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# 2025 NEPA Case Law Update

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## Fred Wagner

Principal Environmental Regulatory Advisor

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Fred Wagner focuses on environmental and natural resources issues concerning major infrastructure, including surface transportation, energy, mining, and commercial project development. Fred advises clients on environmental reviews under the National Environmental Policy Act or equivalent state statutes. He also helps secure permits and approvals from regulators under a variety of federal programs, including Section 404 of the Clean Water Act, the Endangered Species Act, the Clean Air Act, and the National Historic Preservation Act. Fred provides strategic counseling regarding implementation of the full spectrum of federal environmental programs, as well as U.S. Department of Transportation (USDOT) surface transportation grant management and safety regulations.

Prior to joining Jacobs, Fred represented a wide variety of developers, public entities, and businesses in environmental, land use, and natural resources litigation in federal trial and appellate courts across the country, from citizen suits to government enforcement actions and Administration Procedure Act (APA) challenges. Most recently, Fred was counsel of record in the Seven County Infrastructure Coalition NEPA case before the U.S. Supreme Court.



## P.E. Danko, Esq.

Env't'l Attorney/Consultant, Hudson Danko Eng'r, LLC

- NAEP member since 2012.
- Retired FAA AGC and Navy OGC attorney, with over 20+ years of experience reviewing EAs and EISs, including projects involving transportation, airport development and grants, commercial space transportation, military testing and training, including ranges, military construction and unmanned aerial systems deployment
- Served on the 2013 NAEP Committee for Best Practice Principles for Environmental Assessments, a CEQ Pilot Project.
- Received the NAEP's President's Service Award in 2014 and 2019
- Annually serves as an author of the yearly NEPA case law review for NAEP since 2014



## Michael D. Smith, Ph.D.

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- NAEP Member for 25+ years; 31 years of NEPA experience
- Manages and oversees some of the nation's largest, most complex, and highly controversial projects, including major energy, transportation, and water infrastructure projects, regulation of genetically engineered plants, commercial space transportation operations, and approval of new fuel economy standards
- Extensive experience as a NEPA Trainer
- Ph.D. Sociology (Environment and Natural Resources emphasis), Utah State University
- M.A. Geography, University of Wyoming
- B.A. Environmental Studies, University of California, Santa Cruz



## Chuck Nicholson, Ph.D.

NAEP Board Member, Chair NEPA Working Group, Senior Environmental Planner/Scientist/HDR

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- NAEP member for 15+ years
- 47 years of professional experience in the environmental and natural resources fields
- 30 years as a NEPA compliance specialist
- Tennessee Valley Authority
- Extensive experience in the preparation of EIS, EA, and CE documentation for wide range of actions
- PhD, Ecology & Evolutionary Biology, University of Tennessee, Knoxville, 2004
- MS, Wildlife Management, University of Maine, 1978
- BS, Wildlife and Fisheries, University of Tennessee, Knoxville, 1975

# NEPA Litigation

- There is no NEPA cause of action – challenges to an agency decision not made in accordance with NEPA are brought under the Administrative Procedure Act (APA)
  - “Arbitrary and capricious” standard
- Plaintiffs must show they are within the “zone of interests” protected by NEPA and that they are or would be harmed if the agency’s decision were implemented
  - Plaintiffs must raise their concerns during the agency’s NEPA process

# NEPA Remedies

Typical remedies for violations of NEPA under the Administrative Procedure Act (APA), 5 U.S.C. § 706, include:

- (1) reversing and remanding without instructions to vacate,
- (2) reversing and remanding with instructions to vacate,
- (3) equitable relief (injunction),
- (4) declaratory relief (declaratory judgment), and
- (5) mandamus.

