No. 23-975

IN THE
Supreme Court of the United States

SEVEN COUNTY INFRASTRUCTURE COALITION, ET AL.,
Petitioners,

v.

EAGLE COUNTY, COLORADO, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

ENVIRONMENTAL RESPONDENTS' BRIEF

Eric Glitzenstein
CENTER FOR BIOLOGICAL DIVERSITY
1411 K St. NW, Ste. 1300
Washington, D.C. 20005

Wendy Park
CENTER FOR BIOLOGICAL DIVERSITY
1212 Broadway, Ste. 800
Oakland, CA 94612

Edward B. Zukoski
CENTER FOR BIOLOGICAL DIVERSITY
1536 Wynkoop St., Ste. 421
Denver, CO 80202

Kirti Datla
Counsel of Record
Benjamin Chagnon
EARTHJUSTICE
1001 G St. NW, Ste. 1000
Washington, DC 20001
202.797.5241
kdatla@earthjustice.org

Linnet Davis-Stermitz
EARTHJUSTICE
810 Third Ave., Ste. 610
Seattle, WA 98104

Counsel for Environmental Respondents

QUESTION PRESENTED

Whether the National Environmental Policy Act requires an agency to study environmental impacts beyond the proximate effects of the action over which the agency has regulatory authority.

CORPORATE DISCLOSURE STATEMENT

Under Supreme Court Rule 29.6, Respondents Center for Biological Diversity, Living Rivers, Sierra Club, Utah Physicians for a Healthy Environment, and WildEarth Guardians state they have no parent companies, subsidiaries, or affiliates that have issued shares to the public in the United States and that no publicly held corporation owns 10% or more of the groups' stocks because none of the groups has ever issued any stock or other security.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

INTRODUCTION

Over and over again, the National Environmental Policy Act tells agencies to consider whether their actions will have long-term, and potentially irreversible, environmental effects. And so early on, a settled understanding of agencies' obligations under the statute emerged. Agencies must consider the environmental effects of a proposed action that are reasonably foreseeable and within their discretion to consider. In the context of NEPA's environmental review provisions, reasonably foreseeable effects are those that are sufficiently likely to occur and capable of being considered in sufficient detail. If an effect is speculative or if an agency does not have access to information that would allow it to consider the effect, then the agency need not do so. Fifty years of experience with this framework gives agencies direction on which effects they must consider, and a deferential standard of review applies if questions arise.

This framework led to a sensible result below. The project here is a railway that would connect waxy crude oil reserves in the Uinta Basin to the national rail network, on which the crude would travel to a few specialized refineries. The Surface Transportation Board knew the railway would significantly increase crude production (it pegged economic benefits in the Basin to that increase). And it knew which refineries would likely receive the crude (it identified those refineries to project where trains carrying Basin crude would travel). Yet it declined to consider how increased production would affect wildlife and vegetation in the Basin or how increased refining would affect air quality near those refineries. The Board had

undisputed statutory authority to weigh those effects in deciding whether to approve the railway, the effects were likely (after all, the point of the railway was to increase Basin production), and the Board had sufficient information to consider those effects. The court below held that the Board had to do so or explain why it could not.

Petitioners think that "[i]t makes no sense" to ask a railway agency to consider these kinds of environmental effects. Petrs. Br. 1. But agencies have long understood that NEPA requires them to consider—at a minimum—the environmental effects of the outcomes that their proposed actions are designed to achieve. The Board's predecessor agency did just that 50 years ago. When the Interstate Commerce Commission considered a 150-mile railway that would connect coal mines in Wyoming's Eastern Powder River Basin to the national rail network, it recognized that "development and mining of the vast coal reserves" would be "a major secondary impact resulting from railroad construction" and that coal exports from the Basin would "increase significantly."[1] And so the Commission considered the reasonably foreseeable environmental effects of those outcomes.[2]

NEPA's basic commands have not changed since its enactment. When amending the statute just last

---

[1] Dep't of the Interior, *Final Environmental Impact Statement: Proposed Development of Coal Resources in the Eastern Powder River Coal Basin of Wyoming* II-2, II-86 (1974) (jointly prepared by the Agriculture and Interior Departments and Interstate Commerce Commission), bit.ly/eprceis.

[2] *Id.* at II-86 (noting a regional study); *id.* at I-460a (discussing some effects of exportation but stating that their "exact nature . . . [wa]s not reasonably foreseeable" given coal's many uses).

year, Congress brought the longstanding reasonable foreseeability test into NEPA's express text. Though Congress began with a bill that would have imposed new limits on the effects that agencies must consider, it chose not to enact those limits.

Petitioners ask this Court to do what Congress did not and pencil in new limits on agencies' environmental review. Their view of *what* those limits should be has shifted during this case. But what has remained steady is this: Petitioners' arguments are inconsistent with NEPA's text, with the long history of agency practice under the statute, and with the statutory design.

This Court should affirm.

STATEMENT

A. The National Environmental Policy Act

In the National Environmental Policy Act, Congress and the President recognized the "profound impact of man's activity on the . . . environment" and crafted a "continuing policy" to address it. Pub. L. No. 91-190, § 101(a), 83 Stat. 852, 852 (1970) (codified at 42 U.S.C. § 4331(a)).[3] That policy commits the government to creating conditions "under which man and nature can exist in productive harmony" and the needs of present and future generations will be met. 42 U.S.C. § 4331(a). And it makes it the federal government's "responsibility" to use "all practical means" to improve federal plans, functions, and programs. *Id.* § 4331(b).

---

[3] Congress amended NEPA in 2023, after the Board decision at issue here. *See* Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, § 321, 137 Stat. 10, 38–46. This brief cites the statute as amended, unless otherwise indicated.

NEPA specifies how federal agencies are to carry out that responsibility. Principally, and "to the fullest extent possible," agencies must produce a "detailed statement" for every proposed "major Federal action[] significantly affecting the quality of the human environment." *Id.* § 4332(2)(C). Called an environmental impact statement, the document must cover the action's environmental effects, any unavoidable adverse environmental effects, reasonable alternatives to the action, the relationship between "local short-term uses" of the environment and "long-term productivity," and "irreversible and irretrievable commitments of Federal resources." *Id.* Taken together, these provisions require agencies "to consider every significant aspect of the environmental impact of a proposed action." *Vt. Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 553 (1978).

NEPA directs all agencies to develop expertise in predicting environmental effects and also to draw on other agencies' expertise. Agencies must "identify and develop methods and procedures" for environmental analysis. 42 U.S.C. § 4332(2)(B). Agencies must also "consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact" of a proposed action. *Id.* § 4332(2)(C).

NEPA's provisions "require that agencies take a 'hard look' at environmental consequences" but do not dictate outcomes. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (citation omitted). If an agency identifies and evaluates the environmental effects of a proposed action, it may decide that "other values outweigh the environmental costs." *Id.* Yet NEPA is still "action-forcing": It "focus[es] the agency's attention" so that environmental effects are

not "overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast." *Id.* at 349 (citation omitted). And it ensures that "the larger audience that may also play a role in" developing and implementing the agency's decision understands those effects. *Id.*

B. Agency Practice Under NEPA

From the beginning, agencies understood that fully considering an action's potential environmental effects means considering both immediate and secondary effects. Just after NEPA's enactment, the Council on Environmental Quality explained that agencies should study their actions' "primary and secondary significant consequences for the environment." Statements on Proposed Federal Actions Affecting the Environment: Interim Guidelines, 35 Fed. Reg. 7390, 7391 (Apr. 30, 1970).[4] It gave "implications . . . for population distribution or concentration" as an example of a secondary effect. *Id.* Courts also quickly recognized that NEPA directs agencies to consider the predictable "ripple" effects of their actions. *Citizens Organized to Defend Env't, Inc. v. Volpe*, 353 F. Supp. 520, 540 (S.D. Ohio 1972) (noting that a highway project that grants a right to use the highway to facilitate strip mining would require studying the project's impact on the environmental effects of the mining).[5]

---

[4] NEPA established the CEQ and tasked it with "formulat[ing] and recommend[ing] national policies to promote the improvement of the quality of the environment." 42 U.S.C. § 4342.

[5] *See also City of Davis v. Coleman*, 521 F.2d 661, 674–677 (9th Cir. 1975) (holding that an agency needed to consider the effects of industrial development a proposed highway interchange would spur); *Conservation Council of N.C. v. Constanzo*, 398

Consistent with this understanding of NEPA, agencies considered the secondary effects of their proposed actions when carrying out the new statute. *See, e.g.*, CEQ, *Environmental Quality: The Second Annual Report of the Council on Environmental Quality* 25–26 (Aug. 1971) (discussing several agencies' NEPA reviews), bit.ly/ceq2drpt. The U.S. Army Corps of Engineers noted that "[p]art of the economic justification" for deepening and widening channels in the Tampa Bay Harbor was a "favorable economic impact expected on phosphate shipments" from the region. U.S. Army Eng'r Dist., Jacksonville, *Final Environmental Impact Statement: Tampa Harbor Project* 113–114 (Dec. 1974), bit.ly/tbchannels. So when approving the project, it studied how "spur[ring] mining activities" in the region would affect land uses. *Id.* at 114. And the U.S. Coast Guard knew that a new deepwater port built to receive crude oil off the coast of Freeport, Texas meant that more oil would travel to and from the area. So when licensing the port, it studied the effects of oil spills near Florida from tankers traveling to the port and of "secondary hydrocarbon emissions" from onshore "refining and petrochemical complexes." U.S. Coast Guard, *Final Environmental Impact Statement, Seadock Deepwater Port License Application: Executive Summary* 1, 22–27, 29, 33 (1976), bit.ly/seadock.

