

No. 25A1263

IN THE
SUPREME COURT OF THE UNITED STATES

TECK COMINCO METALS, LTD.,

Applicant,

v.

THE CONFEDERATED TRIBES OF THE COLVILLE RESERVATION,

Respondent.

**[REFILED WITH COMPLETE CASE NUMBER] OPPOSITION TO
APPLICATION FOR EXTENSION OF TIME WITHIN WHICH TO
FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

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TO THE HONORABLE ELENA KAGAN, ASSOCIATE JUSTICE OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE NINTH CIRCUIT:

In this extended litigation, Appellant, Teck Cominco Metals, Ltd., has resolutely sought to avoid responsibility for the consequences of its disposal of its smelter wastes by dumping ten million tons of slag and effluent into the Upper Columbia River. See decision below, *Confederated Tribes of the Colville Rsrv. v. Teck Cominco Metals Ltd*, 153 F.4th 947 (9th Cir. 2025) Teck's promised petition for writ of certiorari will be its third petition to this Court in this case. The prior petitions were denied in 2008 and 2012. *Teck Cominco Metals, Ltd. v. Pakootas*, 552 U.S. 1095, 128 S. Ct. 858, 169 L. Ed. 2d 722 (2008); *Pakootas v. Teck Cominco Metals, Ltd.*, 646 F.3d 1214 (9th Cir. 2011), *cert. denied sub nom. Teck Cominco Metals, Ltd. v. Pakootas*, 568 U.S. 928 (2012).

The current petition will fare no better because the Ninth Circuit decision at issue, *Confederated Tribes of the Colville Rsrv. v. Teck Cominco Metals Ltd*, 153 F.4th 947 (9th Cir. 2025), aligns with prior Ninth Circuit decisions authorizing recovery lost use damages under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C §9601 *et. seq.*, see *Alaska Sport Fishing Ass'n v. Exxon Corp.*, 34 F.3d 769, 772 (9th Cir. 1994), as well as the decision of the D.C. Circuit in *State of Ohio v. U.S. Dep't of the Interior*, framing the scope of recoverable lost uses, see 880 F.2d 432, 454 (D.C. Cir. 1989). *New Mexico v. Gen. Elec.*

Co., 467 F. 3d 1223, 1247 (10th Cir. 2006), the case Teck cited for an alleged circuit split, did not engage the relevant analysis of the scope of lost use in this case or in *State of Ohio v. U.S. Dep't of the Interior*, 880 F.2d 432, 454 (D.C. Cir. 1989).¹ And, the panel considered and its opinion is consistent with the views of the United States expressed in an amicus brief filed in this action. *Brief of the United States as Amicus Curiae, Confederated Tribes of the Colville Rsrv. v. Teck Cominco Metals Ltd.*, No. 24-5565, ECF No. 22 (9th Cir.); *Confederated Tribes of the Colville Rsrv. v. Teck Cominco Metals Ltd.*, 153 F.4th 947 (9th Cir. 2025).²

Delay in proceedings in this case is not warranted and will be harmful to the parties. Teck's promised petition will seek interlocutory review of a summary judgment order that is part of a larger case that is ready for trial. Both the Colville Tribes and the State of Washington have substantial claims for ecological injury and recreational fishing losses that have been delayed by Teck's requests for review. Teck did not ask the Ninth Circuit to stay of the return of the mandate, authorized by Fed R. App. P. 41(d) on a showing of good cause, pending its promised petition to this

¹ The Tenth Circuit's opinion endorsed the lost use damages remedy at issue here, and, indeed, cited *State of Ohio* in aid of its analysis. The Court instead was concerned with ultimate use of damages. Such a concern is premature, at best, because trial of this case will determine the damages and resulting restoration measures. Teck also cited *Nat'l Ass'n of Mfrs. V. Dep't of Interior*, 134 F. 3d 1095,113 (D.C. Cir. 1998). This case is similarly off point because it concerned litigation of private interests while this case concerns claims of governmental entities authorized by CERCLA. 42 U.S.C §9607. The scope of those remedies will be determined at trial.

² Teck's Application mentioned concerns about cross-boundary contamination and related international-comity concerns, without noting that it raised this issue in its first petition for writ of certiorari in this case and lost.

Court, but informed the trial court of its intentions to file this petition and the trial court advised that it will await decision on Teck's petition before setting a trial date.

Teck has had ample time to prepare its petition since the Ninth Circuit opinion issued on September 3, 2025. *Confederated Tribes of the Colville Rsrv. v. Teck Cominco Metals Ltd*, 153 F.4th 947 (9th Cir. 2025). Its unsuccessful petition for *en banc* review on which it received no favorable votes was denied on February 26, 2026. In effect, the *en banc* motion has given Teck more than eight months to prepare its petition to this Court.

No extension should be granted, but if an extension is granted it should not exceed thirty (30) days.

Respectfully submitted,

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May 19, 2026