The court may also retain jurisdiction over the matter until resolved

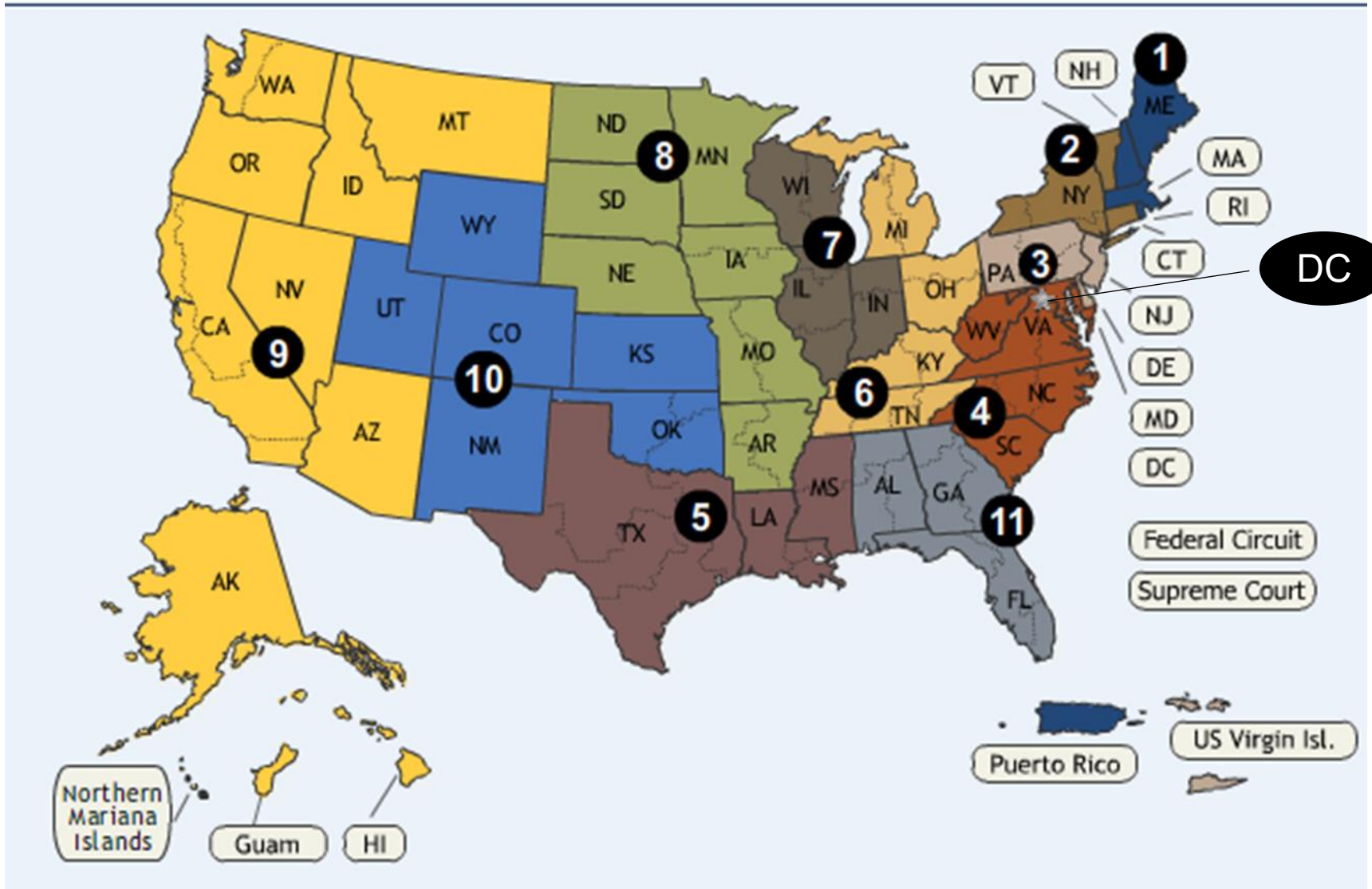
# Federal Court System

Challenges to NEPA/APA involve federal actions and are brought in federal court

- District courts (one or more in each state)
- Courts of Appeal (several states within one circuit; 11 circuits of general jurisdiction and 1 of special jurisdiction [Federal Circuit])
- U.S. Supreme Court (only takes cases it agrees to hear – usually to address differences in the circuits or constitutional questions)



# Jurisdiction of Federal Courts of Appeal



# 2025 NEPA Litigation Statistics



U.S. Courts of Appeals issued 32 NEPA decisions (where courts reviewed NEPA documents) in 2025, 12 in the D.C. Circuit, and 11 in the 9th Circuit, and 3 in the 11th Circuit, 2 in the 10th Circuit, and 1 each in the 4th, 5th, and 8th Circuits

6 different departments, and 1 independent agency:

- FERC – 8 cases (prevailed in all)
- UDSA (APHIS, USFS) – 7 cases (prevailed in 3, did not prevail in 2 and partially prevailed in 2)
- DOW (USACE, USAF) – 5 cases (prevailed in all but 1)
- DOI (BLM) - 7 cases (prevailed in 2, did not prevail in 1, and partially prevailed in 2)
- DOT (FAA, PHMSA) – 3 cases (prevailed)
- Surface Transportation Board (STB) – 2 cases (prevailed)
- DOE – 1 case (prevailed)
- DHS – 1 case (prevailed)

Government prevailed in **72% (78% if partial counted)** of the cases

# Comparison to Previous Years



	U.S. Courts of Appeals Circuits												
	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	D.C.	TOTAL
2006 - 2016	9	6	5	11	6	11	5	5	120	27	6	27	238
2017		1	1		1				13	1		8	25
2018			1	3	2	1			16		3	9	35
2019				1			1	1	9	2	1	6	21
2020		1			1	1			19		2		24
2021	1	1		2			1		6	2		5	18
2022				2		1	1		15	2	1	5	27
2023				1	2		2	1	12	3	1	3	25
2024	1				1		1		10	3		10	26
2025				1	1		1		11	2	3	12	32
<b>TOTAL</b>	11	9	7	21	14	14	11	8	231	42	17	85	471
<b>Proportion</b>	2%	2%	2%	5%	3%	3%	2%	2%	49%	9%	4%	18%	100

# Why Such a High Government Success Rate?



- Post *Seven County*, the standard is "deferralial"
- Thus, Courts relied heavily on evidence in AR and agency discretion
- Agency prevailed in both CE cases\* (100%)
- EAs had an agency success rate of 60% (73% if partial cases counted); one of these cases involved a DNAs\*, 15 total case, 9 prevails, 2 did not prevail and 4 partial prevails
- EISs had an agency success rate of 83% (92% if partials counted); 12 total cases, 10 prevails, and two partial prevails

# 2025 Case Trends, by Sector Classification

- Land Management – 10
- Energy (Gas) – 10
- Transportation (Rail) - 3
- Energy (Oil) – 2
- Energy (Oil and Natural Gas) – 2
- Transportation (Aviation) – 2
- Construction – 2
- Energy (Hydroelectric) – 1
- Defense - 1
- Utility – 1
- Security – 1
- Many Cases involved multiple industries

# 2025 Case Trends

- 22 (of 32) cases involved challenges to impact assessment and Reasonably Foreseeable Impacts (direct, indirect, and (formerly) cumulative impacts)

Note: Several cases involved challenges in multiple categories.

