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Recent Environmental Cases and Rules

Jessica Bernardini &
Mary Stites, Editors

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

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OREGON COURT OF APPEALS

NewSun Energy, LLC v. OPUC,
346 Or App 545 (2026)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

Sakr et al v. City of Portland et al.,
No. 3:24-CV-01265-AN, 2026 WL 473189 (D. Or. Feb. 18, 2026)

Center for Biological Diversity v. U.S. Forest Service, et al.,
No. 6:24-CV-00930-AA, 2026 WL 893291 (D. Or. Mar. 31, 2026)

National Wildlife Federation v. National Marine Fisheries Service,
No. 3:01-cv-640-SI, 2026 WL 836836 (D. Or. March 26, 2026)

**If you are interested in contributing to future editions, please contact the editors:*

Jessica Bernardini, jessica.bernardini@millernash.com
Mary Stites, mary@nedc.org

Introduction

Petitioner NewSun Energy, LLC (“NewSun”) challenged the rules amended and promulgated by the Public Utility Commission of Oregon (“OPUC”) in 2023. NewSun asserted that (1) the 2023 rules were promulgated without following required notice of proposed rulemaking procedures, and (2) OPUC exceeded its authority in adopting two specific rules that described certain rights and obligations in power purchase agreements between public utilities and qualifying small power production and/or storage facilities (“QFs”) that conflicted with ORS 758.525 and the legislative policy expressed in ORS 785.515. The Court ruled against all of NewSun’s claims, finding that the new regulations were adopted following proper notice procedure, and that the rules were valid and did not conflict with the proffered statutes or policies.

Background

The Federal Public Utility Regulatory Policies Act of 1978 (“PURPA”) directs the Federal Energy Regulatory Commission (“FERC”) to prescribe rules encouraging cogeneration and small power production, as well as rules that require public utilities to purchase and sell power to and from QFs. FERC, in turn, directs state agencies with rate-making authority (such as the OPUC) to implement FERC’s PURPA regulations.

In November 2022, OPUC filed an official notice of proposed rulemaking and, after comments and a public hearing, filed the final adopted rules with the Secretary of State in July 2023.

Court’s Analysis

Oregon courts may declare a rule invalid only if the rule violates constitutional provisions, exceeds the statutory authority of the agency, or was adopted without complying with applicable rulemaking procedures. ORS 183.400(4). NewSun contended that (1) all of the rules promulgated in OPUC’s July 2023 rulemaking were invalid because of procedural notice deficiency by OPUC, and (2) OPUC exceeded its statutory authority when it adopted OAR 860-028-0120(2) and OAR 860-029-0121(5).

1. The Court Held OPUC’s Rulemaking Notice to be Procedurally Adequate

In its opening brief, NewSun alleged that the caption of OPUC’s rulemaking notice failed to comply with ORS 183.335(2)(a)(A), under which an agency’s notice must include “[a] caption of not more than 15 words that reasonably identifies the subject

NewSun Energy, LLC v. OPUC, 346 Or App 545 (2026), summarized by Peter Hurd.

matter of the agency’s intended action.” Under ORS 183.335(11)(c), however, “[a] rule is not subject to judicial review or other challenge by reason of failing to comply with subsection (2)(a)(A) of this section.” Therefore, the Court could not fault the rulemaking’s procedural adequacy based on the caption alone.

In its reply brief and oral argument, NewSun expanded its procedural challenge to argue that nothing in the full notice fulfilled the purpose of notifying parties interested in nonstandard QF contracts that the proposed rules could affect those contracts. The Court evaluated whether OPUC substantially complied with the notice requirements in ORS 183.335 by looking at the context of the notice as a whole. The Court found that not only did OPUC’s notice cover the proposed amendments (including the amendments that NewSun asserted affected nonstandard contracts), but those relevant amendments were obvious because they were the first three rules listed on the front page of the notice and included in the proposed changes. Further, the Court found the proposed amendments obvious and easy to understand because the rules and their amendments were either short and not complex, or explicitly defined their applicability. Thus, the Court concluded that OPUC’s notice, taken as a whole, substantially complied with the notice requirements of ORS 183.335.

2. The Court Held OPUC Acted Within its Statutory Authority When it Promulgated OAR 860-028-0120(2) and OAR 860-029-0121(5)

i. Policy Backdrop

NewSun challenged OAR 860-028-0120(2) and OAR 860-029-0121(5) on the grounds that the rules contravened ORS 758.525 and the legislative policy set out in ORS 758.515.

