No. 17-71692

In the United States Court of Appeals for the Ninth Circuit

UNITED STATES OF AMERICA *et al.*,
Petitioners,
v.
UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF OREGON
Respondent,
and
KELSEY CASCADIA ROSE JULIANA *et al.*,
Real Parties in Interest.

On Petition for a Writ of Mandamus in
Case No. 6:15-cv-01517-TC-AA (D. Or.)

BRIEF OF *AMICI CURIAE*, FOOD & WATER WATCH, INC., FRIENDS OF THE EARTH - US, AND GREENPEACE, INC. IN OPPOSITION TO WRIT OF MANDAMUS

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CORPORATE DISCLOSURE STATEMENT

Amici curiae, Food & Water Watch, Inc., Friends of the Earth - US, and Greenpeace, Inc. are nonprofit corporations that have no parent corporations or stock held by any publicly held corporation.

STATEMENT PURSUANT TO RULE 29

The Petitioners and Real Parties in Interest have consented to the filing of this brief. No party or counsel thereof authored this brief; no person other than *Amici* contributed money that was intended to fund preparing or submitting this brief.

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I. INTRODUCTION

The undersigned *amici curiae* submit the following brief opposing the Defendant-Petitioners' ("Defendants") Petition for Writ of Mandamus ("Pet.").

While this case is undeniably unprecedented in its importance, there simply is no *clear error* in the District Court's decision that would warrant this Court's involvement at this juncture. Quite the contrary, the Real Parties in Interest ("Plaintiffs") have demonstrated standing. Their injuries, including the ocean-related ones, are real and particularized. Global-warming-induced sea-level rise and ocean acidification are caused in no small part by Defendants' permitting, authorizing, and subsidizing of fossil-fuel extraction, production, transportation, utilization, and exports that result in the greenhouse-gas emissions. The same statutory discretion Defendants have exploited to authorize this conduct can instead serve to redress Plaintiffs' injuries by enabling the Defendants to implement an enforceable national plan phasing out greenhouse-gas emissions.

Moreover, Plaintiffs have established viable Due-Process-Clause claims against Defendants. Among other reasons, Defendants have violated their deeply rooted duties as trustees to protect the nation's territorial seas. Their own actions in no small part have wreaked havoc on these resources and undermined the resources' public purpose as a defensive shield from even greater warming, sea-level rise, and flooding.

Defendants simply disagree with the District Court's conclusions, but this is far from clear error. *See Lewis v. Ayers*, 681 F.3d 992, 998 (9th Cir. 2012) (stating that clear error requires implausible findings and a "definite and firm conviction that a mistake has been committed"). *Amici* therefore urge this Court to reject Defendants' request for extraordinary relief.

II. INTEREST OF *AMICI CURIAE*

Food & Water Watch, Inc. ("FWW") is a national, non-profit, public-interest consumer advocacy organization with more than 93,300 members nation-wide. FWW advocates for policies shifting the nation from fossil fuels to 100% renewable energy by 2035.

Friends of the Earth - US ("FOE") is a national, non-profit, environmental advocacy organization with about 300,000 members. FOE advocates for policies to reduce fossil-fuel subsidies, production, and consumption and to protect our oceans.

Greenpeace, Inc. ("Greenpeace") is an independent campaigning organization, which uses non-violent, creative confrontation to expose global environmental problems, and to force the solutions which are essential to a green and peaceful future.

III. ARGUMENT

A. The District Court's Conclusion That Plaintiffs Have Standing Was Not Clear Error.

Defendants point to no clear error in the District Court's conclusion that Plaintiffs alleged facts demonstrating each irreducible constitutional minimum of standing, as

required at the pleading stage. *See Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016) (citations omitted). Instead, their petition misconstrues Plaintiffs' injuries, underscoring Defendants' apparent disregard for global warming's real and serious consequences.

