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13
14 **IN THE UNITED STATES DISTRICT COURT**
15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

16
17 CLEANAIRNOW; CENTER FOR
BIOLOGICAL DIVERSITY; and SIERRA
18 CLUB,

19 Plaintiffs,

20 v.

21 LOUIS DEJOY, in his official capacity as U.S.
Postmaster General; and U.S. POSTAL
22 SERVICE,

23 Defendants.
24

25
26 **COMPLAINT FOR DECLARATORY**
AND INJUNCTIVE RELIEF

INTRODUCTION

1
2 1. Plaintiffs challenge the United States Postal Service’s (“Postal Service” or “USPS”)
3 unlawful decision to replace up to 165,000 postal delivery vehicles—a significant majority of the
4 agency’s active vehicle fleet—without first performing a lawful environmental review as required
5 under the National Environmental Policy Act (“NEPA”). The crux of this case is that the Postal
6 Service performed its NEPA analysis too late, and the analysis it did finally prepare was incomplete,
7 misleading, and biased against cleaner vehicles. The Postal Service finalized its Next Generation
8 Delivery Vehicles (“NGDV”) plan to purchase approximately 90% internal combustion engine
9 (“ICE” or “gas”) and 10% electric (“EV”) postal delivery vehicles before properly analyzing the
10 environmental effects of its decision. Astoundingly, the Postal Service signed a contract *and* agreed
11 to pay millions of dollars for these vehicles first, *before* beginning its environmental analysis to
12 justify its action, in blatant violation of NEPA. As the largest government fleet in the nation, the
13 Postal Service’s improper action will not only needlessly pollute every American community for
14 decades to come, but it will also cost millions more in taxpayer funds and leave the agency
15 vulnerable to fluctuating fuel prices.

16 2. When the Environmental Protection Agency (“EPA”) and the President’s Council on
17 Environmental Quality (“CEQ”) pointed out the flawed calculations and reasoning in the Postal
18 Service’s environmental review, the Postal Service ignored its sister agencies’ concerns. The Postal
19 Service proceeded to finalize its NEPA review and move forward with its plan anyway.

20 3. Specifically, in January 2015, the Postal Service issued a request for information for
21 various postal delivery vehicle prototypes. Shortly thereafter, the agency selected and ordered
22 prototypes for ICE vehicles, EVs, and hybrid options. On February 23, 2021, the Postal Service
23 formalized a contract with Oshkosh Defense (“Oshkosh”) to produce up to 165,000 vehicles. The
24 terms of the contract noted the initial order would be fulfilled in 2023. At the same time, the Postal
25 Service issued the first payment for this order, totaling \$482 million. Only *after* its lengthy call for
26 prototypes, evaluation and research of different vendors, finalization of the contract, and issuance of
27 its first payment—a process that took over 6 years—did the Postal Service begin its environmental
28 review as required by NEPA. It issued a Draft Environmental Impact Statement (“EIS”) for the

1 NGDV Acquisition on August 26, 2021, and a Final EIS on January 7, 2022. *See* Notice of
2 Availability of Draft Environmental Impact Statement for Purchase of Next Generation Delivery
3 Vehicle, 86 Fed. Reg. 47,662 (Aug. 26, 2021) (“Draft EIS”); Notice of Availability of Final
4 Environmental Impact Statement for Purchase of Next Generation Delivery Vehicles, 87 Fed. Reg.
5 994 (Jan. 7, 2022) (“Final EIS”).

6 4. Despite the Postal Service’s glaring failure to perform a timely NEPA review, there is
7 no question that the agency was well-aware of its obligations under NEPA. Indeed, almost 25 years
8 ago, the Postal Service formalized the current iteration of its NEPA regulations and issued internal
9 documents proclaiming the importance of NEPA review. 39 C.F.R. pt. 775; *see, e.g.*, U.S. Postal
10 Serv., Facilities Environmental Guide, Handbook RE-6 (Dec. 1997).

11 5. Criticism of the Draft EIS was swift and overwhelming. The agency received over
12 35,000 comments from federal and state agencies, scientists, labor organizations, environmentalists,
13 and members of the public, among many others. Commenters raised several concerns, including the
14 untimeliness of the Postal Service’s environmental review process, and that the Draft EIS rested on
15 faulty assumptions. Specifically, the Center for Biological Diversity (the “Center”) and Sierra Club
16 highlighted that the Postal Service’s review relied on flawed estimates to justify purchasing almost
17 entirely ICE vehicles. Some concerns raised included that the Postal Service’s estimates for battery
18 costs were unrealistically high, while its evaluations of gas prices were unreasonably low.
19 Commenters also noted that the Draft EIS dramatically underestimated the mileage range for EVs,
20 ignoring the fact that EVs on the market today already surpass the figure the Postal Service relied on.
21 Further, commenters explained that the Draft EIS underestimated the benefits of EVs in reducing
22 greenhouse gas (“GHG”) emissions, especially as the power sector increasingly relies on renewable
23 energy. Commenters also raised that the Postal Service’s award of the purchase contract to Oshkosh
24 before performing the environmental review process violated NEPA.

25 6. Several governmental agencies also criticized the environmental review. EPA called
26 the EIS “seriously deficient” and “inconsistent with the requirements of NEPA.” CEQ noted that the
27 Postal Service “committed to walk down a path before looking to see where that path was leading,”
28 an approach that conflicts with NEPA’s requirements. The Bay Area Air Quality Management

1 District (“BAAQMD”) explained that the proposed action would delay the transition to clean
2 technologies and hinder the California Bay Area’s progress toward improving local air quality and
3 reducing GHG emissions, particularly in communities with environmental justice concerns. Despite
4 these agencies’ requests that the Postal Service take time to reexamine its work, the Postal Service
5 pressed on and issued a Record of Decision (“ROD”) on February 23, 2022. Next Generation
6 Delivery Vehicles Acquisitions, 87 Fed. Reg. 14,588, 14,589 (Mar. 15, 2022).

7 7. The NGDV Acquisition comes at a pivotal moment in the federal government’s
8 efforts to slow the effects of climate change. President Biden has committed to channeling the
9 “whole of government” to combat climate change, and he has specifically pledged to electrify all
10 federal fleets, including USPS vehicles. *See* Executive Order 14008: Tackling the Climate Crisis at
11 Home and Abroad, 86 Fed. Reg. 7,619, 7,624 (Jan. 27, 2021).

12 8. There are good reasons for this. Electrifying the Postal Service fleet would reduce
13 smog and particulate matter pollution in nearly every neighborhood in America. Postal delivery
14 routes are stop-and-go by nature, which means that gas-powered delivery vehicles idle just outside
15 people’s homes for much of the day. This daily pollution impacts nearly every single resident in the
16 country, but the harmful effects of this pollution are felt most significantly by low-income
17 communities of color, which are often forced to breathe compounding sources of pollution. Indeed,
18 highways, ports, railyards, and oil refineries are often located in or near low-income communities of
19 color, exacerbating the daily, negative health impacts these communities experience. Transitioning
20 the postal fleet to zero-emissions would remove many otherwise polluting vehicles from this harmful
21 equation.

22 9. In addition, transitioning one of the world’s largest civilian fleets to zero-emissions
23 would have a meaningful impact on reducing GHG emissions, which are the primary driver of
24 climate change. Indeed, the Final EIS estimates that the NGDV Acquisition would emit 309,270
25 metric tons of carbon dioxide per year. EPA estimates the Acquisition will result in more than three
26 times that amount, at 975,534 tons per year. Either figure makes clear that the GHG emissions from
27 the Postal Service’s NGDV Acquisition are significant.

1 15. The challenged agency action is final.

2 16. The Court has jurisdiction pursuant to 28 U.S.C. § 1331 (actions arising under the
3 laws of the United States) and 39 U.S.C. §§ 401(1), 409 (suits against the Postal Service). This Court
4 may grant declaratory relief, injunctive relief, and other relief pursuant to 28 U.S.C. §§ 2201–2202
5 and its equitable powers.

6 17. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e)(1) because this
7 complaint seeks relief against an agency of the United States, and defendant Louis DeJoy is an
8 officer or employee of the United States acting in his official capacity; plaintiff Sierra Club is
9 headquartered in this District; plaintiff Center for Biological Diversity is incorporated and has an
10 office in this District; and no real property is involved in the action.

11 18. Pursuant to Civil Local Rules 3-5(b) and 3-2(c), there is no basis for assignment of
12 this action to any particular location or division of this Court.

