NO. 23-975

In the
Supreme Court of the United States

SEVEN COUNTY INFRASTRUCTURE COALITION, ET AL.,
Petitioners,

v.

EAGLE COUNTY, COLORADO, ET AL.,
Respondents.

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

BRIEF OF THE STATES OF COLORADO, WASHINGTON, THIRTEEN OTHER STATES, AND THE DISTRICT OF COLUMBIA *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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Amici are the States of Colorado, Washington, Connecticut, Delaware, Illinois, Maine, Michigan, Minnesota, Nevada, New Jersey, New York, Oregon, Rhode Island, Vermont, the Commonwealth of Massachusetts, and the District of Columbia.

Amici are sovereign entities that regulate land use, water and air quality, fish and wildlife, and water resources within their borders through duly enacted state laws. Many *amici* are also authorized by federal law to administer an array of federal environmental statutes, including the Clean Air Act, Clean Water Act, Safe Drinking Water Act, Resource Conservation and Recovery Act, and the Surface Mining Control and Reclamation Act. And large portions of several *amici* are public lands owned and managed by the federal government.[1]

Colorado's economy is reliant on its outdoor industries. Clean air, land, and water provide ecologically vibrant habitats that undergird Colorado's robust outdoor recreation economy, which includes fishing, hunting, hiking, skiing, and other outdoor activities. In total, such activities contributed $65.8 billion dollars to Colorado's economy, supported over 404,000 jobs, and provided more than $11 billion in local, state, and federal tax revenue in 2023 alone. Colo. Parks & Wildlife, *The 2023 Economic Contributions of Outdoor Recreation in Colorado* (Sept. 2024), https://tinyurl.com/57tntkps. A core state interest of Colorado is ensuring

[1] Congressional Research Service, Federal Land Ownership: Overview and Data, Feb. 21, 2020, https://sgp.fas.org/crs/misc/R42346.pdf.

that harm to the natural environment caused by development projects is avoided, minimized, and mitigated, and that Colorado's natural resources are preserved for the state's economic vitality as well as for the enjoyment of current and future generations.

Similarly, Washington's natural resources, including aquatic leases in the Puget Sound, generate more than $300 million in annual financial benefits to state public schools, institutions, and county services every year. 2023 Annual Report, Washington Department of Natural Resources, https://www.dnr.wa.gov/publications/em_annual_report_2023.pdf. They also generate billions of dollars' worth of ecosystem services to surrounding communities by filtering drinking water, purifying air, and providing space for recreation. Washington's natural areas generate commercial and recreational opportunities, ranging from hunting and fishing to skiing and camping, that put billions of dollars into the Washington economy annually.[2] This industry supports 264,000 jobs across Washington State.[3]

Amici are actively and regularly involved in a broad range of federal environmental reviews required by the National Environmental Policy Act ("NEPA") as cooperating agencies, and they also rely on the NEPA process to provide meaningful state-level input in federal decisions that impact their sovereign

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[2] Economic Analysis of Outdoor Recreation in Washington State, https://rco.wa.gov/wp-content/uploads/2020/07/EconomicReportOutdoorRecreation2020.pdf.

[3] *Id.*

and quasi-sovereign interests in resource management and the protection of public health and the environment. The Colorado Department of Natural Resources and Department of Agriculture participate in NEPA-required environmental reviews for plans governing the use and management of public lands, including Bureau of Land Management resource management plans, U.S. Forest Service land management plans, public-land grazing permit renewals, range improvement projects involving water distribution systems and habitat management,[4] and for actions involving water planning[5] and fish and wildlife protection.[6] The Colorado Department of Public Health and

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[4] See, e.g., Final Record of Decision for the Revised Land Management Plan, Grand Mesa, Uncompahgre, and Gunnison National Forests (USDA, U.S. Forest Service, June 2024), https://usfs-public.app.box.com/s/q1ynrmqbv90hrzp9rpxanxgwtk2rxq70/file/1560805849306 (listing Colorado's Department of Agriculture, Department of Natural Resources, Colorado Parks and Wildlife, and the Colorado Water Conservation Board as cooperating agencies); Record of Decision and Approved Eastern Colorado Resource Management Plan (U.S. Department of Interior, Bureau of Land Management) (Jan. 2024), https://tinyurl.com/y8ytftvp (cooperating agencies include Colorado Departments of Agriculture, Natural Resources, and Public Health and Environment).

[5] See, e.g., Colorado River States Submit a Consensus-Based Modeling Alternative to Bureau of Reclamation, Colo. Water Conservation Bd., Colo. Dep't of Nat. Res. (Jan. 30, 2023), https://cwcb.colorado.gov/news-articles/colorado-river-states-SEIS.

[6] See, e.g., Sweetwater Partnership continues collaboration on long-term planning process at Sweetwater Lake, Colo. Parks and Wildlife, https://cpw.state.co.us/news/07202023/sweetwater-partnership-continues-collaboration-long-term-planning-process-sweetwater (last visited Aug. 27, 2024).

