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C O M M E N T S

An Empirical Look at Preliminary Injunctions in Challenges Under Environmental Protection Laws

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A preliminary injunction is an "extraordinary" and "drastic" equitable remedy.[1] It should be granted only where the movant carries a heavy burden of persuasion that the requested relief is necessary.[2] Indeed, this "strong arm" of equity "should be used sparingly and only in a clear case."[3] These sentences, or those like them, appear in almost every recitation of the standard governing preliminary injunctive relief. But experience teaches that courts do not always treat preliminary injunctions as so extraordinary, especially in environmental cases.

Environmental cases tend to involve large projects, such as interstate pipelines, mines, and highways, that have long-term impacts. Halting those impacts for a few months to allow for meaningful judicial review—even if it is not entirely clear that the plaintiff will succeed on the merits, and even if it may cost the company receiving the authorization substantial monies and reduce employment and economic benefits—can be alluring. From this point of view, the possibility of irreparable harm dominates in the analysis, with the other three prongs (likelihood of success on the merits, the overall balance of equities, and the broader public interest) diminishing in importance.

This type of thinking had become increasingly prevalent in the federal courts before 2008, much to the consternation of regulatory agencies, regulated industries, and some legal scholars. The permits and certifications challenged in these cases are the product of years of costly administrative review. And they are frequently the last piece of a complex puzzle of contracts, investments, and commitments. So the cost of an injunction, if monetary, is substantial. Absent a clear, rigorously applied standard for deciding whether to grant that relief, the uncertainty over whether a court might decide to issue an injunction can be paralyzing.

The U.S. Supreme Court's seminal decision in *Winter v. Natural Resources Defense Council, Inc.*[4] in 2008 offered hope for greater certainty and a higher bar for preliminary injunctive relief, especially in environmental litigation. At a minimum, the majority's decision (rendered in an environmental case) promised to put all four of the prongs of the traditional test for preliminary injunctive relief on more equal footing. The more optimistic predicted that injunctions would once again become "drastic" and "rare," as the Court described.

We attempted to evaluate empirically *Winter*'s impact on the frequency with which these types of "environmental preliminary injunctions" are granted. Did *Winter*, in fact, achieve the anticipated effect? Are courts now applying a uniform standard for deciding whether to grant injunctive relief in environmental cases? And if not, what jurisdictions are more likely to apply the majority's holding in *Winter* most vigorously?

I. The "Extraordinary" Preliminary Injunction

Rule 65 of the Federal Rules of Civil Procedure allows federal courts to issue preliminary injunctions, and, generally, federal courts have considered four familiar prongs in deciding whether to grant them.

The first is likelihood of success on the merits.[5] Because the decision on preliminary injunctive relief occurs before a full trial of the claims, courts require the movant to show

1. 11A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure §2948 (3d ed. 2004).
2. *Id.*
3. 42 Am. Jur. 2d *Injunctions* §1 (2010).
4. 555 U.S. 7, 39 ELR 20279 (2008).
5. Courts have phrased this prong differently. *See, e.g.*, Tuxworth v. Froehlke, 449 F.2d 763, 764 (1st Cir. 1971) (using "reasonable possibility of success"); Minnesota Bearing Co. v. White Motor Corp., 470 F.2d 1323, 1326 (8th Cir. 1973) (using "substantial probability of success"); Automated Mktg. Sys., Inc. v. Martin, 467 F.2d 1181, 1183 (10th Cir. 1972) (using "reasonable probability" of success). Yet, these "verbal differences do not seem to reflect substantive disagreement." 11A Wright & Miller, *supra* note 1, §2948.3. For consistency, this Comment tracks the "likely to succeed on the merits" language used by the Supreme Court. *Winter*, 555 U.S. at 20.

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it can prevail on its claims, though "absolute" certainty is not required.[6]

The second prong is irreparable harm.[7] Here, the movant must show that it has no adequate alternative remedy, usually money damages.[8] The preliminary injunction protects the movant from irreparable injury and preserves the court's power to issue a meaningful decision after the claims are tried.[9] Thus, if money damages can make the movant whole, then no need for a preliminary injunction exists.

The third is the balance of equities.[10] This prong requires a court to evaluate the impact on the non-movant should the injunction issue, and compare it to the impact on the movant should the injunction not issue.[11]

The fourth and final prong is the public interest.[12] Here, the court inquires whether any policy considerations bear on whether the injunction should issue.[13]

II. Pre-*Winter* Lack of Uniformity

Before 2008, these four prongs were a part of nearly every articulated standard for preliminary injunctive relief. But federal courts differed in how they weighed those prongs. For example, the U.S. Court of Appeals for the District of Columbia (D.C.) Circuit weighed the prongs against each other as factors.[14] If a plaintiff could show only a questionable likelihood of success on the merits, it might overcome that with a stronger showing of irreparable harm. In contrast, the U.S. Court of Appeals for the Fourth Circuit used a test where, if the irreparable-harm and balance-of-equities prongs were met, then the likelihood of success on the merits was softened to a showing of only a "serious question."[15]

The U.S. Court of Appeals for the Ninth Circuit's test featured yet more complexity. This test existed as two alternatives on a "single continuum." The first alternative required a showing of likelihood of success on the merits and the "possibility" of irreparable harm.[16] The second alternative required a showing of serious questions going to the merits and balance of equities. Thus, the likelihood of success and the harm caused stood at each end of the continuum so "the greater the relative hardship," then "the less probability of success must be shown."[17] Further obstructing uniformity, some circuits disposed of the public-interest prong entirely.[18] These examples demonstrate how different applications of the same four prongs spawned a "dizzying diversity" of legal standards for preliminary injunctions among the circuits.[19]

III. The *Winter* Decision

The Supreme Court tackled this lack of uniformity in *Winter*. In *Winter*, environmental groups obtained a preliminary injunction restricting the U.S. Navy's use of active sonar in training exercises.[20] The Ninth Circuit concluded that all four prongs were met, but only required a "possibility" of irreparable harm for the second prong.[21]

The Supreme Court reversed. Significantly, the Court listed the four prongs as independent showings a plaintiff must make: "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, *and* that an injunction is in the public interest."[22]

The Court then reviewed the Ninth Circuit's application of that test and rejected its relaxation of the irreparable-harm prong because issuing a preliminary injunction only

