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

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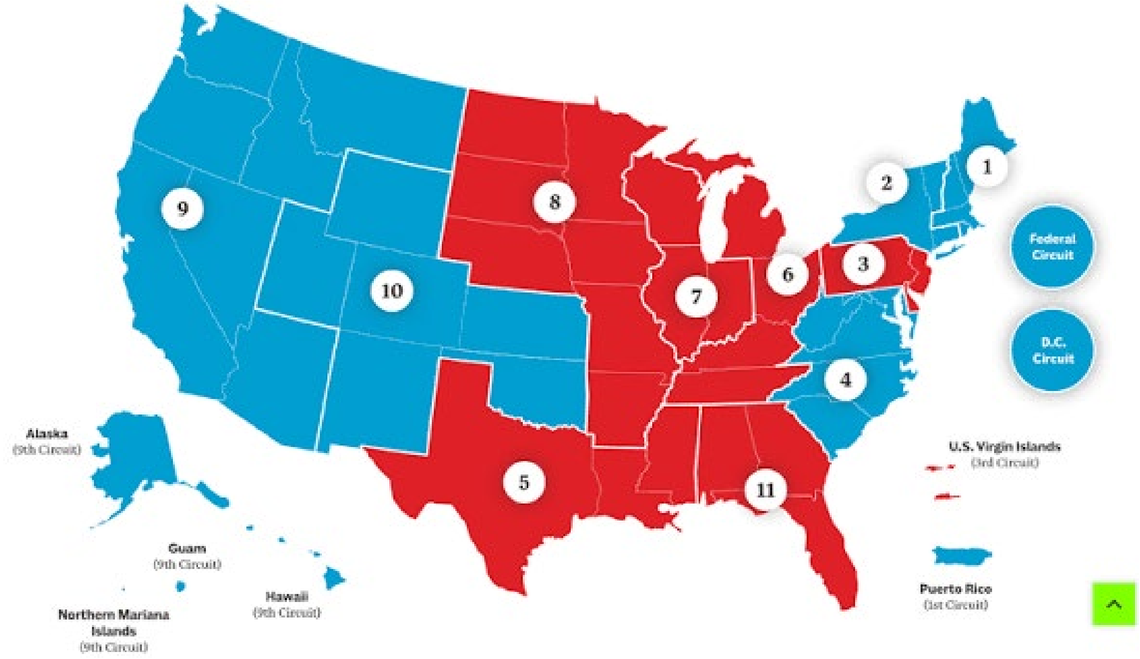
UNITED STATES CIRCUIT COURTS

- Mid-Level Appellate Courts in Federal System
- Often the Last Word

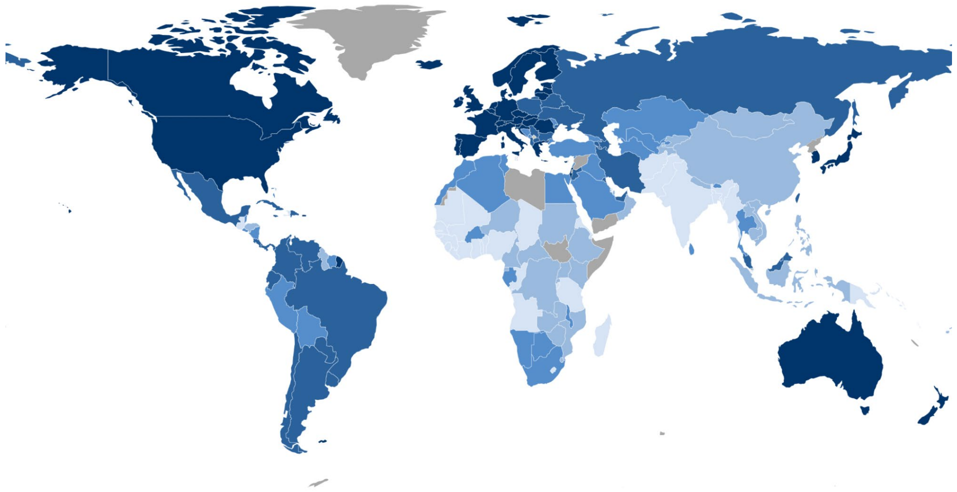


CLIMATE CHANGE LITIGATION

- Discounting Future Benefits
- ExxonMobil

Maryland Common Law Does Not Support Local Governments' Climate Change Allegations.

