

RESOLUTION NO. 76-24

A RESOLUTION JOINING THE AMICUS BRIEF IN THE UNITED STATES SUPREME COURT CASE OF SEVEN COUNTY INFRASTRUCTURE V. EAGLE COUNTY, COLORADO *ET AL.*

Recitals

On June 24, 2024, the United States Supreme Court granted *certiorari* in a case concerning the environmental review(s) for the Uinta Basin Railway project (Project). The City Council has been asked to join on the *Amicus* brief (Brief) to be filed in the case and by and with this Resolution the City Council agrees to join the *Amici Curiae* in support of urging the Supreme Court to affirm the decision below.

The Project as proposed is an 85-mile rail line to transport crude oil, and possibly gas and other minerals, from the Uinta Basin in eastern Utah to processing locations using other rail line(s). Primarily because of environmental concerns, lawsuits challenging the Project were filed. With its grant of *certiorari*, the Supreme Court will review the scope of the National Environmental Policy Act (NEPA) and how the same was, or was not, considered by the Surface Transportation Board (STB). Proponents of the Project assert that the STB fully considered the proximate environmental impacts of the Project; opponents assert that the review was inadequate.

Amici Curiae are a bipartisan coalition of local governments and communities located along the Union Pacific Rail Line and Interstate 70 (I-70). The *Amici*, including Grand Junction, are what the STB refers to as the "down-line study area" for the Project approval under review in the case. The case concerns *Amici's* interests in numerous ways as described in the Brief.

The Brief, a copy of which is attached, contends that the STB's NEPA process is important and must analyze effects to *Amici's* interests in wildfire prevention, water quality, public health, and safety, and calls into question the STB's analysis of those concerns. Also, the Brief discusses other procedural matters related to the decision under review.


Because the Grand Junction City Council is concerned about the Project's "down-line" impacts on the City and its residents the City Council does find by and with this Resolution that it is proper for the City to join the Brief and instructs the Interim City Manager and City Attorney to join with the *Amici Curiae* concerning this matter.

Furthermore, the City Council recognizes the importance of working in collaboration with other cities and counties in support of their expressions of concern about the Project as provided in the Brief.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO, THAT:

1. In consideration of the Recitals, the Grand Junction City Council approves joining the *Amicus* Brief in the United States Supreme Court case of *Seven County Infrastructure Coalition v. Eagle County Colorado et al.*
2. The Interim City Manager and City Attorney are directed to discharge the Council's direction as provided herein and as necessary or required, in addition to this Resolution, take all appropriate action(s) to indicate the City's support for the Brief.

Adopted this 21st day of October 2024.



Abram Herman
President of the City Council

ATTEST:



Selestina Sandoval
City Clerk

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 COLORADO
COMMUNITIES AS *AMICI CURIAE*
IN SUPPORT OF RESPONDENTS**

MATTHEW R. ARNOLD
EUBANKS & ASSOCIATES PLLC
1629 K Street NW,
Suite 300
Washington, DC 20006

WILLIAM S. EUBANKS II
Counsel of Record
EUBANKS & ASSOCIATES PLLC
1629 K Street NW,
Suite 300
Washington, DC 20006
(970) 703-6060
bill@eubankslegal.com

*Counsel for Amici Curiae
(additional counsel at the end of the brief)*

117089



COUNSEL PRESS

(800) 274-3321 • (800) 359-6859

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comparatively diminutive operating budgets and the ensuing environmental fallout threatens lasting damage to the outdoor recreation and tourism industry on which these communities heavily rely. Amici thus maintain a clear interest in understanding the full array of the downline effects in Colorado, i.e., foreseeable effects that will occur along existing railways due to the substantial increase in rail traffic, including what can be done to mitigate those impacts and how Amici should prepare to respond to them.

Glenwood Springs, Colorado is a home-rule municipality of roughly 10,000 residents in Garfield County.³ It sits in Glenwood Canyon at the confluence of the Roaring Fork and Colorado rivers. Surrounded by steep, rugged topography, Glenwood Canyon represents a natural mountain pass for both I-70 and the Union Pacific Line.

