

No.

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

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TECK METALS LTD.,

*Petitioner,*

v.

THE CONFEDERATED TRIBES OF THE  
COLVILLE RESERVATION,

*Respondent.*

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

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**PETITION FOR A WRIT OF CERTIORARI**

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### QUESTION PRESENTED

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) authorizes the United States, the States, and Indian tribes to recover damages for “injury to, destruction of, or loss of natural resources.” 42 U.S.C. § 9607(a)(4)(C), (f)(1). Those damages may be recovered for “use only to restore, replace, or acquire the equivalent of such natural resources.” *Id.* § 9607(f)(1).

The question presented is whether CERCLA authorizes damages for the felt loss of a cultural connection to natural resources.

## **PARTIES TO THE PROCEEDINGS**

Teck Metals Ltd., formerly known and named in the proceedings below as Teck Cominco Metals Ltd., is the petitioner in this Court, was the defendant in the district court, and was the appellee in the court of appeals.

The Confederated Tribes of the Colville Reservation is the respondent in this Court, was a plaintiff in the district court, and was the appellant in the court of appeals.

The State of Washington, Joseph Pakootas, and Donald Michel were plaintiffs in the district court but did not participate in the proceedings in the court of appeals.

### **RULE 29.6 DISCLOSURE STATEMENT**

Teck Metals Ltd., formerly known and named in the proceedings below as Teck Cominco Metals Ltd., is a Canadian corporation. It is a wholly owned direct subsidiary of Teck Resources Limited, a Canadian corporation whose common stock is publicly traded on the New York Stock Exchange under the ticker symbol TECK and on the Toronto Stock Exchange under the ticker symbols TECK.A and TECK.B. Teck Resources Limited has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

## STATEMENT OF RELATED PROCEEDINGS

United States District Court (E.D. Wash.):

*Pakootas, et al. v. Teck Cominco Metals, et al.*, No. 2:04-cv-00256-SAB (Feb. 6, 2024) (judgment Feb. 6, 2024; order certifying interlocutory appeal July 9, 2024)

United States Court of Appeals (9th Cir.):

*Confederated Tribes of the Colville Reservation, et al. v. Teck Cominco Metals Ltd.*, No. 24-5565 (Sept. 3, 2025), *reh'g denied* (Feb. 26, 2026)

*Pakootas, et al. v. Teck Cominco Metals, Ltd.*, No. 24-4442 (Sept. 11, 2024) (order granting permission to appeal)

*Pakootas, et al. v. Teck Cominco Metals, Ltd.*, No. 16-35742 (Sept. 14, 2018)

*Pakootas, et al. v. Teck Cominco Metals, Ltd.*, No. 15-35228 (July 27, 2016)

*Pakootas, et al. v. Teck Cominco Metals, Ltd.*, No. 10-35045 (Sept. 16, 2013)

*Pakootas, et al. v. Teck Cominco Metals, Ltd.*, No. 08-35951 (June 1, 2011)

*Pakootas, et al. v. Teck Cominco Metals, Ltd.*, No. 05-35153 (July 3, 2006)

Supreme Court of the United States:

*Teck Metals Ltd., fka Teck Cominco Metals, Ltd. v. The Confederated Tribes of the Colville Reservation, et al.*, No. 18-1160 (June 10, 2019)

*Teck Cominco Metals, Ltd. v. Pakootas, et al.*, No. 06-1188 (Jan. 7, 2008)

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**INTRODUCTION**

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) is an environmental cleanup statute. It is designed “to promote the timely cleanup of hazardous waste sites and to ensure that the costs of such cleanup efforts [are] borne by those responsible for the contamination.” *Atlantic Richfield Co. v. Christian*, 590 U.S. 1, 6 (2020). But CERCLA is not a common-law tort regime designed to make plaintiffs whole. It “does not provide a

general cause of action for all harm caused by toxic contaminants.” *CTS Corp. v. Waldburger*, 573 U.S. 1, 18 (2014).

That focus on environmental cleanup shapes the entire statute. On the front end, CERCLA is unforgiving about liability. It imposes strict liability on a broad class of defendants, with relaxed causation requirements and narrow defenses. Congress swept aside the usual requirements to hold persons liable in tort because its overriding goal was to get contamination cleaned up promptly.

But Congress moderated that approach on the back end. CERCLA provides only limited remedies, not the make-whole damages of tort law. CERCLA’s baseline remedy is limited to the cost of cleaning up hazardous waste. In addition, when contamination injures natural resources, Congress authorized one more remedy: natural-resource damages. The United States, the States, and Indian tribes may sue for “damages for injury to, destruction of, or loss of natural resources” under the respective sovereign’s authority. 42 U.S.C. § 9607(a)(4)(C). These natural-resource damages must be used “only to restore, replace, or acquire the equivalent of” the injured resources. *Id.* § 9607(f)(1).

In the decision below, the Ninth Circuit upended CERCLA’s careful tradeoff between broad liability and limited remedies. The court of appeals allowed the Confederated Tribes of the Colville Reservation to seek damages not only for the *actual costs* of restoring allegedly injured resources in the Columbia River but also for the *felt loss* of cultural connection to that river. That type of subjective, personal injury has no place under CERCLA.

More specifically, the Tribes alleged that discharges from Teck Metals Ltd.'s smelter operations injured two natural resources in the Columbia River: fly larvae and some fish that had elevated mercury levels. In claims not at issue here, the Tribes and the State of Washington jointly sought \$177 million in natural-resource damages to restore those resources.

The Tribes alone then brought additional claims for damages "specific to their members because of their unique relationship" with the river. App., *infra*, 8a. The Tribes sought more than \$500 million to compensate them for feelings of "cultural disconnection from the [Columbia] River" and to fund a host of cultural programming and purchases. *Id.* at 31a. By the Tribes' own account, these damages turned on members' subjective "perceptions" and "fear" of contamination, not on any physical injury to a resource; in fact, the damages "would remain the same" even if the river were pristine. 4 C.A. S.E.R. 814-815, 887-889.

The district court correctly distinguished between the joint natural-resource-damages claims by Washington and the Tribes that CERCLA authorizes and the separate cultural-connection claims that it does not. The Ninth Circuit, however, rejected the distinction. It concluded that trustees may recover for the "cultural significance" associated with a natural resource's "passive" existence rather than its actual use. App., *infra*, 16a.

That holding cannot be squared with CERCLA's text. CERCLA imposes "liability" for natural-resource damages in 42 U.S.C. § 9607. But the panel did not analyze the Tribes' damages under that provision. Instead, the panel turned to a "miscellaneous" provision directing the President to promulgate

damage-assessment procedures that consider “use value,” among other things. *Id.* § 9651(c)(2). Even that ancillary provision does not help the Tribes here. “Use value” is a yardstick for measuring the objective value of temporarily losing the active use of a resource—such as the fees that a government might lose while a lake is closed to swimmers. It is not freestanding authority for a distinct category of subjective, *nonuse* injuries that reflect how a person *feels* about a resource. The Ninth Circuit’s endorsement of damages for perceived cultural losses, untethered to objective uses of the injured resources, creates a CERCLA remedy that Congress did not authorize and that has no limiting principle.

