

No. 26-130

IN THE
Supreme Court of the United States

TECK METALS LTD.,

Petitioner,

v.

THE CONFEDERATED TRIBES OF THE COLVILLE
RESERVATION,

Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit**

BRIEF IN OPPOSITION

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QUESTION PRESENTED

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. § 9601 *et seq.*, allows the United States, any State, or any Indian tribe to recover damages for “injury to, destruction of, or loss of natural resources.” 42 U.S.C. § 9607(f)(1). “The measure of damages” under that provision “shall not be limited by the sums which can be used to restore or replace such resources.” *Id.* “[S]uch damages . . . shall take into consideration factors including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover.” *Id.* § 9651(c)(2).

The question presented is whether CERCLA prohibits recovery for lost-use value of injured natural resources when the use has a cultural component.

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BRIEF IN OPPOSITION

INTRODUCTION

For the third time, Teck Metals seeks to obtain this Court’s review of an interlocutory decision in this long-running Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) case. This Court denied both prior requests for certiorari. *See Teck Metals Ltd. v. Confederated Tribes of the Colville Rsrv.*, 587 U.S. 1051 (2019); *Teck Cominco Metals, Ltd. v. Pakootas*, 552 U.S. 1095 (2008). For a multitude of reasons, this petition warrants the same fate.

To start, there is no circuit split on the question Teck frames: “whether CERCLA authorizes damages

for the felt loss of a cultural connection to natural resources.” Pet. I. In holding that CERCLA authorizes natural resource damages without excluding cultural components of harm, the court of appeals aligned with decisions from other circuits holding that CERCLA compensates for all lost uses of damaged natural resources. Nothing in those decisions conflicts with the decision below—indeed, this is the first appellate case in which a defendant has attempted to carve compensation for cultural uses out of CERCLA.

But the problems get worse from there, because Teck fails to identify any error in—or even to accurately characterize—the decision below. The court of appeals uncontroversially determined, in line with its sister circuits and with Department of Interior regulations dating back to the Reagan Administration, that CERCLA compensates for *all* lost uses of a natural resource when that resource is affected by hazardous wastes. And contrary to Teck’s assertion, the court did not endorse the availability of “damages for the felt loss of a cultural connection to natural resources.” Instead, the court held only that CERCLA does not categorically bar recovery of natural resource damages with a cultural component. Teck’s gloss about “felt loss” puts the cart before the horse, complaining about methods of proof that remain to be tested at trial.

For many of the same reasons, this case is neither important enough for the Court’s review nor an appropriate vehicle for consideration of the question presented. This is the first appellate decision to address a defendant’s claim that a Tribe’s recovery of natural resource damages must exclude compensation for lost cultural uses. And it is premature to conclude that the Tribes here will even obtain such lost-use damages;

trial will determine the extent of the Tribes' recovery. Even assuming that this CERCLA question is certworthy at all, the Court should await final judgment.

STATEMENT OF THE CASE

A. Statutory and Regulatory Background

1. CERCLA “establishes a complex statutory scheme for responding to certain environmental hazards.” *Guam v. United States*, 593 U.S. 310, 312 (2021); *see generally* 42 U.S.C. § 9601 *et seq.* As relevant here, CERCLA imposes liability on owners and operators of facilities that dispose of hazardous substances. 42 U.S.C. § 9607(a)(1)-(2); *see id.* § 9601(9), (14). It extends that liability to entities that transport hazardous substances or arrange for their disposal. *Id.* § 9607(a)(3)-(4).

CERCLA makes available several categories of damages once liability is established. Liable entities must cover “all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe,” 42 U.S.C. § 9607(a)(4)(A), thus “impos[ing] the costs of the cleanup on those responsible for the contamination,” *Pennsylvania v. Union Gas Co.*, 491 U.S. 1, 7 (1989). CERCLA also provides for “damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release.” 42 U.S.C. § 9607(a)(4)(C). The statute defines “natural resources” to mean resources “belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States . . . , any State or local government, any foreign government, any Indian tribe or, if such resources are subject to a trust restriction on alienation, any member of an

Indian tribe.” *Id.* § 9601(16). The category of damages permitted by Section 9607(a)(4)(C) is known as “natural resource damages.”

Not any plaintiff can seek natural resources damages. When CERCLA was first enacted, only the United States or a State could do so. CERCLA, Pub. L. No. 96-510, § 107(f), 94 Stat. 2767, 2783 (1980). In 1986, Congress amended the statute to also permit Indian Tribes to seek damages for injuries to “natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation.” Superfund Amendments and Re-Authorization Act of 1986 (SARA), Pub. L. No. 99-499, § 207(c), 100 Stat. 1613, 1705.

The statute also speaks to the proper measure of natural resource damages. It provides that “[t]he measure of damages in any action under [the natural-resource-damages provision] shall not be limited by the sums which can be used to restore or replace such resources.” 42 U.S.C. § 9607(f)(1). At the same time, it specifies that the United States and States may “use” recovered sums “only to restore, replace, or acquire the equivalent of such natural resources.” *Id.* There is no parallel limitation for Indian Tribes.

2. CERCLA directs the President to issue “[r]egulations respecting assessment of damages to natural resources.” 42 U.S.C. § 9651(c). Congress instructed that those regulations should, *inter alia*, “establish[] measures of damages.” *Id.* § 9651(c)(2). It elaborated that “[s]uch regulations shall identify the best available procedures to determine such damages, including

both direct and indirect injury, destruction, or loss and shall take into consideration factors including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover.” *Id.* President Reagan delegated the development of those regulations to the Department of Interior. Exec. Order No. 12,316, § 8(c)(3), 46 Fed. Reg. 42,237, 42,240 (Aug. 20, 1981).

The Interior Department first promulgated its regulations in 1986 and later revised those regulations in 1994 and 2008. Natural Resource Damages for Hazardous Substances, 73 Fed. Reg. 57,259 (Oct. 2, 2008); Natural Resource Damage Assessments, 59 Fed. Reg. 14,262 (Mar. 25, 1994); Natural Resource Damage Assessments, 51 Fed. Reg. 27,674 (Aug. 1, 1986). The revisions came following a D.C. Circuit decision that vacated a portion of the regulations on the ground that “natural resources have values that are not fully captured by the market system,” *Ohio v. U.S. Dep’t of Interior*, 880 F.2d 432, 462-63 (D.C. Cir. 1989), and thus held that Interior’s initial methods for calculating “use value” were based “on an incorrect reading of the statute,” *id.* at 464.

