Nos. 22-1019 & No. 22-1020 (consolidated)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

EAGLE COUNTY, COLORADO,

Petitioner,

CENTER FOR BIOLOGICAL DIVERSITY, ET AL.,

Petitioners,

v.

SURFACE TRANSPORATION BOARD, ET AL.,

Respondents,

SEVEN COUNTY INFRASTRUCTURE COALITION
AND UINTA BASIN RAILWAY, LLC,

Intervenors.

PETITIONERS CENTER FOR BIOLOGICAL DIVERSITY, ET AL.'S OPPOSITION TO REHEARING EN BANC

Wendy Park
Center for Biological Diversity
1212 Broadway, Suite 800
Oakland, CA 94612
(510)844-7138
wpark@biologicaldiversity.org

Edward B. Zukoski
Center for Biological Diversity
1536 Wynkoop Street, Suite 421
Denver, CO 80202
(303)641-3149
tzukoski@biologicaldiversity.org

Counsel for Petitioners Center for Biological Diversity, Living Rivers, Sierra Club, Utah Physicians for a Healthy Environment, and WildEarth Guardians

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GLOSSARY

Basin	Uinta Basin
Board	Surface Transportation Board
barrels/day	barrels of oil per day
Center	Petitioners Center for Biological Diversity, et al.
Decision	the panel's ruling on the merits
EIS	Environmental Impact Statement
FERC	Federal Energy Regulatory Commission
ICCT Act	Interstate Commerce Commission Termination Act
NEPA	National Environmental Policy Act
Railway	Uinta Basin Railway
Seven County	Seven County Infrastructure Coalition

INTRODUCTION

Seven County Infrastructure Coalition's (Seven County's) Petition for Rehearing En Banc contorts basic principles under the National Environmental Policy Act (NEPA), and plucks language out of context from two recent cases—*Delaware Riverkeeper Network v. FERC,* 45 F.4th 104 (D.C. Cir. 2022) and *Center for Biological Diversity v. FERC* ("*Alaska Gasline*"), 67 F.4th 1176 (D.C. Cir. 2023)—to manufacture a purported conflict with those cases. No such conflict exists. Neither this Court, nor any other circuit, has ever held that NEPA excuses an agency from considering and analyzing in an Environmental Impact Statement (EIS) "reasonably foreseeable" environmental impacts of proposed agency action unless it is *certain* where impacts would occur and how extensive they would be. Seven County effectively asks the Court to create from whole cloth two rules divorced from this Court's precedent: first, an EIS need not analyze "upstream" drilling impacts from a fossil fuel infrastructure project unless the agency can identify the precise locations and number of wells the project will induce; and, second, an EIS need not analyze "downstream" impacts from the fossil fuel's end uses, unless the project applicant has contracts with downstream end users, establishing the fossil fuel's end uses with certainty.

This Court has repeatedly rejected imposing similar categorical rules under NEPA, and for good reason. NEPA's "look before you leap" mandate requires

"reasonable forecasting" of a proposed action's effects and case-by-case, fact-specific determinations of whether those effects are reasonably foreseeable. Applying these guiding principles, nothing in *Delaware Riverkeeper* or *Alaska Gasline* conflicts with the panel's decision invalidating the EIS's analysis of the Uinta Basin Railway's (Railway) upstream and downstream impacts ("Decision"). The Court correctly distinguished those cases, concluding that here, unlike in those cases, the agency can reasonably foresee (1) where the oil transported on the Railway will come from; and (2) where it's likely to go.

In addition, Petitioners Center for Biological et al. (Center) join and incorporate by reference Eagle County's opposition to Seven County's petition. As Eagle County explains, the petition does not raise an issue of "exceptional importance." The Decision's holding that the Surface Transportation Board (Board) arbitrarily weighed the Railway's environmental harms against its transportation merits under the Interstate Commerce Commission Termination Act (ICCT Act) and Administrative Procedure Act is well supported by the record. Contrary to Seven County's protests, Pet. at 1, 3, 14-15, the Court was not required to use magic words recognizing a "presumption" in the project's favor to support its reasoning. The Court did not fault the correctness of the Board's substantive conclusion that the Railway's merits outweighed its harms, merely the Board's failure to "fulfill its obligation under the ICCT Act to consider [environmental

impacts] alongside any potential economic benefits." Op.65. The Center respectfully requests that the Court deny Seven County's request for rehearing en banc.