Environment reviews projects for transportation and water supply infrastructure as part of the NEPA process, including federal permits and licenses that involve discharges to Colorado waters.[7] And although Colorado does not have its own state-level environmental review statute, it has adopted processes to streamline the review and permitting for construction and expansion of water supply reservoirs and related infrastructure subject to NEPA.[8]

The ability of Colorado state agencies to participate in NEPA processes improves the efficiency and coordination of the water supply permitting process. Notably, such participation helps project proponents incorporate both state and federal regulatory requirements into initial water supply planning phases long before permitting requests are submitted.[9] By coordinating with federal agencies to ensure their NEPA review includes consideration of statewide visions for

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[7] See Quality Management Plan, Tech. Servs. Program, Colo. Dep't of Pub. Health and Env't (Jan. 2023), https://www.colorado.gov/airquality/tech_doc_repository.aspx?action=open&file=QMP_2023.pdf; Colorado Department of Public Health & Environment, 401 water quality certification, at https://cdphe.colorado.gov/401-Certification (last visited Aug. 27, 2024)

[8] Colorado Handbook: Colorado Water Supply Planning and Permitting (October 2017), https://dnrweblink.state.co.us/CWCB/0/edoc/204742/ColoradoWaterSupplyPlanningAndPermittingHandbook-Oct2017.pdf

[9] https://dnrweblink.state.co.us/CWCB/0/edoc/204742/ColoradoWaterSupplyPlanningAndPermittingHandbook-Oct2017.pdf

managing Colorado's finite water resources, this process helps avoid costly delays for project sponsors. Similarly, Washington state agencies, including the Department of Ecology, the Department of Fish and Wildlife, the Department of Transportation, the Department of Natural Resources, and the Department of Health regularly engage in the federal NEPA process as cooperating and commenting agencies or as agencies with special expertise highlighting potential impacts to the state's natural resources and public health.

Likewise, the other *amici* states have a strong interest in ensuring comprehensive environmental reviews inform federal actions in their jurisdictions. For instance, Massachusetts is home to fifteen units and three national trails managed by the National Park Service, eleven National Wildlife Refuges, and twelve recreation areas managed by the U.S. Army Corps of Engineers. Numerous federal agencies operate, license, or permit activities in Massachusetts waterways and off Massachusetts' coastline impacting Massachusetts fisheries, other valuable resources, and maritime uses, which are critical to the health and economic vitality of the Commonwealth. Similarly, New Jersey is home to Joint Base McGuire-Dix-Lakehurst and is the site of several current and anticipated energy and infrastructure projects with numerous federal agencies.

The proposed Uinta Basin Rail Line at issue in this case is squarely within Colorado's and Washington's interests. The proposed route and its connection to existing rail lines in Colorado would transport hundreds of thousands of barrels of waxy crude oil per day

through the state. The project raises the risk of leaks, spills, or rail car accidents immediately adjacent to the headwaters of the Colorado River, the most critical water source for the state's residential communities, and agricultural and outdoor recreation sectors. The project's risks to Colorado's residents and natural resources have generated deep concern and strong opposition from across the state. Similarly for Washington, approximately 10% of the Uinta Basin waxy crude could be transported to the Puget Sound for refining. J.A. 478, 481 These refineries are all located along the coast of the Puget Sound, an iconic and critical resource for the people of the State of Washington. The additional oil from the Uinta Basin travelling through Washington increases the risk of spills into the Puget Sound and along rail lines leading to the refineries. These very real risks affect the people and the environment of Washington State.[10]

SUMMARY OF THE ARGUMENT

The Court should reject the invitation from Petitioners and several *amici* to curtail the scope of federal agencies' NEPA reviews by allowing federal agencies to disregard in their environmental analyses reasonably foreseeable environmental effects for which the agencies are not directly responsible. Pet'rs Brief at 1-2.

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[10] Washington experienced just such a rail accident on December 22, 2020, when an oil train derailed and caught fire in Custer, Washington, spilling over 28,000 gallons of oil. Department of Ecology State of Washington: Custer Crude Oil Derailment 2020, https://ecology.wa.gov/Spills-Cleanup/Spills/Spill-preparedness-response/Responding-to-spill-incidents/Spill-incidents/Custer-Crude-Oil-Derailment-2020.

We agree Petitioners' argument implicates "basic principles of cooperative federalism," which requires "States and the federal government [to] work together in harmony for the good of the people and our environment." Louisiana *et al.* Amicus Brief at 1. But the undersigned states disagree that Petitioner's bright-line rule, which would allow federal agencies to turn a blind eye to reasonably foreseeable effects regulated by other federal agencies, states, and local governments, will protect states' sovereign and quasi-sovereign interests or enhance cooperative federalism.

On the contrary, as this case demonstrates, Petitioners' proposed bright-line rule would undermine states' ability to ensure that proposed federal actions: (1) protect states' sovereign and quasi-sovereign interests, (2) preserve states' ability to meet their obligation to comply with federal environmental laws, and (3) account for states' interests in advancing the economic and environmental well-being of their citizens.

