (1984), *overruled by* Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244 (2024).

2. 42 U.S.C. §§ 7401–7428.

3. Requirements for Preparation, Adoption and Submittal of Implementation Plans and Approval and Promulgation of Implementation Plans, 46 Fed. Reg. 50,766 (Oct. 14, 1981) (codified as amended at 40 C.F.R. § 51 (2024)).

4. *Chevron*, 467 U.S. at 840.

5. *Id*. at 865–66 (holding that agency decisions like the EPA's are "entitled to deference").

6. *Id*. at 842–43 (footnotes omitted).

7. *Id*. at 843 n.11 ("The court need not conclude that the agency construction was the only one it permissibly could have adopted to uphold the construction, or even the reading the court would have reached if the question initially had arisen in a judicial proceeding." (citations omitted)).

The *Chevron* Court effectively distinguished between the initial construction of a statute to determine whether it is ambiguous (Step 1) and the resolution of any ambiguities that emerged (Step 2). In *Chevron* Step 1:

> The judiciary is the final authority on issues of statutory construction and must reject administrative constructions which are contrary to clear congressional intent. If a court, employing traditional tools of statutory construction, ascertains that Congress had an intention on the precise question at issue, that intention is the law and must be given effect.[8]

However, if Congress left an ambiguity or gap in the statute, then Congress had, explicitly or implicitly, delegated authority to the implementing federal agency to resolve the statute's meaning.[9] As a result, in Step 2, the agency's "legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute."[10]

Chevron deference became pervasive in federal administrative law. Seventy of the Supreme Court's own decisions between 1984 and 2024 turned on *Chevron* deference,[11] and, according to Westlaw, well over 18,000 court decisions have cited to *Chevron*.[12] Thus, on average, *Chevon* influenced more than 450 cases each year, or more than one case per day, for forty years.

Forty years and three days after it decided *Chevron*, however, the U.S. Supreme Court overturned *Chevron* deference in two consolidated federal fisheries cases, *Loper Bright Enterprises v. Raimond*o and *Relentless, Inc. v. Department of*

8. *Id*. at 843 n.9 (citations omitted).

9. *Id*. at 843–44 (noting that an agency's reasonable interpretation must control regardless of whether Congress implicitly or explicitly delegates its authority).

10. *Id*. at 844.

11. Adam Liptak, *Justices Limit Power of Federal Agencies, Imperiling an Array of Regulations*, N.Y. TIMES (June 28, 2024), https://www.nytimes.com/2024/06/28/us/supreme-court-chevron-ruing.html [https://perma.cc/6TH5-CX33].

12. As of February 2025, over 18,800 cases cite *Chevron. See Westlaw Precision*, THOMSON REUTERS, https://1.next.westlaw.com/RelatedInformation/I1d248e419c9711d993e6d35cc61aab4a/kcCitingReferences.html?docSource=6007d79b888f4242b112e7278733c30c&facetGuid=h562dbc1f9a5f4b0c9e54031a19076b9c&ppcid=bd1c540073424263bb584a5dfc9e78e0&originationContext=citingreferences&transitionType=CitingReferences&contextData=%28sc.Default%29 [https://perma.cc/QMW4-DTBC] (on the *Chevron* case page, select "citing references"; then select "cases").

Commerce.[13] As Part I will discuss in detail, the *Loper Bright* Court deemed *Chevron* deference unworkable, as well as contrary to the federal Administrative Procedure Act's (APA's) judicial review provisions.[14] As a result, federal courts are now the arbitrators of statutory meaning, seeking to achieve the Supreme-Court-announced goal of fixing the statute's "best" meaning at the time of its enactment.[15] While it remains to be seen how enthusiastically and how frequently the lower federal courts will choose to disagree with federal agency interpretations of the statutes they implement, especially when agencies are trying to apply those statutes to new situations, early signs indicate that federal courts will be looking skeptically at agency actions—especially new agency rules.[16]

This Article takes the first empirical look at what the state and lower federal courts are doing in this new, non-deferential world of statutory construction. Like *Chevron* itself, *Loper Bright* is already a highly cited case: In the first six months of its existence (June 28, 2024 to December 27, 2024), courts cited *Loper Bright* over 400 times.[17] This Article begins in Part I with a summary of the *Loper Bright* decision. It then engages in an analysis of the cases that have already relied on *Loper Bright*, using a dataset of all state (n=28), U.S. Supreme Court (n=10), and U.S. Court of Appeals (n=111) cases that cited *Loper Bright* in the first six months of its existence, plus the subset of the U.S. District Court cases that seriously engaged[18] the *Loper Bright*

13. Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244 (2024).

14. 5 U.S.C. §§ 701–706.

15. *See infra* Part I; *Loper Bright*, 144 S. Ct. at 2266 (explaining that courts must determine the "single, best meaning" that is "fixed at the time of enactment" (quoting Wis. Cent. Ltd. v. United States, 138 S. Ct. 2067, 2074 (2019))).

16. *See infra* Part III.

17. As of February 2025, over 500 cases cite *Loper Bright*. *See Westlaw Precision*, THOMSON REUTERS, https://1.next.westlaw.com/RelatedInformation/Ib96867e3354011efb5b5e02d7c311e0c/kcCitingReferences.html?docSource=a00d53ad95774abe8c7f1151107487c7&facetGuid=h562dbc1f9a5f4b0c9e54031a19076b9c&ppcid=e89c8168c0ea483da2c2d8a9ec2320e1&originationContext=citingreferences&transitionType=CitingReferences&contextData=%28sc.Default%29 [https://perma.cc/6J9Q-C34V] (on the *Loper Bright* case page, select "citing references"; then select "cases").

18. The dataset relies on Westlaw's classification of cases. Under these classifications, "examined by," "discussed by," and "declined to extend" indicate that a district court decision actively engaged the *Loper Bright* decision, as opposed to cases that merely "cite" or "mention" *Loper Bright*. *See id.* (on the "citing

decision (n=121) in the same period. Part II begins with the state court decisions, finding distinct differences in reaction between states that defer to state agency interpretations of statutes and states that do not. As for the federal courts, the Supreme Court has provided no additional guidance regarding the implications of *Loper Bright*. Perhaps unsurprisingly, however, differences are already emerging among the lower courts, which Part III illustrates through the courts' treatment of other forms of deference and through two agency rules and one statute that each have been reviewed by multiple courts.

Overall, this Article offers three main observations. First, state courts react differently to *Loper Bright* depending on their own state administrative review standards and on whether the case before them involves federal law, with the most negative reaction coming from the Hawai'i Supreme Court[19] and the most accepting reactions coming from states that never had or that have already eliminated the state equivalent of *Chevron* deference. Second, in the absence of additional guidance from the Supreme Court, lower federal courts are already diverging regarding what *Loper Bright* means for federal administrative law judicial review, particularly with respect to *Skidmore*[20] and *Auer*[21] deference. Finally, the lower federal courts are so far treating different types of agency actions differently, consistently overturning new agency rules while otherwise upholding agency actions more than sixty percent of the time.[22] While courts likely would have overturned many of the new rules that they reviewed even without *Loper Bright*, *Loper Bright* has made that decision easier, and it bears watching the extent to which federal court deployment of *Loper Bright* constrains in particular agency attempts to make 20th-century statutes relevant to 21st-century issues.

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references" page, refer to the "treatment" column to the left of each case result). The remaining roughly 150 district court cases add little to this Article's analysis. Many, for example, simply cite *Loper Bright* in a footnote to note that *Chevron* deference has been overruled. *E.g.*, United States v. Sharfi, 2024 WL 4483354, at *7 n.6 (S.D. Fla. Sept. 21, 2024).

19. *See infra* Part II (discussing Rosehill v. State, 556 P.3d 387 (Haw. Sept. 24, 2024)).

20. Skidmore v. Swift & Co., 323 U.S. 134 (1944).

21. Auer v. Robbins, 519 U.S. 452 (1997).

22. *See infra* Part V.

I. THE *LOPER BRIGHT* DECISION IN JUNE 2024

On June 28, 2024, by a six-three vote, the Supreme Court overturned *Chevron* deference in *Loper Bright Enterprises v. Raimondo* and *Relentless, Inc. v. Department of Commerce* ("*Loper Bright*").[23] Substantively, the question at the core of both cases was whether the Secretary of Commerce, acting through the National Marine Fisheries Service pursuant to the Magnuson-Stevens Fishery Conservation and Management Act,[24] can require commercial fishers to pay for onboard observers whom they are required to take on some fishing voyages.[25] However, the Supreme Court granted certiorari to decide only one issue: whether it was time to limit or overturn *Chevron* deference.[26]

In an opinion by Chief Justice John Roberts, the Supreme Court majority concluded that *Chevron* deference contradicts the APA's judicial review provisions.[27] This broad law governs both the procedures that federal agencies must follow[28] and, more importantly, the standards that federal courts must use to review agency actions.[29] As the Court emphasized, APA Section 706 requires that "the *reviewing court* shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action."[30] It also requires courts to set aside agency actions and decisions that do not follow the law.[31] According to the

23. 144 S. Ct. 2244 (2024).

24. 16 U.S.C. §§ 1801–1891d.

25. *Loper Bright*, 144 S. Ct. at 2255–56 (describing the challenge to the agency's rule requiring fishermen pay for observers despite no such mandate in the Act).

26. *Id*. at 2257.

27. *Id.* at 2265 ("*Chevron* defies the command of the APA that 'the reviewing court'—not the agency whose action it reviews—is to 'decide *all* relevant questions of law' and 'interpret . . . statutory provisions.'" (citing 5 U.S.C. § 706) (emphasis added)).

28. 5 U.S.C. §§ 551–559.

29. *Id.* § 706.

30. *Id.* (emphasis added); *Loper Bright*, 144. S. Ct. at 2265 (discussing the APA's demand that courts, not agencies, determine questions of law and statutory interpretation).

31. 5 U.S.C. § 706(2)(A) (instructing the reviewing court to "hold unlawful and set aside any agency action, finding, and conclusions" that are found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law").

Supreme Court, "The APA thus codifies for agency cases the unremarkable, yet elemental proposition reflected by judicial practice dating back to *Marbury*: that courts decide legal questions by applying their own judgment."[32] The APA, in other words, incorporated a long-time understanding that it is *the courts*' role to interpret the law, including federal statutes.[33]

Given this emphasis, the *Loper Bright* majority then concluded that "[t]he deference that *Chevron* requires of courts reviewing agency action cannot be squared with the APA."[34] *Chevron* deference:

> demands that courts mechanically afford *binding* deference to agency interpretations, including those that have been inconsistent over time. Still worse, it forces courts to do so even when a pre-existing judicial precedent holds that the statute means something else—unless the prior court happened to also say that the statute is "unambiguous." That regime is the antithesis of the time honored approach the APA prescribes. In fretting over the prospect of "allow[ing]" a judicial interpretation of a statute "to override an agency's" in a dispute before a court, *Chevron* turns the statutory scheme for judicial review of agency action upside down.[35]

Instead, courts must interpret statutes in the first instance, and courts "understand that such statutes, no matter how impenetrable, do—in fact, must—have a single, best meaning. That is the whole point of having written statutes; 'every statute's meaning is fixed at the time of enactment.'"[36]

As a result, the Court overruled *Chevron*.[37] It justified its departure from *stare decisis* on several grounds. First, *Chevron*

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32. *Loper Bright*, 144 S. Ct. at 2261 (citing Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803)).

33. *Id*. at 2262 ("The APA, in short, incorporates the traditional understanding of the judicial function, under which courts must exercise independent judgment in determining the meaning of statutory provisions.").

34. *Id*. at 2263; *see also id*. at 2265 ("Neither *Chevron* nor any subsequent decision of this Court attempted to reconcile its framework with the APA. The law of deference that this Court has built on the foundation laid in *Chevron* has instead been [h]eedless of the original design of the APA." (alteration in original) (citing Perez v. Mortg. Bankers Ass'n, 575 U.S. 92, 109 (2015) (Scalia, J., concurring))).

35. *Id*. at 2265 (first citing Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837 (1984); and then quoting Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs., 545 U.S. 967, 984 (2005)).

36. *Id*. at 2266 (quoting Wis. Cent. Ltd. v. United States, 138 S. Ct. 2067, 2074 (2019)).

37. *Id*. at 2272–73.

is doctrinally irreconcilable with the APA.[38] Second, *Chevron* is "unworkable," because disagreements as to what a statutory ambiguity actually is have repeatedly forced the Court to attempt to clarify the doctrine,[39] rendering *Chevron* "an impediment, rather than an aid," to statutory construction.[40] Third, *Chevron* destroys rather than affirms reliance interests, undermining the rule of law.[41]

Nevertheless, the *Loper Bright* Court recognized that some agency interpretations might still be entitled to respect and consideration.[42] The factors it recognized as relevant in determining whether an agency's interpretation is worthy of respectful consideration are: (1) whether the statute is "doubtful and ambiguous;"[43] (2) whether the agency implements the statute;[44] (3) whether the "Executive Branch interpretation was issued roughly contemporaneously with enactment of the statute;"[45] (4) whether the interpretation "remained consistent over time;"[46] and (5) whether the first interpreters were also drafters of the statute.[47] The *Loper Bright* Court also upheld *Skidmore* deference, under which interpretations from an expert agency are accorded respect according to their persuasiveness, especially in

38. *Id*. at 2270 (calling *Chevron* "fundamentally misguided" and concluding that it cannot be reconciled with the APA's description of judicial review of agency action).

39. *Id*. at 2270–71 ("Because *Chevron* in its original, two-step form was so indeterminate and sweeping, we have instead been forced to clarify the doctrine again and again.").

40. *Id*. at 2271.

41. *Id*. at 2272 ("Rather than safeguarding reliance interests, *Chevron* affirmatively destroys them.").

42. *Id.* at 2257 (noting that the Supreme Court has "recognized from the outset" the fact that "exercising independent judgment often include[s] according due respect to Executive Branch interpretations of federal statutes").

43. *Id*. (quoting Edwards' Lessee v. Darby, 25 U.S. (12 Wheat.) 206, 210 (1827)).

44. *Id*. (noting that when the same agency officials who constructed the statute's meaning are those who are "appointed to carry its provisions into effect," the agency interpretation is "entitled to very great respect" (quoting *Edwards' Lessee*, 25 U.S. (12 Wheat.) at 210)).

45. *Id.* at 2258 (citations omitted).

46. *Id.* (citations omitted).

47. *Id*. (stating that the Court has historically given "the most respectful consideration" to agency interpretations made by the individuals who were "the draftsmen of the laws they [were] afterwards called upon to interpret" (quoting United States v. Moore, 95 U.S. 760, 763 (1878))).

light of the other factors.[48] According to the Court, "[s]uch interpretations 'constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance' consistent with the APA. And interpretations issued contemporaneously with the statute at issue, and which have remained consistent over time, may be especially useful in determining the statute's meaning."[49] *Skidmore* deference, however, might lead a court to "respect" the agency's view, but the court's interpretation is still what matters.[50]

Moreover, the Court also recognized that, when dealing with statutes that agencies implement, the "best" interpretation might be that Congress delegated some discretion to the agency.[51] Thus, Congress can expressly delegate to federal agencies "the authority to give meaning to a particular statutory term," to prescribe rules to implement the statutory scheme, or to act within congressionally limited ("appropriate," "reasonable") realms of flexibility.[52] However, courts must police these delegations of agency discretion and authority, ensuring that the agency stays within the boundaries of its delegated authority and that it engages in "reasoned decisionmaking."[53]

Finally, the Court insisted that all prior cases that rested on *Chevron* deference remain good law.[54] The mere fact that a court

48. *Id*. at 2259 (describing that *Skidmore* deference considers factors such as "the thoroughness evident in [the agency's] consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control" (quoting Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944))).

49. *Id*. at 2262 (quoting *Skidmore*, 323 U.S. at 140).

50. *Id*. at 2258 (cautioning that, throughout history, "[t]he views of the Executive Branch could inform the judgment of the judiciary, but did not supersede it").

51. *Id*. at 2263 ("In a case involving an agency, of course, the statute's meaning may well be that the agency is authorized to exercise a degree of discretion.").

52. *Id*. at 2263 n.6 (first quoting Batterton v. Francis, 432 U.S. 416, 425 (1977); then citing Wayman v. Southard, 23 U.S. (10 Wheat.) 1, 43 (1825); then citing Michigan v. EPA, 576 U.S. 743, 752 (2015); then quoting 33 U.S.C. § 1312(a); and then quoting 42 U.S.C. § 7412(n)(1)(A)).

53. *Id*. at 2263 (quoting *Michigan*, 576 U.S. at 750).

54. *Id*. at 2273 ("The holdings of those cases that specific agency actions are lawful—including the Clean Air Act holding of *Chevron* itself—are still subject to statutory *stare decisis* despite [our] change in interpretive methodology." (citing CBOCS W., Inc. v. Humphries, 553 U.S. 442, 457 (2008))).

relied on *Chevron* deference, therefore, "is not enough to justify overruling a statutory precedent."[55]

Justice Kagan, joined by Justices Sotomayor and Jackson, dissented in *Loper Bright*. Calling *Chevron* deference a "cornerstone of administrative law," the dissenters viewed the doctrine as a commonsense approach to statutory construction given that "Congress knows that it does not—in fact cannot—write perfectly complete regulatory statutes."[56] They grounded the appropriateness of *Chevron* deference in federal agency expertise and the Executive Branch's political accountability:

> Some interpretive issues arising in the regulatory context involve scientific or technical subject matter. Agencies have expertise in those areas; courts do not. Some demand a detailed understanding of complex and interdependent regulatory programs. Agencies know those programs inside-out; again, courts do not. And some present policy choices, including trade-offs between competing goods. Agencies report to a President, who in turn answers to the public for his policy calls; courts have no such accountability and no proper basis for making policy. And of course Congress has conferred on that expert, experienced, and politically accountable agency the authority to administer—to make rules about and otherwise implement—the statute giving rise to the ambiguity or gap. Put all that together and deference to the agency is the almost obvious choice, based on an implicit congressional delegation of interpretive authority.[57]

The dissenters deplored the fact that "[i]n one fell swoop, the majority today gives itself exclusive power over every open issue—no matter how expertise-driven or policy-laden—involving the meaning of regulatory law. As if it did not have enough on its plate, the majority turns itself into the country's administrative czar."[58] The dissenters also took issue with the majority's confidence that all statutory provisions have a single best meaning that was fixed at the time of enactment, given the multiple caselaw examples to the contrary.[59] Finally, the dissenters found the APA "perfectly compatible with *Chevron* deference."[60]

As the dissent suggests, many tensions remain for federal administrative law after *Loper Bright*. In particular, the

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55. *Id*.

56. *Id.* at 2294 (Kagan. J., dissenting).

57. *Id*.; *see also id.* at 2298–99 (expanding on these reasons).

58. *Id*. at 2295.

59. *Id*. at 2296–97 (chronicling cases wherein "a statutory phrase has more than one reasonable reading").

60. *Id*. at 2301–02.

majority emphasized the authority of federal courts to determine what the law is, while at the same time underscoring that every federal statute has a single best interpretation fixed at the time of its enactment.[61] Nevertheless, as the dissenters recognized, policy and expertise evolve, particularly in regulatory fields that depend heavily on scientific understanding, evolving technological capacity, and changing public norms, such as in public health law and environmental and energy law.[62] Arguably, therefore, *Loper Bright* problematized rather than resolved the issue of how to reconcile congressional intent and a changing society, particularly with respect to federal statutes that are more than one or two decades old. As Parts III and IV will discuss, lower courts are beginning to negotiate this tension through *Skidmore* deference, the reinvigoration of pre-*Chevron* forms of deference, and interpretations that conclude that Congress delegated authority to the agency.

Nevertheless, states are also relevant to this discussion. State legislatures and courts often borrow from federal administrative law, but neither they nor state agencies are bound by the federal APA or U.S. Supreme Court decisions about it. Because the limited state court decisions discussing *Loper Bright* provide interesting and varied reactions to the Supreme Court's decision despite not being bound by it, Part II begins with those state decisions.

II. STATE COURTS AND *LOPER BRIGHT*

The debate between the majority and dissent in *Loper Bright* was largely a debate over relative expertise and authority, with the majority handing interpretive—and hence, to a certain extent, implementation—primacy to the federal courts. As the *Chevron* decision itself emphasized, however, there are also good reasons for respecting agency expertise, particularly in highly specialized or technical areas of law.[63] The state court

61. See *supra* notes 15, 32–33 and accompanying text.

62. *Loper Bright*, 144 S. Ct. at 2311 (Kagan., J., dissenting) (listing hypothetical subjects of regulation, such as climate change or the American healthcare system, in which courts will "play a commanding role" post-*Loper Bright*).

63. *E.g.*, Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 865 (1984) (reasoning that agencies are entitled to deference because they are the ones "with great expertise and charged with responsibility for administering

decisions discussing *Loper Bright* often hone in on this debate about relative expertise—but with the state court judges free to reject the U.S. Supreme Court's resolution.

Indeed, much of the debate in these state court cases is whether *Loper Bright* is even relevant. For example, some states adopted *Chevron* deference as a matter of state law and now face the issue of whether the U.S. Supreme Court's overruling of *Chevron* automatically changes the state court standard of review as well.[64] In general, however, state court reactions to *Loper Bright* depend on state law standards of review, whether federal law plays a role in the state court decision, and the state judges' respect for state agencies. Moreover, as Table 1 indicates and as is discussed in more detail below, it is the District of Columbia Court of Appeals that has been wrestling most often with the implications of *Loper Bright*.

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the provision," especially where "the regulatory scheme is technical and complex, the agency considered the matter in a detailed and reasoned fashion, and the decision involves reconciling conflicting policies" (footnotes omitted)), *overruled by Loper Bright*, 144 S. Ct. 2244 (2024).

64. *See, e.g.*, *infra* note 97 and accompanying text (providing examples of two states that elected not to adhere to the *Loper Bright* decision despite previously adopting *Chevron*).

Table 1: State Court Cases Citing *Loper Bright*, June 28–December 27, 2024[65]

State	Number of Cases
District of Columbia	5
California	3
Kentucky	3
Indiana	2
Wisconsin	2
South Carolina	1
Alabama	1
Colorado	1
Georgia	1
Hawai'i	1
Louisiana	1
Michigan	1
Missouri	1
New Jersey	1
North Carolina	1
North Dakota	1
Pennsylvania	1
Vermont	1
TOTAL:	**28**

65. See *supra* notes 17–18 and accompanying text for a description of the methodology of gathering state cases citing *Loper Bright*.

A. *LOPER BRIGHT* IS RELEVANT WHEN STATE COURT CASES INVOLVE FEDERAL LAW

While the cases are limited in number, state courts do deem *Loper Bright* relevant when the cases they hear involve federal law. For instance, state courts will consider the impact of *Loper Bright* when they are relying on federal agency interpretations of federal statutes.[66] California is the leader in wrestling with this issue; all three of the California state court opinions that cite *Loper Bright* involve federal agencies interpreting federal law.

Indeed, in two unpublished opinions, the California Courts of Appeals have adopted a full *Loper Bright* approach to federal interpretations of federal statutes, declining to apply *Chevron* deference and applying *Skidmore* deference instead.[67] When a union claimed that the National Mediation Board had exclusive jurisdiction over a representation dispute, the California Court of Appeals, Fourth District, first noted that *Chevron* deference was no longer appropriate.[68] However, it also noted that the analytical framework that the California Supreme Court had established "draws heavily from the United States Supreme Court's decision in *Skidmore*, which has not been overruled and establishes a lower level of deference, depending on the circumstances."[69] It then went ahead and applied that deference analysis, essentially declining to give the agency *Skidmore* deference, either.[70]

The California Court of Appeals, Second District, followed almost exactly the same process. It cited *Loper Bright* for the

66. Pantoja v. Atomic Transp., LLC, 2024 WL 4714470, at *2 n.2 (Ky. Ct. App. Nov. 8, 2024) (noting that *Loper Bright* was relevant when a party offered the U.S. Department of Labor's guidance to the issue of whether a person is an employee or an independent contractor); Humboldt All. for Responsible Plan. v. Cal. Coastal Comm'n, 328 Cal. Rptr. 3d 188, 197 (Cal. Ct. App. Nov. 25, 2024) (applying federal standards to the National Oceanic & Atmospheric Administration (NOAA)).

67. Int'l Ass'n of Sheet Metal, Air, Rail & Transp. Workers v. Cal. Pub. Emp. Rels. Bd., 2024 WL 3407701, at *1, *7 n.5 (Cal. Ct. App. July 15, 2024); Camarillo Sanitary Dist. v. Cal. Reg'l Water Control Bd., 2024 WL 5164726, at *3, *4 (Cal. Ct. App. Dec. 19, 2024).

68. *Int'l Ass'n*, 2024 WL 3407701, at *7 n.5 (noting that *Chevron* was overruled and is no longer applicable).

69. *Id*. (citing Yamaha Corp. v. State Bd. of Equalization, 960 P.2d 1031 (Cal. 1999)).

70. *Id*. at *7–9 (concluding that deference was unwarranted).

rule that "[w]e must exercise our independent judgment in determining the meaning of the federal statutory provisions at issue" but then accorded the California Supreme Court's version of *Skidmore* deference to the U.S. Environmental Protection Agency's interpretations of and expertise regarding the federal Clean Water Act.[71] Thus, under its independent judgment, "[g]iven the value of expertise in this area, we find persuasive EPA's guidance and interpretation, which appropriately reflects the federal rules and is manifestly based on a studied consideration of the issues."[72]

At least three state courts have suggested that *Loper Bright* is also relevant when *state* agencies or courts interpret federal statutes.[73] State courts have also cited to *Loper Bright* positively for the basic principle of court interpretive primacy when there is no competing, authoritative agency interpretation at issue.[74]

B. *LOPER BRIGHT* IS GENERALLY *NOT* RELEVANT TO STATE ADMINISTRATIVE LAW

State court decisions are nearly uniform in finding that *Loper Bright* did not change the outcome of cases involving *state* administrative law.[75] The Michigan Court of Appeals, for

71. *Camarillo Sanitary Dist.*, 2024 WL 5164726, at *4 (first citing Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244 (2024); and then citing Skidmore v. Swift & Co., 323 U.S. 134 (1944)); *id.* at *11 (affirming a trial court's award of deference to the EPA's guidance under *Skidmore*).

72. *Id*. at *4 (quoting *Loper Bright*, 144 S. Ct. at 2267).

73. Velasquez v. Miranda, 321 A.3d 876, 898 n.18 (Pa. Aug. 29, 2024) (acknowledging that, pursuant to *Loper Bright*, a state court must use its independent judgment when interpreting federal immigration law, although the federal agency's interpretation can be informative); Humboldt All. for Responsible Plan. v. Cal. Coastal Comm'n, 328 Cal. Rptr. 3d 188, 197 (Cal. Ct. App. Nov. 25, 2024) (noting that "it is not clear what, if any, deference should be accorded to a *state* agency's interpretation of a *federal* regulation" (citation omitted)); Bd. of Educ. v. M.N., 318 A.3d 670, 676 n.4 (N.J. Aug. 7, 2024) (describing that because the U.S. Department of Energy would receive no deference for its interpretations of federal law after *Loper Bright*, no deference was appropriate for a state agency's interpretation of the same federal law—even though *Loper Bright* did not bind the state court).

74. *E.g.*, Karr v. Kan. City Life Ins., 702 S.W.3d 1, 18 (Mo. Ct. App. Sept. 24, 2024) (citing *Loper Bright* for the proposition that courts, not agencies, interpret the law).

75. *E.g.*, Bd. of Comm'rs v. Brantley Cnty. Dev. Partners, 905 S.E.2d 685, 704 (Ga. Ct. App. Aug. 15, 2024) (Dillard, J., concurring) (noting that while the court followed Georgia administrative law in this case, it should reconsider its

example, declared that "*Loper Bright* is a federal case dealing with federal law and has no particular relevance to this state-law dispute."[76] However, simple declaratory statements of *Loper Bright*'s inapplicability (as in Michigan) are surprisingly rare. While the strongest rejection of *Loper Bright* so far has come from the Hawai'i Supreme Court, some states and the District of Columbia have been far more ambivalent about the potential impact of *Loper Bright*.

1. The Hawai'i Supreme Court's Strong Condemnation of *Loper Bright*

The Hawai'i Supreme Court has gone the furthest in rejecting *Loper Bright*, producing what is so far the most negative discussion of the case in any majority opinion. Specifically, the court took issue with the lack of respect for agency expertise that underlies *Loper Bright*. Reviewing the state Land Use Commission's interpretation of a statute, the court affirmed that "[w]hen there is ambiguous statutory language, 'the applicable standard of review regarding an agency's interpretation of its own governing statute requires this court to defer to the agency's expertise and to follow the agency's construction of the statute unless that construction is palpably erroneous.'"[77] The court then criticized *Loper Bright* at some length:

> We note that Hawai'i's approach to administrative deference now differs sharply from federal precedent. These days, the United States Supreme Court seems determined to ensure that "settled law easily unsettles." Recently, the court toppled forty years of precedent that shaped the "warp and woof of modern government." The court overruled *Chevron*, which molded administrative law doctrine. Under *Chevron*, the reviewing court would, upon close inspection, ask if Congress had "directly spoken to the precise question at issue." If it had, "that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." If the statute was silent or ambiguous as to the question at hand, the court would defer to the administrative agency's reasonable interpretation of the statute.

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approach to deference in light of *Loper Bright* in the future). *But see* Colonial Pipeline Co. v. S.C. Dep't of Revenue, 905 S.E.2d 129, 134–35 (S.C. Ct. App. July 17, 2024) (following *Loper Bright* as an example of "rules governing statutory construction" when interpreting the South Caroline tax code).

76. DTE Energy, Inc. v. Mich. Occupational Safety & Health Admin., 2024 WL 4820147, at *2 (Mich. Ct. App. Nov. 18, 2024).

77. Rosehill v. State, 556 P.3d 387, 403 (Haw. Sept. 24, 2024) (citing Pofolk Aviation Haw., Inc. v. Dep't of Transp., 354 P.3d 436, 440–41 (Haw. 2015)).

> *Chevron*'s well-reasoned analysis allowed agencies to function in a modern nation using older statutes — statutes that, at the time they were written, could not possibly account for the many nuanced situations that arise in a rapidly changing world. Justice Kagan's dissent in *Loper Bright* cites to paradigmatic examples of agency deference. *Chevron* made for good, balanced governance, whereby Congress made laws while agencies, subject to accountability from a duly-elected President, implemented those laws and reasonably filled in the gaps. As is often the case, policy implementation requires substantial know-how. Under *Chevron*, agencies had the ability to allow experts to, within reason, make the rules.
>
> Now, the U.S. Supreme Court considers itself and other federal courts the experts on exceedingly complicated areas of American life, including worker safety, air quality, food and drug safety, airplane safety, telecommunications, and the integrity of our financial markets. We do not believe the expertise of courts outstrips that of the agencies charged with implementing complex regulatory schemes on a day-to-day basis. In Hawai'i, we defer to those agencies with the na'auao (knowledge/wisdom) on particular subject matters to get complex issues right. "Ku'ia ka hele a ka na'au ha'aha'a (hesitant walks the humble hearted)." A court's domain is the law, and judges should recognize the limits of their expertise.[78]

Thus, deference to federal administrative agencies will remain the norm in Hawai'i, with the courts there respecting state agency expertise in complicated legal matters.

2. More Ambivalence in North Dakota and Vermont: Is *Loper Bright* Inapplicable or Irrelevant?

An increasing number of state courts in states that traditionally have deferred to state agencies have hedged their decisions not to engage with *Loper Bright*, categorizing *Loper Bright* as irrelevant to the particular issue involved or concluding that the court would have reached the same decision as the state agency. For example, both the Vermont Supreme Court and the North Dakota Supreme Court decided that *Loper Bright* was

78. *Id*. at 404–05 (first quoting City of Honolulu v. Sunoco LP, 537 P.3d 1173, 1208, 1210 (Haw. 2023) (Eddins, J., concurring); then quoting Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 2294 (2024) (Kagan, J., dissenting); then quoting Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 842–44 (1984); then citing *Loper Bright*, 144 S. Ct. at 2296–97 (Kagan, J., dissenting); and then quoting *Sunoco*, 537 P.3d at 1210 (Eddins, J., concurring)) (footnotes omitted).

irrelevant to the issue at hand—as opposed to simply inapplicable—in their review of state agencies.[79]

In *In re Investigation Pursuant to 30 V.S.A. Sec. 30 & 209*, the Vermont Supreme Court recited its usual "substantial deference" standard for reviewing the Public Utility Commission's decisions, then noted in a footnote that "nothing in our decision today implicates deference to an agency's 'permissible construction' of an ambiguous statute. We therefore need not decide the impact on our jurisprudence of the U.S. Supreme Court's recent decision abrogating *Chevron* deference."[80] Moreover, in response to the challenging developer's argument that the court deferred too much to state agencies, the court noted—again in a footnote—that:

> Developer argues that, like federal courts, "this Court too defers to agencies," and it asks that we overrule our precedents requiring agency deference. However, *Loper Bright* dealt only with "*Chevron* deference"—that is, deference to an agency's "permissible construction" of a statute that is "silent or ambiguous" as to the issue at hand. Nothing in our decision today implicates the deference to an agency's legal interpretations of an ambiguous statute called for in *Chevron*. Rather, our decision rests on our independent examination of the statutory text and legislative purpose. We therefore need not decide whether to follow *Loper Bright* at this time.[81]

Similarly, in *Liberty Petroleum Corp. v. North Dakota Industrial Commission*, the North Dakota Supreme Court addressed *Loper Bright* in reviewing the North Dakota Industrial Commission's actions but deemed the decision irrelevant:

> This Court has said that "we generally defer to an administrative agency's reasonable interpretation of its governing statutes and rules." The United States Supreme Court recently held that "courts need not and under the [federal Administrative Procedure Act] may not defer to an agency interpretation of the law simply because a statute is ambiguous." This case does not involve the interpretation of a federal statute under the federal Administrative Procedure Act. Nor have the parties argued the statutes involved in this case are ambiguous. Because we

79. *In re* Investigation Pursuant to 30 V.S.A. Sec. 30 & 209, 327 A.3d 789, 797 n.1 (Vt. Aug. 30, 2024); Liberty Petroleum Corp. v. N.D. Indus. Comm'n, 11 N.W.3d 851, 855 (N.D. Sept. 26, 2024).

80. *In re Investigation*, 327 A.3d at 797 (quoting *In re* Vt. Gas Sys., Inc., 312 A.3d 519, 526 (Vt. Jan. 12, 2024)); *id.* at n.1 (first quoting *Chevron*, 467 U.S. at 843; and then citing *Loper Bright*, 144 S. Ct. at 2244).

81. *Id.* at n.6 (first citing *Loper Bright*, 144 S. Ct. at 2264; and then citing *Chevron*, 467 U.S. at 843) (internal citations omitted).

> conclude that the relevant statutes are unambiguous in this context, we need not reevaluate our precedent in light of *Loper Bright*.[82]

Thus, on the one hand, the Vermont and North Dakota Supreme Courts suggest that *Loper Bright* is simply inapplicable to state administrative law. On the other, however, both courts stressed that no agency interpretation was really at issue—the Vermont Supreme Court performed its own interpretation of the statute at issue, while North Dakota deemed the statute at issue "unambiguous."[83] Moreover, both courts suggested that they may have to, eventually, re-examine state administrative law in light of *Loper Bright*.[84] This state court ambivalence regarding *Loper Bright*'s potential to change state administrative law is worth watching as *Loper Bright*'s legacy continues to unfold.

3. D.C. Court of Appeals: Repeated Avoidance

The District of Columbia is, of course, a special case in many ways. The U.S. Constitution provides for its creation, and Congress has plenary legislative authority over it.[85] However, while "Congress retains ultimate authority on local legislative and public policy matters in the District of Columbia,"[86] in 1973, Congress accorded the District of Columbia home rule through the District of Columbia Self-Government and Governmental

82. 11 N.W.3d at 855 (first quoting Black Hills Trucking, Inc. v. N.D. Indus. Comm'n, 904 N.W.2d 326, 333 (N.D. 2018); and then quoting *Loper Bright*, 144 S. Ct. at 2273); *see also* Comm'r of Dep't of Workplace Standards, Educ., & Lab. Cabinet v. Kalkreuth Roofing & Sheet Metal, Inc., 2024 WL 4469215, at *2 (Ky. Ct. App. Oct. 11, 2024) (noting that Kentucky had applied *Chevron* deference but that *Loper Bright* did not matter to the case because the *Chevron* doctrine would not have applied to the Cabinet's decision).

83. *In re Investigation*, 327 A.3d at 805 n.6 ("[O]ur decision rests on our independent examination of the statutory text and legislative purpose."); *Liberty Petroleum Corp.*, 11 N.W.3d at 855.

84. *In re Investigation*, 327 A.3d at 805 n.6 (noting the court "need not decide whether to follow *Loper Bright at this time*" (emphasis added)); *Liberty Petroleum Corp.*, 11 N.W.3d at 855 (suggesting that if a case or controversy presented "the interpretation of a federal statute under the federal Administrative Procedure Act," or the argument that an implicated statute was ambiguous, it may need to reconsider North Dakota precedent in light of *Loper Bright*).

85. U.S. CONST. art. I, § 8, cl. 17.

86. CONG. RSCH. SERV., IF12577, GOVERNING THE DISTRICT OF COLUMBIA: OVERVIEW AND TIMELINE 1 (Jan. 29, 2024), https://crsreports.congress.gov/product/pdf/IF/IF12577 [https://perma.cc/FGE4-J5H7].

Reorganization Act of 1973.[87] Perhaps most importantly for *Loper Bright*, the government of the District of Columbia is explicitly *not* a federal agency for the purposes of the federal APA.[88] Thus, while all law in the District of Columbia ultimately traces to federal law, for purposes of administrative law the District operates as a state or territory[89] rather than as a federal agency. Even so, the avoidance tactic has been a hallmark of the D.C. Court of Appeals' post-*Loper Bright* administrative law decisions.

As Table 1 indicates, the District of Columbia, through the D.C. Court of Appeals, has wrestled with the *Loper Bright* in five different cases—each time ambivalently. In the property tax case of *Vornado 3040 M Street LLC v. District of Columbia*, for example, the court decided to "reserve judgment" on whether *Loper Bright* affected its normal deference doctrine, emphasizing that "[t]his case was argued before *Loper Bright* was decided, and neither party has suggested that this case might affect our deference to agencies."[90] A week later, the court similarly concluded, with respect to a challenge to the D.C. Public Service Commission, that

> [w]e have no occasion in this case to consider the possible implications of *Loper Bright* for our review of agency action under the DCAPA [District of Columbia Administrative Procedure Act], because this court has already held that it owes no deference to the Commission with respect to the Commission's interpretation of and compliance with the DCAPA.[91]

A week after that, however, the D.C. Court of Appeals indicated that *Loper Bright* had created "uncertainty" regarding the deference owed, although it also concluded that the test that the District of Columbia Department of Employee Services used for determining whether a worker's compensation claimant was an "employee" was "plainly correct."[92] The court then ducked the

87. Pub. L. No. 93-198, § 102(a), 87 Stat. 774, 777 (1973) (granting powers of local self-government to the District of Columbia).

88. 5 U.S.C. § 551(1)(D).

89. Congress also exempted the United States' territories from the APA. *Id.* § 551(1)(C).

90. 318 A.3d 1185, 1195 n.7 (D.C. July 25, 2024).

91. Potomac Elec. Power Co. v. Pub. Serv. Comm'n, 319 A.3d 392, 402 (D.C. Aug. 1, 2024) (citing Wash. Gas Energy Servs., Inc. v. D.C. Pub. Serv. Comm'n, 893 A.2d 981, 986–87 (D.C. 2006)).

92. Lopez v. D.C. Dep't of Emp. Servs., 319 A.3d 985, 993 n.5 (D.C. Aug. 8, 2024).

Loper Bright impact issue a fourth time by emphasizing that it was not deferring to the Department of Housing and Community Development's interpretation of the Tenant Opportunity to Purchase Act even though the court agreed with that interpretation,[93] and a fifth time by insisting that "our holding concerning the zoning regulation at issue would be the same even on de novo review."[94] Thus, while the D.C. Court of Appeals has recognized that *Loper Bright* may create a deference issue and has effectively shifted to de novo review of D.C. agencies' interpretations, it has yet to fully grapple with the amount of deference owed to District of Columbia agencies.

C. STATE COURTS UNDERGOING THEIR OWN STATE LAW DEFERENCE TRANSITIONS CITE *LOPER BRIGHT* AS PART OF ONGOING DEBATES ABOUT AGENCY EXPERTISE

States can, of course, change their own rules about deference to state agencies independently of the federal government, and at least two states—Indiana and North Carolina—were in the process of eliminating their state-law versions of *Chevron* deference as the U.S. Supreme Court was considering and deciding *Loper Bright*. Notably, *Loper Bright* figured into state supreme court decisions in both states reflecting that change, sparking the same debate about agency expertise that the dissenters raised in *Loper Bright*.

1. Indiana's State-Level Changes in Administrative Review

Loper Bright was perfectly timed to correspond with the Indiana Legislature's independent decision to abolish deference to agency legal interpretations,[95] and the two Indiana decisions citing *Loper Bright* reflect this change in state administrative law. In the first of these cases, the Indiana Court of Appeals emphasized that the Indiana Supreme Court had cited *Chevron* with approval when applying the Indiana Administrative Orders and Procedures Act (IAOPA) and that the 2024 amendments to the

93. Lane v. Dep't of Hous. & Cmty. Dev., 320 A.3d 1044, 1047 n.1 (D.C. Aug. 22, 2024).

94. Friends of the Field v. D.C. Bd. of Zoning Adjustment, 321 A.3d 673, 680 n.2 (D.C. Aug. 29, 2024).

95. *See* IND. CODE § 4-21.5-5-11(b) (2024) (effective July 1, 2024) ("The court shall decide all questions of law, including any interpretation of a federal or state constitutional provision, state statute, or agency rule, without deference to any previous interpretation made by the agency.").

IAOPA did not apply to the case.[96] It then concluded that *Loper Bright* was a federal decision only and did not overrule parallel state law; hence, it continued to apply *Chevron* deference.[97]

In contrast, in December 2024, after the new Indiana rules had gone into effect, the Indiana Supreme Court debated how to define the new relationship between the courts and state agencies.[98] While the majority applied the new plenary (de novo) review standard without evident discomfort, concurring Justice Goff relied on Justice Kagan's dissent in *Loper Bright* to argue that the majority had gone too far by implementing plenary review:

> The court, of course, still plays its part in all this. But rather than inserting itself into an "agency's expertise-driven, policy-laden functions," the court "polices the agency to ensure that it acts within the zone of reasonable options." Thus, our review is properly limited to deciding whether the agency "acted within its legal guardrails" or "stayed within its jurisdiction and conformed to the statutory standards and legal principles involved in producing its decision." Such an arrangement is "best suited to keep every actor in its proper lane."[99]

From Justice Goff's perspective, plenary review not only disrespected agencies but also created a separation of powers problem:

> With today's decision, however, the Court demands more than just a "fresh look." Rather than showing judicial restraint, the Court "gives itself exclusive power over every open issue—no matter how expertise-driven or policy-laden—involving the meaning of regulatory law." To be sure, "we have a constitutional system of government in which the

96. Brookston Res., Inc. v. Dep't of Nat. Res., 243 N.E.3d 1127, 1137–38 (Ind. Ct. App. Sept. 11, 2024) (citations omitted).

97. *Id.* at 1138; *see also* Comm'r of the Dep't of Workplace Standards, Educ., & Lab. Cabinet v. Kalkreuth Roofing & Sheeting, 2024 WL 4469215, at *2–3, *5 (Ky. Ct. App. Oct. 11, 2024) (declining to find that *Loper Bright* affected the case despite the fact that Kentucky had adopted the *Chevron* approach); Liberty Petroleum Corp. v. N.D. Indus. Comm'n, 11 N.W.3d 851, 855 (N.D. Sept. 26, 2024) (declining to find that *Loper Bright* affected the case despite the fact that North Dakota defers to agency interpretations of statutes).

98. Ind. Off. of Util. Consumer Couns. v. Duke Energy Ind., LLC, 248 N.E.3d 1205, 1210 (Ind. Dec. 19, 2024) (deciding as a matter of state law that plenary review rather than deference applied to the state agency's interpretation of state law).

99. *Id.* at 1219 (Goff, J., concurring) (first quoting Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 2300 (2024) (Kagan, J., dissenting); then quoting Ind. Off. of Util. Consumer Couns. v. Duke Energy Ind., LLC, 183 N.E.3d 266, 268, 269 (Ind. 2022); then quoting Ind. Gas Co. v. Ind. Fin. Auth., 999 N.E.2d 63, 66 (Ind. 2013); and then quoting *Loper Bright*, 144 S. Ct. at 2300 (Kagan, J., dissenting)).

> judiciary is said to be supreme in determining the jurisdiction and limits on the powers of the other branches of the government, as fixed by the constitution and laws." But "this supremacy does not extend to the point where we may substitute our judgment for, or control the discretionary action of the executive or legislative branches, so long as their action is within the sphere and jurisdiction fixed by the statutes and constitution." And yet, plenary review does just that, effectively usurping "all discretionary action" in those branches of government.[100]

However, the majority explicitly refuted Justice Goff's argument, asserting that "we no more overstep our role when we interpret the law authoritatively in the cases that come before us than the general assembly oversteps its role when it establishes public policy through its lawmaking, or the governor oversteps his role when he takes care that the laws are faithfully executed."[101] Thus, respect for the agency and its expertise seemingly played no role in the majority's view of the new de novo judicial review rule.

2. North Carolina

A tax credit case became the occasion for the North Carolina Supreme Court to abandon deference to agency interpretations, subject to a dissent decrying the court's apparent adoption of *Loper Bright*. The case turned on the issue of whether Philip Morris could carry forward Export Credits earned under the North Carolina tax code, which in turn turned on the meaning of "credit allowed" in the statute.[102] The North Carolina Supreme Court first held that "since neither party's textual analysis provides a univocal interpretation, we find the statute ambiguous."[103] It then reversed the grant of summary judgment in favor of the Department of Revenue, holding that "any generated Export Credit in excess of the annual statutorily defined cap may be carried forward for the succeeding ten years."[104] The court proceeded to analyze the statutory meaning de novo, even though both the tax code and case law gave the Secretary of

100. *Id*. at 1220 (Goff, J., concurring) (first quoting *Loper Bright*, 144 S. Ct. at 2295 (Kagan, J., dissenting); and then quoting Pub. Serv. Comm'n v. City of Indianapolis, 131 N.E.2d 308, 312 (Ind. 1956)).