13 **PARTIES**

14 19. Plaintiff CleanAirNow is a leading non-profit environmental justice organization in
15 the Midwest that is dedicated to improving air quality and addressing environmental injustice in the
16 counties that compose the Kansas City metro area, with a particular focus on overburdened
17 communities impacted by environmental health hazards associated with cumulative pollution
18 exposure. CleanAirNow is especially committed to preventing and mitigating disease caused by air
19 pollution in the communities that are forced to suffer the greatest health burdens from these
20 injustices. Specifically, CleanAirNow works extensively on cleaning up transportation pollution,
21 including pollution from medium- and heavy-duty trucks. CleanAirNow also works to clean up
22 industrial sources of pollution and is very concerned about the impacts of oil and gas transport and
23 dispensing in the region where it works. CleanAirNow is a member of the Moving Forward
24 Network, which is a nationwide coalition of grassroots organizations committed to addressing the
25 pollution burdens from the freight and logistics industry.

26 20. CleanAirNow is a membership organization that holds regular meetings to strategize
27 how best to address air pollution and environmental injustice in the Kansas City metro area.
28 CleanAirNow’s members are impacted by transportation pollution every day. CleanAirNow’s

1 members have an interest in reducing the air quality and noise pollution in and around their homes,
2 neighborhoods, places of work, schools, and parks. CleanAirNow's members also have an interest in
3 minimizing and eliminating additional harms to their members' health from the Postal Service's
4 decision to procure such a high percentage of ICE vehicles.

5 21. Among CleanAirNow's impacted members is Atenas Mena, who lives in Kansas
6 City, Missouri. Ms. Mena grew up in an area greatly impacted by industrial pollution, and she
7 remains concerned about industrial and transportation pollution impacts on her health. She must
8 remain constantly vigilant about the cumulative impacts of pollution from postal delivery vehicles
9 that drive through her neighborhood every day to deliver mail. Another CleanAirNow member, Beto
10 Lugo Martinez, who lives in Kansas City, Missouri, has deep concerns about the continued
11 investments in gas-powered postal trucks. Mr. Martinez works on cleaning up transportation
12 pollution, and he is familiar with zero-emission options for medium-duty trucks. Postal vehicles
13 deliver mail in his neighborhood, and he is concerned about the pollution impacts on his and his
14 partner's health.

15 22. Plaintiff Center for Biological Diversity is a national nonprofit membership
16 organization incorporated and with a major office in the Northern District of California, and with its
17 headquarters in Tucson, Arizona. The Center has over 89,000 members and more than 1.7 million
18 supporters throughout the United States dedicated to the protection of endangered species and the
19 environment. Combining conservation biology with litigation, policy advocacy, creative
20 communications and strategic vision, the Center is working to protect the lands, water, air, and
21 climate that all living species need to survive.

22 23. The Center's Climate Law Institute, in particular, works to curb greenhouse gas and
23 other air pollution, in order to limit the damaging effects of climate change and air pollution on
24 endangered species, their habitats, and human health. For instance, the Center was a Plaintiff in
25 *Massachusetts vs. EPA*, which resulted in the landmark Supreme Court decision finding that
26 greenhouse gases are pollutants under the Clean Air Act. *Massachusetts v. EPA*, 549 U.S. 497
27 (2007). The Center has submitted comments on and litigated many successive vehicle rules under
28 the Energy Policy Conservation Act, the Clean Air Act, and NEPA. For example, when the National

1 Highway Traffic Safety Administration issued a rule preempting state greenhouse gas emissions
2 standards and zero-emission mandates and EPA withdrew California's Clean Air Act waiver
3 allowing it to set those standards (84 Fed. Reg. 51,310 (Sept. 27, 2019)), the Center challenged the
4 preemption rule and waiver withdrawal. *Union of Concerned Scientists v. Nat'l Highway Traffic*
5 *Safety Admin.*, No. 19-1230 (D.C. Cir. filed Nov. 25, 2019).

6 24. Air pollution and greenhouse gas emissions from Postal Service vehicles harm the
7 health, welfare, economic, recreational, and aesthetic interests of the Center's members. Climate
8 change is already driving many animals and plants to extinction; increasing temperatures, causing
9 droughts, flooding and sea level rise; and affecting the livelihoods and property of Center members.
10 Center members are increasingly less able to, and sometimes altogether prevented from, viewing,
11 photographing, and enjoying wildlife threatened by climate change and from recreating in
12 wilderness areas undergoing rapid climate change. They are deprived of the aesthetic and
13 recreational enjoyment that stems from such activities, and experience worry, upset, and other
14 significant emotional injury because of it. Some of the Center's members suffer from pulmonary
15 diseases such as asthma from the smog-forming co-pollutants emitted by vehicles and from
16 refineries used to process fuels. Those co-pollutants include volatile organic compounds, sulfur
17 dioxide, nitrogen oxides, and fine particulate matter.

18 25. Among the Center's affected members is Jennifer Molidor in Cloverdale, California.
19 Ms. Molidor spends a part of almost every day gardening outside with her son and taking long walks
20 along the Russian River near her house. Postal trucks drive by her home and through her
21 neighborhood several times a day, and she lives near a busy intersection that draws pollution from
22 other postal trucks completing their routes. Ms. Molidor has asthma, which is exacerbated when the
23 air quality is worse. Another Center member, Mary K. Reinhart, lives in Scottsdale, Arizona. She
24 goes running in her neighborhood six days a week, and sometimes she is caught behind a gas-
25 burning postal truck as it completes its route. She also hikes and walks her dog in local parks. Ms.
26 Reinhart lives near a busy six-lane roadway, which adds constant noise and vehicle exhaust to her
27 community. Gas-burning postal trucks exacerbate this pollution and endanger her ability to exercise
28 outside and enjoy her neighborhood.

1 26. Plaintiff Sierra Club is the nation's oldest grassroots organization dedicated to the
2 protection and preservation of the environment. The Sierra Club has over one million members and
3 supporters dedicated to exploring, enjoying, and protecting the wild places of the Earth; practicing
4 and promoting the responsible use of the Earth's ecosystems and resources; educating and enlisting
5 humanity to protect and restore the quality of the natural and human environment; and using all
6 lawful means to carry out those objectives. The Sierra Club has chapters and members in every state.

7 27. The Sierra Club actively works toward the widespread shift to electric vehicles as a
8 way to reduce emissions. This work includes advocacy for policies at all levels of government to
9 make EVs more affordable; pushing for investments in EVs from the utility sector; outreach on the
10 benefits of EVs; and campaigning for public transportation and school adoption of electric buses. In
11 2016, the Sierra Club published Rev Up Electric Vehicles, the first multi-state study of the EV
12 shopping experience. The Sierra Club is a co-presenter of the annual National Drive Electric Week
13 and a member of the EV Charging Initiative.

14 28. Among Sierra Club's members impacted are Hadrien Dykiel. Mr. Dykiel lives in
15 Evergreen, Colorado, which is located in an area that is in nonattainment of the Clean Air Act's
16 National Ambient Air Quality Standards for ozone. Mr. Dykiel has an infant son who is particularly
17 susceptible to the impacts of air pollution. The Dykiel family enjoys outdoor activities, including
18 walking and running, but they alter their activities based on air pollution levels. Mr. Dykiel sees
19 several postal vehicles travel in his neighborhood daily. He is very concerned that continued reliance
20 on gas postal vehicles will impact air quality in his neighborhood. He is also concerned about the
21 large number of postal vehicles in the Denver region contributing to poor air quality where he lives
22 and works. Another Sierra Club member, Alexa Cameron, lives in Denver, Colorado, close to a large
23 USPS distribution facility and in a nonattainment area for ozone. Ms. Cameron can clearly see the
24 USPS facility and postal delivery vehicles when she is driving to and from her home. Ms. Cameron
25 is an avid runner who used to run semi-competitively; she currently trains 3 to 4 days per week on a
26 trail that she believes is impacted by postal vehicle pollution from a large USPS distribution facility.
27 Ms. Cameron monitors the daily air quality and alters her training schedule on days with poor air
28 quality. Ms. Cameron is highly concerned that the continued use of gas vehicles at the USPS facility

1 near her home will worsen the local air quality and continue to impact her ability to recreate
2 outdoors.

3 29. Defendant Louis DeJoy is sued in his official capacity as Postmaster General. The
4 Postmaster General is the chief executive officer of the Postal Service. *Id.* § 203.

5 30. Defendant Postal Service is “an independent establishment of the executive branch of
6 the Government of the United States.” 39 U.S.C. § 201. The Postal Service may be sued in its
7 official name. *Id.* § 401.

8 LEGAL BACKGROUND

9 I. National Environmental Policy Act

10 31. NEPA is “our basic national charter for protection of the environment.” 40 C.F.R.
11 § 1500.1(a) (1978). At its core, NEPA is guided by the principle that “[s]imply by focusing the
12 agency’s attention on the environmental consequences of a proposed project, . . . important effects
13 will not be overlooked or underestimated only to be discovered after resources have been committed
14 or the die otherwise cast.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989).