Agencies worked to develop expertise in considering environmental effects under NEPA. Some of that expertise was shared across agencies, as the statute contemplates. For example, CEQ catalogued agencies to

---

F. Supp. 653, 672 (E.D.N.C. 1975) (describing the reality that a proposed "marina . . . will accelerate upland development" and "have a significant effect on the environment" as "inescapable").

be consulted for their expertise on various environmental effects. *See* Statements on Proposed Federal Actions Affecting the Environment, 36 Fed. Reg. 7724, 7727–729 (Apr. 23, 1971). Other expertise came via the development of new practices and techniques, as the statute also contemplates. For example, CEQ observed that, although studying secondary effects is "indispensable," some agencies initially found doing so "more difficult" than studying "first-order physical effects." CEQ, *The Fifth Annual Report of the Council on Environmental Quality* 411 (Dec. 1974) (*Fifth Annual Report*), bit.ly/ceq5thrpt. To speed up the development of "better methodologies for predicting secondary impacts," it worked with agencies to study common actions. *Id.* (mentioning "public infrastructure projects, such as highways and sewage treatment plants"). One study focused on "energy-related" projects like "deepwater ports for supertankers" and "the production of crude petroleum from oil shale" that "exemplified" the kinds of actions that have significant secondary effects. *Id.* at 44. It showed that secondary effects, such as "heavy onshore investment resulting from the offshore production," could alter the environment "as much or more" than "the energy facilities themselves." *Id.* at 44, 46. The study also showed that considering those effects provided "public officials at the state and local levels" with valuable "information and analytical tools to predict and adequately plan for" those effects. *Id.* at 47.

Early on, courts coalesced around a reasonable foreseeability test when reviewing whether an agency satisfied NEPA's requirements to consider environmental effects. *See Scientists' Inst. for Pub. Info., Inc. v. Atomic Energy Comm'n*, 481 F.2d 1079, 1092 (D.C.

Cir. 1973).[6] This test recognizes that "the basic thrust" of NEPA involves *some* "forecasting and speculation" because an agency must consider the effects of an action it has not taken. *Id.* Although an agency cannot be asked to "foresee the unforeseeable," it also cannot avoid considering effects "simply because describing the[m]" involves a "degree of forecasting." *Id.*

CEQ's first regulations reflected this early consensus. They required agencies to consider both direct effects and indirect effects, so long as they are reasonably foreseeable. *See* 40 C.F.R. § 1508.8(a)-(b) (1979) (defining effects to include effects that "occur at the same time and place" and effects that "are later in time or farther removed in distance, but are still reasonably foreseeable"). The regulations acknowledged that agencies may face "gaps in relevant information or scientific uncertainty." *Id.* § 1502.22. Under those circumstances, agencies should "always make clear that such information is lacking or that uncertainty exists." *Id.* (discussing the obligation to obtain information needed to choose between alternatives).

These regulations also instituted procedures to ensure that NEPA did not "become needlessly cumbersome." 43 Fed. Reg. 55,978, 55,980 (Nov. 29, 1978). They endorsed the use of "categorical exclusions" to identify actions that are "exempt" from further consideration under NEPA because they will not have significant environmental effects. 40 C.F.R. § 1500.4(p) (1979). They created an "environmental assessment" step through which agencies can find that an action

---

[6] *See also Nat'l Helium Corp. v. Morton*, 486 F.2d 995, 1002 (10th Cir. 1973); *Louisiana v. Fed. Power Comm'n*, 503 F.2d 844, 877 (5th Cir. 1974); *Swain v. Brinegar*, 542 F.2d 364, 368 (7th Cir. 1976).

will not have significant effects that require a full study in an environmental impact statement. *Id.* § 1501.4. And they included an early, public "scoping" process to identify "the significant issues related to" an action, *id.* § 1501.7, encouraged the use of "tiering" to incorporate earlier environmental reviews by reference, *id.* § 1502.20, and recommended page limits, *id.* § 1502.7. They also streamlined the inter-agency process for consulting agencies with "special expertise" in "any environmental issue" being studied. *Id.* § 1501.6. These measures focused agencies "on the issues . . . truly significant to the action." *Id.* § 1500.1(b).[7]

The regulations have proven remarkably durable. For 42 years, CEQ made just one substantive change. *See* 51 Fed. Reg. 15,618, 15,625 (Apr. 25, 1986) (deleting a requirement that agencies study the "worst case" outcome). In 2020, CEQ made other revisions that provided, for example, that an agency "generally" need not consider effects that "are remote in time, geographically remote, or the product of a lengthy causal chain." 40 C.F.R. § 1508.1(g)(2) (2020). These revisions also added a definition of "reasonably foreseeable" that mirrored early decisions applying that term. *See id.* § 1508.1(aa). Less than two years later, CEQ returned to the original definition of effects. Those revisions had "unduly limit[ed] agency discretion" and imposed categorical rules that were "in tension with NEPA's directives." 87 Fed. Reg. 23,453, 23,466 (Apr. 20, 2022). Returning to the longstanding definition

---

[7] *See* U.S. Gov't Accountability Office, *NEPA, Little Information Exists on NEPA Analyses* 7, GAO-14-369 (Apr. 2014) (reporting that 95% of analyses are through categorical exclusions, less than 5% are through environmental assessments, and less than 1% are through environmental impact statements).

would "avoid delays or deficiencies" due to "agency uncertainty over the proper scope of effects analysis." *Id.* at 23,463. CEQ retained the definition of reasonably foreseeable. *See* 40 C.F.R. § 1508.1(ii).

When Congress amended NEPA's basic commands for the first time in 2023, it also declined to alter the scope of environmental review under the statute. *See* Pet. 26. The amendments began as a bill that would have narrowed the Act to require consideration of only "reasonably foreseeable environmental effects with a reasonably close relationship to the" proposed action and would have defined reasonably foreseeable to mean limited temporally ("10 years") and geographically ("in an area directly affected by the proposed agency action"). BUILDER Act, H.R. 1577, 118th Cong. §§ 2(a)(3)(B), (b) (2023). Congress declined to enact those limits. Instead, it incorporated only the longstanding "reasonably foreseeable" language into the express text. *See* 42 U.S.C. § 4332(2)(C)(i)-(ii) (requiring discussion of "reasonably foreseeable environmental effects" and of unavoidable "reasonably foreseeable adverse environmental effects"). It also expressly incorporated other longstanding regulatory approaches. *See, e.g.*, *id.* § 4336a(e)(2) ("environmental assessments"); *id.* § 4336c (categorical exclusions). And it made changes to address concerns about, for example, delayed project approvals. *See id.* § 4336a(e) (mandatory page limits of 75 pages (excluding citations and appendices) for environmental assessments; 150 for environmental impact statements; and 300 for complex actions); *id.* § 4336a(g) (adding enforceable deadlines); *id.* § 4336e(10) (excluding certain actions from the definition of "major federal action").

C. The Proposed Railway And Board Proceedings

This case stems from the Seven County Infrastructure Coalition's proposal for a railway that "would primarily transport crude oil produced in the [Uinta] Basin to markets outside of the Basin." JA332. As proposed, the railway would start at the Basin in northeastern Utah and run roughly 85 miles southwest to a national rail network connection near Kyune, Utah. Pet. App. 75a. The Coalition, a group of seven Utah counties, planned to create a public-private partnership to operate the railway that would include a developer, a railroad, and the Ute Indian Tribe, whose reservation lands lie within the Basin.[8]

The Coalition stated that the railway was justified because "the lack of rail access has effectively capped oil production in the Basin."[9] Due to its terrain, the Basin is currently accessible only by road. Pet. App. 75a. The Basin contains reserves of waxy crude oil (so named because it congeals at ambient temperatures). That crude is now trucked to Salt Lake City refineries, but those refineries are at capacity. JA31. The Coalition anticipated that the new railway traffic would be substantial: Trains up to two miles long would run at "all hours of the day and over the entire year," averaging up to 10 train trips a day. CADC JA240, 888.

The Coalition's design and study of the railway reflected the reality that the railway's "anticipated primary traffic source is the crude oil production

---

[8] *See* CADC JA284–285.

[9] CADC JA281. Natural gas produced in the Basin "is currently being transported by pipeline," which "is expected to continue regardless" of the railway project. JA31.

industry" in the Basin. JA2; JA140 (noting that other Basin commodities would not support dedicated trains). It sited the railway's proposed terminus points "in close proximity to the principal production areas of the [Basin's] major crude oil production field." JA3; JA32 (identifying known reserves). To ensure that there was demand for Basin waxy crude, it interviewed refineries to assess their capacities, railway connections, and facilities. JA33. It identified "nine top rated refinery targets," seven in the Gulf Coast region. JA33–34. And its feasibility study outlined the routes by which Basin waxy crude would reach those refineries after leaving the new railway. JA40-a.