# 2025 Case Trends

- 9 cases involved challenges to alternatives analysis (agencies prevailed in all but 1)
- 4 cases involved claims of segmentation/connected actions (agencies prevailed in all)
- 3 cases involved remedies (in the three cases the court did not vacate the agency's underlying decision/action)

# Pre-Seven County Cases



# Pre-Seven County 2025 Case Statistics

- 16 total opinions
  - Government prevails in 9 cases
  - Plaintiffs prevail in 7 cases
  - Government success rate of 56%
- Agencies involved:
  - USDA – 6 opinions (won 2, lost 4)
  - DoW – 4 opinions (won 3, lost 1)
  - FERC – 3 opinions (won 3, lost 0)
  - DOE – 1 opinion (won 1)
  - DOI – 1 opinion (lost 1)
  - DOT – 1 opinion (lost 1)



# ***Montana Wildlife Federation v. Haaland*** 127 F.4th 1 (9th Cir. 2025)

- BLM EA and DNA on oil and gas lease sales in Montana
- Plaintiffs alleged BLM severely shortened and eliminated public involvement opportunities
  - Reduced several comment periods to 15 days; court rules this was insufficient time to allow for meaningful participation, including time for site visits, consulting experts, and preparing informed comments
  - Opinion emphasizes this subverted NEPA's twin aim of informed decision-making AND informed public participation
  - Failure to explain why the shortened and eliminated opportunities were unnecessary was ruled arbitrary and capricious



# ***Montana Wildlife Federation v. Haaland*** 127 F.4th 1 (9th Cir. 2025)

- COURT: "At the same time, the justification offered for a change in policy or agency action cannot be inconsistent with the purpose of the requirement being implemented. Here, the agency's decision to prioritize administrative efficiency and expedition of oil and gas production over deliberative decision-making that takes into account informed public comments is in direct tension with NEPA. Individuals and groups are unlikely to learn of the decision, research the environmental impacts of each sale—here, numbering in the dozens to hundreds—and compose a formal comment or protest marshalling facts and arguments in little over two weeks. By curtailing the opportunities available for public input in land management decisions for the sole purpose of more expeditious offerings of oil and gas leaseholds, the agency “entirely failed to consider an important aspect of the problem,” one embedded in NEPA...”



# ***WildEarth Guardians v. USDA*** ***APHIS Wildlife Services 135 F.4th*** ***717 (9th Cir. 2025)***

- EA for a predator damage and conflict management program in wilderness and WSAs on BLM lands in Nevada
- Program non-lethal methods include habitat manipulation, husbandry, hazing, fencing, harassment devices, herding, and livestock guard animals
- Lethal methods include aerial shooting, ground shooting, snaring, live trapping, and poisoning (including M-44 cyanide ejectors)
- 2012-2016 – the agency killed 21,851 coyotes, 19,031 ravens, 239 badgers, 120 mountain lions, 24 foxes, 20 bobcats, and 7 black bears



# **WildEarth Guardians v. USDA APHIS Wildlife Services 135 F.4th 717 (9th Cir. 2025)**

- COURT: "By leaving the public guessing where APHIS-WS proposes to conduct predator damage management (PDM), the agency vitiated NEPA's purpose because it deprived the public of the ability to evaluate the impacts of the agency's proposed actions."
- Plaintiffs alleged that the proposed action statement was ambiguous on where the program would take place
  - Not clear whether Areas of Critical Environmental Concern (AECs) were included or not – changes geographic scope of the action by 1.4 million acres
- EA failed to adequately examine: (1) impacts on a local scale; (2) potential public health impacts; (3) impacts to sensitive and unique areas; and (4) scientific uncertainty over effectiveness of lethal methods



# ***Center for Biological Diversity v. USFS 2025 WL 586358 (9th Cir. 2025)***

- EA for the Black Ram Project on the Kootenai National Forest
- Court rules USFS improperly excluded documented unauthorized road use in their analysis of road effects on bears, and obscured its methodology for how it calculated effects
- Relatedly, court ruled that the affected environment description was flawed due to unsupported assertions that unauthorized road use was "sporadic" and ineffective road barriers would be "promptly repaired."



# Sierra Club v. U.S. Dep't of Transp., 125 F.4th 1170 (9th Cir. 2025)

- DOT-PHMSA EA for rulemaking authorizing transportation of LNG by rail; plaintiffs argued an EIS should have been prepared instead
- COURT: "...the record reflects that transporting LNG by rail poses a low-probability but high-consequence risk of a derailment that could seriously harm the environment: A breach of one or more rail cars containing LNG could cause an explosion, an inferno, or the spread of a freezing, flammable, suffocating vapor cloud. The real possibility of such catastrophes significantly affects the quality of the human environment. For that reason, NEPA required PHMSA to prepare an EIS.



# Central Oregon Wild Horse Coal. v. Vilsack No. 23-4260 (9th Cir. 2025)

- USFS EA/FONSI for a Wild Horse Management Plan in Oregon
- COURT: *"The Service also considered voluminous data in support of its conclusion that "[t]he current number of wild horses are contributing to the declined riparian conditions, as riparian areas have been repeatedly over-utilized." The Coalition's objections to the Service's considerations of this data "amount to the sort of quibbling that can't overcome [our court's] deferential standard of review.""*
- USFS considered all ten intensity factors for significance (from the 1978 CEQ Regulations)



# ***Indigenous Peoples of the Coastal Bend v. USACE* 132 F.4th 872 (5th Cir. 2025)**



- USACE EA for sea floor dredging and fill discharge for North America's largest oil export terminal in Texas
- Plaintiffs alleged EA analysis violated NEPA by:
  - Not taking a hard look—or any look—at the risk of oil spills and other accidents
  - **Failing to assess direct, cumulative and secondary impacts to seagrass from current and expanded operations**
  - Failing to assess the impacts on the neighboring communities of noise and light pollution
  - **Failing to analyze climate change and its impacts, even though the expansion can be expected to exacerbate climate change**
  - **Not concluding that the expansions will have significant impacts on the environment, and thus an environmental impact statement (EIS) is required.**

# ***Indigenous Peoples of the Coastal Bend v. USACE 132 F.4th 872 (5th Cir. 2025)***

- COURT: *"Because the Corps's analysis here concluded that mitigation efforts offset any incremental and cumulative impacts, acknowledged extrinsic past impacts on the surrounding environment, and explained how the project wouldn't interfere with further efforts to restore the watershed, the analysis aligns with the impacts analysis conducted in Atchafalaya Basinkeeper, which we held was compliant with NEPA. As such, we agree with the district court that an extensive cumulative impact analysis was not required in this case."*



# Post-*Seven County* Cases

# 2025 Case Trends (Post Seven County)



Agencies were successful in all but 1 cases (partial prevail) of the 13 cases (92% gov't success rate (96% if partial cases are counted))\*(note one case was not counted for statistics)