STATEMENT OF THE CASE

I. National Environmental Policy Act

The National Environmental Policy Act's (NEPA) environmental protection goals are achieved "through a set of 'action-forcing' procedures that require that agencies take a 'hard look' at environmental consequences." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (citation omitted). "One of the most important procedures NEPA mandates is the preparation, as part of every 'major Federal action[] significantly affecting the quality of the human environment,' of a 'detailed statement' discussing and disclosing the environmental impact of the action." *Sierra Club v. FERC* ("*Sabal Trail*"), 867 F.3d 1357, 1367 (D.C. Cir. 2017) (citing 42 U.S.C. § 4332(2)(C)). Agencies must take the required "hard look" "in advance of deciding whether and how to proceed." *Oglala Sioux Tribe v. U.S. NRC*, 896 F.3d 520, 532 n.9 (D.C. Cir. 2018) (citation omitted).

NEPA mandates that agencies disclose environmental impacts that are direct, indirect, and cumulative. 40 C.F.R. § 1508.8 (2019).[1] Indirect impacts are those "caused by the action and are later in time or further removed in distance [than direct impacts], but are still reasonably foreseeable." *Id*. § 1508.8(b) (2019). Where, as here, a fossil fuel delivery project is at issue, these "reasonably foreseeable" indirect effects may include "upstream" effects, such as the effects of drilling new oil or gas wells induced by the project. *Delaware Riverkeeper*, 45 F.4th at 109 (quoting 2020 NEPA regulations' definition of "indirect impacts"); *see also* 40 C.F.R. § 1508.8(b) (2019) (same definition). Likewise, agencies are required to consider reasonably foreseeable "downstream" effects, such as emissions from the processing and/or consumption of fossil fuels that a fuel delivery project would facilitate. *See Sabal Trail*, 867 F.3d at 1372 (FERC failed to take a hard look at the greenhouse gas emissions of burning gas that would be transported by the Sabal Trail pipelines, where the burning of that gas was "not just reasonably foreseeable" but "the project's entire purpose"). Analyzing these effects "necessarily involves some reasonable forecasting," and "agencies may sometimes need to make educated assumptions about an uncertain future." *Id*. at 1374.

[1] This action is governed by the Council on Environmental Quality's regulations that were in force before the Council amended them in 2020. *See* Op.25**.**

II. Factual and Procedural Background

The Center incorporates by reference Eagle County's Statement of the Case from its Opposition to Rehearing En Banc and notes the following additional facts. In December 2021, the Surface Transportation Board (Board) approved construction and operation of the Uinta Basin Railway ("Railway"), an 88-mile Railway to be sited in northeastern Utah's mountainous and sensitive desert landscape, including a 12-mile length through an inventoried roadless area of National Forest. JA1742, 1749. The Railway's driving purpose and intended effect is to spur increased oil drilling in the Uinta Basin by providing producers access to the national rail network and allowing them to ship oil to refineries outside Utah. JA440. According to Seven County, and as the Surface Transportation Board's EIS concluded, currently oil production in the Basin is "capped" at 90,000 barrels/day, JA260-61, 1107, with almost all existing oil production trucked to Salt Lake City refineries, JA260-61, 882. Seven County touts that the Railway would provide a cheaper means of shipping oil to Gulf Coast refineries, allowing producers to boost production. JA440, 257, 262-264, 387-88. Seven County's own study concludes the Railway's viability depends on dramatically expanding Basin oil production and sustaining high-volume oil shipments. JA434-36, 438.

After the Board received Seven County's proposal for Railway construction and operation, it prepared an Environmental Impact Statement (EIS) evaluating the project. The EIS projected:

- Uinta Basin oil producers would increase production by up to 350,000 barrels/day—quintupling current production—and would ship that entire increase on the Railway for distribution to the national refinery market, JA1107;
- up to 3,330 additional wells would be drilled over 15 years in the Uinta Basin to maintain these shipping volumes, JA1108;
- fifty percent of the crude oil (175,000 barrels/day) would be delivered to refineries in Houston and Port Arthur, Texas, and thirty-five percent (122,500 barrels/day) to refineries along the Louisiana Gulf Coast, JA1190-91; and
- contrary to Seven County's assertions, the Board determined that "there are currently no reasonably foreseeable plans for transporting [other] commodities," except to import frac sand for oil production. JA1095, 823.

