Nos. 25-5185, 25-5189, 25-5197

In The United States Court of Appeals for the Ninth Circuit

ARIZONA MINING REFORM COALITION; et al.,

Plaintiffs-Appellants,

v.

BROOKE L. ROLLINS, U.S. Secretary of Agriculture, et al.,

Defendants-

Appellees, and

RESOLUTION COPPER MINING LLC,

Intervenor-Defendant-Appellee.

On Appeal from the United States District Court
for the District of Arizona
No. 2:21-cv-00122-PHX-DWL
Hon. Dominic W. Lanza

BRIEF OF *AMICI CURIAE* THE TOWNS OF SUPERIOR, KEARNY, AND MIAMI, ARIZONA, AND MAYOR DEAN HETRICK OF HAYDEN, ARIZONA, IN SUPPORT OF APPELLEES

Ivan L. London
Grady J. Block
MOUNTAIN STATES LEGAL FOUNDATION
2596 South Lewis Way
Lakewood, Colorado 80227
Phone: (303) 292-2021
ilondon@mslegal.org

Attorneys for Amici Curiae

SAN CARLOS APACHE TRIBE, a federally recognized Tribe,

Plaintiff-Appellant,

v.

UNITED STATES FOREST SERVICE,
an agency of the U.S. Department of Agriculture, et al.,

Defendants-

Appellees, and

RESOLUTION COPPER MINING LLC,

Intervenor-Defendant-Appellee.

On Appeal from the United States District
Court for the District of Arizona
No. 2:21-cv-0068-PHX-DWL
Hon. Dominic W. Lanza

GOUYEN BROWN LOPEZ, et al.,

Plaintiffs-Appellants,

v.

UNITED STATES OF AMERICA, et al.,

Defendants-

Appellees, and

RESOLUTION COPPER MINING LLC,

Intervenor-Defendant-Appellee.

On Appeal from the United States District
Court for the District of Arizona
No. 2:25-cv-2758-PHX-DWL
Hon. Dominic W. Lanza

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

The undersigned attorneys certify that *amici curiae* the Towns of Superior, Arizona; Kearny, Arizona; and Miami, Arizona, are municipalities organized under the laws of the State of Arizona. Superior, Miami, and Kearny are government entities, not publicly traded, and have no parent corporation. They have no stock, and therefore no publicly held corporation owns ten percent or more of their stock. Mayor Dean Hetrick is an individual filing in his personal capacity.

/s/ Ivan L. London
Ivan L. London

TABLE OF CONTENTS

		Page
RULE 26.1 CORPORATE DISCLOSURE STATEMENT		i
TABLE OF CONTENTS		ii
TABLE OF AUTHORITIES		iv
IDENTITIES AND INTERESTS OF AMICI CURIAE		1
INTRODUCTION AND SUMMARY OF THE ARGUMENT		6
ARGUMENT		8
I.	SALECA IS IN THE PUBLIC INTEREST, AND NEPA CANNOT BE WIELDED AS A SWORD TO DEFEAT THE PUBLIC INTEREST.	8
II.	THE LOWER COURT RESPECTED ITS LIMITED ROLE IN DECIDING WHETHER THE FOREST SERVICE HAD ACTED REASONABLY.	11
III.	THE LOWER COURT PROPERLY DENIED INJUNCTIVE RELIEF.	14
A.	An injunction does not advance the public interest.	14
B.	Appellants did not demonstrate a likelihood of success on the merits under the standards governing NEPA review.	14
C.	Further delay imposes significant, irreparable harm on the Copper Corridor communities.	16
1.	The Copper Corridor's Mining-Dependent Economy Faces Existential Vulnerability Without the Project's Stabilizing Benefits.	17
2.	An Injunction Would Unravel Decade-Long Negotiated Agreements Essential for Workforce	

Development, Infrastructure, and Environmental Mitigation..... 20

3. The Injunction Would Imminently Freeze Millions in Investments, Job Creation, and Local Procurement 22

4. An Injunction Would Forfeit Superior's Congressionally-Mandated Land Acquisition, Condemning the Town to Geographic Constraints. 24

CONCLUSION..... 27

CERTIFICATE OF SERVICE 29

CERTIFICATE OF COMPLIANCE..... 30

TABLE OF AUTHORITIES

Case	Page(s)
FCC v. Prometheus Radio Project, 592 U.S. 414 (2021)	10
Loper Bright Enterprises v. Raimondo, 603 U.S. 369, 144 S.Ct. 2244, 219 L.Ed.2d 832	13
Loving v. United States, 517 U.S. 748, 758 (1996)	9, 10
Nken v. Holder, 556 U.S. 418, 435 (2009)	16
Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 350 (1989)	11, 15, 16
Seila Law LLC v. Consumer Fin. Prot. Bureau, 591 U.S. 197, 237–38 (2020)	9
Seven County Infrastructure Coalition v. Eagle County, Colorado, 145 S. Ct. 1497 (2025)	7, 8, 11, 13, 15
Strycker's Bay Neighborhood Council, Inc. v. Karlen, 444 U.S. 223 (1980)	15
Trump v. United States, 144 S. Ct. 2312, 2380 (2024)	9, 10
Vt. Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc., 435 U.S. 519, 558 (1978)	15
Winter v. Natural Res. Def. Council, 555 U.S. 7 (2008)	14
Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 609–10 (1952)	9, 10, 12

