

Environmental Law & Litigation

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9th Circuit Expands Scope of Recoverable Natural Resource Damages Under CERCLA

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On Sept. 3, the U.S. Court of Appeals for the 9th Circuit held that the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)¹ authorizes recovery of natural resource damages for the lost use of natural resources that have a cultural dimension, broadening the scope of traditional natural resource damages recovery.²

Background

The Confederated Tribes of the Colville Reservation (Tribes) brought a claim under CERCLA against Canadian company Teck Cominco Metals Ltd. (Teck) seeking natural resource damages for injuries to fish and other organisms in the Upper Columbia River that were allegedly caused by hazardous substances attributable to Teck's lead-zinc smelter operations.³ The Tribes also sought natural resource damages for their lost uses of the injured wildlife "that are specific to their members because of their unique relationship with the Upper Columbia River," including for "cultural purposes."⁴ Teck moved for partial summary judgment, and the district court granted the motion, holding the Tribes were seeking damages for "cultural resources," which are not recoverable under the statute, rather than "natural resources."⁵

The Tribes filed an interlocutory appeal to the 9th Circuit, arguing "they are not seeking damages for injured cultural resources, but rather for their lost use of injured natural resources where their lost use has a cultural dimension in light of the Tribes' unique relationship with the Upper Columbia River."⁶

Analysis

In reviewing the district court's decision, the 9th Circuit held that while "natural resource damages under CERCLA are only available to address injury to natural resources," that "does not mean that natural resource trustees can *only* recover damages to restore or replace natural resources that are directly injured by the release of a hazardous substance."⁷ The circuit court relied on two CERCLA statutory provisions to reach this conclusion.

First, CERCLA expressly states that natural resource damages "shall not be limited by the sums which can be used to restore or replace natural resources."⁸ Second, CERCLA's provision requiring the promulgation of natural resource damage assessment regulations mentions that the regulations should consider "both direct and indirect injury" to natural resources, including "use value."⁹ Taken together, "Congress did not limit the types of recoverable natural resource damages, nor specify the types of approved 'uses,'" and there is nothing in the statute that precludes recovering natural resource damages that have a cultural component.¹⁰ Further, the court found that permitting recovery of natural resource damages where lost uses have a cultural element is "consistent with CERCLA's restorative purpose."¹¹

The 9th Circuit therefore reversed the lower court's grant of summary judgment for Teck and remanded for trial.¹²

Potential implications

The 9th Circuit's decision could expand the scope of damages sought to be recovered as natural resource damages. Specifically, if any damages allegedly stem from lost use of natural resources, those damages arguably are now recoverable in the 9th Circuit, even if the specific lost use is only "indirectly" related to the injured natural resource.

For more information, please contact the authors of this Client Alert.

¹ 42 U.S.C. §§ 9601 *et seq.*

² *Confederated Tribes of the Colville Reservation v. Teck Cominco Metals Ltd.*, No. 24-5565, 2025 U.S. App. LEXIS 22675 (9th Cir. Sept. 3, 2025).

³ 2025 U.S. App. LEXIS 22675 at *4-5. "The district court trifurcated the case to sequentially determine: (1) whether Teck was liable as a potentially responsible party; (2) Teck's liability for response (i.e., cleanup) costs; and (3) Teck's liability for natural resource damages." *Id.* at *7. In Phase I, the district court determined Teck is liable under CERCLA, and in Phase II, the district court awarded the Tribes response costs. *Id.*

⁴ *Id.* at *8.

⁵ *Id.* at *9.

⁶ *Id.* at *10.

⁷ *Id.* at *15 (emphasis added).

⁸ *Id.* at *15 (quoting 42 U.S.C. § 9607(f)(1)).

⁹ *Id.* at *15-16 (quoting 42 U.S.C. § 9651(c)(2)).

¹⁰ *Id.* at *17.

¹¹ *Id.*

¹² *Id.* at *5.

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