Briefly, OAR 860-028-0120(2) gives QFs the unilateral right to sell firm output power to investor-owned utilities (“IOU”) at fixed prices for a term of up to 15 years, with the option to select a nonfixed-price term of up to five years at the conclusion of the fixed-price term.

Under OAR 860-029-0121(5), QFs may not begin commercial operation more than 180 days prior to the scheduled commercial operation date of the standard power purchase agreement without consent from the IOU. Additionally, an IOU may restrict the QF operation to begin no more than 90 days prior, if the IOU is unable to accept delivery despite reasonable efforts to secure transmission service up to 180 days prior to scheduled operation commencement. The QF also must cover increased transmission costs associated with commencing operation sooner than 90 days prior to scheduled operation.

NewSun Energy, LLC v. OPUC, 346 Or App 545 (2026), summarized by Peter Hurd.

ORS 758.525, in relevant part, requires utilities to publish a 20-year incremental electricity cost forecast at least once every two years, and allows QFs to sell power at either the avoided costs calculated at the time of delivery, or the projected avoided costs calculated at the time the legal obligation to purchase the energy or energy and capacity is incurred.

Finally, ORS 758.515 lays out Oregon's energy goals, which include promoting renewable energy sources by providing for just and reasonable contract terms for QFs, utilities, and consumers, among other policy aspirations.

ii. Challenge to OAR 860-028-0120(2)

NewSun argued that OAR 860-028-0120(2) violated ORS 758.525 because that statute requires a 20-year fixed-price term, but the rule only provides for a 15-year fixed-price term for standard contracts. The Court disagreed, finding that nothing in the text of ORS 758.525 expressly required a 20-year fixed-price term in contracts with QFs, nor did the text create an implied 20-year term. The Court reasoned that, while the text did require a 20-year forecast, that forecast was not linked to contract duration terms, and that the legislature gave the OPUC broad authority to set terms and conditions for energy purchase or storage contracts between utilities and QFs.

The Court was also unconvinced that the legislative goals and policies outlined in ORS 758.515 should change its interpretation of ORS 758.525, such that QFs should have the right to contract for 20-year terms. The Court reasoned that policy statements could provide general context for interpreting statutes, but did not provide a basis to read a specific, required contract term into ORS 758.525 that was not articulated in that statute. Further, nothing in ORS 758.515 itself required a 20-year fixed-price contract for QFs.

Last, legislative history did not sway the Court. Although a legislative committee hearing statement made by Oregon Department of Energy suggested a connection between ORS 758.525's 20-year forecast and contract term obligations, the Court considered that statement in context of the entire written testimony and determined that the legislative history was not enough to overcome the text of the statutes.

iii. Challenge to OAR 860-029-0121(5)

NewSun argued that OAR 860-029-0121(5) violated PURPA, ORS 758.525, and contravened the goals and policies of ORS 758.515 because the rule gave IOUs the unilateral right to reject QF power delivered more than 180 days before scheduled operation date, as well as limit purchases that are more than 90 days early.

NewSun Energy, LLC v. OPUC, 346 Or App 545 (2026), summarized by Peter Hurd.

The Court held that OAR 860-029-0121(5) did not violate any of the above statutes, nor did it contradict policy. The Court reasoned that while OAR 860-029-0121(5) may have set conditions on the standard power purchase agreement laid out in PURPA and ORS 758.525, OAR 860-029-0121(5) did not relieve IOUs from the basic obligation of offering to purchase the QF's energy as required by PURPA and ORS 758.525.

Finally, the Court summarily rejected NewSun's argument that the rule, on its face, contravened the goals and policies of ORS 758.515.

Conclusion

The Court, having found that OPUC followed procedural rulemaking requirements, and that OPUC did not exceed its statutory authority in any of the ways NewSun asserted, held the 2023 rules at issue valid.

Introduction

On February 18, 2026, U.S. District Judge Adrienne Nelson entered judgment in favor of Defendants—public redevelopers and funders of an affordable housing development project—after almost two years of litigation over National Environmental Policy Act (“NEPA”) issues. The decision allows an affordable housing development project, Peacefull Villa Redevelopment, to continue despite a legal challenge that the City of Portland (“City”) improperly issued an Environmental Assessment (“EA”) and a Finding of No Significant Impact (“FONSI”). The Court found that the City correctly followed the NEPA process.