15 32. The statute has twin aims: (1) it “ensures that the agency, in reaching its decision, will
16 have available, and will carefully consider, detailed information concerning significant
17 environmental impacts” from the action; and (2) it “guarantees that the relevant information will be
18 made available to the larger audience that may also play a role in both the decisionmaking process
19 and the implementation of that decision.” *Id.*

20 33. To fulfill these goals, the statute imposes procedural requirements “designed to force
21 agencies to take a ‘hard look’ at environmental consequences.” *Earth Island Inst. v. U.S. Forest*
22 *Serv.*, 351 F.3d 1291, 1300 (9th Cir. 2003) (citation omitted). Agencies must prepare an
23 environmental impact statement for federal actions that will “significantly affect[] the quality of the
24 human environment.” 42 U.S.C. § 4332(2)(C); *Bark v. U.S. Forest Serv.*, 958 F.3d 865, 868 (9th Cir.
25 2020). The EIS “shall be prepared early enough so that it can serve as an important practical
26 contribution to the decision-making process and will not be used to rationalize or justify decisions
27 already made.” 40 C.F.R. § 1502.5.

II. The Postal Service, the Postal Reorganization Act, and NEPA

34. The Postal Service, as a federal agency, is subject to NEPA’s requirements, including the duty to prepare a thorough, detailed EIS. 42 U.S.C. § 4332; 40 C.F.R. § 1500.3(a); *Akiak Native Cmty.*, 213 F.3d at 1144; *Chelsea Neighborhood Ass’ns*, 516 F.2d at 386.

35. Congress adopted the Postal Reorganization Act (“PRA”), *see* Pub. L. No. 91-375, 84 Stat. 719 (1970), to “eliminate outmoded ‘legislative, budgetary, financial, and personnel files’ so that the Postal Service could employ ‘modern management and business practices’ to provide the American public with ‘efficient and economical postal service.’” *Carlson v. U.S. Postal Serv.*, No. 13-cv-06017-JSC, 2015 WL 9258072, at *3 (N.D. Cal. Dec. 18, 2015) (quoting H.R. Rep. No. 91-1104, 91st Cong., 2d Sess., at 2 (1970), *reprinted in* 1970 U.S.C.C.A.N. 3649, 3650).

36. The PRA directs the Postal Service to operate in a more “businesslike way,” but with “appropriate safeguards against abuse” of its responsibility for managing the postal system and “appropriate assurances of continued congressional surveillance.” H.R. Rep. No. 91-1104 at 5, *reprinted in* 1970 U.S.C.C.A.N. at 3653.

37. The PRA exempts the Postal Service from some federal laws, unless “such laws remain in force as rules or regulations of the Postal Service.” 39 U.S.C. § 410(a). The PRA does not exempt the Postal Service from NEPA. *Chelsea Neighborhood Ass’ns*, 516 F.2d at 386.

38. The Postal Service has promulgated its own agency-specific NEPA procedures. 39 C.F.R. pt. 775; *see also Akiak Native Cmty.*, 213 F.3d at 1144 (“There is no longer any dispute that the Postal Service has adopted the relevant provisions of . . . NEPA.”).

39. In its regulations, the Postal Service states that it is the agency’s policy to “[i]nterpret and administer applicable policies, regulations, and public laws of the United States in accordance with the policies set forth in the National Environmental Policy Act, as amended, and the NEPA Regulations.” 39 C.F.R. § 775.2(a).

40. It is also the Postal Service’s policy to “[m]ake the NEPA process useful to Postal Service decision makers and the public,” *id.* § 775.2(b), and to “[u]se the NEPA process to identify and assess reasonable alternatives to proposed actions in order to avoid or minimize adverse effects on the environment,” *id.* § 775.2(e).

1 41. The Postal Service has also acknowledged that NEPA applies to its proposed NGDV
2 Acquisition. The agency noted that it developed this EIS “[p]ursuant to the requirements of the
3 National Environmental Policy Act of 1969 . . . , its implementing procedures at 39 CFR 775, and
4 the Council on Environmental Quality Regulations (40 CFR parts 1500–1508).” 87 Fed. Reg. 994,
5 994. The Postal Service also provided, in its Notice of Intent to Prepare an EIS for the proposed
6 NGDV Acquisition, that it is the “intent of the U.S. Postal Service, pursuant to the requirements of”
7 NEPA and its implementing regulations “to prepare an EIS to evaluate the environmental impacts of
8 the proposed action” and alternatives. 86 Fed. Reg. 12,715, 12,715.

9 42. A reviewing court should set aside the Postal Service’s EIS if it is “arbitrary,
10 capricious, an abuse of discretion, or otherwise not in accordance with law.” *Akiak Native Cmty.*,
11 213 F.3d at 1144 (quoting 5 U.S.C. § 706(2)(A)).

12 43. An agency action is arbitrary and capricious if the agency has “relied on factors
13 which Congress has not intended it to consider, entirely failed to consider an important aspect of the
14 problem, offered an explanation for its decision that runs counter to the evidence before the agency,
15 or is so implausible that it could not be ascribed to a difference in view or the product of agency
16 expertise.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29,
17 43 (1983).

18 44. Moreover, the agency’s factual determinations “must be supported by substantial
19 evidence.” *League of Wilderness Defenders/Blue Mountains Biodiversity Project v. Connaughton*,
20 752 F.3d 755, 759 (9th Cir. 2014).

21 45. In order to establish that the action is neither arbitrary nor capricious, the Postal
22 Service “must articulate a rational connection between the facts found and the conclusions made.”
23 *Env’t. Def. Ctr., Inc. v. EPA*, 344 F.3d 832, 858 n.36 (9th Cir. 2003).

24 **III. NEPA Requirements for an Environmental Impact Statement**

25 46. Under the Postal Service’s NEPA regulations, the agency must prepare an “analytic”
26 EIS that contains “discussions of impacts,” including all direct, indirect, and cumulative impacts, “in
27 proportion to their significance.” 39 C.F.R. § 775.11(b)(2).

28

1 47. Courts employ a “rule of reason” analysis to determine the adequacy of an EIS under
2 NEPA, which involves evaluating “whether the agency took a sufficiently ‘hard look’ at probable
3 consequences.” *Ctr. for Biological Diversity v. Bernhardt*, 982 F.3d 723, 734 (9th Cir. 2020)
4 (citation omitted). Put another way, the “rule of reason” standard demands “a pragmatic judgment
5 whether the EIS’s form, content and preparation foster both informed decision-making and informed
6 public participation.” *California v. Block*, 690 F.2d 753, 761 (9th Cir. 1982) (citation omitted).

7 48. Agencies only satisfy this “hard look” standard if they prepare an EIS “before any
8 irreversible and irretrievable commitment of resources is made.” *California v. Norton*, 311 F.3d
9 1162, 1168 (9th Cir. 2002) (citation omitted). It is critical that the EIS not be used “to justify
10 decisions already made,” but instead “[s]erve to assess the environmental impact of proposed
11 actions.” 39 C.F.R. § 775.11(b)(2).

12 49. In pursuit of this principle, “NEPA emphasizes the early presentation of relevant
13 information to facilitate reaching fully informed decisions.” *Ctr. for Biological Diversity*, 982 F.3d
14 at 735 (citation omitted).

15 50. Preparing an EIS “necessarily involves some degree of forecasting,” and the agency
16 “must use its best efforts to find out all that it reasonably can” when assessing the environmental
17 impacts of the proposed action. *City of Davis v. Coleman*, 521 F.2d 661, 676 (9th Cir. 1975).

18 51. The alternatives and mitigation portion of the EIS is one of the most “vital
19 important” sections of the environmental review process. 39 C.F.R. § 775.11(c)(5). Under the Postal
20 Service’s regulations, the agency is required to “[s]tudy, develop, describe, and evaluate at all
21 decision points, reasonable alternatives to recommended actions which may have a significant effect
22 on the environment,” including the “no action” alternative. *Id.* §§ 775.8(a)(4), 775.11(c)(5); *see also*
23 *Citizens for a Better Henderson v. Hodel*, 768 F.2d 1051, 1057 (9th Cir. 1985) (“The existence of a
24 viable but unexamined alternative renders an environmental impact statement inadequate.”).