6. *See*, *e.g.*, University of Tex. v. Camenisch, 451 U.S. 390, 395 (1981) ("A party thus is not required to prove his case in full at a preliminary-injunction hearing."); Ross-Simons of Warwick, Inc. v. Baccarat, Inc., 102 F.3d 12, 16 (1st Cir. 1996) (trial courts "need not predict the eventual outcome on the merits with absolute assurance"); West Virginia Highlands Conservancy v. Island Creek Coal Co., 441 F.2d 232, 235 (4th Cir. 1971) ("it is not necessary" for the movant to "demonstrate an absolute right to the relief it seeks").
7. Courts have referred to this prong as "irreparable harm" and "irreparable injury." *Compare* Siegel v. LePore, 234 F.3d 1163, 1176 (11th Cir. 2000) (using "irreparable injury"), *and* Texas v. Seatrain Int'l, S.A., 518 F.2d 175, 179 (5th Cir. 1975) (same), *with* Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1135 (9th Cir. 2011) (using "irreparable harm"). The Supreme Court uses "irreparable harm." *Winter*, 555 U.S. at 20.
8. 11A Wright & Miller, *supra* note 1, §2948.1.
9. 11A Wright & Miller, *supra* note 1, §2947.
10. Courts have called this prong "balance of harms," "balance of equities," and "balance of hardships." *See*, *e.g.*, Haitian Refugee Ctr., Inc. v. Baker, 949 F.2d 1109, 1111 (11th Cir. 1991) (using "balance of harms"); Glenwood Bridge, Inc. v. City of Minneapolis, 940 F.2d 367, 370 (8th Cir. 1991) (using "balance of equities"); Sports Form, Inc. v. United Press Int'l, Inc., 686 F.2d 750, 753 (9th Cir. 1982) (using "balance of hardships"). The Supreme Court uses "balance of equities." *Winter*, 555 U.S. at 20.
11. *See* Amoco Prod. Co. v. Village of Gambell, Alaska, 480 U.S. 531, 542, 17 ELR 20574 (1987) ("[A] court must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief."); Weinberger v. Romero-Barcelo, 456 U.S. 305, 312, 12 ELR 20538 (1982) ("[T]he court 'balances the conveniences of the parties and possible injuries to them according as they may be affected by the granting or withholding of the injunction.'" (quoting Yakus v. United States, 321 U.S. 414, 440 (1944)).
12. 11A Wright & Miller, *supra* note 1, §2948.
13. *See Winter*, 555 U.S. at 24 ("In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." (quoting *Weinberger*, 456 U.S. at 312)).
14. *See* Chaplaincy of Full Gospel Churches v. England, 454 F.3d 290, 297 (D.C. Cir. 2006) (employing a standard that listed all four prongs and told courts to "balance the strengths" of them as factors).
15. Blackwelder Furniture Co. v. Seilig Mfg. Co., 550 F.2d 189, 196 (4th Cir. 1977).
16. Faith Ctr. Church Evangelistic Ministries v. Glover, 480 F.3d 891, 906 (9th Cir. 2007).
17. Clear Channel Outdoor Inc. v. City of Los Angeles, 340 F.3d 810, 813 (9th Cir. 2003).
18. *See* Jackson Dairy, Inc. v. H.P. Hood & Sons, Inc., 596 F.2d 70, 72 (2d Cir. 1979) (listing a legal standard with only three prongs); *Clear Channel Outdoor Inc.*, 340 F.3d at 813 (same); *see also* Sarah J. Morath, *A Mild* Winter*: The Status of Environmental Preliminary Injunctions*, 37 Seattle U. L. Rev. 155, 157 (2013) (explaining that the *Winter* "Court reinvigorated the public interest factor, a factor that had effectively fallen by the way side").
19. *See* John Leubsdorf, *The Standard for Preliminary Injunctions*, 91 Harv. L. Rev. 525, 525 (1978) ("Some authorities do no more than list the relevant factors . . . . Others state combinations of these factors that will warrant relief. Still others lay down a fourfold test, whose folds differ from one formulation to the next.").
20. Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 17-18, 39 ELR 20279 (2008).
21. *Id*. at 19-20.
22. *Id*. at 20 (emphasis added).

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on the "possibility" of irreparable harm was "too lenient."[23] Irreparable harm instead must be "likely."[24] Moreover, the Court identified the Navy's interest in "effective, realistic training" and balanced it against the plaintiffs' "ecology, scientific, and recreational interests," concluding that the Navy's interest prevailed.[25] Finally, the Court chastised the lower court for not giving "serious consideration to the public interest"[26] and identified the public's interest in national defense.[27]

The Court reversed the decision and vacated the injunction because the lower court inadequately considered the balance-of-equities and public-interest prongs. This failure to give due weight to these factors "alone requires denial of the requested injunctive relief."[28]

Despite the Court's direct articulation of the showing that must be made by a plaintiff seeking a preliminary injunction, the courts have interpreted the import of *Winter* differently. Some read it as requiring a showing for all four prongs without "weighing" them against each other.[29] Others have parsed *Winter*'s language and concluded that, because the Court did not discuss how the prongs relate to each other, the prongs can still be weighed.[30] Still others do not know what to make of it.[31] Given these inconsistent readings, it is perhaps unsurprising that confusion persists.

IV. The Post-*Winter* Circuit Split

Winter spawned a three-way circuit split.[32] The first cluster of circuits follows the letter and spirit of *Winter*, citing the four prongs in the conjunctive test and then evaluating the plaintiff's showing for each. The second cluster reads *Winter* narrowly and continues to weigh some prongs against each other—meaning a less than adequate showing on one prong of the *Winter* test can be overcome by a more than adequate showing on another—as they did before. As for the third cluster, the question of *Winter*'s import remains open or unaddressed.

The Fourth Circuit leads the first cluster because it expressly rejected its prior weighing standard due to its "fatal tension" with *Winter*.[33] Thus, the Fourth Circuit no longer permits a lesser showing of serious questions for the first prong.[34] The U.S. Courts of Appeals for the First,[35] Tenth,[36] and Eleventh[37] Circuits join this cluster because they have cited *Winter*'s four-prong test and applied it faithfully, requiring proof that each prong is met. Notably, these circuits do not discuss a lesser showing for any prong. Accordingly, "[a]s a practical matter, there does not appear to be any meaningful differences between the standards applied in these circuits and the *Winter* standard."[38]

The second and largest cluster reads *Winter* narrowly to reconcile it with pre-*Winter* standards that weigh the prongs. The U.S. Court of Appeals for the Seventh Circuit was the first to follow this approach post-*Winter*.[39]