101. *Id*. at 1212 (first citing *id*. at 1220 (Goff., J., concurring); and then citing *Loper Bright*, 144 S. Ct. at 2295 (Kagan, J., dissenting)).

102. Philip Morris USA, Inc. v. N.C. Dep't of Revenue, 909 S.E.2d 197, 200 (N.C. Dec. 13, 2024).

103. *Id*.

104. *Id*.

Revenue authority to interpret statutory terms.[105] According to the North Carolina Supreme Court, "We therefore align ourselves with previous precedent repudiating agency deference when the question is one of law."[106]

However, dissenting Justice Riggs, like Justice Goff in Indiana and the Hawai'i Supreme Court, saw danger in adopting the *Loper Bright* line of reasoning:

> I am troubled by the scolding tone with which the majority addresses the Department. . . . Here, it seems plain to me that regardless of the Department's prior interpretations, the Department's current interpretation is consistent with the clear intent and purpose of the law at issue here. I do not see any grounds for inferring bad intent or actions on the part of the Department for honoring the intent of the legislature. It may be that this Court intends to follow the federal trend and more fully reject agency deference as the Supreme Court of the United States did in *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 1244 (2024). But this larger, politically-charged issue does not relate to situations in which an agency is acting in accord with the legislature regarding what I believe to be a non-ambiguous statute.[107]

Thus, regardless of whether the state courts accord deference or not, the issue of respect for state agencies remains a live one.

D. STATES THAT DO NOT DEFER TO AGENCY INTERPRETATIONS TEND TO APPROVE *LOPER BRIGHT*

In contrast to states with their own deference doctrines, courts in states that do not defer to state agency interpretations of statutes are far more likely to find *Loper Bright* persuasive or to follow it outright. For example, the Colorado Court of Appeals cited *Loper Bright* to emphasize that agency interpretations are not binding; "[r]ather, we interpret the statute de novo. And when the statute is unambiguous, as it is here, we apply it as written, giving words and phrases their plain and ordinary meanings."[108] Similarly, the Wisconsin Court of Appeals adopted

105. *Id*. at 201 (applying the de novo standard of review); *id*. at 206–07 (noting that while Indiana precedent, tax code, and legislation suggest that the Secretary of Revenue is owed deference, "not *every* interpretation by the Secretary of Revenue is deserving of deference by a reviewing court").

106. *Id*. at 206 (repudiating Aronov v. Sec'y of Revenue, 371 S.E.2d 468, 473 (N.C. 1988); and then citing Brooks v. McWhirter Grading Co., 281 S.E.2d 24, 29 (N.C. 1981)).

107. *Id*. at 215 (Riggs, J., dissenting).

108. HCPI/CO Springs Ltd. v. El Paso Bd. of Comm'rs, 558 P.3d 636, 639 (Colo. App. Aug. 1, 2024) (citations omitted); *see also* Bevco Precision Mfg. Co.

Loper Bright's insistence on courts being the sole interpreters of the law, which accords with Wisconsin's approach to deference.[109]

E. SUMMARY OF STATE REACTIONS TO *LOPER BRIGHT*

Even before *Loper Bright*, state administrative law standards for deference to state agencies differed, including deference to agency interpretations of state law. Unsurprisingly, therefore, states with existing traditions of not deferring to agencies' interpretations of the law find *Loper Bright* more persuasive and useful than those states that have an ongoing state version of *Chevron* deference. At the same time, however, for states like Indiana and North Carolina that were already in the process of moving to a de novo or plenary review approach to questions of law, *Loper Bright* can help sharpen remaining tensions and disagreements about that transition, especially regarding the extent to which state agency interpretations still deserve respect, suggesting that new state-law versions of *Skidmore* deference may emerge.

In contrast, state courts in jurisdictions that defer to state agency interpretations of the laws they implement generally do not allow *Loper Bright* to change the outcome of their state administrative law cases. However, these courts' comfort in rejecting *Loper Bright* outright exists on a continuum, with Hawai'i and Michigan at one end and the D.C. Court of Appeals at the other. The extent to which state courts will allow *Loper Bright* to change state administrative law thus remains to be seen.

III. FEDERAL COURTS AND *LOPER BRIGHT*

Federal courts obviously must follow *Loper Bright*—when it applies. Table 2 summarizes by federal circuit the frequency of *Loper Bright* citations in the lower federal courts in the first six months after the Supreme Court's decision.

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v. Wis. Lab. & Indus. Rev. Comm'n, 12 N.W.3d 552, 556 n. 8 (Wis. Ct. App. Aug. 21, 2024) (emphasizing that Wisconsin courts give no deference to an agency interpretation that contradicts a prior court interpretation and citing *Loper Bright* for the fact that the U.S. Supreme Court had reached the same no deference rule).

109. Kaul v. Wis. State Legislature, 2024 WL 4926387, at *5 (Wis. Ct. App. Dec. 2, 2024) (crediting *Loper Bright* as foundational for the understanding that judges apply judgment "*independent*" of the political branches (citing Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 2273 (2024))).

Table 2: *Loper Bright* Citations Among the Federal Circuits, June 28–December 27, 2024[110]

Circuit	Courts of Appeals Citations	District Court Citations
1st Circuit: MA, ME, NH, PR, RI	1	4
2nd Circuit: CT, NH, NY, VT	5	5
3rd Circuit: DE, NJ, PA, USVI	11	8
4th Circuit: MD, NC, SC, VA, WV	4	11
5th Circuit: LA, MS, TX	16	18
6th Circuit: KY, MI, OH, TN	16	15
7th Circuit: IL, IN, WI	4	5
8th Circuit: AR, IA, MN, MO, ND, NE, SD	3	8
9th Circuit: AK, AZ, CA, Guam, HI, ID, MT, NMI, NV, OR, WA	16	12
10th Circuit: CO, KS, NM, OK, UT, WY	3	17
11th Circuit: AL, FL, GA	8	8
D.C. Circuit	14	5
Federal Circuit	7	5
Court of Veterans Appeals	3	0
TOTAL:	**111**	**121**

As might be expected given the number of administrative law cases decided there in general, *Loper Bright* citations are particularly frequent in the U.S. Courts of Appeals for the D.C. and Ninth Circuits (and the district courts within those circuits). Notably, however, the U.S. Courts of Appeals for the Fifth and Sixth Circuits and the district courts within them are also actively discussing the applicability and impact of *Loper Bright*.

110. See *supra* notes 17–18 and accompanying text for a description of the methodology of gathering federal cases citing *Loper Bright*.

A. THE SUPREME COURT'S LACK OF FURTHER GUIDANCE REGARDING *LOPER BRIGHT*

By December 27, 2024, ten U.S. Supreme Court cases had cited *Loper Bright*. Nine of these, all issued on July 2, 2024, were two-sentence decisions that granted certiorari and then vacated and remanded to the relevant Court of Appeals' decision in light of *Loper Bright*.[111] Four of these were immigration cases,[112] and two laid within the field of environmental, natural resources, and energy law,[113] suggesting that these two federal law specialties may be on the front lines of working out the new rules of agency deference going forward. The other three cases involved tax and labor relations.[114]

In the tenth case, *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*, Justice Jackson cited *Loper Bright* in her dissent.[115] In this decision, issued on July 1, 2024, the Supreme Court decided that the default statute of limitations for APA suits against the United States and its agencies does not start to run until the plaintiff is actually injured by a final agency action.[116] According to Justice Jackson, joined by Justices Sotomayor and Kagan, the combination of *Corner Post* and *Loper Bright* will give the federal courts extensive authority to overturn longstanding agency rules, because "[a]ny new objection to any old rule must be entertained and determined *de novo* by

111. Bastias v. Garland, 144 S. Ct. 2704 (2024) (mem.); Diaz-Rodriguez v. Garland, 144 S. Ct. 2705 (2024) (mem.); Edison Elec. Inst. v. Fed. Energy Regul. Comm'n, 144 S. Ct. 2705 (2024) (mem.); Cruz v. Garland, 144 S. Ct. 2706 (2024) (mem.); Foster v. Dep't of Agric., 144 S. Ct. 2707 (2024) (mem.); Lissack v. Comm'r, 144 S. Ct. 2707 (2024) (mem.); KC Transp., Inc. v. Su, 144 S. Ct. 2708 (2024) (mem.); United Nat. Foods, Inc. v. NLRB, 144 S. Ct. 2708 (2024) (mem.); Solis-Flores v. Garland, 144 S. Ct. 2709 (2024) (mem.).

112. For the pre-*Loper Bright* discussion of the immigration cases vacated on July 2, 2024, see Bastias v. U.S. Atty. Gen., 42 F.4th 1266 (11th Cir. 2022); Diaz-Rodriguez v. Garland, 55 F.4th 697 (9th Cir. 2022); Cruz v. Garland, 2023 WL 4118011 (4th Cir. June 22, 2023); Solis-Flores v. Garland, 82 F.4th 264 (4th Cir. 2023).

113. For the pre-*Loper Bright* discussion of the environmental, natural resources, and energy law cases vacated on July 2, 2024, see Solar Energy Indus. Ass'n v. Fed. Energy Regul. Comm'n, 59 F.4th 1287 (D.C. Cir. 2023); Foster v. U.S. Dep't of Agric., 68 F.4th 372 (8th Cir. 2023).

114. United Nat. Foods, Inc. v. NLRB, 66 F.4th 536 (5th Cir. 2023); Lissack v. Comm'r, 68 F.4th 1312 (D.C. Cir. 2023); Sec'y of Lab. v. KC Transp., Inc., 77 F.4th 1022 (D.C. Cir. 2023).

115. 144 S. Ct. 2440, 2482 (2024) (Jackson, J., dissenting).

116. *Id.* at 2450 (majority opinion).

judges who can now apply their own unfettered judgment as to whether the rule should be voided."[117]

Justice Jackson may well be correct.[118] Nevertheless, none of these ten cases gives the lower courts any additional guidance on what to do with *Loper Bright*.

B. DEFINING *LOPER BRIGHT*'S APPLICABILITY

Thus far, much of the attention of the lower federal courts, especially of the district courts, has focused on defining when exactly *Loper Bright* is relevant. As is the case with most new major pronouncements from the Supreme Court, litigants often assert that *Loper Bright* supports their argument, or requires reexamination of a previous decision, under a broad array of circumstances—far broader than the Supreme Court indicated. While the lower federal courts have been fairly consistent in containing *Loper Bright*, they have begun to diverge regarding *Loper Bright*'s impact on non-*Chevron* doctrines of judicial deference.

1. If *Chevron* Would Not Have Applied, Neither Does *Loper Bright*

Many lower federal courts have explicitly limited *Loper Bright* to its specific context—that is, to federal agency interpretations of the statutes they implement, reviewed pursuant to the federal APA, that previously would have received *Chevron*

117. *Id.* at 2482 (Jackson, J., dissenting).

118. *See*, *e.g.*, Cacho v. McCarthy & Kelly LLP, 739 F. Supp. 3d 195, 204 n.6 (S.D.N.Y. July 3, 2024) ("[T]he Court pauses to note that this case highlights the disruption that the Supreme Court's recent decision in *Loper Bright* portends. Regulatory regimes that have been settled for decades are now subject to de novo review in private disputes such as this one, without the benefit of briefing from the expert agency tasked with administering the relevant statute."). *But see* Cal. Coastalkeeper All. v. Cosumnes Corp., 2024 WL 4819208, at *11 (E.D. Cal. Nov. 18, 2024) (holding in a Clean Water Act (CWA) citizen suit that the EPA's Confined Animal Feeding Operations regulations will remain in place because the CWA itself, 33 U.S.C. § 1369(b), requiring that they be challenged within 120 days of promulgation, explaining that the defendant cannot collaterally challenge the regulations in a citizen suit, and concluding that *Corner Post* does not apply because the defendant was not seeking relief under the APA); Cogdell v. Reliance Standard Life Ins., 2024 WL 4182589, at *3 & n.6, *4 (E.D. Va. Sept. 11, 2024) (holding that the defendant could not use *Loper Bright* to bring a facial challenge to a regulation), *appeal docketed*, No. 25-1083 (4th Cir. Jan. 28, 2025).

deference.[119] Thus, federal courts have found *Loper Bright* irrelevant to various claims that did not turn on federal agency interpretations of statutes.[120] As one example, less than a month

119. *See*, *e.g.*, Purdy v. Carver, 2024 WL 4651275, at *5 (D. Md. Nov. 1, 2024) (noting that *Loper Bright* is relevant only if "the challenge raised . . . pertain[s] to a regulation put into place by the administrative agency which is being challenged under the APA. Further, there must be some ambiguity in the statute the agency administers that conceivably calls into question the validity of the regulation challenged" (citing Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 2261–62 (2024))).

120. Martinez Medina v. Garland, 2024 WL 4692028, at *2 (5th Cir. Nov. 6, 2024) (finding Martinez Medina did not demonstrate that the Board of Immigration Appeals' decision implicated any federal deference standard); Rana v. Jenkins, 113 F.4th 1058, 1066, 1067 (9th Cir. Aug. 15, 2024) (evaluating double jeopardy in the context of India's request for extradition of a Pakistani national and concluding that "because the logic underpinning *Chevron* deference is entirely distinct from the logic underpinning a deference to the Executive in matters of foreign affairs, . . . *Loper Bright* has no effect on our decision here"—specifically, the reasoning in *Loper Bright* "does not touch, let alone undermine, the principle that we are to give deference to the Executive Branch's understanding of its own treaties"); Firearms Regul. Accountability Coal. v. Garland, 112 F.4th 507, 519 n.12 (8th Cir. Aug. 9, 2024) (noting that application of *Loper Bright* to review a regulation is unnecessary when the plaintiff will succeed on an APA claim instead); Bridgeport Hosp. v. Becerra, 108 F.4th 882, 890 n.4 (D.C. Cir. July 23, 2024) (reasoning that *Chevron* deference would not have applied when the agency was not resolving an ambiguity); Lion Elastomers, LLC v. NLRB, 108 F.4th 252, 255 n.1 (5th Cir. July 9, 2024) (stating that *Loper Bright* is not relevant if the court resolves the case on grounds other than the agency's interpretation); Gonzalez v. Garrett, 2024 WL 5096474, at *2 (E.D. Ark. Dec. 12, 2024) (finding both *Loper Bright* and *Chevron* inapplicable when the regulation at issue is unambiguous); Parker v. Tenneco, Inc., 2024 WL 5004326, at *3 (E.D. Mich. Dec. 6, 2024) (acknowledging that *Loper Bright* does not speak to any questions about other "judge-made rules"); Strebel v. Scoular, 2024 WL 4903907, at *4 (N.D. Ill. Nov. 27, 2024) (declining to apply *Loper Bright* where the issue "involves neither a federal statute nor a federal agency interpretation"); United States v. Szostak, 2024 WL 4828721, at *4 (E.D. Mich. Nov. 19, 2024) (suggesting that if *Chevron* would not play a role in a case's outcome, neither will *Loper Bright*); Hernandez v. Eischen, 2024 WL 4839827, at *1 n.2 (D. Minn. Oct. 28, 2024) (acknowledging the diminished role of deference after *Loper Bright* but finding no relevant issue of statutory interpretation demanding its application); Reynolds v. Warden, FCI Beckley, 2024 WL 4202385, at *1 (S.D.W. Va. Sept. 16, 2024) (holding that *Loper Bright* plays no role when none of the authorities that a Magistrate Judge relied on turned on *Chevron* deference), *appeal docketed*, No. 24-6952 (4th Cir. Oct. 3, 2024); Cogdell v. Reliance Standard Life Ins., 2024 WL 4182589, at *3 & n.6, *4 (E.D. Va. Sept. 11, 2024) (stating that *Loper Bright* applies only when there is statutory ambiguity and holding that *Loper Bright* does not allow a defendant to raise a facial challenge to a regulation when it could not do so before), *appeal docketed*, No. 25-1083 (4th

after the *Loper Bright* decision, the U.S. Court of Appeals for the Third Circuit concluded that *Loper Bright* does not apply to court determinations of whether APA jurisdiction exists—specifically, whether an EPA health advisory under the federal Safe Drinking Water Act qualifies as "final agency action" subject to APA review.[121] Similarly, *Loper Bright* did not affect the standard governing Rule 12(b)(6) motions to dismiss for failure to state a

Cir. Jan. 28, 2025); Xia v. Garland, 2024 WL 3925766, at *5 (E.D.N.Y. Aug. 23, 2024) (concluding in an immigration mandamus case that "the Supreme Court's ruling in *Loper Bright*, which overturned the prior norm of deference to agency interpretations of ambiguous statutes, simply has no bearing on this case" because "[t]he governing statute here, 8 U.S.C. § 1252(a)(2)(B)(i), has been interpreted by courts—not by any executive agency—to preclude jurisdiction over discretionary denials of adjustment of status" (citations omitted)), *appeal docketed*, No. 24-2304 (2d Cir. argued Feb. 6, 2025); Baskin v. L.A. Super. San Fernando Ct., 2024 WL 4867800, at *1 (C.D. Cal. Aug. 19, 2024) ("Petitioner does not explain how *Loper Bright* impacts his case. Petitioner does not appear to challenge an administrative decision. Nor does Petitioner identify any administrative decision or guidance that this Court previously relied on."); Milless v. Salmonsen, 2024 WL 3725318, at *1 (D. Mont. Aug. 6, 2024) (responding to a prisoner's habeas petition and argument "that the U.S. Supreme Court's overruling of the *Chevron* doctrine is relevant to his claims," holding that "[i]t is not. This Court's determinations of the law regarding Milless' case are not based on deference to any agency's determination of the law. The repeated citations to *Loper Bright* are inapt.").

121. Chemours Co. FC v. EPA, 109 F.4th 179, 183 n.3 (3d Cir. July 23, 2024) (holding that cases decided on jurisdictional grounds do not implicate *Loper Bright*); *see also* Generous Home Care Mgmt., LLC v. Becerra, 2024 WL 3843789, at *3 n.1 (W.D. Tex. July 22, 2024) ("[T]his Court does not defer to any HHS interpretation of an ambiguous statute to conclude that it lacks jurisdiction over Generous Home's claims."); White v. U.S. Att'y Gen., 2024 WL 4665163, at *7 (D. Haw. Nov. 4, 2024) ("[I]n considering whether there has been an unreasonable delay under the APA, the Court has not deferred to Defendants' construction of the APA's requirements. Instead, the Court has 'exercised [its] independent judgment' in deciding . . . whether the agency action here has been unreasonably withheld. *Loper Bright* therefore has no relevance to these issues." (citing *Loper Bright*, 144 S. Ct. at 2273)); Bauman v. Garland, 2024 WL 4406962, at *3 (C.D. Cal. Aug. 28, 2024) ("The Supreme Court's decision in *Loper Bright* . . . has no impact on the Court's decision regarding its lack of subject matter jurisdiction in this case. Indeed, the Court's decision is not based on any deference to an agency's interpretation of a statute, but rather is based on the statutory language of 8 U.S.C. § 1252(a)(2)(B)(i), as interpreted by the courts." (citing *Loper Bright*, 144 S. Ct. at 2266)); Reeder v. United States, 2024 WL 3912751, at *7 & n.8 (D.N.M. Oct. 23, 2024) (holding that *Loper Bright* and its overruling of *Chevron* does not affect arbitrary and capricious review under the APA), *appeal dismissed and remanded*, 2024 WL 4926611 (10th Cir. Nov. 25, 2024).

claim.[122] Even when the issue is statutory interpretation, moreover, *Loper Bright* does not require reexamination if a previous interpretation did not turn on *Chevron* deference,[123] particularly when the prior interpreters were the courts themselves, as *Loper Bright* now demands.[124]

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122. *White*, 2024 WL 4665163, at *7.

123. Frey v. Comm'r of Soc. Sec., 2024 WL 5090079, at *1 n.1 (W.D. Mich. Dec. 12, 2024) (noting that other courts had determined that "the analytical framework [for Social Security appeals] has not changed since *Loper Bright*" and finding that plaintiffs had not identified "any specific error of law in the ALJ's decision that would raise an issue under *Loper Bright*"); Horizon Tower Ltd. v. Park Cnty., 2024 WL 4525229, at *7 (D. Wyo. Oct. 4, 2024) (reasoning that *Chevron* deference applied to "direct challenges to agency regulations," whereas it would have been improper to invoke *Chevron* deference in an action regarding the denial of permits, therefore *Loper Bright* was irrelevant); Adams v. All Coast, LLC, 2024 WL 4291520, at *3–4 (W.D. La. Sept. 25, 2024) (finding that *Loper Bright* did not affect a Fifth Circuit determination on seaman status when the Fifth Circuit had not applied *Chevron* deference); Hicks v. Comm'r of Soc. Sec. Admin., 2024 WL 3901190, at *2 n.3 (E.D. Ky. Aug. 19, 2024) (finding that *Loper Bright* did not change the analytical framework in a social security case, wherein the agency should still receive deference), *appeal docketed*, No. 24-5946 (6th Cir. Oct. 17, 2024); Am. Wild Horse Campaign v. Stone-Manning, 2024 WL 3872558, at *5 n.3 (D. Wyo. Aug. 14, 2024) ("*Loper Bright* is of little consequence in this matter . . . . [because] this Court reaches its conclusion without deferring to BLM's interpretation of the WHA, NEPA, or FLPMA—only that its actions were justified by those laws."), *appeal docketed*, No. 24-8057 (10th Cir. Aug. 20, 2024).

124. *See, e.g.*, Save Jobs USA v. U.S. Dep't of Homeland Sec., 111 F.4th 76, 79 n.2 (D.C. Cir. Aug. 2, 2024) (following the reasoning of *Wash. All. of Tech. Workers v. U.S. Dep't of Homeland Sec.*, 50 F.4th 164 (D.C. Cir. 2022), and noting that the court had not relied on *Chevron* deference); Williams v. O'Malley, 2024 WL 3519774, at *1 n.1 (9th Cir. July 24, 2024) (finding that *Loper Bright* did not undercut Ninth Circuit precedent because the prior holding did not defer to the Social Security Administration's interpretation of the Social Security Act (citing Cross v. O'Malley 89 F.4th 1211 (9th Cir. 2024))); Lowmaster v. Dir., Bureau of Prisons, 2024 WL 5135970, at *2–3 (D. Kan. Dec. 17, 2024) (declining to undercut the Supreme Court's deference to Bureau of Prisons over sentence reductions in *Lopez v. Davis*, 531 U.S. 230 (2001)); King v. IC Grp., Inc., 2024 WL 4654114, at *3 (D. Utah Nov. 1, 2024) (denying a plaintiff's motion for reconsideration because the district court's earlier dismissal did not rely on an agency's interpretation of a statute); Black Farmers & Agriculturists Ass'n v. Vilsack, 2024 WL 4571446, at *1 (W.D. Tenn. Oct. 24, 2024) (denying plaintiffs' motion because the district court had not previously relied upon USDA's interpretation of a statute, but on the "plain language . . . itself"); United States v. Moore, 2024 WL 4379748, at *6 (S.D. Ohio Oct. 3, 2024) (noting that it's reasoning did not entail interpreting an agency's organic statute, but rather the Second Amendment); United States v. Farmer, 2024 WL 4254320, at *3 (E.D. Mich. Sept. 20, 2024) (ruling that since the statutory definition of "machinegun" is

Some specific situations have repeatedly required the federal district courts to cabin overeager litigants trying to extend *Loper Bright* to new contexts. For example, paralleling the state court approaches to *Loper Bright*, federal courts hearing state administrative law issues deem *Loper Bright* inapplicable to state law.[125] Multiple courts have ruled that *Loper Bright* does not affect an Article III judge's ability to adopt a magistrate judge's findings and recommendations.[126] Courts have also rebuffed arguments that *Loper Bright* empowers federal courts to excuse litigants' untimeliness,[127] nullify various kinds of

clear and unambiguous, the court did not apply *Chevron* deference in analyzing a prior motion to dismiss); *Milless*, 2024 WL 3725318, at *1 (dismissing a habeas petition because the district court's determinations of law were not based on deference to any agency's determination of law); *Xia*, 2024 WL 3925766, at *5 (noting that the court was following prior courts' interpretation of the relevant governing statute, not that of any executive agency); *Bauman*, 2024 WL 4406962, at *3 (same); *Hicks*, 2024 WL 3901190, at *2 n.3 (noting that courts had afforded the same level of deference to the Social Security Administration both before and after the *Loper Bright* decision); *Generous Home*, 2024 WL 3843789, at *3 n.1 (reasoning that, in finding that it lacked jurisdiction over claims seeking injunctive relief, the district court did not defer to any agency interpretation of an ambiguous statute).

125. Thompson v. Keliher, 2024 WL 4851243, at *29 n.17 (D. Me. Nov. 21, 2024) (distinguishing *Loper Bright* from state law claims, and finding that the district court lacked subject matter jurisdiction to rule on the lawfulness of state agency rules); Gotschall v. Salmonsen, 2024 WL 4751614, at *2 (D. Mont. Nov. 12, 2024) (finding an attempted application of *Loper Bright* to state actors to be meritless); Pryor v. Salmonsen, 2024 WL 4535014, at *3 (D. Mont. Oct. 21, 2024) (same).

126. *See* Su v. Forge Indus. Staffing, Inc., 2024 WL 4825382, at *4 (W.D. Mich. Nov. 19, 2024) (adopting a magistrate judge's report and recommendation after finding that the magistrate judge did not defer to an agency's interpretation of a statute and noting that *Loper Bright* did not appear to cut through subpoena enforcement jurisprudence), *appeal docketed*, No. 24-2024 (6th Cir. Nov. 25, 2024); Reynolds v. Warden, FCI Beckley, 2024 WL 4202385, at *1 (S.D.W. Va. Sept. 16, 2024) (finding no error in the magistrate judge's use of authority, which did not involve application of *Chevron* deference), *appeal docketed*, No. 24-6952 (4th Cir. Oct. 3, 2024); Kornegay v. Brown, 2024 WL 3964947, at *2 (N.D.W. Va. Sept. 28, 2024) ("The decision in *Loper Bright Enterprises* only alters the requirement of courts to defer to agencies in the interpretation of ambiguous statutes, and does not invalidate reports and recommendations issued by courts.").

127. Hughes v. Dep't of Veterans Affs., 2024 WL 4294792, at *1 (D.C. Cir. Sept. 25, 2024).

procedural waivers or exhaustion requirements,[128] or ignore litigants' failure to qualify under statutory requirements.[129]

While most analyses in the first six months were short, a few federal courts more deeply examined the impact of the *Loper Bright* decision on prior rulings. In the U.S. District Court for the Eastern District of Michigan, for example, a criminal defendant asked the court to reconsider its December 2022 decision not to dismiss the indictment, which turned on the interpretation of "machinegun," in light of *Loper Bright*.[130] The defendant asserted that the district judge had relied on the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF's) interpretation of "machinegun."[131] The district court, however, concluded that: (1) "Defendant is incorrect that the Government relies on the ATF's interpretation of the statute for the charges against him. Instead, the Government relies on the plain language of § 5845(b)";[132] (2) "[a]s such, *Loper Bright* is inapposite";[133] and (3) "there is no problem under *Loper Bright*, because *court* precedent interprets the statute to include devices like DIAS and Glock switches."[134]

Nevertheless, if a federal agency asks for *Chevron* deference, the federal courts will now refuse.[135] Thus, federal courts are

128. Lopez v. Garland, 2024 WL 4763923, at *3 (2d Cir. Nov. 13, 2024) (declining a petitioner's request to re-brief their petition); Clary v. Salmonsen, 2024 WL 5186996, at *1 (D. Mont. Dec. 19, 2024) (finding *Loper Bright* inapplicable to a Rule 60 reconsideration proceeding); Garg Tube Exp. LLP v. United States, 740 F. Supp. 3d 1355, 1366–67 (Ct. Int'l Trade Nov. 7, 2024) (holding that *Loper Bright* did not excuse plaintiff's duty to exhaust administrative remedies); Sichting v. Rardin, 2024 WL 4973202, at *2–3 (D. Minn. Sept. 12, 2024) (finding that the Court did not have jurisdiction over petitioner's habeas claim because the "rule that conditions-of-confinement claims cannot be raised in a habeas petition does not derive from [an agency's] interpretation" of a federal law), *modified*, 2024 WL 4785007 (D. Minn. Nov. 14, 2024).

129. *See* Johnston v. Colbert, 2024 WL 4903725, at *1 (9th Cir. Nov. 27, 2024) (declining to address a petitioner's *Loper Bright*–based argument because the petitioner did not meet the First Step Act of 2018's statutory eligibility requirement).

130. United States v. Farmer, 2024 WL 4254320, at *1 (E.D. Mich. Sept. 20, 2024).

131. *Id*. at *3.

132. *Id*. (citing 26 U.S.C. § 5845).

133. *Id*.

134. *Id*. at *4.

135. BNSF Ry. Co. v. Ctr. for Asbestos Related Disease, Inc., 2024 WL 4273814, at *2 n.3 (9th Cir. Sept. 24, 2024); Sinclair Wyo. Refin. Co. v. EPA, 114

clearly applying *Loper Bright*'s most basic lesson even as they clarify that decision's applicability, and federal agency requests for *Chevron* deference will likely disappear as the transition period passes.

2. Federal Agencies Can Still Receive Deference in Some Circumstances—Even for Statutory Interpretation

a. APA Versus Non-APA Judicial Review

Perhaps the biggest battle emerging among the lower courts centers around what *Loper Bright* did to other sources of judicial review of and deference to the executive branch. For example, some courts insist that their review must be pursuant to the APA before *Loper Bright* eliminates deference, retaining deference to agencies in other circumstances. Thus, for example, the Third Circuit was unwilling to change its traditional, pre-*Chevron* standard of deference to the National Labor Relations Board's classifications under the National Labor Relations Act,[136] while district courts have held *Loper Bright* inapplicable to criminal law issues.[137]

F.4th 693, 709 (D.C. Cir. Aug. 14, 2024); Amazon Servs. v. U.S. Dep't of Agric., 109 F.4th 573, 581–82 (D.C. Cir. July 26, 2024); *see also* Quito-Guachichulca v. Garland, 122 F.4th 732, 735–36, 735 n.1 (8th Cir. Dec. 9, 2024) (noting that the court would not defer to the Board of Immigration Appeals' interpretation of a statute when performing de novo review); Grand Canyon Univ. v. Cardona, 121 F.4th 717, 723 (9th Cir. Nov. 8, 2024) ("We review de novo whether the Department [of Education] correctly construed the [Higher Education Act]."); Tista-Ruiz de Ajualip v. Garland, 114 F.4th 487, 494–95 (6th Cir. Aug. 9, 2024) (applying de novo review to questions of law in a Board of Immigration Appeals opinion); *cf.* United States v. Multistar Indus., Inc., 2024 WL 5055552 (9th Cir. Dec. 10, 2024) (noting that, even where EPA did not request deference, federal courts would not defer to EPA's approach to differentiating between stationary containers and containers in transit, yet nevertheless finding EPA's interpretation of the statute to be persuasive).

136. Alaris Health at Boulevard E. v. NLRB, 123 F.4th 107, 121 (3d Cir. Dec. 9, 2024); *see also* Deptula v. Greene, 2024 WL 4729879, at *3 n.1 (M.D. Pa. Nov. 8, 2024) (holding *Loper Bright* inapplicable because "18 U.S.C. § 3632(d)(4)(E)(i) is a statute, not a regulation; it is not subject to challenge under the APA"); Collingwood v. Neely, 2024 WL 3656752, at *1 (N.D. Ala. Aug. 2, 2024) ("*Loper Bright* concerns court deference to agency interpretations of statutes when those interpretations are challenged under the Administrative Procedure Act ("APA"). 144 S. Ct. at 2262. Section 3624(g)(1)(D)(1) is a statute, not a regulation; it is not subject to challenge under the APA.").

137. United States v. Chilcoat, 2024 WL 5008714, at *6 (D.D.C. Dec. 6, 2024) ("The holding in [*Loper Bright*] does not bear on Defendants' [criminal]

The most interesting of these decisions so far is the U.S. Court of Appeals for the Ninth Circuit's decision that *Loper Bright* does not apply, and federal courts must still defer, to the U.S. Department of State's analyses and interpretations of international treaties to which the United States is a party.[138] Deciding the issue in the context of a double jeopardy determination regarding extradition of a Pakistani national to India, the Ninth Circuit concluded that "because the logic underpinning *Chevron* deference is entirely distinct from the logic underpinning a deference to the Executive in matters of foreign affairs, . . . *Loper Bright* has no effect on our decision here";[139] specifically, the reasoning in *Loper Bright* "does not touch, let alone undermine, the principle that we are to give deference to the Executive Branch's understanding of its own treaties."[140]

However, some courts are extending *Loper Bright*'s rule of non-deference to non-APA judicial review contexts if the source of judicial review standards is "APA-like." For example, the D.C. Circuit extended *Loper Bright* to judicial review of the EPA's decisions pursuant to the Clean Air Act's judicial review provisions, "because judicial review under the Clean Air Act is 'essentially the same' as judicial review under the APA."[141]

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prosecution. The Court assures Defendants that it will interpret the law in this case without deference to the Department of Justice or any other agency. To the extent Defendants' [sic] request any relief under *Loper Bright*, the Court will DENY their request."); Su v. Forge Indus. Staffing, Inc., 2024 WL 4825382, at *4 (W.D. Mich. Nov. 19, 2024) ("*Loper Bright* seems inapposite here because it is not clear that the axe to *Chevron* also cut through the subpoena enforcement jurisprudence."), *appeal docketed*, No. 24-2024 (6th Cir. Nov. 25, 2024). *But see* United States v. Ramos, 2024 WL 4710905, at *4 n.8 (N.D. Ill. Nov. 6, 2024) ("The Sentencing Commission is not an agency, per se, but *Loper*'s logic and import are highly relevant and persuasive in this context, too."), *appeal docketed*, No. 24-3052 (7th Cir. Nov. 12, 2024); Nat'l Ass'n for Gun Rts. v. Garland, 741 F. Supp. 3d 568, at 600 (N.D. Tex. July 23, 2024) (rejecting Defendants' arguments for expanding an administrative record because they were "little more than a thinly veiled backdoor effort to import *Chevron*-style deference"), *appeal docketed*, No. 24-10707 (5th Cir. Aug. 6, 2024).

138. Rana v. Jenkins, 113 F.4th 1058, 1066–67 (9th Cir. Aug. 15, 2024), *cert. denied*, 2025 WL 247461 (U.S. 2025).

139. *Id.* at 1066 (citations omitted).

140. *Id*. at 1067.

141. U.S. Sugar Corp. v. EPA, 113 F.4th 984, 991 n.7 (D.C. Cir. Sept. 3, 2024) (quoting Ethyl Corp. v. EPA, 51 F.3d 1053, 1064 (D.C. Cir. 1995)); *see also* NextEra Energy Res., LLC v. Fed. Energy Regul. Comm'n, 118 F.4th 361, 368 (D.C. Cir. Oct. 4, 2024) (noting that it had previously accorded "*Chevron*-like"

b. Deference to Agency Interpretations in APA Review: Skidmore *and* Auer *Deference After* Loper Bright

As discussed, *Loper Bright* itself commended *Skidmore* deference as the legal vehicle through which federal courts could continue to consider and respect agency interpretations of the statutes they implement.[142] As a result, as Table 3 indicates, most of the lower federal courts that have considered the issue have concluded that *Skidmore* deference[143] remains a viable form of deference that courts can accord federal agencies' statutory constructions.[144]

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deference to FERC's reasonable interpretations of ambiguous contracts and tariffs, and raising the issue of whether such deference survived *Loper Bright*); Garg Tube Exp. LLP v. United States, 740 F. Supp. 3d 1355, 1365 n.10 (Ct. Int'l Trade Nov. 7, 2024) ("[W]hile this Court reviews this redetermination under 28 U.S.C. § 2640, the logic of *Loper Bright* applies here because, similar to the APA, 28 U.S.C. § 2640 directs review to 19 U.S.C. § 1516a(a)(2)(B)(iii) providing that the court will set aside a determination found to be 'contrary to law.'").

142. *See supra* notes 42–50 and accompanying text.

143. Skidmore v. Swift & Co., 323 U.S. 134, 139–40 (1944).

144. Perez v. Owl, Inc., 110 F.4th 1296, 1307–08 (11th Cir. Aug. 6, 2024) (applying *Skidmore* deference); Ard v. O'Malley, 110 F.4th 613, 618–19 (4th Cir. Aug. 7, 2024) (noting *Skidmore* deference still applies to interpretations in agency manuals); Anderson v. Diamondback Inv. Grp., 117 F.4th 165, 188 n.14 (4th Cir. Sept. 4, 2024) (applying *Skidmore* deference but finding the agency's interpretation lacking the "power to persuade" (quoting *Skidmore*, 323 U.S. at 140)); Lopez v. Garland, 116 F.4th 1032, 1038–40 (9th Cir. Sept. 11, 2024) (applying *Skidmore* deference); Hanan v. U.S. Citizenship & Immigr. Servs., 2024 WL 4293917, at *4 (N.D. Cal. Sept. 25, 2024) (applying *Skidmore* deference to a Board of Immigration Appeals decision), *appeal docketed*, No. 24-6193 (9th Cir. Oct. 11, 2024); Harding v. Steak N Shake, Inc., 2024 WL 3833341, at *7 (N.D. Ohio Aug. 15, 2024) ("*Loper Bright* makes clear that *Skidmore* deference is the appropriate standard to evaluate agency regulations."); Varian Med. Sys., Inc. v. Comm'r, 2024 WL 3936396, at *18 (T.C. Aug. 26, 2024) (quoting *Loper Bright*'s approval of *Skidmore* deference); Clinkenbeard v. King, 2024 WL 4355063, at *4 (D. Minn. Sept. 30, 2024) ("And even post-*Loper Bright*, courts should still defer to an agency's interpretation when a statute expressly delegates interpretive authority to an agency or when the statute allows the agency to 'fill up the details of a statutory scheme'" (quoting Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 2263 (2024))), *aff'd*, No. 24-3127 (8th Cir. Mar. 27, 2025); *In re* Yellow Corp., 2024 WL 4194560, at *7 (Bankr. D. Del. Sept. 13, 2024) ("The Supreme Court explained that the 'interpretations and opinions' of a government agency with 'specialized experience' could be a source 'to which courts and litigants [could] properly resort for guidance,' particularly when the agency's view was well reasoned, longstanding, and consistently held." (alteration in original) (quoting *Loper Bright*, 144 S. Ct. at 2259)), *amended and superseded on reconsideration*, 2024 WL 4925124 (Bankr. D. Del. Nov. 5, 2024);

Perhaps more importantly, several federal courts have determined,[145] assumed,[146] or strongly suggested[147] that *Loper Bright* did not eliminate the deference owed to a federal agency

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Regents of the Univ. of Cal. v. Chefs' Warehouse, Inc. Emp. Benefit Plan, 2024 WL 3937161, at *5 n.3 (E.D. Cal. Aug. 26, 2024) ("Although the Supreme Court has overruled *Chevron*, it has not disturbed district courts' application of *Skidmore* deference principles." (citation omitted)), *appeal docketed*, No. 24-5985 (9th Cir. Oct. 1, 2024); NLRB v. Macomb, 2024 WL 4240545, at *3 (6th Cir. Sept. 19, 2024) (noting that although the court now uses de novo review, it pays "careful attention" to the implementing agency's interpretation); Am. Wild Horse Campaign v. Stone-Manning, 2024 WL 3872558, at *5 n.3 (D. Wyo. Aug. 14, 2024) ("[T]he Supreme Court in *Loper Bright* noted that while an agency's interpretation of a statute cannot bind a court, it may still be especially informative to the extent it rests on factual premises within that agency's expertise. That informativeness would become ever more salient given the unique nature of this [case's facts]." (citation omitted)), *appeal docketed sub nom*. Friends of Animals v. Bureau of Land Mgmt., No. 24-8057 (10th Cir. Aug. 20, 2024).

145. *See* United States v. Trumbull, 114 F.4th 1114, 1118 n.2 (9th Cir. Aug. 22, 2024) ("The Supreme Court did not call *Kisor* into question in *Loper Bright* (and in fact cited it), and as the concurrence acknowledges did not overrule it, so we continue to apply it." (citation omitted)); United States v. Boler, 115 F.4th 316, 322 n.4 (4th Cir. Oct. 8, 2024) ("Since *Loper Bright* dealt specifically with ambiguities in statutory directives to agencies and did not address the issue of agency interpretations of their own regulations, we will apply the Supreme Court's recent guidance in *Kisor* to address the issue before us today."); United States v. Durio, 2024 WL 3791225, at *4 (E.D. La. Aug. 13, 2024) ("Simply put, the only kind of deference relevant to this case is *Seminole Rock* deference . . . ."); Battineni v. Mayorkas, 2024 WL 4367522, at *7 n.3 (D.D.C. Oct. 2, 2024) ("The Supreme Court's recent decision in *Loper Bright* . . . does not affect [*Auer* deference]. *Loper Bright* presented an issue of an agency's interpretation of a statute, not of its own regulations."); Rorie v. McDonough, 37 Vet. App. 430, 434 (Vet. App. Aug. 16, 2024) ("We see no principled reason that the same rule of stare decisis does not hold sway in the context of the Supreme Court's change from *Auer* to *Kisor* deference in terms of ambiguous regulations."), *appeal docketed*, No. 25-1194 (Fed. Cir. Nov. 19, 2024).

146. *See* United States v. Charles, 2024 WL 4554806, at *13 (6th Cir. Oct. 23, 2024) ("Assuming [the *Kisor* framework] is not altered by the Supreme Court's recent decision in *Loper Bright* . . . we defer to an agency's interpretation of its own regulation when the regulation remains 'genuinely ambiguous after [this court] exhaust[s] all the traditional tools of construction . . . .'" (alteration in original)).

147. *See* Schaffner v. Monsanto Corp., 113 F.4th 364, 384 n.12 (3d Cir. Aug. 15, 2024) ("And while courts may sometimes defer to an agency's interpretation of its own regulations, the Court has 'cabined' the scope of that deference 'in varied and critical ways.'" (quoting Kisor v. Wilkie, 139 S. Ct. 2400, 2405 (2019))).

interpreting its own regulations, generally known as *Auer*[148] or *Seminole Rock*[149] deference.[150] The U.S. Supreme Court refused to overrule *Auer* deference in 2019,[151] and the *Loper Bright* Court did not address it.[152] As a result, the U.S. Court of Appeals for the Sixth Circuit assumed that *Auer* deference remains applicable to the commentaries on the Federal Sentencing Guidelines.[153] Similarly, the Ninth Circuit concluded that the *Loper Bright* majority did not call *Auer* deference into doubt and, "as the concurrence acknowledges did not overrule it, so we continue to apply it."[154]

However, some courts view *Loper Bright* instead as a signal that the Supreme Court will be getting rid of *Auer* deference as well.[155] Thus, the U.S. Court of Appeals for the Fourth Circuit concluded that "[t]he Supreme Court's recent ruling in *Loper Bright Enterprises v. Raimondo*. . . calls into question the viability of *Auer* deference"; nevertheless, because "*Loper Bright* dealt specifically with ambiguities in statutory directives to agencies and did not address the issue of agency interpretations of their own regulations, we will apply the Supreme Court's recent guidance in *Kisor* to address the issue before us today."[156] Most complex is the U.S. District Court for the District of New Mexico,

148. Auer v. Robbins, 519 U.S. 452, 461 (1997) (deferring to the agency's interpretation of its regulation unless it is "plainly erroneous" (quoting Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 359 (1989))).

149. Bowles v. Seminole Rock & Sand Co., 325 U.S. 410 (1945).

150. *See Kisor*, 139 S. Ct. at 2408 ("This Court has often deferred to agencies' reasonable readings of genuinely ambiguous regulations. We call that practice *Auer* deference, or sometimes *Seminole Rock* deference, after two cases in which we employed it.").

151. *Id.* at 563–64 (declining to overrule *Auer* deference, albeit modifying how it applies).

152. *But see* Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 2306–10 (2024) (Kagan, J., dissenting) (discussing the *Kisor* Court's reasoning to not overrule deference to administrative agencies).

153. United States v. Charles, 2024 WL 4554806, at *13 (6th Cir. Oct. 23, 2024); *see also* United States v. Ponle, 110 F.4th 958, 961–62 (7th Cir. Aug. 5, 2024) (determining that *Auer* deference, as modified by *Kisor*, still applies to Sentencing Guidelines).

154. United States v. Trumbull, 114 F.4th 1114, 1118 n.2 (9th Cir. Aug. 22, 2024).

155. *See infra* Table 3 (categorizing cases by treatment of forms of deference since *Loper Bright*).

156. United States v. Boler, 115 F.4th 316, 322 n.4 (4th Cir. Oct. 8, 2024) (citation omitted).

which has repeatedly denounced *Auer* deference while simultaneously acknowledging that it remains the law of the land after *Loper Bright*.[157]

Finally, a debate is beginning to emerge among the federal courts regarding whether *Loper Bright* affects "arbitrary and capricious" review. For the most part, courts conclude that *Loper Bright*, with its emphasis on the APA's primacy, left arbitrary and capricious (and substantial evidence) review intact.[158] The U.S. District Court for the District of New Mexico, for example, has concluded that *Loper Bright* has "little bearing" on arbitrary and capricious review.[159] From a slightly different perspective, the U.S. District Court for the District of Rhode Island has concluded that *Loper Bright*'s adherence to the APA *requires* deference to agencies under "arbitrary and capricious" or "substantial evidence" review.[160] More generally, the U.S. District Court for the District of Vermont has concluded that "*Loper* overruled *Chevron* but does not appear to affect 'judicial review of agency policymaking and factfinding.'"[161] Nevertheless, the U.S. District Court for the District of South Dakota has asserted that "the Supreme Court's recent decision overturning *Chevron* deference calls into question the applicability of the arbitrary and capricious standard to agency legal conclusions," suggesting that

157. *See* Dolan v. Fed. Emergency Mgmt. Agency, 2024 WL 5145808, at *10–13 (D.N.M. Dec. 17, 2024) (noting that *Auer* deference is the "law of the land" but agreeing with Justice Scalia's skepticism regarding the doctrine (quoting Decker v. Nw. Env't Def. Ctr., 568 U.S. 597, 612–21 (2013) (Scalia, J., dissenting))); Aero Tech, Inc. v. U.S. Dep't of the Interior, 2024 WL 4581545, at *7–10 (D.N.M. Oct. 25, 2024) (same); Friends of the Floridas v. U.S. Bureau of Land Mgmt., 2024 WL 3952037, at *60–62 (D.N.M. Aug. 27, 2024) (same), *appeal docketed*, No. 24-2164 (10th Cir. Oct. 31, 2024).