Background

On August 2, 2024, Plaintiffs Claude Sakr, Laura Jackson, and Margaret Skenderian (“Plaintiffs”) filed a complaint seeking review of the City’s decision to issue an EA and a FONSI for an affordable housing project.

Plaintiffs challenged validity of the EA and FONSI on several grounds, including that (i) the EA failed to consider a reasonable range of alternatives, such as smaller, multi-family townhouses, which resulted in a lack of compliance with NEPA; (ii) Defendants did not use accurate data and assumptions to assess impacts from the proposed project resolved in an inadequate EA; and (iii) the NEPA process did not include sufficient public involvement. Additionally, Plaintiffs sought to supplement or complete the related administrative record.

On June 2, 2025, the Court denied the Plaintiffs’ Motion for Preliminary Injunction. Consequently, construction of the four-acre superblock redevelopment continued throughout the litigation. The final Opinion and Order issued on February 18, 2026, ruled on several cross-motions for summary judgment. Appeals by Plaintiffs are currently pending.

Standard of Review

NEPA requires federal agencies and their designees to consider the potential effects of proposed actions. 42 U.S.C. §§ 4321. “NEPA ‘prescribes the necessary process’ to analyze environmental impacts and prepare related documents, but ‘NEPA itself does not mandate particular results.’” *Sakr v. City of Portland*, 2026 WL 473189, at *3 (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989)). Agencies must take a hard look at environmental consequences but need not weigh environmental consequences in any particular way.

An agency’s compliance with NEPA is reviewed under the Administrative Procedures Act (“APA”). The District Court must set aside any agency decision that

is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, or unsupported by substantial evidence.” 5 U.S.C. §§706(2)(A), (E). An agency’s decision is arbitrary or capricious if it relies on unintended factors, fails to consider an important aspect of the problem, runs counter to the evidence before the agency, or is “so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Motor Vehicle Mfrs. Ass’n of the U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Courts must also afford the agency “substantial deference” when reviewing a NEPA challenge. *Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 605 U.S. 168, 180, 183, 192 (2025).

Judicial review under the APA must be based on the whole record. 5 U.S.C. § 706. Challenges to the completeness of an administrative record bear “the burden of overcoming the presumption of regularity by clear evidence.” *Xerces Soc’y for Invertebrate Conservation v. Shea*, 682 F. Supp. 3d 948, 953 (D. Or. 2023). The party seeking to supplement the record must identify with adequate particularity the specific documents it seeks to have supplemented.

Court’s Analysis

1. *Plaintiffs lacked specificity to complete or supplement the administrative record.*

The Court denied the Plaintiffs’ requests to complete or supplement the administrative record with: (1) four letters provided by Plaintiffs in 2022 and (2) five general categories of documents: (i) NEPA timeline documents; (ii) the City’s review participation documents; (iii) internal documents from developers; (iv) communications from developers; and (v) alternative design documents. Regarding the four letters, the Court found that a “plethora of more contemporaneous communications . . . were considered and included in the record” and held that adding the four letters that pre-dated the NEPA obligations to the record was not appropriate. *Sakr v. City of Portland*, 2026 WL 473189, at *11. The Court also found the request failed the particularity standards. “Only the first and fifth categories are bound by time, and the first four categories are all generally vague as to the subject matter.” *Id.* at *9. To the extent that specificity requirements were potentially met, Plaintiffs did not demonstrate that Defendants “heavily relied” on the documents requested to be added to the record.

2. *Defendants considered a reasonable range of alternatives.*

The Court found that Defendants satisfied the NEPA requirements to consider appropriate alternatives. 42 U.S.C. § 4322(2)(H). The obligations to consider alternatives are less rigorous for an EA than an EIS. Agencies can, and Defendants did, satisfy requirements by considering two alternatives: action and no action. *See Earth Island Inst. v. U.S. Forest Serv.*, 87 F.4th 1054, 1065 (9th Cir. 2023).

Plaintiffs also did not show how their proposed alternatives, which they allege Defendants failed to consider, met the redevelopment project’s goal “to provide affordable housing in an underserved area of the City of Portland and to contribute critical housing stock to the Portland region” *Sakr v. City of Portland*, 2026 WL 473189, at *12. Thus, the Court concluded that considering only two alternatives was sufficient for the EA.