The undersigned states submit this amicus brief to demonstrate that the Court's adoption of the Petitioners' interpretation of *Department of Transportation v. Public Citizen* would contravene the text and fundamental purpose of NEPA, harm the states' sovereign and quasi-sovereign interests, and undermine cooperative federalism. The Court should reject Petitioners' proposed rule and affirm that the Surface Transportation Board (STB) was required to consider all of the reasonably foreseeable upstream and downstream effects of its proposed approval of the Uinta Basin Rail Line—even those regulated by other enti-

ties—where the STB has statutory authority to consider those effects in its determination to approve the rail line.

ARGUMENT

I. Federal agency decisions implicate important State interests.

State sovereignty is a cornerstone of our federal system. *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991). Our Nation's federalist structure of dual sovereigns empowers each state to champion the health, safety, and well-being of its citizens as necessary based on states' differing needs and unique resources. Indeed, as this Court noted over a century ago, a "state has an interest . . . in all the earth and air within its domain. It has the last word as to whether its mountains shall be stripped of their forests and its inhabitants shall breathe pure air." *Georgia v. Tennessee Copper Co.*, 206 U.S. 230, 237 (1907).

1. Today, states maintain important sovereign and quasi-sovereign interest over several aspects of natural resources and environmental quality within their borders, including: (1) water quantity, *California v. United States*, 438 U.S. 645, 654 (1978) (describing the long history of Congressional deference to state laws regarding the appropriation of water); (2) water quality, 33 U.S.C. § 1341 (reserving to the states the authority to determine whether discharges to navigable waters associated with activities requiring a federal license or permit comply with state water quality requirements); (3) air quality, 42 U.S.C. §§ 7401(a)(3) (noting that "air pollution prevention . . . and air pollution control at its source is the primary responsibility of States and local governments") and 7407(a)

("Each State shall have primary responsibility for assuring air quality within the entire geographic area comprising such State . . ."); and (4) fish and wildlife, *Kleppe v. New Mexico*, 426 U.S. 529, 545 (1976) ("Unquestionably the States have broad trustee and police powers over wild animals within their jurisdictions").

The states' exercise of sovereign and quasi-sovereign authority over these resources, grounded in their status as "residuary sovereigns" under the U.S. Constitution's federal system, is fundamental to their statehood and their right to protect their citizens. *Alden v. Maine*, 527 U.S. 706, 715 (1999); *Tennessee Copper Co.*, 206 U.S. at 237. Land, water, air, and fish and wildlife are particularly important to the public, and states are well-positioned to protect their residents' interests in these resources.

2. At the same time, the federal government has a significant interest in "protecting and promoting environmental quality" and natural resources. *Robertson v. Methow Valley Citizens' Council (Methow Valley),* 490 U.S. 332, 348 (1989); 42 U.S.C. § 4331. Advancing those interests while respecting traditional state authority, Congress relied upon cooperative federalism as a core feature for many of the foundational environmental laws enacted in the 1970s. Robert L. Glicksman, *From Cooperative to Inoperative Federalism: The Perverse Mutation of Environmental Law and Policy*, 41 WAKE FOREST L. REV. 719, 738 (2006); *see also, e.g., Ohio v. Environmental Protection Agency*, 603 U.S. ____; 144 S. Ct. 2040, 2048 (2024) (noting "the Clean Air Act envisions States and the federal government working together to improve air quality"); *Arkansas v. Oklahoma*, 503 U.S. 91, 101 (1992) ("The Clean Water

Act anticipates a partnership between the States and the Federal Government, animated by a shared objective: 'to restore and maintain the chemical, physical, and biological integrity of the Nation's waters'" (quoting 33 U.S.C. § 1251(a))).[11] Cooperative federalism refers to "those instances in which a federal statute provides for state regulation or implementation to achieve federally proscribed policy goals." Philip J. Weiser, *Towards a Constitutional Architecture for Cooperative Federalism*, 79 N.C. L. REV. 663, 668 (2001). Unlike dual federalism, in which state and federal actors "regulate[] in [their] own distinct sphere of authority without coordinating with the other," *id.* at 664, "cooperative federalism" requires "federal and state actors [to] work[] together," *Health & Hosp. Corp. of Marion Cnty. v. Talevski*, 599 U.S. 166, 182 (2023).

The result of this cooperative, intergovernmental approach is a regulatory system in which "both levels of government . . . contribute to the common goal of minimizing the degree to which human activities threaten harm to health and to valuable natural resources." Glicksman, *supra*, at 720.

II. NEPA requires and advances cooperative federalism.

NEPA fits within and advances cooperative federalism by requiring cooperation between the federal

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[11] Several other environmental laws rely on a similar framework. *See, e.g.*, 42 U.S.C. § 6901(a)(4) (Resource Conservation and Recovery Act); 42 U.S.C. § 300g-1(b)(1)(A) (Safe Drinking Water Act); 15 U.S.C. § 2605 (Toxic Substances Control Act).

government and states to "reduce or eliminate environmental damage and to promote 'the understanding of the ecological systems and natural resources important to' the United States." *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 756 (2004) (quoting 42 U.S.C. § 4321); 42 U.S.C. § 4331(a).