Statutes

5 U.S.C. § 706(2)(A) 11

16 U.S.C. § 516 9

16 U.S.C. § 539p 2

16 U.S.C. § 539p(a) 6, 9, 10, 12, 14, 16

16 U.S.C. § 539p(c)(1) 10

16 U.S.C. § 539p(c)(3)(A) 10

16 U.S.C. § 539p(c)(9) 6, 10, 12, 13

16 U.S.C. § 539p(c)(10) 7

16 U.S.C. § 539p(h) 2, 25

42 U.S.C. § 4332(2)(C) 13

42 U.S.C. § 4332(C) 10

U.S. Const. art. I, § 1 8

IDENTITIES AND INTERESTS OF *AMICI CURIAE*[1]

An *amicus* brief cannot begin to convey to the Court the importance of the Resolution Copper project to the **Town of Superior**, Arizona (Superior or the Town). Located in Arizona's historic "Copper Corridor," Superior's existence is inextricably linked to mining, defined for the better part of the 20th century by the Magma Mine (1910–1996). The copper ore deposit in Superior is estimated to be the largest in North America, adding substantially to Superior's and the State of Arizona's position as a national producer and exporter of Copper in the United States.

When the Resolution Copper project was proposed with Superior as the host community, Superior approached it with caution born of experience. Besich Decl. ¶ 6.[2] The first Draft Environmental Impact Statement (DEIS) projected a significant net fiscal *loss* for the Town, estimating $1 million in annual infrastructure and service costs against only $350,000 in revenue. In response, Superior engaged in nearly a decade of rigorous, strategic negotiation to transform this projected liability into a

---

[1] No party's counsel authored the brief in whole or in part; no party or any party's counsel contributed money that was intended to fund preparing or submitting the brief; and no person—other than the amicus curiae, its members, or its counsel—contributed money that was intended to fund preparing or submitting the brief. Further, all parties have consented to the filing of this brief.

[2] The Declaration of Superior Mayor Mila Besich is attached to this brief as Ex. A, and called throughout "Besich Decl." The brief also refers to the Declaration of Victoria Peacey, the President and General Manager of Resolution Copper Mining LLC, which was filed in this case on September 30 as Docket Entry 84.2. For simplicity, this brief refers to that document as the "Peacey Decl."

foundational asset. Besich Decl. ¶ 8. The process resulted in binding compacts, including the 2024 Good Neighbor Agreement (GNA) and the 2023 Superior Regional Economic Development Agreement (REDA). These agreements secure critical investments in workforce development, STEM education, community infrastructure (including a new campground to mitigate the loss of the Oak Flat campground), and environmental stewardship.

For further context, Superior is geographically "land-locked," severely limiting its ability to grow. Besich Decl. ¶ 11. The Southeast Arizona Land Exchange and Conservation Act (SALECA), 16 U.S.C. § 539p, gives the Town a congressionally authorized opportunity to acquire 545 acres of adjacent federal land. *Id.* § 539p(h)(1). This acquisition is essential for housing, economic development, and expansion of the Town's industrial park and airport—keys to building a diversified economy that can survive beyond the life of the mine. Besich Decl. ¶ 12. So while delay might not superficially void Congress's authorization to the Town, *see* 16 U.S.C. § 539p(h), indefinite injunction creates practical forfeiture, as funding and political momentum for acquisition depend on the exchange's timely (now a decade delayed) completion. *See* Peacey Decl. ¶¶ 21–34 (describing the expected disastrous consequences of further injunction-based delay).

The injunction that Appellants[3] seek threatens these hard-won benefits and the critical land transfer. Superior files this brief to articulate the unique perspective of the host community, whose future resilience depends on the timely execution of the congressional mandate and the negotiated agreements that rely upon it.

Superior is not alone in wanting to bring local impacts to the Court's attention.

Mayor Dean Hetrick, the Mayor of Hayden, Arizona, joins this brief in his personal capacity to underscore the profound importance of the Resolution Copper project to his community. Situated in the heart of Arizona's "Copper Corridor," Hayden has long been defined by its mining heritage, including the ongoing operations of the ASARCO Hayden smelter, which processes copper concentrate and supports hundreds of local jobs. The Resolution Copper project represents a vital economic lifeline for Hayden, promising sustained employment, increased tax revenues, and enhanced regional infrastructure that will bolster the town's resilience against the cyclical nature of the mining industry. As another small community grappling with limited growth opportunities and the lingering effects of past economic downturns, Hayden stands to gain significantly from the project's contributions to workforce training, community development, and environmental mitigation efforts negotiated through collaborative agreements.

---

[3] For convenience, the combined Plaintiffs-Appellants across the dockets are called Appellants in this brief.

The **Town of Kearny**, Arizona, with a population of approximately 2,000 residents, is a quintessential Copper Corridor community located about 20 miles west of Superior. It was historically anchored by the Ray Mine, which has provided generations of high-wage jobs and sustained the local economy since the early 20th century. Kearny's interest in this case stems from its shared regional reliance on mining for economic stability, where the Resolution Copper project is projected to generate thousands of direct and indirect jobs, boost tax revenues, and infuse substantial economic value to Arizona. Local leaders in Kearny have voiced strong support for the project, emphasizing its potential to revitalize the Copper Corridor through infrastructure investments, workforce training, and enhanced community services. As a mining-dependent town that has navigated boom-bust cycles like Superior's, Kearny opposes further delays and the risks of further economic stagnation and lost opportunities for diversification, while trusting that reasonable mitigation measures will address potential concerns.