158. *See infra* Table 3 (presenting a breakdown of courts' treatment of arbitrary and capricious review since *Loper Bright*).

159. Reeder v. United States, 2024 WL 3912751, at *7 (D.N.M. Aug. 23, 2024).

160. Newbury v. U.S. Dep't of Hous. & Urb. Dev., 2024 WL 3890779, at *8–9 (D.R.I. Aug. 20, 2024).

161. Indus. Tower & Wireless, LLC v. Roisman, 2024 WL 4329935, at *12 n.10 (D. Vt. Aug. 19, 2024) (quoting Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 2261 (2024)), *appeal docketed*, No. 24-2512 (2d Cir. Sept. 24, 2024); *see also* Tista-Ruiz de Ajualip v. Garland, 114 F.4th 487, 495 (6th Cir. Aug. 9, 2024) (noting that *Loper Bright*'s decision explained "that deferential review of an agency decision is 'cabined to factbound determinations'"); Small v. Holzapfel, 2024 WL 4268040, at *4 (S.D.W. Va. Sept. 23, 2024) (holding that *Loper Bright* does not direct courts to override the Bureau of Prisons' authority to calculate credits under the First Step Act).

Loper Bright may affect agency determinations based on mixed questions of law and fact.[162]

Table 3: Federal Court Conclusions Regarding Other Forms of Deference to Federal Agencies, June 28–December 27, 2024

Deference Decision	Courts of Appeals	District Courts
Court recognized and/or applied *Skidmore* deference[163]	8	23

162. Finneman v. U.S. Dep't of Agric., 2024 WL 5158473, at *9 (D.S.D. Dec. 17, 2024).

163. Art & Antique Dealers League of Am., Inc. v. Seggos, 121 F.4th 423, 435 (2d Cir. Nov. 13, 2024); Seldon v. Garland, 120 F.4th 527, 531 (6th Cir. Oct. 31, 2024); Shamrock Bldg. Materials, Inc. v. United States, 119 F.4th 1346, 1355 (Fed. Cir. Oct. 23, 2024); Lopez v. Garland, 116 F.4th 1032, 1036 (9th Cir. Sept. 11, 2024); Anderson v. Diamondback Inv. Grp., 117 F.4th 165, 188 n.14 (4th Cir. Sept. 4, 2024); Rest. L. Ctr. v. U.S. Dep't of Lab., 120 F.4th 163, 174 (5th Cir. Aug. 23, 2024); Ard v. O'Malley, 110 F.4th 613, 618–19 (4th Cir. Aug. 7, 2024); Perez v. Owl, Inc., 110 F.4th 1296, 1307–08 (11th Cir. Aug. 6, 2024); Friends of Animals v. U.S. Fish & Wildlife Servs., 2024 WL 5200514, at *13 (D. Utah Dec. 23, 2024); Shop Rite Inc. v. U.S. Small Bus. Admin., 2024 WL 5183329, at *4 (W.D. La. Dec. 19, 2024) (quoting *Loper Bright*, 144 S. Ct. at 2262), *appeal docketed*, No. 25-30028 (5th Cir. Jan. 20, 2025); Mohammed v. Stover, 2024 WL 5146440, at *4 (D. Conn. Dec. 17, 2024) (citing *Loper Bright*, 144 S. Ct. at 2262); Green v. Perry's Rests. Ltd., 2024 WL 4993356, at *6 (D. Colo. Dec. 5, 2024); Doe v. U.S. Dep't of Health & Hum. Servs., 2024 WL 4719612, at *4 (E.D. Tex. Nov. 8, 2024); Ventura Coastal, LLC v. United States, 736 F. Supp. 3d 1342, 1357 (Ct. Int'l Trade Nov. 7, 2024); *In re* Yellow Corp., 2024 WL 4925124, at *7 (Bankr. D. Del. Nov. 5, 2024); Aero Tech, Inc. v. U.S. Dep't of the Interior, 2024 WL 4581545, at *7 n.3 (D.N.M. Oct. 25, 2024); Kumho Tire (Vietnam) Co. v. United States, 741 F. Supp. 3d 1277, 1289, 1332 n.47 (Ct. Int'l Trade Oct. 18, 2024); U.S. Dep't of State v. Picur, 2024 WL 4502250, at *8 (D.D.C. Oct. 16, 2024); Vogue Tower Partners VII v. City of Elizabethton, 2024 WL 4351425, at *4 (E.D. Tenn. Sept. 30, 2024) (citing *Loper Bright*, 144 S. Ct. at 2262); Clinkenbeard v. King, 2024 WL 4355063, at *4 (D. Minn. Sept. 30, 2024), *aff'd*, No. 24-3127 (8th Cir. Mar. 27, 2025); Houtz v. Paxos Rests., 2024 WL 4336738, at *3 (E.D. Pa. Sept. 27, 2024); Andrews v. 1788 Chicken, LLC, 2024 WL 4291521, at *7 n.11 (S.D. Miss. Sept. 25, 2024); Hanan v. U.S. Citizenship & Immigr. Servs., 2024 WL 4293917, at *4 (N.D. Cal. Sept. 25, 2024), *appeal docketed*, No. 24-6193 (9th Cir. Oct. 11, 2024); Lirones v. Leaf Home Water Sols., LLC, 2024 WL 4198134, at *7 (N.D. Ohio Sept. 16, 2024) (quoting *Loper Bright*, 144 S. Ct. at 2267); Kalshiex LLC v. Commodity Futures Trading Comm'n, 2024 WL 4164694, at *7 n.9 (D.D.C. Sept. 12, 2024), *appeal docketed*, No. 24-5205 (D.C. Cir. Sept. 12, 2024); Friends of the Floridas v. U.S. Bureau of Land Mgmt., 2024

Court called into question *Skidmore* deference[164]	2	0
Court recognized and/or applied *Auer*/*Seminole Rock*/*Kisor* deference[165]	10	9

WL 3952037, at *60 n.42 (D.N.M. Aug. 27, 2024), *appeal docketed*, No. 24-2164 (10th Cir. Oct. 31, 2024); Regents of the Univ. of Cal. v. Chefs' Warehouse, Inc. Emp. Benefit Plan, 2024 WL 3937161, at *5 n.3 (E.D. Cal. Aug. 26, 2024), *appeal docketed*, No. 24-5985 (9th Cir. Oct. 1, 2024); Varian Med. Sys., Inc. v. Comm'r, 2024 WL 3936396, at *18 (T.C. Aug. 26, 2024); Harding v. Steak N Shake, Inc., 2024 WL 3833341, at *7 (N.D. Ohio Aug. 15, 2024); Am. Wild Horse Campaign v. Stone-Manning, 2024 WL 3872558, at *5 n.3 (D. Wyo. Aug. 14, 2024) (citing *Loper Bright*, 144 S. Ct. at 2273), *appeal docketed sub nom*. Friends of Animals v. Bureau of Land Mgmt., No. 24-8057 (10th Cir. Aug. 20, 2024); Lyman v. Quinstreet, Inc., 2024 WL 3406992, at *4 (N.D. Cal. July 12, 2024).

164. Moctezuma-Reyes v. Garland, 124 F.4th 416, 422–23 (6th Cir. Dec. 23, 2024) (noting that under *Loper Bright*, courts are not *required* to accord *Skidmore* deference even if it would be appropriate); Mayfield v. U.S. Dep't of Lab., 117 F.4th 611, 619–20 (5th Cir. Sept. 11, 2024) (questioning "what work *Skidmore* deference can do" if courts must determine the best interpretation of a statute after *Loper Bright*).

165. United States v. McIntosh, 124 F.4th 199, 205–06 (3d Cir. Dec. 23, 2024); Seldon v. Garland, 120 F.4th 527, 531 (6th Cir. Oct. 31, 2024); United States v. Peralta, 2024 WL 4603297, at *2 n.2 (11th Cir. Oct. 29, 2024); United States v. Charles, 2024 WL 4554806, at *13 (6th Cir. Oct. 23, 2024); United States v. Korotkiy, 118 F.4th 1202, 1210 n.6 (9th Cir. Oct. 10, 2024); United States v. Trumbull, 114 F.4th 1114, 1118 n.2 (9th Cir. Aug. 22, 2024); Rana v. Jenkins, 113 F.4th 1058, 1067 (9th Cir. Aug. 15, 2024); United States v. Ponle, 110 F.4th 958, 961 n.3 (7th Cir. Aug. 5, 2024); Finneman v. U.S. Dep't of Agric., 2024 WL 5158473, at *16 (D.S.D. Dec. 17, 2024); *Perry's Rests. Ltd.*, 2024 WL 4993356, at *6; Rappaport v. Guardian Life Ins. Co. of Am., 2024 WL 4872736, at *11–12 (S.D.N.Y. Nov. 22, 2024); Niblock v. Univ. of Ky., 2024 WL 4891025, at *4 (E.D. Ky. Oct. 28, 2024), *appeal docketed*, No. 24-6060 (6th Cir. Nov. 26, 2024); Battineni v. Mayorkas, 2024 WL 4367522, at *7 & n.3 (D.D.C. Oct. 2, 2024); United States *ex rel.* Schroeder v. Hutchinson Reg'l Med. Ctr., 2024 WL 4298655, at *18 n.12 (D. Kan. Sept. 26, 2024); Sec'y of Lab. v. Macy's, Inc., 2024 WL 4302093, at *3 (S.D. Ohio Sept. 26, 2024); *Steak N Shake*, 2024 WL 3833341, at *7–8; United States v. Durio, 2024 WL 3791225, at *2, *4 (E.D. La. Aug. 13, 2024).

Court called into question *Auer*/*Seminole Rock*/*Kisor* deference (including the New Mexico District Court)[166]	2 + 1[167]	3
Court applied arbitrary and capricious or substantial evidence review as normal[168]	2	4
Court deemed *Loper Bright* relevant to arbitrary and capricious or substantial evidence review[169]	0	1
Court recognized or applied *Mead*[170]	0	1
Court called *Mead* into question[171]	1	0

166. *See supra* note 157 and accompanying text; United States v. Boler, 115 F.4th 316, 322 n.4 (4th Cir. Oct. 8, 2024) ("[*Loper Bright*] calls into question the viability of *Auer* deference."); Schaffner v. Monsanto Corp., 113 F.4th 364, 384 n.12 (3d Cir. Aug. 15, 2024) (emphasizing the limitations *Kisor* placed on deference and the Supreme Court's reminder in *Loper Bright* that the judiciary interpret law); Dolan v. Fed. Emergency Mgmt. Agency, 2024 WL 5145805, at *10–13 (D.N.M. Dec. 17, 2024) (agreeing with Justice Scalia's denouncement of *Auer* deference (quoting Decker v. Nw. Env't Def. Ctr., 568 U.S. 597, 616–21 (2013) (Scalia, J., dissenting))); *Aero Tech, Inc.*, 2024 WL 4581545, at *7–10 (same); *Friends of the Floridas*, 2024 WL 3952037, at *60–62 (same).

167. United States v. Trumbull, 114 F.4th 1114, 1126 (9th Cir. Aug. 22, 2024) (Bea, J., concurring) ("Although I acknowledge that *Loper Bright* did not expressly overrule *Kisor*, the majority is mistaken to brush *Loper Bright* aside and treat it as irrelevant to the interpretation of regulatory language.").

168. China Unicom (Ams.) Operations Ltd. v. FCC, 124 F.4th 1128, 1151–56 (9th Cir. Dec. 24, 2024); Rest. L. Ctr. v. U.S. Dep't of Lab., 120 F.4th 163, 175 (5th Cir. Aug. 23, 2024); Aero Tech, Inc. v. U.S. Dep't of the Interior, 2024 WL 4581545, at *12–16 (D.N.M. Oct. 25, 2024); *Am. Wild Horse Campaign*, 2024 WL 3872558, at *5; Newbury v. U.S. Hous. & Urb. Dev., 2024 WL 3890779, at *8–9 (D.R.I. Aug. 20, 2024); Hicks v. Comm'r of Soc. Sec. Admin., 2024 WL 3901190, at *7–8 (E.D. Ky. Aug. 19, 2024), *appeal docketed*, No. 24-5946 (6th Cir. Oct. 17, 2024).

169. *Finneman*, 2024 WL 5158473, at *10 ("[*Loper Bright*] calls into question the applicability of the arbitrary and capricious standard to agency legal conclusions.").

170. Nat'l Ass'n for Gun Rts. v. Garland, 741 F. Supp. 3d 568, 601 n. 106 (N.D. Tex. July 23, 2024), *appeal docketed sub nom.* Nat'l Ass'n v. McHenry, No. 24-10707 (5th Cir. Aug. 6, 2024).

171. *Schaffner*, 113 F.4th at 397 n.19 ("Because the Supreme Court has since overruled *Chevron*, the reliance on *Mead* in *Hardeman II* and *Carson II* might no longer be appropriate today." (citation omitted)).

3. *Loper Bright* May Increasingly Affect the Scope of a Federal Agency's Authority for Other Functions

Federal courts are beginning to determine whether *Loper Bright* affects other federal agency functions, such as rulemaking. For example, in deciding a case that implicated the EPA's pesticide labeling authority under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the U.S. Court of Appeals for the Third Circuit concluded that *Loper Bright* did not affect the analysis.[172] It distinguished agency interpretations subject to *Loper Bright* from the promulgation of implementing regulations:

> [W]hile *Loper Bright* requires courts, not agencies, to determine the meaning of statutory terms such as "misbranding," we do not read the decision to undermine the EPA's authority to promulgate the regulations that implement FIFRA. As the Court explained in *Loper Bright*, while courts alone must ascertain a statute's meaning, "the statute's meaning may well be that the agency is authorized to exercise a degree of discretion." And one way for statutes to express that meaning is when they "empower an agency to prescribe rules to 'fill up the details' of a statutory scheme." FIFRA is such a statute: it expressly authorizes the EPA Administrator "to prescribe regulations to carry out the provisions" of the statute. We therefore conclude that *Loper Bright* does not undermine the validity of the EPA regulations that govern pesticide labeling and that we consider in analyzing preemption under FIFRA in this opinion.[173]

Similarly, the U.S. Court of Appeals for the Seventh Circuit deemed *Loper Bright* to require federal courts to uphold agency regulations when Congress expressly delegated rulemaking authority to the agency.[174] Nevertheless, as this and other examples discussed below acknowledge, courts increasingly apply *Loper Bright* to independently assess the scope of the agency's authority—especially in rulemaking.[175]

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172. *Id.* at 381 n.9.

173. *Id.* (citations omitted).

174. Midthun-Hensen v. Grp. Health Coop. of S. Cent. Wis., 110 F.4th 984, 988 (7th Cir. Aug. 5, 2024); *see also* Tex. Med. Ass'n v. U.S. Dep't of Health & Hum. Servs., 120 F.4th 494, 504 (5th Cir. Oct. 30, 2024) (noting broad statutory delegation to HHS); Hudson Inst. of Process Rsch. v. NLRB, 117 F.4th 692, 700 (5th Cir. Sept. 18, 2024) (noting that when Congress delegates authority to an agency, the court must "effectuate the will of Congress").

175. *See infra* Part IV (describing three case studies of lower court treatment of agency interpretations after *Loper Bright*).

C. ADHERENCE TO *CHEVRON*-BASED PRECEDENT IN THE WAKE OF *LOPER BRIGHT*

As noted, before late June 2024, federal courts decided thousands of cases by applying *Chevron* deference.[176] One immediate concern in the wake of *Loper Bright* was whether these decisions remain good law. As discussed in Part I, the *Loper Bright* majority went out of its way—somewhat ironically, given its own treatment of *Chevron*—to ensure that precedent remains precedent.[177] It emphasized that prior court decisions upholding agency interpretations based on *Chevron* deference cannot be challenged solely because of that fact and emphasized that these decisions "are still subject to statutory *stare decisis*."[178] In other words, no challenger can go back to a court that relied on *Chevron* deference and ask the court to change its original decision to uphold the agency's interpretation.

Nevertheless, as Table 4 shows, while some of the lower courts have applied this part of the *Loper Bright* decision as the Supreme Court announced it, others regard prior decisions that rested on *Chevron* deference with suspicion. Notably, the federal courts of appeals are only slightly more likely to discard *Chevron*-based precedent than the district courts, although one might have assumed that the latter would be more inclined to follow both binding precedent and nonbinding decisions from higher-ranked courts. These decisions thus suggest that lower federal courts will continue to wrestle with one of *Loper Bright*'s core tensions: Why should courts continue to follow prior decisions that deferred to a federal agency regarding an interpretation that the court itself thinks is wrong—or, at least, not the best reading of the statute?

176. *See supra* note 12 and accompanying text (noting over 18,800 cases cite *Chevron*).

177. *See supra* notes 54–55 and accompanying text.

178. Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 2273 (2024).

Table 4: Lower Courts' Treatment of *Chevron*-Based Precedent, June 28–December 27, 2024

Court's Approach	Courts of Appeals	District Courts
Court applied *Chevron*-based precedent as decided[179]	2	11

179. Siqueira v. U.S. Att'y Gen., 2024 WL 4590031, at *2 (11th Cir. Oct. 28, 2024) (declining to "disturb prior" interpretations that relied on *Chevron* because the parties did not challenge such interpretations); Tennessee v. Becerra, 117 F.4th 348, 363–64 (6th Cir. Aug. 26, 2024) ("In short, abandoning *Rust* and *Ohio* based on their reliance on *Chevron*, is unwarranted."); Lowmaster v. Dir., Bureau of Prisons, 2024 WL 5135970, at *3 (D. Kan. Dec. 17, 2024) ("*Lopez* and the Tenth Circuit opinions applying that case to felon-in-possession offenders remain good law and must be followed by this Court."); Rappaport v. Guardian Life Ins. Co. of Am., 2024 WL 4872736, at *12 (S.D.N.Y. Nov. 22, 2024) ("The Court therefore declines to depart from settled Circuit precedent . . . ."); United States v. Glover, 2024 WL 4753811, at *3 (N.D. Ill. Nov. 12, 2024) (following precedent that found Sentencing Commission guidance unreasonable under *Chevron* and reluctantly denying compassionate release); Niblock v. Univ. of Ky., 2024 WL 4891025, at *4 (E.D. Ky. Oct. 28, 2024) (noting that Sixth Circuit precedent "remains good law" after *Loper Bright*), *appeal docketed*, No. 24-6060 (6th Cir. Nov. 26, 2024); Hansen v. Lab'y Corp. of Am., 2024 WL 4564357, at *6 (E.D. Wis. Oct. 24, 2024) ("Although *Morash* predates *Loper*, the *Loper* Court was clear that its decision does 'not call into question prior cases that relied on the *Chevron* framework.'" (quoting *Loper Bright*, 144 S. Ct. at 2273)); Horizon Tower Ltd. v. Park Cnty., 2024 WL 4525229, at *8 (D. Wyo. Oct. 4, 2024) ("*City of Portland* remains good law despite the Ninth Circuit's deferral to the FCC's interpretation of the definition of an 'effective prohibition' under *Chevron* in that case."); Clinkenbeard v. King, 2024 WL 4355063, at *5 (D. Minn. Sept. 30, 2024) (looking to a *Chevron*-based precedent as persuasive and noting that no other district courts had deviated from the precedent yet after *Loper Bright*), *aff'd*, No. 24-3127 (8th Cir. Mar. 27, 2025); United States v. Uriarte, 2024 WL 4111867, at *5 (N.D. Ill. Sept. 6, 2024) (noting the court would uphold Sentencing Commission guidance if "writing on a clean slate" after *Loper Bright*, but it must instead follow precedent), *appeal docketed*, No. 24-2627 (7th Cir. Sept. 18, 2024); Am. Wild Horse Campaign v. Stone-Manning, 2024 WL 3872558, at *5 n.3 (D. Wyo. Aug. 14, 2024) ("[I]nsofar as the cases cited throughout this ruling themselves rely upon the old framework overturned by *Loper Bright*, the Supreme Court made clear that it did not find justification to overrule those cases as well."), *appeal docketed sub nom*. Friends of Animals v. Bureau of Land Mgmt., No. 24-8057 (10th Cir. Aug. 20, 2024); Fed'n of Ams. for Consumer Choice v. U.S. Dep't of Lab., 2024 WL 3554879, at *6, *13–15 (E.D. Tex. July 25, 2024) (relying on precedent that concluded that the Department of Labor's regulation *failed Chevron* deference at Step 2); Lyman v. Quinstreet, Inc., 2024 WL 3406992, at *4 (N.D. Cal. July 12, 2024) (applying a Ninth Circuit decision

Court noted *Loper Bright* rule regarding *Chevron*-based precedent but did not need to apply it.[180]	5	9
Court used *Loper Bright* to call *Chevron*-based precedent into question[181]	4	3

upholding an FCC interpretation and admitting the interpretation would also stand "under pre-*Chevron* principles").

180. Moctezuma-Reyes v. Garland, 124 F.4th 416, 422 (6th Cir. Dec. 23, 2024); Hudson Inst. of Process Rsch., Inc. v. NLRB, 117 F.4th 692, 700 (5th Cir. Sept. 18, 2024); Lopez v. Garland, 116 F.4th 1032, 1045 (9th Cir. Sept. 11, 2024); Rorie v. McDonough, 37 Vet. App. 430, 434 (Aug. 16, 2024), *appeal docketed*, No. 25-1194 (Fed. Cir. Nov. 19, 2024); Oklahoma v. U.S. Dep't of Health & Hum. Servs., 107 F.4th 1209, 1225 n.16 (10th Cir. July 15, 2024); Strebel v. Scoular, 2024 WL 4903907, at *4 (N.D. Ill. Nov. 27, 2024) (ducking an argument between plaintiff and defendant over whether *Chevron*-based precedent should be deemed overruled after *Loper Bright*); Barton v. U.S. Dep't of Lab., 2024 WL 4886048, at *7 (E.D. Ky. Nov. 25, 2024) ("[E]ven if [precedential cases at issue] had relied on *Chevron*, '[t]he holdings of those cases that specific agency actions are lawful . . . are still subject to statutory *stare decisis* despite our change in interpretive methodology.'" (quoting *Loper Bright*, 144 S. Ct. at 2273)); Doe v. U.S. Dep't of Health & Hum. Servs., 2024 WL 4719612, at *5 n.3 (E.D. Tex. Nov. 8, 2024); Black Farmers & Agriculturists Ass'n v. Vilsack, 2024 WL 4571446, at *1 n.2 (W.D. Tenn. Oct. 24, 2024); Adams v. All Coast, LLC, 2024 WL 4291520, at *3 (W.D. La. Sept. 25, 2024) (noting *Chevron*-based precedent is not overruled but ultimately "the Fifth Circuit did not apply *Chevron* deference" in its decision remanding the case); Andrews v. 1788 Chicken, LLC, 2024 WL 4291521, at *7 n.11 (S.D. Miss. Sept. 25, 2024); O'Brien v. Lowell Gen. Hosp., 2024 WL 4123514, at *4–5 (D. Mass. Sept. 6, 2024), *appeal docketed*, No. 24-1844 (1st Cir. Sept. 23, 2024); Dupree Farms, LLC v. Producers Agric. Ins. (*In re* Dupree Farms, Inc.), 2024 WL 3633272, at *9 n.10 (Bankr. E.D.N.C. Aug. 1, 2024); United States v. Carroll, 2024 WL 3566635, at *2 n.1 (E.D. Mo. July 29, 2024).

181. Diaz-Arellano v. U.S. Att'y Gen., 120 F.4th 722, 726 n.5 (11th Cir. Oct. 29, 2024) (questioning whether it should rely on *Chevron*-based immigration decisions from another circuit); Coleman v. Child.'s Hosp. of Phila., 2024 WL 4490602, at *3 n.4 (3d Cir. Oct. 15, 2024) (noting that whether relevant precedent remained good law was an open question, but one that did not need to be addressed in the case at hand); Rangel-Fuentes v. Garland, 2024 WL 3405079 (10th Cir. July 10, 2024) (reconsidering an immigration decision based on *Chevron* in light of *Loper Bright*), *vacating and granting panel rehearing*, 99 F.4th 1191, 1194–97 (10th Cir. Apr. 23, 2024); Williams v. O'Malley, 2024 WL 3519774, at *1 n.1 (9th Cir. July 24, 2024) (following precedent only because the court did not defer to the agency in the precedential case); Gonzalez v. Garrett, 2024 WL 5096474, at *2 & n.3 (E.D. Ark. Dec. 12, 2024) (relying on precedent but only because the agency's interpretation was unnecessary to the result); Sharma v. Peters, 2024 WL 4668135, at *7 (M.D. Ala. Nov. 4, 2024) (concluding that pre–*Loper Bright* precedent remained authoritative because it found the

Court used *Loper Bright* to change *Chevron*-based precedent[182]	1	1
Extended *Loper Bright* precedent principle to prior decisions based on *Auer* deference[183]	1	0

IV. ILLUSTRATING DIVERGING APPROACHES IN THE LOWER COURTS: THREE CASE STUDIES

A. U.S. DEPARTMENT OF EDUCATION: TITLE IX SEX DISCRIMINATION INCLUDES GENDER IDENTITY

On April 29, 2024, the U.S. Department of Education redefined "sex discrimination" for purposes of Title IX's sexual harassment regulations to "[c]larify that sex discrimination includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity,"[184] to become effective August 1, 2024 ("Title IX Gender Rule").[185] Title IX came into being through the Education Amendments of 1972,[186] and "[t]he Department's predecessor, the Department of Health, Education, and Welfare (HEW), first promulgated regulations under Title IX, effective in 1975."[187]

statute unambiguous); Teche Vermilion Sugar Cane Growers Ass'n v. Su, 2024 WL 4246272, at *21 (W.D. La. Sept. 18, 2024) (refusing to follow nonbinding decisions from other courts that relied on *Chevron* deference).

182. Quito-Guachichulca v. Garland, 122 F.4th 732, 735–37 (8th Cir. Dec. 9, 2024) (using *Loper Bright* to depart from Eighth Circuit precedent regarding the deference owed to the Board of Immigration Appeals); Mazariegos-Rodas v. Garland, 122 F.4th 655, 672 (6th Cir. Dec. 5, 2024) (holding that the Board of Immigration Appeals could no longer use a rule relying on *Chevron* to change Sixth Circuit precedent); Mazariegos-Rodas v. Garland, 117 F.4th 860, 877 (6th Cir. July 23, 2024) (same), *amended and superseded on other grounds*, 122 F.4th 655 (6th Cir. Dec. 5, 2024); Harding v. Steak N Shake, Inc., 2024 WL 3833341, at *7 n.5 (N.D. Ohio Aug. 15, 2024) (concluding that all cases upholding the 1967 regulation at issue on the basis of *Chevron* deference "are no longer good law, nor are they binding").

183. *Rorie*, 37 Vet. App. at 434.

184. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 33,474, 33,476 (Apr. 29, 2024).

185. *Id*. at 33,474.

186. *Id*.

187. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 85 Fed. Reg. 30,026, 30,028 (May 19, 2020).

However, the Title IX regulations have never defined "sex," and the 2024 rule provided the first regulatory definition of "sex discrimination."[188]

Over half the states challenged the new regulations in ten lawsuits—Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wyoming—while an additional fifteen states supported the Department of Education as amici.[189] Although states challenged the regulation before the Supreme Court decided *Loper Bright*, their lawsuits were nevertheless well timed to allow courts to deploy *Loper Bright*, and the lower courts hearing these challenges issued all but two of their decisions after the *Loper Bright* decision.

Alone among the ten federal courts that had already considered the rule,[190] the U.S. District Court for the Northern District of Alabama refused to preliminarily enjoin the rule's

188. Alabama v. Cardona, 2024 WL 3607492, at *6 (N.D. Ala. July 30, 2024), *rev'd sub nom.* Alabama v. U.S. Sec'y of Educ., 2024 WL 3981994 (11th Cir. Aug. 22, 2024).

189. Alabama v. Cardona, 2024 WL 3607492, at *2.

190. Tennessee v. Cardona, 2024 WL 3453880, at *5 (6th Cir. July 17, 2024) (denying the Department of Education's motion for a partial stay of the district court's preliminary injunction that enjoined enforcement of the rule in Tennessee, Kentucky, Ohio, Indiana, Virginia, and West Virginia); Louisiana v. U.S. Dep't of Educ., 2024 WL 3452887, at *3 (5th Cir. July 17, 2024) (per curiam) (denying the Department's motion for a partial stay of the district court's preliminary injunction that enjoined enforcement of the rule in Louisiana, Mississippi, Montana, and Idaho); Oklahoma v. Cardona, 743 F. Supp. 3d 1314, 1333–34 (W.D. Okla. July 31, 2024) (enjoining enforcement in Oklahoma); Arkansas v. U.S. Dep't of Educ., 742 F. Supp. 3d 919 (E.D. Mo. July 24, 2024) (enjoining enforcement of the rule in Arkansas, Missouri, Iowa, Nebraska, North Dakota, and South Dakota); Carroll Indep. Sch. Dist. v. U.S. Dep't of Educ., 741 F. Supp. 3d 515 (N.D. Tex. July 11, 2024) (partially enjoining enforcement of the rule in a specific school district); Texas v. United States, 2024 WL 3405342 (N.D. Tex. July 11, 2024) (enjoining enforcement of the rule against individual plaintiffs and the State of Texas); Kansas v. U.S. Dep't of Educ., 739 F. Supp. 3d 902 (D. Kan. July 2, 2024) (enjoining enforcement of the rule in Kansas, Alaska, Utah, Wyoming, and in specific schools), *appeal docketed*, No. 24-3097 (10th Cir. July 11, 2024); Tennessee v. Cardona, 737 F. Supp. 3d 510 (E.D. Ky. June 17, 2024) (enjoining enforcement of the rule in Tennessee, Kentucky, Ohio, Indiana, Virginia, and West Virginia), *appeal docketed*, No. 24-5588 (6th Cir. June 26, 2024); Louisiana v. Dep't of Educ., 737 F. Supp. 3d 377 (W.D. La. June 13, 2024) (enjoining enforcement of the rule in Louisiana, Mississippi, Montana, and Idaho).

enforcement, on grounds that challengers Alabama, Florida, Georgia, and South Carolina had failed to establish a substantial likelihood of success on the merits.[191] However, the U.S. Court of Appeals for the Eleventh Circuit reversed, adhering—like all the other courts have done—to a historical definition of "sex."[192] The Eleventh Circuit's historical orientation was evident from the beginning of the case:

> On April 29, 2024, the U.S. Department of Education promulgated a new administrative rule "interpreting" Title IX to break new ground in the 52-year history of that landmark statute. The rule represents a sea change to the regulations administering Title IX by, among other things, expanding the definition of discrimination on the "basis of sex" to include discrimination based on gender identity—as well as materially altering and expanding the scope of Title IX's sexual-harassment-related regulations.[193]

It also cited *Loper Bright* twice for the proposition "that statutes 'have a single, best meaning.'"[194] Finally, the Eleventh Circuit had already decided in 2022 that "sex" in Title IX unambiguously refers to biological sex, making it easy for the court to preliminarily enjoin the 2024 Title IX Gender Rule.[195]

Of course, the Eleventh Circuit's 2022 decision and the two challenges to the 2024 rule resolved before the Supreme Court decided *Loper Bright* clearly demonstrate that courts could invalidate new interpretations of old statutes without *Loper Bright*'s help. The U.S. District Court for the Western District of Louisiana invoked the major questions doctrine to enjoin the 2024 Title IX Gender Rule, concluding that:

> Because the Final Rule is a matter of both vast economic and political significance, the Court finds the enactment of this rule involves a major question pursuant to the major questions doctrine. Therefore, Congress must have given "clear statutory authorization" to the applicable

191. Alabama v. Cardona, 2024 WL 3607492, at *1; *see also id.* at *3 ("The court therefore must ultimately conclude that Plaintiffs have failed to 'clearly' establish that they are entitled to the 'extraordinary and drastic remedy' that is a preliminary injunction." (quoting Suntrust Bank v. Houghton Mifflin Co., 252 F.3d 1165, 1166 (11th Cir. 2001))).

192. Alabama v. U.S. Sec'y of Educ., 2024 WL 3981994, at *2, *4–5 (11th Cir. Aug. 22, 2024).

193. *Id.* at *1 (citation omitted).

194. *Id.* at *4–5 (quoting Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 2266 (2024)).

195. *Id.* at *4–5 (citing Adams *ex rel.* Kasper v. Sch. Bd., 57 F.4th 791, 811–17 (11th Cir. 2022)).

> agency. The Court finds that Congress did not give clear statutory authorization to this agency.[196]

It also found the rule arbitrary and capricious but gave short shrift to *Chevron* deference.[197] In contrast, the U.S. District Court for the Eastern District of Kentucky briefly considered the major questions doctrine,[198] but it more prominently followed the *Chevron* deference analysis, concluding through its own statutory interpretation analysis at Step 1 that Congress had spoken directly to the issue of whether "sex" could include gender identity.[199]

As these two cases demonstrate, administrative law before *Loper Bright* gave courts multiple analytical pathways to invalidate a rule but no agreed-upon methodology for doing so. *Loper Bright* simplified the methodology by validating the approach to statutory interpretation that seeks a single, best interpretation of statutory words based on Congress's language use, judged at the moment it enacted the statute. Courts addressing the 2024 Title IX Gender Rule after *Loper Bright* readily embraced this historically minded methodology. Thus, in the first of the post–*Loper Bright* decisions to address this rule, the U.S. District Court for the District of Kansas apparently had been prepared to rest on the major questions doctrine.[200] Instead, its final decision rests on *Loper Bright*'s ruling that it need not defer to the Department of Education, concluding that, "[a]fter review, the court finds that the unambiguous plain language of the statutory provisions and the legislative history make clear that the term 'sex' means the traditional concept of biological sex in which there are only two sexes, male and female."[201] Similarly, in a related challenge to the parallel Affordable Care Act Gender Rule, the U.S. District Court for the Middle District of Florida noted

196. Louisiana v. U.S. Dep't of Educ., 737 F. Supp. 3d 377, 402 (W.D. La. June 13, 2024) (footnote omitted).

197. *Id.* at 405–06.

198. Tennessee v. Cardona, 737 F. Supp. 3d 510, 536–37 (E.D. Ky. June 17, 2024), *appeal docketed*, No. 24-5588 (6th Cir. June 26, 2024).

199. *Id.* at 529–36.

200. Kansas v. U.S. Dep't of Educ., 739 F. Supp. 3d 902, 924–25 (D. Kan. July 2, 2024) (finding that "the Final Rule involves issues of both vast economic and political significance and therefore involves a major question," and that Congress did not give a clear statutory authorization to the Department of Education to "expand the meaning of 'sex discrimination' to include gender identity"), *appeal docketed*, No. 24-3097 (10th Cir. July 11, 2024).

201. *Id.* at 919.

that "Title IX, decades old, did not change meaning in 2024. HHS's attempt to alter prospectively the meaning of Title IX shows the wisdom of *Loper*'s statement that 'agencies have no special competence in resolving statutory ambiguities. Courts do.'"[202] The U.S. District Court for the Eastern District of Texas developed this historical perspective on statutes even further, emphasizing that:

> [T]he Court interprets Title IX's phrase "on basis of sex" as it was reasonably understood at the time the statute was enacted. "The upshot [of this principle] is that new rights cannot be suddenly 'discovered' years later in a document, unless everyone affected by the document had somehow overlooked an applicable provision that was there all along." And here, there is no question that at the time Congress enacted Title IX, everyone understood the statute to prohibit treating members of one sex (women) worse than the other (men).[203]

As Part V will discuss in more detail, lower federal courts reviewing challenges to new federal rules in the wake of *Loper Bright* have been particularly willing to overturn those rules. The cases reviewing the Title IX Gender Rule reveal one reason why: *Loper Bright* gives courts ample ammunition to prevent federal agencies from attempting to evolve their long-lived statutory regimes to match evolving social norms and preferences. *Loper Bright* thus created powerful precedent for plaintiffs seeking to challenge agency attempts to update long-lived statutes. Indeed, *Loper Bright* goes beyond overturning *Chevron* deference by allowing federal courts to also eliminate ambiguity, discretion, and the ability of statutory regimes to evolve independently of congressional intervention and amendment.

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202. Florida v. Dep't of Health & Hum. Servs., 739 F. Supp. 3d 1091, 1105 (M.D. Fla. July 3, 2024) (quoting Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 2266 (2024)). By law, sex discrimination under the Affordable Care Act must track sex discrimination under Title IX. *Id.* at 1097; Patient Protection and Affordable Care Act (ACA) § 1557, 42 U.S.C. § 1816.

203. Texas v. Becerra, 739 F. Supp. 3d 522 (E.D. Tex. July 3, 2024) (alteration in original) (internal citation omitted) (quoting ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 78–92, 81 (2012)).

B. FEDERAL COMMUNICATION COMMISSION: CELL PHONE USERS ARE RESIDENTIAL TELEPHONE SUBSCRIBERS

Thousands, perhaps millions, of Americans seek freedom from telemarketers by signing up for the National Do Not Call Registry, a product of the Telephone Consumer Protection Act of 1991 (TCPA) and the Federal Communications Commission's (FCC's) regulations implementing it.[204] The TCPA makes it illegal "to initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party . . . ."[205] In 1992, the FCC adopted rules to implement the TCPA, including requiring entities that make telephone solicitations to maintain do-not-call lists.[206] Then, in 2003, the FCC responded to the expansion of telemarketing activities with the National Do Not Call Registry, making it illegal for any "person or entity . . . [to] initiate any telephone solicitation . . . to . . . [a] residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the federal government."[207]

At the time Congress enacted the TCPA in 1991, most residential telephones were still landlines that did not leave the home. When the FCC established the National Do Not Call registry over a decade later, the FCC acknowledged that consumers were increasingly abandoning landlines in an order providing

204. *The Do Not Call Registry*, FED. TRADE COMM'N, https://www.ftc.gov/news-events/topics/do-not-call-registry [https://perma.cc/KAZ2-9AX2] ("The Registry now has more than 221 million telephone numbers on it . . ."); *see also* Telephone Consumer Protection Act of 1991 § 3, 47 U.S.C. § 227.

205. 47 U.S.C. § 227(b)(1)(B). The U.S. Supreme Court held the debt collection exemption from this prohibition unconstitutional in 2020, but the Court severed that provision from the rest of the statute. Barr v. Am. Ass'n of Pol. Consultants, 140 S. Ct. 2335, 2346–47, 2356 (2020).

206. Rules & Reguls. Implementing the Tel. Consumer Prot. Act of 1991, 18 FCC Rcd. 14014, 14020 (2003). Throughout the 1990s and early 2000s, various states created centralized do-not-call lists. *Id.* at 14024–25; *see also* Marguerite M. Sweeney & Justin Shumacher, *Do Not Call: The History of Do Not Call and How Telemarketing Has Evolved*, NAT'L ASS'N OF ATT'YS GEN. (May 3, 2017), https://www.naag.org/attorney-general-journal/do-not-call-the-history-of-do-not-call-and-how-telemarketing-has-evolved [https://perma.cc/39NF-ZAKL] (providing examples of state efforts to establish do not call lists).

207. 47 C.F.R. § 64.1200(c)(2) (2003); *see also* Sweeney & Shumacher, *supra* note 206 (highlighting the FCC's rulemaking process to establish the National Do Not Call Registry).

that "wireless subscribers may participate in the national do-not-call list" and that the Commission "presume[s] wireless subscribers who ask to be put on the national do-not-call list to be 'residential subscribers.'"[208] Thus, the FCC extended to National Registry protections to cell phones, and, given the order's date of 2003, one would think the issue was settled.

However, *Loper Bright* has given telemarketers and others new license to challenge the FCC's interpretation in private lawsuits initiated by cell phone users accusing them of violating the TCPA. For example, in *Cacho v. McCarthy & Kelly LLP*, a consumer sued over violations of the TCPA, and the defendants argued that although the TCPA provision on solicitation mentioned cellular service, the provision instructing the FCC to promulgate its rules did not, indicating that cell phone users could not be "residential telephone subscribers" deserving protection.[209] Although the U.S. District Court for the Southern District of New York cited *Loper Bright* to acknowledge that it now had an independent duty to interpret the TCPA, it instead first emphasized that both consumers and businesses had settled expectations based on the FCC order:

> For more than two decades, cellphone users have been permitted by the FCC to register for the National Do Not Call Registry as "residential subscribers." Countless cellphone users have relied upon that protection to ensure their privacy. They have purchased cellphones on the assumption that their devices would be protected against unwanted telemarketing. Telemarketing firms have developed policies and practices to comply with their Do Not Call obligations for cellphone users. The FCC, Federal Trade Commission, and state agencies alike have enforced the rights of cellphone users on the Registry. As Americans increasingly "no longer maintain wireline phone service, and rely only on their wireless telephone service," Defendant's interpretation of the TCPA would effect a sea change in the telemarketing industry and leave many consumers without protections that they have long enjoyed. There is little doubt that if the Court were to apply the deference owed to the FCC's interpretation of the TCPA at the time Congress enacted the statute, the Court would uphold the FCC's interpretation as reasonable.[210]

Following *Loper Bright*, and applying its own interpretation of the statute, "the Court concludes that users of cellphones are not

208. Rules & Reguls. Implementing the Tel. Consumer Prot. Act of 1991, 18 FCC Rcd. 14014, 14039 & n.139 (2003).

209. 739 F. Supp. 3d 195, 202–03 (S.D.N.Y. July 3, 2024).

210. *Id*. at 203–04 (citations and footnotes omitted) (quoting 18 FCC Rcd. At 14039).

categorically excluded from the definition of 'residential subscriber' under the TCPA."[211] According to the court, "Defendant's *expressio unius* argument . . . amounts to a category mistake: Cellular telephones—like telephone lines, paging services, radio common carrier services, and telephone facsimile machines—are a kind of telephonic communications technology."[212] More importantly, "[a] 'residential subscriber' . . . does not refer to the specific phone technology, but to the type or identity of the subscriber to the technology. Thus, a 'residential subscriber' and a cellular telephone are not members of the same genus."[213] In other words, what matters is who subscribed and for what purpose, not the kind of technology deployed.

In contrast, facing the identical issue, the U.S. District Court for the Central District of California turned instead to *Loper Bright*'s acknowledgement that sometimes, the best interpretation of a statute is that Congress has delegated authority and discretion to the agency.[214] After a bit of its own interpretation of the statute and a discussion of Congress's intent to protect residential phone users, as *Loper Bright* requires, it noted:

> Congress has expressly conferred discretionary authority on the agency to flesh out the TCPA. Using its discretion within the boundaries of its delegation, the agency has created a presumption that a cell phone registered on the Do Not Call Registry is a residential phone, a presumption that has lasted for more than two decades. The FCC's interpretation "rests on factual premises within the agency's expertise," thus giving its interpretation "particular power to persuade, if lacking power to control." In this context, it is "especially informative" and particularly persuasive. In any event, however, the Court would reach the same conclusion in the absence of any FCC interpretation of the TCPA's statutory text.[215]

As in the Southern District of New York, therefore, the FCC order's longevity was important—but this time because the consistency supported *Skidmore* deference and respect for the agency's interpretation.

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211. *Id*. at 204.

212. *Id*.

213. *Id*. at 205.

214. Lyman v. QuinStreet, Inc., 2024 WL 3406992, at *4 (C.D. Cal. July 12, 2024).

215. *Id*. (internal citations omitted) (quoting Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 2267 (2024)).

Similarly, the U.S. District Court for the Northern District of Ohio opted to find the FCC's interpretation "persuasive."[216] While "consideration of the 2003 Order is . . . appropriate under *Loper*,"

> Congress expressly conferred discretionary authority on the FCC to flesh out the TCPA. "Using its discretion within the boundaries of its delegation," the FCC has created a presumption that a cellular telephone registered on the DNC is a residential phone. "The FCC's interpretation 'rests on factual premises within the agency's expertise,' thus giving its interpretation 'particular power to persuade, if lacking power to control.'" The Court finds the FCC's interpretation of "residential subscriber" persuasive.[217]

As Part V will discuss, these decisions are typical of how lower federal courts treat both agency orders and issues of agency interpretation in private lawsuits under *Loper Bright*; in both situations, the agency is more likely to be upheld than in a challenge to a new rule. At the same time, however, one must wonder whether federal courts would have so readily embraced the FCC's interpretation as a valid exercise of delegated discretion if the FCC had issued it in a 2024 rulemaking instead of a 2003 order.

C. FEDERAL BUREAU OF PRISONS: IMPLEMENTING THE FIRST STEP ACT

Table 5 makes clear that the lower federal courts have been wrestling with the impacts of *Loper Bright* in more than just civil cases; instead, *Loper Bright* has implications for criminal law and habeas petitions, as well.[218] Among the most frequent of these discussions are habeas petitions challenging the U.S. Attorney General's and Bureau of Prisons' implementation of the First Step Act.[219]

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216. Lirones v. Leaf Home Water Sols., LLC, 2024 WL 4198134, at *7 (N.D. Ohio Sept. 16, 2024).

217. *Id*. (quoting *Lyman*, 2024 WL 3406992, at *4 (quoting *Loper Bright*, 144 S. Ct. at 2267)).

218. *See infra* Table 5 (categorizing lower court decisions by the type of decision the court was reviewing and the treatment of the federal agency's decision).

219. Pub. L. No. 115-391, 132 Stat. 5194 (2018) (codified as amended in scattered sections of 18, 21, 34, and 42 U.S.C.).