1. NEPA does not impose any substantive environmental requirements. *Methow Valley,* 490 U.S. at 351. "Rather, NEPA imposes only procedural requirements on federal agencies with a particular focus on requiring agencies to undertake analyses of the environmental impact of their proposals and actions." *Public Citizen*, 541 U.S. at 756-57 (citing *Methow Valley*, 490 U.S. at 349–50). While the Act does not dictate particular results, its procedures, which require federal agencies to take a "hard look" at the potential direct and environmental effects of their proposed actions, often "affect the agency's substantive decision." *Methow Valley* at 349-50.

NEPA directs federal agencies to comply with its requirements "to the fullest extent possible." 42 U.S.C. § 4332. This "is neither accidental nor hyperbolic"; instead, it is "a deliberate command," *Flint Ridge Dev. v. Scenic Rivers Ass'n*, 426 U.S. 776, 787 (1976). And that directive seeks to ensure that federal agencies understand the potential environmental consequences of their proposed actions, 42 U.S.C. § 4331, and use that knowledge to "take actions that protect, restore, and enhance the environment," 40 C.F.R. § 1500.1(c). In that regard NEPA imposes action-forcing requirements, which obligate agencies to consider, among other things: (1) the direct effects of their actions, that is effects that "are caused by the action and occur at

the same time and place," and (2) the indirect effects of their actions, "which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable." *Public Citizen*, 541 U.S. at 764 (quoting 40 C.F.R. § 1501.18 (2003)).

These action-forcing requirements are essential to NEPA's informational purposes. By requiring analysis of these effects, NEPA "ensures that the [federal] agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts; it also guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision." *Methow Valley*, 490 U.S. at 349; *see also Baltimore Gas & Electric v. NRDC*, 462 U.S. 87, 97 (1983) (discussing NEPA's "twin aims"); *Kleppe v. Sierra Club*, 427 U.S. 390, 409 (1976) (discussing NEPA's action-forcing requirements

2. Congress reserved a special role for states in advancing NEPA's mandates, requiring federal agencies to achieve NEPA's goals "in cooperation with State and local governments." 42 U.S.C. § 4331(a). To that end, NEPA expressly requires agencies to include with environmental impact statements the comments and viewpoints of state agencies with jurisdiction over the environmental effects of major federal actions. *Id.* § 4332(2)(C). And NEPA allows federal agencies to include state agencies with jurisdiction over such effects as cooperating agencies in their NEPA review. *Id.* §§ 4336a(3) & (4). These provisions reflect Congress' intent to ensure cooperation between state and federal

actors to achieve their shared interest in "encourag[ing] productive and enjoyable harmony between man and his environment." *Id.* § 4321.

The Council on Environmental Quality (CEQ) is tasked with developing implementing regulations for NEPA. *Pub. Citizen*, 541 U.S. at 757. CEQ's NEPA regulations build upon the statutory requirement for federal agencies to involve state and local governments in their NEPA processes. Those regulations require federal agencies to assess whether a proposed federal agency action either violates state law or is inconsistent with state policies designed for the protection of the environment. 40 C.F.R. § 1501.3.[12] Any such violations or inconsistencies may lead the agency to determine that those impacts are significant and require more in-depth environmental analysis. And, when drafting an environmental impact statement, the agency must discuss whether a proposed action is inconsistent with any approved state law or plan. 40 C.F.R. § 1506.2(d). These requirements illustrate NEPA's consideration of and respect for impacts that are explicitly under the control of other federal, state or local government agencies, not just the federal agency taking the action under review.

NEPA's cooperative federalism approach ensures robust coordination between federal agencies and the states in evaluating the environmental impacts of federal actions. It also provides states with an important

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[12] Although CEQ's regulations have been amended several times over the past few years, the regulatory provisions cited in this paragraph are largely unchanged from the provisions originally adopted by CEQ in 1978. *See* 40 C.F.R. §§ 1506.2(d) and 1508.27(10) (1978).

opportunity to protect their sovereign and quasi-sovereign interests and ensure their ability to comply with their delegated responsibilities, helping federal agencies in reaching better informed decisions in the process. Thus, NEPA serves to safeguard states' sovereign and quasi-sovereign interests, as Congress intended.

III. Consideration of reasonably foreseeable effects outside an agency's control is consistent with NEPA's text and supports states' interests.

Petitioners urge the Court to read NEPA and *Public Citizen* to allow federal agencies to disregard reasonably foreseeable impacts regulated by other federal agencies, states, or local governments—on the rationale that addressing or mitigating such impacts is beyond the scope of the federal agency's regulatory authority. Pet'rs Brief at 1-2.

As a threshold matter, this argument mischaracterizes this Court's holding in *Public Citizen*. Petitioners erroneously rely on *Public Citizen* for the proposition that an agency's NEPA review is limited to the scope of its regulatory authority over environmental harms. Pet'rs Brief at 2. But *Public Citizen* merely held that the scope of the agency's ability to *consider and act* upon the effects of a proposed agency action is what informs the scope of the agency's NEPA review. *Public Citizen* at 770. An agency's regulatory jurisdiction is irrelevant to the *Public Citizen* analysis.