3. *Defendants did not rely on inaccurate data and assumptions.*

The Court held that Defendants took the required “hard look” at the Project’s effects. Plaintiffs argued that Defendants relied on incorrect assumptions regarding the neighborhood’s aesthetic, traffic and safety impacts, impacts on the surrounding environment, and Plaintiffs’ preferred alternative plan. Plaintiffs also asserted that computer-generated before-and-after pictures were necessary to evaluate the “aesthetics” of the project. 40 C.F.R. § 1508(i)(4). The Court rejected these arguments, noting that the project was properly zoned, that before-and-after images are not a requirement for an EA, and that the site was not historic or a scenic expanse that might involve additional aesthetic considerations. Plaintiffs also did not allege that the transportation and parking study relied on inaccurate data or assumptions.

4. *Public participation was adequate.*

The Court determined that Defendants met NEPA’s public participation requirements. Plaintiffs argued the process was inadequate because Defendants were not responsive enough to comments and the notice format inhibited participation. The Court found that Defendants surpassed NEPA’s requirement to “make diligent efforts to involve the public.” 40 C.F.R. § 1506.6(a) (2020). Because Defendants extended the comment period, received over 300 public comments, some of which resulted in changes to the redevelopment project, and responded to comments, the Court held Plaintiffs did not show inadequate public participation.

5. *The City did not improperly delegate responsibility.*

The Court found that the City properly delegated preparation of the EA and conducted an adequate independent review. Plaintiffs argued that the City unlawfully delegated its NEPA obligations to Home Forward and Dudek and that Dudek failed to provide a conflict-of-interest disclosure. The Court explained that NEPA allows delegation if the agency independently evaluates the information and remains responsible for the document’s “accuracy, scope, and contents.” 40 C.F.R. § 1506.6(b)(1)–(2) (2020). Although the City’s role was described as “limited” or “administrative,” the record showed that it reviewed the EA, communicated with HUD and Home Forward, responded to comments, and reviewed the EA before approval. The Court also found no evidence that Dudek had an actual conflict and

held that any technical conflict would not invalidate the EA because the City provided effective oversight.

Conclusion

The Court's opinion clarifies the administrative record requirements and reinforces that NEPA is procedural and does not require agencies to adopt the least controversial project design or reach a particular outcome. Instead, agencies must only follow the process outlined by NEPA. They must take a hard look at impacts, consider alternatives, provide public involvement, and retain responsibility for the environmental review. Because the Court found that the City satisfied those obligations, it denied Plaintiffs' motions and granted summary judgment in favor of Defendants.

Introduction

The District of Oregon granted the Center for Biological Diversity’s motion to supplement the administrative record in a challenge to the U.S. Forest Service’s management of off-highway vehicle (“OHV”) activity in the Oregon Dunes National Recreation Area. Center for Biological Diversity (“CBD”) alleged that the Forest Service violated the Endangered Species Act (“ESA”), National Environmental Policy Act (“NEPA”), National Forest Management Act (“NFMA”), and the Administrative Procedure Act (“APA”) by expanding OHV use and issuing special use permits for large OHV events in designated critical habitat for the ESA-listed coastal marten.

Background

The challenged actions included the Forest Service’s 2015 “10(C) Project,” which expanded OHV access in the Dunes before the coastal marten was listed under the ESA, and the agency’s issuance of special use permits for large OHV events such as DuneFest and UTV Takeover. CBD alleged that the Forest Service failed to reinitiate ESA consultation after the marten’s listing and critical habitat designation, failed to consult regarding large OHV event permits, failed to prepare adequate NEPA analysis, and acted inconsistently with governing forest plans.

CBD sought to supplement the record with 39 documents. The documents included materials produced by the Forest Service in response to a Freedom Of Information Act (“FOIA”) request, which CBD argued had been considered by the agency but omitted from the administrative record, as well as scientific studies, technical materials, photographs, and agency materials that plaintiff had submitted to the Forest Service before filing suit.

Court’s Analysis

The court first held that CBD’s ESA citizen-suit claims were not limited to the administrative record. Although the APA’s arbitrary-and-capricious standard may govern review of ESA claims because the ESA lacks its own standard of review, the court explained that ESA citizen-suit claims may be reviewed using admissible evidence outside the administrative record. The court therefore concluded that it could consider extra-record evidence for the limited purpose of reviewing the ESA claims, while reserving any specific admissibility determinations.

For the NEPA and NFMA claims, which are reviewed under the APA, the court considered whether the administrative record was complete. The court found that CBD had rebutted the presumption of regularity as to 14 FOIA documents. The

Center for Biological Diversity v. U.S. Forest Service, et al., No. 6:24-CV-00930-AA, 2026 WL 893291 (D. Or. Mar. 31, 2026), summarized by Allison Rothgeb, Markowitz Herbold PC.