That serious error warrants this Court’s review. Three courts of appeals have now staked out three different positions on the scope of natural-resource damages. In the Tenth Circuit, recovery is restricted to accomplishing CERCLA’s core goals of restoring or replacing natural resources. In the D.C. Circuit, trustees may account for some nonuse values in seeking damages, but may not recover for purely private interests such as subjective individual perceptions of harm. And now in the Ninth Circuit, trustees may recover for the subjective, felt losses of a cultural connection to a resource.

Which rule is right is exceptionally important. Governmental trustees routinely assert natural-resource-damages claims worth tens or hundreds of millions of dollars. The Ninth Circuit has invited all trustees—not just tribes but also the 50 States and the United States—to add subjective, perception-based demands that can (as here) dwarf conventional damages. That

result exposes businesses to massive and unpredictable liability. It also diverts finite funds away from actually cleaning up hazardous waste and restoring injured resources. The decision's impact is magnified because the Ninth Circuit is home to the biggest share of the Nation's federal resources and Indian tribes.

Review is warranted now. The question may not reach this Court again in as clean a posture—or at all. Even though CERCLA damages questions frequently recur, virtually all natural-resource-damages claims settle. The most recent trial of CERCLA natural-resource-damages claims of which Teck is aware took place in 2001, and even that case later settled. The decision below will only increase the intense settlement pressure that exists in all CERCLA cases. This Court should grant review now to clarify CERCLA's scope. At a minimum, this Court should call for the views of the Solicitor General, given the United States's interest as both governmental trustee and potential defendant against natural-resource-damages claims arising from hazardous waste at federal facilities.

### OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-19a) is reported at 153 F.4th 947. The order of the district court granting partial summary judgment (*id.* at 29a-34a) is unpublished but available at 2024 WL 457769.

### JURISDICTION

The court of appeals denied rehearing en banc on February 26, 2026. App., *infra*, 35a-36a. On May 15, 2026, Justice Kagan granted Teck's application to extend the time to file this petition to and including July

24, 2026. *See* No. 25A1263. This Court has jurisdiction under 28 U.S.C. § 1254(1).

### STATUTORY PROVISIONS INVOLVED

Relevant statutory provisions are reproduced in full in the appendix to this petition. App., *infra*, 37a-45a.

### STATEMENT OF THE CASE

#### A. Legal Background

CERCLA is a federal environmental statute that creates “a mechanism for cleaning up hazardous-waste sites.” *Pennsylvania v. Union Gas Co.*, 491 U.S. 1, 7 (1989). On the front end, CERCLA imposes sweeping liability. Any person who falls within one of “four broad categories of persons” associated with hazardous-waste sites may be liable. *United States v. Atl. Rsch. Corp.*, 551 U.S. 128, 135 n.2 (2007). These “so-called potentially responsible parties,” *id.* at 131, include private firms and governmental entities, 42 U.S.C. § 9601(21) (defining “person” to include the “United States Government, State, [and] municipality”); *see id.* § 9620(a)(1) (providing that the United States is “subject to” CERCLA “in the same manner and to the same extent” as “any nongovernmental entity”). Potentially responsible parties are subject to “strict liability.” *Burlington N. & Santa Fe Ry. Co. v. United States*, 556 U.S. 599, 608 (2009).

Once a waste site is identified, the primary remedy is cleanup costs. CERCLA authorizes the federal government to “clean up [the] contaminated area itself” or “compel” private parties to perform the cleanup. *Cooper Indus., Inc. v. Aviall Servs., Inc.*, 543 U.S. 157, 161 (2004). Potentially responsible parties must pay for the “costs of removal or remedial action”

plus other “necessary costs of response.” 42 U.S.C. § 9607(a)(4)(A)-(B).

When cleanup alone does not suffice, CERCLA provides a second remedy: recovery for natural-resource damages. 42 U.S.C. § 9607(a)(4)(C), (f)(1). Specifically, the potentially responsible party “shall be liable for . . . damages for injury to, destruction of, or loss of natural resources.” *Id.* § 9607(a)(4)(C). Natural resources are “land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources.” *Id.* § 9601(16).

Congress turned to governmental trustees to recover these damages. CERCLA thus provides that the United States, a State, or an Indian tribe may sue when the injured, destroyed, or lost resource is “managed by, controlled by, or appertaining to” the relevant governmental entity. 42 U.S.C. § 9607(f)(1). Congress also clarified that “[s]ums recovered” by the governmental entity are available “for use only to restore, replace, or acquire the equivalent of such natural resources.” *Ibid.*<sup>1</sup>

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<sup>1</sup> In the U.S. Code, Section 9607(f)(1) refers to sums recovered by the United States and the States. But the Tribes correctly agreed that they are similarly “bound to use any recovery as required by” that limit. C.A. Reply Br. 23, C.A. Dkt. 54. In 1980, CERCLA did not authorize Indian tribes to sue for natural-resource damages, and provided that “[s]ums recovered shall be available for use to restore, rehabilitate, or acquire” resources by the “Federal Government or the State government.” Pub. L. No. 96-510, § 107(f), 94 Stat. 2767, 2783 (1980). When Congress amended CERCLA in 1986, it added “or the Indian tribe” to the end of that provision. Pub. L. No. 99-499, § 207(c)(2)(D), 100 Stat. 1613, 1706 (1986). Because the U.S. Code “cannot prevail over the Statutes at Large when the two are inconsistent,” *Darby v. Cisneros*, 509 U.S. 137, 138 n.1 (1993), CERCLA’s

## B. Factual Background

Teck is a Canadian mining company that produces critical metals such as zinc. App., *infra*, 6a. Since 1896, Teck and its predecessors have operated a smelter on the banks of the Columbia River in British Columbia, about ten miles north of the U.S.-Canada border. *Ibid.*; 7 C.A. S.E.R. 1785. At that smelter, Teck heats rocks and minerals to extract pure metals. 1 C.A. S.E.R. 64; 7 C.A. S.E.R. 1785. The leftover rock and mineral material, a sand-sized material called “slag,” was historically discharged to nearby waterways to disperse the material. 7 C.A. S.E.R. 1785-1786.

Beginning in 1930, Teck’s smelter discharged slag and effluent into the Columbia River. App., *infra*, 6a. The slag and effluent were carried downstream and settled in the sediment of the Upper Columbia River, located in Washington State. *Ibid.*; see 7 C.A. S.E.R. 1786. Some of the metals in the sediment allegedly injured some “benthic organisms” (fly larvae) and “fish with elevated mercury levels.” App., *infra*, 12a.

In 2006, Teck, with the support of the Canadian government, agreed to fund a U.S. Environmental Protection Agency (EPA) study of the Upper Columbia River. 7 C.A. S.E.R. 1687-1688. In 2020 and 2021, EPA confirmed that the Upper Columbia River is “safe for recreation,” EPA, *Upper Columbia River Superfund Site* (June 5, 2026), <https://perma.cc/R8TD-EZAT>, and that there is “really no risk from ingesting” the water because it is “extremely clean,” EPA, *Upper Columbia River Study* at 35:53-35:58, YouTube (June 10, 2020),

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1986 amendment “places limits on the use of damages by Indian tribes,” *In re Gold King Mine Release*, 669 F. Supp. 3d 1146, 1156 (D.N.M. 2023).

