No. 26-130

IN THE

Supreme Court of the United States

TECK METALS LTD.,
Petitioner,

v.

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 FOR THE NATIONAL MINING ASSOCIATION, THE AMERICAN EXPLORATION & MINING ASSOCIATION, THE AMERICAN PETROLEUM INSTITUTE, AND THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICI CURIAE* SUPPORTING PETITIONER

BRIAN T. BURGESS
ISABEL M. MARIN
GOODWIN PROCTER LLP
1900 N Street, NW
Washington, DC 20036
(202) 346-4000

WILLIAM M. JAY
Counsel of Record
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
2001 K Street, NW
Washington, DC 20006
wjay@paulweiss.com
(202) 223-7300

Counsel for Amici Curiae
(additional counsel listed on inside cover)

August 28, 2026

ANDREW R. VARCOE
STEPHANIE A. MALONEY
U.S. CHAMBER LITIGATION CENTER
1615 H Street, NW
Washington, DC 20062
(202) 463-5337

Counsel for Amicus Curiae the Chamber of Commerce of the United States of America

RYAN MEYERS
MARA E. ZIMMERMAN
AMERICAN PETROLEUM INSTITUTE
200 Massachusetts Ave., NW
Washington, DC 20001
(202) 682-8000

Counsel for Amicus Curiae American Petroleum Institute

TAWNY BRIDGEFORD
NATIONAL MINING ASSOCIATION
101 Constitution Ave., NW
Suite 500 East
Washington, DC 20001
(202) 463-2600

Counsel for Amicus Curiae National Mining Association

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases:

Statutes:

Regulations:

Other Authorities:

INTEREST OF THE *AMICI CURIAE*[1]

The National Mining Association (NMA), based in Washington, D.C., is a national trade association that serves as the voice of the mining industry. NMA's 250-plus members include producers of most of America's coal, metals, and industrial and agricultural minerals; the manufacturers of mining and mineral processing machinery, equipment and supplies; and the engineering and consulting firms, financial institutions, and other firms serving the mining industry. A core mission of NMA is working with Congress and regulators to advocate for public policies that will help America fully and responsibly utilize its vast natural resources. NMA works to ensure America has secure and reliable supply chains, abundant and affordable energy, and the American-sourced materials necessary for U.S. manufacturing, national security, and economic security, all delivered under world-leading environmental, safety, and labor standards. NMA also participates in litigation on issues of concern to the mining industry.

The American Exploration & Mining Association (AEMA) is a 130-year-old organization with 1,800 members in forty-six states. AEMA's members have been active since the 19th century in the entire mining life cycle, beginning with prospecting and exploration, advancing through development and mineral

---

[1] Pursuant to Supreme Court Rule 37.6, *amici curiae* state that no counsel for any party authored this brief in whole or in part and no entity or person, aside from *amici curiae*, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief. All counsel of record received timely notice of *amici curiae's* intent to file this brief.

extraction and processing, and concluding with mine reclamation and closure. More than eighty percent of AEMA's members are small businesses or work for them.

The American Petroleum Institute (API) is a nationwide, non-profit trade association that represents approximately 600 companies involved in every aspect of the petroleum and natural-gas industry. Its members range from the largest integrated companies to the smallest independent oil and gas producers. API's members include producers, refiners, suppliers, marketers, pipeline operators, and marine transporters, as well as service and supply companies that support the industry. API is also the worldwide leading body for establishing standards that govern the oil and natural-gas industry.

The Chamber of Commerce of the United States of America is the world's largest business organization. As the nation's leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

Amici have a substantial interest in the proper interpretation of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 *et seq.*, and its provision authorizing natural resource damages. Their membership includes companies that operate facilities on or near federal, state, and tribal lands, as well as companies that have been pursued for liability for natural resource damages. Any business that is a potential target for such liability (now and in the future) has an interest in the outcome of this case, because the theory of natural resource damages advanced by respondent, the Confederated Tribes of the Colville Reservation (Colville), and endorsed by the Ninth Circuit would threaten liability that is duplicative, unpredictable, and highly disproportionate to any concrete injury to natural resources. *Amici* seek a predictable, rational, and plain reading of CERCLA that preserves the statutory balance created by Congress. The decision below extends CERCLA beyond its textual boundaries and creates a sweeping new CERCLA remedy that Congress never authorized.