Glenwood Springs was established as and continues to be a respite for visitors to the Rockies. Annually, 1.5 million people visit Glenwood Springs to enjoy the world's largest mineral hot springs, whitewater rafting, kayaking, fly-fishing, hiking, and skiing. The nearby White River National Forest receives "more than 12 million visitors per year," making it "the most-visited recreation forest in the country." *White River National Forest*, U.S. FOREST SERV., <https://bit.ly/4hcBebG> (last visited Oct. 23, 2024). Glenwood Springs' economy is heavily dependent on tourism; nearly 40% of residents are employed in the

3. The Colorado Constitution empowers cities and towns to adopt "home rule" governance, allowing them to exercise greater control over matters of local significance. COLO. CONST. art. XX, § 6; *id.* art. XIV, § 16.

has diverted millions of dollars to protect its residents' water. See *Glenwood Springs, Glenwood Springs Water and Resiliency After the Grizzly Creek Fire* at 2, 6 (2021), <https://bit.ly/3ETpvOK> (outlining turbidity monitoring, solids collection system, and other improvements made after the debris flows).

Debris flows caused repeated closures of I-70, which exacerbated economic harm to local businesses. In fact, in 2021, “[n]early every strong storm triggered debris flows that carr[ie]d mud, rocks, and woody material from steep side drainage basins into Glenwood Canyon,” damaging “portions of [I-70], as well as the Union Pacific [Line].” *Glenwood Canyon and Debris Flows* (Dec. 16, 2021), <https://on.doi.gov/3CJ8cx1>. The following photographs show the repeated annihilation of I-70 and the Union Pacific Line by post-fire debris flows in Glenwood Canyon.



Debris flow covering eastbound lanes of I-70⁴

4. Photo by U.S. Geological Survey (USGS). See *June 26 and 27, 2021: Grizzly Creek Flooding and Debris Flows*, U.S. GEOLOGICAL SURV. (Aug. 24, 2021), <https://bit.ly/3yTRqdA>.

its streams and rivers bring clean, high-quality water to communities and agricultural operations throughout the West. Situated at the west entrance of Rocky Mountain National Park, Grand County's tourism-based economy is supported by year-round outdoor activities like world-class skiing at Winter Park Resort, boating and fishing on the county's many lakes, and rafting and fly-fishing on the Colorado River, which attracts over 7.7 million visitors a year. In 2020, the East Troublesome Fire—the second largest fire in Colorado's history—burned through 193,812 acres of land in Grand County, destroying over 500 structures and homes. After the 15,000-acre Williams Fork Fire, nearly 17% of Grand County was impacted by wildfire in 2020 and it continues to deal with the fallout from debris flows caused by those fires. Thanks to a multi-agency collaborative restoration effort, these fragile ecosystems and watersheds that are tributaries to the Colorado River are beginning to show signs of recovery.

The Union Pacific Line winds through Grand County along the Colorado River, passing through sharply curved and hard-to-access canyons where trains have repeatedly derailed within the last twenty years. Long stretches of railroad tracks are merely feet from the Colorado and Fraser rivers. Any oil spill into either river would have devastating impacts on outdoor recreation, agriculture, and the aquatic environment.

Grand Junction, Colorado is a home-rule municipality, located in Mesa County near the Utah border, and the most populous city in western Colorado. The City's name derives from its location at the confluence of the Gunnison and Colorado rivers. Beginning in the 1880s, and continuing today, two major railroads contributed to the development of Grand Junction and the Grand Valley.

Avon, Colorado is a home-rule municipality located on I-70. It sits adjacent to Beaver Creek and eight miles west of the Vail Valley. It has a year-round population of 6,072, which increases significantly during the ski season. Avon is also a popular tourist destination for hiking, horseback riding, bicycling, kayaking, and rafting. Year-round tourism and winter recreation-related businesses account for a significant portion of employment and earned income of area residents. As such, it remains vigilant about wildfires and river contamination that may detract from the area's appeal. Avon, for example, now spends roughly \$80,000 per year on a wildfire fuel source removal program.

Red Cliff, Colorado is a town of 300 residents nestled between Beaver Creek and Vail. It sits along the Colorado Scenic Byway, ten miles south of I-70. Residents and tourists alike enjoy mountain biking, cross-country skiing, snowmobiling, kayaking, fly fishing, rock climbing, and hiking with fantastic wildflower viewing, all within and around Red Cliff. Like nearby towns, a single wildfire and its effects—including drinking water impacts, landslides, debris flows, and road closures—can cripple Red Cliff's tourism-based economy for years.