Congress enacted the First Step Act in 2018 to reduce recidivism.[220] The Attorney General developed a web-based risk and needs assessment to, among other things, "determine the recidivism risk of each prisoner as part of the intake process, and classify each prisoner as having minimum, low, medium, or high risk for recidivism" and "determine the type and amount of evidence-based recidivism reduction programming that is appropriate for each prisoner and assign each prisoner to such programming accordingly, and based on the prisoner's specific criminogenic needs."[221] Prisoners who successfully participate in the program become entitled to a variety of incentives that the Director of the Bureau of Prisons develops,[222] including, most relevantly for the habeas petitions, time credits toward early release from prison.[223]

Prisoners in the anti-recidivism program thus have every incentive to ensure that the assessment tool is applied, and the time credits are calculated correctly. Several of them seized on *Loper Bright* as a means of securing de novo review of how the Attorney General and Bureau of Prisons were applying that program to them. As is the case with many habeas petitions, many of these are filed pro se and with dubious legal reasoning despite *Loper Bright*, and the federal courts dispatch them quickly.[224]

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220. *See* 132 Stat. at 5195–216 (setting out provisions for "recidivism reduction").

221. 18 U.S.C. § 3632(a)(1), (3).

222. *Id*. § 3632(d).

223. *Id*. § 3632(d)(4).

224. *E.g.*, Gonzalez v. Garrett, 2024 WL 5096474, at *2 (E.D. Ark. Dec. 12, 2024) (rejecting Gonzalez' argument because *Loper Bright* does not change the fact that a prisoner can only earn time credits beginning December 21, 2018, the act's effective date); Deptula v. Greene, 2024 WL 4729879, at *3 n.1 (M.D. Pa. Nov. 8, 2024) (calling Deptula's argument "meritless" because *Loper Bright* does not allow a court to review statutes); Purdy v. Carter, 2024 WL 4651275, at *5 (D. Md. Nov. 1, 2024) (holding that a prisoner with a "high" risk of recidivism cannot have time credits applied toward release when "[t]he statute in question here unambiguously mandates that only inmates with low and minimum recidivism scores are eligible to have earned time credits under the FSA applied toward pre-release custody or supervised release."); Sichting v. Rardin, 2024 WL 4973202, at *2 (D. Minn. Sept. 12, 2024) (finding *Loper Bright* does not change the rule that "conditions-of-confinement claims cannot be raised in a habeas petition" because that rule "does not derive from the BOP's interpretation of the FSA or another federal law; instead, the rule derives from prior judicial interpretation of the scope of the federal habeas statute."), *modified*, 2024 WL 4785007 (D. Minn. Nov. 14, 2024); Collingwood v. Neely, 2024 WL

On occasion, however, *Loper Bright* has caused courts to review the implementation of the First Step Act more deeply. For example, the First Step Act does not define when a prisoner "successfully completes" programming to earn time credits; instead, those details are provided in a January 2022 Bureau of Prisons rule.[225] Under *Loper Bright*, the U.S. District Court for the Middle District of Florida found this rule to be facially valid because it furthered the First Step Act's goal by incentivizing successful participation in programming.[226] At the same time, however, the court concluded that the Bureau of Prisons had improperly applied the rule in the case at hand by disqualifying credits for programming that the prisoner had completed elsewhere than at his designed facility, because the First Step Act itself "does not lay this limit on a prisoner's eligibility to earn time credits or constrain BOP's ability to review a prisoner's programing across separate BOP facilities."[227] Similarly, the U.S. District Court for the District of New Jersey concluded pursuant to *Loper Bright* that prisoners' eligibility for time credits commences when they are taken into federal custody, not—as the Bureau of Prison's regulation dictated—when they finally reach their designated prison.[228]

Similarly, the First Step Act was not clear about what to do with prisoners who are serving multiple sentences for multiple crimes, some of which are eligible for time credit and some of which are not. The United States and the Bureau of Prisons concluded "that when a person is convicted of multiple crimes—some independently eligible for time credits and some not—the phrase 'serving a sentence for a conviction' of an ineligible crime renders the prisoner ineligible for time credits for the full length of the sentence."[229] Applying both *Loper Bright* and *Skidmore* deference, the U.S. District Court for the District of Minnesota

3656752, at *1 (N.D. Ala. Aug. 2, 2024) (noting that nothing in *Loper Bright* allows review of federal statutes, and the Bureau of Prison's program statement adheres to the statutory language).

225. 28 C.F.R. §§ 523.40–.44 (2023).

226. Pelullo v. FCC Coleman—Low, 2024 WL 3771691, at *4 (M.D. Fla. Aug. 13, 2024).

227. *Id*. at *4–5; *see also* Jackson v. Doerer, 2024 WL 4719489, at *5 (C.D. Cal. Nov. 7, 2024) (reaching the same conclusion); Puana v. Williams, 2024 WL 4932514, at *4 (D. Colo. Dec. 2, 2024) (reaching the same conclusion).

228. Heath v. Knight, 2024 WL 5198863, at *1, *4 (D.N.J. Dec. 23, 2024).

229. Clinkenbeard v. King, 2024 WL 4355063, at *2 (D. Minn. Sept. 30, 2024), *aff'd*, No. 24-3127 (8th Cir. Mar. 27, 2025).

agreed with the government, noting that the criminal code elsewhere treats concurrent and consecutive sentences as a single term of imprisonment,[230] but emphasizing that:

> [T]he Attorney General and the Bureau of Prisons are entrusted with sole authority to compute federal sentences. The First Step Act also expressly delegates at least some authority to the Attorney General and the Bureau of Prisons to fill up the details of the time credit system . . . .
>
> Though the Court does not rely exclusively on the BOP's interpretation of the statute to preclude prisoners like Clinkenbeard from becoming eligible for time credits, the Court nevertheless takes note of the BOP's experience with implementing the First Step Act and finds that its interpretation is a more accurate reading of Congress's intent.[231]

If the First Step Act cases add a third "flavor" to the lower courts' deployment of *Loper Bright*, it is that the Bureau of Prisons and U.S. Attorney General appear to retain the traditional respect that used to be accorded to all federal agencies acting within their areas of statutory expertise. While the result is not *Chevron* deference, the federal courts clearly (if silently) accord the Bureau of Prisons a presumption of correctness in these habeas cases, reversing the government's position only when it clearly contradicts explicit statutory language.

D. AN OBSERVATION ACROSS THE CASE STUDIES: RELIANCE INTERESTS

Taken together, these three sets of cases suggest that federal courts in a post-*Chevron* world both consciously and unconsciously take reliance interests into account when deciding what to do with an agency's interpretation of a statute. In the best reading of the Title IX Gender Rule cases, the rule was a departure from longstanding reliance on a definition of "sex" that allowed both girls and boys the safety of separate bathrooms and locker rooms in schools; the specter of a transgender girl (identified at birth as male) in the girls' rooms or competing in girls' sports haunted more than one court.[232] The cell phone cases acknowledged the pervasive and substantial reliance upon the current regulatory regime and courts' unwillingness to upset it.

230. *Id*. at *3 (quoting 18 U.S.C. § 3584(c)).

231. *Id*. at *4.

232. The author acknowledges, nevertheless, that reliance was weakest in these cases; the Title IX Gender Rule was going down in flames in these courts regardless.

Even the few First Step Act cases that went against the government can be classified as reliance-based, because they involved prisoners who participated in anti-recidivism programming on the understanding that they could reduce their sentences, only to find out that the Bureau of Prisons did not intend to give them credit for those programs. Whether courts develop this reliance thread further, of course, remains to be seen—but it does help to explain the courts' otherwise varying approaches to applying *Loper Bright*.

V. THE OVERALL IMPACT OF *LOPER BRIGHT* IN THE LOWER FEDERAL COURTS

In a *Loper Bright* world of administrative law, especially in combination with the Major Questions Doctrine, agency rulemakings fare worse in judicial review than agency adjudications and enforcement actions. As Table 5 reveals, in the first six months after the *Loper Bright* decision, only six federal courts fully upheld a new agency rule in a direct challenge to that rule, as opposed to 31 decisions that have stayed, remanded, vacated, or preliminarily enjoined new agency rules (see Figure 1), invalidating new agency rules 83.8% of the time—although, similarly to the cell phone cases, courts have also confirmed the validity of existing rules after *Loper Bright* in other contexts (most often private lawsuits that turn on the application of federal rules, such as overtime pay disputes). In contrast, federal courts citing *Loper Bright* upheld agency orders (including enforcement actions and permits) 54 times,[233] deeming them partially or completely invalid only 22 times (see Figure 2), a success rate for federal agencies of 71%.

233. Under the federal APA, an agency "order" is "the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing." 5 U.S.C. § 551(6).

Figure 1: Disposition of New Federal Rules

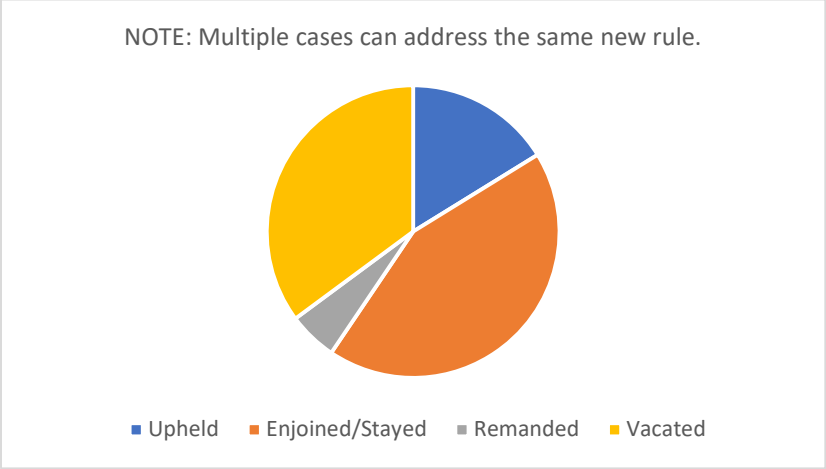
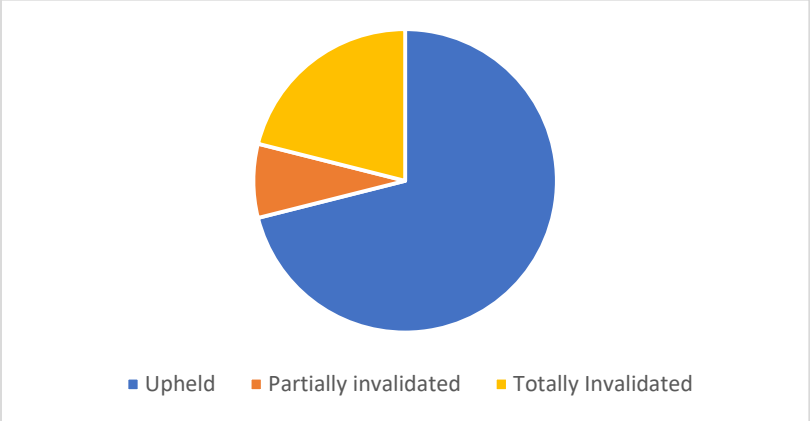


Figure 2: Disposition of Federal Orders, Including Permits and Agency Enforcement



Two further observations about new agency rules in a *Loper Bright* world are important. First, courts are more likely to characterize new rules as raising issues regarding the agency's *authority* than any other form of agency action.[234] In particular,

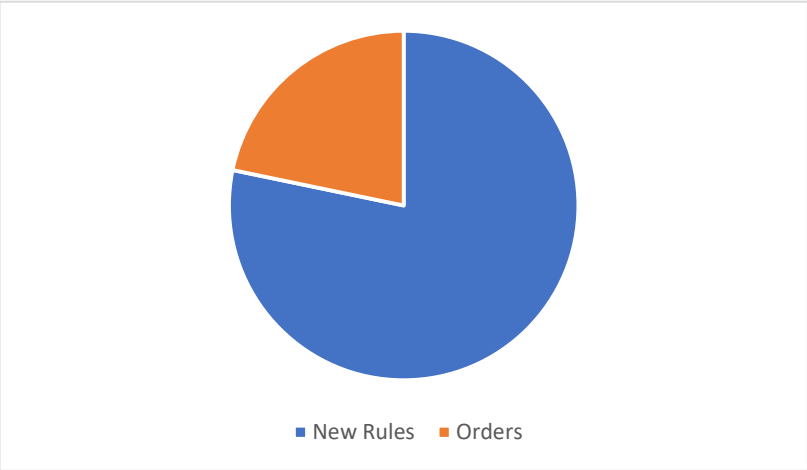
234. NOTE: In classifying these decisions, the author focused on whether the court explicitly discussed its decision in terms of the agency's statutory authority. If not, the case was classified into the category of "invalid

and *not* counting Major Questions Doctrine determinations, courts engaged in a *Loper Bright* analysis characterized the validity of new rules as turning on the agency's authority eighteen times, while agency orders were framed in terms of agency authority only five times (see Figure 3). These cases provide evidence that *Loper Bright* licenses the federal courts to thoroughly examine a federal agency's basic statutory authority, not just its statutory interpretations. As the U.S. District Court for the Eastern District of Texas summarized, "when there is an ambiguity 'about the scope of an agency's own power . . . abdication in favor of the agency is least appropriate.'"[235] Apparently, however, agency rulemaking far more often sparks concerns among the lower federal courts about keeping agencies within their delegated authority than orders do. This result makes a certain amount of sense, because orders generally reflect the day-to-day administration of a statute, while rules are more likely to take a statute in a new direction.

interpretations or applications". The distinction, however, is not always clear, especially because *Loper Bright* itself focused both on agency interpretations of statutes and on patrolling the bounds of agency authority.

235. Texas v. U.S. Dep't of Lab., 2024 WL 4806268, at *13 (E.D. Tex. Nov. 15, 2024) (citing Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 2246 (2024)); *see also In re:* Dupree Farms, LLC, 2024 WL 3633272, at *9 n.10 (Bankr. E.D.N.C. Aug. 1, 2024) (noting that under *Loper Bright*, "the limits of an administrative agency's statutory authority are now a justiciable issue"); ATS Tree Servs. v. FTC, 2024 WL 3511630, at *13 n.16 (E.D. Pa. July 23, 2024) (acknowledging that, pursuant to the APA after *Loper Bright*, "courts are required to exercise their independent judgment in deciding whether an agency has acted within its statutory authority").

Figure 3: Decisions Framed in Terms of Agency Authority



Second, when federal courts invalidate agency rules, they far more often vacate, stay, or enjoin the rule than remand it to the agency to fix. *Loper Bright*'s emphasis on the APA helps to ensure this result. As the U.S. District Court for the Northern District of Texas emphasized, quoting *Loper Bright*, "The text of the APA means what it says[,]" and hence, having concluded that a rule "is arbitrary and capricious, the Court must 'hold unlawful' and 'set aside' the [rule] as required under § 706(2)."[236]

Nevertheless, despite their apparent predilection to overturn new agency rules, lower federal courts citing *Loper Bright* uphold federal agency action in general more often than they invalidate it (Figures 4 & 5). As discussed in Part IV.C, habeas and criminal law cases make up a significant percentage of the cases discussing *Loper Bright* in the first six months since the Supreme Court's decision, and, not surprisingly, courts uphold government action in those cases at a higher frequency than in civil cases. Nevertheless, even setting aside the criminal and habeas cases, lower federal courts still uphold the federal government 62.8% of the time.

236. Ryan, LLC v. FTC, 2024 WL 3879954, at *14 (N.D. Tex. Aug. 20, 2024) (quoting *Loper Bright*, 144 S. Ct. at 2262).

Figure 4: Disposition of Federal Action in Lower Federal Courts Citing *Loper Bright*—All Types of Cases

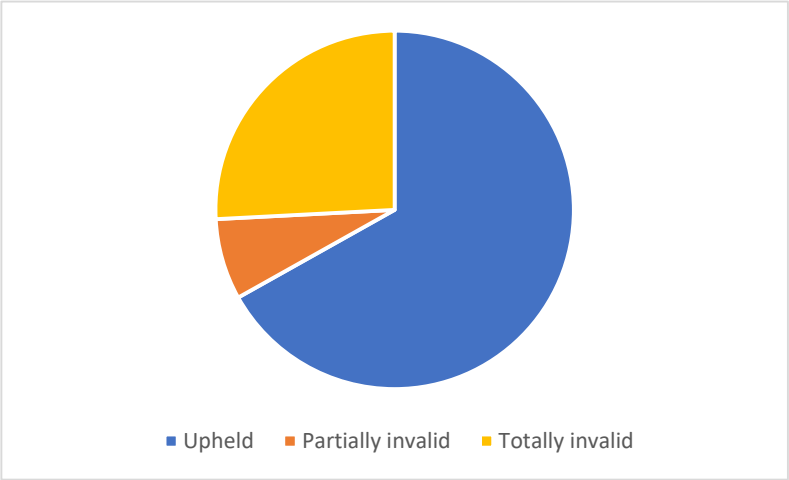


Figure 5: Disposition of Federal Action in Lower Federal Courts Citing *Loper Bright*: Civil Cases Only

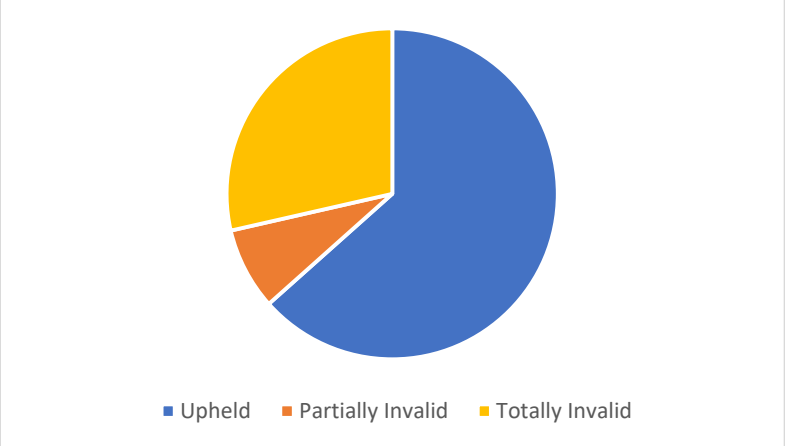


Table 5: Treatment of Federal Agencies in Lower Federal Court Cases Citing *Loper Bright*, June 28–December 27, 2024

NOTE: Numbers do not match total cases because not all cases ruled on a federal agency action and because some cases fit more than one category, especially when they involved rules deemed partially or totally invalid for multiple reasons.

Court's Decision	Courts of Appeals Decisions	District Court Decisions
The government's interpretation or application of the federal statute was valid *in toto*.		
Habeas	2	16
Criminal appeal	6	6
Appeal from agency adjudication OR agency court enforcement	31	23
Challenge to agency rulemaking	2	1
Other	2	12
TOTAL:[237]	**43**	**58**

237. For "habeas" decisions, see Johnston v. Colbert, 2024 WL 4903725, at *1 (9th Cir. Nov. 27, 2024); Giovinco v. Pullen, 118 F.4th 527, 530 (2d Cir. Oct. 8, 2024); Clary v. Salmonsen, 2024 WL 5186996, at *2 (D. Mont. Dec. 19, 2024); Mohammed v. Stover, 2024 WL 5146440, at *4–5 (D. Conn. Dec. 17, 2024); Lowmaster v. Dir., Bureau of Prisons, 2024 WL 5135970, at *3 (D. Kan. Dec. 17, 2024); Gonzalez v. Garrett, 2024 WL 5096474, at *2 (E.D. Ark. Dec. 12, 2024); Gotschall v. Salmonsen, 2024 WL 4751614, at *2 (D. Mont. Nov. 12, 2024); Deptula v. Greene, 2024 WL 4729879, at *2 (M.D. Pa. Nov. 8, 2024); Jackson v. Doerer, 2024 WL 4719489, at *5 (C.D. Cal. Nov. 7, 2024); Washington v. Marshall, 2024 WL 4668127, at *1 (M.D. Ala. Nov. 4, 2024); Hernandez v. Eischen, 2024 WL 4839827, at *2 (D. Minn. Oct. 28, 2024); Hanley v. LeJeune, 2024 WL 4589856, at *4 (D. Minn. Oct. 28, 2024); Pryor v. Salmonsen, 2024 WL 4535014, at *1–3 (D. Mont. Oct. 21, 2024); Clinkenbeard v. King, 2024 WL 4355063, at *1, *4 (D. Minn. Sept. 30, 2024), *aff'd*, No. 24-3127 (8th Cir. Mar. 27, 2025); Small v. Holzapfel, 2024 WL 4268040, at *4 (S.D.W. Va. Sept. 23, 2024); Reynolds v. Warden, FCI Beckley, 2024 WL 4202385, at *2 (S.D.W. Va. Sept. 16, 2024), *appeal docketed*, 2024 WL 4202385 (4th Cir. Oct. 03, 2024); Milless v. Salmonsen, 2024 WL 3725318, at *1 (D. Mont. Aug. 6, 2024); Collingwood v. Neely, 2024 WL 3656752, at *2 (N.D. Ala. Aug. 2, 2024).

For "criminal appeal" decisions, see United States v. Peralta, 2024 WL 4603297, at *2 & n.2 (11th Cir. Oct. 29, 2024) (according *Auer* deference to Sentencing Guidelines commentary when guideline is truly ambiguous); United States v. Charles, 2024 WL 4554806, at *14 (6th Cir. Oct. 23, 2024) (ruling that Sentencing Guidelines receive *Auer* deference); United States v. Korotly, 118 F.4th 1202, 1210 (9th Cir. Oct. 10, 2024) (reviewing de novo interpretation of regulations); United States v. Boler, 115 F.4th 316, 322 & n.4 (4th Cir. Oct. 8, 2024) (upholding the Sentencing Guidelines' interpretation of "loss" pursuant to *Auer* deference); United States v. Deleon, 116 F.4th 1260, 1263–64 (11th Cir. Sept. 5, 2024); United States v. Trumbull, 114 F.4th 1114, 1118–19 (9th Cir. Aug. 22, 2024) (upholding Sentencing Guidelines' interpretation of "large capacity magazine" pursuant to *Auer* deference); United States v. Moulton, 2024 WL 5102816, at *2–3 (S.D. Fla. Dec. 13, 2024); United States v. Chilcoat, 2024 WL 5008714, at *1, *6 (D.D.C. Dec. 6, 2024); United States v. Moore, 2024 WL 4379748, at *6 (S.D. Ohio Oct. 3, 2024); United States v. Farmer, 2024 WL 4254320, at *3 (E.D. Mich. Sept. 20, 2024); United States v. Durio, 2024 WL 3791225, at *4 (E.D. La. Aug. 13, 2024) (according *Auer* deference to the Sentencing Guidelines); United States v. Carroll, 2024 WL 3566635, at *1–2 (E.D. Mo. July 29, 2024).

For decisions regarding "appeals from agency adjudication OR agency court enforcement," see China Unicom (Ams.) Operations Ltd. v. FCC, 124 F.4th 1128, 1151–54 (9th Cir. Dec. 24, 2024); Moctezuma-Reyes v. Garland, 124 F.4th 416, 418 (6th Cir. Dec. 23, 2024); United States v. McIntosh, 124 F.4th 199, 204–06 (3d Cir. Dec. 23, 2024); Vanda Pharm., Inc. v. Food & Drug Admin., 123 F.4th 513, 520–21 (D.C. Cir. Dec. 17, 2024); United States v. Multistar Indus., Inc., 2024 WL 5055552, at *2 (9th Cir. Dec. 10, 2024); Alaris Health at Boulevard E. v. NLRB, 123 F.4th 107, 116–17 (3d Cir. Dec. 9, 2024); Simon-Domingo v. Garland, 2024 WL 4850698, at *1 (6th Cir. Nov. 21, 2024) (applying substantial evidence review); Lopez v. Garland, 2024 WL 4763923, at *3 (2d Cir. Nov. 13, 2024); Grand Canyon Univ. v. Cardona, 121 F.4th 717, 723 (9th Cir. Nov. 8, 2024); Martinez Medina v. Garland, 2024 WL 4692028, at *2 (5th Cir. Nov. 6, 2024); Seldon v. Garland, 120 F.4th 527, 531–32 (6th Cir. Oct. 31, 2024); Diaz-Arellano v. U.S. Att'y Gen., 120 F.4th 722, 722, 725 (11th Cir. Oct. 29, 2024); Miranda Gomes v. U.S. Att'y Gen., 2024 WL 4588900, at *1, *3 (11th Cir. Oct. 28, 2024); Siqueira v. U.S. Att'y Gen., 2024 WL 4590031, at *1 (11th Cir. Oct. 28, 2024); Mem'l Hermann Accountable Care Org. v. Comm'r, 120 F.4th 215, 219–20 (5th Cir. Oct. 28, 2024); Shamrock Bldg. Materials, Inc. v. United States, 119 F.4th 1346, 1352–55 (Fed. Cir. Oct. 23, 2024); Windsor v. McDonough, 2024 WL 4511184, at *2 (Vet. App. Oct. 17, 2024), *appeal docketed sub nom.* Windsor v. Collins, No. 25-1385 (Vet. App. Jan. 24, 2025); NextEra Energy Res. LLC v. Fed. Energy Regul. Comm'n, 118 F.4th 361, 368 (D.C. Cir. Oct. 4, 2024); NLRB v. Macomb, 2024 WL 4240545, at *1 (6th Cir. Sept. 19, 2024); Lopez v. Garland, 116 F.4th 1032, 1041 (9th Cir. Sept. 11, 2024); Brown v. Comm'r, 116 F.4th 861, 875 (9th Cir. Aug. 29, 2024); Tennessee v. Becerra, 117 F.4th 348, 363–64 (6th Cir. Aug. 26, 2024); Rorie v. McDonough, 37 Vet. App. 430, 444–45 (Vet. App. Aug. 16, 2024); Rieth-Riley Constr. Co. v. NLRB, 114 F.4th 519, 528–29 (6th Cir. Aug. 14, 2024); Sunnyside Coal Co. v. Dir., Off. of Workers Comp. Programs, U.S. Dep't of Lab., 112 F.4th 902, 910, 912–13 (10th Cir. Aug. 13, 2024); Ard v. O'Malley, 110 F.4th 613, 618–19, 621 (4th Cir. Aug. 7, 2024) (upholding the

denial of Social Security benefits through *Skidmore* deference); Midthun-Hensen v. Grp. Health Coop. of S. Cent. Wis., 110 F.4th 984, 988 (7th Cir. Aug. 5, 2024) (upholding denial of health insurance coverage; *Loper Bright* deemed irrelevant); Adee Honey Farms v. United States, 107 F.4th 1322, 1331 (Fed. Cir. July 15, 2024) (upholding the agency as correct after *Loper Bright* de novo interpretation); Oklahoma v. U.S. Dep't of Health & Hum. Servs., 107 F.4th 1209, 1214 (10th Cir. July 15, 2024) (denied a preliminary injunction motion to stop HHS's rescission of a grant); Consumer Fin. Prot. Bureau v. Townstone Fin., Inc., 107 F.4th 768, 771 (7th Cir. July 11, 2024) (reversing the district court's decision to uphold the CFPB's interpretation in an enforcement action); Aguilar v. U.S. Att'y Gen., 107 F.4th 164, 170 n.3 (3d Cir. July 10, 2024) (upholding the Board of Immigration Appeals despite applying *Loper Bright* de novo review); Friends of Animals v. U.S. Fish & Wildlife Serv., 2024 WL 5200514, at *3 (D. Utah Dec. 23, 2024), *appeal docketed*, No. 25-4021 (10th Cir. Feb. 21, 2025); Shop Rite Inc. v. U.S. Small Bus. Admin., 2024 WL 5183329, at *8 (W.D. La. Dec. 19, 2024), *appeal docketed*, No. 25-30028 (5th Cir. Jan. 20, 2025); Frey v. Comm'r of Soc. Sec., 2024 WL 5090079, at *1–2 (W.D. Mich. Dec. 12, 2024); Bloomberg LP v. Comm'r, T.C.M. (RIA) 2024-108, at *1, *24–25 (2024); United States v. Szostak, 2024 WL 4828721, at *1 (E.D. Mich. Nov. 19, 2024); Su v. Forge Indus. Staffing, Inc., 2024 WL 4825382, at *1 (W.D. Mich. Nov. 19, 2024); Doe v. U.S. Dep't of Health & Hum. Servs., 2024 WL 4719612, at *4–6 (E.D. Tex. Nov. 8, 2024); Ventura Coastal, LLC v. United States, 736 F. Supp. 3d 1342, 1363–64 (Ct. Int'l Trade Nov. 7, 2024); Garg Tube Export LLP v. United States, 740 F. Supp. 3d 1355, 1366–67 (Ct. Intl. Trade Nov. 7, 2024); White v. U.S. Att'y Gen., 2024 WL 4665163, at *1 (D. Haw. Nov. 4, 2024); Jazz Pharma., Inc. v. Becerra, 2024 WL 4625731, at *12–13 (D.D.C. Oct. 30, 2024), *appeal docketed*, No. 24-5262 (D.C. Cir. Nov. 20, 2024); Dekovic v. Tarango, 2024 WL 4346415, at *8 (D. Colo. Sept. 30, 2024), *appeal docketed*, No. 24-1431 (10th Cir. Oct. 31, 2024); Salutoceuticals, LLC v. U.S. Small Bus. Admin., 2024 WL 4931853, at *1 (W.D. Texas Sept. 26, 2024); Sec'y of Lab. v. Macy's, Inc., 2024 WL 4302093, at *1 (S.D. Ohio Sept. 26, 2024); Hanan v. U.S. Citizenship & Immigr. Servs., 2024 WL 4293917, at *8 (N.D. Cal. Sept. 25, 2024), *appeal docketed*, No. 24-6193 (9th Cir. Oct. 11, 2024); Bauman v. Garland, 2024 WL 4406962, at *3 (C.D. Cal. Aug. 28, 2024) (finding *Loper Bright* was irrelevant; the court lacked subject matter jurisdiction); Xia v. Garland, 2024 WL 3925766, at *1 (E.D.N.Y. Aug. 23, 2024), *appeal docketed*, (2d Cir. argued Feb. 6, 2025); Reeder v. United States, 2024 WL 3912751, at *1 (D.N.M. Aug. 23, 2024), *appeal dismissed & remanded*, 2024 WL 4926611 (10th Cir. Nov. 25, 2024); Isleem v. Peacock, 2024 WL 3887511, at *12 (E.D. La. Aug. 21, 2024); Baskin v. L.A. Super. San Fernando Ct., 2024 WL 4867800, at *12 (C.D. Cal. Aug. 19, 2024); Am. Wild Horse Campaign v. Stone-Manning, 2024 WL 3872558, at *6 (D. Wyo. Aug. 14, 2024), *on appeal*, No. 24-8057 (10th Cir. Aug 20, 2024) (providing an arbitrary and capricious review); Tidewater Fin. Co. v. U.S. Small Bus. Admin, 2024 WL 4329140, at *6–7 (E.D. Va. Aug. 9, 2024).

For decisions in cases posing a "challenge to agency rulemaking," see Avon Nursing & Rehab. v. Becerra, 119 F.4th 286, 291–92 (2d Cir. Oct. 17, 2024); Gonzales & Gonzales Bonds & Ins. Agency, Inc. v. U.S. Dep't of Homeland Sec., 107 F.4th 1064, 1067 (9th Cir. July 18, 2024) (applying *Skidmore* deference

The government's interpretation or application of the statute was valid in part and invalid in part.		
Habeas	0	1
Criminal appeal	1	0
Appeal from agency adjudication OR agency court enforcement	3	3

after *Loper Bright*); ATS Tree Servs. v. FTC, 2024 WL 3511630, at *1, *14–18 (E.D. Pa. July 23, 2024) (applying the "Non-Compete Rule").

For "other" decisions, see Rana v. Jenkins, 113 F.4th 1058, 1066–67, 1070 (9th Cir. Aug. 15, 2024) (giving a higher level of deference to the Department of State's interpretation and implementation of treaties than *Loper Bright* would allow); Perez v. Owl, Inc., 110 F.4th 1296, 1307–08 (11th Cir. Aug. 6, 2024) (upholding the Department of Labor's longstanding interpretation of the Fair Labor Standards Act in an employee's lawsuit against the employer); Green v. Perry's Rests. Ltd., 2024 WL 4993356, at *7 (D. Colo. Dec. 5, 2024) (upholding the Department of Labor's 1988 guidance under both *Skidmore* and *Auer* deference in a private employment law lawsuit); Rappaport v. Guardian Life Ins. Co. of Am., 2024 WL 4872736, at *11 (S.D.N.Y. Nov. 22, 2024) (continuing to follow precedent that held the rules valid in private lawsuit); *In re:* Yellow Corp., 2024 WL 4194560, at *6–7 (Bankr. D. Del. Sept. 13, 2024), *amended and superseded on reconsideration*, 2024 WL 4925124 (D. Del. Nov. 5, 2024) (upholding ERISA rule in the course of a bankruptcy proceeding); Ctr. for a Sustainable Coast v. U.S. Army Corps of Eng'rs, 2024 WL 4731126, at *1, *5, *10 (S.D. Ga. Oct. 21, 2024) (ruling Army Corps not arbitrary and capricious in giving permission to landowner to build a dock); Horizon Tower Ltd. v. Park Cnty., 2024 WL 4525229, at *7–8 (D. Wyo. Oct. 4, 2024) (upholding the Federal Communication Commission's regulatory definitions despite *Loper Bright* and the Ninth Circuit's prior deference to them in private litigation); Houtz v. Paxos Rests., 2024 WL 4336738, at *3–4 (E.D. Pa. Sept. 27, 2024) (according *Skidmore* deference, in private litigation, to the Department of Labor's longstanding definitions of "tip" and "service fee" under the Fair Labor Standards Act); United States *ex rel.* Schroeder v. Hutchinson Reg'l Med. Ctr., 2024 WL 4298655, at *18–20 (according *Auer* deference to Health and Human Services' Guidance); Adams v. All Coast LLC, 2024 WL 4291520, at *4–5 (W.D. La. Sept. 25, 2024) (retaining the Secretary of Labor's definition of "seaman" for the Fair Labor Standards Act in private employment litigation, despite a party's argument that *Loper Bright* rendered it invalid); Lirones v. Leaf Home Water Sols., LLC, 2024 WL 4198134, at *7 (N.D. Ohio Sept. 16, 2024) (according *Skidmore* deference in a private class action to the FCC's view that cell phone users can be residential customers); Harding v. Steak N Shake, Inc., 2024 WL 3833341, at *8 (N.D. Ohio Aug. 15, 2024) (according *Skidmore* deference in private employment dispute to the Department of Labor's regulations); Lyman v. QuinStreet, Inc., 2024 WL 3406992, at *4 (N.D. Cal. July 12, 2024) (upholding the FCC's treatment of cell phones as residential phones in a private putative class action); Cacho v. McCarthy & Kelly LLP, 739 F. Supp. 3d. 195, 203–04 (S.D.N.Y. July 3, 2024) (same).

Challenge to agency rulemaking	2	1
TOTAL:[238]	**6**	**5**
The government's interpretation or application the statute was invalid *in toto*.		
Habeas	0	4
Criminal appeal	2	1
Appeal from agency adjudication OR agency court enforcement	10	6
Challenge to agency rulemaking	4	8
Other	2	2
TOTAL:[239]	**18**	**21**

238. For "habeas" decisions, see Sharma v. Peters, 2024 WL 4668135, at *4–9 (M.D. Ala. Nov. 4, 2024).

For "criminal appeal" decisions, see United States v. Cisneros, 2024 WL 3770325, at *1–2 (9th Cir. Aug. 13, 2024) (upholding the conviction but vacating the sentencing).

For decisions regarding "appeals from agency adjudication OR agency court enforcement," see Hudson Inst. of Process Rsch., Inc. v. NLRB, 117 F.4th 692, 707 (5th Cir. Sept. 18, 2024); Sinclair Wyo. Refin. Co. v. EPA, 114 F.4th 693, 700 (D.C. Cir. Aug. 14, 2024); Williams v. O'Malley, 2024 WL 3519774, at *1, *2 (9th Cir. July 24, 2024) (remanding Social Security disability determination because the ALJ did not properly weigh all the evidence); Finneman v. U.S. Dep't of Agric., 2024 WL 5158473, at *11–17 (D.S.D. Dec. 17, 2024) (using both arbitrary & capricious and substantial evidence review); Dep't of State v. Picur, 2024 WL 4502250, at *9, *13 (D.D.C. Oct. 16, 2024) (upholding the Department of State's interpretation of the statute but concluding that it lacked statutory authority to include special differentials in an annuity calculation); Friends of the Floridas v. U.S. Bureau of Land Mgmt., 2024 WL 3952037, at *62–78 (D.N.M. Aug. 27, 2024), *appeal docketed*, No. 24-2164 (10th Cir. Oct. 31, 2024) (providing hard look review under the National Environmental Policy Act).

For decisions reviewing a "challenge to agency rulemaking," see Env't. Def. Fund v. EPA, 124 F.4th 1, 18–19 (D.C. Cir. Dec. 20, 2024); Mazariegos-Rodas v. Garland, 122 F.4th 655, 672–73 (6th Cir. Dec. 5, 2024); Tex. Med. Ass'n v. U.S. Dep't of Health & Hum. Servs., 120 F.4th 494, 511 (5th Cir. Oct. 30, 2024); Kansas v. U.S. Dep't of Lab., 2024 WL 3938839, at *5–9 (S.D. Ga. Aug. 26, 2024) (deciding an agricultural labor rule was valid under the Immigration and Naturalization Act but conflicted with the National Labor Relations Act).

239. For "habeas" decisions, see Heath v. Knight, 2024 WL 5198863, at *1, *4–5 (D.N.J. Dec. 23, 2024); Puana v. Williams, 2024 WL 4932514, at *4 (D. Colo. Dec. 2, 2024); United States v. Uriarte, 2024 WL 4111867, at *4 (N.D. Ill. Sept. 6, 2024), *on appeal*, (7th Cir. Sept. 18, 2024) (refusing to follow "compelling" Sentencing Guidelines guidance in favor of Seventh Circuit precedent

regarding compassionate release); Pelullo v. FCC Coleman-Low, 2024 WL 3771691, at *1, *5 (M.D. Fla, Aug. 13, 2024).

For "criminal appeal" decisions, see United States v. Burwell, 122 F.4th 984, 995–97 (D.C. Cir. Dec. 9, 2024); United States v. Rutherford, 120 F.4th 360, 371, 373 (3d Cir. Nov. 1, 2024) (overturning Sentencing Commission's amended policy regarding compassionate release); United States v. Ramos, 2024 WL 4710905, at *4 (N.D. Ill. Nov. 6, 2024), *appeal docketed*, No. 24-3052 (7th Cir. Nov. 12, 2024).

For decisions regarding "appeals from agency adjudication OR agency court enforcement," see All. for Fair Bd. Recruitment v. SEC, 125 F.4th 159, 177–78 (5th Cir. Dec. 9, 2024); Quito-Guachichulca v. Garland, 122 F.4th 732, 735–36 (8th Cir. Dec. 9, 2024); Van Loon v. Dep't of the Treasury, 122 F.4th 549, 549, 561–62 (5th Cir. Nov. 26, 2024) (reversing and remanding because the district court gave too much deference to the agency); Lake Region Healthcare Corp. v. Becerra, 133 F.4th 1002, 1007 (D.C. Cir. Sept. 3, 2024) (overturning prior interpretation given *Chevron* deference in light of *Loper Bright*); Mouns v. Garland, 113 F.4th 399, 415 (4th Cir. Aug. 28, 2024); Pac. Gas & Elec. Co. v. Fed. Energy Regul. Comm'n, 113 F.4th 943, 949 (D.C. Cir. 2024); MCR Oil Tools, LLC v. U.S. Dep't of Transp., 110 F.4th 677, 687 (5th Cir. July 30, 2024) (ruling on non-*Loper Bright* grounds); Amazon Servs. v. U.S. Dep't of Agric., 109 F.4th 573, 582 (D.C. Cir. July 26, 2024); Lion Elastomers, LLC v. NLRB, 108 F.4th 252, 262 (5th Cir. July 9, 2024) (deciding on non-*Loper Bright* grounds); Dolan v. Fed. Emergency Mgmt. Agency, 2024 WL 5145808, at *1 (D.N.M. Dec. 17, 2024) (providing an arbitrary & capricious review); Greenwich Terminals LLC v. U.S. Army Corps of Eng'rs, 2024 WL 4595590, at *2 (E.D. Pa. Oct. 28, 2024) (using an arbitrary & capricious review); Kumho Tire (Vietnam) Co. v. United States, 741 F. Supp. 3d 1277, 1352–53 (Ct. Intl. Trade 2024) (ordering the Department of Commerce's determination remanded for a better explanation); Battineni v. Mayorkas, 2024 WL 4367522, at *1 (D.D.C. Oct. 2, 2024) (reversing an immigration decision as arbitrary and capricious despite *Auer* deference); Vogue Tower Partners VII, LLC v. City of Elizabethton, 2024 WL 4351425, at *4 (E.D. Tenn. Sept. 30, 2024) (rejecting the Federal Communication Commission's text under *Loper Bright* in favor of Sixth Circuit precedent); Varian Med. Sys., Inc. v. Comm'r, 163 T.C. No. 4, at 19 (U.S. Tax. Ct. Aug. 26, 2024).

For decisions reviewing a "challenge to agency rulemaking," see Al Otro Lado v. Exec. Off. for Immigr. Rev., 120 F.4th 606, 610–11 (9th Cir. Oct. 23, 2024); U.S. Sugar Corp. v. EPA, 113 F.4th 984, 988 (D.C. Cir. Sept. 9, 2024); Rest. L. Ctr. v. U.S. Dep't of Lab., 115 F.4th 396, 408–10 (5th Cir. Aug. 23, 2024); Alabama v. U.S. Sec'y of Educ., 2024 WL 3981994, at *4–5 (11th Cir. Aug. 22, 2024); Purl v. U.S. Dep't of Health & Hum. Servs., 2024 WL 5202497, at *7–11 (N.D. Tex. Dec. 22, 2024) (reviewing a 2024 HIPAA Privacy Rule); Teche Vermilion Sugar Cane Growers Ass'n v. Su, 2024 WL 4246272, at *22 (W.D. La. Sept. 18, 2024) (finding the rule to be arbitrary and capricious for failure to explain); Ryan, LLC v. FTC, 2024 WL 3879954, at *9 (N.D. Tex. Aug. 20, 2024) (ruling the Non-Compete Rule was arbitrary and capricious); Oklahoma v. Cardona, 743 F. Supp. 3d 1314, 1330–31 (W.D. Okla. July 31, 2024) (finding the Department of Education incorrectly construed "sex" in Title IX to include gender identity); Fed'n of Ams. for Consumer Choice, Inc. v. U.S. Dep't of Lab., 742 F. Supp. 3d 677, 693–97 (E.D. Tex. July 25, 2024) (examining a 2024 Fiduciary

Rule); Arkansas v. U.S. Dep't of Educ., 742 F. Supp. 3d 919, 941–42 (E.D. Mo. July 24, 2024) (reviewing a Title IX Gender Rule); Texas v. Becerra, 739 F. Supp. 3d 522, 533–34 (E.D. Tex. July 3, 2024), *modified on reconsideration*, 2024 WL 4490621 (E.D. Tex. Aug. 30, 2024) (reviewing a Title IX Gender Rule); Tennessee v. Becerra, 739 F. Supp. 3d 467, 477–81 (S.D. Miss. July 3, 2024) (examining a Title IX Gender Rule); Florida v. Dep't of Health & Hum. Servs., 739 F. Supp. 3d 1091, 1105–10 (M.D. Fla. July 3, 2024) (reviewing an Affordable Health Care Act Gender Rule); Kansas v. U.S. Dep't of Educ., 739 F. Supp. 3d 902, 919–23 (D. Kan. July 2, 2024), *appeal docketed*, No. 24-3097 (10th Cir. July 11, 2024) (scrutinizing a Title IX Gender Rule); Texas v. U.S. Dep't of Lab., 738 F. Supp. 3d 807, 821–24 (E.D. Tex. June 28, 2024) (reviewing a rule exempting employees from overtime wages).

For "other" decisions, see Kaweah Delta Health Care Dist. v. Becerra, 123 F.4th 939, 944–45 (9th Cir. Dec. 11, 2024) (vacating an agency policy); Anderson v. Diamondback Inv. Grp., 117 F.4th 165, 187–88 (4th Cir. Sept. 4, 2024) (agreeing with the Ninth Circuit's interpretation of 2018 Farm Bill over the Drug Enforcement Agency's); Aero Tech, Inc. v. U.S. Dep't of the Interior, 2024 WL 4581545, at *12 (D.N.M. Oct. 25, 2024) (deeming the Department of the Interior arbitrary and capricious in a private lawsuit about damages to a fire-fighting airplane).

The challengers received a preliminary injunction against or stay of a rule.[240]		
TOTAL:	**4**	**12**
The agency's rule was upheld.[241]		
TOTAL:	**3**	**3**
The agency's rule was remanded.[242]		

240. Al Otro Lado v. Exec. Off. for Immigr. Rev., 120 F.4th 606, 610–11 (9th Cir. Oct. 23, 2024); Alabama v. U.S. Sec'y of Educ., 2024 WL 3981994, at *2 (11th Cir. Aug. 22, 2024); Firearms Regul. Accountability Coal., Inc. v. Garland, 112 F.4th 507, 519 & n.12 (8th Cir. Aug. 9, 2024) (declining to address the statutory interpretation issue); *In re* MCP No. 185, 2024 WL 3650468, at *1–2 (6th Cir. Aug. 1, 2024); Purl v. U.S. Dep't of Health & Hum. Servs., 2024 WL 5202497, at *11 (N.D. Tex. Dec. 22, 2024) (2024 HIPAA Privacy Rule); Barton v. U.S. Dep't of Lab., 2024 WL 4886048, at *1, *19–20 (E.D. Ky. Nov. 25, 2024); Int'l Fresh Produce Ass'n v. U.S. Dep't of Lab., 2024 WL 4886058, at *11–12 (S.D. Miss. Nov. 25, 2024); Teche Vermilion Sugar Cane Growers Ass'n v. Su, 2024 WL 4246272, at *24 (W.D. La. Sept. 18, 2024); Kansas v. U.S. Dep't of Lab., 2024 WL 3938839, at *9 (S.D. Ga. Aug. 26, 2024); Oklahoma v. Cardona, 743 F. Supp. 3d at 1324–25 (Title IX gender rule); *Fed'n of Ams. for Consumer Choice, Inc.*, 742 F. Supp. 3d at 683 (2024 Fiduciary Rule); Arkansas v. U.S. Dep't of Educ., 742 F. Supp. 3d 919, 941–42 (E.D. Mo. July 24, 2024) (Title IX Gender Rule); Texas v. Becerra, 739 F. Supp. 3d at 536–37 (Title IX Gender Rule); Tennessee v. Becerra, 739 F. Supp. 3d at 486–87 (Title IX Gender Rule); Florida v. Dep't of Health & Hum. Servs., 739 F. Supp. 3d at 1116–17 (Affordable Health Care Act Gender Rule); Kansas v. U.S. Dep't of Educ., 739 F. Supp. 3d at 919–23 (Title IX Gender Rule); Texas v. U.S. Dep't of Lab., 738 F. Supp. 3d at 821–24 (exempt employee for overtime wages rule).