The Surface Transportation Board, which regulates interstate rail transportation, must approve any new railway. *See* ICC Termination Act of 1995, Pub. L. No. 104-88, §§ 101, 102(a), 201(a), 109 Stat. 803, 807, 932–934. The Board licenses a railway if it is not "inconsistent with the public convenience and necessity." 49 U.S.C. § 10901(b)-(c). The Board uses a streamlined licensing process if, among other things, "carry[ing] out the [Act's] transportation policy" would not require full proceedings. *Id.* § 10502(a). The policy includes "ensur[ing] the development . . . of a sound rail transportation system . . . to meet the needs of the public," "operat[ing] transportation facilities and equipment without detriment to the public health and safety," and "encourag[ing] and promot[ing] energy conservation." *Id.* § 10101(4), (8), (14).

The Coalition asked the Board to approve the railway using the streamlined process, and the Board preliminary agreed to do so, "subject to completion of the ongoing environmental review." Pet. App. 74a–75a.

Several environmental organizations (respondents here) participated in that review. Their participation led the Board to take a closer look at—and address—some of the railway's adverse environmental effects. For example, the draft environmental impact statement did not consider readily available ways of reducing big game collisions and deaths.[10] After the groups pointed that out, the Board required the Coalition to consider and implement such measures.[11]

The groups identified fundamental deficiencies in the Board's environmental review that stemmed from a lopsided consideration of consequences of increased Basin waxy crude production. The final environmental impact statement stated that it was "reasonably foreseeable" that the railway would lead to "future oil and gas development projects in the Basin"—potentially increasing production nearly five-fold. JA353, 530. It noted where the crude would likely go after leaving the Basin, discussing the target refineries that the Coalition had identified, nearly all of which are major refineries on the Louisiana and Texas Gulf Coast. JA33–34, 477–478, 512–513. The final statement discussed the economic benefits of increased production, which included "induced spending on goods and services" and a larger tax base. JA341–342, 456–459; *see also* JA335.

But when it came to the environmental effects of the anticipated increased production of Basin waxy crude, the final environmental impact statement balked. It limited consideration of the effects of more drilling on

---

[10] CADC JA603, 687, 692–695.

[11] Pet. App. 118a n.20; *see also id.* at 163a (adopting proposed measures to reduce the spill risk from trains); *id.* (adopting proposed reporting requirements).

vegetation and most wildlife in the Basin to the railway's footprint: 500 feet on each side of the railway. JA383–385 (wildlife other than migratory game); JA391 (fish); JA392–393 (vegetation).[12] It did not acknowledge the effects that refining Basin waxy crude would have near the refineries, such as increased air pollutant emissions in areas that already fail air quality standards. JA420–423.[13]

The Board adopted the final environmental impact statement without resolving these deficiencies. The Board described its consideration of these effects as "full." Pet. App. 108a n.15.[14] It declined to "directly

---

[12] *See also* CADC JA950 (defining the "field survey study area" for "biological resources"); JA383 (same).

[13] Eagle County, Colorado (also a respondent here) is located on the Union Pacific Railroad mainline, "the only practical route" from the Basin through the Rockies towards Denver and on to Gulf refineries. JA514. The final environmental impact statement's study of "downline impacts" from "increased rail traffic" from the Basin considered effects on that mainline. JA511. The County criticized that analysis for, as relevant, failing to discuss impacts to the Colorado River; using derailment risk statistics that did not reflect the difficult terrain the mainline traverses or the long, heavy, heated trains full of Basin waxy crude that will travel along it; and understating wildfire risk. *See* JA76–82, 194–203, 487–490.

[14] The Board's description responded to criticism of the characterization of environmental effects of increased production as "cumulative effects." Cumulative effects "result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions regardless of" who undertakes them. 40 C.F.R. § 1508.1(i)(3). To explain this characterization, the Board pointed to its lack of "authority or jurisdiction" over the production. Pet. App. 107a–108a (referencing *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752 (2004)). It also stated that its analysis "would be the same no matter which label

address" the criticism of its consideration of the environmental effects of increased production, summarily dismissing them instead. Pet. App. 109a n.16. The Board then defended its decision not to consider the air pollution effects from refining by referencing the thresholds that the Board uses to determine which areas it will include in its environmental study, JA475–476. The Board concluded that "minimal increases" in downline traffic below the thresholds—expressed as an increase in daily traffic from Basin trains that enter existing lines— likely would not "result in significant additional impacts." Pet. App. 112a; *see also id.* (referring to *Public Citizen* and stating that more analysis was neither "required nor useful").[15]

The Board approved the railway.[16] It adopted the final environmental impact statement. *Id.* at 84a. It then found under the Termination Act that an exemption was appropriate because "the transportation merits of the project outweigh the environmental impacts." *Id.* at 121a.

---

is used." *Id.* at 108a n.15. Given that statement, the court below later held that any error in viewing the effects as cumulative effects was not prejudicial. *Id.* at 29a.

[15] The Board's decision did not directly address the failure to discuss effects on the Colorado River along the Union Pacific line or from more derailments. *See supra* at 14 n.13. It did defend the study of wildfire risk by stating that because other trains already traverse the Union Pacific line, the new railway "would not introduce a new ignition source for wildfires along the downline segments." Pet. App. 94a.

[16] One Board member dissented, disagreeing with the Board's conclusions on the railway's financial viability and criticizing the environmental impact statement for understating the environmental effects. Pet. App. 123a–124a.

D. The Proceedings Below

The environmental respondents and Eagle County, Colorado each petitioned for review of the Board's order in the D.C. Circuit, which consolidated the petitions. *Id.* at 13a.

The court held the Board had "ignored" significant environmental effects from the railway—including the impacts of increased Basin waxy crude production on vegetation and species in the Basin and on local air pollution around refineries—without an adequate explanation. *Id.* at 30a.

The Board's first explanation—that it could not know where the crude would be produced or refined, so any related effects were not reasonably foreseeable—was arbitrary. The Board's own final environmental impact statement described its production estimates as "'a reasonably foreseeable development scenario.'" *Id.* at 34a (citation omitted). That meant that the Board had to consider the environmental effects of that increased production in the Basin or—at the very least—explain why it could not. The Board did neither. *See id.* The statement similarly "identified the refineries that likely would be the recipients of the oil resulting from the Railway's operation." *Id.* at 35a. Here too, the Board had to either "take the next step" and discuss the resulting air pollution from the refineries or "adequately explain" why it could not. *Id.* at 34a–35a. Here again, the Board did neither.[17]

---

[17] Petitioners' statement (at 39) that the court "assert[ed] that the new rail is the proximate cause of the *climate effects* of such combustion" is wrong. The respondents did not raise a NEPA claim based on the Board's calculation of greenhouse gas emissions from the combustion of Basin waxy crude. They did argue

The Board's second explanation—that "it lacks authority to prevent, control, or mitigate" these effects—did not excuse its truncated analysis either. *Id.* at 36a. The Termination Act authorizes the Board to license railways "based on the 'public convenience and necessity,' which encompasses reasonably foreseeable environmental harms." *Id.* at 37a (citation omitted). And the Board "concededly" could "deny the exemption" if the railway's "environmental harm . . . outweighs its transportation benefits." *Id.* at 36a. Given its authority to consider these environmental effects, the Board's "argument that it need not consider effects it cannot prevent is simply inapplicable." *Id.* at 37a.[18]

The court also found other statutory violations "not before this Court." Petrs. Br. 15 n.1. These included several violations of the Termination Act. Departing from past practice, the Board had brushed aside evidence questioning the railway's "financial viability" and thus "did not properly consider the relevant economic and regulatory policies." *Id.* at 61a. The Board's discussion of the railway's environmental effects—which the court evaluated "separately" from NEPA—showed that it did not weigh them under the Termination Act, which "necessitated" more explanation. *Id.* at 65a–66a, 68a. And the Board conceded

---

that those emissions should be categorized as indirect effects (an argument the court rejected) and that the Board failed to weigh those emissions *as the Termination Act requires* (an argument the court accepted). Pet. App. 28a, 66a, 68a. Neither issue is before this Court.

[18] As to the County's NEPA claims based on downline environmental effects, *see supra* at 14 n.13, 15 n.15, the court found that the Board either ignored them (effects on the Colorado River) or offered "utterly unreasoned" bases for discounting them (effects from derailment and wildfires). Pet. App. at 44a–46a.

"that it did not evaluate the [Act's] energy conservation policy" at all. *Id.* at 66a.

Given these "significant" deficiencies in the Board's reasoning, the court vacated the exemption order and remanded the matter to the Board. *Id.* at 70a–71a.

Petitioners sought rehearing en banc solely on the grounds that the panel's holding that "certain indirect environmental effects were reasonably foreseeable" conflicted with circuit precedent applying the reasonable foreseeability test.[19] The D.C. Circuit denied rehearing, with no vote requested. Pet. App. 72a–73a.

This Court granted certiorari.

SUMMARY OF THE ARGUMENT

I. Since NEPA's enactment, agencies have applied a reasonable foreseeability test to determine which environmental effects of a proposed action they must consider under the Act. Under that test, an agency asks whether an effect is sufficiently likely to occur and can be described in sufficient detail. *See* 40 C.F.R. § 1508.1(ii) (defining reasonably foreseeable). If the answer is yes, then an agency must consider that effect under NEPA's environmental review provisions.

