

No. 12-623

---

**In The Supreme Court of the United States**

---

UNITED STATES FOREST SERVICE, ET AL., PETITIONERS

*v.*

PACIFIC RIVERS COUNCIL, ET AL., RESPONDENTS

---

*ON WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT*

---

**MOTION TO VACATE JUDGMENT BELOW  
AND DISMISS AS MOOT**

---

SCOTT L. NELSON  
PUBLIC CITIZEN LITIGATION  
GROUP  
1600 20TH STREET, NW  
WASHINGTON, DC 20009  
(202) 588-1000

BRIAN GAFFNEY  
LIPPE GAFFNEY WAGNER  
LLP  
329 BRYANT ST., SUITE 3D  
SAN FRANCISCO, CA 94044  
(415) 777-5600

JAMES A. FELDMAN  
*Counsel of Record*  
STEPHANOS BIBAS  
NANCY BREGSTEIN  
GORDON  
UNIV. OF PENNSYLVANIA  
LAW SCHOOL SUPREME  
COURT CLINIC  
3501 SANSOM STREET  
PHILADELPHIA, PA 19104  
(202) 730-1267  
WEXFELD@GMAIL.COM

---



1. Pacific Rivers Council (“PRC”) commenced this action against the United States Forest Service in the United States District Court for the Eastern District of California in 2005, challenging the Supplemental Environmental Impact Statement (“SEIS”) that the government issued in connection with its adoption of a new framework (the “2004 Framework”) for managing the Sierra Nevada National Forests. The district court granted summary judgment in favor of the Forest Service, and PRC appealed.

2. In the court of appeals, the government for the first time challenged PRC’s standing. The court of appeals rejected that challenge, and it reversed the district court’s judgment in part, holding that the SEIS was inadequate because it did not analyze the effects of the 2004 Framework on individual fish species. Pet. App. 1a-45a.

3. The government filed a petition for certiorari, raising the issues of standing, ripeness, and the substantive question whether the SEIS complied with The National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* This Court granted certiorari on March 18, 2013.

4. Meanwhile, the court of appeals had remanded this case to the district court for further proceedings. After this Court granted certiorari, the government asked the district court to hold the proceedings in abeyance pending this Court’s action. PRC did not take a position on that request. The district

court, however, determined to proceed with this case.

On April 29, 2013, the district court issued a memorandum and order. The court denied most of the relief that PRC had sought, including vacatur of the 2004 Framework and all actions taken in reliance on it; reinstatement of the previous, 2001 Framework; and an injunction against any logging, burning, road activity, and grazing in the Sierra Nevada National Forests that is inconsistent with the earlier, 2001 Framework. The court did, however, grant PRC an injunction requiring the Forest Service to complete a supplemental environmental impact statement that addressed the single analytical deficiency identified by the court of appeals in the original SEIS.

5. In light of the district court's ruling, PRC has now determined it no longer wishes to litigate this case further. Entirely aside from the outcome of this case in this Court, PRC would likely face the need for substantial costly and time-consuming additional litigation in order to achieve what it views as meaningful relief. PRC has therefore determined that it wishes to abandon its claims challenging the 2004 Framework. It no longer seeks to obtain the relief that it sought when it filed this case.

6. When a respondent has determined to withdraw its request for relief, even after a petition for certiorari has been granted, this Court's practice is to vacate the decision of the court below with instructions to dismiss the claims involved as moot. In *Deakins v. Monaghan*, 484 U.S. 193 (1988), the

plaintiffs originally commenced their action in federal district court. The district court dismissed the complaint, but the court of appeals reversed and remanded. After this Court granted certiorari, plaintiffs – who were now respondents in this Court – determined that they no longer sought to advance certain of their claims. This Court held that the appropriate course was to treat those claims as moot and vacate the court of appeals’ decision, with instructions to the district court to dismiss with prejudice the relevant portions of the complaint. *Id.* at 528.

*Deakins* has been followed in a number of cases, including most recently *Arave v. Hoffman*, 552 U.S. 117 (2008), in which the respondent abandoned the only claim that was before this Court. As in *Deakins*, the Court vacated the judgment of the court of appeals with instructions to the district court to dismiss the relevant claims with prejudice. Accord *City of Cuyahoga Falls v. Buckeye Community Hope Found.*, 538 U.S. 188, 199-200 (2003); *Webster v. Reproductive Health Servs.*, 492 U.S. 490, 512-13 (1989); *Frank v. Minnesota Newspaper Ass’n*, 490 U.S. 225 (1989) (per curiam). See also *U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership*, 513 U.S. 18, 23 (1994) (noting that “vacatur must be granted where mootness results from the unilateral action of the party who prevailed in the lower court”). The same disposition, which in this case would necessarily require the district court to vacate its injunction, is applicable here.

**CONCLUSION**

The decision of the court of appeals should be vacated, and the case should be remanded with instructions that the district court dismiss respondent's claims for relief with prejudice as moot.

Respectfully submitted.

Scott L. Nelson  
Public Citizen  
Litigation Group  
1600 20th Street, NW  
Washington, DC 20009  
(202) 588-1000

Brian Gaffney  
Lippe Gaffney Wagner  
LLP  
329 Bryant St., Suite 3D  
San Francisco, CA 94044  
(415) 777-5600

James A. Feldman  
*Counsel of Record*  
Stephanos Bibas  
Nancy Bregstein  
Gordon  
Univ. of Pennsylvania  
Law School Supreme  
Court Clinic  
3501 Sansom Street  
Philadelphia, PA 19104  
(202) 730-1267  
wexfeld@gmail.com

June 3, 2013