INTRODUCTION AND SUMMARY OF ARGUMENT

CERCLA's natural resource damages provision was enacted to restore ecological elements damaged by pollution. The Ninth Circuit has strayed far from that purpose by allowing damages for subjective feelings of cultural disconnection from nature. In a decision untethered from CERCLA's text, context, and purpose, the Ninth Circuit greenlighted a claim for more than $500 million in supposed "natural resource damages." But the claim is not based on any actual injury to the specific natural resources at issue in this case—it is based on the (inaccurate) perception that the Upper Columbia River as a whole is unsafe. The result is a new species of strict liability that has no anchor in CERCLA's text, provides no limiting principle, and achieves none of the environmental restoration that Congress sought to achieve.

The Ninth Circuit's error matters enormously. First, the decision creates a new form of unbounded liability that any CERCLA trustee can pursue. Because every human community can assert a subjective, perception-based claim based on the felt loss of cultural connection to natural resources, the Ninth Circuit's reasoning cannot logically be confined to tribal trustees like the plaintiffs in this case. Federal and state trustees can invoke the same theory, opening the door to duplicative and disproportionate claims that would require courts to adjudicate the cultural worth of fishing, hiking, or swimming to various local communities. Respondent's own damages demand illustrates the problem: its felt-cultural-loss claim reaches as high as $525 million—treble the combined state and tribal claims for ecological harm, and roughly thirty times the claim for fishing damages.

Second, the decision harms the business community, including *amici*'s members, by introducing uncertain, company-ending liability unmoored from any statutory text. Instead of heeding this Court's guidance that CERCLA "liability may not extend beyond the limits of the statute itself," *Burlington N. & Santa Fe Ry. Co. v. United States*, 556 U.S. 599, 610 (2009), the Ninth Circuit has introduced an amorphous theory of liability that is detrimental to manufacturers, transporters, real estate developers, and countless other enterprises. And because this new theory of *felt* cultural loss turns on subjective perceptions of environmental harm, businesses cannot defend themselves by pointing to the limited extent of any actual damage—or the absence of harm to natural resources altogether. In fact, the EPA found that the relevant perceptions of harm to the river as a whole are ill-founded. Pet. 8. To the Ninth Circuit, it did not matter.

Third, the decision's impact is magnified by the Ninth Circuit's unique geography. Approximately 74 percent of federal lands, 75 percent of the nation's Indian tribes, and 80 percent of reservation acreage lie within the Ninth Circuit. The circuit is also home to many of the nation's most economically significant rivers. Left undisturbed, the Ninth Circuit's rule will govern CERCLA claims brought by most natural resource trustees.

The decision is also wrong on the law. CERCLA authorizes damages for "injury to, destruction of, or loss of natural resources"—each term demanding concrete, demonstrable harm. 42 U.S.C. § 9607(a)(4)(C). The statute says nothing about subjective perceptions of harm, cultural disconnection, or emotional injury. And CERCLA's requirement that damages be used "to restore, replace, or acquire the equivalent of" injured natural resources confirms that Congress tied recovery to ecological restoration, not cultural programming. *Id.* § 9607(f)(1). The Ninth Circuit's contrary reading rests heavily on a miscellaneous rulemaking directive that, in context, reinforces rather than undermines these limits. This Court should grant certiorari to correct the Ninth Circuit's dramatic departure from CERCLA's text and purpose.

ARGUMENT

I. The question presented is exceptionally important.

The Ninth Circuit endorsed a novel and unlimited theory of CERCLA liability based on respondent's felt loss of cultural connection to a natural resource. In so doing, the Ninth Circuit created a new tort for alleged cultural harm based on perceptions and fear and deviated sharply from CERCLA's focus on environmental cleanup—specifically, the restoration, replacement, or acquisition of natural resources.