Today, the relevant regulation provides that natural resource damages should “compensate the public for the loss in services provided by the injured resources between the time of the discharge or release and the time the resources are fully returned to their baseline conditions, or until the resources are replaced and/or equivalent natural resources are acquired.” 43 C.F.R. § 11.83(c)(1). It further states that “[t]he compensable value can include the economic value of lost services provided by the injured resources, including both public use and nonuse values such as existence

and bequest values.” *Id.* The regulation provides for a number of methodologies “to estimate appropriate compensation for lost services,” including “stated preference method[s]” that ask individuals how they value natural resources. *Id.* § 11.83(c)(2)(vii)-(viii).

B. The Present Controversy

1. Respondent Confederated Colville Tribes is a federally recognized Indian Nation that consists of twelve individual Tribes but functions as a single entity. Pet. App. 6a. Since “time immemorial,” the Colvilles have lived on the banks of the Upper Columbia River, which “forms the eastern and southern boundary of the Colville Reservation and holds great cultural significance to the Tribes.” *Id.* Located in Washington State, the Upper Columbia River is bounded to the north by the Canada-U.S. border and to the south by the Grand Coulee Dam. *Id.*

Petitioner Teck Metals Ltd. is a Canadian mining company. Pet. App. 6a. From 1930 to 1995, Teck’s lead smelter discharged nearly 10 million tons of slag directly into the Columbia River, which it used as a “‘free’ and ‘convenient disposal facility.’” *Pakootas v. Teck Cominco Metals, Ltd.*, 905 F.3d 565, 578 (9th Cir. 2018); see Pet. App. 6a. The slag “contained 7,300 tons of lead and 255,000 tons of zinc.” Pet. App. 6a. And “[i]n addition to slag, Teck also discharged untold gallons of contaminated effluent directly into the Columbia River”—effluent that “contained about . . . 108,000 tons of zinc, 22,000 tons of lead, 200 tons of mercury, 1,700 tons of cadmium, and 270 tons of arsenic.” *Id.*

Those wastes flowed downstream, where they settled in the sediment. *See id.* at 6a-7a.¹

The Tribes “historically depended on the River’s plentiful fish for their survival and gave the River a central role in their cultural traditions.” *Pakootas*, 905 F.3d at 572. The Tribes’ “[c]ultural use activities include[d] fishing, participation in ‘sweats,’ and other ceremonial interactions with” the river. 3 C.A. S.E.R. 667. But because of Teck’s discharges, “[w]hat was once the lifeblood of the Tribes[] now became a toxic dumping ground, impacting the relationship the Tribe had with the river.” Pet. App. 6a-7a. The toxic materials discharged into the river led to “reduced river use due to the mercury-based fish advisories issued over the years.” *Id.* at 12a-13a. They also caused the Tribes’ members other harms, relating to the “lost use of an uncontaminated river” and the “lost use of the injured natural resources for cultural purposes.” *Id.* at 12a.

2. This litigation began in 2004, when two Tribal members sued Teck under a different CERCLA

¹ Teck presents a rosier picture, claiming that the EPA has “confirmed” that the river is “safe for recreation” and the water is “extremely clean.” Pet. 8. But in the very same sentence, Teck’s cited source notes the exclusion of a beach with “soils [that] contain lead in concentrations that pose potential risks to residents.” EPA, *Upper Columbia River Superfund Site* (June 5, 2026), <https://perma.cc/R8TD-EZAT>. And that source also links to a study that names nine “chemicals of concern,” including “arsenic” and “mercury,” still present in the river’s sediment that “present unacceptable risk” to “plants, invertebrates, birds, and mammals,” EPA, *Final Baseline Ecological Risk Assessment for Upland Terrestrial Habitat: Upper Columbia River Site, Stevens County, Washington* at ES-8 to ES-10 (Dec. 15, 2023), <https://perma.cc/JJU2-FCMA>.

provision, 42 U.S.C. § 9659(a)(1). Pet. App. 7a. The State of Washington intervened in the Tribal members' suit, and Teck then moved to dismiss, arguing, *inter alia*, that CERCLA could not be applied to a Canadian smelter. The district court denied the motion, and the Ninth Circuit affirmed on an interlocutory appeal, reasoning that "applying CERCLA here to the release of hazardous substances . . . is a domestic, rather than an extraterritorial application of CERCLA" because "the suit concerns actual or threatened releases of heavy metals and other hazardous substances into the Upper Columbia River Site within the United States." *Pakootas v. Teck Cominco Metals, Ltd.*, 452 F.3d 1066, 1079, 1082 (9th Cir. 2006). This Court denied certiorari. *Teck Cominco Metals, Ltd. v. Pakootas*, 552 U.S. 1095 (2008).

While the district court's decision was on appeal, the Tribes joined the suit as plaintiffs, and they and the State of Washington added natural-resource-damages claims as CERCLA trustees. After appellate review of the denial of Teck's motion to dismiss had concluded, the district court divided the case into three phases to determine: "(1) whether Teck was liable as a potentially responsible party; (2) Teck's liability for response (i.e., cleanup) costs; and (3) Teck's liability for natural resource damages." Pet. App. 7a.

The district court began by conducting a trial on the first question, and it concluded that Teck was liable under CERCLA as an "arranger" of hazardous materials. See 42 U.S.C. § 9607(a)(3). Before the second phase began, the State settled its response-cost claims with Teck, so the second-phase trial concerned only Teck's response-cost liability to the Tribes. Pet. App. 7a. After trial, the district court awarded

approximately \$8.25 million in response costs to the Tribes. *Id.* Teck then appealed the district court’s judgment as to both of the first two phases, the Ninth Circuit again affirmed, *Pakootas*, 905 F.3d at 596, and this Court again denied certiorari, *Teck Metals Ltd. v. Confederated Tribes of the Colville Reservation*, 587 U.S. 1051 (2019).

3. a. This petition concerns the third and final phase of this case: “Teck’s liability for damages to natural resources.” Pet. App. 7a. This phase involves two categories of claims. First, the State and the Tribes “brought joint claims for natural resource damages based on injury to benthic organisms in the river sediment and elevated mercury levels in fish, including claims for damages for the public’s lost use of those natural resources.” *Id.* at 7a-8a. Those damages claims, which include claims based on the recreational value of fishing in the river, are not at issue in Teck’s petition. *See id.* at 8a.

