

**Thomas R. Lundquist**

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Practice Areas

- Environment & Natural Resources
- Administrative & Regulatory

Thomas R. Lundquist is a counsel in the firm's Environment & Natural Resources Group, where he focuses on natural resources counseling and litigation. Over the course of his 25-year career as an environmental attorney, Tom has litigated more than 50 cases involving the Endangered Species Act (ESA) and other national resource statutes. Those statutes include the Administrative Procedure Act, Migratory Bird Treaty Act, Mineral Leasing Act, National Environmental Policy Act, National Forest Management Act, and Outer Continental Shelf Lands Act.

Tom counsels a wide range of land development, oil and gas, water development, and alternative energy clients on ESA compliance and environmental rule making. He has litigated cases before the U.S. Supreme Court, numerous courts of appeal, and federal district courts. Tom's clients have included CropLife America, Edison Electric Institute, Shell Oil, and the American Forest & Paper Association, among others.

Tom is a seasoned advisor to Fortune 500 companies, providing both strategic counseling and comprehensive litigation defense strategies on ESA and other natural resource matters.

Representative ESA Cases:

- ***Animal Welfare League v. Beech Ridge Energy LLC*, 675 F. Supp. 2d 540 (D. Md. 2009).** In this first-ever case on whether a wind energy project would unlawfully cause an ESA § 9 "take" of an Indiana bat, an ENR team defended energy developer Beech Ridge and its parent Invenergy.
- ***Center for Native Ecosystems v. Cables*, 509 F.3d 1310 (10th Cir. 2007).** For the National Association of Home Builders, Tom prepared an amicus brief in this case concerning critical habitat issues under the ESA.

- ***Spirit of the Sage Council v. Kempthorne* , 511 F. Supp.2d 31 (D.D.C. 2007)**. Plaintiffs challenged the legality of the No Surprises assurances that the Services offer as an incentive for the private sector to enter into habitat conservation plans and obtain incidental take permits under ESA § 10. The district court rejected that challenge. Tom prepared briefs for the successful intervenor-defendants in preserving cost assurances that make HCPs and ITPs more attractive to the private sector.
- ***Center for Biological Diversity v. Badgley* , 335 F.3d 1097 (9th Cir. 2003)**. Tom prepared appellate court and district court amicus briefs on behalf of the American Forest & Paper Association. Those briefs assisted in the successful defense of the U.S. Fish and Wildlife Service's decision against ESA listing of an alleged "distinct population" of northern goshawks.
- ***National Ass'n of Home Builders v. Defenders of Wildlife* , 551 U.S. 644 (2007), and *Bennett v. Spear*, 520 U.S. 154 (1997)**. In the Supreme Court's most recent ESA decisions, Tom authored amicus briefs on the winning sides for coalitions of trade associations. The *Home Builders* decision limited the situations where ESA § 7 consultation is required on federal agency actions. *Bennett v. Spear* provided ESA-regulated industries with equal access to the courts.
- ***Defenders of Wildlife v. Kempthorne* , 2006 WL 2844232 (D.D.C. Sept. 29, 2006)**. This case challenged the ESA counterpart rules that federal agencies adopted for more timely completion of ESA § 7 compliance on projects implementing the National Fire Plan. On behalf of intervenor-defendants, Tom prepared a brief that assisted in obtaining an opinion affirming those rules.
- ***Environmental Protection Information Center v. Tuttle* , 2001 WL 114422 (N.D. Cal. Jan. 22, 2001)**. Tom served as co-counsel for timber industry intervenors. The suit alleged that California State officials are legally-culpable causes of ESA "take" of wildlife because they were failing to adequately regulate timber harvesting on private property. The district court initially denied plaintiffs' motion for a preliminary injunction, and then dismissed the suit as a programmatic challenge that is not ripe for judicial review. Tom has been involved in other litigation concerning the alleged vicarious liability of State regulators for ESA § 9 "take" as a result of regulated private actions. E.g., *Seattle Audubon Soc'y v. Sutherland*, 2007 WL 2220256 and 2007 WL 1300964 (W.D. Wash. 2007).
- ***Babbitt v. Sweet Home Chapter of Communities for a Great Oregon* , 515 U.S. 687 (1995)**. Tom and his ENR colleagues represented the landowner plaintiffs in challenging the U.S. Fish and Wildlife Service's regulation including land-use activities within the regulatory definition of "harm" for purposes of an ESA § 9 "take" of listed wildlife. We convinced the court of appeals on rehearing to set aside the regulation. 17 F.3d 1463 (D.C. Cir. 1994). The Supreme Court construed the "harm" rule narrowly and, based on that narrowing

construction, affirmed the legality of the rule by a 6-3 vote. After the *Sweet Home* decision, lower courts have imposed greater burdens on environmental group plaintiffs attempting to enjoin proposed projects as allegedly causing ESA § 9 "take" of listed wildlife.