This test both implements NEPA's express text and accommodates its implicit rule of reason. The statute directs agencies to study environmental effects "to the fullest extent possible." 42 U.S.C. § 4332(2)(C). And it tells agencies to consider both immediate effects and secondary effects that might occur later in time or further away. *See, e.g.*, *id.* § 4332(2)(C)(iv)-(v). At the same time, courts have recognized that the Act should not be read to make it impossible for agencies to

[19] Reh'g Petn. 1, Nos. 22-1019, 22-1020 (D.C. Cir. Sept. 29, 2023).

comply. The reasonable foreseeability test requires agencies to conduct the forecasting that NEPA's text requires but cuts off speculation about effects that are not likely enough to permit discussion in some detail. As the federal government's consistent, "longstanding practice" under NEPA, the reasonable foreseeability test is "especially" deserving of respect. *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2258 (2024) (citation omitted).

Half a century of accumulated precedent under this test has shown that it is workable and leads to sensible results. Decisions assessing reasonable foreseeability have established a spectrum. At one end, if the very reason a project is being proposed is to achieve a certain result, the environmental effects of that result will ordinarily be reasonably foreseeable, and an agency must consider them. Agencies have done so since NEPA's early days, considering, for example, the environmental effects of spills from transporting oil to a proposed new deepwater port and of air pollution from the end use of that oil at onshore refineries. At the other end, if an effect is so attenuated from the proposed action as to be speculative, then the agency need not consider it. Between these poles, the test turns on the proposed action at issue and the information available to the agency. In every case, an agency's conclusion on reasonable foreseeability is reviewed under the familiar, deferential arbitrary and capricious standard.

Congress recently amended NEPA to bring the reasonable foreseeability test and other limits on environmental review that this Court has identified into NEPA's express text. Congress began with a bill that would have narrowed the set of effects an agency must consider under NEPA, but it declined to enact that

language. Instead, Congress chose to amend the statute to expressly refer to "reasonably foreseeable" environmental effects. 42 U.S.C. § 4332(2)(C)(i)-(ii). NEPA now expressly excludes from its environmental review requirement actions for which Congress has stripped an agency of discretion to take, or for which Congress has directed the agency to not consider environmental effects when acting. *See id.* § 4336(a)(4).

II. Petitioners persuaded this Court to grant certiorari to address whether a direct-authority-to-regulate test governs whether an agency must study a given environmental effect. They appear to abandon that test now, and rightly so: NEPA's text forecloses it. The statute requires agencies to consult with agencies that have "jurisdiction by law or special expertise with respect to any environmental impact involved." *Id.* § 4332(2)(C). The test would also reintroduce the problem that NEPA aimed to stop: of agencies relying on generalized notions of their "relatively limited [statutory] remit," Petrs. Br. 10, to decline to consider reasonably foreseeable environmental effects.

Petitioners' new argument that NEPA incorporates tort-law concepts of proximate causation wholesale is also wrong. Petitioners proceed by asking whether the Board might be liable in tort for the effects at issue, but this Court has twice rejected that move. In *Metropolitan Edison*, and again in *Public Citizen*, this Court found it useful to analogize to proximate causation when explaining its interpretation of NEPA. But both decisions stressed that this was only a qualified analogy. NEPA's "underlying policies or legislative intent" are what matters, not "suggest[ions] that any cause-effect relation too attenuated to merit damages in a tort suit would also be too attenuated to merit" study. *Metro. Edison Co. v. People Against Nuclear*

Energy, 460 U.S. 766, 774 n.7 (1983); *see also Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004).

This Court should not discard its earlier wisdom in offering only a qualified analogy to proximate causation. NEPA's text shows that the statute does not share the same concerns that tort law does (and that proximate causation was designed to address). NEPA is a forward-looking statute, one that reflects the political branches' judgment that there is value in understanding the potential environmental effects of agency actions, even if an agency chooses to proceed despite those effects. In stark contrast, the tort-law concept of proximate causation is all about liability for violating rules about how to act. At bottom, there is a fundamental mismatch between this tort-law concept—which exists to limit liability—and NEPA—which exists to increase agencies' consideration of environmental effects.

Beyond disregarding NEPA's text and undermining its goals, importing the tort-law concept of proximate causation into NEPA will have other costs. Even in its tort-law home, proximate causation is famously slippery. Petitioners' test would generate endless litigation over how to apply tort-law principles to NEPA. Petitioners themselves cannot settle on a formulation here, offering at least eleven descriptions of factors or tests for this Court's consideration. And although petitioners profess fealty to proximate causation, they use terms that tort law has long rejected. The disconnect between how tort-law proximate causation works and how petitioners would have it work under NEPA suggests that they are simply asking this Court to rewrite the statute.

That, combined with the fast-and-loose nature of petitioners' tests shows that, at bottom, petitioners object to NEPA itself. Their policy concerns are properly addressed to Congress. That is especially so where, as here, the political branches have a long record of addressing those concerns, including in amendments enacted just last year.

III. Though federal respondents agree that this Court should reject petitioners' new tests, they offer their own new gloss on reasonable foreseeability. Under it, if environmental effects are more attenuated, speculative, contingent, or otherwise insufficiently material, the agency need not consider them at all or may give them only limited consideration. This Court should reject this new gloss too.

Because the reasonable foreseeability test excludes consideration of environmental effects that are too attenuated, speculative, or contingent to allow for consideration, it already excludes consideration of effects that are "insufficiently material" to environmental review under NEPA. Federal respondents' application of their proposed gloss here shows that it would exclude consideration of undeniably material environmental effects. As this case comes to the Court, the effects at issue are reasonably foreseeable—meaning they are sufficiently likely to occur and can be discussed in sufficient detail—and are effects that the Board can consider under the Termination Act when deciding whether to approve the railway. The effects are thus material in every sense relevant to NEPA, and yet federal respondents would have this Court say that the Board did not need to consider them.

IV. If this Court adopts a new test for determining which environmental effects an agency must study

under NEPA, it should follow its ordinary course and allow the court below to apply it in the first instance. Petitioners' and federal respondents' arguments have shifted so much, and so often, during this case, and the court below has not had a chance to apply their many proposed new tests.

This Court should affirm.

ARGUMENT

I. Federal Agencies Must Study Reasonably Foreseeable Environmental Effects That They Have Statutory Authority To Consider.

The longstanding reasonable foreseeability test implements NEPA's clear textual commands and sets workable limits on agencies' duties under the statute. In the NEPA context, the test asks if an effect is both "likely to occur" and capable of being described "with sufficient specificity to make . . . consideration useful." *Sierra Club v. Marsh*, 769 F.2d 868, 878 (1st Cir. 1985) (Breyer, J.). Put differently, it asks if an effect is "sufficiently likely to occur such that a person of ordinary prudence would take it into account in reaching a decision." 40 C.F.R. § 1508.1(ii). Agencies use a half-century's worth of experience to apply this test and exclude effects that are too speculative to permit meaningful consideration. If a question arises over whether an agency has drawn that line reasonably, a court applies the familiar, deferential arbitrary and capricious standard. *Cf. Pub. Citizen*, 541 U.S. at 763.

The reasonable foreseeability test has a broad reach because that is required to execute NEPA's command to fully consider environmental effects. NEPA requires "all" agencies to study an action's effects and "any" unavoidable adverse effects "to the fullest extent possible." 42 U.S.C. § 4332(2)(C). Read

naturally, these words have "an expansive meaning." *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 219 (2008) (citation omitted); *see also Flint Ridge Dev. Co. v. Scenic Rivers Ass'n of Okla.*, 426 U.S. 776, 787 (1976) (This language is "a deliberate command that" agencies' environmental review obligations "not be shunted aside in the bureaucratic shuffle.").

The test also implements NEPA's requirement that agencies consider both immediate and secondary effects. The statute repeatedly directs agencies to take a wide lens when considering environmental effects. *See* 42 U.S.C. § 4331(a) (emphasizing developments that occur over time like "high-density urbanization" and "technological advances"); *id.* § 4331(b)(1) (directing the government to act "as trustee of the environment for succeeding generations"). That direction is most clear in the environmental impact statement provision itself, which tells agencies to address tradeoffs between "local short-term uses of" the environment and "long-term productivity" and to identify "irreversible and irretrievable commitments" of federal resources. *Id.* § 4332(2)(C)(iv)-(v). By requiring agencies to consider the effects the agency can reasonably predict in sufficient detail, the reasonably foreseeability test implements NEPA's requirement that agencies consider not only immediate effects, but also secondary effects that occur over time and distance.

In doing so, the test serves NEPA's goals. The impact statement requirement ensures that agencies look at environmental effects before they leap into action and it is too late to address them. *Robertson*, 490 U.S. at 349. The Act exists to inform federal agencies' decisions, *see Pub. Citizen*, 541 U.S. at 768–769, and also provides valuable notice to officials who will have to respond to the effects of those decisions. For

example, the resort development in *Robertson* would have caused "predicted off-site development" affecting "air quality" and wildlife, both effects that were "subject to regulation by other governmental bodies." *Robertson*, 490 U.S. at 350. As this Court explained, considering those effects ensures that those other governments have "adequate notice" of those effects and the ability to respond "in a timely manner." *Id.*; *see also Fifth Annual Report* at 47 (noting that most state and local officials considered secondary "induced impacts" to be "the most important effects" of "the development of new energy facilities"). And it provides people who would be harmed by those secondary effects with information that they need to press those governments to respond. *See Marsh v. Or. Nat. Res. Council*, 490 U.S. 360. 371 (1989) (NEPA "permits the public and other government agencies to react to the effects of a proposed action at a meaningful time.").