23. *Id*. at 22.
24. *Id*.
25. *Id*. at 23, 25.
26. The Court showed concern for the lack of analysis given to the last two prongs: "The [lower] court's entire discussion of these factors consisted of one (albeit lengthy) sentence . . . . The subsequent Ninth Circuit panel framed its opinion as reviewing the District Court's exercise of discretion but that discretion was barely exercised here." *Id*. at 26-27.
27. *Id*. at 24, 27.
28. *Id*. at 23.
29. *See*, *e.g.*, Real Truth About Obama, Inc. v. Federal Election Comm'n, 575 F.3d 342, 347 (4th Cir. 2009), *vacated*, 559 U.S. 1089 (2010), *adhered to in part sub nom*. Real Truth About Obama, Inc. v. F.E.C., 607 F.3d 355 (4th Cir. 2010) ("*Winter* articulates four requirements, each of which must be satisfied as articulated"); Davis v. Pension Benefit Guar. Corp., 571 F.3d 1288, 1296 (D.C. Cir. 2009) (Kavanagh, J., concurring) ("[T]he old sliding-scale approach to preliminary injunctions—under which a very strong likelihood of success could make up for a failure to show a likelihood of irreparable harm, or vice versa—is no longer controlling, or even viable. It appears that a party moving for a preliminary injunction must meet four independent requirements." (quotation omitted)).
30. *See*, *e.g.*, Citigroup Global Mkts., Inc. v. VCG Special Opportunities Master Fund Ltd., 598 F.3d 30, 38 (2d Cir. 2010) (reasoning that if the *Winter* Court meant "to abrogate the more flexible standard for a preliminary injunction, one would expect some reference to the considerable history of the flexible standards"); Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 51, 39 ELR 20279 (2008) (Ginsburg, J., dissenting) ("[C]ourts have evaluated claims for equitable relief on a 'sliding scale,' sometimes awarding relief based on a lower likelihood of harm when the likelihood of success is very high. This Court has never rejected that formulation, and I do not believe it does so today.").
31. *See*, *e.g.*, *Davis*, 571 F.3d at 1292 ("We note that the analysis in *Winter* could be read to create a more demanding burden, although the decision does not squarely discuss whether the four factors are to be balanced on a sliding scale."); C. Griffith Towle & Justin M. Klein, *Fundamentals 201: Stop That Right Now—Preparing for, and Winning, Injunctions*, American Bar Association 33rd Annual Forum on Franchising 7 (2010) ("[T]he Court left unresolved the issue of whether the four traditional factors must be established independently of each other, or whether a 'sliding scale' approach can be applied."); Morath, *supra* note 18, at 157-58 ("Because the Court failed to describe how the four factors relate to each other or to the greater purposes of a preliminary injunction, *Winter* failed to answer the more pressing question: how should a trial court apply these factors?").
32. *See* Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1132 (9th Cir. 2011) (stating that "other circuits have directly confronted the question whether some version of a sliding scale test has survived *Winter*" and observing that "[t]hey have split").
33. *Real Truth About Obama, Inc.*, 575 F.3d at 346-47.
34. *Id*. at 347.
35. The First Circuit has only cited to *Winter*'s four-prong standard in passing. Voice of the Arab World, Inc. v. MDTV Med. News Now, Inc., 645 F.3d 26, 32 (1st Cir. 2011). But the First Circuit continues to cite to its own preliminary injunction standard, which is identical to *Winter* and faithfully applies all four prongs. *See*, *e.g.*, Respect Me. PAC v. McKee, 622 F.3d 13, 15-16 (1st Cir. 2010).
36. *See* Diné Citizens Against Ruining Our Env't v. Jewell, No. 15-2130, slip op. at 10-11, 46 ELR 20172 (10th Cir. Oct. 27, 2016) ("Under *Winter*'s rationale, any modified test which relaxes one of the prongs for preliminary relief and thus deviates from the standard test is impermissible. We accordingly hold that the district court did not abuse its discretion in simply applying the Supreme Court's 'frequently reiterated standard' for preliminary relief, including the requirement that the plaintiff must show he is likely to succeed on the merits.").
37. The Eleventh Circuit follows the same trend as the First Circuit. It cites *Winter*'s four-prong standard in passing. Norfolk S. Ry. Co. v. Alabama Dep't of Revenue, 550 F.3d 1306, 1312 n.10 (11th Cir. 2008), *abrogated by* CSX Transp., Inc. v. Alabama Dep't of Revenue, 562 U.S. 277 (2011). Yet, the Eleventh Circuit continues to cite its own standard, which is identical to *Winter* and faithfully applies all four prongs. American Civil Liberties Union of Fla., Inc. v. Miami-Dade County Sch. Bd., 557 F.3d 1177, 1198 (11th Cir. 2009).
38. Towle & Klein, *supra* note 31, at 8-9.
39. *See* Hoosier Energy Rural Elec. Coop., Inc. v. John Hancock Life Ins. Co., 582 F.3d 721, 725 (7th Cir. 2009) ("How strong a claim on the merits is enough depends on the balance of harms: the more net harm an injunction can prevent, the weaker the plaintiff's claim on the merits can be while still supporting some preliminary relief."); *see also* Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1133 (9th Cir. 2011) ("The Seventh Circuit was the first to hold that the sliding scale test survives *Winter* . . . .").

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The U.S. Courts of Appeals for the Second,[40] Sixth,[41] Eighth,[42] and Ninth[43] Circuits have since joined. These circuits acknowledge *Winter*'s demand about a "strong showing" for the irreparable-harm prong, but allow weighing for the remaining prongs. For example, the Ninth Circuit requires a movant to "make a showing on all four prongs," but, if the balance-of-equities prong "tips sharply towards" the movant, then the first prong requires only "serious questions going to the merits"; not, as *Winter* states, a finding that the plaintiff is "likely to succeed on the merits."[44] Stated plainly, the circuits in this cluster require a showing for the irreparable-harm and public-interest prongs but weigh the showings for the success-on-merits and balance-of-equities prongs against each other, where a strong showing for one compensates for a weak showing for the other.

The third cluster has left *Winter*'s effect open or unaddressed. The D.C. Circuit is typical of this group. It has acknowledged the circuit split but has yet to take a side.[45] The U.S. Courts of Appeals for the Third[46] and Fifth[47] Circuits similarly have not clarified their standards post-*Winter*.

In sum, the post-*Winter* case law in the courts of appeals yields the following conclusions. First, the circuits routinely cite all four prongs, meaning the public-interest prong has now returned after an absence in some courts. Second, the circuits require a showing of "likely" irreparable harm for the second prong—the "possibility" of irreparable harm is not enough. *Winter*'s plain language makes this mandate clear. Third, two competing standards for preliminary injunctions have emerged.

One standard cites the four prongs then demands a showing for each without weighing them against each other. We refer to this as the "Elements Test" because the first cluster treats the prongs like classic, conjunctive elements.[48] The competing standard allows the success-on-the-merits prong and the balance-of-equities prong to be weighed against each other. We refer to this as the "Sliding Scale Test," mainly because some circuits in the second cluster commonly refer to their test by this name.[49]

V. Empirical Data for Preliminary Injunctions in Challenges Under Environmental Protection Laws

What effect, if any, have the competing Elements and Sliding Scale Tests had on requests for preliminary injunctions in cases involving environmental protection laws? We collected empirical data to answer this question.

Our goal was simple: to examine the frequency with which federal courts have granted preliminary injunctions in challenges under environmental protection laws after *Winter*. To achieve this goal, we performed a Westlaw search[50] then reviewed the results, looking for cases that raised claims under environmental protection laws[51] and discussed one or more of the four prongs. Our methodology produced a total of 131 federal district court cases and 33 federal circuit court cases, all catalogued in the Appendix to this Comment.

We recognize our methodology has limitations. Indeed, we do not claim to have found every post-*Winter* case addressing preliminary injunctions in challenges under environmental protection laws. For example, our search did not capture denials of injunctions made in bench rulings by district courts or decisions made in terse per curiam orders by circuit courts. Moreover, we acknowledge the small number of cases in our data set. Despite these limitations, the data suggest some clear trends worth monitoring.

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40. *See* Citigroup Global Mkts., Inc. v. VCG Special Opportunities Master Fund Ltd., 598 F.3d 30, 35 (2d Cir. 2010) ("Because the moving party must not only show that there are 'serious questions' going to the merits, but must additionally establish that 'the balance of hardships tips decidedly' in its favor, its overall burden is no lighter than the one it bears under the 'likelihood of success' standard." (citations omitted)).
41. *See* Physicians Ins. Capital v. Praesidium Alliance Group, 562 F. App'x 421, 425 (6th Cir. 2014) (explaining that "some weighing of the merits is a component of any form of preliminary or interim relief"); Tri-County Wholesale Distribs., Inc. v. Wine Group, Inc., 565 F. App'x 477, 480 (6th Cir. 2012) ("These four considerations are factors to be balanced, not prerequisites that must be met." (internal quotes omitted)).
42. *See* Sierra Club v. U.S. Army Corps of Eng'rs, 645 F.3d 978, 992-93 (8th Cir. 2011) (noting that the *Winter* "Court did not need to consider whether the plaintiffs had established a likelihood of success on the merits" and finding no error for the first prong despite the district court's use of pre-*Winter* "wording" like "established a fair ground for litigation" and "serious issues"); *see also* Eric J. Murdock & Andrew J. Turner, *How "Extraordinary" Is Injunctive Relief in Environmental Litigation? A Practitioner's Perspective*, 42 ELR 10464, 10470 (May 2012) ("In upholding the preliminary injunction order on appeal, an Eighth Circuit panel cited *Winter* as the governing standard for preliminary injunctive relief, but it did not faithfully apply the *Winter* standard in substance . . . .").
43. *See Alliance for the Wild Rockies*, 632 F.3d at 1134 ("[W]e join the Seventh and the Second Circuits in concluding that the 'serious questions' version of the sliding scale test for preliminary injunctions remains viable after the Supreme Court's decision in *Winter*.").
44. *Id*. at 1135.
45. Sherley v. Sebelius, 644 F.3d 388, 393 (D.C. Cir. 2011); *see also* Davis v. Pension Benefit Guar. Corp., 571 F.3d 1288, 1292 (D.C. Cir. 2009) ("We need not decide whether a stricter standard applies, because the pilots fail even under the 'sliding scale' analysis . . . .").
46. The Third Circuit has been inconsistent on its post-*Winter* standard. *Compare* HR Staffing Consultants LLC v. Butts, 627 F. App'x 168, 171 (3d Cir. 2015) (citing *Winter*'s four prongs then faithfully applying each), *with* In re Revel AC, Inc., 802 F.3d 558, 569 (3d Cir. 2015) (stating, in the context of stays and preliminary injunctions, that "we have viewed favorably what is often referred to as the 'sliding-scale' approach" and citing its pre-*Winter* case law recognizing such).
47. The Fifth Circuit used a pre-*Winter* sliding scale. *See* Productos Carnic, S.A. v. Central Am. Beef & Seafood Trading Co., 621 F.2d 683, 686 (5th Cir. 1980) ("Where the other factors are strong, a showing of some likelihood of success on the merits will justify temporary injunctive relief."). Our research revealed no Fifth Circuit cases post-*Winter* discussing its continued viability.
48. *See* Black's Law Dictionary (10th ed. 2014) (defining "element" as a "constituent part of a claim that must be proved for the claim to succeed").
49. *See*, *e.g.*, Kreisberg v. HealthBridge Mgmt., LLC, 732 F.3d 131, 141 (2d Cir. 2013) (using "sliding scale test"); Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1134 (9th Cir. 2011) (same).
50. The search used the terms "preliminary injunct!" and "environment." Then, we filtered these results by choosing the "environmental" topic, limiting the results to federal courts, and requiring the opinion's date to occur after Nov. 12, 2008—the date of the *Winter* decision.
51. Cases that met this criteria raised one or more claims under the following: National Environmental Policy Act; Endangered Species Act; Comprehensive Environmental Response, Compensation, and Liability Act; Resource Conservation and Recovery Act; Clean Air Act; Clean Water Act; National Forest Management Act; National Historic Preservation Act; Federal Land Policy and Management Act; Rivers and Harbors Act; Coastal Zone Management Act; and Outer Continental Shelf Lands Act.