241. Avon Nursing & Rehab. v. Becerra, 119 F.4th 286, 291–92 (2d Cir. Oct. 17, 2024); Mayfield v. U.S. Dep't of Lab., 117 F.4th 611, 619–20 (5th Cir. Sept. 11, 2024); Bernardo-De La Cruz v. Garland, 114 F.4th 883, 890 (7th Cir. Aug. 15, 2024); Rappaport v. Guardian Life Ins. Co. of Am., 2024 WL 4872736, at *11 (S.D.N.Y. Nov. 22, 2024) (continuing to follow precedent that held the rules valid); Nosirrah Mgmt., LLC v. AutoZone, Inc., 2024 WL 4804083, at *6 n.4 (W.D. Tenn. Nov. 15, 2024); *In re* Yellow Corp., 2024 WL 4925124, at *6–7 (Bankr. D. Del. Nov. 5, 2024) (upholding ERISA rule under *Loper Bright* in the course of a bankruptcy proceeding).

242. Arnesen v. Raimondo, 115 F.4th 410, 414 (5th Cir. Aug. 23, 2024) (citing *Loper Bright* only for fisheries statute); Utah v. Su, 109 F.4th 313, 322 (5th Cir. July 18, 2024) (remanding the Department of Labor's ERISA regulation allowing ERISA fiduciaries to consider environmental, social, and governance objective when making investment decisions to the district court, which had denied the plaintiffs' challenge, for reconsideration in light of *Loper Bright*'s removal of deference).

TOTAL:	**2**	**0**
The agency's rule was vacated or set aside.[243]		
TOTAL:	**11**	**2**
The government had authority to take the action it did.		
Habeas	0	1
Criminal appeal	1	0
Appeal from agency adjudication OR agency court enforcement	2	0
Challenge to agency rule	3	2
Other	3	5
TOTAL:[244]	**9**	**8**

243. Env't Def. Fund v. EPA, 124 F.4th 1, 18–19 (D.C. Cir. Dec. 20, 2024) (in part); Metro. Area EMS Auth. v. Sec'y of Veterans Affs., 122 F.4th 1339, 1344–48 (Fed. Cir. Dec. 9, 2024); Kentucky v. EPA, 123 F.4th 447, 464–66 (6th Cir. Dec. 6, 2024); Tex. Med. Ass'n v. U.S. Dep't of Health & Hum. Servs., 120 F.4th 494, 508 (5th Cir. Oct. 30, 2024); U.S. Sugar Corp. v. EPA, 113 F.4th at 1002; Laska v. McDonough, 37 Vet. App. 460, 468–70 (Vet. App. Sept. 6, 2024); *Rest. L. Ctr.*, 115 F.4th at 408–10; Union Pac. R.R. Co. v. Surface Transp. Bd., 113 F.4th 823, 838–39 (8th Cir. Aug. 20, 2024); Tex. Med. Ass'n v. U.S. Dep't of Health & Hum. Servs., 110 F.4th 762, 776 (5th Cir. Aug. 2, 2024); Nat'l Fam. Farm Coal. v. Vilsack, 2024 WL 4951257, at *10 (N.D. Cal. Dec. 2, 2024) (holding APHIS rule arbitrary and capricious); Texas v. U.S. Dep't of Lab., 2024 WL 4806268, at *26 (E.D. Tex. Nov. 15, 2024) (reviewing a salary rule for exemption under the Fair Labor Standards Act); Nat'l Ass'n for Gun Rts. v. Garland, 741 F. Supp. 3d 568, 616–17 (N.D. Tex. July 23, 2024) (BAFT's 2018 machine gun rule), *on appeal*, (5th Cir. Aug. 6, 2024).

244. For the "habeas" decision, see Purdy v. Carter, 2024 WL 4651275, at *5 (D. Md. Nov. 1, 2024).

For the "criminal appeal" decision, see United States v. Ponle, 110 F.4th 958, 960–62 (7th Cir. Aug. 5, 2024) (upholding a criminal conviction where *Loper Bright* played no role).

For decisions in cases reviewing "appeals from agency adjudication OR agency court enforcement," see Softview LLC v. Apple Inc., 108 F.4th 1366, 1372 n.2 (Fed. Cir. July 26, 2024); Kovac v. Wray, 109 F.4th 331, 335 (5th Cir. July 25, 2024), *petition for certiorari docketed*, (U.S. Dec. 23, 2024) (No. 24-674).

For decisions in cases involving a "challenge to agency rule," see Metro. Area EMS Auth. v. Sec'y of Veterans Affs., 122 F.4th 1339, 1344–45, 1347–48 (Fed. Cir. Dec. 9, 2024); Laska v. McDonough, 37 Vet. App. 460, 467 (Vet. App. Sept. 6, 2024); Union Pac. R.R. v. Surface Transp. Bd., 113 F.4th 823, 838–39 (8th Cir. Aug. 20, 2024); Tex. Med. Ass'n v. U.S. Dep't of Health & Hum. Servs., 110 F.4th 762, 775 (5th Cir. Aug. 2, 2024); *In re* MCP No. 185, 2024 WL 3650468,

CONCLUSION

The state and federal courts are certainly aware of *Loper Bright* and have begun to navigate a new jurisprudence when reviewing agency interpretations and implementations of the statutes they administer. In the state courts, this jurisprudence has so far generally found *Loper Bright* irrelevant. Nevertheless, the state courts—with a few notable exceptions like the Hawai'i Supreme Court—have been surprisingly reluctant to reject *Loper Bright* as simply inapplicable to state administrative law. Some of this reluctance undoubtedly stems from the fact—as a few of the cases acknowledge explicitly—that state administrative law in general and deference doctrines in particular often borrow heavily from federal law. Notably, in the states that expressly adopted *Chevron* deference as state law, the impact of *Loper Bright* may in fact not be clear until the state supreme court or legislature decisively confronts the issue.

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at *4 (6th Cir. Aug. 1, 2024) (indicating that *Loper Bright* helps the major questions doctrine); Bridgeport Hosp. v. Becerra, 108 F.4th 882, 888–89 (D.C. Cir. July 23, 2024) (finding that although *Chevron* deference was deemed not relevant, the agency exceeded the bounds of its authority); Purl v. U.S. Dep't of Health & Hum. Servs., 2024 WL 5202497, at *7–10 (N.D. Tex. Dec. 22, 2024) (2024 HIPAA Privacy Rule); Barton v. U.S. Dep't of Lab., 2024 WL 4886048, at *1, *9–12 (E.D. Ky. Nov. 25, 2024) (finding farmworker rule violated the National Labor Relations Act); Int'l Fresh Produce Ass'n v. U.S. Dep't of Lab., 2024 WL 4886058, at *8–10 (S.D. Miss. Nov. 25, 2024) (finding the Department lacked authority to promulgate the farmworkers rule authorizing collective bargaining); Texas v. U.S. Dep't of Lab., 2024 WL 4806268, at *12–17 (E.D. Tex. Nov. 15, 2024) (discussing the salary rule for exemption under the Fair Labor Standards Act); KalshiEX LLC v. Commodity Futures Trading Comm'n, 2024 WL 4164694, at *1, *8–9 (D.D.C. Sept. 12, 2024), *appeal docketed*, No. 24-5205 (D.C. Cir. Sept. 12, 2024); Ryan, LLC v. FTC, 2024 WL 3879954, at *12 (N.D. Tex. Aug. 20, 2024) (deciding FTC lacked authority to promulgate the Non-Compete Rule); Nat'l Ass'n for Gun Rts. v. Garland, 741 F. Supp. 3d 568, 597–99 (N.D. Tex. July 23, 2024), *on appeal sub nom.* Nat'l Ass'n for Gun Rts. v. Bondi, No. 24-10707 (5th Cir. Aug. 6, 2024) (reviewing BAFT's 2018 machine gun rule).

For "other" decisions, see Art & Antique Dealers League of Am., Inc. v. Seggos, 121 F.4th 423, 442–43 (2d Cir. 2024) (finding Endangered Species Act restrictions on display of ivory artifacts violated the First Amendment); Marin Audubon Soc'y v. FAA, 121 F.4th 902, 910 (D.C. Cir. 2024) (holding that the Council on Environmental Quality lacked authority under the National Environmental Policy Act to promulgate regulations of general applicability in the course of a challenge to the FAA's compliance with NEPA); *In re* Fosmax (Alendronate Sodium) Prods. Liab. Litig., 118 F.4th 322, 356 n.27 (3d Cir. 2024) (holding as part of a tort lawsuit that the Food & Drug Administration lacked authority to determine preemption issues); Teche Vermilion Sugar Cane Growers Ass'n v. Su, 2024 WL 4246272, at *19 (W.D. La. Sept. 18, 2024).

The federal courts, too, have decided a spate of cases that begin to define *Loper Bright*'s scope. The most interesting issue arising from this group is whether courts will generally confine *Loper Bright* to agency interpretations reviewed *pursuant to the APA*, or whether judicial review pursuant to other statutes is similarly governed by the *Loper Bright* analysis.

Like *Chevron* deference itself, however, even when *Loper Bright* applies, it still gives agencies multiple pathways for review. Courts can choose to stress their own duty to interpret the statute and perform a de novo analysis of its historical meaning on the day Congress enacted it.[245] Alternatively, courts can find congressional delegations of authority and discretion to the relevant agency and only lightly police how the agency uses those delegations.[246] Thus far, those alternative pathways have resulted in the lower federal courts overturning or preliminarily enjoining new rules at high rates (83.8%) while simultaneously upholding most agency orders and prior rule-based interpretations.

If in applying *Loper Bright* federal courts continue to favor the old over the new, the ability of federal agencies to use old statutes to address new problems may all but disappear. Increased action by Congress, is, of course, the obvious answer to how to deal with new problems—but Congress often has been unresponsive to pre-*Loper Bright* requests that it update statutes, and the current (2025–2027) Congress is unlikely to amend regulatory regimes to give federal agencies *increased* discretion and regulatory authority.

In the next few years, categories of agency expertise are likely to emerge, and the distinction between arbitrary and capricious review and statutory interpretation may become critical to whether individual agency regulatory decisions survive judicial review in certain federal courts. To use an environmental law example, while it may be the courts' prerogative to decide

245. *E.g.*, Moctezuma-Reyes v. Garland, 124 F.4th 416, 420–23 (6th Cir. 2024) (giving the Board of Immigration Appeals no deference, including *Skidmore* deference, and eschewing precedent in favor of its own independent duty to interpret the statute, albeit upholding the agency's decision anyway).

246. *E.g.*, China Unicom (Ams.) Operations, Ltd. v. FCC, 124 F.4th 1128, 1138–48 (9th Cir. 2024) (upholding the FCC's in revoking a Chinese company's authority to offer telecommunications services on grounds of national security and lack of trustworthiness on the grounds that statutory silence implied authority to revoke as well as to issue such authorizations).

what "best available technology economically achievable" *means* under the Clean Water Act,[247] it remains—at least for the moment—the EPA's duty to decide which technology in each regulated industry fits that definition and to create discharge limits based on the technologies it identifies. The *Loper Bright* Court's strong adherence to the APA has this silver lining: arbitrary and capricious review is both highly deferential to federal agencies[248] and clearly grounded in the APA itself.[249]

247. Under the Clean Water Act, "best available technology economically achievable" (BAT or BATEA) is the technological basis for effluent limitations on dischargers of toxic and nonconventional pollutants from point sources subject to regulation and for pretreatment requirement for entities that send their waste to sewage treatment plants, set on an industry-by-industry basis. 33 U.S.C. § 1311(b)(2). "[S]uch effluent limitations shall require the elimination of discharges of all pollutants if the Administrator [of the EPA] finds, on the basis of information available to him . . . that such elimination is technologically and economically achievable for a category or class of point sources . . . ." *Id*. For a court that wants to find it, therefore, there is an express delegation to the EPA to exercise discretion in setting these standards, but the factfinding used to decide what qualifies as BATEA should be subject to arbitrary and capricious review, not *Chevron* deference.

248. *E.g.*, FCC v. Prometheus Radio Project, 141 S. Ct. 1150, 1158 (2021) ("The APA's arbitrary-and-capricious standard requires that agency action be reasonable and reasonably explained. Judicial review under that standard is deferential, and a court may not substitute its own policy judgment for that of the agency. A court simply ensures that the agency has acted within a zone of reasonableness and, in particular, has reasonably considered the relevant issues and reasonably explained the decision." (citation omitted)).

249. 5 U.S.C. § 706(2).

___ (GORSUCH, J., concurring in judgment) (slip op., at 1).

*

At the end of the day, venue rules are like traffic laws. They simply tell litigants where to go, and they should be easy to follow. As I read it, the Clean Air Act provides a clear rule for cases like this one. Applying that rule here, I would direct the parties to the appropriate regional circuit. The Court doing otherwise, I respectfully dissent.

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA *v.* ENVIRONMENTAL PROTECTION AGENCY

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 23–753. Argued October 16, 2024—Decided March 4, 2025

Under the Clean Water Act (CWA), 33 U. S. C. §1151 *et seq*., the Environmental Protection Agency (EPA) and authorized state agencies issue permits that impose requirements on entities that wish to discharge "pollutants" into the waters of the United States. A critical component of the CWA regulatory scheme is the National Pollutant Discharge Elimination System (NPDES), which makes it unlawful to discharge pollutants into covered bodies of water unless authorized by permit. *EPA* v. *California ex rel. State Water Resources Control Bd.*, 426 U. S. 200, 205. These permits typically include "effluent limitations" on discharges that restrict the "quantities, rates, and concentrations of chemical, physical, biological, and other constituents." §1362(11). Failure to comply with permit limitations exposes permittees to civil penalties and even criminal prosecution. §§1319(c) and (d). Under what is known as the "permit shield" provision, however, an entity that adheres to the terms of its permit is deemed to be compliant with the Act. §1342(k).

This case involves a challenge to "end-result" requirements—permit provisions that do not spell out what a permittee must do or refrain from doing but instead make a permittee responsible for the quality of the water in the body of water into which the permittee discharges pollutants. The City of San Francisco operates two combined wastewater treatment facilities that process both wastewater and stormwater. Combined Sewer Overflow (CSO) Control Policy, 59 Fed. Reg. 18689; 75 F. 4th 1074, 1082 (CA9). During periods of heavy precipitation, the combination of wastewater and stormwater may exceed the facility's capacity, and the result may be the discharge of untreated

Syllabus

water, including raw sewage, into the Pacific Ocean or the San Francisco Bay. 59 Fed. Reg. 18689; EPA, Office of Water, Combined Sewer Overflows: Guidance for Permit Writers, p. 1–1; 75 F. 4th, at 1082–1083. In 1994, the EPA adopted its CSO Control Policy, which requires municipalities with combined systems to take prescribed measures and to develop and implement a Long-Term Control Plan, and provides for a two-phase permitting process. 59 Fed. Reg. 18691, 18696.

For many years, San Francisco's NPDES permit for its Oceanside facility was renewed without controversy, but in 2019, the EPA issued a renewal permit that added two end-result requirements. 75 F. 4th, at 1084–1085. The first of these prohibits the facility from making any discharge that "contribute[s] to a violation of any applicable water quality standard" for receiving waters. *Id.*, at 1085. The second provides that the City cannot perform any treatment or make any discharge that "create[s] pollution, contamination, or nuisance as defined by California Water Code section 13050." *Ibid.* (internal quotation marks omitted). San Francisco argued that the end-result requirements exceed EPA's statutory authority, but the Ninth Circuit denied the city's petition for review. The court held that §1311(b)(1)(C) authorizes EPA to impose "any" limitations ensuring applicable water quality standards are satisfied in a receiving body of water.

Held: Section 1311(b)(1)(C) does not authorize the EPA to include "end-result" provisions in NPDES permits. Determining what steps a permittee must take to ensure that water quality standards are met is the EPA's responsibility, and Congress has given it the tools needed to make that determination. Pp. 7–19.

(a) Not all "limitations" under §1311 must qualify as effluent limitations. While §§1311(b)(1)(A) and (B) refer to "effluent limitations," §1311(b)(1)(C) refers to "any more stringent limitation." This distinction shows that Congress intentionally authorized limitations beyond effluent limitations because "it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion" of language in a statute. *Russello* v. *United States*, 464 U. S. 16, 23 (internal quotation marks omitted). Other CWA provisions support this by referring to "effluent limitations and other limitations" under §1311. See, *e.g.*, §§1341(d), 1365(f). Moreover, San Francisco's interpretation would either invalidate widely accepted narrative permit provisions or require an improbably broad reading of "effluent limitation." Pp. 7–9.

(b) Section 1311(b)(1)(C) does not authorize permit requirements conditioning compliance on receiving water quality. The provision's text, structure, and context support this interpretation. Pp. 9–19.

(1) The terms "limitation," "implement," and "meet" in §1311(b)(1)(C) suggest EPA must set specific rules permittees must

follow to achieve water quality goals. A "limitation" is a "restriction . . . imposed from without," not an end-result requirement leaving permittees to determine necessary steps. Webster's Third New International Dictionary 1312. When a provision tells a permittee that a particular end result must be achieved, the direct source of the restriction comes from within, not "from without." To "implement" standards requires "concrete measures," not simply mandating achievement of results. *Id.,* at 1134; §1311(b)(1)(C). A limitation that is "necessary to meet" an objective is most naturally understood to mean a provision that sets out actions that must be taken to achieve the objective. Pp. 10–12.

(2) The pre-1972 Water Pollution Control Act (WPCA) contained a provision that allowed direct enforcement against a polluter if the quality of the water into which the polluter discharges pollutants failed to meet water quality standards. See Federal Water Pollution Control Act, ch. 758, §§1, 2(d)(1), 2(d)(4), 2(d)(7), 62 Stat. 1155, 1156–1157. But Congress deliberately omitted such provisions when overhauling the law in 1972. Instead, the CWA imposes "direct restrictions" on polluters rather than working backward from pollution to assign responsibility. *EPA*, 426 U. S., at 204. The Government's interpretation would undo what Congress plainly sought to achieve when it scrapped the WPCA's backward-looking approach. Pp. 12–14.

(3) Two features of the broader statutory scheme further support this conclusion. First, end-result requirements would negate the CWA's "permit shield" protecting compliant permittees from liability. Second, EPA's interpretation provides no mechanism for fairly allocating responsibility among multiple dischargers contributing to water quality violations. Pp. 14–16.

(c) The agency has adequate tools to obtain needed information from permittees without resorting to end-result requirements. Its reliance on the Combined Sewer Overflow Policy is misplaced as that policy authorizes narrative limitations but not end-result requirements. And concerns about disrupting general permits are unfounded given that narrative limitations remain available. Pp. 17–19.

75 F. 4th 1074, reversed and remanded.

ALITO, J., delivered the opinion of the Court, in which ROBERTS, C. J., and THOMAS and KAVANAUGH, JJ., joined, in which GORSUCH, J., joined as to all but Part II, and in which SOTOMAYOR, KAGAN, BARRETT, and JACKSON, JJ., joined as to Part II. BARRETT, J., filed an opinion dissenting in part, in which SOTOMAYOR, KAGAN, and JACKSON, JJ., joined.

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SUPREME COURT OF THE UNITED STATES

No. 23–753

CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA, PETITIONER *v.* ENVIRONMENTAL PROTECTION AGENCY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[March 4, 2025]

JUSTICE ALITO delivered the opinion of the Court.

Under the Clean Water Act (CWA), 86 Stat. 816, 33 U. S. C. §1251 *et seq*., the Environmental Protection Agency (EPA) and authorized state agencies[1] may issue permits that impose requirements on entities that wish to discharge "pollutants" (a broadly defined term)[2] into the waters of the United States.[3] Permits issued by these agencies include what the CWA calls "effluent limitations," that is, provisions that specify the quantities of enumerated pollutants that may be discharged.[4] It is also common for permits to set out other steps that a discharger must take. These may include testing, record-keeping, and reporting requirements, as well as requirements obligating a permittee to follow specified practices designed to reduce pollution.

[1] See 33 U. S. C. §1342(b). The provision at issue in this case, §1311(b)(1)(C), applies equally to federal and state permits, but for convenience, we refer only to the EPA when referring to the scope of permitting authority under that provision.

[2] §1362(6).

[3] §1362(7).

[4] §1362(11).

None of these so-called narrative requirements is at issue here.

Instead, this case involves provisions that do not spell out what a permittee must do or refrain from doing; rather, they make a permittee responsible for the quality of the water in the body of water into which the permittee discharges pollutants. When a permit contains such requirements, a permittee that punctiliously follows every specific requirement in its permit may nevertheless face crushing penalties if the quality of the water in its receiving waters falls below the applicable standards. For convenience, we will call such provisions "end-result" requirements.

The permittee in this case is a wastewater treatment facility owned by San Francisco. For the past five years, the facility's permit has included two end-result requirements, and if those provisions are upheld, the City could be heavily penalized even though it was never put on notice that it was obligated to take any specific step other than those it undertook. San Francisco argues that the end-result provisions in its permit are not authorized by the CWA, and its position is supported by many other similarly situated cities, including New York, the District of Columbia, Boston, and Buffalo, as well as national and state associations whose members collectively "provide wastewater and stormwater services to the majority of [the people in this country whose homes are connected to sewers]."[5]

We hold that the two challenged provisions exceed the EPA's authority. The text and structure of the CWA, as well as the history of federal water pollution legislation, make this clear. And resorting to such requirements is not necessary to protect water quality. The EPA may itself determine what a facility should do to protect water quality,

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[5] Brief for Public Wastewater and Stormwater Agencies et al. as *Amici Curiae* 2.

and the Agency has ample tools to obtain whatever information it needs to make that determination. If the EPA does its work, our holding should have no adverse effect on water quality.

I

A

To understand the issue before us, it is helpful to take a brief look back at the history of federal water pollution legislation. For most of the Nation's history, the Federal Government played a secondary role in this field. See *Sackett* v. *EPA*, 598 U. S. 651, 659 (2023). In 1948, however, Congress passed the Federal Water Pollution Control Act (WPCA), ch. 758, 62 Stat. 1155, which represented a cautious expansion of federal authority. K. Murchison, Learning From More Than Five-and-a-Half Decades of Federal Water Pollution Control Legislation: Twenty Lessons for the Future, 32 Env. Affairs L. Rev. 527, 530–531 (2005) The WPCA reaffirmed the long-accepted principle that "controlling water pollution" was primarily a state responsibility, but it also declared that the pollution of certain interstate waters had become "a public nuisance" and was "subject to abatement in a suit" brought by the Attorney General on behalf of the United States. §§1, 2(d)(1), 2(d)(4), 2(d)(7), 62 Stat. 1155–1157.

Over the next 24 years, the WPCA was amended numerous times,[6] and the federal role gradually grew, but the basic structure of federal enforcement actions remained the same. The starting point was the identification of a body of water with substandard water quality. After that, federal

[6] See Water Pollution Control Act Amendments of 1956, Pub. L. 84–660, 70 Stat. 498; Federal Water Pollution Control Act Amendments of 1961, Pub. L. 87–88, 75 Stat. 204; Water Quality Act of 1965, Pub. L. 89–234, 79 Stat. 903; Water Quality Improvement Act of 1970, Pub. L. 91–224, 84 Stat. 91.

authorities had to work backward and prove that a particular entity should be held responsible for the problem.[7] Both the original version of the 1948 Act and all amendments enacted before 1972 proved to be ineffective due in part to this backward-looking model. See *EPA* v. *California ex rel. State Water Resources Control Bd.,* 426 U. S. 200, 202 (1976).

By 1972, the WPCA's inadequacy was apparent, and Congress made a fresh start. It amended the WPCA by deleting all its provisions and substituting what is now generally known as the Clean Water Act. The CWA jettisoned the WPCA's retrospective approach and aimed directly at the sources of pollution. A critical component of the CWA scheme is the National Pollutant Discharge Elimination System (NPDES), see *id*., at 204–205, which makes it unlawful to discharge pollutants into covered bodies of water unless authorized by permit. Permits issued under this program may contain several different types of provisions.

Some are known as "effluent limitations," see 33 U. S. C. §1311, which are defined as restrictions on the "quantities, rates, and concentrations of chemical, physical, biological, and other constituents." §1362(11). Section 1311(b)(1), subparagraphs (A) and (B) require compliance with one type of effluent limitations: those that are based on what can be achieved using specified pollution-treatment technologies. See 40 CFR §122.44(a)(1) (2023). In most cases, these technology-based limitations are sufficient, but when they are not, NPDES permits also include water quality-based effluent limitations (WQBELs). 33 U. S. C. §1311(b)(1)(C). These WQBELs, unlike technology-based effluent limitations, are "set without regard to cost or technology availability." *Natural Resources Defense Council* v. *EPA*, 808 F. 3d 556, 565 (CA2 2015); see *Natural Resources*

[7] See §2(d), 62 Stat. 1156–1157; 70 Stat. 504–505; 75 Stat. 208–209; 79 Stat. 909.

Defense Council, Inc. v. *EPA*, 859 F. 2d 156, 208 (CADC 1988) (*per curiam*). Instead, they permit only those discharges that may be made without unduly impairing water quality.

In addition to these effluent limitations, it is common for permits to include requirements that do not set numerical limitations on allowed discharges. One example, which is apparently common in so-called general permits, is a provision demanding that permittees follow certain "best practices" that aim to limit pollution.[8]

Under the NPDES system, permittees have a very strong incentive to comply with all permit terms. For one thing, the CWA gives the EPA a very big "stick." Permittees that do not comply may be hit with enormous civil penalties and may face criminal prosecution for "knowing" or even "negligent" violations. See §§1319(c) and (d); 40 CFR §19.4 (2023). At the same time, the CWA holds out an enticing "carrot." Under what is known as the "permit shield" provision, an entity that adheres to the terms of its permit is deemed to be compliant with the Act. See 33 U. S. C. §1342(k).

B

The case now before us involves a particular type of public wastewater treatment, one that processes both wastewater (water that has been used in a home) and stormwater (rainwater that does not sink into the ground). Many major cities have such systems, and they present special problems. During periods of heavy precipitation, the combination of wastewater and stormwater may exceed the facility's treatment capacity, and the result may be the discharge of untreated water, including raw sewage. See Combined Sewer Overflow (CSO) Control Policy, 59 Fed. Reg.

[8] See Brief for National Association of Home Builders et al. as *Amici Curiae* 1, 11–12.

18689 (1994); EPA, Office of Water, Combined Sewer Overflows: Guidance for Permit Writers, p. 1–1 (1995). This problematic feature of combined facilities was recognized long ago; installing a new system that handles stormwater and wastewater separately is enormously expensive.[9]

To address the problem of CSOs, the EPA adopted its CSO Control Policy, which requires municipalities with combined systems to take prescribed measures and to develop and implement a Long-Term Control Plan. 59 Fed. Reg. 18691. The CSO Policy provides for a two-phase permitting process. *Id.*, at 18696. During phase I, permits require municipalities to implement nine minimum controls and to develop a long-term plan. Then, during phase II, that plan must be implemented. *Ibid.* In 2000, Congress amended the CWA and gave the CSO Control Policy the force of a statute. See 33 U. S. C. §1342(q)(1).

C

The city of San Francisco operates two combined treatment facilities: the Bayside facility, which discharges into San Francisco Bay, and the Oceanside facility, which empties into the Pacific Ocean. The permit at issue in this dispute concerns only the Oceanside facility,[10] which treats water from 250 miles of sewers and serves approximately 250,000 residents. 75 F. 4th 1074, 1082 (CA9 2023).

For many years, the Oceanside facility's NPDES permit was renewed without controversy, but in 2019, the two end-result requirements that San Francisco now challenges were added. *Id.*, at 1084–1085. The first of these prohibits the facility from making any discharge that "contribute[s] to a violation of any applicable water quality standard" for receiving waters. *Id.*, at 1085. The second provides that

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[9] T. Camp, The Problem of Separation in Planning Sewer Systems, 38 J. Water Pollution Control Federation 1959 (1966).

[10] See App. to Pet. for Cert. 80–140.

the City cannot perform any treatment or make any discharge that "create[s] pollution, contamination, or nuisance as defined by California Water Code section 13050." *Ibid.* (internal quotation marks omitted).

The California Regional Water Quality Control Board for the San Francisco Bay Region approved the final Oceanside NPDES permit, and the EPA did the same.[11] *Id.*, at 1088. San Francisco appealed to the EPA's Environmental Appeals Board (EAB), objecting to, among other things, the two new provisions just noted. *City and Cty. of San Francisco*, 18 E. A. D. 322, 325 (2020). The EAB rejected San Francisco's challenge, and the City then filed a petition for review in the Ninth Circuit under 33 U. S. C. §1369(b)(1)(F). 75 F. 4th, at 1088. A divided Ninth Circuit panel denied that petition, holding that §1311(b)(1)(C) authorizes the EPA to impose "any" limitations that seek to ensure that applicable water quality standards are satisfied in a receiving body of water. *Id.*, at 1089–1090. In dissent, Judge Collins argued that the CWA "draws an explicit distinction between the 'limitations' that the agency must devise and impose on a particular permittee's discharges" and the water quality standards themselves. *Id.*, at 1102 (Collins, J., dissenting). The majority, he maintained, erred by making the "'water quality standards' themselves the applicable 'limitation' for an individual discharger." *Ibid.*

We granted certiorari to decide whether the EPA can impose requirements like those at issue. 602 U. S. ___ (2024).

II

Contending that the Ninth Circuit misread §1311(b)(1)(C), San Francisco leads with the argument that

[11] Both the California Regional Water Quality Control Board and the EPA had to approve the NPDES permit because the Oceanside facility discharges into waters that fall under both state and federal jurisdiction. 75 F. 4th 1074, 1082 (CA9 2023) (case below).

all "limitations" imposed under §1311 must qualify as effluent limitations. The statutory text dooms this broad argument. "[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello* v. *United States*, 464 U. S. 16, 23 (1983) (internal quotation marks omitted). We have invoked this canon time and time again. See, *e.g.*, *Gallardo* v. *Marstiller*, 596 U. S. 420, 429–430 (2022); *Salinas* v. *Railroad Retirement Bd.*, 592 U. S. 188, 196 (2021); *Azar* v. *Allina Health Services*, 587 U. S. 566, 576–577 (2019). And it is fatal to San Francisco's argument here. Sections 1311(b)(1)(A) and (B) refer to "effluent limitations," but the very next provision, §1311(b)(1)(C), refers instead to "any more stringent limitation." We cannot believe that Congress omitted the term "effluent" from §1311(b)(1)(C) simply because it wanted to save ink or assumed that regulators and interested parties would understand that the omission of the term was inconsequential.

Other provisions of the CWA support this conclusion by describing §1311 as authorizing the EPA to impose effluent *or other* limitations. See §1341(d) (referring to "effluent limitations and other limitations, under section 1311"); §1365(f) (referring to "effluent limitation[s] or other limitation[s] under section 1311"); §1367(d) (same); see also *National Assn. of Mfrs.* v. *Department of Defense*, 583 U. S. 109, 122 (2018) (interpreting the phrase "effluent limitation or other limitation" in the CWA's judicial review provision, §1369, to encompass both "effluent" limitations and limitations such as "non-numerical operational practice[s]" and "equipment specification[s]").

These reasons convince us that San Francisco's argument is wrong, but if more were needed, it is telling that the City's interpretation would lead to either drastic consequences that the City is unwilling to embrace or a very loose

interpretation of the term "effluent limitation" that would undermine the City's argument. As noted earlier, it is common for permits to contain "narrative" provisions requiring permittees to do such things as following certain "best practices." These provisions do not directly restrict the "quantities, rates, or concentration" of pollutants that a permittee may discharge, and therefore they do not fit easily within the definition of an "effluent limitation." Nevertheless, the City acknowledges their legitimacy, see Brief for Petitioner 15, 33, n. 22, and if that is correct, it must follow either that (1) §1311(b)(1)(C) authorizes the imposition of limitations other than effluent limitations (which would, of course, defeat the City's argument) or (2) the statutory definition of an effluent limitation should be read very loosely (which raises the question why this broad interpretation would not encompass the provisions at issue here). Under either alternative, the City is on perilous ground.

These problems overwhelm any help that the City can derive from the fact that §1311 is titled "Effluent limitations." The title of a statutory provision can inform its interpretation, but it is not conclusive. See *Dubin* v. *United States*, 599 U. S. 110, 120–121 (2023). And here, the title of §1311 is not enough to win the day for the City. Section 1311 is a lengthy provision, and most of its subsections concern effluent limitations. The title "Effluent limitations" provides a rough description of the provision's general sweep, but it cannot be read as doing more than that.

III

In addition to the broad argument discussed above, San Francisco advances a narrower alternative, namely, that even if §1311(b)(1)(C) is not limited to effluent limitations, it "does not authorize EPA to impose NPDES permit requirements that condition permitholders' compliance on whether receiving waters meet applicable water quality

standards." Brief for Petitioner 19. We agree with this argument. As the City maintains, "[t]he text, structure, and pre- and post-enactment context" support this interpretation. *Ibid.*

A

We begin with the text of §1311(b)(1)(C), which, as noted, requires a permit to contain, in addition to "effluent limitations," "any more stringent *limitation*" that is "necessary to *meet*" certain "water quality standards" that are imposed under state law "or any other federal law or regulation"; and "any more stringent *limitation*" that is "required to *implement* any applicable water quality standard established pursuant to this chapter." (Emphasis added.) All the italicized terms in the preceding sentence suggest that the most natural reading of §1311(b)(1)(C) is that it authorizes the EPA to set rules that a permittee must follow in order to achieve a desired result, namely, a certain degree of water quality.

We start with the term "limitation." As used in the relevant context, a limitation is a "restriction or restraint imposed *from without* (as by law[])." Webster's Third New International Dictionary 1312 (1976) (emphasis added). A provision that tells a permittee that it must do certain specific things plainly qualifies as a limitation. Such a provision imposes a restriction "from without." But when a provision simply tells a permittee that a particular end result must be achieved and that it is up to the permittee to figure out what it should do, the direct source of restriction or restraint is the plan that the permittee imposes on itself for the purpose of avoiding future liability. In other words, the direct source of the restriction comes from within, not "from without."

We do not dispute that the term "limitation" is sometimes used in a looser sense, but our task is to ascertain what the term means in the specific context in question. And here,

our interpretation of the meaning of the term "limitation" in §1311(b)(1)(C) must take into account the way in which the term is used in the two preceding statutory subsections, §§1311(b)(1)(A) and (B). In both those provisions, the "limitations" are imposed directly by the EPA, and it is therefore natural to presume that the term has a similar meaning in §1311(b)(1)(C). See, *e.g.*, *McDonnell* v. *United States*, 579 U. S. 550, 568–569 (2016); *Yates* v. *United States*, 574 U. S. 528, 544 (2015) (plurality opinion); A. Scalia & B. Garner, Reading Law 195–198 (2012). So the use of the term "limitation" in §§1311(b)(1)(A) and (B) provides an opening clue that the EPA's interpretation of §1311(b)(1)(C) may be wrong.

The terms "implement" and "meet" point in the same direction. The implementation of an objective generally refers to the taking of actions that are designed "to give practical effect to and ensure of actual fulfillment by concrete measures." Webster's Third New International Dictionary, at 1134. Section 1311(b)(1)(C) tells the EPA to impose requirements to "implement" water quality standards—that is, to "ensure" "by concrete measures" that they are "actual[ly]" "fulfill[ed]." Simply telling a permittee to ensure that the end result is reached is not a "concrete plan" for achieving the desired result. Such a directive simply states the desired result; it does not implement that result.

Section 1311(b)(1)(C)'s other directive—that the EPA impose limitations that are "necessary to meet" certain water quality standards–is similar. The verb to "meet," in the sense operative here, means "to comply with; fulfill; satisfy" or "to come into conformity with." Random House Unabridged Dictionary 1195 (2d ed. 1987). Thus, a limitation that is "necessary to meet" an objective is most naturally understood to mean a provision that sets out actions that must be taken to achieve the objective.

In assessing what the directives in §1131(b)(1)(C) mean,

it is helpful to consider the use of the relevant terms in everyday speech. Suppose a State requires that all schools "meet" certain standards of math proficiency, and suppose the principal of a school calls a faculty meeting and instructs the teachers to "implement" those standards. The principal's obvious expectation would be that the teachers would devise and "implement" a plan to make sure that the desired end is "met." It is unlikely that the principal would be happy if the teachers simply told their students that a state math proficiency test would be administered and that they should make sure they passed. That would not constitute the *implementation* of the desired end, *i.e.*, *meeting* the State's standard of math proficiency.

Attempting to counter this interpretation, the EPA stresses §1311(b)(1)(C)'s use of the term "any" in the phrase "any more stringent limitation," arguing that "any" is a very broad term. That argument misconstrues the term's effect. The adjective "any" is indeed a broad term, but it cannot expand the reach of the noun it modifies. A reference to "any mammal" would capture all mammals, but it would not encompass a bird or fish. Similarly, §1311(b)(1)(C) encompasses any *limitation* that is necessary to meet or implement water quality standards, but not provisions that do not fall within that category.

B

The text of the CWA militates against the Government's interpretation of §1311(b)(1)(C) for yet another reason that stands out when the history of federal water pollution control legislation is kept in mind. Under the Government's reading, a permittee may be held liable if the quality of the water into which it discharges pollutants fails to meet water quality standards. Before 1972, the WPCA contained a provision that did exactly that in no uncertain terms. But when Congress overhauled the WPCA in 1972, it scrapped that provision and did not include in the new version of the

Act anything remotely similar. Under these circumstances, the absence of a comparable provision in the CWA is telling.

This glaring void resulted from a deliberate and prominent policy choice. As recounted earlier, before 1972, the basic structure of federal enforcement efforts was a lawsuit seeking to hold a polluter accountable for contributing to what amounted to or was expressly termed a violation of water quality standards. Building on the enforcement model originally adopted in the 1948 Act, the 1965 amendments of the WPCA required the adoption of "water quality standards," and they then provided that "violators" of these standards were subject to suit by the United States. 79 Stat. 907–909. That is where matters stood until 1972 when Congress again amended the WPCA by deleting its entire text and substituting what is now popularly called the CWA.

This overhaul of the WPCA continued to require the adoption of water standards, 33 U. S. C. §1313, but the revised statutory text conspicuously omitted any provision authorizing either the United States or any other party to bring suit against an entity whose discharges were contributing to a violation of those standards.

This omission cannot be viewed as accidental or inconsequential. The repealed enforcement provision went to the heart of what Congress viewed as a major defect in the old scheme. As we have noted, the 1972 overhaul aimed to facilitate enforcement by "making it unnecessary to work backward from an overpolluted body of water to determine which point sources [were] responsible" and thus subject to suit. *EPA* v. *California*, 426 U. S., at 204. Instead, the amended WPCA sought to achieve "acceptable quality standards" by means of "direct restrictions" on polluters. *Ibid.* The Government's interpretation would undo what Congress plainly sought to achieve when it scrapped the

WPCA's backward-looking approach.[12]

C

It is a "'fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.'" *Utility Air Regulatory Group* v. *EPA*, 573 U. S. 302, 320 (2014) (quoting *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U. S. 120, 133 (2000)). Thus, in construing §1311, we must also take into account the broader statutory scheme, and at least two features of that scheme point in favor of our interpretation.

1

The first is the so-called "permit shield" provision, 33 U. S. C. §1342(k), under which a permittee is deemed to be in compliance with the CWA if it follows all the terms in its permit. This protection is very valuable because violations of the CWA, even if entirely inadvertent, are subject to hefty penalties. The CWA imposes a regime of strict civil liability, see, *e.g.*, *United States* v. *Allegheny Ludlum Corp.*, 366 F. 3d 164, 174 (CA3 2004), and a party that violates a permit term may be fined up to $25,000 per day per violation. §1319(d). As San Francisco explains, it may take months to gather the information necessary to detect a drop below the applicable water quality standards, see Tr. of

[12] The dissent suggests that the 1972 Congress was displeased with the prior enforcement regime because it was too burdensome for the Government, not because it was unfair for entities against which enforcement actions were brought. See *post*, at 8–9 (BARRETT, J., dissenting in part). But whether or not this assessment of Congress's intent is correct, what matters for present purposes is that Congress deliberately deleted a longstanding provision that expressly authorized what the dissent wishes to perpetuate. The idea that Congress sought to preserve the old enforcement mechanism by squirreling it away in §1311(b)(1)(B)'s inapt language defies belief.

Oral Arg. 16, and after substandard water quality is detected, it may take some time to devise and implement appropriate corrective measures. Indeed, there may be occasions (such as the multiple-discharger situation we discuss below, see *infra* this page and 16), when there is nothing a permittee can do to bring about a prompt correction. For these reasons, the potential civil penalties for noncompliance can mount up and reach enormous sums. In a pending suit against San Francisco regarding the Bayside facility, the penalties sought are $10 billion. See Tr. of Oral Arg. 102. In addition to all this, a permittee who is found to have acted "knowingly" or even "negligently" may be criminally prosecuted. §1319(c).

Because of the harsh penalties for violating the terms of a permit, the permit shield is invaluable. Because of it, a discharger that complies with all permit conditions can rest assured that it will not be penalized. But the benefit of this provision would be eviscerated if the EPA could impose a permit provision making the permittee responsible for any drop in water quality below the accepted standard. A permittee could do everything required by all the other permit terms. It could devise a careful plan for protecting water quality, and it could diligently implement that plan. But if, in the end, the quality of the water in its receiving waters dropped below the applicable water quality levels, it would face dire potential consequences. It is therefore exceedingly hard to reconcile the Government's interpretation of §1311(b)(1)(C) with the permit shield. And contrary to the Government's contention, the possibility that a court might ultimately exercise its "broad discretion" to mitigate penalties, see Brief for Respondent 44 (internal quotation marks omitted), is not enough to make up for disarming the shield.

2

One final structural feature cements the case against the EPA's interpretation: the absence of any provision dealing

with the problem that arises when more than one permittee discharges into a body of water with substandard water quality. As previously explained, it is hard to believe that the 1972 Congress used §1311(b)(1)(C) to perpetuate (in camouflaged form) the backward-looking enforcement scheme in the prior version of the WPCA. And it is even harder to accept the proposition that Congress did that without setting out any method for dealing with the multi-discharger problem. "[T]here may be dozens or even hundreds of . . . permitted and unpermitted discharges into the same waterbody." Brief for National Mining Association et al. as *Amici Curiae* 9. In such situations, the pre-1972 enforcement scheme made it necessary for federal authorities to "unscramble the polluted eggs after the fact." *Wilmington* v. *United States*, 157 Fed. Cl. 705, 710 (2022). By 1972, it was recognized that this was impractical, yet the EPA maintains that Congress retained the backward-looking approach without making any attempt to address the vexing multiple-discharger problem.

The EPA's only response to this argument is to note that in this case the Oceanside facility is the only entity that discharges into the relevant area of the Pacific Ocean. But the multiple-discharger problem goes to the meaning of §1311(b)(1)(C), and that provision cannot mean one thing in a single-discharger case and another when there are multiple dischargers.[13]

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[13] In response to our arguments about the two structural features discussed above, the dissent contends that our interpretation of §1311(b)(1)(C) is not necessary to protect permittees because even without that interpretation a permittee subjected to an end-result provision could challenge it as arbitrary and capricious. See *post*, at 10–12 (opinion of BARRETT, J.). Of course, that response is no answer to our argument that §1311(b)(1)(C) does not authorize end-result provisions in the first place. And in any event, it is not clear that individual arbitrary-and-capricious challenges would provide adequate protection. Unless some form of judicial relief could be obtained before an end-result provision

IV

Before concluding, we briefly address three additional arguments advanced by the Government.

A

The EPA maintains that the imposition of end-result limitations is the best course of action when "the information necessary to develop additional 'effluent limitations' is unavailable." Brief for Respondent 41. And it complains that it should not bear the burden of determining what a permittee should do to protect water quality because a permittee is likely to have better access to necessary information and a superior understanding of the operation of its facility and the changes that could be made to provide further protection for water quality.

We are not moved by this argument. For one thing, it appears that the EPA and state permitting authorities have used end-result requirements routinely, not just when a permit holder has failed to provide necessary information. See *In re Lowell*, 18 E. A. D. 115, 176 (EAB 2020); App. to Pet. for Cert. 519. And in any event, the EPA possesses the expertise (which it regularly touts in litigation) and the resources necessary to determine what a permittee should do. It is also armed with ample tools to deal with situations in which a permittee is slow to provide needed information or is otherwise uncooperative. The EPA can set a schedule for the provision of information and can refuse to issue a permit until the permittee complies. If necessary, it can make use of its emergency powers. See 33 U. S. C. §1364.[14]

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took effect, a permittee's potential liability could reach astronomical proportions before the challenge was finally resolved.