The **Town of Miami**, Arizona, with a population of about 1,800 residents, lies approximately 15 miles east of Superior in the heart of the Copper Corridor. It was founded as a mining town in the late 19th century and long supported by the Freeport-McMoRan-operated Miami Mine, which is still a key driver of local employment. Miami's interest aligns with its neighbors' interests in advocating for the Resolution Copper project's expected economic benefits like jobs, tax revenues,

and broader regional growth helping small communities through increased funding for education, infrastructure, and public services. Town officials and residents have shown support through partnerships and public endorsements emphasizing the project's role in sustaining mining heritage while enabling diversification into tourism and recreation. Miami joins this brief because further delays will harm rural economies already strained by past mine-slowdowns.

The effects of further delay on the local communities are real, not imaginary. As Resolution Copper recently explained, moving forward will allow for "agreed-upon recreational enhancements to the Town of Superior [and] invest[ment of] more than $8.9 million into projects in the Copper Triangle that drive the area's long term economic growth, as well as supporting its recreational and cultural advancements." Peacey Decl. ¶ 16. "Resolution has, for example, invested $4.7 million to help regrow Superior's local workforce, as well as hundreds of thousands of dollars in revitalization projects to bring new life to historic spaces and create opportunities for new businesses in Globe, Miami, Gila County, and Kearny, Arizona." *Id.* And "Resolution has committed to pay over $20,000,000 to benefit local communities and the environment." Peacey Decl. ¶ 17. These *amici curiae* have substantial interests in seeing the benefits.

For the rest of this brief, Superior is the illustrative example of the impacts at stake. However, as fellow Copper Corridor towns, Hayden, Kearny, and Miami share

interconnected economies and face similar vulnerabilities to the cyclical nature of mining. What happens to Superior is what will happen to all the Copper Corridor towns suffering further delay of the Resolution Copper project, perpetuating economic uncertainty, foreclosing opportunities for diversification, and undermining regional resilience.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

In 2014, Congress made a deliberate policy choice by enacting SALECA to "authorize, direct, facilitate, and expedite" the land exchange necessary for the Resolution Copper project. 16 U.S.C. § 539p(a). This legislation was the culmination of a political process in which Congress weighed environmental, cultural and other impacts against economic benefits and the national security imperative of securing a domestic copper supply. For Superior—which has been held hostage for more than a decade while groups like Appellants here throw all they can at blocking the project—the lower court's refusal to further enjoin this project is vital to securing irreplaceable land acquisitions and negotiated investments that promise long-term resilience beyond the Resolution Copper project's lifespan.

While mandating the exchange, Congress also required environmental review under the National Environmental Policy Act (NEPA). 16 U.S.C. § 539p(c)(9). Following the publication of the "new" Final Environmental Impact Statement (FEIS) on June 20, 2025—a document spanning over 3,600 pages and the product

of years of analysis—Appellants sought preliminary injunctions to block the exchange, even though federal law required the exchange be executed within 60 days. 16 U.S.C. § 539p(c)(10). In lengthy, well-reasoned decisions that reflect an understanding of the Supreme Court's recent instructions to lower courts on how to review NEPA cases, *Seven County Infrastructure Coalition v. Eagle County, Colorado*, 145 S. Ct. 1497 (2025), the lower court here separately disposed of (and denied) further tries to preliminarily enjoin, and generally delay, development of the Resolution Copper project. *See* 1-AMRCER-95; LOPEZ-ER023.

A decade after Congress directed the land exchange that would make the Resolution Copper project workable and now that the *new* FEIS is published, Appellants seek preliminary injunctive relief to further delay the project. But the Resolution Copper project is in the public interest—Congress already said so—while further delay is not. Relatedly, the lower court correctly found that Appellants were not likely to prevail on the merits. And most damaging for *amici*, further delay will continue to impose significant, irreparable harms on Copper Corridor communities.

This Court should affirm. The lower court here started in the right place by acknowledging what the Supreme Court has long tried to make clear and has recently again explained in *Seven County*: First, Congress is the federal body tasked with expressing—through legislation—the public interest, and anti-public-interest groups (like the plaintiffs in these and similar cases) and regulators cannot use NEPA as a

way to displace the public interest by inserting their own interests instead. *E.g.*, LOPEZ-ER029. Second, the "fundamental principles of judicial review" similarly do not let federal judges nullify the public interest by placing themselves in the regulators' shoes rather than examining whether the regulators had acted reasonably. *See Seven County*, 145 S. Ct. at 1511–15; 1-AMRCER-41. And third, considering these fundamental starting points, Appellants' NEPA challenges are unlikely to succeed or otherwise justify further injunctive relief holding up the land exchange and the development of the Resolution Copper project. *See, e.g.*, LOPEZ-ER018 ("This challenge is unlikely to succeed on the merits."); *see also* 1-AMRCER-94 (denying further injunctive relief while acknowledging the ongoing order preventing the United States conveying its land[4]).