Forest Service did not dispute that the documents were in its possession or had been considered, but argued that they were deliberative. The court ordered the agency to produce a privilege log and disclose relevant factual portions concerning issues such as OHV impacts on wildlife, baseline OHV use, OHV noise and enforcement, permit noncompliance, unlawful OHV intrusions into closed areas, and related matters.

The court also admitted several categories of extra-record evidence under exceptions to the administrative-record rule. The court found that the existing record did not adequately address relevant issues, including noise from large OHV events, impacts to denning martens, kits and juveniles, and OHV intrusions into closed areas. The court admitted scientific studies, technical materials concerning OHV features, photographs showing vegetation damage, and a Forest Service FAQ on OHV noise limits to assist in determining whether the Forest Service considered all relevant factors and adequately explained its “no effect” determination.

Conclusion

Based on these determinations, the court granted the motion to supplement the administrative record, ordered the Forest Service to produce a privilege log and disclose relevant factual portions of the disputed FOIA documents, and admitted Exhibits 17 through 38 as extra-record evidence.

Introduction

Plaintiffs challenged certain federal agency actions with respect to the Columbia River System (“CRS”), a network of fourteen federally managed dams on the Columbia and Snake Rivers. Federal agencies moved to dismiss for lack of subject matter jurisdiction, arguing that the exclusive jurisdiction provision of the Northwest Power Act conferred exclusive jurisdiction on the Ninth Circuit Court of Appeals. The district court denied the motion.

Background

This case is the most recent installment in ongoing litigation over the fate of salmonid populations in the Columbia and Snake Rivers, involving a large and shifting constellation of plaintiffs and defendants over the course of its 25-year history. Plaintiffs for purposes of this Opinion and Order are National Wildlife Federation, Pacific Coast Federation of Fishermen’s Associations, Institute for Fisheries Resources, Sierra Club, Idaho Rivers United, Northwest Sport Fishing Industry Association, NW Energy Coalition, Columbia Riverkeeper, and Federation of Fly Fishers (collectively, “NWF Plaintiffs”); Defendants are the National Marine Fisheries Service (“NMFS”), the U.S. Army Corps of Engineers (“the Corps”), the U.S. Bureau of Reclamation (“BOR”), and the U.S. Fish and Wildlife Service (“USFWS”) (collectively, “Federal Defendants”). Importantly, the Bonneville Power Administration (“BPA”) is not a party to this case, though its actions have been challenged separately in the Ninth Circuit. At the center of the lawsuit are a chain of administrative decision documents pertaining to the CRS, including as relevant to this challenge a Biological Opinion (“BiOp”) issued by NMFS pursuant to the federal Endangered Species Act, and an Environmental Impact Statement and Record of Decision issued by the Corps, BOR, and BPA, pursuant to the National Environmental Policy Act (“NEPA”) concerning the implementation of the BiOp (“the 2020 ROD”).

In 2023, the parties signed a Memorandum of Understanding and the case was stayed. In June 2025, however, the Trump administration withdrew Federal Defendants from the Memorandum, and this motion to dismiss by Federal Defendants followed, on the ground that the court lacked subject matter jurisdiction because the ROD and BiOp implicate the exclusive jurisdiction provision of the Northwest Power Act, 16 U.S.C. § 839f(e)(5) (“the Act”), because the ROD is a “joint decision” with the BPA, or, in the alternative, that the suit brings claims that are “inextricably intertwined” with a final action of the BPA.

The Federal Defendants' Arguments

1. *The 2020 ROD Was a "Joint Decision" with BPA*

Federal Defendants argued that the Act's exclusive jurisdiction provision applied to this case. That provision confers exclusive jurisdiction over disputes over certain BPA actions upon the U.S. Court of Appeals for the applicable region. Because the 2020 ROD is a "joint decision" involving the BPA, the Federal Defendants argued this provision applied, divesting the district court of any jurisdiction over the challenge. Specifically, Federal Defendants argued that: (1) because BPA agreed, as part of the EIS and ROD, to "collaborate" by marketing and transmitting CRS power pursuant to authority conferred upon it by the Act, its pledge to do so was done pursuant to the Act and therefore the Act's exclusive jurisdiction must apply; (2) because Congress required the Corps, BOR, and BPA to manage the CRS consistent with the Act, that the agencies were acting under the same authority and thus acting jointly; and (3) because Plaintiffs seek vacatur of the 2020 ROD, the provision applies.

