

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 AMICUS CURIAE OF
PACIFIC LEGAL FOUNDATION
IN SUPPORT OF PETITIONER**

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QUESTION PRESENTED

Whether CERCLA authorizes damages for the felt loss of a cultural connection to natural resources.

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IDENTITY AND INTEREST OF AMICUS CURIAE¹

Founded in 1973, Amicus Curiae Pacific Legal Foundation (“PLF”) is the nation’s leading public interest legal organization that advocates for limited government, property rights, and the separation of powers, particularly when overreaching environmental regulation threatens these principles. Accordingly, PLF attorneys have been counsel of record in many cases addressing the intersection of property rights and environmental protection.²

INTRODUCTION AND SUMMARY OF ARGUMENT

In its decision below, the Ninth Circuit blessed Respondent’s attempt to use the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”)’s provisions allowing government entities to seek damages from polluters to fund environmental restoration projects as a way to obtain a

¹ Pursuant to Rule 37.2, Amicus Curiae provided timely notice to all parties by emailing all counsel of record. Pursuant to Rule 37.6, Amicus Curiae affirms that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amicus Curiae, their members, or their counsel made a monetary contribution to its preparation or submission.

² See *Sackett v. EPA*, 598 U.S. 651 (2023) (representing private landowners in a challenge to the EPA’s regulation of property under the Clean Water Act lacking a direct surface connection to waters of the United States); *N.M. Cattle Growers’ Ass’n v. U.S. Fish & Wildlife Serv.*, 148 F.4th 755 (D.C. Cir. 2025) (representing ranchers in a challenge to the United States Fish and Wildlife Service’s denial of a petition to delist the southwestern willow flycatcher on taxonomic grounds).

general windfall for vague and unquantifiable injuries to their members’ “unique relationship” with the Columbia River. *See* Pet. at 3. This award of “cultural resource” damages is untethered from restoration or replacement costs, or from interim loss of economic value of the use of the damaged natural resources. What’s more, it is also untethered from both the plain text of CERCLA and what existing precedent exists on the issue.

The Petition at issue concerns an important question of federal law that implicates the Constitution and has divided the Circuit Courts of Appeal. Furthermore, the Ninth Circuit’s decision, if allowed to stand, will have nationwide consequences that demand this Court’s immediate attention.

ARGUMENT

I. This Case Presents A Matter Of Substantial National Importance

a. The Ninth Circuit’s Decision Is Inconsistent With The Text And History Of CERCLA And Represents A Significant Breach With Precedent

A reasonable examination of CERCLA’s plain text, especially when read within the statute’s broader statutory context, does not support the availability of cultural resource damages of the sort Respondent seeks.

i. The Ninth Circuit’s decision is inconsistent with CERCLA’s plain text and statutory context

CERCLA was enacted by Congress in 1980 “to provide for liability, compensation, cleanup, and emergency response for hazardous substances released into

the environment and the cleanup of inactive hazardous waste disposal sites.” CERCLA, Pub. L. No. 96–510, 94 Stat. 2767 (Dec. 11, 1980), *as amended by* Pub. L. No. 115–141, 132 Stat. 348 (Mar. 23, 2018). The statute serves two primary purposes: to ensure mitigation and remediation of environment damaged by hazardous substances released by a particular entity or entities, and to provide adequate compensation to individuals for the economic harm suffered as a result of said environmental damages. *See Burlington N. & Santa Fe Ry. Co. v. United States*, 556 U.S. 599, 602 (2009) (explaining that CERCLA was enacted “in response to the serious environmental and health risks posed by industrial pollution,” and “designed to promote the timely cleanup of hazardous waste sites and to ensure that the costs of such cleanup efforts were borne by those responsible for the contamination.”) (internal quotation omitted).

CERCLA’s remedial component serves primarily as a mechanism to incentivize trustees like Respondent to take on some of the burden of enforcement that would otherwise fall on the federal government, which is apparent from CERCLA’s strict rule that damages may only be used for environmental remediation purposes. Natural resource damages under CERCLA are not standard compensatory damages as ordinarily available in a tort action. *See* 42 U.S.C. § 9607(f)(1). They are *certainly* not private damages to assuage subjective pain and suffering.