In addition, “the Tribes also separately seek natural resource damages for their interim lost uses of the injured natural resources that are specific to their members because of their unique relationship with the Upper Columbia River.” Pet. App. 8a. The Tribes’ experts proposed three valuations of those natural resource damages: (1) “reduced tribal fishing trips due to state-issued advisories concerning unsafe mercury levels in fish”; (2) “the interim lost use of an uncontaminated river”; and (3) “the interim lost use of the injured natural resources for cultural purposes.” *Id.* The “second and third categories of damages are alternative approaches to damages.” *Id.* at 8a n.1.

For the first valuation, the Tribes' expert began with "well-developed and widely accepted methodologies" used to "identif[y] the negative impacts of [Fish Consumption Advisories] on recreational anglers." 3 C.A. E.R. 561. The expert then applied "an adjusted diminished trip value" based on considerations specific to the Tribes—for example, the role "harvested fish or wildlife" played in "traditional events and ceremonies"; the Tribes' "close proximity to" the river, which would "be expected to increase the service losses" from "natural resource injuries"; and the Tribes' rights to the river "afforded by Executive Order" and "not held in common with the general public." 3 C.A. E.R. 561-62.

The Tribes' second and third valuations proposed alternative methods to assess the interim lost use of the river for purposes unique to the Tribes and in addition to fishing. The second valuation used a "stated preference survey" that informed Tribal members that "metals (such as arsenic, cadmium, copper, lead, mercury, and zinc)" were present "along the banks" and at the "bottom of the river," and asked them to choose between "[a] sediment removal program" that would restore the river and "an alternative" of "land acquisition" that could "approximate in-kind compensation." 4 C.A. E.R. 601-04. Damages would be measured based on the value of the land the Tribes would vote to forgo in exchange for restoration. The third valuation assessed the Tribes' "cultural services lost as a result of contamination" as the "the cost to implement and operate" programs that could "offset ongoing harm." 3 C.A. E.R. 330 (emphasis omitted). Those programs involve "monitoring of hazardous substances," "[r]emoving and replacing contaminated sand" and slag-

contaminated sediment, acquisition of land to “improve cultural connection and enable additional river use,” and construction of a “longhouse” and operation of “cultural programs” to “replace aspects of lost cultural services.” *Id.* at 331-33.

b. The district court granted partial summary judgment for Teck on the entirety of the Tribes’ separate natural-resource-damages claims. Pet. App. 29a-34a. The court accepted Teck’s mischaracterization of the Tribes’ claims as seeking damages for injury to “cultural resources.” *Id.* at 33a. And the court observed that “natural resources have been categorized into the following five groups: Surface water resources, ground water resources, air resources, geologic resources, and biological resources.” *Id.* (quoting 43 C.F.R. § 11.14(z) (emphasis omitted)). Because that list does not include “cultural resources,” the court concluded that the Tribes could not pursue their separate damages claims. *Id.*

The Tribes moved for reconsideration, explaining that they did not seek damages for “cultural resources” but rather for quintessential natural resources—like fish—that hold importance in the Tribes’ culture. Pet. App. 26a-27a. The district court denied reconsideration. *Id.* at 27a. But because it recognized that aspects of its analysis were in “conflict” with the D.C. Circuit’s decision in *Ohio*, the court certified its order for interlocutory review. *Id.* at 23a.

c. The court of appeals granted interlocutory review and reversed. Pet. App. 1a-19a.

The court began its analysis by explaining that CERCLA permits damages for “interim lost use.” Pet. App. 14a. The court grounded that conclusion in

Section 9607(f)(1), which explicitly declares that natural resource damages “shall not be limited by the sums which can be used to restore or replace natural resources.” Pet. App. 13a. It also relied on the CERCLA provision that directs the President to issue regulations measuring natural resource damages through the “use value” of the resource. *Id.* (quoting 42 U.S.C. § 9651(c)(2)).

Having decided that “CERCLA authorizes damages for lost use of injured natural resources,” the court next considered whether CERCLA imposes a different rule “in cases where the lost uses have a cultural dimension.” Pet. App. 14a. The court saw nothing in “CERCLA’s text” to “limit the types of recoverable natural resource damages, nor [to] specify the types of approved ‘uses.’” *Id.* (citing 42 U.S.C. §§ 9607(f)(1), 9651(c)(2)). To the contrary, the court concluded that the “ordinary meaning” of the statutory term “use value” includes “lost uses that have a cultural component.” *Id.* at 14a-15a.

The court bolstered that conclusion by looking to CERCLA as a whole. The court explained “that Congress aimed at providing full recovery of any damages to those persons harmed by the loss of natural resources.” Pet. App. 15a-16a. “To do that,” the court emphasized, “damages occasioned by lost human activities must be considered.” *Id.* at 16a. Accordingly, “[r]eading in new limitations to CERCLA’s natural resource damages provisions” would “fall short of ‘Congress’s intent to permit recovery for the full damages resulting from a release.’” *Id.* at 15a (quoting *Nat’l Ass’n of Mfrs. v. U.S. Dep’t of Interior*, 134 F.3d 1095, 1112 (D.C. Cir. 1998) (alterations omitted)).

Finally, the court explained that “[t]he D.C. Circuit’s opinion in *State of Ohio*” also “supports [its] holding that CERCLA authorizes damages for the lost use of injured natural resources including where the lost use has a cultural component.” Pet. App. 16a. As the court observed, *Ohio* holds that CERCLA “authorizes lost use claims based on reliably calculated values that reflect utility derived by humans from a resource.” *Id.* (internal quotation marks omitted) (quoting *Ohio*, 880 F.2d at 463-64). Those values can include “both active and passive values of injured natural resources bearing cultural significance.” *Id.*

The court concluded: “Whether the Tribes can prevail on their damages claims will include questions about methodology[,] . . . but these factual issues can only be properly determined after trial and full consideration of the evidence, including expert testimony.” Pet. App. 16a. “The fact issues not yet determined require a trial, not a summary judgment.” *Id.* at 17a.

d. The court of appeals denied Teck’s petition for rehearing en banc. Pet. App. 35a-36a. No judge requested a vote on the petition. *Id.* at 36a.

ARGUMENT

The court of appeals correctly held that CERCLA does not categorically exclude natural resource damages that take into account cultural use of a natural resource. That holding does not conflict with the decision of any other court of appeals—indeed, Teck appears to be the first polluter to argue before an appellate court that CERCLA has a cultural-use carveout. And while Teck complains about the proposed methods of calculating the Tribes’ natural resource damages, its complaints are neither sufficiently important

for the Court’s review nor properly raised in this interlocutory posture. The petition should be denied.