<https://perma.cc/N6YP-MYBC>. Hundreds of thousands of people visit the area each year. 7 C.A. S.E.R. 1733.

### C. Proceedings Below

1. Washington State, joined by the Confederated Tribes of the Colville Reservation, sued Teck under CERCLA to establish liability and recover (1) the costs of investigating the condition of the Upper Columbia River (“response costs”), and (2) natural-resource damages. App., *infra*, 7a; 7 C.A. S.E.R. 1687-1688. The district court broke the case into three phases, the third of which is at issue here.

First, the district court concluded that Teck was a responsible party under CERCLA and therefore liable to the Tribes and the State for response costs. App., *infra*, 7a.

Second, the district court addressed response costs, and awarded the Tribes about \$8.6 million. App., *infra*, 7a. Washington State settled its response-cost claims. *Ibid*. In addition, Teck has paid about \$165 million and counting to fund the EPA study described above. 7 C.A. S.E.R. 1649-1658. Teck has also paid for the Tribes to participate in that study. *Ibid*.

Third, the district court turned to natural-resource damages. The State and the Tribes identified two injured natural resources: (1) reductions in some “benthic organisms”—*i.e.*, fly larvae—in the river sediment, and (2) “fish with elevated mercury levels.” App., *infra*, 12a. Washington State and the Tribes brought joint claims for \$177 million to compensate for those alleged injuries to the benthic organisms and for reduced fishing trips due to state advisories about mercury levels in fish. *Id.* at 7a-8a; D. Ct. Dkt. No. 2960-1

at 6 (Apr. 11, 2025) (\$159.7 million for benthic organisms); 2 C.A. S.E.R. 422-423 (\$17.9 million for fishing trips). Those joint claims are not at issue in this petition.

In addition to those joint claims, the Tribes brought their own separate claims for natural-resource damages. App., *infra*, 7a-8a. According to the Tribes, some tribal members had formed a “perception” that the Columbia River was unsafe because of the supposed contamination. 3 C.A. S.E.R. 634-635, 638, 641-642, 674, 774; 4 C.A. S.E.R. 883-885, 887-890, 895, 898; *see id.* at 815 (“members explain they feel unsafe”). Those members’ “perceptions about the contamination,” 4 C.A. S.E.R. 889, had provoked “fear” and “apprehensions,” resulting in “feelings” of cultural “disconnection and sadness,” *id.* at 814-815. Other members claimed a “feeling of loss from a perceived death of the Columbia River.” 3 C.A. S.E.R. 774-775. As the Tribes’ experts put it, members’ “perceptions about the contamination,” not actual contamination, “create[d] a large range of cultural losses.” 4 C.A. S.E.R. 889; *see id.* at 883-885, 887; 3 C.A. S.E.R. 633, 637-638, 640-642 (“it’s the perception that drives injury”); *id.* at 634 (agreeing that damages are not based on whether “this particular kind of benthic macroinvertebrate was injured”).

The Tribes’ perceived cultural loss is not limited to any specific period of alleged contamination. Because the asserted damages are based on the members’ “understanding” of the contamination, there is “no mathematical link between measured contamination and this [damages] package.” 4 C.A. S.E.R. 887. So if members’ “perception” “remained the same,” then recoverable damages “would remain the same,” even if “contamination is not there” any longer. *Id.* at 884, 887; *see*

*id.* at 883, 888-889, 894 (similar). As a result, according to the Tribes, EPA’s safety findings in 2020 and 2021 did not solve the problem. Tribal officials tried to alleviate members’ fears through “communication outreach,” but that was not “enough”: members “did not believe the data, they did not believe the source, they did not believe it.” D. Ct. Dkt. No. 2679-5 at 31 (Aug. 25, 2023); *see* 3 C.A. S.E.R. 649, 738 (describing members’ “trust issues” about “believing scientific results” concerning “contaminant levels in the river”). According to the Tribes’ experts, that disbelief arose because “tribal peoples” process “information differently” than the “mainstream population” in ways that make them more fearful and less “trusting.” 4 C.A. S.E.R. 895 (explaining that members are “triggered because of the colonial history”).

To ease those fears and increase confidence in the river, the Tribes developed a “novel” theory of natural-resource damages. 4 C.A. S.E.R. 900. That methodology was pioneered by an academic (one of the Tribes’ experts) who decided to chart “a path” that “differed from the one laid out by the [natural-resource damages assessment] process.” 2 C.A. S.E.R. 353. Instead of focusing on “harms to the natural environment,” *ibid.*, and “replacements” for injured resources, 4 C.A. S.E.R. 900, his methodology urged tribes suing under CERCLA to seek “financial support” for cultural “programs” to “restore the relationships” that are “crucial” to indigenous “identity,” 2 C.A. S.E.R. 353.

The Tribes here took up that invitation. They sought up to \$538 million in damages—more than three times the natural-resource damages sought jointly by the Tribes and the State. The Tribes-specific damages claims comprised:

- A lump-sum award of up to \$525 million for members’ “cultural disconnection from the Columbia River.” App., *infra*, 31a (brackets omitted).
- In the alternative, \$114 million for the construction or funding of (i) a 15,000-square-foot “longhouse”/“cultural center,” a “van and canoe trailer,” a “greenhouse,” a “pit house,” an “educational garden,” and a “riverfront cabin/small house”; (ii) a “suite of cultural programs” and language lessons to “repair the trust broken” and re-center the river in “members’ cultural experience”; (iii) the purchase of “600 acres” of land; (iv) aesthetic improvements to the river to reduce feelings of “apprehension”; and (v) a 100-year tribal-run river “monitoring program,” at \$500,000 per year, to increase confidence about the river because tribal members do not “trus[t]” outside “research.” 2 C.A. S.E.R. 454-455; 3 C.A. S.E.R. 649, 706; *see generally id.* at 703-716.
- Separately, up to \$13 million for “cultural” losses felt by members who declined to fish or perceived a reduced value in fishing because of mercury advisories, over and above the Tribes’ \$17.9 million joint claims with Washington State for reduced fishing trips. App., *infra*, 31a. These damages sought to capture the “enhanced value” of “fishing in the Colvilles’ culture.” *Id.* at 13a.

2. The district court granted Teck’s motion for partial summary judgment on the Tribes’ separate

claims. App., *infra*, 30a. Applying CERCLA’s plain text, the court held that natural-resource damages are available to “compensate the public by providing for the recovery of the funds that are necessary—and by law must actually be used—to restore or replace injured natural resources.” *Id.* at 32a (citing 42 U.S.C. § 9607(f)(1)). The Tribes’ claims fell outside the statute’s scope because they sought “recovery from loss or damage” to some members’ subjective “connection or relationship” to the Columbia River—not the restoration, replacement, or acquisition of the equivalent of the injured benthic organisms in the sediment or fish with elevated mercury levels. *Id.* at 33a. The court observed that nothing “in the language of CERCLA” authorized that felt-loss recovery. *Ibid.* The Tribes’ cultural damages were “simply not recoverable.” *Ibid.*

The district court granted the Tribes’ motion to certify the order for immediate appeal. App., *infra*, 20a-24a. The court explained that the case involved a straightforward interpretation of the “language of CERCLA.” *Id.* at 23a. It also noted the “potential for over \$1 billion in environmental damage[s]” in this case, and the “broader significance” of the issue for CERCLA claims generally. *Ibid.*

3. The Ninth Circuit granted interlocutory review and reversed. The court held that “Congress did not limit the types of recoverable natural resource damages.” App., *infra*, 14a. Instead, the Tribes were free to seek damages for what the court characterized as the “lost uses of injured natural resources in cases where the lost uses have a cultural dimension”—that is, a “cultural component because of their unique relationship with the Upper Columbia River.” *Id.* at 13a-14a.