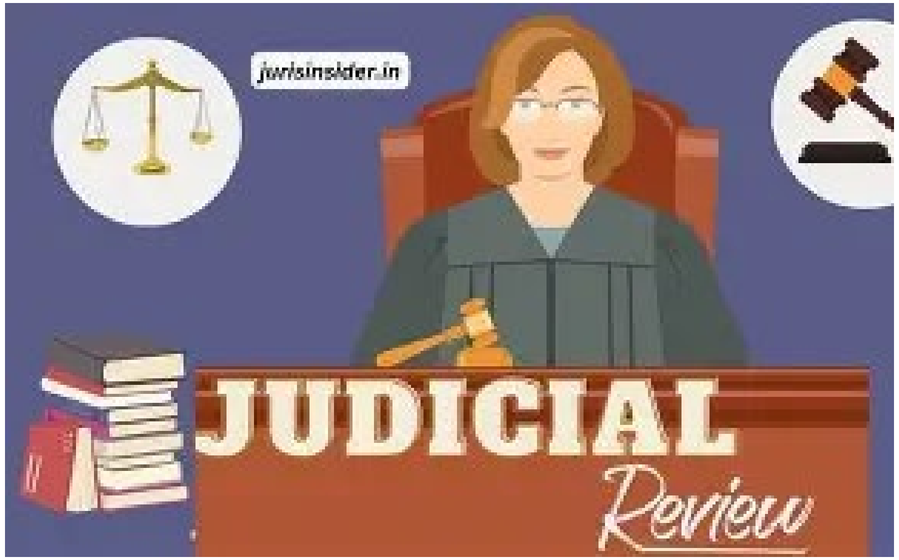
- *Mayor & City Council of Baltimore v. B.P. P.L.C.* 493 Md. 427, 482 (2026), "the local governments are attempting to utilize state law to regulate global conduct that is purportedly causing global harm."




ENDANGERED SPECIES ACT

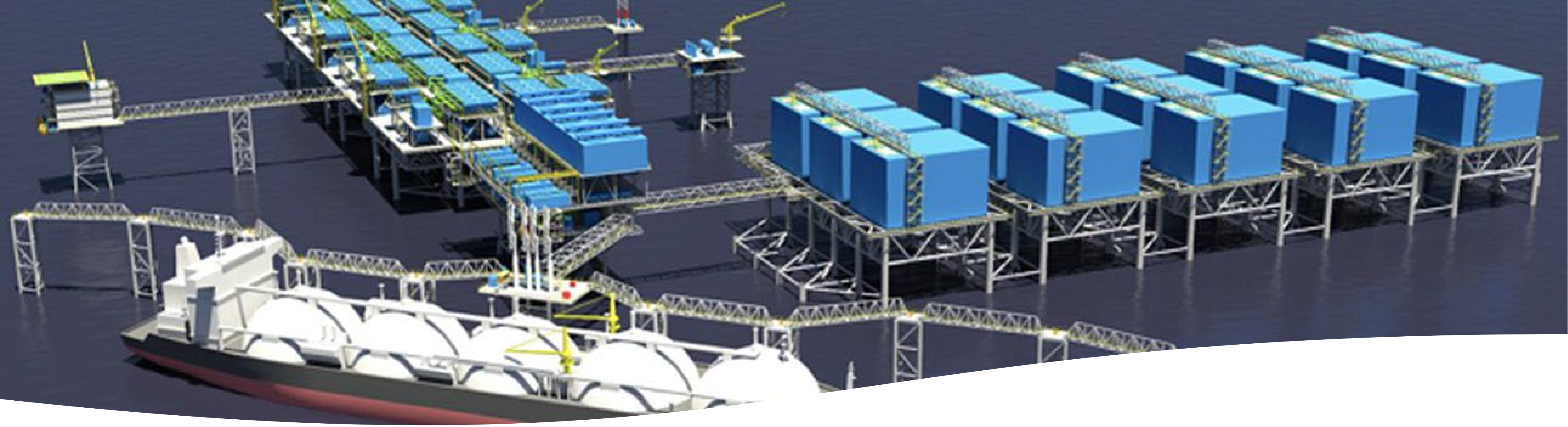
San Luis Obispo Coastkeeper v. City of San Luis Obispo, 161 F.4th 590 (9th Cir. 2025).