1. *Appalachian Voices v. Fed. Energy Reg. Comm'n*, 139 F.4th 903 (D.C. Cir. 2025) (Agency Prevailed)
2. *Coalition to Stop CPKC v. Surface Transp. Board*, No. 23-1165, 2025 WL 1720672 (D.C. Cir. Jun. 20, 2025) (Agency Prevailed)
3. *Center for Biological Diversity v. U.S. Bureau of Land Mgm't*, 141 F.4th 976 (9th Cir. 2025) (Agency Partially Prevailed)
4. *American Wild Horse Campaign v. Raby*, 144 F.4th 1178 (10th Cir. Jul. 15, 2025) (Agency Prevailed)
5. *Sierra Club. v. Fed. Energy Reg. Comm'n*, 145 F.4th 74 (D.C. Cir. Aug 1, 2025) (Agency Prevailed)
6. *Shoshone-Bannock Tribes of the Fort Hall Reservation v. U.S. Dep't of Interior*, 153 F.4th 748 (9th Cir. 2025) \*\*Not counted in the statistics

# 2025 Case Trends (Post *Seven County*)



7. *Cascadia Wildlands v. U.S. Bureau of Land Mgm't*, 153 F. 4th 869 (9th Cir. 2025) (Agency Prevalled)
8. *Sierra Club v. Fed. Energy Reg. Comm'n*, 153 F.4th 1295 (D.C. Cir. 2025) (Agency Prevalled)
9. *Badger Helicopters v. Fed. Aviation Admin.*, 154 F. 4th 902 (8th Cir. 2026) (Agency Prevalled)
10. *Gas Transmission Northwest, L.L.C. v. Fed. Energy Reg. Comm'n*, 157 F.4th 674 (D.C. Cir. 2025) (Agency Prevalled)
11. *Friends of the Everglades, Inc. v. U.S. Dep't of Homeland Sec.*, No. 25-12873, 2025 WL 2598567 (11th Cir. Sept. 4, 2025)
12. *American Whitewater v. U.S. Forest Serv.*, 2025 WL 2945591 (9th Cir. Oct. 17, 2025) (Not for Publication) (Agency Prevalled)
13. *Center for a Sustainable Coast v. U.S. Army Corps of Eng'rs*, No. 24-14171 (11th Cir. Oct. 20, 2025) (Not for Publication) (Agency Prevalled)

# Post-*Seven* County Cases

# *Center for a Sustainable Coast v. U.S. Army Corps of Eng'rs, No. 24-14171 (11th Cir. Oct. 20, 2025)*

Agency Prevailed  
(not for publication)

Proposed Action

Corps permitting for construction of private 500 ft<sup>2</sup> boat dock on private land on Cumberland Island to facilitate eventual construction of house



## *Center for a Sustainable Coast (cont.)*

### Background

- Permit issued in 2016 following categorical exclusion determination
- Dock construction completed
- First challenged in 2019 in suit against NPS. Dismissed for lack of NPS jurisdiction.
- Amended complaint filed for violation of Rivers and Harbor Act, Seashore Act and NEPA
- District court ruled for Corps based on redressability and Court's jurisdiction

## *Center for a Sustainable Coast (cont.)*

### The Ruling

- On appeal, Circuit court reversed on NEPA claim
- On remand, District court ruled permit was not arbitrary and capricious
- 2<sup>nd</sup> appeal to Circuit court
- Circuit court upheld Corps' use of categorical exclusion based on conclusions that project would be:
  - Minor in nature
  - Not have significant impact on environmental values
  - Encounter no appreciable opposition
- Cites Seven County on scope of impact analysis

# *American Wild Horse Campaign v. Raby*, No. 24-8055 (10th Cir. Jul. 15, 2025)

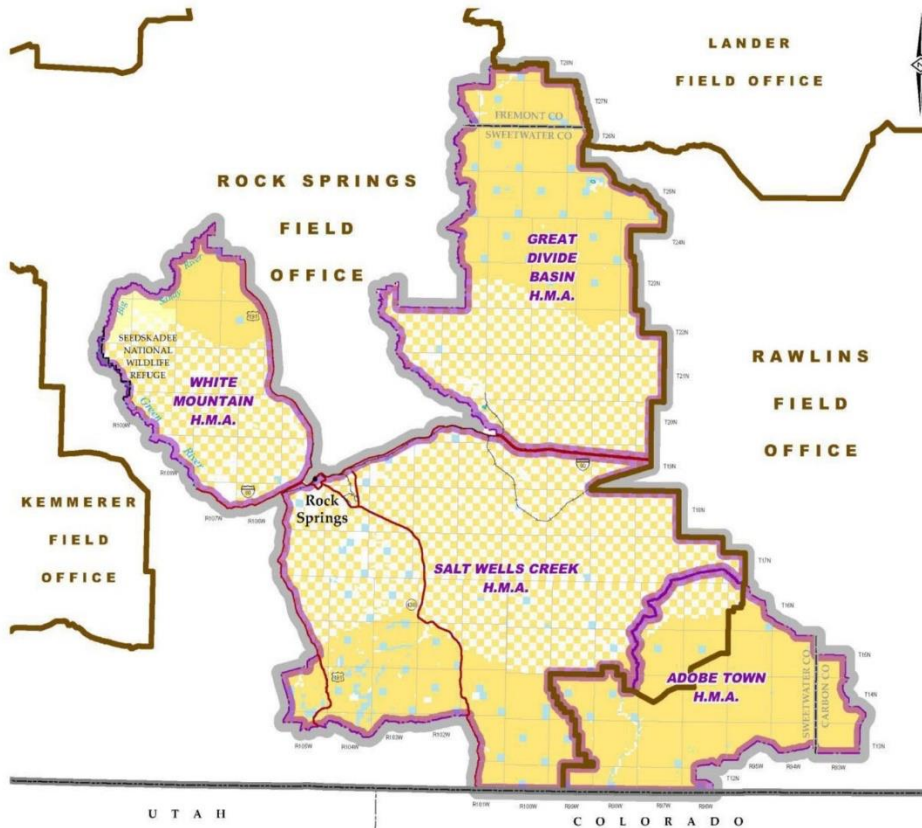
Agency prevailed on NEPA claim

Proposed Action

Amendments to BLM southern Wyoming resource management plan to change two Herd Management Areas and part of third area to Herd Areas with herd population goals of zero.

