No. 24-5565

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE NINTH CIRCUIT**

CONFEDERATED TRIBES OF THE COLVILLE RESERVATION,
*Plaintiff-Appellant,*

JOSEPH A. PAKOOTAS, ET AL.,
*Plaintiffs*

STATE OF WASHINGTON,
*Intervenor-Plaintiff,*
v.

TECK COMINCO METALS LTD,
*Defendant-Appellee*

Appeal from the United States District Court
for the Eastern District of Washington
No. 2:04-cv-0256 (Hon. Stanley A. Bastian)

# BRIEF FOR THE NATIONAL MINING ASSOCIATION, AMERICAN EXPLORATION & MINING ASSOCIATION, AND CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICI CURIAE* IN SUPPORT OF APPELLEE

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## CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a)(4)(A), *amici curiae* state as follows:

The National Mining Association has no parent corporation that has any outstanding securities owned by the public and there is no corporation that owns more than ten percent of its stock.

The American Exploration & Mining Association has no parent corporation that has any outstanding securities owned by the public and there is no corporation that owns more than ten percent of its stock.

The Chamber of Commerce of the United States of America (Chamber) states that it is a non-profit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent corporation, and no publicly held company has 10% or greater ownership in the Chamber**.**

Dated: January 28, 2025

*s/ William M. Jay*
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## INTEREST OF *AMICI CURIAE*[1]

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

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

[1] No counsel for any party authored this brief in whole or in part and no entity or person, aside from *amici curiae*, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief. All parties have consented to the filing of this brief.

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

The Chamber is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the Courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

*Amici* have a substantial interest in the proper interpretation of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 *et seq.*, and its provision authorizing natural resource damages. Their membership includes companies that operate facilities on or near tribal lands, as well as companies that have been pursued for liability for natural resource damages. Any business that is a potential target for such liability (now and in the future) has an interest in the outcome of this case, because the theory of natural resource damages advanced by the Confederated Tribes of the

Colville Reservation (CCT) and rejected by the district court would threaten liability that is duplicative and highly disproportionate to any concrete injury to natural resources. *Amici* seek to promote a predictable, rational, and plain reading of CERCLA.

## INTRODUCTION AND SUMMARY OF ARGUMENT

The district court correctly foreclosed an unauthorized and effectively unlimited theory of liability: CCT's claim for damages of over *half a billion dollars* for its lost cultural connection to the Upper Columbia River. CERCLA allows "damages for injury to, destruction of, or loss of natural resources" in order to restore or replace those resources. 42 U.S.C. § 9607. CERCLA does not authorize the lost-cultural-connection damages that CCT seeks here. Moreover, CCT's claim fails for the independent reason that it is based on tribal members' *perceptions* of injury to a natural resource, not on actual damage or on lost use directly caused by such damage.

The underlying case is about injury to two types of natural resources: injury to creatures in the sediment (benthic macroinvertebrates) and injury to fishing. Both CCT and the State of Washington are pursuing natural resource damages claims for those injuries. But those claims are not at issue in this appeal. Rather, CCT seeks additional damages beyond those injuries. It contends that it is entitled to damages for injury to the entire Upper Columbia River and Lake Roosevelt because of tribal members' "apprehension" that the river was contaminated—damages that far exceed the alleged harm that contamination may have caused to benthic organisms or fishing. For example, the claimed damages purport to quantify how much tribal members value sediment removal from the river (which

is not the natural resource injury at issue) and include estimates for the cost of a new longhouse and for native language instruction for decades into the future. CCT's damage theories drove its lost-cultural-connection claim above *half a billion dollars*, significantly more even than the separate claim for actual damage to benthic organisms and fisheries jointly pressed by the State of Washington and CCT (which is not before this Court).

