38TH ANNUAL ENVIRONMENTAL SUPERCONFERENCE
"A STAR-SPANGLED AFFAIR"
CASE LAW UPDATE
AUGUST 6, 2026

JAMES E SMITH
SHAREHOLDER, CRAIN, CATON & JAMES, PC
713-752-8620
jsmith@craincaton.com

CIRCUIT COURTS AND STATE SUPREME COURTS

John Cruden and Todd Kim will give a Supreme Court of the United States ("SCOTUS") update. This presentation addresses decisions by US Circuit Courts of Appeals and by the highest court in three states, Maryland, North Dakota, and Texas. SCOTUS considers a very small portion of cases presented to it. In most cases, decisions from a Circuit Court or state supreme court are the last word within the circuit or state subject to the decision.

Environmental cases can be addressed by any of the circuits. This paper summarizes cases from the District of Columbia, 2nd (Connecticut, New York, and Vermont), 4th (Maryland, North Carolina, South Carolina, Virginia and West Virginia), 5th (Louisiana, Mississippi, and Texas), 6th (Kentucky, Michigan, Ohio, and Tennessee), 8th (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota), 9th (Alaska, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington), and 11th (Alabama, Florida, and Georgia) circuits.

With one exception, the presentation does not discuss pending cases. Trial-level and appellate courts are currently considering many important environmental cases and decisions are expected in the coming months.

Circuit Court Opinions

Climate Change

Minors Lack Standing to Challenge Discounting of Future Environmental Benefits. *G.B. v. EPA*, 172 F.4th 1042 (9th Cir. 2026). According to the 9th Circuit, minors' allegations that discounting future benefits discriminated against them and denied them equal protection did not assert a cognizable injury-in-fact. Minors' pleadings did not demonstrate that their alleged environmental injuries are fairly traceable to the Government's use of discounting. Declaratory relief is unlikely to redress their asserted harm.

Award of Fees for Improper Removal of Deceptive Advertising/Climate Change Case. *City of New York v. ExxonMobil*, 154 F.4th 36, (2d Cir 2025). City was awarded attorneys' fees and costs by the trial court related to the fossil fuel companies' removal of the case from state court to federal court. The 2nd Circuit upheld the trial court's award, finding no abuse of discretion when the companies claimed multiple bases for removal that had been rejected by the 2nd Circuit and by other courts. Federal rules allow for an award of fees and costs in an unusual case, even when, as in this case, bad faith is not found.

ESA

ESA Downlisting Approved Despite Finding of Future Endangerment. *Center for Biological Diversity v. US Fish & Wildlife Service*, 146 F.4th 1144 (D.C. Cir. 2025). Service downlisted an animal from "endangered" to "threatened" under the Endangered Species Act (ESA). The report recommending downlisting acknowledged that due to climate change the animal would likely become endangered by 2039. The DC Circuit held that the downlisting was within the Service's discretion, especially given the Service's history of reviewing the status every five years.

Injunctions Must Balance Interests among Competing Endangered Species. *San Luis Obispo Coastkeeper v. City of San Luis Obispo*, 161 F.4th 590 (9th Cir. 2025). The 9th Circuit determined that if injunctive relief under the ESA may benefit one protected species at the expense of other protected species, a court must consider and balance competing interests as to all protected species that may be affected. The injunction issued by the trial court protected the steelhead trout but could harm the California red-legged frog and the tidewater goby, which are also entitled to ESA protection. The 9th Circuit rejected the argument that when injunctions might harm other protected species, the court must balance all the usual equities when considering an injunction, such as economic and development. Rather, "the only equities that matter here are those related to the interest of other ESA-listed species." *Id*. at 601.