1. Global warming's impacts on our oceans are real and have caused Plaintiffs particularized harm.

The District Court found Plaintiffs met their burden of demonstrating injury-in-fact. Their First Amended Complaint pled "'an invasion of a legally protected interest' that is 'concrete and particularized'" and "'actual or imminent, not conjectural or hypothetical[,]'" *see id.* at 1548 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)), due to their extensive allegations of ongoing injuries from global warming—from drought, to water contamination, to increased flooding. (*Kelsey Cascadia Rose Juliana v. United States of America*, No. 15 Civ. 01517, slip op. 19-20 (D. Or. June 9, 2017), ECF No. 172.) Perhaps most compelling were Plaintiffs' ocean-related injuries, including sea-level rise and acidification. (*See id.* 19-20, 42, n.11.) The District Court concluded that these injuries flow from ocean resources that the federal government holds in trust under the Public Trust Doctrine. (*Id.*)

Defendants now disagree, contending these injuries are not "concrete and particularized." (Pet. 14.) But it would be anomalous to construe Plaintiffs' alleged injuries from global warming as anything but "concrete" or, as the Supreme Court has recently simplified this requirement: "real." *See Spokeo*, 136 S. Ct. at 1548.

The Earth's energy imbalance cannot be legitimately disputed. Global mean temperatures have dramatically increased since the 1900s. (Hansen Decl. ¶ 31, ECF 7-1.) The planet has witnessed warmer global temperatures in the past three decades than any preceding 10-year period since 1850, and the last 30 years have been the warmest of the last 1400 years in the Northern Hemisphere.[1]

The oceans have absorbed nearly 90% of the Earth's excess energy, causing them to warm and expand, resulting in sea-level rise. (*See* Hansen Ex. 2, at 5, ECF 7-3; First Amend. Compl. ¶ 218, ECF 7.) Parts of the East and Gulf Coasts of the United States have seen dramatic seawater incursions, spurred by a combination of melting ice and seawater expansion. (First Amend. Compl. ¶ 219.)

Without dramatic reductions in greenhouse-gas emissions, scientists expect that the global sea level will rise by more than 3 feet by 2100. (*See* Hansen Ex. 2, at 6; Ex. 3, at 20091, ECF 7-4.) This will be catastrophic, with flooding, erosion, higher storm surges, and, in some areas, permanent inundation. Another two-foot sea-level rise would jeopardize one-trillion dollars of U.S. property with permanent inundation.[2] (*See* First Amend. Compl. ¶ 253 (estimating coastal damage of at least $5 trillion).) Other effects

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[1] Intergovernmental Panel on Climate Change, 2013, *Summary for Policymakers*, *in* Climate Change: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change 5 (T.F. Stocker *et al*., eds. 2013), http://www.ipcc.ch/pdf/assessment-report/ar5/wg1/WG1AR5_SPM_FINAL.pdf.

[2] Union of Concerned Scientists, *Causes of Sea Level Rise: What the Science Tells Us* 5, (Apr. 2013), http://www.ucsusa.org/sites/default/files/legacy/assets/documents/global_warming/Causes-of-Sea-Level-Rise.pdf.

include saltwater intrusion of drinking-water supplies and the undermining of measures like seawalls. (*Id.* ¶ 87.)

Such incursions would have happened much sooner if not for the protection of the seas themselves. The ocean has acted as a giant heat sponge, causing seawater to expand uniformly. But now, as a greater proportion of sea-level rise is due to melting land ice such as on Antarctica, sea levels are rising faster. (*See id.* ¶¶ 41, 218; Hansen Ex. 2, at 4, 6; Ex. 3, at 20062.) Due to its location, North America is expected to feel the brunt.[3]

Plaintiffs alleged they are directly harmed by sea-level rise, meaning their injuries are adequately "particularized." *See Spokeo*, 136 S. Ct. at 1548, n.7. Levi D., for example, alleged that his city is threatened by sea-level rise, the barrier island on which it sits has seen real-estate prices decline, and the value of his home has decreased and eventually could be lost completely, due to sea-level rise caused by global warming. (Levi D. Decl. ¶ 4, ECF 41-7.)

While global warming has essentially weaponized our seas, the damages it has caused to the ocean ecosystem are also a source of Plaintiffs' concrete and particularized injuries. Among other effects, global warming reduces sea-ice thickness and extent, alters storm tracks and intensity, changes precipitation patterns, alters freshwater input,

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[3] Chris Mooney, *The U.S. Has Caused More Global Warming Than Any Other Country. Here's How the Earth Will Get Its Revenge*, Wash. Post, Jan. 22, 2015, https://www.washingtonpost.com/news/energy-environment/wp/2015/01/22/the-u-s-has-contributed-more-to-global-warming-than-any-other-country-heres-how-the-earth-will-get-its-revenge/?utm_term=.99fde813a805.

increases acidification, and reduces dissolved-oxygen levels.[4] (*See* First Amend Compl. ¶¶ 70, 218-20, 229, 231, 253; Hansen Decl. at 16, n.7; Hansen Ex. 2, at 4, 7; Hansen Ex. 3, at 20085, 20110, 20119.) Fish populations are harmed as global warming changes productivity, distribution, phenology, survivorship, abundance, and community composition.[5] (*See id.* ¶¶ 235-36.)