On appeal, CCT contends that its claim was for interim lost use value of the river specific to its members. But even that reformulation of its claim is not tied to the particular effect of contamination on fish and benthic organisms. Nor can CCT shore up its claims by asking for a more favorable reading of CERCLA than is available to other members of the public. The canon of construction that favors Indian tribes has no application here, as there is no ambiguity in the statute and the statute is not specific to tribes. Rather, Congress *added* tribes as potential plaintiffs to a cause of action it had already created—and that cause of action is limited to restoring and replacing injured natural resources.

CCT's expansive and unbounded theory of liability will have far reaching effects if blessed by the Court. The result in many cases will be to leave *less* money available for remediation and restoration, which Congress sought to prioritize in enacting the statute. And the result may deter business operations near tribally-owned natural resources by creating a unique disincentive to economic

development near tribal lands—hardly Congress's purpose in extending to tribes the same right of action that CERCLA granted to federal and state governments.

The district court correctly recognized that CCT was pressing a claim that CERCLA does not authorize—and that no court has recognized. This Court should not be the first; it should affirm the decision below.

## ARGUMENT

### I. CERCLA does not authorize tribal service loss claims premised on "lost cultural connection" to natural resources caused by "perceptions" of contamination.

Over the course of the lengthy history of this litigation, the scope of the injuries to natural resources on which liability may be premised has come into focus. This Court focused the inquiry on harm allegedly caused, not by the release of slag into the Upper Columbia River, but rather by the leaching of metal from the slag into the environment. *Pakootas v. Teck Cominco Metals, Ltd.*, 452 F.3d 1066, 1075 (9th Cir. 2006). The resulting claim of injury to natural resources is likewise specific and narrow: 1) injury to creatures in the sediment (benthic macroinvertebrates), and 2) injury to fishing due to elevated mercury levels. 2-ER-13; Opening Br. 7; Answering Br. 16-17. The question in this appeal is whether the natural resource damages CERCLA authorizes include damages for a lost cultural connection to the Upper Columbia River based on the "perception" that the river is contaminated. It does not.

### A. Neither CERCLA nor its implementing regulations authorize natural resources damages based on perceptions of contamination.

CCT argued below that it can obtain "natural resource damages" for its lost cultural connection to the Upper Columbia River as a result of tribal members' *perception* that the river was contaminated, or their "apprehension" about using the river as a whole for that reason. 2-ER-170, 3-ER-348. But CERCLA authorizes damages for actual injuries to natural resources, nothing more. A contrary ruling would create unbounded liability by opening the courthouse doors to claims based on innumerable perceptions of harm and consequent cultural impact. This Court should reject CCT's theory as inconsistent with CERCLA and the implementing regulations promulgated by the Department of the Interior.

CERCLA authorizes "damages for injury to, destruction of, or loss of natural resources." 42 U.S.C. § 9607.[2] The statute defines "natural resources" to include "land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources" (if controlled or held in trust by the United States, a state, or an Indian tribe). 42 U.S.C. § 9601(16); *see also* 43 C.F.R. § 11.14(z) (same).

The ordinary meaning of an "injury" is a concrete harm, which is fully consistent with the other harms ("destruction" and "loss") that are paired with it in the statute. *See Injury*, Merriam-Webster's Dictionary (11th ed. 2003) ("hurt,

[2] Only certain parties may "recover for such damages"—namely the United States Government, States, and Indian tribes.

damage, or loss sustained"); *Injury*, Black's Law Dictionary (5th ed. 1979) ("Any wrong or damage done to another, either in his person, rights, reputation, or property"). Likewise, CERCLA's implementing regulations define "injury" as "a measurable adverse change, either long- or short-term, in the chemical or physical quality or the viability of a natural resource." 43 C.F.R. § 11.14(v).