The court of appeals did not ground this holding in Section 9607, which governs “Liability.” 42 U.S.C. § 9607. Indeed, the Ninth Circuit did not discuss the statutory language relied on by the district court, App., *infra*, 33a—namely, that natural-resource damages “shall be retained by the trustee . . . for use *only* to restore, replace, or acquire the equivalent of such natural resources,” 42 U.S.C. § 9607(f)(1) (emphasis added).

Instead, the Ninth Circuit turned to Section 9651, a “Reports and studies” provision located in CERCLA’s “Miscellaneous provisions” subchapter. App., *infra*, 14a (starting—and ending—“with [this] text”). In that miscellaneous provision, Congress directed the President to “promulgate regulations for the assessment” of natural-resource damages. 42 U.S.C. § 9651(c)(1). “Such regulations” must “identify the best available procedures to determine such damages,” “tak[ing] into consideration . . . replacement value, use value, and ability of the ecosystem or resource to recover.” *Id.* § 9651(c)(2). In the court’s view, Congress’s inclusion of “use value,” without a “specif[ied]” limitation on “approved ‘uses,’” showed that Congress did not intend to “limit the types of recoverable natural resource damages.” App., *infra*, 14a. The court further reasoned that “[n]othing in th[e] common meaning” of the word “use” excluded claims with a “cultural component.” *Id.* at 14a-15a.

Because the court of appeals believed that “Congress aimed at providing full recovery of *any* damages to those *persons* harmed by the loss of natural resources,” it reversed and remanded for trial on the Tribes’ solo claims. App., *infra*, 15a-16a, 18a (emphases added).

### REASONS FOR GRANTING THE PETITION

The Ninth Circuit created a new CERCLA remedy that Congress did not authorize and that lacks any limiting principle. This case is a vivid illustration. Teck has paid more than \$173 million to study and clean up the Upper Columbia River, and the Tribes and the State of Washington demanded another \$177 million to compensate for allegedly injured natural resources. But the Tribes separately sought more than *\$500 million* for perceived cultural losses, unmoored from specific uses of the injured resources and unbounded by any defined period of alleged contamination. That free-floating theory is flatly at odds with a CERCLA scheme built around environmental cleanup and restoration of natural resources, not full compensation for private harms.

The Ninth Circuit's incorrect ruling warrants this Court's review. Three courts of appeals have now reached diverging interpretations of CERCLA's coverage of abstract nonuse values like cultural connections. And the decision below exposes private and public defendants alike to massive, unpredictable, strict-liability damages that will distort CERCLA litigation nationwide. This case is an excellent vehicle to resolve an important question that frequently recurs but will rarely reach this Court because of heavy, statute-driven settlement pressure that the decision below ratchets up even more.

## **I. THE DECISION BELOW IS WRONG.**

Text, structure, and history confirm that CERCLA does not authorize damages for the felt loss of a cultural connection to natural resources—a particularly abstract form of nonuse value.

### **A. CERCLA’s Text Does Not Encompass Subjective Cultural Losses.**

CERCLA authorizes a governmental trustee to sue for “damages for injury to, destruction of, or loss of natural resources.” 42 U.S.C. § 9607(a)(4)(C). Those damages may compensate for the costs to restore, replace, or acquire the equivalent of natural resources. Beyond that, such damages may, at most, compensate for the intervening lost use of the resources until they are restored or replaced. But CERCLA damages do not extend to the subjective, felt loss of a cultural connection to a natural resource.

1. By its plain text, CERCLA most straightforwardly permits restoration, replacement, or substitution costs. Congress authorized CERCLA trustees to sue for the amount needed to “restore, replace, or acquire the equivalent” of an injured natural resource. 42 U.S.C. § 9607(f)(1). It then reiterated that the “[s]ums recovered” by the governmental trustee are available “only” for those purposes. *Ibid.* To take a basic hypothetical, assume that hazardous waste spills into a river and fish die. If the governmental entity that manages the river plants vegetation to help support the fish population, it has “restored” that resource. If it spends money to stock the river with new fish, the government has “replaced” or “acquired the equivalent” of that resource. CERCLA clearly covers all those damages.

CERCLA might also allow—albeit with some textual stretching—damages for the inability to use a resource during the intervening period of time between the injury and restoration. Although Congress did not expressly authorize damages for that interim inability to use a resource, it is conceivably recoverable as part of the value of “replac[ing]” the resource. 42 U.S.C. § 9607(f)(1); see *New Mexico v. Gen. Elec. Co.*, 467 F.3d 1223, 1250 n.39 (10th Cir. 2006) (endorsing “the general proposition that the State, in its capacity as trustee of the State’s groundwaters, is entitled to recover for all interim loss-of-use damages on behalf of the public from the time of any hazardous waste release until restoration”). In the hypothetical above, assume that the government takes two years to restock fish. During that time, the government might have lost the ability to sell fishing permits. At most, the government could recover those concrete lost-use values.

By contrast, CERCLA damages do not cover the subjective “nonuse value” of an injured resource. The “nonuse value”—sometimes called “passive use” or “existence value”—is, as the name suggests, a distinct category of recovery that reflects the intangible appreciation of a resource “independent of people’s present use” of it. A. Myrick Freeman III et al., *The Measurement of Environmental and Resource Values: Theory and Methods* 110 (3d ed. 2014). Return once more to the basic hypothetical above. Some people might find joy simply in knowing that fish exist, are healthy, and are swimming in the river—and might experience corresponding feelings of sadness upon hearing that fish have died. See *id.* But the felt loss of that subjective, intangible joy is disconnected from restoration, re-

placement, or acquisition costs—and thus is not recoverable. 42 U.S.C. § 9607(f)(1). Damages for that felt loss do not “bring back into existence” or “re-establish” the injured fish. *Restore*, American Heritage Dictionary 1108 (2d ed. 1980). They do not “put back” or “fill the place” of the injured fish. *Replace*, American Heritage Dictionary 1103 (2d ed. 1980). And they do not reflect the value of “gain[ing] possession” of a substitute for the fish. *Acquire*, American Heritage Dictionary 12 (2d ed. 1980). In short, such damages do not track Congress’s specific focus on restoring or replacing natural resources.

2. Under a straightforward reading of the text, the Tribes’ claims fall outside CERCLA. To start, the Tribes seek a \$525 million lump-sum award for the members’ feelings of “cultural disconnection” from the river. App., *infra*, 31a. That money might “ease” tribal members’ “fears” and “increase confidence” in a river that the Tribes’ witness acknowledged is “safe.” 3 C.A. S.E.R. 696; *id.* at 739; 4 C.A. S.E.R. 877. But it would not restore, replace, or acquire the equivalent of the allegedly injured benthic organisms or fish, and the Tribes have not committed to using the lump sum for those purposes. Nor would that money compensate for any inability to use those two resources while they were injured.