The question presented is exceptionally important for three reasons. First, the Ninth Circuit's decision creates unbounded liability that is divorced from ecological harm. The scope of that liability is broadened further because the Ninth Circuit's reading of natural resources damages can be invoked by *all* CERCLA trustees—every State, all Tribes, and the federal government. Second, the possibility of being targeted for unbounded, unpredictable, strict-liability damages creates untenable uncertainty. Any business near a waterway or near federal, state, or tribal land must now operate in the shadow of this decision. Third, the Ninth Circuit's decision has a disproportionate impact on the interpretation and implementation of CERCLA, given the proportion of federal, state, and tribal land that falls within the Ninth Circuit.

A. The Ninth Circuit's decision creates unbounded liability that can be imposed by all CERCLA trustees.

Authorizing damages based on the felt loss of cultural connection to a natural resource allows

CERCLA plaintiffs to escalate their damages demands exponentially—and thus generate enormous settlement pressure irrespective of whether any trustee ever takes such a case to trial. *Cf. Cisco Sys., Inc. v. Doe*, 146 S. Ct. 1882, 1892 n.2 (2026) ("While few plaintiffs have successfully litigated [Alien Tort Statute] suits to final judgment, many more have sued and obtained large settlements."). Because the claim rests on the *felt* loss of cultural connection, it is based on intangible assessments untethered to any objective measure such as actual harm to a natural resource. And not only does each such claim lack an upper limit, the number of such claims is likely to grow, since *any* CERCLA trustee (federal, state, and tribal trustees alike) could potentially pursue the type of claim the Ninth Circuit recognized.

The unbounded theory of damages the Ninth Circuit approved diverges sharply from the statutory purpose of restoring, replacing, or acquiring natural resources. Indeed, it is entirely disconnected from any measure of actual harm to natural resources. Respondent seeks damages to restore members' relationship with the Columbia River, which some tribal members perceive to be unsafe. 2 C.A. E.R. 170; 2 C.A. S.E.R. 353; 3 C.A. E.R. 348 (expert report opining on "restoration programs" to address "cultural loss due to the widespread apprehension about the safety and health of the river and beaches"). This felt cultural loss has no connection to the natural resources that were injured. The felt cultural loss is based on the perception and fear that the *river as a whole* was unsafe, with damages designed to restore the Tribes' trust and relationship with the river. Yet the claims in this case are limited to injuries to benthic organisms (fly larvae) and fish; they do not extend to the river as a whole. 2 C.A. E.R. 13; 4 C.A. S.E.R. at 877 (Tribes' representative testifying that: "According to EPA's studies, yes [the Upper Columbia River is safe]. Yes, it is."). The damages claims thus would not restore, replace, or acquire the equivalent of the allegedly injured natural resources (e.g., the benthic organisms (fly larvae) and fish). Instead, the damages sought focus on spending aimed at repairing cultural connection to the river, such as cash compensation or funding to build and operate a longhouse and retreat. 2 C.A. E.R. 175. Further proving the inherent disconnect between a felt-cultural-loss claim and actual harm to natural resources, respondent's measure of cultural damages ranges as high as $525 million, which is treble the amount of the state *and* tribal claims for injury to benthic organisms, and about *thirty* times the amount of the claim for actual injury to fishing. *Id*.

The unprecedented reach of the Ninth Circuit's decision is magnified by the fact that its invitation to bring felt-cultural-loss claims cannot, as a matter of textual consistency and logic, be confined to tribal trustees alone. After all, every human community can assert its own inimitable and ineffable connection to nature. *See* Henry D. Thoreau, Walden (1854) ("Our village life would stagnate if it were not for the unexplored forests and meadows which surround it. We need the tonic of wildness…. We can never have enough of Nature."). Thus, the Ninth Circuit's reasoning opens up ambitious theories of cultural liability to any state and federal trustees willing to bring them—potentially egged on by contingency-fee counsel. *See, e.g.*, Ashley Taylor, Ryan Strasser & Amy Pritchard Williams, *State attorney general actions: how outside counsel for AGs changes the game*, Reuters (June 30, 2023), https://www.reuters.com/legal/legalindustry/state-attorney-general-actions-how-outside-counsel-ags-changes-game-2023-06-30/ (noting the incentive for outside counsel representing states on a contingency-fee basis to pursue "novel and aggressive legal theories that could require substantial resources from a defendant to debunk"); Cassandre Coyer & Tonya Riley, *States Turn to Outside Firms to Generate Big Privacy Settlements*, Bloomberg Law (Oct. 9, 2025), https://news.bloomberglaw.com/privacy-and-data-security/states-turn-to-outside-firms-to-generate-big-privacy-settlements.