Project Approval Review, including NEPA

FERC Action relating to Gas Compressor Station Expansions Upheld. *Gas Transmission NW v. FERC,* 157 F.4th 674 (5th Cir. 2025). The Federal Energy Regulatory Commission (FERC) approved replacement of three compressors for a natural gas pipeline. The pipeline company filed a Petition for Review (PFR) complaining of FERC's denial of the company's request for predetermination that roll-in rates will apply in the rate proceeding. Two states and two environmental groups filed PFRs certification of the project. The 5th Circuit denied all PFRs. The Court denied the pipeline's request because it was within FERC's discretion and prior FERC actions did not establish a precedent that the pipeline's request must be granted at this time. The Court denied the PFRs challenging certification, holding that FERC properly relied on the pipeline company's long-term contracts for the expanded capacity. In denying challenges under the National Environmental Policy Act (NEPA), the 5th Circuit relied on the recent SCOTUS decision in *Seven County*, which acknowledged that courts must afford agencies a wide zone of reasonableness in implementing NEPA. FERC's analysis of the "no action" alternative, although brief, was adequate. Its failure to consider the replacement compressors as a "connected action" to the expansion project was consistent with FERC's own settled and longstanding policy that exempts replacement facilities from additional environmental review. Finally, FERC adequately considered the expansion project's risks to "public health or safety." FERC's Environmental Impact Statement discussed the incremental safety risks of the expansion project. It then explained why those risks were mitigated by the Department of Transportation's safety standards and the compressor stations' remote locations. Although NEPA requires agencies to "consult with" other agencies as appropriate, the extent of those consultations falls within FERC's discretion. "FERC did all that NEPA required by citing the Department of Transportation's standards, requiring GTN to follow them, and requiring it to complete all necessary consultations with that agency." *Id.* at 712

Pipeline Project Not Stayed During Challenge to Water Quality Certifications. *Sierra Club v. North Carolina Department of Environmental Quality*, 2026 WL 1689722 (4th Cir. 2026); *Dan River Basin Association v. Virginia Department of Environmental Quality*, 2026 WL 1689719 (4th Cir. 2026). The 4th Circuit refused to issue a stay of state agency water quality certifications for a natural gas pipeline project in North Carolina and Virginia. Opponents of the project sought a stay during their appeal of the state agencies' certifications. A stay of the certifications would have brought the project's construction to a halt. FERC issued a permit for the project. As part of the permitting process, the North Carolina Department of Environmental Quality and the Virginia Department of Environmental Quality issued certifications that the project will comply with their water quality requirements. The 4th Circuit noted the specific and detailed requirements that each state agency imposed on the project as part of their certifications. Those requesting a stay of the certifications failed to overcome the judicial deference afforded to agencies when reviewing the adequacy of specific permit requirements.

Searching NEPA Review Is Over. *Sierra Club v. FERC*, 153 F.4th 1295 (D.C. Cir. 2025). In another case relying on *Seven County*, the DC Circuit observed, "the Supreme Court repudiated NEPA arguments like those raised by the Sierra Club in this case." *Id*. at 1311. After *Seven County*., "the era of searching NEPA review is over — or at least it should be." *Id*.

Standing Requires Concrete, Particularized Injury Fairly Traceable to the Project. *Center for Biological Diversity v. US Department of Transportation*, 2026 WL 1959172 (5th Cir. 2026). Environmental groups lacked standing to challenge a license issued by the Maritime Administration, which is part of the US Department of Transportation, for a deepwater port in the Gulf of America. The groups' individual members either 1) failed to identify a "Project-affected area" they use or 2) failed to show how "Project-specific" emissions, operation, or construction will cause their anticipated harms. Allegations of "speculative, undifferentiated risk of future harm" and "generalized allegations of environmental injury" do not establish standing.

Clean Air Act

All Applicable Attainment Requirements Must be Met by Redesignation Date. *Sierra Club v EPA,* 161 F.4th 934 (6th Cir. 2025). The 6th Circuit held that EPA was within its discretion to allow Michigan to ignore data affected by the wildfires; however, the 6th Circuit vacated the approval of Michigan's request for redesignation as attainment for ozone, holding that Michigan did not meet all applicable requirements at the time of redesignation. While Michigan's application for redesignation was pending, Michigan failed to implement reasonably available control technology (RACT) requirements for the Detroit area, which were required by March 2023. EPA approved redesignation in May 2023, stating it interpreted the Clean Air Act (CAA) to allow EPA to ignore the failure to meet the intervening RACT requirement when approving redesignation. After noting the demise of *Chevron* deference, the 6th Circuit agreed with Sierra Club that the CAA required the Detroit area to have complied with all applicable requirements by the redesignation date. Failure to comply with the RACT requirement, which arose after applying for redesignation, still precluded approval.