The same is true for the Tribes’ alternative request for \$114 million to “restore the relationships” with the river that are “crucial” to indigenous “identity.” 2 C.A. S.E.R. 353. However laudable that desire, it does not fit within the statutory text. Building a cultural center, creating language and identity programs, acquiring 600 acres of land, and establishing a century-long mon-

itoring program will not restore a single benthic organism, replace a single fish, or acquire the equivalent of either. *Id.* at 454-455.

Finally, the Tribes' fishing-trips claim exceeds any cognizable lost-use theory. The Tribes seek \$13 million for "cultural" losses, over and above their joint claims with Washington State for the same forgone fishing trips. App., *infra*, 31a. That \$13 million captures the "enhanced value" of "fishing in the Colvilles' culture," *id.* at 13a—a culture-based premium separate from any actual lost use of fish between injury and restoration.

3. The Ninth Circuit nevertheless held that CERCLA authorized the Tribes' damages claims. The court of appeals grounded that holding not in 42 U.S.C. § 9607, but in 42 U.S.C. § 9651. In the latter section, Congress directed the President to promulgate regulations "for the assessment of" natural-resource damages. *Id.* § 9651(c)(1). Those regulations must "identify the best available procedures" to determine damages, taking into consideration "use value," among other factors. *Id.* § 9651(c)(2). The court appeared to assume that the "cultural component" of the Tribes' claims was a "lost use" and therefore a use value, App., *infra*, 15a, although the court acknowledged that the Tribes' claims also incorporated "nonuse or 'existence value,'" *id.* at 13a; *see id.* at 16a (the Tribes' claims include "both active and passive uses of injured natural resources bearing cultural significance").

a. Section 9651 does not authorize the Tribes' claims. For starters, the Ninth Circuit trained its attention on the wrong place. Section 9607 governs "Liability" and is part of a subchapter titled "Hazardous Substances Releases, Liability, Compensation." By contrast, Section 9651 covers "Reports and studies"

and is part of another subchapter titled “Miscellaneous Provisions.” So the more relevant provisions here—and the place the court of appeals should have focused—are in the “liability” section, not the miscellaneous “reports” section. *See Dubin v. United States*, 599 U.S. 110, 120-121 (2023) (deeming headings permissible tools of interpretation). By grounding its holding in a far-flung miscellaneous provision, the Ninth Circuit paid “too little heed to the main provisions governing” liability and “too much” to an ancillary one. *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 587 U.S. 370, 383 (2019). It “would be rather bizarre to read a provision” that governs reports and studies in a subchapter “entitled ‘[m]iscellaneous’” as authorizing a sweeping new category of natural-resource damages for subjective harms. *Monsanto Co. v. Durnell*, 609 U.S. \_\_\_, 2026 WL 1825691, at \*11 (U.S. June 25, 2026); *see Sackett v. EPA*, 598 U.S. 651, 677 (2023) (explaining that it “would be odd indeed if Congress had tucked an important expansion to the reach” of a statute “into convoluted language in a relatively obscure provision”).

b. In any event, Section 9651 confirms rather than undercuts the statute’s focus on objective replacement and use values.

First, Section 9651 enumerates specific measurements of damages—“replacement value, use value, and ability of the ecosystem or resource to recover”—but omits nonuse value. 42 U.S.C. § 9651(c)(2). That is a strong indicator that nonuse values like the cultural connections here are not covered. *See Esteras v. United States*, 606 U.S. 185, 195 (2025) (applying the “well-established canon” that “expressing one item of

an associated group or series excludes another left unmentioned”) (quotation marks and alterations omitted).

The court of appeals reasoned that Congress did not “specify the types of approved ‘uses,’” so it saw “no reason why” even “passive uses of injured natural resources bearing cultural significance” would fall outside CERCLA’s scope. App., *infra*, 14a, 16a. But “passive use[]” of a resource for its “cultural significance” is a classic *nonuse* value. Indeed, the court recognized that at least some of the Tribes’ claims—the \$525 million lump sum for cultural disconnection, as well as the alternative \$114 million request for measures such as cultural buildings and language programs—reflect “nonuse” value. *Id.* at 13a.<sup>2</sup> Yet the court never acknowledged that Section 9651, whether it cabins “use” values or not, conspicuously omits any mention of nonuse values.

Second, Section 9651 repeatedly ties damages assessments to objective measurements. For example,

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<sup>2</sup> Elsewhere, the court of appeals appeared to assume that cultural connection itself is a use value. App., *infra*, 13a-15a. That is wrong. “[U]se value” is a term of art that, before CERCLA’s passage, meant the “value established by the usefulness of an object” rather than its market price. *Value*, Black’s Law Dictionary 1392 (5th ed. 1979). By contrast, “nonuse values,” such as the value someone might place on the enjoyment of appreciating and preserving endangered species, operate “independent of any kind of observable use.” Freeman, *The Measurement of Environmental and Resource Values: Theory and Methods* at 13 (distinguishing “use values” from “nonuse values”). Put differently, a use is something a person does with a resource, not something a person perceives about the resource. Most or all of the Tribes’ solo claims are unequivocally based on the latter. See 4 C.A. S.E.R. 883-884, 887-889, 894.

Congress required assessment procedures to include objective “simplified assessments requiring minimal field observation”—an impossibility for subjective cultural-disconnection injuries. 42 U.S.C. § 9651(c)(2). Moreover, the two other “factor[s]” that assessment procedures must consider along with “use value”—“replacement value” and “ability of the ecosystem or resource to recover,” *ibid.*—involve objective measurements to put a dollar figure on an injured resource. *E.g., Associates Com. Corp. v. Rash*, 520 U.S. 953, 959 n.2 (1997) (“replacement value” in bankruptcy context is the price paid to “obtain property of like age and condition”). Reading “use value” as freestanding authority for an unbounded category of subjective, intangible “cultural disconnection” injuries based on the *existence* of a resource, App., *infra*, 31a, gives that term “a meaning so broad that it is inconsistent with its accompanying words,” *Gustafson v. Alloyd Co.*, 513 U.S. 561, 575 (1995).

### **B. CERCLA’s Structure Confirms Its Plain Text.**

The panel’s authorization of unbounded, subjective felt-loss damages also conflicts with CERCLA’s overarching structure. In particular, two features of the statutory scheme—its imposition of strict liability and its waiver of sovereign immunity—require construing the scope of permissible damages narrowly, not broadly.

1. CERCLA’s broad *liability* scope necessitates a narrower *damages* scope. CERCLA imposes “strict liability,” *Burlington*, 556 U.S. at 608, on “virtually all persons likely to incur cleanup costs,” “even parties not responsible for contamination,” *Atlantic Rsch. Corp.*,

551 U.S. at 136. Congress did not pair that near-automatic liability with damages for an unbounded category of felt harms.