25 52. It is critical that the agency “[d]evote substantial treatment” to its evaluation of each
26 alternative and consider each “in detail” so that reviewers “may evaluate their comparative merits.”
27 39 C.F.R. § 775.11(c)(5). The analysis should also “discuss the reasons for eliminating any
28 alternatives.” *Id.*

1 53. Moreover, the Postal Service’s evaluation of “each reasonable alternative” must
2 describe “each affected element of the environment . . . , followed immediately by an analysis of the
3 impacts.” *Id.* § 775.11(c)(6). Among other things, this analysis should include “[a]ny adverse
4 environmental effects which cannot be avoided should the action be implemented,” and “[a]ny
5 irreversible or irretrievable commitments of resources” if the action is implemented. *Id.*

6 54. Likewise, NEPA requires agencies to disclose the underlying data on which the
7 environmental analysis is based, including the methods used, the “scientific and other sources relied
8 on for conclusions,” a summary of “existing credible scientific evidence relevant to evaluation of the
9 impacts,” and “an evaluation of such impacts on the basis of theoretical approaches or generally
10 accepted research methods.” *Id.* §§ 775.11(b)(6), 775.11(b)(8). Agencies fail to meet the “hard look”
11 standard if they rely on incorrect assumptions or data. *Native Ecosystems Council v. U.S. Forest*
12 *Serv.*, 418 F.3d 953, 964 (9th Cir. 2005) (citation omitted).

13 55. The Postal Service is also required to hold public hearings on the EIS whenever a
14 “request for a hearing [is made] by an agency with jurisdiction over or special expertise concerning
15 the proposed action,” if there is a “[s]ubstantial environmental controversy concerning a proposed
16 action and [there is] a request for a hearing by any responsible individual or organization,” or if there
17 is a “reasonable expectation that a hearing will produce significant information not likely to be
18 obtained without a hearing.” 39 C.F.R. § 775.14(a)(1)–(3).

19 **IV. The EIS’s Environmental Justice Analysis and Review**

20 56. Executive Order 12,898 requires all federal agencies to “make achieving
21 environmental justice part of [their] mission by identifying and addressing, as appropriate,
22 disproportionately high and adverse human health or environmental effects of [their] programs,
23 policies, and activities on minority populations and low-income populations” to the “greatest extent
24 practicable and permitted by law.” Executive Order 12,898: Federal Actions To Address
25 Environmental Justice in Minority Populations and Low-Income Populations, § 1-101, 59 Fed. Reg.
26 7,629 (Feb. 16, 1994) (“Environmental Justice Order”).

27 57. The Environmental Justice Order requires that federal agencies conduct
28 “environmental justice” analyses by “collect[ing], maintain[ing], and analyz[ing] information on the

1 race, national origin, income level, and other readily accessible and appropriate information for areas
2 surrounding facilities or sites expected to have a substantial environmental, human health, or
3 economic effect on the surrounding populations.” *Id.* § 3-302(b).

4 58. While the Environmental Justice Order does not create a private right to judicial
5 review, once an agency has “exercised its discretion to include the environmental justice analysis in
6 its NEPA evaluation, . . . that analysis therefore is properly subject to ‘arbitrary and capricious’
7 review under the APA.” *Cmties. Against Runway Expansion, Inc. v. FAA*, 355 F.3d 678, 689 (D.C.
8 Cir. 2004); *see also Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321,
9 1330 (D.C. Cir. 2021) (“[A] petitioner may challenge an agency’s environmental justice analysis as
10 arbitrary and capricious under NEPA and the APA.”).

11 **FACTUAL AND PROCEDURAL BACKGROUND**

12 **I. Postal Delivery in the United States**

13 59. The United States Postal Service is required to “provide prompt, reliable, and
14 efficient services to patrons in all areas and shall render postal services to all communities.” 39
15 U.S.C. § 101(a). It must “maintain an efficient system of collection, sorting, and delivery of the mail
16 nationwide,” and “establish and maintain postal facilities of such character and in such locations,
17 that postal patrons throughout the Nation will, consistent with reasonable economies of postal
18 operations, have ready access to essential postal services.” *Id.* § 403(b)(1), (3).

19 60. The Postal Service has “specific powers” to meet these requirements, including “to
20 provide for the collection, handling, transportation, delivery, forwarding, returning, and holding of
21 mail” and “to determine the need for post offices, postal and training facilities and equipment, and to
22 provide such offices, facilities, and equipment as it determines are needed.” *Id.* § 404(a)(1), (3). The
23 Postal Service also has “general powers,” including “to adopt, amend, and repeal such rules and
24 regulations . . . as may be necessary in the execution of . . . such other functions as may be assigned
25 to the Postal Service under any provisions of law” and “to have all other powers incidental,
26 necessary, or appropriate to the carrying on of its functions or the exercise of its specific powers.” *Id.*
27 § 401(2), (10).

1 61. The Postal Service’s fleet consists of roughly 212,000 delivery vehicles. Final EIS, at
2 1-1. It is one of the largest civilian fleets in the world and the largest government fleet in the country.

3 62. An important vehicle type that the Postal Service owns and operates are purpose-
4 built, right-hand drive light delivery vehicles. These vehicles have been labeled “Long-Life
5 Vehicles” (“LLVs”). Of the approximately 212,000 delivery vehicles in the fleet, more than 141,000
6 of these vehicles are LLVs. *See* Final EIS at 1-1, G-2.

7 63. There is no dispute that these vehicles have been in operation for decades, long past
8 their intended lifespan. LLVs lack basic features such as airbags and anti-lock brakes. *Id.* at 2-2.
9 They also each average over \$5,000 in annual maintenance costs, and the total average annual
10 maintenance costs exceeds \$700 million for these vehicles. *See id.* at C-2.

11 64. Current LLVs have an average fuel efficiency of 8.2 miles per gallon (“mpg”). Final
12 EIS at G-2. The Postal Service estimates the total gasoline usage for these vehicles is over 97 million
13 gallons per year. *Id.*

14 65. The Final EIS states that the 165,000 vehicles poised for replacement burned 180
15 million gallons of gasoline in 2020. Final EIS at 4-6. Yet, at the same time, the Final EIS’s analysis
16 assumes the fleet burns 135 million gallons of gasoline per year. Final EIS at 4-6. The Final EIS
17 does not explain this discrepancy.

18 **II. The Role of Electric Vehicles in Addressing the Climate Crisis and Air Pollution**

19 66. Emissions of greenhouse gases from the transportation sector pose mortal dangers to
20 public health and the environment, as they accelerate climate change. The U.S. is battered by a
21 never-ending stream of disastrous weather events, from unrelenting heat waves and droughts to
22 raging wildfires and extreme rainfall and flooding. Many of these events are clearly attributable to
23 the deteriorating climate and are already costing the U.S. economy billions of dollars in damages,
24 with economic losses worsening with each additional ton of carbon pollution.

1 67. According to the Intergovernmental Panel on Climate Change’s 2022 Sixth
2 Assessment Report (“IPCC Report”),¹ we have a narrow and rapidly closing window in which we
3 can act to limit warming to close to 1.5 degrees Celsius, the international goal set to avoid the worst
4 catastrophic damages to the U.S. and the rest of the world. To stay close to or below 1.5 degrees, the
5 IPCC Report states that the world must slash fossil fuel production and stop building new fossil fuel
6 infrastructure—including gas-powered vehicles—that will lock in future carbon emissions. Instead,
7 governments must redirect investment to electrification and renewable energy. Combustion vehicles
8 sold over the next 10 years could be on the road for 20 or more years, meaning that the consequences
9 of USPS’s NGDV Acquisition plan will be felt decades into the future.

10 68. According to the American Lung Association,² more than 4 in 10 Americans live in
11 communities with unhealthy levels of air pollution. Air pollution, including particulate matter and
12 smog, causes or exacerbates health harms, including shortness of breath, asthma attacks, worsening
13 Chronic Obstructive Pulmonary Disease, lung cancer, increased infant mortality, increased hospital
14 admissions for cardiovascular disease, and premature death. These health effects are even more
15 acute in communities that live near highways, busy roads, and depots, including Postal Service
16 depots, many of which are in low-income communities and communities of color.

17 69. Transitioning to EVs will help ameliorate these climate and health impacts. The IPCC
18 Report notes that transitioning to EVs powered by low-emissions electricity is essential for
19 decarbonizing transportation and meeting the 1.5-degree warming goal. EVs do not require gasoline
20 and do not emit tailpipe pollution or greenhouse gas emissions. EV battery prices are falling rapidly,
21 along with the overall cost of EVs. At the same time, EV sales are skyrocketing. Some automakers
22
23

24 ¹ See Intergovernmental Panel on Climate Change, Sixth Assessment Report, Climate Change 2022:
25 Impacts, Adaptation and Vulnerability (Working Group II) (Feb. 2022),
https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_FinalDraft_FullReport.pdf
26 ; Climate Change 2022: Mitigation of Climate Change (Working Group III) (April 2022),
https://report.ipcc.ch/ar6wg3/pdf/IPCC_AR6_WGIII_FinalDraft_FullReport.pdf.

27 ² American Lung Association, Zeroing in on Healthy Air: A National Assessment of Health and
28 Climate Benefits of Zero-Emission Transportation and Electricity, at 4 (2022),
<https://www.lung.org/getmedia/13248145-06f0-4e35-b79b-6dfacfd29a71/zeroing-in-on-healthy-air-report-2022.pdf>.