The EIS also identified ten Gulf Coast refineries in Louisiana and Texas that would likely accept and refine the Railway's oil shipments. JA1189. In prior studies analyzing the feasibility of shipping oil by rail, Seven County identified

these refineries as "target" or "proposed" customers. JA430, 437. The EIS assumed that all oil shipped on the Railway would be combusted for energy production, resulting in 53 million tons of greenhouse gases annually—nearly one percent of all U.S. greenhouse gas emissions. JA1139.

After the Board issued the final EIS and granted Seven County authorization to construct and operate the Railway, the Center brought this legal action challenging the EIS's failure to analyze, *inter alia*, (1) the Railway's upstream impacts of inducing increased oil drilling in the Uinta Basin on vegetation and special-status species, including rare desert plants protected under the Endangered Species Act and Greater sage-grouse; and (2) the Railway's downstream air quality and public health impacts from greater oil shipments to Gulf Coast communities in Louisiana and Texas that are already heavily burdened by industrial pollution. The Court held the EIS failed to adequately address these upstream and downstream effects and specifically distinguished *Delaware Riverkeeper* and *Alaska Gasline*. *See* Op.28-35, 33 n.1.[2] In light of these "significant" errors, among several others, the Court vacated the Board's decision and EIS. Op.65-66.

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[2] The Court found no error in the Board's choosing to analyze upstream and downstream effects as cumulative impacts, rather than indirect effects, based on the Board's statement that "[t]he impacts and the analysis of those impacts would be the same no matter which label is used." Op.27 (citing JA40 n.15). Still, the Court held the EIS's cumulative impacts analysis failed to address the upstream

ARGUMENT

I. THE COURT'S RULING INVALIDATING THE BOARD'S UPSTREAM AND DOWNSTREAM EFFECTS ANALYSES DOES NOT CONFLICT WITH ANY OF THIS COURT'S NEPA DECISIONS.

Rehashing arguments the panel already rejected, Seven County seeks to manufacture a conflict between the Court's Decision and *Delaware Riverkeeper* and *Alaska Gasline* based on a fundamental misunderstanding of NEPA. Those cases do not—and cannot—stand for Seven County's proposed sweeping rule excusing agencies from (1) considering and disclosing upstream effects, unless the agency knows precisely where and how many upstream wells the project will induce; and (2) analyzing downstream effects, unless the project applicant already has "customer contracts" with downstream end users. *Cf.* Pet. at 11, 13.

Rather, bedrock NEPA principles require agencies to evaluate the unique factual circumstances of each case—which depend on the project's location and purpose, the nature and magnitude of the impacts, and many other case-specific factors—to engage in "reasonable forecasting" of upstream and downstream effects. *See, e.g.*, *Scientists' Inst. for Pub. Info., Inc. v. Atomic Energy Comm'n*, 481 F.2d 1079, 1091-92 (D.C. Cir. 1973); 40 C.F.R. § 1502.22(b) (2019). Here, the

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and downstream impacts at issue here. Op.28-35. Because the Court suggested that analyzing these effects as either indirect effects or cumulative impacts is appropriate, the Court's case law regarding "indirect effects" applies here.

panel reviewed the agency's analysis considering these factors as applied to the record, rather than adopting Seven County's rigid approach, which neither this Circuit nor any other has ever endorsed. The panel properly distinguished this case from *Delaware Riverkeeper* and *Alaska Gasline* based on the facts supplied by the Board's EIS.

A. Seven County Is Wrong that NEPA Demands *Certain* Knowledge of the Number and Locations of Upstream Wells and of Specific Downstream End Users.

The panel's decision does not conflict with this Circuit's precedent because, contrary to Seven County's misreading of precedent, NEPA requires disclosure of "reasonably foreseeable" effects on a case-by-case basis, not only effects that are certain or precisely quantifiable. *Potomac All. v. U.S. Nuclear Regulatory Comm'n*, 682 F.2d 1030, 1035, 1037-38 (D.C. Cir. 1982). Agencies must "predict the environmental effects of proposed action before the action is taken and those effects fully known." *Scientists' Institute*, 481 F.2d at 1092. NEPA therefore requires agencies to "engage in 'reasonable forecasting and speculation,' with *reasonable* being the operative word." Op.30 (citing *Sierra Club v. Dep't of Energy* ("*Freeport*"), 867 F.3d 189, 198 (D.C. Cir. 2017)). Courts "reject any attempt by agencies to shirk their responsibilities under NEPA by labeling any and all discussion of future environmental effects as 'crystal ball inquiry.'" *Scientists' Institute*, 481 F.2d at 1092. For example, in *Sabal Trail*, this Court rejected claims

similar to Seven County's that fluctuations in demand make end-user consumption impossible to predict, given available data to forecast future consumption. *Sabal Trail*, 867 F.3d at 1374; *see also Food & Water Watch v. FERC*, 28 F.4th 277, 288 (D.C. Cir. 2022) (rejecting similar claim).