CERCLA states that the United States, the states, and the Indian tribes may sue as natural-resource trustees to recover damages from liable parties whose releases of hazardous substances caused “injury to, destruction of, or loss of natural resources” “belonging to, managed by, controlled by, or appertaining to” the

respective sovereign. 42 U.S.C. § 9607(a)(4)(C), (f)(1). CERCLA damages are available for “use only to restore, replace, or acquire the equivalent of such natural resources,” *id.* § 9607(f)(1), defined as “land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources.” *Id.* § 9601(16). The statute makes no mention whatsoever of culture, religion, spirituality, historical significance, or any other similarly intangible value.

The Ninth Circuit accepted the argument below that the Tribes were not seeking redress for injury to some inchoate cultural resources, but ordinary damages for harm done to their natural resources as defined in section 9607(f)(1). *See* Pet. App. at 12a-18a. Under this theory, the relief Respondent seeks is not “cultural resource[s] damages,” so much as damages to the use value of their natural resources, such as are commonly granted by courts in cases where a competitive market for the resources does not exist for a market-based valuation to be based on. *Id.* at 18a. This mistakes, however, both the nature of the “natural resources” protected under CERCLA and the existing precedent on use-value.

The damaged natural resources Respondent is entitled to receive compensation for are defined within CERCLA itself, which provides a bounded list of specific physical resources the statute applies to. *See* 42 U.S.C. § 9607(f)(1). While such a list is not exhaustive, it is also not open-ended and includes inherent limitations to its application. Under the *noscitur a sociis* canon of statutory construction, “a word is ‘given more precise content by the neighboring words with which it is associated.’” *Fischer v. United States*, 603 U.S. 480, 487 (2024) (quoting *United States v. Williams*, 553 U.S. 285, 294 (2008)). The closely related

ejusdem generis canon counsels that, when a specific, itemized list is followed by a general, “catch-all” phrase, the catch-all is interpreted to include only items that share the same characteristics as the listed items. *See Yates v. United States*, 574 U.S. 528, 545-46 (2015) (“[W]here general words follow specific words in a statutory enumeration, the general words are [usually] construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words.” (quoting *Wash. State Dep’t of Social & Health Servs. v. Guardianship Estate of Kefeler*, 537 U.S. 371, 384 (2003) (alterations in original))). Together, these canons help courts “avoid ascribing to one word a meaning so broad that it is inconsistent with” “the company it keeps.” *Fischer*, 603 U.S. at 487 (quoting *Gustafson v. Alloyd Co.*, 513 U.S. 561, 575 (1995)).

In *Yates*, this Court was asked to consider whether a fisherman throwing undersized fish overboard to evade government inspection had violated the Sarbanes-Oxley Act’s prohibition on the destruction or concealment of “any record, document, or tangible object with the intent to impede, obstruct, or influence” a federal investigation. 574 U.S. at 531 (quoting 18 U.S.C. § 1519). Invoking the *ejusdem generis* and *noscitur a sociis* canons, the Court held that it did not. *Id.* at 546-47. While the term “tangible object,” read in isolation, would generally include a fish, the term cannot be construed in a vacuum. In providing a list of illustrative examples, Congress must have intended a more limited interpretation—otherwise “it is hard to see why it would have needed to include the examples at all.” *Id.* at 545-46 (quoting *Begay v. United States*, 553 U.S. 137, 142 (2008)). “Tangible object,” when preceded by “records” and “documents,” and when

contained within a statute regulating financial transactions that is not otherwise concerned with the fishing (or any other) industry, does not reasonably encompass undersized fish.

Similarly, in *Fischer*, this Court was asked to consider whether Sarbanes-Oxley, which made it a crime to “alter[], destroy[], mutilate[], or conceal[] a record, document, or other object . . . with the intent to impair the object’s integrity or availability for use in an official proceeding” or “otherwise obstruct[], influence[], or impede[] any official proceeding,” applied to the conduct of a defendant who trespassed on federal property and pushed a police officer during the January 6, 2021, Capitol riot. *Fischer*, 603 U.S. at 485-86 (quoting 18 U.S.C. § 1512(c)(1)-(2)). The Court again invoked the *nosctitur a sociis* and *ejusdem generis* canons to determine that the statute’s use of the term “otherwise obstruct” could not be read broadly enough to encompass the challenged behavior without rendering the previous clause superfluous. *Id.* at 487-91.