In other contexts, this Court has narrowly construed damages provisions in strict-liability regimes. For example, when a treaty subjected international air carriers “to strict liability” for “injuries sustained on flights connected with the United States,” this Court refused to impose that strict liability “for purely mental distress” or “purely psychic injury” absent “convincing evidence” in the text. *Eastern Airlines, Inc. v. Floyd*, 499 U.S. 530, 551-552 (1991). Likewise, when a statute subjected securities sellers to strict liability, this Court declined to extend such liability to the “unpredictably defined” class of anyone whose “participation in the buy-sell transaction” was a substantial factor in causing it. *Pinter v. Dahl*, 486 U.S. 622, 648, 652 (1988). Here, the panel’s rule invites the same “uncertainty” those decisions rejected: strict liability for subjective and perception-based losses, with no objective measure and no clear stopping point. *Id.* at 652.

For similar reasons, the Ninth Circuit’s interpretation raises constitutional questions that a narrower reading avoids. Due process requires providing “fair notice” to regulated parties of the “severity” of damages they may face. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 417 (2003) (punitive damages). But the “freewheeling,” “open-ended” valuation of harm contemplated by the Ninth Circuit provides no meaningful notice. *Sackett*, 598 U.S. at 681 (narrowly construing Clean Water Act). Coupled with a defendant’s strict liability, this expansion of authority for CERCLA damages awards would raise at least “serious constitutional questions.” *Texas Dep’t of Hous. &*

*Cnty. Affairs v. Inclusive Cmtys. Project, Inc.*, 576 U.S. 519, 540 (2015); *cf. Atlantic Richfield*, 590 U.S. at 39 (Gorsuch, J., concurring in part and dissenting in part) (explaining that expansive interpretation of CERCLA would raise “constitutional questions”).

2. CERCLA’s broad class of defendants makes it especially implausible that Congress authorized unbounded, subjective liability. CERCLA makes government defendants, including the United States, liable for natural-resource damages on the same terms as private entities. 42 U.S.C. § 9607(a)(4)(C) (“any person” may be liable); *see id.* § 9601(21) (“person” includes the United States, States, and municipalities); *id.* § 9620(a)(1) (United States is liable “in the same manner and to the same extent” as a private party). And Congress does not usually subject governments to open-ended liability for subjective harms. *See, e.g., FAA v. Cooper*, 566 U.S. 284, 304 (2012) (holding that the Privacy Act’s authorization of “actual damages” does not “authorize an award of damages for mental or emotional distress” against the federal government). The Ninth Circuit’s expansive reading, however, threatens to expose the United States and other governments to that kind of uncabined liability.

The decision below thus implicates the United States’s interests as both a CERCLA plaintiff (as trustee) and defendant (as a potentially responsible party). In the waning days of the previous Administration, the United States filed a panel-stage amicus brief supporting the Tribes. C.A. Dkt. 22 (Dec. 12, 2024). The panel proceeded to adopt the government’s interpretation of CERCLA. *Compare id.* at 12-15 (discussing 42 U.S.C. § 9651, purpose, and legislative history), *with App., infra*, 14a-15a. After the change in Administrations, the

United States requested additional time to file an amicus brief concerning Teck’s petition for rehearing en banc, but did not ultimately file such a brief. C.A. Dkt. 79, 82. Accordingly, the current Administration has not expressed its views on the merits of the question presented. Given that fact and the significance of the question for the United States’s own interests, at a minimum the Court should call for the views of the Solicitor General.

**C. History And Purpose Reinforce CERCLA’s Focus On Restoration And Replacement.**

The Ninth Circuit’s decision also clashes with CERCLA’s “legislative background” and purpose. *Arizona v. United States*, 567 U.S. 387, 405 (2012).

1. The “notion that [natural-resource damages] should be used to restore or replace the injured natural resource predates CERCLA.” *General Elec.*, 467 F.3d at 1247; *see, e.g.*, Restatement (Second) of Torts § 929(1)(a) (1979) (damages for harm to land may include market value, restoration costs, and value of lost use of land). In the “best example” of that principle, *General Elec.*, 467 F.3d at 1247, the First Circuit explained that natural-resource damages from an oil spill must be measured by the reasonable costs to “restore or rehabilitate the environment” to its “pre-existing condition” or, alternatively, to “‘acquir[e] resources to offset the loss.’” *Puerto Rico v. S.S. Zoe Colocotroni*, 628 F.2d 652, 675-676 (1st Cir. 1980). But that court rejected “a purely abstract recovery,” and cautioned against damages that “provide a windfall to the public treasury.” *Id.* at 676-677.

CERCLA carried forward that tradition and rejected proposals to broaden it. A failed Senate bill

would have authorized recovery for “loss due to personal injury,” though still excluding non-economic damages like “pain and suffering.” S. 1480, 96th Cong. (1979); S. Rep. No. 96-848 at 31, 96th Cong., 2d Sess. (July 11, 1980); *see Exxon Corp. v. Hunt*, 475 U.S. 355, 365 n.8 (1986); *CTS Corp.*, 573 U.S. at 4. Even that limited personal-injury bill “ran into opposition” for being too “far-reaching.” *Exxon*, 475 U.S. at 366-368. So its proponents settled for “far less.” 126 Cong. Rec. 30,934 (1980) (statement of Sen. Stafford). If the Congress that enacted CERCLA rejected personal-injury damages—let alone non-economic damages—out of hand, it is inconceivable that the same Congress would have blessed amorphous cultural damages. *See West Virginia v. EPA*, 597 U.S. 697, 731 (2022) (legislation that “‘Congress considered and rejected’” can inform statutory interpretation).

2. The court of appeals misunderstood CERCLA’s history and purpose. The panel voiced the policy concern that rejecting the Tribes’ claims would “fall short of ‘Congress’s intent’” to provide “full recovery of any damages to those persons harmed by the loss of natural resources.” App., *infra*, 15a-16a. But that was never Congress’s intent. The “primary, if not the sole, objective” of natural-resource damages is “environmental protection and preservation.” *General Elec.*, 467 F.3d at 1247 (quotation marks omitted). Accordingly, CERCLA speaks of damages for injuries to resources, not to persons. 42 U.S.C. § 9607(a)(4)(C), (f)(1); *see CTS Corp.*, 573 U.S. at 4 (“The Act provided a federal cause of action to recover costs of cleanup from culpable entities but not a federal cause of action for personal injury or property damage.”).

If anything, the Ninth Circuit’s decision will undermine CERCLA’s environmental goals. Massive and unpredictable settlements or judgments for subjective, felt losses will siphon finite funds away from actual remediation efforts. Businesses “do not have unlimited financial resources,” and “[s]ometimes the orange is squeezed dry.” *Pakootas v. Teck Cominco Metals, Ltd.*, 646 F.3d 1214, 1222 (9th Cir. 2011).

In any event, even if the panel’s policy view were accurate, it could not override the statutory text. As this Court has cautioned, CERCLA “does not provide a general cause of action for all harm caused by toxic contaminants.” *CTS Corp.*, 573 U.S. at 18. CERCLA serves important remedial goals, but “no legislation pursues its purposes at all costs.” *Rodriguez v. United States*, 480 U.S. 522, 525-526 (1987) (per curiam). Congress’s limits on natural-resource damages are as integral to the statutory design as the remedy itself.