[14] The dissent argues that end-result provisions are in the best interests of regulated entities because the alternative may be delay in the issuance of permits. *Post*, at 14 (opinion of BARRETT, J.). If that were true, one would expect regulated parties to favor such provisions, but none has done so. On the contrary, a long list of municipalities and other

B

The EPA contends that Congress authorized the use of end-result requirements when it codified the Agency's CSO Policy in 1994, see 33 U. S. C. §1342(q)(1). And in support of that argument, it cites language in the policy that pertains to phase I permits. But the permit in question here is a phase II permit, and the EPA does not claim that its interpretation is supported by any CSO Policy provision relating to such permits.[15]

In any event, the phase I language to which the EPA points does not authorize the imposition of end-result requirements. The policy states that a phase I permit should require a permittee to "[c]omply with applicable [water quality standards] . . . expressed in the form of a narrative

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permittees support San Francisco's position. See *supra*, at 2; *infra*, at 19–20. These sophisticated entities are better positioned than the dissent to judge what is good for them.

[15] In fact, the CSO Control Policy specifies exactly what a phase II permit should contain, and those requirements are inconsistent with the end-result limitation that the EPA imposes here. Under the policy, a phase II should contain: (1) "[r]equirements to implement the technology-based controls"; (2) "[n]arrative requirements which insure [*sic*] that the selected CSO controls are implemented, operated and maintained as described in the long-term CSO control plan"; (3) "[w]ater quality-based effluent limitations . . . requiring, at a minimum, compliance with . . . numeric performance standards for the selected CSO controls"; (4) "[a] requirement to implement, with an established schedule, the approved post-construction water quality assessment program"; (5) "[a] requirement to reassess overflows to sensitive areas in those cases where elimination or relocation of the overflows is not physically possible and economically achievable"; (6) "[c]onditions establishing requirements for maximizing the treatment of wet weather flows"; and (7) "[a] reopener clause authorizing the NPDES authority to reopen and modify the permit upon determination that the CSO controls fail to meet [water quality standards] or protect designated uses." 59 Fed. Reg. 18696. Again, although the purpose is to improve the quality of the relevant bodies of water, these permitting components all relate to the dischargers' behavior and the permitting authority's supervision of that behavior.

limitation." 59 Fed. Reg. 18696 (emphasis added). Our decision does not rule out "narrative limitations." "Limitations," as we understand the term, see *supra*, at 10–11, are permitted under §1311(b)(1)(C), and limitations may be expressed in both numerical and non-numerical (*i.e.*, "narrative") form.

Attempting to read more into the phase I language, the EPA cites guidance it issued in 1995, but Congress did not codify that guidance, and we are not obligated to accept administrative guidance that conflicts with the statutory language it purports to implement. See *Loper Bright Enterprises* v. *Raimondo*, 603 U. S. 369 (2024). We also note that other guidance issued by the EPA is arguably inconsistent. See EPA, Combined Sewer Overflows: Guidance for Permit Writers, at A–1 to A–7.

C

Finally, the EPA contends that the rejection of its interpretation of 33 U. S. C. §1311(b)(1)(C) would have disruptive consequences for businesses that rely on "general permits." Brief for Respondent 38; Tr. of Oral Arg. 83. (General permits cover an entire category of point sources in a given area. See *South Fla. Water Management Dist.* v. *Miccosukee Tribe*, 541 U. S. 95, 108, n. * (2004).) Such permits are important for certain businesses, such as home builders, other construction companies, and certain agricultural enterprises, see Brief for National Association of Home Builders et al. as *Amici Curiae* 1, 11, but no such company has submitted a brief supporting the EPA's interpretation. On the contrary, a brief filed on behalf of such companies urges us to reject the EPA's position. *Id.*, at 4–7. What is important, these companies tell us, are narrative limitations other than end-result requirements, and they specifically cite provisions demanding compliance with "best-management practices" and "operational require-

ments and prohibitions." Our decision allows such requirements.

V

In sum, we hold that §1311(b)(1)(C) does not authorize the EPA to include "end-result" provisions in NPDES permits. Determining what steps a permittee must take to ensure that water quality standards are met is the EPA's responsibility, and Congress has given it the tools needed to make that determination. If the EPA does what the CWA demands, water quality will not suffer.

* * *

The judgment of the Ninth Circuit is reversed.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 23–753

CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA, PETITIONER *v.* ENVIRONMENTAL PROTECTION AGENCY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[March 4, 2025]

JUSTICE BARRETT, with whom JUSTICE SOTOMAYOR, JUSTICE KAGAN, and JUSTICE JACKSON join, dissenting in part.

The Environmental Protection Agency issued San Francisco a permit allowing it to discharge pollutants from its combined sewer system into the Pacific Ocean. The permit, of course, does not give the city free rein, and among its conditions are prohibitions on discharges that contribute to a violation of applicable water quality standards. San Francisco challenges these conditions on the ground that EPA lacks statutory authority to impose them. The city is wrong. The relevant provision of the Clean Water Act directs EPA to impose "any more stringent limitation" that is "necessary to meet . . . or required to implement any applicable water quality standard." 33 U. S. C. §1311(b)(1)(C). Conditions that forbid the city to violate water quality standards are plainly "limitations" on the city's license to discharge.

Notwithstanding the straightforward statutory language, the Court sides with San Francisco. I join Part II of its opinion, which rightly rejects the city's primary argument. In Part III, however, the Court embraces an equally weak theory—that the permit's restrictions are not "limitations," as that word is ordinarily used. The Court's analysis

is contrary to the text, so I respectfully dissent in part.

I

A

Under the Clean Water Act, "the discharge of any pollutant by any person" is unlawful except as expressly authorized. 33 U. S. C. §1311(a). As relevant here, authorization comes in the form of "National Pollutant Discharge Elimination System (NPDES) permits," which EPA (or, in some circumstances, a State) may issue to allow discharges. Before issuing a permit, however, the Agency must ensure that "such discharge will meet . . . all applicable requirements" under several different statutory provisions. §1342(a)(1).

Section 1311(b) is one such provision. It works in two steps for permits like San Francisco's. *First*, under §1311(b)(1)(A), EPA must set "effluent limitations" that "shall require the application of the best practicable control technology currently available." "'[E]ffluent limitation'" refers to a restriction "on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources" into waters subject to EPA's jurisdiction. §1362(11).

Second, under §1311(b)(1)(C), EPA must impose "any more stringent limitation, including those necessary to meet water quality standards, . . . or required to implement any applicable water quality standard." Water quality standards—which are devised by the States and subject to federal approval—"consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses." §1313(c)(2)(A). Effluent limitations, standing alone, are not always sufficient to protect the desired water quality, as set forth in the water quality standards. So point sources, "'despite individual compliance with effluent limitations, may be further regulated to prevent water quality from falling below acceptable

levels.'" *Arkansas* v. *Oklahoma*, 503 U. S. 91, 101 (1992) (quoting *EPA* v. *California ex rel. State Water Resources Control Bd.*, 426 U. S. 200, 205, n. 12 (1976)). Importantly, the Act does not itself require dischargers to heed water quality standards; the standards are enforceable only insofar as they are incorporated into permit conditions under §1311(b)(1)(C).

Section 1311(b) therefore sets forth a coherent regime. In the first instance, EPA regulates water pollution through technology-based effluent limitations that restrict the "quantities, rates, and concentrations" of harmful materials that permittees may discharge. §1362(11). But when the technology-based effluent limitations are insufficient to ensure that the water quality standards are met, EPA has supplemental authority to impose further limitations.

B

As the Court explains, San Francisco operates a combined sewer system, which transports sewage and stormwater runoff via the same conduits. See *ante*, at 5–7. Such systems occasionally overflow in wet weather—and when they do, they discharge both stormwater and untreated sewage into waters potentially regulated by the Clean Water Act. 59 Fed. Reg. 18689 (1994). As relevant here, "combined sewer overflow" events from one component of San Francisco's sewer system result in the discharge of pollutants into the Pacific Ocean via the Southwest Ocean Outfall, which is located within EPA's jurisdiction, 3.3 nautical miles off the coast of San Francisco. These discharges are presumptively unlawful under §1311(a) and hence require a permit.

The city's NPDES permit contains both the technology-based effluent limitations required by §1311(b)(1)(A) and additional limitations to protect the water quality standards under §1311(b)(1)(C). This latter category includes two "receiving water limitations"—requirements defining

the permissible discharge by reference to its effect on the quality of the waters that receive it, rather than by reference to the nature of the discharge itself. (These are what the Court calls "'end-result' requirements." *Ante*, at 2.) The first states that San Francisco "shall not cause or contribute to a violation of any applicable water quality standard." App. to Pet. for Cert. 97. The second provides that "[n]either the treatment nor the discharge of pollutants shall create pollution, contamination, or nuisance" as defined by the California Water Code. *Id.*, at 339.

The city's permit thus tracks the structure of §1311(b). It restrains discharges initially through technology-based effluent limitations, as required by §1311(b)(1)(A). But because the effluent limitations may be insufficient to ensure that California's water quality standards are met, the permit contains supplemental limitations, as required by §1311(b)(1)(C). The concern that the technology-based effluent limitations may fall short is on display in this case—discharges from components of San Francisco's sewer system have allegedly led to serious breaches of the water quality standards, such as "discoloration, scum, and floating material, including toilet paper, in Mission Creek." Complaint in *United States* v. *City and County of San Francisco*, No. 3:24–cv–02594 (ND Cal., May 1, 2024), ECF Doc. 1, p. 22. The receiving water limitations imposed under §1311(b)(1)(C) are included to ensure that such breaches do not occur.

II

A

San Francisco dedicates almost all its briefing to the proposition that the receiving water limitations are unlawful because §1311(b)(1)(C) allows only effluent limitations. In other words, San Francisco reads the phrase "any more stringent limitation" to mean "any more stringent *effluent* limitation." As the Court explains, this argument is flatly

inconsistent with the text of §1311(b). See *ante*, at 7–9. In my view, the failure of that argument should have ended this case.

The Court continues, however, with a theory largely of its own making. Whatever "any more stringent limitation" may mean, the Court says, it does not authorize EPA to direct permittees to comply with the water quality standards.

This conclusion is puzzling. The entire function of §1311(b)(1)(C) is to ensure that permitted discharges do not violate state water quality standards. And as discussed above, the provision gives EPA broad authority to achieve that aim through conditions imposed in NPDES permits. Why would that broad authority not allow EPA to tell permittees that they must not cause or contribute to a violation of the very standards that §1311(b)(1)(C) serves to safeguard?

The answer, according to the Court, is that a restriction does not count as a "limitation" if the permittee must identify the steps necessary to comply with it. *Ante*, at 10. San Francisco's permit only authorizes discharges that do not degrade water quality below the applicable standard. It is up to the city, however, to formulate a plan to achieve that result. The city's plan, the Court asserts, is a "limitation" on its discharges, but the permit condition is not. See *ibid.* As best I can tell, the Court thinks that only the "direct source of restriction or restraint"—apparently, the most specific restriction—counts as a "limitation." *Ibid.*

The Court offers nothing to substantiate this proposition, and it is wrong as a matter of ordinary English. It is commonplace for "limitations" to state "that a particular end result must be achieved and that it is up to the [recipient] to figure out what it should do." *Ibid.* For example, a company could impose spending "limitations" by requiring each branch to spend no more than its allotted budget, while still leaving branch managers flexibility to determine how to allocate those funds. A doctor could impose a "limitation" on

a patient's diet by telling the patient that she must lose 20 pounds over the next six months, even if the doctor does not prescribe a specific diet and exercise regimen. And an airline could impose a "limitation" on the weight of checked bags, even though it does not tell passengers what items to pack. "Limitations" can be general as well as specific, and general limitations can call for more specific ones.

In this context, "limitation" is simply a synonym for "[a] restrictive condition." Funk & Wagnalls New Standard Dictionary of the English Language 1437 (1952). And conditions can be stated at many levels of generality—including in terms of end results. A college may condition a scholarship on the student's maintenance of a minimum GPA. A homeowner may condition payment for a new roof on the contractor's satisfaction of industry standards. An employer may condition job perks on the employee's performance. In each example, the condition is a limitation on a benefit or payment. There are strings attached.

The Court also misconstrues §1311(b)(1)(C)'s reference to limitations that are "necessary to meet" or "required to implement" the water quality standards. As for the former phrase, "necessary to meet" does not imply anything about the specificity or concreteness of the limitations adopted by EPA. Rather, the limitations on San Francisco's permit are "necessary to meet" the water quality standards because without them, the standards would not bind the city. The limitations thus ensure that San Francisco will "'comply with,'" "'fulfill,'" "'satisfy,'" or "'come into conformity with'" the water quality standards. *Ante*, at 11 (quoting Random House Unabridged Dictionary 1195 (2d ed. 1987)).

Nor does the phrase "required to implement" help the Court. "Implement," the Court says, generally means "'to give practical effect to and ensure of actual fulfillment by concrete measures.'" *Ante*, at 11. That is true but incomplete. The full definition reads: "to carry out: ACCOMPLISH, FULFILL, . . . *esp*.: to give practical effect to and ensure of

actual fulfillment by concrete measures." Webster's Third New International Dictionary 1134 (1976). So while the word is often used in the sense of taking "concrete measures," such measures are not necessary to satisfy the definition of "implement."

Regardless, the receiving water limitations "implement" the water quality standards in both the broad and narrow senses of the word. They are required to "carry out[,] accomplish, [or] fulfill" the standards: When effluent limitations fall short, discharges from the city's combined sewer system will otherwise degrade water quality below the applicable standard. *Ibid.* (capitalization altered). And the limitations are "concrete measures," *ibid.*, because they are the means by which EPA "implement[s] any applicable water quality standard," §1311(b)(1)(C). They give the standards "practical effect" by making them enforceable. *Id.*, at 1134.

There is no getting around it: The receiving water limitations are "limitations." If they are vague or unreasonable, they are vulnerable to challenge on one or both of those grounds. See, *e.g.*, *Natural Resources Defense Council* v. *EPA*, 808 F. 3d 556, 578 (CA2 2015) (invalidating a receiving water limitation as arbitrary and capricious). But even a vague or unreasonable limitation is still a "limitation."

B

With the text of §1311(b)(1)(C) against it, the Court tries to marshal support for its approach from the Clean Water Act's history, as well as from what the Court describes as the "broader statutory scheme." *Ante*, at 12–16. Neither helps.

1

As for the statutory history: Advancing a specific theory of the congressional intent behind the Clean Water Act, the Court contends that EPA's interpretation would revive the

"backward-looking" policy regime that the Act was designed to replace. See *ante*, at 12–14. Before the Act, the United States enforced federal water pollution laws primarily through abatement actions. See 33 U. S. C. §1160 (1970 ed.). Though the Act abolished this cause of action, the Court claims that receiving water limitations function in essentially the same way. Just as the United States did when it brought abatement suits, EPA would have to "'work backward from an overpolluted body of water'" to combat water pollution. *Ante*, at 13 (quoting *State Water Resources Control Bd.*, 426 U. S., at 204). Thus, the Court insists, the use of receiving water limitations would "undo" the Act's shift from abatement suits to "'direct restrictions' on polluters." *Ante*, at 13 (quoting *State Water Resources Control Bd.*, 426 U. S., at 204).

Of course, no theory of "what Congress plainly sought to achieve," *ante*, at 13–14, could justify an implausible interpretation of §1311(b)(1)(C). Here, however, the Court does not even deliver on the claim that its account "plainly" tracks Congress's goal. *Ante*, at 13–14. Because receiving water limitations do not actually replicate the old abatement regime, the Court's rendition is not the only (much less the most obvious) explanation for the statutory before and after. There is another explanation, and it is one in which receiving water limitations fit right in.

Under the old system, the United States could bring abatement actions only after the pollution had already occurred. See 33 U. S. C. §1160(c)(5) (1970 ed.). A glaring problem with this approach is that an *ex post* enforcement regime does not adequately deter polluters or prevent pollution. Making matters worse, this regime involved "cumbrous enforcement procedures" that made it next to impossible to bring abatement actions. *State Water Resources Control Bd.*, 426 U. S., at 202; see also 33 U. S. C. §1160 (1970 ed.) (requiring, prior to an abatement action, that the

United States hold a conference of the relevant state agencies, then provide the state agency six months to take remedial action, then call a public hearing with the state agency and the discharger); K. Murchison, Learning From More Than Five-and-a-Half Decades of Federal Water Pollution Control Legislation: Twenty Lessons for the Future, 32 Env. Aff. 527, 534 (2005) ("According to a report prepared by the Senate Committee on Public Works, the federal government initiated only one enforcement action under the Federal Water Pollution Control Act prior to 1970").

Congress chose a different regulatory model when it adopted the Act in 1972. The Act renders all discharges presumptively unlawful. Then, under the current *ex ante* permitting regime, EPA authorizes only those discharges that comply with the Act. Should a permittee fail to comply with the terms of its permit, EPA has broad authority to sue. See 33 U. S. C. §§1319(b)–(d) (authorizing civil actions for injunctive relief, civil penalties for violations, and in some instances criminal sanctions).

The receiving water limitations imposed under §1311(b)(1)(C) are entirely consistent with this scheme. Again, the technology-based effluent limitations imposed under §1311(b)(1)(A) do the primary work of gating discharges at the front end to minimize pollution. The §1311(b)(1)(C) limitations guard against any residual risk that discharges will violate the water quality standards. Because these limitations supplement rather than replace the technology-based effluent limitations, there is no risk that broadly worded receiving water limitations will recreate the ineffective abatement regime that prevailed prior to 1972.

Furthermore, the receiving water limitations operate within the broader context of the Act's permitting regime. These permits impose a *prospective* requirement on permittees to comply with permit conditions. Under the old regime, a discharger could take an approach of "pollute first

and apologize later," secure in the knowledge that an abatement suit was unlikely and that such a suit would at most allow judgment to "secur[e] abatement of any pollution proved." 33 U. S. C. §1160(h) (1970 ed.). A permittee who violates a permit condition, by contrast, necessarily exposes itself to enforcement actions by EPA, as well as potential penalties. See 33 U. S. C. §§1319(b)–(d). Receiving water limitations, like any other permit condition, thus operate as "'direct restrictions' on polluters." *Ante*, at 13 (quoting *State Water Resources Control Bd.*, 426 U. S., at 204).

2

The Court also claims that the receiving water limitations are inconsistent with two features of the "broader statutory scheme." *Ante*, at 14–16. *First*, it contends that the receiving water limitations are at odds with the permit shield provision because violations of the permit condition (and the attendant liability) are hard to predict. *Ante*, at 14–15. *Second*, it argues that the Clean Water Act is silent about the problem of multiple dischargers into the same body of water—and if the Act allowed EPA to condition a permit on maintaining water quality standards, the Court says, it surely would have spelled out how to deal with such an obvious complication. *Ante*, at 15–16. Both of these arguments boil down to the Court's concern that receiving water limitations might be unfair to permittees. In some circumstances, they might be. But any unfairness should be addressed through arbitrary-and-capricious challenges—not a statutory rewrite.

Start with the permit shield provision. Under §1342(k), compliance with the terms of a permit "shall be deemed compliance" with various substantive provisions of the Act, thereby shielding permit holders from liability. The Court insists that receiving water limitations like those in the city's permit would "eviscerat[e]" that benefit by failing to provide fair notice. *Ante*, at 14–15.

The permit shield provision, however, serves the specific role of immunizing permittees that *comply* with a permit. See §1342(k). For instance, it "insulate[s] permit holders from changes in various regulations during the period of a permit" and "relieve[s] them of having to litigate in an enforcement action the question whether their permits are sufficiently strict." *E. I. du Pont de Nemours & Co.* v. *Train*, 430 U. S. 112, 138, n. 28 (1977). The receiving water limitations do not eliminate that benefit. It remains true that San Francisco cannot be sued under the theory that the city's permit is insufficient to ensure compliance with the Act.

Really, the Court's argument reduces to the broader policy concern that it may be difficult for regulated entities to comply with receiving water limitations and that they may lack adequate notice of a violation. But again, that concern goes to the question whether a particular receiving water limitation is rational. If a permittee cannot reasonably determine how to comply with a receiving water limitation, then the permit condition may be invalidated as arbitrary and capricious. (In fact, San Francisco made arbitrary-and-capricious arguments below, but the Ninth Circuit rejected them; the city did not seek this Court's review of that issue. See 75 F. 4th 1074, 1092–1093 (2023).) And as EPA acknowledged at oral argument, the Agency "may not impose limitations of any kind that are unconstitutionally vague." Tr. of Oral Arg. 51. These concerns do not speak to the relevant question here, which is whether receiving water limitations comport with the Act.

The Court is also wrong to suggest that receiving water limitations are categorically impermissible because there may be multiple dischargers into one body of water in some circumstances. See *ante*, at 15–16. It makes little sense to say that an agency *always* lacks authority to take a certain action just because the action would be unreasonable in some scenarios. And as the Court itself recognizes, there is

no multiple-discharger problem here: San Francisco is the only significant discharger at the Southwest Ocean Outfall. *Ante*, at 16. If EPA does start imposing receiving water limitations in contexts where permittees cannot control the quality of the receiving waters—such as where there are multiple dischargers—then, again, the permittee can bring an arbitrary-and-capricious challenge.

3

Finally, the Court downplays the valuable uses of receiving water limitations. To begin, EPA imposes such limitations when the Agency "lacks the information necessary to develop more tailored limitations." Tr. of Oral Arg. 51. That is the case here: San Francisco has consistently failed to update its Long-Term Control Plan for managing combined sewer overflows. See 75 F. 4th, at 1095 (observing that San Francisco has not updated its plan since 1991). By imposing receiving water limitations, EPA was nevertheless able to issue a permit to San Francisco while complying with the Clean Water Act.

The Court does not explain what other course of action EPA could take. Instead, it states, without citation, that "EPA possesses the expertise . . . and the resources necessary to determine what a permittee should do." *Ante*, at 17. This bare assertion simply ignores the obvious problem—how is EPA expected to deploy its expertise when it lacks the basic information necessary to make a decision? The Court also suggests that the Agency could refuse to issue a permit until the applicant provides the necessary information. *Ibid.* But this gives the game away: The entire point of EPA's argument is that it is preferable for EPA to impose broadly worded conditions in its permits than to deny permits altogether and potentially shut down San Francisco's sewer system. Nor can EPA simply "make use of its emergency powers" when permittees fail to provide necessary information. *Ibid.* Such powers are available

only when there is "imminent and substantial endangerment to the health of persons or to . . . the livelihood of . . . persons." §1364(a). As the name "emergency" suggests, these powers provide a limited avenue for the Agency to sue in response to a crisis. They do not provide a solution to the problem of non-compliant permittees.

Receiving water limitations are also useful when EPA issues general permits to broad categories of dischargers (such as for construction projects). See *South Fla. Water Management Dist.* v. *Miccosukee Tribe*, 541 U. S. 95, 108, n. (2004) (observing that such "permits greatly reduce . . . administrative burden by authorizing discharges from a category of point sources within a specified geographic area"). In lieu of individualized and prescriptive permitting conditions—which would take time to craft and with which small businesses might have difficulty complying—EPA instead allows the permittee to proceed under more general language. EPA can therefore issue the permit quickly and give responsible permittees flexibility to choose how to comply with the permit.

After today, the alternative for entities seeking a general permit is not for EPA to issue the permit without the §1311(b)(1)(C) limitation. Instead, the alternative is for the permit to be delayed or even denied. See Tr. of Oral Arg. 83 (If the Court "take[s] away [EPA's] ability to rely on these sorts of prohibitions," then the Agency is "going to need to ask for more information because it's only with that information" that the Agency can "develop more tailored limitations"). Section 1311(b)(1)(C) is not optional; EPA is required to issue the limitations necessary to ensure that the water quality standards are met. So taking a tool away from EPA may make it harder for the Agency to issue the permits that municipalities and businesses need in order for their discharges to be lawful.

The Court dismisses this concern, noting that "no . . .

company has submitted a brief supporting . . . EPA's interpretation." *Ante*, at 19. But there is no reason to think that the sampling of trade associations from which this Court happens to hear reflects the views of all potentially affected parties. And in any event, neither the cited *amicus* brief nor the Court itself has any response to EPA's straightforward point: If the Agency must impose individualized conditions for each permittee under §1311(b)(1)(C), then it will be more difficult and more time consuming for the Agency to issue permits.

* * *

Receiving water limitations are not categorically inconsistent with the Clean Water Act. Because the Court holds otherwise, I respectfully dissent in part.

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

SEVEN COUNTY INFRASTRUCTURE COALITION ET AL. *v.* EAGLE COUNTY, COLORADO, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23–975. Argued December 10, 2024—Decided May 29, 2025

Under federal law, new railroad construction and operation must first be approved by the U. S. Surface Transportation Board. 49 U. S. C. §10901. In 2020, the Seven County Infrastructure Coalition applied to the Board for approval of an 88-mile railroad line connecting Utah's oil-rich Uinta Basin to the national freight rail network, facilitating the transportation of crude oil to refineries along the Gulf Coast. As part of its project review, the Board prepared an environmental impact statement (EIS) that addressed significant environmental effects of the project and identified feasible alternatives that could mitigate those effects, as required by the National Environmental Policy Act (NEPA). The Board issued a draft EIS and invited public comment. After holding six public meetings and collecting more than 1,900 comments, the Board prepared a 3,600-page EIS that analyzed numerous impacts of the railway's construction and operation. Relevant here, the EIS noted, but did not fully analyze, the potential environmental effects of increased upstream oil drilling in the Uinta Basin and increased downstream refining of crude oil. The Board subsequently approved the railroad line, concluding that the project's transportation and economic benefits outweighed its environmental impacts. Petitions challenging the Board's action were filed in the D. C. Circuit by a Colorado county and several environmental organizations. The D. C. Circuit found "numerous NEPA violations arising from the EIS." 82 F. 4th 1152, 1196. Specifically, the D. C. Circuit held that the Board impermissibly limited its analysis of the environmental effects from upstream oil drilling and downstream oil refining projects, concluding that those effects were reasonably foreseeable impacts that the EIS should have analyzed more extensively. Based on the deficiencies it

found in the EIS, the D. C. Circuit vacated both the EIS and the Board's final approval order.

Held: The D. C. Circuit failed to afford the Board the substantial judicial deference required in NEPA cases and incorrectly interpreted NEPA to require the Board to consider the environmental effects of upstream and downstream projects that are separate in time or place from the Uinta Basin Railway. Pp. 6–22.

(a) NEPA ensures that agencies and the public are aware of the environmental consequences of certain proposed infrastructure projects. As a purely procedural statute, NEPA "does not mandate particular results, but simply prescribes the necessary process" for an agency's environmental review of a project. *Robertson* v. *Methow Valley Citizens Council*, 490 U. S. 332, 350. Some federal courts reviewing NEPA cases have assumed an aggressive role in policing agency compliance with NEPA, and have not applied NEPA with the judicial deference demanded by the statutory text and the Court's cases.

When, as here, a party argues that an agency action was arbitrary and capricious due to a deficiency in an EIS, the "only role for a court" is to confirm that the agency has addressed environmental consequences and feasible alternatives as to the relevant project. *Strycker's Bay Neighborhood Council, Inc.* v. *Karlen*, 444 U. S. 223, 227. Further, the adequacy of an EIS is relevant only to the question of whether an agency's final decision (here, to approve the railroad project) was reasonably explained.

Judicial deference in NEPA cases extends to an agency's determination of what details are relevant in an EIS. While NEPA requires an EIS to be "detailed," 42 U. S. C. §4332(2)(C), and the meaning of "detailed" is a legal question, see *Loper Bright Enterprises* v. *Raimondo*, 603 U. S. 369, 391–392, what details need to be included in any given EIS is a factual determination for the agency. The textual focus of NEPA is the "proposed action"—the project at hand—not other separate projects. §4332(2)(C). Courts should defer to agencies' discretionary decisions about where to draw the line when considering indirect environmental effects and whether to analyze effects from other projects separate in time or place. See *Department of Transportation* v. *Public Citizen*, 541 U. S. 752, 767. In sum, when assessing significant environmental effects and feasible alternatives for purposes of NEPA, an agency will invariably make a series of fact-dependent, context-specific, and policy-laden choices about the depth and breadth of its inquiry—and also about the length, content, and level of detail of the resulting EIS. Courts should afford substantial deference and should not micromanage those agency choices so long as they fall within a broad zone of reasonableness. Even a deficient EIS does not necessarily require vacating an agency's project approval, absent reason to

believe that the agency might disapprove the project if it added more to the EIS. Cf. 5 U. S. C. §706. Pp. 6–15.

(b) Contrary to the D. C. Circuit's NEPA analysis, the Board's determination that its EIS need not evaluate possible environmental effects from upstream and downstream projects separate from the Uinta Basin Railway complied with NEPA's procedural requirements, particularly NEPA's textually mandated focus on the "proposed action" under agency review. While indirect environmental *effects* of the project itself may fall within NEPA's scope even if they might extend outside the geographical territory of the project or materialize later in time, the fact that the project might foreseeably lead to the construction or increased use *of a separate project* does not mean the agency must consider that separate project's environmental effects. See *Public Citizen*, 541 U. S., at 767. This is particularly true where, as here, those separate projects fall outside the agency's regulatory authority. Pp. 15–21.

(c) NEPA does not allow courts, "under the guise of judicial review" of agency compliance with NEPA, to delay or block agency projects based on the environmental effects of other projects separate from the project at hand. *Vermont Yankee Nuclear Power Corp.* v. *Natural Resources Defense Council, Inc.*, 435 U. S. 519, 558. Pp. 21–22.

82 F. 4th 1152, reversed and remanded.

KAVANAUGH, J., delivered the opinion of the Court, in which ROBERTS, C. J., and THOMAS, ALITO, and BARRETT, JJ., joined. SOTOMAYOR, J., filed an opinion concurring in the judgment, in which KAGAN and JACKSON, JJ., joined. GORSUCH, J., took no part in the consideration or decision of the case.

NOTICE: This opinion is subject to formal revision before publication in the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, pio@supremecourt.gov, of any typographical or other formal errors.

SUPREME COURT OF THE UNITED STATES

No. 23–975

SEVEN COUNTY INFRASTRUCTURE COALITION, ET AL., PETITIONERS *v.* EAGLE COUNTY, COLORADO, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[May 29, 2025]

JUSTICE KAVANAUGH delivered the opinion of the Court.

Some 55 years ago, Congress passed and President Nixon signed the National Environmental Policy Act, known as NEPA. For certain infrastructure projects that are built, funded, or approved by the Federal Government, NEPA requires federal agencies to prepare an environmental impact statement, or EIS. The EIS must address the significant environmental effects of a proposed project and identify feasible alternatives that could mitigate those effects.

NEPA was the first of several landmark environmental laws enacted by Congress in the 1970s. Subsequent statutes included the Clean Air Amendments of 1970, the Clean Water Act of 1972, and the Endangered Species Act of 1973, among others.

Unlike those later-enacted laws, however, NEPA imposes no substantive environmental obligations or restrictions. NEPA is a purely procedural statute that, as relevant here, simply requires an agency to prepare an EIS—in essence, a report. Importantly, NEPA does not require the agency to weigh environmental consequences in any particular way.

Rather, an agency may weigh environmental consequences as the agency reasonably sees fit under its governing statute and any relevant substantive environmental laws.

Simply stated, NEPA is a procedural cross-check, not a substantive roadblock. The goal of the law is to inform agency decisionmaking, not to paralyze it.

In this case, the U. S. Surface Transportation Board considered a proposal by a group of seven Utah counties for the construction and operation of an approximately 88-mile railroad line in northeastern Utah. Under federal law, the Board determines whether to approve construction of new railroad lines. The railroad line here would connect Utah's oil-rich Uinta Basin—a rural territory roughly the size of the State of Maryland—to the national rail network. By doing so, the new railroad line would facilitate the transportation of crude oil from Utah to refineries in Louisiana, Texas, and elsewhere. And the project would bring significant economic development and jobs to the isolated Uinta Basin by better connecting the Basin to the national economy.

For that proposed 88-mile Utah railroad line, the Board prepared an extraordinarily lengthy EIS, spanning more than 3,600 pages of environmental analysis. The Board's EIS addressed the environmental effects of the railroad line. But the U. S. Court of Appeals for the D. C. Circuit nonetheless faulted the EIS for not sufficiently considering the environmental effects of projects separate from the railroad line itself—primarily, the environmental effects that could ensue from (i) increased oil drilling upstream in the Uinta Basin and (ii) increased oil refining downstream along the Gulf Coast of Louisiana and Texas.

On that basis, the D. C. Circuit vacated the Board's EIS and the Board's approval of the 88-mile railroad line. As a result, construction still has not begun even though the Board approved the project back in December 2021.

We reverse. First, the D. C. Circuit did not afford the

Board the substantial judicial deference required in NEPA cases. Second, the D. C. Circuit ordered the Board to address the environmental effects of projects separate in time or place from the construction and operation of the railroad line. But NEPA requires agencies to focus on the environmental effects of the project at issue. Under NEPA, the Board's EIS did not need to address the environmental effects of upstream oil drilling or downstream oil refining. Rather, it needed to address only the effects of the 88-mile railroad line. And the Board's EIS did so.

I

Under federal law, new railroad construction and operation must first be approved by the U. S. Surface Transportation Board. 49 U. S. C. §10901. After receiving an application for a new railroad line, the Board issues a public notice and initiates an agency proceeding to review the proposal; alternatively, the Board may streamline approval through a statutory exemption process. §§10101, 10502, 10901. In addition, for covered projects, NEPA compels the Board to prepare an environmental impact statement, or EIS.

In 2020, the Seven County Infrastructure Coalition—a group of seven Utah counties—applied to the Board for approval of an 88-mile railroad line in northeastern Utah. The new railroad line would connect the Uinta Basin with the interstate freight rail network—and via that network, to refineries in Louisiana, Texas, and other destinations.

The Uinta Basin contains significant quantities of crude oil and other fossil fuels. The Uinta Basin Railway would provide oil producers a more efficient option for transporting oil out of the Basin to refineries. As of now, oil from the Basin is carried by trucks that must navigate mountain passes on narrow roads, a difficult and slow journey in any season.

The Board's environmental review of the Uinta Basin

Railway followed standard NEPA procedures. In October 2020, the Board issued a draft EIS and invited public comment. During the public comment period, the Board held six public meetings and collected more than 1,900 comments. In August 2021, the Board published its final EIS.

All told, the Board's final EIS clocked in at more than 3,600 pages. The EIS identified and analyzed numerous "significant and adverse impacts that could occur as a result" of the railroad line's construction and operation—including disruptions to local wetlands, land use, and recreation. App. 121; see *id.*, at 94–105, 121–126, 206–347. The EIS likewise addressed several "minor impacts," such as air pollution and big-game movement around the construction site. *Id.*, at 126; see *id.*, at 126–134, 251–259, 309–325.

The EIS also noted, but did not fully analyze, the potential effects of increased upstream oil drilling in the Uinta Basin and increased downstream refining of crude oil carried by the railroad. *Id.*, at 135, 348–482, 511–516, 520–534, 539–543.

As to the environmental effects of upstream oil drilling, the EIS explained why further analysis of those "potential future, as yet unplanned, oil and gas development projects" was not needed. *Id.*, at 520. To begin with, the project at issue was an 88-mile railroad line, not an oil well or a drilling permit in the Uinta Basin. Moreover, the Board possesses "no authority or control over potential future oil and gas development" in the Basin. *Id.*, at 522. Future projects would be "subject to the approval processes of other federal, state, local, and tribal agencies." *Ibid.* In any event, the environmental effects of future oil and gas development in the Basin are "speculative" and attenuated from the project at hand. *Id.*, at 525; see *id.*, at 525–527 (citing *Department of Transportation* v. *Public Citizen*, 541 U. S. 752, 767–768, 770 (2004)).

As for the environmental effects of downstream oil refining projects, the Board recognized that "trains originating on the proposed rail line would transport crude oil to markets in other regions of the United States," such as Louisiana and Texas, and that oil refining (and the associated effects on the environment) could increase in those locations as a result. App. 477; see *id.*, at 477–482. But the identity of specific destinations "would depend on the ability and willingness of refineries in other markets to receive rail cars carrying Uinta Basin crude oil and process the oil in their refineries." *Id.*, at 477. Moreover, the Board "would have no role in approving or regulating the production, refining, or use" of Uinta Basin crude oil. *Id.*, at 540–541. So the Board did not fully evaluate the effects of additional oil refining along the Gulf Coast.

In December 2021, a few months after issuing the final EIS, the Board approved the construction and operation of the Uinta Basin Railway. Recognizing that "rail construction projects are in the public interest," the Board concluded that the new railroad line would "have substantial transportation and economic benefits," and that those benefits outweighed the environmental impacts identified in the EIS. App. to Pet. for Cert. 121a, 119a; see *id.*, at 118a–121a.

In the wake of the Board's final approval, a Colorado county and several environmental organizations sued by filing petitions for review in the U. S. Court of Appeals for the D. C. Circuit.

The D. C. Circuit found "numerous NEPA violations arising from the EIS." *Eagle Cty.* v. *Surface Transp. Bd.*, 82 F. 4th 1152, 1196 (2023). In the court's view, the Board "failed" to take "the requisite 'hard look' at all of the environmental impacts of the Railway." *Id.*, at 1175.

Specifically, the Court of Appeals held that the Board impermissibly limited its analysis of upstream and downstream projects. The court concluded that the

environmental effects from oil drilling in the Uinta Basin and oil refining along the Gulf Coast were "'reasonably foreseeable impacts'" that the EIS should have analyzed more extensively. *Id.*, at 1177. The court rejected the Board's argument that those effects would arise from other projects (upstream oil drilling, downstream oil refining, and the like) that are separate from the current project and regulated by other agencies. *Id.*, at 1177–1180 (citing *Sierra Club* v. *FERC*, 867 F. 3d 1357, 1372–1375 (CADC 2017) (*Sabal Trail*)).

Based on the deficiencies it found in the EIS, the Court of Appeals vacated the EIS and the Board's final approval order. 82 F. 4th, at 1196. The Coalition and the Uinta Basin Railway sought review in this Court, and we granted certiorari. 602 U. S. ___ (2024).

II

For certain infrastructure projects that are built, funded, or approved by the Federal Government, NEPA requires federal agencies to prepare an environmental impact statement, or EIS, identifying significant environmental effects of the projects, as well as feasible alternatives. The law ensures that the agency and the public are aware of the environmental consequences of proposed projects. Properly applied, NEPA helps agencies to make better decisions and to ensure good project management.

Importantly, however, NEPA is purely procedural. In ultimately deciding whether to build, fund, or approve a project, an "agency is not constrained by NEPA from deciding that other values outweigh the environmental costs." *Robertson* v. *Methow Valley Citizens Council*, 490 U. S. 332, 350 (1989). Otherwise stated, NEPA "does not mandate particular results, but simply prescribes the necessary process" for an agency's environmental review of a project. *Ibid.*; see *Department of Transportation* v. *Public Citizen*, 541 U. S. 752, 756–757 (2004); *Marsh* v. *Oregon*

Natural Resources Council, 490 U. S. 360, 370–372 (1989); *Baltimore Gas & Elec. Co.* v. *Natural Resources Defense Council, Inc.*, 462 U. S. 87, 97–98 (1983); *Strycker's Bay Neighborhood Council, Inc.* v. *Karlen*, 444 U. S. 223, 227–228 (1980); *Vermont Yankee Nuclear Power Corp.* v. *Natural Resources Defense Council, Inc.*, 435 U. S. 519, 558 (1978); *Kleppe* v. *Sierra Club*, 427 U. S. 390, 410, n. 21 (1976).[1]

Here, the Board's EIS evaluated the environmental effects of the proposed 88-mile railroad line in Utah's rural Uinta Basin. But the D. C. Circuit, following Circuit precedent applying NEPA, concluded that the EIS did not sufficiently address the reasonably foreseeable environmental impacts of increased upstream oil drilling in the Uinta Basin, as well as the environmental effects of

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[1]As it was phrased at the time of the Board's EIS (before a 2023 amendment to the statute, see n. 3, *infra*), NEPA directed federal agencies to

> "include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—
>
> "(i) the environmental impact of the proposed action,
>
> "(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
>
> "(iii) alternatives to the proposed action,
>
> "(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
>
> "(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.
>
> "Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved." §102(2)(C), 83 Stat. 853, as amended, 42 U. S. C. §4332(2)(C) (2018).

increased downstream oil refining along the Gulf Coast. 82 F. 4th, at 1196.

As we will explain, we disagree with the D. C. Circuit's decision on two grounds. First, the court did not afford the Board the substantial judicial deference required in NEPA cases. Second, the court incorrectly interpreted NEPA to require the Board to consider the environmental effects of upstream and downstream projects that are separate in time or place from the Uinta Basin Railway.

A

Since the early 1970s, federal courts have reviewed NEPA cases. Over time, some courts have assumed an aggressive role in policing agency compliance with NEPA. Other courts have adopted a more restrained approach. In light of the continuing confusion and disagreement in the Courts of Appeals over how to handle NEPA cases, we think it important to reiterate and clarify the fundamental principles of judicial review applicable in those cases. As we will explain, the central principle of judicial review in NEPA cases is deference.[2]

As a general matter, when an agency interprets a statute, judicial review of the agency's interpretation is *de novo*. See *Loper Bright Enterprises* v. *Raimondo*, 603 U. S. 369, 391–392 (2024). But when an agency exercises discretion

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[2]Some have debated whether Congress and the President in 1970 actually intended or anticipated judicial review of agency compliance with NEPA. See R. Lazarus, The National Environmental Policy Act in the U.S. Supreme Court: A Reappraisal and a Peek Behind the Curtains, 100 Geo. L. J. 1507, 1515 (2012) (describing the history). In any event, an early D. C. Circuit case concluded that an agency's compliance with NEPA was judicially reviewable. See *Calvert Cliffs' Coordinating Comm., Inc.* v. *U. S. Atomic Energy Comm'n*, 449 F. 2d 1109 (1971). And this Court's cases have treated NEPA compliance as judicially reviewable. That said, courts must conduct their review with significant deference to the agency. When reviewing compliance with NEPA, "courts are to play only a limited role." *Vermont Yankee Nuclear Power Corp.* v. *Natural Resources Defense Council, Inc.*, 435 U. S. 519, 558 (1978).

granted by a statute, judicial review is typically conducted under the Administrative Procedure Act's deferential arbitrary-and-capricious standard. Under that standard, a court asks not whether it agrees with the agency decision, but rather only whether the agency action was reasonable and reasonably explained. See *Motor Vehicle Mfrs. Assn. of United States, Inc.* v. *State Farm Mut. Automobile Ins. Co.*, 463 U. S. 29, 43 (1983); *FCC* v. *Prometheus Radio Project*, 592 U. S. 414, 423 (2021).

When a party argues that an agency action was arbitrary and capricious due to a deficiency in an EIS, the reviewing court must account for the fact that NEPA is a *purely procedural statute*. Under NEPA, an agency's only obligation is to prepare an adequate report. "NEPA requires no more." *Strycker's Bay Neighborhood Council*, 444 U. S., at 228. Unlike a plethora of other federal environmental statutes (such as the Clean Air Act, the Clean Water Act, etc.), NEPA imposes no *substantive* constraints on the agency's ultimate decision to build, fund, or approve a proposed project. So when reviewing an agency's EIS, "the only role for a court" is to confirm that the agency has addressed environmental consequences and feasible alternatives as to the relevant project. *Id.*, at 227; see *Vermont Yankee*, 435 U. S., at 551, 555. Because an EIS is only one input into an agency's decision and does not itself require any particular substantive outcome, the adequacy of an EIS is relevant only to the question of whether an agency's final decision (here, to approve the railroad) was reasonably explained.

In short, when determining whether an agency's EIS complied with NEPA, a court should afford substantial deference to the agency.

In practice, judicial deference in NEPA cases can take several forms. For example, NEPA says that the EIS should be "detailed." 42 U. S. C. §4332(2)(C). Of course, the meaning of "detailed" is a question of law to be decided by

a court. *Loper Bright*, 603 U. S., at 391–392. But what details need to be included in any given EIS? For the most part, that question does not turn on the meaning of "detailed"—instead, it "involves primarily issues of fact." *Marsh*, 490 U. S., at 377. The agency is better equipped to assess what facts are relevant to the agency's own decision than a court is. As a result, "agencies determine whether *and to what extent* to prepare an EIS based on the usefulness of any new potential information to the decisionmaking process." *Public Citizen*, 541 U. S., at 767 (emphasis added). So the question of whether a particular report is detailed enough in a particular case itself requires the exercise of agency discretion—which should not be excessively second-guessed by a court. Brevity should not be mistaken for lack of detail. A relatively brief agency explanation can be reasoned and detailed; an EIS need not meander on for hundreds or thousands of pages. So courts should not insist on length as a prerequisite for finding an EIS to be detailed.[3]

The EIS also must identify significant environmental impacts and feasible alternatives. But there too, an agency exercises substantial discretion. An agency must make predictive and scientific judgments in assessing the relevant impacts (what are the likely impacts; do they rise to the level of "significant"?) and alternatives (what are the

[3] Indeed, federal law now strictly *prohibits* an agency's EIS from going on endlessly. In 2023, two years after the Board issued its final EIS for the Uinta Basin Railway, Congress passed and President Biden signed an Act amending NEPA meaningfully titled the "Building United States Infrastructure through Limited Delays and Efficient Reviews Act of 2023." Pub. L. 118–5, Div. C, Tit. III, §321, 137 Stat. 38–39. Under that BUILDER Act, an EIS "shall not exceed 150 pages" and must be completed in "2 years" or less. *Id.*, at 41–42 (42 U. S. C. §§4336a(e)(1)(A), (g)(1)(A)). That Act strongly reinforces the basic principles that NEPA, correctly interpreted, already embodied but that have been too often overlooked. The analysis in this opinion thus applies to NEPA as amended by the BUILDER Act.

potential alternatives; are they really "feasible"?). As this Court has said, "the term 'alternatives' is not self-defining," and "[c]ommon sense" should be brought to bear. *Vermont Yankee*, 435 U. S., at 551. Black-letter administrative law instructs that when an agency makes those kinds of speculative assessments or predictive or scientific judgments, and decides what qualifies as significant or feasible or the like, a reviewing court must be at its "most deferential." *Baltimore Gas & Elec.*, 462 U. S., at 103; see *Marsh*, 490 U. S., at 378; *State Farm*, 463 U. S., at 43.