Moreover, the culture-specific claims that the Ninth Circuit endorsed could lead to ugly, constitutionally suspect, and divisive court battles comparing the beliefs, perceptions, and environmental attachments of various cultures. For example, in this case, respondent seeks $13 million for the "enhanced value" of "fishing in the Colvilles' culture." Pet. App. 13a. This sum is above and beyond the joint claims for lost fishing brought by Washington State and the Tribes. By greenlighting respondent's subjective cultural-loss claim, the Ninth Circuit opened the door to many other such claims by other local communities with disparate views and perspectives. That would saddle the judicial system with the task of comparing local communities and cultures, for which it is ill-suited.

B. The Ninth Circuit's decision creates detrimental uncertainty for businesses that are near public and tribal lands.

The threat of unbounded liability that is disproportionate and untethered to concrete injury to natural resources concerns many businesses that could be targeted with CERCLA claims. CERCLA affects all kinds of businesses and industries beyond mining, including manufacturing, transportation, real estate, waste management, and countless others. The businesses that are most vulnerable to CERCLA claims, and now felt-cultural-loss claims, are those located near waterways and federal, state, and tribal lands.

While businesses are equipped to navigate risk, they are not well equipped to navigate uncertainty—that is, when there is no reliable way to predict the chances of an event occurring. *See* Mark A. Geistfeld, *Legal Ambiguity, Liability Insurance, and Tort Reform*, 60 DePaul L. Rev. 539, 541 (2011). That is precisely why felt-cultural-loss claims, which are untethered from any objective measure of restoring, replacing, or acquiring natural resources, create exactly the type of legal uncertainty that is most difficult for businesses to navigate. And here, the Ninth Circuit not only has deviated from CERCLA's text but has greenlighted an amorphous theory of liability that knows no bounds.

A business environment shaped by open-ended judicial theories rather than clear statutory standards is particularly toxic to innovation and investment. The chilling effect of the Ninth Circuit's acceptance of felt-cultural-loss claims will fall on any business located near natural resources controlled by CERCLA trustees who can demand such damages—*i.e.*, any and all of the many businesses located near federal, state, or tribal lands. Operating in these areas will now be more expensive and will expose businesses to significant financial uncertainty. "Shutting off the possibility of [such] liability" will "provide[] clarity to defendants." *Cisco*, 146 S. Ct. at 1892 n.2.

C. The Ninth Circuit's decision has a disproportionate impact on the implementation and interpretation of CERCLA given the percentage of federal, state, and tribal lands within its borders.

The Ninth Circuit's decision has a disproportionate impact on claims for natural resource damages. A very substantial portion of public lands and natural resources fall within the Ninth Circuit. Approximately 74 percent of federal lands are located in the Ninth Circuit. *See* Congressional Research Serv., CRS Report 42346, *Federal Land Ownership: Overview and Data* 7-9, https://www.congress.gov/crs-product/R42346 (Feb. 2020) (noting exclusions such as federal land in Guam). And the natural resource trustees that can bring CERCLA claims (the United States, a State, or Indian Tribe, *see* 42 U.S.C. § 9607(f)) are also disproportionately located within the Ninth Circuit. About 75 percent of the nation's 574 Indian tribes and roughly 80 percent of the country's total reservation lands are found within the Ninth Circuit. *See* Amicus Br. of the National Congress of American Indians et al. at 9, *United States* v. *Cooley*, 593 U.S. 345 (2021) (No. 19-1414). As a result, the Ninth Circuit's decision will control CERCLA claims brought by the vast majority of natural resource trustees.