The reasonable foreseeability test also implements NEPA's "rule of reason," *id.* at 373. That rule—which is implicit, not express, in NEPA's text—recognizes that the Act should not be read to "render agency decisionmaking intractable." *Id.*[20] That "rule of reason" means that an "agency need not foresee the unforeseeable." *Scientists' Inst.*, 481 F.2d at 1092. As its name indicates, the *reasonable* foreseeability test does not require that. Instead, it requires agencies to undertake only the forecasting that is essential to NEPA's

---

[20] This rule emerged in cases discussing the parallel question of which alternatives an agency must consider. *See* 42 U.S.C. § 4332(2)(C)(iii) (alternatives requirement); *Nat. Res. Def. Council, Inc. v. Morton*, 458 F.2d 827, 834, 838 (D.C. Cir. 1972) (applying a "rule of reason" to state that agencies need not consider "remote and speculative possibilities" as alternatives).

predictive requirements. *Id.*; *see also Louisiana*, 503 F.2d at 877 (similar).

As a consistent "Executive Branch interpretation" of NEPA accompanied by "longstanding 'practice'" under the Act, the reasonable foreseeability test is "especially" deserving of respect. *Loper Bright*, 144 S. Ct. at 2258 (citation omitted). The test emerged "roughly contemporaneously with enactment of" NEPA. *Id.* CEQ's first regulations incorporated this test and stated that agencies must consider "direct" effects that "occur at the same time and place" and also those effects that "are later in time or farther removed in distance" so long as they "are still *reasonably foreseeable*." 40 C.F.R. § 1508.8 (1979) (emphasis added); *see also* 35 Fed. Reg. at 7391 (referring to "primary and secondary significant consequences"); 36 Fed. Reg. at 7725 (same). This interpretation has "remained consistent over time." *Loper Bright*, 144 S. Ct. at 2247; *see also* 40 C.F.R. § 1508.1(i), (ii).

The reasonable foreseeability test has proven workable, with environmental effects falling along a spectrum. At one end, effects that are "highly speculative or indefinite" are not reasonably foreseeable. *Marsh*, 769 F.2d at 878 (citing *Kleppe v. Sierra Club*, 427 U.S. 390, 402 (1976)). For example, even if a proposed action might in theory affect "population or land use patterns," the agency need not consider them if they are not sufficiently likely to occur. *Trout Unlimited v. Morton*, 509 F.2d 1276, 1284 (9th Cir. 1974) (reviewing the analysis of a dam and reservoir project).[21] At

[21] *See also* Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 Fed. Reg. 18,026, 18,031 (Mar. 23, 1981) ("[I]f there is total uncertainty

the other end, effects that result from the very outcome a project is designed to achieve are ordinarily reasonably foreseeable. *See supra* at 6 (discussing early environmental impact statements that did so); *see also Sierra Club v. Sigler*, 695 F.2d 957, 979 (5th Cir. 1983) (explaining that if an agency identifies a result of a project "as a 'selling point,' " the environmental effects of that result are reasonably foreseeable). That is because if a project is meant to achieve a result, then the environmental effects of that result are likely to occur and can be considered in sufficient detail. For example, if an agency proposes to connect an undeveloped island via a cargo port and causeway and selects a site because of its potential to support future development on the island, it must consider "the secondary impacts" of that anticipated development. *Marsh*, 769 F.2d at 878–879 (collecting cases).

Between these poles, reasonable foreseeability turns on the action at hand and the information available to the agency. If an agency finds that an effect is not reasonably foreseeable, if it explains why, and if its explanation is not arbitrary, that will suffice. Cases across the government's work—airport projects, [22]

about" the effect, "the agency is not required to engage in speculation or contemplation.").

[22] *Compare Barnes v. U.S. Dep't of Transp.*, 655 F.3d 1124, 1136–137 (9th Cir. 2011) (holding that a conclusion that a "major hub airport" runway would not induce growth "strain[ed] credulity" given the record), *with City of Los Angeles v. Fed. Aviation Admin.*, 138 F.3d 806, 807–808 (9th Cir. 1998) (upholding a decision not to study growth-inducing effects because demand did not turn on "how nifty the [expanded] terminal is").

port projects, [23] transportation projects, [24] and more[25]—have reasonably sorted effects that must be considered from those that need not.

The application of the reasonable foreseeability test below shows how it sensibly polices agencies' obligations under NEPA. The Board "had no obligation" to consider "a remote possibility" that the railway would lead to reactivation of a connecting line. Pet. App. 37a–39a. But the effects of oil production and refining were not mere speculative possibilities. These effects were likely to occur, given that the railway's "undisputed purpose . . . is to expand oil production in the Uinta Basin, by enabling it to be brought to market." *Id.* at 36a. The Board had enough information to consider those effects, given the extensive record about that new production and where the crude would be

---

[23] *Compare Sierra Club v. Marsh*, 976 F.2d 763, 775–776 (1st Cir. 1992) (holding that light-dry industry development was a reasonably foreseeable effect of a new cargo port); *with id.* at 776–777 (holding that heavy industry development was not, because it depended on improvements that were unlikely to occur).

[24] *Compare Rocky Mountain Wild v. Dallas*, 98 F.4th 1263, 1294 (10th Cir. 2024) (noting that the effects of a proposed development that a right-of-way would facilitate were "characteristic" foreseeable effects), *with Headwaters, Inc. v. Bureau of Land Mgmt., Medford Dist.*, 914 F.2d 1174, 1181–182 (9th Cir. 1990) (holding that "no evidence" rendered the "conceivable" possibility that a road project would increase logging "more than speculation").

[25] *Compare Food & Water Watch v. FERC*, 104 F.4th 336, 343 (D.C. Cir. 2024) (holding that the agency "reasonably concluded" that it need not assess "effects caused by extracting natural gas" given uncertainty over the number and location of wells), *with* Pet. App. 33a–34a (finding that the Board "provide[d] no reason why it could not" assess the effects "of the wells it reasonably expects in [an] already identified region" of the Basin).

refined. *Id.* And the Board had undisputed authority to consider those effects when making its decision under the Termination Act. *Id.* For those reasons, the Board had to study the environmental effects of that production and refining (or at least offer a reasoned explanation why it could not). *Id.* at 34a–36a.

This Court has identified other limits on the scope of NEPA review that operate alongside the reasonable foreseeability test. Agencies need not consider effects that do not result from "a change in the physical environment." *Metro. Edison*, 460 U.S. at 774. If implementing NEPA would force an agency to violate "a clear and fundamental conflict of statutory duty," NEPA's requirements give way. *Flint Ridge*, 426 U.S. at 787. And if an agency is carrying out an action over which the agency has no discretion, or if Congress has prohibited an agency from considering environmental effects when acting, NEPA does not require the agency to consider those environmental effects. *See Pub. Citizen*, 541 U.S. at 761. That is because, given NEPA's focus on agency decisionmaking, the Act does not require an agency to study "the environmental impact of an action it could not refuse to perform." *Id.* at 768–769. These cases did not displace, or question, the reasonable foreseeability test but instead addressed facts that implicated additional policies underlying NEPA.

The political branches' recent amendments to NEPA closely track this doctrinal landscape. NEPA now expressly refers to reasonable foreseeability. *Compare* 42 U.S.C. § 4332(2)(C)(i)-(ii) ("reasonably foreseeable environmental effects of the proposed agency action"; "any reasonably foreseeable adverse environmental effects"), *with* 42 U.S.C. § 4332(2)(C)(i)-(ii) (1970) ("the environmental impact of the proposed action";

"any adverse environmental effects which cannot be avoided"). The amendments also track the other limits on NEPA review that this Court's cases have identified. Mirroring *Flint*, NEPA's environmental impact statement requirement does not apply if "preparation of such document would clearly and fundamentally conflict with the requirements of another provision of law." 42 U.S.C. § 4336(a)(3). And mirroring *Public Citizen*, the requirement does not apply if "the proposed agency action is a nondiscretionary action with respect to which such agency does not have authority to take environmental factors into consideration." *Id.* § 4336(a)(4).

In sum, NEPA requires an agency to consider effects so long as they are environmental in nature, within the agency's discretion to consider, and reasonably foreseeable—meaning that there is evidence that they are likely to occur and that facilitates meaningful consideration.

II. Petitioners' Novel Tests Defy Text, Precedent, And Respect For The Political Branches.

Petitioners persuaded this Court to take this case to resolve an alleged split over whether NEPA requires agencies to "study environmental effects that they do not regulate." Pet. 14, 18. Having done so, they now jettison the direct-authority-to-regulate test that they advanced at the certiorari stage and run with a new test that would import tort-law proximate causation wholesale into NEPA. *See infra* II.B. This Court does not ordinarily tolerate a merits-stage bait-and-switch. *See, e.g.*, *Visa v. Osborn*, 580 U.S. 993 (2016).

Even so, petitioners' old and new tests both are contrary to NEPA, and this Court should not adopt them.