This case presents a similar question: does CERCLA’s use of the term “other such resources” extend to the sort of cultural resources Respondent seeks compensation for, when considered in both its immediate and broader context? The answer is clearly “no,” for the same reasons this Court applied in *Yates* and *Fischer*. First, the term “other such resources” does not stand alone, and indeed modifies the previous clause, defining “natural resources” to include “land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources.” 42 U.S.C. §§ 9607(a)(4)(C), (f)(1), 9601(16). Each of the items in this list refers to a physical object or substance within the natural world—either a living creature or a physical resource such as air or water necessary to sustain

such living creatures. The residual clause must therefore be construed to refer only to resources that also fit within that class.

The *noscitur a sociis* canon applies with equal force when one takes a broader look at CERCLA as a whole. As with Sarbanes-Oxley in *Yates* and *Fischer*, Respondent and the Ninth Circuit have attempted to apply CERCLA well outside its originally intended context. CERCLA is an environmental statute concerned with the remediation of natural resources physically damaged by pollution, as well as the compensation of property owners for the lost monetary value of those resources. See *Burlington Northern*, 556 U.S. at 602. There is no provision addressing cultural or historical resources or emotional distress damages, even in the section detailing tribal participation in the statutory scheme and mandating the government consult with tribal governments in producing surveys of potential hazardous waste sites on Indian lands. See 42 U.S.C. § 9626. CERCLA is no more concerned with damages to cultural resources than Sarbanes-Oxley is concerned with fishery management.

This becomes even more clear when examining CERCLA within its statutory context. Congress is presumed to know what it's doing and how to clearly communicate its intentions within the plain language of its statutes. *Whitman v. American Trucking Ass'ns*, 531 U.S. 457, 468 (2001) ("Congress, we have held, does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes."). Courts should therefore avoid imputing unwritten provisions into statutes when "Congress has shown that it knows how to adopt the omitted language or

provision.” *Lackey v. Stinnie*, 604 U.S. 192, 205 (2025).

Here, Congress has repeatedly shown it knows how to address the sorts of concerns Respondent raises in other statutes more directly focused on those issues. Congress enacted the National Historic Preservation Act fourteen years prior to CERCLA for the express purpose of preserving sites of historic or cultural importance, 54 U.S.C. §§ 300101-307108, building off the Antiquities Act of 1906, *id.* at §§ 320301-320303. Congress enacted the Religious Freedom Restoration Act in 1993, which provides an avenue for relief when federal action interferes with religious exercise, including for those following traditional Native American religions. 42 U.S.C. § 2000bb. Statutes such as the Native American Graves Protection and Repatriation Act of 1990 and the Archaeological Resources Protection Act of 1979 focus specifically on protecting Native American cultural resources. *See* 25 U.S.C. §§ 3001-3013; 16 U.S.C. §§ 470aa-470mm. Many statutes, such as Title VII of the Civil Rights Act, explicitly make emotional distress or psychological damages available for victims of violations. 42 U.S.C. § 1981a(b). The United States Congress regularly enacts statutes explicitly providing compensation for non-economic injuries of the sort Respondent complains of—that it chose not to do so here, in a statute focused on the efficient cleanup of environmental disasters, is a strong indication such relief was not intended.

As shown above, when Congress wishes to enact laws protecting cultural resources or providing compensation for emotional or otherwise intangible injury, it knows how to do so, and indeed has on numerous occasions. Its silence regarding these issues in the

text of CERCLA, therefore, militates strongly against reading cultural damages into what is otherwise a very grounded statute concerned with monetary liability for major environmental disasters. CERCLA is not an appropriate vehicle for redressing whatever cultural injury Respondent may have purportedly received.

Respondent attempts to sidestep this fatal flaw by arguing that they are not seeking “cultural resource damages” *per se*, but merely natural resources damages as a result of “the interim lost use of the injured resources for cultural purposes.” *Confederated Tribes of the Colville Reservation v. Teck Cominco Metals Ltd.*, 153 F.4th 947, 951 (9th Cir. 2025). The claim not to seek cultural resources damages, but ordinary damages is based on the use value of the property in question, “enhanced” by Respondent’s “unique relationship with the Upper Columbia River.” *Id.* In doing so, however, Respondent urges this Court to expand the concept of use value to an essentially limitless degree.