Relatedly, the Ninth Circuit is home to a huge number of important natural resources that could be susceptible to natural resource damage claims. For example, the Pacific coast (including Alaska) is home to over one quarter of the nation's significant seafood industry. U.S. Dep't of Commerce, *Fisheries Economics of the United States 2020*, at 10 (Feb. 2023), https://www.fisheries.noaa.gov/s3/2024-03/FEUS-2020-final3-web.pdf. Likewise, the Ninth Circuit contains thousands of miles of the nation's most economically significant rivers. *See* U.S. Fish & Wildlife Service, *Rivers: America's Lifeblood*, (Dec. 9, 2021), https://www.fws.gov/story/rivers-americas-lifeblood. The sheer breadth and wealth of public land and natural resources located within the Ninth Circuit, and thus subject to CERCLA claims, makes this case exceptionally important and worthy of this Court's review.

II. The Ninth Circuit's decision defies the text and purpose of CERCLA.

The Ninth Circuit greenlighted a theory of recovery for natural resource damages that is far afield of anything CERCLA ever contemplated. Respondent's claimed damages are based on felt loss of cultural connection to a natural resource. That supposed loss, in turn, comes from the *perception* of harm to a natural resource and not on *actual* harm to that resource. And because perception is all that matters under this theory, the claim sweeps in the value of the *river as a whole*, when the claims of harm at issue in this case are limited to injury to specific natural resources (fly larvae and fish with elevated mercury levels). *See* Pet. App. 12a. This case illustrates how cultural-connection claims are liable to pile subjectivity on top of subjectivity, whereas the statute authorizes only damages for concrete harms.

A. The Ninth Circuit erred in allowing damages for the perception that a natural resource was damaged.

The Ninth Circuit endorsed respondent's theory that it can obtain "natural resource damages" for its felt loss of cultural connection to the Upper Columbia River as a result of tribal members' *perception* that the river was unsafe, or their "apprehension" about using the river for that reason. 2 C.A. E.R. 170, 3 C.A. E.R. 348. But CERCLA authorizes damages for actual injuries to natural resources, nothing more.

CERCLA authorizes "damages for injury to, destruction of, or loss of natural resources." 42 U.S.C. § 9607(a)(4)(C). The statute defines "natural resources" to include "land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources" owned, controlled, or held in trust by the United States, a state or local government, foreign government, or an Indian tribe. *Id.* § 9601(16).

Each of the statute's operative verbs—injury, destruction, and loss—convey that CERCLA is limited to concrete and actual harm to natural resources. *See Injury*, Merriam-Webster's Dictionary (11th ed. 2003) ("hurt, damage, or loss sustained"); *Injury*, Black's Law Dictionary (5th ed. 1979) ("Any wrong or damage done to another, either in his person, rights, reputation, or property"); *Injury*, Black's Law Dictionary (4th ed. 1957) ("An act which damages, harms, or hurts."); *Destruction*, Black's Law Dictionary (12th ed. 2024) ("The quality, state, or condition of being ruined or annihilated."); *Loss*, Merriam-Webster's Dictionary Online (2026) ("destruction, ruin"; "decrease in amount, magnitude, value, or degree"). Likewise, CERCLA's regulations concerning optional natural resource damages assessments define "injury" as "a measurable adverse change, either long- or short-term, in the chemical or physical quality or the viability of a natural resource." 43 C.F.R. § 11.14(v).

The statute's use of the terms injury, destruction, or loss leaves no room for damages based on *perceptions* of harm rather than actual harm. Assessing money damages for subjective fear, rather than for demonstrable environmental harm, impermissibly expands the statute. CERCLA "liability may not extend beyond the limits of the statute itself." *Burlington N.*, 556 U.S. at 610. And it would be incongruous to pair strict liability with "liability for purely mental distress," which "traditionally has been subject to a high degree of proof." *E. Airlines, Inc. v. Floyd*, 499 U.S. 530, 552 (1991).