Representative Cases on Other Natural Resources Matters:

- ***Summers v. Earth Island Institute* , 129 S. Ct. 1142 (2009), and *Winter v. Natural Resources Defense Council*, 129 S. Ct. 365 (2008).** In these two Supreme Court cases, Tom prepared amicus briefs on the winning sides for coalitions of trade associations. The *Summers* decision used standing doctrine to reduce the scope of judicial review and relief available in environmental group challenges to broad agency actions. This continues a trend that Tom and the firm first started in *Ohio Forestry Association v. Sierra Club* , 523 U.S. 726 (1998). The *Winter* decision makes it more difficult to obtain injunctions in environmental cases.
- ***Sierra Forest Legacy v. Rey* , 577 F.3d 1015 (9th Cir. 2009).** Tom serves as counsel to intervenor-defendant California Forestry Association in the cases challenging the Forest Service's Sierra Framework. In the interlocutory appeal, Tom helped to avoid a preliminary injunction against fuels-reduction projects. The district court has largely affirmed the Forest Service and declined to issue a broad injunction in decisions such as *Sierra Forest Legacy v. Rey*, 691 F. Supp. 2d 1204 (E.D. Ca. 2010), and 670 F. Supp. 2d 1106 (E.D. Ca. 2009).
- ***Allegheny Defense Project v. U.S. Forest Service* , 423 F.3d 215 (3d Cir. 2005).** Tom and Michael Klise represented a coalition of local interests as intervenor-defendants. They successfully defended, at the district court and appellate levels, some decisions allowing portions of the Allegheny National Forest to be managed for production of cherry wood.
- ***Sierra Club v. Peterson* , 228 F.3d 559 (5th Cir. 2000) (en banc).** Representing the American Forest & Paper Association, Tom and Michael helped to secure a ruling that the ripeness doctrine prevented environmental group plaintiffs from bringing a forest-wide challenge to timber harvesting in the four National Forests in Texas. This reversed a district court injunction against virtually all timber harvesting, which had been affirmed by a split panel.
- ***Oregon Natural Resources Council v. Animal and Plant Health Inspection Service* , 2000 WL 219747 (9th Cir. Feb. 24, 2000).** This case concerned challenges to Agriculture Department regulations on pest controls on imported wood products. Tom and Michael Klise represented intervening timber industry associations in successfully defending those rules and their NEPA compliance at the district court and Ninth Circuit levels.

- ***Amax Land Co. v. Quarterman* , 181 F.3d 1356 (D.C. Cir. 1999).** Tom represented a federal coal lessee in district court and on appeal in this action. The action challenged the interest rate assessed by a Minerals Management Service regulation on late coal lease payments under the Mineral Leasing Act and other statutes. A victory at the district court, and a partial victory and remand before the D.C. Circuit set the stage for a settlement favorable to the client.
- ***Newton County Wildlife Association v. Rogers* , 141 F.3d 803 (8th Cir. 1998), and 113 F.3d 110 (8th Cir. 1997).** Tom and Michael Klise again teamed up for the successful timber industry intervenors. We received favorable appellate rulings that: (1) this Administrative Procedure Act case was limited to the administrative record and that extra-record evidence by plaintiffs' experts would be excluded; (2) the Clean Water Act does not require National Pollutant Discharge Elimination System ("NPDES") permits for timber harvesting-related activities; and (3) the timber sales complied with the Endangered Species Act, National Environmental Policy Act, National Forest Management Act, Wild and Scenic Rivers Act, and Wilderness Act.

Education

- Union College, B.S. (1974)
- Harvard Law School, J.D. (1977)

Affiliations

Admitted to practice: District of Columbia, U.S. Supreme Court, most U.S. appellate courts (D.C., 3rd, 5th, 6th, 8th-11th), U.S. District Court for the District of Columbia.