Increased absorption of carbon dioxide also has caused ocean pH levels to drop precipitously. (*See id.* ¶ 231; Hansen Ex. 2, at 7.) Corals and shellfish species such as shrimp, crabs, lobster, clams, and oyster, which currently comprise about two-thirds of U.S. marine aquaculture production and more than half of U.S. domestic-fishery landings by value, are most susceptible to ocean acidification.[6] (*See id.*)

Plaintiffs alleged particularized injuries from these global-warming effects. Plaintiff Jacob Lebel, for example, alleged that he and his family's harvesting of mussels and his own crab-fishing and mussel-gathering activities in Bandon, Oregon have been harmed by scarcity linked to global warming. (*Id.* ¶ 33.) Plaintiff Alex Loznak testified that in the summer of 2015, the Oregon Department of Fish and Wildlife curtailed salmon fishing at his fishing spots due to stress from abnormally high-water temperatures and low-stream flows. (Loznak. Decl. ¶ 24, ECF 41-1.)

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[4] U.S. Dept. of Commerce *et al.*, *NOAA Fisheries Climate Science Strategy* 3 (Jason S. Link *et al.*, eds., Aug. 2015), https://swfsc.noaa.gov/uploadedFiles/Home/NOAA_Fisheries_Climate_Science_Strategy_2015.pdf

[5] *Id.*

[6] *Id.* at 5.

As if to support the merits of Plaintiffs' underlying claims by derogating the Defendants' trust duties, Defendants undermine these injuries, calling them "generalized phenomena that may affect plaintiffs, but in the same way and to the same extent as they may affect everyone else." (Pet. 14.) That argument disregards what the Supreme Court reiterated just two terms ago: "[t]he fact that an injury may be suffered by a large number of people does not of itself make that injury a nonjusticiable generalized grievance. The victims' injuries from a mass tort, for example, are widely shared, to be sure, but each individual suffers a particularized harm." *Spokeo*, 136 S. Ct. at 1548.

The Plaintiffs' injuries are the same type as with a mass tort, only their claims target Defendants' violations of the Due Process Clause. The District Court was correct in thus refusing to disqualify Plaintiffs' claims, and there is no reason for this Court to upend the lower court's injury-in-fact determination now.

2. Defendants' permitting, authorizing, and subsidizing of fossil-fuel extraction, production, transportation, utilization, and exports cause Plaintiffs' injuries.

The District Court also did not commit clear error in concluding that Plaintiffs established causation.

To satisfy this criterion, Plaintiffs need only show that their injuries are "fairly traceable" to the challenged agency action and "not the result of independent choices by a party not before the court." *Nw. Requirements Utils. v. FERC*, 798 F.3d 796, 806 (9th Cir. 2015) (citing *Wash. Envt'l Council v. Bellon,* 732 F.3d 1131, 1141 (9th Cir. 2013)). Plaintiffs meet this burden by showing that the government action has a "determinative

or coercive effect" on the third party. *Id*. (quoting *Bennett v*. *Spear*, 520 U.S. 154, 169 (1997).

The District Court concluded that Plaintiffs demonstrated two independently sufficient chains of causation, one of which was as follows: "fossil fuel combustion accounts for the lion's share of greenhouse gas emissions produced in the United States; defendants have the power to increase or decrease those emissions; and defendants use that power to engage in a variety of activities that actively cause and promote higher levels of fossil fuel combustion." (Slip op. 25.)

Defendants now complain that this not enough without alleging more specific actions by the Defendants as the source of Plaintiffs' injuries. (Pet. 17.)

But what the District Court describes as Defendants' "power to increase or decrease those emissions"—which Defendants deride for being too general—is actually a reference to an extensive list of specific government authorities alleged to "cause and promote higher levels of fossil fuel combustion." (Slip op. 25.) For example, the District Court cites to leases issued by the U.S. Department of Interior ("DOI")'s Bureau of Land Management (First Amend. Compl. ¶¶ 164, 166); specific government subsidies for fossil fuel extraction and production (*id*. ¶¶ 171, 173); licenses and export exemptions for crude oil (*id*. ¶ 181), and subsidies for Sports Utility Vehicles (*id*. ¶ 190).