ARGUMENT

I. SALECA IS IN THE PUBLIC INTEREST, AND NEPA CANNOT BE WIELDED AS A SWORD TO DEFEAT THE PUBLIC INTEREST.

James Madison explained in Federalist 51 that checks and balances are "essential to the preservation of liberty." Among the checks and balances, the "legislative Powers" to make law and define the public interest are "vested in a Congress of the United States." U.S. Const. art. I, § 1. And the Supreme Court has

[4] Albeit, Appellee Resolution Copper Mining LLC has recently moved to dissolve that "temporary administrative injunction"—the motion was filed in this case on September 30 as Docket Entry 84.1.

long recognized that "the lawmaking function belongs to Congress . . . and may not be conveyed to another branch or entity." *E.g.*, *Loving v. United States*, 517 U.S. 748, 758 (1996).

While courts have the negative power to disregard an unconstitutional enactment by Congress, they cannot re-write Congress's work. *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197, 237–38 (2020); *see also Trump v. United States*, 144 S. Ct. 2312, 2380 (2024) (Jackson, J., dissenting) (Congress "is the entity our Constitution tasks with deciding, as a general matter, what conduct is on or off limits"). By vesting "[a]ll legislative Powers" in Congress, the Constitution ensures that elected representatives—not Appellants here nor the unelected regulators at the Forest Service—can codify the public interest. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 609–10 (1952) (Frankfurter, J., concurring).

Here, Congress has made clear that the land exchange and development of the Resolution Copper project are in the public interest. Speaking in its role of representing the people across this Nation, Congress said, "The purpose of this section is to authorize, direct, facilitate, and expedite the exchange of land between Resolution Copper and the United States." 16 U.S.C. § 539p(a); *see also* 16 U.S.C. § 516 (granting the Secretary of Agriculture authority beyond the specific exchanges described by Congress to decide that additional changes will "benefit" the "public interests"). Congress did not just *authorize* the Secretary of Agriculture to make the

land exchange, but also "*directed*" the Secretary to do so. 16 U.S.C. § 539p(c)(1). Congress could hardly have been clearer in its expression of the public interest.

Nor can Appellants or federal regulators put their own interests *above* the "public interest"; Congress has spoken. *Loving*, 517 U.S. at 758; *Trump*, 144 S. Ct. at 2380 (Jackson, J., dissenting); *Youngstown Sheet & Tube Co.*, 343 U.S. at 609–10 (Frankfurter, J., concurring). True, Congress ordered the Secretary to "consult[]" with "affected Indian tribes," 16 U.S.C. § 539p(c)(3)(A), but not at the expense of the public interest in actually making the land exchange.

So where does NEPA come into play? Typically, Congress requires federal regulators to stop, consider whether a proposed action will "significantly affect[] the quality of the human environment," and if so, then include a detailed environmental impact statement. *See* 42 U.S.C. § 4332(C). Does the land exchange here meet those thresholds? It does not matter because in SALECA, Congress further directed the Secretary of Agriculture (through the Forest Service) to go ahead and prepare an environmental impact statement. 16 U.S.C. § 539p(c)(9).

Yet to repeat the point, Congress has decided that exchanging the land ***is*** in the public interest. 16 U.S.C. § 539p(a). NEPA is a procedural statute—it requires the federal regulators to pause, reasonably consider the significant effects to "the quality of the human environment" that the exchange might cause, and then reasonably explain those effects. 42 U.S.C. § 4332(C); *FCC v. Prometheus Radio*

Project, 592 U.S. 414, 423 (2021) (5 U.S.C. § 706(2)(A) "requires that agency action be reasonable and reasonably explained"). It "does not mandate particular results, but simply prescribes the necessary process" for agencies to follow. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989). That's *all* it does.

NEPA—even, or maybe especially—as expressed in SALECA, does not offer a mechanism to veto the underlying policy decision made by Congress. "The political process, and not NEPA, provides the appropriate forum in which to air policy disagreements." *Seven County*, 145 S. Ct. at 1518. Neither anti-project plaintiffs like Appellants here nor federal regulators like the Forest Service here can wield NEPA as a sword to cut down the public interest as Congress has clearly expressed it. The Forest Service appropriately did not undermine the public interest in its NEPA analysis, and this Court should find that the NEPA analysis in this case was both reasonable and reasonably explained, and further that the public interest is best served—as Congress said more than a decade ago—by the land exchange and development of the Resolution Copper project.

II. THE LOWER COURT RESPECTED ITS LIMITED ROLE IN DECIDING WHETHER THE FOREST SERVICE HAD ACTED REASONABLY.

If the federal regulators acted reasonably in implementing NEPA/SALECA, then the lower court ***had to*** respect their actions and decisions. 5 U.S.C. § 706(2)(A); *Seven County*, 145 S. Ct. at 1512; *Prometheus Radio Project*, 592 U.S. at 423.

Congress has already shown that the land exchange is in the public interest, and that the regulators must confine their "NEPA" role to the process that Congress intended, 16 U.S.C. § 539p(a), (c)(9). And when "Congress itself has struck the balance, has defined the weight to be given the competing interests, a court of equity is not justified in ignoring that pronouncement . . . ." *Youngstown Sheet & Tube Co.*, 343 U.S. at 609–10 (Frankfurter, J., concurring).