Thus, the statute's use of the term "injury" leaves no room for damages based on *perceptions* of injury rather than actual injury to natural resources. Assessing money damages not for any demonstrable, real-world environmental harm to natural resources, but for subjective fear, would be an untenable expansion of the statute. CERCLA "liability may not extend beyond the limits of the statute itself." *Burlington N. & Santa Fe Ry. Co. v. United States*, 556 U.S. 599, 610 (2009).[3]

Notably, CCT and the State of Washington are already pursuing natural resources damages in this case. For instance, CCT and the State of Washington jointly claim $17.9 million "recreational damages" from lost fishing trips by all Washington residents (including CCT members) as a result of fish consumption advisories for elevated mercury levels. 2-ER-169 (Teck Statement of Undisputed Material Facts ("SUMF") ¶ 17). They also claim "ecological" damages based on

[3] *Amici* assume, for the purpose of this amicus brief, that CCT's claims were presented as cultural losses below.

the alleged reduction of biomass of benthic organisms. 2-ER-169 (Teck SUMF ¶ 16). To be clear, the damages figures of these claims already reflect enormous sums, which are calculated to capture damages up to the year 2100. SER-379. And while these natural resource damages claims are not at issue in this appeal, they demonstrate the anomaly of CCT's separate damages claim.

CCT separately seeks damages because "r[e]leases of hazardous substances have altered the relationship between [CCT] and natural resources in the Upper Columbia River" and "discouraged use of natural resources … which includes diminished traditional and cultural connections to those resources." 2-ER-170 (citation omitted). CCT's use of the river was discouraged not by any actual injuries to the natural resources at issue here (benthic organisms and fishing), but from the perception that the river—as a whole—was unsafe. 2-SER-170 (citation omitted); 2-SER-171 ("CCT members' avoidance of the river is based on Teck's contamination of the river and not specifically the injury its contamination caused to benthos in the sediment."). In CCT's view, "[p]roof of damage … need not specifically tie to the actional injury." *Id.* In other words, CCT seeks damages for members' perception (even if inaccurate) that the river as a whole was no longer suitable for their accustomed uses. That is entirely distinct from a claim for concrete, demonstrable damage to a natural resource itself—and the latter is all that CERCLA authorizes.

In a recent case, the District of New Mexico agreed that a claim "to restore confidence in [a] resource" is beyond the scope of what CERCLA authorizes, because it "seek[s] to remedy injuries that are distinct from the injury to the [natural resource]." *In re Gold King Mine Release*, 669 F. Supp. 3d 1146, 1159, 1160 (D.N.M. 2023). *Gold King Mine* correctly identifies that natural resource damages under CERCLA are limited to damages for *injury to natural resources*; they do not encompass perceptions of injury.

In this case, therefore, any claimed natural resource damages must result from the claimed injury to benthic organisms and fishing. Those injuries could not have caused CCT's "tribal service" losses because the CCT has not established (and cannot establish) that the Upper Columbia River as a whole was unsafe for public use, including for cultural uses, and that the public therefore suffered a compensable loss in this form. *Final Site-Wide Human Health Risk Assessment for the UCR*, at 124-30, 136-37, 157; 2-ER-170. The only thing undergirding CCT's claim is its members' perception that the river was contaminated. But CCT's perceptions of contamination are not entitled to unique protection that is unavailable to the general public under CERCLA.

### B. Expanding CERCLA to encompass damages based on perceptions of injury to natural resources is contrary to the purpose of the statute.

CERCLA's purpose and structure also support the conclusion that damages must be based on actual injuries to natural resources, not perceived injuries. CERCLA limits how natural resource damages may be used—namely "for use only to restore, replace, or acquire the equivalent of such natural resources." 42 U.S.C. § 9607(f)(1). It follows that the measure of damages must be closely tied to those permissible uses. But CCT's perception-based claims are not.