Vacating EPA's Disapproval of the Texas SIP. *State of Texas v EPA,* 170 F.4th 328 (5th Cir. 2026). In an earlier opinion, the 5th Circuit affirmed EPA's disapproval of the Texas State Implementation Plan (SIP). That decision relied on EPA's representation that it disapproved of the SIP based on modeling done prior to the SIP's submission. In 2026, the 5th Circuit reversed its earlier decision and vacated EPA's disapproval. An EPA statement in the Federal Register published after the earlier decision provided "a strong indication that EPA placed substantial reliance on data that was unavailable to Texas when it submitted its SIP." *Id*. at 359. After concluding EPA relied on information only available after Texas submitted its SIP, the 5th Circuit conducted a new analysis and vacated EPA's disapproval.

Agency Has No Authority to Issue Rule Based on Erroneous Legal Conclusion. *SSM Group v. EPA*, 150 F.4th 593 (D.C. Cir. 2025). In 2023, EPA rescinded a 1992 regulation providing for an affirmative defense in CAA enforcement. EPA claimed it had reevaluated the statute and determined it did not have authority to issue the 1992 regulation. A coalition of industry groups filed a PFR, arguing EPA's rescission relied on erroneous legal justifications. The DC Circuit agreed, granted the Petition, and reversed the rescission. Relying on a 2024 decision, the Court said EPA had authority to create "a complete affirmative defense, like the one at issue here… because it relates to the antecedent question of liability and therefore does not impinge on the judiciary's authority" to assess penalties. In addressing the "continuous standard" issue for the first time, the DC Circuit said, "we now hold that a complete affirmative defense to liability does not render an emission limitation non-continuous."

<u>Administrative and Procedural Law</u>

Notice Was Inadequate Because Final Rule Deviated from Proposed Rule. *Iowa v. Wright*, 154 F.4th 918 (8th Cir. 2025). When a final rule deviates too sharply from the proposed rule, affected parties are deprived of adequate notice. The determination if the notice was adequate is for the Court, with no deference to the agency. *Id*. at 948

Taxpayer Penalized for Gross Overvaluation of Conservation Easement. *Jackson Crossroads v. Commissioner of Internal Revenue,* 2026 WL 822261 (11th Cir. 2026). A developer paid $3 million for one parcel of 604 acres of land and $2.2 million for an adjacent parcel of 315 acres of land. The next year, the developer donated conservation easements from the properties of 229 acres and 307 acres and then claimed tax deductions of $23.1 million and $13.8 million, based on expert opinions that mining for aggregate and granite would produce profits consistent with these valuations. The IRS disallowed the deductions and assessed penalties against the developer for grossly overstating the value of the properties. The developer sued in Tax Court, asserting 1) the valuations were accurate, 2) the penalty was improper, and 3) the developer should receive the full value of the claimed deductions. The 11th Circuit upheld the Tax Court's determination of value and assessment of penalty. The 11th Circuit agreed with the Tax Court that the ability to mine and the estimates of profits were far too speculative.

False Sustainability Allegations Require Reasonable Specificity. *Ellis v. Nike*, 158 F.4th 932 (8th Cir. 2025). The Court affirmed the dismissal of a class action suit alleging false and misleading statements relating to Nike's "Sustainability Collection" Products. The plaintiff alleged that Nike's products are not made with sustainable materials but actually made with virgin synthetic and non-organic materials that are harmful to the environment. However, the plaintiff cited no facts to support the allegation of no sustainable materials and insufficient support for alleging that Nike's statements were false. The inability to plead specific factual support properly led to dismissal.