NEPA's text squarely forecloses petitioners' direct-authority-to-regulate test, which perhaps explains why they no longer seem to believe in it. As for petitioners' new test, it boils down to undefined incantations of proximate causation. This Court has rejected the mechanical importation of proximate causation into NEPA twice before, and it should do so again here. In the end, petitioners' shifting arguments show that they object to NEPA as written, but their policy arguments are for Congress to address, not this Court.

A. NEPA's text forecloses petitioners' direct-authority-to-regulate test.

Petitioners are right to back away from their direct-authority-to regulate test, as NEPA forecloses it. Under that test, an agency need not study environmental "effects . . . regulated by other agencies." Pet. Reply 11. But NEPA expressly anticipates that agencies will study effects that fall outside of their direct regulatory authority. Since its enactment, NEPA has directed agencies to "consult with and obtain the comments of any Federal agency" with "jurisdiction by law or special expertise with respect to any environmental impact involved." 42 U.S.C. § 4332(2)(C). NEPA thus recognizes that its commands ask agencies to study issues that lie outside of their core "subject-matter expertise," Petrs. Br. 44, and its solution is consultation, not arbitrarily truncating environmental review. The 2023 amendments doubled down on this front, adding language that mirrored longstanding regulations. A new section that governs multi-agency reviews authorizes a lead agency to "designate any Federal, State, Tribal, or local agency that has jurisdiction by law or special expertise . . . as a cooperating agency." 42 U.S.C. § 4336a(a)(3). And special expertise is now

defined as "statutory responsibility, agency mission, or related program experience." *Id.* § 4336e(13).

Other provisions of NEPA similarly shut the door on relying on generalized notions of an agency's "relatively limited remit," Petrs. Br. 10, to restrict NEPA's reach arbitrarily. NEPA requires "all agencies" to "integrat[e]" scientific methods into "planning" and "decisionmaking which may have an [environmental] impact." 42 U.S.C. § 4332(2)(A). And it makes its requirements "supplementary to those" in agencies' "existing authorizations." *Id.* § 4335. The statute thus expressly contemplates that all agencies will acquire the expertise necessary to consider how their actions may affect the environment. *See* Gov't Br. 31–33.

The direct-authority-to-regulate test would reintroduce the problem that NEPA aimed to stop. Before the Act, agencies took a "not my job" view towards environmental effects.[26] By making agencies responsible for "improv[ing] and coordinat[ing]" planning processes, 42 U.S.C. § 4331(b), the Act sought to break agencies out of the exact siloed planning approach that petitioners' test would impose. An agency funding a new highway would, for example, not study air pollution and other environmental effects because it is a mere "highway agency" that does not regulate those effects. NEPA makes it clear that the statute should not be read to reimpose that approach. *See id.* § 4332(1) (enacting a rule of construction to "interpret[]" the statute "in accordance with [its] policies").

This Court's decision in *Public Citizen* does not support petitioners' direct-authority-to-regulate test. It

---

[26] *See, e.g.*, CEQ, *Environmental Quality: The Third Annual Report of the Council on Environmental Quality* 226 (Aug. 1972), bit.ly/ceq3drpt.

holds that an agency need not consider effects that it "has no ability to prevent" because Congress limited its "discretion" to consider those effects. 541 U.S. at 770. So if all petitioners mean when they refer (at 23) to "matters beyond the agency's remit" is that an agency need not consider effects it has no discretion to consider, that is an unobjectionably true statement of the limits of review under NEPA. But it is also irrelevant here because the court below found—and petitioners do not dispute—that the Board has authority to consider the effects at issue here when making its decision. Pet. App. 36a–37a.

B. Petitioners' proximate causation test has no connection to NEPA's text or policies.

Petitioners' argument that NEPA incorporates tort law concepts of proximate causation wholesale is just wrong. It starts in the wrong place: with a claim that this Court has already held as much. It ends in the wrong place: reading a statute designed to expand our understanding of environmental consequences to cut off meaningful consideration of those consequences. And it does all of this at great cost: requiring federal agencies to waste time and resources applying a notoriously vexing area of tort law.

Petitioners start by making the very move that this Court has rejected twice over. They frame the dispositive question here as whether a person harmed by one of the new railway's environmental effects could seek damages in tort from the Board. Petrs. Br. 2, 17, 31. They do so because, they say, this Court has "held that an agency need only study environmental effects proximately caused by the proposed agency action." *Id.* at 5. It has not.

Petitioners lean on *Metropolitan Edison* for support, but their 20 citations to that decision studiously avoid its most relevant language, which rejects petitioners' framing. There, the Nuclear Regulatory Commission proposed allowing a nuclear plant to restart. *See* 460 U.S. at 768. The plant would, for example, release low-level radiation and create fog. *See id.* at 775. Its operations would also carry a risk of a nuclear accident, which, if realized, would have environmental effects. *See id.* at 775 & n.9. The Commission studied all of these effects when carrying out its NEPA duties.

The Court relied on NEPA's text to hold that the Commission rightly did not study a non-environmental effect: the potential for the unrealized risk of an accident to cause nearby residents to suffer psychological trauma. NEPA's repeated references to "environmental" effects show that the statute's "central concern" is with ensuring that agencies have the information needed to consider the tradeoff between a proposed action's benefits and the "level of alteration of our physical environment or depletion of our natural resources" that will result. *Id.* at 774–776. When asking if an agency must study a given effect, NEPA therefore requires "a reasonably close causal relationship between a change in the physical environment and the effect at issue." *Id.* at 774.

Just after describing this requirement as "like . . . proximate cause from tort law," *id.* at 774, this Court anticipated the mischief that mechanical applications of that phrase could cause. It warned that by analogizing to proximate causation, it did "not mean to suggest that any cause-effect relation too attenuated to merit damages in a tort suit would also be too attenuated to merit notice in an [environmental impact statement]" (or the converse). *Id.* at 774 n.7. NEPA

is, after all, a statute, not common law, and any question of what it requires an agency to study must be resolved by reference to that statute's "underlying policies or legislative intent." *Id.*

Based on the statutory text and policies underlying NEPA, this Court held that the effect at issue in *Metropolitan Edison*—psychological harm due to "risk, qua risk"—lacked "a sufficiently close connection to the physical environment." *Id.* at 778–779. The Court stressed that the "situation where an agency is asked to consider" effects that would occur if a risk were *realized* was "an entirely different case." *Id.* at 775 n.9. An agency must study those effects, even though they also result from a causal chain. *Id.*

Petitioners likewise fail to square up to the parallel caveat in *Public Citizen*. There, this Court repeated *Metropolitan Edison*'s "reasonably close causal relationship" language and its analogy to the tort-law doctrine of proximate causation. 541 U.S. at 767. It also repeated the admonition that this is only an analogy and that "the underlying policies or legislative intent" drive the analysis. *Id.*

For that reason, *Public Citizen* looked to NEPA's underlying policies—not tort law's underlying policies—to resolve the question before it. The Court focused on the agency's lack of discretion to act based on the effects at issue. That lack of discretion meant that studying the effects at issue could not generate "potential information" relevant to the agency's "decisionmaking process" and so would not serve "the underlying policies behind NEPA and Congress' intent, as informed by the 'rule of reason.'" *Id.* at 767–768. "Put another way," the "causal connection" between the agency's action and the environmental effects at issue was

"insufficient to make [it] responsible *under NEPA* to consider" those effects. *Id.* at 768 (emphasis added); *see also Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 667–668 (2007) ("[T]he basic principle announced in *Public Citizen*" is "that an agency cannot be considered the legal 'cause' of an action that it has no statutory discretion not to take.").

Petitioners ask this Court to discard its earlier wisdom in drawing only a qualified analogy to proximate causation. They propose importing the tort-law concept of proximate causation wholesale into NEPA. Doing so would betray NEPA's text, its policies, and the intent behind the Act.

By its terms, NEPA is a forward-looking statute, one that reflects the political branches' judgment that there is value in understanding and disclosing the potential environmental effects of agency actions. *See Robertson*, 490 U.S. at 350 (recognizing that NEPA's goals can be met only "[i]f the environmental effects of the proposed action are adequately identified and evaluated"). NEPA requires agencies to consider the *potential* environment effects of their actions so that environmental protection is "infused into the ongoing programs and actions of the Federal Government." *Public Citizen*, 541 U.S. at 769 (quoting 40 C.F.R. § 1502.1). Its "manifest concern with preventing uninformed action" does not tolerate imposing arbitrary "blinders to adverse environmental effects." *Marsh*, 490 U.S. at 371. Though NEPA requires agencies to study environmental effects fully, it does not require agencies to *avoid* those effects, *see Public Citizen*, 541 U.S. at 756–757, much less render agencies *liable* for any harm stemming from those effects.

In stark contrast, the tort-law concept of proximate causation is all about imposing liability for violations of rules about how to act. The function of tort law is to impose duties and to make actors who breach those duties pay. *See* Restatement (Third) of Torts: Phys. & Emot. Harm § 7 cmt. a (2010) (*Third Restatement*) ("[A]ctors engaging in conduct that creates risks to others have a duty to exercise reasonable care to avoid causing physical harm."). When a breach occurs and causes harm, proximate causation's function is to "confin[e] liability[]" to the harms that are the reason why liability was imposed in the first place. *Id.* § 29 cmt. d; *see also* W. Page Keeton et al., *Prosser and Keeton on Law of Torts* 264 (5th ed. 1984) (*Prosser*).