## **II. THE DECISION BELOW WARRANTS REVIEW.**

This Court should grant review to correct the Ninth Circuit’s error. The courts of appeals are divided on the question presented: three courts have staked out three different positions on the scope of natural-resource damages under CERCLA. And the correct interpretation of a major federal environmental statute is exceptionally important to businesses across the country, as well as to governments that are sometimes plaintiffs and sometimes defendants.

### A. The Courts Of Appeals Are Divided Three Ways.

The Ninth, Tenth, and D.C. Circuits have advanced different interpretations of CERCLA's scope with respect to natural-resource damages.

1. As discussed above, the Ninth Circuit's basic thesis is that Congress "did not limit the types of recoverable natural resource damages." App., *infra*, 14a. So in the Ninth Circuit, natural-resource trustees may now sue for some constituents' felt losses of cultural connections to natural resources—including nonuse values, and highly subjective ones at that. *Id.* at 13a. As the Tribes' expert testified, the "measure of injury here is an individual's response to the river." 4 C.A. S.E.R. 883. That was good enough for the court of appeals, because it believed CERCLA provides "full recovery of *any* damages to *those persons harmed* by the loss of natural resources." App., *infra*, 15a-16a (emphases added).

2. The Tenth Circuit takes a different position. That court has held that the "*measure and use* of damages arising from the release of hazardous waste is restricted to accomplishing CERCLA's essential goals of restoration or replacement, while also allowing for damages due to interim loss of use." *General Elec.*, 467 F.3d at 1245 (emphasis in original). The court reasoned that "CERCLA's comprehensive [natural-resource damages] scheme" is limited to "the restoration, replacement, or acquisition of the equivalent of a contaminated natural resource." *Id.* at 1247.

Critically, while the Tenth Circuit allows interim-lost-use damages, any lost-use remedy "must be tailored to redress specific injury to the State's role as

trustee.” *General Elec.*, 467 F.3d at 1250 n.39. A governmental trustee thus may *not* recover “impairment of beneficial use” claims better left to individuals—or, indeed, any “personal or economic injury caused by the release of hazardous substances”—much less *nonuse* claims by individuals. *Id.* at 1246 n.34, 1250 n.39; *see Satsky v. Paramount Commc’ns, Inc.*, 7 F.3d 1464, 1470 (10th Cir. 1993) (“Claims for private damages are not recoverable under CERCLA.”).

The Tribes’ claims would fail in the Tenth Circuit. The Tribes do not seek to restore, replace, or acquire the equivalent of fly larvae or fish. Nor do they seek interim-lost-use damages tailored to some replacement cost between the release of hazardous substances and restoration of the resources. Instead, these claims turn on individual members’ “perceptions” of contamination and would “remain the same” even if the “contamination [were] not there.” 4 C.A. S.E.R. 883-884, 887-889, 894. A claim that rises or falls on how individuals feel about a resource is a personal-injury claim dressed in trustee’s clothing, or at best a subjective *nonuse* claim. Either way, CERCLA does not authorize it.

3. The D.C. Circuit stands somewhere between the Ninth and Tenth. The Ninth Circuit sought to align itself with the D.C. Circuit’s decision in *Ohio v. Dep’t of Interior*, 880 F.2d 432 (D.C. Cir. 1989); *see App., infra*, 16a. But the D.C. Circuit did not reach nearly as far as the decision below.

In *Ohio*, the D.C. Circuit reviewed Department of Interior regulations addressing natural-resource damages assessments. The court observed in a footnote that trustees may recognize “passive use” or

“nonuse” values among available methodologies to assess damages. 880 F.2d at 464, 476 n.77 (quotation marks omitted). That observation was unmoored from the statutory text. *See* pp. 17-22, *supra*. But even so, the court did not embrace *all* nonuse damages, including for subjective individual perceptions.

The *Ohio* footnote could not have gone that far, because circuit precedent says otherwise. The D.C. Circuit has explained that “CERCLA does not . . . allow public trustees to recover for damages to private property or other ‘purely private’ interests.” *National Ass’n of Mfrs. v. Dep’t of Interior*, 134 F.3d 1095, 1113 (D.C. Cir. 1998). As noted above, the Tribes’ damages claims turn entirely on private interests: some individual members’ “perceptions” of the river and their relationship with it. 4 C.A. S.E.R. 887-889.

### **B. The Question Presented Is Important.**

This Court’s review is also warranted because the question presented is exceptionally important. On that much, the parties agree. The Tribes, in seeking interlocutory appellate review, highlighted this question’s “importance” and its “implications . . . throughout the country.” Tribes Pet. 16, No. 24-4442 (9th Cir. July 18, 2024). The resolution of that question will mark the boundaries of a keystone federal environmental statute, will govern potentially massive financial liability, and could even have foreign-relations consequences.

1. Congress enacted CERCLA as a landmark “statutory scheme,” *Guam v. United States*, 593 U.S. 310, 312 (2021), to address a “serious” nationwide problem, *Atlantic Richfield*, 590 U.S. at 6. Given CERCLA’s legal and practical importance, this Court has repeatedly

granted certiorari to resolve questions about the statute's scope. See *Guam*, 593 U.S. 310; *Atlantic Richfield*, 590 U.S. 1; *CTS Corp.*, 573 U.S. 1; *Burlington*, 556 U.S. 599; *Atlantic Rich. Corp.*, 551 U.S. 128; *Key Tronic Corp. v. United States*, 511 U.S. 809 (1994). That includes cases without a circuit split. *Cooper Indus.*, 543 U.S. 157; see Amicus Br. of United States at 16, *id.*, 2003 WL 22977858 (U.S. Dec. 12, 2003) (describing lack of split and supporting certiorari).

The decision below, if left undisturbed, will prompt a flood of copycat claims. The Ninth Circuit's reasoning is not limited to tribes alone. It applies to all "natural resource trustees"—federal, state, and tribal. App., *infra*, 13a. It invites all those trustees to characterize their respective communities' perceptions and cultural associations as compensable "uses." And it offers no guidance to district courts on how they are supposed to measure or prioritize those subjective injuries.

CERCLA trustees have brought, and will continue to bring, many such claims. There are "tens of thousands of properties" affected by hazardous-waste releases. *Atlantic Richfield*, 590 U.S. at 19 n.7. The federal government alone brought and settled 273 CERCLA claims for natural-resource damages between 1989 and 2016. Karen Bradshaw, *Settling for Natural Resource Damages*, 40 Harv. Envt'l L. Rev. 211, 232, 235 (2016). "State and tribal trustees are pursuing claims more frequently" too. *Id.* at 225. Amici supporting the Tribes have emphasized that "there are many examples" of Indian tribes seeking damages for "injuries to their cultural uses of natural resources." Amicus Br. of Nez Perce Tribe et al. at 21, C.A. Dkt. 26. The scope of natural-resource-damages claims was

“increasingly important” two decades ago, *General Elec.*, 467 F.3d at 1244, and is even more important now.