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VI. Trends in Federal District Courts

The table below summarizes the frequency with which post-*Winter* preliminary injunctions in environmental cases are granted by circuit.

Federal District Court Cases		
Circuit	**Outcome**	**Percentage**
First	1 of 3 cases granted	33%
Second	3 of 7 cases granted	43%
Third	3.5 of 5 cases granted*	70%
Fourth	1 of 4 cases granted	25%
Fifth	3 of 5 cases granted	60%
Sixth	2 of 6 cases granted	33%
Seventh	1 of 6 cases granted	17%
Eighth	4 of 9 cases granted	44%
Ninth	15 of 58 cases granted	26%
Tenth	1 of 7 cases granted	14%
Eleventh	1.5 of 6 cases granted	25%
D.C.	1.5 of 15 cases granted	10%
Total	**37.5 of 131 cases granted**	**29%**

* We awarded a one-half point for cases where the preliminary injunction was granted in part and denied in part.

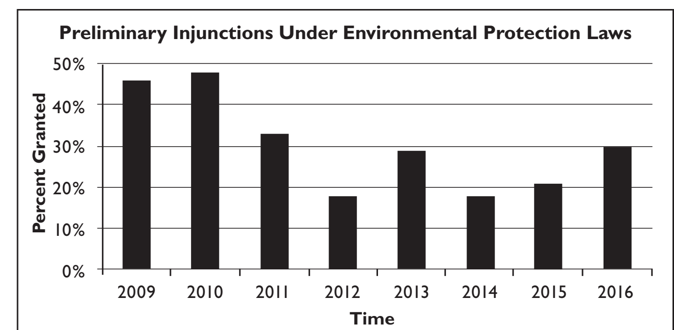
Based on review of these 131 cases, movants nationwide have a 29% chance of obtaining a preliminary injunction under environmental protection laws in a federal district court.[52] District courts in the Ninth Circuit have considered almost one-half of these cases,[53] and second place goes to those in the D.C. Circuit, with 11%.[54] The remaining circuits averaged about six district court cases each.[55] Federal district courts in the Southeast grant preliminary injunctions more sparingly than the nationwide average.[56] In contrast, the Midwest grants preliminary injunctions at a higher rate than the nationwide average.[57]

The data also shed light on the circuit split, as the table below indicates:

Circuit Split Data		
Standard	**Outcome**	**Percentage**
Elements Test	4.5 of 20 cases granted	23%
Sliding Scale Test	25 of 86 cases granted	29%
Open/Unaddressed	8 of 25 cases granted	32%
Nationwide	**37.5 of 131 cases granted**	**29%**

Circuits using the Elements Test described in *Winter* granted preliminary injunctions at the lowest rate among the three clusters, and below the nationwide average.[58] Circuits using the Sliding Scale Test have considered the most preliminary injunction cases and matched the nationwide average of 29%.[59] Circuits that have left *Winter*'s effect unaddressed have granted preliminary injunctions at the highest rate among the three clusters, and above the nationwide average.[60] Overall, the data suggest that movants are less likely to obtain preliminary injunctions in circuits using the Elements Test than in circuits using the Sliding Scale Test.[61] Notably, while it has been reluctant to take a side in the post-*Winter* split and has extensive experience with environmental cases, the D.C. Circuit, as the data indicate, is the most difficult circuit from which to obtain a preliminary injunction under environmental protection laws.[62]

A final noteworthy trend from this data involves time. Nationwide, federal district courts have averaged about 16 cases per year.[63] But they are granting fewer preliminary injunctions grounded in environmental protection laws now than immediately after *Winter*.



The graph above demonstrates this trend,[64] which is consistent with a similar empirical study.[65]

52. Thirty-seven-and-a-half granted cases out of 131 total cases equals 29%.
53. Fifty-eight Ninth Circuit cases out of 131 total cases equals 44%.
54. Thirteen D.C. Circuit cases out of 131 total cases equals 11%.
55. The remaining circuits have considered a total of 58 cases, averaging 5.8 cases each.
56. The Fourth, Eleventh, and D.C. Circuits produced four granted cases out of 25 total cases, which is 16% (compared to the nationwide average of 29%).
57. The Sixth, Seventh, and Eighth Circuits produced seven granted cases out of 21 total cases, which is 33% (compared to the nationwide average of 29%).
58. The First, Fourth, Tenth, and Eleventh Circuits produced 4.5 granted cases out of 20 cases overall, which is 23% (compared to the nationwide average of 29%).
59. The Second, Sixth, Seventh, Eighth, and Ninth Circuits produced 25 granted cases out of 86 cases total, which is 29% (compared to the nationwide average of 29%).
60. The Third, Fifth, and D.C. Circuits produced eight granted cases out of 25 cases total, which is 32% (compared to the nationwide average of 29%).
61. The first cluster has a 23% average compared to the second cluster's 29% average. *See supra* notes 59-60 and accompanying text.
62. The D.C. Circuit produced 1.5 granted cases out of 15 cases overall, which is 10%.
63. We excluded 2008 from this temporal trend analysis because *Winter* was decided late in the year and, thus, a full calendar year of data does not exist. Total cases for each post-*Winter* year: 2009 = 14 cases; 2010 = 22 cases; 2011 = 18 cases; 2012 = 14 cases; 2013 = 14 cases; 2014 = 20 cases; 2015 = 12 cases; and 2016 = 10 cases. We also excluded 2017 because a comparable year's worth of data does not exist yet.
64. The data for each year are as follows: 6.5 granted cases out of 14 total cases (46%) in 2009; 10.5 granted cases out of 22 total cases (48%) in 2010; six granted cases out of 18 total cases (33%) in 2011; 2.5 granted cases out of 14 total cases (18%) in 2012; four granted cases out of 14 total cases (29%) in 2013; one granted case out of 20 total cases (5%) in 2014; 2.5 granted cases out of 12 total cases (21%) in 2015; and three granted cases out of 10 total cases (30%) in 2016.
65. Another scholar examined the empirical data for preliminary injunctions under similar environmental protection laws in the three years after *Winter*

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VII. Trends in Federal Circuit Courts of Appeals

Our research only produced 33 federal circuit court cases. These results are too sparse to show trends within each circuit—indeed, some circuits have not reviewed these preliminary injunctions at all.[66] But they do reveal nationwide trends. The table below summarizes federal appellate court review of post-*Winter* preliminary injunctions under environmental protection laws.