State Court Opinions

Supreme Court of Maryland

Maryland Common Law Not Applicable to Local Governments' Climate Change Allegations. *Mayor & City Council of Baltimore v. B.P. P.L.C.* 493 Md. 427 (2026). The Maryland Supreme Court held that state common law did not apply to alleged actions of fossil fuel companies related to climate change. The Court held that the local governments' state law tort claims involved regulation of interstate and international pollution and would therefore be permitted only under federal law. The Court stated that "[n]o amount of creative pleading can masquerade the fact that the local governments are attempting to utilize state law to regulate global conduct that is purportedly causing global harm." *Id.* at 482.

Supreme Court of North Dakota

Anti-Suit Injunction against Greenpeace. *Energy Transfer LP v Gion*, 35 N.W.3d179 (N.D. 2026). Energy Transfer requested an anti-suit injunction after a jury found that Greenpeace and others were liable for $667 million (later reduced to $345 million) in connection with actions related to Dakota Access Pipeline protests. The North Dakota Supreme Court concluded that Energy Transfer's request involved "fundamental interests" and presented "issues of vital concern on a matter of important public interest." The Court found that Greenpeace's claims in a Dutch complaint would require the Dutch court to resolve factual and legal questions in Greenpeace's favor that the North Dakota jury resolved against Greenpeace. The North Dakota Supreme Court further found that an injunction was required for three reasons. First, the Dutch action was "vexatious" based on the timing of its filing two weeks before the North Dakota jury trial began. Second, the Dutch action was an attack on North Dakota's "fundamental policy" regarding "an orderly process for challenging an adverse verdict." Third, the Dutch action created a risk of inconsistent verdicts. The decision requires the trial-court judge to enter a "narrowly tailored" anti-suit injunction that orders Greenpeace to refrain from pursuing any claim in the Dutch action "whose elements require, as pleaded, a finding that the North Dakota case lacked legal foundation."

Fifth Circuit Interpreting Texas Law and Supreme Court of Texas

No Cross-Jurisdictional Tolling of Limitations. *Ackerman v. Arkema*, 157 F.4th 715 (5th Cir. 2025). In 2017, a group sued Arkema in federal court for property damage allegedly caused by explosions related to Hurricane Harvey; they requested the case be certified as a class action. In 2022, the federal court certified a class for injunctive relief but not for monetary damages. Less than two years after the certification decision, a group filed a second suit in state court seeking monetary damages, which Arkema removed from state to federal court. While the group seeking damages acknowledged the two-year statute of limitations would ordinarily bar their claim, they argued that limitations were tolled on the damages claim while the class action was pending. If tolled, limitations only restarted when the district court limited certification to injunctive relief; if the time from the first filing until certification is not counted, their suit was within two years. The 5th Circuit disagreed and affirmed dismissal based on limitations, "Texas law does not recognize cross-jurisdictional tolling of the statute of limitations." The group could not file in state court and take advantage of the prior case filed in federal court to toll limitations, even though Arkema removed the second case to federal court.

Private Parties Cannot Enforce Open Beaches Amendment. *Texas General Land Office v. SaveRGV*, 2026 WL 1765503, (Tex. 2026). A Texas statute allows state and local authorities to close public beaches to accommodate “space flight activities” by private businesses. In 2019, Space X began launching rockets for satellites in Texas. The “blast radius” of the launches includes Boca Chica Beach, a public recreation area, which authorities close during launches. Several non-governmental organizations sued, alleging the statute conflicts with the Open Beaches Amendment in the Texas Constitution. This Amendment gives the public “an unrestricted right to use and a right of ingress to and egress from a public beach. The right granted by this subsection is dedicated as a permanent easement in favor of the public.” The Supreme Court of Texas (SCOTX) dismissed the case for lack of jurisdiction. The Amendment says, “this section does not create a private right of enforcement.” SCOTX held that a suit by private parties alleging that a statute was unconstitutional required a “private right of enforcement” for the courts to have jurisdiction. The Amendment’s specific statement denying such a right, which does not appear in any other part of the Texas Constitution, precludes private parties from seeking a court ruling that a statute conflicts with the Amendment.