- Management governed by Wild Free-Roaming Horses and Burrows Act
- Subject areas with checkerboard land ownership
- Long history of litigation over increasing horse population
- Herd management requires consent of private landowners
- Consent revoked in 2010
- Plan amendments subject of EIS, implemented in 2022

# American Wild Horse Campaign (cont.)



- Plaintiffs challenged RMP amendments under APA for Wild Horse Act, NEPA, and FLPMA violations
- District ruled in favor of BLM on all counts
- Plaintiffs appealed to 10<sup>th</sup> Circuit



## *American Wild Horse Campaign (cont.)*

### The Circuit Court Ruling

- BLM violated Wild Horse Act by not properly considering whether amendments met requirement to manage herds in a “manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands.”
- Rejected NEPA claims that BLM:
  - 1) predetermined its decision
  - 2) failed to properly consider land swaps as alternative, and
  - 3) did not consider the environmental impacts of increased grazing
- cites *Seven County* on agency deference, consideration of possible future actions
- BLM plan amendment adequately addressed FLPMA requirement to balance multiple uses
- Remanded to district court to determine remedy

# *Shoshone-Bannock Tribes of the Fort Hall Reservation v. U.S. Dep't of Interior, 153 F.4th 748 (9th Cir. 2025)*

Plaintiffs Prevailed (no NEPA ruling)

Proposed Action

Exchange of land between BLM and J.R. Simplot Company to enable expansion of a phosphate processing waste facility in Idaho.

At Issue

Subject land was formerly part of Fort Hall Reservation, ceded by Tribe to U.S. under 1898 agreement ratified by Congress in 1900. Terms of 1900 Act specified ceded land *“shall be subject to disposal under the homestead, townsite, stone and timber, and mining laws of the United States only.”*



# *Shoshone-Bannock Tribes of the Fort Hall Reservation (cont.)*

## The District Court Case

- Tribes filed suit in December 2020 under 1900 Act, FLPMA, and NEPA following completion of EIS and issuance of ROD.
- Tribes requested injunctive relief but not temporary restraining order or preliminary injunction.
- Land exchange completed in same month.
- Tribes filed motion for summary judgement in April 2022.
- Court granted summary judgement to Tribes in 2023 for violation of 1900 Act, APA, FLPMA, and NEPA.
- NEPA violation based on lack of analysis of detailed cooling pond and gypstack design options.
- Court ordered parties to confer and submit proposals for briefing on appropriate remedies.
- Simplot requested and was granted interlocutory appeal over differences of opinion on interplay between 1900 Act and FLPMA.

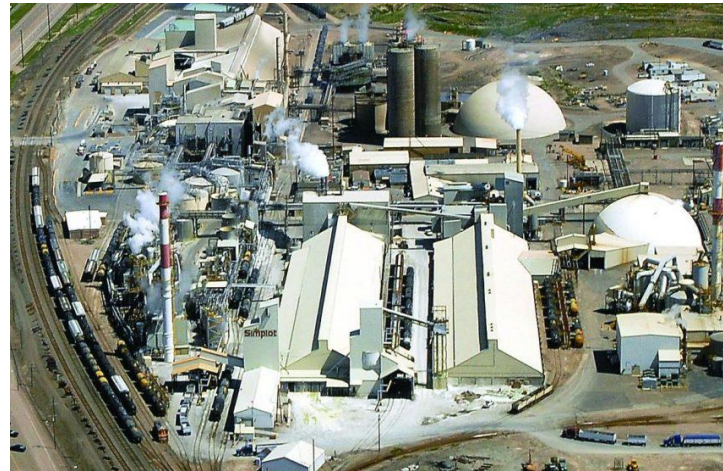
# *Shoshone-Bannock Tribes of the Fort Hall Reservation (cont.)*

## The 9<sup>th</sup> Circuit Ruling

- 2-1 ruling upheld district court ruling.
- Majority ruling did not address NEPA complaint.
- Lengthy dissent disputed 1900 Act, FLPMA, and NEPA findings.
- Dissent found no violation of NEPA, citing Seven County on agency deference.

## Update

Defendant's' request for en banc hearing denied on April 23, 2026



# *Cascadia Wildlands v. U.S. Bureau of Land Mgm't*, 153 F. 4th 869 (9th Cir. 2025)

Agency Prevailed

Proposed Action

The Big Weekly Elk Forest Management Plan, thinning and regenerative harvest on ~4,000-acre area of public land in Coos County, Oregon. Plan would, in part, meet annual sale quantities established by the Oregon and California Railroad Act.

Final EA and FONSI issued in 2021.

EA tiers from 2016 Northwestern and Coastal Oregon RMP/FEIS which established management objectives and direction and makes land use allocations based on stand characteristics, endangered species concerns, and other factors. USFWS issued biological opinions on RMP and the BWE project.

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\*RMP EIS previously challenged by environmental groups and logging industry, upheld by 9<sup>th</sup> Circuit

# *Cascadia Wildlands v. BLM (cont.)*

## The Issues

- Violation of FLMPA because BWE project did not follow the Murrelet Management Direction in the RMP due to proposed logging adjacent to marbled murrelet habitat
- Plaintiffs contested interpretation of term “modifying nesting habitat” and associated buffer requirements as used in Murrelet Management Direction
- Violation of NEPA for failure to take “hard look” at impacts on marbled murrelet



# *Cascadia Wildlands v. BLM (cont.)*

## Analysis in the EA

Body of EA described impacts to spotted owl; impacts to murrelet addressed in EA appendix. BLM consulted with USFWS, biological opinion concluded adverse effects but no jeopardy and long-term benefits to murrelet.