A. There Is No Circuit Split on the Question Presented.

Teck’s question presented asks “whether CERCLA authorizes damages for the felt loss of a cultural connection to natural resources.” Pet. I. Teck identifies no other court of appeals decision that has ever addressed or resolved that question—much less in a way that conflicts with the Ninth Circuit’s decision below. Pet. App. 5a-6a. Instead, Teck cites decisions from the D.C. and Tenth Circuits that address separate questions about the scope of natural resource damages under CERCLA. Both of those decisions—like the decision below—conclude that “interim lost use value” is recoverable under CERCLA. *Ohio v. U.S. Dep’t of Interior*, 880 F.2d 432, 448 (D.C. Cir. 1989); see *New Mexico v. General Elec. Co.*, 467 F.3d 1223, 1245 (10th Cir. 2006). And neither implies that some uses of resources in the public trust should be categorically non-compensable. Those courts’ reasoning is therefore fully consistent with the Ninth Circuit’s reasoning here.

1. The D.C. Circuit’s decision in *Ohio* bolsters the decision below—which is why the Ninth Circuit expressly agreed with *Ohio*’s analysis, Pet. App. 16a. In *Ohio*, the D.C. Circuit invalidated Interior regulations that “establish[ed] a rigid hierarchy of permissible methods for determining ‘use values,’ limiting recovery to the price commanded by the resource on the open market.” 880 F.2d at 462. The court explained that Interior’s “decision to limit the role of non-consumptive values, such as option and existence values, in the calculation of use values rests on an erroneous

construction of the statute.” *Id.* at 464; *see id.* at 476 n.77. While acknowledging that such values “may represent ‘passive’ use,” the court emphasized that “they nonetheless reflect utility derived by humans from a resource, and thus, *prima facie*, ought to be included in a damage assessment.” *Id.* at 464. And the court remanded for Interior to “consider a rule that would permit trustees to derive use values for natural resources by summing up all reliably calculated use values, however measured.” *Id.* That reasoning “supports [the Ninth Circuit’s] holding that CERCLA authorizes damages for the lost use of injured natural resources including where the lost use has a cultural component.” Pet. App. 16a.

Teck observes that the D.C. Circuit “did not embrace *all*” interim-lost-use damages, including damages with a cultural dimension. Pet. 30. But *Ohio* had no occasion to decide whether CERCLA permits interim-lost-use damages with a cultural component because no such damages were at issue in that case. In any event, the court’s reasoning confirms that such damages are recoverable. As noted, the court emphasized that lost-use damages “include[]” “[o]ption and existence values” that “reflect utility derived by humans from a resource.” *Ohio*, 880 F.2d at 464. And it affirmed an “approach[] to use valuation” that “involves a series of interviews with individuals for the purpose of ascertaining the values they respectively attach to particular changes in particular resources.” *Id.* at 475. Those statements make clear that the D.C. Circuit viewed interim-lost-use damages broadly and would not have arbitrarily excluded damages with a cultural component.

Teck also asserts that *Ohio* “could not have” endorsed the same understanding as the Ninth Circuit, Pet. 30, because the D.C. Circuit has stated that “CERCLA does not . . . allow public trustees to recover for damages to private property or other ‘purely private’ interests,” *Nat’l Ass’n of Mfrs. v. U.S. Dep’t of Interior*, 134 F.3d 1095, 1113 (D.C. Cir. 1998) (quoting *Ohio*, 880 F.2d at 460). But that reference to purely private interests does not relate to use damages with a cultural component. Instead, it addresses “resources under purely private ownership.” *Ohio*, 880 F.2d at 460; see 42 U.S.C. § 9601(16) (defining natural resources to include only resources “belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by” a government). And Teck does not (and could not) contend that the Columbia River or its fish and wildlife are resources under purely private ownership.

2. Teck fares no better in arguing that the Ninth and Tenth Circuits are “[d]ivided.” Pet. 28 (emphasis omitted). Like the D.C. Circuit, the Tenth Circuit in *General Electric* never addressed the availability of interim-lost-use damages with a cultural component; indeed, the opinion does not involve a plaintiff’s attempt to obtain CERCLA damages at all. See 467 F.3d at 1252. So Teck has no sound basis for asserting that “[t]he Tribes’ claims would fail in the Tenth Circuit.” Pet. 29.

Rather than relying on the holding of *General Electric*, Teck rests on two footnotes in that decision. See Pet. 29 (citing 467 F.3d at 1246 n.34, 1250 n.39). Neither footnote conflicts with the Ninth Circuit’s reasoning below. First, *General Electric* observes that CERCLA “provides no private right of action for personal or economic injury caused by the release of hazardous

substances.” 467 F.3d at 1246 n.34. But the Tribes do not invoke a private right of action. Instead, they invoke CERCLA’s cause of action allowing the United States, States, and Tribes, acting as trustees, to seek “damages for injury to, destruction of, or loss of natural resources.” 42 U.S.C. § 9607(a)(4)(C). Thus, the issue here is not the right to sue, but the measure of damages.

Second, *General Electric* explains that while a State (or Tribe) is “entitled to recover for all interim loss-of-use damages,” such a remedy “must be tailored to redress specific injury to the State’s role as trustee, *i.e.*, its role of making water available for appropriation and beneficial use by water rights holders.” 467 F.3d at 1250 n.39. And *General Electric* emphasizes that “[c]laims of impairment of beneficial use are better left to water rights holders whose uses are impaired.” *Id.* Those statements have nothing to do with the question presented here. Rather, they simply reaffirm the point from *Ohio* that CERCLA generally “excludes” damages to “purely private resources.” 880 F.2d at 460. Because “[c]laims of impairment of beneficial use by water rights holders” relate to purely private interests in water, a State cannot recover damages based on injuries to those interests. *Gen. Elec.*, 467 F.3d at 1250 n.39. But as noted above, Teck has no basis to claim that the resources at issue here are purely private.

B. The Decision Below Is Correct.

The court of appeals correctly rejected Teck’s extra-textual limitation on damages to compensate for the harm Teck caused to the Upper Columbia River.