To the extent courts allow compensation for use value beyond the cost of restoring or replacing the damaged resources, that value is typically determined based on one or more of several methodologies aiming to generate a monetary valuation for the loss and lost use. *See* 43 C.F.R. § 11.83 (describing various acceptable valuation methodologies, including “market price,” “appraisal,” “travel cost,” and “resource equivalency analysis.” All are concerned with determining an objective economic value for lost natural resources, and there is no provision for unique or idiosyncratic cultural value.); *American Tel. & Tel. Co. v. Connecticut Light & Power Co.*, 470 F. Supp. 105, 109 (D. Conn. 1979). It is the fair market value of the resources, rather than any one individual or collection of

individuals' unique and subjective sense of value, for which CERCLA seeks to provide compensation. *See Ohio v. Dep't of the Interior*, 880 F.2d 432, 462-65 (D.C. Cir. 1989) (Even on the rare occasion a court sanctions natural resource damages valued using non-market mechanisms such as "contingency value" assessments where no more effective methodology is reasonably available, the analysis is still attempting to simulate the effects of a market transaction).

Otherwise, every plaintiff could obtain unlimited compensation merely by placing an irrationally high value on their use of their property. The entire purpose of the statute would be compromised by bad actors seeking windfalls in compensation for damage to property of only marginal value. A mechanism for holding polluters accountable would morph into a rent-seeking enterprise almost perfectly constructed to hamstring industrial investment in domestic natural resources. For these reasons, courts do not generally consider an individual or group's emotional connection to a specific piece of property when determining compensation in other contexts, such as the use of eminent domain. *See United States v. 50 Acres of Land*, 469 U.S. 24, 35 (1984) ("[J]ust compensation must be measured by an objective standard that disregards subjective values which are only of significance to an individual owner."). There is no reason to believe Congress intended a different result in the CERCLA context.

ii. The Ninth Circuit created a new class of damages beyond the text

The importance of following the statutory text applies with force where a plaintiff is seeking a new form of relief that will retroactively open large numbers of

American citizens up to the threat of limitless liability.

First, there is a strong presumption against finding an implied cause of action in a statute that already provides for an explicit cause of action. See *Transamerica Mortg. Advisors, Inc. v. Lewis*, 444 U.S. 11, 19-20 (1979) (“[I]t is an elemental canon of statutory construction that where a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it. ‘When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode.’”) (quoting *Botany Worsted Mills v. United States*, 278 U.S. 282, 289 (1929)). The fact that CERCLA expressly provides a private right of action for damages to certain natural resources for the limited purpose of “restor[ing], replac[ing], or acquir[ing] the equivalent of such natural resources,” 42 U.S.C. § 9607(f)(1), militates against inferring the existence of an additional implied cause of action for cultural resource damages. This presumption is strengthened by the fact that neither CERCLA nor its implementing regulations make any mention of cultural, spiritual, or historic resources or imply that a special “connection” or “relationship” with a particular natural resource should hold any weight in damages calculations. See *Pakootas v. Teck Cominco Metals, Ltd.*, No. 2:04-CV-00256-SAB, 2024 WL 457769, at *2 (E.D. Wash. Feb. 6, 2024). CERCLA’s legislative history is replete with discussion of the health and economic consequences of pollution, concerns about oil spills, and the method of calculating damages, but does not include any discussion of cultural resources or providing additional compensation based on individuals’ special relationships to any such resources. Absent any indication, either in the plain

text of CERCLA itself or the circumstances of its enactment, that Congress intended to provide a remedy for injury to a plaintiff's special relationship or connection to a natural resource, the Ninth Circuit should not have inferred such an implied remedy.