1 have announced plans to fully electrify their models by 2035, and almost all have announced new
2 electric models they will debut in the coming years.

3 70. In line with these findings, the federal government is committed to transitioning to
4 EVs for federal fleets. The government wants both the direct climate change benefits and overall
5 cost savings that come with EVs. It also wants to lead by example, so that other vehicle fleets will
6 follow in purchasing EVs. President Biden has issued an executive order for the development of a
7 clean vehicle procurement strategy, which specifically directed government agencies to only acquire
8 zero-emission light-duty vehicles by 2027. Executive Order 14057: Catalyzing Clean Energy
9 Industries and Jobs Through Federal Sustainability, 86 Fed. Reg. 70,935 (Dec. 13, 2021). This goal
10 will be impossible to meet if the Postal Service acquires thousands of ICE vehicles over the next 10
11 years.

12 **III. NEPA Process**

13 71. In 2015, the Postal Service issued a request for information related to replacing a
14 portion of its delivery fleet. Final EIS at 1-2. The Postal Service ordered prototypes based on bids for
15 a variety of types of vehicles. *Id.*

16 72. On February 23, 2021, the Postal Service announced that it had selected Oshkosh
17 Defense for a 10-year contract to produce up to 165,000 new vehicles, beginning in 2023. *See* Postal
18 Service, Press Release, U.S. Postal Service Awards Contract to Launch Multi-Billion-Dollar
19 Modernization of Postal Delivery Vehicle Fleet (Feb. 23, 2021).

20 73. The Postal Service did not begin its NEPA process until after it selected Oshkosh for
21 the 10-year contract.

22 74. In 2020, Oshkosh stated in a securities filing that it lacked the “expertise or
23 resources” to produce EVs on a “cost-effective basis or at all.” Oshkosh Corporation, Fiscal 2020
24 Annual Report on Form 10-K, at 22 (Nov. 18, 2020).³

25
26
27 ³ This filing is publicly available through the Securities and Exchange Commission. *See*
28 https://www.sec.gov/Archives/edgar/data/0000775158/000156459020054491/osk-10k_20200930.htm.

1 75. The Postal Service’s contract with Oshkosh for the production of vehicles includes a
2 “special provision” on NEPA, which states that the “Postal Service is required to comply with the
3 National Environmental Policy Act (NEPA), 42 U.S.C. § 4321, *et seq.*”

4 76. In February 2021, the Postal Service made an initial task-order of \$482 million. It had
5 not completed its NEPA review prior to issuing this initial task order.

6 77. On March 4, 2021, the Postal Service published a Notice of Intent to prepare an EIS
7 in the *Federal Register*.

8 78. On August 26, 2021, the Postal Service released a Draft EIS analyzing potential
9 delivery vehicle replacements for public review and comment. 86 Fed. Reg. 47,662.

10 79. The Draft EIS’s preferred alternative was to purchase up to 90% of the 165,000
11 vehicles as ICE vehicles. The Postal Service assumed an EV would have a range of 70 miles on a
12 single charge, and the EIS projected that 12,500 routes, or about 5% of total routes, could not be
13 served by EVs. Draft EIS at 3-2. For commercially available EVs, the draft considered only left-
14 hand-drive vehicles, which were rejected because they could not support curbside delivery. *See id.*
15 at 4-12, 4-37.

16 80. The Sierra Club and the Center for Biological Diversity submitted comments in
17 October 2021, explaining that the Draft EIS violated NEPA by failing to include reasonable
18 alternatives in its analysis, using incorrect cost information, failing to take a hard look at air quality
19 or socioeconomic impacts, lacking a proper analysis of cumulative effects, failing to consider
20 environmental justice, and lacking any mitigation. These organizations also appended a technical
21 report prepared by a mechanical engineer.

22 81. EPA also submitted comments on the Draft EIS. EPA determined the document was
23 “inadequate and precludes meaningful consideration of the proposed action and alternatives.” EPA
24 further elaborated that it “did not believe a proper analysis was conducted” and explained “there was
25 never an evidence-based careful consideration of the merits of each alternative.” EPA recommended
26 that the Postal Service revise the Draft EIS in a supplemental draft EIS.

27 82. BAAQMD also submitted comments on the Draft EIS, critiquing the reasoning
28 behind the preferred alternative of 90% ICE vehicles. BAAQMD explained that the proposed action

1 would delay the transition to clean technologies and hinder the California Bay Area’s progress
2 toward improved local air quality and reducing GHG emissions, particularly in communities with
3 environmental justice concerns. BAAQMD also noted that assumptions in the Draft EIS were based
4 on outdated EV technology and that the proposed action would likely cost the Postal Service and
5 taxpayers more in the long term due to ICE vehicles having higher operation and maintenance costs.

6 **IV. Final EIS**

7 83. The Postal Service published a notice of its Final EIS on January 7, 2022 in the
8 *Federal Register*. See 87 Fed. Reg. 994.

9 84. The Final EIS included consideration of four alternatives in addition to the no-action
10 alternative: (1) purpose-built vehicles consisting of at least 10% EV and up to 90% combustion
11 engines; (2) purpose-built vehicles consisting of 100% EVs; (3) 100% commercially available right-
12 hand-drive combustion engine vehicles; and (4) 100% commercially available left-hand-drive EVs.
13 Final EIS at 3-4 to 3-7.

14 85. The Postal Service failed to provide a reason for evaluating a 90% ICE and 10% EV
15 mix for the fleet as opposed to any other combination of powertrains.

16 86. The Final EIS used an unsupported assumption that the batteries in electric delivery
17 vehicles would solely provide a 70-mile range per charge. This assumption does not account for
18 expected advancements in battery technology over the next decade. Moreover, battery technology at
19 the time of the Final EIS far exceeded this assumption.

20 87. In the Final EIS, the Postal Service claimed that “approximately 12,500 delivery
21 routes” were too lengthy for EVs with the assumed 70-miles of total range. Final EIS at 3-2. This
22 represents approximately 5% of current routes. The average postal delivery route is 21.05 miles.

23 88. The Final EIS acknowledged that “battery technology will improve in the future and
24 these routes may become suitable for a BEV [battery electric vehicle] in future years.” *Id.* Despite
25 this acknowledgment, the Postal Service retained its limited alternatives analysis. Because of the
26 supposed operational constraints on roughly 5% of routes, neither 100% EV alternative could meet
27 the stated purpose and need of the EIS.

28

1 89. The Final EIS conceded that the Postal Service was not planning to retrofit any
2 internal combustion engines with EV powertrains in the future.

3 90. The Postal Service’s analysis concluded that the 100% EV alternative would cost
4 significantly more than its preferred alternative. The price of EVs is heavily influenced by battery
5 costs because the most expensive component for an EV is its battery. But the Postal Service failed to
6 use reasonable assumptions about battery costs in its analysis, instead using unrealistically high
7 costs.

8 91. The Final EIS included similarly unreasonably low assumptions of gasoline prices.
9 The Draft EIS did not disclose the gas prices assumed for modeling. The Final EIS explained that it
10 used a baseline national average of prices from October 2020 of \$2.19 per gallon and the reference
11 case from the Energy Information Administration (“EIA”) to project increases up to \$2.55 per gallon
12 by 2040. By the time of the notice of intent to prepare an EIS, gasoline prices had already risen to
13 \$2.80 per gallon according to the EIA. Gas prices as of the time of this complaint are much higher
14 than the assumptions used in the Postal Service’s models.

15 92. The Final EIS indicated the Postal Service would prioritize EVs for longer routes in
16 order to maximize fuel and maintenance savings. The Final EIS failed to explain why it solely
17 considered fuel and maintenance savings to determine which routes EVs should travel, as opposed to
18 other factors like local air quality, environmental justice considerations, traffic congestion,
19 distribution of EV charging infrastructure, programs by utilities to cover charging expenses,
20 availability of state-level EV incentives, or noise. The analysis also provided no list of where those
21 routes are located.

22 93. The Postal Service erred in its emissions analyses for both internal combustion
23 engines and EVs. According to EPA’s analysis, the ICE delivery vehicles in the preferred alternative
24 would emit 975,534 metric tons of carbon dioxide per year. The Draft and Final EIS assumed that
25 the vehicles would emit an estimated 311,739 metric tons. This is more than a rounding error; it
26 undercounts greenhouse gas emissions threefold. Despite EPA identifying this significant error in
27 the Draft EIS, the Postal Service failed to correct it in the Final EIS. The Postal Service also failed to
28

1 consider future decreases of carbon intensity in the electric grid—thereby underestimating climate
2 benefits of EVs.