Congress enacted CERCLA "to address 'the serious environmental and health risks posed by industrial pollution' and 'to promote the timely cleanup of hazardous waste sites.'" *Atl. Richfield Co. v. Christian*, 590 U.S. 1, 6 (2020). The statute's decision to allow governments—federal, state, and tribal—to pursue claims for damages to natural resources is fully consistent with that focus on cleanup: unlike damages for a typical tort or contract injury, which the plaintiff can use however it chooses, CERCLA requires that natural resource trustees use natural resource damages "to restore, replace, or acquire the equivalent of [the injured] natural resources." 42 U.S.C. § 9607(f)(1); *New Mexico v. Gen. Elec. Co.*, 467 F.3d 1223, 1244 (10th Cir. 2006); *Gold King Mine*, 669 F. Supp. 3d at 1155 (limitation applies to Indian tribes). Damages thus are tied directly to restoring or replacing injured natural resources.

CCT's theory of liability, by contrast, has no such tie: it is untethered from actual, measurable injury to a natural resource. The theory consequently creates potential liability that is vastly disproportionate to any natural resource injuries sustained, and indeed, is effectively unbounded. Consider the disproportionate nature of the damages CCT seeks. CCT's damage measure ranges over half a billion dollars. 2-ER-174. That is astronomically higher than CCT and Washington's joint claim for injury to fishing, which is already $17.9 million. 2-SER-502. Indeed, CCT's claim for tribal cultural losses seeks more than the claims for natural resources damages to fishing and benthic organisms *combined*.

This Court should not condone a theory that can lead to liability so disproportionate to the natural resource injuries that CERCLA remedies. Expansion of liability may serve the interests of a particular plaintiff in a particular case, but it frustrates the overall statutory purpose: a new, expansive, and unbounded category of liability, *on top of* the State's and CCT's claims for damages to fisheries and benthic organisms that are not at issue in this appeal, would frustrate the statutory purpose by diverting limited resources away from the environmental restoration that is CERCLA's aim. As this Court pointed out in an earlier decision in this case, CERCLA defendants "do not have unlimited financial resources" and cannot simply meet unlimited liability. *Pakootas v. Teck Cominco Metals, Ltd.*, 646 F.3d 1214, 1222 (9th Cir. 2011). "Sometimes the orange is

squeezed dry." *Id.* For that reason, this context is a particularly inappropriate one in which to recognize new theories of liability, especially difficult-to-limit liability based on difficult-to-falsify claims of perception, apprehension, and resulting cultural injury. An expansive reading of CERCLA, divorced from the physical injury to defined natural resources that the statute requires, would not further the statutory purpose—it would undermine it.

### C. CCT's proposals for how to measure damages for cultural injury confirm that its claim is untethered from the statute.

CCT's methodologies for measuring cultural damages are untethered to CERCLA and provide little reassurance that cultural damages can be predictably and reliably calculated. To start, none of the damages methodologies ties the damages to specific natural resource injuries; rather, each seeks to remedy cultural losses that derived from a host of historical factors. Second, CCT's measure of cultural damages ranges from over $114.6 million to $525 million. 2-ER-175. Some components at least rely on real-world costs (though still not cognizable under this statute), such as the cost to build and operate a longhouse or to buy back specific land. 2-ER-175. But CCT's most far-reaching measure of damages is based on a "stated preference" survey that asked tribal respondents which of two choices they would prefer: a) some amount of sediment removal from the river, or b) the purchase of a specific amount of land by CCT. 2-ER-175. The survey did not ask respondents to connect either side of the scale to measurable monetary

value, making the valuation method inherently subjective and unquantifiable: two respondents might both prefer A to B, but they might value both A and B very differently from each other. CCT's deviation from the standard approach taken by stated preference studies (which creates a comparison to a specific amount of money) should be rejected. *See Clausen v. M/V New Carissa*, 339 F.3d 1049, 1056 (9th Cir. 2003). And even if the concept of a "which would you like better" comparison were methodologically appropriate, the comparators were not: the survey tied its valuation method to *sediment removal*, a large-scale remedial undertaking that is not the natural resource injury at issue. *Comcast Corp. v. Behrend*, 569 U.S. 27, 37 (2013) ("[A]ssurance is not provided by a methodology that identifies damages that are not the result of the wrong.").