The Ninth Circuit’s outsized role in CERCLA cases makes the decision below especially consequential. More than 74% of federal lands, including their abundant natural resources, are located within the Ninth Circuit. *See* Cong. Research Serv., *Federal Land Ownership: Overview and Data* 7-9 (Feb. 21, 2020), <https://www.congress.gov/crs-product/R42346>. And the “Ninth Circuit includes over 75 percent of the nation’s 574 Indian tribes.” Amicus Br. of the National Congress of American Indians et al. at 9, *United States v. Cooley*, 593 U.S. 345 (2021) (No. 19-1414). Absent review, the Ninth Circuit’s rule will govern most of the country’s trustees and defendants.

2. The financial stakes are enormous, in this case and in future CERCLA cases. As Teck’s experience illustrates, damages for subjective, felt losses can dwarf traditional natural-resource damages: Washington State and the Tribes seek a combined \$177 million, while the Tribes separately seek triple that—more than half a billion dollars—for culture-based claims. *See* pp. 9-12, *supra*. Those claims are resolved, in the view of the Tribes’ experts, only when tribal members’ “perceptions about the contamination” have dissipated. 4 C.A. S.E.R. 889.

Such extreme financial consequences will be felt far beyond this case. A subjective, culture-based multiplier threatens “*everyone* who is potentially responsible for hazardous-waste contamination,” *United States v. Bestfoods*, 524 U.S. 51, 56 n.1 (1998), including both private and public defendants.

For private industry, the decision magnifies settlement pressure across sectors. Potentially responsible parties have paid more than \$1 billion to the federal government to settle natural-resource damages claims under CERCLA. Bradshaw, *Settling for Natural Resource Damages*, 40 Harv. Envt'l L. Rev. at 235-236 (Figures 3-4). Authorizing damages for hard-to-predict subjective harms that dwarf traditional objective damages would ratchet up the pressure. As industry groups explained below, the panel's rule will have "profoundly disruptive" consequences "felt nationwide" for "all kinds of businesses, including manufacturing, transportation, real estate, waste management, and countless others." Amicus Br. of Nat'l Mining Ass'n et al. at 4, 6, 11, C.A. Dkt. 86.

The public sector is also exposed to increased liability. As noted above, the United States is "subject to" CERCLA's natural-resource-damages provisions "in the same manner and to the same extent" as "any non-governmental entity." 42 U.S.C. § 9620(a)(1). States and municipalities are also "persons" that may be liable under CERCLA. *Id.* §§ 9601, 9607. Tribal claims against the federal government, which operates numerous federal facilities for defense and energy production, are common and costly. *E.g.*, *General Elec.*, 467 F.3d at 1235 (suit against Air Force and Department of Energy); Catherine Foley et al., Indus. Econs., Inc., *A Review of Tribal Natural Resource Damage Settlements and Cases* 5 (Nov. 2, 2018), <https://perma.cc/38J7-HDU5>. To take one example, the federal government faces \$20.5 billion in natural-resource liability from its nuclear sites—and that was

before the Ninth Circuit's new felt-loss rule. Bradshaw, *Settling for Natural Resource Damages*, 40 Harv. Env'tl L. Rev. at 215 n.15.

3. The decision has foreign-policy implications, too. Foreign companies that do not operate in the United States—such as Teck, whose smelter is ten miles north of the Canadian border—can be held liable under CERCLA for a release of hazardous substances that reach the United States. Expanding CERCLA in unpredictable and undefined ways can confound our neighbors, complicate international relations, and chill international business. As the Province of British Columbia warned, the Ninth Circuit's opinion “threatens Canada's and British Columbia's sovereignty by exposing their citizens and British Columbia to large and unpredictable claims in American courts.” Amicus Br. of His Majesty the King in Right of the Province of British Columbia at 2, C.A. Dkt. 80.

Plus, the Ninth Circuit's rule “invites reciprocal litigation against American businesses” by foreign sovereigns with “grievances against polluters in the United States.” Amicus Br. of British Columbia at 14; Amicus Br. of Canadian Chamber of Commerce at 19, C.A. Dkt. 85. Before the Ninth Circuit's expansive interpretation of CERCLA prompts that kind of international escalation, this Court should decide whether it is correct.

### **III. THIS CASE IS AN EXCELLENT VEHICLE.**

This case is a clean vehicle for addressing this important question. The Ninth Circuit decided a single question of “statutory interpretation”: in its words, “whether § 9607(a)(4)(C) authorizes damages for the interim lost uses of injured natural resources in a case where the diminished uses have a cultural dimension.”

App., *infra*, 10a. The answer to that question will resolve all, or at minimum most, of the Tribes’ remaining solo claims. If Teck is correct, the Tribes will be “preclude[d]” from “proceeding to trial on its tribal-specific natural resource damages claims.” Tribes Pet. 14, No. 24-4442 (9th Cir. July 18, 2024). That question was fully ventilated by the parties, six amicus briefs, and a published panel decision “conclud[ing] that the Tribes’ damages claims are authorized under CERCLA.” App., *infra*, 17a. It is hard to create a cleaner vehicle than one where both parties are on record saying that the issue is important and case-dispositive, and where the district court and court of appeals granted certification for just that reason.

The Court is unlikely to encounter many future vehicles because the Ninth Circuit’s rule increases the settlement pressure that already keeps cases like this one from reaching trial or final judgment. *See* pp. 32-33, *supra*. “Settlements are the heart” of CERCLA, which provides incentives for parties to resolve cases by agreement rather than litigation. *Atlantic Richfield*, 590 U.S. at 22. Unsurprisingly, “nearly all”—more than 95%—of natural-resource-damages claims settle. Bradshaw, *Settling for Natural Resource Damages*, 40 Harv. Envt’l L. Rev. at 223. The last CERCLA natural-resource-damages trial of which Teck is aware occurred in 2001, and the defendant settled before the damages phase of the case concluded. *Coeur d’Alene Tribe v. Asarco Inc.*, 280 F. Supp. 2d 1094, 1119 (D. Idaho 2003); *see ASARCO, LLC v. Union Pac. R.R. Co.*, 765 F.3d 999, 1002 (9th Cir. 2014).

Settlement pressure will only intensify if the Ninth Circuit’s decision is left undisturbed because plaintiffs’

valuations of their claims will rise ever higher. If review is denied, other CERCLA defendants are unlikely to litigate long enough for the question to reach this Court after a final judgment. And now that the Ninth Circuit has decided the question, the certification path that Teck took here is probably off the table. So if certiorari is denied now, the question may never return—at least not this cleanly.

This case’s interlocutory posture is no reason to deny review. This Court routinely grants review where, as here, the district court’s order was certified for interlocutory appeal under 28 U.S.C. § 1292(b). *See, e.g., Guam*, 593 U.S. 310 (CERCLA); *Warner Chappell Music, Inc. v. Nealy*, 601 U.S. 366, 370 (2024); *Digital Realty Tr., Inc. v. Somers*, 583 U.S. 149, 159 (2018). If anything, the certification posture highlights that there are no relevant factual disputes here. To the contrary, the Ninth Circuit held that it was “error” to “dismiss the Tribes’ claims as a matter of law by characterizing the claims as unauthorized under CERCLA.” App., *infra*, 16a-17a; *see id.* at 18a (holding that the Tribes’ claims are not “excluded as a matter of law”). This Court can and should decide that clean legal question now.

**CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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