1. *CERCLA provides for damages to compensate for lost uses of a natural resource, including lost uses with a cultural component.*

a. As every court of appeals to consider the question has held, CERCLA permits a plaintiff to obtain damages for “interim loss of use” of a natural resource. *Gen. Elec.*, 467 F.3d at 1245; *see Ohio*, 880 F.2d at 448; *Alaska Sport Fishing Ass’n v. Exxon Corp.*, 34 F.3d 769, 772 (9th Cir. 1994) (per curiam); Pet. App. 8a & n.2. Thus, a plaintiff may recover damages for lost use of a resource prior to that resource being restored or replaced through environmental remediation. That conclusion follows directly from three CERCLA provisions.

First, Section 9607(a)(4)(C) makes available “damages for injury to, destruction of, or loss of natural resources.” As a matter of ordinary meaning, “damages for . . . loss of natural resources” encompasses damages for past loss of use due to the degradation of the resource.

Second, Section 9607(f)(1) states that “[t]he measure of damages in any action under subparagraph (C) of subsection (a) shall not be limited by the sums which can be used to restore or replace such resources.” As the Tenth Circuit explained, that clause ensures that “the total amount of damages includes the costs of restoration and the value of all the lost uses of the damaged resources from the time of the release up to the time of restoration.” *Gen. Elec.*, 467 F.3d at 1245 (alterations omitted); *see Ohio*, 880 F.2d at 448 (“[T]he measure of damages must not only be sufficient to cover the intended restoration or replacement uses . . . but may in some cases exceed restoration cost by

incorporating interim lost use value as well.”); Pet. App. 13a-14a (similar).

Third, Section 9651(c), titled “[r]egulations respecting assessment of damages to natural resources,” instructs the Executive Branch to issue regulations to measure natural resource damages. Those regulations must “take into consideration factors including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover.” As the D.C. Circuit has noted, that language plainly directs that “use value” should be considered in measuring natural resource damages. *Ohio*, 880 F.2d at 443-44 & n.7, 463-64.

b. As all courts of appeals have also concluded, a CERCLA plaintiff “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”—regardless what form those interim-lost-use damages take. *Gen. Elec.*, 467 F.3d at 1250 n.39; see *Ohio*, 880 F.2d at 462-65; Pet. App. 14a-15a.

Some uses of natural resources are consumptive. For example, “imagine a hazardous substance spill that kills a rookery of fur seals.” *Ohio*, 880 F.2d at 442. The “market value of the fur seals’ pelts” would be a form of interim-lost-use damages. *Id.*

But other uses of natural resources are “non-consumptive.” *Ohio*, 880 F.2d at 464. Some “utility derived by humans from a resource” does not depend on consuming the resource, *id.*—for example, Americans have “recreational interests in the national forests,” *Summers v. Earth Island Inst.*, 555 U.S. 488, 494 (2009). If a national forest were unavailable for recreation due to the discharge of hazardous waste,

CERCLA would compensate for that interim loss of public use.² After the Deepwater Horizon oil spill, for instance, natural resource damages were measured in part based on the public’s lost use of damaged coastline for “boating, fishing, going to the beach, and generally using and enjoying the Gulf’s environment.” Fla. Tr. Implementation Grp., *Deepwater Horizon Oil Spill Phase V.2 Florida Coastal Access Project: Final Restoration Plan and Supplemental Environmental Assessment* 2-1 (Feb. 2018), <https://perma.cc/PY2M-GYRL>.

As particularly relevant to Indian Tribes, some uses of natural resources are cultural. Many Tribes incorporate natural resources into their religious and spiritual traditions: As Justice Gorsuch recently explained, for example, a Western Apache ceremony “requires the Apache girl coming of age to gather certain plants from Oak Flat—plants Apaches believe to have the ‘spirit of Chí’chil Bildagoteel.’” *Apache Stronghold v. United States*, 145 S. Ct. 1480, 1481 (2025) (Gorsuch, J., joined by Thomas, J., dissenting from the denial of certiorari); see also, e.g., *Washington v. Wash. State Com. Passenger Fishing Vessel Ass’n*, 443 U.S. 658, 664-65 (1979) (describing how Tribes in the Pacific Northwest “share[] a vital and unifying dependence” on anadromous fish and have long performed

² Contrary to Teck’s suggestion, the damages measure in this hypothetical would not be based solely on “the fees that a government might lose.” Pet. 4. As the D.C. Circuit explained in *Ohio*, valuing natural resources based on fees “is quite obviously and totally fallacious” because “there is no necessary connection between the total value to the public of a park and the fees charged as admission, which typically are set not to maximize profits but rather to encourage the public to visit the park.” 880 F.2d at 463.

“[r]eligious rites . . . to insure the continual return” of those fish). If hazardous wastes destroyed the plants used by the Western Apache for the Tribe’s rituals, the Tribe could recover based on all “utility derived” from that lost “resource,” including its economic, recreational, spiritual, and cultural components. *Ohio*, 880 F.2d at 464.

c. The Executive Branch’s implementing regulations have consistently recognized that all forms of interim lost use are compensable under CERCLA. In regulations dating back to the Reagan Administration, Interior has made clear that “compensable value can include the economic value of lost services provided by the injured resources, including both public use and nonuse values such as existence and bequest values.” 43 C.F.R. § 11.83(c)(1); *see Ohio*, 880 F.2d at 464, 475-76 & nn.72-73 (defining “existence value” and explaining its role in Interior’s regulations). Interior has further specified that methods for calculating use value include “measure[ments of] the recreational or other experience lost with the affected resources.” 43 C.F.R. § 11.83(c)(2)(vi).

Interior has also expressly stated that CERCLA makes available natural resource damages based on lost cultural uses. When updating the regulations during the George W. Bush Administration, Interior specifically observed that “[c]ultural, religious, and ceremonial losses that [a]rise from the destruction of or injury to natural resources continue to be cognizable.” Natural Resource Damages for Hazardous Substances, 73 Fed. Reg. 57,259, 57,264 (Oct. 2, 2008). By stating that such damages “continue” to be available, Interior made clear that both CERCLA’s text and Interior’s longstanding regulations allow for cultural-use

damages. Where, as here, an “Executive Branch interpretation was issued roughly contemporaneously with enactment of the statute and remained consistent over time,” that interpretation “is entitled to very great respect.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024) (quoting *Edwards’ Lessee v. Darby*, 25 U.S. (12 Wheat.) 206, 210 (1827)).