Here, the lower court specifically held that the federal regulators here acted and explained themselves reasonably. As the lower court described, for example:

> it is evident that the Forest Service took the sort of "hard look" at alternative mining methods that, to the extent any such analysis was even required here, would be sufficient under NEPA. . . . Courts must . . . resist the urge to "fly-speck" the agency's analysis and act as a type of omnipotent scientist. In a related vein, it fell within NEPA's "broad zone of reasonableness," for the Forest Service to consider the cost and productivity of the alternative mining methods when assessing their feasibility. Such consideration was particularly reasonable here because Congress indicated in SALECA that it expected the land exchange to result in "the extraction of minerals in commercial quantities by Resolution Copper."

LOPEZ-ER020 (citations and some internal alterations omitted); *see also, e.g.*, 1-AMRCER-27 ("Put another way, even if the appraisal decision was wrong—and the Court is skeptical it was—it at least fell within the 'zone of reasonableness,' given the absence of contrary authority and the presence of a reasoned explanation for the decision.").

This is not to say that federal courts must defer to regulators in all-things-NEPA, and Justice Kavanaugh explained the distinction between the federal courts' obligations to read the NEPA statute (or, *e.g.*, SELECA, 16 U.S.C. § 539p(c)(9)) without deferring to regulators' reading of *the law* versus the deference required when considering their implementation of such procedural requirements *in fact*:

> In practice, judicial deference in NEPA cases can take several forms. For example, NEPA says that the EIS should be "detailed." 42 U.S.C. § 4332(2)(C). Of course, ***the meaning of "detailed" is a question of law to be decided by a court***. *Loper Bright*, 603 U.S. at 391–392, 144 S.Ct. 2244. But what details need to be included in any given EIS? For the most part, that question does not turn on the meaning of "detailed"—instead, it "involves ***primarily issues of fact***." The agency is better equipped to assess what facts are relevant to the agency's own decision than a court is. As a result, "agencies determine whether and to what extent to prepare an EIS based on the usefulness of any new potential information to the decisionmaking process." So the question of whether a particular report is detailed enough in a particular case itself requires the exercise of agency discretion—***which should not be excessively second-guessed by a court***. Brevity should not be mistaken for lack of detail. A relatively brief agency explanation can be reasoned and detailed; an EIS need not meander on for hundreds or thousands of pages. So courts should not insist on length as a prerequisite for finding an EIS to be detailed.

Seven County, 145 S. Ct. at 1512 (emphasis added, some citations and internal alterations omitted). The lower court followed this instruction, and this Court should affirm.

III. THE LOWER COURT PROPERLY DENIED INJUNCTIVE RELIEF.

A preliminary injunction is an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief. *See Winter v. Natural Res. Def. Council*, 555 U.S. 7, 22 (2008). To get a preliminary injunction, the movant must : (1) a likelihood of success on the merits; (2) a likelihood of irreparable injury to the plaintiff if injunctive relief is not granted; (3) a balance of hardships favoring the plaintiff; and (4) advancement of the public interest.

Here, Appellants cannot make the showing necessary to justify a devastating, unlawful injunction.

A. An injunction does not advance the public interest.

Briefly, and as explained *supra* at Arg. I and II, Congress has already decided that going forward with the land exchange and the Resolution Copper project ***are*** in the public interest. 16 U.S.C. § 539p(a). The lower court saw that too, although it should have leaned more heavily into this *Winter* element. *E.g.*, 1-AMRCER-7–8; LOPEZ-ER029. Frankly, given the clarity and weight of Congress's statement of the public interest as relevant to these cases and this appeal, the lower court should have found the "public interest" element dispositive alone in denying the request for injunctive relief.

B. Appellants did not demonstrate a likelihood of success on the merits under the standards governing NEPA review.

Another, fundamental flaw in Appellants' injunction-elements argument is the

presumption that NEPA provides a substantive basis to halt the Resolution Copper project. It does not. NEPA just ensures that "the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts." *Robertson*, 490 U.S. at 349.

It is a "purely procedural statute" for analysis and disclosure but imposes "no substantive constraints on the agency's ultimate decision." *Seven County*, 145 S. Ct. at 1511; *see also Vt. Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 558 (1978). Specifically, it "imposes no substantive environmental obligations or restrictions." *Seven County*, 145 S. Ct. at 1507. Nor does it require—or, as described *supra*, allow—anti-project-plaintiffs, federal regulators, or reviewing courts to elevate environmental concerns over other competing considerations, such as economic development or national security. *See Strycker's Bay Neighborhood Council, Inc. v. Karlen*, 444 U.S. 223, 227 (1980) (per curiam).

So even when a project has clear expected environmental impacts, NEPA does not require regulators or courts to negate the project. "If the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs." *Robertson*, 490 U.S. at 350. NEPA is "not a substantive roadblock" to agency action. *Seven County*, 145 S. Ct. at 1507. Its goal is "not to paralyze" the government from undertaking major projects. *Id*.

Even if there was a "substantive roadblock" here, the record shows that the Forest Service complied with NEPA's procedural requirements, as the lower court found. The environmental review process spanned nearly a decade. It involved extensive coordination with cooperating agencies, stakeholders, the Town of Superior, and the Appellant Tribes. The Forest Service received and responded to over 29,000 comments on the Draft EIS. 1-AMRCER-6, at n.1.