NEPA's text shows that it does not share the same concerns that tort law does (and that proximate causation was designed to address). First, and again, the statute does not impose a duty on an agency to avoid environmental harm. *See supra* at 4–5. Indeed, NEPA recognizes that some harm cannot be avoided and expressly requires agencies to take account of unavoidable harm. *See* 42 U.S.C. § 4332(2)(C)(ii) (referring to "any reasonably foreseeable adverse environmental effects which cannot be avoided"). And it tells agencies to study environmental effects even if other actors may have a hand in causing or stopping them. *See id.* §§ 4332(2)(C), 4336a(a)(3). Second, NEPA was designed to expand, not confine, the consideration of environmental effects. The tort-law concept of proximate causation does not approximate the "usefulness" of "potential information" about environmental effects that agencies develop under NEPA. *Pub. Citizen*, 541 U.S. at 767; *see also* Gov't Br. 35–38. There is instead a fundamental mismatch between that concept and NEPA's requirements.

Beyond disregarding NEPA's text and undermining its goals, importing tort-law concepts of proximate causation into NEPA would have other costs. To determine the scope of review, agencies now ask which effects of an action are reasonably foreseeable and study those effects, so long as Congress has not stripped them of discretion to consider them. *See supra* at 29. Under petitioners' test, agencies would ask which effects of an action are reasonably foreseeable, then ask which of those effects they might be liable for in tort, and study only those effects. Even without more, merely changing the rules that govern NEPA's fundamental requirements risks "uncertainty and confusion" for agencies implementing NEPA. 87 Fed. Reg. at 23,463.[27]

But there is more, because proximate causation is famously slippery even as a tort-law concept. There is no "consensus on any one definition" of the phrase. *CSX Transp., Inc. v. McBride*, 564 U.S. 685, 701 (2011). Instead there is serious "disagreement" over "principles of proximate causation and confusion in the doctrine's application" even in its home context. *Exxon Co. v. Sofec., Inc.*, 517 U.S. 830, 838 (1996). Petitioners themselves cannot settle on a definition of proximate causation that should apply to the question of which environmental effects NEPA requires an agency to consider. Instead, they offer at least eleven formulations. Petrs. Br. 2 ("small and uncertain effects . . . , but the reviewing agency does not regulate

---

[27] CEQ has hewed to longstanding interpretations of NEPA for this reason. *See supra* at 10; *see also* 89 Fed. Reg. 35,442, 35,481 (May 1, 2024) (declining to change language that had been consistent since 1978 because doing so "could introduce unnecessary confusion and potential delay").

those things"); *id.* at 16 ("remote in geography and time"); *id.* ("a demanding form of proximate cause"); *id.* at 17 ("separated by multiple intervening causes"); *id.* ("legally relevant"); *id.* at 23 (not covering "remote . . . effects"); *id.* at 25 (not covering "factors outside the agency's control"); *id.* at 26 (excludes "far-downstream consequences"); *id.* at 27 ("turns on foreseeability and reasonableness"); *id.* at 34 ("environmental effects that flow from subsequent actions that the project may (or may not) ultimately enable need not be considered"); *id.* at 36 ("contingent and remote").

Petitioners' proximate causation test would generate endless litigation over how to apply tort-law principles to NEPA. The statute applies to "all agencies of the Federal Government" and "every" proposed "major Federal action[] significantly affecting" the environment. 42 U.S.C. § 4332(2)(C). Importing the tort-law concept of proximate causation into these disparate actions, with their myriad environmental effects, and asking agencies unfamiliar with tort law to sort all of this out can end only one way. Agencies and courts alike would be adrift, agency actions would sit in "NEPA-litigation purgatory," Petrs. Br. 49, and this Court would face a press of cases asking it to resolve the conflicting approaches that result. The tort-law concept of proximate causation does not offer any "manageable" line, *id.* at 35, to guide agencies' environmental review under NEPA.

Petitioners' arguments show how quickly things could go wrong. Though professing fealty to proximate causation, they invoke limitations that tort law itself has rejected. Take their references (at 34) to effects that are "remote . . . in space and time." In tort law, whatever connotations that proximate cause had "of time and space" have "long since disappeared."

Prosser 273, 276–277; *see also Third Restatement* § 29 cmt. b ("[T]ortious conduct need not be close in space or time to the plaintiff's harm to be a proximate cause."). Or consider their objection (at 34, 36) to studying environmental "effects that flow from subsequent actions" that the project enables or (at 18) from "multiple intervening causes." In tort law, the "distinction" between an active "cause" and creating a "condition" that enables harm is "now almost entirely discredited." *Prosser* 277–278. Instead, tort law recognizes that harms often have "multiple proximate causes." *Staub v. Proctor Hosp.*, 562 U.S. 411, 420 (2011); *see also Sofec*, 517 U.S. at 837; *Third Restatement* § 29 cmts. b, d.

The disconnect between petitioners' proposed tests and how proximate causation works even in tort law shows that petitioners' arguments "boil down to a request to impose new limits on NEPA's established framework," Govt. Br. 38. They recognize that the political branches, just last year, added the reasonable foreseeability test to NEPA's express text. *See* Petrs. Br. 28. They even recognize that proximate causation is often explicated in terms of foreseeability. *Id.* at 27, 41; *Paroline v. United States*, 572 U.S. 434, 444 (2014). And yet they resist the reasonable foreseeability test that "'developed under' prior agency practice" and under judicial decisions applying deferential review for fifty years before Congress "transplanted" the test into the express text, *George v. McDonough*, 596 U.S. 740, 746 (2022) (citation omitted). Their view seems to be (at 32) that *some* test beyond but-for causation is needed, but the reasonable foreseeability test provides such a test already. *See, e.g. Sierra Club v. FERC*, 827 F.3d 36, 46 (D.C. Cir. 2016); *see supra* at 27–28.

That leaves petitioners' backup effort to recast their proximate causation test as a "rule of reason" test. Petrs. Br. 24. Their arguments treat the rule of reason as an invitation to make free-floating policy judgments about when studying effects "makes perfect sense." *Id.* at 34. The rule of reason cautions against reading NEPA to require more than an agency can do as a practical matter. *See supra* at 25; *see also N.Y. Nat. Res. Def. Council, Inc. v. Kleppe*, 429 U.S. 1307, 1311 (1976) (Marshall, J., in chambers) (NEPA should not be read to make review "either fruitless or well nigh impossible." (citation omitted)). No precedent supports using that rule to allow agencies to sidestep NEPA's clear commands. *See* 42 U.S.C. § 4332(1) (stating that NEPA should be "interpreted . . . in accordance with the policies" set out in the Act).

Petitioners characterize *Robertson* as a rule of reason case "holding that only proximate environmental effects count." Petrs. Br. 23–24. It did no such thing. The questions in *Robertson* were whether NEPA *required* agencies to conduct so-called worst-case analyses or to mitigate adverse environmental effects. In answering no on both fronts, this Court reiterated that the agency's obligation was to "adequately identif[y] and evaluate[]" the "adverse environmental effects" of proposed actions. *Robertson*, 490 U.S. at 349, 352. Agencies have understood NEPA to require them to consider these kinds of secondary effects since day one, and they have done just that. *See supra* at 5–7. And *Roberston* itself emphasized that considering these environmental effects serves NEPA's purposes. *See supra* at 25. Petitioners' test would read these kinds of effects out of NEPA, and they have no sensible explanation for why the statute should be read this way.

C. Petitioners present their policy arguments to the wrong forum.

The fast-and-loose nature of petitioners' tests shows that, at bottom, they object to NEPA itself. Policy concerns of this kind are "properly addressed to Congress." *SAS Inst., Inc. v. Iancu*, 584 U.S. 357, 368 (2018). That is especially true where, as here, Congress has a long record of addressing those concerns, including in amendments enacted just last year.

Congress understands that NEPA—as with any procedural requirement—adds to the timeline for agency action, and it acts to modify whether and how NEPA applies to address that fact. It has exempted some actions from NEPA's requirements outright.[28] For others, it has required specific interagency coordination[29] or set expedited deadlines.[30] And it has revisited its

---

[28] *See, e.g.*, 15 U.S.C. § 793(d) (certain border transmission facilities); 16 U.S.C. § 544o(f) (certain forest management plans); 42 U.S.C. § 10141(c) (criteria for nuclear waste); *id.* § 10196(b) (certain nuclear test and evaluation facilities); 43 U.S.C. § 1652(d) (trans-Alaska oil pipeline construction); Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Pub. L. No. 106-398, § 317, 114 Stat. 1654, 1654A-57 (low-level flight training); *see also* 42 U.S.C. § 5175 (1976) (certain disaster reconstruction projects).

[29] *See, e.g.*, Energy Policy Act of 2005, Pub. L. No. 109-58, § 313(b), 119 Stat. 594, 688–689 (codified as amended at 15 U.S.C. § 717n(b)) (FERC as lead); 16 U.S.C. § 824p(h) (Department of Energy as lead); Fixing America's Surface Transportation Act, Pub. L. No. 114-94, § 41002, 129 Stat. 1312, 1743–747 (2015) (codified as amended at 42 U.S.C. § 4370m-1) (establishing a Steering Council to manage permitting).