3 94. The Final EIS also did not analyze nitrogen oxides, volatile organic compounds, and
4 particulate matter emissions. Although internal combustion engines emit significant amounts of
5 these pollutants, the Postal Service failed to include an analysis that allowed it and the public to
6 understand the benefits of EVs to reduce criteria pollutants compared to ICE vehicles.

7 95. The Final EIS used Westchester County, New York, as a representative location for
8 its emissions modeling analysis. The Postal Service selected this county because it has the most
9 high-maintenance delivery vehicles in need of replacement. Westchester County has a high level of
10 zero-carbon electricity, but the Postal Service did not account for this in its modeling of greenhouse
11 gas emissions in the Final EIS. Instead, the Final EIS used a higher, national average in modeling the
12 carbon intensity of the grid for the EV options. The resulting calculation therefore made the carbon
13 emissions for EVs appear higher than they actually are.

14 96. The Final EIS included no reasoned environmental justice analysis, even though the
15 Postal Service explicitly stated in the Draft EIS that it intended to “consider the impacts of its actions
16 on EJ communities of concern.” Draft EIS at 4-5; *see also id.* (“[T]he Postal Service endeavors to
17 fulfill the spirit of those non-mandatory requirements [of Executive Order 12,898] and consider the
18 impacts of its actions on EJ communities of concern. This includes locations with high
19 concentrations of minority and low-income populations.”).

20 97. Despite the numerous flaws in the Draft EIS, the Final EIS only minimally revised
21 the draft. The Postal Service also failed to meaningfully respond to many of the comments submitted
22 on the Draft EIS.

23 **V. Criticism of Final EIS**

24 98. After the Postal Service released the Final EIS, EPA issued a letter noting that its
25 “review has determined that EPA’s concerns with the Draft EIS were not adequately addressed and
26 that the Final EIS remains seriously deficient.” EPA Final EIS letter at 1.⁴ EPA further noted that the
27

28 ⁴ A copy of this letter is provided in Appendix C of the ROD.

1 Final EIS’s “deficiencies render the Final EIS inconsistent with the requirements of NEPA and its
2 implementing regulations.” *Id.*

3 99. EPA noted the following deficiencies in the Final EIS:

4 Key deficiencies include the fact that contrary to NEPA’s requirements, a contract for
5 this proposal was awarded prior to the NEPA process, critical features of the contract
6 are not disclosed in the EIS, important data and economic assumptions are missing in
7 the EIS, and the EIS failed to consider a single feasible alternative to the proposed
8 action. Specifically, the final EIS does not disclose essential information underlying
9 the key analysis of Total Cost of Ownership (TCO), underestimates greenhouse gas
(GHG) emissions, fails to consider more environmentally protective feasible
alternatives, and inadequately considers impacts on communities with environmental
justice concerns.

10 *Id.* EPA requested a supplemental EIS given the major flaws.

11 100. EPA explained that the award of a contract for the delivery vehicles in advance of
12 starting the environmental analysis violated NEPA regulations. It also described the Postal Service’s
13 total cost of ownership analysis as “flawed and out of date,” explained that the Postal Service
14 violated requirements to identify methodologies and make explicit reference to sources, and noted
15 that the Postal Service inappropriately limited its choice of alternatives because of the advanced
16 award of a contract.

17 101. EPA concluded “the Postal Service must supplement its Final EIS to cure its
18 infirmities and ensure it meets the basic requirements of NEPA.” *Id.* at 2. EPA also requested a
19 public hearing under the Postal Service’s NEPA regulations based on its “serious concerns and
20 jurisdiction over, and special expertise concerning, the proposed action related to motor vehicles and
21 emissions.” *Id.* at 3 (citing 39 C.F.R. § 775.14).

22 102. EPA provided detailed explanations of the flaws in the Postal Service’s (1)
23 assessment of total cost of ownership; (2) analysis of greenhouse gas emissions, including
24 underestimating ICE emissions and overestimating EV emissions; (3) analysis of mitigation and
25 alternatives; and (4) consideration of environmental justice impacts.

1 103. CEQ also issued a letter on the Final EIS. The letter urged the Postal Service to
2 comply with NEPA. CEQ reiterated EPA’s “grave concerns with the adequacy of the environmental
3 review” that “warrant further examination” through a supplemental EIS. CEQ letter at 1.⁵

4 104. CEQ explained that the Postal Service “committed to walk down a path before
5 looking to see where that path was leading” by awarding a contract for the delivery vehicles before
6 beginning NEPA review. *Id.* That “approach conflicts with longstanding NEPA practice and law.”
7 *Id.*

8 105. If the Postal Service failed to address its deficiencies under NEPA, CEQ explained
9 that “the Federal courts may compel [the Postal Service] to alter course.” *Id.*

10 106. The California Air Resources Board (“CARB”) also issued a letter requesting a public
11 hearing under the Postal Service’s NEPA regulations, a request for which the EPA stated its support
12 in its own letter on the Final EIS. EPA Final EIS letter at 3. “[A]n expert agency on vehicle
13 emissions and electrification,” CARB requested a public hearing based on its “deep concerns about
14 the EIS’s proposed decision to focus procurement on internal combustion vehicles rather than zero
15 emission.” *Id.*

16 107. Plaintiffs and several other organizations filed a letter on the Final EIS raising
17 concerns about the environmental review on February 4, 2022.

18 108. Sixteen United States Senators and three Representatives submitted a letter to the
19 Postal Service on February 4, 2022 expressing concerns over the Final EIS and requesting a public
20 hearing.⁶

21 **VI. Record of Decision**

22 109. The Postal Service issued the Record of Decision on February 23, 2022. 87 Fed. Reg.
23 at 14,589.

24
25
26 ⁵ Available at https://www.whitehouse.gov/wp-content/uploads/2022/02/USPS_letter_02022022.pdf.

27 ⁶ Available at
28 <https://climatecrisis.house.gov/sites/climatecrisis.house.gov/files/202202.04usps electrificationletterfinal.pdf>.

1 110. The ROD states it was “prepared in accordance with the requirements of the National
2 Environmental Policy Act, the Postal Service’s implementing procedures at 39 CFR part 775, and
3 the President’s Council on Environmental Quality Regulations (40 CFR parts 1500–1508).” *Id.*

4 111. The ROD indicates the Postal Service will purchase up to 148,500 ICE vehicles over
5 the next 10 years.

6 112. The ROD altered its description of alternatives by combining the 90% ICE alternative
7 and the 100% EV alternative into one alternative described as the “proposed action.” The EIS
8 analysis did not change as a result of this change in the ROD.

9 113. The Postal Service’s response in the ROD also included new arguments purporting to
10 support its EIS. For example, on the miles per gallon comparison between the current vehicles and
11 proposed new ones, the Postal Service objected that EPA compared the proposed combustion engine
12 mpg rating with the use of air conditioning to the existing vehicle’s mpg rating without the use of air
13 conditioning. *See id.* at 4. The Postal Service provided no evidence that letter carriers would not use
14 air conditioning.

15 114. The Postal Service stated in the ROD that it would not issue a supplemental EIS
16 under 40 C.F.R. section 1502.9(d)(1) to address EPA’s concerns. ROD at 2, 11. In its response to the
17 EPA’s comment that the environmental review included only a limited selection of alternatives, the
18 Postal Service ignored alternatives suggested by EPA. *See id.* at 2-3 (discussing only the scoping
19 phase and failing to mention the Draft EIS phase). The Postal Service claimed EPA
20 “mischaracterize[d] the analysis of alternatives,” *id.* at 3, but it failed to explain how EPA
21 mischaracterized the analysis.

22 115. The Postal Service conceded that the analysis used the price of gasoline from October
23 2020, prior to the scoping phase and subsequent NEPA documents. The Postal Service admitted
24 these calculations were “used by Postal Service management at the time it determined which
25 supplier” to use for acquiring new vehicles. *Id.* at 5.

26 116. The Postal Service asserted that any differences in gasoline prices or electricity would
27 not have “change[d] the fundamental comparisons of alternatives” in the EIS because the difference
28 would be less than the \$2.3 billion net differential between a 90% internal combustion fleet and a

1 100% EV fleet. *Id.* But that comparison was based on a long list of unsupported and incoherent
2 assumptions that were critiqued by many commenters, including EPA, environmental groups, and
3 local agencies like the BAAQMD.

4 117. The Postal Service dismissed EPA and others' concern that it underestimated
5 greenhouse gas emissions based on improper modeling entries, implying it was not relevant to its
6 decision. *Id.* at 5-7.

7 118. In response to EPA's critique that the Postal Service failed to consider deploying EVs
8 in places with cleaner grids and therefore greater potential for emission reductions, the Postal
9 Service asserted that its statutory mission does not include this consideration. *Id.* at 7. However,
10 NEPA requires consideration of these types of benefits, in addition to the consideration of mitigation
11 and alternatives.