2. *Teck’s contrary arguments defy the statutory text.*

a. Although Teck spends most of its petition on the merits, *see* Pet 16-27, it never grapples with (or even mentions) CERCLA’s critical language: “The measure of damages in any action . . . shall not be limited by the sums which can be used to restore or replace such resources.” 42 U.S.C. § 9607(f)(1). Teck’s omission is particularly notable because that text was core to the court of appeals’ analysis. Pet. App. 13a-14a. So although Teck criticizes the court for “pa[ying] too little heed to the main provisions governing liability,” Pet. 20 (internal quotation marks and citation omitted), that criticism is more properly lodged against Teck itself.

Rather than addressing CERCLA’s language about the “measure of damages,” Teck relies heavily (at 16-18) on language stating that “[s]ums recovered by the United States Government” or a State “as trustee under this subsection 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). But that language governs how natural resource damages are to be spent by the United States or a State; it

says nothing about Tribes.³ And even as to the trustees it covers, it does not specify the proper *amount* of natural resource damages. Thus, the statute’s use restrictions shine no light on the proper measure of CERCLA damages in a suit brought by a Tribe.

Teck also errs when critiquing (at 19-20) the court of appeals’ reliance on Section 9651, which instructs the Executive Branch to “take into consideration factors including, but not limited to . . . use value.” 42 U.S.C. § 9651(c)(2). Teck’s primary objection is that Section 9651 is titled “Reports and studies” and is part of a subchapter called “Miscellaneous Provisions.” Pet. 19-20. But the title of the relevant *subsection*—“Regulations respecting assessment of damages to natural resources”—specifically addresses how to

³ Teck misstates the record in claiming that the “Tribes correctly agreed that they are similarly ‘bound to use any recovery as required by’ th[e] limit” on States and the United States. Pet. 7 n.1 (quoting C.A. Reply Br. 23 (Dkt. 54)). In fact, Teck’s reply brief below said that “the Colvilles will be bound to use any recovery as required by law”—not that they will use any recovery under the same restrictions as other entities named in the statute. C.A. Reply Br. 23. And Teck’s argument based on an apparent inconsistency between the Statutes at Large and the U.S. Code likewise collapses upon inspection. It is true that, in enacting SARA’s CERCLA amendments, Congress “added ‘or the Indian tribe’ to the end of [a] provision” in CERCLA. Pet. 7 n.1. But in the same enactment, Congress deleted that provision of CERCLA and replaced it with the two current sentences, which do not mention Tribes. SARA, Pub. L. No. 99-499, § 107(d)(2), 100 Stat. at 1630 (“Section 107(f)(1) of CERCLA . . . is amended by striking out the third sentence . . .”). So the resulting statute does not have any language limiting Tribes’ use of recovered natural resource damages. “[I]f that omission was inadvertent, the remedy l[ies] with the legislature.” Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 97 (2012).

assess damages to natural resources. And in any event, “the title of a statute and the heading of a section cannot limit the plain meaning of the text.” *Brotherhood of R.R. Trainmen v. Baltimore & Ohio R. Co.*, 331 U.S. 519, 528-29 (1947). By its terms, Section 9651 makes clear that “use value” must be considered in the calculation of natural resource damages—which is why the D.C. Circuit has relied on that language when determining the scope of natural resource damages, *see supra* at 19. Nothing in the title or placement of the language alters that plain meaning.

b. Recognizing the weakness of its broad objections to interim-lost-use damages, Teck ultimately acknowledges that CERCLA “might also allow . . . damages for the inability to use a resource during the intervening period of time between the injury and restoration.” Pet. 17. But Teck then goes astray again, insisting that the court of appeals erred in permitting interim-lost-use damages based on harms that are supposedly “felt,” “subjective,” or “intangible.” *Id.* at 17-18.

Teck’s list of adjectives distracts from the question at issue in this case. The court of appeals held only that “interim lost uses of injured natural resources” can “have a cultural component.” Pet. App. 18a. The court did not address how to measure that cultural component—or whether particular forms of measurement are unduly “subjective.” Instead, such questions will be decided on remand and are not properly before the Court at this juncture.

Notably, some cultural-use components can be measured objectively: For example, if a Tribe could acquire plants used in cultural ceremonies on the open

market, then destruction of those plants on Tribal land could be measured in purely economic terms. And correspondingly, some non-cultural uses of resources are valued subjectively. For example, Washington and the Tribes jointly pursue natural resource damages because their citizens were unable to engage in recreational fishing due to Teck's pollution. Pet. App. 8a. Valuing that recreational use will require surveys and studies about the experience of the fishing trip, not market prices of fish or guides—but Teck has never argued that those joint damages are unavailable under CERCLA. So Teck's disparaging labels bear no logical connection to the “cultural component” question that the Ninth Circuit resolved.

On the actual question at issue, Teck offers no sound justification for artificially excluding interim-lost-use damages with a cultural component. As explained above, interim-lost-use valuation captures both consumptive and “non-consumptive” use, allowing for losses that cannot be determined solely through “market prices.” *Ohio*, 880 F.2d at 463-64; *see supra* at 19-21. Often, calculating the value of a use requires assessing “how individuals feel about a resource,” Pet. 29, which is why Interior's regulations explicitly approve of “[c]ontingent valuation” methodologies that use surveys to “elicit an individual's economic valuation of a natural resource,” 43 C.F.R. § 11.83(c)(2)(vii).

As the D.C. Circuit recognized, a contrary rule would disserve CERCLA's goal “to capture fully all aspects of loss.” *Ohio*, 880 F.2d at 463. “From the bald eagle to the blue whale and snail darter, natural resources have values that are not fully captured by the market system.” *Id.* at 462-63. Teck may believe that the Tribes' use of natural resources for religious,

cultural, and spiritual purposes is a second-class use relative to purely economic or even recreational uses. *See* Pet. 12. But nothing in CERCLA codifies Teck’s preferred “hierarchy of use values.” *Ohio*, 880 F.2d at 464.

Nor does Teck advance its case by describing non-consumptive uses of a natural resource as “nonuse values” or “passive use[s].” Pet. 19, 21. “Passive uses” *are* uses; traveling to the Grand Canyon to admire its beauty is just as much of a use of a natural resource as fishing in the Colorado River below. As Teck’s own primary authority explains, there is no principled “distinction between use or nonuse values”—rather, there are only “values that can be estimated with revealed preference data” and “those that cannot.” A. Myrick Freeman III et al., *The Measurement of Environmental and Resource Values: Theories and Methods* 114 (3d ed. 2014). And the same source says that valuing an ecosystem’s services involves consideration of “cultural services” that provide benefits through “spiritual enrichment” and “aesthetic experience.” *Id.* at 424-25.