Respondent seeks damages—separate from ecological damages for the specific natural resources injured—on the premise that tribal members perceive that the entire Columbia River is unsafe. Respondent alleges that its members feel a cultural disconnection from the river not because of any actual injuries to the natural resources at issue here (fly larvae and fishing) but from the "perception" that the river—as a whole—was unsafe. 2 C.A. E.R. 170-174. In respondent's view, "[p]roof of damage … need not specifically tie to the actionable injury." 2 C.A. E.R. 56; 3 C.A. S.E.R. 634 (damages not based on whether "this particular kind of benthic macroinvertebrate was injured"). In other words, respondent seeks damages for members' perception that the river as a whole was unsafe—whether or not that belief has any empirical basis. 4

C.A. S.E.R. 884, 887. That is entirely distinct from a claim for concrete, demonstrable damage to a natural resource itself—and the latter is all that CERCLA authorizes.

B. CERCLA does not authorize damages for felt cultural loss.

The root of the Ninth Circuit's error is its endorsement of the respondent's felt-cultural-loss claim. In other words, even if respondent could tie its felt cultural loss to the specific fly larvae and fish at issue in this case, felt cultural loss is not a lost use of a natural resource.[2] Felt-cultural-loss damages are simply not authorized by CERCLA.

CERCLA's text and context indicate that such damages do not extend to second or third-order cultural or emotional injuries. *Fischer v. United States*, 603 U.S. 480, 486 (2024) (courts interpreting a federal statute "consider both 'the specific context' in which [the relevant language] appears 'and the broader context of the [law] as a whole.'" (citation omitted)); *United States v. Hansen*, 599 U.S. 762, 775 (2023) (considering the "context of these words—the water in which they swim").

Under CERCLA, damages are available "for use *only* to restore, replace, or acquire the equivalent of"

---

[2] Insofar as respondent points to lost fishing trips, they acknowledge that they have already asserted a "joint claim … with the State for lost fishing trips by the general public" but seek additional damages because, due to their "unique relationship" with the river, the lost fishing trips "impacted the Tribes in ways that are distinct from the general public." Colville C.A. Br. 10. Respondent thus attempts to assign an added cultural value to the lost fishing trips that is unique to them. Doing so raises its own serious concerns, *see supra* pp. 8-9.

those resources—not to restore a community's cultural connection to natural resources. 42 U.S.C. § 9607(f)(1) (emphasis added). Allowing recovery so far afield of the permitted uses would be incongruous. After all, Congress enacted CERCLA "to address 'the serious environmental and health risks posed by industrial pollution'" and "to promote the timely cleanup of hazardous waste sites." *Atl. Richfield Co. v. Christian*, 590 U.S. 1, 6 (2020) (citations omitted). Allowing federal, state, and tribal trustees to pursue claims for damages to natural resources is fully consistent with that focus on cleanup. Unlike damages for a typical tort or contract injury, which the plaintiff can use however it chooses, CERCLA requires that *these* plaintiffs—natural resource trustees—use natural resource damages "to restore, replace, or acquire the equivalent of [the injured] natural resources." 42 U.S.C. § 9607(f)(1); *New Mexico v. Gen. Elec. Co.*, 467 F.3d 1223, 1244 (10th Cir. 2006); *In re Gold King Mine Release*, 669 F. Supp. 3d 1146, 1155 (D.N.M. 2023) (limitation applies to Indian tribes). So even though (as the Ninth Circuit emphasized, Pet. App. 13a) the "measure of damages … shall not be limited by the sums which can be used to restore or replace" natural resources, CERCLA provides significant context for the scope of damages by limiting their use for "restor[ing], replac[ing], or acquir[ing]" natural resources. 42 U.S.C. § 9607(f)(1). Respondent's theory of damages for lost cultural connection, by contrast, has no tie to restoring, replacing, or acquiring natural resources, especially because it is untethered from actual, measurable injury to a natural resource.