2. *The 2020 ROD Was "Inextricably Intertwined" with BPA's Final Agency Action*

Defendants next argued that the exclusive jurisdiction provision was triggered by the fact that the challenged actions of the Corps and BOR were factually inextricably intertwined with those of the BPA and that the practical effect of bringing suit in the district court was to challenge BPA's actions. Federal Defendants relied on Ninth Circuit precedent to argue that because the agencies' actions were, as a factual and practical matter, related, that the exclusive jurisdiction provision was triggered and must control.

The Court's Analysis

As an initial matter, the court determined that it need not address Federal Defendants' claims that the court lacked jurisdiction over the BiOp challenge, and analyzed Federal Defendants' arguments only with respect to the 2020 ROD. *See Aluminum Co. of Am. V. Adm'r, Bonneville Power Admin.*, 175 F.3d 1156, 1160 (9th Cir. 1999).

1. *The Corps, BOR, and BPA Did Not Engage in Any Jointly-Promulgated Regulation or Joint Final Agency Action.*

While the agencies conducted a single NEPA process in issuing the 2020 ROD, the court noted that NEPA is "purely procedural," *Seven County Infrastructure Coalition v. Eagle Country, Colorado*, 605 U.S. 168, 177 (2025), and the agencies could not have acted "jointly" because they do not share any common source of substantive statutory

***National Wildlife Federation v. National Marine Fisheries Service*, No. 3:01-cv-640-SI, 2026 WL 836836 (D. Or. March 26, 2026), summarized by Heather Doherty, Pearl Legal Group PC.**

authority under which they could do so. Under Executive Order 13807 and a subsequent memorandum from the Office of Management and Budget, the agencies were directed to issue one single ROD for major infrastructure projects. Each agency then individually issued Final Agency Findings specific to its decision, within the framework of the agencies' relevant governing statutes. The court concluded that for agencies to be acting "jointly," they must be doing so under the same statutory authority. Using the example of the Corps' and the Environmental Protection Agency's joint authority to implement the Clean Water Act, the court clarified that the Congressional directive to manage the CRS consistent with the Act was not a conferral of authority on the Corps or BOR to implement the Act's provisions.

The court also noted that the Ninth Circuit in *Northwest Resource Information Center, Inc. v. National Marine Fisheries Service*, 25 F.3d 872, 875 (9th Cir. 1994) acknowledged the fact that challenges to BPA actions under the Act have different jurisdictional rules, but the Act's exclusive jurisdiction provision does not affect the district court's jurisdiction over any other federal agency defendant; the court described that it would be an odd result indeed to conclude that Act had "jurisdictional penumbras."

Finally, the relief sought by Plaintiffs had no impact on the court's subject matter jurisdiction over the case. *Nat'l Wildlife Fed'n v. Cosgriffe*, 21 F. Supp. 2d 1211, 1218 (D. Or. 1998). This is because any relief issued would apply only to the parties to the case: NMFS, the Corps, BOR, and USFWS, and even if vacated with respect to those agencies, it would still be in effect with respect to BPA. This is supported by NEPA's judicial review process, which the court explained must include an agency-specific comparison between the challenged action and the agency's statutory authority and NEPA obligations. *City of Arlington v. FCC*, 569 U.S. 290, 297 (2013).

2. *The "Inextricably Intertwined" Test is Inapplicable to the Agencies' Action Here*

The court first explained that the correct test for "inextricably intertwined" is not whether the agencies' actions are so as a factual matter, but rather that a district court must apply the narrower jurisdictional statute when a plaintiff's claims are inextricably intertwined "between two statutes" with conflicting jurisdictional provisions. *Am. Bird Conservancy v. FCC*, 545 F.3d 1190, 1194 (9th Cir. 2008). Because the claims here are brought under NEPA, the Administrative Procedures Act, and the ESA—none of which contain jurisdiction-limiting provisions—there is no conflict and no limit on the district court's jurisdiction over this case.

National Wildlife Federation v. National Marine Fisheries Service, No. 3:01-cv-640-SI, 2026 WL 836836 (D. Or. March 26, 2026), summarized by Heather Doherty, Pearl Legal Group PC.

Conclusion

Because it concluded that the Northwest Power Act's exclusive jurisdiction provision did not apply to the challenge to the 2020 ROD, the court denied Federal Defendants' motion to dismiss for lack of subject matter jurisdiction.