Crested Butte, Colorado was founded as a mining camp but once the coal and silver ran out it transitioned to agriculture and an outdoor recreation hub. When molybdenum ore was discovered and proposed to be mined in Mt. Emmons (a.k.a. Red Lady) the community banded together to "Save Red Lady" and nearly 50 years later that goal was accomplished through collaboration with local governments, the mine owner, community groups, and the federal government. The town is an active participant

Boulder County, Colorado has 330,758 residents and lies in north-central Colorado on the eastern slopes of the Rocky Mountains. It contains forests, mountains, and canyons, which hold creeks that supply water to the cities, high plains, grasslands, and farmlands in the eastern part of the county. Boulder County's extensive efforts to protect open space and promote conservation have attracted farming, business, recreation, and tourism revenue. Since 1989, Boulder County has experienced at least nine major wildfires, including the 2021 Marshall Fire—the most destructive in Colorado history—which destroyed more than 1,000 homes and over 30 commercial structures. Part of the Union Pacific Line travels through the county. Local water supplies for the county depend upon South Boulder Creek, which runs alongside the Union Pacific Line, and would be impacted by any contamination triggered by the Railway.

Pitkin County, Colorado is located in Colorado's Central Mountains. It has a population of 17,548 that swells during peak tourism seasons. Home to the famed Aspen-Snowmass ski resorts, it attracts summer and winter visitors for skiing, fishing, hiking, rafting, and other outdoor pursuits.

Northwest Colorado Council of Governments (NWCCOG) is an association of 31 county and municipal governments created by Executive Order as a regional planning district. Its purpose is to work together on a regional basis to provide benefits and services that could not be obtained alone. The region includes municipalities and counties located in the central mountain region of Colorado. Many of its members are located along

transportation corridors of national significance such as the I-70 and the Union Pacific.

SUMMARY OF THE ARGUMENT

The D.C. Circuit correctly held that the Board's analysis of downline impacts on western Colorado failed for numerous reasons under NEPA and the Administrative Procedure Act. This Court should affirm that decision.

1. The answer to the question presented has no bearing on whether the Board's analysis of downline impacts in western Colorado passed muster under NEPA and the Administrative Procedure Act. In the decision under review, the D.C. Circuit's analysis rests in part on the understanding that downline impacts fell within the agency's regulatory ambit and were a foreseeable result of the Board's decision to approve the construction and operation of a new railway that essentially serves as an extension of the Union Pacific line running through western Colorado's narrow mountain passes.

(a) In this Court, Petitioners suddenly contend that the Board was not obligated to consider the Railway's effects on western Colorado because now they feel those impacts are too "contingent and remote" to be considered under NEPA. Petrs. Br. 36. This is a sea change from prior proceedings; before now, no party has ever challenged the foreseeability of the Railway's effects on western Colorado. Indeed, the Board *did* consider these issues as part of its normal NEPA review, and the D.C. Circuit invalidated that analysis as "utterly unreasoned."

In any case, it would be impossible to dismiss the Railway's effects on western Colorado's environment

the Court should reject it. Amici strenuously object to the limitation that Petitioners have tried to foist on NEPA (i.e., limiting the scope of an effects analysis to issues within the lead agency's remit) because local governments depend on the information disclosures NEPA compels, as well as the collaborative approach to decisionmaking that allows small government bodies to have their concerns seriously considered and/or mitigated during the NEPA review process. If Petitioners get their way, Amici will lose the invaluable tools NEPA provides in all but the most direct impact cases. This kind of hyper-narrow limitation on NEPA review is neither supported by the Act's text nor consistent with its animating purposes.

3. Finally, Petitioners' claims about NEPA's allegedly exorbitant delays and costs are overblown and refuted by data. Amici's experiences with NEPA do not track with Petitioners' claims. If anything, in Colorado, NEPA has been used to formulate some of the state's most enduring, innovative compromises when dealing with otherwise intractable conflicts over the state's much-celebrated natural resources.

ARGUMENT

I. The Question Presented Has No Bearing on the Adequacy of the Board's Analysis of Impacts to Western Colorado

The question before the Court is whether NEPA "requires an agency to study environmental impacts beyond the proximate effects of the action over which the agency has regulatory authority." Pet. i. Although Petitioners do not stick to any one test, they suggest their

it with conditions,” “including environmental mitigation conditions,” after analyzing “the environmental impacts associated” with its decision).