These Defendant actions, including the permitting, authorizing, and subsidizing of fossil-fuel extraction, production, transportation, utilization, and exports, result in the greenhouse-gas emissions that spur global warming (*id*. ¶ 279) and cause Plaintiffs'

injuries. (Slip op. 26.) Not only does approximately one quarter of U.S. fossil-fuel extraction occur on federal public lands (First Amend. Compl. ¶ 164), federal fossil fuels account for 46 to 50% of total U.S. potential greenhouse-gas emissions.[7]

The District Court's conclusion that this establishes causation was not error, and it certainly was not *clear error*, as it is blackletter law that plaintiffs can establish causation by showing the "administrative agency *authorized* the injurious conduct." *America's Cmty. Bankers v. FDIC*, 200 F.3d 822, 827 (D.C. Cir. 2000) (emphasis added) (citing cases); *accord Alaska Fish & Wildlife Fed'n & Outdoor Council v. Dunkle*, 829 F.2d 933, 937 (9th Cir. 1987).

Finally, it is worth noting that the District Court's causation findings did not take into consideration more recent actions by Defendants under the new President. Not considered, for example, was the DOI's 2017 order[8] revoking a moratorium on coal leasing on federal lands.[9] The District Court also did not consider actions that agencies have taken pursuant to the President's Executive Order 13783, which dismantled prior agency actions to address climate change.[10] If introduced, these and other actions taken

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[7] Dustin Mulvaney *et al., The Potential Greenhouse Gas Emissions from U.S. Federal Fossil Fuels* 16 (Aug. 2015), http://www.ecoshiftconsulting.com/wp-content/uploads/Potential-Greenhouse-Gas-Emissions-U-S-Federal-Fossil-Fuels.pdf.

[8] Dept. of Interior Secretarial Order 3348 (Mar. 29, 2017), http://columbiaclimatelaw.com/resources/climate-deregulation-tracker/database/doi/#order3348.

[9] Dept. of Interior Secretarial Order 3338 at 8 (Jan. 15, 2016), https://perma.cc/JVT4-J7VR.

[10] Presidential Executive Order on Promoting Energy Independence and Economic Growth, 82 Fed. Reg. 16,093 (Mar. 31, 2017).

by the current administration are evidence that Defendants continue to cause Plaintiffs' injuries by spurring even greater fossil-fuel extraction and warming.

3. Plaintiffs' painstakingly detailed allegations of Defendants' broad statutory discretion to limit greenhouse-gas emissions are sufficient to establish redressability.

The District Court issued a cautious redressability ruling, recognizing a number of difficult questions for later resolution. (Slip op. 27-28.) But, at the pleading stage, the District Court found that Plaintiffs demonstrated a remedy that would slow or reduce their alleged injuries. An order requiring Defendants to prepare an enforceable national remedial plan to phase out fossil-fuel emissions and draw down excess carbon dioxide would be substantially likely to redress Plaintiffs' injuries. (*Id*. at 26-27.)

Defendants' primary clear-error argument is that Plaintiffs have not asserted the "statutory authority for the sweeping remedial action . . . necessary to remedy their harms." (Pet. 20). But Defendants ostensibly admit that Plaintiffs alleged such authority in 36 separate paragraphs of their complaint. (Pet. 20, n.7.) There, Plaintiffs painstakingly review Defendants' broad authority to issue fossil-fuel leases, permits, and export authorizations. While historically the Defendants have used this discretion to authorize and encourage greenhouse-gas emissions, their authority is not so delimited.

For example. under the Federal Land Policy Management and the Minerals Leasing Acts (First Amend. Compl. ¶ 110); 43 U.S.C. § 1701 (2012); 30 U.S.C. §§ 201, 226, 241(a)(1) (2012); Defendant DOI has enormous discretion on whether to lease land for fossil-fuel development, including the "discretion *not to lease at all* . . . if it was felt

that such leasing would be detrimental to the public interest." *Pease v. Udall*, 332 F.2d 62, 63-64 (9th Cir. 1964) (emphasis added). Likewise, DOI has extensive authority under the Outer Continental Shelf Lands Act (First Amend. Compl. ¶ 111), including to suspend energy leases in federal water to conserve the outer continental shelf's natural resources. *See Gulf Oil Corp. v. Morton*, 493 F.2d 141, 144-45 (9th Cir. 1973). Defendants also have considerable discretion in approving infrastructure used to process and transport fossil fuels for domestic supply and export.[11]