Seven County's insistence on a bright line rule also conflicts with NEPA's "necessarily contextual" inquiry. Op.30; *see also Nat'l Audubon Soc'y v. Dep't of the Navy*, 422 F.3d 174, 185-86 (4th Cir. 2005) ("[G]iven all the possible factual variations in NEPA cases, an agency's obligations under NEPA are case-specific. A 'hard look' is necessarily contextual."). This Court has long held that "NEPA compels a case-by-case examination ... of discrete factors." *Birckhead v. FERC*, 925 F.3d 510, 519 (D.C. Cir. 2019) (quoting *Calvert Cliffs' Coordinating Committee, Inc. v. U.S. Atomic Energy Comm'n*, 449 F.2d 1109, 1122 (D.C. Cir. 1971)). Indeed, in *Birckhead*, this Court specifically rejected adopting just the kind of categorical rule that Seven County seeks to impose. The Court declined to read *Sabal Trail* as meaning "that downstream emissions are an indirect effect of a project *only* when the project's 'entire purpose' is to transport gas to be burned at 'specifically-identified' destinations," labeling this "an extreme position" that FERC properly backed away from. *Id*. at 519 (citation omitted, emphasis added). Instead, it inquired into whether the agency "acted reasonably" to obtain missing information, given the context and known information about the project. *Id*.

Seven County incorrectly suggests that more definite information is required to analyze the Railway's upstream and downstream effects, because the Court's Decision requires granular, site-specific analysis at the well-site or refinery-site level. But the Court did not mandate any particular detail or scale of analysis on remand. *See* Op.32-33. Nor does NEPA necessarily require it. Rather, the Board must "use its best efforts to find out all that it reasonably can," *Birckhead*, 925 F.3d at 520 (citation omitted), and "fulfill its duties to 'the fullest extent possible,'" *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1310 (D.C. Cir. 2014) (citation omitted)); *see also WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41, 67-68 (D.D.C. 2019) (agency "could reasonably foresee and forecast the impacts of oil and gas drilling across [proposed] leased parcels as a whole," even if it could not forecast the impacts of specific drilling projects on a specific lease parcel).

Misapplying *Delaware Riverkeeper* and *Alaska Gasline* in violation of these well-settled NEPA principles, as Seven County asks, would eviscerate NEPA's requirements that agencies consider and analyze a proposed action's indirect effects and cumulative impacts, which necessarily require predictions about an "uncertain future." *Sabal Trail*, 867 F.3d at 1374; 40 C.F.R. § 1508.8(b) (2019) (indirect effects "are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable"); *id.* § 1508.7 (2019) (cumulative impacts are "the incremental impact of the action when added to other past, present

and reasonably foreseeable future actions"). *Delaware Riverkeeper* and *Alaska Gasline* thus need not, and should not, be read to require certain knowledge of specific upstream well numbers and locations and specific downstream end-users. The panel properly recognized the fact-specific inquiry entailed in those cases, and thus hewed to, rather than conflicted with, this Court's precedents.

B. The Court's Ruling Concerning Upstream Effects Is Consistent with *Delaware Riverkeeper*.

The panel's Decision does not conflict with, and indeed is readily distinguishable from, *Delaware Riverkeeper*. In that case, FERC utterly lacked information concerning a pipeline project's gas supply and potential upstream effects, compared to the considerable information the Board had here.