[30] *See, e.g.*, 16 U.S.C. § 824p(h)(4)(B) (setting deadline); Healthy Forests Restoration Act of 2003, Pub. L. No. 108-148, § 104, 117 Stat. 1887, 1897–899 (codified at 16 U.S.C. § 6514)

statutory adjustments, sometimes making temporary changes permanent after monitoring their effectiveness.[31]

What Congress has declined to do is to enact the changes petitioners urge here, though it was asked to do so just last year. Its recent amendments began as a bill that would have introduced new limits on the effects that NEPA requires agencies to consider. Congress deleted those limits in the drafting process and referred to only the settled reasonable foreseeability test. *See supra* at 10. Rather than amend NEPA's substantive commands, Congress imposed new procedural ones that streamline review, including page limits, deadlines, and default lead agency designations. *See* 42 U.S.C. §§ 4336a, 4336d. By asking this Court to disregard "the qualifications" of those amendments, petitioners ask it to "'[dis]respect the limits up to which Congress was prepared to go.'" *New Prime Inc. v. Oliveira*, 586 U.S. 105, 121 (2019) (citation omitted). If petitioners wish to (re-)air their policy arguments, the "political process" is the "forum in which" they should do so. *Metro. Edison*, 460 U.S. at 777.

(reducing the alternatives to be considered in evaluating fuel reduction projects in wildland-urban interfaces); Moving Ahead for Progress in the 21st Century Act, Pub. L. No. 112-141, § 1306, 126 Stat. 405, 535–539 (2012) (codified as amended at 23 U.S.C. § 139(h)) (budgetary penalties for missed deadlines); Water Resources Reform and Development Act of 2014, Pub. L. No. 113-121, § 1005(a)(1), 128 Stat. 1193, 1199–212 (codified at 33 U.S.C. § 2348(h)(5)) (similar); 33 U.S.C. § 2348(g)(2)(A) (limited comment period); 42 U.S.C. § 4370m-4(d)(1) (similar).

[31] *See, e.g.*, Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, § 11301, 135 Stat. 429, 525–530 (2021) (codified as amended at 23 U.S.C. § 139) (making large parts of the FAST Act permanent and finetuning its language).

III. This Court Should Reject Federal Respondents' New Gloss On Reasonable Foreseeability.

Federal respondents agree that this Court should reject petitioners' new tests. Gov't Br. 31–38. They offer their own gloss on reasonable foreseeability: If environmental effects "are more attenuated, speculative, contingent, or otherwise insufficiently material to the agency's decisionmaking, . . . the agency need not consider [them] at all, or . . . may give [them] only limited consideration." *Id.* at 21–22. The reasonable foreseeability test already screens out effects that are too attenuated, speculative, contingent, or otherwise insufficiently material to the environmental review that NEPA requires. *See supra* at 25–29. As federal respondents' application of their proposed gloss here shows, it would exclude *material* effects and therefore flouts NEPA's text and aims. This Court should reject that gloss too.[32]

The reasonable foreseeability test already "excludes any consideration of" environmental effects that are "too attenuated, speculative, [or] contingent." Gov't Br. 27. That is the exact standard that courts already use to assess reasonable foreseeability. *See supra* at 27–28. Indeed, it is the language the Board used below to argue that the environmental effects of increased Basin waxy crude production were not

[32] Any question of when an agency may give an effect only limited consideration raises "auxiliary questions" that this Court did not agree to answer. *Coinbase, Inc. v. Suski*, 144 S. Ct. 1186, 1194 (2024). The question presented asks "[w]hether" NEPA requires agencies to consider certain effects, Petrs. Br. i, not the degree of consideration required, and the Board did not consider the effects at issue here.

reasonably foreseeable. Pet. App. 31a (quoting the Board's view that the production would result from "as yet unknown and independent projects" and was "unknown and unknowable"). The court below found that explanation arbitrary in light of the record and gave the Board a chance to offer a better explanation. *Id.* at 33a–35a. Federal respondents do not say why the outcome should be different because they frame the same arguments in the guise of a new gloss.

The reasonable foreseeability test also already excludes consideration of effects that are "insufficiently material to," Gov't Br. 21, environmental review under NEPA. It screens for those effects that are both sufficiently likely and capable of being considered in sufficient detail. *See supra* at 23. Those are the factors that are material to NEPA, which requires agencies to consider environmental effects "to the fullest extent possible." 42 U.S.C. § 4332(2)(C); *see also Marsh*, 490 U.S. at 371 (explaining that agencies must "not act on incomplete information").

Federal respondents' application of their gloss here shows that it excludes consideration of effects that *are material* to environmental review under NEPA. Gov't Br. 42–45. It is undisputed that the effects at issue from increased Basin waxy crude production were reasonably foreseeable. The railway was designed to increase that production, and the Board has the information needed to consider the environmental effects of that production, just as it considered the economic benefits of that production. Pet. App. 33a–35a. It is also undisputed that the Board has authority to consider those effects under the Termination Act. *Id.* at 67a–69a. The effects are thus material in every sense relevant to NEPA, and yet federal respondents would have this Court say that the Board did not need to

consider them. Gov't Br. 41 ("assuming" the effects are reasonably foreseeable and within the Board's authority to consider). "That is the opposite of what Congress required," *id.* at 33.

Federal respondents' reliance on "*Public Citizen's* reasoning" for this part of their gloss is misplaced. *Id.* at 27. *Public Citizen* did not grant agencies unfettered discretion to decide whether information is "sufficiently material" to consider. Instead, it established that NEPA does not require an agency to consider environmental effects if Congress did not grant the agency discretion to act, or discretion to consider that information when acting. *See supra* at 35–36.

Federal respondents' application of their gloss also shows that it is unbounded and unpredictable. An agency that would rather not acknowledge an environmental effect can simply cobble together a "context-specific determination[]," of "materiality," *id.* at 45, to avoid acknowledging it. Indeed, federal respondents would allow agencies to base that determination on factors that they elsewhere agree are *inconsistent* with NEPA's commands. For example, though they recognize that NEPA forecloses petitioners' direct-authority-to-regulate test, federal respondents nonetheless incorporate that idea into their new gloss. *Compare* Gov't Br. 33 (arguing that agencies cannot "exclude environmental effects that are not within their direct regulatory jurisdiction"), *with id.* at 45 (justifying the Board's decision based on its role in authorizing railways and lack of authority over oil and gas development). As the federal government has explained, changing the longstanding, well-understood framework for environmental review under NEPA would lead to delay and uncertainty as agencies struggle to apply a new test. S*ee supra* at 38. This Court

should decline to impose those costs and should reject federal respondents' gloss.

IV. Reversal Is Not Warranted.

To the extent that petitioners ask this Court to reverse the *entire* judgment below (at 52), the request is misplaced. As they acknowledge (at 15 n.1), the judgment below rests on violations of multiple statutes: NEPA, the Endangered Species Act, and the Termination Act. Reversal full stop is off the table.

Petitioners' request that this Court "affirmatively hold that" this final environmental impact statement "passes NEPA muster" (at 50) is also misplaced. The court below found NEPA errors that are not at issue here because they fall outside the scope of the question presented. *See* Gov't Br. 39–41. Those relate to the statement's unreasoned analysis of environmental effects of trains from the Basin traveling along the Union Pacific line. *See supra* at 14 n.13, 15 n.15; *see also* Eagle Cnty. Br. 20–22.

If this Court adopts a new legal test—petitioners' or federal respondents'—it should follow its ordinary course and allow the court below to apply that test to the effects that are at issue in the first instance. *See, e.g.*, *Bissonette v. LePage Bakeries Park St., LLC*, 601 U.S. 246, 256 (2024). Petitioners did not press their direct-authority-to-regulate test below, and the Board raised *Public Citizen* only to defend its study of certain effects as cumulative effects. *Compare* CADC Board Br. 30–31, *with* Petrs. Br. 2, 31; *see also supra* at 14 n.14. Petitioners did not raise their tort-law test below. *Compare* CADC Petrs. Br. 24 ("[E]veryone agrees that a project can have indirect effects that occur 'later in time or farther removed in distance.'"(citation omitted)), *with* Petrs. Br. 17, 35, 39. As for the

government's test, the Board defended its decision not to study the environmental effects of increased Basin waxy crude production primarily by claiming they were not reasonably foreseeable, Pet. App. 34a–36a, not based on any "context-specific determination" of materiality, Gov't Br. 27. There is no reason for this Court to "send a clear signal," Petrs. Br. 50, through reversal, and every reason not to, given that the court below has not been given a chance to address the various tests pressed here. *See Thacker v. Tenn. Valley Auth.*, 587 U.S. 218, 228 (2019).

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

Eric Glitzenstein
CENTER FOR BIOLOGICAL DIVERSITY
1411 K St. NW, Ste. 1300
Washington, D.C. 20005

Wendy Park
CENTER FOR BIOLOGICAL DIVERSITY
1212 Broadway, Ste. 800
Oakland, CA 94612

Edward B. Zukoski
CENTER FOR BIOLOGICAL DIVERSITY
1536 Wynkoop St., Ste. 421
Denver, CO 80202

Kirti Datla
Counsel of Record
Benjamin Chagnon
EARTHJUSTICE
1001 G St. NW, Ste. 1000
Washington, DC 20001
202.797.5241
kdatla@earthjustice.org

Linnet Davis-Stermitz
EARTHJUSTICE
810 Third Ave., Ste. 610
Seattle, WA 98104

Counsel for Environmental Respondents

October 18, 2024