Second, the Ninth Circuit's decision creates an entirely new class of relief that retroactively subjects Americans across the country to potentially limitless liability, essentially legislating from the bench in violation of the Constitution's separation of powers. In the more than 45 years of CERCLA's existence, no other court has ever accepted the damages theory that won the day for Respondent below. *See Coeur d'Alene Tribe v. Asarco, Inc.*, 280 F. Supp. 2d 1094, 1107 (D. Idaho 2003) ("cultural uses of water and soil by [the] Tribe are not recoverable as natural resource damages"); *In re Gold King Mine Release in San Juan Cnty.*, 669 F. Supp. 3d 1146, 1156, 1158-59 (D.N.M. 2023) (refusing to allow a tribe to collect damages relating to loss of "confidence of its members in the San Juan River as a natural resource," because the purpose of the damages would be for something other than the restoration, replacement, or acquisition of the equivalent of natural resources allowed under CERCLA, and would thus "undercut Congress's policy objectives in enacting [CERCLA]") (quoting *New Mexico v. General Elec. Co.*, 467 F.3d 1223, 1248 (10th Cir. 2006)).

Indeed, other courts that have addressed this issue have held that the type of cultural resource damages Respondent seeks are not only not contemplated by the statute, but are indeed expressly preempted by it. *See In re Gold King Mine*, 669 F. Supp. 3d at 1158-59. The Ninth Circuit's decision represents an abrupt departure from prior precedent that greatly expands the

scope and scale of CERCLA liability beyond what a plain reading of the language (guided by broader statutory context) allows. The decision’s free-wheeling willingness to read expansive new remedies into a statute without clear congressional authorization stands in stark contrast to the jurisprudence of this Court, which has repeatedly cautioned courts against such expansive and unsupported interpretations of federal statutes. *See, e.g., Hallstrom v. Tillamook Cnty.*, 493 U.S. 20, 28 (1989) (“‘Absent a clearly expressed legislative intention to the contrary,’ the words of the statute are conclusive.”) (quoting *Consumer Prod. Safety Comm’n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980)); *West Virginia v. EPA*, 597 U.S. 697, 721-24 (2022) (cautioning against “expansive construction” of statutes in the context of a statutory delegation of authority to a federal agency, and reiterating that “we ‘typically greet’ assertions of ‘extravagant statutory power over the national economy’ with ‘skepticism’”) (quoting *Utility Air Regulatory Group v. EPA*, 573 U.S. 302, 324 (2014)). The Ninth Circuit has “‘claim[ed] to discover in a long-extant statute an unheralded power’ representing a ‘transformative expansion in [its] regulatory authority,’” *West Virginia*, 597 U.S. at 724 (quoting *Utility Air*, 573 U.S. at 324), and its decision therefore cannot be allowed to stand.

b. The Ninth Circuit’s decision creates uncertainty, discouraging investments and harming local communities that depend on them

The Ninth Circuit’s decision, if allowed to stand, is likely to have profound negative consequences for investment in natural resource projects in mining, oil and gas, and manufacturing. “[T]ens of thousands” of

“potentially responsible parties” exist who could now be subject to limitless liability for vaguely defined and impossible-to-measure damages like those Respondent seeks here. *Atl. Richfield Co. v. Christian*, 590 U.S. 1, 3-4 (2020). Businesses across the country have been built on longstanding understandings of their liability risk under this nation’s environmental laws, and these reasonable reliance interests cannot be casually tossed aside. *See Payne v. Tennessee*, 501 U.S. 808, 828 (1991) (“Considerations in favor of *stare decisis* are at their acme in cases involving property and contract rights, where reliance interests are involved[.]”); *Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833, 855-56 (1992), *overruled on other grounds by Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) (listing reliance interests as one of the four factors the Court must consider when deciding whether to overturn prior precedent, and upholding *stare decisis*, in part, due to two decades of women making important life decisions in reliance on the existing precedent). Opening up an entirely new category of liability, especially one that relies on fundamentally subjective and difficult to quantify questions like the value of a tribe’s “unique cultural connection to fishing,” would retroactively expose tens of thousands of Americans to the threat of limitless liability they could have never anticipated.

