



## LITIGATION TYPES AND LEGAL GLOSSARY

Types of litigation likely to be participated in or initiated by Great Old Broads national office or Broadbands:

- 1. Challenging a project** based on failure to meet National Environmental Policy Act (NEPA) regulations, Clean Water Act, Endangered Species Act, Wilderness Act, Federal Land Policy and Management Act (FLPMA) or Administrative Procedures Act, or other legal requirements. For example:
  - Failure to consider a range of alternatives or a submitted alternative under NEPA for a project like a timber sale, grazing permit etc.  
*Note: if the agency addresses the issue at all, even if in an inadequate way, courts will likely defer to the agency.*
  - Failure to properly consult with Fish and Wildlife Service over effects of a project on endangered species under ESA.
  - Permitting activities in a Wilderness Area prohibited by Wilderness Act.
- 2. Challenge to a programmatic action**, such as a regulation or land management plan (*e.g.*, national forest plan), which would affect many site-specific actions in the future.
- 3. Freedom of Information Act:** either challenging a failure to respond to a request, or challenging the affirmative withholding of information in response to a request, where the government asserts a withholding privilege.
- 4. State Courts:** Usually we are involved in federal court litigation because federal lands are at issue. However, we could potentially become involved in state court action if dealing with state or other non-federal land and resources.
- 5. Motion to intervene** in a case that has other plaintiffs/defendants. This could be an intervention on the side of a government defendant when sued by industry for taking a pro-environment action, or on the side of another plaintiff where joining them originally as a plaintiff is not feasible.
- 6. Amicus brief:** less commitment than intervention, it involves filing a brief in support of one of the parties in a case but not actually becoming a party.

7. It is important to note that **simply because we disagree with a government action does not mean we could succeed if we file suit.** It can be difficult to overcome the “deference” that courts grant government agencies without a very strong case on the merits (e.g, knowing an expert with an opinion contrary to the government’s opinion can help make a case strong, but is not usually enough on its own to win).
8. Additionally, **various procedural hurdles can present a bar to successful litigation,** including: “exhaustion of administrative remedies” (having participated sufficiently during notice and comment periods and administrative appeals); “standing” (pre-litigation boots-on-the-ground use of the affected area by a Broad member); and “mootness” (action occurs before the ability to stop it).

**GLOWebinar Resource to Watch via Zoom** (click below for link):  
[Intro to Litigation Webinar](#) for Broadband Leaders with Matt Kenna and Mary O’Brien

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**Glossary of Terms Most Likely to be Encountered by  
Broads’ National Office and/or Broadbands**

**Affidavit.** An affidavit is a written statement of facts confirmed by the oath of the party making it. Affidavits must be notarized or administered by an officer of the court.

**Amicus Brief:** Latin for "friend of the court." It is advice formally offered to the court in a brief filed by an entity interested in, but not a party to, the case.

**Attorney fees:** Money paid to an attorney for legal services. Attorney's fees may be an hourly, flat (for a particular service), or contingent (a percentage of client's recovery). The fees may be paid by the client to the attorney, or they may be awarded to the lawyer by the other party at the end of a case. Attorney's fees may be set by an attorney-client compensation agreement.

**Civil action** - A legal action started by a plaintiff against a defendant based on a complaint that the defendant failed to perform a legal duty, resulting in harm to the plaintiff.

**Complaint:** - A written statement by the plaintiff stating the wrongs allegedly committed by the defendant. A written statement that begins a civil lawsuit, in which the plaintiff details the claims against the defendant.

**Declaration:** Just like an affidavit, except not notarized. Most courts now accept declarations in addition to affidavits for most purposes.

**Declaratory relief:** When the court makes an official ruling regarding the status of the matter under dispute and the rights of the parties involved in a dispute, but it does not include any monetary or injunctive relief.

**Deposition:** An oral statement made before an officer authorized by law to administer oaths. Such statements are often taken to examine potential witnesses, to obtain discovery, or to be used later in trial.

**Discovery:** A broad array of requests for information from the opposing party in litigation, whether written (e.g., interrogatories) or oral (e.g., depositions), that are presented in a case that could be decided by a trial. It is usually not used in public land litigation where cases are decided by briefing in “summary judgment,” based on the “administrative record,” which is comprised of all the documents that an agency did, or should have, considered in making its decision.

**Filing fees:** Fees charged by a court to file a complaint, petition or other document. Amount depends on court and type of action, but usually \$25-\$500.

**Injunctive Relief:** An order of the court requiring a party to do something (e.g., to prepare an EIS) or to stop from doing something (e.g., to stop logging a timber sale). It is contrasted with “money damages,” where a court orders a party to pay another party money. (See also Preliminary Injunction)

**Intervenor:** An individual who is not already a party to an existing lawsuit but who makes himself or herself a party either by joining with the plaintiff, or uniting with the defendant in resistance of the plaintiff's claims. An intervenor is a party who has a substantial interest and standing in a judicial determination and whose party status has been granted by the court for all or a portion of the proceedings.

**Opinion:** A judge's written explanation of a decision of the court. In an appeal, multiple opinions may be written. In appeals, the court's ruling comes from a majority of judges and forms the majority opinion. Dissenting and concurring opinions may also be written.

**Plaintiff:** The person who files the complaint in a civil lawsuit.

**Preliminary Injunction:** A preliminary injunction may be issued before the case is decided if the requesting party demonstrates irreparable damage or harm and the court decides that party has a substantial likelihood of success with their case. (See also Injunctive Relief)

**Quiet title:** A lawsuit filed to confirm or clarify the true ownership of property

**Retainer:** Paying a lawyer in advance for work to be specified or performed later. A retainer fee may be required to see a case through to its conclusion. Could be a single or recurring payment.

**Settlement:** Parties to a lawsuit resolve their difference without having a trial. Settlements often involve the payment of compensation or agreement to take certain action in satisfaction of the other party's claims.

**Standing:** The legally protectable stake or interest that a person has in a dispute that entitles them to bring the controversy to court. It is not enough that a person is merely interested as a member of the general public in the resolution of the dispute. The person must have personal stake in the outcome. In public land disputes, it usually requires that a member of the plaintiff group have used the exact tracts of land at issue, with an intent to return to them for continued use.

**Summary judgment:** A decision made on the basis of briefs and record evidence presented without a trial. It is used when there is no dispute as to the facts of the case, and one party is entitled to judgment as a matter of law.