Injunctions Must Balance Interests among Competing Endangered Species



PROJECT REVIEW

- Judicial deference to agencies
- Wide zone of reasonableness
- "The era of searching NEPA review is over–or at least it should be." *Sierra Club v. FERC*, 153 F.4th 1295, 1311 (D.C. Cir. 2025)



PROJECT REVIEW-LACK OF STANDING

- Standing required
  - use of the “Project-affected area”
  - how “Project-specific emissions” will cause the anticipated harms
- *Center for Biological Diversity v. US Department of Transportation*, 2026 WL 1959172 (5th Cir. 2026)

DAKOTA ACCESS PIPELINE LITIGATION

- Greenpeace filed Anti-SLAPP case against Energy Transfer in Dutch court.
- *Energy Transfer LP v. Gion*, 35 N.W.3d179, (N.D. 2026), Supreme Court of North Dakota ordered the trial court to enjoin Greenpeace International from pursuing claims in the Dutch court that the case in North Dakota lacked legal foundation.

CLEAN AIR ACT

- All Applicable Attainment Requirements Must be Met by Redesignation Date. *Sierra Club v. EPA*, 161 F.4th 934 (6th Cir. 2025)

TEXAS OPEN BEACHES AMENDMENT

- Texans have “unrestricted right” and “permanent easement” to use Texas beaches.
- Statute allows state and local agencies to close beaches for private space flights.

TEXAS OPEN BEACHES AMENDMENT

- *Texas General Land Office v. SaveRGV*, 2026 WL 1765503, (Tex. 2026) recognized a general right to sue to declare void statutes conflicting with Article I of the Constitution.
- Open Beaches Amendment, despite being in Article I, is an exception due to the Amendment's express statement of no private right of action.

of our form of government, do in accordance with the provisions of the Joint Resolutions for annexing Texas to the United States, approved March 1, one thousand eight hundred and forty-five, ordain and establish this Constitution.

ARTICLE I. BILL OF RIGHTS.

That the general, great, and essential principles of Liberty and Free Government may be recognized and established, we declare that—

SECTION 1. All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit; and they have at all times the unalienable right to alter, reform, or abolish their form of government, in such manner as they may think expedient.

SEC. 2. All freemen, when they form a social compact, have equal rights; and no man, or set of men, is entitled to exclusive separate public emoluments or privileges, but in consideration of public services.

SEC. 3. No religious test shall ever be reqired as a qualification to any office or public trust in this State.

DOJ POSITION IN CITIZEN SUIT

- DOJ claims it can intervene and insist that any citizen suit be dismissed,
- Even over the citizen plaintiff's objection.

DOJ POSITION IN CITIZEN SUIT

NAACP

Mississippi State Conference

- *NAACP v. X.AI Corp.*, No. 3:26-cv-00074 (N.D. Miss.)
- Unless DOJ has this power, all citizen suit provisions are unconstitutional (and might be anyway).

CONSERVATION EASEMENT OVERVALUATION

Property	Purchase Price	Conservation Easement	Deduction (following year)
604 acres	$3.0 million	229 acres	$23.1 million
315 acres	$2.2 million	307 acres	$13.8 million

CONSERVATION EASEMENT OVERVALUATION

- Experts (appraisers, geologists, engineers) claimed that mining for aggregate and granite would produce profits consistent with these valuations.
- *Jackson Crossroads v. Commissioner of Internal Revenue*, 2026 WL 822261 (11th Cir. 2026), deductions limited to $1.2 million and $1.6 million with 40% penalty for gross overvaluation

IRS