Moreover, the economic fallout of the Ninth Circuit’s decision is likely to fall hard precisely on the rural tribal communities the decision was intended to protect. As amici supporting Respondent below proudly acknowledge, tribal governments are leading the charge in seeking expansion to the damages allowed under CERCLA. Amicus Br. of Nez Perce Tribe et al. at 21, C.A. Dkt. 26. As news spreads about tribal

governments seeking—and receiving—large CERCLA damage awards for unprecedented reasons, rational fear of cultural resources liability is likely to chill future investment on and around tribal land. CERCLA as it currently exists has already chilled investment and caused businesses to abandon urban cores, *see* Robert H. Abrams, *Superfund and the Evolution of Brownfields*, 21 Wm. & Mary Env'tl. L. & Pol'y Rev. 265, 271–74 (1997) (discussing CERCLA liability's creation of large swathes of “pariah parcels” throughout inner city neighborhoods that were practically undevelopable, despite usually only having marginal levels of pollution), and making areas in and around tribal land even more of a business risk can only make things worse as firms look to invest in areas that present less aggressive risk profiles. This will mean less well paying and stable employment available for communities that are already struggling with high poverty and unemployment, less actual tribal involvement in making the decisions on how these projects are conducted, and potentially even a degradation of environmental priorities as more and more resources are dedicated to salve emotional wounds rather than actually contribute to environmental restoration. *See Pakootas v. Teck Cominco Metals, Ltd.*, 646 F.3d 1214, 1222 (9th Cir. 2011) (Businesses “do not have unlimited financial resources,” and “[s]ometimes the orange is squeezed dry.”).

II. The Ninth Circuit's Decision Has Created A Circuit Split This Court Must Resolve

The Ninth Circuit has departed not only from this Court's longstanding statutory interpretation principles, but also from its sister circuits who have also addressed the question of cultural resource damages

under CERCLA. Both the Tenth and D.C. Circuits have reached contrary conclusions in similar cases. *See General Electric*, 467 F.3d 1223; *Ohio*, 880 F.2d 432. This inter-circuit disagreement demands the Court's attention.

In *General Electric*, New Mexico sought state tort damages under public nuisance and negligence theories from companies allegedly responsible for chemical contamination of groundwater. 467 F.3d at 1226. The Tenth Circuit held that these claims were preempted by CERCLA, and that the statute “demands that environmental protection and preservation be the primary, if not the sole, objective of natural resource damage valuation.” *Id.* at 1247 (quotation omitted). The court found that Congress had been quite clear in its intent that the purpose of CERCLA damages “should be to protect the public interest in a healthy functioning environment, and *not to provide a wind-fall to [a government trustee’s] public treasury.*” *Id.* (quoting *Puerto Rico v. SS Zoe Colocotroni*, 628 F.2d 652, 676 (1st Cir. 1980)). Congress used its “considered judgment” to determine that “the best method of serving the public interest” required limiting CERCLA damage awards to be used only for the purpose of restoring or replacing lost natural resources. *Id.*

The Tenth Circuit rejected the insertion of personal compensatory damages that do not directly contribute to environmental restoration or compensate for interim loss of the injured natural resources, and that was in a context where the damages were susceptible to well-established, objective tests. Here, by contrast, Respondent seeks uncapped damages, unmoored from any objective value calculation or any purpose other than the filling of Respondent's public coffers.

In *Ohio*, which admittedly hews slightly closer to the Ninth Circuit’s decision below, a group of organizations challenged Interior Department regulations that limited the natural resource CERCLA damages recoverable by government trustees to “the lesser of: restoration or replacement costs; or diminution of use values,” as well as the specific “hierarchy of permissible methods for determining ‘use values’” as inconsistent with CERCLA’s text. 880 F.2d at 441, 462 (quoting 43 C.F.R. § 11.35(b)(2) (1987)). But while the D.C. Circuit admonished the Department of the Interior for being overly restrictive in the precise way natural resource damages must be calculated, it anchors its entire analysis on the assumption that even intangible natural resource damages that cannot be readily calculated by a simple referral to competitive market prices require some objective basis for their monetary value. *See generally, id.* Respondent would not have succeeded on their claim for cultural resource damages under even the D.C. Circuit’s relaxed standards in *Ohio*.

The Ninth Circuit’s decision is inconsistent with the text and history of CERCLA, this Court’s jurisprudence, and the precedent of at least two other circuit courts of appeal. Its error is also one of substantial national importance which, if allowed to stand, would retroactively expose tens of thousands of Americans to potentially unlimited liability that Congress never authorized.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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