Limitation to Utility Easement Acquired by Estoppel. *Boerschig v. Rio Grande Valley Electric Cooperative*, 2026 WL 1468464, (Tex. 2026). The utility constructed a distribution line in 1947. Decades later, when the land was under new ownership, the utility removed the old line and constructed a new line with more poles and wires. The new landowner sued; the jury found that the utility had a valid easement and that its actions were within the easement’s scope. The landowner appealed. SCOTX determined as a matter of law that constructing the new line with more poles and wires exceeded the scope of the easement, which rendered the jury findings irrelevant. SCOTX noted that the utility could use its eminent domain power to acquire the rights necessary for the new line, with compensation determined in a condemnation proceeding.

Changes in Law Can Become Part of Contracts. *Spectrum Gulf Coast v. City of San Antonio,* 2026 WL 969172 (Tex. 2026). Many contracts include provisions that require the parties to “comply with all applicable laws” while the contract is in effect. SCOTX recently ruled that regulatory changes, due to federal legislation, state legislation, or updated regulations, can become binding obligations when contracts contain these provisions. A utility agreed that a telecommunications provider could attach its equipment to the utility’s poles for a fee. The contract had an “escalator” clause, which raised the annual fee charged to the telecommunications provider. A few years later, the utility agreed that another telecommunications provider could use its poles;

this contract did not have an escalator clause. Some years after that, federal law set a maximum fee for use of utility poles and state legislation prohibited utilities from discriminating among telecommunications providers. The first telecommunications provider sued the utility, asserting that 1) state law precluded the utility from charging it more than the utility charged the second provider; 2) the contract's provision requiring compliance with laws incorporated subsequent changes in law; and 3) the utility breached the contract by charging the first provider more than the second. SCOTX agreed, holding that the "all laws" clause incorporated subsequent changes in law.

DOJ'S Position in Pending Citizen Suit

DOJ Claims it Can Insist on Any Citizen Suit being Dismissed. *NAACP v. X.AI Corp*., No. 3:26-cv-00074 (N.D. Miss.). In this citizen suit brought under the Clean Air Act, the US Department of Justice (DOJ) filed a "Motion for Intervention and Dismissal." DOJ can intervene as a matter of right. 42 U.S.C. § 7604(c)(2). In addition to intervening, DOJ's motion seeks immediate dismissal of the entire case, even over NAACP's objection. According to DOJ, "where the Clean Air Act entitles the United States to intervene so that the government can protect federal policy interests from private enforcers' conflicting interests—the United States' procedural rights must be interpreted to include the right to dismiss the citizen suit." DOJ Motion for Intervention and Dismissal at 10. DOJ included a threat: "But interpreting the Clean Air Act to authorize citizen enforcement actions that seek civil penalties payable to the United States over the United States' objection would 'deprive[]' the United States of 'discretion to decide that a given violation" (assuming any occurred) "should not be the object of suit at all.' *Laidlaw*, 528 U.S. at 210 (Scalia, J., dissenting). That would be 'constitutionally bizarre.' *Id*. Because interpreting the Clean Air Act's federal-intervention right to entitle the United States to dismissal is consistent with the statute's structure and avoids that serious Article II concern, that interpretation should be favored." *Id*. at 17. DOJ further noted: "In light of Article II's commitment of federal enforcement power to the Executive, several Supreme Court Justices have identified '[d]ifficult and fundamental questions' about whether citizen-suit provisions impermissibly transfer Executive enforcement discretion to private parties. *Laidlaw*, 528 U.S. at 197 (Kennedy, J., concurring); *see also id.* at 209-10 (Scalia, J., joined by Thomas, J., dissenting); *Dep't of Transp. v. Ass'n of Am. R.R.*, 575 U.S. 43, 62 (2015) (Alito, J., concurring). So too have many Fifth Circuit judges. In a case brought under the Clean Air Act's citizen-suit provision, Judge Jones—joined by seven other judges—recognized citizen suits' 'potential to usurp the Executive Branch's principal prosecutorial responsibility.' *ExxonMobil*, 123 F.4th at 375 n.32 (Jones, J., dissenting)." [footnote omitted] *Id*. at 18-19.