In preparing an EIS, an agency also must determine the scope of the environmental effects that it will address. The textual focus of NEPA is the "proposed action"—that is, the project at hand. 42 U. S. C. §4332(2)(C) (2018). The agency therefore will obviously seek to assess significant effects from the project at issue. But how far will the agency go in considering the indirect effects that might occur outside the area of the immediate project—for example, due to emissions or run off from the project carried elsewhere by air or water? And will the agency evaluate the environmental effects from other future or geographically separate projects that may be initiated (or expanded) as a result of or in the wake of the current project? And what if another agency also possesses regulatory authority over a related project?

In analyzing those scope questions, it is critical to disaggregate the agency's role from the court's role. So long as the EIS addresses environmental effects from the project at issue, courts should defer to agencies' decisions about where to draw the line—including (i) how far to go in considering indirect environmental effects from the project at hand and (ii) whether to analyze environmental effects from other projects separate in time or place from the project at hand. On those kinds of questions, as this Court has often said, agencies possess discretion and must have broad latitude to draw a "manageable line." *Public Citizen*,

541 U. S., at 767 (quoting *Metropolitan Edison Co.* v. *People Against Nuclear Energy*, 460 U. S. 766, 774, n. 7 (1983)).

To tie all of this together: When assessing significant environmental effects and feasible alternatives for purposes of NEPA, an agency will invariably make a series of fact-dependent, context-specific, and policy-laden choices about the depth and breadth of its inquiry—and also about the length, content, and level of detail of the resulting EIS. Courts should afford substantial deference and should not micromanage those agency choices so long as they fall within a broad zone of reasonableness. As the Court has emphasized on several occasions, and we doubly underscore again today, "inherent in NEPA . . . is a 'rule of reason,' which ensures that agencies determine whether and to what extent to prepare an EIS based on the usefulness of any new potential information to the decisionmaking process." *Public Citizen*, 541 U. S., at 767. A reviewing court may not "substitute its judgment for that of the agency as to the environmental consequences of its actions." *Kleppe*, 427 U. S., at 410, n. 21.

Some courts have strayed and not applied NEPA with the level of deference demanded by the statutory text and this Court's cases. Those decisions have instead engaged in overly intrusive (and unpredictable) review in NEPA cases. Those rulings have slowed down or blocked many projects and, in turn, caused litigation-averse agencies to take ever more time and to prepare ever longer EISs for future projects.

The upshot: NEPA has transformed from a modest procedural requirement into a blunt and haphazard tool employed by project opponents (who may not always be entirely motivated by concern for the environment) to try to stop or at least slow down new infrastructure and construction projects. Some project opponents have invoked NEPA and sought to enlist the courts in blocking or delaying even those projects that otherwise comply with

all relevant substantive environmental laws. Indeed, certain project opponents have relied on NEPA to fight even clean-energy projects—from wind farms to hydroelectric dams, from solar farms to geothermal wells. See, *e.g.*, Brief for Chamber of Commerce of the United States of America, et al. as *Amici Curiae* 19–20.

All of that has led to more agency analysis of separate projects, more consideration of attenuated effects, more exploration of alternatives to proposed agency action, more speculation and consultation and estimation and litigation. Delay upon delay, so much so that the process sometimes seems to "borde[r] on the Kafkaesque." *Vermont Yankee*, 435 U. S., at 557. Fewer projects make it to the finish line. Indeed, fewer projects make it to the starting line. Those that survive often end up costing much more than is anticipated or necessary, both for the agency preparing the EIS and for the builder of the project. And that in turn means fewer and more expensive railroads, airports, wind turbines, transmission lines, dams, housing developments, highways, bridges, subways, stadiums, arenas, data centers, and the like. And that also means fewer jobs, as new projects become difficult to finance and build in a timely fashion.

A 1970 legislative acorn has grown over the years into a judicial oak that has hindered infrastructure development "under the guise" of just a little more process. *Id.*, at 558. A course correction of sorts is appropriate to bring judicial review under NEPA back in line with the statutory text and common sense. *Id.*, at 525. Congress did not design NEPA for *judges* to hamstring new infrastructure and construction projects. On the contrary, as this Court has stressed, courts should and "must defer to 'the informed discretion of the responsible federal agencies.'" *Marsh*, 490 U. S., at 377.

Critically, as the Government and the Coalition explained at oral argument, courts not only must defer to

the agency's reasonable choices regarding the scope and contents of the EIS, but also must keep in mind that review of an agency's EIS is not the same thing as review of the agency's final decision concerning the project. See Tr. of Oral Arg. 31–32, 70–71. That, too, follows from NEPA's status as a purely procedural statute. The ultimate question is not whether an EIS in and of itself is inadequate, but whether the agency's final decision was reasonable and reasonably explained. Review of an EIS is only one component of that analysis. Even if an EIS falls short in some respects, that deficiency may not necessarily require a court to vacate the agency's ultimate approval of a project, at least absent reason to believe that the agency might disapprove the project if it added more to the EIS. Cf. 5 U. S. C. §706. For example, in a case like this one, even if the EIS drew the line on the effects of separate upstream or downstream projects too narrowly, that mistake would not necessarily require a court to vacate the agency's approval of the railroad project. Cf. *Vermont Yankee*, 435 U. S., at 558.[4]

In other words, as this Court has said before, NEPA does not authorize a court to "'interject itself within the area of discretion . . . as to the choice of the action to be taken'" by the agency. *Strycker's Bay Neighborhood Council*, 444 U. S., at 227–228 (quoting *Kleppe*, 427 U. S., at 410, n. 21). NEPA's procedural mandate helps "to insure a fully informed and well-considered decision, not necessarily a decision the judges of the Court of Appeals or this Court

[4]When, unlike this case, an agency *denies* approval of a project, the denied applicant may ordinarily challenge the denial under the APA or the relevant agency's governing statute. The denied applicant may argue, among other things, that the agency acted unreasonably in denying approval by weighing environmental consequences too heavily in light of the agency's governing statute and other relevant factors, or perhaps that the agency erred because the governing statute did not allow the agency to weigh environmental consequences at all. NEPA does not alter those judicial inquiries.

would have reached had they been members of the decisionmaking unit of the agency." *Vermont Yankee*, 435 U. S., at 558.

The "role of a court in reviewing the sufficiency of an agency's consideration of environmental factors is a limited one." *Id.*, at 555. The bedrock principle of judicial review in NEPA cases can be stated in a word: Deference.

B

Even apart from failing to afford sufficient deference to the Surface Transportation Board, the D. C. Circuit's decision was mistaken on the merits under NEPA. The D. C. Circuit erroneously required the Board to address environmental effects from projects that are separate in time or place from the 88-mile railroad project at hand—that is, effects from potential future projects or from geographically separate projects. Moreover, those separate projects fall outside the Board's authority and would be initiated, if at all, by third parties.

In its EIS, the Board determined that upstream oil drilling in the Uinta Basin and downstream oil refining along the Gulf Coast were separate from the construction and operation of the 88-mile railroad line. The Board's EIS explained that the "proposed rail line and any future oil and gas development projects are not two phases of a single action," but "separate, independent projects." App. 523. Those other projects, the Board reasoned, should not be considered "part of the proposed action assessed in the EIS." *Ibid.* The Board concluded that its EIS need not evaluate the possible environmental effects from separate upstream or downstream projects.[5]

[5] Even though not mandated by NEPA to do so, the Board did identify some of the potential effects and marginal risks from projects separate from the 88 miles of additional railroad track in rural Utah. See, *e.g.*, App. 354–358 (forecasting the number of oil wells that could be added in the Uinta Basin as a result of increased production spurred by the new

The Board's approach complied with NEPA and this Court's longstanding NEPA precedents. Importantly, the textually mandated focus of NEPA is the "proposed action"—that is, the project at hand—not other future or geographically separate projects that may be built (or expanded) as a result of or in the wake of the immediate project under consideration. 42 U. S. C. §4332(2)(C) (2018); see *Aberdeen & Rockfish R. Co.* v. *Students Challenging Regulatory Agency Procedures (SCRAP)*, 422 U. S. 289, 322–324 (1975); *Kleppe*, 427 U. S., at 398–402. Therefore, when the effects of an agency action arise from a separate project—for example, a possible future project or one that is geographically distinct from the project at hand—NEPA does not require the agency to evaluate the effects of that separate project.

To be clear, the environmental *effects* of the project at issue may fall within NEPA even if those *effects* might extend outside the geographical territory of the project or might materialize later in time—for example, run-off into a river that flows many miles from the project and affects fish populations elsewhere, or emissions that travel downwind and predictably pollute other areas. Those so-called indirect effects can sometimes fall within NEPA, as the Government explained at oral argument. See Tr. of Oral Arg. 59–63.

But if the project at issue might lead to the construction or increased use *of a separate project*—for example, a housing development that might someday be built near a highway—the agency need not consider the environmental effects *of that separate project*. To put it in legal terms, the

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railway); *id.*, at 420–423, 539–542 (evaluating effects from increased oil refining along the Gulf Coast). The Board should not necessarily earn bonus points for studying more than NEPA demanded. But it should definitely not receive a failing grade just because its 3,600-page EIS was less thorough in analyzing the effects from other projects than the Court of Appeals might have preferred.

separate project breaks the chain of proximate causation between the project at hand and the environmental effects of the separate project. See *Public Citizen*, 541 U. S., at 767 (citing *Metropolitan Edison,* 460 U. S., at 774, and n. 7). The effects from a separate project may be factually foreseeable, but that does not mean that those effects are relevant to the agency's decisionmaking process or that it is reasonable to hold the agency responsible for those effects. Cf. *Public Citizen*, 541 U. S., at 766–767. In those circumstances, "the causal chain is too attenuated." *Metropolitan Edison,* 460 U. S., at 774. In other words, there is no "'reasonably close causal relationship'" between the project at hand and the environmental effects of those other projects. *Public Citizen*, 541 U. S., at 767 (quoting *Metropolitan Edison,* 460 U. S., at 774).

Moreover, and importantly, the Board here possesses no regulatory authority over those separate projects. The Board does not regulate oil drilling, oil wells, oil and gas leases, or oil refineries. The Board approves railroad lines. See 49 U. S. C. §§10101, 10901. Other agencies possess authority to regulate those separate projects and their environmental effects. As this Court stated in one of the more important sentences in the NEPA canon, "where an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant 'cause' of the effect." *Public Citizen*, 541 U. S., at 770. In other words, agencies are not required to analyze the effects of projects over which they do not exercise regulatory authority. For that reason as well, there is no "'reasonably close causal relationship'" between the 88-mile railroad project at hand and the environmental effects of the separate oil drilling and oil refining projects. *Id.*, at 767 (quoting *Metropolitan Edison*, 460 U. S., at 774); see also *Robertson*, 490 U. S., at 350–353; *Vermont Yankee*, 435 U. S., at 550–551, 558.

To be sure, NEPA mandates that an agency "consult

with" other agencies as appropriate. 42 U. S. C. §4332(2)(C). But there is a vast difference between, for example, an agency's consulting with the Forest Service to determine the effects of a railroad line that would pass through a national forest and an agency's asking another agency to assess how 88 miles of additional track in rural Utah would contribute to emissions or climate change along the Gulf Coast. Indeed, "no rule of reason worthy of that title would require an agency to prepare an EIS" addressing effects from another project that is separate in time or place from the project at hand—particularly when it would require the agency to speculate about the effects of a separate project that is outside its regulatory jurisdiction. *Public Citizen*, 541 U. S., at 767–768 (citing *Aberdeen & Rockfish R. Co.*, 422 U. S., at 325).

In this case, the Uinta Basin Railway was the relevant project. NEPA therefore required the Board to consider the environmental effects of that 88-mile railroad line's construction and operation. To the extent that the new 88-mile railroad line could disrupt the habitat of protected species, or the new rail embankments could cause soil erosion into local bodies of water, or trains on the new line could pollute the air, NEPA dictated that the Board evaluate those effects. And consistent with NEPA, the Board here *did* comprehensively evaluate those effects, including via consultation with other agencies. As the D. C. Circuit itself recognized, the Board explained that "construction and operation of the Railway" would affect "water resources, air quality, [and] special status species like the greater sage-grouse." 82 F. 4th, at 1168. But nothing in NEPA required the Board to go further and study environmental impacts from upstream or downstream projects separate in time or place from the 88-mile railroad line's construction and operation.

Under NEPA, it also bears emphasis, a mere "'but for' causal relationship is insufficient to make an agency

responsible for a particular effect." *Public Citizen*, 541 U. S., at 767. Likewise, the fact that other projects might foreseeably be built or expanded in the wake of the current project does not, by itself, make the agency responsible for addressing the environmental effects of those other projects. The agency may draw what it reasonably concludes is a "'manageable line'"—one that encompasses the effects of the project at hand, but not the effects of projects separate in time or place. *Ibid.* (quoting *Metropolitan Edison*, 460 U. S., at 774, n. 7). True, a new airport may someday lead to a new stretch of highway; a new pipeline to a new power plant; a new housing development to a new subway stop. But the environmental effects of the project at hand constitute NEPA's textual focus. An agency need not assess the environmental effects of other separate projects simply because those projects (and effects) might not materialize but for the project at hand, or are in some sense foreseeable.

Simply stated, a court may not invoke but-for causation or mere foreseeability to order agency analysis of the effects of every project that might somehow or someday follow from the current project. See *Public Citizen*, 541 U. S., at 767–768; *Metropolitan Edison*, 460 U. S., at 774–775. NEPA calls for the agency to focus on the environmental effects of the project itself, not on the potential environmental effects of future or geographically separate projects. A relatively modest infrastructure project should not be turned into a scapegoat for everything that ensues from upstream oil drilling to downstream refinery emissions. As Justice Rehnquist underscored in *Vermont Yankee*, NEPA is not a "game" where project objectors can engage in "unjustified obstructionism"—here, for example, by raising a slew of remote effects that they think "'ought to be' considered." 435 U. S., at 553–554.

To be sure, in certain circumstances, other projects may be interrelated and close in time and place to the project at

hand—a residential development next door to and built at the same time as a ski resort, for example. See, *e.g.*, *Robertson*, 490 U. S., at 338–340. The question then is whether that is a single project within the authority of the agency in question. There may be a gray area in defining the project at hand. Even in those circumstances, however, a court's review still must remain deferential, as we explained in Part II–A above. In other words, even if the reviewing court in such a case might think that NEPA would support drawing a different line, a court should defer to an agency so long as the agency drew a reasonable and "'manageable line.'" *Public Citizen*, 541 U. S., at 767 (quoting *Metropolitan Edison*, 460 U. S., at 774, n. 7). All of that is to again underscore that a difference may exist between what an agency should do as a matter of good policy and best practices under NEPA, and what a reviewing court may subsequently order an agency to do under NEPA.

In this case, in any event, the NEPA question is not close. The Board did not need to evaluate potential environmental impacts of the separate upstream and downstream projects. As to other projects upstream, the EIS rightly explained that the environmental consequences of future oil drilling in the Basin are distinct from construction and operation of the railroad line. App. 525–527. As for other projects downstream, the Board likewise correctly explained that any environmental effects from highly regulated oil refineries along the Gulf Coast are well outside the scope of the 88-mile railroad project in rural Utah. *Id.*, at 420–423, 539–542.[6]

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[6] In addition, inherent in Board approval of railroad lines is the understanding that any new freight railroad may transport different kinds of cargo over an approved line—from corn to cars to coal and the like. See Brief for Association of American Railroads as *Amicus Curiae* 2, 8–9. As common carriers, railroads subject to the Board's jurisdiction are required to provide "transportation or service on reasonable request"

An agency may decline to evaluate environmental effects from separate projects upstream or downstream from the project at issue. *Public Citizen*, 541 U. S., at 770. Here, the Board's EIS concluded that the "proposed rail line and any future oil and gas development projects are not two phases of a single action," but "separate, independent projects." App. 523. So the Board concluded that they need not be considered "part of the proposed action assessed in the EIS." *Ibid.* Absolutely correct.

* * *

In deciding cases involving the American economy, courts should strive, where possible, for clarity and predictability. Some courts' NEPA decisions have fallen short of that objective. The proper judicial approach for NEPA cases is straightforward: Courts should review an agency's EIS to check that it addresses the environmental effects of the project at hand. The EIS need not address the effects of separate projects. In conducting that review, courts should afford substantial deference to the agency as to the scope and contents of the EIS.

Plaintiffs' policy objections to this 88-mile Utah railroad may or may not be persuasive. But neither "the language nor the history of NEPA suggests that it was intended to give citizens a general opportunity to air their policy objections to proposed federal actions. The political process, and not NEPA, provides the appropriate forum in which to air policy disagreements." *Metropolitan Edison*, 460 U. S.,

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to any person or commodity. 49 U. S. C. §§11101(a), 10102(9). Railroad lines approved by the Board cannot decline to provide "common carrier" transport based on the product or commodity to be carried. §11101(a). For that additional reason, the EIS here correctly explained that the Board was "not required to analyze impacts related to the destinations or end uses of any such products or commodities" transported by the 88-mile railroad line, including Uinta Basin crude oil. App. 422; see *Department of Transportation* v. *Public Citizen*, 541 U. S. 752, 766–770 (2004).

at 777. Citizens may not enlist the federal courts, "under the guise of judicial review" of agency compliance with NEPA, to delay or block agency projects based on the environmental effects of other projects separate from the project at hand. *Vermont Yankee*, 435 U. S., at 558.

We reverse the judgment of the Court of Appeals and remand the case for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE GORSUCH took no part in the consideration or decision of this case.

SUPREME COURT OF THE UNITED STATES

No. 23–975

SEVEN COUNTY INFRASTRUCTURE COALITION, ET AL., PETITIONERS *v.* EAGLE COUNTY, COLORADO, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[May 29, 2025]

JUSTICE SOTOMAYOR, with whom JUSTICE KAGAN and JUSTICE JACKSON join, concurring in the judgment.

The National Environmental Policy Act improves agency decisionmaking by requiring agencies to consider environmental impacts for which their decisions would be responsible. I agree with the Court that the Surface Transportation Board would not be responsible for the harms caused by the oil industry, even though the railway it approved would deliver oil to refineries and spur drilling in the Uinta Basin. I reach that conclusion because, under its organic statute, the Board had no authority to reject petitioners' application on account of the harms third parties would cause with products transported on the proposed railway. The majority takes a different path, unnecessarily grounding its analysis largely in matters of policy. Accordingly, I write separately to explain why the result in this case follows inexorably from our precedent.

I

A

The Uinta Basin spans thousands of square miles across northwestern Utah and Colorado. Bookended by the Uinta Mountains in the north and the Roan Cliffs in the south,

the Basin is hard to access and has few residents. The Basin, however, contains "'extensive deposits of valuable minerals,'" including large reserves of "waxy crude," a form of petroleum known for its thick consistency at ambient temperatures. 82 F. 4th 1152, 1165–1166 (CADC 2023). For over a decade, oil producers have transported this oil out of the Basin in heated tanker trucks, to be sold to refineries in Utah and beyond.

Petitioners, the Seven County Infrastructure Coalition and the Uinta Basin Railway, LLC, plan to build a railway connecting the Uinta Basin with the Union Pacific Railroad Company station in Kyune, Utah, and from there to the national rail network. As the Coalition recognizes, "the Railway's predominant and expected primary purpose would be" to enable Basin oil producers to transport, with greater ease and in greater quantities, waxy crude to refineries in the Gulf Coast. *Ibid.* Nearly all the waxy crude transported by train out of the Uinta Basin would continue its travels over the Union Pacific track from Kyune to Denver, which runs through Eagle County, Colorado, and closely abuts the Colorado River.

B

No person may "construct an additional railroad line" or "provide transportation over . . . an extended or additional railroad line" without a certificate of approval from the Surface Transportation Board. 49 U. S. C. §10901(a). Applicants can file a formal application for such a certificate, §10901(c), or they can seek approval through an abbreviated exemption process, §10502(a). In either case, the Act expresses a clear presumption in favor of approving railways. See *ibid.* (exemptions must be granted "to the maximum extent" consistent with law); §10901(c) (the Board "shall" issue a certificate "unless" inconsistent with public convenience and necessity).

In May 2020, petitioners requested permission to build

the Railway by way of the exemption procedure. Because the proposed railway constitutes a "major Federal action significantly affecting" the environment, the National Environmental Policy Act (NEPA) required the Board to prepare a "detailed" statement addressing its environmental impacts. 42 U. S. C. §4332(C). The Board conditionally approved petitioners' request based on the Railway's "'transportation merits,'" but it deferred a final decision pending the results of its environmental review. Surface Transportation Board, Office of Environmental Analysis, Uinta Basin Railway Final Environmental Impact Statement S–2, n. 2 (Aug. 2021) (Final EIS).

After soliciting public comment, the Board completed its environmental impact statement on August 6, 2021.[1] App. to Pet. for Cert. 76a. The statement recognized that "between 3.68 and 10.52 trains" would travel daily on the proposed new railway, which would be used "primarily to transport crude oil from the Basin to markets across the United States." Final EIS 1–4. Consistent with its obligations under NEPA, the Board discussed the comparative environmental merits of alternative railway routes as well as the environmental consequences common to all alternatives. Among other things, the Board analyzed the Railway's likely impact on the Basin's natural environment and the impacts increased freight traffic from the Railway would have on the existing Union Pacific line running through Eagle County.

Of particular relevance here, the Board recognized that "[r]efiners would refine the crude oil transported by the proposed rail line into various fuels," which in turn would be

[1] The final statement consisted of a 600-page report accompanied by supporting appendixes and responses to the public comments. See www.uintabasinrailwayeis.com (Board-created website containing the complete EIS and all related documentation); cf. *ante,* at 2, 4, 15, n. 5, 22 (asserting that the EIS spanned more than 3,600 pages of analysis).

combusted, causing an increase in greenhouse-gas emissions. *Id.*, at 3.15–35. Depending on market conditions, the Board estimated that increased oil production made possible by the Railway would cause greenhouse-gas emissions equivalent to between 0.04 and 0.1 percent of the global total. *Id.*, at 3.15–36. (By way of comparison, Sweden and Ireland are each responsible for about 0.1 percent of global emissions.[2]) Although the Board recognized the "massive deleterious impacts" of climate change, it explained that it was "not required to analyze impacts related to the destinations or end uses of" products transported on proposed rail lines. *Ibid.* After all, the Board explained, "railroads have a common carrier obligation to carry all commodities, including hazardous materials, upon reasonable request," meaning the Board cannot control the products "transported on the proposed rail line." *Ibid.* (citing 49 U. S. C. §11101 and *Riffin* v. *STB*, 733 F. 3d 340, 345–347 (CADC 2013)). For that reason, the Board did not consider in further detail the effects of increased drilling for oil in the Basin, or increased refining of oil in the Gulf Coast.

After completing this analysis, the Board issued a decision approving the railway. With respect to the anticipated increase in oil production, the Board again concluded that it had "no authority or jurisdiction over development of oil and gas in the Basin nor any authority to control or mitigate the impacts of any such development." App. to Pet. for Cert. 108a. Board member Oberman dissented. In his view, the Board did have "the power to deny construction approval based on weighing all of the environmental impacts that will arise from oil and gas development in the Basin," particularly because the Railway's "'entire purpose'" would be to stimulate such production. *Id.*, at 124a.

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[2]See European Commission, Emissions Database for Global Atmospheric Research Report 2024 (last accessed May 7, 2025), https://edgar.jrc.ec.europa.eu/report_2024#emissions_table.

C

Several environmental groups filed a petition for review of the Board's decision to approve the railway, arguing principally that the Board should have further considered the consequences of increased oil drilling and refining that the Railway's construction would enable. Eagle County separately petitioned for review of the Board's decision, alleging that the Board's environmental analysis was deficient because it ignored or underestimated the Railway's impacts, through increased rail traffic, on the County and the nearby Colorado River. Petitioners intervened in support of the Board's decision.

The D. C. Circuit rejected several claims no longer at issue here, but it sided with the challengers on others. With regard to the environmental respondents' challenge, the court held that the Board should have more carefully considered the deleterious environmental effects of increased oil production made possible by the Railway's construction. 82 F. 4th, at 1180. Among other things, the court explained, the Board should have "estimate[d] the emissions or other environmental impacts" of oil refining as localized for the "specific regions that will receive the oil based on expected train traffic." *Id.*, at 1179. The court rejected the Board's argument "that it lacks authority to prevent, control, or mitigate those developments." *Id.*, at 1180. Instead, in the D. C. Circuit's view, the Board's statutory obligation to consider whether the Railway would serve the "'public convenience and necessity'" encompassed "reasonably foreseeable environmental harms," including those resulting from the increase in oil production on the Gulf Coast. *Ibid.*

Moving to the County's claims, the D. C. Circuit agreed the Board's analysis of the Railway's effect on the Union Pacific track and the Colorado River contained serious, unexplained errors and omissions. The court further concluded that the Board had failed to comply with several

other statutory requirements unrelated to NEPA. Accordingly, the D. C. Circuit vacated the Board's decision and remanded it to the agency for further proceedings.

Petitioners asked this Court to review only one part of the D. C. Circuit's decision: whether NEPA required the Board to study the environmental impacts of oil wells and refineries that lie outside the Board's regulatory authority. Pet. for Cert. i. This Court granted review to decide that question.

II

A

NEPA requires agencies to prepare and publish a "detailed statement" reviewing the environmental impact of any major federal action. 42 U. S. C. §4332. That "action-forcing" requirement serves dual purposes, ensuring both that an agency considers a project's environmental consequences before deciding whether to approve it, and rendering the agency publicly accountable for environmental harms it decides to tolerate. See *Robertson* v. *Methow Valley Citizens Council*, 490 U. S. 332, 349–350 (1989). The point, as this Court has recognized, is not merely that an agency produce a report but "that environmental concerns be integrated into the very process of decision-making." *Andrus* v. *Sierra Club*, 442 U. S. 347, 350 (1979); see also *Kleppe* v. *Sierra Club*, 427 U. S. 390, 409–410 (1976); *Robertson*, 490 U. S., at 350. In that way, NEPA's procedural requirements advance Congress's aim that the Federal Government "use all practicable means [to ensure] that the Nation may . . . fulfill the responsibilities of each generation as trustee of the environment for succeeding generations." §4331(b)(1).

Because NEPA's central aim is to improve agency decisionmaking, an agency need not consider every conceivable environmental consequence of a proposed federal action. Rather, agencies need only analyze environmental impacts

for which their decision would be (at least in part) "responsible," a requirement akin to "the familiar doctrine of proximate cause from tort law." *Metropolitan Edison Co.* v. *People Against Nuclear Energy*, 460 U. S. 766, 774, and n. 7 (1983). An agency is not responsible for environmental impacts it could not lawfully have acted to avoid, either through mitigation or by disapproving the federal action. See *Department of Transportation* v. *Public Citizen*, 541 U. S. 752, 770 (2004). Nor is an agency responsible for impacts that, though technically avoidable, are so causally attenuated from or ancillary to the agency's statutorily assigned tasks that it could not reasonably have been expected to consider them as part of its decisionmaking process. *Metropolitan Edison*, 460 U. S., at 774. Together these limitations serve to keep the scope of the agency's review targeted to environmental impacts it is well positioned to address.

Precedent makes these abstract principles concrete. In *Public Citizen*, this Court evaluated the Federal Motor Carrier Safety Administration's environmental analysis of regulations establishing an application process for Mexican motor carriers who wanted to operate in the United States. 541 U. S., at 758–763. The application system itself had only minimal environmental impacts (related to anticipated roadside inspections of the Mexican trucks and buses). Yet the agency developed it at the direction of the President, who had decided to lift a long-running moratorium on Mexican carriers' operation in the United States following the system's completion. *Id.*, at 760. Thus, promulgation of the agency's regulations would enable a substantial influx of new trucking, which in turn would have major environmental implications.

This Court concluded that, though the agency's regulations would be a "but-for" cause of the new trucking, it did not need to consider the related environmental impacts because it had "no authority to prevent" them. *Id.,* at 766–

767. After all, the decision to lift the moratorium had been the President's, not the agency's, and the agency could not lawfully refuse to issue its regulations in order to block the President's decision. *Id.*, at 761. The agency had no means to prevent, and thus was not responsible for, the consequences of lifting the moratorium. Hence NEPA did not require it to analyze those consequences.

The Court's decision in *Metropolitan Edison* illustrates the companion principle: Some environmental impacts are connected to an agency action by way of so "attenuated" a causal chain that the agency may reasonably dismiss them as ancillary to its decision. 460 U. S., at 774. In *Metropolitan Edison*, the Court considered whether the Nuclear Regulatory Commission had to analyze not only the risk that a proposed nuclear plant would cause an accident, but also the psychological concern nearby residents might experience when they learned about that risk. *Ibid.* Although the psychological concern would be "caused by" the nuclear plant, the Court held that NEPA did not require the agency to consider it. *Id.*, at 774–775. That makes sense: Preventing nuclear accidents is a core element of the Commission's statutory task; preventing psychological distress is not. See *id.*, at 776 (noting that "psychiatric expertise" is "not otherwise relevant to [the agency's] congressionally assigned functions"). Because the agency could reasonably disregard psychological distress in deciding whether to approve a power plant, it could disregard that risk in its environmental analysis as well.

As these cases show, the dual limitations on an agency's duty to consider information under NEPA yield a "'rule of reason,' which ensures that agencies determine whether and to what extent to prepare an EIS based on the usefulness of any new potential information to the decisionmaking process." *Public Citizen*, 541 U. S., at 767 (quoting *Marsh* v. *Oregon Natural Resources Council*, 490 U. S. 360,

373–374 (1989)). NEPA requires consideration of environmental impacts only if such consideration would result in information on which the agency could act.

B

Consistent with these principles, judicial review of an agency's environmental impact statement involves a two-step analysis. First, courts must consider the grounds on which an agency may rely under its organic statute to modify (by mitigation) or reject a proposed federal action. If the organic statute precludes consideration of a particular issue, the agency may set it aside for purposes of its NEPA review as well. That is the rule of *Public Citizen*.[3]

Second, if an agency decided not to review an environmental impact because (in its judgment) the impact was too causally attenuated from the question at hand, courts must ask whether the agency "acted arbitrarily" in doing so. *Kleppe*, 427 U. S., at 412. That deferential standard of review is appropriate here, as it is across substantive areas of administrative law, because "[a]gencies . . . have 'unique expertise,' often of a scientific or technical nature, relevant to applying a regulation 'to complex or changing circumstances.'" *Kisor* v. *Wilkie*, 588 U. S. 558, 571 (2019) (plurality opinion). Thus, as the majority points out, agencies often are "better equipped to assess what facts are relevant to the[ir] . . . own decision than a court is." *Ante*, at 10; cf. *Loper Bright Enterprises* v. *Raimondo*, 603 U. S. 369, 456 (2024) (KAGAN, J., dissenting) ("[A]gencies often know things about a statute's subject matter that courts could not hope to").[4]

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[3] It follows from this rule that the proper scope of an agency's NEPA review depends in part on the nature of the agency's statutory authority. The greater an agency's authority to consider and prevent environmental impacts in its decisionmaking process, the greater its duty under NEPA to consider those impacts, and vice versa.

[4] Of course, that point applies equally when an agency decides that an environmental impact is relevant to its decision.

This case provides no occasion to consider the second step because the question presented is resolved at the first. The Board twice decided it lacked authority to reject railway applications on account of the ways in which third parties would use the products "transported on the proposed rail line." Final EIS 3.15–36; App. to Pet. for Cert. 108a ("Here, the Board has no authority or jurisdiction over development of oil and gas in the Basin nor any authority to control or mitigate the impacts of any such development"). Each time, the agency cited *Public Citizen* to justify its decision not to analyze further the environmental effects of oil drilling and refining made possible by the Railway. See Final EIS 3.15–36; App. to Pet. for Cert. 108a.

Review of the Board's organic statute, the Interstate Commerce Commission Termination Act, confirms the Board's understanding of the scope of its review. "As common carriers, railroads subject to the Board's jurisdiction are required to provide 'transportation or service on reasonable request' to any person or commodity." *Ante,* at 20, n. 6 (quoting 49 U. S. C. §11101(a)). In addition, the Act contains a clear presumption in favor of approving new railways. See *supra*, at 3. And of the 15 statutory policies the Board must consider in the exemption process, not one concerns the anticipated use of commodities that will be transported on the proposed railway. See §§10101(1)–(15). Unlike the Board, meanwhile, other entities do have authority "to approve oil and gas development projects" and to regulate the effects of refining. See Brief for Federal Respondents 19. All this suggests, as the Board concluded, that the Board could not have rejected petitioners' application in order to prevent the harmful effects of oil drilling and refining.[5] Short of rejecting the Railway entirely, moreover, the

[5]The D. C. Circuit came to the opposite conclusion because it viewed the Board's authority to license railroad construction based on the "'public convenience and necessity'" as encompassing the effects of oil drilling and refining enabled by the Railway. 82 F. 4th 1152, 1180 (2023). That

common carrier mandate prevented the Board from mitigating, by limiting the transport of crude oil, the Railway's spurring of the oil industry. See §11101(a).

The environmental respondents concede that the Board correctly understood the scope of its decisionmaking authority. See Tr. of Oral Arg. 84–85. Instead, they argue that the Board should have analyzed even environmental impacts it could not lawfully prevent. Yet *Public Citizen* squarely forecloses that position. See *supra*, at 9–10. Even a foreseeable environmental effect is outside of NEPA's scope if the agency could not lawfully decide to modify or reject the proposed action on account of it. NEPA thus did not require the Board to consider the effects of oil drilling and refining.

* * *

Under NEPA, agencies must consider the environmental impacts for which their decisions would be responsible. Here, the Board correctly determined it would not be responsible for the consequences of oil production upstream or downstream from the Railway because it could not lawfully consider those consequences as part of the approval process. For that reason, I concur in the Court's judgment reversing the D. C. Circuit's holding requiring the Board to consider in further detail harms caused by the oil industry.

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phrase, however, must be read "with a view to [its] place in the overall statutory scheme." *Davis* v. *Michigan Dept. of Treasury*, 489 U. S. 803, 809 (1989). Here, the Board's organic statute contains clear indicators, most significantly the common carrier mandate, that the Board's authority does not extend so far.

Environmental Barriers to Oregon's Renewable Energy Transition

Caroline Moore, Acting Director Energy Program, Oregon Public Utility Commission

Caroline Moore is the Acting Director of the Public Utility Commission of Oregon's (OPUC) Energy Program, and as part of her role, oversees the implementation of Oregon's landmark House Bill 2021 (Clean Energy) and House Bill 2475 (Energy Equity). Caroline has experience working on several sides of Oregon's utility sector, serving for eight years as OPUC Staff, and, prior to that, working in the renewable markets industry and in customer solutions at PacifiCorp.

Mike Goetz, Regulatory Affairs Director, Renewable Northwest

Mike Goetz joined Renewable Northwest in January 2025 as Regulatory Affairs Director. In his role, Mike is responsible for leading the development of the organization's state regulatory and markets and transmission strategy in Oregon, Washington, Montana, and Idaho. Mike engages in a wide variety of proceedings before state utility regulatory commissions, the Bonneville Power Administration, and regional forums related to electricity markets and transmission expansion. Previously, Mike served as Senior Policy and Regulatory Counsel at the NW Energy Coalition, and as general counsel for Oregon's residential utility consumer advocate for eight years. Mike serves on the executive committee of the Oregon State Bar's Energy, Telecom, and Utilities section and served on Renewable Northwest's Board of Directors for six years, including one year as Board Chair. Mike attended the University of Oregon School of Law, graduating with a J.D. and a certificate of completion in Environmental and Natural Resources Law and received a B.S. in Earth Systems, Environment & Society from the University of Illinois. Originally from the Chicago suburbs, Mike has adopted the Pacific Northwest as his chosen home, where he spends his free time exploring wild areas on skis, bicycle, and by foot.

Sarah Esterson, Regulatory Affairs Director, Renewable Northwest

Sarah Esterson is the Senior Policy Advisor at the Oregon Department of Energy (ODOE), Siting Division. She has been in this position for 4 years, and with ODOE for 11 years. In her position, she acts as a team lead for permit (site certificate) reviews for utility scale energy facilities and provides guidance on regulatory interpretation and application. She is also responsible for tracking legislation and making recommendations during session regarding statutory changes to support or clarify the regulatory process for energy facility siting. She has a Bachelor of Science in Public Affairs, with a concentration in Environmental Management, Policy and Law from Indiana University; and a Master's in Public Administration from University of Colorado-Denver.



Oregon Public Utility Commission

Environmental Barriers to Oregon's Renewable Energy Transition

2025 Environmental & Natural Resources Law: Year in Review

Caroline Moore, Energy Program Director

October 16, 2025

PUC Overview and Funding

3 full-time Commissioners – 142 FTE

Quasi-judicial and policy functions

Economic regulator of investor-owned utilities:

- Electric – PGE, PacifiCorp, and Idaho Power
- Natural Gas – NW Natural, Cascade, and Avista
- Select telecom and small water companies

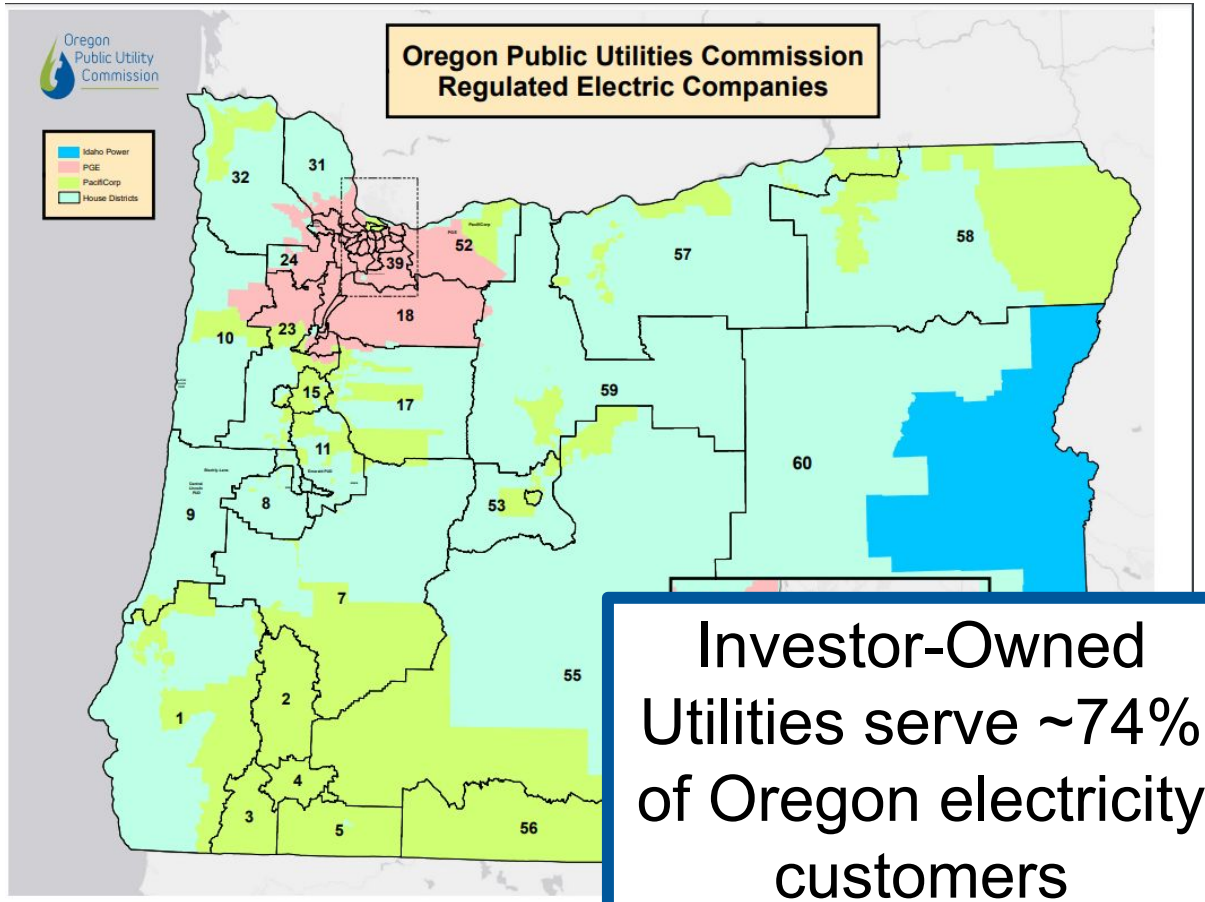
Broader role in utility safety and emergency support

Our **mission** is to ensure Oregonians have access to **safe, reliable and fairly priced** utility services that advance **state policy** and promote the **public interest**.

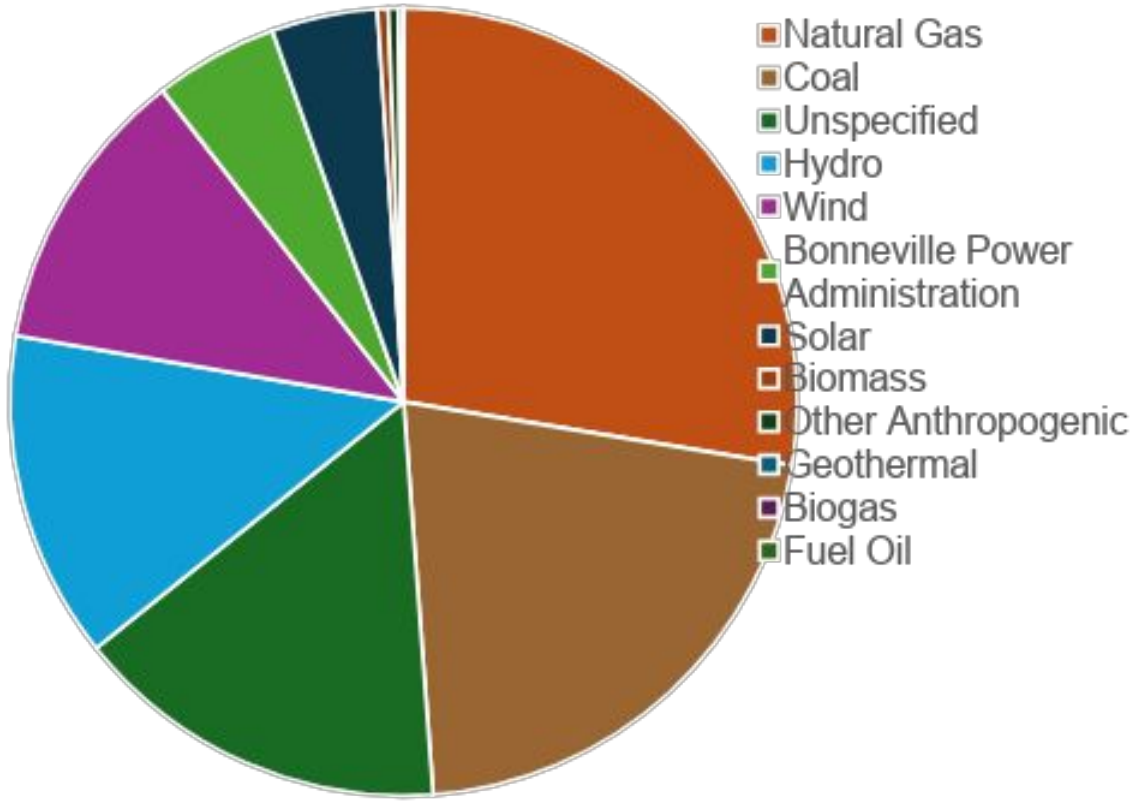
We use an **inclusive process** to evaluate differing viewpoints and visions of the public interest and arrive at **balanced, well-reasoned, independent decisions** supported by fact and law.