12 119. The ROD provided new details on the Postal Service's contract with Oshkosh. The
13 Postal Service responded that EPA failed to timely raise its concern that the Postal Service's
14 issuance of the contract award with Oshkosh was improperly early in the NEPA process. *Id.* at 9.
15 The Postal Service ignored in this response that several entities, including Sierra Club and the
16 Center, had raised this issue in comments.

17 120. The Postal Service stated in the ROD that information provided by Oshkosh formed
18 the basis of its analysis regarding the total cost of ownership for EVs. *Id.* at 9–10. The Postal Service
19 conceded it did *not* consider industry forecasts or expert reports. The Postal Service also attacked
20 one expert report as “biased,” without evidence to substantiate these claims. *Id.* at 7. The Postal
21 Service failed to explain how the information provided by Oshkosh was unbiased.

22 121. Instead of addressing environmental justice impacts, and despite the agency's claim
23 that it would do so, the Postal Service concluded without any provided analysis or support that no
24 “one community is disproportionately impacted by the Preferred Alternative.” *Id.* at 11.

25 122. The Postal Service asserted that the ROD had “been prepared in accordance with the
26 requirements of” NEPA, CEQ's NEPA regulations, and the Postal Service's NEPA regulations. *Id.*
27 at 1.

28

1 123. The Postal Service also rejected EPA’s request for a public hearing, asserting that
2 EPA had not made a timely request because the public comment period had expired. *Id.* at 11.
3 However, the Postal Service’s regulations include no such time limitation and instead state a public
4 hearing “must be held *whenever*” any one of the stated criteria for a hearing is met. 39 C.F.R.
5 § 775.14 (emphasis added).

6 124. The ROD provides no reference to CEQ’s letter on the Final EIS.

7 125. The ROD provides no reference to the letter from sixteen Senators and three
8 Congressional representatives.

9 126. Mark A. Guilfoil, the Postal Service’s Vice President for Supply Management, signed
10 the ROD as the responsible official.

11 127. The Postal Service provided no comment period on the ROD.

12 **FIRST CLAIM FOR RELIEF**
13 **(NEPA Violation:**
14 **Irreversible Commitment of Resources)**

15 128. Plaintiffs reallege and incorporate Paragraphs 1 through 127.

16 129. CEQ requires agencies to begin the NEPA process “at the earliest reasonable time.”
17 40 C.F.R. § 1501.2(a). These regulations require that an EIS “will not be used to rationalize or
18 justify decisions already made.” *Id.* § 1502.5.

19 130. The Postal Service’s regulations similarly require that the EIS “must . . . [s]erve to
20 assess the environmental impact of proposed actions, rather than to justify decisions already made.”
21 39 C.F.R. § 775.11(b)(2)(vi).

22 131. NEPA’s requirement that agencies prepare an EIS is intended to require forward-
23 looking analysis that shapes the decisions they make. Decisions taken and resources committed in
24 advance of an EIS frustrate that purpose. *See Metcalf v. Daley*, 214 F.3d 1135, 1143 (9th Cir. 2000)
25 (stating that agencies are required to prepare NEPA documents “before any irreversible and
26 irretrievable commitment of resources” (citations omitted)); *Ctr. for Env’t. Law & Policy v. U.S.*
27 *Bureau of Reclamation*, 655 F.3d 1000, 1006 (9th Cir. 2011) (“To avoid *post hoc* agency
28

1 rationalizations, “[p]roper timing is one of NEPA’s central themes.” (quoting *Save the Yaak Comm.*
2 *v. Block*, 840 F.2d 714, 718 (9th Cir. 1988)).

3 132. The Postal Service awarded the delivery vehicle contract to Oshkosh Defense and
4 issued an initial order in February 2021, prior to beginning the NEPA process. The Postal Service
5 issued its Draft EIS approximately 6 months later.

6 133. The Postal Service’s award of a contract, issuance of a task order, and reliance on the
7 information from the contract in the EIS was arbitrary and capricious, did not demonstrate reasoned
8 decision-making, exceeded the Postal Service’s statutory authority, and was contrary to NEPA, 42
9 U.S.C. § 4332(2)(C); CEQ’s NEPA regulations, 40 C.F.R. §§ 1501.2, 1502.5; and the Postal
10 Service’s NEPA regulations, 39 C.F.R. § 775.11.

11 **SECOND CLAIM FOR RELIEF**
12 **(NEPA Violation:**
13 **Unreasonable Range of Alternatives Analyzed)**

14 134. Plaintiffs reallege and incorporate Paragraphs 1 through 127.

15 135. Each EIS must include “a detailed statement” on “alternatives to the proposed
16 action.” 42 U.S.C. § 4332(2)(C).

17 136. “The analysis of alternatives to the proposed action is the heart of the environmental
18 impact statement.” *Ctr. for Biological Diversity v. U.S. Dep’t of the Interior*, 623 F.3d 633, 642
19 (9th Cir. 2010) (quotation marks omitted); *see also California ex rel. Lockyer v. U.S. Dept. of Agric.*,
20 459 F. Supp. 2d 874, 905 (N.D. Cal. 2006). Critically, “[t]he existence of a viable but unexamined
21 alternative renders an environmental impact statement inadequate.” *NRDC*, 421 F.3d at 813
(citations omitted).

22 137. CEQ regulations require an EIS to “[e]valuate reasonable alternatives to the proposed
23 action,” including a discussion of the environmental consequences of each alternative and the
24 reasons for elimination of alternatives not considered. 40 C.F.R. § 1502.14. The EIS’s consideration
25 of environmental consequences then “forms the scientific and analytic basis for the comparisons” for
26 the alternatives analysis. *Id.* § 1502.16(a).

1 138. The Postal Service is bound by its own NEPA regulations to “[s]tudy, develop,
2 describe, and evaluate . . . reasonable alternatives to recommended actions which may have a
3 significant effect on the environment.” 39 C.F.R. § 775.8(a)(4). Under Postal Service regulations, the
4 EIS “must” “[e]xplore and evaluate all reasonable alternatives.” *Id.* § 775.11(c)(5). This alternatives
5 analysis is “vitally important” and must be “presented in comparative form, thus sharply defining the
6 issues and providing a clear basis for choosing alternatives.” *Id.*

7 139. The EIS included only four alternatives for the new fleet: (1) purpose-built vehicles
8 consisting of at least 10% EV and up to 90% combustion engines; (2) purpose-built vehicles
9 consisting of 100% EVs; (3) 100% commercially available right-hand-drive combustion engine
10 vehicles; and (4) 100% commercially available left-hand-drive EVs. Final EIS at 3-4 to 3-7.

11 140. The Postal Service quickly rejected the commercially available options because they
12 do not comport with the agency’s need to have a right-hand steering wheel. *See id.* at 4-42. And it
13 rejected the 100% purpose-built EVs alternative due to supposed operational constraints on
14 approximately 5% of routes. The Postal Service unreasonably assumed that its EVs could only travel
15 70 miles on a single charge. *See id.* at 3-2.

16 141. The Postal Service did not explain why it chose to evaluate only a mix of 10% EVs
17 and 90% combustion vehicles and not any other combination, despite EPA, Plaintiffs, and others’
18 requests during the public comment period that the Postal Service include other reasonable
19 alternatives.

20 142. EPA, Plaintiffs, and others provided examples of other reasonable alternatives that
21 were not considered. For instance, even including the unjustified and unreasonable assumptions
22 regarding battery technology and range the Postal Service assumed would prevent electrification of
23 roughly 5% of routes, the EIS should have included an alternative for 95% EVs. EPA recommended
24 the Postal Service evaluate a “mid-range alternative,” such as acquiring 25% EVs and “as high a
25 percentage of [EV delivery vehicles] as is economically feasible.”

26 143. The Postal Service did not include any of these reasonable alternatives in the Final
27 EIS, nor did it explain why it rejected them.

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1 144. The Postal Service’s failure to include and analyze reasonable alternatives was
2 arbitrary and capricious, did not demonstrate reasoned decision-making, exceeded the Postal
3 Service’s statutory authority, and was contrary to NEPA, 42 U.S.C. § 4332(2)(C); CEQ’s NEPA
4 regulations, 40 C.F.R. §§ 1502.14, 1502.16; and the Postal Service’s NEPA regulations, 39 C.F.R.
5 §§ 775.8, 775.11, 775.12.

6 **THIRD CLAIM FOR RELIEF**
7 **(NEPA Violation:**
8 **Failure to Take a “Hard Look” at Environmental Impacts)**

9 145. Plaintiffs reallege and incorporate Paragraphs 1 through 127.