Even if *Public Citizen* did not contradict Petitioners' argument, their proposed bright-line rule is exceedingly and unworkably broad and contradicts the

text and purpose of NEPA. It does not distinguish between direct and indirect effects. And it does not require federal agencies to assess important qualitative factors (e.g., the ability to identify and quantify the effects, the anticipated magnitude of the effects, or the relative probability that such effects will be caused by the proposed action) in determining the appropriate weight to be given to effects regulated by other entities in their NEPA analyses.

On Petitioners' approach, federal agencies would be allowed to ignore harmful effects to land, air, or water, even those directly caused by the federal agency action, simply because those effects are subject to regulation by other federal agencies, local governments, or states exercising their sovereign and/or delegated authority. Essentially, Petitioners seek to impose a standard of enforced ignorance on federal agencies, hamstringing the agencies' ability to make reasoned and informed decisions that protect human health and the environment on the theory that it could potentially be addressed elsewhere. This approach not only violates NEPA, but also harms states' ability to collaborate on and influence federal decisions that implicate core state interests and seek appropriate mitigation of potential harmful impacts. In other words, Petitioners' argument represents the opposite of cooperative federalism. The Court should reject this approach for the following reasons.

1. Such an approach is wholly out of step with the express language of NEPA, which explicitly provides for participation by other governmental entities, including state and local government agencies, in the environmental review process. *See* 42 U.S.C. §§ 4331(a),

4332(2)(C), 4336a(3) & (4); *see also supra* at 13-14. NEPA requires federal agencies to "consult with and obtain the comments of" other federal, state, and local agencies with jurisdiction over the environmental effects of major federal actions. *Id.* § 4332(2)(C). The requirement to consult with other agencies with "jurisdiction by law with respect to any environment [sic] impact" was intended to be a prerequisite to the preparation of the required analysis of environmental effects. 115 CONG. REC. 40,420 (1969).

Petitioners' proposed bright-line rule would eliminate that textual directive from the statute, allowing agencies to solicit but then ignore input provided by other agencies regarding such reasonably foreseeable effects. This is inconsistent with both NEPA's text and Congress' intent to require a comprehensive assessment of the environmental effects of federal agency actions. *Methow Valley*, 490 U.S. at 348 (citing 115 CONG. REC. 40,416 (1969)) (in enacting NEPA, Congress intended to infuse a commitment to protect and promote environmental quality into federal decision making). The Court should reject Petitioners' invitation to disregard NEPA's plain language.

2. Petitioners' proposed bright-line rule is inconsistent with this Court's precedent. Petitioners cite *Methow Valley* for the proposition that agencies "need not consider remote environmental effects, non-environmental effects, pure risk, or matters beyond the agency's remit." Petitioners' Brief at 23. But *Methow Valley* involved consideration of not just direct effects caused by development of a ski resort, but also indirect effects regulated by state and local governments and caused by off-site development driven by the proposed

project. *Methow Valley* at 342. In fact, the Forest Service's environmental impact statement in that case considered several categories of direct and indirect effects regulated by state and local governments, paying "particular attention" to air quality and wildlife, and included input from the Washington State Department of Game with respect to impacts to the state's mule deer population from off-site developments. *Methow Valley* at 349. And, indeed, the Court recognized that state and local input serves an important "informational role." *Id.* at 342.

Critically, in *Methow Valley* the responsible decision-maker's consideration of direct and indirect effects regulated by Washington State and local governments directly informed and improved the ultimate decision and protected the state's sovereign and quasi-sovereign interests. The Regional Forester directed the Forest Supervisor to implement mitigation measures to address state and local agency comments identifying reasonably foreseeable effects the proposed action would have on air quality and mule deer wintering range, effects outside the regulatory authority of the Forest Service but within the jurisdiction of state and local governments. *Id.* at 345. The position Petitioners seem to be taking in the instant case asks the Court to cut off NEPA review of the very type of impacts considered by the Forest Service and the input provided by Washington State and local governments in *Methow Valley*.

3. The facts of this case demonstrate the negative consequences of Petitioner's proposed bright-line rule. As required by NEPA, in the environmental review at

issue in this action the STB solicited input from several state agencies with jurisdictional authority over environmental effects of the STB's action, including the Colorado Department of Public Health & Environment and Colorado Parks and Wildlife.[13] Unita Basin Railway: *Environmental Impact Statement* (EIS), at 5-5 to 5-6 (August 2021), https://icfbiometrics.blob.core.windows.net/uinta-basin/05_Consultation_Coordination_FEIS.pdf. Those state agencies provided extensive comments on the anticipated environmental effects for which they would be responsible should the STB adopt one of the proposed alternatives identified through the NEPA process.

