



## **Ninth Circuit Expands Right to Intervene in NEPA Cases**

**By:** [Ruth Moore](#)

The Ninth Circuit issued a decision this month abandoning its “federal defendant” rule for National Environmental Policy Act (NEPA) cases. Under [Wilderness Society v. U. S. Forest Service](#), a company whose investment is threatened by a NEPA lawsuit will now be entitled to intervene to defend the government’s compliance with NEPA.

From 1989 until this month’s decision, the Ninth Circuit’s federal defendant rule prevented private parties from intervening of right to defend against NEPA challenges. Its rationale was that only the federal government has a “significantly protectable interest” in a NEPA action because NEPA is a procedural statute that binds only the federal government. However, this rationale was at odds with the intervention standards in all other cases and under the rules of civil procedure since it focused on the underlying legal claim instead of the property or transaction at issue. The Ninth Circuit now joins most other jurisdictions in holding that a private party is entitled to intervene to defend against a NEPA challenge when it has a “significantly protectable interest” under some law and “there is a relationship between the legally protected interest and the claims at issue.”



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