In short, CCT's methodologies for calculating damages are untethered to the statute because it provides no reassurance that the "tribal service" loss claim is tied to actual injury to the natural resources at issue here.

## II. CCT's "lost cultural connection" claim is not an interim "use value" of natural resources under CERCLA.

Even if CCT could premise its claim on a perception of harm, its claim fails for the independent reason that it is not based on the "use value" of natural resources. On appeal, CCT focuses on whether damages for its lost cultural connection to the river can be tied to the lost interim "use" value of natural resources. CCT argues that it can connect its cultural damages to the "distinct

ways" CCT lost use of natural resources that are "above and beyond the harm suffered by the general public." Opening Br. 3. But CCT's reliance on "use value" does not provide a loophole for its lost-cultural-connection claim. Its claim for damages remains unattributable to the use of the natural resources that were actually injured. In other words, "use value" does not have the expansive meaning that CCT gives it.

CERCLA does not directly address how to measure damages to natural resources. One important indication, however, is its authorization for Interior to engage in rulemaking to "identify the best available procedures to determine such damages, including both direct and indirect injury, destruction, or loss and shall take into consideration factors including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover." 42 U.S.C. § 9651(c)(2). Interior's regulations define "use value" as "the economic value of the resources to the public attributable to the direct use of the services provided by the natural resources." 43 C.F.R. § 11.83(c)(1)(i). "Services" means "the physical and biological functions performed by the resource including the human uses of those functions." *Id.* § 11.14(nn).

Most of CCT's tribal loss claims do not fall within the regulatory definition of "use value" because CCT's lost cultural connection to the river is not due to lost use of benthic organisms, or to lost use of fishing because of fish consumption

advisories. Rather, CCT's claims are allegedly based on the "lost use of an uncontaminated river," Opening Br. 9-10, which is not a "direct use of the services provided by" benthic organisms and fish.

CCT also claims "lost use of natural resources from contamination of the river," Opening Br. 12, without identifying how its claimed damages stem from the lost "direct use" of the "physical and biological functions" performed by benthic organisms and uncontaminated fish, 43 C.F.R. §§ 11.14(nn), 11.83(c)(1)(i). Nor does that lost use become clear when one considers the damages CCT seeks: "cultural programs and buildings to enable restoration of cultural attributes, including language programs," acquisition of land, "monitoring of the Upper Columbia River to confirm water and sediment conditions," and slag removal. Opening Br. 12. CCT fails to tie any of those to the lost use of benthic organisms or fishing. In other words, CCT must tie its lost use claim to an impairment on use caused (either directly or indirectly) by injury to the natural resource at issue.[4]

Even assuming that CCT could properly point to the river as a whole as the contaminated entity, the lost "tribal services" that make up its lost-cultural-connection claim are insufficiently connected to use of the river. CCT desires to

[4] CCT cannot hinge its claim on "non-use" value either, which Interior defines as the market value of a resource that is independent of its "use value." *See* 43 C.F.R. § 11.83(c)(1)(ii). CCT's claims are wholly divorced from "existence and bequest values" of the injured benthic organisms or fish. 43 C.F.R. § 11.83(c)(1).

"restore the primacy of the river in the Tribes' experience," Opening Br. 12, but does not explain what *use* of the river was lost. In short, CERCLA does not allow for unbounded liability based on cultural activities that may take place near a natural resource or that may be based on a feeling about a natural resource. Rather, lost "use" claims are limited to uses that were lost due to the impairment of the specific natural resource that was injured. Under that standard, the district court properly dismissed the CCT's tribal loss claim.

## III. Indian tribes are on an equal footing with federal and state trustees in bringing natural resource damages claims under CERCLA.