For instance, Colorado Parks and Wildlife commented on direct effects of the STB's action, including the anticipated impacts of the alternatives on state-administered fish and wildlife resources. JA 151-52. Similarly, the Colorado Department of Public Health & Environment commented on indirect effects of the STB's approval of the rail line, namely the anticipated downline air quality impacts of the various alternatives. CDPHE: Comments on the Seven County Infrastructure Coalition – Unita Basin Railway Draft Environmental Impact Statement (December 9, 2020),

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[13] The STB also solicited comments from several tribal and local governments, whose participation added significant value to the STB's NEPA process. EIS at 5-5 to 5-6 (listing other agencies with whom STB consulted); *see also*, *e.g.*, JA 152-53 (summarizing comments provided by Moffat County, Colorado, in discussion of alternatives); EIS at 3.4-58, https://icfbiometrics.blob.core.windows.net/uinta-basin/03_04_Bio_Resources_FEIS.pdf ("recommending mitigation requiring the Coalition implement the reasonable requirements of the Ute Indian Tribe for minimizing impacts on wildlife, fish, and vegetation on Tribal trust lands").

https://uintabasinrailwayeis.com/comment_submissions/UBR-DEIS-00188-53701.pdf. Those comments noted the project's potential to impact the state's ability to comply with the federal standards for ozone in the Denver Metro/North Front Range nonattainment area and requested inclusion of several mitigation measures to address those potential impacts, including adoption of anti-idling programs and use of electric equipment where feasible. *Id*.

Those state agency comments helped inform the STB's environmental analysis and, by extension, its ultimate decision, which weighed the project's transportation benefits against the environmental harms identified in the NEPA process. The STB cited Colorado Parks and Wildlife's concerns regarding the proposed rail route's potential harm to high quality wildlife habitat—including crucial winter range and migration routes for big game species—in declining to carry forward one alternative it deemed unreasonable due in part to "the potential for disproportionately significant environmental impacts." JA 153. And like the U.S. Forest Service did in the environmental impact statement analyzed in *Methow Valley*, the STB directed the proponents to consider several of the mitigation measures requested by the Colorado Department of Public Health & Environment to minimize the rail line's impact on Colorado's ability to comply with the Clean Air Act's air quality standards. Pet. App. 177a, 178a (AQ-MM-3, requiring the proponent "to develop and implement an anti-idling policy"; and AQ-MM-5, requiring the proponent "to consider procuring alternative engine and fuel technologies").

By including effects regulated by state and local governments in its analysis of the proposal and other potential alternatives, even indirect effects geographically distant from the proposed rail line, the STB was able to identify an alternative that minimized some of the unavoidable environmental impacts while delivering substantial transportation and economic benefits. Pet. App. 118a-119a. To be clear, the STB was not required to adopt the Environmentally Preferable Alternative identified in its environmental impact statement. *Methow Valley*, 490 U.S. at 350 ("If the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs"). But the fact that it chose an alternative supported by input from states on effects outside of STB's regulatory authority shows the value a robust, cooperative NEPA process adds to federal decision making.[14] *Supra at 13 and infra at 21*.

Petitioners concede it was appropriate for the STB to consider certain direct effects regulated by states in its environmental impact statement for the proposed Uinta Basin Rail Line. Pet'rs Brief at 1, 41-42. But, taken to its logical end, the rule they ask the Court to adopt would allow federal agencies like the STB to ignore both direct and indirect effects simply because they are regulated by other governmental entities. Had the STB applied Petitioners' bright-line rule and

[14] As noted above, the value added by the STB's incorporation of certain state-regulated effects into its environmental analysis and decision-making process underscores the damage caused by its inconsistent decision to then ignore the downstream and upstream effects at issue here.

ignored effects regulated by Colorado here, it would likely have reached a different decision—one that failed to account for significant impacts to Colorado's interest in protecting and preserving the state's fish and wildlife. *See supra* at 20. This also would likely have impacted Colorado's ability to comply with its obligations under the Clean Air Act. *See id*. If the STB had not considered the indirect air quality effects identified by the Colorado Department of Public Health & Environment, it might not have identified and recommended mitigation measures designed to address those effects, which could have contributed to violations of the federal ozone standards and hampered the state's ability to comply with those standards. CDPHE: Comments on the Seven County Infrastructure Coalition – Unit Basin Railway Draft Environmental Impact Statement (December 9, 2020), https://uintabasinrailwayeis.com/comment_submissions/UBR-DEIS-00188-53701.pdf.

This highlights the impacts of STB's refusal to consider the upstream and downstream effects at issue here because some of those effects, once they come to pass, are then regulated by other entities. Pet. App. 107a-108a, 112a. The STB's failure to account for all of the reasonably foreseeable direct and indirect effects regulated by other entities here missed important, and legally required, opportunities to understand and enable response to environmental harms resulting from the STB's action. Had the STB considered such effects, instead of dismissing them because they are regulated by other entities, its decision would have been fully informed as to all of the reasonably foreseeable environmental impacts it was statutorily authorized to consider. In addition, the decision

could likely have been further refined and improved to consider those effects while still achieving the benefits sought by the project proponents. The STB thus departed from NEPA's cooperative federalism approach, disregarding important environmental impacts that harm state interests merely because other actors could theoretically address them.

Perhaps anticipating the legal obstacles to a bright-line rule allowing agencies to ignore effects regulated by other governmental entities, Petitioners appear to have broadened their argument to advocate for a bright-line rule equating the scope of NEPA review with the boundary of tort liability. As addressed in the Respondents' briefs, this argument is inconsistent with this Court's precedent and ignores the difference between NEPA's forward-looking, informational purpose and tort law's backward-looking liability-limiting focus. Regardless, Petitioners' rhetorical pivot does not meaningfully change the impact their proposed rule would have on states. Whether Petitioners' proposed rule is based on a lack of regulatory authority or an artificial comparison to tort law principles, it would undermine states' ability to protect their sovereign and quasi-sovereign interests, comply with federal environmental laws, and account for states' interests in advancing the economic and environmental well-being of their citizens.