In short, NEPA—as well as the Board’s own regulations—required the Board to alert western Colorado communities to the foreseeable effects of its decision coming down the line. The Board’s failure to adequately analyze these indisputably foreseeable impacts is a run-of-the-mill violation of NEPA.

A. No One Seriously Disputes That the Railway Will Foreseeably Impact Western Colorado and the Natural Resources on Which Amici Rely

When the Board acted, longstanding, binding regulations implementing NEPA compelled the Board to consider and disclose to the public the “reasonably foreseeable” effects of its decision, including those “caused by the action [that] are later in time or farther removed in distance, but are still reasonably foreseeable,” 40 C.F.R. § 1508.8, 40 C.F.R. § 1508.18(b)⁷; *see also* Pet.App.107a-08a (acknowledging duty to examine same).

But throughout the litigation below and the Board’s administrative proceeding, nobody disputed the understanding that the Railway will foreseeably impact

7. Before the Board reached a final determination on the Railway, NEPA’s implementing regulations were amended to define “reasonably foreseeable” as being “sufficiently likely to occur such that a person of ordinary prudence would take it into account in reaching a decision.” 85 Fed. Reg. 43,304, 43,376 (July 16, 2020) (codified at 40 C.F.R. 1508.1(aa) (2021)).

Petitioners' newly minted attempt to automatically dismiss all downline impacts as unforeseeable is simply not credible. The record here is crystal clear that the Board's decision will introduce roughly 1,100 new, crude-oil-laden rail cars *every day* to existing rail lines. J.A.513-14. The increased rail traffic foreseeably induced by and acknowledged in the Board's decision means that each train from the Uinta Basin will bring over two miles of rail cars filled with flammable waxy crude oil through the communities Amici are entrusted to protect on a daily basis. C.A.App.888.

The Board's analysis determined the risk of rail accidents will more than double on the Union Pacific Line as a result of the Board's decision, J.A.202, including possible derailments and spills contaminating the invaluable water supplies on which western communities depend, *see, e.g., Arizona v. Navajo Nation*, 599 U.S. 555, 561 (2023) (acknowledging that for the "western United States," especially those reliant on the Colorado River, "[w]ater has long been scarce, and the problem is getting worse").

In Amici's view, a commonsense reading of the Board's decision and supporting analysis under NEPA clearly illustrates the Railway's inevitable effects on the citizens and communities that Amici are entrusted to protect by Colorado law, *supra* at 22. According to the Board, eastbound trains will account for 90% of the new rail traffic emanating from the Uinta Basin. J.A.513. Not only is the Union Pacific Line (from Kyune, UT to Denver, CO) a foreseeable route for that new rail traffic, it "is the *only* practical route for all rail traffic moving eastward from the Uinta Basin Railway." *Id.* (emphases added). Thus, the Railway's effects on western Colorado

As detailed above, the Railway's effects on western Colorado satisfy both parts of the Board's understanding of downline impacts. Because it will receive 90% of the new rail traffic created by the Board's authorization, J.A.513, the Union Pacific corridor (from Kyune, UT to Denver, CO) will obviously "experience an increase in rail traffic ... if the proposed rail line were constructed." J.A.312. Hence, the Board's regulations also plainly compelled the disclosure and consideration of these issues.

This additional ground for rejecting the Board's incomplete analysis of downline effects adds yet another wrinkle to this case. To the extent the Court finds that this issue, or Petitioners' failure to contest the foreseeability of downline impacts in western Colorado before now, obscures the issues necessary to resolve the question presented, it can and should consider dismissing the Petition as improvidently granted. *See Unicolors*, 595 U.S. at 190 (Thomas, J., dissenting); *see also Yee v. Escondido*, 503 U.S. 519, 538 (1992) ("Prudence also dictates awaiting a case in which the issue was fully litigated below, so that we will have the benefit of developed arguments on both sides and lower court opinions squarely addressing the question." (citing *Lytle v. Household Mfg., Inc.*, 494 U.S. 545, 552 n.3 (1990))).

II. The Indirect Effects Analysis Discloses Critically Important Information Otherwise Unavailable to Local Governments

Under Colorado law, counties and municipalities like Amici are tasked with protecting the public health, safety, and welfare of their constituents. Colo. Rev. Stat. §§ 25-15-06, 30-11-101 (2024). To execute those broader duties, state

railroad crossings through the Union Pacific Corridor. NEPA plays a crucial role in informing local governments of potential impacts to services and infrastructure within their domain, even without direct authority to regulate railroads. Even if they could, local governments often lack the resources necessary to properly inform their citizens about the effects of a proposed federal project in the way that NEPA does.