Federal Circuit Courts of Appeals Cases

Circuit	Affirming Grant	Affirming Denial	Reversing Grant	Reversing Denial
First			1 case	
Second	1 case	1 case		
Third	1 case			
Fourth				
Fifth				
Sixth		1 case		
Seventh	1 case	1 case		
Eighth	2 cases			
Ninth	0.5 case	13.5 cases	2 cases	4 cases
Tenth		5 cases		
Eleventh				
D.C.				
Total	**4.5 cases**	**21.5 cases**	**3 cases**	**4 cases**

The data show that parties only appeal one-quarter of these preliminary injunction decisions.[67] Moreover, circuit courts have affirmed 79% of these decisions using an abuse-of-discretion standard.[68] In fact, only the First and Ninth Circuits have reversed a decision to grant a preliminary injunction under environmental protection laws in the post-*Winter* era. Unsurprisingly, the Ninth Circuit has the most decisions appealed[69] and a high percentage of reversals.[70]

VIII. Conclusion

The legal standard for preliminary injunctions remains unsettled nationwide. The *Winter* decision promoted uniformity by listing the four prongs and clarifying the showing needed for the irreparable-harm prong, but circuits still disagree over how to weigh the other prongs. And this seems to matter—courts in circuits following the Elements Test appear less likely to grant preliminary injunctions than do courts in circuits following the Sliding Scale Test. This circuit split is ripe for the Supreme Court to resolve.[71]

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and found that federal district courts granted 46.4% of preliminary injunction requests. *See* Morath, *supra* note 18, at 180 (stating the article's data set included 41 trial court decisions "issued in the three years after *Winter*" where preliminary injunctions denials occurred "53.6% of the time post-*Winter*"). Our data for 2009, 2010, and 2011 is consistent with Morath's, showing 43% granted (23 granted cases out of 54 total cases).

66. Our research revealed no circuit court cases from the Fourth, Fifth, Eleventh, or D.C. Circuits.

67. Thirty-three federal circuit court cases out of 131 federal district court cases equals 25%.

68. Twenty-six cases affirmed out of 33 total cases equals 79%.

69. Twenty total circuit court cases out of 58 total district court cases equals 34%.

70. Six reversals out of 20 total circuit court cases equals 30%.

71. *See* Murdock & Turner, *supra* note 42, at 10469 ("Given the disparity that already exists among circuits, it would not be surprising if the Supreme Court decided to take up this question once again."); Elisabeth Long, Alliance for the Wild Rockies v. Cottrell: *Raising "Serious Questions" About Post-*Winter *Injunctive Relief in the Ninth Circuit*, 39 Ecology L.Q. 643, 644 (2012) ("The lack of uniformity across the circuits and the confusion within the Ninth Circuit suggest the Supreme Court will ultimately need to provide further guidance on the continuing validity of sliding scale approaches to preliminary injunctions.").

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Appendix: Post-*Winter* Preliminary Injunctions in Challenges Under Environmental Protection Laws (by Circuit)

First Circuit		
Case Name	**District Court**	**Circuit Court**
Sanchez v. Esso Standard Oil de P.R., Inc.	Granted; All four met No. CIV.08-2151-JAF, 2008 WL 5192343 (D.P.R. Dec. 5, 2008)	Reversed and remanded 572 F.3d 1 (1st Cir. 2009)
Phippsburg Shellfish Conservation Comm'n v. U.S. Army Corps of Eng'rs	Denied; None met 800 F. Supp. 2d 312 (D. Me. 2011)	
Friends of Merrymeeting Bay v. U.S. Dep't of Commerce	Denied; None met 810 F. Supp. 2d 320 (D. Me. 2011)	

Second Circuit		
Case Name	**District Court**	**Circuit Court**
Matter of Defend H20 v. Town Bd. of the Town of E. Hampton	Denied; None met 147 F. Supp. 3d 80 (E.D.N.Y. 2015)	
National Audubon Soc'y, Inc. v. U.S. Fish & Wildlife Serv.	Denied; No success on merits 55 F. Supp. 3d 316 (E.D.N.Y. 2014)	
National Post Office Collaborative v. Donahoe	Granted; All four met No. 3:13-CV-1406-JBA, 2013 WL 5818889 (D. Conn. Oct. 28, 2013)	
Habitat for Horses v. Salazar	Denied; No success on merits; No balance of equities 745 F. Supp. 2d 438 (S.D.N.Y. 2010)	
Metropolitan Taxicab Bd. of Trade v. New York City	Granted; All four met 633 F. Supp. 2d 83 (S.D.N.Y. 2009)	Affirmed 615 F.3d 152 (2d Cir. 2010)
City of Newburgh v. Sarna	Denied; No irreparable harm 690 F. Supp. 2d 136 (S.D.N.Y. 2010)	Affirmed 406 F. App'x 557 (2d Cir. 2011)
Abbo-Bradley v. City of Niagara Falls	Granted; All four met 293 F.R.D. 401 (W.D.N.Y. 2013)	

Third Circuit		
Case Name	**District Court**	**Circuit Court**
PennEnvironment v. PPG Indus., Inc.	Granted; All four met No. CIV.A.12-342, 2014 WL 6982461 (W.D. Pa. Dec. 10, 2014)	
Minard Run Oil Co. v. U.S. Forest Serv.	Granted; All four met No. CA 09-125-ERIE, 2009 WL 4937785 (W.D. Pa. Dec. 15, 2009)	Affirmed 670 F.3d 236 (3d Cir. 2011)
Delaware Dep't of Natural Res. & Envtl. Control v. U.S. Army Corps of Eng'rs	Part granted, part denied; No success on merits 681 F. Supp. 2d 546 (D. Del. 2010)	
Tri-Realty Co. v. Ursinus Coll.	Denied; No irreparable harm No. CIV.A.11-5885, 2013 WL 5298469 (E.D. Pa. Sept. 19, 2013)	
Tennessee Gas Pipeline Co. LLC v. Delaware Riverkeeper Network	Granted; All four met 921 F. Supp. 2d 381 (M.D. Pa. 2013)	

Fourth Circuit		
Case Name	**District Court**	**Circuit Court**
North Carolina Wildlife Fed'n v. North Carolina Dep't of Transp.	Denied; No irreparable harm No. 5:10-CV-476-D, 2010 WL 5477676 (E.D.N.C. Dec. 30, 2010)	
Ohio Valley Envtl. Coalition, Inc. v. U.S. Army Corps of Eng'rs	Denied; No success on merits 890 F. Supp. 2d 688 (S.D. W. Va. 2012)	
Rio Assocs., L.P. v. Layne	Denied; No success on merits No. 3:15-CV-00012, 2015 WL 3546647 (W.D. Va. June 8, 2015)	
Red Wolf Coalition v. U.S. Fish & Wildlife Serv.	Granted; All four met No. 2:15-CV-42-BO, 2016 WL 5720660 (E.D.N.C. Sept. 29, 2016)	