That Defendants demand Plaintiffs plead more specific authority suggests that somehow courts otherwise do not have the independent power to remedy Constitutional violations—a plain misunderstanding of the Article III.[12] *Greenwood v. FAA*, 28 F.3d 971, 975 (9th Cir. 1994) ("[I]n the absence of very explicit language from Congress precluding review . . . , judicial review of colorable constitutional claims is available, even where statutory claims are otherwise committed to agency discretion") (citing *Webster v. Doe*, 486 U.S. 592, 603-04 (1988).)[13]

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[11] For example, the Federal Energy Regulatory Commission may deny certificates of public convenience and necessity for pipelines and other natural-gas-transportation infrastructure for conservation. *Fed. Power Comm'n v. Transcon. Gas Pipe Line Corp.*, 365 U.S. 1, 20-22 (1961).

[12] Nor would the court need to enjoin the President. (*See* Pet. 20.) The Council of Environmental Quality and White House Office of Environmental Quality have independent authority to coordinate federal agencies and programs affecting environmental quality. *See* 42 U.S.C. § 4372(d)(5) (2012).

[13] This is what the District Court meant by "[P]laintiffs' theory of the case requires no citation to particular statutory or regulatory provisions . . . ." (Slip op. 20.) *See also AFGE Local 1 v. Stone*, 502 F.3d 1027, 1038 (9th Cir. 2007) ("The power of the federal

B. The District Court's Refusal To Dismiss Plaintiffs' Substantive-Due-Process Claim Was Not Clear Error.

1. The District Court was correct to conclude that the Public Trust Doctrine is deeply rooted in this nation's history and traditions.

The District Court also rightly concluded that Plaintiffs' Substantive-Due-Process claim should not be dismissed, in part, because the rights flowing from the Public Trust Doctrine are deeply rooted in this nation's history and traditions. (Slip op. 47, 48.)

Defendants are simply wrong that "[t]he Supreme Court has always addressed the public trust doctrine in connection with *state management* of coastal regions and navigable waterways[.]" (Pet. 30 (emphasis added).) In fact, *United States v. 1.58 Acres of Land,* a district court decision that the District Court found persuasive in the present case, relies on a series of Supreme Court decisions firmly establishing that *the federal government* holds its territorial seas in public trust. 523 F. Supp. 120, 124-25 (D. Mass. 1981).

United States v. California is the seminal decision. The federal government brought a trespass claim against the state for issuing leases within the three-nautical-mile beltway waters around the state. 332 U.S. 19, 22-23 (1947). The Supreme Court disagreed that this was the state's property under the U.S. Constitution's Equal Footing Doctrine. *Id.* at 30-32. *Only the federal government* has acquired such an interest, as demonstrated by the numerous occasions as early as 1793 where the federal government

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courts to grant equitable relief for constitutional violations has long been established . . . .") (citation omitted).

has historically asserted its dominion over the territorial seas.[14] *Id*. at 33-34, n.16. As an incident of sovereignty, the federal government "must have powers of dominion and regulation in the interest of its revenues, its health, and the security of its people from wars waged on or too near its coasts." *Id*. at 35. It could not waive such rights, as "the great interests of the Government in this ocean . . ." are held "*here as elsewhere in trust* for all the people . . ." *Id*. at 39-40 (emphasis added).

Thus, the federal government has dominion over its territorial seas and holds such resources in trust, if for no other reasons, for the revenues, health, and security of its people.

Congress responded to this decision by passing the Submerged Lands Act, giving the disputed submerged lands back to the states.[15] What followed was a series of Supreme Court cases about various states' rights and whether the federal government could even disclaim such resources. But Justices Black and Douglas's dissenting views in *Alabama v. Texas*, 347 U.S. 272, 278 (1954), cited to by the District Court in the present case, along with Justice Reed's concurrence, *id*. at 277 (saying the government "is to utilize the assets that come into its hands as sovereign in the way that it decides is

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[14] The Court cites numerous examples, *see* 332 U.S. 19, 34, n.18, and the government's dominion over these resources has only expanded since. *See* Presidential Proclamation Nos. 5030, 48 Fed. Reg. 10,605 (Mar. 14, 1983); 5928, 54 Fed. Reg. 777 (Jan. 9, 1989); and 7219, 64 Fed. Reg. 48,701 (Aug. 2, 1999).