The resulting FEIS is a comprehensive document, comprising six volumes and over 3,600 pages. *Id*. It thoroughly examines the project's impacts, acknowledges the significant environmental and cultural tradeoffs, and outlines mitigation strategies. In short, it met NEPA's requirements. Having taken the required "hard look"—that is, having acted and explained its actions reasonably—the agency was free to conclude that the economic and national security benefits of the project outweigh the environmental costs. *Robertson*, 490 U.S. at 350. After all, Congress had already made the substantive decision, 16 U.S.C. § 539p(a), and all that was left to the federal regulators was implementing Congress's determination and mandate.

C. Further delay imposes significant, irreparable harm on the Copper Corridor communities.

The equities are not confined solely to the environmental and cultural impacts raised by anti-mining groups. Courts must also consider the consequences of an injunction on other third parties and the broader public. *See Nken v. Holder*, 556 U.S.

418, 435 (2009). In this case, the equities weigh against the extraordinary remedy of an injunction because the ongoing delay imposes concrete, immediate, and potentially irreversible economic harm on the Town of Superior and the interconnected communities of Arizona's historic Copper Corridor—Hayden, Kearny, and Miami. For them, the injunction is not merely a pause in a regulatory process; it is an active threat to their economic revitalization, their negotiated future, and their long-term ability to diversify and survive beyond the lifespan of the Resolution Copper project. The injunction jeopardizes meticulously negotiated agreements and critical land acquisitions essential for these communities to overcome historical vulnerabilities and achieve resilience.

Appellants' alleged harms—speculative environmental and cultural risks—are addressed by the FEIS's mitigation measures, while an injunction would impose immediate, concrete economic harms on the Copper Corridor towns. It would not merely delay economic opportunity; it would dismantle a comprehensive, decade-long strategic plan designed to secure, *e.g.*, Superior's future viability and break the devastating economic cycles that have historically defined it.

1. The Copper Corridor's Mining-Dependent Economy Faces Existential Vulnerability Without the Project's Stabilizing Benefits.

To understand the gravity of the harm imposed by the injunction, the Court must recognize the unique historical and economic context of the Copper Corridor. The existence of these communities is inextricably linked to the mining industry.

Superior, for the better part of the 20th century, was defined by the Magma Mine (1910–1996). The region hosts what is estimated to be the largest copper ore deposit in North America, positioning Arizona as a critical national producer. Ryan Randazzo, *McCain was crucial backer of Superior copper mine for jobs and national security*, The Republic, (Aug. 31, 2018) (quoting Arizona Senator John McCain: "This mine, when it's fully operational, will supply 25 percent of America's copper supply, and that is a national security issue.").[5] This heritage, however, comes with inherent vulnerability to the "boom-bust" cycles endemic to resource extraction economies. These communities have navigated the economic stagnation, population loss, and strain on public services that go with mine slowdowns and closures. The closure of the Magma Mine in 1996 dealt a severe blow to Superior, starting a period of economic uncertainty that the Town has struggled to overcome. Besich Decl. ¶ 3.

Other Copper Corridor towns face similar vulnerabilities. Hayden has long relied on the ASARCO Hayden smelter; Kearny was historically anchored by the Ray Mine; and Miami continues to rely on the Freeport-McMoRan-operated Miami Mine. These are small, rural communities grappling with limited growth opportunities and the lingering effects of past economic downturns.

---

[5] https://www.azcentral.com/story/news/politics/arizona/2018/08/31/sen-john-mccain-legacy-resolution-copper-project-near-superior-arizona/1110685002/ (last visited Oct. 6, 2025).

The Resolution Copper project represents what local leaders have characterized as an "economic lifeline to our economically challenged communities." Mayor, Mila Besich, *Mayors' Ltr. To President Biden*, Facebook, (Mar. 17, 2021).[6] To be clear, the project is a game changer for the area: 1,500 direct jobs (plus 2,200 indirect jobs); $61 billion for Arizona over the project's life; and boosts to state and local tax revenues of $88 million to $113 million per year. Resolution Copper, *Economic Impact* (2025).[7] Investments in this project have surpassed $2 billion, "$4.9 million was invested in the community, supporting education and youth programs, economic, workforce and business development and cultural heritage preservation initiatives." Resolution Copper, *$2 Billion Invested for a Smarter, Stronger Copper Future* (2025).[8]

An injunction would directly undermine this economic stabilization. By delaying the project, the injunction perpetuates the economic uncertainty that has plagued the region, risking further stagnation and foreclosing opportunities for the current generation of residents. The effects of this delay translate into lost jobs, deferred investments, and a continued inability for these small communities to

---

[6] https://www.facebook.com/MayorMilaBesich/photos/pcb.2956321347981433/2956321307981437 (last visited Oct. 6, 2025).

[7] https://resolutioncopper.com/economic-impact-2/ (last visited Oct. 6, 2025).

[8] https://resolutioncopper.com/2-billion-invested-for-a-smarter-stronger-copper-future/ (last visited Oct. 6, 2025).

achieve their full potential. As Superior Mayor Mila Besich articulated, the ongoing uncertainty is devastating: "This would really set us back probably two decades at this point if we had to start all over again." Felicia Fonseca, *Mayor: Superior can't reach full potential without mine*, Wash. Times (Apr. 13, 2021).[9] To enjoin the project now, after this profound investment of time, resources, and political capital, would inflict profound and irreparable harm by foreclosing the Town's only pathway to a diversified future.