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Fifth Circuit		
Case Name	**District Court**	**Circuit Court**
Hornbeck Offshore Servs., LLC v. Salazar	Granted; All four met 696 F. Supp. 2d 627 (E.D. La. 2010)	
Aquifer Guardians in Urban Areas v. Federal Highway Admin.	Denied; None met 779 F. Supp. 2d 542 (W.D. Tex. 2011)	
Ensco Offshore Co. v. Salazar	Granted; All four met 781 F. Supp. 2d 332 (E.D. La. 2011)	
Association of Taxicab Operators v. City of Dallas	Denied; No success on merits 760 F. Supp. 2d 693 (N.D. Tex. 2010)	
Abbott v. BP Exploration & Prod. Inc.	Granted; All four met 781 F. Supp. 2d 453 (S.D. Tex. 2011)	

Sixth Circuit		
Case Name	**District Court**	**Circuit Court**
Kentucky Coal Ass'n, Inc. v. Tennessee Valley Auth.	Denied; No success on merits; No irreparable harm; No balance of equities 68 F. Supp. 3d 685 (W.D. Ky. 2014)	
Kentucky Oil & Ref. Co. v. W.E.L., Inc.	Granted; All four met No. CIV.A 7:09-148, 2010 WL 882133 (E.D. Ky. Mar. 8, 2010)	
Sherwood v. Tennessee Valley Auth.	Denied; No success on merits No. 3:12-CV-156, 2012 WL 2212971 (E.D. Tenn. June 15, 2012)	
Kentuckians for the Commonwealth v. U.S. Army Corps of Eng'rs	Granted; All four met No. 3:12-CV-00682-TBR, 2013 WL 5278236 (W.D. Ky. Sept. 18, 2013)	
Huron Mountain Club v. U.S. Army Corps of Eng'rs	Denied; No success on merits; No irreparable harm; No balance of equities No. 2:12-CV-197, 2012 WL 3060146 (W.D. Mich. July 25, 2012)	Affirmed 545 F. App'x 390 (6th Cir. 2013)
Askins v. Ohio Dep't of Agric.	Denied; No success on merits; No irreparable harm; No public interest No. 3:14-CV-1699, 2014 WL 6775548 (N.D. Ohio Dec. 2, 2014)	

Seventh Circuit		
Case Name	**District Court**	**Circuit Court**
Grace Christian Fellowship v. KJG Invs. Inc.	Denied; No irreparable harm No. 07-C-0348, 2009 WL 2460990 (E.D. Wis. Aug. 7, 2009)	
United States v. NCR Corp.	Granted; All four met No. 10-C-910, 2012 WL 1490200 (E.D. Wis. Apr. 27, 2012)	Affirmed 688 F.3d 833 (7th Cir. 2012)
National Wildlife Fed'n v. U.S. Army Corps of Eng'rs	Denied; None met No. 14-590-DRH-DGW, 2014 WL 6685235 (S.D. Ill. Nov. 25, 2014)	
Michigan v. U.S. Army Corps of Eng'rs	Denied; No balance of equities No. 10-CV-4457, 2010 WL 5018559 (N.D. Ill. Dec. 2, 2010)	Affirmed 667 F.3d 765 (7th Cir. 2011)
Highway J Citizens Group, U.A. v. U.S. Dep't of Transp.	Denied; No irreparable harm No. 15-CV-994-PP, 2016 WL 5390880 (E.D. Wis. Sept. 27, 2016)	
Indiana Forest Alliance v. McDonald	Denied; No success on merits; No public interest No. 116CV03297JMSMPB, 2017 WL 131739 (S.D. Ind. Jan. 13, 2017)	

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Eighth Circuit		
Case Name	**District Court**	**Circuit Court**
Sierra Club v. U.S. Army Corps of Eng'rs	Granted; All four met No. 4:10-CV-04017 (W.D. Ark. Oct. 27, 2010)	Affirmed 645 F.3d 978 (8th Cir. 2011)
North Dakota v. Environmental Prot. Agency	Granted; All four met 127 F. Supp. 3d 1047 (D.N.D. 2015)	
Reed v. Antwerp	Denied; None met No. 4:09-CV-3096, 2009 WL 2824771 (D. Neb. Aug. 28, 2009)	
Richland/Wilkin Joint Powers Auth. v. U.S. Army Corps of Eng'rs	Granted; All four met No. CIV. 13-2262-JRT/LIB, 2015 WL 2251481 (D. Minn. May 13, 2015)	Affirmed 826 F.3d 1030 (8th Cir. 2016)
Ouachita Watch League v. U.S. Forest Serv.	Denied; None met No. 4:11-CV-00425 JM, 2014 WL 11498055 (E.D. Ark. Dec. 15, 2014)	
Sierra Club v. Clinton	Denied; No success on merits; No balance of equities; No public interest 689 F. Supp. 2d 1123 (D. Minn. 2010)	
Ozark Soc'y v. U.S. Forest Serv.	Denied; None met No. 4:11-CV-00782 SWW, 2012 WL 994441 (E.D. Ark. Mar. 23, 2012)	
Oakey v. U.S. Army Corps of Eng'rs	Denied; None met No. 4:12-CV-2207 JAR, 2012 WL 6652953 (E.D. Mo. Dec. 21, 2012)	
United States v. Xcel Energy, Inc.	Granted; All four met 759 F. Supp. 2d 1106 (D. Minn. 2010)	

Ninth Circuit		
Case Name	**District Court**	**Circuit Court**
Citizens of the Ebey's Reserve for a Healthy, Safe & Peaceful Env't v. U.S. Dep't of the Navy	Denied; No irreparable harm; No balance of equities; No public interest 122 F. Supp. 3d 1068 (W.D. Wash. 2015)	
Idaho Rivers United v. U.S. Army Corps of Eng'rs	Denied; No irreparable harm; No balance of equities; No public interest 156 F. Supp. 3d 1252 (W.D. Wash. 2015)	
Center for Food Safety v. Vilsack	Granted; All four met 753 F. Supp. 2d 1051 (N.D. Cal. 2010)	Vacated and remanded 636 F.3d 1166 (9th Cir. 2011)
Northwest Envtl. Def. Ctr. v. U.S. Army Corps of Eng'rs	Denied; No irreparable harm 817 F. Supp. 2d 1290 (D. Or. 2011)	
Los Padres Forestwatch v. U.S. Forest Serv.	Granted; All four met 776 F. Supp. 2d 1042 (N.D. Cal. 2011)	
San Luis & Delta-Mendota Water Auth. v. Salazar	Granted; All four met No. 1:09-CV-00407-OWWDLB, 2009 WL 1575169 (E.D. Cal. May 29, 2009)	
League of Wilderness Defenders/Blue Mountains Biodiversity Project v. Connaughton	Denied; No success on merits No. 3:12-CV-02271-HZ, 2013 WL 3776305 (D. Or. July 17, 2013)	Reversed and remanded 752 F.3d 755 (9th Cir. 2014)
Confederated Tribes & Bands of Yakama Nation v. U.S. Dep't of Agric.	Granted; All four met No. CV-10-3050-EFS, 2010 WL 3434091 (E.D. Wash. Aug. 30, 2010)	
Ground Zero Ctr. for Nonviolent Action v. U.S. Dep't of the Navy	Denied; No success on merits 918 F. Supp. 2d 1132 (W.D. Wash. 2013)	
Greater Yellowstone Coalition v. Timchak	Denied; No success on merits; No irreparable harm No. CV-08-388-E-MHW, 2008 WL 5101754 (D. Idaho Nov. 26, 2008)	Vacated and remanded 323 F. App'x 512 (9th Cir. 2009)
Olenec v. National Marine Fisheries Serv.	Denied; No success on merits; No irreparable harm 765 F. Supp. 2d 1277 (D. Or. 2011)	