## The District Court Case

- Court ruled interpretation of “modifying nesting habitat” in Murrelet Management Direction was ambiguous and gave deference to BLM under *Kisor v. Wilkie* Supreme Court ruling. Therefore BLM did not violate FLPMA because BWE project conformed to the RMP
- BLM took necessary hard look in EA and FONSI
- Summary judgement issued, plaintiffs appealed to circuit

# *Cascadia Wildlands v. BLM (cont.)*

## The Circuit Court Ruling

- Concurred with District Court ruling on ambiguity of “modifying nesting habitat in RMP,” BLM interpretation was reasonable, and BLM entitled to deference
- Concurred with District Court ruling that BLM acted with discretion and took the required “hard look” at impacts on marbled murrelets in the EA appendix and biological assessment incorporated by reference
  - *“We find guidance in the Supreme Courts recent decision in Seven County...” emphasizing “that in determining whether a document complied with NEPA, a court should afford substantial deference to the agency.”*
  - *“An agency is not required to compose the Aeneid whenever it assesses a particular issue or decides that a particular issue does not warrant a full analysis.”*

# *Badger Helicopters v. Fed. Aviation Admin., 154 F. 4th 902 (8th Cir. 2025)*

Agency Prevailed

Proposed Action

- Issuance of air tour management plans by FAA and NPS for Mount Rushmore National Memorial and Badlands National Park in compliance with 2000 National Parks Air Tour Management Act.

Background

- Both parks issued NOIs for preparation of EAs for plan for each park in 2004.
- Work stalled, act amended in 2012 to allow voluntary agreements.
- Petition for writ of mandamus filed in 2020 in D.C. Circuit to compel agencies to complete plans or agreements within two years for certain parks, including Mount Rushmore and Badlands. Writ granted. Development of voluntary agreements begun.

# *Badger Helicopters v. FAA (cont.)*

## Background

- Notice terminating development of voluntary agreements and switch to formal plans issued in 2020
- Plans issued in 2023 terminating air tours over parks and within half mile of park boundaries due to negative effects on visitor experience, wildlife, tribal cultural experiences

## The Complaint

Tour operators filed petition for review with Circuit Court per FAA code on grounds plans violate Air Tour Management Act and NEPA by being arbitrary and capricious, an abuse of discretion, and otherwise contrary to law



## *Badger Helicopters v. FAA (cont.)*

### The Ruling

- Change from voluntary agreements to plans based on non-cooperation by a tour operator, reasonably explained by agencies
- Agencies' claim that NEPA challenge is outside plaintiffs' zone of interest due solely to economic interest dismissed because Air Tour Management Act focused on commercial tour operators and required NEPA reviews of plans
- Challenge on data and resources relied upon in the EAs for noise and wildlife impacts rejected because agencies reasonably explained data selection
- Challenge to range of alternatives rejected because alternative selection adequately explained
- Claim that plans failed to consider aviation safety rejected because plans include compliance with FAA aircraft operation rules
- Court ruled agencies' decisions were reasonable, denied petition to vacate the plans
- Cited Seven County ruling

# *Center for Biological Diversity v. U.S. Bureau of Land Mgm't, 141 F.4th 976 (9th Cir. 2025)*

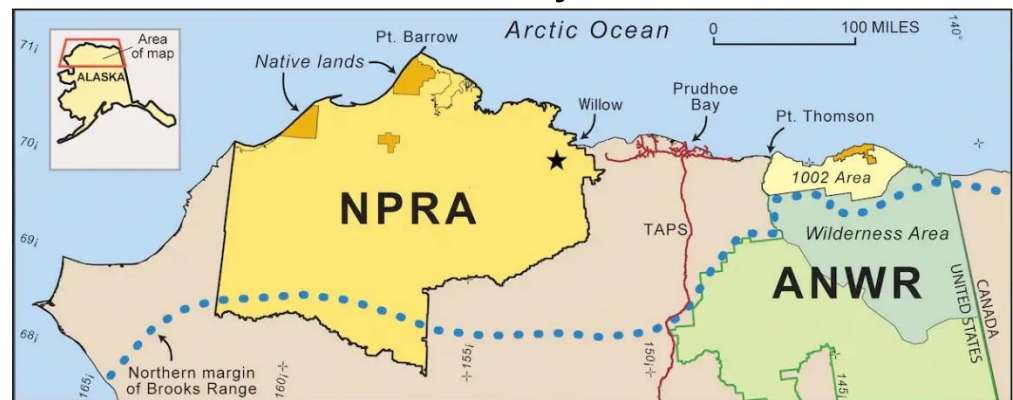
Agency Prevailed on 3 of 4 NEPA claims

Proposed Action

Approval by the Bureau of Land Management of ConocoPhillips' Master Development Plan for the Willow Project, a large oil and gas development project in the National Petroleum Reserve – Alaska.

Background

BLM completed an EIS and approved the project in 2020. EIS vacated by the Alaska district court over GHG analysis and reasonable alternatives. Following completion of a supplemental EIS, BLM issued a new ROD and approval in 2023.



# *Center for Biological Diversity v. BLM* (cont.)

SEIS analyzed alternatives that aligned with BLM “full field development” standard. ROD approved scaled-back development of 3 of 5 drill sites. ROD did not explain change.

## The Complaint

SEIS Environmental groups and Alaska Native groups filed suit under NEPA, ESA, ANILCA, and Naval Petroleum Reserves Production Act.



Motion for preliminary injunction denied for lack of irreparable harm.

District court found SEIS corrected deficiencies in EIS, no violation of other laws.

Plaintiffs appealed to 9<sup>th</sup> Circuit.