Allowing felt-cultural-loss damages contravenes CERCLA's statutory purpose because such damages may siphon scarce resources away from the environmental cleanup and natural resource restoration that CERCLA was designed to achieve. Massive damages awards like the one respondent seeks could leave other claims unsatisfied, including claims for restoring resources near other communities. After all, CERCLA defendants "do not have unlimited financial resources" and cannot simply meet unlimited liability. *Pakootas v. Teck Cominco Metals, Ltd.*, 646 F.3d 1214, 1222 (9th Cir. 2011). "Sometimes the orange is squeezed dry." *Id*. Where all environmental cleanup and natural resource damage claims may need to be satisfied from the same limited pocket, adding a new and boundless type of liability to the mix threatens to divert funds away from restoration of injured natural resources (which benefits all communities) and toward the felt-cultural-loss claims of a single community. *Cf. Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 776 (1983).

The Ninth Circuit's opinion undermines CERCLA's statutory limits on the use of natural resource damages and runs counter to CERCLA's focus on environmental cleanup and natural resource restoration. Instead, the Ninth Circuit relied on a misreading of a miscellaneous provision of CERCLA that directs the executive branch to promulgate regulations that "shall identify the best available procedures to determine such damages"—*i.e.*, "damages for injury to, destruction of, or loss of natural resources," 42 U.S.C. § 9651(c)(1)—"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.* § 9651(c)(2). The Ninth Circuit erred in reading "use value" outside of the context of the other key terms: "replacement value" and the "ability of the ecosystem or resource to recover." *See ZF Auto. US, Inc. v. Luxshare, Ltd.*, 596 U.S. 619, 627 (2022) (refusing to read the word "tribunal" "[s]tanding alone"). Each of the three terms signals a concrete measure of damages: the cost to replace a resource, the economic value of using a resource, and the potential for a resource to recover. All these point to an objective evaluation of the *actual harm* to a resource. Felt cultural connection is not a use of a natural resource and, as demonstrated in this case, is not objectively tied to any actual harm to, or potential recovery of, a specific natural resource.[3] In short, not even this miscellaneous provision provides a foundation for the Ninth Circuit's expansive reading of CERCLA.

CONCLUSION

This Court should grant the petition for a writ of certiorari.

Respectfully submitted.

---

[3] As an additional example of the speculation inherent in felt-cultural-loss damages, *amici* note that respondent relied on a stated preference survey to estimate the alleged cultural value of the Columbia River to the Tribes. 2 C.A. E.R. 23. Such surveys provide several hypothetical options and ask the survey-takers which option they prefer. But such surveys are subject to significant reliability concerns, particularly as to their "tremendous[]" sensitivity to the researcher's choice of options (prompts) to include in the survey. *See Contingent Valuation of Environmental Goods: A Comprehensive Critique* x-xi (Daniel McFadden & Kenneth Train eds., 2017). The cost of each option that researchers decide to include in their survey then determines the value of the river. If every option costs $500 million or more, that becomes the alleged value of the river.

TAWNY BRIDGEFORD
NATIONAL MINING ASSOCIATION
101 Constitution Ave., NW
Suite 500 East
Washington, DC 20001
(202) 463-2600

Counsel for Amicus Curiae National Mining Association

ANDREW R. VARCOE
STEPHANIE A. MALONEY
U.S. CHAMBER LITIGATION CENTER
1615 H Street, NW
Washington, DC 20062
(202) 463-5337

Counsel for Amicus Curiae the Chamber of Commerce of the United States of America

RYAN MEYERS
MARA E. ZIMMERMAN
AMERICAN PETROLEUM INSTITUTE
200 Massachusetts Ave., NW
Washington, DC 20001
(202) 682-8000

Counsel for Amicus Curiae American Petroleum Institute

WILLIAM M. JAY
Counsel of Record
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
2001 K Street, NW
Washington, DC 20006
wjay@paulweiss.com
(202) 223-7300

BRIAN T. BURGESS
ISABEL M. MARIN
GOODWIN PROCTER LLP
1900 N Street, NW
Washington, DC 20036
(202) 346-4000

Counsel for Amici Curiae

August 28, 2026