2. An Injunction Would Unravel Decade-Long Negotiated Agreements Essential for Workforce Development, Infrastructure, and Environmental Mitigation.

An injunction would irreparably harm Superior by dismantling the comprehensive compact of binding agreements negotiated over the past decade in reliance on SALECA. These agreements—the 2023 REDA and the 2024 GNA—are the mechanisms through which Superior ensures the project contributes to, rather than undermines, its long-term resilience. The destruction of this compact cuts the critical investments in human capital, infrastructure, and accountability necessary for a sustainable future.

The Town's reliance interest in these agreements is substantial and justifies the denial of an injunction. These agreements were not passively received; they were

---

[9] https://www.washingtontimes.com/news/2021/apr/13/mayor-superior-cant-reach-full-potential-without-m/

actively negotiated in response to a documented threat. When the first DEIS revealed that the project would impose a significant fiscal deficit on the Town (projecting a $650,000 annual negative impact), Superior strategically invested a decade of political capital and resources to compel Resolution Copper to address these localized negative impacts. This effort reflects the Town's vision of becoming "a town with a mine, not a mining town"—a community capable of leveraging the project for long-term sustainability. Fonseca, *Mayor*, April 13, 2021, *supra* at n.9. In other words, this effort represents a sophisticated strategy to leverage the "boom" to build resilience *before* the next bust occurs. The resulting GNA and REDA form a bedrock of Superior's future planning, securing critical, multi-faceted investments that go beyond standard economic impacts. The agreements encompass comprehensive investments in several key areas such as:

(i) Workforce Development and Education: The agreements mandate significant investment in local workforce training and STEM education initiatives. This is aimed at ensuring residents, including those in neighboring communities and nearby Tribes, are positioned to benefit from the high-wage jobs the project will generate, building local capacity for the long term.

(ii) Community Infrastructure and Revitalization: The agreements secure funding for essential infrastructure upgrades and the revitalization of historic spaces, aimed at attracting new businesses and improving the quality of life.

(iii) Environmental Stewardship and Mitigation: Recognizing the significant impacts, the agreements include provisions for environmental monitoring and stewardship. Critically, they also include funding for the development of a new campground specifically designed to mitigate the loss of the Oak Flat campground, showing a negotiated solution to a key impact of the land exchange.

Appellants want to unravel these hard-won benefits. The implementation of the GNA and REDA, and the realization of the investments they secure, are contingent upon the timely execution of the land exchange and the progression of the project. An indefinite delay places these agreements in jeopardy, undermining the years of negotiation and strategic planning.

3. The Injunction Would Imminently Freeze Millions in Investments, Job Creation, and Local Procurement.

The economic harms of the injunction are not speculative or distant; they are immediate, quantifiable, and substantial. The continuation of the injunction prevents Resolution Copper from initiating the next phase of the project, stalling significant financial investments and job creation in the local community.

The fiscal impact of this delay is profound. As Resolution Copper has detailed, the completion of the land exchange triggers significant, contractually obligated investments. Moving forward will allow for the implementation of "agreed-upon recreational enhancements to the Town of Superior" and the investment of "more than $8.9 million into projects in the Copper Triangle that drive the area's long term

economic growth, as well as supporting its recreational and cultural advancements." Peacey Decl. ¶ 16. And "Resolution has committed to pay over $20,000,000 to benefit local communities and the environment" as the project moves forward. *Id*. ¶ 17. The injunction prevents these funds from flowing into the community, stalling the revitalization efforts essential for the economic health of the Copper Corridor.

Further harm would be inflicted upon the local workforce. Resolution Copper had made substantial preparations to ramp up activities immediately following the completion of the land exchange, including finalizing contracts and recruitment plans. Peacey Decl. ¶ 8. These efforts were halted by the administrative injunction issued by this Court, and would be exacerbated by imposing further injunctive relief that Appellants seek. *Id*.

If the exchange were allowed to close, Resolution would promptly hire approximately 25 new roles to support planned drilling activities and employ approximately 150 contractors for underground development and associated surface construction. Peacey Decl. ¶ 11. These are high-quality jobs, many covered by a Project Labor Agreement with the Arizona Building and Construction Trades Council, ensuring that the benefits flow directly to professional tradespeople in the region (electrical, pipefitting, plumbing, HVAC). *Id*.

Resolution's hiring practices prioritize the local community, including the San Carlos Apache Tribe. In Q1 2025, 258 out of 341 total employees came from the

local community (within 40 miles of the project). Peacey Decl. ¶ 13. The delay prevents the expansion of these local hiring initiatives in areas with historically high unemployment.

The injunction also freezes massive procurement spending. Following the close of the exchange, Resolution is budgeted to spend approximately $100 million on procurement for the drilling program alone, including equipment, fuel, salaries, housing, and local services (restaurants, safety equipment). Peacey Decl. ¶ 14. So while Superior supports dissolving the administrative injunction temporarily in place—which, admittedly, is distinct from the specific appellate review before the Court in this brief—it is worth further explaining that additional injunctive relief and delay that Appellants seek will have devastating, irreparable effects on *amici*.