Oregon Public Utility Commission

Energy Landscape

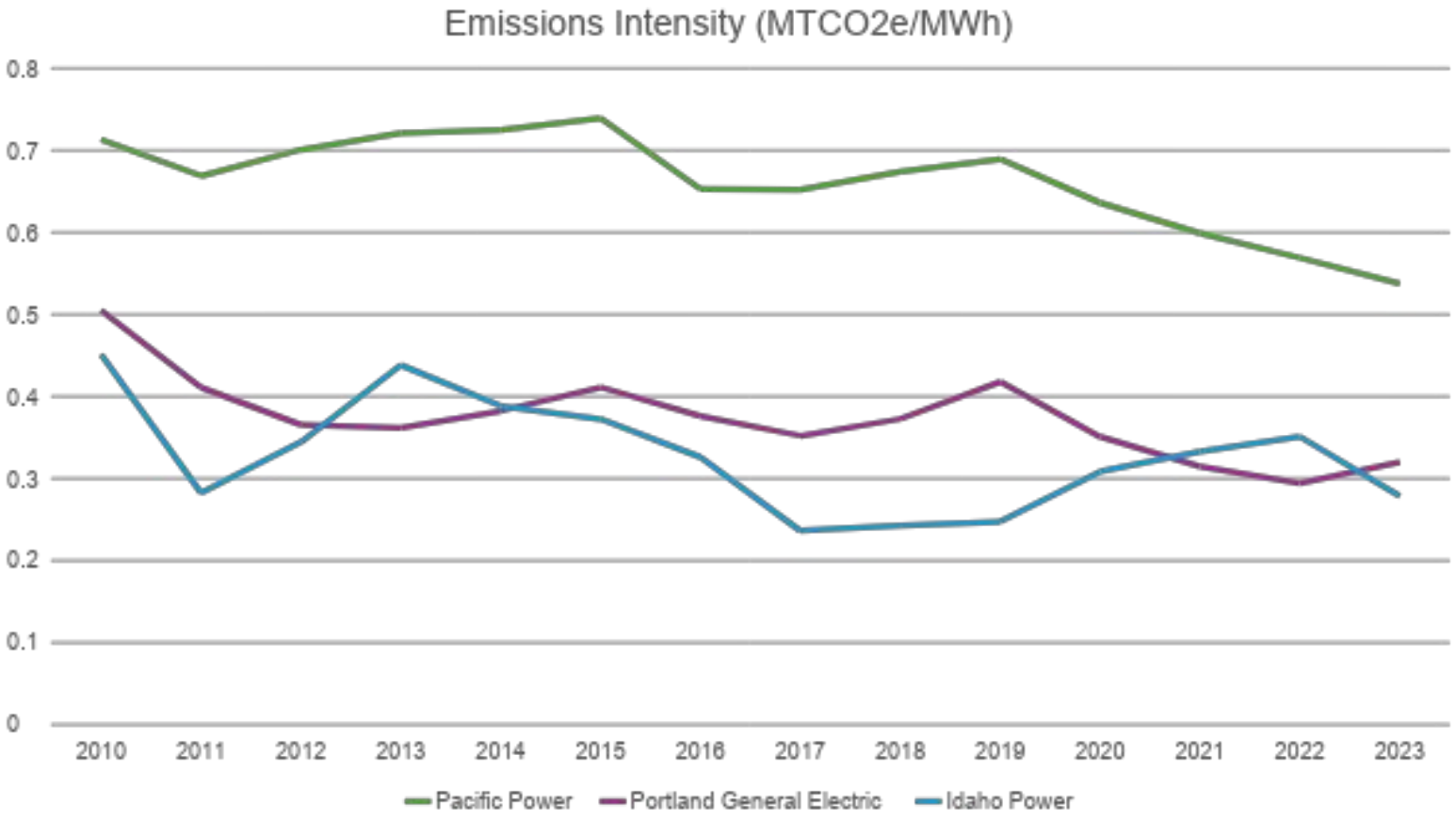


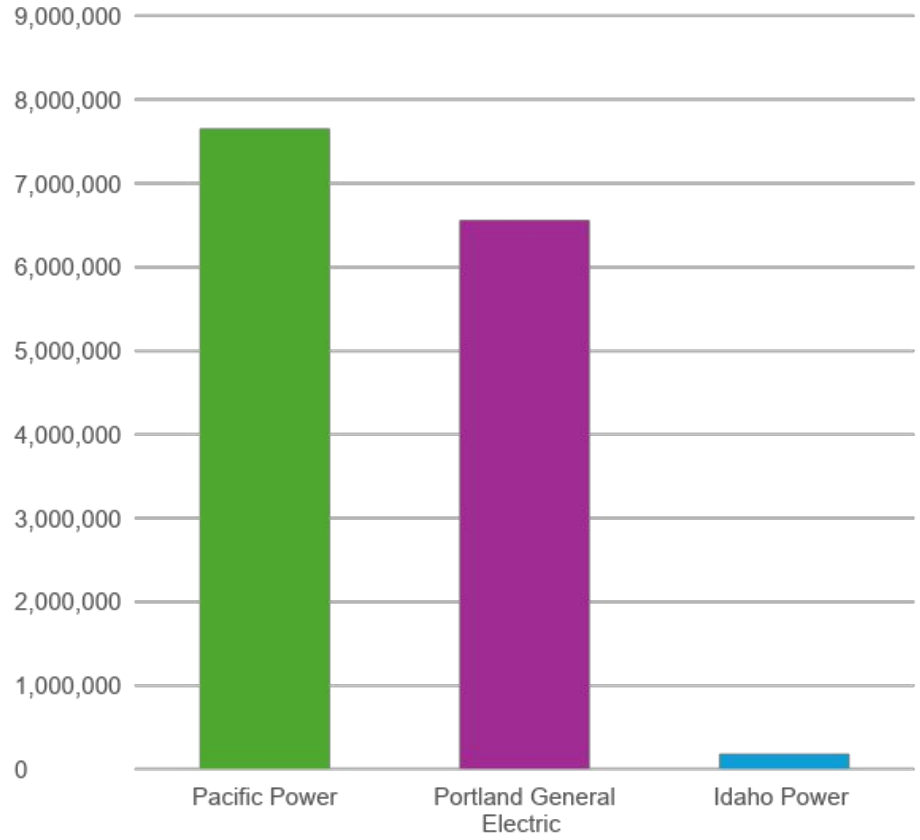
Investor-Owned Utilities serve ~74% of Oregon electricity customers



Source: Oregon Department of Environmental Quality, Greenhouse Gas Emissions from Utility Sector
https://www.oregon.gov/deq/ghgp/Pages/GHG-Emissions.aspx

Electric Sector Emissions





Source: Oregon Department of Environmental Quality, Greenhouse Gas Emissions from Utility Sector
https://www.oregon.gov/deq/ghgp/Pages/GHG-Emissions.aspx

HB 2021 – Key Provisions

Emissions Reductions

- 80% reduction – 2030
- 90% reduction – 2035
- 100% GHG free – 2040

OPUC+DEQ oversight

Planning & Protections

- Clean Energy Plans (CEP)
- Reliability pause
- Affordability off ramp
- Regional coordination
- Non-bypassability of costs

Environmental Justice

- Advisory groups
- Labor standards (ODOE)
- Community benefits
- Natural gas plant ban

Applies to:

Portland General Electric
PacifiCorp (dba Pacific Power)
Retail Choice Suppliers (ESSs)

Community Renewables

- 10% small-scale by 2030
- CBRE Grants (ODOE)
- CBRE Study (ODOE)

Consumer Choice

- Local government renewables
- Code of conduct (maintaining competition)

* Effective September 25, 2021

HB 2021 – PUC Oversight

- Pre-2030
  - Clean Energy Planning (ORS 469A.415, ORS 469A.420)
  - Continual progress (ORS 469A.415)
  - Cost cap (ORS 469A.445, ORS 469A.450)
  - Reliability off-ramp (ORS 469A.440)

- Post-2030
  - Compliance verification with Oregon DEQ (ORS 469A.435)
  - Remediation plans for non-compliance (ORS 469A.435)

HB 2021 - Headwinds

Pacing and feasibility

- Near-term costs/customer bill impacts
- Supply chain constraints
- Technology uncertainty
- Load growth uncertainty
- Liability exposure system hardening costs

Regional issues

- Permitting/land use
- Transmission
- Markets
- Resource Adequacy
- Emissions accounting
- Competing regional goals

Allocation of risks and benefits

- Energy burden
- Community-based resources
- Large customer growth

**Federal landscape changes amplify many issues

2025 Environmental & Natural Resources Law: Year in Review

Environmental Barriers to Oregon's Renewable Energy Transition



Mike Goetz
Regulatory Affairs Director,
Renewable Northwest

October 16, 2025

2025 Environmental & Natural Resources Law: Year in Review

Environmental Barriers to Oregon's Renewable Energy Transition

Sarah Esterson, Sr. Policy Advisor,
Oregon Department of Energy

October 16, 2025







OREGON DEPARTMENT OF ENERGY

OREGON DEPARTMENT OF ENERGY

Leading Oregon to a safe, equitable, clean, and sustainable energy future.

Our Mission

The Oregon Department of Energy helps Oregonians make informed decisions and maintain a resilient and affordable energy system. We advance solutions to shape an equitable clean energy transition, protect the environment and public health, and responsibly balance energy needs and impacts for current and future generations.

What We Do

On behalf of Oregonians across the state, the Oregon Department of Energy achieves its mission by providing:

- A Central Repository of Energy Data, Information, and Analysis
- A Venue for Problem-Solving Oregon's Energy Challenges
- Energy Education and Technical Assistance
- Regulation and Oversight
- Energy Programs and Activities

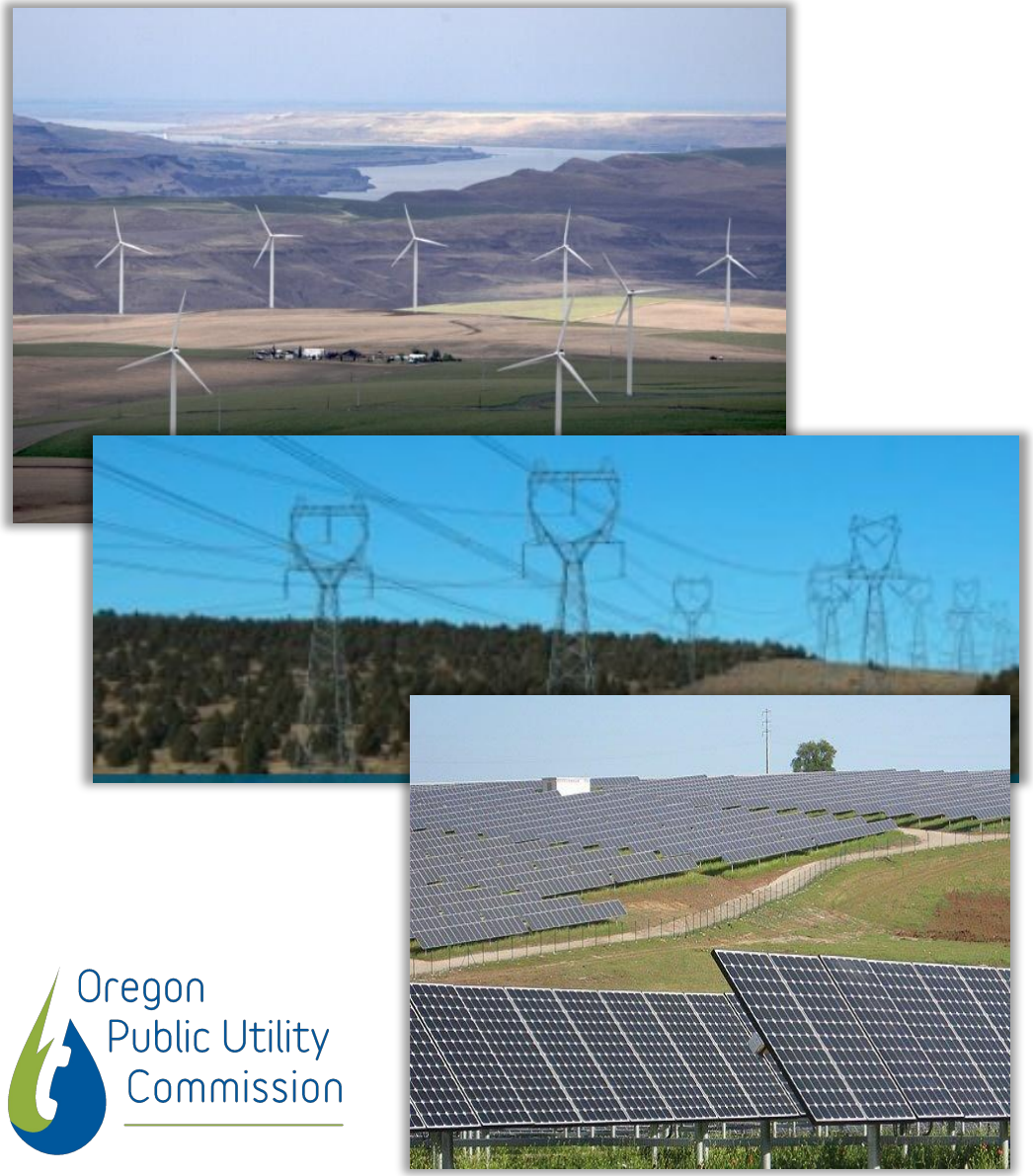
STATE ENERGY SITING STATUTORY POLICY

ORS 469.310

"…the siting, construction and operation of energy facilities shall be accomplished in a manner consistent with protection of the public health and safety and in compliance with the energy policy and air, water, solid waste, land use and other environmental protection policies of this state."

Oregon Public Utility Commission

Energy Facility Siting Council (EFSC) Review

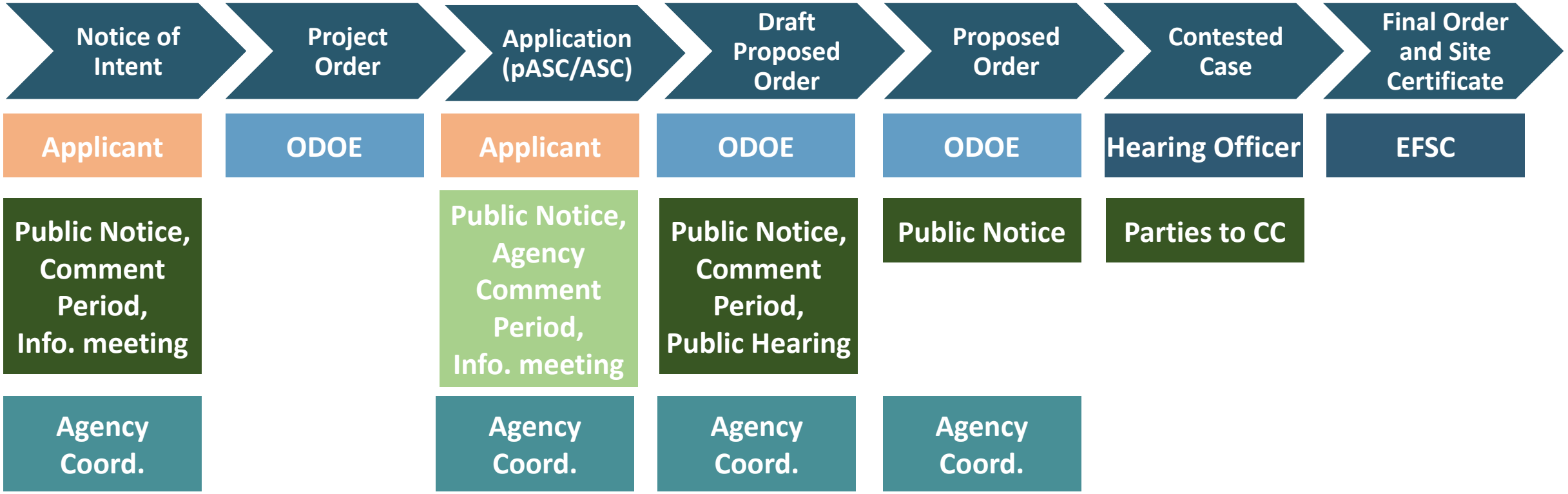


- Consolidated review and oversight of most large-scale energy facilities and infrastructure in Oregon
- EFSC Members
  - Seven volunteers from around the sates
  - Appointed by Governor, confirmed by Senate
- ODOE's Siting Division is staff to EFSC

Oregon Public Utility Commission

ENERGY FACILITY SITING PROCESS

Application for Site Certificate Process



Oregon Public Utility Commission

Permitting Challenges for Renewable Energy

- Complexity and duration of state/federal jurisdiction (for transmission lines)
- Landowner consent/access for surveys/evaluation (for transmission lines)
- Land use review/approval > exception to Statewide Planning Goal 3 (solar)
- Wildfire and noxious weed risk concerns (all)
- Ability to interconnect to regional grid (BPA queue), secure power purchase agreement/financing

Oregon Public Utility Commission

Permitting Challenges for Renewable Energy

Complexity and duration of state/federal jurisdiction (for transmission lines)

- Example: Boardman to Hemingway Transmission Line
  - 300 mile 500 kV transmission line (approx. 100 miles on federal land, 190 on private land)
  - Federal process resulted in identification of a different route (agency preferred route)
    - Required temporary hold of concurrent state/federal process, and re-start of state process
  - Timeline
    - August 2008: Joint start with State/Federal processes
    - Feb 2013: pASC filed
    - 2013-2017: State process put on-hold (agency preferred route)
    - 2017: Federal process concludes (Record of Decision
    - 2017 – 2023: State process

Oregon Public Utility Commission

Permitting Challenges for Renewable Energy

- Landowner consent/access for surveys/evaluation (for transmission lines)
  - State permitting process is an evidentiary process > requires preponderance of evidence to support evaluation of compliance..typically reliant on field surveys for biological, hydrological and cultural resources
  - Unwilling landowners reduce accessibility, create permitting challenges
    - Unknown resources and impacts
    - Late-in-the-game changes upon request

Oregon Public Utility Commission

Permitting Challenges for Renewable Energy

- Land use review/approval > exception to Statewide Planning Goal 3 (solar)
  - Pursuant to state statute (ORS 469.503(3)) and Council's Land Use standard (OAR 345-022-0030), to issue a site certificate, Council must find that a proposed facility complies with the statewide planning goals adopted by the Land Conservation and Development Commission (LCDC).
  - LCDC Rule prohibits a solar pv facility from using, occupying or covering more than 12 acres of high value farmland, 20 acres of arable land or 320 acres of nonarable lands >> every EFSC jurisdictional facility exceeds on of these thresholds
  - Applicants request a "reasons" exceptions, offering reasons such as: locational dependence, minimal impacts to agriculture, minimal impacts to other resources, consistency with state and local energy policies

Oregon Public Utility Commission

Permitting Challenges for Renewable Energy

- <u>Wildfire and noxious weed risk concerns (all)</u>
  - Wildfire risk and prevention is addressed under Council's standard at OAR 345-022-0115
    - Adopted in July 2022
  - Standard require risk assessment, emergency response/communication, wildfire prevention
    - Firebreak/design requirements
    - Vegetation Mgmt
    - Equipment inspections and maintenance
    - Routine plan updates to address new information/lessons learned/industry guidance
  - Noxious weed control is addressed under Council's Land Use, Soil Protection and Fish and Wildlife Habitat standards (OAR 345-022-0030, -0022, -0060)
    - Identification of potential and actual noxious weeds onsite, and invasive weeds that affect success of seeding
    - Rigorous monitoring and treatment plan

Oregon Public Utility Commission

Permitting Challenges for Renewable Energy

- Ability to interconnect to regional grid (BPA queue), secure power purchase agreement/financing
  - ORS 469.401(4) requires that EFSC specify a deadline for beginning construction.
  - Majority of Site Certificates are approved with a 3-year construction deadline (from date of approval)
    - Majority of projects seek an extension of the deadline to the above reasons, up to 2 times
    - Currently, there is 2.7 GW of approved solar facilities (10 faciliti8es) in Oregon, not yet constructed.

Oregon Public Utility Commission


OREGON
DEPARTMENT OF
ENERGY
QUESTIONS?

Privilege, Generative AI in the Practice of Law, and the Intersection of the Two

Nellie Barnard, Schwabe, Williamson & Wyatt

Nellie Barnard provides legal ethics and risk management advice to lawyers, law firms, law students, and in-house legal departments. She also represents Oregon and Washington lawyers in attorney discipline matters and character and fitness proceedings, including on appeal. Nellie appreciates the obstacles that lawyers and law firms face in the practice and the business of law and works collaboratively with clients to minimize the risk of liability, including issues involving conflicts of interest, sanctions, privilege, client confidentiality, engagement, and withdrawal procedures, multi-jurisdictional practice, lawyer-client relationships, fee disputes, and practice planning and management. She helps lawyers and law firms address the boundaries involving attorney advertising and marketing, including issues particular to social media, client solicitation, business relationships with non-lawyers, and fee sharing. Nellie also serves as deputy general counsel for her firm.



Privilege & Generative AI in the Practice of Law: The Intersection

PRESENTED BY
Nellie Q. Barnard

Oregon State Bar
Environmental & Natural
Resource Section

REPRESENTED BY
Schwabe

October 16, 2025

Objectives

- Explore attorney-client privilege and potential waiver issues that arise when using generative artificial intelligence
- Develop strategies to reduce risk

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Caveats

- Not intended to
  - Create an attorney-client relationship
  - State a standard of care
- Keep hypotheticals hypothetical
- Seek counsel for a particular issue

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Roadmap

- Attorney-Client Privilege in Oregon
  - Elements
  - Waiver principles
- Generative AI
  - Overview
  - Relevant case law
  - Ethics opinions
- The Potential Impact of Generative AI on Attorney-Client Privilege
  - Risk assessment
  - Implementation strategies

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Part I: Attorney-Client Privilege in Oregon

Attorney-Client Privilege in Oregon

- Oregon Lawyer-Client Privilege (ORS 40.255.503(2)): “A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client.”

Elements of Attorney-Client Privilege

- Generally, assertions of the attorney-client privilege in Oregon require:
  I. A communication made for the purpose of facilitating the rendition of professional legal services to the client
  II. Between an attorney and client
  III. Confidentiality of the communication

- All three elements must be present for privilege to attach.

Schwabe

Element I: Attorney-Client Relationship

- In Oregon, communication must be between client and client's "law practitioner."
- A law practitioner is "a person authorized, *or reasonably believed by the client to be authorized*, to practice law in any state or nation." OEC 503(1)(c)
- For attorney-client privilege to attach to a communication, the client's intention must be to obtain legal advice or assistance from their attorney.
  - Business or other non-legal advice is not protected

Schwabe

Element II: Communication

- The attorney-client privilege is designed to encourage open communications between a client and their attorney.
- Protects the communication itself, not the underlying facts.
- Facts or information not otherwise privileged will not become privileged simply by being communicated to the attorney.

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Element III: Confidentiality

- OEC 503(1)(b) defines "confidential communication" to mean:
  - "A communication not intended to be disclosed to third persons **other than those to whom disclosure is in furtherance of the rendition of professional legal services** to the client or those reasonably necessary for the transmission of the communication."
- Key Principles (*Gollersrud v. LPMC, LLC*, 371 Or. 739 (2023))
  - In Oregon, there is a presumption of confidentiality.
  - After the individual asserting attorney-client privilege establishes (1) the existence of an attorney-client relationship and (2) that the communication at issue was made for the purpose of facilitating the rendition of legal services, the burden shifts to the proponent of the evidence to overcome the presumption of confidentiality.
  - Confidentiality focuses on the client's intent and is not defeated by the "mere awareness of a risk of disclosure."

Waiver of Attorney-Client Privilege

- General Waiver Rule (OEC 511):
  - The holder of the attorney-client privilege waives the privilege if the person "*voluntarily* discloses or consents to disclosure of any significant part of the matter or communication."
- Voluntary Disclosure
  - Intent to disclose is a fact-specific inquiry and can be "inferred from the circumstances, e.g., taking or failing to take precautions." OEC 503(1)(b) Commentary (1981).
  - Key factors to consider when determining whether disclosure was voluntary include:
    - Whether any attempt was made to remedy any error promptly
    - Whether preservation of the privilege will occasion unfairness to the opponent

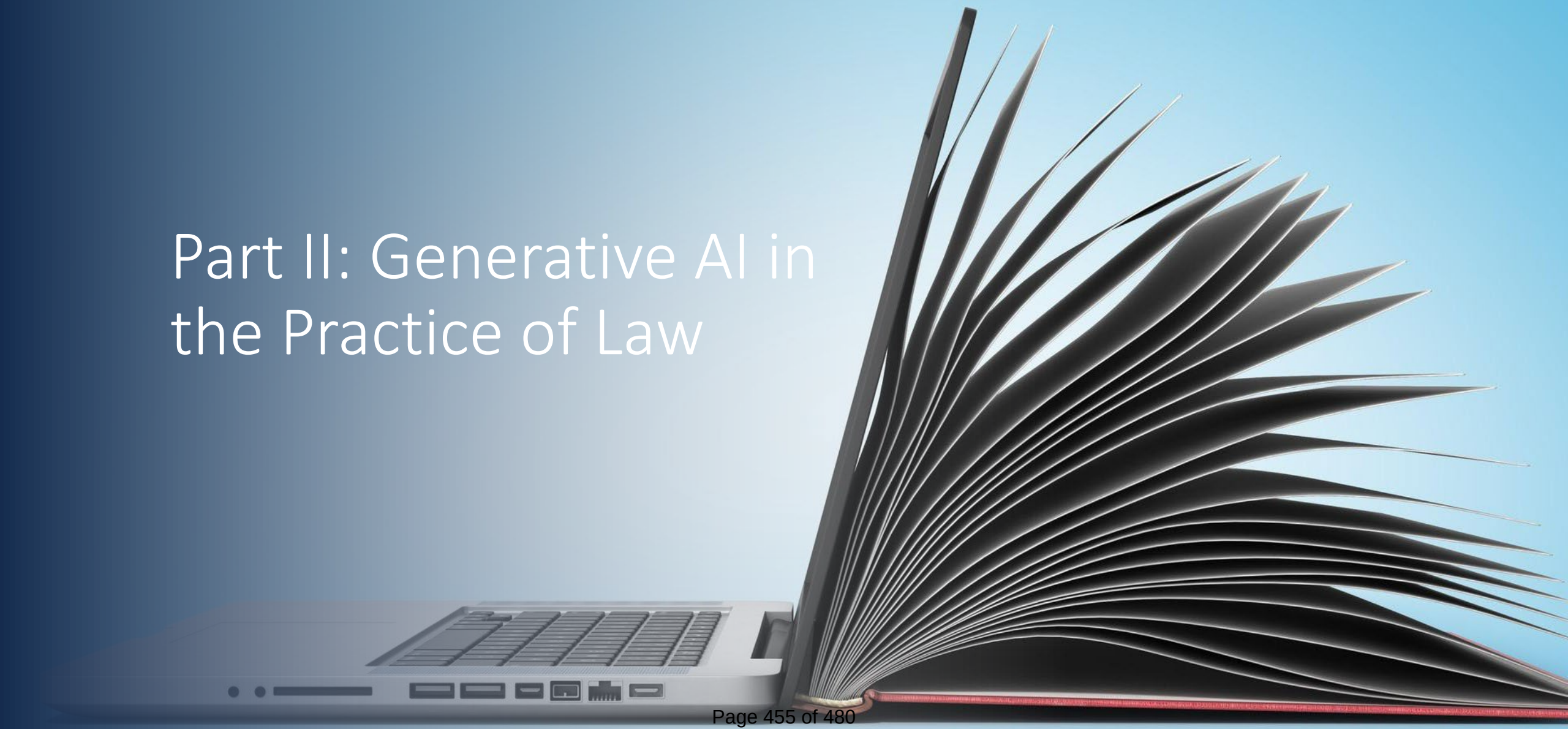
Goldsborough v. Eagle Crest Partners, Ltd., 314 Or. 336, 343 (1992).

Attorney's Authority to Waive Privilege

- Although the client is the holder of the privilege, the disclosure of confidential communications by the attorney may waive attorney-client privilege.
- Because clients authorize their attorneys to act on their behalf, an inference may be drawn that an attorney who voluntarily turns over privileged material acts within the scope of the attorney's authority from the client and with the client's consent, i.e., that the client has waived the privilege.
- There is no general legal requirement that a client have specifically consented to the release of a particular confidential information in order for a waiver to be established.

Goldsborough v. Eagle Crest Partners, Ltd., 314 Or. 336, 342-43 (1992).

Part II: Generative AI in the Practice of Law



What is Generative AI?

- Generative AI is artificial intelligence that can generate text, images, video, or other forms of content using models trained on data in the same form. The models identify patterns and structures in the training data, and, in response to a prompt, the generative AI can use those learnings to create outputs.
- Content is generated in an attempt to provide a response to a request
- Can create text, images, audio, video, etc.

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Critical Distinction: Open Models versus Closed Models

- “Open” Algorithms:
  - Continuously learn from data inputs, including potentially sensitive information.
  - May incorporate and disclose sensitive client data that is input by lawyers.
  - Data is shared with other users of the system
- “Closed” Algorithms:
  - Operate in isolation
  - Process and retain data within a secure environment.

Oregon State Bar Formal Opinion No 2025-205, Artificial Intelligence Tools

Current State of Case Law

- No Precedent:
  - There are no cases (in Oregon or elsewhere) that directly analyze how generative AI impacts attorney-client privilege
- Existing technology cases provide limited guidance:
  - *Gollersrud v. LPMC, LLC*, 371 Or. 739 (2023)

Gollersrud v. LPMC: Facts

- Gollersrud exchanged attorney-client privileged emails using his work email accounts at three former employers
- Gollersrud did not delete emails before leaving employment
- Emails remained stored on the employers' servers
- No evidence of employer email monitoring policies
- No evidence that any email monitoring policies were communicated to employees
- No evidence that anyone had ever accessed or read the privileged communications

Key Takeaways from *Gollersrud*

- Court's Holdings:
  - Simply transmitting privileged emails through an employer's servers is NOT a per se waiver of attorney-client privilege
  - Waiver requires more than just a theoretical risk that communications might be disclosed
  - Evidence of actual disclosure is required for waiver

OSB and ABA Ethics Opinions

- ABA Formal Opinion 512

- Oregon Formal Opinion No 2025-205

ABA Formal Opinion 512: Confidentiality

- Confidentiality under Model Rule 1.6:
  - “A lawyer shall not reveal information relating to the representation of a client” and must make “reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.”
- Key Obligations for Lawyers using GAI:
  - A lawyer using GAI must keep confidential all information relating to the representation of a client, unless the client gives informed consent, disclosure is impliedly authorized to carry out the representation, or disclosure is permitted by an exception.
  - Assess likelihood of disclosure and unauthorized access
  - Consider sensitivity of information
  - Evaluate difficulty of implementing safeguards
  - Balance safeguards against the lawyer’s ability to represent the client

Oregon Formal Opinion No 2025-205

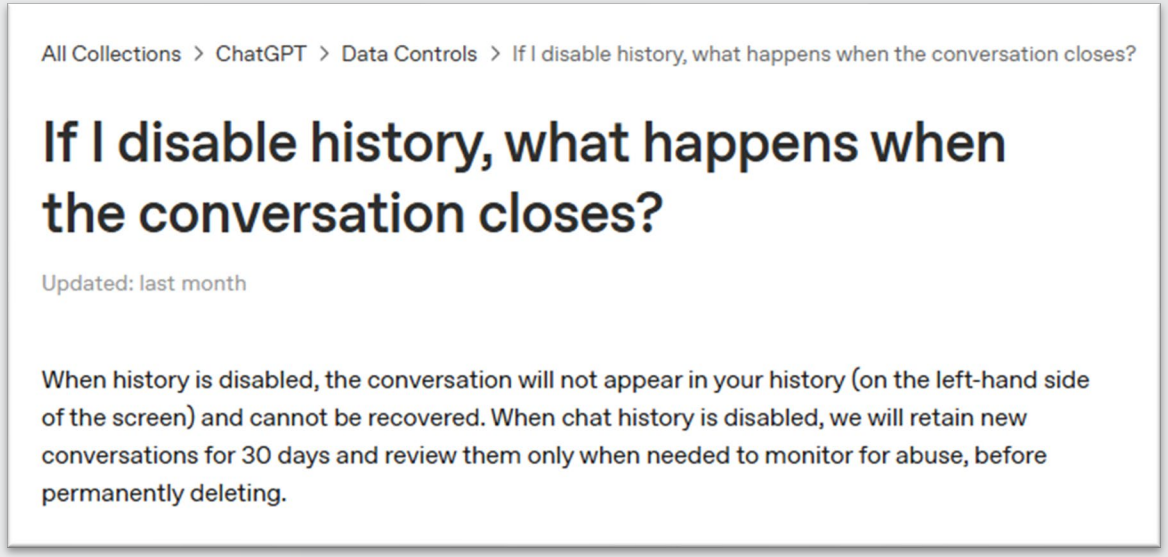
- Before utilizing AI, lawyers must:
  - Confirm information is reasonably secure; or
  - Develop policies that prohibit client information from being input into a system that could compromise its confidentiality
- For Open Models:
  - Lawyers must obtain their clients' informed consent
- For Closed Models:
  - Lawyers must ensure contracts with AI providers address data handling, encryption, storage, and destruction
  - The contract must include clear terms protecting client confidentiality
  - Ensure that the technology uses strict privacy protocols
  - Ensure that sensitive client information is neither exposed to, nor used by, any external systems or entities

Part III: The Impact of Generative AI on Attorney-Client Privilege



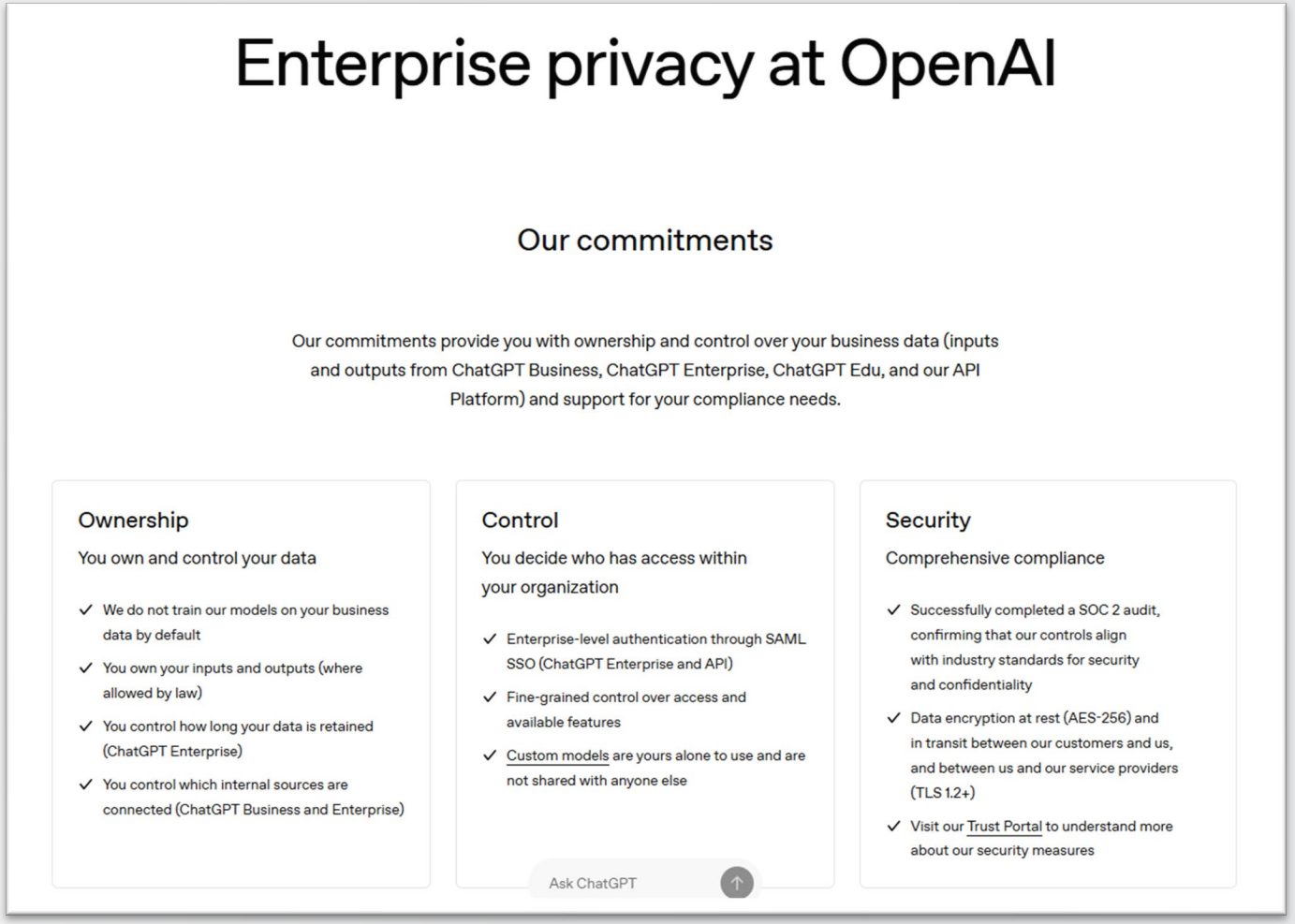
More than a “Mere Risk” of Disclosure?

- Courts require more than a theoretical possibility of disclosure to waive privilege. However, AI systems present unique risks that require careful analysis.
- Example: ChatGPT Data Handling:



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More than a “Mere Risk” of Disclosure?



Enterprise privacy at OpenAI

Our commitments

Our commitments provide you with ownership and control over your business data (inputs and outputs from ChatGPT Business, ChatGPT Enterprise, ChatGPT Edu, and our API Platform) and support for your compliance needs.

Ownership

You own and control your data

- ✓ We do not train our models on your business data by default
- ✓ You own your inputs and outputs (where allowed by law)
- ✓ You control how long your data is retained (ChatGPT Enterprise)
- ✓ You control which internal sources are connected (ChatGPT Business and Enterprise)

Control

You decide who has access within your organization

- ✓ Enterprise-level authentication through SAML SSO (ChatGPT Enterprise and API)
- ✓ Fine-grained control over access and available features
- ✓ Custom models are yours alone to use and are not shared with anyone else

Ask ChatGPT

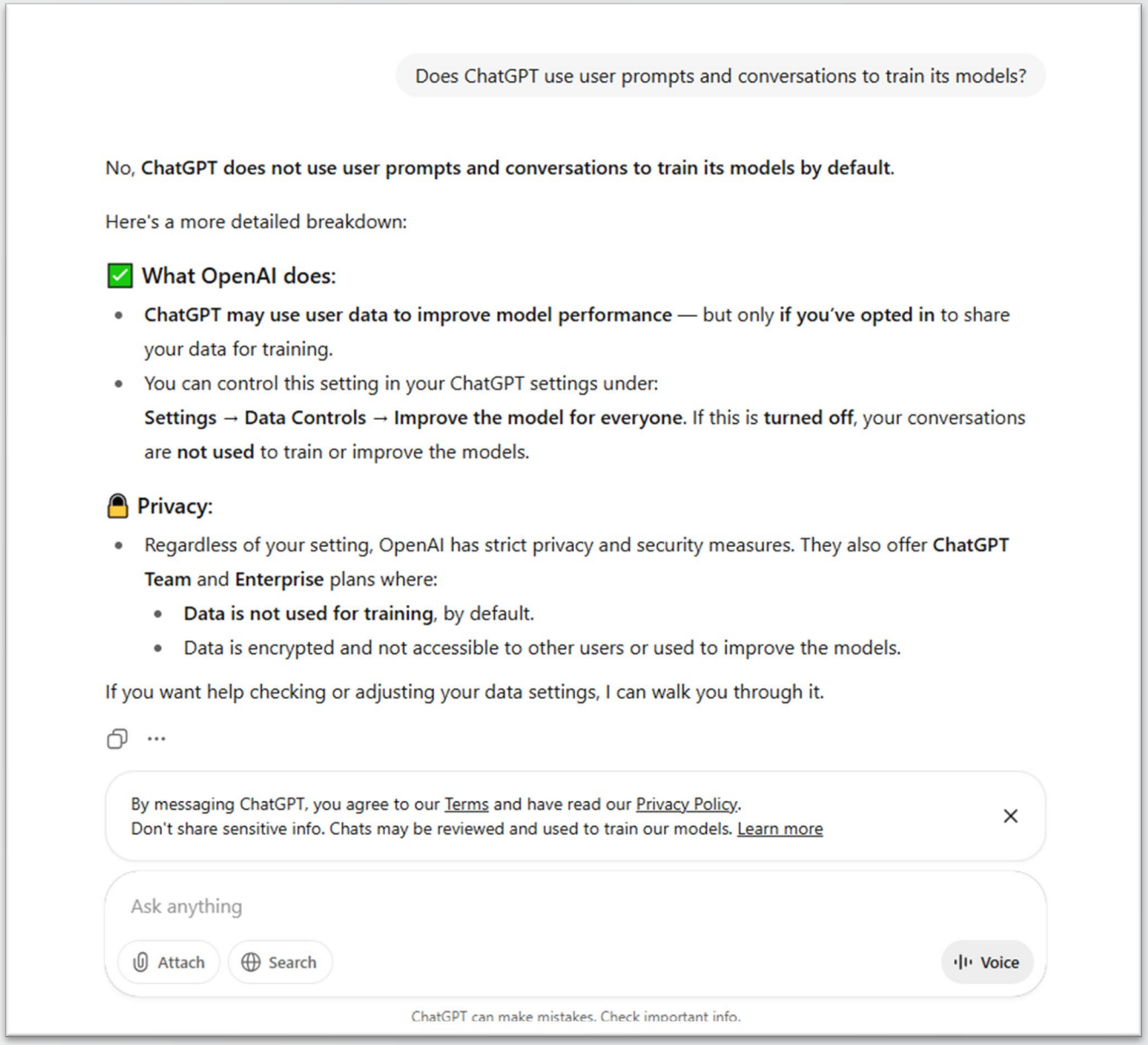
Security

Comprehensive compliance

- ✓ Successfully completed a SOC 2 audit, confirming that our controls align with industry standards for security and confidentiality
- ✓ Data encryption at rest (AES-256) and in transit between our customers and us, and between us and our service providers (TLS 1.2+)
- ✓ Visit our Trust Portal to understand more about our security measures

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More than a “Mere Risk” of Disclosure?



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Waiver in the AI Context

- Traditional Waiver Analysis:
  - Must show voluntary disclosure
  - Of significant part of communication
  - With intent to waive (actual or inferred)

- AI- Specific Considerations:
  - How does terms of service language affect intent analysis?
  - What constitutes adequate precautions in AI context?
  - When does limited third-party access to data become more than a “mere risk” of disclosure?
  - If data is never accessed by third-party, was there ever actual disclosure?

Hypothetical 1: Environmental Compliance

- Lisa represents a manufacturing company responding to EPA requests for information about air emissions reporting. To help draft their response, Lisa gathers her client's internal compliance reports, emails between plant managers discussing equipment maintenance issues, and her own notes from client meetings where the company discussed their compliance challenges and preferred settlement approach. Lisa uploads these documents into an AI platform asking: "Help me calculate penalty exposure and draft a response strategy based on these compliance issues." The AI platform's terms allow data usage for service improvement and potential employee access.

Hypothetical 1: Environmental Compliance

- Questions:

- Has privilege been waived by uploading privileged materials?
- What additional information do you need to decide?

Hypothetical 2: Permit Application

- David represents a waste management company applying for a hazardous waste treatment permit. His client must submit detailed technical specifications for their proposed treatment facility as part of the permit application, which will become part of the public administrative record once filed.
- David uses a secure AI tool (with contractual privacy protections and no data retention) to help proofread and format the technical engineering specifications, ensuring they comply with regulatory formatting requirements, and are written clearly for agency reviewers.
- He inputs only the technical data that his client has already decided to make public through the permit application. He includes no confidential business information, strategic discussions, or client communications regarding the application strategy.

Hypothetical 2: Permit Application

- Questions:

- Has privilege been waived by uploading privileged materials?
- What additional information do you need to decide?

Hypothetical 3: Solar Project Strategy

Rachel represents a renewable energy company seeking permits for a large solar installation. She uses an AI platform to help strategize responses to community opposition. She inputs anonymized summaries: “Company developing 500-acre solar project in rural agricultural area, facing opposition over farmland conversion. Company willing to relocate project but concerned about permitting delays and cost. What are best legal strategies for land use challenges?” She doesn’t name the client or location, but the project size and circumstances might be identifiable to someone familiar with current regional solar developments.

Hypothetical 3: Solar Project Strategy

- Questions:
  - Has privilege been waived by uploading privileged materials?
  - What additional information do you need to decide?

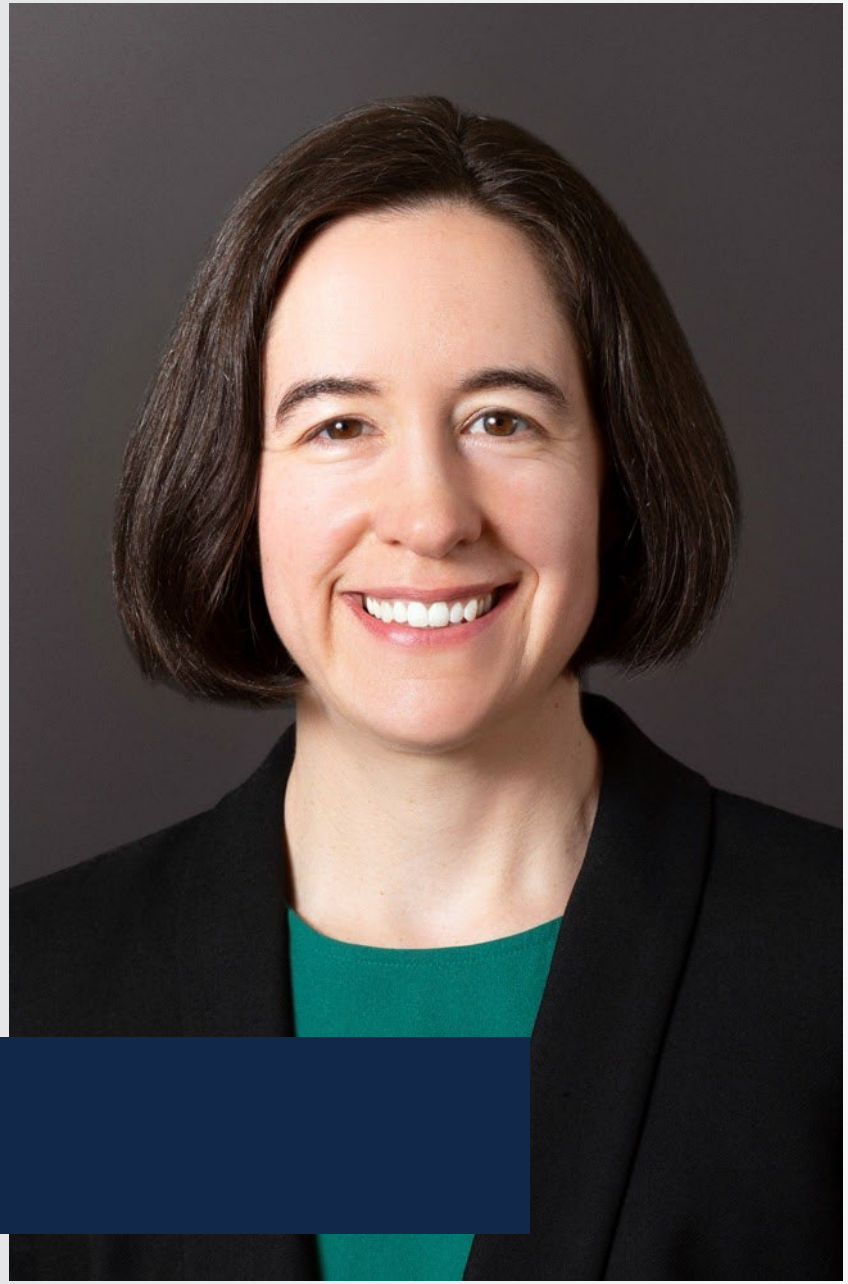
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Final Takeaways: Flag and Identify Risk

- Evaluate AI Tools:
  - As a baseline, all lawyers should read and understand the Terms of Use, privacy policy, and related contractual terms and policies of any generative AI tool they use to learn who has access to the information that the lawyer inputs into the tool.
- If using confidential client information, informed consent is likely required.
- If using the tool for idea generation in a manner that does not require inputting information relating to the representation, client informed consent would not be necessary.



Schwabe



Nellie Q. Barnard

Deputy General Counsel, Shareholder

As an experienced litigator, I provide legal ethics and risk management advice to lawyers, law firms, law students, and in-house legal departments.

I also represent Oregon and Washington lawyers in attorney discipline matters, character and fitness proceedings, sanctions motions, and disqualification motions, including on appeal. I also maintain a commercial litigation practice.

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