# *Center for Biological Diversity v. BLM (cont.)*

## The Ruling

### NEPA Claims

- Court rejected plaintiffs' claim of inadequate analysis of downstream GHG emissions
- Court rejected plaintiffs' claim of improper selection of mitigation measures under Reserves Act
- Court rejected plaintiffs' claim of improper use of full development standard as threshold for evaluating alternatives, finding
  - Alignment with Reserves Act implementing regulations
  - Standard necessary for purpose and need statement
  - Standard necessary to avoid segmentation
- Court agreed with plaintiffs' claim that BLM did not adequately explain the selection of the alternative (development of 3 of 5 drill sites) that did not comply with the full development standard

# *Center for Biological Diversity v. BLM* (cont.)

- Separate opinion stated majority was too deferential to BLM on accepting the narrow range of alternatives and should have evaluated less than full development alternatives

Court dismissed plaintiffs' claims under ESA, ANILCA, Reserves Act

The Remedy

Court remanded BLM's project approval without vacatur for BLM to explain the discrepancy between full development standard and the selected alternative

# *Friends of the Everglades, Inc. v. U.S. Dep't of Homeland Security, No. 25- 12873 (11th Cir., Sep. 4, 2025)*

Agency Prevailed  
(not for publication)

The “Alligator Alcatraz” case  
DHS challenged over lack of  
NEPA review for its funding and  
other actions for conversion of  
airport facilities into immigrant  
detention facility

Site in Big Cypress National  
Preserve, close to Everglades  
and tribal lands



# *Friends of the Everglades v. DHS (cont.)*

## Background

- June 23, 2025 – Florida Division of Emergency Management took control of Dade-Collier Training and Transition Airport, announced construction of mass migrant detention and deportation camp.
- June 25, 2025 – Gov. DeSantis announced camp requested by DHS and would be fully funded by DHS. Construction begun.
- June 27, 2025 - NGOs filed suit for violation of several laws including NEPA claim that approval and use of camp by DHS was major federal action, requested preliminary injunction. DHS and state disputed federal action claim, although DHS had announced \$600 million in funding.
- August 21, 2025 - District Court granted motion for preliminary injunction, finding that state was operating under authority of DHS and DHS committed to funding facility and irreparable harm.
- DHS and State ordered to halt construction, not bring in more detainees, remove new fencing, lighting, utilities within 60 days.



# *Friends of the Everglades v. DHS (cont.)*

## The Appeal

- DHS immediately appealed to 11th Circuit
- September 4, 2025 – 11th Circuit in 2-1 decision granted stay of preliminary injunction, declaring that neither construction nor use of facility was major federal action, claiming “no federal dollars have been expended” and DHS likely to succeed on the merits
- Strong 25-page dissent: “*Given the applicable burden on litigants [DHS] who move for a stay, the deferential abuse of discretion standard that governs review of a preliminary injunction, and the clearly erroneous standard that limits appellate review of factual findings, the stay motion filed by the state and federal defendants should be a relatively simple denial.*”



## *Friends of the Everglades v. DHS (cont.)*

And Then...

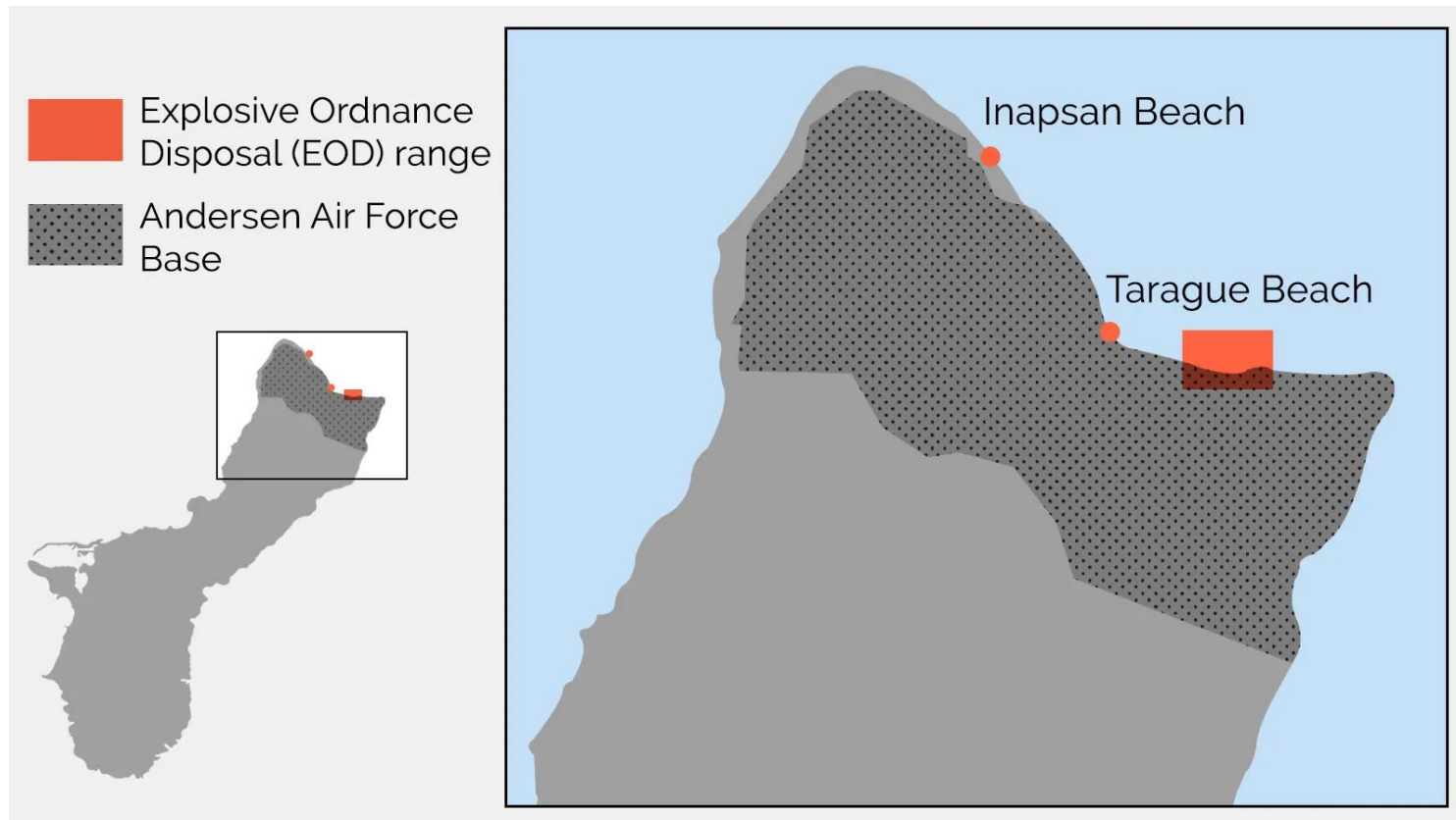
- September 2025 – Plaintiffs asked for reconsideration, stay order overbroad, did not allow consideration of non-NEPA claims
- September 2025 – DHS argued for stay, claimed improper discovery, Southern District of Florida court wrong venue
- Late September 2025 - Florida notified by DHS of approval of \$608 million for construction and operation, funds on hold
- October 2025 – Appeal proceedings halted due to government shutdown
- March – April 2026 – Oral arguments held, plaintiff request to lift stay on preliminary injunction denied (2-1 ruling)
- April 21, 2026 – 11th Circuit vacated injunction, ruling lack of final action challengeable under APA and facility not federally controlled (2-1 ruling)