[15] The act expressly retained dominion over lands seaward of this three-mile-belt. Pub. L. No. 83-31, 67 Stat. 29, 32-33 (1953) (providing that these "*natural resources appertain to the United Sates, and the jurisdiction and control of which by the United States is hereby confirmed*") (emphasis added).

best for the future of the Nation"), support the conclusion in *United States v. California* that the territorial seas and its resources are held by the federal government in trust for the American people, even while disagreeing about the implications for the states. "How the Court resolved this dispute . . . relat[ing] to federal or state control . . . is not significant; . . . what is significant . . . is the Court's recognition of the *jus publicum* and the nature of the trust administered by the state and federal governments." *1.58 Acres of Land*, 523 F. Supp. at 124; *accord United States v. Texas,* 339 U.S. 707, 718-20 (1950).

Thus, the District Court's conclusion in the instant case that the federal government holds its territorial seas and their resources in trust for the American people is a principal deeply rooted in our nation's history and traditions, as recognized by the Supreme Court in its *U.S. v. California* decision.

2. The District Court did not err in determining the Public Trust Doctrine provides a basis for liability.

Since the federal government has established control over the vital territorial seas and their resources for our nation's benefit, the Public Trust Doctrine requires, among other things, that the federal government, as trustee, protect the trust's corpus. "Elementary trust law . . . confirms the commonsense assumption that a fiduciary actually administering trust property may not allow it to fall into ruin on his watch." *United States v. White Mt. Apache Tribe*, 537 U.S. 465, 475 (2003). The trustee has a duty to protect trust assets from damage for current and successive beneficiaries.

Restatement (Second) of Trusts, §§ 183, 232 (1959). And beneficiaries have the right to seek injunctive relief to compel trustees to fulfill their duties. *Id*., § 199.[16]

As demonstrated above, Plaintiffs have properly alleged a claim that Defendants are violating their trust duties. Their permitting, authorizing, and subsidizing of fossil-fuel extraction, production, transportation, utilization, and exports spur the global warming that is damaging trust resources, due to ocean temperature rise and acidification, while also undermining the resources' public purpose as a defensive shield from even greater warming, sea-level rise, and flooding. These impacts are the weapons that global warming has levied against the nation, and the threats are now greater than ever before. Because they are in no small part due to the trustees themselves, the District Court did not err in refusing to dismiss Plaintiffs' Public-Trust-Doctrine claims.[17]

IV. CONCLUSION

Defendants fail to point to clear error and only raise disagreements. The District Court's decision reflects a reasoned conclusion that Plaintiffs have met all three criteria for standing at this stage of the case—real and particularized ocean-related injuries,

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[16] Federal courts also have found jurisdiction for claims against the federal government violating its common-law trustee duties. *See, e.g., Cobell v. Babbitt*, 30 F. Supp. 2d 24, 38 (D.D.C. 1998).

[17] Defendants are wrong to rely on the *Judicial Missteps, Legislative Dysfunction, and the Public Trust Doctrine: Can Two Wrongs Make It Right?*, 45 Envtl. L. 1139, 1152 (2015) to argue that this case takes the Public Trust Doctrine past its historic moorings. (*See* Pet. 31, n.9.) The District Court's envisioned proper remedy directly addresses Professor Lazarus's sole concerns that this sort of case might shortcut more democratic approaches. (*See* slip op. 12-13, 17.)

caused by Defendants' authorizations of fossil-fuel production, transport, and export, under authorities which instead should be implemented to reduce or slow down climate change. And because Plaintiffs have pled viable Due-Process-Clause claims based on Public-Trust-Doctrine rights deeply rooted in this nation's history, this Court should deny Defendants' Petition for Writ of Mandamus.

Respectfully submitted,

DATED: September 5, 2017

Amici curiae, Food & Water Watch, Inc., Friends of the Earth – US, and Greenpeace, Inc.

By their attorney,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation set forth in Fed. R. App. P. 29(a)(5) and Circuit Rules 21-2(c), 32-3(2) because it contains 3,858 words.

2. This brief has been prepared in a proportionally spaced typeface of 14 point, Times New Roman, using Microsoft Word for Mac. 2015.

DATED: September 5, 2017

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing brief with the U.S. Court of Appeals or the 9th Circuit using the CM/EMF system on September 5, 2017. I certify that all the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/Zachary B. Corrigan
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