10 146. NEPA requires agencies to take a “hard look” at environmental consequences before
11 taking an action. *See* 42 U.S.C. § 4332; *Robertson*, 490 U.S. at 350 (noting that the “sweeping policy
12 goals” of NEPA are “realized through a set of action-forcing procedures that require that agencies
13 take a hard look at environmental consequences” (quotations marks omitted)). Agencies must
14 provide the data on which they base their environmental analysis. *N. Plains Res. Council, Inc. v.*
15 *Surface Transp. Bd.*, 668 F.3d 1067, 1083 (9th Cir. 2011). Agencies do not satisfy the “hard look”
16 standard if they rely on “stale data.” *Id.* at 1086–87.

17 147. CEQ’s NEPA regulations require a hard-look analysis through a variety of specific
18 requirements, including: informed decision-making, 40 C.F.R. § 1502.1; alternatives analysis, *id.*
19 § 1502.14; evaluation of environmental consequences, *id.* § 1502.16; requirements for methodology
20 and scientific accuracy, *id.* § 1502.23; if applicable, cost-benefit analysis, *id.* § 1502.22; response to
21 comments, *id.* § 1503.4; and record of decision, *id.* § 1505.2.

22 148. The Postal Service’s NEPA regulations similarly require a hard look to “[i]dentify
23 environmental effects and values in detail, and appraise them in conjunction with economic and
24 technical analyses.” 39 C.F.R. § 775.8. The Postal Service must do so in an “analytic” EIS that
25 serves “to assess the environmental impact of proposed actions, rather than to justify decisions
26 already made.” *Id.* § 775.11(b)(2).
27
28

1 149. Following the Final EIS, EPA sent a detailed letter to the Postal Service about the
2 numerous technical flaws in the “seriously deficient” EIS. The Postal Service refused to fix any of
3 the errors EPA had identified.

4 150. The Postal Service failed to take a hard look at air pollutant emissions, including for
5 nitrogen oxides, volatile organic compounds, and particulate matter. Although internal combustion
6 engines emit significant amounts of these pollutants, the Postal Service failed to analyze, monetize,
7 or contextualize the reductions of these pollutants for EV alternatives. *See, e.g.*, Final EIS at 4-22,
8 tbl. 4-6.1 (quantifying pollutants as “not applicable”).

9 151. In some cases, the emissions reductions benefits of going fully electric are as much as
10 10 times those of the proposed action. *Compare id.* at 4-25, tbl. 4-6.5 (534 tons per year reduction in
11 sulfur dioxide for fully electric), *with id.* at 4-23, tbl. 4-6.2 (55 tons per year reduction in sulfur
12 dioxide for proposed action). But the Postal Service did not compare alternatives of air pollution
13 reduction because of its failure to calculate emissions for some air pollutants. The Postal Service also
14 did not contextualize the benefits or impacts of all air pollutants.

15 152. The EIS therefore “falls below NEPA’s standards because it fails to provide
16 policymakers and the public with sufficient information to make an informed comparison of the
17 alternatives.” *Se. Alaska Conservation Council v. Fed. Highway Admin.*, 649 F.3d 1050, 1058
18 (9th Cir. 2011) (quotation marks omitted).

19 153. On greenhouse gas emissions, EPA explained that annual carbon dioxide equivalent
20 emissions from combustion engines were 2.5 times greater than what the Postal Service had
21 calculated. For annual emissions from new vehicles with 100% combustion engines, EPA calculated
22 821,807 metric tons, but the Postal Service only calculated 311,739 metric tons. Final EIS at B-166.

23 154. This error had a large impact on the conclusions the Postal Service made. It allowed
24 the Postal Service to claim that even replacing the existing fleet with 100% combustion engines
25 would have a *beneficial* impact on the environment compared to continuing to repair and use the
26 existing fleet. *See id.* at F-9 (showing negative emissions for each alternative); 4-43 (labeling each
27 alternative “beneficial” for greenhouse gas emissions).

28

1 155. Because of these and other errors, the Postal Service failed to rely on scientifically
2 sound calculations for greenhouse gas emissions, in violation of NEPA regulations. *See* 40 C.F.R.
3 § 1502.23.

4 156. The Postal Service also failed to take a hard look at costs. While the purpose of a
5 NEPA analysis is to identify environmental consequences of an action, presenting inaccurate
6 economic information in an EIS prevents the decisionmaker from making a “well-informed and
7 reasoned decision,” and is therefore reviewable as a violation of the statute. *NRDC v. U.S. Forest*
8 *Serv.*, 421 F.3d 797, 812 (9th Cir. 2005).

9 157. The Postal Service’s economic analysis comprised numerous flaws. It failed to
10 consider trends in EV battery technology, which led it to overestimate the costs of EVs. It estimated
11 that the cost of gasoline would be \$2.14 per gallon in 2022, when much of the nation already
12 experiences gas prices double that. *See* Final EIS at B-160. It projects that gasoline will only rise to
13 \$2.55 by 2040. *Id.* And it failed to compare its cost assumptions to currently available cost data for
14 Class 2b-3 vehicles, which is the class of commercial delivery vehicles used by the Postal Service as
15 well as private delivery companies like Amazon and UPS.

16 158. The Postal Service also refused to disclose the assumptions used in its total cost of
17 ownership analysis. *See id.* at B-161 to B-163, B-165. But NEPA requires an agency to “disclose its
18 methodologies and scientific sources.” *Save the Peaks Coal. v. U.S. Forest Serv.*, 669 F.3d 1025,
19 1038 (9th Cir. 2012). The “withholding of information violated NEPA, which requires upfront
20 disclosures of relevant shortcomings in the data.” *Lands Council v. Powell*, 395 F.3d 1019, 1032 (9th
21 Cir. 2005).

22 159. The Postal Service’s erroneous cost data led it to conclude that “committing to
23 purchase more than 10 percent [EV delivery vehicles] . . . is not achievable, absent additional
24 funding.” Final EIS at *iii*. The failure to consider reasonably foreseeable trends, and the reliance on
25 unsupported assumptions such as a static and outdated 70-mile battery range for EVs throughout the
26 10-year period of analysis, led the Postal Service to reject the potential for a higher mix of EVs.

27 160. The Postal Service also failed to take a hard look at environmental justice impacts.
28 Although the Postal Service is an independent agency and thus is not bound by the Environmental

1 Justice Order, it said that it would voluntarily consider environmental justice in the Draft EIS. *See*
2 Draft EIS at 4-5. Because the Postal Service “exercised its discretion to include the environmental
3 justice analysis in its NEPA evaluation, . . . that analysis therefore is properly subject to ‘arbitrary
4 and capricious’ review under the APA.” *Cmties. Against Runway Expansion, Inc.*, 355 F.3d at 688;
5 *see also Vecinos para el Bienestar de la Comunidad Costera*, 6 F.4th at 1330.

6 161. However, the Postal Service did not actually analyze environmental justice concerns.
7 Despite the high likelihood that minority and low-income populations live in highly congested areas
8 or areas near mail distribution facilities, the Postal Service did not examine the potential that
9 combustion engines—and their attendant tailpipe pollution—would have disproportionate impacts
10 on communities with environmental justice concerns. Nor did the Postal Service respond to
11 comments raising these environmental justice concerns. *See* Final EIS at B-178 to B-179. Instead,
12 the Postal Service concluded without discussion that its decision would not have significant
13 environmental justice effects. *See* Final EIS at 4-41.

14 162. The Postal Service’s failure to take a hard look at greenhouse gas and air pollutant
15 emissions, costs, or environmental justice considerations was arbitrary and capricious, did not
16 demonstrate reasoned decision-making, exceeded the Postal Service’s statutory authority, and was
17 contrary to NEPA, 42 U.S.C. § 4332(2)(C); CEQ’s NEPA regulations, 40 C.F.R. §§ 1502.1,
18 1502.14, 1502.16, 1502.22, 1502.23, 1503.4, 1505.2; and the Postal Service’s NEPA regulations, 39
19 C.F.R. §§ 775.8, 775.11, 775.12.

20 **REQUEST FOR RELIEF**

21 WHEREFORE, Plaintiffs respectfully request that this Court:

- 22 a) Declare the Postal Service violated NEPA and its implementing regulations in issuing
23 its Final EIS and Record of Decision;
- 24 b) Vacate the Postal Service’s Final EIS and ROD until Defendants have demonstrated
25 lawful compliance with NEPA and applicable regulations;
- 26 c) Issue an order enjoining the Postal Service from any action under its Next Generation
27 Vehicle Acquisition plan until Defendants have demonstrated lawful NEPA compliance;
- 28 d) Award Plaintiffs their costs, expenses, and reasonable attorneys’ fees; and

1 e) Provide for such other relief as the Court deems just and appropriate.
2

3 DATED: April 28, 2022

Respectfully submitted,

4 /s/ Adriano L. Martinez

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