To be sure, Teck correctly notes that CERCLA damages should be neither “unbounded” nor “uncabined.” Pet. 24. Indeed, CERCLA limits plaintiffs to “accurate and credible damage assessment methodologies.” *Ohio*, 880 F.2d at 463 (citation omitted). Interior’s regulations list such methodologies, *see* 43 C.F.R. § 11.83(c)(2), while also allowing plaintiffs to come forward with “[o]ther methodologies that measure compensable value in accordance with the public’s willingness to pay for the lost service,” *id.* § 11.83(c)(3). And for any such methodology to be introduced at trial through expert testimony, it must be “reliable” and grounded in appropriate “methods and procedures.”

Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579, 589-90 (1993). So if Teck is correct that there is “no objective measure” of the Tribes’ damages, Pet. 23, it can seek to exclude the Tribes’ experts’ analyses on remand.

But the question presented at this stage is unrelated to damage-assessment methodologies. Instead, the Ninth Circuit decided only whether “CERCLA authorizes damages for the interim lost use of natural resources when the lost use has a cultural component.” Pet. App 18a. And in that decision, the court appropriately said nothing about whether and how such damages are to be measured at trial. Those case-specific issues should be decided by the trial court on remand, not by this Court in the first instance.

Regardless, Teck’s attacks on the Tribes’ damages assessments lack merit. Teck largely ignores the Tribes’ first assessment—based on the Tribes’ inability to fish because of mercury advisories—other than to characterize it as “a culture-based premium separate from any lost uses of fish.” Pet. 19. But it follows that Tribes whose culture is built around a river might lose considerable utility from being unable to fish in that river. In any event, the enhanced value the Tribes’ expert attributed to use of the river was based on a combination of factors, some of which, like the Tribe’s proximity to the river, have nothing to do with “culture.” *See supra* at 9-11.

Teck’s characterization of the Tribes’ second damages assessment as “a \$525 million lump-sum” to remedy “feelings of ‘cultural disconnection’” is likewise inaccurate. Pet. 18. This assessment—like all of the Tribes’ assessments—is based on “service losses”

resulting from “hazardous releases to the Upper Columbia River,” not cultural disconnection. 4 C.A. E.R. 598. And the Tribes’ experts’ methodology made no particular allowance for cultural harms—the “stated preference” valuation method they employed is approved by federal regulations and has frequently been used “to estimate appropriate compensation for lost services” in the face of catastrophic interim-lost-use harms. 43 C.F.R. § 11.83(c)(2)(viii); *see* Richard C. Bishop et al., *Putting a Value on Injuries to Natural Assets: The BP Oil Spill*, 356 Science 253, 253-54 (2017) (describing use of stated-preference methodology to value harms from Exxon Valdez and Deepwater Horizon oil spills). Moreover, the Tribes’ expert did not propose an absolute \$525 million figure—the lower bound he proposed was less than a third that amount. 4 C.A. E.R. 611 (describing “lower bound mean” of “\$165 million”).

Finally, the Tribes’ third alternative valuation is based on the loss of “[c]ultural use activities” like “fishing, participation in ‘sweats,’ and other ceremonial interactions with” the river, as well as value “derived independent of any direct use.” 3 C.A. E.R. 324. But although Teck attacks the programs the Tribes’ expert estimates could restore those losses, Interior’s regulations explicitly permit estimating the cost of repairing the damage. *See* 43 C.F.R. § 11.83(c)(2)(ix)-(xi). Indeed, it is a “traditional principle[]” of “remedies law” to “place the victim of a legal wrong . . . in the position that person would have occupied if the wrong had not occurred.” *Babb v. Wilkie*, 589 U.S. 399, 413-14 (2020) (citation omitted).

c. The remainder of Teck’s analysis is untethered to any statutory language or interpretive principle.

Teck claims (without citation) that “CERCLA’s broad *liability* scope necessitates a narrower *damages* scope.” Pet. 22. That is a policy argument for Congress, not a rule of statutory interpretation. The same is true of Teck’s objection that damages should be limited because “government defendants” are “liable for natural-resource damages on the same terms as private entities.” *Id.* at 24. And Teck’s insistence that the Ninth Circuit’s interpretation “raises constitutional questions” is also incorrect. *Id.* at 23. Outside of the punitive-damages context, the Court has never limited damage awards on constitutional grounds, *see State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 416 (2003) (distinguishing compensatory and punitive damages), and any theoretical constitutional problem would arise in the context of a specific damages award, not with respect to cultural-use damages generally.

Teck’s arguments based on “legislative background” are equally unavailing. Pet. 25 (citation omitted). The failed legislation that Teck cites related to private party suits to recover for “injury to . . . real or personal property” and “out-of-pocket medical expenses,” not natural resource damages. S. Rep. No. 96-848, at 32 (1979) (discussing S. 1480 (1979)); *see* Pet. 26. And Teck never mentions that Congress has considered and rejected proposals to amend CERCLA to exclude “lost use and nonuse damages, including contingent valuation methodology”—which Teck now argues CERCLA never included in the first place. *Superfund Reauthorization: Hearings Before the Subcomm. on Water Res. & Env’t of the H. Comm. on Transp. & Infrastructure* 729 (104th Cong. July 11, 1995) (statement of Kevin L. McKnight, Manager,

Env't Remediation Projects, Aluminium Co. of Am.); see H.R. 3000, § 406 (105th Cong. 1997) (unenacted). That is the much more relevant statutory change that “Congress considered and rejected.” Pet. 26 (quoting *West Virginia v. EPA*, 597 U.S. 697, 731 (2022)).

C. The Question Presented Does Not Warrant Certiorari.

Contrary to Teck’s contention (at 30-34), the question presented is not sufficiently important to warrant this Court’s review.

Teck cannot claim that its question presented is a recurring issue in the courts of appeals. Teck cites no prior appellate decision—and the Tribes are aware of none—discussing the exclusion of cultural components from natural resource damages. And Teck points to no CERCLA case where this Court has granted certiorari after only a single three-judge panel has weighed in. See Pet. 31; cf. *Cooper Indus., Inc. v. Aviall Servs., Inc.*, 543 U.S. 157, 164 n.4 (2004) (granting certiorari after four courts of appeals had considered the issue). At a minimum, therefore, further percolation is warranted.

