

FILED

UNITED STATES COURT OF APPEALS

JUN 16 2011

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

WESTERN RADIO SERVICES CO., an
Oregon Corporation; et al.,

Plaintiffs - Appellants,

v.

UNITED STATES FOREST SERVICE,

Defendant - Appellee.

No. 10-35468

D.C. No. 6:09-cv-00872-HO

District of Oregon,
Eugene

ORDER

Before: TASHIMA, BEA, and IKUTA, Circuit Judges.

The Memorandum Disposition filed on May 16, 2011 is amended as follows:

1. On page 2 of the Memorandum Disposition, add the following text before the word "AFFIRM":

Western Radio's allegations that it was "unable to determine" if the radio tower project would interfere with its radio signals and that the project had the "potential" to disrupt wireless communications raise only "conjectural or hypothetical" concerns. *Id.* (internal quotation marks omitted). Likewise, Western Radio makes factual statements that the radio tower project would result in trees being cut down and vegetation replaced but does not allege an injury to itself (for example, that the project would diminish its use or enjoyment of the aesthetic and recreational values of the surrounding area), nor is such an injury self-evident. *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 181–82 (2000).

The panel has voted to deny the petition for panel rehearing. The petition for panel rehearing is **DENIED**. The Appellants' petition for rehearing en banc is still pending before this court.

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AMENDED
MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Michael R. Hogan, District Judge, Presiding

Submitted May 5, 2011**
Portland, Oregon

Before: TASHIMA, BEA, and IKUTA, Circuit Judges.

Western Radio Service Co. and Richard Oberdorfer, the company's owner and president (collectively "Western Radio"), appeal the district court's grant of summary judgment to the United States Forest Service ("Forest Service"). We

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

affirm the district court because Western Radio has not adduced evidence sufficient to raise a triable issue of fact that it has suffered a “concrete and particularized” and “actual and imminent” harm as required for Article III standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (citations omitted). Western Radio’s allegations that it was “unable to determine” if the radio tower project would interfere with its radio signals and that the project had the “potential” to disrupt wireless communications raise only “conjectural or hypothetical” concerns. *Id.* (internal quotation marks omitted). Likewise, Western Radio makes factual statements that the radio tower project would result in trees being cut down and vegetation replaced but does not allege an injury to itself (for example, that the project would diminish its use or enjoyment of the aesthetic and recreational values of the surrounding area), nor is such an injury self-evident. *Friends of the Earth, Inc. v. Laidlaw Env’tl. Servs. (TOC), Inc.*, 528 U.S. 167, 181–82 (2000).

AFFIRMED.