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Ninth Circuit		
Case Name	**District Court**	**Circuit Court**
Landwatch v. Connaughton	Granted; All four met 905 F. Supp. 2d 1192 (D. Or. 2012)	
Consolidated Salmonid Cases	Granted; All four met 713 F. Supp. 2d 1116 (E.D. Cal. 2010)	
Swan View Coalition v. Weber	Denied; No irreparable harm; No balance of equities; No public interest No. CV 13-129-M-DWM, 2014 WL 3510166 (D. Mont. July 14, 2014)	
Earth Island Inst. v. Gould	Denied; No balance of equities; No public interest No. 1:14-CV-01140-KJM-SK, 2014 WL 4082021 (E.D. Cal. Aug. 19, 2014)	
Friends of the Wild Swan v. Christiansen	Denied; No irreparable harm; No balance of equities; No public interest 955 F. Supp. 2d 1197 (D. Mont. 2013)	Affirmed 767 F.3d 936 (9th Cir. 2014)
Tri-Valley Cares v. U.S. Dep't of Energy	Denied; No irreparable harm No. C 08-01372-SBA, 2009 WL 347744 (N.D. Cal. Feb. 9, 2009)	
San Luis & Delta-Mendota Water Auth. v. Locke	Granted; All four met No. 1:09-CV-01053-OWW-DLB, 2010 WL 500455 (E.D. Cal. Feb. 5, 2010)	
Western Watersheds Project v. Bureau of Land Mgmt.	Denied; None met 774 F. Supp. 2d 1089 (D. Nev. 2011)	Affirmed 443 F. App'x 278 (9th Cir. 2011)
Alliance for the Wild Rockies v. Cottrell	Denied; No success on merits; No irreparable injury No. 9:09-CV-001070-DWM (D. Mont. Aug. 14, 2009)	Reversed and remanded 632 F.3d 1127 (9th Cir. 2011)
Kunaknana v. U.S. Army Corps of Eng'rs	Denied; No balance of equities; No public interest No. 3:13-CV-00044-SLG, 2014 WL 975592 (D. Alaska Mar. 12, 2014)	
Save Strawberry Canyon v. U.S. Dep't of Energy	Granted; All four met 613 F. Supp. 2d 1177 (N.D. Cal. 2009)	
Drakes Bay Oyster Co. v. Salazar	Denied; No success on merits; No balance of equities; No public interest 921 F. Supp. 2d 972 (N.D. Cal. 2013)	Affirmed 747 F.3d 1073 (9th Cir. 2013)
Consolidated Delta Smelt Cases	Granted; All four met 717 F. Supp. 2d 1021 (E.D. Cal. 2010)	
League to Save Lake Tahoe v. Tahoe Reg'l Planning Agency	Part granted, part denied; No irreparable harm No. S-08-2828-LKK/GGH, 2009 WL 3048739 (E.D. Cal. Sept. 18, 2009)	
Shell Offshore Inc. v. Greenpeace, Inc.	Part granted, part denied; No balance of equities 864 F. Supp. 2d 839 (D. Alaska 2012)	Affirmed 709 F.3d 1281 (9th Cir. 2013)
Soda Mountain Wilderness Council v. U.S. Bureau of Land Mgmt.	Denied; None met No. 1:12-CV-1171-CL, 2012 WL 4794135 (D. Or. Oct. 9, 2012)	Part affirmed, part reversed and remanded 534 F. App'x 680 (9th Cir. 2013)
Center for Biological Diversity v. Salazar	Denied; No success on merits No. CV-09-8207-PCT-DGC, 2010 WL 2493988 (D. Ariz. June 17, 2010)	Affirmed 431 F. App'x 593 (9th Cir. 2011)
Tongass Conservation Soc'y v. U.S. Forest Serv.	Denied; No success on merits No. 3:10-CV-00006-TMB (D. Alaska Mar. 8, 2010)	Affirmed 385 F. App'x 708 (9th Cir. 2010)
Alliance for the Wild Rockies v. Marten	Granted; All four met No. CV 16-35-M-DWM, 2016 WL 4068459 (D. Mont. July 28, 2016)	
South Fork Band v. U.S. Dep't of Interior	Denied; No success on merits 643 F. Supp. 2d 1192 (D. Nev. 2009)	Part affirmed, part reversed and remanded 588 F.3d 718 (9th Cir. 2009)

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Ninth Circuit		
Case Name	**District Court**	**Circuit Court**
REV 973 LLC v. Mouren-Laurens	Granted; All four met No. CV 98-10690-AHM (EX), 2010 WL 383615 (C.D. Cal. Jan. 25, 2010)	
Klamath-Siskiyou Wildlands Ctr. v. Grantham	Denied; No success on merits No. 2:10-CV-02350-GEBCMK, 2010 WL 3958640 (E.D. Cal. Oct. 8, 2010)	Affirmed 424 F. App'x 635 (9th Cir. 2011)
Earth Island Inst. v. Quinn	Denied; No balance of equities; No public interest No. 2:14-CV-01723-GEB-EF, 2014 WL 3842912 (E.D. Cal. July 31, 2014)	
Coalition for Clean Air v. VWR Int'l, LLC	Denied; No irreparable harm No. 1:12-CV-01569-LJO, 2013 WL 129389 (E.D. Cal. Jan. 9, 2013)	
Wild Equity Inst. v. City & County of San Francisco	Denied; No irreparable harm No. C 11-00958-SI, 2011 WL 5975029 (N.D. Cal. Nov. 29, 2011)	
San Luis & Delta-Mendota Water Auth. v. Jewell	Denied; No balance of equities 969 F. Supp. 2d 1211 (E.D. Cal. 2013)	
In Def. of Animals v. U.S. Dep't of Interior	Denied; None met 737 F. Supp. 2d 1125 (E.D. Cal. 2010)	
Center for Biological Diversity v. Skalski	Denied; No success on merits 61 F. Supp. 3d 945 (E.D. Cal. 2014)	Affirmed 613 F. App'x 579 (9th Cir. 2015)
Audubon Soc'y of Portland v. National Marine Fisheries Serv.	Denied; No success on merits; No irreparable harm 849 F. Supp. 2d 1017 (D. Or. 2011)	
Earth Island Inst. v. Carlton	Denied; No success on merits; No balance of equities No. CIV. S-09-2020-FCD, 2009 WL 9084754 (E.D. Cal. Aug. 20, 2009)	Affirmed 626 F.3d 462 (9th Cir. 2010)
Protect Our Cmtys. Found. v. U.S. Dep't of Agric.	Denied; None met 845 F. Supp. 2d 1102 (S.D. Cal. 2012)	Affirmed 473 F. App'x 790 (9th Cir. 2012)
Rocky Mountain Farmers Union v. Goldstene	Granted; All four met 843 F. Supp. 2d 1071 (E.D. Cal. 2011)	Vacated and remanded 730 F.3d 1070 (9th Cir. 2013)
Cloud Found. v. U.S. Bureau of Land Mgmt.	Denied; None met 802 F. Supp. 2d 1192 (D. Nev. 2011)	
Rosemere Neighborhood Ass'n v. Clark County	Granted; All four met No. C11-5213-RBL, 2011 WL 6815851 (W.D. Wash. Dec. 28, 2011)	
Native Ecosystems Council v. Krueger	Denied; None met 40 F. Supp. 3d 1344 (D. Mont. 2014)	
Cascadia Wildlands v. Thrailkill	Denied; No success on merits; No irreparable harm; No public interest 49 F. Supp. 3d 774 (D. Or. 2014)	Affirmed 806 F.3d 1234 (9th Cir. 2015)
AquAlliance v. U.S. Bureau of Reclamation	Denied; No success on merits No. 1:14-CV-000945-LJO-B, 2014 WL 3401390 (E.D. Cal. July 11, 2014)	
Gallatin Wildlife Ass'n v. U.S. Forest Serv.	Denied; No success on merits; No irreparable harm No. CV 15-27-GF-BMM, 2015 WL 4507237 (D. Mont. July 24, 2015)	
Western Watersheds Project v. Salazar	Denied; No success on merits; No balance of equities; No public interest 766 F. Supp. 2d 1095 (D. Mont. 2011)	Affirmed 494 F. App'x 740 (9th Cir. 2012)
Ridge Top Ranch, LLC v. U.S. Fish & Wildlife Serv.	Denied; No success on merits No. CIV. S-13-2462 LKK, 2014 WL 841229 (E.D. Cal. Mar. 4, 2014)	
Conservation Cong. v. U.S. Forest Serv.	Denied; No success on merits No. CIV. S-11-2605 LKK, 2012 WL 2339765 (E.D. Cal. June 19, 2012)	Affirmed 720 F.3d 1048 (9th Cir. 2013)
Concerned Friends of the Winema v. U.S. Forest Serv.	Denied; None met No. 1:14-CV-737-CL, 2014 WL 2611344 (D. Or. June 11, 2014)	