Nor is there reason to expect that the decision below will prompt “a flood of copycat claims.” Pet. 31. Cultural considerations have played a role in the valuation of Tribes’ natural resource damages for decades. See *id.* (citing examples). Although Teck describes the Tribes’ “theory of natural-resource damages” as “novel” and “pioneered” by one of the Tribes’ experts, *id.* at 11, that expert only measured the value of cultural-use losses, as opposed to determining their existence in the first place, 3 C.A. E.R. 374-75 (describing inadequacy of “financial compensation” as an “acceptable substitute” for “cultural restoration”). In any

event, if more courts eventually consider CERCLA’s applicability to damages with cultural components, then their decisions will ventilate this issue. Until then, this Court’s review would be premature.⁴

Even if the question presented were significant in the abstract, the interlocutory posture undercuts its importance in the context of this case. As explained above, the court of appeals held only that CERCLA does not categorically preclude cultural-use damages. Whether the Tribes can establish such damages here—and in what amount—remain open questions that will be resolved on remand. While Teck complains that the decision below “offers no guidance to district courts on how they are supposed to measure” cultural-use theories of loss, Pet. 31, that is because the measurement question has not yet arisen in this case. Until that question is answered, Teck’s assertions of “extreme financial consequences” are speculative. *Id.* at 32.

Teck’s remaining importance arguments land even farther from the mark. While Teck complains that “[p]otentially responsible parties have paid more than \$1 billion to the federal government to settle natural-resource damages claims under CERCLA,” it does not specify what portion—if any—of those settlements

⁴ The fact that the Tribes sought and obtained interlocutory appeal under 28 U.S.C. § 1292(b) does not suggest that certiorari is warranted. *Contra* Pet. 30. Plainly, not every Section 1292(b) appeal produces a decision worthy of this Court’s review. And Teck’s petition to the Ninth Circuit stressed that the district court’s “restricted reading of recoverable tribal service losses is inconsistent with established practices in CERCLA claims across the country.” C.A. Dkt. 1, at 16, No. 24-4442 (9th Cir.). By reversing that decision, the Ninth Circuit restored the status quo.

involved claims for lost cultural uses of natural resources. Pet. 33. While Teck frets that the decision below will leave “[t]he public sector . . . exposed to increased liability,” it cites no case where a Tribe has ever obtained natural resource damages with a cultural component against a public defendant. *Id.* And while Teck raises the specter of “international escalation” and “foreign-policy” issues, those concerns bear no relationship to the question presented. *Id.* at 34. Teck’s contrary argument reiterates its objections to the Ninth Circuit’s prior holdings that Teck’s Canadian discharges into an American river create CERCLA liability. This Court twice denied certiorari on that question, and Teck does not present it here. *See supra* at 7-9.

Finally, the Court should not indulge Teck’s request (at 5, 25) to call for the views of the Solicitor General. As Teck admits (at 24), the United States submitted a brief in the court of appeals supporting the Tribes’ position. And as Teck acknowledges (at 25), the United States considered filing a brief at the rehearing stage but declined to do so. Particularly given that the court of appeals’ holding is consistent with Interior’s regulations—which this Administration has not proposed to change—there is no cause to seek the federal government’s renewed input. *See supra* at 21-22.

D. This Case Is an Inappropriate Vehicle.

Even if the question presented otherwise warranted this Court’s review, this case presents an inappropriate vehicle.

Most fundamentally, Teck’s petition is premature because this case has not proceeded to trial and final

judgment. No natural resource damages have yet been awarded against Teck, and Teck’s central arguments—including its focus on “felt,” “subjective” loss—go to whether the Tribes will be able to substantiate their damages claims at trial. *See supra* at 26-28. If Teck’s criticisms of the Tribes’ evidence have merit, it may well prevail at trial—thus eliminating the need to decide this question presented.⁵

Teck’s own filings in this action identify additional problems with interlocutory review. In opposing Section 1292(b) review in the court of appeals, Teck stated that it intends to raise arguments “based on standing, limitations, and ripeness” “in any appeal from the final judgment.” C.A. Dkt. 4, at 8, No. 24-4442 (9th Cir.). “If Teck is right on any of those issues, then there should never have been a trial in the first place.” *Id.* Thus, Teck puts the point well: “The order at issue can and should be appealed in the ordinary course after Plaintiffs’ [natural resource damages] claims are tried, along with the other issues preserved for appeal in this case.” *Id.* at 21.

In response, Teck suggests that it may face “settlement pressure” if the Court denies its petition. Pet. 35. But Teck has been litigating this case since 2004 without settling—indeed, in seeking rehearing below, Teck suggested that the company intended to “withstand” any “settlement pressures.” C.A. Dkt. 76, at 5.

⁵ Teck errs in asserting that *Guam* supports review in this “interlocutory posture.” Pet. 36. There, the court of appeals “reverse[d] the district court’s denial of the United States’ motion to dismiss and remand[ed] with instructions to dismiss the complaint.” *Guam v. United States*, 950 F.3d 104, 118 (D.C. Cir. 2020). Had the Court denied certiorari in *Guam*, unlike here, there would have been no further chance for review.

It is therefore unlikely that Teck will abandon its defense 22 years into this litigation.

In addition, granting this petition and delaying trial would prejudice the State of Washington as well as the respondent Tribes. The trial court has made clear that it “[d]oes not intend to schedule a trial until the appellate issues are done.” D. Ct. Dkt. 3003, at 1; *see* Pet. App. 23a (“This Court is concerned that this matter could fragment into multiple trials.”). So granting certiorari now could well delay recovery by the citizens of Washington—as well as the citizens of the Tribes—for the natural resource damages that Teck does not contest in this petition.

This petition is an unsuitable vehicle for yet one more reason. Teck stakes its merits argument on Section 9607(f)(1)’s statement that natural resource damages must be used “only to restore, replace, or acquire the equivalent of” the injured resources. But as noted above, *see supra* at 23 & n.3, that statutory language does not apply to Tribes at all. Teck’s merits argument thus depends on reading a limitation into Section 9607(f)(1) that is nowhere in the text. And neither the Ninth Circuit nor any other court of appeals has addressed Teck’s novel argument to extra-textually expand the use restriction’s application to Tribes. This Court should not grant a petition whose central statutory argument rests on a flawed (and at minimum contestable) premise with which no court of appeals has yet grappled.

CONCLUSION

The Court should deny the petition.

Respectfully submitted,

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