As an initial matter, petitioners in *Delaware Riverkeeper* failed to "point to any evidence that shippers 'would not extract and produce [the] gas' [from upstream wells] even if the Project did not go forward." 45 F.4th at 109. Thus, petitioners there could not even establish that the project would induce upstream drilling at all, let alone where new drilling would occur or how many wells would be drilled due to the project. In contrast, here, "[t]he undisputed purpose of the Railway," as reflected in the Board's EIS, "is to expand oil production in the Uinta Basin, by enabling it to be brought to market via the proposed rail line connecting the Basin to existing lines that run to Gulf Coast refineries." Op.34; p. 5 *supra*; *see*

also JA1519, 1522 (Basin oil producers stating that they cannot increase production without the Railway). The EIS thus assumed that *all* oil transported on the Railway—up to 350,000 barrels daily—would come from new production in the Uinta Basin. JA1107. The EIS estimated that 3,330 oil wells would be newly drilled in the Basin to maintain these shipment levels. JA1108.[3] Seven County does not dispute the Board's projections.

Further, in *Delaware Riverkeeper*, FERC only knew that the proposed pipeline would "receive gas from other interstate pipelines." 45 F.4th at 109. Here, the EIS concluded that all oil transported on the Railway would come from existing oil fields spanning central Duchesne County and eastward across Uintah County. JA1107 (citing Figure 3.15-1 at JA1105, showing oil fields in green). Seven County also mapped "principal production areas" the Railway would serve, *see* JA96-97 (Figure 1), allowing the Board to identify where vegetation and

[3] Seven County counterintuitively suggests that because the EIS forecasted a range of induced wells based on the EIS's "high" and "low" oil production scenarios, and not a precise figure, the Board should be excused from conducting any upstream effects analysis. Pet. at 13. But forecasting a range of potential effects or the "maximum" effects scenario—as the EIS does with respect to many other effects (e.g., train accident risk, truck traffic, and air quality, JA888, 1115, 1135)—is consistent with NEPA's demand for reasonable forecasting. *See, e.g.*, Council on Environmental Quality, NEPA Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, 88 Fed. Reg. 1196, 1202 (Jan. 9, 2023) (recommending agencies estimate quantitative ranges if more precise quantification is not possible).

special-status species may be harmed by induced production with minimal, let alone, "best efforts." *Birckhead*, 925 F.3d at 520.

Indeed, here, the Board did analyze some upstream effects of new oil production induced by the Railway on wildlife and vegetation but confined that analysis to areas overlapping the footprint of Railway construction. JA1123, 1127. As the Court held, the Board's limiting its upstream effects analysis to this narrow area "lacks any reasoned explanation and is unsupported in the record." Op.32 (citing JA1123). The Court's decision is entirely consistent with *Delaware Riverkeeper*, because the Board forecasted the Railway would induce thousands of new Uinta Basin oil wells and analyzed upstream effects from some of those wells.

C. The Court's Decision Requiring Further Analysis of Downstream Impacts Is Consistent with *Delaware Riverkeeper* and *Alaska Gasline*.

The Court's Decision is consistent with *Delaware Riverkeeper*'s and *Alaska Gasline*'s rulings that FERC was not required in those cases to analyze a pipeline project's downstream greenhouse gas emissions. In both of those cases, the agency had far less information about where and how much gas would be delivered and how it would be used. In contrast, here, the Board estimated how much oil would be shipped to Gulf Coast refining regions, JA1231, "identified the refineries that likely would be the recipients of the oil resulting from the Railway's operation, *see*

J.A. 1189, and explained that the oil will be refined for combustion, *see id*. at 1138." Op.32-33.

In *Delaware Riverkeeper*, FERC only knew gas "would be delivered for further transportation on the interstate grid for an unknown end use." 45 F.4th at 110. Likewise, in *Alaska Gasline*, FERC could not predict where a pipeline would deliver gas for use in Alaska. *Alaska Gasline*, 67 F.4th at 1185. Before any gas deliveries could occur, the developer would need to "secure regulatory approval from Alaska" for taps along the pipeline, and "various subsidiary pipelines (none of which had been proposed)" would have to be built. *Id*. Moreover, "the extent, scope, and location of any future interconnections" for subsidiary pipelines "were unknown." *Id*. FERC therefore "could not *reasonably* identify the end users of the gas." *Id*. (emphasis added). The panel addressed both *Delaware Riverkeeper* and *Alaska Gasline* at length, Op.31-33, distinguishing those decisions based on the record before the Board here. Op.32 ("This is not a case in which the location of where the oil will be delivered or its end use is unknown, as in *Delaware Riverkeeper Network.*"); Op.33, n.1 (*Alaska Gasline* "merely reiterates this Court's precedent that 'indirect emissions are not reasonably foreseeable if the Commission cannot identify the end users of the gas,' but that is not what we have here.").