4. An Injunction Would Forfeit Superior's Congressionally-Mandated Land Acquisition, Condemning the Town to Geographic Constraints.

Perhaps the most critical harm imposed by the injunction is the threat it poses to Superior's long-term economic diversification—the key to its survival beyond the life of the mine. While the Resolution Copper project provides immediate economic benefits, the Town recognizes the imperative to build a sustainable economy that is not solely dependent on resource extraction. This requires strategic planning and, crucially, the acquisition of land for development, which is a challenge exacerbated by Superior's unique geography.

Superior faces a fundamental geographic constraint that severely limits its ability to build a sustainable economy: it is "land-locked," surrounded by federal and state trust lands. Besich Decl. ¶ 11. This constraint prevents the Town from developing the necessary housing, commercial centers, or industrial facilities needed to support a diversified economy. Without the ability to expand, Superior still is overly dependent on the mining industry, vulnerable to the inevitable decline of the mine's lifespan and the cyclical nature of the industry.

SALECA provides a unique and singular remedy to this existential crisis. Recognizing the Town's geographic constraints and the need for sustainable development, Congress included a provision that specifically authorizes Superior to buy 545 acres of adjacent federal lands. 16 U.S.C. § 539p(h). This acquisition, which could nearly double the available land for development, is an indispensable key to unlocking the Town's future. Yet it is expressly contingent upon the execution of the main land exchange mandated by SALECA. 16 U.S.C. § 539p(h).

The Town has developed detailed plans for the use of this land, directly addressing its strategic goal to transition from a "mining town" to a "town with a mine." Fonseca, *Mayor*, April 13, 2021, *supra* at n.9. A significant portion of the land is earmarked for the expansion of the Superior Industrial Park and improvements to the municipal airport (for which SALECA also secures reversionary rights). This infrastructure is essential for attracting light

manufacturing, logistics, and technology-related businesses. And this is the point of the strategy: proactively building an alternative economic base *now* that will sustain the community when the Resolution Copper mine eventually ceases operations decades from now. By eliminating the space for these industries, further injunction and delay destroy the Town's ability to diversify.

Further, a critical housing shortage stifles population growth and workforce stability. The 545-acre transfer provides space for sustainable housing development. Without it, the Town cannot accommodate growth or build a stable residential community. An injunction, therefore, does not merely delay development; it permanently forecloses Superior's only opportunity to secure the physical foundation for a sustainable economy. It condemns the Town to remain trapped within its geographic and existential boundaries. And it ensures the historical cycle of boom and bust will repeat, leading to another severe economic collapse when the mine inevitably closes. This destruction of the Town's long-term viability is irreparable harm.

And as delay continues, funding sources become less and less certain; the political coalition supporting the acquisition may fragment (which, of course, is Appellants' goal); and the opportunity cost of prioritizing this acquisition over other pressing needs increases. The uncertainty created by the injunction makes it impossible for the Town to secure the necessary financing and commitments from

developers and investors. As the Peacey Declaration details, the consequences of injunction-based delay are expected to be disastrous for these interdependent processes. *See* Peacey Decl. ¶¶ 21–34. Further delay effectively kills the acquisition by eroding the necessary support and momentum, causing irreparable detriment to Superior and the other *amici*. The consequences of overturning the lower court will ripple throughout the Copper Triangle.

CONCLUSION

For the reasons explained in this brief, Superior and the other *amici* respectfully ask the Court to affirm denial of further injunctive relief and prevent further delay of the land exchange and development of the Resolution Copper project.

DATED this the 6th day of October 2025.

Respectfully submitted,

/s/ Ivan L. London

Ivan L. London
Grady J Block
MOUNTAIN STATES LEGAL FOUNDATION
2596 South Lewis Way
Lakewood, CO 80227
(303) 292-2021
ilondon@mslegal.org

Attorneys for Amici Curiae *Towns of Superior, Kearny, and Miami, Arizona, and Hayden Mayor Dean Hetrick*

CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2025, I electronically filed the foregoing *Brief of* Amici Curiae *the Towns of Superior, Kearny, and Miami, Arizona, and Mayor Dean Hetrick of Hayden, Arizona, in Support of Appellees* with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit via the appellate CM/ECF system, which will serve all registered CM/ECF users.

/s/ Ivan L. London
Ivan L. London

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 8. Certificate of Compliance for Briefs

Instructions for this form: http://www.ca9.uscourts.gov/forms/form08instructions.pdf

9th Cir. Case Number(s) 25-5185, 25-5189, 25-5197.

I am the attorney or self-represented party.

This brief contains 6,101 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief *(select only one)*:

[ ] complies with the word limit of Cir. R. 32-1.

[ ] is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.

[x] is an **amicus** brief and complies with the word limit of Fed. R. App. P. 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).

[ ] is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.

[ ] complies with the longer length limit permitted by Cir. R. 32-2(b) because *(select only one)*:
- [ ] it is a joint brief submitted by separately represented parties;
- [ ] a party or parties are filing a single brief in response to multiple briefs; or
- [ ] a party or parties are filing a single brief in response to a longer joint brief.

[ ] complies with the length limit designated by court order dated _____.

[ ] is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature */s/ Ivan L. London* **Date** October 6, 2025.
*(use "*s/[typed name]*" to sign electronically-filed documents)*