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Ninth Circuit		
Case Name	**District Court**	**Circuit Court**
Wolf Recovery Found. v. U.S. Forest Serv.	Denied; No success on merits 692 F. Supp. 2d 1264 (D. Idaho 2010)	
Alliance for the Wild Rockies v. Pena	Denied; None met No. 2:16-CV-294-RMP, 2016 WL 6123236 (E.D. Wash. Oct. 19, 2016)	
Cascadia Wildlands v. Scott Timber Co.	Granted; All four met No. 6:16-CV-01710-AA, 2016 WL 7339201 (D. Or. Dec. 19, 2016)	
Defenders of Wildlife v. U.S. Fish & Wildlife Serv.	Denied; No likelihood of success No. 16-CV-01993-LHK, 2016 WL 4382604 (N.D. Cal. Aug. 17, 2016)	
Native Ecosystems Council v. Weldon	Denied; No balance of equities No. CV 16-106-M-DWM, 2016 WL 4591897 (D. Mont. Sept. 2, 2016)	

Tenth Circuit		
Case Name	**District Court**	**Circuit Court**
Diné Citizens Against Ruining Our Env't v. Jewell	Denied; No success on merits; No balance of equities; No public interest No. CIV 15-0209-JB/SCY, 2015 WL 4997207 (D.N.M. Aug. 14, 2015)	Affirmed 839 F.3d 1276 (10th Cir. 2016)
Coalition of Concerned Citizens to Make Art Smart v. Federal Transit Admin. of U.S. Dep't of Transp.	Denied; None met No. 1:16-CV-00252-KG-KBM (D.N.M. July 29, 2016)	Affirmed No. 16-2192, 2016 WL 7210054 (10th Cir. Dec. 13, 2016)
San Luis Valley Ecosystem Council v. U.S. Fish & Wildlife Serv.	Granted; All four met 657 F. Supp. 2d 1233 (D. Colo. 2009)	
San Diego Cattlemen's Coop. Ass'n v. Vilsack	Denied; None met No. CV 14-0818-RB/RHS, 2014 WL 11332357 (D.N.M. Oct. 9, 2014)	
Sierra Club v. Bostick	Denied; No balance of equities No. CIV-12-742-R, 2012 WL 3230552 (W.D. Okla. Aug. 5, 2012)	Affirmed 539 F. App'x 885 (10th Cir. 2013)
Village of Logan v. U.S. Dep't of Interior	Denied; None met No. 12-CV-401 WJ/LFG (D.N.M. Jan. 14, 2013)	Affirmed 577 F. App'x 760 (10th Cir. 2014)
American Wild Horse Pres. Campaign v. Jewell	Denied; No success on merits No. 14-CV-0152, 2014 WL 11485260 (D. Wyo. Aug. 28, 2014)	

Eleventh Circuit		
Case Name	**District Court**	**Circuit Court**
Black Warrior Riverkeeper, Inc. v. Alabama Dep't of Transp.	Denied; None met No. 2:11-CV-267-WKW, 2014 WL 200578 (M.D. Ala. Jan. 17, 2014)	
Sierra Club v. U.S. Army Corps of Eng'rs	Granted; All four met No. 3:10-CV-564-J-25-JBT, 2011 WL 2887956 (M.D. Fla. July 8, 2011)	
Palm Beach County Envtl. Coalition v. Florida	Denied; No success on merits; No irreparable harm 587 F. Supp. 2d 1254 (S.D. Fla. 2008)	
City of Dania Beach, Florida v. U.S. Army Corps of Eng'rs	Denied; None met No. 12-60989-CIV, 2012 WL 3731516 (S.D. Fla. July 6, 2012)	
City of Eufaula, Alabama v. Alabama Dep't of Transp.	Denied; No success on merits 71 F. Supp. 3d 1272 (M.D. Ala. 2014)	
Sierra Club v. U.S. Forest Serv.	Part granted, part denied; No irreparable harm 593 F. Supp. 2d 1306 (N.D. Ga. 2008)	

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D.C. Circuit		
Case Name	**District Court**	**Circuit Court**
Sierra Club v. U.S. Army Corps of Eng'rs	Denied; No success on merits; No balance of equities; No public interest 990 F. Supp. 2d 9 (D.D.C. 2013)	
Committee of 100 on Fed. City v. Foxx	Denied; No success on merits; No balance of equities 87 F. Supp. 3d 191 (D.D.C. 2015)	
National Min. Ass'n v. Jackson	Denied; No irreparable harm 768 F. Supp. 2d 34 (D.D.C. 2011)	
National Parks Conservation Ass'n v. U.S. Forest Serv.	Denied; No irreparable harm; No balance of equities; No public interest No. 15-CV-01582-APM, 2016 WL 420470 (D.D.C. Jan. 22, 2016)	
Stand Up for Cal.! v. U.S. Dep't of the Interior	Denied; No success on merits 919 F. Supp. 2d 51 (D.D.C. 2013)	
Sierra Club v. U.S. Dep't of Energy	Denied; No success on merits; No irreparable harm 825 F. Supp. 2d 142 (D.D.C. 2011)	
Colorado Wild Horse v. Jewell	Denied; None met 130 F. Supp. 3d 205 (D.D.C. 2015)	
U.S. Ass'n of Reptile Keepers, Inc. v. Jewell	Part granted, part denied; No balance of equities or public interest 103 F. Supp. 3d 133 (D.D.C. 2015)	
Southern Utah Wilderness Alliance v. Allred	Granted; All four met No. CIVA 08-2187-RMU, 2009 WL 765882 (D.D.C. Jan. 17, 2009)	
Safari Club Int'l v. Salazar	Denied; None met 852 F. Supp. 2d 102 (D.D.C. 2012)	
In Def. of Animals v. Salazar	Denied; None met 675 F. Supp. 2d 89 (D.D.C. 2009)	
National Parks Conservation Ass'n v. U.S. Forest Serv.	Denied; No success on merits; No irreparable harm No. CV-15-01582-APM, 2015 WL 9269401 (D.D.C. Dec. 8, 2015)	
Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs	Denied; No likelihood of success; No irreparable harm No. CV 16-1534-JEB, 2016 WL 4734356 (D.D.C. Sept. 9, 2016)	
Friends of Animals v. U.S. Bureau of Land Mgmt.	Denied; None met No. 17-CV-00136 (CRC), 2017 WL 499882 (D.D.C. Feb. 7, 2017)	
Fisheries Survival Fund v. Jewell	Denied; None met No. 16-CV-2409 (TSC), 2017 WL 629246 (D.D.C. Feb. 15, 2017)	

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