Here, "no such uncertainties" foreclose meaningful analysis. Op.33 n.1. The EIS projected that most of the oil transported on the Railway will be delivered to "a limited number of refineries in [the Gulf Coast] that would have the available capacity to process and refine the Uinta Basin's waxy crude oil." Op.32 (citing JA1189). The EIS estimates that the Railway would send up to 175,000 barrels/day to refineries in Houston and Port Arthur, Texas, and up to 122,500 barrels/day to refineries in Louisiana. *See* JA1231.

Further, the EIS and Seven County identified ten "target" Gulf Coast refineries that could accept Uinta Basin oil based on their (1) larger refining capacity allowing for high-volume unit train deliveries, JA1189; (2) access to rail offloading infrastructure, JA1190, 430-31; and (3) lack of cheaper alternative oil supplies, JA1190, among other factors. *See also* JA437. Although the EIS, and now Seven County, states that all 31 refineries along Houston and Louisiana's Gulf Coast would potentially accept Uinta Basin crude oil, no record evidence supports that all 31 refineries would have the capacity to receive and refine this oil. *See* JA430-31, 435.

The EIS fails to explain why it could not "take the next step" and estimate air pollution emissions and other impacts from this massive influx of oil to Texas's and Louisiana's coastal refinery regions. Op.32. These regions include Houston's "serious" nonattainment area for ozone, JA778, 84 Fed. Reg. 44238, 44245 (Aug.

23, 2019); majority Black and Brown Port Arthur—the site of the nation's largest oil refinery, JA1530, 1533; and Louisiana's "Cancer Alley," which suffers some of the nation's most toxic air pollution. JA1495-97, 1499-1502. The EIS effectively "zeroed out" the potential harms from adding the equivalent of one or more new refineries to each of these communities already heavily burdened by industrial pollution. *See* JA1294, 1295 (federal data showing Texas and Louisiana refineries with refining capacities in tens to hundreds of thousands of barrels/day).

Critically, however, the Board found that the Railway would boost local Utah economies and meet their goals of growing Uinta Basin oil production, JA46 (citing JA792, 796, 1304)—a benefit only made possible by the Railway providing oil producers access to Gulf Coast refineries, JA254-55, 257, 264, 433-36, 438, 440—despite the absence of customer contracts with any refinery. Neither *Alaska Gasline* nor *Delaware Riverkeeper* involved the same lopsided analysis, i.e., assuming economic benefits of increased upstream production without considering the accompanying harms of increased downstream refining. *See Sabal Trail*, 867 F.3d at 1375 ("when an agency thinks the good consequences of a project will outweigh the bad, the agency still needs to discuss both the good and the bad"). The Court therefore correctly concluded those cases are not controlling here.

In sum, the Court's Decision regarding upstream and downstream effects does not conflict with any precedent of this Court, which the panel carefully

addressed. Further, no "recurring issue" is at stake, *cf.* Pet. at 16-17—it is well-settled that whether the agency took the required "hard look" at "reasonably foreseeable" impacts is decided on a case-by-case basis and on fact-specific grounds, pp. 9-12 *supra*. The Court should deny rehearing Petitioners' upstream and downstream effects claims.

CONCLUSION

The Center respectfully requests that the Court deny Seven County's petition for rehearing en banc.

Dated: November 9, 2023.

/s/ *Wendy Park*
Wendy Park
Center for Biological Diversity
1212 Broadway, Suite 800
Oakland, CA 94612
wpark@biologicaldiversity.org

Edward B. Zukoski
Center for Biological Diversity
1536 Wynkoop Street, Suite 421
Denver, CO 80202
(303) 641-3149
tzukoski@biologicaldiversity.org

Counsel for Petitioners Center for Biological Diversity, Living Rivers, Sierra Club, Utah Physicians for a Healthy Environment, and WildEarth Guardians

CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limit of the Court's October 4, 2023 order because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f), this document contains 3,884 words.

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/s/ *Wendy Park*
Wendy Park

Counsel for Petitioners Center for Biological Diversity et al.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and D.C. Circuit Rule 26.1, Petitioners Center for Biological Diversity, Living Rivers, Sierra Club, Utah Physicians for a Healthy Environment, and WildEarth Guardians certify that they have no parent companies, subsidiaries, or affiliates that have issued shares to the public.