Now, Petitioners invite the Court to jettison NEPA's basic information gathering and disclosure function in most circumstances. The Court should decline to deliver this devastating blow to Amici and the many local communities throughout the United States that depend heavily on the participatory approach embodied by NEPA.

A. Local Governments Depend on the Information NEPA Discloses and the Collaboration It Requires

This Court has repeatedly stressed the twin aims served by NEPA. *E.g., Pub. Citizen*, 541 U.S. at 768. First, it “ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts.” *Id.* Second, NEPA “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.” *Id.*; see also *Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 371 (1989).⁸

8. NEPA's operative implementing regulations required the Board to disclose, *inter alia*, the Railway's direct, indirect, and cumulative impacts. See 40 C.F.R. §§ 1508.7-1508.8 (1979).

constituents, or undermine their ability to fulfill their statutorily prescribed duties. If a federal authorization conflicts with local priorities (e.g., public safety and welfare), NEPA provides an avenue for local governments to present their concerns directly to the attention of the federal decisionmaker, who is required by law to give consideration to the views of local governments. 42 U.S.C. § 4331

Further, where a proposed federal action threatens to impede a local government's ability to fulfill its duties to its citizens, NEPA provides a forum for amicably resolving those disputes. As the examples discussed below reveal, *see infra* at 28-33, the mandatory collaboration prescribed by NEPA is an underappreciated aspect of the statute, and one that has been responsible for some of the most ingenious and enduring solutions to otherwise intractable conflicts over shared natural resources.

Finally, as Petitioners repeatedly stress in their brief, comprehensive environmental reviews of the kind generated under NEPA can be expensive, especially when considering projects of the magnitude of the Uinta Basin Railway. For local governments, which often lack the capital reserves necessary to fund such a review, the costs can be prohibitive. By partnering with state and federal agencies under NEPA, however, local governments can defray those costs while examining important issues related to public health, safety, and environmental concerns.

analyses. If anything, Petitioners' proposed rule cuts against the interdisciplinary, all-of-government approach clearly embodied by the Act's terms. *See* 42 U.S.C. § 4331 (directing "Federal Government to use all practicable means" and measures to achieve NEPA's policy goals); *see also id.* § 4332 (instructing agencies to implement NEPA's provisions "to the fullest extent possible"); *id.* § 4336a(a) (authorizing "any Federal, State, Tribal, or local agency that has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal to serve as a cooperating agency" in the NEPA process).

Second, the rule Petitioners propose is ill-defined and Amici fear the questions left open by its formulation will lead to more, not less, litigation in the future. For example, under Petitioners' proposed rule, which agency would be responsible for determining the appropriate responder? If two agencies share overlapping expertise in a given subject matter—e.g., railroad safety, *see* 65 Fed. Reg. 42,529, 42,529 (July 10, 2000) (acknowledging the "statutory safety authority" delegated to the Federal Railroad Administration and Federal Transit Administration "straddle[s] the jurisdictional line")—which agency is responsible for analyzing and disseminating the relevant information? What if both agencies refuse to do so, washing their hands of the issue by pointing to the other agency's overlapping expertise? Which agency bears the burden of showing that a given action is (or is not) the proximate cause of a given effect? And what if those agencies disagree about proximate causation?

Finally, as this case and the examples discussed below illustrate, Petitioners' proposed rule threatens to arbitrarily cut local governments out of the decisionmaking

the local governments that will feel the proposal's effects most concretely. Below, Amici briefly recap some of those examples to illustrate why comprehensive NEPA review remains an imperative tool for counties and municipalities in Colorado.

I-70 Mountain Corridor Express Lanes

For residents and tourists alike, the I-70 corridor is infamous for its many chokepoints that can quickly snarl rail and vehicle traffic traveling to and from the West Slope (of the Rockies) to Denver and/or other points east. The steep canyon walls and narrow rock ledges that typify this corridor make it a difficult area to navigate safely, regardless of the mode of transport. During periods of peak congestion—mainly Fridays and Sundays during the ski season—the congestion on I-70 routinely added an hour or more to travel times in the area, with some reporting eight-mile drives taking as long as two-and-a-half hours through the mountains.

