

## "Citizens for Better Forestry" Denied Fees Where Ninth Circuit Concludes Environmental Organization Was Not The "Prevailing Party"

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[The Ninth Circuit](#) decided a “prevailing party” issue in the environmental context in [Citizens for Better Forestry, et al. v. U.S. Department of Agriculture](#), 2009 DJDAR 8323 (2009). Citizens for Better Forestry and other environmental groups sued the USDA alleging violations of the [National Environmental Policy Act](#) (NEPA) and other environmental statutes. The Plaintiffs alleged that the USDA committed procedural violations of NEPA and other statutes when promulgating a new national forest management rule and sought declaratory and injunctive relief.

The district court dismissed the suit on standing and ripeness grounds. On appeal the Ninth Circuit court reversed and remanded, holding that the USDA had violated NEPA and directed the district court to determine whether injunctive relief was proper. That matter was decided at [Citizens for Better Forestry v. U.S. Department of Agriculture](#) 341 F.3d 961, 965 (9th Cir. 2003).

After Ninth Circuit reversed the decision of the district court, the USDA withdrew the challenged rule and issued a new one in its place. The Plaintiff then dismissed its case and moved for attorney fees under the Equal Access to Justice Act (EAJA). The district court awarded attorney fees, holding that the environmental groups were the “prevailing party” on the NEPA claims. The USDA appealed the district court’s ruling and the Ninth Circuit reversed once again.

The Ninth Circuit court held that the EAJA permits an award of attorney fees to a “prevailing party” in civil actions against the United States. To be considered “**prevailing**,” a party must have been awarded a judgment or similar relief in its favor. Further, an award “must be preceded by a material alteration” of the parties’ legal relationship. The Plaintiffs argued that they should be considered a prevailing party due to the ruling that the USDA violated NEPA. The Ninth Circuit noted however, that Plaintiffs did not receive a formal declaratory judgment or other relief from any court. This court found that a favorable determination on an issue did not suffice to consider them to be a prevailing party. Further, the legal relationship of the parties did not materially alter. The Ninth Circuit concluded that the district court erred in awarding attorney fees.

Citizens for Better Forestry should be studied by potential fee claimants’ prior to moving for a fee award under the EAJA. The court here seemed inclined to deny the award for fees where the plaintiff simply dismissed the case after the USDA issued a new set of rules. In retrospect the plaintiff should have obtained a finding that it was their litigation which caused the USDA to amend the rule. The court would likely have granted the award under that scenario.