CERCLA placed federal, state, and tribes on an equal footing as plaintiffs seeking natural resources damages. The statute creates liability "[1] to the United States Government and [2] to any State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to such State and [3] to any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation." 42 U.S.C. § 9607(f)(1). Whichever of the three types of governments the plaintiff may be, the basis for liability is the same: "an injury to, destruction of, or loss of natural resources under [§ 9607(a)(4)(C)]." *Id.* Likewise, the definition of covered "natural resources" incorporates the same concepts of ownership or trusteeship by "the United States," "any State or local government," and "any

Indian tribe," again in parallel. *Id.* § 9601(16). The statute thus does not authorize Indian tribes to recover natural resource damages that are different in kind. Like federal and state plaintiffs, tribal plaintiffs can recover damages only for injuries to natural resources. CCT cannot uniquely claim damages based on a lost cultural connection to or perceptions of injury to natural resources that are not available to other governmental plaintiffs.

Nor can CCT attain a double recovery merely because CCT is a tribe. 42 U.S.C. 9607(f)(1) ("There shall be no double recovery under this chapter for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, or acquisition for the same release and natural resource."). CCT and Washington jointly seek natural resource damages for loss of recreational fishing trips by *all* Washington residents, including CCT members. But simultaneously, CCT's standalone claim seeks a second, impermissible recovery for damages for its members' lost fishing trips. There is no discernible reason that CCT should be able to recover lost fishing trips first based on its members status as members of the public in Washington State and then again as members of a tribe.

One amicus brief suggests that the statute should be read to treat CCT more favorably than federal and state plaintiffs given the pro-Indian canon of statutory interpretation, and asks this Court to construe CERCLA's provisions liberally in favor of CCT's interests. Nez Perce Amicus Br. 9. But that canon has no

relevance here—and it certainly cannot authorize courts to broaden damages available to favor Indian tribes. The statutory provisions providing liability for natural resource damages are of general applicability, benefiting non-tribal and tribal governments alike. And as a "la[w] of general applicability," those provisions were therefore not enacted specifically to benefit tribes. *CFPB v. Great Plains Lending, LLC*, 846 F.3d 1049, 1057 (9th Cir. 2017). To the contrary, the liability-creating provisions were enacted first; only six years later did Congress add tribes as potential plaintiffs. It did so not by creating a special provision for tribal plaintiffs, but by inserting tribes into the existing provision. *See* Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, § 207(c)(2), 100 Stat. 1705. Thus, even if there were ambiguity in the provisions governing natural resources damages as Congress wrote them, it would make little sense to presume that Congress wanted the ambiguity resolved in favor of tribes, which were not potential plaintiffs at the time the provisions were written and which were explicitly added on an equal footing with every other plaintiff. The text (including the definitions) and the structure of the statute foreclose any interpretation that would allow the meaning of liability to change based on which type of plaintiff is suing.

* * *

The district court correctly foreclosed an unauthorized and effectively unlimited theory of liability that tribal plaintiffs alone could pursue. The effect of recognizing this theory would run contrary to CERCLA's statutory policy, embodied in its text, of focusing on compensating concrete injury to natural resources. As is further confirmed by the Tribes' theories of proof and the astronomical sums the Tribes' experts generated from them, liability on this theory would know no bounds. The result in many cases will be to leave *less* money available for the actual remediation and restoration that was Congress's priority in enacting the statute. And indeed, if any business operating near tribally owned natural resources must face *this* sort of unbounded liability (but businesses operating elsewhere do not), the effect would be to create a unique disincentive to economic development near tribal lands—hardly Congress's purpose in extending to tribes, on an equal footing, a right of action that CERCLA had already granted to other governments.

## CONCLUSION

This Court should affirm the district court's grant of summary judgment on CCT's "tribal service loss" claim.

Dated: January 28, 2025

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Fed. R. App. P. 29(a)(5), 32(a)(7)(B), and Circuit Rule 32-1(a) because it contains 4,499 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

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## CERTIFICATE OF SERVICE

I certify that I electronically filed this brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on January 28, 2025. I certify that all participants in the case are registered CM/ECF users and service will be accomplished by the CM/ECF system.

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