And Note:

- At least 4 lawsuits filed elsewhere by cities and states over lack of NEPA review for DHS detention centers

# *Petition for Certiorari Granted:*

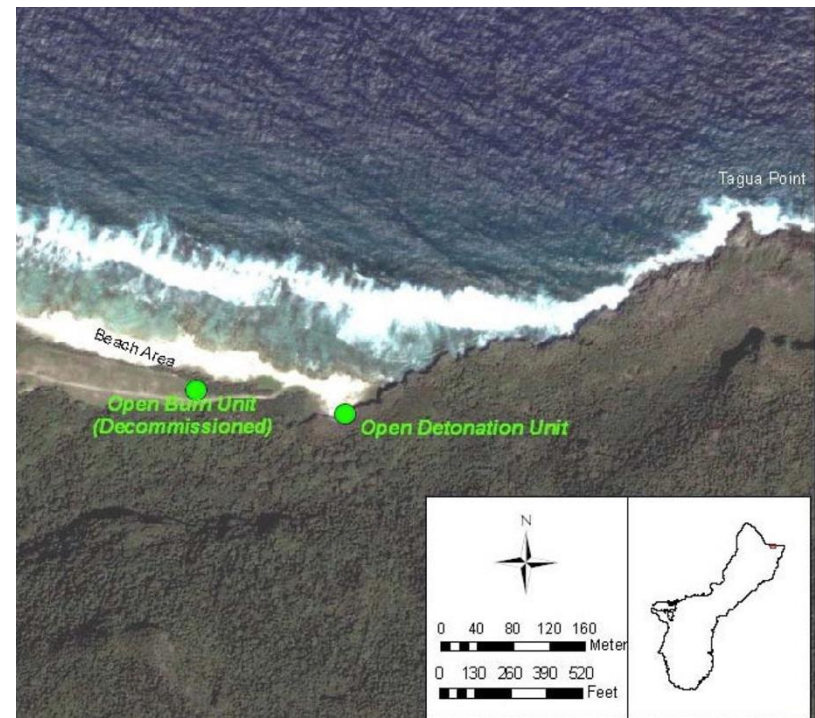
## *Dep't of Air Force v. Prutehi Guahan (Mar. 9, 2026)*



# Background and History

- Beginning in 1982, the Air Force has continuously held a RCRA permit for treating unexploded WWII-era ordnance and other munitions at Anderson AFB, an isolated facility on Guam's northern coast (near Tarague Beach). Since then, in accordance with RCRA and governing EPA regulations, the Air Force has periodically applied to renew the permit, and the Guam EPA has granted the renew.

- The Air Force most recently applied for renewals in 2021. Guam EPA has published a draft permit, solicited comments, and held a public hearing, but it has not yet reached a final decision on the application.



# *Prutehi Guanam – Procedural History*



*Prutehi Litekyan: Save Ritidian v. U.S. Dep't of the Air Force*, 128 F.4th 1089 (9th Cir. 2025)

- Agency Granted MTD Decision by the Guam District Court\*\*
- Reversed in the Ninth Circuit

*Prutehi Litekyan: Save Ritidian v. U.S. Dep't of the Air Force*, 128 F.4th 1089 (9th Cir. 2025)



- USAFs decision to apply for a RCRA permit and the details of its planned activities on Tarague Beach, described in the permit application, reflected the agency's commitment to a particular location for and method of waste munitions disposal, and so was the endpoint in its decisionmaking process. That commitment also determined the agency's legal obligations. The Air Force thus engaged in final agency action that was ripe for judicial review.

*Prutehi Litekyan: Save Ritidian v. U.S. Dep't of the Air Force*, 128 F.4th 1089 (9th Cir. 2025)



- RCRA's permitting process is in important respects dissimilar from the environmental review mandated by NEPA and so does not make the latter superfluous. Nor do the processes outlined in RCRA suggest that Congress did not intend NEPA to apply to the decisionmaking of operational agencies (as opposed to agencies charged with assuring environmental compliance). NEPA therefore applies to the Air Force's decision to conduct OB/OD operations at Tarague Beach, and the nonprofit can state a claim by alleging noncompliance with NEPA.

# *Prutehi Guanam*

## **Issue:**

1. Whether the federal government's submission to a state or territorial regulator of an application to renew a [Resource Conservation and Recovery Act of 1976](#) (RCRA) permit is “final agency action” that is immediately reviewable under the [Administrative Procedure Act](#); and
2. Whether the federal government must comply with the general environmental-review procedures of the National Environmental Policy Act of 1969, before submitting a permit-renewal application under RCRA, which sets forth its own specific procedures to review environmental impacts in the context of hazardous-waste treatment.

# Questions/Comments?

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