The Federal Highway Administration (FHWA) and Colorado Department of Transportation (CDOT) released a draft programmatic EIS in 2004 that recommended some solutions to the congestion issue. Those proposals, however, included several publicly unpopular and environmentally destructive choices, including recurring rockface blasting, unattractive retaining walls, and even channeling watercourses routinely utilized by outdoor recreationists. The agencies received “substantial public and agency comments” opposing the project and its predicted impacts. Fed. Hwy Admin. & Colo. Dep’t of Transp., *I-70 Mountain Corridor Record of Decision and Final Programmatic Environmental Impact Statement* at 1-2 (2011).

If NEPA had not required a comprehensive, transparent process to analyze and disclose the full array of impacts (including indirect effects) of the original proposals, FHWA and CDOT likely would have built one of those initial (but environmentally harmful and highly unpopular) options without feedback from, or the benefit of collaboration and consensus-building with, important stakeholders such as affected local governments and their residents.

Thompson Divide Administrative Withdrawal

For those who live on the West Slope, the Thompson Divide area is special. It is beloved by locals in the Glenwood Springs, Carbondale, and Pitkin County communities as a respite from otherwise crowded recreational areas in the Roaring Fork Valley during peak tourism seasons. For instance, the Divide is home to Sunlight Mountain, a lesser-known yet cherished ski area utilized by locals when other places like Aspen and Vail become too busy. It is also an immensely popular location amongst sportsmen for its hunting and angling opportunities.

About 20 years ago, the Thompson Divide area became an attractive exploration location for extractive mineral operations. When a proposed project threatened to negatively impact the area's solitude and recreational opportunities, local stakeholders from across the ideological spectrum came together to voice their support for establishing long-term protections for the Thompson Divide. This included local governments that engaged in multiple NEPA processes to initially oppose extraction activities within or in close proximity to their jurisdiction, and later to support administrative protections. The

Fraser and the Williams Fork rivers—to reservoirs on the East Slope, where that water can be treated and distributed to customers in the Denver Metro area.

Because the project required multiple federal authorizations, including a Section 404 permit under the Clean Water Act and a license amendment from the Federal Energy Regulatory Commission, the project was subject to review under NEPA. Serving as the lead agency, the U.S. Army Corps of Engineers began NEPA public scoping for the project in 2003. From that process, several upstream communities on the West Slope, including Grand and Eagle counties, learned that the project would have devastating indirect effects on West Slope water resources (e.g., increased water temperatures and turbidity due to Denver Water’s increased drawdowns).

Initially, both Denver Water and the West Slope communities signaled steadfast unwillingness to change position on the project; however, because of the NEPA process, both sides were forced to grapple with the others’ views on the project’s likely effects on both sides of the Rocky Mountains. That opened the door to negotiations between the West Slope communities and Denver Water.

Those negotiations resulted in multiple intergovernmental agreements that allowed Denver Water to move the project forward in exchange for long-term commitments to protect the originating water bodies. *See Colorado River Cooperative Agreement*, COLO. RIV. DIST., <https://bit.ly/4eSq0XR> (last visited Oct. 23, 2024); *see also Intergovernmental Agreement for the Learning By Doing Cooperative Effort*, GRAND CNTY. (May 15, 2012) <https://bit.ly/4h56REh> (establishing an ongoing duty amongst

CONCLUSION

The Court should affirm the decision below.

Respectfully submitted,

MATTHEW R. ARNOLD
EUBANKS & ASSOCIATES
PLLC
1629 K Street NW,
Suite 300
Washington, DC 20006

WILLIAM S. EUBANKS II
Counsel of Record
EUBANKS & ASSOCIATES
PLLC
1629 K Street NW,
Suite 300
Washington, DC 20006
(970) 703-6060
bill@eubankslegal.com

Counsel for Amici Curiae

ERICK KNAUS
522 Lincoln Avenue,
Suite 34
P.O. Box 773598
Steamboat Springs, CO
80477
*Counsel for Amicus
Routt County, Colorado*

RICHARD Y. NEILEY III
530 East Main Street,
Suite 301
Aspen, CO 81611
*Counsel for Amicus
Pitkin County, Colorado*

TORIE JARVIS
BARBARA GREEN
SULLIVAN GREEN SEAVY
JARVIS LLC
3223 Arapahoe Ave., Suite 300
Boulder, CO 80303
*Counsel for Amicus
Northwest Colorado
Council of Governments*