Adopting such a rule would be at odds with NEPA's goal of protecting and preserving environmental quality by requiring federal agencies to make decisions fully informed by the environmental impacts of their actions, *supra* at 12-13, as well as its requirement that federal agencies cooperate with state and

local governments in determining the scope of those same impacts, *supra* at 13-15. And there is no basis for allowing federal agencies to ignore either the direct or indirect effects of their actions because other federal agencies, states, or local governments have regulatory authority to potentially address the relevant impacts, or because those effects do not satisfy an ill-defined tort-law standard.

For the same reason STB considered reasonably foreseeable effects regulated by Colorado and Utah, it should have also considered the upstream and downstream effects of the proposed rail line project at issue here. Because the purpose of the proposed rail line is to allow increased development and transportation of crude oil, the effects of increased development and oil refining are reasonably foreseeable. Thus, these effects are not too far attenuated from the proposed project and should have been considered by STB.

IV. Requiring federal agencies to consider reasonably foreseeable effects of their actions, even those outside their authority, does not harm states' sovereign and quasi-sovereign interests or cooperative federalism.

Notwithstanding the benefits of considering reasonably foreseeable effects regulated by state and local governments in the environmental analysis of proposed federal agency actions—and the significant drawbacks of failing to do so—other state *amici* suggest that Petitioners' proposed rule best advances states' sovereign and quasi-sovereign interests and cooperative federalism. These arguments fail for several reasons.

1. The other state *amici* misinterpret NEPA's requirements. They argue, for example, that by requiring the STB to consider downstream effects of refining oil brought to market via the proposed Uinta Basin Rail Line, the court of appeals' opinion requires the STB to determine how best to regulate those effects. Louisiana *et al.* Amicus Brief at 18 (requiring the STB to consider downstream effects regulated by Louisiana would require the agency "to figure out how to regulate Louisiana activities based on a Utah project"). That argument fundamentally misconstrues NEPA.

NEPA "does not mandate particular results"; it "simply prescribes necessary process," which often does, but is not required to, affect the agency's substantive decision. *Methow Valley,* 490 U.S. at 350. NEPA requires an agency to identify and evaluate the environmental effects of a proposed action; it does not constrain the agency "from deciding that other values outweigh the environmental costs." *Id.* "Other statutes may impose substantive environmental obligations on federal agencies, but NEPA merely prohibits uninformed—rather than unwise—agency action." *Id.* at 351. Requiring federal agencies to consider reasonably foreseeable effects regulated by other federal agencies, states, or local governments does not, as other state *amici* suggest, overlook and undercut federal and state regulation of "non-STB regulated" effects and render state regulations superfluous or delegated authority meaningless. Louisiana et al. Amicus Brief at 4, 12, 15. To the contrary, it fulfills NEPA's action-forcing requirements. *Supra* at 12.

As the record in this case demonstrates, a federal agency's consideration of reasonably foreseeable effects regulated by a state in its NEPA analysis enhances, and does not override, the state's regulation of those effects. For example, in its environmental impact statement for this rail line, the STB considered certain water quality effects regulated by the Utah Department of Environmental Quality. JA 213, 214-15. In assessing the environmental impacts of the proposed rail line, the STB acknowledged the state's role in regulating those effects and expressly relied on the state's permitting authority in concluding that those effects would be insignificant. JA 213-14;EIS at 4-6, https://icfbiometrics.blob.core.windows.net/uinta-basin/04_Mitigation_FEIS.pdf (identifying requirement to obtain CWA Section 401 permit from the State of Utah as a mitigation measure). It also adopted mitigation measures designed to help Utah meet its obligations under the Clean Air Act. Pet. App. 179a (directing proponent to avoid construction in January and February, to the extent possible, to minimize ozone precursor chemicals in the Uinta Basin Ozone nonattainment area).

These examples show how NEPA advances state sovereignty and how the process could have worked in states' favor if the STB had considered the upstream and downstream effects at issue here. If the court of appeals' opinion is upheld, STB will need to evaluate the specific upstream and downstream effects identified by that court. The STB can make reasonable educated assumptions regarding the upstream and downstream consequences of oil and gas development and refining caused by the proposed project. In fact, it has already prepared estimates of how much potential

oil development might result from construction of the rail line, J.A. 351-58, and estimated a reasonable "distribution of destinations for Uinta Basin crude oil transported on the proposed rail line." J.A. 481-482. Moreover, as long as the STB explains these assumptions so the public is aware, STB will have complied with NEPA. STB started this analysis and unreasonably stopped. We simply request that STB analyze these reasonably foreseeable effects to ensure a thorough environmental review of its proposed approval of the rail line.

2. Other state *amici* misapprehend the relationship between NEPA and federal agencies' organic statutes. They suggest that requiring federal agencies to consider effects regulated by states or other entities in their NEPA analyses will somehow expand the scope of agencies' authority to consider such effects in reaching their ultimate decision. Louisiana *et al.* Amicus Brief at 11-12. But this argument is backward. As the Court held in *Public Citizen*, NEPA does not define the scope of an agency's statutory authority to make decisions delegated to it by Congress; the scope of an agency's statutory authority to act informs whether the agency can properly consider an impact under NEPA. *Public Citizen*, 541 U.S. at 770; *see also* Pet. App. 36a-37a (holding that the STB's broad authority to consider environmental harm in making licensing determination informed scope of required NEPA review). The Interstate Commerce Commission Termination Act of 1995 authorizes the STB to consider the upstream and downstream effects at issue in deciding whether to approve the proposed rail line, not NEPA. Pet. App. 4a. And as the court of appeals properly held, the scope of the STB's statutory authority under the

ICC Termination Act of 1995 informs the appropriate scope of its NEPA review. Pet. App. 36a-37a.

3. Allowing federal agencies to ignore in their NEPA analyses reasonably foreseeable effects regulated by other governmental entities defies cooperative federalism and undermines the sovereign and quasi-sovereign interests of the states. This approach would complicate, or even render impossible, the ability of states to protect their sovereign and quasi-sovereign interests during environmental reviews and to work with the federal government to fulfill their delegated authorities.

Consider states' exercise of their authority to regulate air quality to comply with the standards set by the U.S. Environmental Protection Agency under the Clean Air Act. If federal agencies could ignore the reasonably foreseeable but geographically remote effects of their actions on state-regulated air quality, they could undermine states' ability to meet federally imposed standards, such as ozone standards on Colorado's Front Range. *See supra* at 22. In addition to harming public health and the environment and imposing regulatory costs on state agencies, such violations can lead to serious penalties and restrictions. 42 U.S.C. § 7509 (providing for penalties imposed for failure to attain federal ozone standards, including loss of federal highway funding). This risk is magnified for federal projects over which states have limited authority, like the STB's approval of the Uinta Basin Rail Line. *See* 49 U.S.C. § 10501(b) (preempting state regulation of rail transportation). The Clean Air Act's sanctions for non-compliance are mandatory. 42 U.S.C. § 7509. Thus, the state is subject to sanctions if

it cannot mitigate a federal project's air quality impacts by regulating other sources under the state's control, even if the state has no authority to directly regulate the project's emissions.

4. Other state *amici* also suggest that requiring federal agencies to consider in their NEPA analyses effects regulated by states introduces additional delay. Louisiana *et al.* Amicus Brief at 18. As an initial matter, some delay is inherent in requiring agencies to identify and analyze the environmental effects of their decisions before acting. *See* Robert W. Adler, *In Defense of NEPA: The Case of the Legacy Parkway*, 26 J. LAND RES. & ENVTL. L. 297. 299 (2006). By its very nature, NEPA reflects Congress' determination that the drawbacks of some potential delay in federal decision making are outweighed by the benefits of infusing environmental considerations into these decisions.[15]

But even assuming any delay caused by NEPA review is problematic, there is no evidence that requiring agencies to consider effects regulated by other governmental entities exacerbates that delay. And there is reason to believe otherwise: "Experience has shown that where agencies use NEPA to share information and planning responsibilities with other affected agencies early on, the environmental review process will take less time and lead to decisions that enjoy greater support." CEQ, National Environmental Policy Act: *A Study of Its Effectiveness After Twenty-*

[15] As noted in the Brief for Respondent Eagle County, Congress spoke to these concerns in the BUILDER Act, in which it imposed time limitations on agencies' NEPA review processes. Brief for Respondent Eagle County at 25 (citing 42 U.S.C. § 4336a(g) (2023)).

five Years, at 21-22 (Jan. 1997), https://ceq.doe.gov/docs/ceq-publications/nepa25fn.pdf. In contrast, the limited, piecemeal review championed by other state *amici* would "put agencies — and the public — in adversarial positions and delay federal actions that are important to local and regional economies, as well as actions that are intended to improve the environment." *Id.; see also* Adler*, supra,* at 307.

5. Finally, other state *amici* argue that requiring federal agencies to consider effects regulated by other governmental entities in their NEPA analyses threatens state economies. Louisiana *et al.* Amicus Brief at 16. This argument ignores the economic benefits of ensuring that federal decisions account for environmental quality and natural resources impacts. *Supra* at 1-2. In addition to the significant public health, ecosystem services, and regulatory benefits of ensuring federal decisions account for state-regulated environmental quality effects, accounting for potential impacts to state-regulated natural resources directly contributes to outdoor industries of critical importance to many states' economies. *Id*.

Simply put, requiring federal agencies to consider all reasonably foreseeable impacts of their actions that they are statutorily authorized to weigh in taking a proposed action, even indirect effects regulated by other governmental entities, not only honors the text of NEPA but also protects states' sovereign and quasi-sovereign interests and advances cooperative federalism.

CONCLUSION

The judgment of the U.S. Court of Appeals for the District of Columbia Circuit should be affirmed.

Respectfully submitted,

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